



Charging Team
Ofwat
Centre City Tower
7 Hill Street
Birmingham, B5 4UA

Email: charging@ofwat.gov.uk

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Dear Sirs,

Ofwat consultation on changes to NAV policy and assessment guidance

Thank you for the consultation document dated 1 June 2023.

NAV licensing and underlying processes continue to be a primary area of focus. Discussions on national licencing, streamlining the existing NAV application and bulk supply processes continue to take place to enhance the NAV market. Ofwat's willingness to consider new ways of working and to listen to suggestions and concerns from NAVs is positive. We hope this will continue as the NAV market continues to grow with more new appointees.

In respect of the consultation itself, we have considered the document and supporting information and comment as follows:

Views on the proposed update to Ofwat's Policy Statement and Application Guidance that would apply to applications for sites in Wales.

It is through this consultation that we have become aware of the Welsh government's new Strategic Priorities and Objectives statement (SPS) which was published in late 2022. The content is perhaps unsurprising in respect of its anti-competitive bias, stating that the promotion of competition is 'not a priority' and 'undesirable'. Though the statements within the SPS are nothing new and have been apparent to the NAV community for some time, this is at odds with the Water Industry Act 1991, in that Ofwat should protect the interest of consumers in promoting competition and that Welsh ministers *must*, in turn, have regard to the duties imposed on Ofwat.

In addition, Defra's own SPS from earlier in 2022, set out its expectations that Ofwat should support the NAV market and realise its potential for consumers, society and the environment.



Consequently, we consider the Welsh SPS is in stark contrast to the Defra SPS which supports the ongoing collaborative work Ofwat is undertaking with NAV companies.

Views on how, with respect to this policy proposal, we can best achieve our aim that regulatory burdens are kept to a minimum while ensuring companies deliver the best outcomes for customers

The respective SPS documents published by the Welsh Government and Defra are both organised around a series of expectations that Ofwat should meet in carrying out its duties. The Welsh SPS specifies that “the Welsh Government does not support the introduction of competition...where it cannot clearly be evidenced that it would be beneficial to customers”. We would agree with this view and believe that when Ofwat grants a variation in favour of a NAV, it is done so on the understanding that it is beneficial to customers.

However, the draft wording in the Ofwat proposals goes beyond this, placing an obligation on NAVs when submitting licence application for sites located wholly or mainly in Wales, to ‘set out how the **end** customers and / or environment would benefit as a result of the applicant serving the site rather than the existing incumbent’. Focussing solely on the consumer and environment rather than a holistic view reduces the opportunities NAVs will have to cite relevant benefits to developers and customers. It also overlooks the role NAVs play in delivering indirect benefits by which incumbent water and wastewater companies are incentivised to improve their performance.

The current arrangements that remain in place in respect of licencing and bulk supply already impose a competitive burden on the NAV in its ability to compete against incumbent water and wastewater companies that are not subject to equivalent provisions. In addition, the NAV licensing process also imposes a significant resource burden and until NAVs become an established part of the water industry, the approach is becoming increasingly restrictive.

Views on introducing a similar requirement for sites in England at some point in the future.

In addition to the proposed implementation of changes to Ofwat’s NAV policy for sites based solely or mainly in Wales, the consultation seeks views on the value of extending this proposal to NAV licence applications for sites in England.

Any industry change should be clear in that the benefits outweigh the associated cost and that advantages will ultimately accrue to customers. Consequently, where Ofwat awards a licence to a NAV for a new site, it is done so on the understanding that this will lead to developer and consumer benefits. This is against a current bulk supply and licensing regime that constrains the NAV’s ability to compete against incumbent water and wastewater companies. Consequently, these additional proposals would further hinder the NAV’s ability to compete on a level playing field.



The 2022 CEPA assessment of the 'Benefits of independent network competition in the water and wastewater sector' demonstrated the significant potential for further development of the NAV sector to deliver more substantial and wide-ranging benefits to both developer and end customers. Consequently, we do not consider that policy changes should be implemented to stifle development of the NAV sector.

To conclude, we are not supportive of policy changes which are anti-competitive, stifle the NAV market and place onerous expectations on NAVs to outperform incumbent water and wastewater companies. We are supportive of proposals that promote competition and provide benefits to stakeholders and end users. Adopting the approach of Defra's 2022 SPS in supporting and promoting the NAV is, in our view, more appropriate.

I hope that this response is helpful. If you have any questions or would like to discuss these in more detail, please feel free to get in touch.

Yours sincerely



Vicky Bell
Head of Regulation and Compliance