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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

30 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 2

Friday, 30 October 2020

(10.30 am)

THE PRESIDENT: Good morning. Thank you for some of the additional material we have received over night.

Reverting to the matter discussed at the end of the hearing yesterday, we understand that some enquiries have been made. The sensible (inaudible) is that we deal with everything apart from the Dawsongroup/Ryder applications for disclosure against Daimler first. We then take a break of about -- I am told we need 30 minutes -- in which time a separate hearing room is set up, which will include only those in the Dawsongroup/Ryder/Daimler confidentiality rings. Then we return to hear those applications.

Although it may be that part of the application could be heard in open court, it is technically just too difficult to jump between open court and closed session when we are doing it fully remotely. So we will hear it entirely in closed session. The resulting order, of course, can be an open order. So that is how we propose to proceed.

There are a number of matters then to deal with today before that.

First of all, we have had draft directions as requested on trial 1, that is to say

1 the Royal Mail/BT Group/DAF trial, which I am looking
2 at.

3 As regards expert evidence, in paragraph 2, I have
4 to say, we are not happy with that proposal. We would
5 like to know before making an order, and to decide
6 ourselves, how many experts there should be on each of
7 these matters, and whether it is one economist dealing
8 with A and one accountant dealing with B, C, D, or if
9 not, what are the parties asking for.

10 Secondly, we would like to know, more specifically,
11 what are the issues that we are invited to direct that
12 the experts can address.

13 We note that it is said that the parties will notify
14 the Tribunal of the issues to be addressed. But it is
15 a matter for us to decide what issues the experts should
16 address.

17 So we would like submissions insofar as not agreed,
18 if agreed, then what is proposed, on those matters, with
19 the names of the experts, before making the directions.
20 It is just a question of how soon you can do that. We
21 would hope it can be done in a couple of weeks. You
22 will be, no doubt, some way down the line in having
23 appointed your experts.

24 So if we were to ask for that, this concerns
25 Mr. Ward's clients and Mr. Beard's clients.

1 Mr. Ward, would 13 November, two weeks, give you
2 sufficient time?

3 MR. WARD: Thank you. Would it be possible for us to have
4 a month to do this? Because the reality is there is
5 still some thinking ahead in terms of exactly how to
6 divide the expert issues.

7 THE PRESIDENT: Yes, and so that would be 27 November, say.

8 MR. WARD: Yes.

9 THE PRESIDENT: And Mr. Beard?

10 MR. BEARD: Well, I am slightly -- there is an issue here
11 that may not get resolved within a month. So regulatory
12 competition economics, that is relatively
13 straightforward --

14 THE PRESIDENT: Can I just interrupt you. We cannot see you
15 at the moment; we can hear you.

16 MR. BEARD: Oh, I am sorry. I can -- somewhat
17 solipsistically, I can see me on my feed. I do not know
18 where it is. I am sorry.

19 THE PRESIDENT: Well, maybe it is just me, but you are not
20 on the live stream either.

21 MR. BEARD: I think I popped up. I think the live stream
22 has about a 30-second delay, sir. So when you start
23 speaking -- (overspeaking) --

24 THE PRESIDENT: Yes, you are there, I have got you now.
25 Thank you. Sorry.

1 MR. BEARD: No, no. No problem.

2 So regulatory competition economics: that is going
3 to be relatively straightforward. We will be able to
4 provide the details of our experts from Compass Lexecon,
5 and so on.

6 Forensic accounting we will also be able to deal
7 with.

8 I think the more difficult issue and the one that is
9 covered off here is financing and possibly tax.

10 The issue in relation to financing is that at
11 the moment there is an exchange in correspondence going
12 on to actually clarify what the position of
13 the claimants is in relation to financing costs going to
14 compound interest claims.

15 We have made it very clear in correspondence that
16 unless we get a satisfactory answer in relation to
17 the position on these matters, we are going to be
18 seeking to strike out, at least in relation to
19 Royal Mail, those claims. It may well, therefore, mean
20 that one would take expert evidence rather differently
21 in relation to these matters. I do not want to get into
22 the details of why this is the case.

23 Now, we -- there is essentially a response awaited
24 from Royal Mail; and that response has been slightly
25 delayed by the fact that we are dealing with the CMC

1 now. So we will get a response, one anticipates, next
2 week. It may then be that there is a need for
3 a relatively urgent hearing in relation to these matters
4 concerning compound interest. But I can see that that
5 could have a knock-on effect as to whether or not we
6 would be able to hit that month deadline.

7 I am very happy to say we will do our best to
8 provide those details in a month's time, but I think it
9 is just right to put that caveat down, that there may be
10 some issues around the clarity of the position in
11 relation to experts.

12 So what we did in this order was simply covered off
13 the areas that we thought might require expert input at
14 this stage, without committing to who and why. It was
15 in part with that in mind that we deferred the date by
16 which we would notify the Tribunal in paragraph 3. So
17 it was not just random indolence on our part that meant
18 that there were deferrals here.

19 I do not mind if the Tribunal wants to say it would
20 like responses by the end of November, but it has to be
21 with that caveat, because it may not be resolvable by
22 that date.

23 THE PRESIDENT: Well, you can respond as regards regulatory
24 and competition economics by the end of November, and we
25 can sort out the issues on that.

1 MR. BEARD: Yes.

2 THE PRESIDENT: What I think you are saying is, on the --
3 not sure if it is B --

4 MR. BEARD: Yes, it is more likely to be C and D. B on
5 forensic accounting is much more likely to be relevant
6 to issues in respect of pass-on; and therefore we
7 anticipate that probably both we and Royal Mail/BT are
8 going to want someone dealing with those issues who may
9 not fall directly within the category of regulatory and
10 competition economics; or it may be the same person can
11 deal with both. We are not assuming that each of A, B,
12 C and D has to be a different person. I should stress
13 that.

14 THE PRESIDENT: Well, can we say, as regards economics and
15 accounting, it will be by 27 November.

16 MR. BEARD: Yes.

17 THE PRESIDENT: And as regards financing and/or tax, you
18 will make your best endeavours by 27 November.

19 MR. BEARD: Yes.

20 THE PRESIDENT: But you may need longer.

21 MR. BEARD: Yes. Just in relation to 3, in terms of
22 the issues, there was no discourtesy intended of
23 notification of issues. Obviously it is right that
24 the Tribunal decides these things in the end.

25 I think, again, a caveat needs to be placed.

1 Pending factual evidence and completion of disclosure,
2 particularly in relation to issues of pass-on,
3 the extent to which we can provide details of those
4 issues at this stage is going to be relatively limited.

5 Now, that, again, does not stop us providing
6 assistance to the Tribunal on these things in general
7 terms. But I think one has to recognise the limitations
8 at this stage with that deadline.

9 THE PRESIDENT: Yes, well, it may be a fairly high level --
10 (overspeaking) --

11 MR. BEARD: Yes, sure.

12 THE PRESIDENT: -- (inaudible) issues.

13 I think we will say, then, on A and B by the 27th;
14 and financing and/or tax, your best endeavours by
15 27 November.

16 MR. BEARD: That is fine. As long as the Tribunal
17 understands the position, we are happy to work to that
18 deadline, yes.

19 THE PRESIDENT: Yes. Just one moment. (Pause)

20 Yes, we are all happy with that.

21 Moving down the draft: experts' reports. I think it
22 is -- in 7, it is "experts of like discipline". I think
23 that is a little tight to leave just a month before
24 reports are exchanged. The idea is they should meet
25 sufficiently in advance that they can have a meaningful

1 discussion that will inform their reports. I would
2 ideally wish that to be on 15 September. That may
3 intrude on holidays, so at least can we say
4 22 September, rather than the 29th?

5 MR. BEARD: I am sure that will be fine. There was
6 a balance being struck here by making sure that
7 the reports -- or the work on the reports was advanced
8 enough that this meant it would be constructive --
9 (overspeaking) --

10 THE PRESIDENT: I understand that, but I think that extra
11 week will assist.

12 Just a moment. (Pause)

13 Well, my colleagues make the point that the idea of
14 the meeting before is really to have a preliminary
15 discussion before they start drafting their reports. So
16 we would actually want it to be 15 September. They get
17 the -- they will have the main witness statements in May
18 and July, so there is enough time to read them. They
19 may not have got into detailed drafting of reports, but
20 the idea is they should have this preliminary discussion
21 before they get down to drafting. So we will say
22 15 September.

23 There is always liberty to apply if there is
24 a problem.

25 MR. BEARD: Yes, it is fine. We understand the purpose and

1 the intention. It is just to make sure that the work
2 process has been undertaken sufficiently that it is
3 meaningful. But we see the point.

4 THE PRESIDENT: And then similarly, in paragraph 11, it
5 is "experts of like discipline".

6 MR. BEARD: Yes.

7 THE PRESIDENT: And then going down, "trial": we see you
8 have agreed a trial window on the first day of term,
9 26 April, to start then, with an estimate of 8 to 10
10 weeks. We think that if it is going to be that sort of
11 trial, it is generally helpful to everyone if the court,
12 or the Tribunal does not sit on Friday.

13 MR. BEARD: Yes.

14 THE PRESIDENT: So that might push it to 10 weeks. But
15 nonetheless, I think that will be appreciated by
16 everyone when we get to the time. So we can say that an
17 estimate of, I will say 10 weeks, including one reading
18 week, with Fridays being a non-sitting day.

19 MR. BEARD: Yes. The 10-week estimate that we had come up
20 with, obviously it is rough --

21 THE PRESIDENT: We appreciate that.

22 MR. BEARD: -- taking into account four-day weeks. That was
23 part of our thinking. So that is fine, yes.

24 THE PRESIDENT: Yes, and the main thing is to get a start
25 date to get it in everyone's diaries and an actual end

1 date can be (inaudible).

2 So, subject to those changes, and --

3 MR. BEARD: Could I just make a couple of quick remarks on
4 a couple of other paragraphs, sir, if I may?

5 THE PRESIDENT: Yes.

6 MR. BEARD: Just going back to the first paragraph on
7 pleadings, I think there are just two points to make
8 here. To be clear, these will not be the only pleading
9 amendments that will be made to the pleadings. For
10 instance, there are consequential pleadings on
11 the Sainsbury's judgment that have been put forward in
12 draft that are going to need to be dealt with.

13 THE PRESIDENT: Actually, I missed that. I thought these
14 are not just what we said yesterday, it is not just from
15 the binding recitals appeal but also the Sainsbury's
16 judgment.

17 MR. BEARD: Well, I do not know that is what was traversed
18 necessarily.

19 THE PRESIDENT: Surely that can be done by 18 December?

20 MR. BEARD: Oh, yes. No, no, there is no problem with that.
21 What I was just saying was that yesterday we were
22 talking about binding findings and abuse of process, and
23 that those were the issues that were discussed by
24 reference to the 18 December and submissions have been
25 made. But I was just clarifying that they would not be

1 the only amendments that would be put forward. So we
2 are fine putting forward the consequential Sainsbury's
3 amendments by 18 December; that is not a problem. But
4 I am not sure we need an order on that. We will be
5 dealing with that in any event. Obviously, if further
6 amendments come forward from either side, they will need
7 to be dealt with in the normal way of each side
8 approaching the other in correspondence, and so on. So
9 that was one caveat.

10 The other caveat is, obviously, we will, in line
11 with this order, respond on binding findings and abuse
12 of process issues. If there are appeals to
13 the Supreme Court, obviously our responses will be
14 appropriately caveated by reference to such appeals.
15 That isn't to say we will not respond, of course we
16 will, but obviously we have to protect --

17 THE PRESIDENT: Yes.

18 MR. BEARD: -- that position. So I do not think that is
19 controversial.

20 We have dealt with the expert evidence issue on 2.

21 In relation to disclosure, I did want to be clear
22 about this disclosure date. We see this as a longstop
23 date; we do not see this as the date on which disclosure
24 should be given. That is particularly important in
25 relation to pass-through disclosure. There have been

1 some exchanges between the parties on the categories of
2 pass-through, mitigation disclosure, whatever you want
3 to call it. We will try and resolve those issues as
4 quickly as possible. But we do anticipate, and we
5 expect that, a first tranche of pass-through mitigation
6 disclosure should be provided by Christmas by BT and
7 Royal Mail; and we would anticipate that the remainder
8 would be some time around the end of February; not later
9 than that.

10 Obviously we will engage in correspondence to
11 resolve these matters as far as we can, but I think it
12 is sensible to give that indication, because those are
13 important issues on which disclosure to date has been
14 very limited -- understandably -- and this is not
15 a criticism of anyone -- because of the discussion about
16 case management that has been going on. But that is now
17 going to become much more urgent.

18 So I think it is right to place that caveat, that we
19 do see as a longstop date not a disclosure date, as it
20 were.

21 Then, just finally, in relation to -- I think it is
22 paragraph 12 in the version I have got, which refers to
23 what is colloquially termed "the agree/disagree
24 statement" of experts.

25 Now, we are not -- we are entirely happy with

1 the process of there being such an attempt to agree and
2 disagree. But we have also included language
3 setting out that the experts summarise their position in
4 relation to the issues. The reason for that is,
5 experience tells us that the fight to get agreement
6 between experts can be a painful, extended and bloody
7 one, as different sides place different caveats on
8 the nature of the agreement. In those circumstances, we
9 want to essentially foreshorten it and say: All right,
10 you haven't agreed because you can't work out
11 the caveats; summarise your position. It will
12 nonetheless, we hope, assist the Tribunal, and assist
13 the parties in the presentation of cases, but we thought
14 it was worth just mentioning that as our anticipated
15 approach here.

16 Indeed, we have built in just two weeks -- sorry,
17 a month before that, the possibility of supplementary
18 reports, to make sure that that process is facilitated
19 by exchanges of material in writing. They are not going
20 to be full reports, they will be brief. There is only
21 three weeks after the reply reports in order to provide
22 them. But we hope that will facilitate that process
23 being more effective than we have seen in other pieces
24 of litigation. But that is explanatory, it is all
25 agreed, and I just thought it might be helpful to

1 explain to the Tribunal our thinking.

2 THE PRESIDENT: Yes, thank you.

3 Mr. Ward, is there anything you want to say?

4 MR. WARD: Yes, thank you. Just very briefly on Mr. Beard's
5 observations.

6 Firstly, regarding the proposed amendments arising
7 out of the Sainsbury's judgment. They were provided
8 to us a couple of days before this hearing, and my
9 clients are still considering whether they will consent
10 to those amendments. So I just wanted to make clear to
11 the Tribunal where we were in that process.

12 Subject to that of course, we would have no
13 objection to the deadline for those amendments being
14 incorporated into the first recital of the order.

15 Regarding the longstop for disclosure, the position
16 on pass-on disclosure is that a Redfern schedule was
17 served by DAF on I think 3 October. My clients have
18 been considering it and will continue to act
19 conscientiously to bring that forward as efficiently as
20 it can be done. So that was all I was going to say by
21 way of further comment.

22 THE PRESIDENT: Yes. Well, we are not making an order for
23 pass-through disclosure by Christmas, but you have
24 the point. Your trial is coming first; it is covering
25 everything that suits your client, so you need to get on

1 with pass-through disclosure.

2 There is just one matter I wanted to ask my
3 colleagues about, so I will mute for a moment.

4 (Pause)

5 Yes, just one other point on the order as drafted.
6 If you look at paragraph 7, the first without prejudice
7 discussions states "in the absence of legal
8 representatives". We would like the same provision to
9 be included in paragraph 11 for the second meeting of
10 experts.

11 MR. BEARD: I would have thought the economists and lawyers
12 will be delighted, yes.

13 THE PRESIDENT: And it might help to avoid some of
14 the problems Mr. Beard has just referred to.

15 Very well. We can -- if you can draw that up and
16 resubmit it with those amendments --

17 MR. WARD: Yes, of course.

18 THE PRESIDENT: -- at the beginning of next week.

19 I think that is it on directions on trial 1, unless
20 there is something else either of you wishes to say?

21 MR. BEARD: Not from our side. Thank you, sir.

22 THE PRESIDENT: Thank you.

23 If we then turn to trial 2. We have had, helpfully,
24 from Mr. Brealey written submissions on dates -- start
25 date and some other points. I promised him yesterday

1 that he would be allowed to address us on that today.

2 So Mr. Brealey, the question is really January or
3 March. Precisely when in March.

4 Submissions by MR. BREALEY

5 MR. BREALEY: Or, yes, sir, precisely when in January.

6 So, you have obviously got the written submissions.
7 I will go through the written submissions fairly
8 briefly. Clearly, we deal with three matters: that is
9 the trial date, directions and then the MAN/Scania
10 marker.

11 Dealing with the trial date, we have proposed three
12 options. That is 11 January 2023 -- that is the first
13 day of Hilary term -- and then 30 January, and then
14 1 March. So as the Tribunal knows, provisionally set
15 a trial date for the beginning of January 2023;
16 the suggestion that this be pushed back to March 2023.
17 If it is March 2023, we would ask that it be 1 March for
18 the date to be fixed. However, we do request an earlier
19 date. As I say, we have proposed two January dates.
20 There are two implications that we set out in
21 paragraph 3, and essentially it is delay to trial 2 and
22 trial 3.

23 So, first, they would get more delay to trial 2.
24 The BT and Royal Mail trial starts in April 2022,
25 whereas on a March '23 timetable Ryder's trial would not

1 start until about a year later. This, we say, is quite
2 an important point, notwithstanding that Ryder is
3 effectively at the same stage of readiness as Royal Mail
4 and BT, and in circumstances in which Ryder purchased
5 twice as many DAF trucks as Royal Mail and BT.

6 I would just like to go to Edwards 3, because it is
7 relevant to two points that I want to make. That is
8 {R-C/9/3}. So this is the third statement.

9 THE PRESIDENT: Is this going to come up on Opus?

10 MR. BREALEY: I would hope so. {R-C/9/3}.

11 THE PRESIDENT: Yes.

12 MR. BREALEY: So, just briefly, by way of background, one
13 sees paragraph 7. So the UK trucks claim in total is
14 70,000.

15 Then the witness statement, in paragraph 8, sets out
16 the first wave proceedings. You see the total on
17 the right-hand side. Out of 56,000 -- so you have
18 basically 56 first wave and 11,000 second wave. So of
19 the 56,000 first wave, 32,000 of those are Ryder's. So
20 it is a substantial claim. If one looks at Ryder versus
21 DAF, that is 20,000 trucks, as opposed to Royal Mail and
22 BT's, say, 10,000.

23 So we are in a situation where there is a delay to
24 the most significant claim. That is the first point.

25 The second point is that if it is pushed back too

1 far, there would be clear delay to trial 3. It could
2 well be not until 2024 for trial 3. That is our second
3 point.

4 So, as we say at paragraph 4 of the written
5 submissions, the question really arises whether it is
6 necessary to postpone trial 2 until March 2023, and we
7 set out three points.

8 The first is that, as we know, the trial 1 judgment
9 is not binding, it is only of interest.

10 Secondly -- and this is where we go back to
11 the table -- it really has not been articulated what
12 actually needs to be digested which would warrant such
13 a long delay. This is because the defendants are
14 modelling, both in overcharge and pass-on, data that is
15 specific to themselves and to Ryder. So this is
16 the second bullet of paragraph 4. They are modelling
17 data that is specific to them and to Ryder. Trial 1 --

18 MR. BEARD: Sorry, I do not want to delay Mr. Brealey in his
19 submissions, which are echoing points that were made
20 yesterday, but that is wrong.

21 The data that DAF will use is the data that is
22 market-wide. We have been clear about that. It is not
23 a good point.

24 MR. BREALEY: The defendants are, as I say, modelling data
25 that is specific to them and to Ryder, because they want

1 to find out what the overcharge is, if any, to Ryder.
2 That is specifically what they have told us.

3 So whilst the trial 1 judgment may be of interest,
4 it does not seem proportionate to delay Ryder's trial by
5 a further two to three months, to consider how
6 a judgment on a model concerning DAF and Royal Mail will
7 impact on a model concerning Ryder and the other
8 defendants.

9 If I can just illustrate that. If one looks at
10 the table on paragraph 8 and takes, for example, MAN.
11 MAN will be modelling 2,700 trucks. I think I still
12 have Mr. Beard attacking me. But you will see MAN has
13 2,700 trucks. So MAN's task is to model MAN and Ryder.
14 It is not clear what relevance it is, DAF and
15 Royal Mail, to that analysis, and why it needs three to
16 four months to do that. That is the point.

17 We say a period of two months is sufficient for
18 experts to prepare a statement, or a joint statement, to
19 consider the implications of the prior judgment; and
20 that could be provided in November 2023.

21 So the question is, for example: why does MAN need
22 so long to do a model which is MAN and Ryder, when the
23 judgment will concern DAF/Royal Mail, DAF and BT?

24 So, we have proposed three dates, that is
25 11 January, 30 January and 1 March, which we say gives

1 ample time -- particularly the January date gives ample
2 time for the defendants to consider the trial 1
3 judgment. It does not have to be 1 March 2023.

4 I will move to paragraph 5. Whatever date
5 the tribunal decides -- that is 11 January, 30 January
6 or 1 March -- Ryder ask the Tribunal to fix that date
7 now, so that the parties have the requisite certainty
8 and can start planning the timetable now. As you said,
9 sir, that would constitute a natural end date.

10 So that is all I want to say on the trial date. We
11 would urge the Tribunal to keep to 11 January; and as
12 a compromise, 30 January, but not 1 March.

13 If I could just then move to the timetabling.
14 The Tribunal has indicated that a further CMC would be
15 fixed in March 2021 to determine the directions for
16 trial 2.

17 THE PRESIDENT: Yes, I will interrupt you, Mr. Brealey. We
18 are with you on fixing timetables for Redfern schedules.

19 MR. BREALEY: I am most grateful.

20 THE PRESIDENT: And we will come to that separately,
21 irrespective of trial date.

22 MR. BREALEY: Thank you. I think there is a draft order
23 which incorporates that.

24 Then can I just move to paragraph 10 and deal very
25 briefly with Scania, which really, we say, is

1 (inaudible).

2 MAN places what was described as "a marker" about
3 Ryder's reliance on the Scania decision. We make three
4 comments in response.

5 First, Ryder refers to the Scania decision in
6 the light of the observations made by the Tribunal
7 itself. As the Tribunal know, we made an unsuccessful
8 attempt for disclosure in March 2019, and
9 the application was rejected in part because the Scania
10 decision would provide more detail as to the defendants'
11 participation in the cartel.

12 The second point is we rely on the decision to fill
13 the gaps by the laconic(?) settlement decision. We have
14 not sued Scania, and it does not ask the Tribunal to
15 make any determination that would be inconsistent with
16 the Masterfoods jurisprudence.

17 Could I just refer the Tribunal to how Scania
18 describes the position, as we agree with it; and that is
19 at {COM-B1/9/11} --

20 THE PRESIDENT: What document is that?

21 MR. BREALEY: Scania skeleton.

22 THE PRESIDENT: Yes, I think we have that separately.

23 The Scania skeleton for today?

24 MR. BREALEY: The Scania skeleton that was lodged for
25 the CMC.

1 THE PRESIDENT: For this CMC? Yes, give us just a moment,
2 because I think we have it in hard copy.

3 MR. BREALEY: It is paragraph 16 of the Scania skeleton.

4 THE PRESIDENT: Paragraph?

5 MR. BREALEY: 16.1. {COM-B1/9/11}.

6 Scania, essentially, accurately summarises what
7 Ryder is trying to do. It says:

8 "The fact that Ryder's pleadings rely on the Scania
9 decision does not preclude a trial of Ryder's claims
10 while Scania's appeal is on foot ... Scania is not
11 party to the Ryder proceedings and only has access to
12 the non-confidential version of its pleading. However,
13 Ryder does not make any allegations against Scania or in
14 relation to Scania trucks, but simply relies on the
15 Scania Decision to give further particulars of the case
16 against the other OEMs ... Scania agrees with Ryder's
17 position that 'it is simply for the Tribunal to decide
18 what evidential weight to give to such pleadings, taking
19 due account of Scania's appeal and the wider evidential
20 matrix'. In those circumstances it does not appear
21 necessary to extend any stay to the Ryder proceedings,
22 or to delay that trial until after the Scania appeal."

23 So if there is a substantive point, really MAN have
24 got to come up with it. That leads me to the third
25 bullet of paragraph 10, which is simply putting down

1 a "marker" is no ground for delaying Ryder's trial date
2 now. Any substantial issue, if indeed there be one --
3 and we do not really see that there is one -- any
4 substantial issue can be dealt with at a subsequent CMC,
5 but we just do not see what the real issue is. We have
6 done essentially what the Tribunal guided us to do,
7 which was to go to the Scania decision and fill
8 the gaps.

9 THE PRESIDENT: Understood. Thank you.

10 MR. BREALEY: Those are my submissions for -- on the Scania
11 -- the timetable on the trial date. Thank you.

12 THE PRESIDENT: Yes, thank you.

13 I think we will take a short break to discuss among
14 ourselves.

15 MR. BREALEY: I am grateful.

16 MR. HOSKINS: If you are going to -- if there is any risk of
17 you finding for Mr. Brealey on the timing of the trial
18 --

19 THE PRESIDENT: Oh, no, we'll come back to you.

20 MR. HOSKINS: Thank you.

21 THE PRESIDENT: We will come back to you before that. We
22 understand that.

23 MR. HOSKINS: Thank you.

24 MR. BEARD: -- (overspeaking) -- on the disclosure as well,
25 sir, I am sorry. Thanks.

1 MR. WARD: Sir, if I may, just before you rise, while
2 the court has been sitting, a form of draft directions
3 for the Dawsongroup trial has been sent to the Tribunal.
4 If it is convenient to look at that, I thought I would
5 draw your attention to it.

6 THE PRESIDENT: Right.

7 MR. WARD: Dawsongroup and Ryder, I should say.

8 THE PRESIDENT: Yes.

9 MR. BEARD: Sir, before -- I am not sure anyone else has
10 received those. I may be mistaken.

11 MR. WARD: They have been sent to the parties at the same
12 time.

13 THE PRESIDENT: I do not think we will be looking at those
14 directions now. I do not think we have time, frankly.

15 MR. BEARD: Thank you.

16 (Pause)

17 [Ruling given - pending approval]

18 THE PRESIDENT: So, that is perhaps something we should do
19 now. Though of course a number of parties -- and I do
20 not know, Mr. Ward, for Dawsongroup, are there any
21 points from your client's perspective regarding any
22 disclosure directions before the March 2021 CMC?

23 MR. WARD: Sir, yes, there is a proposed set of timings for
24 Redfern schedules and responses in the draft order which
25 was circulated only earlier this morning during

1 the hearing. I can, if you like, just read those out
2 now, if that would be --

3 THE PRESIDENT: Yes, it is only directions for what is to
4 happen before the March CMC we are concerned with.

5 MR. WARD: So the proposal was for requests for disclosure
6 to be made in the form of Redfern schedules by
7 15 January with a response to be served by 5 February
8 and a reply to that response no later than 19 February,
9 just in order to have an orderly process in time for
10 the CMC.

11 THE PRESIDENT: So these are the same dates, I think, as
12 Ryder has proposed --

13 MR. WARD: Yes.

14 THE PRESIDENT: -- in paragraph 8 of Mr. Brealey's notes.

15 MR. WARD: I believe they are, sorry, yes.

16 THE PRESIDENT: Mr. Brealey and Mr. Holmes' notes, should
17 I say.

18 So essentially you are adopting the same position as
19 Ryder in paragraph 8; is that right?

20 MR. WARD: Yes.

21 THE PRESIDENT: Yes. So, that then affects everyone in
22 those trials, which is really all the defendant groups
23 apart from Scania.

24 So Mr. Beard, just on those dates?

25

Submissions by MR. BEARD

1
2 MR. BEARD: Well, first of all, in principle, having
3 a Redfern schedules process running through to the CMC
4 makes sense to us. Some of those dates feel somewhat
5 compressed. It rather depends when the CMC is going to
6 be set. If the CMC is not going to be set until
7 mid-March, we wonder whether or not it is sensible to
8 add a week or two to each of the relevant periods. We
9 obviously want that Redfern process completed
10 sufficiently far in advance of the March CMC that we can
11 take it into account, but we do wonder whether or not we
12 should be looking at 15 January, 12 February and then
13 26 February as the relevant dates. But that is a minor
14 issue.

15 Our bigger point -- and I think the Tribunal has
16 already anticipated it -- is that we do strongly object
17 to the suggestion in the Ryder notes that this will be
18 with a view to disclosure being completed by May 2021.
19 We can have that discussion at the CMC in March, but
20 that is plainly inappropriate.

21 THE PRESIDENT: Rather, if there is consensus that it makes
22 sense to proceed with disclosure by Redfern schedules,
23 which is the Tribunal's practice in these cases now, and
24 that it should be done such that it is completed
25 sufficiently in advance of the CMC for the schedules to

1 be taken into account and subject to submission at
2 the CMC, what I would suggest is we cannot fix the CMC
3 now, because it was a lot of date checking by a lot of
4 people, that next week enquiries are made so the CMC can
5 be fixed for two dates in March -- two successive days
6 in March, and then the parties confer to see if they can
7 agree dates, and whether they be the dates proposed by
8 Ryder and Dawsongroup or a week later. If you can
9 agree, all well and good; if you cannot, we can decide
10 on the papers what the dates should be rather than my
11 going through each of the counsel for all the parties
12 now and that it is taken forward that way.

13 Before I go to Mr. Harris, Mr. Beard are you content
14 that we proceed that way?

15 MR. BEARD: For DAF's part, yes. Obviously I don't speak
16 for the other defendants.

17 THE PRESIDENT: Yes, Mr. Harris for Daimler.

18 Submissions by MR. HARRIS

19 MR. HARRIS: So I won't take up much time in light of the
20 indication about further liaison, but could I just draw
21 your attention -- you don't need to turn it up now -- to
22 the judgment given by Mr. Malek for further disclosure
23 as it happened between *Daimler and*
24 *the Wolseley Group* in a hearing that took place in
25 June, and it's at {COM-A1/10}.

1 What you'll see in paragraph 25 in the conclusion of
2 that judgment is the sort of timetable that was set out
3 for the Redfern schedule process -- further
4 Redfern schedule process in respect of existing
5 disclosure. It is very considerably more elongated than
6 this incredibly compressed proposal that is put forward
7 only 10 minutes ago in the Dawsongroup and Ryder
8 proposed directions. I would invite you, and for that
9 matter the parties, simply to reflect upon how
10 unworkable and unrealistic the proposed compressed
11 schedule is.

12 Of course, there is an answer to this, given that
13 all parties would like to see this process complete
14 before a, say, March next year CMC; and it is that it
15 begins far, far sooner. The claimants begin
16 the process, and for some inexplicable reason they have
17 chosen only to even begin it by 15 January. Of course,
18 if it began by 15 November -- they are after all
19 the claimants -- that will give rise to a much more
20 manageable process.

21 So although I do not wish to make detailed
22 submissions now, the current proposal is far too
23 compressed; it bears no resemblance to the one ordered
24 by Mr. Malek for existing disclosure, whereas this one
25 is additional and new disclosure; and it begins far too

1 late in order for it to be dealt with at the March CMC.

2 So those are the outline markers that I wish to put
3 down. Though of course we will liaise, as you have
4 indicated.

5 THE PRESIDENT: Yes, I am not sure it is only one way.

6 I mean, there may be defendants' disclosure being
7 requested from claimants -- (overspeaking) --

8 MR. HARRIS: We put in our requests and they have not been
9 responded to. (inaudible) built in, I have no doubt.

10 THE PRESIDENT: Yes.

11 MS DEMETRIOU: Well, may I interject briefly on behalf of
12 VSW?

13 THE PRESIDENT: Yes.

14 Submissions by MS. DEMETRIOU

15 MS DEMETRIOU: Thank you.

16 So we agree with Mr. Harris about earlier
17 engagement, and we would also seek a timetable for
18 exchange of Redfern schedules in advance of the March
19 CMC in respect of trial 3.

20 In fact, Daimler, Quinn Emanuel, have already
21 provided us with a Redfern schedule. I can take you to
22 it. We received it a couple of days ago. But we would
23 also welcome earlier exchanges on both sides, with
24 a view to having a discussion about
25 the Redfern schedules at the March CMC.

1 Sir, you will recall yesterday that you said that
2 the Tribunal had decided that the March CMC would be
3 used, as far as trial 3 is concerned, amongst other
4 things, to determine the test claimant issue. But of
5 course, sir, that issue is inextricably linked with what
6 disclosure is being sought from the VSW claimants on
7 pass-on, because the very purpose of the test claimant
8 proposal is to ensure a proportionate approach. So we
9 anticipate that the Tribunal will want to see the extent
10 of disclosure that is being sought, so as to reach
11 a view as to whether proportionality requires a test
12 claimant approach or similar, or whether full scale
13 disclosure should be ordered. So we see the two things
14 as going very much hand in hand.

15 We have complete -- we have of course, some time
16 ago, received Redfern schedules from all of
17 the defendants, which cover pass-on, which need to be
18 amended in light of -- they will need to be reconsidered
19 in light of Sainsbury's. So they are not starting from
20 a standing start. As I have said, we received an
21 updated Redfern schedule from Quinn Emanuel on behalf of
22 Daimler. So we agree with Mr. Harris that earlier
23 engagement would be desirable. That would also
24 facilitate the inter partes meetings that have taken
25 place which have successfully led to agreed disclosure

1 orders in advance of CMCs on previous occasions. So
2 that is what I wanted to say.

3 But we are also seeking, just to be clear,
4 directions for exchange of Redfern schedules in respect
5 of trial 3 in advance of the March CMC, so that
6 the March CMC can progress matters.

7 THE PRESIDENT: Yes. Can I go back to Mr. Brealey. Your
8 note, which was of course more than 10 minutes ago. You
9 have put forward -- you have asked for the momentum for
10 disclosure to be maintained. Is there any reason that
11 you cannot do it if not November, then early in
12 December?

13 MR. BREALEY: From our perspective, the sooner the better.

14 THE PRESIDENT: Yes. Well, I think that is what
15 the defendants are saying as well.

16 MR. BREALEY: We did (inaudible) matters, but we did have
17 a previous draft of this which did have November. That
18 was in the order in I think the CMC. So we just put
19 this back because our trial had been put back. But from
20 our perspective, in order to ensure momentum is
21 maintained, we would be very happy with earlier
22 Redferns.

23 THE PRESIDENT: Mr. Ward, does that apply to you as well?

24 MR. WARD: Very much. We were quite surprised by what
25 Mr. Harris said. We would very much welcome it being

1 earlier. It is worth bearing in mind that the bulk of
2 disclosure took place a long time ago in the Dawsongroup
3 case. There are still ongoing queries coming from
4 Daimler, among others. But yes, certainly, we would be
5 very happy with that.

6 THE PRESIDENT: Yes. Now, Mr. Jowell?

7 Submissions by MR. JOWELL

8 MR. JOWELL: Mr President, we have been waiting for this CMC
9 to see what the shape of the various trials will be and
10 their order; and what that has meant is that our extent
11 of readiness to request disclosure for different cases
12 is at different stages.

13 In relation to Ryder in particular, we are not in
14 a position yet to be able to put in a final -- full and
15 final Redfern schedule in respect of the documents that
16 we need. Therefore, we think that even a 15 January
17 date, like DAF, is going to be difficult to achieve,
18 particularly given the Christmas break and
19 the inevitable hiatus, and the difficulties in
20 contacting experts and clients who are overseas. So we
21 would require further time.

22 But we entirely appreciate that some may be in
23 a different position, and there is no reason why all of
24 this has to go in tandem or in perfect step. If others
25 wish to make requests of the defendants in advance of

1 that, or if some defendants are in a position already to
2 finalise their Redfern schedules, then there is no
3 reason that that cannot take place sooner. But there is
4 no need to be too rigid and to try and confine everybody
5 to the same timetable in this respect.

6 THE PRESIDENT: Yes, thank you.

7 Submissions by MR. HOLLANDER

8 MR. HOLLANDER: Can I say something on behalf of Iveco?

9 Obviously the Redfern schedule works both ways, and
10 therefore it is not just in respect of the claimants.
11 We would suggest that one sticks with 15 January. If
12 one then just slightly pushes out the next two dates for
13 the response to 12 February, which is similar to
14 the timetable that was ordered in May 2019 at that CMC
15 in relation to the Redfern schedules then, that gives
16 four weeks for response. 5 March for reply. That would
17 enable us to have a CMC in the second half end of
18 March -- or, actually, I mean, if the Tribunal finds it
19 more convenient, one could have it at the beginning of
20 the Easter term just sort of mid-April. But that
21 timetable, I think, would be -- sounds, from hearing
22 the various submissions, would work for more or less
23 everybody.

24 THE PRESIDENT: Yes, thank you. I think we will

25 -- (overspeaking) --

1 MR. HOSKINS: You have not heard from me yet, sir.

2 THE PRESIDENT: Yes.

3 MR. HOSKINS: You may not particularly desire it!

4 THE PRESIDENT: Yes.

5 Submissions by MR. HOSKINS

6 MR. HOSKINS: Mark Hoskins for VT/RT.

7 I think in relation to the Dawson group and Ryder
8 Redfern schedules, we are certainly in the camp of
9 saying it is better to have a bit more time to do this,
10 rather than trying to do it too quickly. There is
11 actually a lot of correspondence. You have not seen it;
12 you have been spared the detail of the correspondence on
13 this. But there is a lot of detail still being worked
14 through on VOC, on pass-through, on tax. There is still
15 an awful lot of work. You are often given
16 the impression by all the claimants that disclosure is
17 done -- almost done, and that is simply not correct.

18 So this should be done with good time, so it can be
19 done properly; and we certainly echo what you just heard
20 from Mr. Hollander. This is already, we think, probably
21 a bit too tight. But if we are having a CMC in March,
22 it has to be done. But I think we are probably closer
23 to the Iveco camp than any of the others.

24 VSW is a real problem. Again, you get
25 this (inaudible) it is fine, it is all ready to go, it

1 is done. I'm sorry, that is simply not the case.
2 Particularly given that we now know that France and
3 Germany is going to be in that trial, which was not
4 known until yesterday.

5 That means, as you have seen from pretty much
6 I think all the (inaudible), those are treated and they
7 are separate markets. So you are going to have
8 different evidence, very different evidence for France
9 and Germany.

10 Bear in mind the difficulty of the number of VSW
11 claimants and the difficulty (inaudible) of the VSW
12 claimants. This is a whole different order of
13 difficulty. It is just not correct to give you
14 the impression that we are almost there on this and this
15 is the final detail. So we've got a problem with VSW.

16 Now, I can see absolutely why, coming up to a CMC,
17 which we want to be as effective as possible, we would
18 want Redfern schedules. But with the best will in
19 the world, those are not going to be the sort of final
20 word on disclosure in VSW. It is simply pulling
21 the wool over the Tribunal's eyes to suggest otherwise.
22 I think it is very important the Tribunal is aware of
23 that.

24 I think there is nothing else I need to add, unless
25 you have any questions for us.

1 Thank you.

2 MR. BEARD: I am sorry, sir, I do need to add to this.

3 THE PRESIDENT: Yes.

4 Submissions by MR. BEARD

5 MR. BEARD: I agree. I adopt the submissions made by
6 Mr. Hollander for Iveco, and echo the points made by
7 Mr. Hoskins. The idea of 15 November, or some time in
8 November, being a relevant date for Redfern schedules is
9 not feasible in relation to this case. We are going to
10 be getting on with an awful lot of other things in
11 relation to the first trial as well. It is plainly
12 sensible to afford extra time, as I suggested, but
13 starting from the date of 15 January and then
14 accommodating the CMC, as the Tribunal already
15 envisaged. We would struggle with any dates before
16 Christmas in relation to Redfern schedules. To echo
17 what Mr. Hoskins said, this is the start of the process,
18 it is not the end.

19 THE PRESIDENT: Yes, thank you. And Mr. O'Donoghue wants to
20 say something.

21 Submissions by MR. O'DONOGHUE

22 MR O'DONOGHUE: I'm very grateful.

23 This will be obvious to everyone at this hearing,
24 but to date we have had obviously nothing on disclosure
25 from any party. Even in respect of the pleadings, all

1 we have seen are redacted particulars from Dawsongroup
2 and Ryder. So I do not want to cut across in any way
3 what Mr. Ward and Mr. Brealey wish to do. I understand
4 why they want this expedited.

5 We are coming from a very different starting point.
6 What needs to happen in our case is that there is
7 a levelling of the playing field to allow us to catch
8 up. Then, and only then, can we begin to grapple with
9 some of the disclosure issues. Indeed, we know from
10 the directions that the precise extent of DS Smith's
11 participation in trial 2 will be an issue for further
12 determination at the CMC.

13 So we are highly motivated to catch up, but we are
14 starting from a different baseline, which is different
15 to Ryder and Dawsongroup, and that needs to be factored
16 in on (inaudible) level.

17 THE PRESIDENT: Yes, thank you.

18 MR. BREALEY: Sorry, sir, can I just make --

19 THE PRESIDENT: Yes.

20 Submissions by MR. BREALEY

21 MR. BREALEY: Just in response to, for example, Volvo's
22 statement, it is clear that Ryder gave pass-on
23 disclosure from December 2019 to May 2020. Many of
24 the defendants have just sat on that disclosure, and
25 have only recently started to ask questions. That is

1 why we have really sought to preserve the momentum prior
2 to the March CMC. We say it is necessary to stop
3 the defendants delaying and to get on with it.

4 As I say, they have had pass-on disclosure,
5 December 19, May 20. They really have not grappled --
6 particularly MAN. And so it really lies ill in their
7 mouth to say it is not complete -- far from complete
8 when they have delayed so much. So that is my point,
9 and that is why we really want to keep the momentum
10 going.

11 THE PRESIDENT: Yes, thank you. Well, we will take a few
12 minutes to consider that.

13 (Pause)

14 [Ruling 2 given - pending approval]

15 THE PRESIDENT: Mr. O'Donoghue?

16 Submissions by MR. O'DONOGHUE

17 MR O'DONOGHUE: Sir, I am very grateful for that indication
18 in relation to DS Smith.

19 So we are obviously keen and highly motivated to
20 catch up as quickly as we can, but that has to be on
21 the basis that we are provided with the documentation
22 and admitted to any relevant rings.

23 It is obviously not for today, but I hope very much,
24 in view of what has been indicated, that the other
25 parties will be cooperative in allowing us to catch up;

1 and we would wish to avoid having to come back before
2 the Tribunal, either in December or before April, to
3 have to haggle over entitlement to see things which
4 other parties have already seen. So we hope
5 a constructive and expeditious attitude is taken to
6 that. I just wanted to mention that marker.

7 THE PRESIDENT: You are down for the 4 December CMC at
8 the moment.

9 MR O'DONOGHUE: Sir, we are. We are. It obviously has
10 a slightly different focus now given that
11 the second-wave claimants will not be in trials 2 or 3.
12 But that is obviously a foothold for us to raise any
13 points at that stage. But we very much hope that -- we
14 will write to the parties straight after the CMC, but
15 what we do not want to happen is people sitting on their
16 hands until December and nothing being done. We want to
17 catch up as soon as possible.

18 THE PRESIDENT: The impression we have is that no party is
19 reticent or shy about correspondence in this case; and
20 I am sure they will engage with you if you write
21 appropriately and agree as much as can be agreed; and
22 insofar as it cannot, it will be resolved on 4 December.
23 I think we did say it may also be some of the other
24 parties in the second wave that are involved in trial 3.
25 That is something to be considered --

1 MR O'DONOGHUE: I am grateful.

2 THE PRESIDENT: Yes, is it Ms. Demetriou? Yes, you wanted
3 to come in.

4 Submissions by MS. DEMETRIOU

5 MS DEMETRIOU: Sir, thank you very much.

6 In relation to the trial 3 CMC, which you have
7 indicated should be after the trial 2 CMC to consider
8 test claimants, we understand the point that
9 the Tribunal has made about data from France and Germany
10 following, because those markets may be different, but
11 as regards pass-on disclosure that the defendants will
12 be seeking from us, we do not expect the categories to
13 differ depending on the jurisdiction or the location of
14 the claimants. So the pass-on disclosure is likely to
15 be the same wherever the claimant is based.

16 THE PRESIDENT: Yes.

17 MS DEMETRIOU: So we do think it is important to get on with
18 that.

19 As I have said, we have received already, some time
20 ago, initial Redfern schedules on pass-on from all of
21 the defendants; and we have received an up-to-date one
22 from Daimler, which I can take you to if you want to see
23 it. But we would like pass-on to be included in
24 the Redfern schedule process, so that the test claimant
25 CMC can consider that and can be held shortly after

1 the trial 2 CMC so that this does not drift, because
2 there is a lot of work to be done, and even though
3 the trial is going to be a little bit later, it has not
4 been fixed, and we are really concerned that there needs
5 to be a discipline and that there is not drift.

6 THE PRESIDENT: So what you are saying, have I understood
7 it, is that you are content for the Redfern schedule to
8 you regarding pass-on to include the foreign trucks --

9 MS DEMETRIOU: Yes.

10 THE PRESIDENT: -- but that you will not be seeking from
11 the defendants disclosure from them regarding the French
12 and German markets?

13 MS DEMETRIOU: Sir, yes, that is exactly right. We say that
14 there are two reasons why that is reasonable. The first
15 is because there should not be any distinction as
16 regards pass-on that depends on the location of
17 the claimant. Secondly, a lot of the work has been done
18 already. We see this in the disclosure --
19 the Redfern schedules that have been given to us
20 already. Daimler has provided an up-to-date one. What
21 the other defendants need to do is review what they have
22 asked for in terms of pass-on disclosure, in light of
23 Sainsbury's, which we say is not an onerous task.

24 Unless that is done, then it is going to be
25 difficult for the Tribunal to make meaningful orders as

1 example, there are different accounting practices in
2 Germany and France than in the UK; and that might affect
3 the categories that are required. We would like to
4 consult with our experts on that before we give an
5 answer that is given hastily and repented at leisure.
6 So I do not think that we can say definitively that they
7 would be the same.

8 A more general issue we do have is that one of
9 the points that we have made repeatedly in
10 correspondence to VSW is that before we can properly see
11 whether a test claimant approach is possible, we are
12 going to need to actually see some further disclosure
13 from VSW about those proposed test claimants and more
14 generally. Obviously we appreciate that that cannot be
15 the full slew of disclosure, otherwise the whole purpose
16 of the test claimant approach goes out the window. But
17 we are going to need some more disclosure, in order to
18 be reassured that they are not simply cherry-picking
19 the most advantageous test claimants.

20 THE PRESIDENT: Well, I think I am going to cut this short.

21 I am sorry Mr. Jowell.

22 MR. JOWELL: Yes.

23 THE PRESIDENT: We will, as it were, offline, canvass a date
24 for a specific CMC on trial 3, whether it is in late
25 April or early May. Then, once that is fixed, we will

1 then ask you to propose a timetable for the relevant
2 Redfern schedules on French and German trucks and see
3 what can be agreed.

4 MR. JOWELL: We are very grateful.

5 THE PRESIDENT: But to try and arrive at dates with this
6 many parties will take an hour very quickly just going
7 round the houses. So I think we need to stop this now.

8 So we will not include German and French trucks in
9 that order. We settled those dates, and we will hope to
10 fix that CMC for mid-April at the beginning of next
11 week.

12 I think, before we come on to Daimler, there is one
13 outstanding matter -- well, there are two outstanding
14 matters. One is that there has been a proposed agreed
15 order on the communications disclosure involving,
16 I think, Volvo, Renault and one other party which
17 the Tribunal has gone back to the parties on with some
18 comments. I hope that can then be resolved and agreed.
19 I think you have had those comments back.

20 Mr. Hoskins?

21 Submissions by MR. HOSKINS

22 MR. HOSKINS: I am aware -- I think we have now agreed both
23 the categories of communications disclosure and the date
24 for communications disclosure with both Dawsongroup and
25 Ryder. I must confess, I have not seen the details of

1 the agreed order with one of the parties. But I think,
2 basically, if you leave it with us, unless either
3 Dawsongroup or Ryder tell me I am wrong, we have now got
4 an agreement on the substance and the dates with both of
5 them. That is something obviously we can sort out with
6 them and we will take account of the Tribunal's comments
7 obviously as well.

8 THE PRESIDENT: Yes, I think -- (overspeaking) -- and DAF
9 was the other party, yes. I am told it has been agreed.

10 MR. BEARD: We have agreed; and we are grateful for
11 the comments of the Tribunal; we have agreed with those.

12 THE PRESIDENT: Yes, so we shall make that order -- I think
13 one order covering both of your clients, or client
14 groups.

15 Then the remaining matter is there is an issue on
16 the date for communications disclosure as regards two
17 other parties. The scope of disclosure, the scope of
18 the order is agreed, I think it is just -- or has that
19 now been resolved?

20 Submissions by MR. WARD

21 MR. WARD: Sir, if I can assist. There is -- so we have
22 complete agreement with DAF, Volvo, Renault, in the form
23 of the (inaudible) Tribunal (inaudible). And then there
24 remains Daimler, where there is of course the issue of
25 scope, which is going to be the next agenda item.

1 As to timing, we are now content to agree with
2 Daimler's proposed date, which is 30 April, which will
3 be in line with those two consent orders.

4 THE PRESIDENT: Right. So the -- so in fact, if that is
5 correct, as I have understood it, there is no
6 outstanding matters apart from the substantive
7 disclosure application against Daimler by Ryder and
8 Dawsongroup; is that correct?

9 Submissions by MR. HOLMES

10 MR. HOLMES: Sir, that is also our understanding.

11 In relation to MAN, there was a dispute about
12 timing. The scope of the order was agreed. We
13 understand there is now also agreement as regards
14 timing. We agreed the end of April in view of
15 the timetable which has been set, so the only remaining
16 dispute is as to the scope of the Daimler communications
17 disclosure.

18 THE PRESIDENT: Well, in that case, I think we can briefly
19 adjourn for 30 minutes, and all parties other than
20 Dawsongroup, Ryder and Daimler are excused. We shall
21 resume in -- without the live stream and I think
22 a different hearing room -- remote hearing room is being
23 set up to include only those within
24 the confidentiality ring.

25 Is it the -- can someone help me: is it the Inner

1 Ring or the Outer Ring?

2 MR. HARRIS: It is the Inner Ring, sir, members of
3 the Tribunal.

4 May I make -- just make one other housekeeping
5 remark, which concerns the amount of time.

6 You may have seen a letter that we sent expressing
7 the view that regrettably, but nevertheless necessarily,
8 I at least will have to take you to quite a few Inner
9 Ring confidentiality documents, and they will literally
10 have to be gone through. Not from beginning to end but
11 it will take some time.

12 I am just slightly concerned about the effluxion of
13 time. I wonder whether it might be sensible to combine
14 the break now that is needed for technical reasons with
15 the lunch break, so that we do not then have another
16 long break taking up more time and reducing the amount
17 of time available. It would be most unfortunate, we say
18 potentially unfair, if I, when responding, am
19 constrained in the amount of time available to me in
20 referring to these documents that are difficult
21 documents.

22 THE PRESIDENT: Just a moment. (Pause)

23 We will start at 12.30. We will take a 45 -- we
24 will go to 1.15, and we will take a 45-minute lunch
25 break until 2 o'clock.

1 MR. HARRIS: I am grateful.

2 THE PRESIDENT: We will resume at 12.30.

3 (12.04 pm)

4 (Conclusion of public hearing)

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