



Neutral Citation Number: [2024] EWHC 1047 (Comm)

Claim No: LM-2023-000173

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
LONDON CIRCUIT COMMERCIAL COURT (KBD)

Royal Courts of Justice
Rolls Building, Fetter Lane
London, EC4A 1NL

Date: 7 May 2024

Before:

DAVID QUEST KC

sitting as a Deputy Judge of the High Court

Between:

KERISH INTERNATIONAL MOTORS AGENCY

Claimant

- and -

OPEL AUTOMOBILE GMBH

Defendant

Paul Sinclair KC and Simon Butler (instructed by **TKD Solicitors**) for the Claimant
Andrew George KC (instructed by **Shoosmiths**) for the Defendant

Hearing dates: 12, 13, 14, 18, 19 March 2024

JUDGMENT

This judgment was handed down remotely at 10am on Tuesday 7 May 2024 by circulation to the parties' representatives by e-mail and release to the National Archives.

DAVID QUEST KC:**Introduction**

1. The Claimant (**KIMA**) is a Palestinian company carrying on business as an automobile dealer in Ramallah in the Palestinian territory of the West Bank. It is a family business. Mr Adnan Kerish is the chief executive, and he and his wife, Mrs Abeer Kanaan, are the directors and shareholders. Their three children also work in the business.
2. The Defendant (**Opel**) is a German automobile manufacturer. It was formerly a member of the General Motors group but was acquired by the Peugeot SA group (**PSA**) in March 2017. It is currently a member of the Stellantis NV group, which was formed in 2021 on the merger of PSA with the Fiat Chrysler NV group.
3. The present proceedings concern a Dealer Sales and Services Agreement (**DSSA**) made between KIMA and Opel on 1 April 2012 covering the sale of Opel vehicles by KIMA.
4. The DSSA terminated with effect from 28 January 2020 in the circumstances described below. KIMA does not contest the validity of the termination as a matter of contract, but it contends that, in consequence of the termination, it is entitled to compensation under Palestinian law, specifically under article 15 of Law 2 of 2000 Regulating the Work of Commercial Agents (**the Commercial Agents Law**). I have discussed below the relevant provisions of that law. In summary, article 15 provides that a principal who terminates or does not renew a commercial agency agreement without serious reason must compensate the agent. The principal relief sought by KIMA in these proceedings is a declaration to the effect that it is entitled to such compensation. It does not seek any order for assessment or payment of any compensation due.
5. The governing law of the DSSA is English law. However, KIMA contends that Palestinian law applies to its right to compensation because article 19 of the DSSA provides that, depending on the contractual grounds of termination, KIMA is entitled to compensation if “expressly mandated by national law”. KIMA contends that “national law” in that phrase means Palestinian law as the law of the place of the dealership.
6. Opel disputes that article 19 of DSSA applies in the present case and disputes KIMA’s interpretation of it. Opel also disputes that KIMA has any right in Palestinian

law to compensation, arguing that KIMA was not a commercial agent for the purpose of the Commercial Agents Law and, anyway, that Opel had a serious reason for terminating and not renewing the DSSA.

7. The parties' respective cases raise four principal questions:
 - (1) What were the grounds for termination of the DSSA?
 - (2) Which law is "national law" for the purpose of article 19.1 of the DSSA?
 - (3) Was KIMA a commercial agent for the purpose of the Commercial Agents Law?
 - (4) Did Opel have a serious reason for terminating or not renewing the DSSA?
8. KIMA brings its claim in this court pursuant to an English jurisdiction agreement in article 22.1 of the DSSA.
9. Mr Paul Sinclair KC and Mr Simon Butler appeared on behalf of KIMA and Mr Andrew George KC appeared on behalf of Opel. I am grateful to both, and to the parties' solicitors, for the efficient and cooperative way in which the case was prepared and argued.

The witnesses

10. KIMA called two factual witnesses, Mr Adnan Kerish and Dr Mahmoud Shawakha, respectively chief executive and chief financial officer of KIMA. Opel called one factual witness, Ms Sophie Burki, who, at the relevant time, was Opel's Zone Director for Israel and Palestine. All were cross-examined. It was apparent that they all had strong views about the performance and termination of the business relationship between Opel and KIMA, which to some extent coloured their recollection of events and affected their reliability. Where their evidence differed, I looked at which version of events seemed more plausible and more consistent with the contemporaneous documents.
11. Mr Sinclair argued that Ms Burki did not give her evidence honestly in some respects and that she was prepared to say whatever was necessary for Opel to succeed on its claim regardless of its truth. However, although I have not accepted her evidence on some points (as, on others, I have not accepted Mr Kerish's), I do not find her to be a dishonest witness.

12. I received expert evidence on Palestinian law from Dr Hiba Hussein for KIMA and from Mr Firas Attereh for Opel, both qualified and practising Palestinian lawyers. Dr Hussein was particularly well placed to comment on the Commercial Agents Law because she had acted as legal advisor to the Palestinian Ministry of National Economy (**the Ministry**) and was the lead Palestinian lawyer working with an international legal expert in preparing drafts of the Commercial Agents Law. She had also participated in the relevant hearings and plenary sessions of the Economic and Finance Committee of the Palestinian Legislative Council. Mr Sinclair criticised Mr Attereh as a “lightweight” in comparison with Dr Hussein. I do not agree. It is right, as Mr Sinclair pointed out, that Mr Attereh’s legal practice is focussed on intellectual property matters rather than commercial agency specifically, and that he lacks the specific legislative experience of Dr Hussein, but I found him to be sufficiently knowledgeable and experienced in Palestinian law to give helpful expert evidence on the issues. He also drew to the court’s attention several relevant Jordanian and Palestinian authorities, which Dr Hussein had not identified.

The facts

The 1998 agreement

13. KIMA was incorporated in 1996. Between 1996 and 1998, it acquired the vehicles for sale in its business from Universal Motors Israel Ltd (**UMI**), an Israeli company that at that time had the exclusive right to distribute General Motors automobiles (including Opel automobiles) in Israel and the Palestinian territories.
14. In 1998, UMI ceased to be a distributor in the Palestinian territories. That was because the Ministry had introduced rules requiring a separation of Palestinian and Israeli markets. KIMA and Opel then entered into a direct contractual relationship, executing a “Standard Form Export Dealer Sales and Services Agreement” dated 1 September 1998. KIMA paid US\$500,000 to UMI in connection with the new arrangement.
15. The new agreement gave KIMA non-exclusive rights, in summary, to buy new Opel automobiles, to buy Opel parts, and to identify itself as an Opel dealer at approved locations. In return, KIMA undertook responsibilities, in summary, to establish and maintain satisfactory premises, to actively and effectively promote and sell Opel automobiles and parts, to provide effective service to customers, and to endeavour to conduct and perform dealership operations in a satisfactory manner. The agreement was governed by Swiss law and subject to Swiss jurisdiction.
16. The initial term of the agreement expired on 31 December 2001, but it was extended on several occasions by written agreement between the parties. A final five-year extension to 31 December 2011 was agreed in January 2007.

The Motor Mall

17. KIMA initially operated from leased premises located on the main road between Ramallah and Jerusalem. In 2008, it decided to move to much larger, purpose-built premises. Mr Kerish and Mrs Kanaan purchased a vacant plot of land in the industrial zone of Betounia outside Ramallah, and instructed architects to draw up plans for the construction of a building that became known as the “Motor Mall”. The total cost of the land and construction was approximately US\$10 million.
18. KIMA kept Opel informed of the development of the new premises. In August 2010, while the Motor Mall was under construction, KIMA invited Opel to visit the site and building works. Senior executives from Opel and General Motors attended, including Opel’s international sales director and General Motors’ regional director. Mr Kerish also arranged for them to meet the Palestinian Minister of Transport. The visit was covered in a local newspaper, which reported that the visiting delegation was impressed by the idea of the project.
19. KIMA shared some of the plans for the Motor Mall with Opel, and Opel provided KIMA with an architectural drawing setting out its requirements for the branding of the frontage. Opel also arranged for its approved supplier to supply branded materials.
20. Opel made the renewal of KIMA’s dealership conditional on the timely completion of the Motor Mall. On 24 October 2011, Opel wrote to KIMA stating that if the premises were not complete and ready for use for dealership activities by 30 November 2011 then the existing dealership agreement, which was due to expire at the end of the year, would not be renewed. In the event, the Motor Mall was completed by Opel’s deadline.
21. I was shown photographs of the Motor Mall as built. It is a large building on several storeys. It is in a dramatic architectural style, incorporating a dome, a pediment, pillars, towers and crenellations. The ground floor is primarily an entrance and reception with areas for display of various brands of automobiles. The first, second and third floors are showrooms for individual brands, with the first floor dedicated (prior to termination of the DSSA) to Opel and fitted out with Opel branded material. The fourth floor is used for storage of new vehicles before they are delivered to customers. The basement contains a workshop, storage for spare parts, and a waiting area for customers who have brought in vehicles for service or repair. The state of the interior of the Motor Mall was a significant point of dispute between the parties and I return to that below.

The DSSA

22. Rather than agreeing a further extension, on 1 April 2012, KIMA and Opel entered into the DSSA. The parties' rights and responsibilities under the DSSA were similar to those under the previous agreement. They were summarised in articles 4.3 and 4.4, which provided:

4.3 GRANT OF RIGHTS

OPEL NSC hereby grants DEALER the right to:

4.3.1 buy and sell the MOTOR VEHICLES identified in the MOTOR VEHICLE ANNEX and OPEL PARTS AND ACCESSORIES; and

4.3.2 to provide Service (all work related to MOTOR VEHICLES OPEL PARTS and ACCESSORIES including but not limited to inspections, repairs, maintenance, warranty, campaign and policy carried out by DEALER under this AGREEMENT) for MOTOR VEHICLES; and

4.3.3 identify itself as an OPEL DEALER at the DEALER FACILITIES approved by OPEL NSC.

4.4 RESPONSIBILITY OF DEALER

DEALER shall endeavour to conduct and perform DEALER OPERATIONS in a manner which exceeds customer expectations throughout the purchasing and ownership experience.

DEALER shall:

4.4.1 Actively and effectively sell and promote MOTOR VEHICLES, OPEL PARTS and ACCESSORIES and, if DEALER participates, OPEL NSC Recommended Programs; and Actively and effectively promote the DEALER OPERATIONS, the purchase and use of MOTOR VEHICLES, OPEL PARTS and ACCESSORIES to all customers and in particular to customers located in the AREA OF RESPONSIBILITY; and

4.4.3 Provide prompt, efficient, courteous and quality service and shall use its best endeavours to fix each MOTOR VEHICLE and OPEL PART right the first time. DEALER shall provide service to meet all of the service needs of customers of MOTOR VEHICLES and OPEL PARTS. DEALER shall perform all service, pre-delivery inspections, transportation damages repair and adjustments, warranty repairs, special policy repairs and adjustments, and campaign inspections and

corrections, regardless of where such MOTOR VEHICLES were purchased, in a workmanlike manner and in accordance with the SERVICE POLICIES AND PROCEDURES ANNEX and any other instructions provided to DEALER by OPEL NSC, within the timeframe set forth by the applicable consumer protection and warranty laws. OPEL NSC may amend the SERVICE POLICIES AND PROCEDURES ANNEX at any time; and

4.4.4 Provide maintenance and repair service to customers of MOTOR VEHICLES regardless of where such MOTOR VEHICLES were purchased and where customer normally services the MOTOR VEHICLE, within the timeframe set forth by the applicable consumer protection and warranty laws.

23. The initial term of the DSSA expired on 31 March 2015, pursuant to article 18.1. It was extended by written agreement three times; a final one-year extension, to 31 December 2019, was agreed on 28 June 2018.

Registration under the Commercial Agents Law

24. The Commercial Agents Law provides for the registration with the Ministry of commercial agents and commercial agency contracts. KIMA and the DSSA (and before that, the 1998 agreement) were at all material times registered under the Law. For example, on 16 September 2018, the Ministry issued a certificate confirming that KIMA was registered in the Commercial Agents Record for the calendar year 2019 as an agent of Opel, trading vehicles and spare parts. Opel was aware of KIMA's registration, and Ms Burki said that Opel kept an electronic copy of the certificates.

Acquisition of Opel by PSA

25. Opel was acquired by PSA in March 2017. Direct control of the dealership operations initially remained with the existing Opel management, and the change in ownership of Opel did not have any immediate practical effect on its business relationship with KIMA.
26. Mr Kerish's evidence was that KIMA's relationship with Opel had always been a very successful one. He said that Opel representatives frequently visited the Motor Mall from the local Opel office and had never made any complaints about the premises or about KIMA's performance as a dealer. He said that pictures of the Motor Mall were displayed in the meeting room at Opel's headquarters and at other showrooms around the world.
27. That evidence, so far as it relates to the period before late 2018, was not challenged and I accept it. I saw nothing to suggest that Opel had expressed any dissatisfaction

with KIMA in that period. On the contrary, on 16 August 2017, Mr Burkhart of Opel, who at that time had operational responsibility for the relationship, emailed KIMA congratulating it for “a good year for Opel and Motor mall in Palestine”. Sales of Opel vehicles by KIMA had increased year on year from 60 vehicles in 2014 to 220 in 2018 and an ambitious target of 350 vehicles had been agreed for 2019. Mr Burkhart also told Mr Kerish in February 2018 that there were no plans to change distribution partners in Palestine.

28. From mid-2018, PSA began to take direct control of Opel dealership operations. Mr Emre Ozocak took over from Mr Burkhart as Zone Manager for Palestine, and Ms Burki was appointed Zone Director (and Mr Ozocak’s superior) in November 2018. From that point, the relationship between Opel and KIMA began to deteriorate.
29. PSA had its own operational processes and performance expectations which were different from those previously used by Opel, and more rigorous. Ms Burki regarded them as more efficient and as having rescued Opel from unprofitability. In her evidence, she explained the particular importance of “carflow”, which refers to the management of the process from the initial order of the vehicle through to delivery to the customer, of proper market and competition analysis, and of setting end pricing at the appropriate level for the brand. She said that she expected distributors to provide Opel with a view of the market based on proper analysis and with a pricing proposal for Opel to consider. She also emphasised the need for standardisation of branding.

November 2018 visit to the Motor Mall

30. Ms Burki and Mr Ozocak visited the Motor Mall for the first time on 6 November 2018. Ms Burki described the visit in her witness statement. She was not impressed. She said that the state of the showroom and the state of the cars was a problem and that she discussed with Mr Kerish that changes needed to be made. When cross-examined about the precise nature of the problem, she said that the cars in the showroom were not clean, that they had plastic covers on the seats, and that there were no technical specifications or price information displayed by the cars. She added that the castle-like appearance of the Motor Mall was not what she was expecting for a dealership, and that she had been surprised that there was a Chevrolet logo in the centre of the frontage, rather than the name of the dealership. She said that she later checked and discovered that the frontage was not in accordance with the approved architectural plan.
31. Mr Kerish disputed Ms Burki’s account. He said that neither she nor Mr Ozocak raised any complaints with him during their visit and that he was given the impression that Opel was happy with what KIMA had done and was ready to continue the

business relationship. He said that Mr Ozocak said as much in a telephone call after the visit. Dr Shawakha, who was also present, gave a similar account.

32. I accept Ms Burki's evidence about the presence of plastic covers and the absence of technical specifications and price information. However, I do not accept her evidence (strongly disputed by Mr Kerish) that the vehicles in the showroom were not clean. That would have been a relatively serious issue, but she did not mention it in her witness statement or in any contemporaneous email. There is no photographic or other evidence of the state of the vehicles at that time.
33. Given that Ms Burki had some genuine, albeit fairly minor, concerns about the display of vehicles in the showroom and about the branding of the Motor Mall frontage, I do not think that she or Mr Ozocak would have given an entirely positive report of their visit, as Mr Kerish and Dr Shawakha recollected. On the other hand, I do not think that she communicated to KIMA at that time that there was any significant problem with its operations. Indeed, Ms Burki herself said in evidence that she did not think that making a long list of complaints was the best way to start a relationship.

Events following the visit

34. The next day, 7 November, Mr Kerish emailed Ms Burki and Mr Ozocak thanking them for the visit. Ms Burki responded thanking him in return for his welcome and saying, "I count on you to build a strong Opel brand in Palestine". Mr George observed that that was not exactly an expression of congratulation, which is true, but I accept Mr Kerish's evidence that he took it as a positive message about the future. That was reasonable in the circumstances, given KIMA's long and hitherto successful relationship with Opel. Mr Kerish later (in an email dated 9 April 2019) told Ms Burki that he had been happy and encouraged to receive her email; and I think that he was.
35. In a separate response to Mr Kerish, Mr Ozocak requested KIMA to provide a wholesale and retail carflow broken down by model, so that Opel could understand KIMA's business performance, and an Excel-based pricing structure for the Opel Combo (a model of van) so that Opel could perform a study on it.
36. The next written communication I was shown was an email from Mr Ozocak to Mr Kerish dated 23 January 2019 with the subject line "Business Status Update". It set out what Mr Ozocak described as a "wrap up of all the subjects... for your review and mutual understanding of all sides". The email covered various topics including Opel's approval of price lists for various models; a summary of the status of KIMA's vehicle orders for January to March; a request for KIMA to extend a bank guarantee securing its obligations to Opel; and the results of Opel's study into the Combo van (mentioned

in Mr Ozocak's previous email) with suggested retail prices. Mr Ozocak asked Mr Kerish to evaluate the information provided and to revert on any points of concern.

37. There is no record of KIMA having prepared, in written form, the carflow or pricing structure that Mr Ozocak had requested in November 2018; indeed, KIMA does not appear to have provided Opel with any written information between November 2018 and January 2019. However, Mr Ozocak did not chase for information in his later email, nor did he complain about not having received it.
38. Mr Kerish responded briefly to Mr Ozocak's update, thanking him for the feedback and asking for delivery of more vehicles as soon as possible. He confirmed that the bank guarantee would be extended. He said that KIMA had just signed a contract to supply most of its existing stock to the Palestinian government.

The tender process

39. On 15 February 2019, Mr Kerish attended a meeting with Mr William Mott of Opel in Germany. Ms Burki joined by telephone. She told Mr Kerish that Opel intended to put the dealership renewal out to tender, and that she wanted KIMA to participate. In her evidence Ms Burki said that it was standard for PSA to launch a tender towards the end of a dealership agreement when there were "performance issues".
40. In his evidence, Mr Kerish said that he was shocked by the development. His reaction was understandable. Although the DSSA was due to expire at the end of 2019 in accordance with the parties' earlier agreement, Opel had not previously expressed any concern about the relationship or indicated that the term might not be extended again, as it had been several times in the past. No performance issues had been mentioned.
41. After the meeting, Mr Kerish emailed Mr Ozocak, Ms Burki and Mr Mott to express his disappointment at Opel's decision, which he described as unfair and unexpected.
42. KIMA argued forcefully at trial that Opel never had any intention of awarding the dealership to KIMA, and that the decision in February 2019 to hold a tender was merely a pretext for Opel to replace KIMA with the existing Peugeot dealer in the West Bank. Mr Kerish said that he had been contacted by that dealer in summer 2018, who told Mr Kerish that he had been approached by Opel to take over from KIMA.
43. Ms Burki did not explain in her witness statement precisely what performance issues had arisen as of February 2019. Evidently Opel had not thought at the time that they were sufficiently material to raise with KIMA in writing. Moreover, Opel did not seek to engage the contractual mechanism in article 13 of the DSSA allowing Opel

formally to evaluate KIMA on its performance and standards and to require correction of deficiencies.

44. Nevertheless, I accept that Ms Burki was genuinely dissatisfied with the presentation of the Motor Mall and that she was disappointed and frustrated that KIMA was not producing financial and business analyses in the form and with the detail in which she expected to see them in line with PSA's procedures. Whether any of Ms Burki's concerns amounted to breaches of the DSSA is a different question that I return to below. However, Opel had no contractual obligation to renew the DSSA when it expired, and it was entitled, if it wished, to require KIMA to take part in a tender process as a condition of renewal.
45. More broadly, it is clear to me, having heard Ms Burki and Mr Kerish, that they had very different approaches to the business relationship. Ms Burki attached importance to a rigorous, documented business planning process and to standardisation in branding. As she said in her witness statement, "to do proper business we should avoid any emotion, any bargaining and implement robust analysis processes". She concluded at her first visit to the Motor Mall that Mr Kerish was "very far away" from working within PSA's processes which were "completely different" from the old Opel processes and "obviously new" for KIMA. And she rightly took exception to Mr Kerish addressing her (but not her male colleagues) as "darling", even after he had been told that that was inappropriate. Mr Kerish, on the other hand, took an unapologetically emotional approach to business. At one point in his evidence he said that Opel was like one of his children: "to you its emotion, to me, it's alive".
46. The difference in approach no doubt contributed to the eventual breakdown in the relationship. However, I do not accept KIMA's argument that Opel was determined from the outset to reject KIMA's tender. That would not be consistent with the contemporaneous material showing that Opel sought to guide KIMA in the preparation of its tender and business plan or with the fact that Opel later invited Mr Kerish to Paris to discuss his plan with senior management. Ms Burki's evidence was that she spent "hours on Microsoft Teams" with Mr Kerish trying to help KIMA to build an Excel spreadsheet to analyse the carflow process, but without success because "it was not his way of doing business". Mr Kerish disputed that, but I accept that Ms Burki did spend some time trying, unsuccessfully, to get KIMA to produce an analysis in the form and with the content she wanted.
47. On 21 February, Opel wrote to KIMA formally setting out the position that had been discussed at the meeting in Germany:

As previously mentioned and in order to comply with its internal rules Opel has launched a tender process to select a new importer of Opel

branded vehicles and their relative spare parts to be distributed in Palestine.

We would like you [to] participate to this tender process in accordance with the terms and conditions submitted to all the applicants.

The current Import and Distribution Agreement signed between Opel and Kerish International Motors Agency will still apply during this process.

Through this period Kerish International Motors Agency is strongly invited to achieve its ambitious performances as referred in your proposed business plan and which can be summed up as follows: 350 units of deliveries in 2019.

We consider that this is a fair opportunity for Kerish International Motors Agency to prove its determination to pursue our commercial relationship based on an ambitious strategy.

In the event [KIMA] is not selected as the new importer at the end of this process Opel will cooperate with you in order to enable a smooth transition until the effective date of the termination of the Import and Distribution Agreement, i.e. February 28, 2020, in accordance with its article 18.2.

48. Article 18.2 of the DSSA, referred to by Opel in its letter, provided that either KIMA or Opel could terminate the agreement without cause at any time by written notice to the other party. Any termination would be effective on the date specified in the notice, which could not be less than one year after receipt of the notice. Strictly speaking, Opel could not unilaterally give notice of termination effective on 28 February 2020 because the DSSA was already due to terminate on 31 December 2019 in accordance with the parties' previous agreement. However, both parties treated the letter at the time, and also at trial, as having the effect as a matter of contract of extending the agreed termination date by two months.

KIMA's business plan

49. On 25 February 2019, Mr Ozocak emailed Mr Kerish inviting KIMA to submit a business plan for evaluation as part of the tender process. He attached a timetable, which provided for KIMA to make a presentation at a meeting with Opel on 20 March. There would then be a process of feedback and further submission, and a final presentation at meeting in Paris in June, following which Opel would announce its decision on the tender on 27 June.
50. On 4 March, Mr Kerish emailed Mr Ozocak saying that he had taken legal advice and that KIMA was entitled to compensation for its investment in the dealership. He

attached a letter of advice from his lawyers, which referred to article 15 of the Commercial Agents Law and explained that, if a principal wishes to terminate a dealership contract or not to renew it, then that must be based on “specific and serious reasons”. Mr Kerish also attached a letter from the Ministry, which also referred to the right to compensation under article 15. Mr Ozocak responded saying that Opel would check Mr Kerish’s points and reply to them, but no reply was ever sent.

51. At the beginning of April, there was an internal exchange within Opel about the status of KIMA’s outstanding vehicle orders. KIMA had asked Opel not to produce more vehicles against its existing, unpaid orders until the renewal of the DSSA had been agreed. Mr Ozocak emailed Mr Sebastian Brehmer, Opel’s manager of vehicle distribution, requesting the cancellation of further production, but was told by Mr Brehmer that KIMA must take all of their ordered cars, adding “if it is for sure that the importer will not pay, please work on a plan B”. Mr Ozocak’s response was: “There is a termination notice for this importer sent last Feb. For sure he will not buy. And there is no Plan B.”
52. KIMA argued that this shows that Opel had already resolved not to renew the DSSA. Again, however, although the prospect of KIMA retaining its dealership became increasingly doubtful over time, I do not think that the evidence is sufficient to prove that Opel had yet made a final decision.
53. On 31 March, Mr Kerish emailed Mr Ozocak following a meeting between them in Istanbul two days earlier. Mr Kerish said that he was unhappy with the way that KIMA had been treated, that KIMA wanted to continue in business with Opel, but that if the relationship was not renewed then KIMA was entitled to compensation.
54. Ms Burki responded to Mr Kerish on 7 April. She thanked Mr Kerish for his attachment to Opel but said:

Nevertheless, Opel is not at the expected level in terms of branding and market share in Palestine... According to our internal rules, we need to evaluate which is the best partner to put Opel at the expected level. That’s the reason why we decided to launch a tender. The best way for you to keep Opel is to present us an ambitious and robust plan.

She summarised what should be covered in the plan (including marketing, branding, network development, training, and financial data) and reminded Mr Kerish that Mr Ozocak had previously given KIMA a template for the plan and the data it needed to complete it. I do not think that she would have responded in that way if Opel had had a firm intention not to renew.

55. On 30 April, Mr Shawakha sent Opel a business plan in the form of a set of slides entitled “Opel Palestine: A Vision and [Business Plan] by KIMA (2019-2023) Initial Submission”. Mr Ozocak responded thanking him for the “detailed presentation” and providing comments on six of the slides. But he added that there was missing information on several topics including training, corporate image implementation, customer relationship management, customer flow, stock and supply chain, and carflow. Mr Shawakha subsequently sent a revised presentation aimed at addressing Mr Ozocak’s points.
56. In her witness statement, Ms Burki said of the business plan that, although KIMA had produced a “very nice PowerPoint presentation”, the business case was not robust and Mr Kerish was not able to answer basic questions from her about the size of the market and the positioning of his competitors.

The Paris meeting

57. A meeting was arranged for 4 June in Paris for KIMA to discuss its business plan with Ms Burki and Mr Quemard, who was then an executive Vice President of PSA and Middle East and Africa Director. In advance of the meeting, Ms Burki emailed Mr Kerish with some points about the presentation of the plan. She suggested that KIMA should “try to be more concrete by showing real processes, if they exist... If these processes are not existing, just tell us when you will implement them.” In his brief reply, Mr Kerish replied that he was confident about the business plan and that the information requested by Ms Burki already existed in it.
58. Mr Kerish attended the meeting in Paris with his daughters, Ms Lujayn Kerish and Ms Majdolen Kerish, who were intending to join KIMA as deputy chief executive officer and marketing analyst respectively. Mr Kerish presented the business plan but in a reduced form; at Ms Burki’s request it had been shortened to about ten slides beforehand.
59. It is clear from Ms Burki’s evidence and from the subsequent correspondence that the presentation went badly so far as Opel was concerned. Ms Lujayn Kerish, who was at the time still a student, presented a plan to focus KIMA’s business on electric vehicles and to invest in charging stations, but Ms Burki regarded that as not feasible, at least not immediately.
60. There was also a discussion of deliveries of further vehicles by Opel for sale by KIMA. The witnesses gave different accounts of this. Mr Kerish said that Mr Quemard offered that if KIMA agreed to pay for 69 cars that had already been ordered and to order an additional 80 cars then Opel would “freeze” the tender process until the end of the year. Ms Burki said, however, that it was Mr Kerish who

pressed for delivery of more cars and that, even though she thought it probable that the relationship would end in February 2020, she agreed to it so that KIMA would have a final opportunity to demonstrate its ability to perform. She said that Mr Kerish was told that he could remain in the tender process but denied that there was an agreement to freeze it.

61. On that issue, I prefer Mr Kerish's evidence, which is consistent with the later correspondence. On Mr Ozocak's timetable, the tender process was due to conclude on 27 June. It did not; indeed, it was never concluded. It must therefore have been frozen or suspended in some way. Ms Burki's explanation that Opel was prepared to supply further cars in order to give KIMA a final opportunity to perform does not make sense given that the cars were not expected until September or October, long after the dealership was due to be awarded on the tender timetable. Moreover, KIMA was never in fact given that opportunity since, as explained below, Opel communicated its final decision to terminate the DSSA in August.
62. Following the meeting, there were several further exchanges between Ms Burki and Mr Kerish about further information requested by Opel, including sales and marketing plans and selling price and profitability information for each model. Ms Burki asked KIMA to prepare an action plan showing how it intended to sell more than 200 cars in the second half of 2019 given that it had only sold 45 in the first five months.
63. On 25 June, Mr Quemard wrote to Mr Kerish as a belated follow-up to the 4 June meeting. He said that he was shocked by Mr Kerish's inappropriate emotional behaviour and disappointed by the content and quality of the presentation. He said that Opel was nevertheless prepared to keep KIMA in the tender process.
64. In his response, on 30 June, Mr Kerish said:

Based on our meeting with you and your team of Jun 4, 2019, in Paris, we acknowledge your decision and directions to delay the importer selection process till end of year. And I would like to confirm hereby, that we will maintain business-as-usual on all operational aspects with Opel. If you decide to resume the selection process as per the PSA communicated schedule in the email of Feb 25th, 2019, then we'll be ready to present our final detailed Business Plan as mandated by PSA process, since we have not done that yet.

It appears from that that Opel had indeed given KIMA to understand that it had until the end of the year to persuade Opel to renew the dealership.

July 2019 visit to the Motor Mall

65. On 4 July, Mr Quemard and Ms Burki paid another visit to the Motor Mall. The visit had not been pre-arranged with KIMA. Mr Quemard and Ms Burki were in Palestine for meetings with dealers of other PSA brands and with government ministers. Since they had time after those meetings, they decided to visit KIMA. Ms Burki called Mr Kerish about half an hour beforehand to alert him to their arrival, which was towards the end of the last working day of the week.
66. Mr Kerish gave them a tour of the Motor Mall on a golf cart. Ms Burki's evidence was that she and Mr Quemard were unhappy with what they saw. Her witness statement set out a series of criticisms of the presentation, cleanliness and organisation of the premises—every new floor, she said, was a bigger disaster. She said that Mr Quemard, who was visiting for the first time, told her that he had never seen such a poor presentation of a PSA brand. The visit lasted about thirty to forty minutes. Mr Quemard declined Mr Kerish's offer of refreshment, which Mr Kerish clearly took as a discourtesy.
67. I was provided with photographs of the Motor Mall taken by Mr Quemard during his visit, and Mr Kerish and Ms Burki were cross-examined about what they showed. I have already described the general arrangement and appearance of the Motor Mall. I shall now describe the state of the premises on 4 July 2019 as I find it to be on the photographic and witness evidence (noting and taking account of KIMA's point that Mr Quemard's photographs might have been selective).
68. On the ground floor, there were a number of reception desks. One desk displayed several brand symbols, including the Opel lightning bolt symbol, although not the name Opel. Another desk, in the Opel colour scheme, was specific to Opel. Two people were sitting in conversation at the Opel desk during the whole visit. Ms Burki said that she thought that their interaction might have been staged because it would be unusual to have a long conversation at the reception desk, but I do not accept that; it is inherently unlikely, and there was no evidence of it beyond Ms Burki's speculation. A small Chinese-brand (not Opel or PSA) electric car was parked at one side of the ground floor in an area with Opel branding and underneath part of the frontage displaying the Opel lightning bolt symbol.
69. The first floor was configured as a dedicated Opel showroom. The vehicles on display were clean but the seats were covered in plastic protective sheets, as they had been in November 2018. Ms Burki initially said that the vehicles were dirty or dusty, but she eventually withdrew that complaint in cross-examination. I find that the showroom was clean and tidy, as Mr Kerish said, and that the cars were clean. However, there

was no technical and pricing information on display and a vertical Opel display board (referred to as a “totem”) did not have up to date Opel branding.

70. The fourth floor was used to store vehicles and equipment, including vehicles intended for delivery to customers. The vehicles were parked tightly packed together and were very dusty. Mr Kerish explained that that was because they were transported by land from the port in Israel and were left outside for long periods during customs processing. He said they would be cleaned and prepared before delivery to customers in a different part of the Motor Mall. The area generally appeared untidy and disorganised in that vehicles were parked at different angles rather than in a neat formation. There was no customer access to the fourth floor.
71. The basement level contained a workshop and a storage area for parts and equipment. A ramp leading down to the basement displayed three Opel flags. A car was raised on a lift; its engine had been removed and placed on the floor underneath. Two mechanics were working on another engine at a metal table. Ms Burki said that there were discarded plastic coffee cups lying around; in fact, they were being used by the mechanics to hold nuts and bolts. The workshop floor appeared stained or marked or dirty. Overall, the area did not appear pristine, but I do not regard that as surprising for an automotive workshop. The storage area appeared untidy and disorganised, with boxes and equipment stacked on the floor as well as on shelves. Mr Quemard administered a short test, asking a staff member to find a particular part on the computer and then locate it on the shelf; the test was passed. There was no customer access to the workshop or storage area. The separate basement waiting area for customers appeared clean and tidy and Opel made no complaints about it.
72. The frontage of the building showed Opel fascia as per the architectural plan, but the central panel displayed the Chevrolet logo rather the KIMA name as shown on the plan.
73. My assessment overall is this. Insofar as Ms Burki’s complaints related to the customer-accessible areas, that is, the frontage, entrance, reception, showroom and waiting area, they were relatively minor and capable of remedy fairly easily. The non-accessible areas were, as I have described, rather disorganised and not completely clean, but not in a way that would be likely to affect the practical operations of the dealership in any material way.
74. Ms Burki said that by the end of the visit she and Mr Quemard were absolutely convinced that there was no possibility for KIMA to improve after what they had seen. She said that Mr Quemard told Mr Kerish that the presentation of the premises was not at all professional and that the visit confirmed Opel’s decision to terminate.

75. I do not accept that Mr Quemard conveyed quite such a blunt message to Mr Kerish during the visit. Although Mr Kerish appears to have understood that the visit had not gone well, he remained under the impression that KIMA's position was still under review. That is apparent from his letter later that day, where he said that Opel was welcome to repeat the visit:

For us, it's a new management style by PSA after Opel acquisition that we welcome and like to learn from. We certainly would like to have PSA representatives at our headquarters for much more than today's 40 minutes and to have the chance for even a 5-min sit-down meeting to listen to your feedback and directions and to exchange business ideas.

I doubt that he would have written in those terms if Mr Quemard had confirmed a decision to terminate.

Termination

76. Mr Kerish sought to engage with Opel a few further times in July, but without receiving any response. Finally, on 30 August, nearly two months after the visit, Mr Quemard emailed Mr Kerish attaching a letter dated 26 August in the following terms:

Following our meeting on June 4th 2019 as well as my visit to your flagship in Ramallah on July 4 2019 it has been decided not to appoint you as the future importer of Opel branded vehicles and spare parts in Palestine.

Indeed, I have to say that I haven't seen such a very poor representation of the Opel brand for years.

The minimum requirements are not fulfilled:

- Multiple brand entrance as well as car presentation do not comply with Opel corporate image,
- Technical specifications presentation do not comply with Opel standards,
- The Chinese car displayed in the Opel branded area,
- Opel branded vehicles stored in very poor condition, without any protection in a very dusty area,
- The after sales service area as well as the spare parts storage which are careless

Consequently and as provided in our letter dated February 21 2019 we confirm that the Dealer Sales and Service Agreement signed between Opel and your company shall be terminated as of February 28 2020.

77. On 9 September 2019, Mr Kerish wrote to Mr Cherfan, who had by then succeeded Mr Quemard as Middle East director, requesting a meeting as early as possible to discuss what he described as Mr Quemard's astonishing and arbitrary letter. He said that Mr Quemard had not given KIMA the chance to cooperate for the benefit of Opel and that KIMA had been "purposely set to fail, despite achieving our sales targets and despite our repetitive requests and reminders on many encounters to cooperate on operational and strategic matters".
78. Following some further correspondence, on 15 October 2019, Mr Cherfan wrote to Mr Kerish confirming Opel's position:

As stated in our various exchanges, meetings during the last months a tender process has been organized in order to select a new importer of Opel branded vehicles and their relative spare parts to be distributed in Palestine in compliance with Groupe PSA internal rules.

It was clearly mentioned that in the event Kerish company was not selected as the new importer at the end of this process Opel will cooperate with you in order to enable a smooth transition until the effective date of the termination of the Import and Distribution Agreement ie February 28, 2020, in accordance with its article 18.2.

As explained, Opel has decided not to renew the Dealer Sales and Service Agreement signed between Opel and your company since it was not convinced at all by the business plan submitted by Kerish neither satisfied by the situation of the showroom visited in Ramallah on July 4, 2019.

Therefore, in accordance with the Extension Agreement signed on June 28, 2019 which provides the end of the Agreement on December 31, 2019 without any automatic renewal and as provided in our letter dated February 21, 2019 we confirm that the Dealer Sales and Service Agreement signed between Opel and your company shall be terminated as of February 28, 2020.

79. The DSSA duly terminated on 28 February 2020, eventually giving rise to the present proceedings. The tender process was never completed. Ms Burki said that Opel was unable to register a new importer with the Palestinian Ministry of Transportation because KIMA refused to consent to being deregistered. There is currently no Opel dealer in Palestine.

The claim for compensation

The parties' arguments

80. I summarised the parties' arguments in the introduction. I now set them out in a little more detail.

81. KIMA's case runs as follows:

- (1) Although the DSSA is generally governed by English law, Palestinian law is applicable to Opel's obligation to pay compensation on termination. That is the consequence of article 19.1 of the DSSA, which provides as follows (I have introduced roman paragraph numerals for ease of reference):
 - (i) If this AGREEMENT is terminated under Articles 18.3.1, 18.3.2, 18.3.3, 18.3.4 or 18.3.7, DEALER shall have no right to compensation or indemnification resulting from the termination.
 - (ii) If this AGREEMENT is otherwise terminated, DEALER shall have no right to compensation or indemnification from OPEL NSC resulting from the termination unless otherwise expressly mandated by national law.
- (2) Since the DSSA was not terminated under any of the articles listed in article 19.1(i), KIMA has a right to compensation under article 19.1(ii) if expressly mandated by national law.
- (3) National law in that context means Palestinian law, that being the law of the place of the dealership.
- (4) As explained in *Dicey, Morris & Collins on the Conflict of Laws* (16th ed), at paragraph 32–079, where a contract refers to a foreign law, that can be treated either as a choice of that law to govern the contract, or part of it, or as incorporating relevant rules of the foreign law as a term of the contract. KIMA put its case on the latter basis, relying on the following statement in *Dicey*:

It is open to the parties to an English contract to agree, e.g. that the liability of the agent to the principal should be determined in accordance with the relevant articles of the French Civil Code. In such a case, the foreign law becomes a source of law on which the governing law may draw. The effect is not to make French law the governing law of the contract but rather to incorporate the French articles as contractual terms into an English contract. This is a convenient "shorthand" alternative to setting out the French articles verbatim.

- (5) The effect of article 19.1(ii) of the DSSA is to incorporate the rules on compensation for termination of agency that are contained in the Commercial Agents Law. The relevant rule for present purposes is contained in article 15 of the Law, which provides, in the Claimant's translation:

If the principal terminates the agency agreement or does not renew it for no serious reason, he shall be obliged to compensate the agent fairly, taking into account the damages incurred by the agent as a result of the termination or non-renewal of the agreement and the benefit to the principal from the activity of the agent in promoting their products or services.

- (6) KIMA is a commercial agent for the purpose of the Commercial Agents Law and the DSSA is a commercial agency agreement.
- (7) Opel had no serious reason for terminating the DSSA or not renewing it in 2020.
- (8) Opel is therefore obliged to compensate KIMA under article 15 of the Commercial Agents Law.

82. Opel's position is that it has no obligation to compensate KIMA, for one or more of the following reasons:

- (1) Opel terminated, or was entitled to terminate, the DSSA under article 18.3.1(d) or 18.3.2, so any right to compensation is excluded without qualification by article 19.1(i). I note in that respect that Opel did not rely on any articles other than 18.3.1(d) and 18.3.2 as bringing the case with article 19.1(i).
- (2) If, however, article 19.1(ii) applies, then the expression "mandated by national law" in article 19.1(ii) means mandated by English law, as the governing law, and there is no claim to compensation under mandatory English law.
- (3) In any case, KIMA is not a commercial agent for the purpose of the Commercial Agents Law.
- (4) In any case, Opel had serious reasons for terminating the DSSA or not renewing it.

83. Although Opel had taken the point in its Defence, at trial it was not in dispute that article 15 was mandatory in Palestinian law in the sense that the parties could not disapply it by agreement.

What were the grounds for termination of the DSSA?

84. In the letters of 21 February, 26 August and 21 October 2019 referred to above, Opel referred to and relied on, and only on, article 18.2 of the DSSA as giving it the right to terminate with effect from 28 February 2020 (although in the last of those letters it also referred to the fact that the parties had previously agreed that the DSSA would terminate on 31 December 2019).
85. However, article 18.3.6 of the DSSA provides that a terminating party “may select the termination provision under which it elects to terminate [the DSSA] without reference in its notice of termination to any other provision that may also be applicable” and “may subsequently assert other grounds for termination”. Based on that provision, Opel argues that it is not precluded in principle from relying at this stage on the facts set out in the 26 August letter as having given it the right also to terminate (or to have terminated) under article 18.3.1(d) and/or articles 18.3.2. I agree with that analysis.

Termination under article 18.3.1(d)

86. Article 18.3.1(d) concerns non-compliance with the “Dealer Standards” set out in annex 8 to the DSSA. It provides:

Whenever, during the term of this AGREEMENT, DEALER is found not to be in compliance with a specific DEALER STANDARD as referred to in Article 7.1 of this AGREEMENT, OPEL NSC may take the following actions:

Serve a written notice to DEALER with the requirement to take adequate measures in order to ensure compliance within a reasonable period of time (the Warning);

In case of continued non-compliance with the specific DEALER STANDARD in question by the end of the Warning period, OPEL NSC may decide to apply a financial consequence as defined in Article 18.3.1. (a) or OPEL NSC may directly initiate the escalation process as defined in Article 18.3.1(b).

(a) Financial Consequence

When at the end of the Warning period, DEALER is found not to be in compliance with a DEALER STANDARD mentioned in the Warning, OPEL NSC may impose further [sic] until DEALER is found to be in

compliance with all DEALER STANDARDS. OPEN NCS reserves the right, in case of continued DEALER non-compliance, to start the Escalation Process as defined in Article 18.3.1(b).

(b) Escalation Process

In case of continued non-compliance by DEALER of the specific DEALER STANDARD following the expiry of the Warning period, OPEL NSC may start the Escalation Process. The Escalation Process defines a new period of time to comply with the Action Plan. If DEALER does not comply with the Action Plan within the period of time granted under the Escalation Process, OPEL NSC may terminate this AGREEMENT.

...

(d) OPEL NSC may terminate this AGREEMENT by giving DEALER notice of termination, such termination to be effective as specified in the notice, without a minimum notice period being required.

87. Opel's pleaded case on non-compliance with Dealer Standards was based on, and only on, "the facts and matters set out in the 26 August Letter" (paragraph 17 of the Defence), and on the following specific standards (paragraph 10.1 of the Defence):

[annex 8 paragraph 1.1] The DEALER Opel showroom is an undivided area used for MOTOR VEHICLES only. It is directly accessible from a dedicated Opel main customer entrance.... The Opel dedicated areas are restricted to Opel activities only.

[annex 8 paragraph 1.2] Only Opel approved furniture, displays and point of sale (PoS) hardware, must be used in Opel dedicated areas according to OPEL NSC specifications and requirements, and kept clean, tidy and in good working order.

[annex 8 paragraph 2.1] DEALER must install signage and where applicable other identity elements according to current Opel specifications, installation requirements, application guidelines and Matrix Sheet.

[annex 8 paragraph 2.2] DEALER must use current Opel brand symbols according to published guidelines.

[annex 8 paragraph 6.1] DEALER must display all current Point of Sale (POS) material for MOTOR VEHICLES, OPEL PARTS and ACCESSORIES, as required by OPEL NSC. DEALER must remove all obsolete/superseded POS material.

88. I take the allegations in the letter of 26 August 2019 in turn.

- (1) “Multiple brand entrance as well as car presentation do not comply with Opel corporate image.” It is common ground that there was a dedicated Opel showroom on the first floor of the Motor Mall that was restricted to Opel activities and had a dedicated main customer entrance. That was in compliance with the Dealer Standard at annex 8 paragraph 1.1. Nothing in the Dealer Standards relied on by Opel prohibited KIMA from also having an area used for multiple brands, nor did the Dealer Standards specify how such an area should be configured or presented. Opel representatives had visited the Motor Mall many times before November 2018 and had made no complaint about the configuration of the multiple brand entrance and ground-floor showroom.
- (2) “Technical specifications presentation do not comply with Opel standards.” As I have set out above, one of Ms Burki’s complaints was that technical specifications were not displayed in the showroom next to the vehicles. That might have been a breach of paragraphs 2.1 or 6.1 of the Dealer Standards, but that would depend on whether Opel had issued any standards or guidelines covering what precisely must be displayed, and I was not shown any. I am therefore not satisfied that there was any breach of Dealer Standards in that respect.
- (3) “The Chinese car displayed in the Opel branded area.” Paragraph 1.1 of the Dealer Standards requires Opel-dedicated areas to be restricted to Opel activities. However, the non-Opel, Chinese car that is the subject of Opel’s complaint was in the multi-brand entrance area, not in the Opel-dedicated showroom on the first floor. The car was parked in a part of the entrance area that used Opel branding, both inside and outside the building, but that does not mean that paragraph 1.1 applied to it.
- (4) “Opel branded vehicles stored in very poor condition, without any protection in a very dusty area.” I take this to be a reference to the storage of vehicles on the fourth floor. I have described the condition of those vehicles above. However, the Dealer Standards relied on by Opel do not say anything about the required condition of vehicles in storage. Mr Kerish said that the vehicles would have been cleaned before delivery.
- (5) “The after sales service area as well as the spare parts storage which are careless.” Again, I have described the condition of the service and parts storage area in the basement. Again, I was not shown any Dealer Standard applicable to that area.

89. Opel has not therefore established any of the pleaded breaches of the Dealer Standards.
90. In any case, there is a shorter and simpler answer to Opel's argument about termination under article 18.3.1(d). It is clear from the text of the article that Opel's right to terminate for non-compliance with Dealer Standards would have arisen only after the expiry of the Warning Period and the subsequent completion of the Escalation Process on a failure to comply with the Action Plan. Opel did not give a Warning, did not agree an Action Plan, and did not carry out the Escalation Process. It follows that, even if there had been a breach of Dealer Standards, Opel never acquired any right to terminate under article 18.3.1(d).

Termination under article 18.3.2

91. Article 18.3.2 provides:

OPEL NSC may terminate this AGREEMENT where any act or event has occurred which is so basic to and contrary to the spirit and objectives of this AGREEMENT that, in the light of the surrounding circumstances and the respective interests of DEALER and OPEL NSC, OPEL NSC cannot reasonably be expected to continue its business relationship with DEALER under this AGREEMENT

A non-exhaustive list of examples of such acts and events was then set out. In argument, Opel relied on three of those examples:

(r) involvement of DEALER or DEALER OPERATOR or DEALER OWNER in any conduct which, in the reasonable opinion of OPEL NSC, may materially and adversely affect (i) the trust between DEALER, DEALER OPERATOR or DEALER OWNER and OPEL NSC and/or (ii) the goodwill or interest of DEALER or OPEL NSC;

(u) failure to achieve the Minimum Purchase requirement, stocking requirements and demonstration vehicles requirements established in accordance with this AGREEMENT;

(v) failure to achieve Sales Targets in accordance with this AGREEMENT

92. The pleaded case (at paragraph 17 of the Defence) is again based on and limited to the matters set out in the 26 August 2019 letter. As I have explained, none of those gave rise to a breach of the Dealer Standards, nor to any other breach of the DSSA. The criticisms were minor and easily capable of correction. Opel gets nowhere near establishing conduct that might have materially and adversely affected the trust between it and KIMA or conduct so basic to and contrary to the spirit and objectives

of the DSSA that it could not reasonably have been expected to continue its business relationship with KIMA. Nor did Opel demonstrate that KIMA had failed to comply with any contractual Sales Targets, Minimum Purchase requirements, stocking requirements or demonstration vehicles requirements.

93. It follows that Opel has not established any right to terminate under article 18.3.2 either. Article 19.1(ii) is therefore engaged.

Which law is “national law” for the purpose of article 19.1 of the DSSA?

94. KIMA’s position is that “national law” in article 19.1(ii) of the DSA should be interpreted as meaning Palestinian law. It advanced the following arguments:

- (1) National law means the law of the location of the dealership. If the parties had intended to refer to English law, as the governing law, then they could and would have said so. The use of the expression national law is indicative of a different meaning.
- (2) Article 19.1 does not expressly refer to Palestine law but that is because the DSSA is a standard form contract intended for different dealers in different locations. That should be inferred from the fact that the body of the DSSA does not refer to KIMA or Palestine by name but to the “dealer” and the “area of responsibility”, which are defined in an annex.
- (3) Article 3.1.10 provides that the dealer’s business activities must comply with “European competition law and/or where applicable national competition rules as well as with all laws and governmental regulations relating to its performance of this [DSSA]”. “National competition rules” must mean the rules of the location of the dealership.
- (4) The qualification in article 19.1(ii) would be redundant if national law meant English law. The DSSA provides for English jurisdiction, and an English court necessarily applies mandatory English rules of law.

95. Opel argued:

- (1) National law means the governing law. If the parties had intended to refer to the law of location of the dealership, then they could and would have said so, as they did in article 10.6 (warranties on motor vehicles etc.), which provides that it “does not preclude the application of any warranty that is imposed by the statutory law of the AREA OF RESPONSIBILITY of the DEALER”.

- (2) An argument from redundancy did not assist KIMA because, if national law means Palestine law, the qualification would equally be redundant in a Palestine court (which would necessarily apply mandatory Palestinian law).
96. In my view, KIMA's interpretation is the correct one. I reach that view largely by reference to KIMA's argument that there would have been no reason to refer to national law at all if it simply meant the governing law. Arguments from redundancy are often of limited weight: as Leggatt LJ said in *Merthyr (South Wales) Ltd (FKA Blackstone (South Wales) Ltd) v Merthyr Tydfil County Borough Council* [2019] EWCA Civ 526 at [39]), "it is... by no means uncommon, including in professionally drafted contracts, to find provisions which are unnecessary and could, without disadvantage to either party, have been omitted". However, in the DSSA it is significant that the expression "unless otherwise mandated by national law" appears only in article 19.1(ii), and only in connection with the right to compensation in the event of a termination where the dealer is not at fault. That very specific and directed usage is a strong reason to infer that parties must have intended the qualification to have some certain effect in that event and not simply to refer, unnecessarily, to the application of mandatory English law.
97. KIMA's interpretation gains support from the business context: there is good commercial sense in a dealer wishing to preserve for himself the benefit of local mandatory laws intended to protect local agents in the event of a termination.
98. I am not persuaded by Opel's counter-argument that, if national law meant Palestinian law, then the qualification would equally be redundant in any proceedings in a Palestine court. The DSSA contains an English jurisdiction agreement. Even if, as Opel argued, there might be circumstances in which a Palestine court might nonetheless accept jurisdiction, for the purpose of interpreting the DSSA it is right to assume that the parties expected and intended that any dispute would be litigated in England as the contractual forum.
99. Article 19.1 uses different wording from article 10.6—"national law" rather than "law of the AREA OF RESPONSIBILITY"—but, given the points discussed above, I do not regard that inconsistency in drafting as giving any significant support for Opel's argument that article 19.1 cannot be referring to Palestinian law.
100. Opel also argued that, if national law meant Palestine law, then article 19.1 would be too uncertain to incorporate the provisions of the Commercial Agents Law that are relied on by KIMA. It relied on the statement in *Dicey*, *ibid*, at paragraph 32–080:

The doctrine of incorporation only operates where the parties have sufficiently identified, according to the law applicable to the contract, the provisions of a foreign law or international code which are apt to be incorporated as terms of the contract. Thus a general reference to the provisions of Sharia law is (at least as a matter of English contract law) insufficient, because the doctrine of incorporation can only sensibly operate where the parties have sufficiently identified specific “black letter” provisions of a foreign law or an international code or set of rules apt to be incorporated as terms of the relevant contract.

101. I do not agree that there is any material uncertainty in the DSSA. Article 19.1 is concerned specifically with the right to compensation for termination. There is no difficulty in interpreting it as incorporating any mandatory national law concerning such rights, which, in the case of Palestinian law, is the Commercial Agents Law.

Was KIMA a commercial agent for the purpose of the Commercial Agents Law?

102. This proved to be the most contentious issue of Palestinian law. It was not initially part of the pleaded case but arose from an amendment by Opel. It is an important issue because, if KIMA was not a commercial agent, then it has no right to compensation under the Commercial Agents Law.

103. Commercial agent is a defined term in the Commercial Agents Law. Article 1 provides, in the Claimant’s translation from Arabic:

For the purposes of implementing the provisions of this law, the words and expressions shown below shall have the following meanings unless the context indicates otherwise:

...

Commercial agent: A natural or legal person who has the right, according to an agreement, to sell, distribute or promote goods and products or provide services in Palestine on behalf of a producer or supplier in return for a commission or profit margin.

104. There was a dispute about both the translation and the interpretation of the underlined words. The translations included in the trial bundle, one from each party, both used the expression “on behalf of”. Dr Hussein, who is herself a qualified translator, also used that expression in her evidence. However, Mr Attereh considered that “for the account of” was a more accurate translation.
105. In the light of that dispute, I gave permission at the start of the trial for both parties to adduce a short explanatory note from their respective translators, both of whom are

specialist legal translators (although I refused permission for a further expert report from Mr Attereh about the translation). In response, KIMA's translator said this: "The use of 'on behalf of' encapsulates the essence of agency relationships in law, emphasising the agent's role as a representative or delegate acting under the principal's authority." Opel's translator said: "the Arabic term literally translates to 'for the account of'. Our choice to use 'on behalf of' for the English version was driven by a desire to align with the intended legal and operational context within this law, ensuring a more accurate representation of the agent's role and responsibilities."

106. As I pointed out to the parties in the course of argument, attempting to resolve the translation dispute was somewhat moot, since the parties were also in dispute about what the expressions "on behalf of" and "for the account of" meant for the purpose of the Commercial Agents Law. KIMA's translator said that "'for the account of'... suggests a focus on financial transactions and benefits... which is a broader concept"; and Dr Hussein expressed a similar view. Mr Attereh, however, said that the distinction was between, on the one hand, an agent who acts explicitly in the name of his principal and, on the other, an agent who acts in his own name but for the financial account of his principal.
107. The ultimate issue for present purposes is whether KIMA is a commercial agent within the meaning of the definition in the Commercial Agents Law. That depends not only on how the Arabic text is translated into English but on how it is interpreted in its relevant context. With that in mind, I have in the following discussion adopted the expression "on behalf of" while recognising that (as both parties argued) it may not have precisely the same meaning in the Commercial Agents Law as it would if used in an English statute.
108. Dr Hussein addressed the issue of KIMA's status in her supplemental report. She made the following principal points:
 - (1) The Commercial Agents Law does not refer to dealers, and regards any seller, distributor, or promoter of goods as a commercial agent. The law is "all inclusive of those persons who sell, distribute or promote goods and products".
 - (2) The Ministry would not have registered KIMA as a commercial agent or the DSSA as a commercial agency agreement unless the requirements of the Commercial Agents Law were satisfied. The fact that KIMA and the DSSA were so registered has the effect that the DSSA would be treated by a Palestinian court as falling under the terms of the Law.

- (3) Although the DSSA did not make express provision as to the amount of commission or profit margin payable to KIMA, that did not affect its status as a commercial agency agreement. It was sufficient that KIMA and Opel had agreed on a calculation method subsequently. Dr Hussein referred in that respect to the January 2019 email exchange between Mr Ozocak and Mr Kerish concerning the pricing of Opel vehicles.
 - (4) KIMA could be distinguished from a “merchant”, who buys without any requirement to register itself or its agreement, because a merchant “is not obligated toward the seller for any terms and conditions as stipulated in the Law nor does such a merchant fall within the scope and definition of a dealer as stipulated in the Law”.
 - (5) According to the official Registration Procedures issued by the Commercial Agents Directorate of the Ministry, “the registration of the dealer and the agency agreement are key factors for an entity to be deemed a dealer”.
 - (6) Dr Hussein relied on various specific terms of the DSSA as indicative of KIMA’s status as a commercial agent. I discuss those below.
109. On a first reading, Dr Hussein’s report gave the impression that the registration of a person as a commercial agent, and of an agreement as a commercial agency agreement, was sufficient in itself for a Palestine court to treat that person as a commercial agent. Indeed, that was KIMA’s case (in paragraph 11g of the Reply) until just before Dr Hussein was due to give evidence, when it was withdrawn. Mr Sinclair explained that KIMA’s legal team had misunderstood her evidence on that point.
110. Mr Sinclair argued that the fact that KIMA had been registered was nevertheless an important consideration, pointing out that the Registration Procedures say that a registration certificate will be issued by the Ministry only after the relevant agreement has been “thoroughly studied” to confirm compliance with the law. I accept that I should have some regard to the view of the Ministry, as the body responsible for the drafting of the legislation and for registration. However, there was no evidence before me as to the Ministry’s specific reasons for issuing a certificate to KIMA; and Mr Attereh’s evidence was the Ministry was not consistently rigorous in its examination of agreements. On the other hand, I have had the benefit during the present proceedings of detailed arguments and evidence on Palestinian law and on the contractual effect and practical operation of the DSSA. I propose to resolve the issue on those materials, as I expect a Palestinian court would in similar circumstances. For example, in case 872/2001, the Palestinian Court of Appeal held that the appellant

was not a commercial agent notwithstanding that it had been registered as such by the Ministry.

111. I was unsure from my initial reading of Dr Hussein's report, including the points that I have set out above, whether her opinion was that every person who imported and distributed goods from a manufacturer was a commercial agent for the purpose of the Commercial Agents Law or, if not, what were the criteria that distinguished a commercial agent from a merchant. The position became somewhat clearer during her evidence and during closing argument. KIMA's case, as put by Mr Sinclair, was that there was a continuum of relationships from pure merchant contracts to pure agency contracts, with a commercial agency falling somewhere in that continuum.
112. What is clear is that not every distributor or dealer is a commercial agent; that appears from a recent decision of the Palestinian Court of Cassation, the territory's highest court. In that case (325/2022, a further appeal in the case I referred to in paragraph 110 above) the respondent, a company in the Shell group, had authorised its exclusive agent in Jordan to appoint the appellant as a distributor for Shell mineral oil products in Palestine. The appellant claimed compensation for the termination of its distributorship. In rejecting the appellant's case that it was a commercial agent, the court made the following general statement about the law:

It is well established in jurisprudence and judiciary that purchasing goods from a supplier or producer for the purpose of resale does not constitute a commission agency, as jurisprudence and judiciary have gone to say that an agreement to be an exclusive distributor does not constitute a commission agency, as a commission agent, as stated in Articles 87 and 88 of the Commercial Law [1966], requires a contract between the principal and the agent from the outset.

113. A commission agent is a particular type of agent in Palestinian (and Jordanian) law, defined in article 87 of the Commercial Law 1966 as "a person who undertakes to conclude in his own name, but for the account of his principal, a sale or purchase and other commercial transactions in return for a commission". The appellant in 325/2022, would, if it was an agent at all, have been a commission agent, because it was contracting in its own name. KIMA is in the same position in the present case. I understand the court to be saying in the quoted passage that the exclusive distributorship arrangement in that case was not a commission agency, and so could not be a commercial agency.
114. Similar statements can be found in the Jordanian cases referred to by Mr Attereh. Jordanian sources of law are relevant to Palestinian law because of the historical context. Between 1948 and 1967, the West Bank was under the control of Jordan and Jordanian law was applied. Jordanian statutes enacted in that period, such as the

Commercial Law 1966, continue to have force in the West Bank. More generally, Jordanian case law and scholarly works are consulted and relied on by Palestinian courts, especially where there is a lacuna in Palestinian law.

115. Jordanian case 538/2019 concerned a dispute between a pharmacy and a supplier of cosmetic and pharmaceutical products. The plaintiff said that it had exerted significant efforts and incurred substantial expenses in conducting marketing studies to promote the defendant's products in Jordan, including hiring and training employees, renting a warehouse to receive the Defendant's products, and registering all the products with the Jordanian Food and Drug Administration. When the defendant cancelled the arrangement, the plaintiff claimed compensation under the Jordanian Commercial Agents and Intermediaries Law. That law does not have effect in the West Bank (not having been enacted before 1967) but it is in similar, although not identical terms, to the Commercial Agents Law. The Jordanian Court of Cassation dismissed the claim, holding that a plaintiff was not a commercial agent for the purpose of that law because it "acted in its own name and its own account as it imported the goods, paid for them and sold them on its own account".
116. Other decisions of the Jordanian Court of Cassation contain similar explanations or definitions of commercial agency. It suffices to mention two. First, in case 2949/2007, the court said:

The concept of commercial agency is established only with the presence of the following elements: 1. The existence of a contract between the principal and the agent. 2. The actions conducted by the agent are in his name but for the account of his principal. 3. The agent receives a commission agreed upon for this.

In that case, the defendant had the right to set the sale price of the goods supplied by the putative agent. That, however, did not imply an agency relationship: the court said that that mechanism "is not considered a commission but a profit for the importer and for price control purposes only".

117. Second, in case 1295/2020, the court said:

The elements of an agency contract according to that law, which are: 1. A contract made between the agent and the principal. 2. Conducting commercial transactions and activities. 3. Acting in one's name but for a commission. Given that the court [below] concluded that the Plaintiff did not receive a commission but was obligated to pay for the merchandise sent to him according to the terms of the agreement, the conditions for an agency contract as intended by the Commercial Law or the Commercial Agents and Intermediaries Law were not met.

118. Thus, although addressing legislation in slightly different terms, the Jordanian cases take the same line as the Palestinian case, i.e. that merely acting as a distributor or reseller does not make a person a commercial agent. However, none of the cases that I was shown contained any specific guidance as to how a court should distinguish in any particular case between an arrangement that is a commercial agency agreement for the purpose of the Commercial Agents Law and one that is not.
119. Mr Attereh in his report said the central question of whether sale or distribution was “for the account of the principal” was one that “lacks established Palestinian jurisprudence or customary practice defining the criteria for determining this distinction”. He said, however, that there were two key indicators. The first was that, under article 92 of the Commercial Law, a commission agent was generally not liable for non-performance of the obligations of persons with whom they have contracted on behalf of the principal unless they have specifically acted as a guarantor. The second was that, under article 96 of the Commercial Law, the ownership of goods to be sold by a commercial agent remains with the principal even after delivery to the agent, as they are held on behalf of the principal.
120. The first point does not arise in the present case, because KIMA did not purport to contract with its customers on behalf of Opel. As to the second point, Dr Hussein disagreed, pointing out that neither the Commercial Agents Law nor any of the cases presumed or provided that the agent cannot own the goods that he is selling.
121. Dr Hussein is right to say that ownership cannot be conclusive of status under the Commercial Agents Law. That is because the Law itself contemplates that a commercial agent might be the owner of the goods that it is selling: article 14 provides that on termination of the agency agreement for any reason the supplier or the new agent is obligated to purchase all stocks of products and spare parts in possession of the agent. Mr Attereh fairly accepted in his report that article 14 conflicted with the fundamental nature of a commercial agency as he saw it (although Mr George argued that the article was explicable on the grounds that the importer might buy spare parts or sundry equipment to which the article would apply or that the goods might be purchased on a retention of title basis). That said, I would accept that ownership of the goods is a relevant factor, even if not conclusive.
122. Both parties sought in their evidence and argument to analyse the DSSA and to identify contractual terms supporting their respective positions. I have discussed below those terms that seemed to me to be of greatest significance.
123. For KIMA, the following articles were said to be indicative of a commercial agency:

- (1) article 4.3.3, which grants KIMA the right to identify itself as an Opel dealer;
 - (2) article 4.4.4, which obliges KIMA to provide maintenance and repair services to owners of Opel vehicles regardless of where they were purchased;
 - (3) article 4.5, which obliges KIMA to promote the sale of Opel vehicles and parts at its own expense;
 - (4) article 4.10, which obliges KIMA to comply with vehicle modifications;
 - (5) article 8, which obliges KIMA to purchase minimum quantities of vehicles and parts;
 - (6) article 9, which provides for price changes and charges;
 - (7) article 10.2, which provides for Opel to set sales targets;
 - (8) article 10.6, which provides that KIMA “shall directly handle and shall be held liable for the claims of customers” in relation to the manufacturer’s warranty given by Opel, “whereby OPEL NSC will have no direct legal relationship with such customers on warranty claims, and will reimburse DEALER”;
 - (9) article 12, which obliges KIMA to provide Opel with commercial and financial information of various types; and
 - (10) article 16.1.2, concerning the use of intellectual property.
124. Dr Hussein also commented that, although the DSSA made no provision for KIMA’s remuneration or profit on sales, the retail selling price was in practice set by agreement between KIMA and Opel in the course of their business relationship. In support of that, she referred to an email exchange in 2019 and to part of KIMA’s business plan referring to the intended retail price. That was a factual conclusion outside the scope of her role as an expert. It was also not correct. The evidence I have set out shows that Opel was interested in the retail selling prices, and that it asked for and was provided with KIMA’s pricing proposals, but that there was never any binding agreement with Opel as to the price at which KIMA could sell to its customers, and no requirement for such an agreement to be reached.
125. As well as his point about ownership of the goods, Mr Attereh relied on some of the same articles, including articles 4.3, 8 and 9, as showing that KIMA was *not* a commercial agent. He also relied on:

- (1) article 4.11, which provided that KIMA was not an agent or legal representative of Opel;
 - (2) article 4.12, which provides that KIMA is an independent business and solely responsible for its success and profitability;
 - (3) article 19.4, which provides that KIMA must sell to Opel specified items on termination of the agreement;
 - (4) annex 6, containing the terms of sale and delivery of vehicles by Opel to KIMA.
126. I have carefully considered all those articles, individually and in the context of the DSSA as a whole. The terms relied on by Opel are, in my view, ultimately to be regarded as ancillary to the core function of the DSSA. As article 4.3.1 expressly provides, that function is to set the terms on which KIMA will buy vehicles from Opel and sell vehicles to KIMA's customers. Having regard to the Palestinian and Jordanian cases discussed above, it is particularly significant that in the present case KIMA buys and sells vehicles both in its own name and for its own financial account.
127. If KIMA bought a vehicle from Opel but could not sell it, or sold it for less than the purchase price, or did not receive payment from the buyer, then it would bear the loss; if it sold it for more than the purchase price, then it would receive the profit without having to account for any part of it to Opel. The DSSA sets the prices at which KIMA may purchase vehicles from Opel (in article 9.1) but it does not set the prices at which KIMA may sell vehicles to its customers; nor, as discussed above, did the parties agree the prices at any stage. KIMA was therefore free to set its own targeted profit levels; and did so.
128. That arrangement seems to me to be fundamentally what Dr Hussein referred to as a merchant arrangement and what the Palestinian Court of Cassation described as "purchasing goods from a supplier or producer for the purpose of resale".
129. Similarly, Opel's profit was earned from the difference between the cost of manufacture and the price paid for the vehicles by KIMA. Opel undertook no obligations to KIMA's customers (except, perhaps, outside the DSSA on manufacturer warranties) and took no financial risk, and received no financial benefit, on sales to them.
130. It is true that Opel exercised a degree of control over how KIMA could market vehicles to its own customers. That does not, however, detract from the essential

nature of the contractual relationship. For example, the fact that KIMA had the right to identify itself as an Opel dealer and the obligation to promote sales of Opel vehicles does not imply that it is acting on behalf of Opel in any sense. Those are personal rights and obligations of KIMA; they are not exercised or performed on behalf of Opel. Similarly, where KIMA provided maintenance or repair services to owners of Opel vehicles, it did so on its own behalf; nothing in the DSSA makes Opel responsible for those services. In relation to warranty repairs, article 10.6 provides that KIMA, not Opel, shall be liable for the claims of customers.

131. KIMA's obligations to meet minimum purchase or sales targets, comply with dealer standards, and provide commercial and financial information are similarly not inconsistent with it acting exclusively on its own behalf and for its own account.
132. Indeed, even if Opel had a right to control selling prices, that would not necessarily make the agreement a commercial agency, as held by the Jordanian Court of Cassation in case 2494/2007 above.
133. A further powerful indicator of the nature of the agreement is that article 4.11 expressly provides that the DSSA does not make either party the agent or legal representative of the other for any purpose, and article 4.12 provides that KIMA is an independent business and as such is solely responsible for the success and profitability of all business activities. In case 1295/2020, the Jordanian Court of Cassation held that a similar provision in a contract "negated the agency characteristic regardless of its nature". Mr Sinclair argued that, since the DSSA is governed by English law, articles 4.11 and 4.12 should be taken as referring to English law concepts of agency, such that they do not necessarily exclude the possibility of a commercial agency under Palestinian law. However, given that the premise for KIMA's claim is that the DSSA incorporates Palestinian law, I do not see why the articles should not extend to, and exclude, Palestinian law concepts of agency. In any case, if KIMA is not an agent or representative of Opel in an English law sense, it is hard to see what in the facts of the present case or the terms of the DSSA supports a conclusion that it is nevertheless acting "on behalf of" or "for the account of" Opel in any sense.
134. For completeness, I add that, even if there were some aspects of KIMA's performance under the DSSA that were carried out on behalf of Opel, that would not be sufficient. In case 538/2019, the Jordanian Court of Cassation said that in a commercial agency "*all* activities covered by the commercial agent are on behalf of the principal" (my emphasis).

135. The definition of commercial agent also requires that the sale, distribution or promotion of goods on behalf of a producer or supplier must be “in return for a commission or profit margin”.
136. Mr Sinclair argued that it was sufficient to satisfy that condition that KIMA made, or expected to make, a profit on the sale of vehicles to its customers. However, as Mr George responded, the words “in return for” are significant: they indicate that the relevant person is remunerated, whether by way of commission or profit margin, by the manufacturer (or, at least, with the manufacturer’s authority) in return for the distributor’s efforts on the manufacturer’s behalf. I do not think that those words cover a situation such as the present one where KIMA receives its remuneration from its own customers in return for the goods and services that it supplies to them.
137. Mr George’s argument finds further support in article 5 of the Commercial Agents Law, which provides that the commercial agency agreement must specify “the rights and obligations of both the agent and the principal, with an indication of the amount of profit or commission due to the agent for the agency”. Dr Husseini said that the fact that the DSSA did not specify any profit or commission due to KIMA did not matter because under the Law it was permissible for the parties to agree the commission or profit separately and subsequently. However, even if that is right, the fact that the parties are required to agree it all is a strong indication that the Commercial Agents Law is concerned with arrangements where remuneration is payable by the principal to the agent.
138. It is fair to say that the expression “profit margin”, which usually means the percentage ratio of profit to sale price, is not entirely apt in context, and does not fit very well with either party’s case. Mr Attereh said that the distinction between commission and profit margin being made in the Commercial Agents Law was that the former was calculated as a proportion of the gross transaction value whereas the latter was calculated as a proportion of the supplier’s net profit, taking into account costs. I accept that explanation; it requires “profit margin” to be read as meaning “profit share” but that makes better sense of the definition.
139. For those reasons, I conclude that KIMA was not selling vehicles or providing services on behalf of Opel and that it did not do so in return for a commission or profit share (or profit margin). It was not, therefore, a commercial agent for the purpose of the Commercial Agents Law. It was a dealer in the true and usual sense of the word, in that it bought and sold vehicles and provided maintenance and repair services on its own behalf and for its own account (subject only to its contractual right to reimbursement for warranty work).

Did Opel have a serious reason for terminating or not renewing the DSSA?

140. I can address this issue briefly in the light of the expert evidence that was given on it. “Serious reason” is not defined in the Commercial Agents Law, and I was not shown any Palestinian or Jordanian authority on what it means. Mr Attereh said in his report that a serious reason encompassed a situation where “the agent violates or breaches the agreement, provided that the agreement confers upon the principal the right to terminate under such circumstances”. Importantly, he also confirmed in evidence the converse: a breach of contract that does not give rise to a right to terminate is not a serious reason for termination. Dr Hussein took a slightly different approach: she said that whether a breach was sufficiently serious was a matter to be weighed and determined by the court. Neither expert suggested that a principal could have a serious reason for terminating if the agent was not in breach at all.
141. I have decided that Opel has not proved any breach of the DSSA by KIMA and, in any case, has not established a right to terminate for breach. It follows that, on the evidence of the experts, Opel could not have had a serious reason for terminating or for not renewing the DSSA.

Disposition

142. I conclude that:
- (1) Opel has not established that KIMA was in breach of the Dealer Standards;
 - (2) Opel did not and was not entitled to terminate the DSSA for such a breach or otherwise for cause, and did not have a serious reason for terminating or not renewing the DSSA;
 - (3) KIMA was entitled under the DSSA to compensation if mandated by the Palestinian Commercial Agents Law; but
 - (4) KIMA was not a commercial agent for the purpose of that Law.
143. It follows that KIMA is not entitled to compensation for termination of the DSSA and I decline to grant any declaration to that effect.
144. KIMA also seeks a declaration that “the notice of termination dated 30 August 2019 is null and void”. Opel’s email of that date and attached letter dated 26 August was not a notice of termination, nor was it intended as one: the letter simply referred back to the earlier notice given on 21 February 2019. As to the complaints made by Opel in the

26 August letter, I have set out above my findings in that respect. Given that I have refused the principal declaratory relief sought by KIMA, I see no purpose in granting any declaratory relief in relation to the letter.

145. The claim is dismissed.