



Neutral citation [2026] CAT 40

**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case Nos: 1440/7/7/22

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

1 May 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

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**RULING (WIDER ROC COSTS)**

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## **A. INTRODUCTION**

1. This is the Tribunal's ruling on further matters relating to the costs of these proceedings. I use the defined terms set out in the Tribunal's judgment on ROC Issues published with the neutral citation [2025] CAT 68 (the **Preliminary Issue Judgment**) unless the context requires otherwise.
2. This ruling needs to be read together with the Tribunal's other ruling on costs reported with neutral citation [2026] CAT 17 (the **First Costs Ruling**). In the First Costs Ruling, I declined to make an order on the Defendants' application for their **Wider ROC Costs**, inviting further submissions on that issue at a case management conference (CMC) that was then listed for 23 March 2026. In the event, there was insufficient time at that CMC to address the question of Wider ROC Costs. I have, therefore, prepared this ruling with the benefit of the parties' skeleton arguments prepared for the CMC, and having afforded the parties the opportunity to make further written submissions on the issue in response to arguments set out in the other parties' skeleton arguments.

## **B. DISCUSSION**

### **(1) What are "Wider ROC Costs"?**

3. One of the reasons why I declined to make an order on Wider ROC Costs in the First Costs Ruling was because I was not entirely sure what those costs were or how they could be separated out from other costs. The Defendants' position on this can be summarised as follows:
  - (1) The Preliminary Issue Judgment meant that they succeeded on the preliminary issue concerning ROCs issued pursuant to ROO10. Prior to the trial of ROC issues, the Class Representative had conceded that she could not make good her claim for loss based on ROO09.
  - (2) The First Costs Ruling made an award of costs associated with the trial of that preliminary issue.

- (3) After the Preliminary Issue Judgment was given, the Class Representative amended her Amended Collective Proceedings Claim Form so as to abandon claims for loss occasioned by pass-on through ROCs issued pursuant to ROO09 and ROO10. (The Class Representative continues to assert loss occasioned by pass-on through ROCs issued pursuant to ROO13.)
- (4) In those circumstances, the Class Representative should be treated as abandoning part of her claim, with the Defendants obtaining an award of costs in relation to the part so abandoned. Those costs will be greater than the costs awarded by the First Costs Ruling since: (i) the First Costs Ruling was concerned only with costs of a trial and the Defendants should have costs not connected with that trial; and (ii) in any event, the Preliminary Issue Judgment dealt substantively only with ROO10, whereas the Class Representative abandoned her claim relating to ROO09 as well.

4. The Defendants seek an order that:

“The Class Representative shall pay the Defendants’ costs of and arising from the Class Representative’s withdrawn claims for loss via the Renewables Obligation Order 2009 and the Renewables Obligation (Amendment) Order 2010, not falling within the scope of the Tribunal’s order in respect of the costs of the ROC Issue dated 5 March 2026, in an amount to be subject to detailed assessment, if not agreed.”

5. The Tribunal’s order referred to in the extract above was that:

“The Class Representative shall pay the costs of the trial of the ROC Issue incurred by the Defendants.”

6. The “ROC Issue” for these purposes related to ROO10 given the Class Representative’s acceptance recorded in §3(1) above. Thus, in effect, the Defendants define Wider ROC Costs by exception: they are costs that (i) “arise from” the Class Representative’s claims based on ROO09 or ROO10, that (ii) are not costs of the trial of the ROC Issue that revolved around ROO10.

7. I agree with the Class Representative that, while linguistically comprehensible, that definition would give rise to difficulties of practical application. For example:

- (1) Consider an expert instructed by a particular Defendant. He or she had to understand how the ROC system worked as a whole. The structure of that system was similar under ROO09, ROO10 and ROO13, although different numbers of ROCs/MWh were allocated to offshore wind by the different orders. The costs that an expert incurred in becoming familiar with the ROC system generally would appear to fall within the scope of Wider ROC Costs. Yet the end product of some of those costs may be deployed in an expert report dealing with ROO13, in relation to which ROC issues have not yet been determined since the Preliminary Issue Judgment was not concerned with ROO13.
- (2) Consider the certification hearing on 11 April 2024. Paragraph 5 of Prysmian’s skeleton argument for that hearing stated that “the ROC Issue [expressed in that skeleton argument by reference to ROO09 and ROO10 only] is of critical importance for the Tribunal’s exercise of its gatekeeper function...”. Costs that Prysmian incurred in making submissions on ROC issues at the certification hearing would, therefore, appear to be Wider ROC Costs. Yet a realistic argument can be made to the effect that Prysmian should not have any costs associated with the certification hearing until the collective proceedings have been finally determined, not least since the Tribunal’s general order for costs following the certification hearing was “costs in the case”.
- (3) Relatedly, much earlier in the proceedings, Prysmian applied in October 2023 to strike out all or part of the Class Representative’s claim insofar as it depended on ROCs. That application was ultimately not pursued. Costs associated with that strike-out application would appear to fall within the definition of Wider ROC Costs. However, it is at least debatable whether Prysmian should, at this stage, be entitled to any costs associated with an application that it decided to withdraw.

8. I do not suggest that these examples are in themselves fundamental objections to the making of an order in relation to Wider ROC Costs. I do not know, for example, the amount of costs that the examples involve. It may be that those costs are small in relation to the totality of costs claimed. However, these examples indicate that there may be difficulties in the practical application of any order that is made in relation to Wider ROC Costs. Making an order of the kind that the Defendants seek would carry some risk either of unintended consequences or of forestalling legitimate debate on whether the Defendants should, at this stage, have any costs associated with, for example, the certification hearing or Prysmian's strike-out application. In my judgment, those are relevant considerations when it comes to the exercise of discretion in this area which I will consider later in this ruling.

**(2) Applicable principles**

9. All parties agree that the Tribunal has the power to make an award of Wider ROC Costs.
10. The Defendants rely on comments that Nugee J (as he then was) made at §6 of his judgment in *Merck KGaA v Merck Sharp & Dohme Corp & others* [2014] EWHC 3920 (Ch), [2014] 11 WLUK 622 to the effect that:

“...those who lose discrete aspects of complex litigation should pay for the discrete applications or hearings which they lose and should do so when they lose them rather than leaving the costs to be swept up at trial.”
11. However, they rely on that statement out of context. In *Merck*, Nugee J had, at the defendants' request, decided a preliminary issue as to the proper law of a contract. He preferred the claimant's arguments on that issue and so, ostensibly, the claimant was the successful party. However, success on the question of proper law did not mean that the claimant would necessarily succeed on its claim or any part of it at trial. The defendants, therefore, argued that costs of the preliminary issue should be reserved until trial. It was that argument that Nugee J was rejecting at §6 of his judgment, of which the above quotation forms just a part. Nugee J was not concerned with a request for a costs award that extended beyond those connected with a trial of the preliminary issue.

12. I have already, in the First Costs Ruling, made an order that is consistent with Nugee J's approach in *Merck* by awarding the Defendants their costs of the trial of the ROC Issue, even though it remains possible that other aspects of the Class Representative's claim will succeed.
13. The Defendants next argue that the Class Representative has, by her amendments in her Draft Re-Re-Amended Collective Proceedings Claim Form, abandoned a significant proportion of her claim, and that such an abandonment should result in an award of all costs of the withdrawn claims.
14. I was helpfully referred to the case of *Packer v Packer* [2025] EWHC 27 (Ch), [2025] Costs LR 1. In that case, the claimant made an application to amend a claim so as to withdraw an allegation of fraud. The defendant asked not just for the usual order for costs occasioned by the amendment but also for an award of a proportion of the costs incurred on the entire dispute up to the date of the amendment. That application failed, but of more interest than the outcome is the survey of authorities that HHJ Paul Matthews, sitting as a judge of the High Court, performed. I draw the following conclusions from that survey without dealing with the question of jurisdiction to make such an order since it is common ground that the Tribunal has jurisdiction:
  - (1) Determining what order to make will depend on all the circumstances of the case (§36 of Bean LJ's judgment in *Begum v Birmingham City Council* [2015] EWCA Civ 386, [2015] CP Rep 32).
  - (2) If a claimant makes an amendment that makes all the difference, in the sense that until that amendment was made, the action would fail, that may support an order that the claimant pay all of the defendant's costs up to the date of the amendment (see *Beoco Ltd v Alfa Laval Ltd* [1995] QB 137, [1994] 4 All ER 464 as considered by Bean LJ in *Begum*).
  - (3) Where a claimant amends so as simply to abandon a cause of action and substantial costs have been wasted, it may be appropriate to award the defendant costs of the abandoned cause of action, by analogy with the usual result if a claim were abandoned (see the judgment of *Carter*

*Projects Ltd v CUA Property Ltd* [2020] EWHC 3417 (TCC), [2020] 12 WLUK 303).

- (4) However, not every amendment deleting assertions in a pleading amounts to abandonment of a cause of action. Some such amendments remove assertions of fact but leave the substance of the claim unchanged. For example, in *Packer*, even after the allegation of dishonesty was removed from the pleading, the substance of the claimant's claim remained that the deceased had not made a valid will.
- (5) It is relevant to consider whether it would be "time consuming, cumbersome and unjust" to identify, in the course of proceedings, which costs relate to which deletions to a pleaded case (*Genius Sports Technologies Ltd v Soft Construct (Malta) Ltd* [2022] EWHC 1067 (Ch), [2022] Costs LR 825, as referred to in *SKAT v Solo Capital Partners LLP (in Special Administration) and Others* [2022] EWHC 2969 (Comm), [2022] Costs LR 1751).
- (6) As a matter of common sense, a court should be reasonably clear, before making a costs award of the kind that the Defendants seek, that those costs would in any event be awarded at the conclusion of the litigation (§29 of *Packer*).

### **(3) Application of the principles**

15. The Defendants argue that the claims for loss based on ROO09 and ROO10 should "never have been brought" and that from "the outset, it was clear that those claims were made without having been properly analysed and tested". In support of that, they point to the fact that, early on in proceedings, both Mr Druce (the Class Representative's expert) and experts on the Defendants' side had identified a central relevant question, namely whether the asserted Overcharge was too small to affect the number of ROCs allocated to offshore wind. They criticise the Class Representative for not testing this issue earlier on in the proceedings.

16. I consider that to overstate matters. The Defendants did indeed succeed on issues in relation to ROO10 that they had identified early in the proceedings. However, they did so after the Tribunal gave detailed consideration to all the evidence, including disclosure given by DESNZ that was not available until much later in the proceedings. The fact that the Tribunal ultimately rejected the Class Representative's case that 1.75 ROCs/MWh would have been awarded in the counterfactual scenario in which there was no Cartel does not make that case, or the Class Representative's earlier case based on 1.8 ROCs/MWh, bound to fail from the beginning.
17. The Defendants are right to point out that the Class Representative abandoned her case based on ROO09 in November 2024, well before the trial of the ROC Issues. However, while that certainly demonstrates that the Class Representative came to realise quite soon that she would have difficulties in establishing that case, it goes too far to say that it "should never have been brought".
18. Overall, I consider that there is force in the Class Representative's argument that the Defendants are applying undue hindsight when saying that the claims based on ROO09 and ROO10 should never have been brought.
19. The Defendants argue, in connection with the consideration summarised in §14(4) that the substance of the Class Representative's claim does not remain the same because "the claims for loss via ROO 2009 and 2010 are no longer pursued following the [Preliminary Issue Judgment], as reflected in the [Class Representative's] recent re-re-amendments to the Claim Form". I do not consider that to be the most natural characterisation of the Class Representative's claim. More natural, in my judgment, is to describe it as a claim that the Cartel in which the Defendants participated, caused domestic electricity bills in the UK to be increased. The substance of that claim remains even though the Class Representative no longer asserts that ROCs issued pursuant to ROO09 and ROO10 caused any part of that increase.
20. Relatedly, it cannot be said that the Class Representative's amendments "make all the difference" in the sense set out in §14(2). Her claim can continue even though she no longer pursues arguments on ROO09 and ROO10. That said, I

do acknowledge that the claim will be considerably smaller following the Class Representative's loss on the ROO09 and ROO10 issues.

21. Against that, there is clearly force in the point that the Defendants have incurred unnecessary costs because of the Class Representative's stance on ROO09 and ROO10 to date. I am prepared to accept that not all of those costs will be captured in the order the Tribunal made following the trial of the ROC Issues and I quite understand why the Defendants argue that they should have more of their costs at this stage.
22. However, as I have highlighted in §§7–8, there are real questions as to whether the Defendants' proposed method of addressing that issue will fairly and appropriately deal with that point. The Defendants' answer to those concerns is to assert that, given that claims based on ROO09 and ROO10 were abandoned, they will necessarily receive their costs associated with those claims whatever happens at the full trial. They submit that the Tribunal has the full facts to make a determination in respect of these costs now. I am not convinced by that argument.
23. Of course, even if the remainder of the Class Representative's claim succeeds, there will be force in a submission that the Defendants should obtain some credit for costs occasioned by the Class Representative's stance on ROO09 and ROO10. If that is the position at trial, then the Tribunal would be equipped to consider a submission such as this in the light of all circumstances that are known following trial, including communications that are without prejudice save as to costs. However, at this point in the proceedings, the Tribunal does not know all relevant circumstances and certainly does not have access to without prejudice communications.
24. I accept that, even if the Class Representative's remaining claim succeeds, the Tribunal may well wish to make some allowance for costs that the Defendants have incurred associated with claims based on ROO09 and ROO10. However, that allowance could take many forms. It might, for example, result in an order that the Defendants pay only a percentage of the Class Representative's overall costs. If without prejudice correspondence suggested that there were aspects of

the Defendants' conduct that were to be deprecated, the Tribunal might require the Class Representative to pay only a percentage of their costs associated with the ROO09 and ROO10 claims. There are many allowances that could be made and it is not axiomatic that the Defendants are bound, ultimately, to obtain the Wider ROC Costs that they now seek.

25. In a similar vein, I do not accept the Defendants' submission that the detailed assessment which their proposal envisages would be reasonably straightforward to perform. The Defendants refer to schedules that they have prepared in support of an application for a payment on account of Wider ROC Costs, that they say substantiate their position that it will be reasonably clear where to draw the line in most cases.
26. I do not agree with the Defendants on this issue. In my judgment, points such as those set out in §7 are both complicating and raise points of principle. I consider that in some areas it is likely to be necessary to apportion particular costs into a component that consists of Wider ROC Costs and a component that does not. Mr Day's witness evidence in relation to Prysmian's schedules confirms that some apportionments have been performed. The fact that the Defendants have prepared schedules performing an apportionment exercise does not of itself show that the exercise would be reasonably straightforward. Conceptually, many different approaches to apportionment could be undertaken and, in my judgment, a process of detailed assessment would be complicated by a need to select the appropriate approach.
27. Overall, I consider that the balance comes down against making any award in relation to Wider ROC Costs at this stage. The Class Representative has not abandoned an entire cause of action and her claim remains in substance the same (though much smaller) even following the amendments to her claim. The Class Representative might yet succeed on her claim. Making an award of Wider ROC Costs now would lead to a complicated detailed assessment and the difficulties I have described in §§7–8. Deferring consideration of Wider ROC Costs until after trial of the whole action will enable the Tribunal better to determine what, if any, costs award should be made in the light of all relevant circumstances.

**C. DISPOSITION**

28. The Defendants' application for their Wider ROC Costs is dismissed.

The Hon. Mr Justice Richards  
Chair

Charles Dhanowa, CBE, KC (Hon)  
Registrar

Date: 1 May 2026