

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

IN THE MATTERS OF:

NORTEL NETWORKS UK LIMITED	<u>No. 536 of 2009 / CR-2016-006154</u>
NORTEL NETWORKS S.A.	<u>No. 539 of 2009 / CR-2009-000048</u>

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

**TWENTY-SECOND
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:

1. I am a licenced insolvency practitioner and an Associate Partner in the firm of Ernst & Young LLP ("**E&Y**").
2. I was appointed as a joint administrator of Nortel Networks UK Limited ("**NNUK**") and Nortel Networks S.A. ("**NNSA**"), together with NNUK the "**Companies**" and each a "**Company**" on 14 January 2009 together with Alan Robert Bloom, Alan Michael Hudson and Christopher John Wilkinson Hill, of E&Y, pursuant to Orders of Mr Justice Blackburne. Copies of the Orders of Mr Justice Blackburne are at [1/1] to [1/173] of SJH22.
3. 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.
4. Mr Hill has ceased to practice as an insolvency practitioner and resigned as a joint administrator on 20 September 2017. 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.

5. On 2 June 2015, by Order of Registrar Briggs (a copy of which is at **[2/174]** of SJH22), Stephen Taylor of Leawood Hall, Holloway, Derbyshire DE4 5AQ was appointed as an administrator of NNSA with responsibility for dealing with certain conflict matters (the "**Conflict Administrator**") pursuant to paragraph 103(2) of Schedule B1 to the Insolvency Act 1986 (the "**Act**"). While I shall continue to refer to Mr Taylor as the Conflict Administrator, the Joint Administrators agreed that Mr Taylor's role should be expanded following the global settlement agreed on 12 October 2016 (the "**Global Settlement**") and which greatly diminished the actual or potential conflicts such that he and the Joint Administrators now have conduct of matters generally in the administration of NNSA, with any conflict matters that arise referred to the Conflict Administrator. I shall refer to the Joint Administrators and the Conflict Administrator collectively as the "**NNSA Administrators**".
6. The Joint Administrators' have provided the Conflict Administrator with the final draft of this witness statement and he has confirmed to them that, so far as it relates to NNSA for the period since his appointment and to the best of his knowledge, he considers it to be accurate and that, in his capacity as the Conflict Administrator, he authorises the making of this application in respect of NNSA.
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 an electronic bundle of documents marked "**SJH22**" to which I shall refer in this witness statement. References in this document to exhibits are in the form [Tab/Page].
9. The Joint Administrators' terms of office and the administrations of each of the Companies were extended by Orders of Registrar Derrett on 12 January 2010 and 6 December 2011, by Order of Registrar Baister on 1 November 2013 and by Orders of Mr Justice Snowden on 2 December 2015, 14 December 2017, 17 December 2018 and 17 December 2019 (**[3/176]**, **[4/179]**, **[5/182]**, **[6/185]**, **[7/187]**, **[8/190]** and **[9/193]** of SJH22 respectively). The Joint Administrators' and Conflict Administrator's terms of office now expire at 12:01 pm on 13 January 2021. A copy of the judgment of Mr Justice Snowden regarding the most recent extension dated 17 December 2019 is provided at **[10/195]** of SJH22.
10. I am duly authorised to make this witness statement on behalf of the Joint Administrators and the Conflict Administrator in support of our applications to extend the terms of office of the Joint Administrators and the Conflict Administrator (the "**Extension Applications**"), seeking orders in the following terms:
 - 10.1 pursuant to paragraph 76(2)(a) of Schedule B1 to the Act, the Joint Administrators' term of office as joint administrators of NNUK be extended for a further period of 24 months so as to expire at 12:01pm on 13 January 2023;

- 10.2 pursuant to paragraph 76(2)(a) of Schedule B1 to the Act, the NNSA Administrators' term of office as joint administrators of NNSA be extended for a further period of 12 months so as to expire at 12:01pm on 13 January 2022; and
- 10.3 the costs of and incidental to the Extension Applications be paid as expenses of the administrations and paid out of the assets of the Companies.
11. Pursuant to Rule 3.54(2) of the Insolvency (England & Wales) Rules 2016 (the "**Rules**") and for the purposes of the Extension Applications, this witness statement sets out the reasons why the Joint Administrators are seeking the extensions.
12. This witness statement is divided into the following sections:
- A. Background (page 3);
 - B. Purpose of the administrations (page 4);
 - C. Reporting progress of the administrations (page 5);
 - D. General progress in the administrations (on page 5 **Error! Bookmark not defined.**);
 - E. NNUK (page 7);
 - F. NNSA (page 13);
 - G. Brexit (page 17);
 - H. Relief Sought (page 18); and
 - I. Conclusion (page 20).

A. BACKGROUND

13. In order to assist the Court in understanding the progress made by the Joint Administrators in achieving the statutory purpose of the administrations, I briefly set out below certain background information that is relevant in the context of the present applications.
14. The Nortel group was a global supplier of networking solutions (i.e. telecommunications, computer networks and software) serving customers in Europe, the Middle East and Africa ("**EMEA**"), Canada, the US, the Caribbean, Latin America and Asia.
15. On 14 January 2009 in a series of coordinated filings:
- 15.1 Nortel Networks Corporation (the ultimate holding company for the Nortel group) and Nortel Networks Limited ("**NNL (Canada)**") (the primary Canadian operating company and holding company for most of the Nortel global subsidiaries) together with certain Canadian subsidiaries (collectively, the "**Canadian Debtors**"), sought protection under the Companies' Creditors Arrangement Act;
 - 15.2 Nortel Networks Inc. (the primary US operating company) and Nortel Networks Capital Corporation (together with certain of their direct and indirect US

subsidiaries, the "**US Debtors**"), filed voluntary petitions in the US Bankruptcy Court for the District of Delaware pursuant to Chapter 11 of the US Bankruptcy Code; and

15.3 the Companies were placed into administration by Orders of Mr Justice Blackburne and the Joint Administrators were appointed to each of the Companies. Each of the administrations of the Companies is a main insolvency proceeding as defined in Article 3(1) of the Council Regulation (EC) on Insolvency Proceedings 2000 (No 1346/2000) (the "**EC Insolvency Regulation**"). A summary corporate structure chart of the Companies is provided at [11/203] of SJH22.

16. The Joint Administrators subsequently considered it in the best interests of the creditors of NNSA to commence secondary proceedings in France. On 28 May 2009 the Commercial Court of Versailles ordered the commencement of secondary proceedings in respect of NNSA (the "**Secondary Proceeding**") and appointed Maître Cosme Rogeau as a liquidator (*liquidateur judiciaire*) (the "**French Liquidator**").

B. PURPOSE OF THE ADMINISTRATIONS

17. The Joint Administrators set out their approach for achieving the statutory purpose of administration for each of the Companies in their statements of proposals dated 25 February 2009 (the "**Statements of Proposals**") that were approved by a creditors' meeting of each Company. Copies of the Statements of Proposals for each of the Companies are at [12a/204] and [12b/232] of SJH22. As the Joint Administrators explained in the Statements of Proposals, the proposals for each of the Companies were:

17.1 to continue to manage the Company's businesses, affairs and property during the period of the administration whilst the possibilities for a global restructuring of the Nortel business and/or a global sale of all or part of the Nortel business (together defined as the "**Global Restructuring**") were considered, progressed and given effect to by the Company as appropriate;

17.2 during the process of the Global Restructuring, for the Company to continue trading and paying its suppliers and employees in respect of goods or services supplied to the Company after 14 January 2009 for so long as the Company required such goods or services;

17.3 to monitor the cash and asset position of the Company and the general progress and prospects of the Global Restructuring in order to be satisfied that it may still be possible to rescue the Company as a going concern and/or achieve a sale of all or part of the Company's businesses as part of the Global Restructuring and that it was appropriate that the Company continue to trade rather than cease to trade and/or be placed into liquidation; and

17.4 if the Joint Administrators decided that a Global 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, by seeking to realise the best price for the business and/or assets of the Company as was obtainable in the circumstances, and then would take steps to enable the assets of the Company to be distributed to its creditors.

C. REPORTING PROGRESS OF THE ADMINISTRATIONS

18. Following their appointment, the Joint Administrators have informed creditors of the progress of the administrations including by way of six-monthly progress reports for each of the Companies. Since my seventeenth witness statement in these proceedings, dated 22 November 2019 ("**Harris 17**"), made in support of the Joint Administrators' last application to extend the administrations of the Companies (**[13/260]** of SJH22), the Joint Administrators have prepared progress reports for each of the Companies for the following periods:

18.1 14 July 2019 to 13 January 2020 dated February 2020 (**[14a/290]** to **[14b/315]** of SJH22); and

18.2 14 January 2020 to 13 July 2020 dated August 2020 (**[15a/335]** to **[15b/358]** of SJH22).

19. Creditors' committees were established for each of the Companies. The Joint Administrators have written to the committees of each Company to inform them of the making of these Extension Applications. The Joint Administrators have also uploaded notices regarding the making of the Extension Applications addressed to all creditors of each Company onto the Nortel EMEA Administration proceedings website (<http://www.emeanortel.com/proceedings.html>). Copies of these notices sent to the committees and the notices uploaded onto the website are at **[16/377]** of SJH22. As at the date of this statement no responses have been received. An update on any responses received by the Joint Administrators will be given to the Court at or before the Extension Applications' hearing.

D. GENERAL PROGRESS IN THE ADMINISTRATIONS

20. Following their appointment, both administrations have proceeded successfully and various sales of the Nortel group's business lines were concluded in 2010 in pursuit of the Joint Administrators' proposal to achieve a better result for creditors of the Companies as a whole than would be likely if the Companies were wound up. The sales resulted in total global realisations of approximately US\$7.3 billion (the "**Sale Proceeds**"). A dispute in relation to 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 four settlement agreements comprising the Global Settlement: (a) the Settlement and Plans Support Agreement between (inter alia) the US Debtors, the Canadian Debtors and the Companies; (b) the "**UKPI Settlement Deed**" between (inter alia) the Companies and the UK Pension Interests – being the Trustee of the NNUK Pension Scheme (the "**Trustee**" and the "**NNUK Pension Scheme**" respectively) and the Board of the Pension Protection Fund; (c) the Deed of Release between (inter alia) the Companies and the UK Pension Interests; and (d) the "**NNSA Settlement Deed**" between (inter alia) the Companies, the Joint Administrators, the Conflict Administrator and the French Liquidator.

21. Following court approval in the US, Canada, England and France, the Global Settlement became effective on 8 May 2017 and the Sale Proceeds were released with each of the Companies receiving the allocation agreed as part of the Global Settlement in May 2017.
22. Following the Global Settlement, the Joint Administrators of each Company made applications for directions from the Court that the Joint Administrators inform potential claimants that any claims which were 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**") (the "**Expense Application**").
23. On 9 June 2017 in the case of NNUK and on 17 July 2018 in the case of NNSA Mr Justice Snowden made Orders granting the Joint Administrators directions as sought regarding the Expense Claims (the "**Expense Orders**"). The Expense Bar Date was set for 27 October 2017 in the case of NNUK and 29 January 2019 in the case of NNSA, in the latter case so as to dovetail with the timetable for the promulgation of a company voluntary arrangement ("**CVA**"). Copies of the Expense Orders made by Mr Justice Snowden are provided at **[17a/379]** and **[17b/392]** of SJH22 and the judgments given by Mr Justice Snowden are provided at **[18a/402]** and **[18b/424]** of SJH22.
24. In the following sections E (*NNUK*) and F (*NNSA*), I detail the progress made in the administration by the Joint Administrators of each Company in the last twelve months. In this paragraph I set out a summary of that progress. The Joint Administrators and their team have continued to advance the administrations including investigating and adjudicating creditor claims and Expense Claims. In NNUK the Joint Administrators have been engaged with planning and taking steps to facilitate the ultimate winding down of the Company. During the last 12 months NNUK has realised further assets including the sale of its unsecured claims against NNSA and recoveries from its subsidiaries, including through receipt of a distribution from the liquidators (the "**NNIF Liquidators**") of Nortel Networks International & Finance & Holding BV ("**NNIF**") (a wholly owned subsidiary of NNUK and intermediate holding company in the Nortel EMEA group structure). As a result the Joint Administrators

have been able to make a further distribution of 2.4p in the pound to non-preferential creditors of NNUK. They have also taken steps necessary to realise its outstanding interests in its subsidiaries in the Nortel EMEA group. In NNSA, the Joint Administrators' work has involved assisting the NNSA Supervisors (as defined at paragraph 48 below) making distributions to NNSA's creditors, including a distribution of 59c in the euro on 13 December 2019 and a distribution of 5c in the euro on 15 April 2020, providing information to the French Liquidator to prepare the Secondary Proceeding's final liquidation accounts, dealing with claims of a number of NNSA's former employees which were asserted to be Expense Claims and realising the remaining assets in NNSA.

E. NNUK

NNUK Proof Process and distributions

25. Permission to make a distribution to creditors of NNUK was granted by Order of Mr Justice Snowden dated 23 July 2015 (the Order and judgment are provided at **[19/433]** of SJH22 and **[20/438]** of SJH22 respectively). The Joint Administrators commenced the formal proof process pursuant to paragraph 65 of Schedule B1 to the Act and Chapter 10 of Part 2 of the Insolvency Rules 1986 on 30 July 2015 with a deadline for claims of 31 October 2015.
26. Following a further Order of Mr Justice Snowden dated 3 November 2016 (**[21/455]** of SJH22) the Joint Administrators were required to declare the first dividend to creditors by the earlier of the date ten weeks after the release of the Sale Proceeds to NNUK, being 4 August 2017, or 9 November 2017. On 27 July 2017, the Joint Administrators gave notice to creditors that a dividend to non-preferential creditors of 22.1p in the pound was declared in a first interim distribution. The total amount paid to non-preferential creditors in that initial distribution was approximately £495 million. A copy of the Notice of Declaration of Initial Dividend is provided at **[22a/458]** of SJH22.
27. The Joint Administrators continued to make adjudications of a number of unsecured claims and have been able to release a number of reserves following the occurrence of the Expense Bar Date on 27 October 2017. Between 5 December 2017 and 11 July 2019, the Joint Administrators made a further three interim distributions to non-preferential creditors totalling payments of approximately £516.22 million (including tax and national insurance payments for certain employee related claims), equivalent to 22.9p in the pound. Copies of the Notices of Declaration of Interim Dividends of the second, third and fourth interim distributions are provided at **[22b/459]**, **[22c/460]** and **[22d/461]** of SJH22. Most recently in July 2020, a fifth interim distribution was made to non-preferential creditors of £55.7 million, equating to 2.4p in the pound. A copy of the Notice of Declaration of Interim Dividend is provided at **[22e/462]** of SJH22. To date NNUK's unsecured creditors have received a total of approximately £1.069 billion or 47.4p in the pound. The Joint Administrators of NNUK may make a sixth

interim distribution subject to further certain realisations and a final distribution at the conclusion of the administration once the affairs of NNIF have been finalised.

28. A small number of complex unsecured creditor claims await final adjudication by the Joint Administrators. Excluding the reciprocal pension creditors described in paragraph 29 below and a small number of claims of employees who continue to be employed by NNUK, there remain seven creditors whose claims are yet to be adjudicated with a combined total claim value of just under £3.1 million. The Joint Administrators have prudently reserved for payment of these claims at the current dividend rate while they continue their investigations. The Joint Administrators anticipate that these claims are capable of resolution and adjudication within the next six months.
29. Among the claims which are yet to be finally adjudicated by the Joint Administrators are claims of former employees who have asserted claims against NNUK in respect of pension arrangements. These claims are said to arise as a result of reciprocal arrangements between NNUK and other companies in the Nortel group by which accrued benefits under the Nortel Networks UK Pension Plan would remain linked to salary during service with other companies in the Nortel group, rather than only service with NNUK. The Joint Administrators have investigated the validity of these claims and have had the claims valued by a firm of actuaries. While the actuaries had initially determined the value of these claims, new facts have come to light resulting in the actuaries having to revalue the claims. The process has taken longer than expected however, the Joint Administrators are now in the process of finalising their adjudication methodology with actuaries appointed by the Trustee of the NNUK Pension Scheme before informing creditors of their proposed adjudication. The Joint Administrators have accepted approximately 149 of these reciprocal claims in principle with the quantum of these claims still to be determined and anticipate being able to adjudicate the 23 remaining claims (when they have full information available) in early 2021. The Joint Administrators are mindful that these creditors have had to wait for the valuation of their claims while the Joint Administrators have progressed the review of their claims, and are likely to make payment of a catch-up dividend for those creditors once the value of their claims has been finally determined.
30. The largest creditor of NNUK has been the Trustee of the NNUK Pension Scheme in respect of the debt due by NNUK under section 75 of the Pension Act 2004. The Joint Administrators wish to draw the Court's attention to the assignment by Trustee of the claim, which the Joint Administrators understand was completed on 5 November 2020. Accordingly, the Trustee will no longer play an active role in the administration of NNUK or the EMEA Debtors.

Intragroup claim recoveries

31. NNUK had a number of pre-appointment intragroup claims against the other companies in the Nortel EMEA group. During the course of the administration NNUK also agreed to take

assignments (for value) of a number of pre-appointment intragroup claims due to a number of other companies in the Nortel EMEA group. The commercial rationale for these assignments was to save those companies having to delay their final distributions to creditors, including NNUK itself and NNIF, and their moves to dissolution pending recovery of those intragroup claims. Certain of the pre-appointment intragroup claims have already been discharged in full. However, NNUK still expects to receive further distributions in respect of certain intragroup claims this year or early 2021.

32. Of particular note are the pre-appointment intragroup claims of NNUK against NNSA. NNUK had received a dividend in respect of these claims from the NNSA Supervisors (as defined in paragraph 48 below) in the amount of £208,243 on 15 April 2020. However, the Joint Administrators considered that a sale of such claims to a third party was appropriate given the uncertainty at the time of quantum and timing of further distributions by the NNSA Supervisors. The sale process was launched in June 2020 and concluded in July 2020 and a total of approximately £1.27 million was received in consideration for the assignment of the claim to the third party purchaser. These recoveries were then available for the Joint Administrators to distribute to NNUK's creditors in the fifth interim distribution in July 2020.
33. On 5 November 2020, NNUK also received a final distribution in respect of its intragroup claim against Nortel Networks S.p.A. ("**Nortel Italy**"), such that its claim has been discharged in full. The Joint Administrators understand that Nortel Italy has insufficient assets to allow any payment to NNUK on account of post-filing interest. Also on 5 November 2020, NNUK received a final distribution on account of post-filing interest associated with its intragroup claim against Nortel Networks (Ireland) Limited ("**Nortel Ireland**"). The Joint Administrators were also informed of the intention of the joint administrators of those companies to make applications to Court for the termination of their appointments in November this year.
34. NNUK had a number of claims, including pre-appointment intragroup claims, against NNL (Canada) (the "**Canadian Claims**"). NNUK also had a number of claims against certain entities in the worldwide Nortel group (the "**RoW Claims**"). An initial distribution to NNUK was made by NNL (Canada) on 11 July 2017 at a rate of approximately 41.5% and a further interim distribution to NNUK was made on 11 December 2018 for an additional 4.3% such that approximately £44 million was received from NNL (Canada). Limited distributions have been received to date in respect of the RoW Claims.
35. Given the uncertainty as to the quantum and timing of any further recoveries in respect of the Canadian Claims and RoW Claims, the Joint Administrators initiated a sales process to assign these claims to a third party purchaser for value so as to realise the value in these claims and distribute that value to NNUK's creditors without further delay. The sale process was launched in October 2019 and involved diligent engagement with multiple parties. On 19 December 2019 an agreement was entered into with the successful purchaser and the

claims were subsequently assigned. The Company received total consideration of approximately £7 million in respect of the sale on 30 December 2019.

Recoveries and realisation of NNUK's subsidiaries

36. At the date of the Joint Administrators' appointment, NNUK was the sole shareholder of Nortel Networks Australia ("**NNA**"). NNA is in a solvent liquidation governed by Australian law. The liquidators of NNA paid a dividend of AUD988,888 to NNUK at the end of August 2020. The liquidators are in the process of collecting intercompany receivables due from other Nortel entities (of which some are also subject to insolvency proceedings in their respective jurisdictions) and recently advised that the liquidation may continue until February 2023. In order to expedite and finalise recoveries, the Joint Administrators have commenced taking the necessary steps to sell their shareholding in NNA on the secondary market. The Joint Administrators anticipate the sale process being commenced shortly.
37. Another wholly owned subsidiary of NNUK, Nortel Networks (Northern Ireland) Limited ("**NNNI**"), has been in members' voluntary liquidation since 16 August 2016. The Joint Administrators have been informed by NNNI's liquidators that certain insurance matters are being considered and that, once these are resolved, tax clearance has been obtained and all costs have been settled, the Joint Liquidators will distribute any surplus funds to, NNUK. It is currently estimated that this may be in the region of £2m.
38. As the ultimate shareholder in the Nortel EMEA group (with the exception of NNSA and Nortel Ireland) by way of its shareholding in NNIF, NNUK would be eligible to receive any surplus remaining in certain companies in the Nortel EMEA group. Its shareholding in NNIF remains NNUK's most significant asset yet to be realised.
39. On 26 September 2018, NNIF was placed into a Dutch law governed solvent liquidation the purpose of which is to finalise the affairs of that company and allow for the distribution of the substantial surplus cash and other assets to NNUK as shareholder. Following an initial distribution of £44.5 million in July 2019 NNIF holds approximately £19.8 million of cash as at the date of this witness statement. I understand from the NNIF Liquidators (of whom I am one) that they expect to make further recoveries of approximately £2.5 million from Nortel Networks AG ("**Nortel Switzerland**") during 2021. These further recoveries will, subject to the costs of Nortel Switzerland's liquidation, allow a further and final return of capital or equity distribution to NNUK. I detail the recent and further expected main sources of NNIF's recoveries below.
 - 39.1 Nortel Networks AB ("**Nortel Sweden**") was previously subject to English administration proceedings and, following the termination of the administration proceedings by Order of Mr Justice Snowden dated 24 August 2018 (at **[23/463]** of SJH22), entered a Swedish solvent liquidation on 8 October 2018. Cash of £2.4 million held by Nortel Sweden was distributed to NNIF by the liquidators of Nortel

Sweden (being myself and a local lawyer experienced in insolvency matters) in November 2020. This final distribution shall allow for the dissolution of Nortel Sweden imminently after the making of those distributions.

39.2 Nortel Networks South Africa (Pty) Limited ("**Nortel South Africa**") did not enter into insolvency proceedings in 2009 and remained under the control of its directors. It was placed into a solvent liquidation on 15 April 2019, a dividend of approximately £530,000 was paid to NNIF in October 2019 and a final dividend of approximately £4,400 was paid on 9 July 2020. Having made these distributions, the liquidation has concluded and the Master of the High Court to the Companies Office has confirmed that the affairs of the company were completely wound up with effect 18 September 2020.

39.3 Similarly, Nortel Switzerland did not enter into insolvency proceedings in 2009 and remained under the control of its directors. It was placed into a solvent liquidation in 2018. The Joint Administrators of NNUK agreed with the Swiss liquidator that NNUK should take an assignment of Nortel Switzerland's remaining intragroup receivables for value, allowing the Swiss liquidation to progress quickly. Nortel Switzerland is expected to pay a final dividend to NNIF shortly, and the company to then be dissolved. However, the Swiss liquidator informed the Joint Administrators of potential delays in finalising all tax matters owing to the impact of Covid-19. The Joint Administrators expect that the Swiss liquidator will be in a position to dissolve the company in 2021.

40. A table summarising the principal equity recoveries made in 2020 and expected further distributions to NNIF which will in turn fuel a further return of capital to NNUK is shown below.

Company	Date company entered into liquidation	Date of dissolution of company	Date of distribution by company to NNIF	Amount of distribution (approximate)
NNIF	Sep-18	N/A	Jul-19	£44.51 million
Nortel South Africa	Apr-19	Sep-18	Sep-19	£0.53 million
			Jul-20	£4,400
Nortel Switzerland	Jun-18	N/A	Expected 2021	£2.5 million*
Nortel Sweden	Oct-18	N/A	Nov--20	£2.4 million*

** Anticipated amount to be distributed at the point of dissolution.*

Exit

41. Subject to the completion of the adjudication process for certain claims against NNUK and the realisation of outstanding assets from its subsidiaries, the Joint Administrators of NNUK anticipate making a sixth and potentially a final distribution once a final return of capital or equity distribution has been made by NNIF. I understand from the NNIF Liquidators that this final return of capital or equity distribution may only be made once the affairs of NNIF have been finalised. It had been hoped that the affairs of NNIF would be concluded earlier so as to allow for a final distribution by the Joint Administrators to creditors of NNUK in 2020. In paragraph 41 of Harris 17, at [13/270], I made reference to the Joint Administrators' anticipating making a final distribution in 2020. However, the Joint Administrators understand from the NNIF Liquidators, based on advice that they have received, that these affairs are not limited to recoveries of value from its subsidiaries but that all of the assets of NNIF must be dealt with (that is, its subsidiaries dissolved). I also understand from the NNIF Liquidators that they intend to retain prudent cash reserves pending the final dissolution of NNIF's subsidiaries and until such time as the tax and other statutory affairs have appropriately been dealt with. The current view, given the affairs of NNIF, of the steps still to complete the affairs of NNIF has led to the conclusion that the final distribution by the Joint Administrators of NNUK may not occur before December 2022.
42. While there is still value to be realised from the group and distributions to be made by the Joint Administrators in accordance with paragraph 65 of Schedule B1 to the Act and pursuant to Order of Mr Justice Snowden dated 23 July 2015, the purpose of the administration of NNUK cannot be said to have been sufficiently achieved.
43. In addition to making final recoveries to allow the Joint Administrators to make a final distribution, the Joint Administrators will need to finish winding down certain other affairs of NNUK. This will include continuing the dismantling of the Company's IT systems infrastructure, which has been used to assist the Joint Administrators in their adjudication of claims, making arrangements for essential data retention, terminating contracts entered into by the Joint Administrators (such as office space leases) and arranging for the termination of employment of the remaining NNUK employees who assist the Joint Administrators in their duties. The decision as to the most appropriate route to dissolution has yet to be made by the Joint Administrators who will need to review carefully the path to dissolution whether via liquidation or straight to dissolution, with detailed tax advice required in this respect. Regardless of this pending decision, the Joint Administrators believe that moving to liquidation at this stage of the administration would be hugely disruptive to the affairs of NNUK and damaging to its creditors' interests, while bringing no benefit to the creditors of NNUK.

44. As explained above, the view of the Joint Administrators, based on information provided by the NNIF Liquidators, is that the winding up of NNIF's affairs and its subsidiaries is unlikely to be completed by the end of 2021. Accordingly the Joint Administrators consider it necessary to extend the administration for a period of 24 months until 13 January 2023.

F. NNSA

NNSA CVA

45. Liberty to promulgate a CVA in respect of NNSA (the "**NNSA CVA**") was granted by Order of Mr Justice Snowden dated 23 July 2015 (provided at [19/433] of SJH22).
46. On 24 August 2018, the Joint Administrators issued a proposal for a CVA which provided for a mechanism to distribute cash to NNSA's creditors. A copy of the proposal issued to creditors and members is at [24/466] of SJH22. The principles and certain key terms of the NNSA CVA include those agreed between the NNSA Administrators and the French Liquidator and set out in Schedule 4 (*The NNSA CVA*) to the NNSA Settlement Deed, as amended and restated on 1 March 2017, a copy of which is provided at [25/628] of SJH22. The main objectives of the NNSA CVA are:
- 46.1 to implement a date by which claims of creditors must be submitted to enable the assets of NNSA to be distributed as quickly as possible;
 - 46.2 to provide a mechanism to facilitate payment by NNSA to its creditors; and
 - 46.3 to provide a framework for certain releases of the NNSA Administrators and their advisers.
47. At meetings held in Paris on 5 October 2018 in accordance with section 3 of the Act, the creditors and members of NNSA unanimously approved the proposed NNSA CVA without modification. I have provided a copy of the Chairman's report of the meeting, which was filed at Court on 9 October 2018, and Form CVA1 (*Notice to the registrar of Companies of Voluntary Arrangement Taking Effect*) at [26/723] and [27/730] of SJH22.
48. I was appointed as a supervisor of the CVA, in accordance with its terms together with Mr Bloom, Mr Hudson and Joanne Hewitt-Schembri of E&Y, and the Conflict Administrator. Ms Hewitt-Schembri gave notice that she was to resign as an NNSA Supervisor on 17 July 2019. Ms Hewitt-Schembri formally resigned as an NNSA Supervisor on 14 August 2019. Where I use the term "**NNSA Supervisors**" in relation to matters or events before 14 August 2019, I am referring collectively to myself, Mr Bloom, Mr Hudson, Ms Hewitt-Schembri and the Conflict Administrator. 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, Mr Hudson and the Conflict Administrator.

49. The CVA Bar Date by which creditors of NNSA must submit their claims was 11 February 2019. The NNSA Supervisors received, either directly from creditors or by way of transfer from the French Liquidator of the Secondary Proceeding, some 743 CVA Claims before the CVA Bar Date. All claims have been adjudicated (save for part of a claim referred to at the end of this paragraph) which include, 519 from former NNSA employees (the "**Former Employees**"), 170 from trade creditors, 33 from other Nortel entities, 2 from landlords, 16 from fiscal or tax authorities and 3 from the UK Pension Regulator. Among others, the NNSA Supervisors have formally admitted the claims of both landlords, 133 trade creditors, and 13 claims of other Nortel entities. The NNSA Supervisors have also admitted (in part) a significant claim submitted by a French tax authority (the "**French Tax Authority**"). The balance of that claim was recently agreed between the French Liquidator and the French Tax Authority and accordingly the Supervisors are taking steps to agree the same treatment in the Main Proceedings.

NNSA Expense Claims

50. As set out at paragraph 23 above, on 17 July 2018, Mr Justice Snowden made an Expense Order setting 29 January 2019 as an Expense Bar Date for the submission of Expense Claims (**[17b/392]** of SJH22). In accordance with the terms of that Order, the NNSA Administrators sent Explanatory Letters and Expense Demand Forms to all creditors and those persons known to have asserted potential Expense Claims before 31 August 2018.
51. The NNSA Administrators have received some 70 completed Expense Demand Forms before the Expense Bar Date, with the overwhelming majority being from Former Employees. Certain of these alleged Expense Claims are in respect of the balance of payments due under an "End of Strike Agreement" agreed between the French Liquidator and the Former Employees in 2009. The NNSA Administrators do not agree that these claims rank as Expense Claims. On 2 October 2019, the NNSA Administrators wrote to invite the Former Employees that have submitted Expense Demand Forms to withdraw them and informed them that the alleged Expense Claims have already been submitted to the NNSA Supervisors on the Former Employees' behalf by the French Liquidator and admitted as unsecured claims by the NNSA Supervisors. A copy of that letter is at **[28/736]** of SJH22. While a number of Former Employees did withdraw their Expense Claims, a number of Former Employees did not provide an unambiguous withdrawal. In the intervening months, the Joint Administrators have made significant progress explaining the status of Expense Claims to Former Employees. All Former Employees have now unconditionally withdrawn their Expense Claims.

Completion of Secondary Proceeding

52. Since having made a significant payment to the French Tax Authority following receipt of the Sale Proceeds in 2017, it has been the view of both the NNSA Administrators and the French

Liquidator that no tax would be due to the French Tax Authority for the remainder of the insolvency proceedings and that, in fact, a significant tax refund would fall due to NNSA towards the end of the administration and liquidation by way of a "long period" refund covering all of the years of the liquidation of NNSA (the "**Long Period Refund**"). The NNSA Administrators were advised by the French Liquidator that in order for the Company to be eligible to receive the Long Period Refund from the French Tax Authority the Secondary Proceeding must be completed. Completion of the Secondary Proceeding required the realisation of all NNSA's assets by the NNSA Administrators and the determination of all claims against NNSA by the NNSA Supervisors so that the Secondary Proceeding's final liquidation accounts could be approved by the French Court. The NNSA Administrators have been working closely with the French Liquidator to conclude the adjudication of all CVA Claims and have provided the French Liquidator and his professional advisors information regarding the CVA, the claims adjudication process and related matters to assist them with their work. In addition, steps were taken to sell certain intra-group receivables owed by certain Nortel group companies to NNSA in order that the French Liquidator could inform the French Court that NNSA had realised all its assets.

53. On 23 October 2020 the French Tax Authority agreed the Long Period Refund and that the amount due from the French Tax Authority be set off against a pre-petition amount asserted to be due from NNSA, in respect of which a significant reserve had been made by the Secondary Proceeding. The result of the set-off is that €27 million became available to the Secondary Proceeding which, having paid its creditors in full, is able to transfer that surplus (less the costs of the Secondary Proceeding) to the Main Proceeding under the terms of the NNSA Settlement Deed and Article 35 of the EC Regulation.
54. The NNSA Administrators received the surplus, in the amount of €23 million, from the Secondary Proceeding on 26 October 2020. This surplus is expected to provide sufficient assets to the NNSA Administrators to allow for CVA Creditors of NNSA to be paid the principal of their CVA Claims in full together with an element of interest for the period since the commencement of the administration on 14 January 2009 in accordance with the terms of the CVA. As a result of the adjudication and realisation of assets, on 23 October 2020 the Versailles Court ratified the approval of the final accounts of the Secondary Proceeding and is expected to hand down its order on 12 November 2020 granting the French Liquidator permission to proceed to close the Secondary Proceeding.

Distributions and exit from administration

55. In an estimated outcome statement included with the NNSA CVA proposal, circulated in August 2018 (**[24/557]** of SJH22), the NNSA Administrators set out a lower range of total recoveries by creditors of between 43.6c in the euro and a higher range of 100c in the euro with the potential for approximately €5.6 million available for the payment of interest to creditors for the period from the commencement of the administration.

56. The NNSA Supervisors made an initial distribution to creditors with Admitted CVA Claims on 13 December 2019 of 59c in the euro. The NNSA Supervisors made a second CVA Distribution of 5c in the euro to CVA Creditors on 15 April 2020 which brought the aggregate CVA Distributions received by CVA Creditors to 64c in the euro. A copy of the notice to creditors that the second interim dividend is at [29/744] of SJH22.
57. When distributions were made, the NNSA Supervisors applied hotchpot to take into account payments that have been made or are likely to be made to CVA Creditors by the Secondary Proceeding in accordance with the Terms of the CVA. This involved a close analysis of the payments made or expected to be made by the Secondary Proceeding and the ranking of those payments under English law. The NNSA Supervisors have taken into account any payment made to creditors by the Secondary Proceeding in respect of their claim or a claim based on similar facts in the manner required under the CVA. Ahead of the initial distribution in December 2019, on 6 November 2019 the NNSA Supervisors wrote to each CVA Creditor to explain how the application of hotchpot will impact payments to them and to inform them of the implications for dividend purposes. A copy of a letter sent to a creditor on 6 November 2019 is at [30/745]. However, the NNSA Administrators note that the hotchpot analysis will be significantly simplified now that assets allow CVA Creditors to be paid in full.
58. As a result of the surplus funds received from the Secondary Proceeding described at paragraph 54, it is now expected that CVA Creditors will be paid in full and that the NNSA Supervisors should also be able to pay CVA Creditors a portion of post-filing interest. This is reflected in the updated estimated outcome statement the NNSA Supervisors issued to the CVA Creditors dated 28 October 2020, a copy of which is at [31/750]. The NNSA Supervisors' current intention is to make a third distribution to CVA Creditors before the end of this year to take distributions to 99 percent of principal of each CVA Claim and anticipate making a fourth and final distribution, in 2021 for the balance of one percent of each CVA Claim and an amount on account of post-filing interest, once the outstanding matters in the administration are substantially complete.
59. Those outstanding matters in the administration include the calculation of interest due to creditors and dealing with any questions regarding the payment of interest received from creditors. Payments have been made to creditors in both the Main Proceedings and the Secondary Proceedings and the NNSA Supervisors anticipate needing to explain the rationale and calculation of the post-filing interest to creditors with great care and clarity.
60. As noted in paragraph 58 above, the NNSA Supervisors expect to make a further distribution to the CVA Creditors such that they will have received approximately 99 percent of principal of their CVA Claims. In not discharging CVA Claims in full, the NNSA Supervisors and NNSA Administrators are ensuring that NNSA's creditors and in particular the creditors' committee (the "**Committee**") retain capacity to approve matters put to them by the NNSA Administrators and NNSA Supervisors. The NNSA Administrators believe that the

Committee constitutes an important statutory function in both observing and advising the NNSA Administrators, and ensuring accountability in respect of fees and remuneration. Given the complex nature of the administration, the Committee has had an important role ensuring accountability by the NNSA Administrators. Unusually for most administrations, even after the payment of all creditor claims, there will be a significant amount of work to be done in relation to the payment of post-filing interest pursuant to the CVA to CVA Creditors, which is complicated by the making of payments by both the Main and the Secondary Proceeding. The ultimate beneficiaries of this work will remain the creditors. For this reason the NNSA Administrators consider it important to have a Committee that the NNSA Administrators and NNSA Supervisors can liaise with, that that Committee be the first to determine whether the fees of the NNSA Administrators should be approved and that there be a body which formal notification can be made to of any applications for directions that the NNSA Administrators may need to seek in future. For the retention of a very small amount of the ultimate principal dividend (that is, one percent) the NNSA Administrators believe that the retention of the quorate Committee is the better approach.

61. Following the final distribution, the NNSA Administrators would expect to consider that they had achieved the objectives of the NNSA administration. On that basis the NNSA Administrators would expect to make an application for the termination of their appointment and their discharge. In this regard, the NNSA Administrators believe that moving to liquidation at this stage of the administration would be disruptive to the affairs of NNSA and damaging to its creditors' interests. In particular, any new insolvency proceedings in England may cause significant confusion in France and could cause recognition issues if commenced after 31 December 2020 (for which see section G (*Brexit*) below). The NNSA Administrators anticipate making an application in 2021 to terminate their appointment so as to transfer full control of the company to a French office-holder (a *mandataire ad hoc*) who would arrange for the final dissolution of NNSA.

G. BREXIT

62. For the purposes of the EC Insolvency Regulation and the Regulation (EC) on Insolvency Proceedings 2015 (No 2015/848) (the "**Recast Regulation**"), the administrations of the Companies and the NNSA CVA are recognised as main proceedings.
63. The Companies are companies registered in EU Member States and the Joint Administrators understand from their legal advisers that the English Court has jurisdiction over those Companies pursuant to Article 3(1) of the EC Insolvency Regulation.
64. On 29 March 2017 HM Government gave notice to the European Council of the United Kingdom's intention to withdraw from the European Union in accordance with Article 50(2) of the Treaty on European Union (the "**Treaty**"). In accordance with Article 50(3) of the Treaty, the Treaty and the Treaty on the Functioning of the European Union shall cease to

apply to the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, two years from the date of the notification.

65. On 19 October 2019, HM Government issued a draft withdrawal agreement between the United Kingdom and the European Union (the "**Draft Withdrawal Agreement**"). The Draft Withdrawal Agreement was ratified and entered into force on 31 January 2020 (the "**Withdrawal Agreement**") on which date the United Kingdom left the European Union. Article 126 of the Withdrawal Agreement provides for a transition period, from 31 January 2020 and expiring on 31 December 2020. During the transition period the United Kingdom and the European Union have continued with their existing relationship leaving existing laws to apply as before. Article 67(3)(c) of the Withdrawal Agreement sets out that the Recast Regulation shall apply to insolvency proceedings provided that the main proceedings were opened before the end of the transition period. Section 13 of the European Union (Withdrawal) Act 2018 requires that a final withdrawal agreement be approved by the House of Commons.
66. The Joint Administrators' primary concerns are that the administration proceedings of NNSA and the NNSA CVA might not continue to be recognised in France without further formality, or that the administration proceedings of NNUK might not be recognised in the Netherlands such that assets in NNIF might not properly be distributed to the NNUK Administrators as representatives of NNUK as shareholder.
67. The Joint Administrators have been advised that the administration and CVA of NNSA have already been recognised in France pursuant to Article 16(1) of the EC Regulation and Article 19(1) of the Recast Regulation. Absent any new provision of EU or French law to remove recognition from proceedings commenced before 31 December 2020, the administration and CVA should continue to be recognised in France without further formality. The same logic is understood by the Joint Administrators, in light of local advice, to apply in the Netherlands. However, for the avoidance of doubt, if after 31 December 2020 it becomes uncertain how the EC Insolvency Regulation or the Recast Regulation will apply to the administrations of the Companies or the NNSA CVA, and if it becomes apparent that some additional form of recognition or other action is required, then the Joint Administrators will seek such remedy from the French and/or Dutch Courts (and/or courts of any relevant Member State), or otherwise, as may be necessary to best coordinate the completion of the administrations and NNSA CVA. If necessary, the Joint Administrators and/or NNSA Supervisors will also apply for directions to this Court, should it appear (for example) that the objectives of the administrations and/or CVA cannot be achieved.

H. RELIEF SOUGHT

68. For the reasons set out in this statement and notwithstanding the impact of Brexit, the Joint Administrators consider that, at this point in the administrations, moving either Company into

a liquidation process would be hugely disruptive to the affairs of the Companies and damaging to creditors' interests. If the Companies were to be forced into liquidation at this stage, the permission given by the Court to the Joint Administrators of NNUK to make distributions would be frustrated. In the case of NNSA, without an extension, the Joint Administrators would be unable to fulfil the terms of the CVA which has been approved by the creditors of NNSA. The Joint Administrators remain of the view that there are no obvious benefits to any creditors if the Companies were to go into liquidation at this stage and there would be considerable amounts of disruption and wasted costs.

69. To date, the administrations and the CVA have proceeded successfully and the statutory purposes of the administrations as set out at paragraph 3(1) of Schedule B1 to the Act are capable of further achievement by way of making distributions to creditors, including by way of the NNSA CVA. Accordingly, the Joint Administrators consider that the orders sought by the Extension Applications are in the best interests of both Companies.
70. For the reasons explained above the Joint Administrators consider that the objectives of the administration of NNSA is likely to be completed in the course of the next 12 months and therefore propose that the administration be extended for that period until 13 January 2022. Whilst the Joint Administrators have in previous applications requested a 12 month extension the Joint Administrators recognise, for reasons set out above, that the objectives of the administration of NNUK may not be completed before the end of 2022 and therefore request an extension to 13 January 2023. Whilst the Joint Administrators are seeking a two year extension for the reasons given above, which the Joint Administrators believe will save stakeholders from bearing unnecessary costs and time of a further extension application this time next year, the Joint Administrators will have no objection if the Court deems it appropriate to grant a shorter extension, notwithstanding the likelihood of a further extension application being necessary.
71. A period of 12 months has been applied for in the case of NNSA to ensure that in the event of unexpected delays the NNSA Administrators still have sufficient time to achieve the purposes of the administration of NNSA without incurring the costs of making a further application to extend the administration. In the absence of any unexpected delays, the NNSA Administrators anticipate that they will be in a position to apply to the Court in the course of the next six months for an order that their appointments at NNSA cease to have effect under paragraph 79 of Schedule B1 to the Act.
72. The Joint Administrators are mindful of their obligation to perform their functions as quickly and efficiently as reasonably possible. The Joint Administrators intend to make such applications in respect of each Company, in compliance with their duty under paragraph 80 of Schedule B1 to the Act, as and when they consider that the purpose of the administration of that Company has been sufficiently achieved.

73. If the circumstances of either Company change significantly, including such that the Joint Administrators consider that the purposes of either administration or the NNSA CVA are frustrated by the impact of Brexit or otherwise, the Joint Administrators understand that they are obliged to return to Court to seek such an order as to the future conduct of the administration as is appropriate in those circumstances, including an order that their appointment as Joint Administrators of that Company shall cease to have effect.
74. Accordingly, the Joint Administrators respectfully request that this Honourable Court makes the orders for the Extension Applications on behalf of each of the Companies.

I. CONCLUSION

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

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.



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STEPHEN JOHN HARRIS

Date: 13 November 2020

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

IN THE MATTERS OF:

NORTEL NETWORKS UK LIMITED	<u>No. 536 of 2009 /</u> <u>CR-2016-006154</u>
NORTEL NETWORKS S.A.	<u>No. 539 of 2009 /</u> <u>CR-2009-000048</u>

AND IN THE MATTER OF THE INSOLVENCY ACT
1986

TWENTY-SECOND WITNESS STATEMENT
OF
STEPHEN JOHN HARRIS

**Applicant
Stephen John Harris
Twenty-Second Statement
Exhibit "SJH22"
13 November 2020**

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

IN THE MATTERS OF:

**NORTEL NETWORKS UK LIMITED
NORTEL NETWORKS S.A.**

**No. 536 of 2009 / CR-2016-006154
No. 539 of 2009 / CR-2009-000048**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

EXHIBIT "SJH22"

This is the Exhibit marked "SJH22" which is referred to in the witness statement of Stephen John Harris dated 13 November 2020.



.....
Stephen John Harris