



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 47 OF THE COMPETITION ACT 1998

CASE NO 1042/2/4/04

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 12 July 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 taken by the Director General of Water Services (the “Director”) on 11 May 2004 (the “Contested Decision”). According to the notice of appeal, the Contested Decision was notified to the appellant on 7 July 2004 but the reasons for the Contested Decision have not been communicated to the appellant.

According to the notice of appeal, the Contested Decision inter alia rejected an application to the Director pursuant to section 47 of the Act to withdraw or vary a decision or decisions (the “Relevant Decision”) taken in correspondence between the appellant and/or its former parent company Enviro-Logic Limited and the Director on 8 March 2002 and published on 31 March 2003. The Relevant Decision followed complaints made by the appellant and/or Enviro-Logic Limited to the Director regarding the conduct of Thames Water Utilities Limited (“Thames Water”) relating to access for common carriage to Thames Water’s water supply network to convey water from two boreholes, operated by the appellant, at Bath House and Albion Yard. The Relevant Decisions inter alia found that Thames Water had not infringed the Chapter II prohibition of the Act.

The notice of appeal states that in April 2003 the appellant and Enviro-Logic Limited became owned by Pennon Group plc (“Pennon”). On 19 February 2004 ownership of the appellant was transferred from Pennon to Waterlevel Limited. Ownership of Enviro-Logic Limited remained with Pennon. According to the notice of appeal, the Director advised the appellant by letter dated 7 July 2004 that:

1. the Director had made a decision on 11 May 2004 that the appellant’s application pursuant to section 47 did not show sufficient reason to withdraw or vary the Relevant Decision;
2. the Director had advised the appellant’s former owners (Enviro-Logic, now renamed Peninsula Water Limited) of the Contested Decision but did not intend to publish it;
3. the Director considered the time limit for bringing an appeal to the Tribunal against the Contested Decision ran from 11 May 2004;
4. the appellant did not have sufficient interest in the Contested Decision to engage in correspondence on the subject with the Director or to appeal against the Contested Decision.

The appellant seeks the following relief:

1. a ruling that the appellant has a sufficient interest in the Contested Decision to bring an appeal against it pursuant to section 47(6) of the Act;
2. that the Director be invited to disclose correspondence relevant to his decisions, especially correspondence subsequent to 25 April 2003, and in particular, correspondence relating to his

decision to reject the appellant's application pursuant to section 47 of the Act, failing which the Tribunal should make an order to the same effect;

3. permission that the appellant be granted 2 months following receipt of the Contested Decision from the Director to amend its notice of appeal; and
4. such further and other relief as the Tribunal may consider appropriate.

The principal grounds on which the appellant relies are that:

1. the Director erred in the procedure followed and in the reasons he has given in attempting to deny the appellant the opportunity to appeal against the Contested Decision to the Tribunal and has failed to advise the appellant of his decision in a timely fashion thereby denying the appellant sufficient time to prepare its notice of appeal;
2. the Director erred in the procedure followed by failing to advise the appellant of the reasons for the Contested Decision thereby denying the appellant the opportunity to contest the merits of that decision;
3. the Director has erred in law and in fact by claiming that the appellant does not have a sufficient interest in the Contested Decision;
4. having accepted an application to withdraw or vary the Relevant Decision from the appellant pursuant to section 47 of the Act, the Director has erred in law in his conclusion that the appellant has no right of appeal against the Contested Decision and that any right of appeal is limited to Enviro-Logic, a subsidiary of Pennon, a company which no longer has any connection with the appellant and has withdrawn from the market; and
5. the Director has erred in law and in the reasons given by ignoring a letter from Pennon stating that Pennon was content for the appellant to pursue the complaint against Thames Water, if that were possible, from which, according to the appellant it is evident that Pennon was content that the appellant had a legitimate interest in the Contested Decision.

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.

Registrar

21 July 2004