



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPLICATION UNDER SECTION 47 OF THE COMPETITION ACT 1998

CASE No: 1031/2/4/04

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (the “Rules”), the Registrar of the Competition Appeal Tribunal (the “Tribunal”) gives notice of the receipt of a notice of appeal, dated 1 April 2004, under section 47 of the Competition Act 1998 (the “Act”) by Albion Water Limited (“the appellant”) of 71 Clarence Road, Teddington, Middlesex, TW11 0BN (and formerly a wholly-owned subsidiary of Enviro-Logic Limited) in respect of a decision or decisions taken by the Director General of Water Services (the “Director”), and notified to the appellant in a course of correspondence from 6 June 2003 to 4 February 2004 (the “Contested Decision”).

According to the notice of appeal the appellant is the only licensed new entrant to the water industry pursuant to inset appointments made under section 7 of the Water Industry Act 1991.

According to the notice of appeal, the Contested Decision inter alia rejected the appellant’s request to the Director to withdraw or vary a series of decisions (the “Relevant Decisions”) taken in the course of correspondence between the appellant and the Director over the period between 31 May 2001 to 4 February 2004. The Relevant Decisions followed complaints made by the appellant to the Director in correspondence from 11 December 2000 regarding the conduct of Dŵr Cymru Cyfyngedig (“Dŵr Cymru”) relating to common carriage for the supply of non-potable water to a major customer. According to the appellant, the Relevant Decisions inter alia found that Dŵr Cymru had not infringed the Chapter II prohibition within the meaning of section 46 of the Act.

The principal grounds on which the appellant relies are:

1. that the Director, having conducted an investigation of the appellant’s complaint for over 3 years, has made a decision or decisions within the meaning of section 47 of the Act that Dŵr Cymru did not infringe the Chapter II prohibition inter alia in the provision of an access price for the common carriage of water through its non-potable network;
2. that the Director’s decisions are incorrect from the point of view of (i) the reasons given; (ii) the facts and analysis relied on; (iii) the law applied; (iv) the investigation undertaken; and (v) the procedure followed;
3. that the Director, having promised the appellant to issue a further decision by March 2004, has not done so and will not address significant new evidence in the Director’s possession since January 2004; and
4. that Dŵr Cymru’s behaviour, and in particular its bulk supply price and terms of trade, constitute a continuing abuse of dominance which imposes a considerable competitive disadvantage on the appellant;

The appellant seeks the following relief:

1. the disclosure of documents in Ofwat’s possession that relate to the investigation of the appellant’s complaint;

2. the disclosure of documents relating to the appellant's inset application from 23 October 1995 to the date of the appellant's original complaint on 11 December 2000;
3. the adoption of interim measures requiring Dŵr Cymru to reduce its current bulk supply charges for non-potable water for the period commencing 1 April 2003 and preventing Dŵr Cymru from imposing any terms of trade for bulk supplies of potable and non-potable water such as will cause the appellant to suffer further competitive disadvantage;
4. that the Tribunal itself determine the matter of whether Dŵr Cymru has infringed the Chapter II prohibition rather than remitting the matter back to the Director for further investigation;
5. should the Tribunal nevertheless decide to remit the matter back to the Director, that the Tribunal provides sufficient guidance to the Director to enable him promptly and fairly to decide the matter; and
6. that the appellant be awarded its costs associated with the application.

Any person who considers that he has a sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa

Registrar
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