PTA Template 269C1 - First Appeal

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2024-002770**

DAF TRUCKS NV –v– ROAD HAULAGE ASSOCIATION LIMITED AND ANOTHER

CA-2024-002770

ORDER made by the Rt Hon The Chancellor of the High Court

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal against [2] and [4] of the Order of the Competition Appeal Tribunal ("CAT") dated 5 August 2024

Decision: Permission to appeal refused

Reasons

1. Of the defendants in the *Trucks* collective proceedings in the CAT, DAF alone seeks to challenge the arrangements approved by the CAT for the separate arrangements for funding of the two sub-groups of potential class members ("PCMs"), purchasers of new trucks and purchasers of used trucks. Contrary to the assertion of DAF in its Ground of Appeal and Skeleton Argument, there is no arguable point of law identified by DAF. The Court of Appeal held that the conflict of interest between the two sub-groups potentially extended to funding. At [88] of the judgment I said:

   "I am firmly of the view that the conflict between new truck purchasers and used truck purchasers over resale pass-on which the RHA faces can be addressed by the erection of a Chinese wall within the RHA organisation for the purposes of dealing with that issue. This will need to involve a separate team within the RHA acting for each of the two sub-classes, instructing different firms of solicitors and counsel and a different expert or experts. I also consider that a different funder will need to be involved for one of those sub-classes, given that the conflict potentially extends to funding. As Green LJ pointed out during the course of Mr Flynn KC's submissions, the RHA will have to be able to satisfy the CAT that the funding arrangements put in place do not interfere unreasonably with ordinary independent decision-making in the litigation including as to settlement. In my judgment, the safest way of ensuring that will be to have separate funders for the two sub-classes, thereby avoiding the risk of a funder siding with the members of one of the sub-classes."

   The Supreme Court refused permission to appeal our judgment, saying that the issues are procedural and case management issues arising from the statutory regime. The paragraph just quoted made clear that it was for the CAT to assess whether the funding arrangements put in place do not interfere unreasonably with ordinary independent decision-making in the litigation including as to settlement. That is what the CAT has done. It considered the separate funding arrangements of the RHA and RUTL through separate funding entities with separate teams and information barriers (albeit within the same litigation funder) and the safeguard of an independent KC to adjudicate on any conflict issues and concluded that the arrangements were "sufficient and adequate to address potential conflict as regards funding". That was a case management factual assessment by the CAT which does not raise any point of law.

2. In effect DAF seeks to concoct a point of law out of that factual assessment, as the CAT said in refusing permission to appeal: "by invoking the test for information barriers set out by the Court of Appeal in *Koch Shipping Inc v Richards Butler* [2002] EWCA Civ 1280, which in turn referred to the House of Lords judgment in *Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222, [1998] UKHL 52." As the CAT went on to say, the issue in this case is: "not the flow of information or protection of confidence, but a potential conflict of interest in a much more general sense, as regards the incentive of X, as an investor in the differently constituted funding vehicles, to fund the used truck sub-class when the interest of that sub-class on the question of pass-on conflicts with the interest of the new trucks claims."

3. Furthermore, contrary to DAF's Ground of Appeal, the CAT did not find that there was a real risk of disclosure despite the arrangements put in place. As the CAT correctly recognised in its judgment, at [88] of my judgment I was not saying that it was essential that such an arrangement was put in place, let alone saying that such an arrangement should be put in place as a matter of law. As the RHA correctly says in its statement under 52CPD.19 this was a pragmatic case management decision by the CAT well within its discretion that the funding arrangements were "sufficient and adequate to address the conflicts issue in a realistic way".

4. The proposed appeal is without merit and has no real prospect of success.

Signed: BY THE COURT
Date: 23 January 2025

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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