



[2013] CAT 23

**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**

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**ORDER OF THE CHAIRMAN (PERMISSION TO RE-AMEND)**

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**UPON** the Tribunal handing down its Ruling of 15 August 2013 ([2013] CAT 18, the “Ruling”), which lifted the stay over the claims brought by the 13<sup>th</sup>-17<sup>th</sup> Claimants (the “UK Claimants”) against the 2<sup>nd</sup>-6<sup>th</sup> Defendants

**AND UPON** the Chairman of the Tribunal making an Order dated 29 August 2013 ([2013] CAT 20, the “UK Claims Order”) giving certain case management directions in relation to the UK Claimants’ claims

**AND UPON** the Claimants filing and serving a draft Re-amended Claim Form, together with an application for permission to re-amend the Claim Form on 20 September 2013, in accordance with paragraph 3(b) of the UK Claims Order

**AND UPON** the First Defendant indicating that, without prejudice to the stay of proceedings against it pending the judgment of the Supreme Court, it had no comments on the proposed amendments contained in the draft Re-amended Claim Form

**AND UPON** the Second to Fourth and the Sixth Defendants consenting to the proposed amendments contained in the draft Re-amended Claim Form on the basis that such consent does not amount to a submission to the jurisdiction or entering an appearance for the purposes of Article 24 of Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

**AND CONSIDERING** that the Fifth Defendant has declined to either provide comments on, or consent to, the draft Re-amended Claim Form, notwithstanding the terms of the UK Claims Order

**AND HAVING REGARD TO** rule 34 of the Tribunal Rules 2003 (S.I. 1372/2003)

**IT IS ORDERED THAT:**

1. The Claimants be granted permission to re-amend the Claim Form in the form of the draft Re-amended Claim Form filed and served on 20 September 2013
2. The Claimants:
  - a. file one original and ten copies of each of the Re-amended Claim Form and the version of the Re-amended Claim Form with those sections relevant to the UK Claimants’ claims highlighted; and

- b. serve one copy of each of the documents referred to in subparagraph a. above on each of the Defendants,

by not later than 4pm on 27 September 2013

3. There be liberty to apply

## **REASONS**

1. The Tribunal has considered the draft Re-amended Claim Form filed by the Claimants and is unanimously of the view that permission to re-amend ought to be granted. The Tribunal notes that each of the Defendants, other than the Fifth Defendant, has given its consent to, or indicated that it had no comments on, the draft Re-amended Claim Form, subject to the reservations noted in the Recitals to this Order. Had the Fifth Defendant similarly given its consent then, pursuant to rule 34(a) of the Tribunal Rules, the permission of the Tribunal would not have been required to re-amend.
2. In the circumstances, however, the Fifth Defendant indicated to the Tribunal by letter dated 13 September 2013 that it would not comply with paragraph 2 of the UK Claims Order on the basis that it considered that there was a risk that doing so would amount to a submission to the jurisdiction within the meaning of Article 24 of Regulation 44/2001, the terms of the Ruling, the UK Claims Order and certain correspondence between the Fifth Defendant and the Tribunal notwithstanding. The Fifth Defendant has therefore declined to take an active part in this process.
3. Having regard to (i) the terms of draft Re-amended Claim Form, (ii) the consents of each of the Defendants other than the Fifth Defendant and (iii) the fact that the Fifth Defendant, despite the terms of the UK Claims Order, has decided not to avail itself of the opportunity to address any substantive concerns it may have regarding the draft Re-amended Claim Form, the Tribunal is of the view that it is appropriate in all the circumstances to grant permission to re-amend the Claim Form.
4. The timetable for the filing of further pleadings in this matter, as set out in the UK Claims Order, therefore takes effect from the date of this Order.