

1 Summary

1.1. On 7 September 1989 the Secretary of State asked us to investigate the proposed merger between The Colne Valley Water Company (Colne), Rickmansworth Water Company (Rickmansworth) and water enterprises carried on under the control of General Utilities PLC (GU), the United Kingdom subsidiary of Compagnie Générale des Eaux (CGE).

1.2. Colne and Rickmansworth are two of the 29 statutory water companies (SWCs) which, with the ten water services public limited companies (WSPLCs), supply water in England and Wales. CGE controls four SWCs including Lee Valley Water Company (Lee), which has common boundaries with Colne and Rickmansworth. Colne, Lee and Rickmansworth have been associated for a number of years in a scheme to take water from the River Thames. Because of a possible expansion to this scheme, and other economies which are expected to result from the proposed merger, the Boards of Colne, Lee and Rickmansworth have decided that it would be appropriate to merge. The arrangements would involve a share exchange being made by Three Valleys Water Services PLC (Three Valleys) which has been set up for that purpose. If the merger proposals were accepted, Three Valleys would be controlled through GU by CGE.

1.3. The reference (Appendix 1.1) was the first to be made under sections 29 and 30 of the Water Act 1989 (the Water Act) (Appendix 1.2) which requires the Secretary of State to refer to the Commission certain mergers between water enterprises.¹

1.4. The supply of water and sewerage services in England and Wales is subject to price control. In order to maintain a balance between the need to ensure that water undertakers can finance their functions and the interests of customers in relation to their charges, annual price increases are limited to RPI plus a factor known as K, set initially for each water undertaker by the Secretary of State for the Environment. Future reviews of K (and of the services provided by the industry generally) will be carried out by the Director General of Water Services (DGWS). The review process will be based on the assumption that there is a sufficient number of independently managed companies to enable the DGWS to make comparisons of efficiency and other criteria between companies and therefore to set Ks which reflect both the circumstances of the individual company and of the industry generally.

1.5. This assumption is reflected in section 30 of the Water Act, which provides that in determining, in relation to a merger between water enterprises, whether any matter operates or may be expected to operate against the public interest, the Commission are required to have regard to the desirability of giving effect to the principle that the number of water enterprises which are under independent control should not be reduced so as to prejudice the DGWS's ability to make comparisons. Section 30 also provides that we are to have regard to the desirability of achieving any other purpose so far only as we are satisfied that the other purpose can be achieved in a manner that does not conflict with that principle or that the achievement of that other purpose is of substantially greater significance in relation to the public interest.

¹Water enterprises are companies which have been given an appointment under the Water Act as water or sewerage undertakers to provide water, or sewerage services, in England and Wales. References under sections 29 and 30 are also subject to an assets test.

1.6. The Commission have concluded that the proposed merger involves a reduction in the number of water enterprises under independent control which may be expected to prejudice the DGWS's ability to carry out his functions under the Water Act. The Commission have also concluded that certain purposes related to the merger, including cost and financial savings, cannot be fully achieved without the merger and, therefore, without prejudice to the DGWS's ability to make comparisons.

1.7. The Commission have decided that, unless the cost savings arising from the merger are made available to consumers as lower water charges, the purposes of the merger would not be of substantially greater significance in relation to the public interest than the prejudice to the DGWS's ability to discharge his duties and could not be brought about except in a manner which conflicts with that principle. We have therefore concluded that the proposed merger may be expected to operate against the public interest.

1.8. We have, however, recommended that the merger might be allowed if the parties undertook to seek a new appointment for Three Valleys as a water enterprise and to ensure that the benefits of some £60 million which they expect from the merger were taken into account in the calculation of a K value for that new appointment. The effect on the average user at the end of the ten-year period would be that water charges should be at least 6 per cent lower than if the merger did not take place.