

February 2022

**Notice of intention to accept
modified 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 3 of Schedule 6A to the Competition Act 1998 (**CA98**). It sets out our proposed decision to accept modified binding commitments offered by Thames Water Utilities Limited (**Thames Water**) to address competition concerns that we had identified during our investigation into its approach to the introduction of smart water meters at business premises.¹

In May 2021 we consulted on our proposal to accept commitments that Thames Water had offered to address those same competition concerns (**Initial Commitments**). We discussed the responses we received to this consultation with Thames Water and the issues raised in them by respondents. In light of some of the issues raised, Thames Water has proposed modifications to its proposed commitments (**Modified Commitments**). We consider that the Modified Commitments offered by Thames Water will address our competition concerns and are therefore consulting on our proposal to accept the Modified Commitments.

This document summarises:

- the competition concerns that we have identified;
- the consultation responses we received on our proposal to accept the Initial Commitments offered by Thames Water;
- the Modified Commitments proposed by Thames Water to address our competition concerns; and
- our assessment of why we believe that the Modified Commitments will address these concerns and why acceptance of the Modified Commitments is appropriate in this case.

Interested parties are invited to comment on our proposed decision to accept the Modified Commitments. We will take representations received into account before making a final decision on whether to accept the Modified Commitments.

¹ Smart meters are meters that measure and record the flow of water and enable this data to be transmitted automatically over long distances.

Executive summary

On 25 May 2021, we gave notice (**May Notice**)² that we proposed to accept the Initial Commitments offered by Thames Water in relation to our investigation into whether Thames Water had abused a dominant position with respect to its approach to smart metering and the provision of digital data services (**DDS**)³ in the area covered by its Licence.⁴ The abuse of a dominant position is prohibited by Chapter II of the CA98.

The May Notice set out our competition concerns, namely, that as a result of Thames Water's approach to smart metering:

- Retail licensees (**retailers**) and third-party service providers (**TPPs**) are unable to directly access water usage (consumption) data from the smart meters which inhibits their ability to compete to provide a range of services (including water efficiency, leakage detection and bill validation services) to business customers⁵; and
- Thames Water has not, as an alternative to that direct access, provided access to the water usage data it gathers 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 business customers.

We further had concerns that, as a monopoly operator of a water supply system, Thames Water has failed to have sufficient regard to the impact of its infrastructure investment decisions on related markets.

The May Notice outlined our provisional view that the Initial Commitments addressed those concerns and that they should therefore be accepted. It sought the views of interested parties on the Initial Commitments and our proposal to accept them. We received representations from nine interested parties. We have carefully considered those representations.

² Ofwat, [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. May 2020.](#)

³ DDS are services offered by Thames Water to retailers 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.

⁴ 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.

⁵ Our concerns relate solely to the provision of services to business customers, by which we mean anyone who is not a household customer. Household customers are unable to choose who supplies them with water and wastewater services and instead take these services from the incumbent monopoly provider in their area.

Most respondents to the consultation were broadly supportive of our proposed decision to accept the Initial Commitments. However, the responses did help to highlight particular aspects of the competition concerns and Initial Commitments that were especially important to retailers and business customers. Taking the representations as a whole, we now consider that, in order to provide greater confidence to potentially affected parties, the Initial Commitments could be clearer as to some of the actions that would be taken, particularly as regards Thames Water's metering policy, and could include some additional steps to address the competition concerns, including in relation to loggable smart meters and DDS pricing.

Our competition concerns remain unchanged from those expressed in the May Notice.

Following further discussions with Thames Water, Thames Water offered modifications to the Initial Commitments in the form of the Modified Commitments, including:

- Setting out in the commitments themselves key details of its current metering policy and the changes planned to it for 2022, including in relation to when it will replace meters that have logging equipment attached to them and the circumstances in which it will install loggable meters;
- Free replacement of meters that had logging equipment removed from them with loggable smart meters as they become available;
- Payment of compensation for lost or damaged logging equipment in certain circumstances; and
- Removing the ongoing subscription charges for DDS (initial set-up costs remain chargeable).

We provisionally consider that the Modified Commitments offered by Thames Water address our competition concerns by improving the clarity of Thames Water's metering policy and including key aspects of it within the commitments, committing it to greater engagement with retailers, and reducing the costs of the DDS.

As such, we propose to accept the Modified Commitments and issue a formal commitments decision.

Invitation to comment

We now invite representations from interested parties on the Modified Commitments. We will carefully consider any representations made before we make a final decision on whether to accept the Modified Commitments. The deadline for responses is 27 February 2022.

Contents

1.	Introduction	5
2.	Our competition concerns	7
3.	Assessment of the Initial Commitments	9
4.	Response to our consultation	11
5.	Proposed Modified Commitments	14
6.	Provisional assessment of the Modified Commitments	19
A1	The Modified Commitments	26
A2	List of DDS improvements already implemented	40
A3	Responses to the consultation and our assessment	43

1. Introduction

- 1.1 In May 2021, we gave notice that we proposed to accept the Initial Commitments offered by Thames Water under the CA98 to address competition concerns we had identified following our investigation into its approach to the introduction of smart water meters at business premises. We invited representations from interested parties on the Initial Commitments and our proposal to accept them.
- 1.2 We received nine responses to the consultation, which we summarise and discuss in Section 4 and Appendix A3. We have carefully considered these responses and discussed the concerns raised in those responses with Thames Water.
- 1.3 As a result, Thames Water has proposed to make certain modifications to the Initial Commitments. Having considered these Modified Commitments, we are provisionally of the view that acceptance of the Modified Commitments will address our competition concerns and it would be appropriate for us to accept the Modified Commitments in this case.
- 1.4 We therefore give notice pursuant to paragraph 3(1)(a) of Schedule 6A CA98 that we propose to accept the Modified Commitments in accordance with section 31A(2) CA98.
- 1.5 Formal acceptance of the Modified Commitments would result in the closure of our investigation, with no decision being made on whether the conduct that is the subject of the investigation constitutes an infringement of the CA98.
- 1.6 Acceptance of the Modified Commitments would not prevent us from taking any action in relation to competition concerns that are not addressed by the Modified Commitments. Acceptance of the Modified Commitments would also not prevent us from re-opening the investigation, making an infringement decision or giving a direction in circumstances where we had reasonable grounds for:
 - Believing that there had been a material change of circumstances since the Modified Commitments were accepted;
 - Suspecting that a person had failed to adhere to one or more of the terms of the Modified Commitments; or
 - Suspecting that information which led us to accept the Modified Commitments was incomplete, false or misleading in a material particular.
- 1.7 The remainder of this document is structured as follows:
 - **Section 2** summarises the competition concerns.
 - **Section 3** summarises our assessment of the Initial Commitments.

- **Section 4** summarises the key issues raised in the consultation responses we received in response to our proposal to accept the Initial Commitments.
- **Section 5** summarises the proposed modifications to the Initial Commitments.
- **Section 6** explains our provisional assessment of the Modified Commitments and invites representations on our decision to accept the Modified Commitments.
- **Appendix A1** sets out in full the Modified Commitments offered by Thames Water.
- **Appendix A2** sets out the list of DDS improvements already made by Thames Water.
- **Appendix A3** sets out a summary of the responses to our May Notice.

1.8 We have not repeated here the full background to our investigation, the Initial Commitments or the detail of our assessment of why we provisionally considered that they addressed our competition concerns, which were set out in the May Notice.

1.9 We invite interested parties to make representations on the Modified Commitments and our proposal to accept them. We will take any representations into account before a final decision is made on whether to accept the Modified Commitments. Details of how to comment are provided in Section 6 of this document. The closing date for representations is 27 February 2022.

2. Our competition concerns

- 2.1 We set out our 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 business 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 its DDS, and the extent to which Thames Water had considered and reflected competition law in its decisions on the approach it took to these.
- 2.2 We explained that access to water usage data could either take the form of allowing direct access to the revenue meter itself (this is, to enable logging equipment to be attached)⁶ or by providing access to the data generated by those meters on fair, reasonable and non-discriminatory terms.
- 2.3 We noted that the frequency and timeliness with which data is required by users, 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-meters⁷ or eyeball reading of the meters were not effective substitutes for access to the data from the revenue meter itself. Our position on these has not changed.

Inability to log new meters

- 2.4 We considered that Thames Water's decision in the upstream markets to introduce smart meters that cannot be logged⁸ has prevented access to the water usage data required by business customers in the downstream market.⁹ The supply of direct access to water usage data has been withdrawn from those meters that were previously loggable and refused to those that now wish to directly access the data by using logging equipment.

Lack of availability of reasonable DDS

- 2.5 Although Thames Water took steps during the investigation to improve the quality of the DDS that it offers and the ease with which they can be ordered, we continued to have concerns about whether they were being offered on fair, reasonable and non-

⁶ This position applies regardless of whether the revenue meter is a smart meter or an analogue meter.

⁷ For an explanation of sub-meters, please see paragraph 1.4 of the May Notice.

⁸ For an explanation of the meter types and which can be logged, please see paragraph 2.8 of the May Notice.

⁹ Paragraphs 2.3-2.10 and 2.20-2.25 of the May Notice discuss water metering and Thames Water's decision to introduce smart meters.

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 it compromises 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. Ultimately this may result in the further downstream markets ceasing to exist. Thames Water's approach has in practice made it the monopoly provider of this input for a growing set of business customer premises.

Approach to managing its impact on customers and markets

- 2.6 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 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 monopoly water companies like Thames Water, consider the impact of their actions on others.

3. Assessment of the Initial Commitments

- 3.1 In order to address our competition concerns (as described in Section 2), and without prejudice to its position that it has not infringed the Chapter II prohibition by its conduct, Thames Water offered the Initial Commitments to address our competition concerns. The Initial Commitments and our provisional assessment of them were set out in full in the May Notice published in May 2021.
- 3.2 In summary, we provisionally concluded that it was appropriate for us to accept commitments in this case, and that acceptance of the Initial Commitments was appropriate taking into account the framework set out in the CA98.
- 3.3 We assessed the Initial Commitments against the Competition and Markets Authority's guidance¹⁰ on when it is appropriate to accept binding commitments.¹¹
- 3.4 We considered that the competition concerns are readily identifiable (as set out in Section 2 above) and that, once implemented, the Initial Commitments would address our competition concerns by providing retailers and TPPs with the choice of installing their own equipment on Thames Water's digital smart meters to collect water usage data or purchasing an improved DDS from Thames Water that is offered on fair, reasonable and non-discriminatory terms.
- 3.5 We considered that the Initial Commitments would address our competition concerns as they give retailers and TPPs the choice of either installing their own equipment on Thames Water's smart meters to collect water usage data or purchasing an improved DDS that provides 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.
- 3.6 We further considered that the Initial Commitments would 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.
- 3.7 We provisionally considered that the Initial Commitments were capable of being implemented effectively and in a timely manner as they required Thames Water to provide us with regular compliance reports and required it to demonstrate to our

¹⁰ The Competition and Markets Authority's [Guidance on the CMA's investigation procedures in Competition Act 1998 cases \(the CMA Procedural Guidance\)](#).

¹¹ Paragraphs 10.17 to 10.20 of the CMA Procedural Guidance sets out the circumstances in which it is likely to be appropriate to accept commitments and the factors that might determine that it is not appropriate to accept commitments.

satisfaction that the commitments had been complied with by 31 December 2022. We were satisfied that the case did not involve a serious abuse of dominance¹² or that accepting the Initial Commitments would significantly undermine deterrence.

¹² Cases involving a serious abuse of dominance are those which the CMA considers are most likely by their very nature to harm competition. The CMA identifies that in relation to infringements of the Chapter II Prohibition, this will typically include conduct which is inherently likely to have a particularly serious exploitative or exclusionary effect, such as excessive and predatory pricing (CMA Procedural Guidance, paragraph 10.19). Thames Water's conduct in this case does not fall into this category.

4. Response to our consultation

- 4.1 On 25 May 2021 we published the May Notice on our proposed decision to accept the Initial Commitments, inviting comments by 22 June 2021.
- 4.2 We received nine responses to the consultation from a range of parties covering the main groups with a likely interest in the issues being considered – business customers, retailers, TPPs and water industry bodies.
- 4.3 All respondents agreed with us that fair and easy access to water usage data is important and most respondents were broadly supportive of our provisional decision to accept the Initial Commitments. Several respondents expressed the view that the Initial Commitments were insufficiently clear as to exactly what Thames Water was committing to and therefore failed to fully address the identified competition concerns.
- 4.4 While a number of issues were raised by these respondents, there were certain key themes in the responses that were directly relevant to whether the Initial Commitments addressed the competition concerns that we had identified. We discuss these below. Appendix A3 sets out in more detail the wider range of issues raised in responses to the consultation, together with our consideration and response to each issue.

Thames Water's metering policy

- 4.5 Some respondents felt that Thames Water's existing metering policy was insufficiently clear as to the type of meters that would be installed and in what circumstances. Clarity was sought as to whether Thames Water's policy not to replace logged analogue meters applied both inside and outside the area covered by Thames Water's wide area network (**WAN**).¹³
- 4.6 Respondents were also concerned that Thames Water's proposed commitments on its metering policy and the type of technology it would use for smart metering were insufficiently clear and failed to explicitly commit Thames Water to installing loggable smart meters.

¹³ Thames Water's wide-area fixed network communication system makes use of licensed radio frequency spectrum, together with a compatible communication product and smart meters. At present, the WAN largely only covers London and the area bounded by the M25 motorway. Smart meters sited within the WAN may transmit meter reading data automatically without the need to visit the meter.

Customer engagement

4.7 Linked to the metering policy, there was a general view among respondents that Thames Water needed to engage more with retailers and their business customers when it was replacing meters, including sharing its smart meter roll-out plans and ensuring that customers understood the options available to them. In particular, it was felt that Thames Water should be clearer that there is the option to opt-out of having an unloggable smart meter installed. It was felt that the commitments should be revised to require this further clarity. Some respondents felt that customer consent should be obtained before meters were replaced and that it should be the business customers' choice as to which type of meter was installed.

Compensation

4.8 Several respondents questioned the lack of compensation within the Initial Commitments. They felt Thames Water should pay compensation or offer some form of restitution for the harm caused and that business customers should be returned to the position they were in before their logging equipment was removed.

4.9 Collectively, they identified three types of harm that they believe have resulted from Thames Water's approach to smart metering:

- Retailers and TPPs have suffered lost assets as their logging equipment was damaged or lost in some cases when Thames Water removed analogue meters to install smart meters.
- Retailers and TPPs lost business as they could no longer provide water efficiency services (and other types of value-added services) to existing or new business customers where smart meters were installed.
- Business customers suffered increased water charges in some cases as, because they no longer had direct access to their water usage data, they were unable to identify leaks as soon as they occurred or identify how to reduce their water charges.

DDS pricing

4.10 Several respondents felt that the current prices of Thames Water's DDS were too high, noting that in some cases it was still cheaper for them to send someone to eyeball read the meter than to purchase that data from Thames Water. It was noted that Thames Water already recovers many of its metering costs through its wholesale charges for supplying water and that therefore only the additional cost of actually providing the data to retailers or TPPs should be recovered through DDS charges.

- 4.11 One respondent suggested that it should be standard practice within the business retail market for wholesalers to make granular water usage data available within their existing wholesale charges for water services.
- 4.12 Another respondent felt that Thames Water's proposed commitment to review its DDS charges was inadequate as it considered there would be insufficient external scrutiny of the outcome and no safeguards as to the independence of the review.

Reporting on the delivery of the commitments

- 4.13 Several of the respondents felt that, if the Initial Commitments were accepted, Thames Water should be required to publish its monitoring reports on their delivery for transparency and so that retailers, TPPs and business customers could comment on their progress and provide challenge where appropriate and in light of their experiences of the services.
- 4.14 One respondent noted that while the Initial Commitments require Thames Water to produce or commission a range of reports and studies, these obligations contain none of the standard safeguards that are used by the CMA in its cases. For example, they stated that Thames Water has been left to choose which research agency to use and to determine the scope of the study. The respondent considered that this would leave Thames Water with the discretion to act as it wishes on those reports, with no scrutiny from market participants.

5. Proposed Modified Commitments

- 5.1 In light of the responses to the consultation, and subsequent discussions with Thames Water on these issues, it offered Modified Commitments to us.
- 5.2 The Modified Commitments retain the same broad structure and overarching commitments as the Initial Commitments but propose amendments and additions to the detail within them. The modifications proposed by Thames Water cover the five main themes discussed in Section 4 and we use these below to compare the Modified Commitments with the Initial Commitments. The Modified Commitments are set out in full in Appendix A1.

Metering policy

Initial commitment

- 5.3 Overarching commitment 3 requires Thames Water to ensure that the decisions that it takes in relation to meter technology are consistent with the interests of and needs of downstream market participants, including retailers, their business customers and suppliers of water usage data services.
- 5.4 To support this overarching commitment, specific commitment 9 requires Thames Water to clearly communicate to retailers and their business customers its updated metering policy. Its policy includes its approach to both proactively and reactively installing smart meters.
- 5.5 Thames Water committed to updating its metering policy to include its approach to loggable smart meters, once its systems were upgraded to become compatible with these meters.¹⁴

Proposed modification

- 5.6 Thames Water has proposed modifications to specific commitment 9 to explicitly include within that commitment key aspects of its metering policy. This includes details of what will happen when Thames Water fits a meter under either its reactive meter replacement programme or its proactive meter replacement programme.

¹⁴ Additional commitments (specific commitments 10 and 11) set out Thames Water's plans to review technology options, including those that would enable customers to collect water usage data directly, and to deliver its technology refresh that would enable the introduction of loggable smart meters.

5.7 Under the reactive meter replacement programme, for example where a faulty meter is due to be replaced:

- If the meter operates within the WAN, Thames Water will fit an unloggable digital AMI smart meter unless there is a logger already fitted (or a logger is due to be fitted imminently), in which case it will fit a pulse enabled or loggable digital AMI smart meter¹⁵ (as requested by the retailer); and
- If the meter operates outside the WAN, Thames Water will fit an unloggable digital AMR smart meter¹⁶ unless there is a logger already fitted (or a logger is due to be fitted imminently), in which case it will fit a pulse enabled or loggable digital AMR smart meter (as requested by the retailer).

5.8 Under the proactive meter replacement programme:

- If the meter operates within the WAN, Thames Water will fit an unloggable digital AMI smart meter unless there is a logger already fitted (or a logger is due to imminently be fitted), in which case it will not proactively replace the meter; and
- If the meter operates outside the WAN, Thames Water will fit an unloggable digital AMR smart meter unless there is a logger already fitted (or a logger is due to imminently be fitted), in which case it will not proactively replace the meter.

5.9 In addition, Thames Water has proposed modifications to specific commitment 9 to include details of its plans to offer loggable smart meters as a meter choice in 2022. For new installations or where the existing meter is not currently logged, Thames Water will charge the difference between its default (unloggable) smart meter and the new loggable smart meter, where the retailer or its business customer requests that a loggable smart meter be installed. Business customers that have previously had logging equipment removed as part of Thames Water's smart metering rollout, will have the right to have their existing smart meter replaced with a loggable smart meter without any additional charge.

Customer engagement

Initial commitment

5.10 Under overarching commitment 1, Thames Water is required to ensure that it understands, considers and addresses customer needs in a timely and objective manner. To support this, there are specific commitments to formalise and strengthen the way in which it gathers, reviews and acts upon customer feedback and to

¹⁵ In the short term this is likely to be a loggable analogue meter but loggable smart meters will be installed once Thames Water is satisfied that they will work properly on its network.

¹⁶ The difference between AMI and AMR meters is described in paragraph 2.8 of the May Notice.

commission research into the future needs of customers in relation to smart meters and water usage data.

Proposed modification

- 5.11 As discussed above, Thames Water has proposed revisions to specific commitment 9 to improve its engagement with retailers and their business customers on the metering options available to them before replacing a meter. Thames Water will endeavour to understand a customers' logging plans by checking CMOS¹⁷ for logger information, reviewing responses from retailers and their business customers to its notifications of meter replacement plans and through direct communication with the retailers and their business customers or representatives on site.
- 5.12 Thames Water has also proposed a revision to overarching commitment 4 that will ensure that it further develops its DDS in line with reasonable requests made by its customers.

Compensation

Initial commitment

- 5.13 None of the Initial Commitments proposed by Thames Water related to compensation for any harm suffered by retailers, TPPs or business customers as a result of its approach to smart metering.

Proposed modification

- 5.14 Thames Water has proposed a new specific commitment to pay compensation to retailers and TPPs for lost or damaged logging equipment in certain circumstances.
- 5.15 Thames Water has committed to process and pay reasonable claims for direct losses where it receives properly evidenced claims from customers in respect of damaged or lost data logging equipment where:
- It had previously provided consent for logging equipment to be attached to the meter; and
 - It is unable to evidence that it provided reasonable notice of its intention to install a smart meter.

¹⁷ Central Market Operating System. CMOS holds data about all the business customers in the business retail market and is used to enable switching between retailers and for the calculation of the financial settlement between wholesaler water companies and their retailers.

5.16 As noted above, Thames Water is additionally now offering to install loggable smart meters free of charge where it has previously removed logging equipment when installing a smart meter.

DDS pricing

Initial commitment

5.17 Under overarching commitment 5, Thames Water proposed to review its charging methodology for DDS to ensure that its charges are cost reflective and are implemented in a fair, reasonable and non-discriminatory manner. There was also a specific commitment to obtain our agreement that its tariffs meet this overarching commitment.

Proposed modification

5.18 Thames Water has proposed a revision to the specific commitments relating to its DDS pricing (now specific commitment 20) that will see it simplify its DDS charges.

5.19 Thames Water is proposing to charge only for the initial set-up costs of the DDS, with no charge for the subsequent provision of data. It would also provide regular smart meter reads to the market as wholesaler reads.

Reporting on the delivery of the commitments

Initial commitment

5.20 Under the Initial Commitments proposed by Thames Water, it is required to provide monitoring reports to us every six months, providing evidence of the steps that it has taken to comply with the commitments. The commitments are to remain in force until we are satisfied that they have been fully implemented.

5.21 There is, however, no requirement in the Initial Commitments for it to inform retailers or other market participants of its progress towards completing the actions set out in those commitments.

Proposed modification

5.22 In addition to reporting progress to us on a six-monthly basis, Thames Water is now proposing to update retailers on how it is progressing with the delivery of its

commitments by using its Retailer Forum meetings to provide details of the actions that it has taken to comply with the commitments.

5.23 Our assessment of the Modified Commitments is discussed in Section 6.

6. Provisional assessment of the Modified Commitments

- 6.1 Our competition concerns remain unchanged from the May Notice but after considering the responses to that consultation, we are no longer of the view that the Initial Commitments are sufficient to address those concerns.
- 6.2 In particular, the responses indicate that the Initial Commitments:
- provided insufficient detail as to what changes Thames Water intended to make to its metering policy and what options retailers and TPPs would have in terms of loggable smart meters;
 - contained insufficient requirements on Thames Water to engage with retailers and their business customers when replacing meters;
 - provided no compensation to retailers, TPPs or business customers for harm suffered as a result of the approach Thames Water has taken to install smart meters;
 - the DDS prices do not appear to be fair, reasonable and non-discriminatory; and
 - provide no visibility to retailers, TPPs and their business customers of Thames Water's progress with the commitments.
- 6.3 Some of these deficiencies stemmed from the fact that Thames Water was not in a position, at the time that it offered the Initial Commitments, to be able to provide more detail than it did.
- 6.4 While respondents were correct to point out that smart meters are now available that are compatible with logging devices, these loggable smart meters were not available at the time that Thames Water procured the systems and technology that it uses to provide itself and its customers with smart metering services (including DDS).
- 6.5 The loggable smart meters were not compatible with the systems and technology that Thames Water procured, meaning that Thames Water either needed to negotiate changes to the contracts with its existing suppliers, to update its technology, or find alternative technology suppliers before it was in a position to be able to offer loggable smart meters.
- 6.6 Thames Water recognised this and set out to us its plans to negotiate new contracts with its metering technology suppliers and to upgrade its systems and technology to enable loggable smart meters to be used.
- 6.7 Thames Water did not include details in the Initial Commitments of the specific technology that it intended to use to enable it to offer loggable smart meters as it was still in the process of negotiating its contracts with its technology suppliers. We

understood the reasons for this, given the ongoing commercial discussions with their suppliers.

- 6.8 Thames Water's negotiations with its suppliers have since sufficiently progressed and Thames Water now has a better understanding of the services and products that it will be able to offer retailers and their business customers in the future. It is therefore important that this be reflected in the commitments that Thames Water offers to us.
- 6.9 We discussed this and the comments raised in responses to our consultation with Thames Water and as a result it has offered the Modified Commitments. We provisionally consider that the Modified Commitments provide greater clarity to retailers, TPPs and business customers as to its current metering policy and its planned amendments to that policy in 2022 – including how it will go about installing smart meters; the types of smart meter that it will install; and the circumstances in which retailers and business customers can request that a loggable smart meter be installed and when they will be charged for this.
- 6.10 The Modified Commitments additionally commit Thames Water to greater engagement with retailers and business customers as to the type of meter to be installed when Thames Water is replacing meters and provide for compensation to be paid in certain circumstances. They provide details of how Thames Water will change the pricing of its DDS and commit it to developing its DDS in line with reasonable customer requests.
- 6.11 Having assessed the available information and having considered Thames Water's proposed modifications, we provisionally consider that the Modified Commitments address our competition concerns.
- 6.12 We set out below our provisional assessment of each of the modifications proposed by Thames Water.

Metering policy

- 6.13 By setting out the details of its metering policy in the Modified Commitments, Thames Water has addressed several of the criticisms levelled at its Initial Commitments. Key parts of its current metering policy are now explicitly included as specific commitments. Thames Water has also included details of key changes that it plans to make to its metering policy in 2022, including the commitment to make loggable smart meters available on request. This provides greater clarity to retailers, TPPs and their business customers and greater comfort that Thames Water will abide by its metering policy as the commitments are enforceable.

- 6.14 The revised wording makes clear that while Thames Water intends to continue installing unloggable smart meters as their default meters, retailers can request and have installed other types of meters offered by Thames Water. The metering policy makes clear that retailers will be informed prior to meter replacements taking place and given an opportunity to request that a loggable meter be installed. In the short term this is likely to be a loggable analogue meter but loggable smart meters will be installed once Thames Water is satisfied that they will work properly on its network.
- 6.15 Loggable smart meters will be installed free of charge where Thames Water has previously removed logging equipment from the meter, with retailers facing only the cost difference between an unloggable smart meter and a loggable meter where logging equipment had not previously been installed and the retailer has requested a loggable smart meter.
- 6.16 We consider that the modifications to the proposed commitments address the concerns raised by respondents that Thames Water's metering policy was insufficiently clear. The new wording is more explicit about the circumstances in which logged meters would be replaced (both inside and outside the WAN). The proposed commitments are also now clear that Thames Water will introduce loggable smart meters.

Customer engagement

- 6.17 We consider that the revisions that Thames Water has made to its metering policy also address concerns raised about a lack of engagement by Thames Water with retailers and their business customers when replacing meters. As a result of the revisions, Thames Water will now improve its communication with retailers, endeavouring to check with them as to their plans to install logging equipment before replacing meters and giving them the option of having a loggable meter installed if they wish.
- 6.18 The revisions that Thames Water has proposed to overarching commitment 4 will help ensure that retailers have more input and involvement in determining the way in which Thames Water's DDS are developed in the future. The revised wording commits Thames Water to updating its DDS in line with reasonable customer requests.

Compensation

- 6.19 The Initial Commitments contained no provision for compensation to be paid to retailers, TPPs or business customers for any harm or loss that they had suffered as a result of Thames Water's approach to installing smart meters.

- 6.20 Respondents were critical of this, highlighting three types of harm that they believed have resulted from Thames Water's conduct (see paragraph 4.9 above). In the Modified Commitments, Thames Water has proposed a new specific commitment that would see it process and pay reasonable claims for direct losses from retailers and TPPs for lost or damaged logging equipment in certain circumstances.
- 6.21 Proposed revisions to specific commitment 9 will also mean that where Thames Water has previously removed logging equipment when installing an unloggable smart meter, it will now install, free of charge, a loggable smart meter so that the retailer or TPP can again provide water usage data services to the business customer.
- 6.22 While we welcome the remedial actions that Thames Water is proposing to take through the Modified Commitments, we take no view as to the merits of respondents' claims for compensation and whether Thames Water's proposals are adequate to address these. We consider that the civil courts are better qualified to consider such claims.

DDS pricing

- 6.23 We consider that Thames Water's proposals in the Modified Commitments address the issues raised by respondents and our own concerns in relation to DDS prices. The proposed new commitment makes clear that ongoing DDS prices will be reduced to zero, addressing concerns that DDS prices are too high.
- 6.24 Our assessment of the costs of providing the DDS found that the actual ongoing costs of providing the data were close to zero and that it was only once the costs of issuing bills were added that the costs begin to reflect more the amounts that Thames Water is charging for the services. By not charging for the ongoing provision of DDS, Thames Water avoids these billing costs.
- 6.25 We consider that Thames Water's decision not to charge for the ongoing provision of the DDS is more reflective of the marginal ongoing costs incurred in providing those services. Based on our assessment of the cost information provided by Thames Water, the proposed charges appear to be fair, reasonable and non-discriminatory, and appropriate within the context of Thames Water's de facto monopoly data access provider position in relation to the unloggable smart meters within its network (which are its standard models).

Reporting on delivery of the commitments

- 6.26 Thames Water has modified its commitments to include proposals to provide updates at Retailer Forum meetings on its progress in complying with the commitments. This will

keep customers for these services updated on progress and provide them with the opportunity to scrutinise and challenge Thames Water. Where we consider appropriate, we may seek the thoughts of retailers and TPPs when assessing Thames Water's compliance with the commitments.

- 6.27 We expect Thames Water to be as open and complete as possible when sharing monitoring information and keeping retailers and other interested parties updated on its progress towards meeting the commitments. Thames Water's monitoring reports to us should include the material shared with retailers and other interested parties to demonstrate that they are being kept updated. We recognise there may be some areas covered by the monitoring reports that are of a commercially sensitive nature that it may not be suitable for Thames Water to make more widely available.
- 6.28 We disagree with the respondent that our decision not to specify the external parties that Thames Water should use to carry out the studies and reports identified in the commitments or to determine the exact scope of those studies and reports undermines the effectiveness of the commitments.
- 6.29 The wording of the commitments means that we are the ultimate arbiters of whether Thames Water has properly complied with the commitments. If we consider that the external reports and studies commissioned by Thames Water have not been carried out properly by a body with suitable skills and knowledge or that Thames Water has not properly carried out the follow-up actions arising from those studies or reports, we will not conclude that the commitments have been complied with.

Conclusions

- 6.30 We provisionally conclude that the Modified Commitments address our competition concerns by providing retailers and their business customers with a choice of means to access the water usage data that they require:
- Amendments to its metering policy, which is now included as a commitment, make clear that Thames Water will give retailers the choice of installing a loggable meter where logging equipment exists on a meter that needs replacing.
 - The commitment to reduce ongoing DDS prices to zero, making the charges more reflective of the costs of providing the service, means that retailers are able to offer their business customers access to water usage data at low cost and that this information will be readily available to the market.
 - A new commitment to install, free of charge, a loggable smart meter where Thames Water removed logging equipment when replacing meters will enable retailers and TPPs to continue to provide logging services to their business customers.

- Commitments to engage more with retailers when replacing meters and developing DDS will enable their views to be reflected in the approach taken by Thames Water when replacing meters and providing DDS.

6.31 Further, we provisionally conclude that the Modified Commitments, through the commitments maintained from the Initial Commitments, 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.

6.32 Therefore, based on our assessment of the evidence available to us, we provisionally consider that the Modified Commitments address our competition concerns and are provisionally minded to accept the Modified Commitments by means of a formal commitments decision.

Invitation to comment

6.33 As required by paragraph 3 of Schedule 6A to the CA98, we invite interested parties to make representations on the Modified Commitments. We will take representations into account before making a final decision on whether to accept the Modified Commitments.

6.34 Please email them to martin.hill@ofwat.gov.uk. Interested parties can also submit evidence to assist the final assessment of the commitments.

6.35 The closing date to make comments is 27 February 2022. 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.

6.36 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](#).

6.37 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 The Modified Commitments

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 15 February 2022.¹⁸

(1) 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.

¹⁸ Text in red (other than defined terms or headings) reflects the modifications made by Thames Water to the Initial Commitments that were consulted on in May 2021.

AMR means Automated Meter Reading. A digital smart meter in AMR mode may provide meter reading data wirelessly via walk-by or drive-by methods using a mobile electronic interface unit.

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.

(2) 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 A2 for information and does not form part of the formal commitments.

(3) 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 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 forum¹⁹ 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 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.²⁰
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

¹⁹ Members of the MSG will include the Retail Director and the Strategic & Regulation Affairs Director.

²⁰ The Board provides oversight of the Executive team.

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. (a) 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 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.

(b) republish for customers and retailers an updated metering policy which clearly and simply sets out its proactive and reactive metering policy. The proactive element will be consistent with the policy already published as referenced in commitment 9(a) above, but the revision will provide greater clarity across a wider range of scenarios. This policy will include the following:

- What will happen when Thames Water fits a meter under its reactive meter replacement programme, such as when a meter is found to be faulty:
 - If the meter operates inside the WAN, it will aim to fit a digital (smart AMI) meter unless there is a logger already fitted that is still required or if a logger is imminently due to be fitted. In such cases it will fit a pulse enabled or digital (smart AMI) meter whichever is requested by the retailer;
 - If the meter operates outside the WAN, it will aim to fit a digital (AMR) meter unless there is a logger already fitted that is still required or if a logger is imminently due to be fitted. In such cases it will fit a pulse enabled or digital (AMR) meter whichever is requested by the retailer; and
 - It will endeavour to check if there is an existing logger attached that is still required or if the customer has imminent plans to install logging equipment. This will include checking CMOS for updated logger information, responses to notifications to retailers or through direct communication with retailers and their customers and their representatives on site.
- What will happen when Thames Water fits a meter under its proactive meter replacement programme:
 - If the meter operates inside the WAN, it will aim to fit a digital (smart AMI) meter unless there is a logger already fitted that is still required or if a

logger is imminently due to be fitted. In such cases then it will not proactively replace the meter;

- If the meter operates outside the WAN, it will aim to fit a digital (AMR) meter unless there is a logger already fitted that is still required or if a logger is imminently due to be fitted. In such cases then it will not proactively replace the meter; and
- It will endeavour to check if there is an existing logger attached that is still required or if the customer has imminent plans to install logging equipment. This will include checking CMOS for updated logger information, responses to notifications to retailers or through direct communication with retailers and their customers and their representatives on site.

(c) update its metering policy to include its approach to fitting loggable smart meters when this technology is available. This will include its treatment of customers who have previously had a logger removed by Thames Water, as well as what will happen on a prospective basis where it exchanges an existing analogue meter with or without logging equipment. In addition to covering its proactive and reactive programmes inside and outside the WAN as per Commitment 9b above, the new metering policy will also set out:

- Thames Water's plans to offer an additional option of a digital (smart AMI/AMR) meter which is a pulse enabled meter in 2022 as part of its Tech Refresh. If it is a new installation or the existing meter is not currently logged, there will be an additional charge (difference in the cost of the pulse enabled digital smart AMI/AMR meter compared to a standard digital smart AMI/AMR) if this is required. It will endeavour to seek the requirements through direct communication with the retailers and their customers or their representatives on site;
- An option for those parties that have already had logging equipment removed as part of Thames Water's smart metering rollout the opportunity to have the existing meter removed and a loggable smart meter reinstated. If it has already replaced a logged analogue meter for a digital meter, which was flagged in CMOS as logged and a logger is still required, it will replace it with a pulse-enabled smart meter when available, without charge. It will endeavour to seek the requirements through direct communication with the retailers and their customers or their representatives on site; and
- Further details regarding the specific loggable smart metering options available, their specification and the charging basis for these (which will cover situations where the existing meter was or was not logged). As metering technology further develops, different metering options may be made available as set out in an updated policy from time to time, reflecting customer insight from the actions described in overarching commitment 1.

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.
13. process and pay properly evidenced reasonable claims for direct losses made by customers in respect of damaged or lost data logging equipment in circumstances where Thames Water is not able to evidence that reasonable notice had been given of its intention to install a smart meter, provided that consent had originally been given by Thames Water for any logging equipment to be installed.

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. It will also continue to update its services in line with reasonable customer requirements (and service upgrade timetables) as identified through the engagement processes set out in overarching commitment 1 above.

Specific commitments in support of overarching commitment 4

Thames Water:

14. 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.
15. as soon as technically feasible, Thames Water 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.

16. 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.
17. 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.
18. 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.
19. 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:

20. 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 the review and propose changes to 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;
 - 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;
 - e. Obtain Ofwat's agreement, in line with the timeline set out in Table 1, that its resultant tariffs meet overarching commitment 5; and
 - f. to simplify its tariffs for digital data services (DDS) by charging for initial set-up costs only, with ongoing DDS service provision provided on a zero-subscription basis and smart meter reads provided regularly to the market as wholesaler reads.

(4) Reporting and provision of information

21. 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;
- e. the proposed schedule of commitment delivery and evidence provision to Ofwat is set out below in Table 1; **and**
- f. **in addition, provide feedback to the market on how Thames Water is progressing in delivery of these Commitments through its Retailer Forum meetings.**

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] ²¹	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

²¹ 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.

Relevant Commitment	Expected Delivery Date	Evidenced to Ofwat
<p>Making the right meter technology decision for customers and downstream markets</p> <p>9(a) communicate change of smart metering policy</p> <p>9(b) republish for customers and retailers an updated metering policy which clearly and simply sets out its proactive and reactive metering policy</p> <p>9(c) update its metering policy to include its approach to fitting loggable smart meters when this technology is available</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>13 process and pay properly evidenced reasonable claims for direct losses made by customers in respect of damaged or lost data logging equipment</p>	<p>30/6/21</p> <p>31/12/21</p> <p>31/10/22</p> <p>31/7/21</p> <p>28/2/22</p> <p>31/3/22</p> <p>30/6/22</p>	<p>30/9/21</p> <p>31/3/22</p> <p>31/12/22</p> <p>30/9/21</p> <p>31/3/22</p> <p>31/3/22</p> <p>30/9/22</p>
<p>Providing a Digital Data Service (DDS) that meets customers' needs</p> <p>14(a) implement further improvements to the DDS dashboard</p> <p>14(b) deliver an automation of the "access to premises" process in the metering workflow management platform</p> <p>15 to make any improvements – as soon as they become available – in setting up the initial DDS</p> <p>16 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>17 communicate and adapt approach to bulk requests</p> <p>18 conduct a feasibility study into provision of daily data from Thames Water loggers</p> <p>19 continue to progress installation of the final mast in London to improve WAN coverage and signal strength²²</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>20(a) commission an external review to seek assurance in relation to the methodology it has adopted with regard to pricing</p> <p>20(b) its MSG to review outcome of review and Ofwat comments to recommend tariff changes for approval by the Executive</p> <p>20(c) update its 2021/22 Non-Primary and Additional Services tariffs and the Wholesale Tariff Document for relevant findings from 20(a)</p> <p>20(d) update its 2022/23 Non-Primary and Additional Services tariffs and the Wholesale Tariff Document for relevant findings from 20(a)</p> <p>20(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>

²² Delivery date subject to the necessary planning controls being granted.

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

	Relevant Commitment	Expected Delivery Date	Evidenced to Ofwat
	20(f) ongoing DDS service provision provided on a zero-subscription basis and smart meter reads provided as wholesaler reads	1/4/22	30/9/22
	Reporting and provision of information 21 provide feedback to the market on how Thames Water is progressing in delivery of these Commitments through its Retailer Forum meetings	30/11/22	31/12/22

A2 List of DDS 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 improve issue resolution speed. (Providing digital meter data)	Speeds up access to our DDS.	June 2020.

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

Description (with relevant service in brackets)	Benefit	Date completed
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.

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

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

A3 Responses to the consultation and our assessment

General comments

Consultation responses

- A3.1 Respondents were supportive of our view that access to water usage (consumption) data is good for water efficiency and leakage detection, as well as for more general environmental reasons, for example removing the need to send out meter readers on a regular basis. It was recognised that smart meters helped facilitate this.
- A3.2 One respondent suggested that as more water companies were starting to introduce smart meters, there was a need for national standards and a consistent approach between these companies to ensure that retailers and their business customers were able to get the same data in the same format across the country.

Our response

- A3.3 We agree that access to water usage data is important. Our [annual reports on the state of the business retail market](#) have consistently highlighted poor data quality as a friction in the market, including large numbers of long unread meters. Having easy access to water usage data will enable retailers to improve this situation.²³ The reports also highlight our expectation and aim that competition and choice will encourage the offer and take up of water efficiency and leakage reduction services and so enable business customers to reduce water consumption in support of our wider strategy.²⁴ These services rely on access to timely and accurate water usage data.
- A3.4 We recognised this when deciding to open our investigation. Although the impact of TMS's conduct at the time was fairly limited due to the low number of meters that had logging equipment attached, we recognised that this was likely to change over time as the need to use water more efficiently became more important.
- A3.5 We don't believe, however, that it's appropriate for us to determine the technology to be used to provide water usage data services, particularly in the context of a CA98 investigation.
- A3.6 There are multiple different types of meters and transmission technology available in the market and we do not consider it appropriate for us to seek to determine one type

²³ Ofwat, [State of the Market 2020-21](#), December 2021, page 18.

²⁴ Ofwat, [State of the Market 2020-21](#), December 2021, page 15.

of technology that should be used. In addition, a one-size-fits-all approach is unlikely to be appropriate. The type of property and its geographical location are likely to be key factors in determining which type of equipment should be used, with the solutions used in rural areas likely to differ from those used in densely populated urban areas.

A3.7 Our decision sets clear expectations of the type of factors that wholesalers should consider when dealing with requests to provide access to water usage data from their meters, in order to comply with their CA98 obligations.

Overarching commitment 1: understanding and addressing customer needs

Consultation responses

A3.8 One respondent suggested that the research being carried out by Thames Water should prioritise engagement with customers that have had logging equipment removed to understand the impact on their services and to learn from this process.

Our response

A3.9 The purpose of the research is to ensure Thames Water understands business customer, retailer and TPP needs, both now and in the future, so that it can develop its metering and DDS offerings as a whole to meet these needs. Such research should ensure it is representative of the Thames Water's different customer types and how its services affect them, and we see no reason why it should focus on just one sub-set of customers, as suggested by the respondent.

A3.10 We consider that lessons learnt from customers' past experience of Thames Water's approach have been considered as part of our investigation and reflected in the commitments proposed by Thames Water, including in terms of better embedding consideration of customer needs in its governance arrangements (overarching commitment 2) to mitigate the risk of similar scenarios happening in the future. The research should focus on current and future customer needs, rather than what happened in the past.

Overarching commitment 2: consideration of markets in decision making

A3.11 No issues were raised that specifically relate to the commitments proposed as part of this overarching commitment.

Overarching commitment 3: making the right meter technology decisions

Consultation responses

A3.12 Some respondents felt that there was still a lack of clarity around Thames Water's meter replacement policy and the circumstances in which meters will be replaced and repaired. Respondents were unclear as to whether the metering policy applied only to meters situated outside the WAN area or whether it also included meters situated within the WAN area.

A3.13 Some respondents felt that the wording of commitment 9 (metering policy) gave Thames Water too much freedom and didn't actually commit it to do anything.

A3.14 Other respondents felt that there was a need for Thames Water to engage more with retailers and their business customers before replacing meters. This could involve sharing its roll-out plans and ensuring that customers better understand the options available to them, particularly where they could choose not to have smart meter that would remove their ability to use existing or soon to be installed logging equipment. It was suggested that this greater, proactive engagement should be included in the commitments.

A3.15 One respondent felt that Thames Water should be required to obtain explicit customer consent before replacing meters and that customers should decide which type of meter was installed (including in new premises).

A3.16 Two respondents expressed the view that the commitments with respect to access for logging equipment should apply to all types of technology used to get consumption data from meters, for example limpet readers,²⁵ and not just to logging devices.

A3.17 As discussed in Section 4 above, some respondents claimed that the commitments were deficient in that they did not provide for compensation to be paid to retailers, TPPs or business customers for the harm caused by Thames Water's approach to

²⁵ Limpet readers are devices that can be attached to a meter and which send an image of the meter register to the customer.

smart metering. It was also suggested that Thames Water should be required to restore business customers to the position they were in before their logging devices were removed from meters.

- A3.18 Several respondents indicated that they did not think it was sufficiently clear from the commitments that Thames Water would introduce loggable smart meters, noting that the commitments only required Thames Water to review technology rather than to install a specific type of meter. They argued that an explicit commitment was needed to require the introduction of loggable smart meters, given that the technology already exists. Another respondent asked when loggable smart meters would become available and whether we have set any time limit on Thames Water's negotiations with its suppliers.
- A3.19 There was a difference in views between respondents as to whether Thames Water's smart meter roll-out should be delayed until loggable smart meters were made available. Some respondents thought the roll-out should be delayed to prevent more unloggable smart meters being installed and suggested that Thames Water should only be permitted to install loggable smart meters. Others felt that it was important that the smart meter roll-out continue as it enabled that more regular and granular water usage data to be made available.

Our response

- A3.20 In considering our position on smart meters, we have taken into account the fact that revenue meters are owned by the water companies and form part of their water supply network. The water companies have a responsibility for the installation, maintenance and repair of these meters as part of the overall management of their networks to effectively and efficiently fulfil their statutory obligations as water companies. Any meters that are installed must therefore, first and foremost, meet the operational needs of the water companies. Thereafter, the water companies should ensure that they meet reasonable requests for access to their meters and the consumption data that comes from them in order to meet their special responsibilities as monopoly providers of wholesale water services.
- A3.21 We disagree with the view put forward by some respondents that Thames Water should be required to install loggable smart meters as its default meter. Loggable smart meters are considerably more expensive than the unloggable smart meter used by Thames Water (the cost per meter unit is around double) and appear to provide no additional benefits to Thames Water if the logging functionality is not used. On the basis of the evidence gathered from retailers and TPPs, we do not think that the level of demand for logging services is insufficiently high to justify imposing this cost on business customers.

- A3.22 For similar reasons we do not consider it appropriate to halt Thames Water's smart meter roll-out programme. The evidence we have gathered suggests that the number of business customers who require logging devices is small compared to the overall size of the market and we are satisfied that the Modified Commitments contain sufficient protection for these customers to ensure that they are able to obtain (or retain) a loggable meter. Smart meters provide Thames Water (and those who use its DDS) with a regular source of water usage data that can be used to improve network efficiency and benefit the environment through better leakage detection and improved water efficiency.
- A3.23 That does not mean that it is reasonable for Thames Water to refuse to install a loggable smart meter where a retailer has requested it and that meter is compatible with its data transmission systems. We consider it reasonable that the price difference between the loggable smart meter and the default unloggable smart meter should be borne by the retailer and their business customer as they are the ones who derive the additional benefit from the loggable meter.
- A3.24 While we expect Thames Water to provide access to the water usage data from its meters (through direct access to the meter itself and/or by making the data available in the form of a DDS), this does not mean that it needs to ensure that the meters are compatible with every type of reading or logging equipment. We consider that if the meters are compatible with some forms of meter reading equipment available in the market, such that retailers and business customers have a choice of how to access water usage data, then this is sufficient to meet Thames Water competition obligations in this respect. Some respondents made reference to the use of limpet readers and the need to ensure that they are compatible with the smart meters used by Thames Water. We have seen no evidence to indicate that the limpet readers are not compatible with the smart meters that Thames Water is using or proposing to use.
- A3.25 As we discuss in Section 6 above, we are proposing to accept the Modified Commitments as the metering policy set out by Thames Water within them reflects this position and provides the additional clarity sought by respondents. Our views on respondents' comments regarding customer engagement and compensation, and the modifications proposed by Thames Water on these issues, are also discussed in Section 6.

Overarching commitment 4: providing a DDS that meets customers' needs

Consultation responses

A3.26 Some respondents expressed the view that DDS don't provide a reasonable substitute for data obtained from logging devices for all customers. They noted that some customers require real-time data that is not available through DDS and claimed that data obtained from logging devices was of better quality than that obtained from DDS.

A3.27 Other respondents felt that more information was required on how Thames Water is working to improve the performance and delivery of DDS and how this has been received by customers and market participants.

- One respondent noted that although the commitments required Thames Water to improve its processes, they contained no quantitative standards that it had to satisfy in this regard.
- Another commented that although the service had improved, the activation of data transfer after the initial request for a DDS was submitted remains slow.
- A third commented that it was essential that water usage data was made available in an appropriate format to enable retailers to develop innovative services for their customers.

A3.28 One respondent alleged that Thames Water was refusing to provide meter reading services to all retailers and complained about the lack of information being made available by Thames Water as to which customers had meters from which DDS could be provided.

A3.29 Another respondent alleged that Thames Water was offering water usage data directly to business customers.

Our response

A3.30 We consider that in relation to the vast majority of business customers, Thames Water's DDS are likely to provide a reasonable substitute for data obtained from logging devices. While none of Thames Water's DDS provide data on a real-time basis, evidence gathered during our investigation suggests that this frequency of data is not required for most business customers. But if retailers or TPPs do feel that the DDS do not provide the frequency or quality of data that they need to provide services to their customers, the ability to request the installation of a loggable smart meter will mean that they can install their own logging equipment and obtain the data they require.

- A3.31 Thames Water has made improvements to its DDS in the period since offering the Initial Commitments. Enhancements have been made to its automated dashboard that enable it to better manage the service and monitor service performance. The technology upgrade that Thames Water is in the process of implementing will enable it to reduce the time taken to initially set up the service, and to offer DDS that provide data nearer to real-time. The timescale for these changes is dependent on completion of the contractual discussions between Thames Water and its suppliers.
- A3.32 Thames Water's conduct in the market for the provision of manual meter reading services is not an issue that is the subject of the original complaint prompting this investigation or of our subsequent investigation. If the respondent wishes us to investigate the question of whether or not Thames Water is abusing a dominant position in relation to the provision of meter reading services, it needs to first submit a properly evidenced complaint to us. This should include details of its view of the relevant markets and Thames Water's position in those, the discussions that it has had with Thames Water on this issue, why it believes that the alleged conduct contravenes the CA98 and the effect that this has had on it and its customers. We will then consider whether it is appropriate for us to investigate the issue.
- A3.33 We understand from Thames Water that where requested it has previously provided retailers with details of those of their business customers for which DDS can be provided. The respondent should contact Thames Water directly if it wishes to be provided with details of which of its customers in the Thames Water area have smart meters from which DDS can be provided.
- A3.34 We have received no evidence of Thames Water actually providing water usage data directly to business customers and charging them for this. Thames Water exited the business retail market in 2017 and has informed us that it does not sell DDS directly to business customers. Absent any further evidence and arguments from the respondent, we do not consider that there is anything further here to investigate.

Overarching commitment 5: setting appropriate charges for DDS

Consultation responses

- A3.35 There was a general view among respondents that commented on DDS prices that they were too high.
- One respondent noted that in some cases it remained cheaper to eyeball read a meter than to purchase a DDS to obtain this data.

- Another respondent commented that only the marginal costs of providing the data to customers should be recovered through Thames Water's DDS charges.
- A third respondent expressed the view that granular water usage data should be made available by wholesalers within the existing costs of service as standard practice in the market.

A3.36 One respondent considered that Thames Water's commitment to review its charges was insufficient as it contained inadequate scrutiny of Thames Water's review and no safeguards as to the independence of the review.

Our response

A3.37 We agree with respondents that as Thames Water is already collecting water usage data for its own purposes (such as network management), only the additional (incremental) costs of providing this data to retailers should be recovered through the prices of its DDS. It would not be fair or reasonable for Thames Water to seek to recover costs through its DDS that it is already recovering through charges for other services.

A3.38 The costs to Thames Water of providing the DDS that it currently makes available are very low. Were Thames Water to charge for these DDS, the billing costs associated with doing so would far exceed the costs of the providing the data itself. We therefore consider that Thames Water's decision not to charge an ongoing subscription fee for the DDS (as set out in the Modified Commitments) is justified as the zero charge more closely reflects the costs of actually providing the service.

A3.39 We note the respondents comments that Thames Water's commitment to review its charges was insufficient as it contained inadequate scrutiny of the review. This comment ignores the other commitment that requires Thames Water to demonstrate to our satisfaction that its charges are fair, reasonable and non-discriminatory. The review that Thames Water carried out of its charges is just one piece of evidence that we will look at when assessing whether Thames Water's charges are fair, reasonable and non-discriminatory.

Compliance reporting

Consultation responses

A3.40 Several respondents commented that the compliance monitoring reports that Thames Water has committed to produce and provide to Ofwat should be made public to

provide the opportunity for interested parties to comment on progress and provide challenge.

A3.41 One respondent noted that the commitments require Thames Water to produce and/or commission a range of reports and studies but that these obligations contain none of the standard safeguards included by the CMA in similar cases (for example, determining the choice of research agency to be used or the scope of the reviews). The respondent considered that this left Thames Water with discretion to act (or not) on those reports, with no scrutiny by other market participants.

Our response

A3.42 Our position on the comments made regarding oversight of the commitments are set out in Section 6 above.

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