



IN THE COMPETITION
APPEAL TRIBUNAL

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 / Rule 39 Claimants

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

Defendant

- and -

NIPPON YUSEN KABUSHIKI KAISHA

Rule 39 Defendant
(the “Proceedings”)

ORDER

UPON the Claimants in the Proceedings (the “**Claimants**”) and the First and Tenth Defendants in the Proceedings (the “**First and Tenth Defendants**”) having agreed to a settlement in the terms set out in a confidential agreement dated 2 November 2023, copies of which are held by the solicitors for the Claimants and the First and Tenth Defendants

AND UPON the Order of the Tribunal dated 15 December 2023 withdrawing the Claimants’ claims against the First and Tenth Defendants

AND UPON the Claimants and the Seventh to Ninth Defendants in the Proceedings, and the Claimants and the Rule 39 Defendant respectively, having reached settlements in principle

AND UPON the First Defendant having agreed to discontinue its claim against the Rule 39 Defendant (the “**Part 20 Claim**”)

IT IS ORDERED THAT:

1. The entirety of the Part 20 Claim against the Rule 39 Defendant be discontinued and dismissed.
2. The Defendant shall pay the Rule 39 Defendant’s costs to be assessed if not agreed.

REASONS

1. The usual rule in civil proceedings is that set out in CPR 38.6. That reflects a rationale that in general a party who is brought into proceedings should not be made to bear costs if the claim against it is abandoned.
2. The CAT has a wide discretion on costs (Tribunal rule 104(4)). There is no rule contradicting CPR 38.6. Nor is there any established practice to the contrary.
3. Accordingly, the appropriate starting point is that the losing (or discontinuing) party ought to pay the other party’s costs. In this case that general rationale would appear to apply. This was a competition action brought by one commercial party against another. There is no other factor which justifies making a different order.
4. The fact the case was withdrawn rather than going to trial might be said to be relevant, but it does not justify making a different order. The essence of the position is that the Defendant has not succeeded in its claim against the Rule 39 Defendant.

5. What has been done by agreement in the main proceedings is *res inter alios acta*. So too is the settlement agreement with NYKK. There is no factor invoked which shifts the dial such that the starting point should in this case be departed from.

The Hon Mrs Justice Cockerill DBE

Made: 8 March 2024

Chair of the Competition Appeal Tribunal

Drawn: 8 March 2024