



News Release

22/07

1 May 2007

CC ORDERS PRICE REDUCTION FOLLOWING WATER MERGER

South East Water Limited (South East Water) and Mid Kent Water Limited (Mid Kent Water) will be required to make a one-off price reduction to their customers totalling £4 million following the Competition Commission's (CC's) inquiry into the merger between the two companies.

In its final report, published today at www.competition-commission.org.uk, the CC has concluded that the merger between South East Water and Mid Kent Water may be expected to prejudice the Water Services Regulation Authority's (Ofwat's) ability to make comparisons between water enterprises but that the extent of the prejudice is limited. As a result, Ofwat may be expected to set less challenging targets for the water companies it regulates, which is likely to lead to higher prices for customers.

The CC nevertheless expects that this merger will generate customer benefits. In particular, the merger is expected to result in cost savings which will be passed through to customers through future regulatory price reviews. The merger may also result in improved water resource sharing and planning across what were previously company boundaries. The CC's price reduction remedy will allow these benefits to be retained.

As well as the price reduction, which will come into effect in 2008/09, the CC's remedies will also ensure that the next Ofwat price determination (for 2010/11 to 2014/15) takes into account the annual savings in operating expenditure that are expected to result from the merger.

Inquiry Group Chairman and CC Deputy Chairman, Peter Davis commented:

After considering a number of options, from blocking the merger to requiring that the companies maintain separate data sources, we decided that a price cut was the best solution. A price cut mitigates the adverse consequences of the merger, whilst allowing customers to benefit from both the cost savings and the improved water resource management that we think are likely to result from the merger.

The CC had been asked to decide whether the acquisition of Macquarie Luxembourg Water Sarl (now Hastings Luxembourg Water Sarl) by Hastings Diversified Utilities Fund (HDUF) and Utilities Trust of Australia (UTA) may be expected to prejudice the ability of Ofwat to make comparisons between water enterprises for the purposes of its regulatory functions.

HDUF and UTA already own Mid Kent Water and by acquiring Hastings Luxembourg Water Sarl, they now also own South East Water. This is the first time the OFT's duty to refer a water merger has been triggered since the Enterprise Act 2002 came into force.

Notes for editors

1. This report confirms the CC's provisional findings which were published in March. See News release dated 08/03/2007 at www.competition-commission.org.uk/press_rel/2007/march/index.htm.
2. The reference test: under the Water Industry Act 1991 (as amended by the Enterprise Act 2002) the OFT has a duty to make a reference to the CC if the OFT believes that it is or may be the case that a merger of any two or more water enterprises has taken place or arrangements are in progress which would result in such a merger. The duty does not apply if the value of the turnover of the water enterprise being taken over or the value of the turnover of each of the water enterprises belonging to the person making the takeover does not or would not exceed £10 million.
3. The statutory questions the CC has to answer in respect of the merger are:
 - (a) whether a water merger has taken place; and
 - (b) if so, whether that merger has prejudiced, or may be expected to prejudice, the ability of Ofwat in carrying out its functions by virtue of the Water Industry Act 1991, to make comparisons between different water enterprises.
4. Under the water merger provisions introduced by the Enterprise Act the CC is responsible for taking the decisions on the statutory questions and taking decisions about, and implementing, any remedial action considered necessary. Under the previous regime the CC made a recommendation to the Secretary of State who was not bound by the CC's recommendation.
5. The CC has a 24-week period in which it is required to publish its report, which may be extended by no more than eight weeks if it considers that there are special reasons why the report cannot be published within that period.
6. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its website at: www.competition-commission.org.uk.
7. Enquiries should be directed to Rory Taylor on 020 7271 0242 (email rory.taylor@cc.gsi.gov.uk).