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IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1289/7/7/18

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Tuesday 13th October 2026

Before:
Sir Peter Roth
The Honourable Mr Justice Rajah
Paula Riedel
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Road Haulage Association Limited

Class Representative

RHA Used Trucks Limited

Sub-Class Representative

v

TRATON SE and Others

Defendants

A P P E A R AN C E S

David Went and David Illingworth (Instructed by Addleshaw Goddard LLP) on behalf of Road Haulage Association Limited

David Scannell KC and Laurence Page (Instructed by Tyr Law) on behalf of RHA Used Trucks Limited

Daniel Jowell KC and Alfred Artley (Instructed by Slaughter and May) on behalf of MAN (First to Third Defendants)

Tony Singla KC and James White (Instructed by Herbert Smith Freehills Kramer LLP) on behalf of Iveco (Fourth to Seventh Defendants)

Rob Williams KC (Instructed by Pinsent Masons LLP) on behalf of DAF (Eighth to Tenth Defendants)

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Tuesday, 13 October 2026

(10.30 am)

(Transcript delayed due to technical issues)

(10.40 am)

Pleading

Submissions by MR WENT

THE CHAIR: And then, I think, 54.1 and 54.2. Is that correct?

MR WENT: Yes. It's in fact very limited in 54.1 and 54.2, as we'll see as I take you through it, but that's correct.

THE CHAIR: So if we go to 46 -- should we go straight to 46 (overspeaking)?

MR WENT: I was wondering whether we might start by going to 54, just because this sets out our revised stall on causation --

THE CHAIR: Yes.

MR WENT: -- and it should explain pleaded material facts in relation to this earlier on in the claim form.

If we could go to the confidential bundle; it's at K/2/43.

THE CHAIR: Okay. Is this the pleading? We've got it, CMC1-CB/1, I think. (Pause)

MR WENT: Okay. I see that it is also in the core bundle.

THE CHAIR: Yes.

MR WENT: I think when I was making references over the weekend, the core bundle hadn't yet been uploaded.

THE CHAIR: Right.

MR WENT: But anyway, we have it on screen.

THE CHAIR: It's just that we've marked up some things.

MR WENT: This paragraph sets out the RHA stall on causation based on the material

facts pleaded earlier in the claim form. The defendants don't object to this paragraph, except to the two references to the new paragraphs 46H to 46K.

This paragraph, as you'll see, states that the collusive practices followed a single economic aim to co-ordinate each other's gross pricing behaviour and the introduction of certain emission standards to remove uncertainty regarding the behaviour of the cartelists and the reaction of customers. Then the single economic aim was to distort independent price setting and normal movement of price, including in the UK.

Then the third sentence here:

"The different arrangements and mechanisms adopted by the cartelists described at the paragraph's reference, including 46H to K above, were in pursuit of that common anti-competitive object which remained the same throughout." [as read]

So this explains the setting of the new materials pleaded at 46H to K. They show the different arrangements and mechanisms adopted by the cartel members to distort independent price setting, including in the UK.

Then paragraph 54.2 further develops the case on causation, as best as the RHA can at this stage, by reference to the mechanisms which RHA says, "... led to increased prices". Again, the defendants aren't objecting to any of this except at paragraphs we will come to in a moment. It's a sub-paragraph with capital letters A to E at 54.2(a)(iv).

But just quickly going through the amendments prior to that; 54.2(a) deals first with the increase in gross prices giving rise to higher net transaction prices. Then paragraphs 54.2(a)(i) to (iii) initially deal with how gross prices would have increased through the cartel either fixing gross prices; that's at (i). Then (ii), over the page, which we're on now, deals with sharing gross price information. Then (iii) at the bottom of this page deals with influencing the price positioning of new products.

I just pick up one element of (ii) in the first sentence, and that's the reference to other commercially sensitive information, including information on delivery periods, order

intake, stock figures and other technical information, putting the cartelists in a better position to understand each other's European price strategy, and so on.

Then over the page, (iv), explains the direct link between gross prices and net transaction prices. Then at the subparagraphs, capital letters A to E provide the material facts demonstrating that link. As I mentioned, it's only the subparagraphs with capital letters A to E that are objected to.

THE CHAIR: Just to be clear, in 54.1, the only objection is to the cross-referencing to 46H to K.

MR WENT: Yes.

THE CHAIR: Yes.

MR WENT: That's correct.

THE CHAIR: And that's because 46H to K is itself objected to.

MR WENT: Yes. Exactly.

THE CHAIR: 54.2, there's no objection to subparagraph (a), sub-subparagraph (i), (ii), (iii) and (iv), but the objection is to the evidence being pleaded under sub-subparagraph (iv)(A) to (E); is that right?

MR WENT: That's correct. We should obviously (inaudible) material facts in the causation story. If --

THE CHAIR: I'm getting slightly confused which is the subparagraph and which is the sub-subparagraph , but --

MR WENT: There's nothing else objected to.

THE CHAIR: So sub-subparagraph (v) is not objected to, and B and C are not objected to. Is that right?

MR WENT: That's my understanding. I think that comes most clearly across in the draft composite order that's been prepared, but that's certainly my understanding.

In terms of the subparagraphs with the capital letters (A) to (E), if I can just explain

that. If we just go back a page, please.

If we look at the penultimate sentence immediately before those paragraphs, so the Royal Mail judgment is referenced by way of context. It's explained that in that case, one of the main factual witnesses for DAF responsible for negotiating with customers in the UK contradicted DAF's position that there was no real connection between gross list prices and net transaction prices, and therefore that the exchange of information as to increases in gross list prices could not have led to an actual increase in net transaction prices.

We say this is part and parcel of the reasons why the points pleaded in the subsequent paragraphs here are material facts to which the defendants should plead; so, material facts showing the link between gross list prices and net transaction prices.

Just going over the page, just to complete the causation story, which I know we've moved forward to already. Obviously, (v) then explains that having set gross prices at high levels would have prevailed absent the cartel, and better able to calculate competitors' net transaction prices, the cartelists influence net transaction prices.

Then just over the page again at paragraph 54.2B, that deals with the cartel giving rise to high net transaction prices through the cartel members fixing and/or sharing net transaction prices.

If I could, though, there is some highlighted text there which is confidential. If I could just ask you to read those. (Pause)

Then finally in this paragraph, sub-paragraph C deals with the cartel giving rise to higher gross and net transaction prices through the passing on of costs for and co-ordinating on the timing of the introduction and success of emission technologies.

With that in mind, if we can turn back to paragraphs 46 A to M. That's --

THE CHAIR: Before we do that, if we are looking at these, just looking at the bit that is objected to; you're saying direct link between gross and net, and you're saying,

really, that A to E, although it's not quite the way it's put in terms of language, but you're effectively saying, aren't you, the best particulars that the Class Representative can currently give prior to disclosure --

MR WENT: Yes --

THE CHAIR: -- are the following ...

MR WENT: That would have been a better way of putting it. I accept that, but that's correct, yes.

THE CHAIR: If you phrased it that way and did it as particulars. I'm not sure that sentence above about what happened in the Royal Mail trial -- slightly odd thing to put in a pleading, but you say it's not objected to.

But if you did it as particulars, and then said those are the best particulars you can currently give, A to E --

MR WENT: Yes.

THE CHAIR: You would be content with that.

MR WENT: Yes.

THE CHAIR: That's what you're alleging, the link between gross and net.

Yes. So that's the paragraph 54 point (c).

MR WENT: Yes. If we then turn back up -- the reference I have is K225.

THE CHAIR: Yes. We've got it, I think, in the core bundle at page 159.

MR WENT: I'm grateful.

Just before we go through these, I do also just want to make the threshold point that obviously liability has been established, and so one of the key battlegrounds is going to be whether the collusion engaged in by the cartel participants caused net transaction prices to rise in the UK, as compared with the counterfactual of the extent of any increase. There is obviously going to be heavy reliance on econometric analysis; that's very clear.

We did point out one judgment at paragraph 11 of our skeleton, the O'Higgins judgment, making clear that in competition cases where there is heavy reliance on econometrics, the pleader is entitled to significant and sympathetic latitude in how the case is put, because the pleader will be pleading material facts of an unusual and particular type.

I also just wanted to make clear that we know obviously what happened in the Royal Mail BT cases. There, DAF contended that the collusive activities had no effect at all, but then didn't offer any evidence to explain how the cartel had in fact operated or what its purpose was in the supposed absence of any such effect. That obviously principally relied on econometric evidence.

So we do say it's important these matters are properly aired in pleadings at the start, and so it's clear the extent to which the defendants admit the findings made by the Commission or the material facts, which were not already binding, as to the nature and extent of the collusive activities. We obviously understand why the defendants would be reluctant to respond to these pleadings, and why they're contending they shouldn't be required to plead to the detail.

THE CHAIR: Yes, I mean, we saw that. But it's clear, isn't it, that you don't have to plead all the evidence you rely on; otherwise, pleadings become extremely prolix. You'll get more evidence on disclosure. You may get massive evidence on disclosure, and we'll end up with a pleading of several hundred pages, if everything has to be put out. So you really have to plead your allegations, and then particularise them as best you can. That's really the gist of it, isn't it?

MR WENT: Yes. Well, perhaps we can go through the pleadings earlier on.

THE CHAIR: I mean, what Rule 75 says, it's a concise statement of relevant facts.

MR WENT: Yes. We say that these material facts are going to causation, and the defendants should be required to plead back to them, so we know at the outset where

we will stand, and particularly, as I say, given how the cases have evolved previously.

THE CHAIR: Well, shall we look at the pleadings?

MR WENT: Yes, exactly. So, 46A to C -- obviously the new material facts of the pleading come from the RHA's review of the Commission file.

THE CHAIR: What's the point of pleading 46A?

MR WENT: Well, as I said, this is the basis for the new material facts that are being pleaded.

THE CHAIR: But you wouldn't plead that. I mean, it seems to me quite redundant.

MR WENT: Well, I said that --

THE CHAIR: It doesn't seem to belong there at all in a pleading.

MR WENT: Well, 46A to C are, in a sense, scene setting for what follows, but --

THE CHAIR: 46A is just saying you've had access to the Commission file and it has various things in it, but it's not something you plead.

MR WENT: Well --

THE CHAIR: It seems to me completely redundant and unnecessary. And similarly, 46B saying what we haven't got. I mean, it's not something you plead. It's probably not particularly objected to, but it just shouldn't be there.

Then 46C, you are saying -- I appreciate it's partly confidential, but skipping over the confidential bits, you're quoting a bit of the Decision. Again, that's, that's all accepted and binding. It doesn't need to be pleaded. I can't see any role for 46A to C.

The real point, it seems to us, is the first sentence of 46D, where you're making an allegation which I won't read out.

MR WENT: Yes.

THE CHAIR: I'm not sure why these things are still at this point confidential. It's something that one will need to think about, it seems to me.

MR WENT: That's understood.

THE CHAIR: Because it's in 2026 where we have a decision, many years ago, and there's no basis for confidentiality, but we won't get into that now.

You said a moment ago that one of the things you're alleging is that this all had direct effect in the UK, so you make that allegation. It seems to me the first sentence of 46D is that allegation, which it did seem to us you should properly plead. And then --

MR WENT: And the detail of 46D --.

THE CHAIR: Well, the detail of 46D is just referencing a lot of individuals. Aren't the particulars of this allegation -- the first sentence -- really in 46I, UK prices? You're alleging here that it is relevant to the UK and then the best particulars about relevance and effect on the UK is 46I. The rest of it isn't.

MR WENT: Well, we're saying that there are specific details that we've picked up that relate to the UK.

THE CHAIR: Yes.

MR WENT: We're obviously not saying that's the only way, as I took you through all the causation elements just now. That's obviously not the only way in which the cartel had an impact on prices in the UK.

THE CHAIR: No.

MR WENT: Clearly, so it's setting that out with material facts in these paragraphs to make that clear. So there are different elements of it, as I said as we were going through it just now. We say that across these paragraphs, these are material facts relevant to that causation story that we've pleaded later on in paragraph 54 following. That's what we're saying. You're right that there are specific details in 46I, and I was going to draw your attention to (a), (b), and (d) by way of example.

THE CHAIR: Yes, well, I can see that you could plead as the best particulars of the allegation in the first sentence of 46D, and then you will want to add 46F:

"For the avoidance of doubt, even when there's no explicit reference to the UK, it's

averred ... collusion [and so on]." [as read]

Relating to the introduction ... equally relevant to and will have caused an increase in prices of new Relevant Trucks." [as read]

I can see that, but the rest of it is sort of what's under 46H at great length, and 46J and 46K.

MR WENT: Perhaps I can --

THE CHAIR: That's all stuff that you don't need to allege; it's in the Decision. The allegation is established, so you don't need to provide particulars of it.

MR WENT: Well, but perhaps I could draw your --

THE CHAIR: That's why I'm puzzled by what this is all doing.

MR WENT: Perhaps I could draw your attention, for example, to 46K(b), where again it's showing the link with the UK in relation to emission technologies.

THE CHAIR: 46K(b), there's a link --

MR WENT: That's at K/2/35 --

THE CHAIR: Yes. (Pause)

If you want to plead specific points that say support in effect directly in the UK --

MR WENT: Yes.

THE CHAIR: -- because the general nature of the collusion is in the recitals that are binding. This is evidence that was used to reach those findings in the binding recitals and don't have to be pleaded here. As I say, you're going to get a lot more from disclosure. But you could then if you want to say that the agreement on Euro emissions, which was found by the Commission in the Decision, included specific discussions about implementation in the UK --

MR WENT: Yes.

THE CHAIR: -- and again, the best particulars you can give, and there's that reference you've just shown us. Speaking for myself -- I actually raised it directly with my

colleagues -- that would be acceptable, but that's far less than we've got here. But setting out at length the sort of evidence that the Commission had to produce the recitals in the Decision, which are binding and you have the benefit of, is irrelevant, prolix and not the purpose of these pleadings, even if you would quite like to know what the defendants say about each and every meeting.

MR WENT: Well, I obviously hear what you're saying. I don't think I can advance our position any further. I would say we'd understood that this was, in fact, on a more lean scale as compared with what's happened in previous proceedings in the Trucks cases -- for example, the Ryder pleading. We know from what we've been told by Iveco in their response at paragraph 7, that only something like 10 to 15 percent of these pleadings haven't been pleaded back to previously by the defendants. It was also noted, I think in the Royal Mail proceedings, the Claimants pleaded many examples of the collusion from the Commission file. There's a reference to that at paragraph 16(3) of our skeleton.

We certainly didn't think we were doing anything out of the ordinary here, where you have a short form Settlement Decision to plead out these material facts that go to the heart of the case. That's the position that we've adopted.

THE CHAIR: Yes, well, just give me a moment.

MR WENT: Of course.

THE CHAIR: Yes. Well, we do feel that a more confined pleading -- obviously we haven't heard from Mr Williams speaking for the defendants. You can keep your allegation in the first sentence of 46D saying the best particulars you can currently give, and then you have what you have under the 46I, and then you may wish to say "further as regards Euro emissions", there was specific discussion regarding the UK, the best particulars you can give, you give the following -- and then your 46F saying that:

"For the avoidance of doubt, even if there was no explicit reference to the UK, the general discussions were equally relevant to the UK ..." will get you the allegations you want, the particulars you need, which we think legitimately, you can expect an answer to. You won't be prejudiced at all. That's where we are at the moment, subject to hearing from the defendants.

MR WENT: Okay, I'm grateful. I don't have anything further at this stage.

THE CHAIR: So, Mr Williams, you've heard what we've just said.

Submissions by MR WILLIAMS

MR WILLIAMS: Yes, sir. Obviously, the amendment in the form which you've just contemplated would be very different from that which we were addressing in the submissions.

THE CHAIR: Yes.

MR WILLIAMS: I'm making submissions for all the defendants.

THE CHAIR: Yes.

MR WILLIAMS: And I will need to take instructions from everyone in relation to what you've said, and whether we maintain our objection.

THE CHAIR: Yes, at a convenient point, perhaps we will rise and you can do that. Similarly, what we've said about 54 -- well, obviously the cross references that relate to paragraphs that have gone would go. But as regards, 54.2, the bits in blue would be put as the best particulars. That's paragraphs (a) to (e)

MR WILLIAMS: Yes.

THE CHAIR: Okay, well, we'll leave it. You take instructions and we'll come back to it, thank you.

I think we then move to the Sub-Class Representative's pleading, and Mr Scannell, is it?

Application to amend the claim form

Submissions by MR SCANNELL

MR SCANNELL: Yes. Good morning, Mr Chairman, members of the Tribunal. I'm David Scannell with Laurence Page for RHA Used Trucks Limited or "RUTL". As in the case of the RHA, we're applying to amend our claim form in light of our review of the Commission administrative file. That was provided to us late in the day on 11 June this year. It was reviewed then over the long vacation, and amendments were made by the 11 September deadline.

RUTL's review of the Commission file has revealed documents evidencing plausible mechanisms by which the cartel conduct alleged by the RHA in the main claim, and by RUTL in our claim, had an effect on used trucks prices. The amendments that we seek, seek to throw light on those mechanisms.

Apart from a few tendentious claims about timing, the defendants' objections to this amendment boils down to a single contention: they say that the amendments that RUTL makes constitute a distinct claim in respect of collusion on used trucks, and that that falls outside the scope of the Settlement Decision. Now, we say that that objection is misconceived for three reasons. I'll take the Tribunal in a moment to the existing pleadings and to the amended pleadings, but if I can just outline at the outset the three submissions I'll make:

The first is that there is no new cause of action in respect of Used Trucks Collusion. The claim that we make today is the same claim as we have always made, and the same claim as the Tribunal has certified.

The second submission is that, so far as RUTL is able to discern -- parenthetically, I'd add there that we can't know the full details of the participants cartel, not least because they chose to settle. They have avoided the publication of a comprehensive Commission Decision proclaiming the full extent of their infringement.

But so far as we can tell, the relevant discussions and exchanges to which we plead did fall within the scope of the cartel established by the Settlement Decision. They were part and parcel of it. They were inextricably linked to it. In any event, it's undeniable that that is arguably the case.

The third submission I would make is that even if that were not the case, that would still not be a reason to disallow the amendments. The exchanges and discussions that RUTL has found in the Commission administrative file on any view relate to the effects of the cartel established by the decision. That means that RUTL is not only entitled to rely on them, it's positively obliged to do so if it can in order to establish a direct and proximate link between the cartel and the used trucks overcharge it alleges.

With that in mind, could I deal with the first of the submissions, which is that there is no new claim. I propose to deal with this in three short steps. First, simply to highlight the law relating to what a "new claim" is. I'll take that extremely shortly.

Then I'll show you the existing claim so that the Tribunal has well in mind what the scope of that is. Then I will show you the proposed amendments to the claim form, with a view to showing that that structure is fully preserved.

A new claim is not defined in the Tribunal's rules or in its guide, but it is defined in the Limitation Act, section 35(2). We don't need to turn it up, it simply provides that a new claim is a new cause of action. The concept of a new cause of action has been considered many times over the centuries -- we cite three cases at paragraph 19 of our skeleton argument.

But what all of these cases boil down to is a pretty simple proposition: a cause of action arises from the coincidence between two things; a claim for a remedy on the one hand; and the factual circumstances necessary to establish that claim on the other. That's to be contrasted with a situation where further particularisation is given in respect of

an existing claim without alleging that the additional particulars give rise to any incremental remedial entitlement. We've cited Paragon Finance v DB Thakerar and Mr Justice Sales' judgment in Nokia v AU Optronics, but I respectfully submit that that's a fairly self-evident proposition.

As to RUTL's existing claim, if I can turn to that. The starting point is the RHA's claim, because RUTL's claim is dependent on their claim. We don't need to turn up the RHA's claim. The Tribunal has been thinking about that already this morning, but I take it that the Tribunal has it clearly in mind that the claim is a follow-on damages claim, to which section 47A applies, and in it, the RHA alleges at paragraphs 1 to 5 of its claim that the defendants' cartel -- and by that I mean the cartel established by the two Commission Decisions, the Scania Decision and the Settlement Decision -- caused the prices of Relevant Trucks to be higher than they otherwise would have been. That goes for all trucks: new trucks and used trucks.

The RHA's claim is that that caused loss and damage to all of the Class Members that the RHA represents, new and used.

The RHA is then the Class Representative for all of the Class Members on all of the issues in the case, except that RUTL is the representative of a sub-class of claimants who bought and leased used trucks. The question that falls to us is whether the cartel had an impact on the prices of Used Trucks and the costs that were borne by used trucks buyers and lessees.

RUTL's remit is not confined to a very narrow question of whether new trucks, buyers and lessors passed on an overcharge to used trucks, buyers and lessees. It's a broader question than that. It's designed to ascertain whether the cartel had an impact on Used Trucks' prices, via pass-on or otherwise.

Could we then turn to the existing RUTL claim form, please. That's in the core bundle at tab 2, if Tribunal members are using that.

THE CHAIR: Which on Opus is on page 35?

MR SCANNELL: I have it as page 36, but I'm sure we'll be able to sort this out.

THE CHAIR: Yes.

MR SCANNELL: I want to go first to paragraph 5 of that, Mr Chairman. There the Tribunal sees that RUTL adopts paragraphs 1 to 5 of the RHA's claim.

Then at paragraph 6, it recites the Used Trucks Sub-Class Common Issues, all expressed in terms of whether or not the cartel had an effect on Used Trucks' prices and costs.

Then on page 35, at paragraph 3, RUTL's core plea is set out. That is that:

"... as a consequence of the cartel [that's the cartel established by the two Commission Decisions] the prices paid by Used Trucks Sub-Class Members for purchasing and/or leasing pre-owned Relevant Trucks ... and other costs [that they bore] were materially higher than they would otherwise have been during the Relevant Period ..."

So it's always been clear that the Used Trucks claim arises from the same cartel as the RHA relies on, and that the claim entails contending that the cartel caused a Used Trucks overcharge, whether that was caused by pass-on in the simple sense or otherwise.

At the time of certification, RUTL's claim simply referred to the facts that were set out in the RHA's claim form in support of its pleas, and that can be seen from paragraph 28 on page 43 of the bundle you were looking at. They were the best particulars that were available at the time of certification, pending disclosure and evidence, and one sees that from page 37, paragraph 9. But that plea was subject to the usual reservation of rights to provide further particulars of loss in light of whatever disclosure might arise. That's paragraph 43, on page 46.

It's always been clear also, since the time of certification, that RUTL would rely on expert evidence to prove or to assist in proving the overcharge. The reference to that

is on paragraph 35, on page 45 of the core bundle.

Mr Wilkinson's expert methodology report is in the bundles, and it's worth turning that up. It's in bundle G, tab 4. It's helpful to see what Mr Wilkinson had to say at the time of certification about the sort of evidence he hoped to be able to rely on in assisting the Tribunal, and I'd emphasise at the outset that at no point has any defendant suggested that Mr Wilkinson's report alleges a new claim, or goes beyond the scope of any Commission Decision.

So within bundle G, tab 4, could we begin at paragraph 23, please.

At section 7 of the report -- we should be down at section 7, rather than section --

THE CHAIR: You asked paragraph 23, I think.

MR SCANNELL: Sorry. Page 23. I apologise if I said paragraph 23.

At section 7 he's dealing with the overcharge on Used Trucks, and within that section on page 25 at subsection 7.3, he addresses the factors affecting prices of Used Trucks at the bottom of the page.

At paragraph 87, two lines from the bottom, he opines that it appears likely that the prices of Used Trucks were affected by the infringement, through the cartel's effect on the price of new trucks. Over the page, he refers in that respect to Royal Mail and the two mechanisms that were agreed by the experts in that case.

MR WILLIAMS: Sorry, sir. While you're there, could you just repeat the paragraph.

THE CHAIR: Beginning of paragraph 87 Commission Decision. Yes.

MR SCANNELL: Over the page, he refers to Royal Mail and the substitution effect and the reduced supply effect.

Just pausing there; RUTL must logically be able to plead to further particulars of those mechanisms, a substitution effect and a reduced supply effect, if they become available. But then at paragraph 88 on the page now on the screen, Mr Wilkinson adds:

"In practice, it is also possible that other mechanisms could cause an increase in the price of Used Trucks as a result of the cartel, either directly or indirectly. For example, the cartel could have involved direct co-ordination on used prices, or Used Trucks' prices are mechanistically linked to new trucks' prices, to some degree. The extent to which other mechanisms exist can be tested through information that will be made available following disclosure." [as read]

Just as Mr Wilkinson apprehended, the disclosure that we've now seen has cast light on what he called other mechanisms by which the cartel may directly or indirectly have affected Used Trucks' prices. We want to plead to them. The defendants resist that, but in my submission, these amendments ought to be uncontroversial, insofar as it's always been clear that we would rely on evidence to show that the cartel affected used trucks' prices and that that evidence would be considered on a broad axe basis by the Tribunal in deciding --

THE CHAIR: You have taken us to that. I don't think there's any problem about allegations and evidence showing various ways that cartel on dealing with new trucks had an effect on prices of Used Trucks. That's your case, and there are various ways it might have happened, and your expert set out a couple and he said there might be others.

Where I think the objection is taken is when he says -- and he's of course not pleading as a lawyer -- he just says the cartel could have involved direct co-ordination on Used Trucks' prices. If you are going to allege that the cartel did involve direct co-ordination on Used Trucks, of course that's useful for him as an expert. But is that allegation -- if that's now being advanced -- a new cause of action?

MR SCANNELL: Yes.

THE CHAIR: That's the question.

MR SCANNELL: That is the question.

THE CHAIR: The fact that it would be relevant to your expert, of course it would.

MR SCANNELL: Yes. The answer to that question is: in our submission, it's not a new claim. It remains a claim that the cartel caused a Used Trucks overcharge, and the particulars that we seek to put forward are particulars showing how the cartel, not some other cartel, caused a Used Trucks overcharge.

THE CHAIR: The question is surely not, "Did it cause a Used Trucks overcharge?", which could happen in various ways, but: did the cartel involve co-ordination on used prices? If it did involve co-ordination on used prices, as it seems to us you now having seen these documents wish to allege, is that within the scope of the cartel in this Decision, or is it actually broadening the scope of what's alleged beyond what was found in the Decision?

You might have material on which you say you can broaden it, but is that not a new allegation, not simply of the causative effect of the cartel, but a new allegation as to the extent of the cartel?

MR SCANNELL: That certainly is the question, Mr Chairman. I don't --

THE CHAIR: I don't think Mr Wilkinson can help us on that.

MR SCANNELL: I take the point. I simply took the Tribunal to Mr Wilkinson to show that it's always been clear that as part of our claim, there was a likelihood that if disclosure revealed a mechanism other than simply a new truck buyer passing on an overcharge to a Used Trucks buyer or lessee, that that information would be relied upon as a mechanism.

THE CHAIR: Sorry to go back on it. It's not just anything more than a pass-on by a new truck buyer to a used truck buyer. It's clear there are other means it could have had an effect, such as a diversion of demand that because new truck prices go up, demand for Used Trucks increases; therefore, Used Trucks prices increase. I mean, none of that goes anywhere near questioning the scope of the cartel, and that's the

point that the defendants, as I understand it, are objecting to. That's the question of whether -- and really, one has to look at your new pleading to see: are you going beyond just saying causative effect in many possible ways of what was found in the Decision to be the cartel, or are you saying, actually, the cartel discussions using cartel -- as it were, with a lowercase "c" -- went wider than these decisions established?

MR SCANNELL: I'd make two submissions in relation to that. The first is that so far as we are able to tell, the scope of the cartel established by the Decisions is broad enough to encompass the forms of discussion that we plead to. We are not saying that that involves any expansion at all of the cartel established by the Decisions. The second point is that when it comes to pleading the effects of the cartel, there is no rule whatever which confines the evidence that can be adduced to evidence of the cartel itself. All sorts of evidence can be led by a claimant in any follow-on damages claim to show a direct and proximate causative link between a cartel and an overcharge, for example, or loss and damage.

THE CHAIR: I don't think the second proposition is in dispute.

MR SCANNELL: I should hope not. It should be uncontroversial.

THE CHAIR: I think it's the first one.

MR SCANNELL: Yes. Well, can we look in that case at the further particulars we wish to add?

THE CHAIR: Yes.

We got a little confused. Is it the one under tab 10; that's the one you are now putting forward Page 2 --

MR SCANNELL: I think I can take this from the core bundle.

THE CHAIR: Page 221? Is that --

MR SCANNELL: Yes, page 221. Let's take it from there. It is also in bundle K, but

there's really no advantage to going to that.

The specific paragraphs here, just to track through to the chairman's remarks to Mr Went; the particular paragraphs to which objection is taken are paragraphs 28B to N for November, and 29A and B. (Pause)

THE CHAIR: Yes.

MR SCANNELL: Paragraph 28 is on page 230, beginning, "Paragraphs 39 to 46M ..." In the last two lines on that paragraph, RUTL proposes to, "... [set] out further particulars of the cartelists' conduct relevant to the Used Trucks Sub-Class Common Issues ..."

So it's put in terms of providing further particularisation, as opposed to adding a new claim.

Further along at paragraph 28B RUTL pleads that:

"... as further particularised below, it is averred on the basis of the [Commission] file documents ... and pending further disclosure and evidence, that the Defendants' cartel activities included exchanges and discussions concerning [the matters that appear before parenthesis] ..."

And that's defined as the Used Trucks Collusion, those discussions and exchanges, and/or that the defendants' cartel activities otherwise directly or indirectly affected Used Trucks prices, resulting in an overcharge thereon.

So "Used Trucks Collusion" is used as the label for exchanges and discussion, but it's expressly pleaded that those discussions and exchanges are included in the defendants' cartel activities; and the cartel is, of course, the same cartel as is alleged by the RHA and RUTL from the outset.

Two lines from the bottom of page 230, RUTL pleads that:

"The Used Trucks Collusion formed part of the single and continuous infringement of [101 and 53] alleged above and found in the Decisions, being conduct carried on by

the same undertakings, and in connection with the same meetings and contacts, over the same period and in pursuit of the same single anti-competitive economic aim."

Then over the page, on page 11 --

THE CHAIR: The next sentence is important, isn't it?

MR SCANNELL: Yes.

THE CHAIR: "The Used Trucks Collusion is not alleged as infringement of competition or distinct from or additional to the infringement found in the Decisions." [as read]

MR SCANNELL: Yes, it is relied upon as the means by which and the extent to which the infringement found in the Decisions affected the prices paid by Used Truck Sub-Class Members for used Relevant Trucks, which are the matters raised by the Used Trucks Sub-Class Common Issues at para 6 above. No claim is made for loss caused otherwise than by that infringement.

Now, turning to the particulars themselves. Just by way of an introduction to them, because they're set out in involved subparagraphs. If I could just explain in overview what the interrogation of the Commission file seems to reveal.

THE CHAIR: Well --

MR SCANNELL: I'll take you to the subparagraphs to make this good, but I just want to situate the Tribunal.

THE CHAIR: Well, you can do that. I don't want to take you out of your course. At the moment, I do struggle for myself with what's said in 28B. You say it's not anything additional that's characterisation, but the actual allegation, namely:

"[Confidential]."

MR WILLIAMS: I'm sorry, Sir, that’s some of that material is within the confidentiality ring.

THE CHAIR: What, in 28B?

MR WILLIAMS: Yes, the contents of those documents.

THE CHAIR: Yes, but I'm reading 28B.

MR WILLIAMS: In the confidential version, that text is redacted, Sir.

THE CHAIR: I'm sorry, it's not been highlighted.

MR WILLIAMS: No, it's not helpful. There's a redacted version and then there's an unmarked confidential version, which --

THE CHAIR: Well, that is extremely unhelpful, because we're normally very careful about these things. The RHA pleading was very clear. We're given a core bundle so we can work off it, and it's not been highlighted.

MR WILLIAMS: Essentially, anything which goes to the content and subject matter of the exchanges is redacted in the confidential version, because it's all confidential material in the Commission file.

THE CHAIR: Quite absurd that when there's a Commission file from a decision taken, when, 2017? It's all history, why on earth is this confidential?

MR WILLIAMS: I think the formal position is that that would all need to be regularised with the Commission.

THE CHAIR: It should have been done by now.

MR WILLIAMS: Yes. I'm sorry to interrupt, sir.

THE CHAIR: No, it's right that you do, because I was not working off the Opus because the benefit of a core bundle is that one can have one bundle.

Delete from the transcript what I just read out, but it goes to the core of the question under discussion. One can go and look at the supporting information. We're not approaching this on the basis that if this was a simple claim form, not relying on a decision, with these factual details that are set out which are confidential, it could be struck out an allegation that they amount to a breach of Article 101, because it's not arguable or something. They do support, to some extent, the allegation.

I think the question is whether the allegation, which I think I can call Used Trucks

Collusion -- it's not the going back to that first sentence of 28B, it's the bit dealing with Used Trucks Collusion. It's not the "and/or otherwise directly affected", that's just dealing with the causative mechanism of a new trucks collusion that could affect Used Trucks prices. It's the allegation that there was what you call "Used Trucks Collusion". We appreciate you've got some material on which you can make the allegation, but whether that is itself something that's found in the decision --

MR SCANNELL: Mr Chairman, part of the difficulty in relation to this -- and I fully accept this -- is that the label, Used Trucks Collusion, is something of a red rag to any competition bull. Once the word "collusion" is used as part of the label, that would suggest that we're alleging a separate infringement which we intend to prove on the balance of probabilities in the usual way. But in fact, that's just a label to describe the relevant discussions and exchanges; that's all it is. It can be changed.

THE CHAIR: Yes. Well, that's why you've got it, because it's the only thing we can say in open court.

MR SCANNELL: It's the only thing you can refer to, I appreciate that, Mr Chairman. But the point I'm making here is that that label could just as easily have been called "the discussions", for example, or "the colour orange" or anything one likes. Partly for historical reasons, which I detect the Tribunal may have picked up on, it's called Used Trucks Collusion, but it's not being alleged -- and this is explicit from the paragraphs we've already seen -- that there was a separate infringement comprising Used Trucks Collusion. Nor is it alleged that any additional or incremental remedial consequence follows from Used Trucks Collusion. It is purely put forward as a mechanism, just as was anticipated at the time of certification.

Because it will be difficult to get to grips with the subparagraphs without it, I'd like to provide an overview of what would seem to be the case from the Commission file. A proportion of the OEMs' contracts for the sale of new trucks contained guaranteed

buyback provisions. What that meant was that after a new truck was sold, the OEM undertook to repurchase it at a future date for a particular price.

Those buyback provisions, so far as we can tell, created a problem for the cartelists. They would have to repurchase their trucks at prices that bore some relationship to the original sales price of the new truck. But of course, the original sales price of the new truck included, so it's alleged, the new truck overcharge. That meant that the overcharge could come home to roost with the defendants. Furthermore, when the manufacturers repurchased the truck and then sought to sell that to a third party, the residual value of the truck would come into view. The residual value of a truck is an absolute value which is the same with or without the cartel.

In other words, there was a substitution effect risk that customers would opt to buy Used Trucks instead of new trucks because the gap between new trucks' prices and Used Trucks' residual values was larger than it should have been. There was also a risk that because the cartelists were both sellers and then buyers, and then sellers again, of trucks, the cartel would give to the defendants with one hand and take away with another.

Now, that waterbed effect seems to have been, so far as we can tell, appreciated by the cartelists. So far as we can tell, their response to it was to include in their cartel discussions -- that's important; to include in those discussions -- discussions about how to manage that effect. So far as we can tell, at least two responses are discernible as having been discussed: one was to reduce the number of guaranteed buyback provisions in new trucks' contracts of sale; and the other was a more audacious step. It involved monitoring the published guides that recorded the residual values of trucks, and taking steps to influence the values that were published there.

We say that all of that is inextricably linked to the cartel. It's part and parcel of the cartel, opposite sides of the same coin, however one wishes to put it. But it's

completely unrealistic, in my submission, to suggest that that is somehow a different cartel relating to Used Trucks. We say it's clear, and certainly arguably so, that that formed part of "the cartel" found by the Commission in the Decisions.

THE CHAIR: I don't think the defendants are putting it as high to say it's a different cartel. I think the point is, as I understood it, is more limited. They're saying it's expanding the scope of "the cartel", considered by the Commission, to be something that is broader than what was established by the Decision.

MR SCANNELL: Possibly the --

THE CHAIR: Because it's clearly the same people.

MR SCANNELL: Yes.

THE CHAIR: It's many of the same meetings, and the rationale may well be the one you've just given.

MR SCANNELL: Yes. If, for example, the allegation were that the response to this waterbed effect, which was one possibility, was that the defendants would say, "There's a real problem here because we're getting an overcharge at the first stage, then we're rebuying the truck and then we're selling, so we're losing it all by the time we get to the third stage. Why don't we just capitalise the Used Trucks price? Why don't we all just agree what will sell trucks for at stage three?"

That would arguably go beyond the scope of the cartel, not least because the Decision says we're not dealing with the sale of used trucks. My learned friend relies heavily on recitals 5 and 71 to say that's a complete answer.

But that's not what we have seen from the Commission file; what we have seen relates to new trucks' contracts of sale. It relates to the buyback provisions that are in those new trucks' contracts of sale under which they committed to repurchasing trucks, which they then had to resell, and a realisation right from the beginning that there was no point in having a cartel which affected gross prices unless this waterbed effect

could be somehow dealt with.

So we do say that, certainly arguably, the particulars that we provide in this pleading fall comfortably within the scope of the cartel established by the decisions. We're not alleging any separate infringement in respect of the sale of used trucks.

If I can just very quickly go through the particulars themselves. I'm simply going to rely on the chapeau of each of these paragraphs so that the headings can be seen; I'm not going to refer to the examples that are given under each of those headings. I don't think that that will actually assist the Tribunal.

THE CHAIR: The chapeaus are non-confidential, are they?

MR SCANNELL: For the most part, yes. I will hesitate from time to time, and I will look over at Mr Williams and he will look angrily back at me if --

MR WILLIAMS: It's Mr Scannell's pleading, my Lord, I mean, I --

THE CHAIR: Yes, I appreciate that, but --

MR SCANNELL: It's certainly not our claim to confidentiality.

THE CHAIR: Yes.

MR SCANNELL: Beginning on page 11, which should be at page 231 of the core bundle, at paragraph 28E. The first two lines.

THE CHAIR: The second line is apparently confidential.

MR SCANNELL: Yes, so if I could just ask the Tribunal to read those --

THE CHAIR: Well, we can read it for ourselves.

MR SCANNELL: Yes. (Pause)

THE CHAIR: Yes.

MR SCANNELL: Over the page at 233 of the core bundle, paragraph 28F, first two lines. If I could ask the Tribunal to read those. I don't think that that is confidential anyway. (Pause)

Page 234, paragraph 28G, all redacted. There is a plea as to the prevalence of

buyback guarantees in the United Kingdom. I don't think that could possibly offend.
Turning forward to page 235 of paragraph 28H, there is a plea there also redacted. If I could just ask the Tribunal to read the chapeau there. Examples are then set out.
Then 238, paragraph 28K. That curiously is not redacted. RUTL pleads there to the published guides apparently used at the relevant time to ascertain prices for Used Trucks in various configurations: the CAP Red Book, the CAP Monitor and Glass's Guide.
Then finally on page 239, paragraph 28L for Lima. There is a plea there which I would again ask the Tribunal to read to itself. If the Tribunal could also read the last two lines on this page, and over the page to the end of the paragraph, you'll see where these relevant discussions ended up.
THE CHAIR: 28L, that's not to deal with their new truck sale contracts; that's something beyond that, isn't it?
MR SCANNELL: This relates to residual prices of trucks.
THE CHAIR: Yes.
MR SCANNELL: So it just relates to the value of a truck over time. There were, I understand, guides that spoke to that -- configurations could be input, and you read across the table and you get a value for the guide. The same guides applied to motor cars as well, and these are the guides that are being pleaded to.
I was in the process of saying that on the last two lines of this page and over the page to the end of the paragraph, that seems to be at least a part of what was discussed in relation to those residual values and guides. (Pause)
The plea then, on page 240 of the core bundle, paragraph 28M, is that the relevant conduct:
"... directly and/or indirectly caused and/or further contributed to an overcharge on Used Truck prices."

And at paragraph 28N for November, that it:

"... caused or contributed to the substitution and reduced supply effects of the cartel."

They are the further particulars RUTL seeks permission to provide.

Now, as to why it is that we say that these particulars fall within the scope of the cartel, I've flagged my submission in that regard already. First, this is new trucks conduct; they did not concern, apparently, the co-ordination of Used Tucks selling prices, which as I've said was one conceivable way that could have been deployed to deal with the waterbed effect. They involved the co-ordination of approaches to buy back clauses in new trucks contracts, in particular through agreeing to reduce the prevalence of them and influencing the people responsible for publishing those guides.

They involved and were conducted by the same undertakings in the same meetings and contacts, over the same period and we say in pursuit of the same aims as the cartel, the cartel that has always been alleged by the RHA and RUTL. As we explain in paragraph 24 of our skeleton, those meetings and communications will, in any event, be examined for the purposes of determining the RHA's claim.

THE CHAIR: Yes. Well, we see that.

MR SCANNELL: But beyond that, my submission which you have already Mr Chairman, is that on any view, this co-ordination relates to the effects of the cartel. By the discussions, the defendants are clearly seeking to curate the effects of that cartel; they're seeking to ensure that gains from the cartel are not lost.

As the Tribunal is well aware, the European Commission conventionally does not consider effects when it conducts a by object infringement analysis, and it didn't in this case. But of course that doesn't mean that when a claimant comes along and says, "This cartel that you have found has caused me loss and damage, and here's how it did that", that is not a per se a standalone action.

THE CHAIR: Yes.

MR SCANNELL: It's a follow-on action and it's preposterous to suggest otherwise. Recitals 5 and 71 do not change any of that. All they do is provide an indication as to what the scope of the infringement that the Commission was content to declare on the basis of admissions was. (Pause)

But that doesn't change the fact that it's misconceived to say that a claim that the effects go beyond the immediate scope of the cartel is a standalone --

THE CHAIR: Yes, we've got your point.

MR SCANNELL: If I could just add finally in relation to that, and then I'll move on to the Merricks point, if I may. DAF should of course be well aware -- because this point was directed to them by the Tribunal and by the Court of Appeal -- that it is incumbent on a claimant in my client's position to put forward evidence of a direct and proximate causal link between a cartel and downstream prices, even in cases without a pass-on component. That is the expectation. The Supreme Court re-emphasised that in evidence in Evans v Barclays Bank. That evidence is obviously not confined to the cartel itself, so pointing to the scope of the infringement decision is, with respect, not the answer. I'd also add that in Sainsbury's v Visa, the point that was made by the Supreme Court was that whereas a claimant in my client's position has that legal burden, once that legal burden is discharged, a very heavy evidential burden passes to anybody in the defendant's position denying pass-on to provide evidence as to how the pass-on was dealt with in the relevant business. If they don't put forward that evidence, adverse inferences can be drawn. It could be thought that all of this evidence is going to have to come out one way or the other.

THE CHAIR: Yes.

MR SCANNELL: Mr Chairman, members of the Tribunal, you have our primary submission, which is: this is no new claim; the particulars are particulars of effects of the cartel; they come within the scope of the cartel in any event; the application is

governed by Rule 32(1) not (2), because there's no new claim; and we commend the application on that basis.

Before I sit down, could I just very briefly --

THE CHAIR: Before you sit down, you've got your alternative in 29B, haven't you, which happily is not confidential. (Pause)

As I understood it, your primary position is the one you've just set out: no new claim.

MR SCANNELL: Yes.

THE CHAIR: And therefore 32(1), but your alternative is, if that's wrong, then you're within sub-paragraph 32(2)(a), arises out of substantially the same facts.

MR SCANNELL: I apologise, Mr Chairman. My hesitation was caused by the fact that there was an alternative claim in an earlier iteration, and I thought somehow that it had remained present. I do need to deal with the possibility of 32(2) on the basis that it might be found that there is a new claim.

THE CHAIR: Yes.

MR SCANNELL: So my primary submission you have, that there is no new claim. But if there were a new claim, what then would be the position? My primary submission in that regard -- Mr Chairman, you're looking at the clock.

THE CHAIR: Yes, before we move on to that, perhaps that would be a suitable moment to take a ten minute break, and we'll come back at noon.

MR SCANNELL: I'm grateful.

(11.54 am)

(A short break)

(12.10 pm)

THE CHAIR: Yes, Mr Scannell.

MR SCANNELL: Thank you very much, Mr Chairman.

We were about to come on to Rule 32(2) and the bringing of a new claim. Of course,

the Tribunal will have in mind that Rule 32(2) allows the Tribunal to give permission to amend a claim form to add a new claim when a relevant limitation period has expired. It's based on Rule 17.4 of the Civil Procedure Rules, which itself derives from the ultimate ancestor, which is the Limitation Act 1980.

If, contrary to my primary submission, it were to be considered that a new claim is brought, then my submission is that that would be a follow-on damages claim of the same kind as is brought by the RHA, and that it arises out of the same facts and circumstances as the existing claim. We're not alleging an infringement other than the infringement found and established in the decisions. We say that that infringement was committed by the same parties as were addressees of the decisions, and over the same period of time.

As to "arising out of the same facts or substantially the same facts", I would just make two very short points: the extant claim is that the cartel alleged by the RHA and RUTL caused Used Trucks prices and costs to be higher than they otherwise would have been. To meet that claim, it's already clear that the Tribunal will need to consider how the defendants priced new trucks, and that will necessarily include a consideration of buyback guarantees and the residual values of trucks.

That, as we've said in our skeleton argument, provides an indication that the new claim arises out of the same, or substantially the same, facts as the existing proceedings.

Now, as to the expiry of a relevant period of limitation for Rule 32(2) first amendment --

THE CHAIR: Pause for a moment. To make the claim, the Tribunal will have to consider buyback guarantees and residual values trucks in any event -- I think that's what you said?

MR SCANNELL: That is what I said.

THE CHAIR: Yes. Can you just explain that a moment?

MR SCANNELL: Well, the buyback guarantees were clauses of the very contracts by

which the OEMs sold their new trucks. In arriving at a price that they would charge for the new truck they, so far as we are aware, factored in the fact that at a later date they would be repurchasing that truck at a certain price.

THE CHAIR: Yes, I see, so it goes to --

MR SCANNELL: It's part of --

THE CHAIR: -- that counterfactual.

MR SCANNELL: Yes. As to the expiry of a relevant period of limitation for Rule 32(2) purposes, that is obviously satisfied. Just pausing here, Rule 32(2) only ever applies if a relevant limitation period has expired. Here, the relevant limitation period would be the limitation period for a fresh claim brought today by a different claimant alleging a used trucks overcharge within the relevant period of RUTL's claim. That would be time barred, and we accept that. The only remaining question is: would a new follow-on claim be saved by Rule 32(2) by reason of the operation of "relation back"? So under relation back, which is a principle that derives from the Limitation Act, a new claim which is permitted under Rule 32(2) is deemed to have been brought on the date that the original claim was filed. The question that would arise is: applying that, would the claim be out of time anyway? The answer to that question is no, for a follow-on damages claim.

The Settlement Decision became final in September 2016. Under the applicable Tribunal limitation rules, which are the rules set out in Rule 31 of the 2003 Rules, as preserved by Rule 119 of the 2015 Rules, at the time limit is two years from the finalisation of the decision, so that would take us to September 2018. The RHA's claim was filed in July 2018, which is before that date. We say that even if further amendments were to be characterised as a new claim, contrary to my primary submission, the amendments should nevertheless be permitted under Rule 32(2). That does, however, leave one further point for consideration, which is: would the

position be the same if the new claim were rationalised not as a follow-on new claim, but as a standalone new claim? That is where the Tribunal's decision in Merricks v Mastercard becomes relevant. The prima facie difficulty with a new standalone claim is that under Rule 32 the claim would be deemed by the principle of relation back to have been brought in July 2018, when the RHA brought its claim. But a standalone claim brought on that date would still arguably be time barred by the operation of Rule 31 of the 2003 Rules. I say "arguably", because obviously I don't want to prejudge any of the limitation arguments that might arise.

The limitation period under the 2003 Rules expires two years from the accrual of the cause of action. The Relevant Period for Used Trucks claims is January 1997 to the end of January 2015, so the time limit would expire in January 2017, arguably. That is before the RHA filed its claim in July 2018. Merricks v Mastercard has been drawn to our attention --

THE CHAIR: The difficulty about that is that the Rule 31 time limit is based on there being a decision finding an infringement. If this is a standalone claim, then ex hypothesi there is no decision finding infringement.

MR SCANNELL: So the accrual --

THE CHAIR: So the operation of those rules is hard to accommodate.

MR SCANNELL: Yes, well, arguably, the position without a regulatory decision is that one applies the accrual of the cause of action start date for limitation. It's two years from the accrual of the cause of action. Each time a used truck was bought or leased, there would be a fresh accrual.

THE CHAIR: Yes.

MR SCANNELL: But the last accrual would happen on the last day of the relevant period, which is the end of January 2015. Two years from that is January 2017, and that's before the RHA filed its claim. So there is, or there would be in principle, an

arguable difficulty under the 2003 Rules were it to be considered that the amendments constitute a new standalone claim. I don't resile from that.

THE CHAIR: Yes.

MR SCANNELL: I don't propose to go into the detail of Merricks v Mastercard. I dare say that the Tribunal didn't really mean me necessarily to go into the detail of that case, but simply to be aware of it. I will just flag that Merricks v Mastercard does offer the prospect of a challenge, potentially, to the 2003 Tribunal limitation rules on the basis that, at least as they apply to standalone claims, they could not be compatible with general principles of EU law which do apply in this case, as found in Merricks v Mastercard, and in particular the general principle of effectiveness.

Certainly, the 2003 Rules are stricter than just about any of the rules that were considered by the European Court of Justice in the cases that were considered in Merricks, with the possible exception of the Manfredi case in 2006, where there was a limitation date that ran from the date of the concerted practice itself.

Just to take one example of how the 2003 Rules could work -- and I don't say that this necessarily arises in this case, but just in principle -- if a Used Trucks claimant bought a truck in 2006, for example, arguably the limitation period under the 2003 rules would expire two years after the accrual of the cause of action in 2006. That would be 2008. But of course, we all know that the trucks cartel was in full swing still in 2008, and moreover that that claimant could not possibly know of the cartel at that time. The earliest that we had any inkling of discussions relating to residual prices and buyback guarantees, for example, was when we saw the Commission file, which is only three short months ago.

That sort of limitation period where the limitation period expires before the cartel is even finished has been highlighted by the Court of Justice as a particularly egregious example of a limitation period that may not be compatible with the general principle of

effectiveness.

So Merricks does provide the prospect of a challenge to those 2003 Rules so far as standalone claims are concerned. It wouldn't necessarily be a perfectly straightforward limitation argument. I fully accept that cases like Volvo and Eureka are post-Brexit cases. I accept also that there's Supreme Court authority arguably going the other way in BCL Old -- that was a follow-on rather than standalone, but the Supreme Court did seem to say there that the 2003 rules were compatible with the principle of effectiveness.

That that would be a debate to be had at a future point in time. The point I would make now is: the right answer to all of this is to allow the amendments that we seek to make. If the defendants want to make the point that there is any limitation difficulty with that, then they are free, as advised, to plead back to that. The non-standalone components of the claim can continue as normal and the limitation point would have to be debated at trial, if necessary on a preliminary issue basis.

THE CHAIR: Mr Scannell, I mean Rule 32 is, I think, exclusive, isn't it? Where a relevant period of limitation is expired, the Tribunal may permit an amendment, and then those are the circumstances in which we can.

MR SCANNELL: Yes.

THE CHAIR: If it's said -- and you accept -- that a limitation period has expired prima facie. So we can only do it if either you come within -- and here it's obviously a little (a), because (b) and (c) don't arise, namely the same facts or substantially the same facts -- or if you say on the basis of the EU principle of effectiveness, the limitation period should be disapplied, in which case, it then hasn't expired. But that would have to be sorted out earlier, not at trial. (Pause)

I appreciate it couldn't be done today because it's not been raised before, but it would have to be done on the question of whether to allow the amendment.

MR SCANNELL: Well, if --

THE CHAIR: One wouldn't want to do it at trial; one could do it by preliminary issue. You certainly wouldn't leave it to trial if there's a limitation point.

MR SCANNELL: Yes. The relation back aspect of the claim -- the allegation that a claim which has been permitted to be brought under Rule 32(2) is a time barred claim -- can still be made. That is certainly how I have read Rule 32, that the Tribunal can permit an amendment to be made under Rule 32 -- not of the requirements of Rule 32 itself; of course, they have to be satisfied -- but leaving aside the question of whether a defendant is free to come along and say, "Very well, you are permitted to add a new claim when a relevant limitation period has expired. That's not necessarily your limitation period, it's just a relevant limitation period. I say that the new claim that you've brought pursuant to that permission is time barred".

So one could have the debate about the 2003 Rules, notwithstanding permission to amend.

THE CHAIR: Well, if you come within 32(2)(a), then the question falls away, because the Tribunal -- subject to ... we have a discretion -- but you get through on 32(2)(a). It's only if you don't get through on 32(2)(a) because we consider it's not substantially the same facts that it then becomes relevant, if you wish to make that argument, to say, "Well, actually, the limitation period that has expired should be disapplied". So we don't get into 32(2), in which case it's just 32(1) even though it's a new claim.

MR SCANNELL: Yes.

THE CHAIR: I think that's the logical order of things.

MR SCANNELL: I understand how you read that, Mr Chairman. It is equating the requirement that the claim arises out of the same facts as being mutually exclusive with a reality that it is a standalone claim.

If you're with me that any new claim would be a follow-on damages claim that arises

out of substantially the same facts, then no difficulty arises. But a difficulty does arise if it doesn't arise out of the same facts; I would fail the Rule 32(2)(a) test. I see that. My primary submission in relation to this -- quite apart from the upstream argument that there is no new claim -- is that insofar as it's rationalised that there is a new claim, it's a follow-on claim which arises out of the same facts as the extant claim. So that difficulty doesn't arise.

THE CHAIR: If it's a standalone claim, I think you would have to also apply to amend the CPO, but we can amend it, of course, or we can vary it. I think it's (overspeaking).

MR SCANNELL: Yes, that may very well be true, yes. I just re-emphasise that as we have brought this claim and we've seen the relevant paragraphs, it's no part of the amendments that we are bringing to allege a new cause of action, or any incremental relief based on a new course of action. The Tribunal has my submissions on all of that.

Submissions by MR WILLIAMS

THE CHAIR: Yes, thank you.

Mr Williams.

MR WILLIAMS: Members of the Tribunal, I think from the defendant's perspective this application has been something of a moving target. You've probably seen that we had three different versions of the application before we did our skeleton, then the basis of the application seemed to shift in Mr Scannell's skeleton argument, and it's continued to move around in his submissions today.

Can I just start by clarifying, and I hope simplifying, what we think the issue for the Tribunal is. Because as I understood Mr Scannell's skeleton argument, we were really dealing with one point, which was whether the proposed pleading works as a follow-on claim -- whether it can be pursued as a follow-on claim. You've probably detected from the history that the application, as it was originally put, put the amendments on

an alternative bases that they could be advanced on a follow-on basis, alternatively, on a standalone basis.

We hadn't seen the draft amendment before the application was made to the Tribunal; that was the first time we'd seen it. We responded to that application in a letter from Pinsent Masons, which you may have read in the course of your preparation. I wasn't going to take you to it now, but I will tell you: what we said was, "The standalone claim is time barred under Rule 31 of the 2003 rules, and if you want to pursue it on a standalone basis, you would need to satisfy the conditions of Rule 32". And we set out our arguments as to why that wasn't the case.

We said, "Evidently, if you want to bring a standalone claim, that's a new cause of action, evidently; you're not relying on the decision anymore. And this doesn't arise out of the same facts because you're alleging a whole new head of collusion and different relying on different exchanges".

RUTL's response to that was to withdraw the application to plead a standalone claim. They sent us a revised version -- I think it was the Friday before skeleton arguments were due on Thursday. Then we got another version again on the Monday because they had over deleted text on which they wanted to rely; they didn't mean to delete it.

The pleading in the form that you've looking at today, members of the Tribunal, is very clear that the only case that RUTL wants to pursue is a follow-on case.

This is reflected in my skeleton argument: the agenda for this hearing is much simplified; we don't need to get into limitation periods because they're continuing to rely on the same cause of action, that is to say the infringement found in the decision; and we don't need to get into Rule 32. That's why our skeleton argument was focused on that issue. That's why we were a bit confused that Mr Scannell's skeleton argument, having said that they were only advancing a follow-on claim, continued to make submissions about the application of Rule 32, because it seemed to us that

Rule 32 arises if you want to rely on a new cause of action, and Mr Scannell's whole new position was, "We're only making a follow-on claim; we're only relying on the same infringement as has always been at the basis of these claims".

THE CHAIR: But we've got paragraph 29(b), which is in the latest version.

MR WILLIAMS: Yes, I understand that that was left in the pleading, but it seemed to us that was redundant in a world where RUTL's clear position in paragraph 28B is that they don't rely on any infringement other than that found in the decision, which was of course always the infringement that formed the basis for RHA's claim and RUTL's claim.

THE CHAIR: We were, frankly, puzzled by the combination of 28(b) and 29(b).

MR WILLIAMS: With hindsight, sir, I would have said in my skeleton argument that those paragraphs were redundant, as we understand the position. But that's why we think that there is no issue under Rule 32 for the Tribunal, given that paragraph 28(b) could not be clearer that RUTL is not relying on any infringement other than that found in the Commission Decisions.

That's our understanding, and on that basis, the issues for the Tribunal are much simplified. One doesn't have to worry about limitation periods or the conditions of Rule 32. The only question is: does this pleading in fact -- does it in fact work as a follow-on claim; and in fact, is it a follow-on claim, properly analysed?

Having said that is much simplified, there is just one point I want to make about the legal framework, as Mr Scannell has described it. He said that if this were a new claim, the doctrine of relation back under section 35 of the Limitation Act would come into play, and effectively what is said is that that could potentially save the amendments from being out of time, in theory anyway.

In our response to the application as it was originally put, we made the point that the relevant limitation periods for most of this claim, if not all of this claim, are not

Limitation Act limitation periods. It's Rule 31 of the old Tribunal's rules, and section 35 doesn't apply in relation to that limitation regime. As we read the rules, Rule 32 was introduced into the Tribunal's rules in 2015, at a point in time when the limitation periods that apply in the Tribunal were brought into line with those that apply in the High Court, the Limitation Act limitation periods. So it makes sense for Rule 32 to then tie into the framework of the Limitation Act.

But section 35 doesn't apply, in our submission, in relation to claims that are subject to old Rule 31, so that there was never a prospect of these amendments being saved by relation back. But on the basis of the revised pleading that we got a week after our response, the only claim that was being advanced was a follow-on claim, and so all of that legal complexity seemed to us to fall away.

So I hope that the effect of those submissions is that the Tribunal can now focus on really one question, which is whether the claim that's advanced in the amendments is properly arguable as a follow-on claim.

THE CHAIR: Well, you say we just disregard 29B of the pleading? I mean, that's part of the application, isn't it? It's part of the amendment that's sought.

MR WILLIAMS: Well, the submissions that Mr Scannell made were: if this is a new claim, it's a new follow-on claim, and therefore it arises out of the same facts; but a new claim is a new cause of action, sir. So I just frankly don't really understand the submission.

But to the extent that 29B is seeking to advance some alternative basis on which the amendments pleaded could be brought as a follow-on claim, then we do say permission should be refused, because that doesn't work either. Either the claim works as a follow-on claim on the basis that's pleaded in paragraph 28B, or it doesn't; and if it doesn't, it can't be saved by what's pleaded in 29A and 29B.

Coming then to what we say is really the only issue for the Tribunal to consider in

relation to this application, you have seen that the new allegations of Used Trucks Collusion break down into a number of elements. The pleading is confidential, but Mr Scannell has made submissions about the subject matter, and he's taken you through the pleadings. I don't want to take up time showing you things you've already seen, but can I just say what the effect of paragraph 28B is?

The meat of paragraph 28B is that the cartel activities included what's called "Used Trucks Collusion". Mr Scannell was very clear that that is adopting the definition of cartel in the RHA's claim form, which in turn in paragraph 1 refers back to the Commission Decisions, and paragraph 3 of the RHA's claim form pleads that the collusion that's the subject of the Scania decision is the same collusion that's the subject of the Settlement Decision. So there is only one infringement, and it's the infringement found by the Commission in the Decision.

It seems to us -- the allegation that the cartel activities included Used Trucks Collusion, it's clearly an allegation that this is part of the infringement found in the decision. Then paragraph 28B goes on to say that in terms, that it is part of the single and continuous infringement found in the decision, and it had the same single anti-competitive aim.

So it's not ambiguous, sir. It's clear that they're saying this is part of the cartel infringement found in the decision.

If one then looks through the pleading -- I don't want to read any of this out -- if you could just look at paragraph 28E. The second line, you can see there are four subject matters referred to, four different categories. If you look at the first two of those, and just to foreshadow my submission; I mean, clearly that falls within recital 5 to the Commission Decision about the sale of used trucks, and I'll deal with what is said about the rest of them shortly.

Then moving on from 28E; 28K. Again, I'm going to say that this subject matter clearly falls within recital 5 of the Settlement Decision.

THE CHAIR: 28K is just --

MR WILLIAMS: I'm sorry. What I should say is the allegations that follow 28K.

THE CHAIR: It's really 28L, isn't it (overspeaking).

MR WILLIAMS: Yes, quite.

THE CHAIR: 28K is just a statement of --

MR WILLIAMS: Then 28M --

THE CHAIR: Which is not confidential, I think, 28M.

MR WILLIAMS: Well, the bit I want to refer to is.

THE CHAIR: Yes, I see.

MR WILLIAMS: If you can see the text on the fourth line.

THE CHAIR: No, you're right.

MR WILLIAMS: We really don't understand the submission that this doesn't fall within recital 5.

THE CHAIR: Well, I think your submission is, as I understood it, that this is not about saying that -- sorry.

MR WILLIAMS: I'm going to deal with the other topics as well, just to be clear. Some of that pleading squarely falls within recital 5, because it concerns the sale of used trucks. That's part of my submission.

THE CHAIR: Yes.

MR WILLIAMS: Squarely.

Given that this is now put as a follow-on allegation, one has to look at it in the context of the infringement decisions. As I've said, the Settlement Decision and the Scania decision are the same, for present purposes. I'm going to focus on the Settlement decision, because that's what's binding on the defendants. Of course, it was also considered in the Tribunal's preliminary issue binding recitals judgment, which is obviously highly material for these purposes.

In the first wave of the trucks claims, the Tribunal was asked to consider and determine the extent to which the Settlement Decision was binding; what constituted the essential basis of the Settlement Decision. Obviously, given the way that RUTL puts this, that's a highly material consideration which you've not been addressed on, sir.

I don't know if you want to go back to it. Obviously, at one time you were very familiar with it. It's at J4.

THE CHAIR: Bear in mind that the two other members of the Tribunal are not (overspeaking).

MR WILLIAMS: I'm so sorry. Yes, of course.

09.1, page 30. I'm sorry, it's J4.

In this ruling, you considered what constituted the binding and essential basis of the Settlement Decision.

THE CHAIR: Wait a minute. This is not it.

MR WILLIAMS: Have I got the wrong reference?

THE CHAIR: We've got the wrong --

MR WILLIAMS: This is 09.1, I think. I think that might be a different --

THE CHAIR: Yes, it's 09.1.

MR WILLIAMS: If we could then move on to page 30 within this tab. Yes.

What you did in this judgment, sir, was you analysed the different components of conduct that are considered in the Settlement Decision. What you do in paragraph 79 is you distil some findings that concern the core elements of the conduct. You'll probably want to read it, but just if it helps, the submission I'm making is that this paragraph establishes that the essential basis of the decision included exchanges on gross pricing, exchanges on the passing on of costs -- I'm sorry; exchanges on gross list pricing and occasional discussions of net prices and the exchange of configurators.

(Pause)

There's quite a lot in that paragraph, but it boils down to gross list pricing, occasional exchanges of net prices for some countries, and exchanges of configurators.

If we then move on to paragraphs 82 and 83, this is where the tribunal found that the exchanges relating to compliance with emission standards were also part of the essential basis. (Pause)

When the Tribunal is ready, the final paragraph is 84, and this deals with the exchange of non-price-related information that was commercially sensitive, such as delivery periods and order intake; and the Tribunal found that those paragraphs were not part of the essential basis. So the extent to which those recitals could be contested turns on abuse of process principles, which the Tribunal goes on to consider later on.

Regardless of whether those recitals are binding, they don't deal with Used Trucks Collusion, as it's now put. They don't deal with that.

That's what the decision is about. The decision also tells us -- as you've seen -- what it's not about, in recital 5. If we could just look at that, in J1, tab 1, page 6.

Recital 5, the final three lines:

"This case does not concern after sales, other services or warranties for trucks, the sale of used trucks [and then it says] or any other goods or services sold by the addresses of the decision." [as read]

So it is delineating what's not covered, and in my submission, an agreement with a customer at the point of sale that the manufacturer will buy the truck back, that's a different service. That's a different component of the service. But --

THE CHAIR: But it's the sale of a new truck.

MR WILLIAMS: Yes.

THE CHAIR: It's part of the contract of the sale of the new truck, and it's part of the price mechanism of the sale of the used truck or what you'll buy back.

I think that's the point that Mr Scannell makes. This is not collusion about selling

used trucks. It's about the terms of sale of new trucks.

MR WILLIAMS: Yes, I understand he makes that point about buybacks and the warranties. I'm submitting that that's actually not an incident of selling a new truck. It's an additional product, effectively, that a customer can negotiate with a customer at the point of sale.

THE CHAIR: It's not an additional product. It's the same product.

MR WILLIAMS: Well, the buyback is an additional right, but --

THE CHAIR: It goes into the price, that if you know I'll pay so much, but I'll get so much back in two years -- it's part of the price mechanism.

MR WILLIAMS: I don't need, probably, to persuade you on that exact point, sir, because the point I make more generally is that when one looks at the positive findings -- sorry. First of all, that exclusion clearly excludes some of the allegations RUTL wants to advance in the pleading, as I showed you when I went through it. That's at that point.

THE CHAIR: In that, you're referring to the guides, is that right? Or --

MR WILLIAMS: We saw in 2018, there were four categories, and the first two concerned the sale of used trucks. Then later on, there was 28L, and 28M also dealt with the same subject matter.

Secondly, and critically, none of the Commission's positive findings embrace used what's said to be Used Trucks' Collusion either.

If one looks at the way Mr Scannell puts it in his skeleton argument, for example, at paragraph 26.2 -- sorry. You probably need to read 26.1. This is setting out the case that the infringement found in the decision was not confined to gross list prices.

26.2 refers to the finding in recital 51 that occasionally the participants also discussed net prices. Well, that doesn't help Mr Scannell here, because that's talking about net as opposed to gross. Then it says there were regular exchanges of competitively

sensitive information by phone and email. So that's talking about the mode of communication. There is no positive finding that this covers Used Trucks' Collusion at all.

Again, in 26.3, the skeleton refers to exchanges of commercially sensitive information such as order intake, stock and other technical information by email and phone, and then again, order intake and delivery times. But that's not the same subject. That's not Used Trucks' collusion either, so none of these positive findings, assist Mr Scannell at all.

The whole submission proceeds on the basis that whatever is on the Commission file somehow forms part of the infringement decision. But that's clearly not right, sir. One has got to read the decision and see what findings are made.

In the same vein, paragraph 28(b) of the draft pleading pleads that this is part of the single and continuous infringement, and says that Used Trucks' Collusion formed part of the single anti-competitive aim. That, with respect, is wrong too. If one looks at recital 71 in the decision, which is J, tab 1, page 17 --

THE CHAIR: 71, yes?

MR WILLIAMS: Yes.

THE CHAIR: Yes, that of course should be described in section 3, that's an error.

MR WILLIAMS: And it says in terms:

"The single anti-competitive aim was to co-ordinate each other's gross pricing behaviour and the introduction of certain emission standards." [as read]

So the plea is directly contradicted by the terms of the decision that RUTL says it relies on. Sir, that's the answer to the application. It is only put on the basis that RUTL pursues this as a follow-on claim, and the only infringement it alleges is the infringement found in the decision. It says that this conduct was part of the activities of the cartel. It says that this is all part of the single and continuous infringement. With

respect, that case is not reasonably arguable; it's clearly not the basis of the decision.

THE CHAIR: They put it more broadly in the last sentence, don't they:

". . the collusive practices followed a single economic aim ... distortion of independent price setting." [as read]

MR WILLIAMS: That's true, but of course the finding which I pointed to is consistent with the findings that you made --

THE CHAIR: Yes.

MR WILLIAMS: -- sir, in the preliminary issue judgment, which identified those two topics as the core components of the infringing conduct. Whether one reads it in the round or focuses on specific words, there really is nothing in the decision at all to support the submission Mr Scannell makes. On the contrary, there's much that contradicts it.

Just to then deal with the last point that's made in the pleading, which is that the Used Trucks Collusion happened at the same meetings as the conduct that did form the basis of the Commission's findings. I said in my skeleton argument this is a misconceived argument because it confuses the question of what was part of the meetings with what was part of the infringement found by the Commission.

In any case, where the Competition Authority scrutinises meetings between competitors, it will look at what happened at the meeting. A range of matters may be discussed. And if the authority finds that some of the matters discussed infringed competition law, it doesn't mean that everything that was discussed is part of the infringement that's found; the reverse is the case. The matters that were discussed at those meetings but which don't form the basis of the infringement finding are not part of the infringement. Of course, any competition authority will look at the information that's exchanged, its propensity to distort competition, its specificity, and so on and so forth, and it will form a view about what's infringing conduct, and that's what the

Commission has done.

Sir, that in my submission deals with the case that's put in the pleading, which is squarely a case that this conduct is part of the infringement found by the Commission. What we saw in RUTL's skeleton argument was that it pivoted to a new argument -- which is the argument, really, which Mr Scannell has probably emphasised to a greater degree in his submissions today -- which is that this is an effects case, or a causation case or a causal mechanism. One gets that from paragraph 28 of his skeleton argument.

Now, I'm bound to say that that was the first explicit mention of this case in those terms, putting it as a matter of effects, because all the emphasis until then had been on how this conduct was part of the cartel activities and part of the single and continuous infringement. Those are different cases, sir. I mean, it's one thing to say that this is part of the infringement, and it's another thing to say that this is an effect or consequence of the infringement.

But if one looks at Mr Scannell's skeleton argument, paragraph 26.3, which we were just looking at. If you pick it up just below half of the way down, it says:

"This information sharing is now relied on in the [claim form] to show how the infringement was carried into the prices the Sub-Class paid. [The] amended pleading, as revised, does not invite any finding that those exchanges were themselves infringement."

I mean, it clearly does do that, sir. And then it says:

"Instead, the focus is limited to how the co-ordination of gross prices ... was carried through into the buy-back and residual value terms on which those trucks were sold."

That's not what the pleading does at all, sir; it's not limited to that, and it doesn't even do that. With respect, what is said at the end of paragraph 26.3 is very hard to understand. So the shift to this argument at the last minute seems to us to amount to

a recognition that the case that's been squarely put in the pleading does not work, because this conduct doesn't fall within the scope of the Settlement Decision or the Scania decision. What that comes to is that the application should be dismissed, because the case that's been proposed in the pleading has no realistic prospects of succeeding at trial.

Sir, those are my submissions in relation to the application. Do you want to hear me on Merricks? I've got two short points to make, sir.

THE CHAIR: Yes, it's not presently on that basis, I think (overspeaking).

MR WILLIAMS: It's not --

THE CHAIR: But if you have something else ...

MR WILLIAMS: The first point is the simple point that it would only arise if this were being put on a standalone basis, and it very clearly is not being put on that basis. It seemed to us for that reason Merricks isn't engaged.

In terms of the discussion of effectiveness, the important point in our submission is this: these proceedings were bought as class action proceedings in the Tribunal in reliance on Rule 31, which, as Mr Scannell says imposes a drop dead limitation period. You've considered that limitation period in earlier cases, and it's been considered by this Tribunal in the Gutmann case -- the mobile phones case -- last year, and the Tribunal has held now clearly that that limitation period does impose a drop dead limitation period of two years, which either runs from expiry of time to appeal a decision or the accrual of the losses, as Mr Scannell was explaining.

But that limitation period for present purposes only applies to the bringing collective proceedings; it's not a limitation period which precludes a claimant who has bought a used truck from bringing an individual claim, for example, in reliance on limitation at limitation periods, if they wanted to do so. So there can be no question of Rule 31, in my submission, barring an effective remedy. All it does at its highest is prevent new

claims, new causes of action, from being brought in these proceedings in collective proceedings.

THE CHAIR: Wouldn't it apply equally if a used truck purchaser were to bring an individual claim in the CAT based on this cartel, they'd still be within Rule 31, wouldn't they?

MR WILLIAMS: Yes, but as far as that allegation is concerned, that's simply a limitation period applicable in the Tribunal.

THE CHAIR: Yes.

MR WILLIAMS: That limitation period has been applied in a context where the claimant would have the ability to bring an action in the High Court. So, it's simply a jurisdiction point; it's a point which applies to the jurisdiction of the Tribunal. But it's not a point which precludes a claimant from having an effective remedy under English law, if they can rely on the Limitation Act period in the High Court.

THE CHAIR: I would say: is it practicable for a truck business to bring a standalone claim in the High Court, and really to seek a remedy other than through collective proceedings?

MR WILLIAMS: I'm not aware, sir, that the obligation to ensure an effective remedy under EU law extends to an obligation to provide, effectively, a class action regime, which would be the effect of that submission.

THE CHAIR: Well, I think it would be a narrower point. It is: if there is a class action regime, and if you preclude someone in that regime from claiming on the basis of facts that it couldn't reasonably have discovered before the primary limitation period expires. That would be the question. I don't know what the answer is, but I'm just saying that would be the point.

MR WILLIAMS: As you probably anticipate, I haven't come before the Tribunal to argue the point.

THE CHAIR: No, I understand that.

MR WILLIAMS: I simply make the observation that it is simply a point which applies as between the jurisdiction of the High Court and the Tribunal, but the same claimant has the right to sue in the High Court under a limitation period which does run, from knowledge ... In my submission, that's obviously a very significant distinction.

THE CHAIR: Yes. I mean, I can see the argument, but I don't know the answer. Yes.

MR WILLIAMS: Sir, unless I can assist the Tribunal further, those are my submissions.

THE CHAIR: We could rise now, but I think, Mr Scannell, if we could have your reply and then we can reflect on this over lunch, that would be helpful.

Reply submissions by MR SCANNELL

MR SCANNELL: I'm grateful. Just a few points arising from submissions. First, in relation to the timing of the provision of the draft to the defendants, about which he insists on complaining.

THE CHAIR: I don't think that's going to have an effect.

MR SCANNELL: I'm very glad to hear that.

On paragraph 29B, which has caused some uncertainty: that was inserted into the draft primarily to cover off the possibility that, contrary to my primary submission, there is a finding that there is a new claim which needs to be permitted under Rule 32(2). I take it that the Tribunal has well in mind that as my learned friend seems to have understood, our case is that we're not bringing a new claim and that this is a follow on. The other points that I make follow logically from that. So far as I can tell, the contentions that I brought forward this morning in relation to the fact that the particulars fall within the scope of the decision, and that the particulars relate to the effects of the cartel found by the Commission in the decision are essentially unanswered. The only points in the amended claim that my learned friend took the Tribunal to were

paragraphs 28E and 28L. The point there seems to be that, "Oh, there's a reference to 'Used Trucks', that that couldn't possibly be permitted", but recital 5 simply says that the decision does not concern sales of Used Trucks. It's no part of what I have said this morning to say that we are alleging that there was discussion in relation to Used Trucks sales. The essence of what we say is that there were discussions relating to new trucks sales, first and foremost. That point is essentially unanswered. The same goes for paragraph 28L. There is nothing in the decision to suggest that particulars as to how the discussions extended to guides, for example, can or can't be brought. It's not an answer, in other words, to what I'm saying to say, "Look at recital 5, it says the decision doesn't concern used truck sales, therefore you have to extirpate from your draft pleading anything that refers to Used Trucks", which seems to be the thrust of that argument.

As to Royal Mail, to which my learned friend took the Tribunal, paragraph 79 to 84 of that judgment. True it is that the Tribunal there was highlighting elements of the cartel as evidenced by the decision. That wasn't purporting to be an exhaustive account of the cartel, but in any event, it remains open to a claimant to say, "Well, if you were discussing gross prices, then logically you may very well have included in those discussions the following ..." We say that that is exactly what happened, that in discussing gross prices, the cartelists were also discussing the effects of cartelising gross prices, and how they could retain the ill-gotten gains of the discussions on gross prices. That's the essence of what we say.

The point about effects which I make -- that we're entitled and indeed duty bound to put forward evidence of the effects of the cartel found by the Decision -- was answered by taking the Tribunal to paragraph 26.3 of the skeleton argument. That argument is difficult to understand. It certainly doesn't answer the main substantive point, but in any event in paragraph 28, the point is made explicitly in our skeleton argument that

the particulars RUTL seeks permission to plead are particulars as to the effects of the cartel conduct. (Pause)

Recital 71, as I submitted this morning, does not provide an answer to our application either; that does focus on the fact that there was gross price collusion, gross price cartelisation, but no explanation has been put forward as to why a cartel addressing gross prices would not or could not have included addressing the waterbed effect. Unless the defendants actually go that far, there is essentially no answer to the point that I make about effects and the scope of the decisions. (Pause)

THE CHAIR: Yes.

MR SCANNELL: The references in the decision to a single economic aim doesn't answer the point either. Of course the cartel may have had a single economic aim, but that doesn't mean that the defendants in pursuing that economic aim aren't speaking about all sorts of elements of gross pricing. What I've sought to show the Tribunal is that from the documents that we've seen in the Commission file, in the same breath as the defendants were discussing gross pricing, they were also discussing buyback guarantees and residual prices of trucks.

Those are my submissions.

THE CHAIR: Thank you very much. We'll return at 2.10 pm.

(1.12 pm)

(The short adjournment)

(2.24 pm)

Ruling (submitted to the learned judge for approval)

THE CHAIR: Mr Williams, are you in a position now on the RHA amendment? Have you taken instructions?

Pleadings (continued)

Submissions by MR WILLIAMS (continued)

MR WILLIAMS: Yes, I've taken instructions. None of the defendants will take issue with permission to amend in the reduced form which you put to Mr Went earlier on, sir. What we have done over the course of the morning and the lunch break is to mark up the pleading, and to send that to the RHA, with a view to having clarity by the end of the day as to whether that that document does in fact reflect what you put forward, sir, and whether we've all correctly understood what you said. One question that has already arisen is whether in relation to the subparagraphs (a) to (e) in 54.2, whether you envisage that those should be limited to exchanges concerning the UK in the same way as the earlier exchanges concerning collusion, or not. I think there were a range of views in relation to that.

THE CHAIR: Yes. I'm not sure whether we specifically had our attention drawn to that.

MR WILLIAMS: It may be a point which has logically arisen following your observation, sir, but you can see A relates to a German subsidiary.

THE CHAIR: Yes. Just to bring it up, this is page 179 of the core bundle.

MR WILLIAMS: We can now see the redacted version on the screen.

THE CHAIR: We need that version. I think we've got it. (Pause)

We need the unredacted version.

MR WILLIAMS: Mr Went says K2, 45.

THE CHAIR: Yes. Thank you.

MR WILLIAMS: A concerns German subsidiaries. E, I think, is -- no, sorry. I presume that's France, so internally.

THE CHAIR: Well, we don't know that means it concerns France. It just says it was an internal Renault meeting that --

MR WILLIAMS: Maybe, sir. I wasn't ...

Then (c) and (d) did relate to the UK; (inaudible) related to Germany.

THE CHAIR: I think the basic allegation here is the link between gross prices and net prices, and that's a general point, not a specific UK point. So, I think the answer is they should all be included as particulars, because that's the allegation. They are saying gross prices had a direct effect on net prices.

MR WILLIAMS: That was the only point of clarification.

THE CHAIR: Well, that is the position, so they should be included.

Can we leave it that the RHA or its advisers will then consider the document you supplied? We hope agreement can be reached. If it can't, you can make a written application to the Tribunal, and we will resolve it, but we very much hope that you can agree it between yourselves.

MR WILLIAMS: Yes. Part of the reason for doing it today was with a view to trying to see if any issues arose today that we could put to you today, sir.

THE CHAIR: Well, if you can do that, but obviously Mr Went is going to be sitting here dealing with other things this afternoon, so it may be difficult. So, if that can be done, all well and good. If it can't, if you can do it -- as it were -- tomorrow or the day after, and if necessary write in with any outstanding points.

MR WENT: Yes, of course.

THE CHAIR: There is then the question of time for defences. We have seen various discussions you have had about that, and the proposals.

I hope you will still be able, in light of this, to serve the amended claim forms by 19 October. That was what you envisaged, Mr Went.

MR WENT: Yes. I was just trying to take instruction on that. I think we're content with that, sir.

THE CHAIR: I mean, if you can't agree on what we've allowed, then there might be a bit of slippage, but I hope you can. I mean, that is after the weekend. Similarly, we

assume in the light of our ruling the RUTL amended claim form can be served by 19 October.

I think the defendants were saying three months if everything had gone in, but given the limited amount that has gone in, can you do your defences by 14 December?

MR WILLIAMS: That's effectively two months.

THE CHAIR: Yes. Well, you can have two months; if you like, 19 December.

MR WENT: Yes.

MR WILLIAMS: That works, I think.

THE CHAIR: Yes, and that's to both pleadings. Then replies eight weeks after defences?

MR WENT: Yes.

THE CHAIR: Very good. That, I think, concludes the --

Submissions by MR SCANNELL

MR SCANNELL: Sir, could I just say one point on the sequence of the pleadings.

THE CHAIR: Yes, of course.

MR SCANNELL: There is an issue as to the timing of any defence to pass on by the RHA. If the RHA waits until its reply to let us know what it says about pass-on in the RUTL claim, then we won't have an opportunity to reply back to that.

THE CHAIR: Yes. How is that actually going to work? There is going to be a defence by the defendants, or defences by the defendants, which may allege pass-on, presumably; and there will be defence to your claim --

MR SCANNELL: By the RHA, presumably.

THE CHAIR: Well, the RHA won't file a defence to your claim, because you're not claiming against them.

MR SCANNELL: Well, some sort of response to pass on is what we envisage.

THE CHAIR: Yes.

MR SCANNELL: The slight difficulty for RUTL is if the RHA sets out its pass on case at the reply stage, then there won't be another stage for my client, RUTL, to respond to that.

THE CHAIR: Yes. Well, it won't set out its case. Well, we see its pleading, it doesn't set out its case on pass on in its claim. The defendants will say something about pass on. Then no doubt the RHA will reply. Your point is, well, you want an opportunity, if I've understood you, to be able to plead to that in some way.

MR SCANNELL: Depending on what we get --

THE CHAIR: Yes.

MR SCANNELL: -- it's difficult to say in advance, but what we can say is that insofar as the RHA's reply contains some sort of response to what we say about pass on -- suggesting, for example, that there wasn't any significant pass on -- we would want an opportunity to plead back to that.

THE CHAIR: Yes. You'll be pleading back to pass on in your reply to the defendants --

MR SCANNELL: Certainly, yes.

THE CHAIR: -- in any event.

MR SCANNELL: Yes.

THE CHAIR: Yes, just a moment.

MR SCANNELL: The slight difficulty is that on the same day, in principle, we would be receiving whatever the RHA (overspeaking).

THE CHAIR: Yes, just a moment. (Pause)

Does that apply also to you, Mr Went, in terms of, what RUTL says about pass on in its reply will also affect you in the same way, won't it?

MR WENT: Yes, exactly, my Lord.

THE CHAIR: Well, we think probably the sensible course is you do your replies and then if so advised, each of you can serve a rejoinder six weeks later, dealing

specifically with pass on.

MR WILLIAMS: Yes.

MR SCANNELL: Right.

MR WILLIAMS: Two points, sir. I'm told 19 December is a Saturday, so I think it should be the 18th.

THE CHAIR: Ah, 18 December.

MR WILLIAMS: We're going to consider our position on costs in relation to the RUTL application. We don't want to take up time now, because there's other business to deal with. Would you be prepared to consider that on paper if we pursue that? I'm grateful.

THE CHAIR: Yes, and we'll assess it thoroughly.

Right, does that take us on then to disclosure?

Disclosure

Submissions by MR WENT

MR WENT: Yes. I think we plan to deal initially with the disclosure that occurred in the Second Wave Proceedings. That's largely agreed.

THE CHAIR: Well, I think before that, there is OTS disclosure.

MR WENT: Yes, that's what I mean. So the off-the-shelf disclosure was packaged together in the Second Wave of Proceedings.

THE CHAIR: (Overspeaking).

MR WENT: I think some of it came from the first, and then the ad hoc disclosure. Then just a limited application from us in relation to a waiver of collateral use. Obviously, a considerable amount of disclosure was made by the defendants in the First/Second Wave Proceedings. We'd been left largely in the dark about that because it was all expert led, and so we couldn't look at any orders, et cetera.

We asked the defendants to explain what they had on 23 July. They eventually got

back at the end of August. But in any event, we've now agreed disclosure for the off-the-shelf and ad hoc. So, if we can go to --

THE CHAIR: That's agreed with all defendants, is it?

MR WENT: Yes.

So, if we can go to the composite order. That's right at the end of the core bundle. It's paragraph 7 and 8 that deal with this. (Pause)

THE CHAIR: Just a moment. (Pause)

Yes.

MR WENT: There was a point taken about some additional language that had been suggested, but we're content just to have the black text in paragraph 7 and 8. Those should be agreed.

There was a question, I think in Iveco's skeleton at paragraph 5(b) as to whether there was a dispute over expert reports being disclosed, but that's not the case. The annex to the draft composite order is agreed as well, as far as we understand.

THE CHAIR: The question I think is in MAN's skeleton about an IKA data set or something?

MR WENT: No, it's agreed that that won't be disclosed at the moment. We're putting down a marker -- reserving our position, obviously, on potentially seeking further disclosure from the Second Wave Proceedings in due course. But we'll review what's provided initially.

THE CHAIR: Just trying to understand, so the DAF disclosure, looking at the annex, will include:

"Truck sales data and vehicle information ... and cost ... sales information."

That's clearer. Iveco will include the VINs, model, seller and purchaser, order number -- so quite a lot of detail.

MR WENT: Yes. (Pause)

THE CHAIR: That will include quite a lot of orders, invoices, prices from what we can see; is that right?

MR WENT: Yes. I was going to deal with that in a little more detail in a moment when I come to my submissions more generally on disclosure going forward and the competing applications that you have before you from the defendants and the RHA. But no, that's correct.

THE CHAIR: That's all agreed, as we understand it; that's right?

MR WILLIAMS: Yes, yes, that's agreed.

THE CHAIR: Yes, thank you.

MR WENT: Then there was a question of the claimant disclosure provided to the defendants in the Second Wave Proceedings. We deal with that at paragraphs 26 to 29 of our skeleton.

THE CHAIR: Yes.

MR WENT: The RHA is seeking a limited waiver of collateral use restrictions to enable the defendants to provide more detailed description of that disclosure, and so the RHA can work out whether it may be necessary to seek to obtain anything from it in due course.

The defendants have confirmed that none of the claimant disclosure is governed by the CPR. That's MAN's response, paragraph 17, core bundle 298. So the Tribunal has jurisdiction to waive collateral use restrictions under Rule 102. At present, obviously the defendants are well familiar with the content of the claimant disclosure in the Second Wave, but they provided only a limited description of what it comprises in their response, and now at paragraph 24 of MAN's skeleton. It may be simplest to pull that up to be looking at what's been said. That's at core bundle 479.

THE CHAIR: Yes.

MR WENT: Paragraph 24.1. First, there's a description of "Resale pass-on

disclosure". It is said, we say without any explanation, that as it is claimant-specific it will be of limited utility in these proceedings. However, that's unevidenced; unexplained; we don't even know whether MAN has cross-checked the disclosure against the Class Register or scheduled trucks before making that assertion. Of course, it may involve trucks that were resold to claimants in these proceedings.

At paragraph 24.2, "supply pass-on" is dealt with. It said it'd be premature to provide a more detailed summary, essentially for two reasons: first, supply pass-on is not yet a common issue; and second, it's not clear which sectors are implicated by the RHA's proceeding, whether there's any overlap with the claimant disclosure in the second wave.

On the first point, it's clear that supply pass on will have to be dealt with in these proceedings one way or another, and we say that we should be establishing now what disclosure is already available on that issue, particularly as Dr Davis, the RHA's expert, is progressing his methodology on supply pass-on. We also said it would be extraordinary if it all related to sectors irrelevant to these proceedings.

And then over the page at 24.3, MAN says there was other information provided by unspecified claimants on value and volume of commerce. Again, we say it's not clear whether that could be useful, whether MAN has checked that information against any of the represented persons or scheduled trucks in these proceedings.

Then at paragraph 24.4, MAN references disclosure relating to Truck Related Services and says it doesn't understand that to be relevant to the proceedings. TRS wasn't mentioned at all in MAN's letter of disclosure on 27 August in which the third and fourth categories were grouped together as "other", no explanation provided. TRS was mentioned, but not defined or explained in MAN's response at paragraph 27(b). We haven't had any explanation of it or why it's not relevant to these proceedings; it's possible it relates to services delivered Using Trucks, and so could be relevant to

supply pass-on.

In essence, we're saying the defendants have made vague unevidenced assertions about the time and costs in describing these categories of disclosure in more detail. If we look at what we're seeking in the composite draft order, that's at paragraphs 9 and 10.

You can see in paragraph 10 the limited information we're seeking:

"... the categories of documents/data disclosed;

"... party ...

"... relevant time periods covered ...

"... volume of documents ... and

"... formats of documents."

As I said, that's to enable the RHA, and RUTL as needed, to make informed and proportionate requests for further disclosure to the extent necessary. In essence, we're just saying that a black box isn't any good to anyone.

THE CHAIR: Did we ask, when are you going to make an application for the supply pass-on to be a common issue?

MR WENT: Yes.

THE CHAIR: Because I think Addleshaw Goddard wrote at the end of August saying that the RHA will be applying, I think they said in the coming months.

MR WENT: Yes.

THE CHAIR: So what is the position?

MR WENT: I think it had been envisaged that it would follow the pleadings timetable. My understanding is that the intention is to bring on that application, probably early in the second quarter of next year. We'd obviously -- the second quarter, early in the second quarter.

THE CHAIR: Why so late though? Why not in the new year, as it were, in the first

quarter? Next term?

MR WENT: As I said, the plan always had been that that would follow on from the close of pleadings and the defendants pleading to the issue of supply pass-on; and then obviously some time after that to finalise Dr Davis' methodology on supply pass-on. That's what took us to the early part of the second quarter.

THE CHAIR: Yes. Well, I appreciate he has got to be satisfied he has got a method for doing this, but he has had quite a while to think about it. If you were going to want to start asking now for the defendants to take steps for a disclosure that principally relates to supply pass-on only, I would have thought you ought to get on with applying to have it a common issue, and you ought to be able to do it in the first quarter.

I mean, these proceedings have been languishing for quite a while, and we're very conscious of the interests of the class. Indeed, as everyone is aware, it's only because of the Tribunal's initiative that the CMC is happening at all. So we do think this case has to be progressed now.

I think you should be able to make your application in the first quarter of next year, particularly when you're asking for the defendants to do something really with that in mind. Is there any difficulty in doing it in the spring?

MR WENT: As I said, my instructions are, as I've explained to you: I would need to check as to whether there are any particular issues in bringing it on in the first quarter of next year. I'd need to seek instructions.

THE CHAIR: Yes, subject only to these rejoinders we've just (inaudible), pleadings will close in mid-February.

MR SCANNELL: Yes.

THE CHAIR: And --

MR WENT: It may well be that it can be brought forward from the beginning of the second quarter to some point in the first quarter.

THE CHAIR: Yes. Well, I think it should.

Before we hear from the defendants, I think -- yes. That's what you're asking for at the moment.

MR WENT: Yes.

THE CHAIR: If one does get further into any form of what's been called second-wave claimants' disclosure, I think what we would envisage -- and it's not something for decision today, but for the parties to note -- is that any general or more specific restriction waiver under Rule 102 doesn't necessarily relate to what you're seeking now, but when you actually seek disclosure of documents --

MR WENT: Yes.

THE CHAIR: That there should be a time in which the party, the second-wave claimant, could object to the provision of the document, because it's their document that you're seeking; so that they can be informed that waiver has been asked for and they would have a right to object.

MR WENT: Yes.

THE CHAIR: So that's how I think it would eventually take place.

Right. So that's what you're wanting at the moment. Okay. Shall we deal with that then, and that's Mr Jowell, I think.

Submissions by MR JOWELL

MR JOWELL: Mr Chairman, members of the Tribunal.

In making this application, the RHA seem to be labouring under something of a misconception, which is that we have some sort of on-hand ready catalogue of the disclosure that was made by the claimants in the Second Wave, and we do not. The preliminary point that needs to be appreciated --

THE CHAIR: Sorry to interrupt you for just a second. When you say "we", you're speaking for all three defendants?

MR JOWELL: Yes. Well, certainly for MAN, and I believe for the others too. They will say if not.

The reason that certainly MAN do not is because of the unusual method by which the disclosure process unfolded in the Second Wave. There was not a conventional disclosure process by which documents were requested and provided. Instead, there was an innovative process that was instituted by Mr Justice Marcus Smith, by which there was an expert-led process by which there were a series of iterative requests for information and documents that were disclosed over many, many, occasions, over many, many months, by many, many different claimants, on each occasion led by the experts with piecemeal requests and piecemeal provision. This related to hundreds of claimants across multiple proceedings, who operated in different industries and across different levels of the supply chain.

That is why, in order to carry out this sort of cataloguing of documents, there would have to be a very extensive and very expensive process undertaken by my clients' solicitors. We say that that is unnecessary and disproportionate at this stage in the proceedings.

The reality is that we have provided an overview of the types of documents that are available, and you see that we've summarised that overview in our skeleton argument, but one can also have a look at it in our correspondence, and if I could just remind you of that. It's our 27 August letter, which is in CMC1-I, tab 50. If we could have that up, please.

If we go, please, to page 6, you can see that I think it is from paragraph 20, we explain providing an overview. Then if you could read, please, from paragraph 22 to 28, you see we have provided a slightly more detailed overview than is in our skeleton of the types of documents that have been provided.

THE CHAIR: Yes.

MR JOWELL: You will see that in our skeleton document, we expanded on the other services categories a little bit, explaining that that comprises both volume of commerce and also truck-related services.

Of course, if the claimants have a specific query, like, "What exactly do you mean by truck-related services?", then of course we're happy to respond to that. But what we say is not necessary at this stage is for us to provide a sort of catalogue -- which would be very, as I said, expensive and extensive -- of all of these different types of documents, from all of these very many claimants, over this very long disclosure process. Most of these categories, we say, are clearly going to be irrelevant. I mean, by their very nature, the claimants in these proceedings certainly should be different claimants to the ones that were in the Second Wave. So something like volume of commerce would clearly be completely irrelevant, and it's just pointless for us to expend enormous amounts of time and energy cataloguing documents that were provided by second-wave claimants on their volume of commerce, back and forth over months and months, when it's clearly going to be completely irrelevant.

We don't exclude the possibility that perhaps in one of these categories, supply pass-on, there might be some documents that turn out to be useful. But we are at a stage now where supply pass-on has not been certified. We don't have a clear view of what methodology is proposed to be adopted for supply pass-on.

In the Second Wave of claimants, what happened -- and this is a matter that's in the public domain -- is that for the purposes of supply pass-on, there was a division into, I think, six different categories of sectors of the economy, and then 30 or so targeted claimants were selected to give specific disclosure relating to those six categories. But at the moment, we don't have visibility as to what the categories would even be in the present claim, because we don't have that information from the claimants, and they haven't come forward with a methodology or even an application for certification

of supply pass-on.

So we don't exclude the possibility that some of the second-wave claimants' material might become useful in due course. But we're not at a stage now where we are able to identify what that would be, and so we say that aspect is clearly premature. Once we have a clearer idea of what they are seeking to do with supply pass-on, then we're happy, of course, to co-operate and seek to identify what documents exist in specific categories. But at this stage, this is going to be a massive waste of time and cost.

THE CHAIR: Did you say six (overspeaking).

MR JOWELL: Six sectors. Six categories -- the retail, the --

THE CHAIR: Would you be -- that wouldn't be onerous, to supply the list of those six categories.

MR JOWELL: No, indeed. We could certainly supply the list of six categories. We can do that.

THE CHAIR: Because it might be proportionate, then, to start grouping the claimants here into those categories --

MR JOWELL: Yes.

THE CHAIR: Which might lead to certain efficiencies.

MR JOWELL: Of course. We're perfectly content to supply six categories and to provide a reference to the order of the CAT in which reference to those six categories is made.

THE CHAIR: Yes. That was covered in an order, was it?

MR JOWELL: Yes. Well, it's referred to, certainly, in an order.

THE CHAIR: Yes. I think it's just knowing -- defining the categories, I'm sure, would be helpful.

MR JOWELL: Yes. Certainly. But we say that at this stage, to give a blanket 102 order, particularly when the claimants aren't represented, is also clearly inappropriate.

Those are my submissions, unless I can assist further.

THE CHAIR: Just a moment before we hear from you, Mr Went. (Pause).

Submissions by MR WENT

THE CHAIR: Yes, Mr Went.

You are going to get the six categories, so that will help you start potentially grouping the represented persons into those categories, which will be useful.

You have heard what's been said about the way documents are kept, and it's really a question about when things should be done in terms also of costs, and what's proportionate and sensible. We can see that at some point it will be relevant for the defendants to look to see whether the claimants' disclosure covers any of the trucks that are listed on your Truck Schedule, and then that would be very relevant; and one of the claimants, from memory, was a big leasing company -- so were those trucks for which they're claiming trucks that people you're representing were leasing, for example -- but whether that should be done now, or rather, given there's going to be more work done on your Truck Schedule, which we are about to come to, would it not be more sensible, perhaps, to wait until that process is done? When you've made your SPO application? We don't know if that will be contested; and then see where we are, and then you can have a more targeted second-wave claimants' disclosure application.

MR WENT: Yes. I mean, I think we had assumed that all this disclosure would have needed to have been catalogued to provide to the defendants' experts, and was laid out sitting on an e-disclosure platform and could be reasonably easily catalogued.

In terms of when this happens for purposes, for example, of the Truck Schedule, of course that depends a bit on what the Tribunal decides in relation to that; because if the defendants, of course, are suggesting that the RHA needs to go to all 11,000 Class Members and basically collect all records from them within a relatively short period of

time, given the enormous undertaking that would entail, and clearly if there's information that is already readily available from previous proceedings, that just doesn't make any sense to us.

THE CHAIR: You're going to get quite a lot of information under the first two heads, aren't you?

MR WENT: Yes.

THE CHAIR: The OTS and ad hoc disclosure.

MR WENT: Yes.

THE CHAIR: So there will be disclosure by the defendants in those proceedings which might give you a lot of information for your schedule.

So the schedule is an ongoing process. What is going through our minds is to see how far you get. Once you've analysed that, you are to make your SPO common issue application, and at that point, one can have a more targeted application regarding Second-Wave claimants' disclosure.

MR WENT: Yes. We can see that makes sense, but provided the RHA isn't being required in the meantime also to be collecting all records from all claimants, given the enormity of that undertaking, how much cost it would involve, et cetera; as I said, if there's actually information available that's going to be filling the gaps in the Truck Schedule without having to go through that enormous undertaking.

THE CHAIR: Well, some of the filling of gaps, I think, will have to be done by the claimants in this case, i.e. represented persons, and we are obviously coming on to consider that. But as far as this is Second-Wave claimants' disclosure, our present feeling is that should be parked until you've had a chance to look at the disclosure you are getting; in other words, Second-Wave defendants' disclosure, effectively, plus other material that we're coming on to; and then revisit this.

We won't make an order then in the form proposed, on the basis that you will be

supplied with the categories into which they were grouped, which I think will assist the process you undertake. Then, as you heard a moment ago, we are keen to progress this case, on the basis that you'll be making your SPO application in the first quarter after that. That will be the appropriate moment.

The defendants have said they will respond to any specific requests for information, and we indeed expect them to do so.

MR WENT: Yes.

THE CHAIR: So you will have that avenue as well.

MR WENT: Okay. I'm grateful.

THE CHAIR: Yes. (Pause)

Then we --

MR WENT: So that --

THE CHAIR: -- come to the class registers and the Truck Schedule, for which there are sort of competing applications.

MR WENT: Exactly, so rival applications on how best to approach the next stage of information-gathering to firm up class eligibility points, and progress volume and value of commerce. Questions of class eligibility and volume of commerce are of course linked to some extent, because class membership requires the acquisition of trucks.

THE CHAIR: Yes.

MR WENT: However, that's not to say that completed value of commerce information is required to confirm eligibility. The distinction gets a bit blurred at times, we say, in the defendant's submissions. So the RHA is seeking to have the defendants' use the ream of information that they clearly have available to them to respond to the Truck Schedule, which the RHA has prepared, with details of over 200,000 trucks, believed to be the vast majority of trucks acquired by the opted-in class. We refer to the Truck Schedules to which the defendants would be required to respond as the Responsive

Truck Schedule.

THE CHAIR: Yes.

MR WENT: The RHA is seeking the defendants to check their records against the information contained in the Truck Schedule, provide certain further information on those trucks, and also to provide details on other trucks their records show were acquired by represented persons.

I'll return to the specifics, if I may, in a moment. Just so to make clear what the defendants are, on the other hand, seeking. As I said, it's in essence for the RHA to gather all truck records over 17 years from the almost 11,000 claimants in parallel with the defendants providing significant amounts of data from the Second Wave Proceedings that could make redundant information the defendants are saying should be gathered from the claimants within short order to complete the Truck Schedule for all claimants and provide proof of satisfying the Class Definition.

Of course, if the RHA has to gather records from 11,000 claimants, within a limited period of this CMC, the RHA couldn't delay to review the -- what will be 10,000 files about to be disclosed by the defendants, and would need to get going straight away. Not that it would be feasible in any event within the timescales that are envisaged by the defendants. The defendants also envisage the RHA --

THE CHAIR: Sorry, just to interrupt you. That's about the timing, and whether you shouldn't first have the chance to review the substantial disclosure that you are getting before having to provide more information. So that's a timing point, isn't it?

MR WENT: Yes, although of course there will also be an equivalent -- assuming, as I think as everyone expects, the other OEMs are joined to these proceedings when the defences are filed -- treasure trove from them, presumably with an equivalent amount of information. As I said, it's 10,000 files being disclosed by the defendants.

We say it doesn't make sense for the RHA to start getting going in terms of gathering

information from claimants before all of that has been analysed -- and that itself is going to be a significant undertaking. We also want to make clear that the defendants, despite the air of cooperation they're seeking to portray in their skeletons, have not been forthcoming in requests by the RHA to tell us what they have beyond the disclosure we're about to be getting. There's been a lack of responsiveness on their part.

We're saying, in essence, the defendants' proposals on volume and value of commerce, VOC, and class eligibility are in essence a naked attempt by the defendants to unnecessarily increase the cost of the RHA and seek to narrow the opted-in class arbitrarily.

Haigh 2 at paragraph 10, that's core bundle 263, explains how lengthy and costly a process it was for the RHA to obtain similar data just from 42 claimants in the class. So rolling --

THE CHAIR: Sorry, what's the reference?

MR WENT: So that's the second witness statement of Ms Haigh, core bundle 263, paragraph 10.

THE CHAIR: Yes, 10, 263. (Pause)

Yes.

MR WENT: So that was the much more minimalist exercise undertaken in relation to 42 claimants and just how much work and effort and cost that involved. Rolling that out across 11,000 claimants would inevitably be a gargantuan undertaking, and completely disproportionate, we say, before exploring much more readily-available data in the hands of the defendants and the other OEMs, and indeed third parties, which I'll show you is what was always envisaged.

THE CHAIR: Well, should we look, to get down to specifics, at your Responsive Truck Schedule -- that's the thing you're asking, is that right, the defendants to --

MR WENT: Yes, it may be helpful initially just to look at the Truck Schedule itself, just to get you a sense as to what information has already been gathered and collated by the RHA, because it's an enormous amount of information on over 200,000 trucks.

THE CHAIR: Well, doesn't that appear in the Responsive Schedule?

MR WENT: No, it doesn't. It would do, but at the moment we just populated the first line for illustrative purposes. But if I take you to the Truck Schedule, it's at I35, which I understand can be shown on the screen.

THE CHAIR: Yes, we have to go through a process. (Pause)

We have to download it, I think. (Pause)

I think we've got it.

MR WENT: It's up on the screen now.

THE CHAIR: Has that come up? Yes.

MR WENT: So there are 22 columns in this spreadsheet.

THE CHAIR: This is Volvo, right?

MR WENT: No, this is the Truck Schedule the RHA put together.

THE CHAIR: And is it -- I'm just looking at the top line -- grouped by different manufacturers?

MR WENT: No, it's grouped by claimants in clusters. So if you look on the left-hand side, there's a cluster ID and then a cluster name.

THE CHAIR: Yes.

MR WENT: So McCulla Ireland is one of the claimants. You'll then see there's a VIN numbers or serial number of the truck, its VRM, the VIN appearance number -- that shows how many times the VIN appears within the opted-in class -- then there's a new or used indication -- that's an assumption based on other information available about the truck. You can see the date of first registration of the truck, and the date of acquisition and data disposal in rows (h) and (i). Unless the represented person

provided information in a template form, this information is all taken from vehicle operating licence data, combined with other data as well that the RHA has had access to.

It shows the period when the truck was specified on the O-licence, belonging to the represented persons, and when it was taken off. This shows the proxy for the ownership period. So you can see why this, for example, was presumed to have been acquired used, as it started being operated by the cluster 1,379 days after the truck's first registration. That's in column (j).

Then going across further across the spreadsheet to other columns, there's more detail on the truck. You can see manufacturer and model and various technical details. Then finally at column (v) there's the UK list price as stated in CAP HPI data. As I said, the RHA has gathered this information for 213,190 trucks.

THE CHAIR: Yes.

MR WENT: It's currently estimated that this represents something like 85 per cent of the trucks in the claim. That's the first witness statement of Ms Haigh, paragraph 51(b).

THE CHAIR: Yes, I saw that.

MR WENT: The process for compiling this Truck Schedule, and indeed the class register, is the process the RHA said it would follow because I know that we've come in for criticism as to what we've been doing in terms of working out the volume of commerce in the proceedings, as well as confirming eligibility. I was just going to take you to a couple of the materials relating to that, just to make clear that we've done what --

THE CHAIR: Unless it comes up, let's not take time with that.

Now, we've seen the first 20 lines; are there parts of the schedule where some of these columns are blank?

MR WENT: No, if it may be helpful just to have a quick look, then, at the Responsive --

THE CHAIR: Just one minute, can you just help -- you said you got some of this from VOL data; is that right?

MR WENT: My understanding is that the vast majority of this information is a combination of the vehicle operating licence information for represented persons combined with two other main sources of data, including DVLA data -- so the vehicle operating licence data will have a modicum of information in, but including when trucks are specified on O-licences and taken off. Then once it's been determined which vehicles are in play, then two other databases we used for populating this Truck Schedule.

THE CHAIR: One was DVLA and the other was?

MR WENT: Just give me a moment.

THE CHAIR: Ms Haigh explains this.

MR WENT: UKVD is the acronym. (Pause)

Sir, the process that the RHA followed is detailed in paragraphs 18 to 19 of the second statement of --

THE CHAIR: Yes.

MR WENT: You were asking if there are blanks. I don't know if it's helpful to pull up the Responsive Truck Schedule that we envisage the defendants populating. In essence, it would contain all this information, together with empty columns where they could verify the information that the RHA has gathered based on their own records, as well as supplying certain additional information that we say the defendants are likely to have.

THE CHAIR: Yes, and that's at B5, Responsive Truck Schedule?

MR WENT: Yes. So it's --

THE CHAIR: Where's that?

MR WENT: Yes. B1/5, if we can pull that up. (Pause)

As I said, this is mainly blank at the moment, but the first line is filled in you can see with McCulla Ireland in row 3. But it would be entirely populated with the information from the Truck Schedule that you've just seen.

Then there are various columns that are shaded, that we're requesting the defendants to respond to based on their records. So you can see columns (E) to (M) ask for information on the first sale or lease outside each defendant's corporate group.

If we go across columns (N) to (AP) they in essence ask for confirmations from the defendants on the data already in the Truck Schedule. So for example, at column (P), there's the date of first registration provided. Column (Q) then asks the defendants to confirm whether that's correct.

If we move across, for example, to column (AL), this references the Euro standard and asks the defendants to confirm that in column (AN). That gives you an idea, I think.

There's also a second tab in the Responsive Truck Schedule that's asking for any information the defendants have in respect of the onward sale of their trucks as well.

I should probably say just whilst we're on it, the RHA has agreed to some wording changes to this Responsive Schedule with the defendants. We've agreed some word changes, but I think the defendants are seeking not to provide certain (inaudible) information. We don't agree with that.

THE CHAIR: These are all the trucks, and you say it's about 80 percent, for which you have in every case a VIN number and registration number; is that right?

MR WENT: Yes, exactly.

THE CHAIR: VRM is vehicle registration, is it?

MR WENT: Mark.

THE CHAIR: Mark, yes.

MR WENT: We don't have the numbers in all cases. In certain cases, we only have

the VRM at the moment.

MR SINGLA: Sir, I'm sorry to interrupt, but just in case there's any confusion about this -- what you've seen in the Truck Schedule concerns 58 percent of the clusters. I just don't want there to be any ambiguity or confusion; there is a lot of missing information which one doesn't see in the schedule, because the schedule omits all of the trucks that relate to the 42 percent of the clusters.

THE CHAIR: Yes, yes. And as we understand, is 20 percent of the total trucks?

MR SINGLA: It's 30,000 trucks, yes.

MR WENT: 15 percent.

THE CHAIR: Sorry?

MR WENT: 15 per cent is our estimate.

THE CHAIR: 15 percent. I mean, the figure that we've got is 36,500.

MR WENT: Exactly, so added to the 210,000.

THE CHAIR: We realise that's not in the schedule; we appreciate that.

MR WENT: To be clear, what the RHA is seeking the defendants to do is to populate this schedule in terms of where the gaps are in relation to the represented persons and clusters currently shown in the schedule.

THE CHAIR: Yes.

MR WENT: But we're also asking them to check their records against other represented persons for whom the RHA hasn't yet been able to collect data, so in relation to the 35,000 trucks.

THE CHAIR: I think we need to separate the 36,000 trucks that are not in the schedule, because you haven't got any data on them. I think your estimates; that's right, isn't it?

MR WENT: Yes, it's just an estimate, although we have seen that the defendants' own records show, for example, the name of the seller and the purchaser. So it's

obviously conceivable that their records will show -- if we've got the name of the represented --

THE CHAIR: I understand that, but they are not on this schedule?

MR WENT: They're not on this schedule.

THE CHAIR: So I think we need to deal with those separately. Let's look at what we do with this schedule at the moment. I'm just trying to see how many. I know this is very long schedule. Every truck you've got the VRM, a few you don't have the VIN number, but not very many; is that right, are lacking a VIN number? Just scrolling down, by the looks of it.

MR WENT: It may be something like 20 percent for which there isn't a VIN number.

THE CHAIR: Just looking down, it looks a lot less than 20 percent, unless there's a huge -- I mean, I appreciate it's a huge schedule, but certainly if the ones --

MS RIEDEL: There are numbers that may be incomplete.

THE CHAIR: Ah, my colleague's pointing out some numbers may be incomplete.

MR WENT: Yes.

THE CHAIR: But you've got a registration mark for all of them. Yes. So that's what you're seeking, and as we understand it, the defendants have offered, where there are VIN numbers, to provide something?

MR WENT: I think VIN or serial numbers, they're saying that they will populate the schedule as we're requesting, to the extent they have records for that in the information that's been disclosed to us.

THE CHAIR: Yes, I see. Let's deal with the estimated 35,000 which are not on the schedule separately.

That deals with this request; is that right? Really, what you're saying is even if there's no VIN number, you've got the VRM and they should still respond.

MR WENT: Yes, and I think to be clear, it's VIN or serial number, so it's one or the

other. I don't think there's any --

MR SINGLA: That's not. Is that not. I'm afraid I'm going to have to take this much more slowly, sir. There's actually a lot of detail that my learned friend has glossed over, and it's important because the specifics do matter in terms of what we've agreed to do, what we've not agreed to do, and what he's asking for.

THE CHAIR: Yes.

MR SINGLA: Just to be completely clear while I'm on my feet, what we have agreed to do is to use the OTS disclosure, which they're going to receive, insofar as their schedule contains complete VIN numbers -- we will do an automated matching process, and that's the extent. I can explain in due course why we've drawn the line there, but we do say that would give them a substantial amount of information. Just to be clear, what my learned friend is seeking is in relation to all trucks in or out of his schedule, we should use the OTS disclosure, do more than the VIN matching, and go beyond --

THE CHAIR: We're concentrating on the schedule at the moment.

MR SINGLA: Yes, but in relation to those trucks in the schedule, they are saying that we should do the VIN matching that we've agreed to do; in addition, use the OTS disclosure to populate the table, which is a manual and labour intensive exercise; and go beyond the OTS disclosure and find new data and information that we don't currently have collated. All of that they're asking us to do in relation to trucks in the schedule.

THE CHAIR: Yes. Can you explain what is it about the VIN number as opposed to the VRM such that where you have a VRM but no VIN number, you're not proposing to do that?

MR SINGLA: Yes, well, this was explained in correspondence I believe yesterday. Those who instructed me sent a letter explaining --

THE CHAIR: Well, can you explain it to us, because we haven't seen that.

MR SINGLA: Yes, of course, but it may be actually helpful to bring up the letter to cut through this. The letter I believe has gone into bundle I at tab 115. There are a number of important points made in this letter, which is why I want to just see -- starting at paragraph 6, if that's come up on the screen.

Do you see:

"... of the trucks attributed to the Iveco, DAF or MAN OEM groups, over 90 percent of those trucks have a 17 character VIN. The automated VIN matching exercise will address the very great majority of the trucks in the schedule. And in Iveco's case, more than 80 per cent can be identified." [as read]

Pausing there, what we have agreed to do by way of the automated VIN matching exercise will produce a large amount of coverage. Then we explain in paragraph 7 the detail of the automated process. Perhaps I should just let you read paragraph 7 and 8.

THE CHAIR: It's paragraph 10.

MR SINGLA: Exactly, so having explained what the process is, it's paragraph 10 which explains why that's the appropriate thing to do and why any further exercise would be qualitatively different and considerably more resource intensive and costly.

This is all against the background of our position that the RHA has not done its adequate process to date. One has to see the offer that we've made in the context of what they themselves have done and have not done.

THE CHAIR: Do we need to read on?

MR SINGLA: We may need to read on in relation to other issues, but I was just answering the question directly. So there is a good reason why we say the appropriate way forward in relation to the OTS disclosure is to conduct the complete VIN-matching exercise, but to stop there.

As I say, I would want to address the Tribunal more broadly on the background to this, because we've dived into what we've agreed to do. But one does actually, in my respectful submission, need to take a step back and see whether the steps that the RHA themselves have taken to date are adequate.

THE CHAIR: Yes, well, we'll come back to that because we're going to Mr ... (Pause) Yes.

MS RIEDEL: I'm just trying to understand. I think I understand your comment about trying to contextualise what you've offered to do against what the inadequacies of what you believe the RHA hasn't done. But as I understand it, Compass Lexecon can provide a high quality assurance exercise in relation to vehicles that have VINs provided, but can't provide a high quality assurance exercise in relation to vehicles which only have VRMs, because the VRM registration number can transfer between vehicles.

Is there a matching exercise that can be done using VRMs which would come subject to caveat? Is it possible to do that exercise subject to caveats, or is it not possible to do that exercise at all?

MR SINGLA: I'll have to take instructions. I can't really on my feet now go beyond paragraph 10, which obviously deals with the proportionality of taking further steps. I don't know the answer to the degree of matching that could be done. But just to be clear, what we are saying is of course, on this proposal, the RHA would receive the OTS disclosure. So any further matching or other work that could conceivably be carried out -- our point is the ball's in their court. That's why I say it is important to contextualise this.

THE CHAIR: Yes, well, we can go into all that, but we would like your instructions on that. Also, if they do it through the VRM, even if in many cases you have an incomplete VIN, but it's still part of the VIN, which could be used to cross check and see if it's

a transferred plate or not. Perhaps you can take instructions. We'll take our break.

MR WENT: Could I maybe just --

THE CHAIR: Yes.

MR WENT: -- make one possibly helpful point.

THE CHAIR: Yes.

MR WENT: We understand that in the Iveco disclosure we're going to get, there's a spreadsheet providing VIN to registration number mapping that was used as part of Iveco's matching exercise. That's how it's been described to us. That's at B4/4/3. I had wanted to take you, to explain very clearly the information we're going to be getting in the disclosure, but it's points like that that suggest to us that the defendants should be able to do more than they're offering. What they are offering has come very late in the day. It was Tuesday last week. Prior to that, they weren't suggesting they would be doing any of this. So it's come very late in the day and it's in the context of the defendants simply not responding to requests by the RHA as to what information they have available. To the extent that any of that's relevant, I would want to take you to that because I think it's very important context.

THE CHAIR: Yes, well, you may have to limit the time we go into context because we do --

MR WENT: I appreciate that.

THE CHAIR: -- have quite a lot to get through and these things get quite ground into specifics. We've raised two questions about the position where there is VRMs and whether that matching can be done; and then whether the partial VIN can be used as a cross-check.

MR WENT: I think we have to have the serial numbers as well. I'm not sure we necessarily realised there was an issue over that.

THE CHAIR: Yes.

MR WENT: We think if there's a serial number, it should be possible for the defendants to --

THE CHAIR: Is this the position? The VIN and the serial number are different things, are they?

MR WENT: That's my understanding.

THE CHAIR: And is the long -- what seems like about 17 digits -- that's a VIN, and the shorter number is a serial number; is that right?

MR WENT: That's correct.

THE CHAIR: And the serial number will be unique to the vehicle?

MR WENT: That's my understanding.

THE CHAIR: Yes. So it's a question of whether you can match serial numbers, which won't have that problem. Secondly, whether, where there's a blank -- which is far fewer cases -- you can, do the exercise Ms Riedel indicated. We'll come back in ten minutes.

(3.51 pm)

(A short break)

Submissions by MR SINGLA

THE CHAIR: Yes, Mr Singla.

MR SINGLA: I've just taken instructions in the short break. Taking the points in turn, starting with the complete VIN-matching exercise, I think you've got the point that we say for Iveco, that would cover 80 percent of the trucks in the schedule.

THE CHAIR: Yes.

MR SINGLA: So we're talking about the remainder of the trucks. As regards serial numbers, in the very short time I've had to take instructions, as far as we're aware, serial numbers -- again, speaking for Iveco only on this point -- don't appear in the OTS disclosure. So that's not something that would advance matters.

Then turning to the VRMs and the partial VINs, trucks in the schedule where there's not a complete VIN, but there's a VRM or a partial VIN. The position is: we could do further work in relation to these trucks, as set out in the letter, it would be costly and time consuming, and it would take longer than the four weeks that we've currently contemplated in the order.

THE CHAIR: Yes.

MR SINGLA: But there are two crucial points, really. You have my submission that we say this is not for us, but I'll leave that to one side for now.

The two points are: one, as set out in the letter, we don't consider that this will necessarily be a reliable process, and so we reserve our position as to the output and whether or not this does establish eligibility for the class and so on; and the second point is -- and this is very important -- that we do say it would be inappropriate to go beyond the OTS disclosure. Sir, as you yourself picked up when we were looking at the annex, the OTS disclosure is very substantial; it's the disclosure that's formed the backbone of the other proceedings; it's market wide, not claimant-specific. If my learned friend is seriously going to pursue an application that we should go wider than the OTS disclosure, then we'd have a lot to say about that because that would be grossly disproportionate. It would be essentially a completely new disclosure exercise that we would be sent away to do. And it would --

THE CHAIR: As I understand it, the serial numbers are not in the OTS disclosure?

MR SINGLA: For Iveco, that's the position based on the limited time I've had to take instructions, yes.

THE CHAIR: But the VRM or partial VIN you could do from the OTS disclosure?

MR SINGLA: That's right.

THE CHAIR: Yes, but it'd just take you longer?

MR SINGLA: That's right.

THE CHAIR: Yes.

MR SINGLA: And it may not be reliable.

THE CHAIR: It may not be reliable. Yes. That's Iveco we don't know about. Well, do you know, Mr Williams, about serial numbers in DAF's OTS disclosure?

MR WILLIAMS: I'll do my best. I have a client in court, sir, and her understanding was that we wouldn't be able to do additional matching through the VRM or the serial number. We've made some further enquiries during the very short break. Those enquiries have suggested that's right; we won't be able to do it. We are happy to take the point away and be more definitive about it.

THE CHAIR: Yes.

MR WILLIAMS: But that's our understanding based on the instructions we've taken in that short period.

THE CHAIR: Mr Jowell, do you know about MAN?

MR JOWELL: Yes, well, our instructions are that with a partial VIN or VRM, then it would be unreliable without manual verification, which would be extremely costly and time intensive.

THE CHAIR: Unreliable, but it's in the OTS disclosure?

MR JOWELL: Yes.

THE CHAIR: Yes, thank you.

Well, just a moment in the light of that. (Pause)

Well, we think that insofar as it's in the defendants' respective OTS disclosure, you should seek to populate the schedule with the caveat you made that it may not be reliable, but on the basis of VRMs or partial VINs, where there is only -- I think there's always a VRM; there's sometimes a serial number as well, but you say that's not going to help.

We're not seeking you to go beyond the OTS disclosure, but where it's in the OTS

disclosure, we think in the circumstances of this case it's reasonable that that exercise should be undertaken by the defendants. We appreciate you will need longer time, and we'll hear you on what sort of period.

MR WENT: Can I just clarify one point of detail, talking about the OTS data, and as to whether we're saying it applies to the disclosure they're about to make to us. Because that's not just OTS; it's also the ad hoc disclosure which has material information in as well. For example, we know the ad hoc data contains PACCAR leasing data for a considerable period of time. Obviously, we have these trucks (inaudible). So we just want to be clear as to what's being talked about.

MR SINGLA: We can cut this short. Yes, is the answer.

MR WENT: It will be --

MR SINGLA: It's the disclosure they're going to receive as.

THE CHAIR: (Overspeaking).

MR SINGLA: Could I perhaps make a submission on timing then?

THE CHAIR: Yes.

MR SINGLA: We would respectfully ask for eight weeks. It was, I think, four weeks that we were seeking for the automated process. This is going to involve more work.

THE CHAIR: Yes, that seems -- yes, eight weeks.

MR SINGLA: I'm grateful. There's just one further point in this regard, which is the format of the Responsive Truck Schedule. It may be convenient to deal with this now. I don't know if you still have the Herbert Smith letter, it's I/115. Essentially, the format is agreed subject to two columns. I think my learned friend perhaps mentioned in passing that we had deleted a couple of columns and --

THE CHAIR: He said there was some discussion.

MR SINGLA: It's a very narrow point, so I don't want to take too much --

THE CHAIR: Is that a problem, Mr Went?

MR WENT: Well, I think the two columns: one is just to confirm whether the truck is within scope of the Settlement Decision, it seemed to us that should be something pretty simple for the defendants to confirm and then avoids any --

THE CHAIR: Do you mean the weight of the truck or ...

MR WENT: Well, if it's simply saying the weight, I think we just want to be clear that there aren't any surprises sprung on us down the road in suggesting that any of these trucks aren't within scope of the EC Settlement Decision. It just seemed to us a simple thing for the defendants to confirm.

The other point related to whether the trucks appear in other proceedings. It seemed to us that that, again, was something that the defendant should have to provide. It might have required a very limited collateral use waiver again, but it seemed to us that we should have that information as well.

MR SINGLA: Could I just briefly respond? I mean, we've just --

THE CHAIR: Wait for a minute.

MR SINGLA: Yes, it's 115, page 4, if you're looking for --

THE CHAIR: Oh, that's the letter. No, I'm looking --

MR SINGLA: Oh, you're looking for the schedule.

THE CHAIR: Should be here. Ah, they keep closing down.

MR SINGLA: It's B1/5 is the blank Responsive Schedule. (Pause)

THE CHAIR: Yes, that's it. Which of the columns --

MR SINGLA: One has to scroll quite far to the right. It's (AN) and (AO). So (AN), you'll see trucks within scope of infringement. We say that raises an evaluative question. It's a matter that may or may not be argued about. I mean it's unclear what they're asking us to agree or disagree. I think, sir, you put the point about weight, but obviously they're not asking merely about weight. So we're not sure --

THE CHAIR: The infringement decision, isn't the scope defined just by weight?

MR SINGLA: There are all sorts of criteria: there's type of truck; there's weight. In our respectful submission, what this exercise is supposed to be aimed at is really collating discrete data points. This actually is a much more involved --

THE CHAIR: What are the other --

MR SINGLA: Well, it's for Mr Went to explain what they're asking.

THE CHAIR: But no, but what you said there are all sorts of criteria.

MR SINGLA: Yes. Well, there's weight, there's truck, there's truck type, there's period of acquisition.

THE CHAIR: Well, isn't period of acquisition covered by one of the earlier columns?

MR SINGLA: It is, yes.

THE CHAIR: So that's going to be blindingly obvious.

MR SINGLA: Yes, but it's just creating extra work, therefore, to ask us to agree or disagree.

THE CHAIR: What else is there apart from period?

MR SINGLA: I just need to open the Decision up. Sir, perhaps I can come back to this point, because I --

THE CHAIR: I mean, there's only -- if it's for military use, but --

MR SINGLA: It seems to us premature to be getting into this exercise.

THE CHAIR: Well, it's pretty straightforward thing, isn't it? If you're going to say, "This is a truck that is under six tonnes", the sooner you say that, the better, then that can be sorted out and it can be checked and if necessary, deleted. I mean, that's not a difficult exercise, and you'll know that from the model. These are your own trucks.

MR SINGLA: Well, can I take instructions on this column. The next column is (AO), which is trucks that have been the subject of prior claims. The point we've made is that that could raise potential collateral use issues, which obviously you've heard about and essentially deferred. Ultimately, what this exercise is about is really establishing

whether these represented persons should be in the class or not. So in the grand scheme of things, in my respectful submission, (AN) and (AO) are not really aimed at the central purpose of this schedule.

THE CHAIR: It's whether they should be in the class and for what product.

MR SINGLA: Yes, but --

THE CHAIR: If it weighs less than six tonnes, it shouldn't be in the claim.

MR SINGLA: With respect, sir, we're actually at an anterior stage, because we don't yet know whether any of these represented persons actually acquired these trucks. So in a sense there's a more fundamental problem, we say, with this whole process and the way in which the RHA --

THE CHAIR: They said they have, and that's how these serial numbers and VINs have been found.

MR SINGLA: Well, with respect, no, it's actually common ground, sir, that the VOL data has been used by the RHA to compile the Truck Schedule. It's actually common ground, but that doesn't establish class membership and doesn't prove acquisition. We are, we say, really at the foothills of this whole process. I don't want to take up too much time, but the context to this is important because the claimants, we say, have not done a sufficient amount of work up until this point.

THE CHAIR: (Overspeaking).

MR SINGLA: We're now offering to do an exercise to assist, and we're now debating two additional columns. In my submission, the onus really is on Mr Went to explain exactly what they're getting at with column (AN), and what is it that he wants in (AM) that he can't work out himself from all of the other answers that we will be providing.

THE CHAIR: What I'm not clear about column (AM) is how it differs from on weight from column (AE). We've got weight in (AD). They've given the weight in (ad), (ae) is in a sense your comment on it, so perhaps Mr Went can explain that.

MR WENT: As I said, I think this is just about avoiding surprises down the road. Obviously, military vehicles are excluded. You can see that in footnote 5 of the Commission Decision. We didn't think it would be controversial just having the defendants confirm at this point whether they accept that the truck is within the scope of the decision.

THE CHAIR: Yes, and you've got the weight. It's going to be checked anyway. Yes. But what about column (AO), which is rather different?

MR WENT: Yes. As we said, it's important to know whether any of these trucks have been subject to previous proceedings, and it seemed to us that that's something that the defendants should be able to provide, to the extent -- I mean, there's possibly a very limited (inaudible) collateral use that might be required to respond to that. But again, it's important to know the position in relation to all these trucks.

THE CHAIR: Yes. Just a moment. (Pause)

Well, we think, Mr Singla, that the defendants should provide the information in (AN). We don't see that should be any problem or prejudice. We don't think it's right to view this case as still in the foothills, because we're keen to advance it rapidly now.

As regards AO, we think you should provide that information without the bit in brackets -- in other words, has it been the subject of a prior claim -- but that you don't have to disclose now which claimant and claim number, and that would be a matter for further application if the RHA wishes to seek it, and that will get around any Rule 102.

MR SINGLA: Yes. I'm grateful.

THE CHAIR: We've got the two stages for doing that -- is it four weeks and eight weeks, I think, is that right -- for providing this information. Have we set a time? No, we haven't for this, have we?

MR SINGLA: I think, in my submission, we would ask for eight weeks.

THE CHAIR: Eight weeks.

MR SINGLA: Not a staged process, but obviously --

THE CHAIR: Yes, eight weeks.

Right. So that's that schedule. Is there anything else on that schedule?

Submissions by MR WENT (continued)

MR WENT: Well, as I've said, the other piece that the RHA was requesting is not just to be matching against VINs, but also to do a matching exercise in the disclosure they're about to provide against claimant names as well.

THE CHAIR: Yes. Well, that seems to us a rather different situation. This is where really you've got names, but no data at all; is that right?

MR WENT: Well, there are two parts to it. One, of course, the exercise the RHA has gone through to identify trucks for claimants that are in the schedule may not be complete. Then the other, yes, is in relation to claimants, which we don't have the vehicle operating licence data, so haven't been able to populate their details in the Truck Schedule as yet.

All we were suggesting is that the defendants also doing their matching exercise -- obviously, it's their data; they know the data well -- is to do a matching exercise against the claimant names as well. Certainly, I can take you to a description of the disclosure we're going to get, but it certainly says that it would include customer names.

It also, as I said, for example, includes the PACCAR leasing data set, over a considerable period of time from 2001 to 2017, and that, I believe it says it does include associated customer information. Obviously, we will get the information and we can do this ourselves, but it's their data. They will be much more familiar with it, and there's certainly precedent for the Tribunal saying that the defendants should do that. That's from the power cables case that we've cited. So we also ask for that

element as well, in terms of populating the Truck Schedule.

THE CHAIR: We are rather concerned that there are this minority of claimants you represent who are just not giving you any data at all, and we've seen what Ms Haigh says about having written to them all, I think. I don't think it was the RHA that wrote to them. I think it was -- was it Punter Southall that wrote to them?

MR WENT: It may have been -- well, Punter Southall under the RHA, but that's right.

THE CHAIR: Yes. I mean, there will come a point where these individuals are going to have to put in their claim. This is not a claim for aggregate damages. It's a claim for individual damages. They're going to have to say, for example, if they got a new truck from the defendants: well, did they sell it used or not at the end, and if they bought it from someone other than the OEMs, what price did they pay for it? The OEMs won't know that. And various information; they're going to have to provide, are they not?

MR WENT: Well, what we're trying to establish is the most efficient and proportionate ways to get to some of the data that's needed in a class of almost 11,000 claimants, many of whom are owner-operators that are out on the road each day and don't have time. They're not sophisticated businesses. So we say, to the extent that data are available, ready and available within disclosure that is going to be provided to us by the defendants, that it makes sense to mine that information in relation to these claimants. That's the more proportionate and cost-effective way of dealing with this.

THE CHAIR: It's not so expensive for you, as the RHA, their trade association, to write to them and say, "Look, if you want still to pursue your claim, yes, it's taken a long time for reasons that can be summarised, and you might have given up all hope by now. The claim is now going ahead, and we need you to tell us, for a start, how many trucks you've got over this period; what make; did you purchase them or did you lease them? Did you get them new or used?"

I mean, they don't have to keep elaborate records to provide that basic information.

Similarly, are you engaged in hire -- is it for hire and reward, or is it an own account use? Basic information like that, which we do think there is an obligation on those opting in to a class and then wanting their cases pursued to provide. They may not keep detailed records, and there may be aspects that they can't readily provide, but most basic information they should be able to provide. If they really can't say or can't be bothered to say that over this period, "I bought three trucks and they were from Volvo, and I used them for my business", which is whatever it is, and you can use the categories which you will get from MAN and say, "If an own-account use, which of these categories do you come into? Just tick the right one". I don't know if they are all-encompassing categories or they are just sample categories, and maybe they are only samples. You will have to tailor it accordingly.

But that kind of information gathering exercise does not seem to us very onerous or horribly expensive. As I say, if at the end of the day these businesses -- they may be small businesses; they may be a one man company, conceivably a one-woman company; I suspect in this field they are more likely to be male -- they're not prepared to provide that, I think there are limits to what the defendants should be doing to help them to set out the very basic elements of the claim they want to pursue.

MR WENT: That's understood. I think, just to be clear -- and this is mentioned in the witness evidence that's been provided -- one other avenue that the RHA has been exploring is in relation to getting more O licence data, because of course, the truck (inaudible) at the moment is populated with O licence data. So in principle, it should be a good source of information for these or for a good number of these remaining claimant's as well. That's obviously something that the RHA is also looking at. So just to be clear, the RHA hasn't been sitting on its hands about these claimants.

THE CHAIR: It may be there will come a point you go to the defendants for more information, but we think the first step now with those who are not on this schedule,

and you just have a name, is to contact them, and it's a matter for you how you do it -- we suspect it's likely to be more effective if it comes from the RHA rather than from a firm of lawyers, but your clients will be the best judge of that -- to ask, as I say, for the fairly basic information so that you can start to populate the schedule, and then there will be -- I am sure there will be things missing, many cases, and at that point, we will be more sympathetic to saying, "Well, the defendants now should provide that".

MR WENT: Yes.

THE CHAIR: And as I say, the sort of things we have in mind is, first: how many trucks over this period? Did you get them new or used? Who manufactured them? Which of these manufacturers? Did you purchase it, or did you lease it? In either case, from whom did you get it, and approximately when? Then: are you in a hire and reward business, or are you own account, and if so, which sector? I think there's an additional point of in which country. I expect generally the UK, but that's something just to be clarified.

MR WENT: Yes.

THE CHAIR: You're going to also get all this disclosure which you can use as well. We accept that you might want some time to do that. We think before the defendants having to start assisting those claimants, those claimants themselves have to produce a bit of information.

MR WENT: Yes. So you're asking, in essence, that we populate the Truck Schedule as we've done with the existing 60 percent of claimants, but the remaining 40 per cent, obviously, in terms of numbers -- yes. We understand that. To be clear, there is all the information coming from the defendants, which will be considerable as well. As we said, we also have in mind that there is going to be considerable information that will be available from the other OEMs as well, assuming that they're joined to these proceedings. So that also needs to be taken into account as well.

THE CHAIR: Of course, people on your schedule will not have got their truck from any of these three defendants, but will have got it from other areas.

MR WENT: Maybe some umbrella trucks.

THE CHAIR: Yes. I mean, we see that even from the schedule that we've got.

Yes. How long do you think -- well, you're not subject to an order, because we're not making an order against the defendants on those claimants, but it would be actually helpful to know how long you think you need to produce a further schedule for those. Is it 11,000 approximately claimants?

MR WENT: It's almost 11,000. You're talking about the claimants that haven't yet provided the VOL data. It's a smaller portion, something like 4,000 I think.

But to be clear, as I said, we need to be able to mine information we're getting from the defendants in relation to these. We also will need to mine the information that we then expect we will get from the other OEMs as well. But of course, that won't happen until presumably sometime early next year. So we say it's important --

THE CHAIR: In the meantime, you can be writing to the claimants themselves.

MR WENT: They can certainly be written to again. And as I said, there is also a plan to try and get more VOL data from the office of traffic commissioner, as well. So they can certainly be written to, yes. (Pause)

I think that the slight difficulty in terms of a timescale is obviously we don't know when we're going to get the disclosure from the other OEMs, assuming they're joined as anticipated.

THE CHAIR: Yes.

MR WENT: And as I said, we would obviously want to take that into account from these defendants. As I said, we're getting 10,000 files. That's obviously going to take some time to work through. One assumes there is going to be at least a similar volume of information from the other OEMs.

So I think that that's just the (inaudible) in terms of committing to any time period now. You know, if we were clear as to when we were getting the other disclosure from the OEMs, then it would be easier. But I believe we can obviously commit to writing to them in the meantime.

THE CHAIR: Yes. There may be -- I mean, I suspect there will be significant information you don't get from this disclosure, which you will need anyway. I mean, there are two questions: one is when there will be the next CMC, which is the one where you'll be seeking SPO as a common issue.

MR WENT: Yes.

THE CHAIR: -- and that we said should be late in the first quarter of next year.

MR WENT: Yes.

THE CHAIR: Now, we should leave it that you use your best endeavours to try and do this by the time of that CMC, and we'll see where you've got to. If you need extra time, you then ask for it. I mean, that would be sort of --

MR WENT: We're content with that.

MR SINGLA: Sir.

THE CHAIR: Yes, Mr Singla.

MR SINGLA: We respectfully agree with what the Tribunal has said about the onus being on the Class Members to actually do some work and engage with the RHA. But in my respectful submission, what you have effectively ordered the RHA to do as regards those represented persons with trucks outside of the schedule -- that's an exercise which ought to be carried out as well by those represented persons with trucks in the schedule, and that's for a couple of reasons.

The first is, as I said earlier, it's common ground -- and I can give you the references if one needs to turn up Ms Haigh's evidence -- but it is common ground that the Truck Schedule is principally based on VOL data, and it is common ground that the VOL

data is not sufficient to prove eligibility in the class. To give you two or three concrete examples: on the VOL data, one doesn't actually know whether a truck is new or used. One might think that's fairly fundamental where we have two different classes; the VOL data doesn't allow us to know whether trucks belong in the new truck class or the used truck class.

We don't know the prices that were actually paid by any of the represented persons, because it's all based on list prices, not transaction prices.

And we don't know from the VOL data whether, for any of the represented persons, even leaving aside the issue about clusters, there was in fact acquisition. Again, this is all accepted by Ms Haigh, quite fairly and properly.

We say, for that reason, one mustn't lose sight of the fact that this is not merely about VOC; this is also about whether these represented persons should be in the class or not. For that reason, there's an exercise to be done in respect of the 58 percent as well.

The second point is that, as we have said recently -- but as we also said back in 2018 -- the defendants and certainly speaking for Iveco, but from Iveco's perspective, we have said repeatedly and consistently that we're not going to have some of this data. For Mr Went to say he wants to see our disclosure -- indeed, he wants to see disclosure from the other OEMs -- before he actually asks his own clients for their documents, we say that's completely misguided in circumstances where we've said we will not have a lot of this material.

Again, I can take you to the references if I need to, but in my submission, this is an exercise that ought to have been done already, and if it's going to be done in respect of the 42 percent, it ought to be done by all the Class Members. Otherwise, one's going to have a bifurcated situation where some of the Class Members have been asked all the right questions, and others haven't been, and we'll be back before the

Tribunal in due course, saying, "Well, it's all very interesting that we have VOL data in respect of 58 percent, but we don't accept, and nor are the RHA saying, that the VOL data proves class membership".

If one's actually going to make meaningful progress in this respect, we do submit that this process should be undertaken by all of the Class Members. We do say it's very striking -- not only for the 42 percent, that they're relying on the representations that people are within the class -- but for the 58 percent, they're relying on the VOL data. It's particularly surprising in a world where they told the Tribunal they were going to prove VOC and get records from the Class Members, and the Class Members were asked to retain records. All of that's set out in correspondence and Mr Burnett's evidence.

Sir, the reason we say this actually raises quite a fundamental point about the future conduct of these proceedings is we say there is a point at which the RHA and the Tribunal will need to grapple with whether any of these represented persons are properly within the class or not, and we say the case shouldn't move forward as regards those represented persons unless they provide sufficient evidence that they're in the class.

So simply relying on VOL data, defendant disclosure, other OEM disclosure, is plainly inadequate. Sir, in my respectful submission one can debate timing issues in due course, but as regards the principle, there's actually no principled distinction between the 42 percent and the 58 percent.

THE CHAIR: Yes, thank you. Just a moment. (Pause)

Mr Singla, we hear what you say. We think that there will be some point at which the RHA may have to seek information from the others, but we think at the moment, until the next CMC, they should be concentrating on those who operated the 35,000 trucks, which is probably largely the smaller operators, where they didn't get data, and you'll

be populating the schedule for the others, and this will be a subsequent stage. So we're not going to make any order in that respect.

The one other thing -- you may tell me there's more, but I have got down there's also the issue of the dissolved companies, and how long should be allowed for the RHA to sort of complete the process of allowing them to be restored to the register. I think the defendants have said three months.

MR SINGLA: I apologise, there was actually a typographical error in our skeleton; it's four months from the CMC.

THE CHAIR: Four months?

MR SINGLA: Yes, and the RHA in correspondence said it takes about 12 to 16 weeks, so we don't actually see the problem.

THE CHAIR: Yes, well, I think you've also said, fairly reasonably, in footnote 36, you'd: "... look favourably upon any request for an extension of this deadline if there's evidence the restoration process for a particular dissolved company has been commenced, but not completed ahead of the deadline." [as read]

So it doesn't have to be completed in the four months, but I think it does seem reasonable that within four months, either they have been restored or at least they have applied to be restored.

MR WENT: That's understood.

THE CHAIR: And I think we would order in those terms. If in four months they still haven't applied, I think they will drop out.

MR WENT: That's understood.

THE CHAIR: Yes.

Is there anything else on the schedules then for us to address now?

MR WENT: There was just one point which I was going to raise earlier, which I hadn't got around to. Just to make clear, it's the RHA, as overall class rep, that is responsible

for obtaining this type of information from Class Members, et cetera. That hasn't been RUTL's responsibility, so to the extent that defendants have been seeking that RUTL be obtaining this information, we say that's not correct; it's RHA that's doing this process.

THE CHAIR: Well, I don't think they mind who does it. They want the information.

MR WENT: Yes, That's understood, but just --

THE CHAIR: The order will be regarding the RHA.

MR WENT: Exactly.

THE CHAIR: Yes.

MR WENT: I don't think there's anything else on the schedule. There were certain things that were said by my learned friend with which we certainly don't agree, but I'm not sure there's much mileage in.

THE CHAIR: Yes, I don't think we're going into who's been dilatory or not.

MR WENT: Indeed -- well, no, it was a slightly different issue, but I won't trouble the Tribunal --

THE CHAIR: Fine. Is there anything else on disclosure? No. Good. We've noted the information barrier breach and that the conflict supervisor's only got at the moment an interim report, and he's going to produce a final report.

MR WENT: Yes.

THE CHAIR: And I don't think we should do anything before getting that final report, including any question of costs that will have to be looked at, but we think it's better to wait for the final report.

I think if enquiries could be made of him as to when he expects to produce his final report, obviously we would wish to have it before the next CMC, and I can't see any reason it should not be produced by that CMC.

MR WENT: No, that makes sense.

THE CHAIR: We recognise there's a cost issue on that that will have to be addressed. Is there anything else on the agenda that we need to deal with today?

MR WENT: Not from our perspective, no.

THE CHAIR: From any of the defendants?

Then I think, subject to the question of the costs of RUTL's amendment application, for the rest, I would have thought it should be costs in the case; is that accepted? Yes. Thank you all very much. That concludes these proceedings.

(4.48 pm)

(The hearing concluded)

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Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
…	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?