



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1284/5/7/18 (T)
1290/5/7/18 (T)

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

AND BETWEEN

- (1) **BT GROUP PLC**
(2) **BRITISH TELECOMMUNICATIONS PUBLIC LIMITED COMPANY**
(3) **BT FLEET LIMITED**

Claimants

-and-

- (1) **DAF TRUCKS LIMITED**
(2) **DAF TRUCKS N.V.**
(3) **DAF TRUCKS DEUTSCHLAND GMBH**
(4) **PACCAR INC**

Defendants

ORDER

UPON hearing Leading Counsel for the Claimants and Leading Counsel for the Defendants at a Case Management Conference on 21 and 22 November 2018 (the “CMC”)

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

- The "**Royal Mail Proceedings**" means the claim bearing case number 1284/5/7/18(T). References to "**Royal Mail**" are to the Claimant and references to the "**Royal Mail Defendants**" are to the Defendants in that claim;
- The "**BT Proceedings**" means the claim bearing case number 1290/5/7/18(T). References to "BT" are to the Claimants and references to the "**BT Defendants**" are to the Defendants in that claim;
- "**The Claimants**" means Royal Mail and BT and "**The Defendants**" means the Royal Mail Defendants and the BT Defendants;

AND UPON Royal Mail seeking permission to amend its Amended Particulars of Claim in the Royal Mail Proceedings in the form of the draft Re-Amended Particulars of Claim at Annex 4 to this Order;

AND UPON the Royal Mail Defendants refusing to consent to certain of the amendments in the draft Re-Amended Particulars of Claim, as highlighted in yellow in Annex 4 to this Order (the "Disputed Amendments"), on the basis of their contention that, pursuant to section 35 Limitation Act 1980, there is no jurisdiction to grant permission to allow the Disputed Amendments;

AND UPON Royal Mail stating that it will not seek to contend that the Royal Mail Defendants have no reasonably arguable case for the purposes of CPR rule 17.4 that the Disputed Amendments were outside the applicable limitation period as at 22 November 2018 and agreeing with the Royal Mail Defendants that other questions going to the jurisdiction to grant permission to make the Disputed Amendments under section 35 Limitation Act 1980 and CPR rule 17.4 were to be deferred until trial;

AND UPON Royal Mail giving the Undertaking set out in Annex 3 to this Order ("the Royal Mail Undertaking")

IT IS ORDERED THAT

Joint case management

1. Case No. 1284/5/7/18 (T) and Case No. 1290/5/7/18 (T) shall be jointly case managed, with joint directions and timetable. The two cases shall be heard together and evidence in each case shall stand as evidence in the other case.
2. The parties have liberty to apply to have the order in paragraph 1 above modified.

Previous Directions Order

3. In respect of Royal Mail and the Royal Mail Defendants, paragraphs 25 to 31 of the directions order of Mr Justice Roth dated 21 June 2018 (the "June Directions Order") are discharged.

Amendments to the Royal Mail pleadings

4. Royal Mail has permission to amend its Amended Particulars of Claim in the form of the draft Re-Amended Particulars of Claim at Annex 4 to this Order save that, in

respect of the Disputed Amendments, permission is granted on the basis that the effect of the amendment is not, for limitation purposes, to give rise to a relation back of the Disputed Amendments to the date of the issue of the Royal Mail proceedings, unless Royal Mail can show at trial that, for the purpose of section 35 Limitation Act 1980:

- a. the Disputed Amendments do not add or substitute a new claim or claims; or,
 - b. in respect of any Disputed Amendments which do add or substitute a new claim or claims, each new claim arises out of the same facts or substantially the same facts as the claim which is pleaded in the Amended Particulars of Claim.
5. Royal Mail shall file and serve its Re-Amended Particulars of Claim by 3 December 2018.
 6. The Royal Mail Defendants shall file and serve their Re-Amended Defence in response by 31 January 2019.
 7. Royal Mail shall file and serve its Amended Reply by 21 February 2019.
 8. The costs of Royal Mail's application to amend the Amended Particulars of Claim and the costs of and occasioned by Royal Mail's Re-Amended Particulars of Claim, the Royal Mail Defendants' Re-Amended Defence and Royal Mail's Amended Reply shall be costs in the case.

Amendments to BT's Particulars of Claim

9. BT shall circulate draft Amended Particulars of Claim to the BT Defendants by no later than 11 January 2019.
10. The BT Defendants shall confirm within 14 days of receipt of the draft Amended Particulars of Claim whether they consent to the proposed amendments pursuant to CPR 17.1(2)(a). If the BT Defendants consent to the amendments sought, BT shall file at the Tribunal the draft Amended Particulars of Claim in the form agreed to with a request for an order for permission to amend.
11. To the extent the BT Defendants do not consent to the amendments sought, BT shall make any application to the Tribunal for permission to amend its Particulars of Claim within 14 days of consent being withheld.
12. Within the later of:
 - a. 35 days of the receipt of the Draft Amended Particulars of Claim; and
 - b. 21 days of receipt of the Amended Particulars of Claim as permitted by the Tribunal

the BT Defendants shall serve and file their Amended Defence in response thereto.

13. Within 21 days of receipt of the sealed Amended Defence, BT shall (if so advised) serve and file its Amended Reply.

Disclosure of the Commission Decision in the BT Proceedings

14. The copy of the decision of the Commission of the European Union dated 19 July 2016 in Case AT.39824 – Trucks (the “**Decision**”) disclosed pursuant to the Order of Mrs Justice Rose dated 18 December 2017, in the Royal Mail Proceedings is hereby deemed disclosed also to BT into the confidentiality ring established by separate order in the BT Proceedings (the “**BT Confidentiality Ring**”).

Documents on the European Commission’s administrative file

15. The documents on the Commission’s administrative file relating to its investigation in case AT.39824 –Trucks (the “File”) as disclosed pursuant to the Order of Mrs Justice Rose dated 18 December 2017, in the Royal Mail Proceedings (the “Royal Mail version of the File”) are hereby deemed disclosed also to BT into the BT Confidentiality Ring.

Scope of Decision

16. By 4.00pm on 7 December 2018, the Claimants are to produce a schedule identifying each finding in sections 3, 4 and 7 of the Decision on which they wish to rely as binding on the Addressees of the Decision and their basis for contending that it is binding (the “**Recital Schedule**”).
17. By 4.00pm on 15 January 2019, those Defendants who are Addressees of the Decision are to respond by identifying, in the Recital Schedule, for each finding: (a) whether they accept that it is binding; and (b) if not the basis on which they disagree, unless they admit that finding in fact.

Pass on

18. By 4.00pm on 31 January 2019, the Claimants shall file and serve a brief statement summarising the goods or services which they supplied using the trucks that are the subject of their claims. The Claimants shall have liberty to apply.

Liability of non-addressees

19. By 4.00pm on 7 December 2018, the Claimants are to file and serve a pleading setting out the basis on which they contend that each of those Defendants who were not addressees of the Decision are liable for the alleged infringement (the “**Non-Addressee Pleading**”).
20. By 4.00pm on 9 January 2019, the Defendants are to file and serve a response to the Non-Addressee Pleading.

Further economic disclosure in the Royal Mail Proceedings

21. By no later than 25 January 2019, the Royal Mail Defendants shall disclose by list the documents in their control falling within the O8 disclosure category set out in Annex 1 to this order.

Disclosure by the parties or the provision of information for the economic experts' analyses in the BT Proceedings

22. Categories O1 to O7 and O9 set out in Annex 2 to this Order under the heading "Defendants' disclosure" (in the form already disclosed in the Royal Mail proceedings) are hereby deemed disclosed also to BT into the BT Confidentiality Ring.
23. By no later than 22 February 2019, BT and the BT Defendants shall disclose by list the documents or information in their control falling within the remainder of the categories set out in Annex 2 to this Order, under the respective headings "Claimants' disclosure" and "Defendants' disclosure" as appropriate.
24. By no later than 29 March 2019 BT is to provide to the BT 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 BT Defendants from January 1994 to September 2017 (inclusive), explaining the basis for any adjustments made to the invoice prices (the "**Effective BT Prices**").
25. By no later than 26 April 2019, the BT Defendants are to respond to BT's schedule indicating which matters are agreed and/or what further adjustments they contend should be made to the Effective BT Prices, explaining the basis for any such adjustments.
26. The documents to be disclosed pursuant to paragraphs 21 to 23:
 - 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.
27. In the event that the disclosure of documents referred to in paragraphs 21 and 23 above in respect of any of the categories listed in Annex 2 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 25 January 2019 or 22 February 2019 (respectively). 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.
28. Where categories set out in Annex 2 provide for a sample of relevant documents to be provided, the basis on which such a sampling approach has been adopted, and an explanation as to why this is reasonable and proportionate in the circumstances, shall be set out in the disclosure statement to be provided pursuant to paragraph 30 below.

Disclosure into the confidentiality rings

29. The parties may choose to disclose documents into the confidentiality ring established in the Royal Mail Proceedings (the "**Royal Mail Confidentiality Ring**") and/or the BT Confidentiality Ring in accordance with the terms of the confidentiality ring orders in those proceedings. If any party chooses to disclose documents into a confidentiality ring, they must disclose the documents into both the Royal Mail Confidentiality Ring and the BT Confidentiality Ring unless the party provides upon disclosure a written explanation of why the particular documents being disclosed should only be disclosed into one of the confidentiality rings.

Disclosure statements

30. The parties' disclosure by list, given pursuant to paragraphs 23 and 25 above, shall be accompanied by disclosure statements within the meaning of CPR Rule 31.10(5) – (7) and (9).

Inspection of documents and provision of copies

31. 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 hearings

32. A further Case Management Conference is to be listed by the Tribunal for two days on dates convenient to the Tribunal and, as far as possible, the parties' counsel.

Confidentiality claims

33. By no later than 21 days prior to the next Case Management Conference, the Defendants shall file and serve a document setting out their positions as to whether documents or categories of documents deriving from the File, that have been disclosed to the Claimants, should continue to be afforded confidential treatment and, if so, why.

Extension of time limits

34. The parties may agree to extend any time period to which the proceedings may be subject for a period or periods of up to 28 days in total without reference to the Tribunal, provided that this does not affect the date given for any case or costs management conference or pre-trial review or the date of the trial. The parties shall notify the Tribunal in writing of the expiry date of any such extension.

Settlement

35. If the claims or any part of the claims is settled, the settling parties must immediately inform the Tribunal, whether or not it is then possible to file a draft consent order to give effect to the settlement.

Costs

36. Costs in the case.

OTHER

37. Liberty to apply.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 21-22 November 2018
Drawn 19 December 2018