



IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES
COMPETITION LIST (ChD)

HC-2016-003442

THE HONOURABLE MR JUSTICE ROTH

13 June 2018

BETWEEN:

ROYAL MAIL GROUP LIMITED

Claimant

-and-

(1) DAF TRUCKS LIMITED
(2) DAF TRUCKS N.V.
(3) DAF TRUCKS DEUTSCHLAND GMBH
(4) PACCAR INC
(5) PACCAR FINANCIAL PLC
(6) LEYLAND TRUCKS LIMITED

Defendants

DIRECTIONS ORDER

UPON HEARING Leading Counsel for the Claimant and Leading Counsel for the Defendants at a Case Management Conference on 13 June 2018

IT IS ORDERED that:

Transfer to the Competition Appeal Tribunal

1. Such part of these proceedings as relates to a claim to which section 47A of the Competition Act 1998 applies and such part of the proceedings as relates to an infringement issue (as defined in section 16(6) of the Enterprise Act 2002) are transferred to the Competition Appeal Tribunal ("the Tribunal") for its determination of those issues pursuant to section 16(4) of the Enterprise Act 2002 and/or section 16(1) of that Act together with Regulation 2(a) of the Section 16 Enterprise Act 2002 Regulations 2015.
2. The sending of this Order to the parties and the Tribunal shall constitute notice to them for the purposes of paragraphs 8.5 and 8.12 of Practice Direction 30 and CPR Rule 30.4(1).
3. For the avoidance of doubt:

- (a) neither this Order giving effect to the said transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Claimant's claim as constituted in this court prior to the transfer taking effect. If and to the extent that any element of the Claimant's claim as constituted in this court prior to the transfer taking effect is not capable of falling within the jurisdiction of the Tribunal on a transfer, or would be altered, limited or excluded by this Order or the transfer, it is not subject to this Order and remains within the jurisdiction of this court;
- (b) the proceedings were and shall continue to be regarded as having been commenced in this court. Any further statements of case or amendments to a statement of case shall be made in accordance with the Civil Procedure Rules and not with the Competition Appeal Tribunal Rules 2015 ("the CAT Rules");
- (c) any appeal to the Court of Appeal against the determination by the Tribunal of the issues transferred or an order of the court giving effect to that determination shall be governed by the rules in CPR Part 52; and
- (d) this court may give such further directions or make such further order as it thinks fit in connection with the transfer and/or with any such element as referred to above.

Amendments to statements of case

- 4. The Claimant shall circulate draft Re-Amended Particulars of Claim to the Defendants by no later than 21 September 2018.
- 5. The Defendants shall confirm by no later than 28 September 2018 whether they consent to the proposed amendments pursuant to CPR 17.1(2)(a). If the Defendants consent to the amendments sought, the Claimant shall file at the Tribunal the draft Re-Amended Particulars of Claim in the form agreed to with a request for an order for permission to amend.
- 6. To the extent the Defendants do not consent to the amendments sought, the Claimant shall make any application to the Tribunal for permission to amend its Amended Particulars of Claim by no later than 5 October 2018.
- 7. Within the later of:
 - (a) 35 days of receipt of the Draft Re-Amended Particulars of Claim; and
 - (b) 21 days of receipt of the Re-Amended Particulars of Claim as permitted by the Tribunal

the Defendants shall serve and file their Re-Amended Defence in response thereto. Those amendments may include any consequential amendments arising from the Amended Defendants' Statement of Case on Foreign Law (see paragraph 9 below).

8. Within 21 days of receipt of the sealed Re-Amended Defence, the Claimant shall (if so advised) serve and file its Amended Reply.

Statements of case on foreign law

9. By no later than 21 September 2018, the Defendants shall file and serve an Amended Defendants' Statement of Case on Foreign Law.
10. Within 35 days of receipt of the Amended Defendants' Statement of Case on Foreign Law, the Claimant shall file and serve an Amended Claimant's Response to the Defendants' Statement on Foreign Law.
11. Within 21 days of receipt of the Amended Claimant's Response to the Defendants' Statement on Foreign Law, the Defendants shall (if so advised) file and serve an Amended Reply on Foreign Law.

Costs of amendments to statements of case

12. The costs of and occasioned by any of the above amendments shall be reserved.

Disclosure by the parties / the provision of information for the economic experts' analyses

Cost of materials for Truck manufacture

13. By no later than 13 July 2018, the Defendants' expert economist is to write to the Claimant's expert indicating how he proposes to address variations in the cost of materials used in the manufacturing of Trucks in his econometric analysis.
14. By no later than 20 July 2018, the parties' experts are to meet in the absence of legal representatives and on a without prejudice basis, to discuss how the variation in price of materials can be addressed and what available data is required for that purpose for use in their econometric analysis, given the need for proportionate disclosure. As soon as is practicable thereafter, the parties' experts are to produce a joint statement setting out their conclusions and any points of disagreement.

Prices paid by the Claimant

15. By no later than 4 July 2018, the Claimant is to provide to the Defendants a schedule setting out the price that it says is the effective price it paid in respect of all Trucks sold to it by the Defendants from January 1994 to September 2017 (inclusive), explaining the basis for any adjustments made to the invoice prices (the "Effective RM Prices").
16. By no later than 25 July 2018, the Defendants are to respond to the Claimants' schedule indicating which matters are agreed and/or what further adjustments they contend should be made to the Effective RM Prices, explaining the basis for any such adjustments.

Further economic disclosure

17. By no later than 12 October 2018, the parties shall disclose by list the documents in their control falling within the categories set out in Annex 1 to this Order, under the respective headings "Claimant disclosure" and "Defendants' disclosure" as appropriate.
18. The documents to be disclosed pursuant to paragraph 17:
 - (a) may be confined to the best available evidence about the information which is the subject matter of the listed categories, which may be in the form of electronic databases or other electronic documents, save where (i) the party concerned does not in fact keep any documents in respect of that subject matter in electronic form, or (ii) although it does keep documents in respect of that subject matter in electronic form, the relevant information in those electronic documents is unreliable in view of the way in which it was collected, or (iii) the best available evidence falls instead to be obtained from hard copy documents or a combination of hard copy documents and electronic databases or other electronic documents. In each case, the party disclosing information pursuant to this provision should explain why the evidence it is providing is the "best available evidence" and why further disclosure is not proportionate, in particular if the excluded information is within an electronic database;
 - (b) if contained in the form of an electronic database or extract therefrom, should be provided in their native electronic format, together with a statement on how the relevant information has been compiled for the database, and, if appropriate, guidance on how it is to be examined; and
 - (c) shall include documents in the public domain.
19. In the event that the disclosure of documents referred to in paragraph 17 above in respect of any of the categories listed in Annex 1 is considered by the party concerned to be disproportionately costly, that party may, in the alternative to giving disclosure, directly provide information on the matters specified, by 12 October 2018. Where information is provided in lieu of disclosure it shall be verified by a statement of truth and supported by a description of the sources from which the information concerned has been compiled and an explanation as to why the underlying disclosure is disproportionately costly.

Disclosure Statements

20. The parties' disclosure by list, given pursuant to paragraph 17 above, shall be accompanied by disclosure statements within the meaning of CPR Rule 31.10(6)(7) and (9).

Inspection of documents and provision of copies

21. Requests for inspection of documents disclosed above shall be made within 7 days after service of the lists. Copies of documents requested to be inspected shall be provided within 7 days of making the request.

Further case management conference ("CMC")

22. A further CMC shall be listed in the Tribunal on a date to be fixed in November 2018 with a time estimate of 1 day.

Witness Statements

23. On 12 October 2018 the parties shall exchange a list of the witnesses of fact on whom it is their intention to rely, with a job title and job description for each witness and a brief explanation of what matters that witness intends to speak to.
24. Either party may amend its list of witnesses at any time before exchange of witness statements provided that it notifies the other party once it has decided to call an additional witness or not to call a witness on the list provided pursuant to paragraph 23.
25. The parties shall exchange signed statements of witnesses of fact by 13 February 2019. Before exchange the parties shall liaise with a view to agreeing a method of identification of any documents referred to in the witness statements.
26. Where a party intends to rely on hearsay evidence at trial which is not contained in a witness statement, the party is to serve a notice on the other party which identifies the hearsay evidence, states that the party serving the notice proposes to rely on the hearsay evidence at trial, and gives an explanation of why the witness will not be called. The party proposing to rely on the hearsay evidence must serve the notice no later than the latest date for serving witness statements, and if the hearsay evidence is to be in a document, supply a copy to the other party if requested to do so.
27. By 6 weeks after the date of exchange of the factual witness statements referred to in paragraph 25 above, the parties shall exchange signed statements of witnesses of fact and any hearsay notice as aforesaid in response.

Experts

28. The experts shall by 12 April 2019 hold without prejudice discussions in the absence of legal representatives for the purpose of:
 - (a) Identifying the issues, if any, between them;
 - (b) Explaining their respective proposed approach and methodology in relation to addressing the issues; and
 - (c) Where possible, reaching agreement on those issues.

29. The experts' main reports shall be exchanged by 13 May 2019, with any reports in reply to be exchanged by 12 July 2019, and any additional supplemental reports to be exchanged by 2 August 2019.
30. The experts shall by 27 August 2019 hold a further without prejudice discussion in the absence of legal representatives for the purpose of:
 - (a) identifying and further narrowing the issues, if any, remaining between them; and
 - (b) where possible, reaching agreement on those issues.
31. The experts shall by 27 September 2019 prepare and file a statement for the court showing:
 - (a) those issues on which they are agreed; and
 - (b) those issues on which they disagree and a summary of their reasons for disagreeing.

Costs

32. Subject to paragraph 12 above, costs in the case.

Other

33. Liberty to apply.
34. Within 7 days of the Case Management Conference on 13 June 2018, the parties shall agree and submit to the Court a form of order reflecting the Directions ordered during the CMC, for the Court's consideration and approval. If the parties are unable to agree a form of order within 7 days of the CMC, each party shall, by that date, submit their own proposed forms of order for the Court's consideration.
35. This order shall be served by the Claimant on the defendants.
36. The court has provided a sealed copy of this order to the serving party:

Bryan Cave Leighton Paisner LLP at Adelaide House,
London Bridge, London, EC4R 91-IA Ref:
AHOC/ECSN/37872.