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Summary Of European Commission Settlement Decision In Truck Cartel Case

On 6 April 2017, the European Commission published its non-confidential version of the July 2016 settlement decision in the EU truck cartel case. As the majority of the truck manufacturers (all except Scania) settled the case with the European Commission, the decision is not as detailed as it might have been – it runs to just over thirty pages rather than the more normal 100 to 200 pages. The decision nevertheless provides key details about how the European truck manufacturers organised the cartel and the way in which they colluded anti-competitively. There will have been vast amounts of evidence sitting behind this short decision and there will be scope to obtain access to the underlying evidence in due course during the collective proceedings process.

While the European Commission also issued its decision against Scania on 27 September 2017, a non-confidential version of that decision will not likely be available for a further six months or so. It is possible, however, that the decision against Scania will be more detailed as compared with the decision against the other truck manufacturers given that Scania chose not to settle the case with the European Commission.

The main points in the July 2016 settlement decision may be summarised as follows:

- The truck manufacturers which settled with the European Commission (MAN, Daimler, Iveco, Volvo/Renault, and DAF) did so in clear and unequivocal terms, confirming their liability for infringing EU competition rules in relation to the main facts and their legal qualification, including the role and duration of the truck manufacturers' participation in the infringement.
- The truck manufacturers which settled acknowledged that they were sufficiently informed of the objections of the European Commission and were given a sufficient opportunity to make their views known. Accordingly, they accepted that there had been sufficient due process during the European Commission investigation.
- The infringement comprised (a) collusive arrangements on pricing and gross price increases in the EEA for medium and heavy trucks; and (b) the timing and (c) passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO III to VI. The infringement covered the entire EEA and lasted from 17 January 1997 until 18 January 2011.

- From 1997 to end of 2004, the meetings involved senior managers from the headquarters of all the truck manufacturers. The meetings took place several times a year at venues of industry associations at trade fairs and product demonstrations by manufacturers, as well as at competitor meetings organised specifically for purposes of the cartel. In addition to the meetings, there were regular exchanges of competitively sensitive information by phone and email. From at least August 2002 onwards, discussions took place via German subsidiaries which to varying degrees reported to their headquarters.
- All the cartel members exchanged gross price lists and information on gross prices and most of them engaged in exchanging computer-based truck configurators.
 - The collusion included agreements on pricing and gross price increases to align gross prices in the EEA.
 - From 1997 to 2004, the participants discussed and in some cases agreed their respective gross price increases. Before pan-European price lists were introduced, the participants discussed gross price increases, specifying their application within the entire EEA divided by major markets.
 - During additional bilateral meetings in 1997 and 1998, the cartel members exchanged information with a view to harmonising gross price lists for the EEA.
 - At time of introducing the Euro currency, the truck manufacturers discussed reducing rebates.
 - Over time, truck configurators, containing detailed gross prices for all models and options, replaced the traditional gross list prices. This facilitated the calculation of the gross price for each possible truck configuration. The exchange happened on a multilateral and bilateral level. Spreadsheets were exchanged split by truck standard model for each producer. The exchange of configurators helped the comparison of own offers with those of competitors and increased transparency of the market. In particular, it helped the truck manufacturers to understand which extras would be compatible with which trucks and which options would be part of the standard or an extra.
 - By way of example of the nature of the discussions at the German subsidiary level, at the end of 2004 an employee of DAF sent an email to 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 participants, including all of the cartel members a few days later containing information on intended gross price increases. During one session in 2005, the participants exchanged information about their planned future gross price increases for 2005 and 2006.

- The exchanges of intended future gross price increases put the cartel members 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.
- Information on gross price increases had been collected for November 2010 and January 2011.
- Occasionally, the cartel members, including senior representatives from HQs, discussed net prices to hauliers for some countries. In addition to agreements on the levels of price increases, the participants regularly informed each other of their planned gross price increases.
- The truck manufacturers also exchanged their respective delivery periods and their country-specific market forecasts, subdivided by countries and truck categories.
- The truck manufacturers 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.
 - In relation to EURO III, for example, the truck manufacturers agreed on the range for the additional charge for EURO standard compliant trucks and agreed not to introduce them until compulsory to do so.
 - During one session in 2005 the participants exchanged information on the additional cost of complying with the EURO IV emissions standards. Further meetings involving representatives of the German subsidiaries continued the discussions on price increases and the price increases for EURO IV and V standards.