



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1290/5/7/18 (T)

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

CONSENT ORDER

UPON the Defendants refusing to consent to certain of the amendments in the draft Re-Amended Particulars of Claim, as highlighted in turquoise in Annex 1 to this Order (the “Additional Disputed Amendments”), on the basis of their contention that, pursuant to section 35 of the Limitation Act 1980, there is no jurisdiction to grant permission to allow the Additional Disputed Amendments

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

AND UPON BT giving the Undertaking set out in Annex 2 to this Order (the “BT Undertaking”)

BY CONSENT IT IS ORDERED THAT

Amendments to the BT pleadings

1. BT has permission to amend its Amended Particulars of Claim in the form of the draft Re-Amended Particulars of Claim at Annex 1 to this Order save that, in respect of the

Additional 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 Additional Disputed Amendments to the date of the issue of the BT proceedings, unless BT can show at trial that, for the purposes of section 35 Limitation Act 1980:

- a. the Additional Disputed Amendments do not add or substitute a new claim or claims; or
- b. in respect of the Additional 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.

Other

2. Costs in the case.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 4 September 2019
Drawn: 5 September 2019

Annex 1: BT's Re-Amended Particulars of Claim

Annex 2: The BT Undertaking

BT undertakes that it will not:

- (a) assert that the effect of the amendment, permission for which is granted by paragraph 1 of the order to which this undertaking is annexed (“the Order”), is otherwise than as stated in paragraph 1 of the Order regarding the effect of relation back and/or assert that it was not reasonably arguable that the Additional Disputed Amendments were outside the applicable limitation period as at the date of the Order;
- (b) apply to amend its Re-Amended Particulars of Claim under CPR 17.1(2) or CPR 17.4 to add a new head of loss and/or damage to its claim that relates to any alleged collusion in respect of any types of additional products or services supplied by any of the Defendants to it (as distinct from Trucks as currently included in its Re-Amended Particulars of Claim) that it has identified in the Re-Amended Particulars of Claim; and/or
- (c) issue a new claim against any of the Defendants that relates to any alleged collusion in respect of any types of additional products or services supplied by any of the Defendants to it (as distinct from Trucks as currently included in its Re-Amended Particulars of Claim) that it has identified in the Re-Amended Particulars of Claim.

For the avoidance of doubt, the above undertaking has no effect upon:

- the heads of loss and/or damage pleaded in BT’s Re-Amended Particulars of Claim and does not prevent BT from maintaining any of the allegations it has pleaded in the Re-Amended Particulars of Claim;
- BT’s claim (which is disputed by the Defendants) that goods or services (including for example standard warranties) included as part of the price for the Trucks sold to it by the Defendants, are included as value of commerce in the claim.