Neutral citation [2024] CAT 46

IN THE COMPETITION APPEAL TRIBUNAL

Case Nos: 1296/5/7/18
1616/5/7/23 (T)

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

5 July 2024

Before:

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

Sitting as a Tribunal in the United Kingdom

BETWEEN:

(1) – (9) ARLA FOODS AMBA AND OTHERS

Claimants

- and -

(1) – (2) STELLANTIS N.V. (FORMERLY FIAT CHRYSLER AUTOMOBILES N.V.) AND ANOTHER

Defendants/Rule 39 Claimants

(1) – (14) TRATON SE AND OTHERS

Rule 39 Defendants

AND BETWEEN:

(1) THE BOOTS COMPANY PLC AND 134 OTHERS

Claimants

- and -

(1) TRATON SE (FORMERLY MAN SE)
(2) MAN TRUCK & BUS SE (FORMERLY MAN TRUCK & BUS AG)
(3) MAN TRUCK & BUS DEUTSCHLAND GMBH

(4) AB VOLVO (PUBL)
(5) VOLVO LASTVAGNAR AB
(6) VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH
(7) RENAULT TRUCKS SAS
(8) DAIMLER AG
(9) STELLANTIS N.V. (FORMERLY FIAT CHRYSLER AUTOMOBILES N.V.)
(10) CNH INDUSTRIAL N.V.
(11) IVECO S.P.A.
(12) IVECO MAGIRUS AG
(13) PACCAR INC.
(14) DAF TRUCKS N.V.
(15) DAF TRUCKS DEUTSCHLAND GMBH
(16) SCANIA AB (PUBL)
(17) SCANIA CV AB (PUBL)
(18) SCANIA DEUTSCHLAND GMBH

Defendants

Heard at Salisbury Square House on 17 June 2024

RULING (DISCLOSURE – INTERNATIONAL MARKETS)

APPEARANCES

Mr Bibek Mukherjee (instructed by Walker Morris LLP) appeared on behalf of the Arla and Boots Claimants.

Ms Jaqueline Harris (of Pinsent Masons LLP) appeared on behalf of the DAF Defendants.

Mr Brendan McGurk K.C. (instructed by Slaughter and May LLP) appeared on behalf of the MAN Defendants.

Mr Hugo Leith (instructed by Freshfields Bruckhaus Deringer LLP) appeared on behalf of the Volvo/Renault Defendants.

Mr Ben Rayment (instructed by Macfarlanes LLP) appeared on behalf of the Daimler Defendants.

Mr Matthew Kennedy (instructed by Herbert Smith Freehills LLP) appeared on behalf of the Iveco Defendants.

Mr Rayan Fakhoury (instructed by Allen Overy Shearman Sterling LLP) appeared on behalf of the Scania Defendants.

A. INTRODUCTION

1. This is one of three applications for disclosure in the Second Wave Trucks Proceedings.

2. The current application dated 24 May 2024 (the "Application") is by the Arla and Boots Claimants, and also in respect of only paragraph 5 and 6 of the order sought (set out in paragraph 57 below), the Claimants in the DS Smith proceedings.

3. The other two applications are brought by the Defendants for disclosure in relation to truck related services VoC and supply pass-on. As the deadline for production of the truck related services VoC and supply pass-on disclosure voluntarily does not expire until 28 June 2024, these applications have been listed for a hearing on 9 August 2024 (see the Tribunal's Ruling dated 27 June 2024 [2024] CAT 43). Given the importance of keeping to the timescales for the parties' positive cases, the hearing on the Application proceeded on 17 June 2024 and was not delayed to be heard together with the Defendants' applications.

4. In its Decision of 9 January 2024 (Ruling (Future Conduct of Proceedings) [2024] CAT 2) the Tribunal set out the trial management approach to Wave 2.

5. The Tribunal set out a strict timetable, with parties' positive cases due by the end of October 2024, and their negative cases due by the end of May 2025 with a view to a trial at the end of 2025 (Ruling (Future Conduct of Proceedings) para 14(7)). It is important that parties receive all the disclosure which is made voluntarily or ordered by the Tribunal in time to meet these deadlines.

6. The Tribunal also determined that the issues to be determined first were overcharge, value of commerce and pass-on, all broadly conceived and all to be prepared for together, and considered across all relevant jurisdictions and at all levels of the market. It noted that issues of overcharge and pass-on arose in the context of a number of jurisdictions. In the case of some jurisdictions the number of truck sales was so small that that anything but the most light-touch

examination would exceed the value at risk. If they were going to be resolved in a light-touch way, either by the use of proxies or settlement, parties needed to be addressing the matter now (Ruling (Future Conduct of Proceedings) para 14(2)).

7. In their skeleton argument the Arla and Boots Claimants explained that the impetus behind the Application was to allow all parties to have clarity as to how international claims were going to be addressed as soon as possible, and in any event well before the deadline for the service of positive cases.

8. The Arla and Boots Claimants made two alternative proposals.

9. Their primary proposal was that their expert Dr Ramada wished to perform a market-wide defendant by defendant econometric estimation of reduced form models of price and price-cost margin in order to calculate overcharge for France and Germany, then to apply those figures to the international markets more generally through the use of proxies.

10. Alternatively, their secondary proposal was that Dr Ramada proposed to use a UK proxy for the relevant international markets, but adjusted to take into account the specific characteristics of each country in which the proxy is applied. If we were with them on their secondary proposal, the Arla and Boots Claimants invited us to make orders in the following terms:

> "9. In respect of all International Markets, the overcharge determination in respect of the UK market shall be applied to the international markets.
>
> 10. For the avoidance of doubt, the parties shall be at liberty to argue precisely how the overcharge determination in respect of the UK market shall be applied to the International Markets, but may not advance a case that it should not be applied at all".

11. In considering Dr Ramada's proposals we will first look at the legal position in respect of expert evidence in the Tribunal, and then consider the substance of her proposals. Finally, in the light of our decision on her proposals, we will rule on the disclosure orders sought.

B. APPROACH OF THE TRIBUNAL TO EXPERT EVIDENCE

12. Rule 53 of the Tribunal Rules provides:

> "53.—(1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) or such other directions as it thinks fit to secure that the proceedings are dealt with justly and at proportionate cost.
>
> (2) The Tribunal may give directions—
>
> (a) as to the manner in which the proceedings are to be conducted……
>
> (e) for the appointment and instruction of experts, whether by the Tribunal or by the parties;…
>
> (l) for the disclosure and the production by a party or third party of documents or classes of documents."

13. Rule 55 provides:

> "**Evidence**
>
> 55.—(1) The Tribunal may give directions as to—
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> …
>
> (b) the issues on which it requires evidence, and the admission or exclusion from the proceedings of evidence;
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> (c) the nature of the evidence which it requires to decide those issues;
>
> (d) whether the parties are permitted to provide expert evidence;
>
> …
>
> (2) Unless the Tribunal otherwise directs, no witness of fact or expert witness may be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Tribunal under paragraph (1)."

14. The Tribunal's Guide to Proceedings states:

> "7.65 As regards expert evidence, the Tribunal will take into account the principles and procedures envisaged by Part 35 of the CPR, notably that expert evidence should be restricted to that which is reasonably required to resolve the proceedings. It is for the party seeking to call expert evidence to satisfy the Tribunal that expert evidence is properly admissible and relevant to the issues which the Tribunal has to decide and would be helpful to the Tribunal in reaching a conclusion on those issues"

15. The approach of the Tribunal to expert evidence was considered by the Court of Appeal in *Stellantis Auto SAS v Autoliv AB* [2024] EWCA Civ 609. For present purposes, we take the following principles from the decision of the Court of Appeal.

16. Firstly, given the potential for irrelevance, cost, and the complexity which can occur with poorly thought through expert evidence, there is a need to control expert evidence, so as to ensure that it is reasonably required to resolve the proceedings (para 35).

17. Secondly, any direction giving permission for expert evidence is governed by two primary dimensions. The first is that the Tribunal will seek to ensure that the case is dealt with justly and at proportionate cost. The second is the duty to restrict expert evidence, in other words to limit it to that which is reasonably required to resolve the proceedings in issue (para 47).

18. Thirdly, proportionality, which is one aspect of the overriding objective and governing principles, is not the only consideration: the just disposal of the case is a vital consideration (para 64).

C. DR RAMADA'S PROPOSALS

(1) Rationale

19. Dr Ramada argued that there could be substantial benefits from conducting separate econometric estimates of the cartel effect for Germany and France. The benefit would arise both from a better estimate of the impact of the cartel in Germany and France (two very important countries in their own right) than would be obtained by the use of the UK effect as a proxy, and from the ability to be better informed on the likely impact in other countries if evidence existed on the relevant characteristics of those other countries relative to the UK, France and Germany.

20. She stressed the need to consider not just direct truck sales, but also the indirect sales that are associated with Claimants' purchases of truck-related services

which, when converted to an equivalent in new truck sales, amounted to a very substantial number (24,000 trucks according to Arla/Boots skeleton, compared to 80,000 trucks sold in the UK.) She argued that the most reasonable and pragmatic basis for allocating indirect truck purchases to individual suppliers was simply to do so pro rata to each Defendant's national market share.

21. In principle, Dr Ramada contended that the extent of any cartel effect could be very different between one country and another, so that there was no good reason to support the Defendants' assumption that the potential difference between the cartel effect in the UK would be a matter of just 1 or 2 percentage points. She cited the academic literature and result of the Oxera study for the EU Commission in which it was found that studies of cartel effects in general have yielded typical price effects of around 20%.

(2) Specific weaknesses of relying on the UK effect

22. Dr Ramada pointed to a number of features that had been encountered in the *Royal Mail v DAF* case ([2023] CAT 6). In that case, in the face of rival claims of zero and around 10% overcharge from the Defendants' and Claimants' Experts, the Tribunal applied a broad axe to assess the cartel overcharge at 5%. Dr Ramada drew specific attention to the problems caused by a shift in the strength of the UK pound that occurred close to the start of the cartel period, and which created particular problems with the Experts' estimations in that case. For this and other reasons she expressed the view that:

> "The UK, in particular, is perhaps, of all the European countries, the least good proxy for …. overcharges in countries in Continental Europe, because the UK has always been a slightly separate market." [Transcript page 105]

23. Even if the econometric estimate of the UK cartel effect generated by the Experts in the current case is able to improve on the estimation that was done in the *Royal Mail v DAF* case, Dr Ramada argued that the ability to compare a UK result with a cartel effect result from France and Germany would yield a richer and more robust base of evidence from which to assess the non-UK aspects of the current claim. This would be true directly as regards the cartel impact in

France and Germany, but also with respect to the ability to infer possible effects in other parts of Continental Europe.

(3) Triangulation based on separate regression results for UK, France, Germany

24. As a hypothetical illustration of the advantages of having regression results for three countries, Dr Ramada postulated a scenario in which it was found that the cartel effect was 5% in the UK, 2% in France and 12% in Germany. Then, with respect to a fourth country such as Denmark an informed estimate would be made by assessing whether the characteristics of the Danish market more closely mirrored those found in France, the UK or Germany.

25. Dr Ramada did not believe that this kind of triangulation could be achieved according to a precise formula, but she argued that even a qualitative assessment based on the estimated results for the 3 comparator countries would be superior to the alternative of relying on the UK alone. She argued that this approach was comparable to the approach that the Experts have agreed to adopt with respect to pass-on, where a sample of different customer types will be used as a basis for inferring the likely pass-on for the different categories of truck customer in the market as a whole.

26. Mr Biro (Renault) recognised that if separate regressions were conducted for France and Germany that this would add extra useful information to the assessment of non-UK effects. He also identified the substantial costs involved in doing so and felt that it was a legal or proportionality question as to whether to go ahead with the additional work. He was, however, sceptical of the additional value of engaging in any attempt to extrapolate from the UK, French and German market results onto other European countries because of the wide range of factors that might affect the outcome in any individual market and the imprecision that would be involved in any attempt to make such inferences. He did not agree with Dr Ramada's assessment that the UK was an obvious outlier compared with the various individual continental European markets, noting that each individual country had its own idiosyncrasies (national brand preferences, exchange rate issues, etc.) and that other observable characteristics such as the

left-hand/right-hand drive distinction or the claimed greater proximity of other European countries to one another had no proven or even likely effect.

27. Dr Chowdhury (DAF) considered that there would be no expectation of any marginal benefit from conducting the regression analyses in France and Germany, primarily because there was no good reason to expect that the regressions in these countries would yield higher cartel effect estimates, or even estimates that were more accurate or robust than the UK regression exercise. She shared Mr Biro's scepticism about the relevance of left-hand/right-hand drive, and noted that the UK was not the only country in which exchange rate complications applied. She acknowledged that extrapolation of results from any one country to any other country involved a rough and ready approximation. However, she saw no *a priori* reason to expect that conducting regression analyses in the French and German markets would generate a more accurate proxy for the cartel effect in other Continental European countries. She noted that some Continental European countries had characteristics more akin to the UK than to France or Germany, including the fact that they had separate currencies and their own exchange rate complications.

28. Dr Majumdar (Scania) had undertaken a more considered assessment of the specific question of whether Denmark (which accounted for the great majority of direct truck sales outside the UK for Scania claimed by the Arla and Boots Claimants) was more alike to the UK than to France in the context of the current exercise, finding that different indicators pointed in different directions. This exemplified the complexity and inherent subjectivity involved in seeking to use multiple country regression estimates for countries where no direct evidence existed.

(4) Triangulation based on an informal assessment of country-specific factors

29. Dr Ramada contended that, even in the absence of reliable econometric estimates of the cartel effect in France and Germany, it might as a second-best alternative be possible to use the large body of economic literature on cartel stability to make an informed assessment of whether effects in other countries might be expected to be higher or lower than those found in the UK. For

example, if the Experts were to agree that asymmetry in market shares had an impact on the likelihood of a cartel effect, then comparing market share asymmetry between the UK and various other EU countries could lead to a reasonable inference that an upward or downward adjustment to the UK level of cartel effect could be warranted.

30. There was some variation in the views from the Experts on the achievability of such an exercise.

31. Mr Biro expressed a clear view that it would not be sensible or practicable to attempt to go beyond a simple extrapolation of the UK cartel effect estimate to the other affected countries. Even if there was a degree of consensus around the factors that contribute towards cartel stability and some ability to measure these for each country, the exercise of weighting these different factors into an overall score for each country would be highly subjective and time-consuming, and in Mr Biro's view would generate few if any real insights.

32. Dr Majumdar and Dr Chowdhury held a more nuanced view, both appearing more open to the possibility that economic theory could be used to draw some directional inferences on the likelihood of cartel effects. Both, however, noted in line with Mr Biro that there would be substantial practical problems in making this work, and a likelihood that the exercise would lead to strong disputes between the parties on both the measurement of the key variables, and the appropriate weights to give to any single factor.

(5) The Defendants' one-way bet concern

33. Dr Ramada responded to the concern, raised by the Defendants, that her approach was designed to provide the Claimants with a 'one-way bet' on the impact outside the UK, and that this aspect was in conflict with her duties as an Expert.

34. The concern arose from Dr Ramada's statement that she would abandon her econometric analysis in France and/or Germany if it became apparent at an early stage that the results were unhelpful. In their criticisms, the Defendants alleged

that ‘unhelpful’ in this sense meant that the cartel effects turned out to be lower than those in the UK, and argued that it would be inappropriate for an Expert to act in this way to hide results that happened to be unhelpful to her clients’ commercial interests.

35. Dr Ramada denied that this was the motivation behind her proposal. First, she noted that the UK cartel effect in the current dispute would not be known to her when conducting the analysis for France and Germany, and so it would not even be clear what would constitute a helpful or an unhelpful answer for France and Germany from her clients’ perspective. As regards the main concern, she accepted that her reports had perhaps not been worded with sufficient care in this respect. Dr Ramada recognised and acknowledged her duty to assist the Tribunal and explained that any decision to abandon an econometric estimation in France or Germany would be motivated by a finding that the data were too poor or there was some other compelling reason to conclude that no robust or stable results could emerge from the exercise. It would not be a matter of abandoning the exercise because the estimated effect was small.

36. Dr Ramada was questioned by the Tribunal on this point, and specifically on how the Tribunal or the Defendants could be sure of the true motivation for any decision to abandon the analysis early. Dr Ramada had not previously considered this question, but suggested she would be happy to provide transparency in this respect, opening up her results to scrutiny by the Defendants’ Experts to allow them to test whether her stated motivation for abandonment was tainted by commercial or client interests.

(6) The impact on Expert costs

37. With respect to the cost implications of adding econometric analysis of cartel effects in France and Germany, Dr Ramada argued that most if not all of the Defendants had probably already engaged in an exercise to estimate effects in these countries in the context of other litigation, and so the Experts’ task in the current case would be able to draw on this existing analysis, even if the individual Experts concerned had not been involved in the prior exercises.

D. DECISION ON THE ARLA AND BOOTS CLAIMANTS PRIMARY AND SECONDARY PROPOSALS

38. There are essentially two issues arising from the discussion between the Experts on this matter:

(1) whether the extra cost and time associated with conducting individual econometric estimates of cartel effects in Germany and France would be proportionate; and

(2) if no such econometric analysis takes place, whether it is nevertheless feasible to make a qualitative (positive or negative) adjustment to the UK cartel overcharge when using the UK effect as a proxy for the impact on price in other EU countries.

39. As regards the case for conducting regression analysis in France and Germany, whilst we recognise the possibility that cartel effects might differ from one country to another it is striking that Dr Ramada herself saw no reason to expect that this exercise would yield a higher or lower estimated cartel effect in these two countries than that which will be derived for the UK. Thus, even as regards the German and French elements of the claim we have no good reason to conclude that the cost and complexity of extending the regression work to these two extra countries would yield sufficient incremental benefit in the cartel damage estimate.

40. Against this somewhat speculative benefit, we must assess the impact on costs, the risk of timing overruns and the implications for the proposed trial timetable.

41. The additional expert cost of proceeding in the manner proposed by Dr Ramada would be significant. Scania estimate their expert costs would, in relation to France alone, be £810,000 to £990,000. Daimler estimate their expert costs of producing the positive case for Daimler trucks sold in France and Germany lie in the region of £450,000 to £650,000 (with incremental costs of £200,000 to £300,000), the cost of the negative case to be £250,000 to £350,000 and the trial-related expert cost to be £100,000 to £150,000. Iveco estimate their total

additional expert work at €4.6million (€2.5million for France and €2.1million for Germany). Oxera, acting for DAF, estimate their additional expert costs for France and Germany to be between £3.3m and £4.35m. The Defendants anticipated that the time required to provide the disclosure sought, and thereafter complete the additional expert work, would mean that it was not achievable within the current timetable.

42. There is some plausibility to Dr Ramada's secondary argument that the UK market might be distinct from other European markets, thus making it a particularly difficult base from which to infer non-UK effects, but having considered all the Experts' views on this we are not convinced it is a sufficiently strong point to justify undertaking the considerable cost of regression analysis for Germany and France. Every national market has its own distinctive features, and Dr Ramada has not persuaded us that the UK estimate that emerges from the Expert process will be such an outlier that it cannot be used as a basis for non-UK effects.

43. In the event that regressions were conducted for France and Germany, we can see some validity in Dr Ramada's claim that this would generate a broader evidence base from which to assess cartel effects in other European countries. However, the Defendants' Experts have collectively identified a number of serious practical and conceptual problems that undermine the prospective pay-off from the extra evidence this would generate. Even if the Experts might agree on some of the country-specific factors that might be compared in the proposed triangulation exercise, it seems highly unlikely that any agreement would emerge on how those factors should be weighted in a final analysis and therefore little prospect that this exercise would yield cost-effective outcomes.

44. We also find that, across all aspects of the econometric analysis and the possible Expert critiques and comments on it, Dr Ramada and the Arla and Boots Claimants have significantly under-estimated the likelihood that this exercise would generate very high additional costs for the Expert teams, and we are not convinced it would be practical for the Defendants' Experts' role to be one confined to critiquing any positive case proposed by Dr Ramada.

45. Similarly, we also feel that Dr Ramada has significantly underestimated the problems and likely associated costs of addressing the one-way bet concern raised by the Defendants. We have no reason to doubt Dr Ramada's good faith in her willingness to provide transparency in any decision to abandon the regression analysis in either France or Germany, or her commitment to discharging her duties as an Expert. But in the context of contested litigation, any decision by Dr Ramada to abandon work on the regression estimates is bound to elicit concerns that this is in part associated with the absence of a convincing cartel effect in the country concerned, and that in turn is highly likely to reignite the debate on the one-way bet concern. We do not think that either Dr Ramada or the Arla and Boots Claimants' legal team has given sufficient thought to the practical implications of this problem or to its solution or likely cost implications.

46. As regards the second question as to whether, even absent the formal regression estimates for France and Germany, some form of qualitative assessment could be undertaken by the Experts to assess whether the estimated cartel effect in the UK should be adjusted up or down for any given non-UK country, we again find that the costs and complexity far outweigh any likely benefits. The Experts acknowledged that it would be possible to draw on established economic theory of cartel stability to identify some of the factors that might make cartel behaviour more or less effective, but that alone does not resolve the issue. We are persuaded by the concerns raised by the Defendants' Experts that there is no practical way to weight the different factors into a single formula that could be applied to any one country, and that embarking on an exercise to try to devise such a formula would itself be likely generate substantial extra cost and delay with little or no anticipated benefit.

47. We recognise that relying on the UK cartel effect and applying it mechanistically to all other affected non-UK truck sales is a simplification that entails a risk of some error in outcome, but we have little hesitation in concluding that this would represent the least bad outcome. We therefore reject the arguments made by Dr Ramada on behalf of the Arla and Boots Claimants that either an econometric estimation of cartel effects in France and Germany should take place, or that (in the absence of any such estimation) any provision

should be made to invite evidence on either side to adjust the UK overcharge up or down when considering the cartel impact in other countries.

48. For these reasons, we find that, subject to paragraph 49 below, it would be just and proportionate for the overcharge determination in respect of the UK market to be applied to the international markets. We are satisfied that in the Second Wave Trucks Proceedings it is just to apply a broad axe and that adopting Dr Ramada's proposals would not yield sufficient incremental benefit in the cartel damages estimate. We are also satisfied that, taking into account the likely costs and benefits involved in the various options, and also the impact that Dr Ramada's proposals would have on the proposed trial timetable, our finding is proportionate. We shall grant paragraph 9 of the order sought (set out in paragraph 10 above). For the avoidance of doubt, in applying the UK overcharge a broad axe will be applied and paragraph 10 of the order sought (set out in paragraph 10 above) is refused.

49. There is one exception to the finding in paragraph 48 above. MAN is in a different position from the other Defendants. Unlike the other Defendants, MAN has a class of customers designated as International Key Accounts customers ("IKAs"). IKAs are large customers with fleet sizes in excess of 500 vehicles that acquire trucks in more than two countries and are dealt with, and the prices set, centrally in Munich. MAN's expert Dr Padilla considers it appropriate and proportionate to analyse overcharge for IKA customers across countries as a pooled group rather than undertaking separate overcharge analyses across all relevant countries. The only jurisdiction not covered by that analysis is Ireland, so Dr Padilla additionally proposed an overcharge analysis specifically for Ireland. These proposals were set out in Dr Padilla's Expert Statement back in December 2023, and there being no objection, the work has largely been done. In these circumstances, we find that it is just and proportionate for MAN to be carved out of our finding in paragraph 48 and to permit, in respect of MAN, expert evidence of overcharge for IKA customers and Ireland, and we will so order.

50. There was also discussion at the hearing as to what should be done about the Edwin Coe Claimants, who were not represented at the hearing, and it was

suggested that they too should be carved out of the order. We are not prepared to do so. It is undesirable for orders in the Second Wave Trucks Proceedings to apply to some but not all parties unless there is good reason for a distinction to be made. We were informed that the Edwin Coe Claimants proposed to use the UK as proxy for the Irish direct truck purchases and there was agreement in principle to continue to explore the use of the UK overcharge proxy in respect of the indirect claims. In these circumstances there is no good reason to carve them out.

E. DISCLOSURE ORDERS SOUGHT

(1) VSW Proceedings French And German Market

51. In the event that we were with Arla and Boots on their primary proposal, we were asked to make an order in the following terms:

> "By no later than 7 days from the date of this Order, off-the-shelf disclosure shall be provided as follows:
>
> (a) DAF, Daimler, Iveco, Scania and Volvo/Renault shall each provide all disclosure and information in their control from the VSW Proceedings relating to the French market which was disclosed to other parties in the VSW Proceedings.
>
> (b) DAF, Daimler, Iveco and Volvo/Renault shall each provide all disclosure and information in their control from the VSW Proceedings relating to the German market which was disclosed to other parties in the VSW Proceedings.
>
> (c) For the avoidance of doubt, the off-the-shelf disclosure shall include the underlying raw data, the Processed Data and the Programming Code for the markets and Defendants identified above."

52. The VSW Proceedings are defined as the combined proceedings in Cases 1292/5/7/18 (T), 1293/5/7/18 (T) and 1294/5/7/18 (T).

53. As we were against the Arla and Boots Claimants on their primary proposal, and have found that the UK overcharge determination is to be applied to the international markets, this disclosure about the French and German Markets is unnecessary. This order for disclosure is refused.

(2) Legal Proceedings In Jurisdictions Other Than France And Germany

54. If we were against the Applicants' primary position, we were asked to make an order in the following terms:

> "By no later than 14 days from the date of this Order, DAF, Daimler, Iveco, Scania and Volvo/Renault shall each provide a description of (i) what categories of data have been collected or prepared and (ii) what disclosure has been given in each of the International Markets pursuant to any legal proceedings (in this jurisdiction or any other) arising from or relating to the European Commission's investigation and decisions in *Case AT.39824 – Trucks.*"

55. The Iveco and MAN Defendants have agreed to provide or have provided this information voluntarily. The question for us is whether we should order compulsory disclosure of this information from the others. We are not prepared to do so. The order would oblige other Defendants to undertake enquiries regarding data and disclosure across many thousands of cases in 20 jurisdictions. We are not persuaded that this task is a proportionate one, given our ruling in paragraph 48 above, and the small number of trucks in some of these jurisdictions. Further, as this order is only the first stage of a disclosure exercise, with Dr Ramada anticipating making further targeted disclosure requests for items when she receives the information sought in the order, we are not convinced that any benefits of this larger disclosure would outweigh the disruption it would cause to the Second Wave Trucks Proceedings timetable. This order is refused.

(3) Unredacted Copy of European Commission File

56. We were originally asked to grant an order for disclosure by DAF of an unredacted copy of the European Commission's administrative file in Case AT.39824 – Trucks. However at the hearing we were informed that there had been discussions between the parties and this was no longer being sought.

(4) Expert Reports

57. We were asked to order disclosure in the following terms:

"4. By no later than 21 days from the date of this Order, in respect of each of the International Markets, DAF, Daimler, Iveco, MAN, Scania and Volvo/Renault shall each provide:

(a) a country-by-country list of any expert reports which analyse truck cartel overcharge served in other proceedings;

(b) brief details of what consent or permission is needed to disclose each report; and

(c) disclosure of any such report where no further consent or permission is needed.

5. By no later than 21 days from the date of this Order, in respect of all International Markets, DAF, Daimler, Iveco, MAN, Scania and Volvo/Renault shall each provide:

(a) a country-by-country list of any expert reports which analyse pass-on by hauliers of truck cartel overcharge served in other proceedings;

(b) brief details of what consent or permission is needed to disclose each report; and

(c) disclosure of any such report where no further consent or permission is needed.

6. By no later than 21 days from the date of this Order, in respect of all International Markets, DAF, Daimler, Iveco, MAN, Scania and Volvo/Renault shall each provide details of what expert evidence has been served on any issue falling within the scope of the "Issues" as defined at paragraph 10 of the Tribunal's Ruling on the Future Conduct of the Proceedings dated 9 January 2024: [2024] CAT 2.

7. For the avoidance of doubt, the orders in paragraphs 4, 5 and 6 each only require the listing of a maximum of [20] expert reports in all international markets by each Defendant. Where more than [20] expert reports would otherwise have been listed, each Defendant shall list the [20] expert reports served in other proceedings by order of the largest proceedings, where the largest proceedings are determined by reference to the value of the claimants' claims in those proceedings."

58. It goes without saying that expert evidence in other proceedings in foreign countries will not be evidence in the current proceedings. The reason given by Dr Ramada for seeking these reports is that they would substantially expedite the process of her coming to her own view and performing her own analyses, and help to ensure she reaches a suitable result within the strict timescales. We find it difficult to see how embarking on the process set out in the orders sought will expedite Dr Ramada in coming to her own expert view by the deadline for

the positive case. It will require the taking of local law advice in some 20 jurisdictions as to the legality of using expert reports for this purpose outwith their jurisdiction. The Boots and Arla Claimants would appear not to have obtained local law advice on this issue for these jurisdictions themselves, or at least if they have, they have not lodged it with the Tribunal for this hearing. This would be a time-consuming and expensive exercise for the Defendants to undertake. Even before they could do that, the Defendants would be required to embark on a time-consuming exercise of establishing what expert evidence existed in the many thousands of cases in the 20 jurisdictions, and obtaining and collating the expert evidence, which may well be in a variety of languages. That is all completely disproportionate to the limited benefit that Dr Ramada might gain from, depending on what the reports said, perhaps not having to re-invent the wheel when formulating her own views by the deadline. Further, it seems to us very likely that the time that will be required to complete the exercise proposed in the orders would necessitate an extension of the deadline, and thus would impede, rather than assist, Dr Ramada in meeting that deadline. These orders are refused.

(5) Confidentiality

59. We were asked to make the following order:

> "The materials provided pursuant to this Order are designated Inner Confidentiality Ring Information pursuant to the Confidentiality Ring Order".

60. The order was unopposed. However, as we have not ordered disclosure of any such materials, the order is unnecessary and is refused.

F. COSTS

61. Costs of the Application are reserved.

62. This ruling is unanimous.

The Hon. Lord Ericht	The Hon. Mr Justice Huddleston	Derek Ridyard

Charles Dhanowa, OBE, KC (Hon)
Registrar

Date: 5 July 2024