

ACQUISITION BY PENNON GROUP PLC OF SEMBCORP BOURNEMOUTH WATER INVESTMENTS LIMITED

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that Pennon Group Plc and Sembcorp Bournemouth Water Investments Limited (**Bournemouth Water**) have ceased to be distinct (the **transaction**);
- (b) the CMA is considering, pursuant to section 32(b) of the Water Industry Act 1991 (**WIA91**), whether it is or may be the case that a merger of two or more water enterprises has taken place;
- (c) the CMA is further considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (UK);
- (d) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 32(b) of the WIA91 and/or section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference;
- (e) Part 3 of the Act (subject to modifications), including the CMA's power to make an initial enforcement order under section 72(2) of the Act, applies to mergers between water enterprises and references under section 32 of the WIA91 pursuant to regulation 2 of the Water Mergers (Modification of Enactments) Regulations 2004 (SI 2004/3202, as amended); and
- (f) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Pennon Group Plc (**Pennon**) (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 17 April 2015.
2. This Order applies to Pennon.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Pennon to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Pennon and Bournemouth Water businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Pennon shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 32(b) of the WIA91 and/or under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Bournemouth Water business with the Pennon business;
 - (b) transfer the ownership or control of the Pennon business or the Bournemouth Water business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Bournemouth Water business or the Pennon business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Pennon shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Bournemouth Water business is carried on separately from the Pennon business and the Bournemouth Water business's separate sales or brand identity is maintained;
 - (b) the Bournemouth Water business and the Pennon business are maintained as a going concern and sufficient resources are made

available for the development of the Bournemouth Water business and the Pennon business, on the basis of their respective pre-merger business plans;

- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Bournemouth Water business or the Pennon business;
- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Bournemouth Water business and the Pennon business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Bournemouth Water business or the Pennon business are disposed of; and
 - (iii) no interest in the assets of the Bournemouth Water business or the Pennon business is created or disposed of;
- (f) there is no integration of the information technology of the Bournemouth Water or Pennon businesses, and the software and hardware platforms of the Bournemouth Water business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Bournemouth Water business will be carried out by the Bournemouth Water business alone and for the avoidance of doubt the Pennon business will not negotiate on behalf of the Bournemouth Water business (and vice versa) or enter into any joint agreements with the Bournemouth Water business (and vice versa);
- (h) all existing contracts of the Bournemouth Water business and the Pennon business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Bournemouth Water business or Pennon business;

- (j) no key staff are transferred between the Bournemouth Water business and the Pennon business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Bournemouth Water business and the Pennon business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Bournemouth Water business (or any of its employees, directors, agents or affiliates) to the Pennon business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

6. Pennon shall procure that each of its subsidiaries complies with this Order as if the Order had been issued to each of them.
7. Pennon shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Pennon and its subsidiaries with this Order. In particular, on 1 May 2015 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Pennon or other persons of Pennon as agreed with the CMA shall, on behalf of Pennon, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. At all times, Pennon shall, or shall procure that Bournemouth Water shall, actively keep the CMA informed of any material developments relating to the Bournemouth Water business or the Pennon business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Bournemouth Water business or the Pennon business;
 - (b) any interruption of the Bournemouth Water or Pennon business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

- (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Bournemouth Water or Pennon business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Bournemouth Water or Pennon business's contractual arrangements or relationships with key suppliers.
9. If Pennon has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Pennon may be directed to appoint under paragraph 10.
10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
11. Pennon shall comply in so far as it is able with such directions as the CMA 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 this Order.

Interpretation

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
13. For the purposes of this Order:

'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 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;

'Bournemouth Water' means Sembcorp Bournemouth Water Investments Limited;

'the Bournemouth Water business' means the business of Sembcorp Bournemouth Water Investments Limited and its subsidiaries carried on as at the commencement date;

'commencement date' means 17 April 2015;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by Bournemouth Water or Pennon and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Bournemouth Water and Pennon;

'Pennon' means Pennon Group Plc;

'the Pennon business' means the business of Pennon and its subsidiaries carried on as at the commencement date;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which Pennon and Bournemouth Water have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Pennon business and the Bournemouth Water business; and

'WIA91' means the Water Industry Act 1991;

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

Nelson Jung
Director, Mergers

Compliance statement for Pennon

I [insert name] confirm on behalf of Pennon that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Pennon has complied with the Order made by the CMA in relation to the transaction on 17 April 2015 (the **Order**).
 - (b) Pennon's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Pennon that might prejudice a reference of the transaction under section 32(b) of the WIA91 and/or section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Bournemouth Water business with the Pennon business;
 - (ii) transfer the ownership or control of the Pennon business or the Bournemouth Water business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Bournemouth Water business or the Pennon business to compete independently in any of the markets affected by the transaction.
 - (b) The Bournemouth Water business has been carried on separately from the Pennon business and the Bournemouth Water business's separate sales or brand identity has been maintained.
 - (c) The Bournemouth Water business and the Pennon business have been maintained as a going concern and sufficient resources have been made available for the development of the Bournemouth Water business and the Pennon business, on the basis of their respective pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Bournemouth Water

business or the Pennon business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Bournemouth Water business and the Pennon business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Bournemouth Water business and the Pennon business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Bournemouth Water business or the Pennon business have been disposed of; and
 - (iii) no interest in the assets of the Bournemouth Water business or the Pennon business has been created or disposed of.
- (g) There has been no integration of the information technology of the Bournemouth Water or Pennon businesses, and the software and hardware platforms of the Bournemouth Water business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Bournemouth Water business have been carried out by the Bournemouth Water business alone and, for the avoidance of doubt, the Pennon business has not negotiated on behalf of the Bournemouth Water business (and vice versa) or entered into any joint agreements with the Bournemouth Water business (and vice versa).
- (i) All existing contracts of the Bournemouth Water business and the Pennon business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Bournemouth Water business or the Pennon business.
- (k) No key staff have been transferred between the Bournemouth Water business and the Pennon business.

- (l) All reasonable steps have been taken to encourage all key staff to remain with the Bournemouth Water business and the Pennon business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Bournemouth Water business (or any of its employees, directors, agents or affiliates) to the Pennon business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the Bournemouth Water business or the Pennon business;
 - (ii) interruptions of the Bournemouth Water business or the Pennon business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Bournemouth Water business or the Pennon business; or
 - (iv) substantial changes in the Bournemouth Water or Pennon business's contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. Pennon and its subsidiaries remain in full compliance with the Order and will, or will procure that Bournemouth Water, continue actively to keep the CMA informed of any material developments relating to the Bournemouth Water or the Pennon business in accordance with paragraph 8 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF PENNON GROUP PLC

Signature

Name

Title

Date