



Neutral citation [2024] CAT 55

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

1 October 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

RULING (PERMISSION TO APPEAL)

A. INTRODUCTION

1. The Boots Claimants (the “Claimants”) seek permission to appeal the Tribunal’s ruling of 5 July 2024 [2024] CAT 46 (the “Ruling”) on five grounds (the “Application”).
2. For the reasons which we set out below, we refuse permission to appeal on all five grounds advanced by the Boots Claimants.

B. THE TEST FOR PERMISSION TO APPEAL

3. In considering whether to grant permission to appeal to the Court of Appeal in England and Wales, the Tribunal applies the test in CPR Rule 52.3(6). Permission to appeal may only be granted where: (a) the Tribunal considers that the appeal would have a real prospect of success; or (b) there is some other compelling reason why the appeal should be heard.
4. The Tribunal’s Guide to Proceedings 2015 (the “Guide”) states:

“8.27 Where permission to appeal is sought on a point of law, it is important that the parties seeking permission identify where in the criticised judgment the error of law was made and why the Tribunal’s approach is erroneous...The Court of Appeal in *Napp* noted in particular (per Buxton LJ) that an applicant should:

- identify in precise terms the rule of law said to have been infringed;
- demonstrate where in the jurisprudence (of the EU or UK courts or otherwise) that rule is to be found, by specific reference to the authorities; and
- demonstrate briefly from the Tribunal’s judgment the nature of the error, by reference to the Tribunal’s handling of the issue in question.”

C. GROUNDS OF APPEAL

Ground (1) Flawed rejection of the application for “off the shelf” disclosure on the basis that there was no reason to expect that the exercise would yield a higher or lower estimated cartel effect in France and Germany than that which will be derived for the UK

5. Two arguments are advanced in support of this ground.
6. The first argument is that the denial of the Claimants’ pursuit of a more accurate result is a denial of natural justice and the Claimants’ right to a fair trial in Schedule 1 to the Human Rights Act 1998, restating Article 6 of the European Convention on Human Rights.
7. This argument was not advanced before the Tribunal at first instance. In any event the argument is wholly unspecific and lacking in any legal analysis of why there is a breach of natural justice or Article 6. The issue for the Tribunal was whether the Tribunal should permit expert evidence as to the individual economic estimates of cartel effects for Germany and France, and if not whether it was feasible to use the UK effect as proxy (Ruling at [38]). The legal basis of the Tribunal’s approach as to whether or not to permit expert evidence is set out at [12]-[18] of the Ruling by reference to the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”), the Guide and the Court of Appeal authority of *Stellantis Auto SAS v Autoliv AB* [2024] EWCA Civ 609 (“*Stellantis CA*”). The Application does not cite any authorities or principles which could demonstrate that that approach is wrong as a matter of law on grounds of natural justice or breach of Article 6. It does not explain why, contrary to the clear provisions of the Tribunal Rules and *Stellantis CA*, the Claimants have a right under natural justice or Article 6 to lead expert evidence in pursuit of a more accurate result. This argument has no real prospect of success and there is no other compelling reason why it should be heard.
8. The second argument is that the Tribunal has not accurately summarised the evidence of Dr Ramada, and that there is some basis to suspect that the overcharge in other markets might be higher.

9. This argument is misconceived. The Tribunal’s statement at [39] of the Ruling that Dr Ramada “saw no reason to expect this exercise would yield a higher or lower estimated cartel effect” is a fair summary of her evidence (transcript of 17 June 2024 hearing, pages 117-19) that she had not studied the question and did not know whether it would point to a lower or higher result. This argument has no real prospect of success and there is no other compelling reason why it should be heard.

Ground (2) Flawed rejection of the application for disclosure to assist in the adjustment of the UK (plus French and German) overcharge to other markets on the basis that it was unlikely that any agreement would emerge on how those factors should be weighted

10. The Claimants argue that it was irrational for the Tribunal to deprive them of the opportunity to state their case on the basis that the matter was unlikely to be agreed.
11. This argument is misconceived. This was not the reason for the Tribunal’s decision. The Tribunal applied the Tribunal Rules and *Stellantis CA* and came to the decision that it did for the reasons set out at [39]-[48] of the Ruling. This ground has no real prospect of success and there is no other compelling reason why it should be heard.

Ground 3: Flawed rejection of the international disclosure on the basis of costs

12. This ground is founded on a denial of natural justice and Article 6. The reasons for refusing permission to appeal under the first argument in Ground 1 also apply mutatis mutandis to Ground 3.
13. The rest of the arguments in this ground of appeal are merely a restatement of arguments made before, and rejected by, the Tribunal and disclose no error of law. The figures in paragraph 10 of the Application were unvouched and disputed by other experts: see the transcript of 17 June 2024 hearing, pages 43-47, and 73). The Tribunal found that the Claimants had significantly underestimated the likelihood that the exercise would generate very high additional

costs for the Defendants' experts: see [44] of the Ruling. The Tribunal applied the law as set out in the Tribunal Rules and *Stellantis CA*.

14. This ground has no real prospect of success and there is no other compelling reason why it should be heard.

Ground 4: Flawed rejection of all limbs of the Application on the basis of jeopardy to the trial timetable

15. The Claimants argue that to set an extremely tight timetable to trial and use that as a reason to prevent the Claimants presenting their case is a denial of natural justice and the right to a fair trial.
16. The Tribunal has a wide discretion as regards case management decisions. The parties and their experts were given the opportunity to express both in writing and orally their views on timetabling before the timetable was set out in the Future Conduct of Proceedings Ruling [2024] CAT 2 (the "Future Conduct Ruling"). The Future Conduct Ruling expressly allowed for parties to apply for an extension (see [14(7)]). The Claimants did not seek permission to appeal against the Future Conduct Ruling. Until such time as the Claimants make an application for an extension, the Tribunal is entitled to proceed on the basis of the timetable. We note for the sake of completeness that although no application for an extension had been made at the time of the Ruling, the parties have now applied for an extension which will be considered at a hearing on the future conduct of the proceedings which has been listed for 21 and 22 October 2024.
17. The reasons for refusing permission to appeal under the natural justice/Article 6 arguments in Ground 1 also apply *mutatis mutandis* to Ground 4.
18. This ground has no real prospect of success and there is no other compelling reason why it should be heard.

Ground 5: Flawed rejection of the applications for experts' reports on grounds of proportionality of costs given the scale of the task

19. This ground discloses no error of law. The Tribunal applied the Tribunal Rules and followed the guidance enunciated by the Court of Appeal in *Stellantis CA*: see [58] of the Ruling.
20. Further, the Claimants argue that the Tribunal did not explore refinement of the Claimants' request for expert reports for 20 foreign jurisdictions or explore the possibility of disclosure of the existence of reports.
21. The role of the Tribunal is to decide on the Claimants' request, and the Tribunal is under no legal obligation to enter into a negotiation with the Claimants and other parties exploring refinement of the request or other possibilities. Even if it were, the problems identified by the Tribunal at [58] as to the admissibility in these proceedings of expert evidence in foreign proceedings, the taking of local law advice, and (to at least some extent) disproportionality would still arise in a request for fewer expert opinions or other possibility.
22. This ground has no real prospect of success and there is no other compelling reason why it should be heard.
23. This ruling is unanimous.

The Hon. Lord Ericht

The Hon. Mr Justice
Huddleston

Derek Ridyard

Charles Dhanowa, OBE, KC (Hon)
Registrar

Date: 1 October 2024