

Date: 26 November 2020  
Our ref: 26-11-20 CMA response  
Your ref:

Alan Sutherland  
Chief Executive  
Water Industry Commission for Scotland  
First Floor, Moray House  
Forthside Way  
Stirling, FK8 1QZ

Dear Alan

**Central Market Agency Limited**  
**Response to 'Measures in support of the retail market in light of the current pandemic'.  
27<sup>th</sup> December 2020**

We welcome the opportunity to respond to the Commission's letter, dated 13<sup>th</sup> November, '*Measures in support of the retail market in light of the current pandemic*'.

The CMA is a membership organization, our members being Scottish Water and all Licensed Providers. Accession to the Market Code and membership of the CMA are preconditions of being licensed to operate for all market participants. Under Part 2 of the Market Code, the CMA has a duty to provide the facilities, resources and services required for the effective implementation of the Market Code. In carrying out those duties, the CMA is required to '*act independently of the interests of any market participant or group of market participants*', to '*act impartially and show no undue preference in its relationship with market participants*', and to '*co-operate with the Commission in relation to the exercise of the Commission's Licence Compliance Functions*'. In responding to this consultation, our interest lies in supporting the ability of all parties to carry out their activities in accordance with their rights and responsibilities as set out in the Market Code, and in supporting the Commission through the provision of information in relation to the exercise of its functions.

The suspension of pre-payment and the deferral of some wholesale charges have provided a period of welcome relief for Licensed Providers and business customers. We hope that businesses in Scotland have been able to adapt sufficiently during the last 8 months to secure their future. However, we recognise that for many, the nature of their activities is such that unfortunately this will not be possible. As bad debt accumulates, an unintended consequence of the deferral arrangements is that they obscure the scale of the problem for those customers, both individually and in aggregate.

The feedback that we receive from participants suggests that there may be a significant proportion of the customer base that is unable to repay the debt that it has accumulated. There is a risk that this could challenge the viability of some Licensed Providers, and ultimately leave customers facing

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disruption and Scottish Water facing the issue of bad debt. The POLR process has been given significant attention in recent years to ensure that in principle, and in application, it provides the best possible protection for customers and Scottish Water, but inevitably that protection is imperfect, and it would be preferable to avoid failures if possible.

Various communications from the Commission have explained that the development of the Wholesale Charges Deferral Scheme (WCDS) has been shaped by three requirements: – protecting customer interests; ensuring participation in the Market in an orderly manner; and ensuring no detriment to Scottish Water’s core business. These requirements have been drawn from statute, specifically, the Water Industry (Scotland) Act 2002 and the Water Services etc. (Scotland) Act 2005:

*Water Industry (Scotland) Act 2002*

**1 Water Industry Commission for Scotland**

- (1) There is established a body to be known as the Water Industry Commission for Scotland (referred to in this Act as “the Commission”).
- (2) The Commission has the general function of promoting the interests of persons (taken as a whole) whose premises—
  - (a) are connected to the public water supply system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2005 (asp 3)) or both, or
  - (b) might reasonably become connected to either or both of those systems,

relating to the provision to them of water and sewerage services.

*Water Services etc. (Scotland) Act 2005*

**11 Participation of licensed providers**

- (1) The Commission is (so far as is consistent with the exercise of its function under section 1(2) of the 2002 Act) to exercise its functions relating to water services and sewerage services licences for the purposes of securing the participation—
  - (a) in an orderly manner; and
  - (b) in a manner that is not detrimental to the exercise of Scottish Water’s core functions,of water services and sewerage services providers in the provision of water and sewerage services.

This terminology was obviously not devised with the exceptional circumstances created by a pandemic in mind and our particular concern is that the risk of Licensed Providers being unable to recover debt, with knock-on implications for Scottish Water, is now in need of urgent consideration in order to safeguard both the letter and the spirit of the legislation.

It would be extremely helpful in promoting an understanding of the WCDS measures, and to the discussion of next steps, if the Commission explained how it interprets ‘customer interests’; ‘participation an orderly manner’; and ‘no detriment to Scottish Water’s wholesale business’. We believe that the industry would benefit from guidance on various questions of interpretation prompted by the legislation, such as: How are the interests of business customers balanced against those of

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domestic customers? Is avoiding the distressed exit of one or more Licensed Providers a consideration in interpreting 'orderly participation'? What constitutes a 'detriment' to Scottish Water's wholesale business, and is the Commission's reference to 'wholesale business' to be understood differently from the term 'core functions' as it appears in the Act?

The Commission has adopted Ethical Business Regulation, the regulatory approach articulated by Professor Christopher Hodges, for the delivery of the Strategic Review of Charges 2021-27 and as a target for its oversight of the competitive retail market for business customers. The CMA welcomes the Commission's commitment to apply the principles set out by Professor Hodges. Hodges' report to the Department for Business Innovation & Skills states: *'It is important that regulators and businesses collaborate, rather than having an adversarial and distanced relationship, and that such collaboration is transparent to outsiders, who can see that lessons are constantly being learned.'* We believe that to promote the best outcomes for customers and the Market, Licensed Providers should now be included alongside Scottish Water in this collaborative framework. The Technical Panel and the Market Participant Forum provide one existing vehicle which could be used to foster and facilitate a regulatory system based on collaboration, for example, by early trailing of ideas and collaborative development of changes to Market rules.

We also support the Commission's decisions to arrange a workshop in December 2020 to discuss the issues included in the letter of the 13<sup>th</sup> and to set up an industry-wide group to discuss next steps in January 2021. We would welcome the development of this approach into regular structured communication from the Commission, providing a forum for the Commission to set out its vision for the Market in the medium term.

We look forward to working with the Commission to ensure that the next steps are implemented to secure the effective functioning of the Market and the interests of customers. We are fully committed to delivering Commission changes to the Market infrastructure in a timely and effective manner.

Yours sincerely

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