



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1518/5/7/22

BETWEEN

- (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)
(5) MASDAR ENERGY UK LIMITED

Claimants

- v -

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

Defendants

DIRECTIONS ORDER

UPON holding a Case Management Conference on 7 March 2023

AND UPON the Tribunal having made concurrently herewith an order establishing a regime for the disclosure in these proceedings of documents which are (or are claimed to be) confidential (the “**Confidentiality Ring Order**”)

AND UPON the Defendants holding a copy of the version of the Commission Decision in Case AT.39610 *Power Cables* (the “**Decision**”), as the same was disclosed in claim number HC-2017-682 (CAT Case 1370/5/7/20 (T)) (the “**Vattenfall Proceedings**”)

AND UPON the Defendants holding copies of the documents on the Commission’s administrative file relating to the investigation in the Power Cables case to which they were granted access pursuant to the Notice on access to file OJ C 325 of 22 December 2005, as such documents were disclosed in the Vattenfall Proceedings

AND UPON hearing leading counsel for the Claimants and for the Defendants

IT IS HEREBY ORDERED as follows:

Preliminary matters

1. Terms defined in the Recitals hereto bear the same meaning in the body of this Order. In addition, the following terms as used herein bear the corresponding meanings as set out in the table below:

Term	Meaning
“Disclosure Notification”	The notification obligation created by paragraph 3 hereof.
“London Array Project”	The offshore windfarm known as London Array located in the Thames Estuary off the coast of Kent, to which the present proceedings relate.
“Vattenfall Versions”	(1) the version of the Decision and Annexes most recently disclosed to the Defendants in the Vattenfall Proceedings, prior to the date of this Order; and (2) the contents of the Commission’s investigation file most recently disclosed to (or by) the Defendants in the Vattenfall Proceedings, prior to the date of this Order.

2. Pursuant to rules 52 and 18 of the Competition Appeal Tribunal Rules 2015 the forum of these proceedings is England and Wales.

Disclosure – first stage

3. The Defendants shall by 21 March 2023 notify the European Commission and the other Addressees of the Decision of their intention to disclose and provide inspection to the Claimants of the Vattenfall Versions upon the terms of the Confidentiality Ring Order, providing the said notified parties with a period of 14 days following such notification

to make an application to the Tribunal that such disclosure should not be given or that further redactions should be applied, supported by reasons.

4. Subject to paragraph 6 hereof, the Defendants shall disclose and provide inspection to the Claimants of the Vattenfall Versions upon the terms of the Confidentiality Ring Order within one business day after the expiry of the 14 day period following notification in paragraph 3 hereof, unless any party to whom the Disclosure Notification has been given has within such 14-day period made an application to the Tribunal that such disclosure should not be given or that further redactions should be applied. In that event, until the application is determined, disclosure shall not be given of such part of the Vattenfall Versions as is the subject-matter of the application.
5. Provided no objections are received to the Disclosure Notification within a period of 14 days following notification, the Defendants have permission to disclose the Vattenfall Versions pursuant to Rule 102(2)(b) of the Competition Appeal Tribunal Rules 2015.
6. The Defendants shall be entitled to redact from the documents to be disclosed pursuant to paragraph 4 above information:
 - (i) referring to material that is protected from disclosure under Article 48 of the Charter of Fundamental Rights of the European Union and Article 339 of the Treaty on the Functioning of the European Union as applied in Case T-474/04 *Pergan* [2007] ECR 11-4225 (“**Pergan Material**”);
 - (ii) that relates to leniency (as defined in Article 2(16) of Directive 2014/104/EU) (“**Leniency Material**”); and/or
 - (iii) referring to privileged material (“**Privileged Material**”).
7. If the Defendants withhold any material from inspection pursuant to paragraph 6 above over and above the redactions appearing in the Vattenfall Versions, they shall clearly identify the material so withheld and describe the nature of the documents and the reason(s) why they are withheld in sufficient detail to enable the Claimants to challenge such assertion, if so advised. Any steps the Defendants are required to take under this

paragraph shall be completed no later than the time the documents themselves are provided for inspection.

8. The Defendants shall disclose and provide for inspection by 21 March 2023 any parts of their pleadings as submitted in their appeals against the *Power Cables* Decision in Case T-449/14 then in Case C-606/18 P which concern Recital (444) of the Decision and / or the London Array Project. The Defendants shall be entitled to redact any Pergan Material and/or Leniency Material provided they identify the material so withheld and describe the nature of the material and the reason(s) why it is withheld in sufficient detail to enable the Claimants to challenge such assertion, if so advised.
9. The parties shall exchange Disclosure Reports and Electronic Documents Questionnaires (in each case, as those terms are defined in the Competition Appeal Tribunal Rules) on 28 April 2023. The Tribunal shall consider what further disclosure the parties should provide in these proceedings at the further CMC for which provision is made in paragraph 10 below.

Further directions

10. There shall be a further CMC in this case, to be listed for one day in the week commencing 12 June 2023.
11. The trial of this case shall be listed with a current provisional time estimate of four weeks, to be listed from the first available date after 29 April 2025. The Tribunal will consider what further pre-trial directions to make on matters such as disclosure, witness statements and expert evidence at the CMC for which provision is made at paragraph 10 above. The Tribunal will also consider at that CMC whether the aforesaid provisional time estimate for trial remains appropriate. This order is without prejudice to any party's right hereafter to seek a split trial in these proceedings.
12. Costs in the case.
13. The Claimants, the Defendants and the other Addressees referred to in paragraph 3 have permission to apply.

The Honourable Mrs Justice Joanna Smith
Chair of the Competition Appeal Tribunal

Made: 7 March 2023
Drawn: 9 March 2023