



COMPETITION APPEAL TRIBUNAL

**IN THE COMPETITION
APPEAL TRIBUNAL**

Case: 1076/2/5/07

**Before:
The Honourable Mr Justice Pumfrey
Peter Clayton
Professor Paul Stoneman**

B E T W E E N:

E.ON UK plc

Appellant

-v-

OFFICE OF RAIL REGULATION

Respondent

And

ENGLISH WELSH AND SCOTTISH RAILWAY LIMITED

Intervener

ORDER

UPON reading the appellant's notice of appeal;

AND UPON reading the written submissions of the parties;

AND UPON hearing counsel for the parties at a case management conference on 19 February 2007;

AND UPON the appellant agreeing to provide the Tribunal and the other parties with information relating to the onwards sale by the appellant of capacity purchased from the intervener;

AND UPON the Tribunal being assured by the parties that it has all the necessary material before it to determine the appeal and that there is no challenge by the appellant or intervener to any of the findings of fact by the respondent;

AND UPON each of the persons named in Part A of the Schedule to this Order, prior to the making of this Order, and in respect of the information mentioned in Part B of

the Schedule to this Order, having given a written undertaking to the Tribunal, in the terms of Part C of the Schedule to this Order

IT IS ORDERED THAT:

1. The intervener be granted permission to intervene in these proceedings at its own risk as to costs
2. The respondent is to serve on the appellant's solicitors and upon the intervener's solicitors an unredacted copy of the respondent's decision issued on 17 November 2006 as soon as practicable
3. The Registrar shall serve on the intervener a non-confidential version of the notice of appeal
4. The respondent file and serve the defence on the appellant and on the intervener by 5:00 p.m. on 1 March 2007
5. The intervener file and serve its statement of intervention (if so advised) by 5:00p.m. on 5 March 2007
6. The parties' counsel file and exchange skeleton arguments by 5 p.m. on 29 March 2007
7. The parties' counsel send to the Registry non-confidential electronic versions (in PDF format) of their skeleton arguments in a form suitable for immediate publication on the Tribunal's website
8. The main hearing be fixed for 19 and 20 April 2007 with a time estimate of two days
9. There shall be liberty to apply concerning confidentiality and generally.

The Honourable Mr Justice Pumfrey
Chairman of the Competition Appeal Tribunal

Made: 19 February 2007
Drawn: 2 March 2007

Schedule

Part A

For the purposes of this Order:

“**External Advisers**” is limited to the following persons save as otherwise expressly authorised by the Tribunal upon the further application of the parties:

For the appellant:

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|-------------------------------------|-----------------------------------|------------------------------------|
| Thomas Sharpe Matthew Cook | Queen’s Counsel Junior Counsel | One Essex Court One Essex Court |
| Michael Fletcher Stefan Paciorek | Solicitor Solicitor | Pinsent Masons Pinsent Masons |

For the respondent

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|---|---|--|
| Jon Turner Anneli Howard | Queen’s Counsel Junior Counsel | Monckton Chambers Monckton Chambers |
| Paula Riedel Dervla Broderick Dagmar Crabbe | Solicitor Trainee Solicitor Paralegal | Linklaters Linklaters Linklaters |

For the intervener:

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| Mark Howard Stephen Midwinter | Queen’s Counsel Junior Counsel | Brick Court Chambers Brick Court Chambers |
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Part B

“**Protected Information**” means all the confidential material obscured from the face of the decision taken by the respondent on 17 November 2006 and annexes, together with any supporting documents not in the public domain which are served with the defence and the information referred to in the fourth recital to this Order relating to the onwards sale by the appellant of capacity purchased from the intervener.

Part C

In respect of any Protected Information disclosed to them pursuant to this Order, each External Adviser mentioned in Part A of this Order undertakes that they will comply with the following requirements, that:

- i. The Protected Information will not be disclosed to any person other than the External Advisers and the Office of Rail Regulation and the Tribunal without the permission of the Tribunal;

- ii. The Protected Information will only be used for the purpose of these proceedings;
- iii. The documents containing the Protected Information are to remain in the custody of the External Advisers at all times; and
- iv. The production of further copies of the documents containing the Protected Information shall be limited to those required for the use of the External Advisers for the purposes of these proceedings; copies of the Protected Information shall be numbered and identified as being for the specific use of one of the External Advisers; any such copies and the documents containing the Protected Information will be returned to the respondent at the conclusion of the present proceedings;

Save that none of the requirements listed at paragraphs i. to iv. above shall prevent the External Advisers from disclosing to the party advised by them information which such party has already seen.