



Innovation Fund: Consultation on amendment to intellectual property right policy for the second Breakthrough Challenge competition August 2021

Southern Water's Response



Consultation questions

Q1. In relation to the proposed policy changes which will allow participants to charge for a licence 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.

The proposed policy changes are welcome and would, from Southern Water's experience of putting together innovation consortia (both for the Ofwat Innovation Fund challenges and generally), create better access to a wider and different innovation market. This should, by its very nature, generate more innovation ideas and higher quality projects as the focus of current and new third party participants, especially those whose entire business model (e.g. software developers, AI innovators, or data analytics providers) shifts away from engaging only in, or looking for legal avenues to protect the fundamental basis of their business rather than the future value of the propositions.

Concerns about the impact and extent of the existing background IPR provisions have already resulted in a number of alternative IPR arrangements being submitted as part of Innovation in Water Breakthrough Challenge 1 proposals, including the Southern Water led Water4All Project. The water4All project proposal related specifically to background IPR, which would mostly be resolved by the proposed policy change.

However, we are concerned that the Ofwat proposal is limited to a policy change for part only of **Catalyst stream** projects (i.e. projects seeking funding of between £100,000 and £1 million), as this implies that only such small scale projects have or are likely to experience a restriction to innovation due to the current background IPR policy. This, in fact, is not the case as many larger scale innovation projects (i.e. **Transform stream** projects seeking funding of between £1 million and £30 million) have already had to deal with this issue and will very likely continue to do so, where the existing background IPR policy does not completely stifle the innovation idea before it has had a chance to be properly developed.

We have seen examples of larger scale projects with multiple innovations within them, each raising concerns about the IPR clause. For example the "Alternative approaches to

phosphorus removal on rural wastewater treatment works" (WBC Bid, United Utilities lead partner, Southern Water project partner), has different needs for each partner. The proposed changes for the **Catalyst stream** would overcome most of these should they be extended out to the **Transform stream**.

Extending the same half and half split background IPR pilot proposed for Catalyst Stream projects to Transform Stream projects for Water Breakthrough Challenge 2 would, in our view, be good for attracting new, different, combinations of and, possibly, better innovation proposals for the ultimate benefit of customers.

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

The proposed approach, especially if it is extended in the same manner to Transform Stream projects, is likely to benefit customers significantly as it would be good for attracting new, different, and, possibly, better innovation proposals from non-water innovators and third parties particularly those who are early-stage innovators, and those proposing digital, data-driven and AI-focused innovations, where revenue is often closely tied with IPR.

This will be to the ultimate benefit of customers as IPR produced from such innovation projects will continue to remain open for use by all appointed water companies, which would have had to individually engage with and pay for such background IPR in the absence of these innovation projects anyway, and in some cases, also pay for use of the foreground IPR. In this latter scenario (i.e. things as they currently exist), customers are actually paying twice, but the cost is mostly hidden and no industry wide innovation is being enabled.

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.

Even with the proposed policy change (whether limited to Catalyst Stream projects or extended to Transform Stream projects as suggested above), it is necessary to continue to retain the option for proposed innovation projects to propose alternative IPR arrangements

as there will continue to be specific projects that need to cover off other IPR related issues not catered for by the proposed policy change.

For example, it is conceivable that certain data driven innovation projects by their very nature require not only access to background IPR (i.e. pre-existing IPR, which exists prior to the submission of any projects to the innovation fund) for the foreground IPR to be usable, but future access to non-project IPR which sits outside of both background IPR and foreground IPR to obtain the full benefit for customers of continuing to use the foreground IPR well into the future. It would be necessary with the existing Ofwat policy, even as would be amended by the proposed policy change, to make it clear that there is no automatic, royalty free licence to access such non-project IPR developed after submission of innovation fund bids, but outside of foreground IPR. Such an approach recognises that for data driven innovation projects, the data fed into and used to deliver the funded project (and, therefore, background IPR) is not a static product and will develop and evolve outside of the foreground IPR.

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

As already indicated above, we believe it is necessary to extend the proposed new approach to Transform Stream projects as well as part of the pilot so that Ofwat is able to gather information on what, and to what extent this change makes a difference across the whole Water Breakthrough Challenge 2.