



Neutral Citation [2022] CAT 57

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1291/5/7/18 (T)

AND BETWEEN:

- (1) RYDER LIMITED**
(2) HILL HIRE LIMITED

The Ryder Claimants

- v -

- (1) ~~MAN SE~~**
(2) ~~MAN TRUCK & BUS SE~~
(3) ~~MAN TRUCK & BUS DEUTSCHLAND GMBH~~
(4) ~~MAN TRUCK AND BUS UK LIMITED~~
(5) ~~AB VOLVO (PUBL)~~
(6) ~~VOLVO LASTVAGNAR AB~~
(7) ~~VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH~~
(8) ~~VOLVO GROUP UK LIMITED~~
(9) ~~RENAULT TRUCKS SAS~~
(10) ~~DAIMLER AG~~
(11) ~~MERCEDES BENZ CARS UK LIMITED~~
(12) ~~STELLANTIS N.V.~~
(13) ~~CNH INDUSTRIAL N.V.~~
(14) ~~IVECO S.P.A.~~
(15) ~~IVECO MAGIRUS AG~~
(16) ~~IVECO LIMITED~~
(17) ~~PACCAR INC.~~
(18) ~~DAF TRUCKS N.V.~~
(19) ~~DAF TRUCKS DEUTSCHLAND GMBH~~
(20) ~~DAF TRUCKS LIMITED~~

The Ryder Defendants

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1295/5/7/18 (T)

BETWEEN:

- (1) DAWSONGROUP PLC
- (2) DAWSONGROUP UK LIMITED
- (3) DAWSONGROUP TRUCK AND TRAILER LIMITED
- (4) DAWSONGROUP MATERIAL HANDLING LIMITED
- (5) DAWSONGROUP SWEEPERS LIMITED

The Dawsongroup Claimants

- v -

- (1) DAF TRUCKS N.V.
- (2) DAF TRUCKS DEUTSCHLAND GMBH
- (3) PACCAR INC
- (4) DAF TRUCKS LIMITED
- ~~(5) DAIMLER AG~~
- ~~(6) MERCEDES BENZ CARS UK LIMITED~~
- (7) AKTIEBOLAGET VOLVO (PUBL)
- (8) VOLVO LASTVAGNAR AB
- (9) VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH
- (10) RENAULT TRUCKS SAS
- (11) VOLVO GROUP UK LIMITED

The Dawsongroup Defendants

REASONED ORDER

UPON the DAF Defendants' application dated 30 November 2023 to vary the Tribunal's Order drawn on 22 July 2021 (the "**May 2021 CMC Order**"), as subsequently varied by the Tribunal's Orders as drawn on each of 20 April, 12 and 27 May, 10 June, and 14 November 2022

AND UPON the separate orders of Hodge Malek KC made on 15 August 2022 (amended and notified to the Tribunal on 22 September 2022) and 23 September 2022 in the Dawsongroup Claim and the Ryder Claim respectively, varying the deadlines for the expert timetable in respect of tax issues

AND UPON reading the second witness statement of Enrique Andreu Molina, the third witness statement of Caroline Felicity Edward, the eighth witness statement of Lawrence Wu, the first witness statement of Timothy Oliver West and the fifteenth witness statement of Edward John Coulson, the submissions of the Ryder Claimants, the reply submissions of the DAF Defendants and the correspondence from the parties to the Tribunal

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

- **“DAF Defendants”** means the Seventeenth to Twentieth Defendants in the Ryder Claim and the First to Fourth Defendants in the Dawsongroup Claim.
- **“Daimler”** means the Tenth and Eleventh Defendants in the Ryder Claim and the Fifth and Sixth Defendants in the Dawsongroup Claim.
- **“Dawsongroup Claim”** means the proceedings with case number 1295/5/7/18 (T).
- **“Dawsongroup Claimants”** means the claimants in the Dawsongroup Claim.
- **“Iveco”** means the Eleventh to Sixteenth Defendants in the Ryder Claim.
- **“MAN”** means the First to Fourth Defendants in the Ryder Claim
- **“Ryder Claim”** means the proceedings with case number 1291/5/7/18(T).
- **“Ryder Claimants”** means the claimants in the Ryder Claim.
- **“Trial 1”** means the trial of the claims in proceedings with case number 1284/5/7/18 (T) and 1290/5/7/18 (T).
- **“Trial 2”** means the joint trial of Dawsongroup Claim and the Ryder Claim.
- **“Trial 3”** means the trial of the proceedings with case number 1292-4/5/7/18(T).

- “**Tax**” means the tax issues which are the subject of the separate orders separate orders of Hodge Malek KC made on 15 August 2022 (amended and notified to the Tribunal on 22 September 2022) and 23 September 2022.
- “**Volvo/Renault**” means the Fifth to Ninth Defendants in the Ryder Claim and the Seventh to Eleventh Defendants in the Dawsongroup Claim.

IT IS ORDERED THAT:

1. Save in respect of expert reports on Tax, paragraphs 15 – 17 of the May 2021 CMC Order are amended as follows:
 - (a) The parties shall, if so advised, file and exchange expert reports in reply by no later than 4pm on 23 December 2022.
 - (b) The experts’ without prejudice discussions shall take place by no later than 17 January 2023.
 - (c) The experts shall prepare and file joint statements by 4pm on 3 February 2023.The May 2021 CMC Order is otherwise unamended.
2. The parties have liberty to apply to vary this Order.
3. The costs of this Order are in the case.

REASONS

1. The DAF Defendants have applied for an extension of the deadline for the filing and exchange of reply expert reports from 9 December 2022 to 13 January 2023.
2. The basis of the application is, in summary, that their expert Mr Andreu needs more time to complete his reply reports on the issues of overcharge, plausibility, value of commerce and resale pass-on in response to the expert evidence on those issues from Dr Lawrence Wu (on behalf of the Ryder Claimants) and from Mr James Harvey and Mr Sam Williams (on behalf of the Dawsongroup Claimants). The application is opposed by the Ryder Claimants, the Dawsongroup Claimants and the Volvo/Renault Defendants. The Ryder Claimants and the Dawsongroup Claimants previously proposed an extension of the current deadline from 9 December 2022 to 23 December

2022 (now put back to 20 December 2002 in the case of the Dawsongroup Defendants). The Volvo/Renault Defendants have proposed an extension to 16 December 2022 and say that they do not need an extension beyond that date.

3. The grounds of the DAF Defendants' application are, in summary, as follows:
 - (a) Mr Andreu needs at least until 13 January 2023 in order to complete his reply reports. The need for this further time is said to have arisen as a result of (i) the agreed three-week extension of time for the exchange of primary reports from 19 September 2022 to 7 October 2022; (ii) a delay in the provision of data packs accompanying Dr Wu's reports leading to an 11-day delay before Mr Andreu could undertake the work needed to properly understand and interrogate Dr Wu's analysis; (iii) difficulties in interpreting the data contained in Dr Wu's data packs arising from or incomplete or unclear information; (iv) substantial divergencies in the approaches taken by the experts to many of the core issues which Mr Andreu has to address, including in particular the Overcharge Issue as identified in the DAF Defendants' reply submissions; examples of these divergencies are given in Mr Andreu's witness statement; (v) the need for Mr Andreu to respond to the plausibility reports of Dr Wu and Mr Harvey as the lead expert on this topic following the settlements of Daimler with the Claimants; (vi) the time inevitably lost during the Christmas break and the impracticality of exchanging expert reports during or immediately after the Christmas break.
 - (b) The two-week delay to the start of Trial 2, which the DAF Defendants recognise would be needed if the application were granted, could be accommodated in the two weeks directed by the Tribunal to be held in reserve in September/October 2023; the trial timetable will have to be reviewed in any event following the release of the judgment in Trial 1.
 - (c) An extension of the deadline to 13 January 2023 should be granted as a matter of fairness in order to avoid the prejudice to the DAF Defendants which would otherwise result from the Claimants' failure to adhere to deadlines earlier in the proceedings. The Claimants are proposing to cut down the time allowed for responsive expert evidence by between 7 and 10 days when compared with the

Tribunal's original directions order whereas Mr Andreu now has more to do than was anticipated.

4. The application for any extension of the deadline beyond 23 December 2022 is opposed by the Claimants on, in summary, the following grounds:
 - (a) The extension sought would disrupt the current directions for the run up to Trial 2. Moreover, the two-week delay to the start of the trial (which the proposed extension would entail) would lead to Trial 2 continuing until after the summer break into September/October 2023. The two-week contingency period in September/October would be used up even before the Trial 2 had started, depriving the Tribunal of flexibility to deal with timing issues later on. Any delay in the issuing of the judgment in Trial 2 may impact on the preparations for Trial 3.
 - (b) There is no sustainable basis for seeking an extension of time. (i) The DAF Defendants have not validly explained why the proposed two-week extension of the deadline (i.e. to 23 December 2022) is insufficient to meet any difficulties arising from the delay of five/six working days in the provision of the data packs; (ii) the criticisms of the content of the data packs are misplaced; the Claimants had their own difficulties in analysing Mr Andreu's data packs; (iii) the extent of the divergencies in the expert reports relied on by the DAF Defendants is overstated and was foreshadowed as long ago as 2019; (iv) the workload of Mr Andreu and his team has decreased as a result of the DAF Defendants' abandonment of their complements defence and the settlements reached between the Ryder Claimants and Iveco, Daimler, Volvo/Renault and MAN; (v) the decision to leave plausibility issues to Daimler's expert was taken at the DAF Defendants' risk.
5. Having taken account of the evidence and submissions made on behalf of the parties, the Tribunal directs that the deadline for the filing and exchange of reply expert reports be extended from 9 December 2022 to 23 December 2022 with consequential one-week adjustments to the dates for the meeting of experts and preparation and filing of the joint expert statements but is not satisfied that any further extension should be granted.

6. The Tribunal considers that exceptionally compelling grounds would be needed in order to justify an extension of time that would result in disruption to the already compressed timetable governing the run up to Trial 2 and would lead to a delay in the conclusion of Trial 2 from July 2023 until September or October 2023. Whilst the Tribunal has directed that two weeks be kept in reserve on a contingency basis in September/October 2023, the Tribunal's strong preference would be for the hearing to conclude in July 2023 so as to enable work to start on the judgment during the summer break. Moreover, the extension sought by the DAF Defendants would deprive the Tribunal of the flexibility to use the two reserve weeks to deal with any other delay, should this prove to be necessary.
7. The Tribunal is not persuaded that the grounds put forward by the DAF Defendants are sufficient to justify an extension beyond 23 December 2022, essentially for the reasons put forward by the Claimants. The Tribunal is mindful of the extent of the work to be carried out by Mr Andreu and his team. The Tribunal is not, however, persuaded that the agreed earlier three-week extension of the date for the exchange of the primary reports or the relatively short delay in the provision of data packs or the other matters relied on by the DAF Defendants validly explain why Mr Andreu and his team are now unable to complete the work needed on the reply reports by 23 December 2022. Nor is there any valid explanation for the failure of the DAF Defendants to apply for an extension at the CMC or at any time before 22 November 2022.
8. The Tribunal is in the circumstances not persuaded that it would be unfairly prejudicial to the DAF Defendants to require them to comply with the 23 December 2022 deadline.

Andrew Lenon KC
Chair

Paul Lomas

Prof Anthony Neuberger

Made: 7 December 2022
Drawn: 7 December 2022