

***Case No IV/M.567 -
LYONNAISE DES
EAUX /
NORTHUMBRIAN
WATER***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 21/12/1995

*Also available in the CELEX database
Document No 395M0567*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case N° IV/M567- LYONNAISE DES EAUX/NORTHUMBRIAN WATER
Notification of 23.11.95 pursuant to Article 4 of Council Regulation N° 4064/89

1. The abovementioned notification concerns the acquisition of Northumbrian Water Group plc (Northumbrian) by a British subsidiary of Lyonnaise des Eaux S.A. (Lyonnaise), by way of a public offer.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Lyonnaise is a French multinational group mainly active in water distribution and waste water treatment, waste management, energy and construction. It is also involved in other activities such as land and property development, television broadcasting and cable TV operation.
4. Northumbrian is principally engaged in the provision of water supply and sewerage services in the North East of England. It is also involved in waste management, consultancy and the manufacture and supply of environmental protection equipment.

II. THE OPERATION

5. On 23 November 1995, Lyonnaise launched a public recommended cash offer for the entire share capital of Northumbrian. Through this operation, Lyonnaise intends to acquire sole control of Northumbrian. It is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined worldwide turnover of Lyonnaise and Northumbrian exceeds Ecu 5 billion (Lyonnaise: 15.186 billion; Northumbrian: 0.404 billion) and they have each an EC-wide turnover in excess of Ecu 250 million. Lyonnaise and Northumbrian do not achieve more than two-thirds of their EC turnover in one and the same Member State. The operation has therefore a Community dimension.

IV. ARTICLE 21(3) PROCEDURE

7. By decision of 29 March 1995 under Article 21(3) of the Merger Regulation⁽¹⁾, the Commission recognised the legitimate interest of the United Kingdom authorities in applying, under certain conditions, the relevant provisions of the Water Industry Act 1991 as amended by the Competition and Services (Utilities) Act 1992. In conformity with this decision, the United Kingdom authorities applied these provisions to the present operation.
8. In its decision of 29 March 1995, the Commission also required the United Kingdom authorities to communicate any measures in each case where the relevant legislation was applied in order for the Commission to verify that these measures are appropriate, proportional and non-discriminatory and more generally in line with Community law.

Subsequent to the Commission's decision, and in the light of Lyonnaise's public announcement of its intention to bid for Northumbrian which had been made on 6 March 1995, the UK authorities initiated an investigation by the Monopolies and Mergers Commission (MMC) into the proposed operation. Following the MMC's report and discussions between the UK authorities and the companies concerned, the UK authorities communicated their proposed measure to the Commission as required by the Commission's decision. The Commission examined the measures, namely: 1. a tightening of price control in respect of the merged companies' water business by comparison with the existing price control with a given cumulative effect over a six-year period and 2. A requirement on Lyonnaise that it will list all its United Kingdom water interests on the Stock Exchange by 2005, subject to market conditions. By letter of 30 October 1995, the Commission did not make any observations on these measures in the light of the abovementioned criteria.

V. COMPATIBILITY WITH THE COMMON MARKET

9. The economic sectors involved in the concentration include water supply and sewerage services, and waste management.

Water supply and sewerage

10. Water supply and sewerage services have been provided in England and Wales since September 1989 by private companies to which licences have been issued by the British government. Ten of these companies provide both water supply and sewerage services ("WASCs") and twenty-one others provide water services only ("WSCs"), each being competent for an allocated region. Licences are granted for a minimum duration of 25 years and may be terminated upon 10 year's notice. Water supply and sewerage services are subject to regulatory control principally organised by the Director General for Water Services (DGWS).
11. Water and sewerage undertakers have strong natural monopolies within their allocated region because it is not economically viable to have more than one network in a region. Competition therefore only takes place between them in two different ways:
- a) at the time where the licence is granted by the government⁽¹⁾;

⁽¹⁾ See OJEC N°C94 of 14.4.95, p.2

⁽²⁾ In this connection, see Commission decision N°92/385/EEC of 28 April 1992 declaring the compatibility with the common market of a concentration (Case N° IV/M.126-

b) residually along the allocated regions' borders. The U.K. legislation permits the DGWS to grant an "inset appointment" to another water undertaker, that is a separate licence set inside the area of the undertaker initially licensed to provide services there.

12. As regards competition at the time where the licence is granted, the relevant market is the market on which the U.K. government grants licences for water supply and sewerage services for England and Wales⁽¹⁾. In this case however, it is unnecessary to reach a precise definition of the relevant geographic market because, even on a narrow definition, taking just England and Wales, the concentration would not create or strengthen a dominant position.

Following the acquisition, and the expected combination of Northumbrian and North East Water (a subsidiary of Lyonnaise) into one licence holder, Lyonnaise will not acquire or reinforce any dominant position in the market for the granting of licences by the government. Lyonnaise will only be one among the many potential bidders. No particular advantage would be acquired by Lyonnaise in that market following this operation. Lyonnaise will control only two out of approximately thirty licences in the relevant geographic market⁽¹⁾. In any case, there are a number of other companies with a similar financial strength to Lyonnaise (eg Compagnie Générale des Eaux, SAUR (Bouygues Group)) who could equally bid for licences.

For sewerage services, Lyonnaise will not acquire or reinforce any dominant position in the market for the granting of licences by the government. Lyonnaise will only be one among the many potential bidders. No dominant position would be created or strengthened by Lyonnaise in that market following this operation. Lyonnaise did not have any WASC licence before the operation and therefore did not provide sewerage services in England and Wales⁽¹⁾.

As a result, the operation does not lead to the creation or the strengthening of a dominant position.

13. As Northumbrian and one of the WSCs controlled by Lyonnaise, North East Water, are adjacent companies, there is a need to examine the question of "inset appointment" for water supply. In this connection, the Commission has noted that under the current regime "inset appointments include restrictions on their application. Notably, the existing appointee must consent to the appointment or variation, or the area must not include premises served by it. In the latter case the DGWS must also have regard to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of the area to be served"⁽¹⁾. The Commission also agrees with the parties and the Monopolies and Mergers Commission that inset appointments are unlikely to apply in relation to existing supply because of the heavy investments which would have to be made in an area where there is already an established network. In the present case, it should be noted that no inset appointment has been made by North East Water or Northumbrian and that neither North East Water nor Northumbrian have ever been approached with a request for inset appointment. Consequently the Commission considers that inset appointment does not, in the present case, raise any competition concern.

Accor/Wagons-Lits OJ L 204 of 21.7.92 page 1) and in particular point V.D for a sector operating under regional monopoly.

(3) The specific regulatory regime under which the water and sewerage undertakers operate does not apply to the rest of the United Kingdom (Scotland and Northern Ireland).

(4) This corresponds to 8% of resident area.

(5) Northumbrian covers 6.2% of resident area.

(6) See the 1990 report by the UK Monopolies and Mergers Commission on a proposed merger of three statutory water companies (General Utilities, Colne Valley Water Co. and Rickmansworth Water Co. Cm 1029 - April 1994 "Three Valleys")

Waste management

14. The waste management activities described below are regulated at national level and mainly subject to the grant of (local) concessions. Competition takes place essentially at the time of tendering for these concessions. For legal and regulatory reasons the conditions governing the grant and the operation of the concessions are uniform throughout the UK. It is unnecessary to reach a precise definition of the geographic market because, even on the narrowest definition, England and Wales, the concentration would not create or strengthen a dominant position. The segmentation described below is made without prejudice that each segment constitutes a distinct product market .
15. **Collection and transport of non-hazardous waste**
Northumbrian's presence in this field is minimal and the parties represent jointly less than 3% of the turnover generated by this activity at national level. Therefore the market for granting of concessions is not substantially affected
16. **Landfill disposal**
The parties represent jointly less than 3% of the turnover generated by this activity at national level. Therefore the market for granting of concessions is not substantially affected. Furthermore, there is no geographic overlap of the parties' activities.
17. **Incineration**
Lyonnaise represents 12.5% of the turnover generated at national level for this growing activity through a joint-venture with the North London Waste Authority which operates a plant in the North of London. Northumbrian is not yet active in this field but is about to start the construction of a new plant at Billingham, Cleveland, through a joint-venture with Cleveland County Council. The parties' activities do not therefore overlap at geographic level. Furthermore, their combined activities will be far below 20% of the turnover generated at national level, and other specialised companies exist who are able to enter this market.
18. **Clinical waste disposal**
The combined activities of the parties at national level is minimal (less than 1% of the turnover generated at national level) and there is no geographic overlap.
19. As a result, the operation will not lead to the creation or the strengthening of a dominant position in the waste management sector.

VI. CONCLUSION

20. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation N° 4064/89.

For the Commission,
