

IBC Conference: Competition Law in the Transport Sector Shipping Focus Day

Wednesday 1 February 2017

Hitting the Road: The Trucking Cartel Fines and Leniency

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Hausfeld – Hitting the Road: The Trucking Cartel Fines and Leniency – 1 February 2017

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The Trucks Cartel: Overview

- **The Cartel:**
 - On 19 July 2016, the European Commission issued a Decision against five of Europe's top truck manufacturers – **DAF, Daimler, Iveco, MAN and Volvo/Renault** for:
 - **coordinating prices at "gross list" level** – i.e. the factory price of trucks (as set by each manufacturer) which are the basis for pricing trucks in the industry; and
 - **coordinating the timing and costs of the introduction of emission technologies** for medium and heavy-duty trucks to comply with European emissions standards (from Euro III through to the currently applicable Euro VI).
 - The Decision was concluded under the Settlement Procedure under which the manufacturers admitted their involvement. **Scania** currently remains under investigation.
- **Time period:** 1997 until 2011
- **Product scope:** Medium-duty trucks (6 – 16 tonnes) and heavy-duty trucks (over 16 tonnes)
- **Geographic scope:** European Economic Area
- **Decision:** The Commission imposed a record fine of **€2.93 billion** on the cartel.

Rights to Compensation

- It is expected that the cartel will have affected a significant proportion of the **600,000 hauliers operating in Europe**.
- The **volume of commerce potentially affected** by the cartel could reach **€150-200 billion**.
- **Any business which purchased trucks which were affected by the cartel has a right to claim compensation** in their national court for any loss which they suffered as a result of the higher prices which they had to pay due to the price-fixing – together with interest since the date of purchase.
- This will include trucks purchased from **MAN, Volvo/Renault, Daimler, Iveco and DAF** between 1997-2011. It is also **likely to include purchases of Scania trucks**, on the basis that the market price of trucks is likely to have been artificially increased by the cartel regardless of whether Scania itself is later found to have participated in the cartel.

Settlement Approach to Defendants

- Initial approach should be to first **seek a commercial resolution with the cartelists** over formal litigation.
- Such an approach is in the best interests of all parties concerned as it provides:
 - **Continuity** to the customer-supplier relationship;
 - The opportunity for parties to **save on time and costs**; and
 - Allows for a **swift and agreeable conclusion of the dispute** without resorting to lengthy and expensive court proceedings.
- However, litigation can also be used to apply pressure and bring the cartelists to the table – establishing a credible threat of litigation will provide a strong incentive for the cartelists to consider early settlement – thereby reducing the need for litigation at all.

Leniency for Selected Parties

MAN

- In return for disclosing the existence of the cartel to the Commission and in accordance with the 2006 Leniency Notice, MAN received full immunity and avoided a fine of approximately €1.2 billion.

Iveco, Daimler, Volvo / Renault

- For cooperating with the Commission's investigation, Iveco, Daimler and Volvo / Renault also benefitted from 10% / 30% / 40% reductions of their respective fines under the 2006 Leniency Notice.
- A further 10% reduction was applied by the Commission under the 2008 Settlement Notice, resulting in total fines of:
 - €494.6 million for Iveco
 - €1.01 billion for Daimler
 - €670.4 million for Volvo / Renault

DAF

- DAF's refusal to cooperate with the Commission's investigation meant it did not receive a reduction of its fine under the 2006 Leniency Notice.
- However due to its acknowledgement of its involvement in the cartel, it also benefitted from a 10% reduction under the 2008 Settlement Notice, resulting in a total fine of €752.7 million.

Record Fines for a Cartel

Record Fine by the Commission

- The level of fines imposed by the Commission is the highest it has imposed on a single cartel, and is more than double the previous record (TV and computer monitor tubes cartel – fined €1,409,588,000).

Factors

- In calculating the level of fines, the Commission factored in the following considerations:
 - **The serious nature of the cartel's infringement**– road haulage accounts for 75% of inland transport of goods in Europe, therefore contributing significantly to the European economy;
 - **The high combined market share and geographic scope** – together, Iveco, Daimler, MAN, Volvo / Renault and DAF account for approximately 9 out of every 10 medium and heavy-duty trucks manufactured in Europe;
 - **The length of the cartel's operations**– the cartel lasted for a period of 14 years between 1997-2011.

Collusion and Co-operation in Cartels

– New Risks for Firms

- The Commission's level of fines imposed on the trucks cartel and the factors that were considered in arriving at the level it did indicates the very real risks faced by firms that participate, or are found to be participating, in a cartel.
- Private enforcement of damages actions arising out of a cartel have become increasingly more common in the realm of European competition law over the past 10 years following encouragement by state authorities and reforms to legislation – both at national level and European Parliament level.
- The developments in private enforcement ensure that damages will go back to those who have suffered harm as a result of a cartel, and so firms need to be mindful of this risk – in addition to the fines they will have to pay to the relevant state authorities.
- A recent example of such reform includes the Directive 2014/104/EU on antitrust damages actions, which seeks to remove the practical obstacles faced by victims of infringements of EU competition law in pursuing a claim for damages, and applies to all actions (individual or collective) which are available in the Member States – so increasing the risk of private enforcement faced by firms involved in a cartel.

Hausfeld: An Expert Team



Anthony Maton, Managing Partner (London)

Anthony has over 20 years' experience litigating claims in the UK and other jurisdictions.

As managing partner at Hausfeld & Co, Anthony has been at the centre of the development of competition damages litigation in Europe and is regarded by peers as one of the leading competition litigators. He has been involved in some of the largest competition claims brought and has personally overseen settlements on behalf of over 100 clients.

Anthony's involvement in some of the largest competition claims brought in Europe include: Air Cargo, Marine Hose, LIBOR, Carbon Graphite, Wax and many more.

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