



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1435/5/7/22 (T)

BETWEEN:

- (1) PSA AUTOMOBILES SA
- (2) GIE PSA TRÉSORERIE
- (3) STELLANTIS NV
- (4) OPEL AUTOMOBILE GMBH

Claimants

- v -

- (1) AUTOLIV AB
- (2) AUTOLIV, INC.
- (3) AUTOLIV JAPAN LTD
- (4) AUTOLIV B.V. & CO. KG
- (5) AIRBAGS INTERNATIONAL LTD
- (6) ZF TRW AUTOMOTIVE HOLDINGS CORP.
- (7) ZF AUTOMOTIVE SAFETY GERMANY GMBH
- (8) ZF AUTOMOTIVE GERMANY GMBH
- (9) TRW SYSTEMS LTD
- (10) ZF AUTOMOTIVE UK LTD
- (11) TOKAI RIKAI CO., LTD
- ~~(12) TOYODA GOSEI CO., LTD~~

Defendants

ORDER

UPON the European Commission issuing a decision in Case AT. 39881 – *Occupant Safety Systems* on 22 November 2017 and in Case AT.40481 – *Occupant Safety Systems II* on 5 March 2019 (each a “**Confidential Decision**”)

AND UPON the Claimants issuing their Claim Form in the High Court, Chancery Division on 22 December 2020 under Claim No. CP-2020-000023 and the claim being transferred to the Competition Appeal Tribunal pursuant to the Order of Master Pester of

1 March 2022 with Case No: 1435/5/7/22 (T) (the “**Claim**”)

AND UPON the Second to Fourth Defendants (“**Autoliv Defendant Addressees**”), Sixth to Eighth Defendants (“**ZF Defendant Addressees**”) and Eleventh Defendant (“**Tokai Rika Defendant Addressee**”) each being an addressee to a Confidential Decision (the “**Defendant Addressees**”)

AND UPON Toyoda Gosei Co., Ltd, Takata Corporation, Takata Aktiengesellschaft and Marutaka Co., Ltd being addressees of a Confidential Decision but not defendants in these proceedings (together, the “**Non-Party Addressees**”)

AND UPON the full text of the Confidential Decision(s) having been provided to the Defendant Addressees and the Non-Party Addressees

AND UPON a final non-confidential version of the Confidential Decisions in Cases AT. 39881 and AT.40481 having been published and made publicly available respectively on 17 April 2018 and 20 June 2019 (each a “**Non-Confidential Decision**”)

AND UPON the Defendant Addressees having documents in their possession, custody or control which are part of the European Commission’s administrative file(s) relating to the investigations in Case AT. 39881– *Occupant Safety Systems* and/or Case AT.40481 – *Occupant Safety Systems II* (each a “**Commission File**”)

AND UPON reading submissions from the Claimants and the First to Fifth, Sixth to Tenth and Eleventh Defendants filed in advance of a case management conference

AND UPON hearing counsel for the Claimants and for each of the First to Fifth, Sixth to Tenth and Eleventh Defendants at a case management conference on 7 June 2022

AND UPON the Claimants having agreed to amend their Particulars of Claim following disclosure of the documents identified below, if so advised

AND UPON the Claimants’ application dated 27 May 2022 in respect of the present Order (including its application to join a number of further parties as additional Claimants hereto) and a confidentiality ring order

AND UPON the Tribunal’s order of 7 June 2022 establishing a confidentiality ring as between the Claimants and the First to Eleventh Defendants (the “**Confidentiality Ring Order**”)

AND UPON the said additional Claimants having filed a document recording their agreement in signed writing to become Claimants herein pursuant to CPR 19A PD paragraph 2.1, treated as filed with the Tribunal on 10 June 2022

IT IS ORDERED THAT:

1. FORUM

Pursuant to rules 52 and 18 of the Competition Appeal Tribunal Rules 2015 the forum of these proceedings is England and Wales.

2. NOTIFICATION OF THE ORDER; APPLICATIONS

2.1 By 4pm on 17 June 2022, the Autoliv Defendant Addressees shall write to each of the Non-Party Addressees providing them with copies of this Order and the Confidentiality Ring Order.

2.2 Any of the Non-Party Addressees may within 28 days of receipt of the notification referred to in paragraph 2.1 of this Order apply to set aside or vary this Order or the Confidentiality Ring Order, such application to be:

(a) made by application notice and served on the Claimants and the First to Eleventh Defendants;

(b) accompanied by a reasoned explanation of the application to set aside or vary this Order or the Confidentiality Ring Order together with any evidence relied on; and

(c) at the applicant's risk as to costs.

3. DISCLOSURE AND INSPECTION OF THE CONFIDENTIAL DECISIONS

3.1 When notifying each of the Non-Party Addressees in accordance with paragraph 2.1 of this Order, the Autoliv Defendant Addressees shall inform each of them of the following:

(a) that the Autoliv Defendant Addressees will disclose and provide inspection of a redacted copy of each Confidential Decision(s) (each a "**Redacted**

Confidential Decision”) to every other Party containing only those redactions which can be justified on the basis that:

- (i) they are leniency statements (as defined in Article 2(16) of Directive 2014/104/EU) and any citations from such leniency statements (“**Leniency Statements**”);
- (ii) they are settlement submissions (as defined in Article 2(18) of Directive 2014/104/EU) and any citations from such settlement submissions (“**Settlement Submissions**”);
- (iii) they are subject to legal professional privilege (“**Privileged Material**”); or
- (iv) they are material that is protected from disclosure under Article 48 of the Charter of Fundamental Rights of the European Union and/or Article 339 of the Treaty on the Functioning of the European Union (as applied in case T-474/04 *Pergan Hilfsstoffe GmbH v Commission* [2007] ECR II-4225) (“**Pergan Material**”);

(b) the Non-Party Addressees are invited to inform the Autoliv Defendant Addressees in writing by 4pm on 15 July 2022 of those passages of the Confidential Decision(s) that they consider should remain redacted on the grounds of being Leniency Statements and/or Settlement Submissions and/or Privileged Material and/or Pergan Material, and to provide an explanation of the basis for each redaction; and

(c) informing each Non-Party Addressee that if they fail to respond by 4pm on 15 July 2022 the Tribunal may refuse any later claims for redactions of the Confidential Decision(s).

3.2 The ZF and Tokai Rika Defendant Addressees shall inform the Autoliv Defendant Addressees in writing by 4pm on 15 July 2022 of those passages of the Confidential Decision(s) that they consider should remain redacted on the grounds of being

Leniency Statements and/or Settlement Submissions and/or Privileged Material and/or Pergan Material, and provide an explanation of the basis for each redaction.

- 3.3 By 4pm on 29 July 2022, the Autoliv Defendant Addressees shall disclose and provide inspection to every other Party of the Redacted Confidential Decisions, subject only to any redactions requested by the Addressee Defendants or by a Non-Party Addressee on one of the grounds set out at paragraph 3.1(a) above. The Redacted Confidential Decisions must be accompanied by a description (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) of any passages which have been redacted, the basis on which they have been redacted, and which of the Defendant Addressees and/or the Non-Party Addressees have requested the redaction.
- 3.4 The Redacted Confidential Decisions shall be treated as Outer Confidentiality Ring Information (within the meaning set out in the Confidentiality Ring Order).

4. DISCLOSURE AND INSPECTION OF DOCUMENTS

Access to File Documents

- 4.1 When notifying each of the Non-Party Addressees in accordance with paragraph 2.1 of this Order, the Autoliv Defendant Addressees shall give notice to the Non-Party Addressees of the following:
- (a) that the Autoliv Defendant Addressees will disclose by list and provide inspection of all documents on the European Commission's file in Case AT. 39881 – *Occupant Safety Systems* and/or Case AT.40481 – *Occupant Safety Systems II* to which the Defendant Addressees were granted access by the European Commission (the “**Access to File Documents**”) within the possession or control of any of the Autoliv Defendant Addressees. The following categories of documents (or parts of documents) shall be redacted or withheld from inspection:

- (i) Leniency Statements;
- (ii) Settlement Submissions;
- (iii) Privileged Materials; and
- (iv) material that is irrelevant, applying the approach contained in CPR rule 31.6 (“**Irrelevant Material**”);

(b) the Non-Party Addressees are invited to inform the Autoliv Defendant Addressees in writing by 4pm on 5 August 2022 of any (or part of any) Access to File Documents which they require to be redacted or withheld on the basis of any, or all, of Leniency Statements, Settlement Submissions or Privileged Materials, and to provide an explanation (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) of the basis for each redaction or withholding.

(c) informing the Non-Party Addressees that if they fail to notify the Defendant Addressees in accordance with paragraph 4.1(b) of this Order by 4pm on 5 August 2022 the Tribunal may refuse any later claims for redactions or withholding, of the Access to File Documents.

4.2 The ZF and Tokai Rika Defendant Addressees shall inform the Autoliv Defendant Addressees in writing by 4pm on 5 August 2022 of any (or part of any) Access to File Documents which they require to be redacted or withheld on the basis of any, or all, of Leniency Statements, Settlement Submissions, Privileged Materials or Irrelevant Material, and provide an explanation (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) of the basis for each redaction or withholding.

4.3 By 4pm on 16 September 2022, the Autoliv Defendant Addressees shall:

- (a) disclose by list and provide inspection of the Access to File Documents to every other Party, subject only to a right to redact or withhold material at the request of the Defendant Addressees or of a Non-Party Addressee on one of the grounds set out at paragraph 4.1(a) above;
- (b) provide a description (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) identifying any documents which have been redacted or withheld by the Defendant Addressees and the basis on which they have been redacted or withheld; and
- (c) provide the Claimants with the explanation(s) provided by the Non-Party Addressees to the Autoliv Defendant Addressees pursuant to paragraph 4.1(b) above.

Additional Commission File Documents

4.4 By 4pm on 30 September 2022, the Defendant Addressees shall:

- (a) disclose by list and provide inspection of the documents within the Commission Files (not otherwise encompassed by the Access to File Documents) within their possession, custody or control, subject only to a right to redact or withhold material at the request of the Defendant Addressees on one of the grounds set out at paragraph 4.1(a) above the (“**Additional Commission File Documents**”); and
- (b) provide a description (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) identifying any Additional Commission File Documents which have been redacted or withheld by the Defendant Addressees and the basis on which they have been redacted or withheld.

5. GENERAL PROVISIONS

5.1 The Parties' disclosures by list shall be accompanied by a disclosure statement in the form described at CPR Rule 31.10(5)-(7).

5.2 The Access to File Documents and Additional Commission File Documents include *inter alia*:

(a) contemporaneous documents included in the European Commission's administrative files relating to the investigations in Case AT. 39881 – *Occupant Safety Systems* and Case AT.40481 – *Occupant Safety Systems II* (including any pre-existing courtesy translations and such pre-existing contemporaneous documents submitted by a leniency applicant);

(b) requests for information made by the European Commission;

(c) responses to requests for information made by the European Commission; and

(d) the indices to the European Commission's administrative files.

5.3 Where a document contains material in the categories identified in paragraph 3.1(a) above, it is only those parts of the document that may be redacted, not the entire document.

5.4 The Autoliv Addressee Defendants are not required to review the validity of requests by the Non-Party Addressees to withhold or redact parts of the Confidential Decisions and/or the Access to File Documents.

6. ADDITION OF CLAIMANTS TO THE PROCEEDINGS

6.1 Without prejudice to any defence (including as to limitation) that the Defendants may raise, the Claimants have permission to add the following parties to the Claim as claimants:

(a) FCA Italy SpA;

(b) FCA Srbija d.o.o. Kragujevac;

(c) FCA Poland SA;

(d) Maserati SpA; and

(e) Societa Europea Veicoli Leggeri (Sevel) SpA.

6.2 Without prejudice to any reliance which they may place on s.32 of the Limitation Act 1980, the claims pursued by the additional Claimants mentioned in paragraph 6.1 hereof shall be treated as having been brought no earlier than the date of this Order, and the commencement of these claims shall not be treated as relating back to the date of issue of the Claim Form.

6.3 The amended Claim Form, as amended to reflect the addition of the further Claimants listed in paragraph 6.1 hereof, shall be filed and served within 14 days of the date of this Order.

7. AMENDMENTS TO STATEMENTS OF CASE

7.1 By 4pm on 24 June 2022 the Claimants shall provide to the Defendants draft Amended Particulars of Claim with proposed amendments to reflect the claims brought by the additional Claimants listed in paragraph 6.1 hereof. The Defendants shall indicate by 4pm on 29 July 2022 whether they consent to the said amendments. To the extent that they do, the proposed amendments shall be included in the Amended Particulars of Claim which may be filed and served by the Claimants pursuant to paragraph 7.2 hereof. To the extent that they do not, the Claimants shall apply for permission to amend the Particulars of Claim by 4pm on 2 September 2022.

7.2 By 4pm on 28 October 2022 the Claimants shall file and serve Amended Particulars of Claim to reflect the claims brought by the additional Claimants listed in paragraph 6.1 of this Order (provided consent for the proposed amendments has been provided by the Defendants pursuant to paragraph 7.1

above) and, if so advised, in light of the documents disclosed pursuant to paragraphs 3 and 4 of this Order.

7.3 By 4pm on 9 December 2022 the First to Eleventh Defendants shall file and serve Amended Defences, if so advised to make any consequential amendments in light of the Claimants' Amended Particulars of Claim.

7.4 By 4pm on 13 January 2023 the Claimants shall file and serve an Amended Reply, if so advised to make any consequential amendments in light of the Defendants' Amended Defences.

8. DISCLOSURE REPORTS AND ELECTRONIC DOCUMENTS QUESTIONNAIRES

By 4pm on 7 February 2023 the parties shall serve Disclosure Reports and Electronic Documents Questionnaires addressing all issues in the proceedings.

9. PROCEDURAL TIMETABLE

There shall be a further case management conference on the first available date from 14 March 2023 to consider further case management matters, including (but not limited to) further disclosure, the timetable for witness statements, expert evidence and the date of any pre-hearing review. The Trial shall be listed to commence not before May 2024 with a provisional estimate of 6 weeks.

10. COSTS

The costs of the case management conference be costs in the case.

11. OTHER

11.1 The Claimants, the First to Eleventh Defendants and the Non-Party Addressees have liberty to apply.

11.2 This order is to be served by the Claimants on the European Commission via the following email address: comp-greffe-antitrust@ec.europa.eu.

Justin Turner QC

Chairman of the Competition Appeal Tribunal

Made: 7 June 2022

Drawn: 21 June 2022