

Terms of reference and conduct of the inquiry

Terms of reference

1. On 16 November 2006 the OFT sent the following reference to the CC:
 1. Whereas in exercise of its duty under section 32(b) of the Water Industry Act 1991 (the Act)¹ to make a reference to the Competition Commission (the CC) the Office of Fair Trading (the OFT) believes that it is or may be the case that a merger of two or more water enterprises has taken place in that:
 - (a) a water enterprise carried on by or under the control of Utilities Trust of Australia (UTA) and Hastings Diversified Utilities Fund (HDUF) has ceased to be distinct from a water enterprise carried on by or under the control of Macquarie Luxembourg Water Sarl (now Hastings Luxembourg Water Sarl); and
 - (b) the value of the turnover of the water enterprise being taken over and of the water enterprise already belonging to UTA and HDUF both exceed £10 million.
 2. Now, therefore, the OFT, in exercise of its duty under section 32(b) of the Act, hereby refers to the CC, for investigation and report within a period ending on 2 May 2007, the following questions in accordance with schedule 4ZA to the Act—
 - (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 the Water Services Regulation Authority, in carrying out its functions by virtue of the Act, to make comparisons between different water enterprises.

(signed) **Vincent Smith**
Senior Director Competition
Office of Fair Trading
16 November 2006

Conduct of the inquiry

2. A notice inviting interested parties to submit written evidence to the CC was placed on our website on 20 November 2006. An administrative timetable for the inquiry was published on 4 December 2006.
3. We sought evidence from customers, water companies, local councils and other regulatory bodies. Evidence was received during oral hearings with a number of water companies, regulatory and other bodies, in written submissions, and in response to questionnaires. Non-sensitive versions of submissions that we received from third parties can be found on our website, together with a summary of key third party arguments and views, and a report on water resources by our engineering consultant, W.S. Atkins.

¹As amended by section 70 of the Enterprise Act 2002.

4. We received written evidence from Hastings and Ofwat and held three hearings with each of them. Non-sensitive versions of their main submissions and their responses to our provisional findings and notice of possible remedies can be found on our website. Members of the Group, accompanied by staff, visited MKW's headquarters in Snodland, the reservoir at Bewl Water, and two water treatment works.
5. In the course of this inquiry we sent to the parties at the relevant time: a statement of issues; extracts from working papers; a notice of provisional findings; the provisional findings report, and a notice of possible remedies. Our provisional findings and the notice of possible remedies were published on the CC website on 8 March 2007.
6. We should like to thank all those who assisted in our inquiry.
7. A copy of this report has been placed on the CC website.