Neutral citation [2023] CAT 25

IN THE COMPETITION APPEAL TRIBUNAL

Case Nos: 1339/7/7/20
1528/5/7/22 (T)

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

6 April 2023

Before:

SIR MARCUS SMITH
(President)
THE HONOURABLE MRS JUSTICE COCKERILL
BRIDGET LUCAS KC

Sitting as a Tribunal in England and Wales

BETWEEN:

MARK McLAREN CLASS REPRESENTATIVE LIMITED

Class Representative

- v -

(1) MOL (EUROPE AFRICA) LTD
(2) MITSUI O.S.K. LINES LIMITED
(3) NISSAN MOTOR CAR CARRIER CO. LTD
(4) KAWASAKI KISEN KAISHA LTD
(5) NIPPON YUSEN KABUSHIKI KAISHA
(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
(12) COMPANIA SUDAMERICANA DE VAPORES S.A.

Defendants

AND BETWEEN:

VOLKSWAGEN AG (and others listed in a schedule to the pleadings)

Claimants

- v -

(1) MOL (EUROPE AFRICA) LTD
(7) "K"-LINE HOLDING (EUROPE) LTD
(8) "K"-LINE (EUROPE) LTD
(9) KAWASAKI KISEN KAISHA, LTD

Defendants and Rule 39 Claimants

(10) MITSUI O.S.K. LINES, LIMITED

Defendant

- and -

NIPPON YUSEN KABUSHIKI KAISHA

Rule 39 Defendant

Heard at Salisbury Square House on 23 February 2023 and 15 March 2023

RULING (DIRECTIONS TO TRIAL)

APPEARANCES

Sarah Ford KC, Emma Mockford and Sarah O'Keeffe (instructed by Scott+Scott UK LLP) appeared on behalf of the Class Representative in Case No. 1339/7/7/20.

Brian Kennelly KC and Philip Woolfe (instructed by Slaughter and May) appeared on behalf of the Claimants in Case No. 1528/5/7/22 (T).

Mark Hoskins KC, David Bailey and Matthew Kennedy (instructed by Arnold & Porter Kaye Scholer (UK) LLP) appeared on behalf of the First to Third Defendants in Case No. 1339/7/7/20 and the First and Tenth Defendants in Case No. 1528/5/7/22 (T).

Tony Singla KC and Anneliese Blackwood (instructed by Cleary Gottlieb Steen & Hamilton LLP) appeared on behalf of the Fourth Defendant in Case No. 1339/7/7/20 and the Seventh to Ninth Defendants in Case No. 1528/5/7/22 (T).

Daniel Piccinin (instructed by Steptoe & Johnson UK LLP) appeared on behalf of the Fifth Defendant in Case No. 1339/7/7/20 and the Rule 39 Defendant in Case No. 1528/5/7/22 (T).

Josh Holmes KC and Jenn Lawrence (instructed by Baker Botts (UK) LLP) appeared on behalf of the Sixth to Eleventh Defendants in Case No. 1339/7/7/20.

Sarah Abram KC (instructed by Wilmer Cutler Pickering Hale and Dorr LLP) appeared on behalf of the Twelfth Defendant in Case No. 1339/7/7/20.

A. THE McLAREN PROCEEDINGS

1. This Ruling describes how two large trials are to be managed.

2. The first such trial we shall refer to as the "McLaren Proceedings". These are – and always were – collective proceedings before the Tribunal. The McLaren Proceedings were certified as collective proceedings by a collective proceedings order dated 20 May 2022. The basis for that certification was described in a judgment of the Tribunal issued on 18 February 2022, [2022] CAT 10. The order and judgment were appealed to the Court of Appeal. In their judgment of 21 December 2022, [2022] EWCA Civ 1701 ("*McLaren*"), the Court of Appeal declined to revoke the order certifying the proceedings as collective proceedings (at [44]) but did conclude that the Tribunal had failed properly to exercise its role as the "gatekeeper" in collective proceedings, and thereby erred in law. The judgment of the Court of Appeal provides:

> "44. We do however share some of the concerns expressed by Ms Demetriou KC about the lack of detail in the Judgment as to how the silo and overall pricing theories are to be addressed in the future as the case proceeds. We are of the view that whilst none of the criticisms made go to certification, they do amount to an error of law in the way in which the CAT understood and approached the principles governing its gatekeeper and case management responsibilities.
>
> 45. The duty on the CAT as gatekeeper in collective proceedings is proactive as well as reactive. Once the CAT has decided to make a CPO that is not the end of the gatekeeper role. A CPO *"... is neither the beginning or the end of measures whereby the CAT may case manage collective proceedings*" (*Merricks* (*ibid*) paragraph [28]). A class representative might not have to overcome a very high hurdle to obtain a CPO but the CAT should nonetheless ensure that from the certification stage the case proceeds efficiently to trial. This role might well entail the CAT imposing substantial case management burdens on the parties at an early stage."

3. A case management conference was held before a (differently constituted) Tribunal on 23 February 2023. The outcome of this case management conference was informed by two matters:

   (1) First, by the decision of the Tribunal in *Dr Liza Lovdahl Gormsen v. Meta Platforms, Inc.*, [2023] CAT 10. This decision sought to articulate – in particular, in light of the Court of Appeal's decision in *McLaren* –

how the Tribunal should discharge its "gatekeeper function" and ensure a proper "blueprint" to trial.

(2) Secondly, by the connection – which a number of parties in the McLaren Proceedings stressed – between the McLaren Proceedings and the proceedings we will come next to describe and to which we will refer as the "Volkswagen Proceedings". As a result of this connection, although the Tribunal (at the 23 February 2023 case management conference) stated a clear "direction of travel" for the conduct of the McLaren Proceedings, it did not embody that direction of travel in a final order of the Tribunal because of the possibility that the McLaren Proceedings might need to be harmonised with the Volkswagen Proceedings or *vice versa*.

B. THE VOLKSWAGEN PROCEEDINGS

4. The Volkswagen Proceedings consolidate two proceedings which originated in the Commercial Court and were transferred to the Tribunal by order of Calver J dated 20 June 2022 and the order of Picken J dated 23 November 2022 respectively. Since the transfers took place, the Chair of the Volkswagen Proceedings has been Cockerill J. A case management conference in the Volkswagen Proceedings had been listed for hearing on 15 March 2023, shortly after the McLaren Proceedings case management conference that we have already described.

C. CONNECTION BETWEEN THE McLAREN AND THE VOLKSWAGEN PROCEEDINGS

5. It is unnecessary to articulate the issues that arise for determination in either the McLaren Proceedings or the Volkswagen Proceedings in any great detail. We make the following points:

(1) The claims in the McLaren Proceedings are "follow-on" claims based upon an infringement decision of the European Commission adopted on 21 February 2018 in Case AT.40009 – Maritime Car Carriers. The

Commission decision found a single and continuous infringement on the part of certain undertakings consisting of the co-ordination of prices and the allocation of customers with regard to the provision of deep sea carriage of new motor vehicles (cars, trucks and high and heavy vehicles) on various routes to and from the European Economic Area from 2006. The McLaren Proceedings necessarily contend:

(i) That the infringements identified in the Commission decision resulted in an unlawful overcharge (the "Unlawful Overcharge"); and

(ii) That this Unlawful Overcharge was "passed on" (in full) to the purchasers of certain brands of new cars and light and medium weight commercial vehicles – this being the class represented by the Class Representative – and borne by them (the "McLaren Overcharge").

(2) The claims in the Volkswagen Proceedings relate also to marine carriage of vehicles. However they concern worldwide and short sea routes over the period from 1997. These proceedings comprise "follow-on" and "standalone" elements, and the proceedings rely upon the findings made by regulators in various jurisdictions, including the decision of the European Commission referred to above. The overcharge alleged by the claimants in the Volkswagen Proceedings (we will refer to these claimants as "Volkswagen" and to the overcharge alleged by them as the "Volkswagen Overcharge") will therefore to an extent overlap with the McLaren Overcharge. We do not propose – because that would be to anticipate the substance of what is in dispute – to articulate the commonality between alleged overcharges in the two sets of proceedings to any greater degree. For reasons that we will come to, it is unnecessary to do so. The fact is that there is some linkage or overlap or connection between the McLaren Overcharge and the Volkswagen Overcharge. To a very considerable extent, there is likely to be a commonality of interest between the Class Representative in the McLaren Proceedings and Volkswagen in contending for as high an

Unlawful Overcharge as possible. We shall refer to this issue as the "Overcharge Issue".

(3) However, it is there that the commonality ends, for the Class Representative in the McLaren Proceedings and Volkswagen will – inevitably – have to advance different and almost certainly inconsistent cases as to who bore the loss, i.e. who paid the Unlawful Overcharge. This issue, which goes to incidence of loss, is most appropriately referred to as the "Pass-on Issue".

D. OUTCOME OF THE CASE MANAGEMENT CONFERENCE IN THE McLAREN PROCEEDINGS

6. The case management problem before the Tribunal at the McLaren Proceedings case management conference on 23 February 2023 was an intractable one. Both the Tribunal and the Court of Appeal had found that the application for certification should succeed and clearly this was not a matter that could be re-visited. The problem was one of case management and the articulation of how very complex issues were to be resolved at trial. A sense of the difficulties can be obtained from the decision of the Court of Appeal. After noting, rightly, the significance of the Class Representative's methodology for assessing loss, the Court of Appeal said this about the battle-lines between the parties:

> "48. In the instant case, clear battle lines were drawn in relation to the methodology at the CPO stage. The Class Representative advanced a relatively inflexible case based upon its theory of silo pricing, and it seems almost inevitable that it will in due course have to modify or adapt its methodology to address the appellants' overall pricing case. The CAT said as much when it recorded that the methodology was provisional pending disclosure and evidence. The MNW appellants, equally, advanced a relatively rigid theory about overall pricing. They have not set out what evidence they will adduce to prove the counterfactual or why and how it will establish that there would be no difference in outcome. The submission that there will be no difference between actual and counterfactual pricing might rest upon some hefty factual assumptions given what is presently known about the evidence.
>
> 49. Neither the class, who are consumers, nor the appellants, who are carriers, will have much, if any, direct disclosure to give on the issue of how car prices are actually set by those in between. Attention will lie with alternative or proxy forms of evidence. None of the parties set out in any real detail how they proposed to address this evidential lacuna, or what the proxy forms of evidence would be. Nor did they address how

> they proposed that the CAT make appropriate findings of fact, or, once facts were found, what methodologies might, in an aggregate damages case, enable the CAT to arrive at conclusions on quantum. Nor have they considered what sorts of adjustments might need to be made should the appellants prevail on some issues for example relating to the extent to which there is pass through of the overcharge, or as to the existence of possible classes of no loss claimant, or as to the possibility of partial off-setting of overcharges by reductions elsewhere.
>
> 50. In its Judgment, the CAT identified the battle lines, but said that the battle along these lines was for trial. In our judgment, this was an error in approach. Once it had decided to grant certification, the CAT should have gone on to address the ramifications of the challenges to the Class Representative's methodology. At the CPO stage it was clear that this represented *the* pivotal dispute in the case."

7. Stepping back, this is – if one may respectfully say so – obvious. Quite clearly, the Class Representative and the Defendants in the McLaren Proceedings will be running mutually inconsistent cases, to the extent their respective economic and other experts (who, of course, owe their primary duty to the Tribunal) permit them to do so. Thus:

   (1) The Defendants will contend that the Unlawful Overcharge was nil or as close to nil as can properly be contended,[1] whereas the Class Representative will contend that the Unlawful Overcharge is high.

   (2) The Class Representative will contend that the Unlawful Overcharge was, to a greater, as opposed to a lesser, extent, borne by members of the class. The Defendants will seek to contend that anyone apart from the class members paid the Unlawful Overcharge (to the extent it existed), and that even if there was a substantive Unlawful Overcharge, the loss to the class (i.e. the McLaren Overcharge) was minimal, if anything.

8. This, put in somewhat stark terms, is a description of the battlelines as they presented themselves to the Tribunal and to the Court of Appeal. The Court of Appeal was, if we may respectfully say so, entirely right in holding that these

[1] Although one might reasonably ask why an undertaking would engage in anti-competitive conduct unless the outcome was financially beneficial to it, it is remarkable how often it is contended that the overcharge was either minimal or even nil. And it should not be thought that contentions are necessarily wrong. Such a contention succeeded in *BritNed Development v. ABB*, [2018] EWHC 2616 (Ch) ("*BritNed*").

battlelines could not be "parked" pending resolution at trial. The case management of these battlelines was essential.

9. Although we have no doubt that the positions of both the Class Representative in and the Defendants to the McLaren Proceedings will change over the course of the proceedings, and that all will adjust the thrust and detail of their respective methodologies in light of disclosure and points taken by opposing parties, the parties are unlikely to be able to agree a common methodology for determining either the Overcharge Issue or the Pass-on Issue. Experience in the few cases that have actually come to trial shows that parties advance inconsistent yet plausible cases throughout, and that it is for the Court or Tribunal to determine which methodology works best after hearing all the evidence.[2] It would certainly be unwise to assume methodological harmony will break out; and it would be in principle wrong for the Tribunal to seek to impose such harmony where none exists. Under our adversarial process, parties are entitled to advance the case they frame and formulate, subject always to the procedural control of the Tribunal.

10. It follows from this that any attempt to create or force harmony through, e.g., requests for further information or yet more statements of case divorced from the evidence will accomplish nothing beyond delay and increased cost.

11. At the case management conference on 23 February 2023, the Tribunal directed a process whereby methodologies and cases would be articulated by the parties in parallel and not (as is usually the case) in sequence. That course was adopted because the Tribunal concluded (having considered the material before it) that the parties were not, in truth, advancing or intending to advance responsive cases at all, but were (at one and the same time) pressing their own case whilst independently critiquing any opposing, inconsistent, case. Accordingly, the Tribunal articulated the following broad directions (which were set out in a draft order for the parties' consideration):

[2] See: *2 Travel Group PLC v. Cardiff City Transport Services Ltd*, [2012] CAT 19; *BritNed*.

(1) By a certain date, the Class Representative and any Defendant electing to do so, would file and serve signed witness statements of fact, signed expert reports and all documentary evidence that they intend to rely upon in support of their own positive case on the Overcharge and Pass-on Issues, together with a position statement explaining how, by reference to that evidence, they intend to establish their case. We shall refer to this body of material as each party's "Positive Case".

(2) Prior to this, each party would have permission to seek disclosure from any other party to the McLaren Proceedings of documentation (including data) that it considers is reasonably required for the purposes of preparing their Positive Case. The details of this disclosure process – which is likely to be "expert led" – is not for this Ruling.

(3) By a certain date not less than four months after the filing of Positive Cases, each party minded to do so would file and serve signed witness statements of fact, signed expert reports and all documentary evidence that they intend to rely upon in response to the other party's Positive Case, together with a position statement explaining their response, by reference to that evidence. We shall refer to this body of material as each party's "Negative Case".

(4) The period of not less than four months between Positive and Negative Cases is needed not merely to enable the Negative Cases to be produced, but also to enable the parties – through inquiry – to ask such questions as they are advised so as to understand the other parties' Positive Cases. We regard four months as very much the minimum for this to be achieved.

(5) The trial of the McLaren Proceedings would be in the first quarter of 2025. The trial would not operate according to the usual rules where each party adduces the evidence it wishes in the order that it chooses. Rather, at a point before trial, each party would be entitled to identify those experts and witnesses of fact that they wished to cross-examine so

as to be able to put their case. Running order would be determined by the Tribunal before the trial.

12. Timings – apart from a firm indicator that the trial would take place in the first quarter of 2025 – were deliberately kept soft, because of the Volkswagen Proceedings. Steps were taken to ensure that those parties who are only party to the Volkswagen Proceedings, and not party to the McLaren Proceedings, were informed of the state of play; and the attendance at the 15 March Volkswagen Proceedings case management conference was expanded so as to include all parties to both sets of Proceedings.

E. OUTCOME OF THE CASE MANAGEMENT CONFERENCE OF THE VOLKSWAGEN PROCEEDINGS

13. As noted, this case management conference took place on 15 March 2023. We are very grateful to the parties for their very helpful submissions in relation to case management issues that are to an extent novel and certainly complex. The reason for the novelty and complexity lies in the nature of the "linkage", "overlap" or "connection" between the McLaren Proceedings and the Volkswagen Proceedings. As to this:

(1) These are not proceedings where the usual tools of *res judicata* or issue estoppel can be used to decide common issues once only, because they arise between common parties in different proceedings. Nor are these proceedings instances where the parties are abusing the process of the court, so as to trigger the abuse of process jurisdiction in *Henderson v. Henderson*, (1843) 3 Hare 100. Nor is this a case where there are a multiplicity of claims that can be dealt with on a "sampling" basis, so as to invoke the jurisdiction in *Ashmore v. British Coal Corporation*, [1990] 2 QB 338.

(2) The procedural analogy that applies best concerns three interchange fee cases that were heard in 2016 and 2017 in this Tribunal and in the

Commercial Court.[3] In circumstances where each Court or Tribunal was not bound by the factual decisions of the tribunal preceding it, notwithstanding the very similar facts in each case, very different outcomes pertained. To the interested outsider, these differences in outcomes were in no way justified by the differences in the cases. But because each Court or Tribunal – as was its duty – decided each case on the (different) facts and evidence before it, there was no way divergent outcomes could be insured against.

(3) It might, therefore, be said that no problem arises. But that would be incorrect. It is inherent in competition law that one infringement generates multiple claims by different claimants against (roughly speaking) the same group of defendants. These multiple claims arise:

(i) First, because an infringement may cause distinct harm to multiple persons. An example would be the cartelist selling 1,000 over-priced widgets to 1,000 different customers. There will be 1,000 claims, all related (the overcharge will be similar, if not the same) and yet all occasioning distinct loss and damage.

(ii) Secondly, because an infringement may generate rival claims at different levels of the supply chain. To carry on with the example in the preceding sub-paragraph, if each of the 1,000 different customers themselves on-sells to other customers, the question immediately arises as to whether the overcharge has been retained or passed on.

(4) It is important that even if there is no duplication of issue in the technical legal sense, there is consistency of application of competition law. The law of precedent ensures a high degree of consistency of legal principle, but when the question is the application of common legal principle to

[3] *Sainsbury's Supermarkets Ltd v. Mastercard Incorporated and others*, [2016] CAT 11, before the Tribunal; *Asda Stores Limited and others v. Mastercard Incorporated and others*, [2017] EWHC 93 (Comm), before Popplewell J; and *Sainsbury's Supermarkets Ltd v. Visa Europe Services LLC and others*, [2017] EWHC 3047 (Comm) and [2018] EWHC 355 (Comm), before Phillips J.

the (very complex) facts, the risk of different outcomes pertaining will continue to exist unless connected issues are heard by the same Court or Tribunal.

(5) To this end, the Court of Appeal in *Sainsbury's Supermarkets Ltd v. Mastercard Inc*, [2018] EWCA Civ 1536, at [356]*ff* directed that competition claims be transferred out of the High Court and to the CAT, and that is precisely what occurred in the case of the Volkswagen Proceedings. But warehousing linked claims under the same jurisdictional roof is only the first step. It is perfectly possible for differently-constituted CAT Tribunals to hear different parts of linked or connected proceedings, and the risk of inconsistent outcomes in the broad sense we use that term therefore continues to exist.

(6) To that end, the Tribunal has published its Practice Direction 2/2022 on "Umbrella Proceedings", enabling the President to make an Umbrella Proceedings Order in respect of multiple proceedings and permitting the designation – within those proceedings – of certain Ubiquitous Matters[4] that can be heard by a single Tribunal.

(7) Even this, however, is not the complete solution. There appears at this stage to be a real likelihood that in due course an Umbrella Proceedings Order will need to be made in respect of the McLaren and the Volkswagen Proceedings. We have refrained from making such an order because it is not at this stage possible to define, with any clarity, what are and what are not Ubiquitous Matters. That is no criticism of the parties: their cases are at the early stage of formulation, and their experts have a great deal of work to do. Although it can be said with confidence that it is likely that there <u>are</u> Ubiquitous Matters lurking within the Overcharge Issue and the Pass-on Issue, those Ubiquitous Matters could not be specified at this stage without committing the parties and the

[4] The term is quite deliberate. We are here considering matters that are pervasive or seem to be everywhere, not common issues in the technical sense.

Tribunal to an articulation of the issues that – in the circumstances – would be premature and fraught with risk.

14. An additional complexity in the inter-relationship between the McLaren and the Volkswagen Proceedings is that we have already provisionally committed to hearing the McLaren Proceedings in the manner described at [11] above. Whilst, of course, we have considered anew whether this course remains appropriate in the light of the submissions we heard on 15 March 2023, we remain of the view that this process is required in the case of the McLaren Proceedings and we have formed the view that (if it can be made achievable) it is highly desirable in the case of the Volkswagen Proceedings.

15. Accordingly, we make the following directions, which will be specified in greater detail in an order that will follow this Ruling:

(1) We classify issues arising out of the McLaren and Volkswagen Proceedings under three heads: "McLaren Issues", "Volkswagen Issues" and "Possible Ubiquitous Issues". We decline to define the parameters of these issues any further at this stage, but it is obvious (in general, but not specific terms) what falls under each head.

(2) There will be a trial of the McLaren Proceedings in the first quarter of 2025. However, we propose to earmark the whole of that term for the determination of issues arising out of the McLaren and Volkswagen Proceedings, although we are not, at this stage, committing to hearing any Volkswagen Issues during this period. If, however, the progress of the Volkswagen Proceedings enables Volkswagen Issues to be heard in this period, then we will certainly be minded to do so. However, to the extent this is not possible, Volkswagen Issues will be heard and determined no later than in the first quarter of 2026, and time will be allocated now to enable that to happen.

(3) The Tribunal for the McLaren Proceedings will be chaired by Ms Lucas KC. For the present, the other members will be Cockerill J and an

economist drawn from the panel of ordinary members.[5] The Tribunal for the Volkswagen Proceedings will be chaired by Cockerill J, sitting with Ms Lucas KC and the same economist member. Although engaging two Chairs in this way is expensive in terms of judicial resource, we are satisfied that these Proceedings, viewed in the round, are of sufficient complexity and importance to justify this course, particularly when we anticipate that the management of these Proceedings is likely to constitute a model that will inform other, later, proceedings that give rise to similar procedural complexities.

(4) There will be mutual disclosure and mutual exchange of all other documents between the two sets of Proceedings. Although we make no formal order of consolidation, for all practical purposes (including confidentiality rings) we want the McLaren and the Volkswagen Proceedings managed as one case. That will include the Positive and Negative Cases to which we will come.

(5) Although the McLaren Proceedings are exclusively "follow-on", the Volkswagen Proceedings are not. The allegations of infringement in the Volkswagen Proceedings are in need of further articulation, which is itself dependent on disclosure to Volkswagen. We direct that the amendments to Volkswagen's statements of case be filed by no later than 31 July 2023 but with a liberty to apply if the disclosure due by end May 2023 on which those amendments depend is so large that that date cannot be complied with. Subject to the same proviso, amendments to responsive statements of case will be filed by 30 September 2023, and any reply by 31 October 2023.

(6) Positive Cases in the McLaren Proceedings will be filed by 15 December 2023. We have thought long and hard about that date. We think it is doable, although we recognise it is a tight date. We think it is doable given what Mr Kennelly KC for Volkswagen has said about the

[5] Dr William Bishop is the obvious choice, having been appointed to the Tribunal hearing the McLaren Proceedings. However, commitments on other CAT cases may preclude this, and we are determined that the same economist member must sit in the McLaren and in the Volkswagen Proceedings.

provision of data going to the Overcharge Issue being provided by July 2023, with data going to the Pass-on Issue being provided in September. We would expect work on the McLaren Positive Cases to be commenced as soon as practically possible – we mean "now" – with disclosure requests informing that work.

(7) The Twelfth Defendant in the McLaren Proceedings – "CSAV" – constitutes a special case. We do not think that CSAV should be obliged to file anything pending determination of the preliminary issue that Ms Abram KC has addressed us on. This preliminary issue (we say nothing more about it in this Ruling) will be determined at some point in time between 15 December 2023 (date of filing of Positive Cases in the McLaren Proceedings) and 15 May 2024 (the date for Negative Cases in the McLaren Proceedings), which we hope achieves the savings that preliminary issues are intended to achieve. If CSAV is successful in the preliminary issue, then CSAV will exit the proceedings altogether. If CSAV is not successful, then CSAV's participation will need to be dealt with, and it will be, but we do not propose to anticipate further the outcome of this preliminary issue.

(8) Positive Cases in the Volkswagen Proceedings will be filed on 31 May 2024. There will then be a three-day case management conference in July 2024 at which Ubiquitous Issues will be considered and (if appropriate) conclusively defined and an Umbrella Proceedings Order made. That case management conference will be heard by a Tribunal constituted with the President and Chairs in both Proceedings, so that any orders required regarding Umbrella Proceedings and Ubiquitous Matters can be made, in addition to any other trial management directions.

(9) The Negative Cases in the Volkswagen Proceedings will be filed on 4 October 2024. We do not think we need to see the Negative Cases in the Volkswagen Proceedings before the July 2024 case management conference.

(10) The trial in the first quarter of 2025 will deal with and dispose of:

(i) All McLaren Issues; and

(ii) All Ubiquitous Issues, as defined in the July 2024 case management conference.

Any remaining Volkswagen Issues will be heard either in this 2025 window that we have ear-marked (if that can fairly be done) or in 2026 (the longstop date for all matters in these Proceedings, as indicated at [15(2)] above).

16. This Ruling is unanimous.

Sir Marcus Smith
President

The Hon. Mrs Justice Cockerill

Bridget Lucas KC

Charles Dhanowa OBE, KC (*Hon*)
Registrar

Date: 6 April 2023