

# SPANISH COMPETITION *Highlights ...*

***Weekly follow-up: 12 Jun – 16 Jun.***

## **The Spanish Supreme Court resolves fifteen cassation appeals against several province court rulings on the truck cartel.**

On July 19<sup>th</sup>, 2016, the EC sanctioned five truck manufacturers (DAF, Daimler- Mercedes, Iveco, Renault – Volvo, Scania and MAN) considering their participation in a cartel regarding not only the price fixation, but also the introduction of emission standards required by the EU, which consequence was the increment of prices in the EEA (*European economic area*). The sanctioned parties reached a settlement agreement, except Scania, whose participation is confirmed to date.

As a result of the Decision, damage claim proceedings have been carried out in the EU States by the purchasers who were affected by the duration of the cartel. On May 10<sup>th</sup> and 11<sup>th</sup>, hearings were held by the First Chamber of the Spanish Supreme Court (SSC), in relation to several appeals, referred to the five manufacturers, from different appeal courts.

In all Supreme Court 15 judgments, the existence of damage and its amounts have been confirmed, despite the lack of rigorousness in the expert report to prove the damage and its amount. The SSC has upheld the appeal judgments to set the damage at 5% of the purchase price of the trucks plus the legal interest since the purchasing date.

The SSC Judgment addressed the following aspects:

- The SSC presumes the existence of harm due to the existence of a final previous infringement decision, the consideration of a long-lasting cartel, its geographic scope (EEA), the market coverage of the cartel (around 90%) and the object nature of the infringement.
- The insufficiency of the plaintiff's expert's report to prove the amount of the damage does not imply that the damage does not exist, nor the possibility to a judicial estimation of its amount.
- The SSC considers that the damage was correctly estimated at 5% of the purchase price, as long as neither a higher nor a lower amount has been proven.

With these rulings, the SC clarifies some controversial aspects arisen before lower courts in relation to claims for damages based on a competition law infringement. However, given the particularities of the case, other aspects remain to be unsolved, such as: how to apply the grounds of these judgments to stand-alone actions; when a competition authority decision is considered final; or how to apply the statute of limitations to certain cases.