

Secretary to the Aarhus Convention
UNECE
Environment & Human Settlement Division
Room 332, Palais de Nations
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Switzerland

Attn: Jeremy Wates/Aphrodite Smagadi/Pietro Rabassi

Your ref. ACCC/2008/23

Our ref: PS/MRG-1

Also by e-mail Pietro.Rabassi@unece.org

22 June 2010

Dear Sirs

Communication to Compliance Committee ACCC/C/2008/23

Thank you for forwarding the UK's comments in relation to the above. We make a brief but important point in reply to the UK's comment on paragraph 32 of the draft findings

The UK's suggested amendment to para. 32 does not fully reflect the position prior to the Court of Appeal hearing to which it relates. This is for the following reasons:

- 1) Any agreement on behalf of the communicants' to pay the regulators' costs after the Court of Appeal proceedings followed the threat by those regulators of further costs should they be a party to the appeal. This was explained in earlier representations to the Compliance Committee and the UK government. The threat of costs to seek to persuade a party not to pursue legal proceedings or a particular legal point or argument is, in our experience, not uncommon.
- 2) It is incorrect to state that the communicants agreed that they 'would remain liable to the regulators in any event.' What was agreed was that the communicants would ensure that the regulators' costs were paid. This agreement was made in the light of the costs threat by the regulators.

If paragraph 32 were to be amended it should be in the light of the costs pressure placed upon the communicants by the regulators to ensure that they were not a party to the appeal. We believe that para. 32 as contained in the draft findings is acceptable.

Yours faithfully

Richard Buxton

cc Jane Barton, Defra