



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1339/7/7/20

BETWEEN:

MARK MCLAREN CLASS REPRESENTATIVE LIMITED

Joint Applicant and Class Representative

-and-

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

Non-Settling Defendants

(12) COMPANIA SUD AMERICANA DE VAPORES S.A.

Joint Applicant and Defendant

COLLECTIVE SETTLEMENT APPROVAL ORDER

UPON the making of an order dated 20 May 2022, pursuant to section 47B of the Competition Act 1998 (the “**1998 Act**”) and Rules 77 and 80 of the Tribunal Rules, that Mark McLaren Class Representative Limited (the “**Class Representative**”) be authorised to act as class representative to continue collective proceedings on an opt-out basis (the “**CPO**”)

AND UPON the CPO specifying a deadline of 12 August 2022 by when (i) persons satisfying the class definition who are domiciled within the UK on 20 May 2022 must notify an intention to opt out and (ii) persons satisfying the class definition who are domiciled outside the UK must notify an intention to opt in

AND UPON the Class Representative and the Twelfth Defendant, Compañía Sud Americana de Vapores S.A. (“CSAV”), reaching a settlement in principle on 19 July 2023

AND UPON the Class Representative and CSAV having finalised the terms of their proposed settlement agreement on 27 September 2023 (the “**Proposed Collective Settlement**”)

AND UPON the Class Representative and CSAV making a joint application dated 6 October 2023, pursuant to Rule 94 of the Tribunal Rules, for a collective settlement approval order (the “**CSAO Application**”)

AND UPON the Class Representative making an application dated 18 October 2023 for an order that part of the damages paid to it by CSAV be used to cover 1.7% of the Class Representative’s relevant costs, fees and disbursements (the “**Related Costs Application**”)

AND UPON the Tribunal making directions for the Class Representative and the First to Eleventh Defendants to make submissions on the Class Representative’s funding arrangements in the light of the judgments of the Supreme Court in *R (oao PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28; [2023] 1 WLR 2594 and of the Tribunal in *Alex Neill Class Representative Ltd v Sony Interactive Entertainment Europe Ltd* [2023] CAT 73 (the “**Funding Matters**”)

AND UPON the Tribunal considering the joint CSAO Application, the terms of the Proposed Collective Settlement and the supporting evidence, written submissions for the Class Representative and CSAV (jointly) and for the First to Eleventh Defendants (the “**Non-Settling Defendants**”), and oral submissions from Sarah Ford KC for the Class Representative, Sarah Abram KC for CSAV and Mark Hoskins KC for the Non-Settling Defendants at an in-person hearing on 6 December 2023

AND UPON the Tribunal considering the terms of a letter dated 6 December 2023 regarding the operation of the ‘reverter’ mechanism proposed in the Proposed Collective Settlement

AND UPON the Class Representative undertaking to make further amendments to its Re-Amended Collective Proceedings Claim Form so as to reduce the damages sought from the Non-Settling Defendants by 1.7% of the total liability of all the Defendants to these collective proceedings

AND UPON the Class Representative, CSAV and the Non-Settling Defendants reaching agreement in the terms recorded at paragraphs 13 to 15 below

AND UPON the Tribunal being satisfied that the terms of the Proposed Collective Settlement are just and reasonable

IT IS ORDERED THAT:

Approval of the Proposed Collective Settlement

1. Pursuant to section 49A(5) of the 1998 Act, the Proposed Collective Settlement is approved in the terms of the settlement agreement between the Class Representative and CSAV which was exhibited to the second witness statement of Mr Mark McLaren and is annexed to this Order (the “**Collective Settlement**”).

The Damages Sum

2. Pursuant to the Collective Settlement, and within 28 days of this Order, CSAV shall pay to the Class Representative £1,120,000 in full and final settlement of the claims for damages as against CSAV in these collective proceedings (the “**Damages Sum**”).
3. The Damages Sum shall be held in an escrow account until further order (and, in any event, until final determination of the Funding Matters (including any appeal)) in accordance with the arrangements described at paragraphs 89 and 90 of the fourth witness statement of Ms Belinda Hollway of Scott+Scott UK LLP, solicitors for the Class Representative.

Stay of collective proceedings against CSAV

4. These collective proceedings against CSAV shall be stayed upon the terms of the Collective Settlement, except for the purpose of enforcing those terms.

Opting out and opting in

5. The decision of the Tribunal as to the time and manner by when (i) represented persons domiciled in the UK on a domicile date to be specified may opt out of the Collective Settlement and (ii) represented persons not domiciled in the UK on that domicile date may opt into the Collective Settlement, shall be deferred until further order.

Notification

6. The Class Representative is to publicise this order using a notice approved by the Tribunal and in accordance with the proposal set out in the evidence in support of the CSAO Application.

Costs

7. Pursuant to the Collective Settlement, and within 28 days of this Order, CSAV shall pay the Class Representative:
 - (a) £280,000 in respect of CSAV's share of the Class Representative's costs of these proceedings (excluding any costs awards already made and settled between the Class Representative and CSAV and/or the other Defendants); and
 - (b) £100,000 by way of contribution to the Class Representative's costs of this CSAO Application or, in the event that such costs are less than £100,000, as an additional payment towards the Class Representative's costs falling within paragraph 7(a) above.
8. The £280,000 paid in accordance with paragraph 7(a) above shall be held in escrow and unallocated pending determination of the Related Costs Application.
9. As between the Class Representative and the Non-Settling Defendants, there be no order as to costs in relation to this CSAO Application.

General

10. There be liberty for each party to the Collective Settlement to apply to the Tribunal for purpose of enforcing the terms of the Collective Settlement without the need to bring a new claim.

11. There be liberty for the Class Representative and any represented person to apply in respect of paragraphs 3 and 5 of this Order.
12. There be liberty to apply in relation to the Class Representative's funding.

IT IS FURTHER ORDERED BY CONSENT THAT:

13. The Non-Settling Defendants shall not claim contribution from CSAV.
14. In the event that the Tribunal determines that CSAV's proportionate liability for damages in relation to these collective proceedings is a sum greater than 1.7% of the total liability of all Defendants (the "**Higher Proportionate Share**") then the damages which the Class Representative seeks from the Non-Settling Defendants will be further reduced by the difference between 1.7% and the Higher Proportionate Share.
15. CSAV shall not claim contribution from the Non-Settling Defendants.
16. The Non-Settling Defendants undertake not to appeal this Order.

Hodge Malek KC

Chair of the Competition Appeal Tribunal

Made: 6 December 2023

Drawn: 11 December 2023

ANNEX

COLLECTIVE SETTLEMENT AGREEMENT

BETWEEN

MARK MCLAREN CLASS REPRESENTATIVE LIMITED

AND

COMPANIA SUD AMERICANA DE VAPORES S.A.

DATED

27 SEPTEMBER 2023



27 September 2023

MARK McLAREN CLASS REPRESENTATIVE LIMITED

and

COMPAÑÍA SUD AMERICANA DE VAPORES S.A.

SETTLEMENT AGREEMENT

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THIS AGREEMENT is dated **27 September** 2023

BETWEEN

- (1) **Mark McLaren Class Representative Limited**, a company incorporated in England and Wales, with registered number 12449867 and whose registered address is at c/o Scott+Scott UK LLP, St Bartholomew House, 90-94 Fleet Street, London, England, EC4Y, for and on behalf of the Class, as defined in Annex 1 to this agreement (**McLaren**); and
- (2) **Compañía Sud Americana de Vapores S.A.**, a company incorporated in Chile, with company number 90160000-7 and whose registered office address is at Avenida Apoquindo 2827, 14th Floor, PC 7550268, Las Condes, Santiago, Chile (**CSAV**)

(together, McLaren and CSAV are the **Parties**).

WHEREAS

- (A) On 21 February 2018, the European Commission issued an infringement decision in Case AT.40009 – *Maritime Car Carriers* (the **Decision**), finding that there was a cartel in the market for deep sea carriage services on routes to and/or from the European Economic Area, which operated between 18 October 2006 and 6 September 2012 (the **Cartel**). CSAV was an addressee of the Decision (which the Parties refer to for its true meaning and effect).
- (B) On 21 February 2020, McLaren filed an application against CSAV and other defendants/respondents in the Competition Appeal Tribunal (the **Tribunal**), for a collective proceedings order pursuant to section 47B of the Competition Act 1998 and Rules 79 and 80 of the Competition Appeal Tribunal Rule 2015 (the **Tribunal Rules**), seeking to represent, on an opt-out basis, a class of natural and legal persons which McLaren alleges were harmed by the Cartel.
- (C) By order dated 20 May 2022, the Tribunal authorised McLaren to act as class representative to continue collective proceedings on an opt out basis, and certified the claims for loss and damages suffered by the Class (as defined in Annex 1 to this agreement) as a result of the Cartel (the **Collective Proceedings**) as eligible to be included in collective proceedings. The Tribunal's decision was upheld by the Court of Appeal on 21 December 2022 and the Supreme Court refused permission to appeal. CSAV had not opposed McLaren's application to act as class representative.
- (D) CSAV denies all and any liability to the Class (as defined in Annex 1 to this Agreement) and, in particular, that the conduct in the Decision as it relates to CSAV has caused loss or damage to the Class.
- (E) On 8 March 2023, CSAV filed a preliminary issue (**Preliminary Issue**) application in the Tribunal regarding the extent of its joint and several liability towards the Class.

- (F) In that context, CSAV and McLaren have engaged in arm's-length negotiations to settle the Collective Proceedings against CSAV.
- (G) In order to dispose of the Collective Proceedings against CSAV, considering, among other things, the potential and inherent legal risk associated with the Collective Proceedings against CSAV and the wish to avoid unnecessary legal and other costs, the Parties have agreed to terms for the full and final settlement of the Collective Proceedings as against CSAV, and wish to record those terms of settlement in this Agreement on a binding basis, subject to the Tribunal approving the settlement and making a collective settlement approval order in accordance with Rule 94 of the Tribunal Rules.
- (H) Such agreement involves the payment by CSAV to the Class of a Settlement Sum (as defined in Clause 1 below) in consideration of certain waivers, releases, covenants and other promises to be given by McLaren and pursuant to Rule 94 of the Tribunal Rules.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration provided in this Agreement, the receipt and sufficiency of which are hereby acknowledged, THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

1. Definitions and interpretation

Definitions

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

Agreement means this present agreement;

Approval Application means the application for a collective proceedings approval order made by the Parties to the Tribunal pursuant to Rule 94(3) of the Tribunal Rules, as amended from time to time;

Class has the meaning given to it in paragraph 4 of the Order of Mrs Justice Falk DBE dated 20 May 2022, set out in Annex 1 to this Agreement for ease of reference;

Collective Proceedings has the meaning given to it in Recital (C) of this Agreement;

Collective Settlement Approval Order means the order made pursuant to Rule 94(8) of the Tribunal Rules further to the Approval Application or any Further Approval Application, as the context requires;

CSAV Released Parties means any natural or legal entity deemed to be part of the CSAV "undertaking" as that term is defined under the Competition Act 1998 and also includes CSAV and its assigns (including Hapag-Lloyd AG and its affiliates with respect to any liability assumed as a result of its merger with CSAV—i.e., for conduct relating to the Maritime Car Carriers Cartel prior to 2 December 2014 by any former CSAV affiliate that became part of Hapag-Lloyd as a result of the 2 December 2014 merger), successors or predecessors in interest, parent entities, business units, business divisions, majority or wholly-owned subsidiaries, and each and all of the current and former officers,

directors, employees, attorneys, stockholders, principals, managers, partners, members, owners, investors, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, insurers, engineers, advisors, heirs, executors, trustees, agents, representatives, estates, administrators of any of the foregoing, and each of their respective predecessors, successors, heirs and assigns. The CSAV Released Parties also includes the following joint ventures in which CSAV was or is a joint venturer: Compania Naviera Rio Blanco S.A. (Chile), Five Continents Navigation S.A. (Panama), North Trade Shipping Co. Inc. (Marshall Islands), South Trade Shipping Co. Inc. (Marshall Islands), Pacific Rider Shipping Co. S.A. (Marshall Islands), and Pacific Winner Shipping Co. S.A. (Marshall Islands);

Damages Sum means £1,120,000 (one million one hundred and twenty thousand pounds) of damages, payable to McLaren on behalf of the Class;

Decision has the meaning given to it in Recital (A) of this agreement;

Defendants means the Defendants to the Collective Proceedings, including CSAV;

Distribution Application has the meaning given to it in clause 4.3 of this agreement;

Distribution Sum means the Damages Sum and/or any further sums received from further settlements and/or damages awarded if McLaren is successful at trial against some or all of the Non-Settling Defendants, less any deduction for costs, fees and disbursements;

Funder means Woodsford Group Limited;

Further Approval Application has the meaning given to it in clause 5.3(b) of this agreement;

Non-Settling Defendants means Defendants to the Collective Proceedings, other than CSAV;

Notice and Distribution Plan means the notice and distribution plan at Appendix 1 to Exhibit MM1.4, exhibited to the First Witness Statement of Mark McLaren dated 18 February 2020;

Represented Person means any member of the Class who was domiciled in the United Kingdom on 22 May 2022 and who has not opted out pursuant to Rule 82(1)(b)(i) of the Tribunal Rules, or who does not opt out pursuant to Rule 94(10)(b), and any member of the Class who was not domiciled in the United Kingdom on 22 May 2022 but who has opted in pursuant to Rule 82(1)(b)(ii) of the Tribunal Rules;

Reverter means an amount up to the Damages Sum or the remainder of the Distribution Sum after distribution, whichever is smaller, which may revert back to CSAV, as set out in paragraph 4.5 below;

Settlement Sum means £1,500,000 (one million five hundred thousand pounds);

Tribunal has the meaning given to it in Recital (B) of this Agreement;

Tribunal Rules has the meaning given to it in Recital (B) of this Agreement; and

Tribunal Guide means the Competition Appeal Tribunal Guide to Proceedings 2015.

Interpretation

1.2 Unless the context otherwise requires:

- (a) the headings in this Agreement are for ease of reference only and do not affect its interpretation;
- (b) a reference to “including” or “includes” does not limit the scope of the words preceding it;
- (c) the singular includes the plural and vice versa;
- (d) references to sub-clauses or clauses are to sub-clauses or clauses of this Agreement; and
- (e) references to legislation include any modification or re-enactment thereof.

2. Terms of settlement

2.1 The Parties agree that in full and final settlement of the Collective Proceedings as against CSAV, subject to the Tribunal making a Collective Settlement Approval Order, CSAV shall pay McLaren on behalf of the Class, a total of £1,500,000 (one million five hundred thousand pounds) (the **Settlement Sum**).

2.2 The Settlement Sum will comprise:

- (a) the Damages Sum;
- (b) £100,000 (one hundred thousand pounds) by way of contribution to McLaren’s costs of the Approval Application, or in the event that such costs are less than £100,000, in additional settlement of CSAV’s share of the costs of Collective Action in accordance with Clause 2.2(c) below; and
- (c) £280,000 (two hundred and eighty thousand pounds) in full and final settlement of CSAV’s share of the costs of the Collective Action excluding any costs awards already made and settled between the Parties and/or the Defendants.

2.3 CSAV, or its solicitors, shall pay the Settlement Sum, within 28 (twenty-eight) days of the Tribunal making the Collective Settlement Approval Order by wire transfer, without deduction, to the following bank account:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 2.4 CSAV will, through its solicitors, provide electronic evidence of payment of the Settlement Sum to McLaren's solicitors, Scott+Scott UK LLP (such evidence to be sent to: bhollway@scott-scott.com; dcampbell@scott-scott.com and rmanson@scott-scott.com).
- 2.5 In consideration of payment of the Settlement Sum, McLaren agrees, as far as it is legally able to and subject to the Tribunal making the Collective Settlement Approval Order, that McLaren, in its own capacity and/or on behalf of Represented Persons or other members of the Class will not seek and irrevocably waives all of its/their rights:
 - (a) against CSAV and CSAV Released Parties, any claim(s) in connection with or relating to CSAV's conduct as set out in the Decision, as set out in greater detail in clause 8 below; and
 - (b) against any of the Non-Settling Defendants, any claim(s) in connection with or relating to CSAV's liability, or CSAV Released Parties' liability, for the conduct as set out in the Decision.
- 2.6 Subject to the Tribunal making the Collective Settlement Approval Order, CSAV agrees that it shall have no right to claim recovery whether from McLaren, Represented Persons or the Funder, of any of its costs incurred or to be incurred in relation to the Collective Proceedings or any related proceedings including, but not limited to, the costs of the Approval Application and any Further Approval Application, or repayment of costs already paid to McLaren over the course of Proceedings.
- 2.7 Save to the extent that CSAV chooses to make written or oral submissions, subject to the payment of the Settlement Sum, McLaren agrees that it shall have no right to claim recovery from CSAV and CSAV Released Parties of any of its costs incurred or to be incurred in relation to the Collective Proceedings or any related proceedings. In the event that CSAV does choose to make written or oral submissions in any application, it shall bear the potential costs and adverse costs risk of doing so.

3. **Barring provision**

- 3.1 The Parties agree that CSAV's highest estimated share on the relevant market during the relevant period was 1.7%, based on the value of sales in Recital 106 to the (non-confidential) Decision and other publicly available information at exhibit TR19 to TR32 of the First Expert Report of Tom Robinson dated 20 February 2023 (the **Percentage Market Share**). The Parties further agree that, subject to any judgment, order or indication from the Tribunal prior to the making of a Collective Settlement Approval Order that it does not agree that this is the correct approach, the Percentage Market Share is an appropriate basis on which to determine CSAV's share of the Defendants' collective liability to the Class.
- 3.2 Subject to this Agreement and the Tribunal making a Collective Settlement Approval Order, McLaren agrees to exclude the Percentage Market Share from the total value of commerce relevant to the Collective Proceedings, and the damages which McLaren seeks from the Non-Settling Defendants will be reduced accordingly.
- 3.3 As part of the Approval Application the Parties will jointly ask the Tribunal to impose:

- (a) a barring provision along the lines of that referred to at paragraph 6.131 of the Tribunal Guide which will prevent the Non-Settling Defendants from claiming contribution from CSAV, or CSAV Released Parties, including if the Tribunal were subsequently to determine that CSAV was liable to the Class for a greater share of the damages caused to the Class than the Percentage Market Share basis described at clause 3.1 above; and
- (b) a provision pursuant to which the Non-Settling Defendants will be prevented from subsequently arguing that CSAV, or CSAV Released Parties, were responsible for a greater proportion of the harm done to the Class than the Percentage Market Share and/or that McLaren has settled a portion of the Collective Proceedings greater than the Percentage Market Share

(together, the **Barring Provision**).

4. Distribution and reversion

- 4.1 McLaren confirms that, by this Agreement, CSAV is the first Defendant to settle in the Collective Proceedings.
- 4.2 The Parties agree that, subject to any deduction for costs, fees and disbursements approved by the Tribunal, the Damages Sum shall be held in escrow until the conclusion of the Collective Proceedings or such other time as McLaren considers it economical, proportionate and in the interests of the Class to seek to distribute it, and the Tribunal approves McLaren's Distribution Application.
- 4.3 McLaren shall in due course make an application seeking the Tribunal's approval to distribute the Damages Sum, less any deduction for costs, fees and disbursements approved by the Tribunal, to Represented Persons in accordance with a distribution plan prepared by McLaren in conjunction with a claims administrator and in a manner in which McLaren considers to be just and reasonable (the **Distribution Application**). McLaren's main objective will be to make as many Represented Persons as possible aware of their right to a share of the Distribution Sum and to encourage them to come forward to claim their share of the Distribution Sum.
- 4.4 McLaren shall provide CSAV with notice of the Distribution Application and any future applications relating to the treatment of the Settlement Sum (including, but not limited to distribution to class members, payment of costs, fees and disbursements, and treatment of any residual Damages Sum following distribution).
- 4.5 To the extent that any of the Distribution Sum remains after distribution, and after any other payments directed by the Tribunal, McLaren will seek a direction from the Tribunal that the Damages Sum or the remainder of the Distribution Sum, whichever is lower, will revert back to CSAV by way of the process envisaged in the final subparagraph of paragraph 6.125 of the Tribunal Guide (the **Reverter**).
- 4.6 In the event that McLaren agrees provisions that are similar in form or effect to those set out in paragraph 4.5 above with any of the Non-Settling Defendants, McLaren agrees that CSAV will receive the Reverter in full on a 'first in last out' basis, not pro-rated with the entitlement of any of the Non-

Settling Defendants (i.e. CSAV would be entitled to be paid the Reverter before the payment of any subsequent reversion(s) agreed in any future settlement(s) with any or all Non-Settling Defendant(s)).

4.7 By way of illustration only:

Example 1:

- The Distribution Sum is £100 million;
- £90 million is distributed (whether directly to the Class or otherwise as directed by the Tribunal following the Distribution Application), meaning £10 million of the Distribution Sum remains after distribution;
- The remainder of the Distribution Sum is £10 million and the Damages Sum is £1.12 million meaning the Damages Sum is the lower; therefore
- CSAV will receive the Damages Sum (£1.12 million) by way of reversion; and
- The remaining £8.88 million of the Distribution Sum shall be considered 'undistributed' for the purposes of Rule 93 of the Rules and paragraphs 6.87 to 6.90 (including footnote 70), 6.98 and 6.125 of the Guide, subject to any reversion provisions in any future settlement(s) with any Non-Settling Defendants.

Example 2:

- The Distribution Sum is £100 million;
- £99 million is distributed (whether directly to the Class or otherwise as directed by the Tribunal following the Distribution Application), meaning £1 million remains after distribution;
- The remainder of the Distribution Sum is £1 million and the Damages Sum is £1.12 million meaning the remainder of the Distribution Sum is the lower; therefore
- CSAV will receive £1 million by way of reversion; and
- None of the Distribution Sum shall be considered 'undistributed' for the purposes of Rule 93 of the Rules and paragraphs 6.87 to 6.90 (including footnote 70), 6.98 and 6.125 of the Guide.

4.8 For the avoidance of doubt, any terms of this Agreement relating to the Reverter will only be enforceable following the Tribunal's approval of the reversion mechanism set out in this agreement.

5. Collective settlement approval order

5.1 Without prejudice to the specificity of Clauses 5.2 to 5.6 below, at any time after the date of this Agreement the Parties shall execute such documents and do any such other acts and things as may be required for the purposes of giving full effect to the provisions of this Agreement.

5.2 The Parties shall work together, in good faith, to prepare and file a joint Approval Application.

5.3 In the event that any part of the Approval Application is unsuccessful:

- (a) the Parties agree that they shall be severally liable in equal share for any adverse costs awarded in relation to the Approval Application, whether in favour of any of the Non-Settling Defendants, one or more Represented Persons who make submissions in accordance with Rule 94(7) of the Tribunal Rules, or any other party;
- (b) the Parties shall negotiate in good faith to prepare a further joint approval application, taking account of any judgments or obiter comments from the Tribunal, such that a collective settlement approval order will be made which, as far as possible, reflects the terms and spirit of this agreement (the **Further Approval Application**); and
- (c) if, negotiating in good faith, the Parties cannot agree a Further Approval Application on terms acceptable to both parties, the terms of this Agreement shall not be binding on either Party, save in respect of Clauses 14 and 17 below, which shall continue in full force and effect.

5.4 In the event that the Further Approval Application is unsuccessful:

- (a) the Parties agree that they shall be severally liable in equal share for any adverse costs awarded in relation to the Further Approval Application, whether in favour of any of the Non-Settling Defendants, one or more Represented Persons who make submissions in accordance with Rule 94(7) of the Tribunal Rules, or any other party; and
- (b) unless otherwise agreed in writing, the terms of this Agreement shall not be binding on either Party, save in respect of Clauses 14 and 17 below, which shall continue in full force and effect.

5.5 If more than one Further Approval Application is needed, the Parties agree that the Clauses 5.3 and 5.4 above shall apply to the preparation of additional Further Approval Applications, *mutatis mutandis*.

5.6 The Parties note Rule 94(15) of the Tribunal Rules and agree that, in the event that the Approval Application or any Further Approval Application is unsuccessful such that this Agreement is rendered not binding in accordance with Clause 5.4(b) above, the Parties shall not rely on or refer to at trial the existence, terms, form or content of this Agreement, the Approval Application and/or any Further Approval Application(s), and all prior or future negotiations in relation thereto, unless otherwise agreed in writing, save in respect of claims for costs.

6. Application in relation to costs, fees and disbursements

6.1 For the purposes of satisfying Rule 94(9)(a) of the Tribunal Rules insofar as it concerns provisions of the settlement which relate to costs, fees and disbursements, McLaren shall file a separate application relating to costs, fees and disbursements (the **Costs Application**), which shall include any proposal in relation to Stakeholder Proceeds, as defined in Clause 1.42 of the Litigation Funding Agreement between McLaren and the Funder dated 18 February 2020.

6.2 The Parties agree that CSAV shall have no liability for the costs of or arising from the Costs Application. The Parties further agree that CSAV shall not make any written or oral submissions in relation to

Stakeholder Proceeds or the payment of costs, fees and disbursements at or in advance of the Costs Application, unless directed to do so by the Tribunal.

7. Stay of the Collective Proceedings

- 7.1 As far as is possible without order from the Tribunal, the Parties agree that any actual and potential deadlines regarding CSAV in the Collective Action, whether substantive or procedural, and whether set out in an order or in accordance with the Tribunal Rules, the Tribunal Guide, or any other Practice Direction, shall be suspended from the point of signing of this Agreement. Upon signing of this Agreement, the Parties shall work together to agree, and take all necessary steps to obtain a consent order to be filed at the Tribunal. The consent order will include a request formally to stay the Collective Proceedings as against CSAV.
- 7.2 Paragraph 7.1 above shall not apply to any orders relating to the Approval Application, the Distribution Application or any other applications relating to the Proposed Settlement.

8. Release and waiver

- 8.1 Subject to the Tribunal making the Collective Settlement Approval Order, as far as McLaren is legally able to, the Parties agree that the settlement set out in this Agreement is in full and final settlement of all and/or any actual or potential actions, claims, counterclaims, rights of set-off, indemnity, cause of action, right or interest (including interest and costs) which any Represented Person may have against CSAV or CSAV Released Parties in relation to the conduct as set out in the Decision, however and whenever arising, whether or not already known to the Represented Person, in whatever jurisdiction, whether in a court, tribunal and/or in arbitration, including (but not limited to) any claims for costs, or for account of profits, or for damages of any kind – including compensatory damages, punitive damages, treble damages, restitution, disgorgement, interest, costs and penalties – and whether on the basis of contract, equity, tort, restitution or unjust enrichment, and/or under antitrust or competition laws, or otherwise.
- 8.2 CSAV agrees that as part of its full and final settlement with McLaren, neither McLaren nor the Funder will have any liability in respect of any of CSAV's costs in the Collective Proceedings pursuant to any judgment, order, award and/or cost certificate of a competent court or tribunal made in the Collective Proceedings, and CSAV shall not be entitled to make any claim in relation to such costs against McLaren and/or the Funder, whether pursuant to the costs undertaking entered into between the Funder and the Defendants dated 12 April 2021 or otherwise.
- 8.3 For the avoidance of doubt, full and final settlement with CSAV and the release of CSAV Released Parties is not intended to and does not release any of the Non-Settling Defendants from any actual or potential actions, claims, counterclaims, rights of set-off, indemnity, cause of action, right or interest (including interest and costs) which any Represented Person may have against the Non-Settling Defendants, save to the extent that the Percentage Market Share is excluded from the total value of

commerce relevant to the Collective Proceedings and the damages which McLaren seeks from the Non-Settling Defendants are reduced accordingly pursuant to clause 3.2 above.

9. Agreement not to sue

9.1 Each Party agrees not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other Party (or the CSAV Released Parties) or the Funder any action, suit or other proceeding concerning the conduct as set out in the Decision, in this jurisdiction or any other, save for the purposes of enforcing this Agreement.

10. No admission

10.1 The Parties agree that the Agreement is entered into without any admission of liability by CSAV and that CSAV denies that any members of the Class or any other person have suffered any loss or damages as a result of any anti-competitive behaviour in connection with the Cartel.

10.2 The Parties also agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against CSAV or evidence of the truth of any of McLaren's allegations against CSAV.

11. Effect of this agreement

11.1 The Parties agree that this Agreement shall immediately be fully and effectively binding upon them.

11.2 In the event that the Tribunal refuses the Approval Application, the Parties shall use their best endeavours, acting in good faith, to resolve or address any concerns which the Tribunal expresses, before filing a Further Approval Application seeking a Collective Settlement Approval Order.

11.3 Should the Tribunal refuse to make a Collective Settlement Approval Order on terms acceptable to the Parties, this Agreement shall cease to be binding in accordance with Clauses 5.5 and 5.6 above. For the avoidance of doubt, McLaren's claim against CSAV and CSAV's application for a Preliminary Issue would continue as if this Agreement had never been entered into.

12. Entire agreement

12.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on any oral or written representation, warranty, or other assurance other than as expressly set out in this Agreement and waives all rights and remedies which might otherwise be available to it in respect thereof, provided always that nothing in this paragraph limits or excludes any liability for fraud.

13. Tax

13.1 Each party shall account solely for its compliance with its own tax liabilities and/or obligations arising from the Agreement.

14. Confidentiality

- 14.1 The Parties agree that this Agreement will form part of the joint Approval Application which will be filed at the Tribunal, served on the Non-Settling Defendants, and made available to Represented Persons (and their legal advisors or representatives) on request.
- 14.2 Unless otherwise stipulated in this agreement or ordered by the Tribunal, the substance of all negotiations in connection with this Agreement are confidential to the Parties, their advisers and the Funder, who shall not disclose them to or otherwise communicate them to, any third party without the written consent of the other Party other than:
- (a) to the extent that they form part of the Approval Application or evidence filed in support thereof;
 - (b) to the Parties' respective board members, auditors, accountants, insurers, lawyers and other professional advisors on terms which preserve confidentiality;
 - (c) to the Parties' relevant tax authorities;
 - (d) pursuant to an order of a court of competent jurisdiction other than the Tribunal, or pursuant to any proper Order or demand made by a competent authority, a tax authority or body where they are under a legal order or regulatory obligation to make such a disclosure; or
 - (e) as far as necessary to implement and enforce any of the terms of this Agreement against, including, but not limited to, the Non-Settling Defendants with regard to the defence against contribution claims.
- 14.3 In the case of a subpoena or court order or other third party legal request seeking or purporting to require access to this Agreement or information as to the substance of negotiations in connection with this Agreement (a **Disclosure Request**), the Parties agree to notify each other promptly upon receipt of the Disclosure Request and to provide to the other Party a copy of the subpoena, court order or request, provided that such notification is not otherwise prohibited by law. The Parties agree to use reasonable endeavours to cooperate with each other to prevent or limit the disclosure of the substance of negotiations in connection with this Agreement (including any drafts) or any parts of it and to provide each other with a reasonable opportunity to take action to prevent production of the substance of negotiations in connection this Agreement or disclosure of any confidential information relating to this Agreement or to ensure that any such production or disclosure should be subject to appropriate confidentiality restrictions.
- 14.4 If applicable and in accordance with this Agreement, the Parties shall agree non-confidential versions of this Agreement, the Approval Application and any evidence filed in support of the Approval Application, for service on the Non-Settling Defendants or production to Represented Persons (and their legal advisors or representatives) in accordance with Clause 14.1 above or for any other purpose, including but not limited to responses to requests pursuant to paragraph 9.64 of the Tribunal Guide.

14.5 It shall not be a breach of this Clause 14.2 for the Parties to publicise, including for the purposes of satisfying McLaren's notice requirements and wider duties to the Class, that McLaren has settled the Collective Proceedings as against CSAV, subject to the Tribunal's approval (if applicable). The Parties may publicise and/or confirm:

- (a) the existence of this Agreement;
- (b) the Settlement Sum and related provision as to the payment of costs, fees and disbursements;
- (c) the Barring Provision;
- (d) the Reverter;
- (e) the implications for Represented Persons and their ability to opt-out of the Collective Settlement; and
- (f) any other facts or terms which the Tribunal directs.

14.6 As part of the Approval Application, the Parties shall agree wording for a notice of application for a collective settlement approval order in accordance with Rule 94(4)(f) of the Tribunal Rules (the **Application Notice**), and a notice of collective settlement approval in accordance with Rule 94(13) of the Tribunal Rules (the **Approval Notice**). Subject to any amendments by the Tribunal, McLaren shall publicise the Application Notice and the Approval Notice in accordance with the Notice and Distribution Plan.

15. Severability

15.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted, while the remaining provisions of this Agreement shall continue in full force and effect. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

16. Counterparts

16.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

17. Jurisdiction and applicable law

17.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

17.2 The English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement, including disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement; and (ii) any non-contractual obligations arising out of or in connection with this

Agreement. For such purpose, each Party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

18. Alterations and amendments

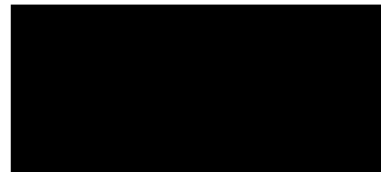
18.1 Any alteration of or amendment to this Agreement shall be in writing and signed by or on behalf of each Party. This requirement of written form shall also apply to any amendment to or waiver of the requirement of written form as stipulated in the present provision.

19. Authority

19.1 The Parties to this Agreement expressly represent and warrant that the execution and performance of, and compliance with, their respective obligations under this Agreement is fully authorised by each of them and that the persons executing the Agreement have the necessary authority to do so.

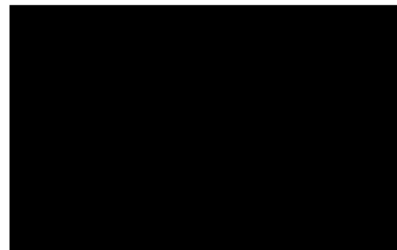
This agreement has been entered into on the date stated at the beginning of it.

Signed by Mark McLaren for
and on behalf of Mark McLaren
Class Representative Limited



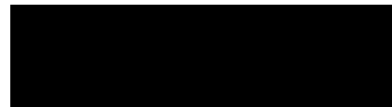
Director

Signed by Óscar Hasbún, for
and on behalf of Compañía Sud
Americana de Vapores S.A.



CEO

Signed by Roberto Larraín, for
and on behalf of Compañía
Sud Americana de Vapores
S.A.



CFO

Annex 1

The **Class** means:

All Persons (other than Excluded Persons) who during the period 18 October 2006 to 6 September 2015 either Purchased or Financed, in the United Kingdom, a New Vehicle or a New Lease Vehicle, other than a New Vehicle or New Lease Vehicle produced by an Excluded Brand or, in the event such a Person has died on or after 20 February 2020, their Personal Representative.

For these purposes:

Cars means motorised four wheel vehicles including people carriers, 4x4s and SUVs, and all motorised passenger carrying vehicles that can carry no more than eight passengers (excluding the driver).

Contract Hire Arrangement means a lease agreement under which the lessee pays a deposit followed by a fixed monthly amount for the use of a vehicle, and where, at the end of the term the lessee returns the vehicle to the lessor.

Excluded Brands / Manufacturers means Abarth; Aixam; Alfa Romeo; Aston Martin; Audi; Bentley; Daimler; DS; Ferrari; Fiat; Fuso; Iveco; Jaguar; KTM; Lamborghini; Land Rover; LDV; Lotus; Maserati; Maybach; Mia; Microcar; Mini; Morgan; Opel; Piaggio; Porsche; Renault Trucks; Rolls-Royce; Rover MG; Saab; Santana; Seat; Skoda; Smart; and Volvo.

Excluded Persons means:

Addressees of the European Commission decision in Case AT.40009 – Maritime Car Carriers, their subsidiaries, holding companies, subsidiaries of those holding companies, and any entity in which any of the addressees has a controlling interest;

- (a) Addressees of the European Commission decision in Case AT.40009 – Maritime Car Carriers, their subsidiaries, holding companies, subsidiaries of those holding companies, and any entity in which any of the addressees has a controlling interest;
- (b) Officers, directors or employees of any of the companies referred to in (a) above, at any time since 18 October 2006;
- (c) All members of the Class Representative's and Defendants' legal teams and all experts or professional advisers instructed by them in these proceedings;
- (d) All members of the Tribunal panel assigned to these proceedings and any judge hearing any appeal in these proceedings;

(e) Any legal person that is recorded as dissolved on the register of companies kept by Companies House; and

(f) Any natural person who died before 20 February 2020.

First Registered Keeper means the Person recorded as such on the V5C Registration Form issued by the Driver Vehicle Licensing Agency in respect of a given vehicle.

Hire Purchase Arrangement means a loan for the full cost of a vehicle, repaid by way of a deposit and then fixed monthly payments over an agreed time period, at the end of which the purchaser becomes the legal owner of the vehicle.

Light and Medium Commercial Vehicles means motorised four wheel vehicles constructed for transporting goods with a gross weight of less than six tonnes.

New Lease Vehicle means all Cars and Light and Medium Commercial Vehicles under a Contract Hire Arrangement by the First Registered Keeper (the lessor) to a lessee.

New Vehicle means all Cars and Light and Medium Commercial Vehicles of which the purchaser, or a Related Third Party, was the First Registered Keeper.

Personal Contract Purchase (or PCP) Arrangement means a loan for the difference between the price of a new vehicle and its predicted value at the end of the loan agreement where, at the end of the loan term, the purchaser can choose to: (i) trade the vehicle in; (ii) return the vehicle to the seller and make no further payment; or (iii) pay a final payment corresponding to the resale price of the vehicle and keep it.

Personal Representative means the executor or administrator of an estate.

Persons means all persons, whether legal or natural.

Purchased or Financed in the United Kingdom means:

- (a) purchased a New Vehicle outright that was first registered in the United Kingdom with the Driver and Vehicle Licensing Agency as a new vehicle, save where such purchase was made for the purposes of providing vehicle finance services;
- (b) purchased a New Vehicle that was first registered in the United Kingdom with the Driver and Vehicle Licensing Agency as a new vehicle using a Hire Purchase Arrangement;
- (c) purchased a New Vehicle that was first registered in the United Kingdom with the Driver and Vehicle Licensing Agency as a new vehicle using a Personal Contract Purchase (PCP) Arrangement; or

(d) was the lessee of a New Lease Vehicle that was first registered in the United Kingdom with the Driver and Vehicle Licensing Agency as a new vehicle on a Contract Hire Arrangement.

Related Third Party means a person whom the outright purchaser of a New Vehicle, the purchaser of a New Vehicle under a Hire Purchase Agreement or the purchaser of a New Vehicle under a Personal Contract Purchase Arrangement decides will be registered as the First Registered Keeper of the New Vehicle in question, for any reason.

ANNEX 2 - CSAO NOTICE

Persons who purchased one or more new cars, SUVs, 4x4s or light or medium commercial vehicles between 18 October 2006 and 6 September 2015 could benefit from a collective settlement.

THIS NOTICE

This is a legal notice published at the direction of the UK Competition Appeal Tribunal (the “**Tribunal**”) which granted a Collective Proceedings Order on 20 May 2022 (“**CPO**”) in favour of Mark McLaren Class Representative Limited (the “**Class Representative**”) to bring proceedings against the following companies, all of whom have been found by the European Commission to have infringed EU competition law in relation to deep sea carriage services for new motor vehicles (“**Car Carriers**”) on routes to/from countries in the European Economic Area (EEA) (the “**Claim**”). The relevant Car Carriers are:

- (1) MOL (Europe Africa) Ltd
- (2) Mitsui O.S.K. Lines Limited
- (3) Nissan Motor Car Carrier Co. Ltd
- (4) Kawasaki Kisen Kaisha Ltd
- (5) Nippon Yusen Kabushiki Kaisha
- (6) Wallenius Wilhelmsen Ocean AS
- (7) EUKOR Car Carriers Inc
- (8) Wallenius Logistics AB
- (9) Wilhelmsen Ships Holding Malta Limited
- (10) Wallenius Lines AB
- (11) Wallenius Wilhelmsen ASA
- (12) Compañía Sud Americana de Vapores S.A.

(together, the “**Defendants**”).

This notice may be relevant to you if you are someone who falls within the class defined in the CPO, i.e.:

“All Persons (other than Excluded Persons) who during the period 18 October 2006 to 6 September 2015 either Purchased or Financed, in the United Kingdom, a New Vehicle or a New Lease Vehicle, other than a New Vehicle or New Lease Vehicle

produced by an Excluded Brand or, in the event such a Person has died on or after 20 February 2020, their Personal Representative.”

A copy of the CPO, with an explanation of all the capitalised terms in the class definition, can be viewed online at www.cardeliverycharges.com.

This notice relates to a settlement (the “**Settlement**”) agreed between the Class Representative and the Twelfth Defendant, Compañía Sud Americana de Vapores S.A. or “**CSAV**” (together, the “**Settling Parties**”). The Settling Parties were required under Rule 94 of the Tribunal Rules 2015 (which can be viewed online at <https://www.catribunal.org.uk/rules-and-guidance>), to seek the Tribunal’s approval of the Settlement. A hearing regarding the Settlement took place on **6 December 2023** with the Tribunal ruling on the same day that the terms of the Settlement are “*just and reasonable*” to Class Members (the “**Tribunal’s Ruling**”).

This notice is for your information so that you can consider whether you wish to opt-out of the Settlement.

A full copy of the application made to the Tribunal regarding the Settlement can be viewed online at www.cardeliverycharges.com, along with other information about the claim. The Tribunal’s Ruling on the Settlement can be found online at: [Judgment \(CSAV Collective Settlement\) | Competition Appeal Tribunal \(catribunal.org.uk\)](https://www.catribunal.org.uk/judgment-csav-collective-settlement-competition-appeal). This notice gives important information about the Settlement.

THE SETTLEMENT

Importantly, the Settlement relates to CSAV only and does not settle the claim against the other eleven Defendants. The case against the other eleven Defendants will proceed in line with the directions of the Tribunal, with a trial due to be listed in early 2025. The Settlement is entered into without any admission of liability by CSAV.

It is noteworthy that CSAV is the smallest Defendants - it has a market share of only 1.5% (when considering the capacity of vessels) or 1.7% (when considering the number of vessels). On the basis of a market share of 1.7%, CSAV’s share of the total Claim value as it was provisionally quantified at filing would be £2,422,500.

With this in mind, the terms of the Settlement, which has been approved, are as follows:

- (a) **Settlement value:** £1.5 million in total, comprised of:
- (i) Damages of £1.12 million. This is the part of the Settlement which is available in due course for distribution to the persons represented by the Class Representative (but also includes CSAV’s contribution to the ultimate costs of distributing the damages to persons represented by the Class Representative).
 - (ii) Costs of £280,000. This is to cover CSAV’s share of the costs incurred to date in bringing the Claim.
 - (iii) Costs of making the application to the Tribunal of the Settlement of £100,000. These costs are a contribution to the legal and other fees that have been and

will be incurred in preparing the application for the Tribunal's approval of the Settlement.

- (b) **Timing of payment:** CSAV is to pay the Settlement sum to the Class Representative within 28 days of the Tribunal's Ruling.
- (c) **Escrow:** Following payment by CSAV to the Class Representative, the Class Representative will hold the damages sum in escrow until the Claim has concluded against all Defendants (either through further settlements or a judgment after trial). We believe that the size of the Settlement does not justify the costs of distributing these monies to Class Members now and the Tribunal's Ruling has confirmed this approach is sensible. Following the conclusion of the case, the Class Representative will then distribute the total funds recovered (through settlement or judgment) using the distribution plan that will have to be approved by the Tribunal. The £280,000 towards CSAV's share of the costs incurred to date in bringing the Claim shall be held in escrow until further order from the Tribunal.
- (d) **Reverter:** the term 'Reverter' is used to refer to a mechanism whereby, in the event that there are any unclaimed damages after the process of distribution is complete, then, subject to the approval of the Tribunal, part of the unclaimed damages may be paid back to (i.e., 'revert' to) the Defendants. We have included a "first in, last out" 'Reverter' in the Settlement Agreement with CSAV. This means that the damages paid by the **first** Defendant to settle into the pot of monies available for distribution are the **last** damages to be paid out to represented persons as part of the distribution process. In other words, the other Defendants' damages will be used to make payments to represented persons before the first settling Defendant's damages are used for that purpose. This increases the chances that the first settling Defendant will benefit under the 'Reverter' by receiving some or all of its damages back. This is intended to incentivise Defendants to settle and to settle before other Defendants do so. The Tribunal's Ruling confirms that the provisions in the Settlement Agreement with CSAV are appropriate under the Tribunal's Rules and has approved the 'Reverter' element of the Settlement, but ultimately will be considered in the context of distribution. In practice, this means that:
 - (i) Following distribution, and if there is money remaining because not all class members came forward, the Class Representative will then apply to the Tribunal for money to make any outstanding payment to the stakeholders (litigation funders and lawyers who have acted on a contingent basis) in accordance with its litigation funding arrangements.
 - (ii) To the extent that there is money remaining, the Class Representative will ask the Tribunal to remit those remaining funds to any settling Defendants, in the order in which they settled with the Class Representative. Accordingly, as the first Defendant to settle, CSAV would be entitled to remittal of up to 100% of the damages paid, if the Tribunal so ordered.

RIGHT TO OPT-OUT OF THE SETTLEMENT

Class Members will have the right to opt-out of any distribution of sums recovered by the Class Representative, including this Settlement and either (i) any further settlements with the remaining Defendants or (ii) damages awarded by the Tribunal at the conclusion of the Claim. In light of the terms of the Settlement, including the Tribunal's confirmation that distribution will not take place at present, the Class Representative has requested that the window in which Class Members who want to opt-out, are required to do so, does not begin to run at present. We believe, and as confirmed in the Tribunal's Ruling, that Class Members should not be required to make a decision until a fuller picture of the level of recovery achieved by the Claim is understood.

Should any Class Member have questions about this, it can contact the Class Representative by email or by post to either of the following addresses: info@cardeliverycharges.com or Car Delivery Charges, PO Box 13260, BRAINTREE, CM70PL.