



## EUROPEAN COMMISSION

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Brussels, 6.6.2017  
C(2017) 3986 final

PUBLIC VERSION

**To the Notifying Parties  
To the Competition and Markets  
Authority**

**Subject: Case M.8464 – ANGLIAN WATER GROUP / NORTHUMBRIAN WATER GROUP / CK HUTCHISON HOLDINGS / WAVE 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: 10.05.2017**

**Legal deadline for response of Member States: 06.06.2017**

**Legal deadline for the Commission decision under Article 4(4): 19.06.2017**

Dear Sir or Madam,

### 1. INTRODUCTION

- (1) On 10.05.2017, 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

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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').

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 11 May 2017.
- (4) By letter of 23 May 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) **Anglian Water Group Limited ("Anglian")** is active in the regulated provision of integrated water and sewerage services to both household ("HH") and non-household ("NHH") customers in the East of England (excluding water services in two small areas) and water only services in Hartlepool, as well as of related non-regulated water services. It is also active in the supply of NHH retail water and sewerage services in Scotland.
- (6) **Northumbrian Water Group Limited ("Northumbrian")** is active in the regulated provision of integrated water and sewerage services to HH and NHH customers in the North East of England (excluding water services in Hartlepool) as well as of related unregulated water services. It supplies regulated water only services in the East of England and is also active in the supply of NHH retail water and sewerage services in Scotland. Northumbrian is ultimately controlled by CK Hutchison Holdings Limited ("CKHH").
- (7) **Anglian** and **Northumbrian** are referred to collectively as the "Parties".

## 3. THE OPERATION AND CONCENTRATION

- (8) The concentration in question consists of the creation of a joint venture ("the JV") comprising the NHH retail water and sewerage businesses of Anglian and Northumbrian. On closing of the proposed transaction, the JV will acquire the NHH retail water and sewerage businesses of the Parties by acquiring the relevant subsidiaries in which those businesses operate.<sup>3</sup> The Parties will no longer be active on the retail markets, except via the JV.
- (9) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## 4. EU DIMENSION

- (10) The undertakings concerned have a combined aggregated world-wide turnover<sup>4</sup> of more than EUR 5 billion<sup>5</sup>. At least two of them have a Community-wide turnover in excess of EUR 250 million<sup>6</sup>. The undertakings do not achieve more than two-thirds

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<sup>3</sup> On Market Opening, each of the Parties carved out and transferred their current NHH retail businesses into one of their own subsidiaries by way of a statutory transfer approved by Ofwat.

<sup>4</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice of 10/07/2007.

<sup>5</sup> Anglian: EUR 1 660 million; CKHH: EUR 38 300 million; JV: [...].

<sup>6</sup> Anglian: EUR [...]; CKHH: EUR [...]; JV: [...].

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

- (11) 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 and sewerage service providers in their respective geographic areas, the JV will be exclusively active on the non-household retail water and sewerage markets.
- (12) 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 decisions can be applied also in the present case, indicating potential separate water and sewerage markets.
- (13) The exact product market definition can however be left open as the outcome of the assessment of the referral request would not be different under any plausible market definition.

### B Relevant geographic market

- (14) 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>
- (15) The exact geographic market definition can however be left open as the outcome of the assessment of the referral request would not be different under any plausible market definition.

### C Assessment

- (16) According to the Commission Notice on case referral, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:<sup>9</sup>
  - (a) there must be indications that the concentration may significantly affect competition in a market or markets, and
  - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market

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

<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> Commission Notice on Case Referral in respect of concentrations – Para. 16.

- (17) With regards to the first requirement, 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. The proposed transaction would lead to a horizontally affected market with regard to the retail supply of water and sewerage services in Scotland (combined market share of [20-30]%). Furthermore, given that the Parties remain the incumbent – natural monopolist - suppliers on the wholesale markets in England, there is a vertical link between the Parties' and the JV's activities resulting in potentially vertically affected markets.
- (18) Therefore, the first legal requirement set forth by article 4(4) of the Merger Regulation appears to be met.
- (19) With regard to the second requirement, and in line with the above, there are strong indications that the distinct markets for the provision of retail water and sewerage services would be at most of national dimension.
- (20) In view of the foregoing, the preliminary assessment suggests that the Transaction may significantly affect competition within a Member State and that the effects of the Transaction would be restricted to the United Kingdom. Further, the markets in question present all the characteristics of a distinct market.

#### *Additional factors*

- (21) Given that the likely focus of the Transaction is confined to the United Kingdom, the CMA is best placed to examine the case.
- (22) The UK competition authorities have substantial experience in examining the market. In the context of the market liberalisation the CMA has already dealt with similar transactions.<sup>10</sup> In addition, in a previous case affecting this market in the United Kingdom, the Commission took the step of referring the matter to the UK competition authorities.<sup>11</sup>
- (23) Finally, the requested referral would preserve the principle of “one-stop-shop” to the extent that the case will be referred to a single competition authority, which is an important factor of administrative efficiency.

## **6. REFERRAL**

- (24) 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.
- (25) The Commission notice on case referral in respect of concentrations<sup>12</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*

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<sup>10</sup> See Decision ME/6575/15 – *Severn Trent / United Utilities* and Decision ME/6657/16 – *South Staffordshire Water / South West Water*.

<sup>11</sup> M.8350 – *South Staffordshire / Pennon / JV*.

<sup>12</sup> OJ C 56, 5.3.2005, p. 2.

*significant, thus deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”.*

- (26) Point 18 of the notice also indicates that *"the requesting parties are required to show that a geographic market in which competition is affected by the transaction in the manner just described (paragraph 17) is national, or narrower than national in scope"*.
- (27) Moreover, point 20 of the notice provides that *"Concentrations with a Community dimension which are likely to affect competition in markets that have a national or narrower than national scope, and the effects of which are likely to be confined to, or have their main economic impact in, a single Member State, are the most appropriate candidate cases for referral to that Member State. This applies in particular to cases where the impact would occur on a distinct market which does not constitute a substantial part of the common market"*.
- (28) The Commission considers, 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 points 17. 18 and 20 of the notice.

## **7. CONCLUSION**

- (29) 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*