

First Spanish truck cartel hearing to be held on 4 December

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- Claimants criticise truck makers' delaying strategy
- Defendant denies overprice for complex distribution chain
- Lawyer rejects that independent dealers decide on prices

The first hearing in Spain on the damages claims against the European truck cartel will be held on 4 December before the Zaragoza Commercial Court n. 1, various sources have told PaRR.

In that hearing, Lacasa Abogados lawyer Pablo Solá will act for two independent drivers against Daimler and Volvo in a single suit.

The Spanish litigation against the truck makers stems from the European Commission's (EC) July 2016 settlement decision fining Volvo/Renault, Daimler, Iveco and DAF EUR 2.92bn for fixing wholesale prices of heavy and medium heavy trucks between 1997 and 2011.

Whistleblower MAN received full immunity from fines – but may still face private litigation – and non-settling firm Scania was sanctioned EUR 880m for its involvement in September 2017, in a decision not yet published.

In the lead up to the hearing, Solá's claims have overcome several defendant pleas considered to be “delaying tactics” by claimants' representatives.

According to several lawyers, one reason for the delay has been court notifications, because the truck defendants rejected citations sent to their Spanish subsidiaries and requested that only European parent companies could be summoned, which required translations.

“The official translation of the full file can make the suit economically unsustainable for the client,” according to Conchita Guelbenzu, a lawyer from Vilarrubí Abogados working on around 60 claims.

But most courts have rejected calls for the full file to be translated, citing the European Court of Justice in *Weiss und Partner*, which established that only information concerning the object and quantum of the claim requires translation, Guelbenzu said.

The Spanish courts have also largely rejected the defendants' challenges questioning the competence of Spanish courts and of the commercial courts to rule on the case, but these appeals have also delayed the proceedings, according to several lawyers.

Susana Beltrán, a lawyer from Ejaso ETL Global who is dealing with five group suits with 150 claimants and 1,700 trucks, said she

PROPRIETARY

Sector: Automotive
Topics: Cartels & Horizontal Agreements

Grade: Confirmed

Companies

AB Volvo
Scania AB
Daimler AG
Renault Trucks SASU
MAN Truck & Bus AG
Iveco Holdings Limited
DAF Trucks N.V.

Agencies

European Commission - Directorate General For Competition (EC - DG Comp)
European Commission
Spanish Commercial Courts - Juzgados De Lo Mercantil

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believed the defendants were trying to play for time.

Law offices are using a variety of methods in their expert reports to calculate the damages suffered by their clients, with quantum ranging between 13% and 30% of a truck's total purchase value plus interest.

Pablo Solá further explained that his expert report – which calculates loss of EUR 0.5m in respect of 18 trucks – is based on several European Commission (EC) studies, and concludes that the average calculation of an overprice resulting from a cartel is approximately 20%.

“It is absolutely impossible to calculate the exact overprice in this cartel,” Solá said, recognising the complexity of the product's sales and stressing that damages claims are different from other types of suits, requiring the judges to adopt a different perspective.

“Our conclusion is that there was no price increase,” a source close to the defendants told PaRR.

This source insisted that the EC decision did not confirm that the cartel had any effect, and that the distribution chain and pricing is too complex to conclude that any changes to gross list prices would have had any impact in the final truck purchases, which in many cases were sold by independent dealers.

The source went on to describe some claimants' expert reports as “poor”, displaying flawed economic analysis and “excessive simplification”, attributing a similar percentage to all vehicles when each vehicle model was characteristic with individual variations.

“We believe that exchanging factory list prices has had no effect on the sales prices of trucks negotiated between DAF's independent dealers and customers,” a spokesperson for DAF told PaRR separately in an emailed statement.

Pedro Amate of Law & Ley Consulting heard defendants' arguments during the course of preliminary hearings in late October and early November against Daimler and Iveco. The lawyer denied that independent car dealers in Spain had “any freedom” to decide on prices, because they are “totally subjugated to the manufacturers”.

Amate has submitted to the court annex documents with distribution contracts between the truck makers and independent dealers that show “a contract of adhesion”. “We believe that all the overcharge has been assumed by the driver,” Amate added.

Several law firms told PaRR that they are awaiting the outcome of these first proceedings before filing further claims. That is the case with law firm Life Abogados, which has so far lodged two of a total of 18 claims, according to lawyer Juan Sánchez Corzo.

Sánchez said that his firm is also exploring how to calculate damages incurred from extra fuel consumption arising from the cartel's agreement to delay technological innovation.

Lawyer Miguel Caamaño from CCS Abogados, who previously said that his firm intended to start filing claims in September, has told PaRR that his firm is postponing those applications until December to consider the different proceedings under way in Spain and other countries.

In the meantime, its clients' portfolio has been enlarged to 5,800 claimants owning 43,000 trucks affected and claiming a total compensation of EUR 746m including interest.

Parallel lawsuits have taken place in other European countries and some rulings have already been issued in Germany. The last hearing on this cartel in the UK was held on 22 November.

by Carmen Perales in Brussels

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