



Neutral citation [2025] CAT 43

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1732/5/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8A

28 July 2025

Before:

ANDREW LENON KC
(Chair)
ROBERT HERGA
GREG OLSEN
Sitting as a Tribunal in England and Wales

BETWEEN:

EUROSPARES (CONTINENTAL PARTS) LIMITED

Claimant/Applicant

- v -

(1) PORSCHE CARS GREAT BRITAIN LIMITED
(2) PORSCHE RETAIL GROUP LIMITED

Defendants/Respondents

Heard at Salisbury Square House on 25 June 2025

**RULING (INTERIM RELIEF, ALLOCATION TO FAST TRACK AND COST
MANAGEMENT)**

APPEARANCES

Anneli Howard KC and Khatija Hafesji on behalf of the Claimant/Applicant (Instructed by Geradin Partners)

Sarah Abram KC, Conor McCarthy and Hannah Bernstein on behalf of the Defendants/Respondents (Instructed by CMS Cameron McKenna Nabarro Olswang LLP)

Note: Excisions in this Judgment (marked “[<]”) relate to confidential information.

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A. INTRODUCTION

1. The Applicant (“Eurospares”) is an independent reseller of spare parts for a range of premium sports cars, including Porsche cars. Since 2018, Eurospares has sold genuine, new spare parts for Porsche vehicles (“Porsche Parts”) which were supplied to it by the Second Respondent, Porsche Retail Group Limited (“PRG”). In September 2024, PRG informed Eurospares that it would be ceasing all supply of Porsche Parts to Eurospares though supply later resumed on a temporary basis, as set out in more detail below.
2. Eurospares has applied for an interim injunction prohibiting the Respondents (together “Porsche”) from ceasing or refusing to supply Eurospares with Porsche Parts on the grounds that Porsche’s threatened refusal to supply would be in breach of competition law and that, if no injunction is granted, Eurospares will suffer serious uncompensatable damage to its business.
3. Porsche’s position is that it entitled to distribute vehicles and spare parts through its selective distribution system (“the SDS”) and that the refusal to supply spare parts to Eurospares is not in breach of competition law. Porsche disputes Eurospares’ claim that if no interim injunction is granted, Eurospares will suffer serious damage and contends that the grant of an interim injunction would cause Porsche substantial damage by undermining the SDS.
4. Porsche accepts that there is a serious issue to be tried for the purpose of the criteria set out in *American Cyanamid v Ethicon Limited* [1975] 1 AC 396 (the “*American Cyanamid* Criteria”) to be considered on an application for interim relief. The serious issue to be tried is whether Porsche’s refusal to supply Eurospares is a breach of competition law. The main issues on the application concern the other *American Cyanamid* Criteria, in particular as to the adequacy of damages for either party and the balance of convenience.
5. In addition to the application for interim relief, Eurospares is applying for the allocation of the case to the fast-track procedure (“FTP”) under rule 58 of the Competition Appeal Tribunal Rules 2015 (the “CAT Rules”) and for cost management directions under rule 53(1)(m).

B. THE FACTUAL BACKGROUND

6. Eurospares acts as an independent wholesale intermediary selling spare parts, including Porsche Parts, to dealers, resellers and repairers and directly to retail customers. It does not sell vehicles and does not install spare parts or offer any vehicle repair or maintenance services. Eurospares' business is predominantly online through its website www.eurospares.co.uk. It has an annual turnover of approximately [X] and employs approximately [X] people.
7. The First Respondent, Porsche Cars Great Britain Limited ("PCGB"), is a wholly owned UK subsidiary of Dr. Ing. H.c. F. Porsche AG and the exclusive importer of new Porsche vehicles and Porsche Parts into the UK. Through the SDS, PCGB controls the supply of Porsche vehicles and Porsche Parts to 43 authorised dealers nationwide and Porsche Parts to one Porsche Service Centre. The authorised dealers comprise Porsche Centres which are the only locations in the UK where brand new Porsche vehicles are sold and Porsche Service Centres which sell approved used Porsche vehicles. Both Porsche Centres and Porsche Service Centres provide service and repair services and sell spare parts to customers.
8. PRG is a wholly-owned subsidiary of PCGB and operates as a member of the SDS with locations in Guildford, Hatfield, Mayfair, Reading and London. PCGB and PRG form part of the same economic undertaking, along with Porsche AG which, in turn, forms part of the wider Volkswagen AG group, which includes Volkswagen, Audi, Bugatti and Lamborghini and other brands.
9. All dealers operate under an agreement with PCGB (the "Dealer Agreement") that governs the supply and resale conditions for Porsche vehicles and Porsche Parts. Clause 2.8 provides that the marketing and sale of Porsche vehicles and Porsche Parts is undertaken exclusively by the Porsche Sales Organisation within the EEA.¹ Clause 2.15 of the Dealer Agreement provides that the Dealer shall not sell Porsche Parts to (a) resellers which are not part of the Porsche Sales Organisation; or to (b) companies which do not appear as a workshop in the purchase and/or which do not want to use the Porsche Parts and the Porsche accessories for the repair or service of vehicles which they carry

¹[X]

out themselves. Clause 2.15 further provides that these restrictions do not apply to sales to end customers.²

10. Since September 2018 Eurospares has bought Porsche Parts from PRG via its Reading branch. Eurospares' total purchases of Porsche Parts from PRG have grown to nearly [X] annually, representing approximately [X] of Eurospares' new parts revenue. A number of other independent resellers in the UK were similarly supplied with Porsche Parts in the past including Design911, which claims to have been supplied with Porsche Parts by authorised Porsche dealers for over 20 years.
11. Since 1 September 2021, the Applicant has paid Porsche AG for a licence to receive the RRP list prices and to republish the Porsche Electronic Parts Catalogue on its website alongside its own materials, thereby publishing and disseminating information about Porsche Parts to its customer base.
12. On 27 September 2024, PRG informed Eurospares, without prior warning, that PCGB had instructed it to cease trading with resellers with immediate effect. PCGB had written to all the UK authorised dealers reminding them that under the terms of the Dealer Agreement, Porsche Parts can only be sold to independent repairers and to end customers who service or repair Porsche vehicles themselves. Design911 (and presumably the five other resellers supplied by Porsche) were similarly informed by various Porsche authorised dealers in September 2024 that they could no longer supply Design911.
13. Porsche's evidence is that the reason for reminding dealers that they should not sell to independent resellers was the discovery in 2024, during investigations at a parts wholesaler in China, that genuine Porsche Parts were being stored in a warehouse alongside counterfeit parts for Porsche vehicles. The discovery was a matter of serious concern at Porsche's headquarters as combatting counterfeiting is a key commercial policy. An audit was ordered to understand the extent to which there was "leakage" from the SDS and to take steps to address the issues identified. As part of that audit, PCGB identified that Eurospares' purchases were not being made in accordance with the SDS.
14. Following negotiations between the parties, Porsche agreed to reinstate the supply of Porsche Parts to Eurospares for a 6-month transitional period ("the Transitional Period"),

² [X]

expiring on 27 May 2025. Porsche made it clear that it would terminate all supply after 27 May 2025 unless Eurospares changed its business model to include physical repair premises, facilities and equipment, a physical store which has operating facilities able to support the sale and repair of Porsche products with distinct service and sales areas, and a customer courtesy car. Eurospares contended that this amounted to requirements that it (i) must transform its business model at substantial capital investment and expense; and (ii) abandon its successful online-focused intermediary model.

15. During the first half of 2025 Eurospares made attempts to secure alternative supplies of Porsche Parts from other authorised dealers, Porsche Centre Solihull and Porsche Centre Leeds, from European-based suppliers, and from “original equipment suppliers” or OESs who make parts for Porsche, but these attempts were unsuccessful.
16. On 20 May 2025, Eurospares’ solicitors wrote to the Tribunal applying for an interim injunction.

C. THE LEGAL FRAMEWORK

17. Section 47D(1) of the *Competition Act 1998* (“CA98”) provides that an injunction granted by the Tribunal in proceedings claiming an infringement of competition law under section 47A has the same effect as an injunction granted by the High Court and is enforceable as if it were an injunction granted by the High Court.
18. Section 47D(2) provides that in deciding whether to grant an injunction in proceedings under section 47A, the Tribunal must apply the principles which the High Court would apply in deciding whether to grant an injunction under section 37(1) of the *Senior Courts Act 1981*. These are the *American Cyanamid* Criteria derived from Lord Diplock’s judgment in that case. In *Sportsdirect.com Retail Ltd v Newcastle United Football Club Ltd* [2024] CAT 24 (“*Sportsdirect*”) the *American Cyanamid* Criteria were described by the Tribunal as comprising four conditions as follows:

7. (1) *The first condition.* The Tribunal must be satisfied that there is a serious issue to be tried or – to put it the other way round – that the applicant has no real prospect of succeeding in their claim for a permanent injunction at trial. Whilst it is possible to conduct a long analysis regarding the precise nature of this test, that is not particularly helpful. What must be stressed is that: (i) fanciful or frivolous or vexatious claims are to be denied; (ii) the Tribunal should in no way conduct a “mini-trial” and that factual investigation

must therefore be kept to a minimum; and (iii) as a consequence, assumptions must generally be made, in this regard, in the applicant's favour.

- (2) *The second condition.* Where the first condition is satisfied, the Tribunal must next be satisfied that damages would not be an adequate remedy for the applicant. If damages would be an adequate remedy, it is in principle wrong to make an interim order against a respondent obliging it, before trial, to do or refrain from doing some act. That is because if the applicant fails at trial, the respondent will have been enjoined to no purpose; and if the applicant succeeds, the absence of injunctive relief prior to trial is not serious, because damages can be awarded and (by definition) will be an adequate remedy. When considering the adequacy of damages as a remedy, a pragmatic approach needs to be taken. Where damages can, in theory, be assessed, but (even with the application of a "broad brush") present intractable or difficult questions of assessment, then damages may very well not be an adequate remedy. In *Garden Cottage Foods Ltd v. Milk Marketing Board*, [1984] 1 AC 130 at 143, Lord Diplock referred to insuperable difficulties of estimation
- (3) *The third condition.* The Tribunal will, almost always, require an undertaking in damages from the applicant as the "price" for the granting of interim relief. Although such undertakings have a standard form, typically seeking to hold the respondent harmless against all damage sustained as a result of the applicant's claim at trial failing and the interim injunction therefore having been "wrongly" granted, such undertakings cannot be compelled but are voluntarily offered up as the condition for the Tribunal exercising its discretion. The undertaking can, and should, be framed according to the circumstances, and can extend to the protection of third parties. Where the first and second conditions are satisfied, the Tribunal must consider whether the undertaking in damages will adequately protect the respondent in the event of the interim injunction having been "wrongly" granted. The third condition is the converse of the second condition. If the undertaking in damages will adequately protect the respondent, then the interim injunction ought to be granted. If the injunction is not granted, the applicant will be inadequately protected should their claim succeed at trial (*ex hypothesi*, damages will not be adequate), whereas if the injunction is granted, provided the third condition is satisfied, the respondent will adequately be protected. If the third condition is not met, it is necessary to proceed to the fourth condition.
- (4) *The fourth condition.* Where the second condition is met, but the third condition is not met, the Tribunal must consider the balance of convenience, weighing up the rival factors in favour of granting or refusing interim relief. It is not particularly helpful to seek to list the relevant factors, for it is accepted that there is no fixed list of factors and that the Tribunal must look at all the relevant facts of the case, and weigh them accordingly.

19. In *Sportsdirect*, the application for an interim injunction was made in the context of a competition dispute with certain factual similarities to the present case. The injunction was sought by the Claimant ("Sports Direct"), a sports retailer, in order to require the Defendant football club ("Newcastle") to continue to supply it with Newcastle's replica kit to sell in its shops and online, as it had done for a number of years. Following a change of ownership of Newcastle, Newcastle had terminated its agreement with Sports Direct and granted another sports retailer, JD Sports, the exclusive right to sell its replica kit. Newcastle had also terminated its contract with the manufacturer of the replica kit

(Castore) and appointed Adidas as manufacturer in its place. Sports Direct issued proceedings alleging that Newcastle had (i) abused its dominant position in failing to supply Sports Direct with Newcastle's replica kit contrary to the Chapter II Prohibition of CA98; and (ii) infringed the Chapter I Prohibition by entering into exclusive arrangements with another sports retailer that had the effect of foreclosing Sports Direct from the market for Newcastle replica kits. At first instance, the Tribunal refused to grant an injunction on the ground that there was no serious issue to be tried.

20. The Tribunal nevertheless went on to address the other *American Cyanamid* Criteria even though these were not the basis for its decision. It considered that damages would not be an adequate remedy for Sports Direct because supporters coming to buy replica kits were likely to buy other things at the same time and to become repeat customers for unquantifiable later purchases. Supporters who were unable to purchase Newcastle replica kit were less likely to become a repeat customer. That loss of repeat business was material and extremely difficult to quantify.
21. The Tribunal also held that damages would not adequately compensate Newcastle, were it to be concluded at trial that any interim injunction should not have been granted. This was on the basis that an interim injunction would interfere with Newcastle's restructuring of its replica kit business.

[32] (3) ... As we have described, the new owners of Newcastle United FC are endeavouring to restructure the NUFC Replica Kit business of the Club. That is no small undertaking, and it requires considerable expenditure of time, effort and money. Thus, existing relationships (for instance with Castore) need to be terminated, and new relationships (for instance with JD Sports and Adidas) forged. The interim injunction, if granted, would throw a substantial spanner in these delicate and complex works, and the fact that we cannot be more specific is, we consider, an indication not that the damage to the Club is unreal, but that it is very real but unquantifiable. To give just one example, we have noted that the new arrangements accord to JD Sports a measure of exclusivity in the UK market (see paragraph 23(3) above). JD Sports pay handsomely for this right, and the granting of the injunction will materially deprive JD Sports of its exclusivity. JD Sports has already indicated that it would regard the Club's supply of NUFC Replica Kit to Sports Direct as a breach of Newcastle United FC's contract with JD Sports. Whether that is in fact the case is open to question: certainly, Newcastle United FC would be able to contend that supply to Sports Direct would be pursuant to mandatory order of this court – and whether that supply could constitute a breach of contract might (as we say) very well be open to question. But the damage to relations between the Club and its suppliers would, we consider, be very real, and impossible to assess. This is a big and important business for Newcastle United FC. The revenues anticipated from this venture are – over time – likely to be considerable. Newcastle United FC are right to be concerned at the significant disruption to their business that would occur were the injunction to be granted, even on

more limited terms than Sports Direct presently seek.

22. With regard to the balance of convenience, the Tribunal concluded that the relevant factors preponderantly favoured the course of not granting interim relief. The main factor was that the “status quo” would best be preserved by not granting an injunction, the status quo being the situation which pertained after the change of ownership of the club and the granting of exclusive rights to JD Sports. The Tribunal’s view that Newcastle would suffer relatively greater harm than Sports Direct from the grant/non grant of the injunction was a further marginal factor against the grant of injunctive relief. Consumer benefit was another marginal factor. The need to supervise the injunction was a minor point against the granting of an injunction.
23. On appeal to the Court of Appeal ([2024] EWCA 532), Sir Geoffrey Vos MR, with whom the other members of the Court of Appeal agreed, held that, whilst the 4-stage process described by the Tribunal reflected Lord Diplock’s description:

“[30] ... the process is perhaps a little more nuanced. The question of the adequacy of damages for both sides can perhaps be regarded as part of, rather than entirely distinct from, the exercise of determining where the balance of convenience lies. The difference may well be immaterial in this case.”

24. Turning to the application of the *American Cyanamid* Criteria, the Court of Appeal held that Tribunal was wrong to decide that Sports Direct had no serious case to be tried; the Tribunal should have concluded that it was possible for Sports Direct to succeed at trial in showing breaches of both the Chapter I and II Prohibitions. However, the Court of Appeal went on to uphold the Tribunal’s reasoning and conclusion on the issues of adequacy of damages and the balance of convenience. It agreed with the Tribunal’s perspective that the balance lay in favour of allowing the new owners of Newcastle to make their own arrangements without the interference of interim relief.

D. THE CROSS-UNDERTAKING IN DAMAGES

25. As noted in *Sportsdirect*, the Tribunal will, almost always, require an undertaking in damages from the applicant as the “price” for the granting of interim relief.
26. Paragraph 5.131 of the CAT Guide states that “[i]n cases that are not subject to the fast track procedure... the provision by the applicant of an undertaking as to damages will

normally be a prerequisite to the grant of an interim injunction by the Tribunal. The purpose of the undertaking is to provide a means of compensating the respondent in the event that it subsequently emerges that the injunction should not have been granted". Where the applicant has failed to provide any evidence to suggest they would be able to provide a "meaningful cross-undertaking in damages", "[t]hat point alone [may] mean[...] that the balance of convenience rests very heavily in favour of the Defendant" see *Traylen v Amiga Homes* [2020] EWHC 1913 (QB) ("*Traylen*").

27. Examples of the exceptional circumstances in which a court or the Tribunal may decide not to require a cross-undertaking are where the claimant is public body enforcing the law for the public benefit as in *Financial Services Authority v Sinaloa Gold plc and others* [2013] 2 AC 2 or where a claimant's inability to provide a cross-undertaking may have been caused by the alleged fraud of the defendants as in *Gould v Kay* [2020] EWHC 3876 (QB).
28. A further exception is where proceedings in the Tribunal are subject to the FTP. Rule 68(5) provides that, in proceedings which are subject to the FTP, the Tribunal may grant an interim injunction without requiring the applicant to provide an undertaking as to damages or subject to a cap on the amount of the undertaking as to damages. The CAT Guide notes, however, that the Tribunal will only dispense with, or cap, the undertaking "*where in all the circumstances this is necessary or appropriate in the interest of justice*" considering the merits, the loss to the respondent if the injunction is wrongly granted, and the claimant's financial resources (paragraph 5.147).
29. Prior to the hearing of its application, Eurospares had declined to offer a cross-undertaking in damages on the ground that, as a relatively small company, it was unwilling to assume the potential unlimited liability in damages to Porsche which could arise, should its claim fail at trial. Porsche had declined, in response to enquiries from Eurospares, to quantify its potential losses. Eurospares submitted that, whilst the absence of a cross-undertaking was a factor to be taken into account in assessing the balance of convenience, it did not preclude the grant of an injunction and that, under the FTP, the Tribunal could dispense with a cross-undertaking.
30. The Tribunal indicated to Eurospares in the course of the hearing that, in its view, this

was not an exceptional case in which it would be appropriate to dispense with the usual cross-undertaking, even if the case was allocated to the FTP. Though relatively small, Eurospares is by no means impecunious; it is planning to spend some [X] on legal costs if the case proceeds to trial. Eurospares contends that Porsche would not suffer any damage at all from the grant of an injunction. Following the Tribunal's indication, Eurospares informed the Tribunal that it would be prepared to provide an unlimited undertaking in damages, if required to do so.

E. SERIOUS ISSUE TO BE TRIED

31. Eurospares' case is that Porsche's conduct is in breach of both:

- a. section 2 of CA98, which prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which: (i) may affect trade within the United Kingdom, and (ii) have as their object, or effect, the prevention, restriction or distortion of competition within the United Kingdom ("the Chapter I Prohibition").
- b. section 18 of CA98 which prohibits conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market, if it may affect trade within the United Kingdom ("the Chapter II Prohibition"). Conduct may, inter alia, constitute such an abuse if it consists in: (i) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; or (ii) limiting production, markets or technical development to the prejudice of consumers.

32. Eurospares contends that the relevant affected market is a matter for expert evidence, but is provisionally defined as the UK aftermarket for the distribution of Porsche Parts ("the UK Aftermarket"), in which PRG and other authorised dealers supply Porsche Parts to independent resellers and compete with them through the supply chain in selling parts on to independent repairers and vehicle owners. Eurospares contends that there are two other markets which are related to the UK Aftermarket and on which Porsche is likely to be dominant and/or hold significant market power. These are: (a) the UK market for the sale of luxury passenger vehicles in which Porsche is likely to have a market share in excess of 30%; and (b) the UK market for the wholesale import and distribution of Porsche Parts (the

“UK Wholesale Import Market”) in which PCGB is the sole importer into the UK.

33. It was common ground that the SDS would not infringe the Chapter I Prohibition if its criteria for admission were shown to satisfy the “safe harbour” requirements laid down by the CJEU in C 26/76 *Metro SB-Großmärkte v Commission* EU:C:1977:167 (the “Metro Criteria”) and subsequent case law. These are that: the members are chosen on the basis of objective criteria of a qualitative nature; the criteria are laid down uniformly for all potential members and not applied in a discriminatory fashion; the characteristics of the product in question necessitate such a network in order to preserve its quality and ensure its proper use; and the criteria do not go beyond what is necessary.
34. Eurospares’ case is that Porsche’s criteria for membership of the SDS do not satisfy the *Metro* criteria and constitute a restriction of competition by object or effect. It argues that the SDS offends the Metro criteria in the following ways:
 - a. Whilst Porsche vehicles may be considered “luxury” products, it does not follow that Porsche Parts are luxury goods in the sense of Case C-230/16 *Coty Germany GmbH v Parfumerie Akzente GmbH* EU:C:2017:941, paragraph 40, necessitating the SDS. Unlike Porsche vehicles, Porsche Parts are not displayed in any particular setting to enhance or preserve their aura of quality to the consumer. Even if Porsche Parts were to be regarded as luxury products, Porsche cannot show that the selection criteria which they apply for admission to the SDS are apt or necessary to preserve the quality of Porsche Parts and ensure their proper use.
 - b. The criteria for admission to the SDS do not support the purported justification for the use of a SDS and/or go beyond what is necessary to meet the objectives of the SDS.
 - c. In particular, an authorised dealer that is not an end-user or part of the Porsche group must be able to satisfy a “repair requirement” along with the facilities and equipment that supports such a requirement. This excludes pure online resellers such as the Applicant, who are direct competitors to Porsche’s authorised dealers, which is an object infringement; the repair requirement goes beyond what is necessary and is not proportionate to preserve the quality of the Porsche Parts or the Porsche brand. It makes it impossible for a reseller who operates purely online to access the UK

Aftermarket, this is notwithstanding the fact that such online operations enhance the accessibility of Porsche Parts to customers in the UK/EU.

35. Eurospares further contends that (i) the SDS does not fall within the “safe harbour” of the *Vertical Block Exemption Order 2022* (the “VBEO”) because Porsche holds more than 30% of the UK Wholesale Import Market for Porsche Parts and more than 30% of the UK Aftermarket for Porsche Parts and/or the SDS contains a hardcore restriction; (ii) the SDS is not exempt under the *Motor Vehicle Block Exemption Order (No.2) Order 2023* (the “MVBE”) because the restriction on sales of aftermarket goods by members of a SDS to independent repairers who use or want to use those aftermarket goods for the purposes of providing repair and maintenance services is a hardcore restriction contrary to Article 5(2)(a) of the MVBE; and (iii) the SDS does not qualify for an individual exemption under section 9 of the CA98.
36. With regard to the Chapter II Prohibition, Eurospares contends as follows:
 - a. Porsche is dominant in the UK Wholesale Import market.
 - b. Porsche’s refusal to supply Eurospares after 27 May 2025 constitutes a discriminatory and exclusionary abuse of its dominant position.
 - c. The supply of Porsche Parts is indispensable for Eurospares to be able to compete in the UK Aftermarket.
 - d. The refusal of supplies will lead to the elimination of all (or all effective) competition on the UK Aftermarket.
 - e. The repair requirement is exclusionary, discriminatory self-preferencing and designed to curb market access.
 - f. There is no objective justification for a refusal of supply by Porsche UK in view of the required costs of entry to the SDS (i.e. the repair requirement), which Eurospares alleges would result in higher prices, lower quality and less innovation and investment.
37. In response, Porsche notes, as a starting point, that in the Commission's guidelines on

vertical agreements in the motor vehicle sector, the Commission observes that SDSs are the predominant means of distribution for spare parts in the motor vehicle sector. Porsche contends that it is entitled to supply spare parts through its SDS as this is essential in order to (i) maintain the quality and brand image of Porsche Parts and the wider Porsche brand; (ii) ensure that Porsche Parts are properly used and safely installed; and (iii) tackle the emergence of counterfeit goods. Porsche relies on the observation of the European Court of Justice in C-439/09 *Pierre Fabre* [2011] ECR I-9419, EU:C:2011:649 at [40] that:

“it has always been recognised in the case-law of the Court that there are legitimate requirements, such as the maintenance of a specialist trade capable of providing specific services as regards high quality and high-technology products, which may justify a reduction of price competition in favour of competition relating to factors other than price.”;

And the opinion of Advocate General Wahl in Case C-230/16 *Coty Germany GmbH v Parfumerie Akzente GmbH* ECLI:EU:C:2017:603 (at [45]) that a SDS:

“may be considered, generally, to have neutral, or indeed beneficial, effects from the aspect of competition.”

38. In respect of the Chapter II Prohibition, Porsche relies on the European Commission’s Draft Guidelines on the Application of Article 102 which it contends show that the threshold for establishing such an abuse is high. At trial, Porsche will argue that there is no proper basis to suggest that the Porsche Parts are indispensable to Eurospares’ ability to compete on the downstream market or that the refusal to supply is liable to eliminate all competition in the supply of such parts on the downstream market, and in any event, that the SDS is objectively justified. Porsche further contends, by reference to the General Court decision in Case T-712/14 *CEAHR v Commission* ECLI:EU:T:2017:74 that, if as it contends, the SDS is objectively justified and in conformity with Chapter I CA98, it is unlikely that it was contrary to the Chapter II Prohibition.
39. At this early stage of the proceedings, and in the absence of expert evidence, it is not possible for the Tribunal to make any firm assessment of the merits of Eurospares’ claims or Porsche’s response beyond accepting that, as conceded by Porsche, Eurospares claims are to be taken as having substance in the sense that they are not frivolous.

F. ADEQUACY OF DAMAGES TO EUROSPARES

40. Turning to the second of the *American Cyanamid* criteria, Eurospares submitted that

damages would not adequately compensate it for the losses which it would suffer if no interim relief were granted. It contended that the consequences of interim relief being refused would be as follows:

- a. In addition to the loss of [X] in annual revenues for sales of Porsche Parts, (which would be quantifiable and compensatable in damages) Eurospares would lose repeat sales of Porsche parts and future sales of non-Porsche Parts, both of which would be difficult to assess and quantify.
- b. Repeat sales of Porsche and non-Porsche Parts would be lost because Eurospares would cease to be a one-stop shop. A large proportion of its customer base consists of independent repairers that provide repeat business because they use Eurospares as a single source for the prompt supply of large volumes of spare parts from a range of luxury brands and manufacturers.
- c. By losing Porsche Parts, Eurospares would lose an important aspect of its unique selling proposition as a one-stop shop and competitive edge since its independent repairer customers will be incentivised to look elsewhere, not just for Porsche Parts but also for other non-Porsche spare parts. Eurospares will lose the customers who migrate to its rivals (Porsche authorised dealers and other suppliers of spares parts). Eurospares may not be able to recapture their custom and recover its lost market share after trial.
- d. In addition to the loss of repeat sales from repairers migrating to other suppliers, the loss of supply of Porsche Parts would result in a loss of online marketing visibility which would in turn damage Eurospares' wider business; as an online business, Eurospares is dependent upon high online visibility and internet traffic to achieve its high rankings in Google search results. The cessation of supply of Porsche Parts will reduce internet traffic, and is likely to make the website less attractive to Google's search algorithms. Eurospares' website would therefore drop down the rankings. This would affect not just purchasers of Porsche Parts, but also purchasers of other brands' vehicle parts from Eurospares, as they would be less likely to find the Eurospares website.
- e. Over more than six years, Eurospares has made significant investments in stock acquisition, warehousing infrastructure, e-commerce systems, digital marketing,

and staff training to develop and grow its Porsche Parts business. These investments were made on the reasonable expectation of continuity of supply. If Porsche now refuses to supply parts, those investments will be substantially wasted and written off, with no viable way to repurpose that capacity at short notice.

41. In response, Porsche contends that Eurospares would not suffer any damage that could not be adequately compensated in damages, for the following reasons.

- a. The loss of revenue from sales of Porsche parts represents only [X] of Eurospares' spare parts business. It is not suggested by Eurospares that its business model is dependent on sales of Porsche Parts. There is therefore no realistic prospect of long-term damage to Eurospares' business from any cessation of supplies for the period of several months before determination of its claims.
- b. Eurospares' case, that a temporary cessation of supply of Porsche Parts will lead to irreversible damage to its relationships with customers, lacks credibility. Its evidence that customers, faced with the unavailability of Porsche Parts, will migrate to Porsche official dealerships, making it extremely difficult to get them back, is inconsistent with Eurospares' evidence that it has a loyal customer base (who may be car owners or independent repairers) who actively avoid using official dealerships. As Eurospares accepts, it is not uncommon for parts to be temporarily unavailable for a period of time.
- c. Eurospares' case as to the loss of customers is undermined by the evidence which it has adduced from Kuldeep Chopra, the managing director of Design911, whose core business is, like that of Eurospares, the supply of parts for motor vehicles, and whose supply of Porsche Parts was cut off in September 2024 after some 20 years, with no transitional period. The thrust of Mr Chopra's evidence, given some nine months after the cessation was that, if supply was not reinstated, customers will be lost in future:

22. If we are unable to restore supply, the business will face serious operational challenges. In the short-term, we may be forced to lay off some of our 55 staff due to the reduction in sales and the inability to fulfil orders. We will also lose customers

permanently, as we will no longer be able to offer the full range of parts they need. This fundamentally undermines the core value proposition of the business.

23. In short, the loss of supply of genuine Porsche Parts threatens the viability of the entire business. Without access to those parts, Design911 cannot operate as a one stop shop, cannot serve its core customer base, and cannot sustain its current operations. If the supply is not reinstated, the consequences for the business will be severe and potentially fatal.

- d. Porsche submitted that this evidence showed that any non-immediate financial losses would not be incurred for several months so that if the case was brought on for trial in six to nine months, such damage would not be suffered.
 - e. If the injunction were denied, Eurospares would be in the same position as any other reseller with continued access to unbranded OES parts for Porsche cars, generic parts and second hand parts.
 - f. Eurospares' case that the grant of an injunction will lead to wasted investment in warehousing infrastructure and training is implausible. Eurospares' assertion that there would be a wastage of "significant investments" in stock acquisition and warehousing infrastructure is not credible in circumstances where its Development Manager, Keith Derrick, describes Eurospares' business model as operating on a "high volume and fast turnaround basis" with £90m of parts in stock at any given time of which less than 0.56% - £500k - is Porsche parts. Eurospares has been on notice for eight months that Porsche's supply to it would cease and has had ample time to adjust warehousing capacity as it sees fit. Any training or marketing investments which are not stated to be specific to Porsche Parts would retain their utility in relation to the sale of other spare parts.
42. The Tribunal accepts Eurospares' evidence that the cessation of supplies of Porsche Parts for several months is likely to cause a loss of profits that would be very difficult to quantify and adequately compensate in damages.
43. The Tribunal is satisfied that a loss of profits is likely to arise, first, as a result of the loss of repeat business from repairers and vehicle owners who, faced with the unavailability of Porsche Parts from Eurospares, would turn to Porsche dealers for the supply of Porsche Parts and would not necessarily return to Eurospares in future.

44. Second, the Tribunal accepts that resellers and vehicle owners, unable to purchase Porsche Parts from Eurospares, would be incentivised to look elsewhere not just for Porsche Parts but also for other non-Porsche spare parts. Eurospares will lose its competitive edge as a “one-stop” shop. As was the case in *Sportsdirect*, the unavailability of one particular product, even for a limited period of time, may have a significant knock-on effect on repeat sales, not only of that product but of other products which customers would have purchased, and the resulting loss of profits would be inherently very difficult to assess.
45. Third, the Tribunal accepts that the loss of the supply of Porsche Parts will have a detrimental impact on Eurospares’ online visibility, making it likely that Eurospares will be more difficult to find, not just for purchasers of Porsche Parts, but also for purchasers of other brands’ vehicle parts from Eurospares. Again, the resulting loss of profits would be hard to assess.
46. The Tribunal does not read the evidence of Mr Chopra that the cessation of supplies of Porsche Parts will cause significant future long term damage to Design911’s business as meaning that the damage to business from the loss of repeat business has not already started or that, if the supply were reinstated, all future damage would be avoided. His evidence was that customers immediately began to look elsewhere for their needs and that uncertainty about availability has caused customers to take their business elsewhere. We incidentally do not accept the suggestion that Eurospares could mitigate its losses pending trial by selling a stockpile of Porsche Parts accumulated during the Transitional Period. This is because the volume of products supplied by Porsche to Eurospares during the Transitional Period have by agreement been kept to pre-existing levels.
47. In short, the Tribunal considers that damages would not be an adequate remedy for Eurospares if no interim injunction was granted. It is therefore necessary to consider next whether the cross-undertaking offered by Eurospares will adequately protect Porsche, in the event that an interim injunction is “wrongly” granted.

G. ADEQUACY OF DAMAGES TO PORSCHE

48. Porsche contended that the grant of the interim injunction sought by Eurospares would undermine its SDS and harm its business in ways which could not easily be assessed or made good in damages, as follows:

- a. An injunction would undermine the investments made by Porsche's authorised dealers in their businesses, including investment in programmes such as 'Destination Porsche', a redevelopment project focused on enhancing customer experience in retail spaces. The injunction would create a free-rider problem since Eurospares benefits from the investment made by authorised dealers, without paying the cost. The incentive for any authorised dealer to invest would be reduced with consequential impact on Porsche's brand in the UK and abroad and its ability to attract applicants to its SDS.
- b. There was a real, and impossible to assess, risk of damage to Porsche's relationships with authorised dealers. If Porsche UK were required to supply Eurospares, authorised dealers may bring claims against Porsche for breach of Clause 2.8 of the Dealer Agreement. Porsche relies by analogy on the Court of Appeal's observation in *Sportsdirect* (at [38]) that an injunction would have required Newcastle to break its exclusivity arrangements with third parties with the result that "[i]t would be very hard to disentangle what loss was caused by the different consequences" with possibly "very complex" ramifications .
- c. Where goods are sold through an unmonitored supply chain, there is a risk of a 'grey market' (i.e. parts sold through an unauthorised supply chain) and counterfeit products being sold which, in turn, makes it difficult for end-users to distinguish between genuine and non-genuine parts. Porsche has invested in its SDS globally, as countering a grey market and counterfeit supply is a key part of Porsche's European commercial strategy. Requiring continued supply to Eurospares would inhibit Porsche's ability to monitor and audit genuine parts accessing the market worldwide. This would undermine Porsche's commercial strategy (and corresponding investment) in a manner that cannot be remedied in damages.
- d. Porsche referred to a letter dated 12 June 2025 from Kilburn & Strode to Mr Chopra alleging that following the seizure of 320 counterfeit wheel hub caps bearing the Porsche Crest device, Porsche had become aware that a website operated by Design911 was offering for sale a large number of goods which bore the Porsche trademarks, but which were not produced or authorised by Porsche.

- e. The SDS protects the Porsche brand by ensuring a high quality of service and support to customers who have a direct line of contact with an authorised dealer with whom they can raise any issue or seek advice on how best to have the relevant part fitted. Every authorised dealer is required to meet certain standards around inter alia delivery, customer service, and training. The continued supply of genuine Porsche Parts to Eurospares, which has never undertaken training with Porsche, risks negative customer experiences from, for example, the improper installation of a part and ultimately diminished safety standards and damage to Porsche's ultraluxury brand.

49. In response, Eurospares submitted that the grant of the injunction ensuring the continuation of the current supply arrangements would not cause any damage to Porsche for the following reasons:

- a. Porsche's SDS would not be undermined. Porsche Centres and Porsche Service Centres sell and service Porsche vehicles. Eurospares does neither and does not compete with Porsche Centres or Porsche Service Centres in these areas. The investments by authorised dealers support the vehicle sales aspects of their business. Eurospares has been supplied by the very same Porsche Centres who Porsche now claims would be aggrieved by such supply. There is no indication that the authorised dealers, who have supplied Eurospares and other resellers, have any of the concerns now raised by Porsche. Porsche's authorised dealers view Eurospares as a useful resource when they are unable to fulfil customer orders when parts are not available from Porsche, when Porsche's own internal distribution systems fail.
- b. An injunction would not lead to claims from authorised dealers. Under the terms of the Dealer Agreement, compliance with an order of the court cannot amount to a breach of contract. If Porsche, pursuant to an order of this Tribunal, authorised sales to Eurospares, Eurospares would fall within the scope of the "Porsche Sales Organisation" definition and there could be no claim against the Defendants in respect of a breach.
- c. Sales to Eurospares would not lead to counterfeiting or to a grey market. Porsche sells directly to repairers and to end users in different locations. Counterfeiters could

copy the parts they obtain directly from Porsche. Porsche has never raised any concerns with Eurospares about counterfeiting, despite representatives of its authorised dealers having visited their offices on many occasions; Eurospares plays a role in preventing counterfeiting by making genuine parts more readily accessible, thereby reducing the demand for counterfeit goods.

- d. The safety concerns raised by Porsche have no credible basis given that Porsche's authorised dealers can and do make sales to independent repairers and end-users and, in so doing, lose control over how the products are installed and the safety of those installations. Porsche does not carry out checks as to the experience or safety record of independent repairers who purchase Porsche Parts through the SDS. Porsche has never raised concerns about safety with independent resellers despite the long history of supplies to them. Eurospares holds itself to very high standards of professionalism, accuracy, and customer care and a genuine commitment to ensuring that customers receive the correct, high-quality parts they need—safely and efficiently.
50. In the Tribunal's view, it is doubtful whether the grant of an interim injunction requiring Porsche to continue the supply of Porsche Parts to Eurospares pending trial would cause material damage to Porsche. The submission that investments by authorised dealers in their businesses would be undermined, given that Eurospares does not compete with dealers in selling or servicing vehicles, is implausible. PRG has been content to supply Eurospares with Porsche Parts for several years with no apparent concerns about the undermining of investments. It seems unlikely that authorised dealers, concerned about the impact on their business from the continued supply to Eurospares, would bring claims against Porsche for breaches of the Dealer Agreement. If there were any valid basis for such claims (which is questionable), any resulting liability would be compensatable under the cross-undertaking. The minimal impact on Porsche's commercial relationships from the continued supply of Porsche Parts to Eurospares is in sharp contrast to what would have been the disruptive effect of an interim injunction in *Sportsdirect* on the Club's new arrangements for the supply of replica kits, throwing "*a substantial spanner in these delicate and complex works.*"
51. The Tribunal is likewise not persuaded that the continued supply of Porsche Parts to

Eurospares would compromise Porsche's safety standards or lead to a grey market or an increase in counterfeiting, for the reasons given by Eurospares. Under the Dealer Agreement, end users can purchase parts directly from Porsche and fit them themselves without any oversight or involvement from Porsche. Whilst they are entitled to seek advice from Porsche Centres/Porsche Service Centres, they can presumably do so regardless of where they purchased the Porsche Parts. Eurospares' website is designed to assist customers in identifying the correct parts and related components needed. As to counterfeiting and grey markets, Eurospares only offers genuine Porsche Parts. Whatever the position with Design911, there is no suggestion that Eurospares has ever sold counterfeit parts and no concerns have ever been expressed previously by Porsche to Eurospares about the supply of counterfeit parts.

52. Whilst the Tribunal considers that the likelihood of Porsche sustaining significant damage as a result of the continuation of supplies of Porsche Parts is small, it does not rule out that there is some risk of interference with Porsche's relationships with authorised dealers, as Porsche contends, which would not be readily compensatable under Eurospares' cross-undertaking. It is therefore necessary to proceed to a consideration of the fourth condition, the balance of convenience.

H. BALANCE OF CONVENIENCE

53. Eurospares submitted that the balance of convenience favours the grant of interim relief for the following reasons:
 - a. Eurospares' case as to the nature and extent of the uncompensatable damage it would suffer if an injunction was not granted is stronger than Porsche's case as to the inadequacy of an award of damages under Eurospares' cross-undertaking if an interim injunction is "wrongly" granted.
 - b. The substantial disparity between the size and resources of the parties to this dispute mean that, while Porsche is a vast global business with resilience to the limited commercial setback which they claim they would suffer, the harm to Eurospares' business from the absence of interim relief would be such that Eurospares' ability to pursue the claim would be stifled.

- c. The injunction should be granted in the public interest. If no injunction is granted, consumers will face higher prices and poorer delivery and customer service options.
- d. The Tribunal should maintain the status quo, that is to say the continuation of the existing supply arrangements.

54. In relation to the balance of convenience, Porsche relied on the following arguments:

- a. Porsche has acted entirely reasonably towards Eurospares. It initially agreed to a three month extension of the supply arrangements. In December 2024 Eurospares' solicitors asked for a nine month Transitional Period as a reasonable transition period. Porsche agreed to six months which was later extended to some eight months following the filing of this application for interim relief. Eurospares has had ample time to adjust to the cessation of supplies.
- b. Eurospares has provided no proper justification for the fact that, despite being on notice since late September 2024 that Porsche would cease supplying it with Porsche Parts on 27 May 2025, it did not issue proceedings until June 2025. It had instructed solicitors by, at the latest, October 2024 and had set out all the facts and matters relevant to the claim it now brings in the pre-action correspondence dated 31 October 2024. The circumstances of this case are therefore analogous to those in *Traylen* where the delay of nine months before the injunction application was said to be "fatal" to the application for an interim injunction.
- c. The terms of the injunction sought, including the requirements to refrain from "[d]isrupting delaying, or otherwise interfering" with Eurospares' orders for Porsche Parts in an "unreasonable manner" or from imposing terms that are "not fair, reasonable and non-discriminatory" are uncertain and would need to be supervised closely by the Tribunal. This would mean that, as in *Sportsdirect*, there "would be a real risk of the Tribunal being sucked into the administration and resolution of day-to-day disputes."

55. In the Tribunal's view, the balance of convenience favours the grant of an interim

injunction, for the following two main reasons.

56. First, the Tribunal considers that, in the words of Staughton LJ in *Lansing Linde v Kerr* [1991] W.L.R. 258 “*the main question is then one of lesser evil: will it do less harm to grant an injunction which subsequently turns out to be unjustified, or to refuse one if it subsequently turns out that an injunction should have been granted.*” In the Tribunal’s view, Eurospares has a credible case that it will suffer a range of adverse effects on its business, reputation, market share and competitive market position if no injunction is granted, which it will not be able to readily quantify or remedy in damages. Porsche’s case that it will suffer uncompensatable harm if an injunction is granted is less compelling. On the main question, therefore, the balance is in favour of the granting of an injunction.
57. The second reason for granting an interim injunction is that this will maintain the *status quo*. In the present case, the maintenance of the *status quo* is particularly apt given that Porsche, through PRG, has known about and willingly participated in the current arrangements for several years.
58. As to Porsche’s agreement to extend supplies for some eight months after September 2024 and the fact that proceedings were not commenced until June 2025, Eurospares’ evidence was that between October 2024 and June 2025 it made some attempts to find alternative supplies, and it made a complaint to the CMA which eventually decided not to allocate resources to this case. It took some time for Eurospares to assemble its claim including instructing specialist counsel, obtaining economic evidence, dealing with ATE insurance and cost budgeting. There was no suggestion that Porsche was prejudiced by delay. Looking at the matter in the round, whilst Eurospares’ application could have been made more promptly, any delay is not so great as to shift the balance of convenience in favour of withholding an injunction.
59. The Tribunal does not regard the other factors raised by the parties as carrying significant weight. As to the public interest, the Tribunal accepts that supplies to Eurospares might result in greater cost competition and lower prices but there is, as noted in *Sportsdirect*, also potential benefit to the consumer in allowing undertakings to structure their distribution in the way they judge most profitable and effective. The Tribunal does not

envisage that there will be any particular need to police the injunction, given that the current arrangements have operated smoothly hitherto and without giving rise to day-to-day disputes.

60. For the reasons set out above, the Tribunal is satisfied that this is an appropriate case for the grant of the interim injunction sought by Eurospares, restraining Porsche from ceasing or refusing to supply it with Porsche Parts, subject to Eurospares giving the usual cross-undertaking to abide by any order that the Tribunal might subsequently make requiring Eurospares to make good any losses sustained by Porsche as a result of the injunction.

I. ALLOCATION TO THE FAST TRACK PROCEDURE

61. Eurospares seeks an order that the claim be allocated to the fast-track procedure (“FTP”) at least for the purposes of the initial stages of the claim.
62. As stated in explanatory notes to the *Consumer Rights Act 2015* which introduced the FTP³, the purpose of the FTP is to enable simpler cases brought by small and medium enterprises (“SMEs”) to be resolved more quickly and at a lower cost than if they were subject to the standard case management procedure. In *Socrates Training Limited v the Law Society of England and Wales* [2016] CAT 10 (“*Socrates*”), Roth J described the FTP as:

“ ... a procedure particularly designed to help small and medium sized enterprises (“SMEs”) to obtain access to justice in an appropriate case. That reflects a view widely expressed in the prior consultation that the cost and complexity of competition actions deter smaller companies from pursuing their rights, particularly as regards injunctive relief. I believe that it is inherent in a claim where the main remedy is an injunction that the opportunities for outside funding are more limited, since the successful outcome will not produce a large sum of damages from which the funder may be rewarded.”

63. Rule 58 of the CAT Rules provides as follows:

(1) The Tribunal may, at any time, either of its own initiative or on the application of a party, make an order that particular proceedings be, or cease to be, subject to the fast track procedure.

³ The statutory basis for the FTP is paragraph 15A of Schedule 4 of the Enterprise Act 2002, inserted by Schedule 8 paragraph 31 of the Consumer Rights Act 2002.

(2) Where the Tribunal has ordered that particular proceedings be subject to the fast track procedure—

- (a) the main substantive hearing is to be fixed to commence as soon as practicable and in any event within six months of an order of the Tribunal stating that the particular proceedings are to be subject to the fast-track procedure; and
- (b) the amount of recoverable costs is to be capped at a level to be determined by the Tribunal.

(3) In deciding whether to make particular proceedings subject to the fast-track procedure the Tribunal shall take into account all matters it thinks fit, including—

- (a) whether one or more of the parties is an individual or a micro, small or medium-sized enterprise within the meaning of Commission Recommendation. No. 361 (EC) of 2003 concerning the definition of micro, small and medium-sized enterprises(a);
- (b) whether the time estimate for the main substantive hearing is three days or less;
- (c) the complexity and novelty of the issues involved;
- (d) whether any additional claims have been or will be made in accordance with rule 39;
- (e) the number of witnesses involved (including expert witnesses, if any);
- (f) the scale and nature of the documentary evidence involved;
- (g) whether any disclosure is required and, if so, the likely extent of such disclosure; and
- (h) the nature of the remedy being sought and, in respect of any claim for damages, the amount of any damages claimed.

64. The CAT Guide (at paragraph 5.146) comments on suitability of cases for the FTP as follows:

Given that competition cases generally tend to be heavy, complex and often involve consideration of novel issues, it is unlikely that the Tribunal will designate a case as suitable for the FTP unless it is a clear-cut candidate for such an approach. Generally, such a case is likely to arise or be linked to a scenario where injunctive relief is being sought, or, in the case of a claim for damages, where all the parties are clearly committed to a tightly constrained and exceptionally focused approach to the litigation. Cases where interlocutory issues involving major points of principle are anticipated are unlikely to be suitable for the FTP procedure.

65. Eurospares submitted that allocation to the FTP was appropriate on the following grounds:

- a. The Tribunal has a deliberately broad discretion as to the types of cases it allocates to the FTP and the circumstances in which it makes the allocation. Whilst the

Tribunal must take into account at least the factors listed at Rule 58(3) of the Tribunal Rules, these are not to be interpreted as a “checklist” or gateway conditions before a case can be allocated to the FTP, rather they are factors which should guide the exercise of the Tribunal’s discretion.

- b. It is essential that the Tribunal is mindful to the access-to-justice issues faced by SMEs particularly in litigation against entities like Porsche, and moreover that the Tribunal uses its case management powers and broad discretion to take the flexible approach to FTP allocation which is in accordance with the legislative intention.
- c. Eurospares is an SME within the meaning of *Commission Recommendation No. 361 (EC) of 2003*. It lacks the resource to conduct expensive competition law litigation against international giants like Porsche.
- d. A 5 to 7 day time estimate for the main substantive hearing is ample. Whilst this is in excess of the 3-day guideline within the Tribunal Rules, it is not well beyond the guideline.
- e. The disclosure required will likely be limited to documents concerning the purposes of, operation of, and criteria for admission to the Defendants’ SDS, as well as any economic evidence or information required to facilitate the provision of expert evidence in relation to the abuse of dominance claim.
- f. The claimed relief is primarily an injunction (both interim and permanent) which limits any claim to damages and therefore the degree of disclosure and complexity of the issues to be determined.
- g. The proceedings are urgent and could be heard fairly in six months.
- h. If the Tribunal considers that the proceedings as a whole are not suitable for allocation to the FTP, the proceedings should be allocated to the FTP or the purposes of the interim-relief and ADR stages. The proceedings can be removed from the FTP subsequently should it be appropriate to do so.

66. Porsche was opposed to allocation to the FTP on the following grounds:

- a. The starting point is that this is not a case where access to justice requires allocation to the FTP. In particular, Eurospares' turnover and operating profit in 2023 and 2024 were c. [X] and [X] respectively; and its unaudited turnover for 2025 is [X]. Quite properly, there is no suggestion in its evidence that Eurospares, in any way, lacks sufficient resources robustly to litigate its claim if it were not allocated to the FTP. Nor is there any evidence that the business would face financial hardship in doing so.
- b. Eurospares is, on the contrary, a well-resourced and long established claimant which has elected to bring commercial proceedings against Porsche in respect of an issue which it says is of pressing commercial importance for its business, and is of equal importance to Porsche (in the UK and further afield).
- c. The parameters of the claim make it wholly unsuited to the FTP; it is far from the "*clear case*" for allocation envisaged in the CAT Guide. Trial length, witnesses and complexity all militate strongly against allocation to the FTP.
- d. Eurospares' claims under the Chapter I Prohibition and the Chapter II Prohibition raise complex issues of fact and law entailing factual investigations, expert economic evidence and a significant amount of disclosure. These issues include the correct definition of the relevant markets relied on by Eurospares in support of its claims, whether Porsche's SDS satisfies the *Metro* criteria, whether the SDS qualifies for exemption under the VBEO and/or the MVBEO and/or individual exemption and whether the supply of genuine branded Porsche Parts is indispensable for Eurospares to be able to compete on the downstream UK Aftermarket.
- e. The hearing of the substantive claim is likely to take 7 – 8 days. The parties are agreed that one day is required for opening and two days for closing submissions. As regards lay witnesses, Eurospares has budgeted for two witnesses and relied on the evidence of three witnesses in support of this application. Although it says it currently anticipates calling only one factual witness at trial Porsche anticipates it will need to call three to four factual witnesses to cover evidence as to the corporate

policy in respect of the SDS, the implementation of the SDS in the UK and technical matters relating to parts, including substitutability and marketing. Witness evidence will take 2.5 to 3 days. Expert industry evidence is likely to be required as to whether the repair requirement in Porsche's SDS has any role in the quality, image or branding in the sale and marketing of vehicle parts by Porsche and on matters such as the substitutability of Porsche Parts, and the importance of warranties for consumers. Expert evidence is likely to take at least 2 days.

- f. Eurospares' proposal in correspondence to have a split trial on liability as between the Chapter I and Chapter II portions of its case is impractical and would result in additional work and delay and increased costs.
 - g. Eurospares is seeking, in addition to a permanent injunction and declaratory relief, damages for loss of future profits, business goodwill and harm to business through lost investment. Damages are not generally an appropriate remedy for FTP. The damages claim is complex and will require detailed factual and expert accounting evidence.
67. In the Tribunal's view this case is not suitable for allocation to the FTP given the likely trial length. As the materials referred to at paragraphs 62-64 above make clear, the FTP is intended for relatively straightforward cases which can be fairly disposed of after a short main hearing. In *Breasley Pillows Ltd & Ors v Vita Cellular Foams (UK) Limited* [2016] CAT 8 ("*Breasley Pillows*"), a case in which the trial time estimate was two weeks, the Tribunal acknowledged that "*although three days is not an absolute limit, it should be stated emphatically that a case of such longer duration is not the kind of case that would qualify for the FTP*". In *Belle Lingerie v Wacoal Emea Ltd* [2022] CAT 22 ("*Belle Lingerie*"), it was said that, whereas three days is "*not an absolute limit*", "*it is difficult to envisage circumstances in which proceedings with a time-estimate double that provided for in the Rules would be appropriate for the FTP*".
68. The Tribunal accepts that in *Up and Running UK Ltd v Deckers* [2024] CAT 9 the Tribunal allocated a case involving alleged infringements of the Chapter I and Chapter II Prohibitions to the Fast Track on the basis that there would be a split trial in which liability, causation and the Claimant's application for an injunction were dealt with in the first trial

and the assessment of damages dealt with in a second trial. In that case, the Tribunal considered that at the first trial there would be only limited economic evidence, the real issue being a largely self-contained and relatively straightforward factual issue as to the Defendant's motivation in terminating supplies to the Claimant.

69. Eurospares did not submit at the hearing that there should be a split trial in this case and neither party suggested that the issues on liability could be largely boiled down to a straightforward question of fact. The Tribunal accepts Porsche's submission that the trial of the claims in this case is likely to take seven to eight days. This time estimate is well beyond the two to three day estimate in the Rule 58(3) of the Tribunal Rules. Consistently with the dicta in *Breasley Pillows* and *Belle Lingerie*, the excess of the estimated trial length over the guideline time estimate, if not in itself fatal to the application for allocation to the FTP, is a strong indicator that allocation to the FTP would be inappropriate. The fact that Eurospares is a SME, with far more limited financial resources than those of Porsche, does not make an otherwise unsuitable case suitable for allocation to the FTP. The discrepancy in the parties' financial resources may, however, be relevant to the question of cost management which is addressed later in this judgement. No useful purpose would be served by making a provisional allocation of the case to the FTP to cover the interim relief application and ADR.
70. It should be emphasised that the FTP is intended for relatively straightforward cases. A claimant intending to take advantage of the FTP may need to put its claim on a narrower footing, both in terms of the legal grounds and the remedies sought, than it would do if it was pursuing the claim under the Tribunal's standard procedures. This may be the only way of ensuring that the claim can be accommodated within the short trial length which is a central feature of the FTP.
71. Notwithstanding our decision not to allocate the case to the FTP, the proceedings are urgent and should be resolved expeditiously. A refusal to allocate proceedings to the FTP "*does not, however, prevent the Tribunal from robustly case managing these proceedings to ensure an efficient procedure and the minimisation of costs*" as Bacon noted in *Rest & Play Footwear Ltd v George Rye & Sons Ltd* [2021] CAT 18. We understand that the Tribunal could accommodate a hearing in December 2025 or January 2026 and we expect the parties to cooperate in agreeing directions to that end. That should not preclude attempts

in the meantime to settle the dispute through ADR which has been proposed by Eurospares.

J. COSTS MANAGEMENT

72. Rule 53 of the Tribunal Rules provides, so far as is relevant for present purposes, that:

“(1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) or such other directions as it thinks fit to secure that the proceedings are dealt with justly and at proportionate cost.

(2) The Tribunal may give directions—

...

(m) for the costs management of proceedings, including for the provision of such schedules of incurred and estimated costs as the Tribunal thinks fit;

73. In *Belle Lingerie* the Tribunal held, by analogy with CPR r.3.19 that the Tribunal has the power to give directions for costs management including a cost-order limiting the amount of future costs which a party may recover pursuant to an order for costs subsequently made. Rule 3.19 provides, so far as is relevant for present purposes:

(5) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if –

- (a) it is in the interests of justice to do so;
- (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
- (c) it is not satisfied that the risk in subparagraph (b) can be adequately controlled by case management directions or orders made under this Part; and
- (d) detailed assessment of costs.

(6) In considering whether to exercise its discretion under this rule, the court will consider all the circumstances of the case, including –

- (a) whether there is a substantial imbalance between the financial position of the parties;
- (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
- (c) the stage which the proceedings have reached; and
- (d) the costs which have been incurred to date and the future costs.

74. Cost capping orders were made in the Tribunal in *Socrates* and in *Meigh v Prinknash*

Abbey Trustees Registered [2019] CAT 14 both of which were FTP cases. Cost-capping was refused in *Belle Lingerie*, which was not a FTP case.

75. Eurospares submits that the Tribunal should make costs management directions, including a cost-capping order, so as to ensure that, notwithstanding the difference in their respective financial means, the parties are able to participate fairly and on equal footing in the proceedings. Porsche opposed any cost management on the basis that (i) Eurospares is a profitable and well-resourced medium sized enterprise with sufficient resources to conduct the litigation and (ii) the Tribunal has substantial powers to ensure that the proceedings are conducted proportionately and cost effectively without resort to cost management.
76. The Tribunal considers that there should be costs management directions and is provisionally of the view that a cost capping order would be appropriate having regard to the substantial imbalance between the parties' respective financial position and the potential for the costs to become unaffordable for Eurospares. The parties should agree on directions for a timetable for the exchange of up to date cost schedules, which will then be considered by the Tribunal.

K. DISPOSITION

77. For the reasons set out above:
 - a. The Tribunal grants (i) Eurospares' application for an interim injunction pending determination of its claim seeking to prohibit Porsche from ceasing or refusing to supply Eurospares with Porsche Parts; and (ii) Eurospares' application for costs management.
 - b. The Tribunal refuses Eurospares' application for allocation of the case to the FTP.
78. This decision is unanimous.

Andrew Lenon KC

Robert Herga

Greg Olsen

Charles Dhanowa, CBE, KC (Hon)
Registrar