



Neutral citation [2024] CAT 43

IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: As set out in Annex 1 to this Judgment

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

27 June 2024

Before:

THE HONOURABLE LORD ERICHT
(Chair)
THE HONOURABLE MR JUSTICE HUDDLESTON
DEREK RIDYARD

Sitting as a Tribunal in the United Kingdom

IN THE MATTER OF:

THE TRUCKS SECOND WAVE PROCEEDINGS

PARTIES TO THIS JUDGMENT:

- (1) **THE ARLA CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (2) **THE EDWIN COE CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (3) **THE ASDA CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (4) **THE DS SMITH CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (5) **THE ADUR CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (6) **THE BOOTS CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (7) **THE HAUSFELD CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (8) **THE BCLP CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (9) **THE MORRISONS CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (10) **THE NORTHERN IRISH PLAINTIFFS** (as set out in Annex 2 to this Judgment).
- (11) **THE SCOTTISH PURSUERS** (as set out in Annex 2 to this Judgment).
- (12) **THE DEFENDANTS** (as set out in Annex 2 to this Judgment).

RULING (THRESHOLD ISSUES)

A. INTRODUCTION

1. By letter dated 16 May 2024 the Defendants applied for an order that certain claimants (the “Targeted Claimants”) provide responses to certain information requests relating to supply pass on by 4pm on 21 June 2024 (the “SPO Application”). By a further letter of the same date the Defendants made a similar application against certain claimants (the “TRS Claimants”) in respect of requests relating to Truck Related Services Value of Commerce (the “TRS Application”). In a further letter of the same date, the Defendants requested a hearing as soon as possible, with a view to obtaining a ruling in relation to the SPO and TRS Applications in June 2024.
2. On 16 May 2024 the Tribunal ordered the Targeted Claimants to file a written statement by 4pm on Monday 20 June 2024 explaining why they had not provided the SPO and TRS data sought by the Defendants and why the Tribunal should not make an order requiring them to provide the material sought promptly.
3. The Targeted and TRS Claimants responded by the deadline. Their position can be summarised in broad terms as that they were in the process of responding to the Defendants information requests and but had difficulties with, or objections to, providing some of the information sought.
4. On 24 May 2024 the Arla and Boots Claimants made an application for disclosure (the “Claimants’ Application”). On 28 May 2024 the Tribunal set a deadline of 4 June 2024 for the Defendants to respond to the Claimants’ Application.
5. On 29 May 2024 the Tribunal listed a hearing of the SPO Application, the TRS Application and the Claimants’ Application for 17 June 2024.
6. On 31 May 2024 the Defendants wrote to the Tribunal requesting that the Tribunal vacate the 17 June 2024 listing. They expressed “material concerns” regarding the 17 June listing due to unavailability of the Defendants’ counsel. They stated that it may no longer be necessary for the Defendants to seek an order in respect of the SPO and TRS Applications at this stage.

7. On 31 May 2024 the Defendants wrote to the TRS and Targeted Claimants. They stated that they were content not to seek an order on the TRS or SPO requests at this stage. They acknowledged that certain claimants had agreed to respond to the TRS and SPO requests by 21 or 28 June 2024 respectively. They stated that the Defendants were content not to seek an order in respect of the TRS or SPO Applications at this stage, but would review the position upon the TRS and Targeted Claimants providing their responses. In relation to the TRS and SPO requests, they stated that as the TRS and Targeted Claimants had acceded to requests to provide responses on or around the proposed deadline, the TRS and SPO Applications had been successful.

8. On 31 May 2024 the Defendants wrote to the Tribunal. They stated that the relevant Claimants had, in large part and with some caveats acceded to the Applications' requests for the provision of substantive responses to the SPO and TRS Applications on or around the proposed deadline of 21 June 2024 and went on:

“Subject to these confirmations and in view of the relevant Claimants’ apparent (belated) commitment to engage substantively and in a timely manner with the TRS Requests and the SPO Targeted Requests, the Defendants are content not to seek an Order in respect of the requests at this stage. However, the Defendants will review the position upon receipt of the relevant Claimants’ responses to the confirmations sought and reserve the right to seek such Orders in relation to the Applications as may be necessary and appropriate, in the event that the outstanding responses to the confirmations sought from the relevant Claimants are unsatisfactory.

Furthermore, the Defendants reserve the right to seek an Order including pursuant to the extant Applications and any further clarifications and / or information in respect of truck-related services VoC and / or supply pass-on.”

9. On 31 May 2024 the Tribunal wrote to the parties stating:

“The Tribunal is concerned to ensure that the parties in the Second Wave Trucks Proceedings are able to meet the 31 October 2024 deadline for positive cases, and that the parties’ experts have all the required data and information as soon as practicable.

The Tribunal would be grateful if the parties would liaise in an attempt to agree an appropriate way forward. The parties should provide the Tribunal with an update by 4pm on Monday, 3 June 2024. The Hearing [ie on 17 June] remains in place until the Tribunal has considered and agreed to the parties’ proposal. The Tribunal is content for the parties to be represented by junior counsel at the Hearing.”

10. In response the parties proposed 26 June 2024 as an alternative day for the hearing.

11. On 6 June 2024 the Tribunal advised the parties that the 17 June 2024 hearing would remain and would deal only with the Claimants' Application. In relation to the TRS and SPO Applications the Tribunal stated:

“As explained in the [Defendants' Letter], the relevant Claimants have largely acceded to the Defendants' Applications for the provision of substantive responses to the truck-related services value of commerce and the supply pass-on targeted requests on or around 21 June 2024. Further, the [Defendants'] Letter states that the Edwin Coe Claimants have committed to providing responses to the supply pass-on targeted requests by 28 June 2024.

In light of this helpful update, it seems sensible that the Defendants' Applications should be heard after the Defendants have considered the Claimants' responses i.e. once any outstanding issues in dispute between the parties have crystallised.

The Tribunal will set out its availability for a hearing of the Defendants' Applications shortly.”

12. The Tribunal offered the 6 or 9 August 2024 for a hearing of the Defendants' Applications. Neither of these dates suited all parties' counsel. Nevertheless, the Tribunal took the view that if there were any outstanding matters arising out of the Defendants' Applications which required a hearing, then that hearing should not be delayed beyond 9 August 2024. On 14 June 2024 the Tribunal listed the hearing for 9 August 2024 and set out the following timetable:

“By 4pm on 8 July 2024, the Defendants shall file and serve any revised application(s), supporting evidence by the economic expert(s) and a revised draft order specifying the documents sought by the Defendants and from which party.

By 4pm on 15 July 2024, the Claimants shall file and serve any responses to the application(s) including evidence in support by the economic expert(s).

By 4pm on 31 July 2024, the parties shall file skeleton arguments to be submitted electronically in Word, with a maximum limit of 20 pages (1.5 spacing and 12-point font).”

B. THE CURRENT APPLICATION

13. On 14 June 2024 the Defendants made an application to the Tribunal in respect of certain disclosure issues relating to the SPO and TRS Applications (the “Threshold Issues”). They submitted that it was necessary that the Threshold Issues be resolved promptly without further delay and in advance of the August hearing. They sought either:

“(a) a process and /or directions for the parties to provide evidence and/or submissions in relation to the Threshold Issues;

(b) the listing of a hearing as soon as possible to determine the Threshold Issues; or

(c) a determination of the Threshold Issues on the papers.”

14. The relevant Claimants have written to the Tribunal opposing the Current Application and setting out their position on the Threshold Issues.

C. DECISION ON THE CURRENT APPLICATION

15. As can be seen from the foregoing, the position before the Defendants made the Current Application was that the Tribunal had made a decision to hear the SPO and TRS Applications on 9 August 2024, and had set out a timetable running up to that hearing.

16. The background to that decision was that, in view of the urgency expressed by the Defendants in the TRS and SPO Applications, the Tribunal had sought to list the TRS and SPO Applications to be heard on 17 June 2024. However the Defendants had asked for the hearing to be vacated and indicated that they did not wish to seek orders at that stage. The Tribunal had taken the view that given the parties were engaging with each other about voluntary production of the requested matters, it would be premature for the Tribunal to make an order for compulsory production. It also took into account that in any event the Defendants were not, at that time, pursuing the Applications. Nevertheless the Tribunal wished to set a process in motion so that when the deadlines for voluntary production on 21 and 28 June 2024 passed, any outstanding matters could be brought before the Tribunal efficiently and expeditiously. To that end it decided to fix a hearing on 9 August 2024 with a timetable running up to that hearing. The purpose of the timetable was to ensure that if at the hearing the Tribunal was required to make specific compulsory orders for disclosure, it was in a position to do so. To that end the timetable required the Defendants to file revised draft orders specifying what items were sought and from whom. In addition, the timetable required the Defendants to lodge expert evidence supporting the draft orders sought.

17. The Current Application asks the Tribunal to order certain disclosure in advance of the 9 August 2024 hearing. The Current Application is 11 pages long and does not contain a detailed and specific draft order but consists mostly of narrative about the contents of

the voluntary disclosure discussions between the parties. The Current Application expresses concern that the Defendants need the information sought in the TRS and SPO Applications by the end of July in order to meet the deadline for positive cases.

18. The Tribunal refuses the Current Application.
19. Firstly, the Defendants are asking the Tribunal to revisit its decision as to how to deal with the TRS and SPO Applications. When the Tribunal makes a decision, then, other than in exceptional cases such as a material change of circumstances, it is not open to a party to revisit that decision. There is no such exceptional case here.
20. Secondly, if granted the Current Application would cut across the ongoing discussions between parties as to voluntary disclosure. The deadlines set by the Defendants for voluntary disclosure have not yet expired. Further, the Claimants are seeking to arrange a joint meeting of Claimants' and Defendants' experts in relation to the TRS and SPO Applications. In these circumstances the Current Application is premature.
21. Thirdly, the Threshold Issues are not specific requests for information. Rather, they are in the nature of complaints about the position that the Claimants have taken in correspondence with the Defendants about voluntary disclosure relating to the TRS and SPO Applications. In their responses to the Current Application, the Claimants reject these complaints and set out their position on them. The procedure adopted by the Tribunal of a hearing on 9 August 2024 with a timetable running up to it is the appropriate mechanism to deal with the Threshold Issues. The procedure will allow the differences between the parties to be focused once the deadlines for voluntary disclosure have expired, and allow for considered and detailed submissions to be made by parties for the benefit of the Tribunal.
22. Fourthly, the Defendants ask the Tribunal to resolve the issues "promptly and without further delay". We remind the Defendants that any delay in dealing with the TRS and SPO Applications was caused by the Defendants. The Tribunal fixed a hearing on the TRS and SPO Applications promptly for 17 June 2024 and it was the Defendants who asked the Tribunal to vacate that hearing. It was the Defendants who indicated to the Tribunal that they were no longer seeking orders at that stage. It was the Defendants

who set deadlines for voluntary disclosure the last of which does not expire until 28 June 2024.

23. In these circumstances matters will progress according to the timetable previously set by the Tribunal.
24. All parties should be aware that if disclosure is ordered at the hearing on 9 August 2024 then the Tribunal will expect it to be produced by the Claimants, and thereafter considered by the Defendants and their experts, in sufficient time for the deadline for the positive case to be met. All parties and their experts should arrange their affairs accordingly.
25. We also remind the Defendants of the necessity of drafting a suitably precise, targeted draft order specifying the items sought and the particular Claimant from whom that item is sought. If the wording of any paragraph of the draft order is too general or too widely expressed, then it may be that the Tribunal will refuse that paragraph, although of course that will be for submission and discussion at the hearing on the 9 August 2024. Parties are encouraged to discuss the precise terms of the draft order in advance and reach agreement on the wording in so far as it is possible to do so.
26. This Ruling is unanimous.

The Hon. Lord Ericht

The Hon. Mr Justice Ian
Huddleston

Derek Ridyard

Charles Dhanowa, OBE, KC (Hon)
Registrar

Date: 27 June 2024

ANNEX 1: CASES INCLUDED IN THE SECOND WAVE TRUCKS PROCEEDINGS

Case Number	Case Name
Cases in England	
1296/5/7/18	Arla Foods AMBA & Others v Stellantis N.V. & Another
1338/5/7/20 (T)	Adnams PLC & Others v DAF Trucks Limited & Others
1343/5/7/20 (T)	DS Smith Paper Limited & Others v MAN SE & Others
1355/5/7/20 (T)	Hertz Autovermietung GmbH & Others v Stellantis N.V. (formerly Fiat Chrysler Automobiles N.V.) & Others
1356/5/7/20 (T)	Balfour Beatty Group Limited & Others v Stellantis N.V. (formerly Fiat Chrysler Automobiles N.V.) & Others
1358/5/7/20 (T)	Zamenhof Exploitation & Others v Fiat Chrysler Automobiles N.V. & Others
1360/5/7/20 (T)	BFS Group Limited & Another v DAF Trucks Limited & Others
1361/5/7/20 (T)	Enterprise Rent-a-Car UK Limited v DAF Trucks Limited & Others
1362/5/7/20 (T)	ABF Grain Products Limited & Others v DAF Trucks Limited & Others
1368/5/7/20 (T)	LafargeHolcim Limited & Others v Aktiebolaget Volvo (Publ) & Others
1371/5/7/20 (T)	The BOC Group Limited & Others v Stellantis N.V. & Others
1372/5/7/20 (T)	GIST Limited & Others v Stellantis N.V. & Others
1417/5/7/21 (T)	Dan Ryan Truck Rental Limited & Others v DAF Trucks Limited & Others
1420/5/7/21 (T)	A to Z Catering Supplies Limited & Others v DAF Trucks Limited & Others
1431/5/7/22 (T)	Adur District Council & Others v TRATON SE & Others
1521/5/7/22 (T)	Wm Morrison Supermarkets PLC & Others v Volvo Group UK Limited & Others
1578/5/7/23 (T)	Asda & Others v AB Volvo & Others
1594/5/7/23 (T)	GAP Group Limited and Another v DAF Trucks Limited and Others
1610/5/7/23 (T)	Rowleys of Northwich Limited and others v DAF Trucks Limited and others
1607/5/7/23 (T)	Wincanton Holdings Limited and another v DAF Trucks Limited and others
1608/5/7/23 (T)	Adnams PLC and others v DAF Trucks Limited and others
1609/5/7/23 (T)	SP0117 Limited (as Assignee) and another v DAF Trucks Limited and others
1616/5/7/23 (T)	Boots & Others v. Traton & Others
Cases in Northern Ireland	
1536/5/7/22 (T)	C Faulkner & Sons v Aktiebolaget Volvo (Publ)
18/78144	JH Irwin & Son (Fuels) Limited -v- AB Volvo
20/22730	McHugh's Oil Limited -v- AB Volvo

18/33243	Niall McCann trading as NMC Haulage -v- AB Volvo
20/41004	Cynthia Beattie t/a Beattie Transport -v- AB Volvo
20/58996	J.C. Campbell (N.I.) Limited –v- DAF Trucks N.V.
20/58997	Gibson Bros Limited –v- DAF Trucks N.V.
20/58985	Joseph Walls Ltd –v- DAF Trucks NV
20/58980	M.G. Oils Limited–v- DAF Trucks NV
20/58992	J.K.C. Specialist Cars Limited–v- DAF Trucks NV
20/58976	G.P. Marketing Limited trading as Patterson Oil –v- DAF Trucks NV
22/53690	Cynthia Beattie t/a Beattie Transport –v- DAF Trucks NV
20/58991	J.H. Irwin & Son (Fuels) Limited –v- DAF Trucks NV
18/33233	Trevor Leckey t/a Stoneyford Concrete –v- DAF Trucks NV
20/58982	Derek O’Reilly t/a O’Reilly’s The Sweet People -v- Daimler AG
20/58998	Patrick Megoran -v- Daimler AG
20/58974	Stephen Pollard -v- Daimler AG
21/05481	John Rodgers Limited -v- Daimler AG
20/58984	Andrew Ingredients Ltd -v- Daimler AG
18/78073	Kieran Quinn t/a Pomeroy Haulage -v- Daimler AG
20/58977	J.C. Campbell (N.I.) Limited -v- Daimler AG
22/53682	Cynthia Beattie t/a Beattie Transport -v- Daimler AG
20/58987	R Magowan & Son Limited -v- Iveco S.P.A
21/48587	C. Russell Auto Sales Ltd -v- Iveco S.P.A
20/58990	Kennedy & Morrison Limited -v- Iveco S.P.A
20/58994	Niall McCann t/a NMC Haulage -v- Iveco S.P.A
21/05466	John Rodgers Limited -v- Iveco S.P.A
18/78144	JH Irwin & Son (Fuels) Limited -v- AB Volvo
20/22730	McHugh’s Oil Limited -v- AB Volvo
18/33243	Niall McCann trading as NMC Haulage -v- AB Volvo
20/41004	Cynthia Beattie t/a Beattie Transport -v- AB Volvo
20/58996	J.C. Campbell (N.I.) Limited –v- DAF Trucks N.V.
Cases in Scotland	
1538/5/7/22 (T)	Clackmannanshire Council v VFS Financial Services Ltd & Others
1539/5/7/22 (T)	Angus Council v VFS Financial Services Limited & Others
1540/5/7/22 (T)	East Ayrshire Council v VFS Financial Services Ltd & Others
1541/5/7/22 (T)	The City of Edinburgh Council v VFS Financial Services Ltd
1542/5/7/22 (T)	East Lothian Council v VFS Financial Services Ltd & Others
1543/5/7/22 (T)	East Dunbartonshire Council v VFS Financial Services Limited

1544/5/7/22 (T)	Fife Council v VFS Financial Services Ltd & Others
1545/5/7/22 (T)	Midlothian Council v VFS Financial Services Ltd & Others
1546/5/7/22 (T)	Glasgow City Council v VFS Financial Services Ltd & Others
1547/5/7/22 (T)	Dundee City Council v VFS Financial Services Ltd & Others
1548/5/7/22 (T)	Scottish Water v VFS Financial Services Limited & Others
1549/5/7/22 (T)	West Lothian Council v VFS Financial Services Ltd & Others
1550/5/7/22 (T)	Perth & Kinross Council v VFS Financial Services Limited
1551/5/7/22 (T)	Stirling Council v VFS Financial Services Limited & Others
1552/5/7/22 (T)	Renfrewshire Council v VFS Financial Services Ltd & Others
1553/5/7/22 (T)	South Ayrshire Council V VFS & Others
1554/5/7/22 (T)	The North Ayrshire Council v VFS Financial Services Limited
1555/5/7/22 (T)	Western Isles Council v VFS Financial Services & Others
1556/5/7/22 (T)	West Dunbartonshire Council v VFS Financial Services
1557/5/7/22 (T)	North Lanarkshire Council v VFS Financial Services Ltd
1558/5/7/22 (T)	Scottish Borders Council v VFS Financial Services Limited
1559/5/7/22 (T)	Dundee CC & Others t/a Tayside Contracts v VFS FS Ltd & Others
1560/5/7/22 (T)	Aberdeenshire Council v VFS Financial Services Ltd & Others
1561/5/7/22 (T)	Argyll and Bute Council v VFS Financial Services Limited
1562/5/7/22 (T)	East Renfrewshire Council v VFS Financial Services Limited
1563/5/7/22 (T)	South Lanarkshire Council v VFS Financial Services Limited
1564/5/7/22 (T)	Grahams The Family Dairy (Processing Ltd) v CNH Industrial
1565/5/7/22 (T)	Grahams The Family Dairy Ltd v CNH Industrial N.V.
1566/5/7/22 (T)	Graham's Dairies Limited v CNH Industrial N.V

ANNEX 2: OVERVIEW OF THE PARTIES

Definition	Description
The Arla Claimants	The Claimants in Case No: 1296/5/7/18
The Edwin Coe Claimants	The Claimants in Case Nos: 1338/5/7/20 (T), 1417/5/7/21 (T), 1420/5/7/21 (T) and 1594/5/7/23 (T).
The Asda Claimants	The Claimants in Case No: 1578/5/7/23 (T).
The DS Smith Claimants	The Claimants in Case No: 1343/5/7/20 (T).
The Adur Claimants	The Claimants in Case No: 1431/5/7/22 (T).
The Boots Claimants	The Claimants in Case No: 1616/5/7/23 (T).
The Hausfeld Claimants	The Claimants in Case Nos: 1355/5/7/20 (T), 1356/5/7/20 (T), 1358/5/7/20 (T), 1371/5/7/20 (T) and 1372/5/7/20 (T).
The BCLP Claimants	The Claimants in Case Nos: 1360/5/7/20 (T), 1361/5/7/20 (T) and 1362/5/7/20 (T)
The Morrisons Claimants	The Claimants in Case No: 1521/5/7/22 (T)
The Northern Irish Plaintiffs	The Plaintiffs in cases filed in Northern Ireland as set out in Annex 1.
The Scottish Pursuers	The Pursuers in cases filed in Scotland as set out in Annex 1.
The Defendants	The Defendant Manufacturing Groups of DAF, MAN, Iveco, Volvo/Renault, Daimler and Scania in relation to the cases filed in England and Wales.