Neutral citation [2020] CAT 21

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1291/5/7/18 (T)

1 October 2020

BETWEEN:

(1) RYDER LIMITED
(2) HILL HIRE LIMITED

Claimants

- and -

(1) MAN SE
(2) MAN TRUCK & BUS AG
(3) MAN TRUCK & BUS DEUTSCHLAND GMBH
(4) MAN TRUCK AND BUS UK LIMITED
(5) AB VOLVO (PUBL)
(6) VOLVO LASTVAGNAR AB
(7) VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH
(8) VOLVO GROUP UK LIMITED
(9) RENAULT TRUCKS SAS
(10) DAIMLER AG
(11) MERCEDES BENZ CARS UK LIMITED
(12) FIAT CHRYSLER AUTOMOBILES N.V.
(13) CNH INDUSTRIAL N.V.
(14) IVECO S.P.A.
(15) IVECO MAGIRUS AG
(16) IVECO LIMITED
(17) PACCAR INC.
(18) DAF TRUCKS N.V.
(19) DAF TRUCKS DEUTSCHLAND GMBH
(20) DAF TRUCKS LIMITED

Defendants

RULING: ASSESSMENT OF COSTS

INTRODUCTION

1. By order made on 11 March 2019, I ruled that the Claimants shall pay the Defendants' costs of and arising from the Claimants' application for specific disclosure dated 12 February 2019 ("Ryder's Application"), in an amount to be summarily assessed if not agreed; and further that this payment is to be made following conclusion of the proceedings.

2. Pursuant to the directions in that order, over the following two months the various Defendant groups filed their respective costs schedules, the Claimants filed very full submissions in response and the Defendants filed submissions in reply.

3. This ruling is the delayed summary assessment of the Defendants' costs. I shall refer to the parties by the same abbreviations as have been used by the Tribunal in the various substantive judgments in these proceedings: e.g., [2018] CAT 19, [2020] CAT 3, [2020] CAT 7.

THE COSTS REQUESTED

4. Ryder's Application was listed to be heard over two days, 11-12 March 2019. In the event, it was disposed of after one day. It was on any view a very significant application in high value proceedings. Nonetheless, the aggregate of the costs applied for by the Defendants is a little over £1.4 million. That is, by any standards, an enormous sum for an application of this kind.

5. The costs schedules are broken down in the usual way as between various heads of costs. In summary terms, the costs sought by the five Defendant groups are as follows:

	Solicitors - general	*Work on documents*	*Counsel*	*Foreign/additional lawyers*	***Total***
MAN	£61,449	£169,046	£99,616		£330,111
Volvo/Renault	£37,806	£159,261	£70,000		£267,067
Daimler	£58,285	£59,913	£128,832		£247,187[1]
DAF	£56,476	£106,662	£87,047	£38,470	£291,183[2]
Iveco	£65,074	£137,958	£45,000	£22,227	£271,660[3]

6. In response to Ryder's submissions, Iveco has reduced its application for costs by £15,127, making its total claim £256,533.192. None of the other Defendant groups have offered any reduction.

7. In order to appreciate the basis on which these costs are sought, it is necessary to summarise the nature of, and background to, Ryder's Application.

RYDER'S APPLICATION

8. At a CMC held on 21-22 November 2018, the Tribunal adjourned two aspects of the application then made by Ryder for disclosure, with liberty to restore. Those concerned the question of disclosure of documents on the Commission file (a) which the Defendants had contended were irrelevant to Ryder's claim, in particular since they did not appear to concern the UK, and (b) OFT and Commission RFIs and the associated responses. The hearing in March 2019 was originally listed for a day on the basis that it would involve the consideration of these matters which Ryder was restoring. However, late on 12 February 2019, Ryder served a draft order and supporting evidence which clearly went very much wider. In particular, Ryder sought disclosure of documents comprising communications that (a) concerned products or services that were not the subject of the Commission Decision (e.g. truck warranties, truck repair and maintenance contracts, and truck spare parts); (b) covered the entire EEA; and (c) concerned a longer period than the Commission Decision. Furthermore, Ryder sought such disclosure for the most part also in respect of

[1] Includes £156 for "meals for hearing" not included in other columns.
[2] Includes printing costs of £2528 not included in other columns.
[3] Includes copying and document production costs of £1400 not included in other columns

documents or information within the Defendants' control that were not part of the Commission File.

9. The basis for Ryder's Application was set out in a 48-page witness statement from Mr Burrows of Ryder's solicitors, comprising 69 paragraphs, to which was attached an Annex of 129 pages, comprising 214 paragraphs, that made detailed references to many of the documents previously disclosed.

10. Mr Burrows' witness statement was accompanied by an exhibit that stretched to six lever arch files comprising 2,632 pages of documents drawn from the disclosure previously provided, to which the Annex to his witness statement cross-referred.

11. In part, Ryder's Application was directed at what were alleged to be certain gaps and deficiencies in the disclosure given to date. That is of course not unusual, but Ryder had not previously engaged in correspondence with the various Defendants' solicitors raising these specific matters or seeking to agree further disclosure. Nor was the application in any way restricted to such specific, targeted requests. In fact, Mr Burrows' evidence made clear that Ryder considered that the scope of the collusion between the Defendant groups "went significantly beyond that which is described in the Articles of the Decision." Mr Burrows stated that it "may have affected most if not all aspects of the European trucks industry." It was therefore in large part seeking a form of pre-action disclosure to enable Ryder to consider whether and to what extent to seek to expand its existing claim. The Defendants had not been informed between November 2018 and February 2019 that an application of this nature would be made.

12. Ryder resisted suggestions from the Defendants that the hearing be adjourned to give the parties more time to engage with the broad range of disclosure sought and the new allegations. Instead, the time for the hearing was extended to two days and on 25 February 2019, the Tribunal gave directions for the Defendants' responsive evidence to be filed by 4pm on 5 March and skeleton arguments to be exchanged by 4 pm on 7 March. The directions also limited the Defendants' skeleton arguments to no more than 10 pages each and stated that the Tribunal expected them to liaise to avoid duplicative submissions.

13. MAN, Volvo/Renault, DAF and Iveco duly served their evidence on 5 March 2019. In each case, it comprised a single witness statement from a partner in their solicitors, with a relatively brief exhibit that mostly contained solicitors' correspondence. The extent of the Defendants' evidence was as follows:

MAN : 18 page witness statement, comprising 50 paragraphs

Volvo/Renault : 19 page witness statement, comprising 86 paragraphs

DAF : 26 page witness statement, comprising 100 paragraphs

Iveco : 17 page witness statement, comprising 80 paragraphs.

14. Daimler did not serve a witness statement but instead its solicitors wrote a very full letter on 4 March 2019 of 34 numbered paragraphs setting out in detail its position on Ryder's Application, and also seeking detailed quantum disclosure from Ryder.

15. All the Defendants' evidence (and the letter from Daimler's solicitors) protested at the way that Ryder had gone about making its Application. They further explained what had been involved in providing documents to the Commission in the course of the investigation and how comprehensive that exercise had been, and in some cases the separate OFT investigation as well. And they explained in some detail the extent of work in terms of complexity, time and costs that would be involved if the Defendants had now to gather the range of documents outside the Commission file which Ryder's Application was seeking. Some Defendants explained why the inferences which Ryder sought to draw from some of the disclosed documents to the effect that unlawful collusion continued beyond 11 January 2014 (the date in the Decision) was misconceived. But none of the Defendants in its evidence sought to go through all the voluminous documents referred to in the lengthy Annex to Mr Burrows' statement to comment on or rebut the observations which Mr Burrows made about specific documents. I should stress that this is not in any way a criticism. The approach of the Defendants, which the Tribunal accepted, was that such an exercise was inappropriate at short notice and without prior discussion, and that the way the Ryder's Application had been brought was misconceived.

16. On 6 March 2019, just before 5 pm, Ryder served on the Defendants draft Amended Particulars of Claim, which introduced these broader stand-alone allegations of anti-competitive collusion, foreshadowed by Mr Burrows' statement. This draft obviously could not be addressed in the Defendants' evidence and it came too late to be taken into account, save in the most general way, in the skeletons.

PRINCIPLES

17. Rule 104 of the Competition Appeal Tribunal Rules 2015 ("the CAT Rules") addresses costs. The rule states, insofar as material:

> "(2) The Tribunal may at its discretion ... at any stage of the proceedings make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.
>
> …
>
> (4) In making an order under paragraph (2) and determining the amount of costs, the Tribunal may take account of—
>
> (a) the conduct of all parties in relation to the proceedings;
>
> (b) any schedule of incurred or estimated costs filed by the parties;
>
> …
>
> (e) whether costs were proportionately and reasonably incurred; and
>
> (f) whether costs are proportionate and reasonable in amount."

18. Rule 104(4)(e) also reflects the governing principle in rule 4(1):

> "The Tribunal shall seek to ensure that each case is dealt with justly and at proportionate cost."

19. The CAT is not governed by the Civil Procedure Rules ("CPR") applicable in the High Court and indeed the CAT Rules differ from the CPR in many respects. Further, the approach of the CAT Rules is for the most part at a higher level of generality than the much more detailed and extensive provisions in the CPR. However, where the rules are the same or very similar, the CAT Rules will be interpreted having regard to the principles established under the CPR, but bearing in mind that the CAT is a UK tribunal and that the Scottish courts, in particular, have distinct procedural rules.

20. The CAT Rules do not contain wording equivalent to CPR rule 44.3(2), which provides:

> "(2) Where the amount of costs is to be assessed on the standard basis, the court will –
>
> (a) only allow costs which are proportionate to the matters in issue, Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
>
> (b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party."

However, consistent with the principles set out above, the CAT will follow a similar approach to assessment on the standard basis. It would be wholly exceptional for the CAT to allow costs which are disproportionate just because they have been reasonably incurred.

21. Proportionality is a concept imported into the CAT Rules from the CPR. CPR rule 44.3(5) provides:

> "(5) Costs incurred are proportionate if they bear a reasonable relationship to-
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> (a) the sums in issue in the proceedings;
>
> (b) the value of any non-monetary relief in issue in the proceedings;
>
> (c) the complexity of the litigation;
>
> (d) any additional work generated by the conduct of the paying party; and
>
> (e) any wider factors involved in the proceedings, such as reputation or public importance."

22. In its costs ruling in *Merricks v Mastercard Inc* [2017] CAT 27, the CAT stated, at [29]:

> "A party to litigation is free to spend as much as it wishes on lawyers, but the Tribunal, like the courts, will control how much it can recover from the other side. In that regard, proportionality is not to be assessed simply by comparing the level of costs with the amount at stake in the litigation but having regard to all the circumstances, including consideration of the legal work which the nature of the case reasonably required."

And the ruling proceeded to quote and adopt the observations of Leggatt J (as he then was) when addressing assessment of costs in high value commercial

litigation in *Kazakhstan Kagazy Plc v Zhunus* [2015] EWHC 404 (Comm), at [13]:

> "In a case such as this where very large amounts of money are at stake, it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonably or proportionately incurred or reasonable and proportionate in amount when it comes to determining what costs are recoverable from the other party. What is reasonable and proportionate in that context must be judged objectively. The touchstone is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party. This approach is first of all fair. It is fair to distinguish between, on the one hand, costs which are reasonably attributable to the other party's conduct in bringing or contesting the proceeding or otherwise causing costs to be incurred and, on the other hand, costs which are attributable to a party's own choice about how best to advance its interests. There are also good policy reasons for drawing this distinction, which include discouraging waste and seeking to deter the escalation of costs for the overall benefit for litigants."

23. To similar effect is the succinct statement by Hildyard J in *Re RBS Rights Issue Litigation* [2017] EWHC 1217 (Ch), a very high value claim, at [134]:

> "… litigants are free to pay for a Rolls-Royce service but not to charge it all to the other side."

24. The submissions for some of the Defendants comment adversely on the fact that Ryder has not submitted a schedule of its own costs, which it is suggested may be of similar magnitude. However, Ryder as the applicant would reasonably incur a higher level of costs as it is making the case on the documents disclosed from five separate Defendant groups of inadequacy or gaps in the disclosure so far, and has to meet arguments raised by five opponents. But in any event, in my view, Ryder's costs would not serve as a benchmark. In heavy litigation, it is not uncommon for both sides' costs to be unreasonable and disproportionate.

25. Furthermore, Ryder has challenged each of the claims for costs as unreasonable and disproportionate but I am not bound to adopt the particular figures put forward by Ryder as constituting the appropriate costs to allow. I exercise my own judgment as to what costs are reasonable and proportionate, and for some items that may result in a lower figure than that suggested by Ryder.

26. Finally, a summary assessment of costs is not a short-hand detailed assessment, where the Court or Tribunal goes through the schedule of costs on an item-by-item basis, assessing in each case whether the figure claimed is reasonable and proportionate. It inevitably involves a broad brush assessment by the judge who heard the case or application, drawing to some extent on his or her judicial experience.

THE DEFENDANTS' COSTS

27. I have no doubt, as all the Defendants point out, that the manner in which Ryder's Application was brought, as regards its breadth, the short notice and the failure to canvass matters in correspondence in advance, caused each Defendant group to incur significantly higher costs in meeting the application than would otherwise have been the case. That is a factor, falling within CAT rule 104(4)(a), of which I take account in assessing the level of recoverable costs.

Hourly rates

28. Ryder submits that the hourly rates charged by the various Defendants' solicitors are unreasonably high and compares them to the SCCO Guideline rates for City of London solicitors set out in *Civil Procedure (the 'White Book')* at 44SC.38. However, although a helpful starting point, it must be appreciated that those rates were last updated in 2010. Further, I consider that specialist competition partners can reasonably charge a premium rate.[4] However, taking that into account, I adhere to the view set out in *Breasley Pillows Ltd v Vita Cellular Foams (UK) Ltd* [2016] CAT 9, that a reasonable rate for a competition law partner (and thus a Grade A solicitor) in a City of London firm for competition litigation should not exceed £600 per hour. I there stated that £300 an hour would be appropriate for an associate "of appropriate seniority" for the application at issue. Grade B solicitor covers a significant range (effectively, between 4 and 8 years litigation experience). Here, I think a range of £300-400 per hour is reasonable, but no more. I do not consider that the period between the ruling in *Breasley Pillows* and the present hearing justifies any increase.

[4] See in that regard the second footnote to the table of Guideline rates.

29. Similarly, for grade C, a reasonable hourly rate should not exceed £275 (with correspondingly lower figures for more junior grade C solicitors); and for grade D (trainee solicitors and paralegals) the rate should be in the bracket £120-£175 per hour (with a lower rate within the band for paralegals than for trainees). Some, but not all, of the Defendants' solicitors have charged in excess, and in some cases significantly in excess of these rates. Given the very large number of hours worked, the cumulative effect is substantial. I do not accept that the relative complexity of the present proceedings in itself justifies an uplift to the hourly rates. The complexity of the proceedings is reflected in the number of hours spent and the degree to which more senior solicitors have to be involved, but not in the reasonable rates for each hour's work.

Counsel

30. This was a heavy application for disclosure of considerable consequence. Given also the relatively short time for advice and preparation, I consider that the instruction of leading and junior counsel cannot be criticised as unreasonable. I also accept that each Defendant group was entitled to separate representation. However, Ryder's Application was never anticipated to involve more than a two-day hearing and in the event was determined in one day, so that no refresher fees were incurred. The skeleton arguments were limited to 10 pages each. In my judgment, the total fee for counsel in those circumstances that was reasonable and proportionate is £65,000.[5] In arriving at that figure, I recognise that counsel (like the solicitors instructing them) will have had to consider the various documents emanating from their clients referred to in Mr Burrows' evidence in case they might have had to respond to submissions concerning specific documents at the hearing. It is not appropriate for me to determine the split as between QC and junior: that will depend on how their work was shared out and the relative seniority of the junior instructed. Similarly, if savings were achieved by instructing a third, more junior counsel, that is not in itself unreasonable. On an application such as this, it is not the number of counsel but the total claimed for counsel's fees that counts.

[5] In assessing a figure that is reasonable and proportionate the approach adopted in this ruling differs from the approach in Ryder's submissions that proposed differing "reasonable" fees for each Counsel team (in several cases in excess of £70,000) but then subjected the aggregate costs of each Defendant group to a reduction on grounds of proportionality to arrive at the same total figure for each of them.

31. I note that Iveco incurred considerably less than £65,000 and its case was very ably presented by an experienced junior. However, I will allow an increase of £5,000 in the reasonable fees for its solicitors to reflect the fact that they could be expected to give greater assistance in those circumstances to the two counsel acting for Iveco, both as regards finalising the skeleton argument and in consideration of the submissions of the other parties.

Attendance at the hearing

32. The number attending and claimed for from most of the various Defendants' solicitors is in my view extraordinary: MAN attended by one partner (grade A), one grade B solicitor, two grade C solicitors, one trainee and one paralegal; Daimler by two partners, one grade B solicitor, one grade C solicitor and one paralegal; DAF by one partner, one grade B solicitor, two grade C solicitors and one trainee/paralegal; Iveco by two partners, one very senior associate (described as grade A/B), and two grade C solicitors. Volvo/Renault attended by one partner, one grade B solicitor, one grade C solicitor and one paralegal. These lawyers were of course in addition to the two counsel (or in the case of Daimler and DAF, three counsel) representing each Defendant group.

33. In response to Ryder's submissions, Iveco has accepted that it should not recover for attendance by more than one partner. I do not see that any of the Defendants' solicitors reasonably needed to attend the hearing by more than one partner, one associate and a trainee or paralegal to assist on finding documents. If any further assistance was needed on a particular document, these days it is always possible for a member of the team to send a text message to a solicitor in the office with a particular query, or if necessary to leave the tribunal to make a telephone call. It is not reasonable to have such large teams spending 6 hours in court (plus 1 hour charged by some for travelling, or in the case of DAF's solicitors, 1.24 hours) at very substantial cost.

Work done on documents

34. It is apparent from the summary set out at para 5 above that for all but Daimler, this accounts for a very substantial part of the total fees claimed. These remarkably high figures break down between various sub-heads as set out in the

schedules annexed to the statements of costs. I make some general observations on several of those categories.

(i) *Preparing witness statement*

35. A solicitor will of course take great care about what he or she says in a witness statement. The statements here involved consideration of what happened by way of document search and provision in the Commission investigation and the OFT investigation, and what would be involved in meeting the requests in Ryder's Application if granted. In some cases this involved consultation with separate law firms that were responsible for the earlier work. I do not accept, as Ryder suggests, that greater coordination between the Defendants was practicable, either in principle or indeed in the short time-frame available.

36. However, as set out in para 13, each witness statement was relatively short and the exhibit to each one largely if not exclusively comprised recent correspondence and prior orders made in this and other Trucks proceedings. The Defendants claim for this as follows:

Number of Hours				
	Grade A/B	*Grade C*	*Trainee/Paralegal*	***Total***
MAN	75.5	57.5	10	143
Volvo/Renault	54.7	198	45.5	298
DAF	54.9	62.5	10.5	128
Iveco	53.4	74.5	3.3	131

I should stress that these times are in addition to the time spent reviewing and considering Mr Burrows' evidence, although I recognise that some solicitors may have allocated time differently as between those two categories.

37. I am firmly of the view that the time spent in every case on the preparation and drafting was excessive, both in total and as regards the level of lawyers involved, resulting in a charge for this item that is unreasonable and disproportionate.

38. Daimler's total charge for "Work done on documents" is markedly lower than those of the other four Defendant groups, in part reflecting the fact that it did not file any evidence. As noted above, it set out its position in a long letter from its solicitors. The cost of that is no doubt reflected in its charge for communications on the Claimants (£19,760) which is significantly higher than the charge under this head by the other Defendant groups. Although I think it is reasonable for Daimler therefore to have incurred higher charges in that respect, I nevertheless consider that the allocation of that work was unreasonably top-heavy: of close to 44 hours of lawyers' time devoted to this, almost 19 hours were spent by a partner. Moreover, Daimler's solicitors' letter of 4 March 2019 also sought disclosure from Ryder, and to that end included a 17 page annex setting out each category and sub-category of disclosure requested, with reasons. I have no doubt that annex took significant time to prepare, but that time and resulting costs are not part of the costs of Ryder's Application: they relate to an application for disclosure by Daimler, which in the event was not pursued on this occasion although it may be in future.

(ii) *Skeleton arguments*

39. The preparation of skeleton arguments is the role and responsibility of the counsel whose name they bear. In a case such as this, it is reasonable for the instructing solicitors to review the skeleton in draft for comment. However, MAN's solicitors (and paralegal) spent over 28 hours, DAF's solicitors spent almost 12 hours and Iveco's solicitors spent over 20 hours on this. The time spent by the solicitors for Volvo/Renault and Daimler is less clear since it is included, along with consideration of the skeleton of Ryder and the other parties, under a broader head in their respective schedules. I regard it as unreasonable for solicitors to claim for more than 3 hours spent reviewing a 10 page skeleton argument that has been drafted and considered by at least two counsel (save in the case of Iveco who did not use leading counsel so that I would allow 6 hours as reasonable).

(iii) *Preparation for hearing / Bundling*

40. Ryder provided a hard copy of the bundles for each Defendant. MAN states that it took the lead in preparing bundles by liaising with the other Defendants

to provide consolidated comments and amendments. By the standards of multiparty commercial litigation, this was not a document-heavy hearing. Ryder had one bundle for its application (comprising Mr Burrows' witness statement, the annex and the draft order), and the exhibit as noted above comprised six bundles. The Defendants had one combined bundle for the four witness statements and another for the exhibits. There was a bundle of correspondence, a single, consolidated bundle of authorities and a slim bundle containing the skeleton arguments. Nonetheless, the time spent and corresponding amount claimed in "Work on Documents" for preparation for the hearing including bundling is substantial:

	Number of Hours		
	Lawyers	*Trainees/Paralegal*	***Total***
MAN	28	64	92
Daimler	9	13	22
DAF	22	49	71
Iveco	57	3	60

(For Volvo/Renault the figure is subsumed in a broader category which includes preparation and consideration of all the skeleton arguments).

41. It should be borne in mind that the cost of copying/printing itself is not normally recoverable save in unusual circumstances, since it is regarded as included in solicitors' overheads: PD 47, para 5 22(5) and see *Cook on Costs* (2020), para 29.18. I consider that the same approach now applies also to preparation of an electronic version of the bundles. I regard all the above figures as unreasonable, and furthermore consider that the great majority of this work should be conducted by trainees and/or paralegals, with limited oversight by solicitors. And even then, I consider that the solicitors involved can reasonably be at more junior level.

Foreign/additional lawyers' fees

42. As already observed, several of the Defendants' current solicitors did not act for their clients in the prior Commission proceedings or in the OFT investigation.

In responding to Ryder's Application, it was therefore reasonable for them to seek information from the lawyers who had previously acted for their clients in that regard. For Volvo/Renault, Freshfields Bruckhaus Deringer state that in the interest of proportionality they have not included the fees of their clients' prior English and Brussels lawyers. MAN's English solicitors consulted their clients' German lawyers who acted for MAN in dealing with the Commission, but no fees of those German lawyers are sought. The position of Daimler's solicitors is similar, and indeed they also had to seek instructions from Daimler's prior English solicitors who acted in the OFT investigation. However, Iveco has claimed over £22,000 for the fees of Sullivan & Cromwell (£17,576), who acted for Iveco in the OFT and Commission investigations, and of the German law firm (£4,651), who acted for Iveco's German national marketing subsidiary on the Commission investigation. DAF has claimed £36,270.50 as the fees of De Brauw Blackstone Westroek NV ("De Brauw"), the Dutch law firm that acted for DAF in the Commission investigation.

43. Iveco also states that Sullivan and Cromwell are, along with the solicitors acting for it in these proceedings, European coordinating counsel for the Iveco Defendant group for all proceedings arising out of the Commission decision. DAF states that De Brauw act for DAF in coordinating its conduct of proceedings in numerous jurisdictions across Europe.

44. I think it is important to distinguish between response to specific inquiries for the purpose of contesting Ryder's Application, on the one hand, and general coordination of strategy with a host of proceedings elsewhere, on the other hand. I accept that to the extent that outside lawyers gave assistance in the former respect, fees are recoverable to the extent that they are reasonable and proportionate. For DAF, it is stated that lawyers at De Brauw who had particular familiarity with the underlying documentation gave assistance and input for DAF's response. I see no problem in claiming fees for that: a client may choose to divide the work of conducting aspects of litigation between several solicitors or as between external solicitors and in-house counsel. So long as there is no overlap, it can recover both lawyers' fees, subject to reasonableness and proportionality.

45. By contrast, I do not accept that fees for work as overall coordinating counsel for all the many actions across Europe arising out of the Commission Decision are properly recoverable as part of the costs of the English litigation. A multi-national company sued in various jurisdictions may understandably wish to have a coordinated strategy in response. In many cases, that role is carried out by in-house counsel. The company may instead decide to appoint outside lawyers (or in the case of Iveco, apparently two outside law firms) to carry out this function. But I do not regard the costs of doing so as a recoverable cost in the English action in addition to the direct costs of conducting the English proceedings. The costs of strategic coordination, both in discussion with the client and as between lawyers acting in litigation in different jurisdictions, is the result of the company having been sued also in other jurisdictions; it is not a cost necessarily incurred in resisting Ryder's claim in England.

46. DAF has supplied in its submissions in reply to Ryder's response to the costs schedules a helpful breakdown of De Brauw's fees so that the apportionment of those fees can be ascertained. I note, for example, that a partner and senior associate from De Brauw attended the hearing of the CMC and of course charged DAF for doing so. DAF was of course fully entitled to have them in attendance if it so wished, but I can see no justification for recovery of the resulting costs (£11,005). Iveco did not supply a similar breakdown of Sullivan & Cromwell's total fees (£17,576), so as an estimate of what appears reasonable I have allowed £11,000 in total as Iveco's recoverable fees for its two foreign law firms. The exact figure is less significant because I have reduced the amount for the recoverable solicitors' fees to the same extent.

47. DAF also used an external costs lawyer to prepare its schedule of costs, at a fee of £2,200. The other solicitors prepared their costs schedules internally. This is clearly a recoverable item and I regard that expense incurred by DAF as reasonable and proportionate.

Work attributable to the case going forward

48. Ryder submitted that part of the work carried out in reviewing the Annex to Mr Burrows' statement and the exhibited documents is work which the Defendants' advisers would always have incurred at some point, irrespective of Ryder's

Application, and should therefore be regarded as costs of the case going forward and not as costs caused by this particular application. Most of the Defendants rejected that contention but Iveco accepted that it did apply to a small proportion of the work, and proposed a consequent reduction of £10,000 generally from its costs. I consider that Iveco was correct in taking that position and that it applies similarly to the advisers to the other Defendants. Any estimate in that regard is necessarily intuitive and if the reduction were made to the figures claimed it would vary according to the different hourly rates charged to the different Defendants. Instead, I have taken this into account in assessing the overall figures for recoverable costs of solicitors' general work and work on documents.

ASSESSMENT

49. As I have observed above, summary assessment necessarily involves a broad brush approach rather than a detailed reworking of the items in the receiving party's costs schedule. I have taken account of the particular points set out above in reviewing the broad categories of costs in the various Defendants' schedules. On that basis, I consider that the reasonable and proportionate costs of resisting Ryder's Application for each Defendant group should be as follows:

	Solicitors - general	*Work on documents*	*Counsel*	*Foreign/additional lawyers*	***Total***
MAN	£35,000	£60,000	£65,000		£160,000
Volvo/Renault	£30,000	£55,000	£65,000		£150,000
Daimler	£45,000	£35,000	£65,000		£145,000
DAF	£26,300	£43,500	£65,000	£15,200	£150,000
Iveco	£32,000	£47,000	£45,000	£11,000	£135,000

50. By way of explanation of the above figures:

(a) I have allowed an additional £10,000 to MAN under "Work on documents" because of the lead role of its solicitors in coordinating bundles among all the Defendants' representatives;

(b) I have allowed Daimler more under "Solicitors – general" but less under "Work on documents" to reflect the fact that it did not file evidence but instead set out its position in a detailed letter;

(c) I have reduced the allowance for costs to DAF under both "Solicitors – general" and "Work on documents" to reflect the fees allowed for De Brauw and the external costs lawyer;

(d) I have similarly reduced the allowance of costs to Iveco by reference to the fees allowed for two additional law firms, while allowing Iveco an additional £5,000 split evenly between "Solicitors – general" and "Work on documents" to reflect the fact that it used junior counsel and not a QC.

51. It will be apparent that subject to these particular points, I am allowing a broadly equivalent amount to each separately represented group of Defendants. I see no reason why their reasonable and proportionate fees should otherwise differ. The total fees allowed of £740,000 is nonetheless an exceptionally high sum for a disclosure application that lasted only one day. Standing back, I have considered whether that total, or the individual sub-totals for each Defendant group, are excessive or disproportionate for what was involved. As explained, I had taken proportionality into account when assessing the various constituent elements. While the aggregate figures are very high, I have concluded that they are appropriate given the way in which Ryder brought its application, supported by an extensive and detailed documentary analysis, without engaging first with the Defendants by correspondence and giving them relatively little time to prepare their responses. Moreover, Ryder's Application in seeking to broaden the scope of its claim had very significant implications for all the Defendants. I therefore see no justification for making any further reductions.

PAYMENT

52. The order directing summary assessment provides that Ryder is not required to pay these costs until the conclusion of the proceedings. The Defendants had all submitted that the costs should be paid within 14 days of assessment and

Daimler has requested that I set out my reasons for rejecting that submission and making an order in those terms.

53. Summary assessment has become a feature of English litigation where a hearing lasts no more than about a day but even then it is by no means mandatory. However, it has the benefit that the costs will be assessed by the judge who heard the case and is therefore familiar with what the issues and evidence involved and what was reasonable and proportionate for the receiving party to do, as opposed to a costs judge coming to the matter 'cold', potentially many years later. For a shorter hearing, where assessment is not too complicated, it is therefore encouraged. It may also have the effect that the costs are payable much earlier than would otherwise be the case, but that is not inevitable since this depends on the terms of the court's order.

54. Under the CPR rule 44.7(1), summarily assessed costs are payable within 14 days of the order stating the amount of those costs or of "such other date as the court may specify." But this is subject to rule 44.2(1)(c) which gives the court a general discretion as to when costs are to be paid.

55. There is no equivalent to CPR rule 44.7 in the CAT Rules. The Tribunal's discretion under rule 104(2) is wide, and there is no basis for importing a similar default rule as to the time for payment of summarily assessed costs. Moreover, the CAT is a UK tribunal, and it is relevant that in Scotland the rules of the Court of Session do not enable the Court summarily to tax the paying party's expenses.

56. As regards Ryder's Application, the reason for ordering summary assessment instead of detailed assessment was precisely because, having held a one-day hearing with very limited evidence, I was in a good position to assess the reasonable and proportionate costs. However, this was one application for disclosure among several that have been, and no doubt will continue to be, made in complex proceedings for which no trial date has yet been set. In determining other applications in these proceedings, the CAT often orders costs in the case. In those circumstances, while it is possible to determine the amount that Ryder should pay in respect of this application, I do not consider it just that Ryder should be required to make that payment now, when costs which it may receive

under other costs orders will be due only some considerable time in the future. Of course, it may be that Ryder will recover no costs, but that uncertainty does not, in my view, justify imposing upon it the burden of a large 'up-front' payment. I should add that this is very different from the position when a discrete issue or aspect of the case is subject to full argument and a determinative judgment, as with the preliminary issue on the effect of the recitals in the Commission decision: [2020] CAT 7.

57. Finally, I should apologise for the time taken to produce this ruling. There have been many other aspects of the Ryder and other Trucks claims dealt with by the Tribunal in the period since Ryder's Application was heard, and this matter was neglected. However, to produce this ruling, I have re-read the transcript of the hearing on 11 March 2019 as well as the evidence and skeleton arguments of all the parties and, of course, their costs submissions.

The Honourable Mr Justice Roth
President

Charles Dhanowa O.B.E., Q.C. (*Hon*)
Registrar

Date: 1 October 2020