



## EU Truck Cartel Update

In July 2016, the European Commission ruled that MAN, Volvo/Renault, Daimler, Iveco, and DAF broke EU antitrust rules. Fines totalling near £2.5 billion were imposed on the Truck manufacturers, but the judgement also allows truck operators to claim damages against the companies involved, likely to be between 10 and 25% of the truck value.

### Key issues

- Potential financial recovery of 10% or more of the cost of both medium (6 to 16 tons) and heavy trucks (over 16 tonnes) from MAN, Volvo/Renault, Daimler, Iveco and DAF Trucks
- Members should seek to ensure records and cost data of truck purchases between 1997 and 2011 are preserved.
- Authorities can lodge claims themselves in UK courts or several law firms including one instructed by the FTA are lodging group claims. It is likely to be several years before recovery is made

### Overview

In July 2016, the European Commission ruled that MAN, Volvo/Renault, Daimler, Iveco, and DAF broke EU antitrust rules. For 14 years these truck makers colluded on truck pricing and on passing on the costs of compliance with stricter emission rules. The Commission imposed a record fine of € 2,926,499,000 (approx. £2.5 billion)

### Cartel Details

The Commission's investigation revealed that MAN, Volvo/Renault, Daimler, Iveco and DAF had engaged in a cartel relating to:

- **Co-ordinating prices at "gross list" level** for medium and heavy trucks in the European Economic Area (EEA). The "gross list" price level relates to the factory price of trucks, as set by each manufacturer. Generally, these gross list prices are the basis for pricing in the trucks industry. The final price paid by buyers is then based on further adjustments, done at national and local level, to these gross list prices.
- **the timing for the introduction of emission technologies** for medium and heavy trucks to comply with the increasingly strict European emissions standards (from Euro III through to the currently applicable Euro VI)

- **the passing on to customers of the costs for the emissions technologies** required to comply with the increasingly strict European emissions standards (from Euro III through to the currently applicable Euro VI).

### **Legal Background**

- Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement prohibit cartels and other restrictive business practices.
- The Commission's investigation started with an immunity application submitted by MAN. In January 2011 the Commission carried out unannounced inspections
- More information will be available on the Commission's competition website, in the public case register under case number 39824, once confidentiality issues have been resolved.

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. 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.

### **Action for Damages**

Any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the EU Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision constitutes binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without being reduced on account of the Commission fine.

### **Actions for Councils**

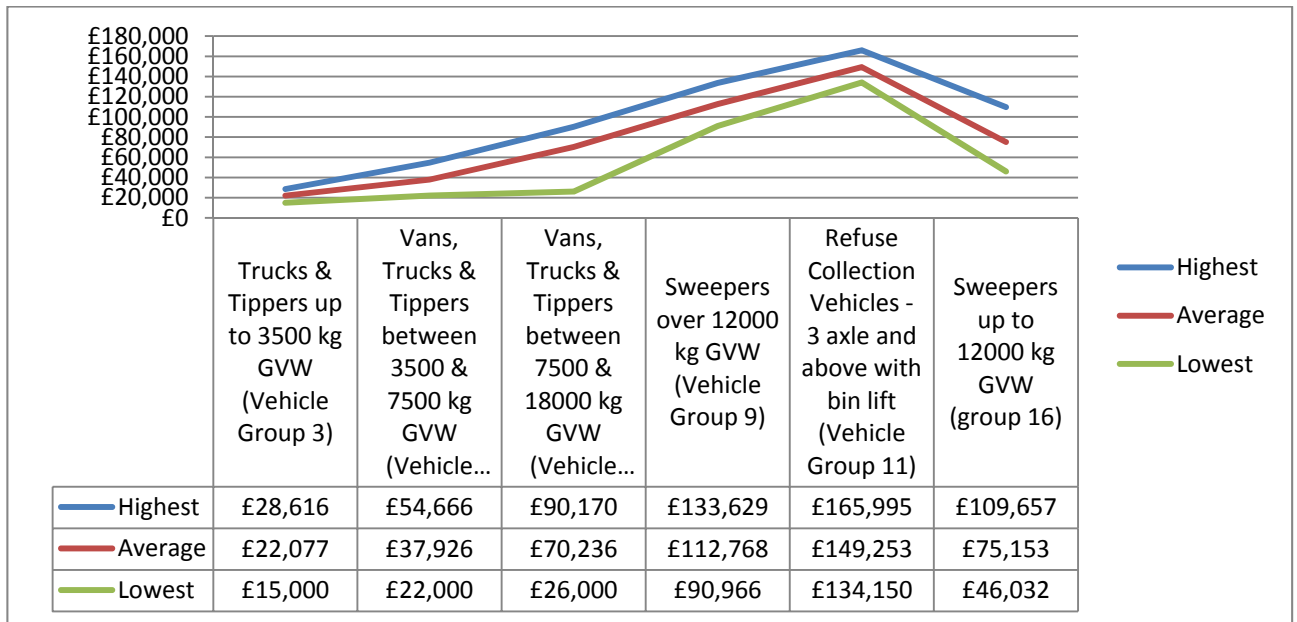
The period of time covered started 20 years ago and lasted until 2011. Record keeping of both purchase costs and vehicle specification may not be immediately available; be partially paper based and archived; involve several generations of vehicle based on an average 7 year replacement cycle; predate current memory.

It is therefore advised that an exercise be undertaken to identify all trucks purchased over the period above 6 tonnes. This could include gritters (typically 10 tonne) and refuse freighters (typically 15 to 30 tonne range), fire-engines and rigid vehicles fitted with a specialist body.

Estimates of the overcharge range from 10% to 25%. Given that local authorities normally both tender and employ procurement professionals, the figures is likely to be nearer to the 10%. Even on those figures, compensation could amount to many millions

Figures above taken from 2015-16 APSE Performance Networks benchmarking service for local authority Transport show the average truck/tipper to cost around £70,000, sweepers between £75,000 - £112,000 dependent on size and refuse collection vehicles £149,000. In simple terms 10% that could mean between £7000

and £15,000 claim per vehicle (although modifications etc. will need to be taken into consideration)



To make a claim, each Claimant must establish the amount of loss suffered (the extent of the overcharge). Damages will amount to the difference between the price actually paid and the price that would have been paid had there not been a cartel, plus damages for the emission technology losses.

Damages will be complicated to calculate and may require specialist accounting services. Truck manufacturers cannot contest liability, however they will undoubtedly challenge the amounts claimed and it is likely to take several years to settle a claim.

**Response from Manufacturers**

APSE approached DAF UK for a response to the EU decision. DAF suggest that any sharing of pricing information was at a very low level within the German market, was never used to set list prices and had no effect on the prices negotiated by dealers and their customers in the UK. The response is included in full with this briefing

**APSE Comment**

The use of a cartel to control pricing of vehicles must be condemned. Whilst the sums involved are unquantified, this is all money that would otherwise have conceivably remained in front-line council services or even lower council tax demands, in both instances retaining money in the local economy.

One would hope that the truck manufacturers balance their wish to defend compensation claims with their brand value. Certainly post Brexit, UK authorities will cease to be constrained by EU procurement rules and may factor reputation into future purchase decisions.

APSE will provide further updates as more information emerges.

**Rob Bailey**

APSE Principal Advisor



### **DAF settlement with European Commission**

DAF reached a settlement with the European Commission (EC) on July 19, 2016 ending the EC's investigation. As part of the settlement DAF will pay a fine of €752 million. Most other European truck manufacturers involved in the investigation also settled with the EC. The fine resulted from the exchange of information among European truck manufacturers regarding factory list prices and the timing of the introduction of trucks meeting new emission standards. DAF has cooperated fully with the EC in resolving this investigation, which was concentrated primarily in the German market. The Company regrets the involvement in the sharing of information with competitors.

We believe the exchange of factory list prices among manufacturers had no effect on truck sales prices negotiated between DAF's independent dealers and its customers. Actual transaction prices are significantly lower than list prices. As part of the investigation, DAF became aware that a few DAF Germany employees discussed list price information with its competitors in the German market. Our review indicated that DAF had a lower level of involvement in these exchanges. This information was not used in setting DAF list prices. European law allows the EC to impose fines based on a percentage of the revenues regardless of the level of involvement or market impact.

The European Union sets the dates for new emission standards after gathering the input of truck manufacturers and other parties. DAF was the first truck manufacturer to introduce Euro-3 in 1999, 2 years before the required adoption date. DAF introduced both Euro 4 and Euro 5 in 2005, which was 1 year before the required adoption date for Euro 4, and 4 years before the adoption date for Euro 5. DAF has consistently introduced trucks meeting the new emissions standards based on customer demand, the availability of emissions technology and the adoption dates set by the EU.

DAF has settled its case and enhanced its compliance training and oversight. DAF is maintaining its focus on the future and continues to invest in the development of industry-leading products and services for its customers.

A handwritten signature in black ink, appearing to read "P. Feight", is located below the text.

Preston Feight  
President DAF Trucks