



Neutral citation [2023] CAT 69

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

**IN THE COMPETITION APPEAL TRIBUNAL**

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

13 November 2023

Before:

JUSTIN TURNER KC  
(Chair)  
SIR IAIN McMILLAN CBE FRSE DL  
PROFESSOR ANTHONY NEUBERGER

Sitting as a Tribunal in England and Wales

BETWEEN:

- (1) PSA AUTOMOBILES SA
- (2) GIE PSA TRÉSORERIE
- (3) STELLANTIS NV
- (4) OPEL AUTOMOBILE GMBH
- (5) FCA ITALY SPA
- (6) FCA SRBIJA D.O.O. KRAGUJEVAC
- (7) FCA POLAND SA
- (8) MASERATI SPA
- ~~(9) SOCIETA EUROPEA VEICOLI LEGGERI (SEVEL) SPA~~
- (10) VAUXHALL MOTORS LTD
- (11) STELLANTIS ESPAÑA SLU

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 RIKA CO., LTD
- ~~(12) TOYODA GOSEI CO., LTD~~

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**RULING (PERMISSION TO APPEAL)**

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1. An application has been made by ZF and Autoliv in relation to our refusal to give permission for the Defendant groups to instruct more than one expert on competition economics.<sup>1</sup> This was a case management decision in relation to which we considered the question of whether there was a conflict of interest between the Defendants in relation to competition economics. We concluded there was not and rejected this application.
2. In their request for permission to appeal ZF and Autoliv submit that we erred in failing to have regard to the fact that there may be contribution proceedings in the future which would give rise to a conflict. We do not believe that it was appropriate to have regard to proceedings which have not been issued or that this amounts to an error of principle.
3. It is also submitted that we should have attached weight to the possibility that a claim that two or more of the Defendant groups were involved in a cartel might lead to a conflict as against the third. We have addressed this position and provided directions in relation to this possibility as a matter of active case management, which directions we did not understand to be opposed. We do not see this raises a point of principle upon which the proposed Appellants are likely to succeed.
4. Third it is suggested that the approach being taken to causation – of comparing a clean period to a period in which the cartels were not operating – means the umbrella claim cannot succeed. That will be a matter for submission at trial and does not mean ZF and Autoliv are likely to succeed on an appeal from this decision.
5. We have expressed a view that Article 48 of the Charter is not engaged. Even if it is engaged this would not alter our view that permission for separate experts should not be ordered.

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<sup>1</sup> See the Tribunal's Ruling of 2 November 2023 ([2023] CAT 66), which terminology and definitions are adopted in this Ruling.

6. As to additional reasons, we have not been shown persuasive evidence that there is an established practice of ordering separate experts in cartel proceedings; and this was disputed by the Claimants. Even if this is common this has not, as we understand it, been the subject of detailed argument before.
7. For these reasons we unanimously refuse permission to appeal.

Justin Turner KC  
Chair

Sir Iain McMillan  
CBE FRSE DL

Professor Anthony Neuberger

Charles Dhanowa OBE, KC (*Hon*)  
Registrar

Date: 13 November 2023