



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

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

**BETWEEN:**

- (1) UTILITA ENERGY LIMITED  
(2) ~~UTILITA SERVICES LIMITED~~ LUXION SALES 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

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**ORDER**

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**UPON** holding the joint Case Management Conference on 26 April 2024 in Case 1581/5/7/23 (the "**Utilita Proceedings**") and 1597/5/7/23 (the "**GLOBAL-365 Proceedings**") (together, the "**Joined Proceedings**")

**AND UPON** the Order of the Tribunal in the Joined Proceedings made on 20 November 2023, as amended on 29 January, 15 February, and 22 March 2024, which provided for the Parties to provide certain categories of disclosure, and granted each of the Parties permission to call one expert in the field of competition economics, in the Joined Proceedings (the "**First CMC Order**")

**AND UPON** the parties' application notices dated 8 April 2024

**AND UPON** hearing counsel for the parties at the Case Management Conference on 26 April 2024

**AND UPON** the Tribunal having made an order on 20 November 2023 establishing a regime for the disclosure in the Joined Proceedings of documents which are (or are claimed to be) confidential (the "**Revised Confidentiality Ring Order**")

**IT IS ORDERED THAT:**

**Amendments to pleadings**

1. The Claimants in the Utilita Proceedings ("**Utilita**") have permission to amend their Claim Form in the form annexed to the Letter filed with the Tribunal on 4 April 2024 and to serve and file the Amended Claim Form by 5pm on two working days from the date of this Order.
2. The Defendants in the Utilita Proceedings have permission to amend their Defence, which must be filed and served by 5pm on five working days from the date of this Order.

3. Utilita shall pay the Defendants' costs of and occasioned by the amendment, to be assessed if not agreed.

#### **Further disclosure**

4. By 4pm on 31 July 2024, the Defendants shall disclose:
  - (a) under paragraph 15(c) of the First CMC Order, the categories of documents set out in Annex C to the First CMC Order in respect of Tracey Cotton, Garrett Foxon, Patrick Headon and Tracey Sewell (together, the "**PayPoint Additional Named Custodians**")
  - (b) under paragraph 15(c) of the First CMC Order and category 4(a) and 5 of Annex C to the First CMC Order, documents responsive to categories 4(a) and 5 of Annex C to the First CMC Order in the time period 1 January 2016 to 31 December 2023, in respect of (i) all custodians identified by PayPoint in the PayPoint EDQ and (ii) the PayPoint Additional Named Custodians;
5. By 4pm on 10 May 2024, the Defendants shall provide:
  - (a) a list of all other employees who have had the same or similar job roles / titles to those included in PayPoint's Electronic Data Questionnaire dated 12 December 2023 (the "**PayPoint EDQ**") during the period 1 January 2015 to 31 December 2023, excluding any individual who had no contact with the business activities involved in this litigation (the "**Additional Unknown Custodians**");
  - (b) a brief explanation of those employees' roles; and
  - (c) a brief explanation as to why those employees have been excluded from the custodians included in PayPoint's EDQ.

6. Following receipt of the list at paragraph 5 above, the parties shall seek to agree whether disclosure should be provided by the Defendants in respect of any individuals identified in the list. In the event agreement cannot be reached between the parties, the parties shall have liberty to apply to the Tribunal. Any such application shall be determined on the papers.
7. By 4pm on 31 July 2024, the Claimants in the GLOBAL-365 Proceedings (“GLOBAL-365”) shall provide any further disclosure under paragraph 15(c) of and Annex B to the First CMC Order.
8. By 4pm on 31 July 2024, in each case save to the extent already disclosed pursuant to the First CMC Order:
  - a. Utilita shall disclose the categories of documents set out in Annex A to the Order;
  - b. GLOBAL-365 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, in respect of: (i) all custodians identified in the Defendants’ Electronic Disclosure Questionnaire; and (ii) the PayPoint Additional Named Custodians.

### **Expert evidence**

9. The parties shall be permitted to rely on the the following experts in competition economics who shall give evidence on the issues set out in Annex D to this Order:
  - a. Mr Mat Hughes of AlixPartners on behalf of GLOBAL-365;
  - b. Mr Mark Bosley of Berkley Research Group (UK) Ltd; and
  - c. Dr Adrian Majumdar of RBB Economics on behalf of PayPoint.

10. Each party shall have permission, in principle, to call one expert in each of the following fields of expertise:
  - (a) one expert in the fields of accountancy and/or corporate finance and/or competition economics to give evidence relevant to quantum; and
  - (b) one industry expert in the energy sector (including energy prepayment services).
11. By 28 June 2024 the parties shall:
  - a. seek to agree a list of the issues to be addressed by each of the experts referred to in paragraphs 9 and 10 and shall update the Tribunal on the outcome of their discussions; and
  - b. identify the experts on whose evidence they seek the Tribunal's permission to rely.
12. Subject to the Tribunal granting the parties permission for the further expert evidence referred to in paragraph 10 above, the parties shall comply with the timetable below.
13. The parties shall file and exchange expert reports in the fields described in paragraph 10 above by 4pm on 7 February 2025.
14. Any expert reports in reply in the fields described in paragraph 10 above shall be filed and served by 4pm on 21 March 2025.
15. The provision made in paragraph 23 of the First CMC Order shall also apply to the experts referred to in paragraph 10 above.

### **Variation of deadlines for factual evidence**

16. Paragraph 20 of the Tribunal's Order of 20 November 2023 shall be varied to provide for the exchange of factual witness statement by 4pm on 18 October 2024.
17. Paragraph 21 of the Tribunal's Order of 20 November 2023 shall be varied to provide for the exchange of factual witness statement by 4pm on 29 November 2024.

### **Further CMC**

18. A further Case Management Conference (the "**Third CMC**") shall be listed on 28 October 2024, with a time estimate of up to one day, to address any outstanding matters regarding the list of issues for experts referred to in paragraph 11 above. The Third CMC shall be held remotely.

### **Miscellaneous**

19. By agreement the parties may extend any deadline in this Order for a period up to 28 days in total without reference to the Tribunal, 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 Third CMC or any other hearing.
20. Save for the matters addressed in paragraph 1 to 3 above, costs in the case.
21. There be liberty to apply.

**The Honourable Lord Richardson**  
Chair of the Competition Appeal Tribunal

Made: 5 June 2024  
Drawn: 5 June 2024

## **ANNEX A – UTILITA’S DISCLOSURE**

### **1: Annex A of the First CMC Order**

- a. Documents responsive to Annex A of the First CMC Order from the additional agreed custodian, Ian Burgess.

### **2: Limitation**

- a. Documents of Utilita’s identified custodians who were involved in the procurement of energy prepayment services during the claim period relating to prepayment service providers’ alleged use of exclusivity including documents evidencing:
  - (i) Utilita’s awareness/knowledge of PayPoint’s (and other prepayment services providers’) alleged use of exclusivity in energy supplier contracts and Agent Retailer contracts (both in respect of Utilita and in respect of others); and
  - (ii) when and how the awareness/knowledge at (a) was acquired.

### **3: The “My Utilita” App**

- a. Documents setting out the actual financial performance of the “My Utilita” App from launch to 31 December 2023 on a monthly basis, including (but not limited to) (i) information on the costs associated with the app (split by cost category); and (ii) to the extent not captured by the above, information on the investment costs incurred by Utilita to develop the app.

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

- a. Documents relating to the Pre-payment Price Cap (Safeguard Tariff) and Energy Price Cap (Default Tariff) including (but not limited to) documents submitted by

Utilita to Ofgem, and documents that discuss how changes in these price caps affect energy tariffs charged by Utilita to pre-payment customers.

- b. Documents relating to Utilita's proposed and/or implemented changes to energy tariffs for prepayment customers over time and the reasons for such changes, including (but not limited to) meeting minutes, board reports, internal communications, and business plans.
- c. Targeted searches to identify data relating to:
  - (i) the actual prices charged to supply energy to pre-payment customers, split by tariff;
  - (ii) revenues for pre-payment energy supply, split by tariff;
  - (iii) costs for pre-payment energy supply, split by tariff and major cost category. Such data should also separately identify the transaction fees paid to energy pre-payment providers (split by provider);
  - (iv) transaction volumes, and volume of energy supplied to pre-payment customers, split by tariff. Such data should also separately identify the transaction volumes processed by energy pre-payment providers (split by provider); and
  - (v) details on how Utilita sets its prices and tariffs for prepayment customers.



## **ANNEX B – GLOBAL-365’S DISCLOSURE**

### **1: GLOBAL-365’s OTC prepayment services**

- a. Documents that consider or discuss the scope of the Epay network available to GLOBAL-365 including any limitations in that network (or limitations in the Epay service generally), including in respect of its locations and coverage together with communications between GLOBAL-365 and Epay, and communications between GLOBAL-365 and energy suppliers, regarding the limitations of Epay.
- b. For the period since November 2014, documents regarding the use (or planned use) of Payzone's and/or Post Office's OTC network(s), including feedback received from Payzone and/or Post Office in respect of GLOBAL-365's product and proposition and why no agreement was reached and notes of meetings and calls in respect of the same.

**2: GLOBAL-365 financial documents.** From the period since November 2014, all documents that include estimates of GLOBAL-365’s Weighted Average Cost of Capital.

**3: Business plans / forecasts.** For the period since 1 January 2016, communications from or to, documents prepared by or for, and minutes from meetings involving, board members, shareholders, prospective or existing investors, and/or external consultants/advisers discussing the validity or reasonableness of, or any revisions required to, GLOBAL-365's business plans and financial forecasts and the assumptions underlying those forecasts, including the impact of changes to market conditions, and external events / macro-economic factors.

## ANNEX C – PAYPOINT’S DISCLOSURE

### Utilita’s disclosure requests

The requests below extend to documents in the following date ranges:

Paragraph	Start date	End date
1	1 January 2007	31 December 2023
2	1 January 2007	31 December 2023
3	1 January 2007	31 December 2023
4	1 January 2007	31 December 2023
5	1 January 2007	31 December 2023
6	1 January 2007	31 December 2015
7	1 January 2007	31 December 2013
8	1 January 2007	31 December 2023
9	[Not used]	[Not used]
10	2 April 2009	31 December 2021
11	1 January 2007	31 December 2023
12	1 January 2007	31 December 2023
13	1 January 2007	31 December 2023
14	[Not used]	[Not used]
15	[Not used]	[Not used]
16	2 April 2009	31 December 2018

### **Market definition**

1. Documents which consider or discuss the characteristics, needs and/or preferences of energy suppliers, Agent Retailers, and end consumers who use PayPoint, by reference to each bill payment service type as applicable.

2. Internal documents discussing the prepayment services available for use by energy suppliers as an alternative to the service offered by PayPoint, including documents that consider or discuss:
  - i. monitoring by PayPoint of its actual or potential competitors;
  - ii. PayPoint's assessment of rivalry or competition from its actual or potential competitors in energy prepayment services;
  - iii. pricing by any such actual or potential competitor (in the context of either tenders or price negotiations more generally; and
  - iv. switching (if any) by energy suppliers, Agent Retailers, and end consumers between PayPoint and any one or more of its actual or potential competitors.

### **Dominance**

3. Documents which identify, analyse, consider or discuss network effects in the relevant market(s).
4. Documents which identify, analyse, consider or discuss barriers to entry into any of the relevant market(s) in which PayPoint operates.
5. Documents which consider or discuss:
  - i. the importance of payment services to energy suppliers and Agent Retailers; and/or
  - ii. the requirement under energy suppliers' Gas and Electricity Supply Licences and respective Standard Licence Conditions to make OTC methods of prepayment available to consumers, in particular PayPoint's exploitation of that requirement.

## Abuse

6. All contracts (i) concluded or in force in the period 1 January 2007 to 31 December 2015 (ii) between the Defendants or any of them and any energy supplier (iii) relating to the provision of either or both of OTC and non-OTC pre-payment facilities to energy consumers with prepayment meters in Great Britain.
7. Documents falling within paragraph 1 Annex C of the Order of the Tribunal dated 20 November 2023 created, received or sent in the period 1 January 2007 to 31 December 2013.
8. Contracts with Agent Retailers which do not contract under PayPoint's standard terms in its "Booklet of Terms for General Retailer Agreements" (i) concluded or in force in the period 1 January 2007 to present (ii) between the Defendants or any of them and any Agent Retailer (iii) relating to the provision of OTC pre-payment facilities to energy customers with prepayment meters.
9. [Not used]
10. Internal documents relating to the negotiation of the Amendment Agreement dated 5 December 2019.
11. Communications with energy supplier customers of OTC and/or non-OTC pre-payment services in Great Britain (i) identifying potential breaches of non-compete and/or confidentiality clauses; and/or (ii) threatening enforcement of such non-compete and/or confidentiality clauses.
12. Communications with Agent Retailers involved in PayPoint's OTC and/or non-OTC pre-payment services in Great Britain held by PayPoint's internal legal team and enforcement team (i) identifying potential breaches of non-compete and/or confidentiality clauses; and/or (ii) threatening enforcement of such non-compete and/or confidentiality clauses.

13. Documents evidencing the purpose and/or intention in imposing and/or enforcing the impugned exclusivity arrangements, including, without limitation, documents evidencing that PayPoint's intention in imposing and/or enforcing the exclusivity arrangements with energy suppliers and/or Agent Retailers was to restrict competition and/or make it difficult for competitors to enter the market and/or expand on the market, and/or to compete with PayPoint in relation to the quality or price of the services PayPoint provided.

**Quantum**

14. [Not used]

15. [Not used]

16. Any documents submitted to the CMA in its Energy Market Investigation by PayPoint and its internal documents relating to those submissions.

## **GLOBAL-365's disclosure requests**

### **1. Market definition**

MD1: Internal documents created in the period 1 January 2016 to 31 December 2023 discussing whether or not the market for energy prepayment services is distinct from the market for bill payment services more generally, including the rationale for PayPoint's assessment.

MD2: Internal documents created in the period 1 January 2016 to 31 December 2023 discussing the prepayment services available for use by energy suppliers as an alternative to the service offered by PayPoint, including documents that consider or discuss:

- i. monitoring by PayPoint of its competitors;
- ii. PayPoint's assessment of rivalry or competition from its competitors; and
- iii. pricing by any such competitor (in the context of either tenders or price negotiations more generally)

MD3: Internal documents created in the period 1 January 2016 to 31 December 2023 that consider or discuss competition or PayPoint's strategy in response to competition in the provision of prepayment services to energy suppliers including notes of meetings and calls in respect of the same.

### **2. Dominance**

D1: For the period from 6 November 2014 to 31 December 2023:

- a. management accounts relating to PayPoint's energy prepayment service;

- b. spreadsheets demonstrating reconciliation from those management accounts to the statutory accounts; and
- c. the document prepared relating to the exercise which the Defendants carried out regarding better cost allocation of its respective business divisions for the financial year ending 31 March 2024.

D2: Internal documents created in the period 1 January 2016 to 31 December 2023 relating to:

- a. PayPoint's assessment of the extent to which energy suppliers were developing their own in-house non-OTC prepayment services, including the features and functionality of each such in-house service;
- b. the extent to which PayPoint perceived the development by energy suppliers of their own in-house non-OTC prepayment services to be a threat to PayPoint's energy prepayment service; and
- c. any actions which PayPoint considered taking in response to any such perceived threat.

### **3. Abuse**

A1: All versions of PayPoint's 'Booklet of Terms for General Retailer Agreements' covering the period 1 January 2016 to 31 December 2023.

A2: Internal documents created in the period 1 January 2016 to 31 December 2023 relating to decisions on the level of transaction volumes proposed by PayPoint for volume commitments, volume discounts and/or volume rebates in contracts with energy suppliers and the rationale for setting the transaction volumes at that level in each such instance.

#### **4. Effect**

- E1: For the period 1 January 2016 to 31 December 2023, representative example documents showing the features and functionality of the software for the provision of non-OTC prepayment services to energy suppliers.
- E2 For the period 1 January 2016 to 31 December 2023, extracts concerning relevant to energy pre-payment services from: (i) PayPoint's Major Incidents Register; and (ii) PayPoint's centralised log of incidents.
- E3: Communications between PayPoint and energy suppliers which they contracted with in the period from 1 January 2016 to 31 December 2023 for energy prepayment services in relation to feedback from the energy suppliers concerning the suitability or quality of the service provided (including complaints regarding the service provided), or whether to continue to take PayPoint's services or extend the terms of a contract, in each case including notes of meetings and calls in respect of the same.



## **ANNEX D – SCOPE OF EXPERT EVIDENCE IN COMPETITION ECONOMICS**

### **Definitions**

References to “Alleged Conduct” are to the allegations of abusive conduct made by each of the Claimants in their statements of case.

### **1 Market Definition**

1.1 The definition of the relevant market(s) for energy bill prepayment services (and, where appropriate, any substitute products or services) in Great Britain from April 2009 to present (or a different period if deemed more relevant for the assessment of effects), including:

- (a) The relevant focal product(s);
- (b) The boundaries of the relevant product market(s), including for the provision of OTC and non-OTC pre-payment services; and
- (c) The boundaries of the relevant geographic market(s).

### **2 Market power / dominance**

2.1 Whether PayPoint was dominant in the relevant market(s) and time period(s) (as defined in 1 above). This may include, and is not necessarily limited to, an assessment of the following:

- (a) the market shares of PayPoint and its competitors in that market(s);
- (b) the nature and identity of PayPoint’s competitors in that market(s);
- (c) the nature and state of competition in that market(s);
- (d) barriers to entry and expansion in that market(s);

- (e) the importance of buyer power in that market(s); and
- (f) any relevant market developments that may have affected competition, rivalry, and market outcomes, before the Conduct Period, during the Conduct Period, and following Ofgem's '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 ("Ofgem's Commitments") until the end of 2023.

### **3 Abuse**

3.1 Whether PayPoint abused its dominant position in that market(s), including:

- (a) The effects of the Alleged Conduct from April 2009 to the beginning of the Conduct Period (as set out in the Global 365 Statement of Claim), which may include the consideration of market outcomes before April 2009;
- (b) the effects of the Alleged Conduct during the Conduct Period (as set out in the Global 365 Statement of Claim), which may include the consideration of market outcomes in the time periods on either side of the Conduct Period; and
- (c) the effects of the Alleged Conduct following the Ofgem's Commitments.

### **4 Quantum**

#### *Global 365*

4.1 The impact (if any) of the Alleged Conduct on Global 365's revenue, costs, investment, and profits, including:

- (a) the difference between Global 365's actual profits and Global 365's profits in the counterfactual (i.e. without the Alleged Conduct); and

- (b) the treatment of interest.

*Utilita*

4.2 The impact (if any) of the Alleged Conduct on Utilita's revenue, costs, investment and profits, including:

- (a) The extent to which Utilita passed-on any higher costs it incurred as a result of the Alleged Conduct to its customers, including the effect (if any) of the regulatory price-cap applied to the retail energy supply market and/or other regulation of that market on Utilita's ability to pass-on costs to its customers;
- (b) The difference between Utilita's actual profits and its profits in the counterfactual (i.e. without the Alleged Conduct);
- (c) In particular, the further profits (if any) which would have been generated by the further investment and/or business Utilita would have made in the counterfactual if it had paid less for bill prepayment services; and
- (d) The treatment of interest.