



## COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1532/5/7/22

Pursuant to Rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 16 September 2022, under section 47A of the Competition Act 1998 (the “Act”), by (1) RWE Renewables UK Robin Rigg East Limited (formerly E.ON UK Solway Offshore Limited) and (2) RWE Renewables UK Robin Rigg West Limited (formerly E.ON UK Offshore Energy Resources Limited) (together, the “Claimants”), against (1) Prysmian Cavi e Sistemi S.r.l. and (2) Prysmian S.p.A (together, the “Defendants”). The Claimants are represented by Hausfeld & Co. LLP, 12 Gough Square, London, EC4A 3DW (Reference: Nicola Boyle).

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 and Article 53 of the Agreement on the European Economic Area.

#### The Parties

According to the Claim Form, the Claimants are companies who developed, and jointly own and operate, Robin Rigg, which consists of two offshore wind farms, located on the Robin Rigg sandbank in the Solway Firth, midway between the Galloway and Cumbrian Coasts. The First Claimant operates the Robin Rigg East wind farm and the Second Claimant operates the Robin Rigg West wind farm.

The Defendants are both companies within the Prysmian group. Prysmian is a cable manufacturer headquartered in Italy, but with operations in many jurisdictions globally including the UK. The undertakings held by the Commission to have participated in the infringement subject to the Decision included Prysmian.

#### The Decision

The cartel established by the Decision was a single and continuous infringement which applied to supplies of underground power cables of 110 kV and above and to submarine power cables of 33 kV 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 18 February 1999 to 28 January 2009. The Second Defendant was held liable from 29 July 2005 to 28 January 2009 on the basis that it exercised decisive control over the First Defendant.

Prysmian 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 the Defendants’ final appeal in a judgment dated 24 September 2020.

### The Claim

Robin Rigg consists of turbines connected to an offshore substation by means of submarine cables known as “inter-array” cables. The offshore substation is connected to the onshore electricity transmission and distribution system by means of submarine cables known as “export” cables. The export cables are then linked to the onshore substation via “onshore” cables. According to the Claim, the Claimants purchased high voltage power cables for the Robin Rigg wind farm which were subject to the cartel.

According to the Claim, the export cables for Robin Rigg were supplied by the First Defendant to the Claimants under a contract entered into on 19 February 2007 (the “Prysmian Contract”). This followed a tender process pursuant to invitations to tender (“ITT”) issued in June 2006, and responses were received in July 2006. It is the Claimants’ case that the supply of export cables, from the initial request for quotation to execution of the Prysmian Contract, occurred within the Cartel Period. The Claimants allege the price of the export cables was therefore higher than it would have otherwise been by reason of the cartel.

The Claimants state that the inter-array cables for the Robin Rigg wind farm were supplied by a company called Scanrope Subsea Cables AS (“Scanrope”, “the Scanrope Contract”). The Scanrope Contract was concluded in December 2006 following a tender process. The entirety of the tender process, from ITT to conclusion of the contract occurred during the Cartel Period. Scanrope was not found by the Commission to be a cartelist 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.

According to the Claim Form, the onshore cables for the Robin Rigg wind farm were supplied by a company called Nexans Deutschland Industries GmbH & Co KG (“Nexans”) as subcontractor to Balfour Beatty Power Networks Limited (“Balfour Beatty”), pursuant to a contract between the Claimants and Balfour Beatty. The contract with Balfour Beatty was concluded in December 2006 following a tender process (the “Balfour Beatty Contract”). Balfour Beatty was not found by the Commission to be a cartelist and the Claimants do not allege that it was. However, the Claimants allege that the supplier of the onshore cables was a company within the Nexans group, which was another of the undertakings found to have been party to the cartel. The Claimants submit that the Defendants are jointly and severally liable together with Nexans (and the other cartelists) for the whole of the Claimants’ losses caused by the cartel. The Claimants claim losses from the Defendants in respect of the onshore cables on this basis.

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 Robin Rigg transmission assets (including the export cables and the onshore cables but excluding the inter-array cables) were transferred to Robin Rigg OFTO in March 2011. According to the Claim, the price determined by Ofgem did not include any adjustment to reflect that the cartel overcharge paid by the Claimants for the export and onshore cable assets, as the existence of the cartel was not known at the material time. It is said that the divestment of the Robin Rigg transmission assets resulted in the whole of the overcharge initially borne by the Claimants when they purchased the export cables for the Robin Rigg project from Prysmian and Nexans (respectively) being passed on to Robin Rigg OFTO. However the arrangements governing the operation of offshore transmission assets under the OFTO regime were such that the acquisition costs were passed back to the wind farm developer over time with the result that the whole of the overcharge ultimately came back to rest with the Claimants again.

The Claimants seek:

1. Damages in the sum of £9.42 million, including damages in respect of the Claimants' costs of financing their principal losses;
2. Alternatively, statutory interest;
3. Costs;
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](http://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](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, KC (Hon)*

Registrar

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