

IN THE HIGH COURT OF JUSTICE  
THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF:

NORTEL GMBH

No. 542 of 2009 / CR-2009-000033

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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NINETEENTH WITNESS  
STATEMENT OF  
STEPHEN JOHN HARRIS

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I, **STEPHEN JOHN HARRIS** of Ernst & Young LLP, 1 More London Place, London SE1 2AF, **DO STATE** as follows:

**INTRODUCTION**

1. I am a licensed insolvency practitioner and an Associate Partner in the firm of Ernst & Young LLP ("**EY**"). I was appointed as a Joint Administrator of Nortel GmbH (the "**Company**" or "**Nortel Germany**") on 14 January 2009 together with Alan Robert Bloom, Alan Michael Hudson and Christopher John Wilkinson Hill of EY pursuant to the Order of Mr Justice Blackburne. A copy of the Order of Mr Justice Blackburne is at **[1/1/1]** of SJH19.
2. In 2017, Mr Hill ceased to practice as an insolvency practitioner and on 11 September 2017 gave notice that he was to resign as a joint administrator of the Company. Mr Hill formally resigned as a joint administrator on 20 September 2017 and notice of his resignation is exhibited at **[1/2/10]** of SJH19.
3. Where I use the term "**Joint Administrators**" in relation to matters or events before 20 September 2017, I am referring collectively to myself, Mr Bloom, Mr Hudson and Mr Hill. Where I use this term in relation to matters or events on or after 20 September 2017, I am referring collectively to myself, Mr Bloom and Mr Hudson.
4. The Company was also subject to a company voluntary arrangement ("**CVA**"), I was appointed as a supervisor of the CVA of the Company, together with Mr Bloom, Mr Hudson and Ms Hewitt-Schembri of EY. Ms Hewitt-Schembri resigned as a supervisor on 17 July

2019 and her resignation became effective on 14 August 2019. Notice of her resignation is exhibited at [1/3/11] of SJH19.

5. Where I use the term “**Supervisors**” in relation to matters or events before 14 August 2019 I am referring collectively to myself, Mr Bloom, Mr Hudson and Ms Hewitt-Schembri. Where I use this term in relation to matters or events on or after 14 August 2019, I am referring collectively to myself, Mr Bloom and Mr Hudson. Where I use the term “**Nominees**” I am referring collectively to myself, Mr Bloom, Mr Hudson and Ms Hewitt-Schembri during the period of time before the CVA was approved.
6. This witness statement has been prepared over the telephone and by exchange of drafts by email with the assistance of Herbert Smith Freehills LLP (the Joint Administrators' English law legal advisers) (“**HSF**”), the relevant EY staff, and the relevant local legal and tax advisers. Save where I indicate to the contrary, the facts contained in this witness statement are within my own knowledge and are true. Where the facts stated are not within my own knowledge, I have identified my sources of information and/or belief. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.
7. Nothing in this witness statement is intended, nor should be taken, as a waiver of privilege in relation to matters dealt with in this witness statement.
8. I make reference to my eighteenth witness statement dated 7 April 2020 (“**Harris 18**”) and the exhibit marked “**SJH18**”, which are in support of the applications by the Joint Administrators currently before the Court in respect of three other companies in the Nortel EMEA group. Capitalised words and phrases used in the present statement shall, unless otherwise defined herein, have the same meaning as in Harris 18. This separate statement has been prepared in respect of Nortel Germany due to the following reasons:
  - 8.1 Nortel Germany has certain unique features as compared to the other three entities described in Harris 18. These unique features are explained below at paragraphs 41 to 47. The work undertaken in Nortel Germany is more complex and I thought that it would be appropriate to set out the work undertaken and the fees incurred in respect of Nortel Germany in this separate statement.
  - 8.2 The drafting of Harris 18 had been fairly advanced since the end of 2019 and it was thought that preparing a new, stand-alone statement in respect of Harris 19 would be simpler and more cost-efficient than adding the relevant details in relation to Nortel Germany to Harris 18.
9. There is now produced and shown to me an electronic bundle of documents marked “**SJH19**” to which I shall refer in this witness statement. References in this document to exhibits in SJH18 and SJH19 are in the form [**Volume/Tab/Page**]. Tab 26 (pages 416 to 453) of SJH19

includes a number of schedules (the “**Schedules**”) setting out the detail of the Joint Administrators' and Supervisors' remuneration for which the Court's approval is sought. The Schedules are explained in detail at Section N (*An explanation of the Schedules*) below.

## **STRUCTURE OF THIS WITNESS STATEMENT**

10. This witness statement is divided into the following sections:
- (A) OVERVIEW – page 3
  - (B) BACKGROUND AND PURPOSE OF THE ADMINISTRATION – page 5
  - (C) REPORTING PROGRESS IN THE ADMINISTRATION – page 5
  - (D) PROGRESS IN THE ADMINISTRATION – page 6
  - (E) EXITING THE ADMINISTRATION – page 10
  - (F) NOTICE OF THE APPLICATION – page 12
  - (G) DETAILS OF SUBSEQUENT DISSOLUTION – page 13
  - (H) DISCHARGE OF LIABILITY – page 14
  - (I) THE REASONS FOR THE REMUNERATION APPLICATION – page 14
  - (J) NOTICE OF REMUNERATION APPLICATION AND ENGAGEMENT WITH CREDITORS – page 16
  - (K) COMMON ASPECTS AND PROCESSES APPLIED TO REMUNERATION – page 17
  - (L) CHARGE OUT RATES – page 18
  - (M) SUMMARY OF REMUNERATION AND COMPARISONS – page 19
  - (N) AN EXPLANATION OF THE SCHEDULES – page 21
  - (O) DETAIL OF REMUNERATION – page 22
  - (P) RELIEF SOUGHT – page 26
  - (Q) CONCLUSION – page 27

### **A. OVERVIEW**

11. I am duly authorised to make this witness statement on behalf of the Joint Administrators in support of their application (the "**Application**") for an Order in the form set out in the draft order, being that:
- 11.1 the appointment of the Joint Administrators in respect of the Company shall cease to have effect pursuant to paragraph 79(1) of Schedule B1 to the Insolvency Act from the time of the taking of the relevant step (as described below) to dissolve the Company in accordance with the law of its jurisdiction of incorporation;
  - 11.2 the Joint Administrators of the Company be discharged from liability pursuant to paragraph 98 of Schedule B1 to the Insolvency Act with effect from 28 days after the date on which their appointment has been terminated in accordance with paragraph 11.1 above;

11.3 if the relevant step required to dissolve the Company (as referred to in paragraph 11.1 above) is not completed within 60 days of the date of the relevant Order the matter be re-listed for hearing within 14 days;

11.4 the Joint Administrators' remuneration in relation to the Administration for the periods from:

- (1) 30 June 2018, being the date after the last approval by the Company's creditors or creditors' committee, to 27 December 2019 ("**Period 1**") be fixed by reference to time properly given by the Joint Administrators and their staff in the amount of £1,058,213.35; and
- (2) 28 December 2019 to the termination of the Joint Administrators' appointment ("**Period 2**") be fixed by reference to forecast time costs of the Joint Administrators and their staff and subject to a cap of £293,366.56.

11.5 the balance of the Supervisors' fees in respect of the CVA for the periods from:

- (1) 30 June 2018, being the date after the last approval by the Company's creditors or creditors' committee, to 27 December 2019 ("**CVA Period 1**") be approved and paid to the Supervisors in the amount of £144,120.53; and
- (2) 28 December 2019 to the termination of the Company's CVA ("**CVA Period 2**") be fixed by reference to forecast time costs of the Supervisors and their staff and subject to a cap of £8,442.50; and

11.6 the costs of, and incidental to, the Application be paid as an expense of the Administration of the Company.

12. The table below provides a summary of the quantum of the Joint Administrators' and Supervisors' fees for which the Court's approval is sought in the present Application (including, insofar as the remuneration is concerned for Period 2 and CVA Period 2, both time costs which have already been incurred and time costs which are forecast to be incurred).

Company	Administration		CVA		Total remuneration for which the Court's approval is sought
	Period 1 (30 June 2018 to 27 December 2019)	Period 2 (28 December 2019 to termination)	CVA Period 1 (30 June 2018 to 27 December 2019)	CVA Period 2 (28 December 2019 to termination)	
Nortel Germany	£1,058,213.35	£293,366.56	£144,120.53	£8,442.50	£1,504,142.94

13. It is important to note that Nortel Germany has certain unique features as compared to the other three companies described in Harris 18 and the work undertaken in Nortel Germany is more complex. These unique features are explained at paragraphs 41 to 47 below. Further,

as explained in further detail below, Period 1 and CVA Period 1 were comparatively long and the quantum of the remuneration for which the Court's approval is sought for these periods is accordingly higher when compared with companies in the Nortel EMEA group in which it was possible to obtain creditor approval for remuneration closer to the end of the administrations. The higher quantum of remuneration also reflects the Joint Administrators' work realising intragroup claims and third-party receivables, completing the realisation of the Company's material assets to allow the Company to make final distributions to creditors and prepare for an accelerated dissolution process.

## **B. BACKGROUND AND PURPOSE OF THE ADMINISTRATION**

14. The relevant background to the Nortel Group insolvency in the context of the present Application is the same as that as set out in Harris 18 and I do not intend to repeat it in this statement.
15. The Joint Administrators set out their approach for achieving the statutory purpose of the Administration in their statement of proposals dated 24 February 2009 (the "**Statement of Proposals**") that were approved by a creditors' meeting of the Company held on 12 March 2009. A copy of the Statement of Proposals is at [1/4/13] of SJH19. The Statement of Proposals is the same as that for the other companies as set out in Harris 18; a summary of these proposals are set out Harris 18 and thus I do not intend to repeat it in this statement.

## **C. REPORTING PROGRESS OF THE ADMINISTRATION**

16. Following their appointment, the Joint Administrators have periodically informed creditors of the progress of the Administration. The Joint Administrators have prepared progress reports for the Company on a six-monthly basis since the beginning of the Administration (the "**Progress Reports**"). Since Harris 17, made in support of the Joint Administrators' application to extend the Administration of the Company ([1/6/121] of SJH18), the Joint Administrators have prepared a Progress Report for the Company for the period 14 July 2019 to 13 January 2020, dated 13 February 2020 ([1/5/41] of SJH19).
17. Rule 3.57(1)(a) requires the Joint Administrators to provide the Court with a report on the progress of the Administration of the Company since the last Progress Report. Accordingly, for the purposes of the Application, the Joint Administrators have prepared an interim progress report dated 6 April 2020 summarising the progress for the Company covering the period from 14 January 2020 to 6 April 2020 (the "**Supplemental Progress Report**") (at [1/6/59] of SJH19). Owing to the complex nature of the EMEA Debtors' internal accounting systems, production of receipts and payments accounts required by Rule 18.3(1)(e) is an expensive and time-consuming process. In light of this and to minimise expense to the Company, the receipts and payments accounts which accompany the Supplemental

Progress Report are reproduced from the most recent Progress Report dated 13 February 2020.

#### **D. PROGRESS IN THE ADMINISTRATION**

##### **Trading following the Joint Administrators' appointment and business sales**

18. The Joint Administrators continued to trade the EMEA Debtors, including the Company, following their appointment, in accordance with the Statement of Proposals. The continued trading helped to ensure that the assets of the EMEA Debtors were not unduly dissipated and to maximise the value of the business for the Company's creditors.
19. The Administration proceeded successfully and various sales of the Group's business lines were concluded in 2010 and 2011 in pursuit of the Joint Administrators' proposal to achieve a better result for creditors of the Company as a whole than would be likely if the Company was wound up. Further, as further described below at paragraph 43, following our appointment the Company also completed an orderly migration of pension fund liabilities and data held in relation to the pension fund liabilities to the Pensions Sicherungs Verein ("PSV").
20. Pursuant to the terms of a settlement agreement between the EMEA Debtors and the Canadian Debtors dated 9 July 2014 (a copy of which is at [1/8/234] of SJH18), NNUK agreed to take an assignment of pre-appointment intragroup debts due from the Company to the Canadian Debtors. The terms of the assignment provided that the CCAA Subordinated Debts were to be subordinated to the claims of other unsecured creditors against the Company. A copy of the assignment dated 14 July 2014 is at [1/10/266] of SJH18 and a copy of the notice from NNUK to the Company, countersigned to confirm the Company's agreement to the assignment and subordination is at [1/7/85] of SJH19. Under the terms of the CVA, the CCAA Subordinated Debts would only be paid once unsubordinated, unsecured creditors had been paid the principal of their agreed claims and interest thereon in full.

##### **Allocation Dispute and Global Settlement**

21. Information in relation to post appointment trading and the Allocation Dispute (which is relevant to the Company) which resulted in a Global Settlement is set out in paragraphs 22 to 24 of Harris 18. Similar to the other EMEA Debtors, the Company received the allocation of Sale Proceeds as part of the Global Settlement in May 2017.

##### **The Company Voluntary Arrangement**

22. Having been granted liberty to promulgate a CVA in respect of the Company by the Order dated 23 July 2015 (a copy of which is at [2/5/127] of SJH18), on 5 April 2017, the Joint Administrators proposed a CVA to the creditors of the Company. A copy of the proposal for the Company's CVA is at [1/8/87] of SJH19.

23. On 24 May 2017, the proposed CVA was approved by the Company's creditors and members unanimously and without modification. I have provided a copy of the Chairman's report and the Notice of Effective Date (which was sent to creditors and posted on the Nortel EMEA Website) at [1/9/240] and [1/10/248] of SJH19.

#### **Reporting on the progress of the CVA**

24. The Supervisors periodically inform creditors of the progress of the CVA by way of CVA Reports in accordance with Rule 2.41(4). Following the termination of the CVA, a Final CVA Report is currently been finalised and will be provided to the Court at or in advance of the hearing of the Application in accordance with Rule 2.44(2).
25. The Supervisors have prepared the following annual progress reports: annual progress reports dated 23 July 2018 ([1/11/249] of SJH19) and 19 June 2019 ([1/11/256] of SJH19). The Final CVA Report is currently been finalised following the termination of the CVA on 3 April 2010 and will be provided to the creditors in due course.

#### **Realisation of intragroup claims and other assets**

26. Nortel Germany had a number of intragroup claims against other EMEA Nortel companies, notably a significant claim of £4,235,311.59 against Nortel Networks Ireland Limited ("**Nortel Ireland**"). In order to facilitate the Company's timely exit from the Administration, the Joint Administrators considered that it was appropriate to assign the residual value of these intragroup claims (which amounted to a total of £607,210.86) to NNUK for value on 8 November 2019, paving the way for a final distribution to creditors of Nortel Germany without having to wait for recoveries to be made from those debtors.
27. In addition, the Joint Administrators have realised value of approximately £2.25 million of three outstanding third-party receivables due to Nortel Germany by three entities that have been in longstanding Germany insolvency proceedings. After exploring various realisation strategies and liaising extensively with both the German Commercial Court and the German insolvency administrator involved to ascertain the quantum and timing of potential distributions, the following was achieved:
- 27.1 the Company received a first and final distribution from one of the German entities in the amount of approximately £60,000;
- 27.2 the Company received a partial distribution from another German entity in the second half of 2019 and arranged for the outstanding receivable to be assigned to NNUK for value in December 2019, with the amount received from the distribution and the assignment together being approximately £1,840,000; and
- 27.3 the third receivable was sold to a third party following a comprehensive sales process in December 2019 for approximately £350,000.
28. The recovery of these three outstanding third-party receivables has enabled the Company to pay all unsecured and non-subordinated creditors the principal of their claims and accrued

commercial interest in full, and a partial distribution of its CCAA Subordinated Debt and, most importantly, complete the realisation of all its material assets such that the Company is positioned for an accelerated and efficient dissolution procedure.

#### **Distributions to expense creditors and tax**

29. On 9 June 2017, Mr Justice Snowden made an Order granting the Joint Administrators directions whereby the Joint Administrators were to inform potential claimants that any claims which were asserted to rank as administration expenses under English law must be notified to the Joint Administrators on a Demand Form on or before the Expense Bar Date. The Expense Bar Date for Nortel Germany was set for 27 October 2017. A copy of the Expense Order made by Mr Justice Snowden in respect of the Company is provided at [1/13/262] of SJH19.
30. The Joint Administrators sent explanatory letters and Demand Forms in accordance with the terms of the Expense Orders and submitted a pro forma tax calculation to the German tax authority. The Joint Administrators confirm that the claims submitted by the German tax authority have been dealt with by the Joint Administrators.

#### **Distributions to creditors of the Company**

31. The CVA Bar Date by which creditors were required to lodge claims in the CVA against the Company passed on 26 September 2017 and the Supervisors have completed the adjudication process for claims.
32. All claims submitted to the Supervisors have been adjudicated and all unsecured creditors of the Company with Allowed Claims have been paid 100p in the pound in respect of their claims and accrued commercial interest in full, the sole exception being NNUK in respect of its CCAA Subordinated Debts as described below at paragraph 36.
33. The Supervisors have adjudicated all 185 claims received before the CVA Bar Date. The total value of these claims was £2,190,339,214 (including a significant contingent claim submitted by the UK Pension Regulator), of which £38,678,735 was admitted for payment.
34. An initial distribution was declared on 5 December 2017, a second interim distribution was declared on 17 August 2018 and a third interim distribution was declared on 21 March 2019.
35. A fourth and final distribution was declared on 5 December 2019, with non-subordinated unsecured creditors, except for NNUK as subordinated creditor, ultimately receiving payment of 100p in the pound on the principal of their claims and their full entitlement to commercial interest at a rate of 3.07% per annum.
36. NNUK received payment of £1,750,000.00 in respect of the principal of its admitted CCAA Subordinated Debt of £3,320,673.83 (i.e. NNUK received approximately 52.7% of the principal of its CCAA Subordinated Debt). The Company did not have sufficient assets available to make payment of the CCAA Subordinated Debts in full or payment of the interest on its CCAA Subordinated Debt.



37. With no further claims to adjudicate or satisfy, on 3 April 2020 the CVA was terminated. The Notice of Termination is exhibited at [1/14/272] of SJH19.

#### **Modification of the CVA**

38. Prior to the making of the final distribution to the Company's creditors, the Supervisors became aware that certain creditors had not, despite repeated requests, provided bank account details for payment. While many of these unresponsive creditors were ultimately located, a small number of the creditors of Nortel Germany could not be traced and the total value of claims of these unresponsive creditors amounts to £18,791.00.
39. The Joint Administrators used powers granted to them by the Terms of the CVA to modify the CVA in the same manner as set out at paragraph 43 of Harris 18.
40. A copy of the Notice of Modification of the CVA which includes the Terms of the CVA as modified is at [1/15/273] of SJH19. The Letter of Undertaking from NNUK confirming the terms on which NNUK has agreed to hold these unclaimed funds is at [1/16/325] of SJH19.

#### **Unique features of Nortel Germany**

41. Nortel Germany has certain unique features as compared to the other EMEA Debtors in the Group. Therefore, certain workstreams have been carried out in the Administration of the Company that were not applicable for the other EMEA Debtors in the Group. I have set out below the key differences in order to provide context to the work carried out by the Joint Administrators and Supervisors and the total fees incurred in respect of their work and to provide the context for the differences in the amount of fees incurred in respect of Nortel Germany as compared to other EMEA Debtors.
42. First, the Company was classified as one of the "at risk entities" at the commencement of the Administration by virtue of its former joint venture relationships with other German corporates, meaning that its trading performance was independent of the remainder of the Group (note that the other "at risk" entity in the Group was Nortel Networks France S.A.S.).
43. Second, the Company operated a self-funded pension scheme and was responsible for the pensions of in excess of 850 pensioners and deferred pensioners at the time of the Joint Administrators' appointment, which was unique in the context of the Group. The Company's significant opening cash balance of approximately EUR 48 million was reflective of it operating a pension fund asset to discharge contingent pension liabilities in addition to the Company being a trading company. The German pension regulator, having facilitated certain payments to the Company's former employees, asserted a claim against the Company for approximately £26 million. During the course of the Administration, the Joint Administrators have had to ensure an orderly migration of pension fund liabilities to the PSV (who is also a member of the Committee), who stepped in to meet the entitlements of the pensioners, and ultimately to determine the quantification of the PSV's claims against the Company. The

PSV's total admitted claim by the Joint Administrators was approximately £26 million, representing a significant proportion of the total CVA claims admitted by the Joint Administrators, which was approximately £35.4 million.

44. Third, owing to the Company's distinctive history, including that the Company in its current form came about by virtue of various mergers and acquisitions, its accounting system and procedures were largely of a stand-alone nature as compared to the remainder of the Group which had significant shared accounting and procedures functions. This has, over time, required the Joint Administrators to expend additional time and effort in overseeing and appraising the financial situation of the Company.
45. Fourth, the Company's operations were undertaken in three separate locations, which required the Joint Administrators to expend additional time and resources dealing with the logistics of the Company.
46. Fifth, in the early years of the Administration, a complex employee transfer and redundancy process had to be undertaken and, in the later years, significant efforts were made to realise longstanding receivable balances and to prepare the Company for accelerated dissolution, which required the realisation of all material assets.
47. Finally, the Company had the benefit of a long period tax regime which required periodic engagement with the German fiscal authorities. This long period has been successfully utilised without the need for further extension following the realisation of all of the Company's remaining material assets in 2019, which facilitates the accelerated dissolution procedure as described below at Section G (*Details of subsequent dissolution*).

## **Brexit**

48. The Administration shall remain the main proceeding, at least for so long as the Recast Regulation remains in force in this jurisdiction. The withdrawal agreement between the United Kingdom and the European Union sets out that the Recast Regulation shall apply to insolvency proceedings provided that the main proceedings were opened before the end of the transition period on 31 December 2020. Therefore, the Administration should remain the main proceeding until the date on which the termination of the Administration and the discharge of the Joint Administrators' liability become effective.

## **E. EXITING THE ADMINISTRATION**

### **Achievement of the purpose of the Administration**

49. The Joint Administrators are mindful of their obligation to make an application to Court to terminate the Administration of the Company pursuant to paragraph 79 of Schedule B1 to the Insolvency Act. As set out in the Statements of Proposals, if the Joint Administrators decided that a restructuring was not in the best interests of creditors or that the cost of continuing to trade was no longer in the best interests of creditors, the Joint Administrators

would seek to achieve a better result for creditors of the Company as a whole than would be likely if the Company were wound up.

50. Having terminated the CVA and made final distributions to creditors of the Company, the Joint Administrators are of the view that the purposes of the Administration have been sufficiently achieved.
51. Overall, the Joint Administrators wish to record their satisfaction with the outcome of the Administration, which includes a period of successful trading, a number of unique and complex international business sales, and ultimately (and most importantly) the payment of all unsubordinated creditors in respect of the principal of their agreed claims and commercial interest thereon in full. In addition, the Joint Administrators worked in close collaboration with the German pension regulator to facilitate the orderly migration of pension fund liabilities to the PSV. The Joint Administrators are also satisfied that the Allocation Dispute was appropriately resolved by way of settlement, as were the claims of the NNUK Pension Scheme Trustee under the Pensions Act 2004, and the Company's tax and accounting positions finalised such that the Joint Administrators are now in a position to place the Company into a dissolution process in accordance with the law of the jurisdiction of that Company's incorporation. These steps successfully positioned the Company to take advantage of the accelerated dissolution procedure as described below at Section G (*Details of subsequent dissolution*).
52. Shortly before making this Application, I was made aware that a former employee of the Company had requested information from the Joint Administrators regarding her tax and pension position. The Company's liability for any shortfall in pension contributions has transferred to the PSV by operation of German law and we understand that the former employee has been paid her full entitlement from the PSV. The Joint Administrators are currently considering whether they can assist with the information request and will liaise with German tax advisors and the PSV as appropriate. At this time the Joint Administrators see no reason why this information request should delay the termination of the Administration or the dissolution of the Company. However, the Joint Administrators have given notice of their intention to issue the Application by way of a letter to her dated 1 April 2020 enclosing the notice described below at paragraph 57 (a copy of the letter is at [1/17/334] of SJH19), such that she will be able to request for the details of the remote hearing should she wish to attend the hearing. Any substantive update in relation to this issue will be given to the Court at or before the hearing of the Application.

#### **The form of this Application**

53. As explained in paragraphs 55 to 57 of Harris 18, the Joint Administrators made similar applications in respect of the Batch One Entities and Batch Two Entities and Mr Justice Snowden granted Orders that the Joint Administrators' appointments of those entities terminate on the commencement of the relevant local liquidation process. Having taken

German law and financial advice as to the suitability of this approach for Nortel Germany, the Joint Administrators propose to take a similar approach for Nortel Germany.

#### **Timeline to termination of the Administration**

54. The Joint Administrators' term of office expires at 12:01pm on 13 January 2021, pursuant to an Order of Mr Justice Snowden dated 17 December 2019, a copy of which is at **[1/8/209]** of SJH18.
55. The terms of the draft order provide that the termination of the Joint Administrators' appointment is conditional on the completion of the dissolution process under German law. Similar to the three entities as described in Harris 18, the Joint Administrators do not consider it appropriate for the Company to be handed back to the control of the directors in circumstances where the only task is to dissolve the Company.
56. The Joint Administrators are mindful that the trigger for the termination of their appointment should be satisfied within a specified time. The Joint Administrators consider that a period of 60 days is appropriate. Should the dissolution of the Company not be completed within the period specified, the draft order requires that the Joint Administrators return to this Court for further directions.

#### **F. NOTICE OF THE APPLICATION**

57. I confirm that, in accordance with Rule 3.57(2), all creditors (including for the avoidance of doubt those creditors who have been paid in full) of the Company were given notice of the Application by the Joint Administrators to exit the Administration and to be discharged from their liability, on or before 26 March 2020, by way of the Nortel EMEA Website. A copy of this notice is provided at **[4/8/144]** of SJH18. In light of the public health emergency created by the coronavirus (Covid-19), the Joint Administrators informed creditors of the Court's guidance that the default position is that hearings should be conducted remotely and that the Joint Administrators would provide further details in due course once the logistics for the hearing are confirmed, including details for how to attend the hearing remotely.
58. Further, and in accordance with Rule 3.57(2), the directors of the Company, being the persons who made the administration applications in 2009, were given notice by email on 26 March 2020, a copy of which is at **[4/8/146]** of SJH18.
59. Following the appointment of the Joint Administrators, a creditors' committee was established for the Company (the "**Committee**"). Following the making of the distribution in August 2018 to the members of the Committee, which resulted in the unsecured and unsubordinated creditors receiving 100p in the pound in respect of the principal of their claims, the Committee ceased to be quorate in accordance with Rule 17.1(e). Notices to the former members of the Committee to inform them of the making and hearing of the Application were sent by email on 26 March 2020, a copy of which is at **[1/19/337]** of SJH19.

An update on any responses received by the Joint Administrators in connection therewith will be given to the Court at or before the hearing of the Application.

60. In addition, notice of the Application was also given to creditors of the Company in the Notice of Termination of the CVA. A copy of the notice is provided at [1/14/272] of SJH19.

61. As at the date of this statement, the Joint Administrators have received no response to those notices. Notice of the making and hearing of the Application is also to be given to all creditors of the Company and former members of the Committee immediately following the filing of the Application by way of the Nortel EMEA Website. An update on any responses received by the Joint Administrators in connection therewith will be given to the Court at or before the hearing of the Application.

#### **G. DETAILS OF SUBSEQUENT DISSOLUTION**

62. The Joint Administrators have taken local legal and accounting advice regarding the most efficient process available under Germany law to have the Company removed from the local register of companies once the Administration is concluded. The directors of the Company have been involved in the planning of the subsequent dissolution.

63. Provided that the Court is minded to grant the relief sought, the Joint Administrators currently anticipate completing the steps necessary to commence the local dissolution proceedings before 21 June 2020.

64. Following distributions to creditors pursuant to the terms of the CVA and the termination of that CVA on 3 April 2020, the Company has no more assets available for distribution to creditors but has not satisfied the entirety of NNUK's intercompany subordinated claim. The Company is not in a position to return a surplus to its shareholder.

65. The Joint Administrators are advised by German local counsel that a German-registered company can be dissolved and removed from the trade register notwithstanding the presence of the outstanding CCAA Subordinated Debt of £1,570,673.83, given that a Germany-registered company is only required to have properly dealt with its assets and therefore not have any material assets remaining at the point of dissolution in accordance with German law, and that there is no requirement for an insolvent liquidation process following a formal insolvency process (such as the Administration process carried out) under German law.

66. The Joint Administrators have been advised by German local counsel that the process for dissolution is as follows:

66.1 the following documents are to be submitted to the German trade registry:

- (1) a letter which states that the Company has no assets; and
  - (2) a liquidation balance sheet up to the date of submission which shows that the Company's assets have been distributed accordingly and that it only has sundry assets;
- 66.2 the Company has submitted a final tax return up to 31 December 2019 to the Germany tax authority;
- 66.3 the dissolution of the Company shall be effective and the Company shall be removed from the trade register on receiving confirmation from:
  - (1) the German trade registry that the documents submitted are in order; and
  - (2) the German tax authority that they have no objections to the Company being dissolved.

#### **H. DISCHARGE OF LIABILITY**

67. Paragraph 98 of Schedule B1 to the Insolvency Act provides that the Joint Administrators will only be discharged from their liability in respect of any action as joint administrators with effect from a time specified by the Court. The Joint Administrators respectfully request that this discharge of liability be granted and take effect 28 days after the date on which their appointment has been terminated in the manner set out above. This would give any person becoming aware of any facts or matters which might give rise to a claim, and seeking to bring such a claim against the Joint Administrators, sufficient time to do so.
68. The Joint Administrators are not aware of any claims made against the Joint Administrators which have not been dealt with during the course of the Administration and none of the Joint Administrators are aware of any facts which would give rise to any such claim.
69. Throughout the Allocation Dispute and the pension dispute with the UKPI, certain claims have been intimated or asserted against the Joint Administrators by, among others, the US Debtors, the Canadian Debtors and the UKPI. However, such claims were released pursuant to the terms of the Global Settlement, as explained at paragraph 76 of Harris 18. In addition, the terms of the CVA of the Company include releases by each creditor of the Joint Administrators, also explained at paragraph 76 of Harris 18. The relevant clause in the CVA of Nortel Germany may be found at [1/15/308] of SJH19.

#### **I. THE REASONS FOR THE REMUNERATION APPLICATION**

70. The Committee has always approved the Joint Administrators' and Supervisors' remuneration. As described above, the Supervisors have made final distributions to the Company's unsecured and unsubordinated creditors and accordingly the Joint Administrators are of the view that those former creditors are not entitled to approve the Joint Administrators' or Supervisors' remuneration. NNUK remains a creditor in respect of part of its CCAA Subordinated Debts but the Joint Administrators do not feel it appropriate in their

capacity as joint administrators of NNUK to approve their remuneration as Joint Administrators of the Company.

71. To limit the burden placed on the Court in having to review and, if it is so minded, approve the basis of the Joint Administrators' remuneration, the Joint Administrators sought approval from the Committee at the last practicable date prior to the Supervisors making of the distribution which resulted in the unsecured and unsubordinated creditors receiving 100p in the pound in respect of the principal of their claims in June 2018. The Supervisors did not propose to delay the making of a distribution to creditors of the principal of their claims purely so that creditors or the Committee would remain entitled to approve the remuneration of the Joint Administrators or the fees of the Supervisors. It has taken a substantial amount of time for the Joint Administrators to realise intragroup claims and third-party receivables so as to complete the realisation of the Company's material assets to make final distributions to creditors on account of their interest entitlement and to position the Company for an accelerated dissolution. This has resulted in a long Period 1 and CVA Period 1, and correspondingly a higher cost incurred in Period 1 and CVA Period 1.
72. For those reasons the Joint Administrators have made this Application to the Court for Orders that:
- 72.1 their remuneration be fixed by reference to time properly given by the Joint Administrators for the periods:
- (1) from 30 June 2018 to 27 December 2019, being the last practicable date prior to the filing of the applications up to which the Joint Administrators are able to provide a full breakdown in respect of their remuneration (i.e. Period 1); and
  - (2) from 28 December 2019 to the termination of the Joint Administrators' appointment, subject to a cap (i.e. Period 2); and
- 72.2 the fees of the Supervisors be approved for the periods:
- (1) from 30 June 2018 to 27 December 2019, being the last practicable date prior to the filing of the Application up to which the Joint Administrators are able to provide a full breakdown in respect of the Supervisors' remuneration (i.e. CVA Period 1); and
  - (2) from 28 December 2019 to the termination of the Company's CVA, subject to a cap (i.e. CVA Period 2) (given that the CVA of the Company was terminated on 3 April 2020, after 27 December 2019, the last practicable date as referred to in paragraph 72.2(1) above).

### **Reporting of the Joint Administrators' remuneration**

73. During the course of the Administration, the Joint Administrators have prepared detailed fee packs which have been provided to the Committee. These fee packs are in a similar form as

provided in the Schedules and set out the detail of work undertaken and remuneration sought.

74. A copy of the most recent fee pack dated 1 August 2018 (for the period 30 September 2017 to 29 June 2018, and approved on 9 August 2018) is provided at [1/20/339] of SJH19. Copies of the resolutions approving the Joint Administrators' remuneration as set out in the fee packs are at [1/21/370] of SJH19.
75. In accordance with Rule 2.47(1) of the 1986 Rules and subsequently Rule 18.3, the details of the remuneration drawn following approval have been included in each Progress Report.

### **Reporting of Supervisors' fees**

76. As in the Administration, the Supervisors prepared detailed fee packs which have been provided to the Committee. The fee packs are in a similar form as the fee packs prepared by the Joint Administrators. In addition to their remuneration as Supervisors, the initial fee packs also included remuneration as Joint Administrators in respect of their time spent as Nominees of the CVA.
77. A copy of the most recent fee pack dated 1 August 2018 (for the period 30 September 2017 to 29 June 2018, and approved on 9 August 2018) is provided at [1/20/356] of SJH19. A copy of the resolution approving the Supervisors' remuneration as set out in the fee pack is at [1/22/372] of SJH19.

## **J. NOTICE OF REMUNERATION APPLICATION AND ENGAGEMENT WITH CREDITORS**

### **Notice to the Company's former creditors**

78. I confirm that all creditors of the Company (including for the avoidance of doubt those creditors who have already been paid in full) were given notice of the Joint Administrators' intention to issue the Application in respect of their remuneration on 26 March 2020. Details of these notices is set out above at Section F (*Notice of the Application*). To date, the Joint Administrators have received no response from the creditors.
79. Further, and in accordance with Rule 18.28(6), notice of the making and hearing of the Application will be given to all creditors at least 14 days before the earliest date for a hearing of the Application, being 7 April 2020, together with access to a copy of this statement by way of the Nortel EMEA Website, with a statement that the exhibit is available on request. An update on any responses received by the Joint Administrators in connection therewith will be given to the Court at or before the hearing of the Application.

### **Engagement with creditors of NNUK**

80. Given that the ultimate economic impact of any overpayment of the Joint Administrators' remuneration would be felt by NNUK in its capacity as a subordinated intercompany creditor of the Company and the ultimate parent company in the Nortel EMEA Group entitled to any



surplus, the Joint Administrators have engaged closely with the Committee of NNUK before issuing the Application. On 10 March 2020, the Joint Administrators provided a draft of the Schedules dated 9 March 2020 setting out the detail of the Joint Administrators' and Supervisors' fees for Period 1 and Period 2 to the Committee of NNUK. A copy of the draft Schedules is at [1/23/373] of SJH19. The Joint Administrators invited the members of the Committee of NNUK to review the draft Schedules in detail, invited questions from the Committee, and provided the Committee with resolutions in order to confirm their views as to the reasonableness (or otherwise) of the Joint Administrators' and Supervisors' time costs and whether or not they approved of the Joint Administrators proceeding with the exit and fee application to Court.

81. A number of queries were received from PricewaterhouseCoopers ("**PwC**") as representatives of, and advisors to, the NNUK Pension Scheme Trustee (the approximately 95% creditor of NNUK). These questions focussed on the charge out rates used and how these have changed over time, the historical fee approval process, the allocation basis for reallocated time costs and the recent ramp up in activity due to the dissolution and exit planning. In addition, PwC also requested additional detail around the proposed dissolution plans and processes.
82. All questions raised were resolved to the satisfaction of PwC and as a result the Joint Administrators received the resolution of the NNUK Pension Scheme Trustee dated 3 April 2020 confirming that the time costs set out in the fee packs and schedules dated 9 March 2020 provided to the creditors' committee on 10 March 2020 appeared fair and reasonable and that the Joint Administrators should seek the approval of these time costs from the UK High Court as part of the proposed exit and fee application. A copy of this resolution is at [1/24/409] of SJH19.
83. Following PwC's review of the fees packs and schedules the Joint Administrators received formal approvals from the NNUK Pension Scheme Trustee and one other member of the NNUK creditors' committee, Sanmina. Another member of the NNUK creditors' committee, Investni, has confirmed in writing that they are reviewing the fee pack and schedules. Copies of these approvals and correspondence are at [1/25/410] to [1/25/415] of SJH19. An update on any further feedback received from members of the NNUK creditors' committee received will be given to the Court at, or before, the hearing of the Application.
84. Notice of the making and hearing of the Application will also be given to all creditors of NNUK at least 14 days before the scheduled date for a hearing of these Applications, being 7 April 2020, together with access to a copy of this statement by way of the Nortel EMEA website, with a statement that the exhibit and the Schedules containing details of remuneration sought are available on request. Details of any responses received and copies of the notice will be given to the Court at, or before, the hearing of the Application.

**K. COMMON ASPECTS AND CONTROL PROCESSES APPLIED TO REMUNERATION**

85. As explained in paragraphs 98 and 99 of Harris 18, the Court will be familiar with the common aspects and control processes applied to the Joint Administrators' remuneration and the Supervisors' fees, including recording, monitoring, and the treatment of expenses, in respect of the Batch One Entities and Batch Two Entities. These common aspects apply to Nortel Germany in the same way. As such, similar to the approach taken in Harris 18, detailed information on these aspects is set out in **Schedule A** to this statement, which is at **[1/27/454]** of SJH19.

86. I set out in this statement and in **Schedule A** the ways in which the Joint Administrators ensure that the remuneration incurred by the Joint Administrators and the Supervisors is fair, reasonable and commensurate with the nature and extent of the work properly undertaken. As a general note and by virtue of the control mechanisms applied by them, the Joint Administrators are confident that work in relation to the Administration and CVA of the Company has been carried out in a timely and cost-effective manner. I can confirm that the Joint Administrators and Supervisors have carefully considered each task that has needed to be done and whether it is necessary. I have had core involvement since my appointment and have been assisted by senior, experienced members of EY's restructuring and insolvency team.

**L. CHARGE OUT RATES**

87. During the course of the Administration, the Joint Administrators' UK charge out rates have changed only once. This was communicated at a Committee meeting on 8 February 2017 and verbally approved in the meeting. The Committee has subsequently approved the Joint Administrators' fees with the corresponding increase in rates. The Joint Administrators have disclosed the average hourly rates of their staff in each Progress Report (the most recent Progress Reports are at **[1/11/249]** and **[1/12/256]** of SJH19). The Joint Administrators have also provided additional detail on the charge out rates in each fee pack. In relation to the most recent fee pack dated 1 August 2018, the detail is provided at **[1/20/354]** of SJH19.

88. The charge out rates applied in the CVA have been the same as those applied in the Administration, and they were most recently approved by the Committee on 9 August 2018 when the most recent fee pack dated 1 August 2018 was approved (the detail of the charge out rates in this fee pack is provided at **[1/20/368]** of SJH19).

89. Unless stated otherwise, the general principles in relation to the charge out rates applied by EY London staff as set out in Harris 18 apply in the same way to Nortel Germany both in the Administration and the CVA and thus I do not intend to repeat it in this statement in detail. The following relevant documents are exhibited at SJH19:

89.1 Details of the charge out rate bands for each of the different grades of seniority are set out in **Schedule GER1.1** (at **[1/26/419]** of SJH19) in the case of the

Administration and **Schedule GER1.2** (at [1/26/420] of SJH19) in the case of the CVA.

- 89.2 Charge out rates applied by staff based in E&Y's local offices are also set out in **Schedule GER1.1** (at [1/26/419] of SJH19) in the case of the Administration and **Schedule GER1.2** (at [1/26/420] of SJH19) in the case of the CVA.

## **M. SUMMARY OF REMUNERATION AND COMPARISONS**

### **Summary**

90. The total remuneration sought for approval in the Application is £1,504,142.94 in respect of both the Administration and the CVA.
91. The time periods for which remuneration is to be fixed by reference to time properly given by the Joint Administrators are:
- 91.1 from 30 June 2018 to 27 December 2019 (i.e. Period 1), 27 December 2019 being the last practicable date prior to the filing of the Application up to which the Joint Administrators are able to provide a full breakdown in respect of their remuneration; and
- 91.2 for the period from 28 December 2019 to the termination of the Joint Administrators' appointment (i.e. Period 2), subject to a cap. This Period 2 includes time costs incurred for work undertaken after 28 December 2019 but before the making of this Application. It also includes estimated time costs for the period from the date of the Applications to 21 June 2020, being the date falling 60 days from the date listed for the hearing of the Applications and the deadline by which the Administrations should be terminated. Should the remuneration actually incurred be in excess of that amount for unforeseen reasons, the Joint Administrators would consider whether to return to Court for directions prior to the termination of their appointment.
92. In addition to their Application for remuneration as Joint Administrators, the Joint Administrators also seek the Court's approval of the Supervisors' outstanding remuneration. The CVA of the Company terminated on 3 April 2020, after the last practicable date prior to the filing of the Applications up to which the Joint Administrators are able to provide a full breakdown in respect of the Supervisors' remuneration. The Court's approval is therefore sought for the periods:
- 92.1 from 30 June 2018 to 27 December 2019 (i.e. CVA Period 1), 27 December 2019 being the last practicable date prior to the filing of the Application up to which the Joint Administrators are able to provide a full breakdown in respect of the Supervisors' remuneration; and
- 92.2 from 28 December 2019 to the termination of the Company's CVA, subject to a cap (i.e. CVA Period 2).

### Comparison with remuneration previously approved by the Committee

93. The total remuneration (including Joint Administrators', Nominees' and Supervisors' remuneration) for which the Court's approval is sought for the period between 30 June 2018 and 21 June 2020 is £1,504,142.94. The Committee has previously approved the Joint Administrators', Nominees' and Supervisors' remuneration amounting to £15,204,350.75. If the remuneration sought is approved by the Court, the total remuneration for the Administration of Nortel Germany for the 137 months between 14 January 2009 and 21 June 2020, including that for which approval is sought, would be £16,708,493.69. By way of comparison, the remuneration for which approval is sought represents approximately 9% of the total remuneration over a period that represents approximately 17.5% of the total. I set out this comparison below. As can be seen, the remuneration for which approval is sought is broadly commensurate with prior previous periods. Further, as explained above, the remuneration sought for Period 1 and CVA Period 1 are of a substantial amount given the substantial work required to realise intragroup claims and third-party receivables so as to complete the realisation of the Company's material assets for distribution to the Company's creditors and to position the Company for an accelerated and efficient dissolution.

Company	Remuneration for which the Court's approval is sought		Total remuneration since 2009 (including that for which approval is sought)		Percentage of total	
	Quantum	Period duration	Quantum	Duration	Quantum of remuneration	Duration
Nortel Germany	£1,504,142.94	24 months	£16,708,493.69	137 months	9.0%	17.5%

94. A direct comparison between the CVA Periods and the period most recently approved by the Committee is set out below.

Nortel Germany					
Period Description	Period Dates	Months	Total time costs (£)	Run Rate per month (£)	
Most recent previously approved period	30 September 2017 to 29 June 2018	9	614,960.50	68,328.94	
Period 1 and CVA Period 1 Time Costs	30 June 2018 to 27 December 2019	18	1,202,333.88	66,796.33	
Period 2 and CVA Period 2 Time Costs	28 December 2019 to 21 June 2020 (the latest date for termination)	6	301,809.06	50,301.51	

95. **Schedule GER 4.1 ([1/26/438]** of SJH19) illustrates the run-rate of time costs for the prior period and Period 1, and shows a higher run rate in the earlier years of the Administration during stabilisation and trading followed by a reduced run rate from late 2013 to the time at

which the Global Settlement was agreed at which point the increase in run rate reflects the increase in activities in the process of recovering other assets for distribution, the planning for the CVA, the work involved in planning and putting into effect the Expense Bar Date and the work to progress to a point at which the Company can be dissolved.

#### **Comparisons with remuneration approved for other EMEA Debtors**

96. As described above at paragraphs 41 to 47 above, Nortel Germany has certain unique features as compared the other EMEA Debtors in the Group and therefore, certain work streams have been carried out in the Administration of the Company that were not applicable for the other EMEA Debtors in the Group. Owing to these additional work streams, the fees incurred by the Joint Administrators and Supervisors in respect of Nortel Germany sit in the upper band of EMEA Debtors.
97. The first page in **Appendix 1** to the Schedules at **[1/26/452]** of SJH19 includes tables of the Joint Administrators', Nominees' and Supervisors' total time costs for the period from 14 January 2009. As the Joint Administrators would expect given the Company's complete trading history and creditor profiles, the total time costs for the Company sits in the upper band of EMEA Debtors.
98. The second page in **Appendix 1** to the Schedules at **[1/26/453]** of SJH19 sets out a similar table in respect only of the Nominees' and Supervisors' remuneration. Again, the cost of the Company's CVA is at the upper band of EMEA Debtors. This is owing to the unique features of the Company as described at paragraphs 41 to 47 above (notably the need to ensure the orderly migration of pension fund liabilities to the PSV) and the need to adjudicate the claims and make distributions to a large number of creditors (including the significant liability to the PSV). A number of these creditors had claims that required close analysis and complex assessment under German law, including under historic employment contracts and a number of complex property leases.
99. While it is difficult to make direct comparisons between EMEA Debtors, I note that the time costs incurred by the Joint Administrators and Supervisors is commensurate with the nature and extent of the work required and are within the range of time costs incurred in respect of other EMEA Debtors of similar size and complexity.

#### **N. AN EXPLANATION OF THE SCHEDULES**

100. Set out in the Schedules to this Statement are the details of the remuneration for which the Court's approval is sought in accordance with Rule 18.24(b) and 18.28(2)(b) and the Practice Direction. The contents and structure of the Schedules contained in Tab 26 (pages 416 to 453) of SJH19 follow the approach taken in respect of the other applications by the Joint Administrators currently before the Court in respect of the three other companies in the Nortel Group. They are explained in detail in Harris 18 and thus I do not intend to repeat them in

detail in this Statement. A single approach has been taken for the purposes of the applications currently before the Court to ensure consistency between the companies and cost efficiency.

101. In summary:

101.1 **Schedules GER2 (Period 1)** sets out the detail of the Joint Administrators' remuneration for Period 1.

101.2 **Schedule GER3 (Period 2)** sets out the detail of the Joint Administrators' estimated remuneration for Period 2.

101.3 **Schedule GER4 (Administration General)** sets out data showing the time costs incurred over the duration of the Administrations as well as the details of certain expenses incurred during Period 1 or expected to be incurred in Period 2 and certain adjustments.

101.4 **Schedule GER5 (CVA Period 1)** relates to the payment of costs to the Supervisors for CVA Period 1 and for which the Court's approval is sought and follows a similar form to **Schedule GER2 (Period 1)**.

101.5 **Schedule GER6 (CVA Period 2)** relates to the payment of costs to the Supervisors for CVA Period 2 and for which the Court's approval is sought.

101.6 **Schedule GER7 (CVA General)** sets out data for the Supervisors' fees, showing the time costs incurred over the duration of the CVAs.

101.7 **Schedule GER8 (Receipts & Payments):**

(1) The Joint Administrators' most recent R&P for the Company in the Administration period to 13 January 2020, being the period covered in the latest Progress Report, is in **Schedule GER8.1** to this Statement (**[1/26/449]** of SJH19).

(2) In addition, the Supervisors' most recent R&P for the Company in respect of the period covered in the Final CVA Report prepared in accordance with Rule 2.44(2), is at **Schedule GER8.2** to this Statement (**[1/26/451]** of SJH19).

## O. DETAIL OF REMUNERATION

102. The Joint Administrators seek Orders that their remuneration in relation to the Administration of the Company for:

102.1 Period 1, being the period 30 June 2018 to 27 December 2019, be fixed at £1,058,213.35; and

102.2 Period 2, being the period from 28 December 2019 to the termination of the Joint Administrators' appointment, be fixed by reference to time properly given by the Joint Administrators and their staff but not to exceed £293,366.56.

103. The Joint Administrators also seek the Court's approval for the payment of the balance of the Supervisors' fees in accordance with the terms of the CVA for:
- 103.1 CVA Period 1, being the period from 30 June 2018 to 27 December 2019, in an amount of £144,120.53; and
- 103.2 CVA Period 2, being the period from 30 June 2018 to the termination of the CVA, be fixed by reference to forecast time costs of the Supervisors and their staff and subject to a cap of £8,442.50.
104. The categories of the Joint Administrators' time costs, and the general principles in respect of the time costs by grade of the Joint Administrators' staff, are the same as that as set out in Harris 18 and I do not intend to repeat it in this statement.
- 104.1 Details of the staff grades and charge out rates in the Administration are at **Schedule GER2.1** at [1/26/421] of SJH19. The average hourly rates incurred by the EY teams in the Administration during Period 1 are: £353.91 and £303.61 in respect of Nortel Germany's Direct Time Costs and Reallocated Time Costs respectively.
- 104.2 Details of the staff grades and charge out rates in the CVA are at **Schedule GER5.1** at [1/26/440] of SJH19. The average hourly rates incurred by the EY teams in the CVA during CVA Period 1 is £320.10 of Direct Time Costs.
105. A summary of the remuneration for which the Court's approval is sought for the Administrations and CVA, split into the Direct Time Costs and Reallocated Time Costs, is set out in the table below. Detailed tables summarising the remuneration for which approval is sought, formatted by Period, are at **Schedule GER1.0** (at [1/26/418] of SJH19).

<b>Nortel Germany</b>					
<b>Cost Category</b>	<b>Administration</b>		<b>CVA</b>		<b>Total Cost (£)</b>
	<b>Period 1</b>	<b>Period 2</b>	<b>Period 1</b>	<b>Period 2</b>	
Direct Time Costs (£)	665,705.90	257,525.00	144,120.53	8,442.50	<b>1,075,793.93</b>
Reallocated Time Costs (£)	392,507.45	35,841.56	-	-	<b>428,349.01</b>
<b>Total remuneration sought for approval (£)</b>	<b>1,058,213.35</b>	<b>293,366.56</b>	<b>144,120.53</b>	<b>8,442.50</b>	<b>1,504,142.94</b>

#### **Administration Direct Time Costs over Period 1: £665,705.90**

106. The overall Direct Time Costs incurred in the Administration during Period 1 aggregates to £665,705.90. The supporting information for these Direct Time Costs is set out in **Schedules GER2.1 to GER2.3** (at [1/26/421] of SJH19) and the importance of some of the key workstreams is described below. A detailed explanation of the tasks undertaken can be found at **Schedule GER2.3** (at [1/26/423]).

107. The key workstreams for Direct Time Costs in the Administration in Period 1 are *Strategy, Tax, and Debtors*, which account for 78.6% of total direct time costs. In summary, the Joint Administrators focused on accelerating the recovery of receivables, and thereby facilitating distributions to creditors and positioning the Company for an accelerated dissolution. The more detailed summary of work undertaken is at **Schedule GER2.3** at [1/26/423] of SJH19.

*Strategy - £237,614.98*

107.1 The Joint Administrators have worked closely with local advisors to identify and agree upon and to deliver the most effective exit route to the Administration and method for the Company's dissolution, and related matters to allow for the dissolution and assessing the accounting steps to be taken prior to termination of the Administration.

*Tax - £162,885.47*

107.2 The work carried out in respect of tax includes work relating to exploring and deciding on the optimum strategy and tax requirements in respect of the exit from Administration and dissolution of the Company, and liaising with the German tax authority and German tax advisers regarding related tax implications of the termination of the Administration.

107.3 The Joint Administrators obtained a concession from the German tax authority to limit the long-term recourse of the Germany tax authority against the Company in respect of the Company's recoveries from the insolvency proceedings of the third-party debtors, allowing completion of the Company's VAT affairs.

*Debtors - £122,657.38*

107.4 The Joint Administrators had to deal with three long standing debtor balances due from insolvent estates of German companies that had entered insolvency proceedings prior to their appointment and intercompany receivables due from Nortel Italy and Nortel Ireland. After exploring various realisation strategies and liaising extensively with both the German Commercial Court and the German insolvency administrator involved in the third-party receivables to ascertain the status and likely dividend timeline, dividends were received in respect of two of the receivables with the residual balance of one being transferred for value to NNUK. The third receivable was sold to a third party following a comprehensive sales process. Following due consideration, the outstanding EMEA intercompany balances were assigned to NNUK for value.

*Others*

107.5 In addition, the Joint Administrators incurred £5,165.95 in respect of the workstream related to *Pensions*, which involved reviewing the validity of post-



petition pension claims, processing payments in respect of post appointment pension sums, and finalising post appointment pension matter.

- 107.6 The descriptions of the other workstreams, including *Creditors; Fees, Statutory; Finance, accounting and administration*, are similar to that described in Harris 18 in respect of Nortel Austria and Nortel Slovakia, and thus I do not intend to repeat it in this statement. There are also sundry costs relating to *Estimated outcome statement*.

#### **Administration Reallocated Time Costs over Period 1: £392,507.45**

108. The key workstreams for Reallocated Time Costs in the Administration in Period 1 are *EMEA Billing, EMEA Tax & VAT Advisory, Progress Reports, Finance, Accounting and Administration*, and *Exit Strategy*, comprising of 91.1% of the total. The key workstreams for Reallocated Time Costs in the Administration in Period 1 are the same as that for Nortel Austria and Nortel Slovakia as explained in detail in Harris 18 and I do not intend to repeat it in this statement.
109. The information in respect of Reallocated Time costs is set out in **Schedules GER2.4 to GER2.6** (at [1/26/428] of SJH19).

#### **CVA Time Costs over CVA Period 1: £144,120.53**

110. An analysis of the Supervisors' Direct Time Costs is set out at **Schedules GER5.1 to GER5.3** (at [1/26/440] of SJH19), with narrative for the tasks undertaken by the Supervisors at **Schedule GER5.3** (at [1/26/442] of SJH19).
111. The Supervisors' work and total CVA time costs of approximately £492,848.71 (of which £144,120.53 relates to CVA Period 1) have facilitated distributions to non-subordinated, unsecured creditors of Nortel Germany of approximately £45 million. Their work has been very similar to that completed by the Supervisors of the three entities described in Harris 18, and I do not intend to repeat the work done that is similar to those entities in this statement. In addition to the work done outlined in Harris 18, the Supervisors had to liaise closely with the PSV, who is the Company's major creditor, to ensure that the PSV was fully informed. The adjudication of the claim of the PSV also required an actuarial based appraisal of the liabilities.
112. **Schedule GER7.1** (at [1/26/448] of SJH19) illustrates the run-rate of the Supervisors' time costs for the CVA from 24 May 2017, being the date on which the CVA was approved by the Company's creditors. The graph illustrates an increase in the weekly run rate following the passing of the CVA Bar Date in September 2017, as claims were determined, and similar increases in advance of the distributions made by the Supervisors in December 2017, August 2018 and March 2019 and December 2019.

#### **Administration Direct and Reallocated Time Costs over Period 2: £293,366.56**

113. The total time costs for Period 2 for which approval is sought for approval are £293,366.56, broken down as £257,525.00 of Direct Time Costs and £35,841.56 of Reallocated Time Costs.
114. This Application requests the approval of remuneration for the period from 28 December 2019 up to the date of the Company's dissolution. This relatively early date was the last practicable date prior to launching of the Application up to which the Joint Administrators could provide a full and detailed description for their time costs both to the Court and to various parties in advance of making the Application.
115. Subsequent to 28 December 2019, the Joint Administrators have incurred Direct Time Costs up to approximately £149,426.06 up to 28 February 2020. These time costs relate to the preparation of this Application, preparing and reviewing documents necessary to implement the dissolution, final preparation work in advance of the dissolution, obtaining clarity and clearance in respect of the tax and completing certain statutory and reporting tasks required at the closure of the Administration. Detail is at **Schedules GER3.1** (at [1/26/432] of SJH19) and **GER3.2** (at [1/26/433] of SJH19). Approximately £37,516.33 of Reallocated Time Costs, the detail of which is at **Schedules GER3.3** (at [1/26/435] of SJH19) and **GER3.4** (at [1/26/436] of SJH19), has also already been incurred as at 28 February 2020 where the Company benefits from certain work undertaken centrally, including billing and EMEA tax advice.

**CVA Time Costs over CVA Period 2: £8,442.50**

116. The total time costs for CVA Period 2 for which approval is sought for approval are £8,442.50. An analysis of the Supervisors' forecast time costs for CVA Period 2 is set out at **Schedules GER6.1** and **GER6.2** (at [1/26/446] of SJH19), with narrative for the key tasks undertaken by the Supervisors at **Schedule GER6.3** (at [1/26/447]).

**P. RELIEF SOUGHT**

117. For the reasons set out in this statement, the Joint Administrators consider that the purposes of the Administration as set out at paragraph 3(1) of Schedule B1 to the Insolvency Act have been sufficiently achieved in relation to the Company. The Joint Administrators have successfully realised the property of the Company, including its allocation of the Sale Proceeds. They have dealt with the financial support directions issued under the Pensions Act 2004 in respect of the Company by way of the Global Settlement and the promulgation of a CVA. The CVA in respect of the Company has been successful in providing a process for agreeing creditor claims and has allowed for efficient distributions of the Company's assets.
118. The Company's third-party unsecured creditors (including the PSV, a significant creditor whom the Joint Administrators have liaised closely with throughout) have been paid the principal of their agreed claims and accrued commercial interest in full. Approximately 52.7%

of the CCAA Subordinated Debt to NNUK (which is the only claim not satisfied in full) has also been settled.

119. The Joint Administrators have considered the process for dissolving the Company in accordance with the law in its jurisdiction of incorporation, the summary of which is set out above. The Company is to be dissolved by way of notification to the trade registry that the Company has been through an English insolvency process and that there are no material assets left in the Company.
120. Accordingly, the Joint Administrators respectfully request that the Court makes the order for the termination of the Administration, conditional on the completion of the local dissolution procedure.
121. For the reasons set out in this statement, the Joint Administrators also request that the Joint Administrators be discharged under paragraph 98 of Schedule B1 to the Insolvency Act in respect of any action as joint administrators arising out of the Company's Administration, such discharge to take effect 28 days after the termination of the Administration. The Joint Administrators are not aware of any existing claims made against any of the Joint Administrators arising out of the conduct of the Company's Administration, nor is any Joint Administrator aware of any facts which would give rise to any such claims.
122. Having made distributions to all creditors of the Company in respect of the principal of their agreed claims in full (bar NNUK in respect an element of its intercompany subordinated debts), the Joint Administrators consider that, insofar as the Company is concerned, the only appropriate method by which their remuneration and expenses may be approved is by Order of the Court. The Joint Administrators respectfully request that the Court grants an Order in respect of the Joint Administrators' remuneration for Period 1 and those anticipated fees in Period 2 on the basis of the details set out in this statement and the Schedules.
123. Similarly, and also in accordance with the Terms of the CVA, the Joint Administrators also respectfully request that the Court grants an Order in respect of the Supervisors' remuneration for CVA Period 1 and CVA Period 2 on the basis of the details set out in this statement and the Schedules.

**Q. CONCLUSION**

124. For the reasons mentioned above, I respectfully request that the Court grants the relief sought by the Application.



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**STEPHEN JOHN HARRIS**

Date: 7 April 2020

**IN THE HIGH COURT OF JUSTICE  
THE BUSINESS AND PROPERTY COURTS OF  
ENGLAND AND WALES**

**INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF:**

**NORTEL GMBH**

**No. 542 of 2009 /  
CR-2009-000033**

**AND IN THE MATTER OF THE INSOLVENCY ACT  
1986**

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**NINETEENTH WITNESS STATEMENT OF  
STEPHEN JOHN HARRIS**

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