

UTILITA ENERGY LIMITED ('Utilita')

Appellant

and

GAS AND ELECTRICITY MARKETS AUTHORITY ('GEMA')

Respondent

OVO ENERGY LIMITED

Intervener

PERMISSION TO INTERVENE

1. On 21 September 2023, the CMA granted the Appellant permission to appeal, pursuant to section 11C of the Electricity Act 1989 ('**EA 89**') and section 23B of the Gas Act 1986 ('**GA86**'), against the decision of GEMA, dated 26 July 2023 to, among other things, modify licences to introduce a common minimum capital requirement for gas and electricity suppliers¹ (the '**Decision**').
2. On 12 October 2023, OVO Energy Limited² ('**OVO**') applied for permission to intervene in the appeal in support of all grounds of appeal ('**Grounds**') advanced by the Appellant in its notice of appeal ('**NoA**').

Requirement for permission to intervene

3. Under Rule 10.1 of the Competition and Markets Authority Rules for Energy Licence Modification Appeals³ (the '**Rules**'), the CMA's permission is required to intervene.

¹ Ofgem's Decision on Strengthening Financial Resilience Minimum Capital Requirements and Ringfencing CCBs by Direction, 26 July 2023.

² Acting on behalf of the licence holders, OVO Electricity Limited and OVO Gas Limited which are wholly owned by OVO Energy Limited.

³ Energy Licence Modification Appeals: Competition and Markets Authority Rules, 27 October 2022 (CMA70)

4. Under Rule 10.2, in considering whether to give permission to intervene, the CMA shall take account of all the circumstances including:
 - (a) whether the applicant is materially interested in the outcome of the appeal;
 - (b) whether the applicant's intervention in the appeal will assist the CMA to determine the appeal; and
 - (c) whether the nature and extent of the intervention sought is proportionate to the matters to be determined.

Decision on permission

5. On 12 October 2023, the application by OVO for permission to intervene in the appeal was received by the CMA within the period prescribed by Rule 10.3.⁴
6. OVO Electricity Limited and OVO Gas Limited are wholly owned subsidiaries of OVO. OVO Electricity Limited and OVO Gas Limited each hold a licence, under section 6(1) EA89 and s7A GA86 respectively. As holders of relevant licenses, they would have been able to bring an appeal against the Decision under s11C(2)(b) EA89 and s23B(2)(b) GA86. Their interests are therefore materially affected by the Decision. The CMA therefore considers that OVO is a business which is directly and materially impacted by the outcome of the appeals. Accordingly, the CMA is satisfied that OVO has a material interest in the outcome of the appeals for the purposes of Rule 10.3(a).
7. The CMA notes that OVO's application expresses support for all of the grounds advanced by the Appellant, but states that its substantive arguments are focused on Grounds 1 (*'The Authority erred in concluding that the Capital Target would further the objective it was intended to achieve.'*⁵) and 3 (*'The Capital Target (at any level, and certainly at the designated level) is unnecessary and disproportionate.'*⁶) of the NoA.

⁴ Rule 10.3 provides that an application for permission to intervene must be made before the end of the period of 15 working days beginning with the first working day after the day on which the CMA's decision to grant permission to appeal is published on the CMA's website. That decision was published on 21 September 2023 in the present case.

⁵ NoA, paragraph 8.1.

⁶ NoA, paragraph 8.3.

Having carefully considered the arguments and evidence set out in OVO's application, the CMA considers that OVO's intervention will assist the Group in determining Grounds 1 and 3 of the NoA.

8. In the CMA's view, OVO's proposed intervention, if limited in scope to Grounds 1 and 3 of the NoA, is proportionate to the matters to be determined.
9. Accordingly, taking all the relevant circumstances into account pursuant to Rule 10.3, the CMA grants OVO permission to intervene in the appeal in support of the Appellant in relation to Grounds 1 and 3 of the NoA only.

Richard Feasey

Group Chair

19 October 2023