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An open letter to the Chief Executives of incumbent water companies in England

16 September 2019

OFFICIAL

Dear Chief Executives¹

Incumbent water companies and the development of effective markets

I am writing further to Rachel Fletcher's [letter to you in May](#) on the importance of incumbent water companies' support for the development of effective markets, and her email to you of 23 August 2019 informing you that I would be writing to you in mid-September to provide more detail on the issues we would be focussing on as part of our review.

We see well-functioning markets as a means to delivering better outcomes for both current and future customers in the form of lower prices, better quality and more tailored services and/or improved choice. Given the unique role in the provision of an essential service, we see incumbent water companies as having a key responsibility in the development of effective markets and delivery of better outcomes for customers and society.

Rachel's letter set out our view that the current overall level of incumbent water company support for markets is unacceptable, and asked incumbent water companies to respond to that letter by end October 2019 setting out progress. We outlined the areas that we would be looking at, which included

1. Effective engagement in and support for initiatives aimed at driving improvements to the business retail market;
2. Supporting a vibrant competitive market for developer services; and
3. Effective support for the development of new markets.

¹ Of incumbent water companies operating wholly or mainly in England

We recognise that there are and will be differing levels of performance in this context and we have seen examples of some incumbent water companies taking positive and pragmatic action to support the development of markets. For consistency, we need all companies to respond fully to this letter to inform our assessment.

Annexes A, B and C of this letter set out specific questions I would like you to address and provide evidence on in your responses. This is a non-exhaustive list of questions and if there is additional information and evidence that you consider is relevant to your response then please include this. We have also included a question in Annex D around supporting the development of new markets. Please note that providing a response to this question is optional.

When supplying supportive evidence, please only provide the extracts responsive to the relevant question together with enough contextual background information to enable them to be fully understood. If it is difficult to extract passages from a larger document, please provide references to enable them to be easily found.

Please email your response to incodem@ofwat.gov.uk by 5pm on 31 October 2019.

We intend to publish all the written responses to this letter on our website at www.ofwat.gov.uk. In view of this, if you believe that any of the information in your response should not be disclosed (for example, because you consider it to be commercially sensitive), you should identify that information and explain why. We expect reasons that are specific to the information concerned. We will take such explanations into account but we cannot give an assurance that information included in responses will not be disclosed.

Please be aware that, information provided in response, including personal information, may be published or disclosed in accordance with legislation on access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the Data Protection Act 2018 and the Environmental Information Regulations 2004. Under the FoIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, obligations of confidence.

We are also asking other industry stakeholders – for example retailers and self-suppliers – to provide feedback, including on the questions set out in Annexes B and C of this letter. Again we intend to publish their responses on our website.

As we review the available evidence on incumbent company support for the development of effective markets, we will work closely with CCWater and MOSL. We

may need to contact you if we have queries relating to your response, so please provide us with relevant contact details for queries.²

I would like to thank you in advance for giving this matter your attention and support. We look forward to working with you and the rest of sector in making markets work better for customers and society.

Yours sincerely



Emma Kelso

Senior Director, Markets and Enforcement

² For information we will also be making a separate more detailed information request in relation to bulk charges for NAVs in a month's time to support a study evaluating application of our guidance.

Annex A: Question relating to your Board's support for the development of effective markets

1. Please provide a description of how your Board engages in and discusses plans for the company's work to support the development of markets. For example, is there a designated Board Committee, is there a designated part of the agenda for regular Board meetings dedicated to discuss this? How does the Board ensure that staff have the time they need to be able to raise any issues, get the support and resources they need for work concerning the development of markets?

Annex B: Questions relating to the Business Retail Market

General

1. As the provider of wholesale services in the business retail market, what action do you take to understand the experiences of end customers in consuming these services? (For example, concerning the ease and speed with which end customers may - including via their retailer - request and receive meter installation, meter repairs, data logging services, decisions on leakage allowances, non-return to sewer allowances, permissions and permits concerning water supply and trade effluent services, disconnection or change of tenancy notification).

Industry Governance

2. Please outline and provide relevant evidence on the extent to which you monitor, contribute to and participate in the work of the Industry Panel (including relevant Committees³ and working groups⁴).
3. Please explain how, in making decisions about how to respond to relevant industry consultations on code change proposals, you balance or reconcile your commercial interests with those of the market as a whole, where possible, citing examples.
4. How have you developed your company's strategic approach to participation at the Industry Panel (including relevant Committees and working groups)? To what extent has it been discussed or approved by your Board? Please provide relevant evidence to support your response (such as Board papers).

Wholesaler performance

5. Have you been subject to an Initial Performance Rectification Plan (IPRP) at any point since they were initiated? If so, what measures did you take to understand the root causes for your underperformance, what activities did you undertake to address this and how has your performance changed since going on the IPRP?

³ <https://www.mosl.co.uk/panel> and <https://www.mosl.co.uk/panel/panel-committees>

⁴ <https://www.mosl.co.uk/groups>

6. Where an IPRP has been put in place for your company, has your Board discussed your IPRP? Please provide relevant extracts of Board papers that document any such discussions.
7. Please set out what safeguards and/or monitoring you have in place to monitor your Operational Performance Standards (OPS) performance for your associated retailer in relation to other retailers?
8. Please set out what processes you have in place to assure yourself that OPS performance data is accurate and valid before it is submitted to MOSL.

Data quality

9. Please explain any collaborative work you have initiated with retailers to improve the quality of market data in relation to: long unread meters; faulty meters; and vacancy.
10. Please describe any processes you have in place to improve the quality or coverage of data in CMOS that relates to your activities and responsibilities as a wholesaler (for example, to ensure meter location data is complete and accurate). How long have any such processes been in place?
11. Please describe any processes you have in place to take into account information received from retailers or end customers concerning incomplete or inaccurate data held in your systems or in CMOS. (For example this could relate to: meter location; customer or retailer meter readings; change of tenancy; or disconnection). Please also set out the process that a retailer would need to follow in order to inform you about incomplete or inaccurate data and your process and timetable for responding to this.

Wholesaler retailer interactions

12. Please outline and provide evidence on the extent to which you monitor and contribute to the work of the Retailer Wholesaler Group (RWG) or other similar discussion and action groups. Have you fully implemented published [RWG guidance](#)? If not, please explain why.

13. What actions have you undertaken to support the development and implementation of a bi-laterals solution⁵? Has your Board discussed your approach to the bi-laterals solution? Please provide relevant extracts of Board papers that document any such discussions.
14. Wholesaler policies⁶: Please set out (and where appropriate provide relevant supporting evidence):
- (a) what action you take to help ensure your wholesaler policies (including: i) the charges /charging structure; and ii) any SLAs or KPIs; associated with the provision of wholesaler services to retailers) are readily accessible and understood by all relevant retailers?
 - (b) what, if any, unilateral action you have taken since 1st April 2017 to simplify or otherwise refine your wholesaler policies to the benefit of retailers?
 - (c) what - if any - changes have you made since 1st April 2017 to the services you provide, the charges / charging structure for these, and/or any associated SLAs or KPIs associated with the provision of these services? If you made changes, what were the reasons for these changes?
15. Charging: Please set out (and where appropriate provide relevant supporting evidence):
- (a) what - if any - unilateral actions have you taken since 1st April 2017 to simplify your wholesaler tariff structure with a view to facilitating retailers' ability to make price and service offers to end customers.
 - (b) What is your expected charging policy in respect of vacant sites and premises from 1 April 2020? How, if at all, has this changed since: i) 1 April 2017; and ii) prior to 1 April 2017?
16. How do you consult or engage with retailers on the following issues (where appropriate provide relevant supporting evidence):
- (a) Measuring or gauging the quality of service you provide to retailers? What actions have you taken here?

⁵ A bi-lateral solution involves the standardisation of transactions between wholesalers and retailers that are excluded from the central operating system, and is likely to be supported by a technology platform.

⁶ For this question you should include at least the following services: meter installation, meter repairs, making meter readings you have taken available to third parties, data logging services, leakage allowances, non-return to sewer allowances, vacant sites, permissions and permits concerning water supply and trade effluent services, disconnection or change of tenancy notification

- (b) maintaining and improving your working relationship with retailers (e.g. do you host retailer engagement days, portfolio meetings, onboarding processes for new entrant retailers etc.)?
 - (c) Understanding causes for, and improving levels of rejected, deferred or late OPS tasks?
 - (d) changes or updates to the form or scope of your wholesaler services, the charges or charging structure for these, and/or any associated SLAs or KPIs associated with the provision of these services? How formal is this consultation?
17. Concerning credit and payment terms, do you offer:
- (a) alternative credit arrangements under Schedule 3 of the Business Terms of the Wholesale-Retail Code? If you have, what have you agreed and why? If not, or if you have refused a request for Schedule 3 terms, why not / why refused?
 - (b) alternative payment arrangements, under Section 9.2.4 and Schedule 3A of the Business Terms of the Wholesale-Retail Code Please describe. If not, why not?
 - (c) tailored offerings under (a) or (b) above to reflect specific characteristics of retailers (for example, self-supply retailers)? If not, please explain why this is the case.
18. There is currently a gap in the protections available to customers under the Alternative Dispute Resolution (ADR) provisions insofar as non-household customers cannot get a remedy which is binding on the wholesaler. What, if any, unilateral actions have you taken to address the ADR gap in relation to compensation from wholesalers?
19. In 2018/19, how many requests did you receive from, and how many separate payments did you make to, retailers under the Guaranteed Standards Scheme? How many, if any, of the requests were subject to dispute between you and the relevant retailer(s)? How many, if any, of the payments made were subject to dispute between you and the relevant retailer(s)?

Annex C: Questions relating to the Market for Developer Services

Please provide a concise commentary and supporting evidence on the market for new connections and developer services in your area of appointment, including the questions in this section.

Developer services and new connections market overview

Aim: To better understand the market context and what actions you are taking to promote an effective market.

1. Please explain how your developer services teams manage their competition law obligations in delivering services to developers, New Appointments and Variations (NAVs) and self-lay providers (SLPs) and in-house operations?
 2. Please describe what actions you take to promote a vibrant and effective developer services market on an ongoing basis.
 3. To enable a better understanding of the market, at a high level please describe the following points. Note that no supporting data is required to be submitted for this question, if it is not easily obtainable:
 - (a) What is the breakdown in size of developments you are seeing each year (e.g. of new connections, the % of single properties, % small developments <20 properties, % medium >20 and <100 properties, % of large developments >100 properties)?
 - (b) What is the breakdown in developer customers (i.e. customers who are not SLPs or NAVs) you are seeing, e.g. what proportion of new connections is for your five largest developer customers? How many developer customers might you have in one year?
 - (c) What proportions of new connections are brownfield vs. greenfield?
 4. Please provide information on SLPs in your area:
 - (a) How many SLPs have carried out new connections in your area (number of SLP companies as opposed to number of SLP connections)?
 - (b) What services do SLPs tend to provide (e.g. do they do the design themselves; are they multi-utility or water only)?
 - (c) Do they tend to compete for a particular size or type of development? Please describe the size/type of development.
 5. Please note any other aspects of the market that are helpful context for your area.
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Charges for new connections and developer services

Aim: To understand what progress has been made since Emma Kelso's letter earlier this year, to better understand how each company goes about setting its charges and to understand why there may be differences between companies.

6. Emma Kelso's letter of 29 April 2019 requested that you urgently review your new connection charges to ensure that they are cost reflective, transparent and do not prevent, restrict or distort competition.
 - (a) Please provide details of what work you have carried out in response to this letter. If a review was carried out, please send us the conclusions of the review and explain how this has been communicated internally.
 - (b) What changes have you made to your charging arrangements since the letter?
 - (c) What changes are you planning to make, and what are the timings for the implementation of change?

 7. Please explain how your charges reflect costs:
 - (a) How did you calculate the charges? What were your data inputs?
 - (b) For requisition charges and infrastructure charges (and other charges if applicable), explain what you consider to be relevant drivers of costs and how these have been used to determine relevant charges.
 - (c) Do cost drivers vary across your region? If so, how are, or will, these differences be reflected in charges?

 8. Where you rely on contractor rates to determine cost, please provide more information about those rates:
 - (a) How are costs structured or formulated (e.g. are they based on a schedule of rates)?
 - (b) What services do contractor rates apply to?
 - (c) What assurance can you provide that these rates are cost reflective? Please provide supporting documentation.

 9. Do you have any of the following instances:
 - (a) Do you have any similar services for which you levy a charge on one customer type (developer, NAV, SLP, etc.) and not another? If so, please describe the service and the reason for the difference.
 - (b) What charges do you levy on SLPs, NAVs (directly, through a developer, or through a third party) or developers, that are not published in your charging arrangements, charges scheme, or bulk charges (for NAVs)? Please explain the activities to which they relate,
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and the circumstances in which they apply.

10. When agreeing a bulk service agreement with a NAV do you:
- (a) Publish a standard agreement; or
 - (b) Provide bespoke agreements for each new site?
 - i. If you publish a standard agreement, please set out in what circumstances it would not apply and you would seek to agree a bespoke agreement.
 - ii. Please give supporting evidence of this by providing information on the forms of bulk service agreements proposed and / or prepared for different NAV licences, over the last two years.

Culture, customer experience and quality of service

Aim: To understand how each incumbent water company operates to provide high quality services that meet the needs of their customers.

11. Please explain how your developer services teams are organised:
- (a) Please provide an organogram, staff numbers and the scope of responsibility for the different teams involved in delivering services for developers/NAV/SLPs.
 - (b) Please indicate which SLP and NAV activities are covered by which teams, and whether those teams cover equivalent activities (if applicable) when the developer is the customer.
12. Please provide a description of your approach to engaging with developers, SLPs and NAVs over the last year, including:
- (a) the groups that you have engaged with, the form of engagement and how the engagement was communicated to potentially interested stakeholders;
 - (b) the topics covered by the engagement (e.g. whether it included information about the proposed levels of charges for the upcoming charging year); and
 - (c) the process by which contributions from stakeholders are taken into consideration and progress is communicated back to stakeholders.
 - (d) Please provide supporting evidence, including emails issued, agendas used, papers or consultations prepared.
13. With respect to information and services provided to NAVs, SLPs and developers:

- (a) Do you offer any similar services with operational service levels that differ depending on the customer type (developer, NAV, SLP)? If so, please list the services and explain the reasons for the differences.
- (b) There are a number of published Water UK developer service metrics that relate specifically to SLPs. Please provide commentary on your performance with respect to those metrics, including an explanation if any measures are blank.
- (c) Water UK has a draft report on Behavioural Improvements relating to interactions with NAVs. It sets out several SLAs relating to NAVs, please describe your performance against those metrics over the past year.
- (d) Are there any examples of instances where you have provided information to NAVs or SLPs at the same time as, or after, providing a quote/offer to the developer of the same site?

14. With respect to asset adoption, please set out:

- (a) How you are ensuring you will be ready for implementation of the new sector guidance and model adoption agreements, once we have approved them and they form part of the Code for Adoption Agreements.
- (b) How you have engaged with customers around codes for adoption.

Annex D: Question relating to the effective support and development of new markets (optional)

1. What are you doing to effectively support the development of new markets (e.g. bio resources)?