

May 2023

Consultation on change of ownership for Northumbrian Water Limited

Ofwat

About this document

This document is a consultation on whether any issues arise out of the recent change of control of Northumbrian Water Limited (“Northumbrian Water”). A change of control occurs when there is any change in who can materially influence the direction, strategy, or activities of a business. We do not limit our definition of change of control to a situation in which shares in a company¹ are transferred to another party.

Our assessment has been undertaken in accordance with the approach we have set out on our approach to changes in control². In carrying out our assessment we reviewed information provided by the new owners and we have separately carried out our own investigations on the new corporate structure using publicly available information.

Specifically, this document sets out:

- Our assessment of the ownership structure.
- Our assessment of the new owners identified as an Ultimate Controller as well as their capacity to be an owner of a regulated water company.
- Our understanding of how the governance arrangements, which are relevant considerations in identifying the new Ultimate Controllers of Northumbrian Water, have changed following the change of control.
- Our considerations in identifying the new Ultimate Controllers of Northumbrian Water.

We ask for views on our assessment of the incoming owners of Northumbrian Water, whether any additional steps need to be taken at the regulated company in light of the change of ownership and the entities identified as Ultimate Controllers.

¹ For the purpose of this document, a reference to a water company or company means a company holding an appointment as a water and/or sewerage undertaker under the Water Industry Act 1991

² Our policy approach is as set out in section 2 of [Change of control – general policy](#)

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1. Introduction

Owners of water companies have an important role to play by maintaining the company's resilience in the long term, delivering a high-quality service to customers and protecting the environment. It is important that we assess changes in the ownership of the companies we regulate against these objectives and, where appropriate, use our power to modify licence conditions if we believe that customers need additional protection.

The licence defines an "Ultimate Controller" as any person which, whether alone or jointly and whether directly or indirectly, is, in the reasonable opinion of Ofwat, in a position to control, or to exercise material influence over, the policy or affairs of the water company, or of any holding company of the water company.

In the interests of customers and in accordance with our statutory duties, in particular our duty to secure that water companies properly carry out their functions, we aim to ensure that any Ultimate Controller of a water company has the integrity, and the operational and financial capability to run such an essential public service as a water utility. Our aim is to take a proportionate approach when there is a change of ownership or control of a water company, in this case we are consulting as the new investor has taken a stake of 25% in the business and has provided ultimate controller undertakings.

2. Responding to this consultation and next steps

We would welcome any comments on this document. Please email them to financial.resilience@ofwat.gov.uk or post them to:

Financial Resilience Change of Control Consultation response, Ofwat, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA.

The closing date for this consultation is 3rd July 2023. If you wish to discuss any aspect of this consultation, please contact financial.resilience@ofwat.gov.uk.

We intend to publish responses to this consultation on our website at www.ofwat.gov.uk. Subject to the following, by providing a response to this consultation you are deemed to consent to its publication.

If you think that any of the information in your response should not be disclosed (for example, because you consider it to be commercially sensitive), an automatic or generalised confidentiality disclaimer will not, of itself, be regarded as sufficient. You should identify specific information and explain in each case why it should not be disclosed and provide a redacted version of your response, which we will consider when deciding what information to publish. At a minimum, we would expect to publish the name of all organisations that provide a written response, even where there are legitimate reasons why the contents of those written responses remain confidential.

In relation to personal data, you have the right to object to our publication of the personal information that you disclose to us in submitting your response (for example, your name or contact details). If you do not want us to publish specific personal information that would enable you to be identified, our privacy policy³ explains the basis on which you can object to its processing and provides further information on how we process personal data.

In addition to our ability to disclose information pursuant to the Water Industry Act 1991, information provided in response to this consultation, including personal data, may be published or disclosed in accordance with legislation on access to information – primarily the Freedom of Information Act 2000 (FoIA), the Environmental Information Regulations 2004 (EIR) and applicable data protection laws.

Please be aware that, under the FoIA and the EIR, there are statutory Codes of Practice which deal, among other things, with obligations of confidence. If we receive a request for disclosure of information which you have asked us not to disclose, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances.

³ [Ofwat Policy](#)

3. Northumbrian Water– background and assessment of the new owners

In this section we set out an overview of the changes to the ownership of Northumbrian Water. We also assess the capacity of its new investor to be the owner of a regulated water company. To assess the new owner of Northumbrian Water we reviewed information that we received from Northumbrian Water and its new investor, Kohlberg Kravis Roberts (KKR & Co Inc). In addition, we have separately carried out our own investigations into the new corporate structure using publicly available information.

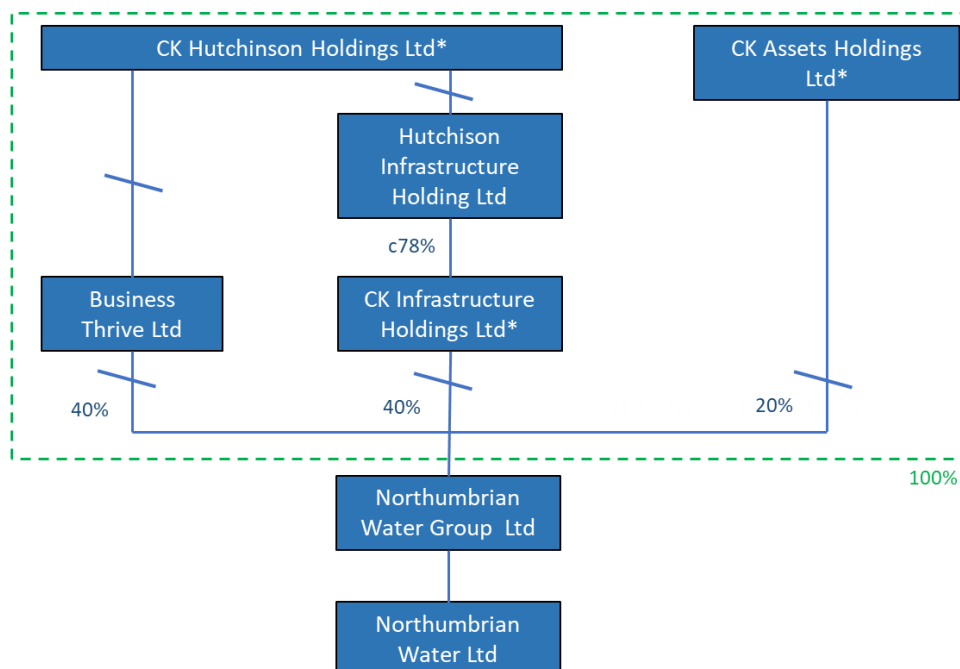
3.1 Overview of changes in Northumbrian Water Limited ownership structure

In July 2022, CK Hutchinson Holdings Limited and CK Asset Holding Limited entered into an agreement with KKR & Co Inc to collectively sell 25% of their shares of Northumbrian Water Group Limited, the holding company of Northumbrian Water. The transaction completed in December 2022.

The corporate structure of Northumbrian Water pre and post the transaction is set out in Figures 1 and 2 below.

Figure 1. The corporate structure within which Northumbrian Water sits before the acquisition by KKR & Co Inc

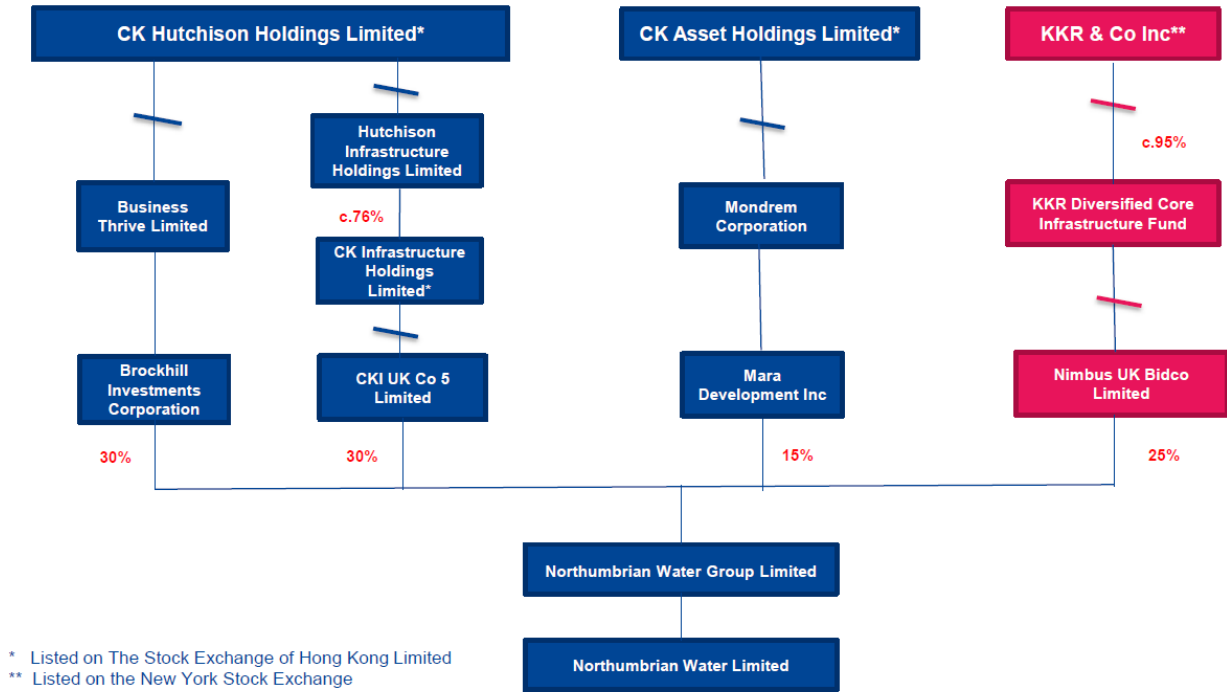
DETAILED OWNERSHIP STRUCTURE PRE-TRANSACTION



* Companies listed on The Stock Exchange of Hong Kong Limited

Figure 2. The corporate structure within which Northumbrian Water sits following the acquisition by KKR & Co Inc

DETAILED OWNERSHIP STRUCTURE POST TRANSACTION



3.2 Assessment of the incoming owner

When a change of ownership takes place, we look at how much relevant experience the new owner has in delivering, managing, or investing in the infrastructure sector. We do this to gain insight into the new owner’s knowledge and capabilities in owning a regulated entity.

The capacity to be shareholders of appointed water companies

We also want to be satisfied that any change of ownership does not compromise the effective management of the appointed water company. To help with this, we look at relevant information including ownership data and other publicly available information about the investor, in each particular case, to help satisfy us that a new owner has the integrity and the operational and financial capacity to assume the role of owning a water company. We also consider whether the licence should be modified to ensure customers are better protected.

3.2.1 The new owners of Northumbrian Water Limited

The new ownership structure is set out in figure 2 above.

KKR & Co Inc

KKR & Co Inc was founded in 1976 and is listed on the New York Stock Exchange (NYSE). It is a leading global investment firm that offers alternative asset management as well as capital markets and insurance solutions. KKR & Co Inc sponsors funds that invest in private equity, credit and real estates and has strategic partners that manage hedge funds. In the third quarter of 2022, the company reported that it had \$496 billion of assets under management.

The company has previous experience of investing in the UK water sector, as for the period 2013 to July 2018 it owned 75% of the shares in South Staffordshire Water PLC, a water only company regulated by Ofwat.

KKR Diversified Core Infrastructure Fund

KKR Diversified Core Infrastructure Fund is an infrastructure core fund managed by KKR & Co Inc. The fund is located in New York and invests in Western Europe and North America, and invests in the global infrastructure sector.

Nimbus UK Bidco Limited

Nimbus UK Bidco Limited is registered in the UK⁴. It was formed in March 2022 to facilitate the acquisition of the 25% investment in Northumbrian Water Group Limited and holds the shares.

As of March 2022, KKR & Co Inc is shown as the sole entity with significant influence or control over Nimbus UK Bidco Limited.

As the company was only formed in March 2022, Nimbus UK Bidco Limited, has no financial history, its first set of annual accounts are not due until March 2023. The company's ultimate shareholder is KKR & Co Inc, registered on the New York Stock Exchange.

Conflicts of interest

KKR & Co Inc has stated that it has no direct or indirect equity interest in any other water undertakers or water supply licensees in England and Wales, therefore KKR & Co

⁴ Registration number 13951606

Inc does not believe that there is any actual or potential conflict of interest. From our own investigation, we are not aware of, and have not identified, any potential conflicts of interest.

Conclusion

Our change of control assessment has considered the ownership, operational activities and financial standing of the new investors in Northumbrian Water and has not identified any issues, based on the information we have received and considered to date. Therefore, we do not see a need to introduce additional protections in the licence directly as a result of the change in ownership.

We have recently made modifications to certain ring-fencing provisions in all large water companies' licences, including Northumbrian Water's licence, in our '[Decision under sections 13 and 12A of the Water Industry Act 1991 to modify the ring-fencing licence conditions of the largest undertakers](#)' published in March 2023 and do not consider that further changes are required at this time.

4. Northumbrian Water – identification of Ultimate Controller

In this section we identify of the providers of a Condition P Ultimate Controller undertaking to Northumbrian Water under the new ownership structure.

An Ultimate Controller is any person which, whether alone or jointly and whether directly or indirectly, is, in the reasonable determination of Ofwat, in a position to control or in a position to materially influence the policy or affairs of the Appointee or any Holding Company of the Appointee.

Ultimate Controllers are required to provide an undertaking in favour of the appointed water company (here, Northumbrian Water) confirming that they will provide the Appointee with such information as is necessary to enable the Appointee to comply with its obligations under the Water Industry Act 1991 or under its licence, and that they will not take any action that may cause the Appointee to breach any of its obligations under the Water Industry Act 1991 or its licence. The undertaking will remain in force as long as the person remains an Ultimate Controller of the Appointee. Where the UK Holding Company of the Appointee is not also the Ultimate Controller of the Appointee, it must also provide an identical undertaking in favour of the Appointee.

Under the current group structure, Nimbus UK Bidco Limited owns 25% of the shares in Northumbrian Water Group Limited, and as such, is able to exert significant influence in the regulated company. KKR & Co Inc is shown as the sole entity with significant influence or control over Nimbus UK Bidco Limited and, following the investment KKR & Co Inc will be able to appoint one individual to the Board of Northumbrian Water and will have power of veto on a number of shareholder matters. Accordingly, KKR & Co Inc is also in a position to exert significant influence in the regulated company. Having also assessed the corporate structure using Companies House data, we determined that both Nimbus UK Bidco Limited and KKR & Co Inc. are Ultimate Controllers of Northumbrian Water.

We have received a copies of the undertakings that Nimbus UK Bidco Limited, KKR & Co Inc and KKR Diversified Core Infrastructure Fund provided to Northumbrian Water in January 2023 which are all compliant with the licence.

CH Hutchinson Holding Limited and CK Asset Holding Limited remain the majority shareholders and have previously provided undertakings.

5. Consultation questions

We welcome responses to the following questions:

- 1) Do you have any views on our commentary about the incoming owners?
- 2) Do you agree that it is not necessary to place additional requirements in the licence of Northumbrian Water in respect of the change of control?
- 3) What are your views on our identification of the Ultimate Controllers?

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