



**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

("Dawsongroup")
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

("Dawsongroup
Defendants")
Defendants

IN THE COMPETITION
APPEAL TRIBUNAL

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

BETWEEN

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

("Ryder")

Claimants

-and-

- (1) MAN SE
- (2) MAN TRUCK & BUS SE
- (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

("Ryder
Defendants")

Defendants

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1343/5/7/20(T)

BETWEEN

- (1) DS SMITH PAPER LIMITED
(2) DS SMITH LOGISTICS LIMITED
(3) DS SMITH PACKAGING LIMITED
(4) DS SMITH CORRUGATED PACKAGING LIMITED
(5) DS SMITH (UK) LIMITED
(6) DS SMITH RECYCLING UK LIMITED
- ("DS Smith
Claimants")
Claimants

-and-

- (1) MAN SE
(2) MAN TRUCK & BUS SE (FORMERLY MAN
TRUCK & BUS AG)
(3) MAN TRUCK & BUS DEUTSCHLAND GMBH
(4) AB VOLVO (PUBL)
(5) VOLVO LASTVAGNAR AB
(6) VOLVO GROUP TRUCKS CENTRAL EUROPE
GMBH
(7) RENAULT TRUCKS SAS
(8) DAIMLER AG
(9) FIAT CHRYSLER AUTOMOBILES N.V.
(10) CNH INDUSTRIAL N.V.
(11) IVECO S.P.A
(12) IVECO MAGIRUS AG
(13) PACCAR INC
(14) DAF TRUCKS N.V.
(15) DAF TRUCKS DEUTSCHLAND GMBH
- ("DS Smith
Defendants")
Defendants

and

- (1) SCANIA AKTIEBOLAG (PUBL)
(2) SCANIA CV ACTIEBOLAG (PUBL)
(3) SCANIA DEUTSCHLAND GMBH
- Named Third
Parties

DIRECTIONS ORDER

UPON the Tribunal's Order dated 3 December 2020 (the "**Trial Order**") which directed that the Dawsongroup Claim (Case 1295/5/7/18(T)) and the Ryder Claim (Case 1291/5/7/18(T)) be heard at a joint trial to be listed to start on 13 March 2023 ("**the Trial**");

AND UPON the Tribunal's Order dated 22 July 2021 (the "**May 2021 CMC Order**") which set down directions to the Trial;

AND UPON hearing Leading Counsel for Dawsongroup and Ryder and the Dawsongroup and Ryder Defendants¹ and the DS Smith Claimants at a case management conference on 11 and 12 October 2021;

AND UPON the Tribunal's indication that, insofar as the Defendants adduce evidence of a general nature in relation to the Plausibility Issue, in principle and subject to any contrary direction of the Tribunal one expert should lead for the Defendants and that expert's evidence should not be duplicated by evidence from the other experts.

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

- "**Acquisition Issue**" means the issue of whether and to what extent Ryder Limited benefited from a lower acquisition price for Hill Hire Limited as a result of the Infringement and the impact (if any) on the damages payable to Ryder as a result.
- "**Alleged Complements**" means goods which may be complementary to the purchase of a Truck, specifically Truck bodies purchased to be used with DAF-manufactured Trucks and Truck trailers.
- "**Bundled Products Pleas**" means Volvo/Renault's Total Value Plea, Daimler's Bundled Discounts Plea and Iveco's Ancillary Products/Services Plea.
- "**Complements Issue**" means the issue of whether and to what extent any Overcharge was offset by reductions in the prices which Dawsongroup and/or Ryder paid for Alleged Complements during the Relevant Period which is pleaded by DAF in paragraph 31(a)(A) and 31(d) of its Re-Amended Defence in the Dawsongroup Claim and in paragraphs 41(a)(A) and 41(d) of its Re-Amended Defence in the Ryder Claim.

¹ The First Defendant in the Ryder Claim was merged into TRATON SE by registration in the commercial register at the Munich Local Court (Amtsgericht) (HRB 246068) on 31 August 2021 and has ceased to exist as an independent legal entity.

- "**DAF**" means the First to Fourth Defendants (Dawsongroup Claim) or the Seventeenth to Twentieth Defendants (Ryder Claim).
- "**Daimler**" means the Fifth and Sixth Defendants (Dawsongroup Claim) or the Tenth and Eleventh Defendants (Ryder Claim).
- "**Daimler's Bundled Discounts Plea**" means the defence pleaded in paragraph 22(b) of Daimler's Re-Amended Defence in the Dawsongroup Claim and proposed in paragraph 38(a)(iA) of Daimler's draft Re-Re-Amended Defence in the Ryder Claim.
- "**Dawsongroup Claim**" means the proceedings with case number 1295/5/7/18 (T).
- "**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.
- "**Financing Losses**" / "**Interest**" means the issue of whether and to what extent Dawsongroup and/or Ryder (as applicable) suffered losses occasioned by the additional cost of financing inflated purchase prices.
- "**Infringement**" has the meaning given in Dawsongroup's Re-Amended Particulars of Claim and Ryder's Amended Particulars of Claim, as applicable.
- "**Iveco**" means the Twelfth to Sixteenth Defendants in the Ryder Claim.
- "**Iveco's Ancillary Products/Services Plea**" means the defence proposed in paragraphs 1A.5A, 6 and 40.5 of Iveco's draft Re-Re-Amended Defence in the Ryder Claim.
- "**Loss of Profit**" means reduced profits (other than the Overcharge and Financing Losses / Interest) caused by the Infringement.
- "**Loss of Volume**" means the extent to which, if the Dawsongroup Defendants or Ryder Defendants (as applicable) demonstrate that an alleged Overcharge was passed on by Dawsongroup or Ryder (as applicable) to their customers, there was a reduction in sales of Truck rentals and/or Truck leases.
- "**MAN**" means the First to Fourth Defendants in the Ryder Claim.

- "**Overcharge**" means the issue of whether and to what extent the Infringement caused the price paid by Dawsongroup or Ryder (as applicable) for Trucks to be inflated compared to the prices that would have been paid in the absence of that conduct.
- "**Plausibility Issue**" means whether it is plausible that the Infringement had any effect on competition and/or the price of Trucks.
- "**Relevant Period**" has the meaning given in Dawsongroup's Particulars of Claim or Ryder's Amended Particulars of Claim, as applicable.
- "**Resale Pass-on**" means the issue of whether and to what extent the Overcharge was passed-on to subsequent buyers of the Trucks purchased by Dawsongroup or Ryder (as applicable) from the Defendants.
- "**Ryder Claim**" means the proceedings with case number 1291/5/7/18 (T).
- "**Stage 1**", "**Stage 2**" and "**Stage 3**" have the same meaning as in the Order of the President made on 3 December 2020.
- "**Supply Pass-on**" means whether and to what extent the Overcharge was passed on by Dawsongroup or Ryder (as applicable) to its rental and/or leasing customers through higher Truck rental and/or leasing prices.
- "**Tax Issues**" means issues pertaining to the calculation of damages and interest after tax.
- "**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, in which the DS Smith Claimants have been permitted to participate to the extent provided by the Order of the President made on 22 July 2021.
- "**Trucks**" means the trucks that are the subject of the claims as defined in the parties' pleadings in the Ryder Claim and the Dawsongroup Claim, as applicable.

- "**Volume/Value of Commerce**" means issues pertaining to the identification of Trucks that are within the scope of the claim and the valuation of those Trucks.
- "**Volvo/Renault**" means the Seventh to Eleventh Defendants (Dawsongroup Claim) or the Fifth to Ninth Defendants (Ryder Claim).
- "**Volvo/Renault's Total Value Plea**" means the defence pleaded in paragraphs 6.4, 32.2 and 37 of Volvo/Renault's Re-Re-Amended Defence in the Dawsongroup Claim and paragraphs 3(d) and 38 of Volvo/Renault's Re-Amended Defence in the Ryder Claim.

IT IS ORDERED THAT:

Expert Appointments in the Dawsongroup Claim

Dawsongroup

1. Dawsongroup has permission to adduce expert evidence from Mr James Harvey of Economic Insight Limited in the field of competition economics to cover the following issues:
 - (a) Overcharge on DAF, Daimler and Volvo/Renault Trucks;
 - (b) The Plausibility Issue (if so advised);
 - (c) Volume/Value of Commerce;
 - (d) Supply Pass-on;
 - (e) Resale Pass-on; and
 - (f) Loss of Volume.
2. Dawsongroup has permission to adduce expert evidence from Mr Harvey in the field of financing to cover the Financing Losses.
3. Dawsongroup has permission to adduce expert evidence from Mr Harvey in the field of regulatory and competition economics to address the Complements Issue by reference to an analysis that considers the relationship between the price of Trucks and the profit margins of the manufacturers of the Alleged Complements

(on the basis that Mr Harvey intends to use profit margins as a proxy for the prices of the Alleged Complements).

4. Dawsongroup has permission to adduce expert evidence from Mr Harvey in the field of regulatory and competition economics to respond to Professor Neven's analysis in relation to the Complements Issue.
5. Dawsongroup has permission to adduce expert evidence from Mr Harvey in relation to Tax Issues.

DAF

6. DAF has permission to adduce expert evidence from Professor Damien Neven, of Compass Lexecon, in the field of competition economics to cover the following issues:
 - (a) Overcharge on DAF Trucks;
 - (b) the Plausibility Issue;
 - (c) Volume/Value of Commerce;
 - (d) Resale Pass-on in relation to DAF Trucks.
7. DAF has permission to adduce expert evidence from Professor Damien Neven in the field of regulatory and competition economics to address the Complements Issue by reference to a simulation model.
8. DAF has permission to adduce expert evidence from Professor Damien Neven in the field of regulatory and competition economics to respond to Mr Harvey's analysis in relation to the Complements Issue.

Volvo/Renault

9. Volvo/Renault has permission to adduce expert evidence in the field of regulatory and competition economics from Mr Zoltan Biro, of Frontier Economics, to cover the following issues:

- (a) Overcharge on Volvo/Renault Trucks, which is to be calculated both on the basis of the Value of Commerce with the discounts applied pursuant to Volvo/Renault's Total Value Plea and on the basis of the Value of Commerce without those discounts applied;
- (b) The Plausibility Issue;
- (c) Volume/Value of Commerce, with Value of Commerce to be calculated both with the discounts applied pursuant to Volvo/Renault's Total Value Plea and without those discounts applied;
- (d) Resale Pass-on in relation to Volvo/Renault Trucks.

Daimler

10. Daimler has permission to adduce expert evidence in the field of competition economics from Dr Rainer Nitsche, of E.CA Economics, to cover the following issues:
- (a) Overcharge on Daimler Trucks, which is to be calculated both on the basis of the value of commerce with the discounts applied pursuant to Daimler's Bundled Discounts Plea and on the basis of the value of commerce without those discounts applied;
 - (b) The Plausibility Issue;
 - (c) Volume/Value of Commerce, with Value of Commerce to be calculated both with the discounts applied pursuant to Daimler's Bundled Discounts Plea and without those discounts applied;
 - (d) Resale Pass-on in relation to Daimler Trucks

The Defendants

11. The Defendants have permission jointly to adduce expert evidence from Mr Andrew Grantham, of AlixPartners, in the field of forensic accounting to cover the issues of Financing Losses, Supply Pass-on, Loss of Volume and Tax Issues.

12. The Defendants have permission jointly to adduce expert evidence, in reply or in first round as advised, from an expert in the field of economics to cover the issue of Supply Pass-on and price elasticity for Loss of Volume. By 23 November 2021, the Defendants will inform the Tribunal and Dawsongroup of the identity of the joint expert they have decided to appoint in this regard.

Expert evidence in relation to Tax Issues in the Dawsongroup Claim

13. Mr Grantham and Mr Harvey shall meet on a without prejudice basis by 26 November 2021 to discuss their respective methodologies on Tax Issues (the "**WP Meeting**"). Mr Ilett shall attend and participate in the WP Meeting on behalf of Ryder.
14. Notwithstanding paragraph 5 above, following the WP Meeting Dawsongroup may, if so advised, file an application for permission to adduce expert evidence on Tax Issues from an alternative expert in place of Mr Harvey.

Expert Appointments in the Ryder Claim

Ryder

15. Ryder has permission to adduce expert evidence from Dr Lawrence Wu of NERA Economic Consulting in the field of regulatory and competition economics to cover the following issues:
- (a) Volume/Value of Commerce;
 - (b) Overcharge on MAN, Volvo, Renault, Daimler, Iveco and DAF Trucks;
 - (c) The Plausibility Issue;
 - (d) Supply Pass-on;
 - (e) Resale Pass-on (including by reference to work undertaken by Mr Ilett in this regard);
 - (f) the Complements Issue (including in response to Professor Neven's analysis in this regard); and

- (g) Price elasticity for Loss of Volume.
16. Ryder has permission to adduce expert evidence from Mr Frank Ilett of Kroll Advisory Limited in the field of forensic accounting to cover the following issues:
- (a) Supply Pass-on;
 - (b) Loss of Volume and Loss of Profit;
 - (c) Interest;
 - (d) Mitigation;
 - (e) the Acquisition Issue; and
 - (f) Tax Issues.

MAN

17. MAN has permission to adduce expert evidence in the field of regulatory and competition economics from Dr Jorge Padilla of Compass Lexecon, to cover the following issues:
- (a) Overcharge on MAN Trucks;
 - (b) the Plausibility Issue;
 - (c) Volume/Value of Commerce;
 - (d) Resale Pass-on in relation to MAN Trucks.

Volvo/Renault

18. Volvo/Renault has permission to adduce expert evidence in the field of regulatory and competition economics from Mr Zoltan Biro, of Frontier Economics, to cover the following issues:
- (a) Overcharge on Volvo/Renault Trucks (to be calculated both on the basis of the value of commerce with any discounts pursuant to Volvo/Renault's

Total Value Plea and on the basis of the value of commerce without any such discounts applied);

- (b) the Plausibility Issue;
- (c) Volume/Value of Commerce, with Value of Commerce to be calculated both with the discounts applied pursuant to Volvo/Renault's Total Value Plea and without those discounts applied;
- (d) Resale Pass-on in relation to Volvo/Renault Trucks.

Daimler

19. Daimler has permission to adduce expert evidence in the field of competition economics from Dr Rainer Nitsche, of E.CA Economics, to cover the following issues:

- (a) Overcharge on Daimler Trucks (to be calculated both on the basis of the value of commerce with any discounts pursuant to Daimler's Bundled Discounts Plea applied and on the basis of the value of commerce without any such discounts applied);
- (b) the Plausibility Issue;
- (c) Volume/Value of Commerce, with Value of Commerce to be calculated both with the discounts applied pursuant to Daimler's Bundled Discounts Plea and without those discounts applied;
- (d) Resale Pass-on in relation to Daimler Trucks.

Iveco

20. Iveco has permission to adduce expert evidence in the field of competition economics from Dr Lorenzo Coppi of Compass Lexecon, to cover the following issues:

- (a) Overcharge on Iveco Trucks (to be calculated both on the basis of the value of commerce with any discounts pursuant to Iveco's Ancillary

Products/Services plea applied and on the basis of the value of commerce without any such discounts applied);

- (b) the Plausibility Issue;
- (c) Volume/Value of Commerce, with Value of Commerce to be calculated both with the discounts applied pursuant to Iveco's Ancillary Products/Services Plea and without those discounts applied;
- (d) Resale Pass-on in relation to Iveco Trucks.

DAF

21. DAF has permission to adduce expert evidence from Professor Damien Neven, of Compass Lexecon, in the field of competition economics to cover the following issues:

- (a) Overcharge on DAF Trucks
- (b) the Plausibility Issue;
- (c) Volume/Value of Commerce;
- (d) Resale Pass-on in relation to DAF Trucks; and
- (e) the Complements Issue (including in response to Dr Wu's analysis in this regard).

The Defendants

22. The Defendants have permission jointly to adduce expert evidence from Mr Andrew Grantham, of AlixPartners, in the field of forensic accounting to cover the following issues:

- (a) Supply Pass-On;
- (b) Mitigation;
- (c) the Acquisition Issue;

- (d) Loss of Volume and Loss of Profit;
 - (e) Interest; and
 - (f) Tax Issues.
23. The Defendants have permission jointly to adduce expert evidence, in reply or in first round as advised, from an expert in the field of economics to cover the issue of Supply Pass-on and price elasticity for Loss of Volume. By 23 November 2021, the Defendants will inform the Tribunal and Ryder of the identity of the joint expert they have decided to appoint in this regard.

Further hearings

Mitigation and Bundled Products Pleas

24. A hearing will be listed in the Ryder Claim for 12 January 2022 with a time estimate of 2 days, to consider any applications relating to the Defendants' Bundled Products Pleas (if applicable) and mitigation pleas.
25. By 4 pm on 1 December 2021, the Defendants will if so advised provide Ryder with any further draft amendments to their Bundled Products Pleas (if applicable) and mitigation pleas.
26. By 4 pm on 17 December 2021, Ryder will indicate whether or not the Defendants' draft amendments are agreed and will provide reasons if any of the draft amendments are not agreed.
27. Any applications and supporting evidence will be filed and served by 4 pm on 21 December 2021.
28. Any evidence in response will be filed and served by 4 January 2022.
29. Skeleton arguments will be filed and served by 4 pm on 7 January 2022.

Case Management Conference

30. A case management conference will be held in the first half of Michaelmas Term 2022 after the exchange of first round expert reports on 19 September 2022 to consider the structure of Trial 2, including:
- (a) whether there should be a stage of the trial to consider supply pass-on issues that are common to the Ryder Claim and the Dawsongroup Claim (if any) and, if so, what issues should be included; and
 - (b) whether the matters allocated to Stage 3 of the trial, which relate to Ryder, should be heard before the matters allocated to Stage 2 of the Trial.

DS Smith

Pleadings and correspondence

31. The other parties to Trial 2 shall provide the DS Smith Claimants with copies of all Particulars of Claim, Defences and Replies in the Part 7 Proceedings in the Ryder Claim and Dawsongroup Claim (to the extent not already provided), and copy them on any future, non-confidential, material correspondence relating to Stage 1 and to supply pass-on issues.

Expert evidence

32. The DS Smith Claimants have permission to adduce expert evidence from Dr Cento Veljanovski on the following, and paragraphs 33 to 39 shall be construed accordingly:
- (a) the identification of the DS Smith Claimants' value of commerce for the purposes of Trial 2;
 - (b) supply pass-on by Ryder; and
 - (c) an evaluation of the approach taken in relation to issues of supply pass-on by the experts in the Ryder Claim.
33. The DS Smith Claimants shall have liberty to apply at the Michaelmas Term 2022 case management conference for permission to respond to specified aspects of the

approach in relation to supply pass-on taken by the experts in the Dawsongroup Claim which concern issues that are held to be common as between the Dawsongroup Claim and the Ryder Claim.

34. By no later than 15 July 2022, Dr Veljanovski shall participate in discussions on a without prejudice basis with the experts of the parties in the Ryder Claim in the absence of legal representation regarding the approach to be taken in their respective expert reports in relation to supply pass-on.
35. The DS Smith Claimant's expert report in relation to supply pass-on in the Ryder Claim shall be filed and exchanged by 4 pm on 19 September 2022.
36. Any amended expert report (taking into account the judgment handed down following Trial 1) by the DS Smith Claimants in relation to supply pass-on in the Ryder Claim shall be filed and exchanged by 4 pm on 7 November 2022.
37. By no later than 4 pm on 9 December 2022, the DS Smith Claimants shall, if so advised, file and exchange an expert report in reply in relation to supply pass-on issues in the Ryder Claim.
38. By no later than 10 January 2023, Dr Veljanovski shall participate in a further discussion on a without prejudice basis with the experts of the parties to the Ryder Claim in the absence of legal representatives for the purpose of: (a) identifying issues in dispute between them in relation to supply pass-on; and (b) where possible reaching agreement on those issues.
39. By no later than 28 January 2023, in relation to issues of supply pass-on, Dr Veljanovski and the experts of the other parties to the Ryder Claim 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.
40. As regards all of paragraphs 36 to 41, the experts of the parties in the DS Smith Claim and the Ryder Claim may hold separate discussions and produce separate expert reports (or discrete sections of their reports) concerning, as applicable, Stage 3 of the Trial.

Witness statements

41. By no later than 4 pm on 10 March 2022, the DS Smith Claimants shall file and exchange factual witness statements in relation to supply pass-on issues raised by the trucks in the DS Smith Claim which overlap with the Ryder Claim. Before witness statements are exchanged the parties to the DS Smith Claim and the Ryder Claim shall liaise with a view to agreeing a method for identifying any documents referred to in the witness statements.
42. By no later than 4 pm on 3 June 2022, the DS Smith Claimants shall, if so advised, file and exchange factual witness statements in reply in relation to supply pass-on issues raised by the trucks in the DS Smith Claim which overlap with the Ryder Claim.

Opening submissions

43. The DS Smith Claimants shall file and serve written opening submissions in relation to:
 - (a) overcharge issues, by 4 pm on 21 February 2023; and
 - (b) issues concerning supply pass-on by Ryder by 4 pm on 24 February 2023.

Overlapping Trucks between the DS Smith and Dawsongroup Claims

44. The DS Smith Claimants will be bound by the judgment on overcharge and supply pass-on issues following Trial 2, insofar as it concerns the Trucks within its claim that overlap with those within the Dawsongroup Claim.

Costs

45. Costs in the case.

Other

46. 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.

47. Liberty to apply.

The Honourable Mr Justice Roth
Chairman of the Competition Appeal Tribunal

Made: 11 February 2022
Drawn: 11 February 2022