



SIGNED: ANDREW F STEWART
EDINBURGH 17 OCTOBER 2022
CERTIFIED AS A TRUE COPY

In the Court of Session
Certified Copy Interlocutor
CA31/19

ASSISTANT CLERK OF SESSION

SCOTTISH BORDERS COUNCIL, a local authority constituted under the Local Government etc. (Scotland) Act 1994, and having its principal office at Council Headquarters, Newtown St Boswells, Melrose TD6 0SA

PURSUER

against

(FIRST) VFS FINANCIAL SERVICES LIMITED, a company incorporated under the Companies Acts and having its registered office at 9 Fifty Pitches Place, Cardonald Business Park, Glasgow, G51 4GA, Company number SC092026, (SECOND) AB VOLVO (publ), a company incorporated in Sweden and having its registered office at 405 08 Goteborg, Sweden, (THIRD) VOLVO LASTVAGNAR AB, a company incorporated in Sweden and having its registered office at 405 08 Goteborg, Sweden, (FOURTH) RENAULT TRUCKS SAS, a company incorporated in France and having its registered office at 99, Route de Lyon, 69806 Saint-Priest Cedex, France, (FIFTH) VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH, a company incorporated in Germany and having its registered office at Oskar-Messter-St. 20, 85737 Ismaning, Germany

DEFENDERS

(FIRST) MAN SE a company incorporated under the laws of Germany having its registered office at Dachauer Str. 641, 80995 München, Germany, (SECOND) MAN Truck & Bus AG a company incorporated under the laws of Germany having its registered office at Dachauer Str. 667, 80995 München, Germany, (THIRD) MAN Truck & Bus Deutschland GmbH a company incorporated under the laws of Germany having its registered office at Oskar-Schlemmer-Straße 19-21, 80807 München, Germany, (FOURTH) Daimler AG, a company incorporated under the laws of Germany having its registered office at Mercedesstrasse 137, 70327 Stuttgart, Germany, (FIFTH) Iveco S.p.A., a company incorporated under the laws of Italy having its registered office at Via Puglia 35, 10156 Torino, Italy, (SIXTH) Iveco Magirus AG, a company incorporated under the laws of Germany having its registered office at Nicolaus-Otto-Straße 27, 89079 Ulm, Germany, (SEVENTH) Fiat Chrysler Automobiles N.V., a company incorporated under the laws of the Netherlands having a place of business at Fiat House, 25 St James's Street, London, SW1A 1HA, United Kingdom, (EIGHTH) CNH Industrial N.V., a company incorporated under the laws of the Netherlands having a place of business at 25 St James's Street, London, SW1A 1HA, United Kingdom, (NINTH) PACCAR Inc a company incorporated under the laws of the United States of America having a place of business at PACCAR Building, 777-106th Avenue N.E, Bellevue, US – Washington 98004, USA, (TENTH) DAF Trucks N.V. a company incorporated under the laws of the Netherlands having a place of business at Hugo van der Goeslaan 1, 5643 TW Eindhoven, The Netherlands, (ELEVENTH) DAF Trucks Deutschland GmbH a company incorporated under the laws of Germany having a place of business at DAF-Allee 1, 50226 Frechen, Germany

THIRD PARTIES

10 October 2022

Lord Ericht

Act: Moynihan K.C.

Alt: M. Ross K.C. *et* A. McKinlay (defenders)

Alt: Lindsay K.C. (1st, 2nd & 3rd third parties)

Alt: Dean of Faculty (Dunlop K.C.) *et* D. Welsh (4th third party)

Alt: Pugh K.C. (5th, 6th 7th & 8th third parties)

Alt: McBrearty K.C. (9th, 10th & 11th third parties)



The Lord Ordinary, having heard counsel at the by order hearing:

1. on the defenders' unopposed motion at the Bar, directs that in actions CA11/19, CA12/19, CA13/19, CA14/19, CA15/19, CA16/19, CA17/19, CA18/19, CA19/19, CA20/19, CA21/19, CA22/19, CA23/19, CA24/19, CA25/19, CA26/19, CA27/19, CA28/19, CA29/19, CA30/19, CA31/19, CA32/19, CA67/21, CA68/21, CA69/21, CA70/21, CA77/21, CA78/21, CA79/21, so long as they remain before the Court, motions need only be enrolled in one action; and, unless the Court orders otherwise, (i) that only one case hearing fee per party will be charged for each hearing, including today's hearing; (ii) that only one motion or opposition fee will be charged per party for each motion enrolled or opposition marked, including the motions and oppositions dealt with at today's hearing;
2. refuses the joint motion of parties for a further period of adjustment;
3. in terms of Rule of Court 32A, transfers cases CA11/19, CA12/19, CA13/19, CA14/19, CA15/19, CA16/19, CA17/19, CA18/19, CA19/19, CA20/19, CA21/19, CA22/19, CA23/19, CA24/19, CA25/19, CA26/19, CA27/19, CA28/19, CA29/19, CA30/19, CA31/19, CA32/19, CA67/21, CA68/21, CA69/21, CA70/21, CA77/21, CA78/21, CA79/21, to the Competition Appeal Tribunal on the condition that they be treated as proceedings in Scotland; and
4. in terms of Rules of Court 32A.1(2) & (3) directs the Deputy Principal Clerk of Session to transfer the cases and process to the Competition Appeal Tribunal and to give the requisite written intimations.

See minute of proceedings

Author: Dino Facchini

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Minute of Proceedings

CA25/19 Renfrewshire Council -v- VFS Financial Services Ltd & Ors

Anderson Strathern LLP

Dentons UK and Middle East LLP
Brodies LLP
Pinsent Masons LLP
Levy & McRae
BTO Solicitors LLP

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The court noted that rule 104 of the Competition Appeal Tribunal Rules provides that costs means expenses recoverable before the Court of Session and in that respect the Competition Appeal Tribunal's attention is drawn to Prospect Healthcare (Hairmyres) Ltd v Keir Build Ltd 2018 SC569.

The court noted that all parties require further period of adjustment to finalise their pleadings but the court took the view that such adjustment should be dealt with by the Competition Appeal Tribunal after the transfer rather than delaying the transfer. In the meantime the parties are encouraged to informally revise and exchange their pleadings to reduce the length of time required for any formal adjustment period which may be granted by the CAT.

The court also noted that specification under case CA19/19 is a further specification and substantial documentation has already been obtained from the DVLA. The court notes that the width of the specification is because it has been drafted in such a way as to assist the DVLA by including all vehicles. It also notes that the extended period for which this specification is sought is because that extended period maybe relevant to the expert report that the pursuers may wish to instruct depending on what is said in the Royal Mail v DAF case. Although the motion has been refused at this stage, the pursuer is at liberty to bring back that or a similar motion in due course before the Competition Appeal Tribunal, for example when the pursuer has come to a decision as to whether it will instruct such an expert.

The court finally noted that third party notices have been served on DAF only in respect of the associated action CA79/21 and DAF is not a third party in the cases of CA77/21 nor CA78/21.

Dino Facchini : Depute Clerk of Session

