

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 NETWORKS POLSKA SP. Z O.O.

No. 554 of 2009 / CR-2009-000037

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

TWENTIETH WITNESS
STATEMENT OF
STEPHEN JOHN HARRIS

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**").
2. I was appointed as a joint administrator of Nortel Networks Polska Sp. z o.o. (the "**Company**" or "**Nortel Poland**") 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]** of SJH20.
3. In 2017, Mr Hill has 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 **[2/10]** of SJH20. 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 Joanne 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 [3/11] of SJH20.

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 advisors), the relevant EY staff, and the relevant local legal and tax advisors. 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. There is now produced and shown to me a pdf e-bundle of documents marked "**SJH20**" to which I shall refer in this witness statement. References in this document to exhibits SJH20 are in the form [Bookmarked tab/Page]. [Bookmarked tab **52**] of SJH20 comprises a number of Schedules setting out the detail of the Joint Administrators' remuneration and Supervisors' fees for which the Court's approval is sought. The Schedules are explained in detail at Sections K and L (*SUMMARY OF REMUNERATION AND COMPARISONS*) and (*Detail of the remuneration*) at paragraphs 94 to 108 below.

(b) The Structure of this Witness Statement

9. This witness statement is divided into the following sections:

- (A) OVERVIEW – page 3
- (B) BACKGROUND and purpose of the administration – page 5
- (C) PROGRESS OF THE ADMINISTRATION – page 6
- (D) EXITING THE ADMINISTRATION – page 12
- (E) NOTICE AND FORM OF THE APPLICATION – page 13
- (F) DETAILS OF THE SOLVENT LIQUIDATION – page 15
- (G) DISCHARGE OF LIABILITY – page 16
- (H) THE REASONS FOR THE REMUNERATION APPLICATION – page 16
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- (N) DETAIL OF THE REMUNERATION - page 32
- (O) RELIEF SOUGHT – page 38
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A. OVERVIEW

(a) The Relief Sought

10. 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:

- 10.1 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 Act from the time that the Company's shareholders resolve at a general meeting, inter alia, to appoint a liquidator and commence the liquidation;
- 10.2 the Joint Administrators of the Company be discharged from liability pursuant to paragraph 98 of Schedule B1 to the Act with effect from 28 days after the date on which their appointment has been terminated in the manner set out at paragraph 10.1 above;
- 10.3 if the relevant step required to wind up the Company (as referred to in paragraph 10.1 above) is not completed within 60 days of the date of the relevant Order the matter be re-listed for hearing within 14 days;
- 10.4 the Joint Administrators' remuneration in relation to the Administration of the Company for the period from:

- (a) 30 December 2017, being the date after the last approval by the Company's creditors or Creditors' Committee, to 3 April 2020 ("**Period 1**") be fixed by reference to time properly given by the Joint Administrators and their staff in the amount of £1,629,257.89; and
 - (b) 4 April 2020 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 £135,005.50;
- 10.5 the balance of the Supervisors' fees in respect of the CVA for the period from 30 December 2017, being the date after the last approval by the Company's Creditors' Committee, to 3 April 2020 (the "**CVA Period**") be approved and paid to the Supervisors in the amount of £38,487.39; and
- 10.6 the costs of and incidental to the Application be paid as an expense of the Administration of the Company.
- 11. 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 time costs which have already been incurred and time costs which are forecast to be incurred) is £1,802,750.78.
- (b) Summary of Nortel Poland's important features**
- 12. Nortel Poland has certain features that meant the work undertaken may be different to work undertaken in other Nortel entities in respect of which the Joint Administrators have brought similar applications to this Application before the Court in the past. The tax position of Nortel Poland has necessitated careful consideration and planning and the vast majority of the work of the Joint Administrators and their advisers has been to finalise the Company's tax position ahead of a solvent liquidation. This work has been undertaken against a background of a dispute between the Company and the Polish Tax Authority (the "**PTA**") early on in the Administration, frequent changes to the regulatory and legal landscape, and the steps taken to conclude a capital injection into the Company to ensure it is solvent at dissolution. This work has at times been intense, particularly during Period 1, and is explained in further detail further below at paragraphs 34 to 38 of this statement.
- 13. For the reasons set out in further detail in paragraph 75 below, Period 1 and the CVA Period are 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 other Nortel entities 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' necessary work in finalising the tax affairs of the Company to satisfy their statutory duties, provide comfort to the Company's directors, Mr Simon Freemantle and Mr David Quane (the "**Directors**"), and a proposed local liquidator. The work completed by the Supervisors during

the CVA Period also includes making payment of a third and final distribution to creditors on 4 December 2019 such that:

- 13.1 creditors have been paid 100p/£ of the principal on their unsecured, unsubordinated claims;
 - 13.2 unsecured, unsubordinated creditors have been paid their full entitlement to interest for the period after our appointment at 5.46% per annum in accordance with the terms of the CVA (“**Commercial Interest**”); and
 - 13.3 the sole subordinated creditor, Nortel Networks UK Limited (“**NNUK**”), has received payment of 100p/£ of the principal of its subordinated claims.
14. The Joint Administrators’ work in Period 1 also involved negotiating and procuring a capital injection from NNUK which allowed payment in full of NNUK’s subordinated claim which, in turn, should allow the winding-up of the Company by way of a local solvent liquidation process under Polish law. For the reasons set out at paragraphs 39 below, the solvent liquidation has a number of important advantages for the Company, the Directors and the Company’s wider group, including NNUK, owing to the likely difficult nature of a Polish law-governed insolvent liquidation.

B. BACKGROUND AND PURPOSE OF THE ADMINISTRATION

15. The Nortel group (the “**Group**”) was a global supplier of networking solutions (i.e. telecommunications, computer networks and software) serving customers in Canada, the US, the Caribbean, Latin America, Asia and Europe, the Middle East and Africa (“**EMEA**”).
16. On 14 January 2009 in a series of coordinated filings:
- 16.1 Nortel Networks Corporation (the ultimate holding company for the Nortel group) together with certain Canadian subsidiaries (collectively, the “**Canadian Debtors**”), sought protection under the Companies’ Creditors Arrangement Act;
 - 16.2 Nortel Networks Inc. (the primary US Nortel operating company) together with certain US subsidiaries (collectively, the “**US Debtors**”), filed voluntary petitions in the US Bankruptcy Court pursuant to Chapter 11 of the US Bankruptcy Code; and
 - 16.3 the Company, NNUK and a number of other companies in the Nortel EMEA group (collectively, the “**EMEA Debtors**”) were placed into Administration by Orders of Mr Justice Blackburne and the Joint Administrators were appointed. The Administration of the Company is a main insolvency proceeding as defined in Article 3(1) of the Council Regulation (EC) on Insolvency Proceedings 2000 (No 1346/2000).
 - 16.4 A simplified corporate structure chart of the Group is at **[4/13]** of SJH20.

17. The Joint Administrators set out their approach for achieving the statutory purpose of administration for the Company in their statement of proposals in February 2009 (the “**Statement of Proposals**”). This Statement of Proposals was approved by the Company’s creditors at a meeting held on 20 March 2009. A copy of the Statement of Proposals for the Company is at [5/14] of SJH20. As the Joint Administrators explained in the Statement of Proposals, the proposals for the Company were:
- 17.1 to trade and continue to manage the Company’s businesses during the period of the Administration whilst exploring possibilities for a global restructuring of the Nortel business and/or a global sale of all or part of the Nortel business;
 - 17.2 to determine if it was still possible to rescue the Company as a going concern and/or achieve a sale of all or part of the Company’s businesses; and
 - 17.3 failing a global restructuring and/or a global sale, to achieve a better result for the Company’s creditors as a whole than would be likely if the Company were wound up, by seeking to realise the best price for the business and/or assets of the Company as was obtainable in the circumstances, and then to take steps to enable the Company’s assets to be distributed to its creditors.

C. PROGRESS OF THE ADMINISTRATION

Post-appointment trading 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 helped 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 and intellectual property were concluded between 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. These sales resulted in total global realisations of approximately US\$7.3 billion (net of certain costs) (the “**Sale Proceeds**”).
20. To assist them in the continuation of trading, the Joint Administrators retained a number of employees of the EMEA Debtors (the “**Legacy Nortel Employees**”), particularly in the EMEA accounting function based primarily in England and Ireland. The Legacy Nortel Employees have continued to assist in the Administration more generally following the sales of the Group’s business lines as part of the EMEA Debtors’ accounting and office functions, and with the building and maintaining of essential IT platforms, including the Nortel EMEA Administration proceedings website (<http://www.emeanortel.com>) (the “**Nortel EMEA Website**”). In addition, the Joint Administrators have required that one employee be retained by Nortel Poland (the “**Polish Employee**”). The Polish Employee has assisted the Joint

Administrators throughout the Administration by managing numerous local aspects of the Company's affairs, including (but not limited to) producing first drafts of tax returns for subsequent review by the Joint Administrators and statutory financial statements for filing on an annual basis, liaising with a small number of residual local suppliers, liaising with the Polish Tax Authority and submitting filings that, at times, have required a local tax representative of the Company. It has been agreed with the Polish Employee that her contract will be terminated prior to the end of the Administration.

CCAA Subordinated Debt

21. Nortel Poland agreed that certain pre-appointment trading balances due by it to the Canadian Debtors should be assigned to NNUK as part of a wider settlement agreed between the EMEA Debtors and the Canadian Debtors in 2014. The terms of the assignment provided that these trading balances were to be subordinated to the claims of other unsecured creditors against the Company. These trading balances are referred to as "**CCAA Subordinated Debt**". A copy of the assignment dated 16 July 2014 is at [6/42] of SJH20 together with a notice from NNUK to the Company, countersigned to confirm the Company's agreement to the terms of the assignment and subordination is at [7/59] of SJH20. Under the terms of the CVA, the CCAA Subordinated Debt would only be paid once unsubordinated unsecured creditors had been paid the principal and interest thereon in full.

Allocation Dispute and Global Settlement

22. A dispute as to the allocation of the Sale Proceeds between the EMEA Debtors, the US Debtors and the Canadian Debtors, among other creditor constituencies, was the subject of proceedings before the US and Canadian Courts (the "**Allocation Dispute**"). On 12 October 2016, the various parties to the Allocation Dispute entered into a number of settlement agreements comprising the "**Global Settlement**" including: (a) the "**Settlement and Plans Support Agreement**" between (inter alia) the US Debtors, the Canadian Debtors and the Company (a copy of which is at [8/61] of SJH20); (b) the UKPI Settlement Deed between (inter alia) the Company, the EMEA Debtors and the UK Pension Interests – being the Pension Trustee of the NNUK Pension Scheme (the "**NNUK Pension Scheme Trustee**") and the Board of the Pension Protection Fund ("**UKPI**"), a copy of which is at [9/206] of SJH20; and (c) the "**Deed of Release**" between (inter alia) the Company, the EMEA Debtors and the UKPI, a copy of which is at [10/264] of SJH20.
23. Mr Justice Snowden made an Order granting the Joint Administrators liberty to perform and to procure the Company perform the Global Settlement on 3 November 2016 ([11/309] of SJH20). The judgment given by Mr Justice Snowden is provided at [12/312] of SJH20.
24. The Global Settlement became effective on 8 May 2017 and the Company received its allocation of Sale Proceeds agreed as part of the Global Settlement in May 2017. Ultimately, the EMEA Debtors recovered around \$1.35 billion of Sales Proceeds for distribution to

creditors. Nortel Poland received approximately \$4.97 million which, together with the residual cash and other assets held by the Company, was available for distribution to the Company's creditors.

The Company Voluntary Arrangement

25. Having been granted liberty to promulgate a CVA in respect of the Company by an Order dated 23 July 2015 (a copy of which is at **[13/332]** of SJH20), on 5 April 2017, the Joint Administrators proposed a CVA to the creditors of the Company. Copies of the proposal for the Company's CVA is at **[14/337]** of SJH20. On 16 May 2017, the proposed CVA in respect of the Company was approved unanimously without modification by the Company's creditors and members. A copy of the relevant Chairman's report and the Notice of Effective Date (which was sent to creditors and posted on the Nortel EMEA Website) at **[15/492]** and **[16/497]** of SJH20.

Distributions to creditors of the Company

26. The date by which creditors were required to lodge claims in the CVA against the Company passed on 17 September 2017. The Supervisors have adjudicated all 31 claims received. The total value of these claims was £2,160,420,939 (including a significant contingent claim submitted by the UK Pension Regulator), of which £12,938,030 was admitted for payment.
27. A first interim distribution, at a rate of 95p in the £, was made on 5 December 2017 and a second interim distribution was made on 17 August 2018, with unsubordinated unsecured creditors being paid 100% of the principal of their claims (an amount of £3,539,470.29 and 100% of their entitlement to Commercial Interest (an amount of £1,793,932.38). NNUK was also paid 61p in the pound (£5,733,121.14) in the second interim distribution in respect of the principal of CCAA Subordinated Debt.
28. Prior to the making of a final distribution to the Company's creditors, the Supervisors became aware that a very small number of creditors with claims amounting to £1,632 had, despite repeated requests, not provided bank account details for payment. In order to avoid the cost and delay of continuing the CVA and/or the Administration, the Joint Administrators used powers granted to them by the Terms of the CVA to modify the CVA to allow for these funds to be held at NNUK for a period of one year from the date of the distribution and thereafter will be donated to charity. A copy of the Notice of Modification of the CVA which include the Terms of the CVA as modified is at **[17/498]** of SJH20. The Letter of Undertaking from NNUK confirming the terms on which NNUK has agreed to hold these unclaimed funds is at **[18/552]** of SJH20.
29. A third and final distribution was made on 4 December 2019 in respect of the remainder of the principal CCAA Subordinated Debt (an amount of £3,665,438.12), such that NNUK received the principal of the CCAA Subordinated Debt in full. This was facilitated by the

capital injection made by NNUK and described below at paragraph 40. There were insufficient assets to pay Commercial Interest on the CCAA Subordinated Debt.

30. With no further claims to adjudicate or satisfy and having made total distributions net of Withholding Tax of £14,708,640 to creditors, on 10 December 2019 the CVA was terminated. The Notice of Termination is exhibited at **[19/559]** of SJH20.

Payments to expense claimants

31. Together with a number of other EMEA Debtors, on 5 April 2017, the Joint Administrators of the Company made an application for directions from the Court to the Joint Administrators to inform potential claimants that any claims which are asserted to rank as administration expenses under English law ("**Expense Claims**") which had not at that point been made must be notified to the Joint Administrators on a prescribed form (the "**Demand Form**") on or before a specified date (the "**Expense Bar Date**").
32. On 9 June 2017, Mr Justice Snowden made an Order granting the Joint Administrators directions as sought regarding the Expense Claims (the "**Expense Order**"). The Expense Bar Date for the Company 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 **[20/560]** of SJH20 and the judgment given by Mr Justice Snowden is provided at **[21/570]** of SJH20.
33. The Joint Administrators sent explanatory letters and Demand Forms in accordance with the terms of the Expense Order and submitted a pro forma tax calculation to the PTA. The PTA did not submit a Demand Form and any other Demand Forms received by the Joint Administrators were dealt with such that the Supervisors have been able to proceed with distributions to creditors.

Taxation and the solvent liquidation

34. The vast majority of the Joint Administrators' recent work has been tax related as a result of a number of tax aspects that the Joint Administrators were required to deal with during the course of the Administration. These tax aspects were complex owing to the rigid tax regime in Poland and the legal and regulatory landscape in Poland changing a number of times in the period.
35. At the commencement of the Administration proceedings there was a material pre-appointment tax dispute with the PTA. This dispute was resolved by the Court in Poland circa 2010, such that the Company did not face additional tax liabilities in the years in dispute.
36. Later, while the Joint Administrators had the benefit of the Expense Bar Date for the submission of Expense Claims, the strategy was ultimately, as guided by our local legal and tax advisors, to obtain a statement from the PTA that no taxes are owing by the Company so that the Joint Administrators could pursue a solvent winding up of the Company. The Joint Administrators required a statement of "no taxes owed" from the PTA to satisfy any liquidator that the Company was solvent and that it did not have any tax claims against it. This involved

extensive discussions with the PTA and significant tax-related work to eventually obtain the relevant statement. The work and specialist local advice in obtaining clearance is discussed in further detail at paragraphs 41 to 43 below.

37. As the Joint Administrators intended to wind up the Company on a solvent basis, a capital injection was required from NNUK to ensure the solvency of the Company. This capital injection had potential tax implications for NNUK. NNUK therefore required comfort that it would not face any adverse tax implications as a result of the capital injection prior to it proceeding. In addition, the implications upon the existing shareholder, Nortel Networks International Finance & Holdings B.V. (in Dutch law governed liquidation) (“**NNIF**”), were required to be considered. This necessitated a substantial amount of tax related work including identifying and assessing the various options in which the outstanding subordinated debt could be dealt with to place the Company in a solvent position, reviewing and assessing documentation required to effect the capital injection including ensuring regulatory requirements are complied with. As with the applicable tax regime, Polish law in respect of recapitalisation was changing through the relevant period, which added a layer of difficulty in resolving the issue.
38. The Joint Administrators’ team also provided substantial tax related services including reviewing and submitting three years of corporation tax returns in respect of the Company to the PTA, undertaking monthly VAT compliance and reviewing monthly VAT returns for a period in excess of 27 months, assessing the withholding tax position of the Company in line with Polish tax law and undertaking reviews and analyses of the Company’s tax position in previous financial years to ensure compliance and providing general tax advice and related services.

Steps taken to allow for a solvent liquidation

39. The Joint Administrators were strongly advised by their Polish legal advisors that a solvent liquidation under Polish law is the optimal way to dissolve the Company. The reason for this is that an insolvent liquidation requires a statutory review process which, the Joint Administrators are advised, would incur significant cost that would need to be reserved for, reducing distributions to creditors including NNUK. An insolvent liquidation imposes onerous obligations on former management, the Directors and the Joint Administrators, and is a time burdensome process. Therefore, to allow Nortel Poland to be dissolved by way of a relatively rapid and cost-effective solvent liquidation, the Joint Administrators have had to ensure all liabilities arising prior to the start of the liquidation be discharged and to obtain confirmations from the PTA that it has no claim against the Company.

(a) Capital injection

40. Following the second interim distribution, the Company had insufficient assets to discharge the CCAA Subordinated Debt in full. Local tax, accounting and legal advice was taken and

that advice recommended that the most appropriate way of discharging the CCAA Subordinated Debt was by way of a capital injection by NNUK to the Company in accordance with Polish law. Following the receipt of confirmation from the PTA of no outstanding taxes (covering all taxes, all tax returns and all tax payments as of 4 September 2019, received on 13 September 2019) the capital injection process was completed on 20 November 2019 in accordance with Polish law. The capital injection allowed the Supervisors to make the final distribution of the principal CCAA Subordinated Debt on 4 December 2019. The Joint Administrators received confirmation of the registration of the capital injection from the Polish trade registry on 2 January 2020, which confirmation is required for the solvent liquidation of the Company. A copy of this confirmation is at [22/592] of SJH20.

(b) Tax affairs

41. Notwithstanding the Expense Order, the Joint Administrators have been advised that it is necessary, in the context of a Polish solvent liquidation, to demonstrate unequivocally to an incoming liquidator that there are no tax liabilities outstanding as at the date of the liquidator's appointment.
42. The tax dispute between the Company and the PTA that needed to be resolved through Court proceedings in Poland (referred to at paragraph 12 above) led the Joint Administrators to take great care when dealing with the Company's tax position and its relationship with the PTA, both in respect of any pre-appointment claims and any tax which might rank as an Expense Claim.
43. The PTA sought c. £651k in relation to a pre-appointment VAT liability. Discussions between the EY Poland tax team ("**EY Poland**") resulted in the PTA stating verbally in May 2017 that they would not seek to reclaim the pre-appointment VAT liability. On 27 March 2019, the Joint Administrators received formal confirmation from the PTA that the Company did not have any liability for any taxes based on all tax returns and payments received by the PTA prior to this date. Latterly on 13 September 2019, a second confirmation statement of "no taxes owed" has been received from the PTA. Copies of the first confirmation (without English translation) is at [23/603] and the second confirmation with the official English translation is at [24/613].

Reporting on the progress of the Administration and the CVA

44. 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 my seventeenth witness statement in these proceedings, dated 22 November 2019 and made in support of the Joint Administrators' application to extend the Administration of the Company ([25/616] of SJH20), the Joint Administrators have prepared two Progress Reports for the Company for the periods 14 July 2019 to 13 January 2020, dated 13

February 2020 and 14 January 2020 to 13 July 2020, dated 6 August 2020, copies of which are at [26/646] and [26/665] of SJH20.

45. Rule 3.57(1)(a) requires the Joint Administrators to provide the Court with a report on the progress of the Administration since the last Progress Report. Accordingly, for the purposes of the Application, the Joint Administrators have prepared an interim progress report summarising the progress for the Company covering the period from 14 July 2020 to 6 August 2020 (the “**Supplemental Progress Report**”) (at [27/683] of SJH20). 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 6 August 2020.
46. The Supervisors have periodically informed creditors of the progress of the CVA by way of an annual CVA progress report (the “**CVA Report**”) in accordance with Rule 2.41(4) of the Rules. Following the termination of the CVA, a final CVA Report has also been provided in accordance with Rule 2.44(2) of the Rules (the “**Final CVA Report**”).
47. The Supervisors have prepared annual progress reports dated 12 July 2018 ([28/690] of SJH20) and 19 June 2019 ([28/697] of SJH20), and a final report dated 9 January 2020 ([28/704] of SJH20).

D. EXITING THE ADMINISTRATION

Achievement of the purpose of the Administration

48. 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 1986. As set out in the Statement 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.
49. Having made final distributions to creditors, taken steps to prepare for the dissolution and terminated the CVA, the Joint Administrators are of the view that the purpose of the Administration has been sufficiently achieved.
50. 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 subordinated and unsubordinated creditors in full including payment of interest to unsubordinated creditors in full (such that creditors have received a recovery of c.150% of

their principal). In addition, the Joint Administrators are satisfied that the Allocation Dispute was appropriately resolved by way of settlement, as were the claims of the NNUK Pension Scheme Trustee, 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 solvent liquidation.

E. NOTICE AND FORM OF THE APPLICATION

51. 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 30 July 2020, by way of the Nortel EMEA Website. A copy of this notice is provided at **[29/711]** of SJH20. In light of the public health emergency created by the coronavirus, 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. Notice of the making and hearing of the Application is also to be given to all creditors of the Company immediately following the filing of the Application by way of the Nortel EMEA Website.
52. Further, and in accordance with Rule 3.57(2), the Directors of the Company, being the persons who made the Administration application in 2009, were given notice by email on 29 July 2020, copies of which are at **[29/713]** of SJH20.
53. Following the appointment of the Joint Administrators, a creditors' committee was established (the "**Committee**"). Following implementation of the CVA, a creditors' committee was established in accordance with Clause 30 of the CVA with the same members as the Committee. The Committee ceased to be quorate in accordance with Rule 17.1(e) of the Rules after the making of final distributions to the members of the Committee, such that their claims were satisfied in full. Notices to the former members of the Committee to inform them of the making and hearing of the Application were sent on 30 July 2020, and a copy is at **[29/714]** of SJH20
54. As at the date of this statement, the Joint Administrators have received no responses to those notices. 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.

The form of this Application

55. The Joint Administrators have made very similar applications to the present Application:
 - 55.1 in August 2018, in respect of six EMEA Debtors (the "**Batch One Entities**"), supported principally by my eighth witness statement dated 8 August 2018 ("**Harris 8**"), a copy of which is at **[30/716]** of SJH20;

- 55.2 in April 2019, in respect of three other EMEA Debtors (the “**Batch Two Entities**”), supported principally by my eleventh witness statement dated 15 April 2019 (“**Harris 11**”), a copy of which is at [30/769] of SJH20;
- 55.3 in August 2019 in respect of Nortel Networks France S.A.S. (“**NNF**”), supported principally by my fourteenth witness statement dated 22 August 2019 (“**Harris 14**”) a copy of which is at [30/813] of SJH20;
- 55.4 in April 2020 in respect of four other EMEA Debtors (the “**Batch Three Entities**”), supported by my eighteenth and nineteenth witness statements dated 7 April 2020 (“**Harris 18**” and “**Harris 19**” respectively), copies of which are at [30/867] and [30/915] of SJH20.
56. On all four occasions, Mr Justice Snowden granted Orders that the Joint Administrators' appointments terminate on the commencement of the relevant local liquidation or dissolution process. Copies of the Orders and Mr Justice Snowden's judgment are exhibited in SJH20, in respect of:
- 56.1 the Batch One Entities at [31/944] to [31/961];
- 56.2 the Batch Two Entities at [32/962] to [32/967];
- 56.3 NNF at [33/968] to [33/971];
- 56.4 the Batch Three Entities at [34/972] and [34/979].
57. The Joint Administrators believe that the process has worked well and the transition from English law administrations to local law liquidations or dissolutions has been as smooth as could have been expected in the circumstances. Therefore, having taken local law and financial advice as to the suitability of this approach for the Company, the Joint Administrators propose to take a similar approach for Nortel Poland.

Timeline to exiting the Administration

58. The terms of the draft order provide that the termination of the Joint Administrators' appointment is conditional on the commencement of the solvent liquidation. This is because the Joint Administrators do not consider it appropriate for the Company to be handed back to the control of the Directors. Having managed the business and affairs of the Company for over ten years, the Joint Administrators should, in all material respects, bear the responsibility of placing the Company into solvent liquidation.
59. 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 solvent liquidation of the Company not have commenced within the period specified, the draft order requires that the Joint Administrators return to this Court for further directions.
60. The Joint Administrators' terms of office expire 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 [35/980]

F. DETAILS OF THE SOLVENT LIQUIDATION

61. The Joint Administrators have taken local legal and accounting advice regarding the most efficient process available under Polish law to have the Company removed from the local register of companies once the Administration is concluded.
62. Provided that the Court is minded to grant the relief sought, the Joint Administrators currently anticipate completing the steps necessary to commence the solvent liquidation during the course of September.
63. As explained in paragraphs 39 to 43 above, the Joint Administrators were strongly advised by their Polish legal advisors, that a solvent liquidation is the best way to conclude the affairs of the Company and allow for its dissolution given that it is less costly and less time-consuming. Given that the liquidators of NNIF cannot proceed with a final distribution and the dissolution of NNIF until it has dealt with all of its assets, the Joint Administrators see there to be clear benefit in taking reasonable steps to allow the solvent liquidation.
64. The Joint Administrators are advised by their local counsel that the process for the solvent liquidation in respect of a Polish registered company is as follows:
 - 64.1 the shareholder of the Company commences the liquidation by passing a resolution at a general meeting (a copy of a draft of which is at **[36/982]** of SJH20) to:
 - (1) resolve that the Company commences the liquidation;
 - (2) appoint the liquidator. The Joint Administrators have identified Mr. Pawel Siekierzyński of Polish law firm skplus as having the expertise to act as the liquidator of the Company. Mr Siekierzyński has also been engaged by the Joint Administrators as a local legal adviser since the beginning of the Administration and so already benefits from a thorough understanding of the Company's affairs; and
 - (3) approve the Company's financial statements up to the day prior to the date of the solvent liquidation and the opening balance sheet for the liquidation
 - 64.2 within 7 days from the date of the resolution the liquidator is to make certain filings with the Polish Registration Court and the PTA, and advertise the liquidation by way of a notice in the Polish Judicial and Economic Monitor. Assuming no objections or claims are received, three months after the filings the liquidator is to produce a liquidation report and prepare final financial statements up to the day of completion of liquidation which are approved by the shareholders, NNIF and NNUK, before the liquidator may apply for the Company's removal at the Polish Commercial Court Registry.

G. DISCHARGE OF LIABILITY

65. Paragraph 98 of Schedule B1 to the 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.
66. 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.
67. 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. Section 8 of the Settlement and Plans Support Agreement provides that all parties release all claims against each other and covenant not to commence any litigation or file any further claims between entities in the Nortel Group and others, provided that rights are reserved to enforce settlement and subject to certain intra-EMEA claims being carved out. The Joint Administrators provided the Court with the full details of the terms of the Settlement and Plans Support Agreement and the Deed of Release in sixteenth witness statement of Mr Bloom, in particular paragraphs 118.8 to 118.19, 207 and 210 (at [37/1020], [37/1040] and [37/1042] of SJH20). In addition, the terms of the CVA of the Company include releases by each creditor of the Joint Administrators. Clause 33 of the CVA provides that each creditor of a Company irrevocably and unconditionally discharges the Joint Administrators from any liability in connection with their acts, omissions or default as Joint Administrators. The relevant clause in the CVA may be found at [17/533] of SJH20.

H. THE REASONS FOR THE REMUNERATION APPLICATION

Joint Administrators' remuneration prior to Period 1

68. In the Statements of Proposals sent to creditors of the Company in February 2009, the Joint Administrators asserted that where a Committee was formed, in accordance with Rule 2.106 of the Insolvency Rules 1986 (the "**1986 Rules**") the Joint Administrators would ask the Committee to determine the basis of their remuneration and would consult and agree with the Committee, from time to time, on the quantum to be drawn. In the event that a Committee could not be formed, the Joint Administrators were to conduct a creditors' meeting by correspondence to fix the basis of their remuneration and the arrangements for drawing it. The Statement of Proposals set out that the Joint Administrators were to ask the Committee

for payment of their professional fees on account on a monthly basis of 80% of time charged as agreed by the Committee in accordance with Rule 2.106 of the 1986 Rules. It was stated that the residual 20% per month would be agreed by subsequent resolution of the Committee.

69. In advance of the initial meetings of creditors to approve the Statement of Proposals and the formation of the Committee, the Joint Administrators made an application to Court to fix the basis of their remuneration pending approval by the Committee or the creditors on the basis that the initial time costs (anticipated to be £11.7 million for all EMEA Debtors) was an exceptional cost for EY to bear.
70. By Order of Mr Justice Warren dated 23 February 2009 (a copy of which is at **[38/1072]** of SJH20), the Joint Administrators were permitted to pay out of the assets of the Company:
 - 70.1 such sums as may amount to 80% of their fees properly chargeable by the Joint Administrators and/or EY for their conduct of the Administration for the period from 14 January 2009 up to and including 13 February 2009 (being the date of the application); and
 - 70.2 such further sums as may amount to 80% of the fees properly chargeable by the Joint Administrators and/or EY for their conduct of the Administration of the Company for the period from 14 February 2009 to the date on which the Applicants' remuneration is fixed or determined pursuant to rule 2.106 to 2.109 of the 1986 Rules.
71. On that basis, the Joint Administrator have been drawing 80% of their time costs on account on a monthly basis in advance to avoid significant cash exposure, and subsequently seeking approval of all time costs from the Committee in accordance with Rule 2.106 of the 1986 Rules and, from 6 April 2017, Rule 18.18(2) of the Rules.
72. Where approval is to be sought from the Committee, the Joint Administrators' general approach is to table a fee pack at the next scheduled meeting of the Committee. After the Joint Administrators update the Committee on the business and process of the Administration, one of the Joint Administrators or a member of their staff provides a briefing to the Committee on the remuneration sought and the fee pack. The Committee are reminded of their duty to scrutinise the details of the remuneration sought. They are invited to consider the fee pack after the Committee meeting and, if they have any queries, to raise them with the Joint Administrators. If there are no queries, members are invited to sign a written resolution approving the remuneration.
73. The Committee has always approved the Joint Administrators' remuneration except as described below at paragraph 74 below. Copies of the most recent approved fee packs for the period 3 September 2016 to 29 December 2017 are provided in SJH20 dated 12 April 2018 and approved by 13 August 2018, at **[39/1075]** of SJH20. In accordance with Rule

2.47(1) of the 1986 Rules and subsequently Rule 18.3 of the Rules, the details of the remuneration drawn following approval have been included in each Progress Report.

74. The Committee felt unable to sanction the Joint Administrators' remuneration at a level commensurate with the costs properly incurred in respect of the period from 14 January 2009 to 31 July 2009. At the meeting on 7 May 2009 the Committee requested additional information on the fees of the Joint Administrators over and above the detailed information already provided to the Committee. A copy of the minute of the meeting is at **[40/1115]** of SJH20. The Committee meeting was reconvened on 9 September 2009 at which the Joint Administrators sought to address all of the queries raised by the Committee. Despite extensive discussions between the Joint Administrators and the Committee, further information was required. A copy of the minute of the meeting is at **[40/1117]** of SJH20. The Joint Administrators addressed the issues raised by the Committee by preparing and distributing a Time Costs Report for consideration by the Committee prior to the date of the reconvened meeting on 28 October 2009. The Joint Administrators again sought to address the Committee's concerns at the meeting and engaged with the Committee including discussing the Time Costs Report. A copy of the minute of the meeting is at **[40/1123]** of SJH20. Notwithstanding the Joint Administrators' efforts to address the queries raised, the Committee was unable to sanction the Joint Administrators' remuneration and the Joint Administrators applied to the Court for approval, on notice to the Committee. A copy of my third statement in support of that application is at **[41/1131]** of SJH20. Fees totalling £539,101.98 in respect of the period 14 January 2009 to 31 July 2009 were approved by Registrar Derrett by an order dated 19 March 2010, a copy of which is at **[42/1163]** SJH20.
75. Initially in 2010, the Committee also felt unable to sanction the Joint Administrators' remuneration in respect of the period from 1 August 2009 to 5 February 2010. The Joint Administrators convened a Committee meeting for this purpose on 26 July 2010 but none of the members of the Committee were present and the meeting was not properly constituted. As mentioned earlier in the witness statement, the Global Settlement was reached during October 2016 and, in the aftermath of the Global Settlement, the Joint Administrators addressed correspondence to the Committee to arrange a meeting to discuss inter alia the preparation for distributions of the business sale proceeds. In the time period between the July 2010 Committee meeting and the Global Settlement one creditor of the Committee had become inactive and another creditor had changed its representative to the Committee. The Joint Administrators consequently convened a Committee meeting for 10 February 2017 to inter alia approve the Joint Administrators' remuneration. On 10 February 2017 the Committee, by way of written resolution, sanctioned the Joint Administrators' remuneration for time properly spent in respect of the period 1 August 2009 to 2 September 2016 in the amount of £1,664,885.98 and approved the Joint Administrators' purchase price allocation and transaction time costs for the period 14 January 2009 to 2 September 2016 in the amount

of £718,965.64. Copies of the resolutions approving the Joint Administrators remuneration is at [43/1166]. On 12 April 2018 the Committee sanctioned the Joint Administrators' remuneration by way of written resolution, in respect of the period 3 September 2016 to 29 December 2017 in the amount of £290,246.28 and approved the Joint Administrators' transaction time costs for the same period in the amount of £13,639.05. Copies of the signed resolutions are at [44/1169].

76. As described above, the Joint Administrators have made final distributions to the Companies' creditors. Once the Supervisors made their second interim distribution to creditors on 17 August 2018, paying them the remaining principal element of their unsecured claims plus Commercial Interest in full, creditors were no longer entitled to approve remuneration in accordance with the Rules and the Committee was no longer quorate. In an attempt 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 sent an additional fee pack dated 13 August 2018 for the period 30 December 2017 to 20 July 2018 to the Committee before the distribution on 17 August 2018. However, only one Committee member responded to the fee packs and approved the fees by resolution which is at [45/1171] of SJH20. Unfortunately the other Committee members never responded and subsequent engagement with the Committee has proved unsuccessful because they no longer have any active interest in the Company. Accordingly the Joint Administrators are seeking to obtain the Court's approval, if it is so minded, for their remuneration in respect of the period from 30 December 2017 onward, as set out in the Application.

Supervisors' remuneration prior to the CVA Period

77. In addition to their Application for remuneration as Joint Administrators, the Joint Administrators also apply for approval of the Supervisors' outstanding remuneration. The terms on which the Supervisors are to be remunerated are set out in the CVA, a copy of which is at [17/531] of SJH20. Clause 29.1 of the CVA provides that "*The Supervisors shall be paid in respect of their work in preparing, implementing and operating the CVA and all acts reasonably incidental thereto*" ([17/531] of SJH20). Clause 29.2 further provides that the basis of the Supervisors' remuneration will be fixed by reference to the time properly given by them and their staff in attending to matters arising in connection with the CVA. Such time costs are to be charged at the Supervisors' rates from time to time for insolvency related work (Clause 29.2). CVA Clause 29.3 provides, relevantly, that the Supervisors' fees shall be approved in accordance with CVA Clause 30.7. Incidentally, I note that CVA Clause 35.1 provides that Clause 29 shall survive the termination of the CVA. As to the approval mechanism referred to in CVA Clause 29.3 (i.e. the one provided by CVA Clause 30.7):
- 77.1 CVA Clause 30.7.1 provides that the Supervisors fees are to be invoiced monthly (or for such other periods as the Supervisors determine appropriate) to the relevant Company.

- 77.2 CVA Clause 30.7.2 permits the Supervisors to be paid 80% of their fees immediately ([17/532] of SJH20).
- 77.3 The balance of fees incurred by the Supervisors are to be approved by the relevant CVA Creditors' Committee (CVA Clause 30.7.3).
- 77.4 CVA Clause 30.7.4 provides that if there is from time to time no CVA Creditors' Committee to assist the Supervisors then the balance of their fees is to be paid "*following the approval of those fees by either the English Court or a meeting of Creditors*", whichever the Supervisors deem to be the appropriate and most cost efficient process ([17/532] of SJH20).
78. For the reasons set out at paragraph 75 above, there are no creditors nor a Committee extant to approve the Supervisors' remuneration and so, on this basis, the Joint Administrators now seek the Court's approval for the payment to the Supervisors of the balance, as contemplated by CVA Clauses 29.3 and 30.7.4.
79. As in the Administration, the Supervisors prepared a detailed fee pack which was provided to the Committee. A copy of the most recent fee pack for the period 3 September 2016 to 29 December 2017, dated 12 April 2018 is at [39/1098] of SJH20, which sets out the Supervisors' fees in respect of the period 3 September 2016 to 29 December 2017. The Committee approved the Supervisors' fees by 13 August 2018 for the period up to 29 December 2017 in the amount of £91,197.56. A copy of the resolution approving the Supervisors' remuneration as set out in the fee packs is at [44/1169] of SJH20.
80. The CVA of the Company was terminated on 10 December 2019, however the Supervisors were required to complete work incidental to the CVA after the termination date including production of the CVA final report, cancelling insurance bonding, preparing fee schedules relating to the Joint Supervisors' time costs and expense and attending to accounting, finance and administrative tasks such as closing bank accounts. The Court's approval is therefore sought for the payment of fees from last approval by the Committee in accordance with the terms of the CVA, from 30 December 2017 to 3 April 2020 (i.e. the CVA Period).

Engagement with the Company's creditors

81. 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' intent to issue the Application in respect of their remuneration on 30 July 2020, with a copy of the notice at [29/711] of SJH20. To date, the Joint Administrators have received no response from the creditors. Further, and in accordance with Rule 18.28(6) of the Rules, notice of the making and hearing of the Application will be given to all creditors at least 14 days before the hearing of the Application together with access to a copy of this statement by way of the Nortel EMEA Website, with a statement that the exhibit will be 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

82. Given that the ultimate economic impact of any overpayment of the Joint Administrators' remuneration would be felt by NNUK in respect of (i) its entitlement to Commercial Interest on the CCAA Subordinated Debt, and (ii) any surplus after a solvent winding-up as the ultimate parent company in the Nortel EMEA Group, the Joint Administrators have engaged closely with the Creditors' Committee of NNUK (the "**NNUK Committee**") before issuing the Application. On 24 July 2020, the Joint Administrators provided a draft of the Schedules setting out the details of the Joint Administrators' remuneration and Supervisors' fees for the period up to 3 April 2020 to the NNUK Committee. The Joint Administrators invited the members of the NNUK Committee to review the Schedules in detail, invited questions from them, and provided the NNUK 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. A copy of this correspondence is at **[46/1172]** of SJH20.
83. A preliminary review was undertaken by PricewaterhouseCoopers ("**PwC**") as representatives of, and advisors to, the NNUK Pension Scheme Trustee (the 95% creditor of NNUK). A number of queries were received from PwC. These questions focused on the proportion of tax related costs in relation to total costs in the fee schedule, the role that EY Poland had in respect of the Company's tax issues, queries around the forecasted costs of the Company up to liquidation, the remaining cash balances of the Company and queries regarding the proposed liquidator and his costs. In addition, PwC also requested additional detail around the Joint Administrators' rates. These queries were comprehensively dealt with by the Joint Administrators. A copy of this correspondence is at **[47/1176]**
84. All questions raised were resolved to the satisfaction of PwC and as a result the Joint Administrators requested approval by resolution of the NNUK Committee. The Joint Administrators issued the fee pack dated 13 July 2020 as reviewed by PwC to the NNUK Committee and received the resolution of the NNUK Pension Scheme Trustee dated 27 July 2020 confirming that the time costs set out in the fee packs and schedules dated 13 July 2020 provided to the NNUK Committee on about 13 July 2020 appeared fair and reasonable and that the Joint Administrators should seek the approval of these time costs from the Court as part of the proposed exit and fee application. A copy of this resolution is at **[48/1192]** of SJH20. The other two members of the NNUK Committee approved the resolution in the same terms and copies of their approvals and correspondence with them are at **[49/1193]** to **[50/1194]** of SJH20. If any further feedback is received from members of the NNUK Committee will be given to the Court at, or before, the hearing of the Application.

85. 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 this Application 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 will be 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.

I. ASPECTS AND PROCESSES APPLIED TO REMUNERATION

86. The Joint Administrators make reference to the applications made to this Court in respect of the Batch One Entities, the Batch Two Entities, NNF and the Batch Three Entities, and the previous key witness statements made by me in support of those applications; Harris 8, Harris 11, Harris 14, Harris 18 and Harris 19. The Court will be familiar with those common aspects including recording, monitoring and the treatment of expenses applied to the Joint Administrators' remuneration and the Supervisors' fees. These common aspects apply to the Company in the same way as they applied to the Batch One Entities, the Batch Two Entities and the Batch Three Entities. As such, detailed information on these aspects is set out in Schedule A to this statement which is at [51/1195] of SJH20.

87. 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.

88. I have had core involvement in the Company since my appointment and have been assisted by senior, experienced members of EY's restructuring and insolvency team.

J. CHARGE OUT RATES

89. The charge out rates applied by staff from EY's London office ("EY London") in the Administration (as distinct from the CVA) have changed only once during the course of the Administration. A copy of the relevant resolution dated 12 April 2018, approving the change in the Joint Administrators' charge out rates is at [44/1169] SJH20. The Joint Administrators have disclosed the average hourly rates of their staff in each Progress Report (in relation to the most recent Progress Report, this may be seen at [26/679], [26/680] and [26/681] of SJH20). 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 13 July 2020, the detail is provided at [52/1203] and [52/1204] of SJH20.

90. 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 in April 2018 when the most recent fee pack was approved. A copy of the resolution approving the application of those charge out rates is at [44/1169] of SJH20.
91. Each EY staff member has specific hourly rates according to their level of seniority. The details of the charge out rate bands for each of the different grades of seniority are set out in Schedule POL1.1 (at [52/1203] of SJH20) in the case of the Administration and Schedule POL1.2 (at [52/1204] of SJH20) in the case of the CVA.
92. Charge out rates applied by staff working in the EY Poland team are also set out in the Schedules to this Statement (at [52/1203] of SJH20) in the case of the Administration and at [52/1204] of SJH20 in the case of the CVA. EY Poland, as a firm, determines its own hourly charge out rates in the applicable local currency and it was noted in Appendix E (*Statement of Administrators' charging policy for remuneration and disbursements pursuant to Statement of Insolvency Practice No. 9*) of the Proposals (at [5/40] of SJH20) that the rates charged may vary. Time costs are submitted by EY Poland to the Joint Administrators on a weekly basis and are converted into Sterling at the average exchange rate for that week. This basis for charging the fees of EY Poland has also been approved by the Committee as part of their previous approval of fees.
93. Professional skill and commercial judgement are applied when determining EY's Corporate Restructuring staff charge out rates. This ensures that fair and reasonable staff charge out rates are set for the financial year. When applying professional skill and commercial judgement to the determination of annual staff charge out rates, the following factors are taken into account:
- 93.1 overall market pressure on the level of staff charge out rates;
 - 93.2 the general level of inflation;
 - 93.3 proposed salary increases for staff in EY's Corporate Restructuring business unit;
and
 - 93.4 specific increases in the level of overheads.

K. SUMMARY OF REMUNERATION AND COMPARISONS

94. The total remuneration sought for approval in this Application is £1,802,750.78 in respect of the Administration and CVA.
95. The time periods for which remuneration is to be fixed by reference to time properly given by the Joint Administrators are:
- 95.1 from 30 December 2017 to 3 April 2020 (i.e. Period 1), 3 April 2020 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

95.2 for the period from 4 April 2020 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 4 April 2020 but before the making of this Application. It also includes estimated time costs for the period from the date of the Application to being the date falling 60 days from the date listed for the hearing of the Application and the deadline by which the Administration 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.

96. In addition to their Application for remuneration as joint administrators, the Joint Administrators also make an Application for approval of the Supervisors' outstanding remuneration. The CVA was terminated on 10 December 2019. The Court's approval is therefore sought for the payment of fees from the last approval by the Company's Committee in accordance with the terms of the CVA, from 30 December 2017 to 3 April 2020 (i.e. the CVA Period).

Comparison with remuneration previously approved by the Court, the Company's creditors or the Committee and explanation of variance

97. If approval is granted by the Court, the total approved remuneration for the Joint Administrators, Nominees and Supervisors since 14 January 2009 would be £5,120,787.27. A table illustrating this is set out below.

	Remuneration for which the Court's approval is sought to the end of the Administration		Total remuneration (including that for which approval is sought)		Percentage of total	
	Quantum (£)	Period Duration	Quantum (£)	Period Duration	Quantum of remuneration	Period Duration
Administration	1,764,263.39	32 months	4,991,102.32	141 months	35.3%	23.0%
CVA	38,487.39	24 months	129,684.95	32 months	29.7%	75%
Total	1,802,750.78		5,120,787.27		35.2%	

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

Period Description	Period Dates	Months	Total time costs (£)	Run Rate per month (£)
Most recent previously approved period (both Administration and CVA)	3 September 2016 to 29 December 2017	16 months	395,082.89	24,692.68
Period 1 Administration Time Costs and CVA Period Time Costs	30 December 2017 to 3 April 2020	27 months	1,667,745.28	61,768.34
Period 2 Administration Time Costs	4 April 2020 to the date of exit from the Administration	7months	135,005.50	19,286.50

99. The Joint Administrators draw the Court's attention to the significant increase in the monthly run rate in the period 30 December 2017 to 3 April 2020 set out in the table above. This increase represents the Joint Administrators' and Supervisors' work involved in the making of two distributions (including a final distribution to unsecured creditors plus Commercial Interest in full as per the terms of the CVA), adjudicating remaining creditor claims, modifying and terminating the CVA, identifying the appropriate local winding up process and identifying a liquidator who is prepared to take the role, dealing with the prospective redundancy arrangements for the Polish Employee, and reviewing tax filings and the overall tax position in order to facilitate obtaining a statement of "no taxes owed" from the PTA. The work undertaken has involved evaluating and completing the complex capital injection to deal with the CCAA Subordinated Debt to enable a solvent winding up of the Company (referred to at paragraph 49 above).
100. The steps leading to the closure of Nortel Poland has required careful planning and preparatory work in respect of the appropriate procedure and tax. The procedural requirements of a Polish solvent liquidation meant that the Joint Administrators had to ensure that the Company's affairs were in perfect order to minimise the risk of any prolonged closure of Nortel Poland which would delay the closure of NNUK.
- 100.1 For the duration of the Administration, the Company has faced a seemingly high volume of questions from the PTA which had to be properly addressed so that the statutory obligations of the Company and its officers could be considered satisfied. A solvent liquidator may not have the benefit of the Expense Bar Date and the PTA might seek to assert claims if any potential claims were not fully investigated and satisfied prior to the end of the Administration. As such, in preparation for the ending of the Administration, in 2018 the Joint Administrators and Directors requested EY Poland as the Joint Administrators' Polish tax advisors to carry out a full review of tax requirements and tax submissions made by the Company for the years 2012 to 2018, including all VAT, income tax and withholding tax filings,

to ensure that all appropriate returns were made and all taxes due had been paid to the PTA's satisfaction. This review was completed in the autumn of 2019.

- 100.2 Significant legal and tax, accounting and other financial advice was required in preparation of the capital injection and that advice had to be robustly tested by the Joint Administrators for the Company's benefit and the benefit of NNUK as the party being asked to inject capital.
- 100.3 The changing legislative background has been more prominent in Poland than in other jurisdictions and has required more attention and advice from advisors to ensure that the Joint Administrators are fully compliant and also taking the most efficient and cost-effective route to conclusion. This changing legislative landscape in Poland and the application of the tax legislation to specific situations necessitated that the Company later submit an amended tax return for the financial year ending 2017 in September 2018.
101. Schedule POL4.1 ([52/1222] of SJH20) illustrates the run rate of time costs for the prior period and Period 1 as a graph. It shows a higher run rate in the earlier years of the Administration during stabilisation and trading, a reduced run rate from late 2013 to the commencement of Period 1 and an increase during late Period 1 as aligned with the exit activity and liquidation planning. The marginal increase in the run rate after 2016 reflects the work of the Joint Administrators in recovering assets for distribution, planning and implementing the CVA and the Expense Bar Date, adjudicating claims, making distributions to creditors and the work required to prepare to place the Company into solvent liquidation.

L. DETAIL OF THE REMUNERATION

Categories of time costs

102. The Joint Administrators' and Supervisors' time costs are classified into two categories across both Period 1 and Period 2.
- 102.1 "**Direct Time Costs**", also referred to in previous fee packs and the Schedules as Administration Time Costs, are entity specific and have, therefore, been incurred solely in respect of the Company.
- 102.2 "**Reallocated Time Costs**", also referred to in fee packs and Schedules as General Time Costs, are not entity specific but benefit all of the EMEA Debtors. Each EMEA Debtor is allocated an equitable portion of costs depending on the Joint Administrators' view of the benefit received by that EMEA Debtor. Further information on how the allocation is determined is set out at paragraph 5 of Schedule A (at [51/1198] of SJH20).
103. A summary of the remuneration for which the Court's approval is sought for the Administration 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 set out in Schedule **POL1.0** ([52/1202] of SJH20).

Cost Category	Administration		CVA	Total Cost (£)
	Period 1 (30 December 2017 to 3 April 2020)	Period 2 (4 April 2020 to liquidation)	CVA Period	
Direct Time Costs	1,337,592.94	135,005.50	38,225.00	1,510,823.44
Reallocated Time Costs	291,664.95	NIL	262.39	291,927.34
Total remuneration sought for approval	1,629,257.89	135,005.50	38,487.39	1,802,750.78

Time costs by grade of Joint Administrators' staff

104. For the purposes of this Application the Joint Administrators have classified Assistant Directors and more senior staff as "**Senior Staff**", whilst Managers and more junior staff have been classified as "**Junior Staff**".
105. In the Administration, EY London Senior Staff incur hourly charge out rates of between £565 and £805, while Junior Staff usually incur hourly charge out rates of between £40 and £415. Details of the staff grades and charge out rates in the Administration are at Schedule POL1.1 (at [52/1203] of SJH20). While the average hourly charge out rates vary between the categories of time costs, the average hourly rates incurred by EY London in the Administration during Period 1 are £257.63 and £307.54 in respect of Nortel Poland's Direct Time Costs and Reallocated Time Costs respectively.
106. In the CVA, EY London Senior Staff incur hourly charge out rates of between £565 and £805, while Junior Staff usually incur hourly charge out rates of between £40 and £415. Details of the staff grades and charge out rates in the CVA are at Schedule POL2.1 (at [52/1205] of SJH20). While the average hourly charge out rates vary between the categories of time costs, the average hourly rates incurred by the EY team in the CVA during the CVA Period are £235.38 for Direct Time Costs and General Time Costs are *de minimis*.
107. The charge out rates of EY Poland have not remained constant throughout the Administration and have been subject to annual increases. That said, EY Poland's Senior Staff currently incur hourly charge out rates of usually between £247 and £939, while EY

Poland's Junior Staff currently incur average hourly charge out rates of between £31 and £545. Details are in Schedules POL2.1 and 2.2 (marked "Local team") and in Schedule POL7.1.

108. Charge out rates applied by staff based in EY's local offices are also set out in the Schedules to this Statement (Schedule POL1.1 (at [52/1203] of SJH20) in the case of the Administration and Schedule POL1.2 (at [52/1204] of SJH20) in the case of the CVA). Each EY local office determines its own hourly charge out rates in the applicable local currency. Time costs are submitted by each local office to the Joint Administrators on a weekly basis and are converted into Sterling at the average exchange rate for that week. The Committee has accepted increases in EY Poland's rates throughout the Administration.

M. AN EXPLANATION OF THE SCHEDULES

109. 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 Amended Practice Direction: Insolvency Proceedings 2018 (the "Practice Direction"). The Schedules comprise a Schedule A at bookmarked tab [51] which describes the recording, monitoring and reporting processes that apply and a fee pack at bookmarked tab [52] which contains Schedules setting out the remuneration for which the Court's approval is sought.

Administration Time Cost

110. **Schedule POL2** (*Period 1 – 30 December 2017 to 3 April 2020*), sets out the detail of the Joint Administrators' remuneration for Period 1 and comprises:
- 110.1 a table headed "*Schedule 2.1 Administration time (direct): analysis by person, by workstream and by grade*", which contains a complete listing of all the members of the EY London, EY Poland, Global Delivery Service ("GDS") (India based) teams and their grades, together with the time they have recorded against each individual workstream and (based on their hourly rate, also listed) the corresponding Direct Time Costs charged to the Company. For ease the Direct Time Costs for Period 1 are highlighted in yellow.
 - 110.2 a table headed "*Schedule 2.2 Administration time (direct): Analysis by grade and workstream*", which groups the team members in their different grades rather than listing the team members individually. The hourly rate listed for each grade is an average arrived at by dividing the total time costs by the total number of hours.
 - 110.3 a narrative summary headed "*Schedule 2.3 Administration time (direct): Summary of work completed*" which contains a detailed description of the key tasks undertaken by the Joint Administrators and their staff in Period 1 directly attributable to the Company. The heading for each workstream narrative contains

the total time costs incurred in respect of that workstream, corresponding to those set out in the preceding Schedules 3.1 and 3.2.

- 110.4 a table headed "*Schedule 2.4 Total Administration time (reallocated) for all EMEA entities: analysis by grade and by workstream*", setting out the total costs recorded centrally for all EMEA Debtors during the period by workstream.
 - 110.5 a table headed "*Schedule 2.5 Administration time (reallocated) for the Company: analysis by workstream*", setting out the allocation and resulting amount of time cost borne by the Company in respect of work undertaken centrally for all EMEA Debtors during Period 1.
 - 110.6 a narrative summary headed "*Schedule 2.6 Administration time (reallocated): summary of work completed*" contains a detailed narrative description of the central tasks undertaken in Period 1, the costs of which have been reallocated to that Company.
111. **Schedule POL3** (*Period 2 – 4 April 2020 to local solvent liquidation*), sets out the detail of the Joint Administrators' estimated remuneration for Period 2. Period 2 includes time costs incurred by the Joint Administrators for work undertaken after 4 April 2020, being the last practicable date prior to the filing of the Application up to which the Joint Administrators are able to provide information in respect of their remuneration, but before the making of this Application. It also includes estimated time costs for the period from the date of this Application to the date of exit from the Administration, being the date by which the Joint Administrators would hope to have commenced the solvent liquidation. Should the remuneration actually incurred be in excess of that amount, the Joint Administrators would consider whether to return to the Court for directions. The Joint Administrators also note that they expect to be able to complete the formalities associated with placing the Company into solvent liquidation in the coming weeks. This Schedule comprises:
- 111.1 a table headed "*Schedule 3.1 Administration time (direct): analysis by grade and by workstream*", which sets out the estimated direct time costs to the Company by workstream and groups the team members in their different grades. A complete listing of all the members of the EY London, EY Poland and GDS teams is not provided as it is not possible to say with certainty which members of the engagement team will undertake the work in question.
 - 111.2 a narrative summary headed "*Schedule 3.2 Administration time (direct): Summary of work to be completed*", which contains the detailed description of the tasks to be undertaken in Period 2 and charged directly to the Company.
 - 111.3 a table headed "*Schedule 3.3 Administration time (reallocated) for the Company: analysis by workstream completed*", which sets out the allocation and resulting amount of time cost borne by the Company in respect of work to be undertaken centrally and allocated to the Company during Period 2. The total forecasted time

costs for all EMEA Debtors reflects an estimate of the Joint Administrators' costs to the termination of the Administration and commencement of the solvent liquidation, in line with the process described at Section F (*Details of the solvent liquidation*) above.

- 111.4 a narrative summary headed "*Schedule 3.4 Administration time (reallocated): summary of work to be completed (reallocated)*", which contains the detailed narrative description of the tasks to be undertaken centrally in Period 2, the costs of which will be reallocated to the Company.
- 112. **Schedule POL4** (*Administration General*), sets out data showing the time costs incurred over the duration of the Administration as well as the details of certain expenses incurred during Period 1 or expected to be incurred in Period 2 and certain adjustments. These Schedules comprise:
 - 112.1 a graph headed "*Schedule 4.1 Weekly time costs for the administration to end of Period 1*", showing the weekly time costs in respect of the Company's Administration from the date of appointment to the end of Period 1. The graph illustrates, as I would expect to see, intensive time costs during the early part of the Administration while the team worked to stabilise the business and undertake the asset sales, followed by a decline in the weekly fees as this work was completed. Time costs then remained broadly consistent, in line with the operations having stabilised and the Joint Administrators focusing on the Allocation Dispute, until the commencement of the CVA. A marginal increase in costs in 2016 followed by a significant increase in costs in Period 1 is the result of the Joint Administrators' efforts to bring the Administration to a close and finalise the affairs of the Company. There was also an increase in work rate during January and April 2019. The Joint Administrators and Directors requested EY Poland (with support from the Polish legal advisors) to carry out a full review of tax requirements and tax submissions made by the Company for the years 2012 to 2018. This was to ensure that all appropriate returns were made and all taxes due had been paid and each VAT, Income Tax and withholding tax filing was reviewed, so that the Company could then approach the PTA with a request for confirmation that no taxes were owing. A number of amendments needed to be made to the withholding tax filings from 2012 to 2016, using the new electronic filing system. Our tax colleagues then attempted to obtain the first statement of "no taxes owed" from the PTA, requiring correspondence and calls with the PTA. Additionally, ensuring that the tax affairs were in order and up to date necessitated the amended tax return for the financial year ending 2017 – being the year in which the sale of business proceeds flowed from the locked boxes to the Company. In the period, the Joint Administrators also

progressed the plans and timeline in respect of the exit from Administration in this period, including meetings with the potential liquidator and local legal advisors.

- 112.2 a list of those expenses incurred in relation to the Administration of the Company during Period 1 is set out below a heading "*Schedule 4.2 Expenses in Administration (Category 2)*". The Joint Administrators do not expect to charge any Category 2 expenses during Period 2. Legal fees for Period 1 and estimated legal fees for Period 2 for both English law and local law advisors are also included.

CVA Time Costs

113. **Schedule POL5** (CVA Period from 30 December 2017 to 3 April 2020) relates to the payment of costs to the Supervisors for the CVA Period and for which the Court's approval is sought and is made up of two main categories of costs, "**CVA Direct Time Costs**" and "**CVA General Time Costs**". Schedule 5 (CVA Period) comprises:

113.1 a table headed "*Schedule 5.1 Supervisors' direct time costs: by person, by grade and by workstream*", which contains a complete listing of all the members of the EY London, EY Poland and GDS teams and their grades, together with the time they have recorded against each individual workstream and (based on their hourly rate, also listed), the corresponding CVA Direct Time Costs charged to the Company.

113.2 a table headed "*Schedule 5.2 Supervisors' direct time costs: by grade and by workstream*", which groups the team members in their different grades rather than listing the team members individually. The hourly rate listed for each grade is an average arrived at by dividing the total time costs by the total number of hours.

113.3 a narrative summary headed "*Schedule 5.3 Supervisors' direct time costs: summary of work completed*", which contains a detailed description of the tasks undertaken by the Supervisors and their staff in the CVA Period directly attributable to the Company. The heading for each workstream narrative contains the total time costs incurred in respect of that workstream, corresponding to those set out in the preceding Schedules 5.1 and 5.2.

113.4 a table headed "*Schedule 5.4 Supervisors' general time costs for the Company*", setting out the total CVA General Time Costs incurred centrally for each of the EMEA Debtors subject to a CVA for the period from approval of each CVA to 3 April 2020. The Supervisors have not incurred any CVA General Time Costs in relation to the CVA Period.

114. **Schedule POL6** (CVA General), sets out the data for the Supervisors' fees, showing the time costs incurred over the duration of the CVA. This Schedule comprises a graph headed "*Schedule 6.1 Weekly time costs over the duration of the CVA*", showing the weekly time costs in respect of the Company from the date of appointment to 3 April 2020. The graph

illustrates that time costs initially accrued at a very low level while claims were submitted to the Supervisors and rose following the CVA bar date, at which point CVA Claims began to be adjudicated. Time costs then remained broadly consistent with occasional increases reflecting the work required to effect distributions to creditors and terminate the CVA.

Receipts & Payments

115. In accordance with paragraph 21.7(a) of the Practice Direction, the Joint Administrators' most recent receipts and payments account (“**R&P**”) in the Administration period to 13 January 2020, being the period covered in the latest Progress Report, is included in Schedule POL7.1, to this statement (at **[52/1230]** of SJH20).
116. 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 POL7.2 to this Statement (at **[52/1232]** of SJH20).
117. The R&Ps are statements of cash received and cash paid out as at their date of issue and do not reflect costs incurred during the period but paid after that date.

N. DETAIL OF THE REMUNERATION

118. The Joint Administrators seek an Order approving:
 - 118.1 their remuneration for:
 - (1) Period 1, being the period 30 December 2017 to 3 April 2020, be fixed at £1,629,257.89;
 - (2) Period 2, being the period from 4 April 2020 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 £135,005.50;and
 - 118.2 the payment of the balance of the Supervisors' fees in accordance with the terms of the CVA for the CVA Period, being the period from 30 December 2017 to 3 April 2020, in an amount of £38,487.39.

Administration Direct Time Costs for Period 1: £1,337,592.94

119. The overall Direct Time Costs incurred in the Administration during Period 1 aggregates to £1,337,592.94. The supporting information for the Direct Time Costs is set out in Schedules POL2.1 to POL2.3 (at **[52/1205]** of SJH20) and the importance of some of the more significant workstreams is described below. A detailed explanation of the tasks undertaken can be found at Schedule POL2.3 (at **[52/1209]** of SJH20).
120. The more significant workstreams for Direct Time Costs in the Administration in Period 1 (27 months) are Tax, Strategy; Fees; Creditors; and Finance, accounting and Administration, which account for approximately 99.4 percent of the Direct Time Costs. Additionally, there

are also sundry costs relating to statutory tasks (£7,434.50). The more detailed summary of work completed is at Schedule POL2.3 at [52/1209] of SJH20.

Tax - £941,806.82

3,598.1 hours, average rate £261.75

121. The work done in respect of tax is categorised into five sub-workstreams as set out below.

122. *Corporation Tax:*

122.1 The work done in respect of Corporation Tax includes reviewing tax calculations and statutory returns for the period which included three corporation tax returns for the Company's 2017, 2018 and 2019 financial years and ultimately submitting the Company's FY17, FY18 and FY19 Corporation Tax returns to the PTA.

122.2 The Joint Administrators liaised with the Polish Employee to clarify matters arising in the review process, reviewing the impact of foreign exchange gains and losses on the Corporation Tax returns. The Joint Administrators also assessed the possibility of a loss utilisation in the FY19 Corporation Tax settlements, assessed and monitored numerous changes in the local Polish tax regime and assessed the implications of these changes in the context of the various filings.

122.3 The Joint Administrators also liaised with the PTA on the submission of the Corporate Tax returns including in respect of the amended FY17 Corporation Tax return to ensure compliance in light of the PTA's recent approach to cases with similar attributes, and to confirm the correct approach in respect of preparing and filing the Corporation Tax Returns.

123. *Tax on capital injection:*

123.1 The work the Joint Administrators completed in respect of the capital injection includes having analysed various options for dealing with the outstanding subordinated debt due to NNUK and assessing options and providing corporate advice on the impact from a tax perspective on the different options of ensuring the Company might enter a solvent winding up process which included the capital injection.

123.2 The Joint Administrators reviewed the documentation required for executing the capital injection to be made by the NNUK to ensure compliance with local tax laws and assessing and ensuring compliance with the required disclosures in respect of the capital injection.

124. *VAT:*

124.1 Work done in respect of VAT included undertaking monthly VAT compliance assessments and reviewing monthly VAT returns for approximately a 27 month period. The Joint Administrators liaised with Polish tax advisors regarding potential VAT refunds.

- 124.2 The Joint Administrators reviewed the required documents for a VAT deregistration including liaising with Polish tax advisors and finalising statutory VAT tasks in compliance with local tax law.
125. *Withholding Tax:*
- 125.1 Work done in respect of withholding tax included assessing the withholding tax position of the Company at regular intervals and as required by Polish law undertaking analysis of payments made to foreign entities by the Company during FY13 to FY16 to analyse the withholding tax implications from these payments for the Company and to ensure all required filings and payments were made, with respect to obtaining a certificate of “no taxes owed” and ultimately entering a solvent liquidation.
- 125.2 The Joint Administrators also prepared Withholding Tax forms and liaised with the PTA to ensure compliance with the Polish tax laws.
126. *General Tax:*
- 126.1 The Joint Administrators also conducted further general tax work which includes liaising with Polish tax advisors on the tax implications for the assignment of intercompany receivables to the NNUK, assessing the risk around the Mandatory Disclosure Rules introduced during the Administration period and liaising with the PTA in respect of obtaining a certificate of “no taxes owed”.
- 126.2 The Company also received its allocation under the Global Settlement in the 2017 financial year and accounted for the disposals, which required the Joint Administrators to prepare and re-submit the Company’s tax submissions. Tax work also includes exploring the various routes available to allow settlement of the CCAA Subordinated Debt and pave the way towards the preferred solvent liquidation.
- 126.3 This work also includes the comprehensive internal tax compliance review referred to in paragraph 100.1 as being necessary to provide for an unproblematic solvent liquidation which is of significant importance to the Joint Administrators, the Directors of the Company, NNIF, NNUK and the proposed liquidator to ensure such compliances.

Strategy - £298,868.50

655.2 hours, average rate £456.15

127. The Joint Administrators have worked closely with local advisors to identify and agree upon the most effective exit route to the Administration and method for the Company’s dissolution, and related matters, including the approach to settling the CCAA Subordinated Debt, to allow for the solvent exit route and assessing the accounting steps to be taken prior to termination of the Administration.
128. The Joint Administrators have liaised with their English legal advisors, local legal advisors, the Directors and the potential liquidator in respect of the Polish Employee as appropriate to

ensure compliance with local law upon entry into solvent liquidation and to conclude the current contract appropriately.

129. In addition, there has been work with local legal advisors, the finance team of the Legacy Nortel Employees, and the Polish Employee in respect of the appropriation of the 2019 trading result and the application of that result to retained earnings and to amend the Articles of Association of the Company in order that the liquidator may do likewise in respect of any subsequent post-liquidation losses.
130. The Joint Administrators have also prepared a diligence summary on the Administration and CVA processes to date and liaised generally to ensure the prospective liquidator feels that he is able to accept the appointment in due course.
131. In order to ensure that all matters were concluded before making this Application, the Joint Administrators have had to consider the approach to be taken in respect of realising the outstanding intercompany assets, including considering the appropriate valuation methodology and evaluating the potential options for assignment to NNUK.

Fees – £53,740.50

793.6 hours, average rate £67.72

132. The Fees workstream includes time spent in the two and a quarter year period on preparing three fee packs, first for the most recently approved period, the second for 30 December 2017 to 20 July 2018 (as explained in paragraph 75 of this statement) and the third for the purpose of this Application. In addition, time costs arising from Fees include recurring functions such as raising invoices in the period at the previously approved 80% and the reporting of time cost information in the Joint Administrators' five, six-monthly Progress Reports for the periods 14 July 2017 to 13 January 2018, 14 January 2018 to 13 July 2018, 14 July 2018 to 13 January 2019, 14 January 2019 to 13 July 2019 and 14 July 2019 to 13 January 2020.

Creditors - £27,012.62

84.6 hours, average rate £319.30

133. The Creditor workstream represents time dealing with creditor queries regarding the Administration process, adjudicating remaining Expense Claims, liaising with and providing updates to the creditors, preparing mailing lists and translations of Progress Reports, and analysing the need for any potential costs or other provisions ahead of the transfer of funds to the Supervisors to enable distributions to creditors.

Finance, accounting and Administration - £8,730.00

35.8 hours, average rate £243.85

134. This work is comprised of the preparation and review of financial information for decision making and includes a review of six-monthly R&Ps arising from the Joint Administrators'

statutory reporting requirements and responding to certain queries from the Legacy Nortel Employees on general accounting, general recording of our cashbook system, account reconciliations and funding requirements between accounts.

Administration Reallocated Time Costs over Period 1: £291,664.95

135. The key workstreams for Reallocated Time Costs in the Administration in Period 1 are EMEA billing, EMEA tax and VAT advisory, Exit Strategy, Progress Reports, Finance, Accounting and Administration and Estimated Outcome Statement; all of which comprise 96.3 percent of the total. Additionally, there are also sundry time costs relating to Creditors (£8,263.77), Debtors (£2,226.61) and IT (£124.93). The more detailed summary of work completed is at Schedule POL2.6 at [52/1217] of SJH20.

EMEA Billing - £85,448.26

Approximately 360.4 hours, average £237.10

136. The time costs associated with *EMEA Billing* relate to the general management and conduct of the billing process, this for the two and a quarter year period, for the EMEA Debtors and coordination with the respective local offices, assembling the base data for the fee packs for approval, raising of appropriate EY invoices for the Joint Administrators' work, the making of payments by the EY treasury team, and monitoring and applying the allocations for Reallocated Time Costs.

EMEA tax & VAT advisory - £60,690.62

Approximately 137.1 hours, average £442.62

137. The tax affairs of the Group were historically complex and, given the unique and technical nature of the issues, minimising tax exposure whilst also making sure the EMEA Debtors are compliant with the laws and regulations in each jurisdiction has been important in advance of any exit from Administration. This has been done both individually for each entity and also from the perspective of the EMEA Debtors as a whole, thus enabling synergies.

Exit Strategy - £43,346.13

Approximately 127.6 hours, average £339.77

138. The *Exit Strategy* workstream primarily involves developing the mechanics to bring the administrations of each EMEA Debtor to a conclusion, including the winding down of crucial IT infrastructure. A number of different routes have been developed and tested, and the evaluation of Estimated Outcome Statements and payment model outputs has greatly assisted with strategy discussions and planning for the route to closure. The Company, as part of the wider EMEA Group, has benefitted from the coordinated approach to the insolvencies developed by the Joint Administrators. This has led to better awareness of the important issues in the administrations and helped to reduce costs by eliminating duplication of work.

Progress Reports - £37,828.63

Approximately 144.1 hours, average £262.50

139. In order to avoid duplication of efforts between the EMEA Debtors, the Joint Administrators prepare template progress reports and common data centrally. This central work includes summarising information relating to remuneration, the necessary R&Ps and coordinating the preparation, review and production of progress reports and their sending to creditors. In this period, there were Progress Reports for the periods 14 July 2017 to 13 January 2018, 14 January 2018 to 13 July 2018, 14 July 2018 to 13 January 2019, 14 January 2019 to 13 July 2019 and 14 July 2019 to 13 January 2020.

Finance, Accounting and Administration - £32,040.93

Approximately 112.1 hours, average £285.72

140. It has been necessary for the Joint Administrators to ensure proper financial and accounting control in respect of the funds held by the EMEA Debtors. The Joint Administrators are responsible for overseeing cash reporting, bank reconciliations required for compliance purposes, and also support treasury decision making in helping to determine the best investment strategy for cash held by the EMEA Debtors. Substantial effort has been made to make sure that each EMEA Debtor holds sufficient funds in local currency to pay Expense Claims, whilst also making sure that the foreign currency exchange and any banking risks are minimised to protect the interests of creditors.

Estimated Outcome Statement - £21,695.06

Approximately 71.3 hours, average £304.15

141. It has been essential to maintain an entity priority model to map the estimated outcomes across the EMEA Debtors, as well as a distribution and payment model to support the distribution process and to effect payments to creditors in accordance with the CVAs. This also needed to be updated in advance of any final distribution (and the capital injection) to ensure sufficient cash to allow for the solvent liquidation.

CVA Time Costs: £38,487.39

142. An analysis and further details of the CVA Direct Time Costs are set out in Schedules POL5.1 (at [52/1224] of SJH20) to POL5.3 (at [52/1226] of SJH20) in a very similar format as presented for Administration time costs, with narrative for the tasks undertaken by the Supervisors at Schedule POL5.3 (at [52/1226] of SJH20).

143. The Supervisors' work and total CVA costs of £129,684.95 (of which £38,487.39 relates to the CVA Period) have facilitated distributions to unsecured creditors of Nortel Poland of approximately £5.3m including Commercial Interest in full at 5.46% per annum as per the terms of the CVA. The Supervisors' work in the CVA Period has included updating the Nortel EMEA Website for information relevant to the Company, the adjudication

of a residual creditor claim, the making of a final distribution of 5p in the £ plus Commercial Interest to creditors, distribution of the CCAA Subordinated Debt, modifying the CVA and implementing its final termination. In addition, it has been necessary to prepare and circulate two annual CVA Reports required by Rule 2.41 (Supervisor's accounts and reports) and a Final CVA Report.

144. Schedule POL6.1 (at [52/1229] of SJH20) illustrates the run-rate of the Supervisors' time costs for the CVA from 17 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 adjudicated, and similar increases in advance of the distributions made by the Supervisors in December 2017 and August 2018. A peak in November/December 2019 reflects work making the final distribution of the CCAA Subordinated Debt, modifying the CVA, terminating the CVA and producing the Final CVA Report.

Administration Direct and Reallocated Time Costs over Period 2: £135,005.50

145. The total time costs for Period 2 for which approval is sought for approval are £135,005.50, broken down as £135,005.50 of Direct Time Costs and £NIL of Reallocated Time Costs.
146. This Application requests the approval of remuneration for the period from 4 April 2020 up to the date of the solvent liquidation. 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.
147. Subsequent to 3 April 2020, the Joint Administrators have already incurred Direct Time Costs of £101,558.65 up to 17 July 2020. These time costs relate to the preparation of this Application, preparing and reviewing documents necessary to implement the solvent liquidation, final preparation work in advance of the solvent liquidation and reporting tasks required at the closure of the Administration. Detail of the full Period 2 forecast is at Schedules POL3.1 (at [52/1219] of SJH20) and POL3.2 (at [52/1220] of SJH20).

O. RELIEF SOUGHT

148. 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 1986 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 CVA. The CVA in respect of the Company has been successful in providing a process for agreeing creditor claims and have allowed for efficient distributions of the Company's assets.

149. The Company's third-party unsecured creditors have been paid the principal of their claims and accrued Commercial Interest in full. NNUK also received 61% of the principal of its CCAA Subordinated Debt prior to the capital injection and 100p in the £ thereafter.
150. The Joint Administrators have carefully considered the process for liquidating 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 through the solvent liquidation with no material assets remaining.
151. Accordingly, the Joint Administrators respectfully request that the Court makes the Order for the termination of the Administration, conditional on the commencement of the solvent liquidation.
152. 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 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.
153. Having made distributions to all creditors of the Company in respect of the principal of their claims in full, 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.
154. 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 the CVA Period on the basis of the details set out in this statement and the Schedules.

P. CONCLUSION

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



STEPHEN JOHN HARRIS

Date: 7 August 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:

NETWORKS POLSKA SP. Z O.O.

**No. 554 of 2009 /
CR-2009-000037**

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

**TWENTIETH WITNESS STATEMENT OF
STEPHEN JOHN HARRIS**
