



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1346/5/7/20

BETWEEN:

- (1) **VOLVO CAR AB**
(2) **VOLVO PERSONVAGNAR AB**

Claimants

- v -

- (1) **MOL (EUROPE AFRICA) LTD**
(2) **WALLENUS WILHELMSSEN ASA**
(3) **WALLENUSREDERIERNA AB**
(4) **WALLENUS WILHELMSSEN OCEAN AS**
(5) **WALLENUS LOGISTICS AB**
(6) **WILHELMSSEN SHIPS HOLDING MALTA LTD**
(7) **EUKOR CAR CARRIERS INC**
(8) **KAWASAKI KISEN KAISHA, LTD**
(9) **NIPPON YUSEN KABUSHIKI KAISHA**
(10) **COMPANIA SUDAMERICANA DE VAPORES SA**

Defendants

ORDER

UPON reading the Claimants' applications made on 30 April 2020 pursuant to Rule 31(2) of the Competition Appeal Tribunal Rules 2015 ("the 2015 Rules") for permission to serve the claim form out of the jurisdiction on the Seventh to Tenth Defendants

IT IS ORDERED THAT:

1. The Claimants be permitted to serve the Seventh to Tenth Defendants outside the jurisdiction.
2. This Order is without prejudice to the rights of the Seventh to Tenth Defendants to apply pursuant to Rule 34 of the 2015 Rules to dispute the jurisdiction.

REASONS

1. The claim is for damages for loss alleged to have been suffered by the Claimants between 18 October 2006 to at least the end of 2014 comprising inflated prices and inflated import duties and taxes paid by the Second Claimant on international shipping services for roll-on, roll-off cargo and loss of profit and/or increased borrowing costs by the First Claimant. There is a reasonable prospect of success in the claim against the Seventh to Tenth Defendants in that the claim is a follow-on claim based on the settlement decision of the European Commission dated 21 February 2018 in case AT.40009 – Maritime Carriers (the “Decision”). Each of the Defendants is an addressee of the Decision, and the damages are said to result from the infringements of Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) and Article 53 of the European Economic Area Agreement (“EEA Agreement”) established by the Decision.
2. It appears likely that, as the Claimants submit, the proceedings will be treated as taking place in England and Wales under Rule 18 of the 2015 Rules.
3. The Claimants are serving the claim form (and supporting annexes) on the First to Sixth Defendants (the “UK and EU/EEA Defendants”) in respect of which the Tribunal’s permission to serve out of the jurisdiction is not required.
4. I am satisfied that there is between the Claimants and the UK and EU/EEA Defendant a real issue to try and that the Seventh to Tenth Defendants are necessary and proper parties to the follow-on claims being pursued against the UK and EU/EEA Defendants in that: (a) the Seventh to Tenth Defendants are addressees of the Decision; (b) the Claimants allege that the Defendants are jointly and severally liable for any loss suffered by the Claimants; and (c) it would be burdensome and costly, as well as cause duplication, if the Claimants had to bring separate proceedings in the Republic of Korea against the Seventh Defendant, in Japan against the Eighth and Ninth Defendants and in Chile against the Tenth Defendant instead of bringing a single set of proceedings.
5. I am satisfied that the Tribunal is the proper place in which to bring the claim. Although the Claimants have issued a claim in the Chancery Division of the High Court against a number of the same Defendants which overlaps in part with the present claim, the High Court claim is wider in that it includes standalone claims and additional (non-addressee) defendants to those named in the present claim. The Claimants’ reason for bringing the present claim is to be able to rely, insofar as necessary, on the different limitation period for competition damages claims that applies to such actions in the Tribunal.
6. I note that on 9 January 2020 the Second to Seventh Defendants commenced proceedings against the Claimants in the Swedish Patent and Market Court (the “Swedish Court”) for a negative declaration as to their liability to the Claimants arising from infringements of Article 101 TFEU and/or Article 53 EEA Agreement. On 22 April 2020 the Swedish Court issued a decision that it had jurisdiction over the proceedings. That decision has not become binding as it is

under appeal. The present claim is in any event said by the Claimants not to be based on the same cause of action as the proceedings before the Swedish Court for the purpose of Article 29 of Regulation (EU) No. 1215/2012 and Article 27 of the Lugano Convention, even for those parties which are common to the proceedings before the Tribunal and the Swedish Court. This is said to be because, despite similarities between the claims, the matters of law and fact involved in each will be different.

The Hon Mr Justice Roth

President of the Competition Appeal Tribunal

Made: 20 May 2020

Drawn: 20 May 2020