



[2014] CAT 15

**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1173/5/7/10

B E T W E E N:

- 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) DB SCHENKER RAIL INTERNATIONAL LIMITED (FORMERLY
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~~
- 22) NV NEDERLANDSE SPOORWEGEN
- 23) NEDTRAIN B.V.
- 24) NEDTRAIN EMATECH B.V.
- 25) NS REIZIGERS B.V.
- 26) DB SCHENKER RAIL NEDERLAND N.V.
- 27) TRENITALIA, S.P.A.
- 28) RETE FERROVIARIA ITALIANA, S.P.A.
- 29) NORGES STATSANER AS
- 30) EUROMAINT RAIL AB
- 31) 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) HOFFMAN & CO. ELEKTROKOHLE AG~~

Defendants

**ORDER OF THE CHAIRMAN
(NON-PARTY DISCLOSURE APPLICATION)**

UPON the 13th to the 17th Claimants (“the UK Claimants”) having made an application for non-party disclosure from Morgan Advanced Materials Plc (“Morgan”) (“the Non-Party Disclosure Application”)

AND UPON the Tribunal listing a hearing and case management conference for 29 September 2014 with a time estimate for two days (“the Hearing”)

AND UPON the Tribunal having included in the draft agenda for the Hearing consideration of the Non-Party Disclosure Application

AND UPON the 2nd and 3rd Defendants, the 4th Defendant and the 5th Defendant (“the Defendants”) seeking permission from the Tribunal to issue claims for contribution against Morgan pursuant to rule 38(1)(b) of the Competition Appeal Tribunal Rules (S.I. 2003 / 1372) (“the Tribunal Rules”) (“the Permission Applications”)

AND UPON the UK Claimants requesting that consideration of the Non-Party Disclosure Application be postponed until the Tribunal has ruled on the Permission Applications

AND UPON considering the Defendants’ observations on the UK Claimants’ request to postpone the hearing of the Non-Party Disclosure Application, as well as further submissions from the UK Claimants

AND HAVING REGARD TO the Tribunal’s case management powers under rule 19(1) of the Competition Appeal Tribunal Rules (S.I. No. 1372 of 2003)

IT IS ORDERED THAT:

1. The Non-Party Disclosure Application be considered in substance at the Hearing

2. The parties submit any written representations on the Non-Party Disclosure Application in their skeleton arguments to be filed with the Tribunal by 4pm on 24 September 2014

REASONS

1. The UK Claimants request that the hearing of the Non-Party Disclosure Application be postponed until the Tribunal has ruled on the Permission Applications. If the Permission Applications are granted, Morgan will no longer be a non-party to the proceedings, and the UK Claimants submit that this would have a material effect on their ability to access materials currently solely in the hands of Morgan through the process of disclosure. This is because, as a party to the contribution claims, Morgan would be required to give disclosure, which would include most if not all the information and documents which the UK Claimants have requested in the Non-Party Disclosure Application. In such a scenario, the UK Claimants say that the Non-Party Disclosure Application may be rendered largely superfluous. The UK Claimants further submit that they are anxious to avoid incurring costs in relation an application which may prove unnecessary in the event that the Tribunal grants the Permission Applications.
2. The Defendants respond that the UK Claimants' request should be denied. They submit that in the event that the Tribunal grants the Permission Applications, Morgan will become a defendant to those claims and its obligation to give disclosure (absent any other order from the Tribunal) will therefore relate to those contribution claims. If Morgan is required to give disclosure in relation to the UK Claimants' damages claims this will remain disclosure by a non-party. Disclosure in these two contexts will not be the same. The Defendants submit that if disclosure is staggered then, logically, disclosure in the damages claims should come first.
3. In reply, the UK Claimants submit that there would be significant overlap in the scope of disclosure in respect of the damages claims and the contribution claims; they reiterated that in light of this the most sensible course of action would be for

the Tribunal to first rule on the Permission Application since this would be likely to either substantially reduce the scope of the Non-Party Disclosure Application or render it entirely unnecessary.

4. Having considered these representations, the Tribunal has decided that it will hear the Non-Party Disclosure Application in substance at the Hearing. The Tribunal considers that this approach is in accordance with its objective of dealing with cases justly, expeditiously and economically pursuant to rule 19(1) of the Tribunal Rules.
5. In particular, this course enables both the Permission Applications and the Non-Party Disclosure Application to be heard, if not determined, in a single hearing, thereby obviating the need for the parties to prepare for and attend at two, distinct, hearings. The Tribunal is conscious that while the Tribunal's decision on the Permission Applications may be determinative of the Non-Party Disclosure Application *if* the Permission Applications succeed, that will not be the case if the Permission Applications do not succeed. In the latter instance, a separate application for non-party disclosure would have to be made at a later date, incurring unnecessary costs and delaying the timetable to trial.
6. For the above reasons, the Tribunal will hear submissions on the Non-Party Disclosure Application at the Hearing.

Marcus Smith Q.C.
Chairman of the Competition Appeal Tribunal

Made: 9 September 2014
Drawn: 9 September 2014