



Neutral Citation Number: [2024] EWHC 1033 (Comm)

Case No: CL-2018-000474

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice Strand, London, WC2A 2LL

Covid-19 Protocol: This judgment was handed down by the judge remotely for circulation to parties' representatives by email. The date of hand- down is deemed to be as shown opposite:

Date: 24/12/2021

Before :

MR JUSTICE JACOBS

Between :

SALT SHIP DESIGN AS

Claimant

- and -

PRYSMIAN POWERLINK SRL

Defendant

Michael Ashcroft QC and Douglas Campbell QC (instructed by Holman Fenwick Willan LLP) for the Claimant

Andrew Hunter QC, Henry Byam-Cook QC and Jonathan Hill (instructed by Wikborg

Rein LLP) for the Defendant

Hearing dates: 13th December 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

NOTE: this judgment was originally subject to an order that it should remain confidential to the parties. This was because the litigation was continuing, and the judgment concerned an interim payment. A redacted (public) version of the judgment was issued: see [2021] EWHC 3583 (Comm). It is no longer necessary for the full judgment to remain confidential

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MR JUSTICE JACOBS

Mr Justice Jacobs :

A: Introduction

1. Following judgment on the liability issues in this case (see [2021] EWHC 2633) a large number of issues arose for determination at a hearing of “consequential” matters arising from the judgment. That hearing took place on 13 December 2021. References in square brackets are (unless the context otherwise requires) to the paragraphs of the liability judgment. The abbreviations used are the same as those in the liability judgment.
2. This judgment concerns two issues: applications by the Claimant (“Salt”) for (i) an interim payment pursuant to CPR Part 25.7 (1) (b) and (ii) a publicity order pursuant to the Trade Secrets (Enforcement, etc) Regulations 2018, SI 2018/597.
3. In broad summary, the proceedings concern claims by Salt against Prysmian for the misuse of Salt’s confidential information. Salt had been selected, after a competitive process, as the designer of a new cable laying vessel (“CLV”) that Prysmian was planning to build. Working in conjunction with its client, Prysmian, Salt carried out high quality design work over many months. In breach of clause 6.4 of the Short Form Agreement (“SFA”) which governed the relationship between the parties, Prysmian made the GA plan and Specification, which were critical design documents prepared by Salt, available to a rival designer Vard Design AS, and indeed Vard as a whole, for the purposes of a Vard alternative design [375]. This occurred initially in the period of late December 2017/ early January 2018, and Prysmian continued to make those documents available in February 2018 and thereafter. Prysmian’s conduct was also a breach of its equitable duties of confidence [377]. When considering the availability of exemplary damages, I described what had occurred as a bad case of breach of confidence [470]. I concluded that Prysmian’s conduct was sufficiently high-handed or egregious so as, potentially at least, to justify a punitive response by way of an award of exemplary damages [465]. However, the question of whether exemplary damages should in fact be awarded is a matter for later determination.
4. In addition to the cause of action for breach of contract/ confidence, I concluded that Salt’s cause of action in unlawful means conspiracy succeeded [424] – [442]. The primary, and perhaps only, relevance of the separate conspiracy cause of action was to facilitate a claim for exemplary damages, which may not be available for a case of breach of a contractual or equitable duty of confidence [452].
5. Prysmian has sought permission to appeal against limited aspects of the liability judgment. There is no proposed appeal, however, against any of the conclusions of fact or law relating to the claim for breach of contract and confidence (see Sections A – E of the judgment, paragraphs [1] – [423]). The proposed appeal is limited to certain aspects of my conclusions in relation to unlawful means conspiracy and exemplary damages. In view of the fact that both aspects of the proposed appeal relate to the exemplary damages claim, which has yet to be finally determined, both parties agreed at the December 2021 “consequentials” hearing that it was sensible for the application for permission to appeal to be postponed until after the exemplary damages claim has been finally determined.

6. That determination will take place as part of a further hearing which will address Salt's financial claims (in other words "quantum" issues) arising from the liability judgment.

Salt's primary case, as explained by Mr Ashcroft QC in his skeleton argument and orally, is for an account of profits made in consequence of the misuse of confidential information. As discussed below, it is well established that this is an available remedy for the misuse of confidential information, such as that which occurred in the present case. It is this claim for an account of profits which forms the foundation of the claim for an interim payment. There will be argument at the further hearing as to whether it is permissible for Salt to advance further claims for damages, in particular exemplary damages, in circumstances where it is pursuing a claim for an account of profits.

Directions were given at the December 2021 hearing for service of the parties' statements of case on the quantum issues, and for a case management conference following a stay to allow for mediation.

7. During the trial of the liability issues which took place in May and June 2021, and also following the liability judgment which was handed down in September 2021, Salt intimated an intention to apply for an injunction. The potential injunction related to the use of the CLV (or to one or more aspects of that vessel) which has been built by Vard, the Leonardo da Vinci, and which Prysmian is now operating. Salt did not, however, apply for any injunction at the consequentials hearing. The current position, therefore, is that there are no constraints on Prysmian using the Leonardo da Vinci, and all aspects of that vessel, as it wishes. Whilst it remains possible that an application for an injunction may be made by Salt in the future, Mr Hunter QC who appeared for Prysmian made it clear that any such application would be met (amongst other things) by an argument based on the delay in making the application. Since no application was made, I did not consider it necessary or appropriate to make any decision as to whether or not an injunction could successfully be obtained at a later stage. It is sufficient and (in view of the arguments relating to the publicity order) important to note, as I have, that no application has been made for an injunction, and that there are no constraints on Prysmian's conduct in relation to the Leonardo da Vinci.

B: The application for an interim payment

The approach to interim payments

8. Salt's claim for an interim payment is made pursuant to its claim for an account of profits. There was no dispute that, pursuant to CPR 25.7, an interim payment can be awarded in relation to such a claim, and also that the relevant test is that provided for in CPR 25.7 (4). Thus, it is necessary for the court to consider "the likely amount of the final judgment", and to decide what "reasonable proportion" of that amount to award as an interim payment.
9. The case-law indicates – see *Dolman v Rowe* [2005] EWCA Civ 715 – that a court has to do its best to make a rough estimate of the likely award, and is entitled to bring into account its general experience in so doing. The question of "reasonable proportion" is a matter for the judge's discretion. The notes to the White Book

(Volume 2, Section 15, Part E, paragraph [15-119]) indicate that the discretion is wide, and that the circumstances in which a decision is made can vary enormously. In some cases, an application for an interim payment will be made in advance of any trial on liability, where the full facts in relation to liability will not have been explored. In other cases, it is made after a trial on liability. Here, there has been a heavily contested trial on liability lasting a number of days. In such cases, a judge is likely to have a better “feel”, for both the rough estimate of the likely award and the reasonable proportion to be ordered, than

judges who hear, for example, a 1-day interlocutory application in a case where they have had no prior involvement.

10. One feature of the present case is that the liability trial did involve consideration of factual and legal issues potentially relevant to the account of profits claimed. Indeed, in paragraph [462] I said that it was not difficult, in the light of the facts found in the judgment, to envisage that Salt would advance a claim which “is based upon or takes into account the approximately € 5 million saving that Prysmian gained as a result of its decision to proceed with the Vard design”, and that such a claim may have an impact on the claim for exemplary damages.

The factual background

11. The factual basis of the application for the interim payment is the findings made in the liability judgment that the misuse of Salt’s confidential information resulted in a substantial cost saving to Prysmian. In paragraph [462], quoted above, I referred to the “approximately € 5 million saving that Prysmian gained as a result of its decision to proceed with the Vard design”. I found that the end of obtaining a reduced price was regarded as the important goal to be achieved, irrespective of Salt’s rights. Prysmian catered for those rights by obtaining an indemnity from Vard. In paragraph [470] I referred to the case as being a “bad case of breach of confidence”, and accepted Salt’s submission that:

“Prysmian did engage in a blatant misuse of confidential information to facilitate an outcome where it could obtain a ship built by Vard with the benefit of the Salt design, but at a significantly lower cost.”

12. These findings reflect conclusions on the facts elsewhere in the judgment. It is not necessary here to refer to all the paragraphs of the judgment which led to these conclusions. In summary, Prysmian had obtained quotations from various shipyards, including Vard, for the construction of the CLV using the Salt design. Vard was in many respects the first choice of Prysmian and its advisers, but it was more expensive than other tenderers. Prysmian therefore sought to have what I described [461] as the “best of both worlds”, namely “a vessel that would be built by a first class yard (favoured on all metrics apart from price), with the benefit of the work that Salt had carried out, but with a cost saving which Prysmian regarded as attractive”.
13. In order for Vard to provide a design that Prysmian might be happy with, Vard would have to use the Salt design documents [280]. Although Salt’s consent could have been

sought for the provision of the Salt design documents to Vard, it was thought highly unlikely that such consent would be forthcoming and no request to Salt for consent was made [281]. Prysmian itself positively encouraged and required the use of the design documents in order to ensure that the Vard alternative design gave Prysmian what it was looking for [295]. In paragraph [326], I accepted Salt's submission that Prysmian's approach was to require Vard to produce a design which met Prysmian's requirements and expectations as set out in the Salt design documents in order to produce something that was as good if not better than the Salt design.

14. In paragraphs [432] and [433], I made findings as to loss suffered by Salt in consequence of Prysmian's conduct. Salt lost the work that it would otherwise have performed under the SFA. If Prysmian's only practical option was for the ship to be built at the Vard price for the Salt design, that was, on the balance of probabilities, something that Prysmian would have accepted.
15. In relation to the financial consequences and benefit to Prysmian as a result of these matters, the judgment referred to a saving of "approximately € 5 million". This was the figure offered as a price reduction on 3 January 2018, against a price for building to the Salt design of € 162,900,000 [105]. Subsequently, and after discussions between Prysmian and Vard, the prices on offer were adjusted. Vard reduced its pricing for the Vard design to € 154,900,000 on 30 January 2018 [119], but without at that stage offering a price for a vessel built to the Salt design. On 12 February 2018, the prices on offer had reduced, both for the Vard and Salt designs [139]. The former was € 154,565,000 and the latter was € 160,275,000 giving rise to a differential and cost saving of € 5,710,000.
16. When the shipbuilding contract was ultimately signed with Vard in April 2018, there was a further reduction on the Vard price to € 153,940,000. There was at that stage no pricing for a vessel built to the Salt design, because Prysmian had decided to use Vard. If a comparison is made between the price in the April 2018 shipbuilding contract, and the previous price quoted by Vard for the Salt design (€ 160,275,000), the differential and cost saving is €6,335,000.

Legal principles relating to an account of profits

17. There is no doubt, and indeed no dispute, that an account of profits is an available remedy for the misuse of confidential information which occurred in this case. The remedy is discussed in Snell's Equity 34th edition, paragraph [9-022] where the authors state:

"Traditionally, the principle has been that when A breaches a duty of confidence by deliberately exploiting confidential information, B may elect for an account of profits, requiring A to disgorge to B gains made through the breach of the duty, even if those gains do not correlate directly to a loss suffered by B."

18. Where an account of profits is sought, questions of causation can arise. In *Marathon*

Asset Management LLP and anr v Seddon [2017] EWHC 300 (Comm), Leggatt J said (at [230]) that where the wrong consists in misuse of intellectual property, the court's task is to decide what profits made by the defendant "may fairly be attributed to the defendant's wrongful act":

"[230] Focusing on the strength of the interest which the law is seeking to protect may serve to explain why, when the remedy awarded is an account of profits, the test of causation varies according to the nature of the defendant's wrong. Thus, where the wrong consists in a breach of fiduciary duty, a stringent test of causation is applied and the burden is on the fiduciary to show that part of the profits made from a transaction entered into in breach of duty is not attributable to the breach: see e.g. *Murad v Al-Saraj* [2005] EWCA Civ 959. A similarly stringent test was applied in *Blake's* case which involved a promise to keep state secrets. On the other hand, where the wrong consists in misuse of intellectual property, the court's task is likewise to decide what profits made by the defendant may fairly be attributed to the defendant's wrongful act, but the court will more readily engage in an apportionment between profits attributable to the infringement of the claimant's intellectual property and profits which should be attributed to other, non-infringing elements of the defendant's activities: see e.g. *Celanese International Corp v BP Chemicals Ltd* [1999] RPC 203. Having regard to the strength of the interest which the law protects may also explain, at least in part, why an account of profits is seldom likely to be an appropriate remedy in an ordinary commercial context."

19. In some contexts, claims for an account of profits will give rise to issues of apportionment: see for example *Toulson & Phipps on Confidentiality* 4th edition para 6-115 and *Hotel Cipriani SRL v Cipriani(Grosvenor Street) Ltd* [[2010] EWHC 628 (Ch) para [8]. This is illustrated by two cases to which reference is made in paragraph 1.59 of the 1997 report of the Law Commission on Aggravated, Exemplary and Restitutionary Damages: *My Kinda Town Ltd v Soll* [1982] FSR 147 (reversed on liability [1983] RPC 407), and the Australian decision *Colbeam Palmer Ltd v Stock Affiliates Pty Ltd* (1968) 122 CLR 25. The authors of that report (which included two current members of the Supreme Court, Lady Arden and Lord Burrows) state in paragraphs 1.59 and 1.60 of the report:

“(1) The quantum of restitution

1.59 The starting-point in determining the quantum of restitution is to identify all the gains that the defendant has made by the wrong. This is a factual causation inquiry, which essentially requires the application of a ‘but for’ test: the gain is attributable to the wrong if the defendant would not have made that gain but for the wrong. So, for example, in *My Kinda Town Ltd v Soll*, where the defendants were alleged to be liable

for passing off by using a name similar to the plaintiffs' for their own chain of restaurants, the profits to be accounted for were only those additional profits caused by the public's confusion in thinking the defendants' restaurants were the plaintiffs', and not all the profits made by the defendants from those restaurants. Similarly in *Colbean Palmer Ltd v Stock Affiliates Pty Ltd*, an infringement of trade mark case, the profits to be accounted for were not all those gained from the sale of infringing goods but only those made because the goods were sold under the trade mark.

1.60 In some cases the factual causation enquiry will indicate that the defendant could have lawfully made the profits in question if it had paid for the property, or use of the property, from which those profits have been derived. On such facts, the measure of restitution (whether through an account of profits or restitutionary damages) should be the expense saved by the defendant in not paying for the property (or use of the property)."

20. Mr Hunter's principal argument, in opposition to the application for the interim payment, relied upon the passage in paragraph 1.60. I was only provided with the entirety of paragraph 1.59 after the hearing, and the two cases referred to in that paragraph were not cited by Mr Hunter in his skeleton argument or shown to the court at the hearing. It seems to me, having now read those cases, that neither *My Kinda Town* nor *Colbeam* has any resemblance or application to the facts of the present case. Nor do they discuss or support the proposition in paragraph 1.60 on which Mr. Hunter relied.
21. *My Kinda Town* is discussed in detail by Laddie J in *Celanese International Corp v BP Chemicals Ltd* [1999] RPC 203, paras [63] – [65]. In *My Kinda Town*, Slade J was considering the extent to which the defendant should account for profits made at a pizza restaurant which had passed off its business as that of the plaintiff by the use of the words "Chicago Pizza". The question was whether the defendant had to account for all profits made by the business, or only the profits made from those diners who were confused by the name. The judge held that where diners were not confused, no wrongful act had been committed, and the sales to those diners were not attributable to the passing off.
22. In *Colbeam*, in the second judgment dated 15 August 1968 contained within the report of the case, Windeyer J said (at paragraph 6) that the account of profits was for those profits which are "attributable to his use of the property which was not his". On the facts of that case, where the relevant property was a trade mark, that did not necessarily mean that the defendant was required to account for the entire profits made on the painting sets which were sold by the defendant, but rather for the proportion of profits attributable to the trade mark wrongly used by the infringer. He recognised, however, that in some cases – where "the whole thing came into existence by reason of his wrongful use of another man's property in a patent, design or copyright" – the infringer must account for all the profits which were made.

23. Prysmian's principal argument was, as I have said, based upon the proposition in paragraph 1.60 of the Law Commission's report. Mr Hunter submitted that Prysmian could have acted lawfully in using Salt's confidential information, in the way that it did, pursuant to the terms of the SFA. This would have required a payment pursuant to Clause 6.3 of the SFA, which is set out in context at paragraph [173] of the liability judgment. This provided as follows:

“6.3 If however, no shipbuilding contract is concluded between the Client and the Yard within the date indicated at Clause 2.3 above, the Client shall be entitled to request the Designer to complete the Scope of Supply, including Phase 3 and 4, by paying the corresponding compensation.”

24. Mr Hunter submitted that the payment required would, pursuant to the SFA, have been € 1,656,000 million in return for the completion and delivery of the Phases 3 and 4 design work. Accordingly, the profits for which Prysmian was required to account to Salt were no more than that sum. This was, to use the language of the Law Commission, the expense saved by Prysmian in not paying for the property or use of the property.

25. It is not clear whether the proposition in paragraph 1.60 is the Law Commission's view of what English law actually was, or what it should be. No authority was cited by the

Law Commission (or indeed by Mr Hunter) as support for that proposition. Indeed, I was surprised at the proposition that a defendant who has decided not to act lawfully, when it had the opportunity to do so, but rather to misuse confidential information, did not have to disgorge the full benefit of the gain attributable to the misuse, but instead could reduce the accounting on the basis that it had the opportunity (whether contractual or otherwise) to have acted differently.

26. It seems to me that the issue has in fact been addressed in case-law subsequent to the Law Commission's report, and that paragraph 1.60 (and therefore Mr Hunter's argument) is not correct as a matter of English law. In *Hotel Cipriani SRL v Cipriani(Grosvenor Street) Ltd* [2010] EWHC 628 (Ch) Briggs J summarised the principles relevant to an account of profits as follows at para [8]:

“The principles are well settled and summarised by Millett J in *Potton v Yorkclose* [1990] FSR 11 at pages 14 to 16. First, the purpose is to deprive the defendants of the profits which they have improperly made by the wrongful acts committed in breach of the claimants' rights and to transfer those profits to the claimants. Secondly, it is no answer to such a claim to say that similar profits could have been made in a non-infringing way – see *Celanese v BP* [1999] RPC 203 at 219 to 220. Thirdly, profits include accrued profits, for example a legal right arises to receive payment, even if payment is yet to be made. Fourthly, where a single head of profit is attributable to a number of causes, some of them infringing and some not, it is

necessary and appropriate for the court to conduct an apportionment so as to work out on a

broad-brush basis what proportion of the profit was due to the act of infringement.” (Emphasis supplied).

27. The proposition that it is no answer to a claim for account of profits that similar profits could have been made in a non-infringing way is indeed supported by the very full discussion of the point by Laddie J in *Celanese v BP*. It is not necessary to set this out in full.

The parties’ arguments

28. In summary, Salt submitted that, on the basis of the fact findings in the liability judgment, this was a straightforward case. A saving in the region of € 5 million had been made as a result of the misuse of Salt’s confidential information. This saving was “baked in”, in the sense that it did not matter if (as appears to have happened) the price payable for the Vard design changed later in 2018.
29. In Prysmian’s written submissions, a number of arguments were advanced. The application was premature because Salt had not pleaded out its claim for an account of profits. There was no finding in the liability judgment to the effect that Prysmian had in fact saved the sum of € 5 million. The liability judgment refers to the sum of “approximately” € 5 million, thus demonstrating the uncertainty as to what amount had been saved. These arguments were not, however, in the forefront of Mr Hunter’s oral submissions. The focus of those submissions was on three points.
30. First, as previously discussed, Prysmian’s primary argument was based upon the proposition in paragraph 1.60 of the Law Commission’s report; namely that the profits that were attributable to the misuse of confidential information was no more than the sum that Prysmian could lawfully have paid under the SFA to acquire the Salt design work. It was submitted that this was the maximum possible amount of any saving arising by reason of the unlawful use of Salt’s information. It made no sense to view any saving above that sum as being caused by the wrongdoing.
31. Secondly, Prysmian submitted that the wrongdoing was not a material cause of the price reduction. That reduction was offered because the adoption of the Vard design would reduce the risk involved in Vard having to construct a third party design. There was no evidence that any of the offered reduction related to design work, or that any saving was in the end made by cutting out design work. The wrongdoing provided the occasion for a possible saving to be made, but was not a material cause.
32. Mr Hunter thus submitted that, on the basis of the findings in the liability judgment, the misuse created the opportunity for Vard to lower its price, but it did not necessarily follow that the whole of the price reduction was relevantly caused by the misuse. He said that the court should not conclude that all 100% of the price reduction was in fact materially caused by the misuse of confidential information. It may be that, on investigation, it was really a price reduction concerned with other things; most notably that the need for Vard to engage with an external designer rather than their own designer had elements of risk. The price reduction was a form of credit for

taking the risk away. So although Vard may have labelled the price reduction as being referable to the difference between constructing a Vard designed vessel rather than using the Salt design, that may be referable at least partly to Vard's view that there was a greater risk of working with anyone other than its own design team. There was, he submitted, a conceptual difference between the situation where a misuse of confidential information creates the opportunity for a price reduction, and then various factors contribute to the price reduction, and a situation where the misuse of confidential information directly causes the whole of the price reduction.

33. Thirdly, even if the wrongdoing was a material cause, Salt's argument as to likely quantum was flawed. There was no evidence that the final price paid for the Vard design was indeed € 5 million less than that which would have been paid for the Salt design. The thrust of this argument is that Vard's price for a vessel built to the Salt design would or might have been lowered below the prices which had previously been quoted. Reference was made to a contemporaneous e-mail of Mr Stenersen of Salt in March 2018, following Prysmian's decision not to go with Salt, in which Salt said that it was prepared to support an initiative to bring down the vessel cost.
34. All of these matters meant that Salt had not shown that it was likely to be awarded anything approaching € 5 million, and therefore the court should decline to order any interim payment.

Discussion

35. I do not accept that Salt's application for an interim payment is premature. It is appropriate to make a claim for an interim payment following judgment on liability. The basis of the claim did not require further pleadings. It was clearly articulated in the short witness statement served in support of the application, which referred to the pertinent paragraphs of the liability judgment including paragraph [462] which identified what in my view was a fairly obvious way in which the claim for an account of profits, and hence for an interim payment, could be advanced.
36. As will be apparent from my discussion of the legal issue, I do not accept Prysmian's primary submission: namely that the profits for which Prysmian should account are to be calculated by reference to the amount (quantified by Prysmian as € 1,656,000) that was payable under the SFA in order to require Salt to complete and deliver the Phase 3 and Phase 4 design work. The issue of causation involves a decision as to what profits made by the defendant may fairly be attributed to the defendant's wrongful act: *Marathon Asset Management*. It is no answer to say that the profits attributable to the wrongful act, or some part of those profits, could have been made in a non-infringing way: *Cipriani Hotels*. Even if Prysmian were correct in its contention that it could have acquired full rights over Salt's design work by paying that sum – whether by exercising rights under the SFA or by entering into a settlement proposed by Salt (see [155]) – the factual position is that Prysmian did not pay that sum, or enter into a settlement, but instead misused Salt's confidential design work for its own benefit as described in the liability judgment.

37. In fact, I do not accept Prysmian’s argument that payment of € 1,656,000 under the SFA, had it been made, would have entitled Prysmian to provide Salt’s GA plan and Specification to Vard for the purposes of Vard’s alternative design. Clause 6.4 of the SFA, discussed at length in the judgment, prohibited Prysmian from sending or making these documents available to a third party without Salt’s consent. I do not consider that the clear words of the contract are, in effect, overridden by an implied entitlement arising from payment for the completion of the design work pursuant to clause 6.3. Even if the CLV had been built by Vard to the Salt design, the prohibition in Clause 6.4 would have remained applicable. Prysmian could not in those circumstances send the GA and Specification to other designers or yards to assist on the design of further ships, or publish the GA and Specification on the internet, at least without Salt’s consent. The position is no different if, as here, the CLV was not being built to the Salt design. Accordingly, Prysmian did not have the contractual entitlement for which it contended.
38. The argument (which was not in the forefront of Mr Hunter’s submissions) that Prysmian had the opportunity to conclude a settlement with Salt, carries Prysmian’s case no further forward. The proposed settlement referred to in paragraph [155] was expressly without prejudice to Salt’s contractual rights, and it therefore cannot be assumed that Salt would have waived its right under Clause 6.4. I have not seen the terms of the without prejudice correspondence referred to in paragraph [155], and can therefore make no findings (were they to have been relevant) as to what the terms of settlement might have been. In any event, it will be apparent from my earlier conclusions that I do not accept that Salt’s claim for an account of profits is to be assessed by reference to the sum that Prysmian might have paid under a proposed settlement for the lawful use of Salt’s confidential information, when the facts are that Prysmian declined to settle or make any payments to Salt and instead misused that confidential information.
39. I also reject Prysmian’s second submission, namely that the wrongdoing was not a material cause of the alleged saving, or that it can be regarded as simply the “opportunity” or “occasion” for the price reduction which Prysmian achieved. I do not consider that this is a sustainable argument in the light of the findings in the judgment which I have summarised above. Indeed, I am inclined to think that the argument is inconsistent with my findings and conclusions in paragraphs [462] and [470] of the liability judgment. Nevertheless, I have considered the argument afresh.
40. The position, on the basis of the findings in the liability judgment, can be summarised as follows. Prysmian’s wrongdoing took place because it wished to achieve the best of both worlds. It wanted a vessel built with the benefit of Salt’s design work, but at the same time wished to receive the significant cost reduction which was potentially available if the ship was built by Vard without the further involvement of Salt. Prysmian did not want a “pure” Vard design: ie a design prepared by Vard without the benefit of the Salt design work. Vard had lost the original design tender competition, and months of work had then taken place with Salt. If Prysmian had been interested in December 2017 and thereafter in a “pure” Vard design, then there was no need for Salt’s confidential information to be passed to Vard. As I said at [280], it was obvious, in December 2017/ January 2018, that Vard and Vard Design would have to

use the Salt design documents to prepare anything like a design that Prysmian might be happy with. This was done at that time, and thereafter, with the active encouragement of Prysmian. Furthermore, I held at [433] that if the only practical option was for the ship to be built at the Vard price for the Salt design, this is something which Prysmian would have done. The option of a “pure” Vard design was therefore not on the table. The option of a Vard design, at a lower price, with the benefit of the Salt work was only available (absent Salt’s consent) if confidential information was misused.

41. Against that background, the price reduction which Prysmian obtained, for a vessel which had the best of both worlds, was a gain to Prysmian which may fairly be attributed in whole to Prysmian’s wrongful act. If the confidential information had not been misused, the only vessel on the table would have been the Salt designed vessel which, on my finding in [433], Prysmian would have built. The option of another vessel, in which Prysmian might be interested, only came into existence as a result of the misuse of the confidential information. But for that misuse, there would have been no other vessel on the table, and therefore no option for Prysmian to consider. The gain to Prysmian as a result of the misuse of the confidential information was, therefore, the difference in the prices payable for the two vessels which were on offer as a result of the misuse: € 5,710.000 on the basis of the figures in February 2018.
42. I do not accept that the above analysis is complicated by any need to enquire into and assess the relative importance of the confidential information against other factors which may have led Vard to reduce its price. I accept that there were likely to have been a number of factors which resulted in Vard pricing the difference between the two vessels in the way in which it did. However, the relevant causation enquiry in the present context is to identify the gain to Prysmian which can be attributed to misuse of the confidential information. That gain to Prysmian was the difference between the two prices which were on offer; two alternative ships were only on offer because of the misuse of the confidential information. The precise way in which Vard had decided on its pricing for either vessel, and any calculation or reasoning by Vard which led to the difference in price between them, would not have been known to Prysmian at the time (or indeed now), and does not affect the computation of Prysmian’s gain. Prysmian was a buyer, and its gain is to be measured by the difference between the pricing that was presented to it.
43. The cases to which I have referred (eg *My Kinda Town*, *Colbeam* and the statement of principle in *Cipriani*) show that, in some contexts of misuse of intellectual property, questions of apportionment arise. I cannot see how it arises here. This is a case where the possibility of an alternative vessel (Vard designed but with the benefit of the Salt design), and the price reduction on offer, only came into existence by reason of the wrongful conduct of Prysmian. In such cases, as Windeyer J said in paragraph [9] of *Colbeam*, any difficulty of allocation or attribution disappears: the infringer must account for all the profit that he made.
44. For the purposes of the present application, I am not required to, and do not, make a final decision on the causation issue. For the purposes of the interim payment application, I must decide what sum of money is “likely” to be awarded in due course. It suffices to say that I see no merit in the argument that the misuse was not a material

cause of the saving which Prysmian made. This was a saving which, as Salt contended, was then “baked in” as matters moved forward. There were no subsequent events which had any causal impact on the saving that was made at the outset.

45. I will deal with Prysmian’s third submission briefly. The essence of this submission was that if there had been no misuse of the confidential information, so that Vard were building to the Salt design, it is likely that Vard’s quoted price would have been lower. Accordingly, the court should not proceed on the basis that the € 160,275,000 was Vard’s final price for a vessel built to the Salt design. Any lowering of the Vard price would reduce the differential (€ 5,710,000 on the basis of the February pricing) between the two vessels on offer, and hence reduce Prysmian’s gain.
46. There is, however, no evidence of any willingness by Vard to reduce its pricing for the Salt designed vessel below € 160,275,000. No evidence to that effect had been adduced by Prysmian in the context of the present application, and there was no evidence to that effect at trial. The suggestion therefore seems to me to be speculative. The price of € 160,275,000 quoted in February 2018 was the last and lowest of a series of quoted prices, and came following a previous request for Vard to provide its Best and Final Offer.
47. For the above reasons, I consider it likely that Salt will recover € 5,710,000 as an account of profits. It is possible that the figure will be higher, bearing in mind that the price ultimately agreed in April 2018 for the Vard vessel was somewhat lower than the price quoted in February, upon which the differential figure of € 5,710,000 is based. It is also possible, however, that small reduction achieved in April 2018 for the Vard vessel would have also been available as a reduction for the Salt vessel. I therefore put the possibility of a larger claim on one side for present purposes.
48. In the light of the likely recovery of € 5,710,000, I consider that the € 5 million sought by Salt on this application is a reasonable proportion of the likely amount of the final judgment. In reaching this conclusion, I take into account the fact that the application is made after a substantial trial on liability issues, and where relevant fact findings which bear materially on the quantum issues have already been made.

C: The application for a publicity order

The application and its legal basis

49. Salt applies for the following order:

The Defendant shall display the following notice to all persons accessing its home page (<https://uk.prysmiangroup.com/>) from an internet protocol (IP) address identifying the United Kingdom, for a period of 12 months from the date hereof, such notice to be in no smaller than 12-point type:

“On 30 September 2021 the High Court of Justice of England and Wales ruled that Prysmian Powerlink SRL had misused Salt Ship Design AS’s confidential information in relation to the design of Prysmian Powerlink SRL’s Leonardo da Vinci

cable laying vessel. A copy of the full judgment of the High Court is available on the following link [link given]”

50. During the course of argument, the focus of the application moved from the Prysmian Group UK directed home page (which was in fact the home page of Prysmian’s parent company) to more specific webpages within the site. There are a number of web pages on the website which relate to, and in many respects extol the virtues of, the Leonardo da Vinci. These include a recent page which records that the vessel has recently (on 17 November 2021) been picked as the Best Support Vessel of the Year by readers of Offshore Wind Journal. That page describes the vessel becoming “operative last July” (ie July 2021) with another webpage (which sought votes for the Offshore Wind Journal award) describing the vessel being delivered in August.
51. The website also has a page dedicated to the Leonardo da Vinci. The page has a slideshow of 8 pages with photographs and links enabling the reader to “read more”. These 8 pages appear to be less recent than the page described in the previous paragraph in that they largely describe events which occurred during construction; for example, the keel laying ceremony and the arrival of the vessel in Norway for completion and other matters. Beneath the slide show are various other photographs, design drawings and links, including a link to a YouTube video under the heading: “Prysmian Group introduces Leonardo da Vinci – a genius in motion”. I was taken to this part of the website during oral argument, and the focus of Salt’s application was for the notice to appear in that section of the website.
52. The application is based upon the Trade Secrets (Enforcement etc) Regulations 2018 (“the 2018 Regulations”). In the liability judgment, I held [472] – [482] that the 2018 Regulations were applicable to the confidential information relied upon by Salt in the proceedings. There is no proposed appeal from that decision.
53. The relevant regulation for present purposes is Regulation 18. This provides:

Publication of judicial decisions

“18.—(1) In proceedings for the unlawful acquisition, use or disclosure of a trade secret, a court may order, on the application of the trade secret holder and at the expense of the infringer, appropriate measures for the dissemination of information concerning the judgment, including its publication in whole or in part.

(2) Any measure a court may order under paragraph (1) must preserve the confidentiality of trade secrets as provided for in regulation 10.

(3) In deciding whether to order a measure under paragraph (1) and when assessing whether such measure is proportionate, the court must take into account where appropriate—

(a) the value of the trade secret,

(b) the conduct of the infringer in acquiring, using or disclosing the trade secret,

(c) the impact of the unlawful use or disclosure of the trade secret,

(d) the likelihood of further unlawful use, or disclosure of the trade secret by the infringer, and

(e) whether the information on the infringer would be such as to allow an individual to be identified and, if so, whether publication of that information would be justified, in particular in the light of the possible harm that such measure may cause to the privacy and reputation of the infringer.”

54. This essentially replicates, with different punctuation in the case of paragraph (3), Article 15 of the EU Directive referred to in argument as the “Trade Secrets Directive”: ie Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

55. Recital (31) of the Trade Secrets Directive explains the policy behind Art. 15:

“(31) As a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions, including, where appropriate, through prominent advertising, in cases concerning the unlawful acquisition, use or disclosure of trade secrets, on the condition that such publication does not result in the disclosure of the trade secret or disproportionately affect the privacy and reputation of a natural person. ”

56. There has been no reported case on the application of these provisions. However, there have been a number of reported cases on provisions which are equivalent, but not exactly the same, in the IP Enforcement Directive 2004/48/EC (“the 2004 Directive”). The 2004 Directive, and the 2006 Regulations which were made pursuant thereto, contained no list of potentially relevant factors to be taken into account or express requirement to consider the effect on privacy and reputation. The policy behind the equivalent provisions was identical to that contained in Recital (31) set out above.

57. In *Duchess of Sussex v Associated Newspapers Ltd* [2021] EWHC 510 (Ch), Warby LJ referred (in paragraph [51]) to a number of authorities relating to the exercise of the court’s discretion under the 2004 Directive, and summarised the position as follows:

“[52] These authorities indicate that it is common practice to make such orders in IP litigation, and that policy favours doing so, in view of the difficulties which owners of IP rights face in identifying and successfully pursuing infringers. The court will take account of all the circumstances, but the following factors

may count in favour of making such an order: (a) deterrence of the infringing defendant; (b) that publication of the result would be a deterrent to other infringers. Factors that may count against the grant of such an order include the strength of the policy grounds on the particular facts of the case, and any procedural or practical obstacles to making an effective and proportionate order. The applicant will need to present the court with a precise form of order, and a workable solution. The solution will need to identify appropriate platforms or publications for the notice. It may include a notice, with a hyperlink to the main judgment. ”

58. There have also been cases on the making of publicity orders where a finding of noninfringement has been made (ie, where a defendant has successfully defended a case of infringement) pursuant to the Court’s general jurisdiction to grant injunctions under s.37 of the Senior Courts Act 1981.
59. Relying upon one of those cases, *Philip Warren & Son Ltd v Lidl Great Britain Ltd* [2021] EWHC 2372 (Ch), Prysmian submitted that the relevant test was whether the making of a publicity order is “necessary and proportionate”. I accept, as is clear from the terms of paragraph (3) of Regulation 18, that the court is concerned with an assessment of whether a measure is “proportionate”. I do not, however, accept that a test of necessity should be substituted for the language of the 2018 Regulations. These confer a discretion on the court (“the court may order”) to order “appropriate measures for the dissemination of information concerning the judgment”. The court is concerned with what is “appropriate”, rather than a more stringent test of necessity. Indeed, in *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWCA Civ 1339 (a case where the court referred to the 2004 Directive), the Court of Appeal identified the relevant question as being whether the order is “desirable”. The court said that such orders should normally only be made where they serve one of the two purposes now set out in Recital (31) of the Trade Secrets Directive.
60. Paragraph (3) also identifies a number of specific matters which the court is required to take into account “where appropriate”. Salt contended, correctly in my view, that the facts of the case did not bring (d) and (e) into play. The parties’ arguments therefore focused on (a) – (c). I consider that the specific matters set out in paragraph (3) should be in the forefront of the court’s analysis of whether to order a measure under paragraph (1). I also accept, however, that the listed factors are not exclusive: there may be other relevant factors which bear upon the exercise of the court’s discretion.

The parties’ arguments

61. Salt submitted that factors (a) – (c) in the present case all pointed towards the making of a publicity order. The trade secrets that were infringed were of substantial commercial value. On the basis of the findings in the liability judgment, Prysmian’s conduct was such as to potentially give rise to a punitive response by way of an award of exemplary damages. Prysmian’s conduct had a damaging effect on Salt. The vessel had been built using, and with the benefit of the Salt design, without Salt receiving

any credit or acknowledgment. Prysmian and Vard were taking the glories of awards bestowed on the vessel without acknowledging Salt's design role. Salt's reputation in the market was also tarnished, in circumstances where it was known that Salt was replaced as vessel designer by Vard. Salt also faced a new competitor in the specialist market, with Vard now established as the designer of an award winning vessel, without any recognition or publicity that Prysmian and Vard used Salt's excellent work as a springboard for the Vard design.

62. Salt referred in this context to evidence of Mr Arne Stenerson, Salt's managing director who gave evidence at trial. In his first witness statement for the trial, he referred to Salt's loss of the project to Vard as "certainly" having a negative effect on Salt's business and its perception in the vessel design market. The loss of a project to a shipyard designer after the concept design phase was particularly harmful to Salt's reputation. In his fourth witness statement, served in support of the application for a publicity order, Mr Stenerson repeated and to a degree expanded upon these points. He said that the dramatic change of ship designer for such a benchmark project was impossible for Salt to explain, and therefore Salt's unique market leading position suffered immensely. This was compounded by the fact that during construction of the Leonardo da Vinci, both Vard and Prysmian used the vessel quite aggressively to mark their position in the market, promoting Vard as the leading CLV designer and therefore seriously hurting Salt's position.
63. Salt submitted that the best way of publicising the wrongs done to Salt, and the role of Salt in the design of the vessel, to those who may be interested market participants, was by requiring Prysmian to put a notice on its website.
64. Prysmian submitted that the order should not be made for various reasons. (a) There was no need for further publicity: there had already been substantial publicity. (b) The website was not controlled by Prysmian (ie the Defendant itself), and a notice on the home page of the Prysmian Group would harm a party which was not a party to the proceedings. (c) There was no practical need to deter Prysmian: it was not in the market for another vessel, and the liability judgment and attendant publicity were deterrent enough. (d) The notice would not be published to those with an interest in the subject matter of the dispute namely those involved in the ship design and construction market. It would not deter others, but would be liable to punish Prysmian and cause it to lose face with those with no interest in the market. (e) In the small ship design and construction market those who might benefit from being informed of the result are liable already to have learned of it. (f) Salt could readily inform third parties of the liability judgment, by a link to the Bailii page where the judgment is reported. (g) The notice would potentially mislead those who saw it, and might make some readers consider that the use and trading of the Leonardo da Vinci was wrongful. It was not possible accurately to sum up the liability judgment in a short sentence. (h) The publicity order may impinge upon an appeal and/or the prospects of settlement.
65. In response to Mr Stenerson's witness statement, Ms Midwinter made her 11th statement, essentially in order to provide evidence which supported the points summarised above. She also referred to a proposal which had been made "at an early stage" by Prysmian for the preparation of a press release jointly with Salt. This would have explained that the reasons for changing designers were, as she described it,

“entirely unrelated to the Claimant’s work”, and crediting Salt for the work done on an earlier concept design. Salt was, however, not interested in pursuing this.

66. In his oral submissions, Mr Hunter emphasised that publicity on the website would result not only in information being given to those within the narrow niche category of third parties interested in CLV design (principally those who might order a CLV or shipyards who might build one), but also a “huge number” of other third parties who were entirely irrelevant audiences. This was a relevant consideration in relation to proportionality, as well as whether there would be deterrence of third parties.

Discussion

67. I consider that, looking at all the circumstances, it is appropriate to make the publicity order sought by Salt in these proceedings, essentially for the reasons given by Salt as summarised above. The notice should not appear on Prysmian's home page, but rather on the principal page (described above) which publicises the Leonardo da Vinci: ie the page which has the 8 page slideshow, and which contains the link to the YouTube video and other information. My reasons for reaching that conclusion are as follows.
68. First, as indicated above, I consider that the matters in paragraph (3) (a) – (c) of Regulation 18 should be in the forefront of the court’s analysis. Each of these matters favours an order for dissemination.
69. As to (a): the trade secrets are valuable, for reasons which are apparent from the liability judgment. Realistically, Prysmian did not contend otherwise.
70. As to (b): the conduct of Prysmian, the infringer, has been described in the liability judgment. I described [470] Prysmian has having engaged in a blatant misuse of confidential information to facilitate an outcome where it could obtain a ship built by Vard with the benefit of the Salt design, but at a significantly lower cost. There is no proposed appeal against my decision as to the misuse of confidential information in breach of contract or the equitable duty of confidence. I did also say that the case was sufficiently serious to justify, potentially at least, the imposition of exemplary damages. However, I recognise that there is a potential appeal on the availability of exemplary damages in the present case, and I therefore do not attach weight to that factor. My basic findings as to misuse are sufficient for the purposes of (b).
71. As to (c): there is in my view sufficient evidence as to the impact on Salt. Mr Stenersen gave, in my view, plausible evidence as to the negative impact on Salt. Indeed, his evidence to that effect in his first witness statement for trial was not really challenged in cross-examination. Salt has not only been deprived of the opportunity to earn additional design fees, but has also lost the association which it would have had with a prestigious CLV project. I do not consider that it matters, for present purposes, that Salt has not produced detailed data supporting the case of a negative market reaction, and has not identified particular projects that were lost. Such evidence may not be easy to obtain. Furthermore, applications for publicity orders at the end of a trial should not

turn into mini-trials of disputed issues of quantum. The court should in my view form a common-sense view of the plausibility of the case that the misuse of confidential information has had an impact on the party whose trade secret has been misused.

72. Secondly, I consider that the policy reasons for publicity identified in Recital (31) of the Trade Secrets Directive are applicable in this case. Publicity of the court's decision will assist in providing a deterrent to future infringers, whether they be companies who are considering building a CLV or shipyards who may be considering constructing one. Such organisations, or others acting on their behalf, are likely to seek information about the latest CLV from the relevant webpages within the Prysmian website. Publicity of the judgment will serve as a warning that the misuse of confidential information does have significant adverse consequences. In addition, whilst I accept that the public as a whole will not be particularly interested in the misuse that occurred in this case, there are sections of the public who will be interested. The publicity given by the Prysmian Group to the Leonardo da Vinci generally, and to the award that has recently been received, is directed at an audience interested in the vessel. It is likely that many within that audience will be interested in learning of the misuse that occurred.
73. Third, as Warby LJ said in *Duchess of Sussex*, publicity orders are commonly made and policy favours doing so, in view of the difficulties which owners of IP rights face in identifying and successfully pursuing infringers. The latter point is to some extent, but not exclusively, an aspect of deterrence.
74. Fourth, Prysmian made various points which are summarised in paragraph [64] above. I did not consider that any of the arguments raised against the publicity order outweighed the above factors which made it appropriate to make such an order.
75. I do not accept that there is no need for further publicity, in the light of the publicity which already exists. Whilst there has indeed been some publicity, and a number of articles written about the case, this has not been extensive. Mr Stenersen's evidence, unsurprising in my view, is that in his conversations with major players in the market, some have never heard of the dispute or the judgment. In my view, publicity on Prysmian's website will be an effective way of bringing the infringement to the attention of market participants who are not already aware of it, and will serve the aim of deterrence. The evidence is that all such participants are not so aware at the present stage. Whilst Salt can also put a notice on its website, that is not in my view a good reason why Prysmian should not be required to give its own publicity to the court's decision. Such publicity on Prysmian's website is likely to have a greater reach, since Prysmian is the party which is in a position to, and wishes to, publicise the vessel which has actually been built with the benefit of the Salt design. It is unrealistic to expect Salt, which is a much smaller organisation, to give or to wish to give an equivalent degree of publicity to a vessel ultimately designed by a rival designer.
76. I accept that it would not be appropriate for the notice to appear on the home page of the Prysmian Group. This is because there is nothing to suggest that those who visit the home page will generally have any interest in the Leonardo da Vinci or its background. The same cannot, however, be said for those who visit the webpages which are dedicated to that vessel. Whilst it may be the case that Prysmian (ie the

Defendant company) does not control the website, there is no reason to think that it would not be able to procure the placement of an appropriate notice on the relevant webpages. Mr

Campbell QC, who argued the publicity issue on behalf of Salt, also made the fair point

that the Prysmian Group was running a website for the whole group; that the publicity given to the Leonardo da Vinci was for the benefit of Prysmian, a company within the wider group; and that it was just that aspects of Prysmian's business which reflected well on the group (such as the promotion of the cutting-edge and award winning Leonardo da Vinci) should be balanced by information as to an infringement which did not reflect well.

77. I do not accept that it is a significant point, against the making of the order, that Prysmian is not in the market for another CLV. The notice will act as a deterrent for the misuse of confidential information by Prysmian generally in its business dealings, as well as acting as a deterrent for third parties, whether designers or shipbuilders or others.
78. I accept Mr Hunter's point that the notice on the Leonardo da Vinci webpage will likely come to the attention of people who have no real interest in the subject-matter of the dispute. For example, the webpages may likely be visited by prospective customers for the services that the Leonardo da Vinci can offer. However, I do not regard this as a telling or decisive point when weighed in the balance. It is inevitable that a notice on a website will not be of interest to all users of the relevant web page. However, I accept Mr Campbell's submission that it is quite likely that anyone serious about building a vessel of this kind will find their way to the relevant web pages of Prysmian since that is where there is information readily available.
79. Prysmian suggests that the publicity order may impinge upon an appeal or the prospects of settlement. Unsurprisingly, I have received no real information or evidence as to the prospects of settlement. I have no basis to conclude that publicity will inhibit settlement. Nor do I consider that the publicity order may impinge upon an appeal. The proposed grounds of appeal are narrow. They do not seek to challenge my basic conclusions as to the misuse of confidential information in breach of contract and equitable duty. The proposed grounds relate to aspects of the case for exemplary damages. Even if the proposed appeal in that regard were to succeed, it would have no impact on the reasons which in my view make it appropriate to grant the publicity order.
80. I have given consideration to the argument that users of the website (for example potential customers for the Leonardo da Vinci) would be misled, for example into thinking that the use and trading of the vessel was wrongful. During the course of Mr Hunter's argument, I suggested that the wording of the notice might make it clear that the court had not granted any relief which prevented Prysmian from trading the Leonardo da Vinci. Mr Campbell suggested that if I were minded to include any such wording, it should be qualified by stating that no such relief had been granted "to date".

81. On balance I consider that it is appropriate for wording to be included so as to advise users of the website that the court has not granted any relief which prevents Prysmian from trading the Leonardo da Vinci. The case-law makes clear that a publicity order is not intended to be punitive. This does not mean, as Mr Hunter submitted, that a publicity order should not be made if it would result in people thinking worse of the infringer. This may happen, and is in my view an aspect of deterrence. However, it would in my view be punitive if potential customers of Prysmian were wrongly to think that Prysmian was not permitted to use or trade its vessel, and that therefore they should not do business with Prysmian in relation to that vessel. Whilst it does not seem to me that there is anything positively misleading in the wording proposed by Salt, the possibility of customers misunderstanding the position should in my view be catered for and avoided. That is one reason why, in paragraph [7] of this judgment, I have explained the position in relation to injunctive relief, and also why I consider that the notice should also refer to the present judgment as well.
82. Accordingly, I will in principle make a publicity order as follows (the parties will have an opportunity to give me any points of detail on the wording):

“The Defendant shall display the following notice to all persons accessing the following Leonardo da Vinci page on the Prysmian Group website (<https://www.prysmiangroup.com/en/new-vessel-leonardo-da-vinci>) from an internet protocol (IP) address identifying the United Kingdom, until 30 June 2022, such notice to be in no smaller than 12-point type:

*“On 30 September 2021 the High Court of Justice of England and Wales ruled that Prysmian Powerlink SRL had misused Salt Ship Design AS’s confidential information in relation to the design of Prysmian Powerlink SRL’s Leonardo da Vinci cable laying vessel. A copy of the full judgment of the High Court is available on the following link [link given]. On * December 2021, the High Court of Justice of England and Wales made further rulings in the case, including that Prysmian Powerlink SRL should make an interim payment to Salt Ship Design AS in respect of the misuse of its confidential information. A copy of the further judgment is available on the following link [link given]. The court has not granted any order which prevents Prysmian from trading the Leonardo da Vinci.””*

83. I consider that the period should be 6 months, until the end of June 2022. As in *Enterprise v Europcar* [2015] EWHC 300 (Ch), visits to the relevant web page are likely to be sporadic. A 6-month period will give a reasonable chance of a reasonable number of market participants seeing it. I also bear in mind that Prysmian Group’s website says (<https://www.prysmiangroup.com/en/insight/projects/leonardo-da-vincithe-best-support-vessel-of-the-year>) that there will be an official launching ceremony in the second quarter of 2022. Visits to the web page may increase at

around that time, and in my view it is appropriate that the notice should appear on the website until the anticipated date of the official launching ceremony.