



Neutral citation [2026] CAT 16

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 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:

- (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 the costs of these proceedings. I use defined terms set out in the Tribunal's judgment on the substantive claim published with the neutral citation [2025] CAT 59 (the **Judgment**) unless the context requires otherwise.
2. The proceedings dealt with in the Judgment (the **London Array Proceedings**) were follow-on proceedings arising out of Nexans's participation in the Cartel. London Array asserted that Nexans's participation in the Cartel had caused it two distinct types of loss. First, it resulted in London Array overpaying for export cables that it purchased from Nexans. Second, there was an "umbrella effect" that resulted in London Array paying an increased price for inter-array cables that London Array purchased from JDR.
3. In the Judgment, the Tribunal concluded that Nexans's participation in the Cartel had indeed caused London Array loss. It found that there was an Overcharge on export cables of 5%, less than the Overcharge of 16.8% for which London Array contended. The Tribunal did not, however, accept that London Array had suffered loss in the form of an increased price for its purchase of inter-array cables.
4. The Tribunal also concluded that London Array should have interest on damages computed at the rate of 2% above the Bank of England base rate, London Array having asked for interest at 3% above base rate.
5. London Array now seeks its costs and a payment on account. Nexans accepts that, in relation to the export cables aspect of the claim, London Array enjoyed what Nexans describes as "partial success" (on the basis that it established a much lower Overcharge than it had argued for). Nexans says that London Array enjoyed no success on the inter-array cables aspect of its claim and, to the contrary, Nexans was completely successful in its defence of that claim. In a similar vein, Nexans says that London Array had no success in relation to the

correct interest rate as the Tribunal preferred Nexans's figure of 2% above base rate.

6. Nexans's primary position, therefore, is that the Tribunal should make an issues-based costs order and that (i) London Array should have 50% of its costs of the export cables claim, (ii) Nexans should have 100% of its costs of the inter-array cables claim and the interest issue (together with interest on those costs) and (iii) the costs orders should be set off against each other. Nexans's alternative position is that it should pay just 40% of London Array's costs to reflect the overall justice of the case.
7. I consider those issues in accordance with r. 104 of the Competition Appeal Tribunal Rules 2015 (the **Rules**). While r. 104 does not contain the same provision as Civil Procedure Rule 44 to the effect that the general rule is that the unsuccessful party would pay the costs of the successful party, it was not suggested that this is significant in this case. Rather, both sides argue for different exercises of the Tribunal's general discretion as to costs. In doing so, they point to different factors set out in r. 104(4) and draw different conclusions as to what those factors mean for the exercise of discretion. However, there is no point of principle between the parties: the dispute is simply as to how the Tribunal should exercise its discretion in this case.
8. A further issue arises from the Tribunal's judgment in *Spottiswoode v Nexans France SAS and others* [2025] CAT 68 (the **ROC Judgment**). As explained at §4 and §8 of the ROC Judgment, London Array, Nexans and other **Aligned Parties** participated in a determination of a preliminary issue (the **ROC Issue**) in collective proceedings brought by Ms Spottiswoode (the **Spottiswoode Proceedings**). The ROC Judgment determined that preliminary issue against Ms Spottiswoode and in favour of the Aligned Parties. A question arises as to how London Array's costs incurred in connection with the ROC Issue should be dealt with which is dealt with in this ruling. The Tribunal will give a separate ruling dealing with costs associated with the trial of the ROC Issue more generally (the **ROC Issue Costs Ruling**).
9. Against that background, the following issues arise for determination:

- (1) Nexans accepts that there should be some award of costs to London Array in connection with the export cables claim. Should the Tribunal reduce that costs award because London Array established only a 5% Overcharge, as compared with the 16.8% Overcharge it was seeking?
- (2) What, if anything, should the Tribunal do to reflect the failure of London Array's claim based on inter-array cables?
- (3) What, if anything, should the Tribunal do to reflect aspects of London Array's conduct of the litigation that Nexans criticises?
- (4) How, if at all, should the Tribunal deal with the costs that London Array incurred in relation to the ROC Issue?
- (5) What, if anything, should the Tribunal do to reflect the fact that London Array did not persuade the Tribunal to apply interest at the rate of base rate plus 3%?
- (6) What is the appropriate costs order in the light of the above matters?
- (7) What if any payment on account should the Tribunal require?

B. DISCUSSION

(1) Implications of London Array demonstrating an Overcharge of just 5%

10. It is common ground that the Tribunal could reduce any costs award to London Array to reflect this factor (see r. 104(4)(c)). The dispute is as to whether the Tribunal should do so.
11. London Array did, indeed, establish a lower Overcharge than it was seeking. Its original pleaded claim was that the Overcharge was 20%. At trial it argued for an Overcharge of 16.8%. Nexans argues that London Array's claim was accordingly "inflated" which should be reflected in the Tribunal's costs order.

12. I do not accept that submission. Nexans's position throughout this dispute has been that there was no Overcharge at all on export cables because, to paraphrase, the contract for export cables was negotiated and agreed after its participation in the Cartel ceased. Nexans made no without prejudice offer to settle on the basis that there was some Overcharge, but less than that for which London Array was arguing. Given that Nexans was taking that stark position, London Array had no choice but to come to the Tribunal to vindicate its assertion that there was any Overcharge.
13. Establishing the amount of the Overcharge involved a detailed consideration of expert evidence. Much depended on which comparator projects to include in the analysis and which measures of margin to use when performing the comparison. There were multiple possible ways in which the data could be analysed. I do not accept that because the ultimate way in which the Tribunal viewed the data led to an Overcharge of just 5% London Array's claim could fairly be described as "inflated". Had just a few more of the evaluative judgments on the data set or methodology for comparison gone in London Array's favour, the Overcharge could have been much higher. On none of the issues on which an evaluative conclusion was necessary was London Array's position unreasonable. Even a 5% Overcharge produced a significant amount of damages for London Array.
14. If Nexans had not adopted its stark position, the parties might well have been able to reach a negotiated settlement. If they had not, Nexans could have made an offer under r. 45. I am not persuaded that, having persisted in its stark position all the way to trial, Nexans should obtain a percentage reduction in the costs it has to pay. Nor am I persuaded by Nexans's argument that London Array's position, in arguing for such a large Overcharge, was so unrealistic as to discourage negotiation. If Nexans thought that London Array was overestimating the Overcharge, it could have made a r. 45 offer which would have focused London Array's mind on the true value of its claim and might have led to a settlement.
15. I was referred to the fact that London Array did not beat its own r. 45 offer to settle these proceedings for £20.2 million made on 5 May 2023 and repeated in a *Calderbank* letter dated 12 March 2025. I consider this to be of little

significance. As I have noted, Nexans could have protected itself from a costs award by making its own realistic offer to settle the case. Since Nexans was asserting throughout that there was necessarily no Overcharge, there was no room for the kind of negotiation on quantum that would have led to a settlement below London Array's offers. Nor do I consider that Nexans's own "drop hands" offer of 12 May 2023 is of much significance since London Array did better than that offer.

16. I will not make any adjustment to London Array's costs award in relation to this issue.

(2) Inter-array

(a) Whether to make an adjustment

17. London Array makes similar arguments in relation to the inter-array aspect of its claim. It says that, if Nexans had been prepared to negotiate on the basis of some liability in relation to export cables, the inter-array cables claim might have been dropped. London Array points out that its *Calderbank* offer of 12 March 2025 ascribed no value to the inter-array cables claim. In short, London Array suggests that Nexans could have protected itself against costs of the inter-array part of the claim by adopting a more realistic approach on export cables.
18. Nexans's position on export cables was that London Array paid Nexans the right price for those cables because London Array's tendering process was effective in driving down prices and Nexans's participation in the Cartel had ceased before that process came to an end. However, the inter-array aspect of the claim involved a different battleground that did not all relate directly to the way in which London Array tendered for cables, not least since London Array had not purchased inter-array cables from Nexans. London Array's assertion was that the Cartel had produced an "umbrella effect" that necessarily inflated the price that it paid to JDR for inter-array cables, even though JDR was not a member of the Cartel. I do not, therefore, accept London Array's argument that the inter-array cables claim was simply a corollary of the claim for export cables. It involved a significantly different analysis and theory of harm.

19. By the time of the trial, it was clear that the inter-array cables claim was weak. While the Tribunal had some evidence on JDR's margin and on Nexans's margin on lower-voltage cables, it had little evidence as to margins achieved by non-Cartel members on sales of inter-array cables more generally. London Array's inter-array cables claim depended on a theoretical market-structure model that assumed that, if there was an Overcharge on export cables, there would necessarily be an Overcharge on inter-array cables. London Array did not put much effort at trial into pursuing the inter-array cables claim, saying little on it in oral submissions and devoting just three pages to it in lengthy written closings.
20. I agree with Nexans that there should be an adjustment in relation to the inter-array aspect of the claim. It would not be appropriate for London Array to escape any costs consequences associated with bringing the weak claim relating to inter-array cables all the way to trial and then not pursuing it with any vigour.

(b) What proportion of costs were attributable to the inter-array cables part of the claim?

21. Nexans's position, as set out in the third witness statement of their solicitor, Mr Marc Israel, is that the inter-array cables claim accounted for approximately 20% of Nexans's costs. Mr Israel supports that calculation in part by counting pages of expert reports: he calculates, for example, that inter-array cables are mentioned on 20.89% of pages of the expert reports.
22. London Array suggests that Mr Israel's approach is flawed. It says, for example, that inter-array cables are mentioned on only 10% of pages of statements of case and on just 7% of pages of the trial transcript. London Array's position, as set out in the first witness statement of its solicitor, Ms Amandine Gueret, is that only around 8% of costs can be allocated to the inter-array issue and submits that this is "too small to justify an issues-based costs order".
23. I do not agree with London Array that counting pages of the trial transcripts reveals much in circumstances where London Array did not really pursue its inter-array cables claim with any vigour at trial. Focusing on trial transcript

pages overlooks Nexans's core complaint that it was forced to incur costs defending a weak claim that was not really pursued at trial.

24. However, against that, I consider that Nexans's 20% figure is likely to be excessive since it overlooks the evidential overlap between the claims. While the theories of harm were different, a good amount of the evidence deployed in the export cables claim was also relevant to the inter-array cables claim. For example, the material that Nexans disclosed on its margins relating to lower voltage cables had something to say about the potential for an Overcharge both in relation to export cables and in relation to inter-array cables. Material such as this was, therefore, going to be considered anyway even if London Array had not pursued its claim in relation to inter-array cables.
25. Moreover, evidence going to the general market for cables, and how tender processes generally were conducted, was of relevance to both claims and so would have been needed even if no inter-array cables claim was being pursued.
26. Therefore, in my judgment the proportion of Nexans's costs represented by the inter-array cables claim is somewhere between 10% and 20%. Doing the best I can, and adjusting for what I see as the overlap issue that is not reflected in Nexans's estimate, I conclude that 15% of Nexans's costs dealt with the inter-array cables claim.
27. Conceptually, the proportion might be lower in London Array's case. Presumably it will have realised before trial that it was not going to pursue the inter-array cables claim with great vigour and so reduced the amount of costs it incurred on that issue. However, perhaps recognising that such an analysis might seem unattractive, London Array has not advanced it, and I will, therefore, proceed on the basis that both sides incurred some 15% of their costs on pure inter-array matters.

(c) What adjustment to make

28. Given my conclusions thus far, it is clear that London Array should not have 15% of its costs. The question is whether I should go further and make some

order by reference to the costs Nexans incurred on the inter-array cables aspect of the claim. I could, for example, require London Array to pay 15% of Nexans's costs. Alternatively, I could seek to synthesise a similar result by providing that a further reduction to London Array's recoverable costs by requiring Nexans to pay 70% of London Array's costs rather than 85%.

29. On balance, I have decided not to order London Array to pay Nexans 15% of its costs. Ultimately, in my judgment, London Array was the successful party in relation to its claim. The failure of the inter-array aspect of its claim meant that London Array had suffered less loss than it claimed. However, it remained successful and, accordingly, the focus should be on how much costs London Array should receive from Nexans.
30. While I consider that the inter-array cables aspect of the claim ultimately turned out to be weak, I do not consider that it was unreasonable for London Array to bring that part of its claim in the first place. There is an intuitive force to the idea that the Cartel could affect prices more generally. London Array's problem came after the inter-array aspect of the claim was advanced, when it became clear that London Array would have real difficulties in proving that the Cartel affected the price of inter-array cables.
31. I do not consider, however, that it would be just to provide for London Array to receive fully 85% of its costs in those circumstances. That would give no recognition to the fact that Nexans had to incur costs defending a claim that turned out to be weak and which London Array did not strenuously pursue at trial. I will, therefore, order that Nexans should pay 75% of London Array's costs thereby effectively giving Nexans some credit for costs that it was required to expend on this issue. That credit will not have the same effect as an order that London Array pay 15% of Nexans's costs, not least since (i) Nexans's costs are higher than those of London Array and (ii) synthesising a payment of 15% of Nexans's costs would involve a reduction to 70% not 75%. (Nexans has not given information on the costs it has actually paid to its solicitors as it is limiting its claim for costs to 130% of Guideline Rates. Even on that basis, Nexans's total costs are higher than those of London Array).

32. In my judgment, an order that Nexans pay London Array 75% of its costs is a reasonable and proportionate adjustment in the circumstances. That adjustment recognises that it was not unreasonable for London Array to bring the inter-array aspect of the claim in the first place. However, it also provides appropriate compensation to Nexans for having to defend what ultimately turned out to be a weak part of the claim and which London Array did not ultimately pursue strenuously.

(3) Nexans’s criticisms of London Array’s conduct of the litigation

33. Nexans suggests that London Array’s disclosure costs were too high and that its solicitors’ trial costs were excessive. Nexans also says that costs that London Array incurred in relation to alternative dispute resolution/settlement were excessive. Those assertions can be dealt with in a standard basis assessment and I see no reason to make any adjustment at this stage.

34. Criticism is also made of the late deployment of Mr Dirk Döring’s evidence. That matter was considered when the Tribunal gave permission for that evidence to be advanced and does not justify a further reduction.

(4) London Array’s costs of the ROC Issue

35. It is quite clear that London Array should not have to bear its costs associated with the ROC Issue alone and without recourse to anyone else. London Array’s position, in common with the position of all Aligned Parties, was upheld in the trial of the ROC Issue. While Ms Spottiswoode makes criticisms of the level of the Aligned Parties’ costs (and I will address these criticisms in the ROC Issue Costs Ruling), there can be no suggestion that London Array should be entirely without recourse to others in relation to its costs. There are two conceptual ways in which London Array could obtain its costs either (i) by means of an order (in the London Array Proceedings) that Nexans pay London Array’s costs coupled with an order (in the Spottiswoode Proceedings) that Ms Spottiswoode indemnify Nexans for costs that it is liable to pay to London Array or (ii) by means of an order requiring Ms Spottiswoode to pay London Array’s costs. Since Ms Spottiswoode is not party to the London Array Proceedings (even

though she is obviously party to the Spottiswoode Proceedings) option (ii) would involve the making of a costs order against a non-party to the London Array Proceedings.

36. I have reached the clear conclusion that the Tribunal should adopt option (i) set out in paragraph 35.
37. Initially in its pleaded case, Nexans had asserted that at least some of London Array's claimed loss was reduced because it received a countervailing benefit since any increase in the price of cables would be reflected in additional renewable obligation certificates (**ROCs**) that London Array would have received under the Government's Renewable Obligations Scheme (the **RO Scheme**). That position, however, was in significant conflict with the position that Nexans was taking in the Spottiswoode Proceedings (to the effect that any increase in the costs of cables resulting from the Cartel was not passed on to electricity consumers via the RO Scheme).
38. Recognising that tension, Nexans amended its pleading in the London Array Proceedings. It clarified that its primary position was that there was no countervailing benefit to London Array in the form of "additional" ROCs. However, as explained at §4 of the ROC Judgment, Nexans did not wish to run the risk of abandoning a "pass-on" argument in the London Array Proceedings, only to find that the Spottiswoode Proceedings determined that there was pass-on. To accommodate that, understandable, concern the Tribunal made the case management directions referred to at §4 of the ROC Judgment.
39. Those case management directions produced an unusual dynamic. Despite Nexans and London Array being opponents in the London Array Proceedings, they both had the same interest in persuading the Tribunal that there was no pass-on in the form of ROCs. However, it is quite clear that London Array's involvement in the ROC Issue came about because of Nexans's position in the London Array Proceedings. Most obviously, if Nexans had not defended the London Array Proceedings then, self-evidently, London Array would not have needed to make any submissions on the ROC Issue. Moreover, even given that Nexans was defending the London Array Proceedings, the case management

directions described at §4 of the ROC Judgment were made precisely to accommodate Nexans's position in the London Array Proceedings.

40. I acknowledge Nexans's point that the ROC Issue as a whole only fell to be determined because it was a central feature of Ms Spottiswoode's case in the Spottiswoode Proceedings. However, London Array was not part of the Spottiswoode Proceedings. As between London Array and Nexans, London Array only became concerned with the RO Scheme because of the position that London Array was taking in the London Array Proceedings. Since London Array was the successful party in the London Array Proceedings, it is right that Nexans should pay London Array's resulting costs.
41. I am not persuaded by Nexans's suggestion that 13 March 2024, the date on which it abandoned its positive argument that London Array had suffered a countervailing benefit from increased ROCs, marked a watershed moment at which the analysis changed. Both before, and after, as between London Array and Nexans, London Array's stake in the ROC analysis arose because of Nexans's position in the London Array Proceedings.
42. There was some suggestion in Nexans's written submissions that London Array did not need to incur any costs in connection with the ROC Issue and could have "left it to Nexans to defeat [Ms Spottiswoode's] case". I do not accept that. Although London Array and Nexans were agreed on certain matters relating to ROCs, there was a clear conflict of interest between them as they were adversaries in the London Array Proceedings. London Array was entitled to put its case on ROC Issues in its own way as it had a bearing on London Array's claim against Nexans. If London Array has incurred costs that are unreasonable or disproportionate, that can be dealt with as part of a standard basis assessment.
43. Thus far, I have dealt with this as a matter of principle. It is, however, important to check that the Tribunal has the power to make a costs order of this kind. Rule 104(2) provides that:

"The Tribunal may, at its discretion, subject to rules 48 and 49, at any stage of the proceedings make any order it thinks fit in relation to the payment of the costs of the whole or part of the proceedings."

44. Rules 48 and 49 are not relevant (as they concern r. 45 offers). The term “proceedings” is not defined. However, it seems to me that the Tribunal would have power to require Nexans to pay costs that London Array incurred in connection with the trial of the ROC Issue. That would be an order made in the London Array Proceedings since (i) it imposes cost benefits and obligations on Nexans and London Array who were the parties to the London Array Proceedings and (ii) London Array was required to participate in the trial of the ROC Issue precisely because it was a party to the London Array Proceedings and of the stance that Nexans was taking in those proceedings. Given the points I have made in §§38–40 such a requirement would relate to costs that London Array incurred in connection with those proceedings. For completeness, I do not consider that r. 104 would preclude the Tribunal from making an order on the basis that London Array incurred its costs in connection with the “wrong” proceedings (namely the Spottiswoode Proceedings). After all, London Array is not a party to the Spottiswoode Proceedings. Nexans has not suggested that the Tribunal lacks power to make an order against it in relation to costs of the ROC Issue.
45. It would not be fair to require Nexans to pay London Array’s costs of the trial of the ROC Issue if Nexans would be unable to obtain an indemnity from Ms Spottiswoode. Ms Spottiswoode has not suggested that the Tribunal lacks any such power. It seems to me that, in the Spottiswoode Proceedings, the Tribunal does have the power to require Ms Spottiswoode to indemnify Nexans. I acknowledge that the order requiring Nexans to pay London Array’s costs is now being made in the London Array Proceedings. However, as between Ms Spottiswoode and Nexans, Nexans has only had to pay London Array’s costs because of the stance that Ms Spottiswoode was taking in the Spottiswoode Proceedings. If Ms Spottiswoode had not asserted that the increased cost of power cables was passed on to consumers via ROCs, Nexans would not have needed to reserve its position in the London Array Proceedings and so incur liability for London Array’s associated costs. Therefore, as between Ms Spottiswoode and Nexans, in my judgment Nexans’s liability to pay London Array’s costs remains a cost of the Spottiswoode Proceedings.

46. Since Ms Spottiswoode will ultimately (via the indemnity) be indirectly paying London Array's costs, it is right that the Tribunal should deal with Ms Spottiswoode's criticisms of the costs of all Aligned Parties (including London Array) before finalising the order for Nexans to pay London Array's costs of the trial of the ROC Issue. Those criticisms are dealt with in the ROC Issue Costs Ruling.
47. I am reassured to note that the analysis set out above corresponds with the way the parties approached costs prior to the trial. There was a joint case management conference (CMC) in May 2024 that involved the parties to both the London Array Proceedings and the Spottiswoode Proceedings. The parties wished the Tribunal to make a "costs in the case" order in relation to that CMC and there was some discussion between the Tribunal and Mr West KC, who represented London Array, as to what that meant. The Tribunal's final order, to which no party objected, and which is clearly consistent with the approach I am taking was as follows:
- "Costs in the case. (that is to say, for the avoidance of doubt, that the costs incurred by the London Array Parties shall be costs in the London Array Proceedings whilst the costs incurred by the Spottiswoode Parties shall be costs in the Spottiswoode Proceedings)."
48. I also note that, in their written submissions on costs of the ROC Proceedings, Nexans, NKT and Prysmian argued that they should have an award of what NKT describes as **Wider ROC Costs**, being the costs of a wider category of interactions with Ms Spottiswoode on matters relating to ROCs going beyond the trial of the ROC Issue. I did not understand London Array to join in that submission. London Array's involvement with the ROC Issue was limited to its participation in the trial of that issue. Since, it was not, unlike Nexans, NKT and Prysmian, a member of the Cartel, and so is not a defendant to the Spottiswoode Proceedings, I do not understand London Array to suggest that it has any Wider ROC Costs that I need to deal with.
49. Finally, under this heading I received a good quantity of submissions directed at the question of whether the Tribunal had power to make a non-party costs order against Ms Spottiswoode. That question does not arise given my conclusion in §36 above and I express no view on it beyond noting that the

Tribunal has, in *Road Haulage Association Limited and another v Traton SE and others* [2026] CAT 2 made a non-party costs order.

(5) The interest rate issue

50. I will make no adjustment in relation to the interest rate issue. It was a minor matter on which London Array lost on the path to overall victory. It was scarcely argued at trial and took up little of the Judgment.

(6) Appropriate costs order

51. The appropriate order is that Nexans should pay:

- (1) 75% of London Array's costs unconnected with the ROC Issue, and
- (2) London Array's costs of the ROC Issue, to be determined in the light of the ROC Issue Costs Ruling.

52. It will be seen that I have not reduced costs of the ROC Issue by 25% since those costs will not have been affected by the claim relating to inter-array cables.

53. The costs above shall be the subject of detailed assessment on the standard basis if not agreed.

54. As noted in §6 above, Nexans sought an award of interest on its costs of the inter-array cables claim. That prompted London Array to deny that the Tribunal has any power to award interest in costs (citing §23 of the judgment of Roth J in *Merricks v Mastercard* [2017] CAT 27). In case the Tribunal was minded to reach a different conclusion from Roth J, London Array made a precautionary application for its own costs to attract interest.

55. I have not made any award of costs to Nexans. London Array has not positively sought interest on its costs. I therefore see no reason to make any determination as to the Tribunal's power or otherwise to award interest on costs. The parties may, if they wish, raise the question of interest on costs with the costs judge performing the detailed assessment (a latitude similar to that afforded by the

Tribunal in Case Nos 1582/7/7/23 and 1572/7/7/22 *Ad Tech Collective Action LLP v Alphabet Inc and others*, reasoned order made on 28 October 2024).

56. Some submissions were made about the costs of resolving the issue of costs. In my judgment, those are costs like any others. They are an overhead cost of litigation of this kind and I do not consider either side's position on costs to be unreasonable: the points aired have been debatable. Those costs are effectively "costs in the case" and should therefore be subsumed within the order set out in §51.

(7) Payment on account

57. Both parties agree that 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.

58. London Array says that 75% of the costs incurred is a reasonable estimate. Nexans argues for 60%, pointing to aspects of London Array's costs that it considers would be vulnerable on a standard assessment. Nexans also points out that an application for permission to appeal to the Court of Appeal is pending.

59. I consider that Nexans's estimate is closer to the mark, recognising the need to allow for a degree of headroom. However, I still consider that estimate to be slightly on the low side. I will order a payment on account of 65% of the costs specified in §51(1).

60. That leaves the question of what, if any, payment on account to require of the costs specified in §51(2). As noted in the ROC Issue Costs Ruling, I considered there to be a lacuna in the submissions on this issue. In my judgment, that lacuna means that I am not presently able to determine a payment on account of costs of the trial of the ROC Issue. I do hope that the parties will be able to resolve that remaining issue. As will be seen from the length of this ruling, it has not been straightforward to deal with this issue on the papers faced with multiple written submissions from multiple parties and a bundle running to seven lever-

arch files. If the question of the payment on account of costs of the ROC Issue cannot be resolved by agreement of all parties, there will need to be a further hearing. While stressing that I hope this will not be necessary, one option would be for the matter to be added to the agenda at a forthcoming CMC in the Spottiswoode Proceedings.

C. DISPOSITION

61. For the reasons set out above:

- (1) Nexans is ordered to pay 75% of London Array's costs further to the Judgment, unconnected to the ROC Issue.
- (2) Nexans shall pay London Array's costs of the ROC Issue.
- (3) Nexans shall make a payment on account of 65% of London Array's costs, unconnected to the ROC Issue.

62. The costs shall be the subject of detailed assessment on the standard basis if not agreed.

The Hon. Mr Justice Richards
Chair

Charles Dhanowa, CBE, KC (Hon)
Registrar

Date: 3 March 2026