



Neutral citation [2024] CAT 73

**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

9 December 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 9 December 2024

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**RULING (DISCLOSURE)**

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## APPEARANCES

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

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

Natasha Simonsen (instructed by Fieldfisher) appeared on behalf of the DS Smith Claimants.

Philip Moser KC and Conor McCarthy (instructed by Fieldfisher) appeared on behalf of the Boots Claimants.

Rayan Fakhoury (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.

Sarah Abram KC (instructed by Slaughter and May) appeared on behalf of the Non-Scania Defendants.

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

1. At the last hearing on 21 and 22 October we heard argument on a request by the Asda Claimants for: (1) 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”); and (2) an expert report prepared on behalf of Scania for the purpose of those Commission proceedings entitled “Competitive assessment of alleged Scania price exchanges” as referred to in footnote 570 of the Scania Decision (the “Scania Report”).
2. We refused that request for the reasons set out in our ruling dated 21 November 2024 ([2024] CAT 66) (the “*Future Conduct of the Proceedings (No. 2)*”). In summary, we found in relation to the Scania Decision that the cases of *Pergan Hilfsstoffe für Industrielle Prozesse GmbH v Commission* T-474/04, EU:T:2007:306 (*Pergan*) and *Emerald Supplies Limited v British Airways Plc* [2015] EWCA Civ 1024 (*Emerald*) applied, and if we were wrong in that, we would have exercised our discretion against granting their request as it was not essential for the experts to have access to the decision and report as they had access to the primary evidence: see [54] to [56].
3. In relation to the Scania Report we were not persuaded on the basis of the expert evidence available to us that the limited benefit on grounds of proportionality would be so useful as to make it appropriate for us to order that it should be disclosed: see [57] to [58].
4. The Asda Claimants now seek further materials from the Scania Defendants referred to in various recitals to the Scania Decision set out in paragraph 7 and 8 of the draft order which they invite us to make:

“7... the Scania Defendants shall provide copies of the following materials (subject to paragraph 8 below):

- (a) The written response dated 23 September 2016 to the European Commission's Statement of Objections dated 20 November 2014, referred to in recital (70) to the infringement decision of the European Commission dated 27 September 2017 in Case AT.39824 – Trucks (the “Scania Decision”).

- (b) The transcript of the oral hearing on 18 October 2016 in which the Scania Defendants presented their case, and copies of the additional documents provided by the Commission on 12 October 2016, referred to in recital (70) to the Scania Decision.
- (c) The letter to the European Commission dated 10 November 2016 in which the Scania Defendants provided their views on questions raised during the hearing and on the additional documents provided by the Commission, referred to in recital (70) to the Scania Decision.
- (d) The letter to the European Commission dated 23 March 2017, referred to in recital (70) to the Scania Decision.
- (e) The Letter of Facts issued by the European Commission on 7 April 2017 and the evidence annexed to the Letter of Facts, referred to in recital (71) to the Scania Decision.
- (f) The Scania Defendants' written comments dated 12 May 2017 on the evidence annexed to the Letter of Facts issued by the European Commission on 7 April 2017, referred to in recital (73) to the Scania Decision.
- (g) All other documents provided to Scania by way of access to the file on 11 April 2017, 5 May 2017 and 10 May 2017 (as recited in recital 72 to the Scania Decision) that post-date the "Dawsongroup" version of the file already provided to the Claimants, and which are not referred to in the above subparagraphs.
- (h) All replies to the Commission's requests for information referred to in recital (74) to the Scania Decision (including for the avoidance of doubt all replies given by all truck manufacturers and Defendants),

8. Paragraph 7 is subject to the following:

- (a) Paragraph 7 does not apply to the extent that the Tribunal would be prevented from making a disclosure order in respect of any material by paragraph 28 of Schedule 8A to the Competition Act 1998.

(b) The documents and information provided pursuant to paragraph 7 above shall, until further order, be designated as Inner Confidentiality Ring Information pursuant to the Confidentiality Orders made across the Second Wave Trucks Proceedings.”

9. The submissions of Mr Macnab for the Asda Claimants consisted largely of criticism of our previous ruling. The Asda Claimants have sought permission to appeal against that ruling and the process for considering permission to appeal is under way with the Tribunal having ordered responsive submissions by 19 December 2024.
10. Permission may or may not be granted, and thereafter the Court of Appeal may or may not take a different view on the substance of the grounds of appeal. Until such time as an appeal, if any, is granted, then we must proceed on the basis of our previous ruling.
11. Mr Macnab submitted that he was not going behind our ruling and the documents his client seeks were part of the primary evidence and it did not have access to them. He accepted that, to the extent to which documents now sought refer to leniency or settlement materials, such information is protected from disclosure under paragraph 28 of schedule 8A to the Competition Act 1998 and any such information would require to be redacted.
12. He further submitted that the *Pergan* principle did not apply as the Court of Appeal in *Emerald* had distinguished between (i) the Commission’s findings and allusions to infringements in the non-operative parts of the Commission decision (*Pergan* protection); and (ii) contemporaneous documents in the possession of a party (no *Pergan* protection).
13. The making of the order was opposed by the Scania Defendants. Mr Fakhoury on their behalf submitted that, firstly, the position was *a fortiori* of this Tribunal’s decision in the *Future Conduct of the Proceedings No.2 Ruling*. The documents now sought were not contemporaneous primary evidence but for the most part comprised *ex post facto* legal submissions made in the context of separate proceedings before the Commission some eight years ago in relation to

an issue which is not in dispute in these proceedings (namely whether Scania's conduct involved any infringement of EU competition law by object). Indeed, they related only to preliminary opinions of the Commission or Scania's response to these preliminary opinions.

14. Secondly, disclosure is likely to give rise to a number of complex legal and practical difficulties, including the obligation to apply *Pergan* redactions and other EU law considerations such as the protections applied to leniency statements which would require an application under Parts 4 and 5 of the Competition Appeal Tribunal Rules 2015 (the "CAT Rules") and/or Civil Procedure Rules Practice Direction 31C, which had not been made.
15. Thirdly, the Claimants' expert had not sought to justify his requests, and this was reflective of their limited utility to his analysis.
16. The order was also opposed by Ms Abram KC on behalf of the Non-Scania Defendants. She took particular exception to the Asda Claimants bringing this application before the Tribunal without engaging in correspondence with her clients, with the result that she had not had an opportunity to address it and make fully considered submissions at the hearing. The Asda Claimants were asking the tribunal to go behind and re-open matters previously decided by Mr Justice Roth in the First Wave Trucks Proceedings. Some of the documents might be leniency materials. There was important authority to which counsel for the Asda claimants had not referred the Tribunal which established that *Pergan* applied to material in letters of objection: *Consumers' Association v Qualcomm* [2023] CAT 4 at [6].
17. In our opinion, the principles set out in our previous ruling apply also to this application.
18. In our previous ruling we took the view that it was not essential for the experts to have access to the Scania Decision or the Scania Report. In our view, the same applies to the documentation now sought. We afforded the Claimants' expert on overcharge, Mr Saggars, an opportunity to explain to us why this information was needed, but his explanation did not expand on the reasons he

had previously given and had been rejected by us in respect of disclosure of the Scania Decision and the Scania Report.

19. We were particularly concerned that the Asda Claimants had not followed the procedure set out by us in repeated case management hearings that matters should be discussed in meetings of experts and we should only be troubled with them when the experts could not reach agreement. There had been no attempt to discuss the specific documents now sought in paragraphs 7 and 8 of the draft order with the other experts or to identify whether Mr Saggars and the other experts could come to an agreement in relation to the documents now sought.
20. The documents now sought can only be at best of limited utility. They are not contemporaneous documents: they are a variety of documents which, in the whole, set out positions adopted in the Commission proceedings. Mr Saggars did not succeed in persuading us that these, rather than the underlying contemporaneous documents, were essential to his case.
21. In respect of proportionality, we must balance that limited utility against the additional work, delay and expense if we were to grant the order. A large-scale redaction exercise would have to be undertaken to establish which passages of which documents related to leniency and which parts of which documents related to *Pergan*. This is likely to lead to extensive disputes before the Tribunal as to the application of the Competition Act 1998 in relation to leniency and also as to the scope of *Pergan*, and possibly will also require applications to the Tribunal under Parts 4 and 5 of the CAT Rules and/or CPR PD 31C.
22. Due to the limited utility of the information sought, this would not be a proportionate exercise. In all the circumstances, the order sought in paragraphs 7 and 8 of the draft order are refused.
23. This ruling is unanimous.

The Hon. Lord Ericht

The Hon. Mr Justice  
Ian Huddleston

Derek Ridyard

Charles Dhanowa, OBE, KC (Hon)  
Registrar

Date: 9 December 2024



**ANNEX 1: CASES INCLUDED IN THE SECOND WAVE TRUCKS  
PROCEEDINGS**

Case Number	Case Name
<b>Cases in England</b>	
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
<b>Cases in Northern Ireland</b>	
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
<b>Cases in Scotland</b>	
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**

<b>Definition</b>	<b>Description</b>
<b>The Arla Claimants</b>	The Claimants in Case No: 1296/5/7/18
<b>The Edwin Coe Claimants</b>	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).
<b>The Asda Claimants</b>	The Claimants in Case No: 1578/5/7/23 (T).
<b>The DS Smith Claimants</b>	The Claimants in Case No: 1343/5/7/20 (T).
<b>The Adur Claimants</b>	The Claimants in Case No: 1431/5/7/22 (T).
<b>The Boots Claimants</b>	The Claimants in Case No: 1616/5/7/23 (T).
<b>The Hausfeld Claimants</b>	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).
<b>The BCLP Claimants</b>	The Claimants in Case Nos: 1360/5/7/20 (T), 1361/5/7/20 (T) and 1362/5/7/20 (T)
<b>The LafargeHolcim Claimants</b>	The Claimants in Case No: 1368/5/7/20 (T).
<b>The Morrisons Claimants</b>	The Claimants in Case No: 1521/5/7/22 (T)
<b>The Northern Irish Plaintiffs</b>	The Plaintiffs in cases filed in Northern Ireland as set out in Annex 1.
<b>The Scottish Pursuers</b>	The Pursuers in cases filed in Scotland as set out in Annex 1.
<b>The Defendants</b>	The Defendant Manufacturing Groups of DAF, MAN, Iveco, Volvo/Renault, Daimler and Scania in relation to the cases filed in England and Wales.