



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

Case Nos: 1284/5/7/18 (T)  
1290/5/7/18 (T)

BETWEEN

**ROYAL MAIL GROUP LIMITED**

Claimant

-and-

- (1) **DAF TRUCKS LIMITED**
- (2) **DAF TRUCKS N.V.**
- (3) **DAF TRUCKS DEUTSCHLAND GMBH**
- (4) **PACCAR INC**
- (5) **PACCAR FINANCIAL PLC**
- (6) **LEYLAND TRUCKS LIMITED**

Defendants

AND BETWEEN

- (1) **BT GROUP PLC**
- (2) **BRITISH TELECOMMUNICATIONS PUBLIC LIMITED COMPANY**
- (3) **BT FLEET LIMITED**

Claimants

-and-

- (1) **DAF TRUCKS LIMITED**
- (2) **DAF TRUCKS N.V.**
- (3) **DAF TRUCKS DEUTSCHLAND GMBH**
- (4) **PACCAR INC**

Defendants

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**DIRECTIONS ORDER**

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**UPON** DAF's application of 15 February 2021 for permission to amend its Defences in both these proceedings

**AND UPON HEARING** Counsel for the Claimants and Leading Counsel for the Defendants at the hearing held on 1 and 2 March 2021

**AND HAVING REGARD TO** the Tribunal's judgment issued on 13 May 2021 ([2021] CAT 10)

**AND UPON** the following definitions applying for the purposes of this Order:

- **"BT"** means BT Group PLC, British Telecommunications Public Limited Company and BT Fleet Limited.
- **"DAF"** means the Defendants in cases 1284/5/7/18 (T) and 1290/5/7/18 (T).
- **"Finance Losses"** means whether and to what extent Royal Mail suffered losses occasioned by the additional cost of financing allegedly inflated purchase prices, including consideration of the appropriate measure by which Royal Mail's claim for financing costs and compound interest (if any) should be calculated, and the rate applicable to the relevant measure (to the extent that this is not agreed between the parties).
- **"Hearing"** means the hearing before the Competition Appeal Tribunal in relation to the Royal Mail Proceedings and the BT Proceedings dated 1 and 2 March 2021.
- **"Infringement"** means the unlawful collusion found by the Commission in its Decision (AT.39824 - Trucks) and as particularised in the Claimants' Particulars of Claim.
- **"Loss of Volume"** means the extent to which, if DAF demonstrates that an alleged Overcharge was passed on by Royal Mail to its customers, there was a reduction in the volume of consumption of Royal Mail's collection and delivery services.
- **"Overcharge"** means inflation (if any) of Truck prices resulting from the Infringement.
- **"Royal Mail"** means Royal Mail Group Limited.
- **"Supply Pass-On"** means the passing on by Royal Mail and/or BT of all, or part, of any Overcharge by increasing the price of their own goods and services.
- The **"BT Proceedings"** means the proceedings bearing case number 1290/5/7/18 (T).

- The “**Royal Mail Proceedings**” means the proceedings bearing case number 1284/5/7/18 (T).
- “**Trucks**” has the meaning given in Article 5 of the Commission's Decision (AT.39824 - Trucks).
- “**Used Trucks Pass-On**” means the passing on of any overcharge by Royal Mail and/or BT upon the resale of their Trucks.
- “**Tribunal Judgment**” means the Tribunal’s judgment issued on 13 May 2021 ([2021] CAT 10)

## **IT IS ORDERED THAT**

### **Pleadings**

1. Permission be granted for DAF to file and serve their amended Defences in the form set out in Annexes 1 and 2 to this Order in accordance with the Tribunal Judgment.
2. DAF’s application for permission to amend paragraph 30(c) of its Defence in the Royal Mail Proceedings and paragraph 28(c) of its Defence in the BT Proceedings is refused.

### **Disclosure categories**

3. Subject to paragraph 4 of this Order, Royal Mail and BT shall disclose by list the documents in their control falling within the categories set out at Annex 3 on the following dates (with inspection to follow in each case within seven days):
  - (a) Categories C1 (BT only) and C3 (Royal Mail only) by 31 March 2021; and
  - (b) Categories C2 (BT only) and C4 (Royal Mail only) by 29 April 2021.
4. Royal Mail and BT (separately) may provide directly, in the alternative to giving some or all the disclosure specified in categories C2/C4, information on the matters specified. Where such information is provided, it shall be provided by way of a pleaded statement verified by a statement of truth setting out details of the matters specified in categories C2/C4. Any such statement must be provided by no later than the date specified in paragraph 3(b) of this Order for providing disclosure.

5. Royal Mail and BT shall disclose by list the documents in their control falling within the categories set out at Annex 4 in three tranches on (i) 5 March 2021; (ii) 31 March 2021; and (iii) 29 April 2021 with inspection to follow in each case within seven days.
6. The disclosure provided in Annexes 3 and 4 should be accompanied by a disclosure statement to be filed on 29 April 2021 by an appropriate person within Royal Mail or BT which shall:
  - (a) set out the extent of the search that has been made in order to locate the documents ordered to be disclosed;
  - (b) specify the manner in which the search has been limited on reasonableness and proportionality grounds and why; and
  - (c) certify to the best of their knowledge and belief that the disclosure ordered has been provided.
7. The documents to be disclosed and made available for inspection pursuant to paragraphs 3 and 5 above:
  - (a) may be confined to the best available evidence about the information which is the subject matter of the listed categories, which may be in the form of electronic databases or other electronic documents, save where (i) the party concerned does not in fact keep any documents in respect of that subject matter in electronic form, or (ii) although it does keep documents in respect of that subject matter in electronic form, the relevant information in those electronic documents is unreliable in view of the way in which it was collected, or (iii) the best available evidence falls instead to be obtained from hard copy documents or a combination of hard copy documents and electronic databases or other electronic documents. In each case, the party disclosing information pursuant to this provision should explain why the evidence it is providing is the “best available evidence” and why further disclosure is not proportionate, in particular if the excluded information is within an electronic database;

- (b) if contained in the form of an electronic database or extract therefrom, should be provided in native electronic format or electronic excel format, together with a statement on how the relevant information has been compiled for the database, and, if appropriate, guidance on how it is to be examined;
  - (c) shall include documents in the public domain; and
  - (d) may where expressly permitted in relation to a given category in Annex 4, be a representative sample of documents, provided that an explanation of the basis on which such a sample has been selected, and an explanation as to why that basis is reasonable and proportionate in the circumstances, is set out in the disclosure statement to be provided pursuant to paragraph 6 above
8. The parties may choose to disclose documents into the Confidentiality Ring in accordance with the Confidentiality Ring Order.

### **Expert Evidence Permissions**

9. In relation to the Royal Mail Proceedings and the BT Proceedings:
- (a) Permission be granted to the parties to adduce written and oral evidence in the field of regulatory and competition economics to address the issues of whether/how the Infringement caused an Overcharge, and if so the extent of any such Overcharge and Used Trucks Pass-On. This evidence is to be given by Mr James Harvey on behalf of Royal Mail and BT, and Professor Damien Neven on behalf of DAF;
  - (b) Permission be granted to the parties to adduce written and oral evidence to address the issues of Supply Pass-On as follows:
    - i. Royal Mail and BT are permitted to adduce expert evidence from Mr Harvey in the field of regulatory and competition economics; and
    - ii. DAF is permitted to adduce expert evidence from Mr Mark Bezant in the field of forensic accounting;
  - (c) Permission be granted for expert evidence in relation to the issue of whether and to what extent any Overcharge was offset by reductions in the prices

which the Claimants paid for goods which may be complementary to the purchase of a Truck, specifically, Truck bodies and Truck trailers in the case of the Royal Mail Proceedings and Truck bodies in the case of the BT Proceedings during the Relevant Period, as follows:

- i. DAF is permitted to adduce written and oral evidence in the field of regulatory and competition economics from Professor Neven to address this issue by reference to a simulation model; and
- ii. Royal Mail and BT are permitted to adduce written and oral evidence from Mr Harvey in the field of regulatory and competition economics to respond to Professor Neven's analysis.

10. In relation to the Royal Mail Proceedings:

- (a) Permission be granted to the parties to adduce written and oral evidence in the field of regulatory and competition economics to address the issue of Loss of Volume. This evidence will be given by Professor Neven on behalf of DAF, and Mr Harvey on behalf of Royal Mail;
- (b) Permission be granted to the parties to adduce written and oral evidence for the purpose of assessing the Finance Losses issue. This evidence is to be given by Mr Julian Delamer on behalf of DAF, and Mr John Earwaker on behalf of Royal Mail, in the field of financing;
- (c) Permission is granted for expert evidence to address issues relating to Royal Mail's Truck leasing and Truck financing arrangements as follows:
  - i. Royal Mail is permitted to adduce written and oral evidence:
    - (1) from Mr Harvey in relation to issues of value of commerce and overcharge in respect of leased Trucks, and
    - (2) from Mr Earwaker on in respect of financing costs associated with leased Trucks,
  - ii. DAF is permitted to adduce written and oral evidence from Mr Delamer in respect of points (1) and (2) above and, insofar as is non-

duplicative and necessary to address the evidence of Mr Harvey on point (1) above, from Professor Neven.

11. In relation to issues pertaining to the calculation of post-tax damages and interest (the **“Tax Issues”**):
  - (a) The parties shall be permitted to adduce written and oral expert evidence in relation to the Tax Issues;
  - (b) The parties’ proposed experts shall meet on a without prejudice basis on or before 16 April 2021 to seek to agree their proposed approach to the Tax Issues;
  - (c) If and insofar as agreement cannot be reached, the parties shall by 4:00pm two weeks after the date of the without prejudice expert meeting, file and exchange statements from their respective experts setting out their proposed approach to the Tax Issues and the reasons for adopting that approach (the **“Tax Statements”**);
  - (d) The Tribunal shall determine the appropriate approach to the Tax Issues, following an oral hearing if necessary and/or make such other directions as it considers appropriate; and
  - (e) The parties shall identify their respective experts in relation to Tax Issues following the Tribunal’s approval of any approach agreed between the parties’ experts on their proposed approach to the Tax Issues, or, if an approach is not agreed, following the Tribunal’s determination of the appropriate approach to the Tax Issues.

#### **Costs**

12. By consent, costs in the case.

#### **Other**

13. Liberty to apply, including liberty for Royal Mail and BT to apply for permission to adduce additional expert evidence in respect of the issues outlined in paragraph 9(c) of this Order.

**The Hon Mr Justice Roth**  
President of the Competition Appeal Tribunal

Made: 21 May 2021  
Drawn: 21 May 2021