



CCR - Competition Competence Report

Damage estimation in the truck cartel

The cartel

In 2016, the European Commission found that MAN¹⁾, Volvo/Renault, Daimler, Iveco, and DAF violated EU antitrust rules.²⁾ For the period of 14 years (1997-2011), these truck makers colluded on truck pricing and the passing on of the costs for the emissions technologies to customers. The European Commission has imposed a fine of € 2.9 billion. The cartel related to the market for the manufacturing of medium (weighing between 6 to 16 tons) and heavy trucks (weighing over 16 tons). The European Commission's investigation revealed that MAN, Volvo/Renault, Daimler, Iveco and DAF had engaged in a cartel relating to:

- **coordinating prices at "gross list" level** for medium and heavy trucks in the European Economic Area (EEA). These gross list prices are the basis for pricing in the trucks industry.
- **the timing for the introduction of emission technologies** to comply with the European emissions standards
- **the passing on to customers of the costs for the emissions technologies.**

The truck companies acknowledged their involvement in the cartel and agreed to settle the case. All their sales of medium and heavy trucks in the period from 1997 up to September 2010 (MAN), and up to January 2011 (all other manufacturers) were affected by the cartel. Depending on the specific circumstances, after-effects of the cartel lasted till the end of 2011.

EE&MC approach

- 1) MAN was not fined as it revealed the existence of the cartel to the Commission. However, MAN is not exempted from private damage claims.
- 2) Swedish VW subsidiary Scania is due to pay approximately € 880 million for truck price fixing. Scania has appealed this ruling before the European Court of Justice. The procedure has not yet been completed with legal effect.

Different approaches can be used to estimate cartel damage. With the support of econometric tools, EE&MC applies the concept of comparison over time, meaning a comparison of the prices paid before and after the cartel. The EE&MC approach does not average damages across all truck categories. Instead EE&MC uses accurate models to estimate the damages per truck in detail. Such a precise estimation of damage is labour-intensive and demands a sound and safe use of econometric models. The model design is preceded by a comprehensive review of market conditions and an evaluation of theoretical model assumptions.

A unique feature of EE&MC is its interdisciplinary approach: EE&MC evaluates economically legal findings of the European Commission and classifies them econometrically. In the case of the truck cartel, the EE&MC approach implements e.g. the finding of the European Commission that the truck manufacturers delayed the implementation of innovations regarding the new emission standards.³⁾

In addition to technical features, EE&MC tests possible supply and demand variables that determine the price of trucks. This is essential in the development of sound models. Moreover, the EE&MC team inspects and evaluates various sources relating to the truck market, continuously conducts expert discussions and, for example, also visited a truck production facility operated by a cartel member.

EE&MC individual reports

The result of these EE&MC analyses is the development of customer-specific regression models for different categories of trucks ("sub-samples").

The experts in the EE&MC team use these well-founded models for the damage estimation. The models determine the hypothetical competitive prices for the cartel period, considering truck-specific variables (e.g. gross vehicle weight, engine power, cab size, etc.), or customer-specific characteristics (e.g. truck use, purchasing behaviour, fleet size, etc.). Thus, results of the EE&MC models are hypothetical competitive prices, also known as "*but for*" prices. By comparing these hypothetical prices with the actual paid cartel prices, the damage is calculated. Accordingly, with these EE&MC models the price overcharges resulting from the cartel behaviour are estimated individually for each customer and/or each truck sold during the cartel.

EE&MC's services include the estimation of cartel damages resulting from the anti-competitive behaviour and the formulation of individual expert testimonies to be presented in an action for damages in front of a national court.

Such individual damage estimations are possible when customers have a sufficient number of transactions. If the customer truck fleet is large enough, a detailed and individualized assessment is possible which next to the foregoing primarily takes into account customer-specific characteristics.

EE&MC has also developed a pool solution to give smaller companies that suffered damage access to accurate damage estimates as well.

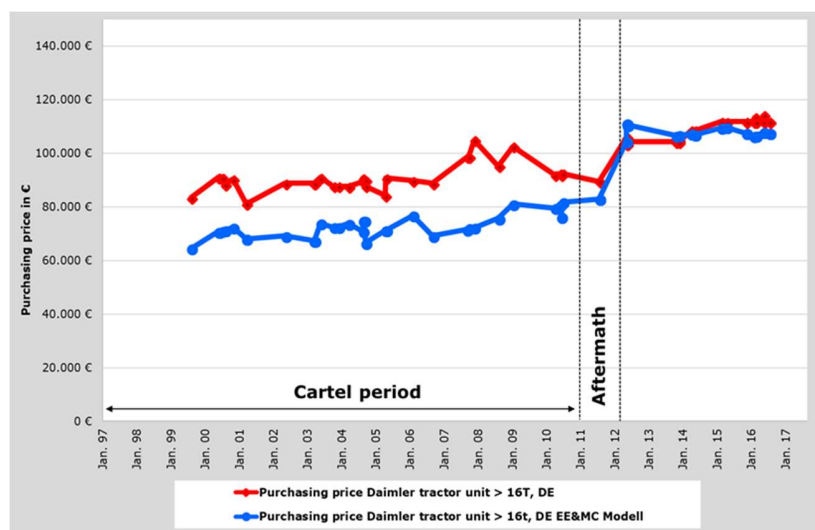
3) (European Commission 2016, CASE AT.39824 - Trucks, Rn. 52)

EE&MC solution for smaller companies

In 2017, EE&MC combined the truck purchases of smaller companies that suffered damage into one data pool. Economically speaking, the EE&MC data pool provides a solid basis for estimations and extrapolations in order to be able to quantify damage claims for smaller injured companies. In accordance with the precise EE&MC approach discussed above, this data pool differentiates the procurement processes by EU member states.

For example, the 2017 data pool for Germany includes 7,500 truck procurement transactions. The following graph of the data pool 2017 shows an example of the course of the actual prices of a tractor unit >16 tons (red line) compared with the hypothetical competitive prices estimated by the EE&MC model (blue line). The excess of the purchasing prices during the cartel period compared with the hypothetical prices is obvious in the graph.

Figure 1: Comparison of the actual price with the hypothetical competition price (08/1999-08/2016, in €)



Source: Presentation EE&MC on Basis of the EE&MC-Data pools.

EE&MC found in the Germany data pool that the purchasing prices, affected by the cartel, were exceeded by 12%-28%. The respective price elevations depend on the manufacturer, the individual consumer behaviour, the weight and other specific product features.

Based on the results from the 2017 German data pool, EE&MC has completed around 100 assessments that EE&MC clients and their attorneys will exploit to bring an action against the truck manufacturers in court.

In this way, EE&MC has also been able to gain in-depth experiences in damage estimation in the case of the truck cartel and draws on this range of results. EE&MC currently provides expert testimonies in action for damages for customers from Germany, Belgium, France, Italy, the Netherlands, Luxembourg, Austria, Poland, Spain and the Czech Republic. EE&MC is well-prepared for the country-specific features due to the international backgrounds of the EE&MC economists involved.

Accompanying Services

In order to guarantee the quality of the data pool and the analyses based on it, EE&MC accompanies its customers from the very beginning on: from an assessment of expected harm values, to data preparation, to the written expert opinion of the results and queries beyond that.

Extensive knowledge of the truck market as well as the technical specifications allow the EE&MC experts to verify customer data in terms of quality and plausibility. In this way, we also motivate our customers to create a meaningful database that complies with the legal standards and provides the basis for precise and reliable econometric estimates.

About EE&MC

EE&MC is an economic consulting firm that performs economic analyses in questions of cartel matters and other economic issues that arise in the course of antitrust proceedings. Managing Partner of EE&MC, sworn expert on antitrust issues and professor at the University of Brussels (VUB) is Prof. Dr. Dr. Doris Hildebrand.

The manifold experiences of the experts at EE&MC in the calculation of cartel damages is documented on the firm's website www.ee-mc.de. Furthermore, EE&MC took part in the development of the "practical guide"⁴⁾ for damage calculation by the European Commission.

With EE&MC you have an experienced, motivated and strong partner at your side.

4) European Commission 2013, Practical guide quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union