

Our Ref: PK/LAT/Ofwat

Your Ref:

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Innovation Consultation
Ofwat
21 Bloomsbury Street
London
WC1B 3HF

SES Water
London Road
Redhill, Surrey,
RH1 1LJ
Telephone: 01737 772000
Facsimile: 01737 766807
Website: www.seswater.co.uk
Email: contactus@seswater.co.uk

Dear Sir

Ofwat innovation funding and competition: further consultation on design and implementation

We appreciate the opportunity to respond to the above consultation issued in May 2020.

Overall, SES Water continues to welcome and is supportive of Ofwat's role in acting as an enabler of innovation across the sector. As a Company, the focus on innovation is central in the delivery of the performance and service levels we have committed to our customers in our recent PR19 Business Plan. We strongly believe that innovating is critical to improving our customers' experience, as well as enabling a more efficient and effective organisation.

We have responded to the questions raised in the consultation document in the appendix to this letter and would welcome further opportunities to engage with Ofwat on this subject.

Yours faithfully

[Redacted signature block]

Ofwat innovation funding and competition: further consultation on design and implementation

Response

Q1: Do you agree with our proposed default arrangements for managing IPR and royalties? Do you think these arrangements work for different types of projects and activities (e.g. new technology vs. process innovation, roll-out activities etc.)?

We agree with the proposed differentiation between Background and Foreground Intellectual Property Rights (IPR).

We agree with the proposed treatment of Background IPR. Innovative companies require sufficient assurance that their existing intellectual property is not at risk, balanced with the need to make their innovation available to enable further development and implementation.

We agree with the proposed attribution of Foreground IPR to the participant(s) that create it. We believe that Foreground IPR needs extremely careful consideration and would direct attention to the European Research Area Guidelines on Intellectual Property (IP) Management¹, which sets out the three main elements of an effective system to protect and exploit IP:

1. a system that enables the protection of IP (e.g. patents, copyrights, brand, industrial design) that includes clarity about the ownership of IP rights, rights to use IP, the rights and freedom of parties to transfer (assign) IP and the freedom to publish;
2. a technology transfer framework, preferably with the provision of specialised knowledge transfer offices with professional staff;
3. a fair law enforcement system in partner's countries that caters for dispute settlement but also that can award penalties and sanctions where appropriate.

Whilst the first two points should be met by the proposed default IP arrangements and the proposed Innovation centre of excellence, we do not consider that the third point has been sufficiently considered in these proposals.

We suggest that Foreground IPR created or co-created, and consequently owned or co-owned by a collaborating partner (i.e. not simply a contractor) should not automatically be made available to all other companies where this may risk undermining the commercial interests of the collaborating partner.

We agree with the arrangements whereby royalties earned by water and wastewater companies and new entrant water and wastewater companies should be shared with customers in proportion to the project funding drawn from the innovation competition.

Q2: What alternative arrangements should we be considering for IPR/ royalties?

We believe that there are a number of different models for managing IP that should be considered. The Intellectual Property Expert Group strongly recommend against the concept of jointly owned IP, and consider that there are a number of alternative and better approaches, including one party owning and licensing the IP, a portfolio of intellectual property which is shared based on vested interests and a "patent pool" arrangement with an administrator.²

Q3: Do you agree with the principle that data generated through the innovation competition should be open by default?

We agree with the principle that data generated through the innovation competition should be open by default. However, we recognise that some of the data generated will be sensitive from a personal,

¹ https://ec.europa.eu/research/innovation-union/pdf/international_cooperation_guidelines_erac_kt_group.pdf

² <https://www.ipeg.com/avoid-jointly-owned-intellectual-property/>

commercial or security point of view and we would suggest that this data should only be shared where there are legitimate reasons and sufficient demonstrable security in place to avoid data breaches.

We also believe that consideration should be given to availability of the open data. The European Data Portal investigated the barriers in working with Open Data and concluded that “Barriers can be political, organisational, legal, technical and financial, but equally with regards to awareness on both the availability of Open Data and the specific needs of users. For instance, re-users of Open Data indicate they have difficulties to find the data they are looking for. This is not necessarily because the data is not available: in most cases it is because the data is too complicated to find due to poor metadata or limited search features on data portals. Specific barriers are found in the geospatial data category.”³

Q4: Do you agree with our proposed approach and that we should consider alternative arrangements beyond company contributions?

We agree with the proposed approach as we would expect to leverage funding from multiple sources, including collaborating parties and other innovation funding (where eligible). We would seek to achieve a wide-ranging engagement in collaborative projects by recognising a range of possible in-kind contributions in the form of people’s time, access to and investment in facilities, materials and consumables, travel and expenses and background IPR.

Q5: Do you agree that a guideline minimum company contribution of 10% is appropriate in this context?

We are concerned about the introduction of the minimum company combined contribution of 10%. Innovation development typically has significant fixed costs at the early stages and this proposal would discourage the smaller water companies from developing wide scale disruptive innovative solutions.

We would welcome an approach that based the company contribution on another metric that takes into account the Company size (for example the number of connections) and the potential value to the wider water industry of the innovation. This would then incentivise the smaller water companies to actively participate in the innovation competition.

We would also seek clarification on the success requirements set out in the competition bid. If successful innovation requires widespread industry adoption, as opposed to the development of a minimum viable product, then 10% of the total cost of roll-out will be a significant barrier to any company taking part in the competition.

Q6: Do you agree with the overarching approach we set out here?

We agree that there should be a wide variation in the types of projects funded through competition and we recognise that the joint Innovation strategy, currently under development, will ensure that innovations are correctly targeted at the specific issues that the industry is facing.

We are concerned that the five-year time span of the fund, and the emphasis on industry roll-out, will tend to direct attention to late Technology Readiness Levels (TRL) innovations, that can successfully be brought to market within these timescales.

We would suggest that mechanisms are put in place to judge the current value of projects that are not completed within the AMP period, so that longer term innovation and early TRL projects are properly considered.

Q7: What are your views on introducing separate, proportionate, arrangements for small-scale projects? How might we define small-scale projects for the purposes of the innovation competition?

³ <https://www.europeandataportal.eu/en/highlights/barriers-working-open-data#:~:text=Barriers%20can%20be%20political%2C%20organisational,data%20they%20are%20looking%20for.>

We note that an innovation allowance is available to energy utilities under their regulated innovation funding arrangements and that this seems to work well, giving companies greater agility in developing and delivering their innovation programmes, including in funding the development of larger project submissions to their innovation competition. We also note that Innovate UK frequently funds lower-cost (c. £50k) feasibility projects to pre-qualify candidates for full funding applications. We consider that such a staged approach to funding both enables and de-risks larger collaborative programmes.

Q8: Do you agree with our proposal for ensuring roll-out is at the heart of the innovation competition? How might we reward both leaders and fast followers in this space?

We agree that implementation is key to delivering value from innovation, however this needs to be balanced against the research risks so that there is not an incentive to roll-out incomplete projects. On the basis that there is value in unsuccessful innovation, Companies should not be penalised for innovation projects that produce valuable data and insight but are not rolled-out.

We agree that there should be mechanisms in place to reward both innovation leaders and fast followers, in particular those who are able to demonstrate a wide spread roll-out of a solution across their Company. However, reward systems of this nature will need to be tied into evidence-based innovation metrics.

In order for industry to benefit from fast following, there needs to be sufficient access to the learning data of the initial innovator. We would therefore suggest that there should be a reward solution for companies that provide comprehensive data and documentation that enhances the ability for innovations to be adopted widely.

Q9: What practical arrangements should we introduce to ensure adequate ring-fencing of the innovation funding?

We agree in principle that the appropriate time for companies to transfer their contribution in full to the joint pot for the charging year is the beginning of the quarter in which the innovation competition is expected to run. We are conscious that if the quarter in which the innovation competition starts running coincides with the last quarter of the financial year, it may have implications for companies' annual financial performance reports. In such cases, we would suggest that using the beginning of the first quarter of the subsequent financial year would give companies more flexibility to address any financial impact during the year.

Q10: Do you think the proposed innovation challenge approach will help better enable partnerships and collaboration between companies and third-parties, in particular smaller innovators? Are there alternative approaches we should be considering? How can we make sure this approach works in practice?

We welcome the innovation challenge approach and recognise that this will open up opportunities to organisations to place their innovative solutions directly in front of Water companies.

However, we recognise that there exist a number of companies that already provide a similar service to the industry. Experience from these companies has shown that the water industry must articulate clear needs statements in order to gain the most benefit from such an approach.

It is anticipated that the joint innovation strategy will provide a significant part of the needs statement, but there will need to be clear communication to ensure that third-parties are demonstrating and developing suitable solutions for the industry.

Q11: Do you agree with our proposed approach to returning funds to customers? Are there any other circumstances, not considered here, under which we might consider returning funding to customers?

We agree with the proposed approach to returning funds to customers, noting that all unused funds should be returned to customers, taking into account that some projects, especially those funded in the latter years of the innovation competition may require funding beyond 2025. We also agree with the adjustment process proposed for misspent or non-compliance projects without reasonable justification.

Q12: Do you agree with our proposed approach for managing interactions with the price review?

We agree that the innovation competition should not be part of, related to, or interact with the companies' ODI measures. We would note, however, that whilst ODI performance is bound to the price control period, either annual or end of PR cycle, innovation must follow the nature of the technology involved and should be allowed to span more than one price review period.

Q13: Do you agree with our proposed amendments to the principles? Are any further amendments to the principles required to reflect our approach to outstanding policy issues outlined in this document?

We agree to the proposed changes to Principle 3, however we would comment that innovations will be adopted within companies on a cost/benefit basis. Simply because an innovation has a positive cost benefit analysis (CBA) in some Water Companies, does not automatically mean that this same CBA will be demonstrated in all Water Companies. In addition, any innovative solution may require pre-existing conditions for optimal deployment, which may not be present in all Companies. Although there should be incentives to ensure that solutions are capable of being widely rolled-out, caution needs to be applied where an innovation cannot be widely adopted at this time due to these reasons.

We do not support the amendment to Principle 5 for the reasons stated in our answer to Q5.

Q14: Do you agree with our proposed focus, major strategic themes and overall approach for the competition?

We agree with the proposed focus and note that the joint Water Innovation Strategy aligns with this proposal both in terms of 'what' we will innovate: the Water Innovation Strategy contextualises the challenges around each of the proposed strategic themes, highlighting innovation opportunities in the short, medium and long-term; and 'how' we will innovation: a set of guiding principles and innovation enablers address the cultural and ecosystem aspects of water sector innovation, including public value, open data.

We support the overall approach for the competition, recognising that some enabling activity will be required to support both the Innovation in Water Challenge and the main competition. We suggest that in order to best engage with stakeholders, particularly innovators and solutions providers, a clear distinction should be made between the purpose and processes of each funding route.

Q15: What is the appropriate split of available funding between the Innovation in Water Challenge, the main competition and enabling activities?

We suggest that for the first year it would be appropriate to split the funding in the following ways

18%	Innovation in Water Challenge
80%	The main competition
2%	Enabling activities

Q16: What are your views on the feasibility of running all three types of activities in the pilot year, and on the proposed timings in Annex 3?

We suggest that plans for running all three activities in the first year are ambitious, particularly given the current challenges facing the industry. We would suggest that the enabling activities and the Innovation in Water Challenge should certainly proceed, and we would anticipate that these would be able to be deployed without too many problems.

We note however that due to the widespread interest in this competition, it is believed that a number of third-party companies are pausing innovative development until the details of the main competition are released. We therefore believe it is essential that realistic timescales for the introduction of the main competition are agreed and published, in order to reduce uncertainty.

Q17: Do you agree with our proposed approach to key implementation considerations outlined here?

We agree with the proposal to appoint a supporting organisation to design and run the innovation funding competitions and the appointment of an independent expert panel to advise Ofwat on project funding decisions. We also welcome the proposal that the application is robust and proportionate, and would recommend that consideration is given into how to make the application process as simple and streamlined as possible.

We recognise the need for the development and implementation of a monitoring solution, and we agree that this should align with the joint sector innovation strategy.

We would suggest that the monitoring metrics should be so defined as to be correctly proportional to the size of the organisation, recognising that smaller companies typically have smaller budgets, but are more agile in their development of innovation. In addition, we would suggest that the metrics should not only measure leading innovation and rollout, but also capture fast follower adoption.