



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1347/5/7/20

BETWEEN:

- (1) JAGUAR LAND ROVER LTD
- (2) JAGUAR E LAND ROVER BRASIL INDÚSTRIA E COMÉRCIO DE VEÍCULOS LTDA
- (3) JAGUAR LAND ROVER (CHINA) INVESTMENT CO., LTD.
- (4) JAGUAR LAND ROVER (SOUTH AFRICA) (PTY) LIMITED
- (5) JAGUAR LAND ROVER AUSTRALIA PTY LTD
- (6) JAGUAR LAND ROVER AUSTRIA GMBH
- (7) JAGUAR LAND ROVER BELUX NV
- (8) JAGUAR LAND ROVER CANADA, ULC
- (9) JAGUAR LAND ROVER CLASSIC DEUTSCHLAND GMBH
- (10) JAGUAR LAND ROVER ESPANA SL
- (11) JAGUAR LAND ROVER FRANCE S.A.S.
- (12) JAGUAR LAND ROVER ITALIA SPA
- (13) JAGUAR LAND ROVER JAPAN LIMITED
- (14) JAGUAR LAND ROVER KOREA CO., LTD
- (15) JAGUAR LAND ROVER NEDERLAND BV
- (16) JAGUAR LAND ROVER NORTH AMERICA, LLC
- (17) JAGUAR LAND ROVER PORTUGAL-VEICULOS E PECAS, LDA
- (18) LIMITED LIABILITY COMPANY "JAGUAR LAND ROVER" (RUSSIA)

Claimants

- v -

- (1) MOL (EUROPE AFRICA) LTD
- (2) WALLENIUS WILHELMSSEN ASA
- (3) WALLENIUSREDERIERNA AB
- (4) WALLENIUS WILHELMSSEN OCEAN AS
- (5) WALLENIUS LOGISTICS AB
- (6) WILHELMSSEN SHIPS HOLDING MALTA LTD
- (7) EUKOR CAR CARRIERS INC.
- (8) KAWASAKI KISEN KAISHA, LTD.
- ~~(9) COMPANIA SUDAMERICANA DE VAPORES S.A.~~

Defendants

ORDER

UPON the European Commission issuing a decision in Case AT.40009 – *Maritime Car Carriers* on 21 February 2018 (the “**Decision**”)

AND UPON the Claimants having issued Case No: 1347/5/7/20 on 30 April 2020 (the “**Claim**”)

AND UPON the Claimants having withdrawn the Claim against the Ninth Defendant, Compañía Sud Americana de Vapores S.A., by an order of the Tribunal made by consent on 30 July 2021

AND UPON the First to Eighth Defendants being addressees of the Decision

AND UPON Compañía Sud Americana de Vapores S.A. (formerly the Ninth Defendant in the Claim), Mitsui O.S.K. Lines, Ltd.; Nissan Motor Car Carrier Co., Ltd; and Nippon Yusen Kabushiki Kaisha being addressees of the Decision but not (or no longer) defendants in these proceedings (together, the “**Non-Party Addressees**”)

AND UPON the full text of the Decision having been provided to the First to Eighth Defendants and the Non-Party Addressees by the Commission (the “**Confidential Decision**”)

AND UPON a final non-confidential version of the Decision having been published and made publicly available on 19 July 2019 (the “**Non-Confidential Decision**”)

AND UPON the First to Eighth Defendants having documents in their possession, custody or control which are part of the Commission’s administrative file relating to the investigation in Case AT. 40009 – *Maritime Car Carriers* (the “**Commission File**”, as further defined at paragraph 11 below)

AND UPON the Tribunal’s order dated 22 December 2021 establishing a Confidentiality Ring as between the Claimants and the First to Eighth Defendants (the “**Confidentiality Ring Order**”)

AND UPON reading written submissions from the Claimants and the First, Second to Seventh and Eighth Defendants filed in advance of a case management conference

AND UPON hearing counsel for the Claimants and for each of the First, Second to Seventh and Eighth Defendants at a case management conference held remotely on 17 December 2021.

IT IS ORDERED THAT:

Forum

1. Pursuant to rules 52 and 18 of the Competition Appeal Tribunal Rules 2015 the forum of these proceedings is England and Wales.

Notification of the Order; Applications

2. By 4 pm on 24 December 2021, the Claimants shall write to each of the Non-Party Addressees providing them with copies of this Order and the Confidentiality Ring Order.
3. Any of the Non-Party Addressees may within 28 days of receipt of the notification referred to in paragraph 2 of this Order apply to set aside or vary this Order or the Confidentiality Ring Order, such application to be:
 - (a) made by application notice and served on the Claimants and the First to Eighth Defendants;
 - (b) accompanied by a reasoned explanation of the application to set aside or vary this Order or the Confidentiality Ring Order together with any evidence relied on; and
 - (c) at the applicant's risk as to costs.

Disclosure and inspection of the Decision

4. When notifying each of the Non-Party Addressees in accordance with paragraph 2 of this Order, the Claimants shall inform each of them of the following:
 - (a) that the First to Eighth Defendants will disclose to the Claimants a version of the Decision (the "**Redacted Confidential Decision**") containing only those redactions which can be justified on the basis that:
 - (i) they are leniency statements, as defined in Article 2(16) of Directive 2014/104/EU ("**Leniency Statements**");
 - (ii) they are settlement submissions, (as defined in Article 2(18) of Directive 2014/104/EU ("**Settlement Submissions**");
 - (iii) they are subject to legal professional privilege ("**Privileged Material**"); or

- (iv) they are material that is protected from disclosure under Article 48 of the Charter of Fundamental Rights of the European Union and Article 339 of the Treaty on the Functioning of the European Union as applied in Case T-474/04 *Pergan* [2007] ECR II-4225 (“**Pergan Material**”);
 - (b) the Non-Party Addressees are invited to inform the First to Eighth Defendants by 4 pm on 24 January 2022 of those passages of the Confidential Decision that they consider should remain redacted on the grounds of being Leniency Statements and/or Settlement Submissions and/or Privileged Material and/or Pergan Material, and to provide an explanation of the basis for each redaction; and
 - (c) informing each Non-Party Addressee that if they fail to respond by 4 pm on 24 January 2022 the Tribunal may refuse any later claims for redactions of the Confidential Decision.
- 5. By 4 pm on 7 February 2022, the First to Eighth Defendants shall disclose and provide inspection to the Claimants of the Redacted Confidential Decision, subject only to any redactions requested by the First to Eighth Defendants or by a Non-Party Addressee on one of the grounds set out at paragraph 4(a) above. The Redacted Confidential Decision must be accompanied by a description (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) of any passages which have been redacted, the basis on which they have been redacted, and which of the First to Eighth Defendants and/or the Non-Party Addressees have requested the redaction.
- 6. The Redacted Confidential Decision shall be treated as Outer Confidentiality Ring Information (within the meaning set out in the Confidentiality Ring Order).

Disclosure and inspection of documents

7. When notifying each of the Non-Party Addressees in accordance with paragraph 2 of this Order, the Claimants shall give notice to the Non-Party Addressees of the following:
 - (a) that the First to Eighth Defendants will disclose by list and provide inspection of the Commission File within the possession or control of any of the First to Eighth Defendants. The following categories of documents (or parts of documents) shall be redacted or withheld from inspection:
 - (i) Leniency Statements;
 - (ii) Settlement Submissions;
 - (iii) Privileged Materials; and
 - (iv) Material that is irrelevant, applying the approach contained in CPR Rule 31.6.
 - (b) the Non-Party Addressees are invited to inform the First to Eighth Defendants by 4 pm on 14 February 2022 of the documents within the Commission File to which the First to Eighth Defendants were granted access by the Commission (the “**Access to File Documents**”) that they wish to redact or withhold on the basis of any, or all, of Leniency Statements, Settlement Submissions or Privileged Materials, and to provide an explanation (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) of the basis for each redaction or withholding, and to identify the documents they wish to designate as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information as set out in the Confidentiality Ring Order.
 - (c) informing the Non-Party Addressees that if they fail to notify the First to Eighth Defendants in accordance with paragraph 7(b) of this Order by

4 pm on 14 February 2022 the Tribunal may refuse any later claims for redactions, withholding, or confidential treatment of documents on the Commission File.

8. By 4 pm on 14 March 2022 the First to Eighth Defendants shall:
 - (a) disclose by list and provide inspection of the Access to File documents within the possession or control of any of the First to Eighth Defendants, subject only to a right to redact or withhold material at the request of the First to Eighth Defendants or of a Non-Party Addressee on one of the grounds set out at paragraph 7(a) above;
 - (b) provide a description (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) identifying any documents which have been redacted or withheld by the First to Eighth Defendants and the basis on which they have been redacted or withheld;
 - (c) provide the Claimants with the explanation(s) provided by the Non-Party Addressees to the First to Eighth Defendants pursuant to paragraph 7(b) above; and
 - (d) identify which documents are to be designated pursuant to paragraph 7 of the Confidentiality Ring Order as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information.

9. By 4 pm on 29 March 2022 the First to Eighth Defendants shall:
 - (a) disclose by list and provide inspection of the documents within the Commission File (not otherwise encompassed by paragraph 8 above) within their possession, custody or control, subject only to a right to redact or withhold material at the request of the First to Eighth Defendants on one of the grounds set out at paragraph 7(a) above;
 - (b) provide a description (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application

to the Tribunal, if so advised) identifying any documents which have been redacted or withheld by the First to Eighth Defendants and the basis on which they have been redacted or withheld; and

- (c) identify which documents are to be designated pursuant to paragraph 7 of the Confidentiality Ring Order as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information.

General provisions

- 10. The Parties' disclosures by list shall be accompanied by a disclosure statement in the form described at CPR Rule 31.10(5)-(7).
- 11. The Commission File includes *inter alia*:
 - (a) contemporaneous documents included in the Commission's administrative file relating to the investigation on Case AT.40009 – *Maritime Car Carriers* (including any such pre-existing contemporaneous documents submitted by a leniency applicant);
 - (b) requests for information made by the European Commission;
 - (c) responses to requests for information made by the Commission; and
 - (d) the index to the Commission File.
- 12. Where a document contains material in the categories identified in paragraph 7(a) above, it is only those parts of the document that may be redacted, not the entire document.
- 13. The First to Eighth Defendants are not required to review the validity of requests by the Non-Party Addressees to withhold or redact parts of the Confidential Decision and/or the Commission File.

Expert evidence

14. The Claimants and Defendants shall have permission to rely on expert evidence in the field of competition economics. The Claimants, the First Defendant, the Second-Seventh Defendants and the Eighth Defendant shall each have permission to rely on one expert in this field, and the Defendants shall endeavour to coordinate their use of experts in this field.

Effects and Quantum disclosure process

15. The parties shall seek to agree the categories of documents to be disclosed for the purpose of the economic experts' analysis of effects and quantum (including pass-on) in accordance with the following process:
- (a) The Claimants shall provide to the Defendants a list of the contracts and Requests for Quotations (RFQs) that they consider to be material to the Claimants' claim by 4pm on 31 January 2022;
 - (b) The parties economic experts shall exchange letters setting out their proposed methodologies and the documents, data and information required for their analysis by 4pm on 21 February 2022;
 - (c) the parties' economic experts shall meet to discuss their proposed methodologies and the documents, data and information required for their analysis by 4 pm on 28 February 2022;
 - (d) by 4 pm on 18 March 2022 the parties' economic experts shall prepare a joint statement, to be filed with the Tribunal, setting out (i) the methodologies that they propose to adopt; (ii) the extent of agreement or disagreement on methodological questions; (iii) the categories of documents, data and information required for analysis in accordance with those methodologies and (iv) the extent of agreement or disagreement as to the necessity of such documents, data and information; and

- (e) by 4 pm on 1 April 2022, the parties shall seek to agree the categories of documents, data and information to be disclosed by each of the parties for the purpose of the economic experts' analysis of effects and quantum and the dates by which such disclosure shall be given.

Disclosure Reports and Electronic Documents Questionnaires

16. By 4 pm on 15 April 2022, the parties shall serve Disclosure Reports and Electronic Disclosure Questionnaires addressing all issues in the proceedings.

Procedural timetable

17. The Trial shall be listed to commence on the first available date from May 2023, with a provisional estimate of 7 weeks.
18. There be a further case management conference on 29 April 2022 (“the **Second CMC**”) to consider the timetable for witness statements, expert evidence and the date of any pre-hearing review.

Amendments to Statements of Case

19. The Claimants shall have permission to file and serve the Amended Claim Form by 4 pm on 24 December 2021.
20. The Defendants shall by 4 pm on 14 January 2022 file and serve Amended Defences, to (i) withdraw those parts of their pleadings regarding mitigation which they accept should be withdrawn, and (ii) if so advised make any consequential amendments in light of the Claimants' amendments under paragraph 19 above.

Costs

21. The costs of the case management conference be costs in the case.

Other

22. The Claimants, the First to Eighth Defendants and the Non-Party Addressees have liberty to apply.

The Hon Mrs Justice Cockerill
Chairwoman of the Competition Appeal Tribunal

Made: 17 December 2021
Drawn: 22 December 2021