

**Date: Monday 6 September 2021**

**British Water's Response to Consultation on amendment to intellectual property right policy for the second Breakthrough Challenge competition**

Ofwat has issued a consultation to test a change to the intellectual property rights ('IPR') policy for part of the catalyst stream within Breakthrough 2. The change will enable owners of background IPR to charge a licence fee at a fair, reasonable and non-discriminatory rate for the use of the background IPR solely to the extent necessary for water companies to receive the benefit of the foreground IPR. (Ofwat do not propose to make any other changes to the background IPR policy). The four questions are below.

**Q1. In relation to the proposed policy changes which will allow participants to charge for a license for background IPR, to what extent do you think this may, or may not, result in:**

- a) better access to the fund for innovators and third parties;
- b) a broader range of projects;
- c) higher quality of projects; and
- d) any other benefits or disadvantages.

Please provide any evidence and / or examples, including from your experience with the fund so far.

It is good that Ofwat are considering allowing participants to charge for a license for background IPR. The proposal however might only lead to a marginal improvement in take-up of the fund by innovators and third parties and only marginally encourage a broader range of projects and higher quality projects. Some of the concerns raised by British Water members include:

- It is unclear how the charge for the background license will be set and who will decide the 'reasonable amount' for the license. Will the true commercial value be independently assessed as with other industry innovation support networks/funds?
- Suppliers feel that applying a license for background IPR could still put them at risk of 'losing control' of their IPR. It might not be possible to progress foreground innovation without knowledge of background IPR. Innovation partners might still be able to gain background IPR, not protected by a license, and make adjustments to develop a similar competitor product.
- Some suppliers have experience of water companies who seek to 'own a piece of an innovators' company', bringing it into their own corporate structure, for example as a shareholder, in order to access IPR for free – and develop a competitor product.
- It is too early to give evidence from the Fund itself, but one possible disadvantage could lead innovative suppliers, who cannot agree suitable IPR arrangements, to leave the UK to pursue development opportunities overseas instead. There a number of examples, where supply chain companies have left the UK water market to successfully pursue opportunities overseas.

**Q2. To what extent might the proposed approach benefit or disadvantage customers in comparison to the current policy?**

Customers are already paying for water companies to develop innovation, in whatever way that comes about. Benefits to the customer are seen in improved processes and operations that are more efficient and cost effective over the whole life of an asset/project. Innovation should be a win-win for water companies, innovators, customers and the environment.

**Q3. Is there any merit in retaining the option to propose alternative IPR arrangements when submitting a bid given the changes we're proposing within this consultation document? If so, where do you consider that we should allow flexibility in the scope for any alternatives – e.g. Foreground IPR? Please provide specific examples in answering this question.**

The option to develop alternative IPR arrangements for foreground and background IPR are necessary so supply chain companies can ensure that the benefits outweigh the risks on a given innovation project and secure the necessary protections. Ofwat is seeking transformative innovation, so, especially within the catalyst stream of Breakthrough 2, a greater degree of IPR ought to emerge. The competition is still very much water company led. If supply chain companies were also able to lead bids they would feel a higher degree of protection and flexibility in how they manage and retain IPR.

There is still some concern how foreground IPR is managed within the innovation fund. Greater protection and flexibility around foreground IPR would also be valued and would significantly improve participation from innovators and third parties in the fund.

**Q4. How do you think we could evaluate the impact of our proposed IPR policy changes to inform the next competition, including areas such as access to the competitions and ultimately the benefits to customers? What additional information do you think we should collect in order to help us to evaluate**

The best way to evaluate the impact is to monitor participation from innovators and third parties, in the next round, and continue to gather their feedback as to the attractiveness of the fund. It would also be good to continue to look at other sectors manage IPR in their innovation funds.

A robust and sustainable supply chain will bring broader benefits to the wider UK economy as well as the water sector through exports and international exchange.