



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1295/5/7/18 (T)

BETWEEN

- (1) DAWSONGROUP PLC
- (2) DAWSONGROUP UK LIMITED
- (3) DAWSONGROUP TRUCK AND TRAILER LIMITED
- (4) DAWSONGROUP MATERIAL HANDLING LIMITED
- (5) DAWSONGROUP SWEEPERS LIMITED

Claimants

-and-

- (1) DAF TRUCKS N.V.
- (2) DAF TRUCKS DEUTSCHLAND GMBH
- (3) PACCAR INC
- (4) DAF TRUCKS LIMITED
- (5) DAIMLER AG
- (6) MERCEDES-BENZ CARS UK LIMITED
- (7) AKTIEBOLAGET VOLVO (PUBL)
- (8) VOLVO LASTVAGNAR AB
- (9) VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH
- (10) RENAULT TRUCKS SAS
- (11) VOLVO GROUP UK LIMITED

Defendants

ORDER

UPON hearing Leading Counsel for the Claimants and Defendants at a hearing on 19 and 20 September 2019

AND UPON the Claimants and Volvo/Renault agreeing that, should the statement and sample to be provided by Volvo/Renault pursuant to paragraph 2 of this Order prove insufficient for the Claimants' expert to understand the changes to the data, their respective experts will meet to discuss how that data might sensibly be interrogated

AND UPON the following definitions applying for the purposes of this Order:

- **“Confidentiality Ring Order”** means the Order of Mr Justice Roth dated 12 June 2019
- **“DAF”** means the First to Fourth Defendants
- **“Daimler”** means the Fifth and Sixth Defendants
- **“Volvo/Renault”** means the Seventh to Eleventh Defendants

IT IS ORDERED THAT

1. By no later than 15 November 2019, Volvo/Renault shall file and serve a statement setting out:
 - (a) the progress which has been made in respect of interrogating the Triton database and the anticipated date by which that work will be completed; and
 - (b) the progress which has been made in respect of identifying any pre-BNA database(s) recording Truck sales in the UK that might hold information responsive to the Defendant disclosure categories set out in Annex 1 to this Order, and the date by which that work will be completed.
2. By no later than 15 November 2019, Volvo/Renault shall, in respect of its BNA and Partner databases:
 - (a) file and serve a statement setting out details of the changes made by Volvo/Renault to its cost accounting methodology on or around 1 January 2017, the reasons why transaction level data before and after that date is therefore not comparable and any adjustments that may be made to attempt to make data before and after that date comparable; and
 - (b) use best endeavours to file and serve a sample of data to illustrate the points covered in the statement referred to at sub-paragraph 2(i) above.
3. By no later than 15 November 2019, Volvo/Renault shall confirm in writing whether they continue to pursue its pleaded case that there was a pass-on as a result of Volvo/Renault buying back Trucks from the Claimants.

4. By no later than 29 November 2019, the parties shall disclose by list, from non-legacy database repositories (which, for Volvo/Renault shall mean the BNA and Partner databases), the documents in their control that are responsive to the categories set out in Annex 1 to this Order, under the respective headings “Claimant disclosure” and “Defendant disclosure” as appropriate.
5. By no later than 31 December 2019, the Claimants shall disclose by list, from all repositories not covered by paragraph 4 of this Order, the documents in their control responsive to the categories set out in Annex 1 to this Order, under the heading “Claimant disclosure”.
6. By no later than 31 December 2019, DAF shall disclose by list, from all repositories not covered by paragraph 4 of this Order, the documents in their control responsive to the categories set out in Annex 1 to this Order, under the heading “Defendant disclosure”.
7. By no later than 31 December 2019, Daimler shall disclose by list, from legacy database repositories, the documents in their control that are responsive to the categories set out in Annex 1 to this Order, under the heading “Defendant disclosure”.
8. Subject to the confirmation described in paragraph 3 above, by no later than 31 January 2020 Volvo/Renault shall disclose by list the documents in its control falling within category PO1 set out in Annex 1 to this Order, under the heading “Defendant disclosure”.
9. By no later than 6 March 2020 Daimler shall disclose by list, from all other repositories not covered by paragraphs 4 and 7 of this Order, the documents in its control falling within the categories set out in Annex 1 to this Order, under the heading “Defendant disclosure”.
10. By no later than 6 March 2020 Volvo/Renault shall disclose by list, from all other repositories not covered by paragraph 4 of this Order, the documents in its control falling within categories O2 to O6 set out in Annex 1 to this Order, under the heading “Defendant disclosure”.

11. By no later than 6 March 2020 Volvo/Renault shall disclose by list the management accounts in its control containing information falling within categories O1(a)-(c), (e) set out in Annex 1 to this Order, under the heading “Defendant disclosure”.
12. By no later than 6 March 2020, Volvo/Renault shall provide a description, in relation to category O1(d) set out in Annex 1 to this Order, of the cost allocation methodology applying during the years for which variable costs data is available on BNA and Partner (being 1 January 2003 to 30 December 2016 in the case of Volvo, and 1 January 2009 to 30 December 2016 in the case of Renault).
13. The documents to be disclosed and made available for inspection pursuant to paragraphs 4 to 12:
 - (a) may be confined to the best available evidence about the information which is the subject matter of the listed categories, which may be in the form of electronic databases or other electronic documents, save where (i) the party concerned does not in fact keep any documents in respect of that subject matter in electronic form, or (ii) although it does keep documents in respect of that subject matter in electronic form, the relevant information in those electronic documents is unreliable in view of the way in which it was stored or collected, or (iii) the best available evidence falls instead to be obtained from physical documents or a combination of physical documents and electronic databases or other electronic documents. In each case, the party disclosing information pursuant to this provision should explain why the evidence it is making available for inspection is the "best available evidence" and why further disclosure is not proportionate, in particular if the excluded information is within an electronic database;
 - (b) if contained in the form of an electronic database or extract therefrom, should be provided in native electronic format or electronic excel format, together with a statement on how the relevant information has been compiled for the database, and, if appropriate, guidance on how it is to be examined;
 - (c) shall include documents in the public domain; and

- (d) may where expressly permitted in relation to a given category in Annex 1, be a representative sample of documents, provided that an explanation of the basis on which such a sample has been selected, and an explanation as to why that basis is reasonable and proportionate in the circumstances, is set out in the disclosure statement to be provided pursuant to paragraph 14 of this Order.
14. In the event that the disclosure of documents referred to in paragraphs 4 to 12 above in respect of any of the categories listed in Annex 1 is considered by the party concerned to be unreasonable and/or disproportionate, that party may, in the alternative to giving disclosure, directly provide information on the matters specified, at the same time that it gives disclosure in accordance with paragraphs 4 to 12. Where information is provided in lieu of disclosure it shall be verified by a statement of truth and supported by a description of the sources from which the information concerned has been compiled and an explanation as to why the disclosure of the underlying documents is unreasonable and/or disproportionate.
15. References in paragraphs 4 to 12 above to a party providing disclosure are to be read as requiring that party to conduct reasonable and proportionate searches for documents in the categories concerned. Where a party considers that providing disclosure of documents responsive to any of the categories is unreasonable and/or disproportionate and it cannot provide information in accordance with paragraph 14 of this Order, the party is to explain the basis for not giving the disclosure or providing information in the disclosure statement to be provided pursuant to paragraph 17 of this Order.

Disclosure into the Confidentiality Ring

16. The parties may choose to disclose documents into the Confidentiality Ring in accordance with the Confidentiality Ring Order.

Disclosure Statements

17. The parties' disclosure by list given pursuant to paragraphs 4 to 12 shall be accompanied by a disclosure statement by an appropriate person which shall (a) set out the extent of the search that has been made in order to locate the documents ordered to be disclosed, (b) specify the manner in which the search has been limited

on reasonableness and proportionality grounds and why, and (c) certify to the best of his knowledge and belief that the disclosure ordered has been provided.

Inspection of documents and provision of copies

18. Requests for inspection of documents disclosed above shall be made within 7 days after service of the lists. Copies of documents requested to be inspected shall be provided within 7 days of making the request.

Extension of time limits

19. The parties may agree to extend any time period in this Order for a period or periods of up to 28 days in total without reference to the Tribunal, provided that this does not affect the date given for any case or costs management conference or any other court hearing or pre-trial review or the date of the trial. The parties shall notify the Tribunal in writing of the expiry date of any such extension.

Costs

20. Costs in the case.

Other

21. Liberty to apply.

Hodge Malek QC
Chairman of the Competition Appeal Tribunal

Made: 19-20 September 2019
Drawn: 25 October 2019