



[2013] CAT 28

**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1173/5/7/10

BETWEEN:

- 1) DEUTSCHE BAHN AG
- 2) DB NETZ AG
- 3) DB ENERGIE GMBH
- 4) DB REGIO AG
- 5) S-BAHN BERLIN GMBH
- 6) S-BAHN HAMBURG GMBH
- 7) DB REGIO NRW GMBH
- 8) DB KOMMUNIKATIONSTECHNIK GMBH
- 9) DB SCHENKER RAIL DEUTSCHLAND AG
- 10) DB BAHNBAU GRUPPE GMBH
- 11) DB FAHRZEUGINSTANDHALTUNG GMBH
- 12) DB FERNVERKEHR AG
- 13) DB SCHENKER RAIL (UK) LTD
- 14) LOADHAUL LIMITED
- 15) MAINLINE FREIGHT LIMITED
- 16) RAIL EXPRESS SYSTEMS LIMITED
- 17) ENGLISH WELSH & SCOTTISH RAILWAY INTERNATIONAL LIMITED
- 18) EMEF - EMPRESA DE MANUTENÇÃO DE EQUIPAMENTO FERROVIÁRIO SA
- 19) CP - COMBOIOS DE PORTUGAL E.P.E.
- 20) METRO DE MADRID, S.A.
- 21) ~~ANGEL TRAINS LIMITED~~
- 2122) NV NEDERLANDSE SPOORWEGEN
- 2223) NEDTRAIN B.V.
- 2324) NEDTRAIN EMATECH B.V.
- 2425) NS REIZIGERS B.V.
- 2526) DB SCHENKER RAIL NEDERLAND N.V.
- 2627) TRENITALIA, S.P.A.
- 2728) RETE FERROVIARIA ITALIANA, S.P.A.
- 2829) NORGES STATSبانER AS
- 2930) EUROMAINT RAIL AB
- 3034) GÖTEBORGS SPÅRVÄGAR AB

Claimants

-v-

- 1) MORGAN ADVANCED MATERIALS PLC (formerly MORGAN CRUCIBLE COMPANY PLC)
- 2) SCHUNK GMBH
- 3) SCHUNK KOHLENSTOFFTECHNIK GMBH
- 4) SGL CARBON SE (formerly SGL CARBON AG)
- 5) MERSEN SA (formerly LE CARBONE-LORRAINE SA)
- 6) HOFFMANN & CO ELEKTROKOHLE AG

Defendants

ORDER OF THE CHAIRMAN (UK CLAIMS DIRECTIONS)

UPON considering the Order of 29 August 2013 (the “UK Claims Order”), which gave certain directions for the future conduct of the Thirteenth to Seventeenth Claimants’ (the “UK Claimants”) claims (the “UK Claims”) against the Second to Sixth Defendants (the “Defendants”)

AND UPON the operation of the UK Claims Order being stayed by Orders of the Court of Appeal made on 16 and 18 October 2013 pending an oral hearing of the Defendants’ applications for permission to appeal the Tribunal’s Ruling of 15 August 2013 ([2013] CAT 18)

AND UPON the Court of Appeal, on 20 November 2013, handing down its judgment ([2013] EWCA Civ 1484) refusing the Defendants permission to appeal and lifting the stay imposed by its earlier Orders

AND UPON the UK Claimants, on 20 November 2013, making an application inviting the Tribunal to set the timetable for the future conduct of the UK Claims

AND HAVING CONSIDERED the Defendants’ observations, filed on 22 November 2013, on the UK Claimants’ application

IT IS ORDERED THAT:

1. Paragraphs 4 to 8 of the UK Claims Order be set aside in favour of the following case management directions
2. Each of the Defendants shall file and serve its Defence to the UK Claims by not later than 4pm on 29 November 2013
3. The UK Claimants be granted permission to file and serve a Reply to the Defences by not later than 4pm on 3 January 2014
4. A case management conference (the “CMC”) be listed on the first available date on or after 17 January 2014 with a time estimate of one day to consider the necessary directions and timetable for the further conduct of the UK Claims
5. The UK Claimants and the Defendants file a joint statement not later than two clear working days prior to the CMC listing those matters which the parties consider it appropriate to address at that hearing and briefly setting out the parties’ respective positions on those matters

6. There be liberty to apply

REASONS

The UK Claimants' application of 20 November 2013 proposed that the Defendants be required to file their Defences by not later than 29 November 2013. By their observations of 22 November 2013, the Defendants agreed to this deadline.

Pursuant to paragraph 5 of the UK Claims Order, the UK Claimants were required to file any Reply within 28 days from the last day for the filing and service of the Defences. Now that the Defences are required to be filed and served by not later than 29 November 2013, the Reply would be due on 27 December 2013. Taking account, however, of the inevitable difficulties with the availability of Counsel and other members of their legal team over the Christmas and New Year period, it is appropriate that the UK Claimants be given until 3 January 2014.

Although the UK Claimants sought a direction that the CMC listed for 17 December 2013 be held as planned, and even stated that they would be willing to commit to filing their Reply by 13 December 2013 in order to maintain that CMC date, I deemed it undesirable to accede to that. First, it seems to me undesirable for the UK Claimants, even by consent, to have only a fortnight in which to reply to three defences in these complex claims. Secondly, and even putting that to one side, filing the Reply on 13 December with the CMC listed for 17 December would afford the Defendants only a single working day in which to consider the Reply before that hearing and no time at all for the parties to discuss the issues arising, with a view to finding some common ground. By the same token, it seems to me inappropriate to hold yet another CMC in these proceedings before the pleadings on the UK Claims have closed. There may well be issues arising out of any, or all, of the pleadings, including the Reply (Mr Jon Turner QC's submission at the last CMC that the issues to be addressed are not dependent on the content of the Reply notwithstanding), and it would appear sensible to address these at a single hearing. On that basis there is no way that the 17 December CMC can be maintained and I have, therefore, directed that a CMC be listed for the first available date 14 days after the Reply is filed.

Marcus Smith QC
Chairman of the Competition Appeal Tribunal

Made: 25 November 2013
Drawn: 25 November 2013