



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) WALLENIS WILHELMSSEN ASA
- (3) WALLENISREDERIERNA AB
- (4) WALLENIS WILHELMSSEN OCEAN AS
- (5) WALLENIS 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 a Case Management Conference held remotely on 29 April 2022 (the “Second CMC”)

AND UPON paragraph 15 of the Tribunal’s Order made on 17 December 2021 (the “First CMC Order”) which requires the parties to 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

AND UPON the Tribunal informing the parties by letter dated 20 January 2022 that trial in these proceedings has been fixed for 9 April to 24 May 2024 on the basis of a provisional time estimate to be narrowed at the Second CMC (the “Provisional Trial Window”)

AND UPON the application of the Claimants dated 5 April 2022 against the First, Second to Seventh and Eighth Defendants pursuant to paragraph 15(e) the First CMC Order for effects and quantum disclosure (the “Claimants’ Disclosure Application”)

AND UPON reading the written submissions from the Claimants and the First and Second to Seventh Defendants filed in advance of the Second CMC

AND UPON hearing leading counsel for the Claimants and counsel for each of the First and Second to Seventh Defendants at the Second CMC

IT IS ORDERED THAT:

Disclosure

1. The Defendants shall each give simultaneous disclosure and inspection of the categories of data and documents, as detailed at paragraph 1 of the Schedule to this Order by 4pm on Monday, 25 July 2022 (the “Defendants’ First Tranche Disclosure”).
2. The Defendants shall each make best endeavours to give simultaneous disclosure and inspection of the categories of data, documents and information detailed at paragraph 2 of the Schedule to this Order by 4pm on Friday, 23 September 2022. In the event that it is not possible to complete the disclosure and inspection by 4pm on Friday, 23 September 2022, the Defendants shall each complete the disclosure and inspection of those categories of data, documents and information as soon as possible thereafter and in any event by no later than 4pm on Monday, 24 October 2022 (the “Defendants’ Second Tranche Disclosure”).

3. The Claimants shall give simultaneous disclosure and inspection of the categories of data and documents as detailed at paragraph 3 of the Schedule to this Order by 4pm on Monday, 25 July 2022 (the “Claimants’ First Tranche Disclosure”).
4. The Claimants shall give simultaneous disclosure and inspection of the categories of data, documents and information as detailed at paragraph 4 of the Schedule to this Order by 4pm on Friday, 23 September 2022. In the event that it is not possible to complete the disclosure and inspection by 4pm on Friday, 23 September 2022, the Claimants shall each complete the disclosure and inspection of those categories of data, documents and information as soon as possible thereafter and in any event by no later than 4pm on Monday, 24 October 2022 (the “Claimants’ Second Tranche Disclosure”).

Disclosure Process

5. The parties shall seek to agree disclosure pursuant to paragraphs 2 and 4 above in accordance with the following process:
 - (a) By 4pm on Friday, 10 June 2022, the Claimants and the Defendants shall by letter set out their proposals for the searches they each have undertaken, or propose to undertake, for the purpose of giving disclosure.
 - (b) By 4pm on Friday, 24 June 2022, the Claimants and the Defendants shall by letter set out their response to the searches set out pursuant to paragraph 5(a) above and shall, to the extent possible, set out any further or additional reasonable and proportionate searches that they consider should be undertaken by the other parties for the purpose of giving disclosure.
 - (c) By 4pm on Friday, 8 July 2022, the Claimants and the Defendants shall meet to seek to agree the extent of searches required for giving disclosure.

6. In addition to paragraph 5 above, any disclosure of a “representative sample” of data, documents and/or information set out in the Schedule to this Order is to be carried out in accordance with the following process:
 - (a) The disclosing party shall make reasonable and proportionate searches to obtain a representative sample of available data, documents and/or information, for each year of the period specified.
 - (b) The basis on which such a sampling approach has been adopted, and an explanation as to why the sample is representative in the circumstances, shall be set out in the disclosure statement to be provided pursuant to paragraph 7 below.
 - (c) The data, documents and/or information included in the sample disclosed shall include data, documents and/or information provided by the disclosing party to their economic expert. The parties shall have a continuing obligation to disclose any data, documents and/or information falling under each category requiring representative sample disclosure that are subsequently provided to the disclosing party’s economic expert, within two weeks of such provision.
7. Disclosure by list, given by each party pursuant to paragraphs 1 to 4 above shall be accompanied by disclosure statements in the form described at CPR Rule 31.10(6), (7) and (9).
8. The parties shall provide the experts with clarification on matters arising out of the data, documents and information disclosed pursuant to paragraphs 1 to 4 above (the “Relevant Matters”) in accordance with the following process:
 - (a) Each expert may request clarification on any of the Relevant Matters by 4pm on Monday, 5 December 2022. Such requests shall (i) be made in writing; (ii) be confined to a single document produced by each expert; (iii) be strictly limited to those necessary for the experts to understand the documents and data which have been disclosed; (iv) seek, and be capable of being answered in, short elucidatory responses;

(v) make clear to which party each request is addressed; and (vi) be sent to all parties.

(b) Each party shall provide written responses to any request above by 4pm on Monday, 9 January 2023. Such written responses shall (i) be contained in a single document produced by each party; (ii) set out clearly each request made to that party and the expert who made the request; (iii) where a party does not believe the request properly falls under paragraph 8(a) above, explain why; and (iv) be sent to all parties.

9. The data, documents and information to be disclosed pursuant to paragraphs 1 to 4 of this Order:

(a) 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;

(b) if contained in the form of electronic databases or other electronic sources, should, wherever possible, be provided in both their native format and any format which facilitates the importation of this data for aggregation and analysis; and

(c) if contained in the form of an electronic database or extract therefrom, should be provided with a brief explanation on how the relevant

information has been compiled for the database, and, if appropriate, guidance on how it is to be examined.

Timetable to trial

10. In view of the Provisional Trial Window, the procedural timetable for the proceedings shall be as follows:
 - (a) Signed statements of witness of fact, and hearsay notices where required by CPR 33.2, are to be exchanged no later than 4pm on Monday, 6 March 2023;
 - (b) Signed reply statements of witnesses of fact are to be exchanged no later than 4pm on Monday, 17 April 2023;
 - (c) Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witness at trial;
 - (d) Signed reports of experts in the field of competition economics are to be exchanged no later than 4pm on Monday, 8 May 2023;
 - (e) Signed expert reports in reply in the field of competition economics are to be exchanged no later than 4pm on Monday, 26 June 2023;
 - (f) Meeting of experts:
 - (i) the experts are to meet after exchange of their signed reports by Monday, 3 July 2023; and
 - (ii) the joint memorandum of the economic experts setting out matters agreed and not agreed is to be filed and served by the Claimants by 4pm on Monday, 24 July 2023.
 - (g) The parties shall endeavour to agree a trial reading list for the Tribunal's panel, to be lodged not less than four weeks before the commencement of the Provisional Trial Window, which shall seek to:

(i) identify the issues that the Tribunal will be asked to decide with the assistance of expert evidence; (ii) in respect of each such issue, briefly state each party's case; and (iii) in respect of each such issue, identify the pages of the expert evidence that need to be read.

(h) The pre-trial review shall be listed with a provisional time estimate of one day and not less than three weeks before the commencement of the Provisional Trial Window.

11. Costs in the case.

12. There be liberty to apply.

The Hon Mrs Justice Cockerill
Chairwoman of the Competition Appeal Tribunal

Made: 11 May 2022
Drawn: 11 May 2022

SCHEDULE

The Defendants' First Tranche Disclosure

1. The Defendants shall each give disclosure and inspection of the following categories of data and documents in accordance with paragraph 1 of the Order:

1.1. to the extent available, data available from electronic databases or other electronic sources in relation to roll-on, roll-off cargo ("RoRo") services provided to the First Claimant (including the First Claimant's predecessors in title, being Land Rover and Jaguar Cars Ltd (together, the "First Claimant's Predecessors in Title")) by the Defendants (or any of them) from 18 October 2006 until 31 December 2019, including the following:

(a) the payments made by the First Claimant (including the First Claimant's Predecessors in Title) to the Defendants;

(b) the volume of shipments made by the Defendants on behalf of the First Claimant (including the First Claimant's Predecessors in Title); and

(c) the transacted unit prices;

(d) to the extent available, each of the items at (a) to (c) above should allow for the identification of the following:

(i) the relevant dates; for example, the date of payment and the date of the RoRo services provided, such as data of loading, shipment and unloading;

(ii) a breakdown of the price, including base price, BAF surcharge, CAF surcharge and other surcharges;

(iii) the route to which the RoRo service applies;

(iv) the vehicle type(s)/model(s) transported; and

(v) the identity of the Claimant paying entity;

1.2. to the extent available, contracts between the First Claimant (including the First Claimant's Predecessors in Title and/or the Ford Motor Company with respect to the business of the First Claimant and/or the First Claimant's Predecessors in Title) and the Defendants (or any of them) entered into:

(a) between 18 October 2006 and 31 December 2019; and

(b) before 18 October 2006 and which had effect, or continued to have effect, between 18 October 2006 and 6 September 2012;

(c) disclosure of contracts falling under (a) or (b) above shall include the disclosure of annexes, amendments and addenda, insofar as the same form part of such contracts;

1.3. to the extent available, costs data available from electronic databases or other electronic sources in relation to RoRo services provided by the Defendants (or any of them) from 18 October 2006 until 31 December 2019 as set out below:

(a) in the first instance, costs data relating to RoRo services provided to the First Claimant (including the First Claimant's Predecessors in Title) in respect of each individual shipment;

(b) to the extent the data in paragraph 1.3(a) is not available, alternatively, aggregated costs data relating to RoRo services provided to the First Claimant (including the First Claimant's Predecessors in Title) in respect of each route such services were provided;

(c) to the extent the data in paragraphs 1.3(a) and (b) is not available, in the further alternative, costs data relating to RoRo services provided by each of the Defendants to all automobile manufacturers in relation to any routes involving the shipment of vehicles from the United Kingdom; or

(d) to the extent the data in paragraphs 1.3(a), (b) and (c) is not available, in the further alternative costs data relating to RoRo services provided by each Defendant to all automobile manufacturers;

(e) to the extent available, the costs data referred to in each of (a)-(d) above should include the following.

- (i) the amount of each cost item;
- (ii) a description of each of the cost items listed in (i) above; and
- (iii) the basis on which such costs are calculated.

The Defendants' Second Tranche Disclosure

2. Each of the Defendants shall give disclosure and inspection of the following categories of data, documents and information in accordance with paragraph 2 of the Order:

2.1. to the extent not already provided under the Defendants' First Tranche Disclosure, and to the extent available, data relating to the margins and revenue of any RoRo services provided by each of the Defendants from 18 October 2006 to 31 December 2019:

(a) to the First Claimant (including the First Claimant's Predecessors in Title);
and

(b) in relation to any routes involving the shipment of vehicles from the United Kingdom to any country/region to which Compania Sudamericana de Vapores S.A. ("CSAV"), Kawasaki Kisen Kaisha, Ltd ("KK"), Nippon Yusen Kabushiki Kaisha ("NYK"), Höegh Autoliner AS, the Grimaldi Group (both together, the "Non-Cartelists"), or any of them, provided RoRo services to the First Claimant (including the First Claimant's Predecessors in Title);

2.2. the data, documents and information set out at paragraph 2.3 below in respect of any “Relevant Tender Process”. A Relevant Tender Process is any invitation by the First Claimant (including the First Claimant’s Predecessors in Title, or the Ford Motor Company on behalf of the First Claimant and/or the First Claimant’s Predecessors in Title) to the Defendants (or any of them), CSAV, KK, NYK and/or the Non-Cartelists, or any of them, to provide a price quotation for the provision of RoRo services that was made either:

- (a) during the period between 18 October 2006 until 31 December 2019; or
- (b) before 18 October 2006 and which related to the provision of RoRo services that were, or were to be, provided between 18 October 2006 and 6 September 2012;

2.3. the data, documents and information for the purpose of paragraph 2.2 above are as follows:

- (a) a list of any Relevant Tender Process in which the Defendants (or any of them) participated;
- (b) information on whether the tender was won, partly won or lost by the Defendants (or any of them);
- (c) the price offers made at each stage of the tender process by the Defendants (or any of them);
- (d) a list of any Relevant Tender Process in which the Defendants (or any of them) were invited to but did not participate;
- (e) documents showing the rationale for not participating in such tenders; and
- (f) documents showing any reasoning, proposals or recommendations relating to the decision made by the Defendants (or any of them) to bid, including in relation to which price level to bid at;

2.4. to the extent available, data and/or documents showing each of the Defendants' overall fleet capacity for vehicle shipments and/or rate of utilisation in the period 18 October 2006 until 31 December 2019 as follows:

- (a) in the first instance, by route and/or by quarter;
- (b) to the extent that the data and/or documents in paragraph 2.4(a) above are not available, in the alternative, in aggregate; or
- (c) to the extent that the data and/or documents in paragraphs 2.4(a) and (b) above are not available, at a market level;

2.5. in relation to the documents described in paragraph 2.6 below:

- (a) all such documents as they relate to RoRo services provided to the First Claimant (including the First Claimant's Predecessors in Title); and
- (b) a representative sample of such documents as they relate to RoRo services provided to other automobile manufacturers;

2.6. the documents for the purposes of paragraph 2.5 above are documents showing how price terms for the provision of RoRo services were constructed and the individuals they were constructed by during the period 18 October 2006 until 31 December 2019, including but not limited to documents giving information on any of the following: (i) any express reference to prior contracts; (ii) any cost categories and the level of costs taken into account; (iii) the market considerations taken into account (including any supply or demand drivers considered); (iv) any data and or/data sources relating to such drivers; (v) the profit or margin targets taken into account; and (vi) any significant company-wide changes in sales or pricing policy that took place during this period;

2.7. documents containing discussions of and/or recommendations on the Defendants' business with the First Claimant (including the First Claimants' Predecessors in Title) in the period 18 October 2006 until 31 December 2019

including: (i) minutes of meetings on the Claimants' business; and (ii) internal management presentations on the Claimants' business;

2.8. a representative sample of documents providing internal business, strategy or management updates in relation to RoRo services for the period 18 October 2006 until 31 December 2019;

2.9. documents describing any significant changes in the accounting practices of the Defendants (or any of them) during the period 18 October 2006 until 31 December 2019.

The Claimants' First Tranche Disclosure

3. The Claimants shall give disclosure and inspection of the following categories of data and documents in accordance with paragraph 3 of the Order, to the extent available:

3.1. contracts with any of the Defendants, CSAV, KK, NYK and/or the Non-Cartelists entered into:

(a) between 18 October 2006 and 31 December 2019; and

(b) before 18 October 2006 and which had effect, or continued to have effect, between 18 October 2006 and 6 September 2012;

(c) the disclosure of contracts falling under (a) or (b) above shall include the disclosure of annexes, amendments and addenda, insofar as the same form part of such contracts;

3.2. data available from electronic databases or other electronic sources in relation to RoRo services provided to the First Claimant (including the First Claimant's Predecessors in Title) by any of the Defendants, CSAV, KK, NYK and/or the Non-Cartelists for the period 18 October 2006 to 31 December 2019, including the following:

- (a) the payments made by the First Claimant (including the First Claimant's Predecessors in Title);
- (b) the volume of shipments made on behalf of the First Claimant (including the First Claimant's Predecessors in Title); and
- (c) the transacted unit prices;
- (d) each of the items at (a) to (c) above should allow for the identification of the following:
 - (i) the relevant dates; for example, the date of payment and the date of the RoRo services provided, such as data of loading, shipment and unloading;
 - (ii) a breakdown of the price, including base price, BAF surcharge, CAF surcharge and other surcharges;
 - (iii) the route to which the RoRo service applies;
 - (iv) the vehicle type(s)/model(s) transported; and
 - (v) the identity of the Claimant paying entity;
- (e) data for the period 18 October 2006 to 31 December 2019 in relation to the sums paid to any of the Defendants, CSAV, KK, NYK and/or any of the Non-Cartelists in relation to RoRo services, broken down by route. If available, sums paid should be broken down by category of charges: base price, BAF surcharge, taxes, levies etc.

The Claimants' Second Tranche Disclosure

4. The Claimants shall give disclosure and inspection of the following categories of data, documents and information in accordance with paragraph 4 of the Order, to the extent available:

4.1 the following data, documents and information in respect of any Relevant Tender Process:

- (a) a list of any Relevant Tender Process in which any of the Defendants, CSAV, KK, NYK and/or any of the Non-Cartelists participated;
- (b) documents containing information on which entities were invited to tender and why;
- (c) information on which entity (or entities) the tender was awarded or partly awarded to;
- (d) the price offers made at each stage of the tender process by each entity that participated; and
- (e) a list of the tenders in which the Defendants (or any of them) were invited to but did not participate;

4.2. documents containing information in relation to why certain sales of RoRo services were not organised by way of a tender process;

4.3. documents containing information in relation to contracts for RoRo services that were not subject to open tenders (including for example, renewals and/or extensions of existing contracts and/or spot trades);

4.4. data and documents for the period 18 October 2006 to 31 December 2019 for the following categories:

- (a) costs including:
 - (i) total actual (or if unavailable, planned, forecast or estimated) vehicle prices and costs, if available, broken down by vehicle model and cost category (including transport costs); and
 - (ii) total actual (or if unavailable, planned) vehicle option costs, broken down by cost category;

(iii) the basis on which such costs are calculated;

(b) documents describing any significant changes in the accounting practices of any of the Claimants;

(c) data on total vehicle prices charged by each Claimant to national sales companies and/or third party importers (as is relevant) and by national sales companies to dealers (if possible with components such as surcharges and discounts provided separately) by model and by country/region;

(d) data on the delivery charge charged by each Claimant to national sales companies and third party importers, and by national sales companies to dealers for transportation, including RoRo services, by country/region; and

(e) data on volume of vehicles sold broken down by vehicle model and country/region;

4.5. documents concerning the Claimants' vehicle price-setting practices in respect of the period from 18 October 2006 to 31 December 2019, including:

(a) documents that relate to how the Claimants determine and adjust their prices over time and the factors that they consider when doing so, and

(b) documents that relate to price increases in response to cost increases and/or positioning in relation to competitors (including the extent to which those competitors are considered substitutes and the market shares of the Claimants in the relevant destination geographies);

4.6. documents to assess volume effects, which may include any available estimates of the relevant price elasticity of demand faced by the Claimants in relation to their vehicles (to the extent available, this should be specific to the relevant geographies and segments) and vehicle margin information, to the extent that this is not obtained from the data requested for the pass-on assessment;

4.7. to the extent not covered by 4.4(c) above, documents evidencing the basis on which those Claimants that are subsidiaries of the First Claimant are included as Claimants;

4.8. disclosure of appropriate representative examples of invoices issued to customers and dealers, and framework contracts entered into between the Claimants and customers and dealers. These examples should cover:

(a) representative examples of invoices for vehicles sold in the USA for the following periods:

(i) 1 October 2009 to 30 September 2010;

(ii) 1 October 2010 to 30 September 2011;

(iii) 1 October 2012 to 30 November 2013;

(b) representative examples of invoices for vehicles sold in China for the following periods:

(i) 1 November 2009 to 31 October 2010;

(ii) 1 November 2010 to 31 October 2011;

(iii) 1 June 2013 to 31 May 2014;

4.9. documents concerning the Claimants' claims for compound interest, including (so far as is relevant) documents that relate to how the Claimants funded any alleged overcharge and their operations more generally, the Claimants' borrowing costs and terms, the Claimants' funding sources, and any investments that the Claimants considered undertaking, from 18 October 2006 to 31 December 2019.