



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1379/5/7/20

BETWEEN:

KERILEE INVESTMENTS LIMITED

Claimant

- v -

INTERNATIONAL TIN ASSOCIATION LTD

Defendant

ORDER

UPON the Tribunal's Order of 29 October 2021 (the "Directions Order")

AND UPON reading the Defendant's proposals for the disclosure to be provided by the Claimant, dated 11 May 2022, and the Claimant's objections thereto dated 13 June 2022

AND UPON reading the Claimant's proposals for the disclosure to be provided by the Defendant, dated 20 May 2022, and the Defendant's objections thereto dated 1 June 2022

AND UPON reading the evidence, and the proposed directions, filed by the Defendant on 17 June 2022

AND UPON reading the other documents on the Tribunal file recorded as having been read

AND UPON the parties reaching agreement in relation to directions and having agreed the terms contained in this consent order

IT IS ORDERED BY CONSENT THAT:

1. The Case Management Conference listed for 8 July 2022 is vacated.

Disclosure for the preliminary issues hearing: Claimant's disclosure

2. The Claimant shall give standard disclosure in relation to the preliminary issues listed in paragraph 7 of the Directions Order, against searches of all potentially relevant repositories, including back-ups and archives where available, and a review of all potentially relevant documents.
3. The repositories to be searched shall include:
 - (a) Hard copy documents, including any hand-written documents, including those of Mr Brian Beckett and Mrs Gillian Beckett;
 - (b) Electronic documents held on email server, including those of Mr Brian Beckett and Mrs Gillian Beckett; and
 - (c) Electronic documents held on the computer of Mr Brian Beckett, including any PC and any laptops (whether work or personal computer).
4. The documents to be disclosed should include (but are not limited to):
 - (a) All documents relating to the Claimant's actual, or potential, financing and trade in "the Minerals" (as defined in Claim §7(4)) and/or in "the Derivatives" (as defined in Claim §7(4)), originating from any country in the world. This should include:
 - (i) correspondence regarding such activities, including with suppliers, smelters/refiners, makers of intermediate metal products, makers of further processed products, other traders, and customers;
 - (ii) sale/purchase orders, including with suppliers, smelters and customers;
 - (iii) contracts and draft contracts, including with suppliers, smelters/refiners and customers;

- (iv) invoices/receipts, including with suppliers, smelters/refiners and customers;
 - (v) transport/shipping documents, including customs documents;
 - (vi) assay documents; and
 - (vii) insofar as not covered above, any document showing the nature of the product; the origin and intended destination of the product; the location of the smelter/refiner; and the intended use of the product.
- (b) Insofar as the Claimant did not engage in any trading or potential trading in the Minerals and/or the Derivatives originating from a country other than Burundi, the DRC, Rwanda or Uganda, any documents showing the reasons for that decision.
- (c) Insofar as not covered by (a) or (b) above:
- (i) All documents relating to the competitive interaction between any of the products within the definition of “the Minerals” and/or “the Derivatives”, such as documents relating to the activities of companies other than the Claimant;
 - (ii) All documents relating to purchasers distinguishing between minerals originating in Burundi, the DRC, Rwanda and Uganda from minerals originating elsewhere in the world.
- (d) All documents relating to the application of Regulation 1907/2006 (the REACH Regulation) to the Claimant’s business model, including any registration details; and any interactions with the relevant authorities and with trading partners or potential partners.
- (e) Documents showing how the Claimant demonstrates conformance with the OECD Guidance, in respect of products originating anywhere in the world, but excluding its membership discussions with ITSCI. This should include

documents showing the nature and cost of the Claimant's own alleged measures, and documents (including correspondence with, or advertising received from) any available alternatives other than ITSCI.

- (f) Documents showing the alleged difficulty in selling products which have not been through the ITSCI system.

Disclosure for the preliminary issues hearing: Defendant's disclosure

5. The Defendant shall give disclosure in relation to the preliminary issues listed in paragraph 7 of the Disclosure Order, of documents created or modified in the period 1 January 2015 to 31 December 2020, against the following searches:

- (a) The ITSCI Secretariat's area of the ITA Shared Drive using the application of the keywords listed in Annex 1 to this Order;
- (b) The repositories of Sonia Marsh using the application of the keywords listed in Annex 2 to this Order;
- (c) All potentially relevant parts of the repositories of Kay Nimmo;
- (d) Documents in the following categories:
 - (i) Documents on where tin, tantalum and tungsten miners, smelters, and downstream users are based. The Defendant reserves its right to provide information on these locations, rather than disclosure of all documents showing these locations, if it should transpire that that would be more proportionate;
 - (ii) Documents showing ITSCI's consideration of whether to offer its services in additional markets (the identities of which will be disclosed within the confidentiality ring);
 - (iii) Documents on the costs of the ITSCI programme. The Defendant reserves its right to provide information on these costs, rather than

disclosure of all documents showing these costs, if it should transpire that that would be more proportionate;

- (iv) Documents on funding for the ITSCI programme. As above, the Defendant reserves its right to provide information on this funding, rather than disclosure of all documents showing this funding, if it should transpire that that would be more proportionate; and
- (v) Documents showing interactions with RMI.

Disclosure for the preliminary issues hearing: general

- 6. The parties shall provide disclosure by list by 4pm on 25 November 2022. The parties' disclosure by list shall be accompanied by a disclosure statement in accordance with CPR Rule 31.10(5)-(7), and (9).
- 7. Requests for inspection of documents disclosed above shall be made within 7 days after the service of the lists. Copies of documents requested to be inspected shall be provided within 7 days of the making of the request.
- 8. Documents should be provided in their native electronic format. Metadata about specific electronic documents shall be made available on request.

Evidence

- 9. By 4pm on 17 February 2023, the parties shall exchange and file:
 - (a) signed statements of witnesses of fact on the issues to be considered at the preliminary issues hearing; and
 - (b) signed expert reports in the area of mineral supply chains, on the issues to be considered at the preliminary issues hearing.
- 10. By 4pm on 17 March 2023, the parties shall exchange and file signed reply witness statements, if any.

11. By 4pm on 31 March 2023, the parties shall exchange and file signed reply reports from the experts on mineral supply chains, if any.

Further matters

12. There shall be a second case management conference (“second CMC”) listed for the earliest mutually convenient date after 22 May 2023, with the following directions:
 - (a) At least 21 days prior to the second CMC, the parties shall file and serve their applications for consideration at the CMC (to the extent issues have not been resolved by consent in advance of the CMC), together with supporting evidence, and any other proposal for directions to be considered at the second CMC;
 - (b) At least 14 days prior to the second CMC, the parties shall file and serve any evidence in response; and
 - (c) At least 7 days prior to the second CMC, the parties shall file and serve skeleton arguments and an electronic bundle containing any documents necessary for the second CMC.
13. Liberty to apply.

The Hon Mr Justice Butcher
Chair of the Competition Appeal Tribunal

Made: 5 July 2022
Drawn: 5 July 2022

Annex 1

Keywords for search of the ITSCI Secretariat's area of the ITA Shared Drive

- (i) "BSP" OR "Better Sourcing Program"
- (ii) "RCS"
- (iii) "Better Mining"
- (iv) "CRAFT" OR "Code of Risk-mitigation"
- (v) "EPRM" OR "European Partnership for Responsible Minerals"
- (vi) "blockchain"
- (vii) "digital assets"
- (viii) "geotraceability"
- (ix) "self-supply" OR "self-supplied" OR "self-verification"
- (x) "independent provider" OR "alternative provider"
- (xi) "BGR" OR "Bundesanstalt für Geowissenschaften und Rohstoffe" OR "German Federal Institute for Geosciences and Natural Resources"
- (xii) "IMPACT"
- (xiii) "RMAP" OR "Responsible Minerals Assurance Program"
- (xiv) "RCM" OR "Regional Certification Mechanism"
- (xv) "ICGLR" OR "International Conference on the Great Lakes Region"
- (xvi) "PPA" OR "Public-Private Alliance"
- (xvii) "Resolve"
- (xviii) "IRMA" OR "Initiative for Responsible Mining Assurance"
- (xix) "Kumi"
- (xx) "Envirosense"
- (xxi) "TDI"
- (xxii) "Martello"
- (xxiii) "Levin"
- (xxiv) "IPIS"
- (xxv) "Responsible Trade LLC"
- (xxvi) "Fairmined"
- (xxvii) "Synergy Global"
- (xxviii) "Assent"
- (xxix) "ERM"
- (xxx) "Ulula"

- (xxxi) “Minespider”
- (xxxii) “Minexx”
- (xxxiii) “Peer Ledger”
- (xxxiv) “safesupply”
- (xxxv) “Circulator”
- (xxxvi) “SustainBlock”
- (xxxvii) “Tetra Tech”
- (xxxviii) “CBRMT” OR “Capacity Building for Responsible Minerals Trade”
- (xxxix) (“RMI” OR “Responsible Minerals Initiative”) AND “MOU”
- (xl) (“RMI” OR “Responsible Minerals Initiative”) AND “memorandum of understanding”
- (xli) (“RMI” OR “Responsible Minerals Initiative”) AND “downstream”
- (xlii) “TI-CMC”

Annex 2

Keywords for search of Sonia Marsh's repositories

- (i) "CAHRA" OR "CAHRAs"
- (ii) "conflict" AND "affected"
- (iii) "high-risk" OR "high risk"
- (iv) "red flag" OR "red flags"
- (v) "RAND"
- (vi) "OECD Guidance"
- (vii) "OECD Due Diligence" OR "OECD DD" OR "OECD DDG"
- (viii) "3T supplement"
- (ix) "five steps" OR "5 steps" OR "five step framework" OR "5 step framework"
- (x) "EU Commission"
- (xi) "EU Minerals Regulation" OR "EU Regulation"
- (xii) "Conflict Minerals Regulation" OR "CMR"
- (xiii) "RMR" or "Responsible Minerals Regulation"
- (xiv) "recommendation 2018/1149" OR "commission recommendation"
- (xv) "non-binding guidelines"
- (xvi) "ITSCI"
- (xvii) "BSP" OR "Better Sourcing Program"
- (xviii) "RCS"
- (xix) "Better Mining"
- (xx) "CRAFT" OR "Code of Risk-mitigation"
- (xxi) "EPRM" OR "European Partnership for Responsible Minerals"
- (xxii) "blockchain"
- (xxiii) "digital assets"
- (xxiv) "geotraceability"
- (xxv) "self-supply" OR "self-supplied" OR "self-verification"
- (xxvi) "independent provider" OR "alternative provider"
- (xxvii) "responsible" AND ("mineral" OR mining" OR "supply" OR "sourcing")
- (xxviii) "BGR" OR "Bundesanstalt für Geowissenschaften und Rohstoffe" OR "German Federal Institute for Geosciences and Natural Resources"
- (xxix) "IMPACT"
- (xxx) "RMAP" OR "Responsible Minerals Assurance Program"

- (xxxix) “Regional Certification Mechanism”
- (xxxii) “ICGLR” OR “International Conference on the Great Lakes Region”
- (xxxiii) “PPA” OR “Public-Private Alliance”
- (xxxiv) “Resolve”
- (xxxv) “IRMA” OR “Initiative for Responsible Mining Assurance”
- (xxxvi) (“RMI” OR “Responsible Minerals Initiative”) AND “MOU”
- (xxxvii) (“RMI” OR “Responsible Minerals Initiative”) AND “memorandum of understanding”
- (xxxviii) (“RMI” OR “Responsible Minerals Initiative”) AND “downstream”
- (xxxix) “TI-CMC”