

**IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
COMMERCIAL COURT (QBD)**

BEFORE: THE HONOURABLE MR. JUSTICE JACOBS

DATE: FRIDAY 10 JULY 2020



CL-2019-000173

B E T W E E N:

- (1) **FIAT CHRYSLER AUTOMOBILES N.V. & OTHERS**
(2) **FCA ITALY S.P.A.**
(3) **FCA MELFI S.R.L.**
(4) **FCA SRBIJA D.O.O.**
(5) **FCA POLAND S.A.**
(6) **MASERATI S.P.A.**
(7) **SEVEL S.P.A**

Claimants

-and-

- (6) **JTEKT EUROPE BEARINGS B.V.**
(7) **KOYO FRANCE SA**
(8) **KOYO DEUTSCHLAND GmbH**
(9) **NTN CORPORATION**
(10) **NTN WALZLAGER (EUROPA) GmbH**
(11) **NTN-SNR ROULEMENTS SA**

Defendants

CASE MANAGEMENT ORDER

UPON a Case Management Conference taking place on 18 June 2020 and 10 July 2020

AND UPON the application of the Claimants dated 1 June 2020 against the Defendants for disclosure (the “**Defendant Disclosure Application**”)

AND UPON reading the evidence filed in support of the Defendant Disclosure Application, the evidence in response thereto and the evidence in reply

AND UPON the Defendants (“**NTN**” and “**JTEKT**”) filing evidence in support of their disclosure requests against the Claimants for Claimant disclosure (the “**Claimant Disclosure Requests**”)

AND UPON hearing Leading and Junior Counsel for the Claimants (“**FCA**”) and Leading and Junior Counsel for the NTN Defendants

IT IS HEREBY ORDERED THAT:

Case Memorandum and List of Common Ground and Issues

1. The Case Memorandum and List of Common Ground and Issues have been approved by the Court in the form agreed between the Claimants and the Defendants.

Request for Information

2. By no later than **15 September 2020** the NTN Defendants shall identify the recitals of the European Commission’s Settlement Decision dated 19 March 2013 (Case Comp /3922 – Automotive Bearings) that they accept as being binding on the Court pursuant to Article 16 of Regulation 1/2003, because they are the essential basis to the operative part of the Settlement Decision.

Permission to rely on expert reports

3. The Claimants and the NTN Defendants shall have permission to each rely on an expert in the field of competition economics.

Disclosure

4. The NTN Defendants shall give disclosure and inspection of the categories of data, documents and information, as detailed at paragraphs 1 to 10 in Schedule 1 to this Order by 4 pm on 30 October 2020.

5. The Claimants shall give disclosure and inspection of the categories of data, documents and information as detailed at paragraphs 1 to 7 in Schedule 2 to this order by 4 pm on 30 October 2020.
6. Disclosure by list, given by the NTN Defendants and the Claimants pursuant to paragraphs 4 and 5 above, shall be accompanied by disclosure statements within the meaning of CPR Rule 31.10(6), (7) and (9).
7. The data, documents and information to be disclosed pursuant to paragraphs 4 and 5 of this Order:
 - 7.1. may be confined to the best available evidence about the information which is the subject matter of the listed categories, which may be in the form of electronic databases or other electronic sources, save where (i) the disclosing party does not in fact keep any documents in respect of that subject matter in electronic form, or (ii) although it does keep data, documents and information in respect of that subject matter in electronic form, the relevant information in the electronic form is unreliable in view of the way in which it was collected, or (iii) the best available evidence falls instead to be obtained from physical documents or a combination of physical documents and electronic databases or other electronic sources. In each case, the disclosing party should explain why the evidence it is providing is the “best available evidence” and why further disclosure is not proportionate, in particular, if the excluded information is within an electronic database or other electronic sources. For the avoidance of doubt, there shall be no requirement that data be collated into the form of an electronic database, excel spreadsheet or similar electronic form if that data has not already been collated in that form (whether for ordinary business purposes or for the purposes of litigation);

7.2. if contained in the form of an electronic database or extract therefrom, should be provided with a brief explanation of how the relevant information has been compiled for the database, and, if appropriate, guidance on how it is to be examined; and

7.3. shall be limited to data, documents and information which is capable of being located through reasonable and proportionate searches (and shall include, for the avoidance of doubt, any documents located through such searches which are in the public domain).

Transfer to the Competition Appeal Tribunal

8. Such part of these proceedings as relates to a claim to which section 47A of the Competition Act 1998 applies and such part of the proceedings as relates to an infringement issue (as defined in section 16(6) of the Enterprise Act 2002) are transferred to the Competition Appeal Tribunal (“**the CAT**”) for its determination of those issues pursuant to section 16(4) of the Enterprise Act 2002 and/or section 16(1) of that Act together with Regulation 2(a) of the Section 16 Enterprise Act 2002 Regulations 2015.

9. The sending of this Order to the parties and the CAT shall constitute notice to them for the purposes of paragraphs 8.5 and 8.12 of Practice Direction 30 and CPR Rule 30.4(1).

10. For the avoidance of doubt:

10.1. neither this Order giving effect to the said transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Claimants’ claim as constituted in this Court prior to the transfer taking effect. If and to the extent that any element of the Claimants’ claim as constituted in this Court prior to the transfer taking effect is not capable of falling within the jurisdiction of the CAT on a transfer, or would be altered, limited or excluded by this Order or the

transfer, it is not subject to this Order and remains within the jurisdiction of this Court;

10.2. the proceedings were and shall continue to be regarded as having been commenced in this Court (including that any further statements of case or amendments to a statement of case shall be made in accordance with the Civil Procedure Rules and not with the Competition Appeal Tribunal Rules 2015 (the “**CAT Rules**”));

10.3. any appeal to the Court of Appeal against the determination by the CAT of the issues transferred or an order of the Court giving effect to that determination shall be governed by the rules in CPR Part 52; and

10.4. this Court may give such further directions or make such further order as it thinks fit in connection with the transfer and/or with any such element as referred to above.

10.5. the case management conference referred to in paragraph 15a below shall stand for the case management conference referred to in Rule 72(3) of the CAT Rules.

11. The parties may agree extensions of up to 28 days for completing each of the steps referred to in paragraphs 4 to 7, without the need to apply to the CAT provided the parties notify the CAT in advance of the expiry of the relevant deadline.

12. Liberty to restore the Case Management Conference.

Provision of Further Particulars in respect of the Compound Interest Claim

13. By 25 September 2020, the Claimants shall file and serve a statement of case providing further particulars of the Claimants’ claim for interest

losses at paragraph 56 of the Amended Particulars of Claim, including the calculation thereof.

14. By 16 October 2020, the Defendants shall, file and serve a statement of case in response to the statement of case referred to in paragraph 13 above, setting out the extent to which the claim for compound interest is admitted, required to be proved or denied, and providing particulars of the basis for any denial.

Procedural timetable

15. The procedural timetable for the proceedings shall be as follows:
 - a. There be a further Case Management Conference in **December 2020**, if required.
 - b. Save as set out above, disclosure shall be given and inspection permitted, on an agreed-upon rolling basis in tranches, and to be completed by no later than **29 January 2021**.
 - c. Signed statements of witnesses of fact, and hearsay notices when required by CPR Rule 33.2, shall be exchanged by **7 May 2021**.
 - d. unless otherwise ordered, witness statements are to stand as the evidence in chief of the witness at trial;
 - e. Signed supplemental statements of witnesses of fact shall be exchanged by **11 June 2021**.
 - f. Signed expert reports in the field of competition economics shall be served by **10 September 2021**.
 - g. Signed supplemental expert reports shall be served by **15 October 2021**.
 - h. A joint meeting of experts to be held by no later than **29 October 2021**.
 - i. Following the joint meeting of experts, the experts will file a joint expert statement setting out matters to which the experts agree and disagree by **12 November 2021**.

- j. The trial reading list for the CAT is to: (i) identify the issues that the CAT will be asked to decide with the assistance of expert evidence; (ii) in respect of each such issue, briefly state each party's case; (iii) in respect of each such issue, identify the pages of the expert evidence that need to be read.
- k. A pre-trial review shall be listed for a day no later than **30 November 2021** and not less than two weeks before the commencement of the Trial.
- l. Preparation of trial bundles in electronic or hard copy form (or part electronic, part hard copy) are to be completed by not later than 4pm on **17 December 2021** (or in accordance with such order as the CAT may make).
- m. The Trial shall be scheduled to commence on the first available date in **January 2022**, for a period of 10 weeks, subject to the CAT's and Counsel's availability.

General

- 16. Costs in the case.
- 17. This Order shall be served by the Claimants on the Defendants.
- 18. There be liberty to apply.

DATED this day of July 2020

Service of the order

The Court has provided a sealed copy of this order to the serving party: Quinn Emanuel Urquhart & Sullivan UK LLP, 90 High Holborn, London WC1V 6LJ