INFORMATE SOBRE EL CARTEL DE CAMIONES Y RECUPERA TU DINERO

1. ¿HAS COMPRADO UN CAMIÓN ENTRE 1997 Y 2011?

La Unión Europea ha impuesto una multa a un CARTEL DE FABRICANTES DE CAMIONES, que es la más elevada de la historia, y se ha anunciado por la Comisión Europea, la cual a través de las autoridades de competencia, resolvió mediante Decisión de 19 de julio de 2016 sobre el caso, imponiendo una multa de más de 2.900 millones de euros por realizar prácticas anticompetitivas.

La sanción impuesta ha sido el resultado de las investigaciones iniciadas por las autoridades europeas en 2011, tras detectarse acuerdos secretos entre los fabricantes DAF, DAIMLER, IVECO, MAN y VOLVO/RENAULT.

La Decisión Europea del cartel de camiones se refiere específicamente al mercado de la fabricación de camiones medianos (peso de entre 6 y 16 toneladas) y camiones pesados (peso superior a 16 toneladas).

La investigación reveló que dichos fabricantes se habían aliado en un cartel relacionado con:

- Coordinación de precios a nivel de «lista de precios brutos».
- La elección del tiempo oportuno para la introducción de las tecnologías en materia de emisiones.
- La repercusión a los clientes de los costes de las tecnologías en materia de emisiones.

La Comisión Europea ha señalado que no es aceptable que estas multinacionales del sector, que representan nueve de cada diez camiones pesados y de medio tonelaje producidos en Europa, hayan

formado parte de un cartel en lugar de haber competido unos contra otros.

En concreto, el cartel comenzó en 1997 y duró 14 años, hasta que la Unión Europea efectuó en 2011 inspecciones no anunciadas en el sector.

La investigación realizada demostró que una reunión en Bruselas fue "el punto de partida" de ese cartel duradero, entre altos ejecutivos de fabricantes de camiones, organizada en enero de 1997,y la violación de las leyes de competencia duró después más de una década, en la que se coordinaron.

Se concentraron a menudo para gestionar el mismo, que involucró a directivos de las sedes que se reunieron regularmente, normalmente en los márgenes de eventos y ferias comerciales, encuentros que se complementaron con conversaciones telefónicas y correos electrónicos.

Esta Decisión de la Comisión Europea se ha tomado mediante un Acuerdo con los fabricantes mencionados (a cambio de reducir las sanciones) y con el fabricante MAN (que ha sido eximido de sanción por denunciar el cártel), reconociendo todos ellos los hechos y su responsabilidad. De los fabricantes implicados, tan solo SCANIA tiene abierto aún el procedimiento sancionador por no haber aceptado las condiciones del mencionado Acuerdo.

Pero su responsabilidad no termina con el pago de la multa, ahora las empresas estafadoras deberán abonar a los transportistas todos los daños y perjuicios sufridos por los camiones adquiridos durante más de diez años.

2. ¿A QUÉ TIENE DERECHO EL TRANSPORTISTA?

Los damnificados por el cártel, es decir, cualquier comprador o tomador de un Leasing que hubiera adquirido un camión medio o pesado entre 1997 y 2011 a los miembros del cartel, tienen derecho a reclamarles los daños y perjuicios que les ha ocasionado esta conducta ilícita e inmoral.

Los daños ocasionados por el cártel de los camiones a sus clientes consisten en la diferencia existente entre el precio de compra pagado

y el precio de compra que se hubiera pagado de no haber habido pacto de precios. Lo mismo resulta aplicable a las cuotas de leasing o renting excesivas, como consecuencia del pacto de precios.

En relación a los vehículos objeto de reclamación, no es necesario que sigan siendo de titularidad del reclamante, es decir, que dichos vehículos pueden haber sido dados de baja o transferidos a un tercero, etc. Lo único necesario es que hubiera sido adquirido en su día por el reclamante, sea cual sea la situación actual del camión.

Una vez se publique oficialmente la Decisión de la Comisión Europea, los transportistas podrán demandar a cualquiera de los fabricantes sancionados, ya que la responsabilidad de los miembros del cartel es solidaria. No obstante, conviene demandar al fabricante al que se le han comprado los vehículos.

3. ¿QUÉ DOCUMENTACIÓN ES NECESARIA PARA PODER PRESENTAR LA RECLAMACIÓN?

El reclamante deberá recopilar la siguiente documentación en fotocopia:

- Factura de adquisición en caso de compra o póliza con la entidad financiera en caso de arrendamiento financiero (leasing), de cada vehículo objeto de reclamación.
- Permiso de circulación de cada vehículo objeto de reclamación.
- Autorización de transporte de empresa del reclamante (MDLE si es ligero, MDPE si es pesado o MPC si es privado complementario).

4. DIRECTIVA DE DAÑOS 2014/104/UE

En noviembre de 2014, la Unión Europea promulgó la llamada Directiva de daños (Directiva 2014/104/UE) con el objetivo de

favorecer la presentación de reclamaciones económicas de resarcimiento por parte de los perjudicados por las infracciones del Derecho de la competencia.

Mediante esta Directiva, la Unión Europea pretende garantizar que cualquier persona que haya sufrido un perjuicio ocasionado por una infracción contra las normas de defensa de la competencia, pueda reclamar eficazmente el pleno resarcimiento de dicho perjuicio a la empresa o empresas responsables de la infracción.

Esta Directiva introduce algunas novedades muy importantes al respecto, así podemos señalar entre otras las siguientes:

- La Directiva aclara que las víctimas tienen derecho a una indemnización total e íntegra por el daño sufrido, ya sea mediante una acción individual o colectiva. Únicamente se requiere que el reclamante sea perjudicado por esa infracción.

- La Directiva establece la responsabilidad conjunta y solidaria de las empresas infractoras respecto de los daños ocasionados.

- Las partes tendrán un acceso más fácil a las pruebas que necesiten en acciones por daños y perjuicios en el campo antimonopolio. En particular, si una parte necesita documentos que están en manos de otras partes o de terceros para probar una reclamación o una defensa, puede obtener una orden judicial para la divulgación de dichos documentos. Si bien el acceso a la prueba no es absoluto, ya que se establecen distintas salvaguardas sobre derechos de terceros y confidencialidad de datos que deberán ser ponderados adecuadamente por los órganos jurisdiccionales.

- Cuantificación del perjuicio. Al no existir normas de la Unión sobre la cuantificación del perjuicio ocasionado por una infracción del Derecho de la competencia, corresponde al ordenamiento jurídico nacional de cada Estado miembro determinar sus propias normas de cuantificación.

- La Directiva confiere fuerza vinculante de las resoluciones firmes dictadas por autoridades nacionales de competencia.

- El plazo de prescripción que determina la Directiva para interponer una demanda por daños y perjuicios ha de ser en cada Estado miembro, de al menos, cinco años.

- En el caso de los daños derivados por cartel, se contempla la presunción iuris tantum de existencia de perjuicio, recayendo del lado de la infractora, en su caso, demostrar lo contrario.

- La Directiva contempla la defensa del "passing-on". La defensa del passing-on es la utilizada por el miembro de un cártel ante empresas afectadas, cuando alega que éstas ya trasladaron el sobreprecio a sus clientes, por lo que no sufrieron perjuicio. El passing-on es una cuestión controvertida en muchas de las acciones de daños por infracciones del derecho de la competencia, bien como defensa de los infractores, bien como base para establecer la legitimación activa de los reclamantes.

  En los casos del cartel de azúcar en España, el Supremo rechazó las alegaciones de los productores de azúcar de que los reclamantes habían repercutido el sobreprecio del azúcar a los consumidores finales. En España, por tanto, ya existe una jurisprudencia sentada por el Tribunal Supremo por el asunto del cartel del azúcar (STS de 7 de Noviembre de 2013) en cuyo caso, se estimaron estas acciones directas de daños y perjuicios sin que estuviera aprobada ni estuviera traspuesta la Directiva ahora publicada.

5. TRASPOSICIÓN AL ORDENAMIENTO JURÍDICO ESPAÑOL

Como toda Directiva europea, "la Directiva de daños" otorgaba un plazo de transposición (en este caso de dos años, hasta el 27 de diciembre de 2016) para que los Estados miembros incluyeran en sus ordenamientos legales las medidas previstas. A estos efectos, el Ministerio de Justicia creó en febrero de 2015 una Sección Especial en la Comisión General de Codificación con el mandato de preparar una propuesta que incluyera las reformas legales necesarias para integrar en el Derecho español las propuestas de la Directiva.

Esta Sección Especial, en la que colaboraron el Ministerio de Economía y la CNMC, presentó su propuesta de reforma a finales de 2015. Para ejecutar la trasposición de la Directiva, la propuesta preparada por la citada Sección contemplaba tanto la reforma de la Ley de Defensa de la Competencia de 2007 como de la Ley de Enjuiciamiento Civil de 2000, incorporando a estos textos legales, respectivamente, las normas sustantivas y procesales contenidas en la Directiva.

Sin embargo la imposibilidad de que un Gobierno en funciones presentara proyectos de ley al Parlamento ha impedido que la trasposición de la Directiva pudiera avanzar en su tramitación durante este año. La reciente formación de nuevo Gobierno permitirá sin duda retomar este procedimiento legislativo con objeto de que la trasposición prevista no sufra mayores retrasos.

6. ¿CUÁNTO VA A COSTAR LA RECLAMACIÓN?

No va a tener que pagar nada, ya que la reclamación y otros gastos relacionados serán a cargo de LAW&LEYCONSUNLTING siguiendo el concepto «Si no ganamos, no cobramos».

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692 030 911 - 900 69 65 67

VALORACIÓN JURÍDICA CARTEL DE CAMIONES

CONCRECIÓN DEL DAÑO Y SU CAUSA

Actuándose en el presente caso la acción, como se pretende, por responsabilidad extracontractual que regula el art. 1902 del Código Civil , constituyen presupuestos de concurrencia indispensable para la exigencia de la misma: primero, la existencia de una acción u omisión ilícita; segundo, la realidad y constatación de un daño causado; tercero, la culpabilidad y cuarto, el nexo causal entre la acción u omisión ilícita y el daño. **De suerte que, de no concurrir el vínculo causal, se hace innecesario examinar la concurrencia de los demás presupuestos**. Y, como se ha recogido en resoluciones anteriores la doctrina jurisprudencial acoge el principio de la causación adecuada, que parte de la necesidad de que los resultados dañosos puedan imputarse causalmente al agente, siendo consecuencia natural, adecuada y suficiente de la determinación de la voluntad; debiendo entenderse por consecuencia natural aquella propicia entre el acto inicial y el resultado dañoso, una relación de necesidad conforme a los conocimientos normalmente aceptados y debiendo valorarse en cada caso concreto si el acto antecedente, que se presenta como causa, tiene virtualidad suficiente para que del mismo se derive como consecuencia necesaria, el efecto lesivo producido, no siendo suficientes las simples conjeturas o la existencia de datos fácticos que, por mera coincidencia, induzcan a pensar en una posible interrelación de estos acontecimientos, sino **que es precisa la existencia de una prueba determinante relativa al nexo entre la conducta del agente y la producción del daño**, de tal forma que haga patente la culpabilidad que obliga a repararlo (sentencias del Tribunal Supremo de 11 de marzo y 17 de noviembre de 1988 , 27 de octubre de 1990 y 25 de febrero de 1992).

Recuerda la sentencia del Tribunal Supremo de 30 junio 2000 que: "Constituye doctrina de esta Sala que para la imputación de la responsabilidad, cualquiera que sea el criterio que se utilice (subjetivo u objetivo), **es requisito indispensable la determinación del nexo causal entre la conducta del agente y la producción del daño** (sentencia de 11 febrero 1998), **el cual ha de basarse en una certeza probatoria que no puede quedar desvirtuada por una posible aplicación de la teoría del riesgo, la objetivación de la responsabilidad o la inversión de la carga de la prueba (sentencias 17 diciembre 1988 y 2 abril 1998). Es precisa la existencia de una prueba terminante (sentencias de 3 noviembre 1993 y 31 julio 1999), sin que sean suficientes meras conjeturas, deducciones o probabilidades (sentencias de 4 julio 1998 , 6 febrero y 31 julio 1999).**

Y, confirmando tal criterio la sentencia de 24 enero 2007 , expone: "Debe señalarse que, sobre la relación de causalidad y su prueba, tiene declarado esta Sala, como se recoge en la sentencia de 25 de septiembre de 2003 , citada en la reciente sentencia de 11 de julio de 2006 , que «corresponde la carga de la base fáctica (del nexo causal) y por ende las consecuencias desfavorables de su falta al demandante» y «en todo caso es preciso que se pruebe la existencia de nexo causal, correspondiendo la prueba al perjudicado que ejercita la acción» (sentencia de 6 de noviembre de 2001 , citada en la de 23 de diciembre de 2002 **); «siempre será requisito ineludible la exigencia de una relación de causalidad entre la conducta (negligente) activa o pasiva del demandado y el resultado dañoso producido, de tal modo que la responsabilidad se desvanece si el expresado nexo causal no ha podido concretarse»** (sentencia de 3 de mayo de 1995 , citada en la de 30 de octubre de 2002) y que, «como ya ha declarado con anterioridad esta Sala, la necesidad de la cumplida demostración del nexo referido, que haga patente la culpabilidad del agente en la producción del daño - que es lo que determina su obligación de repararlo - no puede quedar desvirtuada por una posible aplicación de la teoría del riesgo o de la inversión de la carga de la prueba, soluciones que responden a la interpretación actual de los arts.

1.902 y 1.903 del Código Civil en determinados supuestos...» (sentencia de 27 de diciembre de 2002)".

Por tanto, en aplicación del art. 217. 2 de la Ley de Enjuiciamiento Civil (corresponde al actor la carga de probar la certeza de los hechos de los que ordinariamente se desprenda, según las normas jurídicas a ellos aplicables, el efecto jurídico correspondiente a las pretensiones de la demanda**) es la parte actora la que ha de acreditar la relación de causalidad entre los daños materiales reclamados y el CARTEL.**

En este contexto, el del CARTEL, existe un reconocimiento previo del agente del daño de una conducta contraria a la normativa europea de la defensa de la competencia, contando, en consecuencia, con una asunción inicial por parte de los fabricantes de camiones afectados de una autoría contraria a norma imperativa, y una asunción de responsabilidad administrativa frente al Órgano sancionador de la Comisión Europea. Éste Órgano describirá la conducta inicial generadora del daño ulterior padecido a los transportistas o posibles lesionados por la misma.

CARACTERÍSTICAS JURÍDICAS DEL DAÑO RECLAMABALE.-

El daño extracontractual que se reclama en la jurisdicción civil debe reunir los requisitos propios del mismo: **EXISTIR, SER CIERTO, DETERMINADO O DETERMINABLE**. **EL DAÑO PARA SER INDEMNIZADO DEBE REUNIR ESTOS REQUISITOS SIN QUE BASTE SU ALEGACIÓN, SINO QUE VIENE NECESITADO DE PRUEBA.**

El daño se concreta en sus dos vertientes, en el daño emergente, y en el lucro cesante, siendo el primero de fácil constatación con un estudio pormenorizado de la variación de precios padecida en cada caso para la adquisición de los vehículos, -antes, durante y después del CARTEL-, y, padeciendo el segundo una mayor complejidad probatoria, al tener que acreditar, sin divagaciones, la ganancia no obtenida por el pacto de precios repercutido, individualizando éste de otros aspectos que intervienen en un negocio de transportes de mercancías por carretera, como son, entre otros, la mano de obra, reparaciones, combustible, etcétera, así como el resto de elementos que integran una estructura empresarial de este tipo.

A diferencia del daño emergente, daño real y efectivo, el lucro cesante se agrupa en la presunción de cómo habrían sucedido los acontecimientos en el caso de no haber tenido lugar el suceso dañoso; y el fundamento de la indemnización del lucro cesante ha de verse en la necesidad de reponer al perjudicado en la situación en que se hallaría si el suceso dañoso no se hubiera producido, lo que exige, como dice el artículo 1106 del Código Civil, que se le indemnice también la ganancia dejada de percibir.

Las ganancias que pueden reclamarse son aquéllas en que concurre similitud suficiente para ser reputadas como muy probables, en la mayor aproximación o su certeza efectiva, siempre que se acredite la relación de causalidad entre el evento y las consecuencias negativas derivadas del mismo, con relación a la pérdida del provecho económico. El lucro cesante, como el daño emergente, debe ser probado; la dificultad que presenta el primero es que solo cabe incluir en este concepto los beneficios ciertos, concretos y acreditados que el perjudicado debía haber percibido y no lo ha hecho; no incluye los hipotéticos beneficios imaginarios. Si bien el Tribunal Supremo ha destacado la prudencia rigorista e incluso el criterio restrictivo para apreciar el lucro cesante, lo verdaderamente cierto es que se ha de debe probarse el hecho con cuya base se reclama una indemnización: se ha de probar el nexo causal entre el acto ilícito y el beneficio dejado de percibir, lucro cesante, y la realidad de éste, no con mayor rigor o criterio restrictivo que cualquier hecho que constituye la base de una pretensión.

En nuestra humilde opinión, y sin perjuicio de mejor criterio, la determinación del lucro cesante se presta a interpretaciones por la confluencia de múltiples variables, que pueden perjudicar el éxito de las reclamaciones que inicialmente puedan plantearse.

LA EXISTENCIA DEL DAÑO.-

En ambos casos, tanto en el daño emergente, como en el lucro cesante debe concurrir la prueba de su EXISTENCIA, esto es, que NO HAYA REPERCUSIÓN A TERCEROS DEL DAÑO PADECIDO, EN ESTE CASO, DEL PACTO DE PRECIOS PADECIDO, pues para el caso de existir repercusión, la reclamación judicial fracasaría y se desvanecería por falta de legitimación activa en el actor. Esto es, los transportistas no deben haber repercutido en el período del CARTEL el aumento del precio de la adquisición del vehículo en sus clientes. Esto se acredita por varias vías, bien por un estudio pormenorizado de ventas por volumen en precios, o por un estudio pormenorizado de ventas por clientes.

En este segundo estudio habría que acreditar que en el mercado del transporte, éste no es libre en la fijación de precios al ser el cliente del transportista por carretera el que los impone, piénsese que hoy día el transporte y los precios de las mercancías tanto terrestres, aéreas y navales están en manos de las operadoras del transporte en sus diversas formas (plataformas de transportes, empresas de logística, etc), y no de sus porteadores. Recientemente, y con motivo de la reordenación del transporte existente en España, deben existir estudios publicados que avalen esta opinión.

En cualquier caso, **la ausencia de libertad en la fijación de los precios por parte del transportista debe quedar acreditada.**

PLAZOS DE PRESCRIPCIÓN Y CONOCIMIENTO DEL DAÑO.-

Finalmente consideramos, que al tratarse de daño derivado de relación extracontractual, la reclamación del mismo padecería los plazos prescriptivos propios de este tipo de acciones que vienen computados desde el momento de su conocimiento por lesionado. Es más que interesante o conveniente que no se haga reflejar conocimiento previo por el transportista del daño padecido, a fin de evitar cómputos procesales contrarios en el ejercicio de la acción judicial. En este sentido, con carácter general, el artículo 1968 de dicho texto legal dispone que los plazos de prescripción de las acciones comienzan a contarse "desde el día en que éstas pudieron ejercitarse"; y el artículo 1968.2, como disposición particular concreta el comienzo del cómputo ("dies a quo") para el ejercicio de las acciones de responsabilidad civil o extracontractual "desde que lo supo el agraviado". **Nuestro Código Civil optó claramente en relación al momento de iniciación del plazo de prescripción en estas acciones por el momento del conocimiento que del daño tenga el perjudicado, y no por la mera producción o acontecimiento del mismo.** A estos efectos tiene relevancia determinar si nos encontramos ante un supuesto de los denominados daños duraderos o permanentes, o ante un supuesto de los llamados daños continuados, pues de ello dependerá la fijación del día inicial del cómputo del plazo de prescripción.

Los daños permanentes o duraderos son aquellos que, produciéndose en un momento inicial determinado, persisten a lo largo del tiempo con posibilidad incluso de agravarse por factores ya ajenos a la acción causante inicial. Se trata así de unos daños que se producen en un momento determinado por la conducta (acción u omisión) de un agente, agotándose en ese momento la causa del daño, pero cuyos efectos persisten a lo largo del tiempo, existiendo incluso la posibilidad de que con posterioridad se hagan más graves para la víctima, pero por causas ya no imputables a la conducta del agente causante; es decir, se califican como tales aquellos supuestos en que continúa el daño, pero no la causa. Y los daños continuados son aquéllos que tienen como origen la prosecución continuada de hechos en relación de concausa que han dado lugar al

resultado dañoso, esto es, la idea de los daños continuados es que son unos perjuicios producidos como consecuencia de una causa que se mantiene ininterrumpidamente en el tiempo; es decir, son aquéllos en los que la causa que origina el daño se mantiene ininterrumpidamente y, por tanto, sigue generando daños (STS de 20 de noviembre 2007).

Si el cómputo del plazo de prescripción, en el caso de los daños permanentes o duraderos se ha de iniciar en el momento en que se produjo la causa que los originó, en el caso de los daños continuados o de producción sucesiva e ininterrumpida, el cómputo del plazo de prescripción no se inicia hasta la producción del definitivo resultado, cuando no es posible fraccionar en etapas diferentes o hechos diferenciados su evolución, no resultando siempre fácil de determinar en la práctica cuando se produce o ha producido ese "definitivo resultado", que, en relación con el concepto de daños continuados, se ofrece como algo vivo, latente y conectado precisamente a la causa originadora y determinante de los mismos, que subsiste y se mantiene hasta su adecuada corrección (SSTS de 15 de marzo y 24 de mayo de 1993, 4 de julio de 1998, entre otras muchas). De tal doctrina se sigue que en el supuesto de los denominados daños continuados no puede considerarse producido el resultado definitivo a efectos del inicio del cómputo del plazo de prescripción en tanto subsista la misma causa productora de los referidos daños, aún cuando éstos puedan manifestarse, no de manera permanente, sino incluso en forma intermitente. En suma, en el caso de los daños continuados que se producen de manera ininterrumpida en el tiempo y obedecen a una misma causa, el plazo de prescripción no comienza a correr sino desde que se alcanza el conocimiento de modo cierto de los quebrantos definitivamente ocasionados, no iniciándose tampoco mientras se sigan produciendo los daños; al no desaparecer la causa que los origina.

La sentencia del Tribunal Supremo de 14 de diciembre de 2015, resume la doctrina jurisprudencial sobre la cuestión diciendo: "Esta razón acerca del conocimiento y alcance del daño producido está en la base de la doctrina jurisprudencial de esta Sala que tradicionalmente ha diferenciado, a estos efectos, entre los daños denominados permanentes y los daños continuados. En este sentido, entre otros extremos, la STS de 20 de octubre de 2015, declara: "[...] 5.- El día inicial para el ejercicio de la acción es aquel en que puede ejercitarse, según el principio actio nondum nata non praescribitur [la acción que todavía no ha nacido no puede prescribir] (SSTS de 27 de febrero de

2004 ; 24 de mayo de 2010 ; 12 de diciembre 2011). Este principio exige, para que la prescripción comience a correr en su contra, que la parte que propone el ejercicio de la acción disponga de los elementos fácticos y jurídicos idóneos para fundar una situación de aptitud plena para litigar.

Aunque la jurisprudencia retrasa el comienzo del plazo de prescripción en supuestos de daños continuados o de producción sucesiva e ininterrumpida hasta la producción del definitivo resultado, también matiza que esto es así cuando no es posible fraccionar en etapas diferentes o hechos diferenciados la serie proseguida (STS 14 de junio 2011).

El daño permanente es aquel que se produce en un momento determinado por la conducta del demandado, pero persiste a lo largo del tiempo con la posibilidad, incluso, de agravarse por factores ya del todo ajenos a la acción u omisión del demandado. En este caso de daño duradero o permanente, el plazo de prescripción comenzará a correr "desde que lo supo el agraviado", como dispone el art. 1968. 2° CC , es decir desde que tuvo cabal conocimiento del mismo y pudo medir su trascendencia mediante un pronóstico razonable, porque de otro modo se daría la hipótesis de absoluta imprescriptibilidad de la acción hasta la muerte del perjudicado, en el caso de daños personales, o la total pérdida de la cosa, en caso de daños materiales, vulnerándose así la seguridad jurídica garantizada por el artículo 9.3 de la Constitución y fundamento, a su vez, de la prescripción (SSTS 28 de octubre 2009 ; 14 de junio 2001).

La clave está en la determinación del momento en que el perjudicado tenga conocimiento cabal de la existencia del daño y de sus consecuencias, reales o potenciales; esto es, el momento temporal concreto en que los actores conocieron los elementos fácticos y jurídicos precisos para ejercitar sus acción, en el que por tanto pudieron evaluar de forma estable y precisa las consecuencias del daño.

EUROPEAN COMMISSION
DG Competition

CASE AT.39824 - Trucks

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003 and Commission Regulation (EC) 773/2004

Article 7 Regulation (EC) 1/2003

Date: 19/07/2016

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EUROPEAN
COMMISSION

Brussels, 19.7.2016
C(2016) 4673 final

COMMISSION DECISION

of 19.7.2016

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (the Treaty) and Article 53 of the EEA Agreement

(AT.39824 - Trucks)

(Only the English text is authentic)

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relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (the Treaty) and Article 53 of the EEA Agreement

(AT.39824 - Trucks)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union[1],

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[2], and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission decision of 20 November 2014 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty[3],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case[4],

Whereas:

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1 OJ, C 115, 9/5/2008, p.47.

2 OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

3 OJ L 123, 27.4.2004, p. 18.

4 Final report of the Hearing Officer of 18 July 2016.

1. INTRODUCTION

(1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ("TFEU") and Article 53 of the Agreement on the European Economic Area ("EEA Agreement").

(2) The infringement consisted of collusive arrangements on pricing and gross price increases in the EEA for medium and heavy trucks; and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards. The infringement covered the entire EEA and lasted from 17 January 1997 until 18 January 2011.

(3) The facts as outlined in this Decision have been accepted by MAN, Daimler, Iveco, Volvo and DAF (the "Addressees") in the settlement procedure.

(4) On 20 November 2014, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of this decision and a number of entities of an additional undertaking. This undertaking did not submit a request to settle the proceedings pursuant to Article 10a(2) of Regulation (EC) No 773/2004. As at the date of this Decision, the administrative proceedings under Article 7 of Regulation (EC) No 1/2003 against this undertaking are pending. For the avoidance of doubt, this Decision does not make any findings concerning this undertaking with respect to an infringement of EU competition law.

1. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

1.1. The product

(5) The products concerned by the infringement are trucks weighing between 6 and 16 tonnes ("medium trucks") and trucks weighing more than 16 tonnes ("heavy trucks") both as rigid trucks as well as tractor trucks (hereinafter, medium and heavy trucks are referred to collectively as "Trucks").[5] The case does not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services sold by the addressees of this Decision.

1.2. The Addressees

(6) The undertakings, comprising the legal entities listed in sections 2.2.1 to 2.2.5, (together referred to as the "Addressees") took part in the infringement.[6]

1.2.1. MAN

(7) MAN (MAN SE and its subsidiaries together are referred to as "MAN") manufactures and distributes trucks, buses, diesel engines, turbo machinery as well as special gear. In addition MAN provides financial services relating to the distribution of its products.

(8) The legal entities of MAN that are liable for the infringement are:

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[5] Excluding trucks for military use.

[6] "Headquarters" or "Headquarter-Level" in the following refers to MAN Truck & Bus AG, Daimler AG, Iveco S.p.A., Volvo Lastvagnar AB, Renault Trucks SAS and DAF Trucks N.V. together. "German-Level" or "German Subsidiaries" in the following refers to MAN Truck & Bus Deutschland GmbH, Daimler AG, Iveco Magirus AG, Volvo Group Trucks Central Europe GmbH, Renault Trucks Deutschland GmbH and DAF Trucks Deutschland GmbH.

– MAN SE with its registered office in Munich, Germany;

– MAN Truck & Bus AG (hereinafter referred to as "MAN HQ") with its registered office in Munich, Germany;

– MAN Truck & Bus Deutschland GmbH (hereinafter referred to as "MAN DE") with its registered office in Munich, Germany.

(9) MAN's total worldwide turnover in 2015 was EUR 13,702 million.

1.2.2. Daimler

(10) Daimler develops, produces and sells passenger cars and buses as well as medium and heavy trucks. In addition, Daimler provides financial services.

(11) The legal entity of Daimler that is liable for the infringement is Daimler AG (hereinafter referred to as "Daimler") with its registered office in Stuttgart, Germany.

(12) Daimler's worldwide consolidated turnover in 2015 was EUR 149,467 million.

1.2.3. Iveco

(13) Iveco (CNH Industrial and Fiat Chrysler Automobiles N.V. and their subsidiaries active in the production, financing and sale of Iveco trucks together are referred to as "Iveco") is active in the production and sale of light commercial vehicles, medium and heavy trucks as well as commuter buses and touring coaches, as well as special vehicles for fire-fighting applications, civil defence and peace keeping missions.

(14) The legal entities of Iveco that are liable for the infringement are:

– CNH Industrial N.V. with its corporate seat and registered office in Amsterdam, the Netherlands and the effective place of management in London, UK;

– Fiat Chrysler Automobiles N.V. with its corporate seat and registered office in Amsterdam, the Netherlands and the effective place of management in London, UK;

– Iveco S.p.A. (hereinafter referred to as "Iveco HQ") with its registered office in Turin, Italy;

– Iveco Magirus AG (hereinafter referred to as "Iveco DE") with its registered office in Ulm, Germany.

(15) CNH Industrial N.V.'s worldwide consolidated turnover in 2015 was EUR 23,775 million.

(16) Fiat Chrysler Automobiles N.V.'s worldwide consolidated turnover in 2015 was EUR 110,595 million.

1.2.4. Volvo/Renault

(17) Volvo/Renault (Aktiebolaget Volvo (publ), referred to as "AB Volvo", and its subsidiaries together are referred to as "Volvo" or "Volvo/Renault") is the parent company of Volvo Lastvagnar AB (hereinafter referred to as "Volvo HQ") and Renault Trucks SAS (hereinafter referred to as "Renault HQ", Renault Trucks SAS and its subsidiaries together are referred to as "Renault").

(18) AB Volvo and its subsidiaries are active in the production and sale of trucks, buses, construction equipment, drive systems for marine and industrial applications. In addition, AB Volvo also provides financial services.

(19) The legal entities of Volvo/Renault that are liable for the infringement are:

– AB Volvo (publ), with its registered office in Gothenburg, Sweden;

– Volvo Lastvagnar AB with its registered office in Gothenburg, Sweden;

– Renault Truck SAS with its registered office in Saint-Priest, France;

– Volvo Group Trucks Central Europe GmbH (hereinafter referred to as "Volvo DE") with its registered office in Ismaning, Germany. Renault Trucks Deutschland GmbH (hereinafter referred to as "Renault DE"). With effect as of 23 October 2014, Renault DE was merged into Volvo DE. The activities carried out by Renault before 23 October 2014 have been taken over and are now carried out by Volvo DE. The merged entity continues under the name Volvo Group Trucks Central Europe GmbH ("Volvo DE").

(20) Volvo/Renault's worldwide consolidated turnover in 2015 was EUR 33,411 million.

1.2.5. DAF

(21) DAF (PACCAR Inc. and its European subsidiaries active in the production, sale and financing of trucks together are referred to as "DAF") produces light, medium and heavy trucks under the DAF brand.

(22) The legal entities of DAF that are liable for the infringement are:

– PACCAR Inc. (hereinafter referred to as "PACCAR") with its registered office in Bellevue/Seattle, Washington, U.S.;

– DAF Trucks N.V. (hereinafter referred to as "DAF HQ") with its registered office in Eindhoven, the Netherlands;

– DAF Trucks Deutschland GmbH (hereinafter referred to as "DAF DE") with its registered office in Frechen, Germany.

(23) DAF's worldwide consolidated turnover in 2015 was EUR 17,228 million.

1.3. Description of the trucks market

1.3.1. Market Shares

(24) In 2010 (i.e., towards the end of the infringement period), the aggregated market share in the European Economic Area (EEA) of the Addressees for medium and heavy trucks was approximately [*provisionally redacted*]%.

1.3.2. Structure of the sales force

(25) All of the Addressees have national marketing subsidiaries in key market countries that usually import the trucks. All of the Addressees sell their products through distributors and their respective networks of authorised dealers or, in certain particular cases/regions, directly to key customers[7]. Some of the distributors and dealers are owned by the truck manufacturers as part of their sales organisation, others are independent[8].

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7 Some of the truck producers sold only to a limited extent their products directly to key customers.

8 E.g.: DAF distributes its medium and heavy duty trucks through a network of independent dealers. […]

1.3.3. Characteristics of the trucks market

(26) The demand for trucks is highly cyclical. While passenger cars are acquired by both private and commercial customers, trucks are acquired solely by commercial customers. Since trucks are durable goods for professional use, customers often postpone the investment in fleet renewal in times of economic crises, and compensate for this when their businesses thrive. Trucks are not commodity products but are specified according to individual customer requirements and are inherently complex. All of the Addressees offer a range of trucks and hundreds of different options and variants. Furthermore, perceived reliability, technical performance, fuel consumption, maintenance costs, and branding play an important role in customers' purchasing decisions. Other important aspects are a widespread network of service stations, after sales costs, operating costs, etc.[9]

1.3.4. Price setting mechanisms and gross price lists

(27) The pricing mechanism in the truck sector follows generally the same steps for all of the Addressees. Like in many other industries, pricing starts generally from an initial gross list price set by the Headquarters. Then transfer prices are set for the import of trucks into different markets via wholly owned or independent distributor companies. Furthermore there are prices to be paid by dealers operating in national markets and the final net customer prices. These final net customer prices are negotiated by the dealers or by the manufacturers where they sell directly to dealers or to fleet customers. The final net customer prices will reflect substantial rebates on the initial gross list price. Not all steps are always followed, as manufacturers also sell directly to dealers or to fleet customers.

(28) With regard to the initial gross price lists of new trucks, all of the Addressees except Iveco applied a gross price list with harmonised gross list prices across the EEA[10]. Renault introduced EEA price lists in 2000 but its implementation took some time, Volvo had an EEA price list since January 2002; DAF since September 2002; MAN since 2004; and Daimler since 2006. These initial EEA gross price lists were decided by the Headquarters. The EEA price lists contained the prices of all medium and heavy truck models as well as all factory-fitted options that the respective manufacturer offered.[11]

1.3.5. Transparency on the trucks market

(29) The truck sector is characterised by a high degree of transparency. The Addressees had access to competitively relevant data such as truck registrations through public registries. Furthermore, truck producers and their distributor companies had regular exchanges within various industry associations. Within some of these associations, data on order intake and delivery periods or stock levels was exchanged. In addition, the Addressees had access, to varying degrees, to further data through customers spontaneously presenting competitors' offers in order to negotiate prices[12] and via mystery shopping.[13]

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13 Mystery shopping is a tool used to gather specific information about products and services. The mystery consumer's specific identity and purpose is generally not known by the establishment being evaluated.

(30) As a result, one of the remaining uncertainties for the Addressees on the trucks market was the future market behaviour of competing truck producers and in particular their respective intentions with regard to changes to their gross prices and gross price lists.

2. PROCEDURE

2.1. The Commission's investigation

(31) On 20 September 2010 MAN SE and all of the subsidiaries directly or indirectly controlled by it applied for immunity from fines in accordance with point 14 of the Commission's 2006 Notice on Immunity from fines and reduction of fines in cartel cases (hereafter "the Leniency Notice") and in the alternative, for a reduction of fines in accordance with point 27 of the Leniency Notice in relation with an alleged cartel in the truck industry. The application for immunity was followed by subsequent submissions. On 17 December 2010 the Commission granted conditional immunity from fines to MAN.

(32) Between 18 and 21 January 2011, the Commission carried out inspections at, amongst others, the premises of the Addressees.

(33) On 28 January 2011 AB Volvo (publ), including all its direct and indirect subsidiaries, applied for immunity from fines in accordance with point 14 of the Leniency Notice and in the alternative, for a reduction of fines in accordance with point 27 of the Leniency Notice. The application was followed by subsequent submissions.

(34) On 10 February 2011, at 10.00 am, Daimler AG, including all its direct and indirect subsidiaries, applied for immunity from fines in accordance with point 14 of the Leniency Notice and in the alternative, for a reduction of fines in accordance with point 27 of the Leniency Notice. The application was followed by subsequent submissions.

(35) On 10 February 2011, at 22.22 pm, Iveco S.p.A. and Fiat S.p.A[14] including all their direct and indirect subsidiaries submitted a common application for immunity from fines in accordance with point 14 of the Leniency Notice and in the alternative, for a reduction of fines in accordance with point 27 of the Leniency Notice. The application was followed by subsequent submissions.

(36) In the course of the investigation[15], the Commission has sent several requests for information under Article 18 of Regulation (EC) No 1/2003 as well as under Point 12 of the Leniency Notice to, amongst others, the Addressees.

(37) On 20 November 2014, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against DAF Trucks N.V., DAF Trucks Deutschland GmbH, PACCAR Inc., Daimler AG, Iveco S.p.A., Iveco Magirus AG,

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[14] In 2011, Fiat S.p.A. was demerged into two separate legal entities, which, after subsequent mergers, continued as CNH Industrial N.V. and Fiat Chrysler Automobiles NV.

[15] The Office of Fair Trade (OFT) opened an investigation into the UK trucks market. The investigation, which concerned the same undertakings as the Commission's investigation, was conducted under the Competition Act 1998 as well as under the Enterprise Act 2002. On 21 December 2011 the OFT closed the criminal investigation under the Enterprise Act 2002. On 15 June 2012 the OFT issued a public statement announcing the closure of its investigation under the Competition Act 1998.

CNH Industrial N.V., Fiat Chrysler Automobiles N.V., MAN SE, MAN Truck & Bus AG, MAN Truck & Bus Deutschland GmbH, AB Volvo (publ), Volvo Lastvagnar AB, Volvo Group Trucks Central Europe GmbH, Renault Trucks SAS, , and adopted a Statement of Objections, which it notified to these entities.[16]

(38) As provided for in point 29 of the Leniency Notice, by letter of 20 November 2014, the Commission informed Volvo/Renault, Daimler and Iveco of its preliminary intention to apply a reduction of a fine within a specified band, as provided for in point 26 of the Leniency Notice.

(39) Subsequent to the adoption and notification of the Statement of Objections of 20 November 2014, the Addressees had access to the complete file of the Commission.

(40) In […] all of the Addressees approached the Commission informally and asked to continue the case under the settlement procedure. The Commission subsequently decided to launch settlement proceedings for this case after each of the Addressees had confirmed its willingness to engage in settlement discussions.

(41) Settlement meetings between each Addressee and the Commission took place between […] and […]. During those meetings, each Addressee expressed its views on the objections raised by the Commission against them. The Addressees' comments were carefully considered by the Commission and, where appropriate, taken into account. The Commission also provided the Addressees with an estimation of the range of fines likely to be imposed by the Commission and informed them that in a Post-Statement of Objections settlement procedure, following receipt by the Commission of the settlement submissions, no additional Statement of Objections would be adopted.

(42) At the end of the settlement discussions, the Addressees considered that there was a sufficient common understanding as regards the potential objections and the estimation of the range of likely fines to continue the settlement process.

(43) Between […] and […], MAN, DAF, Daimler, Volvo/Renault and Iveco (i.e. the Addressees) submitted to the Commission their formal requests to settle pursuant to Article 10a (2) of Regulation (EC) No 773/2004 (the "settlement submissions"). The settlement submission of each Addressee contained:

– an acknowledgement in clear and unequivocal terms of the Addressee's liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including its role and the duration of its participation in the infringement in accordance with the results of the settlement discussions;

– an indication of the maximum amount of the fine the Addressee expected to be imposed by the Commission and which it would accept in the framework of a settlement procedure;

– the Addressee's confirmation that it has been sufficiently informed of the objections the Commission raised against it and that it has been given sufficient opportunity to make its views known to the Commission;

[16] As set out at recital (4) above, the Commission also opened proceedings against a number of entities of an additional undertaking on 20 November 2014.

– the Addressee's confirmation that is has been provided by the Commission with all the information necessary for allowing it to make an informed decision on whether or not to settle;

– the Addressee's confirmation that it did not request to be heard again in an oral hearing before the Commission adopts the final settlement decision;

– the Addressee's agreement to receive the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(44) Each of the Addressees made the above-mentioned submission conditional upon the imposition of a fine by the Commission which will not exceed the amount as specified in its settlement submission.

2.2. The main evidence relied on

(45) The principal documentary evidence relied upon consists of the documents submitted by MAN (the immunity applicant), Volvo/Renault (leniency applicant), Daimler (leniency applicant) and Iveco (leniency applicant), corporate statements made by these Addressees, documents copied by the Commission during the course of above mentioned inspections, and replies to the Commission's requests for information.

3. DESCRIPTION OF THE CONDUCT

3.1. Further transparency between the Addressees

(46) All of the Addressees exchanged gross price lists and information on gross prices, and most of them (see (48)) engaged in exchanging computer-based truck configurators. All of these elements constituted commercially sensitive information. Over time, truck configurators, containing the detailed gross prices for all models and options, replaced the traditional gross price lists. This facilitated the calculation of the gross price for each possible truck configuration. The exchange was operated both on a multilateral and on a bilateral level.

(47) In most cases, gross price information for truck components was not publicly available and information that was publicly available was not as detailed and accurate as the information exchanged between, amongst others, the Addressees. By exchanging current gross prices and gross price lists, combined with other information gathered through market intelligence, the Addressees were better able to calculate their competitors' approximate current net prices – depending on the quality of the market intelligence at their disposal.

(48) Similarly, the exchange of configurators helped the comparison of own offers with those of competitors, which further increased the transparency of the market. In particular, it could be understood from the truck configurators which extras would be compatible with which trucks, and which options would be part of the standard equipment or an extra. All of the Addressees, with the exception of DAF, had access to the configurator of at least one other Addressee. Some configurators only granted access to technical information, such as bodybuilder portals, and did not include any price information.

3.2. Nature and scope of the infringement

(49) The collusive contacts engaged in by the Addressees in the period 1997 to 2010 took place in the form of regular meetings at venues of industry associations, at trade fairs, product demonstrations by manufacturers or competitor meetings organised for

the purpose of the infringement. They also included regular exchanges via e-mails and phone calls. The Addressees' headquarters (hereinafter: Headquarter-Level) were directly involved in the discussion of prices, price increases and the introduction of new emission standards until 2004. From at least August 2002 onwards, discussions took place via German Subsidiaries (hereinafter: German-Level), which, to varying degrees, reported to their Headquarters.

(50) These collusive arrangements included agreements and/or concerted practices on pricing and gross price increases in order to align gross prices in the EEA and the timing and the passing on of costs for the introduction of emission technologies required by EURO 3 to 6 standards.

(51) From 1997 until the end of 2004, the Addressees participated in meetings involving senior managers of all Headquarters[17] (see for example (52)). In these meetings, which took place several times per year, the participants discussed and in some cases also agreed their respective gross price increases.[18] Before the introduction of price lists applicable at a pan-European (EEA) level (see above at (28)), the participants discussed gross price increases, specifying the application within the entire EEA, divided by major markets. During additional bilateral meetings in 1997 and 1998 apart from the regular detailed discussions on future gross price increases, the relevant Addressees exchanged information on harmonising gross price lists for the EEA.[19] Occasionally, the participants, including representatives of the Headquarters of all of the Addressees, also discussed net prices for some countries.[20] They also agreed on the timing of the introduction of, and on the additional charge to be applied to, the emissions technology complying with EURO emissions standards.[21] In addition to agreements on the levels of price increases, the participants regularly informed each other of their planned gross price increases.[22] Furthermore, they exchanged their respective delivery periods and their country-specific general market forecasts, subdivided by countries and truck categories[23]. In addition to the meetings, there were regular exchanges of competitively sensitive information by phone and email.[24]

(52) The following examples of meetings illustrate the nature of the discussions, in particular between the Addressees at the Headquarter-Level during the early period of the infringement. On 17 January 1997, a meeting was organised in Brussels.[25] It was attended by representatives of the Headquarters of all of the Addressees. The evidence demonstrates that future gross list price changes were discussed. During a meeting on 6 April 1998 in the context of an industry association meeting, which was attended by representatives of the Headquarters of all of the Addressees, the participants coordinated on the introduction of EURO 3 standard compliant trucks. They agreed not to offer EURO 3 standard compliant trucks before it was

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compulsory to do so and agreed on a range for the price additional charge for EURO 3 standard compliant trucks.

(53) On the upcoming changes to Euro price lists, the evidence shows further that all of the Addressees were involved in discussions about using the introduction of the Euro currency to reduce rebates. The parties involved discussed that France had the lowest prices and agreed that prices in France had to be increased.[26]

(54) After the introduction of the Euro currency and with the introduction of pan-European (EEA) price lists for almost all manufacturers (see (28)), the Addressees started systematically to exchange their respective planned gross price increases through their German subsidiaries (see for example (59)), while the collusive contacts at the level of senior managers of the Headquarters continued in parallel between 2002 and 2004. For example during a meeting on 10 and 11 April 2003,[27] in the context of an industry association meeting, which was attended by, amongst others, representatives of the Headquarters of all of the Addressees, discussions took place concerning, amongst other things, prices and the modalities of the introduction of Euro 4 standard compliant trucks, similar to the discussions that had previously been held concerning the Euro 3 standard (see (52)). In addition, non-senior representatives of the Headquarters and the German Subsidiaries occasionally organised common meetings including both common and separate agenda points and discussions (see for example (59)).

(55) The exchanges involving the German-Level took place via regular competitor meetings and contacts were organised between employees of the German Subsidiaries.[28] In addition to these meetings, there were regular exchanges by phone and email.[29] The topics discussed covered technical topics and delivery periods but also prices (normally gross prices).[30] Frequently, the participants of these exchanges, including the Addressees, also exchanged commercially sensitive information such as order intake, stock, and other technical information by email and phone.[31]

(56) In later years, the meetings involving the German-Level became more formalised and gross price increase information that was not available in the public domain was usually inserted in a spread sheet split by truck standard model for each producer.[32] These exchanges took place several times per year.[33] The future gross price increase information exchanged referred either only to the basic truck models or to the trucks and the available options (often this was indicated separately in the tables exchanged), and usually no net prices or net price increases were exchanged. Information on intended future gross price increases exchanged at the level of the German Subsidiaries was, in varying degrees, forwarded to the respective Headquarters.[34]

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(57) The exchange on planned future gross price increases and on the new emissions standards technology continued over the years and as of 2007 regularly included also the delivery periods of the truck producers.[35] As of 2008, the exchanges became more formalised by using a unified template for the purpose of exchanging information concerning the planned gross price increases.[36]

(58) The exchanges, at least, put the Addressees in a position to take account of the information exchanged for their internal planning process and the planning of future gross price increases for the coming calendar year.[37] Furthermore the information may have influenced the price positioning of some of the Addressees' new products.[38]

(59) The following examples illustrate the nature of the discussions in which representatives of the German-Level took part. At the end of 2004, an employee of DAF Trucks Deutschland GmbH sent an email to, amongst others, the representatives of the German Subsidiaries requesting that they communicate their planned gross price increases for 2005. The summarised and compiled price increase information was sent back to all of the participants, including all of the Addressees, a few days later containing information on intended gross price increases.[39] The Addressees attended a meeting between 4 and 5 July 2005 in Munich which was attended by both non-senior Headquarter-Level representatives and employees of the German Subsidiaries.[40] It appears from the evidence that common activities and meetings were scheduled. In addition special sessions were also foreseen involving the non-senior representatives of the Headquarters and separate meetings involving the representatives of the German Subsidiaries.[41] During one of these latter sessions the participants, including all of the Addressees, exchanged information about their planned future gross price increases for 2005 and 2006 as well as the additional cost of complying with the EURO 4 emissions standards.[42] Further meetings involving representatives of the German-Subsidiaries continued the discussions on price increases and the price increases for Euro 4 and Euro 5 standards include the meetings held on 12 April 2006[43] as well as on 12 and 13 March 2008.[44]

(60) The evidence shows that information on gross price increases of, amongst others, all of the Addressees as of November 2010 and as of January 2011 had been collected from participants in the exchanges. The content of this list has been reproduced in a handwritten note by an employee of MAN who also received the gross price increase information concerning the other participants directly from Daimler. This information was provided when Daimler called MAN to find out details about MAN's next gross price increase.[45]

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3.3. Geographic Scope

(61) The geographic scope of the infringement covered the entire EEA throughout the entire duration of the infringement.

3.4. Duration of the infringement

(62) As set out in Section 4.2, all of the Addressees started their participation in the infringement on 17 January 1997.

(63) The infringement is considered to have ended on 18 January 2011, which is the date on which inspections began. For MAN the infringement is considered to have ended on 20 September 2010 when it applied for immunity.

4. LEGAL ASSESSMENT

(64) Having regard to the body of evidence, the facts as described in Section 4 and the Addressees' clear and unequivocal acknowledgement in their settlement submissions, the Commission makes the following legal assessment.

4.1. Application of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement

4.1.1. Agreements and concerted practices

(a) Principles

(65) Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement prohibit agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States or the Contracting Parties to the EEA Agreement respectively and which have as their object or effect the prevention, restriction or distortion of competition within the internal market and/or the EEA as applicable.

(66) Although Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement draw a distinction between the concept of concerted practice and that of agreements between undertakings, the object is to bring within the prohibition of these Articles a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition. Thus, conduct may fall under Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour.[46]

(67) The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while,

[46] See Case T-7/89 Hercules v Commission EU:T:1991:75, paragraph 256. See also Case 48/69, Imperial Chemical Industries v Commission EU:C:1972:70, paragraph 64, and Joined Cases 40-48/73, etc. Suiker Unie and others v Commission EU:C:1975:174, paragraphs 173-174.

when considered in isolation, some of its manifestations could accurately be described as one rather than the other.[47]

(b) Application to this case

(68) The conduct described in Section 4 above can be characterised as a complex infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement, consisting of various actions which can either be classified as agreements or concerted practices, within which the Addressees knowingly substituted practical cooperation between them for the risks of competition.

(69) This conduct therefore presents all of the characteristics of an agreement and/or concerted practice in the sense of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement, which had as its object the prevention, restriction and/or distortion of competition with respect to Trucks within the EEA. The Addressees were, in particular, involved in the above-described anticompetitive arrangements concerning the sale of Trucks through several layers of competitor meetings and other contacts, which took place at the Headquarter-Level and the German-Level.

4.2. Single and Continuous Infringement

(a) Principles

(70) An infringement of Article 101(1) of the TFEU and of Article 53(1) of the EEA Agreement may result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. According to settled case law, if different actions form part of an 'overall plan', because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.[48]

(b) Application to this case

(71) In the present case, the conduct described in Section 4 constitutes a single and continuous infringement of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement from 17 January 1997 until 18 January 2011. At the same time, on the basis of the facts described above, any one of the aspects of conduct, including in respect of any one of the products and in respect of any one of the Member States (or wider regions) has as its object the restriction of competition and therefore constitutes an infringement of Article 101 TFEU and/or Article 53 of EEA Agreement in its own right.[49] The single anti-competitive economic aim of the collusion between the Addressees was to coordinate each other's gross pricing behaviour and the introduction of certain emission standards in order to remove uncertainty regarding the behaviour of the respective Addressees and ultimately the reaction of customers on the market. The collusive practices followed a single

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47 Case C-49/92 P Commission v Anic Partecipazioni, EU:C:1999:356, paragraph 81.

48 Joined Cases C-204/00 etc. Aalborg Portland et al. EU:C:2004:6, paragraph 258.

49 See Judgment in *Commission* v. *Verhuizingen Coppens NV*, C-441/11P, EU:C:2012:778, paragraphs *37, 45;* Judgment *Commission v. Aalberts Industries and Others,* C-287/11 P, *EU:C:2013:445, paragraph 65;* Judgment of 10 October 2014 *Soliver* v. *Commission,* T-68/09, EU:T:2014:867, paragraphs 108-112.

economic aim, namely the distortion of independent price setting and the normal movement of prices for Trucks in the EEA.

(72) Several factors such as the common characteristics of the content of the contacts, the identity and, for some of the Addressees, overlaps of individuals participating in the contacts, the timing of the contacts or the proximity in time confirm that the collusive contacts were linked and complementary[50] in nature, since each of them was intended to deal with one or more of the consequences of the normal pattern of competition within the framework of an EEA-wide plan having a single objective.[51]

(73) The evidence available shows that the conduct described above constituted an on-going process and did not consist of isolated or sporadic occurrences. The contacts between the Addressees were of a continuous nature, with numerous regular contacts (face-to-face meetings, phone calls and email exchanges). The different elements of the infringement were in pursuit of a common anti-competitive object as described above, which remained the same throughout the entire period of the infringement. The existence of a single and continuous infringement is also supported by the fact that the anticompetitive conduct followed a similar pattern throughout the entire period of the infringement.

(74) Although as of 2004 the collusive contacts took place amongst the German Subsidiaries rather than amongst the Headquarters, such contacts had nevertheless the same object as the previous meetings between representatives of the Headquarter-Level, namely the distortion of independent price setting and of the normal movement for prices for Trucks in the EEA. This is evidenced by the fact that the discussions between the representatives of the German Subsidiaries continued to address the same topics, and in the same way as in other previous meetings involving representatives of the Headquarters[52].

(75) By exchanging EEA-wide applicable gross price lists,[53] the Addressees were in a better position to understand from the price increase information exchanged by the German Subsidiaries, each other's European price strategy, than they would have been solely on the basis of the market intelligence at their disposal.[54]

(76) Furthermore, a limited number of individuals from each Addressee had various contacts which followed a similar pattern throughout the entire period of the infringement, although various circles and levels of exchanges existed. The Addressees intended to contribute to the common objectives of the continuing anti-competitive conduct as described in recitals (49) to (60) and were aware of, or could reasonably have foreseen, the general scope and the essential characteristics of the infringement as a whole.

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50 Case T-587/08 *Del Monte v Commission*, not yet reported, at paragraph 593.

51 Case T-54/03 *Lafarge v Commission* [2008] ECR II-120, at paragraph 482; Joined Cases T-101/05 and T-111/05 *BASF and UCB v Commission* [2007] ECR II-4949, at paragraph 179.

52 Cf. paras to (49) to (60) above.

53 Although Iveco did not have an EEA-wide applicable gross price list for its own trucks, it received the EEA-wide applicable gross price lists of the other Addressees.

54 It depends on the strategy of each company how much resources they dedicated to competitor monitoring. The Addressees had, to varying degrees, access to further data through customers spontaneously presenting competitor offers in order to negotiate prices and via mystery shopping (see paragraph (29)).

(77) The overall scheme was implemented over a period of several years employing the same mechanisms and pursuing the same common purpose of eliminating competition.

(78) On this basis and with regard to the common design of contacts and the common objective of the infringement, the series of collusive contacts that take place between the Addressees constitutes a single and continuous infringement of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement.

4.3. Restriction of Competition

(a) Principles

(79) To come within the prohibition laid down in Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement, an agreement or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market and/or the EEA as applicable.

(80) In that regard, it is apparent from the case-law that there is no need to examine the actual effects of an agreement or concerted practice when it has as its object the prevention, restriction or distortion of competition within the internal market and/or EEA and when the anti-competitive object of the conduct in question is proved.[55]

(b) Application to this case

(81) The anti-competitive behaviour described in paragraphs (49) to (60) above has the object of restricting competition in the EEA-wide market. The conduct is characterised by the coordination between Addressees, which were competitors, of gross prices, directly and through the exchange of planned gross price increases, the limitation and the timing of the introduction of technology complying with new emission standards and sharing other commercially sensitive information such as their order intake and delivery times. Price being one of the main instruments of competition, the various arrangements and mechanisms adopted by the Addressees were ultimately aimed at restricting price competition within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement.

(82) It is settled case-law that for the purposes of Article 101 of the TFEU and Article 53 of the EEA Agreement there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the internal market and/or EEA, as applicable. Consequently, in the present case it is not necessary to show actual anti-competitive effects as the anti-competitive object of the conduct in question is proved.

4.4. Effect on Trade

(a) Principles

(83) Article 101 of the TFEU is aimed at agreements and concerted practices which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous EEA.

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[55] Case C-67/13 P Groupement des Cartes Bancaires v Commission, EU:C:2014:2204, paragraph 49; Case C-286/13 P Dole Food and Dole Fresh Fruit Europe v Commission, EU:C:2015:184, paragraph 113.

(b) Application to this case

(84) The trucks sector is characterised by a substantial volume of trade between Member States as well as between the Union and the EFTA countries of the EEA and affects the competitive structure of the market in at least two Member States.[56]

(85) In this case, taking into account the market share and turnover of the Addressees within the EEA, it can be presumed that the effects on trade are appreciable[57]. Furthermore, the geographical scope of the infringement which covered several Member States and the cross-border nature of the products affected also demonstrate that the effects on trade are appreciable.

4.5. Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement

(a) Principles

(86) The provisions of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the TFEU and Article 53(3) of the EEA Agreement respectively, where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

(b) Application to this case

(87) On the basis of the facts before the Commission, there are no indications that the conduct of the Addressees described entailed any benefits or otherwise promoted technical or economic progress.

(88) The Commission has therefore reached the conclusion that the conditions provided for in Article 101(3) TFEU and Article 53(3) of the EEA Agreement are not met in this case.

5. DURATION OF THE INFRINGEMENT

(89) As set out in Section 4.2, all Addressees started their participation in the infringement on 17 January 1997.

(90) The infringement is considered to have ended on 18 January 2011, which is the date on which inspections began. For MAN the infringement is considered to have ended on 20 September 2010 when it applied for immunity.

6. LIABILITY

(a) Principles

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[56] Cf. point 21 of the Guidelines on the effect on trade concept contained in Article 81 and 82 of the Treaty; OJ 2004 C101, 81, 83.

[57] Cf. point 53 of the Guidelines on the effect on trade concept contained in Article 81 and 82 of the Treaty.

(91) Article 101 of the TFEU and Article 53 of the EEA Agreement apply to undertakings and associations of undertakings.[58] The notion "undertaking" covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.[59]

(92) The term "undertaking" must be understood as designating an economic unit even if in law that economic unit consists of several natural or legal persons.[60] In order to determine whether separate legal entities form part of the same undertaking, regard must be had especially to the economic, organisational and legal links between those entities.[61]

(93) According to the settled case-law, where a parent company has a 100% shareholding in a subsidiary which has infringed the competition rules of the Union, then there is a rebuttable presumption that the parent company can and does in fact exercise decisive influence over the conduct of its subsidiary[62].

(b) Application to this case

(94) Having regard to the body of evidence and the facts described above and the Addressees' clear and unequivocal acknowledgements in their settlement submissions, the Commission holds the below listed undertakings, consisting of the following legal entities, liable for the infringement of Article 101 TFEU and Article 53 of the EEA Agreement.

6.1. MAN

(95) The following legal entities are held jointly and severally liable for the infringement committed by MAN:

(a) MAN Truck & Bus AG, as a direct participant, for its involvement in the infringement from 17 January 1997 until 20 September 2010, and, as parent company, for the conduct of its subsidiary MAN Truck & Bus Deutschland GmbH from 3 May 2004 until 20 September 2010. MAN Truck & Bus AG acknowledged that, as a parent company, it exercised decisive influence over its subsidiary MAN Truck & Bus Deutschland GmbH during the relevant period.

(b) MAN Truck & Bus Deutschland GmbH, as a direct participant, for its involvement in the infringement from 3 May 2004 until 20 September 2010.

(c) MAN SE, as parent company, for the conduct of its subsidiary MAN Truck & Bus AG from 17 January 1997 until 20 September 2010 and of its subsidiary MAN Truck & Bus Deutschland GmbH from 3 May 2004 until 20 September 2010. MAN SE acknowledged that it exercised, as a parent company, decisive

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58 Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P Aalborg Portland and Others v Commission [2004] ECR I-123, paragraph 59.

59 Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P Dansk Rørindustri and Others v Commission [2005] ECR I-5425, paragraph 112; Case C-222/04 Cassa di Risparmio di Firenze and Others [2006] ECR I-289, paragraph 107; and Case C-205/03 P FENIN v Commission [2006] ECR I-6295, paragraph 25.

60 Joined Cases C-201/09 P and C-216/09 P Arcelor v Mittal and Luxembourg v Commission and Others [2011] ECR I, point 95.

61 Case C-97/08 P Akzo Nobel and Others v Commission [2009] ECR I-8237, paragraph 58.

62 See Case C-97/08 P Akzo Nobel and others v Commission [2009] ECR 1-08237, paragraph 60.

influence over its wholly-owned subsidiary MAN Truck & Bus AG from 17 January 1997 until 20 September 2010 and as an (indirect) parent company over its subsidiary MAN Truck & Bus Deutschland GmbH from 3 May 2004 until 20 September 2010.

6.2. Daimler

(96) Daimler AG is held liable, as a direct participant, for its involvement in the infringement from 17 January 1997 until 18 January 2011.

6.3. Iveco

(97) The following legal entities are held jointly and severally liable for the infringement committed by Iveco:

(a) Iveco S.p.A., as a direct participant, for its involvement in the infringement from 17 January 1997 until 14 November 2008, and, as a parent company, for the conduct of its subsidiary Iveco Magirus AG from 26 June 2001 until 18 January 2011. Iveco S.p.A. acknowledged that, it exercised, as a parent company, decisive influence over its subsidiary Iveco Magirus AG during the relevant period.

(b) Iveco Magirus AG, as a direct participant, for its involvement in the infringement from 26 June 2001 until 18 January 2011.

(c) Fiat Chrysler Automobiles N.V., as a (former) parent company, for the conduct of its subsidiary Iveco S.p.A. from 17 January 1997 until 14 November 2008 and of its subsidiary Iveco Magirus AG from 26 June 2001 until 31 December 2010. Fiat Chrysler Automobiles N.V. acknowledged that it exercised, as a (former) parent company, decisive influence over its subsidiary Iveco S.p.A. from 17 January 1997 until 31 December 2010 and as an (indirect) parent company over its subsidiary Iveco Magirus AG from 26 June 2001 until 31 December 2010.

(d) CNH Industrial N.V., as a parent company, for the conduct of its (indirect) subsidiary Iveco Magirus AG from 1 January 2011 until 18 January 2011. CNH Industrial N.V. acknowledged that it exercised, as a parent company, decisive influence over its subsidiary Iveco S.p.A. and as an (indirect) parent company over its subsidiary Iveco Magirus AG from 1 January 2011 until 18 January 2011.

6.4. Volvo/Renault

(98) The following legal entities are held jointly and severally liable for the infringement committed by Volvo/Renault:

(a) Volvo Lastvagnar AB, as a direct participant, for its involvement in the infringement from 17 January 1997 until 8 April 2010, and, as parent company, for the conduct of its subsidiary Volvo Group Trucks Central Europe GmbH (to the extent that this does not involve the liability for Renault Trucks Deutschland GmbH) from 20 January 2004 until 18 January 2011. Volvo Lastvagnar AB acknowledged that it exercised, as a parent company, decisive influence over its subsidiary Volvo Group Trucks Central Europe GmbH during the relevant period.

(b) Volvo Group Trucks Central Europe GmbH, as a direct participant, for its involvement in the infringement from 20 January 2004 until 18 January 2011

and, as legal and economic successor, for the involvement of Renault Trucks Deutschland GmbH in the infringement from 20 January 2004 until 18 January 2011.

(c) Renault Trucks SAS is liable, as a direct participant, for its involvement in the infringement from 17 January 1997 until 18 January 2011, and as a parent company for the conduct of its subsidiary Volvo Group Trucks Central Europe GmbH (to the extent that it is the legal and economic successor of Renault Trucks Deutschland GmbH) from 20 January 2004 until 18 January 2011. Renault acknowledged that it exercised during the relevant period, as a parent company, decisive influence over its subsidiary Volvo Group Trucks Central Europe GmbH (to the extent that it is the legal and economic successor of Renault Trucks Deutschland GmbH).

(d) AB Volvo, as a parent company, for the conduct of:

– its subsidiary Renault Trucks SAS from 2 January 2001 until 18 January 2011;

– its (indirect) subsidiary Volvo Group Trucks Central Europe GmbH (including as legal and economic successor of Renault Trucks Deutschland GmbH) from 20 January 2004 until 18 January 2011; and

– its subsidiary Volvo Lastvagnar AB from 17 January 1997 until 8 April 2010.

(99) AB Volvo acknowledged that it exercised, as a parent company, decisive influence over its subsidiary Renault Trucks SAS from 2 January 2001 until 18 January 2011; over its subsidiary Volvo Group Trucks Central Europe GmbH (including as legal and economic successor of Renault Trucks Deutschland GmbH) from 20 January 2004 until 18 January 2011; and over its subsidiary Volvo Lastvagnar AB from 17 January 1997 until 18 January 2011.

6.5. DAF

(100) The following legal entities are held jointly and severally liable for the infringement committed by DAF:

(a) DAF Trucks N.V., as a direct participant, for its involvement in the infringement from 17 January 1997 until 27 February 2009 and , as parent company for the conduct of DAF Trucks Deutschland GmbH from 20 January 2004 until 18 January 2011. DAF Trucks N.V. acknowledged that it exercised as a parent company decisive influence over its subsidiary DAF Trucks Deutschland GmbH from 20 January 2004 until 18 January 2011.

(b) DAF Trucks Deutschland GmbH, as a direct participant, for its involvement in the infringement from 20 January 2004 until 18 January 2011.

(c) PACCAR Inc., as a parent company, for the conduct of its subsidiary DAF Trucks N.V. from 17 January 1997 until 27 February 2009 and for the conduct of its subsidiary DAF Trucks Deutschland GmbH from 20 January 2004 until 18 January 2011. PACCAR Inc. acknowledged that it exercised as a parent company decisive influence over its subsidiary DAF Trucks N.V. from 17 January 1997 until 18 January 2011 and over its subsidiary DAF Trucks Deutschland GmbH from 20 January 2004 until 18 January 2011.

7. REMEDIES

7.1. Article 7 of Regulation (EC) No 1/2003:

(101) Where the Commission finds that there is an infringement of Article 101 TFEU and Article 53 of the EEA Agreement it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.

(102) Given the secrecy in which the arrangements of the infringement were carried out, in this case it is not possible to declare with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement or concerted practice which may have the same or a similar object or effect.

7.2. Article 23(2) of Regulation (EC) No 1/2003 – Fines

(103) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 101 TFEU and Article 53 of the EEA Agreement[63]. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

(104) In this case, based on the facts described in this decision, the Commission considers that the infringement was committed intentionally.

(105) The Commission imposes fines in this case on the undertakings to which this decision is addressed.

(106) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fine to be imposed, have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in that Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on fines[64]. Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.[65]

7.2.1. Calculation of the fines

(107) According to the Guidelines on fines, the basic amount of the fine to be imposed on each undertaking concerned results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied by the

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63 According to Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty […] shall apply *mutatis mutandis*" (OJ L 305, 30.11.1994, p.6.).

64 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ C 210, 1.09.2006, p. 2).

65 Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1).

number of years of the undertaking's participation in that infringement. The additional amount ("entry fee") is calculated as a percentage between 15% and 25% of the value of sales.[66] The resulting basic amount can then be increased or reduced for each undertaking if aggravating or mitigating circumstances are found to be applicable.

7.2.2. The value of sales

(108) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales,[67] that is to say, the value of the undertaking's sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA.

(109) In this case, the relevant value of sales is the undertaking's sales of medium trucks and heavy trucks both as rigid trucks as well as tractor trucks (as defined in Section 2.1 above) in the EEA. The case does not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services sold by the Addressees in the present proceedings.

(110) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement[68]. If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales. Based on the foregoing, and on the information provided by the Addressees, the Commission used the undertakings' sales in the last full business year of their participation in the infringement, namely 2010.

(111) The Commission will also take into account the evolution of the EEA territory during the infringement period following the accessions of new Member States to the Union in 2004 and 2007. Regarding the assessment of the fine for the infringement before 1 May 2004, only the proxy for the value of sales within the then 18 Contracting Parties to the EEA agreement will be taken into account. From 1 May 2004 until 31 December 2006 the proxy for the value of sales within the then 28 Contracting Parties to the EEA agreement will be taken into account. From 1 January 2007 until the end of the infringement the proxy for the value of sales within the then 30 Contracting Parties to the EEA agreement will be taken into account.

(112) [*provisionally redacted*]

(113) [*provisionally redacted*] the Commission has used the value of sales set out in Table 1 below for the purposes of calculating the variable and additional amounts of the fines.

Table 1: The value of sales

Undertaking	**Retained value of sales for fines calculation**
MAN	[…]

[66] Points 19-26 of the Guidelines on fines.
[67] Point 12 of the Guidelines on fines.
[68] Point 13 of the Guidelines on fines.

Daimler	[…]
Iveco	[…]
Volvo/Renault	[…]
DAF	[…]

7.2.3. Gravity

(114) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.[69]

(115) Price coordination arrangements such as those described in this Decision are, by their very nature, among the most harmful restrictions of competition. The proportion of the value of sales taken into account for such infringements will, therefore, generally be set at the higher end of the scale of the value of sales.[70]

(116) The Commission also takes into account the combined market share of the Addressees in the European Economic Area (EEA), which is around [*provisionally redacted*]% and the fact that the infringement covered the entire EEA.

(117) Given the specific circumstances of this case, in particular taking into account the nature, the geographic scope of the infringement as well as the combined market share of the undertakings, the proportion of the value of sales to be taken into account is [*provisionally redacted*]%.

7.2.4. Duration

(118) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement as set out in Section 4.4.[71]

(119) Volvo/Renault, a leniency applicant, was the first Addressee to provide compelling evidence of events previously unknown to the Commission, which allowed the Commission to identify the starting date of the infringement for all of the Addressees as the 17 January 1997. Thereby, the starting date for the infringement was changed from 16 January 2001 to 17 January 1997. The evidence submitted by Volvo/Renault contained contemporaneous handwritten notes, meeting reports and meeting invitations of an employee, who personally participated in competitor meetings, which are part of the infringement. The evidence contained exact meeting dates and detailed information about further anticompetitive contacts. As these additional facts allowed the Commission to increase the duration of the infringement they are not taken into account against Volvo/Renault for the purposes of determining its fine. In application of Point 26 of the Guidelines on Fines, therefore, Volvo/Renault is granted partial immunity for the period from 17 January 1997 until 15 January 2001.

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69 Points 21 and 22 of the Guidelines on fines.

70 Point 23 of the Guidelines on fines.

71 Point 24 of the Guidelines on fines.

As a result, only the period from 16 January 2001 to 18 January 2011 is taken into account for the calculation of Volvo/Renault's fine.

(120) The duration to be taken into account for the purposes of calculating the fine to be imposed on each addressee and the resulting multipliers for duration are set out in Table 2.

Table 2: Duration

Undertaking	**Duration**	**Multipliers**
MAN	17 January 1997 – 20 September 2010	13.67
Daimler	17 January 1997 – 18 January 2011	14
Iveco	17 January 1997 - 18 January 2011	14
Volvo/Renault	16 January 2001 - 18 January 2011	10
DAF	17 January 1997 - 18 January 2011	14

7.2.5. Determination of the additional amount

(121) The infringement committed by the Addressees involves horizontal price collusion within the meaning of point 25 of the Guidelines on fines. The basic amount of each fine should, therefore, include a sum of between 15% and 25% of the retained value of sales to deter the Addressees from entering into such illegal practices in the future.[72]

(122) For the purposes of deciding the proportion of the retained value of sales to be taken into account, the Commission took into consideration the factors set out in recitals (115) to (116). The proportion of the retained value of sales to be taken into account for the purposes of calculating the additional amount should, therefore, be [*provisionally redacted*]%.

7.2.6. Calculation of the basic amount

(123) Based on the criteria explained in recitals (103)-(122), the basic amount of the fine to be imposed on each undertaking is set out in Table 3.

Table 3: Basic amounts of the fine

[72] Point 25 of the Guidelines on fines.

Undertaking	Basic amount in EUR
MAN	[…]
Daimler	[…]
Iveco	[…]
Volvo/Renault	[…]
DAF	[…]

7.2.7. Adjustments to the basic amount of the fine: aggravating or mitigating factors

(124) The Commission may increase the basic amount where it considers that aggravating circumstances apply. Those circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on fines. The Commission may also reduce the basic amount where it considers that mitigating circumstances apply. Those circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.

(125) The Commission does not consider that any aggravating or mitigating circumstances apply in this case.

7.2.8. Application of the 10% turnover limit

(126) Article 23(2) of Regulation (EC) No 1/2003 provides that for each undertaking participating in the infringement, the fine imposed shall not exceed 10% of its total turnover in the preceding business year.

(127) In this case, none of the fines calculated (see Table) exceeds 10% of the respective undertaking's total turnover in 2015.

7.2.9. Application of the Leniency Notice

(128) On 20 September 2010, MAN SE and all of the subsidiaries directly and indirectly controlled by it applied for immunity from fines in accordance with point 14 of the Commission's 2006 Leniency Notice in relation to an alleged infringement in the truck industry. On 17 December 2010, the Commission granted conditional immunity from fines to MAN.

(129) MAN's co-operation has fulfilled the requirements of the Leniency Notice. MAN is therefore granted immunity from fines in this case.

(130) Volvo/Renault was the first undertaking to meet the requirements of points 24 and 25 of the Leniency Notice. Volvo/Renault was notified of the decision of 20 November 2014 by which the Commission announced its preliminary intention to grant a reduction of any fine imposed on Volvo/Renault within the range of 30-50%. Volvo/Renault provided, as explained above in recital (119), compelling evidence allowing the Commission to extend the duration of the infringement. Volvo/Renault was, therefore, granted partial immunity for the relevant period.

(131) With respect to the remainder of the evidence submitted by Volvo/Renault concerning the infringement found by the Commission, such evidence contained contemporaneous documents which, although useful for establishing certain additional facts (see further recital (131) below), principally served to corroborate evidence already available to the Commission. With respect to the evidence useful

for establishing additional facts, the Commission notes that this evidence helped it better to understand the overall contact pattern and thereby strengthened the Commission's ability to prove the infringement. Therefore, Volvo/Renault is granted 40% reduction of its fines.

(132) Daimler was the second undertaking to meet the requirements of points 24 and 25 of the Leniency Notice. Daimler was notified of the decision of 20 November 2014 by which the Commission announced its intention to grant a reduction of any fine imposed on Daimler within the range of 20-30%. Daimler provided the Commission with further contemporaneous evidence and corroborating evidence of a detailed nature. Daimler submitted very detailed information on the subject matter of several multilateral meetings and contacts including a very detailed analysis of the evidence, explaining the development of contacts and the functioning of the collusion. Daimler's cooperation significantly contributed to the Commission's understanding of the functioning of the collusion and added solid elements to prove the infringement. Therefore, the Commission concludes that evidence provided by Daimler strengthened in a substantial way the Commission's ability to prove the facts pertaining to this infringement. Consequently, Daimler is granted 30% reduction of its fines.

(133) Iveco was the third undertaking to meet the requirements of points 24 and 25 of the Leniency Notice. Iveco was notified of the decision of 20 November 2014 by which the Commission announced its intention to grant a reduction of any fine imposed on Iveco of up to 20%. The evidence submitted by Iveco with respect the infringement found by the Commission was useful to identify the participants of several meetings. Furthermore, Iveco provided presentations which competitors exchanged at such meetings. Iveco's cooperation contributed to the Commission's overall ability to prove the infringement principally by corroborating evidence already in the Commission's possession. Iveco is accordingly granted 10% reduction of its fines.

7.2.10. Application of the Settlement Notice

(134) In accordance with point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.

(135) As a result of the application of the Settlement Notice, the amount of the fine imposed on each Addressee is reduced by 10%, which is added to the leniency reduction.

7.2.11. Conclusion: final amount of individual fines to be imposed in this decision

(136) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 4.

Table 4: Individual fines

Undertaking	Fines (in EUR)

MAN	0
Daimler	1 008 766 000
Iveco	494 606 000
Volvo	670 448 000
DAF	752 679 000

HAS ADOPTED THIS DECISION:

Article 1

By colluding on pricing and gross price increases in the EEA for medium and heavy trucks; and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards, the following undertakings infringed Article 101 TFEU and Article 53 of the EEA Agreement during the periods indicated:

(a) MAN SE, from 17 January 1997 until 20 September 2010; MAN Truck & Bus AG, from 17 January 1997 until 20 September 2010; MAN Truck & Bus Deutschland GmbH, from 3 May 2004 until 20 September 2010

(b) AB Volvo (publ), from 17 January 1997 until 18 January 2011; Volvo Lastvagnar AB, from 17 January 1997 until 18 January 2011; Volvo Group Trucks Central Europe GmbH, from 20 January 2004 until 18 January 2011; Renault Trucks SAS, from 17 January 1997 until 18 January 2011

(c) Daimler AG, from 17 January 1997 until 18 January 2011

(d) Fiat Chrysler Automobiles N.V., from 17 January 1997 until 31 December 2010; CNH Industrial N.V., from 1 January 2011 until 18 January 2011; Iveco S.p.A., from 17 January 1997 until 18 January 2011; Iveco Magirus AG, from 26 June 2001 until 18 January 2011;

(e) PACCAR Inc., from 17 January 1997 until 18 January 2011; DAF Trucks N.V., from 17 January 1997 until 18 January 2011; DAF Trucks Deutschland GmbH, from 20 January 2004 until 18 January 2011

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

(a) EUR 0 jointly and severally on MAN SE, MAN Truck & Bus AG and MAN Truck & Bus Deutschland GmbH

(b) EUR 670 448 000 jointly and severally on AB Volvo (publ), Volvo Lastvagnar AB and Renault Trucks SAS of which,

Volvo Group Trucks Central Europe GmbH is held

		jointly and severally responsible for the amount of EUR 468 855 017.
(c)	EUR 1 008 766 000	on Daimler AG.
(d)	EUR 494 606 000	on Iveco S.p.A., of which: (1) Fiat Chrysler Automobiles N.V. is held jointly and severally responsible for the amount of EUR 156 746 105, (2) Fiat Chrysler Automobiles N.V. and Iveco Magirus AG are held jointly and severally responsible for the amount of EUR 336 119 346 and (3) CNH Industrial N.V. and Iveco Magirus AG are held jointly and severally responsible for the amount of EUR 1 740 549.
(e)	EUR 752 679 000	jointly and severally on PACCAR Inc. and DAF Trucks N.V. of which DAF Trucks Deutschland GmbH is held jointly and severally responsible for the amount of EUR 376 118 773.

The fines shall be paid in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000
BIC: BCEELULL
Ref.: European Commission – BUFI/AT.39824

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or making a

provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012[73].

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringements referred to in that Article insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to

MAN SE, Ungererstraße 69, 80805 München, Germany

MAN Truck & Bus AG, Dachauer Str. 667, 80995 München, Germany

MAN Truck & Bus Deutschland GmbH, Oskar-Schlemmer-Straße 19-21, 80807 München, Germany

AB Volvo (publ), 405 08 Göteborg, Sweden

Volvo Lastvagnar AB, 405 08 Göteborg, Sweden

Volvo Group Trucks Central Europe GmbH, Oskar-Messter-Str. 20, 85737 Ismaning, Germany

Renault Trucks SAS, 99, Route de Lyon, 69806 Saint-Priest Cedex, France

Daimler AG, Mercedesstrasse 137, 70327 Stuttgart, Germany

Fiat Chrysler Automobiles N.V., Fiat House, 25 St James's Street, London, SW1A 1HA, United Kingdom

CNH Industrial N.V., 25 St James's Street, London, SW1A 1HA, United Kingdom

Iveco S.p.A., Via Puglia 35, 10156 Torino, Italy

Iveco Magirus AG, Nicolaus-Otto-Straße 27, 89079 Ulm, Germany

PACCAR Inc., PACCAR Building, 777-106th Avenue N.E, Bellevue, US - Washington 98004, USA

DAF Trucks N.V., Hugo van der Goeslaan 1, 5643 TW Eindhoven, The Netherlands

DAF Trucks Deutschland GmbH, DAF-Allee 1, 50226 Frechen, Germany

[73] OJ L 362, 31.12.2012, p. 1.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 19.7.2016

For the Commission
Margrethe VESTAGER
Member of the Commission

Resumen de la Decisión de la Comisión

de 19 de julio de 2016

relativa a un procedimiento en virtud del artículo 101 del Tratado de Funcionamiento de la Unión Europea y del artículo 53 del Acuerdo EEE

(Asunto AT.39824 — Camiones)

[notificada con el número C(2016) 4673]

(El texto en lengua inglesa es el único auténtico)

(2017/C 108/05)

El 19 de julio de 2016 la Comisión adoptó una Decisión relativa a un procedimiento en virtud del artículo 101 del Tratado de Funcionamiento de la Unión Europea y del artículo 53 del Acuerdo EEE. De acuerdo con las disposiciones del artículo 30 del Reglamento (CE) n.º 1/2003 del Consejo [1]*, la Comisión publica a continuación los nombres de las partes y el contenido principal de la Decisión, incluidas las sanciones impuestas, teniendo en cuenta el interés legítimo de las empresas para que no se revelen sus secretos comerciales.*

1. INTRODUCCIÓN

1) La Decisión se refiere a una infracción única y continuada del artículo 101 del Tratado de Funcionamiento de la Unión Europea y del artículo 53 del Acuerdo EEE.

2) Los destinatarios de la Decisión son las siguientes entidades: MAN SE, MAN Truck & Bus AG, MAN Truck & Bus Deutschland GmbH (en lo sucesivo, conjuntamente denominados «MAN»); Daimler AG (en lo sucesivo, «Daimler»); Fiat Chrysler Automobiles N.V., CNH Industrial N.V., Iveco S.p.A., Iveco Magirus AG (en lo sucesivo, conjuntamente denominados «Iveco»); AB Volvo (publ), Volvo Lastvagnar AB, Renault Trucks SAS, Volvo Group Trucks Central Europe GmbH, (en lo sucesivo, conjuntamente denominados «Volvo/Renault»); PACCAR Inc., DAF Trucks Deutschland GmbH, DAF Trucks N.V., DAF (en lo sucesivo, conjuntamente denominados «DAF»).

2. DESCRIPCIÓN DEL ASUNTO

2.1. Procedimiento

3) A raíz de una solicitud de dispensa del pago de multas presentada por MAN el 20 de septiembre de 2010, la Comisión llevó a cabo inspecciones en los locales de los distintos fabricantes de camiones, entre el 18 y el 21 de enero de 2011. El 28 de enero de 2011, Volvo/Renault solicitó una reducción de las multas, seguido de Daimler el 10 de febrero de 2011 a las 10.00 de la mañana, e Iveco el 10 de febrero de 2011, a las 22.22 horas.

4) El 20 de noviembre de 2014, la Comisión incoó el procedimiento previsto en el artículo 11, apartado 6, del Reglamento (CE) n.º 1/2003 contra DAF, Daimler, Iveco, MAN y Volvo/Renault, y adoptó un pliego de cargos, que notificó a estas entidades.

5) Tras la adopción del pliego de cargos, los destinatarios se dirigieron a la Comisión de manera informal y solicitaron que se tramitara el asunto con arreglo al procedimiento de transacción. La Comisión decidió iniciar un procedimiento de transacción en el presente asunto después de que cada uno de los destinatarios confirmara su voluntad de entablar conversaciones con vistas a una transacción. Posteriormente, MAN, DAF, Daimler, Volvo/Renault e Iveco enviaron a la Comisión su solicitud formal de transacción con arreglo al artículo 10 *bis*, apartado 2, del Reglamento (CE) n.º 773/2004 de la Comisión [2].

6) El Comité Consultivo sobre Prácticas Restrictivas y Posiciones Dominantes emitió un dictamen favorable el 18 de julio de 2016 y la Comisión adoptó la Decisión el 19 de julio de 2016.

2.2. Destinatarios y duración

7) Los destinatarios de la Decisión han participado en una colusión o han tenido responsabilidad en ella, infringiendo, por tanto, el artículo 101 del Tratado, durante los períodos indicados a continuación. En aplicación del punto 26 de las Directrices sobre multas, a Volvo/Renault se le concedió una dispensa parcial para el período comprendido entre el 17 de enero de 1997 y el 15 de enero de 2001.

Entidad	Duración
MAN SE, MAN Truck & Bus AG, MAN Truck & Bus Deutschland GmbH	17 de enero de 1997 — 20 de septiembre de 2010

[1] DO L 1 de 4.1.2003, p. 1.
[2] DO L 123 de 27.4.2004, p. 18.

Entidad	Duración
Daimler AG	17 de enero de 1997 — 18 de enero de 2011
Fiat Chrysler Automobiles N.V., CNH Industrial N.V., Iveco S.p.A., Iveco Magirus AG	17 de enero de 1997 — 18 de enero de 2011
AB Volvo (publ), Volvo Lastvagnar AB, Renault Trucks SAS, Volvo Group Trucks Central Europe GmbH,	17 de enero de 1997 — 18 de enero de 2011
PACCAR Inc., DAF Trucks Deutschland GmbH, DAF Trucks N.V.	17 de enero de 1997 — 18 de enero de 2011

2.3. **Resumen de la infracción**

8) Los productos afectados por la infracción son los camiones con un peso de entre 6 y 16 toneladas (en lo sucesivo, «camiones medios») y los camiones de más de 16 toneladas («camiones pesados»), tanto camiones rígidos como cabezas tractoras (en lo sucesivo, los camiones medios y pesados se denominan conjuntamente «camiones»). ([1]) El asunto no se refiere al servicio posventa, otros servicios y garantías de los camiones, la venta de camiones de segunda mano ni ningún otro bien ni servicio.

9) La infracción consistió en acuerdos colusorios sobre la fijación de precios y los incrementos de los precios brutos de los camiones en el EEE; y el calendario y la repercusión de los costes para la introducción de tecnologías de emisiones en el caso de los camiones medios y pesados exigida por las normas EURO 3 a 6. Las centrales de los destinatarios participaron directamente en la discusión sobre los precios, los incrementos de precios y la introducción de nuevas normas de emisiones hasta 2004. Al menos desde agosto de 2002, se mantuvieron conversaciones a través de filiales alemanas que, en diversos grados, informaron a sus centrales. El intercambio tuvo lugar tanto a nivel multilateral como bilateral.

10) Estos acuerdos colusorios incluyeron acuerdos o prácticas concertadas sobre la fijación de precios y los aumentos de precios brutos con el fin de alinear los precios brutos en el EEE y el calendario y la repercusión de costes para la introducción de las tecnologías de emisiones exigida por las normas EURO 3 a 6.

11) La infracción abarcó la totalidad del EEE y duró desde el 17 de enero de 1997 hasta el 18 de enero de 2011.

2.4. **Contrapartidas**

12) La Decisión aplica las Directrices de 2006 para el cálculo de las multas ([2]). Con la excepción de MAN, la Decisión impone multas a todas las entidades enumeradas en el apartado 7.

2.4.1. Importe de base de la multa

13) Para fijar las multas, la Comisión tuvo en cuenta las ventas de las empresas pertinentes de camiones medios y pesados (tal como se definen en el apartado 8) en el EEE durante el año anterior al final de la infracción; el hecho de que la coordinación de precios es una de las restricciones de competencia más graves; la duración de la infracción; la elevada cuota de mercado de los destinatarios en el mercado europeo de camiones medios y pesados; el hecho de que la infracción abarcara todo el EEE y un importe adicional para disuadir a las empresas de participar en prácticas de coordinación de precios.

2.4.2. Ajustes del importe de base

14) La Comisión no aplicó ninguna circunstancia agravante o atenuante.

2.4.3. Aplicación de la Comunicación sobre clemencia

15) MAN fue eximido totalmente del pago de multas. A Volvo/Renault se le concedió una reducción del 40 % de la multa, a Daimler se le concedió una reducción del 30 % y a Iveco se le concedió una reducción del 10 %.

([1]) Con exclusión de los camiones para uso militar.
([2]) Directrices para el cálculo de las multas impuestas en aplicación del artículo 23, apartado 2, letra a), del Reglamento (CE) n.º 1/2003 (DO L 1 de 4.1.2003, p. 1).

2.4.4. Aplicación de la Comunicación sobre el desarrollo de los procedimientos de transacción

16) En aplicación de la Comunicación sobre el desarrollo de los procedimientos de transacción, el importe de las multas impuestas a todos los destinatarios se redujo todavía en un 10 %.

3. **CONCLUSIONES**

17) De conformidad con el artículo 23, apartado 2, del Reglamento (CE) n.º 1/2003, se impusieron las siguientes multas:

a) 0 EUR — conjunta y solidariamente a MAN SE, MAN Truck & Bus AG y MAN Truck & Bus Deutschland GmbH

b) 670 448 000 EUR — conjunta y solidariamente a AB Volvo (publ), Volvo Lastvagnar AB y Renault Trucks SAS, de los cuales:

Grupo Volvo Trucks Central Europe GmbH se considera conjunta y solidariamente responsable del importe de 468 855 017 EUR.

c) 1 008 766 000 EUR — a Daimler AG

d) 494 606 000 EUR — a Iveco S.p.A., de los cuales:

1) Fiat Chrysler Automobiles N.V. se considera conjunta y solidariamente responsable del importe de 156 746 105 EUR;

2) Fiat Chrysler Automobiles N.V. e Iveco Magirus AG se consideran conjunta y solidariamente responsables del importe de 336 119 346 EUR, y

3) CNH Industrial N.V. e Iveco Magirus AG se consideran conjunta y solidariamente responsables del importe de 1 740 549 EUR.

e) 752 679 000 EUR — conjunta y solidariamente a PACCAR Inc. y DAF Trucks N.V., de los cuales

DAF Trucks Deutschland GmbH se considera conjunta y solidariamente responsable del importe de 376 118 773 EUR.