

## **UK Competition Tribunal gives green light to class action seeking compensation for millions of UK electricity customers**

**03 May 2024, LONDON:** Scott + Scott UK LLP is pleased to announce that, in a judgment handed down today, the Competition and Appeal Tribunal ('CAT') has approved the opt-out collective proceedings order ('CPO') for the landmark class action lawsuit on behalf of electricity customers in England, Scotland & Wales.

The action, which is being brought by class representative Clare Spottiswood CBE, seeks to recover compensation for UK consumers after a global cartel of cable suppliers overcharged electricity network operators for power cables, which resulted in higher consumer electricity bills.

The cartel, which was operational between 1999 and 2009, was fined in 2014 by the European Commission for anti-competitive practices. This means that the liability of the defendants has already been conclusively established.

The power cable companies named as defendants are Nexans France S.A.S., Nexans S.A., NKT A/S, NKT Verwaltungs GMBH, Prysmian Cavi e Sistemi S.R.L., Prysmian S.P.A.

The CAT's certification of the claim, first filed in May 2022, means Ms Spottiswoode is authorized to pursue the claim towards trial, paving the way for compensation for over 30 million electricity consumers across England, Scotland and Wales arising from the defendants' decade-long cartel conduct.

In its decision, the CAT confirmed that the action is suitable for collective proceedings. The CAT also confirmed that the litigation funding agreement behind the claim does not constitute a damages-based agreement following the landmark ruling by the Supreme Court in PACCAR (R vs Competition Appeal Tribunal and others, 26<sup>th</sup> July 2023).

### **Clare Spottiswoode, Class Representative, said:**

*"We are delighted to have received certification from the CAT for this collective action to proceed. This is an important legal milestone toward the claim's goal of achieving justice for the millions of UK electricity customers who suffered from the damaging anticompetitive behaviour of corporates at the top of the supply chain.*

*"I am confident in the strength of this case and the CAT's ability to provide an effective collective route for consumers in the fight against competitive malpractice. It is critical that collective actions like this are brought to hold offending entities to account and allow those impacted by their actions to receive appropriate redress. Indeed, this is precisely the kind of claim the regime was designed*

*for as without it consumers would have no redress and cartelists would be able to profit unfairly from anticompetitive conduct.”*

**James Hain-Cole, Partner, Scott + Scott said:**

*“The certification of this claim by the CAT is a first step, paving the way for a full trial. The granting of the order, alongside ongoing developments in legislation addressing aspects of funding, is positive for the collective actions regime as a whole and is further evidence of the growing role of the CAT in providing an effective route for consumers to access justice.”*

**Background to the claim**

On 2 April 2014, the European Commission (EC) ruled that a number of companies (including the Defendants of this claim) operated almost-worldwide a cartel between 18 February 1999 - 28 January 2009, in the market for the supply of various high voltage and submarine power cables.

As a result of the cartel’s activity, British energy suppliers purchased high voltage power cables at an artificially inflated price. As this capital expenditure was passed onto consumers through Ofgem’s price control regime, domestic electricity customers in Great Britain paid higher electricity bills than they otherwise would have done.

This claim is based on the findings of the 2014 EC Decision, and as such will be a so-called “follow-on” action. This means that the liability of the defendants has already been conclusively established. Consequently, the focus of the Claim will be on proving that the cartel caused higher prices for high voltage cables, and that these costs were in principle passed on to consumers which constitutes the loss suffered by the Proposed Class as a result of the Cartel.

The class representative, Clare Spottiswoode CBE, has a long and distinguished career defending consumer interests and holds a deep expertise in legal and regulatory issues within the energy sector.

**The class**

Any living person (and representatives of the estates of deceased people) who on or after 1 April 2001 paid for the domestic consumption of electricity supplied via the distribution network in Great Britain is eligible for inclusion in the class.

The claim is brought on an “opt-out” basis, meaning that consumers will be automatically included in the class and eligible for compensation awarded, unless they specifically choose to opt-out. Damages sought for consumers are in the hundreds of millions of pounds overall.

For class members to register their interest, find out more information about the claim and to receive updates on its progress, please visit <https://www.homeenergyaction.co.uk/>.

## ENDS

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## NOTES TO EDITORS

### **The Competition Appeal Tribunal (CAT)**

The CAT is a specialist UK court which deals with competition law issues. It has a critical role to provide a route for affected consumers to secure redress from a cartel whose illegal price manipulation, at the expense of electricity customers in Great Britain, has already been proven.

To certify a claim as eligible for collective proceedings, the tribunal must be satisfied that the proposed class are an identifiable group of people who have faced similar issues and that its proposed representative is appropriately qualified to lead its cause.

### **Clare Spottiswoode CBE**

Clare Spottiswoode CBE has an extensive background in energy regulation and consumer redress.

From 1993-1998, she served as Director General of Ofgas, the UK gas regulator which would later merge into Ofgem. In this position she was the architect and leader of the liberalisation of the UK gas market and was awarded a CBE for its successful implementation. She is also a former member of the Independent Commission on Banking, a former member of the Payments Council and has acted as a senior adviser to HM Treasury.

Her role as class representative is to conduct the claim against the cable manufacturers on behalf of all class members, instructing the lawyers and experts, and deciding whether to

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consider any offer of settlement that the cable manufacturers may make. She is also responsible for keeping the class updated on the status and progress of the claim.

## **The team**

Scott+Scott has significant experience in prosecuting major securities, antitrust, arbitration, data privacy, and consumer actions throughout the United States and Europe. The firm represents pension funds, corporations, foundations, businesses, individuals, and other entities worldwide with offices in the US , London, Amsterdam and Berlin. For more information, visit [www.scott-scott.com](http://www.scott-scott.com)

Daniel Jowell KC of Brick Court Chambers, one of the bar's foremost competition law experts, is acting as lead counsel. Regulatory expert economist Richard Druce of NERA Economic Consulting and industry expert Antony Badger of Cornwall Insight have also been engaged to provide expert reports to inform the case.

The action is funded by Burford Capital, the largest provider of commercial legal finance in the world. Burford is publicly traded on the New York Stock Exchange and the London Stock Exchange, and works with companies and law firms around the world from its principal offices in New York, London, Chicago, Washington, DC, Singapore, Sydney and Hong Kong. For more information, please visit [www.burfordcapital.com](http://www.burfordcapital.com).