

1 This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its
2 judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public
3 hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The
4 Tribunal's judgment in this matter will be the final and definitive record.

5 **IN THE COMPETITION**

Case Nos.: 1292, 1293, 1294/5/7/18(T)

6 **APPEAL TRIBUNAL**

7
8
9 Salisbury Square House
10 8 Salisbury Square
11 London EC4Y 8AP
12 (Remote Hearing)

Thursday 4th March 2021

15 Before:
16 Hodge Malek QC
17 (Sitting as a Tribunal in England and Wales)

18
19
20 **BETWEEN:**

21
22
23 Suez Groupe SAS And Others
24 Veolia Environnement S.A. And Others
25 Wolseley UK Limited And Others

26
27 -v-

28
29 Stellantis N.V. (formerly Fiat Chrysler Automobiles N.V.) And Others

30
31
32 **A P P E A R A N C E S**

33
34 Tristan Jones (On behalf of VSW)
35 Tony Singla (On behalf of Stellantis N.V. (formerly Fiat Chrysler Automobiles N.V. and
36 others)

37
38
39
40 Digital Transcription by Epiq Europe Ltd
41 Lower Ground 20 Furnival Street London EC4A 1JS
42 Tel No: 020 7404 1400 Fax No: 020 7404 1424
43 Email: ukclient@epiqglobal.co.uk

1
2 **Thursday, 4 March 2021**

3 **(2.00 pm)**

4 THE CHAIRMAN: This is VSW's application for disclosure against Iveco in the VSW
5 proceedings.

6 Before I start, there are a couple of points I would like to raise. These proceedings
7 are being live streamed. It is a contempt of court to record this or take any
8 screenshots. Any breach of such requirement will be taken very seriously by
9 this Tribunal and the courts.

10 There will be a transcript of this hearing and that will be available on the Tribunal's
11 website in due course.

12 The second point I would like to make is that I have been working from the bundle
13 provided, but my copy of the bundle doesn't indicate what is in the
14 confidentiality ring and what is not. I have just been handed marked-up
15 copies of the skeleton arguments which do show, at least in relation to those,
16 what is confidential and what is not confidential, but I think we just need to be
17 careful about how we deal with confidential material, and the easiest way to
18 deal with it is if there is any particular figure you want to rely on, point to it in
19 the evidence on the skeletons and I will take it from there.

20 I have read the witness statements that have been filed by both sides and I have
21 reminded myself of the history of the action and the previous rulings that we
22 have had.

23 And I am keen, if I can say from the beginning, that I want to deal with this at
24 proportionate cost and there may be alternatives to what has been sought by
25 the claimants. One possibility which I would like both of you to address in the
26 course of submissions today is whether pricing statements could be

1 an alternative to disclosure from the actual databases, because I am very
2 conscious that the databases are limited, at least in time, it is going to cost
3 a lot of money to search those databases and that if, for example, a pricing
4 statement which deals with margins as well, of course, can be provided by
5 each of the DOP dealers, that may be a proportionate response to this
6 application.

7 I am not decided in any event, but in addition one possibility would be to require
8 disclosure from the relevant databases from one DOP dealer in each
9 jurisdiction, so there would be one from France, one from Germany, plus
10 pricing statements in lieu of database disclosure from each of the DOPs, and
11 if that is practicable, then that would be one way of cutting through this,
12 because I am not going to order Iveco to spend over a million euros, having
13 already spent 3.8 million, to go through this disclosure exercise.

14 Of course, I will take into account everything you say in submissions. It is not that
15 I have concluded, finalised, my views on this, but this is a disclosure
16 application, and I tend to do them on a rough and ready basis. I treat the
17 witness statements and the very good skeleton arguments I have had as part
18 of the whole advocacy exercise and I have been through all of that.

19 But this is where I have come to, having looked at all the material quite carefully, but
20 I may be wrong and both of you may persuade me that I am wrong and we
21 end up with some other order, but I am pretty reluctant to order another million
22 euros to be spent on the disclosure exercise if there is an alternative.

23 If Mr Singla tells me we cannot provide pricing statements, then the answer may be
24 that we will have database disclosure instead, but we will see.

25 Mr Jones, could you just respond to that first before you go into your submissions.

26 MR JONES: Sir, absolutely.

1 It is a very helpful starting point if I may say so. I, frankly, will need to take
2 instructions because those are points which others on the team are better
3 placed to --

4 THE CHAIRMAN: Of course.

5 MR JONES: Sir, with that in mind, I know we only have the afternoon but rather than
6 bouncing into the submissions which I have prepared, I wonder whether even
7 just 10 minutes would set us on a better course for me to take instructions so
8 I can engage with that proposal, rather than, as I say, going off on a tangent.

9 THE CHAIRMAN: I agree. You wouldn't go off on a tangent in any event but,
10 Mr Singla, is that something you would like to take instructions on as well?
11 Obviously you are on the receiving end of all of this.

12 MR SINGLA: Yes, I think if we could take some time now to take instructions that
13 would be very helpful, but we are obviously grateful for the early indication.

14 THE CHAIRMAN: I can see that it is going to be relevant to get the net end
15 customer price for these trucks; whether you do it by inference or by direct
16 evidence is something that we can talk about. It is going to have to be done,
17 if it is going to be done at all, by inference in relation to the independents in
18 any event and that is a significant part of the market.

19 In relation to the dependents, the dependent dealers, you have the issue that (a) the
20 data that we have got is not going to be complete because these are old
21 programmes and stuff like that, you have got legacy systems and there may
22 be different systems and, you know, that is probably the biggest qualification
23 in relation to that; and (b) you have got the cost of actually getting there, and
24 a pricing statement is something that can be quite helpful in helping everyone
25 figure out what the net customer price is, and once you have got the price
26 from Iveco to the dealer and you have a pricing statement, you will probably

1 be largely where you need to be in any event.

2 MR SINGLA: Sorry to interrupt. Sir, I will take instructions, of course, but just before
3 perhaps we do break for 10 minutes, I would just like to make clear that --
4 because this is not wholly clear from certainly the VSW submissions and
5 evidence, that the position on what has been called the two-stage analysis is
6 that in fact no DOP dealer data would be required for that.

7 So I just want to be completely clear that on relevance and necessity and so on, one
8 must not be --

9 THE CHAIRMAN: I am fully aware of that but the thing is you are not going to get
10 me to determine today which is the best approach, because there are
11 arguments either way, and what will be the best approach may in part be
12 determined by this disclosure application, so it is a chicken and egg situation.

13 So I have looked at that point, it is not a knockout point, Mr Singla, it is a point that
14 comes into the mix.

15 MR SINGLA: Sir, look, as I say, we are happy to take instructions but it is important
16 to put down this marker --

17 THE CHAIRMAN: You have made a marker in your witness evidence and your
18 skeleton argument and I fully understand what that marker is, but my view is it
19 is not a knockout blow.

20 MR SINGLA: I am grateful. We will take some time.

21 THE CHAIRMAN: We will take time. We will come back at, let's say, 2.30. That will
22 give everyone plenty of time to get instructions and you might be able to
23 speak to each other even before we come back. All right?

24 MR JONES: Thank you, sir.

25 THE CHAIRMAN: Thank you very much.

26 **(2.10 pm)**

1 (A short break)

2 (3.01 pm)

3 THE CHAIRMAN: Yes, Mr Jones.

4 MR JONES: Mr Malek, we are both very grateful for that time and we have reached
5 an agreement which is along the lines, sir, that you suggested. Actually
6 slightly narrower. Can I say what the agreement is and then just make
7 a couple of comments about it and about some consequential points.

8 THE CHAIRMAN: Yes.

9 MR JONES: The agreement is that Iveco will provide one pricing statement per
10 country --

11 THE CHAIRMAN: Per country?

12 MR JONES: For France and Germany, one for France and one for Germany.

13 THE CHAIRMAN: Yes.

14 MR JONES: Relating to one DOP in each country.

15 THE CHAIRMAN: Yes.

16 MR JONES: And they will disclose the data from that DOP as we had requested but
17 from, again, that one DOP, the same DOP, in each country.

18 THE CHAIRMAN: Yes.

19 MR JONES: Sir, just taking those in turn, I will not take too much time on this but to
20 make a few comments about this and some consequential points if I may.

21 The pricing statements of course are relevant if one adopts what has been called the
22 indirect approach.

23 THE CHAIRMAN: Correct.

24 MR JONES: Sir, you suggested five, or rather all DOPs, not five, there are five in
25 each country --

26 THE CHAIRMAN: There may be differences in margins and stuff like that, yes.

1 MR JONES: There could be, and there was a discussion about the costs involved in
2 that. Obviously Mr Singla has that at the front of his mind, as we all do, but
3 also from our perspective, a desire to be proportionate given that, although
4 there may be some differences, these are after all Iveco-owned dealers and
5 we anticipate that a lot of the policies are going to be corporate-wide.
6 Whether that proves to be correct, time will tell, sir, but it did seem to us as
7 a first stage we could agree to just one.

8 Sir, I would make this point, which is, when the pricing statements are written, they
9 have been really helpful when they have been provided more generally.

10 THE CHAIRMAN: They have, yes.

11 MR JONES: That is because the parties have taken, and I am sure Iveco will
12 continue to take, a cooperative approach, which here means keeping in mind
13 that the purpose is to cast light on the question of pass-on, so it is going to
14 need to cover things like the extent to which the policies are corporate level,
15 so we can see whether they would roll across to other Iveco dealers, and
16 also the extent to which the dealer itself would have changed its end prices in
17 response to changes in list prices and dealer prices.

18 So, sir, I am not asking for any order covering those things but I am just making the
19 comment that we have been accommodating now, and are being
20 proportionate now, and we expect and hope the pricing statement on that
21 narrower basis will be useful more generally.

22 There is a timing question and on that we suggest two months for the pricing
23 statements from today.

24 On the DOP, again, it would be the same data -- this is only relevant if one adopts
25 the direct approach, but it would be, we think, helpful and this is what has
26 been agreed, to have nonetheless the data for the same DOP in each country

1 because there might be some process of triangulating --

2 THE CHAIRMAN: Exactly, that is what I thought.

3 MR JONES: We thought that would be helpful. We see the wisdom of focusing on
4 one DOP. Clearly there is going to have to be a process of agreeing on which
5 DOP to avoid cherry-picking and, in the time we have had, what has been
6 emphasised to me is that the DOP in question will need, as far as possible, to
7 be representative of sales more generally in four dimensions: one is temporal
8 scope, one is the volume of sales -- ideally it would be a DOP with a large
9 volume of sales -- one is a wide variety of sales, and then the fourth
10 consideration is the quality of the data that that DOP has available. And what
11 we would propose, sir, is that if Iveco is able to give us information about the
12 DOPs, covering those points which I have just mentioned within, say,
13 two weeks, there can then be -- with, of course, any recommendation they
14 have about which DOP should be chosen -- a process of agreement on the
15 DOPs, and we don't of course know precisely how long that might take. We
16 would obviously all hope that it would not result in anyone having to come
17 back before you, sir, but we do think that the order could then have within it
18 an order that, once agreement has been reached on the identity of the DOPs,
19 the disclosure could be given within two months.

20 THE CHAIRMAN: The fact is that this sort of thing you can just deal with in
21 correspondence. You just write a letter to the Registry and I will give a ruling
22 if necessary.

23 Okay. But one of the things to bear in mind is the temporal scope because if you
24 look at France, there is one that only starts in 2015 --

25 MR JONES: Absolutely.

26 THE CHAIRMAN: -- there is another one that starts in 2004 and three in 2010. And

1 as regards Germany, there are three from 2003 onwards and two from 2008.
2 So in an ideal world, you would want to have as long a period as practicable
3 but it all depends on how the records are kept and how difficult it is and all
4 that.

5 MR JONES: Absolutely.

6 THE CHAIRMAN: But I think Mr Singla's clients are probably in the best position to
7 help us, to guide us as to which is the most appropriate one without, let's say,
8 choosing the smallest one or the smallest time period.

9 MR JONES: Sir, we entirely agree, and it is similar in some respects to what has
10 been going on with the test claimants where the claimants have been in
11 correspondence identifying the test claimants and giving lots of information.
12 So we have all been through that process and I think it should be able to be
13 done cooperatively and sensibly on all sides.

14 THE CHAIRMAN: Yes, but that means that you are not -- you may have problems
15 doing the one-stage approach, as opposed to the two-stage approach.

16 MR JONES: Sir --

17 THE CHAIRMAN: Or would it be the other way round?

18 Because if this way, there are two ways of doing it, aren't there? You get the net end
19 customer price and you work from that, or you don't get the net end customer
20 price and you either work from the price that the dealer paid and then try and
21 work out the extent to which the overcharge has been brought, or you try and
22 get to the net end customer price in any event in order to do the exercise.

23 MR JONES: Sir, that is why the DOP data, just to be clear what we are talking
24 about, would be for one DOP per country but it would be market wide, so that
25 DOP data would help us to do it --

26 THE CHAIRMAN: It would do, it should do.

1 MR JONES: As you put it, the one-step approach, direct approach.

2 But you are absolutely right, we need to make sure it is as representative as possible
3 to make sure that can be done essentially, and that is a point that would then
4 be explored in correspondence.

5 THE CHAIRMAN: Also these approaches are not mutually exclusive, there could be
6 a combination.

7 MR JONES: That's right.

8 THE CHAIRMAN: A lot will depend on what comes out of this process. It is a bit of
9 a chicken and egg here.

10 Mr Singla, anything you would like to say? It is very helpful that you have been so
11 constructive in agreeing this.

12 MR SINGLA: Yes, sir. Can I just address you on two points, please?

13 THE CHAIRMAN: Sure.

14 MR SINGLA: The first is we are in agreement in terms of the substance, as
15 Mr Jones has explained.

16 On what he described as the consequential matters, however, he says some very
17 prescriptive things about the selection of the relevant DOPs and what I would
18 submit, sir, is that there should be nothing in the order about the criteria that
19 should be applied and that is, in particular, because whilst we are not seeking
20 in any way to cherry-pick, there is obviously a problem insofar as Mr Jones
21 and his clients say, "Well, we would like the DOP with the best data
22 availability", because the difficulty, or there may be a difficulty in the sense
23 that one can only assess the question of data availability by spending a lot of
24 time and money in making some early investigations. So, sir, what we would
25 suggest is that the parties should be given a period of four weeks in which to
26 agree the choice of the relevant DOPs in France and Germany, without any

1 criteria at this stage being set down by the Tribunal or being included in
2 an order.

3 We have obviously heard what Mr Jones has said and we are not seeking to be
4 difficult but the reality is that the selection may need to be, or the parties'
5 agreement may need to be, on a rather more pragmatic basis. So, sir, we
6 would say four weeks for the parties to have those discussions and seek to
7 agree, and obviously the hope on all sides is that there will be agreement, but
8 failing which the parties can come back to you, sir, for a decision as to which
9 DOPs it should be.

10 That is the first point, sir. The second relates to timing and, again, not much
11 between us here but Mr Jones says once the relevant DOPs have been
12 selected, the pricing statements and the data should follow within two months.
13 We would submit, sir, that three months would be more reasonable and, in all
14 the circumstances, there is on any view, sir, a lot of work to be done,
15 notwithstanding the narrowing that has happened today.

16 THE CHAIRMAN: Sure. Mr Singla, in the context of a trial that is going to be at the
17 end of 2023, you know, you are pushing at an open door, you don't have to
18 worry about that.

19 MR SINGLA: I am grateful.

20 Do people want me to give a ruling as to why I take the view I do about this or not?

21 I am conscious that there are other parties who may have some interest in
22 knowing what the Tribunal thinks about this but I don't mind, if you don't want
23 a ruling, I will just allow you to draw up the order.

24 MR JONES: Sir, we would find that helpful, because we have found rulings in other
25 disclosure contexts -- actually in these proceedings and from the Ryder and
26 other cases -- helpful as a guide. So, sir, we for our part would find even just

1 a short ruling helpful.

2 THE CHAIRMAN: Yes, Mr Singla?

3 MR SINGLA: Sir, we rather take a more sympathetic view, as far as you are
4 concerned, in the sense that we would not want to burden you to produce
5 a ruling, we don't see that that is necessary in the circumstances.

6 THE CHAIRMAN: I could just give it now. I am not going to go away and write up
7 a ruling. This is a disclosure application, in which ordinarily you would expect
8 the court to give a ruling there and then after hearing submissions rather than
9 reserving it.

10 MR SINGLA: Sir, that is fine. If you are minded to give a ruling, could I just mention
11 one point, sir, because we do have a real issue with the way in which this
12 application has been brought about and if we could just address you on that
13 briefly.

14 THE CHAIRMAN: Sure.

15 MR SINGLA: If you are minded to give a ruling, I would ask you to address this
16 point.

17 Sir, as you know, this application started on the footing that it was a Friday
18 application and the basis on which that was put forward was Mr Bolster's
19 witness statement where he said we satisfy the criteria for a Friday application
20 because this is an application which involves a discrete issue between the
21 VSW claimants and Iveco. That is his sixth witness statement at paragraph 6,
22 and he was building on what you and the Tribunal said in the disclosure
23 ruling.

24 Sir, what then happened, as you know, is the application was listed, and we put in
25 our evidence, covering proportionality and other issues. They then realised,
26 in our submission, that they were on weak ground in terms of proportionality

1 within the confines of these proceedings and, as you have seen, sir, they put
2 in pages and pages of responsive factual and expert evidence. Actually, it
3 was not genuinely responsive. There was no permission for it in the
4 directions and, sir, more troublingly than that, they went on to ask the Tribunal
5 to consider proportionality in the context of a whole series of other claims,
6 some of which have not even been case managed yet, some of which have
7 not reached a disclosure stage.

8 Sir, we do take objection to the idea that an application of this nature that was
9 brought on the footing that it raises a discrete issue between one set of
10 claimants and one defendant -- we do object to a Friday application
11 being pursued in this way and, in my submission, this does actually
12 raise a question which, if you are minded to give a short ruling today,
13 you should deal with for precedential value, because we cannot have
14 another situation where we are put to the burden of dealing with reply
15 evidence that is not genuinely reply evidence, and then a submission
16 that you have to have all of the proceedings in mind. Mr Jones in his
17 skeleton goes even further than Mr Bolster by saying the Tribunal
18 should have regard to the collective proceedings, which have nothing
19 whatsoever to do with this.

20 Sir, really if this conduct is going to continue, this is going to become problematic, in
21 my submission, and if you are then minded to give a ruling, I would ask you to
22 address that point.

23 THE CHAIRMAN: Let me just say what I think, and then you can come back if need
24 be.

25 When I looked at it, the view I took about the responsive evidence was that it was
26 responsive but it was a lot more material than I had envisaged and what I was

1 trying to set out before was a structure whereby the parties have their
2 correspondence and discussions, and only once the issues have crystallised
3 do you make the application. You then make the application supported by
4 relatively limited evidence, both parties file their evidence and there should be
5 evidence in reply for things which are completely new or new facts, new
6 arguments and new facts, because ideally you shouldn't be at that stage
7 because the issues, I hoped, were going to be addressed in discussions or
8 whatever.

9 In this case, something slightly has gone wrong in the sense that the responsive
10 evidence is a lot more material than I envisaged for what is really a rough and
11 ready exercise which I am happy to do every Friday, and it works if I am given
12 limited material because I can then spend half a day reading it and I am ready
13 to do it and it doesn't really disrupt things and I am very happy to do Friday
14 hearings. But if they are going to end up being hearings and I've got to spend
15 8 hours or 10 hours to prepare in advance, it sort of goes against what I was
16 hoping was a Friday hearing, which was going to be flexible and I can hear
17 any Friday generally and I can make half a day's time to deal with it, and half
18 a day in the afternoon works out quite well.

19 You are right, as regards the other point, reference to other proceedings, I think they
20 are entitled to make the point but whether or not it is right, you can answer
21 that and in the scheme of things, when I formed my provisional view, I wasn't
22 really influenced by the fact that there are other proceedings and other things
23 involved. You know, I was really dealing with this on the basis of your position
24 and their position and that looking at your position and their position, both
25 sides had valid points about necessity and proportionality, but I don't feel
26 I needed to come to a concluded view as to the relevance or otherwise of the

1 fact that there are other cases, you know. It is background. I understand your
2 point that you don't want the Friday application to morph into (a) a big hearing
3 with a lot of contested evidence, which is not the idea for effectively half-day
4 hearings, and I don't want that either, or (b) on issues which effectively
5 everyone needs to be there so they can argue their own corner.

6 I don't think they have crossed the line on this one though. I will mention that
7 now, when I give the ruling.

8 MR SINGLA: I am very grateful.

9 MR JONES: Sir, could I address you quickly?

10 THE CHAIRMAN: Yes.

11 MR JONES: I am not sure the point Mr Singla raised is relevant to the ruling but
12 obviously he is inviting you to give us a bit of a telling off and before that
13 happens, I should make a couple of comments.

14 THE CHAIRMAN: I am not going to give you a telling off. All I am going to say is
15 that the evidence in reply is more extensive than I would ordinarily expect.
16 I would not regard that as a telling off, it is a thing to remember in the future
17 that that is how I like things to be done. I've got no criticism of either side.
18 This application has been prepared extremely well on both sides and that is
19 why I am able to form at least a provisional view before the hearing.

20 MR JONES: Sir, could I please make this point, which is, it is helpful to all parties to
21 have the guidance and, sir, to have your view on how the application has
22 been run. It, however, in my submission, needs to be directed at all parties
23 and advice to all of them, and the reason I say that, sir, is the reason why the
24 reply evidence went into the economics and the direct and indirect approach
25 in the way that it did was that the first time Iveco said what they thought the
26 economic approach should be, in other words the two-stage approach, was in

1 their responsive evidence and, sir, there was extensive -- it would be a waste
2 of all of our time to go through all of that now but there was extensive
3 correspondence.

4 I'll just give you one reference: in our letter of 17 July 2020, which is in the bundle at
5 tab 7, page 41, we set out in detail, paragraphs 8 to 17, the approach that
6 Mr von Hinten-Reed wanted to adopt, and that was never, in all the letters that
7 followed, it was never said by Iveco that "We have got a different approach".
8 What they kept saying was "You have not explained your approach" and we
9 kept referring back to that letter, and they never said the different approach.

10 So, sir, I hear what Mr Singla has said and we absolutely hear that the reply
11 evidence needs to be succinct, but it would also be helpful if guidance was
12 given to explain to the defendants that it would be helpful for them to engage
13 in correspondence, including, you know, the key issues that they are going to
14 raise in the applications because otherwise there is not much we can do, we
15 have to engage with a response that has not been said before. That is all.
16 I am grateful.

17 THE CHAIRMAN: Look, there is no point being in the blame game on this because
18 at the end of the day, if I've got to decide all these disclosure applications,
19 which I have been doing through a mixture of doing it on paper and oral
20 hearings, it is for me to tell you what I find most useful and that I think we all
21 know what I am looking for in these cases, and I will say it again, but that is
22 what -- it is not a question of criticism but it is just that, if it is going to be
23 easier for all of us to reach these decisions, and it is important that we have
24 the door open to having these hearings, it has to be done in a way that I find
25 useful, and at the moment, I have found the way it has been prepared today
26 very useful but the only point I wanted to make was that the reply evidence

1 was more extensive than I would ordinarily expect for a half-day hearing. If
2 this was going to be a one-day hearing, I can understand what has been
3 done, but it is not, it is a half-day. We have to compress everything into
4 half-day hearings. Because it may be on some Fridays other people have
5 their own applications, in which case I will have two hours in the morning for
6 one party and two hours for another party.

7 Okay, Mr Singla, I am going to give a ruling now.

8
9 **Ruling (see separate transcript)**

10
11 **Post-ruling discussion**

12 MR SINGLA: Sir, I am very grateful.

13 THE CHAIRMAN: Yes.

14 MR SINGLA: Could I raise two matters, please?

15 THE CHAIRMAN: Of course you can, yes.

16 MR SINGLA: The first is just to pick up a point in your ruling as to the timing. When
17 I was making submissions in relation to that, what I was asking you, sir, to
18 direct was three months from the date of selection of the DOPs but
19 three months for both the pricing statement --

20 THE CHAIRMAN: That is fine. If you can do that, that is fine.

21 So the parties have got one month, okay, to agree who the DOPs are, okay, and
22 once that has been agreed you have one month to produce the pricing
23 statement and then you are saying you only need an extra two months after
24 that to produce the documents?

25 MR SINGLA: I am so sorry, sir, just to be clear, our position is that once the DOP
26 has been selected -- so one month to select a DOP --

1 THE CHAIRMAN: Yes.

2 MR SINGLA: -- but from that point we would ask for three months to do both the
3 pricing statements and the disclosure.

4 THE CHAIRMAN: You want to do it that way, okay.

5 MR SINGLA: Yes.

6 THE CHAIRMAN: Can I just hear Mr Jones on that.

7 Mr Jones? I can't hear you.

8 MR JONES: I do apologise. That sounds fine to us, sir.

9 THE CHAIRMAN: If you are happy with that, then that is fine. Absolutely fine.

10 MR SINGLA: I am very grateful. I apologise if my submission was not wholly clear
11 on that.

12 THE CHAIRMAN: When the ruling comes back, I will make sure I put that timescale
13 in the ruling. That is fine.

14 MR SINGLA: I am very grateful.

15 Sir, the second matter I just wanted to raise is something we have not discussed yet.

16 THE CHAIRMAN: Yes.

17 MR SINGLA: If I could ask you to turn up the draft order, please, which is in
18 bundle 1A, tab 4, at page 186.

19 THE CHAIRMAN: I've got it, yes.

20 MR SINGLA: I am grateful, sir.

21 This relates to the scope of the disclosure that the relevant DOPs will provide and
22 I am afraid I have not had time to discuss this with Mr Jones. You will see
23 that paragraph 1 there is drafted in terms of the DOPs giving "disclosure of
24 data responsive to the categories listed in annex 2 to the Iveco order".

25 That is the third line of paragraph 1.

26 THE CHAIRMAN: I have got that, yes.

1 MR SINGLA: I am grateful, and if I could just ask you now, sir, to turn to annex 2 to
2 the Iveco order, just to remind you of what that looks like. It is in bundle 1B,
3 I am afraid, and it is at page 213.

4 THE CHAIRMAN: Yes, I was looking at that a minute ago.

5 MR SINGLA: I am grateful.

6 Sir, the point is that you will see there that the categories in annex 2 are very
7 extensive indeed. I think they run to some 25 separate categories of
8 disclosure and, in my submission, given the basis on which this DOP dealer
9 data is sought, it ought not to be necessary for us to give disclosure in relation
10 to each of those 25 categories and so what we would suggest, sir, is that the
11 only things that should be relevant are things like the vehicle identification
12 number, the customer name, the date of sale and, obviously, pricing and
13 transactional information and what we would suggest therefore, sir, is that, in
14 conjunction with the discussion as to which DOPs should be selected, the
15 parties should try to be pragmatic and cooperative as to the scope of
16 disclosure to be provided.

17 THE CHAIRMAN: Surely you can resolve that today, as to which ones that you
18 want? I don't want to have an argument over what is going to be ordered.

19 MR SINGLA: It is just in practical terms, sir, we just haven't had time to get into this
20 level of detail in terms of the agreement.

21 THE CHAIRMAN: Okay.

22 MR JONES: Sir, can I just make a couple of quick submissions on that if I may, sir?

23 THE CHAIRMAN: Of course, yes.

24 MR JONES: Firstly, this has not been raised ever up to now. I hear the way
25 Mr Singla puts it, which is "There is now an agreement", but, sir, the reason,
26 as I understand it, and the reason it is certainly helpful to us to have a DOP

1 per country, is because that is going to enable us to do a slimmed down
2 version of the exercise that Mr Von Hinten-Reed wants to do. In other words
3 --

4 THE CHAIRMAN: I understand that, yes.

5 MR JONES: But, sir, the point is this is the data he needs for that and he has made
6 that clear from the outset. That is why they wanted the data, that is why we
7 got the data first time round; the regression analysis for the data that has
8 been disclosed, direct price of dealer level. The reason there are all these
9 different variables is that, in these regression analyses, one is looking at the
10 impact of different factors on price.

11 THE CHAIRMAN: I understand that.

12 MR JONES: This has always been common ground.

13 THE CHAIRMAN: Look, this is a point that Mr Singla has not raised at all in the past.
14 I am not attracted by the point at all, because it has come for the first time
15 now and that he was facing an application whereby there was a real
16 possibility that I was going to make an order in the terms sought and, if he
17 was unhappy with any of the categories in annex 2, he should have said so.

18 So at the moment, the order is going to be in terms of the annex 2 material, because
19 that is what makes sense, because it will match the material we have already
20 got in respect of the direct sales. If there is any particular category there that
21 raises a real problem on cost or proportionality grounds, he can come back to
22 me but I think, at the moment, I am inclined to say I will make the order in the
23 normal way but, clearly, if there is a practical problem that means you just
24 can't do it, then obviously I will listen to that.

25 MR SINGLA: Sir, I hear what you say.

26 The point has not been raised in the course of discussions today, which have

1 happened at some speed. We on our part have struggled to understand why
2 they need a lot of these categories again, because they have already had
3 them in the disclosure we have provided, but, sir, I will not press this point
4 today. We will obviously have a liberty to apply and we will come back --

5 THE CHAIRMAN: Of course you will do.

6 Look, I am really interested in outcomes, you know, what is the result, and to make
7 sure that proper disclosure is given in a form that people can use and, if at the
8 end of the day something is just not possible or just not practicable, you can
9 tell me and I will look at it and give a ruling on paper in the normal way.

10 I have been doing this, you know, in other actions where people just have relatively
11 minor issues between them but I can deal with that by just sending a letter
12 saying "This is what I think".

13 MR SINGLA: We may need to debate this further in correspondence, because the
14 hope is to be pragmatic and cooperative, as you said in your ruling, and we
15 struggle to see, as I say, why they need engine power output and
16 transmission type and axle configuration again, but there we are, sir, we will
17 pursue that if necessary.

18 THE CHAIRMAN: Mr Jones, you have the point. If they have already given the
19 engine size in relation to their own disclosure on the sales to the dealers, they
20 are saying we shouldn't have to give it again. You may say, "Look, if you
21 have already given it, what is the problem in putting it in a proper schedule for
22 when you provide the disclosure in this action?". You can debate this
23 amongst yourselves.

24 MR JONES: We can debate it. Sir, I see the point and we can debate that.
25 I wouldn't have thought we are going to get stuck over that.

26 THE CHAIRMAN: You are not going to get stuck -- but the order is going to be in the

1 form of annex 2 for now, subject to a liberty to apply and whatever you may
2 agree amongst yourselves as to what you take in and take out, because you
3 have both got points as to what needs to be in that but **prima facie** we are
4 going to get what is in annex 2 one way or another, whether it is in the
5 disclosure you have already had or in the new disclosure.

6 MR JONES: Sir, there is one other similar point, which is, looking back at that order
7 in tab 4, I don't think paragraph 2 has ever been questioned. That is just
8 a standard -- they give us the data and they also give us some assistance in
9 understanding it, essentially.

10 THE CHAIRMAN: Yes, and that is subject to the Wolseley ruling, so that wording I
11 think replicates the wording in Wolseley, or similar to that.

12 MR JONES: I think it does. I think that is where it was taken from, sir.

13 THE CHAIRMAN: My expectation in 2 is you follow whatever is in the Wolseley
14 ruling.

15 MR JONES: We will have a look back.

16 THE CHAIRMAN: The other thing is that I will want, obviously, a disclosure
17 statement and that will have to be in the form of paragraph 47 of the
18 disclosure ruling. So you set that out in the order.

19 MR JONES: I am grateful, sir.

20 THE CHAIRMAN: I will put "Disclosure statement".

21 MR SINGLA: Sir, I am grateful.

22 In relation to costs, costs in the case we would suggest.

23 THE CHAIRMAN: Of course, that is sensible.

24 Look, ordinarily, you are going to find with me on a disclosure application it is going
25 to be costs in the case unless something fundamental has gone wrong and
26 one party is completely wrong and off track but, by and large, I think most of

1 the issues that come to me are not really that black and white; if it was black
2 and white, you would have agreed it before. These are all fairly grey issues
3 where we do need to debate it and have a hearing and I think it is useful that
4 we have got to where we are today and hopefully you are not going to spend
5 anything like a million euros in doing this exercise.

6 MR SINGLA: Sir, I am very grateful.

7 THE CHAIRMAN: Okay, thank you very much.

8 MR JONES: Thank you, sir.

9 THE CHAIRMAN: Thank you.

10 **(4.00 pm)**

11 **(The hearing concluded)**

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26