



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1339/7/7/20

BETWEEN:

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) WALLENIOUS WILHELMSSEN OCEAN AS**
(7) EUKOR CAR CARRIERS INC
(8) WALLENIOUS LOGISTICS AB
(9) WILHELMSSEN SHIPS HOLDING MALTA LIMITED
(10) WALLENIOUS LINES AB
(11) WALLENIOUS WILHELMSSEN ASA

Separately Settling Defendants

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

- (1) WOODSFORD GROUP LIMITED**
(2) LITICA LTD
(3) LAKEHOUSE RISK SERVICES LIMITED

Interested Parties

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”) as set out in Annex 1

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, “K” Line and the Sixth to Eleventh Defendants, and for the First to Third, and Fifth Defendants (the “Non-Settling Defendants”), and for the Interested Parties and oral submissions from Sarah Ford KC for the Class Representative, Hanif Mussa KC for “K” Line, Laura Elizabeth John for the Sixth to Eleventh Defendants, Brendan McGurk KC and Natalie Nguyen for the Non-Settling Defendants, and Robert Marven KC for the Interested Parties at an in-person hearing on 5 December 2024

AND UPON the Class Representative and “K” Line agreeing amendments on 6 December 2024 to the Proposed Collective Settlement as set out in Annex 2

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 and the Non-Settling Defendants exchanging letters concerning the determination of the shares of liability of the Defendants in the event that trial of these collective proceedings results in an award of damages

AND UPON the lawyers representing the Class Representative and the Interested Parties undertaking to the Tribunal not to seek any proportion of their entitlement to payment of costs, fees and disbursements in the Collective Proceedings from the Guaranteed Damages Sum, as defined in paragraph 4 below (the “Stakeholder Undertakings”)

AND UPON the Class Representative, “K” Line and the Non-Settling Defendants reaching agreement in the terms recorded at paragraphs 15 to 18 below

AND UPON “Represented Person” having the meaning defined in clause 1.1 of the Proposed Collective Settlement

AND UPON the Tribunal being satisfied that in the light of the Stakeholder Undertakings the terms of the Proposed Collective Settlement (as amended) 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 at Annex 1 of this Order, amended in accordance with the terms set out in Annex 2 of this Order by agreement between the Class Representative and “K” Line on 6 December 2024 (the “Collective Settlement”) is approved.

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 or otherwise retained by the Class Representative in its solicitors’ client account until the Tribunal makes a further order(s) as regards the distribution of the Damages Sum.
4. The Class Representative shall distribute the entirety of the “Guaranteed Damages Sum” of £5,250,000 to the Represented Persons or by way of cy-près to a charity approved by the Tribunal.
5. In relation to the remaining £1,750,000 of the Damages Sum (the “Additional Damages Sum”):
 - (a) if the total amount the Class Representative obtains to compensate the class pursuant to 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 of the Damages Sum may be reverted back to “K” Line;
 - (b) if the CFD Sum (as defined below), the Distribution Cost Contribution (as defined below), and any other sums that McLaren obtains to pay costs, fees and disbursements and the costs of distributing or seeking to distribute the Damages Sum to Represented Persons (the “Distribution Process”) are not sufficient to meet the entirety of the Class Representative’s costs, fees and disbursements, including the costs of the Distribution Process (the difference being the “CFD Shortfall Amount”), the Class Representative may apply to the Tribunal for the Additional Damages Sum (or such lesser amount of the Additional Damages Sum as remains after the Distribution Process) to be paid towards the CFD Shortfall Amount.

Stay of collective proceedings against “K” Line

6. 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

7. 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

8. 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

9. 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, fees and disbursements of or occasioned by these proceedings (excluding any costs awards already made and settled between the Class Representative and “K” Line and/or the other Defendants) (the “CFD Sum”); 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 (with any unused portion returned to “K” Line) (the “Distribution Costs Contribution”).
10. The CFD Sum paid in accordance with paragraph 9(a) above shall be held in an escrow account or otherwise retained and ringfenced by the Class Representative in SSUK’s client account until the Tribunal makes a further order(s) as regards the distribution of the CFD Sum.

11. Any balance of the CFD Sum above the amounts directed by the Tribunal to be paid out by way of costs, fees and disbursements (including costs of the Distribution Process) shall be applied as directed by the Tribunal, including being applied to the benefit of the Represented Persons or by way of *cy-près* to a charity approved by the Tribunal.
12. There shall be liberty to apply in respect of payments out of the CFD Sum, including as to the costs of the hearing of the CSAO Application.
13. As between the Class Representative and the Non-Settling Defendants, there be no order as to costs in relation to this CSAO Application.

General

14. 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.
15. There be liberty for the Class Representative and any Represented Person to apply in respect of paragraphs 3 and 7 of this Order.

IT IS FURTHER ORDERED BY CONSENT THAT:

16. The Non-Settling Defendants shall not claim any contribution from “K” Line.
17. “K” Line shall not claim any contribution from the Non-Settling Defendants.
18. 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.
19. The Non-Settling Defendants undertake not to appeal this Order.

Hodge Malek KC

Chair of the Competition Appeal Tribunal

Made: 6 December 2024

Drawn: 10 December 2024

ANNEX 1

COLLECTIVE SETTLEMENT AGREEMENT

BETWEEN

MARK MCLAREN CLASS REPRESENTATIVE LIMITED

AND

KAWASAKI KISEN KAISHA LTD.

DATED

25 NOVEMBER 2024



25 November **2024**

(1) MARK McLAREN CLASS REPRESENTATIVE LIMITED

and

(2) KAWASAKI KISEN KAISHA, LTD.

SETTLEMENT AGREEMENT

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THIS AGREEMENT is dated 2024

BETWEEN

- (1) **Mark McLaren Class Representative Limited**, a company incorporated in England and Wales, with registered number 12449867 and whose registered address is at c/o Scott+Scott UK LLP, 1 Chancery Lane, London, England, WC2A 1LF, for and on behalf of the Class, as defined in Annex 1 to this Agreement (**McLaren**); and
 - (2) **Kawasaki Kisen Kaisha, Ltd.**, a company incorporated under Japanese Law, whose head office is at Lino Building, 1-1 Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540 Japan ("**K**" Line)
- (together, McLaren and "K" Line are the **Parties** and each a **Party**).

WHEREAS

- (A) On 21 February 2018, the European Commission issued an infringement decision in Case AT.40009 – *Maritime Car Carriers* (the **Decision**), finding that there was a cartel in the market for deep sea carriage services on routes to and/or from the European Economic Area, which operated between 18 October 2006 and 6 September 2012 (the **Cartel**). "K" Line was an addressee of the Decision (which the Parties refer to for its true meaning and effect).
- (B) On 20 February 2020, McLaren filed an application against "K" Line and other defendants/respondents in the Competition Appeal Tribunal (the **Tribunal**), for a collective proceedings order pursuant to section 47B of the Competition Act 1998 and Rules 79 and 80 of the Competition Appeal Tribunal Rule 2015 (the **Tribunal Rules**), seeking to represent, on an opt-out basis, a class of natural and legal persons which McLaren alleges were harmed by the Cartel.
- (C) By order dated 20 May 2022, the Tribunal authorised McLaren to act as class representative to continue collective proceedings on an opt-out basis, and certified the claims for loss and damages suffered by the Class (as defined in Annex 1 to this Agreement) as a result of the Cartel as eligible to be included in collective proceedings, which proceedings are continuing under Case No. 1339/7/7/20 (the **Collective Proceedings**). The Tribunal's decision was upheld by the Court of Appeal on 21 December 2022 and the Supreme Court refused permission to appeal.
- (D) By a collective settlement approval order made on 6 December 2023, the Tribunal approved the terms of a settlement agreement between McLaren and the Twelfth Defendant in the Collective Proceedings, Compania Sud Americana De Vapores S.A. (**CSAV**).
- (E) "K" Line denies all and any liability to the Class (as defined in Annex 1 to this Agreement) and, in particular, that the conduct in the Decision as it relates to "K" Line has caused loss or damage to the Class.
- (F) In that context, "K" Line and McLaren have engaged in arm's-length negotiations to settle the Collective Proceedings against "K" Line.

- (G) In order to dispose of the Collective Proceedings against “K” Line, considering, among other things, the potential and inherent legal risk to the Parties associated with the Collective Proceedings against “K” Line and the wish to avoid unnecessary legal and other costs, the Parties have agreed terms for the full and final settlement of the Collective Proceedings as against “K” Line, and wish to record those terms of settlement in this Agreement on a binding basis, subject to the Tribunal approving the settlement and making a collective settlement approval order in accordance with Rule 94 of the Tribunal Rules.
- (H) Such agreement involves the payment by “K” Line to the Class of sums in settlement of McLaren’s claims against “K” Line in consideration of certain waivers, releases, covenants and other promises to be given by McLaren and pursuant to Rule 94 of the Tribunal Rules.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration provided in this Agreement, the receipt and sufficiency of which are hereby acknowledged, **THE PARTIES AGREE AS FOLLOWS:**

1. Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

Additional Damages Sum means £1,750,000 (one million seven hundred and fifty thousand pounds);

Agreement means this present agreement (as amended and varied from time to time);

Approval Application means the application for a Collective Settlement Approval Order made by the Parties to the Tribunal pursuant to Rule 94(3) of the Tribunal Rules, as amended from time to time;

Barring Provision has the meaning given to it in clause 3.3 below;

Claims means actual or potential actions, claims, counterclaims, rights of set-off, indemnity, cause of action, right or interest (including interest and costs), whether known or unknown, direct or indirect, asserted or unasserted, accrued or unaccrued, filed or unfiled, suspected or unsuspected, liquidated or unliquidated, actual or contingent, foreseen or unforeseen, foreseeable or unforeseeable, in whatever capacity or jurisdiction worldwide, however and whenever arising, whether or not already known, in whatever jurisdiction, whether in a court, tribunal and/or in arbitration, including (but not limited to) any claims for costs, or for account of profits, or for damages of any kind – including compensatory damages, punitive damages, treble damages, restitution, disgorgement, interest, costs and penalties – and whether on the basis of contract, equity, tort, restitution or unjust enrichment, and/or under antitrust or competition laws, or otherwise;

Cartel has the meaning given to it in Recital (A) of this Agreement;

CFD Shortfall Amount has the meaning given to it in clause 4.10 below;

CFD Sum means £5,250,000 (five million two hundred and fifty thousand pounds) to be applied in accordance with clause 4.10 below against McLaren's costs, fees and disbursements;

Class has the meaning given to it in paragraph 4 of the Order of Mrs Justice Falk DBE dated 20 May 2022, set out in Annex 1 to this Agreement for ease of reference;

Collective Proceedings has the meaning given to it in Recital (C) of this Agreement;

Collective Settlement Approval Order means an order made pursuant to Rule 94(8) of the Tribunal Rules further to the Approval Application or any Further Approval Application, as the context requires, approving the settlement that is the subject of this Agreement;

CSAV has the meaning given to it in Recital (D) of this Agreement;

Damages Shortfall Amount has the meaning given to it in clause 4.9 below;

Damages Sum means the total of the Guaranteed Damages Sum plus the Additional Damages Sum, being £7,000,000 (seven million pounds);

Decision has the meaning given to it in Recital (A) of this Agreement;

Defendants means the Defendants to the Collective Proceedings, including "K" Line;

Distribution Application has the meaning given to it in clause 4.5 of this Agreement;

Distribution Costs Contribution means £500,000 (five hundred thousand pounds);

Distribution Process means the process of distributing or seeking to distribute the Damages Sum to the Class pursuant to any order(s) of the Tribunal;

Funder means Woodsford Group Limited;

Further Approval Application has the meaning given to it in clause 5.3(b) of this Agreement;

Guaranteed Damages Sum means £5,250,000 (five million two hundred and fifty thousand pounds);

"K" Line Released Parties means any company or other entity (including its successors and assignees) that, as at the date of this Agreement, is directly or indirectly controlled by "K" Line where "control" shall mean holding, directly or indirectly, more than 50 per cent of the voting stock or rights of that company or entity, and any divisions, agents, representatives, officers, directors and employees (in their respective capacity as divisions, agents, representatives officers and employees) of "K" Line or any "K" Line Released Party.

Non-Settling Defendants means the Defendants to the Collective Proceedings, other than "K" Line, the WWL/EUKOR Defendants (unless the settlement agreed in principle between the WWL/EUKOR Defendants is not approved by the Tribunal ahead of the Collective Settlement Approval Order made with respect to this Agreement) and CSAV;

Notice and Distribution Plan means the notice and distribution plan at Appendix 1 to Exhibit MM1.4, exhibited to the First Witness Statement of Mark McLaren, dated 18 February 2020;

Represented Person means any member of the Class who was domiciled in the United Kingdom on 22 May 2022 and who has not opted out pursuant to Rule 82(1)(b)(i) of the Tribunal Rules, or who does not opt out pursuant to Rule 94(10)(b), and any member of the Class who was not domiciled in the United Kingdom on 22 May 2022 but who has opted in pursuant to Rule 82(1)(b)(ii) of the Tribunal Rules;

Settlement Sum has the meaning given to it in clause 2.1 of this Agreement;

Tribunal has the meaning given to it in Recital (B) of this Agreement;

Tribunal Rules has the meaning given to it in Recital (B) of this Agreement;

Tribunal Guide means the Competition Appeal Tribunal Guide to Proceedings 2015; and

WWL/EUKOR Defendants means the Sixth to Eleventh Defendants;

1.2 Unless the context otherwise requires:

- (a) the headings in this Agreement are for ease of reference only and do not affect its interpretation;
- (b) a reference to “including” or “includes” does not limit the scope of the words preceding it;
- (c) the singular includes the plural and vice versa;
- (d) references to sub-clauses or clauses are to sub-clauses or clauses of this Agreement;
- (e) references to legislation include any modification or re-enactment thereof; and
- (f) References to McLaren’s “costs, fees and disbursements” include third party funding costs, insurance costs (including deferred insurance premia), and any uplifts payable to counsel or solicitors representing McLaren.

2. Terms of settlement

2.1 The Parties agree that in full and final settlement of the Collective Proceedings as against the “K” Line, subject to the Tribunal making a Collective Settlement Approval Order, “K” Line shall pay McLaren on behalf of the Class, a total of £12,750,000 (twelve million seven hundred and fifty thousand pounds) (the **Settlement Sum**), subject to clauses 2.3, 2.4 and 4 below.

2.2 The Settlement Sum will comprise:

- (a) the Damages Sum;
- (b) the CFD Sum; and
- (c) the Distribution Costs Contribution.

2.3 Within 28 (twenty eight) days of the Tribunal making the Collective Settlement Approval Order “K” Line, or its solicitors on its behalf, shall pay to McLaren a total of £12,250,000 (twelve million two hundred and fifty thousand pounds), comprised of:

- (a) the Damages Sum; and
- (b) the CFD Sum.

2.4 The Distribution Costs Contribution will be payable in accordance with clause 4 below.

2.5 All amounts payable to McLaren pursuant to this Settlement Agreement shall be payable by wire transfer, without deduction, to the following bank account:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2.6 "K" Line will, through its solicitors, provide electronic evidence of payment of the Settlement Sum (or any part thereof) to McLaren's solicitors, Scott+Scott UK LLP (such evidence to be sent to: [REDACTED]; [REDACTED] and [REDACTED]).

2.7 In consideration of payment of the Settlement Sum in accordance with this Agreement, and notwithstanding the reversion of any sums to "K" Line in accordance with clauses 4.8 and 4.13 below, McLaren agrees, as far as it is legally able to and subject to the Tribunal making the Collective Settlement Approval Order, that (without prejudice to the releases and covenants in clauses 7 and 8 below) McLaren, for itself and on behalf of Represented Persons or other members of the Class, irrevocably waive(s) all of its/their rights and will not seek to bring any Claim(s):

- (a) against "K" Line, in connection with or relating to "K" Line's conduct as set out in the Decision, as set out in greater detail in clause 8 below; and
- (b) against any of the Non-Settling Defendants or any other person, in connection with or relating to "K" Line's liability for the conduct as set out in the Decision.

2.8 Subject to the Tribunal making the Collective Settlement Approval Order, "K" Line agrees that it shall have no right to claim recovery, whether from McLaren, Represented Persons or the Funder, of any of its costs incurred or to be incurred in relation to the Collective Proceedings or any related proceedings including, but not limited to, the costs of the Approval Application and any Further Approval Application, or repayment of costs already paid to McLaren over the course of the Collective Proceedings.

2.9 Save to the extent that "K" Line chooses to make written or oral submissions within the Collective Proceedings or related proceedings after the date of the Collective Settlement Approval Order, and subject to the payment of the Settlement Sum in accordance with this Agreement, McLaren agrees that it shall have no right to claim recovery from "K" Line of any of its costs incurred or to be incurred in relation to the Collective Proceedings or any related proceedings. In the event that "K" Line does

choose to make written or oral submissions within the Collective Proceedings or related proceedings, the foregoing shall not prevent McLaren from claiming recovery from “K” Line of any of McLaren’s costs incurred as a result (but, for the avoidance of doubt, McLaren shall not have an automatic right to recover such costs from “K” Line which shall be a matter for agreement between the Parties or the order of the Tribunal).

- 2.10 McLaren represents and warrants that neither it, its legal advisors, or the Funder have any present intention, before trial, to enter into a settlement agreement with any Non-Settling Defendant which would dispose of the Collective Proceedings against that Non-Settling Defendant for a settlement amount less than the Settlement Sum payable by “K” Line under this Agreement (pro rata based on that Non-Settling Defendant’s share based on capacity of vessels).

3. Pleadings carve out

- 3.1 Subject to this Agreement and the Tribunal making a Collective Settlement Approval Order, McLaren agrees within 14 (fourteen) days of such Collective Settlement Approval Order to apply to amend its claim in the Collective Proceedings so as to:
- (a) remove any claim against “K” Line; and
 - (b) 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 the damages and interest (whether compound or simple) which McLaren seeks from the Non-Settling Defendants will be reduced accordingly.
- 3.2 Subject to this Agreement and the Tribunal making a Collective Settlement Approval Order, McLaren agrees to give credit for the CFD Sum and the Distribution Costs Contribution when seeking any order for payment of its costs, fees and disbursements of and relating to the Collective Proceedings, and any costs, fees and disbursements which McLaren seeks from the Non-Settling Defendants or from undistributed damages will be reduced accordingly.
- 3.3 Unless otherwise agreed between them, as part of the Approval Application or any Further Approval Application, the Parties shall use their best endeavours to procure that there is included within the terms of the Collective Settlement Approval Order, whether by consent of the Settling Parties and Non-Settling Defendants (as applicable) or by way of a barring provision along the lines referred to at paragraph 6.131 of the Tribunal Guide, a provision that will prevent the Non-Settling Defendants from claiming contribution from “K” Line (a **Barring Provision**). Unless otherwise agreed, “K” Line shall not be under any obligation, pursuant to clause 5 (or otherwise), to make or support a joint Approval Application or Further Approval Application for a Collective Settlement Approval Order that does not include such a provision.

4. Distribution and the Additional Damages Sum

- 4.1 McLaren confirms that, by this Agreement, “K” Line is the third Defendant group to settle in the Collective Proceedings.
- 4.2 “K” Line acknowledges that CSAV was the first Defendant group to settle in the Collective Proceedings and the WWL/EUKOR Defendants were the second Defendant group to settle in the Collective Proceedings, and the Parties agree that nothing in this Agreement will jeopardise those Defendants’ rights as “first in, last out” or “second in, second last out” respectively, to have the sum paid by CSAV to McLaren to be paid out last, and the sum paid or payable by the WWL/EUKOR Defendants that is available for reversion to the WWL/EUKOR Defendants to be paid out second last in any Distribution Process or in any order for payment of costs, fees and disbursements.
- 4.3 “K” Line acknowledges that McLaren intends to distribute the entirety of the Guaranteed Damages Sum to the Represented Persons, either directly or by way of cy-près to a charity approved by the Tribunal, and that none of the Guaranteed Damages Sum will therefore be available for reversion to “K” Line.
- 4.4 The Parties agree that the Damages Sum shall be held in escrow until the conclusion of the Collective Proceedings, or such other time as McLaren considers it economical, proportionate and in the interests of the Class to seek to distribute it, and the Tribunal approves McLaren’s Distribution Application.
- 4.5 McLaren shall in due course make an application seeking the Tribunal’s approval to distribute the Damages Sum to Class Members in accordance with a distribution plan prepared by McLaren in conjunction with a claims administrator and in a manner in which McLaren considers to be just and reasonable (the **Distribution Application**). McLaren’s main objective will be to make as many Represented Persons as possible aware of their right to a share of the Damages Sum and to encourage them to come forward to claim their share of the Damages Sum.
- 4.6 McLaren shall provide “K” Line with notice of the Distribution Application and any future applications relating to the treatment of the Settlement Sum (including in relation to any distribution to class members, payment of costs, fees and disbursements, and/or treatment of any part of the Damages Sum remaining following distribution to the Class).
- 4.7 The Distribution Costs Contribution shall be paid to McLaren within 28 (twenty eight) days of McLaren giving notice to “K” Line that the Tribunal has approved the Distribution Application.
- 4.8 Any part of the Distribution Costs Contribution which is not used by McLaren to meet the cost of: (i) distributing the Damages Sum; and/or (ii) distributing any other sums McLaren obtains to compensate the Class from other Defendants (whether pursuant to judgments or settlements with such other Defendants), will be promptly returned by McLaren to “K” Line at the conclusion of the Distribution Process, by paying the unused portion of the Distribution Costs Contribution to the account of “K” Line’s solicitors, Cleary Gottlieb Steen & Hamilton LLP, details of which are set out below:

[REDACTED]

[REDACTED]

[REDACTED]

- 4.9 Subject to clauses 4.11 and 4.12 below, if the Guaranteed Damages Sum, and any other sums McLaren obtains to compensate the Class, either by way of settlements prior to or subsequent to this Agreement or order(s) following judgment(s), are not sufficient to compensate all of the Represented Persons who come forward during the Distribution Process (the difference being the **Damages Shortfall Amount**), McLaren will notify “K” Line that it intends to use some or all of the Additional Damages Sum for distribution to Represented Persons towards the Damages Shortfall Amount.
- 4.10 Subject to clauses 4.11 and 4.12 below, if the CFD Sum and any other sums McLaren obtains to pay costs, fees and disbursements, either by way of settlement(s) prior to or subsequent to this Agreement or order(s) following judgment(s), are not sufficient to meet the entirety of McLaren’s costs, fees and disbursements (the difference being the **CFD Shortfall Amount**) then, at the conclusion of the Distribution Process, McLaren may apply to the Tribunal for the Additional Damages Sum (or such lesser amount of the Additional Damages Sum as remains after being used towards the Damages Shortfall Amount during the Distribution Process) to be paid towards the CFD Shortfall Amount.
- 4.11 McLaren agrees that it will only use the Additional Damages Sum to pay Represented Persons pursuant to clause 4.9 above and/or for McLaren’s costs, fees and disbursements pursuant to clause 4.10 above on a “third in, third-last out” basis, not pro-rated with the sums recovered from of any of the Non-Settling Defendants. Accordingly, McLaren will first:
- (a) distribute sums to Represented Persons; and
 - (b) seek payment of outstanding costs, fees and disbursements,
- from any sums ordered or agreed to be paid by the Non-Settling Defendants (whether following a trial or pursuant to settlements subsequent to this Agreement, and including any deferred or contingent sums payable by such Non-Settling Defendants to compensate Represented Persons or in respect of costs, fees and disbursements).
- 4.12 McLaren undertakes that any settlement agreement that it enters into subsequent to this Agreement will include appropriate provision(s) to preserve its ability to comply with clauses 4.11 above and 4.13 below.
- 4.13 Without prejudice to clauses 4.9 and 4.10 above if, for any reason, following the Distribution Process and any application by McLaren to the Tribunal, pursuant to clause 4.10 above, any amount of the Additional Damages Sum that has been paid by “K” Line to McLaren remains, McLaren will promptly return the surplus to “K” Line by paying such sum to the account of “K” Line’s solicitors, Cleary Gottlieb Steen & Hamilton LLP, details of which are set out in clause 4.8 above.

4.14 Any notice to be sent by McLaren to “K” Line pursuant to this clause 4 shall be sent by email to the following addresses: [REDACTED] and [REDACTED] and shall be deemed received the same day, if sent before 17:00 local time in England on a day that is not a weekend day or bank holiday in England, or otherwise on the next day that is not a weekend day or bank holiday.

5. Collective settlement approval order

5.1 Without prejudice to the specificity of clauses 5.2 to 5.6 below, at any time after the date of this Agreement the Parties shall execute such documents and do any such other acts and things as may be required for the purposes of giving full effect to the provisions of this Agreement.

5.2 The Parties shall work together, in good faith, to prepare and file a joint Approval Application.

5.3 In the event that any part of the Approval Application is unsuccessful:

- (a) the Parties agree that they shall be severally liable in equal share for any adverse costs awarded in relation to the Approval Application, whether in favour of any of the Non-Settling Defendants, one or more Represented Persons who make submissions in accordance with Rule 94(7) of the Tribunal Rules, or any other party;
- (b) the Parties shall negotiate in good faith to prepare a further joint approval application, taking account of any judgments or obiter comments from the Tribunal, such that a collective settlement approval order will be made which, as far as possible, reflects the terms and spirit of this Agreement (the **Further Approval Application**); and
- (c) if, negotiating in good faith, the Parties cannot agree a Further Approval Application on terms acceptable to both parties, the terms of this Agreement shall not be binding on either Party, save in respect of clauses 14 and 17 below, which shall continue in full force and effect.

5.4 In the event that the Further Approval Application is unsuccessful:

- (a) the Parties agree that they shall be severally liable in equal share for any adverse costs awarded in relation to the Further Approval Application, whether in favour of any of the Non-Settling Defendants, one or more Represented Persons who make submissions in accordance with Rule 94(7) of the Tribunal Rules, or any other party; and
- (b) unless otherwise agreed in writing, the terms of this Agreement shall not be binding on either Party, save in respect of clauses 14 and 17 below, which shall continue in full force and effect.

5.5 If more than one Further Approval Application is needed, the Parties agree that clauses 5.3 and 5.4 above shall apply to the preparation of additional Further Approval Applications, *mutatis mutandis*.

5.6 The Parties note Rule 94(15) of the Tribunal Rules and agree that, in the event that the Approval Application or any Further Approval Application is unsuccessful such that this Agreement is rendered not binding in accordance with clause 5.3(c) or 5.4(b) above, the Parties shall not rely on or refer to at

trial the existence, terms, form or content of this Agreement, the Approval Application and/or any Further Approval Application(s) and accompanying documents, witness statements or exhibits, and all prior or future negotiations in relation thereto, unless otherwise agreed in writing, save in respect of claims for costs.

6. Stay of the Collective Proceedings

- 6.1 As far as is possible without order from the Tribunal, the Parties agree that any actual and potential deadlines regarding “K” Line in the Collective Proceedings, whether substantive or procedural, and whether set out in an order or in accordance with the Tribunal Rules, the Tribunal Guide, or any other Practice Direction, shall be suspended from the point of signing of this Agreement. Upon signing of this Agreement, the Parties shall work together to agree, and take all necessary steps to obtain a consent order to be filed at the Tribunal. The consent order will include a request formally to stay the Collective Proceedings as against “K” Line.
- 6.2 Paragraph 6.1 above shall not apply to any orders relating to the Approval Application, any Further Approval Application, the Distribution Application or any other applications relating to the proposed settlement.

7. Release and waiver

- 7.1 Subject to the Tribunal making the Collective Settlement Approval Order, as far as McLaren is legally able to, the Parties agree that the settlement set out in this Agreement is in full and final settlement of all and / or any Claims which any Represented Person may have against “K” Line and the “K” Line Released Parties in relation to the subject matter of the Collective Proceedings and/or the conduct as set out in the Decision.
- 7.2 “K” Line agrees that as part of its full and final settlement with McLaren, neither McLaren nor the Funder will have any liability in respect of “K” Line’s costs in the Collective Proceedings pursuant to any judgment, order, award and/or cost certificate of a competent court or tribunal made in the Collective Proceedings, and “K” Line shall not be entitled to make any claim in relation to such costs against McLaren and/or the Funder, whether pursuant to the costs undertaking entered into between the Funder and the Defendants dated 12 April 2021 or otherwise.
- 7.3 For the avoidance of doubt, full and final settlement with “K” Line is not intended to and does not release any of the Non-Settling Defendants from any actual or potential actions, claims, counterclaims, rights of set-off, indemnity, cause of action, right or interest (including interest and costs) which any Represented Person may have against the Non-Settling Defendants, save to the extent set out in clauses 3.1 and 3.2 above.

8. Non-cooperation

- 8.1 Unless ordered to by the Tribunal, “K” Line agrees not to facilitate any introductions or otherwise cooperate in any way with any Non-Settling Defendant with respect to “K” Line’s industry witnesses

and experts, namely Lawrence Good, Trevor Finn, Darren Chaisty, Neil Cunningham, and James Dent. For the avoidance of doubt, nothing in this clause shall prevent “K” Line from contacting or otherwise communicating with its industry witnesses and experts to the extent that “K” Line is required to take preparatory steps towards trial pending the Tribunal making a Collective Settlement Approval Order and “K” Line ceasing to be party to the Collective Proceedings. Nothing in this Agreement is intended to prevent any of “K” Line’s industry witnesses or experts from communicating with any Non-Settling Defendant (or the Class Representative) if that witness or expert chooses.

8.2 McLaren agrees not to issue witness summons or in any way engage with or seek to call the “K” Line fact witnesses, namely Mr Heiner Thomsen, Mr Kentaro Tsuji, Mr Nobuyuki Yokoyama, Mr Haruhiko Sugimoto, and Mr Takamasa Soejima.

9. Agreement not to sue

9.1 Each Party agrees not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other Party or the Funder any action, suit or other proceeding concerning the subject matter of the Collective Proceedings and/or the conduct as set out in the Decision, in this jurisdiction or any other, save for the purposes of enforcing this Agreement.

10. No admission

10.1 The Parties agree that the Agreement is entered into without any admission of liability by “K” Line and that “K” Line denies that any members of the Class or any other person has suffered any loss or damage as a result of any anti-competitive behaviour in connection with the Cartel or the subject matter of the Decision.

10.2 The Parties also agree that neither this Agreement nor any statement made in the negotiation hereof shall be deemed or construed to be an admission by or evidence against “K” Line or evidence of the truth of any of McLaren’s allegations against “K” Line.

11. Effect of this Agreement

11.1 The Parties agree that this Agreement shall immediately be fully and effectively binding upon them.

11.2 Should the Tribunal refuse to make a Collective Settlement Approval Order on terms acceptable to the Parties, this Agreement shall cease to be binding in accordance with clauses 5.3 to 5.5 above. For the avoidance of doubt, McLaren’s claim against “K” Line would continue.

12. Entire agreement

12.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on any oral or written representation, warranty, or other assurance other than as expressly set out in this Agreement and waives all rights and remedies which might otherwise be available to it in respect thereof, provided always that nothing in this paragraph limits or excludes any liability for fraud.

13. Tax

13.1 Each party shall account solely for its compliance with its own tax liabilities and/or obligations arising from the Agreement.

14. Confidentiality

14.1 The Parties agree that this Agreement will form part of the joint Approval Application which will be filed at the Tribunal, served on the Non-Settling Defendants, and made available to Represented Persons (and their legal advisors or representatives) on request.

14.2 Unless otherwise stipulated in this Agreement or ordered by the Tribunal, the substance of all negotiations in connection with this Agreement are confidential to the Parties, their advisers and the Funder, who shall not disclose them to or otherwise communicate them to any third party without the written consent of the other Party other than:

- (a) to the extent that they form part of the Approval Application or evidence filed in support thereof;
- (b) to the Parties' respective board members, auditors, accountants, insurers, lawyers and other professional advisors on terms which preserve confidentiality;
- (c) to the Parties' relevant tax authorities;
- (d) pursuant to an order of a court of competent jurisdiction other than the Tribunal, or pursuant to any proper order or demand made by a competent authority, a tax authority or body where they are under a legal order or regulatory obligation to make such a disclosure; or
- (e) as far as necessary to implement and enforce any of the terms of this Agreement, including against the Non-Settling Defendants with regard to the defence of contribution claims.

14.3 In the case of a subpoena or court order or other third party legal request seeking or purporting to require access to this Agreement (other than the version of this Agreement appended to the Collective Settlement Approval Order and published on the Tribunal's website, or another non-confidential version of the Agreement prepared in accordance with clause 14.4 below) or information as to the substance of negotiations in connection with this Agreement (a **Disclosure Request**), the Parties agree to notify each other promptly upon receipt of the Disclosure Request and to provide to the other Party a copy of the subpoena, court order or request, provided that such notification is not otherwise prohibited by law. The Parties agree to use reasonable endeavours to cooperate with each other to prevent or limit the disclosure of the substance of negotiations in connection with this Agreement (including any drafts) or any parts of it and to provide each other with a reasonable opportunity to take action to prevent

production of the substance of negotiations in connection this Agreement or disclosure of any confidential information relating to this Agreement or to ensure that any such production or disclosure should be subject to appropriate confidentiality restrictions.

- 14.4 If applicable and in accordance with this Agreement, the Parties shall agree non-confidential versions of this Agreement, the Approval Application and any evidence filed in support of the Approval Application, for service on the Non-Settling Defendants or production to Represented Persons (and their legal advisors or representatives) in accordance with clause 14.1 above or for any other purpose, including but not limited to responses to requests pursuant to paragraph 9.66 of the Tribunal Guide.
- 14.5 It shall not be a breach of this clause 14 for the Parties to publicise, including for the purposes of satisfying McLaren's notice requirements and wider duties to the Class, that McLaren has settled the Collective Proceedings as against "K" Line, subject to the Tribunal's approval (if applicable). The Parties may publicise and/or confirm:
- (a) the existence of this Agreement;
 - (b) the Settlement Sum;
 - (c) the Damages Sum, the Guaranteed Damages Sum and/or the Additional Damages Sum;
 - (d) the CFD Sum;
 - (e) the Distribution Costs Contribution;
 - (f) the Barring Provision;
 - (g) the implications for Represented Persons and their ability to opt-out of the Collective Settlement; and
 - (h) any other facts or terms which the Tribunal directs.
- 14.6 As part of the Approval Application, the Parties shall agree wording for a notice of application for a collective settlement approval order in accordance with Rule 94(4)(f) of the Tribunal Rules (the **Application Notice**), and a notice of collective settlement approval in accordance with Rule 94(13) of the Tribunal Rules (the **Approval Notice**). Subject to any amendments by the Tribunal, McLaren shall publicise the Application Notice and the Approval Notice in accordance with the Notice and Distribution Plan.

15. Severability

- 15.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted, while the remaining provisions of this Agreement shall continue in full force and effect. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

16. Counterparts

16.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

17. Jurisdiction and applicable law

17.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

17.2 The English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement, including disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement; and (ii) any non-contractual obligations arising out of or in connection with this Agreement. For such purpose, each Party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

18. Alterations and amendments

18.1 Any alteration of or amendment to this Agreement shall be in writing and signed by or on behalf of each Party. This requirement of written form shall also apply to any amendment to or waiver of the requirement of written form as stipulated in the present provision.

19. Authority

19.1 The Parties to this Agreement expressly represent and warrant that the execution and performance of, and compliance with, their respective obligations under this Agreement is fully authorised by each of them and that the persons executing the Agreement have the necessary authority to do so.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by Mark McLaren for
and on behalf of Mark McLaren
Class Representative Limited



Director

Signed by Paul Stuart, for and
on behalf of "K" Line



Partner, Cleary Gottlieb Steen
& Hamilton LLP

ANNEX 1

The **Class** means:

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

For these purposes:

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

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

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

Excluded Persons means:

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

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

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

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

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

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

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

Personal Representative means the executor or administrator of an estate.

Persons means all persons, whether legal or natural.

Purchased or Financed in the United Kingdom means:

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

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

ANNEX 2

**ADDENDUM VARYING THE SETTLEMENT AGREEMENT
PURSUANT TO MATTERS DISCUSSED
AT THE COLLECTIVE SETTLEMENT APPROVAL HEARING**

1. The Settling Parties hereby amend the “K” Line Settlement Agreement as follows:

CLAUSE 4.3: THE GUARANTEED DAMAGES SUM

2. Replace the wording ““K” Line acknowledges that McLaren intends to distribute the entirety of the Guaranteed Damages Sum to the Represented Persons”, with “McLaren undertakes, and “K” Line acknowledges, that McLaren will distribute the entirety of the Guaranteed Damages Sum to the Represented Persons”.

CLAUSE 4.10: THE CFD SUM TO BE AVAILABLE FOR DISTRIBUTION

3. Change the wording as indicated in the underlined text “... if the CFD Sum, the Distribution Cost Contribution, and any other sums that McLaren obtains to pay costs, fees and disbursements and the costs of the Distribution Process, either by way of settlement(s) subsequent to this Agreement or order(s) following judgment(s), are not sufficient to meet the entirety of McLaren’s costs, fees and disbursements, including costs of the Distribution Process (the difference being the **CFD Shortfall Amount**)”.

CLAUSE 4.15: ANY UNCLAIMED CFD SUM TO BE AVAILABLE FOR DISTRIBUTION AS DAMAGES TO THE CLASS

4. Insert a new clause 4.15 stating that “*The Parties agree that the CFD Sum shall be held in escrow until the Tribunal approves the payment out of any part of it. Any balance above the amounts directed by the Tribunal to be paid out by way of costs, fees and disbursements and the costs of the Distribution Process shall be applied as directed by the Tribunal, including being applied to the benefit of the Represented Persons or by way of cy-près to a charity approved by the Tribunal.*”

CLAUSE 8: NON-COOPERATION

5. Strike clause 8.1.

Signed by Mark McLaren for and on behalf of Mark McLaren Class Representative Limited	 Director
Signed by Paul Stuart, for and on behalf of "K" Line	 Partner, Cleary Gottlieb Steen & Hamilton LLP