

# **WATER INDUSTRY ACT 1991, SECTION 13 - PROPOSALS BY THE WATER SERVICES REGULATION AUTHORITY (OFWAT) TO MODIFY THE CONDITIONS OF APPOINTMENT OF ANGLIAN WATER SERVICES LIMITED AS A WATER UNDERTAKER**

## **THE PROCESS**

This Notice seeks views on the proposed modification described below. Any representations or objections must be sent in writing to Keith Mason, Director of Regulatory Finance and Competition, Ofwat, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA (fax, 0121-625 3609 or e-mail emma.cochrane@ofwat.gsi.gov.uk) to be received no later than 5.00pm on 3 August 2007.

## **DESCRIPTION OF AND REASONS FOR THE PROPOSED MODIFICATION**

On 2 October 2006 the boards of Osprey Acquisitions Limited (Osprey) and Anglian Water Group plc (AWG) announced that they had agreed the terms of a recommended cash offer by Osprey for AWG. AWG is the owner of Anglian Water Services Limited (Anglian Water), an appointed water undertaker regulated by Ofwat. On 23 November 2006, Osprey declared the offer wholly unconditional.

We issued a consultation document on 15 December 2006 in which we invited views on:

- the capacity of Osprey and its owners to be the owner of a regulated water business;
- which entities should provide Condition P undertakings to Anglian Water; and
- the need for modifications to Anglian Water's instrument of appointment (its 'appointment') to ensure that, whoever its owners, it has sufficient financial and managerial resources to carry out its functions as a water company and is appropriately ring-fenced from the rest of the Osprey group.

On 3 May 2007 we issued our position paper in which we concluded that the acquisition did not raise any significant regulatory issues but said we would make the licence modifications proposed in our consultation paper. These are set out below.

### **1. The role of the Anglian Water's owners**

Anglian Water should have the active co-operation of its owners in carrying out its functions as a water undertaker and in complying with the conditions of its appointment.

Anglian Water's existing Condition P will be replaced with a generic form of Condition P. This will require Anglian Water to obtain these undertakings from an Ultimate Controller and where the Ultimate Controller is not the UK holding company, from the UK holding company. The condition will also be amended to include a successor clause that requires Anglian Water to obtain new undertakings in the event of a change of control.

### **2. Comparative information**

One of the most important tools available to Ofwat for the regulation of water companies is the ability to make comparisons between them (comparative competition). As a result of Osprey's acquisition, AWG's shares will no longer be listed on the London Stock Exchange and therefore we will no longer be able to rely on the listing of AWG to make comparisons of how the market values it relative to other listed companies. This type of analysis informs our judgements for example on the appropriate cost of capital for water companies.

Therefore we will introduce a condition into Anglian Water's licence that requires it to maintain a listed instrument.

### **3. "Cash lock-up"**

We signalled in MD218<sup>1</sup> our conclusion, following consideration of responses to the Financing Networks discussion paper, that there is merit in the gradual adoption by water companies of cash lock-up provisions similar to those already applied to energy companies. The new provisions make explicit the steps the regulator requires of the regulated company in order that the financial viability of the regulated company is preserved if its investment grade credit quality is threatened.

We indicated that whilst we saw no grounds for urgent change we would seek to introduce cash lock-up provisions into companies appointments as and when suitable circumstances arise. The change of ownership of Anglian Water through the acquisition of AWG by Osprey represents such a circumstance.

END

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<sup>1</sup> Notification of intent to introduce a cash lock-up provision to Condition F of companies' instruments of appointment – 7 September 2006