



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

Claimants

- v -

- (1) DAF TRUCKS N.V.
(2) DAF TRUCKS DEUTSCHLAND GMBH
(3) PACCAR INC
(4) DAF TRUCKS LIMITED
(the “DAF Defendants”)
(5) DAIMLER AG
(6) MERCEDES-BENZ CARS UK LIMITED
(the “Daimler Defendants”)
(7) AKTIEBOLAGET VOLVO (PUBL)
(8) VOLVO LASTVAGNAR AB
(9) VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH
(10) RENAULT TRUCKS SAS
(11) VOLVO GROUP UK LIMITED
(the “Volvo/Renault Defendants”)

Defendants

REASONED ORDER

UPON reading the Claimants’ application for further disclosure set out in their Solicitors’ letter to the Tribunal dated 2 November 2022, the Volvo/Renault Defendants’ Solicitors letter to the Tribunal dated

7 November 2022 and the further letter from the Claimants' Solicitors to the Tribunal dated 8 November 2022;

AND UPON reviewing the Ryder ruling;

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

“Bundled Products Pleas” means paragraphs 6.4, 32.2, and 37 of the Volvo/Renault Defendants' Re-Re-Amended Defence;

“Ryder Proceedings” means *Ryder Limited & anor v MAN SE & ors* (Case No: 1291/5/7/18 (T));

“Ryder ruling” means the ruling of Hodge Malek KC dated 20 September 2022 made in the Ryder Proceedings; and

“Royal Mail Proceedings” means *Royal Mail Group Limited v DAF Trucks Limited & ors* (High Court Claim No. HC-2016-003442 / CAT Case No. 1284/5/7/18 (T)).

IT IS ORDERED THAT:

1. The Volvo/Renault Defendants shall by 4pm on 2 December 2022 disclose to the Claimants the relevant documents which are part of the Commission's administrative file relating to its investigation in Case AT/39824 which were previously withheld from disclosure:
 - (a) pursuant to paragraph 1(1) of the Excluded Categories of Disclosure Order made by Rose J on 18 December 2017 in the Royal Mail Proceedings; and
 - (b) under category P *“documents relating to the market for and pricing of spare parts”* as set out in paragraph 18 of Annex 1 to the disclosure statement of the seventeenth to nineteenth defendants in the Ryder Proceedings dated 21 September 2018 (provided to the Claimants as Annex 4 to the First to Third Defendants' disclosure statement dated 21 December 2018).
2. Disclosure does not need to be given in respect of documents from either category (a) or category (b) above which relate expressly and solely to:
 - (a) spare parts; and/or

- (b) markets other than the UK.
3. The Volvo/Renault Defendants may choose to disclose confidential documents or information into the Confidentiality Ring in accordance with the terms of the Re-Re-Re-Re-Amended Confidentiality Ring Order dated 28 June 2022.
 4. The disclosure referred to in paragraph 1 of this Order shall be accompanied by a statement of truth signed by an appropriate person. The disclosure statement should state the number of documents disclosed and specify any documents (or parts of documents) that are being withheld on the grounds of legal professional privilege or on the grounds that they contain leniency material. The disclosure statement should be filed with the Tribunal.
 5. By no later than 4pm on 16 December 2022, the Claimants shall, if so advised, file and serve a supplemental expert report from Mr Harvey limited to addressing the disclosure provided pursuant to paragraph 1 of this Order, instead of Mr Harvey addressing that disclosure in his reply expert report which is to be filed and served pursuant to paragraph 15 of the Order of Mr Justice Roth drawn on 22 July 2021 (as varied).
 6. The Claimants shall file and serve on the Volvo/Renault Defendants a schedule of any instances of collusion from the disclosure referred to in paragraph 1 of this Order on which they rely as showing collusion in relation to the supply of products/services falling within the scope of the Bundled Products Pleas. The Claimants may elect to file and serve the aforementioned schedule either:
 - (a) at the same time as the Claimants file and serve Mr Harvey's expert report in reply; or
 - (b) at the same time as the Claimants file and serve a supplemental expert report from Mr Harvey pursuant to paragraph 5 of this Order.
 7. By no later than 4pm on the day falling five weeks after the Claimants file and serve their schedule pursuant to paragraph 6 of this Order, the Volvo/Renault shall file and serve any additional expert report from Mr Biro in reply to any part of the relevant expert report from Mr Harvey which relates to the documents disclosed pursuant to paragraph 1 of this order.
 8. The Volvo/Renault Defendants shall have liberty to apply to adduce additional factual evidence in relation to the pricing of products/services within the scope of their Bundled Products Pleas.

9. The Claimants shall have liberty to apply for disclosure of documents relating to spare parts.
10. Costs in the case.
11. The Volvo/Renault Defendants have liberty to apply to claim privilege on Pergan grounds, if so advised, at the same time as providing the disclosure set out in paragraph 1 of this Order.

REASONS:

1. By their application, the Claimants sought the same disclosure from the Volvo/Renault Defendants as the Volvo/Renault Defendants were previously ordered to provide to the Claimants in the Ryder Proceedings pursuant to the Ryder ruling. As more particularly described in the Ryder ruling, that disclosure comprised documents which are included in the administrative file of the Commission underlying its decision in *Trucks* and which relate to products and services other than trucks. The Volvo/Renault Defendants did not in the event provide that disclosure because by order dated 4 October 2022 the Ryder proceedings were stayed as against the Volvo/Renault Defendants.
2. The Tribunal is satisfied that the disclosure now sought is relevant to the issues between the Claimants and the Volvo/Renault defendants in these proceedings. The Claimants' claim in the Amended Particulars of Claim is that, as a result of the unlawful collusion particularised in the Settlement Decision, the price paid for trucks was higher than it would otherwise have been. The Volvo/Renault Defendants assert in their Re-Re-Amended Defence in these proceedings that the Claimants received at least the same total value, taking into account the price of the trucks and other elements of the transaction (i.e. discounts on other goods and services sold alongside the trucks) as they would have done, absent the Admitted Conduct or such other infringement alleged by the Claimants, and that, in calculating any overcharge, the Claimants must take into account any further value received by them through these other elements of the transaction.
3. The Volvo/Renault Defendants correctly submitted that, unlike the Claimants in the Ryder proceedings, the Claimants in these proceedings have not in their pleadings specifically alleged collusion with regard to goods and services sold alongside trucks. The Tribunal nevertheless considers that the Volvo/Renault Defendants' own pleaded case places in issue whether the further value received through discounts on other goods and services should be taken into account in calculating any overcharge. The extent to which the discounts offered on ancillary goods and services were affected by infringing behaviour is clearly relevant to the calculation of that further value and hence to the calculation of any overcharge.

4. The Tribunal is satisfied that the disclosure sought may well be useful in assisting the Tribunal to determine what, if any, impact, should be given to the discounts on ancillary goods and services on the calculation of any overcharge, that the cost and burden of reviewing the documents will not be disproportionate in the context of the size of the case, the resources of the parties and the number of documents involved, that the delay in making the application is not such as to preclude the granting of the application (albeit that the Claimants' explanation for their failure to make the application at an earlier stage, namely their expectation that they would obtain the disclosure via the Claimants in the Ryder Proceedings, was unsatisfactory given the possibility of the Claimants in the Ryder Proceedings settling with the Volvo/Renault Defendants) and that, despite the acknowledged extra burden, this disclosure can be provided without unduly disrupting the preparations of the case for trial.

Andrew Lenon KC
Chair

Paul Lomas

Prof Anthony Neuberger

Made: 11 November 2022
Drawn: 11 November 2022