April 2017

Trust in water

Monitoring the business retail market from April 2017: decisions and responses

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About this document

In this document we summarise the responses we received to 'Monitoring the business retail market from April 2017 - a consultation', which we published on 12 January 2017. We set out the issues raised by respondents and our decisions.

The expansion of the business retail market to further eligible non-household customers in England in April 2017 opens a new chapter in our approach to regulation. We expect to rely primarily on the development of effective competition in the expanded market to generate benefits for customers and where necessary, we can intervene using our competition law and regulatory toolkit. A strong monitoring framework plays an important role in supporting the functioning and development of the market.

On **12 January 2017** we published a consultation document outlining our approach to market monitoring. The consultation closed on **10 February 2017**. The consultation was accompanied by a Twitter hour on **30 January 2017**. We invited interested parties to comment. In particular, we sought views on:

- the objectives and issues market monitoring should look at;
- the type and sources of data we should use, how that data should be segmented and how frequently collected; and
- how we plan to use the information we intend to gather.

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1. Responses to the consultation

Our consultation included the following questions.

Q1 Are there any other objectives that market monitoring could or should fulfil in addition to those mentioned in section 2.2?

Q2 Do you agree with the issues we propose to monitor? What issues do you think should be monitored particularly closely?

Q3 Do you agree with the type and format of the information we are planning to obtain from the market operator? We welcome views on:

- the choice of metrics, their usefulness for our assessment of the market and ways of ensuring they are as useful as possible; and
- the availability of that information, the opportunities and limitations of obtaining information from the market operator including sources that could supplement it.

Q4 What information will retailers hold that will help us achieve our monitoring objectives? We welcome views on:

- the choice of metrics, their usefulness for our assessment of the market and ways of ensuring they are as useful as possible;
- the availability of that information including where else we could obtain the information that we would like retailers to provide;
- the best way for retailers to share that information with us (e.g. most appropriate format);
- whether retailers will be able to segment information in the way we require; and
- the best way to ensure the regulatory burden is proportionate, especially for smaller retailers.

Q5 We would welcome views on our proposal for informal monitoring and other tools we could use.

Q6 We would welcome views on how best we could involve third party intermediaries in our monitoring framework, which information would be best to collect and how we could obtain it.

Q7 We would welcome views on how best to collect useful information on market segments. In particular, we would welcome views on challenges to deriving the market segment information we envisage and ways of overcoming them.

Q8 How can we best ensure that relevant information is shared in a transparent and useful manner, whilst also being mindful of commercial and personal confidentiality and without prejudice to competition law?

We received 33 responses to our consultation. They included:

- 8 retailers
- 12 wholesalers
- 4 consumer bodies
- 3 third party intermediaries
- 6 other organisations

We also received useful comments during our Twitter Hour which we have incorporated into our approach.

Respondents were typically supportive of our approach with a number of comments suggesting that our framework was clear, helpful and well developed.

Most respondents understood the need to monitor the emerging market and agreed that our approach was sensible. Most retailers and wholesalers were also willing to provide the information we need although some retailers signalled that they would struggle to produce some information in the format we require at the time the market expands. We will engage with the sector further to ensure we maximise the quality of information we get and ensure the burden from its collection is proportionate.

Many respondents recognised the importance of identifying whether the market delivers benefits for customers, and that their experiences will be paramount to determining whether the market is working efficiently. Awareness of choice, and the ability to exercise that choice simply and effectively, was seen as crucial in this area. The majority of respondents also highlighted the need to ensure that third-party intermediaries (TPIs) play a positive role in the development of the market and suggested monitoring their activities in the market.

Consultation outcome

Following feedback received from respondents, and our assessment of these views, we are content that our broad approach to market monitoring remains appropriate and proportionate. We do not intend to make significant changes to our approach.

2. Responses to specific questions

This section summarises the main points raised in response to the consultation questions. We have published individual responses separately alongside this document, except where respondents identified their response as being confidential.

2.1 Question 1: Are there any other objectives that market monitoring could or should fulfil?

The majority of respondents endorsed our objectives with few requests for amendments. Respondents also understood the competition and regulatory reasons for Ofwat seeking to monitor the newly expanded market.

A small number of respondents suggested that we should widen the scope of our monitoring activities to include subjects such as:

- micro-businesses;
- wider customer protection areas;
- customer satisfaction; or
- environmental issues such as water efficiency.

One respondent observed that our rigorous approach to monitoring signalled a 'hands on' approach to the market which could suggest that we either:

- do not trust the market to deliver; or
- are planning to be an interventionist regulator.

They suggested that we reassert our commitment to the market by making a commitment to taking a step back when the market has developed. Also, they also suggested that confusion over our role and approach could be avoided if we stated clearly that there are two distinct aims behind our monitoring framework:

- ensuring compliance with codes underpinning the market; and
- monitoring competitive forces in the market to ensure they deliver.

We are confident that our collection of information about how the market is operating and delivering for customers does not in any way:

- undermines our commitment to effective competition; or

- indicates an unreasonably low threshold for any interventions we may wish to make.

Overall we remain content that our objectives of market monitoring remain relevant, suitable and proportionate. We do not intend to make any significant changes in this area.

2.2 Question 2: Do you agree with the issues we propose to monitor? What issues do you think should be monitored particularly closely?

Most respondents agreed with the issues we proposed to monitor. Many of these recognised the importance of focusing on the experience of customers. Another common theme was the need for all market participants to work together to ensure the success of the market.

Some respondents were pleased to find that we recognised that switching levels were not in themselves the sole descriptor of an effective market. They appreciated the focus on a suite of measures, rather than looking at individual measures and their interpretation in a narrow context. We agree with these comments, and remain committed to looking at market performance and monitoring the market in a holistic way.

Suggestions for other issues for us to consider included:

- the number of gap sites and vacant sites; and
- ensuring that the processes and procedures support smooth and efficient interactions between all parties.

Some respondents suggested more emphasis needed to be given to costs and tariffs information. We will seek such information from retailers as part of their annual return. We will give careful consideration to whether it is appropriate to publish this information at a suitable level of aggregation. We are discussing the format of this aspect of their data return with retailers to ensure the information provided is effective and meaningful.

There was a broad agreement among respondents that the scope of our information request is appropriate, with some caveats.

  - Retailers were keen to limit the scope and frequency of data collected from them, raising concerns around the regulatory burden of this.

- Retailers also suggested that we should consider whether the scope of our request might act as a barrier to entry for smaller retailers.

In contrast, customer organisations were keen to see more data gathered to ensure we have enough information for enforcement activities. They were interested in us collecting detailed customer satisfaction metrics and information on contracts including any roll-over contracts.

Some respondents were keen that the retailer – wholesaler relationship be monitored closely. We recognise that wholesalers have a crucial part to play in the effective functioning of the market, and there are a number of reasons to look at their performance, including ensuring a level playing field for competition.

As the majority of wholesaler and retailer interactions will pass through the market operator, we expect the market operator to be the main source of information on how well this relationship is working through such things as looking at the number and nature of disputes raised, and the market performance data report. We also note that how all market participants conduct themselves individually and when interacting with others in the market will be part of the market monitoring activities.

In the light of the comments received and following our analysis, we consider that the scope of the information request remains appropriate. While we recognise that collecting information from market participants will involve some cost for them, we consider that the information we are collecting is:

- necessary for our monitoring aims; and
- proportionate for a newly expanded market.

So, we do not intend to alter the scope at this time, although we will keep this under regular review.

2.3 Question 3: Do you agree with the type and format of the information we are planning to obtain from the market operator?

Respondents generally agreed with the type of information we are planning to obtain. They recognised that gathering the bulk of data through the market operator was the most consistent, efficient and effective approach, while minimising the regulatory burden on participants.

Most retailers would like us to rely on the Central Market Operating System (CMOS) as much as possible and ask them for information directly as little as possible. The information we need to seek directly includes market segmentation (microbusinesses and multi-site businesses) and information on third party intermediaries (TPIs) and multi-utility bundling use.

As a result of comments received, we have made some minor amendments to the list of data items we will obtain from the market operator, which we have published seperately. The frequency will remain monthly.

2.4 Question 4: What information will retailers hold that will help us achieve our monitoring objectives?

As noted above, most retailers who responded would prefer us to rely on data from the market operator as much as possible. A number of retailers appeared to have mis-understood the information that would be available from the market operator. Some retailers were not confident about being able to provide data segmented in the ways we described, at least initially. There were also some queries about the frequency and format of our information requests.

We support the use of the CMOS system to collect information from retailers where appropriate and where the system is able to provide this information. At present, the CMOS system is unable to provide certain information. We will seek this information directly from retailers in the short term, but would be supportive of a code change proposal to allow the CMOS system to collect this information in the future. This applies to information that would:

- identify a micro-business;
- the involvement of third-party intermediaries in a transaction; or
- a customer with a multiple-site portfolio.

We also set out in the consultation our intention to monitor retail tariff information, and a number of retailers raised concerns regarding sharing this information due to its commercial sensitivity. We note this demonstrates retailers are committed to the competitive process in the new market and we recognise their concerns around the sharing of tariff information among competitors. However, to ensure we can assess how competition is developing in the market, we still intend to monitor some information about retail tariffs.

To prevent concerns arising from the collection of this information, we intend to seek this directly and separately from individual retailers rather than through the CMOS central system, both in the short and longer term, and we will consider whether it is appropriate to publish some tariff information at a high level of aggregation, but we are mindful of the need to avoid creating the conditions for collusive behaviour and for the regulator not to 'crowd out' commercial activity.

Some retailers wanted us to limit our data gathering to annually or less frequently. Customer representatives on the other hand asked for more frequent monitoring of at least some of the metrics. We consider that gathering information from retailers on an annual basis is still appropriate for the majority of metrics that we will collect.

We intend to supplement this by seeking data twice-yearly covering aggregate metrics on the number of tariffs offered and a qualitative description of the product types offered and bundles of products and services offered. We consider this appropriate so that we can monitor how retailers' offers are developing over time as the market develops, and we consider that waiting one year from market opening before receiving this information would not give us sufficient oversight of initial market development.

We are aware that collecting this information twice a year rather than annually will impose an increased regulatory burden on retailers, but we have deliberately limited the scope of the information we seek more regularly, and depending on the way the market develops, we expect to be able to move to collect information less frequently once the market is established. We will give consideration to whether this frequency of information collection remains appropriate in future years.

2.5 Question 5: We would welcome views on our proposal for informal monitoring and other tools we could use.

We received support for our proposal to use informal monitoring tools. Suggestions as to how to implement informal monitoring varied. The most common response was support for our proposal to use the Open Water website. But some respondents also wanted us to engage with stakeholders through social media channels.

Some respondents commented on whether we should use these channels to deal with complaints and disputes. Some considered this a good opportunity to solve problems before they become a formal complaint. Others feared that using these channels disproportionately for complaints might paint a negative picture of the market and reduce confidence in it.

We consider that our approach of using the Open Water website to celebrate successes as well as highlight emerging concerns is a suitable way forward and we will proceed on that basis. We will also continue to consider whether and if so how we could usefully engage with the market through social media.

2.6 Question 6: We would welcome views on how best we could involve third party intermediaries in our monitoring framework, which information would be best to collect and how we could obtain it.

We received a positive response to our desire to involve TPIs in our monitoring framework.

Some respondents recognised that we do not have formal powers to request information from TPIs. Suggestions as to how we could overcome this varied. Some respondents noted our parallel consultation on TPIs and agreed that we should obtain additional powers similar to Ofgem. We note however that this refers to being designated as an enforcement authority under the Business Protection from Misleading Marketing Regulations 2008, and this is not a tool designed for market monitoring. So, even if such designation were to take place, we would still want to use other tools to monitor the activities of TPIs in the market.

We received responses from TPIs that volunteered some information and suggested that we use TPI trade bodies to get industry-wide buy in to our intention to seek information from TPIs. The Consumer Council for Water also suggested that it could gather information about complaints that concerned TPIs.

Some retailers suggested that they were willing to share information with us on the high level numbers of TPIs with whom they engage. However, some raised concerns around the publication of this information as they considered their TPI arrangements to be part of their business strategy and therefore commercially sensitive.

We will ask retailers to provide high level information on TPIs as this will enable us to understand the scale of TPI involvement in the market. We will explore issues around the suitability of publishing this information, and whether aggregation of this information resolves concerns among retailers of commercial sensitivity.

2.7 Question 7: We would welcome views on how best to collect useful information on market segments. In particular, we would welcome views on challenges to deriving the market segment information we envisage and ways of overcoming them.

Several respondents appreciated the need to segment data to give a wider perspective on the market. The Welsh Government asked us to report specifically on the areas of Wales where retail competition applies, and separate out our findings from these areas. We will seek to do so where possible.

Some retailers reiterated in response to this question that they do not have ready access to certain information on market segmentation, in particular how to identify microbusinesses among their customers.

The need for retailers to identify microbusinesses among their customers is not a new requirement, and indeed it was included in the Customer Code of Practice published in May 2016, so retailers have had notice of the need to comply with this requirement in the newly expanded market.

We note that the obligation in this area is a one-off requirement for retailers to establish whether a customer is a micro-business when terms and conditions of supply are agreed.

We do not consider it to be unduly burdensome or unreasonable for retailers to establish this information about their customers. So, we will expect retailers to be able to provide this information, as we continue to consider this to be an important metric concerning the development of the market. We will also engage with retailers where necessary to provide advice concerning the requirement to provide this information.

2.8 Question 8: How can we best ensure that relevant information is shared in a transparent and useful manner, whilst also being mindful of commercial and personal confidentiality and without prejudice to competition law?

Most respondents agreed that some degree of transparency of market performance is desirable, whilst recognising that confidentiality and commercial sensitivity needed to be taken into account.

We continue to consider that an appropriate level of transparency, consistent with competition law, is essential to build trust and confidence in the market and to help competition develop. We will therefore publish market data, suitably aggregated and anonymised where appropriate, through a combination of channels including the Open Water website. Wherever practical we will be clear with data providers as to which data will be purely for internal use, and which may be shared more widely.

3. Conclusions and next steps

Following feedback from stakeholders, we have carefully considered all the points raised, the main ones of which are discussed in section 2 above. We note the broad agreement with our approach. So, we do not intend to make significant changes to our market monitoring framework.

We are satisfied with the scope of our monitoring framework, and that we can demonstrate the link between our objectives and our intended data requests, and we are not proposing to amend it substantively at this time. In many cases (e.g. customer satisfaction, microbusinesses), these are already part of our framework and constitute metrics that we are going to follow closely or are part of the Codes.

We anticipate that there should be less need for a 'hands on' approach as the market develops but we will not commit now to a timetable for considering changes to this framework, as that will depend on the market outcomes we observe through our monitoring and the speed of development of competition in the market and the nature of any problems that may arise.

We consider that the scope of the information we will request is appropriate and do not plan any substantive changes to the scope. We will be clearer about what we want to use the information for and clarify exactly the information we want to gather.

Also, we consider that our broad approach of gathering information from the market operator on a monthly basis with detailed retailer returns and a customer survey on an annual basis remains appropriate, although, as highlighted in section 3, there is some information we will expect retailers to provide at the six month mark, such as tariff information.

As a result of comments received, we have made some minor amendments to the list of data items we will obtain from the market operator and retailers, which we will share on our website. In order to facilitate direct data provision from retailers and ensure clarity and consistency we have created a data capture form for retailers to use. We will share this with retailers separately.

Our key requirement is that market data is meaningful, accurate, consistent and comparable, and we are keen to work with retailers to develop a framework that meets our monitoring needs without being unduly burdensome, and remains relevant as the market evolves. We will therefore work closely with retailers to explore and resolve issues and seek to minimise the burden of information collection in the short and longer term. This, includes setting up a small working group with retailers which will assist us in exploring issues in detail and considering potentially suitable resolutions.

We recognise the long term possibilities offered by increasing the role of CMOS in collecting and reporting data. We support:

- code changes that would facilitate this such as flagging transactions that involve a micro-business; or
- creating a ‘group portfolio’ function to group multiple supply points that belong to a single customer.

But in the short to medium term this does not remove the need to seek this information directly from retailers. And there will always be some aspects of market activity that it would be unlikely to be suitable for CMOS to collect, such as retailer tariff data.

The role and impact of TPIs is an area of interest to many respondents and us. We will gather information on the scale of their involvement, and will monitor complaints and other information in relation to their activities. We note that TPIs could be a considerable source of benefit, but also have the scope to cause problems for customers. So we will monitor their influence on the market as appropriate.

We remain committed to allowing the market to deliver customer benefits through competition. We are also committed to enabling smooth entry, operation and exit of retailers, ensuring customer protection and providing a level playing field for competition to flourish. Our market monitoring framework will help us to meet these aims.