



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1292/5/7/18 (T)
1293/5/7/18 (T)
1294/5/7/18 (T)

BETWEEN:

(1)– (339) SUEZ GROUPE SAS AND OTHERS

Claimants

- and -

(1)– (4) FIAT CHRYSLER AUTOMOBILES N.V. AND OTHERS

Defendants

- and -

(1)– (15) IVECO S.P.A. AND OTHERS

Third Parties

AND BETWEEN:

(1)– (139) VEOLIA ENVIRONNEMENT S.A. AND OTHERS

Claimants

- and -

(1)– (15) FIAT CHRYSLER AUTOMOBILES N.V. AND OTHERS

Defendants

- and -

(1)– (4) PACCAR INC AND OTHERS

Third Parties

AND BETWEEN:

(1)– (153) WOLSELEY UK LIMITED AND OTHERS

Claimants

- and -

(1) – (4) FIAT CHRYSLER AUTOMOBILES N.V. AND OTHERS

Defendants

- and -

(1)– (15) MAN SE AND OTHERS

Third Parties

ORDER

UPON hearing Leading Counsel for the Claimants and Leading Counsel for the Defendants and Third Parties 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 “Disclosure Order” means the disclosure order made on 31 July 2018 by Mr Justice Roth;
- “DAF” means the 14th and 15th Defendants and 1st Named Third Party in Case 1293/5/7/18 (T), the 3rd and 4th Defendants and 14th and 15th Named Third Parties in Case 1292/5/7/18 (T) and the 3rd and 4th Defendants and 8th and 9th Named Third Parties in Case 1294/5/7/18 (T);
- “Iveco” means the 1st to 4th Defendants in Case 1293/5/7/18 (T), the 1st and 2nd Defendants and 1st and 2nd Named Third Parties in Case 1292/5/7/18 (T) and the 1st and 2nd Defendants and 14th and 15th Named Third Parties in Case 1294/5/7/18 (T);
- “MAN” means the 5th to 8th Defendants in Case 1293/5/7/18 (T), the 3rd to 5th Named Third Parties in Case 1292/5/7/18 (T) and the 1st to 3rd Named Third Parties in Case 1294/5/7/18 (T);
- “Volvo/Renault” means the 9th to 13th Defendants in Case 1293/5/7/18 (T), the 6th to 9th Named Third Parties in Case 1292/5/7/18 (T) and the 4th to 7th Named Third Parties in Case 1294/5/7/18 (T);
- “Daimler” means the 10th Named Third Party in Case 1294/5/7/18;
- “Scania” means the 3rd to 5th Named Third Parties in Case 1293/5/7/18 (T), the 11th to 13th Named Third Parties in Case 1292/5/7/18 (T) and the 11th to 13th Named Third Parties in Case 1294/5/7/18 (T);
- “Wolseley Claimants” means the 1st to 153rd Claimants in Case 1294/5/7/18;
- “Main Claims” means the Part 7 claims;
- “Claimants” means the Claimants in the Main Claims;
- “Additional Claims” means the Part 20 claims (including by way of contribution notice), other than the Daimler claim against the Wolseley Claimants;
- “Additional Defendants” means the Defendants in the Additional Claims;
- “Defendants” means the Defendants to the Claims and the Defendants in the Additional Claims;

- “Main Defendants” means the Defendants in the Main Claims;
- “Decision” means the European Commission’s Decision Dated 19 July 2016 in Case AT.39824 - Trucks.

IT IS ORDERED THAT:

Case management

1. The Main Claims and the Additional Claims shall be case managed together.
2. The Main Claims shall be heard together and the evidence in one case shall stand as evidence in the other cases.
3. The Additional Defendants, including Scania, shall be allowed to participate in the trial of the Main Claims. Insofar as the Additional Claims raise issues regarding the overall loss and damage suffered by the Claimants, or the liability of the Main Defendants to compensate the Claimants for such loss and damage, such issues shall be tried with the Main Claims. Insofar as the Additional Claims raise issues regarding the amount or apportionment of contribution which any Defendant should make to any other Defendant, such issues shall be tried separately from and subsequently to the Main Claims. The question of whether the liability of the Additional Defendants should be tried with the Main Claims is reserved until the next CMC.

Amendments and pleadings

4. By 4.00pm on 7 December 2018, the Claimants are to confirm in correspondence whether the geographic scope of the infringement alleged in the Main Claims extends to trucks purchased and/or leased outside the EEA.
5. Insofar as the Claimants wish to amend their Particulars of Claim regarding the time period, geographic scope, and/or products alleged to be covered by the infringement, they must circulate to the other parties draft amendments by no later than 4.00pm on 31 January 2019.
6. The Defendants shall confirm by no later than 21 February 2019 (or within 21 days of receipt of the draft amendments, if earlier) whether they consent to the

proposed amendments pursuant to CPR 17.1(2)(a). If the Defendants consent to the amendments sought, the Claimants shall file at the Tribunal the amendments to their Particulars of Claim in the form agreed to with a request for an order for permission to amend.

7. To the extent the Defendants do not consent to the amendments sought, the Claimants shall make any application to the Tribunal for permission to amend their Particulars of Claim by no later than 28 February 2019 (or within 7 days of receipt of all of the Defendants' confirmations under paragraph 6 above, if earlier).
8. By 4.00pm on 14 December 2018, DAF shall provide a full and proper response to the Request for Information sent to it by the Claimants on 19 June 2018 in order to clarify whether its factual position in these proceedings is that it was not involved in any exchange of information including computer-based truck configurators.

Scope of Decision

9. By 4.00pm on 11 January 2019, the following Defendants shall file and serve an explanation as to why, as a matter of fact, they contend that the following vehicles do not fall within the scope of the Decision: Iveco as regards its 'Daily' range; Daimler as regards its 'Sprinter' range; and Volvo/Renault as regards its car transporters and road sweepers. By 4.00pm on 8 February 2019, the Claimants are to file and serve a response stating whether they accept the Defendants' stance and if not why not.
10. 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**"). 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

11. 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 the subject of their claims.

Liability of non-addressees

12. 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 Main Defendants who were not addressees of the Decision are liable for the alleged infringement. By 4.00pm on 9 January 2019, the Defendants are to file and serve a response.

Further information from Claimants

13. By 4.00pm on 21 December 2018, the Claimants shall provide the Defendants with a spreadsheet containing information about Iveco trucks in the same form as they have already provided in relation to trucks manufactured by the other Defendants in the Claimants' 22 June 2018 response to Scania's Request for Information, plus additional columns identifying to the extent reasonably possible the country of purchase or lease and date of purchase or lease.
14. By 4.00pm on 21 December 2018, the Claimants shall provide a summary of the number of trucks which are the subject of their claims in each jurisdiction in which they were allegedly acquired.
15. By 4.00pm on 31 January 2019, the Claimants in each Main Claim shall file one or more witness statements from their procurement manager (or equivalent executive), or if the procurement is not centralised from their procurement manager (or equivalent executive) responsible for each jurisdiction in which the Claimants allegedly acquired trucks explaining:
 - (a) the procurement policy for each Claimant or group of Claimants in each (or the relevant) jurisdiction during the period of the infringement; and
 - (b) the steps which have been taken to gather the information about their alleged truck acquisition which has been provided to the Defendants, confirming (or otherwise explaining) that they have provided as much

information as they can having made best endeavours and why it would be disproportionate for them to conduct any further searches.

16. By 4.00pm on 31 January 2019 the Claimants shall, where they become aware of further data, fill any gaps and correct any deficiencies identified in the spreadsheets previously provided to the other Defendants.

Confidentiality and disclosure

17. 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 Commission's administrative file in Case AT.39824 – Trucks, that have been disclosed to the Claimants, should continue to be afforded confidential treatment and, if so, why.
18. By 4.00pm on 21 December 2018:
 - (a) DAF Trucks N.V. and DAF Trucks Deutschland GmbH shall disclose by list and provide inspection of those documents excluded from the Disclosure Order on the ground that they relate solely to prices charged by the Defendant(s) to customers in one or more of Austria, Belgium, Czech Republic, France, Germany, Ireland, Luxembourg, the Netherlands, Poland, Slovak Republic, Spain, and Sweden.
 - (b) DAF Trucks N.V. and DAF Trucks Deutschland GmbH shall provide inspection of the documents falling within categories I, M, N, O and Q described at paragraph 18 of Annex 1 to DAF's disclosure statement dated 21 September 2018.
 - (c) The Defendants other than DAF and Iveco shall have liberty to apply in respect of categories I, M, N, O and Q by 7 December 2018.
19. The Claimants' application for the disclosure of translations be dismissed.
20. The Claimants' application for the coordination between the Defendants of their correspondence in these proceedings be dismissed.
21. The Claimants' application for quantum disclosure be adjourned.

Other matters

22. Permission is granted for MAN to bring Additional Claims against Scania in each of the claims.
23. The Wolseley Claimants' application as regards Daimler's additional claim against them be adjourned, with costs of that application reserved.
24. The Claimants' application that the Defendants be required to share a single expert be dismissed insofar as it relates to the issue of overcharge. The application be adjourned insofar as it relates to a single common expert on issues of interest and pass-on.
25. 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.
26. The parties may agree to extend any time period to which the Claims 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.

Costs

27. The costs of the CMC are in the cases.

General

28. Subject to paragraph 18(c) above there is liberty to apply.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 21-22 November 2018
Drawn: 19 December 2018