Neutral Citation Number: **[2025] EWHC 2531 (Comm)**

Case No: CL-2024-000678

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**COMMERCIAL COURT**

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

Date: 6 October 2025

**Before** :

**MR JUSTICE BRIGHT**

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**Between :**

**Aston Martin MENA Limited**

**Appellant**

**- and -**

**Aston Martin Lagonda Limited**

**Respondent**

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Jeff Chapman KC, Samuel Ritchie, Ruth Flame (instructed by CMS Cameron McKenna Nabarro Olswang LLP) for the Claimants
Iain Quirk KC, Sophie Weber, Robert Harris (instructed by Slaughter & May) for the Defendants

Hearing date: 23 September 2025
Handed down: 06 October 2025 via email

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# JUDGMENT

**Mr Justice Bright:**

## Introduction

1. This judgment is concerned with an appeal under section 69 of the Arbitration Act 1996, brought by the Appellant ("AMMENA") against the Respondent ("AML").

2. AML is a well-known manufacturer of luxury cars. AMMENA is its sole distributor in the Middle East and North Africa. AML and AMMENA entered into a Distribution Agreement dated 19 April 2018 ("the Distribution Agreement"). Disputes arose as to a number of matters relating to the Distribution Agreement. These disputes were referred to arbitration in July 2022.

3. Under the terms of the arbitration agreement in the Distribution Agreement, the arbitration was subject to the Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2013 ("the UNCITRAL Rules"), with the arbitral appointments to be made by the London Court of International Arbitration ("the LCIA"). With the involvement of the parties, the LCIA duly appointed a panel of three arbitrators (the "Tribunal").

4. The normal procedural steps were followed, and an evidentiary hearing took place in September 2024. On 2 September 2024, both parties served written opening submissions, accompanied by various other documents including an agreed Glossary and an agreed List of Issues. An evidentiary hearing took place between 16 and 30 September 2024, involving substantial documentation, reasonably lengthy oral submissions and oral evidence from 7 witnesses. In the course of the hearing, the Tribunal sent the parties a list of questions to be

addressed in closing submissions. The Tribunal received the parties' written closing submissions on 27 September 2024. In short, it is clear that the Tribunal received a substantial amount of material.

5. The Tribunal made its award on 18 November 2024 (the "Award"). Despite the impressive promptness with which the Award was produced, it is a lengthy and detailed document which is well-structured and clearly reasoned. It runs to 140 pages of Reasons, with the Award itself (i.e., the dispositive part) contained in paragraph 398, on pages 141-144. There are also two Appendices – the agreed Glossary and the agreed List of Issues.

6. The dispositive part, in paragraph 398, decided a number of individual points. AMMENA only challenges one of them, relating to a specific aspect of the interpretation of a single provision in the Distribution Agreement: Article 4(A)(1).

7. The Distribution Agreement is a one-off contract. The provision in question is bespoke. AMMENA has always accepted that its challenge does not raise a question of general public importance. It sought leave to appeal on the basis that the Tribunal's interpretation of Article 4(A)(1) was obviously wrong, and was granted leave on this basis.

8. The respective arguments were presented to me by Mr Jeff Chapman KC for AMMENA, and by Mr Iain Quirk KC for AML, with assistance from their respective juniors. The assistance that I received from both sides was exemplary: clear, to the point and succinct. I am extremely grateful.

## Article 4(A)(1)

9. Article 4(A)(1) is concerned with the price at which AML was to sell cars to AMMENA. It provides as follows:

> "Article 4 Purchase of Products
>
> A. Terms and Conditions
>
> Save where the Company and the Distributor expressly agree otherwise in writing the Supply of Products by the Company to the Distributor shall be governed by the terms and conditions of this Agreement and in particular:
>
> (1) Subject to Article 3A(3), the price for Products shall be set on a regional basis so that (a) the Company's price for export (from its UK premises) to the Territory in force at the time of delivery shall not be materially higher than the UK factory price applicable to other territories, (b) the Company's price to the Distributor, net of all margins, commissions, and other fees payable in respect of such sales, shall be in line with that applicable to other territories /or equivalent vehicles with similar specifications, and (c) such price together with other freight, packing, insurance, forwarding charges (including demurrage and storage, if any) shall be payable in such currency as may be specified by the Company from time to time and if not so specified, in Sterling."

10. This text uses a number of defined terms, indicated by the use of an initial upper-case letter. In particular, "the Company" and "the Distributor" mean AML and AMMENA, respectively. When setting out this provision in the Award, the Tribunal did so having substituted "AML" and "AMMENA" for "the Company" and "the Distributor" (and with similar substitutions for some other defined terms). This was appropriate, although I have chosen to reproduce the text without any such substitutions.

11. It was common ground that, in limbs (a) and (b), the phrases "the Company's price for export (from its UK premises) to the Territory" and "the Company's

price to the Distributor" both refer to the price that AML was to charge AMMENA.

12. The focus of AMMENA's appeal, and thus of much of the submissions to me, was on the meaning of the phrase that defines the comparator in limb (a) – as follows:

> "… the UK factory price applicable to other territories…"

13. AML's submissions also paid some attention to the equivalent comparator in limb (b) – i.e.:

> "… [the Company's price] applicable to other territories for equivalent vehicles with similar specifications…"

14. Neither of these phrases contains a defined term. In particular, the word "price" is not defined.

## The facts

15. In this section, I essentially rely on the facts found by the Tribunal and set out in the Award. However, where appropriate, I also draw upon the Distribution Agreement itself. I should say that the facts set out in the Award are of course considerably more extensive than the summary that follows. Similarly, the Award itself states in terms that it does not refer to all the arguments, evidence and authorities that were advanced by the parties; although they were all taken into account by the Tribunal.

16. AML is a manufacturer of luxury cars, with an address in Warwickshire. Thus, while the Award does not state this directly, it is self-evident that AML operates the UK factory referred to in Article 4(A)(1). It is also apparent from the Award

that AML is one of a number of companies within the Aston Martin group, which is headed by Aston Martin Holdings (UK) Limited.

17. AMMENA is not part of the Aston Martin group and is commercially independent of AML. It is AML's exclusive distributor in the Middle East and North Africa (defined in the Distribution Agreement as "the Territory"). It sells to retail dealers, who then sell to retail customers.

18. There are two other territories where AML sells to a distributor, which then sells to retail detailers – North America and China. However, in both cases the distributor is a captive distributor, i.e. an associated company within the Aston Martin group.

19. In North America, AML sells to Aston Martin Lagonda North America Inc. ("AMLNA"), which then sells to retail dealers. In China, it sells to Aston Martin Lagonda (China) Automotive Distribution Co. Ltd. ("AML China"), although a state-owned company, China Automotive Trading Co. Ltd. ("CATC"), sits between AML and AML China, providing import and customs clearance services.

20. In all other territories, AML manages retail dealerships itself, through its own regional team. Each regional team in effect acts as the distributor, but does not itself buy or sell cars. AML sells directly to the retail dealers, which are not within the Aston Martin group.

21. AML refers to any price at which a sale takes place within the Aston Martin group as the "Internal Transfer Price" ("ITP"). Thus, the price paid by AMLNA for any specific model at any particular time is an ITP; and the price paid by

AML China (which will not necessarily be the same as the price paid by AMLNA for the same specific model at the same particular time) is also an ITP.

22. The Award says of ITPs:

> "AML fixes the ITPs. It calls them a "*technical price*" because they are "*akin to accounting tools; they are not set through a commercial arm 's length arrangement, but instead are subject to transfer pricing rules and jurisdiction-specific tax and regulatory requirements*.""

23. In other territories, where AML sells directly to retail dealers (via its own regional team), AML refers to the price paid by any such retail dealer as the "Dealer Net Price" ("DNP"). The Award notes that the DNP is also sometimes referred to as the wholesale price.

24. The Award does not state this directly, but it is apparent that DNPs in those other territories are set through commercial arm's length arrangements, in that the retail dealers which pay DNPs are commercially independent of the Aston Martin group. DNPs are fixed by AML, in that a single DNP will be applicable to a specific model at a particular time in a given region. However, it is clear from the Award that the Tribunal regarded the process that gives rise to DNPs as qualitatively different from that which gives rise to ITPs, because the relationship between AML and retail dealers, in regions such as Europe and countries such as Germany, is one at commercial arm's length.

25. It is self-evident that, for AMMENA to make a profit, there must be a margin between the price that it pays AML under Article 4(A)(1), and the wholesale price that it receives from the retail dealers in the Middle East and North Africa to which it sells. It follows that, for AMMENA to make a profit, either (i) the price that it pays AML under Article 4(A)(1) must be lower than the DNPs in

other territories or (ii) the wholesale price that AMMENA receives from the retail dealers in the Middle East and North Africa must be higher than the DNPs in other territories or (iii) some combination of the foregoing.

## The issue between the parties

26. The prices actually charged by AML to AMMENA reflected the DNPs in Germany, as charged by AML to German retail dealers, to which it sells directly.

27. AMMENA's case was that Article 4(A)(1) required prices under that provision to reflect (in the sense of being "not materially higher than" in limb (a), and "in line with" in limb (b)) the ITPs charged to captive distributors. AMMENA focussed principally on the ITPs charged by AML to AMLNA; but, at least before me, it was open in principle to pricing that reflected the ITPs charged by AML to AML China (via CATC).

28. The Tribunal recorded in the Award that the commercial purpose of Article 4(A)(1) was common ground:

> "It is to ensure that there is a roughly level playing field between different territories. It requires a like-for-like comparison at a reasonably high level of generality. The price must comply with both sub-paragraphs (a) and (b). As AML say, the provision is analogous to a "most favoured nation" clause."[1]

29. AMMENA said that, because it is a distributor, not a retail dealer, the comparator prices must be prices charged to distributors. In circumstances where there are no commercially independent distributors, AMMENA said that

[1] I cannot agree with the "most favoured nation" clause analogy. The actual words do not require AMMENA to be given the most favoured price; only a price that is not materially higher. The provision is, at most, analogous to a "not materially disfavoured nation" clause.

it follows that the comparator prices therefore must be the ITPs charged by AML to its captive distributors.

30. The Tribunal rejected AMMENA's case and accepted AML's argument that the comparator prices must be prices fixed in the context of a commercial arm's length relationship. The Tribunal considered that the ITPs charged to AMLNA and AML China cannot be used as comparator prices, because they are not fixed in the context of a commercial arm's length relationship. By contrast, the DNPs charged by AML to retail dealers, are appropriate to use as comparator prices and, on this basis, the Tribunal concluded that it was acceptable to use the DNPs charged by AML to retail dealers in Germany.

## The legal principles

31. The legal principles governing contractual interpretation are very well known, and the Tribunal was referred to familiar authorities, notably *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50; *Arnold v Britton* [2015] UKSC 36; *Wood v Capita Insurance Services Ltd* [2017] UKSC 24. In the Award, the Tribunal set out key passages from the speech of Lord Neuberger in *Arnold v Britton* and that of Lord Hodge in *Wood v Capita Insurance Services Ltd*. Before doing so, the Tribunal said:

> "155. Unsurprisingly, there was no dispute between the Parties in relation to the principles involved, but each Party emphasized different principles or aspects of the principles in support of its own case.
>
> 156. In short, contractual interpretation is the ascertainment of the objective meaning of the relevant contractual language. This requires the Tribunal to consider the ordinary meaning of the words used, in the context of the contract as a whole and the background knowledge reasonably available to the Parties at the time of the contract."

32. Before me, it was common ground not only that the Tribunal set out the relevant principles accurately, but also that it is not apparent from the Award that the Tribunal failed to apply those principles properly and faithfully.

33. Mr Chapman KC placed particular reliance on the passage in Lord Neuberger's speech in *Arnold v Britton* at [17] – which was part of the citation set out in the Award – to the effect that the parties' meaning is most obviously to be gleaned from the language of the provision, i.e., its natural and ordinary meaning.

34. Both he and Mr Quirk KC submitted that their respective arguments reflected the natural and ordinary meaning of the words used in Article 4(A)(1). It seems to me very telling that the two of them, both intelligent and experienced practitioners acting in good faith and with full sincerity, were able to say such entirely inconsistent things about natural and ordinary meaning.

35. There are three other things that I should say at this stage about the legal principles.

36. First, neither before the Tribunal nor before me was it argued by either side that the relevant language had a special meaning, established and recognised in the trade or industry. Before the Tribunal, AML relied on evidence from one of its factual witnesses, Mr Kipferler, to the effect that "factory price" meant the commercial price (i.e., one established by an arm's length commercial arrangement) that an external party pays for a vehicle from an entity within the corporate group of the car manufacturer, whether that entity is the original manufacturer or not. The Tribunal refused to pay any regard to this evidence, on the basis that it merely reflected Mr Kipferler's own subjective view. That was undoubtedly right.

37. Second, neither before the Tribunal nor before me was it argued by either side that the issue should be treated as one requiring an implied term. An arbitral or judicial decision that explains the meaning of a particular phrase necessarily adds a gloss to the actual words used, but this is not the same as implicitly writing in some extra words. It follows that the legal principles to be applied are those relating to contractual interpretation, not those relating to implied terms.

38. Third, when AMMENA sought leave to appeal, it had to persuade the Court that the Tribunal's Award was "obviously wrong", this being the test prescribed for the granting of leave to appeal under Section 69(3)(c)(i) of the Arbitration Act 1996. Permission to appeal having been granted, I simply have to decide the appeal. It is AMMENA's appeal, so the persuasive burden is on AMMENA to persuade the Court that the Award was wrong and that the question of law that the appeal identifies should now be given a different answer. However, the test to be applied is not "obviously wrong." Mr Quirk KC suggested that, even after leave has been granted, the Court dealing with the substantive appeal on the merits can and should still apply the "obviously wrong" test. I see no support for this in the language of Section 69, and I note that this appears to have been the view of Moulder J in *Fehn Schiffahrts GmbH & Co. KG v Romani SpA* [2018] EWHC 1606 (Comm), at [15]; of Sir Nigel Teare in *Regal Seas Maritime SA v Oldendorff Carriers GmbH & Co. KG* [2021] EWHC 566 (Comm), at [1]; and of Cockerill J in *CVLC Three Carrier Corp v Arab Maritime Petroleum Transport Co.* [2021] EWHC 551 (Comm), at [34]. Mr Quirk KC relied in particular on the decision of HHJ Waksman QC (as he then was) in *Agile Holdings Corp. v Essar Shipping Ltd*. [2018] EWHC 1055 (Comm), at [19]; but

I do not regard that judgment, fairly read, as intending to suggest that an appeal such as the one before me can only succeed if the Award was obviously wrong, even after leave to appeal has been granted.

## The Tribunal's interpretation of Article 4(A)(1)

39. The Tribunal's interpretation emerges from the following three paragraphs of the Award:

> "190. The language of the clause itself does not spell out the role of the comparator in the trade flow, be it distributor, retail dealer, retail customer or something else.
>
> 191. If on the other hand the clause is to serve the agreed commercial purpose, the Tribunal would expect the price paid by that purchaser to be akin to a market price or a price agreed at arm's length. A comparison with a purchaser paying an off market price will not ensure a level playing field.
>
> 192. AML's case is that the comparator must be "an independent, third party entity which is outside the Aston Martin corporate group (and which purchases that Vehicle for its own use, on-sale, and/or distribution...)". The Tribunal considers that makes commercial sense."

40. The Tribunal's Award on this point, in the light of this reasoning, was set out in paragraph 398(1)(a):

> "398. After consideration of all the factual and legal submissions which have been presented to us and for the reasons set out in full above, we the Tribunal hereby unanimously award, declare and adjudge as follows:
>
> (1) The Tribunal declares that on the proper interpretation of Article 4(A)(1):
>
> (a) The "UK factory price applicable to other territories" (Article 4(A)(1)(a)) and "[AML's] price… applicable to other territories" (Article 4(A)(1)(b)) are in each case references to the prices in each territory other than the MENAT Region at which a Vehicle is first sold to an independent, third-party entity which is outside the Aston Martin corporate group (and which purchases that

> Vehicle for its use, on-sale and/or distribution, as opposed to merely providing technical services)".

## The factual matrix

41. The terms "Internal Transfer Price" and "Dealer Net Price", and their abbreviations, are not used or acknowledged anywhere in the Distribution Agreement. They are not terms of art in the industry. They appear simply to be in-house jargon within the Aston Martin group, with which AMMENA has no doubt become familiar over time because of its business relationship with the Aston Martin group.

42. It is not clear to me whether AMMENA was familiar with these terms at the time the Distribution Agreement was concluded. Nor is it clear whether AMMENA was aware of any of AML's arrangements in territories other than the Middle East and North Africa. I was told in the course of Mr Chapman KC's submissions (on behalf of AMMENA) that the evidence to the Tribunal was that, in April 2018, AMMENA knew that AML had no other independent distributor. I was told in the course of Mr Quirk KC's submissions (on behalf of AML) that the evidence to the Tribunal was that AMMENA did not know of the existence of captive distributors in North America and China. Neither Mr Chapman KC nor Mr Quirk KC suggested that what the other had said was wrong or misleading, nor did either of them even assert that the evidence that the other referred to had been challenged. Nevertheless, the fact is that the Award does not refer to this evidence, still less does it record any of these matters as a finding of fact.

43. Even though what Mr Chapman KC and Mr Quirk KC said in this regard seems likely to have been correct, it would not be right for me to add materially to the

factual findings that can be gleaned from the Award. I therefore am not prepared to proceed on the basis that it is positively established that AMMENA knew in April 2018 that there was no other independent distributor, or that AMMENA did not know of the existence of captive distributors in North America and China; still less that it is established either way that AMMENA was or was not familiar with the terms "Internal Transfer Price"/"ITP" and "Dealer Net Price"/"DNP", as used by AML.

44. However, the fact that these submissions were made to me highlights the stark reality that a Court which has to determine an issue of contractual interpretation on the basis of very limited materials (typically, the Award and the contract) is simply not in the same position as a Tribunal which conducted a multi-day evidentiary hearing.

45. In saying this, I have in mind that the familiar authorities on contractual interpretation emphasise that the process involves considering all the matters enumerated by Lord Neuberger as relevant to identifying what the parties meant, in *Arnold v Britton* at [15]:

> "That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

46. I also have in mind Lord Hodge's observation in *Wood v Capita Insurance Services Ltd*, at [12]:

> "This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are

> investigated: the *Arnold* case, para 77 citing *In re Sigma Finance Corpn* [2010] 1 All ER 571, para 12, per Lord Mance JSC."

47. As to Lord Neuberger's factor (i), I do not shrink from regarding my view of the natural and ordinary meaning of words as just as valid as anyone else's (although I am conscious that I should resist the instinct to regard my view as more valid than anyone else's). Equally, I am just as qualified as the Tribunal to consider (ii) the other relevant provisions of the Distribution Agreement; and (probably) (iii) the overall purpose and (v) commercial common sense. However, I simply do not know as much about (iv) the factual matrix as the Tribunal did. This means that I cannot conduct the necessary iterative process in the same way that the Tribunal will have done.

48. How the Court approaches problems of this kind will vary, but in some cases it may be right for the Court to be slow to be persuaded to overturn the Tribunal's conclusion. In practical terms, it may be necessary to consider how significant the factual matrix was to the Tribunal's decision; at least, if the Court's interpretation of the relevant provision would otherwise be different from the Tribunal's interpretation.

49. There are authorities which suggest that contractual interpretation is, always and only, a question of law. This is often said to be the effect of the judgment of Mustill J (as he then was) in *Vinava Shipping Co. Ltd. v Finelvet AG (The "Chrysalis")* [1983] 1 WLR 1469, at p. 1475B. That is a conveniently simple approach, when it comes to differentiating between questions which can and cannot be regarded as questions of law for the purposes of Section 69 of the Arbitration Act 1996. However, the modern approach to contractual interpretation in the light of authorities such as *Arnold v Britton* and *Wood v*

*Capita Insurance Services Ltd*, which requires attention to some avowedly factual matters in the context of an iterative process, makes it difficult to avoid the conclusion that it is really a mixed question of law and fact. The nature and character of that mixture will vary from case to case.

**My interpretation of Article 4(A)(1)**

50. The two definitions that encompass the possible comparator prices, in limbs (a) and (b) of Article 4(A)(1), refer to "the UK factory price applicable to other territories" and to "the Company's price… applicable to other territories".

51. The fact that the definition in limb (a) is qualified by "UK factory" means that the only prices to be considered are prices charged by AML. This is confirmed by the reference to "the Company" (i.e., AML), in limb (b).

52. Mr Quirk KC suggested that it should in principle be allowable to use the prices charged to retail dealers by AMLNA, in North America, and by AML China, in China; and he suggested that this was what the Tribunal had decided, in the Award at paragraph 398(1)(a). My impression from the Award is that this was not the Tribunal's intention: the Award does not reflect either side ever advancing this argument; the only way the Tribunal could have concluded that a captive distributor's price fell within the phrase "UK factory price" would be if they had accepted the evidence of Mr Kipferler, but they clearly refused to have regard to that evidence; and it seems significant to me that, in paragraph 398(1)(a), they repeated the text of the definition in limb (b), re-writing it so as to make it clear that it referred to AML's price. I therefore do not read the Award in the way that Mr Quirk KC suggested. In any event, I have no doubt

that any comparator price must be one charged by AML. Prices charged by AMLNA or AML China do not qualify.

53. The real debate between the parties, before the Tribunal and before me, related to the word "price" – whether it was restricted to prices charged by AML to a (captive) distributor, or whether it was restricted to a price fixed in the context of a commercial arm's length relationship. Strong arguments can be and were advanced for each; each argument has its attractions, but neither is overwhelmingly compelling. In short, having had the benefit of more detailed exposition than will have been received by the Court at the stage when leave was granted, I do not find the answer obvious.

54. If I were considering the word "price" in the abstract, in a commercial context, I would generally assume that the parties meant a commercial price, i.e. one that resulted from arm's length negotiation. In the context of a commercial contract such as the sale and purchase of goods, and in the specific context of a provision intended to govern how the price of the goods is to be established, I would – again, in the abstract – be, if anything, more likely to make that assumption. It is not normal for commercial parties to agree that one party can fix the price payable to it by reference to its own internal prices, which it sets unilaterally as accounting tools.

55. I have deliberately twice used the phrase "in the abstract", in the preceding paragraph, but the reality is that contractual interpretation seldom occurs in the abstract. The iterative process that has now become familiar means that contractual interpretation is generally undertaken with a good deal of

surrounding context – not least, whatever evidence there may be about the factual matrix.

56. If I knew that the circumstances comprising the factual matrix included knowledge on both sides that AMMENA was the only independent distributor doing business with AML at arm's length, but that there were two captive distributors for whom ITPs were regularly established by AML for internal group accounting purposes, this would be important context that might well affect my abstract view.

57. However, this is not the position. The Award records no findings to this effect. The indications that I have received from Counsel are not matters on which I can or should rely, but they at least confirm that I cannot assume that AMMENA knew that there were any captive distributors, in April 2018. On that basis, it seems to me difficult to proceed on the basis that the parties intended the non-commercial, non-arm's length prices fixed by AML for AMLNA and AML China to be within the scope of Article 4(A)(1).

58. The language of Article 4(A)(1) defines the comparator prices in terms of the UK factory price, and AML's price to other territories. It does not expressly limit this to prices charged to distributors; nor does it expressly exclude prices charged to retail dealers – i.e., DNPs. Whether or not the language of the provision is restricted to DNPs, its natural meaning certainly includes DNPs charged by AML to retail dealers (for example, in Germany). They are, after all, UK factory prices charged by AML in territories other than the Middle East and North Africa. Mr Chapman KC accepted this.

59. I recognise that the Distribution Agreement is one under which AMMENA was to act as a distributor, not a retail dealer. If there were in fact other, similar independent distributors doing business with AML on a commercial, arm's length basis, it might well be right to interpret Article 4(A)(1) on the basis that the comparator prices should be limited to the prices charged to those distributors. At any rate, it would be difficult to exclude the prices charged to those distributors. Equally, there being no other such independent distributors but only captive distributors, if there were evidence that AMMENA knew in April 2018 that there were no independent distributors but only captive distributors, that might at least assist the argument that the parties had in mind the prices charged to those captive distributors, when they agreed Article 4(A)(1).

60. However, those are hypothetical scenarios. The actual position is that there is no suggestion in the Award (or, if it matters, in Counsel's submissions to me) that AMMENA knew of the existence of any captive distributors. The natural meaning of the provision includes DNPs (including the DNPs applicable to Germany), which are prices to independent, third-party entities. In my view it does not include ITPs, which are set by AML unilaterally for internal group accounting purposes. There is no sufficient basis to displace that natural meaning.

## AMMENA's supplementary arguments

61. I have dealt above with the primary arguments made by each side. They both also raised a number of supplementary arguments.

62. AMMENA argued that the ITPs charged by AML to AMLNA and AML China were, in fact, at market levels. Mr Chapman KC referred to the Award at paragraphs 193 and 194:

> "193. Subject to what follows, the Tribunal would not therefore regard the ITP to AMLNA as a valid comparator. It may have been set at 85% of the US DNP but it was not a price agreed at arm's length. AML could have set the price at any level it chose.[159]
>
> [159] Although an off market price might have consequences under the applicable tax and transfer pricing rules.
>
> 194. AMMENA relies on the statement in the 2023 annual accounts of the Aston Martin parent company that "sales and purchases between related parties were made at normal market prices unless otherwise stated." That does not change the analysis, since AML could sell cars to AMLNA at an off market price if it wanted."

63. This is not a finding that the ITPs were, in fact, at market levels. Strictly, it is only a finding that AML said in one set of accounts, covering one year, that sales and purchases in that year were made at normal market prices. Whether the statement was true, either for 2023 or for any other years, is not something on which the Tribunal made any finding. The Tribunal's point – with which I agree – was that, even if this could be shown in fact to have been the case for that year (and perhaps for other years), that was not prospectively foreseeable in April 2018 and cannot have represented the parties' mutual expectations.

64. Mr Chapman KC added that if an ITP did not properly reflect the market price, it would be possible to object to the use of that particular ITP as a comparator. This seems to me an unlikely way for the parties to have intended their contract to work. It would be a recipe for uncertainty and disputes. It also strikes me that this submission, and the underlying statement in the 2023 accounts, lacks

meaning. There are no market prices for sales by AML to any distributors, because there is no open market in which such sales occur.

65. AMMENA's next point was that the Tribunal's view is not consistent with the admitted commercial purpose of Article 4(A)(1), i.e. to ensure a roughly level playing-field, because it would result in the price charged to AMMENA not being compared to a distributor's price. However, the agreed position between the parties as to commercial purpose, as recorded in the Award, was to ensure "a roughly level playing field between different territories" and to require "a like-for-like comparison at a reasonably high level of generality." This does not require AMMENA's prices to be compared with the prices of some entities in other territories (captive distributors), but not with the prices of others (commercially independent retail dealers).

66. AMMENA's next point was to object that the Tribunal's approach involved reading a considerable number of additional words into the provision. This point has no force. This is a contractual interpretation case, not an implied term case, so it is not strictly correct to say that any words are being read in. Furthermore, both parties' cases involve an explanation of the meaning of Article 4(A)(1), which has to be set out in additional text. I cannot decide the case by challenging them to reduce their respective formulations to the smallest number of words, so that I can find in favour of the most succinct.

67. AMMENA's next point referred to Article 3(A)(3) of the Distribution Agreement, which entitles AML to reduce AMMENA's margin, in some circumstances. It could only do this by increasing the prices paid by AMMENA, relative to the existing margin. Mr Chapman KC said that this

provision necessarily assumes that AMMENA's prices will reflect the prices paid by other distributors (i.e., ITPs), because otherwise there can be no proper distributor's margin to be the subject of the Article 3(A)(3) reduction. The fallacy in this point is that Article 3(A)(3) operates irrespective of the magnitude of AMMENA's margin. Its effect is to impose a specified percentage reduction. Mr Chapman KC did not suggest that AMMENA does not make any margin at all on its sales, and in fact it is clear from the Award that it has done; this emerges from a section in the Award concerned with allegations of bad faith, which were not directly relevant to this appeal. Article 3(A)(3) does not require AMMENA to be making what Mr Chapman KC referred to as a "distributor's margin" – another term that is not used or acknowledged in the Distribution Agreement.

68. AMMENA's next point concerned a separate agreement that AML and AMMENA entered into at the same time as the Distribution Agreement – the Agency Agreement. AMMENA noted that the remuneration structure under the Agency Agreement was set as a percentage of the wholesale prices in AMMENA's Territory – i.e., the prices charged to retail dealers. AMMENA argued that this supported the case that the prices charged to AMMENA under the Distribution Agreement should be a percentage of that wholesale price, not at the same level. I accept that, in order to have any margin for profit, AMMENA must buy at a lower price than the price at which it sells. However, this point goes no further than that. The Agency Agreement does not presuppose that the prices paid by AMMENA under the Distribution Agreement must be comparable to the ITPs paid by AMLNA and/or AML China.

69. AMMENA's final point related to a comfort letter that AML provided to AMMENA, at the same time as the Distribution Agreement and the Agency Agreement, in April 2018. Like the Agency Agreement, this proceeds on the basis that AMMENA should have a profit margin. It indicates (without guarantee) that this margin is assumed to be about 15%. However, the fact that AML encouraged AMMENA to assume that it would be able to sell to retail dealers at a wholesale price that would give a margin of 15% says nothing whatsoever about whether the prices payable by AMMENA to AML should be comparable to the ITPs paid by AMLNA and/or AML China.

**AML's supplementary points**

70. AML said that AMMENA's case included arguments that differed from the points advanced before the Tribunal. I was not persuaded that there were any material differences. Arguments always evolve, as the case progresses, but that is neither unusual nor objectionable.

71. AML also said that its case gave effect to the phrase "other territories" in Article 4(A)(1), in a way that AMMENA's case did not. I did not really see the force of this. On the basis that "price" means a price that results from a commercial, arm's length relationship and so is payable by an independent, third-party entity, in some territories a "price" (with this meaning) is paid to AML; in others (North America and China) it is not.

72. Finally, in its written submissions, AML's suggestion that the DNPs charged to retail dealers in North America and China could be used as comparators was based not only on the Award at paragraph 398(1)(a) (which I have already considered), but also on the evidence of Mr Kipferler on the meaning of "factory

price". However, I have already noted that this evidence was rightly disregarded by the Tribunal. Mr Quirk KC very wisely did not press this aspect in oral submissions.

## Conclusion

73. Subject to one possible qualification, the appeal fails.

74. The possible qualification arises from AML's case as to the meaning of paragraph 398(1)(a) of the Award, and whether it extends to prices charged by AMLNA or AML China to the retail dealers in their respective territories. If either of the parties think it desirable for this Court to make an order to clarify that any comparator price must be one charged by AML, and that prices charged by AMLNA or AML China do not qualify, I will in principle be prepared to receive submissions on this.

75. However, for reasons that I have already given, my own view is that this would at most make clearer what the Award is already intended to convey. Furthermore, it was a somewhat peripheral point before me; in particular, it was not the basis on which AMMENA sought or obtained permission to appeal. In other words: this can have no bearing on costs.