



Neutral citation [2012] CAT 17

Case Number: 1166/5/7/10

IN THE COMPETITION
APPEAL TRIBUNAL

Victoria House
Bloomsbury Place
London WC1A 2EB

22 June 2012

Before:

VIVIEN ROSE
(Chairman)
TIM COWEN
BRIAN LANDERS

Sitting as a Tribunal in England and Wales

BETWEEN:

ALBION WATER LIMITED

Claimant

- v -

DŴR CYMRU CYFYNGEDIG

Defendant

**RULING ON APPLICATION
TO RE-AMEND THE PARTICULARS OF CLAIM
AND ON COSTS**

1. The Tribunal has been asked to rule on further disputes between the parties over the content of Albion Water's Particulars of Claim in these proceedings. Following the case management conference on 30 March 2012 (the "30 March CMC"), the Tribunal ordered Albion Water to serve a draft Re-amended Particulars of Claim on Dŵr Cymru. Some of those proposed amendments are now contested by Dŵr Cymru and, in addition, Dŵr Cymru challenges two other paragraphs in the draft pleading. Although these latter paragraphs have not themselves been amended, they have become contentious as a result of other amendments proposed by Albion Water. Both parties have now also made applications in respect of the costs incurred at the 30 March CMC. Attached to this Ruling is a glossary of defined terms brought forward from earlier Rulings of the Tribunal in this case, amended as appropriate.

The draft Re-amended Particulars of Claim

2. The passages of the draft Re-amended Particulars of Claim which are now in dispute relate to Albion Water's claim for exemplary damages. They comprise:
 - (a) paragraph 50, which lists 30 quotations from the Tribunal's various judgments in Case 1046. The selected quotations are critical of Dŵr Cymru's conduct in those proceedings in a number of respects;
 - (b) paragraph 51, which states that these "comments on the behaviour of [Dŵr Cymru] generally and in relation to this litigation will be relied on below in relation to the claim for exemplary damages";
 - (c) paragraph 70, which sets out Albion Water's contention that Dŵr Cymru's abusive conduct, as found in Case 1046, coupled with its conduct in the subsequent litigation, evidences its "cynical disregard" for Albion Water's rights; and
 - (d) paragraph 78, which alleges that, Dŵr Cymru's "cynical disregard" for Albion Water's rights is further reflected in the disparity in the companies' respective size and financial means, as well as the direct personal strain which Dŵr Cymru must have known would be placed on Albion Water's staff and directors. It is further

stated in this paragraph that Dŵr Cymru's conduct of the litigation following the offer of the First Access Price in 2001, and the sums which Albion Water has had to expend in those proceedings, has severely impeded Albion Water's progress on the market.

3. Paragraphs 50 and 51 were included in the Particulars of Claim as first served on 18 June 2010. Albion Water is not seeking to amend them in its application for permission now and the paragraphs have not been challenged in Dŵr Cymru's previous applications to strike out parts of the Particulars of Claim. Paragraph 70 was also included in the original Particulars of Claim. Albion Water's application to amend this paragraph seeks to change the wording slightly to make clear that the quotations set out in paragraph 50 are relied on as part of its claim for exemplary damages because they show Dŵr Cymru's "cynical disregard" for Albion Water's rights. Paragraph 78 was included in the Amended Particulars of Claim with the consent of Dŵr Cymru in June 2011. Like paragraph 70, the proposed amendments add an express cross-reference to paragraph 50. Paragraph 78 also previously set out the names Albion Water's individual directors who are said to have been under "direct personal strain" as a result of Dŵr Cymru's conduct. The names of the individual directors are now deleted but the general reference to the impact of the abuse on Albion Water's "individual staff and directors" remains.
4. In response to Albion Water's application to amend paragraphs 70 and 78, Dŵr Cymru asks the Tribunal to exercise its powers under either rule 40(1)(d) or rule 19 of the Tribunal's Rules to "delete" the whole of paragraphs 50, 51, 70 and 78. Albion Water has treated Dŵr Cymru's counterattack as an application to strike out those four paragraphs and we are content to proceed on that basis.
5. As noted above, all four of the paragraphs challenged concern Albion Water's claim for exemplary damages. In the section of the pleading setting out that part of its claim, Albion Water cites the well-known case of *Rookes v Barnard* [1964] 1 All ER 367, where Lord Devlin identifies the situations in which an award of exemplary damages is justified. The second basis for such an award is where a defendant "with a cynical disregard for a plaintiff's rights has calculated that the money to be made out of his wrong doing will probably exceed the damages at risk": see *Rookes v Barnard* at pages 410 and 411 of the report, cited in paragraph 68 of the draft Re-amended Particulars of Claim. In the

following paragraph of the pleading, Albion Water asserts that “[t]he facts of this case fall squarely within the second category of claim identified” in that “it is clear that the intention of [Dŵr Cymru] was to obtain supra-competitive profits in cynical disregard for the interests of the Claimant or its customer, Shotton Paper.”

6. The question of what kinds of allegations and evidence Albion Water can put forward to prove the element of “cynical disregard” on the part of Dŵr Cymru is a question that has been considered by the Tribunal in a number of interlocutory disputes in these proceedings. The Tribunal has already expressed its concern that the matters to be explored in determining whether or not Dŵr Cymru acted with “cynical disregard” should not extend the scope of these proceedings by generating a range of contentious satellite issues which are far removed from what are, in reality, the key issues in the case. This concern arises in the context of the Tribunal’s earlier findings that the only abuse which is relevant to Albion Water’s claim under section 47A of the Competition Act 1998 (the “1998 Act”) is the offer of the First Access Price in March 2001.
7. As regards the relevance of the quotations in paragraph 50 of the draft Re-amended Particulars of Claim, the parties put forward rival interpretations of the Tribunal’s earlier rulings in this case. Albion Water refers to the 16 December 2011 Ruling which dealt with other alleged incidents of misconduct by Dŵr Cymru. Those incidents post-dated March 2001 but were still said to be relevant to the exemplary damages claim. The Tribunal ruled that disclosure of documents relating to any such incidents was neither relevant nor proportionate in these proceedings. The Tribunal said at paragraph 12 of that Ruling that it “may need to have regard” to the quotations set out in paragraph 50 of the then Amended Particulars of Claim in the course of the trial. The Tribunal went no further than that, however, and did not, as Albion Water now seeks to suggest, positively determine that Albion Water would be permitted to rely on “findings” by the Tribunal as to Dŵr Cymru’s conduct in Case 1046.
8. Matters went further in the 23 April 2012 Ruling, which determined the various applications dealt with at the 30 March CMC. Those applications did not include a strike out application in relation to the Amended Particulars of Claim but rather dealt with a number of complaints by Dŵr Cymru as to the content of the Witness Statement of Dr Jeremy Bryan served on behalf of Albion Water. This brought into sharper focus the

question of what post-March 2001 conduct, if any, Albion Water should be able to rely on in support of the exemplary damages claim. In that Ruling the Tribunal stated that:

“28. ... it is appropriate for the Tribunal now to circumscribe more precisely the scope of the allegations we are prepared to consider in this claim. The focus of the Tribunal’s attention must be on the conduct and motivation of Dŵr Cymru at the time it provided the First Access Price in March 2001. Evidence dating from that period about Dŵr Cymru’s state of mind is relevant to that issue. In addition, there may be contemporary documents which post date March 2001 but which directly relate back to the March 2001 period by referring to the position of the company at that date.

29. There may also be conduct which, although occurring after March 2001, casts light on what Dŵr Cymru’s state of mind was at the time the First Access Price was devised and proposed to Albion Water. Mr Sharpe argued at the hearing that if Albion Water were able to show that Dŵr Cymru deliberately misled Ofwat in its submissions in support of the First Access Price during Ofwat’s initial investigation of Albion Water’s complaint, then that would tend to show that Dŵr Cymru must have realised as at March 2001 that the calculations underlying the First Access Price were insupportable. That in turn would support the allegation that the offer of that price in March 2001 had been a deliberate abuse. This is a point that can be made by Albion Water on the basis of the disclosed contemporaneous documents and any appropriate cost calculations without having to consider (i) whether Ofwat was in fact misled by Dŵr Cymru’s calculations, (ii) whether that had any effect on Ofwat’s ultimate decision rejecting the complaint, or (iii) whether the reason why Ofwat was misled (if it was) was because of inadequate staffing or expertise.

30. To the extent set out in the preceding two paragraphs – and only to that extent – we agree that evidence relating to Dŵr Cymru’s conduct post-March 2001 may be relevant to the exemplary damages claim. Beyond that, we do not regard evidence about post-March 2001 events as relevant. To put it another way, Albion Water has sought to rely on allegations of misconduct over the years as showing a general hostility on the part of Dŵr Cymru against Albion Water and hence as showing the likely motivation of Dŵr Cymru at the time it proposed the abusive First Access Price in March 2001. In our judgment, any light that such alleged post-March 2001 misconduct might shed on Dŵr Cymru’s earlier state of mind is unlikely to be sufficient to justify the time and resource it would take to untangle the highly contentious disputes about whether that alleged conduct took place at all and/or whether the alleged conduct was improper or not.”

9. We can therefore summarise the effects of the Tribunal’s previous rulings on the scope of the claim for exemplary damages as follows:

- (a) The judgment of Lewison J in *Devenish Nutrition Ltd & Ors v Sanofi-Aventis SA (France) & Ors* [2007] EWHC 2394 (Ch) does not preclude a claim for exemplary damages based on an allegation that, in putting forward the First Access Price in March 2001, Dŵr Cymru acted in cynical disregard of Albion Water’s rights,

calculating that the income it, Dŵr Cymru, would generate by excluding Albion Water from the market would be more than any compensation it might later have to pay: see the Rule 40 Judgment in December 2010;

- (b) Allegations of incidents which occurred after March 2001, which were unconnected with the offer of the First Access Price but which are alleged to evidence general hostility on the part of Dŵr Cymru to Albion Water are not relevant to the claim for exemplary damages and/or raise disputes that it would be disproportionate to require the Tribunal to resolve in these proceedings: see the 16 December 2011 Ruling;
- (c) The only material post-dating March 2001 which the Tribunal considers might be relevant to the claim for exemplary damages is the material described in paragraphs 28 and 29 of the 23 April 2012 Ruling, namely contemporary documents which shed light on Dŵr Cymru's state of mind at or before March 2001, either directly or by showing that as at March 2001, Dŵr Cymru could not justify the offer of the First Access Price on the basis of its costs of partially treating and distributing the water through the Ashgrove system.

10. In the light of that summary we now consider the four paragraphs of the draft Re-amended Particulars of Claim in dispute. Albion Water has described the 30 quotations set out in paragraph 50 as “findings” which are binding on Dŵr Cymru. It asserts this to counter Dŵr Cymru's submission that, if the quotations are allowed to stand, it (Dŵr Cymru) will be entitled to bring forward evidence putting its side of the story in respect of each of the criticisms made by the Tribunal in Case 1046 on which Albion Water relies. The great majority of the quotations relate to the information the Tribunal wanted Dŵr Cymru to provide in Case 1046 to show whether the costs incurred in providing access to the Ashgrove system supported the level of the First Access Price. In some instances, the Tribunal complained that the information provided was not accurate. More often the Tribunal complained that not enough information was forthcoming from Dŵr Cymru. For example in quotations (6) and (16) the Tribunal commented:

“(6) “... Whilst Dŵr Cymru has given some considerable disclosure, a troubling feature of the present case is that on a number of occasions information supplied has had to be corrected, and on other occasions assertions have been made that have proved difficult to verify ...”: the 1046 Main Judgment, paragraph [291]

...

(16) “Furthermore, in this case Dŵr Cymru has made no attempt to identify separately, or allocate, the costs, direct or indirect, of the transportation service which it was asked to provide ...”: the Margin Squeeze Judgment, paragraph [294]”

11. It is not clear to us what are the “findings” that Albion Water asserts were made here by the Tribunal. In *Enron Coal Services Ltd (in liquidation) v English Welsh & Scottish Railway Ltd* [2011] EWCA Civ 2, Lloyd LJ, with whom Jacob and Patten LJJ agreed, stated that, in the context of a follow-on damages claim under section 47A of the 1998 Act, “the party seeking to rely on a finding must be able to demonstrate that the regulator has made a clearly identifiable finding of fact to a given effect, and it is not enough to be able to point to passages in the decision from which a finding of fact might arguably be inferred” (at [56]). In agreeing with Lloyd LJ, Jacob LJ held that this point “cannot be emphasised enough. It is not good enough for a party claiming damages in a follow-on claim to root around in the decision of the regulator [or, as in this case, a previous Tribunal panel] to find stray phrases or sentences and say ‘look, here is a finding of fact, you cannot deny it.’” (at [148]).
12. In the present context, even if one could describe some of the quotations set out at paragraph 50 as “findings” that some information provided by Dŵr Cymru to the Tribunal was incorrect or that Dŵr Cymru did not supply the Tribunal with other information that had been requested, it is difficult to see of what relevance they could be to Dŵr Cymru’s state of mind in March 2001. The tone of many of the comments quoted indicates a degree of frustration on the part of the Tribunal as to the manner in which Dŵr Cymru conducted the litigation in Case 1046. There appears to have been some scepticism as to Dŵr Cymru’s assertions about the costs of the Ashgrove system, given the apparent dearth of available information about those costs. We do not, however, read those comments as expressing any findings on the part of the Tribunal as to *why* some of the material was inaccurate or *why* Dŵr Cymru had such apparent difficulty providing the costs information the Tribunal wanted. Such findings would not have been necessary for the Tribunal in Case 1046 to arrive at a finding of infringement; it was sufficient for it to conclude that the First Access Price was an abuse of a dominant position within the meaning of section 18(1) of the 1998 Act.

13. In our judgment, therefore, Albion Water is not in truth seeking to rely on these “findings”. Rather, it wishes the Tribunal to draw adverse inferences from these comments of the Tribunal in Case 1046 as to the reasons for Dŵr Cymru’s “behaviour” and its inability, or unwillingness, to provide accurate information about its costs in the course of Case 1046. It would only be by drawing adverse inferences that the quotations at paragraph 50 could arguably be relevant to Albion Water’s claim for exemplary damages.
14. The Tribunal does not however consider that it would be possible, to draw any such inferences without giving Dŵr Cymru an opportunity to respond to each of these comments and explain why any such inference might be unfair, unjustified or unwarranted. The Tribunal’s “findings”, if such they be, that Dŵr Cymru failed to provide sufficient or accurate costs information to the Tribunal during the course of Case 1046 cannot, without more, assist us in deciding whether this is an appropriate case for an award of exemplary damages. To explore that “more”, so as to enable us to decide whether those failings were in some way related to Dŵr Cymru’s state of mind at the time it offered the First Access Price would disproportionately increase the length, complexity and cost of the trial of this matter.
15. Some of the other quotations in paragraph 50 of the draft Re-amended Particulars of Claim relate the Tribunal’s rejection of bad points put forward by Dŵr Cymru in its intervention in Case 1046. The Tribunal was also critical of Dŵr Cymru’s apparent rejection of an invitation to try to settle Case 1046 by mediation. We do not accept, however, that, in the circumstances of this case, these are relevant to the question of exemplary damages. There is no doubt that Dŵr Cymru resisted the allegation of abusive conduct robustly, both in the proceedings before Ofwat (where it was of course successful) and in the course of the appeal before the Tribunal in Case 1046 (where it was not). The fact that an undertaking accused of infringing conduct exercises its rights of defence to the fullest possible extent or puts forward a number of bad points in argument, should not subsequently be relied on to increase the damages it has to pay if it is ultimately found to have committed an abuse. Such an approach would unfairly hamper an undertaking from defending its interests in the manner which it, and its legal advisers, consider to be most appropriate. If any misconduct on the part of an undertaking goes beyond the bounds of a vigorous defence of its interests, that is properly dealt with when considering the award of costs at the conclusion of those proceedings. It should not form the basis of a claim for exemplary damages.

16. Finally, some of the quotations in paragraph 50 express the Tribunal's finding of abuse and its concern about the consequences of Dŵr Cymru's abusive behaviour. In these proceedings, Dŵr Cymru has accepted, as it must, that the First Access Price was abusive. Such findings, of themselves, do not assist this Tribunal in assessing Dŵr Cymru's state of mind in March 2001 when it offered the First Access Price. Should the precise extent of the abusive conduct become relevant to the claim for damages then the Tribunal will be able to look at the terms of the various judgments in Case 1046 as necessary. We do not see, however, that these quotations include any "finding" – beyond the finding of abuse – that is relevant to the claim for exemplary damages.
17. Accordingly, we have concluded that paragraphs 50 and 51 should be struck out in their entirety.
18. As regards paragraph 70, the necessary consequence of our conclusions above is that permission to include the two cross references to paragraph 50 is refused. The reference in the first line to "and the stalling tactics that [Dŵr Cymru] adopted from 2002 to 2009" is struck out. The deletion of the words "on an illegal and abusive basis" is permitted. The reference in the final sentence to Dŵr Cymru's "approach" to the litigation is also struck out. In this paragraph Albion Water also appears to allege that Dŵr Cymru's approach to this litigation is itself an abuse that warrants exemplary damages. Many of the "findings" set out in paragraph 50 (for example items 8, 10, 15, 16, 18, 22 and 28) seem to be cited in support of such an allegation. However, the current action must concern solely damages arising from the proven market abuse. It would be inappropriate for Albion Water to seek to introduce allegations of a different abuse which has not already been proven elsewhere. The remainder of the paragraph will not be struck out, however, and permission is given for the inclusion of it in the Re-amended Particulars of Claim in the following form:

"70. The effect of the abuse was that the Defendant was able to maintain this revenue stream for a further eight years, without as yet suffering any financial or other sanction. So far as the Claimant is concerned, the requirement of "cynical disregard" for the interests of the Claimant (or of Shotton Paper) has been manifest in the Defendant's abusive conduct."

19. The Tribunal notes that the proposed amendments to paragraph 78 would remove the names of the individual directors of Albion Water, referring simply to the direct personal strain on "the individual staff and directors of a small company such as the Claimant". The

personal strain on the staff or directors of Albion Water, whether foreseen by Dŵr Cymru or not, is not relevant to a claim for exemplary damages by Albion Water itself. The proposed deletion of the individuals' names from paragraph 78 of the draft Re-amended Particulars of Claim does not meet this point and the reference to the effects of the abuse on those individual must be struck out. Albion Water is not, therefore, permitted to lead any evidence about the personal strain suffered by its staff or directors and Dŵr Cymru is neither expected, nor entitled, to attempt to rebut any such evidence by exploring the personal circumstances of Albion Water's staff or directors.

20. As a result of paragraphs 50 and 51 being struck out, the proposed cross-reference to paragraph 50 contained in paragraph 78 must be deleted also. Permission is, therefore, given for the inclusion of paragraph 78 in the Re-amended Particulars of Claim in the following form:

“78. The “cynical” and “outrageous” nature of the Defendant’s conduct is further reflected in the extreme disparity between the parties’ sizes. The resolution of this case was delayed for a period of over eight years, and the Defendant’s behaviour severely impeded the ability of the Claimant to achieve the purposes underlying the 1998 Act and the regime of water regulation more generally, as described by the Tribunal in its main judgment. Had the Claimant not been required to spend a very considerable amount of time since 2001 seeking redress in respect of Dŵr Cymru’s abusive conduct, and fighting to continue to exist, it could have made significantly more progress in the market.”

21. Albion Water is now required to file and serve copies of the final Re-amended Particulars of Claim prepared in accordance with the decision of the Tribunal set out in the foregoing paragraphs. Dŵr Cymru is to file and serve its Re-amended Defence within 28 days of the date of this Ruling, in accordance with paragraph 6(d)(ii) of the Order of 23 April 2012 (as amended).

Costs of the applications decided by the 23 April 2012 Ruling

22. In the 23 April 2012 Ruling, the Tribunal dismissed Dŵr Cymru’s application for security for costs. Albion Water has now applied for its costs of defending that application. It has quantified its costs of defending that application in the amount of £41,969.94.

23. Dŵr Cymru acknowledges that it was unsuccessful in that application but submits that the most appropriate decision, taking into account the other matters considered at the 30 March CMC, would be to make no order as to costs. In the alternative, Dŵr Cymru contends that:

(a) if Albion Water is entitled to any of its costs in respect of the security for costs application, it should only be entitled to its costs from the date at which it provided certain information on which the Tribunal relied in rejecting the application, namely as to the financial means Albion Water's directors and the availability of third party funding, and after-the-event insurance. Prior to the provision of that information, Dŵr Cymru says it was justified in seeking security; and

(b) it is entitled to its costs in respect of the other matters dealt with at the 30 March CMC in respect of which Dŵr Cymru says it was largely successful. Dŵr Cymru quantifies its costs in relation to dealing with Albion Water's witness evidence in the amount of £43,253.77, and in relation to the contested costs applications dealt with at the 30 March CMC in the amount of £7,118.50.

24. Dealing first with the application for security for costs, in our judgment Albion Water is entitled to its costs of successfully defending that application. Albion Water's costs were significantly increased by two points taken by Dŵr Cymru which were without merit. The first was the comparison between Albion Water's accounts and those of a different water company, Veolia Water East, said to demonstrate that sums transferred by Albion Water to its parent company, in consideration for services provided to Albion Water, were excessive. This necessitated the preparation of witness statements in response.

25. The second was the allegation pursued by Dŵr Cymru that "Albion's financial arrangements had the effect of putting its assets beyond the reach of the Tribunal" (see the First Witness Statement of Ms Suyong Kim, paragraph 16). Again this allegation necessitated the preparation of witness statements refuting the allegation, which, it transpired, was entirely unwarranted. As Albion Water pointed out, the payments made to its parent company were made in respect of the services of the directors and staff, who were employed by that parent and provided for consideration to Albion Water, as well as for the central procurement of certain services such as auditing and accountancy. It appears from Ms Kim's witness statement (paragraph 16) that the explanation for the payments to

Albion Water's parent company was first given to Dŵr Cymru, in brief, in a letter received by it on 6 March 2012, approximately one week after the point was raised with them in correspondence by Dŵr Cymru. The explanation was then elaborated on in the Second Witness Statement of Dr Bryan, prepared on behalf of Albion Water on 19 March 2012.

26. We reject the suggestion that Albion Water should only be entitled to claim its costs as from 19 March 2012. The points taken by Dŵr Cymru as to the financial arrangements between Albion Water and its parent company, and the comparison sought to be drawn between Albion Water and Veolia Water East were misconceived. Albion Water was required to respond and did so well in advance of the 30 March CMC.

27. Albion Water is therefore, in our judgment, entitled to its reasonable costs of defending the security for costs application. The Tribunal is, however, concerned that Albion Water has not adequately explained the basis on which it has separated out its costs of defending that application from the other costs incurred in relation to the 30 March CMC. It is not appropriate therefore simply to order the payment of Albion Water's costs. The claim will have to be subject to detailed assessment and we will make an order accordingly. Pending the final assessment of the costs, Dŵr Cymru should make an interim payment to Albion Water of £30,000.

28. We turn now to consider the other matters addressed at the 30 March CMC. We do not accept that Dŵr Cymru was the successful party in relation to all other matters dealt with then. In relation to the First Witness Statement of Dr Bryan, Dŵr Cymru sought to have a very substantial number of paragraphs of that statement struck out. The 23 April 2012 Ruling is, as Dŵr Cymru observes, critical of that statement, describing it as "unwieldy and unhelpful", with parts being inadmissible. However, we did not consider it appropriate to grant Dŵr Cymru's strike out application and directed rather that the witness statement be withdrawn and re-served in amended form. Although the Tribunal concluded that much of the material included in Dr Bryan's witness statement was not properly evidence, we considered that, for example, the commentary by Dr Bryan on contemporaneous documents might well prove useful to the parties (and the Tribunal) in preparing for the substantive hearing of the case, if provided in another form, and was not, therefore, wasted effort. In those circumstances, the Tribunal considers that there should be no order as to costs of these matters.

29. As to the two contested costs applications which were dealt with at the 30 March CMC, Dŵr Cymru submits that it was the substantially successful party and should have its costs, which it quantifies in the amount of £7,118.50. In respect of the costs of the 9 June 2011 Ruling, Dŵr Cymru submitted that there should be no order as to costs and, in respect of the 16 December 2011 Ruling it sought its costs. Albion Water contested both applications at the 30 March CMC. Although Dŵr Cymru was the successful party in this respect, the time spent dealing with this matter was short and is counterbalanced by the time spent addressing the shortcomings in disclosure accompanying the Witness Statement of Ms Janine White, on which Dŵr Cymru relies.

Conclusions

30. In the light of the above our unanimous conclusions are as follows:

- (a) in relation to the draft Re-amended Particulars of Claim, paragraphs 50 and 51 are struck out but permission is given for the inclusion of paragraphs 70 and 78 in the forms set out in paragraphs 18 and 20 of this Ruling, respectively; and
- (b) as to costs, Albion Water is entitled to its reasonable costs of defending the security for costs application. Dŵr Cymru is ordered to make an interim payment to Albion Water in the amount of £30,000 in respect of those costs, with the remainder sought to be assessed. There is to be no order as to costs in respect of the remaining costs sought by Dŵr Cymru.

31. Also attached to this Ruling is an order giving effect to the Tribunal's decisions contained in this Ruling.

Vivien Rose

Tim Cowen

Brian Landers

Charles Dhanowa QC
Registrar

Date: 22 June 2012

ALBION WATER LIMITEDClaimant

- v -

DŴR CYMRU CYFYNGEDIGDefendant**GLOSSARY OF TERMS**

The Tribunal judgments in the current proceedings: Case 1166/5/7/10	
The Rule 40 Judgment	<i>Albion Water Ltd v Dŵr Cymru Cyfyngedig</i> [2010] CAT 30 (8 December 2010)
The Strike Out Ruling	<i>Albion Water Ltd v Dŵr Cymru Cyfyngedig</i> [2011] CAT 1 (21 February 2011)
The 9 June 2011 Ruling	<i>Albion Water Ltd v Dŵr Cymru Cyfyngedig</i> [2011] CAT 18 (9 June 2011)
The 16 December 2011 Ruling	<i>Albion Water Ltd v Dŵr Cymru Cyfyngedig</i> [2011] CAT 42 (16 December 2011)
The 23 April 2012 Ruling	<i>Albion Water Ltd v Dŵr Cymru Cyfyngedig</i> [2012] CAT 10 (23 April 2012)
The Tribunal judgments in the infringement proceedings: Case 1046/2/4/04	
Case 1046	The appeal brought in the Tribunal by Albion Water Ltd in Case 1046/2/4/04
The Interim Judgment	<i>Albion Water Ltd v Water Services Regulation Authority</i> [2005] CAT 40 (22 December 2005)
The 1046 Main Judgment	<i>Albion Water Ltd v Water Services Regulation Authority</i> [2006] CAT 23 (6 October 2006)
The Margin Squeeze Judgment	<i>Albion Water Ltd v Water Services Regulation Authority</i> [2006] CAT 36 (18 December 2006)

The 1046 Costs Judgment	<i>Albion Water Ltd v Water Services Regulation Authority</i> [2007] CAT 1 (8 January 2007)
The 1046 Permission to Appeal Judgement	<i>Albion Water Ltd v Water Services Regulation Authority</i> [2007] CAT 8 (2 February 2007)
The 1046 Court of Appeal Judgment	<i>Dŵr Cymru Cyfyngedig v Albion Water Ltd</i> [2008] EWCA Civ 536 (22 May 2008)
The Unfair Pricing Judgment	<i>Albion Water Ltd v Water Services Regulation Authority</i> [2008] CAT 31 (7 November 2008)
The Remedies Judgment	<i>Albion Water Ltd v Water Services Regulation Authority</i> [2009] CAT 12 (9 April 2009)
Other Terms	
The Tribunal's Rules	The Competition Appeal Tribunal Rules 2003 (SI 2003 No. 1372)
The Chapter II prohibition	The prohibition of the abuse of a dominant position contained in section 18(1) of the Competition Act 1998
First Access Price	The price offered by Dŵr Cymru for common carriage in March 2001, namely 23.2p/m ³
Second Bulk Supply Agreement	The agreement entered into between Albion and Dŵr Cymru on 10 March 1999 for the supply of non-potable water via the Ashgrove System.
Second Bulk Supply Price	The price payable by Albion under the Second Bulk Supply Agreement, namely 26p/m ³
Ashgrove System	The system of pipes owned and operated by Dŵr Cymru through which water is supplied to Shotton Paper and Corus Shotton
Shotton Paper	A paper-making plant situated on Deeside supplied with non-potable water via the

	Ashgrove System
Corus Shotton	A steel producer supplied with non-potable water via the Ashgrove System
United Utilities	A water undertaker and supplier of non-potable water from the River Dee at Heronbridge to Dŵr Cymru
Ofwat	The Water Services Regulation Authority
p/m ³	Pence per cubic metre
Amended Particulars of Claim	The Particulars of Claim amended in accordance with the Rule 40 Judgment and served by Albion on 9 June 2011