

**COMPLETED WATER MERGER BETWEEN
SOUTH EAST WATER LIMITED AND MID KENT WATER LIMITED**

**FINAL UNDERTAKINGS GIVEN PURSUANT TO SECTION 82 OF THE ENTERPRISE
ACT 2002 AS MODIFIED BY REGULATION 23 OF THE WATER MERGERS
(MODIFICATION OF ENACTMENTS) REGULATIONS 2004 BY:**

1. UTILITIES TRUST OF AUSTRALIA (“UTA”) AND
2. HASTINGS DIVERSIFIED UTILITIES FUND (“HDUF”)

Whereas, on 16 November 2006, the OFT made the reference (“the reference”) to the CC under section 32(b) of the Water Industry Act 1991 (“WIA”) concerning the completed acquisition of Macquarie Luxembourg Water Sarl (now Hastings Luxembourg Water Sarl) by HDF (UK) Holdings Limited, which is jointly owned by Utilities of Australia PTY Limited (in its capacity as trustee of UTA) and Hastings Funds Management Limited (in its capacity as responsible entity of HDUF);

Whereas on 1 May 2007, the CC published its final report on the reference (“the Report”) in which the CC concluded that the merger may be expected to prejudice the ability of Ofwat, in carrying out its functions by virtue of the WIA, to make comparisons between different water enterprises (“the prejudicial outcome”);

Whereas the report concluded that the prejudicial outcome should be remedied by a requirement upon Mid Kent Water Limited and South East Water Limited to reduce prices to their customers by a total amount of £4 million on a “one off” basis, to be given effect through bills issued to customers for the year 2008/2009,

Whereas the report concluded that the price reduction remedy described above should be accompanied by requirement on MKW and SEW to accept a price determination at the next quinquennial price review that reflects £3.1 million annual merger savings in operating expenditure (as compared with current operating expenditure costs and projections) (“the opex adjustment”),

Whereas Ofwat, South East Water Limited, Mid Kent Water Limited, UTA and HDUF have agreed an approach to the opex adjustment, as set out in the document attached at Annex B to the draft final undertakings to be given by South East Water Limited and Mid Kent Water Limited;

HDUF and UTA hereby give to the CC these Undertakings pursuant to section 82 of the Act.

The Undertakings shall take effect on the Commencement Date.

Section A. Interpretation and Definitions

1. For the purposes of these undertakings:

“**the Act**” means the Enterprise Act 2002, including the modifications given effect by the Water Mergers (Modification Of Enactments) Regulations 2004;

“**business**” has the meaning given by section 129(1) and (3) of the Act;

“**the CC**” means the Competition Commission;

“**Commencement Date**” means the date of these Undertakings;

“**MKW**” means Mid Kent Water Limited;

“**the OFT**” means the Office of Fair Trading;

“**Primary Undertakings**” means the undertakings given by SEW and MKW dated []

“**SEW**” means South East Water Limited.

“**Undertakings**” means these undertakings.

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

2. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

Section B. Undertakings

3. HDUF and UTA each undertake not to take any step which might:
 - a. prevent SEW and MKW from carrying into effect or complying with the Primary Undertakings;
 - b. have the effect of causing SEW and MKW to fail to comply with the Primary Undertakings; and/or
 - c. otherwise undermine the implementation of the remedies provided for in the Report and which are given effect by the Primary Undertakings.
4. For the avoidance of any doubt, nothing in these undertakings requires HDUF or UTA to take action or to refrain from taking action which would cause either SEW or MKW to be in breach of its instrument of appointment as a water undertaker.
5. HDUF and UTA shall promptly provide to the CC such information as the CC may require for the purposes of performing any of its functions under these Undertakings or under sections 82, 83 or 94(7) of the Act.
6. HDUF and UTA shall promptly provide to the OFT such information as the OFT may require for the purposes of performing any of its functions under these Undertakings or under sections 92, 93(6) or 94(6) of the Act.
7. HDUF undertakes that should it become aware that it is in breach of these Undertakings, it will write to the OFT and the CC within 5 working days of so becoming aware setting out details of the breach and all of the relevant circumstances.
8. UTA undertakes that should it become aware that it is in breach of these Undertakings, it will write to the OFT and the CC within 5 working days of so becoming aware setting out details of the breach and all of the relevant circumstances.
9. HDUF and UTA shall comply insofar as they are able with such written directions as the CC or the OFT may from time to time give and take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.
10. HDUF and UTA accept that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.

11. HDUF and UTA accept that the variation, release or supercession of these Undertakings shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation, release or supercession.

Signed etc