



COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

CASE NO. 1440/7/7/22

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 10 May 2022 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Clare Mary Joan Spottiswoode CBE (the “Applicant/Proposed Class Representative”) against (1) Nexans France S.A.S.; (2) Nexans S.A.; (3) NKT A/S (formerly NKT Holdings A/S); (4) NKT Verwaltungs GmbH; (5) Prysmian Cavi E Sistemi S.r.l.; and (6) Prysmian S.p.A. (together, “the Respondents/Proposed Defendants”). The Applicant/Proposed Class Representative is represented by Scott+Scott UK LLP, St. Bartholomew House, 90-94 Fleet Street, EC4Y 1DH (Reference: Tom Southwell/James Hain-Cole).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order permitting her to act as the class representative bringing opt-out collective proceedings on behalf of UK domiciled persons who fall within the proposed class definition, and opt-in collective proceedings for non-UK domiciled persons (“the Application”). The proposed class is more fully described below.

The proposed collective proceedings would combine follow-on claims for damages under section 47A of the Act caused by the Respondents’/Proposed Defendants’ breach of statutory duty in infringing Article 101(1) of the Treaty on the Functioning of the European Union (“TFEU”) and Article 53 of the Agreement on the European Economic Area (“EEA Agreement”), as determined by the European Commission (“the Commission”) in its infringement decision dated 2 April 2014 in Case AT.39610 *Power Cables* (“the Decision”).

According to the Application, the Proposed Defendants are producers and suppliers of high-voltage submarine and underground power cables. Each was named as an addressee of the Decision. Each forms an undertaking (or part of an undertaking) for the purposes of Article 101 TFEU. It is noted in the Application that fifteen separate appeals were brought against the Decision by its addressees, including all the Proposed Defendants. The Decision became final as against the First and Second Proposed Defendants on 16 July 2020; as against the Third and Fourth Defendants on 14 May 2020; and as against the Fifth and Sixth Proposed Defendants on 24 September 2020.

According to the Application, the central finding of the Commission is that there was an unlawful cartel between February 1999 and January 2009 concerning the high-voltage underground and submarine power cables market, in which the Proposed Defendants (amongst others) participated (“the Cartel”). The Commission found that the Cartel arrangements were in place for an uninterrupted period between 18 February 1999 and 29 January 2009. During this time, members of the Cartel: (i) allocated power cables projects according to geographic region or customer, and (ii) exchanged information on prices and other commercially sensitive information in order to ensure that the designated power cable supplier would be able to present the most attractive offer to the customer. The Decision found that the Cartel was policed and reinforced through the implementation of reporting obligations as well as other practices, such as the collective refusal to supply accessories or technical assistance to certain competitors.

The Applicant/Proposed Class Representative states that each of the Proposed Defendants is an addressee of the Decision and that each has been found liable on a joint and several basis for the infringement described in the Decision. It is said that the collective duration of the Proposed Defendants' liability covers the entire period of the Cartel as found by the Decision.

The Applicant/Proposed Class Representative contends that purchasers of high-voltage power cables, including electricity transmission and distribution companies in Great Britain and offshore windfarms serving Great Britain, paid increased prices for such cables (including associated works and services) as a result of the Cartel. It is argued that this overcharge has been (and continues to be) passed on to electricity suppliers (commonly known as "retailers") through the charges which transmission and distribution companies levy on supplies, and via payments made by suppliers in respect of offshore windfarms pursuant to the United Kingdom government's scheme known as the "Renewables Obligation". In turn, the overcharge was passed on by suppliers by way of increased electricity bills issued to their customers.

It is stated in the Application that in Great Britain, electricity is transmitted from power stations using the high-voltage electricity transmission system commonly known as the National Grid (which uses high-voltage cables of a type affected by the Cartel). The transmission system is owned and maintained by Transmission Owners or "TOs". Domestic consumers then connect to the transmission system through one of 14 distribution networks. The Distribution Networks are operated by "Distribution Network Operators" or "DNOs". The Applicant/Proposed Class Representative contends that the primary mechanism by which the overcharge caused by the Cartel was passed through to domestic consumers was through the charges levied in respect of TOs and DNOs on electricity suppliers, who then passed those charges on to their customers. As such, the claim focuses on consumers who connect to the Distribution Network in Great Britain, rather than the UK as a whole (since Northern Ireland forms part of a distinct power market and distribution network and is subject to separate regulatory arrangements from the rest of the UK).

The proposed class comprises all people alive (and representatives of deceased people) who bore the cost of paying for domestic consumption of electricity supplied via the distribution network in Great Britain on or after 1 April 2001. The Applicant/Proposed Class Representative herself is a member of the proposed class. It is proposed that people not domiciled in the UK may be included in the opt-in group. It is not envisaged that the use of any sub-class will be necessary or appropriate.

According to the Application, the claims raise common issues of law and fact. Specifically, the following are common to all claims: (i) whether the Tribunal has jurisdiction to hear the claims, and if so, what is the applicable law; (ii) whether the cartel led to overcharging of those who paid directly for power cables projects; (iii) whether any such overcharge was passed through to members of the Proposed Class; (iv) the level of the overcharge and pass-through; (v) the level of interest that should be awarded; and (vi) how future damages should be treated.

The Applicant/Proposed Class Representative submits that it is just and reasonable for her to act as the class representative because:

1. The Applicant/Proposed Class Representative will act fairly and adequately in the interests of the Proposed Class Members:
 - (a) The Applicant/Proposed Class Representative has extensive professional experience in regulated markets and in defending consumer rights.
 - (b) The Applicant/Proposed Class Representative intends to make arrangements for a small group of advisers to be appointed who will assist her in her role.
 - (c) The Applicant/Proposed Class Representative has instructed a team of experienced legal advisers.

- (d) The Applicant/Proposed Class Representative has instructed experts with substantial relevant experience in economics and energy markets.
 - (e) The Applicant/Proposed Class Representative – with the assistance of her legal advisers and experts, and an experienced claims administration company – has developed a comprehensive litigation plan as required by Rule 78(3)(c) of the Rules.
 - (f) The Applicant/Proposed Class Representative has entered in to financing arrangements with a legal funding group to fund the costs of the claim.
2. The Applicant/Proposed Class Representative does not have a material interest that is in conflict with the interests of the proposed class members in relation to the common issues.
 3. The Applicant/Proposed Class Representative has sufficient funding arrangements in place to pay the Respondents’/Proposed Defendants’ recoverable costs if ordered to do so.
 4. At the time of filing the Application, the Applicant/Proposed Class Representative is not aware of any other applicant seeking approval to act as the class representative in respect of the same claims.
 5. No interim injunction is sought (therefore the question of the Applicant/Proposed Class Representative’s ability to satisfy any undertaking in damages does not arise).

The Application states that the claims are suitable to be brought in collective proceedings because:

1. There is no other sensible way of recovering the losses that it is said that the Cartel inflicted on consumers. The claims are individually disproportionately small compared with the costs of bringing these complex proceedings.
2. It would, in any event, be wasteful of court resources (and indeed those of the Proposed Defendants) to sanction the bringing of so many similar individual claims. Collective Proceedings, by contrast, will lead to a fair and efficient resolution of the claims of the members of the Proposed Class.
3. The claims are suitable for an aggregate award of damages.

Finally, the Applicant/Proposed Class Representative contends that the strength of the claims and the fact that it would be impracticable for them to be brought on an opt-in basis render them appropriate to be brought in opt-out collective proceedings.

The relief sought in these proceedings is:

- (1) An aggregate award of damages on behalf of the Proposed Class;
- (2) Simple interest pursuant to Rule 105 of the Tribunal Rules;
- (3) Costs; and
- (4) Such further and other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)

Registrar

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