



Neutral citation [2024] CAT 66

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

21 November 2024

Before:

THE HONOURABLE LORD ERICHT
THE HONOURABLE MR JUSTICE HUDDLESTON
DEREK RIDYARD

Sitting as a Tribunal in England and Wales, Scotland and Northern Ireland

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 LAFARGEHOLCIM CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (8) **THE HAUSFELD CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (9) **THE BCLP CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (10) **THE MORRISONS CLAIMANTS** (as set out in Annex 2 to this Judgment).
- (11) **THE NORTHERN IRISH PLAINTIFFS** (as set out in Annex 2 to this Judgment).
- (12) **THE SCOTTISH PURSUERS** (as set out in Annex 2 to this Judgment).
- (13) **THE DEFENDANTS** (as set out in Annex 2 to this Judgment).

Heard remotely on 21 and 22 October 2024

RULING (FUTURE CONDUCT OF THE PROCEEDINGS No. 2)

APPEARANCES

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

Joe Turner KC and Andrew Macnab (instructed by Mishcon de Reya) appeared on behalf of the Asda Claimants.

Natasha Simonsen (instructed by Freshfields Bruckhaus Deringer) appeared on behalf of the DS Smith Claimants.

Daniel Cashman (instructed by Fieldfisher) appeared on behalf of the Adur Claimants.

Conor McCarthy (instructed by Fieldfisher) appeared on behalf of the Boots Claimants.

Rayan Fakhoury and Rowan Stennett (instructed by Allen Overy Shearman Sterling) appeared on behalf of the Scania Defendants.

Ross Anderson (instructed by Anderson Strathern) appeared on behalf of Scottish Pursuers.

Alan Bates (instructed by Edwin Coe) appeared on behalf of the Edwin Coe Claimants.

Natalie Nguyen (instructed by Arnold & Porter Kaye Scholer) appeared on behalf of the WM Morrisons Claimants.

Daniel Piccinin KC and Tom Pascoe (instructed by Slaughter & May) appeared on behalf of the Defendants.

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

A. INTRODUCTION

1. In this ruling, we deal firstly with the scope of the trial in Second Wave Trucks Proceedings, the timetabling of the trial, and various disputed Data Requests. The disputed Data Requests include requests for: (i) a fully unredacted version of the Decision of the European Commission (the “Commission”) dated 27 September 2017 in Case AT.39824 – Trucks, C(2017) 6467 (the “Scania Decision”); (ii) an expert report prepared on behalf of Scania for the purpose of those Commission proceedings titled entitled “Competitive assessment of alleged Scania price exchanges”, as referred to in footnote 570 of the Scania Decision (the “Scania Report”); and (iii) various data requests relating to issue of “supply pass on”.

B. SCOPE OF THE TRIAL

2. In our *Ruling (Future Conduct of the Proceedings)* [2024] CAT 2 (the “Future Conduct Ruling”) we indicated 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 (see [14(2)]).
3. In the time since the making of that ruling, both the Tribunal and parties have refined the scope of the trial. In our *Ruling (Disclosure-International Markets)* [2024] CAT 46 we ordered that the overcharge determination in respect of the UK market should be applied to all international markets, with one exception which was that, in respect of MAN, expert evidence of overcharge for MAN’s International Key Accounts customers and Ireland was permitted. The parties have also engaged in constructive discussions about the scope of the trial and reached agreement on various matters.
4. Accordingly, we are now in a position to fix the scope of the trial.
5. The issues to be determined at the first trial in the Second Wave Trucks Proceedings (the “Issues”), subject to further order, shall be:
 - (a) overcharge in all jurisdictions referenced in the pleadings;

- (b) pass-on in respect of that overcharge at all levels of the supply chain; and
 - (c) value of commerce.
6. For the avoidance of doubt, the Issues shall not include the following:
- (a) Any claims in relation to additional fuel costs or costs relating to alleged emission standards delays;
 - (b) Any claims in relation to interest as damages including simple interest and compound interest claims (including by way of example, loss of profits, increased borrowing requirements or similar);
 - (c) Any claims in relation to higher insurance, maintenance, or other associated costs;
 - (d) Any claims in relation to tax;
 - (e) Loss of volume; and
 - (f) Limitation issues.

C. TIMETABLE TO TRIAL

7. In the Future Conduct Ruling, we were working towards a 12-week trial at the end of 2025 and beginning of 2026. To that end, we indicated that positive cases should be lodged by the end of October 2024, but we would consider an extension. The parties have been engaging constructively since the date of the Future Conduct Ruling and have been working hard in preparing their cases, but even with that it is now clear that an extension is required.
8. We are now in a position to fix the dates of the trial. In setting the trial dates, we have borne in mind that once the dates have been fixed, they will not be altered other than in wholly unexpected and exceptional circumstances, and that in setting the date there requires to be a sufficient time for all the preparatory work to be done. With all that in mind, we now set the trial for 12 weeks beginning 21 September 2026.
9. At this stage, we make no ruling on the constitution of the Tribunal to hear the

trial. Some of the cases in the Second Wave Trucks Proceedings have been transferred from the High Court in England and Wales, some from the Court of Session in Scotland and some from the High Court in Northern Ireland. Various suggestions have been made as to how the Tribunal might constitute itself in these circumstances (e.g. Future Conduct Ruling, at [14(6)]). That will have to be further addressed and finalised prior to the trial, but does not require to be done at this stage. In the meantime, the Tribunal will from time to time constitute appropriately staffed panels to deal with case management and any matters which arise.

10. A detailed timetable leading up to the trial dates is set out in the order accompanying this ruling. The key dates are the lodging of parties' positive cases on 30 May 2025 and their negative cases on 19 December 2025. The dates for lodging these cases, and the trial dates, are now confirmed dates the parties must work towards, and it is very unlikely that the Tribunal will grant a further extension.

D. TARGETED INFORMATION REQUESTS

11. As was made clear in the Future Conduct Ruling, the Tribunal has adopted an expert-led approach. There is no disclosure. Instead, the parties may make Data Requests. Data Requests must be justified by the expert making the request to the expert receiving it. The emphasis will be on providing information that will enable to expert to fulfil their responsibilities (at [14(3)]). Stays do not absolve a claimant from being obliged to respond to Data Requests, although (to the extent possible) such Data Requests ought to be dealt with by active claimants (at [14(5)]).
12. The Tribunal does not expect to be troubled with Data Requests unless they have been the subject of a meeting between the experts (or where no expert has been appointed, the parties) and the experts/parties have been unable to agree and have clearly identified the issues and have set out the experts'/parties' reasoning on the disagreement. The parties' experts are encouraged where possible to find a compromise which is acceptable to them, rather than to take up the Tribunal's time with numerous disagreements which are not of fundamental importance to

the preparation of the parties' cases. The Tribunal has set out a process for the resolution of disputes as to Data Requests involving meetings of the experts and this process has been successful in resolving many issues. The process is ongoing, but in the meantime the parties now seek rulings from the Tribunal in respect of certain disputed Data Requests. We have had the benefit of detailed argument, both orally and in writing, from the parties and the experts on the disputed requests.

E. DISPUTED DATA REQUEST: SCANIA DECISION AND REPORT

(1) The opposed Data Request

13. The Claimants sought an order for disclosure in the following terms:

“The Defendants shall respond to the Outstanding Overcharge Requests as follows:

- (a) Each Defendant shall provide to the Claimants in each of the Second Wave Trucks Proceedings in which a Confidentiality Order has been made a version of the Scania Decision which includes its own confidential information, save to the extent that the Tribunal would be prevented from making a disclosure order in respect of such confidential information by paragraph 28 of Schedule 8A to the Competition Act 1998.
- (b) The Scania Defendants shall provide to the Claimants a copy of the Scania Report.
- (c) The documents provided pursuant to sub-paragraphs (a) and (b) above shall, until further order, be designated as Inner Confidentiality Ring Information pursuant to the Confidentiality Orders made across the Second Wave Trucks Proceedings.”

14. This was opposed by the Defendants and was considered at the hearing. We have taken into account everything that was said at the hearing and also all of the materials provided for us by parties prior to the hearing (including affidavits from the experts and others and detailed written skeleton arguments) and written submissions provided to us after the hearing.

(2) Position of the Experts on the Scania Decision and Report

(a) *The “Scania Information”*

15. The “Scania Information” (“the Information”) comprises the description of the infringement that is contained in the report produced for Scania by RBB Economics in 2016, and the (likely much more extensive) evidence that is redacted from the Commission’s Scania Decision on the operation of the infringement and the personnel involved. The content of this information is by its nature unknown, but it is likely to contain material on the way in which the infringement was operated both by Scania and potentially by the other Defendants.
16. We were informed that the Information has not been seen by Scania’s expert, Dr Majumdar, nor by the other experts for either the other Defendants or Claimants. While, in order to ensure a level playing field, all information given by a party to its expert should also be given to the other parties’ experts, it does not follow from that that if a party does not give information to its expert the other parties’ experts are not entitled to it.
17. It was argued by Mr Piccinin KC that significant information on the infringement could be ascertained by careful review of the existing discovery materials on the file, and that it was therefore not necessary for the experts to have the Information. In this regard, paragraph 13 of Mr Sagers’ Fourth Witness Statement refers to a cache of evidence on the infringement comprising more than 4,700 spreadsheets, 20,000 internal documents, 20,000 documents on the Commission file and more than 70 witness and pricing statements that run to thousands of pages. However, for current purposes (and given that we have not seen the Scania Decision nor the Scania Report) we proceed on the assumption that the Information contains relevant information on the infringement.

18. There are in principle two ways in which the Information might be of use in assessing any overcharge arising from the infringement:
- (1) First, the Information might enable the experts to improve the specification of their econometric models in a way that would improve the ability of these models to estimate any price effect; and
 - (2) Second, the Information might provide evidence that would assist the experts and the Tribunal in performing some kind of independent verification or “sense-check” of the results that come from the econometric models when evaluating any differences that might arise from the results produced by the opposing experts.
19. Mr Saggars (for the Claimants) and Dr Majumdar (for Scania) gave evidence on both aspects at the hearing which we consider below.

(b) Potential impact of information on econometric estimation of overcharge

20. To provide a flavour of the Information, Mr Saggars referred to four pages of the Commission Decision against Scania in which all details were redacted, covering topics such as the nature, scope and layers of the collusive contacts, their meetings and other anticompetitive contacts. He argued that access to the discovery materials is not a satisfactory alternative to this redacted data.
21. In his Fourth Witness Statement, Mr Saggars referred to two aspects of the Information that might be useful in specifying his econometric model of the cartel overcharge: that relating to exchange rates; and to Euro VI trucks. During the hearing he referred to a third category, namely information on the extent to which the infringement applied to ancillary products that were supplied by the Defendants along with trucks.
22. To provide some brief context here, it is understood that the experts plan to estimate any overcharge using a statistical model that will seek to explain truck prices by various “explanatory variables” such as input costs, seasonal variables, demand conditions etc. This model will then estimate the infringement effect by assessing whether, having controlled for as many explanatory factors as possible,

we observe different price levels on truck sales that were affected by the infringement from those that were not. Any such difference will form the basis for an overcharge estimate. The most likely source of this distinction will be to compare truck prices during and after the infringement period.

23. As regards exchange rates, Mr Saggars expressed the view that a model explaining UK prices for trucks that are built outside the UK will need to address the impact of exchange rate changes. He referred specifically to a so-called “identification problem” that was encountered in the econometric models presented in *Royal Mail Group & Others v DAF Trucks* [2023] CAT 6 (“*CAT Royal Mail*”) and arose because changes in the exchange rate coincided with the start and end of the infringement period. This gave rise to a difficulty in identifying whether observed changes in UK truck prices were influenced by the infringement, or by the impact that exchange rate changes had on the costs of production.
24. The Tribunal invited Mr Saggars to provide more detail on how the Information might affect the way in which this identification problem would be addressed in the model. In response, Mr Saggars suggested that knowing whether or not the cartel actually involved discussions between the cartelists as to how exchange rate changes should feed through to UK prices might inform the way in which this explanatory variable was included in the model. He expressed the view that, if the cartel discussions involved adapting UK truck prices to take account of exchange rate changes, then including the exchange rate as an explanatory variable might cause an error in the measurement of any overcharge.
25. Mr Saggars did not provide specific detail on how the model would deal differently with exchange rate factors depending on whether the infringement specifically involved attempts to adapt UK truck prices to currency changes, or suggest that the identification problem could be resolved by the Information. That is not a fatal criticism given that neither expert has yet completed their work on specifying the overcharge model, but it is nevertheless relevant to note that Mr Saggars did not establish (or even claim) that the Information would definitively solve the measurement challenges that are posed by this identification problem.

26. As regards Euro VI trucks, Mr Saggars explained that the problem arises from the possibility that the infringement included discussions that would influence Euro VI trucks even though the Euro VI standard was not applied until after the infringement period. If the prices of such trucks sold in the period after the infringement were nevertheless impacted by the cartel discussions that had occurred during the infringement, this would affect the extent to which these post-infringement Euro VI truck price transactions could be relied upon as representing the non-infringing price level.
27. Mr Saggars' concerns with ancillary products related to a similar point on the ability of the Information to help distinguish infringing from non-infringing transaction prices. If ancillary products (i.e. products sold alongside trucks by the cartel members to the same customers) were unaffected by the infringement, he suggested they could be used as "controls" in the model whose prices changes during and after the infringement could be compared with the price changes of trucks. But if the prices of these ancillary products were themselves influenced by the infringement, that would clearly taint their reliability for this purpose and therefore lead to a risk of measurement errors. Mr Saggars indicated that the Information was in his view likely to contain some details on whether the infringement extended to ancillary products.
28. In support of these concerns, Mr Turner KC emphasised two points. First, he emphasised that the fact that neither side's expert currently has the benefit of the Information does not mean that the impact is neutral. Second, he cited [168] of the Court of Appeal's Judgment in *Royal Mail v DAF Trucks* [2024] EWCA Civ 181 ("*CA Royal Mail*") in support of his contention that the absence of direct evidence on the workings of the cartel:

"...deprived the CAT of evidence about the normal operation of the market which it could have used to plug deficiencies in the regression analysis".

He claimed that this conclusion applied to the quality of the models, and not just to the ability of the Tribunal to evaluate the reliance that should be placed on the results from such models.

29. Dr Majumdar was invited to respond to the points made by Mr Saggars. He emphasised that he had not yet designed his model, and that he remained open to the possibility that additional information might affect the way in which he completed this task. However, his view, in summary, was that the additional benefit from the Information was likely to be small, given that the experts already had access to Scania's pricing statement and that this sets out the factors that Scania deems relevant to the setting of its prices.
30. Dr Majumdar accepted that any model would need to take exchange rate changes into account, but he expressed the view that since exchange rates were clearly exogenous (i.e. they were not affected by the cartel, even if they might affect the way it operated) it was clear that they should be one of the explanatory variables in any model of UK truck prices. He did not rule out the possibility that, if the Information revealed evidence that the infringement itself was influenced by exchange rate changes, that might in principle affect the way in which the model was specified. For example, he noted that if there had been an exchange rate change that triggered a specific action by the cartel members relating to UK prices at a point in time, it might be useful to adapt the model to measure that discrete price effect. He indicated, however, that it would be important to place any such evidence in the context of all the other factors that might have triggered cartel price effects over the 14 years of the infringement.
31. As regards Euro VI trucks, Dr Majumdar recognised the issues raised by Mr Saggars and agreed that it would be useful to know whether, and if so for how long, any infringement effect on such trucks might have extended beyond the end of the cartel period, in order to inform the assessment of whether Euro VI truck prices could be relied upon as unaffected by the infringement.
32. On the question of ancillary products, Dr Majumdar stated that he had not considered this issue in any detail.

(c) *Potential impact of information on evaluating the overcharge estimates*

33. The Claimants' arguments on the potential for the Information to assist in evaluating the overcharge estimates were made primarily by Mr Turner KC. He

drew specific attention to the comments made by the Court of Appeal in *CA Royal Mail* concerning the gaps in the evidence that were left by the absence of direct evidence from DAF on the workings of the cartel. This had led the Court of Appeal to conclude that these gaps left the assessment over-reliant on the expert evidence, and forced the Tribunal to plug these gaps with a broad brush approach to its conclusions on the overcharge.

34. Mr Turner KC also referred to the Court of Appeal's endorsement of the specific criticisms made by the Tribunal of DAF's expert, to the effect that the expert had shown "a lack of curiosity" regarding the workings of the cartel: see *CA Royal Mail* at [170]. He noted that, in the context of the arguments made by DAF's expert in that case regarding the plausibility of a cartel effect, that had led the Tribunal to be concerned about the credibility of the expert evidence. Finally, Mr Turner KC expressed concerns about the practice among litigants in which a so-called "clean" testifying witness who had not been given access to certain underlying facts could be fed information that had been screened and filtered by a team of lawyers and economists who had seen all the relevant evidence. He argued that, following the advice contained in *CA Royal Mail*, the Tribunal itself should proactively question the parties as to why they have chosen not to reveal evidence on the operation of the infringement, and that it should also be prepared to ask the Defendants' experts why they have not insisted on obtaining such data as part of their "duty of curiosity" in fulfilling the expert role.

35. In his evidence, Dr Majumdar accepted that information on the workings of the cartel infringement might be of use as a cross-check on the econometric results. He accepted that it could be of assistance to his own assessment of the model results, for example informing his choice as to where within the likely range of overcharge results he might place greatest weight. He also acknowledged that such information might help the Tribunal in its own evaluation when deciding on the outcome.

(d) Our Assessment

36. Given our working assumption that the Information may yield additional insights into the way the infringement operated, we have to assess how the knowledge of

this Information might affect: first, the accuracy of the econometric models that will be estimated by the parties' experts; and second, the Tribunal's own evaluation of the results that come from those models. This task is made more difficult by the fact that we cannot know with any certainty what additional insights the Information might provide.

37. There is no real disagreement between the experts on the first question. They agree, unsurprisingly, that additional contextual information on the infringement might affect the way in which their models are specified. There is, however, some difference in emphasis on their stated expectations as to the magnitude of any such effect, with Mr Saggars expressing the more positive view on whether the Information would positively improve the accuracy of the modelling work.
38. We did not find anything in the experts' evidence that identified a clear deficiency in the Information available to them that currently inhibits their efforts to devise a statistical model. Nor did we hear any evidence on whether any such problem would be resolved in the event that the Information was made available to them. It is, for example, reasonable to infer from *CA Royal Mail* that it will be challenging to find a clear solution to the identification problems that arise from the coincidence of the timing of certain exchange rate changes and the start and end dates of the infringement. However, nothing in Mr Saggars' evidence has convinced us that access to the Information would cause these challenges to disappear. Much the same assessment applies to the other two areas in which Mr Saggars believed the Information could assist – Euro VI trucks and ancillary products.
39. We do not believe that the comments made by the Court of Appeal in *CA Royal Mail* are pertinent to this issue. It is far from evident that the Court of Appeal's criticism of the absence of evidence on the cartel's workings were directed specifically at the quality of the econometric models, and we consider that these points relate more to the second question of how the outputs of such models can be sense-checked by wider factual evidence.

40. On this second question, there was again a reasonable level of agreement between the parties' experts. Indeed, Dr Majumdar was if anything more explicit than Mr Sagers in affirming that greater understanding of the detailed workings of the infringement might assist the Tribunal in evaluating any differences that might arise between the experts' econometric results, and he also accepted that his own assessment of his model results might be informed by such contextual evidence.
41. In conclusion, therefore, we can see that there would be some utility in giving the experts access to the Information, and that the main advantage from doing so would arise from the ability of both the experts and the Tribunal to use the Information to supplement and sense-check the results that come from the econometric modelling. It remains unclear, however, how much additional benefit the Information would provide.

(3) Legal Submissions on the Scania Decision and Report

(a) Submissions on behalf of the non-Scania Defendants

42. Mr Piccinin KC on behalf of the non-Scania Defendants submitted that the Tribunal was legally prevented from granting the application, and in any event the application should not be granted in the exercise of the Tribunal's discretion given the significant practical difficulties and delay this would create for limited benefit.
43. He submitted that the Court of Appeal had held in *Emerald Supplies Limited v British Airways Plc* [2015] EWCA Civ 1024 ("*Emerald*") that the EU General Court's decision in *Pergan Hilfsstoffe für Industrielle Prozesse GmbH v Commission* T-474/04, EU:T:2007:306 ("*Pergan*") created an absolute bar to disclosure of certain types of material that would breach the EU principle of the Presumption of Innocence. The principles in *Pergan* continue to apply post-Brexit. *Pergan* and *Emerald* were both handed down prior to IP Completion Day (31 December 2020) and were therefore binding on the Tribunal as "retained case law": European Union (Withdrawal) Act 2018, section 6(3) and 6(7)). Further, the effect of Article 92(1) of the Withdrawal Agreement is

that the Commission remained the competent authority for administrative procedures commenced before IP Completion Day such as this one, and Article 95 rendered decisions made in that procedure and addressed to persons in the UK (including the Commission's Decision on redactions) binding on and in the UK. The provisional non-confidential version of the Scania Decision that the Claimants already had was prepared by the Commission, reflecting redactions that it considered should have been made as well as those that the Non-Scania Defendants were contending needed to be made in proceedings before the Commission's Hearing Officer. It followed from *Emerald* that it was not open to the Claimants to circumvent that process by seeking a ruling from the Tribunal that would bypass the Commission's processes.

44. Further and in any event, there were practical reasons why it would not be appropriate to grant the application. The Claimants did not need the confidential version. They waited until 16 August 2024 to request the views of the Non-Scania Defendants on its disclosure. The Claimants had received significant disclosure from the Commission File and had many months to analyse it. All of the expert work in the First Wave Trucks Proceedings was conducted without access to a less redacted version of the Scania Decision, and in the case of Royal Mail and BT in the first First Wave Trucks Proceedings (Cases 1284 and 1290) was conducted all the way through to trial without such disclosure being considered necessary. The Claimants' Overcharge expert, Mr Saggars, was part of the NERA team of economists employed by the Ryder and Dawsongroup Claimants in the second First Wave Trucks Proceedings (Cases 1291 and 1295). The necessary work was able to be based on the Commission File and witness evidence. Any text from the confidential Scania Decision would, unlike the settlement decision, not be binding on the Non-Scania Defendants in any event. Secondly, not all redactions were made at the request of the Non-Scania Defendants: some were made by the Commission. Although the Non-Scania Defendants could collectively produce a less redacted version of the Scania Decision this would not be a quick or straightforward exercise.

(b) *Submissions on behalf of the Scania Defendants*

45. Mr Fakhoury on behalf of the Scania Defendants submitted that Scania had provided the Claimants with all of the confidential, commercially sensitive information which had been redacted at Scania's request and had thus satisfied the Claimants' request, to the extent that it was permitted to do so. The remaining redactions were made at the request of other parties or by the Commission and the Claimants' application in relation to these redactions should be directed towards the Non-Scania Defendants or the Commission.
46. Disclosure of the Scania Report would not fill any evidential gap or clarify any uncertainty. The relevant information i.e. factual evidence relating to Scania's pricing, had been provided in extensive detail and Scania's witness evidence. To the extent that it constitutes factual evidence at all, the Scania Report represents double hearsay evidence from experts in separate Commission proceedings some 8 years ago as to their factual instructions and/or the state of the factual evidence as they saw it at that stage. Further, expert evidence in other proceedings in foreign countries would not be evidence in the current proceedings and such material was likely to prompt parties to undertake time consuming and expensive exercises which were disproportionate and likely to be of limited benefit (*Ruling (Disclosure-International Markets)* at [58]). The mere fact that the Scania Report was referred in the Scania Decision was not a compelling reason for disclosure. Any expert economic analysis pertaining to Germany would not be of relevance or assistance to Mr Saggars. Finally, Dr Majumdar had not been provided with the Scania Report and so disclosure was not required to ensure a level playing field.

(c) *Submissions on behalf of the Claimants*

47. Mr Turner KC for the Claimants referred to the reasons given by Mr Saggars, and further submitted that the necessity of having as full and detailed an account of the cartel as possible had been recognised judicially in the trucks litigation (*CAT Royal Mail* at [18]–[19] and [103]–[117]; *CA Royal Mail* at [167], [168], [174]–[176]). The Defendants' argument that the question whether a confidential text in a Commission Decision disclosed in national proceedings for damages

was a matter for the Commission, not the Tribunal had been firmly rejected by the UK courts (*National Grid v ABB and Others* [2011] EWHC 1717). The *Pergan* principle has no application in this case. *Emerald* was readily distinguishable on the facts. In view of the experts' agreement that the Scania Report may be potentially relevant, and having regard to the expert-led approach, a copy of the Scania Report (at least the factual description elements) should be provided to the Claimants.

48. Mr Turner KC further submitted that in view of the experts' agreement that the Scania Report may be potentially relevant, and having regard to the expert-led approach, a copy of the Scania Report should be provided to the Claimants.

(4) Analysis and Decision on Scania Decision

49. The Defendants opposed the order sought in respect of the Scania Decision as a matter of law, and in any event as a matter of the exercise of the Tribunal's discretion.

(a) The Law

50. The Scania Defendants have provided to the Claimants a version of the Scania Decision which includes Scania's own confidential information. The remaining redactions were made by the Commission.

51. The Scania Decision is addressed to Scania. Nevertheless, the Claimants seek to have made available to them information which is currently redacted in the Scania Decision and relates to the non-Scania Defendants. This raises the *Pergan* issue.

52. The *Pergan* case concerned a Commission decision following an investigation into a peroxides cartel. The Commission closed the proceedings against one company, Pergan. Pergan was not an addressee of the subsequent Decision and had no standing to challenge it. The Court of First Instance (now the General Court) upheld Pergan's claim that passages in the Decision describing Pergan's conduct should be redacted. It held that the presumption of innocence precluded

any allusion to the liability of an accused person unless that person had enjoyed the usual guarantees accorded for the rights of the defence on a decision on the merits (at (76)). As a non-addressee, Pergan had no standing to challenge the Decision, and therefore publication the unredacted decision was contrary to the presumption of innocence.

53. A national court is obliged to afford the same protection to *Pergan* materials which is afforded at Community level to the confidential version of the Commission's decision, notwithstanding that a damages claimant has made an application for disclosure in national court proceedings (*Emerald* at [63]ff).

54. Mr Turner KC sought to distinguish *Emerald* on the facts, submitting that in *Emerald* the liability of the defendants was still unresolved at the time of the Court of Appeal's decision, whereas in the Second Wave Trucks Proceedings the Defendants have admitted their guilt for the cartel. We do not agree. The issue for us is whether the Claimants' request for the Scania Decision falls within the scope of *Pergan*. The non-Scania Defendants have not admitted their guilt in terms of the Scania Decision. They have admitted their guilt only in relation to the settlement decision. The Scania Decision is a later decision which is not addressed to the non-Scania Defendants. The non-Scania Defendants have not admitted their guilt to any additional statements or findings which the Commission set out that later decision. In these circumstances *Pergan* and *Emerald* apply. Accordingly, we are bound by *Emerald* and the order sought in respect of the Scania Decision must be refused.

(b) Discretion

55. If we are wrong on that, and the order is a matter for our discretion, in the exercise of that discretion we would refuse the order sought in relation to the Scania Decision.

56. In our view, it is not essential for the experts to have access to the Scania Decision. They have access to the underlying primary evidence on which the Scania Decision is based. The Scania Decision might enable a sense check in that it would set out the findings that the Commission had come to on the basis

of the primary evidence in relation to Scania. It will not replace the need for the experts to address the primary evidence. As the Court of Appeal stated in *Emerald*, the advantage to the claimants of having an unredacted version of the Decision is more apparent than real:

“What the claimants will be deprived of is the Commission’s findings of infringement, or allusions to the liability of an accused person for infringement... for the purposes of the Commission’s decision. But, as *Pergan* itself makes clear, such findings cannot be regarded as established in law, are not binding on the English courts as findings of fact and amount to no more, in effect, than the opinions of the Commission in relation to matters outside the operative part of its decision. Notwithstanding their potential utility to the claimants in providing evidential and “cause of action” leads, we see no substantive unfairness in the claimants being deprived of the opportunity of access to the Commission’s views in respect of such matters.” ([105]).

(5) Analysis and Decision on Scania Report

57. The Scania Report was produced by RBB Economics in 2016 in the context of proceedings before the Commission. The Commission found it to be of limited utility given that it was mistakenly based on a wrong assumption (Scania Decision footnote 570).

58. In our view the Scania Report will be of limited utility in the current proceedings also. It is an expert report relating to other proceedings and will not be evidence in the current proceedings (*Ruling (Disclosure-International Markets)* at [58]). What limited benefit it may have would be to sense-check the results that come from the econometric modelling done on the primary evidence. We are not persuaded that that limited benefit would be so useful as to make it appropriate for us to order that it should be disclosed.

F. DISPUTED SECTION 8 DATA REQUESTS

59. The Defendants have made specific Data Requests to various Claimants aimed at obtaining transaction data about the Claimants’ prices, costs and quantities. As these are found in Section 8 of the Data Request documents, they have come to be referred to as the “Section 8 Requests”.

60. At the hearing we heard detailed submissions, supplementing what had previously been provided to us in writing, from the parties and their experts covering issues of principle such as the relevance of the data for the experts' analysis and the proportionality of the provision of the information.
61. We came to the view that the Section 8 information should be provided for those who have a truck-related business such as hauliers or lessors, but should not be provided for those further downstream, as that would not be proportionate and would not improve the evidential basis. We now so order.
62. The structure of the Section 8 Requests is that there is a "waterfall" of requests so that if information requested is not provided then other information can be provided instead. Certain of those who will be providing Section 8 information have disagreements about the detail of what they are being asked to provide. Parties should continue to work together to try to resolve these disagreements. Experts (or where no experts are instructed, parties) should meet and seek to resolve, or find a compromise on, these matters of detail. It is hoped that this process will allow parties to come to agreement on these matters. If not, and any particular, detailed disagreement has to come back before the Tribunal, the parties should lodge a detailed report from the experts explaining the reasons why they cannot agree, and why they are not able to reach a compromise. The Tribunal expects experts and the parties to use their best endeavours to find a solution or compromise, so that the Tribunal is not troubled unnecessarily with the minutiae of numerous requests.

F. OTHER DISPUTED DATA REQUESTS

63. Our decisions in respect of certain Data Requests are set out in Appendix A to the accompanying order. Where we have granted or refused an order, that is for the reasons set out by the expert seeking the grant or refusal as the case may be. We have also taken into account the principles set out in paragraphs 11 and 12 above, and the proportionality of the requests.
64. Discussions between parties on other Data Requests are ongoing and will be dealt with in accordance with the procedures set out in our order.

65. This ruling is unanimous.

The Hon. Lord Ericht

The Hon. Mr Justice
Ian Huddleston

Derek Ridyard

Charles Dhanowa, OBE, KC (Hon)
Registrar

Date: 21 November 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 &
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
1633/5/7/24	Tesco Stores Limited & anor v Scania (Great Britain) limited & 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
1674/5/7/24 (T)	J.C. Campbell (N.I.) Limited -v- DAF Trucks N.V.
1675/5/7/24 (T)	Gibson Bros Limited -v- DAF Trucks N.V.
1676/5/7/24 (T)	Joseph Walls Ltd -v- DAF Trucks NV
1677/5/7/24 (T)	M.G. Oils Limited-v- DAF Trucks NV
1678/5/7/24 (T)	J.K.C. Specialist Cars Limited-v- DAF Trucks NV
1679/5/7/24 (T)	G.P. Marketing Limited trading as Patterson Oil -v- DAF Trucks NV
1680/5/7/24 (T)	J.H. Irwin & Son (Fuels) Limited -v- DAF Trucks NV
1681/5/7/24 (T)	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
1682/5/7/24 (T)	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
1683/5/7/24 (T)	R Magowan & Son Limited -v- Iveco S.P.A
1684/5/7/24 (T)	C. Russell Auto Sales Ltd -v- Iveco S.P.A
1685/5/7/24 (T)	Kennedy & Morrison Limited -v- Iveco S.P.A
1686/5/7/24 (T)	Niall McCann t/a NMC Haulage -v- Iveco S.P.A
1687/5/7/24 (T)	John Rodgers Limited -v- Iveco S.P.A
Cases in Scotland	
1538/5/7/22 (T)	Clackmannanshire Council v VFS Financial Services Ltd &
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
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 &
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 LafargeHolcim Claimants	The Claimants in Case No: 1368/5/7/20 (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.