



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1339/7/7/20

BETWEEN:

MARK McLAREN CLASS REPRESENTATIVE LIMITED

Applicant/
Proposed Class Representative

- v -

- (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
- (12) COMPANIA SUDAMERICANA DE VAPORES S.A.

Respondents/
Proposed Defendants

ORDER

UPON reading the letters dated 5 May, 27 May and 12 June 2020 from the solicitors to the Proposed Class Representative concerning its request that the Tribunal make an order under Rule 111(2) of the Tribunal Rules permitting the Proposed Class Representative to serve the collective proceedings claim form (and supporting documents) on the Third to Fifth, Seventh, Eleventh and Twelfth Proposed Defendants (together, the “Relevant Proposed Defendants”) by an alternative method, namely by email

AND UPON the solicitors for the Relevant Proposed Defendants confirming in correspondence that their clients consent to accept service by email

IT IS ORDERED THAT:

1. The Proposed Class Representative be permitted to serve the collective proceedings claim form (and supporting documents) on the Relevant Proposed Defendants by email.
2. The date on which the collective proceedings claim form is to be deemed to be served on the Relevant Proposed Defendants is 30 September 2020.
3. The period for acknowledging service set out in Rules 76(4) and (5) of the Tribunal Rules is varied so as to require each Relevant Proposed Defendant to file with the Registrar the Tribunal's form of acknowledgement of service by 5pm on 22 October 2020.
4. There be liberty to apply.

REASONS

1. On 30 March 2020 I made an order granting permission to the Proposed Class Representative to serve the Third to Fifth, Seventh and Twelfth Proposed Defendants outside the jurisdiction, subject to their rights to apply pursuant to Rule 34 of the Tribunal Rules to dispute the Tribunal's jurisdiction. Those Proposed Defendants are domiciled in Japan, the Republic of Korea and Chile respectively. The permission of the Tribunal was not required to serve the Eleventh Proposed Defendant, domiciled in Norway, out of the jurisdiction.
2. By letters of 17 and 30 March 2020, and in accordance with Rule 111(16) of the Tribunal Rules, the Registrar directed the Proposed Class Representative to serve the collective proceedings claim form and supporting documents on the Relevant Proposed Defendants, amongst others, by any method permissible under Part 6 of the Civil Procedure Rules ("CPR"). Each letter included a direction that service should be effected within six months of the date of the letter.
3. According to the Proposed Class Representative, it intended to comply with these directions by serving the collective proceedings claim form and

supporting documents on the Third to Fifth, Seventh and Eleventh Proposed Defendants, domiciled in Japan, the Republic of Korea and Norway respectively, under the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (“the HSC”) pursuant to CPR 6.40(3)(b) and on the Twelfth Proposed Defendant, domiciled in Chile, through foreign judicial authorities pursuant to CPR 6.40(3)(a)(ii). However, the Proposed Class Representative was for a period unable to serve its collective proceedings claim form and supporting documents in a manner that complies with CPR 6.40(3)(b) and 6.40(3)(a)(ii) because the situation in the UK and internationally as regards the Covid-19 outbreak deteriorated and the Foreign Process Section of the Royal Courts of Justice (“the FPS”) suspended its processing of requests for service of court documents on parties out of the jurisdiction.

4. The solicitors for the Proposed Class Representative wrote to the solicitors for the Third to Fifth, Seventh and Eleventh Proposed Defendants on 7 April 2020 inviting those Proposed Defendants to agree to accept service through their solicitors in the UK or directly by email, and to the Twelfth Proposed Defendant on 8 April 2020 inviting it to agree to accept service directly by email. Through their respective solicitors, each of the Relevant Proposed Defendants agreed to accept service by email.
5. Since the Proposed Class Representative’s request to the Tribunal on 27 May 2020 for permission to serve its collective proceedings claim form and supporting documents on the Relevant Proposed Defendants by email, the FPS has reopened. Nonetheless, the Proposed Class Representative contends that the FPS’s service is restricted by limited available in-person appointment times and logistic challenges. The Proposed Class Representative has not advised the Tribunal as to whether the relevant authorities in Japan, Korea, Norway and Chile (“the Relevant Foreign Authorities”) are open at present, although the Proposed Class Representative has raised concerns regarding the capacity at which the Relevant Foreign Authorities are working, whether the service addresses are currently staffed and would be able to receive the documents.

6. The Proposed Class Representative submits that it has been almost four months since it filed its claim and to commence the process of service through the FPS now would inevitably mean that it would have to seek an extension to the deadline for service, unnecessarily delaying progress in the case and resulting in wasted costs.
7. I do not consider that the avoidance of delay inherent in effecting service under the HSC or through foreign judicial authorities is a sufficient reason on its own for an order for service by an alternative method. However, I consider that the impact of the Covid-19 outbreak is a special circumstance which has and is likely to cause delays in this particular case beyond those inherent in effecting service under the HSC or through foreign judicial authorities. Further, it is significant that the Relevant Proposed Defendants, who are each represented by solicitors, have communicated through their solicitors their agreement for service to be effected on them by email.
8. Accordingly, I am satisfied that, taking these circumstances into consideration, there is good reason to authorise service on each of the Relevant Proposed Defendants by email.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 13 July 2020
Drawn: 13 July 2020