



IN THE COMPETITION
APPEAL TRIBUNAL

Case: 1105/5/7/08

BETWEEN:

- (1) FREIGHTLINER LIMITED**
- (2) FREIGHTLINER HEAVY HAUL LIMITED**

Claimants

-and-

ENGLISH WELSH & SCOTTISH RAILWAY LIMITED

Defendant

ORDER

UPON reading the written submissions of the parties

AND UPON hearing Counsel for the parties at a case management conference on 17 November 2008

IT IS ORDERED THAT:

FORUM

1. Under rule 18 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Tribunal Rules”), the proceedings be treated as proceedings in England and Wales.

DISCLOSURE OF DOCUMENTS

2. By 29 January 2009 there should be disclosure of the following specified information:
 - a. the Claimants shall disclose all of the specific documents to which the Claimants refer in the Claim Form;

- b. the Defendant shall disclose:
 - i. the confidential version of the ORR decision provided by the ORR to the Defendant;
 - ii. relevant documents from the ORR's files relating to the decision provided by the ORR to the Defendant;
 - iii. the E.ON contract, the RWE contract and the Drax contract (as defined in the Claim Form) together with all contracts, side letters, or other contractual documents containing or evidencing any amendments or extension of those agreements; and
 - iv. any agreements entered into between the Defendant and each of E.ON, RWE, and Drax since the ORR's decision was notified to the Defendant.
3. By 29 January 2009, the parties exchange lists in accordance with the principles and procedure applicable to standard disclosure set out in CPR 31 of the following documents for disclosure:
 - a. the documents on which that party relies; and
 - b. the documents which:
 - i. adversely affect it own case;
 - ii. adversely affect another party's case; or
 - iii. support another party's case
4. The parties shall indicate by 6 February 2009 which of the documents listed pursuant to (3) above they wish to receive copies. Any such copies provided to be subject to agreement to pay all reasonable costs of copying.
5. The parties shall provide copies of any documents requested pursuant to (4) above within seven days of receiving notice from the other party.
6. The Defendant having provided draft directions to the Tribunal on 12 November 2008 including a list of documents, there shall be liberty to apply in relation to any such documents as to which there remains a dispute following standard disclosure.
7. The documents to be disclosed by the parties pursuant to (2) and (3) above shall include any documents within their possession containing "specified information" within the meaning of Part 9 of the Enterprise Act 2002 and shall include in particular relevant documents on the ORR's files provided by the ORR to the Defendant.

8. The parties to the proceedings shall only use the documents disclosed in these proceedings for the purpose of these proceedings except where:
 - a. the document has been read to or by the Tribunal, or referred to, at a hearing which has been held in public;
 - b. the Tribunal gives permission; or
 - c. the party who disclosed the document and the person to whom the document belongs agree.
9. Any application for third party disclosure is to be made within four weeks of the production of copies of disclosed documents pursuant to (5) above.

WITNESS STATEMENTS

10. Signed statements of any witnesses of fact are to be filed and served by 5.00pm on 26 March 2009.
11. Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witnesses at trial, subject to each party being permitted in terms of witnesses of fact up to half an hour and in terms of expert witnesses one hour of evidence in chief to focus the Tribunal's attention on the principal issues.

EXPERT EVIDENCE

12. Signed reports of experts are to be confined to one expert for each party.
13. The Defendant is to file and serve the report of any expert on which it relies by 5.00pm on 24 April 2009.
14. The Claimant is to file and serve any additional report of the expert on which it relies by 5.00pm on 8 May 2009.
15. The experts shall hold a discussion for the purpose of:
 - a. identifying the issues, if any, between them; and
 - b. where possible, reaching agreement on those issues.
16. A meeting of both experts shall take place to consider, principally with regard to the calculation of damages, what can be agreed between them, what is not agreed and to the extent there is no agreement, the reasons for disagreement.
17. If the experts' reports cannot be agreed, the parties are to be at liberty to call expert witnesses at the trial, limited to those experts whose reports have been exchanged pursuant to paragraphs (12)-(14) above.

18. The experts shall by 22 May 2009 prepare and file a statement for the Tribunal showing:

- a. those issues on which they did agree; and
- b. those issues on which they disagree and a summary of their reasons for disagreeing.

CASE MANAGEMENT CONFERENCE

19. A further case management conference is to be listed for 10.30am on 12 January 2009.

HEARING

20. The main oral hearing in these proceedings is to be listed for 8 June 2009, with a time estimate of up to 9 days.

LIBERTY TO APPLY

21. There shall be liberty to apply.

Lord Carlile of Berriew QC
Chairman of the Competition Appeal Tribunal

Made: 17 November 2008
Drawn: 18 November 2008