



OFWAT BOARD

Meeting held on Friday 19 January 2007

Attendees

Chairman:
Philip Fletcher

Chief Executive:
Regina Finn

Non-Executive Directors:
Penny Boys
Peter Bucks

Executive Directors:
Keith Mason
Melinda Acutt

In attendance:

Roger Dunshea (Director of Operations)
Fiona Pethick (Head of Corporate Affairs and Secretary to the Board)
Sue Cox (Acting Head of Consumer Affairs)
Huw Brooker (Head of Legal Services)
Sarah Johnson (Minute Secretary)
Phillip Dixon (Head of Competition) item 1
Bethan Illet (Senior Legal Assistant) item 1
Jonathan Ashley (Senior Competition Analyst) item 1
David Muscoe (Senior Tariffs Analyst) item 1
Kevin Ridout (Principal Engineer and Deputy Team Leader Quality Enhancement team) item 2
Emma Cochrane (Head of Corporate Finance Team) item 2
Ingrid Olsen (Competition Commission reference Team Leader) item 3
Audrey Mason (Acting Head of Parliamentary and Public Affairs) item 4

1. Welcome and apologies for absence.

Apologies for absence from Jane May.

2. Declarations of interest.

No declarations of interest were made.

3. Possible substantive appeal to the Court of Appeal in the Shotton case.

Under Ofwat's Rules of Procedure it is for the Board to decide whether or not to apply to the Competition Appeal Tribunal ("CAT") for permission to appeal a CAT judgment to the Court of Appeal. Board considered the CAT's judgement dated 18 December 2006, together with two earlier judgments from the CAT dated 22 December 2005 and 6 October 2006.

The Board decided not to apply to the CAT for permission to appeal (although it reserved its right to consider applying for permission to appeal in light of further developments and any further judgment(s) in what was an on-going case). Board noted, amongst other things, the following:

- The importance it attached to its general competition duties (including its duty to promote competition under section 2 of the Water Industry Act 1991);
- The fact that in general common carriage arrangements (including the type of common carriage arrangement which was the subject of the case) had now been replaced by the new Water Supply Licensing (“WSL”) regime, introduced by the Water Act 2003. The Board noted the desirability of focusing Ofwat’s limited resources on the new regime and competition in general, rather than on one specific case which predated the new regime.
- Despite the relative lack of clarity in other parts of the CAT judgement(s) the clear statements by the CAT that a dominant firm was not required to subsidise its competitor, and that a prospective entrant who cannot compete because it is inefficient (or has higher costs than the incumbent’s downstream arm) is not entitled to be subsidised.

4. Thames Tideway

Kevin Ridout (KR) and Emma Cochrane (EC) gave a presentation to the Board on the Thames Tideway. This included the main drivers for the project, what options had been explored and reported to Ministers, the timing, delivery and finance and next steps. The Board noted that Mott Macdonald are currently reviewing the feasibility of the timetable. The Board endorsed the need for Ofwat to review funding options on a contingent basis, taking account of scale, risks and timetable, to ensure the proper protection of Thames Water’s consumers.

5. Competition Commission

Ingrid Olsen (IO) gave a presentation to Board on the sale of South East Water to Hastings – Competition Commission referral. Board were told that the first hearing had taken place (the second hearing took place on 5 February.) The Board was asked to consider possible remedies going forward should the Competition Commission find that the merger would prejudice our ability to make comparisons.

6. House of Lords Select Committee on regulators

Fiona Pethick (FP) presented an update to the Board on the House of Lords Select Committee on Regulators. Our written evidence was due by 9 February and we were to give oral evidence to the Committee on 20 February. The Board approved the key messages to take forward, and agreed to delegate sign off to Regina Finn and Philip Fletcher.

Sarah Johnson