



Neutral citation [2026] CAT 17

IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1440/7/7/22
1518/5/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

3 March 2026

Before:

THE HONOURABLE MR JUSTICE RICHARDS
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

CLARE MARY JOAN SPOTTISWOODE CBE

Class Representative

– v –

- (1) NEXANS FRANCE SAS
- (2) NEXANS SA
- (3) NKT A/S (formerly NKT HOLDING A/S)
- (4) NKT VERWALTUNGS GMBH (formerly NKT CABLES GmbH)
- (5) PRYSMIAN CAVI E SISTEMI SRL
- (6) PRYSMIAN SPA

Defendants

AND 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 (COSTS)

A. INTRODUCTION

1. This is the Tribunal's ruling on matters relating to the costs of these proceedings. I use defined terms set out in the Tribunal's judgment on the ROC Issues published with the neutral citation [2025] CAT 68 (the **ROC Judgment**) unless the context requires otherwise.
2. This judgment needs to be read together with the Tribunal's other judgment on costs reported with neutral citation [2026] CAT 16 (the **London Array Costs Ruling**) that is being released at the same time.

B. ISSUES TO BE DETERMINED

3. It is common ground that the Class Representative was unsuccessful on the ROC Issues that were dealt with in the ROC Judgment and that the Aligned Parties were successful. Therefore, the starting point is that the Class Representative should pay the Aligned Parties their costs of the trial of the ROC Issues. However, the Class Representative argues that this should not be the end point and that the Aligned Parties should be limited to one set of costs because their conduct of the trial of the ROC Issues involved unreasonable duplication of costs that the Class Representative should not have to bear.
4. As well as arguing that they should all have their costs, Nexans, NKT and Prysmian argue that the Tribunal should go further and award them not just their costs of the trial of the ROC Issues but also their costs of meeting arguments more generally in the Spottiswoode proceedings to date relating to the ROO09 and ROO10. NKT refers to these as **Wider ROC Costs** and I will use the same terminology.
5. I therefore agree with the Class Representative that I must determine the following issues in this ruling:
 - (1) Whether the Tribunal should make a costs award that goes beyond the costs of the trial of the ROC Issues and extends to Wider ROC Costs.

- (2) Whether the Class Representative should pay the costs of all the Aligned Parties or whether, as she argues, the duplication of work means that she should have to pay only a single set of costs.
 - (3) What, if any, interim payment the Tribunal should order.
 - (4) How to treat the costs of pursuing the costs arguments.
6. For completeness, the Class Representative submitted that the Tribunal should also deal with another question, namely “with whom liability for the London Array Claimants costs [of the trial of the ROC Issues] should lie”. That matter is dealt with in the London Array Costs Ruling in which I concluded in §§35–36 that:
 - (1) Nexans should be liable to pay London Array its costs of the trial of the ROC Issues; but
 - (2) Nexans is entitled to be indemnified by the Class Representative in respect of that liability.
7. There was also some debate in the written submissions I have seen as to whether the Tribunal had power to award interest on costs. As discussed in §§54–55 of the London Array Costs Ruling, given the Tribunal’s judgment in *Merricks v Mastercard* [2017] CAT 27, there is doubt as to whether the Tribunal can order a payment of interest on costs. However, the matter can be aired before the costs judge if the parties wish.

C. DISCUSSION

(1) Wider ROC Costs

8. The Tribunal directed the parties to make written submissions on costs on the basis that those submissions would deal with the costs of the trial of the ROC Issues which is relatively fresh in the Tribunal’s mind.

9. The application for Wider ROC Costs is, as all parties acknowledge, for costs going beyond those of the trial of the ROC Issues. The process of determining costs on the papers has already been laborious and taken up a good degree of judicial time and Tribunal resource. I have, for example, been given seven lever arch files of materials that relate both to costs of the ROC Issues and the issues dealt with in the London Array Costs Ruling.
10. I have a real difficulty in making a determination on the papers of the claim for Wider ROC Costs without the benefit of oral submissions. Part of that difficulty is conceptual: I am not sure precisely what Wider ROC Costs are said to consist of. I can understand that some such costs are those connected with an analysis of ROO09 (on the basis that the Class Representative abandoned her reliance on ROO09 even before the trial of the ROC Issues).
11. However, I do not consider that this high level understanding is sufficient for me to consider it fair to make an award of Wider ROC Costs on the papers. For example, the Class Representative is, as I understand it, continuing to pursue a case based on ROO13 which was not determined by the ROC Judgment. I have questions as to how, even if I were minded to make an order in relation to Wider ROC Costs, such an order could be crafted so as to exclude costs relating to issues that have not yet been determined. If I were determining the matter at a hearing, I could explore those questions with counsel, but as matters stand I cannot.
12. I would also welcome the opportunity to discuss the precise juridical basis of the application for Wider ROC Costs with the parties if the matter is to be pursued. Also it has been advanced in written submissions dealing with the costs of the trial of the ROC Issues, it is not an application for such trial costs. Rather, it seems to me that Prysmian, Nexans and NKT make the application because of amendments to pleadings that the Class Representative made both before and after the trial of the ROC Issues abandoning aspects of her case on ROCs.
13. Overall, I do not feel in a position to make a determination in relation to Wider ROC Costs purely on the papers. If Nexans, Prysmian and NKT wish to pursue the application at an oral hearing, they should liaise with the Class

Representative with a view to having that application listed. There is a case management conference (CMC) listed on 23 March 2026 and one possibility might be to deal with it at that CMC but only if time permits. London Array will not, as matters stand, be attending that CMC. Accordingly, in making this suggestion, I am proceeding on the basis that London Array is not making any claim for any Wider ROC Costs (see §48 of the London Array Costs Ruling).

(2) Whether the Class Representative should pay a single set of costs only

14. The Class Representative points out that the Tribunal itself noted, in the ROC Judgment, that the Aligned Parties were indeed aligned on the case they presented on the ROC Issues. For example, at §§101, 105, 109, 118, 123 and 127, the Tribunal referred to the Aligned Parties case on ROC Issues without drawing any distinction between the parties advancing that case.
15. Moreover, at §87 of the ROC Judgment, the Tribunal observed that it was, in its view, unnecessary for three experts to be called by the Aligned Parties rather than one jointly appointed expert.
16. These references to the ROC Judgment set out some views from the Tribunal as to how it perceived matters at trial. As events turned out, the Aligned Parties' cases were indeed largely similar and the Tribunal did not obtain much incremental assistance from having three experts, rather than one.
17. However, in my judgment those observations do not mean that the Tribunal should make an order limiting the recoverable costs of the Aligned Parties. Costs will need to be assessed on the standard basis and the question of whether the Aligned Parties' costs were reasonably and proportionately incurred cannot be determined just by taking a snapshot of how matters appeared to the Tribunal at trial. It is also necessary to address the wider context.
18. As Nexans points out in its written submissions, right from a joint CMC on 22 May 2024, the Class Representative was envisaging that (i) expert evidence would be necessary and (ii) the Aligned Parties would have permission to instruct separate experts. Ultimately, the Tribunal was not as assisted by expert

evidence as the Class Representative and, indeed, all parties envisaged at this CMC. As noted at §85 of the ROC Judgment, much of the disagreement between the experts was not on matters falling within the scope of their expertise.

19. However, the problem with the Class Representative's proposed order is that it effectively asks the Aligned Parties to bear all of the consequences of the expert evidence going beyond what was needed. I am not satisfied that is the fair outcome in the circumstances given the position taken by all parties since the CMC. Fairer in my view, would be to leave the matter to the expertise of a costs judge who will be able to determine, in the light of the conduct of the litigation as a whole, the extent to which the Aligned Parties' costs were reasonably and proportionately incurred. I agree, however, with the Class Representative, that to ensure that the costs judge is in as good a position as possible to make this determination, the assessment of the costs of all Aligned Parties should be performed by the same costs judge.
20. That said, I concluded in the London Array Costs Ruling that London Array was entitled to be represented separately at the trial of the ROC Issue. Therefore, the detailed assessment of London Array's costs associated with the trial of the ROC Issues should proceed on the basis that London Array was indeed entitled to be represented separately and to instruct its own expert at that trial. The Class Representative will be entitled to make submissions as to the reasonableness or proportionality of London Array's costs as set out in paragraph 19 above.

(3) Interim payment

21. The Tribunal should order a payment on account equal to a realistic estimate of the reasonable costs likely to be determined on detailed assessment with an appropriate amount to allow for an overestimate – see *Merricks v Mastercard* [2022] CAT 27 at §10.
22. The Aligned Parties have slightly different positions on that issue. Nexans suggests a figure of 60% of its recorded costs. NKT asks for 65%. Prysmian suggests 70%. London Array asks for 75%.

23. On the face of matters, the Class Representative suggests applying a percentage of 60%. However, I considered there to be a lacuna in the parties' submissions. The Class Representative submitted that there was substantial duplication in the costs of the Aligned Parties. That is why she argued that she should have to bear only one set of costs. In the event, I have concluded that this issue should be left to the costs judge. However, I consider I am lacking submissions as to the appropriate percentage to be applied when calculating an interim payment in circumstances where there remains a risk that a costs judge will make some deduction for asserted duplication.
24. In the London Array Costs Ruling, I noted that this debate also engages the interests of London Array. I do hope that the parties will be able to resolve the issue of payment on account of costs of the ROC Issues between themselves. If not, there will need to be a separate hearing and I am unlikely to wish to resolve that on the papers. If agreement cannot be reached, the parties should consider between themselves whether it can be addressed at the forthcoming CMC with London Array being invited to attend that CMC if necessary.

(4) Costs of pursuing costs arguments

25. I consider that the analysis set out in paragraph §56 of the London Array Costs Ruling applies. Costs of pursuing costs arguments should be treated no differently from other costs.

D. DISPOSITION

26. In respect of the issues to be determined set out at §5 above:
- (1) I make no determination at this stage in respect of Wider ROC Costs.
 - (2) The question of whether the Class Representative's liability to pay costs of the Aligned Parties (whether directly or, in the case of London Array indirectly by virtue of the indemnity described in paragraph 27 below) should be reduced because, inter alia, of (i) excessive expert evidence and/or (ii) asserted duplication between the work done by the Aligned

Parties' representatives and experts is to be determined as part of any standard basis assessment by a costs judge as described in paragraphs 19 and 20 above.

- (3) The costs of all Aligned Parties should be determined by a single costs judge.
 - (4) I will make no order for a payment on account of costs of the ROC Issues at this stage.
 - (5) Costs of pursuing the costs arguments are to be costs in the case.
27. The Class Representative is ordered to indemnify Nexans in respect of its obligation to pay London Array its costs of the ROC Issues.

The Hon. Mr Justice Richards
Chair

Charles Dhanowa, CBE, KC (Hon)
Registrar

Date: 3 March 2026