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Yorkshire Water
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By email: innovationconsultation@ofwat.gov.uk

6 September 2021

Dear Ofwat

Re: Innovation Fund: consultation on amendment to intellectual property right policy for the second Breakthrough Challenge competition

Thank you for the opportunity to study and provide comments on your proposal to test a change to Ofwat's intellectual property rights ('IPR') policy for part of the catalyst stream within Breakthrough 2.

Whilst we welcome Ofwat's willingness to adapt its policy on IPR in relation to the Innovation Fund and the associated competitions, we believe there is scope for further improvements. Innovation is complex and by its very nature relies upon flexibility through all stages of the process from initial concept through to delivery and assessment. We believe there is not a one size model that fits all innovation programmes to accommodate all possible delivery models.

We are aware several parties who are either already involved in the Innovation Fund ('the Fund') or are interested in being involved have raised concerns with the present IPR policy both in relation to valuing background and foreground IPR. In our experience to date the current model around background IPR has not been a major blocker to parties participating in the competitions under the Fund. We feel the limitations in respect of sharing foreground IPR with all water companies regardless of their respective involvement in individual innovation projects under the Fund is a more material issue.

The proposed model for the next round of the Catalyst stream (previously IWC) will add a level of complexity and potentially confusion to bidding parties. It will ask bidding parties to choose between the new IP clause – *“owners of background IPR will be able to charge a licence fee at a fair, reasonable and non-discriminatory rate, if use of the background IPR is necessary to receive the*

benefit of the foreground IPR.” and the current IP clause – “the current terms and conditions for a licence to be provided royalty free where a participant’s background IPR is required for the use of the foreground IPR.”

However, it is not certain that overall there will be a balanced number of applications via these two background IPR choices, yet Ofwat is determining in advance that the Breakthrough 2 funds will be split 50/50 between these two background IPR approaches. This may result in a disadvantageous position for any project bids that are made into the half of the fund that is most popular.

We append our responses to the consultation questions to this letter below. We note Ofwat’s intention to publish responses to the consultation on its website and we give our consent to publish this letter and appended pages.

Should you have any questions in relation to this response please contact me in the first instance.

Yours faithfully,

A solid black rectangular box used to redact the signature of Colin Fraser.

Colin Fraser, Regulatory Strategy Manager

Yorkshire Water response to: Innovation Fund consultation on amendment to intellectual property right policy for the second Breakthrough Challenge competition

We present below our feedback on the issues and proposals detailed in the consultation

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;

We note the proposals in the consultation but to date we have not experienced the present policy around valuing and compensating bidders who bring background IPR into a project as a key blocker. We believe the proposals may be welcomed by some third parties and innovators but that this will not encourage significantly greater access or participation.

b) a broader range of projects;

To date we have not experienced the present policy around valuing and compensating bidders who bring background IPR into a project as a key blocker to wider participation.

c) higher quality of projects; and

To date we have not experienced the present policy around valuing and compensating bidders who bring background IPR into a project as a key blocker to wider participation.

d) any other benefits or disadvantages.

We are not aware of other benefits this additional IPR approach will bring. The dual approach may make bidding more complex in that participants must decide, and commit to, only one of the background IPR approaches, and this may disadvantage their bid where that half of the Breakthrough Challenge fund is greatly over-subscribed.

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

We are not clear what benefits will be attributable to customers overall in comparison to the present approach. We would like to understand how much of the fund will be used in determining and setting the relevant 'fair' background IPR licence fee for each project awarded under the Breakthrough 2 competition.

We would also like to understand if the Fund competition administration body will be expected to negotiate the level of the licence fees with the project participants as part of the bidding process, or will this be left to water companies to do should they 'take up' the foreground IPR of the solution outside the competition once the innovation is proved successful?

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.

Yes, we believe the ability to propose alternative IPR arrangements provides flexibility and can be used to reflect and/or balance financial and non-financial contributions that are being made to the innovation project. We think this is especially relevant to foreground IPR created by a successful project.

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?

It may be helpful to ask any party that is intending to charge a licence fee related to background IPR it brought into a project if this has meant it can collaborate on a project that it would otherwise have been unable to do so.