

Response to Statement of Method Consultation by an Investor

We welcome the opportunity to respond to the consultation on Ofwat's approach to future mergers under the new special merger regime which was introduced as part of the Water Act 2014 and on the draft statement of method. We support the Government's view that the existing special merger regime within the Water Industry Act 1991 acts as a disincentive to potential beneficial mergers between undertakers and creates uncertainty when a merger is proposed.

1.3 We welcome changes aimed at facilitating transaction activity in the sector as companies and investors look to find ways of improving efficiency and performance to the benefit of all stakeholders. We therefore support the introduction of a new process to expedite this but we would like you to note that there are some aspects that need to be considered when designing and considering the new merger regime.

1.4 We think the introduction of a pre-notification phase where potential merger parties can contact Ofwat to discuss process and information requirements would be extremely valuable. In addition, we think that a potential investor should be able to seek "in principle" clearance from Ofwat before it participates in a future process. Based on past experience it would be helpful to have a written response from Ofwat so that a potential investor can share that with the target. Our experience is that where an investor with existing water interests is competing against one without that can disadvantage the existing investor because of fears over deliverability and timetable. Perception in the market needs to be such that no investor (either existing or new to the sector) should be placed at a disadvantage as a result of the Ofwat merger clearance process.

1.5 The potential timetable for a Phase 1 investigation suggests a 40 working day period from the time the CMA receives a complete merger notice. In the context of a typical M&A auction process, where the likely timeline to complete full due diligence by potential investors is around six weeks, the 40 working day period appears too long.

1.6 As new markets develop as a result of further upstream market opening we see an opportunity for benefits to flow to customers through new entrants who will drive efficiencies as competition further makes its way through the sector. We therefore want to emphasise that Ofwat's approach to future mergers should encourage as many participants as possible to foster competition.

1.7 The success of a process is often linked to the competitive tension maintained during a period where more than one party is assessing the merits of their investment. It is essential therefore that all relevant information and assumptions are kept closely guarded during that period. Under the new regime, Ofwat could be in a situation where it is assessing more than one investor for the same transaction so protecting the confidentiality of the information submitted as well as maintaining the adequate level of resource in order to support this is of utmost importance. As a result, due consideration should be given to ensure the ability to deploy dedicated teams that can operate in a ring fenced environment ("chinese walls") to evaluate simultaneous proposals targeting the same assets.