Neutral citation [2025] CAT 4

Case No: 1339/7/7/20

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

15 January 2025

Before:

HODGE MALEK KC
(Chair)
EAMONN DORAN
WILLIAM BISHOP

Sitting as a Tribunal in England and Wales

BETWEEN:

MARK MCLAREN CLASS REPRESENTATIVE LIMITED

Joint Applicant / Class Representative

- v -

(1) MOL (EUROPE) AFRICA LTD
(2) MITSUI O.S.K. LINES LTD
(3) NISSAN MOTOR CAR CARRIER CO. LTD

Non-Settling Defendants

(4) KAWASAKI KISEN KAISHA LTD

Joint Applicant / Defendant

(5) NIPPON YUSEN KABUSHIKI KAISHA

Non-Settling Defendant

(6) WALLENIUS WILHELMSEN OCEAN AS

(7) EUKOR CAR CARRIERS INC
(8) WALLENIUS LOGISTICS AB
(9) WILHELMSEN SHIPS HOLDING MALTA LIMITED
(10) WALLENIUS LINES AB
(11) WALLENIUS WILHELMSEN ASA

Joint Applicants / Defendants

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

Defendants (Stayed)

- and -

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

Interested Parties

Heard at Salisbury Square House on 5 December 2024

JUDGMENT (COLLECTIVE SETTLEMENT) (WWL/EUKOR) (K LINE)

APPEARANCES

Sarah Ford KC, Nicholas Gibson, Sarah O'Keeffe on behalf of the Class Representative (instructed by Scott + Scott (UK) LLP)

Hanif Mussa KC, Anneliese Blackwood, Julianne Kerr Morrison on behalf of the Fourth Defendant (instructed by Cleary Gottlieb Steen & Hamilton LLP)
Josh Holmes KC and Laura Elizabeth John on behalf of the Sixth to Eleventh Defendants (instructed by Baker Botts (UK) LLP) (Settling Parties)

Brendan McGurk KC and Natalie Nguyen on behalf of the First to Third, and Fifth Defendants (instructed by Arnold & Porter Kaye Scholer (UK) LLP and Steptoe International (UK) LLP) (Non-Settling Defendants)

Robert Marven KC on behalf of the Interested Parties

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A. INTRODUCTION

1. The Tribunal has before it two joint applications (the "Applications") for collective settlement approval orders ("CSAO") pursuant to Rule 94 of the Competition Appeal Tribunal Rules 2015 made in the context of collective proceedings combining follow-on claims under section 47A of the Competition Act 1998 for damages for losses caused by the Defendants' breach of statutory duty in infringing Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area.

2. The first is a joint application by the Class Representative (the "CR") and the Sixth to Eleventh Defendants ("WWL/EUKOR") dated 27 November 2024. The second is a joint application by the Class Representative and the Fourth Defendant, Kawasaki Kisen Kaisha Ltd ("K" Line") also dated 27 November 2024. Although the Applications are separate and distinct, many of the matters addressed in support of those applications are relevant to both. For that reason, the Tribunal directed that both Applications be heard together.

3. The Defendants' liability was determined by the European Commission in an infringement decision adopted on 21 February 2018 in Case AT.40009 – *Maritime Car Carriers* as addressed to all Defendants. The cartel was found to have operated between 18 October 2006 and 6 September 2012. The Fourth Defendant was found to have participated in the cartel. The Sixth to Seventh Defendants were also found to have participated in the cartel, albeit they were found not to have participated in certain instances of the infringing conduct. The Eighth to Eleventh Defendants were found to be liable as direct and indirect owners of the Sixth and Seventh Defendants. The Collective Proceedings will, in any event, continue in respect of any damages attributable to the Non-Settling Defendants' liability.

4. The CR has retained Mr Tom Robinson of BDO to advise on the quantum of claims. The current estimate of the overall quantum of the claims against all Defendants to the Collective Proceedings is in the range of £86.1 million, lower-bound estimate, to £215.8 million, upper-bound estimate.

B. THE COLLECTIVE PROCEEDINGS

5. In its Re-Re-Amended Claim Form, the CR alleges that vehicle shipping costs were unlawfully inflated as a result of the Defendants' anticompetitive conduct, and that these inflated charges were passed on through the supply chain as part of the delivery charges which are ultimately paid by the first person to purchase or finance a vehicle.

6. On 20 February 2020, the CR filed its application for a collective proceedings order ("CPO"). On 18 February 2022, the Tribunal issued its Judgment on the CPO application which was granted in principle ([2022] CAT 10). On 20 May 2022, the Tribunal certified the claims as eligible for inclusion in opt-out collective proceedings and made the CPO accordingly. Pursuant to paragraphs 5 and 6 of the CPO, the notice period for persons domiciled within the United Kingdom ("UK") wishing to opt-out, and persons domiciled outside of the UK wishing to opt-in, expired on 12 August 2022.

7. On 8 and 9 November 2022, the Court of Appeal heard an appeal by the First to Eleventh Defendants against the Tribunal's certification decision and, on 21 December 2022, it handed down Judgment dismissing the appeal, subject to a case management issue remitted to the Tribunal ([2022] EWCA Civ 1701). On 17 July 2023, permission to appeal to the Supreme Court was refused.

8. On 27 September 2023, the CR reached a proposed settlement agreement with the former Twelfth Defendant, Compania Sud Americana de Vapores S.A. ("CSAV"). On 18 October 2023, the CR filed an application for an order that part of the damages sum to be paid by CSAV under the proposed collective settlement be used to cover a proportion of the costs payable by the CR to third parties with a stake in the proceedings ("the Related Costs Application"). On 6 December 2023, the Tribunal approved the collective settlement, and made the CSAO of 6 December 2023 pursuant to Rule 94 of the Rules ("CSAV CSAO"). The reasons for the approval are set out in the Tribunal's Judgment [2023] CAT 75). This settlement only dealt with a small proportion of the claims advanced in the proceedings and it was decided to defer any distribution of the modest amount of damages recovered to a later stage. In its Judgment on 12 July 2024,

the Tribunal declined to permit part of the damages to be used to cover third party costs, but allowed £71,000 of the costs sum to be paid towards the costs of the Related Costs Application ([2024] CAT 47).

9. On 14 November 2024, solicitors for the Sixth to Eleventh Defendants ("WWL/EUKOR") informed the Tribunal that their clients had reached a settlement with the CR. On 21 November 2024, solicitors for "K" Line informed the Tribunal that their client had reached a separate settlement with the CR. These are the proposed settlements which form the basis of these Applications for a CSAO. These are for larger sums and represent a more significant proportion of the total claims in the proceedings than were considered by the Tribunal in relation to the settlement with CSAV.

C. THE CSAO APPLICATIONS

(a) The WWL/EUKOR Proposed Settlement

10. The claims to be settled by the proposed collective settlement between the CR and WWL/EUKOR are for the damages attributable to WWL/EUKOR's share of the liability arising from the *Maritime Car Carriers* Decision. The filings of the parties and their experts suggest they were a long way apart on quantum even at a late stage in the proceedings following exchange of expert reports when the parties were preparing for trial. Indeed WWL's estimate of the quantum of the claim against WWL/EUKOR was only £0.81M to £2.75M, including interest, representing a small fraction of the damages estimated by the CR and its expert as referred to above.

11. In addition to a draft CSAO, the WWL/EUKOR Application is supported by the following documents:

    (i) The fourth witness statement of Mr Mark McLaren ("McLaren 4"), the sole director and sole member of Mark McLaren Class Representative Limited, together with exhibit MM4.1 (a copy of the settlement agreement between the CR and WWL/EUKOR);

(ii) the eighth witness statement of Ms Belinda Hollway ("Hollway 8"), the partner at Scott+Scott UK LLP ("SSUK") with conduct of these proceedings for the CR;

(iii) the first witness statement of Mr Christopher Caulfield ("Caulfield 1"), the partner at Baker Botts (UK) LLP with conduct of these proceedings for WWL/EUKOR, together with exhibit CJC1 (also a copy of the settlement agreement between the CR and WWL/EUKOR);

(iv) the first witness statement of Ms Kristin Schjødt Bitnes ("Bitnes 1"), the Senior Vice President (Legal) and General Counsel of Wallenius Wilhelmsen ASA, the Eleventh Defendant and parent company of the Wallenius Wilhelmsen group of companies which owns and controls the Sixth to Ninth and Eleventh Defendants;

(v) the first witness statement of Mr Erik Nøklebye ("Nøklebye 1"), the Chief Executive Officer of Wallenius Lines AB, the Tenth Defendant;

(vi) the third expert report of Dr Raphaël De Coninck ("De Coninck 3") of CRA, WWL/EUKOR's economic expert;

(vii) the second expert report of Mr Jon Lawrence ("Lawrence 2"), who was instructed jointly by the CR and the Sixth to Eleventh Defendants to provide a report with an opinion on the merits of the settlement of the claim; and

(viii) the second witness statement of Mr Steven Friel, the Chief Executive Officer at Woodsford Group Limited.

12. The CR seeks the Tribunal's approval to settle its claim against WWL/EUKOR in these proceedings for a total settlement sum of up to £24,500,000 (the "WWL/EUKOR Settlement Sum"). Assuming that WWL/EUKOR market share is 33%, this represents between 34% and 85% of the overall claim value estimated by the CR and its expert when adjusted to reflect WWL/EUKOR's

market share during the relevant period. This proposed settlement sum is structured as follows:

(a) £15,250,000 in damages (the "Damages Sum"), divided up as:

(i) £8,750,000 in damages ("the Immediate Damages Sum") that clause 2.3 of the proposed WWL/EUKOR settlement agreement provides will be payable within 28 days of the Tribunal making the CSAO;

(ii) £6,500,000 in damages ("the Deferred Damages Sum") that clause 4 of the proposed WWL/EUKOR settlement agreement provides will be payable if there is a shortfall between the amount required to compensate the class and the amount that the CR has available to it in the form of the Immediate Damages Sum plus the aggregate amounts that the CR obtains under any subsequent settlement agreements with the Non-Settling Defendants or following Judgment. WWL/EUKOR is to pay the amount of the shortfall, up to £6,500,000, within 28 days of receiving notice from the Class Representative under clause 4.9 of the proposed WWL/EUKOR settlement agreement;

(b) £8,750,000 in costs, fees and disbursements ("the CFD Sum") that clause 2.3 of the proposed WWL/EUKOR settlement agreement provides will be payable within 28 days of the Tribunal making the CSAO; and

(c) £500,000 in contribution to the Class Representative's costs of distributing the damages to the class ("the Distribution Costs Contribution") which clause 4 of the proposed WWL/EUKOR settlement agreement provides is payable within 28 days of the CR giving notice to WWL/EUKOR that the Tribunal has approved an application by it to distribute the damages.

(b) The "K" Line Proposed Settlement

13. The claims to be settled by the proposed collective settlement between the CR and "K" Line are for the damages attributable to "K" Line's share of the

liability arising from the *Maritime Car Carriers* Decision. Assuming that "K" Line's market share is 17.3%, the total value of the claim based on the estimated range of the CR and its expert against "K" Line is between £14.90 million and £37.33 million including interest.

14. In addition to a draft CSAO, the "K" Line Application is supported by the following documents:

(i) the fifth witness statement of Mr Mark McLaren ("McLaren 5"), together with exhibit MM5.1 (a copy of the settlement agreement between the CR and "K" Line);

(ii) the ninth and tenth witness statement of Ms Belinda Hollway ("Hollway 9"), the partner at Scott+Scott UK LLP ("SSUK") with conduct of these proceedings for the CR;

(iii) the first witness statement of Mr Paul Stuart ("Stuart 1"), the partner at Clearly Gottlieb Steen & Hamilton LLP with conduct of the proceedings for "K" Line;

(iv) the fourth report of Dr Adrian Majumdar ("Majumdar 4") of RBB Economics LLP; "K" Line's economic expert;

(v) the third and fourth expert reports of Mr Jon Lawrence ("Lawrence 3"), who was instructed jointly by the CR and the Fourth Defendant to provide a report with an opinion on the merits of the settlement of the claim;

(vi) the third witness statement of Mr Steven Friel, the Chief Executive Officer at Woodsford Group Limited; and

(vii) the second witness statement of Ms Clare Ducksbury, who is retained by the Class Representative to provide claims administration and litigation support services.

15. The CR seeks the Tribunal's approval to settle the CR's claim against "K" Line for a total sum of £12.75 million. Assuming that "K" Line's market share is 17.3%, this represents between 34.2% and 85.6% of the overall claim value when adjusted to reflect "K" Line's market share during the relevant period. The 17.3% figure represents "K" Line's market share based on capacity of vessels as a proportion of the Defendants' total market share (including the Twelfth Defendant). The settlement sum is structured as follows:

(a) £7,000,000 in damages ("the Damages Sum"), divided up as:

(i) £5,250,000 to be paid to Class Members (the "Guaranteed Damages Sum") with any residual balance after take-up to be paid to charity via a cy-près mechanism; and

(ii) £1,750,000 (the "Additional Damages Sum") to be paid to Class Members, if there is a shortfall between the amount required to compensate the class and the amount that the CR has available to it in the form of the Guaranteed Damages Sum plus the aggregate amounts that the CR obtains under any subsequent settlement agreements with the Non-Settling Defendants or following judgment. Any unused portion of the Additional Damages Sum is subject to reverter to "K" Line;

(b) £5,250,000 to be paid to meet the CR's costs, fees and disbursements (the "CFD Sum").

(c) £500,000 in contribution to the Class Representative's costs of distributing the damages to the class ("the Distribution Costs Contribution"), payable within 28 days of the CR giving notice to "K" Line that the Tribunal has approved an application by it to distribute the damages under clause 4.7 of the proposed "K" Line settlement agreement. Any unused portion of the Distribution Costs Contribution will be repaid to "K" Line.

D. THE LAW

(a) Legal Framework

16. In dealing with the Applications, the Tribunal must bear in mind the provisions of section 49A of the Competition Act 1998 ("1998 Act"):

> **"49A Collective settlements: where a collective proceedings order has been made**
>
> 1. The Tribunal may, in accordance with this section and Tribunal rules, make an order approving the settlement of claims in collective proceedings (a "collective settlement") where—
>
> a. a collective proceedings order has been made in respect of the claims, and
> b. the Tribunal has specified that the proceedings are opt-out collective proceedings.
>
> 2. An application for approval of a proposed collective settlement must be made to the Tribunal by the representative and the defendant in the collective proceedings.
>
> 3. The representative and the defendant must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.
>
> 4. Where there is more than one defendant in the collective proceedings, "defendant" in subsections (2) and (3) means such of the defendants as wish to be bound by the proposed collective settlement.
>
> 5. The Tribunal may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.
>
> 6. On the date on which the Tribunal approves a collective settlement—
>
> a. if the period within which persons may opt out of or (in the case of persons not domiciled in the United Kingdom) opt in to the collective proceedings has expired, subsections (8) and (10) apply so as to determine the persons bound by the settlement;
> b. if that period has not yet expired, subsections (9) and (10) apply so as to determine the persons bound by the settlement.
>
> 7. If the period within which persons may opt out of the collective proceedings expires on a different date from the period within which persons not domiciled in the United Kingdom may opt in to the collective proceedings, the references in subsection (6) to the expiry of a period are to the expiry of whichever of those periods expires later.
>
> 8. Where this subsection applies, a collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective proceedings order who—

a. were domiciled in the United Kingdom at the time specified for the purposes of determining domicile in relation to the collective proceedings (see section 47B(11)(b)(i)) and did not opt out of those proceedings, or
b. opted in to the collective proceedings.

9. Where this subsection applies, a collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective proceedings order.

10. But a collective settlement is not binding on a person who—

a. opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or
b. is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective settlement.

11. This section does not affect a person's right to offer to settle opt-in collective proceedings."

17. The Competition Appeal Tribunal Rules 2015 deal with this aspect in more detail, particularly in Rule 94(1) to (10):

"Collective settlement where a collective proceedings order has been made: opt-out collective proceedings

94. – (1) Where a collective proceedings order has been made and the Tribunal has specified that the proceedings are opt-out collective proceedings, the claims which are the subject of the collective proceedings, may not be settled other than by a collective settlement approval order issued in accordance with this rule.

(2) Any offer to settle by a defendant in the collective proceedings shall be made to the class representative.

(3) An application for a collective settlement approval order shall be made to the Tribunal by—

(a) the class representative; and
(b) the defendant in the collective proceedings, or if there is more than one defendant, such of them as wish to be bound by the proposed collective settlement.

(4) The application referred to in paragraph (3) shall –

(a) provide details of the claims to be settled by the proposed collective settlement;
(b) set out the terms of the proposed collective settlement, including any related provisions as to the payment of costs, fees and disbursements;

(c) contain a statement that the applicants believe that the terms of the proposed settlement are just and reasonable, supported by evidence which may include any report by an independent expert or any opinion of the applicants' legal representatives as to the merits of the collective settlement;
(d) specify how any sums received under the collective settlement are to be paid and distributed;
(e) have annexed to it a draft collective settlement approval order; and
(f) set out the form and manner by which the class representative proposes to give notice of the application to—

(i) represented persons, in a case where it is expected that paragraph (11) will apply; or
(ii) Class Members, in a case where it is expected that paragraph (12) will apply.

(5) Unless the Tribunal otherwise directs, the signed original of the application for a collective settlement approval order shall be accompanied by five copies of the application and its annexes certified by the class representative or its legal representative as conforming to the original.

(6) On receiving an application for a collective settlement approval order, the Tribunal may give any directions it thinks fit, including—

(a) for the confidential treatment of any part of an application for a collective settlement approval order;
(b) for the giving of or dispensing with the notice referred to in paragraph (4)(f);
(c) for further evidence to be filed on the merits of the proposed collective settlement;
(d) for the hearing of the application.

(7) Any represented person or, in a case where paragraph (12) applies, any class member may apply to make submissions either in writing or orally at the hearing of the application for a collective settlement approval order.

(8) At the hearing of the application, the Tribunal may make a collective settlement approval order where it is satisfied that the terms of the collective settlement are just and reasonable.

(9) In determining whether the terms are just and reasonable, the Tribunal shall take account of all relevant circumstances, including—

(a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements;
(b) the number or estimated number of persons likely to be entitled to a share of the settlement;
(c) the likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement;
(d) the likely duration and cost of the collective proceedings if they proceeded to trial;
(e) any opinion by an independent expert and any legal representative of the applicants;
(f) the views of any represented person in a case to which paragraph (11) applies, or of any class member in a case to which paragraph

(12) applies; and (g) the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable.

(10) A collective settlement approval order may specify the time and manner by which—

(a) a represented person or class member, as the case may be, who is domiciled in the United Kingdom on the domicile date may opt out of the collective settlement; and
(b) a represented person or class member, as the case may be, who is not domiciled in the United Kingdom on the domicile date may opt in to the collective settlement."

18. The Competition Appeal Tribunal Guide to Proceedings 2015 (the "Guide") provides even further detail, and provides guidance at paragraph [6.125] on how the Tribunal will approach assessing whether the terms are just and reasonable:

"In considering whether a collective settlement is just and reasonable, the Tribunal will take into account all relevant circumstances, including the specific factors listed in Rules 94(9) and 97(7). While Rule 94(9) applies to settlements of collective proceedings and Rule 97(7) applies to direct collective settlements, the factors are broadly the same in both scenarios. These factors are as follows:

- *The amount and terms of the settlement*

The Tribunal's consideration of the amount and terms of the settlement will include the monetary and non-monetary benefits offered by the settling defendant, as well as any related provisions as to the payment of costs, fees and disbursements. In particular, the Tribunal may consider the amount allocated to costs, fees and disbursements as a proportion of the overall settlement. Where legal costs make up a significant proportion of the settlement funds, the Tribunal will scrutinise whether this allocation is appropriate and will be alert to any potential conflict of interest between the class (or settlement) representative and its lawyers on the one hand and the Class Members on the other hand.

The Tribunal will also consider carefully the terms of any waiver or release contained in the proposed settlement agreement.

- *The number or estimated number of persons likely to be entitled to a share of the settlement*

The number of persons who may be able to claim a share of the settlement will influence the Tribunal's overall assessment of the settlement amount and terms. A settlement may incorporate a provision whereby either party has a right to cancel the settlement in the event that a specified opt-out threshold is exceeded.

The Tribunal may also consider how Class Members will be required to claim their entitlement in order to ensure that the applicable conditions or 9 procedures are not overly onerous or complicated so as to discourage or hinder legitimate claims.

- *The likelihood of judgment being obtained in collective proceedings for an amount significantly in excess of the amount of the settlement*

  When considering the likelihood of judgment being obtained in collective proceedings for more than the amount of the settlement, the Tribunal need not conduct a detailed analysis of the claims to determine what it would have awarded in damages (if anything) following a trial. Rather, the Tribunal will adopt a broad brush assessment of the position, having regard to the prospect of success and estimated quantum of damages.

- *The likely duration and costs of the collective proceedings if they proceeded to trial*

  This factor is intended to reflect the often costly and time consuming nature of legal proceedings. In light of the additional time and cost of taking a case to trial, it may be preferable to approve a settlement even though a somewhat higher damages award might be granted after trial.

- *Any opinion by an independent expert and any legal representative of the applicants*

  As well as considering the written opinion of an independent expert and/or the lawyers advising the class (or settlement) representative and the settling defendant(s), the Tribunal may require that person to attend the settlement approval hearing and be questioned in relation to their opinion (in a closed hearing if necessary). In giving their opinion to the Tribunal, experts and legal representatives are reminded of their professional duties to the Tribunal. Their role is of particular importance where a CSAO is sought for a direct collective settlement: when there are no collective proceedings, the difficulty for the Tribunal is all the greater in assessing whether the proposed terms are just and reasonable.

- *The views of any represented person / class member / settlement class member (as appropriate)*

  As the principal parties to the collective settlement approval application are agreed on the settlement, class objectors provide the closest thing to an adversarial testing of the settlement terms. Therefore, the Tribunal will consider carefully what any objectors have to say about the settlement to ensure that the Class Members' interests are served by the settlement. The Tribunal will not, however, infer from a lack of objectors that the settlement is likely to be just and reasonable.

- The provisions relating to the disposition of any unclaimed balance

  The Tribunal will consider what will happen to any unclaimed settlement sums. Unlike damages awards in collective proceedings, unclaimed sums may revert to the defendant: Rules 94(9)(g) and 97(7)(g). Reversion to the defendant will not of itself be considered unreasonable, but where a settlement includes provision for reversion, the Tribunal may be concerned to see whether this is conditional upon a threshold of take-up of the settlement fund. For example, a

> settlement that could result in substantial fees being paid to the lawyers of the class (or settlement) representative and a significant part of the settlement sums being paid back to the defendants, while future claims by Class Members are barred, is unlikely to be viewed as just and reasonable. A settlement may include provision for all or part of the unclaimed balance be paid to the Access to Justice Foundation, as in the case of a judgment in opt-out collective proceedings: paragraph 6.89 above."

19. The Guide also refers to the possibility of barring orders where there is a settlement with one but not all defendants, and that is dealt with at paragraphs [6.130] and [6.131]:

> "**Collective settlement with one or more, but not all, defendants**
>
> 6.130 The class (or settlement) representative may reach a collective partial settlement, i.e. agree terms with only one, or several, of a larger number of defendants (or would-be defendants), and that collective partial settlement may be the subject of an application for a CSAO.
>
> 6.131 If the defendants are subject to joint and several liability, for example where they were participants in a cartel, achieving such a partial settlement may present difficulties if the settling defendant(s) are concerned about their potential liability to the non-settling defendant(s) in subsequent contribution proceedings. In those circumstances, the Tribunal may consider incorporating in the approval order a barring provision that prevents the non-settling defendant(s) from claiming contribution from the settling defendant(s), on the basis that if it were subsequently determined that there was such a right of contribution, the class (or settlement) representative will be limited to recover from the non-settling defendant(s) only damages for which those defendants would be proportionally liable.85 If the settling parties apply for such a provision to be included in the Tribunal's order, the Tribunal will permit any non-settling defendant (or potential defendant) to make submissions as to whether an order on those terms should be made."

20. The statutory purposes which underpin the collective settlement regime are twofold: encouraging settlement (see *Gutmann v First TMR South Western Trains Limited* [2024] CAT 32 at paragraph [40]) and protecting the interests of the class (see the Guide at paragraph [6.96]). That is why "all relevant circumstances" for the purposes of assessing whether a collective settlement is just and reasonable pursuant to Rule 94 includes consideration of the monetary and non-monetary benefits offered by any settling defendant as well as any related provisions as to the payment of costs, fees and disbursements.

21. In assessing whether the terms of a proposed settlement are reasonable and ultimately what sums should be paid to stakeholders out of a settlement, success

is a highly important factor. Success can be measured in a number of ways and success, for the purposes of a funding or conditional fee arrangement, is not necessarily a success for the class members as a whole. In determining success for the purpose of approving a settlement and distribution of costs, fees and disbursements, the Tribunal will also look to see whether the proceedings are a success overall, which includes the amounts of damages available for class members, the likely and actual take up by class members and what may happen with the amounts not taken up either in terms of reversion to defendants, or payment to charity or being made available to stakeholders (subject to the approval of actual payments out to stakeholders by the Tribunal). A successful outcome can include appropriate proxies to distribution to the individual claimants[1] for any unclaimed damages, including charity as aforementioned but also, in appropriate cases, by way of a cy-près mechanism or to the Access to Justice Foundation. The Tribunal appreciates that not all claims brought by way of collective proceedings will have a successful outcome. The claims may fail at trial. The CR may be advised that it is unlikely to succeed at trial in the light of disclosure and expert evidence, such that it may end up either discontinuing the proceedings or seeking the approval of a settlement with either no or a relatively small amount of damages for class members. Such results are inherent in litigation where outcomes are often uncertain.

22. Collective proceedings should be brought for the benefit of class members and not predominantly for the benefit of stakeholders. The Tribunal would wish to avoid outcomes where little goes to class members, and the primary beneficiaries of the proceedings are the stakeholders. Even where there is a low take up by class members it does not mean that the balance of the settlement sum should go to stakeholders, and the parties and the Tribunal would wish to consider at least a proportion of the sum going to charity or some other distribution which does not mean that the balance is all taken by stakeholders or reversion to defendants.

[1] See *Justin Gutmann v London & South Eastern Railway Limited Registered* [2022] EWCA Civ 1077 at para [87].

(b) The Tribunal's prior decisions

23. This is the third occasion on which the Tribunal has scrutinised CSAOs and, as such, those Judgments in addition to this present Judgment, make up an expanding body of guiding principles in relation to collective settlements. In the first Judgment in CSAV ([2023] CAT 75) ("CSAV Settlement Decision"), which is the first settlement in the present Collective Proceedings, the Tribunal granted a CSAO in respect of the settlement between the CR and the Twelfth Defendant, CSAV. Unlike the present applications, the CSAO was made at a relatively early stage in the proceedings prior to disclosure and exchange of factual and expert evidence, and the sums involved were relatively small. In determining whether the settlement sum was within a reasonable range and the split between damages and costs was appropriate, the Tribunal set out the appropriate approach to this evaluation at paragraph [17]:

> "It is not for this Tribunal to reach a detailed and precise view of the merits of the case; this is not a mini-trial. The present application needs to be dealt with in a proportionate and cost effective manner, and there may well be an element of rough-and-readiness in our decision and how we have dealt with it. It would defeat the purposes of the settlement proceedings and the public policy of promoting settlements if applications like the present, especially when involving a relatively modest sum, become protracted and expensive."

24. Similarly, in relation to the specific factors that the Tribunal was required to take into account under Rule 94(9), the Tribunal made the following observations at paragraph [19], [20(2)] and [20(4)]:

> "*[…]* Litigation is expensive and uncertain; we cannot determine now, on an application like the present, the precise value of the claims, and what is subjectively speaking the amount that would be likely to be awarded by a Tribunal against this Defendant at the end of the day…
>
> "…Of course, it is possible that the damages figure at the end of the day could be higher, it could be lower, that is just an uncertainty, but what both parties are trying to do is buy certainty, and that is a factor that is well worth having…
>
> "It is very difficult for us as a Tribunal at this early stage to take a definitive view as to whether a judgment will be significantly in excess of the sum that has been agreed and it is not for us to substitute our own view as to the merits in place of the parties' solicitors and counsel, and independent counsel, who have looked at this in a great deal more detail than we can in a relatively short hearing."

25. As to barring orders generally, the Tribunal also recorded at paragraph [23] and [25] that the question of whether it had jurisdiction to make a barring order had been resolved by agreement between the parties. As to the merits of a barring order, the Tribunal stated at paragraph [24] that:

> "We have no doubt that a barring order is desirable in a case like the present, because without a barring order there is little incentive on a settling defendant to settle, because they then are still going to be stuck in the proceedings and subject to contribution claims, and that is just too great a risk to take. The advantage of having a barring order is clear. We get certainty and it promotes a settlement. We will have fewer parties, the costs and complexities of the proceedings will be reduced, and for the Non-Settling Defendants there is an advantage in having a barring order because the claim against them is reduced in amount. But we fully accept that in the absence of an agreement between the parties, there will need to be further argument on the barring order."

26. In a separate but related subsequent Judgment dated 12 July 2024 concerning the costs of the CSAV CSAO application ([2024] CAT 47), the Tribunal underlined the importance of third-party funding to the collective proceedings regime, in particular noting that (at paragraph [21]):

> "*[…]* Funding will dry up if funders are unable to recover their costs and disbursements and make a profit even on cases where there is a successful outcome overall. The importance of funders to collective proceedings and of proceedings being economically viable for them has been repeatedly remarked upon in the authorities, including O'Higgins v Barclays Bank plc [2020] EWCA 876 at [129]; Consumers Association v Qualcomm [2022] CAT 20 at [100]; and UK Trucks Claim Limited v Stellantis [2022] CAT 25 at [110]."

27. Guidance was also given in respect of the disbursement of other stakeholder costs. The Tribunal affirmed that it does have the power under Rule 94(4)(b) and 94(9)(a) or, pursuant to its general case management powers, under Rule 53(2)(n) to approve the payment of costs, fees and disbursements in a settlement agreement to stakeholders such as funders and insurers as they are expenses of the CR (at paragraphs [48] to [50]). The optimal time to assess payment to stakeholders was considered to be once the outcome of the Collective Proceedings is known, noting that the proceedings may lead to substantial judgment or settlement or failure of the Non-Settling Defendants to succeed at trial, such that the apportionment of costs to stakeholders is best evaluated when it is certain whether or not those stakeholders have been successful (at paragraph [56]). However, it was acknowledged that prior payment might be appropriate in certain circumstances, and noted that those

stakeholders will have an interest in reducing their overall risk exposure and duration risk (at paragraph [55]).

28. In the second Judgment on CSAO in *SSWT* dated 10 May 2024 ([2024] CAT 32) ("SSWT Settlement Decision") in the Gutmann Trains Collective Proceedings, the Tribunal approved a modified settlement agreement between the CR and the Second Defendant, Stagecoach South Western Trains Limited. The Tribunal noted, having regard to the requirement under section 49(A)(5) of the 1998 Act, that a settlement can only be approved if the Tribunal is satisfied that its terms are just and reasonable, but that there are a range of settlements that may be considered just and reasonable, even if they are not an ideal settlement (at paragraph [58]).

29. The settlement structure and Distribution Plan in *SSWT* was pursuant to a mechanism by which the settlement amount was "up to" a figure to be determined by the amounts of valid claims by Class Members. The Tribunal emphasised the need for the settling parties to put all relevant facts and considerations before the Tribunal, in particular in relation to any conflicts between stakeholders and Class Members, to enable the Tribunal to understand the actual sums likely to be made available to stakeholders depending on the level of take-up by Class Members (at paragraph [64] to [65]).

30. The Tribunal emphasised that, in particular, where the amount of damages ultimately paid is calculated by reference to an estimated number of valid claims and their likely take-up, the Tribunal should be provided with a properly reasoned and researched estimate of the likely take-up by Class Members, so as to enable the Tribunal to assess the likely range for the total amount claimed by the Class Members (at paragraph [65]). Insofar as possible, estimates of the likely take-up should be supported by empirical research and or surveys of actual Class Members (at paragraph [113)].

E. COLLECTIVE SETTLEMENT APPROVAL HEARING

31. The CSAO hearing was held on 5 December 2024, following a careful consideration of all the supporting evidence by the Settlement Tribunal. The CR and the Settling Defendants propose to settle the case on the basis that the

claims against "K" Line, WWL/EUKOR, as well as those brought against the defendant that has already settled, CSAV, represent 52.3% of the overall value of the claims against all the Defendants together. The claims against the remaining Non-Settling Defendants (D1, D2, D3 and D5) are still ongoing and that trial has been set to be heard in January 2025 with an estimate of ten weeks. In the event that the applications for CSAO are approved, the trial time estimate will be shorter by a number of weeks.

32. The issues for consideration in relation to the approval of these two settlements before the Settlement Tribunal are as follows:

(1) Is the settlement sum in each case within a reasonable range such that in broad terms we should approve it, subject to looking at the detailed provisions of the settlement agreements?

(2) What is the split between damages and costs, and is this Settlement Tribunal satisfied that in each case there has been a proper apportionment between the two?

(3) Is it appropriate to make a barring order in this case consistent with the provisions agreed in the settlement agreements and that agreed and approved by the Tribunal in the CSAV Judgment?

(4) Should there be a distribution now of the damages sum, or should that be delayed to a later stage?

(5) Should the "K" Line settlement agreement include a non-cooperation clause?

(6) What is the impact of the lack of a Distribution Plan?

(7) Are the provisions in the draft CSAOs in relation to costs suitable, including whether the sums allocated in the settlement agreements can in effect be locked in as only being used to meet costs, fees and

disbursements for stakeholders, and should payment out now be permitted and, if so, in what terms?

33. These issues were each ventilated at the hearing and the parties were able to agree sensible variations to the settlement agreements to address the points raised by the Settlement Tribunal. The date fixed for the exchange of submissions for all parties for the trial in the collective proceedings was the day after the CSAO hearing, such that there was a particular need for the parties to know the outcome of these two applications at the earliest opportunity such that submissions could be finalised if required and unnecessary trial costs be avoided if the matter was in fact settled. In this context, the Settlement Tribunal delivered an *ex tempore* Ruling at the CSAO hearing, with the fuller fine-tuned reasoning being reserved to this written Judgment.

34. In order to reflect the amendments which the Tribunal considered appropriate at the hearing, on 6 December 2024 the solicitors for the CR and Fourth Defendant and CR and Sixth to Eleventh Defendants respectively filed two Settlement Agreement Variation Addendums in respect of the proposed settlement agreements which amended clause 4.3 of the WWL/EUKOR Settlement Agreement and clause 4.3 of the "K" Line Settlement Agreement respectively to clarify that there would be no reverter to the Defendants of, in the case of "K" Line, any of the Guaranteed Damages Sum and, in the case of WWL/EUKOR, any of the Immediate Damages Sum and that any residual sums after distribution would be distributed by way of cy-près to a charity approved by the Tribunal. Also, by signed undertaking filed on 6 December 2024, the stakeholders to these proceedings, the lawyers, funders and insurers, undertook not to seek any proportion of their entitlement to payment of costs, fees and disbursements from the Guaranteed Damages Sum or the Immediate Damages Sum. Moreover, Clauses 4.11 and 4.10 of the WWL/EUKOR and "K" Line settlement agreements respectively clarify that the sum for costs, fees and disbursement is available for any shortfall in the distribution costs amount, and Clauses 4.17 and 4.15 of the WWL/EUKOR and "K" Line settlement agreements respectively clarify that any unclaimed costs, fees and disbursements and or distribution costs sum be available for distribution to the class, including by way of cy-près to a charity approved by the Tribunal. Clause

8.1 of the "K" Line settlement agreement regarding non-cooperation was stricken from that agreement. Revised draft CSAOs were filed by the parties on 6 December following the *ex tempore* Ruling, with both CSAO settlements being approved in final form on 6 December 2024.

F. ANALYSIS OF THE SETTLEMENT AGREEMENTS

35. Before dealing with the outlined issues individually, it is appropriate for this Settlement Tribunal to set out the key considerations and findings on the basis of the evidence and submissions before it.

36. The total settlement sums in these Collective Proceedings may be broken down as follows:

37. From CSAV, with 1.7% estimated market share: (a) Damages Sum of £1.12 million; (b) costs of the CSAO application, £100,000 and (c) costs, fees and disbursements of £280,000. The costs under (b) have already been expended and most of (c) has been expended with the specific approval of the Tribunal to cover the costs of the CSAO application and the Related Costs Application.

38. From "K" Line, with 17.3% estimated market value: (a) Guaranteed Damages Sum of £5.25 million to go to the Class with any residual balance after take-up to be paid to charity via a cy-près mechanism as approved by the Tribunal; (b) Additional Damages Sum of £1,750,000 to meet take-up over the Guaranteed Damages Sum with any residual of the Additional Damages Sum being used to meet costs, fees and disbursements of the CR not already covered by (c) or where not so used then reverting to "K" Line; (c) costs, fees and disbursements of £5,250,000, possibly less any related costs of the CSAO application, and (d) distribution costs contribution of up to £500,000.

39. From WWL/EUKOR, with 33.3% estimated market value: (a) Immediate Damages Sum of £8.75 million to go the Class, with any residual balance after take-up to be paid to charity via a cy-près mechanism as approved by the Tribunal; (b) Deferred Damages Sum of £6.5 million to go to meet the shortfall for valid Class Members' claims over and above the Immediate Damages Sum,

so that if there is no such excess then this sum is not to be paid by WWL/EUKOR; (c) costs, fees and disbursements of £8.75 million payable under the settlement agreement to the CR; and (d) a distribution costs contribution of £500,000.

40. Whatever sum, if any, is paid by the Non-Settling Defendants either by way of settlement or judgment or order of the Tribunal will equate to the residual 47.7% liability as estimated per market share.

41. In summary, under these settlements, the maximum sum available to Class Members, not accounting for an unknown sum from the Non-Settling Defendants, is £1.12 million, CSAV; £7 million, "K" Line; and £15.25 million, WWL/EUKOR, a total of £23.37 million, less any excess distribution costs not met from other sources. The minimum sum either being paid to Class Members or charity, less any excess distribution costs not met from other sources is £5.25 million from K Line and £8.75 million from WWL/EUKOR, giving a total of £14 million. This is subject to a caveat that the stakeholders do not seek to recover costs, fees and disbursements out of the damages sums if not met from other sources. The stakeholders subsequently provided an undertaking to the Tribunal that at least in respect of the Immediate Damages sum and the Guaranteed Damages Sum, they will make no claim for payments to be made to them in respect of their costs, fees and disbursements. As indicated at the hearing, the settlement proposal would not have been approved by the Settlement Tribunal without such ring-fencing.

42. Whilst under the settlements a total of £1 million is to be made available from K Line and WWL/EUKOR in respect of distribution costs, this is most probably going to be no more than half of the actual distribution costs. It was a matter of concern for the Tribunal at the outset that there was no identified source to meet any shortfall. This matter was also addressed by the parties in the course of the hearing, and there is now a provision that any distribution costs shortfall shall be met from the Deferred Damages Sum and the Additional Damages Sum, but not the Guaranteed Damages sum or the Immediate Damages sum.

43. Under the present settlements, the subject matter of these applications, the following sums are to be paid to the CR for distribution, prior even to a Distribution Plan for Class Members being prepared, amounting to a minimum of £14 million. That is £5.25 million from "K" Line and £8.75 million from WWL/EUKOR with the possibility of an additional £1.75 million from "K" Line, depending on the quantum value of Class Member claims. This was in accordance with the original CSAO applications of the Settling Parties and was also addressed by the parties in the course of the hearing whereby the parties clarified, at the suggestion of the Tribunal, that no payment would be made at this stage to stakeholders and, if that is going to happen prospectively, a separate application to the Tribunal would need to be made.

44. The costs to date are £8.07 million and that has already been paid and funded by Woodsford Group Limited as funders; and the total contractual entitlements said to be owing to all stakeholders is in excess of £45 million. Within that, the figure for insurers is £6.16 million, and for funders it is £34.3 million.

45. The CR will have the continuing costs of the proceedings against the Non-Settling Defendants. If it settles with them, then no doubt any settlement would have provisions for costs. If the matter proceeds to judgment, it may win and obtain a further costs sum; or if it loses, it will probably have an adverse costs order to meet which should be covered at least in a major part by ATE insurers.

46. In the settlement agreements and draft CSAO orders which supported the original applications, the question was left open as to whether the CR and the stakeholders would have the ability to seek to recover costs, fees and disbursements to the extent they were not met by Defendants out of the damages payable by these Defendants in favour of Class Members. As noted above, this was clarified in the course of the hearing and subsequently through signed undertakings and it is now clear that there will be no such clawback in respect of the Guaranteed Damages Sum or the Immediate Damages Sum for that purpose.

47. In considering the allocation of the sum to be paid by "K" Line and WWL/ EUKOR, the Settlement Tribunal is mindful that in the event the matter went

to trial and costs were awarded against them, the Non-Settling Defendants would be liable to contribute to legal costs, including the usual disbursements such as expert fees, but not liable for insurance costs and the CR's liability to funders.

48. The actual number of Class Members is not currently known. On the CR's case, there are approximately 25 million affected vehicles, of which around 12 million were purchased by individuals, and 13 million by business customers. Each individual may have purchased a number of vehicles; whereas for businesses, a number of Class Members may have purchased hundreds, or indeed thousands of vehicles.

49. Of those who have registered on the claim website, individual claimants have registered an average of two cars, whereas the five largest business registrants account for around 85,000 vehicles between them. It is likely that in the event that a worthwhile sum is awarded to be distributed for each individual and business, those already registered will lodge claims in due course.

50. However, for many Class Members, especially those with only one or two vehicles, the damages sum will be low and measured perhaps in terms of individual pounds or tens of pounds. This will lead to a likely low take-up for such Class Members. Even on Mr Robinson's higher estimates of £215.8 million for 25 million affected vehicles, the average amount per vehicle is only £8.63.

51. It is not possible to calculate now how much will be available to meet the claims of the Class Members as the settlement already approved in the CSAV settlement case, and the two proposed settlements which are the subject matter of the current applications represent 52.3% of the estimated total market, and the proceedings continue in respect of the remaining 47.7% of the market, that is as regards the First to Third Defendants and the fifth Defendant.

52. If the matter against the Non-Settling Defendants proceeds to judgment, the outcome could have a very significant impact in terms of available sums to meet claims and for an assessment of the figure for the actual amount of loss

for Class Members. For example, if the Tribunal finds a figure below the lower range of Mr Robinson's figure, or a figure consistent with the substantially lower figures of the Defendants' experts, the impact would be dramatic.

53. No doubt in such a scenario, the parties would reserve the right to make submissions to the Tribunal in relation to distributions out of the Additional Damages Sum ("K" Line) and the Deferred Damages Sum (WWL/EUKOR) if by allocating higher sums to individual members of the total amount of those claims would be pushed above the ceiling of the guaranteed amounts into the next level.

54. Alternatively, if the Tribunal decides that the losses across the whole class are within Mr Robinson's figures, £86.1 million to £215.8 million, and there is a good class member take-up, there could be a substantial shortfall between the amounts in damages available under the settlements plus the amount of damages awarded against the Non-Settling Defendants and the amounts claimed.

55. Despite the sums on the table under the settlement agreements before the Settlement Tribunal, it is still too early to ascertain whether these proceedings will be a success for the Class Members, and certainly not the extent of any success. In particular, it is said that the CR's liability to stakeholders already exceeds £45 million. That is already significantly more than the total sums payable under the present settlements, which amount to a maximum of £38.37 million: £1.12 million CSAV; £12.75 million "K" Line; £24.5 million WWL/EUKOR. The amounts to be actually paid to Class Members is unknown and could be low or substantial dependent on a number of variables, including the result of the claims against the Non-Settling Defendants, the level of take-up by Class Members, and other matters.

56. The parties and their experts are wide apart in terms of overcharge, pass-on and ultimately quantum. Mr Robinson, CR's expert, in his fourth report, has a range between £215.8 million and £86.1 million for the whole class, using a figure of 25 million affected vehicles. The number of affected vehicles can fall to 15 million, depending on the ongoing loss period after the end of the cartel. On

the basis of Mr Robinson's estimates with a market share of 17.3 per cent, the CR's case is that "K" Line's liability ranges between £14.9 million being the lower estimate, and £37.3 million being the upper estimate.

57. Using the upper estimate, the settlement sum comprising damages, the costs, fees and disbursements sum, and the distribution costs amounts to £12.75 million which equates to 34 per cent of "K" Line's liability as apportioned according to its market share. The percentage is significantly lower if one is looking at the £7 million damages sum, of which £5.25 million is the guaranteed damages sum, and £1.75 million is the additional damages sum, that is 18.7 per cent.

58. By comparison, for the purposes of the settlement, CSAV's market share has been estimated at 1.7 per cent; and using Mr Robinson's upper estimate, its liability would have been around £3.7 million. The settlement sum in that case of £1.5 million equates to 40.8 per cent of CSAV's liability as apportioned according to its market share. The figure is not a great deal lower if one simply looks at the damages sum of £1.12 million, and that percentage is 30.5 per cent.

59. "K" Line and its expert, Mr Adrian Majumdar of RBB Economics, have come up with a damages figure at a fraction of those advanced by the CR and Mr Robinson. The key aspects of "K" Line's case may be summarised as follows:

    (a) "K" Line considers that the 'run-off' effect of any overcharge after the end of the Cartel should be limited to when a Defendant's shipping contract agreed during the Cartel ended, and that there is no evidence to support the calculation by the CR's economic expert, Mr Robinson of BDO (UK) LLP, of the ongoing loss period;

    (b) "K" Line considers that the overcharge in respect of services provided by "K" Line was lower than the overcharge observed by Mr Robinson, as set out in Robinson 5, and believes it is appropriate to consider overcharge on a Defendant-by-Defendant basis, by considering the specific routes and customers forming part of the Defendants' respective volume of commerce;

(c) “K” Line disputes Mr Robinson’s estimate of the “umbrella” effect of the Cartel and in particular, criticises Mr Robinson for not taking account of the possibility of excess capacity in the market;

(d) “K” Line considers that Mr Robinson’s approach to calculating the level of pass-on from OEMs, through NSCs and retailers, to Class Members is fundamentally flawed and based on what it considers to be “extreme” factual assumptions, and the appropriate average level of pass-on to Class Members is 19%;

(e) “K” Line considers that large businesses in particular will have passed on any loss, at least to an extent, upon resale of fleet vehicles; and

(f) “K” Line considers there to be issues with the way in which the Class Representative’s interest claim has been calculated, and the interest rate applied.

60. Dr Majumdar's fourth report sets out various scenarios using market shares of 15 per cent and 17.3 per cent respectively and gives a range between £5 million and £12.2 million in respect of “K” Line. It is not practicable for this Settlement Tribunal on this application, without the evidence being tested at trial, to come to a conclusive view on where the actual loss figure should be. But it is unlikely to be in the top of Mr Robinson's range, nor the bottom of Dr Majumdar's. It may well be significantly higher than Dr Majumdar's upper estimate but fall below Mr Robinson's lower estimate. The reality is neither party can be sure, and nor can the Settlement Tribunal on the evidence before it on this application.

61. On the basis of Mr Robinson's estimates with a market share of 33.3 per cent that is WWL 14.8 per cent, and EUKOR 18.5 per cent, the CR's case is that WWL/EUKOR's liability ranges between £28.7 million being the lower estimate and £71.9 million being the upper estimate. Using the upper estimate, the settlement sum of £24.5 million equates to 34 per cent of WWL/EUKOR's market share. Again, the figure is significantly lower if one is looking at the £15.25 million damages sum, of which £8.75 million is the Immediate

Damages Sum, and £6.5 million is the Deferred Damages Sum, that is 21.2 per cent.

62. WWL/EUKOR and their expert, Dr De Coninck, have come up with damages figures, not only a fraction of those advanced by the CR and Mr Robinson, but also significantly lower than Dr Majumdar for "K" Line. The key aspects of WWL /EUKOR's case may be summarized as follows:

(a) WWL/EUKOR denies that Class Members who purchased or financed a vehicle from Hyundai Motor Company or Kia Motors Corporation that had been transported out of Korea via deep-sea carriage services by EUKOR suffered any losses, by virtue of EUKOR's historic status as Hyundai and Kia's affiliated car carrier division;

(b) WWL/EUKOR argues that its conduct was less serious and less extensive than that of other participants in the infringements, and therefore that their conduct would have led to a lower degree of overcharge than the conduct engaged in by some or all of the other participants in the infringement and thus the proportion of that harm attributable to WWL/EUKOR would be expected to be less than that attributable to some or all of the other Defendants;

(c) WWL/EUKOR considers that contracts that were entered into before the relevant period are outside the scope of the claim, and that Mr Robinson's calculation of the run-off period and ongoing loss period are "inappropriate and misconceived";

(d) WWL/EUKOR considers that the direct overcharge to OEMs in respect of services provided by WWL and EUKOR was lower than the overcharge observed by Mr Robinson;

(e) WWL/EUKOR contests Mr Robinson's estimate of the "umbrella" effect of the Cartel which Dr De Coninck considers is unsubstantiated and not supported by the data he puts forward;

(f) WWL/EUKOR considers that large businesses will have passed on a "substantial proportion" of the costs of vehicles in their own prices to consumers and or upon resale of fleet vehicles; and

(g) WWL/EUKOR accepts in principle the CR's claim for compound interest, and the rates claimed, but considers there to be a number of issues with the way Mr Robinson has calculated it, including in relation to the interest rate applied.

63. In WWL/EUKOR's negative position statement based on Dr De Coninck's calculations, the estimated actual loss for their share ranges between £0.81 million and £2.75 million. It is not practicable for this Settlement Tribunal on this application to come to a concluded view on where the actual loss figure should be. But the CR has a reasonably good basis for considering that, at trial, it would obtain a loss figure significantly higher than on WWL/EUKOR's case.

G. THE TRIBUNAL'S ANALYSIS OF THE ISSUES

64. The general principles from the Tribunal's prior decisions in relation to CSAO applications have been summarised above. Certain of those principles bear re-emphasising in relation to the present CSAOs, which will be alighted on below at relevant points of the Tribunal's analysis.

65. An overarching observation of the Tribunal on its third occasion scrutinising CSAOs is the need for the settling parties to provide full and frank disclosure to the Settlement Tribunal. This obligation tracks through to the supporting documentation put before the Tribunal by the parties and their experts, which must be rigorous in its assessment of both the points in favour and against the approval of a settlement. The supporting documents, notably in relation to the settlement structure and the approach to distribution (even in the absence of a worked-up Distribution Plan) should enable the Settlement Tribunal to understand with clarity the mechanics of that settlement and the likely amounts that will be apportioned to stakeholders relative to Class Members under that structure. The relative prioritisation between Class Members and stakeholders should be evident from the face of the supporting documents and, where Class

Members' interests are subordinated, that conflict of interests should be put candidly before the Tribunal. An estimate, with empirical evidence or by survey of the Class Members, of the likely take-up is critically important. A transparent settlement structure will also clarify what happens in relation to unused sums in ring-fenced pots that are not distributed to either Class Members or Stakeholders. A Settlement Tribunal is likely to consider, with approval, a mechanism to distribute to a charity or a cy-près scheme (approved by the Tribunal) any unclaimed damages that had been guaranteed to Class Members. A Settlement Tribunal will closely scrutinise the reasonableness of any reverter of funds to Settling Defendants out of sums ostensibly guaranteed to Class Members

66. It is now appropriate to turn to consider the specific issues arising in relation to these CSAO applications.

Issue 1: Is the settlement sum within a reasonable range

67. The first issue is whether the settlement sum in each case is within a reasonable range such that in broad terms we should approve it, subject to looking at the detailed provisions of the settlements. Under section 49(A)(5) of the 1998 Act and Rule 94(8), the Settlement Tribunal may make a CSAO only if it is satisfied that the terms are just and reasonable. As set out in the CSAV settlement Judgment at paragraph [17], it is not for this Settlement Tribunal to reach a detailed view on the merits of the case. This is not a mini trial. The expert evidence is highly contentious between the parties.

68. The settlement sums and the damages sums in the two applications now before the Tribunal are in percentage terms different to those in respect of the CSAV settlement. That is not a bar to the approval of the collective settlements with "K" Line and WWL/EUKOR. The sum involved in the CSAV settlement was small and settlement was at a much earlier stage in the proceedings. It was not cost effective for CSAV to fight the proceedings, given that quantum and the costs. It is now appropriate to turn to the specific factors in Rule 94(9).

(i) The amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements

69. The Settlement Tribunal, subject to the various matters dealt with at and subsequent to the hearing, is satisfied that the settlement sums are overall fair and reasonable in all the circumstances. In particular, they represent a fair compromise in the circumstances where substantial sums are being paid by "K" Line and WWL/EUKOR. There is a great deal of uncertainty as to what the outcome would be were the matter to proceed to trial.

70. In effect, the parties are sensibly buying certainty and avoiding the costs of an expensive trial. The fairness and reasonableness of the specific terms of the settlement agreement were dealt with during the hearing, and clarifications or amendments made, to the extent to which there were elements which were of concern to the Settlement Tribunal. The structure of the damages sums, whereby major portions are locked in by the Guaranteed Damages Sum, referring to the "K" Line settlement, and the Immediate Damages Sum, referring to the WWL/EUKOR settlement, provides some comfort that in the event there is no take-up or allocation to Class Members of all such sums, the unused sums will go to charity or a cy-près scheme approved by the Tribunal. However, at the hearing, on a close reading of the wording of the respective clause 4.3 of each of the original settlement agreements, it appeared that the CR would only be subject to an obligation to "intend" to distribute any unused amounts to charity. As the Tribunal noted during the hearing, intention is not enough, there needs to be certainty. That position is now a certainty following the filing, subsequent to the hearing, of a Settlement Agreement Variation Addendum by the parties to each settlement which makes clear that such unused sums will go to charity.

71. The second aspect that was opaque was whether it was open to stakeholders to make a claim to these sums to meet the costs, fees and disbursements. That has now been resolved by way of undertakings signed by the stakeholders, filed subsequently to the hearing, confirming that they will not be making such a claim. Without such undertakings there was a real risk that stakeholders (and funders in particular who at one point during the hearing were reserving their

position on their ability to claim those sums for themselves) would seek the deduction of sums for themselves out of the sums otherwise available for the Class.

(ii) The number or estimated number of persons likely to be entitled to a share of the settlement

72. The class member size is not clear at the moment. The number of vehicles concerned runs into millions and is in the range probably of 15 million to 25 million. That means the size of the Class Members or the representative persons is going to be in millions, albeit not necessarily in tens of millions.

(iii) The likelihood of judgment being obtained in the collective proceedings from amounts significantly in excess of the amount of the settlement

73. As the Tribunal has made clear earlier on in this Judgment, there is a real possibility that the CR, had they taken this matter to trial, would obtain sums in excess of the sums in these settlements. On the other hand, there is also a real possibility that the Defendants may be successful at trial in reducing the level of damages below the settlement sums. The litigation uncertainty, therefore, justifies these settlements and informs the reasonableness of these figures. The Tribunal is unable to prejudge the likely outcome at trial and the furthest it can go in expressing a view of the merits of this litigation is that they are not all entirely one way.

(iv) The likely duration and cost of the collective proceedings if they proceeded to trial

74. The trial is due to start mid-January 2025 with an estimate of ten weeks if all the parties, including the settling Defendants, proceed to trial. Additionally, there is going to be some time before judgment is handed down and, of course, there is always the possibility of appeals. These Collective Proceedings could likely be ongoing for at least another six months or a substantially longer period. Appeals may also mean that applications will be brought in relation to costs.

(v) Any opinion by an independent expert and any legal representative of the applicants

75. The Settlement Tribunal has been assisted by a number of opinions in the supporting documentation. There are also written submissions of very experienced counsel, who have made a joint application and provided a joint skeleton, which in effect invites the Tribunal to bless these settlements. A number of steps were undertaken by the CR to satisfy itself that the terms of the settlement agreements were just and reasonable. The Tribunal has the views of Mr McLaren and his panel of experts of eminent people who are advising him, and he expresses the views set out in his witness statements. Prior to agreeing the settlements, Mr McLaren consulted two members of his advisory panel before executing the Settlement Agreement, Sir Richard Aikens and Kate Wellington.

76. The CR also had the benefit of the advice of his solicitor, Ms Hollway, who, *inter alia*, explained the operation of the settlement agreements. The witness statements from the various solicitors for the parties all sing with a similar voice, noting that the solicitors for the CR are quite careful about what they say about the upper-bound figure for the likely outcome at trial; similarly, the solicitors for the Defendants are quite careful what they say about their lower-bound figures. There is certainly room for professional disagreement as to what the likely outcome is. However, all Settling Parties agree that there is a benefit in having certainty now rather than shaking the dice and proceeding to trial. These opinions certainly do carry some weight, but they are not conclusive because the Tribunal has the supervisory role. It is the Tribunal's responsibility to weigh up all these various considerations and to reach a conclusion.

77. In respect of expert opinion, the Tribunal has looked at all the expert reports in the bundles from the various experts, including the position statements, both the positive and the negative position statements. That gives the Tribunal a good overall view of the various 'moving parts' any of which could make a big difference to the ultimate outcome in this case. It goes without saying that when in cases like this an expert comes up with some sort of precise figure, that figure is likely not to be exact. It is an estimate, estimates vary, and two reasonable

people can come to different views on that. This has been taken into account in our evaluation.

78. The Settlement Tribunal also has before it the opinions of Mr Jon Lawrence on the merits of both settlements. He is an expert well known to the Tribunal and also provided the expert opinion in relation to the settlement with CSAV. His reports are helpful and we accept his reasonable conclusions on the complexities of certain issues and uncertainties in relation to the assessment of merits prior to trial. Having considered each on a standalone basis, in relation to the original WWL/EUKOR and "K" Line proposed settlements, Mr Lawrence noted that the structure of the settlements is such that it will not result in all the compensation being paid to lawyers and funders and that a proportion of damages is being paid that will at least equal, if not exceed, the amounts for payment of costs, fees and disbursements, and, moreover, that there is no reverter of ring-fenced unclaimed damages to the Settling Defendants. Mr Lawrence considered this structure, therefore, to be a fair compromise. Mr Lawrence notes there is no mechanism for the Settling Defendants to top-up any shortfall in distributions costs and that this top-up will have to be met by the Class Members. Mr Lawrence did not have the benefit of any survey in relation to the likely take-up rate from the Class Members, given the urgency of these CSAO applications, but did not consider this lack of information to detract materially from his conclusion that the proposed settlements were meritorious.

79. Mr Lawrence did not assess whether the CR should have negotiated a settlement whereby the interests of the stakeholders in relation to costs, fees and disbursements were subordinated to those of the Class Members. Mr. Lawrence expressed reservations as to whether the separate treatment of the costs, fees and disbursements sum will operate to the detriment of the Class Members. The costs, fees and disbursement sums could reduce the amount available for distribution to the Class Members, if the latter is not ring-fenced for the Class and the amounts actually available are potentially insufficient to meet valid claims. These costs are furthermore requested under the original CSAO applications for payment immediately, prior to the end of the proceedings, and before distribution to the Class Members. The Tribunal

accepts that it is not for Mr Lawrence to propose any amendments to the settlement agreements, but rather for the Tribunal in exercise of its supervisory function.

(vi) The views of any represented person

80. No represented person has applied to make submissions to the Tribunal, and so that is not applicable in this case.

(vii) The provision of any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable

81. It is noteworthy that, in relation to the unclaimed balance of damages sums guaranteed to Class Members, the parties have taken on board the comments made in the previous CSAO Judgments of the Tribunal in the CSAV ([2023] CAT 75) and SSWT ([2024] CAT 32). The settlement agreements provide that unclaimed portions of the primary layers of the damages sums, either the Guaranteed Damages Sum or Immediate Damages Sum, will not revert to any Settling Defendant and will go to charity. That is a very positive feature and something that is to be encouraged by the Tribunal.

82. The other elements, which are the damages sums over and above those guaranteed amounts, we have looked at carefully and we are satisfied that they work well and they are fair and reasonable, in view of the amendments agreed during the course of the hearing.

Issue 2: What is the split between damages and costs and is the settlement Tribunal satisfied that in each case, there has been a proper apportionment between the two?

83. As regards the split, the Settlement Tribunal notes that a large proportion of the settlement sums are allocated to costs, fees and disbursements. On one view, it equates to roughly over half of each of the settlement sums. The Tribunal appreciates professionals need to be paid and funders have to have a reasonable opportunity to make a reasonable return on its investment across their set of cases, otherwise funders go out of business, and they will not be available to fund these types of cases. The split is fair and reasonable so long as it is open

to the Tribunal to allocate any sums not approved to be paid out in costs, fees and disbursements to go to the Class Members or to charity. This matter was agreed between the parties and the stakeholders during the course of the hearing and is now reflected by amendment to the settlement agreements thereafter.

Issue 3: Barring order

84. The question of barring orders was dealt with in the CSAV Judgment. The current terms proposed in respect of the settlements before the Tribunal on these applications reflect the wording approved by the Tribunal in that Judgment. It is a sensible provision and is workable. An issue was raised as regards the mechanism to be adopted to determine the correct apportionment of liability among Defendants, in the event that the trial of the Collective Proceedings results in a finding of damages for the Class Members. The Non-Settling Defendants and the CR have agreed in correspondence subsequent to the hearing to adjourn this issue to consequentials whereby further submissions and additional evidence regarding the relative apportionment of liability can be adduced. As such, there is no further issue in relation to the barring order.

Issue 4: Should there be a distribution now of the damages sum, or should that be delayed to a later stage?

85. The trial against the Non-Settling defendants is due to start in January 2025. There is no detailed Distribution Plan before the Tribunal. It is sensible to defer the Distribution Plan until the outcome of the Collective Proceedings is known. The Tribunal is content that, on the facts of the present case, it can approve the CSAOs in the absence of a detailed Distribution Plan, noting the pending trial in the Collective Proceedings. When formulating a Distribution Plan, we invite the parties to bear in mind the observations the Tribunal has already made in the *SSWT* Settlement Decision in the Gutmann Trains Collective Proceedings that Distribution Plans should be researched, and proper evidence be given. It is not satisfactory to rely on data on general outcomes or percentages gleaned from American experience or Canadian experience. An estimate of the likely take-up by Class Members on the facts of the particular case should be put before the Tribunal; it will vary from case to case and will require empirical evidence.

86. We appreciate that this will lead to additional costs in formulating Distribution Plans, but it is imperative to support the highest possible take-up by Class Members. It would be unsatisfactory if, after considerable expense and effort, only a small proportion of Class Members makes a claim, or the amount of claims is tiny, which would be a bad outcome for the collective actions regime in general. Although we acknowledge that, in percentage terms, the take-up in most cases is not going to be particularly high, it is in the public interest to encourage substantial numbers of Class Members to take up their entitlements. However, even where there is a small take up, substantial payments to charity from unclaimed sums can assist in providing a positive outcome.

Issue 5: Should the "K" Line settlement agreements include a non-cooperation clause?

87. Clause 8 of the "K" Line settlement provides as follows:

> "8.1 Unless ordered to by the Tribunal, "K" Line agrees not to facilitate any introductions or otherwise cooperate in any way with any Non-Settling Defendant with respect to "K" Line's industry witnesses and experts *[…]* Nothing in this Agreement is intended to prevent any of "K" Line's industry witnesses or experts from communicating with any Non-Settling Defendant (or the Class Representative) if that witness or expert chooses."

88. The rationale for this is explained by the lawyer with carriage of the proceedings, Ms Hollway, as follows:

> "Moreover, "K" Line is the only Defendant to have instructed industry experts […]
>
> Although much of the "K" Line Industry Evidence is consistent with the industry expert and factual evidence relied upon by the Class Representative, there are important points of difference. In some instances, there are relatively straightforward explanations for the differences of opinion; in others the Class Representative considers there is strong evidence which supports the Class Representative's position over that of "K" Line (whether documentary evidence or corroborative evidence from other factual or expert witnesses)."

89. There is objection taken by the Non-Settling Defendants to this provision because they naturally want to have free access to this industry evidence, both in terms of expert evidence and factual evidence. There is no property in a

witness,[2] and of course this provision does not prevent a Non-Settling Defendant from seeking evidence from such persons, but it is a discouragement, and it does go rather close to the line. It is contrary to the public interest, and adverse to the proper functioning of the Tribunal, for two parties to contract that the expert for one of the parties will not act for another party, even where the expert has already provided an opinion to that party. Such a contractual provision could impact that party being able to put its case properly and the Tribunal should not endorse a contractual provision that impacts the ability of a party to obtain information and evidence for proceedings, especially where such proceedings are pending before the same Tribunal. The concept of no property in a witness is in practice qualified, particularly in relation to experts as one expert advising a party is likely to be in receipt of privileged information relating to that party.[3]

90. The Tribunal at the hearing expressed its view that whilst such a provision is rational in terms of the interests of the CR, it is not a provision that the Tribunal itself should endorse, noting that there are ongoing related proceedings before this Tribunal. It may be, in cases with multiple defendants, that the defendants agree that one defendant is going to cover one aspect with their expert and another defendant is going to cover another part of the evidence with their expert and both parties mutually rely on the expert evidence of the other. And so, a non-cooperation provision such as in the present circumstances could result in the legs being cut from the Non-Settling Defendants' feet when they find that the party with the relevant expert evidence has now settled and agreed to not cooperate. The Tribunal was pleased that the parties have agreed to strike this non-cooperation clause from the "K" Line settlement agreement, as updated by the Settlement Agreement Variation Addendum to that settlement agreement.

[2] Phipson on Evidence, 20th Edition at [45-35]; *Connolly v Dale* [1996] QB 120 AT 125e.
[3] Phipson on Evidence, 20th Edition at [33-81], citing *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG* [2013] EWHC 581.

Issue 6: What is the impact of the lack of a Distribution Plan?

91. The impact of a lack of a Distribution Plan means that the Settlement Tribunal does not have an estimate of the amount of take-up and the amount which is likely to be paid out in settlement of the claims, a point also noted by Mr Lawrence as an impediment to opining definitively on the merits of the settlements. There is a provision of £1 million, whereby each of "K" Line and WWL/EUKOR will contribute £500,000 towards the costs of the distribution. That sum is probably no more than 50 per cent of the likely cost of a properly formulated Distribution Plan and process. During the hearing, the parties confirmed that as regards any shortfall in relation to costs of the distribution process, an application may be made to the Tribunal for the shortfall to be paid from the Deferred Damages or Additional Damages sum. That position is now reflected in the Settlement Agreement Addendum Variations filed by the parties subsequent to the hearing and which amends clause 4.11 to the WWL/EUKOR settlement and 4.10 to the "K" Line settlement. The Tribunal is accordingly satisfied that there will be funds for distribution costs available from another source.

92. Although the lack of a Distribution Plan at the collective settlement approval stage is not an absolute bar to approval in certain circumstances, there can be no distribution of the damages sum until a Distribution Plan has been reviewed and approved by the Tribunal. The CR, in his witnesses statements, outlined the preparatory steps to maximize distribution and expects to explore undertaking the following actions: (i) notifying those registered on the CPO website of the process for obtaining a share of damages, (ii) publicising the outcome of the CPO settlement, (iii) adopting targeted approaches in respect of those Class Members who are not individual consumers in respect of the public and private sectors in which they operate and (iv) exploring mechanisms to allay concerns consumers may have in providing their bank account details to enable payment of damages.

93. The CR should begin the process of preparing a Distribution Plan by undertaking the necessary research, including seeking the views of Class Members through surveys or other mechanisms and engaging with them by

encouraging them to register on the CPO website. It is not only important that the Distribution Plan properly and comprehensively publicises the availability of damages to be claimed but that the Distribution Plan is also geared towards enabling Class Members to exercise that ability to make such claims. Any preparatory steps to formulate a Distribution Plan should be undertaken with the objective to ensuring as high take-up as practicable. The Tribunal appreciates that this may entail costs and, in the event that the Settling Defendants do not cover these ongoing costs (including by releasing that element from the distribution costs early for that purpose), the CR may apply to the Tribunal for such related distribution costs to be paid out of the costs, fees and disbursements pot.

Issue 7: Suitability of provisions in relation to costs

94. The Settlement Tribunal enquired as to (i) whether the provisions in relation to costs are suitable, including whether sums allocated to costs, fees and disbursements for stakeholders in the settlement agreements can in effect be locked in as only being used for that purpose and ring-fenced separately from the damages for the Class Members, and (ii) whether payment out of such costs should be permitted now before distribution to Class Members and, if so, the terms of such payment.

95. The Settlement Tribunal noted the lack of certainty in relation to the position where the amount which properly should be authorised to be paid in respect of costs, fees and disbursements is less than the sums which have been allocated to this category. During the hearing, the parties confirmed that unclaimed sums which are allocated under these settlement agreements for costs, fees and disbursements which are not authorised for payment by the Tribunal will be distributed as appropriate by the Tribunal, including by way of payments to Class Members or by way of cy-près mechanism to a charity. That position is now reflected in the Settlement Agreement Addendum Variations filed by the parties subsequent to the hearing which inserts new clause 4.17 to the WWL/EUKOR settlement and new clause 4.15 to the "K" Line settlement.

96. The Interested Parties, comprising the funders and insurers, were separately represented at the settlement hearing by Mr Robert Marven KC, which

representation and participation was critical to the settlement approval process. Prospectively, noting the constructive intervention of funders and insurers in these settlement proceedings, it would be desirable for these Interested Parties to attend and provide input where there are stakeholder issues in relation to collective settlement approval applications.

97. In relation to the application that stakeholders be paid out a portion of their costs, fees and disbursements now before distribution to the class from the damages sum, that is a concern that the Tribunal also raised at the settlement hearing. The Interested Parties, the funder and insurers, pointed to the fact that there is no presumption against approval of payment to stakeholders out of undistributed damages pursuant to a term of the settlement and that there ought to be payment to the stakeholders supporting the litigation at the point of recovery. The Interested Parties drew support for their position from the Australian, Canadian and United States class action regimes (albeit on different legal bases in those jurisdictions) which recognises that there was no bar to payment of costs prior to distribution where these costs are fixed contractually by the CR who is under a duty to act in the best interests of the class.

98. This Settlement Tribunal is not prepared to direct payment to the stakeholders at this stage, largely for the reasons given in the previous Judgment of the Tribunal in relation to the application for payment to stakeholders from undistributed damages in the related CSAV settlement proceedings ([2024] CAT 47). That Judgment recognised that the Tribunal does have discretion to direct stakeholder payment prior to distribution of the damages and that there was a benefit in allowing stakeholders to recoup part of their outlay, replenish provisions and reduce their risk exposure and duration in respect of the ongoing proceedings against non-settling defendants. In the particularities of the structures of these settlements, as noted above, the amount for costs, fees and disbursements are segregated from the damages sum such that it is not a question of payment from undistributed damages, as in the previous Judgments, in these circumstances. Nevertheless, the Tribunal finds this application for payment to stakeholders to be premature, before the Class Members have received distribution from their damages, and is reluctant to authorise payment

in circumstances where the outcome of the non-settling proceedings is as yet unknown.

99. The Tribunal is conscious that there could well be a significant delay until that outcome is known and that there should be liberty for stakeholders to apply for payment before the end of proceedings, which may be appropriate to authorise for specific sums and purposes in suitable circumstances. Bearing in mind the previous Judgment, the Settlement Tribunal is content to consider the paying out of sums for specific purposes on application and, in particular, is content for an application to be put before the Tribunal in respect of the reasonable costs incurred by the CR making these applications and the attendance of the Interested Parties.

100. When it comes to the distribution phase and the consideration that needs to be given by the Tribunal of the claims for costs, fees and disbursements in favour of stakeholders, the Tribunal would want a great deal more information as to what sums are being claimed by each stakeholder and how they have been calculated. In relation to funders the Tribunal would want to be informed of how its claims for payments from the CR under the funding arrangements have been incurred and calculated. It may be necessary to determine what is a reasonable rate of return for funders on the facts of this particular case and for that the Tribunal may need details of its funding model and rates of return. These matters will be for determination at a later stage but stakeholders should expect that these aspects will require careful consideration and scrutiny by the Tribunal in the light of the overall success of the proceedings.

H. DISPOSITION

101. For the foregoing reasons, we have unanimously approved the CSAO applications and grant liberty to apply in relation to the related costs of those applications. The CR and interested parties are invited to provide the Tribunal with a costs application, including a costs schedule in the form used for summary assessment of costs with a separate schedule for the costs of the interested parties for their attendance at the hearing including the preparation of their written submissions, which application is to be dealt with on the papers.

102. Finally, the Tribunal is grateful to the parties for their very constructive and flexible approach at the hearing to resolve outstanding issues and concerns to the satisfaction of the Settlement Tribunal.

103. This Ruling is unanimous.

Hodge Malek KC
Chair

Eamonn Doran

William Bishop

Charles Dhanowa C.B.E., K.C. (*Hon*)
Registrar

Date: 15 January 2025