

Completed acquisition by Pennon Group plc of Bristol Water Holdings UK Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6946/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 5 November 2021. Full text of the decision published on 11 March 2022.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. On 3 June 2021, Pennon Group plc (**Pennon**) acquired the entire share capital of Bristol Water Holdings UK Limited (**BWHUK**) and its subsidiaries (the **Merger**). Pennon and BWHUK are together referred to as the **Parties** or, for statements referring to the future, the **Merged Entity**.
2. Pennon and BWHUK are water utility companies and each serve water and sewerage services to both household and non-household customers (**NHH customers**) in England and Wales, and Scotland. The supply of water and sewerage services to household customers is a regulated market which in England and Wales is characterised by regional suppliers who hold regional monopolies within set sub-national regions. The household market is regulated by Ofwat and this aspect of the Merger is subject to a separate review process conducted by the Competition and Markets Authority (**CMA**) pursuant to the provisions of the Water Industry Act 1991 (**WIA91**). The CMA will take a separate decision in relation to its duties under the WIA91.
3. The market for the provision of retail water and sewerage services to NHH customers was opened to competition on 1 April 2017. As such, any mergers involving companies active in this market are subject to the merger control provisions of the Enterprise Act 2002 (the **Act**). The following decision

concerns only the parts of the Merger which warrant review under the provisions of the Act.

4. The Parties overlap in the supply of retail water and sewerage services to non-household customers.¹ The CMA considered whether, as a result of horizontal unilateral effects, the Merger may give rise to a substantial lessening of competition (**SLC**) in the markets for the supply of retail water and sewerage services to NHH customers in both England and Wales and (separately) Scotland. In each geographic market, the CMA found that the Parties would possess a low combined market share and that a number of remaining competitors will continue to constrain the Merged Entity. The CMA found no evidence to suggest that the Parties are particularly close competitors. The vast majority of third parties which engaged with the CMA were either neutral or positive in their views towards the Merger.
5. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties and transaction

7. Pennon is a water utility company listed on the London Stock Exchange.² Pennon is active in the supply of water and sewerage services to household and NHH customers.³ Pennon supplies customers through two entities, namely:
 - (a) South West Water Limited (**SWW**), a water and sewerage undertaker regulated by Ofwat under the WIA91 that is wholly owned by Pennon and principally supplies household customers; and

¹ Retail water and sewerage services includes the provision of water supply and the removal of wastewater. Suppliers to NHH customers will purchase wholesale services from regional wholesalers and package the supply of water and/or removal of wastewater together with other services and sell a package to prospective customers. In addition to the physical water supply and removal, other services that suppliers typically offer include billing and metering services, water efficiency and water quality testing, consultancy and technical support, new connections, consolidated billing, and multi-utility offerings. See [State of the market report 2017-18 \(ofwat.gov.uk\)](#)

² Final Merger Notice submitted by the Parties to the CMA on 16 September (**FMN**), paragraph 25 and 26.

³ NHH customers include businesses, charities, and public sector organisations.

- (b) Pennon Water Services Limited (**PWS**), a joint venture with South Staffordshire plc of which Pennon has an 80% stake. PWS principally supplies retail services to NHH customers.
8. BWHUK is a water utility company and is also active in the supply of water and sewerage services to household customers NHH customers.¹ The core entities of BWHUK are:
- (a) Bristol Water plc (**Bristol Water**), a wholly-owned subsidiary that provides water services to the City of Bristol and surrounding areas as a water undertaker;
- (b) Water 2 Business Limited (**W2B**), a joint venture with Wessex Water Limited which is a retailer in the NHH market. BWHUK has a 30% stake in W2B;
- (c) Bristol Wessex Billing Services Limited (trading as **Pelican**), a joint venture with Wessex Water which provides billing services to each of its parent companies; and
- (d) Searchlight Collections Limited (**Searchlight**), a wholly-owned subsidiary of Pelican, which provides debt collection services to Bristol Water and Wessex Water.⁴
9. The Parties' subsidiaries PWS and W2B are the entities involved in the supply of retail water and sewerage services to NHH customers in both England and Wales, and Scotland. Pursuant to a Sale and Purchase Agreement dated 3 June 2021, Pennon acquired the entire share capital of BWHUK and its subsidiaries (including its stake in W2B).⁵

Jurisdiction

10. A relevant merger situation exists where two or more enterprises have ceased to be distinct, and either the turnover of the target in the UK exceeds £70 million (the **turnover test**) or the merger results in a combined share of supply or acquisition of goods or services of any description of 25% or more.⁶
11. Each of Pennon and BWHUK is an enterprise. As a result of the Merger, Pennon and BWHUK have ceased to be distinct.

⁴ FMN, paragraph 27.

⁵ FMN, paragraph 23.

⁶ Section 33(1)(a) and section 23 of the Act.

12. BWHUK's turnover in the year ending 31 March 2020 was £125.5 million. As such, the turnover test set out in Section 23(1)(b) of the Act is satisfied.
13. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
14. The Merger completed on 3 June 2021. The initial period for consideration of the Merger as defined in section 34ZA(3) of the Act started on 17 September and the statutory 40 working day deadline for a decision is therefore 12 November 2021.

Counterfactual

15. The CMA assesses the prospects for competition with the merger against the competitive situation without the merger (ie the counterfactual).⁷ For completed mergers, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger.
16. The Parties also submitted that the Merger should be assessed against the pre-Merger conditions of competition. The CMA did not receive evidence which supported a different counterfactual. Therefore, the CMA considers the pre-Merger conditions of competition to be the relevant counterfactual.

Background

17. Retail water and sewerage services to NHH customers comprise the supply of water and removal of wastewater. Typical services also include meter reading, billing, and payment collection from customers.

Water and sewage sector in England and Wales

18. On 1 April 2017 the market for retail water and sewerage services to NHH customers in England and Wales was opened to competition (**Market Opening**).⁸ The Market Opening provided an estimated 1.2 million eligible businesses, non-profit, and public sector organisations in England,⁹ with the option to select their water and sewerage retailer. Any business who holds a

⁷ [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#) (Merger Assessment Guidelines), paragraph 3.1.

⁸ See <https://www.ofwat.gov.uk/regulated-companies/markets/business-retail-market/>

⁹ In Wales, the Market Opening only applies to NHH customers that use more than 50ML of water per year. This threshold has been removed for licensees that use the water supply system of an appointee whose area is wholly in England, but continues to apply in respect of licensees that use the water supply system of an appointee whose area is wholly or mainly in Wales. In addition, there is no retail sewerage market in Wales. These features of supply in Wales mean that competition for NHH services is more limited. The CMA has nonetheless taken Welsh data into account in its competitive assessment, including carrying out separate regional analyses for Wales.

water and sewerage supply licence (**WSSL**) is able to competitively tender for and supply retail water and sewerage services to eligible NHH customers in any supply area within England and Wales. There are currently around 40 retail companies that hold WSSLs and are actively supplying retail water and/or sewerage services to NHH customers in England.¹⁰

19. Eligible customers may also choose to act as their own retailer by obtaining a self-supply license. Such customers continue to receive water and wastewater services from the wholesaler in their region but have the opportunity to provide their own retail services rather than paying a retailer a margin over the wholesale price.
20. Ofwat regulates default tariffs, which constrain retail prices charged to customers who do not switch to a new retailer, or who are transferred to a licensee as a result of 'retail exit'. The default tariffs limit the average revenue that can be recovered by suppliers for specific customer types. Customers are free to accept prices above this if they wish (eg for value added services).

Water and sewage sector in Scotland

21. The NHH retail sector in Scotland was opened to competition in 2008. Since the Scottish market opened, businesses, non-profit, and public sector organisations in Scotland may choose from a variety of suppliers.
22. A key difference between the markets in Scotland on one hand, and England and Wales on the other, is that Scottish Water remains the sole monopoly provider of wholesale water and sewerage services in Scotland.¹¹ Scottish Water sells wholesale water and sewerage services to retail water suppliers, who then bundle these services with other value-adding offerings and sell them to customers. Retail suppliers are able to apply for a water services licence, sewerage services licence, or both, to enable them to supply retail services to NHH customers.
23. There are currently 25 companies licensed to supply services in Scotland and all have a licence to provide both water and sewerage retail services.¹²

Frame of reference

Product scope

¹⁰ The full list of licensees can be found on Ofwat's website. See [Licences and licensees - Ofwat](#)

¹¹ See <https://www.scotlandontap.gov.uk/>

¹² The full list of licensees can be found on the [website of the Water Industry Commission Scotland](#), the relevant authority for Scotland.

24. As noted above, the Parties' subsidiaries PWS and W2B are involved in the supply of retail water and sewerage services to NHH customers in both England and Wales, and Scotland. As a result of the Merger, Pennon will acquire BWHUK's interest in W2B.¹³
25. Accordingly, the Parties overlap in the supply of retail water and sewerage services to NHH customers. The CMA has previously assessed supply of these services in *Severn Trent/United Utilities*,¹⁴ *Pennon/South Staffordshire*,¹⁵ and *Anglian/Northumbrian*.¹⁶
26. In each of the above cases the CMA considered whether water and sewerage retail services should be considered together or separately. The CMA found:
- (a) a clear customer preference to purchase their water and sewerage services from the same retailer;¹⁷
 - (b) that all WSSLs issued ahead of market opening were for a water licence and sewerage licence to the same company;¹⁸
 - (c) that the incremental costs of providing retail sewerage services for a company already providing retail water services was relatively low; and¹⁹
 - (d) that a large majority (around 95%) of customers who switched suppliers after Market Opening source both water services and sewerage services from the same supplier (instead of sourcing these services separately from different suppliers).²⁰
27. The Parties submitted that they agreed with the CMA's past decisional practice and that, in this case, the CMA should also treat the provision of retail water and sewerage services as a single product market.²¹
28. The CMA has received no evidence to suggest a different approach may be warranted in this case. In particular, third parties generally supported the view that retail water and sewerage services form a single product market.

¹³ The CMA has conservatively considered that this interest amounts to 'material influence' over W2B. However, as set out below, no competition concerns arise on this basis.

¹⁴ [ME/6575/15, Anticipated non-household retail water and sewerage services joint venture between Severn Trent Plc and United Utilities Group Plc \(*Severn Trent/United Utilities*\)](#).

¹⁵ [ME/6657/16, Anticipated joint venture for non-household retail water and sewerage services between Pennon Group Plc and South Staffordshire Plc \(*Pennon/South Staffordshire*\)](#).

¹⁶ [ME/6692/17, Anticipated Joint Venture between Anglian Water Group Ltd and Northumbrian Water Group Ltd \(*Anglian/Northumbrian*\)](#).

¹⁷ *Severn Trent/United Utilities*, paragraph 86; *Pennon/South Staffordshire*, paragraph 56; and *Anglian/Northumbrian*, paragraph 47.

¹⁸ *Pennon/South Staffordshire*, paragraph 56.

¹⁹ *Pennon/South Staffordshire*, paragraph 56.

²⁰ *Anglian/Northumbrian*, paragraph 47.

²¹ FMN, paragraphs 72-79.

Customer segmentation

29. In *Severn Trent/United Utilities, Pennon/South Staffordshire*, and *Anglian/Northumbrian*, the CMA also considered whether the supply of NHH retail water and sewerage services should be segmented according to different customer types.
30. The CMA distinguished between the following customer segments in *Severn Trent/United Utilities*:
 - (a) small and medium-sized enterprises (SMEs) – customers with water usage of less than 5ML per annum and fewer than 25 sites;
 - (b) large users – customers with water usage of at least 5ML per annum and fewer than 25 sites; and
 - (c) multi-site users – customers with 25 or more sites.
31. The CMA made similar distinctions in *Anglian/Northumbrian*²² and *Castle Water/Invicta Water*²³.
32. In *Pennon/South Staffordshire*, the CMA additionally noted that ‘there is a continuum of customers in terms of their size and there is no precise way to distinguish different segments of larger or smaller customers’ and, on this basis, did not define customer segments.²⁴ However, the CMA did take account of customer segmentation in its competitive assessment and considered whether there were differences in the impact of the merger on customers of different sizes.²⁵
33. The Parties noted that they agreed with the approach taken in *Pennon/South Staffordshire* and submitted that the CMA should follow this approach in assessing the Merger. The Parties noted that there is limited difference in the services provided to different sizes of customers. The Parties further noted that while large and multi-site customers are likely to be allocated an account manager to oversee more complex tariff arrangements or more frequent interactions, the services provided to all customers are the same (ie meter readings; applying wholesale and retail rates to calculate and issue a bill; collecting revenues and managing debt interactions; raising any issues with

²² *Anglian/Northumbrian*, paragraphs 51-58.

²³ *ME/6757/18, Completed acquisition by Castle Water Holdings Limited of Invicta Water Limited Castle Water / Invicta Water (Castle Water/Invicta Water)*, paragraphs 37-45.

²⁴ *Pennon/South Staffordshire*, paragraph 62.

²⁵ *Pennon/South Staffordshire*, paragraph 63.

the relevant wholesaler in the customer region; and providing a range of services covering water efficiency).

34. The evidence received from third parties suggested that there are differences between customer types. For example, Market Operator Services Limited (MOSL)²⁶ identifies nine customer segments according to their water usage and whether they are trade effluent (ie whether they discharge liquid waste into public foul water sewers). In addition, a recent Ofwat report suggests that larger customers have higher switching rates.²⁷
35. In light of the above evidence the CMA has followed the approach taken in *Pennon/South Staffordshire* and considered customer segments by customer size in its competitive assessment.

Conclusion on product frame of reference

36. The CMA has assessed the impact of the Merger on the supply of retail water and sewerage services to NHH customers. While the CMA has not concluded on customer segmentation within the frame of reference, the CMA has nonetheless taken customer size into account in its competitive assessment.

Geographic scope

Parties' views

37. The Parties submitted that the appropriate geographic markets are England and Wales and, separately, Scotland. The Parties submitted that this is supported by:
 - (a) the CMA's approach in *Severn Trent/United Utilities*; and²⁸
 - (b) the CMA's conclusions in *Anglian/Northumbrian* and *Castle Water/Invicta Water*, where the CMA considered the potential for regional markets where 'incumbency overlaps' exist.²⁹
38. The Parties also submitted that retailers are not confined by geographical boundaries in the same way regulated water companies are for wholesale supply.³⁰ As regards incumbency, Pennon submitted that there is no

²⁶ MOSL was set up to enable smooth transactions between wholesalers and retailers, and facilitate entry and switching between suppliers. Additionally, MOSL administers the Market Performance Framework (MPF), which ensures that the market is operating effectively and that trading parties are complying with their obligations.

²⁷ Ofwat (2020), [State of the market 2019-20](#), page 7; and Ofwat (2019), [State of the market 2018-19: reviewing the second year of the business retail water market](#), page 49.

²⁸ *Severn Trent/United Utilities*, paragraphs 121-122.

²⁹ *Anglian/Northumbrian*, paragraphs 73-74. *Castle Water/Invicta Water*, paragraph 48.

³⁰ FMN, paragraph 82.

advantage for an ‘in-area NHH retailer’ in its ‘home region’, ie the sub-national region where an NHH retailer may have inherited the existing customer base of the previous regional retail monopoly, typically where the NHH retailer is part of a corporate group that includes the former regulated monopoly holder. NHH suppliers may also have acquired the NHH business (and customer list) of previous monopolists. They are then likely to have a significant market share in these ‘home regions’ given that many customers do not switch suppliers, as explained below.³¹

39. The Parties further submitted that both PWS and W2B have customers in all the wholesaler areas in England & Wales as well as Scotland, and therefore consider themselves to be national NHH retailers.³²
40. Finally, the Parties submitted that a national market is further supported by Ofwat's findings which note that ‘in-area NHH retailers’ continue, in net terms, to lose customers in their ‘home region’, while new entrants continue to acquire customers.³³

CMA assessment

41. Ofwat informed the CMA that the [X]. For instance, [X], which is headquartered in Scotland, has expanded their NHH customer base—principally through acquisitions—and now services many businesses in [X] England.³⁴
42. Third-parties also generally told the CMA that they compete on a national basis.³⁵ For example, Business Stream told the CMA that it is active across all regional areas of the market and said that legacy incumbent suppliers typically have higher shares within their regions.³⁶ [X] also noted that it is active in multiple [X] wholesale areas of England and Wales, as well as Scotland. [X] also noted that the majority of its customers are part of national contracts.³⁷
43. The CMA also contacted NHH customers who told the CMA that geographic location is not a very important factor because on-site person support is not required.³⁸

³¹ FMN, paragraph 83.

³² FMN, paragraph 82.

³³ FMN, paragraph 83. See also https://www.ofwat.gov.uk/wp-content/uploads/2020/08/State-of-the-market-2019_20.pdf, page 14.

³⁴ See note of call with [X].

³⁵ [X] competitors told the CMA that they supply nationally, while [X].

³⁶ See note of call with [X].

³⁷ See note of call with [X].

³⁸ See note of call with [X].

Conclusion on geographic frame of reference

44. In light of the above evidence, the CMA has considered the impact of the Merger on a national basis within England and Wales, and Scotland.

Conclusion on frame of reference

45. For the reasons set out above, the CMA has considered the impact of the Merger using the following frames of reference:
- (a) horizontal unilateral effects in the supply of water and sewerage services to NHH customers in England and Wales, and
 - (b) horizontal unilateral effects in the supply of water and sewerage services to NHH customers in Scotland.

Competitive assessment

Horizontal unilateral effects

46. Horizontal unilateral effects can arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.³⁹ After the merger, it is less costly for the merging company to raise prices (or lower quality) because it will recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging company.⁴⁰ Horizontal unilateral effects are more likely when the merging parties are close competitors.⁴¹

The supply of water and sewerage services to NHH customers in England and Wales

47. In assessing whether the Merger could lead to an SLC in relation to the supply of water and sewerage services to NHH customers in England and Wales, the CMA considered:
- (a) shares of supply;
 - (b) closeness of competition between the Parties; and
 - (c) third party views.

³⁹ [Merger Assessment Guidelines](#), from paragraph 4.1.

⁴⁰ [Merger Assessment Guidelines](#), paragraph 4.7.

⁴¹ [Merger Assessment Guidelines](#), paragraph 4.8.

Shares of supply

National shares of supply

48. The CMA often uses shares of supply as a means of assessing the levels of concentration in a particular market.⁴² The CMA considers that given the services offered by the Parties are largely similar and—as explained at paragraph 64—customers’ choices are driven mainly by price, shares of supply are a good starting point for its assessment.
49. The CMA notes that NHH customers each have a Supplier Point Identifier number (SPID). SPID numbers are generated by the Central Market Operating System (CMOS) which is a shared database across the NHH industry where all NHH customers are linked to their suppliers using a SPID number.⁴³ A customer may have multiple SPIDs (eg if it has multiple sites). Consultancy firm Economic Insight states that there are approximately 1.2 million customers in the market with approximately 2.6 million SPIDs.⁴⁴
50. The CMA considered shares of supply on the basis of total number of SPIDs per retailer.⁴⁵ Table 1 contains the Parties estimated shares of supply for 2020/21.

⁴² [Merger Assessment Guidelines](#), paragraph 4.4.

⁴³ Every business premise has a unique SPID to identify the water and/or sewerage supplies at the property. A SPID number indicates where each business’ access to water and/or sewerage is. The SPID number encompasses all of the chargeable data items related to a business premise including full meter details and return to sewer allowance.

⁴⁴ See Economic Insight, Non-Household Water Retail Market Study, April 2021, Final Report, page 11. See <https://www.economic-insight.com/wp-content/uploads/2021/05/NHH-water-retail-market-study-Final-report-30-04-21-stc.pdf>

⁴⁵ The CMA also examined shares of supply based on: (i) customers (ii) water volumes, and (iii) revenues. The Parties’ and competitors’ shares do not materially differ on these alternative bases.

Table 1: Shares of supply of key NHH retailers: England & Wales

Retailer	FY20/21		FY19/20		FY18/19		FY17/18	
	SPIDs	%	SPIDs	%	SPIDs	%	SPIDs	%
PWS	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
W2B	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Combined	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Water Plus	[REDACTED]	[20-30]%	[REDACTED]	[20-30]%	[REDACTED]	[20-30]%	[REDACTED]	[20-30]%
Castle	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Wave	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Business Stream	[REDACTED]	[20-30]%	[REDACTED]	[20-30]%	[REDACTED]	[20-30]%	[REDACTED]	[10-20]%
Other	[REDACTED]	[10-20]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[10-20]%

Total	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%
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Source: FMN, Table 1.

51. The shares of supply in Table 1 show that the Merged Entity would be the fifth largest player in terms of shares of supply based on SPIDs in 2020/21. These shares of supply indicate that the Parties and Merged Entity are behind Water Plus, Castle Water, Wave, and Business Stream.⁴⁶

National shares of supply by customer type

52. The CMA also assessed the Parties' shares of supply by customer size. Table 2 shows shares of supply by customer size, as also considered in *Severn Trent/United Utilities*.⁴⁷

⁴⁶ The CMA compared the Parties' estimated share of supply against data available from Economic Insight. The CMA found that the Parties' data was broadly consistent with that presented by Economic Insight. See <https://www.economic-insight.com/wp-content/uploads/2021/05/NHH-water-retail-market-study-Final-report-30-04-21-stc.pdf>

⁴⁷ SMEs — customers with water usage of less than 5ML per annum and fewer than 25 sites; Large users — customers with water usage of at least 5ML per annum and fewer than 25 sites; and Multi-site users — customers with 25 or more sites.

Table 2: Shares of supply by customer segment (FY20/21): England & Wales

Retailer	SME		Large		Multi-site	
	SPIDs	%	SPIDs	%	SPIDs	%
PWS	[X]	[5-10]%	[X]	[5-10]%	[X]	[5-10]%
W2B	[X]	[5-10]%	[X]	[5-10]%	[X]	[5-10]%
Combined	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
Water Plus	[X]	[20-30]%	[X]	[20-30]%	[X]	[20-30]%
Castle Water	[X]	[20-30]%	[X]	[20-30]%	[X]	[10-20]%
Wave	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
Business Stream	[X]	[5-10]%	[X]	[5-10]%	[X]	[10-20]%
Other	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%

Source: FMN, Table 2 and Response to RFI 1, Table 2.

53. The CMA found that in some customer segments some of the Parties' competitors' shares of supply decrease substantially. However, the CMA notes that in each customer segment Water Plus, Wave and Castle Water have consistently higher shares of supply than the Parties combined.

Regional shares of supply

54. As part of its investigation, the CMA also reviewed regional share data provided by the Parties, based on wholesale supply regions. These shares are set out in Appendix A. The CMA found that the Parties only possess high shares of supply in the regions where they traditionally held regional monopolies, or have acquired a customer base from those companies.⁴⁸ The CMA also found that, in each of these regions, the other merging party possessed a small share of supply of less than [0-5]%.

55. The CMA has put limited weight into regional shares, due to the incumbency effects of 'in-area NHH retailers'. As explained at paragraph 38, retailers may inherit the significant existing customer bases of previous regional retail monopolies. This, combined with a general lack of customers that actually decide to switch suppliers (as explained at paragraph 65) and inorganic

⁴⁸ For PWS these regions include South Staffordshire, Cambridge, South West, and Bournemouth. For W2B these regions include Bristol and Wessex.

growth by suppliers purchasing customer lists,⁴⁹ means that regional share data may not fully capture competition between suppliers.

56. The CMA considers that an assessment of the switching behaviour of customers that are looking to change supplier (ie the smaller sub-set of customers that NHH retailers actually compete for, see paragraph 65) reflects a more accurate representation of competition than regional share analysis. This switching analysis has been carried out as part of the CMA's closeness of competition assessment, below.

Closeness of competition

57. The CMA looked at the following evidence when considering how closely the Parties compete with one another:

- (a) the Parties' internal documents;
- (b) switching analysis; and
- (c) tender data.

Internal documents

58. The Parties' internal documents suggest that there is a degree of competition between PWS and W2B. For example, a PWS internal document notes [REDACTED].⁵⁰ In addition, the document also noted that [REDACTED].⁵¹ The same document notes [REDACTED].⁵²

Switching analysis

59. The Parties submitted that in 2021, approximately 442,000 NHH customers have switched since Market Opening, or 16.8% of all 2,632,232 NHH customers. Of those 442,000 switchers, approximately 14.7% did so in 2020/2021 alone.⁵³ There are limited barriers to switching, as a result of the Open Water programme established by the UK Government to open the water retail market for businesses, charity and public sector customers in England.⁵⁴

⁴⁹ Some NHH retailers may purchase customer lists from former regional water and sewerage NHH monopoly holders.

⁵⁰ FMN, Annex 8.4_PWS Strategic Review 21-22, Pennon Water Services Strategic Review, page 23

⁵¹ FMN, Annex 8.4_PWS Strategic Review 21-22, Pennon Water Services Strategic Review, page 23

⁵² FMN, Annex 8.4_PWS Strategic Review 21-22, Pennon Water Services Strategic Review, page 23

⁵³ Total switching customers and switching customers in 2020/2021 (based on SPIDs) estimated by the Parties in FMN, paragraph 134. Total of all NHH customers (based on SPIDs) based on estimate by Economic Insight, Non-Household Water Retail Market Study, April 2021, Final Report, page 23.

⁵⁴ The Open Water programme is led by three partner organisations, Ofwat, Defra and MOSL, working with existing water companies across England, Scotland and Wales. See [open water | your water, your choice | about open water \(open-water.org.uk\)](https://open-water.org.uk)

The Open Water programme provides NHH customers and retail suppliers with guidance and information on the markets for retail water and sewerage services. The programme also provides NHH customers with a switching guide and states that switching should ‘take no more than one month to complete’.⁵⁵ The evidence the CMA received supported the finding that there are limited barriers to switching for customers who are engaged in the market. Table 3 sets out the number of switching customers won by the top six retailers in the market.

Table 3: Number of switching SPIDs won by the key retailers in England & Wales

Retailer	FY20/21		FY19/20		FY18/19		FY17/18	
	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
WaterPlus	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Business Stream	[REDACTED]	[10-20]%	[REDACTED]	[20-30]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Castle Water	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Wave	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
PWS	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
W2B	[REDACTED]	[10-20]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%

Source: FMN, Table 8.

60. The Parties [REDACTED]. The exception was in FY20/21 when W2B won [REDACTED] of the total switches in the market. W2B submitted that this [REDACTED].⁵⁶
61. The following two tables show the SPIDs that have switched from the Parties to other competitors, including to the other merging party. The number of switches between the two Parties is not high relative to the number of switches to other competitors. This suggests that the Parties are not particularly close competitors.

Table 4: Switches away from PWS (SPIDs)

Retailer	FY20/21		FY19/20		FY18/19		FY17/18		Total	
	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Business Stream	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Castle Water	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%

⁵⁵ See <https://www.open-water.org.uk/for-customers/how-to-switch/>

⁵⁶ Parties’ response to Question 1 of the CMA’s request for information, dated 5 October 2021.

Everflow	[X]	[30-40]%	[X]	[20-30]%	[X]	[20-30]%	[X]	[10-20]%	[X]	[20-30]%
Other	[X]	[5-10]%	[X]	[20-30]%	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
Water2Business	[X]	[10-20]%	[X]	[10-20]%	[X]	[5-10]%	[X]	[0-5]%	[X]	[5-10]%
Water Plus	[X]	[10-20]%	[X]	[10-20]%	[X]	[20-30]%	[X]	[30-40]%	[X]	[20-30]%
Wave	[X]	[0-5]%	[X]	[5-10]%	[X]	[10-20]%	[X]	[10-20]%	[X]	[5-10]%
Total	[X]	100%	[X]	100%	[X]	100%	[X]	100%	[X]	100%

Source: FMN, table 9.

Table 5: Switches away from W2B (SPIDs)

Retailer	Number of SPIDs	% of total switches away
Everflow	[X]	[20-30]%
Business Stream	[X]	[10-20]%
Castle Water	[X]	[10-20]%
Water Plus	[X]	[5-10]%
PWS	[X]	[5-10]%
Wave	[X]	[5-10]%
Self-Supply	[X]	[5-10]%
Other	[X]	[5-10]%
Total	[X]	100%

Source: FMN, table 11.

62. The CMA also assessed switching data on a customer basis. The data broadly confirms that the Parties' customers switch to other suppliers at a far greater rate than they do to one another. The CMA also considered switching data on a regional basis,⁵⁷ and found no region where the Parties competed more strongly with each than with other third parties.⁵⁸ In particular, in 2020/21, the CMA found that

⁵⁷ Pennon's response to Question 4 of the CMA's section 109 request, dated 27 July 2021, Annex RF11_Q4_Pennon Switching datav0.3 - CMA working file

⁵⁸ In 2020/21, PWS acquired more than 20 SPIDs only in three areas: South Staff – Cambridge, South Staff – South Staffs, Southwest – Bournemouth, Southwest – South West. In these areas, PWS did not acquire particularly more SPIDs from W2B than from other retailers.

- (a) PWS acquired more than [redacted] SPIDs only in four wholesale regions: South Staff – Cambridge, South Staff – South Staffs, Southwest – Bournemouth, and Southwest – South West. These are regions where PWS has a significant share of SPIDs due to the incumbency effect of its position as an ‘in-area NHH retailer’. In these areas, W2B acquired a similar number of SPIDs as other retailers.
- (b) W2B acquired more than [redacted] SPIDs only in three wholesale regions: Bristol and Wessex. These are regions where W2B has a significant share of SPIDs due to the incumbency effect of its position as an ‘in-area NHH retailer’. In these areas, PWS did not acquire particularly more SPIDs than other retailers.⁵⁹
63. The CMA also notes that large customers are able to self-supply. The Parties submitted that after market opening, [5-10]% of switches away from W2B have been a result of customers switching to self-supply. In particular, the Parties [redacted].
64. The CMA found that customers switching choices are largely driven by price. One third party told the CMA that for customers who are engaged with the market, price is the number one factor. This view was supported by customers and competitors who told the CMA that price is typically one of the most important parameters for customers looking to switch suppliers.
65. Economic Insight notes that small customers may not be fully engaging in the market partly because the costs outweigh the benefits. However, Economic Insight also notes that price and non-price protections are currently in place to protect customers because there is low engagement among lower usage customers.⁶⁰ This view was reaffirmed by [redacted]. Therefore, small customers are unlikely to be able to shop around for a significantly better price. Some third parties also raised concerns that small and medium sized customers may not be engaging with the market or benefiting from competition, see paragraphs 70 to 72. For these reasons, the CMA considers that it is likely that many NHH customers will have little engagement with the market and so may not commonly consider switching supplier. Those customers who are engaged and more likely to switch will often be larger customers. This is consistent with views expressed by third parties.

⁵⁹ CMA analysis of Pennon’s response to Question 4 of the CMA’s section 109 request, dated 27 July 2021, Annex RF11_Q4_Pennon Switching datav0.3 - CMA working file

⁶⁰ Economic Insight, Non-Household Water Retail Market Study, April 2021, Final Report, page 11. See <https://www.economic-insight.com/wp-content/uploads/2021/05/NHH-water-retail-market-study-Final-report-30-04-21-stc.pdf>

Tender data

66. The Parties submitted that the markets are characterised by bidding processes. Both Parties gained the vast majority ([90-100]% for PWS, and [X] [90-100]% for W2B) of their sales from customers who tender.⁶¹ Tender contracts are on average [X], including renewals.⁶²
67. The Parties provided data on the top 50 business opportunities they have bid for since April 2017. The data showed that the Parties generally bid for different customers and that they largely target different customers with different tender values. [60-70]% of Pennon's top 50 tender opportunities were for opportunities with a total tender value of over £2 million, while only [30-40]% of W2B's top 50 tender opportunities were for opportunities with a total tender value of over £2 million.⁶³ Overall, the available tender data demonstrates that the Parties competed for approximately [X] of their top fifty tendered business opportunities.⁶⁴

Third party views

68. The CMA invited comments from relevant trade bodies as well as customers and competitors of the Parties. Overall, no third parties expressed transaction-specific concerns about the supply of retail water and sewerage services to NHH customers.
69. Customers and competitors who contacted the CMA noted that the merger was unlikely to impact competition in the market. Customers also indicated that they will have other remaining competitors that they will be able to source these services from.
70. The regulator for the water industry in England and Wales, Ofwat, did not have specific concerns in relation to the Merger.ⁱⁱ Trade bodies [X] and the Consumer Council for Water (CCW) also did not raise competition concerns. [X].⁶⁵
71. While no third parties raised competition concerns in relation to the Merger, a theme which arose from the CMA's third party engagement was that competition may not be working for all customers within the market for retail water and sewerage services to NHH customers. [X].⁶⁶ This view was affirmed by the Consumer Council for Water (CCW), who told the CMA that

⁶¹ Parties response to the Question 7 of CMA's request for information, dated 29 July 2021.

⁶² Parties response to the Question 8 of CMA's request for information, dated 29 July 2021.

⁶³ Parties response to the CMA's request for information, dated 16 September 2021.

⁶⁴ CMA analysis of Parties response to the CMA's request for information, dated 16 September 2021.

⁶⁵ [X] dated 1 October 2021.

⁶⁶ [X] dated 1 October 2021.

the attractiveness of engaging with the market varies considerably depending on the size of the customer. For instance, small and medium-sized enterprises do not generally engage with the market because the financial benefits from engaging are more limited. Conversely, engaging with the market is more attractive for large and multi-site water-users due to increased competition in price (among retailers) for their business, along with other administrative benefits.⁶⁷ⁱⁱⁱ

72. [✂].

73. In conclusion, the CMA considers that no third-party submissions suggested that the merger would lessen competition. The CMA considers that the concerns raised about structural issues preventing smaller customers from effectively accessing the market pre-exist the Merger, and would not be worsened by it.

Conclusion on horizontal unilateral effects in relation to the supply of water and sewerage services to NHH customers in England and Wales

74. Based on the evidence it has gathered, the CMA considers that the Parties have a modest share of supply in the market for water and sewerage services to NHH customers. As described above, only a proportion of NHH customers are likely to be engaged with the market and interested in switching from their existing supplier.⁶⁸ But for this contestable part of the market, the CMA considers that there are no significant barriers preventing customers from switching between a range of suppliers that are able to service customers of different sizes. The Parties will be constrained by these players, and switching data suggests that they do not compete more significantly with each other than they do with the other competitors in the market. The CMA has observed these trends at both the England and Wales level, and on a regional basis.

75. For the reasons set out above, the CMA considers that, post-Merger, the Parties will continue to face a significant number of competitors, of varying sizes, in England and Wales. Moreover, based on the evidence the CMA has received, the CMA does not consider that the Parties are particularly close competitors. In addition, the majority of third parties who contacted the CMA held either neutral or positive views with regards to the Merger.

⁶⁷ See note of call with [✂].

⁶⁸ Although not a parameter of competition between new suppliers, the CMA notes that regulatory protections enforced by Ofwat exist to protect prices for customers who remain with a legacy 'in-area NHH retailer'.

76. Accordingly, the CMA does not believe there is a realistic prospect of an SLC in relation the supply of water and sewerage services to NHH customers in England and Wales as a result of the Merger.

The supply of water and sewerage services to NHH customers in Scotland

77. The CMA considered whether the Merger would give rise to an SLC in relation to the supply of retail water and sewerage services to NHH customers in Scotland. As with the market for England and Wales, given that the services offered by the Parties are similar and customers' choices are driven mainly by price, the CMA considers that shares of supply are a good starting point for its assessment.
78. Table 6 provides shares of supply for the NHH retail market for Scotland. The shares of supply are based on public data provided by the Central Market Agency.⁶⁹

⁶⁹ The Central Market Agency Ltd is the organisation that administers the market for water and wastewater retail services in Scotland.

Table 6: Shares of supply of key NHH retailer (FY20/21): Scotland

	Market share
PWS	<2%
W2B	<5%
Combined	<7%
Business Stream	>25%
Clear Business Water	>25%
Castle Water	5-9.9%
Others (e.g. Waterplus, Everflow, SES Business Water, Wave, Pinnacle Business Water)	35-45%
Total	100%

Source: FMN, table 3. See also [Financial Year 2020-21 Q4 -CMA Scotland](#), tab LP overall performance.

79. Table 6 shows that the Parties' combined shares of supply do not exceed 8%. The table also shows that other companies (Business Stream and Clear Business Water) would have substantially higher shares of supply.
80. The Parties submitted that, while they do view each other as competitors within the NHH retail market in Scotland, they do not consider one another to be particularly close competitors. The Parties further noted that they face the biggest competitive constraint from Business Stream, which formerly held a monopoly over the market.
81. The Parties also submitted that other competitors including, Water Plus, Business Stream, Castle Water and Wave have all received a higher percentage of customers who have switched suppliers from one of the Parties.⁷⁰

Third party views

82. Third parties generally told the CMA that there was little variation in competitive conditions between the NHH retail water and sewerage market for England and Wales and the NHH retail water and sewerage market for

⁷⁰ FMN, paragraph 139 and paragraph 143.

Scotland. One third party told the CMA that operationally the markets were very similar.

83. As noted at paragraph 68, a majority of the third parties that spoke with the CMA held either neutral or positive views towards the Merger. No third parties raised any concerns which were specific to the Scottish market.

Conclusion on horizontal unilateral effects

84. For the reasons set out above, the CMA considers that, post-Merger, the Parties will continue face a significant number of competitors in Scotland. The CMA does not consider that the Parties are particularly close competitors and, in addition, the majority of third parties who contacted the CMA held either neutral or positive view with regards to the Merger.
85. Accordingly, the CMA does not believe there is a realistic prospect of an SLC in relation the supply of water and sewerage services to NHH customers in Scotland as a result of the Merger.

Barriers to entry and expansion

86. While not a focus of its investigation, the evidence the CMA received suggests that barriers to entry for the supply of water and sewerage services to NHH customers in England and Wales, and in Scotland, are moderate. Although costs associated with entering and expanding are low,⁷¹ new entrants, despite growing faster than other retailers, have gained only a small share of the market.
87. On the one hand, limited growth may be explained by the general lack of interest expressed by most customers in changing suppliers and the cost of customer acquisition and support, which could make it difficult to gain significant scale. On the other hand, there may be opportunities to target certain customer niches, and Ofwat has observed that in the last two years new entrants have taken approximately one third of all switched SPIDs and managed to retain the vast majority.⁷²
88. As the Merger does not lead to serious competitive concerns even on the basis of current market structure, the CMA has left open the question of the extent to which new entry or expansion is expected to occur in the market, or to what extent it would constrain the Parties.

⁷¹ The cost of a regulatory license to operate as a retailer in England & Wales, for instance, is £5,250.

⁷² Ofwat (2019), [State of the market 2018-19: review of the second year of the business retail water market](#), page 14.

Third party views

89. The CMA contacted customers and competitors of the Parties, Ofwat and trade bodies. The majority of respondents, including Ofwat, raised no competition concerns regarding the Merger.
90. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

91. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
92. The Merger will therefore **not be referred** under section 22(1) of the Act.

Douglas Cooper
Director, Mergers
Competition and Markets Authority
5 November 2021

APPENDIX A

Table 7: Shares of supply at a wholesale region level (% of SPIDs)

[✂]

Source: Pennon's response to Question 2 of CMA's section 109 request, dated 27 July 2021, Annex RF11_Q2_Market shares

i Paragraph 8 should read as follows:

BWHUK is a water utility company and is also active in the supply of water ~~and sewerage~~ services to household customers **and** NHH customers.

ii Paragraph 70 should read as follows:

Ofwat, did not have specific concerns in relation to the **retail market aspects of the Merger**

iii Paragraph 71 should read as follows:

This view was affirmed by the Consumer Council for Water (CCW), who told the CMA that the attractiveness of engaging with the market varies considerably depending on the size of the customer. For instance, **fewer** small and medium-sized enterprises ~~do not generally~~ engage with the market because the financial benefits from engaging are more limited. Conversely, engaging with the market is more attractive for large and multi-site water-users due to increased competition in price (among retailers) for their business, along with other administrative benefits.