



CCWater's response to the CMA's consultation on Water Codes Appeals Rules and Guide

Introduction

1. The Consumer Council for Water (CCWater) is the statutory body representing the interests of household and business customers of water and sewerage companies and licensed retailers in England and Wales. We operate through four Committees in England and a Committee for Wales.
2. The Water Act 2014 led to the opening of retail competition in England for non-household (NHH) customers in the water industry on 1 April 2017. Sitting behind the market are many codes that define how retailers and wholesalers should operate.
3. Part of the act allowed for regulations to be made for the Competition and Markets Authority (CMA) to consider appeals against decisions made by the Water Services Regulation Authority (Ofwat) about code changes.
4. On 20 June, the CMA released an open consultation on its proposed rules and guide on how it intends to handle these appeals. CCWater welcome the opportunity to provide a response.

General comments

5. It is sensible that an efficient and effective appeal mechanism exists via the CMA. An alternative route, for example, via a judicial review could present an otherwise costly barrier to market participants (i.e. retailers and wholesalers).
6. Market code changes and appeals should be addressed quickly to reduce adverse impacts on NHH customers, retailers or wholesalers.
7. We support that the CMA appeals process generally appears to be efficient and the CMA provides a rationale for the timeframes it intends to adopt to collect and consider evidence from parties where an appeal is brought.

Specific comments/questions on the draft rules

8. Section 5.1(d) requests that applications for permission to appeal should include a statement of how the interests of the applicant are material affected. This statement should also focus in part on the interest of NHH customers. We expect there should be overlap in the interests of applicants (i.e. retailers and wholesalers) and the customers they serve.

9. We think it is sensible to consolidate appeals about the same decision where appropriate to save costs and time. However, Section 10.1 does not make it clear what criteria, process or timeline would be used for consolidation. It is possible that the material effect on appellants could differ between them due to the size of their business or the segment of customers they serve. In some cases, consolidation may not be considered appropriate or desirable from the point of view of applicants or customers. Could the CMA consider an application process that would allow multiple parties to jointly appeal?

Specific comments/questions on the draft guide

10. Section 2.3 provides a mini glossary, but does not define who the “parties” are. We understand this to mean the appellants and Ofwat. The individual parties in an appeal should be clear, particularly if the CMA consolidates multiple appeals into one.
11. It is not clear if case conferences or hearings will be held in person or if there is the option to use remote meeting technology (e.g. teleconference, videoconference). The use of technology could save time and costs and be attractive to retailers who are small or new entrants to the market.
12. In Section 4.28, the CMA states that individual appellants in consolidated cases will be given a full opportunity to state their case respectively. Can appellants also elect for a single representative take up their case?
13. In Section 5.1 (and also Section 22.1 of the rules), the CMA states that it will order the unsuccessful party to pay the costs of the successful party, but may make a different order. We note that the CMA's decision on costs will be influenced in part by the resources of all the parties. We think resource is an important consideration as the prospect of paying for another party's costs could deter some appeals, particularly from retailers who are small or new entrants to the market.

Enquiries

14. Enquiries about this submission and requests for further information should be addressed to:

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