



Neutral citation [2019] CAT 18

**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

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

Victoria House  
Bloomsbury Place  
London WC1A 2EB

3 May 2019

Before:

THE HON MR JUSTICE ROTH  
(President)  
THE HON MR JUSTICE FANOURT  
HODGE MALEK QC

Sitting as a Tribunal in England and Wales

BETWEEN:

**SUEZ GROUPE SAS & OTHERS v FIAT CHRYSLER AUTOMOBILES N.V.  
& OTHERS**

**VEOLIA ENVIRONNEMENT S.A. & OTHERS v FIAT CHRYSLER  
AUTOMOBILES N.V. & OTHERS**

**WOLSELEY UK LIMITED & OTHERS v FIAT CHRYSLER  
AUTOMOBILES N.V. & OTHERS**

Heard at Victoria House on 3 May 2019

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**JUDGMENT: SPECIFIC DISCLOSURE APPLICATION**

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## APPEARANCES

Ms Marie Demetriou QC, Mr Christopher Brown and Mr Tristan Jones (instructed by Hausfeld & Co. LLP) appeared on behalf of the Claimants in the Suez Groupe SAS, Veolia Environnement S.A. and Wolseley UK Limited actions.

Mr Meredith Pickford QC, Mr Rob Williams, and Mr James Bourke (instructed by Travers Smith LLP) appeared on behalf of the DAF Defendants.

Mr Paul Harris QC, Mr Ben Rayment, Mr Michael Armitage and Ms Alexandra Littlewood (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) appeared on behalf of the Daimler Defendants.

Ms Kelyn Bacon QC, Mr Tony Singla and Mr Matthew Kennedy (instructed by Herbert Smith Freehills LLP) appeared on behalf of the Iveco Defendants.

Mr Daniel Jowell QC and Mr David Bailey (instructed by Slaughter and May) appeared on behalf of the MAN Defendants.

Mr Mark Hoskins QC, Mr Daniel Piccinin and Mr Hugo Leith (instructed by Freshfields Bruckhaus Deringer LLP) appeared on behalf of the Volvo/Renault Defendants.

Mr Jason Pobjoy (instructed by Allen & Overy LLP) appeared on behalf of the Scania Third Parties.

1. This is an application for specific disclosure in three of the actions pending before us. It is made by what are referred to as the VSW claimants as a convenient abbreviation for those three claims. They bring the application together.
2. The claims are brought against slightly different combinations of defendant groups, but for the purpose of this judgment it is unnecessary to distinguish between them. There are five defendant groups in all and in addition, as Part 20 defendants, the Scania manufacturers. Three of those groups have agreed to provide disclosure in terms that are satisfactory to VSW as regards a search for the documents sought, so the application is not pursued as against them. It is pursued as against DAF, Iveco and Scania.
3. In very brief terms, VSW have received disclosure of documents from the European Commission file. Those documents include minutes of what is called the Trucks Delivery Database Project, or "TDDB". That is the somewhat curious term for a grouping of the truck manufacturers which met annually pursuant to a formal arrangement and for which they had engaged a French company to provide secretarial services, including the taking of minutes.
4. The minutes of the annual TDDB meetings have been disclosed in that way for the years from 1999 onwards. There has also been disclosed a document called "Historical list of TDDB and BDDB meetings" (BDDB, as we understand it, being a reference to another grouping of the manufacturers). That historical list refers to meetings from 1985 onwards. It is pursuant to what is said in that document that the VSW claimants seek disclosure in these terms:

"That the defendants are to conduct a reasonable and proportionate search for the notes and/or minutes of the following meetings ..."

Then there are itemised the meetings for the years from 1985 to 1999.

5. DAF opposes that application as regards the years 1985 to 1996. It agrees to search for the minutes for the years 1997 to 1999 on the basis that those years fall within the cartel period. Iveco and Scania oppose the application as regards all years.

6. The first question is relevance. The arrangements underlying the TDDDB meetings were formally notified to the Commission under the then prevailing regime for what was Article 85 or its successor. The most recent formal notification appears, from one of the documents that we were shown, to have been made on 28 December 1992. The notification should normally include a description of what the arrangement involved in sufficient detail for the Commission to assess whether it could grant, under its then practice, negative clearance or an exemption.
7. We therefore consider that the notification is potentially relevant and should be disclosed. There is no formal application for such disclosure before us, but we will make that order pursuant to Rule 53(3)(d) of the Tribunal Rules.
8. We will make the order in the first instance as against Volvo because it appears that it may have been the solicitors for Volvo who made that notification, but there will be liberty to apply if it turns out that it was not their solicitors but those of another party. In any event, it seems to have been a formal notification made through a law firm, and we do not have any reason to suppose that it will be difficult to access and obtain a copy of that document.
9. On that basis, we do not consider that any prior documents are relevant. The cartel was found to start on 17 January 1997. We see no reasonable grounds why any pre-December 1992 documents could have any relevance to any of the issues in these cases. We note from recital (119) of the Decision that the start date found for the cartel was indeed brought back from the Commission's initial view that it was 16 January 2001 as a result of information with which it was provided by one of the leniency applicants. We consider that the Commission will have been very alert to the question of when the cartel commenced.
10. We fully appreciate that there is information asymmetry as between the claimants and a defendant involved in a secret cartel, but we have no reasonable grounds to suppose that these documents would indicate any earlier infringement. The existence of these documents was clearly flagged to the Commission, both by the minutes that were disclosed and by the historical list to which we have referred. We note that the Commission carried out an investigation of this matter stretching over five years.

11. If the documents are to be relevant, therefore, it must be on a different ground to shed light on the situation of the market before the start of the infringement. Recital (29) of the decision refers to the high level of transparency and degree of information-sharing as between the manufacturers. Part of the infringement that was found concerns what is described in somewhat general terms as the sharing of sensitive or commercially sensitive information: see recitals (51) and (81).
12. We think it will be helpful to compare what happened during the cartel with what happened in preceding years. It may assist in determining quite what information is regarded as commercially sensitive, compared to the information being shared in the few years before.
13. Mr. Pickford, for DAF, submitted that it is only the cartel years that are relevant for that purpose on the basis that what was exchanged through the TDDB was a lawful exchange. We agree that the cartel years are relevant and, therefore, we have no doubt that these minutes for the years 1997, 1998 and 1999 are relevant, but we think that the minutes for the few years before may be relevant; and by that we mean the period post the notification to the Commission, i.e. the years 1993 to 1996. Subject to the question of proportionality, those minutes accordingly should be disclosed.
14. We turn, therefore, to proportionality. What is sought in the application, as we have indicated, is that the defendants conduct a "reasonable and proportionate search" for the documents. We have seen correspondence and heard briefly from some of their counsel what the other defendants, against whom the application is not pursued, have done pursuant to VSW's request. We think that it is proportionate, at least in the first instance, to restrict the order to minutes of the meetings and not to any other notes that individuals attending may have possibly taken. It seems from the minutes which we have seen that they are reasonably full.
15. Thus, what this application, limited in this way, comes down to is four documents. Is it proportionate to require these three defendant groups to look for them? That depends on an assessment of what may be involved. We think that a reasonable and proportionate search in these circumstances involves identifying the individuals from the various defendants who attended the meetings. In that exercise, the 2000 minutes

provide a helpful starting point as they identify by name the individuals who attended the meeting in September 2000. Accordingly, what is required is, first, to ascertain from those individuals, if they either are still employed or can be readily approached, whether they went to the meetings in these previous seven years and, if not, whether they know who went instead; and then asking those individuals whether they have personally retained minutes or where they filed the minutes at their employer; and thirdly, seeing if those files can be found or accessed without excessive cost.

16. Ms. Bacon, for Iveco, said that the individuals as regards her client would be in Italy, not in the United Kingdom. We are not impressed by that. This was an international cartel. This is international litigation and it is inevitable that disclosure will involve seeking documents abroad.
17. Accordingly, as approached in that way, we do not regard this disclosure as disproportionate. However, given that the three defendant groups have agreed to search for the documents, our order will be a contingent one. As we understand it, the latest date by which the other defendants have agreed to provide whatever they can find is 31 May 2019. If any of these minutes are not produced, then it will be for these three defendants against whom the application is pursued, that is to say DAF, Iveco and Scania, to conduct a reasonable and proportionate search for them on the basis that we have outlined. We will hear submissions from counsel as to what is the appropriate date by which they should complete their searches, which will, therefore, commence only after 31 May 2019.

The Hon Mr Justice Roth  
President

The Hon Mr Justice Fancourt

Hodge Malek QC

Charles Dhanowa OBE, QC (*Hon*)  
Registrar

Date: 3 May 2019