



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1248/5/7/16

PEUGEOT S.A. AND OTHERS

Claimants

-v-

(1) NSK LTD.
(2) NSK EUROPE LTD.
(3) NTN CORPORATION
(4) JTEKT CORPORATION
(5) AB SKF
~~(6) INA HOLDING SCHAEFFLER GMBH & CO. KG~~
~~(7) SCHAEFFLER HOLDING GMBH & CO. KG~~
~~(8) SCHAEFFLER AG~~

Defendants

ORDER

UPON HEARING Counsel for the Claimants and Counsel for the Defendants at a case management conference on 11 October 2016 (the “**First CMC**”);

AND HAVING REGARD TO the Tribunal's powers under the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”);

AND HAVING REGARD TO the Tribunal’s Order of the same date establishing an order to govern the treatment of confidential information (the “**Confidentiality Ring Order**”);

IT IS ORDERED THAT:

1. For the purposes of this Order the term “Party” means the Claimants and each Defendant group (1st and 2nd Defendants together, 3rd Defendant, 4th Defendant, and 5th Defendant).

Forum

2. Pursuant to Rule 52 and Rule 18 of the Tribunal Rules, the proceedings are to be treated as proceedings in England and Wales.

Requests for Further Information

3. By 4pm on 21 October 2016, each Defendant is to respond to the Claimants' Requests for Further Information dated 23 September 2016.

Disclosure

4. The Defendants shall write to the addressees of the confidential version of the European Commission's decision of 19 March 2014 in Case COMP/39922 – Bearings (the "**Confidential Decision**") who are not a Party and invite them to identify by 2 November 2016 all passages in the Confidential Decision which they require to be redacted on the grounds set out in paragraph 5 below. To the extent that an addressee fails to respond, the Court shall refuse any later claims for confidential treatment of the Confidential Decision.
5. By 4pm on 9 November 2016, the Defendants shall disclose and provide inspection of the Confidential Decision. The Confidential Decision shall be redacted in respect of:
 - (a) citations from leniency statements (as defined in Article 2(16) of Directive 2014/104/EU);
 - (b) citations from settlement submissions (as defined in Article 2(18) of Directive 2014/104/EU), save in respect of settlement submissions that have been withdrawn; and
 - (c) any material which a Party claims is protected from disclosure under Article 48 of the Charter of Fundamental Rights of the European Union and/or Article 339 of the Treaty on the Functioning of the European Union (as applied in case T-474/04 *Pergan Hilfsstoffe GmbH v Commission* [2007] ECR II-4225) ("**Pergan Material**").

Each redaction shall identify the basis on which it is made.

6. The Defendants shall write to the addressees of the Confidential Decision who are not a Party and invite them to identify by 16 November 2016 all of those documents which were obtained from them by the Commission and which are on the European Commission's file in Case COMP/39922 – *Bearings* that they contend should be withheld (in whole or in part) from inspection on the grounds set out in paragraph 7 below. To the extent that an addressee fails to respond, the Court shall refuse any later claims for confidential treatment of such documents.

7. By 4pm on 25 November 2016, each Defendant shall disclose and provide inspection of all documents (together, the “**Access to File Documents**”) on the European Commission's file in Case COMP/39922 – *Bearings* that (i) were provided by them to the European Commission in the context of the investigation; or (ii) were provided to or obtained by the Commission from a person who is not a Party. The following categories of documents (or parts of documents) shall be withheld from inspection of the Access to File Documents:
 - (a) leniency statements (as defined in Article 2(16) of Directive 2014/104/EU);
 - (b) settlement submissions (as defined in Article 2(18) of Directive 2014/104/EU), excluding settlement submissions that have been withdrawn;
 - (c) any information protected by legal professional privilege;
 - (d) any Pergan Material; and
 - (e) material that is irrelevant, applying the approach contained in CPR rule 31.6.
8. If and to the extent that any Defendant withholds any Access to File Documents on grounds 7(a) to (e) above (and in particular where materials are withheld from disclosure on grounds of relevance), it shall describe, in sufficient detail to enable the Claimants to challenge such assertion by way of an application to the Tribunal, if so advised, the nature of the documents (by reference to the Commission’s list of documents on the file), the ground under 7(a) to (e) that is applicable and, in the case of ground 7(e), the reason(s) why they are said to be irrelevant.
9. The Confidential Decision and Access to File Documents shall be provided pursuant to the terms of the Confidentiality Ring Order.
10. By 4pm on 25 October 2016, the Parties, in so far as possible, shall write to each other to indicate the categories and types of documents they expect to receive from the other Parties by way of disclosure for the purposes of preparation of Disclosure Reports and Electronic Document Questionnaires.
11. By 4pm on 15 November 2016, each Party shall file and serve a Disclosure Report and Electronic Documents Questionnaire.

Second CMC

12. A further case management conference is to be listed before Mr Justice Green on 1 December 2016 with a time estimate of one day. The parties are to notify the Tribunal promptly in the event that the further case management conference is not needed, if less time is needed, or if it is to be adjourned. A further hearing date before Mr Justice Green of two days shall be reserved in the first term week of January 2017 for any unresolved disclosure issues.

Experts

13. Permission shall be granted for each of the Parties to rely on the evidence of a single expert (together the “**Experts**”), each of whom will address the following:
 - (a) whether and to what extent the Defendants’ conduct caused the prices paid by the Claimants (to the Defendants and/or other suppliers) for automotive bearings to be inflated compared to the prices that would have prevailed in the absence of that conduct (“**Overcharge**”); and
 - (b) if so, whether and to what extent the Claimants passed on any part of the Overcharge (“**Pass-On**”); and
 - (c) the amount of interest on any losses incurred by the Claimants.
14. By 4pm on 15 December 2016, the Experts shall attend an initial meeting (without the Parties) to discuss the scope of their proposed reports and the approaches they intend to take to assessing Overcharge and Pass-On. The agenda for the meeting shall be drafted by the expert instructed by the Claimants, such agenda to be circulated to the other experts not less than one week before the meeting.
15. The order of expert reports shall be:
 - (a) The Claimants’ expert shall serve a report in relation to the matters set out in paragraph 13 above;
 - (b) The Defendants’ experts shall serve their reports in response, but will liaise to avoid any unnecessary duplication; and
 - (c) The Claimants’ expert shall serve a reply report.
16. Following service of the Claimants’ expert’s reply report, the Experts shall meet (without the Parties) and discuss on a without prejudice basis according to the provisions of Civil Procedure Rule 35.12, and identify in a joint memorandum, clearly and concisely and in terms that can be understood by a non-expert, attaching any relevant documents, and with the assistance of the Parties’ legal representatives where necessary:
 - (a) the areas in dispute between them;
 - (b) whether each area in dispute is material to the outcome of the case; and
 - (c) in relation to each material area in dispute:
 - i. the extent to which it is material and why;
 - ii. any assumptions underpinning each Expert’s views;
 - iii. a summary of each Expert’s criticism of the other Expert’s position;

- iv. all key documents and/or pieces of evidence which are relevant to the particular areas of dispute between them and its resolution;
 - v. their opinions on what the Court has to decide in order to resolve the particular areas of dispute and how this can be achieved.
17. The target date for completion of the steps at paragraphs 13 and 15 above shall be 2 October 2017.

Pre-Trial Review and Trial

18. A one-day pre-trial review shall be fixed before Mr Justice Green on a convenient date in November 2017.
19. A six week window will be reserved for the trial, starting on the first term day of January 2018.

Costs

20. Costs in the case.

The Honourable Mr Justice Green
Chairman of the Competition Appeal Tribunal

Made: 11 October 2016
Drawn: 7 November 2016