



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1340/5/7/20 (T)

BETWEEN

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Claimant

-v-

- (1) ABB LTD**
- (2) ABB POWER T&D LIMITED**
- (3) ABB LIMITED**
- (4) ABB HOLDINGS LIMITED**
- (5) ABB AB**
- (6) ABB ASEA BROWN BOVERI LTD**
- (7) ABB NORDEN HOLDING AB**
- (8) ABB AG**
- (9) ABB BETEILIGUNGSUND VERWALTUNGSGESELLSCHAFT MBH**
- (10) NKT HOLDING A/S**
- (11) NKT CABLES LIMITED**
- (12) NKT CABLES A/S**
- (13) NKT CABLES GROUP A/S**
- (13) NKT CABLES GROUP A/S**
- (14) NKT CABLES GMBH**
- (15) PRYSMIAN S.P.A**
- (16) PRYSMIAN CONSTRUCTION COMPANY LIMITED**
- (17) PRYSMIAN CABLES (2000) LIMITED**
- (18) PRYSMIAN CABLES & SYSTEMS LIMITED**
- (19) PRYSMIAN CAVI E SISTEMI SRL**
- (20) SAFRAN SA**

Defendants

ORDER

UPON the application notice filed on behalf of the Claimant on 22 July 2020

AND UPON HEARING Counsel for the Claimant (“**NGET**”), the First to Ninth Defendants (the “**ABB Defendants**”), the Tenth to Fourteenth Defendants (the “**NKT Defendants**”), the Fifteenth to Nineteenth Defendants (the “**Prysmian Defendants**”), and, the Twentieth Defendant (“**Safran**”), at a Pre-Trial Review hearing on 29-30 July 2020 (the “**PTR**”)

AND UPON READING the other documents on the Court file recorded as having been read

IT IS ORDERED THAT:

1. Any documents read to, or by, the Tribunal, or referred to by the parties’ Counsel, at the PTR, which have been designated as containing Confidential Information, under the confidentiality order of the High Court dated 27 October 2016 (“the Confidentiality Order”) shall remain subject to the protections set out in that Confidentiality Order, save that nothing read out by the parties’ Counsel during the PTR should be treated as Confidential Information.

Amendments to statements of case

2. The Claimant shall amend its Amended Particulars of Claim (i) as agreed between the parties in advance of the PTR, and (ii) to plead its case on whether, and if so the extent to which, it has passed on any loss and damage that it suffered to its customers, by 7 August 2020. As respects the amendments reflecting the substitution of the Fifth Defendant, paragraphs 2 and 3 of the Order of 17 July 2020 are varied accordingly.
3. The Defendants are permitted to amend their Defences by 4 September 2020. As respects the ABB Defendants’ amendments reflecting the substitution of the Fifth Defendant, paragraph 4 of the Order of 17 July 2020 is varied accordingly.
4. The Claimant may amend its Reply, if so advised, by 18 September 2020.

Evidence

5. The Claimant may rely on the witness statement of Donald Simpson, dated 22 July 2020.
6. The Defendants may, by 4 September 2020, file short supplementary expert reports addressing:
 - (a) the tax adjustments, if any, that should be made to an award of damages;
 - (b) any new analysis by the Claimant’s experts, contained in or annexed to the Joint Expert Statements of 20 July 2020, as the Defendants’ experts certify in their professional opinion (i) was not contained in the main reports or reply reports of the Claimant’s experts; and (ii)

there was not an adequate opportunity for the Defendants' experts to address during the experts' without prejudice discussions culminating in the Joint Expert Statements. Any report addressing such matters shall be strictly confined to matters necessary to respond to the Claimant's experts.

7. The oral evidence of the parties' experts shall be heard concurrently at trial. Following the giving of concurrent evidence the parties will be permitted to engage in clarificatory cross-examination of the other parties' experts, if and insofar as appropriate. By 11 September 2020, the parties shall use their best endeavours to agree and file a form of Protocol on the Hearing of Concurrent Evidence, and Annex, such Annex not to exceed 10 pages. The final form of the Protocol and the Annex will be subject to approval by the Tribunal to be given on the papers.

Litigation timetable

8. By 14 August 2020, the parties shall file a trial timetable. The parties shall use best endeavours to agree that timetable. Any disputes shall be resolved on the papers.
9. By 11 September 2020, the parties shall confirm the names of the witnesses they wish to call for cross-examination.
10. By 25 September 2020, the parties shall agree the trial bundle index. No further changes to the pagination of the trial bundle may be made after this date.
11. By 12 October 2020:
 - (a) the Claimant shall file its skeleton argument. The skeleton may not exceed 100 pages in length; and
 - (b) the parties shall file an agreed *dramatis personae*.
12. By 19 October 2020:
 - (a) the Defendants shall file their skeleton arguments. Their skeletons may not exceed 75 pages in length, per Defendant group; and
 - (b) the parties shall file an agreed reading list.

13. By 22 October 2020 the parties shall provide the Tribunal with hard copies of the documents on the agreed reading list.
14. A further PTR shall be held on 23 October 2020, with a time estimate of 1 day.

Further matters

15. Liberty to apply.
16. The costs of and occasioned by the amendments to NGET's Particulars of Claim and the amendments to the Defendants' Defences (save for the ABB Defendants' amendments in relation to the substitution of the Fifth Defendant), shall be costs in the case.
17. All costs of the PTR shall be costs in the case.

Mr Justice Trower
Chairman of the Competition Appeal Tribunal

Made: 29-30 July 2020
Drawn: 20 August 2020