

THE HIGH COURT

[2022] IEHC 404

[2017 No. 1527 P]

BETWEEN:

NATIONAL TRUCK RENTAL COMPANY LIMITED

PLAINTIFF

– AND –

**MAN IMPORTERS IRELAND LIMITED, MAN SE, MAN TRUCK AND BUS AG,
MAN TRUCK AND BUS DEUTSCHLAND GmbH, AB VOLVO (publ.), VOLVO
LASTVAGNAR AB, VOLVO GROUP TRUCKSCENTRAL EUROPE GmbH,
RENAULT TRUCKS SAS, DAIMLER AG, FIATCHRYSLER AUTOMOBILES N.V.,
CNH INDUSTRIAL N.V., IVECO SpA, IVECO MAGIRUS AG, DAF TRUCKS N.V.,
DAF TRUCKS DEUTSCHLAND GmbH**

DEFENDANTS

JUDGMENT of Mr Justice Max Barrett delivered on 5th July, 2022.

SUMMARY

The second, third and fourth-named defendants in these proceedings (the ‘defendants’) have come seeking, amongst other matters, that the court issue an order directing the plaintiff to furnish full and proper replies to paras. 8(2)(i) and (n), 10(4) and (5) and 13(1) and (2) of a notice seeking particulars of the defendants dated 21st November 2019. This judgment explains why the defendants’ application has succeeded.

I. Introduction

1. By notice of motion of 6th April 2022, the defendants have come seeking that the following orders issue against the plaintiff: (1) an order directing the plaintiff, within such time as the court may direct, to furnish full and proper replies to paras. 8(2)(i) and (n), 10(4) and (5) and 13(1) and (2) of the notice seeking particulars of the defendants dated 21st November 2019;¹ (2) and certain ancillary orders.

II. The Grounding Affidavit – Part 1

2. The application is grounded on an affidavit of Mr Casey, a partner in A&L Goodbody, Solicitors. That affidavit provides useful background information concerning this application. It is therefore quoted at length below. However, it should be noted that it is an affidavit sworn by a solicitor for the defendants. Thus, insofar as it makes complaint of how the plaintiff has acted, it (naturally) depicts the MAN worldview. So just because, in quoting from Mr Casey's affidavit, I recite certain complaints/criticisms that he makes of the plaintiff, that does not mean that I agree with those complaints/criticisms.

3. Mr Casey avers, amongst other matters, as follows:

“Introduction

3. This is an application to require the plaintiff to provide proper particulars of its claim in accordance with the Rules of the Superior Courts, so that the MAN Defendants may be in a position to fully understand the claim being made against them and to ensure that any requests for discovery are formulated appropriately so as to avoid unnecessary cost being incurred. The MAN Defendants have repeatedly sought particulars from the plaintiff and, despite the time and opportunity repeatedly afforded to the plaintiff to provide particulars of their claim, the plaintiff's claim still fails to provide the particulars required to allow the MAN defendants to understand the claim being made against them.

¹ As will be seen, the defendants have succeeded in this application. However, I will be guided by the parties, who will know better than me the amount of work likely to be generated by this judgment, as to what would be a practicable timeframe to order.

4. On 24th November 2021, the solicitors for the MAN Defendants issued a notice of motion in Waterford Transport Company Limited v. MAN SE & Others...seeking the same relief sought herein. Where a notice of discontinuance subsequently issued in those proceedings, it was necessary for the MAN Defendants to issue the within motion, for which leave was granted...on 9th March 2022.

MAN

5. At all material times MAN SE was the parent company of the MAN Group, which is one of the leading European utility vehicle manufacturers and providers of transport services. The registered seat of MAN SE was at [Stated Address in Germany]....As of this date, all of MAN SE's rights and obligations transferred to TRATON SE, and MAN SE ceased to exist as an independent legal entity. A&L Goodbody LLP has corresponded with the plaintiff's solicitors to notify it of the merger and to address the possibility of an application to the court to amend the pleadings to reflect this development. In this affidavit, save where the context otherwise requires, my references to MAN SE shall be taken to be to TRATON SE insofar as they relate to the position after 31st August 2021.

6. At all material times MAN Truck & Bus SE (formerly known as MAN Truck & Bus AG) was a wholly-owned subsidiary of MAN SE with its registered seat at [Stated Address in Germany]....The product portfolio of MAN Truck & Bus SE includes transporters, trucks, buses, special vehicles and diesel motors as well as gas engines and focuses on activities in the fields of transportation of passengers and goods.

7. At all material times MAN Truck & Bus Deutschland was a subsidiary of MAN Truck & Bus SE with its registered address at [Stated Address in Germany]....MAN Truck & Bus Deutschland GmbH

is a distribution company which operates only within Germany since May 2003.

8. As is apparent from the foregoing, each of the MAN Defendants was domiciled in Germany. The MAN Defendants do not have any presence in Ireland.

Background

9. These proceedings arise from an investigation commenced and conducted by the Directorate General for Competition of the European Commission in relation to an infringement of Art.101 TFEU. Decision AT.39824 of the European Commission, delivered on 19th July 2016 (the 'Commission Decision') found that certain truck manufacturers and others had infringed Art.101 TFEU....

10. The Commission Decision stated, amongst other things, that the MAN Defendants [and other motor companies]...(together 'the Addressees') had shared certain information relating to gross prices in the EEA for medium and heavy trucks and had coordinated on the limitation and timing of the introduction of certain emission technologies for medium and heavy trucks required by certain EU emissions standards in breach of Art.101 TFEU and Art.53 of the EEA Agreement (the 'Conduct')....The Commission found that MAN SE and MAN Truck & Bus AG (now MAN Truck & Bus SE) participated in the Conduct from 17th January 1997 to 20th September 2010. The relevant period for MAN Truck & Bus Deutschland GmbH is from 3rd May 2004 until 20th September 2010.

11. The Commission Decision stated at para.84 that 'The trucks sector is characterised by a substantial volume of trade between Member States as well as between the Union and the EFTA Countries of the EEA and affects the competitive structure of the market in at least two member states.' However, as set out in the Commission Decision none

of the Addressees have their registered office in Ireland, nor does it assert that any of the behaviour which gave rise to the Conduct took place in Ireland.

12. It is also important to note that the Commission Decision does not address the effect of the conduct in any detail. The Commission considered the conduct as ultimately aimed at restricting price competition within the meaning of Art.101(1) TFEU and Art.53(1) of the EEA Agreement....The Commission expressly stated that it was not necessary for it to make any findings concerning any effects of the Conduct on the market....No findings were made in the Commission Decision as to the effect of the Conduct. In particular, the Commission Decision makes no finding as to whether the Conduct had any effect on the Irish market. The Commission Decision also makes no finding as to whether the Conduct had any effect on any Irish market. The Commission Decision also makes no findings in respect of the impact, if any, on the price paid by any customer for its trucks, let alone any customers in Ireland.

13. To date, the plaintiff's solicitors have commenced over 50 [it is now circa. 65] separate proceedings on behalf of numerous plaintiffs seeking damages from the defendants for, among other things, breach of European Union competition law. The claims advanced in each of the proceedings are the same save that the vehicles which are the subject of each of the proceedings would appear, on the basis of the plaintiff's pleadings to date, to be different vehicles.

The Plaintiff's Claims

The Parties

14. The plaintiff is described in the original statement of claim as being 'at all times engaged in the business of the sale and rental and leasing

of commercial vehicles to include rigid and articulated truck units having its registered address at [Stated Address in Ireland].’

15. The proceedings also originally named Man Importers Ireland Limited (the ‘Importers’) as defendants in addition to the MAN Defendants and the other addressees.

16. The importer was described in the original statement of claim as a seller of new medium and heavy trucks manufactured by the MAN Defendants. In fact, as well as its role as importer, the importer is (and was at all times material to these proceedings) an independent, non-exclusive dealer, one of a number of MAN dealers in Ireland. Despite its name, the importer is an independent limited liability company registered in Ireland, with no corporate connection to the MAN Defendants. It is not now, nor has it ever been, a subsidiary or an agent of the MAN Defendants, nor is it an addressee of the Commission’s Decision.

17. As is explained in further detail below, the plaintiff has since abandoned all claims against the importer.

The Causes of Action

18. The plaintiff pleads that it operates in the market for medium and heavy trucks and that it had entered into various contracts to purchase such trucks.

19. It also claims, in generalised terms, that the Conduct was capable of affecting and did in fact affect trade, both between the Member States of the European Union and within Ireland, by preventing, restricting or distorting competition on the market for medium and heavy trucks. It is alleged that the defendants, by participating in the Conduct, whether themselves or through their principals where they are acting as agent,

acted in breach of Art. 101 TFEU and Part 2 of the Competition Acts 2002-2017 (the 'Competition Act').

20. The plaintiff also claims that as a result of the Conduct it was obliged to pay more for trucks than it would otherwise have done. The plaintiff asserts that it has suffered loss or damage as a result.

21. In fact, I say and believe that there are no agreements between the MAN Defendants and the plaintiff and that the plaintiff has abandoned any claim against any party with whom it may have entered into an agreement in respect of the vehicle in issue in this proceeding.

Reliefs Claimed

22. The plaintiff claims a variety of reliefs in the amended statement of claim, including a. a declaration that the defendants or any of them participated in an 'unlawful cartel' and/or engaged in activities prohibited by the Competition Act, b. damages and/or compensation pursuant to s.14 of the Competition Act, c. damages and/or compensation for breach of Art.101 TFEU, d. damages for negligence, breach of duty and breach of contract, e. exemplary and/or punitive damages. f. interest pursuant to the Courts Act, g. further or other relief, h. the costs of these proceedings.

Background to this Application

23. The within proceedings were commenced by way of plenary summons on 16th February 2017 and were admitted to the Competition List of the High Court on 25th April 2017. The proceedings as originally constituted named the addressees of the Commission Decision as defendants together with certain Irish domiciled defendants involved in the sale and financing of the vehicles in question in these proceedings (the 'Subject Vehicles'). At the outset of the proceedings, a question arose as to the jurisdiction of the Irish courts to hear and determine the

within proceedings and conditional appearances on behalf of the MAN Defendants were entered on 21st April 2017. A statement of claim was delivered on behalf of the plaintiff on 16th May 2017....

24. At a directions hearing on 25th April 2017 it was agreed between the parties that the non-Irish domiciled defendants would raise a notice for particulars solely for the purpose of clarifying pleas advanced on behalf of the plaintiff which were relevant to the question of whether the Irish courts have jurisdiction to hear and determine the within proceedings. Under cover of letter dated 13th June 2017, the MAN Defendants delivered such a notice of particulars.

25. Replies to the notice for particulars were delivered on 10th July 2017. By letter dated 19th September 2017, the MAN Defendants noted that the replies were plainly inadequate and identified numerous issues with the replies received. Further amended replies were delivered by the plaintiff on 9th November 2017.

26. At a directions hearing on 10th October 2017...the court made directions which provided for the filing of motions by various Irish-domiciled defendants seeking orders striking out the claims against them in the various proceedings. It was noted that the foreign defendants, including the MAN Defendants, had reserved their rights to contest the jurisdiction of the Irish courts to hear and determine the claims against them and it was proposed that any motions contesting jurisdiction would follow the determination of the motions to be brought by the Irish-domiciled defendants. The court acknowledged that the sequence was logical and approved the proposal to proceed in this manner on the basis that it would result in a saving of time and costs. Multiple strike-out applications were subsequently issued by the Irish-domiciled defendants.

27. On 14th November 2017, the court made directions in respect of the strike-out motions and the exchange of correspondence relating to

procedural logistics in connection therewith, including representative strike-out motions.

28. On 5th February 2018, the court gave further directions regarding the exchange of the legal submissions in the strike-out motions issued by the Irish-domiciled defendants. On the basis of what was subsequently said in court in connection therewith, I say and believe that ultimately the claims against the Irish-domiciled defendants were either withdrawn or struck out and consequently the motions on behalf of those defendants were struck out. Accordingly to the best of my knowledge, information and belief, no claims are being maintained against the importer (previously the first-named defendant).

29. Following protracted correspondence between the plaintiff and the defendants between 12th June 2018 and 15th October 2018 on the appropriate next steps in the proceedings, it was agreed between the parties, and so directed by the court at a case management hearing on 16th October 2018 that the defendants would select sample cases solely for the purpose of testing the jurisdiction of the Irish courts and that amended statements of claim in which any pleas relevant to or germane to the Irish defendants would be deleted would be delivered in the selected cases.

30. Following the selection of the MAN Defendants' jurisdiction sample cases, amended statements of claim were delivered on behalf of each plaintiff in those sample cases. The MAN Defendants issued jurisdiction challenges in two sample cases, namely [Proceedings Stated]

31. There was an exchange of affidavits and legal submissions in the sample jurisdiction applications, during the course of which a Hungarian court made a reference for a preliminary ruling to the CJEU. The reference followed a challenge to the jurisdiction of the Hungarian courts to hear and determine similar claims brought by a Hungarian claimant against one of the co-defendants to the within proceedings,

DAF Trucks NV. In light of the possible implications of the CJEU decision for the sample jurisdictional challenges, it was agreed between the parties to await the outcome of the Hungarian reference.

32. The judgment of the CJEU was handed down on 29th July 2019. At a case management hearing on 17th October 2019, it was agreed that issues of jurisdiction could be stood over to the trial of the action and that each plaintiff would deliver amended statements of claim in those cases which had not been selected as sample cases. It was further agreed that (i) the defendants would deliver notices for particulars in all proceedings by 21st November 2019, (ii) the plaintiffs would provide their replies by 13th January 2020, (iii) the proceedings would be listed for mention on 20th January 2020 and (v) defences would be delivered by 17th February 2020.

33. The MAN Defendants delivered a notice for particulars in each of the 51 proceedings on 21st November 2019 in accordance with the court's directions....

34. The plaintiff delivered replies dated 13th January 2020 (but received by post on 14th January 2020) which were plainly inadequate and made no attempt to provide proper replies....

35. The proceedings were listed for mention on 30th January 2020 where the inadequacy of the plaintiff's replies was ventilated before the court. The court directed, at the suggestion of the MAN Defendant's senior counsel, that (i) each defendant write to the plaintiffs by 27th January 2020 outlining their issues with the replies received, (ii) the plaintiffs respond by 10th February 2020, (iii) the matter be listed for mention on 17th February 2020 and (iv) defences would be delivered by 16th March 2020....

36. There followed an exchange of correspondence between the MAN Defendants and the plaintiff....

37. *The MAN Defendants wrote to the plaintiff's solicitors on 27th January 2020 in accordance with the court's 20th January 2020 directions stating that the replies provided were formulaic, repetitive and repeatedly asserted reliance on the Commission decision without sufficient specificity. That letter also noted that the plaintiff appeared to have misinterpreted the Commission's findings to advance a case that is not supported by the Commission Decision. In the interests of efficiency and to avoid any unnecessary delay, the MAN Defendants identified specific particulars to which inadequate replies had been provided and to which full and proper replies were required by the MAN Defendants in each set of proceedings for the purpose of considering and preparing their Defences.*

38. *The plaintiff's solicitor then provided what was presumably intended to be composite replies to encompass all 51 proceedings. These replies are dated 10th February 2020, although they were received on 11th February 2020. Notwithstanding the impropriety of such an approach and the inadequacy or otherwise of the replies received, the MAN Defendants delivered their defences in the 51 proceedings on 16th March 2020. The MAN Defendants' cover letter accompanying the defences noted that the delivery of the defences 'is not in any way to be taken as acceptance of the adequacy and sufficiency of the replies provided to date'. Furthermore, the MAN Defendants' defence stated that: 'Certain pleas in the amended statement of claim and certain replies to particulars are inadequately particularised, infringing the rights of the MAN Defendants to legal certainty and natural and constitutional justice. No admissions are made to such inadequately particularised pleas, and the MAN Defendants reserve their entitlement to plead this defence further and/or to amend this defence on receipt of adequate particulars.'*

39. *No correspondence was received from the plaintiff following the delivery of the defence and the MAN Defendants wrote to the plaintiff*

on 21st April 2020 again identifying specific particulars which the MAN Defendants require (the '21st April 2020 Letter').

40. The 21st April 2020 Letter set out specific requests for particulars to which the MAN Defendants required full and proper replies and also noted the fact that the MAN Defendants did not take issue with a particular reply was not to be taken as acceptance of the adequacy, accuracy and/or relevance of the reply provided.

41. No correspondence was received from the plaintiff addressing the particulars sought on 21st April 2020 and solicitors for the MAN Defendants wrote to the plaintiff's solicitors on 15th September 2020 outlining that they had 'not received any acknowledgement or response to [the] 21st April 2020 Letter'. Solicitors for the MAN Defendants again wrote to the plaintiff's solicitor on 20th October 2020 noting that correspondence from the plaintiff's solicitors did not acknowledge the outstanding issue of the adequacy of the particulars provided to date, resting with their 21st April 2020 Letter.

42. As outlined above and in light of the inadequacy of the replies, the MAN Defendants issued a motion on 24th November 2021 seeking to compel replies to particulars in a related [stated] set of proceedings....As indicated in the grounding affidavit grounding that motion, to ensure that the court's time was used efficiently and effectively, it was proposed to bring that application in those proceedings alone, initially. It was hoped that the court's determination of that application might obviate the need for corresponding applications to be brought in the related proceedings.

43. At a directions hearing on 14th December 2021 it was agreed between the parties, amongst other matters, that the plaintiff would deliver replies to the defendants' outstanding notices for particulars by 11th January 2022 and under cover of letter dated 10th January 2022, the plaintiff's solicitor purported to deliver such replies. By letter dated

17th January 2022 the MAN Defendants wrote to the plaintiff's solicitor noting that the replies appeared to be inadequate....

44. At a directions hearing on 18th January 2022, it was agreed between the parties, amongst other matters, that (i) the defendants would raise any further issues outstanding in respect of the plaintiff's replies to particulars by 1st February 2022, and (ii) the plaintiff's solicitor would furnish any further replies by 15th February 2022. By letter dated 1st February 2022, the MAN Defendants wrote to the plaintiff's solicitor confirming that the replies dated 10th January 2022 were plainly inadequate and identifying specific issues with the replies received....

45. By letter dated 4th February 2022 the MAN Defendants sought clarification as to the status of the plaintiff in the related proceedings in which a motion seeking to compel replies had issued...[in circumstances] where it had come to the attention of the solicitors for the MAN Defendants that [the plaintiff in those proceedings]....had been struck off the register over a year previously. The solicitors for the plaintiff did not respond to that letter but subsequently a notice of discontinuance issued in those proceedings....

46. On 18th February 2022 the plaintiff's solicitor delivered further replies to particulars and by letter dated 7th March 2022 the MAN Defendants wrote to the plaintiff's solicitor noting that the replies appeared to be inadequate, and that schedule purported to be provided with those replies had not been provided....

47. At a directions hearing on 9th March 2022, counsel for the MAN Defendants confirmed that the plaintiff's replies to particulars remained inadequate, that the MAN Defendants therefore intended to proceed with a motion to compel particulars and that, where the [related] proceedings...had been discontinued it would be necessary to issue the within motion. The court directed, amongst other matters, that the plaintiff furnish all outstanding replies, including the missing

schedules, by 23rd March 2022, and that the MAN Defendants had leave to issue the within motion by 6th April 2022.

48. To ensure that the court's time is used efficiently and effectively, it is proposed [and this is noted by the court to be the approach adopted] to (a) seek orders only in relation to those particulars outlined at paras. 1.4, 1.6, 2.1 and 3 of the 1st February 2022 Letter; and (b) bring this application in these proceedings alone initially. While the MAN Defendants reserve their position in the other proceedings it is hoped that the court's determination of this application in these proceedings will obviate the need for corresponding applications to be brought in the other substantially identical proceedings issued by the plaintiff's solicitors. For the avoidance of doubt, the MAN Defendants are not seeking to select a sample case on the substantive issues with this application".

III. The 1st February 2022 Letter

4. This might be a useful juncture at which to pause in the consideration of Mr Casey's affidavit and to identify what particulars are outlined at paras. 1.4, 1.6, 2.1 and 4 of the 1st February 2022 Letter. They are as follows:

"1.4 You have acknowledged the obligation to provide particulars of the alleged purchase price paid for each vehicle but you have failed to discharge this obligation in the vast majority of cases because you have refused to divulge whether the figures furnished include or exclude VAT. This must surely be information within your client's knowledge and is highly pertinent to determining the actual cost of the vehicles to your client....

1.6 You have wrongfully refused to provide particulars as to which of the vehicles in issue have been sold by your various clients, asserting that this is 'not relevant'. The information is unquestionably relevant given the nature of your clients'

claims. The information is required to determine the quantum of any alleged overcharge (which is denied) by assessing the extent to which any alleged overcharge has been recovered by the plaintiffs. This particular is repeated....

- 2.1 *...You have failed to particularise the basis on which the Commission Decision supports the Plaintiff's allegations that they paid more for vehicles than they would otherwise have done. While the Replies refer to the Commission Decision, the Commission did not conduct any analysis on the actual effect of the conduct on the trade between member states or within Ireland. Furthermore, it will be recalled that the underlying plea is that the plaintiff was 'obliged and/or induced to pay more for trucks than they would have done under circumstances of undistorted competition'. This plea is close to asserting misrepresentation and/or undue influence, and it is well established that all cases alleging misrepresentation or undue influence are required to be particularised with exactness. Reply 2.1 therefore fails to set out the basis upon which it is alleged that there was any impact on prices paid by the plaintiffs....*

[I accept the proposition that in substance the quoted plea comes close to asserting misrepresentation and/or undue influence. There was some effort by counsel for the plaintiff in his oral argument to 'walk back' the word "*induced*". The fact that he saw the need to do so buttresses me in my sense that Mr Casey is right in the point just made (a point that was also canvassed for by counsel for MAN at the hearing of this application).]

4. *You have refused to provide particulars in respect of (i) vehicle repayments, (ii) frequency of repayments, and (iii) length of time for repayments for the proceedings listed at Appendix 2 of our letter dated 11th April 2021. You have justified your*

blanket refusal (in all proceedings) on the basis that only 'certain records' have been retained by the plaintiffs and because certain finance companies also do not hold the records. This response is clearly inadequate for several reasons: a) firstly, you have refused to provide this information for any plaintiffs although it appears that at least some records are in your possession. Again, you are surely not suggesting that all of your clients have lost or destroyed all underlying documentation? To the extent that this information remains, it should be furnished without delay. b) secondly, to the extent that your clients maintain that they no longer have such records, please confirm the steps taken to locate and disclose same and also please confirm when the documents are believed to have left your clients' possession. c) if these records were not available to your clients when the proceedings were issued, please clarify the basis upon which you have purported to advance the claim based on information which was not at the time held by your clients (and without disclosing that salient fact). Please confirm that this information will be provided (together with an explanation where documents are no longer available)."

IV. The Grounding Affidavit – Part 2

5. Returning again to Mr Casey's affidavit and taking up at the point where I had left off, he avers, amongst other matters, as follows:

"Particulars Sought

Particulars of Prices Allegedly Paid

49. The MAN Defendants have sought, at para.8(2)(i) of the Notice of Particulars dated 21st November 2019, confirmation as to the price exclusive of VAT paid by the plaintiff for each subject vehicle allegedly

purchased from the MAN Defendants. The replies dated 13th January 2020 specified the price allegedly paid for those subject vehicles but, in certain proceedings – including the within proceedings – failed to specify whether those prices were VAT inclusive or exclusive. In the 21st April 2020 Letter, confirmation was sought in that respect.

50. The Plaintiff's further replies dated 18th February 2022 purported to provide that confirmation by reference to a schedule to these replies, but as outlined above no schedule was furnished. The plaintiff did not comply with the court's direction on 9th March 2022 that it furnish all outstanding schedules to the defendants by 23rd March 2022. To date, no confirmation has been provided as to whether the alleged purchase prices identified in the replies dated 13th January 2020 are inclusive or exclusive of VAT.

51. Confirmation in that respect is required for the purpose of preparing expert evidence so that the various constituents of the price allegedly paid by the plaintiff can be identified and, if necessary, discounted to establish the price attributable solely to the vehicle/s in question. As noted above, the MAN Defendants have no further involvement in the sale of the subject vehicles following their purchase by the independent Irish importer.

Particulars as to Whether Subject Vehicles have been Sold

52. The MAN Defendants have also sought, at para. 8(2)(n) of the notice for particulars dated 21st November 2019, confirmation as to whether the plaintiff has sold any of the subject vehicles. It is the plaintiff's case that it allegedly paid an increased price for the subject vehicles due to the Conduct. If the plaintiff sold or traded in the subject vehicles, the question arises as to the extent that any alleged overcharge was passed on (in full or in part) to any subsequent purchaser and discovery of documents relating to that resale would be sought by the MAN Defendants in due course.

53. *The plaintiff asserts that the resale of the subject vehicles is 'not relevant'. However, the European Commission in its 'Practical Guide Quantifying Harm in Actions for Damages based on Breaches of Art 101 or 102 of the TFEU' notes that any overcharges as a result of anticompetitive behaviour may be passed on by customers of infringing undertakings.*

54. *While the extent of the alleged overcharge (if any) and the extent to which it was passed on by the plaintiff will ultimately be a matter for expert evidence at the trial of this action, confirmation as to whether or not the subject vehicles are still in ownership of the plaintiff is clearly required at this stage for the purposes of formulating the MAN Defendants' requests for voluntary discovery and is an appropriate matter for particulars.*

Particulars as to Certain Allegations Regarding Sale of Subject Vehicles

55. *The MAN Defendants have also sought at para.10(4) and (5) of the notice for particulars dated 21st November 2019, full and detailed particulars of the plaintiff's allegation at para.10 of the amended statement of claim that it was 'obliged and/or induced' to pay more for the subject vehicles than it would have done under circumstances of undistorted competition.*

56. *In reply, the plaintiff has referenced specific paragraphs of the Commission Decision but has not provided any particulars of the basis upon which the plaintiff was 'obliged and/or induced' to enter into the transaction. Although the plaintiff purports to elaborate on its initial response in further replies dated 10th February 2020, 10th January 2022, and 18th February 2022, those further replies are repetitious and do no more than paraphrase specific paragraphs of the Commission Decision. In particular, those further replies fail entirely to set out the*

basis upon which it is alleged that the conduct that was the subject of the Commission Decision had any impact on the prices ultimately paid by the plaintiff.

57. Leaving aside the fact that the Commission Decision made no finding that the Conduct had any effect on the competition between the defendants and so the plaintiff's claim as to the distortion of the relevant market is a mere assertion, the plaintiff's pleading would appear to be close to asserting misrepresentation and/or undue influence. It is well established that all cases alleging misrepresentation or undue influence are required to be particularised with exactness.

58. Furthermore the MAN Defendants were not a party to the sale of the subject vehicles to the plaintiff.

59. In the interests of fairness, the MAN Defendants are clearly entitled to know precisely what case they have to meet in respect of these particular allegations in order to prepare their defence properly.

60. I say also that, if the plaintiff is unable to provide proper and adequate particulars of the basis on which it is alleged that the plaintiff was 'obliged and/or induced' to pay more for the subject vehicles than it would otherwise have done, then the MAN Defendants are entitled to have that aspect of the plaintiff's amended statement of claim struck out. As such, the plaintiff ought to be compelled to provide the particulars sought, and if it is unable to do so, the MAN Defendants would in turn be able to consider whether to apply to have this part of the plaintiff's case struck out (thereby narrowing the issues in dispute and the scope of any discovery that might be required).

Particulars as to Loss and Damage

61. The MAN Defendants have also sought, at para.13 of the Notice for Particulars dated 21st November 2019, particulars of the plaintiff's

alleged loss and damage. In its replies to particulars dated 13th January 2020, the plaintiff states that 'the losses flow from the [Commission Decision]. At the trial of the action expert oral and documentary evidence will be adduced by the plaintiff to substantiate the plaintiff's losses, price paid and the additional costs unnecessarily borne by the plaintiff at the behest of the defendants and/or each one of them for the vehicle(s) the subject matter of the proceedings together with expert oral and documentary evidence as to the level of damages claimed by the plaintiff for breach of European Union and Irish competition law which will be heard in conjunction with the Communication quantifying harm in anti-trust damages actions...and the European Commission's Practical Guide on Quantifying Harm'

62. As the Commission Decision made no finding as to the effect of the Conduct, the MAN Defendants noted their surprise at the fact that the plaintiff had issued proceedings against them without being in a position to set out, even at a high level, the alleged loss and damage. In response the plaintiff asserted that 'the best estimate that can be given pending disclosure, and based on expert evidence, on the effect of the cartel was that the plaintiff paid approximately 26% more per vehicle [a notably precise figure] than would have been the case in the absence of the defendants' collusive behaviour'.

63. The plaintiff has declined to provide any further details regarding the source of the 26% estimate but I say and believe that it is taken from a 2009 study by Oxera Consulting LLP and is not applicable to the present proceedings. Whether the 26% estimate was taken from the Oxera study was expressly raised in the 1st February 2022 Letter, but was not addressed by the plaintiff in its further replies dated 18th February 2022.

64. The MAN Defendants are entitled to full and proper particulars of the alleged loss and damage suffered by the plaintiff so that they can understand the plaintiff's theory of harm. This is necessary for the

purpose of properly instructing the MAN Defendants’ economic expert and prepare its substantive defence accordingly. It is noteworthy in this respect that the UK Competition Appeal Tribunal delivered a judgment on 15th January 2020 (Ryder Ltd & Or v. MAN SE & Ors [2020] CAT 3) in follow on damages claims arising from the Commission Decision (to which the MAN Defendants are also party) which noted at para.39 that ‘it is necessary to consider early on what method or methods will be used to determine the issues of causation and quantum so that disclosure can be tailored accordingly’. It further noted at para.40(6) that ‘it is important to establish how in practice the issues at trial will be approached, and to do so before and not after vast time, effort and expense is devoted to yet further disclosure’. While the number of trucks at issue in those proceeds far exceed the number of subject vehicles in the within proceedings, it seems logical and sensible to require the plaintiff to provide particulars now on the basis on which it proposes to asset that it suffered loss and damage to ensure the efficient management of the proceedings....

65. In addition, it is incumbent upon the plaintiff to set out in greater detail the basis on which it believes it suffered loss and damage prior to discovery so that the parties can make all appropriate requests of the other side to ensure that the parties progress discovery in a cost-effective and expeditious manner and reduce the scope for discovery of documents or categories of documents which ultimately are not required because the plaintiff failed to turn their mind to the basis on which it is alleging that it suffered damage and loss.”

V. Some Law

a. Overcharge and Passing On

6. It follows from the decision of the UK Competition Appeal Tribunal in *Ryder Ltd. & Anor. v. MAN SE & Ors.* [2020] CAT 3 that a claimant in competition law proceedings can claim overcharging *save for* overcharging that it has passed on to a customer or later purchaser. This

is because the assessment of damages in competition law proceedings proceeds on a compensatory basis and it would be in breach of that compensatory objective if a claimant was to be compensated for an overcharge that it had passed on. (See further the observations of the UK Supreme Court as to over-/under-compensation in *Sainsbury's Supermarkets Ltd v. Mastercard Inc.* [2020] UKSC 24, para.217). The defendants here have raised a passing-on defence in the within proceedings. So whether there was any passing-on by the plaintiff is clearly an issue in play between the parties. I respectfully do not see how the plaintiff can therefore correctly maintain that queries as to re-sale of the MAN trucks is somehow irrelevant. In truth, the contrary situation presents: those queries are relevant.

7. Quantifying overcharge and the scale of any passing-on is a challenging process. (See further *Dawsongroup plc & Ors. v. DAF Trucks NV & Ors.* [2021] CAT 13, para.1). In its guidance in this area, the European Commission has identified various approaches that can be adopted in quantifying the harm suffered by a claimant, including comparator-based methods, simulation models, cost-based methods and finance-based approaches. The nature of the approach/es adopted will clearly have an impact on the type of discovery that eventually transpires in proceedings. It seems to me that the plaintiff in this case must have applied and/or settled upon some form of preferred quantification approach for it to arrive at the notably exact 26% hike in price referred to previously above. But whether or not that is so, the UK Competition Appeal Tribunal was, if I might respectfully observe, patently correct in its observations in *Ryder* that “*It is necessary to consider early on what method or methods will be used to determine the issues of causation and quantum so that disclosure can be tailored accordingly*” (para.39) and that if one were to proceed for an unduly protracted period by reference to the full panoply of possible quantification methodologies, each requiring different types of data for the requisite calculations to be completed “*only for one or other method then to be challenged at trial as unsound or unreliable...would be conducive to a massive and hugely expensive waste of effort on disclosure*” (para.42). (To some extent, as will be seen, the just-quoted observations were anticipated in general terms by O'Donnell J. (as he then was) in his judgment in *Quinn Insurance Ltd (Under Administration) v. PwC* [2019] IESC 13).

8. Armed with the above insights, I turn to consider certain aspects of the law on compelling replies to particulars.

b. Compelling Replies to Particulars

9. In terms of the general principles applicable in this area, the decision of the Supreme Court in *Quinn* is now the key decision when it comes to compelling replies to particulars in complex cases. The judgment of O’Donnell J. (as he then was) in that case, amongst other matters, is authority for the following propositions:

- (1) *“The basic rule remains the classic formulation in Mahon v. The Celbridge Spinning Co. Ltd. [1967] I.R. 1, at p. 3. A party is entitled to know the nature of the case being made against them. However, the role of particulars is not to require a party to furnish detailed particulars or specific aspects of the case. It is sufficient that the issues between the parties should be adequately defined and the parties should know in broad outline what is going to be said at the trial of the action.”* (para.20.i).
- (2) *“[M]any proper requests for particulars can be paraphrased as asking why or how the party pleading the matter makes the relevant contention. However, the real issue is whether the party requesting particulars is entitled to the level of detail which is sought.”* (para.21).
- (3) *“[I]f the provision of proper particulars is clearly necessary to enable the applicant properly to prepare for trial, or in other respects the application is a proper one, the information must be given, even though it discloses some portion of the evidence on which the other party proposes to rely at trial: see Marriott v. Chamberlain (1886) 17 Q.B.D. 154, at p. 161.”* (para.22).

[It seems to me that all of the particulars sought by the defendants are necessary to enable them to prepare properly for the trial.]

- (4) “[T]he more complex the case is, the more detailed the particulars that should be required.” (para.24).

[To the extent that it is contended (if it is contended) by the defendants by reference to *Ryanair DAC v. SC Vola.RO SRL* [2020] IEHC 308 that competition law cases are *necessarily* more complex than all other cases, I respectfully do not accept that this is so. Many commercial cases are complex and involve detailed and complex expert evidence. Economic evidence in competition proceedings is no more complex than, for example, the chemistry evidence that might be provided in patent law proceedings, albeit that those are very different types of expert evidence. However, the within competition law proceedings *are* complex (not least insofar as they present the difficult issue of quantifying any amounts overcharged and passed on) and were in any event accepted by counsel for the plaintiff at the hearing of this application to be complex. That they are complex accentuates the need for the pleadings to be clear – and of course places this case in a category where “*the more detailed the particulars that should be required*”.]

- (5) “*One reason why a complex case requires detailed particulars is, as Clarke J. pointed out in Thema International Fund plc v. Institutional Trust Services (Ireland) Ltd. [2010] IEHC 19, (Unreported, High Court, Clarke J., 26 January 2010), to limit the range of discovery. Discovery is an essential tool in any significant litigation, but it can place an onerous, expensive, and therefore oppressive burden on the parties, which risks creating, rather than avoiding, injustice.*” (para.25).

[This generally inversely proportional relationship between particulars and discovery (more particulars, less sprawling discovery) is a matter to which I have had keen regard in these proceedings. There is a certain forward-looking dimension to

an application of the type now presenting, in the sense that time and cents spent now in furnishing particulars will save time and cents later in terms of the focus and level of discovery required. The approach which appears to be canvassed for by the plaintiff in this application – whereby the provision of the particulars now sought would follow on an iterative process of discovery – is not just inappropriate for the various other reasons identified in this judgment but for the very simple reason that to wander blindly into a discovery process without even the particulars that the defendants have come seeking would, without a shadow of a doubt, yield a chaotic, and unwieldy discovery process that would ill-serve everyone involved in this case.]

- (6) *“If the pleadings can be properly refined, and thus the issues defined at a relatively early stage of proceedings, then that necessarily limits the scope of the research, inquiry, and preparation. It is to be anticipated that the focus of a case may change as further evidence is obtained, discovery reviewed, and the arguments refined, but that....is not a justification for unduly broad or vague pleadings or particulars at the outset.”* (para.26).

[It is precisely that refinement which the defendants have properly sought in the within application.]

- (7) A court can properly order particularisation of the basis for a pleaded figure and/or the methodology that an expert is relying or will rely upon, especially where (as in *Quinn*) *“it seems likely that the differences between the parties can be reduced to a certain number of rival contentions as to methodology”* (para.28)

[As in *Quinn*, so too here: it seems to me that there is the potential for the differences between the parties to be reduced, or at least largely reduced, to rival contentions as to methodology, though this point has not yet been reached in the proceedings, not least as it is thoroughly unclear as of yet what quantification methodology/ies the plaintiff is bringing or intends to bring to bear in these proceedings – though it seems to me that it must already have brought some such methodology to bear privately for it to arrive at the 26% figure quoted previously above.]

- (8) Treating with the level of financial detail that could be provided by Quinn at the stage of proceedings arrived at when the High Court, Court of Appeal, and Supreme Court adjudicated upon the *Quinn* proceedings, O’Donnell J. (as he then was) observed that “[1] *The plaintiff has the capacity to provide substantial detail at this stage of the proceedings, and should, in my view, be required to do so. It is perhaps inevitable that any particular so provided would be qualified by reference to the limits of the information available, and pending the receipt of discovery.*[2] *However....it is at least possible that the delivery of these particulars at this stage will advance the understanding of the case to be made, tighten its focus, and therefore reduce the scale and cost of the work which must be undertaken to prepare for what is on any version a very detailed, complex and lengthy case. That, I think, is the proper function of further particulars.*” (para.31).

[It seems to me that when one has regard, *e.g.*, to the fact that the plaintiff is able to settle upon a figure as precise as the 26% figure quoted previously above that: (a) the plaintiff has the capacity to provide the particulars now being sought, and should be required to do so (subject of course to the caveat that it is perhaps inevitable that any particular so provided will be

qualified by reference to the limits of the information available to the plaintiff, and pending the receipt of discovery); (b) it is at least possible that the delivery of the particulars sought by the defendants will advance the understanding of the case to be made, tighten its focus, and therefore reduce the scale and cost of the work which must be undertaken to prepare for what is on any version a very detailed, and complex case. That, to borrow from O'Donnell J. (as he then was) in the above-quoted text "*is the proper function of further particulars.*"

10. In passing, I *emphasise* that I see merit in the plaintiff's argument that there is, to borrow from the judgment of O'Donnell J. (as he then was) in *Quinn*, at para.27, "*a necessary limit to what the plaintiff can be expected to plead at this stage of the proceedings, particularly in advance of obtaining discovery*" (there of certain PwC and perhaps also Milliman papers). But here there are particulars about the plaintiff's own actions that can be provided at this time, in advance of any such discovery, and which will help to bring a focus and efficiency to the discovery process that will not otherwise present.

11. I note that I have been referred by counsel to my own previous decision in *O'Meara v. Goodbody Stockbrokers* [2016] IEHC 456, and to the judgments of the High Court in *Aranwell Ltd v. Pura Food Products Ltd & Anor* (Unreported, High Court, Herbert J., 23rd April 2004) and *Jeffers v. Volkswagen Aktiengesellschaft* [2020] IEHC 662, all cases concerned with the case-law on particularisation of damage. However, I respectfully do not see that it is necessary for me to consider those cases (or indeed the distinctions drawn between counsel for the plaintiff between those cases and the case pertaining here). This is because the Supreme Court has, in *Quinn*, clearly and succinctly identified the law applicable to the within application. I have myself identified the key principles of relevance in the judgment of O'Donnell J. (as he then was) in my consideration of *Quinn* immediately above and I am of course bound by the decisions of the Supreme Court which I must bring to bear on the case here presenting (not least in my square bracketed observations above). I respectfully do not see that a consideration of what successive High Court judges have had to say when the Supreme Court has so clearly and so recently visited the law in this area is required or would otherwise be beneficial.

VI. Miscellaneous Issues

12. The plaintiff contends by reference to Art.17(1) of the Damages Directive² that Ireland is required to ensure that neither the burden nor the standard of proof required for the quantification of harm renders the exercise of the right to damages practically impossible or excessively difficult. That, the plaintiff contends is precisely what is at play in this application, that the defendants are attempting to ‘hem in’ the plaintiff to a methodology and limit its claim at a point in time when the plaintiff has only the most basic details as to the detail of any wrongdoing by the defendants *vis-à-vis* the plaintiff. The plaintiff contends that it needs a certain amount of disclosure from the defendants before it can give all the requested particulars to the defendants. (In this regard it relies on the observations of Roth J., at paras.17-20 and 22 of his judgment in *Suez Groupe SAS & Ors v. Fiat Chrysler Automobiles NV* [2018] EWHC 1994 (Ch.)).

13. Respectfully, I do not accept that:

(i) the burden or standard of proof required for the quantification of harm in this case renders the plaintiff’s claimed right to damages practically impossible or excessively difficult. In terms of the burden and standard of proof, it is being required to do no more and no less than any plaintiff in any competition law proceedings. The plaintiff bears the burden when it comes to causation. It has pleaded that it has suffered certain ill-consequences as a result of the defendants’ actions but there are deficiencies presenting in the particulars provided to this time and the defendants have come seeking that those deficiencies should be cured for all of the various reasons considered herein. On a related note, while the within application falls within the scope of national procedural autonomy, the principles of equivalence and effectiveness apply. So the plaintiff is of course entitled to an effective remedy. However, I see no basis on which I could properly conclude that the fact of the plaintiff being required (and it will be required) to supply the particulars now sought somehow raises an issue of effectiveness. Indeed, I cannot but note that in Germany, a fellow EU Member State, where there would have been no discovery, expert evidence reports might well have had to be exchanged by this stage of proceedings on the basis of the Commission Decision alone. I certainly do not mean to suggest, in this observation, that there should be no discovery in this case – there *will* be discovery. All

² Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (O.J. L349, 5.12.2014, pp.1-19).

I mean to observe is that it is very difficult to see how an ineffectiveness argument could be sustained (in fact I do not see that it could be sustained) in circumstances where the plaintiff is merely being asked to provide the particular particulars that are being sought in this case in advance of discovery.

(ii) it is a good answer to the motion now brought by the defendants that the plaintiff should not be required to provide particulars at this time because at some point in an iterative discovery process it should hopefully be possible for the plaintiff to provide the particulars sought. As is clear from the judgment of the Supreme Court in *Quinn*, that is not how the particulars/discovery process operates in this jurisdiction. Additionally, when one actually reads the form of particulars sought they are concerned with the plaintiff's own actions and considerations; one does not need discovery of another party to provide particulars concerning one's own actions and considerations.

(iii) the plaintiff is somehow being hampered in bringing its case by being asked to provide the particulars that are being sought of it at this time and that the provision of particulars should await the completion a (unknown) number of rounds of discovery. That, with all respect, is a point that was made and failed in *Quinn*. There, it will be recalled, the plaintiff claimed that it could not know precisely where a set of auditors had gone wrong until it saw certain auditing papers. But that line of argument failed. Here, when one has regard to the substance of the particulars being sought (an aspect of matters I consider in more detail in the next section of this judgment), this line of contention must fail in this case also.

14. Additionally, while I note, for example, the observations in *Suez* (and in *Peugeot SA and Ors. v. NSK Ltd* [2018] CAT 3) about the form of disclosure that might need to be made in a case in which claimants are basing a claim on what has been a long-term, covert activity in which there is a settlement decision, I cannot also but note that, for example, in *UK Trucks Claim Ltd v. Stellantis NV* [2022] CAT 25, the case proceeded entirely on the basis of the Commission Decision. That is not to say that one should proceed without discovery. On the contrary, I have already indicated that I see merit in the plaintiff's argument that there is a necessary limit to what the plaintiff can be expected to plead at this stage of the proceedings, particularly in advance of obtaining discovery. However, when one has regard to the substance of the particulars being sought in this application those particulars can be provided at this time,

in advance of any such discovery, and will help to bring a focus and efficiency to the discovery process that will not otherwise present.

15. Finally, when it comes to iterative discovery in the courts of England and Wales, that, I understand, is a form of discovery expressly provided for in the Civil Procedure Rules that apply in those courts. A very different position currently pertains in Ireland, as can be seen from the recent judgment of Hyland J., in *Brahami and Brahami v. Kelleher Chartered Surveyors Limited* [2021] IEHC 611 where she observes as follows, in the context of an application for additional discovery made pursuant to O.31, r.12(11)/RSC (and it is worth quoting her observations at some length when one considers the prospect of iterative discovery that the plaintiff in this case appears to favour):

“2. *As counsel correctly identified, sub-rule 11 has only recently received judicial discussion in the Court of Appeal decisions of Hireservices (E) Ltd & Anor v. An Post [2020] IECA 120 and Micks-Wallace v. Dunne [2020] IECA 282.*

3. *Sub-rule 11 provides:*

(11) Any party concerned by the effect of an order or agreement for discovery may at any time, by motion on notice to each other party concerned, apply to the Court for an order varying the terms of the discovery order or agreement. The Court may vary the terms of such order or agreement where it is satisfied that: (i) further discovery is necessary for disposing fairly of the case or for saving costs, or (ii) the discovery originally ordered or agreed is unreasonable having regard to the cost or other burden of providing discovery.

4. *In short, the rule permits a person to apply to court to vary the terms of a discovery agreement or order. The Court may do so*

where it is satisfied, inter alia, that further discovery is necessary for disposing fairly of the case or for saving costs.

5. *The circumstances in which that jurisdiction should be exercised were identified in Hireservices where Murray J. observed that the power to direct parties to make additional discovery originally flowed from the inherent jurisdiction of the courts to vary interlocutory orders but that this power has now been grounded in sub-rule 11.*
6. *Critically for the purposes of this application, he says at paragraph 19 that an application pursuant to sub-rule 11 “will not be granted simply because the documents are relevant and necessary in the sense explained most recently in Tobin v Minister for Defence [2019] IESC 57”. He notes that the interests of all in the efficient disposition of proceedings requires that a party has one chance to seek discovery and having agreed to an order for discovery must “have good reason for coming again”. He notes that an interlocutory order can generally only be reopened where there is a good reason for doing so, such as a material change in circumstances. He notes that the court retains the power to make an additional order for discovery “when it determines that an injustice would be done without such a direction.”*
7. *Murray J. goes on to say that “however all of this is the exception rather than the norm. The default position is that the discovery is as agreed or directed, and that some good reason must be given for revisiting that agreement or order”.*
8. *In that case he held that no good reason had been given to justify the directing of new categories of discovery eight years after discovery was agreed and seven years after it was made.*
9. *In Micks-Wallace, Murray J. noted at paragraph 33 that a party seeking additional discovery must “show good reason why the discovery was not originally sought”. At paragraph 35 he observes that, in deciding whether good reason has been made out for not seeking the additional discovery originally,*

the court must have regard to two potentially competing factors. On the one hand, it is in the interests of the efficient disposition of proceedings that parties are encouraged to seek discovery promptly. On the other hand, parties should be discouraged from seeking more discovery than strictly required to address the case as formulated and that if a party can point to developments in a case since the making of discovery, it will often have good grounds for seeking to vary the discovery originally agreed or ordered.”

VII. Some Conclusions

16. It was intimated by counsel for the plaintiff at the hearing of this application that this application involves the defendants seeking information about their own actions. Table 1 below identifies the particulars that are now being sought and it is clear from the ‘Notice for Particulars’ column that the defendants are not seeking information about their own actions. In the Court Response’ section I indicate why, having regard to all that is stated in the table and all that I have previously stated in this judgment, I will make an order directing the plaintiff to furnish full and proper replies in respect of the particular paragraphs of the notice for particulars treated with in the table on the following page.

Notice for Particulars		Court Response
Para. 8(2)(i)	<i>“In respect of each of the trucks allegedly purchased by the plaintiff, please specify... (i) the price paid for the said truck exclusive of VAT”.</i>	As indicated above overcharging and passing-on are key issues in this case. The particulars sought are clearly relevant to the expert calculations arising. The date element should also reduce discovery by placing a temporal limit on passing-on related discovery. Such information is available to the plaintiff. It follows that an order directing the plaintiff to furnish full and proper replies in respect of these categories should now issue.
Para. 8(2)(n)	<i>“In respect of each of the trucks allegedly purchased by the plaintiff, please specify... (n) whether the said truck was subsequently sold by the plaintiff and, if so, please specify the identity of the subsequent purchaser, the price they paid and the date of sale”.</i>	
Para. 10(4)	<i>“[P]lease provide full and detailed particulars of... (4) the allegation that ‘by reason’ of the ‘agreement/decision/concerted practice’ the plaintiff was ‘obliged’ to pay more for trucks than it would have done in circumstances of undistorted competition.”</i>	I respectfully refer the parties to (a) what I have identified previously above as Principles (3)-(8) (inclusive) to be derived from <i>Quinn</i> , and, more particularly, (b) the observations that I have set out in the square bracketed text following each of those principles. (I do not see that I need to re-stated those square bracketed observations here). It follows from those principles and observations that an order directing the plaintiff to furnish full and proper replies in respect of these categories should now issue. I do not see that it can credibly be contended that the parties should now proceed to discovery without, <i>e.g.</i> , a proper sense of the loss that the plaintiff claims to have discovered and what the claimed link is between the defendants’ conduct and that loss. As regards, para.13(1) and (2), I note that the plaintiff has stated that it intends to rely upon the European Commission’s <i>Practical Guide on Quantifying Harm in Actions for Damages Based on Breaches of Art.101 or 102 TFEU</i> (June 2013). However, it will need to particularise further which specific elements of the <i>Guide</i> it intends to rely upon.
Para. 10(5)	<i>“[P]lease provide full and detailed particulars of... (5) the allegation that ‘by reason’ of the ‘agreement/decision/concerted practice’ the plaintiff was ‘induced’ to pay more for trucks than it would have done in circumstances of undistorted competition”.</i>	
Para. 13(1)	<i>“[P]lease specify... (1) the heads of loss and damage allegedly suffered by the plaintiff.”</i>	
Para. 13(2)	<i>“[P]lease specify... (2) the basis on which it is alleged that the plaintiff has suffered loss and damage by reason of the unlawful behaviour of the defendants.”</i>	