



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1347/5/7/20

BETWEEN:

- (1) JAGUAR LAND ROVER LTD
- (2) JAGUAR E LAND ROVER BRASIL INDÚSTRIA E COMÉRCIO DE VEÍCULOS LTDA
- (3) JAGUAR LAND ROVER (CHINA) INVESTMENT CO., LTD.
- (4) JAGUAR LAND ROVER (SOUTH AFRICA) (PTY) LIMITED
- (5) JAGUAR LAND ROVER AUSTRALIA PTY LTD
- (6) JAGUAR LAND ROVER AUSTRIA GMBH
- (7) JAGUAR LAND ROVER BELUX NV
- (8) JAGUAR LAND ROVER CANADA, ULC
- (9) JAGUAR LAND ROVER CLASSIC DEUTSCHLAND GMBH
- (10) JAGUAR LAND ROVER ESPANA SL
- (11) JAGUAR LAND ROVER FRANCE S.A.S.
- (12) JAGUAR LAND ROVER ITALIA SPA
- (13) JAGUAR LAND ROVER JAPAN LIMITED
- (14) JAGUAR LAND ROVER KOREA CO., LTD
- (15) JAGUAR LAND ROVER NEDERLAND BV
- (16) JAGUAR LAND ROVER NORTH AMERICA, LLC
- (17) JAGUAR LAND ROVER PORTUGAL-VEICULOS E PECAS, LDA
- (18) LIMITED LIABILITY COMPANY "JAGUAR LAND ROVER" (RUSSIA)

Claimants

- v -

- (1) MOL (EUROPE AFRICA) LTD
- (2) WALLENIUS WILHELMSSEN ASA
- (3) WALLENIUSREDERIERNA AB
- (4) WALLENIUS WILHELMSSEN OCEAN AS
- (5) WALLENIUS LOGISTICS AB
- (6) WILHELMSSEN SHIPS HOLDING MALTA LTD
- (7) EUKOR CAR CARRIERS INC.
- (8) KAWASAKI KISEN KAISHA, LTD.
- (9) COMPANIA SUDAMERICANA DE VAPORES S.A.

Defendants

ORDER

UPON the Claimants having issued Case no: 1347/5/7/20 on 30 April 2020 (the “Claim”)

AND UPON the Tribunal’s Order made on 20 May 2020 permitting the Claimants to serve the Claim on the Eighth Defendant outside the jurisdiction

AND UPON the Tribunal’s Order by consent made on 18 August 2020 extending the time for the Claimants to serve the Claim on the Eighth Defendant to 20 January 2021

AND UPON the Tribunal’s Order made on 26 October 2020 further extending the time for the Claimants to serve the Claim on the Eighth Defendant to 26 March 2021

AND UPON the Tribunal’s Order made on 22 March 2021 further extending the time for the Claimants to serve the Claim on the Eighth Defendant to 26 June 2021

AND UPON reading the letter from the Claimants’ solicitors dated 29 March 2021 and the letters from the Eighth Defendant’s solicitors dated 23 March and 16 April 2021

IT IS ORDERED THAT:

1. The time for the Claimants to serve the Claim on the Eighth Defendant out of the jurisdiction is extended to 26 September 2021.
2. There shall be no order as to costs.
3. There be liberty to apply.

REASONS:

1. The Claimants’ request is for the fourth extension of time for the service of these proceedings on the Eighth Defendant in Japan under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“the Convention”). Normally, the Tribunal would not be prepared to grant repeated extensions, in particular when the Foreign Process Section (“FPS”) at the Royal Courts of Justice was not asked by the Claimants to effect service for almost five months after the Tribunal’s Order permitting service out of the jurisdiction. However, the circumstances here are truly exceptional.
2. On 19 October 2020 the Claimants’ solicitors delivered to the FPS the documents for service in Japan including translations. The FPS was also provided with a copy of the Tribunal’s Order of 18 August 2020 but that was not listed as one of the documents intended for service and was accordingly not translated.

3. On 23 October 2020 the FPS confirmed that the service pack had been despatched to the authorities in Japan for service.
4. On 29 October 2020 the Claimants' solicitors provided the FPS with a copy of the Tribunal's Order of 26 October 2020 further extending the time for service, with certified translation, and on 5 November 2020 the FPS confirmed that these documents had been forwarded to the Japanese authorities.
5. Due to a backlog resulting from the Covid-19 pandemic, it was only at the end of February or beginning of March 2021 that the FPS sent a chaser letter to the Japanese authorities inquiring about service.
6. The Ministry of Foreign Affairs in Japan ("MoFA") explained to the Claimants' solicitors by email correspondence on 23 March 2021 that formal service could not be made because a translation was missing from the documents received. It appears that the document in question is the Order of 18 August 2020. However, the Eighth Defendant had been asked by the Japanese Court if it would accept voluntary service as envisaged by Art 5, 2nd paragraph of the Convention. The Eighth Defendant has apparently not consented to receive service in this way.
7. On 25 March 2021, the Claimants' solicitors were informed by MoFA that it was not acceptable at this stage for the Claimants to provide an additional translation and that refusal by the Eighth Defendant to agree to voluntary service would result in the service pack being returned to the UK. However, MoFA informed the Claimants' solicitors that if a further complete service pack of documents was sent by the UK authorities, MoFA would then "send them to the Supreme Court as the highest priority and ask them to treat them as urgent". Given the time periods involved in service requests under the Convention at present, it is clear that such further arrangements cannot be completed by 26 June 2021.
8. Accordingly, the Eighth Defendant both directly from the Japanese Court and through its English solicitors is aware of the proceedings and will suffer no prejudice due to the failure to effect service by 26 June 2021. In the light of this sequence of events, it is appropriate that the further extension should leave sufficient time for service now to be effected correctly. According to the

Claimants' solicitors, on information from the FPS, four months are required generally in order to complete service in Japan and the FPS will not accept a request for service with less than three months' time to serve.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 17 May 2021
Drawn: 17 May 2021