ECLI:NL:RBAMS:2026:3734

Court:	Amsterdam District Court
Date of judgment:	15 April 2026
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Case number:	C/13/639718 / HA ZA 17-1255
Areas of law:	Civil law
Particulars:	First instance – three-judge panel
Sources:	Rechtspraak.nl

Summary

Competition law. Truck cartel. Judgment subsequent to the interlocutory judgment of 28 February 2024 (ECLI:NL:RBAMS:2024:1119, the second judgment on the burden of assertion (*stelplicht*)). The court rejects the Truck Manufacturers' plea of limitation under Dutch law. With reference to the judgment of the CJEU in *Heureka Group v Google*, the court holds that the subjective limitation period did not begin to run until the publication of the summary of the European Commission's Decision on 7 April 2017. The writ of summons is dated 13 July 2017. The court does not accept the Truck Manufacturers' position that CDC (or the Assignors) was already in possession, prior to 7 April 2017, of the information necessary to bring an action for damages. As regards objective limitation, the court holds that it follows from the Damages Directive and Article 6:193s of the Dutch Civil Code that an action for compensation of damage caused by an infringement of competition law becomes time-barred upon the expiry of twenty years from the start of the day following the day on which the infringement ceased. In the present case, the Commission determined the end of the Infringement to be 18 January 2011. Accordingly, there is no question of objective limitation.

In the present judgment it must determined whether there was a percentage of overcharge. To that end, the parties have submitted regression analyses prepared by experts. In determining the overcharge rate, the court takes the regression analysis prepared by CDC's experts as its starting point. The court finds an overcharge percentage of 7%.

As regards the run-off period (the effective end date of the Cartel), the court adopts the period determined by CDC's experts. The court finds that the run-off period (the period during which the Cartel continued to have an effect after the date of 18 January 2011 established by the Commission) ended on 30 May 2013.

CDC also claims to have suffered loss on the ground that agreements had been made concerning the introduction of new emission technologies, as a result of which trucks meeting the latest (European) standards came to market only later. The court holds that these emissions-related damages cannot be awarded for lack of sufficient substantiation.

To quantify the damages, the volume of commerce must also be determined. The court sets out the principles by reference to which it can be determined. The parties can on that basis themselves draw up a list of truck transactions that qualify for compensation.

The value of commerce also remains to be determined. Here too the court sets out the principles. The court holds that the purchase price actually paid by the purchasers and the lease instalments calculated by CDC are the starting point for the calculation of the value of commerce.

The court refers the case to the roll for the parties to comment on the further course of the proceedings in relation to the following points for decision: the determination of the volume of commerce and the value of commerce, and the Truck Manufacturers' pass-on defence.

Judgment

AMSTERDAM DISTRICT COURT Private Law Division

Case number: C/13/639718 / HA ZA 17-1255

Judgment of 15 April 2026

in the matter of

the legal person under foreign law

RETAIL CARTEL DAMAGE CLAIMS S.A., having its registered office in Luxembourg, Luxembourg, claimant, hereinafter referred to as "CDC", counsel: J.A. Möhlmann, J.N. Kleywegt and N.A.D. Groot,

against

1. the legal person under foreign law **TRATON SE**, formerly known as **MAN SE**, having its registered office in Munich, Germany,

2. the legal person under foreign law **MAN TRUCK & BUS SE**, formerly known as **MAN TRUCK & BUS AG**, having its registered office in Munich, Germany,

3. the legal person under foreign law **MAN TRUCK & BUS DEUTSCHLAND GMBH**, having its registered office in Munich, Germany,

defendants, hereinafter jointly referred to as "MAN", counsel: J.S. Kortmann and M.G. Kuijpers,

4. the legal person under foreign law **AB VOLVO (PUBL)**, having its registered office in Gothenburg, Sweden,

5. the legal person under foreign law **VOLVO LASTVAGNAR AB**, having its registered office in Gothenburg, Sweden,

6. the legal person under foreign law **RENAULT TRUCKS SAS**, having its registered office in Saint-Priest, France,

7. the legal person under foreign law **VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH**, having its registered office in Ismaning, Germany,

defendants, hereinafter jointly referred to as "Volvo/Renault", counsel: A. Knigge and H.M. Cornelissen,

8. the legal person under foreign law **DAIMLER AG**, having its registered office in Stuttgart, Germany,

defendant, hereinafter referred to as "Daimler", counsel: W. Heemskerk,

and

9. the legal person under foreign law **SCANIA AB**, having its registered office in Södertälje, Sweden,

10. the legal person under foreign law **SCANIA CV AB**, having its registered office in Södertälje, Sweden,

11. the legal person under foreign law **SCANIA DEUTSCHLAND GMBH**, having its registered office in Koblenz, Germany,

hereinafter jointly referred to as "Scania", interveners, counsel: C.E. Schillemans.

The defendants and the intervener Scania will hereinafter jointly be referred to as the Truck Manufacturers.

In addition, the following defined terms are used in this judgment:

Assignors: the parties (purchasers/users of trucks) which have assigned their alleged claims for damages to CDC (see paragraphs 2.3, 3.2 and 3.18 of the interlocutory judgment of 15 May 2019[1] (the *judgment on the burden of assertion*));

Purchaser(s): purchaser(s)/user(s) of trucks (including the Assignors);

Decision: the decision of 19 July 2016 by which the European Commission imposed a fine on a number of undertakings for a cartel established in the market for medium and heavy trucks (the Truck Cartel or the Cartel);

Claimants: CDC and the other claimants in Group 1 of the Truck Cases (see also paragraph 1.3 below);

Infringement: the infringement of Article 101 TFEU as established by the Commission in the Decision and in the Scania Decision;

Scania Decision: the decision of 27 September 2017 by which the European Commission imposed a fine on Scania for an infringement of Article 101 TFEU.

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[1] ECLI:NL:RBAMS:2019:3574.

1. The proceedings

1.1. The writ of summons was originally also directed against DAF Trucks N.V. and DAF Trucks Deutschland GmbH (together "DAF") and against CNH Industrial N.V., Stellantis N.V., Iveco S.P.A. and Iveco Magirus AG (together "CNH/Iveco"). CDC has since reached a settlement with DAF and with CNH/Iveco, so that they are no longer parties to the proceedings.

1.2. Because, up to the time when DAF reached a settlement with CDC, the Truck Manufacturers had largely conducted a joint defence, the procedural documents originating from DAF will also be listed below. Because CNH/Iveco likewise reached a settlement with CDC very shortly before the date of this judgment, the same applies to the procedural documents originating from CNH/Iveco. For the sake of clarity, only those documents relating to the substantive debate between the parties are listed below.

1.3. The court delivered a judgment on 28 February 2024.[2] In that judgment (the *second judgment on the burden of assertion*), the court held that a further round of written submissions was necessary in order, in short, to give CDC (and, at that time, the other Claimants in Group 1 of the Truck Cases) the opportunity to further substantiate all truck transactions for which it claims damages. The court also invited the parties to submit observations on whether a referral to the damage assessment procedure (*schadestaatprocedure*) was still necessary, or whether the damages could also be assessed in these proceedings. The court subsequently indicated in its procedural order of 5 June 2024 that it intended to sever the present case from the cases in Group 1 of the Truck Cases. After the parties had commented on that intention, the court carried it into effect by procedural order of 17 July 2024. CDC thereafter complied with the second judgment on the burden of assertion and, by written submission, further substantiated the truck transactions in respect of which it claims damages. The Truck Manufacturers responded to that written submission. The court subsequently, having taken cognisance of the parties' positions on the matter, determined that the damages would be assessed in the present proceedings. The court ordered a case management hearing and a substantive hearing.

1.4. The case management hearing was held on 3 June 2025. Minutes of the hearing were drawn up which, together with the documents referred to therein — including the written pleadings and the presentations given by the (party-appointed) experts — form part of the case file. At the closing of the hearing, the court directed the parties to file, simultaneously, a summary statement (*overzichtsakte*) setting out in full all matters still relevant to the substantive hearing on 18–19 November 2025 and to the decisions to be taken by the court, including matters already set out in earlier procedural documents.

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[2] ECLI:NL:RBAMS:2024:1119.

1.5. The parties subsequently filed the following documents:

- the CDC summary statement of 1 October 2025, with Exhibits CDCR-0085 to CDCR-0099;
- the summary statement of the Truck Manufacturers of 1 October 2025, with Exhibits:
  - DAIM-0016;
  - IVEC-0010 to IVEC-0012;
  - MAN-0011 (updated version of 19 August 2025);
  - TRUC-0070;
- the letter of counsel Möhlmann of 1 October 2025, enclosing a corrected version of Exhibit CDCR-0089;
- CDC's statement of reduction of claim of 29 October 2025 (following the settlement with DAF);
- the B16 form of 29 October 2025 containing the joint request of CDC and DAF to strike out the proceedings against DAF;
- the further statement filed by the Truck Manufacturers for the substantive hearing, dated 29 October 2025, with Exhibits TRUC-0071 to TRUC-0076;
- the further statement filed by CDC for the substantive hearing, dated 29 October 2025, with annexes 1a (Volume of Commerce overview document), 1b (Volume of Commerce USB stick) and 2 (Agree/Disagree statement).

1.6. The substantive hearing took place on 18 and 19 November 2025. Minutes of the hearing were drawn up which, together with the documents referred to therein — including the written pleadings and the presentations given by the (party-appointed) experts — form part of the case file.

1.7. Judgment was then reserved.

1.8. Subsequently, by letter of 13 April 2026, CDC stated, briefly, that it had reached a settlement with CNH/Iveco and that it no longer maintains any claim in respect of CNH/Iveco's share in the damage which the Assignors allege to have suffered. By notice to the roll of 13 April 2026, CDC requested that the proceedings against CNH/Iveco be struck out. CDC further filed a statement of reduction of claim, by which it reduces its claim against CNH/Iveco to nil (i.e. withdraws the claim against CNH/Iveco). Also on behalf of CNH/Iveco, CDC requests the court to give effect to the reduction of claim and the striking out in respect of CNH/Iveco before delivering judgment. CNH/Iveco confirmed, by notice to the roll of 14 April 2026, that the parties unanimously request that the proceedings be struck out.

1.9. Thereafter, by letter of 14 April 2026, CDC stated, briefly, that it had reached a partial settlement with MAN. Consistently with that, CDC also filed a statement of reduction of claim.

1.10. Likewise by letter of 14 April 2026, CDC stated, briefly, that it had also reached a partial settlement with Scania. Consistently with that, CDC has also filed a statement of reduction of claim.

2. Introduction

The matters before the court in this judgment

2.1. At the case management hearing the court decided that the following topics would be addressed at the substantive hearing on 18–19 November 2025:

1. The methodology for calculating the (potential) damages, in particular the following sub-topics:
    a. the method of calculating the alleged overcharge;
    b. the method of calculating the alleged damages arising from the timing of, and the pass-on of the costs of, the implementation of the European emission standards EURO III to VI (hereinafter referred to as "emissions-related damages");
    c. which data are to be used in calculating the (potential) damage;
    d. the duration of the (possible) run-off period.
2. The methodology for determining the volume of commerce, involving:
    a. which truck transactions are at issue;
    b. the (method of calculating the) truck prices to be used for the damage assessment;
    c. the (method of calculating the) truck lease instalments to be used for the damage assessment.
3. The Truck Manufacturers' pass-on defence.

2.2. The parties subsequently placed these topics on the agenda for the substantive hearing on 18–19 November 2025 in the following order:

- general introduction to the damages debate;
- methodology, data, overcharge and agree/disagree;
- emissions-related damages;
- value of commerce;
- volume of commerce;
- plausibility;
- pass-on defence.

2.3. The court will address each of the (sub-)topics set out below in turn. The Truck Manufacturers' plea of limitation under Dutch law was not on the agenda for the substantive hearing. That plea had been raised earlier in the proceedings; the argument on it had taken place at the hearing of 20 April 2023. The parties thereafter restated their positions in their summary statements. The court sees reason to also rule on the plea of limitation in this judgment, proceeding (still) on the assumption that Dutch law applies to CDC's claims (see further below).

Starting point: Dutch law applies

2.4. The court reiterates that the assessment below of the points at issue proceeds on the basis that Dutch law is applicable. As was decided at the case management hearing on 3 June 2025, the court will not deliver a final judgment until the Court of Justice of the European Union (CJEU) has ruled on the questions referred for a preliminary ruling by the Supreme Court in its judgment of 20 June 2025 concerning the applicable law and the possibility of a choice of Dutch law.[3] As stated in the minutes of the case management hearing, in so far as the present case reaches the stage at which final judgment would otherwise be given before the CJEU has ruled, the hearing of the case will be adjourned so that the parties may still comment on the consequences if Dutch law should nevertheless not apply to all of CDC's claims.

3. Limitation

3.1. The Truck Manufacturers, as their most far-reaching substantive defence, take the position that CDC's claim is time-barred.

Subjective limitation

3.2. The Truck Manufacturers rely in the first place on the subjective limitation period laid down in Article 3:310 of the Dutch Civil Code. Under Article 3:310(1) of the Dutch Civil Code, an action for compensation of damage becomes time-barred upon the expiry of five years from the start of the day following the day on which the injured party became aware both of the damage and of the person liable for it. The Truck Manufacturers contend that as of 3 March 2011 it was publicly known that MAN had submitted a leniency application to the Commission and that the Commission was investigating a number of truck manufacturers. From that moment, CDC and the Assignors were aware of the competition-law infringement on the European truck market, the relevant period, and the presumed participants in the Infringement. With reference to judgments of the Dutch Supreme Court[4] and of the Rotterdam District Court,[5] the Truck Manufacturers submit that the subjective limitation period started to run on 4 March 2011 and expired on 4 March 2016. The limitation period was not interrupted before that date and the writ of summons was served on 13 July 2017. On that basis, according to the Truck Manufacturers, the claims are time-barred.

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[3] ECLI:NL:HR:2025:945.

[4] Supreme Court 31 October 2003, ECLI:NL:HR:2003:AL8168; Supreme Court 3 December 2010, ECLI:NL:HR:2010:BN6241.

[5] District Court of Rotterdam 26 September 2018, ECLI:NL:RBROT:2018:8001 (*Van Gelder v Shell*).

3.3. CDC disputes that the claims are time-barred under Article 3:310 of the Dutch Civil Code. With reference to the judgment of the CJEU of 22 June 2022 in *Volvo v RM*,[6] CDC submits that the limitation period did not begin to run until the publication of the summary of the Decision in the *Official Journal of the European Union* on 7 April 2017. At the time the writ of summons was served, the limitation period had therefore not yet expired.

3.4. In order to determine whether the claims are (in part) time-barred, the court must first establish which limitation regime applies to CDC's claims. Article 22(1) of the Damages Directive provides that the substantive provisions of the Damages Directive shall not have retroactive effect. In *Volvo/RM* the CJEU held that the limitation rule in Article 10 of the Damages Directive is a substantive provision within the meaning of Article 22 of the Damages Directive. It follows that the limitation regime of Article 10 of the Damages Directive and its national implementation in Article 6:193s of the Dutch Civil Code have no retroactive effect. Those provisions therefore apply only to claims in respect of which the limitation period had not yet expired on the deadline for implementation of the Damages Directive, namely 27 December 2016.

3.5. Where the limitation regime under the Damages Directive does not apply, the limitation regime is governed by national law, as held by the CJEU in its judgment of 27 March 2019 in *Cogeco*.[7] The national limitation regime governing the exercise of the right to claim damages is laid down in Article 3:310 of the Dutch Civil Code. Article 3:310 of the Dutch Civil Code provides that an action for compensation of damage becomes time-barred upon the expiry of five years after the injured party has become aware of (i) the damage and (ii) the identity of the person liable for the damage. As noted above, the Truck Manufacturers fix that moment at 3 March 2011.

3.6. The court does not follow the Truck Manufacturers in this. It follows from the judgment of the CJEU of 18 April 2024 in *Heureka Group v Google*[8] that, in principle, from the moment a summary of the Commission's decision has been published in the *Official Journal*, it may reasonably be assumed that an injured party has the information necessary to bring an action for damages, unless it is shown that that information was known well before that date to the person seeking damages (paragraph 83). The limitation period cannot, however, begin to run before the infringement has ceased (paragraph 86).

3.7. The summary of the Decision was published on 7 April 2017. In light of *Heureka Group v Google*, the limitation period thus in principle did not begin to run until that date. The court does not accept the Truck Manufacturers' position that CDC (or the Assignors) already had, before that date, the information necessary to bring an action for damages. It follows from the CJEU's judgment of 22 June 2022 in *Volvo/RM* that the existence of an infringement of competition law, the existence of damage and a causal link between that

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[6] CJEU 22 June 2022, C-267/20, ECLI:EU:C:2022:494 (*Volvo/RM*).

[7] CJEU 27 March 2019, C-637/17, ECLI:EU:C:2019:263 (*Cogeco*).

[8] CJEU 18 April 2024, C-605/21, ECLI:EU:C:2024:324 (*Heureka Group v Google*).

damage and the infringement, as well as the identity of the infringer, form part of the information which the injured party must have in order to bring an action for damages. The Truck Manufacturers refer to the Commission's press release of 18 January 2011 and to news reports in various countries on 18, 19, 20 and 25 January 2011 and on 3 and 4 March 2011. In the court's view, those publications do not permit the conclusion that CDC (or the Assignors) had become aware — or could reasonably be deemed to have become aware — of the above information at any of those moments. The Commission's press release states no more than that unannounced inspections took place on 18 January 2011 "in the truck industry". No truck manufacturers are named. The Commission writes, among other things:

> "The Commission has reason to believe that the companies concerned may have violated EU antitrust rules that prohibit cartels and restrictive business practices and/or the abuse of a dominant market position (Articles 101 and 102 respectively of the Treaty on the Functioning of the EU)
>
> (…)
>
> Unannounced inspections are a preliminary step into suspected anticompetitive practices. The fact that the Commission carries out such inspections does not mean that the companies are guilty of anti-competitive behaviour nor does it prejudge the outcome of the investigation itself."

This is a brief statement containing no specific information. The other media reports to which the Truck Manufacturers refer are also very summary, contain only highly general information (in part identical to the Commission's press release) and concern an investigation by the Commission that had only just been opened. In so far as truck manufacturers are quoted in those reports, this amounts to no more than a confirmation that they were under investigation and that they were cooperating with the investigation. Considered together, those reports do not supply the minimum level of knowledge required under *Volvo/RM*. The fact that MAN is mentioned in the reports as the whistle-blower who made a report to the Commission does not lead to a different conclusion.

3.8. The fact that CDC in these proceedings has sought a declaratory judgment and did not (initially) bring a concrete claim for damages does not detract from the foregoing. Contrary to the Truck Manufacturers' assertion, that does not mean that CDC (or the Assignors) could have brought an action at an earlier stage. The same applies to the Truck Manufacturers' argument that CDC, according to the Truck Manufacturers themselves, assumes that a cartel has a price-raising effect and could therefore already have suspected that it had suffered damage as a result. That is still insufficiently concrete.

3.9. The writ of summons is dated 13 July 2017. That falls within the five-year period following publication of the summary of the Decision. Accordingly, there is no question of subjective limitation.

3.10. Even before the handing down of *Heureka Group v Google*, the court would have reached the same conclusion. That is set out below, for the sake of completeness, in paragraphs 3.11–3.13. Although *Heureka Group v Google* had not yet been handed down at the time of the hearing, there is no reason to afford the parties an opportunity to respond

to that judgment, because it does not lead to a different conclusion from the law previously in force.

3.11. The limitation period under Article 3:310 of the Dutch Civil Code begins to run once the injured party has become aware of the damage and of the person liable. A recent judgment of the Dutch Supreme Court has confirmed the settled rule that this must involve actual knowledge.[9] The injured party must actually be in a position to bring an action for damages. That is the case once the injured party has obtained sufficient certainty that damage has been caused by a failure or wrongful conduct on the part of a third party. Whether there is actual knowledge depends on the circumstances of the case. The question to be answered in that regard is whether the injured parties had the knowledge and insight actually to assess the soundness of the third party's conduct.

3.12. In answering the question whether injured parties have the necessary knowledge and insight actually to assess the soundness of a third party's conduct, the *Cogeco* judgment is of relevance. It follows from that judgment that the injured party must be able to await the final decision of a competition authority and must then still have sufficient time to bring an action for damages, without any national limitation regime being allowed to stand in the way.

3.13. Against that background, the court holds that the injured parties were, at the earliest, actually aware of the damage and of the legal persons liable for it on 7 April 2017. On 7 April 2017 the European Commission published the summary of its Decision on the Infringement. The writ of summons is dated 13 July 2017, which is within the five-year period. Accordingly, there is no limitation. So much for the assessment, obiter dictum, as it would have stood prior to *Heureka Group v Google*.

3.14. The plea of subjective limitation therefore fails.

Objective limitation

3.15. The Truck Manufacturers rely, in the second place, in respect of part of the claims for damages, on the objective limitation period laid down in Article 3:310 of the Dutch Civil Code. Under that provision, an action for compensation of damage is also time-barred upon the expiry of twenty years from the event causing the damage. That period begins to run as soon as the damage-causing event has taken place, even where the injured party is unaware of the existence of its claim. According to the Truck Manufacturers, the 20-year objective limitation period began to run, for each individual claim for damages, on the date of the transaction to which the claim relates. In so far as claims arose more than twenty years before the date of a valid interruption letter, the service of the writ of summons, or the filing of a related amendment to the claim, they are therefore time-barred. The court understands that by this the Truck Manufacturers have in mind the period from 17 January

[9] Supreme Court 12 January 2024, ECLI:NL:HR:2024:19.

1997 (start of the Infringement period) to 14 July 1997 (twenty years before the date of the writ of summons).

3.16. CDC disputes that there is any objective limitation of part of the claims for damages. According to CDC, there is no sequence of damage-causing events. The damage-causing event is not an individual truck transaction but the single continuous Infringement. The objective limitation period therefore does not begin to run truck-by-truck or transaction-by-transaction. There is a single point in time for the Infringement as a whole: the day on which the infringement ceased. That is 18 January 2011, according to CDC.

3.17. In light of what has been held above with respect to the plea of subjective limitation, it is also material here whether the objective limitation period had already expired on the deadline for transposition of the Damages Directive, namely 27 December 2016. The court finds that it had not. The earliest possible date on which the objective limitation period could have begun to run is the date on which the Infringement began, 17 January 1997. That means that the 20-year period would, at the earliest, expire on 17 January 2017. That date is after the transposition deadline of the Damages Directive. Accordingly, the Damages Directive and Article 6:193s of the Dutch Civil Code apply. It follows that an action for compensation of damage caused by an infringement of competition law is time-barred upon the expiry of twenty years from the start of the day following the day on which the infringement ceased. In the present case, the Commission has determined that the Infringement ended on 18 January 2011. Accordingly, there is no objective limitation. The plea of objective limitation is therefore also rejected.

4. The Infringement - unlawfulness

4.1. The Truck Manufacturers submit that there is no civil liability towards the Assignors because the conditions for a tort (*onrechtmatige daad*) have not been satisfied. The court does not accept that submission: the Decision and the Scania Decision establish the Infringement. That means that unlawfulness (*onrechtmatigheid*) vis-à-vis the Assignors is a given, in so far as an Assignor was affected by the Infringement. Whether that is the case depends on the answer to the question whether the Assignors suffered damage as a result of the Infringement.

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5. Plausibility of damage (gross list prices)

Plausibility

5.1. In its interlocutory judgment of 12 May 2021,[10] the court assessed the defence of the Truck Manufacturers that (in so far as now relevant) the Assignors did not and could not

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[10] ECLI:NL:RBAMS:2021:2391.

have suffered loss. The court rejected that defence and held that it has not been established that it is ruled out that the Infringement caused damage to the Assignors (paragraph 3.69). Notwithstanding that decision, at the present stage of the proceedings the Truck Manufacturers (continue to) argue that it is not plausible that the Infringement led to higher truck prices (and therefore to damage for the Assignors).

5.2. The court did indeed formulate that decision in the interlocutory judgment cautiously, but that formulation followed the defence that was being assessed. In the interlocutory judgment the court also took the following (binding final) decisions on the plausibility of damage.

5.2.1. The argument of the Truck Manufacturers (which they continue to advance) that the Infringement in essence involved no more than an exchange of information was rejected. The Commission's use of the term "collusion" to characterise the conduct of the Truck Manufacturers implies that the Commission considers that this went beyond the mere sharing of innocuous information on gross list prices; there was evidently also mutual coordination and agreement. The use of the term "coordinate" makes clear that the Commission considers that specific agreements were made. The court too will proceed on that basis (paragraph 3.19).

5.2.2. The Truck Manufacturers' defence that they did not implement the agreements reached at the impugned meetings was also rejected (paragraph 3.20).

5.2.3. The court held that the Harrington & Schinkel report[11] (setting out a theory of harm) is cogent and convincing. It was prepared by persons who may be regarded as experts in the field and it sets out in a comprehensible manner not only the effect on the market of the information exchanged between the manufacturers but also that, by keeping the agreements secret both within and outside the undertakings, the appearance of a fully competitive market was maintained. This is underpinned by the generally accepted economic theory that prices rise as costs rise. The court finds convincing the theory of Harrington & Schinkel that, because the lower links in the distribution chain were unaware of the gross list price agreements and of the exchange of information on gross list prices, the gross list prices were treated as cost prices (paragraph 3.63).

5.2.4. Lastly, the court held (in paragraph 3.67) as follows:

> "Even at the hearing the Truck Manufacturers were unable to give a convincing answer to the question of what the purpose of the exchange of information on gross list prices was. According to the Truck Manufacturers, they were simply interested in everything happening on the market and saw little or no harm in it. That stands a long way from what the Commission determined in the Decision regarding the purpose of the collusion: to distort independent price-setting and

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[11] Exhibit CDCR-0051, *The Collusion on Gross List Prices by the European Trucks Cartel and its Effect on Net Retail Prices, Expert opinion for Cartel Damages Claims S.A. (CDC)*, Luxembourg, Joseph E. Harrington, Jr. and Maarten Pieter Schinkel, 25 October 2020.

> normal price movements for trucks in the EEA (paragraph 71). The Decision shows that there was already a high degree of transparency on the truck market (paragraph 29). Future market conduct and the Truck Manufacturers' plans concerning changes in gross prices and gross list prices were among the remaining uncertainties. Once again the court observes that the Truck Manufacturers, with the exception of Scania, have acknowledged the Commission's findings. It is difficult to see why a Truck Manufacturer would, out of mere curiosity, give its competitors information about its future market conduct without anything in return that would (or could) benefit it. In this case: information about the future market conduct of its competitors. This was done with the intention of coordinating market conduct, as the Commission has also established. The Commission has moreover established that the Addressees committed the Infringement deliberately (paragraph 104). It is, moreover, obvious that the information exchange was beneficial to the Truck Manufacturers. The Cartel operated for many years and not a single member withdrew from the Cartel prematurely. That too tells against the proposition that the Infringement had no effect and could not have caused damage. In that connection the court also refers to paragraph 81 of the Decision, in which the Commission considers that, given the market share and turnover of the Addressees in the EEA, it may be assumed that the effects on trade were appreciable."

5.3. Taken together, all of these considerations led to the conclusion "that it has not been established that it is ruled out that the Infringement caused damage to the Assignors" (paragraph 3.69). Put differently: the court considers it unlikely that the Infringement did not lead to higher prices and (therefore) to damage to the Assignors.

5.4. Similar considerations are to be found in the decisions of foreign courts.

5.4.1. In the decision of the Competition Appeal Tribunal (CAT) (United Kingdom) in *Royal Mail/BT v DAF* of 7 February 2023,[12] the following is held:

> "(…) For long-running conduct which encompasses some of Europe's largest and most sophisticated industrial operators and which was supported by a series of secret, high level meetings over multiple years, it does not seem plausible (…) that the firms involved could have been ignorant of the risks they were taking. Nor would it have needed to have been so secretive if it was being done to benefit competition by for example reducing costs associated with risks and uncertainty." (282)
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> "(…) We consider it inconceivable that DAF did not expect to raise transaction prices through its participation in the Cartel for such a long period." (319)

[12] Case Nos. 1284/5/7/18 (T), 1290/5/7/18 (T), (1284) Royal Mail/(1290T) BT, Judgment of 7 February 2023.

> "We find that a plausible theory of coordination might be formed around the ability of the Cartelists to use list price increases as a focal point in the hope or expectation that this would make net prices higher. (…) we cannot, and do not need to, test or prove this hypothesis fully. But the clues we do have from the regular Cartel member meetings over 14 years, in which there were several references to net prices among other things, does provide at least a plausible account of how coordinated list price increases might have affected net transaction prices. (…)" (320)

5.4.2. The Court of Appeal upheld the CAT's decision on 27 February 2024[13] and (also) held:

> "On its own admission, DAF participated in a secret cartel with other truck manufacturers to maintain prices at a supra-competitive level for some fourteen years. It is inconceivable that it would have participated in the cartel for such an extended period of time with all the financial, regulatory and reputational risk that that entailed, unless it was gaining significant financial benefit from that participation. (…)" (140)

5.4.3. In a judgment of 5 December 2023,[14] the German Federal Court of Justice (*Bundesgerichtshof*, BGH) held (in an English translation):

> "(1) In its overall assessment, the appeal court attached considerable weight to the rule of general experience to be applied here in the light of the nature and gravity of the cartel infringement, in particular its content relating to gross list prices as an important instrument of strategic control of price-setting behaviour on the market, the cartel participants' over 90% market coverage in the EEA and the maintenance of the cartel over 14 years with an increasing intensity of the mutual exchange of information. It correctly held that the establishment and maintenance of the cartel for at least 14 years would not make sense without a worthwhile return on the cartel, despite the considerable risks involved, including financial risks. (…) (40)
>
> (2) (…) The appeal court did not err in law in basing its conviction that, with the probability required for a judgment on the merits, harm of some amount was incurred, firstly on the considerable weight of the rule of general experience in the present case and, secondly, on the fact that there are no circumstances which, in view of the risks involved, could explain the continuation of the cartel for many years despite a lack of returns. (…)." (41)

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[13] Ibid., (1284) Royal Mail/(1290T) BT, Judgment of the Court of Appeal of 27 February 2024.

[14] ECLI:DE:BGH:2023:051223UKZR46.21.0 (*LKW-Kartell III*).

5.4.4. The Borgarting Court of Appeal (Norway) held, inter alia, as follows in a judgment of 17 March 2025[15] (p. 39):

> "(…) the Court of Appeal is of the opinion that the respondents cannot be heard to argue that this was merely an exchange of information between manufacturers in the form of sharing knowledge of gross list prices that had already been determined internally by each manufacturer. The Court of Appeal has concluded that the nature and scope of the illegal price collusion was more qualified. There was regular and long-term contact between the participants. The contact included discussion of future gross prices with a view to influencing future price developments in the end-user market. The participants had a common, long-term interest in maintaining the price level.
>
> In order to achieve a coordinated effect, it is not a condition that the producers go so far as to agree on specific end-user prices combined with an agreement on sanctions against participants who price the product lower. The Court of Appeal is of the opinion that, based on economic theory, it is sufficient that the participants have a common understanding of what is the relevant area for the end-user prices, in practice often a common understanding of the price development, combined with the fact that they are in a position to monitor whether the other participants act on accordance with this, and also have a potential means of sanction at their disposal if someone violates the common understanding.
>
> A key factor in the existence of the conditions for coordinated effects here is that the illegal price collusion took place over several years (…).
>
> The District Court concluded that the model described by Professor Harrington provided "a good explanation" for why the exchange of list prices could lead to higher end-user prices (…). As the Court of Appeal considers the issue of coordinated effects, the Court of Appeal finds no reason to go into detail of Professor Harrington's theory. (…) Since the Court of Appeal is of the opinion that the tortious act was more extensive than such *sharing of price intentions* (…), Professor Harrington's theory is of less interest. (…)"

5.4.5. All these considerations are also in line with what is stated on this subject in the Practical Guide:[16]

> "Infringing the competition rules exposes the cartel members to the risk of being discovered and thus subject to a decision finding an infringement and imposing fines. The fact alone that undertakings nonetheless engage in such illegal activity

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[15] Case No. 23-084349ASD-BORG/03 (Exhibit CDCR-0095a; unofficial English translation Exhibit CDCR-0095b).

[16] Practical Guide on the quantification of harm in actions for damages based on infringements of Article 101 or 102 of the Treaty on the Functioning of the European Union, No 140.

suggests that they expect to reap substantial benefits from their actions, i.e. that they expect the cartel to have effects on the market and, hence, on their customers."

5.5. It follows from all of the foregoing that, in so far as relevant, it is sufficiently plausible that the Infringement caused damage to the Claimants.

Decisions of the CAT and the Borgarting Court of Appeal

5.6. In what follows, the court will frequently refer to the decisions of the CAT and of the Borgarting Court of Appeal. The parties do likewise; in both those decisions, regression analyses produced by (the experts of) both the claimants in those proceedings and of the truck manufacturers are also assessed; and the CAT and the Borgarting Court of Appeal both have economists on the bench who may be assumed to be better placed than lawyers to assess such economic/econometric analyses.

Right to compensation

5.7. According to the case-law of the CJEU, any person may claim compensation for the damage suffered where there is a causal link between that damage and an infringement of competition law. All national rules concerning the exercise of the right to compensation flowing from an infringement of Article 101 TFEU must comply with the principles of effectiveness and equivalence. This means that they must not be formulated or applied in such a way as to make it excessively difficult or practically impossible to exercise the right to compensation guaranteed by the TFEU.[17] The Damages Directive further provides, inter alia, as follows:

5.7.1. Article 4: in accordance with the principle of effectiveness, national law must not make it excessively difficult or practically impossible to obtain full compensation for damage caused by an infringement of competition law.

5.7.2. Article 17: the standard of proof applicable to the quantification of damages must not make it practically impossible or excessively difficult to exercise the right to compensation. The national courts must be empowered to estimate the damage where it is established that a claimant has suffered damage but it is practically impossible or excessively difficult to quantify the damage suffered with precision on the basis of the available evidence.

5.7.3. Claims for damages arising from infringements of competition law generally require a complex factual and economic analysis (recital 14).

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[17] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (the Damages Directive).

6. Overcharge

Course of proceedings: expert reports

6.1. In support of its position that an overcharge occurred during the Cartel period, CDC has submitted a damage report[18] by Prof. Dr M.P. Schinkel, Professor of Competition Economics and Regulation at the University of Amsterdam, and Dr L. Huberts, research fellow at the University of New South Wales. That report is hereinafter referred to as Schinkel & Huberts 2024. CDC has also produced the underlying dataset.[19]

6.2. In response to Schinkel & Huberts 2024, the Truck Manufacturers submitted reports from their own experts in separate procedural submissions of 7 May 2025.

- Daimler submitted a rebuttal report[20] and three country-specific overcharge reports relating to Germany,[21] France[22] and Spain,[23] all prepared by E.CA Economics.
- CNH/Iveco submitted a rebuttal report[24] by Compass Lexecon. In addition, CNH/Iveco instructed Compass Lexecon to carry out a regression analysis, the report of which[25] has also been submitted.

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[18] Exhibit CDCR-0075, *Quantification of Cartel Overcharges sustained by the Assignors to CDC Retail SA as a result of the European Trucks Cartel*, 10 September 2024.

[19] Exhibit CDCR-0076 (USB stick) and CDCR-0077 (USB stick).

[20] Exhibit DAIM-006, *Expert opinion on the reports submitted by CDC*, 6 May 2025.

[21] Exhibit DAIM-007, *Estimation of possible overcharges due to competition law infringements*, 16 October 2020.

[22] Exhibit DAIM-008, *Estimation of possible overcharges due to competition law infringements in France*, 7 April 2022.

[23] Exhibit DAIM-009, *Estimation of possible overcharges due to competition law infringements — Spain*, 6 December 2022.

[24] Exhibit IVEC-0008, *Economic assessment of the Schinkel Huberts Report on the Quantification of Cartel Overcharges sustained by the Assignors to CDC Retail SA as a result of the European Trucks Cartel*, 6 May 2025.

[25] Exhibit IVEC-0009, *Overcharge analysis of the infringement sanctioned by the European Commission (CASE COMP 39824 Trucks) on the price of IVECO trucks in Spain*, 6 May 2025.

- MAN has submitted a report[26] by Compass Lexecon containing its response to Schinkel & Huberts 2024. MAN has also instructed Compass Lexecon to carry out its own regression analysis and has submitted the resulting report.[27]
- Scania has submitted a report[28] by RBB Economics.
- Volvo/Renault has submitted a report[29] by Frontier Economics containing a response to Schinkel & Huberts 2024. In addition, Volvo/Renault submitted a report[30] by Frontier Economics with annexes containing country-specific overcharge reports for France (prepared by CRA), Spain (prepared by Oxera), Portugal (prepared by CEGEA) and Germany (prepared by CRA).

6.3. The parties then set out their positions on the (calculation of the) overcharge at the case management hearing on 3 June 2025. On behalf of CDC, Prof. Schinkel and Dr Huberts gave a presentation[31] explaining the Schinkel & Huberts 2024 report. On behalf of the Truck Manufacturers, Dr G. [name] of Oxera Consultancy LLP gave a presentation.[32] The Truck Manufacturers had asked Oxera to summarise the parties' positions on the analyses carried out. The aim of the presentation was:

- to provide an overview of the data sources and methods used by the parties;
- to identify the points of agreement between the parties' experts;
- to outline the main differences between the parties' experts, to indicate how these can best be addressed, and to set out the main shortcomings of the data and analysis used by CDC's experts.

6.4. At the case management hearing, the court established that the parties agree that regression analysis is the appropriate instrument for calculating any overcharge. This must be carried out on the basis of a "during-after" analysis. The parties do, however, disagree

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[26] Exhibit MAN-008, *Economic assessment of the report prepared by Schinkel and Huberts and CDC's corresponding claim calculation*, 6 May 2025.

[27] Exhibit MAN-009, *Trucks: Estimation of Possible Price Effects of the Infringement*, 7 May 2025.

[28] Exhibit SCAN-0010, *Response to Schinkel & Huberts report for Retail Cartel Damage Claims S.A.*, 6 May 2025.

[29] Exhibit VTRT-0009, *Response to evidence on the "Quantification of cartel overcharges" submitted in the CDC Proceedings*, 7 May 2025.

[30] Exhibit VTRT-0010, *VT/RT's positive econometric evidence in response to the CDC claim*, 7 May 2025, with Annexes A to F.

[31] Exhibit CDCR-0083, *Quantification of cartel overcharges incurred by the assignors to CDC Retail SA as a result of the European Trucks Cartel*.

[32] Exhibit TRUC-0069, *Overcharge analysis in the CDC I case: a practical guide to the parties*.

on which factors should be included and which data should be used. It was therefore agreed at the case management hearing that the parties, assisted by their experts, would jointly draw up an Agree/Disagree statement and submit it to the court. The intention was for the parties to submit the Agree/Disagree statement prior to the oral hearing on 18–19 November 2025, so that it could still be debated, after which the court would take a decision. CDC submitted the Agree/Disagree statement on 29 October 2025. It contains 140 items. On CDC's side, Prof. Dr Schinkel and Dr Huberts drafted the Agree/Disagree statement as regards the Empirical overcharge analysis. For the Truck Manufacturers, that part was handled by Dr [name].

6.5. In response to the rebuttal reports and (country-specific) regression analyses submitted by the Truck Manufacturers (see under 6.2), CDC submitted a further report by Schinkel and Huberts, hereinafter referred to as Schinkel & Huberts 2025a.[33] At the oral hearing, Prof. Schinkel and Dr Huberts gave a presentation addressing Schinkel & Huberts 2024 and the criticism of it by (the experts of) the Truck Manufacturers. On behalf of the Truck Manufacturers, Dr [name] again addressed the rebuttal of the findings of Prof. Schinkel and Dr Huberts.

Introduction

6.6. The parties and their experts agree that regression analysis is the appropriate method for determining whether an overcharge has occurred. The Practical Guide[34] provides the following explanation of what a regression analysis is:

> "Regression analysis is a statistical technique which helps to investigate patterns in the relationship between economic variables and to measure to what extent a certain variable of interest (e.g., in the flour cartel example, the price for flour) is influenced by the infringement as well as by other variables that are not affected by the infringement (e.g. raw material costs, variations in customer demand, product characteristics, the level of market concentration). Regression analysis therefore makes it possible to assess whether, and by how much, observable factors other than the infringement have contributed to the difference between the value of the variable of interest observed on the infringement market during the infringement period and the value observed in a comparator market or during a comparator time period. Regression analysis is thus a way to account for alternative causes for the difference between the compared data sets. All comparator-based methods are, in

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[33] Exhibit CDCR-0086, *Reply to the Truck Manufacturers' Remarks on our Expert Opinion "Quantification of Cartel Overcharges incurred by the Assignors to CDC Retail SA as a result of the European Trucks Cartel"*, 30 September 2025.

[34] Practical Guide on the quantification of harm in actions for damages based on infringements of Article 101 or 102 of the Treaty on the Functioning of the European Union.

principle, capable of being implemented through regression analysis provided that sufficient data observations are available."[35]

6.7. Regression analyses never yield an exact calculation of the overcharge. Any empirical model is merely an approximation of reality. The experts for the parties in these proceedings, in particular Prof. Dr Schinkel and Dr Huberts on behalf of CDC and Dr [name] on behalf of the Truck Manufacturers, agree on this. The Practical Guide states as follows:[36]

> "(…) It should be stressed, however, that even very sophisticated regression equations rely on a range of assumptions and will (like any technique to predict a hypothetical situation) only be able to deliver estimates. (…)".

6.8. The quality of the dataset on which the analysis is based and the choice of control variables are of great importance to the reliability and accuracy of (the outcomes of) a regression analysis.[37] The prices actually paid must, after all, be compared with the hypothetical situation in which (the effect of) the Infringement is disregarded (the "but-for" or counterfactual scenario). That latter situation can, of course, only be determined or calculated approximately. In the book *Economics for Competition Lawyers*, it is described as follows:

> "Any damages assessment needs to strike a balance between two objectives. The first is to find the most accurate answer – the desire to determine the real damage value as closely as possible, which is how an economist would naturally seek to approach quantification problems. The second is to use approaches that are clear and practical, and fit within the existing legal frameworks. Calculating the exact damage arising from an infringement requires complete information about what would have happened in a parallel world where the infringement did not take place – the 'but for' or counterfactual situation. Determining the counterfactual is inherently difficult as such complete information does not exist. (…)
> Hence, to assess the counterfactual it is inevitable that you enter into the 'realms of economic fantasy' and carry out economic modelling. (…) All models are necessarily simplifications of the real world. They rely on assumptions, and can vary in the degree to which they take into account all factors that may influence the counterfactual. This variation is often driven by constraints on data, time, or budgets."[38]

6.9. That views can differ widely on which data are most appropriate, which control variables to use, and so on, is plain from the Agree/Disagree statement submitted by the

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[35] Practical Guide, No 68.

[36] Practical Guide, No 85; see also No 17.

[37] See also Practical Guide, Nos 78, 81, 82.

[38] *Economics for Competition Lawyers*, Gunnar Niels, Helen Jenkins and James Kavanagh (Oxera), Third edition, paras 10.8–10.9.

parties on 29 October 2025: more than 100 (117 according to Prof. Schinkel) of the 140 items on which the experts disagree relate to the regression analyses/calculation of the overcharge.

6.10. The starting point (under Dutch law) for the calculation of the extent of the obligation to pay compensation is that the injured party must, so far as possible, be placed in the position it would have been in had the event causing the damage not occurred. This means that the extent of the damage is determined by comparing the actual situation with the situation that would (presumably) have existed had the event causing the damage not taken place. Article 6:97 of the Dutch Civil Code provides that the court assesses the damage in the manner most consistent with its nature, and estimates the damage where its extent cannot be precisely determined. In this case, as considered above, the extent of the damage cannot be precisely determined. The court will therefore (have to) estimate the damage, or at least the overcharge percentage. It will do so on the basis of the regression analyses drawn up and explained by the parties' experts. Regression analysis is, after all, the appropriate method for determining whether there has been an overcharge: a regression analysis is used to determine (approximately) what the price of the trucks would have been – in this case – had the Infringement not taken place.

Regression analysis in the Schinkel & Huberts 2024 report

6.11. In Schinkel & Huberts 2024, the overcharge was calculated by carrying out a regression analysis on CDC data relating to 1,115 Assignors, concerning 95,594 trucks purchased or leased between 1990 and 2021 from the brands involved in the Infringement. From that population, a dataset of 5,075 trucks was extracted which, according to Prof. Schinkel and Dr Huberts, is representative, complete and fully manually verified. According to Schinkel & Huberts 2024, this is a dataset of sufficient size to obtain reliable estimates for a statistical analysis applicable to all purchased trucks.

6.12. The conclusion of Schinkel & Huberts 2024 is that the models used indicate, with a very high degree of probability, that over the period from 17 January 1997 to 28 June 2010 the Cartel was responsible, on average, for an overcharge of between 8.33% and 11.52% compared with the hypothetical prices in a situation without a cartel (but-for prices). This corresponds to an overcharge of between 7.69% and 10.33% of the prices actually paid by the Assignors (observed cartel prices).

6.13. As regards the run-off period, the Schinkel & Huberts 2024 report states that in the summer of 2010 the effectiveness of the Cartel gradually began to decline. End May 2013 was the most probable end date of effects of the cartel. The conclusion is that the run-off period lasted from 28 June 2010 to 30 May 2013.

Position of the Truck Manufacturers

6.14. For the purposes of their response to the Schinkel & Huberts 2024 report, as previously indicated, the Truck Manufacturers also relied on the services of Oxera, in the person of Dr [name] of Oxera Consultancy LLP.

6.15. At the case management hearing on 3 June 2025, Dr [name] commented on the Schinkel & Huberts 2024 report by means of a presentation in which he compared it with the reports by the Truck Manufacturers' experts. He summarised the findings of all the experts of CDC and of the Truck Manufacturers and highlighted the differences. Dr [name] noted that the findings of the Truck Manufacturers' economic experts vary but generally indicate no, or almost no, price increase. He further observed that, according to those experts, run-off effects are implausible, and that the run-off effects identified in Schinkel & Huberts 2024 are not robust.

6.16. More specifically, Dr [name] noted that the Truck Manufacturers' economic experts depart from the analysis in Schinkel & Huberts 2024 on the following points.

6.16.1. The analysis for CDC used data on a subset of the truck purchases made by CDC's Assignors (5,075 observations). The analyses for the Truck Manufacturers used the manufacturers' own data on all relevant sales transactions (an average of 227,732 observations for cross-country analyses, and an average of 113,445 for country-specific analyses). Dr [name] concludes that the dataset used in Schinkel & Huberts 2024 has significant shortcomings. In his view, it is preferable to use data from the Truck Manufacturers, because those data contain more observations, provide more information on variables, are derived from internal systems used for business decisions, are less heterogeneous and are readily available.

6.16.2. With regard to costs, the analysis for CDC used a combination of publicly available indices. The analyses for the Truck Manufacturers used the data provided by the Truck Manufacturers themselves, specifically for each truck/transaction. According to Dr [name], that approach is the correct one, because Schinkel & Huberts 2024 does not adequately take into account cost developments over time and cost differences between trucks at a given point in time. Furthermore, according to Dr [name], it is unlikely that production costs were themselves influenced by the Infringement, as Schinkel & Huberts 2024 claims.

6.16.3. With regard to controlling for truck characteristics, CDC based its analysis on a set of thirteen characteristics. According to Dr [name], that is too limited because trucks are highly heterogeneous products with divergent technical characteristics. He considers that Schinkel & Huberts 2024 therefore runs the risk of producing a distorted estimate of the overcharge. Schinkel & Huberts 2024 does not control for customer size, even though large customers are likely to have bargaining power or to obtain volume discounts. Furthermore, according to Dr [name], it is crucial to take into account differences in prices between brands and between countries over time in order to estimate the potential effect of the Infringement correctly. Because Schinkel & Huberts 2024 does not do this and only controls for average price differences between brands, there is a risk of a distorted estimate of the overcharge.

6.16.4. As regards analysing supply and demand, the CDC analysis uses Gross Domestic Product (GDP) to control for demand and transport volume (TKM, tonne-kilometres transported) to control for supply. In the analyses for the Truck Manufacturers, various control variables were used that reflect significant differences between countries and the market positions of the Truck Manufacturers in those various countries. According to Dr

[name], TKM is not an indicator of supply but of demand. The negative relationship between truck prices and TKM in Schinkel & Huberts 2024 is therefore implausible. Furthermore, the inclusion of GDP as an indicator of demand in the combined analysis across multiple countries is inappropriate. French data,[39] for example, show that GDP and the number of new truck registrations do not evolve in the same way across all countries. Dr [name] argues that the inclusion of GDP is likely to influence the analysis in Schinkel & Huberts 2024.

6.16.5. As regards the end date of the Infringement, Dr [name] points out that Schinkel & Huberts 2024, contrary to the date set out in the Decision, sought to determine the end date empirically themselves. For that purpose, a *structural break* test was used, which identifies the date corresponding to the largest unexplained change in prices, within the context of the model and data of Schinkel & Huberts 2024. The conclusion reached is that 28 June 2010 was the effective end date of the Infringement. According to Dr [name], it is unclear why Schinkel & Huberts 2024 prefers an alternative (earlier) end date to the end date set out in the Decision. The start and end dates of the Infringement established by the Commission form a natural basis for the during-and-after analysis. The analysis in Schinkel & Huberts 2024 does not provide a sound basis for deviating from the end date set by the Commission.

6.16.6. Finally, according to Dr [name], run-off effects are improbable. Schinkel & Huberts 2024 is, in this respect, based on incorrect assumptions and on speculative theoretical explanations. Thus, gross list prices do not play a significant role in determining transaction prices. Furthermore, the Truck Manufacturers do not systematically set gross list prices on an annual basis. Even if they did, the three-year run-off period would not be substantiated.

Response from Schinkel and Huberts (CDC)

6.17. According to Prof. Schinkel and Dr Huberts, the above criticism from the Truck Manufacturers can be summarised in the following seven points:

- the dataset on which the analyses in Schinkel & Huberts 2024 are based is too small;
- the internal cost data of the various Truck Manufacturers have not been included;
- no account has been taken of the structurally greater bargaining power of truck buyers after the Cartel than during the Cartel;
- no account has been taken of brand-, country- or buyer-specific models;
- the control variables for supply and demand factors are inadequate;
- an incorrect date has been assumed for when the cartel effect begins to dissipate;
- the inclusion of the Euro emission standards as an explanatory variable in the regression model leads to fragmentation of the time series.

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[39] Exhibit SCAN-0010, *Response to Schinkel & Huberts report for Retail Cartel Damage Claims S.A.*, 6 May 2025.

6.18. In the Schinkel & Huberts 2025a report and at the oral hearing of 18–19 November 2025, Prof. Schinkel and Dr Huberts responded to those points of criticism. They do not agree with them. In summary, they submit the following:

- the size of the CDC dataset is representative and more than sufficiently large and accurate, and contains actual observations;
- the private, endogenous cost series of the Truck Manufacturers are opaque, non-comparable, variable and contaminated;
- there is no evidence whatsoever of structurally greater bargaining power on the part of truck buyers after the Cartel than during the Cartel;
- an overall approach is far superior to fragmenting the analyses into brand- and country-specific regressions; there is no evidence of bias; the Cartel raised gross list prices across the whole of Europe;
- the control variables for supply and demand factors are exogenous and are derived from objective public sources;
- there is ample evidence that the formal and the effective cartel dates differ, and if the effective cartel end date is not (correctly) dated, the analysis deteriorates significantly;
- as regards the EURO standards, it is crucial to control for these important truck innovations over time for the purposes of a during-after comparison.

The assessment

6.19. The court emphasises two points. Firstly: Prof. Dr Schinkel, Dr Huberts, Dr [name] (Oxera) and the other economic experts engaged by the Truck Manufacturers (see 6.2) are all respected experts in this field. They are engaged worldwide to calculate the damages caused by cartels in proceedings such as these. The court has no reason to doubt their expertise. Nor do the parties. Secondly: there is no single correct or ideal method for calculating the overcharge (in this case).

6.20. As considered above, the court will use the regression analyses submitted by the parties in order to assess whether an overcharge has occurred and, if so, to estimate the overcharge percentage. Since under Dutch law, in principle, the ordinary rules of evidence apply as regards the extent of the damage[40] and it is therefore, in principle, for CDC to assert and substantiate the extent of the damage (potentially) suffered by the Assignors as a result of the Infringement, Schinkel & Huberts 2024 will be taken as the starting point. The substantiation provided in that report will be discussed in broad terms below, partly in the light of the criticism levelled at it by Dr [name] on behalf of the Truck Manufacturers (the seven points set out in 6.17 and 6.18). Where necessary or appropriate, the reports by the various Truck Manufacturers' economic experts (and the criticism of them by Prof. Dr Schinkel and Dr Huberts) will also be addressed. There will occasionally be some overlap, as the Truck Manufacturers' experts often tend to defend their own reports, analyses and

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[40] Supreme Court 27 November 2009, ECLI:NL:HR:2009:BH2162, *NJ* 2014/201 (*World Online*).

choices rather than actually engaging with the methodology used in Schinkel & Huberts 2024.

6.21. Not all details and points of criticism will be discussed. That is neither possible nor necessary. The court will confine itself to the main points, as set out above and as discussed at the hearing.

Methodology/approach

6.22. As Prof. Dr Schinkel and Dr Huberts clearly explain in their Schinkel & Huberts 2025a report, their (methodological) approach differs significantly from that of the experts representing the Truck Manufacturers. They explain this as follows:

> "Before delving into the seven points of criticism in some detail, it is useful to set out the overarching strategy adopted by all consultants in challenging our results in Schinkel & Huberts (2024). It is based on the false claim that the 'correct methodology' for intertemporal overcharge analysis would dictate country-, manufacturer brand-, segment- and even buyer specific analyses. Our EU-wide approach would instead have been designed against this standard, be "not adequate", "generate inherently unreliable results", that "overstate the potential overcharge". The opposite is true, however. What is the best econometric approach to quantifying cartel damages in a case depends on the specifics of the case, a good understanding of the market processes and where the cartel effects are likely to have materialized, and the quality data available.
>
> The European Trucks Cartel operated EU-wide, on what by all accounts was a European market, affecting truck purchasing prices EU-wide through an ingenious and novel cartel mechanism by which it centrally, at headquarters level, collusively raised the harmonized gross list prices across the EEA. We have high quality data, that is very complete, detailed and reliable, from across Europe. Those are actual truck purchases from a large group of buyers from across Europe, who each purchased trucks in multiple countries, from truck manufacturers who produced and sold in all those countries (and more) across Europe. We combine these actual purchase data with objective exogenous variables that control for other developments across Europe that also partially explained truck prices over the relevant period. Hence, we can study the research question we address in our report, which is what the effect has been of the trucks cartel on prices paid by CDC assignors, at the appropriate level: the EEA. A strength of the data that we analyzed is that it contains truck buyers from across Europe, allowing for consistent analysis throughout. The consultants, each working for one of the manufacturers, naturally were limited to data of the specific manufacturer that hired them, not the rich data across brands that we have. However there was (and is) no need to subset data further into country-specific, segment specific, even assignor-specific, if not truck-specific analyses. The gross list prices that the manufacturers collusively raised at headquarters' level were EU-wide and not country- or truck buyer-specific. The consultants' fragmentation strategy, in all its forms and varieties, is deliberate and intended to

> obfuscate the analysis by focusing on the idiosyncratic price variations, due to differences in trucks and discounts, which obscures the view on the systemic change in truck prices level that the cartel implemented. That the consultants insist that their way is the best, even the only way, simply is false."[41]

In this context the Schinkel & Huberts 2025a report also refers to the Commission's Scania Decision, which states (on p. 11):

> "(39) The initial EEA-wide gross price lists contain individual gross prices for basic models and each optional component of the trucks. Therefore a gross price for each tailor made truck model with a specific configuration required in a specific country or by a specific customer can be calculated by adding up the gross list prices for all components contained in that specific model. This explains how a gross price list on headquarter-level contains the basis for truck models in different countries, even though their actual composition is tailored to requirements of that country and later to the specific requirements of the individual customer."

Attention is also drawn to the following passage in the Commission's press release of 19 July 2016:

> "[C]oordinating 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"[42]

Finally, Prof. Schinkel and Dr Huberts write:

> "Any differences between countries, for example where certain preferred brands required lower discounts than less preferred brands, would have existed with and without the cartel, and were essentially the same – before, during and after. The same is true for buyer-specific discounts due to different bargaining positions between individual buyers. There is no need, therefore, to look at individual brand-, country-, or buyer-specific level to quantify the cartel's effect in raising the price level across the board. The trucks cartel raised the base level for pricing in the industry, as a higher starting point for individual price negotiations with buyers across the EU. These further bargaining processes were unaffected and remained essentially the same. Therefore the discounting would have remained

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[41] Schinkel & Huberts 2025a, pp. 15–16.

[42] Schinkel & Huberts 2025a, p. 17.

the same, so that the transaction price level increase was due to the increased gross list prices across the European market."[43]

6.23. The court notes that the main differences between the approach/methodology in Schinkel & Huberts 2024, on the one hand, and that in the reports by the Truck Manufacturers' experts, on the other, lie in (i) the data sets and control variables used, and (ii) the fact that Schinkel & Huberts 2024 carries out an EU-wide analysis, whereas the analyses by the Truck Manufacturers' experts are more fragmented, focusing on a (limited number of) country/ies and/or on brand. As considered above, Prof. Schinkel and Dr Huberts are correct in stating that there is no single correct methodology for conducting a during-and-after analysis. That, as the Truck Manufacturers argue, "the correct methodology for intertemporal overcharge analysis would dictate country-, manufacturer-, brand-, segment- and even buyer-specific analyses" is, according to Prof. Dr Schinkel and Dr Huberts, a "false claim". The court finds that the Truck Manufacturers' assertion is not supported by the Practical Guide either. The differences will be discussed below where necessary.

Dataset(s) used and sample size

6.24. As mentioned, Schinkel & Huberts 2024 carried out a regression analysis on CDC data relating to 1,115 Assignors, concerning 95,594 trucks purchased or leased between 1990 and 2021 from the brands involved in the Infringement. From that population, a representative, comprehensive and fully manually verified dataset of 5,075 trucks was compiled. That dataset was subsequently corrected to 4,873 observations, as discussed below. Prof. Schinkel and Dr Huberts have further explained how the dataset was compiled, and have shown that it is sufficiently large, relevant and representative, and can therefore reliably be used for the regression analysis they carried out.

6.24.1. Prof. Dr Schinkel and Dr Huberts have further explained how the dataset was selected. The dataset used is drawn from a population of trucks of all the brands involved and covers the entire period from 1997 (start of the Infringement) to 2018. The complete CDC population (the trucks purchased by the more than one thousand Assignors) consists of 95,594 truck (transaction) records covering the period between 1990 and 2021. Where possible, corrections have been made for missing values, incorrect values and measurement errors in the full dataset, as these could potentially result in a less reliable regression. A representative dataset was then established by means of informed random sampling. Informed random sampling meant that the price and technical specifications of each truck (transaction) were known and that sufficient documentation was available. Furthermore, it is not a random selection: "The representation was established from the complete trucks dataset of 95,594 trucks on the basis of the distribution of elementary characteristics in the information collected on all assignors' trucks – in particular assignor country, year of the transaction, brand name, and transaction type".[44] The truck

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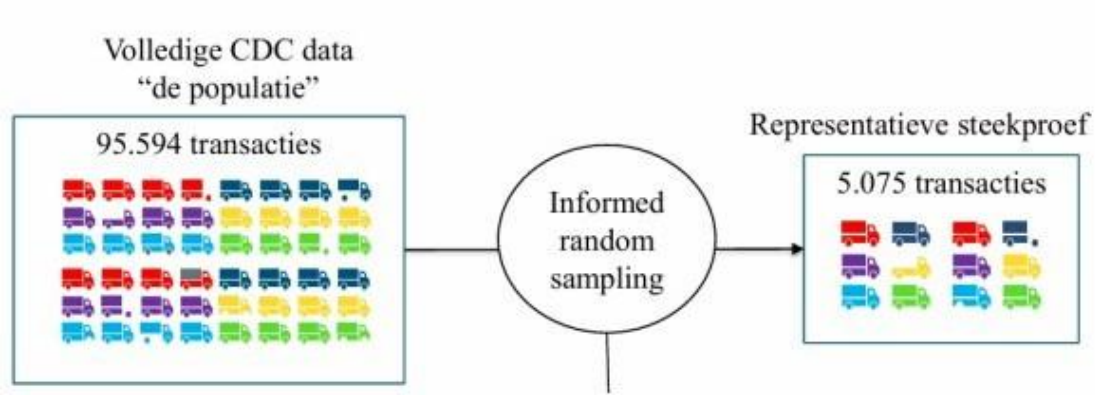
[43] Schinkel & Huberts 2025a, p. 18.

[44] Schinkel & Huberts 2024, p. 30 (4.1).

(transaction) records included in the dataset are therefore representative of the entire population. This is illustrated in the report by the following figure:



Of the 5,075 observations, only 24 trucks had been purchased before the start of the Infringement (17 January 1997). These were excluded (and this number was also too small to carry out a before-during-and-after analysis). Fourteen trucks purchased in 2018 were also excluded (data from after 2018 were not included either). That brought the total to 5,037.[45] Finally, a manual check and correction of the data was carried out, in the course of which the underlying documentation for each truck transaction was checked, the relevant parties were contacted by telephone to fill in missing values, and incorrect values were corrected ("there were 159 for which no (sufficiently reliable) price measurement was available. Furthermore, 2 trucks had no engine power recorded and for a further 3 trucks engine displacement was missing"). This resulted in a representative and accurate set of 4,873 transactions:

6.24.2. Prof. Schinkel and Dr Huberts based their baseline analyses on that dataset of 4,873 trucks obtained from a random sample, but they also carried out analyses using the entire population (95,594), the largest possible representative set (26,304), as well as smaller sets and still more complete datasets (3,427 and 2,779). According to their calculations, those analyses confirm the robustness of the baseline analyses:

- the baseline analysis indicates an overcharge of 7.69–7.78%;
- the analysis using the set of 3,427 indicates an overcharge of 8.42–8.98%; and
- the analysis using the set of 2,279 indicates an overcharge of 10.33%.

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[45] Ibid.

This is (largely) summarised in the following table:

Table 10': Cartel effect ranges as a percentage of estimated but-for prices.

Data subset	Cartel ending specification	Cartel price effect as % of but-for price (estimated effect; std. err)	Cartel price effect as % of observed price
Baselines (representative trucks sample, N=4,873)	Instantaneous	8.44% (0.081; 0.015)	7.78%
	Gradual	8.33% (0.080; 0.016)	7.69%
Fully complete representative trucks sample (N=3,427)	Instantaneous	9.20% (0.088; 0.017)	8.42%
	Gradual	9.86% (0.094; 0.018)	8.98%
Distinct during-after	June 28th 2010 to May 30th 2013 (repr.) (N=3,951)	9.86% (0.094; 0.019)	8.98%
	June 28th 2010 to May 30th 2013 (compl.) (N=2,779)	11.52% (0.109; 0.021)	10.33%
Overall range		8.33%-11.52%	7.69%-10.33%

The robustness analysis on the largest possible representative dataset (26,304), which includes the 4,873 baseline transactions, indicates an overcharge of 6.27%. The data in that set have not been (further) checked or corrected. That robustness analysis still results in a significant cartel effect, but according to Prof. Schinkel and Dr Huberts the estimates are less reliable.

6.25. Dr [name] argues — and Prof. Dr Schinkel and Dr Huberts agree — that the suitability of a dataset (and thus of the one used in Schinkel & Huberts 2024) depends on the following factors:

- sample size: sufficient observations to accurately estimate the overcharge and to include other relevant factors influencing prices;
- information on key variables: the data contain sufficient information on the relevant factors influencing prices;
- accuracy of the data: variables are correctly recorded for each observation;
- transparency: the data collection and sample selection processes are clear and transparent;
- the sample reflects the relevant population.

As explained above, Prof. Dr Schinkel and Dr Huberts consider that the dataset (sample) they used meets those requirements, and they confirmed this at the hearing. Dr [name], on the other hand, takes the view that:

- the CDC dataset is too small given the wide variety of trucks, brands and markets in the set;

- information is missing in respect of truck costs and a number of truck characteristics;
- several errors have been identified in the dataset;
- there is a lack of transparency, because the data processing and the selection of the dataset were not carried out by Prof. Dr Schinkel and Dr Huberts, but by CDC, and some steps in the selection process are unclear;
- representativeness cannot be verified.

Dr [name] concludes that it is preferable to use the data provided by the Truck Manufacturers, as is customary and as was done, for example, in *Royal Mail/BT v DAF* before the CAT.[46]

6.26. The court notes at the outset that no dataset is without flaws. Prof. Dr Schinkel and Dr Huberts have, for example, observed that the data used by the Truck Manufacturers' experts (taken together) cover only part of the relevant countries; that in some sets only a limited number of (technical) characteristics are (often) represented; and that the Cartel period is not always fully covered (data from the early years of the Cartel in particular are often missing — according to Prof. Schinkel and Dr Huberts, the analyses on average begin in 2003 (rather than in 1997)); and data for a number of years during the infringement period are sometimes also missing.

6.27. Nor is the argument put forward by the Truck Manufacturers — that it would be better to conduct the regression analyses by brand and by country, as truck prices evolve differently over time depending on the brand and country — convincing. First of all, Dr [name] himself states that Schinkel & Huberts 2024 also takes into account "brand- and country-specific effects". Dr [name] does note that Prof. Dr Schinkel and Dr Huberts "do not do this correctly", but (the experts of) the Truck Manufacturers have not demonstrated that and why this was not done correctly, despite the fact that they have had access from the outset to all the data and codes used by Prof. Dr Schinkel and Dr Huberts.[47] Furthermore, the reports by the various economic experts of the Truck Manufacturers differ considerably as regards differentiation by country. In any event, the economic experts of DAF, Volvo/Renault and Scania have drawn up reports containing an analysis for five countries, and the economic expert of MAN has produced a report containing an analysis for three countries.[48] The economic experts of DAF (Compass Lexecon) have stated the following as regards the grouping of five countries: "For the purposes of this report, only trucks sold in Belgium, France, Germany, the Netherlands and Spain are considered. These markets are sufficiently similar in terms of characteristics of the product mix and are deeply integrated from an economic perspective."[49] RBB (on behalf of Scania) justified the choice as follows: "First, because the use of a larger and more diverse set of data is expected to improve the

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[46] See footnote 13.

[47] Schinkel & Huberts 2025a, p. 4.

[48] Presentation by Schinkel and Huberts, 18–19 November 2025, slide 35.

[49] Schinkel & Huberts 2025a, p. 19.

precision and the reliability of the results of any statistical analysis, and specifically of the one presented in this report. Second, because the Settlement Decision finds a EEA-wide infringement. As such, any price effects of such alleged conduct would be expected to materialize via a measurement across all customers and across a number of countries."[50] The argument of the Truck Manufacturers (as articulated by Dr [name]) that it is necessary to carry out the regression analyses by brand and by country is difficult to reconcile with this.

6.28. Prof. Schinkel and Dr Huberts have emphasised that they fundamentally disagree with what they refer to as the "fragmentation strategy" deployed by the Truck Manufacturers' economists. In their view, it must not be overlooked that the Cartel "was centrally orchestrated and operated EEA-wide". According to them, their "EU-wide price level analysis" is therefore the correct approach, and it is appropriate "to analyze its potential structural effects on truck transaction prices across the countries". They are also able to do so because they have the data from the CDC Assignors. They take the view that the "fragmentation into brand-, country-, and buyer-specific analyses obscures the systematic cartel price effect by focusing on idiosyncratic price variation, which was normal in truck pricing".[51] The court finds this to be a reasonable line of reasoning. Perhaps this explains why the analyses by the Truck Manufacturers' experts consistently produce results around zero. As Prof. Dr Schinkel put it at the hearing: "If you zoom in far enough, you no longer see the low and high tide. That is partly because you are breaking up the data with that fragmentation."[52]

6.29. Dr [name] rightly points out that in the proceedings before the CAT, DAF's dataset was used (covering all trucks supplied by DAF in the UK during the relevant period, and not just those supplied to Royal Mail/BT), both for the regression analysis carried out by DAF's expert and for those prepared by Royal Mail and BT. That argument does not, however, persuade the court that this dataset is for that reason also the correct basis for the regression analysis in this case. Firstly, it is remarkable that the use of that same dataset in that case by all experts (there) led to completely different results (overcharge percentages) which, even more remarkably, are more or less the same as those calculated in these proceedings, on the one hand, by the experts of the Truck Manufacturers (close to zero (no effect)) and, on the other, by Prof. Dr Schinkel and Dr Huberts (between 7.69% and 10.33%). The expert for Royal Mail and BT arrived at an average overcharge of 9.95% for Royal Mail and 11.1% for BT. Furthermore, the CAT also identified various data issues and ultimately opted for the "broad axe" approach to estimate the overcharge percentage, inter alia "given the substantial imperfections in the data available".

6.30 Incidentally, as the court understands it, the experts in the proceedings in Norway used the dataset of Posten (all trucks leased (and a few purchased) by Posten in Norway

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[50] Schinkel & Huberts 2025a, p. 22.

[51] Schinkel & Huberts 2025a, pp. 4, 7, 10, 15.

[52] Appendix I to the report, p. 53.

from Scania, Volvo, Daimler, MAN and Iveco[53]), which is many times smaller in scope than that of CDC (1,674 observations), and the Norwegian court considered there, as regards the analyses by the Truck Manufacturers (always based on the sales of their own trucks), "that the regression analysis based on [truck manufacturers'] transactions must be given limited weight in the overall assessment of the evidence on the question of whether Posten paid an overcharge".

6.31 At the hearing, Prof. Schinkel confirmed that the dataset used is "more than large enough — almost 10 times the normal econometric standards" — and is also sufficiently representative. The fact that it does not include any truck transactions purchased in the United Kingdom, even though, according to Dr [name], 4% of all CDC trucks were purchased there, does not appear to be sufficient to seriously undermine the representativeness of the dataset.

6.32 Taking all this into account, the court finds that Prof. Dr Schinkel and Dr Huberts have, even in the light of the criticism levelled by the Truck Manufacturers (and their experts), sufficiently shown that the dataset used for Schinkel & Huberts 2024 is representative, sufficiently large and accurate for the regression analysis carried out.

6.33 Furthermore, it is evident not only from Schinkel & Huberts 2024 itself, but also from the CDC Trucks Data Guide used by CDC for the selection of the data (August 2024), that extensive consideration was given, in consultation with industry experts, to which technical characteristics should be represented in the dataset (resulting in a total of thirteen, including the EURO standards (which, according to Prof. Dr Schinkel, are often omitted from the Truck Manufacturers' datasets)). The CDC Trucks Data Guide, August 2024[54] states the following:

> **"2.2 Truck characteristics**
>
> Trucks have hundreds of technical characteristics. Many of these characteristics varied over time, as truck manufacturers and component suppliers innovated. The goal of statistical overcharge analysis is to distinguish the effect of illegal collusion from other forces driving prices. Hence, a truck characteristic is considered important if it is likely to significantly influence willingness to pay or the truck's price. Using that standard, CDC asked experts in the truck market to identify the most important truck characteristics.
>
> Early in the process, we consulted a former high-level sales executive from one of the truck manufacturers. The expert, who has over a decade of experience in commercial vehicle retail, today works as an independent consultant in the logistics sector. We supplemented his answers and explanations with those from DICE Consult GmbH, Lademann Consulting GmbH, and Hamburg Economics GmbH, all of which are economic consultancies involved in modelling the truck

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[53] Only 1% of all trucks.

[54] Exhibit CDCR-0078, p. 4.

market in similar contexts as CDC. We also exchanged views on data and evidence collection with Themis Schaden GmbH, a special purpose company founded out of ELVIS-AG. ELVIS ("Europäischer Ladungs-Verbund Internationaler Spediteure") AG is Europe's largest truckload association. Their case team (assembled in the Themis Schaden GmbH) was recruited from ELVIS itself and from its members: logistics companies with deep, typically decades-long experience in the truck market. Moreover, to widen the somewhat German-centric focus, CDC conducted its own market and product research and interviewed early assignors as well as industry experts from other countries such as Denmark, France, the Netherlands, Portugal and Spain. The industry experts were either specialised service providers or consultancies for the road transport sector (e.g., VATSERVICES4 and Carving Partners) or involved in the selling of trucks. Electronic questionnaires filled in by a greater number of assignors later in the process were used to verify that we did indeed capture characteristics that are price relevant for many truck buyers."

Schinkel & Huberts 2024 also explains that and how sufficient account has been taken of the diversity of trucks, brands and markets. By way of illustration, reference is made to the following passages:

> "We developed our econometric model specifications on the basis of representative subsamples across truck brands and types, with data of high level of granularity and quality. It contains numerous specifics on technical truck specifications that are important for explaining the end prices of the trucks that CDC's assignors paid. A truck's characteristics influence its manufacturing costs and its buyer's willingness to pay, which is relevant for the establishment of truck purchasing prices. The full data set did not contain all this detailed information for all trucks. The baseline econometric analyses are therefore performed on a representative subsample that is as complete and accurate as possible on all explanatory variables included in the regressions."[55]

> "The European Commission Directive 2007/46/EC for the approval of motor vehicles' road admission describes an extensive number of key characteristics of trucks. These include, apart from the truck's brand by manufacturer: chassis type (normal or low-deck), number and types of axles (powered axles and steered axles), engine specifications (number and arrangement of the cylinders), engine power (horsepower/kilowatt, displacement in cm3), body type (here tractor and rigid), and permissible laden mass. Note that several of these technical characteristics go together is a truck – for example engine power typically correlates with a truck's capacity and permissible laden mass. For this reason, it is not necessary to describe a truck by all of its features for the purpose of a regression analysis – in fact, including too many related truck characteristics can

[55] Schinkel & Huberts Report 2024, p. 14 (1.3).

> lead to overspecification, which introduces problems with robustness and reliability of the econometric analysis. (…)".[56]

6.34 Finally, Prof. Schinkel and Dr Huberts explained in detail how the selection process was carried out. The court does not regard it as a problem that this was done by CDC and not by Prof. Schinkel and Dr Huberts themselves. Schinkel & Huberts 2024 refers to the (above-mentioned) CDC Trucks Data Guide of August 2024, a "detailed memorandum", in which "CDC documented the precise steps taken in the collecting and preparation of the data on their assignors' truck[s], and the characteristics of the resulting data sets".[57] Chapter 5 of this Guide does indeed, as Mr Möhlmann stated at the hearing, "clearly describe how the representative dataset was compiled".[58] At the hearing, Prof. Dr Schinkel confirmed, when asked, that the selection of the data took place under his and Dr Huberts' supervision, and that they "extensively checked and contributed to the way in which this should be done". The various steps, including the final one from 5,075 to 4,873, have also been explained in detail (see for this also 6.24.1).

Controlling for costs and truck characteristics

6.35 The parties agree that costs must be controlled for in the regression analysis. The regression analysis must take into account various other factors that affect the variable under investigation, including in any event the cost price.

6.36. In Schinkel & Huberts 2024, this is done by means of control variables:

> "(…) we control for industry wide price drivers and developments over time in the costs of manufacturing, such as country specific electricity prices, as well as in available hauling capacity and developments in the demand for trucks. The latter was amongst other things driven by demand for trucking services and available transport capacity that relate to gross domestic product (GDP) and tonne-kilometre (TKM), as well as technological and regulatory developments in trucks over time. (…)".

6.37 The control variables are taken from "known public, independent and reliable sources", including the "iron and ore price index, non-ferrous metals and ores price index, labour cost index, electricity price" and gas price. Where possible, the costs have been taken for the countries where the trucks were manufactured. With the exception of the iron and ore price index and the non-ferrous metals and ores price index, which apply to the EEA as a whole, all control variables were available on a country-by-country basis. Schinkel & Huberts 2024 summarises the method used to control for production costs and demand as follows:

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[56] Ibid., p. 25 (3.1).

[57] Schinkel & Huberts Report 2024, p. 15 (1.3).

[58] Exhibit CDCR-0078, p. 28 et seq.

"Both will have depended on changes in the technical truck specifications and regulatory requirements. Also, many technical truck features will have jointly determined manufacturing costs. For example would a higher emission standard imply certain modifications to the engine or exhaust system. Other truck specifications may not have changed much, despite having been a major costs component, such as cabin type, which therefore is not included in the analysis. We note, however, that we do not need or intend to estimate the absolute levels of manufacturing costs: what matters for our assessment of cartel effects is changes that may be alternative explanations for end prices changes than the breakup of the cartel. For this, exogenous and not manufacturer-specific costs are appropriate – and have the added benefit that they are external and pre-existing sources, which are not likely to have been affected by the existence of the cartel, unlike production cost series reported by the manufacturers.

On the basis of a combination of industry expertise and goodness of fit, reliability, and explanatory power of our regression analyses (…) we have selected thirteen relevant technical truck characteristics:

- Two numerical variables on engine power: *Power in kilowatt* and *Displacement in cm3.*
- Eleven categorical variables (…): *Brand, Type of truck, Emission norm, Transmission, Chassis type, Wheels, Natural gas conversion kit, Aero package, Rear steering axle,* an *Retarder.*

These characteristics capture the core components that drive truck prices. While other candidate variables, such as cabin type and exhaust system, are important components of trucks too (…) they display little variation over the sample and/or correlate strongly with the factors included.

For general manufacturing cost changes, we include:

- Four numerical indicators for raw materials, labor and energy costs: *Iron ore price index, Non-ferrous metals and ores price index, Labor cost index,* and *Electricity price.*
- The labor and energy cost factors are based on the countries where the trucks were produced.
- Overall changes in demand are captured by including:
- GDP index as a control of demand based on the GDP indices of the countries in which the trucks were ordered.

The availability of trucks is captured by:

- *TKM index*, which included the country-specific TKM index for the countries in which the trucks were ordered.

That is, we include six external control variables, so that the total number of explanatory variables for truck prices is nineteen, plus the cartel dummy variable."

6.38. According to the Truck Manufacturers, the indices and technical specifications used in Schinkel & Huberts 2024 do not reflect the complexity of truck production, nor do they capture the differences in cost trends between different trucks.[59] After all, trucks are highly heterogeneous products with differing technical characteristics; costs vary between brands (the Truck Manufacturers) and between plants, and truck costs evolve over time, and at different rates over time for different trucks, Truck Manufacturers and plants.[60] The set of thirteen truck characteristics is too limited; a number of important production inputs are missing (for example electronics, plastics, software, IP and leather), and the economy-wide indices cannot capture the differences in cost trends between trucks,[61] as Dr [name] further explained at the hearing.

6.39. The Schinkel & Huberts 2025a report responds to this criticism as follows. All models include "brand-specific fixed effects", i.e. dummy regressors for each brand. This takes account of factors such as brand loyalty or higher production costs. There is no indication or evidence that there are different overcharge percentages per brand; on the contrary: gross list prices were raised for all brands. It should also be noted that the method used in Schinkel & Huberts 2024 can also result in a different nominal overcharge for different brands, since prices differ as a result of the brand dummy regressors and other control variables. Prof. Schinkel and Dr Huberts emphasise once more:

" The appropriate econometric approach in this case is to include brand fixed effects, not sub-sampling. The brand heterogeneity is then controlled for. The remaining variance in individual truck prices can be identified – together with the other controls – around an EU-wide systematic price change. Note again that the brand dummies control for a variety of possible reasons why the transaction prices for brands may differ, including importantly also differences in manufacturing cost on the supply side, but also difference in truck desirability and thus their buyers' willingness to pay for them on the demand side. The brand dummy features in the hedonic regression as a truck characteristic, next to other relevant technical characteristics of trucks that matter for production cost and pricing."[62]

6.40. The debate in the court documents, and certainly also at the hearing, has in fact focused only to a very limited extent on the (alleged shortcomings in the) analysis in Schinkel & Huberts 2024. The Truck Manufacturers merely state in general terms that

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[59] Exhibit TRUC-0072, 2.5.

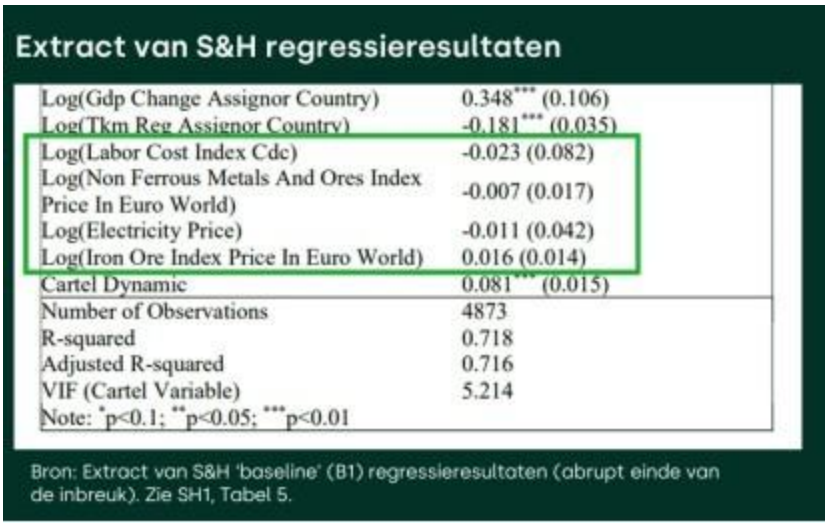
[60] Presentation by Dr [name], 18–19 November 2025, p. 9.

[61] Ibid., p. 11.

[62] Schinkel & Huberts 2025a, pp. 32–35.

Schinkel & Huberts 2024 contains “fundamental methodological flaws”, but they scarcely develop that assertion. In their summary of the case, the Truck Manufacturers argue first and foremost for the use of their own datasets. They begin by asserting that the results of the analyses by the Truck Manufacturers’ economists are “sound and reliable”, “which cannot be said of the (estimated) overcharge” in Schinkel & Huberts 2024. They go on to emphasise that the economic experts they have engaged verify the *actual* costs of a specific truck as recorded in their internal systems. They also argue that the set of “(only) thirteen” technical truck characteristics is too limited and unsuitable for adequately explaining differences in costs between trucks. In their view, it is “simplistic to think that the impact of costs on a complex product such as trucks can be captured by merely the seven characteristics with which S&H attempt to account for those costs”. The public and aggregated cost indices used in Schinkel & Huberts 2024 are, in the Truck Manufacturers’ view, a “fundamental flaw”, “clearly unrepresentative” and “demonstrably unsuitable approximations” of the actual, specific and changing production costs of individual trucks. Those, however, remain merely general assertions for which no further substantiation is provided in the summary pleading (or supplementary pleading). Reference is made to various Rebuttal Reports, but even those, as CDC has also argued with good reason, do not actually address the alleged shortcomings in the analysis of Schinkel & Huberts 2024. As far as the court can ascertain without itself delving into the details of those reports — which is not the court’s task — this is indeed not the case. Even at the hearing, the discussion on the substance of Schinkel & Huberts 2024 remained limited. It has consistently been argued that the thirteen technical characteristics are too limited, but what specifically is missing and why that is a problem has not been clearly set out. That is so notwithstanding the fact that, as set out in 6.33 above, CDC has conducted extensive and in-depth research into the various characteristics of trucks. The Truck Manufacturers have not engaged in any substantive way with that research. The same applies to the control variables for production costs, such as raw materials. At the hearing, it was observed once more that plastic and leather are also used in trucks, and whilst that appears to be correct, no explanation whatsoever was offered as to why the omission of a price index for leather and/or plastic would distort the analysis in Schinkel & Huberts 2024 and lead to an (excessive) incorrect overcharge. No attention was paid to the other production inputs that, according to the Truck Manufacturers, were missing (see 6.38). Furthermore, the Truck Manufacturers have tweaked (the scale of) a graph[63] in order to show that the cost indices used in Schinkel & Huberts 2024 are not in line with actual truck costs (whatever those may be — more on that later), but this is not convincing. During the presentation of that graph, an image was also shown illustrating that the cost fluctuations in the Schinkel & Huberts 2024 model (as had already been stated in the summary document) have no statistically significant impact on prices, which, according to Dr [name], would run counter to economic expectations:

[63] Presentation by Dr [name], 18–19 November 2025, p. 13.



It is not entirely clear to the court what Dr [name] is seeking to demonstrate here. In the first place, this concerns the "labor cost index, non-ferrous metals and ores price index, electricity price" and the "iron ore price index", and it seems obvious that the costs of labour, metals, iron and electricity (may) influence the cost price of a truck. Furthermore, at the hearing Dr Huberts explained that the mere fact that these variables are not statistically significant does not prove that the correct variables were not included in Schinkel & Huberts 2024. With reference to the Agree/Disagree statement, he pointed out that the experts of both parties agree that even insignificant parameters contribute to the explanatory power of the model. In his view, it is in fact sensible to include such variables precisely in order to avoid omitted-variable bias.

6.41. The Truck Manufacturers further submit that Gross Domestic Product (GDP) is not a suitable general demand variable for all countries. The Truck Manufacturers' economists in general agree with Prof. Dr Schinkel and Dr Huberts that the development of tonne-kilometres of road transport (TKM) in a given country may be a relevant factor to consider when estimating a potential price increase, but they go on to argue that the relationship between TKM and truck prices predicted by Prof. Dr Schinkel and Dr Huberts is incorrect. Consequently, according to the Truck Manufacturers, Schinkel & Huberts 2024 does not adequately take account of developments in the demand for trucks. That criticism is also addressed in more detail in Schinkel & Huberts 2025a:

> "(…) The TKM-index is a measure for weight road freight transported as collected by Eurostat – i.e. a measure of transportation activity with trucks. The consultants emphasize their findings (…) as showing a positive sign for their TKM-measure parameters, whereas our results indicate a negative sign. They subsequently try to twist it as if we switched interpretation of the role of TKM from being a demand control – as the consultants had always interpreted it: truck demand up, truck prices up – to being a 'supply' control.
>
> (…)
>
> This, however, is false and misrepresents what we explain in our report. Higher current supply is a result of previous investments in fixed inputs, i.e. new trucks and

> trailers. TKM indices thus represent a trailing indicator of truck purchases, where a higher current index is the result of an increase in past truck purchases. Demand for road freight transport is affected by economic activity measured by GDP. Thus, if economic activity stays level but TKM increases, firms are not incentivized to purchase trucks as existing capacity is (more than) sufficient. Higher TKM levels will thus, ceteris paribus, lead to a lower demand for new trucks. (…)
>
> After correcting for relevant macro-economic developments through GDP, TKM is a clear measure of current *trucking services supply* – or capacity, with another term. (…) Ceteris paribus, when the supply of transportation services is already large, and indeed close to demand, so that there is little unmet demand, the demand for additional trucks, which are fixed production factors to produce more transportation services with, should be expected to decrease. This explains why TKM has a negative effect on truck prices: as TKM increases, the supply of trucking services rises, which induces demand for trucks to fall, truck purchases fall, hence process decline."

The court regards this as a reasonable explanation.

6.42. Nor does the court agree with the Truck Manufacturers' argument that a better — or indeed the only correct and customary — way of controlling for costs and truck specifications is to verify the *actual* costs of a specific truck as recorded in the internal systems of the relevant Truck Manufacturer(s). Prof. Dr Schinkel and Dr Huberts have pointed to various problems that arise when those actual costs are used. The court mentions a few of the most striking ones:

(i) it is not clear how the actual costs used by the Truck Manufacturers' economists in their analyses were arrived at (they were compiled from the Truck Manufacturers' own systems by the Truck Manufacturers themselves; Prof. Schinkel and Dr Huberts have not seen any raw data); the cost series contain fixed cost components and other cost components that do not belong there; there are significant differences between the Truck Manufacturers themselves; and cost data for certain periods is sometimes missing, meaning that the entire infringement period is not covered;

(ii) the way in which the cost series are constructed (in dependence on prices) inevitably leads to endogeneity; that is to say (as Dr Huberts explained at the hearing): "Costs influence the price, but at the same time the price also influences the cost variables, creating a feedback mechanism via volume allocation and price-related cost components";

(iii) there is a risk of x-inefficiencies: because in a cartel, in the absence of competitive pressure, there are fewer incentives to reduce costs, these x-inefficiencies can lead to increased and therefore distorted costs;

(iv) there is a risk of multicollinearity: this occurs when the explanatory variables are too highly correlated with one another, causing the regression estimates to become unstable. The way to measure this is by means of the Variance Inflation Factor (VIF). The reports of the Truck Manufacturers generally contain little or no information on

multicollinearity. According to Prof. Schinkel and Dr Huberts, multicollinearity in the various regression analyses is exceptionally high.

6.43. These are serious (potential) issues with the cost datasets used by the Truck Manufacturers' economists in their analyses. At the hearing, Dr [name] sought to persuade the court that these issues do not arise, but he was unable to allay the concern that they do. The Practical Guide also warns of some of these issues:

> "Where accounting data are available, adjustments may be necessary given that the notions of costs in accounting terms can differ from the notions of costs in economic terms." (109)
>
> "It may occur that the observed production costs during the infringement are not representative of the production costs that would have been likely without the infringement. (…) first, in the event of infringements of Article 101, companies which due to their collusive behaviour are not subject to the competitive pressure that would exist in the non-infringement scenario may operate less efficiently and therefore generate higher production costs than under competitive pressure. (…)" (110)

6.44. Nor does the argument that it is customary to rely on manufacturers' (cost) data carry any weight. The Truck Manufacturers are correct in stating that this was also done in the proceedings before the CAT (*Royal Mail/BT v DAF*). The CAT did indeed hold: "Our conclusion is that the impact of the infringement that is found at the level of DAF's UK prices as a whole can reasonably be applied to the Claimants' purchases" (345). However, as already mentioned, the CAT ultimately concluded that it had to estimate the overcharge percentage, inter alia, "given the substantial imperfections in the data available". The Borgarting Court of Appeal also found the data from the truck manufacturers to be of limited reliability and usefulness, and highlights broadly the same issues as those identified by Prof. Dr Schinkel and Dr Huberts. With respect to the analyses by Volvo's experts, it considered as follows:

> "(…) the Court of Appeal believes that it weakens the evidentiary value of the regression analyses that, for the so-called post-period (…), are based on data retrieved from an internal system (…) from a period when Volvo was aware that the Group risked claims based on allegations of overpricing" (p. 55)
>
> "He [the expert witness] argues that this may suggest that the mechanism could, in principle, have worked the other way round; that sales prices for the trucks influenced how Volvo managed costs within its internal system. He emphasised that using Volvo's own costs as a key economic variable in the analysis presents a methodological problem. This is because the costs themselves may be influenced by the existence of price-fixing. This is described as costs being an endogenous, rather than an exogenous, variable.
>
> The Court of Appeal agrees with the criticism (…). The Court of Appeal also notes that one possible factor during the period in which Volvo participated in the price-fixing may have been that Volvo had less incentive than others to reduce production costs for trucks. (…)" (p. 55)

> "(…) The cost measures in Volvo's data set are not merely objective, verifiable costs. It is clear that they also include an element that has nothing to do with costs at all, referred to as a 'Price Management Surcharge' (PMS). Volvo's cost measures also include both fixed and variable costs. (…) In the case of fixed costs, the Court of Appeal is of the opinion that, in general, there will be considerable room for discretion in relation to the allocation to different types of products. The fact that Volvo's cost target is structured as it is makes it difficult to verify the cost target as an economic variable in the model. This applies even if Volvo provides insight into the underlying figures." (p. 56)

All of this ultimately leads to the following conclusion by the Court of Appeal:

> "that the regression analyses based on Volvo transactions must be given limited weight in the overall assessment of the evidence on the question of whether Posten paid an overcharge. (…) these analyses are not a strong argument that there was no overcharge at all." (p. 58)

The Court of Appeal applies similar reasoning to the cost data used by the other truck manufacturers and reaches the same conclusion for all analyses based on those data.

6.45. All in all, the Truck Manufacturers have failed to persuade the court that Schinkel & Huberts 2024 is, in short, based on incorrect assumptions or contains material shortcomings in the controlling for costs and truck characteristics. The Truck Manufacturers have also failed to persuade the court that more reliable results would be obtained if the Truck Manufacturers' own data were used.

Customer characteristics and bargaining power

6.46. The Truck Manufacturers argue that Schinkel & Huberts 2024 (wrongly) fails to take into account that the bargaining power of truck buyers was structurally greater after the Cartel than during the Cartel. According to Prof. Schinkel and Dr Huberts, there is no evidence whatsoever for this. Firstly, they point out that, both during and after the Cartel, truck buyers negotiated the price of the trucks with staff of the Truck Manufacturers (the sales departments and/or dealers) who were not themselves involved in the Infringement, and that the processes were therefore in principle the same both during and after the Cartel. Nor, according to Prof. Dr Schinkel and Dr Huberts, does the fact that buyers (possibly) bought more trucks after the Cartel than during it mean that bargaining power increased. There may be various reasons for increased volumes. It may, for instance, be that truck prices fell after the end of the Cartel (in that sense, bargaining power could have been endogenously influenced before the Cartel). Nor does the "size of buyer" indicator used by the Truck Manufacturers' economists (measured by the number of trucks purchased per Assignor) point to increased bargaining power; on the contrary, according to Prof. Dr Schinkel and Dr Huberts. They investigated this and concluded that, when measured in this way, there was slightly greater bargaining power during the Cartel than afterwards: the average number of trucks purchased per Assignor was (rounded) 637 during the Cartel and (rounded) 584 after the Cartel. Finally, Dr Huberts explained at the hearing that the existing literature does not provide a clear-cut answer as to what effect

bargaining power has on prices and how that mechanism works. The price is the result of complex interactions between buyer and seller and is influenced by a wide variety of factors, including the buyer-seller relationship and expectations.

Dr [name] countered at the hearing only that, as a general rule, it may be assumed that large customers are able to negotiate lower prices, and he used a graph to show that there were more large customers in the CDC dataset during the Cartel than after the Cartel.

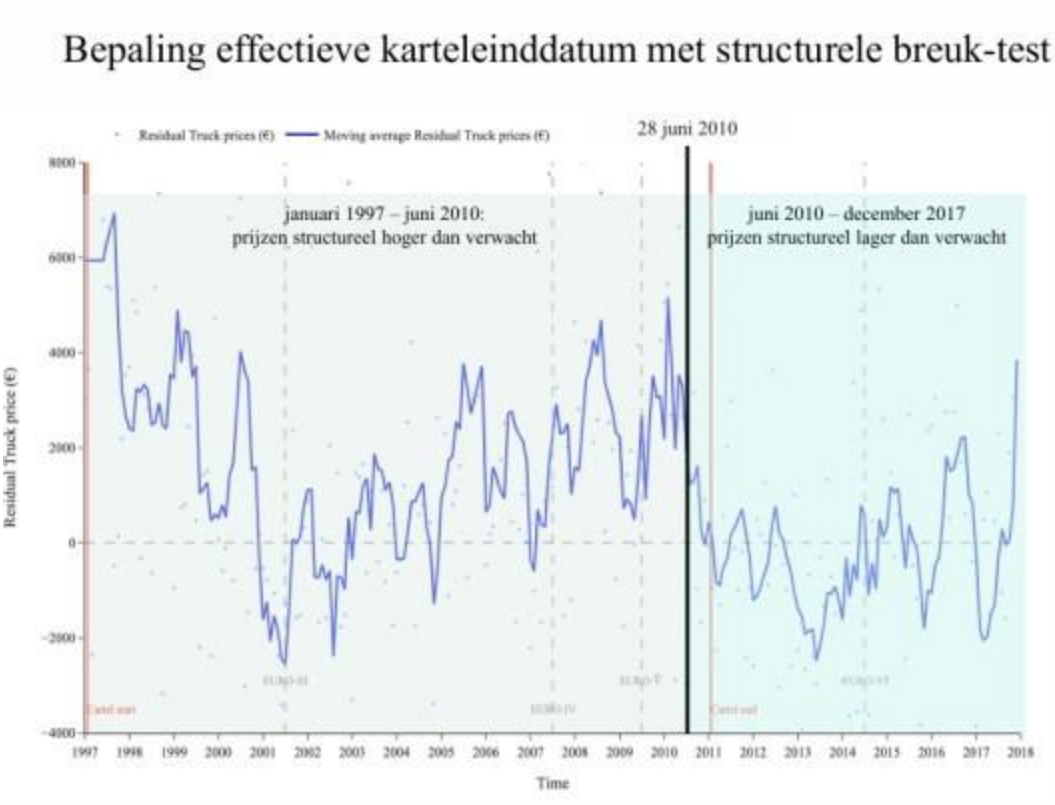
6.47. Against this background, the court is not persuaded that a difference in bargaining power has (significantly) distorted the analysis in Schinkel & Huberts 2024.

End date of the Cartel and run-off period

6.48. The formal end date of the Cartel (as established by the Commission in the Decision) is 18 January 2011. Schinkel & Huberts 2024, however, argue that the effective end date of the Cartel is 28 June 2010. According to Schinkel & Huberts 2024, the run-off period lasted until 30 May 2013. According to Prof. Schinkel and Dr Huberts, that is a conservative estimate, as their model indicated 24 September 2015. Because the latter date is close to the introduction of the EURO VI standards, they regard it as unreliable.

6.49. According to Schinkel & Huberts 2024, the effective end date of a cartel must be determined empirically by identifying patterns in price trends over time that indicate a structural change attributable to the (start or) end of the infringing conduct. That is what Prof. Schinkel and Dr Huberts have done:

> "We analyze the truck purchasing data to determine what were the dates at which the European trucks market appears to have returned to normal competition and the cartel effect had dissipated. That is, we do not assume that the cartel effectively ended with the dawn raid by the Commission or at any approximate date following (or preceding) it. Instead, we apply established econometric methods to analyze where there are structural breaks in truck prices, indication regime shift from collusion to competition. These structural breaks in the data indicate structural changes in the prices over time due to concurrent events, and thus allow us to identify the effective end date of the cartel, that is, when the cartel agreements started to cease to have an impact on prices, as well the extent to which the cartel effect on process had substantially diminished."



At the hearing, Prof. Schinkel explained, with reference to this figure,[64] that the focus is primarily on the period around where the black line is drawn, and that they were able to establish empirically, using the *structural break* test, that the effective end date is 28 June 2010.

6.50. According to Schinkel & Huberts 2024, it is of great importance to determine accurately the effective end date of a cartel (and the run-off period) by means of what they term the "structural break test":

> "(…) Misspecification of the effective cartel end date(s) and the transition period introduces a mislabeling of prices around the cartel end date chosen as either competitive where they are actually collusive, or collusive when they are actually competitive. Misdating, including by modelling the transition process from collusive to competitive prices with less sophistication than the actual cartel dynamics, is expected therefore to lead to a (weak) overestimation of the but-for prices, which implies an underestimation of the cartel price effect."[65]

6.51. The (economic experts of the) Truck Manufacturers do not actually engage with the calculations or methodology applied in Schinkel & Huberts 2024, but, as the court

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[64] Slide 20.

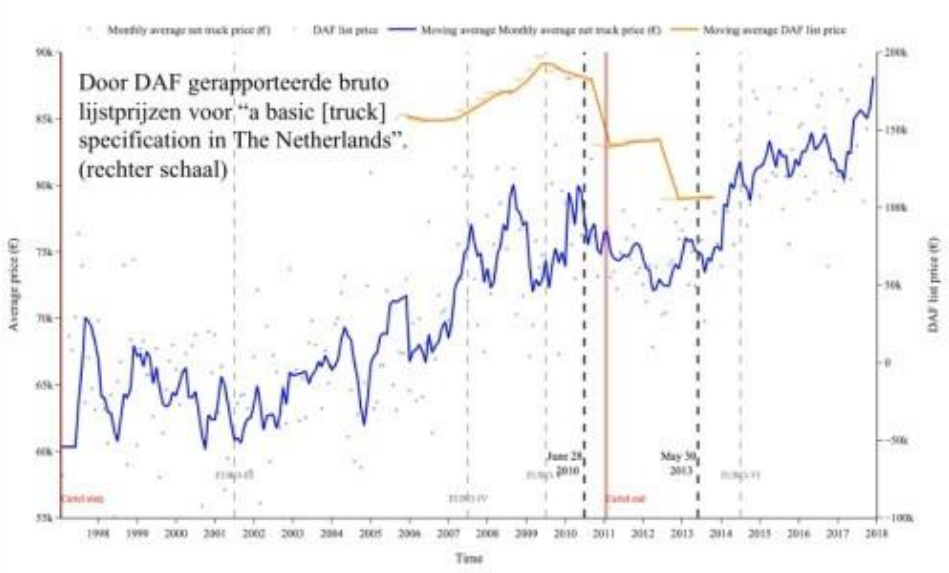
[65] Schinkel & Huberts 2024 refers to Boswijk et al., *Journal of Applied Econometrics*, 2018.

understands it, take the view that, from an economic perspective, the end date of the Infringement as established by the Commission must also serve as the starting point for the during-and-after analysis. According to Dr [name] as well, it is "common practice" to take the start and end dates set by the Commission as the "natural starting point of the infringement effect".[66] The Truck Manufacturers argue that the method in Schinkel & Huberts 2024 is "not objective, flawed" and that it does not control for the relevant factors influencing price, and that Prof. Dr Schinkel and Dr Huberts "thus deviated from the official and legally binding end date of the infringement period without a plausible economic explanation".

6.52. Prof. Schinkel and Dr Huberts go on to explain that the dates they have empirically established are also consistent with the facts: (i) in the summer of 2010, MAN submitted its leniency application, and (ii) until the introduction of EURO VI, the gross list prices were still based on the EURO V standards (which were already in force during the Cartel). They illustrate this by the following figure, based on the gross list prices they found in the DAF data:[67]

Indicatie van samenvallende verlagingen in de bruto lijstprijzen in DAF data

Figure 21": Conceptual illustration of the econometric approach.



6.53. The court is not itself able to determine the correct (effective) end date of the Cartel, but it regards the reasoning underpinning the end date established by Prof. Dr Schinkel and Dr Huberts as sound. In so far as the position of the Truck Manufacturers is to be understood as meaning that it is customary, and (therefore) best, to take the end date set by the Commission as the starting point for the during-and-after analysis, the court does

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[66] Exhibit TRUC-0072, 5.3.

[67] Slide 25.

not follow them in that respect. The Practical Guide also states that the start and end dates of a cartel are not always clear.[68] The court also finds the factual explanation given by Prof. Dr Schinkel and Dr Huberts for the end date to be understandable.

Conclusion as to the run-off period

6.54. As regards the run-off period, the court must take a decision. It will align with the period established by Prof. Schinkel and Dr Huberts and will find that the run-off period continued until — and thus ended on — 30 May 2013. That is justifiable, because it is understandable that the gross list prices continue to affect the final prices for a longer period, and that date more or less coincides with the introduction of EURO VI, the moment at which new gross list prices were expected to come into effect. Furthermore, so far as the court can assess, that date appears to be consistent with the empirical analysis carried out by Prof. Dr Schinkel and Dr Huberts. The Truck Manufacturers have, on the other hand, given no reasons for proposing a different date for the end of the run-off effect.

Conclusion on the overcharge percentage

6.55. Taking everything into account, Schinkel & Huberts 2024 can, with all the uncertainties inherent in any regression analysis, serve as a sound basis for the court's estimation of the overcharge percentage. The court must make a decision and, having regard to all of the above, sets the overcharge percentage at 7%.

7. Volume of commerce

7.1. The issue of the volume of commerce concerns the question of for how many truck transactions CDC can claim damages in these proceedings on behalf of the Assignors. In order to answer that question, it must be assessed for which truck transactions CDC has, in the light of the objections raised by the Truck Manufacturers, sufficiently substantiated that an Assignor entered into a transaction falling within the scope of the Infringement.

7.2. Of the transactions on which CDC bases its claim, according to the Truck Manufacturers' most recent tally, 25,464 truck transactions are no longer disputed, whilst 6,958 transactions remain in dispute. In their latest count, the Truck Manufacturers arrive at slightly different figures of approximately 25,500 recognised (uncontested) transactions and 6,395 contested transactions.

Lack of a joint overview of disputed transactions

7.3. At the case management hearing on 3 June 2025, the court reached the following agreement with the parties:

> "Agreement on volume of commerce (burden of assertion)

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[68] Practical Guide, Nos 43–44.

> 2.9. With regard to the volume of commerce, it has been agreed with the parties that they will determine, by mutual agreement, which truck transactions they agree fall within the scope of the Infringement and that these have been sufficiently substantiated by CDC and can be adequately identified. The court will have to rule on the truck transactions on which they do not agree. The parties shall draw up a list of those truck transactions in which the parties' positions (substantive and, where necessary, procedural) are set out in a manner that is clear to the court. The approximately 23,000 truck transactions that may fall within the run-off period may be excluded from this list, as the court will first decide whether there is a run-off period and, if so, how long it lasts."

7.4. The parties have not succeeded in drawing up the statement referred to above jointly. Instead, on 29 October 2025 they each filed submissions accompanied by their own lists of contested and uncontested transactions. In doing so, each party used its own format. As a result, the lists are not readily comparable and, all things considered, the situation regarding the volume of commerce is anything but clear to the court. The court therefore finds that the parties have failed to comply with the agreement reached. The court will accordingly base its assessment of the volume of commerce on what the parties have argued on this subject in their pleadings and at the oral hearings. The exhibits in Annexes 1a and 1b from CDC and Exhibit TRUC-0071 to the supplementary submissions of 29 October 2025 will not be taken into account in the assessment, except in so far as they contain positions that the parties have also advanced in their pleadings or at the oral hearings.

7.5. The court will first outline below, and in so far as relevant to the assessment, the course of the debate concerning the burden of assertion regarding the volume of commerce.

Burden of assertion regarding volume of commerce

7.6. At the case management hearing on 19 December 2018, it was agreed that the debate on the burden of assertion would be held first and that, on that basis, the Claimants (including CDC) might be given the opportunity to amend their statements of claim. Subsequently, in its interlocutory judgment of 15 May 2019 (the first judgment on the burden of assertion), the court held that the Claimants could be expected to specify, in support of their claims, which trucks they had purchased, hired, leased and/or used during the relevant period, and how they had come to purchase, hire, lease and/or use them (specifically, when, how and from whom the trucks were purchased, hired, leased and/or came into use) and, where ownership, hire, lease or mere use had already ended during the Cartel period or the run-off period, how and when that had ended. All of this was to be done before the Truck Manufacturers submitted their statements of defence. The court also considered that the arguments could subsequently be further elaborated and

substantiated, if necessary, depending on the Truck Manufacturers' defence. The litigation vehicles (such as CDC) were to satisfy that obligation on behalf of the Assignors.[69]

In compliance with that order, CDC further substantiated its claims by procedural submission of 18 September 2019, following which the Truck Manufacturers filed their statement of defence on 1 July 2020.

7.7. In their statement of defence, the Truck Manufacturers explained that they had instructed FTI Consulting LLP (hereinafter: FTI) to extract and analyse the data submitted by the claimants in the CDC proceedings that had not yet been excluded from Group 1. In view of the volume and complexity of the data, the Truck Manufacturers, in consultation with FTI, opted for a phased approach. The Truck Manufacturers' phased approach is as follows:

Trucks excluded on the basis of what has not been established

(a) *For all transactions*, the Truck Manufacturers assessed whether the Claimants had satisfied the initial burden of assertion.

Trucks excluded on the basis of what has been asserted or submitted

(b) *For all transactions*, the Truck Manufacturers determined whether they already fell outside the scope of the Decision on the basis of the Claimants' own assertions in the transaction overviews.

(c) *For the transactions remaining after step (b) for which the Claimants had provided a VIN and for which supporting evidence had been submitted*, FTI and the Truck Manufacturers analysed the evidence submitted by the Claimants.

(d) *For the transactions remaining after step (c)*, the Truck Manufacturers used their own available sales data to ascertain whether the transactions fell outside the scope of the Decision.

7.8. With regard to CDC, the Truck Manufacturers noted in step (a) that the burden of assertion had not been satisfied in only 159 of the 59,690 transactions. In step (b), according to the Truck Manufacturers, there were 23,681 transactions — almost 40% of the total — which fell outside the scope of the Decision.

7.9. Under step (c), the Truck Manufacturers, with the assistance of FTI, carried out a preliminary document review of the evidence submitted by the Claimants. That review is limited to transactions (i) for which the Claimants have provided a Vehicle Identification Number (VIN) and (ii) which do not already fall outside the scope of the Decision on the basis of the information provided by the Claimants in the Transaction Overviews (step (b)).

In the document review, the following questions were asked for each transaction:

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[69] ECLI:NL:RBAMS:2019:3574, paras 3.26 and 3.27.

Transaction Document Validation

(a) Has written evidence been submitted in respect of this transaction and, if so, does that evidence include one or more transaction documents? Transaction documents are understood to mean invoices, lease agreements, order confirmations and other documents intended to document the purchase, hire or lease of a truck. According to the Truck Manufacturers, documents other than transaction documents do not provide sufficient evidence of the transactions to which the Claimants' claims relate.

VIN/Chassis Number Validation

(b) Does at least one of the transaction documents submitted for a specific transaction contain the VIN or chassis number as provided by the Claimant in the Transaction Overview? If not, the Truck Manufacturers consider that insufficient evidence has been submitted.

Used Vehicle Validation

(c) Does any of the transaction documents indicate that the truck was purchased second-hand? If so, the transaction falls outside the material scope of the Decision. The reviewers have been instructed to classify a truck as second-hand if the transaction document unambiguously states that it is a "second sale" or uses similar wording, or if, according to the transaction document, the truck has travelled more than 5,000 kilometres (except in the case of Daimler, which also classified as second-hand vehicles with a mileage of between 0 and 5,000 kilometres).

Claimant Name Validation

(d) Does at least one of the transaction documents contain the name of the buyer or lessee as stated by the Claimants in the Transaction Overviews or, if that name is missing, the name of the Assignor? If not, then on the basis of the transaction documents submitted and without further explanation from the Claimants, it cannot be assumed that the party in question purchased or leased the truck.

7.10. In step (d), the Truck Manufacturers made the following general observations:

(a) The Truck Manufacturers identify a truck in their systems on the basis of the VINs provided by claimants. If the claimants did not provide a VIN at all, the Truck Manufacturers were therefore unable to trace the truck in question. In some cases, this was possible with an incomplete VIN, by combining the incomplete VIN with other details such as the make of the truck. However, not all Truck Manufacturers have this capability. Even if the Claimants have provided a complete 17-character VIN, this does not mean that the truck can always be found in the Truck Manufacturers' systems. In the first place, those systems are not comprehensive. Secondly, the VIN may be invalid, for example because the Claimants have entered the VIN incorrectly in their Transaction Overviews.

(b) Even if the Truck Manufacturers can trace a particular truck in their systems, those systems do not necessarily contain information on the transaction asserted by the

relevant Claimant. Second-hand sales, for example, generally do not appear in the Truck Manufacturers' sales records. Furthermore, some Truck Manufacturers operate through a network of (among others) independent dealers, who purchase the trucks from the relevant Truck Manufacturers and subsequently sell them on to end users.

(c) Due to the time that has elapsed since the Infringement Period, the Truck Manufacturers' sales data are no longer complete.

(d) In view of the above, this is a preliminary analysis. The Truck Manufacturers reserve the right to put forward further defences at a later stage, should there be cause to do so, based on a more comprehensive analysis of their sales data.

7.11. In their statement of defence, on the basis of that document review, the Truck Manufacturers disputed 38.2% (13,771 trucks) of the transactions alleged by CDC.

7.12. On 28 February 2024, the court handed down a further interlocutory judgment concerning the burden of assertion (the second judgment on the burden of assertion).[70] Among other things, it held that an additional round of written submissions was necessary to give the Claimants the opportunity to respond to the information provided by the Truck Manufacturers and to supplement it where necessary and possible. The intention was for the Claimants to substantiate all truck transactions for which they were claiming compensation as thoroughly and specifically as possible (with supporting documents), so that the extent of the Claimants' claims (and in particular those of the Assignors) would be as clear as possible and the Truck Manufacturers would know what they had to defend themselves against.

7.13. In response to the question raised by the Truck Manufacturers as to what information may serve as sufficient evidence, the interlocutory judgment states that the court has not yet ruled on:

> "(i) what information is required as a minimum and/or (ii) what the consequences are for the referral to the damages proceedings if (for certain truck transactions) no information, or not all information, is provided. The court merely instructs the Claimants to produce all available information (data) relating to each truck (transaction) in the proceedings (in particular the VINs). (…) In order to satisfy the burden of assertion ('which trucks (of which make) were acquired, when and from whom, in short'), it appears appropriate that the following details be provided for each truck (transaction):

i) (correct/complete) VIN (or chassis number);
ii) make;
iii) type of transaction (purchase, hire, lease or other form of use);
iv) name of the customer (purchaser, hirer, lessee or user);
v) name of seller, hirer, lessor or provider;

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[70] ECLI:NL:RBAMS:2024:1119.

vi) (maximum permitted) weight of truck;
vii) new or second-hand;
viii) date of transaction;
ix) country where the transaction (purchase, hire, lease) took place (country of the Customer) / country of the seller, hirer, lessor or provider;
x) when the ownership, hire, lease or mere use has ended.

> (…) In so far as the Truck Manufacturers contest the claims, the Claimants will have to provide further evidence to support their assertions (and the information provided), where possible with supporting documents. It is obvious that this should be done by means of what the Truck Manufacturers have termed 'transaction documents' (…), which can be linked to the truck (transaction) for which a Claimant/Purchaser is claiming compensation. However, the court cannot require the Claimants to substantiate their assertions in any specific manner (with specific documents), and given the passage of time, it is also understandable that not all 'transaction documents' are still available."

7.14. Following the separation of the CDC proceedings by the court's decision of 17 July 2024, CDC complied with the order set out in the second judgment on the burden of assertion (*stelplicht*) requiring it to produce further evidence, by filing a supplementary written submission and reply on 6 August 2024. It made additions and corrections to the transactions previously set out and removed 344 truck transactions from its dataset. CDC observed that the Truck Manufacturers had made no observations in their statement of defence regarding 20,156 transactions under steps (a) to (d). In addition, CDC added 727 truck transactions to its overview. Furthermore, CDC included in the transaction overview a response for each individual truck transaction in respect of which the Truck Manufacturers had raised a defence under points (a) to (d).

7.15. On 13 November 2024, the Truck Manufacturers responded to CDC's pleading in their statement of defence, supplementary submissions and reply regarding the truck transactions. Following CDC's amendments, they then applied steps (c) and (d) to various transactions that had initially been excluded at step (b). The Truck Manufacturers maintained their phased approach and extended the analysis with what they refer to as the Extended Administrative Check. This introduced, between steps (b) and (c), an intermediate step in which an attempt was made to verify the existence of the transactions alleged by CDC in the Truck Manufacturers' available sales data, using the VIN and customer details provided by CDC. In the Extended Administrative Check, the Truck Manufacturers were able to verify the existence of the transaction alleged by CDC in 17,924 of the 35,787 trucks remaining after step (b). In 17,863 cases, that was not possible. According to the Truck Manufacturers, that may be because the alleged purchase by the alleged buyer never actually took place, or because the Truck Manufacturers' sales data are incomplete. Furthermore, some Truck Manufacturers sell the vast majority of their trucks to independent dealers, meaning that the name of the end buyer is by no means always recorded.

Proper procedural order and the right to be heard

7.16. In response, CDC has argued that the Extended Administrative Check has led the Truck Manufacturers to partially withdraw their defence under step (c) for transactions in respect of which they now acknowledge that the Assignor is registered in their records, only to adopt new positions on more than 2,000 of those truck transactions by adding new defences to points (c) and (d). This includes, amongst other things, 630 truck transactions on which they made no observation whatsoever in their statement of defence and which they had already accepted as part of the claim.

7.17. The court must consider whether, as CDC argues, the Truck Manufacturers raised these new defences too late. The Truck Manufacturers do not dispute that they have put forward new defences in respect of truck transactions for which they did not raise a defence in their statement of defence, and that they have added new defences to transactions that were previously contested. They take the view that this is permissible and that their investigation went further than would normally be expected of a defendant. They were confronted with an enormous volume of data and made efforts to *match* it with their own data, in the course of which they had been accommodating. The Truck Manufacturers point out that their further investigation has led to a large proportion of the truck transactions now being acknowledged (or at least no longer disputed).

7.18. The court notes, first of all, that the Truck Manufacturers' conduct is not in line with the court's instruction that they were required to file a *full* statement of defence. The court made this clear in an email of 8 July 2019, as shown in the following quotation:

> "Contrary to what the Truck Manufacturers believe they can infer from the judgment, the court did not mean a rejoinder, but a full statement of defence. (…) The question of how detailed the defence must be depends on how fully the Claimants' arguments are set out in the pleadings they are to submit. It is not for the court to interfere in advance with the content of the defence or to provide guidance in that regard.
>
> The next step in the proceedings is therefore for the Claimants to file a statement on the court roll of 18 September 2019, as provided in the judgment of 15 May 2019. The case will then be placed back on the roll so that the Truck Manufacturers can file a full statement of defence. The court wishes, on the basis of the statement of defence, to ascertain the points on which the Truck Manufacturers intend to defend themselves, before decisions are taken regarding the further (possibly phased) conduct of the proceedings."

7.19. The Truck Manufacturers were subsequently given the opportunity to indicate the timeframe within which they could file their statement of defence. In their procedural submission of 2 October 2019, they state: "Following that correspondence, your court informed the parties by email on 8 July 2019 that it intends for the Truck Manufacturers to submit full statements of defence (in all these cases) in which they, amongst other things, respond to the information submitted by the Claimants on 18 September 2019". The Truck Manufacturers were therefore aware that they were required to file a full statement of defence, and that they were required in it to respond to the information submitted by the

Claimants. It is inconsistent with this course of events that the Truck Manufacturers, in their pleading of 13 November 2024, put forward new defences which they could have raised in their statement of defence on the basis of the information provided by CDC on 18 September 2019.

7.20. The fact that it was only decided at a later stage of the proceedings to conduct the damages assessment in the main proceedings themselves, and that at the relevant time the matter still concerned a referral to damages proceedings, does not alter this. Following the first judgment on the burden of assertion, it was clear to the parties that the court expected the Claimants to substantiate their claims concretely, and the court's email of 8 July 2019 reiterated (as is also apparent from the general rules on pleading and denial) that the more concretely the claims are elaborated, the more is expected of the defence. The Truck Manufacturers therefore knew what was required of them, and they were also given (and took) the opportunity to indicate themselves how much time they needed for this.

7.21. Not only is the Truck Manufacturers' conduct at odds with the instruction that they were required to file full statements of defence, but they have also raised the new defences too late, contrary to the proper conduct of proceedings and the principle of the right to be heard. The first judgment on the burden of assertion provides that, following the statements of defence, assertions may, "depending on the Truck Manufacturers' defence", be further elaborated and substantiated if necessary. Subsequently, in the second judgment on the burden of assertion, CDC was given the opportunity to further substantiate the "disputed claims". This is incompatible with the fact that the Truck Manufacturers, in their submission of 13 November 2024, once again raise numerous new defences, including in relation to transactions which were not mentioned at all in the statement of defence. The Truck Manufacturers appear to assume that the playing field was fully open after each round of completion on the other side, and that they were free to subject all transactions to further analysis after each round. The court did not grant such scope, and that premise is not in accordance with the general rules of procedural law. The fact that there is a large volume of data and that the further investigation led to a higher proportion of acknowledged claims does not alter this. The judgments on the burden of assertion show that the scope of the proceedings was progressively narrowed down to the transactions in dispute at the time. That the Truck Manufacturers reserved the right, in their statement of defence, to put forward further defences based on further analyses of the evidence submitted, does not avail them here. They did not have that right, and they could have known as much.

7.22. This means that the defences raised by the Truck Manufacturers in the submission of 13 November 2024 concerning truck transactions which were not contested in the statement of defence will not be taken into account in the assessment. The same applies to the new defences raised in that pleading which, after further analysis, have been added to previously contested transactions but which do not constitute a response to the CDC's further substantiation. In other words, it is the defences that the Truck Manufacturers could have raised in their statement of defence that are excluded from the assessment. This means that new defences which are a response to the further substantiation of transactions provided by CDC in its written submission of 6 August 2024 are taken into account.

727 new transactions

7.23. At the case management hearing of 3 June 2025, it was decided that the 727 new transactions set out by CDC in its submission of 7 August 2024 form part of the proceedings. The Truck Manufacturers raised no defence in respect of those transactions until Exhibit TRUC-0071, filed on 29 October 2025. According to CDC, this involves 246 defences relating to those 727 truck transactions and 261 new defences relating to truck transactions to which the Truck Manufacturers had already responded in their submission of 13 November 2024. As considered above at 7.4, the court disregards Exhibit TRUC-0071 because it does not comply with the agreement reached at the case management hearing of 3 June 2025. The defences contained in that exhibit against the 727 truck transactions, and the new defences concerning previously disputed transactions, are therefore also excluded from consideration.

7.24. The court wishes to make clear that, even if this evidence had complied with the agreement reached at the case management hearing, these new defences would have been disregarded on the ground that they were contrary to the proper conduct of proceedings and the principle of the right to be heard. The court is aware that, following the case management hearing of 3 June 2025, the Truck Manufacturers were still permitted to raise defences against the 727 new transactions. The parties were at that point instructed, as set out above at 1.4, to submit a summary document containing "a full account of what was still relevant for the oral hearing on 18–19 November 2025 and for the decisions to be taken by the court". In their summary pleading, the Truck Manufacturers did not devote a single word to the topic of volume of commerce. Instead, they only included the defence against the 727 truck transactions in Exhibit TRUC-0071, which was submitted on 29 October 2025, shortly before the oral hearing. As a result, CDC has not had a proper opportunity to comment on those defences during the proceedings, which is not in accordance with the proper conduct of proceedings and the principle of the right to be heard.

7.25. In view of the foregoing, the 727 truck transactions in question are deemed to be uncontested.

The substance of the defences

7.26. Both parties have submitted overviews in which they have given reasons, at the level of individual truck transactions, with or without reference to documents, for why the transaction in question does or does not fall within the scope of the Infringement. They have also set out in their court documents their positions on certain topics, grouped into categories. The court will give its ruling on those categories below. First, it considers in general terms that the argument of the Truck Manufacturers that CDC has been unable to prove a particular transaction does not hold water. The debate is, after all, being conducted within the legal framework of assertion and denial. There is no question (at this stage) of a burden of proof on CDC.

The documents to be submitted

7.27. In their submission of 13 November 2024, the Truck Manufacturers again requested the court to first rule on what documents constitute sufficient evidence of a transaction. In response to earlier similar requests, the court had already held in the first and second judgments on the burden of assertion that it is for the Claimants themselves to determine what information they consider necessary to substantiate their claims. In the second judgment on the burden of assertion, the court also stated, at paragraph 3.9, that it appeared appropriate for CDC, in order to satisfy the burden of assertion, to provide certain information set out in that paragraph (including the correct/complete VIN or chassis number). However, the court also considered that, given the passage of time, it was understandable that not all transaction documents are still available. The court therefore expressly did not require CDC to substantiate its claims in any particular manner, and it will not do so in the present judgment either.

7.28. In their defence, the Truck Manufacturers have demanded that CDC provide one or more transaction documents for every truck transaction. By "transaction documents" they mean documents evidencing the purchase, hire or lease of a truck, such as invoices, lease agreements and order confirmations. The Truck Manufacturers contest transactions for which such a document is missing and which are supported, for example, by registration certificates and other documents. CDC argues that a transaction document is not available for every truck. CDC submits (uncontested) that it has provided at least one document for every transaction containing the VIN and the purchaser. It states that it has also submitted other types of reliable documents in the proceedings to support its claims. For example, CDC has submitted official registration certificates for 2,809 trucks. According to CDC, those registration certificates from official authorities show, among other things, the name of the truck owner (the Assignor), the VIN, the type of truck, the weight class, the date of first registration, the date of the current registration and the country of registration. For certain Assignors, CDC has submitted a dataset from the systems of (large) companies by way of evidence, combined with a statement from the Assignor regarding the sources, composition and reliability of the data contained therein. According to CDC, those internal data are exceptionally reliable and accurate, as they were used for various essential business processes, such as accounting, fleet management and insurance, and had to be error-free for those processes. With regard to 2,880 truck transactions, CDC has submitted other documentation. Those documents, CDC states, always contain the name of the Assignor and the VIN, thereby establishing the link between that party and the truck. The majority of those documents originate from official sources, such as lists from the road authority, the Ministry of the Interior and notaries, or from third parties, such as insurers.

7.29. As already considered, CDC was free to substantiate its assertions by means of the documents available to it, having regard to the passage of time, which it considers provide sufficient evidence that a truck transaction falls within the scope of the Infringement. It is then for the Truck Manufacturers, where appropriate, to explain, with reasons, why the relevant evidence does not establish that the alleged transaction falls within the scope of the Infringement. A defence that (merely) asserts that certain documents are missing, without specifically indicating why the documents submitted do not sufficiently

substantiate the existence of a transaction, is insufficient for that purpose. In so far as the Truck Manufacturers' defence regarding specific transactions, substantiated by CDC with documents, consists merely of the assertion that a transaction document is missing, the Truck Manufacturers have therefore failed to sufficiently contest those transactions. The same applies where the Truck Manufacturers have simply stated in their defence that a transaction is contested because no VIN is included in a transaction document that has been submitted. Where the VIN is not included in a transaction document but is, for example, included in another document, that constitutes evidence which must be refuted with proper reasons.

Transaction cannot be verified on the basis of sales data

7.30. Under step (d) of their multi-stage defence, the Truck Manufacturers attempted to verify, using the VIN, whether the transactions remaining after step (c) and those not excluded at step (b) during the Extended Administrative Check fell within the scope of the Infringement, by cross-checking them against their own sales records.

7.31. In the submission of 13 November 2024, the Truck Manufacturers stated that in 17,863 cases it proved impossible to verify the existence of the transaction. They cite as possible reasons that the transaction did not take place, or that the Truck Manufacturers' sales data are incomplete. For example, DAF has only very limited data from the period prior to 2004, when DAF began using a new order management system. Furthermore, DAF and Volvo/Renault sell the vast majority of their trucks to independent dealers, meaning that the end user's name is by no means always recorded. The same applies to Daimler, which also sells a large proportion of its trucks to independent dealers, so that the end user's name is not always known. For Scania, too, the database is not comprehensive, as Scania does not have a central sales database and the central databases that form the source for Scania's dataset vary by country and by variable in terms of availability, quality and scope. MAN used various decentralised records by country or region, some of which are more complete than others, for example because trucks were sold through independent dealers in some countries. Furthermore, the records have been updated over time with new software systems, enabling better registration. Not all trucks sold can be found in MAN's systems.

7.32. Contrary to what the Truck Manufacturers appear to assume, the relevant question here is not whether the manufacturers have been able to verify a transaction in their own sales systems. What matters is whether the evidence provided by CDC has been sufficiently substantiated. If the Truck Manufacturers can verify a transaction on the basis of their own records, it is clear that that transaction need not be contested. Conversely, if the Truck Manufacturers cannot verify a transaction, that does not of itself mean that the transaction has been substantively disputed. As the Truck Manufacturers themselves also point out, there may be other reasons why they cannot verify the transaction, such as an incomplete dataset. If the documentation submitted by CDC shows that a particular truck of a particular make was registered in the name of a particular Assignor during a specific period, that constitutes substantiated evidence. Whether that evidence is legally sufficient depends on whether the challenge to it is likewise substantiated. In the face of

substantiated evidence of a transaction, the Truck Manufacturers cannot, in their defence, simply argue that the transaction cannot be verified in their internal databases.

7.33. In the majority of cases where the Truck Manufacturers have argued that they were unable to verify the transaction in their records, the issue is that the Truck Manufacturers cannot locate the name of the Assignor in their systems. According to CDC, in virtually all such cases, the situation is that an Assignor has purchased a truck through a dealer (who in turn purchased the truck in question directly from one of the Truck Manufacturers). The transaction is therefore not registered in the Truck Manufacturers' systems in the name of the Assignor. That does not, however, necessarily mean that the alleged transaction does not fall within the scope of the Infringement. It is incumbent upon CDC, in such cases, to substantiate with documents from which dealer the Assignor purchased which truck and when. In other words, further substantiation is required that goes beyond mere ownership or possession at a specific point in time, as evidenced by documents such as registration certificates. To that extent, as the Truck Manufacturers also argue, a registration certificate alone is insufficient. However, in those cases where CDC has substantiated a transaction in the sense referred to here, the Truck Manufacturers cannot simply rely on a challenge amounting to the fact that the name of the Assignor does not appear in their sales databases. In those cases, the court will consider the transaction in question to be insufficiently contested and will treat it as established.

7.34. It is also important to note that a well-founded claim must be met with a well-founded defence. CDC has pointed out on several occasions that in their defence under point (d) the Truck Manufacturers refer to data from their sales database without submitting that data. In response, the Truck Manufacturers have argued that they have provided detailed substantiation of the steps they have taken, and that they are not obliged to submit data from the databases. The court agrees with CDC that, where CDC's claim is substantiated by documents, a proper defence by the Truck Manufacturers requires them to make their defence transparent and verifiable. Merely listing the steps they have taken is insufficient. In so far as the Truck Manufacturers confine their challenges to references to data from their databases, without submitting the relevant data or making them verifiable in any other way, the associated truck transactions are deemed to have been insufficiently contested. That applies expressly also to those transactions in respect of which the Truck Manufacturers argue that their internal (unsubmitted) data indicate that the vehicle is a second-hand truck or that the sale took place outside the EEA.

Scope of the Infringement

7.35. Some of the transactions have been contested by the Truck Manufacturers on the ground that they fall outside the scope of the Infringement. In those cases, the transactions as such have not been contested.

Transactions outside the EEA

7.36. As the court held at paragraph 3.9 of the second judgment on the burden of assertion, claims in respect of trucks which were purchased, hired, leased or used in countries

outside the EEA are dismissed. The transactions alleged by CDC involving Swiss Assignors that took place between parties in Switzerland will accordingly be dismissed.

Second-hand trucks

7.37. The Truck Manufacturers have instructed FTI's reviewers to classify a truck as second-hand if the transaction document (unambiguously) states that it is a "second sale" or uses similar wording, or if the transaction document indicates that the truck has travelled more than 5,000 kilometres. In such cases, according to the Truck Manufacturers, there is an indication that the truck is second-hand. Daimler has, in derogation from this, also classified as second-hand trucks that had more than 0 and less than 5,000 kilometres on the odometer. In the submission of 13 November 2024, following further analysis, a large proportion of the trucks classified as second-hand in the statement of defence were subsequently reclassified as new.

7.38. According to CDC, it has become apparent that the Truck Manufacturers' classifications are correct only in isolated cases. CDC states that this is underscored by the large number of transactions where the Truck Manufacturers subsequently determined, following the submission of their written defence, that the vehicles in question were in fact new trucks. As one of the reasons for the large number of trucks incorrectly classified as second-hand, CDC points out that the Truck Manufacturers base their classification on a comparison of the order date in their databases — rather than the delivery date, which is sometimes much later — with the transaction date specified by CDC. In situations where trucks are pre-ordered as part of a large order and are only delivered over time, that method leads to trucks being incorrectly classified as second-hand.

7.39. The court rules as follows. In those cases where CDC, in response to a truck described as second-hand by the Truck Manufacturers in their statement of defence, has specifically stated that the truck is new and provided evidence to that effect, the Truck Manufacturers could not, in their pleading of 13 November 2024, simply refer to a general indication that the truck is second-hand. Where CDC has substantiated its claim as referred to here, a transaction is only deemed to be sufficiently contested if the Truck Manufacturers have stated in their defence, with reasons, that and why the information submitted by CDC does not show that the truck is new. This means that in cases where the Truck Manufacturers, in response to CDC's substantiation, have merely referred to the existence of one or more general indications, the transactions in question are deemed to be insufficiently contested.

FUSO trucks

7.40. Six of the trucks are Fuso models. According to CDC, that brand has been part of Daimler AG since 2006 and the transactions fall within the scope of the Infringement. The Truck Manufacturers dispute this. They argue that pricing for Fuso trucks was set independently by the head office of Mitsubishi Fuso Truck and Bus Corporation, an independent Japanese entity which is not mentioned in the Decision. Furthermore, there are no centrally set European list prices for Fuso trucks.

7.41. In response to that defence, CDC referred to Fuso's website, which shows that Daimler Trucks AG holds 89.29% of the shares in Mitsubishi Fuso Truck and Bus Corporation. That

entity was, and remains, under the full control of Daimler, the company fined for the cartel. Furthermore, according to CDC, it is not contested that the trucks were sold within the EEA.

The Truck Manufacturers did not subsequently respond to this (in their court documents). It is noteworthy that Daimler included the following in the truck table submitted in evidence with the submission of 13 November 2024: “Now Inside Scope step (b), as Fuso belongs to Daimler”.

In view of the foregoing, the court finds that it is no longer disputed that the six Fuso trucks fall within the scope of the Infringement.

Special purpose vehicles

7.42. Daimler disputes that Vario, Unimog and Econic vehicles qualify as trucks within the meaning of the Decision. In its view, Vario vehicles are not trucks but vans. Unimog vehicles are used off-road for military purposes and for municipal tasks. They are unique vehicles featuring unique technology, and there is no competing product on the market for this type of vehicle. The Econic is a so-called low-floor vehicle, which is primarily suited for municipal use (for example, as a refuse collection vehicle) or for special bodywork, for instance for airport vehicles. According to Daimler, there are significant technical differences between the Econic and standard trucks, and for almost the entire duration of the Infringement the other Addressees of the Decision were unable to offer an adequately competitive product.

7.43. The court refers to the judgment referred to at paragraph 7.44 above, in which the CJEU also held:

> "Furthermore, that decision contains no element whatsoever on the basis of which it may be concluded that special trucks do not form part of the products to which the infringement at issue in the main proceedings relates.
>
> In view of the foregoing, the answer to the question referred is that the decision in question must be interpreted as meaning that specialised trucks, including refuse collection trucks, are among the products to which the cartel established in that decision related."

7.44. In the absence of any indication that special-purpose trucks are not covered by the Infringement, Daimler’s defence fails. The Vario, Unimog and Econic vehicles fall within the scope of the Infringement.

Transactions after the infringement period

7.45. At the case management hearing of 3 June 2025, the court ruled as follows with regard to transactions that took place after the infringement period:

> “The approximately 23,000 truck transactions that may fall within the run-off period may be excluded from this overview, as the court will first decide whether there is a run-off period and, if so, how long that period lasts.”

The court has now established in this judgment that there was a run-off period, which ended on 30 May 2013; see 6.54 above. The transactions that took place during the run-off period will be examined in more detail once the parties have had the opportunity to exchange their views on the matter.

Transaction date in relation to the Infringement

7.46. The parties agree that the Decision provides no basis for claiming damages in respect of transactions that took place prior to the period of the Infringement as established by the Commission. The court understands that CDC included the transactions in question in its reports solely as comparator data for the purposes of *before-during-after* regression analyses.

Conclusion

7.47. In the preceding paragraphs, the court has ruled on various points in dispute. The court assumes that, on this basis, the parties will themselves be able to determine, for all or virtually all the truck transactions in question, which of them can still be added to the list of accepted trucks. If any transactions remain on which the parties cannot agree, they may bring this to the court's attention. The court will then rule on the matter.

8. Value of commerce

8.1. In order to estimate the damage, the value of commerce must be determined in addition to the volume of commerce. The value of commerce relates to the prices and lease instalments actually paid by the Assignors. The parties disagree on the principles for determining the value of commerce. Where the parties do agree is that it must relate to the base price of the truck, i.e. excluding, for example, the costs of equipment sold or fitted by third parties, of trailers and of delivery. The parties do not, however, agree on what the actual base sale price is, as they apply different starting points.

8.2. In view of the debate on the assessment of damages, CDC submitted data on prices and payment flows (payment schedules for leasing and other instalment payments) in its submission of 7 August 2024. In that submission, CDC provided a brief explanation of the data submitted. CDC subsequently supplemented those data.

At the case management hearing of 3 June 2025, the Truck Manufacturers gave an initial (brief) response to the position taken by CDC and to the data submitted by CDC. CDC also addressed the matter briefly.

The court subsequently ruled that the value of commerce (as part of the debate on the methodology for determining the volume of commerce) would be discussed at the oral hearing of 18–19 November 2025.

CDC and the Truck Manufacturers set out their positions in their summary statements of 1 October 2025. Finally, the parties responded to each other's positions in their further submissions and at the oral hearing of 18 and 19 November 2025.

CDC's position

8.3. CDC submits that, as a result of the Infringement, the Assignors have suffered direct loss in the form of the additional cost they paid for the new trucks they purchased. The final prices and lease instalments paid by the Assignors are the data on the basis of which the damages must be calculated. It is those prices and lease instalments which must be compared with the hypothetical "but-for" price as determined by the regression analysis. CDC explains this as follows.

8.3.1. CDC's approach is the only correct one, both legally and conceptually. Article 6:193k, preamble and under g, of the Dutch Civil Code provides that "additional costs" is to be understood as meaning the difference between the price actually paid and the price that would have been charged had there been no infringement of competition law. The damages claimed are the full additional cost ultimately paid by the Assignors in their purchase and lease transactions on the market for new trucks as a result of the Infringement. According to CDC, this is also in line with the decisions of courts in other EU Member States, which award damages on the basis of (at least 5% of) the transaction price (invoice amount) paid by the end customer. In *Tibor-Trans*, the CJEU accordingly held that the additional cost paid by the purchaser as a result of the Infringement for new trucks purchased through a dealer constitutes direct damage resulting from the Infringement.[71]

8.3.2. As already mentioned above (at 8.2), CDC has submitted data relating to the prices paid and lease instalments. In so doing, CDC has based its calculations on a pricing concept consistent with the Decision and the Scania Decision: the price of the truck including factory-fitted options, but excluding after-sales services. More specifically, CDC states that it has based its pricing structure on the final (net) price of the truck (after all discounts), excluding VAT, excluding the cost of equipment fitted by third parties, excluding the price of (semi-)trailers, excluding delivery costs (if invoiced/specified), excluding service and maintenance costs, and including all factory-fitted options.

8.3.3. With regard to the source of the price data, they are derived from the truck (transaction) documentation submitted on 6 August 2024. Where CDC does not have data on exact prices, the prices have been estimated using an algorithm that draws on prices from other truck transactions for which CDC does have exact prices.

8.3.4. For leasing and other payment plans, CDC has based its calculations solely on long-term leases of trucks, where the monthly lease payments are based on the price of the truck, the duration of the lease and the interest rate applied by the lessor. CDC has taken into account only the lease payments for the truck itself. In cases where the available data on payment schedules are non-existent or unreliable, i.e. do not correspond to the price definition (for example because other components are included in the payments), CDC has estimated the payment schedule.

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[71] CJEU 29 July 2019, C-451/18, ECLI:EU:C:2019:635 (*Tibor Trans v DAF Trucks*).

Position of the Truck Manufacturers

8.4. The Truck Manufacturers submit that CDC's purchase and lease prices cannot be used to calculate the damages, as they include elements that fall outside the scope of the Infringement. According to the Truck Manufacturers, CDC's estimated purchase prices systematically and substantially overestimate the prices of the bare trucks which, on CDC's case, would have been affected by the Infringement. That is for the following reasons.

8.4.1. CDC is unable, on the basis of the documents provided by the Assignors, to effectively isolate the actual (base) selling price of the trucks from the prices of additional goods and services sold together with the truck and not affected by the Infringement. Analyses and spot checks show that CDC is claiming damages for all sorts of items that were not sold by the Truck Manufacturers and (therefore) not affected by the Infringement. Those items are not included in the internal cost data of the various Truck Manufacturers. This includes, for example, additional truck parts and additional services provided by the dealer.

8.4.2. CDC does not take into account the profit margin that dealers may apply when selling trucks. The dealer margin is a cost item which is set and charged by the dealer to the Assignors, not by the Truck Manufacturers. The dealer margin is therefore not part of the base selling price at which the Truck Manufacturers sold the trucks. According to the Decision, only the base selling price may have been affected by the Infringement. The dealer margin is not included in that.

8.4.3. The parties involved appear to have made data entry errors when providing their price information. CDC appears not to have been able to filter out and correct those errors. In their summary statement, the Truck Manufacturers cite a number of examples where the purchase price stated is higher than the purchase price shown on the corresponding invoice.

8.4.4. CDC has had to estimate the purchase price in cases where the Assignors no longer have documents from which the cost of a truck can be inferred. According to the Truck Manufacturers, the algorithm used by CDC for that purpose is unsuitable. Here too, CDC has systematically overestimated the purchase price. Furthermore, according to the Truck Manufacturers, in a number of cases where the price was estimated, the transaction documents submitted show that the purchase price was lower. In those cases, therefore, there was no need to estimate the price at all.

8.4.5. The Truck Manufacturers, on the other hand, are perfectly capable of supplying the base sales prices. They submit that the sales prices recorded in the Truck Manufacturers' datasets should be taken as the starting point for determining the value of commerce. Those data are also more reliable, because, in principle, they do not contain any items, parts or services unrelated to the Infringement. This is in line with the Decision, which states that the Infringement could in fact relate only to the sale of trucks.

8.5. According to the Truck Manufacturers, CDC has also substantially overestimated the value of commerce of leased trucks. There are two main reasons for this.

8.5.1. In the first place, the purchase prices of trucks are structurally overestimated. That applies also to the purchase prices of leased trucks. To the extent that the lease payments are derived from the purchase prices used by CDC, that overestimation therefore feeds through into the value of commerce. A correction will need to be applied to the portion of the lease payments that is not attributable to the base price of the truck.

8.5.2. Secondly, the lease amount used by CDC may be unduly inflated if it includes additional products and services unrelated to the Infringement, such as bodywork or repair and maintenance contracts. A sample analysis of Iveco trucks, for example, shows that CDC did indeed do so. The lease payments may include additional products and services, even if the purchase prices used by CDC do not. That calls for an adjustment by revising the total payments for leased trucks on the basis of the difference between the prices set by CDC and the prices in the systems of each of the Truck Manufacturers.

Assessment

8.6. As considered above, the parties agree that the value of commerce is to be determined on the basis of the prices and lease instalments actually paid by the Assignors. Nor is it disputed that this must relate to the base price of the truck, i.e. excluding, for example, the costs of equipment sold or fitted by third parties, of trailers and of delivery. The parties differ (on certain points) as to how that base sale price should be determined.

8.7. CDC takes as its starting point the final prices and lease instalments paid by the Assignors. The Truck Manufacturers argue that that does not and cannot lead to correct net sales prices. Since it is in principle for CDC to assert and substantiate the existence and extent of the damage (potentially) suffered by the Assignors as a result of the Infringement (see under 6.20), and since CDC has indeed calculated (and, where necessary, estimated) the value of commerce (the net selling prices), the court will take CDC's method of calculating (and estimating) the value of commerce as its starting point in its assessment. The Truck Manufacturers' points of criticism are addressed in turn below.

Truck Manufacturers are simply able to provide the list prices

8.7.1. The court begins with the Truck Manufacturers' assertion that they can simply extract the base sales prices from their systems. As was also argued at the hearing, this is implausible. As considered above (at 6.26) with regard to the regression analyses carried out by the Truck Manufacturers' economists, the datasets used for those regression analyses are far from complete: data from the early period of the Cartel are often missing, and data for a number of years during the infringement period are sometimes also missing. That it might now suddenly be possible for the Truck Manufacturers, as stated in the summary pleading and confirmed by Mr Van Dam at the hearing, with the aid of the VIN numbers, to extract from their systems the sales prices for all truck transactions throughout the entire infringement period, is inconsistent with this. On closer reading, the summary pleading in fact states "where available", by which the Truck Manufacturers themselves apparently already acknowledge that their data will not be complete either. The court therefore assumes that neither the Truck Manufacturers nor CDC (as it has itself already made

clear) is able to provide the actual sales price for all relevant truck transactions. For some of the truck transactions, the price will therefore have to be estimated, regardless of which data are used.

8.7.2 CDC has (uncontested) stated that approximately 76% of the prices it uses to calculate the value of commerce are exact, whilst the remaining 24% are estimates. The great majority of the prices therefore originate from the records of the Assignors. The court will now address that point first.

Effectively isolating the (base) selling price of trucks

8.7.3 CDC has explained how it arrived at the base sales prices. CDC has provided the Assignors with a guide for entering price information and payment plans (for leasing and other instalment payments), the "Manual Price and Payment Plans", which it has submitted as an exhibit in the proceedings. In that manual, CDC has defined and applied the pricing structure in line with the Decision, namely the final (net) price of the truck (after all discounts), excluding VAT, excluding the cost of equipment fitted by third parties, excluding the price of the (semi-)trailer, excluding delivery costs (if invoiced/specified), excluding service and maintenance costs, and including all factory-fitted options. The Truck Manufacturers do not dispute that that is the correct definition.

8.7.4 The Truck Manufacturers submit that CDC is unable, on the basis of the documents provided by the Assignors, to isolate the actual (base) selling price of trucks from the prices of additional goods and services, and refer in this respect (solely) to analyses carried out by Compass Lexecon on behalf of CNH/Iveco. That, they claim, shows that CDC is claiming damages "for all manner of components that were not sold by the truck manufacturers, and (therefore) were not affected by the infringement". However, those Compass Lexecon analyses show — and that was, as Mr Van Dam stated at the hearing, also the instruction — that they investigated whether the truck sales prices used by CDC correspond to the sales prices of the same trucks in the data provided by CNH/Iveco. The Truck Manufacturers then argue that, on the basis of Compass Lexecon's comparison between the data submitted by CDC and the Iveco data, "it is therefore plausible that CDC frequently claims damages for components that were not charged by the Truck Manufacturers in both direct and indirect sales". The Truck Manufacturers have, however, apparently not submitted the data on which those analyses are based, nor have they provided any examples to illustrate precisely where the error lies. Without that information, such analyses naturally have rather little value, and there is, at the very least, as CDC has rightly pointed out, a risk of comparing apples with oranges. In any event, the Truck Manufacturers have failed to sufficiently substantiate their claim that CDC is unable, on the basis of the documents provided by the Assignors, to isolate the actual (base) selling price of trucks, and the court therefore disregards this argument.

Data entry errors in price data

8.7.5. The Truck Manufacturers state that they have themselves checked part of the evidence provided by the Assignors by means of a "manual (random) sample". According to the Truck Manufacturers, this "analysis" confirms that, in several cases, CDC assumes a higher price for a (bare) truck than is apparent from the documents submitted.

8.7.6 CDC counters that this concerns only a few cases: at the case management hearing of 3 June 2025, the Truck Manufacturers were able to cite three transactions, and the summary pleading lists eight (new) transactions. Those therefore represent only a few of the nearly 60,000 transactions for which CDC is claiming compensation. Furthermore, CDC has consistently stated that it is prepared to rectify errors.

8.7.7. With respect to CDC, the court is of the opinion that (i) the (few) errors made during implementation must be corrected, but that (ii) the fact that things can go wrong during implementation (and sometimes have gone wrong) does not mean that the price actually paid by the purchasers of trucks (the Assignors) is not a suitable starting point for calculating the value of commerce.

8.7.8 It is unclear on what basis the Truck Manufacturers believe they can reserve the right, at a later date and on a manufacturer-by-manufacturer basis, to challenge the price set by CDC and supported by documentary evidence for all truck transactions. The Truck Manufacturers do not (any longer) have that right in these proceedings. Nevertheless, CDC will have to rectify any errors that have been or are identified. It has, however, already declared itself willing to do so at all times.

Dealers' profit margin

8.7.9. It is clear that when (and this is often the case) a truck is sold through a dealer, the dealer will charge a margin (the dealer's margin). The parties agree on that point. The question, however, is whether the margin charged by the dealer may form part of the price (used to calculate the value of commerce). According to CDC, the dealer margin is included in that price. The dealer margin is, after all, simply part of the price paid by the Assignor. It is, moreover, not possible for CDC (or the Assignors) to ascertain how the dealer margin is construed. According to the Truck Manufacturers, the dealer margin should not form part of the price (used to calculate the value of commerce). The dealer margin is not included in the base selling price and is not charged by the Truck Manufacturers to the Assignors, but by the dealer. According to the Truck Manufacturers, under the Decision only the base selling price is (potentially) affected by the Infringement.

8.7.10. At the hearing, the Truck Manufacturers explained for the first time that the dealer margin is not always calculated as a percentage of the selling price, but that this can be (and is) done in two different ways: (i) the dealer margin calculated as a *percentage* of the truck's selling price, and (ii) the dealer margin as a *fixed amount*.

8.7.11. Inasmuch as the dealer margin is calculated as a percentage of the truck's selling price, the court can readily accept CDC's argument. If, after all, that selling price is too high as a result of the Infringement, a percentage calculated on that selling price will also be higher. It only became clear to the court at the hearing that the Truck Manufacturers take the view that the dealer margin can apparently also be a fixed amount. That was also new to CDC, and in the court's view CDC was therefore unable to respond adequately to it. Since the Truck Manufacturers did not mention this distinction between the different types of dealer margins at all in the written submissions (statement of defence and further written submissions statement), let alone substantiate it, that defence is therefore belated and thus contrary to the proper conduct of proceedings. It has, after all, not been argued or shown that that distinction could not have been raised earlier in the written pleadings. This means that that defence is disregarded.

8.8. All of this leads to the conclusion that any dealer margin forms part of the price (used to calculate the value of commerce).

Algorithm for estimating prices unsuitable

8.8.1. As already considered, the price will have to be estimated if insufficient data are available to determine the actual price (Article 6:97 of the Dutch Civil Code). CDC has used an algorithm to estimate those (missing) prices. In its summary pleading (and previously in its submission of 7 August 2024), CDC explained in detail how this — in its view, highly sophisticated — algorithm works.

8.8.2 The Truck Manufacturers argue (merely) that the method used by CDC is "unreliable", "partly because truck prices are in fact highly dependent on specific circumstances, such as the truck's specifications, the market, the buyer and the negotiations prior to purchase". They go on to argue, with reference to a comparison by Compass Lexecon (instructed by MAN) of the prices estimated by CDC (by means of the algorithm) with, according to the Truck Manufacturers, the actual sales prices of those same MAN trucks, that CDC "systematically misestimates" the purchase price of the trucks. A study by Daimler and CNH/Iveco allegedly confirms that pattern. This, according to the Truck Manufacturers, confirms that the algorithm used by CDC is unable to estimate the sales prices of the trucks accurately.

8.8.3 In response, CDC pointed out that (i) it is unclear which prices MAN is comparing, (ii) the data used for the comparison have not been submitted, and (iii) no similar objections have been raised regarding other brands.

8.8.4. It is considered that CDC has explained in detail how its algorithm works and that the Truck Manufacturers have not engaged with its functioning at all. They have not identified, let alone substantiated, which parts of the algorithm are flawed (and why). They have accordingly failed to provide sufficient grounds for disputing that the algorithm is suitable for estimating the (missing) prices as accurately as possible. The mere comparison with their own prices (which are not verifiable by CDC or the court) is insufficient for that purpose. This means that, where necessary,

the (estimated) prices calculated by CDC using that algorithm may be relied upon for the value of commerce.

Value of commerce for leased trucks

8.8.5. CDC has calculated the value of commerce for leased trucks by adding up the total lease payments for each truck; according to CDC, those payments consist solely of the price of the truck and the financing costs, and only the portion of the truck's price actually paid and the corresponding interest paid by the lessee are taken into account. The Truck Manufacturers confirm that that may be a suitable method for calculating the value of commerce for leased trucks. The Truck Manufacturers argue, however, that the value of commerce for leased trucks as calculated by CDC cannot be relied upon because (i) the purchase prices of the trucks have been systematically overestimated and (ii) additional products and services unrelated to the Infringement have been included, such as bodywork or repair and maintenance contracts.

8.8.6. The Truck Manufacturers have also advanced the first argument in relation to purchased trucks. Specifically in relation to the leased trucks, the Truck Manufacturers have referred to a sample analysis carried out by Compass Lexecon on behalf of CNH/Iveco of 56 Iveco trucks, which is said to show that CDC included lease payments containing additional elements not charged by Iveco (the Truck Manufacturers cite a "body", a "unit fitted on top of the truck" and "specialised equipment behind the cab"). Compass Lexecon is also said to have found evidence on behalf of MAN that the overestimation is "significant". The Truck Manufacturers ask the court to allow them the opportunity to carry out an (updated) calculation for each Truck Manufacturer and to propose a reduction percentage for the lease payments reported by CDC.

8.8.7 In support of the second argument — that the lease amount used by CDC is unjustifiably inflated because it includes additional products and services, such as bodywork or repair and maintenance contracts — the Truck Manufacturers refer (merely) to a sample analysis, which allegedly shows that various other factors, such as additional services, VAT and calculation errors, lead to an overestimation of the value of commerce, because those components do not usually form part of the truck price stated in the contract or taken over by CDC. As they did at the case management hearing of 3 June 2025, the Truck Manufacturers cite (only) the lease contracts submitted by CDC for the Iveco truck with VIN WJMM1VSH404365919, which allegedly show that the costs for "technical maintenance and technical repairs" form part of the lease price, and further state that other Truck Manufacturers "observe a similar pattern of a structural overestimation of the value of commerce" of leased trucks. Compass Lexecon is said to have found evidence on behalf of MAN that the lease payments used by CDC are "unrealistically high in certain cases". Compass Lexecon "observes" that the sum of the lease payments reported by CDC for 42% of the MAN trucks exceeds the actual (base) truck price in MAN's records, in some cases by as much as 50%. That is said to be (partly) attributable to the predominantly short-term leases in the CDC dataset. Finally, the

Truck Manufacturers propose a “pragmatic solution for the lease payments”, namely the previously mentioned “reduction to CDC’s value of commerce for leased trucks based on the difference between CDC’s prices and the prices in the truck manufacturers’ systems”.

8.8.8. The court holds as follows. The arguments put forward by the Truck Manufacturers have not sufficiently challenged the “value of commerce” for leased trucks as calculated by CDC. There is no reason to order a re-examination as proposed by the Truck Manufacturers. At the case management hearing of 3 June 2025, it was agreed with the parties that the value of commerce would (also) form part of the damages debate (see 2.1–2.2), which would take place in full at the hearing of 18–19 November 2025. It is moreover relevant for the present judgment that CDC had already introduced into the proceedings on 13 November 2024 both the manual it had provided to the Assignors for recording (also) the payment plans for leasing and other instalment payments (the aforementioned Manual Price and Payment Plans), together with the price data used to determine the value of commerce. CDC submits that only long-term leased trucks are included (according to CDC, this is clear from the data it submitted as early as 7 August 2024: of the more than 37,000 lease transactions in the CDC dataset, only 244 involve a period of less than one year between the first and last payment). CDC has explained that it developed a system that enables the payment flow to be compiled without users having to enter each payment individually. A “payment schedule module” was used. According to CDC, the detailed approach used ensured that the quantification only takes into account the amounts actually paid by the Assignors and not assumptions based on the total price of a truck. CDC also explained which algorithm it used to estimate payment schedules and reiterated the key steps and concepts in its summary pleading. It explained that the suitability of the criteria used and the order of preference of the reference populations were determined empirically and are based on patterns that CDC observed in the data. CDC estimated the payment flow for approximately 18% of the trucks using that algorithm.

8.8.9. The Truck Manufacturers do not submit that there is anything wrong with the method used by CDC. They simply say nothing at all about it. Furthermore, although they have had access to all the data since 7 August 2024, they have identified (virtually) no errors. CDC has also confirmed here that, should the Truck Manufacturers find any errors in CDC’s dataset, it will correct them.

Conclusion

8.8.10. All of this leads to the conclusion that the value of commerce for the leased trucks, as calculated by CDC, can be taken as the basis for calculating the damages.

9. Emissions damage

9.1. CDC submits that the Claimants have (also) suffered loss as a result of the agreements reached by the Truck Manufacturers regarding the timing of the introduction of the EURO III to EURO VI standards. As a result of those agreements, the Claimants were unable to benefit from the economic advantages offered by the most advanced and cost-effective emission technologies until the Truck Manufacturers permitted them to do so. During the Cartel Period, the Truck Manufacturers delayed and blocked the introduction of various technological innovations. That probably led to higher costs for the ownership and operation of trucks, including, for example, costs of insurance, fuel, financing, road tax and tolls. In particular, road tax and tolls in some countries depend on the vehicle's emission class or fuel efficiency. Furthermore, during the Cartel period, the Truck Manufacturers discussed passing on the costs of implementing the increasingly stringent emission standards to their (end) customers. This, according to CDC, led to higher truck prices. CDC provisionally estimates the damage resulting from the delayed availability of truck models equipped with new emission technologies at €6,705,450.00[72] (excluding interest).

9.2. The Truck Manufacturers defend themselves against CDC's claims, inter alia, on the ground that the Commission did not establish in the Decision that the parts of the Decision relating to the infringement concerning the EURO standards had any effect on the timing of the introduction of new emission technologies or on the passing on of the costs thereof. Furthermore, CDC's arguments are based on a number of incorrect assumptions:

(i) that, without the Infringement, trucks equipped with emission-control technology complying with the latest EURO standard would have come onto the market earlier than the statutory deadline for the introduction of that standard;

(ii) that the Claimants would have purchased trucks with new emission technology en masse as soon as they became available, even if that was before the legal deadline from which the new emission technology became mandatory for new trucks, and cheaper trucks with the older emission technology were therefore still being produced and sold;

(iii) that new emission technology always results in fuel savings and a reduction in other operating costs;

(iv) that, without the Infringement, the Truck Manufacturers would not have been able to pass on the cost increases.

The Truck Manufacturers also point out that it has not been specified which emission standard the specific trucks in respect of which CDC is claiming damages comply with.

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[72] Exhibit CDCR-0081, *CDC I Claim Calculation*, October 2024.

9.3. The Truck Manufacturers further argue that, contrary to CDC's claim, they did not delay the introduction of new EURO-standard-compliant trucks until there was a legal obligation to do so. In support of this, they have drawn up the following overview:

Truckfabrikant	EURO III	EURO IV	EURO V	EURO VI
DAF	sept. 1999	okt. 2005	okt. 2005	sept. 2012
Daimler	okt. 1999	sept. 2004	sept. 2004	juni 2011
Iveco	maart 2000	maart 2006	aug. 2005	nov. 2012
MAN	eerste kwartaal 2000	vierde kwartaal 2004	vierde kwartaal 2006	eerste kwartaal 2013
Renault	eerste kwartaal 2000	mei 2006	Maart 2009	sept. 2012
Scania	nov. 1999	maart 2004	sept. 2005	april 2011
Volvo	april 2000	sept. 2005	sept. 2005	juli 2012
Juridische deadline[428]	**1 okt. 2001**	**1 okt. 2006**	**1 okt. 2009**	**31 dec. 2013**

According to the Truck Manufacturers, this overview shows that the date of introduction varies by Truck Manufacturer and by emission standard. Furthermore, all the Truck Manufacturers introduced the required emission technology well ahead of the legal deadlines.

9.4. In response to the defence, CDC submitted a report by CDC Consulting[73] in support of its arguments, accompanied by digital files on toll charges in France[74] and on fuel consumption and mileage.[75] CDC also relies on the so-called Ryder court document.[76] Information from the Ryder court document was used extensively in the CDC Consulting report. According to CDC, the CDC Consulting report and the Ryder court document show that the Infringement did indeed lead to a delay in the availability of new truck models. CDC

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[73] Exhibit CDCR-0052, *Harm caused by collusive delay*, 22 October 2020.

[74] Exhibit CDCR-0053 (USB stick).

[75] Exhibit CDCR-0054 (USB stick).

[76] Exhibit CDCR-0049, *Amended Particulars of Claim* in the case of *Ryder Ltd and Hill Ltd v MAN SE and others* before the CAT; see also the interlocutory judgment of 12 May 2021, paras 3.7.1 and 3.17.

explained this at the oral hearing of 25 November 2020. By submission of 13 November 2024, CDC again submitted evidence relating to the emissions damage.[77]

9.5. A number of Truck Manufacturers have, in separate submissions of 7 May 2025, produced reports from their own experts which (among other things) address the alleged emissions-related damage:

- Daimler submitted a report[78] by E.CA Economics.
- CNH/Iveco submitted a report[79] by Compass Lexecon.
- MAN submitted a report[80] by Compass Lexecon.
- Volvo/Renault submitted a report[81] by Frontier Economics.

CDC responded to these at the case management hearing of 3 June 2025, partly on the basis of a presentation by Mr Bornemann of CDC Consulting.[82] CDC also submitted a further CDC Consulting report.[83] The final debate on the emissions damage took place at the oral hearing of 18–19 November 2025. On behalf of CDC, Mr Bornemann again gave a presentation on that occasion.

9.6. The court observes at the outset that here too, it is for CDC to assert and substantiate the existence and extent of this damage which, in its submission, was suffered by the Assignors as a result of the Infringement (see 6.20 above). Furthermore, this loss arising from the (late) introduction of new emission technology is not the subject of the Harrington & Schinkel report, which sets out the theory of harm that the court finds plausible. The question whether it is plausible that the Assignors have also suffered this form of damage has not previously been addressed. The court finds that CDC has failed sufficiently to

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[77] Exhibits CDCR-0079 (USB stick), CDCR-0081, *CDC I CLAIM CALCULATION — Overcharge, operational damages, expert costs, and legal interest*, October 2024, and CDCR-0082 (USB stick).

[78] Exhibit DAIM-0006, *Expert opinion on the reports submitted by CDC*, 6 May 2025.

[79] Exhibit IVEC-0008, *Economic assessment of the Schinkel Huberts Report on the Quantification of Cartel Overcharges incurred by the Assignors to CDC Retail SA as a result of the European Trucks Cartel*, 6 May 2025.

[80] Exhibit MAN-010, *Economic assessment of CDC's assessment of alleged collusive delay*, 6 May 2025.

[81] Exhibit VTRT-0012, *Response to CDC's reports on alleged "delay damages"*, 7 May 2025.

[82] Exhibit CDCR-0084, *Delay damages*.

[83] Exhibit CDCR-0089, *Delay Damages 2025, Response to the defendants*, 21 September 2025.

substantiate that the Assignors have (also) suffered this (form of) damage. This is explained below.

9.7. The Truck Manufacturers dispute that there was any effective coordination regarding the introduction of emission standards.

9.8. In the first place, the court finds that the Truck Manufacturers are correct in submitting that the (body of the) Decision, with respect to agreements concerning the introduction of new emission technologies, refers only to EURO III and EURO IV:

> "(52) (…) During a meeting on 6 April 1998 in the context of an industry association meeting, which was attended by representatives of the Headquarters of all of the Addressees, the participants coordinated on the introduction of EURO 3 standard compliant trucks. They agreed not to offer EURO 3 standard compliant trucks before it was compulsory to do so and agreed on a range for the price additional charge for EURO 3 standard compliant trucks.
>
> (...)
>
> (54) (…) For example during a meeting on 10 and 11 April 2003 in the context of an industry association meeting, which was attended by, amongst others, representatives of the Headquarters of all of the Addressees, discussions took place concerning, amongst other things, prices and the modalities of the introduction of Euro 4 standard compliant trucks, similar to the discussions that had previously been held concerning the Euro 3 standard (see (52))."

9.9. The Truck Manufacturers further illustrate this defence with the overview set out at 9.3 above. CDC submits that the dates of introduction cited are incorrect, but that submission is not convincing. Specifically, CDC refers, amongst other things, to Table 3 from the CDC Consulting report of 22 October 2020:[84]

[84] Exhibit CDCR-0052, *Harm caused by collusive delay*, 22 October 2020.

Table 3 - CDC data: first confirmed transaction dates per brand and EURO norm

Brand	EURO norm	Date	Type of date	VIN
Daimler	EURO III	2000-03-29	Order date	WDB9506051K518149
	EURO IV	2006-04-26	Order date	WDB9505351L156514
	EURO V	2005-06-15	Order date	WDB9302031L067615
	EURO VI	2012-07-02	Order date	WDB9634031L698158
Renault	EURO III	2000-06-12	First registration date	VF611GTA000104006
	EURO IV	2006-10-25	Order date	VF644AHM000000197
	EURO V	2006-10-30	Invoice date	VF617AKA000000068
	EURO VI	2013-12-20	Invoice date	VF610A36XED000283
Iveco	EURO III	2000-02-23	Order date	WJMM1VPN004228426
	EURO IV	2007-10-15	Invoice date	WJMM1VTH40C195070
	EURO V	2006-01-31	Order date	WJMM1VUJ004313416
	EURO VI	2013-04-25	Order date	WJME2NSH60C271643
Scania	EURO III	2000-03-22	Order date	XLEP4X20004433395
	EURO IV	2005-10-05	Order date	XLER4X20055127999
	EURO V	2006-06-23	Offer date	XLER6X20005159944
	EURO VI	2013-02-01	Contract date	YS2R6X20005319488
Volvo	EURO III	2000-07-11	Order date	YV2A40AC91B277475
	EURO IV	2006-06-28	Invoice date	YV2AS02C77B450626
	EURO V	2006-01-06	Contract date	YV2AS02A08B497089
	EURO VI	2013-10-01	Order date	YV2T0X1A9EB682293
DAF	EURO III	2001-05-31	Order date	XLRAS47XS0E565522
	EURO IV	2006-03-22	Order date	XLRTE47MS0E712841
	EURO V	2005-12-09	Order date	XLRTE47MS0E714076
	EURO VI	2013-06-26	Invoice date	XLRTEH4300E988166
MAN	EURO III	2000-10-01	Order date	WMAL77ZZZYY062402
	EURO IV	2005-11-14	Order date	WMAH06ZZ26W066954
	EURO V	2005-11-21	Order date	WMAH06ZZ56M443501
	EURO VI	2012-12-03	Order date	WMA21XZZ7DM621429

That table lists, for each EURO standard, the date of the first truck transaction found in the CDC dataset. It shows that those dates differ from those provided by the Truck Manufacturers. Table 3 generally contains later dates than those in the Truck Manufacturers' overview, but in a few cases also an earlier date. The report itself already states that the dates mentioned in Table 3 do not imply that trucks meeting the relevant EURO standard were introduced across the board on that date. It is therefore also possible that the actual introduction took place earlier. Furthermore, the data are derived exclusively from CDC's underlying sources. All things considered, no firm conclusions can be drawn from the dates in Table 3 regarding the respective introduction dates of trucks with new emission standards.

9.10. With the overview in Table 3, CDC has therefore failed to demonstrate that effective coordination took place. The overview in Table 3 in fact confirms the Truck Manufacturers' position that the timing of introduction varies by emission standard and by Truck Manufacturer, and that, with a few exceptions,[85] the respective emission standards were introduced before the statutory deadline, sometimes even years earlier.[86] Implementation therefore appears to deviate from what is stated in the Decision, namely that in respect of EURO III and IV it had been agreed not to proceed with introduction until it was mandatory. Those agreements were indeed made, but CDC has not, in the light of the

[85] EURO IV (Renault, Iveco).

[86] EURO V (all Truck Manufacturers).

overviews provided by both the Truck Manufacturers and CDC, shown that they were actually implemented.

9.11. CDC further submits that, even if it were to be assumed that the prohibited agreements were not fully complied with, that does not mean that the delay has suddenly ceased to exist. According to CDC, the Assignors still suffer damage even in the event of partial compliance with the cartel agreements. CDC also submits, on the basis of the Ryder court document and by reference to the introduction of trucks with new emission technology in the United States, that the Truck Manufacturers, irrespective of what the Commission included in the Decision regarding the introduction on the statutory date, had agreed to postpone the introduction of new emission technology, even though that technology had already been developed (much) earlier. The accuracy of those statements can be left aside, for the following reason.

9.12. CDC has submitted various reports to substantiate its claim for damages.[87] Unlike the regression analyses used to calculate the overcharge, those reports do not follow a proven methodology. Furthermore, the reports lack a theory of harm underpinned by economic theory. The reports are (entirely) based on theoretical assumptions and hypotheses which, in particular in the light of the reasoned challenge by the Truck Manufacturers (see 9.2 above), are not, or at least not sufficiently, substantiated. These include, amongst other things:

(i) the dates on which new emission technologies became available;
(ii) the dates on which the new emission technologies were actually introduced;
(iii) the point at which the Assignors *would have decided* to replace their existing trucks with older emission technology with trucks featuring new emission technology;
(iv) the model of truck that *would have been purchased* as a replacement;
(v) the fuel consumption of the older trucks compared with that of new trucks;
(vi) the number of kilometres that *would have been driven* annually per truck;
(vii) the extent to which toll roads were used in Germany and France.

Those reports are therefore insufficient to substantiate the existence and extent of this emissions damage.

9.13. Finally, CDC submits that the Truck Manufacturers also reached agreements on passing on the costs of introducing new emission technologies, and that this has led to higher purchase prices for trucks. This does not constitute damage related to the alleged delayed introduction of trucks with new emission technology. It concerns an (alleged) price-fixing agreement which has been factored into the overcharge. The court has ruled on that in chapter 6 above.

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[87] Exhibits CDCR-0052, *Harm caused by collusive delay*, 22 October 2020; CDCR-0079 (USB stick); CDCR-0081, *CDC I CLAIM CALCULATION — Overcharge, operational damages, expert costs, and legal interest*, October 2024; CDCR-0082 (USB stick); and CDCR-0089, *Delay Damages 2025, Response to the defendants*, 21 September 2025.

10. Pass-on defence

Position of the Truck Manufacturers

10.1. The Truck Manufacturers argue that it is highly likely that the Assignors, in their capacity as transport undertakings, passed on any overcharge and/or higher operating costs resulting from the Infringement in full to their customers. It follows from economic principles that, given the specific characteristics of transport markets, it is highly likely that transport service providers such as the Assignors pass on (and have passed on during the period of the Infringement) higher costs for the use of trucks to the customers of transport services.

10.2. The Truck Manufacturers refer to the Commission's Passing-on Guidelines[88] for the factors that determine whether pass-on is to be expected in a given case. Those factors are:

> *The nature of the input costs*
>
> 10.2.1. Fixed costs are costs that do not vary with whether an undertaking produces more or less or provides additional services. Variable costs are costs that do vary as output rises or falls. Economic theory suggests that price increases are generally passed on more readily where they relate to variable costs, since those costs are usually the determining factor in pricing. Fixed costs, in the short term, play no role in this. According to the Truck Manufacturers it is plausible that transport companies regard the purchase and running costs of a truck as variable costs which are taken into account in pricing, because those costs are directly connected with their core business: the provision of transport services. However, even if certain transport companies (or other undertakings) had initially regarded such costs as fixed, the duration of the Infringement (from 1997 to 2011) makes it plausible that the parties involved in the course of time came to treat those costs as variable. Whether costs are fixed or variable depends in part on the period under consideration: the longer the horizon, the greater the proportion of costs that must be classified as variable and, consequently, the greater the extent to which those costs will have been passed on.
>
> *The nature of demand for the product*
>
> 10.2.2. This concerns the relationship between demand and the price level. In particular, it concerns the price sensitivity of demand in the market in which the purchaser of the affected product operates — the downstream market: by how much does demand change in response to price changes? In the present case, according to the Truck Manufacturers, there are indications that price elasticity in

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[88] Communication from the Commission — Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser (2019/C 267/07) of 9 August 2019.

the market for transport services is low, meaning that demand for transport services changes only to a limited extent as a result of price increases.

The strength and intensity of competition in the market in which the customers operate

10.2.3. In strongly competitive downstream markets characterised by an industry-wide overcharge, pass-on is common. In a highly competitive market — which, according to the Truck Manufacturers, is the case for the road-transport market — margins are low, so customers will necessarily pass on higher input costs. Given those low margins, they cannot absorb the costs themselves. Furthermore, where all, or a very large part of, the market participants are faced with the same higher input costs, passing on those costs is also more likely to be feasible.

Other relevant factors

10.2.4. Other relevant factors include the proportion of an undertaking's costs that is affected by the overcharge, buyer power, price regulation, the timing of pricing decisions at the various levels of the supply chain, cost-based pricing, and the use of open-book contracts and back-to-back arrangements.

10.3. To substantiate the above submissions on the pass-on defence, the Truck Manufacturers have submitted three reports:

- an industry expert report by Prof. P. Klaus of 9 July 2021[89] (the Klaus Pass-On Report);
- an economic expert report by M.A. Williams of 14 July 2021[90] (the Williams Pass-On Report);
- a report by Oxera of 4 March 2025[91] (the Oxera Pass-On Report).

The Klaus Pass-On Report and the Williams Pass-On Report concern customers of road-transport services provided by third-party logistics (3PL) companies. Those reports were not drawn up specifically for the present proceedings but were commissioned by Colgate-Palmolive, the claimant in another Truck Case pending before this court (in the Second Group of Truck Cases).

10.4. The Williams Pass-On Report proceeds on the basis of a 100% pass-on of the (asserted) overcharge of trucks resulting from the Infringement to the customers of road transport.

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[89] Exhibit TRUC-0062, *Road Transport Pricing in the European 3PL Industry 1997–2011*, 9 July 2021.

[90] Exhibit TRUC-0063.

[91] Exhibit TRUC-0065, *Economic analysis of the pass-on of truck costs in the road transport sector*, 4 March 2025.

10.5. The Klaus Pass-On Report reaches the same conclusion:

> "What is the level of competitiveness in the European road transportation market and how are prices set in that market, and do the characteristics of this market indicate that any overcharge on the price of new trucks to truck purchasers, who were providing transport services to the Plaintiffs, would have been passed on to the Plaintiffs?
>
> An in-depth discussion of the European road transport services market corroborates the preliminary observation of the existence of a near-perfectly competitive market by the criteria which competition economists apply. There is a very large number of market participants on the supply side (up to 500,000 3PLs overall). Primary products, such as FTL, LTL and Retail Distribution services are highly standardized, "commodity-type" therefore easily compared and price-sensitive for demand-side market participants. Entry barriers to the market (and exit barriers) are low, allowing a continuous influx of new capacity. Market transparency is high and continuously improving. As a consequence, profitability levels are low. Only companies who are successful in carefully assessing their cost of doing business and passing-on those cost to their customers in full can survive over time. Despite of a great variety of pricing and contracting arrangements found in transport markets, all indications drawn from the general description of the 3PL service provider industry, and the in-depth study of the road transport market segment suggest, that any cost and cost increases- including those that may be caused by inflated new truck prices- will be passed on to the buyers and users of road transport services."

10.6. The conclusion of the Oxera Pass-On Report, which was drawn up specifically for the present proceedings, is broadly to the same effect:

> "In this report, Oxera has examined the characteristics of the logistics market in Europe and in a number of case-study countries (Italy, Germany, France, Spain and Portugal), and has formed an economic assessment of the likelihood and extent of cost pass-on by (commercial) logistics companies. In particular, Oxera has, in the light of the relevant economic framework, collected European and country-specific market data and analysed the implications of those data for the extent of supply pass-on. The characteristics of the European logistics market, the market coverage of the Infringement, the treatment of truck costs and the pricing policies of logistics companies indicate that pass-on by commercial logistics companies operating in Europe is likely to be high. That finding is confirmed by the available country-specific information, which shows that the Italian, German, French, Spanish and Portuguese logistics markets are highly competitive.
>
> Strong competition, combined with the nature of the relevant costs (in this case, the costs of acquiring trucks), suggests that in all these countries a very large proportion (possibly 100%) of the relevant costs is passed on."

10.7. The Truck Manufacturers further point out that customers of transport services have themselves brought claims against the Truck Manufacturers (including the above-

mentioned Colgate-Palmolive), on the footing that the transport companies from which they purchased those transport services passed on any increased truck costs to them, in whole or in part. This also concerns the passing-on of costs by transport companies that form part of the Assignors. Furthermore, some of the Assignors did not purchase the trucks they use for their transport services themselves, but lease them from a leasing company. CDC is, however, claiming damages both on behalf of lessees and on behalf of leasing companies that have leased trucks to those same lessees. It is impossible that both should have borne the alleged overcharge and/or the higher operating costs in full.

10.8. Any higher depreciation costs will, moreover, have been taken into account when setting prices for transport services and products. Those costs may therefore have been factored into the Assignors' own prices, thereby fully or partially offsetting the alleged overcharge. In addition to passing on costs to customers of transport services, the Truck Manufacturers also consider it quite possible that some of the Assignors (i) have (partly) factored the alleged higher truck costs into the price of the truck on resale on the second-hand market, (ii) have benefited from a (higher) maintenance discount or (extended) warranty on account of the alleged higher truck costs, and (iii) have paid lower taxes, as a result of depreciation costs being charged against pre-tax profit.

Position of CDC

10.9. CDC submits that the pass-on defence must be categorically rejected. It advances several grounds in support of that submission.

Factual (economic) grounds for categorical rejection of the pass-on defence

10.9.1. The costs of purchasing or leasing a truck are fixed costs. According to the Passing-on Guidelines, it is less likely that such costs will be passed on. The Truck Manufacturers are attempting to reclassify those fixed costs as variable costs that can be passed on. That is incorrect, as the costs of purchasing or leasing a truck do not rise or fall with the number of journeys or kilometres driven. In addition, competition in the freight-transport market is fierce. That means that the Assignors cannot pass on their fixed costs, in particular given the strong market power of indirect customers.

Legal grounds for categorical rejection of the pass-on defence

10.9.2 According to CDC, there is no causal link between the additional costs and the alleged passing-on of those costs. It refers to the *TenneT/ABB* judgment:[92]

> "In the case of any given undertaking, in the court's view, the causal link between additional costs on fixed assets and the passing on of depreciation on those assets in customer prices is too remote to conclude, in general

[92] District Court Gelderland 29 March 2017, ECLI:NL:RBGEL:2017:1724.

terms, that the increase in customer prices must reasonably be deducted from the damage attributable to the infringer."

Various foreign courts have likewise held that no causal link has been established between the additional costs and the alleged passing-on of those costs, including the Oberlandesgericht Stuttgart (Germany) in two judgments of 27 February 2025,[93] and the above-mentioned decisions of the CAT (in *Royal Mail/BT v DAF*) of 7 February 2023 and of the Borgarting Court of Appeal of 17 March 2025. The Truck Manufacturers have failed to substantiate the causal link sufficiently and have also failed to address volume effects and the resulting loss of profit caused by the alleged passing-on.

Normative grounds for categorical rejection of the pass-on defence

10.9.3. To the extent that there is any pass-on of costs, CDC submits that the principle of reasonableness requires that the portion of the additional costs passed on should not be deducted from the damages payable by the Truck Manufacturers. In the *TenneT v ABB* judgment[94] the Supreme Court held that the principle of equivalence, the principle of effectiveness and the scope of the Damages Directive are decisive. In the present case, the Truck Manufacturers have raised the pass-on defence whereas, of the approximately 750 Assignors, 19 have been identified as having entered into contracts with indirect customers (of 3PLs) which are themselves claiming damages as a result of the Cartel. Furthermore, CDC is aware of only one set of proceedings (in Germany) in which indirect customers (of 3PLs) are claiming damages as a result of the Cartel. The Truck Manufacturers have not adduced sufficient evidence from which it can be inferred that the customers of the Assignors are actually claiming damages from the Truck Manufacturers as a result of the Cartel. This is so even though the Truck Manufacturers should by now have a complete overview of the indirect customers (of 3PLs) that are claiming damages as a result of the Cartel, yet they have not provided any further information on this. What the Truck Manufacturers do argue is that indirect customers too have suffered no loss because they would in turn also have passed that loss on. That would mean that, if the pass-on defence were upheld, the Truck Manufacturers could evade their liability and virtually all cartel damage would remain unrecovered as collateral damage. That would be contrary to the above-mentioned principles. There is established case-law of foreign courts holding that reliance on the pass-on defence must be rejected on normative grounds: the

[93] Oberlandesgericht Stuttgart 27 February 2025, 30 O 235/17 and 30 O 239/17 (Exhibit CDCR-0094).

[94] Supreme Court 8 July 2016, ECLI:NL:HR:2016:1483.

Landgericht Stuttgart (Germany)[95] and the Borgarting Court of Appeal, according to CDC.

10.10. CDC has submitted its own report, drawn up by Prof. J. Tuinstra (Professor of Mathematical Economics at the University of Amsterdam),[96] which considers the reports submitted by the Truck Manufacturers. Prof. Tuinstra presented his report at the oral hearing on 18 November 2025. The conclusion of his report is that there are only limited possibilities for passing on an overcharge:

> "CDC's assignors (typically 3PL service providers) have purchased new trucks at illegally increased prices from the trucks cartel. These increased truck prices correspond to largely unavoidable fixed costs for the 3PL service providers because:
>
> • The costs for new trucks do not vary with the number of contracts the 3PL service provider engages in;
>
> • The relevant short-run decision horizon for 3PL service providers for service contracts is at most one year, whereas the decision horizon for purchasing new trucks is at least five years, but often longer;
>
> • Purchase prices for new trucks are largely sunk once made – as these trucks can typically only be sold at substantially lower proces on the second-hand market.
>
> Economic theory unambiguously teaches us that only increases in marginal costs are passed on to indirect purchasers, certainly in the short run. It is therefore abundantly clear that for none of the 3PL service providers it could have been profitable to pass on any part of the overcharge on new trucks to its customers. I also find that there is very limited scope for passing on the overcharge in the long run in the European road transportation market, since there appears to have been little effect on market dynamics.
>
> The argument made in Oxera (2025) [the Oxera Pass-On Report, court] that guidelines, published by trucker trade associations, led 3PL service providers to interpret truck purchases as variable of marginal costs is entirely unconvincing – any 3PL service provider that would have heeded that advice, would have hurt its own business and failed to maximize profits. Similarly, I find that the scope for resale pass-on is limited."

10.11. CDC further submits that the Truck Manufacturers have failed to substantiate their defence that the damage may have been offset, for example by adjustments to aspects of

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[95] Landgericht Stuttgart, 9 January 2025, 30 O 223/17, paras 5.1 and 5.2; Landgericht Stuttgart, 27 February 2025, 30 O 235/17, paras 5.2.1 and 5.2.2; and Landgericht Stuttgart, 27 February 2025, 30 O 239/17, para 5 (Exhibit CDCR-0091).

[96] Exhibit CDC-0090, *Expert economic report on "The scope for passing on of truck cartel overcharges to indirect purchasers"*, 18 September 2025.

the transaction other than the transaction price (such as a higher maintenance discount or an extended warranty) or by tax benefits. The Truck Manufacturers have failed to discharge their burden of assertion. Moreover, there is no causal link between the Infringement and any alleged advantage enjoyed by the Assignors.

10.12. Finally, CDC submits that, pursuant to Article 150 of the Dutch Code of Civil Procedure, the burden of proof in respect of the pass-on defence rests on the Truck Manufacturers. To that end the Truck Manufacturers rely (principally) on reports commissioned by counsel acting for indirect purchasers, in which they do not shy away from cherry-picking, relying on those reports only in so far as they suggest that there has been a passing-on of damage allegedly suffered by direct purchasers, while expressly disavowing the remainder of the content of those reports. They further rely on the Oxera report they have submitted. In doing so, the Truck Manufacturers rely solely on "general economic theories". That is wholly insufficient in light of the standard (burden of proof) resting on the Truck Manufacturers and the insufficiently rebutted premise, grounded in economic theory, that fixed costs cannot be passed on.

Response of the Truck Manufacturers

10.13. According to the Truck Manufacturers, categorical rejection of the pass-on defence leads to overcompensation and to a risk of multiple liability. They refer in that regard to the Damages Directive. Under the Damages Directive, direct and indirect purchasers cannot ultimately claim more compensation than the damage they have themselves suffered. The Truck Manufacturers further point out that it is now established that several indirect customers have brought claims in Groups 2 to 4 and in the Groupe Casino proceedings in the Netherlands. In any event, Unilever, Colgate-Palmolive and BASF state that they purchased transport services from ten CDC-related parties, who are claiming damages in the CDC proceedings for a total of approximately 3,140 trucks. On the basis of the documents submitted, the Truck Manufacturers have established that these and other indirect customers also purchased transport services from nine other CDC-related parties that are claiming damages in the CDC proceedings in respect of a further 3,111 trucks.

10.14. The Truck Manufacturers dispute that there are any factual (economic) grounds on which the pass-on defence should be rejected. CDC argues that, on the economic principles set out in the Passing-on Guidelines, it would have been impossible for the Assignors to pass on to their customers the additional costs resulting from the Infringement. In doing so, CDC wrongly assumes that the costs of purchase or lease are fixed costs. CDC does not address the specific characteristics of the transport sector, on the basis of which it is on the contrary plausible that those costs must be treated as variable costs and that it is highly plausible that they were passed on to a large extent.

10.15. The Truck Manufacturers argue that CDC continues to lose sight of the fact that, particularly in a highly competitive market, profit margins are low and it is highly likely that any input costs would be passed on. As regards the market power of customers, the Truck Manufacturers submit that it may be that purchase prices were not passed on in full, or that customers were in part compelled to reduce their profit margins further as a result

of certain price mark-ups. That, however, can only be established on the basis of specific information from the Assignors.

10.16. CDC further contends that if the pass-on defence is upheld, the Truck Manufacturers could evade their liability and virtually all cartel damage would remain unrecovered as collateral damage. CDC bases that contention on German case-law. In light of the case-law of the Bundesgerichtshof, German courts too can, in principle, only reject the pass-on defence on normative grounds after a detailed, case-by-case assessment of the downstream markets and of the likelihood and extent of pass-on, the number of potential victims, the potential scale of the damage, and thus the likelihood that infringers will face claims from indirect customers. The lower German courts wrongly failed to assess the likelihood of claims from indirect customers, according to the Truck Manufacturers. Furthermore, CDC has also failed to substantiate that the indirect customers which have brought claims have in turn passed on a price mark-up to their end customers and that this would result in collateral damage that would remain unrecovered.

10.17. As regards CDC's contention that the burden of proof in relation to the pass-on defence rests on the Truck Manufacturers, the Truck Manufacturers take the view that they have discharged that burden. They have produced sufficient qualitative and quantitative evidence to show that (virtually) full pass-on is highly plausible. It was accordingly not incumbent upon the Truck Manufacturers to provide further particulars or to substantiate by way of documents which indirect customers of the Assignors are also claiming damages from the Truck Manufacturers, in addition to the examples already provided. The burden of proof concerning (the extent of) pass-on therefore shifts to CDC.

10.18. Contrary to CDC's submission, it is not for the Truck Manufacturers to prove that there has been no volume effect. It is for CDC to prove that such a volume effect has occurred. The Passing-on Guidelines also expressly provide that, where the pass-on defence is wholly or partly successful (without which volume effect would not be in issue in the first place), the claimant bears the burden of proof in respect of the volume effect resulting from pass-on.

Assessment

10.19. At the case management hearing of 3 June 2025 and in the run-up to the oral hearing of 18–19 November 2025, it was agreed with the parties that the pass-on defence of the Truck Manufacturers would initially be addressed solely at the conceptual/principled level.

10.20. Assessment of the submissions put forward to date by the parties leads, in light of the foregoing, to the following conclusion. The burden of assertion and the burden of proof in respect of the pass-on defence rest on the Truck Manufacturers. At the present stage of the proceedings, the Truck Manufacturers have sufficiently substantiated that it is possible that the Assignors, or some of them, passed on (part of) the higher purchase costs resulting from the Infringement (the overcharge) to their customers/purchasers. Although CDC has substantiated its contention that this is the case, that contention is insufficient to lead (at this stage) to the conclusion that the pass-on defence cannot succeed for any of the Assignors and must therefore be "categorically rejected", as CDC has argued. That means

that the debate on the pass-on defence will need to be conducted in further detail. The court wishes to consult with the parties as to how and when that debate can best be conducted, partly in light of the fact that, as the Truck Manufacturers have submitted, indirect purchasers have brought claims in Groups 2 to 4 and in the Groupe Casino proceedings, and that in any event Unilever, Colgate-Palmolive and BASF submit that they have purchased transport services from the Assignors.

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11. Conclusion

11.1. In summary, the court finds that, in this judgment, rulings have been given on the following points in dispute:

- the defence of limitation under Dutch law (that defence fails);
- the data to be used for the calculation of the damage (the CDC dataset);
- the overcharge percentage (7%);
- the run-off period (until 30 May 2013);
- the emissions damage (to be rejected);
- the methodology for the determination of the value of commerce;
- the principles for the determination of the value of commerce;
- the pass-on defence (no categorical rejection).

11.2. The foregoing means that, in these proceedings, the following matters must now first be dealt with:

1. the determination of the volume of commerce;
2. the determination of the value of commerce;
3. the pass-on defence.

The court will refer the case to the roll for the parties to submit a statement in which they may give their views on the further course of the proceedings in relation exclusively to the three issues mentioned above.

11.3. Finally, the court wishes to inform the parties of a change in the composition of the panel hearing this case. Mr R.C.J. Hamming will take the place of Mr K.A. Maarschalkerweerd for the remainder of the proceedings, following Mr Maarschalkerweerd's transfer to another judicial district.

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12 The decision

The court

1. refers the case to the roll of **10 June 2026** for the parties to submit the statement referred to in paragraph 11.2 above;
2. reserves all further decisions.

This judgment was given by R.A. Dudok van Heel, M. Singeling and K.A. Maarschalkerweerd, judges, assisted by J.P.W. Manders, registrar, and pronounced in open court on 15 April 2026.