

59th Technical Panel Meeting
Approved Minute

Present

Brian Saunders (BS) – CMA (TP Chair)
Amanda Hancock (AH) – CMA (TP Secretary)
Jeremy Atkinson (JA) - CMA
Charles Yates (CY) - Commission
Chantal Price (CP) – Commission (Part)
Duncan Innes (DI) – Business Stream
Peter Strain (PS) – Castle
Ally Logan (AWL) - Anglian
Belinda Oldfield (BO) – Scottish Water
Mike Brindle (MB) – United Utilities
Katy Spackman (KS) – NWG Business
Ian Grundy (IG) – Pure Utilities
Paul Connelly (PC) – Blue Business Water
Liz Roberts (LR) – Aimeria
Alan Logan (AL) – Source for Business
Andrew Morris (AM) – CMA (Part)

Apologies

Lynda McKay (LMcK) - Kelda
Tony March (TM) – AWBN
Alastair Ross (AR) – Commercial Water Solutions
Rich Rankin (RR) - Brightwater
Fraser Gourlay (FG) – Earls Gate Water
Tom May (TMV) – Veolia
Scott McLeod (SM) - Cobalt

1. Introductions and Minute

AH confirmed that no comments had been received on the minute from April 2017. CY stated that he had requested any change on Live RVs be completed by the end of the calendar year, and would like this reflected in the minute. JA commented that the CMA's response to this aspiration be added, confirming that the CMA could not commit to this timescale. Once this was complete, the minute would be taken as approved.

AP432 AH to update the April minute to reflect WIC and CMA comment on delivery timescales.

2. Actions and Administrative Update

AH provided an update on the action log, noting that all actions were now complete.

AH noted that no change proposals had been withdrawn or rejected since the last meeting.

AH noted MCCP211 and MCCP216 had been agreed, and that no MCCPs had been implemented since the last meeting.

AH noted that no Commission Changes had been implemented since the last TP meeting. One new Commission Change, MCCP214 CC, has been introduced since the last meeting.

There were no new Bulletin or Guidance Notes, and no changes to the TP meeting dates.

3. Change Proposals in Progress

There were no change proposals in progress.

4. New Change Proposals

OCCP054 Verification of Meter Details – Process 28

AH advised that this OCCP had been put forward by SWW and looked to make changes to Meter Verification Process and associated forms. BO commented that this was a tidy up process and was mainly down to feedback received from participants. IG commented that these changes were required and that Pure fully supported this proposal.

No other comments were received. BS asked if the meeting were happy to approve this proposal. The TP unanimously voted to approve this proposal.

AP433 AH to prepare final report for OCCP054 and forward to WIC for consultation.

OCCP055 – Trade Effluent and Consent Process Changes

AH advised that this OCCP had been put forward by SWW and looked to make changes to the Trade Effluent process. BO commented again that this was a tidy up effort, and that following feedback from participants, SW was looking to split out Trade Effluent and create a new independent form for TE queries. PS added that the proposal also looked to move away from a wet signature in form H.

BS asked if the meeting was happy to approve this proposal. The TP unanimously voted to approve this proposal.

AP434 AH to prepare final report for OCCP055 and forward to WIC for consultation.

MCCP217 Market Code Changes

AH introduced this proposal and confirmed that following the CMA Board's Governance Review, and follow on discussion at the last TP meeting in April, the CMA was asked to bring forward a change to the Market Code in relation to the quorum for TP meetings and the decision-making process. AH advised that this proposal looked to make those changes. It proposed an increase in the quorum of a TP meeting from 3 members to 7. AH confirmed that whilst there were considerably more participants, if the quorum was set too high, we may end up in the position of not being able to hold a meeting. JA added that there were 9 members present at this meeting, which was reflective of recent meetings.

AH added that the second change was looking at the values for a qualifying majority in decision making. AH added that whilst reviewing the figures, it became evident that a qualifying majority is normally only required where votes are weighted. As there is no weighting at the TP meetings, the proposal was to update the Market Code and replace a qualifying majority with a simple majority.

There was a brief discussion, but the meeting agreed that the changes were practical and on that basis, the meeting unanimously approved the proposal.

AP435 AH to prepare final report for MCCP217 and forward to WIC for consultation.

MCCP214 CC Live Rateable Value

This proposal was tabled at the meeting. Participants were given some time to read over the paper initially. CY then introduced the paper and confirmed that in line with the Scottish Government requirement for equal cash increases in charges, the proposal would require linear change to retail charges over the transition period. CY confirmed that this could be done in one of two ways; either via the introduction of a new license condition, or via a binding, strong assurance to the Commission by all Licensed Providers.

CY advised that the proposal was also seeking views from participants as to how the wholesale element would be calculated. The Commission was content for the Market to determine how this was done, either via linear increases in wholesale charges (Option 1), or via linear increases in rateable value (Option 2). CY added that if participants could not agree on a solution, then the Commission would mandate linear increases in wholesale charges.

MB asked for clarification on whether these charges were after inflation, as if they were before, then the charges would not be linear. CY confirmed these were before inflation.

LR asked whether the proposal was talking about linearity for every customer or for every SPID as these were two different things. CY confirmed that the intension was that it would be linearity for every SPID. KS asked for clarification where the

proposal talked about appropriate action being taken if LPs failed to meet these obligations. CY confirmed any action taken would be proportionate to the level of failure by the LP.

DI asked how the linearity was defined and AM asked what the start and end points would be and whether LPs would be able to set their own endpoint for charging. CY stated they could not. KS asked whether the Commission was effectively looking to mandate margins for all LPs for a 3-year period. CY confirmed that this was a temporary measure for a particular set of prices. LR stated that 3 years did not seem temporary and that LPs would need to consider whether they wanted to be part of this Market, or indeed could compete in this type of market. KS added that this seemed to be in contradiction with a competitive market. CY confirmed that price was not the only aspect of competition, and LPs would still be free to compete on things like quality of service and efficiency savings.

AM stated that he was still uncertain on how you could get to the endpoint for any SPID given they all have differing starting points, even for setting default tariffs. CY added that the Commission would be defining clear rules around default tariffs very soon. BS asked whether this would be before the end of the consultation period on 23rd June 2017. CY confirmed that that was the Commission's aim.

AP436 WIC to aim to provide clear rules around default tariffs before the consultation closed on 23rd June 2017.

DI stated that LPs would have to have a personalised glide path for every single customer, which would be complex and unmanageable. DI also added that this would require LPs to predict prices that customers should be paying in 2020, which was inherently uncertain. DI further added that monitoring this for tens of thousands of customers would also be unmanageable.

DI asked for clarity on what would happen with vacant SPID, and whether the LP would have to keep a new customer on the same path as the landlord may have been on. CY confirmed that they would, and that LP charging must remain linear throughout the 3-year transition period. MB commented that this would lock customers into preferential pricing, without the requirement for a contract. Normally in this scenario, customers are on a deemed contract with a default tariff. Only when they moved to a new contract would they be entitled to preferential rates. DI added that for those in contract, even where the customer was in breach of their contract, they could still achieve preferential pricing.

DI asked how this would work during a customer switch. CY confirmed that the linear path could be shared between LPs to ensure the customers stays on the linear line. MB asked for clarification on whether the Commission was suggesting that LPs pass confidential pricing and margins with its competitors. CY confirmed that if that's what was required to ensure the underlying principles, then that's what would be required, however confirmed that this was only during the transition period. KS stated that this was an unrealistic expectation. MB asked whether the

LP had the ability to price below the linear line, CY confirmed that customers should remain on the linear line for the period of transition and should not deviate from it.

PC asked what the Commission was consulting on as this seemed to be a fait accompli. CY confirmed that the Commission was seeking views on two aspects of the proposal;

1. Whether the assurance in linear retail charges should be enforced through a change in license, or via a binding agreement; and
2. Whether wholesale calculations should be transitioned on linear wholesale charges or linear RV charges.

CY confirmed that the CMA had agreed to collate these responses, and they should be submitted no later than cob on Friday 23rd June 2017. CY also asked the group whether there was merit in hosting a workshop for participants next week.

KS asked for clarification that the Commission was not seeking to consult on the introduction of retail linearity, CY confirmed it was not. DI expressed concern that if both wholesale and retail were not aligned there was a risk this could create negative margins, and potential breach of license conditions. DI asked whether there was scope for looking at the proposal to address linearity in the Default tariff rather than the Retail tariff. CY confirmed there was not. MB added that he could not see how this could work in a competitive market.

AH asked whether the Commission would consider extending the deadline to allow participants sufficient time to respond. CY confirmed that the Commission was not minded to extend the deadline at this time, but would take the matter away and advise if it could be extended. CY further added that the difficulty the Commission had was around timescales for implementing the change, and as noted in his previous request on the April minutes, systems would need to be updated in advance of this legislation taking place next March. LR added that LPs may wish to make formal approaches on this change, and did not believe one week was a sufficient timescale to allow LPs to provide a comprehensive response.

BS noted that the discussion earlier had solely been in relation to wholesale systems and not retail systems. BS asked whether there should be a formal impact assessment on retail systems in advance of any decision being made, further adding that in his experience in other industries, this was a very important aspect of the decision-making process.

DI again raised concern about the disconnect between wholesale and retail calculations as LPs may end up in a position where the wholesale charges increase faster than the retail element, pushing some customers into a negative margin. CY advised that they are aware of this complexity, hence the reason they are seeking views from LPs. BS asked where the Commission was seeking these views as it did not seem to form part of the consultation on this CP. CY advised this could form part of the LPs wholesale decision making process.

DI stated that giving flexibility to the LP on how they implement pricing means that in effect a single customer could see 23 different RVs, assuming LPs all calculate pricing in a different manner. CY noted that the Commission wanted to allow LPs this flexibility, but was mindful that this would create a communications issue. CY added that it was important that LPs communicated with its customers in the most simple and clear way possible. KS added that this potentially maximises confusion for the customer. DI added that this could damage the reputation of the Market. CY noted this was a valid point, and sought views from LPs on how to address this in their consultation responses.

BS commented that a number of times it had been stated by the Commission that this was for a limited period, and this has been looked at from one direction. LPs are being told that they don't need to worry about the complexity they will face because it is only for a 3-year period. If we flipped this on its head, politicians could say that they may have to deal with one or two difficult cases, but that it would only be for a 3-year period, and would ensure that the implementation of this change in the Market could be relatively straightforward. CY noted that the political decisions have been made and as a Market we need to get on and deliver the requirements.

KS asked where representations should be made, is it to the Commission or to the Scottish Government. CY advised that LPs were free to make representation to either or both as views will be shared as part of the ongoing discussions. KS further asked where the evidence had come from to suggest that linear cash increases is what's best for the customer. CY stated that this is what the Scottish Government decided in their consultation last year. BO noted that there was historic precedent set that this is how transitions work in the water industry. The other transition that is also aligned in this manner is business rates. Both KS and MB stated that business rates were not a competitive market and therefore the transition approach used for tax would not be appropriate in a competitive market.

DI asked CY whether there was scope to look at this proposal based on default tariffs rather than on retail tariffs, as this may be workable, albeit complex. CY stated that this should be applied to both default and retail tariffs. MB commented that in relation to the consultation response, he failed to see how LPs could sign up to a voluntary commitment to something that they believed was not possible to implement, thus it would need to be an enforced license condition. KS queried whether the Competition Law would potentially trump any license condition if it was deemed to be anti-competitive, and whether this may be something that the Competition and Markets Authority may have a view on. CY commented that this was a question for the lawyers.

KS further stated that as this condition would effectively make LPs a regulated business for 3 years, and it was likely that the Boards of all LPs would want to consider this point. It may have an impact on whether they chose to stay in this Market. IG added that smaller LPs may not be able to stay in the Market as it would not be viable for them to do so.

At this point BS asked to try and draw the discussion to a close. Whilst there had been considerable discussion around retail tariffs, which was not within the remit of this group, the discussion had been important and indeed useful. A summary of some of the key concerns for LPs were:

1. There was a strong feeling amongst the group that the proposal raised a number of concerns around the viability of the approach. These include:
 - a. A specific glide path would be required for every SPID in the market, requiring a lot of complex calculations.
 - b. Retailers would need to predict prices for the next 3 years.
 - c. This would in effect frustrate competition as customers with RV based services would be unable to deviate from set glide path pricing for a 3-year period.
 - d. Requesting retailers to share competitively sensitive price information with their competitors and risk breaching license conditions if pricing is not fully understood would again frustrate competition and make it very unlikely that switching would take place during the 3-year transition.
 - e. This option also presents the risk of retailers falling into negative wholesale margin, and thus breaching license conditions.
 - f. This proposal looks to interfere with contractual terms that may already be in place with customers.
2. There was also a strong feeling that this proposal was not in line with discussions that have been ongoing for months, and that at this late stage, there was insufficient timescales for LPs to respond.

In concluding the discussion, BS noted that the consultation period was ongoing and that LPs were free to respond to the Commission on the wholesale aspect of charging. AH asked whether LPs could respond on wholesale charging given the uncertainty on retail charging. Several LPs suggested this was not possible, and that whatever happens at retail must also happen at wholesale.

AM added that if Option 1 progressed on a wholesale basis, there would be considerable time constraints from the CMA's perspective, especially given the Commission's aspiration to deliver the wholesale changes this calendar year. CY stated that the December timescale would then allow knock on retail system development to take place before the proposal was implemented. At this point several LPs expressed concern at the potentially short timescales involved. BS asked that the paper be appended to the minutes, and stated that the action would be on LPs to respond within the timescales.

**AP437 LPs to send responses sought in M CCP214-CC to the CMA by
COP on 23rd June 2017.**

AH asked again, given the discussion today whether the Commission was minded to extend the deadline for participants. BS added as a Board Member, there was every likelihood that LP Boards would want to respond on this, and that a week may not be sufficient. CY advised that he will take this away for consideration. Several participants expressed difficulty with the timescales as set down.

AP438 CY to consider extending the deadline for participants to respond on MCCP214-CC given the discussion around whether 1 week was a sufficient period for consultation.

5. Forward Planning Report

AH presented the report and confirmed that there had been no change in the MCCP or CMACPx log since the last meeting. The Release Calendar had been updated to move MCCP214 CC from unallocated to March 2018. Finally, AH added that the financial update on the Market Enhancement Project Funding had been added to section 5 of the Forward Planning Report. Any comments would be welcomed.

6. SAA Market Enhancement Project Proposal (SW)

BO introduced this paper and confirmed that because of the 2017 Rates Revaluation and a recent court ruling, Woolway vs Mazaars, there may be up to 11,000 transactions required to match SAA references. SWW anticipated that the project would take approximately 6 months, and would run from July 2017 to December 2018 at a cost of around £350k. BO further highlighted that it was critical this work was carried out in advance of the move to Live Rateable Value on 1st April 2018.

DI asked what was happening with defining a BAU process when looking Live RV moving forward. BO commented that SWW was already looking at an enduring solution for managing LRV once it is in place.

BS concluded that there was general support around the table from TP members, however asked that SWW look to flesh out in more detail, the key benefits of undertaking the work as a Market Enhancement Project, like timescales and economies of scale achieved from the existing SAA work.

Any Other Business

There being no other business, BS closed the meeting.

Action Summary

| Action | Subject | Update |
|---|--|--------|
| <i>From the minute of the 59th Meeting (15th June 2017)</i> | | |
| AP432 | AH to update the April minute to reflect WIC and CMA comment on delivery timescales. | |
| AP433 | AH to prepare final report for OCCP054 and forward to WIC for consultation. | |
| AP434 | AH to prepare final report for OCCP055 and forward to WIC for consultation. | |

| Action | Subject | Update |
|--------|---|--------|
| AP435 | AH to prepare final report for M CCP217 and forward to WIC for consultation. | |
| AP436 | WIC to aim to provide clear rules around default tariffs before the consultation closed on 23 rd June 2017. | |
| AP437 | LPs to send responses sought in M CCP214-CC to the CMA by COP on 23 rd June 2017. | |
| AP438 | CY to consider extending the deadline for participants to respond on M CCP214-CC given the discussion around whether 1 week was a sufficient period for consultation. | |