

ACQUISITION BY PENNON GROUP PLC OF SUMISHO OSAKA GAS WATER UK LIMITED

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act) as modified by the Water Mergers (Modification of Enactments) Regulations 2004 (SI 2004/3202, as amended) (the Water Modification Regulations)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) is considering, pursuant to section 32 of the Water Industry Act 1991 (**WIA91**), whether it is or may be the case that arrangements are in progress which, if carried into effect, will result in a merger of the water enterprises specified in recital (b) or whether a merger of such water enterprises has taken place;
- (b) the specified water enterprises are Pennon Group Plc (**Pennon**) and Sumisho Osaka Gas Water UK Limited (**the Target**). The Target's subsidiaries include Sutton and East Surrey Water Plc;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 32 of the WIA91 which might prejudice that reference or impede the taking of any action by the CMA which might be justified by the CMA's decision on the reference; and
- (d) 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 Modification Regulations.

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 and the Target (the **Initial Order**).

Commencement, application and scope

1. This Initial Order commences on the commencement date: being the date of completion of the transaction.
2. This Initial Order applies to Pennon and the Target.
3. Notwithstanding any other provision of this Initial Order:
 - (a) no act or omission shall constitute a breach of this Initial Order, and nothing in this Initial Order shall oblige Pennon or the Target to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date;
 - (b) this Initial Order does not prohibit the completion of the transaction provided that Pennon and the Target observe the restrictions set out below.

Management of the Pennon and Target businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Pennon and the Target shall not, during the specified period, take any action which might prejudice a reference under section 32 of the WIA91 or impede the taking of any action by the CMA which might be justified by the CMA's decision on such a reference, including any action which might:
 - (a) lead to the integration of the Target business with the Pennon business;
 - (b) transfer the ownership or control of the Pennon business or the Target business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Target 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 and the Target shall at all times during the specified period take all necessary steps to ensure that, except with the prior written consent of the CMA:
 - (a) the Target business is carried on separately from the Pennon business and the Target business's separate sales or brand identity is maintained;

- (b) the Target business and the Pennon business are maintained as a going concern and sufficient resources are made available for the development of the Target business and the Pennon business, on the basis of their respective pre-merger business plans;
- (c) except in the ordinary course of business, no significant changes are made to the organisational structure of, or the management responsibilities within, the Target business or the Pennon business;
- (d) the nature, description, range and quality of goods or services (or both) supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business through the separate operation of the two businesses:
 - (i) all of the assets of the Target business and the Pennon business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Target business or the Pennon business are disposed of; and
 - (iii) no interest in the assets of the Target business or the Pennon business is created or disposed of;
- (f) there is no integration of the information technology of the Target or Pennon businesses, and the software and hardware platforms of the Target 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 Target business will be carried out by the Target business alone and for the avoidance of doubt the Pennon business will not negotiate on behalf of the Target business (and vice versa) or enter into any joint agreements with the Target business (and vice versa);
- (h) all contracts of the Target 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 Target business or Pennon business;
- (j) no key staff are transferred between the Target business and the Pennon business;

- (k) all reasonable steps are taken to encourage all key staff to remain with the Target 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 Target 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 (including, for example, where required for compliance with external regulatory or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) 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 and the Target shall take all necessary steps to ensure that each of their subsidiaries comply with this Initial Order as if the Initial Order had been issued to each of them.
- 7. Pennon and the Target 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, the Target and their subsidiaries with this Initial Order. In particular, two weeks after completion of the transaction 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 and the Target or other persons of Pennon and the Target as agreed with the CMA shall, on behalf of Pennon and the Target, provide a statement to the CMA in the form set out in the Annex to this Initial Order confirming compliance with this Initial Order.
- 8. At all times, Pennon and the Target shall actively keep the CMA informed of any material developments relating to the Target business or the Pennon business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Target business or the Pennon business;
 - (b) any interruption of the Target 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 Target or Pennon business including any substantial changes in customers' demand; and

(d) substantial changes in the Target or Pennon business's contractual arrangements or relationships with key suppliers.

9. If Pennon and the Target have any reason to suspect that this Initial Order might have been breached they shall immediately notify the CMA and any monitoring trustee that Pennon or the Target may be directed to appoint under paragraph 100.
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 Initial Order, or do or refrain from doing any specified action in order to ensure compliance with the Initial Order. The CMA may vary or revoke any directions so given.
11. Pennon and the Target shall comply in so far as they are 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 Initial Order.

Interpretation

12. The Interpretation Act 1978 shall apply to this Initial Order as it does to Acts of Parliament.

13. For the purposes of this Initial Order:

'the Act' means the Enterprise Act 2002 as amended, where relevant, by the Water Modification Regulations;

'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;

'commencement date' means the date of completion of the transaction;

'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;

'Initial Order' means this initial enforcement order made by the CMA on 8 January 2024 and addressed to Pennon and the Target;

'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 or services (or both) by the Target or Pennon and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the Target and Pennon;

'Pennon' means Pennon Group PLC, a company registered in England and Wales with company number 02366640;

'the Pennon business' means the business of Pennon and its subsidiaries but excluding the Target business, 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 Target' means Sumisho Osaka Gas Water UK Limited, a company registered in England and Wales with company number 08369318, and its subsidiaries, which includes Sutton and East Surrey Water Plc;

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

'the transaction' means the arrangements which if carried into effect will result in Pennon and the Target ceasing to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Pennon business and the Target business;

'WIA91' means the Water Industry Act 1991;

'the Water Modifications Regulations' means the Water Mergers (Modification of Enactments) Regulations 2004 (SI 2004/3202, as amended).

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

Rachel Allen

Assistant 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 Initial Order made by the CMA in relation to the transaction on 8 January 2024 (the **Initial Order**).
 - (b) Pennon's subsidiaries have also complied with this Initial Order.
2. Subject to paragraph 3 of the Initial Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Pennon that might prejudice a reference under section 32 of WIA91 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 Target business with the Pennon business;
 - (ii) transfer the ownership or control of the Pennon business or the Target business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Target business or the Pennon business to compete independently in any of the markets affected by the transaction.
 - (b) The Target business has been carried on separately from the Pennon business and the Target business' separate sales or brand identity has been maintained.
 - (c) The Target business and the Pennon business have been maintained as a going concern and sufficient resources have been made available for the development of the Target business and the Pennon business, on the basis of their respective pre-merger business plans.
 - (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Target business or the Pennon business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Target 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 Target 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 Target business or the Pennon business have been disposed of; and
 - (iii) no interest in the assets of the Target business or the Pennon business has been created or disposed of.
- (g) There has been no integration of the information technology of the Target or Pennon businesses, and the software and hardware platforms of the Target 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 Target business have been carried out by the Target business alone and, for the avoidance of doubt, the Pennon business has not negotiated on behalf of the Target business (and vice versa) or entered into any joint agreements with the Target business (and vice versa).
- (i) All contracts of the Target 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 Target business or the Pennon business.
- (k) No key staff have been transferred between the Target business and the Pennon business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Target business and the Pennon business.

(m) Except as permitted by the Initial 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 Target 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 Target business or the Pennon business;
- (ii) interruptions of the Target 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 Target business or the Pennon business; or
- (iv) substantial changes in the Target or Pennon business' contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Pennon and its subsidiaries remain in full compliance with the Initial Order and will, or will take all necessary steps to ensure that the Target, continue actively to keep the CMA informed of any material developments relating to the Target or the Pennon business in accordance with paragraph 8 of the Initial Order.

Interpretation

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

I understand that:

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fines, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF PENNON

Signature

Name

Title

Date

Compliance statement for the Target

I [insert name] confirm on behalf of the Target that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) The Target has complied with the Initial Order made by the CMA in relation to the transaction on 8 January 2024 (the **Initial Order**).
 - (b) The Target's subsidiaries have also complied with this Initial Order.
2. Subject to paragraph 3 of the Initial Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by the Target that might prejudice a reference under section 32 of WIAA91 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 Target business with the Pennon business;
 - (ii) transfer the ownership or control of the Target business or any of its subsidiaries; or
 - (iii) otherwise impair the ability of the Target business or the Pennon business to compete independently in any of the markets affected by the transaction.
 - (b) The Target business has been carried on separately from the Pennon business and the Target business's separate sales or brand identity has been maintained.
 - (c) The Target business has been maintained as a going concern and sufficient resources have been made available for the development of the Target business, on the basis of its pre-merger business plans.
 - (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Target business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Target 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 Target 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 Target business have been disposed of; and
 - (iii) no interest in the assets of the Target business has been created or disposed of.
- (g) There has been no integration of the information technology of the Target or Pennon businesses, and the software and hardware platforms of the Target 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 Target business have been carried out by the Target business alone and, for the avoidance of doubt, the Pennon business has not negotiated on behalf of the Target business (and vice versa) or entered into any joint agreements with the Target business (and vice versa).
- (i) All contracts of the Target 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 Target business.
- (k) No key staff have been transferred between the Target business and the Pennon business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Target business.
- (m) Except as permitted by the Initial 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 Target 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 Target business;
 - (ii) interruptions of the Target 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 Target business; or
 - (iv) substantial changes in the Target business' contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. The Target and its subsidiaries remain in full compliance with the Initial Order and will continue actively to keep the CMA informed of any material developments relating to the Target or the Pennon business in accordance with paragraph 8 of the Initial Order.

Interpretation

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

I understand that:

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF THE TARGET

Signature

Name

Title

Date