



**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

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**ORDER**

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**UPON** holding a Case Management Conference on 26 June 2023

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

**AND UPON** the Tribunal directing that the trial estimate for this matter should be increased from four to six weeks in order that the trial can accommodate any common issues (if identified) also arising in Case No. 1440/7/7/22 *Spottiswoode v Nexans France SAS*, if the Tribunal so directs following judgment upon the application for a collective proceedings order in that case

**AND UPON** the Tribunal indicating that the parties should give consideration to the extent to which it is appropriate at this stage for any documents to be shared as between these proceedings and Case No. 1440/7/7/22 *Spottiswoode v Nexans France SAS*

**AND UPON** the Claimants herein having indicated that they are prepared to supply to the parties to Case No. 1440/7/7/22 *Spottiswoode v Nexans France SAS* a copy of the Note dated 21 June 2023 prepared by the Claimants' expert, Mr Joseph Bell, for the purposes of the present hearing, the Proposed Class Representative in the *Spottiswoode* case having similarly indicated that she is prepared to share copies of the expert reports served in those proceedings to date with the parties to the present proceedings

**IT IS HEREBY ORDERED** as follows:

***Disclosure pursuant to Annexes 1 and 2***

1. By 10 July 2023 the Claimants shall provide the Defendants with the responses to the tender requests for the export and inter-array cables in March 2008 and June/July 2009.
2. By 10 July 2023 the Defendants are to supply the Claimants with a list of all projects falling within scope of the Overcharge category in Annex 2, including extra high-voltage projects and interconnectors, for the Claimants' consideration (the "**Comparators List**"). The list shall include the following information in respect of each project insofar as it is reasonably available to the Defendants:
  - a. Project name/contract reference numbers;
  - b. Date of supply;
  - c. Location;
  - d. Voltage;
  - e. Type; and
  - f. Project application.
3. By 4pm on 20 October 2023, each of the Claimants and Defendants shall disclose and provide inspection of the documents in their control:

- a. falling within the categories of disclosure set out at Annexes 1 and 2 to this Order;  
and
  - b. any known adverse documents.
4. Subject to any different agreement between the parties and/or any application by the Claimants arising out of the Comparators List, the Defendants are to give disclosure and provide inspection of documents relating to the projects listed in the Comparators List by 4pm on 20 October 2023, in accordance with paragraph 3 of this order.
5. The categories of disclosure set out at Annexes 1 and 2 to this Order are without prejudice to any party's right to seek further disclosure including specific disclosure at a later date.
6. The documents to be disclosed pursuant to paragraph 1-4 above:
  - a. May be confined to the best available evidence about the information which is the subject-matter of the listed categories, which may be in the form of electronic databases or other electronic documents, save where (i) the disclosing party does not in fact keep any documents in respect of the subject-matter in electronic form, or (ii) although it does keep documents in respect of the subject-matter in electronic form, the relevant information in those electronic documents is unreliable in view of the way in which it was collected, or (iii) the best available evidence falls instead to be obtained from hard copy documents or a combination of hard copy documents and electronic databases or other electronic documents. In each case, the disclosing party should explain why the evidence they are providing is the 'best available evidence' and why further disclosure is not necessary or proportionate, in particular if the excluded information is within an electronic database;
  - b. 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;
  - c. Shall include documents in the public domain.

7. The Defendants' and Claimants' disclosure shall be accompanied by a disclosure statement in accordance with CPR Rule 31.10(5)-(7) and (9).

***Further CMC***

8. A further Case Management Conference shall be listed in these proceedings in December of 2023 with a time-estimate of half a day. The parties are to inform the Tribunal's registry as soon as it becomes apparent that such a Case Management Conference is not required insofar as it relates to the present proceedings.

***Witnesses***

9. By 4 pm on 9 February 2024, the Parties shall exchange signed statements of witnesses of fact, and hearsay notices where required by rule 33.2.
10. By 4 pm on 26 April 2024, the parties shall exchange factual witness statements in reply.
11. Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witness at trial.

***Experts***

12. Permission shall be granted for each of the Claimants and the Defendants collectively to rely on the written evidence of a single expert (together, the "Experts"), each of whom will address the following issues:
  - a. whether and to what extent the Defendants' conduct identified in the Commission's Decision 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**"); and
  - b. if so, whether and to what extent the Claimants passed on any part of the Overcharge ("**Pass-On**"); and
  - c. the amount of interest on any losses incurred by the Claimants.
13. Signed reports of experts are to be exchanged simultaneously:

- a. The Claimants' and Defendants' respective expert shall serve a report in relation to the matters set out in paragraph 12 above by 25 October 2024.
  - b. The Claimants' and Defendants' respective expert shall serve a reply report by 6 December 2024.
14. Following service of the expert reply reports, the Experts shall meet (without the Parties) and discuss on a without prejudice basis according to the provisions of Civil Procedure Rule 35.12, and identify 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 where necessary:
- a. the areas where there is agreement between them;
  - b. the areas in dispute between them;
  - c. whether each area in dispute is material to the outcome of the case; and
  - d. in relation to each material area in dispute:
    - i. the extent to which it is material and why;
    - ii. any assumptions underpinning each Expert's views;
    - iii. a summary of each Expert's criticism of the other Expert's position;
    - iv. all key documents and/or pieces of evidence which are relevant to the particular areas of dispute between them and its resolution;
    - v. their opinions on what the Court has to decide in order to resolve the particular areas of dispute and how this can be achieved.
15. The joint memorandum of the experts is to be completed by 10 January 2025.
16. If the experts' reports cannot be agreed, the parties are to be at liberty to call expert witnesses at the trial, limited to those experts whose reports have been exchanged pursuant to paragraph 13 above.

*Pre-trial review and Trial*

17. Preparation of trial bundles in electronic or hard copy form (or part electronic, part hard copy) to be completed by not later than 14 March 2025.
18. The time estimate for the trial of this matter, which has been listed to commence from 29 April 2025, shall be extended from four to six weeks, to include two days' pre-trial reading time.
19. There is to be a pre-trial review not later than 28 March 2025.
20. Costs in the case.
21. Liberty to apply.

**Sir Marcus Smith**

President of the Competition Appeal Tribunal

Made: 26 June 2023

Drawn: 28 July 2023