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

BETWEEN:

MARK MCLAREN CLASS REPRESENTATIVE LIMITED

Joint Applicant / Class Representative

-and-

(1) MOL (EUROPE AFRICA) Ltd

(2) MITSUI O.S.K. LINES LIMITED

(3) NISSAN MOTOR CAR CARRIOR CO. LTD

(5) NIPPON YUSEN KABUSHIKI KAISHA

Non-Settling Defendants

(4) KAWASAKI KISEN KAISHA LTD

Separately 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

Joint Applicant / Defendants

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

JOINT APPLICATION FOR A
COLLECTIVE SETTLEMENT APPROVAL ORDER

PROPOSED SETTLEMENT BETWEEN THE CLASS REPRESENTATIVE
AND THE SIXTH TO ELEVENTH DEFENDANTS

For the Class Representative:

Signature: [redacted]

Name: Belinda Hollway

Position: Partner

Dated: 27 November 2024

For WWL/EUKOR:

Signature: [redacted]

Name: Christopher Caulfield

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 "**CSAO Application**"), which is made by the Class Representative ("**CR**") and the Sixth to Eleventh Defendants ("**WWL/EUKOR**"), 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 WWL/EUKOR 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 WWL/EUKOR.

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

   (a) the fourth witness statement of Mr Mark McLaren ("**McLaren 4**"), the sole director and sole member of Mark McLaren Class Representative Limited, the CR, together with exhibit MM3.1 (a copy of the settlement agreement between the CR and WWL/EUKOR);

   (b) the third expert report of Dr Raphaël de Coninck ("**De Coninck 3**"), of CRA, WWL/EUKOR's economic expert, setting out his calculations of figures relevant to the assessment of whether the proposed settlement is just and reasonable;

(c) the eighth witness statement of Ms Belinda Hollway ("**Hollway 8**"), the partner at Scott+Scott UK LLP ("**SSUK**") with conduct of these proceedings for the CR;

(d) the first witness statement of Ms Kristen Schjødt Bitnes ("**Bitnes 1**"), the Senior Vice President (Legal) and General Counsel of Wallenius Wilhelmsen ASA, the Eleventh Defendant and parent company of the Wallenius Wilhelmsen group of companies which owns and controls the Sixth to Ninth and Eleventh Defendants;

(e) the first witness statement of Mr Erik Nøklebye ("**Nøklebye 1**"), the Chief Executive Officer of Wallenius Lines AB, the Tenth Defendant;

(f) the first witness statement of Mr Christopher Caulfield ("**Caulfield 1**"), the partner at Baker Botts with conduct of these proceedings for WWL/EUKOR, together with exhibit CJC1;

(g) the second expert report of Mr Jon Lawrence ("**Lawrence 2**"), an independent expert with over 20 years' experience in litigating and settling competition damages claims;

(h) the draft CSAO; and

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

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 Guide.

B FACTUAL BACKGROUND

6. This 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 Sixth to Seventh Defendants were found to have participated in the cartel, albeit they were found not to have participated in certain aspects of the infringing conduct. The Eighth to Eleventh Defendants were found to be liable as the direct and indirect owners of the Sixth and Seventh Defendants.

8. In its Re-Re-Amended Claim Form, 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**"). 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 paragraphs 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 against the Tribunal's certification decision, and on 21 December 2022 it handed down judgment dismissing the appeal, 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, Compania Sub 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 ("**CSAV CSAO**").

C THE PROPOSED COLLECTIVE SETTLEMENT

12. The CR and WWL/EUKOR 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)

13. As set out in **Section B** above and discussed more fully in Section B of Hollway 8 and Section A of Caulfield 1, the claims to be settled by the proposed collective settlement between the CR and WWL/EUKOR are for the damages attributable to WWL/EUKOR's share of the liability 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 damages attributable to the non-settling Defendants' liability.

14. The CR's current estimate of the overall quantum of the claims against all of the Defendants to the collective proceedings, is in the range of £86.1M (based on Mr Tom Robinson's lower-bound estimate of overall quantum per his sixth expert report, with adjustments made by Dr De Coninck) to £215.8M (based on Mr Tom Robinson's upper-bound estimate of overall quantum, per his fifth expert report).[1]

15. 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 until four years after it ended. The overcharges he calculates are USD 7/m^3 (or c. 12%) during the cartel period, reducing in each of the four years after the cartel ended (USD7/m^3 in

[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.

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 overcharge;

(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]

(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.

16. WWL's current estimate of the quantum of the claim against WWL/EUKOR is £0.81 million to £2.75 million, including interest.

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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

17. As set out in more detail below, the CR seeks the Tribunal's approval to settle the CR's claim against WWL/EUKOR in these proceedings for a total settlement sum of up to £24,500,000. This substantially exceeds WWL/EUKOR's estimates of the value of the claim against it; and represents between 34% and 85% of the CR's estimates of the overall claim value (when adjusted to reflect WWL/EUKOR's market share during the relevant period, estimated at 33.3%).

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

18. The proposed settlement agreement is exhibited to McLaren 4 at MM4.1 and its terms, and particularly the overall settlement sum, are discussed in McLaren 4, Hollway 8, Caulfield 1 and Bitnes 1.

19. In summary:

    (a) As set out in clause 2 of the proposed settlement agreement, the CR and WWL/EUKOR agree that, in full and final settlement of the collective proceedings against WWL/EUKOR, and subject to the Tribunal making a CSAO, WWL/EUKOR shall pay the CR (on behalf of the class) a total of up to £24,500,000.

    (b) This settlement sum comprises the following:

        (i) £15,250,200 in damages ("**the Damages Sum**"), divided up as:

            1. £8,750,000 in damages ("**the Immediate Damages Sum**") that clause 2.3 provides will be payable within 28 days of the Tribunal making the CSAO;

            2. £6,500,000 in damages ("**the Deferred Damages Sum**") that clause 4 provides will be payable if there is a shortfall between the amount required to compensate the class, and the amount that the Class Representative has available to it in the form of the Immediate Damages Sum plus the aggregate amounts that the Class Representative obtains under any subsequent settlement agreements with the Non-Settling Defendants or following judgment. WWL/EUKOR shall pay the amount of the shortfall, up to £6,500,000,

within 28 days of receiving a notice from the Class Representative under clause 4.9 of the proposed settlement agreement;

(ii) £8,750,000 in costs, fees and disbursements ("**the CFD Sum**") that clause 2.3 provides will be payable within 28 days of the Tribunal making the CSAO; and

(iii) £500,000 in contribution to the Class Representative's costs of distributing the damages to the class ("**the Distribution Costs Contribution**"). Clause 4 provides that this is payable within 28 days of the Class Representative giving notice to WWL/EUKOR that the Tribunal has approved an application by it to distribute the damages.

The amount of the settlement is discussed further in De Coninck 3, McLaren 4 at paras 39-48, Hollway 8 at section C, Caulfield 1 at paras 32-34.

(c) Clause 3 provides for the Class Representative to amend its pleadings. The proposed collective settlement envisages that the amendment will mirror that which the Class Representative has already made following the CSAV CSAO and will carve 33.3% market share out of the claim to account for the Proposed Settlement.

(d) Clause 4.4 provides that the Immediate Damages Sum shall be held in escrow until the conclusion of the collective proceedings or such other time as the CR 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 provision is discussed further in McLaren 4 at paras 25-28, and at paragraphs 40-41below.

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

(f) Subject to the Tribunal's approval, clauses 6, 7 and 8 make provision for a stay of the collective proceedings against WWL/EUKOR, release and waiver, and agreements not to sue. Clause 9 is a standard non-admission clause, and clause 10 makes provision as to the immediate effect of the agreement once concluded.

(g) Clauses 11 to 18 set out 'boilerplate' provisions.

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

20. 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 CR and WWL/EUKOR believe that the terms of the proposed settlement are just and reasonable: see McLaren 4, and Caulfield 1, Section C.

21. In the CR's case, this belief is based on the matters set out in the supporting evidence, including McLaren 4, Hollway 8, and De Coninck 3.

22. This belief is also supported by the independent expert report of Mr Lawrence, as discussed further at paragraphs 36 to 37 below.

(a) The amount and terms of the settlement

23. The CR and WWL/EUKOR 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.

24. The CR and WWL/EUKOR 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 36 to 37below.

25. As to the damages under the settlement – £15,250,000, comprising the Immediate Damages Sum and the Deferred Damages Sum, together "**the Damages Sum**" - the CR and WWL/EUKOR refer to the expert report of Dr De Coninck. It explains that:

    (a) Dr De Coninck remains of the view that his estimate of the damages suffered by the class, of £0.81 million to £2.75 million, including interest, is robust. He therefore considers the Damages Sum to be just and reasonable.[6]

    (b) As regards Mr. Robinson's estimates, Dr Coninck considers that there are a wide variety of ways in which Mr Robinson's modelling assumptions might reasonably

6 De Coninck 3, Section 3.

be adjusted to arrive at a damages estimates for WWL/EUKOR's share of liability that are broadly aligned with the Damages Sum. He gives a number of examples in support of this conclusion, involving adjustments which he considers to be very limited and conservative, and which generate estimates at or below the Damages Sum.

26. As to the costs payments agreed under the settlement, the CR refers to the analysis by Ms Hollway at Hollway 8 paras 77-90, which demonstrates that the level of costs recovery is just and reasonable, with regard to the costs, fees and disbursements incurred to date and the return to which the stakeholders are entitled.

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

27. The CR refers to its best estimate of the size of the class in the Collective Proceedings Claim Form para 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 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 8 para 129-130.

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

28. While it remains possible that, were the matter to proceed to trial, the CR would obtain judgment in the collective proceedings for an amount significantly in excess of the amount of the proposed settlement, the amount agreed is a significant proportion of WWL/EUKOR's share of liability for the overall claim.

29. Mr Lawrence considers that a decision to settle for a sum which is a significant proportion of the overall claim and does not, on its face, appear to be underselling a perfectly good claim, albeit that it falls below the bottom of Mr Robinson's lowest estimated damages figure: see Lawrence 2 para 4.16. In concluding that there is considerable merit in the proposed settlement from the perspective of the class, Mr Lawrence identifies the risk factors that may impact on the chances of success at trial: see Lawrence 2 Sections 3 and 4.

30. Further, this conclusion accords with Ms Hollway's assessment of the risks to the CR of pursuing its claim against WWL/EUKOR to trial (instead of concluding the proposed settlement): see Hollway 8 paras 54. In identifying those risks, Ms Hollway sets out the key issues in dispute between the CR and WWL/EUKOR, including the main defences advanced by WWL/EUKOR, and the CR's intended counter-arguments to those defences: Hollway 8 paras 18-54. This summary includes an explanation of the so-called "EUKOR Defence", unique to WWL/EUKOR, that 99% of EUKOR's transactions on the UK inbound route by value was unaffected by the conduct as set out in the Decision, as well as WWL/EUKOR's defences in relation to the scope of the Commission's findings in the Decision in relation to WWL/EUKOR, the shipping contracts which should properly be considered for the purposes of considering the harm to the Class from the particular conduct that is the subject of the Decision, the overcharge, the "umbrella" effect of the cartel, the "run-off" effect of the cartel, upstream pass-on, downstream pass-on and interest.

31. Ms Hollway observes that there are various issues in dispute with WWL/EUKOR, 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, and the Tribunal, must consider whether the proposed settlement is just and reasonable: Hollway 8 para 18-54.

32. Consistent with that observation, Mr Caulfield's evidence for WWL/EUKOR is that WWL/EUKOR "*consider that they have a strong defence to the claim*": Caulfield para 35. However, like the CR, WWL/EUKOR recognise the inherent risks of litigation and the uncertainty regarding evidence to be finally adduced at trial; and WWL/EUKOR also make reference to the very substantial costs risk and cost in terms of time and human resources associated with pursuing such litigation to its conclusion: Bitnes 1 paras 12-13; Caulfield 1 paras 36-40.

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

33. The Tribunal has ordered the trial of these collective proceedings to be listed in the Hilary Term 2025 with a provisional time estimate of 10 weeks. The case budget which appears at Appendix 5 of Mr McLaren's first witness statement sets out the CR's estimated costs (both time cost and disbursements) between CPO and trial as £11,862,600 (including VAT). WWL/EUKOR consider that their costs of fighting the case to trial on the basis

of the current time estimate would be high, and are mindful of the risk of adverse costs orders as well as the significant burden of their own costs: Bitnes 1 para 13; Caulfield 1 para 39.

34. While settlement with WWL/EUKOR will not obviate the need for a trial of the claims against the other Defendants, the CR anticipates that the settlement will decrease costs and shorten the duration of the trial.

(e) Any opinion by an independent expert

35. The independent expert opinion of Dr De Coninck, an economist, is addressed at paragraph 25 above.

36. The CR and WWL/EUKOR also rely upon the expert opinion of Mr Lawrence. 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 2, Section 2 and Appendix 3.

37. Having reviewed the documents relating to the proposed settlement between the CR and WWL/EUKOR, and based on his extensive experience of settling such claims, Mr Lawrence reaches the clear view that the proposed settlement creates no material risk of disadvantage to the Class, and has considerable merit: see, for example, Lawrence 2, paragraph 5.8.

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

38. The CR and WWL/EUKOR 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) Other matters

39. 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 this 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. In particular,

the CR and WWL/EUKOR note that the proposed settlement was agreed at a much later stage in the proceedings than the CR's settlement with CSAV. The parties now have the benefit of the entirety of the other's cases, including their disclosure, factual witness statements and expert reports, with which to assess the reasonableness of the settlement.

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

40. Rather than distributing the Immediate Damages Sum now, the CR proposes to hold the Immediate Damages Sum in escrow until a later stage at the proceedings. Ms Hollway provides an explanation of how the escrow arrangements would work in practice: see Hollway 8 paras 117-123.

41. Having considered the explanation provided by Ms Hollway, and the interests of class members carefully, the CR has concluded that holding the Immediate Damages Sum in escrow would be appropriate and in the best interests of the class. 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 McLaren 4 paras 56-59. The CR shall seek to obtain as favourable an interest rate as possible to ensure that Class members are not prejudiced by the delayed distribution.

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

42. 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

43. For the reasons set out at McLaren 4 paras 69-71, the draft CSAO does <u>not</u> 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 if the proposed settlement is approved, the collective proceedings against the other 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 <u>overall</u> 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 (as to which, see paragraphs 40-41above).

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

44. 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.

45. The CR and WWL/EUKOR's 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 CSAO includes, at paras 13-16, provisions in the same terms as the CSAV CSAO paras 13-16;

(c) On the basis that the protections afforded are the same, the First to Third and Fifth Defendants have confirmed that they have, in principle, no objections to the principles set out at CSAO paras 13-16; see Annex 2, Letter fromthe First to Third and Fifth Defendants, 25 November 2024. The Fourth Defendant has confirmed separately that it will not object: see Annex 3, Letter from the Fourth Defendant, 25 November 2024.[7]

(c) Other matters

46. The collective settlement agreement is exhibited to McLaren 4, 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).

[7] See also, Annex 4 - Letter dated 22 November 2024 from the Sixth to Eleventh Defendants re. the Draft Collective Settlement Approval Order.

(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))

47. Mr McLaren sets out details of the form and manner by which the CR proposes to give notice to represented persons: see McLaren 4, Section D.

48. 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.

49. 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 para 60.

SARAH FORD KC **JOSH HOLMES KC**

NICHOLAS GIBSON **LAURA ELIZABETH JOHN**

SARAH O'KEEFFE

IN THE COMPETITION APPEAL TRIBUNAL

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Joint Applicant / Defendants

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

***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 Sixth to Eleventh Defendants ("**WWL/EUKOR**"), reaching a settlement in principle on [ ] November 2024

AND UPON the Class Representative and WWL/EUKOR having finalised the terms of their proposed settlement agreement on [ ] November 2024 (the "**Proposed Collective Settlement**")

AND UPON the Class Representative and WWL/EUKOR making a joint application dated [ ] 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, written submissions for the Class Representative and WWL/EUKOR [and for the First to Fifth Defendants (the "**Non-Settling Defendants**")], and oral submissions from Sarah Ford KC for the Class Representative, Josh Holmes KC for WWL/EUKOR [and […] for the Non-Settling Defendants] at an in-person hearing on [ ] 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 33.3% 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 WWL/EUKOR at trial

AND UPON the Class Representative, WWL/EUKOR and the Non-Settling Defendants reaching agreement in the terms recorded at paragraphs [ ] to [ ] 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 WWL/EUKOR which was exhibited to the third 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, WWL/EUKOR shall pay to the Class Representative £8,750,000 for damages as against WWL/EUKOR in these collective proceedings (the "**Immediate Damages Sum**").

3. The Immediate Damages Sum shall be held in an escrow account until further order in accordance with the arrangements described at paragraphs [ ] and [ ] of the eighth witness statement of Ms Belinda Hollway of Scott+Scott UK LLP, solicitors for the Class Representative.

4. If there is a shortfall between:

   (a) the Immediate Damages Sum, plus the aggregate amounts that the Class Representative obtains to compensate the class pursuant to the settlement agreement(s) subsequent to the Settlement Agreement or order(s) following judgment(s), and

   (b) the amount that is required to compensate all of the members of the class who were (i) domiciled in the United Kingdom on 22 May 2022 and who have not opted out pursuant to Rule 82(1)(b)(i) or 94(10(b) of the Tribunal Rules, and (ii) not domiciled in the United Kingdom on 22 May 2022 but who have opted in pursuant to Rule 82(1)(b)(ii) of the Tribunal Rules

   then within 28 days of notice being given to WWL/EUKOR under clause 4.9 of the Collective Settlement, WWL/EUKOR shall pay to the Class Representative such further

amount, up to £6,500,000 ("**the Deferred Damages Sum**"), as is required to compensate those persons.

Stay of collective proceedings against WWL/EUKOR

5. These collective proceedings against WWL/EUKOR 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, WWL/EUKOR shall pay the Class Representative £8,750,000 in respect of WWL/EUKOR's share of the Class Representative's costs of these proceedings (excluding any costs awards already made and settled between the Class Representative and WWL/EUKOR and/or the other Defendants); and

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

9. The £8,750,000 paid in accordance with paragraph 8(a) above shall be held in an escrow account until further order in accordance with the arrangements described at paragraphs

[ ] and [ ] of the eighth witness statement of Ms Belinda Hollway of Scott+Scott UK LLP, solicitors for the Class Representative..

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 the Non-Settling Defendants to apply in respect of paragraphs [ ] and [ ] of this Order.

IT IS FURTHER ORDERED BY CONSENT THAT:

13. The Non-Settling Defendants shall not claim any contribution from WWL/EUKOR.

14. WWL/EUKOR shall not claim any contribution from the Non-Settling Defendants.

15. In the event that the Tribunal determines that WWL/EUKOR's proportionate liability for damages in relation to these collective proceedings is a sum greater than 33.3% 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 33.3% 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

WALLENIUS WILHELMSEN OCEAN AS
EUKOR CAR CARRIERS INC
WALLENIUS LOGISTICS AB
WILHELMSEN SHIPS HOLDING MALTA LIMITED
WALLENIUS LINES AB
WALLENIUS WILHELMSEN ASA

DATED

[ ] NOVEMBER 2024