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## **COMPETITION APPEAL TRIBUNAL UPHOLDS OFGEM'S DECISION AGAINST NATIONAL GRID IN METERING COMPETITION CASE**

Ofgem welcomes the Competition Appeal Tribunal's (CAT) decision today (Wednesday) to uphold Ofgem's finding that National Grid was in breach of competition law, restricting the development of competition in the domestic gas meter market.

In its decision the CAT has ruled that National Grid should face a £30 million financial penalty – although lower than the £41.6 million fine imposed by Ofgem it is the highest penalty for abuse of dominance imposed to date in the UK. In its judgment the CAT has also upheld Ofgem's directions which require National Grid to bring these multi-million pound contracts into compliance with competition law.

Commenting on today's ruling, Ofgem Chairman, Lord Mogg, said "This case illustrates Ofgem's commitment to make full use of its powers to tackle abuse and ensure energy markets work effectively for consumers. The CAT's ruling upholds Ofgem's decision and confirms that National Grid has abused its dominance in the domestic gas metering market, restricting competition and harming consumers."

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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 (CMOs). 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.

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. Any decision that a company has infringed the CA98 can be appealed to the Competition Appeal Tribunal. NG appealed this decision to the CAT in May 2008. Competing meter operators **Capital Meters Limited (CML) and Meterfit** joined the legal proceedings in support of Ofgem's defence of the decision. The CAT had the scope to accept or reject the appeal as well as to set new or different penalties and directions. The CAT has ruled a penalty of £30 million - a reduction on the £41.6 million set by Ofgem. The CAT's penalty reflects the seriousness of the infringement but takes account of National Grid's transparency with Ofgem in the early stages of the development of metering competition. Decisions of the CAT are open to appeal to the Court of Appeal.

6. 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.

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