



Neutral citation [2012] CAT 24

**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~~
- 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 STATSBANER AS
- 30) EUROMAINT RAIL AB
- 31) GÖTEBORGS SPÅRVÄGAR AB

**Claimants**

-v-

- 1) MORGAN CRUCIBLE COMPANY PLC
- 2) SCHUNK GMBH
- 3) SCHUNK KOHLENSTOFFTECHNIK GMBH
- 4) SGL CARBON AG
- 5) MERSEN SA (FORMERLY LE CARBONE-LORRAINE SA)
- 6) HOFFMAN & CO. ELEKTROKOHLE AG

**Defendants**

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**ORDER OF THE CHAIRMAN (EXTENDING STAY TO PROCEEDINGS)**

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**UPON** reading the Order of the Chairman dated 26 July 2011 staying the claims pending the determination by the Court of Appeal of the Claimants' appeal against the Tribunal's judgment of 25 May 2011 ("the May Judgment")

**AND UPON** the Court of Appeal allowing the Claimants' appeal against the May Judgment by its judgment of 31 July 2012 ("the July Judgment")

**AND UPON** the Tribunal writing to the parties on 9 August 2012 to seek their observations on the appropriate next steps in these proceedings

**AND UPON** the First Defendant writing to the Tribunal on 24 August 2012 to inform the Tribunal of its intention to apply to the Supreme Court for permission to appeal the July Judgment ("the Permission Application")

**AND UPON** reading the parties' written observations on the appropriate next steps in these proceedings

**IT IS ORDERED THAT:**

1. The claims be stayed until:
  - a. if the Permission Application is refused, five working days after the Supreme Court determines the Permission Application
  - b. if the Permission Application is granted, five working days after the Supreme Court hands down judgment in the appeal
2. There be liberty to apply

**REASONS**

1. Although a further stay to these proceedings inevitably delays the progress of these claims before the Tribunal, the Tribunal considers that a continued stay is necessary and appropriate in circumstances where the First Defendant continues to seek (before the Supreme Court) the striking-out of the claims against it, and where the other Defendants' challenges are said to be conditional on the outcome of that application.

2. In the event that the Permission Application is refused, the Claimants will have only been subjected to a small further delay, and the Tribunal can thereafter move expeditiously to hear the claims. In the event that the Permission Application is granted, the Tribunal would, in any event, have no option but to continue the stay, as the Supreme Court would have identified a serious point of law to be tried.
  
3. The Tribunal considers that any prejudice to the Claimants in this regard is capable of being compensated in interest, and is not such as to outweigh the potential prejudice to the Defendants of requiring them to take steps in the Tribunal proceedings pending the outcome of the Supreme Court proceedings, which may cause them to incur unnecessary costs and carries the risk of prejudicing any challenge they may wish to make to the Tribunal's jurisdiction to hear the claims.

**Marcus Smith QC**  
Chairman of the Competition Appeal Tribunal

Made: 13 September 2012  
Drawn: 13 September 2012