



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

Case No: 1370/5/7/20 (T)

BETWEEN

- (1) VATTENFALL AB
- (2) VATTENFALL ELDISTRIBUTION AB
- (3) VATTENFALL VINDKRAFT AB
- (7) VÄSTERBERGSLAGENS ELNÄT AB
- (8) THANET OFFSHORE WIND LIMITED
- (10) ORMONDE ENERGY LIMITED
- (11) VATTENFALL A/S
- (12) VATTENFALL VINDKRAFT A/S
- (13) DOTI DEUTSCHE OFFSHORE-TESTFELD UND  
INFRASTRUKTUR GMBH & CO KG
- (14) STROMNETZ BERLIN GMBH
- (15) NOORDZEEWIND CV

Claimants

- and -

- (1) PRYSMIAN S.P.A.
- (2) PRYSMIAN POWERLINK S.R.L.
- (3) PRYSMIAN CABLES & SYSTEMS LTD
- (4) PRYSMIAN GROUP FINLAND OY
- (5) PRYSMIAN KABEL UND SYSTEME GMBH
- (8) PRYSMIAN CAVI E SISTEMI SRL

Defendants

- and -

- (1) NEXANS FRANCE SAS
- (2) NEXANS SA

Third Parties

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**ORDER**

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**UPON** the case management Order made by the Court at the Case Management Conference on 13 October 2020 being referred to herein as the “**October CMC Order**”

**AND UPON** the defined terms herein being as defined and used in the October CMC Order

**IT IS ORDERED THAT:**

Disclosure and inspection

1. By 4pm on 28 May 2021, the Third Parties shall disclose to the Main Parties the following documents, insofar as they are or have been within their control:
  - 1.1 documents falling within the categories identified in Annex A to this Order (“**Annex A**”); and
  - 1.2 any known adverse documents, within the meaning of PD 51U.
2. By 4pm on 28 May 2021 the Third Parties and the Prysmian Defendants shall disclose to each other the documents falling within the categories identified in Annex B to this Order (“**Annex B**”), insofar as they are or have been within their control.
3. Inspection of the documents referred to in paragraphs 1 and 2 above shall be provided within seven days of the date of disclosure.
4. The categories of disclosure set out in Annexes A and B are without prejudice to any party’s right to seek further disclosure at a later date, including specific disclosure.
5. The documents to be disclosed pursuant to paragraphs 1 and 2 above:
  - 5.1 may be confined to the best available evidence about the information which is the subject-matter of the listed categories. In each case, the disclosing party should explain why the evidence it is providing is the best available evidence, and why further disclosure is not necessary or proportionate;

- 5.2 if contained in the form of an electronic database or extract therefrom, should be provided in their native electronic format, together with a statement on how the relevant information has been compiled for the dataset, and, if appropriate, guidance on how it is to be examined; and
- 5.3 shall include documents in the public domain.
6. The Third Parties' disclosure shall be accompanied by a disclosure statement in accordance with CPR 31.10(5)-(7) and (9).
7. The Main Parties shall disclose and provide for inspection the documents referred to at paragraphs 12 and 13 of the October CMC Order to the Third Parties.

#### Amendments to October CMC Order

8. Paragraphs 17-21 of the October CMC Order are revoked and replaced with the directions below.

#### Factual evidence

9. By 4pm on 15 October 2021, the parties shall exchange signed statements of witnesses of fact and hearsay notices where required by CPR 33.2.
10. By 4pm on 3 December 2021, the parties shall exchange signed reply statements of witnesses of fact.
11. Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witness at trial.

#### Expert evidence

12. Permission is granted for each of (1) the Claimants; and (2) the Prysmian Defendants to rely on the written evidence of a single expert, each of whom will address the following issues:

- 12.1 whether or to what extent the Infringement:
- (a) caused the prices paid by the Claimants (to the Defendants and/or other suppliers) for the projects in respect of which the Claimants claim to be inflated compared to the prices that would have prevailed in the absence of that conduct (the “**Overcharge**”);
  - (b) caused the Claimants to suffer a loss in relation to any assets and entities purchased by the Claimants incorporating power cables (the “**Asset Claim Loss**”);
- 12.2 if so, whether and to what extent the Claimants passed on any part of the Overcharge or Assets Claim Loss (“**Pass-On**”); and
- 12.3 the amount of interest on any losses incurred by the Claimants.
13. Permission is granted for the Third Parties to rely on the written evidence of a single expert to address the issues set out at paragraph 12.1 and 12.2 above, in respect of the alleged Overcharge and Asset Claim Loss relating to power cables supplied by the Third Parties or other members of the Nexans corporate group. Any such evidence:
- 13.1 shall not duplicate the evidence of the expert relied on by the Prysmian Defendants; and
  - 13.2 shall be restricted to points which are not addressed in the report of the expert relied on by the Prysmian Defendants, or on which the Third Parties disagree with the Prysmian Defendants.
14. The experts referred to at paragraphs 12 and 13 above (the “**Experts**”) shall exchange signed reports sequentially as follows:
- 14.1 the Claimants’ Expert shall serve their report by 4pm on 11 February 2022;
  - 14.2 the Prysmian Defendants’ Expert shall serve their report by 4pm on 1 April 2022;
  - 14.3 the Third Parties’ Expert shall serve their report by 4pm on 13 May 2022; and
  - 14.4 the Claimants’ Expert shall serve their reply report by 4pm on 17 June 2022.

### Additional Claim

15. The issues relating specifically to the Additional Claim shall be tried separately, and subsequently, to final determination of the issues relating to the Main Claim.
16. The provision of evidence of fact and expert evidence relating specifically to the Additional Claim shall be revisited following final determination of the issues relating to the Main Claim.
17. A case management conference shall be convened following final determination of the issues relating to the Main Claim to address the case management of the Additional Claim.

### Costs

18. Costs in the case.

**The Honourable Mr Justice Trower**  
Chairman of the Competition Appeal Tribunal

Made: 22 January 2021  
Drawn: 22 January 2021