



The Competition Commission Appeal Tribunals

NOTICE OF APPLICATION UNDER SECTION 47 OF THE COMPETITION ACT 1998 CASE NO 1012/2/3/03.

Pursuant to Rule 13 of the Competition Commission Appeal Tribunal Rules 2000 ("the Rules"), the Registrar of the Appeal Tribunals gives notice of the receipt of an application, dated 19 February 2003, under section 47 of the Competition Act 1998 ("the Act") by Aquavitae (UK) Limited ("the applicant") of 33 St James's Square, London, SW1Y 4JS, in respect of a decision made by the Director General of Water Services ("the Director") and notified to the applicant on 20 December 2002, ("the Contested Decision").

According to the application the applicant is a company registered in the United Kingdom seeking to establish itself as a water retailer in the United Kingdom.

The Contested Decision rejected the applicant's request to the Director to withdraw or vary his decision notified to the applicant on 4 September 2002 ("the Relevant Decision"). According to the applicant the Relevant Decision found that Northumbrian Water, Severn Trent Water, Thames Water, United Utilities and Yorkshire Water ("the water companies") had not infringed the Chapter II prohibition of the Act by refusing to supply the applicant with water at wholesale prices and that the Director was entitled to close his file on the applicant's complaint that the water companies have abused their dominant positions in the market for the wholesale supply of water.

The applicant seeks the following relief:

1. that the Contested Decision be set aside;
2. a declaration that where an incumbent water company refuses to make available to a water retailer a wholesale supply of water at a reasonable wholesale price (i.e. the ordinary tariff, less a reasonable discount for retail services), that incumbent water company thereby infringes the Chapter II prohibition (section 18 of the Act);
3. in the alternative to the relief sought at point 2 above, that the matter be remitted to the Director for proper consideration and investigation;
4. that interim directions be ordered against the Director, being (in summary) that the Director make disclosure of specified classes of document;
5. that each party should bear its own costs of the appeal.

In summary the principal grounds on which the applicant relies are that the Director:

1. has made a decision within the meaning of section 47 of the Act, namely a decision that there is no infringement of the Chapter II prohibition where an incumbent water company refused to sell water to a water retailer on a wholesale basis for a reasonable wholesale price; and in so deciding the Director has misdirected himself as to the application of the Chapter II prohibition in this case and, hence, erred in law;
2. has wrongly decided not to withdraw or vary that relevant decision under section 47 of the Act; and in so deciding he misdirected himself and erred in law.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with Rule 14 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Commission Appeal Tribunals, New Court, 48 Carey Street, London WC2A 2JT, so that it is received within **one month** of the publication of this notice.

Further details concerning the procedures of the Competition Commission Appeal Tribunals can be found on its website at www.competition-commission.org.uk. Alternatively the Tribunal Registry can be

contacted by post at the above address or by telephone (020 7271 0395) or fax (020 7271 0281).
Please quote the case number mentioned above in all communications.

Charles Dhanowa
Registrar

7 March 2003