

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**OF ENGLAND AND WALES**  
**COMPETITION LIST (ChD)**



**Mr Justice Adam Johnson**  
**13 October 2020**

HC-2017-000682

**B E T W E E N:**

- (1) VATTENFALL AB
- (2) VATTENFALL ELDISTRIBUTION AB
- (3) VATTENFALL VINDKRAFT AB
- (7) VÄSTERBERGSLAGENS ELNÄT AB
- (8) THANET OFFSHORE WIND LIMITED
- (10) ORMONDE ENERGY LIMITED
- (11) VATTENFALL A/S
- (12) VATTENFALL VINDKRAFT A/S
- (13) DOTI DEUTSCHE OFFSHORE- TESTFELD-  
UND INFRASTRUKTUR- GMBH & CO. KG
- (14) STROMNETZ BERLIN GMBH
- (15) NOORDZEEWIND C.V.

**Claimants**

- and -

- (1) PRYSMIAN S.P.A
- (2) PRYSMIAN POWERLINK S.R.L
- (3) PRYSMIAN CABLES & SYSTEMS LTD
- (4) PRYSMIAN GROUP FINLAND OY
- (5) PRYSMIAN KABEL UND SYSTEME GMBH
- (8) PRYSMIAN CAVI E SISTEMI S.R.L
- (9) NKT A/S
- (10) NKT GMBH
- (11) NKT VERWALTUNGS GMBH
- (12) NKT (U.K.) LTD
- (13) NKT (DENMARK) A/S

**Defendants**

- and -

- (1) NEXANS FRANCE SAS
- (2) NEXANS SA

**Third Parties**

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**ORDER**

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**UPON** hearing Counsel for the Claimants, the Prysmian Defendants and the Third Parties at a Case Management Conference (the “**CMC**”) on 13 October 2020

**AND UPON** the First to Fifth and Eighth Defendants being referred to herein as the “**Prysmian Defendants**”, the Ninth to Thirteenth Defendants being referred to herein as the “**NKT Defendants**” and the Third Parties being referred to herein as the “**Nexans Defendants**”

**AND UPON** the proceedings between the Claimants and the Prysmian and NKT Defendants being referred to (where appropriate) as the “**Main Claim**” and those parties as the “**Main Parties**” and the contribution proceedings between the Prysmian Defendants and the Nexans Defendants being referred to as the “**Additional Claim**”

**AND UPON** the decision of the European Commission in Case COM/39610 – Power Cables – dated 2 April 2014 being referred to herein as the “**Decision**”

**AND UPON** the infringement identified in the Decision (in the case of the NKT Defendants, subject to the effect of the appeals against the Decision) being referred to as the “**Infringement**”

**AND UPON** Annex B to the Amended Particulars of Claim being referred to as “**Annex B**”

**AND UPON** the Order made by the Court at the CMC providing for a confidentiality ring in these proceedings being referred to as the “**Confidentiality Ring Order**”

**IT IS ORDERED THAT:**

**Transfer to Competition Appeal Tribunal**

1. The proceedings, including the Additional Claim, which relate to:
  - 1.1. a claim to which section 47A of the Competition Act 1998 applies; and/or

1.2. an infringement issue (as defined in section 16(6) of the Enterprise Act 2002)

are hereby transferred to the Competition Appeal Tribunal (the "**Tribunal**") for its determination of those issues pursuant to section 16(4) of the Enterprise Act 2002 and/or section 16(1) of that Act together with Regulation 2(a) of the Section 16 Enterprise Act 2002 Regulations 2015.

2. The sending of this Order to the parties and Tribunal shall constitute notice to them for the purposes of paragraphs 8.5 and 8.12 of Practice Direction 30 and CPR 30.4(1).

3. For the avoidance of doubt:

3.1. Neither this Order giving effect to the said transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Claimants' claim as constituted in this Court prior to the transfer taking effect. If, and to the extent that, any element of the claim as constituted in this Court prior to the transfer taking effect is not capable of falling within the jurisdiction of the Tribunal on a transfer or would be altered, limited or excluded by this Order or the transfer, it is not subject to this Order and remains within the jurisdiction of this Court.

3.2. The proceedings were and shall continue to be regarded as having been commenced in this Court. Any further statements of case or amendments to a statement of case shall be made in accordance with the Civil Procedure Rules and not with the Competition Appeal Tribunal Rules 2015.

3.3. Neither this Order giving effect to the said transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Defendants' defences to the Claimants' claim as constituted in this Court prior to the transfer taking effect.

3.4. Any appeal to the Court of Appeal against the determination of the Tribunal of the issues transferred or an Order of the Court giving

effect to that determination shall be governed by the rules in CPR Part 52.

- 3.5. This Court may give such further directions or make such further Order as it thinks fit in connection with the transfer and/or with any such element referred to above.

### **Case management of Additional Claim**

4. The Additional Claim shall be case managed together with the Main Claim. The Nexans Defendants shall be entitled to participate in the trial of the Main Claim.
5. A CMC shall be listed in the Tribunal to consider directions in respect of Nexans' participation in the trial of the Main Claim and the case management of the Additional Claim, with a time estimate of half a day, on the first available date on or after 1 December 2020.

### **Disclosure of statements of case in Additional Claim**

6. Within two business days of the date when the Confidentiality Ring Order is sealed:
  - 6.1. The Prysmian Defendants shall disclose to the other Main Parties a lesser redacted version of their Particulars of Additional Claim against the Nexans Defendants under the terms of the Confidentiality Ring Order.
  - 6.2. The Nexans Defendants shall disclose to the other Main Parties a lesser redacted version of their Defence to Additional Claim under the terms of the Confidentiality Ring Order.
7. The confidential versions of the Additional Particulars of Claim dated 11 June 2020, and of the Nexans Defendants' Defence to the Additional Claim dated 30 September 2020 (together the "**Additional Claim SoCs**"), shall be treated as confidential and copies thereof shall not be provided by the Court to any non-parties pursuant to CPR 5.4C or

otherwise, without the permission of the Court. The non-confidential versions of the Additional Claim SoCs shall be made available from the court records pursuant to CPR Part 5 5.4C. Any application for permission shall be made on 7 days' notice to the Prysmian Defendants and Third Parties.

### **Costs estimates**

8. By 20 November 2020, the Main Parties shall agree cost categories for their estimates and exchange summary statements setting out the costs which they have already incurred in connection with the proceedings, and the costs which they estimate they will incur up to and including a trial of the proceedings.

### **Further Information**

9. By 28 October 2020, the Claimants shall serve a document, verified by a statement of truth, which, insofar as the Claimants are able to do so, provides the following information in respect of each of the transactions listed in Annex B insofar as such information is not at present included in Annex B:
  - 9.1. whether the transaction involved or related to submarine or underground power cables;
  - 9.2. the voltage of the cables which the transaction involved or to which it related; and
  - 9.3. the types of products or services supplied.
10. By 9 July 2021, the Claimants shall serve an amended and updated version of Annex B, which, insofar as the Claimants are able to do so, completes the information in Columns B to O of Annex B insofar as such information is not at present included and confirms, in respect of each supply, whether the transaction is "follow-on" in that it falls within the scope of the infringement as identified in Recital 13 of the Decision or is

pursued on a purely standalone or on a “hybrid” basis.

11. By 6 August 2021, the Prysmian Defendants shall serve a document, verified by a statement of truth, which, in respect of each of the sales alleged in Annex B to have been made by one of the Prysmian Defendants or an entity which was at the time of the sale a member of the same corporate group:

11.1. states whether it is accepted that the relevant sale falls within the scope of the products, works and services that are the subject of the Decision; and

11.2. particularises the basis for any denial under paragraph 11.1 above.

### **Disclosure and inspection**

12. By 4pm on 28 May 2021, the Main Parties shall disclose the following documents, insofar as they are or have been within a party’s control:

12.1. documents falling within the categories identified in the Annex to this Order (the “**Annex**”); and

12.2. any known adverse documents, within the meaning of PD 51U.

13. Inspection of the documents referred to in paragraph 12 above shall be provided within seven days of the date of disclosure.

14. The categories of disclosure set out in the Annex are without prejudice to any party’s right to seek further disclosure at a later date, including specific disclosure.

15. The documents to be disclosed pursuant to paragraph 12 above:

15.1. may be confined to the best available evidence about the information which is the subject-matter of the listed categories. In each case, the disclosing party should explain why the evidence it is providing is the best available evidence, and why further disclosure is not necessary or proportionate;

15.2. if contained in the form of an electronic database or extract therefrom, should be provided in their native electronic format, together with a statement on how the relevant information has been compiled for the dataset, and, if appropriate, guidance on how it is to be examined; and

15.3. shall include documents in the public domain.

16. Each party's disclosure shall be accompanied by a disclosure statement in accordance with CPR 31.10(5)-(7) and (9).

### **Factual evidence**

17. By 4pm on 15 October 2021, the Main Parties shall exchange signed statements of witnesses of fact and hearsay notices where required by CPR 33.2.

18. By 4pm on 17 December 2021, the Main Parties shall exchange signed reply statements of witnesses of fact.

19. Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witness at trial.

### **Expert evidence**

20. Permission is granted for each of (1) the Claimants; and (2) the Prysmian Defendants to rely on the written evidence of a single expert (collectively, the "**Experts**"), each of whom will address the following issues:

20.1. whether or to what extent the Infringement:

- a) caused the prices paid by the Claimants (to the Defendants and/or other suppliers) for the projects in respect of which the Claimants claim to be inflated compared to the prices that would have prevailed in the absence of that conduct (the "**Overcharge**");

- b) caused the Claimants to suffer a loss in relation to any assets and entities purchased by the Claimants incorporating power cables (the “**Asset Claim Loss**”);
  - 20.2. if so, whether and to what extent the Claimants passed on any part of the Overcharge or Assets Claim Loss (“**Pass-On**”); and
  - 20.3. the amount of interest on any losses incurred by the Claimants.
21. The Experts shall exchange signed reports addressing the matters set out at paragraph 20 above sequentially as follows:
- 21.1. the Claimants’ Expert shall serve their report by 4pm on 25 February 2022;
  - 21.2. the Prysmian Defendants’ Expert shall serve their report by 4pm on 14 April 2022; and
  - 21.3. the Claimants’ Expert shall serve their reply report by 4pm on 10 June 2022.
22. Following exchange of the Claimants’ Expert’s report in reply, the Experts shall hold a discussion (without the parties) on a without prejudice basis, pursuant to CPR 35.12. Following the said discussion, the Experts shall identify the following matters in a joint memorandum, clearly and concisely and in terms that can be understood by a non-expert, attaching any relevant documents, and with the assistance of the parties’ legal representatives as appropriate:
- 22.1. the areas where there is agreement between the Experts;
  - 22.2. the areas where there is disagreement between the Experts;
  - 22.3. whether each area where there is disagreement between the Experts is material to the outcome of the case;
  - 22.4. where the Experts disagree:
    - a) a summary of their reasons for disagreeing;
    - b) the key documents and/or evidence which the Experts consider, or each of them considers, relevant to the matter on which there



is disagreement; and

- c) the opinions of the Experts, or of each of them, on the matters which the Court has to decide in order to resolve the disagreement.

23. The joint memorandum of the Experts shall be completed by 4pm on 22 July 2022.

24. If or to the extent that the reports of the Experts cannot be agreed, the parties are at liberty to call the Experts to give evidence at the trial. Unless otherwise ordered, the reports of each Expert are to stand as their evidence in chief at the trial.

### **Trial bundles and PTR**

25. Preparation of trial bundles in electronic or hard copy form (or part electronic, part hard copy) shall be completed by no later than 23 September 2022.

26. A pre-trial review shall be listed on the first available date on or after 3 October 2022, with a time estimate of half a day.

### **Trial listing**

27. The trial shall be listed on the first available date on or after 7 November 2022, with a time estimate of five weeks, to include three days of pre-trial reading time.

### **Other matters**

28. The Agreed List of Issues and the Agreed Case Summary are approved by the Court in the form in the bundles for the CMC.

29. The parties may agree to extend any time period to which the proceedings may be subject for a period or periods of up to 28 days in total without reference to the Court or, after transfer, the Tribunal,

provided that this does not affect the date of the pre-trial review or the date of the trial.

30. The parties shall notify the Court, or, after transfer, the Tribunal, in writing of the expiry date of any such extension of time.

### **Costs**

31. Pursuant to CPR 38.6(1), the Claimants shall pay the Defendants' costs of and arising from the claims of the Fourth, Fifth and Ninth Claimants, to be assessed if not agreed.

32. The Claimants shall bear their own costs of and arising from the claims of the Fourth, Fifth and Ninth Claimants.

33. The Claimants shall pay the Prysman Defendants' costs thrown away in relation to work carried out by the Prysman Defendants in investigating and pleading to aspects of the Claimants' claim which were withdrawn by virtue of the amendments to Annex B in the Amended Particulars of Claim. The said costs shall be assessed if not agreed.

34. The Claimants' costs of and arising from the amendments to the Particulars of Claim are reserved to the trial Judge for determination following the trial in the Main Claim.

35. To the extent that the costs of and incidental to the orders made herein are not already provided for, costs in the case.

### **Service**

36. This order shall be served by the Claimants on the Defendants and the Third Party.

37. Within 7 days of this order, the Claimant shall file with the Registrar of the Competition Appeal Tribunal in accordance with Rule 72(2) of the Tribunal's Rules 2015, certified copies of this Order, the Confidentiality Ring Order and the CMC Disclosure Order, the pleadings relating to the

proceedings, the Agreed Case Memorandum and Agreed List of Issues and any other documents in support of the claim.

**Service of the order**

The court has provided a sealed copy of this order to the serving party: Stewarts at 5 New Street Square, London EC4A 3BF (Ref: 104074.1).