



Challenges and Strategies for Water Supply and the European Commission May 2003 **Green Paper** on Services of General Interest

*R. Andreas Kraemer
Director - Ecologic*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.05.2003
COM(2003) 270 final

GREEN PAPER

ON SERVICES OF GENERAL INTEREST

Content

- **WRc/Ecologic Study on Competition in Water**
 - Objectives and issues
 - Key findings (on competition)
- **Green Paper on Services of General Interest**
 - Character and Purpose
 - Need for EC regulatory framework for water supply?
 - Walking a tightrope over a clash of values
- **Commission's Desired Future for Water Sector**

... Will it be Acceptable to Citizens ?

WRc/Ecologic Study: Competition in Water



**Application of
the Competition
Rules to the Water
Sector in the EU**

**For the European
Commission,
DG Competition**

December 2002

WRc/Ecologic Study: Competition in Water

- **Legal Regime and Structure** in the Water Sector in the European Union and its Member States
- **Economics** of the Water Industry
- **Scope for Competition** in the Water Industry
- **Potential Contribution of EC Competition Rules and Policy** to Increase Competition
- **Possible Regulatory Solutions** in Addition to the Application of EC Competition Rules

http://europa.eu.int/comm/competition/publications/studies/water_sector_report.pdf

WRc/Ecologic Study: Key Findings 1

- **Water & Sewerage are Municipal (except in UK)**
 - Legally responsible; Ownership of assets
 - Power to decide on organisation and delegation
- **Water Services have Significant Social and Environmental Costs and Benefits**
- **Many Water Services are Natural Monopolies**
 - No competition „in the market“ (except large users)
 - But competition „for the market“
 - And competition for „upstream“ goods and services
 - And competition among types of organisation

WRc/Ecologic Study: Key Findings 2

Competition for the Market, issues:

- Granting of **exclusive rights** allowed, but not abuse of them
- No obligation to delegate service provision, but
- **EC procurement rules apply** when delegating
- „Impure“ concessions (financial risk with municipality)
- **„Inter-organic“ concessions** (with municipal enterprise)
- Rules apply to bidders for concession (no abuse, please)

Competition in the Market, not *normally* allowed:

- **Horizontal agreements** (demarcation)
- **Vertical agreements** (exclusive supply, purchasing)
- **Price-fixing agreements**, excessive pricing
- **Exclusionary and exploitative conduct**

WRc/Ecologic Study: Key Findings 3

- **Neighbouring or „Upstream“ Markets:**
 - Goods (equipment) and services (engineering, construction)
 - Credit and financial services („follow the money !“)
 - Transparent application of **EC procurement rules**
 - Non-discrimination (against foreigners & foreign firms)
- **Mergers: If a Water Supplier Acquires a Firm Commission Can Investigate Source of Funds**
- **State Aid: Subsidies May Finance Service**
 - Need not be notified; difficult for Commission to observe
 - Excessive aid would be incompatible with EC Treaty

WRc/Ecologic Study: Key Findings 4

- **Regulatory Solutions** (besides Competition Rules)
 - Regulation should drive **Efficiency**, **Quality**, **Prices**
 - **Water is highly regulated:**
 - Public health
 - **Environment**
 - Consumer interest (**economic regulation**)
- **„It is all about Good Information!“**
 - **Performance reporting and benchmarking**
 - **Environment**, water quality, and quality of service
 - Service performance and **financial results and effects**

Green Paper on Services of General Interest

- Builds on **1996** and **2000** Communications and **2001** Report to the Laeken European Council
- **Shows a Trend in Commission Thinking** on the Role of Competition Rules in Utility Services
- Should **Stimulate Discussion** on
 - Subsidiarity
 - (Possible) **Framework Directive** (or other instrument)
 - **Good Governance**, Competitiveness, Service Quality
 - **Legal Certainty** and the “**Rigorous Application**” of
 - Competition and
 - Internal Market Rules

Water Supply (& Sewerage) in **Green Paper**

- **Brings Water into Scope of Competition Rules**
 - 1996: Water supply was exempted
 - 2000: Water services were ignored
 - 2003: Water supply is ‘service of general economic interest’
- **But is Unclear, because Water is NOT:**
 - ‘provided by large network industries’, with EC regulation
 - ‘non-economic or service without effect on trade’

“Should the Community Establish a Regulatory Framework for Water Supply ?”

Clash of Values: **WFD** and the **Green Paper**

- **Dublin 1992:** “Water has an economic value [...] & should be recognised as an economic good”
- **WFD 2000:**
 - “Water is not a commercial product like any other [...]”
 - “The supply of water is a service of general interest ...”
--> exempting water from EC competition rules
- **Green Paper:**
 - “Water supply is services of general **economic** interest”
- **EC Competition Policy is Driven by Commission**
- **No Role** for European **Parliament and Council**

Commission's Desired Future for Water

- **Green Paper** is Not Explicit, but **Points the Way**
- **Harmonisation** to avoid
 - Legal uncertainty
 - Market distortions
 - Differences in industry structures
- **Unbundling**
 - Breaking up vertically integrated water suppliers
- **International Dimension**
 - World Trade Rules (WTA/WTO)
 - General Agreement on Trade in Services (**GATS**)

Concluding Messages on Water Sector

- **Municipalities** Remain in Control (or state gov.)
- **Public Procurement Rules** Drive Competition
 - In neighbouring and upstream markets
 - “For the market” in bidding for concessions
- **Transparency, Reporting** and **Benchmarking**
- Expect an EC Industrial Policy for Water Sector
- Debate will (in part) **Focus on GATS** negotiations

Water Remains Political:
“**Water is the Blood of Democracy.**”



Challenges and Strategies for Water Supply and the European Commission May 2003 **Green Paper** on Services of General Interest

R. Andreas Kraemer
Director - Ecologic