Neutral citation [2026] CAT 31

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1440/7/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

10 April 2026

Before:

THE HONOURABLE MR JUSTICE RICHARDS
(Chair)
PROFESSOR ANTHONY NEUBERGER
ANTONY WOODGATE

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

Heard on 23 March 2026

RULING (EXPERTS)

APPEARANCES

Robert Marven KC, Gerard Rothschild and Jamie Farmer (instructed by Scott + Scott UK LLP) appeared on behalf of the Class Representative.

Paul Luckhurst (instructed by White & Case LLP) appeared on behalf of Nexans France SAS and Nexans SA.

Fiona Banks (instructed by Macfarlanes LLP) appeared on behalf of Prysmian Cavi E Sistemi S.r.l. and Prysmian S.p.A.

Michael Armitage and Daniel Carall-Green (instructed by Addleshaw Goddard LLP) appeared on behalf of NKT Verwaltungs GmbH and NKT A/S.

A. INTRODUCTION

1. This Ruling is on an application by the Defendants for permission to rely on expert economic evidence in relation to certain issues in the parties' draft agreed list of issues for trial (the **LOI**). The parties agree that expert economic evidence is required in order to facilitate determination of the relevant issues. However, thereafter they differ. The Class Representative argues that the Defendants should all be required to instruct jointly the same single economic expert to address all issues on the LOI. The Defendants seek permission to instruct separate economic experts in respect of the issues of overcharge and value of commerce (**VoC**). On the other economic issues they propose that they will together instruct a single expert on an "issue by issue" basis with the single expert so instructed giving the totality of the Defendants' expert evidence on each issue.

2. The Defendants' proposal is explained in the following table drawn from Mr Israel's Third Witness Statement:

Topic in agreed list of issues	**Expert**
LOI 2 & 3: overcharge and VoC	Each Defendant may adduce evidence, with experts potentially focussing in particular on their client's sales.
LOI 4(a): "regulatory pass-on" via TNUoS/DUoS charges	Dr Moselle
LOI 4(b): ROO 2013	Dr Moselle
LOI 4(c)-(d): electricity retailer pass-on	Dr Davis
LOI 5: pass-on by Class Members	Dr Davis
LOI 6(a): settlements by direct purchasers	Dr Moselle
LOI 6(b)-(f): Class Members' avoidance of loss	Dr Davis

B. THE ISSUES TO BE ADDRESSED BY ECONOMIC EXPERT EVIDENCE

3. The Defendants have been found to be members of a long-running cartel affecting high-voltage power cables (the **Cartel**). The membership of the Cartel fluctuated, but the Cartel was operational between 1999 and 2009.

4. The present proceedings are opt-out collective proceedings brought by the Class Representative on behalf of (broadly) payers of domestic UK electricity bills (the **Class**). In essence the Class Representative asserts that the Cartel resulted in the price of power cables being inflated (the **Overcharge**) and that the Overcharge was passed onto UK electricity suppliers both (i) in the form of increased charges levied by transmission and distribution companies and (ii) in the form of increased payments made by suppliers in respect of offshore windfarms under the Renewables Obligation scheme. The Class Representative asserts that electricity suppliers passed these costs on to the Class and she brings a claim for follow-on damages accordingly.

5. The parties agree that the following broad issues will be the subject of economic expert evidence:

   (1) It will be necessary to determine the VoC that would have been affected by the Cartel associated with the purchase of relevant products (primarily the power cables themselves).

   (2) It will then be necessary to determine the degree of Overcharge (if any) that is contained within that VoC.

   (3) It will be necessary to estimate the extent to which any Overcharge was ultimately passed on to the Class.

6. The Defendants to these proceedings are not the only members of the Cartel. Nor are they the only undertakings that were selling power cables in the UK at the relevant time. However, entities within their corporate groups were

participators in the UK market. Therefore, the value of the supplies they made will be a significant contributor to the total VoC.

7. It is not possible to tell now how any Overcharge might be determined. One possibility is that there was no Overcharge at all through the period during which the Cartel was operative. Alternatively, there might have been a single level of Overcharge that was constant throughout the period of the Cartel. The level of Overcharge might have differed from one contract to another. However, any Overcharge is determined, it is the Overcharge, or Overcharges, for the market as a whole that will drive the calculation of any damages that are awarded to the Class.

8. Of course, if there were an Overcharge in any particular Defendant's sales of cables, that will be relevant to the calculation of an Overcharge in the market as a whole since the Defendants (or entities within their corporate group) collectively were significant suppliers of power cables. However, there may well not be any straightforward relationship between the level of an Overcharge on a particular Defendant's sales and the Overcharge in the market as a whole. For example, even if there is an Overcharge on one Defendant group's sales, the effect of that might be damped down by lower, or nil, Overcharges from other Defendant groups or indeed other suppliers of power cables.

9. Still further complexity comes from the possibility that an "umbrella effect" could be felt which resulted in the presence of the Cartel driving up the price of power cables generally. If there is such an umbrella effect, then supplies of cables by non-Cartel members could be infected by an Overcharge that contributes to a market-wide Overcharge. In addition, conceptually an "overhang" effect might be felt under which an Overcharge continues to be present in the market even after the Cartel has ended.

10. The expert economic evidence will need to navigate all of these difficulties and seek to estimate (i) whether there is an Overcharge at all and (ii) what that Overcharge is. That will necessitate a complicated econometric analysis in which the inputs will include, but not be limited to, data on the price at which

the Defendants and others sold power cables, and the margins that they achieved on such sales, both during and after the period of the Cartel.

C. LEGAL FRAMEWORK

11. Rule 4 of the Competition Appeal Tribunal Rules 2015 (the **Tribunal Rules**) states (insofar as relevant):

> "(1) The Tribunal shall seek to ensure that each case is dealt with justly and at proportionate cost.
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> (2) Dealing with a case justly and at proportionate cost includes, so far as is practicable—
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> …
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> (b) saving expense;
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> (c) dealing with the case in ways which are proportionate—
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> (i) to the amount of money involved;
>
> (ii) to the importance of the case;
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> (iii) to the complexity of the issues; and
>
> (iv) to the financial position of each party;
>
> (d) ensuring that it is dealt with expeditiously and fairly;
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> …
>
> (4) The Tribunal shall actively manage cases.
>
> (5) Active case management includes—
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> …
>
> (e) planning the structure of the main hearing in advance with a view to avoiding unnecessary oral evidence and argument;…"

12. The Competition Appeal Tribunal Guide to Proceedings 2015 (the **Guide**) states at §7.65:

> "As regards expert evidence, the Tribunal will take into account the principles and procedures envisaged by Part 35 of the CPR, notably that expert evidence should be restricted to that which is reasonably required to resolve the proceedings. It is for the party seeking to call expert evidence to satisfy the Tribunal that expert evidence is properly admissible and relevant to the issues which the Tribunal has to decide and would be helpful to the Tribunal in reaching a conclusion on those issues." (footnote omitted)

13. The Tribunal published Practice Direction 3/2025 (Expert Evidence) on 2 December 2025 (the **Practice Direction**). It provides at §6:

> "…Where it appears that the interests of two or more parties are aligned on particular issues, the Tribunal may require those parties to instruct a joint expert rather than individual experts."

14. Guidance on the application of the Tribunal Rules and the Guide was given by the Court of Appeal in *Stellantis v Autoliv* [2024] EWCA Civ 609, [2024] 1 WLR 4728. We will consider that judgment later, noting the Defendants' point that *Stellantis* predates the Practice Direction.

D. DISCUSSION

(1) Should the Defendants each instruct their own expert on Overcharge and VoC?

(a) The Defendants generally

15. Putting to one side particular considerations relevant to the Third and Fourth Defendants (together **NKT**), the Defendants give the following reasons in support of their position:

(1) As a matter of principle, each Defendant group will have a particular interest in interrogating the allegation that there was an overcharge in respect of their own sales. They may also have an interest in assessing the extent of their market involvement in the UK which may have differed as between Defendants.

(2) That principled position is supported by considerations of pragmatism since each Defendant group might present sales data in a different way. Some of the Defendants will already have been working with a particular expert who is familiar with their own data: for example, Dr Davis worked with Nexans in relation to the claim brought by London Array and it would make sense for him to continue to be involved in the analysis of Nexans's data.

(3) A further pragmatic consideration is that it might not be possible to perform a "market-wide" regression analysis to estimate the Overcharge in the market as a whole. It might only be possible to estimate any Overcharge on a "Defendant by Defendant" basis and extrapolate any market-wide Overcharge from that analysis. In those circumstances, it is said that analysis for each of the Defendant groups could be "efficiently conducted by experts instructed by those Defendants".

(4) The Defendants make similar points in relation to the VoC element, arguing that each Defendant will probably have been liaising with their own preferred expert economists already.

(5) By way of an overarching point, the Defendants point to the high value of the claim against them and submit that allowing each to instruct a separate expert on the issues of VoC and Overcharge would be proportionate in those circumstances.

16. In our judgment, the Class Representative is right to stress possible adverse consequences that could flow if each of the three groups of Defendants instructed a separate expert in relation to issues of Overcharge in particular. Such a course could result in four different methodologies for determining the Overcharge being before the Tribunal. Conceptually, as Birss LJ explained at §67 of his judgment in *Stellantis*, the Tribunal might need to perform six different comparisons under which the methodology of each expert is compared with that of all others in order to choose the one it prefers. The Defendants' proposal could, therefore, result in a significant multiplication of the amount of time and effort that needs to be spent by the parties on expert issues with a corresponding significant effect on costs. The Tribunal Rules, the Guide and the Practice Direction all suggest that we should seek to avoid that proliferation of work on expert issues provided, of course, that can be achieved fairly and proportionately.

17. Viewed in that light, we see little force in the Defendants' point summarised in §15(2). Perhaps certain experts will be more familiar with the data of particular Defendants with whom they have worked in the past. However, the Class

Representative's single expert (Mr Druce) is unlikely to have much familiarity with any Defendant's data. Mr Druce will have to make the best of this situation and we do not regard it as disproportionate to require a single expert on VoC/Overcharge to do the same on the Defendants' side. We also consider that the prize of avoiding multiple competing methodologies firmly outweighs the considerations of "data familiarity" to which the Defendants refer.

18. We are unpersuaded by the Defendants' point summarised in §15(3). We accept that it may be necessary to run separate regressions on each of the Defendants' data because of differences in the three data sets. However, the Tribunal will need to make an assessment of the overall Overcharge based on all the data available. It seems likely to us that this will require each expert to have a deep understanding of the data as a whole, and not just an understanding of the data of one Defendant.

19. We similarly see little force in the Defendants' point summarised in paragraph §15(4). We can understand that a Defendant might have incurred some costs with a particular expert to date that might, with hindsight, turn out to have been wasted if that Defendant needs to work with a different expert on VoC and Overcharge in the future. However, in our judgment, benefits to be derived from avoiding a proliferation of possible methodologies which would be felt for the remainder of these proceedings amply outweigh that consideration.

20. The Defendants' remaining points concern the Overcharge, rather than VoC, as Mr Luckhurst acknowledged in oral submissions. These points reduce to the proposition that each Defendant has a particular interest in determining the Overcharge implicit in its own supplies and that given the size of the claim against them, this particular interest should be accommodated. The first step in assessing that argument must be to consider the strength or otherwise of the particular interest that the Defendants assert. In our judgment, the interest asserted is relatively weak and certainly not such as to outweigh the need to avoid a proliferation of competing methodologies.

21. We are prepared to accept, without deciding, that it might suit a particular Defendant to establish that the level of Overcharge on its supplies is lower than

the level of Overcharge on another Defendant's supplies. In contribution proceedings, a Defendant whose "own" Overcharge is low might argue that it should have to contribute less to any judgment sum due than a Defendant whose own Overcharge is high.

22. However, (and putting to one side the particular considerations relevant to NKT that are considered below), Nexans and Prysmian are facing an undifferentiated claim for which both are jointly and severally liable. The Tribunal will not need to consider at trial any question of apportionment as between Nexans and Prysmian and so this consideration is of little weight in relation to them. Birss LJ made a similar point at §69 of his judgment in *Stellantis*. Since questions of apportionment between Nexans and Prysmian will not arise at trial, we are not persuaded that the Class Representative should be exposed to the cost of paying for them to instruct separate experts on the question of Overcharge or be exposed to the risk of costs being increased by a proliferation of expert methodologies.

23. While NKT's position, considered below, is that it has a direct conflict of interest with the other Defendants on the question of quantifying the Overcharge, we did not understand Prysmian and Nexans to put the matter as high as that. Mr Luckhurst, who led in making oral submissions on this issue for the Defendants described Prysmian and Nexans as having "potentially divergent" interests or a "strong individual interest in interrogating the figures" by contrast with what he argues to be a conflict of interest involving NKT.

24. We can accept that all Defendants might have the strong individual interest or even the divergent interest that Mr Luckhurst asserted. For example, one can certainly envisage a situation in which one regression analysis involving one set of variables (Regression A) would lead to a higher estimate of the Overcharge on one Defendant's supplies than a different analysis involving different variables (Regression B). With an eye on contribution proceedings, that Defendant might prefer the Overcharge to be estimated on the basis of Regression B.

25. However, we do not accept that this possibility is a good reason to permit multiple experts to be instructed on the issue of Overcharge. As Birss LJ pointed out in §§25, 26 and 49 and 61 of *Stellantis*, any expert appointed would owe a duty to the Tribunal to help the Tribunal on issues within their expertise, with this duty overriding any duty owed to the Defendant instructing them or paying their fees with the following result in Birss LJ's words (at §61):

> "The expert's overriding duty to help the court means that experts are required to, and do, express views on matters which the party calling them would rather were put in a different way or not put at all. That is why the duty is an overriding one. It is not a justification for separate experts."

26. The Defendants are, of course, free to consider individually how they consider the Overcharge is best calculated and make suggestions to a single expert accordingly. We acknowledge that in making such suggestions, they may have in mind considerations as to the level of Overcharge on their own supplies for the reason set out in §21 above. However, we do not accept that it would be appropriate to permit multiple experts on the issue of Overcharge simply so that those individual experts could advocate for particular models that suit their clients' cases. That is not the role of an expert and it could lead to precisely the proliferation of economic models that should be avoided if it is fair and proportionate to do so.

27. Mr Luckhurst suggested in oral submissions that it is relevant that the power cable projects that the Defendants delivered in this case were highly bespoke whereas the products involved in *Stellantis* were "commoditised". We do not accept that. First, we do not consider that any distinction between "commoditised" and "non-commoditised" products affects the analysis set out in §§20 to 26 above, which is based on the duties of expert witnesses and the importance of avoiding a proliferation of expert methodologies. In any event, the products in *Stellantis* were seatbelts and airbags whose specification varied by model of vehicle and customer. We are not convinced that they can fairly be described as "commoditised".

(b) Specific issues relating to NKT

28. As we have foreshadowed, NKT is in a somewhat different position from the other Defendants. NKT successfully challenged the original decision of the EU Commission relating to the Cartel. It is common ground that NKT's challenge means that it can only be jointly and severally liable for losses caused by the Cartel for period from 22 November 2002 to 17 February 2006, a shorter period than that for which Nexans and Prysmian are jointly and severally liable. NKT also successfully challenged the EU Commission's decision as to the scope of its infringing behaviour. NKT successfully established that (i) it had not engaged in infringing behaviour relating to sales outside the EU or EEA, (ii) it had not participated in a collective refusal to supply accessories and technical assistance to competitors who were not members of the Cartel and (iii) it had not participated in the allocation of underground power cable projects in the EEA from 3 July 2002 to 21 November 2002. The LOI uses the term "**Narrower Infringement**" to describe NKT's narrower infringement, in both temporal and substantive terms. We will adopt that phrasing and, without making any findings on any matters at this stage, will contrast it with the "**Wider Infringement**" being the infringement for which NKT is said to have no liability.

29. Issue 11 on the LOI is:

> "11. How, if at all, are the answers to Issues 1(a) and (b), 2 or 3, which refer to the Infringement, different in relation to NKT, given that (following the judgment of the Court of Justice of the EU) NKT can only be liable in respect of the Narrower Infringement?"

30. No doubt because this is an issue for trial, beyond agreeing that NKT's liability is only for its participation in infringing conduct in the period from 22 November 2002 to 17 February 2006, the parties were unable to help the Tribunal with how Issue 11 might affect the shape of the Tribunal's ultimate decision. Without deciding the matter, we are prepared to accept that the Tribunal might need to perform a specific "NKT-focused" analysis of the following issues in addition to its other findings on Overcharge associated with the Wider Infringement, including in relation to:

(1) the scope of any Overcharge in the period from 22 November 2002 to 17 February 2006 specifically on the basis that NKT can be liable only for its participation in infringing conduct in that period; and

(2) the extent of any Overcharge caused by the more limited set of infringing activities in which NKT participated.

31. We were shown a note by Mr Hughes, NKT's proposed expert, that set out how this separate analysis might be performed. Mr Hughes stressed that the separate analysis might well require a different analytical framework from that applied to determine Overcharge in connection with the Wider Infringement. He cautioned that this was likely to involve a "bespoke econometric approach" and that it might not be possible simply to derive the answers by applying an averaging approach to the outcome of the analysis of the Wider Infringement.

32. We are prepared to accept that such a "bespoke" or "NKT-focused" econometric approach might be needed. Therefore, the question becomes whether NKT need to appoint a separate expert to perform that analysis or whether it could be performed by a single expert appointed by all Defendants as a separate chapter of his or her expert report.

33. NKT argued that they will need a separate expert because this point gives rise to a "conflict of interest" between them and the other Defendants. We accept, of course, that NKT is in a different factual position from other Defendants. Mr Armitage, in his oral submissions on behalf of NKT, asserted that NKT's interests "obviously diverge and point in the opposite direction" from those of the other Defendants. However, that is a general statement that does not establish the precise nature of any conflict. It is not suggested, for example, that an analysis that seeks to drive down the Overcharge caused by the Narrower Infringement would necessarily result in an increase in an estimate of the Overcharge caused by the Wider Infringement.

34. We acknowledge that NKT might wish to advance an "NKT-focused" approach that results in a lower Overcharge attributable to the Narrower Infringement. Such an approach might, conceivably, resonate on issues relating to the Wider

Infringement in ways that Prysmian and Nexans consider unwelcome. However, we do not regard that as being materially different from the situation we have described in §24 above. It is a reflection of the fact that estimating the amount, if any, of any Overcharge is a complicated exercise in statistical analysis which could produce multiple "right" answers (a point that Birss LJ made in §56 of his judgment in *Stellantis*). However, that difficulty is consistent with the Tribunal benefiting from the unvarnished, dispassionate views of a single expert on the Defendants' side on the extent of the Overcharge in the light of the entire data set available. It is not in itself a conflict of interest that points in favour of NKT being permitted to instruct a separate expert.

35. Moreover, NKT's situation strikes us as a special case of a wider issue that frequently arises in the Tribunal. The membership of a cartel will often fluctuate over the total period of infringement with some leaving, and others joining, throughout that period. It would appear to follow from the parties' common position on the implications of NKT's temporally limited infringement that in such a case cartel members will be liable only for losses caused by actions during their period of membership. Birss LJ analysed a similar situation at §§72–73 of his judgment in *Stellantis* concluding that there was no conflict arising from the fact that a particular defendant had not been a member of a cartel for a nine-month period. It is true that Birss LJ derived some support for that conclusion from the fact that the nine-month period in question was too short for differences in data to have any meaningful effect. The period of the Narrower Infringement in our case is longer than nine months – however, even acknowledging that difference, we are still not persuaded that NKT has a conflict of interest.

36. Even if there were some conflict of interest, we would regard it as insufficient to outweigh the importance of avoiding a proliferation of expert methodologies. As Birss LJ explained at §49 of *Stellantis*, a conflict of interest would not be a trump card that entitles NKT to its own expert. We would regard any conflict of interest arising as modest. It could be dealt with adequately by a single expert giving his or her dispassionate view of the appropriate methods for estimating any Overcharge whether caused by the Wider Infringement or the Narrower

Infringement. The Defendants would be free to make suggestions to that single expert as to what those appropriate methods should be.

(c) Conclusion

37. Our reasoning above suggests that the Defendants should jointly appoint a single economic expert to deal with VoC and Overcharge. It only remains to test that conclusion against some more general points made by the Defendants.

38. We accept that this is a high value claim. However, as Birss LJ explains at §48 of *Stellantis*, the same principles apply regardless of the value at stake. We are not going as far as requiring both the Class Representative and the Defendants to appoint a single expert and so the Tribunal will benefit from seeing competing methodologies of two experts. We consider that to be a proportionate approach even noting the large value of the claim.

39. In reaching our conclusions, we have drawn heavily on principles explained in *Stellantis*. The Defendants suggested, perhaps somewhat faintly, that the weight to be given to *Stellantis* is diminished by the fact that the Tribunal made the Practice Direction subsequently. We do not agree. As noted in §13 above, the Practice Direction provides that, if the interests of parties are aligned on particular issues, the Tribunal may order that they are all represented by the same expert on those issues. That in no way alters the principles that are clearly set out in *Stellantis* including as to (i) what matters are capable of constituting a conflict of interest or (ii) how the Tribunal should act if such a conflict of interest exists.

40. We will not give permission to any Defendant to instruct separate experts on VoC or Overcharge issues.

(2) Should the remainder of the Defendants' proposal be approved?

41. The remainder of the Defendants' proposal summarised in §21 above would involve them all instructing Dr Moselle on some issues, but all instructing Dr Davis on other issues.

42. The essence of the Class Representative's objection to that proposal is the limited point that the Defendants have given no sufficiently good reason as to why one individual could not do the whole job. We disagree. The Defendants have explained that they have selected the expert who they consider to be better placed to deal with those issues. For example, Dr Moselle is considered to have particular expertise on regulatory pass-on in the form of renewable obligation certificates and so is proposed to deal with that issue. Dr Davis is considered to be better placed to assess the extent to which Class members passed on the cost of any Overcharge to non-Class members. No doubt Dr Moselle or Dr Davis could do the whole job, but the Defendants have articulated a plausible reason why they would prefer each of them to do part of the job.

43. The Defendants have taken care to ensure that the same expert is instructed on issues which read across to each other. So, for example, Issue 5 deals with the pass-on of any loss by members of the Class to third parties. Issues 6(b) to (e) deal with the possibility that loss suffered by Class members might have been mitigated by other matters. Since all of these issues deal with the positions of members of the Class, Dr Davis is proposed to deal with all of them. The Class Representative has not suggested that the Defendants' proposals in this regard overlook any areas of overlap or read across.

44. Nor do we consider that instructing different experts to deal with different groups of issues will add materially to cost or to the complexity of the proceedings. Since the groups of issues are discrete, we do not consider it matters greatly whether the evidence on those issues is given by the same expert or by way of the strictly bifurcated approach under which different experts deal with different issues that the Defendants propose.

45. Overall we consider it is proportionate to give the Defendants the latitude they seek in relation to the remainder of their proposal.

E. DISPOSITION

46. The Defendants' proposals set out in §§1 and 2 are approved except that the Defendants are given permission to rely only on the evidence of a single joint expert in relation to VoC and Overcharge.

The Hon. Mr Justice Richards
Chair

Professor Anthony Neuberger

Antony Woodgate

Charles Dhanowa, CBE, KC (Hon)
Registrar

Date: 10 April 2026