



COMPETITION APPEAL TRIBUNAL

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

Case No: 1581/5/7/23

Pursuant to Rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 24 March 2023, under section 47A of the Competition Act 1998 (the “Act”), by (1) Utilita Energy Limited, and (2) Utilita Services Limited (the “Claimants”) against (1) PayPoint plc, (2) PayPoint Collections Limited, (3) PayPoint Network Limited, (4) Paypoint Retail Solutions Limited, and (5) Paypoint Payment Services Limited (together, the “Defendants” / “PayPoint”). The Claimants are represented by TupperS Law Limited, 22 Disraeli Road, Ealing, London W5 5HP (Reference: Stephen Tupper).

The claim is for damages for the Defendants’ alleged abuse of dominant position, in breach of statutory duty owed to the Claimants, namely section 18 of the Act.

The First Claimant is a licensed energy supplier. Together, the Claimants are said to constitute a single undertaking, “Utilita”. Each Claimant is a company registered in England. Utilita specialises in the provision of Pay As You Go (“PAYG”) energy services to over 700,000 pre-payment energy meter consumers in Great Britain.

The Defendants constitute a group of companies which provides payment services to energy suppliers in Great Britain, including Utilita, which have customers who pay for their gas and electricity through a pre-payment meter. Each Defendant is a company registered in England.

The Claimants submit that PayPoint’s abuse of dominant position relates to two distinct but closely associated markets:

1. The first market is the market for provision of over-the-counter (“OTC”) pre-payment services to energy suppliers in Great Britain with customers who pay for their gas and electricity through a pre-payment meter (the “OTC Pre-payment Market”).
2. The second, distinct but closely associated market is the market for provision of other, Non-OTC pre-payment services to energy suppliers in Great Britain with customers who pay for their gas and electricity through a pre-payment meter (the “Non-OTC Prepayment Market”).

The Claimants allege that PayPoint has a dominant position in the OTC Pre-payment Market. PayPoint has abused that dominant position through:

1. Exclusionary abuse of dominance which hampers actual and potential competitors’ access to the OTC Pre-payment Market;
2. Exclusionary abuse of dominance which hampers actual and potential competitors’ access to the distinct but closely associated Non-OTC Pre-payment Market; and
3. The imposition and enforcement of non-compete restrictions with respect to Utilita’s development and deployment of a Non-OTC pre-payment facility using its own app, the “My Utilita” App.

According to the Claim Form, the consequence of these abuses is that Utilita has been compelled to pay PayPoint more than it would have done in the counterfactual where those abuses had not occurred.

Accordingly, Utilita submits that it has suffered loss and damage caused by PayPoint's abusive conduct for which the Defendants are jointly and severally liable. Utilita seeks an award of compensatory damages in respect of such loss together with compound interest as damages (alternatively simple interest).

The prima facie measure of Utilita's loss, for the period commencing on 2 April 2009 up until 31 December 2021, is approximately £41.972 million in damages as well as £163,507.25 plus £32,701.45 in VAT, together with compound interest as damages of approximately £4.148 million, for a total estimate of £46.120 million as well as £163,507.25 plus £32,701.45 in VAT.

The Claimants seek:

- (1) Damages comprising:
 - (a) £41.972 million in respect of PayPoint's exclusionary abuse of dominance in the OTC Pre-Payment Market and the Non-OTC Pre-Payment Market; and
 - (b) £163,507.25 plus £32,701.45 in VAT in respect of PayPoint's enforcement of anticompetitive non-compete restrictions;
- (2) Compound interest of £4.148 million as damages, alternatively simple interest at such rate and for such period as the Tribunal determines to be appropriate;
- (3) Costs; and
- (4) Such further and other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, KC (Hon)
Registrar

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