



EUROPEAN COMMISSION  
DG Competition

***Case M.8350 – SOUTH STAFFORDSHIRE / PENNON / JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 4(4)  
Date:01/02/2017



EUROPEAN COMMISSION

Brussels, 01/02/2017  
C (2017) 703 final

PUBLIC VERSION

**To the Notifying parties**

**To the Competition and Markets  
Authority**

**Subject: Case M.8350 – SOUTH STAFFORDSHIRE / PENNON / JV  
Commission decision following a reasoned submission pursuant to Article 4(4)  
of Regulation No 139/2004<sup>1</sup> for referral of the case to the United Kingdom and  
Article 57 of the Agreement on the European Economic Area.<sup>2</sup>**

**Date of filing: 20.12.2016**

**Legal deadline for response of Member States: 18.01.2017**

**Legal deadline for the Commission decision under Article 4(4): 01.02.2017**

Dear Sir or Madam,

## 1. INTRODUCTION

- (1) On 20.12.2016, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom.
- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 20 December 2016.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').  
Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE  
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

- (4) By letter of 18 January 2017, the Competition and Markets Authority ("CMA") as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

## 2. THE PARTIES

- (5) **South Staffordshire plc ("SSP")** is an integrated services group active in the areas of regulated and unregulated water supply and related services. It is jointly controlled by Mitsubishi Corporation and KKR & Co Ltd.
- (6) **Pennon Group plc ("Pennon")** is a large FTSE 250 company which operates and invests in utility infrastructure businesses.

## 3. THE OPERATION AND CONCENTRATION

- (7) The concentration in question consists of the creation of a joint venture ("the JV") comprising the non-household ("NHH") retail water business of SSP and the NHH retail water and sewerage business of Pennon.

## 4. EU DIMENSION

- (8) The undertakings concerned have a combined aggregated world-wide turnover<sup>3</sup> of more than EUR 5 billion.<sup>4</sup> At least two of them have a Community-wide turnover in excess of EUR 250 million.<sup>5</sup> The undertakings do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within Article 1(2) of the Merger Regulation.

## 5. ASSESSMENT

### A Relevant product markets

- (9) On the basis of the information submitted in the Reasoned Submission, the undertakings concerned provide water and sewerage services. While the Parties are the incumbent wholesale and retail water (SSP) and water and sewerage (Pennon) service providers in their respective geographic areas<sup>6</sup>, the JV will be exclusively active on the non-household retail water and sewerage markets.
- (10) The Commission has previously recognised the existence of distinct product markets for the provision of water and sewerage services.<sup>7</sup> The Commission has further considered that the activities relating to the provision of water and sewerage services could be further segmented into separate water and sewerage markets. The principles applied in those

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice of 10/07/2007.

<sup>4</sup> Pennon: EUR 1 846 million, Mitsubishi Corporation: EUR 52 270 million, KKR & Co Limited: EUR 960 million, JV: no turnover.

<sup>5</sup> Pennon: EUR 1 783 million, Mitsubishi Corporation: > EUR 250 million, KKR & Co Limited: > EUR 250 million.

<sup>6</sup> SSP provides water only services in the West Midlands, South Staffordshire, South Derbyshire, North Warwickshire, North Worcestershire, Cambridge and Scotland. Pennon provides water and sewerage services in Devon, Cornwall, and parts of Dorset, Hampshire, Wiltshire and Bournemouth area.

<sup>7</sup> See cases COMP/M.916 Lyonnaise des Eaux / Suez (1997); COMP/M.1633 RWE Umwelt / Vivendi / Berliner Wasserbetriebe (1999).

decisions can be applied also in the present case, indicating potential separate water and sewerage markets.

## **B Relevant geographic market**

- (11) The Commission has previously taken the view that the relevant geographic market for the supply of water and sewerage services is national or sub-national (i.e. England and Wales) in scope.<sup>8</sup>

## **C Assessment**

- (12) On the basis of the information provided by the Parties in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the CMA in accordance with Article 4(4) of the Merger Regulation.
- (13) The transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has a Community dimension and it may significantly affect competition in distinct markets in the United Kingdom.
- (14) The proposed transaction may affect competition as the Parties are choosing to compete on the relevant NHH retail and sewerage markets as a single entity, as opposed to competing against each other. Furthermore, given that the Parties remain the incumbent suppliers on the wholesale markets, there is a vertical link between the Parties' and the JV's activities resulting in potentially vertically affected markets.
- (15) In view of the foregoing, the principal effects of the proposed operation would be restricted to the UK. Further, the markets in question present all the characteristics of a distinct market. The affected geographic markets are likely to be sub-national comprising the South West Area, the Bournemouth Area, the South Staffordshire Area and the Cambridge Area as they are based on the water and sewerage infrastructure.

### ***Additional factors***

- (16) In the context of the market liberalisation the CMA has already dealt with similar transactions.<sup>9</sup>

## **6. REFERRAL**

- (17) On the basis of the information provided by the Parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations<sup>10</sup> (point 17) indicates that, in seeking a referral under Article 4(4), “*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature...*”. The Commission considers,

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<sup>8</sup> See cases COMP/M.567 Lyonnaise des Eaux / Northumbrian Water (1995); COMP/M.5461 Lyonnaise des Eaux / Société de Distribution d'Eau et d'Assainissement (2009).

<sup>9</sup> See Decision ME/6575/15 in Severn Trent / United Utilities (2016).

on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the notice.

## 7. CONCLUSION

- (18) For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*

*Johannes LAITENBERGER*

*Director-General*