



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1379/5/7/20

BETWEEN:

**KERILEE INVESTMENTS LIMITED**

Claimant

- v -

**INTERNATIONAL TIN ASSOCIATION LTD**

Defendant

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**ORDER**

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**UPON READING** the Defendant's applications of 20 October 2021 for (1) security for costs ("**Security for Costs Application**"), and (2) interim payment on account of the Defendant's costs under the Tribunal's Order dated 26 July 2021 ("**Payment on Account Application**"), and the supporting evidence and the documents enclosed therewith;

**AND UPON HEARING** Laura Elizabeth John and Jack Williams for the Defendant, and Brian Kennelly QC and Timothy Parker for the Claimant, at a Case Management Conference on 29 October 2021;

**AND UPON READING** the other documents on the Tribunal file recorded as having been read;

## **IT IS ORDERED THAT:**

### **Forum**

1. Pursuant to Rules 18 and 52 of the Tribunal Rules, the proceedings shall be treated as proceedings in England and Wales.

### **Security for Costs Application**

2. The Security for Costs Application shall be heard on 17 December 2021 at 10.30 a.m. (time estimate: half a day), before Mr Justice Butcher, Mr Peter Anderson, and Mr Simon Holmes, with skeleton arguments filed and served by 4 p.m. on 10 December 2021.
3. The Claimant shall file and serve any evidence in response to the Security for Costs Application (“**the Claimant’s evidence**”), if so advised, by 4 p.m. on 26 November 2021.
4. The Defendant shall file and serve any evidence in response to the Claimant’s evidence, if so advised, by 4 p.m. on 6 December 2021.
5. Costs of the Security for Costs Application are reserved until the determination of that application.

### **Payment on Account Application**

6. The Claimant shall, by 4 p.m. on 30 November 2021, make a payment on account in the sum of £40,000 in respect of the costs awarded to the Defendant pursuant to paragraph 4 of the Tribunal’s order of 26 July 2021, pending detailed assessment.

### **Preliminary issues hearing**

7. There shall be a hearing of the following preliminary issues:
  1. What are the relevant markets for the purposes of these proceedings? In particular:
    - a) Is there a single product market which covers the entire supply chain for all three of the minerals tin, tantalum and tungsten collectively,

originating in Burundi, the DRC, Rwanda and Uganda, as alleged in Amended Claim §§27-28? Or are there separate markets as alleged in Defence §35 for at least the following levels of the supply chain, for each of tin, tantalum and tungsten separately, and irrespective of their country of origin:

- i. mining and processing of ores and/or concentrates;
  - ii. exports of concentrates for smelting or other equivalent first stage production processes;
  - iii. purchasing for further processing and/or transformation and/or use any of the metals and/or intermediates and/or metals products (as relevant for each mineral); and/or
  - iv. purchasing any of the further converted or transformed products downstream?
- b) What is the geographic scope of the market(s) identified in (a) above? Which, if any, include the UK and/or the EU?
- c) Is there a single market for services of the sort supplied by the Defendant, which includes the supply of services to undertakings throughout the entire supply chain for tin, tantalum and tungsten collectively, as alleged by the Claimant in Amended Claim §30? Or is there a separate market complementary to each of the mining and processing market(s) and the export market(s), as alleged by the Defendant in Amended Defence §40?
- d) What is the geographic scope of the market(s) identified in (c) above? Which, if any, include the UK and/or the EU?
2. If the Defendant were to have engaged in the putative conduct alleged in the Amended Claim, would the market affected or likely to be affected by that

conduct be in the UK, for the purposes of English law being applicable under Article 6(3)(a) of Regulation 864/2007 (“**Rome II**”)?

8. The parties have permission to rely on expert evidence in the areas of economics, and the minerals supply chains, for the purposes of the preliminary issues hearing.

**Directions to the hearing of the preliminary issues**

9. The parties shall use best endeavours to agree directions for the hearing of the preliminary issues in accordance with paragraphs 7 and 8 above. The Tribunal shall consider such matters at the hearing listed in paragraph 2 above.

**Further matters**

10. The proceedings are stayed until the determination of the Security for Costs Application with the exception of (a) the Security for Costs Application, and (b) the directions in paragraphs 2-6 and 9 above.
11. Save as provided for above, the costs of the case management conference shall be costs in the case.
12. Liberty to apply.

**The Hon Mr Justice Butcher**  
Chairman

**Peter Anderson**

**Simon Holmes**

Made: 29 October 2021  
Drawn: 3 November 2021