

## **INITIAL UNDERTAKINGS**

### **COMPLETED ACQUISITION BY INTERSERVE PLC OF THE FACILITIES MANAGEMENT BUSINESS OF RENTOKIL INITIAL PLC**

### **UNDERTAKINGS GIVEN BY INTERSERVE PLC TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 71 OF THE ENTERPRISE ACT 2002**

Pursuant to section 71 of the Enterprise Act 2002, for the purpose of preventing pre-emptive action, Interserve plc hereby gives to the OFT the following undertakings (the "undertakings") in respect of the acquisition by Interserve plc ("Interserve") of the facilities management business of Rentokil Initial plc ("Initial Facilities").

#### **Management of the parties' respective businesses until determination of proceedings**

1. Except with the prior written consent of the OFT, Interserve undertakes that it will not during the specified period take any action which might:

- (a) lead to the integration of the Interserve business with all or any part of the Initial Facilities business;
- (b) transfer the ownership or control of the Interserve business or the Initial Facilities business;
- (c) otherwise impair the ability of the Interserve business or the Initial Facilities business to compete independently in any markets affected by the acquisition; or
- (d) otherwise prejudice any reference to the CC or impede the taking of any action under the Act which may be justified by the CC's decisions on any such reference.

2. Without prejudice to the generality of paragraph 1, except with the prior written consent of the OFT, Interserve will at all times during the specified period, procure that:

- (a) the Initial Facilities business is carried on separately and under a separate brand identity from the Interserve business and separate sales of the Initial Facilities business are maintained;
- (b) the Initial Facilities business and the Interserve business are each maintained as a going concern and sufficient resources are made available for the development of the Initial Facilities business and the Interserve business on the basis of their respective pre-merger plans;
- (c) no substantive changes are made to key staff or to the organisational structure of, or the management responsibilities within the Initial Facilities business or the Interserve business;

(d) in relation to the assets of each of the Initial Facilities business and the Interserve business, and otherwise than in the ordinary course of business:

(i) the assets are maintained and preserved, including facilities and goodwill;

(ii) none of the assets is disposed of; and

(iii) no interest in the assets is created or disposed of;

(e) the nature, description, range and standard of goods and/or services supplied in the United Kingdom by the Initial Facilities business and the Interserve business at the date of these undertakings are in all material respects maintained and preserved;

(f) there is no integration of the information technology of the Initial Facilities business with the information technology of the Interserve business and the respective software and hardware platforms of the Initial Facilities business and the Interserve business shall remain unchanged, except for routine changes and maintenance;

(g) the customer and supplier lists of each of the Initial Facilities business and the Interserve business shall be operated and updated separately and any negotiations with the customers and suppliers in relation to the Initial Facilities business will be carried out by the Initial Facilities business alone and for the avoidance of doubt Interserve will not negotiate on behalf of Initial Facilities or enter into any joint agreements with Initial Facilities;

(h) all existing contracts continue to be serviced by the business to which they were awarded;

(i) all reasonable steps are taken to encourage all key staff of the Initial Facilities business and the Interserve business to remain with the business in relation to which they were employed prior to the merger;

(j) no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the Initial Facilities business or the Interserve business ("Confidential Information") shall pass, directly or indirectly from the Initial Facilities business (or any of its employees, directors, agents or affiliates) to the Interserve business (or any of its employees, directors, agents or affiliates) or vice versa, except:

(i) where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed other than as may be required for the purposes of regulatory compliance under applicable law; and

(ii) the flow of Confidential Information from the Initial Facilities business (or any of its employees, directors, agents or affiliates) to the Interserve business (or any of its employees, directors, agents or affiliates) is permitted to the extent that such

disclosure of information is strictly necessary for compliance with external regulatory and/or accounting obligations.

## **Compliance**

3. Interserve shall procure that each of its subsidiaries complies with these undertakings as if it had given them.

4. Interserve shall forthwith provide to the OFT such information as the OFT may from time to time require for the purposes of monitoring compliance by Interserve and its subsidiaries with these undertakings. In particular, on the 9 April 2014 and subsequently every 10 working days thereafter (save where the obligation does not fall on a working day, in which case the first working day thereafter), a director or the company secretary of Interserve shall provide a statement to the OFT on behalf of Interserve confirming compliance with these undertakings in the form set out in the Appendix to these undertakings.

5. At all times, Interserve will actively keep the OFT informed of any material developments relating to the Initial Facilities business, which includes, but is not limited to:

(a) details of key staff who leave or join the Initial Facilities business or the Interserve business;

(b) any Initial Facilities business or Interserve business plant breakdowns which have halted production for more than 24 hours or changes outside the ordinary course of business in the Initial Facilities business' or Interserve business' production arrangements which have affected the working pattern of more than five Initial Facilities business or Interserve business employees;

(c) all substantial customer volumes won or lost by the Initial Facilities business or the Interserve business including any substantial changes in customers' demand; and

(d) substantial changes in the Initial Facilities business' or Interserve business' contractual arrangements or relationships with key suppliers.

6. Interserve shall comply with such written directions as the OFT may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

## **Interpretation**

7. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

8. For the purposes of these undertakings:

**“the Act”** means the Enterprise Act 2002;

**“an affiliate”** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

**“business”** has the meaning given by section 129(1) and (3) of the Act;

**“the CC”** means the Competition Commission;

**“control”** shall be construed in accordance with section 26 of the Act and in the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**“the decisions”** means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

**“Initial Facilities”** means the facilities management business of Rentokil Initial plc acquired by Interserve;

**“the Initial Facilities business”** means the business of Initial Facilities and its subsidiaries carried on in the UK as from 18 March 2014;

**“Interserve”** means Interserve plc;

**“the Interserve business”** means the facilities management business of Interserve and its subsidiaries carried on as from 18 March 2014;

**“key staff”** means staff in positions of executive or managerial responsibility and/or whose performance could materially affect the viability of the business;

**“the merger”** means the creation of the relevant merger situation between the Interserve business and the Initial Facilities business;

**“the OFT”** means the Office of Fair Trading, provided that, should the CC adopt these undertakings pursuant to section 80(3) of the Act, references to “the OFT” in paragraphs 1 and 2 of these undertakings shall be taken as references to the CC, and references to “the OFT” in paragraphs 4, 5 and 6 of these undertakings shall be taken to include both the Office of Fair Trading and the CC;

**“the ordinary course of business”** means matters connected to the day to day supply of goods and/or services by Initial Facilities or Interserve and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Initial Facilities or Interserve;

**“the specified period”** means the period beginning on the date of these undertakings and terminating either at the end of the period specified in section 71(5) or (6) of the

Act or, should the CC adopt these undertakings pursuant to section 80(3) of the Act, the end of the period specified in section 80(7) or (8) of the Act;

“**subsidiary**”, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006; and

“**working day**” mean any day of the week other than a Saturday, Sunday or any other day that is a public holiday in England.

In these undertakings unless the context requires otherwise, the singular shall include the plural and vice versa.