

Competition Commission Adoption of Undertakings

IN THE MATTER of the reference to the Competition Commission dated 16 November 2006 relating to the acquisition of Macquarie Luxembourg Water Sarl (now Hastings Luxembourg Water Sarl) by HDF (UK) Holdings Limited jointly owned by Utilities of Australia Pty Limited (in its capacity as trustee of Utilities Trust of Australia) and Hastings Funds Management Limited (in its capacity as responsible entity (trustee) of Hastings Diversified Utilities Fund)

Whereas on 16 November 2006 the Office of Fair Trading ("OFT") made the reference to the Competition Commission ("CC") in exercise of its duty under section 32(b) of the Water Industry Act 1991 (as amended by section 70 of the Enterprise Act 2002):

And whereas prior to making the reference the OFT, for the purpose of preventing pre-emptive action, accepted the undertakings reproduced in the Annex below ("the Undertakings") from Utilities of Australia Pty Limited (in its capacity as trustee of Utilities Trust of Australia) and Hastings Funds Management Limited (in its capacity as responsible entity (trustee) of Hastings Diversified Utilities Fund) on 10 November 2006 in accordance with section 71(2) of the Enterprise Act:

And whereas the reference has not been finally determined:

And whereas the Undertakings are still in force:

Now the CC hereby adopts the Undertakings in accordance with section 80(3) of the Enterprise Act for the purpose of preventing pre-emptive action, to ensure that no action is taken which might prejudice the reference or impede the taking of any action by the CC under Part 3 of the Enterprise Act which may be justified by the CC's decisions on the reference:

Signed by authority of the CC



Peter Freeman
Chairman
20 November 2006

COMPLETED ACQUISITION OF MACQURIE LUXEMBOURG WATER SARL (NOW HASTINGS LUXEMBOURG WATER SARL) THE HOLDING COMPANY FOR SOUTH EAST WATER LIMITED FROM MEIF LUXEMBOURG HOLDINGS S.A. AT THE TIME OF THE ACQUISITION BY HDF (UK) HOLDINGS LIMITED JOINTLY OWNED BY UTILITIES OF AUSTRALIA PTY LIMITED (IN ITS CAPACITY AS TRUSTEE OF UTILITIES TRUST OF AUSTRALIA) AND HASTINGS FUNDS MANAGEMENT LIMITED (IN ITS CAPACITY AS RESPONSIBLE ENTITY OF HASTINGS DIVERSIFIED UTILITIES FUND)

UNDERTAKINGS GIVEN BY UTILITIES OF AUSTRALIA PTY LIMITED (IN ITS CAPACITY AS TRUSTEE OF UTILITIES TRUST OF AUSTRALIA) AND HASTINGS FUNDS MANAGEMENT LIMITED (IN ITS CAPACITY AS RESPONSIBLE ENTITY OF HASTINGS DIVERSIFIED UTILITIES FUND) TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 71 OF THE ENTERPRISE ACT 2002

Pursuant to section 71 of the Enterprise Act 2002 **Utilities of Australia Pty Limited (in its capacity as trustee of Utilities Trust of Australia) (“Utilities”) and Hastings Funds Management Limited (in its capacity as responsible entity of Hastings Diversified Utilities Fund) (“Hastings Funds”)** hereby give to the OFT the following undertakings in respect of the acquisition by HDF (UK) Holdings Limited (“HDF”) for the purpose of preventing pre-emptive action.

Management of the parties’ respective businesses until determination of proceedings

1. Except with the prior written consent of the OFT, Utilities and Hastings Funds undertake that they will not during the specified period take any action which might:
 - (a) lead to the integration of the South East Water businesses with the Mid Kent Water business;
 - (b) transfer the ownership or control of the South East Water businesses to any third party;
 - (c) otherwise impair the ability of the South East Water businesses to compete independently in any of the markets affected by the acquisition; or
 - (d) prejudice any reference to the CC or impede the taking of any action under the Act which may be justified by the CC’s decisions on any such reference.

2. Without prejudice to the generality of paragraph 1, Utilities and Hastings Funds will at all times during the specified period, procure that, except with the prior written consent of the OFT:
- (a) the South East Water businesses are carried on under different names from the Mid Kent Water business and a separate brand identity is maintained for the South East Water businesses;
 - (b) the South East Water businesses are maintained as going concerns;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the South East Water businesses;
 - (d) except in the ordinary course of business, in relation to the assets of the South East Water businesses:
 - (i) the assets are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets are disposed of; and
 - (iii) no interest in the assets is created or disposed of;
 - (e) the nature, description, range and standard of goods and/or services supplied in the United Kingdom by the South East Water businesses at the date of these undertakings are in all material respects maintained and preserved;
 - (f) there is no integration of the information technology of the South East Water businesses with the information technology of the Mid Kent Water business and the respective software and hardware platforms of the South East Water businesses shall remain essentially unchanged, except for routine changes and maintenance and any such improvements as are reasonably required to ensure the South East Water businesses maintain adequately resourced IT systems;
 - (g) no key staff are transferred between the South East Water businesses and the Mid Kent Water business;
 - (h) all reasonable steps are taken to encourage all key staff of the South East Water businesses to remain with the business in relation to which they were employed prior to the merger;

- (i) except as provided in paragraph (j) below, no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the South East Water businesses ("Confidential Information") shall pass, directly or indirectly from the South East Water businesses (or any of their employees, directors, agents or subsidiaries) to the Mid Kent Water business (or any of its employees, directors, agents or subsidiaries) or vice versa, except where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed other than as may be required for the purposes of regulatory compliance under applicable law; and
 - (j) notwithstanding the undertakings set out above, the flow of Confidential Information from the South East Water businesses (or any of their employees, directors, agents or subsidiaries) to the Mid Kent Water business (or any of its employees, directors, agents or subsidiaries) and vice versa is permitted to the extent that such disclosure of information is necessary (i) for compliance with regulatory and/or accounting obligations or (ii) for the coordination of Utilities, Hastings Funds', South East Water's and Mid Kent's submissions in relation to any OFT or CC investigation in connection with the merger and (in relation to (ii)) on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed other than as may be required for the purposes of regulatory compliance under applicable law. In addition, the individual named in Appendix I shall be able to obtain such Confidential Information relating to the Mid Kent business as is necessary to enable him to perform his function as Chief Operating Officer of Utilities Trust of Australia to report to the board of Utilities Trust of Australia on the performance of the Mid Kent business, provided that such Confidential Information is not passed on to any other person within the South East Water businesses.
3. For the avoidance of doubt, nothing in these undertakings requires Utilities, Hastings Funds, Mid Kent or South East Water to take action or to refrain from taking action which would cause either Mid Kent or South East Water Limited to be in breach of its Instrument of Appointment as a water undertaker.

Compliance

4. Utilities and Hastings Funds will procure that each of their subsidiaries shall comply with these undertakings as if those subsidiaries had so undertaken.
5. Utilities and Hastings Funds will forthwith provide to the OFT such information as the OFT may from time to time require for the purposes of monitoring compliance with these undertakings.
6. Utilities and Hastings Funds shall comply insofar as they are able with such written directions as the OFT 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 these undertakings.

Interpretation

7. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
8. For the purposes of these undertakings:

the Act” means the Enterprise Act 2002;

“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 the 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;

“the CC” means the Competition Commission;

“control” shall be construed in accordance with section 26 of the Act and in the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“the decisions” means the decisions of the CC on the questions which it is required to answer by virtue of Schedule 4ZA of the Water Industry Act 1991;

“South East Water” means South East Water (Holdings) Limited;

“the South East Water businesses” means the businesses carried on under the control of South East Water (Holdings) Limited in the United Kingdom as at **2 November 2006**;

“Mid Kent” means Mid Kent Water Limited;

“the Mid Kent business” means the business of Mid Kent and its subsidiaries carried on as at **2 November 2006**;

“key staff” means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

“the merger” the Acquisition of Macquarie Luxembourg Water Sarl (now Hastings Luxembourg Water Sarl) the holding company for South East Water Limited from MEIF Luxembourg Holdings S.A. at the time of the acquisition by HDF (UK) Holdings Limited jointly owned by Utilities of Australia Pty Limited (in its capacity as trustee of Utilities Trust of Australia) and Hastings Funds Management Limited (in its capacity as responsible entity of Hastings Diversified Utilities Fund);

“the OFT” means the Office of Fair Trading, provided that, should the CC adopt these undertakings pursuant to section 80(3) of the Act, references to “the OFT” in paragraphs 1 and 2 of these undertakings shall be taken as references to the CC, and references to “the OFT” in paragraphs 5 and 6 of these undertakings shall be taken to include both the Office of Fair Trading and the CC;

“the ordinary course of business” means matters connected to the day to day supply of goods and/or services by the South East Water businesses and does not include matters involving material or significant changes to the organizational structure or related to the post-merger integration of the South East Water businesses and the Mid Kent Water business;

“the specified period” means the period beginning on the date of these undertakings and terminating either at the end of the period specified in section 71(5) or (6) of the Act or, should the CC adopt these undertakings pursuant to section 80(3) of the Act, the end of the period specified in section 80(7) or (8) of the Act;

“subsidiary”, unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended); and unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF UTILITIES OF AUSTRALIA PTY LIMITED (IN ITS CAPACITY AS TRUSTEE OF UTILITIES TRUST OF AUSTRALIA)



Signature



Signature

Claire Filson

Name

Tim Poole

Name

Company Secretary

Title

Managing Director

Title

10 November 2006

Date

10 November 2006

Date

FOR AND ON BEHALF OF HASTINGS FUNDS MANAGEMENT LIMITED (IN ITS CAPACITY AS RESPONSIBLE ENTITY OF HASTINGS DIVERSIFIED UTILITIES FUND)



Signature



Signature

Claire Filson

Name

Tim Poole

Name

Company Secretary

Title

Managing Director

Title

10 November 2006

Date

10 November 2006

Date

Appendix I

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