

DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

Dear [✂]

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 15 June 2021 (IEO)

Completed acquisition by Pennon Group plc of Bristol Water Holdings UK Limited (the Acquisition)

We refer to your submissions dated 18 June and 4 July 2021 requesting that the CMA consents to derogations to the Initial Enforcement Order of 15 June 2021 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Pennon Group plc (**Pennon**) and its subsidiaries is required to hold separate the Pennon business from the business of Bristol Water Holdings UK Limited (**BWHUK**) and its subsidiaries, including Bristol Water plc (**Bristol Water**) and the joint ventures involving Bristol Wessex Billing Services Limited and Water 2 Business Limited. Pennon must refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Pennon and the Bristol Water business may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(a) and 5(l) of the Initial Order - to permit Pennon to exercise its rights as majority shareholder of Bristol Water in relation to reserved matters

As the ultimate majority shareholder of Bristol Water, Pennon needs to exercise financial oversight over Bristol Water such that it is maintained as a going concern and there are also matters reserved for the Bristol Water Board that require shareholder oversight and approval. A list of all matters reserved for the Bristol Water Board can be found on Bristol Water's website and the items reserved for shareholders are marked. Pennon requests a derogation of the IEO for Pennon to exercise such rights reserved to it as majority shareholder.

The CMA consents to the derogation of 5(a) and 5(l) of the Initial Order to permit [REDACTED] (Non-Executive Director of Pennon) to receive information to enable him to exercise such majority shareholder rights on behalf of Pennon.

The CMA grants this derogation strictly on the basis set forth at paragraph 4 below and on the basis that:

- (i) the information that is provided will not be more than strictly necessary to allow him to exercise such rights on behalf of Pennon;
- (ii) Pennon will notify the CMA of any requests made by Bristol Water and will be provided with a summary of the information shared with Pennon; and
- (iii) the derogation from 5(a) of the Initial Order will not apply to any veto or other exercise of majority voting rights by Pennon, unless it has received the prior written approval of the CMA.

2. Paragraphs 5(l) of the Initial Order - to permit the sharing of certain financial information during the IEO period to enable Pennon to ensure compliance with [REDACTED]

The consideration for the Acquisition was subject to post-completion adjustment for [REDACTED]. As such, there needs to be liaison between Pennon and the Bristol Water business to allow checks to be made to identify whether any [REDACTED] has occurred and, if it has, to be able to make corresponding claims [REDACTED]. It is necessary for Pennon to be able to identify potential [REDACTED] claims during the IEO period.

The CMA consents to the derogation of paragraph 5(l) of the Initial Order to permit the Bristol Water business to provide the following categories of information to Pennon:

- (i) details of any [REDACTED] which has occurred since 31 March 2020;
- (ii) details of whether any [REDACTED] falls within the categories of [REDACTED] as set out in [REDACTED];
- (iii) details of any agreement that has been made that will result in any [REDACTED] or [REDACTED]; and
- (iv) details of any amounts in respect of [REDACTED] available.

The CMA grants this derogation strictly on the basis set forth at paragraph 4 below and on the basis that the information provided by Bristol Water under this derogation will be limited to [REDACTED] (Group Financial Controller) who is responsible for ensuring Pennon's compliance with the financial aspects of the [REDACTED] or any other individual pre-approved by the CMA.

3. Paragraphs 5(l) of the Initial Order - to permit Pennon to monitor [REDACTED] claims under the [REDACTED] during the IEO period

There are certain [REDACTED] governing the Acquisition that will require continued liaison and information exchanges between the Pennon and Bristol Water businesses in order to monitor situations that may give rise to any such claims and the subsequent making of such claims. Pennon requests that the CMA grants a derogation to allow [REDACTED] (Pennon Group General Counsel & Company Secretary) to liaise and exchange commercially sensitive

information between Pennon and the Bristol Water business strictly for the purpose of monitoring [X].

The CMA consents to the derogation of paragraph 5(l) of the Initial Order to permit Pennon to monitor [X] during the IEO period. The CMA grants this derogation strictly on the basis set forth at paragraph 4 below and on the basis that the information provided by Bristol Water under this derogation will be limited to [X] or any other individual pre-approved by the CMA.

4. The CMA grants derogations 1, 2 and 3 above strictly on the following basis:

- a) The recipient of information identified in the derogation will sign a confidentiality undertaking approved by the CMA.
- b) The information provided to a recipient under a derogation will not be shared or made available to other individuals in the Pennon business except where strictly necessary for the purpose of the derogation or where pre-approved by the CMA.
- c) The information provided under a derogation will be limited to and will be used only for the purpose stated in the derogation.
- d) Any information received shall be maintained securely and with access restricted in accordance with Pennon's internal assurance protocols and the CMA's Guidance.
- e) Should the Acquisition be prohibited, Pennon will ensure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Bristol Water business for the purposes of the specific derogation will be returned to the respective Bristol Water business and any copies destroyed, except to the extent that record retention is required by law or regulation.
- f) The derogations granted herein shall not prevent any remedial action the CMA may need to take regarding the Acquisition.
- g) The derogations will not result in any integration between the Pennon and Bristol Water businesses.

Faye Fullalove
Assistant Director, Mergers

21 July 2021