



Neutral citation [2025] CAT 74

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1518/5/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

11 November 2025

Before:

THE HONOURABLE MR JUSTICE RICHARDS
(Chair)
ANDREW LENON KC
PROFESSOR ANTHONY NEUBERGER

Sitting as a Tribunal in England and Wales

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) ~~GREENCOAT LONDON ARRAY LIMITED (formerly known as ORSTED
LONDON ARRAY II LIMITED (formerly and prior to that known as DONG
ENERGY LONDON ARRAY II LIMITED))~~
(5) MASDAR ENERGY UK LIMITED

Claimants

- v -

(1) NEXANS FRANCE SAS
(2) NEXANS SA

Defendants

RULING (PERMISSION TO APPEAL)

A. INTRODUCTION

1. On 10 October 2025, the Tribunal gave judgment in this case: [2025] CAT 59 (the **Judgment**). In this Ruling we will use the same defined terms as are used in the Judgment. Cross-references to numbers in square brackets are to paragraphs of the Judgment unless we specify otherwise.
2. In the Judgment, the Tribunal concluded that London Array's claim for follow-on damages succeeded in relation to export cables and the Tribunal quantified the Overcharge at 5%. The Tribunal dismissed London Array's claim based on inter-array cables.
3. On 31 October 2025, Nexans applied for permission to appeal against the Judgment, filing written submissions containing four grounds of appeal. London Array were directed to file any submissions in response by 7 November 2025, which they duly did, arguing that Nexans's application should be refused.

B. THE THRESHOLD FOR GRANTING PERMISSION TO APPEAL

4. By s. 49(1A) of the Competition Act 1998 (the **Act**), in a follow-on damages claim such as this, an appeal lies to the Court of Appeal on a point of law only. It follows that we should refuse permission to appeal to the extent that Nexans is seeking simply to challenge factual findings.
5. That said, we acknowledge that factual findings could, conceptually, have been made following a flawed legal process. For example, a finding of fact might have been based on inadmissible evidence, or be procedurally unfair if it is made on an unpleaded allegation. In an extreme case, what is apparently a finding of fact might betray an error of law if it is based on no evidence, or is vitiated by a failure to take relevant considerations into account, or by an analysis of irrelevant considerations. The boundary, therefore, between findings of fact and arguable errors of law is not always a precise one. However, it is clear that an appeal cannot simply be based on an argument that the Tribunal could (or even should) have found the facts differently.

6. To the extent that a permissible ground of appeal is raised, we apply by analogy the approach adopted in the courts. We should grant permission to appeal only where either: (i) the proposed appeal would have a real prospect of success; or (ii) there is some other compelling reason why the appeal should be heard.

C. THE GROUNDS OF APPEAL CONSIDERED

(1) Ground 1

7. Nexans seeks to assert that there was, in fact, no collusion on price between it and ABB between 5 and 7 November 2008. Viewed in isolation, that is simply an appeal against a factual finding. There was evidence that supported the Tribunal's finding (referred to at [103] to [107]). There is no realistic prospect of establishing that the finding was "irrational", as Nexans seeks to do, given that it was supported by that evidence.
8. Nexans argues that it was procedurally unfair to make this finding, pointing to deleterious consequences that ABB, who was not represented before the Tribunal, might suffer as a result. That argument has no realistic prospect of success. The Tribunal did nothing more than explore what the Commission had already determined in the Commission Decision and consider its impact on the bidding for London Array's export cables.
9. Nor is there any realistic prospect of establishing that the existence or significance of the collusion between ABB and Nexans was unpleaded. Paragraphs 29 to 30 of London Array's Claim Form specifically referred to Recital (444) of the Commission Decision and its significance.
10. Nexans objects to the Tribunal's conclusion ([138] and [139(1)]) that Nexans gave no sufficiently good reason for failing to advance evidence from Mr Angoulevant on the workings of the Cartel. This is a challenge to a purely factual evaluation as it was for the Tribunal to assess what conclusions to draw from the absence of particular witnesses. In submissions, counsel for Nexans sought to explain why Mr Angoulevant was not called, but no evidence was given on this issue (see the final sentence of [139(1)]).

11. We refuse permission to appeal on Ground 1.

(2) Ground 2

12. Nexans characterises the Judgment as concluding that Prysmian made a “cover bid”. That is not accurate. The Tribunal’s finding was more limited: namely that Prysmian was not seriously seeking to win the contract for London Array export cables and employees of Nexans France were aware of that fact ([130]).

13. Nexans seek to challenge that conclusion. However, it was a purely factual evaluation that was supported by evidence. At the time, only ABB, Prysmian and Nexans were winning bids for export cables at wind-farms, and Prysmian’s bid was 25% higher than that of both ABB and Nexans ([126]). Nexans clearly disagrees with the conclusions that the Tribunal drew from this and other evidence at [126] to [130]. However, an appeal on that basis has no realistic prospect of success.

14. There was no procedural unfairness to Prysmian in the Tribunal making the findings that it did. Prysmian has already been found, in the Commission Decision, to have been party to the Cartel at the time when first round bids for export cables were submitted. The Tribunal’s findings can be no more damaging to Prysmian than those findings. Moreover, London Array had pleaded a case based on Prysmian’s high bid (see paragraph 4.4A2 of the Amended Reply) and the Tribunal was entitled to make findings on that part of London Array’s pleaded case.

15. We refuse permission to appeal on Ground 2.

(3) Ground 3

16. By this Ground, Nexans seeks to establish that, as a matter of law, the Tribunal could only have concluded that there would have been additional bidders in the counterfactual if it could determine, on a balance of probabilities, who those bidders would be. That argument has no realistic prospect of success.

17. London Array's complaint was that the Cartel had restricted the supply of bidders generally available to make realistic bids to provide export cables. It argued that this general restriction imposed upward pressure on price. London Array was not complaining that any specific bidder had been excluded. Assessing the validity of London Array's complaint involved the Tribunal considering what would have happened in a counterfactual with no Cartel. That was necessarily a difficult enquiry since it involved a consideration of events that, by definition, had not taken place. It was for the Tribunal to reach evaluative conclusions on that issue as best it could and there is no realistic prospect of establishing that the Tribunal's analysis was constrained by a rule of law of the kind that Nexans asserts.
18. In paragraphs 15(4) to 15(6) of their submissions, Nexans seek to challenge specific factual findings on particular cable manufacturers. Challenges of that kind are proscribed by s. 49(1A) of the Act.
19. A feature of the Cartel was that it sought to keep Asian manufacturers out of the European market. The Tribunal observed at [172] that there would have been little point in seeking to keep such manufacturers out of the market if they would not otherwise be viable competitors. While Nexans may well disagree, there is nothing "irrational" about the conclusion that, but for the Cartel, additional bidders for export cables would have emerged.
20. Permission to appeal is refused on Ground 3.

(4) Ground 4

21. The analysis of what can be deduced from complicated statistical evidence is a paradigm example of an evaluative conclusion of an expert tribunal with which an appeal court is unlikely to interfere. That is particularly the case since the Tribunal panel included a specialist economist.
22. Ground 4 simply demonstrates a disagreement with the way in which the Tribunal performed its evaluative task but discloses no appeal, on a question of

law, with any realistic prospect of success. Permission to appeal is refused on Ground 4.

D. DISPOSITION

23. Permission to appeal is refused on all grounds.

The Honourable Mr Justice Richards
Chair

Andrew Lenon
KC

Professor Anthony
Neuberger

Charles Dhanowa, CBE, KC (Hon)
Registrar

Date: 11 November 2025