

Statement

5 August 2010

SUPREME COURT REFUSES NATIONAL GRID APPEAL ON GAS METER CONTRACTS CASE

Ofgem welcomes a decision by the Supreme Court refusing National Grid permission to appeal the Court of Appeal's findings that the company breached competition law in the gas meter market. This endorses Ofgem's 2008 decision following its investigation into the case.

In February this year, and following a failed appeal by National Grid to the Competition Appeal Tribunal, the Court of Appeal ruled that National Grid acted uncompetitively in the domestic gas metering market. The Court of Appeal fully endorsed the findings of Ofgem's Competition Act 1998 investigation into the company, published in 2008. The effect of the Court of Appeal's ruling is that suppliers will be free to renegotiate the terms of metering contracts with National Grid Gas. Following the Court of Appeal's decision, National Grid sought permission to appeal to the Supreme Court. However, the Supreme Court has refused this request.

This is now the end of the legal avenues open to National Grid and the matter is closed. The penalty of £15 million imposed by the Court of Appeal on National Grid is the highest financial penalty for abuse of dominance imposed in the UK to date.

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Notes to editors

1. Shortly after the domestic gas metering market was opened to competition, National Grid struck long-term contracts with five of the six major energy suppliers to supply and maintain gas meters. These contracts included financial penalties that apply if suppliers replaced more than the small number of meters allowed under contract by National Grid. These contracts have severely restricted the rate at which suppliers can replace even National Grid's older meters with cheaper or more advanced, smarter meters from rival competing meter operators. By restricting competition, National Grid has deprived gas suppliers and gas customers of access to lower prices and improved service.
2. There are approximately 22 million domestic gas meters installed in the UK of which about 2.3 million are pre-payment meters. National Grid's turnover from the gas metering business is in the region of £250 million.
3. Ofgem's Authority reached its finding of breach of competition law in February 2008. The Authority decided that National Grid had breached the Chapter II prohibition of the

Competition Act 1998 (CA98) and Article 82 of the EC Treaty. Chapter II of the CA98 prohibits the abuse of a dominant position in a market by one or more undertakings which may affect trade within the UK. Article 82 of the EC treaty prohibits the abuse of a dominant position in a market by one or more undertakings which may affect trade between Member States. This case is one of the most significant prosecuted successfully under Chapter II of the Competition Act 1998 in the UK since the powers took effect. A press release on Ofgem's findings is available here:
<http://www.ofgem.gov.uk/Media/PressRel/Documents1/Matrix%20FINALE.pdf>

4. The Authority has concurrent powers with the Office of Fair Trading under the CA98 to investigate and take enforcement action in relation to suspected infringements. Under the CA98 the penalty imposed for an infringement of competition law may be up to 10 per cent of the company's worldwide turnover.

5. Ofgem is the Office of the Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority, the regulator of the gas and electricity industries in Great Britain. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002, the Energy Act 2004 as well as arising from directly effective European Community legislation.