



Claim No.: CL-2020-000780

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
COMMERCIAL COURT**

**Before the Honourable Mr Justice Picken  
Thursday, 14 July 2022**

CL-2020-000780

**B E T W E E N:**

**(1) VOLKSWAGEN AG  
AND OTHERS**

**Claimants**

**and**

- (1) MOL (EUROPE AFRICA) LTD**
- (2) WALLENIUSREDERIERNA AKTIEBOLAG**
- (3) WALLENIUS WILHELMSSEN ASA**
- (4) WALLENIUS LOGISTICS AB**
- (5) WILHELMSSEN SHIPS HOLDING MALTA LTD**
- (6) WALLENIUS WILHELMSSEN OCEAN AS**
- (7) “K”-LINE HOLDING (EUROPE) LIMITED**
- (8) “K”-LINE (EUROPE) LIMITED**
- (9) KAWASAKI KISEN KAISHA, LTD**

**Defendants**

**and**

**NIPPON YUSEN KABUSHIKI KAISHA**

**Third Party**

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**ORDER**

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**UPON** a Case Management Conference taking place on 14 July 2022,

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

**AND UPON** the First, Second, Third, Fourth, Fifth, Sixth and Ninth Defendants (together, the “**Addressee Defendants**”) and the Third Party being addressees of the Decision,

**AND UPON** Mitsui O.S.K. Lines, Ltd, Nissan Motor Car Carrier Co., Ltd, EUKOR Car Carriers, Inc. and Compañía Sudamericana de Vapores S.A. being addressees of the Decision but not party to these proceedings (together, the “**Non-Party Addressees**”),

**AND UPON** the Seventh and Eighth Defendants being defendants in these proceedings but not addressees of the Decision,

**AND UPON** the full confidential text of the Decision having been provided to the Addressee Defendants, the Third Party 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 by the Commission on 19 July 2019 (the “**Non-Confidential Decision**”),

**AND UPON** the First and Seventh to Ninth Defendants and Third Party having documents in their 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 16 below),

**AND UPON** the Order of Mr Justice Jacobs dated 10 June 2022 establishing a confidentiality ring in these proceedings (the “**Confidentiality Ring Order**”),

**AND UPON** the Order of Mr Justice Calver dated 20 June 2022 directing that these proceedings be transferred to the Competition Appeal Tribunal (“**CAT**”) such transfer to be effective upon the sealing of this Order,

**AND UPON** hearing Leading Counsel for the Claimants (“**VW**”), Leading Counsel for the First Defendant (“**MOL**”) and the Seventh to Ninth Defendants (“**K Line**”) and Counsel for the Third Party (“**NYKK**”)

**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.

Amendments to Statements of Case

2. MOL and “K” Line shall file and serve Re-Amended Defences, in substantially the form provided to the Claimants on 6 July 2022 and 1 July 2022 respectively, by 4 pm on Friday 22 July 2022.
3. The Claimants shall have permission to file and serve an Amended Consolidated Reply, by 4 pm on Friday 16 September 2022.

#### Notification of this Order and Applications

4. The Claimants shall as soon as possible write to each of the Second to Sixth Defendants and the Non-Party Addressees (the “**Recipients**”) providing them with copies of this Order and the Confidentiality Ring Order (the “**Notice(s)**”).
5. Any of the Recipients may within 21 days of receipt of the Notice(s) apply to set aside or vary this Order or the Confidentiality Ring Order, such application to be:
  - 5.1. made by application notice and served on the Claimants, the First and Seventh to Ninth Defendants and the Third Party;
  - 5.2. 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
  - 5.3. at the applicant’s risk as to costs.

#### Disclosure and inspection of the Decision

6. The Notice(s) shall inform the Recipients of the following:
  - 6.1. that the First and Ninth 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:
    - 6.1.1. they are leniency statements, as defined in Article 2(16) of Directive 2014/104/EU (“**Leniency Statements**”);
    - 6.1.2. they are settlement submissions, as defined in Article 2(18) of Directive 2014/104/EU (“**Settlement Submissions**”);
    - 6.1.3. they are subject to legal professional privilege (“**Privileged Material**”); or
    - 6.1.4. 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 by the judgment in Case T-474/04 *Pergan* [2007] ECR II-4225 (“**Pergan Material**”);

- 6.2. the Recipients are invited to inform the First and Ninth Defendants within 21 days of receiving the Notice(s) 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
  - 6.3. that if they fail to respond within 21 days of receiving the Notice(s), the Court may refuse any later claims for redactions of the Commission Decision.
7. Within 35 days of the date of the Notice(s), the First and Ninth Defendants shall disclose and provide inspection to the Claimants of the Redacted Confidential Decision, subject only to any redactions requested by the First and Ninth Defendants or by the Third Party or by a Recipient on one of the grounds set out at paragraph 6 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 Court, if so advised) of any passages which have been redacted, the basis on which they have been redacted, and which of the First and Ninth Defendant and/or the Third Party and/or the Recipients have requested the redaction.
  8. The Redacted Confidential Decision shall be treated as Outer Confidentiality Ring Information (within the meaning set out in the Confidentiality Ring Order).

Disclosure by Defendants and inspection of documents

9. The Notice(s) shall also inform the Recipients of the following:
  - 9.1. that the First and Seventh to Ninth Defendants will disclose by list and provide inspection of the Commission File within the control of any of the First and Seventh to Ninth Defendants. The following categories of documents (or parts of documents) shall be redacted or withheld from inspection:
    - 9.1.1. Leniency Statements;
    - 9.1.2. Settlement Submissions;
    - 9.1.3. Privileged Materials; and

9.1.4. Material that is irrelevant, applying the approach contained in CPR Rule 31.6.

- 9.2. that the First and Seventh to Ninth Defendants will also disclose by list and provide inspection of the documents within its control which were provided to the Commission, but which are not on the Commission File (the “**Other Commission Documents**”). The same categories of documents or parts of documents as set out at paragraph 9.1 above may be redacted or withheld from inspection;
- 9.3. that the Third Party will disclose by list and provide inspection of the documents within its control which (i) the Commission provided to the Third Party during the investigation; and (ii) the Third Party provided to the Commission, or which the Commission took from it, during the Commission’s investigation, irrespective of whether they are on the Commission File (the “**Third Party’s Commission Documents**”). The same categories of documents (or parts of documents) as set out at paragraph 9.1 above may be redacted or withheld from inspection;
- 9.4. the Recipients are invited to inform the First and Seventh to Ninth Defendants and Third Party within 21 days of the date of the Notice of the documents within the Commission File to which the First and Ninth Defendants and Third Party 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 Court, 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; and
- 9.5. that if they fail to notify the First and Seventh to Ninth Defendants and Third Party in accordance with paragraph 9.4 of this Order within 21 days of the date of the Notice, the Court may refuse any later claims for redactions, withholding, or confidential treatment of the documents on the Commission File; the Access to File Documents, the Other Commission Documents or the Third Party’s Commission Documents.

10. Within 35 days of the date of the Notice, the First and Seventh to Ninth Defendants shall:
  - 10.1. disclose by list and provide inspection of the Access to File Documents within the control of any of the First and Seventh to Ninth Defendants and Third Party, subject only to a right to redact or withhold material at the request of the First and Seventh to Ninth Defendants and Third Party or of a Recipient on one of the grounds set out at paragraph 9.1 above;
  - 10.2. 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 Court, if so advised) identifying any documents which have been redacted or withheld by the First and Seventh to Ninth Defendants and the basis on which they have been redacted or withheld;
  - 10.3. provide the Claimants with the explanation(s) provided by the Recipients to the First and Ninth Defendants pursuant to paragraph 9.4 above; and
  - 10.4. identify which documents are to be designated pursuant to paragraph 6 of the Confidentiality Ring Order as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information.
11. Within 35 days of the date of the Notice, the First and Seventh to Ninth Defendants shall also:
  - 11.1. disclose by list and provide inspection of the documents within the Commission File (not otherwise encompassed by paragraph 10 above) and Other Commission Documents within their control, subject only to a right to redact or withhold material at the request of the First and Seventh to Ninth Defendants and Third Party on one of the grounds set out at paragraph 9.1 above;
  - 11.2. 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 Court, if so advised) identifying any documents which have been redacted or withheld by the First and Seventh to Ninth Defendants and the basis on which they have been redacted or withheld; and

- 11.3. identify which documents are to be designated pursuant to paragraph 6 of the Confidentiality Ring Order as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information.
12. Within 35 days of the date of the Notice, the Third Party shall:
    - 12.1. disclose by list and provide inspection of the Third Party's Commission Documents within its control, subject only to a right to redact or withhold material at the request of the First and Seventh to Ninth Defendants and Third Party on the grounds set out at paragraph 9.1 above;
    - 12.2. 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 Court, if so advised) identifying any documents which have been redacted or withheld by the Third Party and the basis on which they have been redacted or withheld; and
    - 12.3. identify which documents are to be designated pursuant to paragraph 6 of the Confidentiality Ring Order as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information.
13. By 4pm on 21 October 2022:
    - 13.1. the Seventh to Ninth Defendants shall give disclosure and inspection of all documents which (i) are or have been in their control; and (ii) have been provided either by the Ninth Defendant or by any of its current or former subsidiaries to regulators and/or authorities in Japan, Australia, South Africa, Brazil, Peru, Chile, Mexico, the USA, India, South Korea, and China in connection with the investigation of anti-competitive practices in relation to Roll On Roll Off maritime transport;
    - 13.2. the obligation to give disclosure and inspection pursuant to paragraph 13.1 above shall be subject only to a right to redact or withhold material on one of the grounds set out at paragraphs 9.1.3 and 9.1.4 above, or otherwise as required by applicable local laws;
    - 13.3. the Seventh to Ninth Defendants shall, at the time of giving such disclosure, (a) 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 Court, if so advised) identifying any documents which have been redacted or withheld and the basis on which they have been redacted or withheld, and (b) identify which documents are to be designated pursuant to paragraph 6 of the Confidentiality Ring Order as Inner Confidentiality Ring Information or Outer Confidentiality Ring Information;

- 13.4. the Seventh to Ninth Defendants shall, in the disclosure statement accompanying the disclosure given pursuant to paragraph 13.1 above, confirm that the Ninth Defendant or its subsidiaries have not produced documents to a regulator or authority in connection with the investigation of anti-competitive practices in relation to Roll On Roll Off maritime transport, other than the European Commission and in the jurisdictions referred to at paragraph 13.1 above.
14. The First Defendant shall provide disclosure on the standard basis and inspection of relevant documents in its control on the basis of searches for documents with custodians identified according to the following process:
  - 14.1. the Claimants and First Defendant shall by 4 pm on Friday 16 September 2022 seek to agree a list of custodians and the date by which such disclosure and inspection shall be given;
  - 14.2. in the absence of agreement, the parties shall by 4pm on Friday 30 September 2022 make submissions in writing, for consideration by the CAT.

#### Disclosure by Claimants

15. The Claimants will give disclosure by list and inspection of:
  - 15.1. the invoices that have been used to compile and/or estimate the volume of commerce and/or overcharge figures included at paragraph 66A of the the Re-Re-Amended Particulars of Claim (“**RRAPOC**”) to the extent that those invoices are in the Claimants’ control and are readily available (the “**Underlying Invoices**”); and



- 15.2. the Excel spreadsheets that have been prepared using only the Underlying Invoices and which have been used to compile and/or estimate the volume of commerce and/or overcharge figures included at paragraph 66A of the RRAPOC.

The Claimants will provide the disclosure set out in this paragraph to the Seventh to Ninth Defendants within 35 days of the date of this Order. The Claimants will provide the disclosure set out in this paragraph to the First Defendant and the Part 20 Defendant within two business days of the First Defendant and the Part 20 Defendant: (a) confirming that they have filed their representatives' signed Confidentiality Ring Order undertakings with the Court; and (b) providing copies of such signed undertakings to the Claimants.

16. The Claimants shall give disclosure by list and inspection of (i) contracts, (ii) requests for quotations (together with related documents), and (iii) tenders (together with related documents) relating to transactions which fall within the scope of the claim, on a rolling basis in the following tranches:

- 16.1. A first tranche on 23 September 2022;

- 16.2. A second tranche on 21 October 2022.

General provisions with respect to disclosure

17. The parties' disclosures by list shall be accompanied by a disclosure statement in the form described at CPR Rule 31.10(5)-(7).
18. The Commission File includes, *inter alia*:
  - 18.1. 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);
  - 18.2. requests for information made by the Commission;
  - 18.3. responses to requests for information made by the Commission; and
  - 18.4. the index to the Commission File.

19. Where a document contains material in the categories identified in paragraph 9.1 above, it is only those parts of the document that may be redacted, not the entire document.
20. The First and Seventh to Ninth Defendants and Third Party are not required to review the validity of requests by the Recipients to withhold or redacts parts of the Confidential Decision and/or the Commission File.

#### Further Directions

21. The parties shall have permission to rely upon the evidence of experts in the field of economics at trial, in relation to issues of liability and quantum, and shall nominate such experts for the purposes of the process set out at paragraphs 21-24 below, However, it shall be for the CAT to determine whether the First and Seventh to Ninth Defendants are permitted to rely on the evidence of more than one such expert witness at trial.
22. 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 4 November 2022.
23. 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 11 November 2022.
24. By 4 pm on 2 December 2022 the parties' economic experts shall prepare a joint statement, to be filed with the CAT, 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.
25. By 4 pm on 23 December 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.
26. A second CMC be listed in the CAT for the first available date after 16 January 2023, subject to the CAT's and Counsel's availability.

### Costs

27. Costs in the case.

### Other

28. The Claimants, the First and Seventh to Ninth Defendants and Third Party, and the Recipients have liberty to apply.

29. This order is to be served by the Claimants on: (i) the First and Seventh to Ninth Defendants and Third Party; and (ii) the Commission via the following email address: COMP-GREFFE-ANTITRUST@ec.europa.eu.

### **Service of the Order**

The Court has provided a sealed copy of this Order to the serving party's solicitors:

Slaughter and May, One Bunhill Row, London, EC1Y 8YY