



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1339/7/7/20
1528/5/7/22 (T)

BETWEEN:

MARK McLAREN CLASS REPRESENTATIVE LIMITED

Class Representative

- v -

- (1) MOL (EUROPE AFRICA) LTD
- (2) MITSUI O.S.K. LINES LIMITED
- (3) NISSAN MOTOR CAR CARRIER CO. LTD
- (4) KAWASAKI KISEN KAISHA LTD
- (5) NIPPON YUSEN KABUSHIKI KAISHA
- (6) WALLENIUS WILHELMSSEN OCEAN AS
- (7) EUKOR CAR CARRIERS INC
- (8) WALLENIUS LOGISTICS AB
- (9) WILHELMSSEN SHIPS HOLDING MALTA LIMITED
- (10) WALLENIUS LINES AB
- (11) WALLENIUS WILHELMSSEN ASA
- (12) COMPANIA SUDAMERICANA DE VAPORES S.A.

Defendants

(the “*McLaren* Proceedings”)

AND BETWEEN:

VOLKSWAGEN AG & OTHERS

Claimants

- v -

- (1) MOL (EUROPE AFRICA) LTD
- (7) “K”-LINE HOLDING (EUROPE) LTD
- (8) “K”-LINE (EUROPE) LTD

(9) KAWASAKI KISEN KAISHA, LTD

Defendants / Rule 39 Claimants

(10) MITSUI O.S.K. LINES, LIMITED

Defendant

- and -

NIPPON YUSEN KABUSHIKI KAISHA

Rule 39 Defendant

(the “*Volkswagen* Proceedings”)

ORDER

UPON the Collective Proceedings Order of the Tribunal dated 20 May 2022 in the *McLaren* Proceedings

AND UPON the order of the Court of Appeal dated 20 January 2023 remitting the *McLaren* Proceedings to the Competition Appeal Tribunal in order that it might reconsider the case management of the dispute between the parties as to the approach to pricing (the “Remittal”)

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

AND UPON a CMC held on 15 March 2023 in the *Volkswagen* Proceedings attended by the parties to the *McLaren* Proceedings to consider whether an Umbrella Proceedings Order ought to be made in respect of Ubiquitous Matter(s) pursuant to Practice Direction 2/2022

AND UPON reading the written observations filed by the parties to the *Volkswagen* Proceedings regarding the potential overlapping issues in the *Volkswagen* and *McLaren* Proceedings

AND UPON the Twelfth Defendant to the *McLaren* Proceedings (“CSAV”) filing an application dated 8 March 2023 seeking a trial of a preliminary issue in the *McLaren* Proceedings (the “CSAV Preliminary Issue Application”)

AND UPON considering the written submissions filed by the parties to the *Volkswagen* and *McLaren* Proceedings in advance of and hearing counsel for the respective parties at the CMC held on 15 March 2023

AND HAVING REGARD TO the governing principles pursuant to Rule 4 of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”) and the Tribunal’s power under Rule 53 of the Tribunal Rules

IT IS ORDERED THAT:

Remittal of the *McLaren* Proceedings

1. By 4pm on 15 December 2023, the Class Representative and the First to Eleventh Defendants to the *McLaren* Proceedings (if so advised) shall file and serve on the parties to the *Volkswagen* and *McLaren* Proceedings the signed witness statements of fact, signed expert reports and all documentary evidence that they intend to rely upon in support of their own positive case on all issues in the claim, together with a position statement that explains how, by reference to that evidence, they intend to establish their case (the “*McLaren* Positive Position Statement”).
2. By 4pm on 15 May 2024, the Class Representative and the First to Eleventh Defendants to the *McLaren* Proceedings shall file and serve on the parties to the *Volkswagen* and *McLaren* Proceedings the signed witness statements of fact, signed expert reports and all documentary evidence that they intend to rely upon in response to the other party’s Positive Position Statement, together with a position statement that explains their response, by reference to that evidence (the “*McLaren* Negative Position Statement”).

CSAV Preliminary Issue Application

3. The hearing of the CSAV Preliminary Issue Application and, if granted, the hearing of such preliminary issue shall be listed for a date between 15 December 2023 and 15 May 2024.
4. Should CSAV be unsuccessful in either the CSAV Preliminary Issue Application or any hearing of such preliminary issue, the parties to the *McLaren* Proceedings shall seek directions from the Tribunal in respect of the filing and service by CSAV of its *McLaren* Positive and Negative Position Statements.

Permission for Defendants to the *McLaren* Proceedings to contact Class Members

5. The Defendants to the *McLaren* Proceedings shall have permission to communicate with Class Members for the purpose of seeking to obtain evidence or information in relation to the factual and/or expert issues in the *McLaren* Proceedings, without being required to obtain permission from the Tribunal or notify the Class Representative. Any communication advertent to the possibility of any formal application being made, or order sought against such Class Member shall require prior permission from the Tribunal.

Case management of *Volkswagen* Proceedings

6. By 4pm on 31 July 2023, the Claimants to the *Volkswagen* Proceedings shall file and serve on the Defendants to the *Volkswagen* Proceedings and the other parties to the *McLaren* Proceedings their consolidated Fourth Amended Particulars of Claim to re-plead the standalone aspect of their case on infringement in the Early Period and in geographies outside the EEA in the *Volkswagen* Proceedings.
7. By 4pm on 30 September 2023, the Defendants to the *Volkswagen* Proceedings shall file and serve on the Claimants and other Defendants to the *Volkswagen* Proceedings and the other parties to the *McLaren* Proceedings their respective Third Amended Defences in the *Volkswagen* Proceedings.
8. By 4pm on 31 October 2023, the Claimants to the *Volkswagen* Proceedings shall file and serve on the Defendants to the *Volkswagen* Proceedings and the other parties to the *McLaren* Proceedings their consolidated Re-Amended Reply in the *Volkswagen* Proceedings.
9. By 4pm on 31 May 2024, the Claimants, Defendants and Rule 39 Defendant to the *Volkswagen* Proceedings shall file and serve on the parties to the *Volkswagen* and *McLaren* Proceedings the signed witness statements of fact, signed expert reports and all documentary evidence that they intend to rely upon in support of their own positive case on pricing and pass-on, together with a position statement that explains how, by reference to that evidence, they intend to establish their case (the “*Volkswagen* Positive Position Statement”).

10. By 4pm on 4 October 2024, the Claimants, Defendants and Rule 39 Defendant to the *Volkswagen* Proceedings shall file and serve on the parties to the *Volkswagen* and *McLaren* Proceedings the signed witness statements of fact, signed expert reports and all documentary evidence that they intend to rely upon in response to the other party's Positive Position Statement on pricing and pass-on, together with a position statement that explains their response, by reference to that evidence (the "*Volkswagen* Negative Position Statement").

Case management of potential overlapping issues in the *Volkswagen* and *McLaren* Proceedings

11. The parties to the *Volkswagen* and *McLaren* Proceedings shall liaise and propose the form of order for a confidentiality ring in respect of both Proceedings.
12. Any disclosure provided by any party pursuant to paragraphs 13 and 14 of this Order shall be provided to all other parties in the *Volkswagen* and *McLaren* Proceedings.
13. In respect of the *McLaren* and *Volkswagen* Positive Position Statements directed at paragraphs 1 and 9 of this Order, each party to the *Volkswagen* and *McLaren* Proceedings has permission to seek disclosure from any other party of either Proceedings of documentation (including data) that it considers is reasonably necessary and proportionate for the purposes of preparing its respective Positive Position Statements:
 - (a) Without prejudice to informal discussions between the parties as to disclosure and the production of documentation pursuant to such discussions (which are encouraged), any party seeking disclosure from another party (the "Requesting Party") shall notify that party (the "Receiving Party") of the disclosure sought, identifying the disclosure sought by list with a brief summary of the reasons why it is required (the "Disclosure Request") by 4pm on 26 May 2023 in respect of the *McLaren* Positive Position Statements and by 4pm on 10 November 2023 in respect of the *Volkswagen* Positive Position Statements.
 - (b) Subject to sub-paragraphs (c) and (d) below, the Receiving Party shall comply with the Disclosure Request on a reasonable rolling basis and by 4pm on 28 July 2023 in respect of requests relating to the *McLaren* Positive Position Statements

and by 4pm on 26 January 2024 in respect of requests relating to the *Volkswagen* Positive Position Statements, or if further time is required, within such time period as the parties may otherwise agree. Failing agreement as to the date for compliance, the parties may seek a direction from the Tribunal.

- (c) If the Disclosure Request is considered by the Receiving Party not to be reasonably necessary or to be disproportionate, it shall have permission to object to the Disclosure Request by 4pm on the date that falls 10 clear business days after the Disclosure Request is made.
- (d) If the Requesting Party wishes to maintain its Disclosure Request, it shall seek directions from the Tribunal by 4pm on the date that falls 5 clear business days after the objection was received.

14. In respect of the *McLaren* and *Volkswagen* Negative Position Statements directed at paragraphs 2 and 10 of this Order, each party to the *Volkswagen* and *McLaren* Proceedings has permission to seek disclosure from any other party of either Proceedings of documentation (including data) that they consider is reasonably necessary and proportionate for the purposes of preparing their respective Negative Position Statements:

- (a) A Requesting Party to either Proceedings shall notify the Receiving Party by making a Disclosure Request by 4pm on 26 January 2024 in respect of the *McLaren* Negative Position Statements and by 4pm on 28 June 2024 in respect of the *Volkswagen* Negative Position Statements.
- (b) Subject to sub-paragraphs (c) and (d) below, the Receiving Party shall comply with the Disclosure Request on a reasonable rolling basis and by 4pm on 1 March 2024 in respect of the *McLaren* Negative Position Statements and by 4pm on 26 July 2024 in respect of the *Volkswagen* Negative Position Statements, or if further time is required, within such time period as the parties may otherwise agree. Failing agreement as to the date for compliance, the parties may seek a direction from the Tribunal.

- (c) If the Disclosure Request is considered by the Receiving Party not to be reasonably necessary or to be disproportionate, it shall have permission to object to the Disclosure Request by 4pm on the date that falls 10 clear business days after the Disclosure Request is made.
 - (d) If the Requesting Party wishes to maintain its Disclosure Request, it shall seek directions from the Tribunal by 4pm on the date that falls 5 clear business days after the objection was received.
- 15. The parties' respective Disclosure Requests referred to at paragraphs 13 and 14 of this Order:
 - (a) should be limited to what is required for the purposes of the Position Statements then under preparation, and not what they may or may not need in the future.
 - (b) are not intended to be a "once and for all" process. The parties to the *Volkswagen* and *McLaren* Proceedings may make further Disclosure Requests after the dates provided for in paragraphs 13 and 14 of this Order and the Receiving Party shall, subject to paragraph 16 of this Order, comply with such requests within a reasonable period.
- 16. Where further Disclosure Requests are made pursuant to paragraph 15(b) of this Order and there is a disagreement between the relevant parties either as to the date for compliance, or as to whether the disclosure sought is required, the parties may seek directions from the Tribunal. Further Disclosure Requests should be made as early as is reasonably practicable; as a general proposition, the later a Disclosure Request is made, the more it is likely to need justification.
- 17. Any application to the Tribunal for directions pursuant to paragraphs 13(b), 13(d), 14(b), 14(d) or 16 of this Order shall indicate whether the parties are content for the application to be determined by the Tribunal on the papers, unless the Tribunal considers a hearing appropriate. Before making any application, the parties should engage with one another in a co-operative manner, in accordance with the governing principles, and meet in order to seek to agree, as far as possible, any of the disclosure sought.

Further CMCs

18. In the event that the parties identify further directions that may be necessary or desirable for the appropriate case management of these proceedings, they shall seek such directions from the Tribunal.
19. Without prejudice to paragraph 18 above, two further CMCs shall be listed for: (i) a date shortly after the filing and service of Positive Position Statements; and (ii) a date shortly after the filing and service of Negative Position Statements, to be vacated if not required. The parties shall liaise and provide convenient dates to the Tribunal.
20. A CMC to consider and frame the designation of any “Ubiquitous Matters” in the *Volkswagen* and *McLaren* Proceedings and whether or not an Umbrella Proceedings Order should be made shall be listed in July 2024, with a time estimate of three days, before the President and each of the Chairs of the respective Tribunals dealing with the *Volkswagen* and *McLaren* Proceedings.

Trial

21. The trial in the *McLaren* Proceedings shall be listed to be held in the Hilary Term 2025 with a provisional time estimate of 10 weeks.
22. The Hilary Term 2025 shall provisionally be reserved to hear such Ubiquitous Matters and/or issues arising in the *Volkswagen* Proceedings as the Court may order at the CMC referred to in paragraph 20 above.
23. The trial for any remaining issues from the *Volkswagen* Proceedings shall be listed to be held no later than the first quarter of 2026.

Miscellaneous

24. Costs in the respective Proceedings.
25. There shall be liberty to apply.

Sir Marcus Smith
President

The Hon. Mrs Justice Cockerill DBE

Bridget Lucas KC

Made: 6 April 2023

Drawn: 6 April 2023