



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) WALLENIIUS WILHELMSSEN ASA
- (3) WALLENIIUSREDERIERNA AB
- (4) WALLENIIUS WILHELMSSEN OCEAN AS
- (5) WALLENIIUS 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 each of the persons named in Parts A and B of the Schedule to this Order giving a written undertaking to the Tribunal in the terms of Parts C or D respectively of the Schedule to this Order prior to receiving any Confidential Information (as defined below)

AND UPON the Claimants having withdrawn the Claim against the Ninth Defendant, Compañía Sud Americana de Vapores S.A., by an order of the Tribunal made by consent on 30 July 2021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 Claimants and the First, Second to Seventh and Eighth Defendants by their solicitors consenting to the terms of this order.

BY CONSENT IT IS ORDERED THAT:

1. DEFINITIONS

1.1. For the purposes of this Order:

1.1.1. “*Confidential Information*” means Inner Confidentiality Ring Information and Outer Confidentiality Ring Information.

1.1.2. “*Inner Confidentiality Ring Information*” means:

(a) documents or information provided by a Party to this Order, including any part of those documents and any information contained within those documents which:

(i) the disclosing Party has designated as Inner Confidentiality Ring Information in accordance with paragraph 6 of this Order; or

(ii) are designated as Inner Confidentiality Ring Information by the Tribunal; and

(b) without prejudice to the generality of paragraph 1.1.2(a) above, documents which contain or refer to the content of the documents/information provided under paragraph 1.1.2(a) such as:

(i) working documents created by the receiving Party or its advisors or experts;

- (ii) inter-partes correspondence;
 - (iii) documents filed at the Tribunal, such as pleadings, witness evidence, expert reports, skeleton arguments, applications and draft orders; and
 - (iv) transcripts prepared by a third party service provider.
- (c) Redacted versions of the documents described at paragraph 1.1.2(b) above are not Inner Confidentiality Ring Information if they have been redacted so that they no longer contain or refer to the content of the documents/information provided under paragraph 1.1.2(a).

1.1.3. “*Inner Confidentiality Ring Members*” are:

- (a) those persons listed in Part A of the Schedule to this Order, as amended from time to time in accordance with the provisions of paragraph 5 below or an order of the Tribunal, who have given a signed undertaking in the terms of Part C of the Schedule to this Order and whose signed undertaking has been provided to the Tribunal and (in the case of those persons who are added as Inner Confidentiality Ring Members in accordance with the provisions of paragraph 5 below) where the Proposing Party has complied with paragraph 5.1.1;
- (b) necessary secretarial and other support personnel (not including trainee solicitors or paralegals) under the supervision of those persons identified in 1.1.3(a) above, provided that such personnel have been informed of the confidential nature of the Confidential Information and the terms of Part C of the Schedule to this Order; and
- (c) any external eDisclosure or litigation support provider, including providers of translation services, engaged by any of the Parties in connection with these proceedings to provide eDisclosure or

similar services in support of those persons identified in paragraph 1.1.3(a) above, who may have access to Inner Confidentiality Ring Information as a necessary consequence of the provision of their services and whose identity is notified in writing in advance to the other Parties, provided that such provider has been informed of the confidential nature of the Confidential Information and the terms of Part C of the Schedule to this Order.

1.1.4. “*Outer Confidentiality Ring Information*” means:

- (a) documents or information disclosed by a Party to this Order, including any part of those documents and any information contained within those documents which:
 - (i) the disclosing Party has designated as Outer Confidentiality Ring Information in accordance with paragraph 6 of this Order; or
 - (ii) are designated as Outer Confidentiality Ring Information by the Tribunal; and
- (b) without prejudice to the generality of paragraph 1.1.4(a) above, documents which contain or refer to the content of the documents/information provided under paragraph 1.1.4(a) such as:
 - (i) working documents created by the receiving Party or its advisors or experts;
 - (ii) inter-partes correspondence;
 - (iii) documents filed at the Tribunal, such as pleadings, witness evidence, expert reports, skeleton arguments, applications and draft orders; and
 - (iv) transcripts prepared by a third party service provider.

- (c) Redacted versions of the documents described at paragraph 1.1.4(b) above are not Outer Confidentiality Ring Information if they have been redacted so that they no longer contain or refer to the content of the documents/information provided under paragraph 1.1.4(a).

1.1.5. ***“Outer Confidentiality Ring Members”*** are:

- (a) Inner Confidentiality Ring Members; and
- (b) those persons listed in Part B of the Schedule to this Order, as amended from time to time in accordance with the provisions of paragraph 5 below or an order of the Tribunal, who have given a signed undertaking in the terms of Part D of the Schedule to this Order, and whose signed undertaking has been provided to the Tribunal and (in the case of those persons who are added as Outer Confidentiality Ring Members in accordance with the provisions of paragraph 5 below) where the Proposing Party has complied with paragraph 5.1.1;
- (c) necessary secretarial and other support personnel (not including trainee solicitors or paralegals) under the supervision of those persons identified in paragraphs 1.1.5(a) and (b) above, provided that such personnel have been informed of the confidential nature of the Confidential Information and the terms of Part D of the Schedule to this Order; and
- (d) any external eDisclosure or litigation support provider, including providers of translation services, engaged by one of the Parties in connection with these proceedings to provide eDisclosure or similar services in support of those persons identified in paragraphs 1.1.5(a) and (b) above, who may have access to Outer Confidentiality Ring Information as a necessary consequence of the provision of their services and whose identity is notified in writing in advance to the other Parties, provided that such provider

has been informed of the confidential nature of the Confidential Information and the terms of Part D of the Schedule to this Order.

1.1.6. “*These proceedings*” means the claim filed in Competition Appeal Tribunal on 30 April 2020 by the Claimants against certain parties (including the First to Eighth Defendants) under Case No: 1347/5/7/20.

2. INNER CONFIDENTIALITY RING INFORMATION

2.1. Inner Confidentiality Ring Information provided in the context of these proceedings is to be provided or made available solely to the Inner Confidentiality Ring Members, to be held by them on the terms set out in Part C of the Schedule to this Order, subject to the following paragraphs of this Order.

3. OUTER CONFIDENTIALITY RING INFORMATION

3.1. Outer Confidentiality Ring Information provided in the context of these proceedings is to be provided or made available solely to the Outer Confidentiality Ring Members, to be held by them on the terms as set out in:

3.1.1. if the individual is also an Inner Confidentiality Ring Member, Part C of the Schedule to this Order, subject to the following paragraphs of this Order;

3.1.2. if the individual is not also an Inner Confidentiality Ring Member, Part D of the Schedule to this Order, subject to the following paragraphs of this Order.

4. SCOPE OF THE ORDER

4.1. Nothing in this Order or in its Schedule applies to documents and/or information received by a Party other than via these proceedings under the terms of this Order.

5. ADDITIONS TO THE INNER OR OUTER CONFIDENTIALITY RING

5.1. If a Party to this Order (the “*Proposing Party*”) wishes to add an additional person as an Inner Confidentiality Ring Member or as an Outer Confidentiality Ring Member:

5.1.1. it shall notify and request the express written consent of the other Parties (each a “*Receiving Party*” and together the “*Receiving Parties*”), and when requesting such written consent specify the name and role of the proposed additional person and provide an explanation of why the addition is reasonable and necessary;

5.1.2. following receipt of a notice pursuant to paragraph 5.1.1 above, a Receiving Party shall not unreasonably withhold or delay their consent and if any Receiving Party objects to the proposed addition to the Inner Confidentiality Ring or the Outer Confidentiality Ring, it shall notify the Proposing Party in writing within 5 days that it so objects along with a statement of the reason for the objection;

5.1.3. if express consent is given by the Receiving Parties, or a Receiving Party fails to give express consent and fails to give written notice of objection within the 5 day period specified in 5.1.2 above:

(a) the additional person will be required to give the written undertaking to the Tribunal in the terms of Part C or D (as appropriate) of the Schedule to this Order; and

(b) the Proposing Party concerned will provide the written undertaking referred to in paragraph 5.1.3(a) above and an amended version of Part A or B (as appropriate) of the Schedule to this Order to the Tribunal and the other Party;

(c) if any objection referred to in paragraph 5.1.2 above is received, the Proposing Party may apply to the Tribunal and give notice of such application to the Receiving Parties.

5.2. If a Party wishes to remove a person as an Inner Confidentiality Ring Member or an Outer Confidentiality Ring Member, that Party shall notify the other Parties

and provide an amended version of Part A or B (as appropriate) of the Schedule to this Order to the Tribunal and the other Parties. The Party shall also comply with paragraph 8.

6. DESIGNATION OF DOCUMENTS/INFORMATION

6.1. A Party providing a document/information in connection with these proceedings may designate that the document/information is: (i) Inner Confidentiality Ring Information; (ii) Outer Confidentiality Ring Information; or (iii) not confidential.

6.2. Designation of a document/information as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information must be made in writing to the Parties receiving the document/information.

6.3. A designation of not confidential means that the document/information is not Confidential Information.

6.4. Failure to provide a designation for a document/information at the time the document/information is provided shall be deemed to be a designation that the document/information in question is not confidential. A Party may alter the designation of a document/information to correct any erroneous designation by notice in writing to all Parties that received such document/information. The other Parties shall not be responsible for any action taken in the meantime in good faith reliance on the original designation.

6.5. A Party receiving documents/information in these proceedings may request that the disclosing Party amend the designation of a document/information that it has provided (including amendment to a designation of not confidential):

6.5.1. The requesting Party must provide a written request to the disclosing Party (copied to the other Parties) specifying the following:

(a) the relevant Confidential Information;

(b) the designation the requesting Party believes is appropriate; and

(c) why it is reasonable and necessary for the designation of the Confidential Information to be amended.

6.5.2. The disclosing Party may consent in writing to amend the designation of Confidential Information, with such consent not to be unreasonably withheld and, in any event, a response should be provided within 10 working days of having initially received the written request referred to at paragraph 6.5.1 above; and

6.5.3. Should the consent referred to in paragraph 6.5.2 above not be obtained, the requesting Party may apply to the Tribunal for an order that the Confidential Information should be designated as either: (i) Inner Confidentiality Ring Information (ii) Outer Confidentiality Ring Information; or (iii) not confidential (as the requesting Party deems appropriate), provided that prior written notice is given of that application to the other Parties.

7. PROVISION OF CONFIDENTIAL INFORMATION TO PERSONS OUTSIDE THE RINGS

7.1. Nothing in this Order prevents a Party, its advisors or experts from sharing Confidential Information provided by that Party in these proceedings.

7.2. A Party that receives Confidential Information in these proceedings may request that:

7.2.1. certain Confidential Information is to be provided or made available to one or more persons who are neither Inner Confidentiality Ring Members nor Outer Confidentiality Ring Members; and/or

7.2.2. certain Inner Confidentiality Ring Information is to be provided or made available to one or more Outer Confidentiality Ring Members.

7.3. If a Party wishes such Confidential Information to be provided or made available to such persons in accordance with paragraph 7.2:

- 7.3.1. it shall notify and request the express written consent of the other Parties, specifying the name and role of the proposed person(s), the specific Confidential Information that is to be provided or made available to such person(s) (by reference to the relevant documents) and provide an explanation of why it is reasonable and necessary for the Confidential Information to be provided or made available to such person(s);
- 7.3.2. following receipt of a notice pursuant to paragraph 7.3.1 above, a recipient of any such notice shall not unreasonably withhold or delay their consent and if any such recipient objects to Confidential Information being provided or made available to the proposed person, they shall notify the requesting Party in writing within 10 working days that they so object;
- 7.3.3. if express consent is given by the recipient(s) of any notice under paragraph 7.3.1 or the recipient(s) (or any of them) fail to give express consent and fail to give written notice of objection within the 10 day period specified in paragraph 7.3.2 above:
 - (a) the additional person shall be required to give the written undertaking to the Tribunal in the terms of Part C or D (as appropriate) of the Schedule to this Order, as amended to list the specific documents that are to be provided or made available to them; and
 - (b) the Party concerned shall provide the written undertaking referred to in paragraph 7.3.3(a) above to the Tribunal and the other Parties.
- 7.4. If any objection referred to in paragraph 7.3.2 above is received, the requesting Party may apply to the Tribunal provided that 5 working days' prior written notice of such application is given to the other Parties.

8. COPIES OF CONFIDENTIAL INFORMATION

- 8.1. Subject to the exceptions in paragraph 8.2 below, copies of Confidential Information provided pursuant to this Order (in both hard and soft copy) must be

destroyed or made inaccessible at the conclusion of these proceedings, or by any Party which ceases to be involved in these proceedings. Each Party shall notify the other Parties that the Confidential Information has been destroyed or made inaccessible (as appropriate).

8.2. The obligation in paragraph 8.1 above, is subject to the following exceptions:

8.2.1. Paragraph 8.1 does not apply to solicitors' or counsel's notes.

8.2.2. Paragraph 8.1 does not create an obligation to search for transitory or deeply stored soft copies of Confidential Information which may exist on the computer system of the receiving Party and which cannot be recovered without special measures, provided that such documents and/or information will be promptly deleted in the event of the restoration of such copies.

8.2.3. Paragraph 8.1 does not apply to Parties' copies of pleadings, evidence, skeleton arguments, transcripts, applications, draft orders, correspondence referred to at trial or in a hearing or submitted in the proceedings, or to lawyer work product referring to Confidential Information, subject to continued compliance with the terms of this Order in respect of the Confidential Information contained within such documents.

8.2.4. Paragraph 8.1 does not apply to a Party in respect of the Confidential Information it provided.

9. UNAUTHORISED DISCLOSURE OF CONFIDENTIAL INFORMATION

9.1. In the event of any disclosure of Confidential Information other than in a manner authorised by this Order, including any unintentional or inadvertent disclosure, lawyers for the improperly disclosing Party shall immediately notify the improper recipient(s) and the lawyers for the Party or Parties that provided the Confidential Information in these proceedings, and the improperly disclosing Party shall use all reasonable endeavours to prevent further unauthorised disclosure including retrieving all copies of the Confidential Information from the improper

recipient(s) thereof and seek to secure the agreement of such recipient(s) not to further disseminate the Confidential Information in any form.

10. DISCLOSURE PURSUANT TO COURT ORDER

10.1. If at any time any Confidential Information is made the subject of a court disclosure or discovery order (or similar) anywhere in the world, the person upon whom the order is served shall immediately give written notice to the legal representatives of the Party or Parties which produced the Confidential Information. If the Party which provided the Confidential Information in these proceedings does not take steps to prevent the further disclosure of such Confidential Information within 10 working days of the date on which such written notice was given, the Party against whom the order was made may produce such Confidential Information but shall take all reasonable measures to have the Confidential Information treated in accordance with the terms of this Order. For the avoidance of doubt, this paragraph only applies to a Party who is the recipient of Confidential Information provided in these proceedings and does not apply to the Party which provides the Confidential Information in these proceedings.

11. ENFORCEMENT OF THE ORDER, LIBERTY TO APPLY AND COSTS

11.1. In the event of any anticipated or actual breach of this Order, any Party may seek to enforce the terms of this Order.

11.2. The costs of compliance with and of drafting this Order shall be costs in the case.

12. NOTICES

12.1. Any notice, consent or objection to be given under or in connection with this Order (each a “*Notice*” for the purposes of this paragraph) shall be in writing.

12.2. Service of a Notice must be effected by email.

12.3. Notices shall be addressed as follows:

12.3.1. Notices for the Claimants shall be marked for the attention of:

Email addresses: abullion@hausfeld.com / tbrown@hausfeld.com

Reference: L0287.0001

12.3.2. Notices for the First Defendant shall be marked for the attention of:

Email addresses: jane.wessel@arnoldporter.com and alastair.brown@arnoldporter.com

Reference: JW/AB/0023660.00017

12.3.3. Notices for the Second to Seventh Defendants shall be marked for the attention of:

Email addresses: chris.caulfield@bakerbotts.com, matthew.levitt@bakerbotts.com and DLBB_RoRo@bakerbotts.com

Reference: 087018.0102

12.3.4. Notices for the Eighth Defendant shall be marked for the attention of:

Email addresses: jkelly@cgsh.com, pstuart@cgsh.com, and Team-Kline-RoRo-CGSHOnly@cgsh.com

Reference: JK/PXS/LS/GR/31550-014

The Hon Mrs Justice Cockerill
Chairwoman of the Competition Appeal Tribunal

Made: 17 December 2021
Drawn: 22 December 2021

SCHEDULE

PART A: Inner Confidentiality Ring Members

Claimants

Hausfeld & Co LLP

- Andrew Bullion
- Tom Bolster
- Tim Brown
- Amandine Gueret
- Charles Laporte-Bisquit
- Jonothan Broadbent
- Sara Berger
- Alexandra McKelvie
- Lida Tsakyraki

Counsel

Tristan Jones (Blackstone Chambers)

First Defendant

Arnold & Porter

- Jane Wessel
- Niels Ersbøll
- Alastair Brown
- Natalie Nguyen

Counsel

- Mark Hoskins QC (Brick Court Chambers)
- David Bailey (Brick Court Chambers)

Second to Seventh Defendants

Baker Botts LL / Baker Botts (UK) LLP

- Matthew Levitt
- Chris Caulfield
- Dina Jubrail
- Laurence Ridgway

Counsel

- Josh Holmes QC (Monckton Chambers)
- Michael Armitage (Monckton Chambers)

Eighth Defendant

Cleary Gottlieb Steen & Hamilton LLP

- Jonathan Kelly
- Paul Stuart
- Lanto Sheridan
- Ben Bolderson
- Joseph McShane

Nishimura & Asahi

- Tokuhiro Matsunaga
- Nobuhiro Tanaka
- Taisuke Ueno

Counsel

- Tony Singla QC (Brick Court Chambers)
- Anneliese Blackwood (Monckton Chambers)

PART B: Outer Confidentiality Ring Members

(excluding Outer Confidentiality Ring Members who are also Inner Confidentiality Ring Members)

Claimants

First Defendant

Second to Seventh Defendants

Eighth Defendant

Kawasaki Kisen Kaisha, Ltd

- Fumiyoshi Sato
- Satofumi Asahi
- Kiyotaka Suzuki

PART C
UNDERTAKING (TO BE PROVIDED BY INNER CONFIDENTIALITY RING MEMBERS)

In respect of any Inner Confidentiality Ring Information and/or Outer Confidentiality Ring Information disclosed to them pursuant to this Order, each Inner Confidentiality Ring Member undertakes that they will comply with the following requirements, to the extent applicable to them, in the terms below.

I, **[name]**, of **[company]** being **[legal or other qualification or position]** undertake to the Tribunal and each of the Parties as follows:

1. I have read a copy of the Tribunal's Order of 17 December 2021 and understand that Order and the implications of giving this undertaking.
2. I have read Rule 102 of the Tribunal Rules 2015 and am aware of and will comply with the obligations imposed by the rule.
3. I will not disclose Inner Confidentiality Ring Information to any person who is not an Inner Confidentiality Ring Member (except to the extent that I am aware of the same information from another document that does not constitute "Confidential Information" and that was not obtained in breach of this undertaking or of the Tribunal's Order).
4. I will not disclose Outer Confidentiality Ring Information to any person who is not an Outer Confidentiality Ring Member (except to the extent that I am aware of the same information from another document that does not constitute "Confidential Information" and that was not obtained in breach of this undertaking or of the Tribunal's Order).
5. I will use the Confidential Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever in any jurisdiction (except to the extent that I am aware of the same information from another document that does not constitute "Confidential Information" and that was not obtained in breach of this undertaking or of the Tribunal's Order).

6. The documents containing any Inner Confidentiality Ring Information will remain in my custody or the custody of another Inner Confidentiality Ring Member at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
7. The documents containing any Outer Confidentiality Ring Information will remain in my custody or the custody of another Outer Confidentiality Ring Member at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
8. The production of further copies by me of the documents containing the Inner Confidentiality Ring Information shall be limited to those required for the use of the Inner Confidentiality Ring Members for the purposes of these proceedings only and such copies shall be held in accordance with paragraph 5 of this undertaking.
9. The production of further copies by me of the documents containing the Outer Confidentiality Ring Information shall be limited to those required for the use of the Outer Confidentiality Ring Members for the purposes of these proceedings only and such copies shall be held in accordance with paragraph 5 of this undertaking.
10. Subject to the exceptions in paragraph 8.2 of the Order, and to the extent permitted by law, any and all copies of Confidential Information which are within my control will be securely disposed of insofar as is technologically possible or rendered inaccessible from any computer systems, disk or device, so that the Confidential Information is not readily available to any person at the conclusion of these proceedings.

Signed:

Name:

Date:

PART D
UNDERTAKING (TO BE PROVIDED BY OUTER CONFIDENTIALITY
RING MEMBERS)

In respect of any Outer Confidentiality Ring Information disclosed to them pursuant to this Order, each Outer Confidentiality Ring Member undertakes that they will comply with the following requirements, to the extent applicable to them, in the terms below.

I, **[name]**, of **[company]** being **[legal or other qualification or position]** undertake to the Tribunal and each of the Parties as follows:

1. I have read a copy of the Tribunal's Order of 17 December 2021 and understand that Order and the implications of giving this undertaking.
2. I have read Rule 102 of the Tribunal Rules 2015 and am aware of and will comply with the obligations imposed by the rule.
3. I will not disclose Outer Confidentiality Ring Information to any person who is not an Outer Confidentiality Ring Member (except to the extent that I am aware of the same information from another document that does not constitute "Confidential Information" and that was not obtained in breach of this undertaking or of the Tribunal's Order).
4. I will use the Outer Confidentiality Ring Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever in any jurisdiction (except to the extent that I am aware of the same information from another document that does not constitute "Confidential Information" and that was not obtained in breach of this undertaking or of the Tribunal's Order).
5. The documents containing any Outer Confidentiality Ring Information will remain in my custody or the custody of another Outer Confidentiality Ring Member at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.

6. The production of further copies by me of the documents containing the Outer Confidentiality Ring Information shall be limited to those required for the use of the Outer Confidentiality Ring Members for the purposes of these proceedings only and shall be held in accordance with paragraph 4 of this undertaking.

7. Subject to the exceptions in paragraph 8.2 of the Order, and to the extent permitted by law, any and all copies of Confidential Information which are within my control will be securely disposed of insofar as is technologically possible or rendered inaccessible from any computer systems, disk or device, so that the Confidential Information is not readily available to any person at the conclusion of these proceedings.

Signed:

Name:

Date: