



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1581/5/7/23
1597/5/7/23

BETWEEN:

- (1) UTILITA ENERGY LIMITED**
(2) UTILITA SERVICES LIMITED

Claimants

- v -

- (1) PAYPOINT PLC**
(2) PAYPOINT COLLECTIONS LIMITED
(3) PAYPOINT NETWORK LIMITED
(4) PAYPOINT RETAIL SOLUTIONS LIMITED
(5) PAYPOINT PAYMENT SERVICES LIMITED

Defendants

AND BETWEEN:

- (1) GLOBAL-365 PLC**
(2) GLOBAL PREPAID SOLUTIONS LIMITED

Claimants

- v -

- (1) PAYPOINT PLC**
(2) PAYPOINT COLLECTIONS LIMITED
(3) PAYPOINT NETWORK LIMITED
(4) PAYPOINT RETAIL SOLUTIONS LIMITED

Defendants

ORDER

UPON hearing Counsel for the Claimants and the Defendants at the joint Case Management Conference on 31 October 2023 in Case 1581/5/7/23 (the "**Utilita Proceedings**") and 1597/5/7/23 (the "**GLOBAL-365 Proceedings**")

AND UPON the Tribunal having made concurrently an order establishing a regime for the disclosure in the Joined Proceedings (as defined in paragraph 2 below) of documents which are (or are claimed to be) confidential (the "**Confidentiality Ring Order**")

IT IS ORDERED THAT:

Preliminary matters

1. Pursuant to rules 52 and 18 of the Competition Appeal Tribunal Rules 2015, the forum of these proceedings is England and Wales.

Joint case management

2. The Utilita Proceedings and the GLOBAL-365 Proceedings shall be jointly case managed from the date of this Order, with joint directions and timetable (together, the "**Joined Proceedings**"). The Joined Proceedings shall be heard together and evidence in each case shall stand as evidence in the other case.
3. A further case management conference be listed for one day on 26 April 2024 (the "**Second CMC**") to consider at least the following issues:
 - 3.1. What further disclosure, in addition to the initial disclosure ordered below, should be given by the parties. Insofar as the scope of further disclosure is in dispute, the parties shall produce Redfern schedules setting out their respective positions on each disputed category; and
 - 3.2. whether any, and if so what, further directions are required in relation to expert evidence, including expert evidence required in fields other than competition economics, and, in particular, in relation to proof of loss.

4. The Parties shall file any applications for determination at the Second CMC and evidence in support of those applications by 4pm on 25 March 2024.
5. The Parties shall file any submissions and evidence in response by 4pm on 8 April 2024.
6. The Parties shall file an agreed agenda for the Second CMC by 4pm on 12 April 2024.
7. The Parties shall file five hard copies and an electronic version of an agreed bundle (and an authorities bundle) for use at the Second CMC by 4pm on 18 April 2024.
8. The Parties shall file skeleton arguments for use at the Second CMC in Word format, with a maximum limit of 20 pages per party (1.5 spacing, 12-point font and regular margins) by 4pm on 22 April 2024.

Requests for further information

9. By 4 p.m. on 15 November 2023, the Defendants shall respond to requests 2 and 4 to 10 of the Request for Further Information dated 28 September 2023 made by the Claimants in the Utilita Proceedings and requests 7 to 12 of the Request for Further Information dated 2 October 2023 made by the Claimants in the GLOBAL-365 Proceedings.
10. By 4 p.m. on 15 November 2023, the Claimants in the GLOBAL-365 Proceedings shall respond to the Request for Further Information dated 6 October 2023 made by the Defendants.

Disclosure of documents relating to Ofgem's investigation

11. By 4 p.m. on 24 November 2023, the Defendants shall disclose:
 - (a) the confidential version of the Ofgem 'Notice of intention to accept binding commitments offered by PayPoint plc in relation to activities in the market for

the provision of over-the-counter top-up services to prepayment energy customers' dated 11 August 2021;

- (b) the confidential version of the Ofgem 'Notice of decision to accept binding commitments offered by PayPoint plc in relation to activities in the market for the provision of over-the-counter top-up services to prepayment energy customers' dated 23 November 2021 (the “**Commitments Decision**”);
 - (c) the Ofgem Statement of Objections dated 29 September 2020;
 - (d) such documents that were (i) provided by Ofgem to PayPoint and (ii) by PayPoint to Ofgem in connection with the investigation that resulted in the Commitments Decision, including, amongst other, the documents that were granted by Ofgem in the process of access to the file, and excluding any documents in respect of which leniency and without prejudice privilege is claimed; and
 - (e) all contracts (i) concluded or in force in the period 1 January 2016 to present (ii) between the Defendants or any of them and any energy supplier (iii) relating to the provision of either or both of over-the-counter (“**OTC**”) and non-OTC pre-payment facilities to energy customers with prepayment meters.
12. The disclosure referred to in paragraph 6 above shall in the first instance be designated as Confidential Information within the meaning of the Confidentiality Ring Order.
13. By 4 p.m. on 22 December 2023, the Defendants shall disclose non-confidential versions of the documents referred to in paragraph 6 above.

Further disclosure

14. The parties shall exchange Disclosure Reports and Electronic Documents Questionnaires (in each case, as those terms are defined in the Competition Appeal Tribunal Rules) by 5 p.m. on 12 December 2023.

15. By 4 p.m. on 2 February 2024:
 - a. the Claimants in the Utilita Proceedings shall disclose the categories of documents set out in Annex A to the Order;
 - b. the Claimants in the GLOBAL-365 Proceedings shall disclose the categories of documents set out in Annex B to the Order; and
 - c. the Defendants shall disclose the categories of documents set out in Annex C to the Order.
16. The parties shall have liberty to apply in relation to the scope of disclosure provided for at Annexes A to C. Any such application shall be determined by way of re-hearing, without any need to prove a material change of circumstances since this Order.

Witness statements

17. The parties shall file and exchange witness statements from witnesses of fact by 4 p.m. on 20 September 2024.
18. The parties shall have permission to file and exchange any witness statements from witnesses of fact in reply by 4 p.m. on 1 November 2024.

Expert evidence

19. Each party shall have permission to call one expert in the field of competition economics.
20. The parties shall:
 - a. seek to agree the scope of issues for competition economics expert evidence in advance of the Second CMC for the Tribunal's consideration at the Second CMC; and

- b. each identify the competition economics experts on whose evidence they seek permission to rely for consideration by the Tribunal at the Second CMC.
21. The parties shall file and exchange expert reports in the field of competition economics by 4 p.m. on 7 February 2025.
22. Any expert reports in reply in the field of competition economics shall be filed and served by 4 p.m. on 21 March 2025.
23. The experts shall meet for without prejudice discussions without the presence of legal advisers of the parties and produce a Joint Statement on matters in which they are agreed and matters in respect of which they are not agreed, with concise reasons for any disagreement. The Joint Statement shall be filed with the Tribunal by 4 p.m. on 25 April 2025.

Trial

24. The trial of the Joined Proceedings shall be listed with a provisional time estimate of six weeks to start on 10 June 2025.
25. The parties shall liaise to agree the content of the Trial Bundle. An electronic copy of the Trial Bundle shall be prepared by the Claimants. It shall be lodged at the Tribunal and copies provided to the Defendants by 5 weeks before the start of the trial]
26. The Claimants shall file and serve their skeleton argument by 4 p.m. on 3 weeks before the start of the trial.
27. The Defendants shall file and serve their skeleton argument by 4 p.m. on 2 weeks before the start of the trial.
28. The Claimants shall lodge at the Tribunal an electronic copy of the agreed Authorities Bundle by 4 p.m. on 1 week before the start of the trial.

Miscellaneous

29. By agreement the parties may vary without further order any deadline in this Order provided that they inform the Tribunal of such agreement in advance of the expiry of the relevant deadline and the extension does not affect the date of the pre-trial review or the trial.
30. Costs in the case.
31. There be liberty to apply.

The Honourable Lord Richardson
Chair of the Competition Appeal Tribunal

Made: 20 November 2023
Drawn: 20 November 2023

ANNEXES

ANNEX A - UTILITA

1: Limitation

- a. Communications (including any requests for information) between Utilita and Ofgem, or any other authority with competition enforcement powers, concerning PayPoint's contractual arrangements.
- b. Documents relating to Utilita's consideration of any communications (including any requests for information) with Ofgem / other authorities with competition enforcement powers in relation to PayPoint's contractual arrangements.
- c. Documents discussing or referring to the contract(s), and the negotiations pertaining to those contracts including any tenders or requests for quotations, between Utilita and PayPoint particularised in paragraphs 25 and 26 of the Claim Form.

2: Negotiations between Utilita and pre-payment service providers (including but not limited to PayPoint) in relation to the provision of pre-payment services.

- a. Communications between Utilita and pre-payment service providers concerning offers, or potential offers, for the supply of pre-payment services to Utilita.
- b. Documents relating to those offers and Utilita's consideration of the same, including the reasons for accepting or rejecting such offers.
- c. Documents evidencing consideration by Utilita of whether to enter into, renew, extend or terminate (or otherwise amend) its contract(s) with PayPoint, including (but not limited to) consideration of competing offers from other pre-payment services.
- d. Copies of contracts concluded by Utilita with other pre-payment service providers since June 2007.

- e. Utilita's generic customer communications and press releases regarding its partnership with PayPoint in relation to the provision of pre-payment services.

3: The launch by Utilita of its own non-OTC pre-payment service.

- a. Documents relating to the decision to develop Utilita's own non-OTC pre-payment service.
- b. Documents relating to Utilita's decision to launch the "My Utilita" App in October 2019, including any consideration of: (i) the earliest anticipated launch date; (ii) whether launching would be in breach of its contract(s) with PayPoint; and (iii) the consequences of any such breach.
- c. Documents relating to the negotiation between PayPoint and Utilita to amend the contract for the supply of pre-payment services following the launch of the "My Utilita" App.
- d. Documents and granular (e.g., monthly) data relating to the volume of transactions processed through the "My Utilita" App after its launch in October 2019.

4: Pass-on by Utilita of the fees for energy pre-payment services

- a. Documents and granular (e.g., monthly) data relating to how Utilita has set its energy pre-payment tariffs since the start of the claim period, including: (i) how Utilita accounted for and planned to recover its costs; and (ii) the reasons for changes in tariffs over time, including the extent to which these were driven by changes in Utilita's costs and, if so, which costs were the main drivers; (iii) monthly data on revenues (split by tariff) and monthly data on costs split by main cost category (and split by tariff, where costs are allocated to a given tariff); (iv) monthly data on revenues (split by customer type); and (v) (to the extent not covered by (iii)) monthly data on costs split by main cost category (and split by customer type, where costs are allocated to a given customer type).

- b. Documents and granular (e.g., monthly) data identifying: (i) the fees paid by Utilita to pre-payment service providers during the claim period (split by provider); and (ii) the pre-payment tariffs charged by Utilita during the claim period.

ANNEX B - GLOBAL-365

1: GLOBAL-365's SMARTprepay system

- a. Documents relating to GLOBAL-365's plans for the development, launch, growth and/or ongoing operation of its SMARTprepay system, including documents relating to:
 - i. GLOBAL-365's strategy and business plans;
 - ii. the services that GLOBAL-365 intended to provide, including the features and functionality that it intended to offer to customers and how Global-365 intended to differentiate its offering from that of incumbent providers;
 - iii. its planned date of launch, and the reasons for any change to the date of its launch;
 - iv. estimates of the market share GLOBAL-365 expected to win following its launch;
 - v. estimates of its costs, revenues and profits in relation to the SMARTprepay system;
 - vi. identification and consideration of potential risks to the launch of the SMARTprepay system;
 - vii. its funding / financing, including (but not limited to) documents concerning anticipated or potential funding / financing and the expected timing of such funding / financing.

- b. Documents relating to the supporting infrastructure, features, functionality, reliability and capabilities of the SMARTprepay system, including:
 - a. any problems or service outages experienced by GLOBAL-365 or its customers in respect of the same;
 - b. integration of the SMARTprepay system with SMETS1 and SMETS2 adapters including (but not limited to) CGI, Secure Meters, Utilisoft, TMA, Smartpear, Aproz.

- c. Communications between GLOBAL-365 and third parties in relation to:

- i. the development of the software for the provision of non-OTC services through the SMARTprepay system;
 - ii. the features, functionality and capabilities of the SMARTprepay system including its integration into SMETS1 and SMETS2 adapters including (but not limited to) CGI, Secure Meters, Utilisoft, TMA, Smartpear, Aproz;
 - iii. the provision or use of OTC pre-payment terminals for use with the SMARTprepay system;
 - iv. funding / financing for the development, launch, growth and/or ongoing operation of the SMARTprepay system including documents concerning anticipated or potential funding / financing and the expected timing of such funding / financing;
 - v. the development of GLOBAL-365's business plan, including reports and / or data procured from third parties in relation to the pre-payment services market(s).
- d. Communications between GLOBAL-365 and energy suppliers in relation to the supply of pre-payment services, including notes of meetings and calls with energy suppliers in respect of the same.
- e. Documents relating to GLOBAL-365's communications with energy suppliers, including (but not limited to) consideration of any offers (including for renewals) put forward (or to be put forward) by GLOBAL-365 to energy suppliers for the provision of pre-payment services or reasons why GLOBAL-365 was not selected by energy suppliers.
- f. Copies of contracts concluded between:
 - i. GLOBAL-365 and energy suppliers for the provision of pre-payment services since 1 January 2015; and
 - ii. GLOBAL-365 and Epay in relation to the provision of OTC pre-payment terminals.

- g. Documents relating to GLOBAL-365's consideration of the impact of market and macro-economic developments on GLOBAL-365's ability to enter the energy pre-payment services markets including but not limited to the factors referred to in paragraph 71 of the Claim Form.
- h. Documents relating to GLOBAL-365's forecasts for the roll out of smart meters in Great Britain.

2: GLOBAL-365's complaint

- a. Documents relating to GLOBAL-365's decision to complain to Ofgem, or any other or any other authority with competition enforcement powers, about PayPoint's contractual arrangements.
- b. GLOBAL-365'S complaint(s) to any authority with competition enforcement powers in relation to PayPoint's contractual arrangements, including any supporting documents provided.

3: GLOBAL-365 financial information

- a. For the period since November 2014:
 - i. financial statements, including annual and management accounts;
 - ii. financial forecasts, including forecast costs, revenues and profits;
 - iii. documents that relate to reasons for any change in the above forecasts.

ANNEX C: PAYPOINT

1: Negotiations between PayPoint and energy suppliers in relation to the provision of pre-payment services

- a. Save to the extent provided by PayPoint to Ofgem in connection with the investigation that resulted in the Commitments Decision, for each contract provided pursuant to paragraph 6(e) of the Order:
 - i. Tenders / requests for quotations received by PayPoint from the relevant energy suppliers and PayPoint's offers in response to same.
 - ii. Communications between PayPoint and energy suppliers in relation to the negotiation of the contracts, including notes of meetings and calls with energy suppliers in respect of the same.

2: PayPoint financial information

- a. Data identifying the fees paid by energy suppliers to PayPoint in respect of pre-payment services from 1 January 2007 to present day.