



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1571/5/7/22 (T)

BETWEEN:

**VOLKSWAGEN AG & OTHERS**

Claimants

- v -

**mitsui o.s.k. lines, limited**

Defendant

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**ORDER**

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**UPON** the Claimants' claims against the Defendant

**AND UPON** the Consent Order of Mr Justice Picken dated 23 November 2022 transferring the proceedings to the Competition Appeal Tribunal with the effect from the sealed date of the order

**AND UPON** considering the Claimants' application, in the form of a letter dated 9 December 2022 from the solicitors for the Claimants, and the accompanying bundle (the "**Application**")

**AND UPON** considering the Defendant's response to the Application, in the form of a letter dated 21 December 2022 from the solicitors for the Defendant and an accompanying bundle (the "**Response to the Application**")

**AND UPON** the Claimants and Defendant indicating through their respective solicitors that they are content for the Application to be determined on the papers

**IT IS ORDERED THAT:**

1. The Defendant shall give the Claimants disclosure and inspection of all documents which (i) are or have been in its control; and (ii) have been provided either by the Defendant or by any of its current or former subsidiaries to regulators and/or authorities, other than the European Commission, in connection with the investigation of anti-competitive practices in relation to Roll On Roll Off maritime transport (the “**Foreign Regulatory Materials**”) as soon as possible on a rolling basis and in any event by 5pm on 31 May 2023.
2. The parties shall provide the Tribunal with an update by 5pm on 1 March 2023 regarding the progress of the disclosure and inspection provided pursuant to paragraph 1 above, such update to include (i) lists of materials disclosed to date and the dates of each tranche of disclosure and inspection thereunder; (ii) an estimate of the proportion of disclosure which remains to be performed; and (iii) any issues identified to date relating to the disclosure given.
3. The obligation to give disclosure and inspection pursuant to paragraph 1 above shall be subject only to a right to redact or withhold material on the grounds that it is privileged or irrelevant, applying the approach contained in CPR Rule 31.6, or otherwise as required by applicable local laws.
4. The Defendant shall, at the time of giving such disclosure, provide a description (in sufficient detail to enable the Claimants to assess any assertion and potentially challenge it by way of an application to the Tribunal, if so advised) identifying any documents which have been redacted or withheld and the basis on which they have been redacted or withheld.
5. The Defendant shall, in the disclosure statement accompanying the disclosure given pursuant to paragraph 1 above, confirm whether the Defendant and/or its subsidiaries have produced documents to a regulator or authority, other than the European Commission, in connection with the investigation of anti-competitive practices in relation to Roll On Roll Off maritime transport and identify all such jurisdictions.

6. The Claimants shall pay the Defendant's costs of and caused by the preparation of its Response to the Application, to be assessed if not agreed.

**REASONS:**

1. The parties recognise and accept that it is desirable for these proceedings to catch up with another set of proceedings under Claim No. 1528/5/7/22 (T) *Volkswagen AG and Others v MOL (Europe Africa) Ltd and Others*, which was transferred to the Competition Appeal Tribunal with effect from 19 August 2022 pursuant to the Order of the Honourable Mr Justice Calver dated 20 June 2022, and in respect of which a case management conference has been fixed for 15-16 March 2023 (the "CMC"). I consider that setting unrealistic deadlines will create more difficulties in getting to that point.
2. The Defendant has said in its Response to the Application, with explanations which I accept, that it cannot provide disclosure of the Foreign Regulatory Materials within the deadlines sought by the Claimants in their Application.
3. It follows that the approach of the Defendant – that of rolling disclosure with a backstop date – is to be preferred.
4. However in ordering disclosure of the Foreign Regulatory Materials by the Defendant on a rolling basis, I would like to see real progress made on this in the near future such that meaningful stock can be taken ahead of the CMC. This is so that, if there are further issues on disclosure, they (or some of them) can be addressed at the CMC. I have therefore included an order that there be a progress report ahead of the CMC.
5. Since I have preferred the Defendant's approach to disclosure it follows that it should have its costs of this dispute.
6. As to paragraph 5 of the Order the wording of this paragraph has been altered slightly from the Claimants' draft order accompanying their Application. As drafted by the Claimants' solicitors, their draft wording seems to require the Defendant to confirm if there are any other regulators or authorities (other than the Commission and their proposed 'First Tranche' and 'Second Tranche' jurisdictions) to whom the Defendant and its subsidiaries have produced documents in connection with the investigations into

anti competitive practices in relation to Roll On Roll Off maritime transport. However the ‘Second Tranche’ jurisdictions cover all other jurisdictions minus the European Commission and minus the ‘First Tranche’ jurisdictions. The rewording therefore provides confirmation of all the jurisdictions in respect of which documents were produced to regulators and authorities.

**The Hon Mrs Justice Cockerill DBE**  
Chair of the Competition Appeal Tribunal

Made: 6 January 2023  
Drawn: 6 January 2023