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Case No. : 1284/5/7/18 (T) ; 1290/5/7/18 (T) ; 1291/5/7/18 (T) ; 1292/5/7/18 (T) ; 1293/5/7/18 (T) ; 1294/5/7/18 (T) ; 1295/5/7/18 (T)

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

Rolls Building,  
7 Rolls Buildings,  
Fetter Lane  
Holborn  
London EC4Y 1NL

29 October 2020

Before:

**The Honourable Mr Justice Roth, The Honourable Mr Justice Fancourt, Hodge Malek QC**

(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

Trucks Proceedings (Case Management Conference – October 2020)

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**CMC – Day 1**

Transcript

CMC 29 October 2020

THE PRESIDENT: Good morning. These proceedings are being live streamed. However this is just as much a court hearing as if all those participating were in the Tribunal in the usual way. There is an authorised transcript being prepared but I have to start by reminding you that you are not allowed to make any recording, whether audio or video, of the proceedings. If you breach that prohibition, that is a contempt of court and punishable by imprisonment. So you have been warned.

We have a list of all counsel so there is no need for an initial introduction. All I would ask is that when you first speak, you please identify yourself and the party whom you are representing. I think that all counsel are joining remotely through MS Teams. If you lose connection at any time, please send a message and if necessary we will pause the proceedings until you can re-join.

Some of the material is marked “confidential”. We don’t anticipate there will be any need to refer to that in detail in the main part of the hearing, and if that is necessary we hope that counsel can just direct us to the relevant passage which we can then read for ourselves and then you can make reference to it in neutral terms if you wish to refer to any of the material that is confidential. However, if you do need to quote from the confidential material then please indicate that you intended to do so in which case the live stream will be turned off and we can check who is participating on the Teams platform. But if that arises, it seems to me that it will only be with regard to the disclosure applications against Daimler, which I expect we will reach only tomorrow and not today.

We will take a break in the middle of the morning and again in the course of the afternoon session. We do that, as many of you know, as a matter of routine anyway, but it is particularly important when people are joining remotely since such hearings are much more exhausting.

We thank all the parties’ representatives for their case management proposals and for the skeleton arguments which have been all the more helpful for being brief. It is clear that a lot of thought has gone into the various proposals which have been put forward.

We do have one preliminary question just to clarify something for ourselves, which is addressed to DAF. So I think that is addressed to Mr Beard and it concerns something that is said in your skeleton. If you turn that up, it is on page seven at paragraphs 14-15 where you explain the issues to be covered under the heading, “Theory of harm, causation, plausibility” you explain there that DAF intends to make an assessment as to whether there is a plausible mechanism by which the infringement could have had any effect on competition in the market. That is on the basis that this was an information sharing exchange, for the most part possibly at parent level and the question is whether it actually affected transaction prices. And there is a footnote at the bottom referring to your short statement of expert methodology. We have looked at that: I think the reference is missing from the skeleton but it is COM-C2/25. There you say that the experts intend to assess this by analysing the relationship between list and transaction price changes. Mr Beard are you following where I am at?

MR BEARD: I certainly am.

THE PRESIDENT: What we just wish to clarify is whether this analysis which your experts intend to conduct, is that based on DAF's prices, both its transaction prices as well as its list prices? Is that how it is going to be done?

MR BEARD: Yes, that's exactly right. So it will be looking at the data set that we have and look at whether or not in relation to that information there is a plausible theory of harm.

THE PRESIDENT: That's what we thought. So it will not be involving the prices of the other manufacturers' trucks?

MR BEARD: No, that would be too complicated as there are too many factors to take into account.

THE PRESIDENT: Thank you. We have read the skeletons and related proposals very carefully. One thing is clear, that there is no ideal way of dealing with the various issues across the various cases. Any route involves some disadvantages and it is always possible to come up with various objections against any route that is proposed. But we do have to decide on a route forward.

In the end we have come to a provisional view. I stress that it is provisional as we have not heard oral submissions, but if any oral submissions simply repeat points that have been made in the written submissions then I have to say it is not likely to change our thinking. Our provisional view is this.

First, we do not consider that the proposal of a common overcharge trial across all claimants and defendants, even if it were limited to the first wave claimants and UK Trucks, is practicable. With this many claimants and defendants, we think that such trial is too unwieldy and virtually unmanageable. We are also concerned that if no issues of pass-through are addressed but those are postponed for a long time, as such a trial of common overcharge would be lengthy with a corresponding delay until judgement, that would be unsatisfactory and will not in all likelihood assist settlement of any claims since in these claims pass-through is a very significant consideration. So instead, what we have in mind is this.

There would be three separate trials. The first trial is of the Royal Mail and BT claims against DAF. Those claims were the first to be brought and it seems can be ready for trial in April 2022. They involve one defendant and no Part 20 defendants. They concern only UK Trucks and as we understand it, all those trucks were purchased direct from DAF and thus there were no issues of intermediary or dealer sales. We think that the Tribunal can in one trial deal with issues of overcharge, pass-through and additional matters such as tax and interest. That should lead to a judgment either at the end of July or in about October 2022, which will therefore be of some use in the other cases, although of course it will not be binding in the other cases. We should add that just because Dawsongroup are represented by the same lawyers we see no good reason for including the Dawsongroup claim in that first trial: their claim raises different issues and involves additional defendants.

The second trial would be of the Dawsongroup and Ryder claims. They are both purchasers who were engaged in the business of leasing and renting out trucks. We are aware of the confidentiality issues between Dawsongroup and Ryder as they are competitors in the leasing/renting markets. So we envisage that this trial would proceed in three stages: first the question of overcharge, which we think can be heard together. Stage two would be the

Dawsongroup pass-through, from which stage Ryder would be excluded. Stage 3 would be the Ryder pass-through, from which correspondingly Dawsongroup would be excluded. However in so far as the question of pass-through involves evidence concerning the leasing/rental market conditions generally, it may be that for that part of pass through the two claims can be heard together. And we have in mind that although proceeding in these three stages, this trial would result in one overall judgment.

Moreover, we think that DS Smith should participate in stages two and three on the basis that, as we understand it from their solicitor letter, they accept the finding of overcharge and would address only pass-through. As we understand it, of the trucks in the DS Smith claim only about 10 were purchased, all the rest were rented or leased. We think the points made by Iveco and DS Smith regarding the importance of including the so-called overlapping trucks are powerful.

We are open to considering whether any of the VSW claimants should participate regarding those trucks in their claims which were rented or leased. We note from the schedule to the VSW skeleton that about 100 trucks were leased by those claimants from Ryder/Dawsongroup.

It would be necessary to leave sufficient time after Trial 1 before starting Trial 2, so we envisage that it could start in January 2023. The question of the length of that trial cannot be determined today. We also note that Scania does not seem to be central to that trial, but in any event the judgment of the General Court, and very possibly, the CJEU if there were a further appeal should be out by then.

The third trial would concern the VSW claims, obviously excluding any trucks which were rented from Dawsongroup/Ryder if those were encompassed in trial two. Those claims are more complicated in various ways; for example they include so-called “umbrella” trucks. And this trial should cover not only the UK trucks but the French and German trucks. There are a significant number of those: it seems that French trucks account for over 50% of the claim and all of Metro’s claim comprises German and French trucks. We think it would be unsatisfactory to leave them out until far into the future. A judgment concerning only UK trucks would not be a great assistance for consideration of the claims involving trucks in the foreign markets.

We recognise that there is a lot more work to do in those cases, but having this trial third in the sequence would allow sufficient time. Trial three would involve Scania, but by the start date of that trial, some time in late 2023, to give sufficient time after trial two, the cases in the EU courts would certainly have been decided.

Moreover, we think it may be appropriate to include Zamenhof and Hertz, as regard France and Germany: see the helpful table at Annex B to DAF’s case management proposal. The same solicitors act for those claimants as act for VSW. However, that is not a question to be resolved now and it clearly could not be resolved in the absence of those claimants. But there would be sufficient times for those claims to catch up. We leave open whether the claim by Arla regarding German trucks should also be included in Trial 3: it seems they operated a central purchasing for trucks in several territories.

Thursday, 29 October 2020

(10.30 am)

(Portion missing due to technical issue)

THE PRESIDENT: ... transaction price information which DAF has.

MR. WARD: Yes.

THE PRESIDENT: Yes, that is what we thought. So it's not involving, say, Daimler's pricing -- (temporary loss of audio feed) --

... about Dawsongroup and Ryder's claims can be heard together.

Stage 2, Dawsongroup pass-through, which would, where necessary, exclude Ryder on confidentiality grounds. And thirdly, Ryder pass-through, which can, if necessary exclude Dawsongroup on confidentiality grounds, although, insofar as pass-through may involve issues of the rental/hiring market generally and conditions in that market, it may be that part of the pass-through stages can be heard with both claims. But when I say three stages, we do not mean three separate trials with three judges all leading to one judgment.

Moreover, we think that DS Smith should participate in stages 2 and 3 on the basis -- which, as we understand it is put forward in the letter from their

1 solicitors -- that they would accept the finding of  
2 overcharge and address only pass-through. It seems,  
3 from what they say, that in fact DS Smith only purchased  
4 10 trucks out of the whole claim, and the overwhelming  
5 majority of their claim concerns leased and rented  
6 trucks.

7 We think that the points that are made by Iveco in  
8 the Iveco skeleton, and indeed by DS Smith, regarding  
9 overlapping trucks, and inclusion of overlapping trucks  
10 is very powerful, in that regard, as a basis for  
11 including them.

12 We are open to considering the question whether any  
13 of the VSW claimants should also participate as regards  
14 the trucks in their claim which were rented or leased.  
15 The schedule to the VSW skeleton indicates that about  
16 100 trucks in their claims -- I am not sure which of  
17 the three claims it is -- were leased from Ryder and  
18 Dawsongroup, so it seems to us there may be a way where  
19 VSW can participate on overcharge on those trucks,  
20 because they are directly affected.

21 We would want to leave sufficient time after  
22 the judgment in trial 1 for the parties to digest that  
23 judgment, so we anticipate that trial 2 could start in  
24 January 2023. The question of the length of that trial  
25 is not something that we need decide today but will

1 need, obviously, careful consideration by all  
2 the parties.

3 Scania is not central to that trial, but in any  
4 event, there is, I think, every expectation that  
5 the General Court judgment in Scania will be out by  
6 the end of 2022, and possibly even the Court of Justice  
7 judgment, if there is a further appeal, and whether  
8 the Court of Justice is relevant will depend on what  
9 points are appealed anyway. So that would be trial 2.

10 Trial 3 would be the VSW claims, potentially  
11 excluding those trucks that the VSW claimants rented  
12 from Dawsongroup or Ryder, if VSW can participate in  
13 trial 2 regarding those trucks. The VSW claims are more  
14 complicated. They include umbrella trucks, for example.  
15 This trial will involve Scania as a part 20 defendant,  
16 but by the start date of that trial, which would be some  
17 time after judgment in trial 2, so late in 2023, the EU  
18 cases at Court of Justice as well as General Court level  
19 will certainly have been decided.

20 Moreover, we think it is important that trial should  
21 cover not just the UK trucks but also the French and  
22 German trucks, the three core countries, where a very  
23 significant number of those trucks -- I think the French  
24 trucks we are told are over 50% of the claim; all of  
25 Metro's claim concerns, I think, German and French

1 trucks. So we think it is very unsatisfactory to leave  
2 out the German and French trucks until some date far in  
3 the future, and by holding the VSW trial in late 2023 we  
4 think there is quite enough time for the additional work  
5 on the French and German trucks to be done.

6 Moreover, it may be appropriate -- and it is not  
7 something we would wish to decide, or could indeed  
8 decide today -- to include also Zamenhof and Hertz in  
9 that trial, because they seem to be significantly  
10 involved with French and German trucks. There is  
11 a helpful table at annex B to the DAF case management  
12 proposal which shows the geographic spread. Query  
13 whether one should consider including Arla. They also,  
14 but to an extent it is not clear to me at the moment,  
15 were involved in purchasing trucks for several  
16 territories and they say had a central purchasing  
17 mechanism. But those are matters that we can hold over.  
18 The main thing is it will be a VSW trial and it will  
19 cover the three core countries.

20 So those are the three trials that we have in mind.

21 Of course we recognise that this gives rise to  
22 the potential for inconsistent decisions. That's  
23 obvious. But with this many claims, and no doubt more  
24 claims to come, that is inescapable at some level.

25 We also appreciate that this involves

1 the defendants' experts appearing in several trials on  
2 the same or similar issues. But with a cartel of this  
3 magnitude and complexity and duration, we think that's  
4 a price that has to be paid by the defendants.

5 We think there is force in the point made by counsel  
6 for VSW, albeit we know you've advocated a different  
7 proposal, but the point you make that completing some  
8 trials and producing judgments will have benefits for  
9 the other claims. Even though they're not binding, they  
10 will facilitate progress in those claims and settlement.  
11 Even if it's not overall settlement, it may be  
12 settlement of certain issues and reduce the scope of  
13 later trials.

14 So, that is where we have come out; and we have  
15 not reached that view hastily; we've had a very full  
16 discussion between the three of us about it.

17 Unless somebody wants to say something immediately  
18 by way of reaction, we think it may be sensible for us  
19 to metaphorically rise and leave each of you an  
20 opportunity to discuss that with your respective teams;  
21 and bearing in mind that you're not all in the same  
22 geographic location, that may take a bit longer than  
23 normal. So we are quite ready to rise for half an hour,  
24 or indeed a bit longer, if -- (overspeaking) --

25 MR. BEARD: I think, sir, I was going to suggest that it



1 time that, I think I mentioned, that we've done that, so  
2 I apologise that that didn't go quite as smoothly as it  
3 should, the most important thing, among others, that  
4 I should repeat, is the warning I gave that it is  
5 contempt of court to make any recording -- audio  
6 recording or video recording -- of what you are seeing  
7 on screen, and therefore you must not do that.

8 I then went on to say that we have read and  
9 considered the proposals from each of the parties very  
10 carefully, that we recognise there is no ideal way of  
11 dealing with the issues across the various cases, and  
12 that any course that might be adopted is open to  
13 objections; and then I outlined why we did not favour  
14 the course that some of the defendants have proposed of  
15 a common overcharge trial, but instead our provisional  
16 view was that there should be three different trials.  
17 The first being of Royal Mail and BT against DAF; all  
18 issues including pass-through. The second of  
19 Dawsongroup and Ryder claims; a trial to be in three  
20 stages; the first being the overcharge, then  
21 the Dawsongroup pass-through, then Ryder pass-through.  
22 And in that trial, DS Smith should participate,  
23 particularly on stages 2 and 3. We left open  
24 the question whether the VSW claimants should  
25 participate as regards those trucks for which they claim

1 that were leased from Dawsongroup and Ryder.

2 And I think the live stream was up by the time  
3 I talked about the third trial, which is for the VSW  
4 claims for the three core countries: the UK, France and  
5 Germany. We left open the question whether that might  
6 also include some of the second-wave claimants who had  
7 claims for France and Germany.

8 So that's a brief recap.

9 As regards the transcript, it's obviously  
10 unfortunate that the detail has not been transcribed.  
11 I am not going to go through it and repeat everything  
12 now; it would be a complete waste of time. I think  
13 the sensible thing is that after the hearing concludes  
14 I will dictate up what I said, so that it could be  
15 attached, as it were, to the beginning of  
16 the transcript. It won't be verbatim the same, because  
17 I have not got every word prepared. But I have got, as  
18 you would expect, some notes, and I think it will be  
19 sufficient, so that we have a transcript of the first  
20 part of this hearing.

21 MR. BEARD: Sir, without wishing to intrude, does  
22 the CAT I think not have, and Opus have, a recording, so  
23 you wouldn't need to redictate it; that could just be  
24 provided to the transcribers and used.

25 THE PRESIDENT: Mr. Beard, we've looked into that.

1           Apparently not on this occasion. I hope, if there is  
2           another problem with the Opus transcription, Opus should  
3           please let us know straight away and we can pause.

4           Right. So that's by way of repetition, in a sense.

5           We left you with the three proposals, three trials  
6           and the course that we had considered, to discuss with  
7           your respective clients and legal teams.

8           I think the sensible thing is to go through  
9           the parties one by one, starting with the claimants, and  
10          to ascertain your response or reaction.

11          So if we start with Royal Mail and BT. That,  
12          I think, is Mr. Ward.

13                               Submissions by MR. WARD

14          MR. WARD: Yes, sir, thank you. It is.

15          You will not be surprised that we welcome these  
16          proposals and the prospect of having a full  
17          determination of all issues in both our claims at a much  
18          earlier stage than the defendants were proposing.

19          We have two areas of concern that we wanted to  
20          raise, however, in regard to the Tribunal's initial  
21          thinking. The first relates to the question of  
22          overlapping trucks in the Dawson group case.

23          THE PRESIDENT: Sorry, before you -- if I can interrupt you.

24          I know you wear the hat for the Dawson group as well, but  
25          does this relate to the first trial as well?

1 MR. WARD: It does not relate to the first trial. This is  
2 purely --

3 THE PRESIDENT: Yes, so on the first trial, are you content  
4 with that?

5 MR. WARD: We are entirely content.

6 THE PRESIDENT: Right. So now you are speaking for  
7 Dawsongroup; is that right?

8 MR. WARD: Yes. So the issue -- I wanted to pick up two  
9 issues, if I may, in respect of the Dawsongroup trial.

10 The first one relates to overlapping trucks. Sir,  
11 you indicated that it was at least in contemplation that  
12 DS Smith and VSW might join in that trial.

13 Now, here, it is useful, in our submission, to  
14 consider the number of trucks that we are talking about.  
15 In the case of DS Smith, I understand there are 19  
16 trucks that overlap with Dawsongroup; although there are  
17 something in the order of 400 that overlap with Ryder.

18 In the case of VSW, I understand there are nine  
19 trucks that overlap with Dawsongroup. I confess I do  
20 not have the number for overlap with Ryder.

21 Now, of course --

22 THE PRESIDENT: I assume there is 100 in all, according to  
23 one of these tables. Presumably there are about 90.

24 MR. WARD: Yes, that must be right.

25 Of course, you have indicated that you are minded to

1 separate out the pass-on trials as between Dawsongroup  
2 and Ryder, for confidentiality reasons among others. We  
3 welcome that. But as regards the Dawsongroup part of  
4 that trial, the very small number of trucks raises  
5 obvious proportionality questions. The issues that  
6 the claimant will have to litigate are of course  
7 the question of the extent of Dawsongroup's pass-through  
8 generally, as well as the specific downstream  
9 pass-through to them. Those are obviously quite  
10 wide-ranging questions.

11 We would have a concern, really, going forwards that  
12 even such a small number of trucks might be said to set  
13 a precedent for others to seek to join this trial later.  
14 All of which has the potential to make it slower, more  
15 expensive and more complicated.

16 So that's the overlapping trucks issue.

17 The other issue, which it may be no more than  
18 registering a concern at this stage: you will have seen  
19 from the skeleton arguments that there is of course an  
20 important difference between Dawsongroup and Ryder in  
21 terms of the defendants who are sued. So Ryder sues  
22 Iveco and MAN, who are not sued by Dawsongroup.  
23 Dawsongroup just sues DAF, Volvo and Daimler; and only  
24 sues in respect of purchases from those three  
25 manufacturers.

1           And one of the concerns we have expressed is that we  
2           should not be forced, in a sense, to litigate against  
3           more defendants than we have actually sued. You saw in  
4           our case management proposals that we suggested that  
5           that could have been avoided had there been an overall  
6           -- an overarching trial of Dawsongroup and Ryder. This  
7           may be something that can be dealt with later through  
8           case management, but this is -- this is one of  
9           the perils of joining up with Ryder that we are very  
10          keen to avoid. We do not want to end up having to  
11          cross-examine the expert for Iveco or MAN and to have to  
12          look at the disclosure that underpins those reports.

13                 So those are really the only two issues that we  
14          wanted to flag at this stage with your proposals.

15         THE PRESIDENT: Yes, thank you.

16                 I think we will hear from everyone and then we will  
17          consider where we go.

18                 So I think, then, we go next to Ryder; and that is  
19          Mr. Brealey?

20         MR. BREALEY: It is.

21         THE PRESIDENT: At the moment, I cannot see you,

22          Mr. Brealey.

23         MR. BREALEY: Can you see me now?

24         THE PRESIDENT: Yes, and Mr. Holmes indeed.

25         MR. BREALEY: He is, on my left.

1 THE PRESIDENT: Yes. So just to be clear, this is Mark  
2 Brealey for Ryder.

3 Submissions by MR. BREALEY

4 MR. BREALEY: For Ryder.

5 Four points, sir. We have taken instructions. We  
6 accept in principle what the Tribunal proposes, that is  
7 to say a trial starting in January 2023; and that would  
8 be on all quantum issues. That is the first point.

9 The second point is, clearly, we will need  
10 a timetable, which perhaps we can deal with tomorrow.

11 The third point is, we accept it in principle but we  
12 do not know whether others disagree; for example  
13 the other defendants; and therefore we may have to make  
14 submissions on -- on the changes that they may want to  
15 make. But as I say, in principle we agree with  
16 the Tribunal's proposal.

17 The fourth point I would like to make is that we  
18 have no issue with DS Smith intervening as the Tribunal  
19 proposes. You should note, sir, that it is not 400  
20 overlapping trucks, as it is said in Iveco; we calculate  
21 it is about 146 trucks. But, that said, we still have  
22 no issue with DS Smith intervening in the pass-on aspect  
23 for that trial.

24 THE PRESIDENT: Yes, thank you. 146 trucks: those are  
25 DS Smith trucks, are they?

1 MR. BREALEY: Yes, yes.

2 THE PRESIDENT: And then, in addition, there are some VSW  
3 trucks?

4 MR. BREALEY: And there are some VSW trucks, yes.

5 THE PRESIDENT: Yes.

6 MR. BREALEY: Those are our comments on the proposal before  
7 us.

8 THE PRESIDENT: Thank you very much. That is extremely  
9 clear.

10 VSW, I think it is Ms. Demetriou.

11 Submissions by MS. DEMETRIOU

12 MS. DEMETRIOU: May it please the Tribunal. I am appearing  
13 for VSW, as you have just said.

14 We have three points to make. So, first of all, we  
15 do not dissent from the Tribunal's provisional view as  
16 to the three trials. We have three observations to  
17 make.

18 The first relates to the second wave of claimants  
19 represented by the same solicitor and counsel team. We  
20 welcome the Tribunal's provisional observation that it  
21 may be appropriate to include some of those in the VSW  
22 trial that will happen, as the Tribunal proposes, at the  
23 end of 2023.

24 We say that the appropriate course is to leave  
25 the door open to those second-wave claimants, who, in

1 any event, are due to attend a CMC in December, such  
2 that a view can be taken at that CMC as to whether they  
3 are likely to be able to catch up. But we are hopeful  
4 that they will, given the extended period now before  
5 the trial takes place.

6 So that is the first point we would like to make.

7 The second point relates to overlapping trucks.

8 Again, we welcome the Tribunal's provisional view that  
9 we may wish to participate in the Ryder/Dawson group --  
10 the second trial, as regards those overlapping trucks.  
11 We would observe that there is a choice, in our  
12 submission, between two -- two routes.

13 So, the first route is that VSW participates as  
14 regards those trucks in trial 2, and are therefore bound  
15 as regards those trucks by the judgment in trial 2.

16 The second route is that VSW do not participate in  
17 trial 2. But then that must clearly be on  
18 the understanding that they are not bound by -- by any  
19 determination made in trial 2, such that the overcharge  
20 on those trucks will be determined afresh during the VSW  
21 trial. That does raise a risk of inconsistency, as  
22 the Tribunal has observed. But it seems to me that  
23 those are the two -- those are the two options.

24 So what would not be fair would be for VSW to be  
25 excluded from trial 2 but then in some way be bound by

1 the result when it comes to (inaudible) determining  
2 the overcharge on those trucks.

3 As regards the two routes, there is  
4 a proportionality question that we will have to take  
5 instructions -- further instructions from our clients  
6 on. There is ongoing correspondence between the parties  
7 designed to bottom out precisely how many overlapping  
8 trucks there are. That will obviously feed into  
9 the proportionality question.

10 We do say that it would be important -- so if VSW  
11 are going to participate in trial 2 and be bound by it,  
12 then we say that it will be important for them to  
13 participate in the overcharge part of the trial as well,  
14 because they would be bound by the over-trial  
15 determination.

16 We say that, secondly, on that issue, it is  
17 difficult to -- to separate out overcharge and pass-on,  
18 because it may well be that the way in which our clients  
19 seek to prove their loss is by focusing on  
20 the overcharge that they paid, rather than by reference  
21 to the pass-on data from Ryder Group and Dawsongroup.  
22 Indeed, our client's estimate of the overcharge that  
23 they paid may inform the Tribunal's assessment of  
24 pass-through. So it is something which may be relevant  
25 to the assessment of pass-through: the two things are

1           symbiotic.

2           But in any event, we say that it would not be fair  
3           for the VSW claimants, in respect of those trucks, to be  
4           bound by the outcome of trial 2 if they were not  
5           permitted to participate as regards overcharge as well.

6       THE PRESIDENT: Sorry, can I interrupt you. Just to clarify  
7           what you said.

8       MS. DEMETRIOU: Yes.

9       THE PRESIDENT: You say they may choose to calculate  
10          the amount they paid, which is as pass-through  
11          purchasers -- or not purchasers, sorry, as lessors -- by  
12          reference to the overcharge to Dawsongroup, or Ryder?

13      MS. DEMETRIOU: No. So by -- so the Tribunal will be aware  
14          that my clients are claiming in respect of a large  
15          number of trucks that were either purchased or leased  
16          from third parties. Some of those third parties are not  
17          in this litigation at all, and so there will not be any  
18          pass-through data from those third parties. So in  
19          respect of the overcharge that my clients paid, they  
20          will be -- they will be using their data, so the data --  
21          the amount they paid for trucks, and the defendants'  
22          data, to reach a conclusion as to the overcharge that  
23          was paid. So without reference, necessarily, to  
24          the pass-through data. They will have to do that in  
25          respect of the majority of the trucks that were

1 purchased or leased from third parties, because there  
2 will not be that pass-through data. So we say that it  
3 is all part of the same picture.

4 So, obviously, if they do participate in the Ryder  
5 and Dawsongroup trial, there will also be pass-through  
6 data which will be useful in respect of those  
7 overlapping trucks. But we say that the overcharge  
8 analysis will also shed light -- is likely to shed light  
9 on the degree of pass-through. So that is one point.

10 But in any event, the overriding point is that if my  
11 clients are going to be bound in respect of those trucks  
12 by the judgment in trial 2, then it is only fair that  
13 they participate in the overcharge section of the trial  
14 as well.

15 But, sir, we say that is subject, as I have  
16 indicated, to the overriding question as to whether that  
17 is proportionate at all, which we do want to take  
18 further instructions on from our clients. That will, in  
19 turn, depend a little bit on the extent of  
20 the overlapping trucks, which is still being bottomed  
21 out in correspondence.

22 As regards the pass-through section of the trial, we  
23 would observe that the interest of my clients is likely  
24 to be a little bit different to the interests of  
25 the defendants in terms of establishing pass-on, because

1 obviously my clients will have a strong incentive to  
2 establish that there has been pass-through of  
3 the overcharge from Ryder or Dawsongroup. Whereas it  
4 might be thought that the defendants are in a bit of  
5 a tricky position in that regard, because if they do  
6 establish substantial pass-on, they know that waiting in  
7 the wings are lots of claims from indirect purchasers.

8 So we do say for that reason, if my clients are to  
9 be bound by the pass-through finding in the second  
10 trial, then they should obviously be permitted to  
11 participate.

12 So, sir, that is what we say about overlapping  
13 trucks. But the punchline, as it were, is that we  
14 welcome the Tribunal's preliminary indication that we  
15 should be permitted to participate. We do think that if  
16 we are going to be bound by the judgment, then we should  
17 participate; but that ultimately it is a question of  
18 proportionality; and we do want to take further  
19 instructions, which we will do as soon as possible, and  
20 revert to the Tribunal with our preferred response.

21 Sir, the third point I wanted to address you on is  
22 next steps in the VSW trial. That is not, obviously,  
23 for determination today, but we wanted to indicate what  
24 we think needs to happen next, because the Tribunal will  
25 be aware that as regards pass-through disclosure, there

1 has not been very much in the VSW claims, and so that is  
2 the next thing on the agenda, as it were.

3 The Tribunal will also know that we have -- and we  
4 have summarised this in our skeleton argument --  
5 proposed to the defendants a means of dealing with  
6 pass-through in a proportionate way given the large  
7 number of different claimants that we have, and that we  
8 have put forward a test claimant proposal, which we  
9 think would be a proportionate way of addressing  
10 pass-through in the VSW claims.

11 The defendants are not, at the moment, agreeable to  
12 that, and that is not for determination, we accept, at  
13 this CMC. But we would like the Tribunal, in principle,  
14 to indicate that it would be appropriate to list  
15 a hearing in the spring term before Easter, to determine  
16 both whether the test claimant proposal is appropriate,  
17 and whether, whether or not the Tribunal decides that  
18 that is appropriate, to make rulings -- appropriate  
19 rulings for disclosure in relation to pass-through, so  
20 that that element of the case can be progressed, which  
21 it needs to be.

22 THE PRESIDENT: By the time of that CMC that you have  
23 suggested, presumably the question of overlapping trucks  
24 that you wanted to investigate further would have been  
25 bottomed out?

1 MS. DEMETRIOU: That will have been bottomed out by then.

2 THE PRESIDENT: So it could deal with that as well.

3 MS. DEMETRIOU: So it could deal with that as well.

4 THE PRESIDENT: Yes.

5 MS. DEMETRIOU: Sir, yes. I do not have any further  
6 submissions. Those are the three areas that I wanted to  
7 touch upon.

8 THE PRESIDENT: Yes, thank you.

9 I think it may be sensible, before turning to  
10 defendants, to ask DS Smith, who are helpfully attending  
11 this hearing, for their comments, because they are  
12 affected by what has been suggested for trial 2, and  
13 I think -- is it Mr. O'Donoghue?

14 Submissions by MR. O'DONOGHUE

15 MR. O'DONOGHUE: Sir, that is right.

16 First of all, sir, we are extremely grateful to  
17 the Tribunal for accommodating us as an interloper of  
18 sorts. We appreciate that.

19 I have a handful of points. We are extremely  
20 grateful for the work the Tribunal has done in thinking  
21 about the shape of trial. There is obviously no perfect  
22 solution given the multiplicity of claims. If ever  
23 there were a case of the perfect being the enemy of  
24 the good, it is the current situation.

25 From DS Smith's perspective, a first trial is likely

1 to have significant benefits. We have obviously sued  
2 DAF as well, so there is a link to that extent. Even if  
3 the judgment is not binding, a first trial judgment will  
4 provide important guidance on overcharge and other  
5 issues. In particular, of course, the question of  
6 interest. Which, given the long antecedents, is a major  
7 part of quantum, and it may of course facilitate  
8 settlement. It is an open secret that DS Smith at least  
9 is keen to settle these litigations as soon as it  
10 possibly can.

11 Second, we are extremely grateful for the scheduling  
12 of the second trial to include, in some capacity,  
13 DS Smith, particularly on pass-through issues. A trial  
14 in January 2023, given that our claim was issued in  
15 2019, is enormously welcome, particularly given some of  
16 the alternatives suggested by some of the defendants.  
17 This will also give DS Smith further time to catch up,  
18 as it were, compared to a suggestion put forward by some  
19 parties of a trial perhaps in 2022.

20 Third, we are also hopeful that while the Ryder and  
21 Dawsongroup and DS Smith claims are individual,  
22 the approach taken in trial 2 to the question of pass-on  
23 issues is likely to be of much wider assistance in  
24 respect of leasing company pass-on. As presently  
25 advised, we would envisage offering evidence not only on

1 procurements conducted between Ryder and Dawsongroup and  
2 DS Smith, but also more generally on how DS Smith  
3 conducted its procurements. Ryder of course was a major  
4 supplier: around a third of our claim.

5 I mean, on the question of overlap, there has been  
6 some confusion. So Mr. Brealey is right that 170 trucks  
7 were purchased by Ryder and leased to DS Smith. But  
8 what he left out of account is that 145 trucks were  
9 purchased by Ryder and rented to DS Smith. So that is  
10 a total of 315.

11 There has been a recent issue in connection with  
12 around 114 further trucks that were provided by Ryder  
13 without an additional payment for a short period of  
14 time. That concerns, sir, a situation where the leased  
15 truck in question for example had broken down, or had  
16 reached such a state of repair that it was uneconomic to  
17 keep repairing it. So there are 114 trucks that may  
18 fall within the question of overlap.

19 But on any view, the overlap is a substantial one:  
20 about one-third -- (overspeaking) --

21 THE PRESIDENT: Just to interrupt you. You have been  
22 talking about Ryder. I think Mr. Ward said with  
23 Dawsongroup it is only about 19; is that right?

24 MR. O'DONOGHUE: Sir, that is correct. Mr. Ward makes  
25 a very fair point, which is, in relation to that

1 overlap, it is obviously not a very significant one  
2 compared to Ryder. But the answer to that issue, if it  
3 is an issue, is really one of proportionality and case  
4 management. It is a very fair point, but it is one  
5 which can be accommodated quite easily within  
6 the context of the management of the second trial and  
7 steps up to the second trial.

8 But I had made the point that we will be putting  
9 forward factual evidence in relation to how we conducted  
10 procurements generally in the context of leasing. That  
11 will include, of course, albeit in the context of 19  
12 trucks, procurements with Dawsongroup. So it arises in  
13 a particular context and has a certain limitation, but  
14 in my submission it will be hopefully of some assistance  
15 to the Tribunal.

16 So that is all I wanted to say. We are extremely  
17 grateful for accommodating us today, and in the context  
18 of the second trial, and thank you very much.

19 THE PRESIDENT: Thank you.

20 Then I think we turn to the defendants. First, DAF,  
21 Mr. Beard.

22 Submissions by MR. BEARD

23 MR. BEARD: Sir, I think others may have more to say in  
24 relation to the provisional proposals that have been put  
25 forward by the Tribunal, and we are grateful for

1 the Tribunal articulating the position.

2 You have seen our proposal that suggested that there  
3 should be an issues-based approach, and the Tribunal  
4 demurs from that. I will leave those issues to be dealt  
5 with by others.

6 I do just want to focus on one or two particular  
7 points that arise in relation to the first trial being  
8 Royal Mail and BT bringing its claim against DAF.  
9 I just want to pick up one issue that arose in relation  
10 to the question, sir, you asked me at the start, which  
11 was about what has been referred to  
12 as "the plausibility" or "theory of harm" analysis.

13 As per our skeleton argument and as per our  
14 three-page methodology statements and as I indicated,  
15 that analysis would be based on the use of DAF's own  
16 data, because that is the material over which our  
17 experts have the relevant knowledge and have carried out  
18 relevant analysis.

19 As we have articulated in our skeleton, however,  
20 there is a benefit in considering such issues across  
21 other defendants as well; and it is part of the reason  
22 why we articulated the idea of a UK-effects-based trial.

23 Now, bearing those matters in mind, I think it is  
24 important that if it were later to be argued by  
25 Royal Mail that any such analysis carried out by DAF

1 using DAF's own data in fact required consideration of  
2 other OEMs' data, then that would be an important reason  
3 why the proposal that the Tribunal is putting forward  
4 provisionally might give rise to potential concerns and  
5 potential issues of unfairness.

6 We would need to consider whether other OEMs and  
7 other OEMs' data would need to be involved in  
8 the consideration of those issues. Obviously, that  
9 moves what the Tribunal is articulating as a first trial  
10 into a position where it ends up looking more like  
11 a joint trial of these issues, which of course  
12 the Tribunal has indicated provisionally it does not  
13 favour; because inevitably, if you are going to be using  
14 other OEMs' data, they may well want to be involved in  
15 the consideration and analysis of those matters.

16 So, we raise -- (overspeaking) --

17 THE PRESIDENT: Sorry, can I interrupt you?

18 MR. BEARD: Yes, of course.

19 THE PRESIDENT: You say that would arise if Royal Mail  
20 wished to counter, as it were, your argument that way.  
21 But you might -- your expert, who is putting the case  
22 for DAF -- want data beyond DAF's data. Any decision  
23 does not bind anyone other than DAF. I am not sure that  
24 the fact that the expert for DAF wants to use broader  
25 data means that therefore other parties have to be

1           involved in the trial.

2           MR. BEARD: Well, that may well be an issue that the other  
3           OEMs want to comment upon.

4           THE PRESIDENT: It does not affect your expert's position.  
5           They are doing the analysis -- (overspeaking) --

6           MR. BEARD: Of course our experts' doing it. I placed that  
7           marker because my understanding is that in relation to  
8           the use of other OEMs' data, concerns have been  
9           expressed about other OEMs wanting to be involved in  
10          that consideration.

11          I do not accept that there would be any good basis  
12          for any objection to our carrying out the analysis  
13          focused on DAF's data in any event. But if that were to  
14          be Royal Mail's position, then it is important to raise  
15          that now, because what you do end up with is  
16          the potential for at least issues of disclosure needing  
17          to be considered in order that there is a wider cohort  
18          of data, that there is other material that is provided  
19          and then analysed. That might have impact on timings,  
20          for instance in relation to expert reports and provision  
21          of information running through to a trial. As I say, it  
22          would be looking at a wider cohort of data and  
23          potentially giving rise to concerns on the part of other  
24          OEMs, which of course they can then comment on.

25          But I want to flag that now, because it is a coda,

1 but potentially rather an important coda, to the answer  
2 to the question, sir, that you posed earlier.

3 As we say, what our experts are envisaging at  
4 the moment is that the DAF data in relation to the UK  
5 can be interrogated in a useful way, because it is  
6 a relatively rich set of data given DAF's position in  
7 the UK, to understand how it is that this theory of harm  
8 that is being posited by BT, Royal Mail and indeed  
9 others, stacks up, or rather does not stack up.

10 But I think it is important to clarify that and also  
11 to recognise that Royal Mail is going to need to explain  
12 its position in relation to these matters sooner rather  
13 than later, in order that these matters can be properly  
14 factored into any timetabling.

15 So that is in relation to the plausibility analysis.

16 We recognise of course, from the Tribunal's  
17 comments, that you understand the concerns that we have  
18 articulated about the fairness of requiring people, both  
19 fact witnesses but in particular experts, having to  
20 repeat submissions; and the concerns about the idea of  
21 the fairness of effectively seriatim cross-examination  
22 of an expert in a series of trials, when of course those  
23 that are doing the cross-examination may, due to  
24 the incident of particular timings, not have been pinned  
25 down in terms of their lines of attack earlier in

1 the process, and therefore unfairly are able to take  
2 advantage of prior cross-examination and what goes on in  
3 the earlier trials.

4 Now, we recognise that the Tribunal has awareness of  
5 that issue. It may well be that when we are thinking  
6 about how to deal with timing and case management steps,  
7 both in relation to any first trial but also subsequent  
8 trials, that steps will be needed to be taken in order  
9 to minimise these risks or prevent this unfairness. So  
10 we put that down as a second marker.

11 So first issue, plausibility analysis; second issue,  
12 fairness.

13 And then I think the third issue is, recognising  
14 the indicative start time that the provisional view of  
15 the Tribunal takes for the first trial being April 2022,  
16 we have been considering how that works in terms of  
17 detailed timetabling. Obviously that is not something  
18 that any of the parties, including the claimants, have  
19 set out at this stage.

20 Of course, we put forward an original proposed  
21 effects-issues-only date for June 2022, possibly  
22 September. We will need to look closely at timetabling  
23 issues in the light of the Tribunal's indication, in  
24 particular in relation to downstream issues, in other  
25 words pass-through issues and disclosure of pass-through

1 material, which it will be important that the claimants  
2 give and give early, and thereafter the expert  
3 preparation in relation to those matters.

4 We are not suggesting we try and resolve all these  
5 matters today. We suggest that these issues are taken  
6 away and dealt with, at least initially, by discussion,  
7 depending on the outturn of the Tribunal's consideration  
8 of the ordering of trials. But just two very brief  
9 markers, so far as those timetabling discussions, if  
10 permitted, will proceed.

11 First of all, we recognise that the sort of  
12 timetabling that the Tribunal is looking at for  
13 the three trials will mean there will need to be  
14 parallel preparation of trials 2 and 3 whilst trial 1 is  
15 going on. That places a significant burden on DAF in  
16 particular. This is not simply a question of having  
17 well-resourced legal teams, because of course it will be  
18 individuals within DAF and experts who are going to be  
19 involved in the first trial who will need to be involved  
20 in preparation for the later trials.

21 I am not trying to resolve these matters now, but  
22 I put down the marker that this is one of  
23 the consequences of the Tribunal's organisation as put  
24 forward in its provisional arrangements.

25 I do not think I need to go into those matters

1 further now.

2 THE PRESIDENT: Yes. Can I just ask you, for -- as regards  
3 Royal Mail and BT, has some pass-on disclosure taken  
4 place?

5 MR. BEARD: I will confirm the position in relation to  
6 Royal Mail and BT.

7 There has certainly been, in relation to  
8 negotiations matters and what is called "communications  
9 disclosure" -- that has occurred in relation to  
10 Royal Mail and BT. But we do not believe that there has  
11 been any pass-on disclosure. Of course, part of  
12 the reason for that has been awaiting the outcome of  
13 the Supreme Court in the Sainsbury's Judgment. In those  
14 circumstances, it is clear that there will need to be  
15 extensive disclosure on the part of Royal Mail and BT in  
16 relation to a whole range of matters that  
17 the Supreme Court has identified as falling within  
18 the scope of potential pass-through and mitigation  
19 defences, sir.

20 THE PRESIDENT: Yes, but there should be time. We have  
21 about 18 months.

22 MR. BEARD: I am not suggesting -- and I do not suppose  
23 Mr. Ward is going to say it is impossible. He would not  
24 be commending the Tribunal's provisional findings did he  
25 not think that. But I think the point I make is

1 a simple one. The burden lies primarily on Mr. Ward and  
2 his clients; it is going to be potentially a rather  
3 heavy burden. He is going to need to get on with that  
4 very quickly, because we are going to need to feed that  
5 into our expert analysis.

6 Although I am sure Mr. Ward will say that with  
7 absolute commitment and dedication they will seek out  
8 all the relevant material that we could possibly want,  
9 there is the passing possibility that we might have  
10 further enquiries after they have provided their first  
11 round of disclosure in relation to these matters. We  
12 need to factor that into the timetable.

13 THE PRESIDENT: Yes, thank you.

14 Then I do not know who wants to go next. Is it  
15 Daimler?

16 Submissions by MR. HARRIS

17 MR. HARRIS: My Lord, yes. Mr. Harris speaking for Daimler.

18 I have essentially four points to make. The first  
19 two are directed at seeking to persuade the Tribunal to  
20 vary in part its provisional view. I will take those  
21 two points obviously first.

22 The second two points, 3 and 4, are reflections upon  
23 the proposed timetable if the provisional view, I do not  
24 seek to persuade the Tribunal to vary it. One of those  
25 two -- so point number 4 -- is an aspect about

1 the incidence of appeals. So that is the roadmap.

2 The first two points to seek to persuade  
3 the Tribunal to vary its provisional view a little are  
4 intended to lead to the following outcome, if  
5 successful, that instead of having a stage 1 trial that  
6 is limited to Royal Mail and BT, instead of that it is  
7 a stage 1 trial that includes Ryder and Dawsongroup.  
8 Since I accept that that is a more complicated and  
9 lengthier trial with more parties involved, then it  
10 would probably end up being at a time that is not  
11 April '22, but equally it may not quite be as late as  
12 the current provisional view of the Ryder and  
13 Dawsongroup trial in January '23. In other words, it  
14 may be sort of the back end of '22, were I to be  
15 successful in these two submissions.

16 So that is where I am aiming with those first two  
17 submissions.

18 THE PRESIDENT: Just to be clear, sorry, that would be,  
19 again, of all issues, pass-through included?

20 MR. HARRIS: Yes, precisely. That will be of all issues.

21 The two points are these. I will just identify them  
22 and then expand upon them succinctly.

23 The first one is the problem that arises if BT and  
24 Royal Mail settles. And the second one is to do with  
25 issues of fairness for the other OEMs, of whom

1 I obviously represent one, on the de facto bindingness  
2 of questions of law that will be determined by  
3 the DAF/Royal Mail/BT first-stage trial on  
4 the provisional proposal. So I will take them in that  
5 order in slightly more detail. The first one is  
6 obviously quite short.

7 The perceived virtue of the provisional view of  
8 having a first stage trial involving BT and Royal Mail  
9 alone is that it is more simple; and as you said in your  
10 opening remarks, it involves things like only direct  
11 purchases, UK trucks, possibly less issues of pass-on,  
12 and what have you. But it is precisely because it is  
13 a simpler set of issues to deal with that the prospects  
14 of that one settling will be greater than other cases.

15 Of course, then, the proposed benefits of having at  
16 least a judgment in relatively short order on all  
17 the issues will disappear in a puff of smoke. We will  
18 then be simply much further delayed and little or no  
19 progress made in the other cases.

20 In contrast, however, with the variation to  
21 the provisional view that I am proposing, namely  
22 the inclusion of Ryder and Dawsongroup, it seems very  
23 unlikely, although of course I do not have a crystal  
24 ball, that that case would settle, because there are far  
25 more issues and they are of greater complexity.

1           So that is the first reason why I seek to change  
2           the provisional view so as to include Ryder and  
3           Dawsongroup in the first stage trial.

4           The second one is slightly more involved, but the  
5           essence of it is this: that there will only be one OEM  
6           involved in the proposed first stage trial involving BT  
7           and Royal Mail, and that will be DAF. None of the rest  
8           of us will be involved. Yet, there will plainly be some  
9           highly material determinations carried out by that trial  
10          in the first stage that will have a direct impact and  
11          relevance upon the other OEMs, including Daimler; and  
12          yet the other OEMs, including Daimler, will not have  
13          participated, as my understanding on the current  
14          provisional view is, in any way, shape or form.

15          Of course, I draw a distinction between those issues  
16          that are decided in the first stage provisional  
17          view trial on questions of fact. That is to be  
18          expected. There might be a view on questions of fact.  
19          But there will be a whole host of difficult questions of  
20          law that will also arise. Indeed, Mr. O'Donoghue was at  
21          page -- at pains to point out that that was his view as  
22          well: there will be questions of how to go about  
23          determining overcharge; and then the second example he  
24          gave was difficult and novel questions of interest.

25          But it is not limited to those. There will be

1 questions of law involving the meaning and scope of  
2 infringement. There will be questions of law regarding  
3 pass-on. There will be questions of law regarding  
4 mitigation. There will be a series of difficult  
5 questions of law, some of which are novel, and yet  
6 the other OEMs including Daimler will not have been  
7 involved.

8 Now, of course I accept the Tribunal's provisional  
9 view that they will not be technically binding, but  
10 my -- the concern that my client has is that they may  
11 well be de facto determinative, given that this  
12 Tribunal, the Tribunal that makes the determinations on  
13 those issues, will then sit on the same issues in  
14 subsequent trials in which I am involved on behalf --

15 THE PRESIDENT: Sorry, can I interrupt you, Mr. Harris.

16 I fully see that point, and perhaps I should have  
17 explained: there will be no overlap between the members  
18 of the Tribunal in the three trials.

19 MR. HARRIS: I see.

20 THE PRESIDENT: We are -- the Tribunal constituted for today  
21 is the case management Tribunal, case managing all these  
22 claims. When we get down and further along to  
23 particular trials, they will have different Tribunals.  
24 They will certainly all, for example, have an economist  
25 as one of the members -- sorry, there seems to be -- if

1           you could mute when you are not speaking, because we are  
2           getting a bit of feedback.

3           For example, it may be that I would preside in one  
4           of the trials, that Mr. Justice Fancourt will preside in  
5           the second trial. Mr. Malek sadly will no longer be  
6           a chairman of the Tribunal at that point, as his term  
7           expires. But in any event, it will not be a Tribunal of  
8           three lawyers; it will not be a Tribunal with two  
9           High Court judges on it; it will be in each case  
10          a Tribunal presided over by a High Court judge with two  
11          other members. I think I can say certainly one will be  
12          an economist. So there will not be overlapping Tribunal  
13          membership.

14         MR. HARRIS: Thank you, sir. I had not appreciated that.

15                 It addresses the issue but not completely, because  
16                 there will still be an authoritative determination that  
17                 has gone first, which is then, although not technically  
18                 binding on me or the other Tribunal, nevertheless it  
19                 will have addressed these issues. The normal course is  
20                 that that is highly persuasive and would be followed --  
21                 and to put -- I am not seeking to make a legal  
22                 submission here, but unless it is obviously wrong or  
23                 obviously misconceived --

24         THE PRESIDENT: No, I understand your point.

25         MR. HARRIS: So my resolution to this, my submission to

1 resolve this issue, and bearing in mind also  
2 the settlement point, would be to include more OEMs at  
3 the first stage. The way to do that, being most  
4 consistent with the provisional view of the Tribunal, is  
5 to have a first stage trial that has Ryder and  
6 Dawsongroup in it as well; or potentially Ryder or  
7 Dawsongroup, if there were a concern about making it too  
8 unwieldy by including both of them.

9 So those are the first two submissions. As I say,  
10 they are directed towards seeking a variation of  
11 the provisional view.

12 Were those variation submissions not to find favour,  
13 then the next point, point 3, relates to a concern that  
14 we have regarding the timetable of the provisional view,  
15 and it is really quite discrete.

16 As I noted it down, the proposal is for April 2022  
17 for the Royal Mail/BT/DAF trial, and then trial 2 being  
18 Dawsongroup and Ryder being January 2023, with the hope  
19 that a judgment in BT/Royal Mail would have been given  
20 by July or perhaps September of 2022.

21 What I simply wish to submit is that we, with great  
22 respect, think that it is optimistic, and indeed  
23 over-optimistic, unrealistically optimistic, to think  
24 that there would be a judgment for what is probably  
25 going to be months of trial in Royal Mail and BT by as

1 early as July 2022, and yet the proposal as we  
2 understand it at the moment is that there needs to be  
3 a meaningful gap between the judgment in the stage 1  
4 trial and the commencement of the stage 2 trial.

5 I mean, the gap between July and January is of  
6 course six months, and we respectfully submit that it  
7 needs to be at least six months, such that if judgment  
8 in trial 1 does not come to even September, then that  
9 would mean a March 2023 start for Ryder/Dawsongroup.

10 But if, as we respectfully submit, if there has been  
11 months of trial involving all the issues in the stage 1  
12 trial, including the novel and difficult questions of  
13 law to which I have already adverted, then  
14 realistically, we may be facing a judgment in the --  
15 towards the end of 2022, November or December. In those  
16 circumstances, it means that the start date for  
17 Ryder/Dawsongroup will be more like June/July 2023.

18 I say that for practical reasons, that for it to be  
19 of the most benefit, this judgment in stage 1, for  
20 subsequent trials, the parties need to be able fully to  
21 take stock of what it says; and if there is too small  
22 a gap between the stage 1 trial and the stage 2 trial,  
23 there simply will not be that opportunity to take stock.

24 The most pertinent regard in which one needs to take  
25 stock is as regards the experts' approach that has been

1 taken in the stage 1 judgment to overcharge and evidence  
2 on overcharge. It is not limited to that, obviously,  
3 but that is a good, pertinent example. If the experts  
4 in the stage 2 trial are going properly to take on board  
5 what, for example, the Tribunal may say about  
6 the correct variables or method of regression analysis  
7 for overcharge in the judgment, then there needs to be  
8 an opportunity for there to be potentially revised  
9 expert evidence in the second trial. So you need to  
10 obtain the judgment, digest it, get instructions and  
11 then alter the approach as is deemed appropriate. Then  
12 there need to be more reports; and then there might need  
13 to be more meetings between experts. One can see  
14 readily that that would take -- that would take months.  
15 Then the submissions that had otherwise been prepared,  
16 or are in the course of preparation for the start of  
17 the stage 2 trial, would need to be revised. One could  
18 see that that would take a while.

19 So all I am saying is there is a timing point there.

20 Then the last point, members of the Tribunal, is  
21 more of, if you like, an observation or query, which is  
22 how, if at all, is it currently proposed that there  
23 would be appeals dealt with following  
24 the BT/Royal Mail/DAF only trial, bearing in mind,  
25 again, that there will be quite a few novel questions of

1 law, and there are obviously rights of appeal.

2 In this regard, it may be worth just reminding  
3 the Tribunal -- and if you wanted the case -- the bundle  
4 reference to this, it is {COM-A2/13/1} -- that in  
5 the transfer order that is -- that governs  
6 the BT/Royal Mail, and indeed some of the other claims  
7 that were commenced in the High Court, appeals are to be  
8 dealt with under CPR 52. That is paragraph (c) of  
9 number 3.

10 I simply raise that because, as the Tribunal will  
11 doubtless be aware, there is Court of Appeal authority  
12 that under CPR 52, to be an appellant one does not have  
13 to have participated in the trial below.

14 So to put not too fine a head on it, if one of  
15 the other OEMs did not like the outcome on questions of  
16 law in what is at first instance a trial that only  
17 involves DAF, that other OEM has a right of appeal.

18 The authority for that, sir, members of  
19 the Tribunal, is *George Wimpey UK Ltd v Tewkesbury*  
20 *Borough Council [2008] EWCA Civ12*, and it is  
21 the earlier part of the judgment of Lord Justice Dyson,  
22 as he then was, in particular paragraph 19. It points  
23 out that under the CPR, one does not have to have been  
24 a party below in order to be a party on appeal.

25 I raise it simply because, though I appreciate I am

1           unlikely to be able to persuade the Tribunal to abandon  
2           its provisional view all together and go for what  
3           Daimler in particular put forward, nevertheless under  
4           the Daimler proposal the suggestion had been made that  
5           there are stages on issues and that appeals be deferred  
6           until after the end. But on this proposal, it brings  
7           into sharp focus, because Daimler, and for all I know,  
8           other OEMs, are not involved in DAF -- the DAF stage  
9           trial, that they may feel that they are constrained to  
10          make appeals on issues that will de facto have a very  
11          large impact upon them, but in which they have not been  
12          involved at all.

13                 So, sir, members of the Tribunal, those are the four  
14          points that I would like to make. I hope they are at  
15          least clear.

16   THE PRESIDENT: Yes, that is very clear. Thank you.

17   MR. HARRIS: Thank you.

18   THE PRESIDENT: Now, it is I think 12.55. If we go to  
19          Volvo, Mr. Hoskins, how long do you think you want to  
20          address us for? It's simply a question of whether we  
21          break now or come back at therefore 2 o'clock.

22   MR. HOSKINS: My best guess is 5 minutes minimum, ten  
23          minutes maximum.

24   THE PRESIDENT: So this is Mr. Hoskins for Volvo.

25

1 Submissions by MR. HOSKINS

2 MR. HOSKINS: Can I just echo in starting, the first point,  
3 the timing issues that Mr. Harris has averted to,  
4 because we are concerned, if there is a BT/Royal Mail  
5 trial in April 2022, that it is going to be too soon to  
6 have the second stage trial in January 2023 and then  
7 the final trial in late 2023.

8 One of the points is the one that Mr. Harris already  
9 developed, that if the intention is that judgments  
10 should be taken into account, then if there is a trial  
11 in April 2022, realistically the judgment is likely to  
12 come in the autumn of 2022. If that judgment is to be  
13 meaningfully taken into account, for example by  
14 experts -- one doesn't know now, but it could actually  
15 -- you see, potentially, for one or more experts, be  
16 quite a big endeavour, because if a large part of their  
17 methodology has been criticised by the Tribunal in  
18 the first judgment, there is an awful lot of thinking to  
19 do and potentially supplemental expert reports to go in.

20 So if that virtue of this architecture is to be  
21 realised, then time has to be allowed for meaningful  
22 consideration to take place.

23 We also have a concern on timing about the time that  
24 will be needed to prepare the expert evidence for stage  
25 2 and stage 3, because we have one expert, as you would

1 expect, Frontier. Mr Biro is going to be the testifying  
2 expert.

3 Now, Frontier under this proposal has to deal with  
4 all issues, not just overcharge, for DG, Ryder, VSW; and  
5 that is VSW UK, Germany and France; and has to consider  
6 all those issues in parallel.

7 Now, the claimants' experts do not have that same  
8 burden by definition. But that is a substantial burden,  
9 and we have on a number of occasions sought to have  
10 detailed discussions with Frontier about what is  
11 possible and what is not possible in terms of their  
12 work. We have a very strong steer from Frontier that  
13 a January 2023 date for a second stage and a late 2023  
14 for VSW -- they simply say it is not possible.

15 I know courts are used to squeezing experts and  
16 putting pressure on people to do better, but in our  
17 submission we are not in a sort of shaving off a month  
18 or two here, there; we just have genuine concerns that  
19 those timings are not possible.

20 So there are those issues on timing.

21 What we would suggest is not that the Tribunal  
22 today, or even tomorrow, decides definitively on timing,  
23 because people will want to make all sorts of  
24 submissions, I am sure; and the claimants will push you  
25 the other way; and other defendants will want to make

1 different points on timing. But this is important. We  
2 have all put, as you said, my Lord, and the Tribunal has  
3 put, a lot of effort into coming up with an  
4 architecture; and it is important for all of us that  
5 this architecture works; and the timing is fundamental  
6 to that.

7 So the second point I wish to make is that we would  
8 suggest, and Ms. Demetriou also indicated that she would  
9 like this as well, that there should be separate CMCs  
10 for trials 2 and 3; and timing would obviously be one of  
11 the issues to be discussed there.

12 But just in going through and listening to the other  
13 submissions, I noted a number of issues that would have  
14 to be dealt with before stage 2 and 3.

15 So, for example, Mr. Ward, with his Dawsongroup hat  
16 on, raised the concern that different defendants have  
17 been sued by Ryder and Dawsongroup. He wanted some  
18 consideration to be given so that he did not find  
19 himself having to, for example, cross-examine experts of  
20 parties he had not sued. He wanted that to be  
21 considered.

22 VSW raised the point about their participation in  
23 stage 2: how that should look, what form it should take,  
24 whether they should be bound by judgments and  
25 overcharge. So clearly there are issues there that

1           require a CMC.  Indeed, Ms. Demetriou expressly proposed  
2           and asked that there should be another CMC in the VSW,  
3           so the stage 3 proposal, in any event, in the spring  
4           term of 2021.  We agree with her that that is certainly  
5           what should happen.  At that stage, we say, that is when  
6           the directions to trial in the VSW stage should be  
7           considered and set down.

8           DS Smith.  Mr. O'Donoghue recognised they had 19  
9           overlapping trucks with Dawson group.  He said there was  
10          a question of proportionality and case management.  So  
11          there is a stage 2 case management issue we are going to  
12          have to deal with.

13          Mr. Beard's submissions on behalf of DAF.  He  
14          adverted to the unfairness of a sort of repeated  
15          cross-examination of the same experts.  So you just  
16          simply -- they get the transcript put to them every time  
17          and hemmed in and hemmed in and hemmed in.  That is  
18          a CMC issue that Mr. Beard wanted to be dealt with.  
19          The start date itself he adverted to is a CMC issue.

20          I could go on but you get the picture.  There are  
21          a lot of obvious CMC issues.  We say the proper thing to  
22          do is therefore to have -- we need a CMC for stage 2  
23          trial, we need a CMC for stage 3, and the timetable to  
24          the trial should be taken account of in those CMCs.

25          Just one final point -- I'm sorry to do this to

1 Mr. Harris -- I wish him all the good luck in the world  
2 in shaking the Tribunal from its provisional view,  
3 because you will understand it was not our preferred  
4 outcome.

5 But if the Tribunal were to be persuaded by his  
6 alternative of a BT/Royal Mail/Dawsongroup/Ryder trial,  
7 I would have a timing issue on that, because Mr. Harris  
8 suggests the end of 2022. We are not averse to that  
9 sort of trial, but it could not take place at the end of  
10 2022; we just could not get the work done on time. So  
11 it is just that small point.

12 So basically my submission is: please can we have  
13 separate CMCs for stage 2 and stage 3 to consider  
14 directions to trial and any other issues in those two  
15 trials.

16 THE PRESIDENT: Thank you very much. You kept very nicely  
17 to your anticipated time.

18 We will now rise, literally as well as  
19 metaphorically, and we will be back at 2 o'clock.

20 (1.02 pm)

21 (The short adjournment)

22 (2.06 pm)

23 THE PRESIDENT: Good afternoon. Can you hear me?

24 MR. BEARD: Yes.

25 THE PRESIDENT: Yes, thank you. We had a problem a few

1 moments ago with the microphone.

2 Thank you. I think we -- where do we go next? Is  
3 there a volunteer, or if not, I will say --  
4 (overspeaking) -- Mr. Hollander?

5 MR. BEARD: I'm sorry. Someone down in the corner is  
6 indicating they cannot hear. So I am not sure that  
7 everyone can hear.

8 Submissions by MR. HOLLANDER

9 MR. HOLLANDER: The Tribunal will be aware I have taken over  
10 from Dame Kelyn Bacon, as she now is. It is a bit  
11 disconcerting to get to the stage in life when one's  
12 pupils are appointed to the High Court bench, but there  
13 it is.

14 Thank you very much to the Tribunal for the  
15 obviously enormous amount of work and consideration that  
16 has been done in reaching the provisional views  
17 expressed this morning. We do not want to say anything  
18 about the principles, the substantive points, which we  
19 are content with.

20 I have a few points to raise on the proposal as you  
21 put it forward, sir, and a few points on the comments of  
22 others. I will start with my comments on the proposal  
23 itself.

24 The first one is timing. Really, this picks up what  
25 my learned friends Mr. Harris and Mr. Hoskins said this

1 morning. So the proposal is if a first trial, with  
2 which we will not be involved in, is April 2021, and  
3 the Tribunal are envisaging a judgment in July or  
4 October --

5 THE PRESIDENT: Sorry, to interrupt you. It is April 2022.

6 MR. HOLLANDER: Sorry, 2022 and 23. I am so sorry. Quite  
7 right.

8 A second trial in January '23, is, we would suggest,  
9 a little bit too soon. One completely understands  
10 the claimants want their claims heard as soon as  
11 possible. But one of the purposes of the first trial is  
12 the parties and their advisers can learn from what  
13 happens; and in particular the experts can learn from  
14 it. There simply will not be time on that schedule to  
15 do that. That would, we would suggest, defeat part of  
16 the purpose of the scheme. We would suggest that there  
17 really needs to be a good six months between judgment on  
18 the first trial and the commencement of the second  
19 trial. Which would take the commencement of the second  
20 trial to March or April 2023. That would enable  
21 everyone to get the most out of it, we would suggest,  
22 and to achieve its purpose.

23 So that was the first point I wanted to make.

24 The same point, then, backing onto that, goes for  
25 the third trial. There is obviously a knock-on effect.

1 If the second trial goes back by three months, as we  
2 suggest, similar to Mr. Harris and Mr. Hoskins, the same  
3 point would go for the third trial.

4 There is a different point in respect of the third  
5 trial, because it involves Scania. Therefore, although  
6 we do not know precisely when the appeal system will be  
7 completed in respect of Scania, if one put the third  
8 trial back three months, it would have the additional  
9 benefit that there would not be -- we could be more  
10 confident there would not be a problem in relation to  
11 that.

12 So that is what I wanted to say about timing.

13 The next point is the -- is really a point not for  
14 today but, again, to put down a bit of a marker:  
15 the possibility being canvassed of second-wave claimants  
16 joining the second trial. We have very great concerns  
17 about that possibility.

18 DS Smith are in a special position for two reasons.  
19 First of all, there is a big issue on overlapping  
20 trucks, as the Tribunal are aware. Which makes --  
21 produces a compelling logic for DS Smith to be in  
22 the second trial, as the Tribunal knows. But in  
23 addition, they have agreed to be bound by the overcharge  
24 findings.

25 Now, beyond that, beyond DS Smith, there are, we

1           would suggest, serious inefficiencies in other parties  
2           being allowed to come into that second trial.

3       THE PRESIDENT: Can I interrupt you a moment.

4           I think we are proposing only DS Smith and possibly  
5       VSW, subject to further discussion of the points raised  
6       by Ms. Demetriou. Other second-wave claimants, as we  
7       are calling them, would not come into trial 2, but we  
8       have raised the possibility that some of them might come  
9       into trial 3.

10       MR. HOLLANDER: Yes. There is a point I am about to make  
11       about VSW. But subject to that, we have no problem with  
12       that at all. Thank you.

13           The next point is, you spoke of the three stages of  
14       a second trial. Again, not really a point for today.

15           If Dawsongroup come into the second trial as  
16       envisaged, although they have not sued Iveco, Iveco  
17       would need, as it were, a seat at the table on that part  
18       of the trial when the Tribunal considers Dawsongroup  
19       pass-on, because their businesses and Ryder's are very  
20       similar; and we would envisage, as between those two  
21       parties, there would be very similar issues on pass-on.  
22       I do not think that is an issue for today, but I just  
23       wanted to mention that.

24           We would also, for the reasons I gave a moment ago,  
25       be strongly against expanding a third trial to add

1 additional parties for the same reason. We would  
2 suggest -- again, not for today -- but it would be  
3 inefficient and not proportionate.

4 So those are the points on the proposal that  
5 the Tribunal -- that you, sir, put this morning.

6 Can I just deal with a few points raised by other  
7 parties.

8 Now, Ms. Demetriou, for VSW, said if VSW were  
9 involved in the second trial, as canvassed by you, sir,  
10 they say that they would want to be involved not merely  
11 in pass-on, but also on the overcharge.

12 Now, that contrasts with DS Smith, who have said  
13 that they would be bound by the overcharge findings. It  
14 is not satisfactory at all that VSW should be involved  
15 in a second trial if they want and are able to be  
16 involved in the overcharge element of that.

17 First of all, it will delay and complicate matters  
18 for them to be involved in that and it is not  
19 proportionate; and, secondly, because they are also  
20 involved against Iveco in the third trial, it will mean  
21 in a sense that they have a go at overcharge in trial 2  
22 and they have another go in trial 3. So that is in  
23 respect to what Ms. Demetriou said about VSW and their  
24 potential in -- their wish to be involved in trial 2  
25 overcharge if VSW is party to that.

1           The other point that Ms. Demetriou made about test  
2 claimants on pass-on, we are happy to engage with that.  
3 It has been canvassed for a long time. We raised  
4 questions on their proposal a long time ago and we have  
5 never had a substantive response. But we are perfectly  
6 happy to engage with those issues in due course.

7           Now, Mr Harris' comments. It may be that it is  
8 a testament to the care with which the Tribunal prepared  
9 this little scheme that the only one party so far who  
10 has sought to argue substantially against it is  
11 Mr. Harris' clients.

12           Mr. Harris, I think, in a sense, is proposing an all  
13 singing, all dancing first trial, which would be, in our  
14 submission, totally unmanageable; hugely long,  
15 inefficient, and would fail to achieve what the Tribunal  
16 is, we would suggest, trying to achieve. You have got  
17 our written submissions on that; I do not want to repeat  
18 them. But he gave two reasons today.

19           The first one was that a first trial might settle.  
20 That is really not a reason at all. Who knows what may  
21 happen. But it is completely speculative. Lumping into  
22 a first trial so it becomes unmanageable in case part of  
23 it settles is not really very efficient.

24           The second point he made was that it would affect  
25 a second trial even though the findings would not be

1 binding. He seemed to suggest it would be almost  
2 de facto binding. That, with respect, is simply wrong.  
3 If those parties who are not involved in the first  
4 trial, it would not in any way be binding on them,  
5 de facto or otherwise. You, sir, mentioned the idea of  
6 a different Tribunal: we would suggest that really is  
7 not a starter either. So we would -- in addition to  
8 the reasons we have already put in writing, we would  
9 invite you not to move from your proposal in respect of  
10 that.

11 The only other point --

12 THE PRESIDENT: Just to clarify, when you say that is not  
13 a starter, you are not referring to the proposal of  
14 having separate Tribunals, are you? You are referring  
15 to the submission of Daimler; is that right?

16 MR. HOLLANDER: He said it will be de facto binding --

17 THE PRESIDENT: Yes.

18 MR. HOLLANDER: -- because the issues will be canvassed and  
19 issues decided. That is just not right, with respect.

20 THE PRESIDENT: I understand.

21 MR. HOLLANDER: I am sure your Lordship knows that is  
22 the position.

23 The only final point I want to make in relation to  
24 Mr. Hoskins' suggestion was that there should be  
25 separate CMCs for each trial. That seems to us to be

1 a sensible suggestion.

2 THE PRESIDENT: Thank you.

3 MR. HOLLANDER: I don't know if there is anything else that  
4 I can assist you with. Those were the points -- I mean,  
5 it may be for a next stage.

6 So far as -- I mean, you will no doubt, having heard  
7 these submissions, make a ruling which -- a more  
8 determinative as opposed to provisional ruling. We  
9 would suggest the next stage is the parties go off and  
10 try to agree between themselves a timetable; because at  
11 the moment, some of the parties have put forward  
12 timetable proposals, but in a sense there is not much  
13 point in doing that until you know what the proposal is  
14 for. We would suggest that perhaps the best way of  
15 doing that is for the Tribunal to require proposals and  
16 counter proposals by a certain time, with a view to  
17 the parties trying to sort out directions; and that that  
18 was the way of doing it. But obviously that is a matter  
19 for the Tribunal.

20 THE PRESIDENT: Yes, thank you.

21 Now, MAN, Mr. Jowell?

22 Submissions by MR. JOWELL

23 MR. JOWELL: Mr. President, members of the Tribunal, we are  
24 also very grateful to the Tribunal for its expression of  
25 its provisional views, and we will not seek to dissuade

1           it from the basic approach that it has provisionally  
2           taken to case managing these proceedings in  
3           the tripartite method described.

4           But we would like to put down just two markers: one  
5           in relation to the Scania appeal issue and its potential  
6           implications for the trial date of the Ryder trial; and  
7           the other relating to timetabling issues and some of  
8           the points that have been raised by my learned friends.

9           Mr. President, you observed in opening that by  
10          January 2023, the mooted date for the Dawsongroup/Ryder  
11          trial, the General Court will be likely to have handed  
12          down judgment on the Scania appeal, and that there may  
13          or may not be an appeal to the Court of Justice; and if  
14          there is an appeal to the Court of Justice, it may or  
15          may not be on a relevant point. We of course  
16          acknowledge that all of that is quite correct.

17          But we should put down a marker that, for  
18          the reasons that we have set down in detail in our  
19          skeleton argument, if there is a relevant appeal by  
20          Scania to the Court of Justice, it would not, in our  
21          submission, be possible to hear the Ryder claim on  
22          the basis of the way that it is currently formulated in  
23          the Ryder pleadings. That is because the way that Ryder  
24          currently pleads its claim is to rely expressly on  
25          the Scania decision and to allege, on the basis of that

1 decision, that Scania was a participant in  
2 the infringement.

3 Now, this is not a problem that the -- arises for  
4 the Dawsongroup claimants. They make no allegation of  
5 Scania's participation; they do not rely on the Scania  
6 decision. So we fully accept that this issue does not  
7 arise for them.

8 Now, it has been suggested by some that the Ryder  
9 pleadings do no more than refer to the Scania decision  
10 to support additional factual allegations against  
11 the existing defendants, and that they relate solely to  
12 those defendants' own involvement in the infringement.  
13 Now, if that were the case, that would be acceptable.  
14 But we do not consider, respectfully, that that is  
15 a tenable reading of Ryder's pleaded case.

16 Now, Mr. Taylor of Slaughter and May has exhibited  
17 to his witness statement a highlighted version of the --  
18 of Ryder's amended particulars of claim and of its  
19 reply. In green, you will find the various passages  
20 where we say there is clear reliance -- not mere  
21 reference but reliance on the Scania decision, in order  
22 to support the allegation that Scania participated in  
23 the infringement; and that that is done in support of  
24 the claim against the existing defendants.

25 Now, I do not intend to take you to the pleading

1 unless you would like me to. One of the reasons for  
2 that is that it is outer ring confidential, and  
3 therefore I cannot ask Opus to bring it up. But what  
4 I would respectfully suggest is that I could give you  
5 for your note the relevant passages.

6 The pleading starts in the Opus bundle at  
7 {R-D/IC9/6}. The first paragraphs that are necessary to  
8 look at are paragraphs 6 and 6A, which set out the clear  
9 reliance on the Scania decision.

10 Then if one looks at paragraph 55A, one sees that it  
11 is shot through with specific references to Scania  
12 representatives' participation, or alleged  
13 participation. At paragraph 62C and B and at  
14 paragraph 71A, it goes even further and makes it  
15 absolutely clear that it is relying on the Scania  
16 decision to substantiate the fact that -- or  
17 the allegation that Scania participated in the same  
18 infringement as the defendants; and alleging that that  
19 decision should be given significant evidentiary weight;  
20 and indeed making that allegation in support of its  
21 claim as against the defendants --

22 THE PRESIDENT: Just give us a moment. Just bear with me  
23 a moment. We have got hard copies as well. So we are  
24 just trying to look at that.

25 While I am looking for that, can you just help me on

1 the dates. The Scania appeal in the General Court  
2 has -- the oral hearing has taken place, has it not?

3 MR. JOWELL: Yes, and that --

4 THE PRESIDENT: When was that?

5 MR. JOWELL: That was in June, I understand. Mr. Kennelly  
6 will have the details. But I understand that that was  
7 in June of this year.

8 THE PRESIDENT: So June 2020.

9 MR. JOWELL: Yes.

10 THE PRESIDENT: So, there should be a judgment, one would  
11 hope, by the summer of 2021 from the General Court.

12 MR. JOWELL: That may well be. Mr. Kennelly will be able to  
13 assist you further.

14 THE PRESIDENT: Yes, I am just thinking --

15 MR. JOWELL: Yes.

16 THE PRESIDENT: -- what is -- as we know, it is hard to  
17 predict judgment dates, even with our own Supreme Court,  
18 let alone the Court of Justice, but of how long a case  
19 is likely to continue there, if we are thinking about  
20 a trial in 2023, but --

21 MR. KENNELLY: Sir, may I help you with that?

22 THE PRESIDENT: Yes. Just -- can you just identify yourself  
23 for the transcript, please.

24 MR. KENNELLY: I'm sorry. This is Brian Kennelly, counsel  
25 for Scania.

1           What I am about to tell you I have from Scania's  
2           representatives who have conduct of the appeal before  
3           the General Court.

4           Sir, you are quite right: we expect judgment in  
5           the General Court in mid to late 2021. That is actually  
6           significantly later than one would normally get  
7           a judgment from the General Court, but unfortunately,  
8           because of COVID 19 there are significant backlogs and  
9           delays both in the General Court and in the Court of  
10          Justice on appeal.

11        THE PRESIDENT: Yes.

12        MR. KENNELLY: I have instruction that if Scania loses its  
13          application to the General Court, we are very likely to  
14          appeal the CJEU. As the Tribunal knows, appeal is  
15          available as of right --

16        THE PRESIDENT: Yes.

17        MR. KENNELLY: -- and Scania intends to appeal if it loses.

18          Again, it normally would take about a year. But  
19          unfortunately, because of the delays and backlogs that  
20          have happened this year in the CJEU, our representatives  
21          in the Scania appeal expect the resolution of that  
22          appeal before the CJEU not to happen until 2023.

23          So we expect, based on our analysis of the current  
24          progress of cases in the General Court and the Court of  
25          Justice not to get resolution of the Scania issues until

1           2023, mid -- perhaps mid-2023, but we cannot be more  
2           precise.

3           THE PRESIDENT: Yes, thank you very much.

4           MR. JOWELL: Sir, the other references -- I also thank  
5           Mr. Kennelly for that.

6           The other references I should give you are to  
7           the amended reply of Ryder. That starts in the bundle  
8           at {R-D/1IC9/157}. In particular, I would invite  
9           the Tribunal to have regard to paragraph 47 of that, and  
10          also to paragraph 57 through to 59. Which again make  
11          very clear that what is being alleged is that it is  
12          simply unmistakable that, as against the defendants,  
13          that Scania participated in the same infringement as  
14          the defendants; and it directly relies on the Scania  
15          decision to substantiate that fact, and alleges that  
16          the decision should be given evidentiary weight. It  
17          relies on that in support of its claim that there has  
18          been or is likely to have been an overcharge.

19          In our submission, it does not work to say, as Ryder  
20          do, that the Tribunal can in due course give what weight  
21          it thinks appropriate to the Scania decision, taking  
22          into account that it is under appeal. In our  
23          submission, and unless and until the Scania appeals are  
24          finally determined, the Tribunal just cannot, and in any  
25          event should not, rule one way or another on

1 the allegations that are made in positive reliance on  
2 the Scania decision.

3 So, it is just an inconvenient -- it is an  
4 inconvenient fact, but it is a fact that if there are  
5 still ongoing appeals to the Court of Justice that are  
6 relevant to the validity of the Scania decision -- and  
7 you have heard Mr. Kennelly -- then it seems to us that  
8 there are really only two options.

9 One is that Ryder maintain their existing pleas, but  
10 they accept that their trials must be held at a time  
11 after the Scania appeals. That might mean, as you have  
12 heard, that the January 2023 date cannot be held, and we  
13 are looking more sensibly at a hearing later in 2023.

14 The other option is for Ryder to agree to withdraw  
15 their allegations in reliance on the Scania decision  
16 that Scania participated in the infringement. It is  
17 inconvenient but those, as we see it, are the only  
18 lawful way forwards. Really, it is for them to choose.

19 But if they are not going to make clear that they  
20 are going to withdraw those allegations, then we think  
21 the sensible thing is to either leave outstanding for  
22 some time the date of the Dawsongroup/Ryder hearing,  
23 until a time in which we know when the General Court's  
24 judgment is going to be handed down, so that we can then  
25 determine when it should be, or put it for late 2023

1 now.

2 I should say a word about also -- unless there is  
3 anything further on that, I should say a word about  
4 the timetable generally.

5 We agree with Mr. Hoskins' proposals that there  
6 should be CMCs for the second and third groups of claims  
7 and that detailed timetables should be considered at  
8 that stage. We do think that, actually, it is  
9 absolutely right to say, as others have said, that  
10 the existing timetables that have been mooted are not  
11 really fit for purpose, because they had other divisions  
12 in mind --

13 THE PRESIDENT: That is clear.

14 MR. JOWELL: And we would, in particular, wish for  
15 considerably more time for factual evidence, and also  
16 for reply expert reports, than had been mooted in  
17 the existing timetables; because one is now talking  
18 about pass-on as well as overcharge.

19 As to trial date, we say it would be sensible for  
20 the Tribunal perhaps to clarify, particularly in light  
21 of the submissions that have been made about  
22 the knock-on effects of the first trial on the second,  
23 those submissions that have been made by Mr. Harris, Mr.  
24 Hoskins and Mr. Hollander that I won't repeat, but we  
25 would suggest that perhaps the appropriate order now is

1 to say that the respective claims should not be tried  
2 before January 2023 for Ryder, and not before  
3 October 2023 for the VSW group, but then to leave  
4 outstanding any actual listing of the claims, and  
5 leaving expressly open the possibility that actually  
6 the trial -- those two trials could commence rather  
7 later than those dates. Particularly in view, as I have  
8 said, of the Scania point, which, as far as Ryder is  
9 concerned, does seem to us to mean that potentially it  
10 might have to be a very significant extension.

11 As regards Daimler's proposed variation of merging  
12 trials 1 and 2, we have no objection to that in  
13 principle, unlike some others, but we do heartily agree  
14 with Volvo that any such merged trial certainly could  
15 not be before the current date of the second trial,  
16 which, on your provisional indication, was January 2023;  
17 and it would be more not less burdensome than  
18 the Ryder/Dawsongroup trial on its own.

19 I mean, one has to bear in mind, in particular, that  
20 if one considers that DS Smith is going to be a part of  
21 that trial, and yet DS Smith's claim is at a very early  
22 stage, and we have not even begun any disclosure on  
23 pass-on from DS Smith. So it would be very ambitious  
24 indeed, in our submission, to hear that -- a joined-up  
25 claim of claims 1 and 2 any time before January 2023.

1           Mr. President, unless there are any questions, those  
2           are the only points that we wish to add.

3           THE PRESIDENT: Thank you.

4           I think, finally, for Scania, Mr. Kennelly.

5                           Submissions by MR. KENNELLY

6           MR. KENNELLY: Even with the VSW trial in late 2023, Scania  
7           maintains its request for a stay on proportionality  
8           grounds. If the Tribunal would indulge me, I will make  
9           three brief points as to why we say that is the right  
10          approach.

11          The first is that even including France and Germany,  
12          the number of Scania trucks in that VSW trial is  
13          de minimis. To make that point good, I need to show you  
14          a document in the inner confidentiality ring, so it  
15          cannot be shown on the main screen, but I will give you  
16          the reference for the Tribunal. It is  
17          {VSW/D1/IC-511/2}. It is a letter --

18          THE PRESIDENT: So, would you like us to -- I mean, we can  
19          bring that up, I think.

20          MR. KENNELLY: I would be grateful, because I need to show  
21          you the letter.

22          THE PRESIDENT: We might need some help, because I am not  
23          sure ...

24          NEW SPEAKER: Could you repeat the reference, please?

25          MR. KENNELLY: Yes, it is {VSW/D1/IC-511/1}, and I want to

1 take the Tribunal to the second page of that document.

2 THE PRESIDENT: But I think for Opus, I think you can't

3 bring it up on the common screen because it is

4 a confidential document; is that right Mr. Kennelly?

5 MR. KENNELLY: That is correct, yes.

6 THE PRESIDENT: I am slightly puzzled why it is confidential

7 if it is just showing the number of trucks in different

8 countries, but you say it is.

9 MR. KENNELLY: It is within the inner ring, so that is why

10 I have to be careful -- (overspeaking) -- probably is

11 not confidential, but I will need confirmation from my

12 clients if I decide to do that.

13 THE PRESIDENT: Let me just see if we can ...

14 I am not sure. Just pause a moment.

15 (Pause)

16 Yes, we have the letter. Is it paragraph 6?

17 MR. KENNELLY: Sir, yes.

18 THE PRESIDENT: Well, that gives -- that is dealing with

19 the proposed test claimants, not the totality of the VSW

20 claim. It says you are objecting to the test claimants.

21 We are not addressing that at the moment. If those are

22 the test claimants, that would be less than 1% of those

23 test claimants' trucks. But it is not the totality of

24 the Scania trucks in the VSW claim.

25 MR. KENNELLY: That is true, sir. But even in the totality

1 of the VSW claim, including France and Germany,  
2 the (inaudible) trucks amount to about 5%. I am told  
3 5.2% when you -- (temporary loss of audio feed) --

4 THE PRESIDENT: Sorry, can you say that again.

5 MR. KENNELLY: 5.2%, sir, when you verify them against  
6 the identification numbers and exclude duplicates.

7 But certainly as these currently stand, the VSW  
8 proposed test claimants are the way in which VSW  
9 proposes to do --

10 THE PRESIDENT: Well, that is VSW's proposal. We have not  
11 decided that; and we are not deciding that today.  
12 Therefore, if that is the basis for a stay application,  
13 that arises if and when -- and it is an if -- we do  
14 adopt those test claimants. At the moment, there are no  
15 test claimants; it is the totality of the VSW claim. It  
16 is a question of whether, on that basis, the claim  
17 against you should now be stayed.

18 MR. KENNELLY: I understand.

19 THE PRESIDENT: Of course, you have been joined in that  
20 action by various of the defendants as a Part 20  
21 defendant.

22 MR. KENNELLY: Indeed, sir. But the basic point I am making  
23 on proportionality is, first, even on totality, it  
24 amounts to about 5% of the trucks. No one is suggesting  
25 that Scania need to be in the VSW trial for that trial

1 to work against the other defendants. You have to weigh  
2 the minimum involvement of Scania with the cost of  
3 Scania's involvement, because although the number of  
4 trucks involved is small, the cost to Scania of doing  
5 disclosure and the overcharge analysis will be very  
6 significant. You have seen that in our skeleton at  
7 paragraph 9.1, where we estimate the costs up to a lead  
8 trial for Scania will be about £6.9 million. That is  
9 far, we say, on the basis of the -- certainly on  
10 the basis of the VSW test claimants' approach, that is  
11 completely out of proportion to any likely overcharge  
12 per truck. But we would submit, even on the basis of  
13 the totality, it is disproportionate to involve Scania  
14 in that trial.

15 The costs that Scania is likely to incur may well be  
16 incurred in the short term. I will put down a marker  
17 when I have finished my three submissions on the stay.  
18 Those costs, as I say, will be significant.

19 The third point, sir, is that there is a risk that  
20 Scania's appeal before the Court of Justice, if such an  
21 appeal is taken after the General Court, risks  
22 disrupting VSW's trial, because if we get, as we expect,  
23 a CJEU judgment in 2023 -- in perhaps mid-2023 -- that  
24 judgment may well have an important effect on  
25 the pleaded case against Scania, because the judgment

1           may not simply be a binary judgment upholding  
2           the Commission's decision in full; the judgment -- both  
3           of the General Court and of the CJEU -- may leave  
4           a mixed outcome, which could have a significant effect  
5           on the case against Scania. That will need to be taken  
6           into account in the evidence -- expert evidence which  
7           will be deployed in the trial. So there will need to be  
8           a proper gap between the CJEU judgment and the trial  
9           involving Scania.

10        THE PRESIDENT: Can I just go back to this proportionality  
11        point? If the number set out in paragraph 6 --  
12        I struggle to think why that number should be  
13        confidential -- is --

14        MR. KENNELLY: The number is not confidential, sir. Sorry,  
15        that number is not confidential.

16        THE PRESIDENT: No. So it says 118 trucks across France and  
17        the UK represent less than 4% of VSW's entire claim  
18        against Scania. Well, if 118 is less than 4%, then  
19        the 100% is close to 3,000. So there are about 3,000,  
20        a bit less than 3,000, trucks in the VSW claim against  
21        Scania, on that basis. So it is not completely  
22        insignificant.

23        MR. KENNELLY: No, you are referring, sir -- your proposal  
24        this morning referred to the UK, France and Germany.  
25        You did not refer to other core countries, such as

1 Sweden.

2 THE PRESIDENT: I see. Because a lot of these are Swedish.

3 I understand.

4 MR. KENNELLY: Well, not just Swedish but other countries.

5 France -- because your focus, sir, is on France, the UK

6 and Germany (inaudible) on the basis of the test

7 claimant approach is less than 1% and only 4% of

8 the entire claim against Scania.

9 THE PRESIDENT: Yes, I understand -- (overspeaking) --

10 MR. KENNELLY: That is why -- (overspeaking) --

11 disproportionate to require Scania to take steps in this

12 case, so my stay is still appropriate.

13 But if, sir, you are against me on the stay, I must

14 at least put down a marker -- and you will forgive me: I

15 know there have been a lot of markers put down by

16 everybody today, but I ask for simply one, and it is

17 that when you come to -- or when the CMC is listed and

18 the VSW trial is considered, we ask that

19 the EU proceedings be taken into account in

20 the directions for that trial. So that steps should not

21 be brought forward where that is not necessary,

22 the costs should not be front loaded unnecessarily.

23 There are two main reasons for that. First,

24 obviously, to get the benefit of the first and second

25 trial, there has to be a gap between them and the third

1 trial. The point made by my learned friends earlier.  
2 And so major steps such as expert evidence should not  
3 take -- should not be undertaken until the judgment is  
4 given in the second trial.

5 Secondly, the later the major steps are taken,  
6 the more likely they are to avoid a (inaudible) problem;  
7 and certainly to take into account any judgment of  
8 the CJEU. So we put down a marker that certainly at  
9 the CMC for the third trial we will be urging  
10 the Tribunal not to require Scania to take steps at an  
11 early stage, not least because the VSW trial now looks  
12 as if it is going to take place, on your provisional  
13 view, in late 2023 or later.

14 I should say, finally, that we agree with  
15 the submission made by my learned friends that there  
16 should be a separate CMC for the second trial and  
17 the third trial. There should not be a joint CMC; there  
18 should be separate CMCs. The trial 3 CMC should not, we  
19 submit, be listed until we have the outcome of the trial  
20 2 CMC, because in order to work out what is feasible and  
21 appropriate at the trial 3 CMC, we should have  
22 the result of the trial 2 CMC. That will assist us in  
23 working out what can be done for the trial 3 CMC, what  
24 is proportionate and reasonable.

25 So those are my short points. Thank you.

1 THE PRESIDENT: Yes, thank you very much.

2 Can we just go back, please, to Mr. Ward, to clarify  
3 one point arising out of what Mr. Beard said to us,  
4 which goes back to the plausibility analysis that DAF  
5 intends to conduct.

6 You will remember that he said that DAF's expert  
7 will be doing that on the basis of DAF's prices, both  
8 the gross prices and transaction prices. That will be  
9 the basis on which they put it forward to support an  
10 argument that it just was not plausible that it could  
11 have had an effect, the cartel, on transaction prices.

12 Your expert will presumably be countering that  
13 result, that inference. Are you envisaging -- and you  
14 will have, of course, for your expert, disclosure of  
15 the data that is being used. Are you envisaging that  
16 your expert is going to want to use data on trucks of  
17 other manufacturers which is not part of  
18 the plausibility and it is not in that trial?

19 Submissions by MR. WARD

20 MR. WARD: Well, sir, at the moment it is very difficult to  
21 give a firm answer to that.

22 Today -- we have heard that there was a plan to do  
23 a plausibility analysis before. Today was the first  
24 time, we think, that we heard a suggestion that somehow  
25 other manufacturers might be involved in that. From

1 the way Mr. Beard describes it, and indeed the way it is  
2 described in the DAF witness evidence, it sounds as  
3 though this plausibility analysis has not even been  
4 done, because it is quite careful drafting used that  
5 this "will be performed". So if it has not been done,  
6 of course we have not seen it.

7 THE PRESIDENT: No, I think what he said was -- and that was  
8 the answer to the question -- DAF will -- DAF's  
9 economist will do it on the basis only of DAF's prices,  
10 not other manufacturers' prices. What he was saying is  
11 whether Royal Mail/BT's economist in response might want  
12 to start using other manufacturers' prices. Then they  
13 will be saying that, look at DAF's list prices, or  
14 published prices, look at the actual prices,  
15 the relationship, etc, shows that ... presumably  
16 something along those lines, as I understood it,  
17 envisaged that.

18 MR. WARD: So as far as I know, and as far as I can  
19 establish today, the answer is there is no such  
20 intention. Of course you will be aware, sir, that one  
21 of the key features of the BT/Royal Mail trial is there  
22 is only one defendant, so there is no disclosure within  
23 those trials from the defendants in other cases or  
24 the other manufacturers. One of the themes of our  
25 submissions has been our desire to curtail the scope of

1           what's happening in these trials, so that we do not end  
2           up essentially litigating against other defendants.

3           I am sorry, sir, that is a slightly hedged answer  
4           but it is simply because this point has come out of  
5           the blue.

6       THE PRESIDENT: No, I understand.

7           I think the only other question I have before  
8           I confirm with my colleagues: Ms. Demetriou, on what  
9           Mr. Kennelly has just said about the trucks -- Scania  
10          trucks in VSW's claim and their limited involvement, is  
11          there anything you want to say about that?

12                               Submissions by MS. DEMETRIOU

13       MS. DEMETRIOU: Yes, sirs.

14           So, the numbers -- let me give you the figures. So  
15           you are quite right that the letter, paragraph 6 of  
16           the letter is referring to the number on the test  
17           claimant scenario. Of course, that -- the test claimant  
18           proposal only relates to pass-through. So even if -- if  
19           it were adopted by the Tribunal -- and we accept that is  
20           not a matter for today -- we would still be seeking  
21           disclosure from Scania in relation to overcharge in  
22           relation to all the trucks, the Scania trucks, which are  
23           within the scope of the claims. As to the figures,  
24           for France, Germany and the UK, there are 2,120 Scania  
25           trucks, most of them are in France, which represents

1           about 8% of the total claim. So it is sizeable.

2           Sir, as to Mr Kennelly's other points, of course it  
3           is always the case where there are pending appeals in  
4           follow-on damages claims, as the Tribunal is fully  
5           aware, that there are arguments about stay and  
6           the cost-benefit of proceeding. In fact, that was  
7           a point which was canvassed fully before the Chancellor  
8           in the National Grid claim; and you will recall that  
9           the Chancellor did not stay the claims but instead  
10          proceeded with them, knowing that if the appeals had not  
11          been finally determined by the end of the trial,  
12          Masterfoods would preclude a trial at that point.

13          But of course, if it were the case ultimately -- and  
14          this is one of the points that the Chancellor took into  
15          account in National Grid. If it were the case  
16          ultimately that Scania were to be completely successful  
17          in its appeal, then that is something which would be  
18          compensated for in costs. But the Tribunal will be  
19          aware that it is not the practice of the English courts  
20          or the Tribunal to stay proceedings in light of pending  
21          appeals in Luxembourg. We say that in circumstances  
22          where these claims were issued in 2017 and what is being  
23          canvassed is a trial in 2023, so more than six years  
24          later, it would be entirely inappropriate to stay these  
25          claims. Indeed, we say, on the contrary, that we

1 strongly urge the Tribunal to list the VSW trial now --  
2 not to defer the listing of it for a CMC in the future  
3 but to list it now, because there is obviously time  
4 between now and the end of 2023 for the preparatory  
5 stages to be completed.

6 We say that without listing -- if the trial is not  
7 listed now, then there is the potential -- clear  
8 potential for drift. So we say it is important for  
9 the trial to be listed now. That will exert  
10 a discipline over the parties; and indeed, a discipline  
11 which will be felt in the next few months in the lead-up  
12 to the next CMC. It will focus discussions and will be  
13 very helpful in terms of the evolution of these  
14 proceedings.

15 So we say, far from staying the claim against  
16 Scania, we would invite -- strongly invite the Tribunal  
17 to list the trial now. Of course, if something  
18 transpires which requires the listing to be reviewed,  
19 that is something that can be canvassed at a future CMC.

20 Sir, that is really what I wanted to say in response  
21 to Mr. Kennelly.

22 THE PRESIDENT: Yes, thank you very much.

23 MR. HOSKINS: Sorry, can I say something in relation to that  
24 last proposal, which is the first time it has been made?

25 THE PRESIDENT: This is the proposal to list the --

1 MR. HOSKINS: To list the trial now.

2 THE PRESIDENT: No. I want to confer with my colleagues and  
3 I will put you on mute.

4 Submissions by MR. BEARD

5 MR. BEARD: Sorry, sir, just before you do confer, there is  
6 just an issue.

7 I understood Mr. Ward's position, albeit tentative,  
8 or somewhat tentative, to be that he did not at this  
9 stage consider that there would be a need for other OEM  
10 analysis in relation to these matters; and that was  
11 the essence of the approach that BT/Royal Mail were  
12 taking here.

13 He referred to this proposal as being new. I think  
14 it is important to draw attention to the fact that this  
15 was raised back in February last year in those expert  
16 three pagers. Just for your notes, that is {C/2/25}.

17 THE PRESIDENT: Yes. Well, I started by referring to that,  
18 Mr. Beard.

19 MR. BEARD: Absolutely. No, I am sure, sir, you have  
20 the point.

21 But I think it is important for us to understand, if  
22 Mr. Ward is going to be saying, "No, no, no, this sort  
23 of analysis, if you are going to do it, has to involve  
24 other OEMs," we need to know that, because that is  
25 significant; and we are taking it at the moment that

1           that is not the position that they are adopting.

2       THE PRESIDENT: Well, I think that is my understanding. It  
3           is also -- what is important, it is the first time  
4           I think you have clarified in response to my question  
5           that you do not intend to involve the other OEMs either.

6       MR. BEARD: Well, on that basis, our focus would be on our  
7           data because we have it. But obviously we were doing it  
8           in the context of a situation where all of these things  
9           on our proposal would have been considered together, and  
10          that is why it is important. Thank you.

11       THE PRESIDENT: Yes, thank you.

12                 Well, we will rise for 10 minutes then resume.

13       (2.52 pm)

14                         (A short break)

15       (3.06 pm)

16                         [Ruling 1 - Pending Approval]

17       MR. BREALEY: Sir, could I just clarify. We did not come  
18           back by way of reply --

19       THE PRESIDENT: On the date.

20       MR. BREALEY: -- on the date. Obviously that does affect  
21           us. We had quite strong views that it should not be  
22           pushed back by a further three months. If the Tribunal  
23           is minded to do that, we would request we have, say, 30  
24           minutes tomorrow to try and persuade the Tribunal to  
25           keep to the January date.

1 THE PRESIDENT: Well, if you want to, but we did think there  
2 were quite powerful reasons that we heard for  
3 -- (overspeaking) -- putting it back. But if you want  
4 to address us on that tomorrow, you can do that.

5 MR. BREALEY: I am grateful. It is a non-binding judgment  
6 by a different Tribunal, and six months to consider  
7 a non-binding judgment by a different Tribunal when we  
8 were preparing a draft timetable which would give  
9 the parties three months, we thought three months was  
10 adequate.

11 THE PRESIDENT: Yes. Do you want to address us on that  
12 first thing tomorrow?

13 MR. BREALEY: Well, I would be obliged.

14 THE PRESIDENT: Yes, that will give you time to think  
15 about it.

16 [Ruling 1 Continues]

17 Is that satisfactory? Is anyone unhappy about that?

18 MR. HARRIS: Sir, it is Mr. Harris speaking on behalf of  
19 Daimler.

20 THE PRESIDENT: Yes.

21 Submissions by MR. HARRIS

22 MR. HARRIS: Well, we have said in our skeleton argument  
23 three months, and we reflected on that quite hard.

24 The problem that we apprehend is that from  
25 the hearing we think there is going to be some

1 adjustment to paragraph 141 of the Tribunal's judgment,  
2 which was that paragraph which, you will recall, set out  
3 the -- if you like, the detailed mechanics of how one  
4 goes about deciding on a given pleading, what is  
5 (inaudible) and what is not. So it is not as though,  
6 absent seeing that adjustment, we can do a lot of this  
7 work now. We can do some, I accept that.

8 But then the second problem, which is arguably even  
9 more significant, which will require more time, is that  
10 these pleadings are vast. It was not at all clear  
11 to us -- take, for example, in Mr Brealey's Ryder  
12 pleading -- exactly where a reference is even being made  
13 to a recital.

14 Now is not the time to go into that pleading in  
15 order to illustrate that point. But, believe me, in  
16 a pleading that is hundreds of paragraphs, and I think  
17 that one was approximately eighty pages long, that is  
18 quite an endeavour. So we respectfully would suggest,  
19 if it is -- that it would be more than three weeks from  
20 the handing down of the Court of Appeal reasons, and  
21 indeed several months. It may be -- well, those are  
22 the two submissions for more time.

23 THE PRESIDENT: Can I clarify? Do the claimants envisage  
24 amending their claims as a result of the Court of Appeal  
25 judgment, their particulars of claim?

1 Mr. Ward?

2 Submissions by MR. WARD

3 MR. WARD: Sir, I don't believe so, but I hope you will  
4 understand if I do not give an absolutely firm  
5 commitment on that as well, as I know this is under  
6 active consideration.

7 Can I just come back, though, on what Mr. Harris has  
8 said?

9 We know that the appeal has been rejected. It is  
10 not necessary to wait for the reasons. There is going  
11 to be some very marginal adjustment to some of  
12 the language of one of the propositions in paragraph 141  
13 of the Tribunal's judgment, but just clarificatory.  
14 That certainly does not justify delay of months and  
15 months.

16 Obviously this is of particular concern in  
17 the BT/Royal Mail proceedings, where now we have --  
18 you know, whatever timetable we have now until next  
19 May (inaudible) 2022 is going to be quite brisk. So  
20 three months, in my respectful submission, is completely  
21 excessive for this exercise.

22 THE PRESIDENT: I understand.

23 Mr. Brealey, do you anticipate that your claim --  
24 that you will seek to amend in the light of the Court of  
25 Appeal judgment?

1                                   Submissions by MR. BREALEY

2           MR. BREALEY: We have no intention of amending our claim in  
3           the light of the Court of Appeal judgment.

4                    I should also point out that for many months  
5           the defendants have been on notice of those paragraphs  
6           in the defence which we say are abusive; and really  
7           three months is --

8           THE PRESIDENT: Yes.

9           MR. BREALEY: -- over the top.

10          THE PRESIDENT: Yes, Mr. Beard?

11          MR. BEARD: Yes.

12          THE PRESIDENT: You are of course in the first trial.

13                                   Submissions by MR. BEARD

14          MR. BEARD: Yes. Well, we do recognise that there is work  
15          we can get on with. We do also recognise Mr. Harris'  
16          point that there may be modifications to 141.

17                    I think in our recent correspondence -- just for  
18          your notes that is in {R-B/497} -- what we have done was  
19          set out a timetable which would take us seven weeks to  
20          respond on the basis of the current structure of 141.  
21          We think we would need that much time in order to work  
22          our way through, given the volume of material.

23                    I think it is right, as Mr. Harris says, that there  
24          may need to be modifications to that, depending on when  
25          the judgment comes out. But your three weeks, sir,

1 would not work, for instance, if the judgment were to  
2 come out next week. That would not give us enough time  
3 to deal with this.

4 We would be happy to work on the basis of making  
5 these -- submitting these materials by 18 December, as  
6 we have suggested. But we have to put down a marker of  
7 liberty to apply if the judgment in that case actually  
8 came out later and we had to consider the matter  
9 further. But --

10 THE PRESIDENT: Well, I think -- (overspeaking) --

11 MR. BEARD: We think 18 December.

12 THE PRESIDENT: -- Mr. Beard, knowing the constitution of  
13 that court, I think it is almost inconceivable. It will  
14 be later than the 18th December. Long before, I suspect.

15 MR. BEARD: That is our working assumption.

16 THE PRESIDENT: Yes.

17 The other defendants who are affected by this,  
18 Mr. Hollander, Iveco?

19 Submissions by MR. HOLLANDER

20 MR. HOLLANDER: Yes, my first proposal, and it may be  
21 something that is not attractive to the Tribunal, is  
22 that given the possibility of an appeal against  
23 the Court of Appeal decision, or an application for  
24 leave to appeal, if the amendments are made now, as  
25 opposed to when the appeal process is completed, there

1 is always the possibility of having to amend back.

2 So my first suggestion would be one waits until that  
3 appeal process is complete. But if that is not  
4 attractive to the Tribunal, then you are obviously  
5 looking at a date from when the Court of Appeal produces  
6 its reasons. In our submission, three weeks is really  
7 quite inadequate. There is quite a lot to do in respect  
8 of that. Exactly how much time the Tribunal is prepared  
9 to give us, in a sense, Mr. Harris has made the points  
10 and I am not sure there is much for us to add, other  
11 than to say that, in our submission, three weeks is  
12 entirely inadequate.

13 THE PRESIDENT: Yes.

14 Mr. Jowell?

15 MR. JOWELL: Mr. President, we really have nothing to add  
16 further to what has already been said at this point.

17 THE PRESIDENT: Yes.

18 Mr. Hoskins, Volvo?

19 MR. HOSKINS: Nothing to add, my Lord.

20 THE PRESIDENT: Yes.

21 We will just take a moment.

22 (Pause)

23 [Ruling 2 - pending approval]

24 THE PRESIDENT: So Mr. Brealey, it is your application.

25 MR. HOLMES: Yes, sir. I think I will be taking the

1 application, if I may.

2 So you will have seen what we say in our written  
3 submissions, sir. The current arrangements are leading  
4 to real practical difficulties.

5 THE PRESIDENT: Sorry to interrupt you. Can you just  
6 identify yourself for the transcript.

7 MR. HOLMES: Of course. This is Josh Holmes, counsel for  
8 Ryder.

9 THE PRESIDENT: Thank you.

10 Application by MR. HOLMES

11 MR. HOLMES: The current position is that the claimants  
12 cannot discuss with one another material, although all  
13 of them have access to it. Equally, they may not share  
14 correspondence, submissions or evidence, although --  
15 insofar as it contains common disclosure, although they  
16 all have access to it.

17 The oddities to which this gives rise are apparent  
18 from the preparatory work that was done for this CMC, in  
19 which Dawsongroup's legal team and Ryder's legal team  
20 were each preparing applications in parallel for similar  
21 or the same categories of disclosure. That preparatory  
22 work involved a discussion of disclosure that was common  
23 between the two claims in the correspondence and in  
24 the witness evidence.

25 For example, both sets of claimants were seeking

1 pre-cartel disclosure. One relevant issue concerned  
2 the utility of the DAF pre-cartel disclosure which had  
3 already been given and each side prepared witness  
4 evidence from their respective experts, but the legal  
5 teams could not see one another's witness evidence in  
6 support of the applications that they were intending to  
7 bring. They could not discuss the material. They could  
8 not see one another's correspondence, although  
9 the material was common between the claims.

10 That created obvious inefficiencies. It meant that  
11 each team had to prepare the correspondence in  
12 isolation. They had to formulate what they said without  
13 sight of what the other said. At the hearing,  
14 insofar as applications were live, it would create  
15 the difficulty that the Tribunal would be hearing  
16 together two parallel applications, but the parties  
17 bringing the applications would not be able to see one  
18 another's evidence and submissions, which the Tribunal  
19 would consider in the round when arriving at  
20 a conclusion. We say that that is inefficient, it is  
21 also unfair.

22 Given the Tribunal's decision of today to hear  
23 the Ryder and the Dawson group claims together, we say  
24 that it is obvious that at the very minimum it will be  
25 necessary for those claimant groups to be able to

1 discuss common disclosure in the two claims. It is --  
2 in all likelihood, evidence in one claim will need to  
3 stand in the other claim. Indeed, from the date when an  
4 order for the two claims to be heard together is made,  
5 that may obviate the need for the amendments sought by  
6 Ryder.

7 Just to show you why that is the case, if we could  
8 turn up for a moment the order, we could perhaps take it  
9 from the marked-up version appended to the Ryder  
10 skeleton argument. Do you have those to hand?

11 THE PRESIDENT: Just a moment.

12 Is it at schedule 1?

13 MR. HOLMES: It is. It is in the annexes, sir. I think it  
14 is schedule 2, indeed. It is at page 28 of the clip at  
15 the back of our skeleton. Do you have that?

16 THE PRESIDENT: This is the re-amended confidentiality ring  
17 order, is it?

18 MR. HOLMES: It is. You will see from page 21 that it is  
19 a markup of the order. But the passage I wanted to show  
20 you is in the order as it currently stands. That is at  
21 page 28.

22 You will see there the provision, paragraph 9.1:

23 "Nothing in this order ..."

24 THE PRESIDENT: Just one moment. You are looking at the --  
25 is this the one that is the re-amended order marked up

1           in red and blue?

2       MR. HOLMES:  Yes, it is.

3       THE PRESIDENT:  And you are looking at page -- so

4           paragraph ...?

5       MR. HOLMES:  9.1, sir.

6       THE PRESIDENT:  "Nothing in this order shall prevent ...",

7           that's it, is it?

8       MR. HOLMES:  Yes, sir.

9       THE PRESIDENT:  Yes.

10      MR. HOLMES:  "So:

11           "Nothing in this Order shall prevent:

12           "(a) any Inner Confidentiality Ring Member from

13           discussing Confidential Information with other inner

14           confidentiality ring members in claims which the

15           Tribunal has ordered are to be heard together with these

16           proceedings ..."

17      THE PRESIDENT:  Yes.

18      MR. HOLMES:  So we take that to mean that, from the date of

19           your order providing for Ryder and Dawsongroup's claims

20           to be heard together, it will become possible for

21           discussion of common confidential disclosure.

22      THE PRESIDENT:  Yes.

23      MR. HOLMES:  And that will achieve the -- as between those

24           two parties, the purpose of our application.  So to that

25           extent our application has been superseded by your

1 suggestion -- the approach that the Tribunal has decided  
2 to adopt.

3 THE PRESIDENT: So then the question arises: how important  
4 is it, then, as regards -- and it does not really arise  
5 for the trial 1, I think, but how important is it with  
6 VSW?

7 MR. HOLMES: Well, sir, it may arise with trial 1 for this  
8 reason.

9 Clearly, the matters that will be canvassed at trial  
10 1, which may concern common disclosure, will be highly  
11 relevant to the preparation which is undertaken for  
12 trial 2. It will therefore be useful for the claimant  
13 groups to be able to discuss. There would otherwise be  
14 artificial difficulties given that Dawsongroup's lawyers  
15 are also Royal Mail's lawyers. It creates a bit of  
16 a quagmire insofar as there are questions about what can  
17 and cannot be discussed.

18 We do not, for our part, see any real difficulty  
19 with this amendment. The only point which is made  
20 against it -- in rather a half-hearted fashion, if I may  
21 suggest that -- by Iveco is a risk of increasing  
22 the possibilities of inadvertent disclosure. The way in  
23 which that is put in Iveco's skeleton argument --

24 THE PRESIDENT: Yes.

25 MR. HOLMES: -- at paragraph 39 is to say:

1           "The greater the number of individuals who are  
2 permitted to discuss information within Confidentiality  
3 Rings, the greater the risk of leakage."

4           But of course, there is no expansion of the number  
5 of individuals who are permitted to see the material  
6 under our proposals. The point is that all of those who  
7 would discuss them already have access to them. That is  
8 the nub of the artificiality of the current position  
9 which arises.

10       THE PRESIDENT: Yes.

11       MR. HOLMES: And we say that there are adequate protections  
12 to prevent the risk of leakage, which are sufficient in  
13 the individual claims and are equally sufficient across  
14 them. Those protections are twofold.

15           The first is the confidentiality undertakings to  
16 which all of those who have received the information are  
17 subject; and they are experienced professionals who know  
18 the care that must be taken with confidential material.

19           The second point is that you will recall at  
20 the former -- at the last CMC in February of this year,  
21 the Tribunal put in place arrangements for identifying  
22 common disclosure in order to avoid any risk of doubt as  
23 to what material could be discussed. We say that those  
24 arrangements are amply sufficient to provide protection.

25           For the avoidance of doubt, there was certain

1           tidying amendments made in our proposal. They were not  
2           intended to suggest that we dispense with the common  
3           disclosure arrangement, the arrangement for  
4           the identification of common disclosure. We just raise  
5           that now because DAF sent yesterday some correspondence,  
6           which was a little obscure, but we think may have been  
7           intended to suggest that that was the effect of our  
8           amendments.

9           We are happy to engage, of course, in relation to  
10          the terms of the order; although no party has made any  
11          submissions about it to date. But we do say that this  
12          amendment is a timely one to make now, and it will avoid  
13          the inefficiencies of parties not being able to liaise  
14          and the unfairness of their not being able to see one  
15          another's submissions, arguments and evidence regarding  
16          the same material.

17        THE PRESIDENT: Yes, thank you.

18                Mr. Hollander?

19                        Submissions by MR. HOLLANDER

20        MR. HOLLANDER: Well, sir, there is very little in this, and  
21          we have been saying all along that the suggestion of  
22          the legal advisers speaking was premature until  
23          the Tribunal had decided the shape of the various  
24          trials. Until then it was inappropriate.

25                Now the Tribunal have decided there will be, on

1 trial 2, Ryder and Dawsongroup are both going to be  
2 parties. Therefore, in principle, subject to working  
3 out the mechanics, which can be done easily, one can see  
4 no particular problem in respect of that. There is  
5 obviously a problem on VSW, because their participation  
6 in trial 2 has not yet been determined.

7 But we have been writing ever since Herbert Smith's  
8 letter of 7 October, and we have been saying it was  
9 premature, "You cannot do this until the Tribunal has  
10 decided the shape of the trial," because, as we all  
11 know, these are a lot of highly confidential documents.  
12 No one is suggesting that anybody is going to misuse  
13 them deliberately, but these inner rings are very big.  
14 The looser the ring, if you like, the more there is risk  
15 of disclosure.

16 But you have decided -- you have reached a decision  
17 in respect of trial 2, and that involves Ryder and  
18 Dawsongroup. I would have thought from that it should  
19 be no difficulty at all in working out a scheme whereby  
20 this can be done in terms of all or some of the legal  
21 advisers.

22 THE PRESIDENT: Well, I think that that is very clear --  
23 just a moment.

24 Mr. Hollander, that is clear as regards Ryder and  
25 Dawsongroup. But the proposal is -- and you now accept,

1 and you explained why you did not before, that they can  
2 discuss it.

3 But the application is wider than that. It is also  
4 that the legal advisers to Royal Mail/BT, the same as in  
5 Dawsongroup, as it happens, but also more significantly  
6 to VSW, can also discuss the documents. The point made  
7 by Mr Holmes is that it is not that they are going to  
8 see any documents they have not seen -- they have all  
9 got these documents; they have all seen those  
10 documents -- it is giving them liberty to talk about  
11 them with each other.

12 MR. HOLLANDER: Well, if they have got -- you know  
13 the concern, which is that people are discussing for  
14 matters outside their own trial. The Tribunal has  
15 decided there are to be three trials. Therefore it is  
16 appropriate, in our submission, that the order --  
17 the extension of the order be limited to the trial, that  
18 trial itself, and not to go beyond that.

19 The -- I mean, we do not see, with respect, why  
20 there should be any need to go beyond the parties or  
21 the party to have been determined to be parties to that  
22 particular trial. It is -- we completely understand,  
23 once the Tribunal has made a decision about the trial,  
24 that there should be discussion for those. But going  
25 beyond that does have risks in our submission, and

1           should not be permitted, and there is no reason for it.

2           THE PRESIDENT: Yes, thank you.

3                     Was it Mr. Beard, I think you wanted to ...

4                             Submissions by MR. BEARD

5           MR. BEARD: Yes, sorry. Only because we had also indicated  
6           that in relation to confidentiality matters we thought  
7           it was important to see what the Tribunal was intending  
8           to order.

9                     We recognise, and it is helpful that Mr. Holmes has  
10           indicated, that his proposal is strictly limited to what  
11           is treated as common disclosed documents, and we are  
12           grateful for that indication.

13                     But we do understand Mr Hollander's position, which  
14           is, now that the Tribunal has ordered three separate  
15           trials, whilst confidentiality arrangements between  
16           the participants in each of those separate trials should  
17           obviously enable common disclosure discussions, we are  
18           not entirely clear why material from  
19           the Royal Mail/BT/DAF trial should automatically be  
20           being made available in relation to Dawsongroup/Ryder.  
21           The fact that you have common legal representatives does  
22           not really change that analysis. The natural course, as  
23           Mr. Hollander says, would be to focus on the particular  
24           trials.

25                     But as I say, we are particularly grateful for

1 Mr Holmes' confirmation in relation to the common  
2 disclosure issues; and we think his suggestion that this  
3 is creating artificial difficulties is itself wrong,  
4 because the natural course is to focus on the particular  
5 trials at issue.

6 THE PRESIDENT: Yes.

7 Slightly taking it out of order in a sense, but  
8 Ms. Demetriou, the focus now is very much on, I think,  
9 the VSW lawyers, because you are not in trial 2 and you  
10 have no identity with the lawyers in trial 1.

11 Submissions by MS. DEMETRIOU

12 MS. DEMETRIOU: Sir, yes. Well, of course, we may be in  
13 trial 2.

14 THE PRESIDENT: You may be, but that is --

15 MS. DEMETRIOU: But, sir, yes, we say that there is  
16 a certain artificiality in considering this on  
17 a trial-by-trial basis. Mr. Malek will remember that  
18 there was a hearing in June, in relation to which there  
19 had been discussions about Daimler disclosure. We only  
20 found out, on the eve of the hearing I think it was,  
21 that similar discussions had been taking place between  
22 Ryder and Daimler in relation to the same documents and  
23 the questions had been asked.

24 So we have had practical experience of  
25 the inefficiencies of not being able to talk to

1 the other claimant groups in relation to the same issues  
2 that are coming up in the respective claims.

3 So in circumstances where information is still being  
4 sought from the defendants, there is an obvious  
5 efficiency in knowing what is going on, so that we do  
6 not tread the same ground and start asking the same  
7 questions or seeking the same documents in circumstances  
8 where another claimant group has already done that.  
9 That obviously leads to wasted costs, and there are  
10 clear inefficiencies in being able to talk to each  
11 other.

12 We really adopt the submissions made by Mr. Holmes,  
13 which are that there is really nothing in the point made  
14 by Mr. Hollander about risks of leakage, because it is  
15 precisely the same people. We are not adding to  
16 the confidentiality ring; so there is no risk, as far as  
17 that is concerned.

18 THE PRESIDENT: Yes, we have got that point.

19 MS. DEMETRIOU: There are clear efficiencies on the other  
20 side of the equation. So that is all I wish to say by  
21 way of support.

22 THE PRESIDENT: Yes, thank you.

23 Does anyone else want to come in on this?

24 In that case, we will just take a few moments to  
25 consider what we do.

1 (Pause)

2 [Ruling 3 - Pending Approval]

3 THE PRESIDENT: So we would hope that we can deal with  
4 the question of dates, we can deal with the date of --  
5 start date of trial 2 right at the beginning of  
6 tomorrow's hearing. Then all the parties, apart from  
7 Dawsongroup, Ryder and Daimler, can be released. We  
8 think we have done enough for today. We shall therefore  
9 adjourn now until 10.30 tomorrow morning.

10 MR. HARRIS: Sir, may I just thank you very much for that  
11 indication.

12 Just on a housekeeping note for tomorrow. As you  
13 will have seen from the letter we sent yesterday,  
14 a large part of at least my responsive submissions to  
15 the Dawsongroup/Ryder application will involve actually  
16 going to inner confidentiality ring materials that  
17 cannot be simply referred to you for you to read, I will  
18 actually have to explain them.

19 I simply raise that because it will have  
20 implications for the Opus -- for who is on the call and  
21 the live streaming.

22 THE PRESIDENT: Yes. Can I -- it will be important,  
23 I think, to enquire whether, if Opus brings up  
24 a document, does that go to everyone who is joining on  
25 Microsoft Teams, or does it only go to those within

1 the confidentiality ring? Do you know the answer to  
2 that?

3 MR. HARRIS: I'm afraid I do not. We can make enquiries.  
4 That is why I raised it now, because I (inaudible) that  
5 I am not the one responsible for asking something to go  
6 further than it should.

7 THE PRESIDENT: No. Well, thank you for raising it.

8 It would be highly desirable, if you are going to  
9 refer to a number of documents -- because if we have to  
10 keep pulling them up ourselves, that will cause  
11 significant delay, if the -- the whole idea of the Opus  
12 system is they can bring it up. But that will only  
13 work, if they are confidential documents, if it can be  
14 restricted.

15 So maybe that is something that those instructing  
16 you can raise and engage with Opus between now and  
17 tomorrow morning and look into it. We can make  
18 enquiries at our end, but I think Opus is dealing really  
19 with the parties' solicitors.

20 The live streaming is not a problem: we can just  
21 switch it off.

22 The other reason for rising early is that we want to  
23 give DAF and the Royal Mail/BT legal teams time to  
24 discuss a draft order leading up to trial 1, which, if  
25 that could be provided to us by 10 o'clock tomorrow

1 morning, that would be helpful.

2 MR. KENNELLY: Sorry to interrupt again. Very briefly.

3 Since Mr. Brealey is going to speak to the Scania appeal  
4 in the course of his submissions tomorrow morning, may  
5 I also attend, at least for that part of  
6 his submissions?

7 THE PRESIDENT: Yes, indeed.

8 Just a moment.

9 Mr. Malek has made the very helpful point that  
10 Mr. Harris, when you give references to documents, could  
11 you also give references to the hard copy, because we  
12 have hard copies behind us, and the hard copy reference  
13 is not the same as the Opus reference.

14 MR. HARRIS: Sir, I have two responses. I am told that we  
15 had already enquired of Opus whether, if I give the Opus  
16 document reference, it can be restricted to, in the case  
17 of the application that I am to meet, just inner  
18 confidentiality ring members of Ryder and Dawsongroup,  
19 and the answer was no; it then would be provided on  
20 the Opus platform, so everyone who is currently as of,  
21 for example, now got access to it. So that is  
22 the problem.

23 There is one solution, before I come back to your  
24 hard copy point -- hard copy documents point, which is  
25 arguably less efficient but it may be the only answer,

1 is if all members of the Tribunal and all members of  
2 the Ryder, Dawsongroup and Daimler teams have access to  
3 an electronic copy of the bundle on their own other  
4 screen, say a laptop or what have you, then we can go  
5 through that. That is how one often does it when one  
6 does not have the Opus platform. It might be a little  
7 slower and it is not ideal, but that, at the moment, is  
8 a possible answer.

9 The problem with the hard copy documents suggestion  
10 is I am being instructed that not all of the documents  
11 that I wish to refer to tomorrow are in the hard copy  
12 files; some of them are only in the soft copy files.

13 THE PRESIDENT: Right. Will they be -- I mean, we have  
14 access to our own Opus system, not on the streaming, on  
15 our own computers on another screen. So it may be that  
16 if you give us the Opus reference, we can find it there  
17 for ourselves. Maybe that is the way to do it?

18 MR. HARRIS: That may be. We will make another enquiry of  
19 Opus overnight. We will find all hard copy bundle  
20 references, so I have got two references where there are  
21 two. We will also make an enquiry of the Ryder and  
22 Dawsongroup solicitors whether they likewise, they have  
23 the same hard copies.

24 Failing that, we will endeavour to liaise overnight  
25 so that at least as a back-up there is an electronic

1 bundle available to the people participating in  
2 the application that could be at least accessed on  
3 another screen as a back-up.

4 THE PRESIDENT: Yes. I mean, the alternative is simply that  
5 we turn off the live stream and we restrict -- well, we  
6 just order, if everyone was in the courtroom, we would  
7 direct that everybody who is not in  
8 the confidentiality ring has to leave the room, and we  
9 would direct that everybody who is not in  
10 the confidentiality ring should exit the live --  
11 the Microsoft Teams platform and leave. Someone, if  
12 necessary, can check who the participants left are.  
13 There are a lot of people though in these rings, so it  
14 is a bit difficult.

15 But that is what one would normally do where we have  
16 a remote hearing with confidential material, so anybody  
17 who is not in the ring has to log out.

18 MR. HARRIS: -- (overspeaking) -- the suggestion is that  
19 overnight we get the names of everybody from each of  
20 the three respective teams, Daimler, Ryder and  
21 Dawsongroup, who is to remain on the Opus feed such that  
22 there can be a quick check once you have ordered  
23 everybody else to drop off.

24 That is the only concern I have. I do not want to  
25 be, or my client to be, the one who has somehow brought

1           about a situation in which other people are there who  
2           should not be.

3       THE PRESIDENT:   Yes, I understand.

4           Mr. Ward, you wanted to say something?

5       MR. WARD:   Sir, thank you.  I was just going to say that  
6           your last suggestion does seem like the simplest.  It is  
7           absolutely true that the application will require  
8           reference to lots of material that is marked as  
9           confidential.  For example in Ms Whiteford's witness  
10          statement, where large passages dealing with (inaudible)  
11          confidential.  It will be quite difficult, I think, to  
12          make the application other than in what is effectively  
13          a closed session.

14       THE PRESIDENT:  Yes.  Well, I think that may be the way to  
15          proceed.

16                If you can supply each other -- because it may well  
17                be, and I would hope, that not all the members of your  
18                confidentiality rings, from your respective instructing  
19                solicitors, actually want to be -- participate in this  
20                application.  They are in the ring because they have to  
21                do work on disclosure or what have you, but they do not  
22                all have to be watching these, no doubt very exciting,  
23                proceedings.

24                Good, we will leave it there.

25                Is there anything else we need to deal with tonight?

