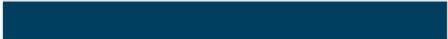


Trucks Cartel: Potential Damages

**Laurent Geelhand - Managing Partner
Brussels**

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HAUSFELD



Hausfeld: Specialist Competition Lawyers

- Hausfeld is **the leading firm in the field of EU & US competition infringement recoveries**, offering a coordinated global strategy to clients.
- Hausfeld's lawyers have pioneered the private enforcement of competition law in Europe and have decades of experience in achieving some of the most high-profile and complex recoveries in the US.
- We act in some of the most complex and high-profile competition claims in Europe including Air Cargo and Interchange Fees.
- We regularly take on cases that are at the cutting edge, raising novel and complex issues in respect of jurisdiction, applicable law, quantification of damages and contribution liability.
- In the last five years **our lawyers successfully recovered** compensation for a large number of businesses – including many in the transport industry – totalling **in excess of €500m**.

Hausfeld: Specialist Competition Lawyers

- Legal directories recognise Hausfeld as the leading claimant competition litigation firm:
 - Hausfeld is **the only claimant-side firm to be ranked** by the Legal 500 and Chambers & Partners as a **top tier firm in private enforcement of antitrust/competition law in both the United States and the United Kingdom**. Our partners are consistently ranked as leading experts by Chambers & Partners, Legal 500 and Super Lawyers both in the US and the UK.
 - We are ranked by Legal 500 as **one of only four Top Tier of Law Firms for Competition Litigation** – alongside Clifford Chance, Freshfields and Herbert Smith Freehills.
 - We are **ranked Band 1 in the “Competition Law: Private Enforcement: Claimant”** category in Chambers & Partners UK, Europe and Global.
 - We were named **“Most Innovative Law Firm in Dispute Resolution of 2013”** by the Financial Times, for pioneering a unique and market-changing litigation funding structure that has enabled clients to pursue actions with little or no risk.
- *“[Hausfeld is] the world’s leading antitrust litigation firm...”* – Politico, September 3, 2015
- *“Hausfeld has been a phenomenon in the U.S...”* – Politico, September 5, 2015
- *“Google to face litigation giant [Hausfeld]”* – Politico, September 3, 2015

Hausfeld: Cartel Damages Experience

- **Wax:** We successfully resolved the claims of 30 corporate claimants – both SMEs and large corporations – against the Wax Cartel (which involved some of the world’s largest oil companies – including ExxonMobil, Shell, Sasol, Repsol and Total). Our clients were seeking in excess of €100 million in damages; we concluded settlements at a relatively early stage of the proceedings through a series of commercial negotiations.
- **Copper Tubes:** We represented a large UK hardware retailer in pursuit of cartel damages arising from the Copper Tubes cartel. The case, *W.H. Newson Holding Ltd & Ors v. IMI plc, IMI Kynoch Ltd & Ors*, shaped the law on the important issue of contribution liability as between the cartelists.
- **Car Parts:** We are acting for a number of OEMs bringing claims in both Europe and the US arising out of several cartels in the automotive sector including Car Glass, Bearings, Maritime Car Transport. We have achieved a number of settlements in these cases already, with several others ongoing.

Hausfeld: Sector Expertise

- We have several lawyers with extensive experience in the European automotive and transport/logistics sectors. They include:
 - Laurent Geelhand, former European General Counsel of **Michelin**. Laurent turned Michelin's European legal department into a profit centre by systematically pursuing actions against suppliers and securing multi-million Euros settlements arising from several cartels using innovative litigation techniques and funding schemes;
 - Christopher Rother, former Head of the Competition Department at **DB Schenker**. Over his two decades at DB, Christopher turned the legal department into a profit centre by setting up a very profitable unit within DB dealing exclusively with DB's global business needs in competition litigation, handling cases worth over €1bn across multiple jurisdictions;
- In connection with the Trucks Cartel specifically, we are also cooperating with the former Michelin Executive Head of Marketing and Sales of Truck Tyres in Spain and Portugal and with the former Michelin General Counsel for the Nordic region in Scandinavia.
- We have also recently been **selected** as **the premier law firm** by the **Swedish Road Haulage Association**, **TLN** – the **Dutch Association for Transport and Logistics** – and **FNTR Normandie - La Fédération Nationale des Transports Routiers** – and various other transport associations in France to represent the associations' members thus further **demonstrating the expertise of Hausfeld's lawyers** in this sector.

The Trucks Cartel: Overview

- On 19 July 2016, the European Commission found five of Europe's top truck manufacturers – **DAF, Daimler, Iveco, MAN and Volvo** – to have engaged in an illegal price-fixing cartel from January 1997 to January 2011 (a period of 14 years) across the entire EEA.
- The cartel affected medium-duty and heavy-duty trucks: medium-duty trucks are defined as trucks weighing between 6 and 16 tonnes, and heavy-duty trucks are those weighing over 16 tonnes.
- The cartel activity included:
 - coordinating prices at "gross list" level (i.e. the factory price of trucks, as set by each manufacturer), and
 - coordinating the timing and costs of the introduction of emission technologies for medium and heavy trucks to comply with European emissions standards (from Euro III through to the currently applicable Euro VI).
- Following the announcement of the Commission's decision, it imposed a record fine of **€2.93 billion** on the cartel. As **Scania** did not plead guilty, it was fined €880 million in September 2017.
- The volume of commerce potentially affected by the alleged cartel is estimated to potentially reach €150-200 billion.

The Trucks Cartel: Proposed Recovery Strategy

- Hausfeld will be bringing claims in at least the Netherlands, Germany and the UK in respect of the Trucks Cartel. There are various options in each jurisdiction for a company to pursue the cartelists to recover its losses.
- We always **prioritise seeking a commercial resolution** over formal litigation, but will use litigation to bring cartelists to the table and put pressure on them to resolve the company's claims.
- We would seek to recover all of a company's losses in a **single European-wide settlement**.
- We will litigate in the Netherlands by group of claimants sharing the same characteristics.
- Wherever we litigate, we will:
 - **Develop the legal and economic case and prepare for litigation.** Establishing a credible threat of litigation will provide a strong incentive for the Cartel to consider settlement – thereby reducing the need for multi-jurisdictional litigation.
 - **Pursue a legal strategy** that recognises the importance of the company's long-lasting, balanced and constructive commercial relationships and therefore **maximises its negotiating position**.

Calculating the Damage

1. **Assessing the affected volume of commerce** – i.e. the price paid for medium and heavy duty trucks during the cartel period.
2. **Calculating the overcharge** – we work with expert economists who analyse and estimate what the price of trucks would have been “but for” the cartel to calculate the amount by which the claimant was overcharged.
3. **Analysing any pass-on of the overcharge to customers** – to rebut the defendant’s argument that the loss was passed on down the supply chain we need to show there was no direct causal link between the overcharge and the price charged to the claimant’s customers.
4. **Calculating interest** – the claimant is entitled to interest accrued on the overcharge from the date of purchase to the date of compensation on a simple or potentially compound basis.

Alternative Fee and Funding Arrangements

We understand that legal costs and risks of litigation can be a barrier pursuing compensation.

We have developed a range of **alternative funding arrangements** which allow clients to pursue competition damages claims without up front cost or significant litigation cost risk.

Netherlands

- We have external third-party funding so that all costs of the litigation (including data retrieval, expert, legal fees and court costs) are funded on behalf of our client until resolution of the claim.
- In this scenario, our client would also be indemnified against any cost risk in exchange for an agreed percentage of the recovery or fixed amount.

Next Steps – Information Request

- **Data template** – Our expert economists have developed an initial template which sets out an example of the type of information needed in the first instance to assist in assessing the potential value of your claim.
- **Data period:** Where information is available, it is helpful to have details of truck purchases and supporting documents both during the cartel (between 1997 and 2011) and after the cartel period (2011 to 2013). Indeed we envision to claim for trucks purchased after 2011 as we assume the cartel would have had effects after the end of the unlawful practices.
- **Supporting documents:** In order to support your claim, the best documents to provide are invoices or lease agreements together with the registration documents issued by local authorities.



Laurent Geelhand, Managing Partner (Brussels)

Laurent is a leading authority on antitrust private enforcement in Europe. Prior to Hausfeld, he was the European General Counsel of Michelin, where he turned Michelin's European legal department into a profit centre by systematically pursuing actions against suppliers and securing multi-million Euros settlements arising from the rubber chemicals, synthetic rubber and paraffin wax cartels using innovative litigation techniques and funding schemes. Laurent is also widely recognised as an authority in European antitrust law and cross-border litigation, listed among the stars of the in-house antitrust bar by Global Competition Review and, in December 2014, listed among the Top 35 Corporate Competition Counsel by the same review.

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