

March 2022

Decision to accept binding commitments from Thames Water Utilities Limited

About this document

This document sets out our decision (the **Decision**) to accept the binding commitments¹ offered to us by Thames Water Utilities Limited (**Thames Water**) under section 31A of the Competition Act 1998 (**CA98**) to address competition concerns that we had identified during our investigation into its approach to the introduction of smart water meters at business premises.

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 that consultation with Thames Water and, in light of the issues raised, Thames Water proposed modifications to those commitments (**Modified Commitments**).

We considered that the Modified Commitments offered by Thames Water would address our competition concerns and in February 2022 consulted on a proposal to accept the Modified Commitments. Having considered comments made in relation to the Modified Commitments, we have agreed two minor changes to the Modified Commitments with Thames Water to improve their clarity. We have also accepted a request from Thames Water that it be permitted to amend the expected delivery dates for five individual commitments. We have now decided to accept those commitments (**Final Commitments**).

This document summarises:

- our investigation (Section 1);
- the relevant markets that we have provisionally identified (Section 2);
- the competition concerns that we identified (Section 3);
- the commitments offered by Thames Water (Section 4);
- the responses that we received on our proposal to accept the Modified Commitments (Section 5);
- our assessment of the Final Commitments (Section 5); and
- our decision to accept the Final Commitments (Section 6).

The Final Commitments are set out in full in Appendix A1.

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

Executive summary

On 15 February 2022, we gave notice (**February 2022 Notice**) that we proposed to accept the Modified Commitments² offered by Thames Water in relation to our investigation into whether Thames Water has infringed the prohibition in section 18 CA98 (the **Chapter II Prohibition**).³

The Modified Commitments built on the Initial Commitments proposed by Thames Water that we had consulted on accepting in May 2021 (**May 2021 Notice**).⁴ Responses to that consultation identified areas where it was felt that the Initial Commitments needed strengthening, which Thames Water did through the Modified Commitments.

Thames Water offered the commitments to address competition concerns that we had identified during our investigation into its approach to smart metering and the effects that this was having on business customers⁵, retail water companies (**retailers**) and third party providers (**TPPs**) offering value-added services to those business customers and/or retailers.

Our investigation identified that Thames Water had installed smart water meters that could not having logging equipment attached to them and had failed to provide alternative access to the water usage data it gathers from those meters on fair, reasonable and non-discriminatory terms. This had the effect of withdrawing access to water usage data for existing users and denying access to that data for those who may wish to access it in future. Water usage data is used to monitor a customer's water consumption and can be used by retailers and TPPs to provide value-added services such as leakage detection, water efficiency services and bill validation services to business customers.

The February 2022 Notice outlined our provisional view that the Modified Commitments addressed our concerns by committing Thames Water to installing digital smart meters that are compatible with logging devices (where requested to do so by the retailer or their business customer); making improvements to the digital data services (**DDS**)⁶ that it offers to retailers as a means of providing them with water usage data; and offering the DDS for free once initial set-up costs have been paid by the customer.

We received three responses to the February 2022 Notice. Having considered these responses, we agreed with comments made by one of the respondents that some minor

² [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](#), 15 February 2022.

³ Section 18 CA98 prohibits any conduct by one or more undertakings that amounts to the abuse of a dominant position in a market if it may affect trade within the UK.

⁴ [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](#), 25 May 2021.

⁵ In this document, the term 'business customers' includes all customers who are not household customers.

⁶ Digital data services are services that provide data from Thames Water's smart meters on a customer's water usage. The frequency with which the data is collected and provided to the purchaser depends on the nature of the service being offered.

changes should be made to the wording of the Modified Commitments to improve the clarity of their requirements. We discussed and agreed these with Thames Water.

We also received a request from Thames Water that it be permitted to amend the delivery dates for five of the individual commitments because of delays caused by contractual discussions with some of its suppliers and our decision to consult on the Modified Commitments. We have agreed to these amendments.

We are satisfied that this is an appropriate case in which to accept commitments. The Final Commitments (included at Appendix A1 of this document) address our competition concerns and lead to a good outcome for business customers and the market as a whole. They are also capable of being implemented effectively and we will be able to identify if they are being complied with. We have therefore decided to accept the Final Commitments.

As a result of accepting the Final Commitments, we have closed our investigation and have made no final decision as to whether or not Thames Water's conduct amounted to an infringement of the Chapter II Prohibition.

Acceptance of the Final Commitments does not prevent us from taking any action in relation to competition concerns which are not addressed by the Final Commitments. Nor are we prevented from continuing our investigation, making an infringement decision, or giving a direction in circumstances where we have reasonable grounds for:

- believing that there had been a material change of circumstances since the Final Commitments were accepted;
- suspecting that a person had failed to adhere to one or more of the terms of the Final Commitments; or
- suspecting that information which led us to accept the Final Commitments was incomplete, false or misleading.⁷

⁷ Section 31B(4) CA98.

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1. Our investigation

Overview of our investigation

- 1.1 In March 2019, we received a complaint alleging that Thames Water⁸ was abusing its dominant position as a statutory water undertaker⁹ to harm competition in the business retail market for water and sewerage services (**the Complaint**).¹⁰ The Complaint alleged that Thames Water was refusing to provide access to its smart water meters and that this was preventing retailers and TPPs from obtaining information about the water usage of business customers.¹¹
- 1.2 Thames Water was appointed by the Secretary of State for the Environment as a water and sewerage undertaker under the Water Act 1989 in August 1989.¹² As a statutory undertaker, Thames Water owns and is the monopoly operator of the water supply and sewerage services systems in its areas of appointment. It determines who can access its systems (or networks), though in doing so must comply with its statutory and licence obligations. Thames Water owns, operates and has responsibility for the physical water supply system of mains and pipes, including metering equipment, through which customers are supplied.
- 1.3 Thames Water's area of appointment for water supply covers around 3.6 million household customers and 147,000 business connections¹³ and its area of appointment for sewerage services covers 5.5 million household customers and 209,000 business

⁸ Thames Water Utilities Limited, company number 02366661, is a private limited company incorporated in England and Wales. It is part of the Thames Water Group which itself is part of the Kemble Water Holdings Group. Thames Water had an annual turnover of around £2.1 billion in 2020-21.

⁹ Undertakers are companies appointed by the Secretary of State for Environment, Food and Rural Affairs as statutory providers of water and/or sewerage services. This is not to be confused with undertakings, who are companies or organisations to whom the CA98 applies. Thames Water is both an undertaking for the purposes of the CA98 and a statutory undertaker for the purposes of the Water Industry Act 1991.

¹⁰ The Complaint also included allegations regarding the accuracy of various market data that Thames Water provided to enable the opening of the business retail market and the fairness of certain contractual credit terms that Thames Water applies to retailers. Although originally included as part of our investigation under the CA98, we subsequently decided that it was more appropriate to investigate these issues using our powers under the Water Industry Act 1991. Our [investigation into the data accuracy issues](#) was concluded in December 2021 and our [investigation into the credit terms](#) was closed in November 2020.

¹¹ We also received complaints from TPPs that raised the similar concerns about Thames Water's approach to smart metering in particular in terms of them not being able to attach data loggers to smart meters or access the smart meter data.

¹² Now replaced by the Water Industry Act 1991. Thames Water's [instrument of appointment \(licence\)](#) is available on Ofwat's website (accurate as at 7 April 2021).

¹³ Household premises receive their retail water and sewerage services from the undertaker that serves the area in which they are located. Since April 2017 and the opening of the business retail market, business customers have been able to choose who provides them with retail water and sewerage services. The wholesale water and sewerage services in both cases are supplied by the statutory undertaker.

connections.¹⁴ Our investigation focuses only on business connections as it is to these customers that there is competition to provide services based on water usage data.¹⁵

- 1.4 Since the opening of the business retail market in April 2017, retailers have been responsible for providing retail water and sewerage services to business customers, who have a choice as to which retailer to use.¹⁶ To differentiate their offerings, retailers may choose to offer additional, value-added, services to business customers, such as water efficiency or leakage detection services. These services are reliant on good quality data regarding the customer's actual water usage, which can only be obtained from a water meter.¹⁷ Retailers may provide these services themselves or purchase them (either wholly or in part) from TPPs. Alternatively, TPPs may offer these services directly to business customers.
- 1.5 Where installed, revenue water meters form part of the undertaker's network. They are used by the undertaker to assess the volume of water used at a premises both to enable the business customer to be billed on that basis (via the retailer), and to support the operational management of its network.¹⁸ It is to these revenue meters that retailers and TPPs attach logging equipment (where the meter is capable of being logged¹⁹) in order to extract data on the business customer's water usage for delivering their own water usage services to customers. Thames Water extracts data from its smart revenue meters to provide DDS as well as for its own operational purposes.
- 1.6 It is the extent of access to the data logged by water meters through a logging device or (if that is not technically possible) by Thames Water itself, that was the subject of our investigation.
- 1.7 Following an initial assessment of the issues raised in the Complaint and after obtaining agreement from the Competition and Markets Authority (**CMA**) that we were best placed to investigate these issues,²⁰ we wrote to Thames Water on 8 July 2019 to inform it that we had opened an investigation. We explained that we had reasonable grounds for suspecting an infringement of the Chapter II prohibition of the CA98 by Thames Water.

¹⁴ Thames Water, [Annual Performance Report 2020-21](#), page 90.

¹⁵ These services include leakage detection, water usage monitoring, water efficiency services and invoice checking.

¹⁶ Thames Water no longer supplies retail services directly to business customers after its decision to exit the business retail market and transfer its business customer base at that time to Castle Water. This does not affect its responsibilities as an undertaker.

¹⁷ Water meters form part of the relevant wholesaler's network and are owned and maintained by them.

¹⁸ Where meters are not fitted, business customers are typically billed on the basis of the net annual value of the premises (usually the rateable value).

¹⁹ Not all meters are capable of being logged – see paragraph 2.8 below for details.

²⁰ Pursuant to regulation 4 of the [Competition Act 1998 \(Concurrency\) Regulations 2014](#), SI 2014/536.

- 1.8 Our concerns related to Thames Water's approach to date for the roll-out of its smart metering programme to business premises, in particular that, in its capacity as a monopoly operator of a water supply system, it had:
- Installed smart meters that were incompatible with data logging devices used by retailers and TPPs, which had the effect of denying them direct access to data on a business customer's water usage and excluded them from entering, or continuing to operate and expand in, the market for water usage data services²¹ unless they installed a sub-meter²² or purchased DDS from Thames Water.
 - Removed other parties' data logging devices from business customers' meters when replacing previously used analogue meters with new digital smart meters, which had the effect of withdrawing access to its meters and the data they generate and forced retailers and TPPs out of the water usage data services market unless they were prepared to purchase DDS from Thames Water or install their own sub-meter.
 - Failed to offer DDS on fair, reasonable and non-discriminatory terms (price and non-price), which, coupled with the inability to attach loggers to Thames Water's smart meters, meant that many retailers and TPPs were unable to gain access to the water usage data they required as an essential input to provide their own services to business customers.
- 1.9 To assist with our consideration of the issues, we gathered evidence from Thames Water, a number of the retailers operating in Thames Water's area of appointment and some TPPs, using our powers under section 26 CA98.
- 1.10 During our investigation, Thames Water indicated that it was prepared to make changes to its approach to smart metering and to the DDS that it offers. It expressed a desire to address our competition concerns.
- 1.11 On 25 November 2020, we wrote to Thames Water setting out the outstanding competition concerns that we had in relation to its approach to smart metering and DDS. These are set out in Section 3 below. We have since engaged in discussions with Thames Water as to what actions it could take to address these concerns.

Commitments

- 1.12 Section 31A CA98 provides that, for the purposes of addressing the competition concerns identified, we may accept binding commitments from such persons as we consider appropriate, to take such action as we consider appropriate. The CMA has

²¹ Details of the candidate markets and market segments that we have provisionally identified, and Thames Water's position in these, are set out in paragraphs 2.11 to 2.19 below.

²² Sub-meters are meters that are installed on the customer's water pipework (rather than Thames Water's network) and which enable data regarding the customer's water usage to be obtained.

produced guidance on the circumstances under which it is appropriate for commitments to be accepted as a means of addressing competition concerns.²³ The CMA Procedural Guidance describes the circumstances in which it may be appropriate to accept commitments and the process by which parties to an investigation may offer commitments. We are required to follow the CMA Procedural Guidance on these matters.

- 1.13 In accordance with paragraph 10.21 of the CMA Procedural Guidance, a business under investigation may offer commitments at any time during the investigation until a decision on infringement is made. In this case, no decision on infringement has yet been made.
- 1.14 Following our discussions, Thames Water wrote to us in April 2021 to indicate that it was willing to offer formal commitments under the CA98 to address Ofwat's competition concerns. The offering of commitments does not constitute an admission by Thames Water of an infringement of the Chapter II prohibition.
- 1.15 We provisionally considered that the Initial Commitments offered by Thames Water addressed our competition concerns. We therefore issued the May 2021 Notice setting out the Initial Commitments proposed by Thames Water and the reasons why we proposed to accept them. We invited interested parties to make representations on the Initial Commitments and our proposal to accept them.
- 1.16 We received responses from nine interested parties. 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. We considered that, in order to provide greater confidence to potentially affected parties, the Initial Commitments could be made clearer as to some of the actions that Thames Water would take, particularly as regards Thames Water's metering policy. We also considered that there were some additional steps Thames Water could include in the commitments to address the competition concerns, including in relation to loggable smart meters and DDS pricing. We put these points to Thames Water and invited it to propose modifications to the Initial Commitments.
- 1.17 Thames Water offered the Modified Commitments to us in February 2022. We provisionally concluded that the Modified Commitments addressed the issues that the consultation had helped us to identify with the Initial Commitments. We therefore issued the February 2022 Notice setting out the Modified Commitments and the reasons why we proposed to accept them. We again invited interested parties to make representations on the Modified Commitments and our proposal to accept them.

²³ Paragraphs 10.17 to 10.20 of the [CMA Procedural Guidance](#) contain the guidance on commitments.

- 1.18 We received three consultation responses; two welcomed the Modified Commitments, though one felt that the wording of some of the commitments could be tightened further to provide clarity and make them easier to enforce. The final respondent felt that the Modified Commitments overcomplicated matters and suggested that they could be simplified by requiring that all meters installed by Thames Water be loggable.
- 1.19 We agreed with comments made that minor clarifications to two of the proposed commitments would be beneficial. These related to making it clearer that Thames Water would provide customers with notice in advance of replacing meters, and that this notice would set out the customers' options with regard to meter replacement, and that any customer could request that a loggable smart meter be installed. We discussed this with Thames Water and it agreed to make revisions to the Modified Commitments and offered to us its Final Commitments. Given these revisions are clarificatory in nature and do not affect the substance of the commitments, we do not consider that it is necessary for us to consult on them.
- 1.20 We have carefully considered all the representations made to us and the evidence in our possession and have decided, for the reasons set out in Section 5, that the Final Commitments address our competition concerns and that it is appropriate to accept them in this case. We have therefore decided to accept the commitments set out in Appendix A1 to this Decision.

2. Background

- 2.1 This section provides contextual background on water metering and sets out our preliminary view of:
- the markets and market segments involved;
 - Thames Water's position in these markets; and
 - Thames Water's conduct in these markets.
- 2.2 The purpose of this section is to provide context for Section 3, which describes our assessment of competition concerns.

Water metering

- 2.3 Water efficiency and the sustainable use of water resources is a key part of the Government's and our strategy for the sector. The Government's strategic policy statement²⁴ sets strategic priorities for us, including to deliver a resilient water sector. This includes managing water demand and encouraging water companies to deliver a 50% reduction in leakage from 2017-18 levels by 2050. Our strategy highlights the challenges that the sector faces from climate change and population growth and sets out our intention to drive water companies to transform their performance and meet these long-term challenges.²⁵ Our forward programme for 2021-22 set out that: "We will encourage an increased focus on water efficiency in the industry, including the business retail and new connections markets, and in building standards."²⁶
- 2.4 Water meters are one tool that water companies can use to help to manage and reduce water consumption as the data obtained from those meters can enable customers to manage their water use more efficiently. They can also give water companies' greater visibility over their networks and improve their ability to detect and respond to leaks more rapidly, which in turn can help to improve security of water supplies and network resilience.
- 2.5 One of the important reasons for opening the business retail market to competition and enabling business customers to choose their retail provider was to encourage and further improve water efficiency, promoted through competitive offers made by retailers. The opening of the business retail market also enabled eligible business customers to act as their own retailer by applying for a water supply and/or sewerage supply (self-supply) licence.²⁷ Business customers holding a self-supply licence

²⁴ [February 2022: The government's strategic priorities for Ofwat](#), February 2022.

²⁵ ['Time to act, together: Ofwat's strategy'](#), October 2019.

²⁶ ['Ofwat's forward programme 2021-22'](#), March 2021, page 11.

²⁷ Holders of self-supply licences are only permitted to provide retail services to their own or associated companies.

therefore engage directly with the wholesaler in relation to their water supply and usage. References in the rest of this document to retailers should be taken to include companies that self-supply their own retail services.

2.6 It was expected that retailers would seek to strengthen their competitive offering in the market by providing, for example, enhanced water monitoring and management services, with TPPs expected to work with customers and retailers to develop innovative new services.

2.7 Good quality customer, asset and consumption data is crucial to enable the business retail market to function effectively, and access to good quality data on water usage is essential to facilitate improvements in water efficiency. Smart metering technology can help to collect water usage data more easily, regularly and cheaply than through the "eyeball" reading of an analogue water meter.

2.8 There are three general types of revenue meters and water companies may have a mix of these across their networks:²⁸

- **Digital (smart) meters in Advanced Metering Infrastructure (AMI) mode.** These meters measure and record the flow of water and are capable of being switched to AMI mode when Local Communication Equipment is fitted, and a Wide Area Network (**WAN**) system is available. When in AMI mode, the data collected by the meter is transmitted automatically, which significantly increases the frequency with which the data can be read and can, potentially, facilitates near real-time collection of the data. Where a smart meter has been installed but is not connected to the WAN, these meters can be set to Automatic Meter Reading (**AMR**) mode, see below.
- **Mechanical analogue and digital (pulse) meters with AMR capability.** These meters measure and record the flow of water. Analogue meters create a pulse through the use of a magnet that rotates due to the flow of water through the meter and triggers a switch on each turn or, in the case of some digital meters, by creating an electrical pulse. In each case, the pulse output represents a known volume of water passing through the meter. This pulse output can allow for equipment to be connected to count or "log" the number of pulses. This data can be downloaded by physical connection to the meter or the data can be transmitted using short-range radio signals and picked up by AMR meter reading devices.²⁹ Some logging devices contain communications equipment that allows data to be transmitted over longer

²⁸ Other than the dumb meters, which can't be logged at all, both the analogue and smart meter groups have some individual meter types that can have logging devices attached to them and some that can't be logged.

²⁹ AMR devices allow data to be read by driving or walking past the meter. The frequency of reads will depend on the frequency of walk/drive-by visits to the meter.

distances and more frequently than AMR reads.³⁰ While not the same as the smart meters in AMI mode being deployed by Thames Water, in some circumstances they may enable similar functionality to be provided.

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

2.9 Demand for better quality usage data pre-dates the opening of the business retail market. As this demand was not, on the whole, being met by the data provided by the vertically integrated water companies at the time, TPPs began offering customers a range of different services.³¹ These range from the sale, installation and maintenance of logging equipment, to the provision of analytical services including water usage data monitoring, analysis and profiling and leakage alarms via dedicated online portals. Currently TPPs are generally able to offer these services by attaching a logging device to the water company's meter. As a result, TPPs are able to provide their services without relying on inputs from the water company, because they can access the meter data directly themselves via their logger.³² The water company's choice of meter type and whether this is loggable is therefore relevant to whether TPPs can access meter data.³³

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

Markets and market segments involved

2.11 For the purpose of accepting commitments, we need to be satisfied that they will address our competition concerns and in order to assess that we need to have a view of the relevant markets involved, consistent with that theory of harm. Market definition is a tool used to identify and define the boundaries of competition between undertakings.

³⁰ Communicating in this way with logged meters can be done using almost any kind of communications' protocol but predominantly uses the GSM/GPRS mobile phone network. This can be SMS (short messaging service) or the GSM data call service.

³¹ As noted above, Thames Water does not provide retail services directly to business customers and instead provides inputs into the services that retailers and TPPs offer to these customers. Depending on the nature of the services they offer, TPPs may provide services to retailers or directly to business customers.

³² TPPs can collect usage data at up to 15-minute frequencies and make this data available to customers and/or retailers in a format to suit their needs. Some logging companies primarily sell their services to retailers and other TPPs (and may also provide services to water companies as part of their data gathering), while others also offer services directly to end customers.

³³ Retailers are able to request that undertakers replace meters in line with their metering policies. At the start of our investigation, Thames Water's metering policy was to only install smart meters in the area covered by the WAN (both when installing new meters and replacing old or broken meters).

Defining the relevant market typically involves an assessment of the degree of substitutability between different groups of candidate products or services, to reach a conclusion on which of those alternatives are similar enough to be viewed as belonging to the same market. To accept commitments, we do not have to have completed a full market definition exercise as we would if issuing a statement of objections or infringement decision. Instead, we need to have a reasonable expectation that the markets identified in the course of an investigation could be consistent with the theory of harm.

- 2.12 The complaints allege that by installing smart meters that cannot be logged, Thames Water is preventing retailers and TPPs from obtaining information about customers' water usage and consequently preventing them from competing in serving customers in downstream markets related to water saving, leakage reduction and billing disputes. We are therefore concerned with an abuse of dominance in vertically related markets, where conduct in an upstream market is having an adverse impact on downstream markets that are reliant on inputs from that upstream market.
- 2.13 For the purpose of considering the competition concerns that we have identified, we provisionally consider there to be two levels of candidate upstream markets – the ultimate upstream market and the upstream market (see Diagram 2.1 below). We consider that the ultimate upstream market is likely to comprise Thames Water's water supply system/network and the technology installed or capable of being installed within that network to create or generate data about an end customer's water usage in Thames Water's area.³⁴ We provisionally consider that related, but downstream from this, is the upstream market for meters that generate water usage data. This comprises all revenue meters in Thames Water's water supply network and, in certain circumstances, may also include sub-meters installed on customers' premises.³⁵
- 2.14 We provisionally consider that there are likely to be two levels of candidate downstream markets – the downstream market(s) and the further downstream markets. The downstream market is likely to be comprised of the collection and provision of the water usage data generated by the meters in the upstream market. The data from a meter can be collected by the owner of the meter (typically remotely using AMR or AMI technology) or anyone who has logging equipment attached to that meter.³⁶ This water usage data can then be used by the collector for their own use (for example, for retailers to provide regular meter reads for the purpose of customer billing or financial settlement with trading parties in the business retail market, or for Thames Water for network

³⁴ The geographic aspect of the market definition is determined by the fact that only Thames Water can supply wholesale water services in its area of appointment.

³⁵ It should be noted that it will not always be physically possible to install a sub-meter on a customer's premises, for example due to space constraints, and it may also not always be economically viable to do so as the potential cost savings that might be obtained from installing a sub-meter might not exceed the cost of doing so.

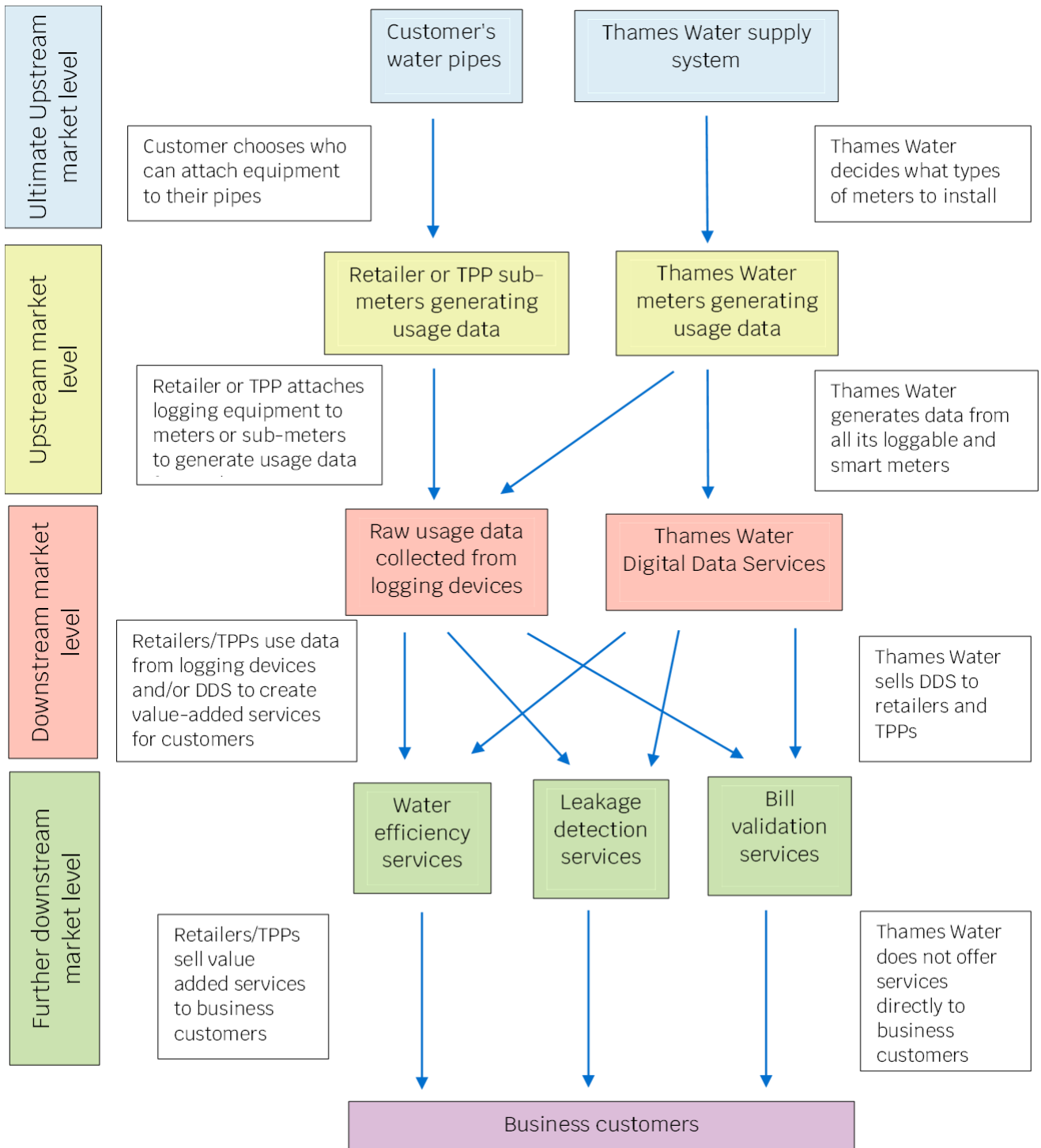
³⁶ As discussed earlier in Section 2, not all meters are capable of being read remotely or having logging equipment attached to them. For those meters, the only way of obtaining usage data is to visit the meter and take an eyeball reading. This is typically only done to obtain meter reads for billing purposes and these meters are unlikely to be suitable for having value-added services offered from them.

management purposes or to offer DDS) or to provide other value-added services to end customers.

- 2.15 It is possible that the downstream market may in fact be two separate markets, based on how often the data needs to be collected and provided to meet the retailers' and TPPs' needs when providing value-added services to customers in the further downstream market. Some value-added services require high frequency data reads (at least one per hour) provided daily (or more regularly), for example leakage detection or water efficiency services. Other services require a single data point provided on a less regular basis, for example meter reading services or bill checking.³⁷ Whether there are two downstream markets or one, does not change our analysis as Thames Water would be active in each.
- 2.16 We provisionally consider that the further downstream markets comprise the provision of paid-for value-added services to end customers that require water usage data as a key input, such as leakage detection on customers' premises, water efficiency services and bill checking.

³⁷ These services additionally require that data be provided from Thames Water's revenue meter as meter reads for billing purposes must be taken from the revenue meter.

Diagram 2.1: Our proposed candidate markets and market segments



Thames Water's market position

2.17 Thames Water is the monopoly operator of its water supply system by which the relevant business customers are supplied, and dictates the infrastructure, including the revenue metering infrastructure, installed on its network which it owns and

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

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

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

Thames Water's conduct

Thames Water's approach to smart metering

2.20 Thames Water's decision to install smart meters across its region dates back to 2013 when the Environment Agency classified South East England as an area of "serious water stress".³⁸ As a result, in order to improve its water supply demand balance in the future, Thames Water was required to evaluate compulsory metering of customers as part of its Water Resources Management Plan options appraisal process. As a result of this evaluation, Thames Water concluded that it was appropriate to charge customers on a metered basis and went on to consider what type of meters to install. Following a cost-benefit analysis, Thames Water concluded that an AMI solution would best meet its needs in terms of water resource management and also offer the best value for its customers who would ultimately fund the metering programme through customer bills. To maximise the benefit from its planned investment in its new infrastructure, Thames Water decided to implement the same AMI technology for business³⁹ and for household customers.

³⁸ Serious water stress is defined in the Water Industry (Prescribed Conditions) Regulations 1999 as where the current or future household demand for water is a high proportion of the current effective rainfall which is available to meet that demand. In areas of serious water stress, water companies may charge customers on a metered basis where it is cost effective to do so and there is customer support through the water resources management plan process.

³⁹ As this pre-dated retail market opening, business customers were still direct customers of Thames Water at the time.

- 2.21 Thames Water began a formal procurement process in October 2013 and trials of the new technology began in 2014. Since December 2016, Thames Water has been phasing in the new smart meters on new installations and meter replacements at household and business properties on both a proactive and reactive basis.
- 2.22 The smart metering technology being deployed by Thames Water uses a licensed radio frequency spectrum, together with a compatible communication product and meters.⁴⁰ This enables Thames Water to capture water usage at hourly or 15-minute intervals⁴¹ when the meter is connected to the WAN. At present, the WAN largely only covers London and the area bounded by the M25 motorway. Smart meters within the WAN are set up in AMI mode, with those outside the WAN set up in AMR mode as they are not connected to the communications network and cannot be read remotely.
- 2.23 Prior to our investigation, Thames Water's approach was to install smart meters wherever possible, both through its proactive meter replacement programme and also when reactively replacing broken meters and installing new meters on request. This had the effect of reducing the number of meters that could be logged by retailers or TPPs and led to logging equipment being removed from some meters when they were replaced. It led to the supply of access to water usage data being withdrawn from some parties (those that previously had logging equipment attached to an analogue meter) and/or refused to others (those that wish to access the data directly from the revenue meter themselves) as only Thames Water can access the data from the smart meters.
- 2.24 When adopting its approach to the installation of smart meters, Thames Water failed to adequately consider the possible implications of its actions on business customers, retailers and TPPs or the markets in which they operate.⁴² Had Thames Water continued with this approach, the number of meters capable of being logged would have continued to reduce and may ultimately have led to a situation where the only means of obtaining water usage data for some customers, or to provide certain services, was by purchasing it from Thames Water.
- 2.25 Thames Water revised its approach in October 2018 (prior to our investigation) so that retailers and TPPs could request that loggable meters be installed at premises outside of the WAN area but continued to only install smart meters within the WAN area. Thames Water has now committed that it will not proactively remove logging equipment from meters within the WAN until the actions set out in the Final Commitments have

⁴⁰ The procured meters have no pulse output and are incompatible with logging equipment. Thames Water has more recently procured access to smart meters that are capable of being logged and will install these where the business customer wishes to have their meter logged.

⁴¹ Data is transmitted from the meter to Thames Water's technology supplier every four hours. Once a day, the technology supplier sends the data for the previous day up to 23:45hrs securely to Thames Water. This is uploaded and processed overnight in Thames Water's Meter Data Management System (**MDMS**). The data can then be extracted from the MDMS and placed in customers' secure folders which can be accessed next day.

⁴² Although Thames Water procured its smart metering technology prior to the opening of the business retail market, the process for the opening of this market had already begun and TPPs were already providing water usage data services.

been completed and that where logging equipment is in place (or there are imminent plans to install logging equipment) it will install a loggable meter at the request of the retailer or business customer.

The DDS offered by Thames Water

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

- Allowing retailers to submit a single form to request that DDS be provided for groups of meters.
- Making changes to its internal teams to improve the way in which requests for new services were dealt with.
- Recruiting a dedicated Analyst and a Case Manager to manage service requests and deal with issues arising from these.
- Introducing new data reporting and tracking tools to monitor service requests.
- Reducing the frequency of mandatory password resets for service users.
- Introducing system changes to enable a single file to be sent to each retailer on a daily basis containing the usage data for all the customers for which it was purchasing DDS.

3. Our competition concerns

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

Inability to log new meters

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

Lack of availability of reasonable DDS

- 3.5 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 whether they were being offered on fair, reasonable and non-discriminatory terms. In particular, we had concerns that the data was not being provided in a format that met the needs of retailers and TPPs and that the pricing of the DDS was not cost reflective. The effect of this, when coupled with our concerns about the inability to log smart meters, would be that the ability of retailers and TPPs in the downstream market to obtain the data inputs they need to be able to supply the further downstream

markets would be compromised and that ultimately the further downstream markets may cease to exist.

Approach to managing its impact on customers and markets

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

4. The commitments

- 4.1 In order to address our competition concerns (as described in Section 3), and without prejudice to its position that it has not infringed the Chapter II Prohibition by its conduct, Thames Water has offered formal commitments to us relating to that conduct.
- 4.2 The Final Commitments are set out in full in Appendix A1 and are summarised below. We explain in Section 5 why we have concluded that the Final Commitments address our competition concerns and that it is appropriate for us to accept them.
- 4.3 The actions set out in the Final Commitments should be completed, and evidence provided to us to demonstrate that this is the case, as soon as possible and by no later than 31 December 2022. Individual commitments will be closed as and when Thames Water is able to demonstrate to our satisfaction that they have been successfully completed ahead of this deadline.

Thames Water's Final Commitments

- 4.4 The Final Commitments are structured in the form of five overarching commitments that are intended to address different aspects of the competition concerns we identified. The overarching commitments are behavioural in nature and set out in general terms the broad outcome that Thames Water is seeking to achieve in relation to issues such as taking better account of the requirements of its downstream customers, developing a metering strategy that works for all market participants, and improving its DDS.
- 4.5 Under each of the overarching commitments, there are a series of specific commitments that detail actions that Thames Water must take as part of meeting the overarching commitment and in line with its overall principals.

Overarching commitment 1: understanding and addressing customer needs

- 4.6 Under overarching commitment 1, Thames Water has committed to improve its engagement with customers in the downstream markets to ensure it understands, considers and addresses their needs in a timely and objective manner. As part of this, Thames Water has specifically committed to:
- Formalise and strengthen the way it gathers, reviews and acts upon feedback from participants in the business retail market.

- Carry out research with retailers, TPPs and business customers to understand their current and future metering and DDS needs.
- Provide feedback to retailers on how it will take into account points raised at Retailer Forum meetings.⁴³

Overarching commitment 2: consideration of markets in Thames Water's decision-making processes

4.7 Under overarching commitment 2, Thames Water has committed to improve its governance processes with respect to markets. This includes specific commitments to:

- Enhance its internal competition law compliance education and awareness programme, with particular focus on the impacts that its decisions have on other markets.
- Re-establish its internal Markets Steering Group (**MSG**) as a body to review and oversee customer insight, performance, compliance and operation in the markets. The MSG will act as a decision-making and escalation point for market-related issues from across the company, and will have oversight from Thames Water's Executive Management Team.
- Consider what impact any proposed changes to its policies will have on downstream markets when deciding whether or not to make those changes.
- Embed market impact assessments into the governance arrangements of the internal fora making procurement, investment, technology and policy decisions, to help ensure that the potential impacts on markets and market participants are considered when decisions are made.
- Formalise and develop the roles of those of its managers responsible for delivering services to the market and identify any changes that are required to those services.

Overarching commitment 3: making the right meter technology decision for customers and downstream markets

4.8 Under overarching commitment 3, Thames Water has committed to implement technology changes that will enable it to: (i) introduce smart meters that can have logging equipment attached to them; and (ii) improve its DDS. This includes specific commitments to:

- Complete a review of the technology options available and develop a short, medium and long-term meter technology deployment strategy.
- Deliver Phase One of its 2020–25 Technology Refresh, which will unlock the functionality required to enable loggable smart meters to be introduced.

⁴³ These are meetings to which Thames Water invites representatives from all the retailers operating in its licence area. They are held at least bi-annually and are used to discuss issues raised by Thames Water or the retailers.

- Not remove logging equipment from meters. Where a meter needs to be replaced and has logging equipment attached, Thames Water will replace that meter with a meter that is also capable of having logging equipment attached.
- Offer retailers the option to have a loggable smart meter installed at a premises, rather than an unloggable smart meter, where the retailer is prepared to pay the difference between the costs of the two meters.
- Install, free of charge, a loggable smart meter in circumstances where it has previously removed logging equipment from a meter when replacing that meter.
- 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 it is unable to evidence that reasonable notice had been given of its intention to install a smart meter and consent had previously been given by Thames Water for the logging equipment to be installed.
- Share with the wider water industry its learning on the roll-out of smart metering.

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

4.9 Under overarching commitment 4, Thames Water has committed to continuously improve its case management and performance capability to deliver a DDS that meets customers' needs in terms of service levels and quality. It will also continue to update its services in line with reasonable customer requirements (and service upgrade timetables). This includes specific commitments to:

- Improve the way in which service requests are handled, including bulk requests and levels of service.
- Reduce the time taken to set up the initial service and enable more timely reads to be provided.
- Look at the feasibility of making data available to customers through an online portal.

Overarching commitment 5: setting appropriate charges for Non-Primary and Additional Services

4.10 Under overarching commitment 5, Thames Water has committed to review its charging methodology for Non-Primary and Additional Services (which includes DDS) 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. As part of this, Thames Water has specifically committed to:

- Commission an external review of its approach to pricing for DDS and act on the findings of that review.

- Update its Non-Primary and Additional Services tariffs and its Wholesale Tariff Document to take account of any changes that the external review identifies are needed to current tariffs.
- Set charges for 2022-23 on the basis of the findings of the external review.
- Simplify its DDS tariffs by charging for initial set-up costs only, with the ongoing provision of data provided free of charge.

Monitoring compliance with the Final Commitments

4.11 In order for us to effectively monitor Thames Water's compliance with the Final Commitments, Thames Water will:

- Provide compliance reports to us on 31 March 2022 and 30 September 2022, providing evidence of the milestones that it has completed and the steps that it has taken to comply with the commitments.⁴⁴
- Provide us with copies of key documents that are generated as a result of the Final Commitments, including copies of the research on metering and DDS needs and the external review of DDS pricing., as well as any other supporting evidence we think appropriate

4.12 In order to keep retailers updated on its progress with the Final Commitments, Thames Water will provide details of how it is progressing the delivery of the Final Commitments through its Retailer Forum meetings.

4.13 Thames Water has been progressing some of the actions set out in the Final Commitments. As indicated in Appendix A1, Thames Water considers that some of the Final Commitments have already been completed. To date, we have not taken a view on whether individual commitments have been satisfactorily completed as we first wanted to make our decision on accepting the commitments.

4.14 Now that we have accepted the Final Commitments, we will review any evidence that Thames Water puts forward on completion of individual commitments in its next monitoring report, due on 31 March 2022, and take a view on whether we are satisfied that those commitments have been completed.

⁴⁴ Thames Water provided a report on 30 September 2021, setting out its progress towards complying with the proposed commitments.

5. Our assessment of the Final Commitments

- 5.1 We have concluded that it is appropriate to accept the Final Commitments as, for the reasons set out in this section, they address our competition concerns in this case and we consider the case is appropriate for commitments.
- 5.2 In deciding to accept the Final Commitments, we have considered the CMA's Procedural Guidance. We have also considered the representations made in response to our May 2021 Notice and February 2022 Notice, as required by Schedule 6A CA98, and taken them into account when making our decision.
- 5.3 Having accepted the Final Commitments, we have closed our investigation with no decision made on whether the Chapter II Prohibition has been infringed.

The CMA Procedural Guidance

- 5.4 Under section 31A CA98, for the purposes of addressing competition concerns that we have identified, we may accept from any person we consider appropriate, commitments to take such actions as we consider appropriate.
- 5.5 In line with the requirements of section 31D CA98, the CMA has produced guidance on the circumstances under which it is appropriate for commitments to be accepted as a means of addressing competition concerns.⁴⁵ We are required to have regard to this guidance when considering whether it is appropriate for us to accept commitments offered by Thames Water.
- 5.6 The CMA Procedural Guidance sets out that it is likely to be appropriate to accept commitments only in cases where (a) the competition concerns are readily identifiable; (b) the competition concerns are addressed by the commitments offered; and (c) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.⁴⁶ It would not be appropriate to accept commitments in cases involving serious abuse of dominance or where compliance with those commitments and their effectiveness would be difficult to discern, and/or where not completing the investigation would undermine deterrence.⁴⁷

⁴⁵ Paragraphs 10.17 to 10.20 of the [CMA Procedural Guidance](#) contain the guidance on commitments.

⁴⁶ CMA Procedural Guidance, paragraph 10.18.

⁴⁷ CMA Procedural Guidance, paragraph 10.20.

Assessment of the appropriateness of this case for commitments

5.7 We consider that this is an appropriate case for commitments.

The competition concerns are readily identifiable

5.8 As set out in Section 3 above, we have identified the aspects of Thames Water's conduct that have given rise to competition concerns. Specifically, we are concerned that by only installing smart meters that are incompatible with logging equipment, Thames Water is preventing retailers and TPPs from being able to directly access water usage data from those smart meters. Further, we are concerned that Thames Water has not, as an alternative, provided access to the water usage data that it obtains from the smart meters on fair, reasonable and non-discriminatory terms.

5.9 These actions are denying retailers and TPPs a key input they need to be able to offer water efficiency and other value-added services to business customers, thereby hampering the development of the market(s) for value-added services described in paragraph 2.16 above.

5.10 More generally, we have concerns that the way in which Thames Water had sought to implement its smart metering policy highlighted a failure to consider the impact of its actions on its customers and related markets and the extent to which competition law compliance was properly considered and incorporated into its thinking and governance processes.

The Final Commitments address our competition concerns

5.11 The Final Commitments commit Thames Water to making available loggable meters and to engaging with retailers and their business customers to identify whether they want a loggable meter when carrying out meter replacements. The Final Commitments further commit Thames Water to improving the quality of its DDS and ensuring that the charges and terms for DDS are fair, reasonable and non-discriminatory, with the ongoing provision of water usage data being provided free of charge.

5.12 As a result, retailers and TPPs will have the choice of either installing their own equipment on Thames Water's digital smart meters to collect water usage data or obtaining from Thames Water an improved DDS that is offered on fair, reasonable and non-discriminatory terms. This should ensure the availability of essential inputs for downstream markets and help improve the quality of water usage data available in the business retail market.

- 5.13 The Final Commitments should also ensure that, in future, Thames Water properly considers the impact that technology and other business changes it may make in its monopoly business will have on its customers and related markets, and that it takes proactive steps to avoid, or where appropriate mitigate, any potential adverse effects, before it introduces those changes.

The Final Commitments are capable of being implemented effectively and within a short period of time

- 5.14 The actions required by the Final Commitments should be completed within nine months of this decision, with many of the key actions due to be completed before this deadline. They are capable of being implemented effectively as the individual commitments contain specific actions for Thames Water to undertake within set timeframes, while the overarching commitments provide us with the flexibility to ensure that Thames Water is also meeting the spirit of the commitments.
- 5.15 The monitoring provisions within the Final Commitments ensure that we will be able to check that Thames Water is implementing the commitments effectively. Thames Water will provide us with regular compliance reports and supporting evidence. We will be reviewing Thames Water's progress in delivering individual commitments on a six-monthly basis up to the deadline for completion of 31 December 2022 and requiring it to demonstrate to us the progress that has been achieved and the steps that it has taken to address any issues that have arisen.

The case does not involve a serious abuse of dominance

- 5.16 The CMA Procedural Guidance notes that it will not be appropriate to accept, other than in exceptional circumstances, binding commitments in cases involving serious abuse of a dominant position. 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.⁴⁸
- 5.17 On balance, we do not consider this to be a case involving a serious abuse of dominance such that it would be inappropriate to accept commitments. Although, over time if unchanged, the effect of Thames Water's smart meter roll out could be capable of foreclosing the downstream markets, we do not currently believe that there has been any material foreclosure. The adverse impact on the downstream markets of Thames Water's conduct is currently low as smart meters currently account for less than 20% of its installed base of meters at business premises and the evidence we have gathered

⁴⁸ CMA Procedural Guidance, paragraph 10.19

suggests that fewer than 1,000 of the meters capable of being logged currently have retailer or TPP logging equipment attached to them.

Compliance with the commitments will not be difficult to discern

- 5.18 We do not think that it will be difficult for us to identify whether Thames Water is complying with the Final Commitments. Many of the individual commitments require Thames Water to take specific actions and in a manner which supports the attainment of the overarching commitments. Some of these actions have already been taken.
- 5.19 We will be able to monitor the extent to which these actions have been completed through the compliance monitoring reports that Thames Water is required to provide to use every six months and whether they meet the aims of the overarching commitments. The Final Commitments require Thames Water to provide evidence to us that the actions required by a commitment have been completed before we consider whether the requirement has been met and the commitment can be closed.

Accepting commitments would not undermine deterrence

- 5.20 We do not consider that accepting commitments in this case would undermine deterrence. The requirement that Thames Water takes diligent steps to ensure that retailers and TPPs can access water usage data, including commissioning new technical solutions from contractors, and offering them on pro-competitive terms sends a strong signal of our willingness to pursue potential breaches of competition law and to do so to a stage which we consider most effectively addresses the relevant competitive harms in the circumstances.
- 5.21 In addition, as Thames Water was the first water company to introduce the widescale roll-out of digital smart meters and as other water companies look to introduce similar technology, accepting commitments sends a strong signal as to the factors that those water companies will need to take into account in relation to retailers, TPPs and business customers in their areas of appointment.
- 5.22 Finally, the Final Commitments do not preclude us from taking further enforcement action in relation to other suspected breaches of competition law, or in related markets, where these raise competition concerns.

Assessment of the consultation responses

- 5.23 We received nine responses to the May 2021 Notice. These were summarised in the February 2022 Notice, along with our consideration of the representations made in those responses. We do not repeat this here.
- 5.24 We received three responses to the February 2022 Notice. Thames Water has additionally submitted a request to amend the delivery dates of five of the individual commitments.

Summary of the responses

- 5.25 One respondent was fully supportive of the Modified Commitments and welcomed the positive message that they sent out about trading parties exploring ways to help improve poor data quality in the business retail market.
- 5.26 While the other two respondents also welcomed the improvements that Thames Water had made to the commitments offered, both felt that further changes were necessary.
- 5.27 One respondent suggested that the Modified Commitments appeared to provide Thames Water with the opportunity to control and manage data delivery to retailers, TPPs and business customers. It questioned why the matter was being complicated by layers of detail in the commitments and argued that what was required was a simple obligation to ensure that all water meters installed by Thames Water provide third parties with the ability to collect data from them.
- 5.28 The other respondent was broadly content that the Modified Commitments addressed most of the concerns it had previously raised but believed that some areas remained where the wording of the Modified Commitments should be tightened to make them clearer and more enforceable. It made comments in relation to five of the proposed commitments, as follows.

Commitment 9a (communication of meter replacement)

- 5.29 The respondent felt it was unrealistic to expect all business customers to be aware of their rights when Thames Water replaced meters. It argued that Thames Water should be required to provide business customers with a notice (with wording approved by Ofwat) that explains in plain English their rights and the options open to them.
- 5.30 Where the existing meter is not faulty, the respondent suggested that the information should be provided at least 28 days in advance of the meter replacement to give the business customer sufficient time to consider its options.

- 5.31 The respondent also suggested that the commitment provided no solution for business customers who have already had loggable analogue meters removed and that the commitment should be extended to require Thames Water to replace unloggable smart meters with loggable meters at no extra cost.

Commitment 9b (meter replacement policy)

- 5.32 The respondent was concerned that the wording of the Modified Commitments meant that any business customer without logging equipment already installed (or without plans to imminent install it) would effectively be locked into having an unloggable meter for the foreseeable future. It also felt that the obligations in the commitment to check on whether a business customer intended to install logging equipment "imminently" were insufficiently precise and had the potential to allow Thames Water to undermine the spirit of the commitments.
- 5.33 The respondent suggested that the issue could be addressed by giving all business customers the option to have a loggable smart meter installed at the time of meter replacement and not just those with imminent plans to install logging equipment.

Commitment 9c (cost of installing meters)

- 5.34 As part of the Modified Commitments, Thames Water proposed committing to offer business customers the option of having a loggable smart meter installed, instead of the default unloggable smart meter. Where customers request a loggable smart meter, there would be an additional charge of the difference in cost between the two meter types. The respondent was concerned that the wording of the commitment is ambiguous as to what is meant by the "difference in the cost" between the two meter types (loggable and unloggable smart meters). It was noted that in its view Thames Water frequently charges customers a mark-up on other equipment and that this should not happen here.
- 5.35 The respondent also suggested that the higher costs of loggable smart meters meant that Thames Water should offer business customers the choice of a loggable smart meter or a loggable analogue meter.

Commitment 13 (compensation)

- 5.36 Under the Modified Commitments, Thames Water committed to processing and paying properly evidenced reasonable claims for direct losses in respect of damaged or lost data logging equipment in circumstances where it is not able to evidence that reasonable notice had been given of its intention to replace the meter and where consent had previously been given by Thames Water for the installation of the logging equipment on its meters.

5.37 The respondent argued that Thames Water should pay compensation in all cases where logging equipment was damaged by Thames Water and that it is irrelevant as to whether Thames Water provided advance notice of the meter replacement or whether the business customer consented to the installation.

5.38 The respondent also noted that under the commitment, Thames Water would unilaterally decide whether to pay compensation and what the amount of compensation should be. The respondent suggested that to ensure the commitment is meaningful, where Thames Water intends to refuse a compensation claim it should provide reasons for that and report details of the claims paid and reasons for rejecting any claims to Ofwat.

Commitment 21f (DDS pricing)

5.39 The respondent noted that while the commitment requires Thames Water not to charge for the ongoing provision of DDS, there was no commitment relating to the level of set-up costs. The respondent suggested that the initial set-up costs for the DDS should either directly reflect Thames Water's actual costs or be capped at a level agreed with Ofwat.

Request to amend commitment delivery dates

5.40 On 9 March 2022, Thames Water formally sought our consent to amend the expected delivery dates (and consequently the reporting dates) for five of its individual commitments. It identified two factors that meant it was not able to progress completion of the individual commitments to the timescales that it had proposed in the Modified Commitments.

5.41 The first factor was delays in finalising a contract extension with its technology supplier. Thames Water originally expected that the contract extension would be agreed by May 2021, but the commercial discussions took longer than anticipated and it was not until December 2021 that the contract extension was finally agreed. The contract extension was needed for Thames Water to be able to deliver its technology refresh which meant that progress on this commitment and commitments to improve its DDS, which were also dependent on the technology refresh, were delayed. This factor has impacted the delivery dates for the following commitments:

- Commitment 11 – work to deliver the AMP7 Technology Refresh Phase One. Thames Water has asked for the delivery date to be pushed back six months to 31 August 2022.
- Commitment 15 – make improvements to setting up the initial DDS. Thames Water has asked for the delivery date to be pushed back six months to 31 August 2022.

- Commitment 16 – deliver on improvements on how best to display data for customers. Thames Water has asked for the delivery date to be pushed back two months to 30 November 2022.

5.42 The second factor was our need to consult on the new commitment Thames Water had proposed to simplify its DDS prices. Given the potential for opposition to this proposed commitment, Thames Water considered it appropriate to wait for the outcome of our consultation on the February 2022 Notice before including the new DDS prices in its pricing documents. This factor impacted the delivery dates for the following commitments:

- Commitment 20d – update its 2022-23 Non-Primary and Additional Services tariffs. Thames Water has asked for the delivery date to be pushed back two and a half months to 1 April 2022.
- Commitment 20e – obtain Ofwat's agreement that the tariffs meet overarching commitment 5. Thames Water has asked for the delivery date to be pushed back four months to 1 April 2022.

5.43 Thames Water is not requesting a change to the final delivery date for all of the Final Commitments of 31 December 2022.

Our consideration of the consultation responses and Thames Water's amendment request

5.44 We disagree with the respondent that the Modified Commitments provide Thames Water with the opportunity to control and manage the data received by retailers, TPPs and business customers. While the commitments do provide retailers and TPPs with the option to obtain water usage data from Thames Water, they also enable them to require that Thames Water installs a loggable smart meter at their business customer's premises so that the retailer or TPP has control over the data that they obtain.

5.45 As we explained in the February 2022 Notice when discussing responses to the May 2021 Notice, we do not consider that it would be appropriate to require Thames Water to install loggable meters as a default option. We support the use of smart meters as they provide water companies with an easily accessible source of data about water use in their networks and enable them to operate those networks more efficiently and to more easily detect leaks. Loggable smart meters are more expensive than the unloggable smart meters and we do not consider that it is necessary or appropriate to require Thames Water to install loggable smart meters as a matter of default in order to address our competition concerns.

5.46 We explained in the February 2022 Notice that requiring Thames Water to install loggable smart meters at all business premises would unnecessarily increase costs to

Thames Water and ultimately business customers⁴⁹ and the respondent has not provided any arguments or evidence to address these concerns. We remain of the view that it would not be necessary or appropriate to expect Thames Water to install loggable smart meters other than where there is a demand from the retailer or business customer to have their meter logged and that it is reasonable to expect the retailer or business customer to cover the cost difference between the two types of meter.

5.47 We have also considered the comments made by the other respondent regarding the wording of the five modified commitments as follows.

Commitment 9a (communication of meter replacement)

5.48 We agree with the respondent that it is important that business customers be made properly aware of the options available to them when Thames Water is replacing their meter and that, where possible, they have a reasonable amount of time to consider what option is best for them.

5.49 Thames Water has informed us that it currently emails all retailers with a list of its planned proactive meter replacement programme three to six months in advance of carrying out the work. It then notifies retailers 22 business days in advance of its intention to replace a meter.

5.50 When Thames Water is seeking to replace a broken meter, it will email the retailer asking them to confirm whether the meter is logged and asking for details of their meter requirements. The retailer is asked to respond within five business days. Where a meter replacement is requested by a retailer, this is done through market form B01. This form requires the retailer to specify whether the meter is logged and includes a field for the retailer to request the type of meter it would like installed.

5.51 We consider that this approach provides retailers with a reasonable amount of time to discuss metering needs with their business customers. Retailers should be aware of the metering options available to their business customers and be able to help them identify the option that best suits their needs. The retailer can then provide Thames Water with details of what types of meter their business customer would like to have installed.

5.52 We recognise, however, that there was nothing in the Modified Commitments or Thames Water's published metering policy that required it to abide by this approach. We have discussed this point with Thames Water and it has offered an additional commitment (commitment 9d – see Appendix A1 below) to make clear that this is the

⁴⁹ Loggable smart meters currently cost more than twice as much per meter than the unloggable smart meter that Thames Water is currently installing as its default meter. The cost of rolling out loggable smart meters would ultimately be funded through the bills of all customers so installing the more expensive meter at every premises would increase the size of customers' bills.

approach that it will adopt when seeking to replace meters. Thames Water has also amended commitment 9a to make clear that it will use best endeavours to contact the customer.

5.53 While the respondent is correct that commitment 9a does not provide a solution for most business customers that have already had a loggable analogue meter replaced, commitments 9b and 9c do provide a solution as they commit Thames Water to installing a loggable smart meter when requested by a business customer. Where the business customer had previously had logging equipment attached to the analogue meter, Thames Water will install the loggable smart meter at no extra cost to reflect the fact that it had stopped the customer from continuing to receive logging services. However, where logging equipment had not previously been installed, the business customer will need to pay the cost difference between the loggable and unloggable smart meters. We consider that this is a reasonable approach for Thames Water to adopt as it will help ensure the overall efficiency of its metering policy to the benefit of all customers.

Commitment 9b (meter replacement policy)

5.54 We agree with the respondent that all business customers should be able to request that a loggable smart meter be installed at their premises. While commitment 9c will ensure that this is the case going forwards, we agree that there is no reason to delay this while Thames Water completes its technology refresh.

5.55 Giving all business customers the opportunity to request that a loggable smart meter be installed at the time that Thames Water is looking to replace an existing meter would reduce costs to both Thames Water and the business customer as it avoids the need for a later, additional visit by Thames Water and the consequent disruption that this would cause to the customer.

5.56 Although installing loggable smart meters now may mean that Thames Water is unable to access the data from these meters until it completes the technology refresh work described in commitment 11 that will enable it to access data from loggable smart meters, this would provide an incentive on Thames Water to ensure that the technology refresh work is carried out expediently.

5.57 We have discussed this point with Thames Water and it has proposed a revision to the commitment so that all business customers can request the installation of a loggable smart meter when Thames Water is replacing their meter.

Commitment 9c (cost of installing meters)

5.58 We agree that Thames Water should only be charging business customers the difference in the input costs that it faces for purchasing loggable and unloggable smart

meters, and that it should not include any additional mark-up. We consider that this is already clear from the wording of the commitment, which refers to costs rather than prices. In addition, overarching commitment 5 requires Thames Water to ensure that its charges for non-primary and additional services, which include meter replacement services, are cost reflective and implemented in a fair, reasonable and non-discriminatory manner.

5.59 We disagree that Thames Water should be required to offer business customers the choice of a loggable smart meter or a loggable analogue meter. We have been clear since the May 2021 Notice that we support the move to smart metering and requiring Thames Water to install analogue meters would be a retrogressive step. If the cost of a loggable smart meter is too high for the business customer, it has the option to instead take a DDS from Thames Water where it will only have to pay the initial set-up costs.

Commitment 13 (compensation)

5.60 Thames Water has sought to limit its obligation to compensate for lost or damaged logging equipment through the commitments to circumstances where it was aware that there was logging equipment on the meter (and therefore knew that care needed to be taken when its contractors replaced the meter), and it failed to give the customer sufficient notice that it was planning to replace the meter (and therefore that the logging equipment was going to be removed from the meter).

5.61 We consider this to be a reasonable approach for it to adopt. We are not saying that these are the only circumstances in which compensation may be appropriate, but these are the circumstances in which it is clear that compensation should be paid as a result of the commitments. Once other factors are brought into the equation, for example whether failure to obtain Thames Water's consent to attach equipment nullifies the claim or whether having given notice and the customer fails to act on this means that the customer contributed to any losses suffered, we consider that the appropriateness of compensation is less clear cut and that the matter would more appropriately be dealt with through the courts if the parties are unable to reach agreement on the matter.

5.62 Given that commitment 13 requires Thames Water to pay compensation claims, any refusal to pay a claim will need to be supported with an explanation to the claimant as to why their claim falls outside the scope of commitment 13. We expect Thames Water's compliance monitoring reports to provide details of claims received and the numbers paid and rejected, and we would be able to ask for additional supporting detail or evidence for this if we consider it needed.

Commitment 21f (DDS pricing)

- 5.63 We agree that Thames Water should not be looking to set excessive set-up charges as this would risk undermining the commitments but believe that the Modified Commitments already addressed this.
- 5.64 Overarching commitment 5 requires Thames Water to ensure that all of its charges for DDS are cost reflective and implemented in a fair, reasonable and non-discriminatory manner – this includes the DDS set-up prices. We have not received complaints that Thames Water's current set-up charges are unreasonably high, and our assessment of the cost information provided by Thames Water suggests that prices appear to reflect the costs it faces. As the respondent has not actually claimed that the set-up costs are too high or provided evidence of this, we see no need to amend the commitments in this regard.

Thames Water's request to amend commitment delivery dates

- 5.65 We have carefully considered Thames Water's request to amend the delivery dates for five of the individual commitments and its justification for these amendments.
- 5.66 While it is disappointing that the contractual discussions took longer than anticipated, we recognise that obtaining the best possible commercial deal was in the interests not just of Thames Water, but also retailers and their business customers who will face the service and meter costs that Thames Water agreed as a result of its discussions. Thames Water kept us informed of the progress of its negotiations and has been open with us about the delays that this would cause. We recognise that the delays have had a knock-on impact on the timescales for commitments 11, 15 and 16 – which are dependent on the technology refresh progressing – and have concluded that it would be reasonable for us to allow Thames Water to amend the expected delivery dates and reporting dates for those commitments as proposed.
- 5.67 The delays to Thames Water's ability to publish prices for its DDS and to demonstrate to us that these meet the overarching commitment resulted from the need for us to consult on the proposed changes in the Modified Commitments, including on the approach to DDS pricing. The delays to Thames Water's publication of its charges have not had an impact on the start date for those prices so retailers and their business customers have not lost out as a result of the delay. Thames Water's request to revise the five delivery dates does not impact on the final deadline for completing the Final Commitments of 31 December 2022. We therefore conclude that it would be appropriate for us to allow Thames Water to amend the expected delivery dates and reporting dates for commitments 20d and 20e as proposed.
- 5.68 The revised delivery and reported dates are set out in the Final Commitments in Appendix A1.

Conclusion

- 5.69 Having carefully considered the responses to our February 2022 Notice, we considered that two minor revisions to the Modified Commitments were required by Thames Water:
- The first was to include a more explicit commitment to provide advance notice to retailers and their business customers of meter replacements that includes a clear explanation of what meter options are available to them.
 - The second was to amend commitment 9c so that it is not just business customers who imminently intend to install logging equipment on their meter that can request that a loggable smart meter be installed, but any business customers.
- 5.70 Thames Water agreed to make these revisions when offering the Final Commitments to us. Given the minor nature of the revisions and that they are in response to comments made via the consultation, we do not believe that it would be necessary to consult again on whether we should accept them.
- 5.71 We have considered Thames Water's request that it be permitted to amend the delivery and reporting dates for five of the individual commitments and concluded that it would be appropriate for us to permit Thames Water to do so. Thames Water has included these in offering the Final Commitments to us,
- 5.72 We are now of the view that the Final Commitments address our competition concerns and that it is appropriate to accept them in this case.

6. Our Decision

6.1 For the reasons set out above, we consider that the Final Commitments offered by Thames Water, as set out in Appendix A1 to this Decision, address the competition concerns we have identified and provide a good outcome for business customers. We therefore consider that it is appropriate to accept the Final Commitments. Accordingly, we:

- have decided to accept the Final Commitments by means of this Decision; and
- will close our investigation as of today's date.

Signed:

A handwritten signature in black ink, appearing to read 'Emma Kelso', is centered within a light gray rectangular box.

Emma Kelso

**Senior Director Markets and Enforcement
For and on behalf of the Water Services Regulation Authority**

Date: 31 March 2022

A1 The Final 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.

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.

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.

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.

Part 3: The Commitments

Overarching commitment 1

Understanding and addressing customer needs, including learning from customer complaints and feedback

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 market 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.

Overarching commitment 2

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

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 forum⁵⁰ 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

⁵⁰ Members of the MSG will include the Retail Director and the Strategic & Regulation Affairs Director.

compliance and report into the Thames Water Executive. The MSG will then meet quarterly. The MSG will keep a register of all decisions that are made, and the register will be provided to the Executive to ensure oversight of decisions by the full Executive.⁵¹

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.

Overarching commitment 3

Making the right meter technology decision for customers and downstream markets

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

Specific commitments in support of overarching commitment 3

Thames Water will:

9. (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

⁵¹ The Board provides oversight of the Executive team.

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

(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 attempt to fit a digital (smart AMI) meter unless there is a logger already fitted that is still required or if the customer and/or retailer advises that a logger is required. In such cases it will fit a pulse enabled or digital (smart AMI) meter whichever is requested by the customer and/or retailer;
 - If the meter operates outside the WAN, it will attempt to fit a digital (AMR) meter unless there is a logger already fitted that is still required or if the customer and/or retailer advises that a logger is required. In such cases it will fit a pulse enabled or digital (AMR) meter whichever is requested by the customer and/or retailer; and
 - It will use best endeavours to make contact with the customer and/or retailer to check if there is an existing logger attached that is still required or if the customer has 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 attempt to fit a digital (smart AMI) meter unless there is a logger already fitted that is still required or if the customer and/or retailer advises that a logger is required. In such cases then it will not proactively replace the meter;
 - If the meter operates outside the WAN, it will attempt to fit a digital (AMR) meter unless there is a logger already fitted that is still required or if the

customer and/or retailer advises that a logger is required. In such cases then it will not proactively replace the meter; and

- It will use best endeavours to make contact with the customer and/or retailer to check if there is an existing logger attached that is still required or if the customer has 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.

(d) Thames Water will comply with and publish on their website processes which ensure they provide sufficient clarity and time for retailers and customers to make informed choices regarding meter replacement.

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 engaging 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.

Overarching commitment 4

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

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 November 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.

Overarching commitment 5

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

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 comments 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.

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] ⁵² | 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 |

⁵² 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.

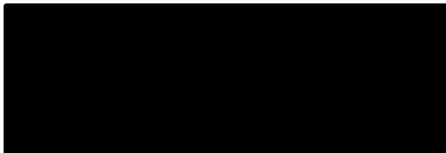
| Relevant Commitment | Expected Delivery Date | Evidenced to Ofwat |
|--|--|--|
| <p>Making the right meter technology decision for customers and downstream markets</p> <p>9(a) communicate change of smart metering policy</p> <p>9(b) republish for customers and retailers an updated metering policy which 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>9(d) comply with and publish processes for providing clarity and time for retailers and customers to make informed meter replacement choices</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>30/4/22</p> <p>31/7/21</p> <p>31/8/22</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>30/9/22</p> <p>30/9/21</p> <p>30/9/22</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 strength⁵³</p> | <p>30/4/21 [C]</p> <p>31/3/21 [C]</p> <p>31/8/22</p> <p>30/9/21 (review) 30/11/22 (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>30/9/22</p> <p>31/3/22 (review) 31/12/22 (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>1/4/22</p> <p>1/4/22</p> | <p>30/9/21</p> <p>30/11/21</p> <p>31/3/22</p> <p>30/9/22</p> <p>30/9/22</p> |

⁵³ Delivery date subject to the necessary planning controls being granted.

| | 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 |

Execution

Signed for and on behalf of Thames Water Utilities Limited on 25 March 2022 by:



Sarah Bentley

Chief Executive Officer

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 Final Commitments set out in this document.

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

The improvements documented below were implemented at various points since the end of 2019. The last improvement to be implemented was the creation of two new roles within Thames Water's 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 2: Completed actions – Providing DDS which meet 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. |

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

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. |

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

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