



[2013] CAT 20

**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 STATSBANER 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 the Thirteenth to Seventeenth Claimants (the “UK Claimants”) applying on 13 June 2013 (the “Application”) to lift the stay in respect of their claims (the “UK Claims”) as against the Second to Sixth Defendants (the “Defendants”)

AND UPON the Tribunal granting the Application by its Ruling ([2013] CAT 18) dated 15 August 2013 (the “Ruling”) for the reasons given therein

AND UPON the parties having reached agreement in relation to certain case management directions for the UK Claims and having filed observations in relation to those directions on which agreement could not be reached

AND HAVING REGARD TO each of the Defendant’s applications challenging the jurisdiction of this Tribunal, which remain undetermined, and noting that the Defendants, and each of them, maintain their jurisdictional objections

AND CONSIDERING THAT for the reasons given in the Ruling, in taking the steps ordered by this Order, none of the Defendants is submitting to the jurisdiction of the Tribunal nor taking any steps in the proceedings other than in relation to the UK Claims

IT IS ORDERED THAT:

1. The UK Claimants provide to the Defendants and to the First Defendant by not later than 4pm on 30 August 2013:
 - a. a draft Re-amended Claim Form; and
 - b. a version of the draft Re-amended Claim Form with those sections relevant to the UK Claims highlighted
2. The Defendants and the First Defendant provide comments, if so advised, on the draft Re-amended Claim Form to the UK Claimants by not later than 4pm on 13 September 2013.
3. By not later than 4pm on 20 September 2013:
 - a. the UK Claimants file and serve the draft Re-amended Claim Form (including a version in the form referred to in paragraph 1(b) of this Order) in a form agreed with the Defendants and the First Defendant, in which case permission to re-amend shall be deemed granted on 23 September 2013; or
 - b. in the event that agreement cannot be reached, the UK Claimants file and serve the draft Re-amended Claim Form (including a version in the form

referred to in paragraph 1(b) of this Order) together with an agreed letter setting out the parties' respective positions on the areas of disagreement, in which case the Tribunal shall rule on whether permission to amend should be given.

4. Within 28 days of the date on which permission to re-amend is granted, each of the Defendants shall file and serve its Defence to the UK Claims.
5. The UK Claimants be granted permission to file and serve a Reply to the Defences within 28 days of the last day for the filing and service of such Defences in accordance with paragraph 4 of this Order.
6. A case management conference (the "CMC") be listed on the first available date falling no earlier than 14 days after filing and service of the UK Claimants' Reply, with a time estimate of half a day, to consider the necessary directions and timetable for the further conduct of the UK Claims.
7. The UK Claimants and the Defendants notify the Tribunal of the availability of their counsel to attend the CMC for the period 2 to 20 December 2013 by not later than 4pm on 6 September 2013.
8. The UK Claimants and the Defendants file a joint statement not later than two clear 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.
9. There be liberty to apply.

REASONS

As the Recitals to this Order note, many of the necessary case management directions were agreed between the UK Claimants and the Defendants. There were, however, three points on which agreement could not be reached.

The first area of disagreement related to the period for consideration of the draft Re-amended Claim Form by the Defendants. The UK Claimants' position was that seven days would be adequate for the Defendants to consider, and then provide comments on, the draft Re-amended Claim Form, whereas the Defendants considered that 14 days would be more appropriate. It was agreed that there should then be a seven-day period in which to seek to agree the Re-amended Claim Form. I consider that the Defendants should be afforded the extra seven days they seek. First, as the Defendants point out, they are in the process of preparing an application for permission to appeal the Ruling and, secondly, both that process and consideration of the draft Re-amended Claim Form will have to be carried out in the vacation period, when availability of counsel can cause

parties difficulties. Thirdly, it seems to me that, given the unusual course these claims have charted up to this point, it is desirable for the parties to have adequate time to carefully consider the proposed amendments and their implications. Finally, it seems to me that the addition of seven extra days is unlikely to cause any prejudice to the UK Claimants.

The second contentious issue was the period for preparation of the Defences by the Defendants. The Defendants requested that they be afforded six weeks in which to prepare their Defences, whereas the UK Claimants submitted that 28 days ought to be sufficient. The Defendants note that these proceedings relate to complex, international and multi-party claims, the complexity of which has to some extent increased following the Ruling. It is first to be noted that the period for the preparation and filing of a defence to a claim for damages stipulated by rule 37(1) of the Competition Appeal Tribunal Rules 2003 is 28 days. Claims for damages are very often complex and multi-party claims, and it must be the case that, nevertheless, 28 days was considered an appropriate period. Moreover, in this particular instance, the Defendants have been aware of the substance of the claims, subject to the proposed re-amendments, since December 2010. The Ruling has in fact narrowed the scope of the claims to which the Defendants will be required to plead by limiting matters to the UK Claims. In those circumstances I do not consider that the Defendants have shown good reason for departing from the 28-day period provided for by rule 37(1).

The final point was the period for the preparation of the reply by the UK Claimants. The UK Claimants requested that they be afforded 28 days for this process, whilst the Defendants initially proposed 21 days. The Defendants were, however, content to consent to a period of 28 days for the Reply “on the basis that each party should have the time it requires to properly prepare its pleadings” (numbered paragraph 3 of the Defendants’ letter of 28 August 2013). That phraseology may have been intended to make the Defendants’ consent conditional upon their being granted the additional two weeks for the preparation of their Defences. Whether that was the case or not, I consider 28 days to be an appropriate period for the UK Claimants to prepare their Reply for two reasons. First, as the UK Claimants point out, they will have to respond to three separate Defences. Secondly, whilst the Defendants have been aware of the substance of the UK Claimants’ claims since December 2010, and have doubtless made some enquiries in relation to them, the Defences will be the first time that the UK Claimants will have an indication of the Defendants’ positions in relation to the claims and I consider that an extra seven days for the preparation of the Reply is appropriate in those circumstances.

Marcus Smith QC
Chairman of the Competition Appeal Tribunal

Made: 29 August 2013
Drawn: 29 August 2013