Neutral citation [2023] CAT 27

IN THE COMPETITION APPEAL TRIBUNAL

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

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

19 April 2023

Before:

JUSTIN TURNER KC
(Chair)
PROFESSOR ANTHONY NEUBERGER
SIR IAIN McMILLAN CBE FRSE DL

Sitting as a Tribunal in England and Wales

BETWEEN:

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

Claimants

- v -

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

Defendants

Heard at Salisbury Square House on 28-29 March 2023

RULING (STRIKE OUT)

APPEARANCES

Colin West KC and Séan Butler (instructed by Hausfeld and Co. LLP) appeared on behalf of the Claimants.

Robert O'Donoghue KC and Hugo Leith (instructed by White & Case LLP) appeared on behalf of the First to Fifth Defendants.

Sarah Ford KC and David Bailey (instructed by Macfarlanes LLP) appeared on behalf of the Sixth to Tenth Defendants.

Daniel Piccinin KC (Instructed by Steptoe & Johnson UK LLP) appeared on behalf of the Eleventh Defendant.

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A. INTRODUCTION

1. At the hearing of the case management conference on 28 and 29 March 2023 ("the Second CMC"), we refused an application by the Eleventh Defendant to strike out the claim made against it and for summary judgment on its defence. These are the reasons for that refusal.

2. This is a claim for damages against the Defendants for concerted practices to prevent, restrict or distort competition in the supply of occupant safety system products ("OSS products") to the Claimants. The claim arises following two decisions of the European Commission ("the Commission"): the first being a decision of 22 November 2017 (AT.39881 – *Occupant Safety Systems supplied to Japanese Car Manufacturers*) hereafter referred to as "OSS1" and a decision of 5 March 2019 (AT.40481 – *Occupant Safety Systems (II) supplied to the Volkswagen Group and the BMW Group*) hereafter referred to as "OSS2".

3. The Claimants are manufacturers of motor cars and are now all part of the Stellantis Group. The First to the Fifth Defendants are members of the Autoliv Group of which the Second Defendant is the ultimate parent company. For the purpose of this Ruling it is not necessary to distinguish between them and we shall refer to the First to Fifth Defendants collectively as "Autoliv". The Sixth to Tenth Defendants are members of the ZF/TRW Group and we shall refer to them collectively as "ZF" or "TRW". The Eleventh Defendant is incorporated in Japan and supplies *inter alia* seat belts to motor car manufactures including the Claimants (referred to hereafter as "Tokai Rika"). Other than the alleged cartel activities it is not said that Tokai Rika has any relationship with Autoliv or ZF.

4. OSS1 and OSS2 establish the existence of the following cartels:

Supplies	Participating undertakings	Period of participation
Sale of seatbelts in the EEA to Toyota	Tokai Rika	6/7/2004 – 11/2/2010
	Takata	6/7/2004 – 25/3/2010
	Autoliv	18/12/2006 – 25/3/2010
	Marutaka	6/7/2004 – 15/4/2009
Sale of airbags in the EEA to Toyota	Takata	14/6/2005 – 26/7/2010
	Autoliv	18/7/2006 – 26/7/2010
	Toyoda Gosei	14/6/2005 – 15/7/2009
Sale of seatbelts in the EEA to Suzuki	Takata	14/2/2008 – 18/3/2010
	Tokai Rika	14/2/2008 – 18/3/2010
Sale of seatbelts, airbags and steering wheels in the EEA to Honda	Takata	28/3/2006 – 22/5/2010
	Autoliv	28/3/2006 – 22/5/2010

Supplies	Participating undertakings	Period of participation
Sales of seatbelts, airbags and steering wheels in the EEA to Volkswagen ("VW")/Porsche	Autloiv	4/1/2011 – 30/3/2011
	Takata	4/1/2011 – 30/3/2011
	TRW	4/1/2007 – 28/3/2011
Sales of seatbelts, airbags and steering wheels in the EEA to BMW/Mini	Autoliv	28/2/2008 – 16/9/2010
	Takata	28/2/2008 – 17/2/2011
	TRW	5/6/2008 – 17/2/2011

5. The OSS1 and OSS2 decisions were reached by way of settlement between the addressees and the Commission which involved an admission of breach of Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area. In OSS1 it is stated at Recital (39):

> "Tokai Rika, Takata and Autoliv colluded on prices and the allocation of supply of seatbelts to Toyota. The discussions covered the maintenance of commercial rights, collusion on certain [requests for quotation (RFQs)], exchanges of commercially sensitive information and coordination on Toyota periodical requests for price reviews / cost reductions, and inquiries related to raw material cost increases. The contacts took place via email exchanges, face-to-face meetings or phone meetings."

6. Similar allegations were made in respect of collusion between Takata and Tokai Rika in respect sales of seatbelts to Suzuki.

7. On this application Tokai Rika submits that, having received all of the contemporaneous documents from the Commission, the Claimants have no reasonable grounds for making the claim that Tokai Rika colluded on any of the commerce at issue and that nothing pleaded, and none of the evidence put forward, justifies the allegations going to trial. It relies upon the absence of a

reference to the Claimants in the Commission decision to draw an inference that there was no collusion with respect to supplies to the Claimants. It further contends the action should be struck out now as there is no reason to believe further disclosure will be of assistance to the Claimants.

8. Tokai Rika further submits that there is no adequate pleading of a causal mechanism or any econometric analysis which could sustain a case at trial that collusion on supplies to other original equipment manufacturers ("OEMs") caused the Claimants to suffer loss.

B. THE LEGAL PRINCIPLES

9. The correct approach to an application to strike out a claim, or summary judgment on a claim, is set out at paragraph 15 of the judgment of Lewison J in *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch) ("*Easyair*"):

> "15. As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:
>
> i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;
>
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]
>
> iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents*: ED & F Man Liquid Products v Patel* at [10]
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> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application,

> where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;
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> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

10. As pointed out by the Lewison J at [15(v)] and [15(vi)] regard should be had not only to the evidence before the Tribunal today but evidence which can reasonably be expected to be available at trial and that a Court should hesitate to strike out a claim where "reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available".

11. Mr West KC reminded the Tribunal that in a claim relating to a secret cartel there is an information imbalance and that it is challenging for a claimant to prove even a meritorious case: wrongdoing may be sparsely recorded in the documentary record and concern facts known only to the Defendants (see *Nokia Corporation v AU Optronics Corporation & Others* [2012] EWHC 731 (Ch) at [62]-[67]).

12. Mr Piccinin KC for Tokai Rika relied on statements made by the Tribunal in *Evans v Barclays Bank plc* [2022] CAT 16 ("*Evans*"). This was a follow-on claim for damages arising from infringement decisions of the Commission. The claims were not straightforward, it being contended there was market-wide harm due to the unlawful widening of bid-ask spreads applied to FX spot transactions. After citing *Easyair* the Tribunal stated:

> "209. We have no hesitation in saying that, in those causes of action where actionable damage is a necessary element (as here), a failure properly to assert a causal link between breach and damage will result in a claim being defective and – if that defect is not cured – liable to be struck out. That is as true of Applications for CPOs as it is in other cases.
>
> 210. It is not enough for a claimant to commence proceedings unable properly to make the necessary factual averments sufficient to constitute a cause of action. In particular, a claimant may not commence proceedings in the hope that material will turn up later to enable him or her later to make the necessary factual averments in the pleadings."

13. This was in the context of the particular challenge of having to show causation and market-wide harm in that case. But the Tribunal also emphasised that there are cases where there are information imbalances and that the Courts are astute to ensure that claims are not stifled because of such imbalances. See earlier in the *Evans* at [200]:

> "Although the Evans PCR referred to such informational imbalances in the Evans Theory of Harm Submissions, it was not clear to us how far the Evans PCR was contending that informational imbalances were material in this case or to these Applications. True it is that both PCRs made clear that they reserved the right, and indeed expected, to expand and improve their cases if their claims proceeded to disclosure. Both expected to obtain significant information from the Respondents and from third parties. But that sort of expansion and articulation is commonplace in civil litigation: almost every claim of any complexity is altered to reflect what emerges on disclosure. That fact does not justify the conclusion that there is an informational imbalance that may stifle a claim; nor does it justify advancing a case that is not pleaded with sufficient specificity."

14. Mr Piccinin also drew our attention to the judgment of Flaux J in *Bord Na Móna Horticulture Limited and others v British Polythene Industries plc and others* [2012] EWHC 3346 (Comm). This was at least in part a follow-on claim pursuant to a decision of the Commission where the relevant territory was the German, French, Spanish and Benelux markets for the purpose of its decision. The claim was put a number of ways claiming both cartelist activity in the UK and Ireland (a stand-alone claim) and economic consequences in the UK and Ireland of the acts in the other markets in respect of which the Commission had made findings. Flaux J stated at [30]:

> "… where the claim involves damages arising out of infringements of competition law by cartels which by their nature are clandestine and the court is considering an application by an alleged participant in the cartel to strike out a claim prior to disclosure and evidence, the court will tend to allow a more generous ambit for pleadings, where what is being alleged is necessarily a

> matter which is largely within the exclusive knowledge of defendants, than it might in other cases. I agree that a more generous approach to pleadings is appropriate and has been recognised in a number of such cases. …"

15. It is necessary for this Tribunal to scrutinise the pleaded case and evidence to identify whether the Claimants have a realistic, as opposed to fanciful, prospect of succeeding against Tokai Rika while at the same time recognising the information imbalance and the fact that full disclosure has not yet been provided to the Claimants.

C. THE PLEADINGS

16. At the first CMC on 7 June 2022 the Chair ordered preliminary disclosure of the Commission file. This led to the service of the Re-Amended Particulars of Claim ("RAPC"). At this Second CMC there were numerous applications for disclosure, some of which were agreed and some of which were contested. This strike out application was the first matter which was heard and it proceeded on the assumption that the disclosure requested would be ordered.

17. The following claims relevant to Tokai Rika are made in the RAPC:

> "39. Over a period which extended from at least as early as 6 July 2004 until at least as late as 30 March 2011 (hereinafter "the Cartel Period"), the Undertakings to which the Addressees of the Decisions belonged, or any two or more of them in combination, entered into (and thereafter implemented) one or more agreements or concerted practices to prevent, restrict or distort competition in the supply of OSS products to automotive OEMs including PSA, FCA and Vauxhall/Opel (or any of them) as well as Toyota, Honda, Suzuki, Subaru, BMW/Mini and VW/Porsche.
>
> 40. Prior to full disclosure herein the Claimants are unable to provide full particulars of such agreement(s) or concerted practice(s), and thus reserve the right to provide further particulars in due course. However, the Claimants allege at this stage that they involved at least the following anti-competitive elements:
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> (i) The exchange of confidential information between competing undertakings, including information on costs and prices;
>
> (ii) The allocation of customers and supplies; and
>
> (iii) Co-ordination on pricing."

18. There are then identified by way of particulars various communications which have been obtained as a result of disclosure of the Commission file, none of which refer to Tokai Rika. Paragraph 44 of the RAPC then states:

> "In the further alternative, even if there was no cartel concerning supplies of OSS to PSA, FCA or Vauxhall/Opel, the effect of the cartels established in the Commission Decisions (and the findings of the other regulators pleaded above, so far as relevant) would have been to increase the prices charged by the cartelists of supplies to OEMs other than those which were the targets of those particular cartels, by tending to lessen the degree of competition in the market in general and thereby to increase prices in the market. Autoliv, ZF and Tokai Rika are liable for the losses resulting to the Claimants by reason of such increased prices even in the absence of any cartel concerning supplies to PSA (or Vauxhall/Opel) or FCA specifically."

19. Mr Piccinin points out that this paragraph is inadequate in that this alternative claim to damage is just assertion. He submits that if a claim such as this to "umbrella damages" is to be made it must properly be particularised if it is to be sustainable. (There was some dispute as to whether this paragraph was properly described as being a claim to "umbrella damages" but we shall label them as such for convenience without resolving that debate.)

20. There then follows an allegation relating to the Toyota Peugeot Citroën Automobile Czech s.r.o. ("TPCA") joint venture:

> "47. [TPCA] was a joint venture between Toyota and PSA which existed between 2002 and 2020. TPCA manufactured certain models of vehicles including the Citroën C1, Peugeot 107, Peugeot 108 and Toyota Aygo, primarily at a manufacturing plant at Kolin in the Czech Republic. The models manufactured by the joint venture were referred to internally (including by the Defendants, as set out below at paragraphs 49D-49N) as the 'B0 Project'. The project was undertaken in two phases. TPCA began producing the Toyota Aygo and the Peugeot 107 and Citroën C1 from 2005 ("B0 Project Phase 1"). In 2014, the next generation models were launched, with the Citroën C1 and Toyota Aygo retaining their existing model names, and the new Peugeot model being named the Peugeot 108 ("B0 Project Phase 2").
>
> …
>
> 49. As noted above, the Commission has already held that Autoliv and Tokai Rika were involved in a cartel concerning the supply of OSS products to Toyota in Europe. It is not possible to tell from the public version of the OSS1 Decision whether the sales by the addressees to Toyota falling within the scope of that Decision included sales to TPCA. In any event, there is nothing in the Commission Decisions to suggest that such sales were excluded from the scope of the cartel. If the OSS1 Decision does cover such sales, these proceedings would be a follow-on claim to that extent."

21. Again there then follows a number of paragraphs by way of particulars including the following:

> "49E. First, an email dated 27 November 2008 from an employee of Tokai Rika (Mr Ken Obara) addressed to the "*overseas sales office*" in Europe and with the subject line "*Next term B0 seatbelt*". In that email, Mr Obara reports that:
>
> (i) the RFQ for the B0 Project is being discussed with competitors, and that the response is due in January 2009;
>
> (ii) that the supply of seatbelts for the B0 Project is a "*commercial right that we* [Tokai Rika] *can never give away*";
>
> (iii) that the "*competitors*" have agreed "*allocations*" as set out in the email, including "*Next term B0: All seats TR*" (that is, that all seatbelt sales will be allocated to Tokai Rika); and
>
> (iv) that the "*person in charge*" of the PSA account at Autoliv "*has an authority of [final] decision on BO, so careful discussions will be held for several times behind the scene again.*""

22. At paragraphs 79 and 80 of the RAPC references are made to a preliminary econometric analysis identifying cartel overcharges in respect of steering wheels, airbags and seatbelts.

23. Tokai Rika focussed on the email to which reference is made in paragraph 49E which it is said, by the Claimants, evidences that Tokai Rika was engaged in unlawful anti-competitive conduct as regards the TPCA joint venture. Tokai Rika accepts that the email is evidence of a cartel in respect of supplies to TPCA but submits that it is only evidence of cartel activity in respect of B0 Project Phase 2 and not Phase 1. This distinction it says is important because it is common ground that damages in respect of Phase 2 do not form part of this claim; the Claimants having reached a settlement with Takata.

24. The email is from Ken Obara of Tokai Rika. It was sent on 27 November 2008 and is contemplating Phase 2 of the B0 Project. We agree that it is evidence of cartel activity and it is notable it contains the following statement at the outset:

> "Please leave [save] the attachment as necessary and delete this message after confirming this email".

25. "The attachment" has not yet been identified. The body of the email contains the following text:

> "[I] have attached the materials at the time of B0 in-house kick off meeting as below.
> One the day, please confirm the schedule feeling with person[/people] involved, arrange contents and decide each person in charge.
>
> ([To] Manju-san, Tadashi Nakamura-san: Please add information in the yellow hatching parts of the attached.)
>
> Also please confirm again if this time's RFQ is [for] this[1] compe[tition]. Please confirm the timing of decision of marker(s) as well.
>
> Next B0 for all seats will be the commercial right that we can never give away. Regarding BO, [we] have been discussing with competitors since at the time of Yaris compe[tition], and tentatively [or for now], [we] are intending to move as the following allocations.
>
> AL···Next term Yaris: none, CDV: AL odds-on favourite, avoid price battle, Next term B0: All seats TR
>
> TK···Next term Yaris: Fr
>
> Nevertheless, [I] heard something that the person in charge of PSA in AL has an authority of [final] decision on BO, so careful discussions will be held for several times behind the scene again.
>
> While also considering the above, as the price submission would be in next January, please understand the certain purpose of this RFQ.

26. The Claimants say that the phrase "so careful discussions will be held for several times behind the scene again" implies that discussion took place in respect of Phase 1. Tokai Rika contend that "again" is a reference to the need to repeat Phase 2 discussions with "the person in charge of PSA in AL". Both of these interpretations are credible and we cannot today resolve which is correct.

27. Mr Piccinin confirmed that Mr Obara is still employed by Tokai Rika and if this matter went to trial would be giving evidence on behalf of Tokai Rika in respect of the email of 27 November 2008.

[1] Translator's note: '本' in the original text means either 'this' or 'an actual'.

D. DISCLOSURE APPLICATIONS

28. At this Second CMC there were various disclosure applications which if ordered would require the Defendants to search documents provided to Brazilian and South African competition authorities and the US Department of Justice (the "US DOJ"). ZF provided 50,000 documents to the US DOJ, Autoliv provided 45,000 documents and Tokai Rika provided 4,700. Given the Commission decision did not address cartel activity with respect to the Claimants there may well be documents which emerge from this disclosure exercise which are relevant to these proceedings and which were not disclosed as part of the Commission file.

29. Tokai Rika has already done some electronic searching of the documents provided to the US DOJ and has given disclosure of approximately 400 documents to the Claimants. Further searching of those documents, using additional search terms, is contemplated. In addition there are broad applications for disclosure of financial documents *inter alia* relating to volume of commerce, initial contract prices, price amendments, costs of manufacture and sample RFQs.

E. ASSESSMENT

30. We refuse the application to strike out the claim against Tokai Rika in whole or in part for the following reasons.

31. There is no dispute that Tokai Rika has engaged in a cartel in respect of the supply of seatbelts to Toyota and Suzuki as found by the Commission from 6 July 2004 to 11 February 2010 and 14 February 2008 to 18 March 2010 respectively. Further there is no dispute, at least for the purposes of this application, that the email of 27 November 2008 is evidence of cartel activity in respect of the B0 Project Phase 2 between Tokai Rika and at least Autoliv and Takata. Tokai Rika has put forward no evidence to explain why its cartel activity might be expected to be limited to the findings made to date. It has chosen to adduce no positive case but merely points to what it says is the poverty of

documentary evidence produced by the Claimants, following initial disclosure from the Commission file.

32. On the face of the Commission decisions it is arguable that Tokai Rika has not always been open about its illegal activities. Recital (19) of OSS1 records that Tokai Rika applied for immunity with respect to supplies of seatbelts to Toyota on 9 February 2011. It did not at that time apply for immunity with respect to supplies of seatbelts to Suzuki. On 24 March 2011 it was Takata which applied for immunity in respect of supply of seatbelts to Suzuki (Recital (20)). As stated in Recital (142) "Tokai Rika applied for leniency relatively late in the investigation". It is also apparent from the instructions to delete the email of 27 November 2008, to which reference is made above, that at least around that date attempts were being made to hide evidence of collusion. It follows that there are no positive reasons for this Tribunal to conclude at this stage that Tokai Rika's illegal activity is limited to those acts identified by the Commission and to Phase 2 of the B0 Project.

33. We note that the Commission found six distinct cartels in respect of supplies to the OEMs that are the subject of its two decisions. The parties were unable to assist us as to why the Commission reached the conclusion that these are distinct cartels as opposed to a single cartel or single cartels for each product. It is not clear to us whether each phase of each contract is a distinct cartel to be judged in isolation although Tokai Rika's position implies that it must be. Tokai Rika submits that evidence of cartel activity in respect of B0 Project Phase 2 is nothing to do with cartel activity in relation to Phase 1. In our judgment we cannot conclude, at this stage of the proceedings, that there is such a bright line between the two phases such that evidence of collusion on Phase 2 is not suggestive of collusion on Phase 1. Moreover we see no reason why, if there was a cartel in relation to Phase 2, it would necessarily be a distinct cartel to Phase 1.

34. Taking the matters in the round we conclude that the Claimants have a realistic, as opposed to fanciful, prospect of showing that Tokai Rika was engaged in cartel activity against the Claimants as alleged in the RAPC. The particulars pleaded support a case of collusion at least in respect of supplies to TPCA and

in these circumstances it is reasonable to infer that the wrongdoing extends beyond the findings of the Commission in OSS1 and OSS2. Tokai Rika was not able to advance a positive case that the Commission had investigated collusion with respect to supplies to the Claimants or drawn any relevant conclusions one way or the other.

35. Moreover there are reasonable grounds for believing that a fuller investigation of the facts would mean that there would be more material before the Tribunal at trial to determine this matter. Although the documentary evidence which the Claimants are able to deploy at this stage is fragmentary, that is to be expected in a case of this type; *a fortiori* where there is evidence of an intention by Tokai Rika to delete emails relating to its collusion. The extent of Tokai Rika's wrongdoing may become apparent after full disclosure has been provided and a trial has taken place.

36. As to the umbrella claim at paragraph 44 of the RAPC, we see considerable force in Tokai Rika's submission that it is lacking in particularity. It is asserted in paragraph 44 that the impact of the cartels established in the Commission decisions is to increase the prices charged to the Claimants irrespective of whether the alleged cartels identified in the RAPC existed. No particulars are provided. This is an allegation which bites on the other Defendants who have not applied to strike it out. That does not mean it should not be struck out as against Tokai Rika or that it should not be struck out as against all the Defendants as a matter of active case management. We are of the view that the preferred course, however, is to provide the Claimants with an opportunity to plead its claim to umbrella damages with proper particulars after it has had an opportunity to consider the disclosure sought and ordered. In the event that it is unable to do this then the umbrella claim should not proceed to trial.

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

Charles Dhanowa OBE, KC (*Hon*)
Registrar

Date: 19 April 2023