



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1291/5/7/18 (T)

BETWEEN:

- (1) RYDER LIMITED**
(2) HILL HIRE LIMITED

Claimants

- and -

- (1) MAN SE**
(2) MAN TRUCK & BUS AG
(3) MAN TRUCK & BUS DEUTSCHLAND GMBH
(4) MAN TRUCK AND BUS UK LIMITED
(5) AB VOLVO (PUBL)
(6) VOLVO LASTVAGNAR AB
(7) VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH
(8) VOLVO GROUP UK LIMITED
(9) RENAULT TRUCKS SAS
(10) DAIMLER AG
(11) MERCEDES BENZ CARS UK LIMITED
(12) FIAT CHRYSLER AUTOMOBILES N.V.
(13) CNH INDUSTRIAL N.V.
(14) IVECO S.P.A.
(15) IVECO MAGIRUS AG
(16) IVECO LIMITED
(17) PACCAR INC.
(18) DAF TRUCKS N.V.
(19) DAF TRUCKS DEUTSCHLAND GMBH
(20) DAF TRUCKS LIMITED

Defendants

ORDER

UPON the Order of the Tribunal made in these proceedings on 2-3 May 2019, in particular paragraph 10 thereof which directed the parties to file and serve a Redfern Schedule containing each party's position in relation to any disputed disclosure requests along with a list of categories which are agreed between the parties

AND UPON the parties filing Redfern Schedules containing both agreed and disputed categories on 2 August 2019

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

AND UPON the following further definitions applying for the purposes of this Order and the accompanying annexes:

"Confidentiality Ring" means the confidentiality ring established by the Order of Roth J made on 12 June 2019 (the **"Confidentiality Ring Order"**);

"DAF" means the 17th to 20th Defendants;

"Daimler" means the 10th to 11th Defendants;

"Data" means data held in electronic form on computer data systems;

"DG" means a category of disclosure as agreed in the Dawsongroup proceedings (Case No. 1295/5/7/18 (T));

"Disclosure Statement" has the meaning given to it by CPR Rule 31.10(6)(7) and (9);

"Iveco" means the 12th to 16th Defendants;

"MAN" means the 1st to 4th Defendants;

"Truck" means as defined at paragraph 5 of the Decision of the European Commission in Case AT.39824 – Trucks dated 19 July 2016; and

"Volvo/Renault" means the 5th to 9th Defendants

IT IS ORDERED THAT:

Provision of further information

1. By 4.00 p.m. on 15 November 2019, Volvo/Renault shall:
 - (a) file and serve, by way of further information, a statement setting out details of the changes made by Volvo/Renault to their cost accounting methodology in or around January 2017, the reasons why transaction level data before and after that date is therefore not comparable, and any

adjustments that may be possible to make data before and after that date comparable;

- (b) use best endeavours to file and serve a representative sample of Data to illustrate the points covered in the statement at sub-paragraph (a) above;
- (c) file and serve a witness statement explaining;
 - (i) the progress that has been made in respect of interrogating the Triton database and the anticipated date by which that work will be completed; and
 - (ii) the progress that has been made in respect of identifying any pre-BNA database(s) in the UK that might hold information responsive to the Defendant disclosure categories VOC2/O1 and O1, and the anticipated date by which that work will be completed.

2. By 4.00 p.m. on 29 November 2019, DAF, Daimler, Iveco and Volvo/Renault shall file and serve, by way of further information supported by a statement of truth, a statement setting out, on a best endeavours basis, in respect of the UK market in the period from 1 January 1997 to 30 September 2017:

- (a) a general description of how Truck models were priced, including any increases in price (which, for the avoidance of doubt, excludes a granular description of how each individual Truck model was priced);
- (b) which body or employee within the company took such decisions to set the price and at what level, whether at headquarters or UK subsidiary, the decisions were taken; and
- (c) the information on which that body and/or employee relied (in general terms) in taking such decisions.

3. By 4.00 p.m. on 31 December 2019, MAN shall file and serve the statement referred to in paragraph 2 above.

Disclosure

4. DAF shall disclose by list:

- (a) by no later than 4 October 2019, the documents and/or information set out at paragraph 1 of Annex 1 to this Order; and
 - (b) by no later than 31 December 2019, documents and/or Data in its control that are responsive to the categories set out at paragraph 2 of Annex 1 to this Order.
- 5. Daimler shall disclose by list:
 - (a) by no later than 29 November 2019, from non-legacy database repositories, Data in its control that are responsive to the categories set out in Annex 2 to this Order;
 - (b) by no later than 31 December 2019, from legacy database repositories, Data in its control that are responsive to the categories set out in Annex 2 to this Order; and
 - (c) by no later than 6 March 2020, from all other repositories not covered by paragraphs (a) and (b) above, the documents and/or Data in its control that are responsive to the categories set out in Annex 2 to this Order.
- 6. Volvo/Renault shall disclose by list:
 - (a) by no later than 29 November 2019, from non-legacy databases (which shall mean the BNA and Partner databases), documents and/or Data in their control that are responsive to the VoC2/O1 and O1 categories identified in Annex 3 to this Order; and
 - (b) by no later than 6 March 2020, documents and/or Data in their control that are responsive to the O4A, DG O1, DG O2, DG O3, DG O4B, DG O4C, DG O5D and DG O6 categories identified in Annex 3 to this Order.
- 7. MAN shall disclose by list Data (as specified in Annex 4 to this Order) responsive to the categories identified in Annex 4 to this Order by the relevant date specified in the Annex.
- 8. Iveco shall disclose by list:
 - (a) by no later than 31 December 2019, Data in its control that are responsive to the VoC2/O1(b), VoC2/O1(c), VoC2/O1(e), VoC2/O1(f),

VoC2/O1(g), VoC2/O1(i), VoC2/O1(k), VoC2/O1(l), VoC2/O1(m), VoC2/O1(n), VoC2/O1(r), VoC2/O1(s) and VoC2/O1(u), O1, O3(ii) and O18 categories identified in Annex 5 to this Order; and

- (b) by no later than 6 March 2020, Data and/or documents (as applicable) in its control that are responsive to the VoC2/O1(v1), VoC2/O1(v2), VoC2/O1(w), VoC2/O1(x), VoC2/O1(y), O2, O3(i) and O14 categories identified in Annex 5 to this Order.

9. The Claimants shall disclose by list:

- (a) by no later than 31 December 2019, the documents and/or Data in their control that are responsive to categories VoC2/O1 and T1-T4 identified in Annex 6 to this Order;
- (b) by no later than 14 February 2020, the documents and/or Data in their control that are responsive to categories A1, I1-I10 and PO1 identified in Annex 6 to this Order; and
- (c) by no later than 30 April 2020, the documents and/or Data in their control that are responsive to categories PO2-PO7 identified in Annex 6 to this Order.

10. The documents and Data to be disclosed and made available for inspection pursuant to paragraphs 4 to 9 above:

- (a) may be confined to the best available evidence about the information which is the subject matter of the categories identified in each Annex to this Order. In each case, the party disclosing documents and/or Data pursuant to this provision should explain why the evidence it is providing is the "best available evidence" and why further disclosure is not proportionate; and
- (b) if contained in the form of an electronic database, or extract therefrom, should be provided in their native electronic format or electronic excel format, together with a statement on how the relevant information has been compiled from the database(s) and, if appropriate, guidance on how it is to be examined.

11. Where categories set out in the annexes provide for a sample of relevant documents and/or Data to be provided, the basis on which such a sampling approach has been adopted, and an explanation as to why this is reasonable and proportionate in the circumstances, shall be set out in the Disclosure Statement to be provided pursuant to paragraph 14 of this Order.
12. In the event that the disclosure referred to in paragraphs 4 to 9 above 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. 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 and/or Data is unreasonable and/or disproportionate.

Disclosure into the Confidentiality Ring

13. The parties may choose to disclose documents, Data or information into the Confidentiality Ring in accordance with the Confidentiality Ring Order.

Disclosure Statements

14. The parties' disclosure by list given pursuant to paragraphs 4 to 9 above 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 and/or Data 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 and provision of copies

15. Subject to the provisions of the Confidentiality Ring Order, parts 31.3 and 31.15 of the Civil Procedure Rules apply in relation to the inspection of documents and/or Data.

Extension of time limits

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

Costs

17. Costs in the case.

Other

18. Liberty to apply.

Hodge Malek QC
Chairman of the Competition Appeal Tribunal

Made: 19-20 September 2019
Drawn: 26 November 2019