



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1533/5/7/2022

BETWEEN:

COMMERCIAL BUYERS GROUP LIMITED
(formerly known as CBG LIMITED)

Claimant

- v -

- (1) ASSOCIATED LEAD MILLS LIMITED**
- (2) ROYSTON SHEET LEAD LIMITED**
(formerly known as JAMESTOWN METALS LIMITED)
- (3) INTERNATIONAL INDUSTRIAL METALS LIMITED**
(in liquidation)
- (4) H.J. ENTHOVEN LIMITED**
(trading as BLM BRITISH LEAD)
- (5) ECO-BAT TECHNOLOGIES LIMITED**

Defendants

ORDER (CASE MANAGEMENT CONFERENCE DIRECTIONS)

UPON the parties agreeing that the application of the Claimant for the proceedings to be subject to the fast-track procedure be withdrawn, on the basis that there be provisions as to costs budgeting and a streamlined process to the substantive hearing made herein

AND UPON the parties having produced Redfern Schedules of the documents or categories of documents which they propose to disclose to the other parties, and as amended under direction of the Tribunal

AND UPON hearing the First/Second and Fourth/Fifth Defendants' applications dated 22 and 21 March, respectively, for orders permitting disclosure of the CMA's case file in CMA Case 50477 (the "**CMA Case File**") and the confidential version of the CMA's decision in Case 50477 ('Roofing Materials') dated 4 November 2020 (the "**Confidential Decision**") to their current solicitors for the purposes of these proceedings, including disclosure of the relevant parts of the CMA Case File and Confidential Decision into the confidentiality ring

AND UPON hearing counsel for the Claimant, First/Second Defendants and Fourth/Fifth Defendants at a case management conference on 23 March 2023

IT IS ORDERED THAT:

Forum

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

Disclosure of the Confidential Decision and CMA Case File

2. Following the date of this Order:
 - (a) Subject to the other relevant provisions in this Order, the First/Second and Fourth/Fifth Defendants shall disclose the Confidential Decision and the relevant parts of the Case File Documents to the other parties pursuant to the provisions of the Confidentiality Ring in accordance with the provisions of this Order relating to disclosure and the Confidentiality Ring Order to be made separately;
 - (b) The First/Second Defendants and the Fourth/Fifth Defendants shall write to the CMA notifying the CMA of the prospective disclosure and or use by the parties of the information ordered to be disclosed as per paragraph (a) pursuant to this Order.

(c) With a view to identifying relevant documents or parts thereof to be disclosed in these proceedings, in advance of disclosure into the Confidentiality Ring:

(i) the First/Second Defendants shall instruct their former solicitors to disclose copies of (1) the Confidential Decision and (2) any documents in their possession which formed part of the CMA's Case File to Hill Dickinson LLP, and

(ii) the Fourth/Fifth Defendants shall provide the Confidential Decision and Case File Documents to White & Case LLP, and

documents not identified as relevant will not be disclosed outside the First/Second and Fourth/Fifth Defendants and their retained counsel.

For the avoidance of doubt, where a document relates to the October 2015 Infringement but only in part, the whole document may be disclosed without redaction of irrelevant material.

(d) The First, Second, Fourth, and Fifth Defendants must withhold from disclosure and inspection any document which is a settlement submission which has not been withdrawn or which is a leniency statement, whether or not it has been withdrawn.

Cost Budgeting

3. By 4pm on 14 April 2023, each party is to provide its proposed costs budget, broken down by phase of activity in the litigation, to the other parties.
4. By 4pm on 28 April 2023, each party is to provide its comments on the other's costs budget to the other parties.
5. By 4pm on 12 May 2023, the parties are to provide their respective budgets to the Tribunal for approval and may refer any observations on any party's budget to the Tribunal in writing, which the Tribunal may determine on papers or by hearing.

6. After the budgets have approved by the Tribunal:
 - (a) Each party is to notify the other parties and the Tribunal promptly if its own budget for any phase is likely to be exceeded.
 - (b) There is to be a (rebuttable) presumption that, if costs are awarded on the standard basis, costs in excess of the approved budget (taking account of any revisions approved by the Tribunal) will not be recoverable.

RFI, Statements of case and Schedule in relation to the Confidential Decision

7. By 4pm on 22 May 2023, each party is to serve on the other parties any requests for further information.
8. By 4pm on 5 June 2023:
 - (a) each party is to respond to any requests for further information served under paragraph 7 above; and
 - (b) the Defendants are to serve any proposed amended defences on the Claimant.
9. By 4pm on 12 June 2023, the Claimant is to serve any proposed amended reply on the Defendants.
10. By 4pm on the day that is 14 days before the Second CMC to be listed by the Tribunal, the First/Second Defendants and Fourth/Fifth Defendants shall file and serve schedules setting out, by reference to each paragraph of the Confidential Decision referred to in the Tribunal's letter dated 20 March 2023 whether they accept that paragraph as binding in these proceedings and, if not, the basis on which they do not so accept.
11. The Defendants are at liberty to write to the Claimant and enquire whether the Claimant disputes particular paragraphs of the Decision, no later than 28 days before the Second CMC. Following any such request, the Claimant shall file and serve a schedule setting out, by reference to the relevant paragraphs, whether it accepts each paragraph and, if not, the basis on which it does not do so, no later than 14 days before the Second CMC.

Disclosure

12. By 4pm on 30 June 2023, each party is to give disclosure by list of the documents or categories of documents identified in its approved Redfern Schedule. Such disclosure shall be accompanied by a disclosure statement by an appropriate person which shall (a) set out the extent of the search that has been made in order to locate the documents ordered to be disclosed, (b) specify the manner in which the search has been limited on reasonableness and proportionality grounds and why, and (c) certify to the best of their knowledge and belief that the disclosure ordered has been provided.
13. By 4pm on 7 July 2023, each party is to specify which of the documents disclosed under paragraph 12 above it wishes to be produced by the other party.
14. By 4pm on 25 August 2023, each party is to produce the documents specified under paragraph 13 above.

List of issues

15. By 4pm on 16 June 2023, the parties are to serve on each other and file at the Tribunal a list of:
 - (a) which factual witnesses that party proposes to call to give evidence; and
 - (b) the pleaded issues in respect of which it is proposed that each witness will give evidence.
16. The parties are to endeavour to agree a list of issues, by reference to the pleadings, on which the parties propose their experts should give evidence.
17. By 4pm on 30 June 2023 the parties are to file at the Tribunal the list of issues referred to in paragraph 15 above, identifying any dispute between the parties about the content of that list.

18. The contents of that list of issues shall be kept under review by the parties and shall be amended in the light of the parties' respective factual and expert evidence in advance of trial.

Witness statements

19. By 4pm on 13 October 2023, each party is to serve on the others a witness statement from each witness whom the serving party intends to call to give evidence at trial, in accordance with the list of issues prepared for that witness under paragraph 15 above and any subsequent direction of the Tribunal. Each party may call as a witness at trial any witness whose witness statement has been served in accordance with this direction.

Expert evidence

20. By 4pm on 3 November 2023, the parties are to serve on each other any expert report confined to the issues in respect of which permission has been given to that party.
21. By 4pm on 1 December 2023, the parties are to serve on each other any expert report in reply in relation to the issues in respect of which permission has been given.
22. By 12 January 2024, the experts shall meet for the purpose of producing a joint statement on matters in respect of which they are agreed and matters in respect of which they are not agreed with concise reasons for any disagreement.
23. By 4pm on 19 January 2024, the experts' joint statement shall be filed at the Tribunal.

Pre-Trial

24. By 4pm on 26 February 2024, the Claimant shall provide a draft index to the trial bundle to the Defendants for agreement.
25. By 4pm on 11 March 2024, the Defendants shall indicate to the Claimant whether it agrees with the draft index provided under paragraph 24 above and state any changes to the index that it seeks (identifying by reference number or equivalent any documents sought to be included or excluded).

26. By 4pm on 26 March 2024, the Claimant shall provide to the Defendants and lodge at the Tribunal an electronic copy of the trial bundle.
27. Skeleton Arguments for trial shall be filed and served as follows:
 - (a) for the Claimant, by 4pm on 30 May 2024;
 - (b) for the Defendants, by 4pm on 3 June 2024.
28. By 4pm two clear working days before the first day of trial, the Claimant shall lodge at the Tribunal an electronic copy of the consolidated authorities bundle.

Protection of Third Parties' Confidentiality

29. By 4pm on 9 June 2023, the Defendants shall write to all third parties whose documents fall to be disclosed pursuant to paragraphs 12 to 14 ("relevant third parties"), providing them with copies of this Order and the Confidentiality Ring Order, and giving notice that:
 - (a) the Defendants have been ordered to disclose by 30 June 2023 documents from the Confidential Decision and documents from the CMA Case File that are relevant to the issues in these proceedings which may include documents belonging to and/or information confidential to the relevant third party;
 - (b) if the relevant third party has concerns that this Order and/or the Confidentiality Ring Order does not provide adequate protection for their confidential information, or otherwise objects to their confidential information being disclosed pursuant to this Order, then following the giving of at least 5 working days' notice to the Defendants setting out their concerns, they may make an application to the Tribunal in accordance with paragraph 30.
30. Any relevant third party may apply to the Tribunal to vary (to the extent necessary) this Order and/or the Confidentiality Ring Order with a view to protecting their confidential information. Such application(s) will be:

- (a) filed with the Tribunal Registry by 4pm on 23 June 2023;
- (b) served at the same time on the Claimants and the Defendants;
- (c) accompanied by a reasoned explanation of the application to vary (to the extent necessary) this Order or the Confidentiality Ring Order together with any evidence relied on; and
- (d) at the applicant's risk as to costs if the application is unsuccessful.

Miscellaneous

- 31. Costs in the case.
- 32. There shall be liberty to apply.

Hodge Malek KC
Chair of the Competition Appeal Tribunal

Made: 31 March 2023
Drawn: 31 March 2023