



ECJ Volvo and DAF Trucks set to reshape ongoing Spanish damages claims - analysis

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- Emerging question on deadline for appealed decisions
- More requests for guidance to the ECJ to come, judge predicts
- Ruling to boost new actions, claims rejected as time-barred

The European Court of Justice (ECJ) 22 June *Volvo and DAF Trucks* ruling and its interpretation of the deadline to bring damages actions will have a strong impact on the ongoing Spanish cartel damages litigation, experts told this news service.

A question arises, for example, on how the limitation periods established by the ECJ will affect ongoing litigation following truck, milk and car cartels when the sanctioned companies have already appealed the competition authority decisions, they said.

In last Wednesday's *Volvo and DAF Trucks* judgment, the ECJ ruled that claimants harmed by a European truck cartel have a five-year deadline to bring their actions by application of the EU Damages Directive, instead of one year under the former Spanish regime, which seemed to be the common criteria in national courts.

Judge Eduardo Pastor from the Valencia commercial court No. 3 – who has ruled on several truck damages actions – said he believed that the ECJ judgment will likely cause a new 'wave' of litigation in the trucks case due to all the actions considered time-barred by Spanish judges, that were actually filed on time under the criteria confirmed in the ECJ's judgment.

Pastor also considers that Spanish courts will probably file more requests for guidance to the EU top court because the *Volvo and DAF Trucks* ruling is complex and makes "hardly intuitive" distinctions between 'substantive' and 'procedural' rules in the Damages Directive, so he expects that new doubts will arise among national judges.

"Of course, the judgment will have a concrete impact on the rest of the cases that are currently pending before the Spanish courts," he added.

Deadline interpretations

By extending from one to five years the deadline to introduce damages actions, the ECJ ruling will have profound implications in Spanish private litigation concerning cases other than the trucks, such as the milk and car cartels, several experts said.

The milk damages case stems from a decision by the Comisión Nacional de los Mercados y la Competencia (CNMC) in July 2019. The sanctioned milk processing companies have appealed the

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Companies

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Iveco Holdings Limited
CNH Industrial NV
Stellantis N.V.
DAF Trucks N.V.

Agencies

European Commission - Directorate General For Competition (EC - DG Comp)
European Court Of Justice
European Commission
Spanish Regional Court - Audiencia Provincial
Spanish Commercial Courts - Juzgados De Lo Mercantil

Case Files

Spanish Private Litigation Concerning Truck Cartel (2017)
Spanish Private Litigation In Castile And León Concerning Truck Cartel (2018)

decision before the Audiencia Nacional, whose rulings on the case are still pending.

The Spanish car cartel litigation follows July 2015 CNMC findings. The Spanish top court confirmed last year the infringement in most of the appeals filed by the car makers.

Marcos Araujo Boyd, who acted 30 years as competition lawyer at Garrigues and is currently a PhD student at the University of Glasgow, highlighted several problems arising from the Damages Directive's final provisions in terms of temporal applicability, since it was unclear whether the non-retroactivity applies since the infringement or the declaration of that infringement.

Apart from the five-year deadline, Araujo Boyd told PaRR that the directive and the ECJ *Cogeco* case law make a "very generous treatment of the suspension". Furthermore, in his opinion, the new five-year deadline starts with the decision of the competition authority, and not when that decision becomes final in court.

However, lawyer and expert in private enforcement Julia Suderow said that she considers that the right to bring damages actions starts when the decision has been made final.

In the truck cartel, the company most affected by the ECJ ruling may be Scania, Suderow noted, as it is the only truck maker who did not settle the case with the EC and whose appeal is pending before the EU top court, after the General Court rejected its challenge.

However, according to Suderow, the remaining truck cartelists may be affected under a criterion of "joint liability" in claims that may be filed against Scania but regard products that were commercialised by other cartelists.

In the milk cartel litigation, the deadline to introduce damages claims should start with a court ruling making the CNMC decision final, Suderow said. She added that the deadline to bring damages actions in the car cartel case should start with the last Supreme Court ruling which confirmed the infringement, which was the one concerning Toyota in December 2021.

Lawyer Miguel Caamaño of law firm Caamaño, Concheiro & Seoane (CCS Abogados), working with thousands of trucks damages claims in Spain, explained that the ECJ ruling contains many interesting statements and conclusions, which are very satisfactory from the point of view of the victims of the infringements.

Among them, he highlights that the ECJ "seems to indicate" that the beginning of the deadline to bring a damages action is not when the infringement took place, but when the penalty becomes final because the offender has not appealed or the decision has been made final in court.

Another interesting ECJ conclusion is the application of "all" the Article 10 of the Damages Directive on limitation periods to the trucks litigation in Spain, particularly relevant in its fourth paragraph regarding suspensions and interruptions of the period to bring damages actions, Caamaño observed.

According to Paul Hitchings, the ECJ judgment “contains no great surprises” but it does “bring about a number of relevant changes for private enforcement in the EU, including certainly Spain”. Hitchings is managing partner of Hitchings & Co., inter alia acting as legal director for the Eskariam/Hausfeld group of Spanish milk claimants, and advised Daimler on trucks damages actions in Spain until September 2020.

There is now the confirmation, “contrary to the view of most Spanish courts to date,” that the new limitation rules apply if an action is alive under applicable national law at the relevant time, he said, adding that the key now is the interpretation of national law.

In Spain, it seems likely that the milk cartel claims will be covered by the new regime, but the car cartel claims “probably hang on whether time began to run from the decision or whether it was in suspense during the appeals,” Hitchings observed.

A ‘shock’ in the farming sector

The ECJ ruling has caused a ‘shock’ in the farming sector, said Juan Álvarez, business director of milk claim coordinating organisation Eskariam. He said that Eskariam is receiving calls from many cattle breeders interested in bringing actions. Álvarez also insisted that any potential challenge to the top court – if the appeal court rejects the dairy companies’ challenges – will push forward the deadline to bring actions, allowing more plaintiffs to sue, and increasing the interest.

Milk claim coordinators in the organisations Unions Agrarias and Eskariam recently told PaRR that they cautiously considered that they only had one year to file a damages claims since the delivery of the authority’s decision, so they had already sent “extra judicial notifications” to the defendants to interrupt this deadline.

But, in a press conference following the ECJ ruling, Unions Agrarias’ legal services coordinator Félix Porto said that the possibility for cattle breeders to sue dairy processing companies has been enlarged until July 2024 in the “worst-case scenario”.

The new situation will also be a solution for those claimants who have seen their claims rejected as time-barred, Unions Agrarias’ General Secretary Roberto García said in the same press conference. This was the case in a recent Lugo first-instance court ruling, in which the judge dismissed a claim because it was filed after the one-year deadline.

The 27,000 farmers from Galicia – the region most affected by the cartel – who did not bring a damages claim already have now the right to do so until July 2024, he added. García also commented that every day that passes without “reaching an agreement” with the dairy processing companies only increases the final bill the defendants will have to pay, because it rises the interests that will accompany any compensation award.

By applying Article 10.4 of the Directive, the deadline to bring actions for the milk cartel has been suspended, because the CNMC decision has been appealed, Álvarez of Eskariam added.

Lawyer Manel Espinosa, whose firm Allura & Peimondt is representing car cartel claimants, said that the ECJ ruling confirms the application of the five-year deadline to bring actions against the car makers that appealed the CNMC decision and defends that the deadline starts to run since the December 2021 Tribunal Supremo ruling on Toyota.

A different situation arises with the entities from the Volkswagen group, which were leniency applicants and did not appeal the decision, the lawyer noted, adding that they might be anyway sued for damages with an argument based on the single and continuous infringement or under the joint liability.

Since his firm used a conservative one-year deadline approach, the ECJ ruling will not affect the car cartel claims his law firm is currently preparing, he said. However, Espinosa said that his team will study the possibility of restarting a campaign to recruit more claimants under the new possibilities arising from the ECJ criteria on the deadline.

by Carmen Perales in Brussels

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