



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1528/5/7/22 (T)

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 and Rule 39 Claimants

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

Defendant

- and -

**NIPPON YUSEN KABUSHIKI KAISHA**

Rule 39 Defendant

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**ORDER**

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**UPON** a case management conference taking place on 15 March 2023 (“**the CMC**”)

**AND UPON** the Tribunal having indicated that there should be consideration of whether there are Ubiquitous Matters, within the meaning of the Tribunal’s Practice Direction

2/2022 *Umbrella Proceedings*, between the present proceedings (“**the VW proceedings**”) and Case 1339/7/7/20 *Mark McLaren Class Representative Limited v MOL (Europe Africa) Limited and others* (“**the McLaren proceedings**”) and having directed that the parties in the McLaren proceedings (“**the McLaren parties**”) should attend the CMC

**AND UPON** the Order of Picken J dated 14 July 2022 requiring the First and Seventh to Ninth Defendants to give disclosure of documents within their control which are part of the EU Commission’s administrative file relating to the investigation in Case AT.40009 – Maritime Car Carriers (the “**Commission File**”) and requiring the Seventh to Ninth Defendants to give disclosure and inspection of all documents in their control which had been provided to regulators and/or authorities other than the EU Commission in connection with the investigation of anti-competitive practices in relation to Roll On Roll Off maritime transport (the “**Foreign Regulatory Documents**”)

**AND UPON** the Tribunal’s Order dated 6 January 2023 requiring the 10<sup>th</sup> Defendant to give disclosure of Foreign Regulatory Documents, and the Rule 39 Defendant consenting to give disclosure of Foreign Regulatory Documents as further set out at paragraphs 1 to 3 below

**AND UPON** considering the written submissions filed by the Claimants, Defendants, Rule 39 Defendant and the McLaren parties and hearing counsel for the Claimants, Defendants, Rule 39 Defendant and the McLaren parties at the CMC

**AND UPON** the Tribunal’s Ruling of 6 July 2023 relating to three disputed requests for disclosure made by the First Defendant, the Seventh to Ninth Defendants, and the Tenth Defendant of the Claimants

**AND UPON** the Claimants, the First Defendant, the Seventh to Ninth Defendants, the Tenth Defendant, and the Rule 39 Defendant having agreed to the terms of this Order in correspondence

**IT IS ORDERED THAT:**

1. The Rule 39 Defendant shall give the Claimants disclosure and inspection of all documents which (i) are or have been in its control; (ii) have been provided either by the Rule 39 Defendant or by any of its current or former subsidiaries to regulators and/or authorities, other than the European Commission, in connection with the investigation of anti-competitive practices in relation to Roll On Roll Off maritime transport; and (iii) are dated prior to 18 October 2006 (the “**Early Period Foreign Regulatory Materials**”). The Early Period Foreign Regulatory Materials shall be provided in two tranches:

- 1.1 a first tranche by 4pm on 14 April 2023, consisting of the Early Period Foreign Regulatory Materials relating to Australia, Brazil, China, Mexico, the USA and South Africa; and
  - 1.2 a second tranche by 4pm on 31 May 2023, consisting of the Early Period Foreign Regulatory Materials relating to all other jurisdictions
2. The obligation to give disclosure pursuant to paragraph 1 above shall be subject only to a right to redact or withhold material on the grounds that they are: (i) leniency statements; (ii) settlement submissions; (iii) Pergan material; (iv) privileged material; (v) irrelevant applying the approach contained in CPR Rule 31.6; and/or (vi) material which the Rule 39 Defendant is required to redact or withhold under applicable laws.
3. The Rule 39 Defendant shall, at the time of giving disclosure pursuant to paragraph 1 above 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 and the basis on which they have been redacted or withheld. The Rule 39 Defendant shall, in the disclosure statement accompanying the disclosure given pursuant to paragraph 1 above, confirm whether the Rule 39 Defendant and/or its subsidiaries have produced documents to a regulator 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 identify all such jurisdictions.
4. The Claimants shall give disclosure and inspection of the narrative statement and accompanying documents pursuant to paragraph 7 of the Schedule to this Order by 23 August 2023.
5. The Claimants shall give disclosure and inspection of the data, documents and information pursuant to paragraphs 8.1 to 8.3 of the Schedule to this Order by 4pm on 6 September 2023.
6. The Claimants, Defendants and Rule 39 Defendant shall give simultaneous disclosure and inspection of the categories of data, documents and information, as detailed in the

Schedule to this Order (save as set out at paragraphs 4 and 5 above) by 17 November 2023.

7. The data, documents and information to be disclosed pursuant to paragraph 6 of this Order:

- 7.1 may be confined to the best available evidence about the information which is the subject matter of the listed categories, which may be in the form of electronic databases or other electronic sources, save where (i) the disclosing party does not in fact keep any documents in respect of that subject matter in electronic form, or (ii) although it does keep data, documents and information in respect of that subject matter in electronic form, the relevant information in the electronic form is unreliable in view of the way in which it was collected, or (iii) the best available evidence falls instead to be obtained from physical documents or a combination of physical documents and electronic databases or other electronic sources. In each case, the disclosing party should explain in the accompanying disclosure statement to be provided pursuant to paragraph 9 below why the evidence it is providing is the “best available evidence” and why further disclosure is not proportionate, in particular if the excluded information is within an electronic database or other electronic sources; and

- 7.2 if contained in the form of an electronic database or extract therefrom, should be provided with a brief explanation on how the relevant information has been compiled for the database, and, if appropriate, guidance on how it is to be examined.

8. In respect of each category of data, documents and information detailed at paragraphs 5.3, 5.4, 6, 8.5, 8.11 of the Schedule to this Order (the “**Sample Disclosure**”):

- 8.1 the disclosing party shall make reasonable and proportionate searches to obtain a representative sample of available data, documents and information, for each year of the period specified;

- 8.2 the basis on which such a sampling approach has been adopted, and an explanation as to why the sample is representative in the circumstances, shall be set out in the disclosure statement to be provided pursuant to paragraph 9 below; and
- 8.3 the data, documents and information included in the sample disclosed pursuant to paragraph 8 above shall include data, documents and information provided by the disclosing party to their economic expert. The parties shall have a continuing obligation to disclose any data, documents and information falling under each such category that are subsequently provided to the disclosing party's economic expert, within two weeks of such provision.
9. Disclosure by list, given by each party pursuant to paragraphs 1-8 above, shall be accompanied by disclosure statements within the meaning of CPR Rule 31.10(6), (7) and (9) (save that the Claimants are entitled to provide a single disclosure statement in respect of the disclosure given pursuant to paragraphs 6 and 7 of the Schedule to this Order at the time that the final disclosure is provided and save where otherwise agreed by the parties). Where the categories set out in the Schedule to this Order provide for a sample of relevant documents to be provided, the disclosure statement shall address the matters set out in paragraph 8.2 above.
10. The parties reserve their rights to seek further disclosure upon review of the evidence provided by each party in this case.
11. The parties shall seek to agree disclosure in respect of Relevant Tender Processes as defined in paragraph 5.1 of the Schedule to this Order ("**Relevant Tender Process Disclosure**") in accordance with the following process:
- 11.1 The relevant categories of data documents and information in respect of Relevant Tender Processes shall be, for the Claimants, those set out in paragraph 8.4 of the Schedule, and, for the Defendants and Rule 39 Defendant, those set out in paragraph 5.1 of the Schedule.

- 11.2 By 4pm on Friday 21 April 2023, the parties shall by letter set out their proposals for keyword searches, date filters and file type filters they each have applied or propose to apply for the purposes of giving Relevant Tender Process Disclosure.
- 11.3 By 4pm on Friday 5 May 2023, the parties shall by letter set out their response to the proposals for searches set out pursuant to paragraph 11.2 above and shall, to the extent possible, set out any further or additional reasonable and proportionate searches that they consider should be undertaken by the other parties for the purposes of giving Relevant Tender Process Disclosure.
- 11.4 By 4pm on 19 May 2023, the parties shall seek to agree the extent of the searches required for giving Relevant Tender Process Disclosure.
- 11.5 To the extent that the searches are agreed, the parties shall give disclosure and inspection in accordance with paragraph 6 above. To the extent that the searches are not agreed, any application must be made to the Tribunal by 4pm on 26 May 2023.
- 11.6 Any data, documents or information regarding Relevant Tender Processes which have been provided by any party to its economic expert shall be disclosed in accordance with paragraph 6 above. Further the parties shall be subject to a continuing obligation to disclose any such data, documents or information that are subsequently provided to their economic experts, within two weeks of such provision.
12. The Claimants shall by 4pm on 21 April 2023:
- 12.1 provide further particulars of its claim for compound interest based on increased cost of debt as set out at paragraph 67 of its Re-Re-Amended Particulars of Claim (“**the Further Particulars**”); and

- 12.2 give simultaneous disclosure and inspection to the Defendants and Rule 39 Defendant of all materials used by the Claimants' expert economic advisors to calculate the amount of this claim as set out in the Further Particulars.
13. The: (i) Claimants, collectively; (ii) First and Tenth Defendants, collectively (“**MOL**”); (iii) Seventh to Ninth Defendants, collectively (“**K-Line**”); and (iv) Rule 39 Defendant (“**NYKK**”), shall each have permission to rely on the evidence of one expert in the field of economics.
14. The: (i) Claimants, collectively; and (ii) Defendants and Rule 39 Defendant, collectively, shall each have permission to rely on the evidence of one expert in the shipping industry.
15. Costs of the CMC be costs in the case.
16. There be liberty to apply.

**The Hon. Mrs Justice Cockerill DBE**  
Chair of the Competition Appeal Tribunal

Made: 5 October 2023  
Drawn: 6 October 2023

## SCHEDULE

### 1. PART A: DEFENDANTS' AND RULE 39 DEFENDANT'S FURTHER DISCLOSURE

1. The Defendants and the Rule 39 Defendant shall each give simultaneous disclosure by list and inspection of the following categories of data, documents and information to the extent available from electronic databases or other electronic sources:

1.1 all contracts between the Claimants and the Defendants and Rule 39 Defendant (or any of them) entered into:

(a) between 1 February 1997 and 31 December 2019; and

(b) disclosure of contracts falling under 1.1(a) above shall include the disclosure of annexes, amendments and addenda, insofar as the same form part of such contracts.

1.2 Data relating to RoRo Services (as defined in the Re-Re-Amended Particulars of Claim) provided by the Defendants and the Rule 39 Defendant (or any of them) to the Claimants or any of them between 1 February 1997 and 31 December 2019, including, to the extent available:

(a) the amounts invoiced by the Defendants and/or the Rule 39 Defendant to the Claimants, and the payments made by the Claimants to the Defendants and/or the Rule 39 Defendant (or any of them);

(b) the transacted volumes and unit prices; and

(c) only if the data set out in sub-paragraphs 1.2(a) and (b) above is not available on a transaction level basis, the volume of shipments made per month by the Defendants and/or the Rule 39 Defendant on behalf of the Claimants (including the relevant unit of volume).



- 1.3 Costs data relating to RoRo Services and RoRo Charters (as defined in the Re-Amended Particulars of Claim) provided by the Defendants and the Rule 39 Defendant (or any of them) to the Claimants (or any of them) from 1 February 1997 to 31 December 2019, as set out below:
- (a) in the first instance, if available, costs data relating to RoRo Services and RoRo Charters provided to the Claimants in respect of each individual shipment during the period 1 February 1997 to 31 December 2019;
  - (b) to the extent the data in sub-paragraph 1.3(a) are not available, aggregated costs data available from electronic databases or other electronic sources, relating to RoRo Services and RoRo Charters provided to the Claimants in respect of each route on which such services were provided;
  - (c) to the extent that the data in sub-paragraphs 1.3(a) and (b) are not available, aggregated costs data available from electronic databases or other electronic sources, relating to RoRo Services and RoRo Charters provided to other customers in respect of each route on which such services were provided; and
  - (d) to the extent that the data in sub-paragraphs 1.3(a), (b) and (c) are not available, aggregated costs data available from electronic databases or other electronic sources, relating to RoRo Services and RoRo Charters provided to the Claimants or other customers averaged across routes on which such services were provided.
2. To the extent available, each of the items at sub-paragraphs 1.2 (a), (b) and (c) above should allow for the identification of the following:
- (a) the relevant dates; for example, the date of payment and the date of the RoRo Services provided, such as the date of loading, shipment and unloading;
  - (b) a breakdown of the price, including base price, BAF surcharge, CAF surcharge and other surcharges;

- (c) the relevant route to which the RoRo Services apply;
  - (d) the vehicle type(s)/model(s) transported;
  - (e) the identity of the transacting parties (including the RoRo carrier and the Claimant paying entity); and
  - (f) the type of shipment (i.e. Dedicated Capacity Agreements, One Way Tonnage and RoRo Charters, each as defined in the Re-Re-Amended Particulars of Claim, or analogous terms).
3. Disclosure provided pursuant to paragraphs 1.2 and 2 above must be accompanied by the following, to the extent available:
- (a) codes for data cleaning and data consolidation; and
  - (b) an explanation of the fields included in the disclosed data and the assumptions used by the Defendants' and/or Rule 39 Defendant's experts in preparing the disclosed data.
4. To the extent available, the costs data referred to in each of sub-paragraphs 1.3(a) and (b) above should include the following:
- (a) the amount of each cost item and the relevant currency;
  - (b) a description of each of the cost items identified; and
  - (c) the basis on which such costs are calculated, including without limitation the basis on which any allocation of fixed or common cost is undertaken.
5. The Defendants and the Rule 39 Defendant shall each give simultaneous disclosure by list and inspection of the following categories of data, documents and information to the extent available from electronic databases or other electronic sources:

- 5.1 as agreed or determined in accordance with the process set out at paragraph 11 of the Order, data, documents and information in the categories set out below relating to any invitation by the Claimants (or any of them) to the Defendants, the Rule 39 Defendant, umbrella suppliers and other carriers (or any of them) to provide a price quotation for the provision of RoRo Services that was made between 1 February 1997 and 31 December 2019 (a “**Relevant Tender Process**”):
- (a) data, documents and information relating to any Relevant Tender Process in which any of the Defendants and Rule 39 Defendant (or any of them) participated, including (but not limited to): (i) a list of the tenders in which the Defendants and Rule 39 Defendant (or any of them) participated during the period 1 February 1997 to 31 December 2019, (ii) information on whether the tender was won, partly won, or lost by the Defendants and Rule 39 Defendant (or any of them), and (iii) the price offers made at each stage of the tender process (so far as known to the Defendants or Rule 39 Defendant);
  - (b) data, documents and information relating to any Relevant Tender Process in which the Defendants and Rule 39 Defendant (or any of them) were invited to but did not participate, including documents showing the rationale for not participating in such tenders; and
  - (c) documents showing any reasoning, proposals or recommendations relating to the decision made by the Defendants and Rule 39 Defendant (or any of them) to bid, including in relation to which price level to bid at;
- 5.2 data and/or documents showing each of the Defendants’ and the Rule 39 Defendant’s overall fleet capacity for vehicle shipments and/or rate of utilisation in the period 1 February 1997 to 31 December 2019 as follows:
- (a) in the first instance, by route and/or by quarter;

- (b) to the extent that the data and/or documents in sub-paragraph 5.2(a) above are not available, in the alternative, in aggregate (split by deep-sea and short-sea if possible); or
  - (c) to the extent that the data and/or documents in sub-paragraphs 5.2(a) and (b) above are not available, at a global level.
- 5.3 a representative sample of documents containing discussions of and/or recommendations on the Defendants' and/or Rule 39 Defendant's business with the Claimants in the period 1 February 1997 to 31 December 2019 including, for example: (i) minutes of meetings on the Claimants' business; and (ii) internal management presentations on the Claimants' business;
- 5.4 a representative sample of documents providing internal business, strategy or management updates in relation to RoRo Services and RoRo Charters for the period 1 February 1997 to 31 December 2019;
- 5.5 documents describing any significant changes in each of the Defendants' and Rule 39 Defendant's accounting practices during the period 1 February 1997 to 31 December 2019; and
- 5.6 documents showing how price terms for the provision of RoRo services were constructed and the individuals they were constructed by during the period 18 October 2006 to 31 December 2019, including but not limited to documents giving information on any of the following: (i) any express reference to prior contracts; (ii) any cost categories and the level of costs taken into account; (iii) the market considerations taken into account (including any supply or demand drivers considered); (iv) any data and or/data sources relating to such drivers; (v) the profit or margin targets taken into account; and (vi) any significant company-wide changes in sales or pricing policy that took place during this period.

## 2. PART B: CLAIMANTS' FURTHER DISCLOSURE

6. The Claimants shall provide a narrative of its vehicle price-setting practices in relation to all brands within the claim in respect of the period from 1 February 1997 to 31 December 2019 in the form of a price-setting statement. This price-setting statement shall address *inter alia*:
- (a) the factors the Claimants considered when determining and adjusting prices over time;
  - (b) price increases in response to cost increases;
  - (c) how the Claimants treat RoRo costs and how RoRo costs, logistics costs, shipping cost changes and/or other variable vehicle costs are factored into the Claimants' pricing decisions;
  - (d) price positioning or benchmarking in relation to competitors;
  - (e) vehicle margins;
  - (f) price elasticity of demand faced by the Claimants and OEMs with which the Claimants compete in relation to their vehicles; and
  - (g) any significant company-wide changes in sales or pricing policy that took place during this period.

The price-setting statement shall be accompanied by samples of documents relating to the matters addressed in the statement, to the extent available. The Claimants shall disclose a sample of management documents relating to the Claimants' price-setting practices (where relevant and to the extent available).

7. The Claimants shall separately provide a narrative of its vehicle price-setting practices in relation to the Claimants involved in the production, importation and sale of the Volkswagen brand of passenger vehicles in the UK market during the period from 18 October 2006 to 31 December 2019.

8. The Claimants shall give disclosure by list and inspection of the following categories of data, documents and information to the extent available from electronic databases or other electronic sources, in respect of the period from 1 February 1997 to 31 December 2019:

8.1 data relating to RoRo Services (as defined in the Re-Re-Amended Particulars of Claim) the Defendants, the Rule 39 Defendant, umbrella suppliers and other carriers which are not Defendants to these proceedings provided to the Claimants or any of them between 1 February 1997 and 31 December 2019, including:

(a) the amounts invoiced by the Defendants, Rule 39 Defendant, umbrella suppliers or other carriers to the Claimants and the amounts paid by the Claimants, broken down so as to show amounts paid separately per Defendant, Rule 39 Defendant, umbrella supplier or other carrier and the identity of the Claimant making each such payment; and

(b) the transacted volumes and unit prices.

8.2 To the extent available, each of the items at sub-paragraphs 8.1(a) and (b) above should allow for the identification of the following:

(a) the relevant dates, for example, the date of payment and the date of the RoRo Services provided, such as the date of loading, shipment and unloading;

(b) a breakdown of the price, including base price, BAF surcharge, CAF surcharge and other surcharges;

(c) the relevant route to which the RoRo Services apply;

(d) the vehicle type(s)/model(s) transported;

(e) the identity of the transacting parties (including the RoRo carrier and the Claimant paying entity); and

- (f) the type of shipment (i.e. Dedicated Capacity Agreements, One Way Tonnage and RoRo Charters, each as defined in the Re-Re-Amended Particulars of Claim).
- 8.3 Disclosure of the transaction-level data under sub-paragraphs 8.1(a) and (b) above must be accompanied by:
- (a) codes for data cleaning and data consolidation; and
  - (b) an explanation of the fields included in the disclosed data and the assumptions used by the Claimants' experts in preparing the disclosed data.
- 8.4 As agreed or determined in accordance with the process set out at paragraph 11 of the Order, data, documents and information in the categories set out below in respect of any Relevant Tender Process:
- (a) a list of Relevant Tender Processes in which any of the Defendants, the Rule 39 Defendant, Höegh Autoliner AS or the Grimaldi Group participated, including information on which entity (or entities) the tender was awarded to in whole or in part;
  - (b) the price offers made at each stage of the tender process by each entity that participated; and
  - (c) a list of tenders in which the Defendants, the Rule 39 Defendant, Höegh Autoliner AS or the Grimaldi Group (or any of them) were invited to but did not participate.
- 8.5 The Claimants shall provide a narrative statement that explains the negotiation and purchasing processes adopted by the Claimants for the period 1 February 1997 to 31 December 2019 in relation to the purchase of RoRo Services that were not organised by way of a tender process, including (*inter alia*) which purchases of RoRo Services were not organised by way of a tender process, the circumstances in which such negotiation and purchasing processes were typically adopted, the Claimants' use of third-party brokers, how such processes

differed from those processes that were followed in relation to the purchase of RoRo Services that were organised by way of a tender process and the reasons for extending contracts for RoRo Services that were not subject to open tenders.

The non-tendering procurement statement shall be accompanied by a sample of relevant documents, to the extent available.

8.6 The Claimants shall give disclosure of the following data from the databases identified at paragraph 8.8 below:

(a) to the extent available, data on total vehicle prices charged by the Claimants to third party importers and/or dealers (if possible with components such as surcharges and discounts provided separately), organised by model and by country / region (such data should if possible indicate the prices charged by each Claimant throughout 1 February 1997 to 31 December 2019, indicating each time any of these prices changed); and

(b) to the extent available, data on the volume of vehicles sold per month, organised by vehicle model, and country or region.

8.7 The Claimants shall give disclosure of the following data and documents relating to the Claimants' manufacturing and delivery costs from the databases identified at paragraph 8.8 below:

(a) to the extent available, data on the delivery charge charged by the Claimants to third party importers and/or dealers for transportation, including RoRo Services, organised by country or region;

(b) to the extent available, data relating to the Claimants' costs including:

(i) total actual (or if unavailable, planned, forecasted or estimated) vehicle prices and costs, if available, organised by vehicle model and cost category (including transport costs);



(ii) total actual (or if unavailable, planned, forecasted or estimated) vehicle option costs, organised by cost category; and

(iii) the basis on which such costs are calculated; and

(c) to the extent available, documents describing any significant and relevant shifts in the accounting practices of any of the Claimants.

8.8 The databases from which disclosure shall be given for the purposes of paragraphs 8.6 and 8.7 above are, subject to ongoing reviews for relevancy and data matching, the following:

Name
1. PROFIS-FAB
2. ISAC
3. NEWADA
4. SAP FICO
5. PAM
6. PVMS
7. NF-5 Group Share
8. INDIANA
9. VAS

8.9 Documents and data concerning the costs the Claimants allegedly incurred in investigating the Unlawful Arrangements (as defined in the Re-Re-Amended Particulars of Claim), as referenced in paragraph 68 of the Re-Re-Amended Particulars of Claim.

8.10 To the extent available, representative examples of invoices issued to customers and dealers, and framework contracts entered into between the Claimants, and customers and dealers.

8.11 A representative sample of: (i) minutes of meetings of the Second Claimant (or its predecessors); and (ii) internal management presentations of the Second Claimant or its predecessors, relating to the Second Claimant's knowledge of the costs of providing RoRo Services, to the extent available.