Applicant
Stephen John Harris
Twenty First Statement
Exhibit "SJH21"
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 MATTER OF:

NORTEL NETWORKS S.P.A. (THE "COMPANY")

No. 552 of 2009 / CR-2009-000035

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

TWENTY FIRST 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**"). I was appointed as a joint administrator of the Company on 14 January 2009 together with Alan Robert Bloom, Alan Michael Hudson and Christopher John Wilkinson Hill of EY pursuant to an Order of Mr Justice Blackburne (the "**Joint Administrators**"). A copy of this Order is at **[1/1]** of SJH21.

2. In 2017 Mr Hill ceased to practice as an insolvency practitioner and on 20 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 the notice of his resignation is exhibited at **[2/10]** of SJH21.

3. Where I use the term "**Joint Administrators**" in relation to matters or events before 20 September 2017 I am referring collectively to Mr Bloom, Mr Hudson and Mr Hill and myself. Where I use this term in relation to matters or events on or after 20 September 2017, I am referring collectively to Mr Bloom and Mr Hudson and myself.

4. The Company is also subject to a company voluntary arrangement ("**CVA**"). I was appointed as a supervisor of the Company's CVA, 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. The notice of her resignation is exhibited at **[3/12]** of SJH21.

5. Where I use the term "**Supervisors**" in relation to matters or events before 14 August 2019 I am referring collectively to Mr Bloom, Mr Hudson, Ms Hewitt-Schembri and myself. Where I use this term in relation to matters or events on or after 14 August 2019, I am referring collectively to Mr Bloom, Mr Hudson and myself. Where I use the term "**Nominees**" I am referring collectively to myself, Mr Bloom, Mr Hudson and Mr Hill during the period of time before the CVA was approved.

6. References to the "**Insolvency Act**" are to the Insolvency Act 1986 (as amended) and, unless otherwise stated, references to a "**Rule**" or "**Rules**" are to the Insolvency (England & Wales) Rules 2016.

7. This witness statement has been prepared over the telephone and by exchange of drafts by email with the assistance of Herbert Smith Freehills LLP (the Joint Administrators' English law legal advisers) ("**HSF**"), the relevant EY staff, and tax advisers. Save where I indicate to the contrary, the facts contained in this witness statement are within my own knowledge and are true. Where the facts stated are not within my own knowledge, I have identified my sources of information and/or belief. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

8. 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.

9. There is now produced and shown to me an electronic bundle of documents marked "**SJH21**" to which I shall refer in this witness statement. References in this document to exhibits are in the form **[Tab/Page]**.

STRUCTURE OF THIS WITNESS STATEMENT

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

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A. OVERVIEW

11. I am duly authorised to make this witness statement on behalf of the Joint Administrators in support of their application (the "**Application**") for an Order in the form set out in the draft order, being that:

11.1 the appointment of the Joint Administrators in respect of the Company shall cease to have effect pursuant to paragraph 79(1) of Schedule B1 of the Insolvency Act from the time of the filing with the Italian Register of Enterprises of the notarised minutes of an extraordinary meeting of the shareholder of the Company in which the shareholder resolves to liquidate the Company in accordance with Italian law;

11.2 the Joint Administrators be discharged from liability pursuant to paragraph 98 of Schedule B1 to the Insolvency Act with effect from 28 days after the date on which their appointment has been terminated in accordance with paragraph 11.1 above;

11.3 if the notarised minutes of the shareholders' extraordinary meeting required to commence the liquidation of the Company (as referred to in paragraph 11.1 above) are not filed with the Italian Register of Enterprises within 60 days of the date of the Order the matter be re-listed for hearing within 14 days;

11.4 pursuant to paragraph 76(2)(a) of Schedule B1 to the Act, the Joint Administrators' term of office as joint administrators of the Company be extended for a period of three months so as to expire at 12:01 pm on 13 April 2021; and

11.5 the costs of and incidental to the Application be paid as expenses of the administration of the Company.

B. BACKGROUND TO THE NORTEL GROUP INSOLVENCY

12. 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**").

13. The Joint Administrators, in their statement of proposals dated February 2009 (the "**Statement of Proposals**", a copy of which is at **[4/14]** of SJH21), described the Company as a "limited risk entity", being an entity within the group which had responsibilities for distribution and sales to third party customers. Limited risk entities were granted a right to use the Nortel Group intellectual property, without which they would have been unable to trade.

14. On 14 January 2009 in a series of coordinated filings:

14.1 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;

14.2 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

14.3 the Company, Nortel Networks UK Limited ("**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 (the "**Administration**") 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**").

14.4 A simplified corporate structure chart of the Group is at **[5/42]** of SJH21.

14.5 The Company is a wholly owned subsidiary of Nortel Networks International Finance & Holding B.V. (in Dutch law governed liquidation) ("**NNIFH**").

15. The Joint Administrators set out their approach for achieving the statutory purpose of administration for the Company in their Statement of Proposals (a copy of which is at **[4/14]** of SJH21). This Statement of Proposals was approved by the Company's creditors at a meeting held on 13 March 2009. As the Joint Administrators explained in the Statement of Proposals, the proposals were:

15.1 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;

15.2 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

15.3 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. RECENT PROGRESS IN THE ADMINISTRATION

Trading following the Joint Administrators' appointment and business sales

16. The Joint Administrators continued to trade the EMEA Debtors, including the Company, following their appointment. The continued trading, whilst loss making in the early months, helped to ensure that the assets of the EMEA Debtors were not unduly dissipated, minimised the propensity for damages claims to be brought against the Company and thereby maximised the value of the business for the Company's creditors.

17. In order to stem the trading losses of the Company, it was necessary to make the employees of the Company redundant in the early stages of the Administration. A small number of employees of NNUK and Nortel Networks (Ireland) Limited ("**Nortel Ireland**"), particularly in the EMEA accounting function, 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**"). The Joint Administrators have also been assisted by a consultant with knowledge of the Company.

18. The Administration proceeded successfully and various sales of the Group's business lines were concluded in 2010 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 were wound up. The sales of the business lines resulted in total global realisations of approximately US$7.3 billion (net of certain costs) (the "**Sale Proceeds**").

Allocation Dispute and Global Settlement

19. 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 a number of settlement agreements comprising the "**Global Settlement**" including:

    19.1 the "**Settlement and Plans Support Agreement**" between (inter alia) the US Debtors, the Canadian Debtors and the Company (a copy of which is at **[6/43]** of SJH21);

    19.2 the "**UKPI Settlement Deed**" between (inter alia) the Company 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 **[7/188]** of SJH21; and

    19.3 the Deed of Release between (inter alia) the Company and the UK Pension Interests, a copy of which is at **[8/246]** of SJH21.

20. Mr Justice Snowden made an Order granting the Joint Administrators liberty to perform and to procure the Company to perform the Global Settlement on 3 November 2016 (**[9/291]** of SJH21). The judgment given by Mr Justice Snowden is provided at **[10/294]** of SJH21.

21. The Global Settlement became effective on 8 May 2017 and the Company received the allocation of Sale Proceeds agreed as part of the Global Settlement in May 2017. Ultimately, the EMEA Debtors recovered around US$1.35 billion of Sale Proceeds for distribution to creditors. The Company received approximately £4.11m, which, together with the residual cash and other assets held by the Company, was available for distribution to the Company's creditors.

The CVA

22. Having been granted liberty to promulgate a CVA in respect of the Company by the Order of Mr Justice Snowden dated 23 July 2015 (a copy of which is at [**11/314**] of SJH21), on 5 April 2017, the Joint Administrators proposed a CVA to the creditors of the Company. A copy of the proposals for the Company's CVA is at **[12/319]** of SJH21.

23. At meetings held in Rome on 5 May 2017, the proposed CVA was approved without modification by the Company's creditors and member. I have provided a copy of the Chairman's report and the Notice of Effective Date (which was sent to creditors and posted on the Nortel EMEA Website) at **[13/477]** and **[14/484]** of SJH21.

24. Creditors were required to submit claims to the Supervisors by 8 September 2017 to rank for payment under the terms of the CVA (the "**CVA Bar Date**").

Distributions to expense creditors and tax

25. On 9 June 2017, Mr Justice Snowden made an Order granting the Joint Administrators directions whereby the Joint Administrators were to inform potential claimants that any claims which were asserted to rank as administration expenses under English law must be notified to the Joint Administrators on a prescribed form (the "**Demand Form**") on or before a specified date (the "**Expense Bar Date**"). The Expense Bar Date was set for 22 December 2017 in the case of the Company. A copy of the Order made by Mr Justice Snowden is provided at **[15/485]** of SJH21 and the judgment given by Mr Justice Snowden is provided at **[16/495]** of SJH21.

26. The Joint Administrators sent pro-forma tax calculations along with and explanatory letter and a Demand Form to the *Italian Direzione Regionale della Lombardia and Direzione Provinciale II di Milano* (together, the "**Italian Tax Authority**") in accordance with the Order.

27. In my seventeenth witness statement in these proceedings, dated 22 November 2019 ("**SJH17**") and made in support of the Joint Administrators' application to extend the Administration of the Company (**[17/517]** of SJH21), I informed the Court (at paragraph 53.3

at **[17/532]** of SJH21) that the Joint Administrators were in the process of investigating and agreeing a potential tax refund due from the Italian Tax Authority (the "**Italian Tax Refund**"). At paragraph 53.3 of SJH17, I noted that the refund may only be recoverable once the Company has entered into a local liquidation process and thus it may be necessary to procure a modification to the CVA to protect the interest of creditors.

28. The Joint Administrators are pleased to inform the Court that in September 2020 they successfully recovered:

28.1 a corporate income tax (IRES) tax refund in respect of regional income tax (IRAP) for the 2009 tax year, totalling EUR 60,583 plus EUR 13,553.89 in interest; and

28.2 a VAT refund totalling EUR 645,551.06 relating, in most part, to the Company's former customers which had entered insolvency proceedings .

29. The Joint Administrators are also pleased to inform the Court that following extended discussions with the Italian Tax Authority and their Italian tax advisers regarding a further corporate tax (IRES) refund totalling EUR 172,810.12 (net of set offs) for the 2008 tax year, they have received confirmation that the final part of the Italian Tax Refund was transferred to the Company on 5 November 2020. Whilst this final recovery was received too late to form part of the final distribution to creditors under the CVA (see paragraph 40 below), the funds received will be applied by the Joint Administrators towards the final costs and expenses of the Administration and the subsequent liquidation, including the Administrators' remuneration (details of which are set out at paragraphs 62 to 64 below). This recovery of final value has enabled the Joint Administrators to conclude the Administration and make this exit application.

30. The duration of the discussions with the Italian Tax Authority to recover the Italian Tax Refund and the fact that parts of the Italian Tax Refund were not capable of recovery before 2020 have had an impact on the duration of the Administration. Due to the total size of the Italian Tax Refund, the Joint Administrators were reluctant to bring the Administration to an end before its recovery. Had it not been for the recovery of the Italian Tax Refund, the Joint Administrators would have had to consider requesting a "top-up" equity injection from NNUK (as had been done for certain other EMEA Debtors) under the terms of the UKPI Settlement Deed. The Joint Administrators are satisfied that significant tax refunds were ultimately recovered for the benefit of the estate, which obviated the need to incur further costs that would have resulted from a shortfall.

31. The Joint Administrators are advised by their Italian tax advisers that there exists a further potential asset of the Company, corresponding to a potential VAT receivable in an amount of circa EUR 180,081.80 from a historic customer of the Company, to which the Company would only potentially become entitled once the Italian insolvency proceedings in respect of this customer are terminated. The historic customer in question has been subject to

insolvency proceedings since 2003 and the Joint Administrators understand from their correspondence with its office-holders that these are not anticipated to end before the latter half of 2021 at the earliest. The Joint Administrators are advised by their Italian tax advisers that an assignment of the receivable to NNUK (or any other party) is not feasible in these circumstances, due to the fact that the Company's legal entitlement to the receivable is contingent on a series of steps being taken by the Company following the termination of insolvency proceedings in respect of the historic customer, which could only be completed by an assignee (such as NNUK) with great difficulty, if at all. The Joint Administrators and the Supervisors do not consider it to be in the best interest of creditors to incur further costs by keeping both the CVA and Administration on foot for an indefinite period of time in order to await this potential VAT refund. As such, the Joint Administrators consider that their only option is to conclude that this potential asset will not be recoverable.

Onerous Telecoms Mast

32. In paragraph 53.4 of SJH17, I informed the Court that the Joint Administrators were aware of a potentially onerous asset potentially held by Nortel Italy that they have not yet been able to deal with satisfactorily. The asset in question was a telecommunications mast which has been the subject of litigation in the Italian courts with a local property owner (the "**Onerous Telecoms Mast**"). At the time, the Joint Administrators were investigating whether Nortel Italy was the proper owner of the Onerous Telecoms Mast so that, if it were, a strategy could be developed to ensure it is dealt with effectively either in the Administration or in a subsequent liquidation under Italian law.

33. The Joint Administrators, with the support of their Italian legal advisors, have obtained additional documentation in respect of the litigation. Following a review of this documentation, the Joint Administrators became comfortable that the Onerous Telecoms Mast was, in all likelihood, not an asset of the company, as it was likely disposed in the course of a series of larger transactions. However, out of an abundance of caution, in May 2020, the Joint Supervisors wrote to all parties they understood may potentially have been impacted by the Onerous Telecoms Mast and the litigation, allowing them additional time to raise any potential claims under the CVA, and providing them with a CVA claim form for this purpose. No party has raised any such claim and the extended deadline provided has since expired on 3 July 2020.

Recovery from NNL (Canada) and Nortel Ireland

34. In paragraph 53.5 of SJH17, I informed the Court that Nortel Italy also had a number of pre-appointment intragroup claims against Nortel Networks Limited ("**NNL (Canada)**"), formerly the primary Canadian operating company and holding company for most of the Nortel global subsidiaries (the " **Canadian Claims**"). By way of reminder, an initial distribution to Nortel

Italy was made by NNL (Canada) on 11 July 2017 at a rate of approximately 41.5% with a further distribution of 4.3% made on 11 December 2018. At the time, the Joint Administrators were uncertain as to the quantum and timing of any further recoveries which could be made in respect of the Canadian Claims and were progressing a sales process to assign the claims for value to a third party so as to realise value in those claims and not delay the conclusion of the Administration.

35. The Company (as well as NNUK and certain other EMEA Debtors, which were also creditors of NNL (Canada)) commenced the sale process in respect of the Canadian Claims in October 2019. This involved diligent engagement with multiple interested parties. On 19 December 2019 an agreement was entered into with the successful purchaser to which the Canadian Claims were subsequently assigned.

36. The group of EMEA Debtors assigning claims against NNL (Canada) received £7.5m in consideration for their claims on 30 December 2019. Of the £7.5m, a total of circa £108k was then allocated to the Company in respect of its Canadian Claims.

37. In addition, the Company held a pre-appointment intragroup claim against Nortel Ireland. In light of the timing of the final distribution of Commercial Interest that the Company had expected to receive under Nortel Ireland's CVA on 5 November (the same date on which the Company made its own final distribution), the Joint Administrators assigned this claim to NNUK at par value, in order to avoid a delay to the termination of its own CVA.

Distributions to creditors of the Company

38. The CVA Supervisors have adjudicated all 114 claims received in advance of the CVA Bar Date. The total value of claims submitted was £2,153,275,402 (including a significant contingent claim submitted by the UK Pension Regulator), of which £4,969,559 has now been admitted for payment (the "**Allowed Claims**").

39. An initial interim distribution was made on 16 March 2018. Creditors with Local Priority Claims received 100% of the principal of those claims and other unsecured creditors received 95% of the principal of their unsecured claims.

40. Following: (i) receipt of part of the Italian Tax Refund (as set out at paragraph 28 above); (ii) the satisfactory resolution of the open question in relation to the Onerous Telecoms Mast (see paragraph 33); and (iii) the successful assignment of the Canadian Claims (as set out at paragraph 36), the Supervisors made a final distribution of 5p in the pound in respect of the principal of the unsecured creditors' claims on 5 November 2020. The Supervisors gave notice of final distribution to creditors on 5 November 2020 (a copy of which is at **[18/547]** of SJH21) via the Nortel EMEA Website in accordance with clause 36.2 of the CVA (at **[12/384]** of SJH21).

Termination of the CVA and work towards termination of the Administration

41. The Company had no further claims to adjudicate following the final distribution to unsecured creditors on 5 November 2020. The Supervisors intend to terminate the CVA on 3 December 2020, having allowed sufficient time for those creditors who received their final dividend by way of a cheque to redeem their cheques and there being no further assets of the Company to distribute.

42. Following Italian legal, tax and accounting advice, the Joint Administrators have determined that an Italian law governed liquidation of the Company is the most appropriate solution to dissolve the Company and have taken steps to prepare for the same (see section G (*Details of Subsequent Liquidation*) below).

Brexit

43. The Administration shall remain the main proceedings, at least for so long as the EC Insolvency Regulation and the Regulation (EC) on Insolvency Proceedings 2015 (No 2015/848) (the "**Recast Regulation**") remains in force in this jurisdiction.

44. 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

45. 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.

46. The Joint Administrators have been advised that the Administration of the Company had already been recognised in Italy pursuant to Article 16(1) of the EC Insolvency Regulation. Absent any new provision of EU or Italian law to remove recognition from proceedings commenced before 31 December 2020, the Administration should continue to be recognised

in Italy without further formality for the short period in January 2021 before the Joint Administrators' appointment is terminated.

47. Moreover, on the basis of the advice the Joint Administrators have received regarding recognition of the Administration proceedings in Italy described in paragraph 46 above, the Joint Administrators consider that the discharge from liability (and, indeed, the termination of their appointment) will be recognised and effective in Italy even where the Brexit transitional period ends on 31 December 2020 without a deal agreed between the EU and the United Kingdom.

48. However, if after 31 December 2020 it becomes uncertain how the EC Insolvency Regulation will apply to the Administration and it becomes apparent that some form of recognition or other action is required to conclude the Administration then the Joint Administrators will seek such remedy from the Italian courts as is necessary to best coordinate the completion of the Administration. If necessary in such circumstances, the Joint Administrators will also apply for directions to this Court if it appears that the Administration cannot be terminated. The Joint Administrators are advised that any such application is extremely unlikely to be necessary.

D. REPORTING

Reporting on the progress of the Administration

49. Following their appointment, the Joint Administrators have periodically informed creditors of the progress of the Administration. The Joint Administrators have prepared progress reports for the Company on a six-monthly basis since the beginning of the Administration (the "**Progress Reports**"). Since SJH17, which was made in support of the Joint Administrators' application to extend the Administration of the Company (**[17/517]** of SJH21), the Joint Administrators have prepared Progress Reports for the Company for the period 14 July 2019 to 13 January 2020 and 14 January 2020 to 13 July 2020, dated 13 February 2020 and 12 August 2020 respectively, copies of which are at **[19a/548]** and **[19b/567]** of SJH21.

50. 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 10 November 2020 (the "**Supplemental Progress Report**") (at **[20/585]** of SJH21). 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 12 August 2020.

Reporting on the progress of the CVA

51. The Supervisors periodically inform creditors of the progress of the CVA by way of annual progress reports ("**CVA Reports**") in accordance with Rule 2.41(4) and, following the termination of the CVA, a final report ("**Final CVA Report**") will be provided in accordance with Rule 2.44(2).

52. The Supervisors have prepared CVA Reports dated 4 July 2018 (at **[21a/593]** of SJH21), 19 June 2019 (at **[21b/600]** of SJH21), and 30 June 2020 (at **[21c/606]** of SJH21).

E. EXITING THE ADMINISTRATION

Achievement of the purpose of the Administration

53. Having adjudicated all claims, made a final distribution to creditors, having made preparations to terminate the CVA, and having taken steps to prepare for the dissolution, the Joint Administrators are of the view that the purposes of the Administration have been sufficiently achieved.

54. Overall, the Joint Administrators wish to record their satisfaction with the outcome of the Administration, which includes a period of difficult, yet ultimately successful trading, participation in the unique and complex international business sales, and ultimately (and most importantly) the payment of principal in full. Such an outcome was very difficult to envisage in 2009. 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 under the Pensions Act 2004, and the Company's tax and accounting positions finalised such that the Joint Administrators are now in a position to place the Company in liquidation in accordance with Italian law at the appropriate time.

55. The Joint Administrators have certain minor administrative tasks that they will need to attend to and prepare to hand over to the liquidators before the liquidation of the Company is commenced. These include:

    55.1 finalising the legal and financial documentation necessary to terminate the Administration and to place the Company into an Italian law governed solvent liquidation process (which documentation includes the formal corporate resolutions, the closing financial statements up to the day of the Company's entry into liquidation and an opening balance sheet for the liquidation);

    55.2 preparing for and procuring the audit of the financial statements;

    55.3 liaising with the EMEA Debtors to settle all invoices for services rendered to the Company for its timely liquidation; and

    55.4 preparing for and attending the virtual meetings (or, if necessary, in person meetings in Italy) to place the Company into solvent liquidation.

The form of this Application

56. The joint administrators of a number of other EMEA Debtors have made very similar applications (the "**Discharge Applications**") to the present application:

56.1 in August 2018, in respect of six EMEA Debtors (the "**Batch One Entities**"), supported by Stephen Harris's eighth witness statement dated 8 August 2018, a copy of which is at **[22/612]** of SJH21;

56.2 in April 2019, in respect of three other EMEA Debtors (the "**Batch Two Entities**"), supported by Mr Harris's eleventh witness statement dated 15 April 2019, a copy of which is at **[23/665]** of SJH21;

56.3 in August 2019 in respect of Nortel Networks France S.A.S. ("**NNF**"), supported by Mr Harris's fourteenth witness statement dated 22 August 2019 ("**Harris 14**") a copy of which is at **[24/709]** of SJH21;

56.4 in April 2020 in respect of four other EMEA Debtors (the "**Batch Three Entities**"), supported by Mr Harris's eighteenth and nineteenth witness statements dated 7 April 2020, copies of which are at **[25/763]** and **[26/811]** of SJH21; and

56.5 in August 2020 in respect of Nortel Networks Sp. z o.o. ("**Nortel Poland**") supported by Mr Harris's twentieth witness statement dated 7 August 2020, a copy of which is at **[27/840]** of SJH21.

57. On all five occasions, Mr Justice Snowden granted Orders that (among other things) 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 SJH21, in respect of:

57.1 the Batch One Entities at **[28a/880]** and **[29a/918]**;

57.2 the Batch Two Entities at **[28b/898]** and **[29b/928]**;

57.3 NNF at **[28c/904]** and **[29c/940]**;

57.4 the Batch Three Entities at **[28d/908]**; and

57.5 Nortel Poland at **[28e/916]**.

58. The Joint Administrators believe that the Discharge Application process has worked well and the transition from English law administrations to local law dissolution processes has been as smooth as could have been expected in the circumstances. Therefore, having taken Italian legal and financial advice as to the suitability of this approach for the Company, the Joint Administrators propose to take a similar approach.

Timeline to termination of the Administration

59. 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 **[30/952]** of SJH21. The Joint Administrators are mindful that there is a small risk that, following the expiry

of the transition period under the Withdrawal Agreement, they may face some difficulty in ensuring a smooth transition between the conclusion of the Administration and the commencement of an Italian law governed liquidation of the Company. The Joint Administrators' past experience from the conclusion of the administrations of other EMEA Debtors, particularly Nortel GmbH and Nortel Networks Romania SRL, was that the administrative authorities in some European jurisdictions are not accustomed to dealing with entities previously subject to overseas insolvency procedures. These difficulties occasionally resulted in delays to the commencement of local liquidation procedures. In view of this risk and in order to avoid the costs involved in making a separate application to extend the Joint Administrators' term of appointment, the Joint Administrator therefore wish to take a cautious approach and request that the Administration be extended for a period of three months, until 13 April 2021. The Court will note the relief referred to at paragraph 11.3 above – whereby, if the notarised minutes of the shareholders' extraordinary meeting required to commence the liquidation of the Company (as referred to in paragraph 11.1 above) are not filed with the Italian Register of Enterprises within 60 days of the date of the Order (being 29 January 2021, assuming that the Court grants the Order sought on 30 November 2020), then this matter is to be re-listed to be heard within 14 days (being 12 February 2021). In light of that provision of the Order sought, the Joint Administrators' proposed three-month extension to the their appointment will have the effect of building in a short period of leeway, should the Court be unable (for whatever reason) to hear this matter within the stipulated 14-day period. Moreover, should it be necessary to further extend the duration of the administrations beyond 13 April 2021, the Joint Administrators would make the required applications to Court in advance of that date.

60. The terms of the draft order provide that the termination of the Joint Administrators' appointment is conditional on the filing with the Italian Register of Enterprises of the notarised minutes of the Company's extraordinary shareholders' meeting, in which the shareholders resolve to place the Company into liquidation in accordance with Italian law. This is because the Joint Administrators do not consider it appropriate for the Company to be handed back to the control of the directors in circumstances where the only task is to place the Company into an Italian liquidation process. Having managed the business and affairs of the Company for over eleven years, the Joint Administrators should, in all material respects, bear the responsibility of placing the Company into liquidation.

61. The Joint Administrators are mindful that the trigger for the termination of their appointment should be satisfied within a specified time. Having sought advice from their Italian legal advisers, the Joint Administrators consider that a period of 60 days is appropriate. Should the liquidation of the Company not have commenced within the period specified (with the Order sought imposing an effective deadline of 29 January 2021), the draft order requires that the Joint Administrators return to this Court for further directions, with the matter to be

re-listed within 14 days (i.e. by 12 February 2021). Against that backdrop the Court will note that the three-month extension sought to the Joint Administrators' term of appointment (i.e. until 13 April 2021) has the effect of building in a short period of leeway into the Order, should the Court be unable (for whatever reason) to re-list the matter within the required 14-day period.

Approval of the remuneration of the Joint Administrators and the Supervisors

62. No application is made for the fixing of the remuneration of the Joint Administrators or the Supervisors of the Company on this occasion.

63. Following the repayment of 100% of the principal of all Allowed Claims under the CVA, the Company does not have sufficient assets to make any distribution to its sole shareholder, NNIFH. In contrast to other EMEA Debtors, NNUK is not a subordinated creditor of the Company by virtue of being the assignee of any intragroup debts previously held by the Canadian Debtors. As such, neither NNIFH, NNUK nor, by extension, the creditors of NNUK, have any remaining economic interest in the Company. The economic effect of any overpayment of remuneration to the Joint Administrators or the Supervisors would be felt exclusively by the creditors of the Company.

64. The Joint Administrators and the Supervisors therefore sought the views of the Creditors' Committee of the Company and the CVA Creditors Committee as to the approval of the Joint Administrators' and the Supervisors' remuneration prior to the committees ceasing to be quorate. The Creditors' Committee and the CVA Committee approved resolutions on 29 and 30 October 2020 that (amongst other things):

64.1 the Joint Administrators' time costs, properly incurred in the period from 18 August 2018 to 28 August 2020, together with applicable VAT, be approved as £528,834.98 (exclusive of VAT) and that they be permitted to draw such remuneration;

64.2 the Joint Administrators' future time costs for the forecast period from 29 August 2020 until the termination of the Administrators' appointment be approved, provided that such costs, do not exceed £103,477.50 (exclusive of applicable VAT), and that they permitted to draw future time costs, up to a total amount of £103,477.50, together with applicable VAT without further reference to creditors;

64.3 the Nominees' and Joint Supervisors' estate time costs for the period from 18 August 2018 to 28 August 2020, together with applicable VAT, be approved as £38,537.00 (exclusive of VAT) and that they be permitted to draw such fees;

Copies of the resolutions of the Creditors' Committee and the CVA Committee (which are made up of the same three members) are at **[31a/954]** and **[31b/958]** of SJH21.

F. NOTICE OF THE APPLICATION

65. I confirm that, in accordance with Rule 3.57(2), all creditors (including for the avoidance of doubt those creditors who have been paid in full) of the Company were given notice of the Application by the Joint Administrators to exit the Administration and to be discharged from their liability, on or before 6 November 2020, by way of the Nortel EMEA Website. A copy of this notice is provided at **[32/962]** of SJH21. In light of the public health emergency created by COVID-19, the Joint Administrators informed creditors of the Court's guidance that the default position is that hearings should be conducted remotely and that the Joint Administrators would provide further details in due course once the logistics for the hearing are confirmed, including details for how to attend the hearing remotely.

66. 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 6 November 2020, a copy of which is at **[33/964]** of SJH21.

67. Following the payment to the members of the Creditors' Committee of the principal of their claims in full on 5 November 2020, the Creditors' Committee ceased to be quorate in accordance with Rule 17.1(e). The Joint Administrators have continued to provide information to the former members of the Committee. A notice to the former members of the Committee to inform them of the intention to make this Application was sent by email on 6 November 2020, a copy of which is at **[34/967]** of SJH21.

68. As at the date of this statement, the Joint Administrators have received no response to that notice. 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. An update on any responses received by the Joint Administrators in connection therewith will be given to the Court at or before the hearing of the Application.

G. DETAILS OF SUBSEQUENT LIQUIDATION

69. The Joint Administrators have taken local legal and accounting advice regarding the most efficient process available under Italian law to have the Company removed from the Italian Register of Enterprises once the Administration has concluded. The directors of the Company have been involved in the planning of this process.

70. Provided that the Court is minded to grant the relief sought, the Joint Administrators currently anticipate completing the steps necessary to commence the Italian liquidation proceedings on or before 30 November 2020.

71. I set out below a brief summary of the Italian liquidation process currently envisaged by the Joint Administrators in relation to the Company.

72. The Joint Administrators have been advised that a liquidation of the Company requires an extraordinary meeting of the Company's shareholder to take place in the presence of a Notary Public, in which the sole shareholder of the Company, NNIFH, resolves to commence the winding up of the Company in accordance with Italian law. The Italian liquidation procedure commences upon the filing by the Notary Public of the notarised minutes of the extraordinary shareholder's meeting with the Italian Register of Enterprises. The Joint Administrators understand that the liquidators of NNIFH intend to appoint me as liquidator of the Company. I am advised that there are no issues from an English or Italian law perspective with me being appointed as officeholders.

73. Notwithstanding the Joint Administrators' work, it is expected that the liquidation of the Company will be completed by March 2021, such period being necessary principally due to the time required for the liquidators to complete the Italian statutory requirements in a liquidation, which include the preparation of financial statements (in respect of both 2020 and any period in 2021 during which the liquidation endures) and a final liquidation report.

H. DISCHARGE OF LIABILITY

74. Paragraph 98 of Schedule B1 to the Insolvency Act provides that the Joint Administrators will only be discharged from their liability in respect of any action as joint administrators with effect from a time specified by the Court. The Joint Administrators respectfully request that this discharge of liability be granted and take effect 28 days after the date on which their appointment has been terminated in the manner set out above. This would give any person becoming aware of any facts or matters which might give rise to a claim, and seeking to bring such a claim against the Joint Administrators, sufficient time to do so.

75. 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.

76. 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 (see **[6/70]** of SJH21) 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 Group and others, provided that rights are reserved to enforce settlement and subject to certain intra-EMEA claims being carved out. During 2016 the Joint Administrators brought an application which application, supported by Alan Robert Bloom's sixteenth witness statement ("**Bloom 16**"), was made pursuant to paragraph 63 of Schedule B1 of the Insolvency Act in which the Court was asked for directions on the Settlement and Plans

Support Agreement and the Deed of Release. 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 Bloom 16, in particular paragraphs 118.8 to 118.19, 207 and 210 thereof (at **[35/1005]** to **[351008]** and **[35/1025]** to **[35/1029]** of SJH21). In addition, the terms of the CVA include releases by each creditor of the Joint Administrators. Clause 33 of the CVA provides that each creditor of the 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 **[12/378]** of SJH21.

I. RELIEF SOUGHT

77. For the reasons set out in this statement, the Joint Administrators consider that the purposes of the Administration as set out at paragraph 3(1) of Schedule B1 to the Insolvency Act have been sufficiently achieved in relation to the Company. The Joint Administrators have successfully realised the property of the Company, including its allocation of the Sale Proceeds. They have dealt with the financial support directions issued under the Pensions Act 2004 in respect of the Company by way of the Global Settlement and the promulgation of the CVA. The CVA has been successful in providing a process for agreeing creditor claims and has allowed for efficient distributions of the Company's assets.

78. The Company’s creditors have been paid the principal of their claims in full.

79. The Joint Administrators have considered the process for dissolving the Company in accordance with Italian law. The Company is to be dissolved through an Italian liquidation.

80. Accordingly, the Joint Administrators respectfully request that the Court makes the order for the termination of the Administration, conditional on the filing with the Italian Register of Enterprises of the notarised minutes of the extraordinary meeting of the Company’s shareholder, in which the shareholder resolves to place the Company into liquidation.

81. For the reasons set out in this statement, the Joint Administrators also request that the Joint Administrators be discharged under paragraph 98 of Schedule B1 to the Insolvency Act in respect of any action as joint administrators arising out of the Company's Administration, with 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.

82. For the reasons set out in this statement, the Joint Administrators also request that pursuant to paragraph 76(2)(a) of Schedule B1 to the Act, the Joint Administrators' term of office as joint administrators of the Company be extended for a period of three months so as to expire at 12:01 pm on 13 April 2021.

J. CONCLUSION

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

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STEPHEN JOHN HARRIS

Date: 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 MATTER OF:

NORTEL NETWORKS S.P.A.	**No. 552 of 2009 / CR-2009-000035**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

TWENTY FIRST WITNESS STATEMENT OF STEPHEN JOHN HARRIS

Applicant
Stephen John Harris
Twenty First Statement
Exhibit "SJH21"
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 MATTER OF:

NORTEL NETWORKS S.P.A. (THE "COMPANY")

No. 552 of 2009 / CR-2009-000035

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

EXHIBIT "SJH21"

This is the Exhibit marked "SJH21" which is referred to in the witness statement of Stephen John Harris dated 13 November 2020.

……..
Stephen John Harris
13 November 2020