

Press Release

CDC achieves first key judgment in the Trucks cartel litigation in the Amsterdam District Court

Luxembourg, 17 May 2019

On 15 May 2019, the District Court of Amsterdam rendered a first important judgment in the damages action by CDC Cartel Damage Claims ('CDC') against the European Trucks cartel.

The 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 in 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.

In its judgment the Amsterdam District Court dismisses the argument of the truck manufacturers that the writs of summons of the claimants should be declared null and void for a lack of substantiation of (the grounds of) the claim. The Court confirmed that the writs of summons make sufficiently clear what the claimants claim from the truck manufacturers, why and on what legal grounds they are entitled to damages, and what the cartel members should defend themselves against. This should be clear to the defendants as well, as shown in their submissions.

The Amsterdam District Court makes clear that the basis of liability lies in the single and continuous infringement of Art. 101 TFEU and Art. 53 EEA. Regarding the merits of the claims, the Court invites the claimants to provide more specific information on the individual truck purchases, leases and/or uses, even if the final damage will be established in a damage assessment procedure. The Court understands that against the background that the trucks cartel lasted from 1997 to 2011 but was revealed by the Commission only in 2016, documentation may no longer be available in respect of all affected trucks.

The Court leaves it up to the claimants what information they deem necessary to substantiate their claims. CDC will therefore further substantiate its claim providing detailed information on each affected truck transaction in the next months.

Another important aspect of the judgment concerns the standards so called 'claims vehicles' have to fulfil. Such entities bundle damage claims by multiple cartel victims in one damage action, typically by way of an assignment of claims. The Court clarified that claims vehicles are not subject to any specific rules or a higher standard of proof, but that the same standards apply to them as to any individual claimant. The court did not rule on the validity of the assignment of claims. According to the Court, the claims vehicles must substantiate the assignments, and thus the right to claim, with (assignment) documentation. CDC already did this at the first docket date, and each time it brought newly assigned claims into the proceedings.

The court has ruled that, after the further substantiation of the claims, it will give the cartel members the opportunity to submit a statement of defence, which under Dutch law must contain all defences the defendants want to put forward in the proceedings.

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

