



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1339/7/7/20

BETWEEN:

MARK McLAREN CLASS REPRESENTATIVE LIMITED

Class Representative

- v -

- (1) **MOL (EUROPE AFRICA) LTD**
(2) **MITSUI O.S.K. LINES LIMITED**
(a company incorporated under the laws of Japan)
(3) **NISSAN MOTOR CAR CARRIER CO. LTD**
(a company incorporated under the laws of Japan)
(4) **KAWASAKI KISEN KAISHA LTD**
(a company incorporated under the laws of Japan)
(5) **NIPPON YUSEN KABUSHIKI KAISHA**
(a company incorporated under the laws of Japan)
(6) **WALLENUS WILHELMSSEN OCEAN AS**
(a company incorporated under the laws of Norway)
(7) **EUKOR CAR CARRIERS INC**
(a company incorporated under the laws of Korea)
(8) **WALLENUS LOGISTICS AB**
(a company incorporated under the laws of Sweden)
(9) **WILHELMSSEN SHIPS HOLDING MALTA LIMITED**
(a company incorporated under the laws of Malta)
(10) **WALLENUS LINES AB**
(a company incorporated under the laws of Sweden)
(11) **WALLENUS WILHELMSSEN ASA**
(a company incorporated under the laws of Norway)
(12) **COMPANIA SUD AMERICANA DE VAPORES S.A.**
(a company incorporated under the laws of Chile)

Defendants

ORDER

UPON the Collective Proceedings Order made by the Tribunal on 20 May 2022 (“**the CPO**”)

AND UPON considering written submissions filed by the parties in advance of and hearing counsel for the Class Representative and for the Defendants at a case management conference held on 23 February 2023 (the “**CMC**”)

AND UPON the rulings given at the CMC by the Tribunal in relation to the disclosure of foreign regulatory documents

IT IS ORDERED THAT:

Commission Documents

1. Subject to paragraph 2 below, the Defendants shall, between them, provide to the Class Representative, by 4pm on 3 March 2023 in the case of the First to Eleventh Defendants, and by 4pm on 8 March 2023 in the case of the Twelfth Defendant, confidential versions of the following documents, in each case containing only those redactions that can be justified on the basis that: (1) they are leniency statements, as defined in Article 2(16) of Directive 2014/104/EU; (2) they are settlement submissions, as defined in Article 2(18) of Directive 2014/104/EU; (3) they are subject to legal professional privilege; or (4) they are material that is protected from disclosure under Article 48 of the Charter of Fundamental Rights of the European Union and Article 339 of the Treaty on the Functioning of the European Union as applied by the judgment in Case T-474/04 *Pergan* [2007] ECR II-4225 (together, the “**Justified Exclusions**”):
 - (a) The Decision of the European Commission (the “**Commission**”) in Case AT.40009 – Maritime Car Carriers dated 21 February 2018 (the “**Decision**”);
 - (b) Documents provided by the Decision’s addressees to the Commission, and to which any of the Defendants were subsequently granted access by the Commission (the “**Access to File documents**”);
 - (c) Any other document within the Commission’s file which is within any of the Defendants’ possession or control; and

- (d) Documents provided by any of the Defendants to the Commission, but which are not on the Commission's file.
2. In relation to the documents identified in paragraph 1 of this Order, the Defendants shall be permitted to withhold inspection of those documents that are irrelevant in their entirety ("**Irrelevant Documents**"). If a Defendant withholds Irrelevant Documents, it shall list those Irrelevant Documents in a schedule prepared and signed by the relevant Partner in the law firm of the Defendant's instructed solicitors. The schedule shall include for each Irrelevant Document: (i) the date of the document, (ii) a concise and accurate description of the document withheld, and (iii) an explanation of the reason(s) why the document is being withheld on grounds of relevance.
3. The Defendants shall bear the costs of the relevance review and the signed schedule described in paragraph 2.

Documents Provided to Other Regulators

4. The Fourth, Sixth to Eleventh and Twelfth Defendants shall provide to the Class Representative by 23 March 2023 those documents that they provided to any regulator and/or authority other than the European Commission in connection with the investigation of anti-competitive practices in relation to Roll On Roll Off maritime transport and which have been previously disclosed in either *Daimler AG v Walleniusrederierna Aktiebolag* (High Court Claim No. CL-2018-000572) (in the case of the Sixth to Eleventh and Twelfth Defendants) or *Volkswagen AG and Others v MOL (Europe Africa) Ltd and Others* (Case No: 1528/5/7/22 (T)) (in the case of the Fourth Defendant).
5. The Fourth, Sixth to Eleventh and Twelfth Defendants shall be permitted to limit their disclosure of the documents referred to in paragraph 4 of this Order to those documents which:
- (a) are contemporaneous documents that were created during the time period under investigation by each regulator and/or authority; and/or
 - (b) are not already disclosed under paragraph 1 of this Order; and/or

- (c) do not fall within the Justified Exclusions identified in paragraph 1 of this Order; and/or
 - (d) are not Irrelevant Documents as defined at paragraph 2 of this Order.
6. The First to Third and Fifth Defendants shall provide to the Class Representative by 23 March 2023:
- (a) A list of all investigations by any regulator and/or authority, other than the European Commission, in connection with the investigation of anti-competitive practices in relation to Roll On Roll Off maritime transport, to which they have provided documents (the “**Non-EC Investigation Documents**”). That list shall provide:
 - (i) The identity of the regulator that conducted the investigation;
 - (ii) The jurisdiction in which the investigation was conducted; and
 - (iii) A specific and accurate description of the scope of the investigation;
 - (b) The following further information in relation to the Non-EC Investigation Documents:
 - (i) The lawyers instructed in each jurisdiction who were responsible for providing the Non-EC Investigation Documents to the relevant regulator(s) and/or authority/ies;
 - (ii) Where and how the Non-EC Investigation Documents are currently held; and
 - (iii) The volume of documentation involved (or where this is not known, the Defendant’s best reasonable estimate).

Costs

7. Save for those costs identified at paragraph 3 of this Order, there shall be costs in the case.

Bridget Lucas KC
Chair of the Competition Appeal Tribunal

Made: 23 February 2023
Drawn: 6 April 2023