IN THE COMPETITION APPEAL TRIBUNAL **Case No: 1046/2/2/04**

BETWEEN:

ALBION WATER LIMITED
ALBION WATER GROUP LIMITED

Appellants

-and-

WATER SERVICES REGULATION AUTHORITY

Respondent

supported by

(1) DŴR CYMRU CYFYNGEDIG
and
(2) UNITED UTILITIES WATER PLC

Interveners

DŴR CYMRU'S SKELETON ARGUMENT FOR THE HEARING ON 13 FEBRUARY 2009

I BACKGROUND

1. This Skeleton sets out Dŵr Cymru's position in support of its application for an order in the form attached. Dŵr Cymru had sought (and the Tribunal granted) an extension of time in which to make consequential applications following the Tribunal's judgment of 7 November 2008, in the hope that an agreement could be reached as to the form of a final order that would dispose of the proceedings before the Tribunal. Although agreement has been reached as regards the indicative access price for common carriage services, regrettably agreement has not been reached as to the form of a final order.

2. Pursuant to the Tribunal's judgment of 7 November 2008[1], in which the Tribunal stated that "[*i*]*t is open to Dŵr Cymru and Albion to see if an agreed solution can now be reached*"[2], the parties have agreed a revised indicative access price for common carriage services of 14.4p per m^3, in 2000/2001 prices (adjusted for inflation as appropriate, and subject to contract).[3] It is acknowledged that the implementation of an agreement for common carriage between the parties would be subject to conditions precedent, such as the receipt by Albion of an exemption from the provisions of the Water Act 2003, or the conclusion of a bulk supply agreement between Albion and United Utilities. This does not, however, affect the conclusion that Dŵr Cymru has already effected an appropriate modification of that conduct which the Tribunal found to have infringed the Chapter II prohibition. Dŵr Cymru therefore submits that no final order is required from the Tribunal in that regard.

3. Despite agreeing a revised indicative access price for common carriage services, the parties have been unable to reach a consensus as to the terms of any final directions to be given by the Tribunal in this case.[4] Albion has sought to introduce a number of other commercial issues, outside the scope of the present proceedings, relating to the *bulk supply* arrangements between the parties. Principally, these issues relate to: (i) the bulk supply price at which Dŵr Cymru supplies non-potable water to Albion; and (ii) the margin between the tariff offered to retail customers for the supply of non-potable water, and the wholesale price for the bulk supply price charged to Albion. Albion has asked the Tribunal to give directions which would encompass these issues.

4. Dŵr Cymru's position is that the additional issues raised by Albion do not need to be determined in order to remedy the infringements found by the Tribunal. Moreover, the Tribunal would be acting outside its jurisdiction if it gave directions in the form requested by Albion. The purpose of any directions in this case should be to put an end to the infringements found by the Tribunal, not to resolve each and every commercial dispute arising between the parties more generally.

---

[1] [2008] CAT 31.
[2] *Ibid*, paragraph 276.
[3] The revised indicative access price for common carriage was chosen as the average of the three figures arrived at by the Tribunal at paragraph 197 of its judgment of 7 November 2008. So far as Dŵr Cymru is aware, Albion has not sought to take forward the common carriage proposal.
[4] Copies of the correspondence between the parties will be placed in a bundle for the hearing.

5. These submissions set out Dŵr Cymru's position as to:

(a) the issue of jurisdiction generally;

(b) the directions sought by Albion in relation to bulk supply;

(c) the directions sought by Albion in relation to margin squeeze;

(d) Albion's request for "on-going supervision"; and

(e) costs.

II THE TRIBUNAL HAS NO JURISDICTION TO MAKE ANY FINAL ORDER IN RESPECT OF BULK SUPPLY

6. Were the Tribunal to give the directions sought by Albion relating to the bulk supply arrangements between the parties, the Tribunal would be acting outside its jurisdiction. The position is straightforward:

(a) The Tribunal can "*give such direction ... as* [*the Authority*] *could itself have given*" (paragraph 3(2)(d) of Schedule 8, CA98).

(b) The powers of the Authority (and therefore the powers of the Tribunal) to impose directions are not unlimited. For present purposes, section 33 CA98 sets out the scope of the Authority's power to give directions:

(i) section 33(1) CA98 provides that, where the Authority has made a decision that conduct infringes the Chapter II prohibition, "*it may give ... such directions as* [*it*] *considers appropriate to bring the infringement to an end*" (emphasis added);

(ii) similarly, section 33(3) CA98 provides that a direction may include provisions "*requiring the person concerned to modify the conduct in question*" or "*requiring him to cease that conduct*" (emphases added).

The Authority's (and therefore the Tribunal's) power to give directions is therefore limited by the scope of the relevant infringement finding, and it cannot give directions that go beyond the scope of its infringement findings. It

is therefore important to distinguish between infringements found by the Tribunal that can form the subject of a final order disposing of the present proceedings, and other commercial issues that fall outside the infringements found by the Tribunal.

(c) The case before the Tribunal, and the Tribunal's infringement findings in relation to the issues of margin squeeze and excessive pricing, solely concern the Authority's decision of 26 May 2004. That decision related to an offer of indicative terms for common carriage services made by Dŵr Cymru to Albion in March 2001. The Authority has confirmed to the Tribunal that the bulk supply arrangements between the parties were not the subject of the Authority's May 2004 decision.[5]

(d) The Tribunal's findings do not relate to the bulk supply arrangements existing between Dŵr Cymru and Albion[6], and the Tribunal has recognised that the bulk supply price "*is not, as such, under challenge in the current proceedings*".[7] Accordingly:

(i) the infringement finding in the judgment of 18 December 2006 in relation to the existence of a margin squeeze was that "*by quoting the First Access Price of 23.2p/m^3, at the same time as offering a retail price of some 26p/m^3, Dŵr Cymru imposed on Albion a margin squeeze which constituted an abuse of a dominant position within the meaning of the Chapter II prohibition*"[8]; and

[5] See, for example, paragraph 222 of the Tribunal's judgment of 18 December 2006 ([2006] CAT 36), and the letter from the Authority's solicitors to the Tribunal of 28 November 2008.

[6] Although the Tribunal made *obiter* comments relating to the bulk supply price (see paragraph 11 below), it has not investigated, nor made, any infringement findings as regards the bulk supply price. Indeed, as a matter of law, the Tribunal could not have made an infringement finding as regards the bulk supply price, as the decision of the Authority appealed to the Tribunal did not concern the bulk supply price – and a key element of that price, the water resource cost, was never investigated by the Authority (see paragraph 12 below).

[7] See, for example, paragraph 760 of the Tribunal's judgment of 6 October 2006 ([2006] CAT 23), where the Tribunal stated "*The price in the Second Bulk Supply Agreement of 26p/m^3 is not, as such, under challenge in these proceedings. What is, however, under challenge is whether that price can safely be used, in a Decision adopted eight years later, as the basis for an ECPR calculation*".

[8] Judgment of 18 December 2006, paragraph 360(iv).

(ii) the infringement finding in the judgment of 7 November 2008 in relation to the issue of excessive pricing was that "*in March 2001 Dŵr Cymru abused its dominant position by quoting a First Access Price which was both excessive and unfair*".[9]

(e) As the Tribunal cannot give directions which go beyond bringing to an end the infringements found, the Tribunal must limit any directions to measures remedying those infringements found by the Tribunal relating to the provision of common carriage services.

(f) The Tribunal therefore has no jurisdiction to make any final directions which relate to the bulk supply arrangements existing between Dŵr Cymru and Albion.

7. In a letter of 12 January 2009 from Albion's solicitors, Albion raises two arguments in support of its claim that the Tribunal would have jurisdiction to include issues relating to the bulk supply arrangements between the parties in any final order. As to these:

(a) Albion's first argument refers to paragraphs 336-354 of the Tribunal's judgment of 18 December 2006 in the present case, where the Tribunal (in the specific context of whether it had jurisdiction to grant interim measures) *inter alia* commented:

> "*it would by now be apparent to the Authority that... there were also reasonable grounds to suspect an infringement in relation to the Bulk Supply Price*" (paragraph 352)
>
> "*We would not accept, and indeed it has not been suggested, that the Bulk Supply Price in this case is not subject to the Chapter II prohibition. ... We do not see any jurisdictional reason why the Authority could not give either an interim measures decision under section 35, or a final direction under section 33 of the 1998 Act, in relation to the existing Bulk Supply Price*" (paragraph 353)

Dŵr Cymru makes the following observations:

[9] Judgment of 7 November 2008, paragraph 275.

(i) Although a CA98 investigation can be launched where there are "*reasonable grounds to suspect*" a Chapter II infringement, by contrast a finding that the Chapter II prohibition has been infringed must be based on "*strong and compelling evidence*"[10], and may be found only after the accused party has been given a full opportunity to respond to the specific case against them (in accordance with the procedural protections accorded by statute).[11] No such investigation or infringement finding has been made in relation to the existing bulk supply price.

(ii) Without such a finding, no directions can be imposed.

(b) Albion's second argument refers to paragraph 233 of the Tribunal's judgment on remedies in *Genzyme*[12], where the Tribunal commented that:

> "*In our judgment, the power to make a direction under section 33 of the Act includes the power to ensure that an infringement is not repeated, if the OFT in its discretion considers that such a direction is necessary. Moreover, in our view, the power "to bring the infringement to an end" covers conduct closely linked to, or to the like effect as, the infringement found*".

However, the Tribunal's comments in *Genzyme* do not support Albion's contention that the Tribunal has the jurisdiction to include directions relating to the bulk supply arrangements in any final order:

(i) In *Genzyme* the relevant infringement found by both the OFT and Tribunal was a margin squeeze. The OFT made a direction; that direction was modified by Tribunal. There was no question of the Tribunal's direction going beyond the infringement that both it and the OFT found.

---

[10] *Napp Pharmaceutical Holdings Ltd v DGFT* [2002] CAT 1, paragraph 109.
[11] See in particular the procedural protections contained at Rules 4 and 5 of the Competition Act 1998 (OFT's Rules) Order 2004 (SI 2004/2751).
[12] *Genzyme Limited v. OFT* [2005] CAT 32.

(ii) In the *Genzyme* case, the Tribunal's final order states (at paragraph 1.3) that Genzyme shall "*refrain from adopting any measures having an equivalent effect*". The Tribunal did not impose on Genzyme an obligation to provide a particular product or service, which was not the subject of the contested decision, to a specified customer, at a price set by the Tribunal.

(iii) *Genzyme* is therefore factually different from the position here and provides no basis for providing the Tribunal with a jurisdiction to make a final order in respect of bulk supply.

8. It is therefore clear that the Tribunal would be acting outside its jurisdiction if it gave the directions sought by Albion in relation to the bulk supply arrangements. Furthermore, as discussed at paragraph 14 and following below, there is a specific statutory regime applicable to the determination of bulk supply arrangements.

III THE BULK SUPPLY PRICE DIRECTIONS SOUGHT BY ALBION

9. As regards the bulk supply price charged by Dŵr Cymru to Albion for non-potable water, Albion seeks the following remedy:

> "*...the bulk supply agreement between Dŵr Cymru and Albion shall remain in force and the price for bulk supply of non-potable water supplied by Dŵr Cymru to Albion through the Ashgrove system shall be based on:*
>
> *(1) 14.4p/m^3 as indexed by the Producer Prices Index (PLLV); plus*
>
> *(2) the costs of the Heronbridge bulk supply, as invoiced by United Utilities to Dŵr Cymru.*"[13]

10. Albion is therefore asking the Tribunal to give a direction which would set the bulk supply price at which Dŵr Cymru supplies Albion. As stated above at Section II, the bulk supply arrangements between Albion and Dŵr Cymru were not the subject of the Authority's decision, and the Tribunal's infringement findings relate solely to the

[13] Paragraph 3 of Albion's draft order – see Albion's fax to the Tribunal of 24 November 2008.

terms for common carriage services. Any order of the Tribunal that encompasses the bulk supply arrangements would therefore be beyond its jurisdiction.

11. In requesting this remedy, Albion appears to rely on the fact that the Tribunal identified a "*read across*" between elements of the first access price and the bulk supply price[14], and made *obiter* comments that evidence "*strongly suggests*" that the bulk supply price is excessive.[15] However, whilst there may be common elements between the first access price and the bulk supply price, the Tribunal has not investigated the bulk supply price, and any "*read across*" that exists is neither complete nor straightforward.

12. One important difference between the first access price and a bulk supply price is the water resource cost. Albion is asking the Tribunal to order that the water resource element of the bulk supply price be "*based on*" the price paid by Dŵr Cymru to United Utilities. Dŵr Cymru makes a number of observations in this regard:

    (a) the water resource cost is not an issue which either the Authority or the Tribunal has investigated. Indeed, at the Directions Hearing of 24 October 2006, the Authority's counsel stated that "*the water resource, which has not been looked* [*at*] *at all in relation to the Second Bulk Supply Agreement*"[16] and "[*t*]*he Second Bulk Supply Price agreement is a single price not broken down into each of its components. It has not been investigated*".[17] In response, the then President of the Tribunal acknowledged: "[*t*]*here is no basis for attacking the water resource cost of the Second Bulk Supply Price*".[18]

    (b) Albion is asking the Tribunal to set the water resource element of the bulk supply price on the basis of Dŵr Cymru's local resource costs.[19] However, that would entail the application of one specific methodological approach, which would not be consistent either with the approach taken by the Authority in the Referred Work, or with that of the Tribunal in its judgment of 7

[14] See, for example, paragraph 264 of the Tribunal's judgment of 18 December 2006.
[15] See, for example, paragraphs 748, 757, 760 and 981(4) and (6) of the Tribunal's judgment of 6 October 2006.
[16] Transcript of the Directions Hearing of 24 October 2006, page 22 lines 31-32.
[17] Transcript of the Directions Hearing of 24 October 2006, page 23 lines 1-2.
[18] Transcript of the Directions Hearing of 24 October 2006, page 23 lines 3-4.
[19] See paragraph 5 of Albion's letter to Dŵr Cymru of 19 November 2008.

November 2008, on which the indicative access price of 14.4p per m3 that has subsequently been agreed between the parties was based.

13. In addition, sections 40 and 40A of the Water Industry Act 1991 provide for a statutory regime for the determination, by the Authority, of bulk supply terms where the parties are unable to agree. The regime sets out the principles to which the Authority is to have regard, and includes a statutory requirement to consult with the Environment Agency, the regulator of water resources in England and Wales. A determination by the Authority would therefore be the appropriate forum for the bulk supply dispute between the parties, as acknowledged by the Tribunal (see paragraph 14(b) below). The bulk supply dispute between the parties regarding the supply of potable water to the Shotton Paper site is currently being determined by the Authority under the same provisions. Any challenge to such determinations lies by way of Judicial Review to the Administrative Court.

Dŵr Cymru's attempt to end the bulk supply dispute

14. Not only would the directions proposed by Albion be outside the Tribunal's jurisdiction, they would also be unnecessary. In the absence of an agreement between the parties, Dŵr Cymru has asked the Authority to determine the bulk supply price in accordance with section 40 of the Water Industry Act 1991. Dŵr Cymru makes the following observations:

(a) It has been clear for some time that there is little prospect of agreement between the parties as to the terms of a new non-potable bulk supply agreement. A determination under section 40 of the Water Industry Act 1991, intended by Parliament to deal with this very situation, would therefore be the most appropriate forum for resolution of the bulk supply dispute between the parties.

(b) The question of how to address the issue of bulk supply terms arose following the Tribunal's judgment of 6 October 2006, and was addressed in the Tribunal's judgment of 18 December 2006. In that judgment, the Tribunal concluded that "... *it appears to be common ground that the Authority will, in*

any event, undertake a re-determination of the existing Bulk Supply Price...".[20]

(c) Dŵr Cymru has sought to progress the matter, first seeking to refer the bulk supply dispute (in relation to non-potable and potable terms) to the Authority in a letter of 9 February 2007, and also continuing to pursue a narrowing of the differences between itself and Albion as to the terms of bulk supply for the purposes of the determination by the Authority. Albion, by contrast, has taken the position that "*...any attempt by Dŵr Cymru's* [*sic*] *to coerce the Authority into an early section 40 determination, before the Tribunal has handed down its judgment on excessive pricing, should be resisted...*".[21]

(d) To the extent there is a "*read across*" between the first access price and the bulk supply price, that is something that the Authority would take into account when making a determination under section 40 of the Water Industry Act 1991. Indeed the Authority has indicated that it would take the Tribunal's judgments into account making such a determination.[22]

15. Dŵr Cymru has therefore taken steps to resolve the outstanding bulk supply dispute between the parties, having full regard to the appropriate statutory regime.

IV MARGIN SQUEEZE

16. As regards the bulk supply of non-potable water, Albion seeks the following remedy:

> "*Dŵr Cymru's tariff offered to retail customers for the bulk supply of non-potable water shall exceed the wholesale price for such supply offered to Albion by a minimum of 5p/m*^{3}" (emphasis added).[23]

17. Once again there is a jurisdictional problem with the remedy sought by Albion. In its judgment of 18 December 2006, the Tribunal declared that:

---

[20] Paragraph 259 of the Tribunal's judgment of 18 December 2006.
[21] Letter from Albion to the Authority, dated 21 February 2008.
[22] See the letter from the Authority to Albion of 15 November 2006, as referred to by the Tribunal at paragraph 26 of the Tribunal's judgment of 18 December 2006.
[23] Paragraph 5 of Albion's draft order – see Albion's fax to the Tribunal of 24 November 2008.

> *"by quoting the First Access Price of 23.2p/m³, at the same time as offering a retail price of some 26p/m³, Dŵr Cymru imposed on Albion a margin squeeze which constituted an abuse of a dominant position within the meaning of the Chapter II prohibition."*[24]

18. The margin squeeze found by the Tribunal relates to the margin between the First Access Price and Dŵr Cymru's retail price – i.e. the service against which a margin squeeze was found was the supply of common carriage services. By contrast, the remedy proposed by Albion relates to wholesale service of bulk supply of non-potable water – i.e. the tariff offered to retail customers for the supply of non-potable water relative to the wholesale price for bulk supply of non-potable water. Albion's proposal therefore does not relate to the infringement found by the Tribunal.

19. For the reasons set out at Section II above, any directions given by the Tribunal must be limited to such provisions as will bring the infringements to an end. The Tribunal therefore has no jurisdiction to issue a direction that goes beyond remedying the margin squeeze found by the Tribunal to exist as regards the supply of common carriage services.

20. In any event, as to the specific elements of Albion's proposals, Dŵr Cymru makes the following observations:

    (a) Neither the Tribunal's judgments of 6 October 2006 and 18 December 2006, nor the Court of Appeal's judgment of 22 May 2008, made any finding as to the level of margin to which Albion may be entitled.

    (b) Albion claims that it is accepted that the appropriate level of Albion's retail margin is 5p/m³, on the basis that Malcolm Jeffery's witness evidence of 9 November 2004 is *"unchallenged"*.[25] That is not correct. Indeed, the Tribunal's judgment of 18 December 2006 records Albion's submission that the question of retail costs (on which Albion's claim of a margin of 5p per m³

[24] Judgment of 18 December 2006, paragraph 360(iv).
[25] Letter from Albion to Dŵr Cymru, 19 November 2008, and letter from Albion to WilmerHale, 26 November 2008.

rests) was a matter still to be determined, whether by remittal back to the Authority or a determination under the Water Industry Act 1991.[26]

(c) In any event, any determination of a margin to be accorded to Albion would, under section 60 CA98, require the Authority to follow the position adopted by the Court of First Instance ("CFI") in *Deutsche Telekom*.[27] In that case, the CFI confirmed that:

> "*although the Community judicature has not yet explicitly ruled on the method to be applied in determining the existence of a margin squeeze, it nevertheless follows clearly from the case-law that the abusive nature of a dominant undertaking's pricing practices is determined in principle on the basis of its own situation, and therefore on the basis of its own charges and costs, rather than on the basis of the situation of actual or potential competitors.*"[28]
>
> "*It must be added that any other approach could be contrary to the general principle of legal certainty. If the lawfulness of the pricing practices of a dominant undertaking depended on the particular situation of competing undertakings, particularly their cost structure – information which is generally not known to the dominant undertaking – the latter would not be in a position to assess the lawfulness of its own activities.*"[29]

As a result, if the Authority were to determine the margin to be accorded to Albion, the margin to be accorded would have to be based on the retail costs of Dŵr Cymru, not the specified retail costs of Albion.

(d) As formulated, Albion's proposal would effectively require Dŵr Cymru to agree with Albion to set a supply price to retail customers of a minimum of 5p per m^3 above the wholesale price charged to Albion – which could itself be anti-competitive.

---

[26] Judgment of 18 December 2006, paragraphs 207, 210, 215 and 217.
[27] Case T-271/03 *Deutsche Telekom AG v. European Commission*, 10 April 2008 (appeal pending to European Court of Justice).
[28] *Ibid*, paragraph 188, citing Case C-62/86 *AKZO* v *Commission* [1991] ECR I-3359 (paragraph 74), Case T-5/97 *Industrie des poudres sphériques* v *Commission* [2000] ECR II-3755 (paragraph 179), and the European Commission's decision in Case No IV/30.178 Napier Brown – British Sugar) (OJ 1988 L 284, p. 41 (recital 66).
[29] *Ibid*, paragraph 192.

(e) In addition, the retail tariffs which would be the subject of Albion's proposed Order are themselves the subject of a specific statutory regime under the 1991 Water Industry Act. In particular, they are part of Dŵr Cymru's annual Charges Scheme which is made in accordance with sections 142 and 143 of that Act and which is subject to various regulatory requirements, including the explicit approval of the Authority before it can take effect.

V ONGOING SUPERVISION

21. Albion proposes that the Tribunal's order include a provision whereby ongoing supervision of the operation of the remedy vests in the Authority, and refers to the Tribunal's judgment on remedies in the *Genzyme* case to support its position.[30] Dŵr Cymru's position is that, given the simple remedy appropriate in this case, no such supervision is necessary.

22. It is noted that, unlike the *Genzyme* case, the infringement relates to an offer of an indicative price for services, which Albion may or may not choose to take up. Dŵr Cymru has offered a price for those services which Albion has agreed is acceptable. In those circumstances, there is no ongoing supervisory role for the Authority, outside the broader oversight that it would exercise in any event in its capacity as a regulator and concurrent competition authority.

VI COSTS

23. The parties are largely in agreement as regards the terms of any order to be made by the Tribunal on the issue of costs.

24. However, whereas the position of both Dŵr Cymru and the Authority is that the Tribunal's order should limit the award of costs to "*Albion's legal fees reasonably incurred before this Tribunal*", Albion seeks to claim all of "*Albion's costs incurred before this Tribunal*" since the Tribunal's judgment of 8 January 2007.[31] Albion

[30] See Albion's letter to Dŵr Cymru, 19 November 2008.
[31] [2007] CAT 1.

therefore wishes to claim *inter alia* for costs other than legal fees, irrespective of whether those costs were reasonably incurred.[32]

25. Albion's solicitors wrote to Dŵr Cymru on 12 January 2009 seeking costs of £201,479.30, and asked for a response by 16 January 2009. Counsel's fee notes were provided on 13 January 2009. Dŵr Cymru is conducting a detailed review of the amounts claimed, in order to establish whether the substantial costs claimed are reasonable and proportionate, and has *inter alia* asked Albion for a detailed breakdown of its solicitor's costs.

CHRISTOPHER VAJDA QC

MEREDITH PICKFORD

WILMER HALE

3 February 2009

[32] As regards whether Albion should be awarded only those costs which have been reasonably incurred, we note that Albion's position is contrary to the Tribunal's comments in its costs judgment of 8 January 2007, that: "*Our starting point is, therefore, that Albion is entitled, in principle, to its recoverable costs to the extent that such costs are reasonable and proportionate*".

IN THE COMPETITION APPEAL TRIBUNAL **CASE NO. 1046/2/4/04**

BETWEEN:-

(1) ALBION WATER LIMITED

- and -

(2) ALBION WATER GROUP LIMITED

Appellants

- v -

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

Respondent

supported by

(1) DŴR CYMRU CYFYNGEDIG

and

(2) UNITED UTILITIES WATER PLC

Interveners

DRAFT ORDER PROPOSED BY DŴR CYMRU CYFYNGEDIG

UPON the Court of Appeal having upheld the judgments of the Tribunal in respect of margin squeeze and dominance ([2008] EWCA Civ 536) and upon the Tribunal having handed down its judgment in respect of excessive and unfair pricing ([2008] CAT 31) (the "Judgments"); and

UPON Albion Water Limited ("Albion") and Dŵr Cymru Cyfyngedig ("Dŵr Cymru") having agreed a revised indicative access price for common carriage services of 14.4p/m^3, in 2000/2001 prices

IT IS DECLARED THAT:

1. In March 2001 Dŵr Cymru abused its dominant position within the meaning of section 18 of the Competition Act 1998 by quoting an indicative access price for common carriage services which:

   (1) was both excessive and unfair in itself; and

   (2) imposed a margin squeeze.

IT IS ORDERED THAT:

2. The Tribunal's interim Order of 20 November 2006 ceases to have effect as of the date of this Order.

3. Albion's legal fees reasonably incurred before this Tribunal since the Tribunal's judgment of 8 January 2007 shall be paid by the Water Services Regulation Authority and Dŵr Cymru, such costs to be assessed if not agreed by those three parties and to be apportioned between the latter two parties as agreed between them or, in default of agreement, on such other basis as decided by the Tribunal.

Lord Carlile of Berriew Q.C.
Chairman of the Competition Appeal Tribunal

Made: xx February 2009
Drawn: xx February 2009