

Press Release

Trucks Cartel: Amsterdam District Court rules in favour of CDC on binding effect, scope, and likeliness of damage

Luxembourg, 12 May 2021

The Amsterdam District Court (“Court”) today ruled in favour of CDC Retail SA (“CDC”) in a key judgment, confirming the binding effect of the entire European Commission’s decision, the scope and nature of the Trucks cartel as well as the likeliness of a damage caused. In respect of the damage the Amsterdam Court relies extensively on the economic experts of CDC, Prof Joe Harrington (University of Pennsylvania) and Prof Maarten Pieter Schinkel (University of Amsterdam).

“We are very happy about this outcome, especially for the companies harmed by the trucks cartel. The judgement by the Amsterdam Court confirms the approach of CDC and its experts, particularly regarding the economic analysis on the functioning and the effects of the cartel. The very detailed reasoning by the Amsterdam Court will likely have an impact on other proceedings concerning the European trucks cartel in the Netherlands and other countries.”

– Till Schreiber, Managing Director of CDC

Background

CDC’s action, filed in July 2017, pertains to about 60,000 trucks sourced by over 700 affected companies, which sold and transferred their damage claims to CDC. In substantiating the claim, CDC had submitted almost 200,000 documents. Today’s judgment concerns actions brought by several plaintiffs, including CDC, against DAF, MAN, Volvo/Renault, Daimler and Iveco for damages resulting from their participation in the European Trucks cartel. The CDC action is based on the decision of the European Commission of 19 July 2016 (Case AT.39824 – Trucks) which found the truck manufacturers had coordinated the pricing for medium and heavy trucks and the timing for the introduction of emission reduction technologies as well as the passing on of the costs for such technologies to customers. The Commission had imposed record fines of several billion Euro for the infringement which covered the entire EEA and lasted 14 years. Additionally, in June 2020, CDC filed a second action for damages relating to over 30,000 trucks purchased or leased by close to 400 companies.

Scope of the Commission decision

The Court clarifies the scope of the binding force of the Commission’s settlement decision. The defendants cannot dispute the facts in damages litigation which they have previously admitted to in the settlement procedure. The Court considers the entire content of the decision as binding, including that the economic aim of the truck manufacturers’ collusion was to increase prices. The Court furthermore rejects the defendants’ argument that the cartel was a mere information exchange without having effects on the market. Further, the court finds that it is evident from the decision that the truck manufacturers implemented the agreements made.

The Court confirms that new trucks sourced by companies in the EEA are covered by the scope of the decision, irrespective of the sourcing modality (e.g. purchase, leasing, renting) and irrespective of whether the truck was sourced from one of the defendants or dealers. The court acknowledges that it is generally accepted that a cartel can have lingering effects. Questions concerning the extent of the damage caused will be determined in the quantification stage.

Possibility of a damage

The defendants had argued that due to the heterogeneity of the products, most of the agreements pertaining to list prices, and because the final rebates were negotiated between dealers and the customer, effective collusion by the truck manufacturers was impossible.

The Court rejects the argument of the defendants. Quoting extensively from CDC’s expert opinion of Profs Harrington and Schinkel, the Court elucidates that their model assumption of “fuzzy” control of the final prices by the firm

headquarters fits the facts of the case well. Profs Schinkel and Harrington demonstrate that as firms anticipate sharing future list prices with competitors, each firm sets list prices higher than they otherwise would. The normal behaviour of actors on the lower levels of the distribution chain propagates this increase. Overall an effect of the collusion on final prices is plausible.

The defendants also submitted econometric reports. However, those reports were produced on the basis of internal data of the Truck manufacturers, without sharing that data with the claimants. The Court hence finds that the results presented by the Truck manufacturers are not verifiable and must be disregarded at this stage.

Next steps

A case management hearing is scheduled in the case for 27 May 2021.

CDC is represented by Joost A. Möhlmann and Mark R. Fidder of the law firm Van Benthem & Keulen, Utrecht.

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