



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1258/5/7/16

B E T W E E N:

UKRS TRAINING LIMITED

Claimant / Applicant

- v -

NSAR LIMITED

Defendant / Respondent

ORDER

UPON hearing Counsel for the parties at a hearing on 21 July 2016

AND UPON reading the evidence and material submitted by the parties

AND UPON the Tribunal accepting the undertakings offered to the Tribunal by the Claimant and the Defendant in the terms set out in the Schedule to this Order, subject to the reservation made by the Defendant that it may apply to the Tribunal to be released from its undertaking

IT IS ORDERED THAT:

Pleadings and preliminary issue

1. The Claimant, if so advised, file and serve a draft amended claim form and application to amend the claim form pursuant to Rule 32 of the Tribunal Rules by 5pm on 25 July 2016.
2. In the event that a draft amended claim form is filed and served pursuant to paragraph 1 above, the Defendant indicate in writing to the Tribunal by 5pm on 26 July 2016 whether it intends to dispute any allegation introduced by the proposed amendment to the claim form.

3. The wording for the preliminary issue to be determined in these proceedings is as follows:

Whether the Defendant is an “undertaking” for the purpose of s.18 of the Competition Act 1998.

4. The Defendant file and serve a defence confined to matters raised by the preliminary issue by 5pm on 12 August 2016.
5. The Claimant file and serve any reply to the defence by 5pm on 26 August 2016.

Disclosure

6. By 5pm on 26 August 2016, the Defendant disclose to the Claimant the following documents, classes of documents and information, insofar as the same are presently in its possession or control:
 - a. The agreements between the Defendant and Network Rail pursuant to which the Defendant has since 2012 carried out quality assurance on behalf of Network Rail (as referred to at paragraph 58 of the second witness statement of Mr Robertson filed on behalf of the Defendant (“NR2”));
 - b. The Defendant’s accounts for the last two years showing how income is treated and allocated;
 - c. The materials generally sent by the Defendant to parties interested in becoming a member of the Defendant;
 - d. The NTAR joint venture agreement (as referred to at paragraph 83 of NR2).
7. By 5pm on 26 August 2016, the Claimant disclose to the Defendant the following information, insofar as the same is presently in its knowledge, possession or control:
 - a. Clarification of the arrangements made by Network Rail to ensure the competence of the training schemes operated by the Claimant in the period 2010 to 2012, in particular the role carried out by Achilles (as referred to at paragraph 7 of the first witness statement of Mr Bowen filed on behalf of the Claimant).

Evidence

8. The witness statements already filed in these proceedings stand as evidence-in-chief for the preliminary issue hearing.

9. By 5pm on 9 September 2016. the parties file any supplementary witness statements and provide, insofar as not exhibited to those statements and available, copies of the following documents:
 - a. Network Rail's network licence;
 - b. Any annual report of Network Rail in the years 2015 and 2016; and
 - c. The Network Rail Framework Agreement with the Department for Transport.

Hearing

10. The hearing of the preliminary issue be listed for 6 to 7 October 2016.
11. The Claimant file agreed indexed hearing bundles (liaising in advance with the Tribunal Registry) by 5pm on 16 September 2016.
12. The parties file and serve skeleton arguments and agreed authorities bundles by 5pm on 30 September 2016.

General

13. Costs be reserved.
14. There be liberty to apply.

The Honourable Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 21 July 2016
Drawn: 27 July 2016

SCHEDULE

UNDERTAKING OF THE DEFENDANT

The Defendant undertakes pending the determination of the preliminary issue or further Order that it shall not seek to enforce the terms of the Claimant's suspension from The Inspection Framework Training Assurance Scheme as contained in the Appeal Letter dated 17 June 2016, and in order to effect this, to postpone the period of suspension so that the remainder of the period starts on the day following the determination of the preliminary issue or such other date as the Tribunal may permit.

CROSS-UNDERTAKING OF THE CLAIMANT

If the Tribunal later finds that this Order has caused loss to the Defendant or any other party served with or notified of this Order and decides that the Defendant or other party should be compensated for that loss, the Claimant will comply with any Order the Tribunal may make.