



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1295/5/7/18 (T)

BETWEEN:

- (1) DAWSONGROUP PLC
(2) DAWSONGROUP UK LIMITED
(3) DAWSONGROUP TRUCK AND TRAILER LIMITED
(4) DAWSONGROUP MATERIAL HANDLING LIMITED
(5) DAWSONGROUP SWEEPERS LIMITED

Claimants

- and -

- (1) DAF TRUCKS N.V.
(2) DAF TRUCKS DEUTSCHLAND GMBH
(3) PACCAR INC.
(4) DAF TRUCKS LIMITED
(5) DAIMLER AG
(6) MERCEDES-BENZ CARS UK LIMITED
(7) AKTIEBOLAGET VOLVO (PUBL)
(8) VOLVO LASTVAGNAR AB
(9) VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH
(10) RENAULT TRUCKS SAS
(11) VOLVO GROUP UK LIMITED

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:

“Main Claim” means the Part 7 claims issued in the High Court under claim number CP-2017-000020 and subsequently transferred to the Competition Appeal Tribunal under case number 1295/5/7/18(T);

“Additional Claims” means the Part 20 claims (including by way of contribution notice) issued in connection with these proceedings in the High Court under claim number CP-2017-000020 and subsequently transferred to the Competition Appeal Tribunal under case number 1295/5/7/18(T);

“Defendants” means the Defendants to the Main Claim and the Defendants in the Additional Claims;

“Iveco Decision Addressees” means Fiat Chrysler Automobiles N.V., CNH Industrial N.V., Iveco S.p.A. and Iveco Magirus AG.

IT IS ORDERED THAT:

Disclosure of the Commission Decision

1. The First to Third Defendants (the "DAF Decision Addressees") shall, within 7 days of the date of this Order, disclose into the confidentiality ring established in this Claim (the “Confidentiality Ring”) by separate order (the “Confidentiality Ring Order”) a 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 *Royal Mail Group Limited v DAF Trucks Limited & Others* (Claim No: HC-2016-003442).

Documents on the Commission’s administrative file

2. Subject to paragraphs 3 and 4 below, by 4pm on 21 December 2018, the DAF Decision Addressees shall disclose by list into the Confidentiality Ring the documents on the Commission’s administrative file relating to its investigation in case AT.39824 –*Trucks* which were ordered to be disclosed under paragraphs 2 and 3 of the order of Mr Justice Roth of 31 July 2018 in High Court Claim CP-2017-000022 (the “Ryder Order of 31 July 2018”) and shall provide the documents for inspection.
3. The DAF Decision Addressees may withhold from inspection, subject to the Claimants’ application for inspection of the documents under the remaining categories set out in the TS letter (defined below), the same documents that were withheld from inspection pursuant to paragraph 4 of the Ryder Order of 31 July 2018, with the exception of any documents under categories I, M, N, O, and Q described in Travers Smith LLP’s letter to Bryan Cave Leighton Paisner LLP dated 14 November 2018 (“TS Letter”).

4. Scania AB and the addressees of the Decision, save for the DAF Decision Addressees and the Iveco Decision Addressees, have liberty to apply, with reasons, by 7 December 2018 if they object to the inspection of specific documents under categories I, M, N, O, and Q described in the TS Letter.
5. There shall be a further hearing to be listed before the President sitting alone to consider the Claimants' application for inspection of the documents under the remaining categories described in the TS Letter.

Scope of Decision

6. By 4.00pm on 11 January 2019, Volvo shall file and serve an explanation as to why, as a matter of fact, it contends that its car transporters and road sweepers do not fall within the scope of the Decision. By 4.00pm on 8 February 2019, the Claimants are to file and serve a response stating whether they accept Volvo's stance and if not why not.
7. 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").
8. 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

9. 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.

Liability of non-addressees

10. 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.

11. By 4.00pm on 9 January 2019, the Defendants are to file and serve a response.

Quantum disclosure

12. By no later than 11 January 2019, DAF shall disclose by list to the Claimants, and provide for inspection, the documents or information in their control falling within the categories O1 to O7 and O9 set out in Annex 1 to this Order under the heading “DAF’s disclosure”. Daimler and Volvo shall have liberty to apply for the same disclosure.

13. The documents to be disclosed pursuant to paragraph 12 above:

(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) DAF 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, DAF 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.

14. In the event that the disclosure of documents referred to in paragraph 12 in respect of any of the categories is considered by DAF to be disproportionately costly, DAF may, in the alternative to giving disclosure, directly provide information on the matters specified (by the relevant disclosure deadline). 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.

Confidentiality claims

15. 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.

Disclosure into the Confidentiality Ring

16. The parties may choose to disclose documents into the Confidentiality Ring in accordance with the terms of the Confidentiality Ring Order.

Further Case Management Conference

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

Disclosure statements

18. DAF's disclosure, given pursuant to paragraph 12, shall be accompanied by a disclosure statement in accordance with CPR Rule 31.10(5) – (7) and (9).

Settlement

19. If the Claim or part of the Claim 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.

Extension of time limits

20. The parties may agree to extend any time period to which the Claim 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

21. Costs in the case.

Other

22. Save as provided by paragraph 4 above, there be liberty to apply.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

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