



IN THE COMPETITION
APPEAL TRIBUNAL

Case: 1292/5/7/18 (T)

Case: 1293/5/7/18 (T)

Case: 1294/5/7/18 (T)

B E T W E E N :

(1) – (339) SUEZ GROUPE SAS. AND OTHERS

Claimants

—and—

**(1) – (4) STELLANTIS N.V. (FORMERLY FIAT CHRYSLER AUTOMOBILES
N.V.) AND OTHERS**

Defendants

—and—

(1) – (13) IVECO S.P.A AND OTHERS

Third parties
(the “Suez Proceedings”)

(1) – (139) VEOLIA ENVIRONNEMENT S.A. AND OTHERS

Claimants

—and—

**(1) – (15) STELLANTIS N.V. (FORMERLY FIAT CHRYSLER AUTOMOBILES
N.V.) AND OTHERS**

Defendants

—and—

(1) PACCAR INC. AND OTHERS

Third parties
(the “Veolia Proceedings”)

(1) – (153) WOLSELEY UK LIMITED AND OTHERS

Claimants

—and—

**(1) – (4) STELLANTIS N.V. (FORMERLY FIAT CHRYSLER AUTOMOBILES N.V.)
AND OTHERS**

Defendants

—and—

(1) – (13) TRATON SE AND OTHERS

ORDER

UPON the matter coming back before the Tribunal for a Case Management Conference on 3 and 4 March 2022

AND UPON the VSW Claimants having provided the Defendants with the current working version of the Composite Dataset on 4 February 2022

AND UPON the VSW Claimants’ application dated 11 February 2022 seeking Orders (i) that the DAF, Scania, Iveco and Daimler Defendants provide certain further disclosure in respect of VoC and Overcharge; (ii) that the Defendants provide inspection of certain documents withheld from the VSW File; (iii) setting a deadline for the representatives of the VSW Claimants and the Scania Defendants to discuss the issue of proxies for the German market; (iv) requiring the Defendants to review and update the Composite Dataset; (vi) setting a deadline for the Defendants to set out their requests for further pass-on disclosure (the “**VSW Claimants’ Application**”)

AND UPON the Daimler Defendant’s application dated 11 February 2022 seeking an Order that the Claimants in the Wolseley Proceedings be required by 1 April 2022 to respond to certain questions sent on 8 October 2021 regarding the disclosure provided by the Claimants in the Wolseley Proceedings

AND UPON the Parties having agreed the identification of Test Claimants, whose claims will proceed to trial in the VSW Proceedings ahead of the remaining VSW Claimants, as set out in the Tribunal’s order drawn on 23 March 2022 (the “**Test Claimants**”)

AND UPON hearing Counsel for the VSW Claimants and Counsel for the Defendants at the Case Management Conference held on 3 and 4 March 2022

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

- “**VSW Claimants**” means the Claimants in the “**VSW Proceedings**” (Cases: 1292-4/5/7/18(T)).

- **“Brakes Claimants”** means C12 – C21 and C154 in Case 1294/5/7/18 (T).
- **“EV Downton Claimant”** means C22 in Case 1294/5/7/18 (T).
- **“Dairy Crest Claimants”** means C23 – 25 in Case 1294/5/7/18 (T).
- **“Metro Claimants”** means C26 – C128 in Case 1294/5/7/18 (T).
- **“Wolseley Claimants”** means C1 – C11 in Case 1294/5/7/18 (T).
- **“Claimants’ UK Redfern Schedule”** means the Claimants’ updated Redfern Schedule relating to the UK market as served on the Defendants on 11 February 2022.
- **“Claimants’ French Redfern Schedule”** means the Claimants’ updated Redfern Schedule relating to the French market as served on the Defendants on 11 February 2022.
- **“Claimants’ German Redfern Schedule”** means the Claimants’ updated Redfern Schedule relating to the German market as served on the Defendants on 11 February 2022.
- **“Defendants’ Redfern Schedules”** means the Redfern Schedules containing the VSW Defendants’ requests for disclosure from the VSW Claimants in relation to the UK market exchanged on 16 April 2021 and 3 September 2021 and in relation to the French and German markets exchanged on 3 September 2021.
- **“Defendants”** means the Defendants in the VSW Proceedings.
- **“Composite Datasets”** means the datasets provided by the VSW Claimants to the Defendants on 4 February 2022.
- **“MAN Defendants”** means TRATON SE, Man Truck & Bus AG, MAN Truck & Bus Deutschland GMBH, and MAN Truck and Bus AG Limited.

- “**Volvo/Renault Defendants**” means Aktiebolaget Volvo (Publ), Volvo Lastvagnar Aktiebolag, Volvo Group Trucks Central Europe GMBH, Renault Trucks SAS, and Renault Truck Commercials Limited.
- “**Daimler Defendant**” means the Tenth Named Third Party in Case 1294/5/7/18.
- “**Iveco Defendants**” means Iveco SPA, Iveco Magirus AG, and Iveco Limited, Stellantis NV, and CNH Industrial NV.
- “**DAF Defendants**” means PACCAR Inc, DAF Trucks N.V., DAF Trucks Deutschland GmbH, and DAF Trucks Limited.
- “**Scania Defendants**” means Scania Aktiebolag (publ), Scania CV Aktiebolag (publ) and Scania Deutschland GmbH.
- “**VSW File**” means the documents in the European Commission’s administrative file in case AT.39824 *Trucks* which were disclosed to the VSW Claimants pursuant to the Tribunal’s disclosure order of 31 July 2018.
- “**Withheld Categories**” means the categories of documents in the VSW File listed in paragraph 18 of Annex 1 to the DAF Defendants’ first disclosure statement dated 21 September 2018, marked with letters A to Q, which were withheld from inspection by DAF when the VSW File was disclosed, following parallel reviews conducted by DAF (“**DAF Review**”) and Iveco (“**Iveco Review**”), and which are further described in terms of sub-categories in Travers Smith’s letter of 1 November 2018 (for documents subject to the DAF Review) and in Herbert Smith Freehills’ letter of 31 October 2018 (for documents subject to the Iveco Review).
- “**Truck**” has the same meaning as in the Redfern Schedules filed in the VSW Proceedings.
- “**Relevant Period**” means in relation to the DAF Defendants, the MAN Defendants, the Iveco Defendants, Scania Defendants and Daimler Defendant from 1 January 1997 to 30

September 2017. For the Volvo/Renault Defendants, it means from 1 January 1997 to 31 December 2016.

IT IS ORDERED THAT:

Composite Masterdata

1. By 6 May 2022, the VSW Claimants shall:
 - 1.1 Produce revised Composite Datasets (the “**Revised Composite Datasets**”) covering Trucks allegedly purchased and/or leased by the VSW Claimants prior to 30 September 2016, which:
 - (a) Where reasonably possible, clarify and/or de-duplicate the entries, across all tabs in the Composite Datasets, including by clarifying and/or removing entries where data in respect of which the Vehicle Identification Number (“**VIN**”), registration number and price is identical or sufficiently similar that it is possible to conclude that the trucks are identical.
 - (b) Incorporate: (A) all of the database disclosure made by any party up to the end of February 2022 and the database disclosure to be disclosed by the Suez Germany Claimants by 25 March 2022; and (B) the information provided by the VSW Claimants to the Defendants on 7 February 2022 regarding the attribution of Trucks within the Veolia and Suez Proceedings; and
 - (c) Identify, in some convenient manner, all the Trucks within the Revised Composite Datasets that the VSW Claimants say fall within Trial 3 (either because they were or are said to have been purchased and/or leased by the Test Claimants and/or because they are Trucks within the Revised Composite Datasets in respect of which the VSW Claimants say a Test Claimant has acquired title to sue).
 - 1.2 Disclose the input files used to produce such Revised Composite Datasets.
2. By 9 September 2022, each Defendant shall, by reference to their database disclosure, where reasonably possible, supply, by a convenient output to be agreed between the

parties, the best information that is available to them in order to fill in missing, incomplete or inaccurate data points as to (i) VINs (ii) registration numbers and (iii) the price for each Truck in the Revised Composite Datasets, save for Trucks that are identifiable as a Truck manufactured by another Defendant or manufacturer.

3. By 7 October 2022, the Parties shall hold discussions to agree, insofar as it relates to Trucks purchased and/or leased by the Test Claimants between 17 January 1997 and 31 December 2013 and/or Trucks purchased and/or leased between 17 January 1997 and 31 December 2013 and in respect of which it is said a Test Claimant has acquired title to sue:

- 3.1 What, if any, data fields in the Revised Composite Datasets, other than VIN, registration, and price, should be reconciled and/or completed, having regard to the reasonableness and proportionality of that exercise; and

- 3.2 A method for determining the relevant price of each Truck, where the Revised Composite Datasets record more than one possible price.

VoC and Overcharge Disclosure

4. The DAF Defendants shall:

- 4.1 By 4pm on 22 April 2022 provide disclosure of the documents, data and/or information in respect of disclosure categories VoC2/O1(e), (m), (w), (dd), and O5BU within the scope and country market as set out in Annex 1 to this Order.

- 4.2 By 4pm on 22 April 2022:

- (a) conduct reasonable and proportionate searches for documents, data and information in respect of the disclosure categories in respect of disclosure category VoC2/O1(q) and O7 for the country markets as set out in Annex 1 to this Order;

- (b) provide the VSW Claimants with disclosure and inspection of the documents, data and/or information revealed by these searches; and

- (c) serve disclosure statements detailing the searches conducted in the course of providing the disclosure at sub-paragraph (a) above and/or providing the

VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found.

4.3 By 4pm on 10 June 2022:

- (a) conduct reasonable and proportionate searches for documents, data and information in respect of disclosure category VoC2/O1(y) for the country markets as set out in Annex 1 to this Order;
- (b) provide the VSW Claimants with disclosure and inspection of the documents, data and/or information revealed by these searches; and
- (c) serve disclosure statements detailing the searches conducted in the course of providing the disclosure at sub-paragraph (a) above and/or providing the VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found.

5. The Daimler Defendant shall:

5.1 By 4pm on 1 April 2022:

- (a) conduct reasonable and proportionate searches for documents, data and information in respect of disclosure category VoC2/O1(cc)(NEW) in respect of purchased Trucks, and disclosure category VoC2/O1(s) in respect of leased Trucks on the French market, as set out in Annex 2 to this Order;
- (b) provide the VSW Claimants with disclosure and inspection of the documents, data and/or information revealed by these searches; and
- (c) serve disclosure statements detailing the searches conducted in the course of providing the disclosure at sub-paragraph (a) above and/or providing the VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found;

5.2 By 4pm on 29 April 2022:

- (a) conduct reasonable and proportionate enquiries with its dependent dealers to ascertain the availability of databases containing potentially responsive documents, data and information in respect of disclosure category VoC2/O1(cc)(NEW) in respect of the German market as set out in Annex 2 to this Order; and
- (b) conduct reasonable and proportionate searches for documents, data and information capturing price lists for all Truck characteristics/options that were applicable during (at the least) each year of the Relevant Period, in respect of disclosure category VoC2/O1(g)(vii)-(viii) (MODIFIED), in respect of the German market as set out in Annex 2 to this Order;
- (c) provide the VSW Claimants with disclosure and inspection of the documents, data and/or information revealed by these searches; and
- (d) serve disclosure statements detailing the searches conducted in the course of providing the disclosure at sub-paragraph (b) above and/or providing the VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found.

6. The Iveco Defendants shall by 4pm on 10 June 2022:

6.1 With respect to sub-request (i) of disclosure request VoC2/O1(g)(vii)-(viii) (MODIFIED) in relation to the UK, French and German markets, as set out in Annex 3 to this Order:

- (a) disclose to the VSW Claimants a list containing all [...] Truck characteristics for Trucks sold by Iveco; and
- (b) provide an explanation regarding the process undertaken by Iveco to determine “price and/or margin relevance” of the 30 Truck characteristics disclosed to the VSW Claimants; and

6.2 With respect to sub-request (ii) of disclosure request VoC2/O1(g)(vii)-(viii) (MODIFIED) in relation to the UK, French and German markets, as set out in Annex 3 to this Order:

- (a) conduct reasonable and proportionate searches for price brochures, including price lists and option price lists for all Truck characteristics/options for (at least) each year of the Relevant Period;
- (b) provide the VSW Claimants with disclosure and inspection of the documents revealed by these searches; and
- (c) serve a disclosure statement detailing the searches conducted in the course of providing the disclosure at sub-paragraph (b) above and/or provide the VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found.

7. The Scania Defendants shall:

7.1 By 4pm on 1 April 2022, disclose and provide inspection of the documents referred to under the heading Tranche 1 in Annex 4 to this Order.

7.2 By 4pm on 27 May 2022:

- (a) conduct reasonable and proportionate searches within reasonably and readily available databases for, and disclose and provide inspection of the documents referred to under the heading Tranche 2 in Annex 4 to this Order; and
- (b) serve a disclosure statement detailing the searches conducted in the course of providing the disclosure at sub-paragraph (a) above and/or providing the VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found.

7.3 By 4pm on 1 July 2022:

- (a) conduct reasonable and proportionate searches within reasonably and readily available databases for, and disclose and provide inspection of the documents

and/or data referred to under the heading Tranche 3 in Annex 4 to this Order;
and

- (b) serve a disclosure statement detailing the searches conducted in the course of providing the disclosure at sub-paragraph (a) above and/or providing the VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found.

8. The VSW Claimants and the Scania Defendants agree that the documents/data to be disclosed pursuant to paragraph 7 above:

8.1 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 (i) a statement setting out how the relevant information has been compiled for the database (including details of any data cleaning exercise conducted before disclosing the data) and (ii) if appropriate, guidance on how the data is to be examined or any other explanatory notes or material which would assist the VSW Claimants' expert economists in analysing the disclosed information.

8.2 May be confined to what is believed by the Scania Defendants to be the best available evidence about the information which is the subject matter of the agreed categories.

9. The Volvo/Renault Defendants shall:

9.1 By 4pm on 8 April 2022:

- (a) conduct reasonable and proportionate searches for documents, data and information in respect of category O6 (NEW) (b) in the French market, as set out in Annex 5 to this Order;
- (b) provide the VSW Claimants with disclosure and inspection of the documents, data and/or information revealed by these searches; and
- (c) serve disclosure statements detailing the searches conducted in the course of providing the disclosure at sub-paragraph (a) above and/or providing the

VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found.

9.2 By 4pm on 27 May 2022:

- (a) conduct reasonable and proportionate searches for documents, data and information in respect of categories O5AV (NEW) (c)(i) and (c)(iv) in respect of the country markets as set out in Annex 5 to this Order;
- (b) provide the VSW Claimants with disclosure and inspection of the documents, data and/or information revealed by these searches; and
- (c) serve disclosure statements detailing the searches conducted in the course of providing the disclosure at sub-paragraph (a) above and/or providing the VSW Claimants with an explanation as to why material responsive to the relevant disclosure category could not be found.

Pass-on Disclosure

10. By 4pm on 1 April 2022, the Defendants shall submit to the VSW Claimants any remaining disclosure requests they wish to make of the Test Claimants falling within the scope of categories PO4 - PO6 in the Defendants' Redfern Schedules.

ATF Disclosure

11. By 4pm on 29 April 2022, DAF shall provide inspection of documents in the following Withheld Categories (or sub-categories within them):

11.1 From within Withheld Category A the documents:

- (a) subject to the Iveco Review which relate to (i) technical data, specifications or fact sheets regarding particular models of trucks; and (ii) individual dealers, such as analysis of dealers against performance targets, or administrative, day-to-day correspondence between OEMs and dealers, as described in paragraph 5(a) and 5(d) of Herbert Smith Freehills' letter dated 31 October 2018; and

- (b) subject to the DAF Review which relate to (i) analysis of dealer performance; (ii) correspondence with dealers; and (iii) technical (but not pricing) details for specific orders/models, as described in Travers Smith’s letter dated 1 November 2018 under the heading “Category A”, at points (ii), (v) and (vi).
- 12. By 4pm on 29 April 2022, DAF and Iveco shall (each in relation to the documents subject to the DAF Review and the Iveco Review respectively):
 - (a) review again the documents within Category F which were subject to the DAF Review and the Iveco Review, re-assessing their relevance irrespective of whether DAF or Iveco considered these documents to be publicly available;
 - (b) file a disclosure statement (i) describing the review conducted pursuant to (a) above and the parameters adopted for that review;
 - (c) disclose and DAF shall provide simultaneous inspection of any documents, which, further to the review described at (a) above, are identified to be relevant to the issues in the claim irrespective of whether DAF and Iveco considered those documents to be publicly available at the time when the documents were first reviewed.

Proxy for overcharge on German market for Scania

- 13. By 29 April 2022, the expert economists instructed by the Scania Defendants shall meet with the expert economists instructed by the VSW Claimants to discuss, on a without prejudice basis, a timetable to agree an appropriate proxy for the assessment of overcharge in the German market in respect of Scania Trucks.
- 14. The recoverable costs for the process of agreeing an appropriate proxy shall be limited to £25,000, including in respect of any determination of the proxy by the Tribunal if agreement cannot be reached.

Daimler’s Application

15. By 4pm on 1 April 2022, the Claimants in the Wolseley Proceedings shall answer the following questions in Annexes 4 – 9 enclosed with the Daimler Defendant’s application of 11 February 2022 regarding the disclosure provided by the Claimants in the Wolseley Proceedings (with such responses to be provided in the final column of each Annex):
 - 15.1 Questions 4 and 5 in Annex 4 regarding the Claimants’ lack of explanation as to data availability;
 - 15.2 Questions 2, 8, 10 (further questions 1 and 2), 11, 19, 22.b, 24.a, 25.a, 27, 28, 29, 31 and 32 in Annex 5 regarding the Brakes Claimants’ disclosure;
 - 15.3 Questions 3, 4, 6, 8, 9, 10, and 12 in Annex 6 regarding the EV Downton Claimant’s disclosure;
 - 15.4 Questions 1 (further questions after sub-questions a - h.), 3, 4, 5, 9, 10, 11 and 13 in Annex 7 regarding the Dairy Crest Claimants’ disclosure;
 - 15.5 Questions 1 (sub-questions a - c and f), 2, 5, 8, 9, 10, 11, 13, 14, 15.f, 16 (main question and sub-questions b, c, i, j, m - o), 17 (sub-questions e, g and k), 18 (sub-questions a, d, f – g), 20, 21 (sub-questions b and i) and 22 (sub-questions b and c) in Annex 8 regarding the Metro Claimants’ disclosure and
 - 15.6 Questions 2, 5, 6, 11, 13 (main question and sub-questions a and c), 14, 15, 17, 19a, 22, 23, 25, 26, 27, 28, 29, 30, and 34 (sub-questions d and f) in Annex 9 regarding the Wolseley Claimants’ disclosure.

Costs

16. Costs in the case.

Other

17. Liberty to apply.

The Honourable Mr Justice Roth
Chairman of the Competition Appeal Tribunal

Made: 3-4 March 2022
Drawn: 23 March 2022