

Statement

Tuesday 23 February 2010

OFGEM'S DECISION AGAINST NATIONAL GRID'S METERING CASE IS FURTHER ENDORSED BY THE COURT OF APPEAL

Ofgem welcomes today's Court of Appeal ruling that National Grid breached the law and acted anti-competitively in the domestic gas metering market, endorsing Ofgem's April 2008 findings.

Today's ruling fully endorses the substance of Ofgem's case, that the multi-million pound contracts struck by National Grid with suppliers in 2002 when the metering market was opened to competition harmed new entrants' ability to compete and acted against consumers' interests.

The effect of the Court of Appeal's ruling is that suppliers will be free to renegotiate the terms of contracts with National Grid Gas, and it opens the door to claims for damages against National Grid by competing meter operators, as the competition law regime allows.

Welcoming today's ruling, Ofgem's Chairman Lord Mogg said "We welcome the Court of Appeal's endorsement of Ofgem's decision. This confirms that National Grid breached the law and acted anti-competitively. It is a victory for consumers and strikes a firm blow in favour of new and competing entrants in Britain's energy market. Today's ruling shows that energy companies who hold and abuse positions of market dominance will face the full force of regulatory action and the law."

Today's ruling follows an earlier decision in April 2009 in favour of Ofgem by the Competition Appeal Tribunal.

-Ends-

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. The penalty of £15 million imposed (order still pending) by the Court of Appeal is the highest financial penalty for abuse of dominance imposed in the UK to date. If permission is granted, National Grid can appeal this decision to the Supreme Court.

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.

For further press information contact:

Chris Lock 020 7901 7225 / 07766 511470
Alison Wright 020 7901 7217 / 07771 980297