



COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM FOR DAMAGES UNDER SECTION 47A OF THE COMPETITION ACT 1998

CASE No. 1198/5/7/12

The Registrar of the Competition Appeal Tribunal (the “Tribunal”) gives notice of the receipt of a claim for damages (the “Claim”) on 19 July 2012, under section 47A of the Competition Act 1998 (the “Act”), by Siemens plc (“Siemens”) of Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey, GU18 8QD against National Grid plc (“National Grid”) of 1-3 Strand, London WC2N 5EH. Siemens is represented by Hill Hofstetter LLP of Trigen House, Central Boulevard, Blythe Valley Park, Solihull, B90 8AB (Reference: JMH/JD/726220.70003).

The Claim arises from the decision of the Gas and Electricity Markets Authority (the “Authority”) in Case CA98/STG/06 “*Investigation into National Grid (formerly known as Transco)*” (the “Decision”), adopted on 21 February 2008. In the Decision, the Authority found that National Grid had abused its dominant position in the market for the provision of domestic-sized gas meters, which included the ancillary service of meter maintenance, (“meters”) in Great Britain contrary to section 18(1) of the Act and Article 82 of the Treaty establishing the European Community¹. In particular, the Authority found that certain terms of National Grid’s long-term supply and maintenance contracts with five energy suppliers restricted competition in the relevant market. The Authority found that each of these contracts had the actual and likely effect of foreclosing the relevant market to competing meter operators and restricted the commercial benefits that gas suppliers and their customers might reasonably have expected to obtain from competition. The Authority directed that National Grid put an end to the infringement identified in the Decision and imposed a financial penalty of £41.6 million on National Grid.

The Tribunal dismissed an appeal by National Grid against the Authority’s finding of infringement in a judgment dated 29 April 2009 ([2009] CAT 14). The Tribunal held, however, that the finding of infringement related only to long-term Legacy Meter Service Agreements (“Legacy MSAs”). Further, the Tribunal reduced the financial penalty imposed on National Grid to £30 million given the mitigating factor of the Authority’s involvement in the process that led to the making of National Grid’s metering contracts. A further appeal by National Grid against the finding of infringement was dismissed by the Court of Appeal in a judgment dated 23 February 2010 ([2010] EWCA Civ 114). The Court of Appeal reduced, however, the penalty imposed on National Grid to £15 million. The UK Supreme Court refused National Grid’s application for permission to appeal on 28 July 2010.

According to the Claim, on 8 December 2003 British Gas Trading Limited (“BGT”), the largest supplier of gas to domestic customers in Great Britain at the time of the Decision, and Capital Meters Limited (“CML”) entered into an agreement for the provision of meter operator services (“MOSA”). On the same date Siemens entered into a sub-contract with CML to perform the installation and maintenance services required of CML by BGT (“Siemens Sub-Contract”). Both the Siemens Sub-Contract and the MOSA were subsequently amended on 31 January 2008, in particular, to extend the duration of the agreements by 18 months (respectively, the “Siemens Sub-Contract Extension” and the “MOSA Extension”).

According to the Claim, the adverse impact of National Grid’s abuse of a dominant position on Siemens may be summarised as follows:

¹ Following the entry into force of the Treaty of Lisbon on 1 December 2009, Article 82 EC became Article 102 of the Treaty on the Functioning of the European Union.

- (a) As a result of the terms of the Legacy MSAs BGT realised that it was cheaper for it to reduce installation volumes available to CML than to incur charges that would be payable for early replacement under the Legacy MSA notwithstanding the lower prices and higher service levels for the relevant products offered by CML/Siemens.
- (b) As BGT wished to avoid incurring early replacement charges under the Legacy MSAs, during the term of MOSA, it kept replacement volumes to the minimum commensurate with (i) its obligations under the MOSA and (ii) the continued viability of CML, notwithstanding it considered that CML's domestic credit meters rentals were cheaper than National Grid's.
- (c) The bundling of meter maintenance by National Grid exacerbated the effects of the Legacy MSAs by depriving CML/Siemens of the opportunity to replace National Grid prepayment meters with their own prepayment meters because Siemens was not given the opportunity to attend maintenance call outs on National Grid meters and accordingly was not able to implement the "first visit fit principle" agreed with BGT.

By reason of these, and other, matters particularised in the Claim, Siemens was given less installation and maintenance work and Siemens was unable to optimise the efficiency of its operations. As a result Siemens incurred higher sub-contractor costs that it would otherwise have incurred if the scale, density and access rates according to mix of work had not been adversely affected by the Legacy MSAs.

According to the Claim, Siemens has suffered loss and damage in the form of:

- (a) loss of profits on the installations and maintenance work it would have carried out under the Siemens Sub-Contract but for the existence of the abusive Legacy MSAs; and
- (b) loss of profits on installations it would have carried out (in attempting to mitigate its losses under the Siemens Sub-Contract) under the Siemens Sub-Contract Extension but for the existence of the abusive Legacy MSAs.

Siemens seeks the following relief:

- (a) damages;
- (b) Siemens weighted average cost of capital on a compound basis or, alternatively, interest pursuant to Rule 55 of the Competition Appeal Tribunal Rules or otherwise at law or in equity and over such periods as the Tribunal thinks fit; and
- (c) such further or other relief as the Tribunal may consider appropriate.

Further details concerning the procedures of the Tribunal can be found on its website at www.catribunal.org.uk.

The Tribunal Registry can be contacted by post at the address below, or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar
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