Case No: 1435/5/7/22 (T)

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

(1) STELLANTIS AUTO SAS
(2) GIE PSA TRÉSORERIE
(3) STELLANTIS NV
(4) OPEL AUTOMOBILE GMBH
(5) STELLANTIS EUROPE SPA
(6) FCA SRBIJA D.O.O. KRAGUJEVAC
(7) FCA POLAND SP.ZO.O
(8) MASERATI SPA
~~**(9) SOCIETA EUROPEA VEICOLI LEGGERI (SEVEL) SPA**~~
(10) VAUXHALL MOTORS LTD
(11) STELLANTIS ESPAÑA SLU

Claimants

- v -

(1) AUTOLIV AB
(2) AUTOLIV, INC.
(3) AUTOLIV JAPAN LTD
(4) AUTOLIV B.V. & CO. KG
(5) AIRBAGS INTERNATIONAL LTD
~~**(6) ZF TRW AUTOMOTIVE HOLDINGS CORP.**~~
~~**(7) ZF AUTOMOTIVE SAFETY GERMANY GMBH**~~
~~**(8) ZF AUTOMOTIVE GERMANY GMBH**~~
~~**(9) TRW SYSTEMS LTD**~~
~~**(10) ZF AUTOMOTIVE UK LTD**~~
~~**(11) TOKAI RIKA CO., LTD**~~
~~**(12) TOYODA GOSEI CO., LTD**~~

Defendants

REASONED ORDER (PERMISSION TO APPEAL)

UPON the Claimants issuing their Claim Form in the High Court, Chancery Division on 22 December 2020 under Claim No. CP-2020-000023 and the claim being transferred to the Competition Appeal Tribunal pursuant to the Order of Master Pester of 1 March 2022 with Case No: 1435/5/7/22 (T) (the "Claim")

AND UPON hearing Counsel at a hearing on 1 to 29 October 2024

AND UPON the Tribunal handing down its judgment of 21 February 2025 ([2025] CAT 9) (the "Judgment")

AND UPON the Tribunal making an Order on 6 March 2025 dismissing the Claim and adjourning issues of costs in the Claim and permission to appeal the Judgment to a consequential orders hearing yet to be listed

AND UPON the Claimants making an application for permission to appeal the Judgment on 14 March 2025 (the "PTA Application")

AND UPON the Defendants disputing via their solicitors' letter dated 24 March 2025 and subsequent correspondence that the PTA Application is governed by CPR Part 52 and asserting that it was brought out of time if it is governed by CPR Part 52 (the "Defendants' Application")

AND UPON the Tribunal directing on 31 March 2025 that all parties should file written submissions setting out their position as to whether the PTA Application is to be considered pursuant to Rule 107 of the Competition Appeal Tribunal Rules 2015 (the "Rules") or CPR Part 52 by 4pm on 7 April 2025

AND UPON the Tribunal granting the parties permission to file short further responsive submissions in relation to the PTA Application by 4pm on 16 May 2025

AND UPON the Defendants filing further submissions on 28 May 2025 and the Claimants filing further submissions on 29 May 2025

AND HAVING CONSIDERED the parties' written submissions

IT IS ORDERED THAT:

1. Permission to appeal the Judgment to the Court of Appeal is granted on the first limb of its draft grounds of appeal dated 14 March 2025, being paragraph 1(A).

REASONS

1. The Claimants apply for permission to appeal this Tribunal's Judgment of 21 February 2025 ([2025] CAT 9) by which we dismissed this claim. It is unfortunate that it has been impractical to arrange an oral hearing of the PTA Application due principally to the unavailability of counsel. Given the time which has already elapsed since the delivery of the Judgment, we have chosen to determine the application for permission to appeal on the papers.

2. A preliminary issue arises as to whether the PTA Application is governed by Part 52 CPR or the Competition Appeal Tribunal Rules 2015 ("the Rules") and the Competition Act 1998 ("CA98"). This potentially impacts the principles to be applied when considering permission to appeal and, whether the PTA Application is out of time.

3. These proceedings were issued in the High Court on 22 December 2020. A consent order, made by Master Pester, transferred those proceedings to this Tribunal on 10 February 2022. The order contained the following provision:

> "any appeal to the Court of Appeal against the determination by the Tribunal of the issues transferred or an order of the court giving effect to that determination shall be governed by the rules in CPR Part 52".

4. This is not an uncommon provision made when proceedings are transferred to this Tribunal. CPR 52.6 provides inter alia that permission to appeal may be given only where the court considers the appeal would have "a real prospect of success"; or where "there is some other compelling reason for the appeal to be heard". Although the Court of Appeal will be slow to revisit findings of fact by the trial judge (an appeal being by way of a review), a consideration of whether to grant permission to appeal is not strictly limited to identifying whether the decision raises a point of law.

5. The CA98, in section 49(1A), provides that an appeal shall lie to the appropriate court "on a point of law". The Defendants contend that there was no power for Master Pester to broaden the circumstances under which there should be an appeal and that the correct

interpretation of his consent order is that references to CPR 52 relate only to "the procedure governing that request" should an application for permission to appeal be made to the Court of Appeal.

6. We do not agree with that textual interpretation of the consent order. The order is a substantive order requiring that an "appeal" be "governed" by Part 52 of the CPR. That would, on its face, include, and be directed to, the application of CPR 52.6. We therefore need to address the effect of a consent order which purports to set a threshold for an appeal which differs from that in section 49(1A) of CA 98. In *Royal Mail Group Limited v Daf Trucks Limited and others* [2023] CAT 31 at [7] this Tribunal held:

> "Both of these claims were transferred from the High Court to the CAT. By Orders of Mr Justice Roth dated 13 June 2018 and 13 July 2018 the terms of the transfer included provisions applying the Civil Procedure Rules ('CPR') to the claims and in relation to appeals stated as follows: 'any appeal to the Court of Appeal against the determination by the Tribunal of the issues transferred or an order of the court giving effect to that determination shall be governed by the rules in CPR Part 52.' Accordingly the test under s.49 of the Competition Act 1998 does not apply."

7. It is not clear that the appropriate threshold for an appeal was the subject of argument in *Royal Mail*. As a general matter we doubt that it is open for the parties to embody within a consent order a tailor-made threshold for an appeal. The appropriate threshold is that provided by the relevant rules or statutes and is not to be negotiated between the parties. In *The Secretary of State for Health and Social Care and others v Lundbeck Limited and others* [2025] EWCA Civ 677 the Court of Appeal was concerned with the effect of provisions in a consent order transferring a case from the High Court to this Tribunal which included the following wording:

> "Neither this Order giving effect to the said transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Defendants' accrued rights in respect of defence to the Claimants' Claim as constituted in this Court prior to the transfer taking effect, including, but not limited to, applicable law, process for service, jurisdiction, liability (including as to any defence or argument based on imitation, time bar, laches, delay, or related issue), or the existence of a duty of care, or otherwise howsoever in relation to the Claim."

8. It was submitted that this order meant that the Limitation Act 1980 was the relevant provision in determining whether the claim was time-barred and not this Tribunal's Rules. Green LJ held at [25]:

> "Nothing in section 16 EA 2002 empowers rules to be made whereby the High Court, upon a transfer, can: give binding directions to the CAT as to the future conduct or progress of the transferred case; or otherwise alter or waive any of the Rules. PD30 8.1-8.6 and 8.10 – 8.13 sets out procedural rules relating to transfers to the CAT. These provide that the only obligation upon the transferring court is: (i) to send to the CAT a notice of transfer containing the name of the case and the papers related to the case; and then (ii), to notify the parties of the transfer: See PD30 [8.5] and [8.12]."

9. He went on to observe later in his judgment, at [71], as a "postscript on High Court practice":

> It is apparent from a review of cases on the CAT website that there have been a number of in time transfers of cases from the High Court and that various boilerplate terms have been deployed in transfer orders pursuant to which the Court: (i) directed that the transferred proceedings continue to be regarded as having been commenced in the High Court; and (ii), has given directions which, *prima facie*, purport to bind the CAT. Such directions would appear to have no legal basis and do not flow from an exercise of jurisdiction under Section 16 EA 2002. However, nothing in this judgment is intended to indicate that any excess of power on the part of the High Court has any prejudicial or adverse effect upon any existing or future proceedings in the CAT. Once a case is in the CAT it has ample power to adopt a High Court direction as its own, ignore the direction and substitute its own, or otherwise take such case management decisions to enable the case to proceed as it sees fit. Anything which indicates that proceedings before the CAT might be irregular, as not in accordance with the Rules, can be waived or cured by the CAT under Rule 114, but in any event do not, without more, render the CAT proceedings void. I note, in passing, that in *Sainsbury's* Mr Justice Barling, in his capacity as a High Court judge, gave directions as to how the case should proceed in the CAT *but* his order was rightly made subject to any overriding direction given by the CAT itself.

10. In the light of these observations we hold that the consent order made by Master Pester does not circumvent section 49(1A) of the CA 98 and substitute CPR 52.6 in its place. It follows that an appeal to the Court of Appeal only lies on a point of law.

11. The second preliminary point which arises is the time for making an application for permission to appeal. Judgment was handed down (remotely) on 21 February 2025. At that stage no application for permission to appeal had been made and no application had been made to extend the time for seeking permission to appeal.

12. On 6 March 2025, at the request of the Claimants, this Tribunal made an order adjourning any PTA Application:

> "Any application to the Tribunal for costs or permission to appeal is adjourned to a consequential orders hearing, to be fixed. The adjournment shall apply whether an

application for permission to appeal is made under CPR Part 52 or under Rule 107 of the Rules"

13. The Tribunal in making this order did not seek to resolve the question of whether CPR Part 52 or Rule 107 of the Rules applied.

14. Under Rule 107, an application for permission to appeal a decision of the Tribunal shall be sent to the Registrar within three weeks of notification of the decision. Given the order of 6 March 2025 extending time, it is accepted that the PTA Application is made in time *if* the Rules apply. Under CPR 52.3, an application for permission to appeal must be made at the time of the decision unless it is adjourned in accordance with the CPR. The Defendants contend that the extension of time granted on 6 March 2025 is not effective because this Tribunal was functus by that point. It relies in particular on *McDonald v Rose* [2019] EWCA Civ 4 in which the Court of Appeal reviewed the relevant powers and procedures when seeking permission from a lower court. It stated at [21] onwards:

> "It is the experience of the Court that the effect of the rules, as expounded in the authorities referred to above, is often not properly understood by would-be appellants. We think there is value in our summarising in this judgment the effect of those authorities and the procedure that ought to be followed in consequence by parties wishing to seek permission to appeal from the lower court (which is good practice though not mandatory). We would set the position out as follows:
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> (1) The date of the decision for the purposes of CPR 52.12 is the date of the hearing at which the decision is given, which may be ex tempore or by the formal hand-down of a reserved judgment: see *Sayers v Clarke* [[2002] EWCA Civ 645] and *Owus v Jackson* [[2002] EWCA Civ 844]. We call this the decision hearing.
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> (2) A party who wishes to apply to the lower court for permission to appeal should normally do so at the decision hearing itself. In the case of a formal hand-down where counsel have been excused from attendance that can be done by applying in writing prior to the hearing. The judge will usually be able to give his or her decision at the hearing, but there may be occasions where further submissions and/or time for reflection are required, in which case the permission decision may post-date the decision hearing.
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> (3) If a party is not ready to make an application at the decision hearing it is necessary to ask for the hearing to be formally adjourned in order to give them more time to do so: *Jackson v Marina Homes* [[2002] EWCA Civ 1404]. The judge, if he or she agrees to the adjournment, will no doubt set a timetable for written submissions and will normally decide the question on the papers without the need for a further hearing. As long as the decision hearing has been formally adjourned, any such application can be treated as having been made 'at' it for the purpose of CPR 52.3 (2) (a). We wish to say, however, that we do not believe that such adjournments should in the generality of cases be necessary. Where a reserved judgment has been pre-circulated in draft in

> sufficient time parties should normally be in a position to decide prior to the hand-down hearing whether they wish to seek permission to appeal, and to formulate grounds and such supporting submissions as may be necessary; and that will often be so even where there has been an ex tempore judgment. Putting off the application will increase delay and create a risk of procedural complications. But we accept that it will nevertheless sometimes be justified.
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> (4) If no permission application is made at the original decision hearing, and there has been no adjournment, the lower court is no longer seized of the matter and cannot consider any retrospective application for permission to appeal: *Lisle-Mainwaring* [*v Associated Newspapers Ltd* [2018] Civ 1470].
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> (5) Whenever a party seeks an adjournment of the decision hearing as per (3) above they should also seek an extension of time for filing the appellant's notice, otherwise they risk running out of time before the permission decision is made. The 21 days continue to run from the decision date, and an adjournment of the decision hearing does not automatically extend time: [*R (on the application of Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633]. It is worth noting that an application by a party for more time to make a permission application is not the only situation where an extension of time for filing the appellant's notice may be required. It will be required in any situation where a permission decision is not made at the decision hearing. In particular, it may be that the judge wants more time to consider (see (2) above): unless it is clear that he or she will give their decision comfortably within the 21 days an extension will be required so as to ensure that time does not expire before they have done so. In such a case it is important that the judge, as well as the parties, is alert to the problem.
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> (6) As to the length of any extension, Brooke LJ says in *Jackson v Marina Homes* (para. 8) that it should normally be until 21 days after the permission decision. However, the judge should consider whether a period of that length is really necessary in the particular case: it may be reasonable to expect the party to be able to file their notice more promptly once they know whether they have permission."

15. We agree with the Defendants that subparagraph (4) above makes clear that an extension of time for applying for permission to appeal cannot be made retrospectively by the lower court under CPR 52.4 and that insofar as our order of 6 March 2025 purported to extend the time, it did not do that if CPR 52.4 was the relevant provision. Nevertheless, adopting the guidance given by Green LJ in *Lundbeck*, we do not consider that the consent order before Master Pester had the effect of disapplying Rule 107. Although it is open to this Tribunal to vary its Rules, those Rules are not automatically varied by reason of a consent order in the High Court. It follows that the application for permission to appeal is not out of time.

16. The Claimants raise two limbs to their appeal. The first limb is that this Tribunal, having found that there was evidence of cartel activity, had no basis for concluding that the activity was no more than sporadic or ineffective. It points out that evidence of cartel

activity is necessarily fragmentary. In the circumstances it is said that our legal approach was wrong and that, having found evidence of cartel activity, we should have proceeded on the basis that there was a strong likelihood of harm. We grant permission to appeal on this limb as raising a point of law.

17. The second limb raises the allegation that the Tribunal erred in its assessment of the expert evidence. The Tribunal decline to grant permission on this second limb. This aspect of the permission to appeal, as a stand-alone ground, raises no point of law and is inviting the Court of Appeal to reassess the conclusions drawn from the expert evidence which this Tribunal has reached. In the event that the appeal succeeds on limb 1, the Court of Appeal may wish to reconsider how damage is to be measured in the light of this Tribunal's assessment of the expert evidence, but that will be a matter for the Court of Appeal.

18. This decision is unanimous.

Justin Turner KC (Chair) | Sir Iain McMillan CBE FRSE DL | Professor Anthony Neuberger

Made: 2 June 2025

Drawn: 2 June 2025