



EU, COMPETITION AND REGULATED MARKETS

Truck manufacturers fined a record €2.93 billion for cartel activity by the European Commission

by **Marco Hickey**

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18th August 2016 | by Marco Hickey

The European Commission [recently imposed](#) a record fine of €2.93 billion on several of the EU's biggest truck manufacturers for participating in a cartel for fourteen years.

The Commission found that that MAN, Volvo/Renault, Daimler, Iveco, and DAF colluded on truck pricing and on passing on the costs of compliance with stricter emission rules.

The total amount of fine is twice the previous record, the €1.4 billion levied against a TV and [computer monitor tubes cartel](#) in 2012. Commissioner for Competition, Margrethe Vestager, stated that the fines were justified on the grounds that the cartel involved a very large market and that it continued for a long time.

Daimler received the largest penalty of €1.1 billion, while DAF, Volvo/Renault and Iveco were fined €752.7 million, €670.4 million and €494.6 million, respectively. The fines were set on the basis of the Commission's 2006 Guidelines on Fines and imposed pursuant to Article 23(2)(a) of Regulation No 1/2003. These producers, combined, account for 9 out of every 10 medium and heavy trucks produced in Europe. Under the Commission's [2008 Settlement Notice](#), the Commission applied a reduction of 10% to the fines imposed in view of the parties' acknowledgment of liability and an undertaking not to challenge the Commission decision in court.

The Commission decision follows the sending of a Statement of Objections to the truck producers [in November 2014](#). In the context of this investigation, proceedings were also opened with regard to Scania. Scania is not covered by this settlement decision and therefore the investigation will continue under the standard (non-settlement) cartel procedure. Under the Commission's [2006 Leniency Notice](#), MAN received full immunity for revealing the existence of the cartel, thereby avoiding a fine of around €1.2 billion. For their cooperation with the investigation, Volvo/Renault, Daimler and Iveco also benefited from reductions of their fines.

The case has been received as reflecting the strong stance of the Vestager Commission to competition enforcement. The basis for the fines was Article 101 of the Treaty on the Functioning of the European Union (TFEU) which prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition in the EU internal market.

Prohibition of Cartels in Ireland

Section 4 of the Irish Competition Act 2002 (as amended) (2002 Act) is based on Article 101 of the TFEU and prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State. Cartels, virtually by definition, are not efficiency enhancing and do not benefit consumers. In Ireland, businesses and individuals found guilty of so-called hard-core cartel offences can face criminal penalties, including fines and imprisonment.

Leniency or Immunity for Whistleblowers

The above case is an interesting example of the usefulness of the Commission's [Leniency Policy](#) in encouraging whistleblowing amongst cartel participants. Cartels, by their nature, tend to be secret arrangements with little documented evidence of their existence. As such, granting leniency for providing information leading to the prosecution of a cartel is amongst the regulators' most effective tools for detecting illegal practices. Leniency programmes function because whistleblowers receive the largest exemption from fines when they come forward to the regulators ahead of the other cartel members. This destabilises existing cartels by creating an incentive for cartel members to blow the whistle. By making it harder to run a stable cartel, the presence of leniency programmes in turn prevent competitors from entering into cartels in the first place.

In Ireland, the [Cartel Immunity Programme](#) provides a domestic mechanism to help uncover cartels and provide witnesses for the criminal prosecution of cartel members whereby a member of a cartel may avoid prosecution, including fines and imprisonment, if they are the first member to come forward and reveal their involvement in illegal cartel activity before an investigation has been completed. Due to the criminal standard of proof applicable to cartel offences under the Irish legislation, the CCPC must collaborate with the Director of Public Prosecutions and bring a case through the court system in order to prosecute a cartel offence. However, the substantial penalties applicable and the CCPC's record in securing convictions in the [Heating Oil](#) and [Car Dealership](#) cartels in the recent past means that the leniency programme may play an important role in dissuading and destabilising cartel activity in Ireland.

For more information, please feel free to contact Marco Hickey, Partner and Head of the EU, Competition and Regulated Markets team at mhickey@kshields.ie. Marco is the author of [Merger Control in Ireland](#) published by Thomson Reuters.

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