



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1440/7/7/22

BETWEEN:

CLARE MARY JOAN SPOTTISWOODE CBE

Class Representative

- v -

- (1) **NEXANS FRANCE S.A.S.**
(a company incorporated under the laws of France)
- (2) **NEXANS S.A.**
(a company incorporated under the laws of France)
- (3) **NKT A/S (formerly NKT HOLDING A/S)**
(a company incorporated under the laws of Denmark)
- (4) **NKT VERWALTUNGS GMBH (formerly NKT CABLES GMBH)**
(a company incorporated under the laws of Germany)
- (5) **PRYSMIAN CAVI E SISTEMI S.R.L.**
(a company incorporated under the laws of Italy)
- (6) **PRYSMIAN S.P.A.**
(a company incorporated under the laws of Italy)

Defendants

COLLECTIVE PROCEEDINGS ORDER

UPON the Class Representative’s application for a collective proceedings order (the “**CPO Application**”) pursuant to section 47B of the Competition Act 1998 (the “**Act**”) and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”) made in the collective proceedings claim form filed on 9 May 2022, which combines claims in respect of losses alleged to have been caused by the Defendants’ infringement of competition law as found in the decision of the European Commission dated 2 April 2014 in Case AT.39610 *Power Cables*

AND UPON an amended collective proceedings claim form being filed by consent on 3 October 2023

AND UPON the Third, Fourth, Fifth and Sixth Defendants having applied on 20 October 2023 for strike-out or reverse summary judgment on aspects of the proposed claim (the “**Strike-out Applications**”)

AND UPON the Third to Sixth Defendants withdrawing their Strike-out Applications

AND UPON hearing counsel for the parties at a hearing on 11 April 2024

AND UPON the Tribunal having decided in accordance with Rule 78 of the Tribunal Rules that it would be just and reasonable for Ms Clare Spottiswoode to act as Class Representative in the Collective Proceedings

AND UPON the Tribunal having decided in accordance with Rule 79 of the Tribunal Rules that the claims as described in the CPO Application in its re-amended form are eligible for inclusion in collective proceedings

AND UPON the Tribunal being satisfied that the Class Representative's Litigation Funding Agreement is not a damages-based agreement under the definition contained in section 58AA(3) of the Courts and Legal Services Act 1990

AND UPON the Tribunal's indication that it will have the option of de-certifying these proceedings in the absence of satisfactory proposals from the Class Representative in accordance with paragraph 15 of this Order as to the distribution of any aggregate damages award, and that this aspect of the case will be kept under review

AND UPON the Defendants having consented to re-amendments to the Collective Proceedings Claim Form in the form annexed hereto

IT IS ORDERED THAT:

A. RE-AMENDMENT OF COLLECTIVE PROCEEDINGS CLAIM FORM

1. The Class Representative has permission to file and serve a Re-Amended Collective Proceedings Claim Form in the form annexed hereto, which is hereby deemed filed and served.
2. The amendments contained in the first three lines of paragraph 31 of the Re-Amended Collective Proceedings Claim Form (namely, the substitution of the words "*comprises all those who satisfy the following definition as at the date of the Order giving permission for the filing and service of this Re-Amended Collective Proceedings Claim Form*") shall take effect as of the date of this Order.

B. AUTHORISATION OF CLASS REPRESENTATIVE

3. Pursuant to section 47B of the Act and Rules 77 and 80 of the Tribunal Rules, Ms Clare Spottiswoode CBE be authorised to act as Class Representative to continue collective proceedings on an opt-out basis claiming damages for loss allegedly suffered by the

Class (as defined below) as a result of the infringement of competition law found in the decision of the European Commission dated 2 April 2014 in Case AT.39610 *Power Cables* (the “**Collective Proceedings**”).

4. The remedy sought is an award of aggregate damages pursuant to section 47C(2) of the Act and interest on such damages (alternatively, in respect of future losses, a declaration), costs, and/or such further or other relief as the Tribunal may see fit.
5. The Class Representative’s address for service is Scott+Scott UK LLP, 3rd Floor, 1 Chancery Lane, London WC2A 1LF (Attention: James Hain-Cole).
6. The claims certified for inclusion in the Collective Proceedings are the claims as set out in the Re-Amended Collective Proceedings Claim Form.

C. CLASS DEFINITION

7. The class of persons (the “**Class**”) whose claims are certified for inclusion in the Collective Proceedings includes all those who satisfy the following definition as at the date of this Order—

All people alive who directly paid (and personal representatives of deceased people who had directly paid) the cost of domestic consumption of electricity supplied via the distribution network in Great Britain on or after 1 April 2001.

8. The following categories of persons (as constituted from time to time) shall be excluded from the Class:
 - (a) those who for the first time directly paid (and personal representatives of deceased people who had for the first time directly paid) such cost in the period from 1 October 2015 to 9 May 2016 in respect of premises in England and Wales only;
 - (b) those who for the first time directly paid (and personal representatives of deceased people who had for the first time directly paid) such cost after the date of this Order;

- (c) all members of the Proposed Defendants' legal team(s) and expert(s) instructed by the Proposed Defendants in the Proposed Collective Proceedings;
- (d) all members of Ms Spottiswoode's legal team(s), Ms Spottiswoode's professional advisors, and experts instructed by Ms Spottiswoode for the Proposed Collective Proceedings;
- (e) all members of the Tribunal panel assigned to the Proposed Collective Proceedings; and
- (f) any judge hearing any appeal in these Proposed Collective Proceedings.

D. FORUM

- 9. The Collective Proceedings shall be treated as taking place in England and Wales.

E. NOTIFICATION

- 10. By 11 May 2024, the Class Representative shall publish a notice of the Collective Proceedings in the form attached to this Order in accordance with Rule 81 of the Tribunal Rules.

F. OPTING OUT AND OPTING IN

- 11. Every person falling within the description of the Class who is domiciled in the United Kingdom on 11 April 2024 (the "**Domicile Date**") shall be included in these collective proceedings, unless they opt out in accordance with paragraph 12 below.
- 12. Any person falling within the description of the Class who is domiciled in the United Kingdom on the Domicile Date may opt out of the Collective Proceedings by giving the Class Representative notice in writing of their decision to opt out in accordance with the attached Rule 81 Notice and by no later than 4pm on the date three months after the date of publication of the Rule 81 Notice.

13. Any person falling within the description of the Class who is not domiciled in the United Kingdom on the Domicile Date may opt in to the Collective Proceedings by giving the Class Representative notice in writing of their decision to opt in in accordance with the attached Rule 81 Notice and by no later than 4pm on the date three months after the date of publication of the Rule 81 Notice.

G. FURTHER DOCUMENTS FROM THE CLASS REPRESENTATIVE

14. By 4pm on 2 May 2024, the Class Representative shall file and serve a document setting out the assumptions underlying her litigation budget, specifying the stages of the proceedings and their anticipated durations in sufficient detail for the Tribunal to be able to determine in future whether there has been a significant departure from those assumptions.
15. By 4pm on 11 July 2024, the Class Representative shall file and serve a report to the Tribunal setting out her proposals for a practicable and efficient methodology for the distribution of damages (if awarded) to the Class, not limited to a process for distribution of cash and not limited to a process in which members of the Class must come forward and prove their entitlement.

H. DEFENCES AND REPLIES

16. The Defendants shall file and serve their Defences to the Collective Proceedings Claim Form by 4pm on 20 September 2024. The Defendants must set out in their respective Defences if they are taking a point on pass-on and if so what their case is on pass-on.
17. The Class Representative shall file and serve any Replies (if so advised) by 4pm on 20 November 2024.

I. JOINT CASE MANAGEMENT CONFERENCE

18. A Case Management Conference for both this case and case no. 1518/5/7/22 (*London Array Ltd. & ors. v. Nexans France S.A.S. & anr.*) has been fixed for 10.30am on 22 May 2024, with a time estimate of half a day, in particular to consider appropriate directions for trying any common issues relating to the way in which any cartel

overcharge (if found) affected Government banding decisions for Renewables Obligation Certificates.

J. COSTS

19. Save for the costs of the limitation and prescription issues raised by the Third and Fourth Defendants (which are reserved to trial), costs shall be in the case.

K. GENERAL

20. There be liberty to apply.

Andrew Lenon KC
Chair of the Competition Appeal Tribunal

Made: 11 April 2024
Drawn: 3 May 2024