



COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998

Case No: 1518/5/7/22

Pursuant to Rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 8 July 2022, under section 47A of the Competition Act 1998 (the “Act”), by: (1) London Array Limited; (2) RWE Renewables UK London Array Limited (formerly known as E.ON Climate & Renewables UK London Array Limited); (3) Orsted London Array Limited (formerly known as Dong Energy London Array Limited); (4) Orsted London Array II Limited (formerly known as Dong Energy London Array II Limited); and (5) Masdar Energy UK Limited (together, “the Claimants”) against: (1) Nexans France SAS; and (2) Nexans SA (together, “the Defendants”). The Claimant is represented by Hausfeld & Co. LLP, 12 Gough Square, London EC4A 3DW (Reference: Anna Morfey/Luke Streatfeild).

The Claim arises out of the Decision of the European Commission (“the Commission”) in Case AT.39610 *Power Cables* dated 2 April 2014 (“the Decision”). The Decision found that a cartel had operated in the high voltage power cables sector between 18 February 1999 and 28 January 2009 (“the Cartel Period”), contrary to Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) and Article 53 of the Agreement on the European Economic Area (“EEA”).

The Parties

The Claimants are companies who were involved in a joint venture to develop and operate the London Array offshore wind farm (“London Array”, “the London Array project”), located in the Thames estuary off the coast of Kent. The joint venture was organised in part through the First Claimant, a project company called London Array Limited, with the participation of the remaining claimants (under their original company names, together referred to in the Claim as “the Consortium”).

The Defendants are both members of the Nexans group, a cable manufacturer headquartered in France with global operations in many jurisdictions including the UK. Both Defendants are companies incorporated in France. Nexans SA owns 100% of the shares in Nexans France SAS and is the ultimate parent company of the Nexans group.

The Decision

The cartel established by the Decision was a single and continuous infringement which applied to supplies of underground power cables of 110kV and above and to submarine power cables of 33kV and above, as well as to all associated products, works and services supplied, where cables were sold as part of a power cable project.

The Commission found that the operation of the cartel involved: (i) the allocation of customers and territories, in that Japanese and Korean producers had agreed not to bid for European projects and vice versa; and (ii) the allocation of customers within Europe between European producers, in that only the appointed producer would bid, or bids would be agreed between producers in advance (i.e. by means of price fixing or the unlawful exchange of price information) to ensure that the appointed producer’s bid would be the lowest and the project would thereby be awarded to the producer to which the European cartel members had previously agreed to allocate it.

The addressees of the Decision included the First and Second Defendants. The First Defendant was held to have participated directly in the infringement from 13 November 2000 onwards, both on its own behalf and on behalf of other subsidiaries within the Nexans group, including Nexans Norway AS. The Second Defendant was held liable from 12 June 2001 onwards for the infringement on the basis that it exercised decisive control over Nexans France SAS. Nexans pursued appeals against the Decision to the General Court of the European Union and thereafter to the Court of Justice of the European Union (“CJEU”). The CJEU dismissed Nexans’ final appeal in a judgment dated 16 July 2020.

The Claim

London Array consists of offshore turbines connected to offshore substations by cables known as ‘inter-array’ cables. The substations are then connected to the shore by submarine cables known as ‘export’ cables. According to the Claim, the Second, Third, Fourth and Fifth Claimants purchased high voltage power cables which were subject to the cartel in connection with the development of the London Array project.

According to the Claim, the export cables for London Array were supplied by Nexans, in particular Nexans Norway AS, under a contract entered into on 30 September 2009 between Nexans Norway AS and the Second, Third, Fourth and Fifth Claimants (“the Nexans Contract”). This followed a tender process pursuant to a request for quotation (“RFQ”) issued in March 2008, and bids were received in November 2008. It is the Claimants’ case that the terms and conditions of the Nexans Contract were determined to a substantial extent by the tender process which occurred during the Cartel Period and that prices under such contract thus incorporated the full amount of any cartel overcharge. To the extent that such terms, by reason of their timing, did not incorporate the full cartel overcharge, it is alleged that they would nevertheless have incorporated the “overhang effect” (whereby prices in a market affected by a cartel will continue to be inflated for a period of time following the end of the cartel). The Claimants allege that whilst the specific company which supplied the export cables was Nexans Norway AS, which is not a Defendant to the Claim, the Defendants are liable for the loss resulting from that supply, since: (i) both Defendants are part of the same undertaking as Nexans Norway; (ii) as a matter of law, it is the undertaking that is taken to have committed the infringement and which caused the loss sued for; (iii) the Second Defendant, Nexans SA, is the ultimate parent company of the group, of which Nexans Norway is its indirect wholly owned subsidiary; and (iv) in the case of the First Defendant, Nexans France SAS, the Commission had already held that it participated in the infringement on behalf of its affiliates, specifically including Nexans Norway AS.

The Claimants allege that the inter-array cables for the London Array project were supplied by a company called JDR Cable Services Limited (“JDR”, “the JDR Contract”). The JDR Contract was concluded in November 2009 following a tender process. JDR was not found by the Commission to be a cartel member and the Claimants do not allege that it was; however, it is contended that the effect of the cartel was to inflate the price paid for the inter-array cables above the level which would have prevailed had there been no cartel, by reducing the level of competition in the market as a whole, and for the tenders in question in particular. The Claimants’ claim in relation to the inter-array cables is therefore pursued as a claim for “umbrella” damages.

As a result, the Claimants claim that they have suffered loss and damage. The Claimants state that as a result of the regulatory regime introduced by the UK government in 2009, Offshore Transmission Owners (“OFTOs”) were established and were granted licenses for offshore electricity transmission. The owners of offshore transmission assets were required to sell them to OFTOs at prices determined by Ofgem. Pursuant to that regime, the London Array transmission assets (including the export cable assets but excluding the inter-array cables) were transferred to Blue Transmission London Array Limited in September 2013. According to the Claim, the price determined by Ofgem did not include any adjustment to reflect that the cartel overcharge paid by the participants in the London Array project for the export cables purchased from Nexans, as the existence of the cartel was not known at the material time. It is said that the arrangements for the divestment and subsequent operation of the London Array transmission assets resulted in the whole of the overcharge initially borne by the Consortium when they purchased the export cables ultimately coming back to rest with the Consortium once again.

The Claimants seek:

- (1) Damages in the sum of £49.8 million or such other sum as the Tribunal may determine, including damages in respect of the Claimants' costs of financing their principal losses;
- (2) Alternatively, statutory interest;
- (3) Costs; and
- (4) Further or other relief.

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, KC (Hon)
Registrar

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