



Case No: 1352/5/7/20 (T)

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

BETWEEN:

- (1) GREATER GABBARD OFFSHORE WINDS LIMITED**
- (2) SSE plc**
- (3) SSE RENEWABLES HOLDINGS (UK) LIMITED**
- (4) SSE RENEWABLES ONSHORE WINDFARM HOLDINGS LIMITED**
- (5) SSE RENEWABLES LIMITED**
- (6) SSE RENEWABLES OFFSHORE WINDFARM HOLDINGS LIMITED**

Claimants

- v -

- (1) PRYSMIAN CAVI E SISTEMI Srl**
- (2) PRYSMIAN S.p.A.**
- (3) PRYSMIAN POWERLINK Srl**
- (4) PRYSMIAN CABLES & SYSTEMS LIMITED**
- (5) PRYSMIAN CONSTRUCTION COMPANY LIMITED**
- (6) PRYSMIAN CABLES (2000) LIMITED**

Defendants

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**ORDER**

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**UPON** the Pre-Trial Review in these proceedings on 28 April 2022 (“the PTR”)

**AND UPON** the Claimants having applied to remove the confidentiality designations applied to certain documents by the Defendants or by certain third parties, such application having been made under Rule 101 of the Competition Appeal Tribunal Rules 2015

**AND UPON** hearing leading counsel for the Claimants and for the Defendants

**AND UPON** the Tribunal determining that a potential issue identified by the Defendants in the draft Case Memorandum as to whether the First Claimant obtained benefits in the form of additional revenues from the Renewables Obligation Certificates regime is not currently a live issue on the pleadings in the case

**AND UPON** the Defendants having confirmed that they do not wish to cross-examine Ms Rebecca Richardson upon the contents of her statements as relied upon by the Claimants in connection with these proceedings

**AND UPON** no application having been made for any witness to give his or her evidence by video-link

**AND UPON READING** the other documents on the Court file recorded as having been read

**IT IS ORDERED THAT:**

*Definitions*

1. In this Order the terms set out in the table below bear the corresponding meanings as also set out therein:

Commission	The European Commission
Commission Decision	The Commission's Decision dated 2 April 2014 in case AT.39610 - <i>Power Cables</i>
Confidentiality Ring Order	Confidentiality Ring Order of Jacobs J in these proceedings dated 1 May 2020
ATF documents	Documents provided by the Commission to the parties to the Commission's investigation in case AT.39610 - <i>Power Cables</i> as part of the 'access to file' process, as subsequently disclosed by the Defendants to the Claimants pursuant to paragraphs 7-10 of the Order of Mr Justice Jacobs dated 1 May 2020 in these proceedings.

Prysmian	The Defendants taken individually and/or together (in any combination)
Sumitomo	Sumitomo Electric Industries, Ltd. and/or J-Power Systems Corporation.
Nexans	The Nexans group as referred to in recital (15) of the Commission Decision and/or any legal entity within such group including Nexans SA and any other company under the direct or indirect control of that company.
Pirelli	Pirelli & C. S.p.A. as referred to in recital (15) and Article 2(g) of the Commission Decision

*The Updated Case Memorandum and the Defendants' application to amend the Defence in relation to Pass-on and Countervailing Benefits*

2. The Defendants shall file any application to amend paragraphs 60-63 and 70-71 of their Defence by 10 am on 4 May 2022. The Claimants shall respond with any objections and evidence (if so advised) by 4pm on 11 May 2022 for determination by the Tribunal.
3. The approval of the Updated Case Memorandum in this matter is adjourned until further order following the determination of any application by the Defendants as mentioned in the preceding paragraph of this Order.

*Confidentiality*

ATF Documents

4. All contemporaneous ATF documents belonging to Prysmian and disclosed by Prysmian in these proceedings, which were designated as “Inner Ring” confidential material on disclosure, are hereby by consent designated as non-confidential. For the avoidance of doubt, the Prysmian documents to which this paragraph refers are those listed in Annex 1 hereto.
5. All non-contemporaneous ATF documents belonging to Prysmian listed in the attached Annex 2 to this Order, which were designated as “Inner Ring” confidential material on disclosure, are hereby by consent designated as non-confidential. The parties shall use their best endeavours to reach an agreed position on Document ID MAC-001-000013198 by 4pm on 6 May 2022. Any remaining disputes over confidentiality shall be referred to the Tribunal by 4pm on 10 May 2022 for determination on the papers.

The Commission Decision

6. By 4pm on 10 May 2022, Prysmian shall supply to the Claimants a version of the Commission Decision appearing at tab 1 (including tabs 1A and 1B) of the PTR bundle from which have been removed any redactions or confidentiality designations which apply to wording which identifies the Prysmian individuals referred to in the said Decision. If for technical reasons Prysmian is not in a position to remove any such redactions or confidentiality designations, it shall be open to Prysmian instead to supply a version of the Decision in which the information in question has been added back in by manuscript amendment.

#### Comparator Projects and Expert Reports

7. The specific figures referring to costs, revenues and margins relating to any comparator projects (“specific figures”) which are set out in the parties’ expert reports and joint expert statement, shall remain designated as ‘Inner Ring’ confidential material. For the avoidance of doubt, any material appearing in the said expert reports and joint expert statement other than specific figures as defined in the first sentence of this paragraph (including figures for average margins and language comparing or describing margins without stating them precisely) is to be regarded (and is hereby designated) as non-confidential. By 4pm on 6 May 2022 the Defendants shall supply the Claimants with a further version of the expert reports and joint expert statement in this case in which only confidentiality markings which are in accordance with this paragraph of this order appear.

#### Internal Accounting documents (Category C)

8. The Defendants shall continue their review of the documents disclosed by Prysmian which are or contain Prysmian’s internal accounting, pricing and sales policies and which have been designated as confidential and the parties shall use their best endeavours to reach an agreed position by 10 May 2022. Any remaining disputes over confidentiality shall be referred to the Tribunal by 4pm on 12 May 2022 for determination on the papers. (For the avoidance of doubt and for the purposes of identification, the document numbers of the documents to which this paragraph applies are those appearing in the annex to the Second Letter from Macfarlanes to Hausfeld dated 14 April 2022 at tab [36] page 1417 of the PTR bundle.)

#### Witness Evidence

9. The witness statements of Mr Knowles and Mr Romeo served on behalf of Prysmian are hereby designated as non-confidential save for the specific approval thresholds in paragraphs 61, 63 and 67 of Romeo I. By 4pm on 6 May 2022 the Defendants shall supply the Claimants with a further version of the said statements in which only confidentiality markings which are in accordance with this paragraph of this order appear.

10. The evidence of Mr Dibble and Ms Bibby (for the Claimants) and Messrs Knowles and Romeo (for the Defendants) shall be given in person.

Documents belonging to third parties

11. Document number C39610ID0174 provided to the Commission by Sumitomo is hereby designated as non-confidential for the purposes of these proceedings.
12. All ATF documents provided to the Commission by Nexans and marked by the Commission as the non-confidential versions of such documents are hereby designated as non-confidential for the purposes of these proceedings, subject to Nexans having liberty to apply to raise reasoned objections before the Tribunal, regarding the need for continued confidentiality protection for such information, within 21 days of this Order (such period to run from the date on which the order was pronounced, and not only the later date when it was sealed or served). (For the avoidance of doubt and for the purposes of identification, the document numbers of the documents to which this paragraph applies are those appearing in the annex to the Letter from Hausfeld to White & Case LLP dated 29 March 2022 at tab [28] page 1394.1 of the PTR bundle.)
13. Contemporaneous ATF documents provided to the Commission by Pirelli and marked by the Commission as the non-confidential versions of such documents are hereby designated as non-confidential for the purposes of these proceedings, subject to the Claimants notifying Pirelli's legal representatives of the direction made in this Order and Pirelli having liberty to apply to raise reasoned objections before the Tribunal, regarding the need for continued confidentiality protection for such information, by 4pm on 19 May 2022. (For the avoidance of doubt and for the purposes of identification, the document numbers of the documents to which this paragraph applies are those listed in the attached Annex 3 to this Order).

*Expert Evidence*

14. The oral evidence of the parties' experts shall be heard concurrently at trial. By 10 May 2022, the parties shall use their best endeavours to agree and file in draft a form of Protocol on the Hearing of Concurrent Evidence, and Annex, such Annex not to exceed 10 pages. The final form of the Protocol and the Annex will be subject to approval by the Tribunal to be given on the papers.

*Litigation Timetable*

15. The Defendants shall file their Amended Defence by 10am on 4 May 2022. (For the avoidance of doubt, if such Defence contains amendments falling within paragraph 2 hereof, it shall remain in draft to that extent, pending the determination of any such application as is referred to in paragraph 2.)

16. By 4 May 2022, the parties shall file and serve the agreed trial timetable.
17. By 10 May 2022, the parties shall file an agreed dramatis personae and an agreed reading list.
18. The Claimants are to file the trial bundles by 4pm on 12 May 2022 in electronic form only in the first instance. To the extent that disputes remain concerning the confidentiality status of particular documents or parts thereof within the trial bundles, the Claimants shall have permission to file updated versions of the trial bundles following the resolution of such disputes. The Claimants shall liaise with the Tribunal following filing of the electronic copies of the trial bundles in relation to the timescales and other arrangements for filing hard copy versions of the trial bundles and of any documents contained in the reading list.

*Further Matters*

19. Any documents read to, or by, the Tribunal, or referred to by the parties' Counsel, at the PTR, which have been designated as containing Confidential Information shall remain subject to the protections set out in that Confidentiality Ring Order, save that nothing read out by the parties' Counsel during the PTR should be treated as Confidential Information.
20. Liberty to apply.
21. All costs of the PTR shall be costs in the case.

## ANNEX 1

### LIST OF CONTEMPORANEOUS ATF DOCUMENTS REDESIGNATED

#### AS NON-CONFIDENTIAL

##### **Volume / Document ID**

VOL001 C39610ID0104  
VOL001 C39610ID0138  
VOL001 C39610ID0116  
VOL001 C39610ID0117  
VOL001 C39610ID0118  
VOL001 C39610ID0120  
VOL001 C39610ID0121  
VOL001 C39610ID0122  
VOL001 C39610ID0123  
VOL001 C39610ID0124  
VOL001 C39610ID0125  
VOL001 C39610ID0127  
VOL001 C39610ID0128  
VOL001 C39610ID0129  
VOL001 C39610ID0130  
VOL001 C39610ID0132  
VOL001 C39610ID0134  
VOL001 C39610ID0136  
VOL001 C39610ID0138  
VOL001 C39610ID0185  
VOL001 C39610ID0186  
VOL001 C39610ID0187  
VOL001 C39610ID0249  
VOL001 C39610ID0250  
VOL001 C39610ID0251  
VOL001 C39610ID0263  
VOL001 C39610ID0264  
VOL001 C39610ID0334  
VOL001 C39610ID0335  
VOL001 C39610ID0336  
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VOL001 C39610ID0338  
VOL001 C39610ID0340  
VOL001 C39610ID0350  
VOL001 C39610ID0357  
VOL001 C39610ID0358  
VOL001 C39610ID0403  
  
VOL001 C39610ID0441  
VOL001 C39610ID0447  
VOL001 C39610ID0637  
VOL001 C39610ID0650  
VOL001 C39610ID0695

VOL001 C39610ID0732  
VOL001 C39610ID0826  
VOL001 C39610ID0958  
VOL001 C39610ID0960  
VOL001 C39610ID0962  
VOL001 C39610ID0963  
VOL001 C39610ID0966  
VOL001 C39610ID1017  
VOL001 C39610ID1261  
VOL001 C39610ID1390  
VOL001 C39610ID1436  
VOL001 C39610ID1443  
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VOL001 C39610ID1488  
VOL001 C39610ID1697  
VOL001 C39610ID1698  
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VOL001 C39610ID1724  
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VOL001 C39610ID1896  
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VOL001 C39610ID1900  
VOL001 C39610ID2017  
VOL001 C39610ID2018  
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VOL001 C39610ID2048  
VOL001 C39610ID2057  
VOL001 C39610ID2058  
VOL001 C39610ID2084  
VOL001 C39610ID2086  
VOL001 C39610ID2157  
VOL001 C39610ID2181  
VOL001 C39610ID2184  
VOL001 C39610ID2260  
VOL001 C39610ID2266  
VOL001 C39610ID2282  
VOL001 C39610ID2283  
VOL001 C39610ID2284  
VOL001 C39610ID2305  
VOL001 C39610ID2308  
VOL001 C39610ID2310  
VOL001 C39610ID2340  
VOL001 C39610ID2400  
VOL001 C39610ID2466  
VOL001 C39610ID2593

VOL001 C39610ID2596  
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VOL001 C39610ID3321  
VOL001 C39610ID3457  
VOL002 MAC-001-000013117  
VOL002 MAC-001-000013118  
VOL002 MAC-001-000013119  
VOL002 MAC-001-000013120  
VOL002 MAC-001-000013121  
VOL002 MAC-001-000013122  
VOL002 MAC-001-000013123  
VOL002 MAC-001-000013199

**ANNEX 2**  
**LIST OF PRYSMIAN'S NON-CONTEMPORANEOUS ATF DOCUMENTS TO BE**  
**REDESIGNATED AS NON-CONFIDENTIAL**

**VOL001**

<b>Bates / Document ID</b>
C39610ID0218

**VOL002**

<b>Bates / Document ID</b>
MAC-001-000013113
MAC-001-000013114
MAC-001-000013115
MAC-001-000013116
MAC-001-000013124
MAC-001-000013125
MAC-001-000013126
MAC-001-000013127
MAC-001-000013128
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MAC-001-000013137
MAC-001-000013138
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MAC-001-000013140
MAC-001-000013141
MAC-001-000013142

<b>Bates / Document ID</b>
MAC-001-000013143
MAC-001-000013144
MAC-001-000013145
MAC-001-000013146
MAC-001-000013147
MAC-001-000013148
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MAC-001-000013172
MAC-001-000013173

<b>Bates / Document ID</b>
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MAC-001-000013203
MAC-001-000013204
MAC-001-000013205

**ANNEX 3**  
**LIST OF PIRELLI'S NON-CONTEMPORANEOUS ATF DOCUMENTS TO BE**  
**REDESIGNATED AS NON-CONFIDENTIAL**

<b>VOL001</b>
C39610ID0727
C39610ID1183
C39610ID1184
C39610ID1193
C39610ID1194
C39610ID1205
C39610ID1223
C39610ID1225
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C39610ID1256
C39610ID1257
C39610ID1388
C39610ID1399
C39610ID1432
C39610ID1433
C39610ID2016
C39610ID2036
C39610ID2063
C39610ID2125
C39610ID2127
C39610ID2126
C39610ID2128
C39610ID2133

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C39610ID3081
C39610ID3082
C39610ID3083
C39610ID3084
C39610ID3085
C39610ID3086
C39610ID3088
C39610ID3090
C39610ID3291
C39610ID3293