



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF AN APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

**Case No: 1380/1/12/21**

Pursuant to rule 14 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Tribunal Rules”), the Registrar gives notice of the receipt of an appeal on 2 February 2021, under section 46 of the Competition Act 1998 (“the Act”), by BGL (Holdings) Limited, BGL Group Limited, BISL Limited and Compare the Market Limited (together, “BGL”) against a decision of the Competition and Markets Authority (“the CMA”) dated 19 November 2020, entitled *Price comparison website: use of most favoured nation clauses* (“the Decision”). BGL is represented by Linklaters LLP, One Silk Street, London, EC2Y 8HQ (reference: Nicole Kar/Tom Cassels) and TLT LLP, One Redcliff Street, Bristol, BS1 6TP (reference: Miles Trower/Richard Collie)

In the Decision, the CMA found that between 1 December 2015 and 1 December 2017, BGL, through its operation of the price comparison website (“PCW”) comparethemarket.com (“CTM”), was a party to agreements with 32 home insurers that contained clauses, known as wide most favoured nation clauses (“WMFNs”), which restricted the prices the home insurers were permitted to quote on PCWs. By preventing the relevant home insurers from offering lower prices on rival PCWs than on CTM, the agreements had the appreciable effect of: (a) preventing, restricting or distorting competition between PCWs, and (b) preventing, restricting or distorting competition between home insurers competing on PCWs. The CMA found that BGL thereby infringed the prohibition in section 2(1) of the 1998 Act and/or Article 101 of the Treaty on the Functioning of the European Union and imposed a penalty of £17,910,062 on BGL.

In summary, BGL advances six grounds of appeal against the finding of infringement made by the CMA in the Decision. BGL states that the CMA:

1. Incorrectly applied the hypothetical monopolist test and made a number of significant methodological errors.
2. Erred in its legal and evidential assessment of market coverage.
3. Failed to assess key evidence of an effect on either retail pricing or PCW commissions.
4. Failed to assess key evidence of an effect on promotional deals.
5. Failed to properly analyse the counterfactual to the existence of CTM’s WMFNs. As a result, its causation analysis is flawed.
6. Made further factual errors in relation to CTM.

Strictly in the alternative, BGL submits that any alleged infringement (which is denied) was not committed intentionally or negligently and that in any event the penalty imposed in the Decision is manifestly inequitable, excessive and disproportionate.

By way of relief BGL asks that the Tribunal to:

1. quash all or part of the Decision; and/or alternatively
2. quash or substantially reduce the penalty; and
3. order the CMA to pay BGL’s costs pursuant to Rule 104 of the Tribunal’s Rules.

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.

Please also note that a direction of the President is currently in place as to the electronic filing of documents: see paragraph 2 of the [Practice Direction](#) relating to Covid-19 published on 20 March 2020. Therefore, a request for permission to intervene should be sent to the Registrar electronically, by email to [registry@catribunal.org.uk](mailto:registry@catribunal.org.uk), 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 telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar

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