Neutral citation [2026] CAT 67

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1597/5/7/23

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

7 August 2026

Before:

THE HONOURABLE LORD RICHARDSON
(Chair)
PAUL LOMAS
PROFESSOR ALASDAIR SMITH

Sitting as a Tribunal in England and Wales

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

RULING (COSTS)

A. INTRODUCTION

1. On 7 May 2026, the Tribunal issued its judgment ([2026] CAT 43) in the proceedings (the **Judgment**) finding that PayPoint had abused its dominant position in the market for the supply of OTC prepayment services to energy suppliers in Great Britain and awarded GLOBAL-365 damages of £169,334 for the period 2019 to 2023, plus interest. This Ruling uses the same abbreviations as the Judgment.

2. This Ruling deals with the parties' consequential applications in relation to costs further to the Judgment. The parties filed their respective applications for costs further to the Judgment on 28 May 2026. PayPoint's application was supported by the Second Witness Statement of Mark Simpson. The parties filed submissions in response to the respective costs applications on 5 June 2026. The parties were content for the costs applications to be determined on the papers.

B. THE POSITION OF THE PARTIES

(1) GLOBAL-365

3. GLOBAL-365 seeks its costs of the claim, to be subject to detailed assessment on the standard basis if not agreed, contending it was the successful party for the following reasons:

   (1) PayPoint was ordered to pay a sum of £169,334 together with interest resulting in a total liability of £219,878.81. The result for GLOBAL-365 was better than PayPoint's best, and only, "drop hands" offer to settle the proceedings dated 16 May 2025.

   (2) There was an important non-monetary element to the claim, specifically the finding that PayPoint abused its dominant position, which is an important element to the claim on which GLOBAL-365 was successful.

   (3) PayPoint's conduct in refusing to concede the question of infringement, having regard to (a) the Ofgem SO and the Commitments Decision and

(b) the trial itself, where very little time was spent addressing such issues in PayPoint's opening and closing submissions. This substantially increased the evidence that was required to be filed, the length of trial and the costs of the proceedings.

4. However, recognising that the Tribunal rejected significant limbs of its case in relation to causation and loss, GLOBAL-365 accepted that it would be appropriate for there to be a percentage deduction in the costs that PayPoint is ordered to pay. GLOBAL-365 submitted that the appropriate deduction in all the circumstances was 30%. This reflected that approximately 60% of the pleadings addressed abuse and dominance, approximately 30% addressed causation and loss and approximately 10% addressed other issues. Additionally, the vast majority of PayPoint's disclosure concerned abuse and dominance. Further, the evidence in relation to causation and loss overlapped to some extent with the evidence as to the exclusionary effect of PayPoint's conduct, on which GLOBAL-365 was the successful party.

5. GLOBAL-365's total costs, as set out in its Schedule of Costs, amounted to £3,662,220.15. Applying the 30% reduction, GLOBAL-365's claimed costs amounted to £2,563,557.11 and it sought payment on account to the sum of £1,794,000 (being 70% of the reduced figure).

(2) PayPoint

6. PayPoint contended that it should be treated as the successful party having regard to the unusual and extreme circumstances of the proceedings. Although the Tribunal largely accepted GLOBAL-365's case on liability, this was a money claim in which GLOBAL-365 originally sought more than £170 million for lost profits, £113.2 million by the time of the trial. However, GLOBAL-365 obtained just 0.15% of its claimed damages at trial (and approximately 0.1% of the sum initially claimed).

7. Further, the sum obtained by GLOBAL-365 (as compared by the claimed sum) did not justify the costs reasonably incurred by the parties advancing and defending a claim for a sum more than 1,000 times greater.

8. PayPoint applied for an order that GLOBAL-365 pay its reasonably incurred costs, to be subject to detailed assessment if not agreed. PayPoint's claimed costs amounted to £6.8 million. PayPoint considered that it acted reasonably in defending the claim, including in relation to abuse and dominance on which it succeeded on certain discrete issues. Moreover, PayPoint submitted that it focused its submissions on the issues of causation and quantum that were the core of the claim and on which GLOBAL-365 was ultimately unsuccessful.

9. PayPoint contended that GLOBAL-365 acted unreasonably in the pursuit of its claim by proceeding without any proper scrutiny as to whether its premise was well founded (or even arguably so), as recognised by the Tribunal in its Judgment. There was no basis whatsoever for the amount of damages sought in the claim save for the wildly optimistic and unrealistic view of Mr Wilson. The Tribunal observed in the Judgment that it was regrettable that no scrutiny was given to the reasonableness of Mr Wilson's views by GLOBAL-365's expert, Mr Hughes, when he provided his independent expert opinion on the value of the claim.

10. PayPoint made it clear that it was willing to seriously engage in discussions if there was any realistic prospect of settling the claim, as set out in correspondence. However, there was no realistic prospect of settling the claim while GLOBAL-365 maintained a wholly unreal perception of its value.

11. In the alternative, PayPoint seeks an order that GLOBAL-365 pay its reasonably incurred costs of £2.6 million from 1 April 2025, the date on which GLOBAL-365 made a settlement offer of £39.8 million in response to PayPoint's invitation for a reasonable and realistic settlement offer.

C. ANALYSIS

12. Pursuant to r. 104 of the Competition Appeal Tribunal Rules (**the Rules**), the Tribunal has a broad discretion as to costs and may have regard to the factors set out in r. 104(2) when determining the amount of costs. The Tribunal recently considered the applicable legal framework in relation to costs in *Gutmann v Vodafone Limited & Others* [2026] CAT 9 at §§8–14.

13. Although there is no prescribed "general rule" in the Rules that the unsuccessful party should pay the costs of the successful party (corresponding to CPR 44.2(2)(a)), that is the approach generally adopted by the Tribunal (see *Merricks v Mastercard & Others* [2024] CAT 57 at §18).

14. In *Riefa v Apple* [2025] CAT 34 at §13, citing Merricks with approval, the Tribunal summarised the relevant principles in relation to costs. The Tribunal held that:

(1) The Tribunal generally follows the practice of the High Court. The question of how to determine who has been the successful party should be approached as a matter of common sense, in a practical and commercially realistic way.

(2) An issue-based order may be appropriate where the overall successful party has lost on a discrete issue which caused additional costs to be incurred, where the issue was raised unreasonably. If the issue was raised reasonably "the mere fact that the successful party lost on that issue does not by itself normally make it appropriate to deprive it of its costs; rather, the question is what order in respect of that issue is just and appropriate in all the circumstances of the case".

(3) If ordering an interim payment, the Tribunal should take a cautious approach and make a broad estimate of the reasonable and proportionate costs likely to be determined on detailed assessment, with an appropriate margin to allow for an overestimate.

15. In the present case, the principal issue between the parties is which of them has been successful.

16. We are satisfied that GLOBAL-365 should be regarded as the successful party. We agree with the submission made by GLOBAL-365 that a powerful starting point for working out the successful party is to identify which party is to receive money at the end of the case (see *AL Barnes v Time Talk* [2003] EWCA Civ 402 at §28 per Longmore LJ; and *Day v Day* [2006] CP Rep 35 at §17).

17. PayPoint sought to rely on a separate line of authority which appeared to outline a different approach to determining the "successful" party for costs purposes. The starting point for this line of authority was, in particular, *Roache v News Group Newspapers Ltd* [1998] EMLR 161 at §§168-169. In essence, this approach seeks to look not so much at the initial question of who makes the payment, but more at the overall 'moral' (substance and reality) winner in the context of the claim that had been brought: has the Defendant denied the Claimant the prize that he brought the action to win?

18. We note that the more recent applications of this approach appear to deal with cases in which, although a claimant has been awarded only an (often very) small fraction of the total damages claimed, the reason was that the award had not been made on the basis of the claimant's primary case: see *Magical Marking Ltd v Ware and Kay LLP* [2013] EWHC 636 (Ch) [2013] 4 Costs LR 535 at §21; and *Pepe's Piri Piri Ltd v Junaid* [2019] EWHC 2769 (QB) at §33(i)).[1]

19. We consider that this represents an important distinction from the present case. Here, GLOBAL-365 was successful in vindicating each element of its substantive claim and we held that PayPoint had abused its dominant position by acting in an exclusionary manner, damaging competition in the market. These were complex and significant issues in respect of which, over the course of the litigation, both parties expended much time, effort and expense. However, ultimately, GLOBAL-365 failed to recover material damages not because it did not succeed substantively but because (i) its failure to penetrate the market was almost entirely caused by other factors and hence the illegal exclusion was not the cause of its loss; and (ii) its internal assessment of its business opportunity was unrealistic.

20. In these circumstances, we are satisfied that, for the purposes of this case, the approach endorsed by the Court of Appeal in *AL Barne*s and *Day* is the correct one.

[1] We consider that the same distinction applies, at least to a material extent, to the approach of Richard Spearman KC in *The Wine Enterprise Investment Scheme Limited (In Liquidation) v Crowe UK LLP* [2026] EWHC 1662 (Ch): see at §17. This judgment was handed down after submissions on costs had closed, while we were in the process of preparing this Ruling, but it was drawn to our attention by PayPoint.

21. Applying this approach to the Judgment, PayPoint has clearly been unsuccessful: it is obliged to pay an, admittedly modest, sum of damages to GLOBAL-365.

22. We are not persuaded by any of PayPoint's arguments to the contrary.

23. First, PayPoint points to the small sum of damages which has been awarded to GLOBAL-365, especially when compared with the sums originally sought by it and highlights that such an award is disproportionate to the trial process. Both of these points are undeniable. We agree that they demonstrate that the scale of GLOBAL-365's success has been small. However, the fact remains that GLOBAL-365 was indeed successful. PayPoint wrongly denied dominance and abuse and refused to pay GLOBAL-365 anything at all and now, following a lengthy and highly expensive court case, have been compelled to do so.

24. Second, PayPoint asserts that GLOBAL-365 has been unreasonable in advancing a claim for such a significant sum. Furthermore, PayPoint contends that GLOBAL-365 was unreasonable and "wildly unrealistic" in making an offer in "without prejudice save as to costs" correspondence to settle for the sum of £39.8 million on 1 April and 22 May 2025. In these circumstances, PayPoint "therefore had no option but to see the proceedings through to trial" (PayPoint Submissions at §5).

25. We consider that this argument both misses the point by focussing on the actions of GLOBAL-365 rather than considering its own actions and is, in any event, unfounded. The simple fact is that from the outset of the litigation, it was open to PayPoint to make an offer in terms of r. 45. Had PayPoint done so, it would have been entitled to the protection provided by the rule. PayPoint elected not to do so and was, therefore, exposed to the risk which eventuated, namely that GLOBAL-365 would be successful in obtaining any award of damages. From this perspective, the fact that, had PayPoint chosen to make such an offer based on Dr Majumdar's Conservative Alternative Scenario in April 2025, the costs consequences would have been disproportionate is entirely irrelevant. Furthermore, PayPoint's argument also ignores the fact that it would have been

open to it to have made a Calderbank offer on this basis just as it made a "drop hands" offer.

26. The second issue for us to determine is, on the basis that GLOBAL-365 is entitled in principle to payment for its costs, what deduction should be made from that award of costs to reflect the minimal success which it achieved and the unrealistic basis on which it assessed its potential damages and brought the claim. That such a deduction falls to be made is conceded by GLOBAL-365. In all the circumstances, we consider that this concession is properly made.

27. GLOBAL-365 submits that a 30% deduction is appropriate, a calculation based on the fraction of the pleadings which related to issues of dominance and abuse as opposed to causation and quantum.

28. We consider that 30% understates the significance of the issues of causation and quantum at trial and, therefore, the amount of time and effort which was taken up with matters in relation to which it was unsuccessful. It also does not reflect the size of the gap between GLOBAL-365's unrealistic pleaded claim and its actual loss caused by PayPoint's conduct and the costs (and possible outcomes) that would have been incurred had the claim been approached more realistically. We recognise that assessing the level of deduction will inevitably be somewhat impressionistic and involve the wielding of the broad axe. On this basis, we consider that a deduction of 60% of an award of costs in favour of GLOBAL-365 would be appropriate and a fair reflection of PayPoint's powerful arguments on the very low level of recovery by reference to the amount claimed. We note that, in that respect, only approximately 40% of GLOBAL-365's own closing written submissions related to the issues of dominance and abuse (with the remainder relating to causation and quantum) which points in a similar direction.

29. For these reasons, we will order PayPoint to pay 40% of GLOBAL-365's costs. Those costs are to be subject to detailed assessment on the standard basis if not agreed.

30. GLOBAL-365 also sought a payment on account on what it described as the "conventional basis" of 70% of the costs awarded (see *Le Patourel v BT Group* [2025] CAT 10 at §21). PayPoint did not challenge this. In the circumstances of this case, we agree that such an order is appropriate. The payment is to be made within 28 days of the date of this Ruling.

31. This Ruling is unanimous.

The Honourable Lord Richardson Chair	Paul Lomas	Professor Alasdair Smith

Charles Dhanowa, CBE, KC (Hon) Registrar	Date: 7 August 2026