



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1291/5/7/18 (T)
1295/5/7/18 (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) STELLANTIS 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

AND 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 each of the parties to the Dawsongroup Claim, the Ryder Claim and the DS Smith Claim at the Case Management Conference held on 5 and 6 May 2021;

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

“**Claimants**” means the Dawsongroup Claimants and Ryder Claimants.

“**CMC**” means the Case Management Conference held on 5 and 6 May 2021.

“**Dawsongroup Claim**” means the proceedings with case number 1295/5/7/18 (T).

“**Dawsongroup Claimants**” means the claimants in the Dawsongroup Claim.

“**Dawsongroup Defendants**” means the defendants in the Dawsongroup Claim.

“**Defendants**” means the Dawsongroup Defendants and Ryder Defendants.

“**DS Smith Claim**” means the proceedings with case number 1343/5/7/20 (T).

“**DS Smith Claimants**” means the claimants in the DS Smith Claim.

“**Ryder Claim**” means the proceedings with case number 1291/5/7/18 (T).

“**Ryder Claimants**” means the claimants in the Ryder Claim.

“**Ryder Defendants**” means the defendants in the Ryder Claim.

“**Stage 1**”, “**Stage 2**” and “**Stage 3**” have the same meaning as in the Order of the President made on 3 December 2020.

“**Trial 1**” means the joint trial of the claims in the proceedings with case number 1284/5/7/18 (T) (*Royal Mail Group Limited v DAF Trucks Limited and others*) and case number 1290/5/7/18 (T) (*BT Group PLC and others v DAF Trucks Limited and others*).

“**Trial 2**” means the joint trial of the Ryder Claim and the Dawsongroup Claim.

“**Volvo/Renault Defendants**” means the 5th to 9th Defendants in the Ryder Claim and the 7th to 11th Defendants in the Dawsongroup Claim.

IT IS ORDERED THAT:

Pleadings

1. In paragraphs 6.5 and 50A.1 of the Volvo/Renault Defendants’ Re-Amended Defence to the Dawsongroup Claim, the words “including (without limitation)” be struck out.
2. A hearing be listed for 20 July 2021 with a time estimate of 2 days, to consider any applications made by the Claimants pursuant to paragraph 3 below, relating to issues of mitigation, complementary products, “offsetting effects” or “total/further value” arising from the Defendants’ pleadings.
3. By 4 pm on 18 June 2021, the Claimants will file and serve any applications and supporting evidence.
4. By 4 pm on 9 July 2021, the Defendants will file and serve any evidence in response.
5. By 4 pm on 16 July 2021, the Claimants and the Defendants will file and serve skeleton arguments, that shall be limited to 15 pages in length.

Permission for expert evidence

6. By 15 July 2021, the parties in each of the Ryder, Dawsongroup and DS Smith Claims shall notify each other of their proposals as to:
 - (a) whether, and if so how many, experts should be permitted to give written and oral evidence;
 - (b) the identity of their proposed experts and their field(s) of expertise; and
 - (c) a summary of the issues to be addressed by each expert.
7. By 16 September 2021, the parties in each of the Ryder, Dawsongroup and DS Smith Claims shall notify the Tribunal of their proposals. The parties shall indicate whether their proposals are agreed and, if not, identify the areas of disagreement.

Directions to Trial 2

8. As between the Dawsongroup Claimants on the one hand, and the Ryder Claimants, the First to Fourth Defendants and the Twelfth to Sixteenth Defendants in the Ryder Claim on the other hand, nothing in paragraphs 10 to 20 below shall require them to:

- (a) exchange factual witness statements or expert reports;
- (b) hold expert discussions or prepare a joint experts' statement;
- (c) serve written opening submissions;

which concern only Stage 2 and/or 3 of the Trial.

Insofar as any of the above concern both Stage 1 and Stage 2 or 3 of the Trial, the parties may redact passages concerning only Stage 2 and/or 3 from documents to be served or exchanged.

Disclosure

9. Save for any discrete disclosure applications, disclosure shall otherwise be completed by the parties to the Dawsongroup Claim and the Ryder Claim on or before 17 December 2021.

Witness statements

10. By no later than 4 pm on 10 March 2022, the parties shall file and exchange factual witness statements. Before witness statements are exchanged the parties shall liaise with a view to agreeing a method for identifying any documents referred to in the witness statements.

11. By no later than 4 pm on 3 June 2022 the parties shall, if so advised, file and exchange factual witness statements in reply.

Expert evidence

12. By no later than 15 July 2022, the experts shall have held discussions on a without prejudice basis in the absence of legal representation regarding the approach to be taken in their respective expert reports.

13. Expert reports shall be filed and exchanged by 4 pm on 19 September 2022.

14. Any amended expert reports (taking into account the judgment handed down following Trial 1) shall be filed and exchanged by 4 pm on 7 November 2022.

15. By no later than 4 pm on 9 December 2022, the parties shall, if so advised, file and exchange expert reports in reply.
16. By no later than 10 January 2023, the experts shall have held a further discussion on a without prejudice basis in the absence of legal representatives for the purpose of: (a) identifying issues in dispute between them; and (b) where possible reaching agreement on those issues.
17. By no later than 28 January 2023, the experts shall prepare and file joint statements showing: (a) those issues on which they are agreed; and (b) those issues on which they disagree, and a summary of their reasons.
18. As regards all of paragraphs 12-17 above, the experts may hold separate discussions and produce separate reports (or discrete sections of their reports) concerning, as applicable, Stages 2 and/or 3 of the Trial.

Opening submissions

19. The Claimants shall file and serve written opening submissions by 4 pm on 17 February 2023.
20. The Defendants shall file and serve written opening submissions by 4 pm on 3 March 2023.

Trial

21. The time estimate for Trial 2 is 24 to 26 weeks.
22. The precise structure of Trial 2, including whether there will be a separate stage (in addition to Stage 1, Stage 2 and Stage 3) dealing with pass-on issues that are common to the Ryder Claim and the Dawsongroup Claim (and any consequential issues) shall be kept under review and considered further at future case management conferences.

DS Smith

DS Smith disclosure

23. By no later than 19 May 2021:
 - (a) the Claimants shall disclose to the DS Smith Claimants the disclosure that they have already provided in the Dawsongroup and Ryder Claims relating to the issues of overcharge and pass-on (save for any data disclosed in respect of the issue of overcharge); and

- (b) the Defendants shall disclose to the DS Smith Claimants the disclosure that they have already provided in those claims relating to the issue of overcharge (save for any data disclosed in respect of the issue of overcharge).

DS Smith pleadings

- 24. The DS Smith Claimants shall file and serve a pleading for the purpose of their participation in Trial 2 (“**DS Smith’s Trial 2 Pleading**”) that (i) identifies and explains the nature of its businesses, (ii) states the number of trucks that the DS Smith Claimants have rented or leased from the Claimants and so far as possible identifies those trucks in a schedule, (iii) sets out (so far as possible) the DS Smith Claimants’ case as to pass-on, and (iv) if so advised, includes a schedule detailing any particular allegations relating to the infringement, by 4 pm on 4 June 2021.
- 25. The Claimants and the Defendants shall, if so instructed, file and serve their responses (in the form of a pleading or otherwise) to DS Smith’s Trial 2 Pleading by 4 pm on 2 July 2021 (save that it is not necessary for the Defendants to plead to the matters covered by point (iv) of the preceding paragraph, in respect of allegations relating to the infringement).

Role of DS Smith in Trial 2

- 26. The DS Smith Claimants are permitted to intervene in Trial 2 in respect of overcharge issues and to participate in Stage 3 of Trial 2 in respect of pass-on issues.
- 27. In respect of overcharge issues:
 - (a) The involvement of the DS Smith Claimants shall be limited to that of an intervener which may make representations and undertake witness examination on a proportionate and non-duplicative basis; but
 - (b) The DS Smith Claimants will not be permitted to adduce any factual or expert evidence or to participate in the discussions between the parties and experts in this regard falling within paragraphs 12 or 16 above.
- 28. The scope and timing of the written opening submissions and the timing of factual and expert evidence on pass-on issues of the DS Smith Claimants for the purposes of Trial 2 will be considered further at a subsequent case management conference.
- 29. The DS Smith Claimants will be bound by the judgment on overcharge and pass-on issues following Trial 2 insofar as it concerns the trucks within its claim that overlap with those within the Ryder Claim. Whether or not the DS Smith Claimants will be bound by the judgment on overcharge and pass-on issues following Trial 2, insofar as

it concerns the Trucks within its claim that overlap with those within the Dawsongroup Claim, shall be determined at a subsequent case management conference.

Costs

30. Costs in the case.

Other

31. A further case management conference shall be listed for 11 October 2021, with a provisional time estimate of 2 days, at which the Tribunal will consider (amongst other things) the proposals of the parties to the Ryder, Dawsongroup and DS Smith Claims regarding expert evidence and the issues referred to in paragraphs 28 and 29 above.

32. The parties may agree to extend any time period in this Order for a period of up to 35 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.

33. Liberty to apply.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 5-6 May 2021
Drawn: 22 July 2021