

**IN THE COMPETITION**

Case No. 1173/5/7/10

**APPEAL TRIBUNAL**

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

29 September 2014

Before:

**MARCUS SMITH QC**

(Chairman)

**MARGOT DALY**

**DERMOT GLYNN**

Sitting as a Tribunal in England and Wales

**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~~
- (22) NV NEDERLANDSE SPOORWEGEN
- (23) NEDTRAIN B.V.
- (24) NEDTRAIN EMATECH B.V.
- (25) NS REIZIGERS B.V.
- (26) DB SCHENKER RAIL NEDERLAND N.V.
- (27) TRENITALIA, S.P.A.
- (28) RETE FERROVIARIA ITALIANA, S.P.A.
- (29) NORGES STATSANER AS
- (30) EUROMAINT RAIL AB
- (31) GÖTEBORGS SPÅRVÄGAR AB

Claimants

-v-

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

Defendants

## APPEARANCES

Ms. Sara Masters QC and Mr. Rob Williams (instructed by Hausfeld & Co LLP) appeared on behalf of the Claimants.

Mr. Matthew Weiniger QC and Ms. Kim Dietzel (Solicitor Advocate and Solicitor of Herbert Smith Freehills LLP) appeared on behalf of the Second and Third Defendants.

Mr. Mark Hoskins QC (instructed by Freshfields Bruckhaus Deringer LLP) appeared on behalf of the Fourth Defendant.

Mr. Daniel Beard QC and Ms. Sarah Ford (instructed by Hogan Lovells International LLP) appeared on behalf of Fifth Defendant.

Mr. Mark Brealey QC and Ms. Marie Demetriou QC (instructed by Clifford Chance LLP) appeared on behalf of Morgan Advanced Materials Plc.

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1 THE CHAIRMAN: Good morning, Ms Masters.

2 MS MASTERS: Good morning, Mr. Chairman. We are pleased to say that we all have smiles on  
3 our faces and we are very grateful for the time that the Tribunal has given us this morning.  
4 It has enabled us to reach an agreement in principle, both as to liability and also as to costs.  
5 We are going to need some time to formally document it. It is subject to contract and  
6 subject to various board approvals. In the light of that, the parties would ask you to adjourn  
7 this hearing to enable us to put together the formal documentation and sign off on it. We  
8 would anticipate it would take us a few weeks, and we would ask for a month, and we  
9 would wish to report back to the Tribunal in a month and hopefully then we will be able to  
10 discontinue the action.

11 THE CHAIRMAN: I assume there is a high degree of confidence that success will be achieved in  
12 this process, but you are saying that it may not be. A month seems quite a long time to  
13 achieve agreement.

14 MS MASTERS: We would be hopeful, Mr. Chairman, of doing it more quickly than that. The  
15 problem is one that we represent a number of public service train companies in different  
16 countries, some of whom's wheels move rather more slowly than others. Therefore, out of  
17 an abundance of caution we ask that that bit of the rolling stock be given more time in order  
18 to conclude the deal.

19 THE CHAIRMAN: I take it you are speaking for the serried ranks of all the ----

20 MS MASTERS: I am sure they will jump up and tell me if I am not.

21 MR. BEARD: Sir, many thanks for the short adjournment to enable this. I know it was at the last  
22 minute, and I am very grateful.

23 In relation to timing, the defendant parties do not object to having four weeks before any  
24 report to the Tribunal occurs. There is a real degree of confidence that this is going to now  
25 be resolved. The key points have been sorted out, as I understand it, and therefore it is a  
26 matter of documentation. We are sorry their rolling stock goes slowly; it is nothing to do  
27 with our carbon brushes!

28 THE CHAIRMAN: Given those indications, I do not think that we have very much choice but to  
29 accede to your request. I think what we will do, just to ensure that minds are concentrated,  
30 because I am sure all the parties are aware of the last letter that the Tribunal sent on the  
31 question of settlement and adjournments, is put in the diary for roughly a month's time a  
32 further hearing. If, contrary to all our hopes, a settlement does not emerge fully  
33 documented, this case moves ahead. I think I can say with some firmness that there will not  
34 be another month long adjournment after that. It is very much the last chance saloon.

1 Obviously the court does not want to stand in the way of settlement, because that is the most  
2 efficient way of concluding proceedings to the benefit of all, but at the same time this  
3 Tribunal wants to resolve matters without them sitting on its books indefinitely.  
4 On that basis we will adjourn for four weeks. We will look at diaries and set two further  
5 days for these matters to be aired in the future.  
6 MS MASTERS: Thank you, and I am sure that I can speak on behalf of all us before you today in  
7 thanking you for your assistance in resolving all of these matters. Thank you very much.  
8 THE CHAIRMAN: Thank you very much, Ms Masters, that is very nice to hear.  
9 Thank you all very much. We will adjourn.  
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