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**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

Case No. 1031/2/4/04  
1034/2/4/04(IR)

18 December 2006

Before:  
SIR CHRISTOPHER BELLAMY  
(The President)

THE HONOURABLE ANTONY LEWIS  
PROFESSOR JOHN PICKERING

Sitting as a Tribunal in England and Wales

BETWEEN:

**ALBION WATER LIMITED**

-v-

**WATER SERVICES REGULATION AUTHORITY**  
(formerly DIRECTOR GENERAL OF WATER SERVICES)

**AQUAVITAE (UK) LIMITED**

1045/2/4/04

-v-

**WATER SERVICES REGULATION AUTHORITY**  
(formerly DIRECTOR GENERAL OF WATER SERVICES)

**ALBION WATER LIMITED**

1046/2/4/04

Supported by

**AQUAVITAE (UK) LIMITED**

-v-

**WATER SERVICES REGULATION AUTHORITY**  
(formerly DIRECTOR GENERAL OF WATER SERVICES)

Supported by

**DŴR CYMRU CYFYNGEDIG**

and

**UNITED UTILITIES WATER PLC**

**PROCEEDINGS**

**After Judgment handed down**

## APPEARANCES

Mr. Rhodri Thompson QC appeared on behalf of the Appellant and Aquavitae (UK) Limited.

Mr. Rupert Anderson QC (instructed by the Head of Legal Services, Water Services Regulation Authority) appeared on behalf of the Respondent.

Mr. Christopher Vajda QC and Mr. Meredith Pickford (instructed by Wilmer Cutler Pickering Hale and Dorr LLP) appeared on behalf of Dŵr Cymru Cyfyngedig.

Mr. Fergus Randolph (instructed by Group Legal Manager) appeared on behalf of United Utilities.

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1 THE PRESIDENT: The Tribunal is handing down Judgment today in this case. For the reasons  
2 given in the Judgment the Tribunal unanimously:

- 3 (i) sets aside the paragraphs identified in para.(i) in para.360 of the Judgment.  
4 (ii) confirms as correct the Director's assumption as to dominant position at paras.  
5 212 and 215, last sentence, of the Decision, and finds on the facts that Dŵr  
6 Cymru had at all material times a dominant position on the relevant market  
7 within the meaning of the Chapter II prohibition.  
8 (iii) refers back to the Authority under Rule 19(2)(j) of the Tribunal's Rules for  
9 further investigation the matter of the costs reasonably attributable to the  
10 service of the transportation and partial treatment of water by Dŵr Cymru,  
11 generally and through the Ashgrove system in particular, together with the  
12 associated question of whether, in the light of those costs, the First Access  
13 Price was an unfair price within the meaning of the Chapter II prohibition.  
14 (iv) declares that by quoting the First Access Price of 23.2p/m<sup>3</sup>, at the same time  
15 as offering a retail price of some 26p/m<sup>3</sup>, Dŵr Cymru imposed on Albion a  
16 margin squeeze which constituted an abuse of a dominant position within the  
17 meaning of the Chapter II prohibition.  
18 (v) continues until further order the Tribunal's interim order of 20 November  
19 2006 reducing Dŵr Cymru's existing Bulk Supply Price to Albion by  
20 3.55p/m<sup>3</sup>.

21 That being the Tribunal's Judgment, as far as we know at the moment we have two outstanding  
22 matters. One is the request by Dŵr Cymru for permission to Appeal, and the other is the  
23 question of costs.

24 On the first of those matters, we have thought it convenient not to rule on the existing  
25 application for permission to appeal until Dŵr Cymru has had a chance to absorb the contents  
26 of this Judgment in case there is a further application for permission to appeal in which event it  
27 would be convenient for the two applications to be dealt with together, and it may be that to  
28 some extent any forthcoming (not necessarily anticipated but possible) application can  
29 conveniently be regarded as having subsumed the existing application; convenient though it  
30 was to have the existing application at the time. That is the first point on permission to appeal.  
31 There is, however, a practical point in relation to permission to appeal which is that in relation  
32 to the position of the President, he should have retired on Friday but has not done so pending  
33 the resolution of outstanding matters in this case. The Tribunal is not prepared to formally  
34 abridge the time for permission to appeal but, at the same time, it is not prepared to extend the

1 time for permission to appeal in the circumstances. Yet, insofar as it is convenient and  
2 possible for the parties – without putting them under any pressure of any kind – to introduce  
3 before the Tribunal any application for permission to appeal without taking the full statutory  
4 limit that is a matter that the Tribunal would simply ask the parties to bear in mind in preparing  
5 any document that they feel they ought to prepare. That is the permission to appeal situation.  
6 As far as costs are concerned, the Tribunal notes that there are a number of points that it has to  
7 deal with. It anticipates dealing with those points. It also notes that there have been  
8 negotiations between the parties. We have understood that various stages of the negotiations  
9 have become open matters, so that having consulted the parties we have seen what the position  
10 of the parties is in those negotiations, at least as between the Treasury Solicitor and the  
11 claimant, Albion, so we are aware of the position. I do not think it is appropriate at this stage  
12 to say more than that, except that the Tribunal is always in favour of matters being settled if  
13 they possibly can be.

14 I think that is probably all that we need to say for the time being. Are there any other  
15 applications or interventions that anybody would like to make?

16 MR. ANDERSON: Yes, Sir. On behalf of Ofwat we hear what you say on the question of  
17 abridgement of time but I wonder if I could just make an application for an extension of the  
18 time in which to seek permission to appeal against this Judgment on behalf of Ofwat and if I  
19 could just mention a couple of points in that respect. It is, of course, clear from this further  
20 Judgment that there are matters of substance that the Tribunal has now decided which go  
21 considerably beyond, in our submission, what was contained in the main Judgment, that was in  
22 particular the Tribunal has now felt able to reach a conclusion on dominance, a conclusion on  
23 margin squeeze, a finding that the second bulk supply price agreement is capable of giving rise  
24 to an abuse for precisely the same reasons as the First Access Price; those are all matters of  
25 some significance to Ofwat. They would therefore wish to have a proper opportunity firstly in  
26 which to consider whether it is appropriate to appeal; and secondly, to prepare the necessary  
27 paper work in order to advance such an appeal.

28 THE PRESIDENT: Yes.

29 MR. ANDERSON: In the circumstances of this case, there is a Board Meeting on 6<sup>th</sup> February,  
30 which is the first appropriate Board Meeting at which those matters could be considered. An  
31 extension of time to seven days after that we would submit would cause no prejudice in the  
32 circumstances of the case given, first, that the Tribunal has awarded interim relief, secondly,  
33 that the Authority has been ordered to undertake further investigations in the next six months  
34 which would occur in tandem with any process for apply for permission to appeal, and thirdly,

1 of course, there is the outstanding existing request for permission to appeal by Welsh. The  
2 further point, of course, is that there is between now and the time at which permission to  
3 appeal would normally expire, the intervening Christmas and New Year period at which a  
4 number of key personnel are not present. So in those circumstances we would urge the  
5 Tribunal to grant us until 13<sup>th</sup> February in which to submit any request for permission to  
6 appeal.

7 THE PRESIDENT: Well I think the practical problem, Mr. Anderson, is my personal position, I am  
8 afraid.

9 MR. ANDERSON: Well I understand and fully appreciate that, Sir.

10 THE PRESIDENT: You can have another Chairman.

11 MR. ANDERSON: We see no objection, from our point of view, to another Chairman considering  
12 what is, in principle ----

13 THE PRESIDENT: It is not very desirable.

14 MR. ANDERSON: Of course, Sir, in an ideal world we would wish you to conduct all aspects of the  
15 case. The question of permission to appeal though is, in a sense, discrete. It raises only the  
16 question of whether or not we can demonstrate a reasonable prospect of success of errors of  
17 law in the Judgment or some other compelling reason. So whilst of course a new Chairman  
18 would need to be brought up to speed in a sense, any subsequent appeal or application for  
19 permission to appeal, if declined by the Tribunal, could be made to the Court of Appeal and of  
20 course would be decided in that context by a Judge with no experience of the case to date  
21 whatsoever and, of course, any new Chairman would have the benefit of your existing  
22 colleagues on this tribunal. So from our point of view we would clearly have no objection to a  
23 new Chairman being appointed for the purposes of considering permission to appeal.

24 THE PRESIDENT: We are now at 18<sup>th</sup> December, surely the Authority, as an Authority, can find  
25 out what its position is without having to wait for a formal Board Meeting, by having a Special  
26 Board Meeting, or telephoning each other, to arrive at a view on what to do once they have had  
27 some advice.

28 MR. ANDERSON: Sir, with respect, I think it is a very significant decision and a decision the  
29 authority would not wish to take lightly. We are in the last week before Christmas; it is my  
30 understanding it would not be possible to convene a Board Meeting until the New Year. We  
31 are reluctant, for reasons we explained on a previous occasion, simply to launch a request for  
32 permission to appeal as, as it were, an insurance policy. We would prefer to take a considered  
33 view on whether or not it is appropriate to appeal and, of course, to formulate an appropriate  
34 application to the Tribunal. It is clear, given that the Tribunal has directed the Authority to

1 consider further matters under 19(2)(J) that in all likelihood this case will be coming back to  
2 this Tribunal without the current President chairing this panel of the Tribunal. So in our  
3 submission the better course is to grant the Authority the appropriate time in which to consider  
4 properly this question of permission rather than to try and squeeze it into a timetable that  
5 would meet the possibility of the current President personally being involved in that decision  
6 which, as I say, is a discrete decision from the substance of the Tribunal's Judgment.

7 THE PRESIDENT: Yes, thank you. Yes, Mr. Vajda?

8 MR. VAJDA: I would be also asking for an extension of time not, as it happens, as long as the  
9 Authority. The extension of time that I would be asking for would be to 1<sup>st</sup> February, which is  
10 two weeks beyond 18<sup>th</sup> January which, by my calculation, is when time would expire. The  
11 reasons for that are similar, but not identical, to the ones advanced by Mr. Anderson. First,  
12 there is the Christmas and New Year break which affects my client, because my client will  
13 have to consider whether or not they wish to appeal this, and then there will be the question of  
14 actually drafting the document, and the two week extension is, in a sense, designed to cover the  
15 two weeks when people are not going to be around, so that is the basis of ----

16 THE PRESIDENT: They are off for two weeks, are they?

17 MR. VAJDA: Well, if I can start with counsel, term ends on 21<sup>st</sup> December, it starts again on 11<sup>th</sup>  
18 January; plainly lawyers nowadays work outside term time but there is, as you can imagine at  
19 this time of year, quite a lot going on in other cases apart from this case, and therefore in the  
20 context of a case which started in 2004, with respect, we do not see that an extension of time  
21 for two weeks could, in any way be said to be disproportionate or indeed, for the reason Mr.  
22 Anderson gave, in any way prejudicing what the Tribunal has ordered.  
23 So far as the position of the President himself is concerned, plainly the President will wish to  
24 weigh up, as it were, his own position with that of, if I can put it like this, the interests of the  
25 parties and the interests of justice in this case. We would say that in this situation a two week  
26 extension of time, absent the President's own position, is one that would – I would suggest –  
27 be granted. I understand the concern of the President, but in my respectful submission this is  
28 not a concern that in a sense should override what would in other cases be the correct decision.  
29 Plainly, there are great advantages in the President being here to take the decision on whether  
30 or not to grant permission, but I adopt entirely what Mr. Anderson said, that if that is not  
31 possible then it will have to be done by somebody else, and the important thing in my  
32 respectful submission is that the parties are given, as it were, a fair crack of the whip and that it  
33 has been seen that the proceedings before this Tribunal have been conducted in a way that is  
34 fair to all the parties. So for those reasons I would ask the Tribunal to grant an extension. I

1 said obviously if the Tribunal grant an extension to 13<sup>th</sup> February I am very much in the  
2 Tribunal's hands, we could put ours in by 1<sup>st</sup> February, that is really a matter for the Tribunal if  
3 they want to give us the same length of time as the Authority.

4 Those are the only points I have to make. We totally agree with the approach that you, Mr.  
5 President, have indicated in terms of effectively joining the whole thing up as composite, that  
6 is plainly sensible.

7 THE PRESIDENT: Yes, thank you. Do you have any application, Mr. Randolph?

8 MR. RANDOLPH: Only this: my present instructions are – and I would imagine they will stay this  
9 way – that we will not be seeking permission to appeal, I say “we”, United Utilities. But  
10 whilst I am on my feet I would like briefly to make clear United Utilities support of Mr.  
11 Anderson and Mr. Vajda's approach insofar as it obviously impacts on them. The only point I  
12 would make in addition to what they have said is this, obviously, Sir, your position is almost  
13 unique in this case, and there have been statements by the Lord Chancellor talking about  
14 members of the Judiciary leaving and how that should be supported in large measure for  
15 various policy reasons and that is wholly understandable in itself. But to a certain extent the  
16 eyes of the world, Sir, are on you to a certain extent and how this difficult issue is handled and  
17 I would simply submit that if it were possible to make absolutely clear that the parties did not  
18 suffer any disadvantage from the process then that is obviously to be supported and ----

19 THE PRESIDENT: There is no question, Mr. Randolph, of the parties having any disadvantage.  
20 The only question is whether or not 18<sup>th</sup> January, which is the normal time at which permission  
21 to appeal would expire, is an unfair period from their point of view to put in a sensible  
22 application.

23 MR. RANDOLPH: Indeed.

24 THE PRESIDENT: That is the point that needs to be addressed.

25 MR. RANDOLPH: Indeed, and you, Sir, have heard their submissions.

26 THE PRESIDENT: Yes, Mr. Thompson?

27 MR. THOMPSON: Sir, from our point of view obviously the issues of costs and interim relief are  
28 the ones that are of interest to us going forward, and I mention them immediately because there  
29 is a concern on our part that if the permission to appeal process starts to become spun out there  
30 is a material risk that that issue will still be before the Tribunal when most (if not all) of the  
31 period of six months for the Authority to report back in relation to excess pricing will have  
32 melted away. I heard what Mr. Anderson said but it does appear to us likely that there will be  
33 some impact on that issue, depending on whether or not the question of appeal is pursued, and  
34 we would therefore seek the matter to be taken forward with reasonable expedition, so we are

1 slightly unhappy about the extension that is being proposed. Perhaps I could say in relation to  
2 interim relief that we have obviously seen what the Tribunal has said in that regard, but it is  
3 clearly a matter of concern to Albion that having materially won on the issues that it pursued,  
4 that commercially it is likely to be in the same position for some time going forward as it has  
5 been for the last two years and it is not impossible that we will be seeking to persuade the  
6 Tribunal in due course that a somewhat more advantageous commercial position ought to  
7 prevail given the findings that the Tribunal has made in particular in October and today. It  
8 does seem to us that the issue of how long the appeal process or the permission to appeal  
9 process drags on is something that the Tribunal should bear in mind, given the way that this  
10 case has panned out over the past two years and, indeed, over the past 10 years depending what  
11 one looks at. So I do not think we are particularly sympathetic to the request for an extension  
12 of time and the Tribunal will, of course, be aware, that in the High Court very weighty matters  
13 are often put before the Government and applications for appeal are made within a matter of  
14 hours of Judgments coming out and it does appear to us that, if the will were there, a Body  
15 with the resources of the Authority or, indeed, Dŵr Cymru, could make up its mind what it  
16 wants to do on an important commercial matter in a matter of less than two months. It seems  
17 to us that that is somewhat unrealistic, and there is no particular reason why they should be  
18 slower in this jurisdiction than they would be if, for example, they lost a Judicial Review.

19 THE PRESIDENT: What is the time limit in Judicial Review, Mr. Thompson – we can easily  
20 remind ourselves? I have 14 days in mind in my head, or maybe it is shorter than that.

21 MR. THOMPSON: I think the reality is that applications for leave to appeal ----

22 THE PRESIDENT: Are generally made straight away.

23 MR. THOMPSON: -- are generally made on the day; everyone panics and runs around and makes  
24 telephone calls and then at the hearing permission to appeal is made on a failsafe basis, but I  
25 think it is either 14 or 28 days – I think it is 28 days if permission is not sought on the day.

26 THE PRESIDENT: Yes, I just need to check what the position is, somebody can probably remind  
27 me. What is the position in the High Court, Mr. Thompson?

28 MR. THOMPSON: Mr. Randolph thinks it is 14 days.

29 THE PRESIDENT: I think it is 14 days from memory but we will just quickly check it. (After a  
30 pause) We will check what the position is but I remember it as 14 days unless somebody  
31 corrects me.

32 MR. THOMPSON: There is at least one copy of the White Book over on my left I do not know  
33 whether their researches are any better than mine. I am sorry to delay it.

34 THE PRESIDENT: 14 days from the order sought to be appealed, served as soon as practicable.

1 MR. THOMPSON: Sir, while I am on my feet there are two other points. The costs issue, obviously  
2 we have two cases still awaiting ----

3 THE PRESIDENT: Yes, we are dealing with them together.

4 MR. THOMPSON: I am sure, Sir, you have that in mind.

5 THE PRESIDENT: Yes, we are waiting for some information from your side that we asked for  
6 earlier today.

7 MR. THOMPSON: I am not aware of that, Sir, but I am certainly happy to provide it.

8 THE PRESIDENT: It is in relation to the fees of your learned Junior.

9 MR. THOMPSON: I will pursue him if he has not produced what he should have done, and he will  
10 get the collective wrath of myself and our administration. The other issue is Aquavitae where  
11 I think you will have seen, Sir, that there is an application for the costs of preparing the Appeal  
12 in case 1045, and the Tribunal has made certain pertinent remarks in relation to Aquavitae at  
13 paras. 356 to 358.

14 THE PRESIDENT: I apprehend the only outstanding issue in the Aquavitae case is the question of  
15 the costs of the Notice of Appeal.

16 MR. THOMPSON: I suspect that is so, Sir. I think the only issue between the parties is that there is,  
17 at least in Aquavitae's mind, in the correspondence, between Aquavitae and the Authority,  
18 some indication that the Authority continues to maintain effectively that the exercise of its  
19 discretion under the Water Act may, in some way, float free from the findings of the Tribunal  
20 in this case, but I suspect that statements made at paras. 356 to 358 close out such a debate and  
21 so if that is the case, and then subject to any appeal, I suspect that is the end of the Aquavitae  
22 appeal ----

23 THE PRESIDENT: I am not going to make any order in the Aquavitae appeal that goes beyond the  
24 contents of the present Judgment.

25 MR. THOMPSON: Indeed, I suspected that was the case so I think the only issue is the issue of  
26 costs.

27 THE PRESIDENT: Which are the costs on the notice of appeal?

28 MR. THOMPSON: Indeed, sir.

29 THE PRESIDENT: Which is not a large sum?

30 MR. THOMPSON: Relatively modest, Sir. Can I just check with my various people instructing me?

31 THE PRESIDENT: Yes.

32 MR. THOMPSON: (After a pause) That is our position, Sir. I am grateful.

33 MR. ANDERSON: Could I just say very quickly, on the question of the time extension we are  
34 seeking in relation to permission to appeal, we could of course in a shorter period of that apply

1 for permission to appeal. The reason for asking for a period of time and to enable the Board to  
2 consider it is in order to give proper consideration as to whether or not it is appropriate, or an  
3 appropriate use of public resources to seek permission in the first place. That is the exercise  
4 that will take time. Sir, with the greatest of respect the 14 day time period in Judicial Review  
5 is not, in our submission, the appropriate way to approach the matter. It is a question of ----

6 THE PRESIDENT: But if this was Judicial Review that is what you would have to do – Christmas or  
7 no Christmas, would you not?

8 MR. ANDERSON: Unless one could obtain an extension of time, which is what we are seeking.  
9 We are seeking an extension of time because of the circumstances of the case ----

10 THE PRESIDENT: Yes, but you are not prepared to do anything to change your Board Meeting  
11 which, in the regular rhythm of the Authority is not until 7<sup>th</sup> February.

12 MR. ANDERSON: Can I just take instructions on that? (After a pause) It may be possible to bring  
13 it forward by a short period, but the point is that with the two week period ----

14 THE PRESIDENT: Is this not important enough to have a Board Meeting, Mr. Anderson?

15 MR. ANDERSON: It is important, yes, but as I say it is not feasible to arrange it before Christmas.  
16 There is then the period of time over Christmas and so there will be a period of time thereafter,  
17 but for the reasons I have given we would submit that an extra couple of weeks or so that we  
18 are seeking is not disproportionate given the overall circumstances of the case, and will cause  
19 no prejudice since the other matters can all proceed in the normal way, wholly unaffected by  
20 this.

21 PROFESSOR PICKERING: Mr. Anderson, in relation to the Board and its procedures, there was a  
22 Board Meeting on, I think it was probably 11<sup>th</sup> December – is that right?

23 MR. ANDERSON: I could not answer that without taking instructions. (After a pause) I am  
24 instructed that, sir, you may well be right.

25 PROFESSOR PICKERING: Thank you, well we were given to understand in the letter from Ofwat  
26 dated 6<sup>th</sup> December that that was going to be so. I imagine that at that Board Meeting,  
27 especially given that certain intimations had been given to us by Mr. Brooker in this letter of  
28 6<sup>th</sup> December, that various scenarios would have been considered by the Board in relation to  
29 this case. Would that be so?

30 MR. ANDERSON: I could not say, I was not there.

31 PROFESSOR PICKERING: Well you might like to take instructions.

32 MR. ANDERSON: We did in that letter indicate the basis upon which we had taken the decision not  
33 to proceed to appeal.

34 PROFESSOR PICKERING: Yes, yes.

1 MR. ANDERSON: But if I could just take instructions on your question, Sir.

2 PROFESSOR PICKERING: Yes.

3 MR. ANDERSON: (After a pause) Yes, I am instructed that of course the Board did have before  
4 them legal advice, yes.

5 PROFESSOR PICKERING: Thank you. And would I be right in assuming that the Board has  
6 within its provisions the facility to hold a Board Meeting by telephone or to take decisions by  
7 exchange of correspondence.

8 MR. ANDERSON: (After a pause) Again, I am instructed, yes, technically that can be done but we  
9 would question whether for this decision it is appropriate for that to be the right kind of forum,  
10 because this is a decision in which there may well be debate and differing views and it would  
11 be appropriate for the Board to debate that across the table.

12 PROFESSOR PICKERING: I hear what you say about that, Mr. Anderson, but if it is impossible for  
13 the Board to meet physically in certain circumstances, especially having presumably  
14 considered alternative scenarios in terms of the Judgment that we have just handed down, then  
15 there is a question of the appropriate balance between the Board's desire all to be physically in  
16 one place and other considerations but ----

17 MR. ANDERSON: I would accept that, sir. If we were faced with some definitive date at which  
18 something draconian happened, and a decision had to be taken by a certain date then of course  
19 there are mechanisms for expediting that arrangement, but we would say that in this case there  
20 is no particular reason why a request for permission to appeal has to be in by a specific date  
21 given that this case is proceeding under the matters that have been remitted to us under  
22 19(2)(J). There is an existing request from another party for permission to appeal and the  
23 conduct of the Appeal thereafter can be expedited by the court were permission to be granted.  
24 So in our submission this is not a case where there is such urgency as to require draconian  
25 measures of that kind, on the other hand this is a case raising a number of issues and important  
26 policy considerations that it is appropriate for the Board to discuss and debate, rather than if  
27 forced down a particular route to take a decision and put in a request for permission to appeal  
28 in order to safeguard the position, which is the alternative route. It is simply avoiding  
29 pre-empting that sort of situation that I am asking for this extra time which, as I say, we do not  
30 see as prejudicing the future conduct of the proceedings before the Tribunal or, indeed,  
31 ultimately the Appeal were permission to be granted either by the Tribunal or the Court of  
32 Appeal or the Court of Appeal. So while we would agree with you entirely as to the fact that it  
33 is a question of balance in our submission and in the circumstances it would be appropriate to  
34 grant us that extra time.

1 MR. VAJDA: Simply to say in relation to the Judicial Review analogy, of course the Tribunal is  
2 aware that we are operating under a *sui generis* regime, and of course the rule is one month  
3 here and obviously careful consideration ----

4 THE PRESIDENT: Yes, well no one is suggesting that you should not have less than a month.

5 MR. VAJDA: No, Sir, but all I am saying is the starting point here is different from what it is in the  
6 Administrative Court, and the simple question is really given the Christmas and New Year  
7 break it is appropriate to give a two week extension, a power which of course the Tribunal has  
8 to extend time.

9 THE PRESIDENT: Well the Authority is asking for considerably more than two weeks, it is asking  
10 for an extra month effectively.

11 MR. VAJDA: They are. I suspect probably what you have in front of you are two separate  
12 applications in the sense that, as I understand it, the Authority is still asking until 13<sup>th</sup> February.

13 THE PRESIDENT: In fact it is an extra three weeks.

14 MR. VAJDA: Yes, and what I am saying, Sir, is that if the Tribunal were to rule against the  
15 Authority and say that is too long, I would ask the Tribunal to consider our own application  
16 which is two weeks effectively to take account of the Christmas and the New Year break and,  
17 as I say, to judge it by the fact that the starting point is a month under the Tribunal's Rules.  
18 Other than that I would just be repeating myself.

19 THE PRESIDENT: Thank you.

20 (The Tribunal confer)

21 THE PRESIDENT: The Tribunal will retire.

22 (The hearing adjourned at 3.10 p.m. and resumed at 3.33 p.m)

23 THE PRESIDENT: Having handed down Judgment in this case the Tribunal is dealing with an  
24 application for an extension of time to lodge a written application for permission to appeal.  
25 Under Rule 58(1)(b) of the Tribunal's Rules any such request normally has to be lodged  
26 "... within one month of the notification of the decision", which in this case would be 18<sup>th</sup>  
27 January next.

28 The Authority applies for an extension of time until 13<sup>th</sup> February on the basis that it is unable  
29 to hold the relevant board meeting earlier than 6<sup>th</sup> February 2007. That would be an extension  
30 of time of approximately four weeks and effectively means that the Authority had taken about  
31 two months in order to decide whether to seek permission to appeal. That period is to be  
32 compared with the 14 days for permission to appeal that is normally allowed in proceedings in  
33 the High Court.

1 Although it is true that the Tribunal's Rules form a self-standing code, it is not in general in  
2 accordance with the Tribunal's approach to give extensions of time for appealing longer than  
3 the already generous one month permitted under the Rules. In principle, as a matter of case  
4 management, we take the view that we should adhere as far as possible to the time period that  
5 is indeed set out in the Rules.

6 Dŵr Cymru, for its part, applies for a more modest extension of time to 1<sup>st</sup> February and draws  
7 our attention in particular to the fact that the Christmas and New Year period intervenes  
8 between now and then. Dŵr Cymru has the advantage of having already prepared in draft an  
9 existing permission to appeal which may to some extent have been overtaken by events by the  
10 Tribunal's Judgment of today but, on the other hand, at least a certain amount of the ground  
11 work in terms of the preparation for a possible application for permission to appeal has already  
12 been done.

13 In our judgment as a matter of case management it is appropriate to take account of the fact  
14 that the Christmas and New Year period intervene between now and the expiry of the time for  
15 permission to appeal, so we are prepared to extend time for permission to appeal to the close of  
16 business on Friday, January 26<sup>th</sup>, which is effectively an eight day extension to take account of  
17 the holiday period.

18 I have directed myself to disregard the personal position of the President and the Tribunal  
19 members have equally disregarded that factor as well. Our collective judgment is that we  
20 should, as far as possible, adhere to the strict case management procedures of the Tribunal and  
21 not be over generous with time limits for permission to appeal, especially having regard to the  
22 fact that the parties, if unsuccessful before the Tribunal, have a second opportunity to address  
23 the Court of Appeal.

24 Thank you very much. We are therefore adjourned for today.

25 (The hearing concluded at 3.35 p.m)