



Neutral Citation Number: [2024] EWHC 3186 (KB)

Case No: QB-2022-002405 and others

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

**THE NO<sub>x</sub> EMISSIONS GROUP LITIGATION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11<sup>th</sup> December 2024

**Before :**

**MR JUSTICE CONSTABLE**

**Between :**

**VARIOUS CLAIMANTS**

**Claimants**

**– and –**

**(1) MERCEDES-BENZ GROUP AG**

**(2) MERCEDES-BENZ AG**

**(3) MERCEDES-BENZ UK LIMITED (FORMERLY MERCEDES-BENZ  
CARS UK LIMITED)**

**(4) MERCEDES-BENZ FINANCIAL SERVICES UK LIMITED**

**(5) MERCEDES-BENZ RETAIL GROUP UK LIMITED**

**(6) 43 AUTHORISED DEALERSHIPS**

**(as listed at Schedule 4 of the Group Litigation Order)**

**Defendants**

- and -

**DEUTSCHE UMWELTHILFE**

- and -

**CLIENTEARTH**

**Interested Parties**

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**Leigh Day, PGMBM Law Ltd trading as Pogust Goodhead, Slater & Gordon UK Limited,  
Milberg London LLP and Hausfeld & Co LLP** on behalf of the Steering Committee for the  
Claimants

**Malcolm Sheehan KC, James Purnell and Alastair Richardson** (instructed by Herbert Smith  
Freehills LLP) for Mercedes-Benz AG and Others

**Guelen & Klinger Rechtsanwälte** on behalf of **Deutsche Umwelthilfe  
ClientEarth** representing itself

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**JUDGMENT**

**This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Wednesday 11th December 2024.**

**MR JUSTICE CONSTABLE:**

**Introduction**

1. This Judgment concerns an application by Mercedes-Benz Group AG and others ('the Mercedes Defendants') pursuant to CPR 31.22 prohibiting the collateral use of certain information said to be commercially sensitive ('the Information') contained within particular documents disclosed in these proceedings, including where those documents have been read to or by the Court, or referred to at a hearing held in public ('the Application'). There are related applications by Deutsche Umwelthilfe ('DUH') and ClientEarth, both environmental law groups in Germany and the UK respectively (together 'Interested Parties'). These applications, effectively made by non-parties pursuant to CPR 5.4C(2), are for unredacted versions of documents referred to in the recent preliminary issues hearing ('the KBA Issues Trial'), judgment in respect of which was handed down on 14 November 2024 ([2024] EWHC 2904 (KB)).

2. The Information is contained in three documents which were placed before the Court for the purpose of the KBA Issues Trial ('the Documents'). The first document ('Document 1') contains a Type Approval Certificate issued by Germany's Federal Motor Transport Authority ('KBA') on 14 September 2018, together with annexures to the certificate. The decision granted type approval in respect of a "*modification of engine management system*". It was initially disclosed pursuant to a Confidentiality Ring Order, but de-designated by agreement following a (second) de-designation application by the Claimants dated 30 August 2024. It is one of the agreed sample decisions which formed the subject of the KBA Issues Trial (the 'Sample Decisions'), specifically a Voluntary Update Decision ('VUD'). The second and third documents ('Document 2' and 'Document 3') are similar documents, but they were not one of the Sample Decisions. Document 2 was de-designated by agreement in common with Document 1. Document 3 was de-designated pursuant to a determination by Cockerill J ([2024] EWHC 190 (KB)) ('the De-Designation Judgment').
3. On 27 September 2024, DUH wrote to the Court requesting copies of the Sample Decisions. ClientEarth and the Department of Transport made similar requests. On 8 October 2024, the Mercedes Defendants filed the Application, seeking collateral use protections in relation to specific passages contained in the Documents. The Application was supported by a witness statement from Elisabeth Ramsauer, in-house counsel for the First Defendant, dated 8 October 2024 ('Ramsauer 1').
4. By the Court's Order, the Mercedes Defendants provided the Interested Parties (together with the Department for Transport) with the Sample Decisions that were the subject of the KBA Issues Trial, subject to redactions reflecting those parts of the Documents which related to the subject matter of the Application. Out of the 10 Sample Decisions, only Document 1 is the subject of this Application and the subject of the Interested Parties' application for an unredacted version. On 18 October 2024, the Claimants made written submissions opposing the Application and supporting the Interested Parties' requests.
5. The parties agreed a timetable (which the Court subsequently approved) which would enable the Mercedes Defendants and the Claimants to make any further submissions in relation to the Application, and for any interested parties to file submissions in relation to the Sample Decisions which had been provided to the interested parties. A further witness statement from Elisabeth Ramsauer was served on 25 October 2024, dealing with the existence of a duplicate of Document 3. On 31 October 2024 the Claimants confirmed that they had no further submissions to make. DUH and ClientEarth filed their submissions in relation to Document 1 on 1 November 2024 and 6 November 2024 respectively. No submissions were filed by the Department for Transport. On 13 November 2024, the Mercedes Defendants filed comprehensive reply submissions. No parties have sought to supplement their submissions following review of the KBA Issues Trial Judgment.

## The Applicable Law

6. The applicable law to applications pursuant to CPR 31.22 was summarised at paragraphs 9 to 11 of an earlier joint judgment of Constable J and Cockerill J in these proceedings at [2024] EWHC 695 (KB) rejecting an application by the Mercedes Defendants for an order under CPR 31.22 ('the Collateral Use Judgment'), which is repeated here for convenience:

'9. *The basic rule under CPR 31.22 is that a party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed unless it comes within one of the exceptions in CPR 31.22(1) – agreement, specific court permission or being "read to or by the court, or referred to, at a hearing which has been held in public". This exception reflects the fundamental open justice principle.*

10. *Rule 31.22(2) states:*

*'(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.'*

11. *The Court of Appeal's decision in Lilly Icos Ltd v Pfizer Ltd (No. 2) [2002] WLR 2253 is the leading applicable authority on the application of r 31.22(2). Both parties agree that Lilly Icos stands for the following propositions:*

*1) The starting point is the principle of open justice, and very good reasons are required to depart from the normal rule of publicity;*

*2) When considering an application in respect of a particular document, the court should take into account the role that the document has played or will play in the trial, and thus its relevance to the process of public scrutiny of the trial process. The court should start from the assumption that all documents in the case are necessary and relevant for that purpose, and should not accede to general arguments that it would be possible or substantially possible to understand the trial and the judgment without access to a particular document, though in particular cases the centrality of the document to the trial is a factor to be placed in the balance;*

*3) The court must have in mind any "chilling" effect of an order upon the interests of third parties;*

*4) The court will require specific reasons why a party would be damaged by the publication of a document. Those reasons will in appropriate cases be weighed in light of the considerations in paragraph 11(2) above. Simple assertions of confidentiality and damage which will be done by publication are insufficient even if supported by both parties.'*

7. Of some particular relevance to the arguments in the present Application is the application of the principles laid down in Lilly Icos to the facts in that case. As the Court of Appeal explained at [26], the most important feature of the case, was the very limited role that the relevant part of the relevant document played in the trial. Buxton LJ observed in this context that, if it had been placed in a physically separate document, and had not been, unnecessarily, referred to in passing by the witness, it would not have fallen under the terms of CPR 31.22(1)(a) at all. He went on, in the context of the essential interest in public scrutiny of the trial process:

*‘... it is not necessary, and indeed it is not relevant, for the interested spectator to have access to [the relevant page], however much it may fall under CPR 31.22(1)(a). That consideration enables the court to take a somewhat less demanding approach to the claim for confidentiality than would otherwise be appropriate.’*

8. In the application before the Court which led to the Collateral Use Judgment, the Mercedes Defendants sought to restrict the collateral use of documents which had earlier been de-designated from the existing Confidentiality Ring Order. The documents had been de-designated pursuant to the De-Designation Judgment. In her judgment, Cockerill J undertook a comprehensive review of the relevant law, and concluded, amongst other things, that:

- (1) a claim to confidentiality needs to be focused with precision by reference to the precise contents of documents; it can often be suitably protected by the use of redaction and/or gisting as tools by which as much of a document or its relevant contents is put into open;
- (2) a party who resists disclosure of documents otherwise falling within its disclosure obligations on the basis that the documents contain trade secrets is under a duty to consider, in relation to each piece of information within those documents, whether and to what extent that information is truly confidential;
- (3) the court will not readily accept that the entire contents of a given document or a whole class of documents are confidential such that no part of it can be inspected by the other party;
- (4) the question of confidentiality must be carefully interrogated.

9. The application before Cockerill J related to the de-designation of entire documents. Much of the information was already in the public domain via catalogues, user manuals, technical documents issued to garages, and on websites run by professionals or enthusiasts, and there was a huge amount of anodyne material. However, Cockerill J expressly recognised that there may be exceptions to this generality, although the Judge considered that they had not been properly identified from the morass and explained if such exceptions existed. At paragraph 77, Cockerill J stated:

*‘In oral submissions the document to which the Defendants pointed was the document entitled "AES/BES\*SW-Update\*0025\*00 Version 13.10.2021" (the "AES/BES document"). That must be taken to be the high water mark of the*

*Annexes. It was a 2021/2022 document – and hence within the EU five year rule of thumb for confidentiality. I would be prepared to accept a real possibility that such a document might contain some confidential material. But again the entire document had been treated as confidential, which was wrong. Certainly too, not all of it was on any sensible reflection confidential. As Mr De La Mare KC put it, it "contains vast passages of things that are absolutely quotidian public information". Even orally what was pointed to was a very small portion of the document and again the confidentiality involved was not properly and specifically explained.'*

10. In relation to this document, the Judge permitted a short period of time in which the document could be re-reviewed for confidentiality.

11. It was following the De-Designation Judgment that the Mercedes Defendants made the CPR 31.22 application which led to the Collateral Use Judgment. However, as recorded by the Judges, the application remained hopelessly broad, seeking whole documents to be subject to CPR 31.22 restrictions. At paragraphs 24 and 25, the Judges said:

*'24. So, as with the De-designation Application, the Mercedes Defendants have adopted a broad-brush approach in seeking to prevent publication of entire categories of documents, and we conclude that the 31.22 Application fails for essentially the same reasons. The principle of open justice demands that documents read or referred to in a public hearing be available to the public unless there are good reasons otherwise. The Mercedes Defendants have failed to persuade us that, as regards the materials that are the subject of this application, there are such good reasons.'*

*25. This is not to say that such an application will always be hopeless. A genuine justified concern about collateral use of specific material whose commercial sensitivity is properly made clear could be justified – particularly if the role of that material at trial were dubious. There may also be some force in restricting publication of truly sensitive details of extant systems which are not already in the public domain. However, any such application must be properly particularised and evidenced.'*

12. In terms of the applications by the Interested Parties, it is necessary to consider CPR 5.4C(2). This states that:

*'A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.'*

13. The leading authority is the Supreme Court Judgment in Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38; [2020] A.C. 629, which dealt in terms with CPR 5.4C(2) and considered how much of the written material placed before the Court in a civil action should be accessible to people who are not parties to the proceedings and how it should be made accessible to them. At paragraph 45, Baroness Hale made plain that although the Court has the power to allow access, the applicant pursuant to CPR 5.4C(2) has no general right to be granted it. It is for the person seeking access to explain why

he seeks it and how granting him access will advance the open justice principle. The Court has to carry out a fact-specific balancing exercise. On the one hand will be “*the purpose of the open justice principle and the potential value of the information in question in advancing that purpose*”. On the other hand will be “*any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others*”. Baroness Hale observed that:

*‘There may be very good reasons for denying access. The most obvious ones are ... the protection of trade secrets and commercial confidentiality.’*

14. These principles applicable to CPR 31.22(2) applications and CPR 5.4C(2) plainly intersect. However, it is noted that the burden is upon the Mercedes Defendants in the context of establishing collateral use protection under CPR 31.22(2), and upon the Interested Parties in the context of the CPR 5.4C(2) application.

### The CPR 31.22(2) Application

15. In respect of Document 1, the protection in respect of the use of the disclosed document provided by CPR 31.22(1) has been lost because this document was referred to at the KBA Issue Trials. The protection under CPR 31.22(1) is an important one, and a parties’ breach of its obligation to respect the clear restriction upon which a disclosed document can be used would be regarded as a serious one. However, there is no suggestion in the present Application by the Mercedes Defendants that there is reason to believe that the Claimants have not complied or do not intend to comply with CPR 31.22(1). If such a legitimate concern existed, this might justify (at the very least) the embodiment of the rule into a specific order of the Court, deliberate breach of which could amount to contempt.
16. However, Document 1 has lost that protection by virtue of being referred to in the KBA Issues Trial. Unless the Mercedes Defendants’ Application is successful, those parts of the document which are said to contain commercially sensitive information could then be used by the Claimants for purposes other than the proceedings. There would, for example, be no prohibition on the Claimants providing the documents to others, whether in the context of litigation or investigations elsewhere, or otherwise. That this is the case results from the application of open justice to the fact the document has been referred to or read in open Court. However, CPR 31.22(2) gives the Court the power to reimpose the erstwhile protection, and in exercising its discretion the Court must consider the principles set out in the preceding section.
17. At the outset, it is clear that the Application made by the Mercedes Defendants is considerably more targeted than its previous applications. No part of the Type Approval Decisions themselves are sought to be subjected to a restriction, which is limited to certain parts of certain of the annexures. For each element in respect of which protection is sought, Ms Ramsauer explains the nature of the parameters that have been highlighted for protection, the reason why the information is commercially sensitive and the harm that would be caused should that information become publicly available and thus could be used by competitors to the potential disadvantage of the Mercedes Defendants. She explains that the evidence she provides is on the basis of detailed discussions with her engineering colleagues.

18. Ms Ramsauer states that Mercedes-Benz is known for quality and robustness, and that these qualities are an integral part of its brand by which it seeks to set itself apart from its competitors. The ultimate products are built upon the cumulative effect of thousands and thousands of individual calibrations, parameters and functionalities and other technical details used in the current vehicles' software that has been developed over many years. They are the result of significant research and development. Of particular note is her evidence that the relevant information is still used in vehicles currently manufactured, or so similar to the equivalent information used in vehicles sold today that it would allow a competitor to understand the currently used information. The parameters and calibrations would provide competitors with an effective blueprint of the calibrations adopted by the Mercedes Defendants on the basis of their own research and development. This would provide, in effect, shortcuts to competitors in their own product development, reducing the time and cost of research and development that competitors would have to invest. Allowing competitors to understand and potentially replicate the functional logic behind Mercedes products puts the Mercedes Defendants, it is said, at a clear disadvantage.
19. It is not necessary, given the general shape of the objections to which I will come, to deal individually with each set of parameters or calibrations which are sought to be protected, which I will refer to as 'proposed redactions'. I will instead use examples to illustrate the basis of the Mercedes Defendants' approach to this application and to consider the merits of the Claimants' objections (bearing in mind that the burden remains on the Mercedes Defendants).
20. In relation to Document 1, the redactions commence within a document that details the basis of the On-Board Diagnostics ('OBD') system. The document details the monitoring strategy description, the fault detection criteria, the number of trips in the context of MI illumination, secondary parameters, pre-conditioning and demonstration test. Ms Ramsauer explains, on the basis of discussions with her research and development colleagues, that the OBD system is a key element in ensuring the proper operation of the vehicle, based on decades of development efforts. Each parameter is a crucial piece of information within the overall system and open release of these parameters sitting behind each fault code would enable competitors to close development gaps at no cost, and undermine features of a Mercedes-Benz product which are unique.
21. Whilst acknowledging, correctly, that the Mercedes Defendants' approach in respect of the Application is more targeted than previous ones, the Claimants contend that Ms Ramsauer's evidence amounts to little more than bare assertions, with no relevant evidence of the associated harms. In respect of the OBD document, the Claimants then quote from Ms Ramsauer's evidence and state '*No further detail is provided*'. I disagree that the approach taken by Ms Ramsauer is inadequate. It is a fundamentally different and more specific approach to that which the Mercedes Defendants have previously adopted. It identifies the particular parts of the document which have particular commercial sensitivity and explains why open release of that information would be extremely problematic in a way that is readily comprehensible. It is not anodyne material, and in contrast to previous applications, the Claimants have not countered the application with any suggestion that this information would otherwise be readily publicly available, e.g. through garages or enthusiast websites. Importantly, Ms



Ramsauer has explained that the specific technical information is either used in vehicles currently in production or so similar to such information as to overcome the suggestion that any commercial sensitivity has been lost to historical unimportance. There is no basis upon which the Court should go behind this evidence.

22. A second example from Document 1 is the table at page 126 which summarises the features of the software update to Transmission, Drive Programs. The unredacted portion of the document states, '*Due to continuous further developments and to establish a unified software the following software changes have been made.*' The document then explains in relatively non-technical language what the nature of the software improvements were. One relates to 'brake function' which Mr Ramsauer explains refers to what an engineer would understand as engine braking, where the mechanical resistance of an engine is utilised. Ms Ramsauer accepts that, as a concept, this is obviously well known, but when and how it is used will be particular to different manufacturers depending on their own research and development and understanding of competing advantages and disadvantages. It is clear from looking at the unredacted version that if this document were openly available, the generality of strategy (if not the specifics of the software itself) would become evident. I accept, as justified by Ms Ramsauer's evidence, that this would give competitors an unfair advantage. The Claimants merely recite this evidence, and engage with it only to the extent that they say 'this is the sum total of information'. The Claimants do not suggest that Ms Ramsauer is wrong in stating that this information would not otherwise be publicly available or challenge the (fairly obviously correct) assertion that such information would be advantageous for competitors. The justified criticisms of the Mercedes Defendants' previous, hopelessly broad applications are simply not available in light of the framing of the present Application. It was not necessary for Ms Ramsauer to explain how the same principle she explained by reference to 'brake function' would be applicable to the other contents of the table if that was in truth the high point of the Claimants' challenge to this evidence.
23. Furthermore, in applying the correct legal approach to CPR 31.22 as explained in Lilly Icos, it is of particular significance that, save insofar as I identify below, none of the parts of the annexures sought to be redacted were referred to in the KBA Issues Trial Judgment, and it is clear to me that an understanding of these parts of Document 1 is not necessary or relevant to being able to comprehend the matters in dispute in the KBA Issues Trial or the Judgment. I make plain that this may *not* be the case, in due course, in respect of the PDD Issues Trial, listed for October 2025, in which the interrogation of precise parameters and calibrations or software updates may well form a necessary part of the trial. In this context, the principle of open justice and public scrutiny of the trial process may lead to an entirely different balancing exercise to the one I carry out following the KBA Issues Trial.
24. The exception to this is a very small part of Document 1, which is found at page 111 of the exhibit to Ramsauer 1. This page was referred to, albeit indirectly, at paragraph 124 of the KBA Issues Trial Judgment. Irrelevance to proceedings clearly cannot apply to this page of Document 1 when it was the precise source of the example provided within that paragraph when rejecting the Mercedes Defendants' argument within the KBA Issues Trial that software changes made pursuant to the VUD did not introduce changes which would have led to the information package being changed. Moreover, any confidentiality in that technical issue was lost when it was included in the KBA Issues

Trial Judgment, and the Mercedes Defendants did not seek (when given a draft of the Judgment before hand down) that the technical detail was redacted from any public version of the Judgment. Any confidentiality it had has been lost. It would not, therefore, be appropriate to apply a CPR 31.22(1) restriction to this element of Document 1 which was the direct source of a finding by the Court and the substance of which has effectively been included in a public document. However, save in this limited respect, it is clear to me that the remainder of the proposed redactions to Document 1 are neither necessary nor relevant to being able to understand the KBA Issues Trial or the Judgment.

25. In respect of the other objections by the Claimants, I do not accept that the fact of de-designation itself prevents, as a matter of principle, a subsequent application under CPR 31.22(2). De-designation merely takes the document back to the position whereby it is protected by CPR 31.22(1); where that protection has been lost, the fact of prior de-designation cannot be determinative of the Application. Moreover, the fact that such a (specific and targeted) application could succeed has already been acknowledged within the Collateral Use Judgment for the reasons stated therein. I deal with the Claimants' objection based upon the fact that the Interested Parties are not competitors further below in the context of their application.
26. As such, I am prepared to grant the collateral protection sought in respect of Document 1, save in respect of that part of page 111 of the exhibit to Ramsauer 1 which deals with the NOx Sensor 2 removal detection monitoring including a new diagnostic function, and the relevant fault code changing from P229F to P22FD, referred to at paragraph 124 of the KBA Issues Trial Judgment. The Order should also be subject to a provision which makes clear that the Order is to remain in place save to the extent that the redacted elements are referred to in due course during the remainder of the proceedings (most likely the PDD Issues Trial). This is because a central plank of the reasoning in this judgment is that, as in Lilly Icos, the permitted redactions are focussed parts of Document 1 and which, as I have found, are clearly commercially sensitive but which are wholly irrelevant to a proper understanding of the KBA Issues Trial and Judgment. This may not be the case in the context of future issues to be determined. I also note that the Claimants have to date been extremely co-operative in either not referring or reading out parts of documents about which they are aware the Mercedes Defendants have concerns, irrespective of their view of the merits of those concerns, and I would expect that co-operation to continue.
27. Although Documents 2 and 3 were not Sample Documents, some parts of them (albeit not parts containing the Information) were referred in the parties' Skeleton Arguments and/or Closing Submissions and/or in oral argument. They have therefore also been read to or by the Court, or referred to at a hearing which has been held in public. It follows that their CPR 31.22(1) protection has similarly been lost. It is therefore appropriate to make an Order in respect of Documents 2 and 3 equivalent to that which I am prepared to make in respect of Document 1 for the same reasons.
28. I would add, however, particularly in the context of the previous CPR31.22 applications, had these documents not have lost their CPR 31.22(1) protection, it would not have been appropriate, in my judgment, to have made an order which automatically bites in respect of some future hearing in which Documents 2 and 3 may or may not have been referred to or read. This would reverse the ordinary default position with

regards to open justice embodied in the circumstances in which CPR 31.22(1) protection is lost. This is not a case where the Mercedes Defendants, at least presently, have demonstrated that the CPR 31.22(1) protection is in itself inadequate to protect its interests. The harm it relies upon is based upon the document becoming public and (unless and until it is read or referred to in Court), there is no demonstrated risk that this would be the case. As such, it is only against a proper understanding of the context of the particular hearing in which a document was referred to or read, by which it lost its automatic protection under CPR 31.22(1), that a decision under CPR 31.22(2) should be made. This is because it is only in this context, at least in the majority of cases, that the Court is in a position properly to weigh the need for open justice against potential commercial sensitivity.

### The CPR 5.4C(2) Application

29. In light of the foregoing, this can be dealt with briefly. I have determined that no part of the material which I have determined above pursuant to CPR 31.22(2) may receive the benefit of continued protection as if Document 1 had not been read or referred to in Court is in any way necessary for a third party to understand, and thereby scrutinise, the KBA Issues Trial or the Judgment.
30. I fully accept that the material for which the Mercedes Defendants have successfully pursued its CPR 31.22(2) application means that it is not possible to understand from Document 1 how precisely the Mercedes Defendants' engines and software works. Indeed, this is precisely the reason why the Mercedes Defendants contend that the material is commercially sensitive and may, if it were openly available, advantage its competitors. However, it is not suggested by the Interested Parties that the availability of this information is necessary for them to understand and scrutinise the KBA Issues Trial or the Judgment. It is this principle that is at the heart of CPR 5.4C(2) which permits non-parties to have access to documents which are held on the Court record. As clearly set out by the Supreme Court in Cape Intermediate Holdings, an applicant must show how obtaining access to documents would advance the principle of open justice. The Interested Parties have not done so.
31. The fact that the Interested Parties seeking a fully unredacted version of Document 1 are not themselves competitors does not, plainly, affect the foregoing analysis. This is because provision of a fully unredacted Document 1 to third parties who are not themselves subject to any restriction on its use means that there is nothing preventing the information becoming immediately public. This would bring about the very harm which the Mercedes Defendants identify. When, as here, the provision of an unredacted Document 1 is not in any way necessary for the purposes of advancing the principle of open justice, the balance pursuant to CPR 5.4C(2) lies in favour of restricting clearly commercially sensitive information which could, if made public, cause the Mercedes Defendants real harm.
32. Finally, however, it follows from my earlier observations that in the context of future issues to be determined by the Court, the balancing exercise in respect of documents containing similar content referred to or read out in the context of any substantive trial which investigates the existence of PDDs may lead to a different answer. That, however, is a potential dispute for another day.