



IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1166/5/7/10

B E T W E E N :

ALBION WATER LIMITED

Claimant

-v-

DŴR CYMRU CYFYNGEDIG

Defendant

ORDER

UPON the Claimant applying on 16 May 2012 for permission to re-amend its Particulars of Claim pursuant to rule 34 of the Tribunal's Rules (the "Rule 34 Application")

AND UPON the Claimant applying on 22 May 2012 for its costs of defending the Defendant's application for security for costs under rule 45 of the Tribunal's Rules (the "Rule 45 Application"), which was refused by an order of the Tribunal made and drawn on 23 April 2012 (the "23 April Order")

AND UPON the Defendant applying on 31 May 2012 for its costs of various applications made at a case management conference held on 30 March 2012 (the "CMC Applications"), which were determined by the 23 April Order

AND UPON the Tribunal handing down its ruling ([2012] CAT 17) (the "Judgment") determining those applications

IT IS ORDERED THAT:

1. This Order adopts the same definitions as, and should be read with, the Judgment.
2. The Claimant has permission to Re-amend its Particulars of Claim in the form filed in draft with the Rule 34 Application, save that:
 - (a) Paragraphs 50 and 51 of the draft are struck out;

(b) Paragraph 70 shall be included 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.”

(c) Paragraph 78 shall be included 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.”

3. The Defendant pay to the Claimant its reasonable costs of defending the Rule 45 Application, such costs to be assessed on the standard basis, if not agreed.
4. The Defendant pay to the Claimant the sum of £30,000 by way of an interim payment in respect of the costs awarded under paragraph 3 of this Order, such payment to be made within 28 days of the date of this Order.
5. There is no order as to the Defendant’s application for its costs occasioned by the CMC Applications.
6. There be liberty to apply.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 22 June 2012
Drawn: 22 June 2012