IN THE COMPETITION APPEAL TRIBUNAL **Case no. 1339/7/7/20**

B E T W E E N : -

MARK McLAREN CLASS REPRESENTATIVE LIMITED

Joint Applicant / Class Representative

- v -

(1) MOL (EUROPE AFRICA) LTD
(2) MITSUI O.S.K. LINES LIMITED
(3) NISSAN MOTOR CAR CARRIER CO. LTD
Non-Settling Defendants

(4) KAWASAKI KISEN KAISHA LTD
Joint Applicant / Defendant

(5) NIPPON YUSEN KABUSHIKI KAISHA
Non-Settling Defendant

(6) WALLENIUS WILHELMSEN OCEAN AS
(7) EUKOR CAR CARRIERS INC
(8) WALLENIUS LOGISTICS AB
(9) WILHELMSEN SHIPS HOLDING MALTA LIMITED
(10) WALLENIUS LINES AB
(11) WALLENIUS WILHELMSEN ASA
Separately Settling Defendants

~~**(12) COMPANIA SUD AMERICANA DE VAPORES S.A.**~~

JOINT APPLICATION FOR A
COLLECTIVE SETTLEMENT APPROVAL ORDER

PROPOSED SETTLEMENT BETWEEN
THE CLASS REPRESENTATIVE AND THE FOURTH DEFENDANT

For the Class Representative:

Signature: [redacted]

Name: Belinda Hollway

Position: Partner

Dated: 27 November 2024

For the Fourth Defendant:

[redacted]

Signature:

Name: Paul Stuart

Position: Partner

Dated: 27 November 2024

A INTRODUCTION AND SUMMARY

1. This is a joint application for a collective settlement approval order ("**CSAO**"), pursuant to rule 94 of the Competition Appeal Tribunal Rules 2015 No. 1648 (the "**Rules**") (the "**"K" Line CSAO Application**"), which is made by the Class Representative ("**CR**") and the Fourth Defendant ("**"K" Line**", and together with the CR the "**Settling Parties**"), regarding the proposed settlement between them.

2. For the reasons set out more fully below and in the evidence in support of this CSAO Application, both the CR and "K" Line believe that the terms of their proposed settlement are just and reasonable, and they therefore respectfully invite the Tribunal to make a CSAO in the terms set out in the draft CSAO annexed to this CSAO Application at Annex 1.

3. This CSAO Application has been duly signed by the firms of solicitors acting, respectively, for the CR and for "K" Line.

4. The CSAO Application is supported by the following documents:

   (a) the fifth witness statement of Mr Mark McLaren ("**McLaren 5**"), the sole director and sole member of Mark McLaren Class Representative Limited, the CR, together with exhibit MM5.1 (a copy of the settlement agreement between the CR and "K" Line);

   (b) the ninth witness statement of Ms Belinda Hollway ("**Hollway 9**"), the partner at Scott+Scott UK LLP ("**SSUK**") with conduct of these proceedings for the CR;

(c) the first witness statement of Mr Paul Stuart ("**Stuart 1**"), the partner at Cleary Gottlieb Steen & Hamilton LLP with conduct of these proceedings for "K" Line;

(d) the third expert report of Mr Jon Lawrence ("**Lawrence 3**"), an independent expert with over 20 years' experience in litigating and settling competition damages claims;

(e) the fourth report of Dr. Adrian Majumdar ("**Majumdar 4**") of RBB Economics LLP, "K" Line's economic expert setting out his calculations of figures relevant to the assessment of whether the proposed settlement is just and reasonable;

(f) the draft CSAO; and

(g) the draft notice to publicise to the represented persons the making of the CSAO, if granted by the Tribunal pursuant to this CSAO Application.

The Class Representative anticipates filing a witness statement of Steven James Friel, the Chief Executive Officer at Woodsford Group Limited, the Class Representative's litigation funder, in due course.

5. The remainder of this application is structured as follows:

(a) **Section B** sets out salient elements of the factual background to this CSAO Application; and

(b) **Section C** addresses the terms of the proposed collective settlement by reference to the requirements of rule 94 of the Rules and related provisions of the Competition Appeal Tribunal Guide to Proceedings 2015 (the "**Guide**").

B FACTUAL BACKGROUND

6. The "K" Line CSAO Application is made in the context of collective proceedings combining follow-on claims under section 47A of the Competition Act 1998 for damages for losses caused by the Defendants' breach of statutory duty in infringing Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area. The Defendants' liability was determined by the European Commission in an infringement decision adopted on 21 February 2018, in Case AT.40009 – *Maritime Car Carriers* (the "**Decision**"). The Decision was addressed to all of the Defendants and found that the cartel operated between 18 October 2006 and 6 September 2012.

7. The Fourth Defendant was found to have participated in the cartel. This was acknowledged by the Fourth Defendant.

8. In its Re-Re-Amended Claim Form, its Positive Position Statement, and its Negative Position Statement the CR alleges that vehicle shipping costs were unlawfully inflated as a result of the Defendants' anticompetitive conduct, and that these inflated charges were passed on through the supply chain as part of the delivery charges which are ultimately paid by the first person to purchase or finance a vehicle.

9. On 20 February 2020, the CR filed its application for a collective proceedings order ("**CPO**"). "K" Line opposed certification. On 20 May 2022, the Tribunal certified the claims as eligible for inclusion in opt-out collective proceedings and made the CPO accordingly. Pursuant to §§5-6 of the CPO, the notice period for persons domiciled within the United Kingdom ("**UK**") wishing to opt out, and persons domiciled outside of the UK wishing to opt in, was set to expire after 12 August 2022.

10. On 8 and 9 November 2022, the Court of Appeal heard an appeal by the First to Eleventh Defendants (i.e., all Defendants except CSAV) against the Tribunal's certification decision, and on 21 December 2022, the Court of Appeal handed down its judgment dismissing the Defendants' appeal against the Tribunal's certification judgment, subject to a matter of case management which was remitted to the Tribunal. On 17 July 2023, permission to appeal to the Supreme Court was refused.

11. On 27 September 2023, the CR reached a proposed settlement agreement with the former Twelfth Defendant, Compañía Sud Americana de Vapores S.A. ("**CSAV**"). On 6 December 2023 the Tribunal approved the collective settlement and made the CSAO of 6 December 2023 under rule 94 of the Rules (the "**CSAV CSAO**").

12. On 14 November 2024, solicitors for the Sixth to Eleventh Defendants ("**WWL/EUKOR**") informed the Tribunal that their clients had reached a settlement with the CR. This WWL/EUKOR proposed settlement is the subject of a separate application for a CSAO (the "**WWL/EUKOR CSAO Application**").

13. On 21 November 2024, solicitors for "K" Line informed the Tribunal that their client had reached a separate settlement with the CR, i.e., the proposed settlement which forms the basis for the present CSAO Application. This CSAO Application is concerned only with the settlement between the Settling Parties as defined above, i.e., the CR and "K" Line.

C THE PROPOSED COLLECTIVE SETTLEMENT

14. The Settling Parties address below each of the matters specified under rule 94(4) as being required for inclusion in the CSAO Application.

(1) Details of claims to be settled by the proposed collective settlement: rule 94(4)(a)

15. As discussed more fully in Section C of Hollway 9 and Section B of Stuart 1, the claims to be settled by the proposed collective settlement between the CR and "K" Line correspond to "K" Line's share of the liability in respect of follow-on damages claims arising from the *Maritime Car Carriers* Decision which are the subject of the present collective proceedings. The collective proceedings will continue in respect of the share of the liability attributable to the First to Third and Fifth Defendants (the "**Non-Settling Defendants**"). The share of liability attributable to WWL/EUKOR is the subject of the separate WWL/EUKOR CSAO Application.

16. The current estimate of the CR's economic expert, Mr Tom Robinson of BDO LLP, of the overall quantum of the claims against all of the Defendants to the collective proceedings, is in the range of £86.1 million (based on Mr Tom Robinson's lower-bound estimate of overall quantum per his sixth expert report, with adjustments made by Dr De

Coninck, expert for the WWL/EUKOR Defendants) to £215.8 million (based on Mr Tom Robinson's upper-bound estimate of overall quantum, per his fifth expert report).[1]

17. Mr Robinson's estimates are based on:

(a) Overcharges calculated using shipments into the EEA, by all Defendants on all routes, for a period from the date on which the cartel commenced and until four years after it ended. The overcharges he calculates are USD 7/m^3 (or approximately 12%) during the cartel period, reducing in each of the four years after the cartel ended (USD7/m^3 in the first 12 months, and USD 5/m3, USD 4/m3 and USD 2/m3 in the subsequent 12 month periods respectively);

(b) Umbrella effects at 100% of the overcharges;

(c) Different scenarios for quantifying pass-on:

(i) In his upper range scenario, Mr Robinson assumes that the Tribunal accepts the CR's factual evidence as to the pass-on of vehicle shipping costs in delivery charges.[2] By the end of the Run-Off period, his pass-on rates are up to 93%;[3]

(ii) In his lower range scenario, Mr Robinson assumes that the Tribunal prefers the Defendants' factual evidence as to the pass-on of vehicle shipping costs in delivery charges.[4] By the end of the Run-Off period, his estimated pass-on rate is 33.7%;[5]

---

1 Mr Robinson's sixth expert report, of 26 July 2024, filed with the CR's Negative Position Statement and responding to the expert reports of the Defendants' experts. The upper range figure of £215.8m is per Mr Robinson's Fifth Report (based on the mid-point). The lower range figure of £86.1m has been calculated by Dr De Coninck using the loss figure set out in Mr Robinson's Sixth Report for Scenario 3, to which Dr De Coninck has applied high-level adjustments to remove Deceased Persons/Defunct Companies, and added interest using the methodology set out in Mr Robinson's Fifth Report; see paragraph 23 of the Third Expert Report of Dr De Coninck dated 26 November 2024, filed in support of the WWL/EUKOR CSAO Application.

2 Robinson 6, paras 4.172 - 4.173.

3 Robinson 6, para 4.14 table 15, and para 4.190.

4 Robinson 6, para 4.183 – 4.189.

5 Robinson 6, para 4.189 table 21, and para 4.190

(d) Interest based on:

(i) For business customers, the Bank of England base rate plus 2%, on a simple basis;

(ii) For private customers who purchased on finance, a rate on a GBP 10,000 personal loan plus a 1.58% premium for the assumed 4 years of financing (on a compound basis), and then the mid-point of rates on GBP 5,000 and GBP 10,000 personal loan (on a simple basis) for the after-financing period; and

(iii) For private customers who did not purchase on finance, the mid-point of rates on a GBP 5,000 and GBP 10,000 personal loan, on a simple basis.

18. As set out in more detail below, the Settling Parties seek the Tribunal's approval to settle the CR's claim against "K" Line in these proceedings for a total sum of £12.75 million (the "**Settlement Sum**"). Assuming that "K" Line's market share is 17.3%, the total value of the claim against "K" Line (including interest) is between £14.90 million and £37.33 million depending on whether one takes Mr Robinson's estimate (as outlined in Mr Robinson's fifth expert report), or lower estimate (based on based on Mr Robinson's lower-bound estimate of overall quantum per his sixth expert report, with adjustments made by Dr De Coninck as noted in footnote 1). The Settlement Sum therefore represents between 34.2% and 85.6% of the overall value of the claim against "K" Line, depending on whether one takes Mr Robinson's upper or lower estimate of the overall claim value.

19. The portion of the Settlement Sum available for distribution for class members, as explained §23(a)(i) below is £7,000,000. This represents between 18.8% and 47.0% of the total value of the claim against "K" Line (including interest), again depending on whether one takes Mr Robinson's upper or lower estimate of the overall claim value.

20. The Settlement Sum is to carve out 17.3% of the overall value of the claim against all of the Defendants together (or any greater sum the Tribunal determines): Hollway 9 §26-27 and Stuart 1 §§20-22. This 17.3% figure represents "K" Line's market share based on the capacity of vessels, as a proportion of the Defendants' total market share (including the Twelfth Defendant): Robinson 4 §2.16. As explained in more detail at §31(a) below on the CR's case this is a conservative estimate of "K" Line's market share.

21. Majumdar 4 also provides estimates of the claim value based on his overcharge and pass-on frameworks. How these estimates compare with the Settlement Sum is discussed in detail at §31(d) below.

(2) Terms of the proposed collective settlement: rule 94(4)(b)

22. The proposed settlement agreement is exhibited to McLaren 5 at MM5.1 and its terms, and particularly the overall settlement sum, are discussed in McLaren 5, Hollway 9, and Stuart 1.

23. In summary:

(a) As set out in clause 2 of the proposed settlement agreement read in conjunction with the Definitions in clause 1 and clause 4, the CR and "K" Line agree that, in full and final settlement of the collective proceedings against "K" Line, and subject to the Tribunal making a CSAO, "K" Line shall pay the CR (on behalf of the class) a total of GBP 12,750,000 (as above, the Settlement Sum). That settlement sum comprises four elements:

(i) £7,000,000 in damages ("**the Damages Sum**"), divided up as:

1. £5,250,000 to be paid to class members (the "**Guaranteed Damages Sum**"). If class member take up is such that all these monies are not required, the balance will be paid to charity.

2. £1,750,000 to be paid first to class members, should the Guarantee Damages Sum be insufficient to meet class member take up, and then, at the conclusion of the Distribution Process, be paid in further satisfaction of the CR's costs fees and disbursements, should the CFD Sum be insufficient (see below) (the "**Additional Damages Sum**", and together with the Guaranteed Damages Sum the "**Damages Sum**"). The CR will use the Additional Damages Sum in this manner on a "third in, third-last out" basis (i.e. in third priority to CSAV and WWL/EUKOR, assuming for these purposes the application submitted by WWL/EUKOR and the CR is approved), not pro-rated with the sums recovered from of any of the Non-Settling Defendants Any

unused portion of the Additional Damages Sum will be reverted to "K" Line. The Damages Sum and the CFD Sum are payable within 28 days of the Tribunal making the CSAO. These provisions are discussed in more detail below.

(ii) £5,250,000 to be paid to meet the CR's costs, fees and disbursements (the "**CFD Sum**").

The Damages Sum and the CFD Sum are payable within 28 days of the Tribunal making the CSAO. These provisions are discussed in more detail below.

(iii) Up to £500,000 to be paid as a contribution to the costs of distributing damages to class members (the "**Distribution Costs Contribution**"). The Distribution Costs Contribution is payable within 28 days of the Class Representative giving notice to "K" Line that the Tribunal has approved an application by it to distribute the damages. Any unused portion of the Distribution Costs Contribution will be repaid to "K" Line.

The amount of the settlement is discussed further at §31-33 below.

(b) Clause 2.10 is a warranty and representation given by the CR that it has no present intention to enter into a settlement agreement with the Non-Settling Defendants on terms which would mean the Non-Settling Defendants pay less to dispose of the claims against them than the Settlement Sum, pro rated based on that Non-Settling Defendant's market share based on capacity of vessels.

(c) At clause 3, the parties have included a pleadings 'carve-out' that means, subject to the Tribunal making a CSAO, the CR will amend its claim expressly to exclude from its claim against the Non-Settling Defendants 17.3% of the total loss or damage caused by the alleged cartel. If the Tribunal ultimately judges that "K" Line is responsible for a greater proportion of the claim than 17.3%, the amount claimed by the Class Representative against the Non-Settling Defendants will be reduced further accordingly. This provision mirrors the one approved by the Tribunal, and implemented by the CR, following the CSAV CSAO.

(d) Clause 3 also contemplates the CR and "K" Line procuring agreement to a 'barring provision', as contemplated in the Guide §6.131 where a partial collective settlement is reached with one or more, but not all, of the defendants to collective proceedings. The pleadings carve-out and barring provision are discussed further at 31(a) and 61-62 below.

(e) Clause 4 provides that the Damages Sum shall be held in escrow until the conclusion of the collective proceedings or such other time as the CR and/or the Tribunal considers it economic, proportionate and in the interests of the class to seek to distribute it, and the Tribunal approves the CR doing so. This reflects the proximity of the settlement to trial and the efficiencies of distributing the damages payable by "K" Line together with other settlement damages sums and any trial judgment sums. Clause 4 also sets out the timetable for payment.

(f) Clause 5 makes provision for the parties to apply jointly to the Tribunal for a CSAO, as they now do by this CSAO Application.

(g) Clause 8 is a non-cooperation agreement that prevents "K" line from facilitating any introductions or otherwise cooperating with the Non-Settling Defendants with respect to "K" Line's industry experts and witnesses. It also contains an agreement that the CR will not seek to summons or engage with "K" Line's fact witnesses, who are employees of "K" Line. This provision is discussed further at §53 - 56 below.

(h) Subject to the Tribunal's approval, clauses 6, 7 and 9 make provision for a stay of the collective proceedings against "K" Line, release and waiver, and agreements not to sue. Clause 10 is a standard non-admission clause, and clause 11 makes provision as to the immediate effect of the agreement once concluded.

(i) Clauses 12 to 19 set out contractual 'boilerplate' provisions.

(3) The applicants' belief that the terms are just and reasonable: rule 94(4)(c) (and rule 94(9))

24. For the reasons set out in the applicants' evidence in support of this application, and taking account of all relevant circumstances (including the matters set out in

rule 94(9)(a)-(g), and discussed at Guide §§ 6.125 to 6.128), the Settling Parties believe that the terms of the proposed settlement are just and reasonable: see McLaren 5, section B, Hollway 9, Section, and Stuart 1, Section D.

25. In the CR's case, this belief is based on the matters set out in the supporting evidence, including Mr McLaren's privileged discussions with the CR's Advisory Committee attended by Sir Richard Aikens and Kate Wellington. None of the Advisory Committee raised any concerns that a settlement as agreed in the terms of the proposed settlement were not just and reasonable or in the best interest of the class: see McLaren 54.

26. In "K" Line's case, this belief is based on the matters set out in the supporting evidence, including Stuart 1 and Majumdar 4. These are discussed further below.

27. This belief is also supported by the independent expert report of Mr Lawrence, as discussed further at §43 to §44 below.

(a) The amount and terms of the settlement

Independent Expert

28. The Settling Parties note that the Guide §6.98 (third indent) suggests that the evidence filed in support of the settling parties' belief that the terms of the settlement are just and reasonable may include a report from an independent expert (such as an economist) or an opinion by counsel as to the merits of the settlement.

29. The Settling Parties rely on the opinion of independent counsel, Mr Lawrence, as to the merits of the settlement as a whole. Mr Lawrence's expert opinion is addressed at paragraphs §43 to §44 below.

Structure of the settlement

30. The Settling Parties believe that the structure of the settlement outlined at §23(a) above is just and reasonable for the reasons set out at Hollway 9, McLaren 5, and Stuart 1 Section D. Namely:

(a) Under this structure, the Guaranteed Damages Sum ensures that there is £5,250,000 available exclusively for class recovery (or for charity) that cannot be reverted to

"K" Line or called upon by the stakeholders. Class members are at least as well off, even absent the Additional Damages Sum, therefore, as the stakeholders.

(b) The Additional Damages Sum is available for additional class member recovery, should it be required. It is only if class member recovery is low enough that the entirety of this pot is not required to compensate class members that there is any possibility of stakeholders applying for access to these fees or of the relevant sums being reverted to "K" Line.

(c) Similarly, "K" Line is making a significant contribution towards the cost of distributing damages. This was the approach taken in the Stagecoach Settlement and reduces the need to spend money earmarked for class members on the costs of distribution.

(d) It is also reasonable for a sum of money that does not exceed the amount available to class members to be paid to stakeholders. This was accepted by the Tribunal in the Stagecoach Settlement given their role in enabling the claim to be brought.

Settlement amount

31. As to the amount of the Settlement Sum of £12,750,000, the CR and "K" Line refer to the evidence supporting this joint application as well as their respective expert's reports that have been filed to date.

(a) Both the CR's expert, Mr Robinson, and "K" Line's expert, Dr Majumdar, explain that "K" Line's share of the total liability can be measured in a variety of ways. These include: (i) number of vessels (18.4%); (ii) capacity of vessels (17.3%), and (iii) volumes shipped into the EU (15%).[6] Mr Stuart explains the implication of the market share selected for the purposes of this Application, and why selecting the share as measured by capacity of vessels (17.3%) is a reasonable compromise position to adopt: Stuart 1 §§21-22. Ms Hollway notes that, since Mr Robinson, the CR's expert, only considers that (i) the number of vessels; and (ii) the capacity of vessels are suitable measures, from the CR's perspective, agreeing a 17.3%

[6] Robinson 4, §2.14; Majumdar 2, §769-771.

carve-out for "K" Line (i.e., the lower of the two available numbers) is the best outcome possible for class members on the CR's case: Hollway 9 §25.

(b) Based on Mr Robinson's upper estimate of the overall value of the claim, of £215.8M, "K" Line's share of liability is between £37.33 million (assuming a 17.3% market share) and £39.7 million (assuming a 18.4% market share). On this estimate, the Damages Sum is between 18.7% and 17.6% of "K" Line's share of the damages, as estimated by Mr Robinson.

(c) Based on Mr Robinson's lower estimate of the overall value of the claim (based on Mr Robinson's lower-bound estimate of overall quantum per his sixth expert report, with adjustments made by Dr De Coninck as noted in footnote 1), of £86.1M, "K" Line's share of liability is between £14.0 million (assuming a 17.3% market share) and £15.8 million (assuming a 18.4% market share). On this estimate, the Damages Sum is between 50% and 44.3% of "K" Line's share of the damages.

(d) As Dr Majumdar explains, he estimates that "K" Line's share of liability is 15%.[7]

(i) Based on the assumptions outlined in his report, Dr Majumdar estimates that the total claim value attributable to "K" Line is £1.5 million.[8] On this estimate, the Damages Sum under settlement is 467% of "K" Line's share of the damages.[9]

(ii) Dr Majumdar further explains that when accounting for certain assumptions that are more favourable to the Class Representative (i.e., applying Mr Robinson's overcharge framework, and Mr Robinson's "Scenario 3" pass on framework) "K" Line's share of the damages is £2.7 million.[10] On this estimate, the Damages Sum under settlement is 259% of "K" Line's share of the damages.[11]

---

7 Majumdar 4, §6.

8 Majumdar 4, Table 1.

9 Majumdar 4, Table 3.

10 Majumdar 4, Table 1.

11 Majumdar 4, Table 3.

(e) Dr Majumdar then provides the same calculations on the basis of a 17.3% market share.

(i) Using this market share, on the same assumptions as used in §31(d)(i) above Dr Majumdar estimates that the total claim value attributable to "K" Line is £1.7 million.[12] On this estimate, the Damages Sum under settlement is 412% of "K" Line's share of damages.[13]

(ii) Using this market share, on the more favourable assumptions to the CR applied in 31(d)(ii) above the total claim value attributable to "K" Line is £3.1 million.[14] On this estimate, the Damages Sum under settlement is 226% of "K" Line's share of damages.[15]

32. The evidence of Ms Hollway, Mr Stuart and Mr McLaren explain why these calculations have led them to the belief that this settlement amount is just and reasonable: Hollway 9 §26, Stuart 1 §§32-34, McLaren 5 §§32-36. Ms Hollway also points out that the Settlement Sum, expressed as a percentage of the claim value asserted against "K" Line, is very similar (within a tenth of a percent) to that which has been agreed with the WWL/EUKOR Defendants. As these negotiations were conducted separately at an arm's-length basis, this gives Ms Hollway, and the CR, further comfort that what has been agreed is just and reasonable.

33. As to the costs payments agreed under the settlement, the CR refers to the analysis by Ms Hollway at Hollway 9 §§38 onwards, which demonstrates that the level of costs recovery is just and reasonable.

(b) The number or estimated number of persons likely to be entitled to a share of the settlement

34. The CR refers to its best estimate of the size of the class in the Collective Proceedings Claim Form §50, i.e., that the class will certainly number in the millions. The CR does not see any reason why the number of persons entitled to a share of the settlement would

12 Majumdar 4, Table 2.

13 Majumdar 4, Table 3.

14 Majumdar 4, Table 2.

15 Majumdar 4, Table 3.

be any smaller than the number of persons falling within the class defined in the CPO, i.e., a class numbering in the millions (albeit with deceased persons and defunct companies excluded): see Hollway 4 §101.

(c) The likelihood of judgment being obtained in collective proceedings for an amount significantly in excess of the amount of the settlement

35. While it remains possible that, were the matter to proceed to trial, the CR would obtain judgment in the collective proceedings for an amount in excess of the amount of the proposed settlement, this is unlikely given the analysis carried out by Dr Majumdar, as summarised above at §31(d)-31(e) above, and the comparison with Mr Robinson's lower end estimate at §18 above.

36. Mr Lawrence considers that a settlement falling within these ranges can be regarded as reasonable from the perspective of the class in these proceedings: Lawrence 3 §2.10. In concluding that there is considerable merit in the proposed settlement from the perspective of the class, Mr Lawrence identifies the risk factors specific to "K" Line that may impact on the chances of success at trial: see Lawrence 3 §2.12.

37. Further, this conclusion accords with Ms Hollway's assessment of the risks to the CR of pursuing its claim against "K" Line to trial (instead of concluding the proposed settlement): see Hollway 9 §§19-21. In identifying those risks, Ms Hollway sets out the key issues in dispute between the CR and "K" Line, including the main defences advanced by "K" Line and the CR's intended counter-arguments to those defences: Hollway 9, Section B. This summary includes reference to the weight of evidence that "K" Line has adduced, as compared with the Non-Settling Defendants, and the implications for likely recovery at trial.

38. Ms Hollway observes that there are various issues in dispute with "K" Line. It is inherent in litigation that every issue carries litigation risk and it is in the context of these issues, and the litigation risk that they carry that the CR, that the Tribunal is invited to consider whether the proposed settlement is just and reasonable: Hollway 9, Section B.

39. Consistent with that observation, like the CR, "K" Line recognises the inherent risks of litigation and the uncertainty regarding evidence to be finally adduced at trial. "K" Line also makes reference to the very substantial costs risk and cost in terms of time and

human resources associated with pursuing such litigation to its conclusion: Stuart 1 at §38.

(d) The likely duration and costs of the collective proceedings if they proceed to trial

40. The trial has been listed for ten weeks beginning 13 January 2025. Mr Stuart sets out that "K" Line considers the costs of fighting the case to the conclusion of trial on the basis of the current time estimate would be high, and "K" Line is mindful of the risk of adverse cost orders, recovery on assessment, and the significant burden on executive and management time: Stuart 1 §§36-39.

41. While settlement with "K" Line will not obviate the need for a trial of the claims against the Non-Settling Defendants, the CR anticipates that the settlement will decrease costs and certainly shorten the duration of the trial given the weight of evidence "K" Line intends to call should the settlement not be approved, and the need for "K" Line's counsel to cross examine all but two of the Class Representative's witnesses and industry experts (something which "K" Line indicated it planned to do at trial and allowances were made for in the draft trial timetable).

(e) Any opinion by an independent expert

42. The Tribunal and the Parties now have the benefit of a substantial volume of independent economic and industry expert evidence. These form part of the basis of Mr Stuart and Ms Hollway's belief that the settlement is just and reasonable, as set out in their statements.

43. Furthermore, the Settling Parties also rely upon the expert opinion of Mr Lawrence which he has prepared for the purposes of the "K" Line CSAO Application. As he explains in his report, Mr Lawrence has over 20 years' experience of litigating and settling competition damages and other complex commercial claims, formerly as a partner at Freshfields Bruckhaus Deringer LLP and now as a barrister at Brick Court Chambers: see Lawrence 3.

44. Having reviewed the documents relating to the proposed settlement between the CR and "K" Line, and based on his extensive experience of settling such claims, Mr Lawrence reaches the clear view that he sees "*no material risk of disadvantage to the Class and therefore consider[s] that the Proposed K Line Settlement has considerable merit*": see Lawrence 3.8 in particular.

(f) The views of any represented person (or other appropriate category of person)

45. The Settling Parties will make submissions, if so advised, in advance of and at the hearing of the CSAO Application in respect of any views expressed by represented persons following the publication of this CSAO Application.

(g) The provisions relating to the disposition of any unclaimed balance

46. Clause 4.13 provides that should any part of the Additional Damages Sum remain following distribution to class members and any application made by the CR for a portion of the Additional Damages Sum to be paid to meet its costs, fees, and disbursements, it will revert to "K" Line.

47. Stuart 1 (§§23-25), the Eighth Witness Statement of Belinda Hollway dated 27 November 2024 filed in support of the WWL/EUKOR CSAO Application and Hollway 9 explain why this is just and reasonable. In summary: (i) this has been included as a means of incentivising settlement, maximising the total funds available for distribution, and borrowing from the principles of successful leniency regimes which now form part of public competition law enforcement regimes in many jurisdictions around the world; (ii) however, the Guaranteed Damages Sum is not available for reversion - should class member take up be very low, the undistributed balance of the Guaranteed Damages Sum will be available for charity; and (iii) the Additional Damages Sum is the only portion that is available for reversion, and is 13.7% of the Settlement Sum, and 25% of the Damages Sum.

(h) Other matters

Sufficient information

48. The Guide § 6.127 notes that the Tribunal will wish to be satisfied that the CR and its lawyers had sufficient information to assess the reasonableness of the settlement to represented persons. As set out in the supporting evidence and in the "K" Line CSAO Application, the CR and its lawyers have carefully considered all of the information available to them in reaching the view that the proposed settlement is just and reasonable. The Settling Parties note that the proposed settlement is at a much later stage in the proceedings than the CSAV CSAO. The parties now have the benefit of all the trial

evidence, including their disclosure, witness statements, expert reports and joint economic expert statement, with which to assess the reasonableness of the settlement.

49. The Stagecoach Settlement notes at §65 further information that the Tribunal expects to receive. In particular:

    (a) total loss and average loss per class member;

    (b) estimated likely take-up by class members; and

    (c) a clear picture of the sums likely to be ultimately made available to the lawyers and funders.

50. Regarding (a) and (b), as a preliminary matter, and as discussed in more detail at §30(a) above, the structure of the proposed settlement between these Settling Parties is different from the one proposed and approved in the Stagecoach proceedings in that most of the amount paid by "K" Line to settle the claims against it is not dependent on take-up. The Guaranteed Damages Sum will be paid to the CR in any event, even if take up is low, with no possibility of reversion. The Settling Parties are cognisant that the Tribunal will still wish to scrutinise these matters in accordance with its supervisory role, but respectfully submit that, given the existence of the Guaranteed Damages Sum, the need for the information identified at (a) and (b) in the foregoing paragraph is less acute than in the context of the Stagecoach Settlement.

51. Furthermore, as explained in McLaren 5 §49 (referring to the Fourth Witness Statement of Mark McLaren dated 27 November 2024 filed in support of the WWL/EUKOR CSAO Application ("**McLaren 4**")), no distribution is proposed at this stage, not least because of the short timeline between the hearing of these applications and trial. Following any future settlement or judgment at trial, a detailed assessment of these factors may be proportionate and can be carried out at that stage.

52. As to point (c), in paragraph 49 above, the Tribunal will find details of the sums likely to be ultimately made available to the lawyers and funders in the evidence supporting this CSAO Application: see, in particular, Hollway 9. Further, the Settling Parties have structured their agreement so that the amount which stakeholders may receive cannot

exceed the total that is made available for class member recovery: see in particular Hollway 9, McLaren 5, on the reasonableness of this proposal.

Non-cooperation clause

53. As part of the settlement agreement between the CR and "K" Line, the CR requested the inclusion of a non-cooperation clause that prevents "K" Line from facilitating any introductions or otherwise cooperating with any Non-Settling Defendant with respect to "K" Line's industry experts and witnesses unless ordered to do so by the Tribunal (Exhibit MM 5.1, clause 8.1).

54. The Settling Parties are aware that there is no property in a witness, and it is explicitly stated in the settlement agreement that the Settling Parties do not seek to prevent the relevant witnesses and experts communicating with any Non-Settling Defendant or the CR itself.

55. As to whether it is just and reasonable, as Hollway 9 explains, part of the litigation risk that "K" Line represents to class recovery is the volume of industry evidence that it submitted in support of "K" Line's defence to the CR's claims. The Non-Settling Defendants did not adduce any such evidence. Therefore, as Hollway 9 explains, this is a key part of the benefit the class gains from the "K" Line CSAO Application.

56. The reasons why "K" Line were willing to give such a non-cooperation agreement are summarised at Stuart 1 §§26-28. As Stuart 1 explains, "K" Line is essentially neutral as to whether this clause is included. It was made clear and acknowledged by both Settling Parties that there is no property in "K" Line's witnesses, and the Settling Parties have informed the Non-Settling Defendants that they have not done anything to alter that position. Following the agreement of the in principle settlement, "K" Line sought permission from the CR to share contact details (beyond those already listed on the experts' reports) with the Non-Settling Defendants, and this was refused: Stuart 1 §28.

(4) How any sums received are to be paid and distributed: rule 94(4)(d)

57. Rather than distributing the Damages Sum now, the CR proposes to hold the Damages Sum in escrow until a later stage in the proceedings. The CR's proposal as to when the sums received should be paid and distributed is informed by considerations materially

the same as those set out in the evidence supporting the CSAV CSAO application and, in particular, the first witness statement of Ms Ducksbury of Case Pilots, the claims administrator appointed by the CR. In particular, the CR notes the potential issues with proportionality and the potential disincentive for class members to claim a share of aggregated damages if they were required to engage more than once for a relatively modest total claim value: see Ducksbury 1 §15-17.

58. Having considered the explanation provided by Ms Hollway, and the interests of class members carefully, the CR has concluded that holding the Damages Sum in escrow would be appropriate and in the best interests of the class.

(5) The draft CSAO: rule 94(4)(e) (and rule 94(10))

59. The draft CSAO is annexed to this CSAO Application at Annex 1.

(a) Deferring specification of a time and manner for opt-out / opt-in

60. For the reasons set out at McLaren 5 §56 (referring to McLaren 4), the draft CSAO does not specify a time and manner by which a represented person must opt out (for UK-domiciled persons) or opt in (for non-UK-domiciled persons): cf. rule 94(10) (and Guide § 6.132). The CR does not believe it would be fair and reasonable to set a deadline by which represented persons must opt out or be bound by the CSAO at this stage, principally because (i) the present settlement does not represent the entirety of the monies the CR expects to recover and (ii) if the proposed settlement is approved, the collective proceedings against the Non-Settling Defendants will be ongoing. As such, the represented persons cannot yet make a properly informed decision as to whether or not they should opt out which should properly be based on their likely overall recovery (i.e., including potential recovery against the other Defendants). Instead, the CR proposes to set an opt-out deadline in due course after any distribution proposal is later approved by the Tribunal.

(b) Directions for the incorporation of a 'barring' provision in the CSAO: Guide § 6.131

61. The Guide specifically contemplates the inclusion of a 'barring provision' within a CSAO in a case where a partial collective settlement is reached with one or more, but not all, of the defendants to collective proceedings: Guide §§ 6.130-6.131. The Tribunal included such a provision in the CSAV CSAO at paras 13-16.

62. The Settling Parties' approach to the position of the Non-Settling Defendants on this occasion is informed by the approach which ultimately was adopted in the CSAV CSAO. In short:

(a) As explained above, the proposed collective settlement includes, at clause 3, a provision that the CR will amend its claim against the Non-Settling Defendants in the same form as it amended the claim following the settlement with CSAV;

(b) The present draft CSAO includes, at §13-16, provisions in the same terms as the CSAV CSAO paras 13-16;

(c) The protections afforded to the Non-Settling Defendants are therefore the same as have been made available to them following the CSAV CSAO. "K" Line wrote to the Non-Settling Defendants proposing that approach in relation to the equivalent barring order contained in the "K" Line Settlement. The Non-Settling Defendants have indicated they do not, in principle, object to the these paragraphs, pending sight of the WWL/EUKOR CSAO Application and Settlement Agreement itself. The Settling Parties will therefore seek to agree this provision with the Non-Settling Defendants ahead of the hearing of this application.

(c) Other matters

63. The collective settlement agreement is exhibited to McLaren 5, and the CSAO includes the statements recommended at Guide § 6.133, save the statement at the third indent (since that statement will only become appropriate once the represented persons have had an opportunity to decide whether to opt out in due course: see paragraph 60 above).

(6) Form and manner by which the class representative proposes to give notice to represented persons: rule 94(4)(f)(i) (and rules 94(11) and 94(13))

64. Mr McLaren sets out details of the form and manner by which the CR proposes to give notice to represented persons: see McLaren 5, Section D.

65. In particular, once the CSAO Application is filed, a notice will be published on the claim website in a form approved by the Tribunal, the CR's social media pages will be updated and an email update will be sent to all those who have registered their interest on the claim website or by other means, including represented persons who have done so.

66. The CR proposes to undertake rigorous further noticing of represented persons in due course once the CR applies to make, and the Tribunal approves, distribution at a later stage: see McLaren 4 § 60.

SARAH FORD KC **HANIF MUSSA KC**

NICHOLAS GIBSON **ANNELIESE BLACKWOOD**

SARAH O'KEEFFE **JULIANNE KERR MORRISON**

IN THE COMPETITION APPEAL TRIBUNAL **Case no. 1339/7/7/20**

B E T W E E N : -

MARK McLAREN CLASS REPRESENTATIVE LIMITED

Joint Applicant / Class Representative

- v -

(1) MOL (EUROPE AFRICA) LTD
(2) MITSUI O.S.K. LINES LIMITED
(3) NISSAN MOTOR CAR CARRIER CO. LTD

Non-Settling Defendants

(4) KAWASAKI KISEN KAISHA LTD

Joint Applicant / Defendant

(5) NIPPON YUSEN KABUSHIKI KAISHA

Non-Settling Defendant

(6) WALLENIUS WILHELMSEN OCEAN AS
(7) EUKOR CAR CARRIERS INC
(8) WALLENIUS LOGISTICS AB
(9) WILHELMSEN SHIPS HOLDING MALTA LIMITED
(10) WALLENIUS LINES AB
(11) WALLENIUS WILHELMSEN ASA

Separately Settling Defendants

~~**(12) COMPANIA SUD AMERICANA DE VAPORES S.A.**~~

Defendant (Stayed)

***draft* COLLECTIVE SETTLEMENT APPROVAL ORDER**

UPON the making of an order dated 20 May 2022, pursuant to section 47B of the Competition Act 1998 (the "**1998 Act**") and Rules 77 and 80 of the Tribunal Rules, that Mark McLaren Class Representative Limited (the "**Class Representative**") be authorised to act as class representative to continue collective proceedings on an opt-out basis (the "**CPO**")

AND UPON the CPO specifying a deadline of 12 August 2022 by when (i) persons satisfying the class definition who are domiciled within the UK on 20 May 2022 must notify an intention to opt out and (ii) persons satisfying the class definition who are domiciled outside the UK must notify an intention to opt in

AND UPON the Class Representative and the Fourth Defendant ("**"K" Line**"), reaching a settlement in principle on 18 November 2024

AND UPON the Class Representative and "K" Line having finalised the terms of their proposed settlement agreement on 25 November 2024 (the "**Proposed Collective Settlement**")

AND UPON the Class Representative and "K" Line making a joint application dated 27 November 2024, pursuant to Rule 94 of the Tribunal Rules, for a collective settlement approval order (the "**CSAO Application**")

AND UPON the Tribunal considering the joint CSAO Application, the terms of the Proposed Collective Settlement and the supporting evidence and written submissions for the Class Representative and "K" Line [and for the First to Third, and Fifth Defendants (the "**Non-Settling Defendants**"), and for the Sixth to Eleventh Defendants], and oral submissions from Sarah Ford KC for the Class Representative, Hanif Mussa KC for "K" Line, Josh Holmes KC for the Sixth to Eleventh Defendants [and […] for the Non-Settling Defendants/] at an in-person hearing on 5 December 2024

AND UPON the Class Representative having agreed, in the Proposed Collective Settlement, to make further amendments to its Re-Re-Amended Collective Proceedings Claim Form so as to remove and expressly exclude from its claim against the Non-Settling Defendants 17.3% of the total loss or damage caused to the Class by the Cartel (including any loss or damage caused by 'umbrella effects'), or such greater proportion of liability for damages as the Tribunal may determine to be attributable to "K" Line at trial

AND UPON the Class Representative, "K" Line and the Non-Settling Defendants reaching agreement in the terms recorded at paragraphs 13 to 16 below

AND UPON the Tribunal being satisfied that the terms of the Proposed Collective Settlement are just and reasonable

IT IS ORDERED THAT:

Approval of the Proposed Collective Settlement

1. Pursuant to section 49A(5) of the 1998 Act, the Proposed Collective Settlement is approved in the terms of the settlement agreement between the Class Representative and "K" Line which was exhibited to the fifth witness statement of Mr Mark McLaren and is annexed to this Order (the "**Collective Settlement**").

The Damages Sum

2. Pursuant to the Collective Settlement, and within 28 days of this Order, "K" Line shall pay to the Class Representative £7,000,000 for damages as against "K" Line in these collective proceedings (the "**Damages Sum**").

3. The Damages Sum shall be held in escrow until the Tribunal makes a further order(s) as regards the distribution of the Damages Sum.

4. If the total amount the Class Representative obtains to compensate the class pursuant to the settlement agreement(s) subsequent or prior to the Settlement Agreement or order(s) following judgment(s), is greater than the amount that is required to compensate all of the represented persons in the proceedings then, subject to any sums reverted in priority to the former Twelfth Defendant and subject to any sums retained in priority by the Sixth to Eleventh Defendants (if their collective settlement application is approved) up to £1,750,000 million may be reverted back to "K" Line.

Stay of collective proceedings against "K" Line

5. These collective proceedings against "K" Line shall be stayed upon the terms of the Collective Settlement, except for the purpose of enforcing those terms.

Opting out and opting in

6. The decision of the Tribunal as to the time and manner by when (i) represented persons domiciled in the UK on a domicile date to be specified may opt out of the Collective Settlement and (ii) represented persons not domiciled in the UK on that domicile date may opt into the Collective Settlement, shall be deferred until further order.

Notification

7. The Class Representative is to publicise this order using a notice approved by the Tribunal and in accordance with the proposal set out in the evidence in support of the CSAO Application.

Costs

8. Pursuant to the Collective Settlement:

   (a) within 28 days of this Order, "K" Line shall pay the Class Representative £5,250,000 in respect of "K" Line's share of the Class Representative's costs of these proceedings (excluding any costs awards already made and settled between the Class Representative and "K" Line and/or the other Defendants); and

   (b) within 28 days of the Class Representative giving notice to "K" Line that the Tribunal has approved an application by it to distribute the Damages Sum, "K" Line shall pay the Class Representative £500,000 by way of contribution to the Class Representative's costs of distributing the Damages Sum.

9. The £5,250,000 paid in accordance with paragraph 8(a) above shall be held in an escrow account until the Tribunal makes a further order(s) as regards the distribution of the Damages Sum.

10. As between the Class Representative and the Non-Settling Defendants, there be no order as to costs in relation to this CSAO Application.

General

11. There be liberty for each party to the Collective Settlement to apply to the Tribunal for purpose of enforcing the terms of the Collective Settlement without the need to bring a new claim.

12. There be liberty for the Class Representative and any represented person to apply in respect of paragraphs 3 and 6 of this Order.

IT IS FURTHER ORDERED BY CONSENT THAT:

13. The Non-Settling Defendants shall not claim any contribution from "K" Line.

14. "K" Line shall not claim any contribution from the Non-Settling Defendants.

15. In the event that the Tribunal determines that "K" Line's proportionate liability for damages in relation to these collective proceedings is a sum greater than 17.3% of the total liability of all Defendants (the "**Higher Proportionate Share**") then the damages which the Class Representative seeks from the Non-Settling Defendants will be further reduced by the difference between 17.3% and the Higher Proportionate Share.

16. The Non-Settling Defendants undertake not to appeal this Order.

<Name> Made: <Date>

[President/Chair] of the Competition Appeal Tribunal Drawn: <Date>

ANNEX

COLLECTIVE SETTLEMENT AGREEMENT

BETWEEN

MARK MCLAREN CLASS REPRESENTATIVE LIMITED

AND

KAWASAKI KISEN KAISHA LTD.

DATED

25 NOVEMBER 2024