



Neutral Citation Number: [2025] EWHC 213 (Ch)

Case No: CP-2022-000014

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPETITION LIST (ChD)

Rolls Building
Fetter Lane
London, EC4A 1NL

5 February 2025

Before :

MRS JUSTICE BACON

Between :

- (1) VAUXHALL MOTORS LTD
- (2) OPEL AUTOMOBILE GMBH
- (3) STELLANTIS ESPAÑA SL
- (4) PSA AUTOMOBILES SA
- (5) FCA ITALY SPA
- (6) FCA SRBIJA D.O.O. KRAGUJEVAC
- (7) FCA POLAND SA
- (8) MASERATI SPA
- (9) GIE PSA TRESORERIE
- (10) STELLANTIS NV
- (11) PEUGEOT CITROËN DO BRASIL AUTOMÓVEIS LTDA
- (12) FCA FIAT CHRYSLER AUTOMÓVEIS LTDA

Claimants

- and -

- (1) DENSO AUTOMOTIVE UK LTD
- (2) DENSO CORPORATION
- (3) DENSO EUROPE BV
- (4) DENSO AUTOMOTIVE DEUTSCHLAND GMBH
- (5) DENSO MANUFACTURING UK LTD
- (6) VALEO SE
- (7) VALEO KLIMASYSTEME GMBH
- (8) VALEO GMBH
- (9) VALEO SYSTEMES THERMIQUES SAS
- (10) VALEO JAPAN CO, LTD
- ~~(11) MAHLE BEHR GMBH & CO. KG~~
- ~~(12) SANDEN CORPORATION~~
- ~~(13) SANDEN INTERNATIONAL (EUROPE) GMBH~~

Defendants

Colin West KC and Nathalie Koh (instructed by **Hausfeld & Co LLP**) for the **Claimants**
Philip Moser KC, Alan Bates and Jack Williams (instructed by **Linklaters LLP**) for the **First**
to Fifth Defendants

Brian Kennelly KC and Andrew Trotter (instructed by
Cleary Gottlieb Steen & Hamilton LLP) for the **Sixth to Tenth Defendants**
Sarah Ford KC and David Bailey (instructed by **Norton Rose Fulbright LLP**) for the
Twelfth and Thirteenth Defendants

Hearing dates: 24–25 July 2024

Approved Judgment

This judgment was handed down remotely at 10 am on 5 February 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

MRS JUSTICE BACON:

Introduction

1. This is the determination of jurisdiction challenges under CPR Pt 11 pursued by all of the remaining defendants, in respect of a claim for damages said to have been suffered by the claimants as a result of cartels in which the defendants were or are said to have been involved, in breach of Article 101 TFEU and Article 53 of the EEA Agreement. The products in issue are thermal system components (**TSCs**) in cars, which either regulate the ambient temperature inside the vehicle, or cool the engine.
2. The claim is based (in various ways explained below) on European Commission Decision C(2017) 1465 final, dated 8 March 2017 (the **Commission Decision**), which found there to have been price coordination or market sharing between undertakings from six manufacturing groups, in respect of sales of air conditioning and engine cooling products to a number of car manufacturers in the EEA, in breach of EU and EEA competition law. A summary of the Commission Decision was published in the Official Journal on 30 May 2017: [2017] OJ C 169/19.
3. In addition to the Commission Decision, the claimants rely on investigations and decisions by a number of other overseas competition regulators. The most significant of these (for the purposes of the claims) is an investigation and judgment by Brazil's Administrative Council for Economic Defence (**CADE**). In addition, the claimants rely on investigations and/or decisions by regulators in the US, Japan, South Korea, Mexico, South Africa and Indonesia.
4. The claim form was initially issued on 7 March 2022, making claims against 19 defendants from the six manufacturing groups addressed by the Commission Decision. Following several extensions of time, settlements with some of the defendants, and amendments to the claim form (some but not all of which were consequential on the settlements), the proceedings were served on the defendants within the jurisdiction (the **service-in defendants**) on 19 September 2023. The defendants outside the jurisdiction (the **service-out defendants**) were served on various dates between 20 September 2023 and 18 March 2024.
5. The hearing then took place on 24–25 July 2024. By that time the remaining defendants following the various settlements fell into three groups: **DENSO** (the first to fifth defendants), **Valeo** (the sixth to tenth defendants) and **Sanden** (the twelfth and thirteenth defendants).
6. Jurisdiction was contested by those defendants on essentially three bases: (i) Valeo disputed the extension of time for service on it granted by Deputy Master Smith on 15 May 2023; (ii) various arguments were advanced regarding the applicability of the jurisdictional gateways for the service-out defendants; (iii) all of the defendants disputed jurisdiction on *forum non conveniens* grounds, arguing that the claims have minimal connection with England and that the most appropriate forum is France. Valeo therefore contended that the extension of time should be set aside, such that the claims against it should be dismissed *ab initio*, and all of the defendants contended that the order permitting service out should be set aside and/or that the proceedings should be stayed on grounds of *forum non conveniens*.

7. Following the hearing, and at the request of the court, further evidence was submitted by the claimants and Valeo on the specific issue of the extent of any settlement negotiations or discussions between those parties during the period prior to the service of the proceedings on Valeo, which was relevant to the issue of the extension of time.
8. Matters did not, however, rest there. On 15 October 2024, shortly before this judgment was going to be circulated in draft to the parties, the court was informed that the claimants had settled with Sanden (the **Sanden settlement agreement**), leaving only the claims against DENSO and Valeo. Written submissions on the consequences of that settlement for the jurisdiction issues were then filed by DENSO, Valeo and the claimants, between 15 October and 6 November 2024 (the **October/November 2024 submissions**). DENSO and Valeo contended that the Sanden settlement agreement left no remaining anchor defendant for the claims by the first three claimants, and that the removal of the Sanden defendants from the claims further supported their *forum non conveniens* challenge. The claimants contended that both the jurisdictional gateway and *forum non conveniens* arguments were unaffected by the Sanden settlement agreement.
9. By early December, this judgment was close to finalisation following the further submissions of the parties. On 9 December 2024, however, the claimants requested that the court stay its judgment to allow them to apply for permission to adduce further evidence which had been obtained from Sanden following the settlement agreement. The claimants' application was then submitted on 20 December 2024, with written response and reply submissions filed on 13 and 20 January 2025 respectively.
10. I have taken all of the further submissions into account in this judgment.

The parties

11. The claimants are all companies within the Stellantis group, which was formed by the 2021 merger of the former Peugeot group (**PSA**) and the Fiat Chrysler Automobiles group (**FCA**). The PSA group owned the Peugeot, Citroën and DS brands, and in 2017 it acquired the Opel and Vauxhall brands from General Motors. The first to third claimants (the **OV claimants**) operate the Opel and Vauxhall brands. The fourth, ninth, and tenth claimants (the **PSA claimants**) are companies formerly within the PSA group who operate the remaining PSA group brands. The fifth to eighth claimants (the **FCA claimants**) are companies formerly within the FCA group. The eleventh and twelfth claimants (the **Brazilian claimants**) were formerly within the PSA and FCA groups, respectively.
12. The claimants are all companies which claim to have purchased TSCs for incorporation in the vehicles they manufacture and sell, from the defendants as well as other suppliers of TSCs. The countries where the claimants are incorporated are as follows:
 - i) first claimant, Vauxhall Motors Ltd – UK;
 - ii) second claimant, Opel Automobile GmbH – Germany;
 - iii) third claimant, Stellantis España SL – Spain;
 - iv) fourth claimant, PSA Automobiles SA – France;

- v) fifth claimant, FCA Italy SPA – Italy;
 - vi) sixth claimant, FCA Srbija d.o.o. Kragujevac – Serbia;
 - vii) seventh claimant, FCA Poland SA – Poland;
 - viii) eighth claimant, Maserati SpA – Italy;
 - ix) ninth claimant, GIE PSA Trésorerie – France;
 - x) tenth claimant, Stellantis NV (the top holding company of the Stellantis group) – Netherlands;
 - xi) eleventh claimant, Peugeot Citroën Do Brasil Automóveis LTDA – Brazil;
 - xii) twelfth claimant, FCA Fiat Chrysler Automóveis LTDA – Brazil.
13. The defendants remaining in the claim are (as set out above) all companies in the DENSO and Valeo groups, which have at times said to be material been in business in the manufacture and sale of automotive parts including TSCs. Their countries of incorporation are as follows:
- i) first defendant, DENSO Automotive UK Ltd – UK;
 - ii) second defendant, DENSO Corporation – Japan;
 - iii) third defendant, DENSO Europe BV – Netherlands;
 - iv) fourth defendant, DENSO Automotive Deutschland GmbH – Germany;
 - v) fifth defendant, DENSO Manufacturing UK Ltd – UK;
 - vi) sixth defendant, Valeo SE – France;
 - vii) seventh defendant, Valeo Klimasysteme GmbH – Germany;
 - viii) eighth defendant, Valeo GmbH – Germany;
 - ix) ninth defendant, Valeo Systèmes Thermiques SAS – France;
 - x) tenth defendant, Valeo Japan Co Ltd – Japan.
14. The erstwhile twelfth defendant, Sanden Corporation is also incorporated in Japan. The erstwhile thirteenth defendant, Sanden International (Europe) GmbH, is incorporated in Germany, with an establishment in the UK. It is the successor entity to Sanden International Europe (Ltd) (**SIE**), which was incorporated in the UK.
15. The anchor defendants who were served within the jurisdiction, for the purposes of the jurisdictional gateways, were therefore the first and fifth defendants (from the DENSO group), as well as the thirteenth defendant (from the Sanden group). The remaining defendants are all service-out defendants; these include all of the Valeo defendants.

The Commission Decision and decisions of other regulators

16. The Commission Decision (which was a settlement decision) found four separate infringements of Article 101 TFEU and Article 53 of the EEA agreement, concerning the supply of TSCs for cars in the EEA, as follows:
 - i) infringement 1: coordination between undertakings in the DENSO, Valeo and Mahle-Behr groups, concerning supplies of heating, ventilation, and air-conditioning units (**HVACs**) to Volkswagen, Daimler and BMW, between 2005 and 2009;
 - ii) infringement 2: coordination between undertakings in the DENSO, Valeo and Sanden groups, concerning supplies of compressors to Volkswagen and PAG, between 2004 and 2009;
 - iii) infringement 3: coordination between undertakings in the Panasonic and DENSO groups, concerning supplies of e-compressors to Nissan/Renault, between May and October 2009;
 - iv) infringement 4: coordination between undertakings in the DENSO, Calsonic, Sanden and Valeo groups, concerning supplies of HVACs, radiators and fans to Suzuki, between 2007 and 2009.
17. The addressees of the Commission Decision included all of the remaining defendants to the present proceedings, save for the fifth defendant, which was not an addressee.
18. The claimants also rely on the materials from other overseas regulators to support their case that the cartel conduct went beyond that found in the Commission Decision, and that the claimants were amongst the car manufacturers targeted by the cartel. Particular reliance is placed on the investigation of CADE in Brazil, where the companies under investigation included companies within the DENSO and Valeo groups. Although those proceedings concluded with a judgment finding by a majority that the infringement had not been proven beyond a reasonable doubt (the relevant standard of proof) against DENSO, the claimants rely (among other things) on the existence of settlements and leniency agreements concluded with the other companies, including Valeo.
19. Further investigations and decisions relied on by the claimants include:
 - i) an investigation by the US Department of Justice, which resulted in the second and tenth defendants signing plea agreements admitting their participation in anticompetitive conduct related to the manufacture and sale of certain HVAC components and air conditioning systems;
 - ii) a decision of the Japanese Fair Trade Commission, finding that the second defendant had conspired in procurements of automotive radiators and electrical fans supplied to non-claimant companies;
 - iii) a decision of the South Korean Fair Trade Commission, finding that the second defendant and another company had engaged in bid-rigging in relation to the supply of compressors (again in relation to a non-claimant company);

- iv) a decision of the Mexican Federal Economic Competition Commission, which also found that the second defendant had engaged in anti-competitive conduct in relation to the supply of compressors;
 - v) an investigation by the South African Competition Commission, resulting in consent agreements being entered into with various companies who were alleged to have entered into anti-competitive agreements involving DENSO; and
 - vi) an investigation by the Indonesian Competition Commission, which resulted in companies in the DENSO and Sanden groups entering into a settlement agreement admitting anticompetitive conduct in relation to the supply of an air-conditioning system to a non-claimant company.
20. The Commission Decision was one of a number of decisions adopted by the Commission concerning anticompetitive conduct in relation to the supply of car parts. The claimants do not rely on those other decisions in relation to the substance of their claim in these proceedings. For the purposes of the jurisdiction challenges, however, the claimants rely on the fact that the first ten claimants have brought an earlier claim in this jurisdiction against different defendants, *Stellantis Auto v Autoliv*, on the basis of two decisions of the Commission concerning the supply of occupant safety system components. The *Stellantis Auto v Autoliv* proceedings were commenced prior to Exit Day under the Brexit withdrawal arrangements, were therefore subject to the jurisdictional rules under the Brussels I Regulation, and no jurisdiction challenge was brought by the defendants. The trial of that claim took place in the Competition Appeal Tribunal in October 2024, with judgment pending.

The claims

21. The Commission Decision did not find that the addressees coordinated their conduct in respect of TSC supplies to the claimants, and did not find an infringement in relation to all of the products covered by the present claim. The claim in these proceedings is therefore not based, directly, on the infringements found in the decision. Instead the claimants advance their claim on two alternative bases. First, the claim alleges that the defendants' anticompetitive conduct extended to supplies to the claimants, and to further products not covered by the Commission Decision (relying, as noted above, on investigations and decisions by other overseas regulators). Secondly, the claimants advance an "umbrella damages" claim, alleging that even if there was no such wider infringement, the infringements that were found by the Commission (in relation to supplies to other car manufacturers) led to an increase in the prices of TSCs purchased by the claimants from the defendants.
22. The original claim form alleged a cartel which covered the period from 2004 to 2009, coextensive with the period covered by the four infringements found in the Commission Decision (between them), and confined to the products covered by the Decision. The claim also pleaded an unspecified period following the cartel during which prices were said to have continued to be inflated by reason of the cartel.
23. Prior to service of the claim form, however, the claimants amended the claim form three times: on 20 June 2022, 29 June 2022 and 25 April 2023. The re-re-amended claim form alleges a cartel period spanning 1999 to 2011, again with a further period thereafter during which prices are said to have been affected by the cartel. (The particulars of claim

define this “overhang period” as lasting until “at least 2016”). The re-re-amended claim form also introduces claims in relation to products not covered by the Commission Decision, namely condensers, intercoolers and oil coolers, and adds the two Brazilian claimants, who were not listed as claimants in the original claim form.

24. The claim is advanced on the basis of the law of England and Wales, on the grounds that there is said to be no material difference between that and any other governing law. The claimants accept, however, that such a difference may arise in relation to limitation arguments, and in that respect contend that the claims are governed by German law (OV claimants), French law (PSA claimants), Italian law (FCA claimants) and Brazilian law (Brazilian claimants).
25. The claimants’ position is that under German, French and Italian law the limitation period was five years from the date of publication of the summary of the Commission Decision, such that it expired on 30 May 2022. The position under Brazilian law is not entirely clear, but the claimants’ position is that the period is five years from the “unequivocal acknowledgement of the unlawful act”, which would arguably take the period to 8 March 2022, based on the date of the Commission Decision. In so far as domestic law is or might be relevant to limitation, the period is six years from the point when the claimants could have had a reasonable belief that there had been a cartel (*Gemalto v Infineon* [2022] EWCA Civ 782, [2023] Ch 169, §53). It does not appear to be seriously disputed that that period started running no later than the date of the Commission Decision, and therefore expired no later than 8 March 2023.
26. A final point to note regarding the claims is that the OV claimants do not pursue any claims against DENSO. In addition, as a result of a settlement agreement entered into between General Motors and Valeo, the OV claimants do not pursue any claims in respect of purchases from Valeo up to 10 March 2016 (the **Valeo settlement agreement**). General Motors also entered into a settlement agreement with Sanden on 24 June 2015 (the **2015 Sanden settlement agreement**). Given the subsequent Sanden settlement agreement concluded with all of the claimants, the 2015 Sanden settlement agreement is no longer relevant to Sanden itself. The 2015 agreement does, however, remain of relevance for the application of the jurisdictional gateways to the remaining claims of the OV claimants against Valeo, for the reasons given further below.
27. On 11 July 2024 Valeo asked the claimants to provide draft amended particulars of claim reflecting the settlement between General Motors and Valeo. A draft was provided by the claimants on 19 July 2024.

Procedural background

28. The claim form was issued on 7 March 2022, at the time making claims against defendants from all six of the manufacturing groups addressed by the Commission Decision. Pursuant to CPR 7.4(2) and (5), the claim form and particulars of claim should have been served on the service-in defendants by 7 July 2022, and on the service-out defendants by 7 September 2022. Between April and June 2022, however, consent orders were agreed extending time for service on all of the defendants, save for the Panasonic defendant which settled with the claimants in May 2022. The consent orders gave the claimants until 1 September 2023 to serve the claims (and particulars of claim).

29. In April 2023 the claimants settled with the Calsonic defendants. Not having reached settlement agreements with any of the other defendants, the claimants then decided to serve the proceedings, and sought further extensions of time to do so. DENSO and Sanden agreed extensions of time to 1 January 2024; the Valeo and Mahle-Behr defendants did not.
30. The claimants therefore applied for an extension of time for service on Valeo and Mahle-Behr, in the same application in which permission for service out was sought. On 15 May 2023 Deputy Master Smith granted the claimants permission to serve out, and also granted an extension of time for service on Valeo and Mahle-Behr, to 1 January 2024. On 17 May 2023 those orders, together with the re-re-amended claim form and particulars of claim, were sent to the defendants by email for information (albeit not of course constituting formal service on the service-out defendants).
31. On 9 June 2023 the claimants' service packs for service on the service-out defendants were deposited at the Foreign Process Section of the High Court. The proceedings were served on Mahle-Behr in Germany in August 2023, but the claim against Mahle-Behr was then settled in September 2023.
32. On 12 September 2023 the proceedings were served on all three of the service-in defendants, i.e. the first and fifth defendants (in the DENSO group) and the thirteenth defendant (in the Sanden group). The proceedings were then served on the service-out defendants over the course of the next six months, via the Foreign Process Section and the authorities of the relevant countries. The Valeo defendants were served in France, Germany and Japan on various dates between 20 September 2023 and 8 December 2023. On the same date, DENSO agreed a further extension of time for service of proceedings on the third defendant (DENSO Europe BV) to 1 April 2024. The third defendant was eventually served in the Netherlands on 18 March 2024; it was the last of the service-out defendants to be served.
33. Between 26 September 2023 and 2 April 2024, the DENSO, Valeo and Sanden defendants all filed acknowledgements of service indicating an intention to contest jurisdiction. The defendants' applications contesting jurisdiction were then filed on various dates between 30 November 2023 and 2 April 2024.
34. In addition, the DENSO and Valeo defendants (but not the Sanden defendants) filed applications seeking to set aside the amendments made by the claimants to the claim form prior to service, and to strike out parts of the particulars of claim that go beyond the scope of the re-re-amended claim form (the **amendment applications**). The basis for the applications is that the claimants' amendments purport to bring new claims outside the limitation period. The amendment applications of DENSO and Valeo, if successful, would have the effect (among other things) of removing the Brazilian claimants from the claim.
35. Those applications are not before the court in this hearing, but are due to be determined at a later date if necessary, subject to one point: DENSO and Valeo say that if the court were to find against them on the issues in this hearing by finding material supplied by them during the extended period now relied upon by the claimants, or by reference to the claims by the Brazilian claimants, then the appropriate course would be to adjourn the final determination of the jurisdiction challenges to the hearing of the amendment

applications, or to make a contingent order. That situation does not arise given the terms of my judgment set out below.

Issues

36. The defendants' applications raise the following issues:

- i) Should the extension of time for service on Valeo be set aside, leading to the dismissal of the claim against Valeo?
- ii) What are the applicable jurisdictional gateways for the claims?
- iii) Should the order permitting service out be set aside (in relation to the service-out defendants), and jurisdiction declined (in relation to the service-in defendants), on *forum non conveniens* grounds?

37. The defendants' position is that the claims should be dismissed for lack of jurisdiction irrespective of whether the amendments to the claim form are permitted, and irrespective of whether the particulars of claim are allowed to stand in their present form, and that it will therefore ultimately not be necessary to determine the amendment applications.

Relevant legal principles

Extension of time under CPR r. 7.6(2)

38. CPR r. 7.5(2) provides that where the claim form is served within the jurisdiction, the defendant must be served in accordance with the rules in CPR Part 6 section IV, within six months of the date of issue.

39. CPR r. 7.6 permits the claimant to apply to extend that period, as follows:

- “(1) The claimant may apply for an order extending the period for compliance with rule 7.5.
- (2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made –
 - (a) within the period specified by rule 7.5; or
 - (b) where an order has been made under this rule, within the period for service specified by that order.
- (3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –
 - (a) the court has failed to serve the claim form; or
 - (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
 - (c) in either case, the claimant has acted promptly in making the application.
- (4) An application for an order extending the time for compliance with rule 7.5 –

- (a) must be supported by evidence; and
- (b) may be made without notice.”

40. PD 7A sets out the evidence required for an application under r. 7.6:

“11.1 An application under rule 7.6 (for an extension of time for serving a claim form under rule 7.6(1)) must be made in accordance with Part 23 and supported by evidence.

11.2 The evidence should state –

- (1) all the circumstances relied on,
- (2) the date of issue of the claim,
- (3) the expiry date of any rule 7.6 extension, and
- (4) a full explanation as to why the claim has not been served.”

41. The conditions for the grant of an extension of time are thus less stringent for an application made in time under r. 7.6(2) than for an application made out of time under r. 7.6(3). For an application made out of time, where it is the claimant rather than the court which has failed to serve the claim form, the extension of time may only be granted where the court is satisfied that all three conditions set out in r. 7.6(3) are satisfied, and in particular that the claimant has taken *all* reasonable steps to serve in time, but has been unable to do so. By contrast, where the application is made within time, those conditions are not specified, and the claimant is therefore not required to show that it has taken *all* reasonable steps to serve within time. Rather, the court’s power to extend the time must be exercised in accordance with the overriding objective: *Hashtroodi v Hancock* [2004] EWCA Civ 652, [2004] 1 WLR 3206, §§17–18; *Al-Zahra v DDM* [2019] EWCA Civ 1103, §49.

42. The following considerations emerge from the authorities as to the considerations which are relevant in the exercise of the court’s discretion in the application of r. 7.6(2):

- i) It follows from the overriding objective that civil litigation should be undertaken and pursued with proper expedition. Parties are therefore required to progress their proceedings promptly and within the specified time limits: see *Vinos v Marks & Spencer* [2000] 3 All ER 784, §20. Until the claim form is served, the court has no influence over the proceedings and cannot ensure that cases are dealt with expeditiously and fairly. The service of the claim form is therefore essential in order to (i) notify the defendant that the claimant has embarked on the formal process of litigation; (ii) enable the defendant to participate in the litigation; and (iii) enable the court to control the litigation: *Hoddinott v Persimmon Homes (Wessex)* [2007] EWCA Civ 1203, [2008] 1 WLR 806, §54.
- ii) It will always be relevant for the court to determine and evaluate the reason why the claimant did not serve the claim form within the specified period: *Hashtroodi*, §18. What may be a sufficient reason for an extension of time for service of particulars of claim may not necessarily be a sufficient reason for an extension for service of the claim form: *ST v BAI* [2022] EWCA Civ 1037, §62(ii).
- iii) If there is a very good reason for the failure to serve within time, then an extension of time will usually be granted. By contrast, the court is unlikely to grant an

extension of time if no good reason has been shown for the failure to serve within the relevant period: *Hashtroodi*, §18; *Hoddinott*, §54; *ST v BAI*, §62(ii) and (iii).

- iv) In general, the reason for seeking an extension of time must be a genuine difficulty in serving within time, rather than the consequences of the claimant's own neglect: *Hashtroodi*, §18; and *Cecil v Bayat* [2011] EWCA Civ 135, §49. The claimant's own delay in preparing its case, such as a delay in drafting the particulars of claim, is therefore not a good reason for an extension of time: *Euro-Asian Oil v Abilo* [2013] EWHC 485 (Comm), §37.
- v) While an extension of time might be justified to enable the claimant to avoid the expense of serving out in circumstances where there is "real and substantial progress in settlement negotiations", it is not sufficient for the claimant to say that it is waiting for the defendants to make or accept an offer of settlement: *The Hai Hing* [2000] 1 Lloyd's Rep 300, pp. 308–309; *Euro-Asian Oil*, §28; and see *ST v BAI*, §62(ii).
- vi) It is important to consider whether the limitation period has or may have expired since the commencement of proceedings, such that the extension of time would or may deprive the defendant of a limitation defence. If that is the case the claimant should show, at the very least, that it has taken reasonable steps to effect service, and that an extension of time is justified by factors which are, either separately or cumulatively, "out of the ordinary": *Cecil v Bayat*, §48; *ST v BAI*, §§62(iv) and 63.
- vii) If the claim form has been sent to the defendant such that it has brought to the defendant's attention the nature of the claims, that is a factor relevant to the court's discretion under r. 7.6(2), even if sending a copy of the claim form did not constitute service: *Hoddinott*, §57. In *Cecil v Bayat* at §88, Rix LJ characterised *Hoddinott* as an "exceptional" case where the defendant had received the claim form (even if not by formal service) within the period for service and the claim was still well within its limitation period, such that the defendant suffered no prejudice by reason of the extension of time. He noted, however, that in the great majority of cases an extension would only be granted where a good reason has been supplied.

Service out of the jurisdiction under CPR rr. 6.36 and 6.37

43. Following Brexit, service out of the jurisdiction on the service-out defendants is governed by CPR rr. 6.36 and 6.37, requiring the permission of the court and the application of one or more of the grounds, generally referred to "gateways", set out in CPR PD 6B, §3.1. In the present case the gateways relied upon by the claimants are gateways 3, 9(a) and 9(b). These provide as follows:

"(3) A claim is made against a person ('the defendant') on whom the claim form has been and will be served (otherwise than in reliance on this paragraph) and –

- (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
- (b) the claimant wishes to serve the claim form on another person who is a necessary and proper party to that claim.

...

(9) A claim is made in tort where –

- (a) damage was sustained, or will be sustained, within the jurisdiction;
- (b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction;”

44. The relevant principles applicable to service out under CPR Part 6 were set out by Lloyd LJ in *VTB Capital v Nutritek* [2012] EWCA Civ 808, §§99–100 (endorsed by Lord Clarke in the Supreme Court in the same case, [2013] UKSC 5, [2013] 2 AC 337, at §164), as follows:

“99. ... The three basic principles were recently restated by Lord Collins of Mapesbury in giving the advice of the Privy Council in *AK Investment CJSC v Kyrgyz Mobile Tel Ltd* [2012] 1 WLR 1804, paras 71, 81 and 88. They can be summarised as follows: first, the claimant must satisfy the court that, in relation to the foreign defendant to be served with the proceedings, there is a serious issue to be tried on the merits of the claim, i.e. a substantial question of fact or law or both. This means that there has to be a real, as opposed to a fanciful, prospect of success on the claim. Secondly, the claimant must satisfy the court that there is a good arguable case that the claim against the foreign defendant falls within one or more of the classes of case for which leave to serve out of the jurisdiction may be given. These are now set out in paragraph 3.1 of Practice Direction 6B. ‘Good arguable case’ in this context means that the claimant has a much better argument than the foreign defendant. Further, where a question of law arises in connection with a dispute about service out of the jurisdiction and that question of law goes to the existence of the jurisdiction (eg whether a claim falls within one of the classes set out in paragraph 3.1 of Practice Direction 6B), then the court will normally decide the question of law, as opposed to seeing whether there is a good arguable case on that issue of law.

100. Thirdly, the claimant must satisfy the court that in all the circumstances England is clearly or distinctly the appropriate forum for the trial of the dispute and that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. This requirement is reflected in rule 6.37(3) of the CPR, which provides that ‘The court will not give permission [to serve a claim form out of the jurisdiction on any of the grounds set out in paragraph 3.1 of Practice Direction 6B] unless satisfied that England and Wales is the proper place in which to bring the claim’”.

45. The first of those three principles (serious issue to be tried) needs no further explanation. The third principle is the *forum conveniens* rule which I consider separately below.
46. In relation to the second principle, the application of the standard of “good arguable case” in this context was explained by Lord Sumption in *Brownlie v Four Seasons Holdings* [2017] UKSC 80. After referring at §7 to the observation of the Court of Appeal in *Canada Trust v Stolzenberg (No. 2)* [1998] 1 WLR 547, p. 555, that “good arguable case” reflects that “one side has a much better argument on the material available”, Lord Sumption continued:

“The reference to ‘a much better argument on the material available’ is not a reversion to the civil burden of proof ... What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the Court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it. I do not believe that anything is gained by the word ‘much’, which suggests a superior standard of conviction that is both uncertain and unwarranted in this context.”

47. That formulation was repeated by Lord Sumption in *Goldman Sachs v Novo Banco* [2018] UKSC 34, §9. In *Kaefer Aislamiento v AMS Drilling Mexico* [2019] EWCA Civ 10, Green LJ considered the application of the three limbs of the *Brownlie* formulation. His comments may be summarised as follows:
- i) *Brownlie* limb (i) is a reference to an evidential basis showing that the claimant has the better argument – in other words the relative test in *Canada Trust*. It is, however, not necessary to show that the claimant has “much” the better argument. Moreover, in expressing a view on jurisdiction, the court must be astute not to express any view on the ultimate merits of the case, even if there is a close overlap between the issues going to jurisdiction and the ultimate substantive merits (§§73–77).
 - ii) *Brownlie* limb (ii) requires the court to overcome evidential difficulties and arrive at a conclusion if it reliably can, recognising that jurisdiction challenges are invariably interim and will be characterised by gaps in the evidence. It is an instruction to use “judicial common sense and pragmatism”, not least because the exercise is intended to be one conducted with “due despatch and without hearing oral evidence” (§78).
 - iii) *Brownlie* limb (iii) addresses the situation where the court is unable to form a decided conclusion on the evidence before it as to who has the better argument. In that situation, limb (iii) moves away from a relative test and instead introduces a test combining good arguable case and plausibility of evidence. That is a more flexible test which is not necessarily conditional upon relative merits (§§79–80).
48. Green LJ thereby recognised that jurisdiction challenges are interim, and are likely to be determined in the context of evidential gaps and without hearing oral evidence. In that context, the court should, in principle, attempt to reach a view on whether the claimant has the better argument, recognising the limitations of the material before it. There may, however, be a situation where, despite best endeavours, the material before the court is too finely balanced, or too inconclusive, for the court to reach a conclusion one way or the other as to the relative strength of the parties’ cases. In such a case the court may determine a good arguable case on the basis of an assessment of whether there is, at least, a plausible evidential basis for the application of the relevant jurisdictional gateway.

Forum conveniens

49. The *forum conveniens* principles set out in the well-known judgment of Lord Goff in *Spiliada Maritime Corp v Cansulex (The Spiliada)* [1987] AC 460 apply both to the question of whether to permit service outside the jurisdiction in relation to service-out defendants, and whether to decline jurisdiction in relation to service-in defendants. Those principles have been the subject of considerable further commentary in more recent case-law. For present purposes the relevant principles can be summarised as follows:

- i) In service-in cases, the burden is on the defendant to show that England and Wales is not the natural or appropriate forum for the trial, and that there is another available forum which is clearly or distinctly more appropriate, or which in other words is the “natural forum” for the trial of the action. If the court is satisfied that there is another available forum which is *prima facie* the appropriate forum, the burden shifts to the claimant to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country: *Spiliada* pp. 476–478.
- ii) In service-out cases, the burden is on the claimant to show that England and Wales is clearly or distinctly the most appropriate forum. It is not sufficient to show that it is one of several equally suitable available fora: *Gulfvin Investment v Tahrir Petrochemicals* [2022] EWHC 1040 (Comm), [2022] 4 WLR 66, §§18–22.
- iii) Where there are multiple defendants, some of which have been served without the need for permission and some with permission, the court is in essence looking for a single jurisdiction in which the claims against all the defendants may, as a whole, most suitably be tried: *Lungowe v Vedanta Resources* [2019] UKSC 20, [2020] AC 1045, §68; *Mercedes-Benz v Continental Teves* [2023] EWHC 1143 (Comm), [2023] 5 CMLR 21, §22.
- iv) In seeking to establish the appropriate forum for the litigation, the court should consider the forum with which the action has “the most real and substantial connection”: *Spiliada* p. 478; *Lungowe* §66.
- v) Relevant factors will include the location of witnesses and documents, and their language, consideration of the places where the parties reside or carry on business, the place where the wrongful act or omission occurred, and the place where the harm occurred: *Spiliada* p. 478; *Lungowe* §66.
- vi) It is generally preferable, other things being equal, that a case should be tried in the country whose law applies. That factor carries particular force if issues of law are likely to be important and there is evidence of relevant differences in the legal principles between the different competing fora: *VTB Capital v Nutritek*, [2013] UKSC 5, §46.
- vii) In cases involving questions of EU law, the fact that the courts of England and Wales can no longer make references to the CJEU may be a factor pointing to the courts of an EU State, and away from England and Wales as the appropriate forum: *Mercedes-Benz v Continental Teves* [2023] EWHC 1143 (Comm), [2023] 5 CMLR 21, §§55–57.

- viii) It may be relevant that the legal teams and experts in one jurisdiction have built up a substantial bank of knowledge and expertise relevant to the claims (the so-called “*Cambridgeshire*” factor): *Spiliada* pp. 485–486. But it is not sufficient simply to assert that the same firms of solicitors have been acting for the parties for some time: *Samsung Electronics v LG* [2022] EWCA Civ 423, §32.
 - ix) In considering whether there are special circumstances requiring a stay not to be granted notwithstanding the conclusion that another forum is *prima facie* more appropriate, one factor may be cogent evidence establishing that the claimant will not obtain justice in the foreign jurisdiction: *Spiliada* p. 478.
 - x) Procedural differences such as differences in disclosure rules in different jurisdictions are, however, generally not reasons making it unjust to stay proceedings in this jurisdiction: *Spiliada* pp. 482–483.
 - xi) If a claimant would be out of time in the foreign jurisdiction, and did not act unreasonably by failing to issue protective proceedings in that forum, that does not render the foreign jurisdiction “unavailable”, but may be a reason why it would be unjust to stay the domestic proceedings. It will be relevant to consider the claimant’s awareness of the time-bar and the explanation for its failure to issue protective proceedings: see *Spiliada* pp. 483–484; *Citi-March v Neptune Orient Lines* [1996] 1 WLR 1367, p. 1374. If the claimant has acted reasonably in commencing proceedings in England and Wales, and in allowing time to expire in the relevant foreign jurisdiction, a stay (or set-aside of service) should only be granted on terms the defendant waives the time-bar in the foreign jurisdiction, assuming it can do so: *Baghlaf Al Safer v Pakistan National Shipping* [1998] CLC 716, p. 727; and see also *Spiliada* p. 484.
50. Mr Moser KC, for DENSO, submitted in his skeleton argument that it is not necessary for the court to identify a single alternative forum to England and Wales which would be the most appropriate of the available alternative fora, provided that the court can identify at least one other available forum that would be more appropriate than England and Wales. He relied in this regard on a passage at fn 109 of *Dicey, Morris & Collins on the Conflict of Laws* (16th ed, 2022), suggesting that if there are two fora which are both more appropriate than England and Wales, a stay may be granted even if it cannot be said that one is more appropriate than the other.
51. This question was considered by Michael Green QC (as he then was) in *Wilton Trustees v AFS Trustee et al*, BVIHC (COM) 2018/154, who concluded that the defendants “must nail their colours to the mast of one jurisdiction which they can prove is the appropriate forum”, for their applications for a stay on grounds of *forum non conveniens* to succeed (§42). He concluded that the defendants had not shown that there was another jurisdiction which was “the appropriate forum” for the trial of the action (§91). Happily, however, I do not need to reach a view on this point for the purposes of these proceedings, because by the time of the hearing the defendants all took the position that the most appropriate forum for the claims was France.

Change of circumstances after service out

52. As already indicated, it will be necessary in this judgment to consider the effect of the settlement of all of the claims against Sanden on the remaining claims pursued against

DENSO and Valeo. In that regard, the established position is that an application to set aside permission to serve out of the jurisdiction falls to be determined by reference to the position at the time permission was granted, even if the circumstances have changed by the time that the application to set aside is heard: *Erste Group v Red October* [2015] 1 CLC 706 (CA), §§44–45, citing Hoffmann J in *ISC v Guerin* [1992] 2 Lloyd’s Rep 430 at pp. 434–435, and *Mohammed v Bank of Kuwait* [1996] 1 WLR 1483.

53. In an *obiter* comment in *BMG Trading v McKay* [1998] IL Pr 691, §9, Phillips LJ expressed “reservations” with that proposition, in circumstances where an anchor defendant had fallen away between the grant of permission to serve out and the application to set aside the grant of permission. Ultimately, however, he did not need to decide the point because the defendants based their challenge to jurisdiction on other grounds. I do not consider that this *obiter* comment is a sufficient basis to depart from the principle set out in the *ISC v Guerin* line of authorities.
54. The position is different for the *forum non conveniens* arguments. Those must be determined on the basis of the position as it now is. The claimants disputed that proposition in their October/November 2024 submissions, relying on Hoffmann J’s comment in *ISC v Guerin* (p. 434) that *forum non conveniens* should be decided on the facts as they stood as at “the date of the hearing”. Evans LJ reached the same conclusion in *Mohammed v Bank of Kuwait* (p. 1492). The claimants contended that the applications for a stay on grounds of *forum non conveniens* should therefore be determined on the basis of the facts as they stood at the time of the hearing (i.e. in this case in July 2024) and that the Sanden settlement should accordingly be disregarded.
55. I do not accept that submission. The purpose of the comments in both *ISC v Guerin* and *Mohammed v Bank of Kuwait* was to draw a distinction between an application to set aside permission to serve out and an application for the stay of the proceedings, in circumstances where further evidence had been received between the order for service out and the application to discharge that order. The point was to emphasise that the question of a stay on grounds of *forum non conveniens* must be determined on the basis of the circumstances as at the time of the court’s decision on the application. As Evans LJ commented in *Mohammed v Bank of Kuwait*, “Where a stay is applied for, i.e. for the future, I would hold that the court should also have regard to the situation at the date of the hearing if only to avoid the absurdity of ordering a stay which is patently unjust through a chance of circumstances” (p. 1493).
56. That was the way the matter was put by Cooke J in *Credit Agricole v Unicof* [2003] EWHC 2676 (Comm), [2004] 1 Lloyd’s Rep 196, commenting at §22:

“In contradistinction to the application to set aside proceedings which, as was common ground, has to be approached on the basis of the circumstances existing when permission was given ... an alternative application to stay falls to be considered at the time of the determination of the application: see *ISC Technologies v Guerin* [1992] 2 Lloyd’s Rep 430 at pages 434–5 and *Mohammed v Bank of Kuwait* [1996] 1 WLR 1483 at pages 1492–3.”
57. It follows that if, after the hearing of a stay application but before judgment is handed down by the court, the court is informed by the parties of a material change of circumstances such as a settlement with one or more of the defendants, it would be wrong and indeed absurd for the court to be required to shut its eyes to that fact, and decide the

case as if that settlement had not been reached and the relevant defendant group was still within the claim. Nor is there any principled reason why the court should ignore a clearly relevant fact.

58. That does not (contrary to the claimants' submissions) discourage amicable settlements. It simply recognises that the fact of a settlement is something that will inevitably have to be taken into account in the determination of the appropriate forum for the hearing; and that remains the case if the settlement happens to be agreed between the date of the hearing and the handing down of final judgment. There is no sensible reason why a settlement agreement concluded on the day before the hearing should be treated any differently from a settlement agreement concluded on the day after the hearing, if (as in the present case) judgment is not handed down until some months after the hearing.
59. The fact that the claims are no longer being pursued against the Sanden defendants is therefore undoubtedly a factor to be taken into account in determining the global question of where the remaining claims may most suitably be tried. The question of the admission of further evidence by the claimants following documents obtained pursuant to the Sanden settlement agreement is, however, a different matter: that evidence does not concern a change of circumstances since the hearing, but rather concerns the admission of further contemporaneous documents dating from the period of the alleged cartel. I will consider that issue separately below.

Extension of time for service on Valeo

The parties' submissions

60. The extension of time issue applies only to Valeo, the other defendants having consented to extensions of time to 1 January 2024 and (in the case of the third defendant) 1 April 2024.
61. In respect of Valeo, the extension of time agreed by consent expired on 1 September 2023, and Valeo did not thereafter consent to a further extension of time. Without the extension of time granted on 11 May 2023, therefore, the claimants would have had to reissue their claims. By then the limitation period under domestic law (to the extent that is relevant) had expired; and on the claimants' own case the limitation periods under French, German, Italian and Brazilian law had also expired. Valeo would therefore have been entitled to defend any reissued claim on the basis that it was time-barred. That does not appear to be disputed by the claimants.
62. On that basis the claimants have to show that they had taken reasonable steps to effect service, and that there was a good reason for their failure to serve within the agreed extended time period based on factors that were out of the ordinary.
63. The claimants say that they did take steps to commence the process of service out prior to the 1 September 2023 deadline, and that they were justified in waiting to take those steps in light of their attempts to reach settlements with the various defendants. Valeo objects that service could easily have been effected prior to the deadline if the claimants had taken the steps to do so earlier, and says that there were in fact no settlement discussions between the claimants and Valeo between issue of the claim form and the 11 May 2023 extension order. Valeo also contends that there were material and non-

innocent breaches of the duty of full and frank disclosure by the claimants in seeking that extension order.

Steps taken to effect service

64. The claim form was issued on 7 March 2022. On the claimants' own evidence, they did not decide to serve the proceedings until April 2023, the decision to (finally) serve being taken on the basis that settlements had not been concluded with any of the defendants other than Calsonic and Panasonic. Prior to that date, it is apparent that no steps at all were taken by the claimants to serve the proceedings.
65. The claimants did, after their decision to serve, then take steps to do so by serving the service-in defendants, and preparing service packs for service on the service-out defendants, depositing them at the Foreign Process Section of the High Court. By then, however, the latter steps were too late, as it was very unlikely that the service-out defendants would be served within the original 1 September 2023 deadline (as proved, in fact, to be the case: the service-out defendants were eventually served between 20 September 2023 and 18 March 2024).
66. Mr West KC, for the claimants, said that it was sufficient that steps were taken to serve prior to the 1 September 2023 deadline. He relied on the judgment of Teare J in *JSC BTA Bank v Ablyazov* [2011] EWHC 2988 (Comm), upholding an order extending time for service on the second defendant in Russia. In that case, prior to the expiry of validity of the claim form, the claimant had commenced the process of preparing notarised translations of the relevant documents, which were then delivered to the Foreign Process Section shortly after the claim form would have (but for the extension of time) expired. The judge considered that there was a good reason to extend time, namely the long period of time required to effect service in Russia, notwithstanding a delay of "a month or more" in commencing the process of preparing the notarised translations for service out of the jurisdiction (§§28–29).
67. The circumstances of that case were, however, very different to the present case. At the time the claim form was issued, the claimants believed that they would be able to serve in the jurisdiction on the second defendant's solicitors, Olswang, who were instructed by the second defendant in several other related proceedings. The claimant repeatedly asked Olswang whether they were instructed to accept service of the new proceedings on behalf of the second defendant. It was only two and a half months later that the claimants were informed by Olswang that they were not instructed to accept service. Teare J considered that until that point the claimant had a good reason for not serving out on the second defendant (§24). Thereafter, he thought that the claimant should have taken steps to serve, notwithstanding the fact that without prejudice discussions were ongoing between the claimant and the second defendant (§28). He noted, however, that although there had been a delay of a month or more in commencing the process by the claimant, an extension of time would inevitably have been needed because of the very much longer period of time required to effect service in Russia (§§28–30).
68. In the present case, the delay in commencing the process of serving out of the jurisdiction was not a matter of months, but was more than a year. It is difficult to see how on any basis that can be regarded as the taking of reasonable steps to effect service, having regard to the requirement to progress litigation expeditiously. Moreover, unlike the *Ablyazov* case, this is not a case where it is apparent that a further lengthy extension of time would

have been needed in any event for service out of the jurisdiction on the Valeo defendants. Those defendants were all served on 8 December 2023, within six months of the service packs being deposited at the Foreign Process Section. The extensions of time initially agreed by the defendants had given the claimants almost 18 months to serve the proceedings. There is no suggestion in the evidence that the proceedings could not have been served on the Valeo defendants within that period, if reasonable steps had been taken to do so from the outset.

Reasons for the delay

69. Nor is there, in my judgment, any good reason for the claimants' delay. I will start with the reasons given in the claimants' evidence in support of their May 2023 application for an extension of time for service on Valeo and Mahle-Behr, in the form of a witness statement from Mr Bolster, a partner at Hausfeld, the claimants' solicitors. Valeo contends that the evidence given in that witness statement was undermined by material non-disclosures. I do not, however, need to reach any view on that because it is in my judgment clear that the reasons given by Mr Bolster were, on their face, simply not good enough to justify the extension of time sought.
70. The first reason was that the claimants had had to prepare particulars of claim to be served within the period of validity of the claim form. That was not, in itself, a reason why the claimants could not serve proceedings by 1 September 2023. The extended time period agreed with the defendants had given the claimants ample time to prepare those particulars following issue of the claim form.
71. The second reason was that there had been backlogs caused by a cyber-attack on Royal Mail in early 2023, affecting its overseas delivery services, which might lead the Foreign Process Section to take several months to dispatch the documents for service to the relevant foreign authorities. It is clear, however, that this was not the real reason why the claimants were unable to serve by 1 September 2023. The cyber-attack did not occur until mid-January 2023, over nine months after the claim form was issued. Had reasonable steps been taken to serve the proceedings after issue of the claim form, there is no reason why the documents for service could not have been deposited with the Foreign Process Section long before the cyber-attack occurred. There is no explanation at all (let alone a good explanation) of why a delay of a few months, which might have arisen from the cyber-attack, prevented service of proceedings in the 18-month period between issue of the claim form and the extended deadline of 1 September 2023.
72. The third reason was that service on Valeo and Mahle-Behr in France and Germany might take around three months from receipt of the documents by the French and German authorities, and that Hausfeld had been told that the average time for service in Japan was four months from receipt of the documents by the Japanese authorities (but that Mr Bolster understood that it might take longer). Again, however, there is no reason why those periods could not have been accommodated within the extended service period agreed by the defendants, had reasonable steps been taken to commence service promptly after issue of the claim form.
73. The final reason given was that the other defendants had consented to an extension of time for service to 1 January 2024, and that the extension would align the dates for service on all of the defendants which would simplify the subsequent steps in the proceedings. That is manifestly not a reason why service by 1 September 2023 was "unlikely to be

possible”. Indeed, it is not a coherent reason for an extension of time on any basis. Given that the defendants were being served in a variety of different jurisdictions, by different authorities, the alignment of the deadlines for service could not ensure that the dates of *actual* service on the various defendants were aligned. Nor would that have been a good reason for an extension of time in any event, given that it was perfectly possible for the parties to agree a timetable for subsequent procedural steps to ensure efficient case management, once the defendants had all been served (as in fact occurred).

74. The real reason that the claimants needed an extension of time was therefore not the reasons given in the claimants’ May 2023 evidence, but rather the fact that the claimants had decided not to take steps to serve proceedings until April 2023. That was a matter wholly within the claimants’ control. As the authorities cited above make clear, a claimant’s own delay in preparing its case and commencing steps for service is not a good reason for an extension of time.
75. Mr West said that the reason why the claimants waited to start the process of service on the defendants was that they were endeavouring to resolve the proceedings without formal litigation, in circumstances where there were ongoing settlement discussions with the defendants, which did in fact lead to settlements with Panasonic and Calsonic before the claim form was served on them (and with Mahle-Behr shortly after it was served). At the hearing, however, Mr Kennelly KC, for Valeo, disputed the existence of any settlement discussions with Valeo specifically. Further evidence on this was therefore provided after the hearing, in the form of witness statements from Mr Bolster, for the claimants, and Mr Bock, a partner at Cleary Gottlieb, Valeo’s solicitors.
76. It is apparent from that further evidence that there were no contacts between the claimants and Valeo that could properly be characterised as settlement discussions, in the period between issue of the claim form and 11 May 2023, the date of the extension of time order. What in fact happened was that:
 - i) Immediately following issue of the claim form, the claimants wrote (separately) to all of the defendants, informing them of the claim and proposing an extension of the period for service to 1 September 2023 to allow the parties to engage in settlement negotiations.
 - ii) On 15 April 2022 an individual at Valeo heading the thermal system sales contacted his counterpart at Stellantis objecting to the claim and requesting that it be withdrawn. The Stellantis contact responded on 2 June 2022 informing him that any questions should be directed to Hausfeld.
 - iii) On 13 June 2022 Valeo consented to the extension of time for service. It did not, however, engage in any settlement discussions with the claimants.
 - iv) On 5 January 2023 the claimants sent a without prejudice letter to Valeo, providing a large volume of claimant sales data for the purposes of advancing settlement discussions. Valeo did not respond to that letter.
 - v) On 18 April 2023 there was a telephone call between Mr Bolster and Mr Bock, initiated by Mr Bolster, in which the claimants’ request for a further extension of time and the scope for settlement discussions was discussed. Mr Bolster made an attendance note of that call, which records Mr Bock’s position as being that Valeo

was unlikely to agree a further extension of time for service. Mr Bolster apparently commented that the claimants were “still waiting to hear from [Valeo] on the data and that that is a normal starting point for [settlement] discussions”. It is common ground that this was a reference to the data provided in January 2023, and the fact that Valeo had not responded to that. Mr Bock’s response (according to the attendance note) was that Valeo was reluctant to do so as it considered the claim to be so “outlandish” in its scale as not to have any credibility.

- vi) There were no further discussions between the parties between that call and the 18 May 2023 extension order.
77. This was therefore not a case where there was “real and substantial progress” in settlement negotiations as between the claimants and Valeo, justifying the claimants holding back from incurring the expense of serving out of the jurisdiction. Nor, indeed, was there even any concrete offer of settlement on the table. Rather, the claimants were simply hoping that Valeo would respond to their (very preliminary) communications regarding the commencement of settlement discussions. It is apparent from Mr Bolster’s note of the April 2023 call that, as of the date of that call, Valeo had not yet done so. The claimants were therefore, during the period between issue of the claim form and the May 2023 extension order, simply hoping for Valeo to engage in settlement negotiations which did not, in the event, ever occur. That does not provide a sufficient justification for the claimants’ failure to take steps to serve on Valeo.
78. Finally, while Valeo was sent the claim form and particulars of claim for information on 17 May 2023, that does not in the circumstances of this case constitute a sufficient ground to grant an extension of time, given the expiry of the limitation period, the consequent prejudice to Valeo of being deprived of limitation defence, and the fact that there was (as I have found) no good reason for the claimant’s delay. Mr West submitted that Valeo’s objection to the extension of time was a purely technical one, since Valeo could be brought back in to the proceedings by way of a contribution notice. That is, however, not a basis for an extension of time to be given for service of the claim form where no good reason for such an extension has been shown.
79. The order for an extension of time for service on Valeo should therefore be set aside. The consequence is that the Valeo defendants were served out of time, and the claim against Valeo is therefore dismissed. I will, however, consider the remaining issues in this judgment on the basis that Valeo remains a defendant, in case I am wrong on this issue, and also because (in the case of the *forum conveniens* arguments), irrespective of whether Valeo remains a defendant in the proceedings or is brought back in by way of a contribution notice, the claim extends to supplies by Valeo in so far as not covered by the Valeo settlement agreement.

Jurisdictional gateways

The parties’ submissions

- 80. The position as regards the application of the jurisdictional gateways differs as between the various claimants.
- 81. As noted above, the OV claimants do not pursue any claims against DENSO in these proceedings, and have settled their claims against Valeo up to 10 March 2016.

Accordingly, following the recent Sanden settlement agreement, the only claims pursued by the OV claimants in these proceedings are claims against Valeo brought on the basis of the overhang period in so far as it persisted beyond 10 March 2016. The OV claimants' claims in that regard were served out on the basis of jurisdictional gateway 3, relying on the thirteenth defendant, Sanden International (Europe) GmbH, as the anchor defendant on the basis of service on its UK office. In the alternative the first claimant (only) relied on gateway 9(a) on the basis of supplies made to it in the jurisdiction by Sanden and Valeo.

82. For the reasons set out above, while Sanden is no longer a defendant in these proceedings, the jurisdictional gateways must be determined on the basis of the facts as they stood at the time of the order granting permission to serve out. In that regard, Valeo's position is that there was (even prior to the Sanden settlement agreement) no serious issue to be tried as between the OV claimants and Sanden, and therefore no anchor defendant for the purposes of gateway 3. As for gateway 9(a), Valeo contends that the first claimant cannot demonstrate a good arguable case that it has suffered any significant damage in the jurisdiction to invoke gateway 9(a).
83. The claims of the PSA and FCA claimants were served on the service-out defendants on the basis of gateway 3, relying on the first, fifth and thirteenth defendants as the anchor defendants. The application of gateway 3 to those claims is not disputed by DENSO or Valeo.
84. In addition, to the extent necessary, the claimants seek permission to amend their application for permission to serve out, so as to add gateway 9(b) as an alternative jurisdictional gateway for the claims by the fourth claimant (only), relying on supplies made to its plant in Ryton, Warwickshire by Valeo and Sanden during (at least) 2005 and 2006. It is not necessary to consider this further, given the application of gateway 3 to those claims. The relevance of the supplies to the Ryton plant is, however, considered further below in relation to the *forum non conveniens* arguments of the defendants.
85. Finally, the claims of the Brazilian claimants were served on the service-out defendants on the basis of gateway 3, relying on the first, fifth and thirteenth defendants as the anchor defendants. The application of gateway 3 to those claims is not in principle disputed by Valeo (although Valeo does contest the addition of these claims in its amendment application, as noted above). DENSO does, however, dispute the application of gateway 3 on the basis that there is no real issue to be tried as between the Brazilian claimants and any of the anchor defendants.
86. It is therefore necessary to consider Valeo's objection to the application of gateway 3 and (in so far as necessary) gateway 9(a) to the claims of the OV claimants, and DENSO's objection to the application of gateway 3 to the claims of the Brazilian claimants.

The OV claimants

87. At the hearing, Ms Ford KC for Sanden submitted that the 2015 Sanden settlement agreement covered all of the claims by the OV claimants against Sanden, or at least the claims up to the date of the agreement. As for the overhang period beyond the date of the settlement agreement Ms Ford contended that any claims against Sanden were insufficiently pleaded, speculative and *de minimis*.

88. Mr Kennelly's gateway 3 submission for Valeo was parasitic on Ms Ford's submissions: he contended that if there was no serious issue to be tried as between the OV claimants and *Sanden*, then there was no remaining anchor defendant for the OV claimants' claims against *Valeo* for the purposes of gateway 3. Those claims against Valeo are, for the reasons explained above, the only claims which are now still pursued by the OV claimants in these proceedings.

89. Those submissions raise two issues: (i) the scope of the 2015 Sanden settlement agreement; and (ii) the sufficiency of the pleaded case (as it stood against Sanden at the time of the order permitting service out) and evidence as regards the OV claimants' claims against Sanden for the overhang period.

– *The scope of the 2015 Sanden settlement agreement*

90. The 2015 Sanden settlement agreement was referred to in Sanden's evidence in support of its application challenging jurisdiction. It was not, however, put in evidence by Sanden at the time. On 17 June 2024 Sanden provided the claimants with a redacted version of the agreement. A further version with fewer redactions was provided on 19 July 2024.

91. The agreement contains the following material clauses (not redacted in either version):

"Sanden's Representation Regarding No Further Collusion. Other than with respect to the RFQs listed in Exhibit A hereto, Sanden represents that it is currently unaware of any collusion in which it participated against GM.¹ Both parties acknowledge and agree that they have performed their own investigation into the matters covered by this Agreement, that they are not entering into this Agreement based upon any representations of the other except for the promise to perform the affirmative obligations set forth herein.

¹ Nothing contained herein is or shall be interpreted as an admission by Sanden that it participated in collusion against GM, which allegations Sanden denies.

...

Release. GM and all subsidiaries and affiliates hereby release Sanden and all subsidiaries, affiliates, joint ventures, officers, directors, employees, agents, insurers, and attorneys from any and all claims, whether known or unknown, that exist as of the date of the settlement agreement and which relate to or arise out of GM's allegations that Sanden engaged in anti-competitive activity that violates the Sherman Act and all similar antitrust provisions world wide. The parties acknowledge and agree, without limiting the foregoing, the scope of the release is expressly intended to and does encompass all world wide claims for damages without respect to the jurisdiction in which the alleged anti-competitive activity occurred or impacted GM in anyway whatsoever."

92. A governing law clause in the agreement specifies that the agreement is governed by the law of the State of Michigan, with disputes under the agreement to be settled by arbitration to take place in New York (unless otherwise agreed by the parties) and subject to the exclusive jurisdiction of the New York courts.

93. Exhibit A to the agreement then lists 12 RFQs (i.e. requests for quotations) dated 2004 to 2009, all relating to the supply of compressors to General Motors. No RFQs for any other products are listed.
94. Neither Ms Ford nor Mr Kennelly explained the basis on which they contended that this court could determine that the claims by the OV claimants against Sanden in these proceedings were precluded by the 2015 Sanden settlement agreement, in circumstances where there was no application for those claims to be struck out, and where the agreement itself provides for disputes under the agreement to be settled by arbitration in New York, subject to the exclusive jurisdiction of the New York courts, and governed by Michigan law. In any event, I do not accept the submission that the 2015 Sanden settlement agreement must have covered all of the claims advanced by the OV claimants against Sanden in these proceedings, or at least the claims up to the date of the agreement.
95. Under the terms of the release clause, the 2015 Sanden settlement agreement settles all claims relating to or arising out of “GM’s allegations” that Sanden engaged in unlawful anticompetitive conduct. Those allegations are not defined anywhere in the agreement. At best, they can only be divined on the basis of inference from the representation clause, read together with the footnote to that clause and Exhibit A listing the RFQs. On the face of those provisions, the natural interpretation of the agreement is that it covers General Motors’ allegations of collusion in relation to the specified RFQs. There is no suggestion in the agreement that General Motors’ allegations extended to collusion concerning RFQs other than those listed in Exhibit A. Indeed, if the allegations had extended beyond those RFQs, it would have been very odd not to have listed those allegations in Exhibit A, given the terms of Sanden’s representation in the representation clause.
96. It is therefore not possible for the court, for the purposes of the present jurisdiction challenges, to conclude that the 2015 Sanden settlement agreement settled all the OV claimants’ claims against Sanden falling within the scope of the present proceedings. Even so far as claims relating to the period up to the date of the settlement agreement (24 June 2015) are concerned, and even taking the scope of the claim to be as set out in the original form without the amendments introduced by the re-re-amended claim form, the claim is not limited to the supply of compressors, but extends to other TSCs such as HVACs, radiators and fans. Nor was the claim limited, as regards the OV claimants’ purchases from Sanden, to the contracts set out in Exhibit A to the Sanden settlement agreement. As Mr West pointed out, the claimants had not yet been able to ascertain whether there were supplies of TSCs (whether condensers or other products) to the OV claimants under contracts not listed in Exhibit A.
97. I therefore reject the submission that the 2015 Sanden settlement agreement covered all of the OV claimants’ claims against Sanden, whether up to the date of the settlement agreement or beyond that date.
- *The pleaded case on the overhang period*
98. Ms Ford described the OV claimants’ claims for the overhang period as “exorbitant and fanciful” and “pure speculation”, given that the Commission found that the latest date of Sanden’s infringement in respect of compressors for VW cars was 15 October 2009. Her submission was that, in the absence of any particulars supporting the allegation of an overhang period of that duration, the allegation of continued cartel effects lasting that

length of time does not satisfy the standard for a pleading of a competition law infringement, as set out in *Forrest Fresh Foods v Coca Cola* [2021] CAT 29, §30.

99. Again, I do not accept that submission. *Forrest Fresh Foods* concerned an application for strike out or summary dismissal of the claim. As noted above, no such application has been made by Sanden in these proceedings. Nor, in any event, do I accept that the claimants' pleaded case in relation to the overhang period is insufficiently particularised by reference to the test set *Forrest Fresh Foods*. §30 of that judgment notes that:

“The onus is on a claimant advancing a claim of infringement of competition law to identify (i) the relevant primary facts which are the foundation of that claim, (ii) the way in which those facts are said to infringe the relevant competition law provision(s) relied upon, and (iii) the way in which that alleged infringement is said to have resulted in the loss or damages claimed.”

100. In the present case, it is not suggested that the claim is deficient in its pleading of the relevant primary facts or the way in which the alleged conduct is said to have amounted to an infringement of the relevant competition law provisions. The issue is rather the claim for loss and damage extending to the overhang period. In that regard, the relevant paragraphs of the particulars of claim set out the following allegations:

“86. The supplies in respect of which the Claimants sue in these proceedings (the ‘**Supplies In Issue**’) are supplies of TSCs purchased by the Claimants identified above, either from the Defendants or from other entities within the undertakings to which the Defendants belong, during the Cartel Period and for a period thereafter referred to as the ‘**Overhang Period**’. ...

87. The Supplies In Issue were affected by the Cartel, in that the prices of such supplies were higher than they would have been had there been no such Cartel. In other words, the Claimants contend that the Supplies in Issue were subject to a cartel overcharge ...

88. The precise duration of the Overhang Period will be addressed in expert evidence in due course, but for present purposes the Claimants allege that such period is likely to have lasted until at least 2016. The length of the Overhang Period reflects the fact that contracts for the supply of TSC products are often long-term in nature (reflecting the long-term nature of car production runs).”

101. The particulars of claim therefore plead that the reason for the overhang claim is the existence of long-term supply contracts (§88), the prices under which are said to have been higher than they would have been absent the cartel (§87). That is a sufficient pleading of the way in which the alleged infringement is said to have resulted in loss during the overhang period.
102. As for the suggestion that the OV claimants' claims against Sanden are speculative and *de minimis*, the claimants rely on a preliminary quantum analysis prepared by their experts AlixPartners in relation to the claim by the PSA claimants. That analysis estimates that the PSA claimants continued to suffer significant losses until 2021, flowing from overcharges on contracts concluded during the cartel period. Ms Ford objected that this analysis does not relate to the OV claimants' claims. But, as Mr West pointed out,

there is no reason why the same analysis would not in principle also apply to the claims of the OV claimants. That position is also set out in the claimants' draft amended particulars of claim. As to the materiality of the supplies during the overhang period, the OV claimants contend that Sanden made over €25m of supplies to the first claimant between 2014–2019.

103. I am clearly, at this stage of proceedings, not in any position to reach a view as to the merits of these claims (which have in any event now been settled). For the purposes of the jurisdictional gateway argument, however, there is no doubt that there is at least a plausible evidential basis for the pleaded claims by the OV claimants against Sanden, so as to satisfy the Brownlie limb (iii) test as set out at §§46–48 above. I do not, therefore, accept that the OV claimants' claims are either insufficiently particularised or fanciful.

– *Conclusion on the OV claimants*

104. It follows that I reject Valeo's challenge to gateway 3 as a relevant jurisdictional gateway for the OV claimants' claims in these proceedings, to the limited extent that such claims remain in issue. I do not, therefore, need to consider the application of gateway 9(a), relied on in the alternative for the claims of the first claimant.

The Brazilian claimants

105. At the hearing, Mr Moser submitted that the investigation by CADE relied upon in relation to the claims by the Brazilian claimants concerned the supply of TSCs by undertakings within the Valeo and DENSO groups (including two DENSO Brazilian companies), but the investigation did not concern supplies by either of the DENSO UK defendants or the Sanden group. The investigation did not, therefore, concern any of the anchor defendants in these proceedings for the purposes of gateway 3. Moreover, as set out above, the final CADE judgment concluded that the evidence against the DENSO Brazilian entities was insufficient to prove an infringement by those companies, to the standard required by Brazilian law. On that basis Mr Moser contended that there is no real issue to be tried as between the Brazilian claimants and any of the anchor defendants.
106. As Mr West noted, however, Brazilian law is presumed to be the same as domestic law, absent evidence to the contrary (which DENSO has not adduced): see *FS Cairo (Nile Plaza) v Lady Brownlie* [2021] UKSC 45, §125. In that regard, the claimants rely on the EU/EEA principle of liability attaching to undertakings which may include group companies that form a single economic unit for the purposes of the application of Article 101 TFEU/Article 53 of the EEA Agreement: see e.g. *Bellamy & Child: European Union Law of Competition* (8th ed, 2018), §2.026. For the purposes of these applications, that principle must be assumed to apply. It is therefore not relevant that the first and fifth defendants did not themselves supply the Brazilian claimants, and it is not suggested that the concept of a single economic unit cannot apply to those defendants, taken together with the DENSO Brazilian companies, on the facts.
107. As for the CADE judgment, the particulars of claim explain that while the CADE Tribunal concluded by a majority that the evidence did not meet the required standard of proof beyond reasonable doubt, the claimants rely on evidence referred to in the CADE investigation and judgment, which is said to provide a clear indication of anticompetitive conduct relating to the supply of automotive TSCs in Brazil by (among others) both Valeo and DENSO.

108. Again, while I evidently cannot reach a view as to the merits of the claims by the Brazilian claimants at this stage of the proceedings, there is at least a plausible evidential basis for these claims. I do not, therefore, accept DENSO's arguments in relation to the application of gateway 3 to the claims of the Brazilian claimants.
109. Accordingly, I reject the applications to set aside the order permitting service out on the service-out defendants, on the basis of the jurisdictional gateways. On the basis of the circumstances at the time of that order (when Sanden remained a defendant), gateway 3 was an applicable gateway for all of the claims against those defendants.

Forum non conveniens

The parties' submissions

110. As set out above, in a case such as the present where there are both service-in and service-out defendants, while there are differences in the burden of proof as between those two categories of defendants, the court is essentially seeking to identify the jurisdiction in which the claims against all of the defendants may most suitably be tried, and in that regard is looking for the forum with which the action has the most substantial connection.
111. The claimants' submission at the hearing was that the anchor defendants have "strong and substantial" links to this jurisdiction, on the basis that the first defendant was an addressee of the Commission Decision, and the thirteenth defendant was the successor to SIE, which was one of the Sanden addressees. The claimants also relied on supplies by Sanden to the first claimant, and the supplies by Valeo and Sanden to the fourth claimant's Ryton plant in 2005–2006. Mr West also referred to the experience of the courts of England and Wales in dealing with complex international competition litigation, and specifically the experience gained in the *Stellantis Auto v Autoliv* proceedings currently in the Competition Appeal Tribunal, in which the claimants have retained the same solicitors, leading counsel and economic experts as in these proceedings. Given the multi-jurisdictional nature of the claim, with both the claimants and the defendants based in numerous different jurisdictions, Mr West realistically accepted that there were several jurisdictions where the claim could appropriately be tried, including England and Wales. He contended, however, that there is no other jurisdiction that is clearly the most appropriate for the trial of their claim.
112. By the time of the hearing, the defendants' position was that France is clearly a more appropriate forum for the claims, having regard to the volume of supplies to France by comparison to the supplies elsewhere, the fact that the PSA claimants (whose purchases made up the vast majority of the relevant supplies) are headquartered in France, and the fact that Valeo is also headquartered in France with the majority of its relevant supplies made from the French Valeo entities. The defendants also relied on the location of relevant witnesses and documents, and the fact that on the claimants' own case the laws governing the claims include French law (among others) but not the law of England and Wales. Valeo also relied (albeit somewhat faintly) on jurisdiction clauses in favour of France in the agreements for supplies to the PSA claimants.
113. In their October/November 2024 submissions following the Sanden settlement agreement, the defendants submitted that the concentration of the relevant supplies in France has now become even greater with the removal of Sanden from the claim. The claimants disputed some of the points made by the defendants, but their main objection

was that the Sanden settlement was irrelevant for the purposes of the defendants' *forum non conveniens* challenges. As set out above, I have rejected the latter submission: it is necessary to consider matters as they now stand, with Sanden no longer a defendant to these proceedings.

114. Finally, in their application to adduce new evidence, the claimants submit that 17 documents obtained from Sanden following the Sanden settlement agreement demonstrate that unlawful coordination between DENSO, Valeo and Sanden occurred within the jurisdiction between 2001 and 2007, which the claimants say rebuts the remaining defendants' contentions on the absence of connection between the proceedings and this jurisdiction. The claimants contend that the new evidence should therefore be admitted in furtherance of the overriding objective and by analogy with the principles in *Ladd v Marshall* [1954] 1 WLR 1489.
115. The defendants' position is that the court should not permit the claimants to rely on this evidence, whether on the basis of *Ladd v Marshall* or the overriding objective, not least because the further documents do not (according to the defendants) provide evidence of any cartel conduct within the jurisdiction, and are therefore immaterial to the assessment of the defendants' *forum non conveniens* arguments. For the same reason, even if the documents were to be admitted, the defendants contend that they should not make any difference to the court's analysis.
116. I will consider first the submissions advanced at the hearing and in the October/November 2024 submissions, before considering the new evidence sought to be adduced by the claimants and the parties' submissions as to the relevance of that evidence.

Available forum

117. There was no dispute that France would in principle be an available forum for the present claims. Although (on the claimants' case) the limitation period for a claim there expired on 30 May 2022, that does not render that jurisdiction "unavailable" as an appropriate forum: see §49.xi) above.

Location of parties

118. The top holding company of the claimant group is Stellantis NV, the tenth claimant, which is headquartered in the Netherlands. During the period relevant to the claims, the holding company for the PSA group was Peugeot SA, a French company, and the top company of the FCA group was Fiat SpA, an Italian company. Only one of the claimants (the first claimant) is incorporated in England. Other than that claimant and the tenth claimant, the countries of domicile of the claimants are, as set out at paragraph 12 above, above, Germany, Spain, France, Italy, Serbia, Poland and Brazil.
119. As set out below, the clear majority of the supplies to the claimants currently identified as falling within the scope of the claim are supplies to claimants in the PSA group, headquartered in France. Notably, the only claimant which is incorporated in this jurisdiction (the first claimant) no longer pursues claims against either DENSO or Sanden, and it has also settled its claims against Valeo up to 10 March 2016. The consequence of those settlements is that there are no longer any supplies to the first claimant which have been definitively identified as being within the scope of the claim. As discussed below, the only identified UK supplies are *de minimis* supplies to the Ryton

plant of the fourth claimant (a French company), and an even smaller quantity of replacement part sales to the first claimant which the defendants say do not fall within the claim. The locations of the claimants therefore do not point to England and Wales as the most appropriate forum for the claims. Rather, when considered in the context of the supplies subject to the claims, France is a more appropriate forum for the claims.

120. As regards the defendants remaining in the proceedings, DENSO is headquartered in Japan, and Valeo is headquartered in France. The countries of domicile of the individual DENSO and Valeo defendants are, as set out at paragraph 13 above, the UK, the Netherlands, France, Germany and Japan. The only remaining anchor defendants are the first and fifth defendants, from the DENSO group. There is, however, no reference in the claimants' pleadings to any relevant supplies having been made by those defendants to any of the claimants. The locations of the defendants do not therefore point to England and Wales as the most appropriate forum for the claims. Rather, again as set out below, when considered in the context of the supplies subject to the claims, France is a more appropriate forum.

Economic effects of the alleged infringements

121. At the hearing, the claimants' evidence was that the countries where the markets were affected, where the economic effects of the alleged infringement were felt, and where (accordingly) loss was suffered by the claimants, were Germany (OV claimants save for the first claimant), France (PSA claimants), Italy (FCA claimants), Brazil (Brazilian claimants) and the UK (first claimant only, plus some supplies to the Ryton plant of the fourth claimant).
122. Excluding the claims of the Brazilian claimants, which are unquantified, and with the claims against Sanden also now removed, the claimants' current estimates of the value of the TSC purchases relevant to the claims indicate that the claims of the PSA claimants account for around 72% of the claims during the original cartel period. During that time the PSA group was (as set out above) headquartered in France; the losses are said to have been suffered in France; and the claims by those claimants are said to be governed by French law. The majority of the PSA group's purchases relevant to the claims (around 62%) are said to have been from Valeo, headquartered in France, with around 38% from DENSO. The remaining 28% of the claims related to supplies made to the FCA group, which at the relevant time was headquartered in Italy; the losses are said to have been suffered in Italy; and as set out below the claims by those claimants are said to be governed by Italian law.
123. Following the Sanden settlement agreement, the only UK supplies identified by the claimant as being within the scope of the claim, or at least potentially so, are supplies said to have been made by Valeo to the Ryton plant of the fourth claimant in 2005–2006, and some sales by Valeo to the first claimant of replacement parts during the period 2014–2019.
124. Starting with the Ryton sales, the figures currently in evidence identify €7.1m total supplies from Valeo during the period from 2005–2006. That represents a tiny fraction of the claim: 0.2% of the total estimated value of commerce for the cartel period originally claimed (over €3.5bn) and an even smaller percentage of the total value of commerce including the amended cartel period and the overhang period. Even on the basis of the claimants' extrapolation from the 2005–2006 figures to cover the period

1999–2004, the supplies in issue would amount to only around 1.3% of the estimated value of commerce for the original cartel period; again, that percentage will be even smaller if the amended cartel period and overhang period are taken into account. The Ryton sales are therefore *de minimis* in the context of the overall economic effects of the infringements.

125. As for the Valeo replacement parts sales during 2014–2019, there is a dispute as to whether those fall within the scope of the pleaded claim. In any event, however, the identified sales have a total value of €174,694. That is so minuscule as to be even more *de minimis*, even before taking into account that (i) the claim against Valeo has been settled for all purchases up to 10 March 2016; and (ii) even on the basis of the overhang period pleaded in the particulars of claim served with the re-re-amended claim form, there is no explicit claim for purchases beyond 2016. While the claimants say that the purchase data are incomplete, and seek to infer that additional supplies falling within the scope of the claim were made by Valeo, that is (as matters stand) pure speculation.
126. The economic effects of the infringements therefore point strongly to France as the appropriate forum, and away from England and Wales for which only minuscule relevant supplies have been identified.

Applicable law

127. The claimants do not contend that any part of their claim is subject to the law of England and Wales. On the claimants' own case, on the basis of the economic effects of the alleged infringement, the claims are governed by German law (OV claimants), French law (PSA claimants), Italian law (FCA claimants) and Brazilian law (Brazilian claimants). As Mr Bolster notes in his evidence, although the claimants contend that the first claimant suffered loss in the UK, Germany was and is the centre of operations of the OV brands, such that the claimants' primary case is that the first claimant's claim is subject to German law. As discussed above, following the settlement with Sanden it is not clear that any supplies to the first claimant remain within the scope of the claim in any event.
128. The parties' skeleton arguments and evidence explored in some detail the effect of the French jurisdiction clauses in the agreements of supply to the PSA claimants. By the time of the hearing that point had largely evaporated, with Mr Kennelly acknowledging that the clauses did not expressly cover claims based on breaches of competition law. I do not consider that anything material turns on these for the purposes of the present determination.

Witnesses and documents

129. Valeo's evidence is that its witnesses in relation to sales to the PSA claimants are in France; and in relation to sales to the FCA claimants they are in Italy. DENSO's evidence is that most of its witnesses are likely to be in either Italy or Brazil.
130. As for the documents likely to be relevant to these proceedings, according to the evidence before the court, Valeo's documents are mostly in France, Spain and Italy, with none likely to be in the UK. DENSO's documents are likely to be in Italy and in Brazil, with the language of those documents likely to be Italian, French or Portuguese; as with Valeo, none of DENSO's documents are likely to be in the UK.

131. Having regard to the centre of gravity of the supplies within the scope of the claim (as discussed above), the evidence as to the location of witnesses and documents likewise points in favour of France as the appropriate forum. There is in this regard no connecting factor whatsoever with England and Wales.

Juridical advantages

132. The claimants rely on the *Stellantis Auto v Autoliv* proceedings in the Competition Appeal Tribunal as the “*Cambridgeshire* factor” pointing towards England as an appropriate forum. As discussed at §49.viii) above, however, it is not sufficient that the same legal team has been acting for the claimants in a parallel case. Even though the *PSA Automobiles* case concerns the same overarching sector, those proceedings are brought against different defendants and allege infringements in relation to different products.
133. Mr West relied on the fact that the claim in *Stellantis Auto* raises similar issues to those that would arise in the present case, such as the extent to which umbrella effects can be inferred from a finding of an overcharge based on a regression analysis, and issues of pass-on and financing losses. These are, however, issues that are commonplace in cartel damages claims. The fact that they arise in both the present claims and the *PSA Automobiles* is therefore entirely unremarkable, and falls far short of the situation in *Spiliada* where both those proceedings and the *Cambridgeshire* trial concerned claims for damages to vessels caused by the loading of sulphur onto the respective vessels by the same shippers at the same port, in circumstances where the solicitors for both claimants were the same and had built up a substantial bank of knowledge and experience with regard to the specific factual issues relevant for the case at hand (such as the carriage of sulphur on ships).
134. Mr West also relied on the processes available in the Competition Appeal Tribunal and the courts of England and Wales for dealing with disclosure issues in competition claims. In so far as there are differences between these procedures and the procedures of the French courts, however, such differences are in principle irrelevant to the question of whether to stay proceedings in this jurisdiction: see §49.x) above. While Mr Bolster has given evidence of his experience of litigation of one cartel trial in France, in which there was (apparently) very limited disclosure, I agree with Mr Kennelly’s submission that this does not come close to establishing that the claimants could not have obtained justice in the French courts, had they brought their proceedings there.
135. Finally on the issue of juridical advantages, it does not appear to be disputed that the limitation period under French law expired in 2022, such that any proceedings issued there would now likely be time-barred. There is, however, no suggestion by the claimants that they were unaware of the time-bar in other relevant jurisdictions. On the contrary, Mr Bolster’s witness statement in support of the claimants’ applications in May 2023 explicitly stated that the claimants had obtained German, French and Italian law advice on the limitation periods applicable in those jurisdictions. Nor is there any convincing explanation of why the claimants failed to issue protective proceedings in France. The only purported explanation proffered by Mr Bolster in his evidence is an assertion that it would have been unreasonable for the claimants to be put to the “burden” of starting protective proceedings in other jurisdictions. No evidence is, however, given as to the time and expense of doing so, and the assertion is in any event wholly unpersuasive in the context of the scale of the litigation and the considerable costs no doubt incurred so far in these proceedings.

136. Rather, it is clear from Mr Bolster's evidence that the real reason for issuing the claim in England was the claimants' view that their claim could only be proven by obtaining "English-style disclosure, which is not generally available in Civil law countries". The decision to issue proceedings only in this jurisdiction was therefore a deliberate litigation strategy, with awareness of the consequences. That is not, however, a sufficient reason for trying the proceedings in this jurisdiction. Nor is there, in the circumstances, any reason why a stay or set-aside of service should be made conditional on terms that the defendants should waive any limitation defence in France (and indeed I have not seen any evidence of their ability to do so).

The claimants' application to adduce new evidence

137. The claimants seek to adduce new evidence in the form of 17 documents obtained following the Sanden settlement agreement, on the basis of the application of the overriding objective, and an analogy with the *Ladd v Marshall* principles. Their application is supported by two further witness statements from Mr Bolster. Mr Bolster explains how the documents came into the claimants' possession, describes their content, and sets out what the claimants consider to be their relevance to the issue of *forum non conveniens*.
138. The *Ladd v Marshall* principles provide guidance on the admission of new evidence on appeal. It is, however, well-established that those principles are also relevant factors to consider in other situations where an application is made to adduce fresh evidence after the hearing, such as after final submissions but before a draft judgment has been circulated, or between circulating the draft judgment and handing down the final judgment, or between handing down the final judgment and sealing the order giving effect to the judgment: see e.g. *K v K (Abduction) (No. 2)* [2009] EWHC 3378 (Fam), *Tetronics (International) v HSBC Bank* [2018] EWHC 201 (TCC), and *Augusti v Matharu* [2023] EWHC 1900 (Fam).
139. The three criteria in *Ladd v Marshall* for the admission of fresh evidence are that: (i) it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; (ii) if given, the evidence would probably have an important influence on the result of the case, though it need not be decisive; and (iii) the evidence is apparently credible. The courts have, however, repeatedly emphasised that the *Ladd v Marshall* principles should not be treated as a straitjacket, and regard must always be ultimately to the application of the overriding objective in the particular case: see e.g. *Al Sadeq v Dechert* [2024] EWCA Civ 28, §141.
140. In the present case, I am satisfied that the evidence could not reasonably have been obtained by the time of the July 2024 hearing. As Mr Bolster explains, the claimants only received the documents in November 2024, following settlement with Sanden the previous month. Prior to that settlement the defendants had refused to provide voluntary disclosure (or had not responded to requests to do so). Valeo in its submissions suggests that the claimants might have settled after the hearing in the hope of obtaining further evidence so as to improve their position against the remaining defendants. There is no evidence before me which supports that suggestion. Mr Bolster's evidence is, to the contrary, that the claimants had been in active settlement discussions with Sanden since before the jurisdiction hearing in July 2024.

141. I am also satisfied that the documents on which the claimants now seek to rely are apparently credible, so far as they go. According to the claimants, they are contemporaneous documents provided by Sanden to the Commission for the purposes of the Commission's TSC investigation.
142. I do not, however, consider that the new documents have any material impact on the question of *forum non conveniens*. The documents consist of 14 internal Sanden emails and memos recording, or reporting on, discussions with DENSO and Valeo which are said to relate to the operation of the alleged cartel, plus three documents relied on to establish the identities and roles of key individuals in the first 14 documents. Six of the original documents are in Japanese, and are therefore provided with an English translation. It is apparent from the documents that the emails and memos were sent from and/or to individuals who were listed as being, at various times, directors of (or in one case a business strategist at) SIE, the UK-incorporated predecessor to Sanden International (Europe) GmbH. The claimants' evidence indicates that the SIE directors had given residential addresses in England as their place of correspondence and/or residence, and that at least some of them used @sandensie.co.uk email addresses.
143. The evidence indicates, therefore, that SIE personnel who were, or at least may potentially have been, resident in England either participated in discussions with DENSO and Valeo, or were copied into reports of such discussions. There is, however, no evidence of any conduct by DENSO or Valeo which took place in this jurisdiction. In some cases it is clear that the relevant discussion took place in another country (such as Japan), and was then simply reported back to SIE. In the remaining cases, while the documents provide evidence of discussions between Sanden and DENSO or Valeo, there is no evidence of the relevant individuals in DENSO and Valeo being located in England and Wales, nor do the documents indicate that any discussion with those individuals took place in this jurisdiction.
144. More importantly, while the claimants argue that the documents show that SIE was involved in arranging or implementing the cartel (in general terms) in the jurisdiction, none of the new documents provide evidence of any unlawful conduct being implemented in England and Wales in relation to the supplies of TSCs by DENSO and Valeo which remain at issue in these proceedings. Moreover, even if the documents were in some way relevant to the remaining claims against DENSO and Valeo, the claimants recognise that the individuals within SIE who sent and/or received the relevant communications, wherever they are now resident, will not be witnesses in this case in light of the settlement with Sanden.
145. Set against all the other factors considered above, the new documents provide evidence of (at most) only a very marginal connection to this jurisdiction. They do not, therefore, have any material impact on the assessment set out above, that the forum with which the proceedings have the most substantial connection is France rather than England and Wales. On that basis, the *Ladd v Marshall* test is not satisfied, nor would it be in accordance with the overriding objective for the new evidence to be admitted at this stage. Furthermore, for the same reasons, even if the documents were to be admitted in evidence, they would not change the conclusion as to the proper forum for the dispute.

Conclusion on forum non conveniens

146. My conclusion is that the forum with which the dispute has the closest connection is France; and that France is (very clearly) the natural forum for the dispute. The defendants' challenges to jurisdiction on the grounds of *forum non conveniens* therefore succeed.

Overall conclusions

147. My conclusions on the issues raised by the defendants' applications are therefore:

- i) The order for an extension of time for service on Valeo will be set aside. The claim against Valeo is therefore dismissed.
- ii) I reject the applications to set aside the order permitting service out on the basis of the jurisdictional gateways.
- iii) The jurisdiction which is the natural forum for the dispute, and with which the dispute has the closest connection, is France. The defendants' challenges on the basis of *forum non conveniens* therefore succeed. Accordingly, the claims against the first and fifth defendants will be stayed. The orders permitting service out on the remaining defendants will be set aside, and the claim against those defendants dismissed.