



Neutral citation [2007] CAT 5

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1031/2/4/04

Victoria House
Bloomsbury Place
London WC1A 2EB

19 January 2007

Before:

Sir Christopher Bellamy (President)
The Honourable Antony Lewis
Professor John Pickering

Sitting as a Tribunal in England and Wales

BETWEEN:

ALBION WATER LIMITED

Appellant

-v-

WATER SERVICES REGULATION AUTHORITY
(formerly Director General of Water Services)

Respondent

ORDER

Dr. Jeremy Bryan, Managing Director, appeared for the Appellant.

Mr. George Peretz and Miss Valentina Sloane appeared for the Respondent.

1. The notice of appeal in this case (no. 1031) was lodged by Albion Water Limited (“Albion”) on 1 April 2004. The notice of appeal alleged that the Director General for Water Services (“the Director”) had taken a series of decisions appealable to the Tribunal under section 47 of the Competition Act 1998 (“the 1998 Act”) regarding a complaint to him made by Albion, under Chapter II of that Act, in respect of the common carriage terms offered to Albion by Dŵr Cymru in February 2001 for the transportation of non-potable water through the Ashgrove system. The notice of appeal included a request to the Tribunal to adopt interim measures.
2. Shortly after the appeal had been lodged, the Director sent to Albion and Dŵr Cymru drafts of a decision he proposed formally to adopt in relation to Albion’s complaint. These drafts envisaged the rejection of Albion’s complaint.
3. A case management conference took place on 29 April 2004, prior to which both Dŵr Cymru and United Utilities Water PLC applied to intervene. At that hearing, the Director indicated that he expected to take until mid-July 2004 before his final decision would be ready.
4. At the hearing on 29 April 2004, the Tribunal took the view that 1 June 2004 would be a reasonable date by which the Director’s decision could be adopted. For the reasons given in the Tribunal’s ruling of that date, [2004] CAT 9, the Tribunal adjourned the case management conference to 2 June 2004 and made no other order. Certain correspondence then took place between the parties as regards interim measures and disclosure.
5. On 26 May 2004, the Director adopted Decision no. CA98/01/2004 formally rejecting Albion’s complaint against Dŵr Cymru under the Chapter II prohibition. That decision has been the subject of a full appeal by Albion in Case no. 1046, lodged on 23 July 2004. The appeal in Case no. 1046 culminated in the Tribunal’s judgment of 18 December 2006 [2006] CAT 36, and an order for costs [2007] CAT 1.
6. Meanwhile, before the appeal in Case no. 1046 had been lodged, on 28 May 2004 Albion introduced a further appeal before the Tribunal regarding interim measures,

following a formal refusal by the Director on 25 May 2004 to adopt certain interim measures requested by Albion. That case was designated as Case no. 1034(IR).

7. At the case management conference on 2 June 2004 held jointly this case and in Case no. 1034(IR) the Tribunal made, by consent, an interim measures order.
8. On 1 June 2004 Aquavitae (UK) Limited (“Aquavitae”) applied to intervene in this case. On 21 July 2004 Aquavitae introduced its own appeal (Case no. 1045) against the Director’s decision dated 26 May 2004, and was later permitted to intervene in Case no. 1046: see [2004] CAT 19. By an order made on 12 January 2007 [2007] CAT 4 the Tribunal has brought Case no. 1045 to an end.
9. This case, (no. 1031), was formally stayed by an order of the Tribunal made on 21 September 2004. Albion’s appeal in this case has been effectively replaced by Albion’s appeal in Case no. 1046, lodged on 23 July 2004. No pleadings have been filed in this case, other than the notice of appeal. The applications to intervene have not been dealt with.
10. The interim measures order made on 2 June 2004, by consent, was later varied by orders of the Tribunal dated 19 May 2005 and 27 November 2006. In its judgment of 18 December 2006 in Case no. 1046, the Tribunal continued, until further order, the interim measures order made on 27 November 2006: see section X of the judgment of 18 December 2006. At paragraphs 328 and 350 of that judgment, the Tribunal found that, since the introduction of Case no. 1034 (IR) on 28 May 2004, and/or since the introduction of the appeal in Case no. 1046 on 23 July 2004, the Tribunal’s interim measures orders have been made in the context of those cases, namely nos. 1034(IR) and 1046. We observe that, in any event, this case (no. 1031) has been stayed since 21 September 2004.
11. The Tribunal has not ruled on the admissibility of the present appeal, nor on any of the allegations made therein. At paragraph 328 of its judgment of 18 December 2006, the Tribunal held that this case (no. 1031) “has been overtaken by events and may now be left to rest”. In the Tribunal’s view, there is no purpose in the present case proceeding any further.

12. An order to the effect that this case shall not proceed further does not affect the interim measures orders, either as previously made, or as currently in force.
13. The Tribunal takes the view that the costs of this appeal should lie where they fall. The Tribunal's judgment of 8 January 2007, [2007] CAT 1 covers the costs of preparing the notice of appeal in Case no. 1046 and the interim measures application in Case no. 1034(IR), together with an allowance for some of Dr Bryan's time with effect from May 2004. It would not be correct, in the Tribunal's view, to make any supplementary order for costs in the present case.
14. On those grounds the Tribunal orders that:
 1. Case no. 1031/2/4/04 shall not proceed
 2. there be no order as to costs.

Christopher Bellamy

Antony Lewis

John Pickering

Charles Dhanowa
Registrar

19 January 2007