

May 2021

Notice of intention to accept binding commitments from Thames Water Utilities Ltd in relation to the provision of access to its smart meters and digital data services

About this document

This document constitutes a notice under paragraph 2 of Schedule 6A to the Competition Act 1998. It sets out our proposed decision to accept binding commitments offered by Thames Water to address competition concerns that we had identified during our investigation into its approach to the introduction of smart water meters.

The document summarises our investigation, the markets and market segments involved, the competition concerns that we have identified, the commitments offered by Thames Water to address these concerns, and our assessment of why we believe that the commitments will address these concerns and that acceptance of commitments is appropriate in this case.

Interested parties are invited to comment on our proposed decision and we will take representations received into account before making a final decision on whether to accept commitments.

Executive summary

In June 2019, the Water Services Regulation Authority (**Ofwat**) opened an investigation using its powers under the Competition Act 1998 (**the Act**) into the approach to smart metering adopted by Thames Water Utilities Limited (**Thames Water**) and the effect that this was having on third parties' access to water usage data.

We had concerns that Thames Water was breaching the Chapter II prohibition, which prohibits conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market within the United Kingdom.

On 9 April 2021, Thames Water offered commitments for the purposes of addressing Ofwat's competition concerns in this investigation (**the Commitments**).¹

Specifically, the Commitments seek to address our concerns that, as a result of the approach Thames Water has chosen for rolling out its smart metering programme:

- retailers and third-party service providers are unable to directly access water usage data from the smart meters; and
- Thames Water has not, as an alternative to that direct access, provided access to the water usage data gathered via the new smart meters on fair, reasonable and non-discriminatory terms.

The water usage data is needed to enable retailers and third parties to provide water efficiency and other value-added services to non-household (**NHH**) customers.²

The Commitments also address our concerns that Thames Water has failed to have sufficient regard to the impact of its infrastructure investment decisions as a monopoly operator of a water supply system on related markets.

Section 31A(2) of the Act provides that, for the purposes of addressing the competition concerns we have identified, Ofwat may accept, from such person (or persons) concerned as we consider appropriate, commitments to take such action (or refrain from taking such action) as we consider appropriate.

¹ A party under investigation can offer commitments at any time during the course of an investigation until a decision on infringement is made (see paragraph 10.21 of the Competition and Markets Authority's [Guidance on the CMA's investigation procedures in Competition Act 1998 cases \(the CMA Procedural Guidance\)](#)). In this case, no decision on infringement has been made.

² Our concerns relate solely to the provision of services to NHH customers. Household customers are unable to choose who supplies them with water and wastewater services and instead take these services from the incumbent provider in their area.

By this document, we give notice³ that we propose to accept the Commitments offered by Thames Water. Accepting the Commitments would result in the closure of our investigation, with no decision being made on whether the Chapter II prohibition has been infringed by Thames Water.

Accepting the proposed commitments would not prevent us from continuing the investigation, making an infringement decision, or giving a direction in circumstances where we have reasonable grounds for:

- Believing that there has been a material change in circumstances since the commitments were accepted;
- Suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
- Suspecting that information which led us to accept the commitments was incomplete, false or misleading in a material particular.⁴

Invitation to comment

In this document we set out details of our investigation and provide background on the issues that we have been looking at (Sections 1 and 2). We summarise our competition concerns (Section 3), the Commitments that Thames Water is offering to address these concerns (Section 4) and explain why we consider that the Commitments will address our concerns (Section 5). The Commitments offered by Thames Water are set out in full in Appendix 1 to this notice.

We invite interested parties to provide comments on the Commitments. We will take any representations received into account before making a final decision on whether to accept them. Details on how to comment are provided in Section 6 of this document. The closing date for comment is Tuesday, 22 June 2021.⁵

³ In accordance with paragraph 2 of Schedule 6A to the Act.

⁴ Section 31B(4) of the Act.

⁵ The statutory minimum consultation period is at least 11 working days, starting from the date on which notice is given – paragraph 2(3) of Schedule 6A to the Act.

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1. Our investigation

Overview of our investigation

- 1.1 In March 2019, we received a complaint alleging that Thames Water was abusing its dominant position as a statutory water undertaker⁶ to harm competition in the business retail market for water and wastewater services (**the Complaint**).⁷ The Complaint alleged that Thames Water was refusing to provide access to its smart water meters and that this was preventing retailers and third-party providers of meter logging and data services (**TPPs**) from obtaining information about water usage of NHH customers.⁸
- 1.2 Since the opening of the business retail market in April 2017, retailers have been responsible for providing water and wastewater services to NHH customers, who have a choice as to which retailer to use. To differentiate their offerings, retailers may choose to offer additional, value-added, services to NHH customers, such as water efficiency or leakage detection services. These services are reliant on data regarding the customer's actual water usage, which can only be obtained from a water meter. Retailers may provide these services themselves or purchase them (either wholly or in part) from TPPs. Alternatively, TPPs may offer these services directly to NHH customers.
- 1.3 Following an initial assessment of the issues raised in the Complaint and after obtaining agreement from the Competition and Markets Authority (**CMA**) that we were best placed to investigate these issues,⁹ we wrote to Thames Water on 8 July 2019 to inform it that we had opened an investigation. We explained that we had reasonable grounds for suspecting an infringement of the Chapter II prohibition of the Act by Thames Water.
- 1.4 Our concerns related to Thames Water's approach to date to the roll-out of its smart metering programme to NHH premises, in particular that, in its capacity as a monopoly operator of a water supply system, it had:

⁶ Undertakers are companies appointed by the Secretary of State for Environment, Food and Rural Affairs as statutory providers of water and/or wastewater services. This is not to be confused with undertakings, who are companies or organisations to who the Act applies. Thames Water is both an undertaking for the purposes of the Act and a statutory undertaker for the purposes of the Water Industry Act 1991.

⁷ The Complaint also included allegations regarding the accuracy of the data that Thames Water made available to retailers at the time of the opening of the business retail market and the fairness of certain contractual credit terms that Thames Water applies to retailers. Although originally included as part of our investigation under the Act, we subsequently decided that it was more appropriate to investigate these issues using our powers under the Water Industry Act 1991. Our [investigation into the data accuracy issues](#) continues but we closed our [investigation into the credit terms](#) in November 2020.

⁸ We also received complaints from TPPs that raised the similar concerns about Thames Water's approach to smart metering in particular in terms of them not being able to attach data loggers to smart meters or access the smart meter data.

⁹ Pursuant to regulation 4 of the [Competition Act 1998 \(Concurrency\) Regulations 2014](#), SI 2014/536.

- Installed smart meters that were incompatible with data logging devices used by retailers and TPPs, which had the effect of denying them direct access to data on a NHH customer's water usage and excluded them from entering, or continuing to operate and expand in, the market for water usage data services¹⁰ unless they installed a sub-meter¹¹ or purchased a digital data service¹² from Thames Water.
- Removed other parties' data logging devices from NHH customers' meters when replacing previously used analogue meters with new digital smart meters, which had the effect of withdrawing access to its meters and the data they generate and forced retailers and TPPs out of the water usage data services market unless they were prepared to purchase digital data services from Thames Water or install their own sub-meter.
- Failed to offer digital data services on fair, reasonable and non-discriminatory terms (price and non-price), which, coupled with the inability to log its smart meters, meant that many retailers and TPPs were unable to gain access to the water usage data they required as an essential input to provide their own services to NHH customers.

- 1.5 To assist with our consideration of the issues, we have gathered evidence from Thames Water, a number of the retailers operating in Thames Water's area of appointment and some TPPs, using our powers under section 26 of the Act.
- 1.6 During our investigation, Thames Water indicated that it was prepared to make changes to its approach to smart metering and to the digital data services that it offers. It expressed a desire to address our competition concerns.
- 1.7 On 25 November 2020, we wrote to Thames Water setting out the outstanding competition concerns that we had in relation to its approach to smart metering and digital data services. These are set out in Section 3 below. We have since engaged in discussions with Thames Water as to what actions it could take and what assurances it could provide to address these concerns.

The Commitments

- 1.8 Section 31A of the Act provides that, for the purposes of addressing the competition concerns identified, we may accept commitments from such persons as we consider appropriate, to take such action as we consider appropriate. The CMA Procedural

¹⁰ Details of the markets and market segments that we have provisionally identified, and Thames Water's position in these, are set out in paragraphs 2.11 to 2.19 below.

¹¹ Sub-meters are meters that are installed on the customer's water pipework (rather than Thames Water's network) and which enable data regarding the customer's water usage to be obtained.

¹² Digital data services are services that provide data from Thames Water's smart meters on a customer's water usage. The frequency with which the data is collected and provided to the purchaser depends on the nature of the service being offered.

Guidance describes the circumstances in which it may be appropriate to accept commitments and the process by which parties to an investigation may offer commitments. We are required to follow the CMA Procedural Guidance on these matters.

- 1.9 In accordance with paragraph 10.21 of the CMA Procedural Guidance, a business under investigation may offer commitments at any time during the investigation until a decision on infringement is made. In this case, no decision on infringement has yet been made.
- 1.10 Following our discussions, Thames Water wrote to us on 9 April 2021 to indicate that it was willing to offer formal commitments to address Ofwat's competition concerns. The Commitments being offered to us by Thames Water are set out in Appendix 1. The offering of commitments does not constitute an admission by Thames Water of an infringement of the Chapter II prohibition.
- 1.11 Having considered Thames Water's proposed commitments, we are currently of the provisional view that these address our competition concerns, for the reasons set out in this notice. Formal acceptance of the proposed commitments would result in us closing our investigation and not proceeding to a decision on whether the Chapter II prohibition has been infringed.

The party and the services under investigation

- 1.12 Thames Water Utilities Limited, company number 02366661, is a private limited company incorporated in England and Wales. It is part of the Thames Water Group which itself is part of the Kemble Water Holdings Group. Thames Water had an annual turnover of around £2.2 billion in 2019-20.
- 1.13 Thames Water was appointed by the Secretary of State for the Environment as a water and sewerage undertaker under the Water Act 1989 in August 1989.¹³ Thames Water's area of appointment for water supply covers around 3.6 million household customers and 112,900 NHH connections¹⁴ and its area of appointment for sewerage services covers 5.5 million household customers and 176,300 NHH connections.¹⁵ Our

¹³ Now replaced by the Water Industry Act 1991. [Thames Water's instrument of appointment \(licence\)](#) is available on Ofwat's website (accurate as at 7 April 2021).

¹⁴ Household premises receive their retail water and sewerage services from the undertaker that serves the area in which they are located. Since April 2017 and the opening of the business retail market, non-household customers have been able to choose who provides them with retail water and sewerage services. The wholesale water and sewerage services in both cases are supplied by the statutory undertaker.

¹⁵ [Thames Water, Delivering life's essential service: Combined Report – Annual Report, Annual Performance Report and Sustainability Report 2019-20](#), pages 230 and 231.

investigation focuses only on NHH connections as it is to these customers that there is competition to provide services based on water usage data.¹⁶

- 1.14 As a statutory undertaker, Thames Water owns and is the monopoly operator of the water supply and sewerage services systems in its areas of appointment. It determines who can access its systems (or networks), though in doing so must comply with its statutory and licence obligations. Since April 2017, Thames Water no longer supplies retail services directly to NHH customers after its decision to exit the business retail market and transfer its NHH customer base at that time to Castle Water. However, as the statutory undertaker, Thames Water continues to operate the physical water supply system of mains and pipes, including metering equipment, through which NHH customers are supplied.
- 1.15 Where installed, revenue water meters form part of the undertaker's network. They are used by the undertaker to assess the volume of water used at a premises both to enable the NHH customer to be billed on that basis (via the retailer), and to support the operational management of its network.¹⁷ It is to these meters that retailers and TPPs attach logging equipment (where the meter is capable of being logged¹⁸) in order to extract data on the NHH customer's water usage for delivering their own water usage services to customers. Thames Water extracts data from its smart revenue meters to provide digital data services as well as for its own operational purposes.
- 1.16 It is the extent of access to the data logged by water meters through a logging device or (if that is not technically possible) by Thames Water itself, that is the subject of our investigation.

¹⁶ These services include leakage detection, water usage monitoring, water efficiency services and invoice checking.

¹⁷ Where meters are not fitted, NHH customers are typically billed on the basis of the net annual value of the premises (usually the rateable value).

¹⁸ Not all meters are capable of being logged – see paragraph 2.8 below for details.

2. Background

2.1 This section provides contextual background on water metering and sets out our preliminary view of:

- The markets and market segments involved;
- Thames Water's position in these markets; and
- Thames Water's conduct in these markets.

2.2 The purpose of this section is to provide context for Section 3, which describes our assessment of competition concerns.

Water metering

2.3 Water efficiency and the sustainable use of water resources is a key part of the Government's and our strategy for the sector. Our strategy highlights the challenges that the sector faces from climate change and population growth and sets out our intention to drive water companies to transform their performance and meet these long-term challenges.¹⁹ Our forward programme for 2021-22 sets out our aims for the year, including that: "We will encourage an increased focus on water efficiency in the industry, including the business retail and new connections markets, and in building standards."²⁰

2.4 Water meters are one tool that water companies can use to help to manage and reduce water consumption as the data obtained from those meters can enable customers to manage their water use more efficiently. It can also give water companies' greater visibility over their networks and improve their ability to detect and respond to leaks more rapidly, which in turn can help to improve network resilience.

2.5 One of the important reasons for opening the business retail market to competition and enabling business customers to choose their retail provider was to encourage and further improve water efficiency, promoted through competitive offers made by retailers. The opening of the business retail market also enabled eligible NHH customers to act as their own retailer by applying for a water supply and/or sewerage supply (self-supply) licence.²¹ NHH customers holding a self-supply licence therefore engage directly with the water company in relation to their water supply and usage. References

¹⁹ [Time to act, together: Ofwat's strategy](#), October 2019.

²⁰ [Ofwat's forward programme 2021-22](#), March 2021, page 11.

²¹ Holders of self-supply licences are only permitted to provide retail services to their own or associated companies.

in the rest of this document to retailers should be taken to include companies that self-supply their own retail services.

- 2.6 It was expected that retailers would seek to strengthen their competitive offering in the market by providing, for example, enhanced water monitoring and management services, with TPPs expected to work with customers and retailers to develop innovative new services.
- 2.7 Good quality data is crucial to enable the business retail market to function effectively, and access to good quality data on water usage is essential to facilitate improvements in water efficiency. Smart metering technology can help to collect water usage data more easily, regularly and cheaply than through the "eyeball" reading of a meter.
- 2.8 There are three general types of revenue meters and water companies may have a mix of these across their networks:²²

- **Digital (smart) meters in Advanced Metering Infrastructure (AMI) mode.** These meters measure and record the flow of water and are capable of being switched to AMI mode when Local Communication Equipment is fitted, and a Wide Area Network (**WAN**) system is available. When in AMI mode, the data collected by the meter is transmitted automatically, which significantly increases the frequency with which the data can be read and can, potentially, facilitate near real-time collection of the data. (Where a smart meter has been installed but is not connected to the WAN, these meters can be set to Automatic Meter Reading (**AMR**) mode.)
- **Mechanical analogue and digital (pulse) meters with AMR capability.** These meters measure and record the flow of water. Analogue meters create a pulse through the use of a magnet that rotates due to the flow of water through the meter and triggers a switch on each turn or, in the case of some digital meters, by creating an electrical pulse. In each case, the pulse output represents a known volume of water passing through the meter. This pulse output can allow for equipment to be connected to count or "log" the number of pulses. This data can be downloaded by physical connection to the meter or the data can be transmitted using short-range radio signals and picked up by AMR meter reading devices.²³ Some logging devices contain communications equipment that allows data to be transmitted over longer distances and more frequently than AMR reads.²⁴ While not the same as the smart meters in AMI mode being deployed by Thames Water, in some circumstances they may enable similar functionality to be provided.

²² Other than the dumb meters, which can't be logged at all, both the analogue and smart meter groups have some individual meter types that can have logging devices attached to them and some that can't be logged.

²³ AMR devices allow data to be read by driving or walking past the meter. The frequency of reads will depend on the frequency of walk/drive-by visits to the meter.

²⁴ Communicating in this way with logged meters can be done using almost any kind of communications' protocol but predominantly uses the GSM/GPRS mobile phone network. This can be SMS (short messaging service) or the GSM data call service.

- **Mechanical analogue meters without a pulse (dumb meters).** These meters measure and record the flow of water but are not capable of being logged and must be physically inspected to obtain a reading. The frequency of the reads depends on how often the meter is inspected.

2.9 Demand for better quality usage data pre-dates business retail market opening. As this demand was not, on the whole, being met by the data provided by water companies at the time, TPPs began offering customers a range of different services.²⁵ These range from the sale, installation and maintenance of logging equipment, to the provision of analytical services including water usage data monitoring, analysis and profiling and leakage alarms via dedicated online portals. Currently TPPs are generally able to do this by attaching a logging device to the water company's meter. As a result, TPPs are able to provide their services without relying on inputs from the water company, because they can access the meter data directly themselves.²⁶ The water company's choice of meter type and whether this is loggable is therefore relevant to whether TPPs can access meter data.²⁷

2.10 Thames Water's decision to introduce smart meters was based on its desire to improve the water usage data that it was able to collect for network management and leakage detection purposes. We have seen no evidence that it intended for its use of smart meters to have a negative impact on other market participants, with its choice of technology being based on the best available to it at the time of procurement.

Markets and market segments involved

2.11 For the purpose of accepting commitments, we need to be satisfied that the Commitments will address our competition concerns and in order to assess that we need to have a view of the relevant markets involved consistent with that theory of harm. Market definition is a tool used to identify and define the boundaries of competition between undertakings. Defining the relevant market typically involves an assessment of the degree of substitutability between different groups of candidate products or services, to reach a conclusion on which of those alternatives are similar enough to be viewed as belonging to the same market. To accept commitments, we do not have to have completed a full market definition exercise as we would during an

²⁵ As noted above, Thames Water does not provide retail services directly to NHH customers and instead provides inputs into the services that retailers and TPPs offer to these customers. Depending on the nature of the services they offer, TPPs may provide services to retailers or directly to NHH customers.

²⁶ TPPs can collect usage data at up to 15-minute frequencies and make this data available to customers and/or retailers in a format to suit their needs. Some logging companies primarily sell their services to retailers and other TPPs (and may also provide services to water companies as part of their data gathering), while others also offer services directly to end customers.

²⁷ Retailers are able to request that undertakers replace meters in line with their metering policies. Thames Water's metering policy is to only install smart meters in the area covered by the WAN (both when installing new meters and replacing old or broken meters).

investigation. Instead, we need to have a reasonable expectation that the markets identified in the course of an investigation could be consistent with the theory of harm.

- 2.12 The complaints allege that by installing smart meters that cannot be logged, Thames Water is preventing retailers and TPPs from obtaining information about customers' water usage and consequently preventing them from competing in serving customers in downstream markets related to water saving, leakage reduction and billing disputes. We are therefore concerned with an abuse of dominance in vertically related markets, where conduct in an upstream market is having an adverse impact on downstream markets that are reliant on inputs from that upstream market.
- 2.13 For the purpose of considering the competition concerns that we have identified, we provisionally consider there to be two levels of upstream markets – the ultimate upstream market and the upstream market. We consider that the ultimate upstream market is likely to comprise Thames Water's water supply system/network and the technology installed or capable of being installed to that network to create or generate data about an end customer's water usage in Thames Water's area.²⁸ We provisionally consider that related, but downstream from this, is the upstream market for meters that generate water usage data. This comprises all revenue meters in Thames Water's water supply network and, in certain circumstances, may also include sub-meters installed on customers' premises.²⁹
- 2.14 We provisionally consider that there are likely to be two levels of downstream markets – the downstream market(s) and the further downstream markets. The downstream market is likely to be comprised of the collection and provision of the water usage data generated by the meters in the upstream market. The data from a meter can be collected by the owner of the meter (typically remotely using AMR or AMI technology) or anyone who has logging equipment attached to that meter.³⁰ This water usage data can then be used for own use (for example, for retailers to provide regular meter reads for the purpose of billing or settlement or for Thames Water to offer digital data services) or to provide other value-added services to end customers.
- 2.15 It is possible that the downstream market may in fact be two separate markets, based on how often the data needs to be collected and provided to meet the retailers' and TPPs' needs when providing value-added services in the further downstream market. Some value-added services require high frequency data reads (at least one per hour)

²⁸ The geographic aspect of the market definition is determined by the fact that only Thames Water can supply wholesale water services in its area of appointment.

²⁹ It should be noted that it will not always be physically possible to install a sub-meter on a customer's premises, for example due to space constraints, and it may also not always be economically viable to do so as the potential cost savings that might be obtained from installing a sub-meter might not exceed the cost of doing so.

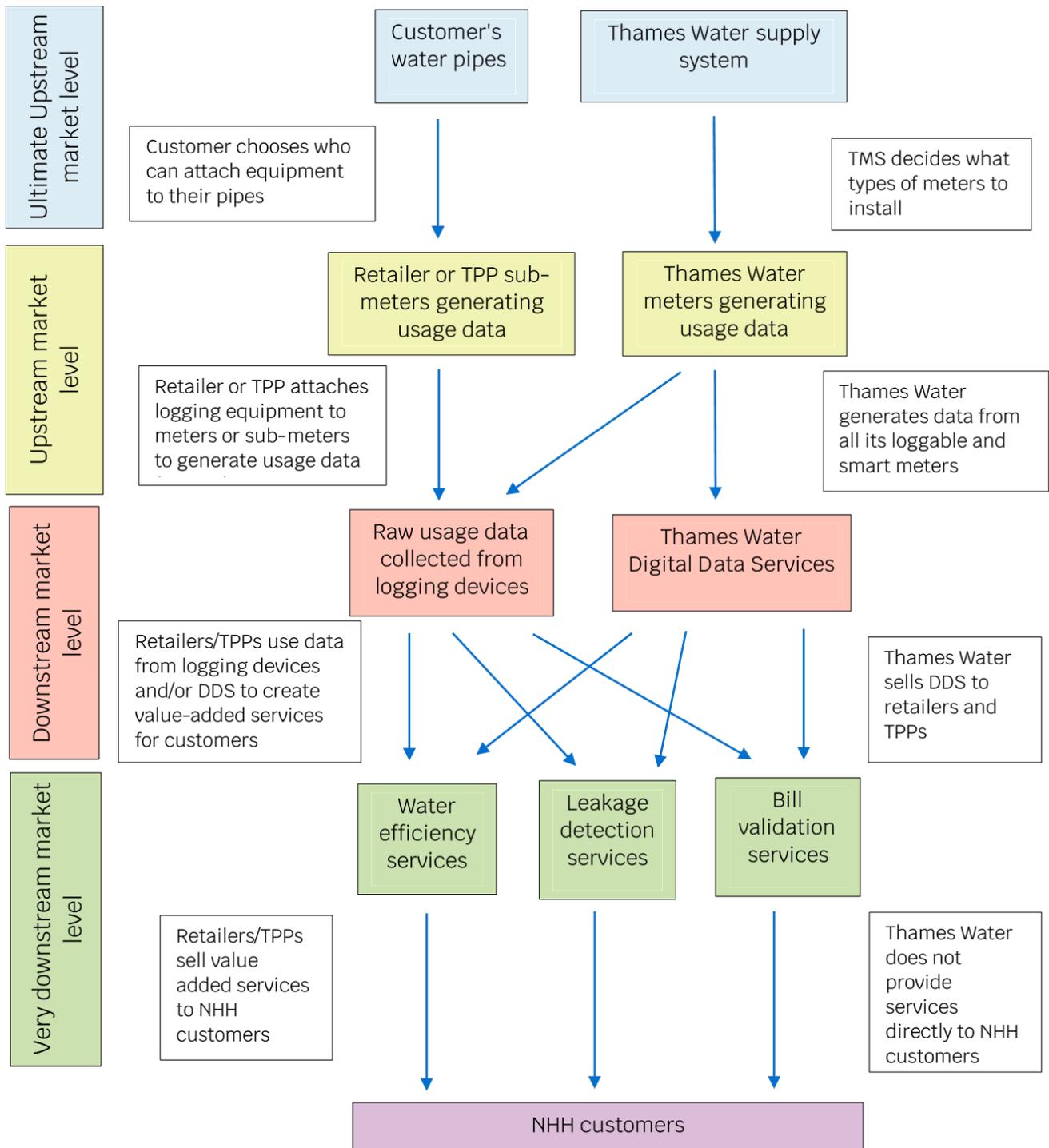
³⁰ As discussed earlier in Section 2, not all meters are capable of being read remotely or having logging equipment attached to them. For those meters, the only way of obtaining usage data is to visit the meter and take an eyeball reading. This is typically only done to obtain meter reads for billing purposes and these meters are unlikely to be suitable for having value-added services offered from them.

provided daily, for example leakage detection or water efficiency services. Other services require a single data point provided on a less regular basis, for example meter reading services or bill checking.³¹ Whether there are two markets or one does not change our analysis as Thames Water would be active in each.

2.16 We provisionally consider that the further downstream markets comprise the provision of value-added services to end customers that require water usage data as a key input, such as leakage detection on customers' premises, water efficiency services and bill checking.

³¹ These services additionally require that data be provided from Thames Water's revenue meter as meter reads for billing purposes must be taken from the revenue meter.

Diagram 2.1: Our proposed markets and market segments



Thames Water's market position

2.17 We provisionally consider Thames Water to be dominant in both the ultimate upstream and upstream markets. It is the monopoly operator of its water supply system to which the relevant NHH customers are attached, and dictates the infrastructure, including the

revenue metering infrastructure, installed on its network which it owns and controls. It is also the dominant operator in the upstream market for meters that generate water usage data. As the statutory undertaker, Thames Water owns and controls all the revenue meters within its water network. No other company is permitted to install meters within Thames Water's network. Although it may be possible for a sub-meter to be installed on a customer's premises, in practice we understand that it is rare for this to happen due to the cost of doing so when compared to the savings that may be achieved.

2.18 It is unnecessary to consider whether or not Thames Water is dominant in the downstream market for the purposes of our investigation as it is its actions in the upstream market about which we have concerns. It is sufficient that Thames Water is active in this market. We would, however, note that as Thames Water continues to install smart meters that are not capable of having logging equipment attached to them, it will increasingly become the only party able to collect data from its meters and that ultimately it could foreclose this market.

2.19 Thames Water is not active in the further downstream markets.

Thames Water's conduct

Thames Water's approach to smart metering

2.20 Thames Water's decision to install smart meters across its region dates back to 2013 when the Environment Agency classified South East England as an area of "serious water stress". As a result, in order to improve its water supply demand balance in the future, Thames Water was required to evaluate compulsory metering of customers as part of its Water Resources Management Plan options appraisal process. Following a cost-benefit analysis, Thames Water concluded that an AMI solution would best meet its needs in terms of water resource management and also offer the best value for its customers. To maximise the benefit from its planned investment in its new infrastructure, Thames Water decided to implement the same AMI technology for NHH³² and for residential customers.

2.21 Thames Water began a formal procurement process in October 2013 and trials of the new technology began in 2014. Since December 2016, Thames Water has been phasing in the new smart meters on new installations and meter replacements at residential and NHH properties on both a proactive and reactive basis.

³² As this pre-dated retail market opening, NHH customers were still customers of Thames Water at the time.

- 2.22 The smart metering technology being deployed by Thames Water uses a licensed radio frequency spectrum, together with a compatible communication product and meters.³³ This enables Thames Water to capture water usage at hourly or 15-minute intervals³⁴ when the meter is connected to the WAN. At present, the WAN largely only covers London and the area bounded by the M25 motorway. Smart meters within the WAN are set up in AMI mode, with those outside the WAN set up in AMR mode as they are not connected to the communications network and cannot be read remotely.
- 2.23 Prior to our investigation, Thames Water's approach was to install smart meters wherever possible, both through its proactive meter replacement programme and also when reactively replacing broken meters and installing new meters on request. This had the effect of reducing the number of meters that could be logged by retailers or TPPs and led to logging equipment being removed from some meters when they were replaced. It led to the supply of access to water usage data being withdrawn from some parties (those that previously had logging equipment attached to an analogue meter) and/or refused to others (those that wish to access the data directly from the revenue meter themselves) as only Thames Water can access the data from the smart meters.
- 2.24 When adopting its approach to the installation of smart meters, Thames Water failed to adequately consider the possible implications of its actions on NHH customers, retailers and TPPs or the markets in which they operate.³⁵ Had Thames Water continued with this approach, the number of meters capable of being logged would have continued to reduce and may ultimately have led to a situation where the only means of obtaining water usage data for some customers, or to provide certain services, was by purchasing it from Thames Water.
- 2.25 Thames Water revised its approach in October 2018 (prior to our investigation) so that retailers and TPPs could request that loggable meters be installed at premises outside of the WAN area but continued to only install smart meters within the WAN area. Thames Water has now committed (proposed to be formalised as part of these commitments) that it will not proactively remove logging equipment from meters within the WAN until the actions set out in the Commitments have been completed.

³³ The procured meters have no pulse output and are incompatible with logging equipment.

³⁴ Data is transmitted from the meter to the current service provider every four hours. Once a day, the current service provider sends the data for the previous day up to 23:45hrs securely to Thames Water. This is uploaded and processed overnight in Thames Water's Meter Data Management System (**MDMS**). The data can then be extracted from the MDMS and placed in customers' secure folders which can be accessed next day.

³⁵ Although Thames Water procured its smart metering technology prior to the opening of the business retail market, the process for the opening of this market had already begun and TPPs were already providing water usage data services.

The digital data services offered by Thames Water

- 2.26 Thames Water introduced digital data services in April 2017. At the time, it held little in the way of meaningful discussions with TPPs as to their needs from the services or the format in which they would like to receive the data and instead simply offered the service that it was prepared and able to provide.
- 2.27 Thames Water provides the digital data services by collecting usage data from its digital smart meters at the frequency requested (either every 15 minutes, hourly or monthly) and providing it on a daily or monthly basis (depending on the service purchased by the retailer or TPP).
- 2.28 Although the digital data services could theoretically offer equivalent quality data as could be obtained from logging meters, retailers and TPPs have claimed that the services offered by Thames Water fell short of this as a result of their price, time delays involved in the process for ordering the services, and limitations in the format in which Thames Water provided the data. These shortcomings meant that it was not a viable substitute (in price or substance) for data from data loggers in the provision of value-added services where it was no longer possible to use these devices. As a result, TPPs and retailers were no longer able to provide these services to NHH customers. We do, however, recognise that smart meters provide some functionality that was not previously available.
- 2.29 During the course of our investigation, Thames Water has taken a number of steps to improve the digital data services that it offers to retailers and TPPs.
- 2.30 In December 2019, Thames Water introduced service level agreements for the investigation of flatlining (where the expected data was not being received by the user of the digital data service) and removed the need for retailers to provide evidence of customer authorisation before digital data services were provided. Thames Water has also introduced a file formatting tool to enable retailers to better manage the data files provided as part of the service.
- 2.31 To support retailers and the market during the Covid-19 pandemic, Thames Water provided retailers with free reads from its digital smart meters or analogue meters where it had obtained meter reads operationally to ensure that accurate information for billing purposes was available where possible.
- 2.32 Between March and August 2020, Thames Water introduced further improvements to its digital data services following discussions with retailers. These included:
- Allowing retailers to submit a single form to request that digital data services be provided for groups of meters;

- Allowing retailers to use system to system access to obtain the usage data for customers, using secure file transfer protocol;
- Making changes to its internal teams to improve the way in which requests for new services were dealt with;
- Recruiting a dedicated Analyst and a Case Manager to manage service requests and deal with issues arising from these;
- Introducing new data reporting and tracking tools to monitor service requests;
- Reducing the frequency of mandatory password resets for service users; and
- Introducing system changes to enable a single file to be sent to each retailer on a daily basis containing the usage data for all the customers for which they were purchasing digital data services.

3. Our competition concerns

- 3.1 We set out our outstanding competition concerns regarding Thames Water's approach to smart metering in a letter to it of 25 November 2020. We emphasised that the primary focus of our concerns was ensuring that retailers and their customers, plus any TPPs that they wish to employ, are able to access the water usage data of those customers. Our competition concerns related to both the practical delivery of Thames Water's smart metering roll-out and digital data services, and the extent to which competition law compliance was considered and incorporated in the thinking and governance processes that had led to the approach Thames Water had chosen to take to these.
- 3.2 We explained that access to water usage data could either take the form of allowing direct access to the meter itself (to enable logging equipment to be attached) or by providing access to the data generated by those meters on fair, reasonable and non-discriminatory terms.
- 3.3 We noted that the frequency and timeliness with which data is required, coupled with the need to obtain data from the revenue meter for many of the services offered by retailers and TPPs, meant that the use of sub-meters or eyeball reading of the meters were not realistic substitutes for access to the data from the revenue meter itself.

Inability to log new meters

- 3.4 We considered that, absent the availability of reasonable quality digital data services on fair, reasonable and non-discriminatory terms, Thames Water's decision in the upstream markets to introduce smart meters that cannot be logged has led to the supply in the downstream market of direct access to water usage data having been withdrawn from those meters that were previously loggable and denied to those that now wished to directly access the data by using logging equipment.

Lack of availability of reasonable digital data services

- 3.5 Although Thames Water took steps during the investigation to improve the quality of the digital data services that it offers and the ease with which they can be ordered, we continued to have concerns whether they were being offered on fair, reasonable and non-discriminatory terms. In particular, we had concerns that the data was not being provided in a format that met the needs of retailers and TPPs and that the pricing of the services was not cost reflective. The effect of this, when coupled with our concerns about the inability to log smart meters, is that the ability of retailers and TPPs in the

downstream market to obtain the data inputs they need to be able to supply the further downstream markets will be compromised and that ultimately the further downstream markets may cease to exist.

Approach to managing its impact on customers and markets

- 3.6 We further expressed concern that, in rolling out its smart metering programme, Thames Water had not done enough to understand and effectively manage the impact that its smart metering activities have on related downstream and further downstream markets, which rely on data from the meters as an essential input. While we fully support the introduction of smart metering, it is important that water companies like Thames Water, which appear to hold a dominant position upstream, understand the impact on other market participants of their actions and take steps to ensure that they are responsive to the needs and specific circumstances of individual market participants.

4. The Commitments

- 4.1 In order to address our competition concerns (as described in Section 3), and without prejudice to its position that it has not infringed the Chapter II prohibition by its conduct, Thames Water has offered formal commitments to us relating to that conduct.
- 4.2 The Commitments are set out in full in Appendix 1 and are summarised below. We explain in Section 5 why we have provisionally concluded that the Commitments address our competition concerns and that it would be appropriate for us to accept the Commitments in this case.
- 4.3 The actions set out in the Commitments should be completed, and evidence provided to us to demonstrate that this is the case, as soon as possible and by no later than 31 December 2022. It is proposed that individual commitments will be closed as and when Thames Water is able to demonstrate to our satisfaction that they have been successfully completed ahead of this deadline.

Thames Water's proposed commitments

- 4.4 Thames Water carried out a root cause analysis of the competition concerns that we identified to it and, based on that analysis, has proposed the following commitments.
- 4.5 Thames Water has offered to:
- (1) Improve its engagement with customers to better understand their concerns and requirements and improve the way it acts upon this feedback. This will include:
 - a. Formalising and strengthening the way it gathers, reviews and acts upon feedback from participants in the business retail market;
 - b. Carrying out research with retailers, TPPs and NHH customers to understand their current and future metering and digital data service needs; and
 - c. Providing feedback to retailers on how it will take into account points raised at Retailer Forum meetings, including the March 2021 meeting on smart metering and data services.
 - (2) Improve its governance processes with respect to markets. This will include:

- a. Enhancing its internal competition law compliance education and awareness programme, with particular focus on the impacts that its decisions have on other markets;
 - b. Re-establishing an internal Markets Steering Group (**MSG**) as a body to review and oversee customer insight, performance, compliance and operation in markets. It will act as a decision-making and escalation point for cross-company market related issues and will have oversight from Thames Water's Executive;
 - c. Considering what impact any proposed changes to its policies or services will have on downstream markets, when deciding whether or not to make those changes;
 - d. Embedding market impact assessments into the governance of the for making procurement, investment, technology and policy decisions to help ensure that impacts on markets and market participants are considered when decisions are made; and
 - e. Formalising and developing the roles of its managers responsible for delivering services to market and identifying any changes that are required to those services.
- (3) Implement technology changes that, where technically feasible, will enable it to (i) introduce digital smart meters that can have logging equipment attached to them, and (ii) improve its digital data services. This will include:
- a. Completing a review of the technology options available and developing a short, medium and long-term meter technology deployment strategy;
 - b. Delivering Phase One of its 2020–25 Technology Refresh, which will unlock the functionality required to enable loggable smart meters to be introduced;
 - c. Sharing with the water industry its learning on smart metering; and
 - d. Not proactively³⁶ removing existing logging equipment from meters until loggable smart meters are able to be installed.
- (4) Ensure that the digital data services it provides to its customers are done so on fair, reasonable and non-discriminatory terms. This will include:

³⁶ Thames Water will continue to replace broken meters with digital smart meters and will install digital smart meters where no there is no meter at the supply point.

- a. Improving the way in which service requests are handled, including bulk requests and levels of service;
- b. Looking at the feasibility of making data available to customers through an online portal; and
- c. Commissioning an external review of its approach to pricing for digital data services and acting on the findings of this review.

4.6 Thames Water has been progressing implementation of the Commitments during our discussions with it. As indicated in Appendix 1, Thames Water considers that some of the Commitments have already been completed. In order for us to confirm that this is the case, evidence that the Commitments have been completed will be provided to us in accordance with the timetable set out in Appendix 1. Appendix 2 sets out the improvements to its DDS that Thames Water has informed us it made during our investigation.

4.7 In order for us to effectively monitor Thames Water's compliance with the Commitments, Thames Water proposes that it will:

- Provide compliance reports to us on 30 September 2021, 31 March 2022 and 30 September 2022,³⁷ providing evidence of the milestones that it has completed and the steps that it has taken to comply with the Commitments; and
- Provide us with copies of key documents that are generated as a result of the Commitments, including copies of the research on metering and digital data service needs and the external review of digital data service pricing.

³⁷ The September 2021 and March 2022 dates coincide with key milestones on the review of digital data service pricing and technology refresh implementation, respectively. The September 2022 date will allow us to review how the metering and digital data services are operating after all the milestones have been met.

5. Assessment of the proposed commitments

- 5.1 For the reasons set out below, we have reached the provisional view that our competition concerns would be addressed by the Commitments, once implemented, and that acceptance of commitments is appropriate in this case. Formal acceptance of the Commitments would result in us closing our investigation and not proceeding to a decision on whether the Chapter II prohibition has been infringed.
- 5.2 A decision to accept commitments will not include any statement as to whether the conduct of Thames Water that is under investigation infringed competition law either prior to the acceptance of the Commitments or once the Commitments are in place.

The CMA's guidance

- 5.3 Under section 31A of the Act, for the purposes of addressing competition concerns that we have identified, we may accept from any person we consider appropriate, commitments to take such actions as we consider appropriate.
- 5.4 In line with the requirements of section 31D of the Act, the CMA has produced guidance on the circumstances under which it is appropriate for commitments to be accepted as a means of addressing competition concerns.³⁸ We are required to have regard to this guidance when considering whether it is appropriate for us to accept the Commitments offered by Thames Water.
- 5.5 The guidance states that it is likely to be appropriate to accept binding commitments in cases where the:
- competition concerns are readily identifiable;
 - competition concerns are fully addressed by the commitments offered; and
 - proposed commitments can be implemented effectively and, if necessary, within a short period of time.³⁹
- 5.6 The guidance notes that it will not be appropriate to accept, other than in exceptional circumstances, binding commitments in cases involving serious abuse of a dominant position. Whether commitments are appropriate will be assessed on a case-by-case basis, taking account of all the circumstances of the case. The guidance also states that commitments should not be accepted in circumstances where compliance with and the

³⁸ Paragraphs 10.17 to 10.20 of the CMA Procedural Guidance contain the guidance on commitments.

³⁹ CMA Procedural Guidance, paragraph 10.18.

effectiveness of any binding commitments would be difficult to discern, and/or where not to complete an investigation and make a decision would undermine deterrence.⁴⁰

Our assessment

- 5.7 We have carefully considered the Commitments and whether they address our competition concerns.
- 5.8 Our preliminary view is that this is an appropriate case for commitments and acceptance of the Commitments is appropriate taking into account the framework set out above. The reasons for this are summarised below.
- 5.9 First, the competition concerns are readily identifiable. As explained in Section 3 above, Thames Water's conduct has given rise to competition concerns that retailers and TPPs are unable to directly access water usage data from the smart meters and that Thames Water has not, as an alternative, provided access to this data on fair, reasonable and non-discriminatory terms. This is denying retailers and TPPs a key input they need to be able to offer water efficiency and other value-added services to NHH customers, thereby hampering the development of the market(s) for value-added services described in paragraph 2.16 above.
- 5.10 Second, we have reached the provisional view that the Commitments, once implemented, would address our competition concerns by 31 December 2022. The proposed commitments will give retailers and TPPs the choice of either installing their own equipment on Thames Water's digital smart meters to collect water usage data or purchasing an improved digital data service that will provide broadly equivalent data to that which Thames Water has access to from its smart meters, and which is offered on fair, reasonable and non-discriminatory terms.
- 5.11 The Commitments should also ensure that, in future, Thames Water properly considers the impact that technology and other business changes it may make in its monopoly business will have on its customers and related markets, and that it takes proactive steps to avoid, or where appropriate mitigate, any potential adverse effects, before it introduces those changes.
- 5.12 Third, we have reached the provisional view that the Commitments are capable of being implemented effectively. Thames Water will provide us with regular compliance reports and copies of key documents that are generated as a result of the Commitments. We would intend to review Thames Water's progress in delivering the Commitments on a six-monthly basis up to the deadline for completion of 31 December 2022 and would

⁴⁰ CMA Procedural Guidance, paragraph 10.20.

be looking for it to demonstrate to us the progress that has been achieved and the steps that it has taken to address any issues that have arisen.

- 5.13 Although it will take around 12 months for all the steps set out in the Commitments to be fully implemented, Thames Water's commitment to not remove existing logging equipment from meters during this period, as set out in commitment 9 in Appendix 1 below, will minimise the risk of any additional harm arising. Individual commitments will remain in place until Thames Water has demonstrated to our satisfaction that they have been successfully completed.
- 5.14 In proposing to accept the Commitments, we recognise that not all the actions set out in them are fully within Thames Water's control. For example, some of the technology upgrades are dependent on agreement being reached with its current technology providers and on end-to-end testing being successful in a live environment. The Commitments therefore cover the assessment of alternative technology that would not be reliant on the current technology providers, but which would nevertheless enable the overarching goal of ensuring access to water usage data to be achieved.
- 5.15 On balance, we do not consider this to be a case involving a serious abuse of dominance such that it would be inappropriate to accept commitments. We have no evidence that Thames Water intended for the introduction of smart meters to have a negative impact on the markets, rather these were unintended consequences of the actions that it took to improve the data available to it to manage its network. Although, over time if unaddressed, the effect of Thames Water's smart meter roll out could be capable of foreclosing the downstream markets, this is not currently the position. The adverse impact on the market(s) of Thames Water's conduct is currently low as smart meters account for around 15% of its installed base of NHH meters and the evidence we have gathered suggests that fewer than 1,000 of the meters capable of being logged currently have retailer or TPP logging equipment attached to them.
- 5.16 We do not consider that accepting the proposed commitments in this case would significantly undermine deterrence. The requirement that Thames Water takes diligent steps to ensure that retailers and TPPs can access water usage data, including commissioning new technical solutions from contractors, and offering them on pro-competitive terms sends a strong signal of our willingness to pursue potential breaches of competition law and to do so to a stage which we consider most effectively addresses the relevant competitive harms in the circumstances.
- 5.17 In addition, as Thames Water was the first water company to introduce digital smart meters and as other water companies look to introduce similar technology, accepting the Commitments send a strong signal as to the factors that they will need to take into account in relation to retailers, TPPs and NHH customers in their areas of appointment.

5.18 Finally, the Commitments do not preclude us from taking further enforcement action in relation to other suspected breaches of competition law, or in related markets, where these raise competition concerns.

6. Intention and invitation to comment

Our intention

- 6.1 For the reasons set out above, we provisionally consider that the commitments offered by Thames Water, as set out in Appendix 1 to this notice, are sufficient to address the competition concerns we have identified. Therefore, we propose to accept the Commitments offered by Thames Water by means of a formal commitments decision.
- 6.2 As required by paragraph 2(2)(d) of Schedule 6A of the Act, we now invite interested parties to make representations on the Commitments and will take any representations made into account before making a final decision on whether to accept them.

Invitation to comment

- 6.3 We would welcome any comments on the Commitments set out in this document, in particular from retailers and TPPs who might have been affected by Thames Water's approach to smart metering and digital data services. Please email them to martin.hill@ofwat.gov.uk. Interested parties can also submit evidence to assist the final assessment of the Commitments.
- 6.4 The closing date to make comments is 22 June 2021. If you wish to discuss any aspect of this consultation, please contact Martin Hill on 0121 644 7595 or by email at martin.hill@ofwat.gov.uk.
- 6.5 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (**FoIA**), the General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [privacy policy](#).
- 6.6 If you would like the information that you provide to be treated as confidential, please be aware that under the FoIA there is a statutory [Code of practice](#) which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

A1 Commitments offered by Thames Water under the Competition Act 1998

Thames Water Utilities Limited (**Thames Water**) gives to the Water Services Regulation Authority (**Ofwat**), without in any way acknowledging or accepting that it has infringed applicable competition law, the following commitments (**the Commitments**) under section 31A(2) of the Competition Act 1998 in order to meet Ofwat's concerns as set out inter alia in Ofwat's letter to Thames Water dated 25 November 2020 and in Ofwat's notice of its intention to accept binding commitments from Thames Water dated 25 May 2021.

Part 1: Interpretation

The Interpretation Act 1978 shall apply to these Commitments as it does to Acts of Parliament.

In these Commitments, the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

For the purpose of these Commitments, the following terms shall have the meaning given to them below:

Additional Services means services that are not Primary or Non-Primary Charge services and which are subject to the Additional Terms and Conditions.

Additional Terms and Conditions are those terms and conditions for Additional Services which apply in addition to the conditions of service set out in the Wholesale Contract and Wholesale-Retail Code.

AMI means Advanced Metering Infrastructure. A digital smart meter may provide meter reading data automatically through remote data transfer in AMI mode when Local Communication Equipment (**LCE**) is fitted and the WAN system is available.

AMP7 Technology Refresh means the upgrading of our incumbent supplier's proprietary systems which capture and transmit meter reading data to Thames Water and of the Thames Water systems into which such data is transferred.

Customers in the context of these commitments means non-household customers and/or retailers within the non-household market.

Non-Primary Services in the context of the Wholesale Contract for Wholesale Services means those services provided by Thames Water to the retailer which attract Non-Primary Charges. For the avoidance of doubt, these charges are not calculated by the market operator.

Primary or Non-Primary Charges has the same meaning as the definition of that term in the Wholesale Contract/Wholesale-Retail Code.

Primary Services are those services provided by Thames Water to retailers which attract primary charges and are calculated by the market operator.

WAN means Thames Water's wide-area fixed network communication system, which currently covers the London area. Digital smart meters sited within the WAN may transmit meter reading data automatically without the need to visit the meter.

Part 2: Commencement and duration

These Commitments shall take effect from the date that, having been signed by Thames Water, Ofwat's acceptance of such Commitments is notified to Thames Water.

Nothing in this provision will prevent either party from requesting an amendment to, or early termination of, the Commitments (or requesting new commitments to substitute for the Commitments) at any point in time, in light of, for example, changed market circumstances or regulatory or legislative requirements.

Table 1 included within this document includes a schedule of both the commitment delivery dates, some of which have already been delivered, and the date that Thames Water expects to provide evidence to Ofwat of its completion. Ofwat agreeing that a commitment has been satisfactorily implemented and evidenced will result in the closure of that commitment, such agreement not to be unreasonably withheld. The deadline for completing and evidencing all commitments is 31 December 2022.

Thames Water commits to delivering both the overarching commitments and the specific commitments in support of delivering the overarching commitments. It will deliver the latter consistently with the aim of meeting the overall relevant overarching commitment.

During the course of the investigation and before, Thames Water recognised that improvements were required to its digital data services and has already made and detailed to Ofwat improvements already in place. A summary of these is provided at Appendix 2 for information and does not form part of the formal commitments.

Part 3: The commitments

Understanding and addressing customer needs, including learning from customer complaints

Overarching commitment 1

Thames Water will ensure that it understands, considers and addresses customer needs in a timely and objective manner, including gathering, learning from and acting on insights from customer complaints and feedback. Thames Water will take steps to ensure that action is taken to address concerns as they arise.

Specific commitments in support of commitment 1

Thames Water:

1. will formalise and strengthen the way it gathers, reviews and acts upon feedback from NHH market participants and will:
 - a. document the mechanisms for capturing and reviewing customer feedback, including those from its complaints and account management activity. These mechanisms will include timeframes for reviewing and escalating feedback. Thames Water will publish and make this document available to NHH participants;
 - b. implement process enhancements to the mechanisms in (1a) above and ensure these are aligned with Thames Water's customers' needs and are responsive to needs and other factors, identified through market impact assessments; and
 - c. formalise the escalation route for matters identified from (1a) above to Thames Water's Markets Steering Group ("**MSG**") for consideration and to determine appropriate action. The MSG will direct improvement plans to ensure Thames Water's processes are aligned with its customers' needs and review customer and market insight on a quarterly basis to determine appropriate actions.
2. will commission specific research into the current and future needs of customers relating to smart meters and consumption data, which will be provided to Ofwat by 30 September 2021. Thames Water will work with an external agency to design and deliver targeted research with non-household customers, retailers and third-party providers of water consumption services. It will provide Ofwat with the detailed results of this research. For each customer group, Thames Water will design its research in order to establish:
 - Views covering current needs and those over the next 5 years;
 - Attitudes towards smart meters, dataloggers and consumption data;

- What consumption data needs customers have and what this data will be used for;
 - The type, frequency and format of consumption data that is needed;
 - Preferred routes for obtaining consumption data;
 - How widely these services might be used (penetration) and the key customer considerations in enabling their use; and
 - Customer expectations on cost / price.
3. will provide feedback to Retailers on how Thames Water is taking into account of the points raised at the Retailer Forum meetings held annually. From the meeting held in March 2021 this will include smart metering and data services.

Consideration of markets in Thames Water's decision-making processes

Overarching commitment 2

Thames Water will ensure that in making strategic, operational and procurement decisions it properly identifies, considers and takes appropriate account of the impact of those decisions on customers and wider market participants in all related markets in consequence of its market power derived from being the statutory undertaker in its area of appointment, and, where appropriate, mitigates any identified adverse impacts; and that its decision making processes support the fulfilment of this commitment.

Specific commitments in support of overarching commitment 2

Thames Water:

4. will enhance its competition law compliance education and awareness programme with particular focus on the impacts that its decisions have on other markets. Thames Water will:
- a. deliver dedicated training sessions for senior managers to raise the awareness and understanding of the markets in which Thames Water operates and interacts with. This training will include reference to the special responsibility Thames Water has as a monopoly supplier of certain services; and
 - b. continue to review and enhance existing competition compliance training for Thames Water staff by including specific materials on the legal issues that arise in the context of impacts on downstream markets.
5. will re-establish the MSG to provide a senior forum⁴¹ with a remit agreed by Ofwat, to routinely and consistently provide oversight into Thames Water's market-related activities (NHH Retail, NAV and Developer Services) and associated competition law

⁴¹ Members of the MSG will include the Retail Director and the Strategic & Regulation Affairs Director.

compliance and report into the Thames Water Executive. The MSG will then meet quarterly. The MSG will keep a register of all decisions that are made, and the register will be provided to the Executive to ensure oversight of decisions by the full Executive.⁴²

6. will review its existing governance and decision-making processes to ensure they embed and can evidence how markets are considered, such that they identify, assess, monitor, and mitigate appropriately the potential implications for related downstream markets. The changes identified as part of this review will be presented to the MSG for consideration and approval for implementation. These proposals will be shared with Ofwat (as per the timeline in Table 1), together with details of the MSG's subsequent decision and its reasons supporting that decision.
7. will develop and embed a Market Impact Assessment tool, including risk guidance and training materials, to standardise Thames Water's approach when making procurement, investment, technology and policy decisions. Any market services issues identified will be escalated to the MSG for discussion and action. This will deliver consistent outcomes, ensuring that Thames Water considers markets in its decision-making processes.
8. will formalise and develop the roles of accountable/responsible managers, who are tasked with delivering services to market and identifying any changes that may be required to these services. Thames Water will put in place guidance on how to identify and respond to issues relating to the impact of their services on downstream markets, ensuring that material issues are brought to the attention of MSG.

Making the right meter technology decision for customers and downstream markets

Overarching commitment 3

Thames Water will ensure that decisions in relation to NHH meter technology are consistent with the interests and needs of downstream market participants including retailers and their NHH customers and the suppliers of water usage data services to retailers and their customers and related downstream markets and where possible, with availability of water consumption data for customers being comparable to that available to Thames Water.

Specific commitments in support of overarching commitment 3

Thames Water will:

9. clearly communicate to customers and retailers the change to policy that has already been actioned whilst the delivery of these commitments is underway. Thames Water has

⁴² The Board provides oversight of the Executive team.

amended its proactive metering policy and will not proactively replace existing non-household analogue meters with attached logging equipment unless the meter is faulty or the customer has not objected to the installation of a new smart meter. Prior to any proactive meter replacement, where no logging equipment exists, Thames Water will continue with its existing process which is to provide customers with an opportunity to opt out of a proactive meter replacement if they are planning to install their own logging equipment. This change to policy is applicable to both inside and outside of the WAN.

10. complete a review of technology options, developing a short, medium and longer term meter technology deployment strategy to define Thames Water's current and future Metering Policy that best fits customer needs, downstream market needs and Thames Water's wholesale business requirements. The review will specifically include consideration of options which provide the ability for customers to collect consumption data directly and to provide data to third parties on a comparable basis to that available to Thames Water at a fair, reasonable and non-discriminatory price. This will include:
 - Options available to use today;
 - In flight opportunities to be opened up through the AMP7 Technology Refresh and proposed timelines;
 - Understanding the wider potential of the Meter Agnostic Smart Point (MASP) a device that provides a gateway for data to flow through its incumbent supplier's proprietary meter reading data capture system from alternative devices.
 - Future metering product/supply roadmap and release schedule;
 - Outputs from potential future market engagement activity on the complementary technology project, which will assess alternative technology options for smart water metering beyond its existing architecture;
 - Proactively engage with downstream markets impacted by meter technology choices (including but not limited to retailers, developers, third party consumption data and analytic providers, household and non-household customers and industry organisations) to understand impacts and suitability of options; and
 - Consideration of the output from (2) above.

The outputs and proposed solutions from the review will be assessed through the Market Impact Assessment tool, and any implications will be considered by the MSG. Where market impacts are identified, the MSG will make decisions on how these will be addressed, or recommend these decisions to the Executive. The decisions, including the rationale for the final decision made will be included on the register of decisions and provided to the full Executive for further oversight (in accordance with commitment 5 above).

11. continue to work with its supplier to efficiently deliver the AMP7 Technology Refresh Phase One. This phase is intended to deliver the upgrade to the existing meter

management and data capture systems and will enable the use of meters with a loggable output. If issues materialise in implementing the technology refresh that prevent the achievement of the overarching commitment, alternative options will be delivered through a complementary technology project which delivers the commitment and the intended outcome of the overarching commitment, which will need to be subject to a procurement exercise. If the alternative approach is required, Thames Water will deliver this commitment by its deadline, unless it has obtained Ofwat's prior written agreement to an extension of this deadline which still enables expeditious delivery of the commitment, such agreement not to be unreasonably withheld. Ofwat will agree to such an extension provided Thames Water has demonstrated to Ofwat's reasonable satisfaction that it has used its best endeavours to meet the original deadline.

12. continue to share with the water industry the AMI smart meter learning, including learning from the meter data in relation to consumption patterns and impacts on network operation and leakage. This will include contribution to the UK Water Metering Forum and other industry fora and discussions with other water companies regarding Thames Water's learning.

Providing a Digital Data Service (DDS) that meets customers' needs

Overarching commitment 4

Thames Water will continuously improve its case management and performance management capability to deliver a DDS that meets customers' needs in terms of service levels and quality and is offered on fair, reasonable and non-discriminatory terms.

Specific commitments in support of overarching commitment 4

Thames Water:

13. will make improvements to its internal case management processes that will enable it to better manage and improve the service levels provided to users of its services. It will:
 - a. implement further improvements to the DDS dashboard to deliver improved internal reporting, performance management and intelligence to drive continuous improvement; and
 - b. deliver an automation of the "access to premises" process in the metering workflow management platform to reduce manual activity, minimising the risk of errors or missed deadlines for communications to be sent to customers.

14. as soon as technically feasible, we will make improvements to reduce the time taken in setting up the initial service, including commissioning of meters, and to enable more timely reads by providing in-day meter reads uploaded to customer folders.
15. will continue to improve how best to display data for customers to help them understand consumption through smart meter data. Items under consideration that will form part of a discovery phase to be launched in May 2021 will include access to dashboards giving status of onboarding, commissioning and service performance of digital data service meters. Thames Water commits to completing this discovery phase by 30 September 2021 and to subsequently deliver on its recommendations. Delivery is reliant upon technology development, with actions from the review expected to be complete by 30 September 2022 or as otherwise agreed in advance by Ofwat, such agreement not to be unreasonably withheld.
16. will continue to build on the improvements already made in respect of bulk requests for the digital data service. Bulk requests are accepted but the format and associated SLA for servicing the request is agreed with the requestor on a case-by-case basis. There is no standard form. Thames Water commits to continuing to accept bulk requests in this way, to clearly communicate its approach and to adapt its practice to comply with any future Code change relating to bulk requests.
17. will continue to look at the feasibility of providing data daily from Thames Water loggers, aligning to the Retailer Wholesaler Group published Data Logging Good Guide. Thames Water will undertake a legal and technical review into the mechanism as to how access can be granted to third parties and retailers to view its logger data through a third party online portal on a chargeable basis. The results of the review together with any proposal for change will be presented to the MSG for consideration and approval.
18. will continue to progress the implementation of the final mast in the London WAN. The installation of the final mast in London will conclude the programme and result in 95% coverage for London overall and 69% of London covered by at least two masts; providing improved signal strength.

Setting appropriate charges for Non-Primary and Additional Services, including DDS

Overarching commitment 5

Thames Water will review its charging methodology for Non-Primary and Additional Services to ensure that the charges are cost reflective of the appropriate cost to serve and are implemented in a fair, reasonable and non-discriminatory manner.

Specific commitments in support of commitment 5

Thames Water will:

19. commission an external review to report by 31 July 2021 on whether, in the view of the reviewer, its methodology complies with the overarching commitment.
 - a. The review will include consideration of its approach to benchmarking the components of its pricing (and how any potential benefits to Thames Water should be taken into account) and the identification and evaluation of possible alternative approaches. Thames Water will provide the review to Ofwat for comment in advance of proposals being made by the MSG.
 - b. The MSG will consider the output from the review and Ofwat's comments on that review and propose changes to the tariffs to the Thames Water Executive with oversight from the Board for approval in two parts as detailed at c and d below, taking full account of Ofwat's comments;
 - c. From the results of the review Thames Water will prospectively update its 2021/22 Non-Primary and Additional Services tariffs and the Wholesale Tariff Document where the external review identifies amendments to current tariffs that can reasonably be implemented at this stage; and
 - d. Where the external review identifies amendments that would require more fundamental or structural changes, these will be included in its update to its 2022/23 Non-Primary and Additional Services tariffs and the Wholesale Tariff Document in readiness for the beginning of the financial year; and
 - e. Obtain Ofwat's agreement, in line with the timeline set out in Table 1, that its resultant tariffs meet overarching commitment 5.

Reporting and provision of information

20. To update Ofwat while these Commitments remain in force and effective, and until Ofwat has agreed they have been satisfactorily implemented and evidenced and can therefore be closed, Thames Water shall:
 - a. provide written monitoring reports to Ofwat,
 - (i) demonstrating the steps that it has taken in complying with these Commitments; and
 - (ii) providing assurance of its ongoing compliance with the Commitments;
 - b. provide the first of these monitoring reports on 30 September 2021 after the acceptance of the Commitments by Ofwat and then on 31 March 2022, 30 September

2022 and future dates to be agreed with Ofwat if it has not agreed the Commitments have been implemented and closed by this point;

- c. provide to Ofwat any supporting information and documents which Ofwat reasonably requests in relation to the Commitments;
- d. the reports will provide Ofwat with evidence of successful implementation of the commitments; and
- e. the proposed schedule of commitment delivery and evidence provision to Ofwat is set out below in Table 1.

Thames Water will carry out the actions described above in accordance with the timetable set out below:

Table 1

Relevant Commitment	Expected Delivery Date	Evidenced to Ofwat
Understanding and addressing customer needs, including learning from customer complaints		
1(a) document and publish the mechanisms for capturing and reviewing customer feedback	31/7/21	30/9/21
1(b) recommend and implement process enhancements	30/4/21 [C] ⁴³	30/9/21
1(c) formalise escalation route	30/4/21 [C]	30/9/21
2 commission specific research into the current and future needs of customers	28/5/21	30/9/21
3 provide feedback to retailers on how Thames Water is taking into account points raised at the Retailer Forum	31/7/21	30/9/21
Consideration of markets in Thames Water's decision-making processes		
4(a) deliver dedicated training sessions for senior managers	30/4/21 [C]	30/9/21
4(b) continue to review and enhance existing competition compliance training	30/4/21 [C]	30/9/21
5 re-establish the MSG	28/2/21 [C]	30/9/21
6 review existing governance and decision-making processes	30/6/21	30/9/21
7 develop a Market Impact Assessment tool	30/6/21	30/9/21
8 formalise and develop roles of accountable / responsible managers and associated guidance	30/6/21	30/9/21

⁴³ Dates marked [C] indicate those commitments that Thames Water considers to be complete but for which they have yet to provide evidence of this to Ofwat. Evidence of completion is due to be provided to us in line with the dates set out in the 'Evidenced to Ofwat' column.

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Relevant Commitment	Expected Delivery Date	Evidenced to Ofwat
<p>Making the right meter technology decision for customers and downstream markets</p> <p>9 communicate change of smart metering policy</p> <p>10 complete a review of technology options</p> <p>11 continue to work to deliver the AMP7 Technology Refresh Phase One</p> <p>12 continue to share its learning on smart metering with the water industry</p>	<p>30/6/21</p> <p>31/7/21</p> <p>28/2/22</p> <p>31/3/22</p>	<p>30/9/21</p> <p>30/9/21</p> <p>31/3/22</p> <p>31/3/22</p>
<p>Providing a Digital Data Service (DDS) that meets customers' needs</p> <p>13(a) implement further improvements to the DDS dashboard</p> <p>13(b) deliver an automation of the "access to premises" process in the metering workflow management platform</p> <p>14 to make any improvements – as soon as they become available – in setting up the initial DDS</p> <p>15 complete a review to recommend how to improve and best display data for customers, and to subsequently deliver on those recommendations (subject to technology developments)</p> <p>16 communicate and adapt approach to bulk requests</p> <p>17 conduct a feasibility study into provision of daily data from Thames Water loggers</p> <p>18 continue to progress installation of the final mast in London to improve WAN coverage and signal strength⁴⁴</p>	<p>30/4/21 [C]</p> <p>31/3/21 [C]</p> <p>28/2/22</p> <p>30/9/21 (review) 30/9/22 (actions)</p> <p>31/7/21</p> <p>30/9/21</p> <p>31/7/21</p>	<p>30/9/21</p> <p>30/9/21</p> <p>31/3/22</p> <p>31/3/22 (review) 30/9/22 (actions)</p> <p>30/9/21</p> <p>31/3/22</p> <p>30/9/21</p>
<p>Setting appropriate charges for Non-Primary and Additional Services, including DDS</p> <p>19(a) commission an external review to seek assurance in relation to the methodology it has adopted with regard to pricing</p> <p>19(b) its MSG to review outcome of review and Ofwat comments to recommend tariff changes for approval by the Executive</p> <p>19(c) update its 2021/22 Non-Primary and Additional Services tariffs and the Wholesale Tariff Document for relevant findings from 19(a)</p> <p>19(d) update its 2022/23 Non-Primary and Additional Services tariffs and the Wholesale Tariff Document for relevant findings from 19(a)</p> <p>19(e) obtain Ofwat's agreement that the resultant tariffs meet the overarching commitment</p>	<p>31/7/21</p> <p>30/9/21</p> <p>30/9/21</p> <p>14/1/22</p> <p>30/11/21</p>	<p>30/9/21</p> <p>30/11/21</p> <p>31/3/22</p> <p>31/3/22</p> <p>30/11/21</p>

⁴⁴ Delivery date subject to the necessary planning controls being granted.

A2 List of Digital Data Service improvements already implemented

This Appendix summarises the improvements to digital data services which Thames Water considers it has already completed in the period up to provision of the Commitments set out in this document.

The two tables below have been provided by Thames Water. Table 2 sets out improvements relating to setting up the digital data services, Table 3 then summarises the improvements made to the ongoing provision of service.

Table 2: Completed actions – Providing a digital data service which meets customers' needs – initial service provision

Description (with relevant service in brackets)	Benefit	Date completed
Remove requirement for Retailers to provide evidence of customer authorisation. (Giving consent for data logger installations, providing consumption data from our data loggers, providing digital meter data, fitting splitters for data loggers).	Speeds up access to our DDS. Speeds up customers being able to fit their own logger.	December 2019
Review of access request forms - bespoke forms developed relevant to all of our service offerings. (Fitting splitters, providing historic consumption data, providing DDS).	Speeds up access to our DDS.	The RWG Good Practice Guide suggests using a single national form they have produced. The form does not cover our full service range and as such we continue to use our own bespoke form, which is kept under review.
Align to Data Logging Good Practice Guide SLA - we will provide a substantive response within 5 business days of receipt of completed service request form. (Fitting splitters)	Speeds up customers being able to fit their own logger.	October 2020.
Align to Data Logging Good Practice Guide SLA - we will fit a splitter within 22 business days (assuming it is a standard installation) of receipt of completed service request form. (Fitting splitters for data loggers)	Speeds up customers being able to fit their own logger.	October 2020.
Redesigning the internal onboarding process of new DDS requests. (Providing digital meter data)	Speeds up access to our DDS.	June 2020.
Expanding the Smart Metering Operations Centre to include a dedicated DDS analyst that would manage onboarding requests to	Speeds up access to our DDS.	June 2020.

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Description (with relevant service in brackets)	Benefit	Date completed
improve issue resolution speed. (Providing digital meter data)		
Bringing DDS requests into a system that tracks by reference numbers and integrates into a single automated report for all DDS requests and services, provides latest updates to requests. (Providing digital meter data)	Speeds up access to our DDS.	June 2020.
Allowed for Retailers to request bulk groups of meters under one request. (Providing digital meter data)	Speeds up access to our DDS.	February 2020.
Recruit a Case Manager in Metering team for DDS requests. (Providing digital meter data)	Speeds up access to our DDS.	August 2020. Case Manager recruited and a Technical Analyst.
Allow third parties who want to log a meter which currently cannot be logged to submit meter exchange requests directly to us. (Data logging installation)	Allows third parties to access our DDS or directly attach loggers.	January 2021. We updated our website and republished our Wholesale Service Offering. Third parties can now contact us directly to ask us to exchange a meter for this purpose.

The improvements documented above were implemented at various points since the end of 2019. The last improvement to be implemented was the creation of two new roles within the metering teams to ensure that the improvements can be sustained. The two roles are:

- Case Manager in Thames Water's Non-household Metering Delivery team; and
- Technical Analyst in Thames Water's Smart Meter Operations team.

Table 3: Actions completed – providing timely, accurate and user-friendly data

Description (with relevant service in brackets)	Benefit	Date completed
Implement service level agreements (SLA) for investigating flat lining, where the expected data output is not being received. (Data logging installation)	Ensures that customers access complete information on a timely basis.	December 2019.
Improvements to data files provided to customers including grouping into single file per day, a file formatting tool to allow better file management, improved availability of SPID data, and better Thames/ Retailer system integration. (Providing digital meter data)	Provision of more user-friendly data.	March - August 2020.

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Description (with relevant service in brackets)	Benefit	Date completed
Offer a smart meter reading service that can be requested by Retailers on an ad-hoc, monthly or 6 monthly basis where the data is available, to correspond to market meter reading needs. A specific chargeable service provided to individual Retailers.	New service better aligned to meter reading needs (to complement data services).	30 November 2020.
Reduce the frequency of mandatory password resets for digital data service users. There is now no end date. (Providing digital meter data)	Maintains access to our DDS.	June 2020.
Introducing proactive notifications to Retailers when the service they have subscribed to is due to expire. (Providing digital meter data)	Maintains access to our DDS.	January 2021.
Producing digital data service guide for Retailers and users of the service. Plan to develop and publish by December 2020. (Providing digital meter data)	Ensures that retailers and users can make the most of the DDS provision.	December 2020. https://www.thameswater.co.uk/media-library/home/wholesale/metering/getting-data-from-meters-guidance.pdf

**Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
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