



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**

The Dawsongroup Claimants

- v -

- (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 LIMITED¹**
- (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 Dawsongroup Defendants

¹ Proceedings against the Fifth and Sixth Defendants have been stayed pursuant to a consent order made by the Tribunal on 27 October 2022.

IN THE COMPETITION
APPEAL TRIBUNAL

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

AND BETWEEN:

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

The Ryder Claimants

- v -

- ~~**(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 LIMITED²
~~**(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

The Ryder Defendants

DIRECTIONS ORDER

² Proceedings against the Tenth and Eleventh Ryder Defendants have been stayed pursuant to a consent order made by the Tribunal on 27 October 2022.

UPON the Tribunal’s Order drawn on 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 drawn on 22 July 2021 (the “**May 2021 CMC Order**”) which set down directions to the Trial (including the extent to which the DS Smith Claimants have been permitted to participate in the Trial);

AND UPON the Tribunal’s Order drawn on 11 February 2022 (the “**October 2021 CMC Order**”) which set down further directions to the Trial;

AND UPON hearing Leading Counsel for each of the Dawsongroup Claimants, the Ryder Claimants, the Dawsongroup Defendants and the Ryder Defendants, and the DS Smith Claimants at a case management conference on 27 October 2022;

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

- “**Bundled Products Pleas**” means Volvo/Renault’s Total Value Plea.
- “**Consolidated Confidentiality Ring Order**” means the Confidentiality Ring Order made on or around the date of this Order which replaced the Confidentiality Ring Order dated 28 June 2022 in the Dawsongroup Proceedings, and the Confidentiality Ring Order dated 4 December 2020 in the Ryder Proceedings.
- “**DAF**” means the First to Fourth Defendants (Dawsongroup Claim) or the Seventeenth to Twentieth Defendants (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 issues of: (i) whether and to what extent Dawsongroup and/or Ryder (as applicable) suffered losses occasioned by the additional

cost of financing inflated purchase prices; and (ii) the calculation of interest on losses which are established.

- **“Infringement”** has the meaning given in Dawsongroup’s Re-Amended Particulars of Claim and Ryder’s Amended Particulars of Claim, as applicable.
- **“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.
- **“Mitigation”** means the issue in the Ryder Claim of whether and to what extent the Ryder Claimants mitigated any Overcharge and/or alleged losses of profit and/or other alleged losses by reducing their expenditure including capital and discretionary expenditure and costs which they paid to their suppliers.³
- **“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 prices for Trucks.
- **“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).

³ This wording reflects paragraph 41(c) of DAF's Re-Re-Amended Defence in the Ryder Claim. The Ryder Claimants do not agree that this accurately captures the legal issues related to mitigation.

- “**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 adjustment of 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).
- “**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 Dawsongroup and/or Ryder Claim and the valuation of those Trucks.
- “**Volvo/Renault**” means the Seventh to Eleventh Defendants in the Dawsongroup 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.

IT IS ORDERED THAT:

TRIAL

Trial structure

1. Paragraph 2 of the Trial Order is set aside.
2. The trial shall be heard in the following two stages:
 - (a) The first stage of the trial (“**Stage A**”) is to address any issues that arise in the Dawsongroup and / or Ryder Claims in relation to Overcharge, the Plausibility Issue, Volume/Value of Commerce, and Bundled Products Pleas (together, the

“**Stage A Issues**”). Stage A will include oral openings and closings from all parties, factual witness evidence from all parties (save for the DS Smith Claimants) and expert evidence from all parties (save for the DS Smith Claimants), to the extent permitted in the October 2021 CMC Order, pertaining to the Stage A Issues. Prior to the conclusion of Stage A, to the extent permitted in the October 2021 CMC Order, the parties will file and serve written closing submissions on the Stage A Issues.

- (b) The second stage of the trial (“**Stage B**”) is to address any issues that arise in the Dawsongroup and / or Ryder Claims in relation to Supply Pass-on, Resale Pass-on, Loss of Volume (including Loss of Profit), Mitigation, Financing Losses / Interest and Tax Issues (the “**Stage B Issues**”). Stage B will include oral openings and closings from all parties, factual witness evidence from all parties, and expert evidence from all parties, to the extent permitted in the October 2021 CMC Order, pertaining to the Stage B Issues. The expert evidence on Financing Losses / Interest and Tax Issues shall follow the evidence on Supply Pass-on, Resale Pass-on, Loss of Volume (including Loss of Profit) and Mitigation. Prior to the conclusion of Stage B, to the extent permitted in the October 2021 CMC Order, the parties will file and serve written closing submissions on the Stage B Issues.

(Stages A and B, together, the “**Trial**”).

Written opening submissions

3. The parties will, to the extent permitted in the October 2021 CMC Order, submit written opening submissions pursuant to paragraphs 19 and 20 of the May 2021 CMC Order, and pursuant to paragraph 43 of the October 2021 CMC Order, pertaining to the Stage A Issues and Stage B Issues.
4. Each party’s written opening submissions are limited to 80 pages, save for the Dawsongroup Claimants’ written opening submissions which are limited to 100 pages.

Factual witnesses at trial

5. A factual witness providing evidence at both Stage A and Stage B shall be released from purdah following the end of the provision of their evidence at Stage A and prior to them giving evidence at Stage B.
6. A factual witness providing evidence during Stage B, who has already provided evidence at Stage A, may not be asked questions by any counsel concerning Stage A Issues.

EVIDENCE

Amended expert reports taking into account the judgment handed down following Trial 1

7. Paragraph 14 of the May 2021 CMC Order is set aside.

Exchange of witness statements and expert reports

8. Any witness statements or expert reports:
 - (a) which have been prepared for the purpose of the Trial and have been served to date on some, but not all, of the remaining parties, shall be provided by the party on behalf of which the statement or report was prepared to those parties which have not yet received all such statements or reports by 17 November 2022;
 - (b) which will be prepared for the purpose of the Trial but have not yet been served shall, when served, be served on all of the remaining parties; and
 - (c) served or provided according to the terms of this paragraph shall be served or provided in unredacted form in accordance with the terms of the Consolidated Confidentiality Ring Order.
9. The Dawsongroup Claimants shall not be required to disclose to the DS Smith Claimants any data supplied from the Society of Motor Manufacturers and Traders, subject to agreement by the Society of Motor Manufacturers and Traders to the disclosure of such data to the DS Smith Claimants.

Hearing expert evidence on a concurrent basis

10. Expert evidence shall be heard using a combination of concurrent evidence (or “Hot Tubs”) and cross-examination. The parties shall liaise to seek to agree the scope of the use of Hot Tubs in these proceedings.

Cross admissibility of evidence

11. Evidence in the Dawsongroup Claim shall stand as evidence in the Ryder Claim, and evidence in the Ryder Claim shall stand as evidence in the Dawsongroup Claim. The parties shall be entitled to make representations and undertake witness examination on a proportionate and non-duplicative basis as to matters relevant to the proceedings to which they are party.

PRE-TRIAL REVIEW

12. A Pre-Trial Review shall be listed in the week commencing 6 February 2023 with a provisional time estimate of one day with a second day in reserve (the parties to notify the Tribunal in advance of the hearing if a lesser time estimate would be sufficient).

TRIAL TIMETABLE

13. The Trial remains listed to start on 13 March 2023 and shall be timetabled to conclude by the end of July 2023. The weeks commencing 25 September 2023 and 2 October 2023 are to be held by the parties and the Tribunal in reserve.
14. The Tribunal shall not sit:
 - (a) on Fridays, save for sitting weeks where there is a United Kingdom Bank Holiday or Public Holiday;
 - (b) on any United Kingdom Bank Holidays or Public Holidays;
 - (c) during the week commencing 10 April 2023;
 - (d) during the week commencing 29 May 2023.
15. A preliminary Trial timetable is set out in Annex A to this order. The detailed timetable will be finalised at the Pre-Trial Review.

COSTS

16. Costs in the case.

OTHER

17. Liberty to apply.

Andrew Lenon KC
Chair of the Competition Appeal Tribunal

Made: 14 November 2022
Drawn: 14 November 2022