



COMPETITION APPEAL TRIBUNAL

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

CASE No.: 1199/5/7/12

The Registrar of the Competition Appeal Tribunal (the “Tribunal”) gives notice of the receipt of a claim for damages (the “Claim”) on 24 July 2012, under section 47A of the Competition Act 1998 (the “Act”), by Capital Meters Limited (“CML”) of Ropemaker Place, 28 Ropemaker Street, London EC2Y 9HD against National Grid plc (“National Grid”) of 1-3 Strand, London WC2N 5EH. CML is represented by SJ Berwin LLP of 10 Queen Street Place, London EC4R 1BE (Reference: 642/C25838.1).

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 (hereafter simply “meters”), which included the ancillary service of meter maintenance, in Great Britain contrary to section 18(1) of the Act and Article 82 of the Treaty establishing the European Community (the “EC Treaty”)¹. In particular, the Authority found that the certain agreements maintained by National Grid with five gas suppliers, artificially and illegally restricted the rate at which the gas suppliers could replace National Grid’s meters with less expensive and/or more technologically advanced meters offered by competing meter operators (of which CML was one). 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.

National Grid appealed the Decision to the Tribunal pursuant to section 46 of the Act. The appeal against the finding of infringement was dismissed by the Tribunal in a judgment handed down on 29 April 2009 ([2009] CAT 14). The Tribunal did, however, restrict the scope of the Decision so that the finding of infringement related only to long-term contracts known as Legacy Meter Service Agreements (“Legacy MSAs”), and excluded New and Replacement Meter Service Agreements. Taking into account the mitigating factor of the Authority’s involvement in the process that led to the making of National Grid’s metering contracts, the Tribunal reduced the financial penalty imposed to £30 million. National Grid appealed that judgment to the Court of Appeal, which, in a judgment handed down on 23 February 2010 ([2010] EWCA Civ 114), also dismissed the appeal against the finding of infringement but further reduced the financial penalty imposed on National Grid to £15 million. CML, among others, intervened in support of the Authority both before the Tribunal and the Court of Appeal. The UK Supreme Court refused National Grid’s application for permission to appeal on 28 July 2010.

Meter operators like CML own and then rent or lease meters to gas suppliers, who have a contractual relationship with, and supply gas to, domestic customers. According to the Claim, the abuse by National Grid caused loss to CML in that *inter alia* one of National Grid’s gas-supplier customers, British Gas Trading Limited (“BGT”), took a lower volume of meters from CML under an agreement (the Meter Operator Services Agreement or “MOSA”) entered into between them, than the volume it would have taken in the absence of the abuse. The parties entered into the MOSA in December 2003 and it gave CML the exclusive right, from August 2004, to install meters for BGT in East Anglia and most of the London area for an initial term of five years extendable by agreement. If BGT’s domestic customer switched to another gas supplier after CML had installed a meter, then CML would rent the meter to that other gas supplier under its Standard Terms and Conditions contract (the “STC Contract”).

¹ Now Article 102 of the Treaty on the Functioning of the European Union.

BGT had previously entered into a Legacy MSA with National Grid, which agreement imposed *inter alia* certain switching costs on BGT should it wish to replace a large number of National Grid meters with meters owned by another meter operator, like CML. BGT therefore kept replacement volumes to the minimum commensurate with its obligations under the MOSA. At the time of the alleged loss, CML was owned as to 80% by Macquarie Bank Limited and as to 20% by Siemens plc (together with Siemens Energy Service Limited, "Siemens"). CML subcontracted certain of its functions, in particular the installation and maintenance functions required under the MOSA, to Siemens. 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.

According to the claim, CML has suffered loss and damage in the form of:

- (a) loss of profits in the form of rental charges on the additional volume of meters which it would have installed under the MOSA but for the abuse; and
- (b) loss of profits in the form of rental charges on the additional volume of meters which it would have installed under the MOSA but for the abuse that would have been rented by gas suppliers, other than BGT, under the STC Contract.

CML seeks the following relief:

- (a) damages (calculated as particularised in the Claim) for breach of statutory duty, namely a breach of section 18 of the Act and/or Article 82 of the EC Treaty;
- (b) interest on any damages awarded by the Tribunal at such rate and over such period 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. Alternatively, 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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