



COMPETITION APPEAL TRIBUNAL

**NOTICE OF APPEAL UNDER SECTION 46 OF  
THE COMPETITION ACT 1998**

**CASE NO 1099/1/2/08**

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (SI 2003, No 1372) (“the Rules”), the Registrar gives notice of the receipt of an appeal dated 21 April 2008, under section 46 of the Competition Act 1998 (“the Act”) by National Grid plc (“National Grid”) in respect of a decision dated 21 February 2008 (“the Decision”) taken by the Gas and Electricity Markets Authority, 9 Millbank, London, SW1P 3GE (“GEMA”).

According to the Decision GEMA found that National Grid had abused its dominant position in the market for the provision of domestic-sized gas meters in Great Britain, contrary to section 18 of the Act and Article 82 of the Treaty establishing the European Community (“the EC Treaty”) (“the Infringement”). In particular GEMA considered that the meter service agreements entered into between National Grid and gas suppliers restricted the commercial benefits that gas suppliers and customers might reasonably have expected to obtain from competition and restricted the ability of commercial meter operators to compete effectively with National Grid primarily by imposing switching costs on gas suppliers through early replacement charges leading to foreclosure of the market.

In respect of the Infringement the Decision imposes a financial penalty on National Grid of £41.6 million. The Decision also contains directions requiring National Grid to bring the Infringement to an end as soon as reasonably practicable and in any event within 90 days of the date of the Decision (“the Directions”). The Directions were suspended by consent by an order of the President of the Tribunal on 14 March 2008 until determination of this appeal.

In summary the principal grounds of appeal on which National Grid relies are that:

- (a) GEMA incorrectly decided that National Grid is dominant within a single market for the provision of domestic-sized gas meters in Great Britain, in particular by failing correctly to assess the countervailing buyer power of National Grid’s customers and the continued growth of new entrants;
- (b) GEMA has incorrectly defined the relevant product market by considering that the provision of legacy meters (installed before 2004) and the provision of new and replacement meters (installed since 2004) form part of the same product market;
- (c) in the alternative, National Grid has not abused a dominant position, in that the agreements entered into between National Grid and gas suppliers were pro competitive in nature and were in any event objectively justified;
- (d) even if the Tribunal finds that there has been an infringement by National Grid, it was not committed intentionally or negligently and the financial penalty imposed by GEMA is excessive and disproportionate; and
- (e) the Directions imposed by GEMA are imprecise, inappropriate and unlawful and National Grid is unable to identify what it needs to do in order to comply with the Directions.

National Grid seeks the following relief from the Tribunal:

- (a) an order setting aside the Decision and the Directions;
- (b) such further or other relief as is appropriate; and
- (c) costs.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

*Charles Dhanowa*  
Registrar

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