



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1339/7/7/20

BETWEEN:

MARK McLAREN CLASS REPRESENTATIVE LIMITED

Class Representative

- v -

- (1) MOL (EUROPE AFRICA) LTD
- (2) MITSUI O.S.K. LINES LIMITED
- (3) NISSAN MOTOR CAR CARRIER CO. LTD
- (4) KAWASAKI KISEN KAISHA LTD
- (5) NIPPON YUSEN KABUSHIKI KAISHA
- (6) WALLENIUS WILHELMSSEN OCEAN AS
- (7) EUKOR CAR CARRIERS INC
- (8) WALLENIUS LOGISTICS AB
- (9) WILHELMSSEN SHIPS HOLDING MALTA LIMITED
- (10) WALLENIUS LINES AB
- (11) WALLENIUS WILHELMSSEN ASA
- (12) COMPANIA SUDAMERICANA DE VAPORES S.A.

Defendants

COLLECTIVE PROCEEDINGS ORDER

UPON receipt of a collective proceedings claim form on 20 February 2020 (amended on 16 March 2021)

AND UPON hearing leading counsel for the parties at a hearing between 29 November and 1 December 2021

AND UPON the Tribunal having given judgment on 18 February 2022 ([2022] CAT 10) on the application for a collective proceedings order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”)

AND UPON the Tribunal having given further judgment on 27 April 2022 ([2022] CAT 18) in relation to consequential matters, including costs

IT IS ORDERED THAT:

Authorisation of class representative and certification of the claims eligible for inclusion in collective proceedings

1. Pursuant to section 47B of the Competition Act 1998 and Rules 77 and 80 of the Tribunal Rules, Mark McLaren Class Representative Limited shall be authorised to act as class representative to continue collective proceedings on an opt-out basis (the “**Class Representative**”).
2. The Class Representative’s address for service shall be c/o Scott+Scott UK LLP, St. Bartholomew House, 90-94 Fleet Street, London, EC4Y 1DH (Attention: Belinda Hollway).
3. The claims certified to be combined in the collective proceedings, pursuant to section 47B of the Competition Act 1998 and Rules 79 and 80 of the Tribunal Rules, are claims for loss and damages suffered by the Class (as defined below), as a result of an infringement of competition law determined in the settlement decision adopted by the European Commission on 21 February 2018, in Case AT.40009 – Maritime Car Carriers.

The Class

4. The class shall be defined as follows (hereafter the “**Class**” and the “**Class Definition**”):

“All Persons (other than Excluded Persons) who during the period 18 October 2006 to 6 September 2015 either Purchased or Financed, in the United Kingdom, a New Vehicle or a New Lease Vehicle, other than a New Vehicle or New Lease Vehicle produced by an Excluded Brand or, in the event such a Person has died on or after 20 February 2020, their Personal Representative.

For these purposes:

Cars means motorised four wheel vehicles including people carriers, 4x4s and SUVs, and all motorised passenger carrying vehicles that can carry no more than eight passengers (excluding the driver).

Contract Hire Arrangement means a lease agreement under which the lessee pays a deposit followed by a fixed monthly amount for the use of a vehicle, and where, at the end of the term the lessee returns the vehicle to the lessor.

Excluded Brands / Manufacturers means Abarth; Aixam; Alfa Romeo; Aston Martin; Audi; Bentley; Daimler; DS; Ferrari; Fiat; Fuso; Iveco; Jaguar; KTM; Lamborghini; Land Rover; LDV; Lotus; Maserati; Maybach; Mia; Microcar; Mini; Morgan; Opel; Piaggio; Porsche; Renault Trucks; Rolls-Royce; Rover MG; Saab; Santana; Seat; Skoda; Smart; and Volvo.

Excluded Persons means:

- (a) Addressees of the European Commission decision in Case AT.40009 – Maritime Car Carriers, their subsidiaries, holding companies, subsidiaries of those holding companies, and any entity in which any of the addressees has a controlling interest;
- (b) Officers, directors or employees of any of the companies referred to in (a) above, at any time since 18 October 2006;
- (c) All members of the Class Representative’s and Defendants’ legal teams and all experts or professional advisers instructed by them in these proceedings;
- (d) All members of the Tribunal panel assigned to these proceedings and any judge hearing any appeal in these proceedings;
- (e) Any legal person that is recorded as dissolved on the register of companies kept by Companies House; and
- (f) Any natural person who died before 20 February 2020.

First Registered Keeper means the Person recorded as such on the V5C Registration Form issued by the Driver Vehicle Licensing Agency in respect of a given vehicle.

Hire Purchase Arrangement means a loan for the full cost of a vehicle, repaid by way of a deposit and then fixed monthly payments over an agreed time period, at the end of which the purchaser becomes the legal owner of the vehicle.

Light and Medium Commercial Vehicles means motorised four wheel vehicles constructed for transporting goods with a gross weight of less than six tonnes.

New Lease Vehicle means all Cars and Light and Medium Commercial Vehicles under a Contract Hire Arrangement by the First Registered Keeper (the lessor) to a lessee.

New Vehicle means all Cars and Light and Medium Commercial Vehicles of which the purchaser, or a Related Third Party, was the First Registered Keeper.

Personal Contract Purchase (or PCP) Arrangement means a loan for the difference between the price of a new vehicle and its predicted value at the end of the loan agreement where, at the end of the loan term, the purchaser can choose to: (i) trade the vehicle in; (ii) return the vehicle to the seller and make no further payment; or (iii) pay a final payment corresponding to the resale price of the vehicle and keep it.

Personal Representative means the executor or administrator of an estate.

Persons means all persons, whether legal or natural.

Purchased or Financed in the United Kingdom means:

- (a) purchased a New Vehicle outright that was first registered in the United Kingdom with the Driver and Vehicle Licensing Agency as a new vehicle, save where such purchase was made for the purposes of providing vehicle finance services;
- (b) purchased a New Vehicle that was first registered in the United Kingdom with the Driver and Vehicle Licensing Agency as a new vehicle using a Hire Purchase Arrangement;

- (c) purchased a New Vehicle that was first registered in the United Kingdom with the Driver and Vehicle Licensing Agency as a new vehicle using a Personal Contract Purchase (PCP) Arrangement; or
- (d) was the lessee of a New Lease Vehicle that was first registered in the United Kingdom with the Driver and Vehicle Licensing Agency as a new vehicle on a Contract Hire Arrangement.

Related Third Party means a person whom the outright purchaser of a New Vehicle, the purchaser of a New Vehicle under a Hire Purchase Agreement or the purchaser of a New Vehicle under a Personal Contract Purchase Arrangement decides will be registered as the First Registered Keeper of the New Vehicle in question, for any reason.”

Opting out

- 5. Persons satisfying the Class Definition who are domiciled within the UK on 20 May 2022 may opt out of the proceedings by email or by post to either of the following addresses: optout@cardeliverycharges.com or Car Delivery Charges, PO Box 13260, BRAINTREE, CM7 0PL. Instructions are available at www.cardeliverycharges.com. Notice of an intention to opt out must be received by 12 August 2022 to be effective.

Opting in

- 6. Persons satisfying the Class Definition who are domiciled outside of the UK on 20 May 2022 may opt in to the proceedings either via the website, by email or by post to either of the following addresses: optin@cardeliverycharges.com or Car Delivery Charges, PO Box 13260, BRAINTREE, CM7 0PL. Instructions are available at www.cardeliverycharges.com. Notice of an intention to opt in must be received by 12 August 2022 to be effective.

Notification

- 7. The Class Representative is to publicise this order in accordance with Rule 81 of the Tribunal’s Rules. It shall be publicised using the Notice approved by the

Tribunal and in accordance with the proposal for publication set out in paragraph 33 of the Litigation Plan exhibited at MM1.4 to the first witness statement of Mark McLaren.

Costs

8. The First to Eleventh Defendants shall pay 80% of the Class Representative's Costs in Issue (as defined at [2022] CAT 18 at [24]), to be assessed if not agreed.
9. 15% of the Costs in Issue and the Excluded Costs (as defined at [2022] CAT 18 at [24]) are costs in the case.
10. The First to Eleventh Defendants shall make a payment on account of the costs referred to at paragraph 8 above to the Class Representative in the sum of £590,000 by 31 May 2022.

General

11. The First to Eleventh Defendants' applications to strike out the claims are dismissed.
12. There be liberty to apply.

Sarah Falk

The Hon Mrs Justice Falk DBE
Chairwoman of the Competition Appeal Tribunal

Made: 20 May 2022
Drawn: 20 May 2022