

Kluwer Competition Law Blog

Mass Antitrust Damage Claims in Spain Against the Car Manufacturers Cartel

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Over the last five years, mass litigation in the field of antitrust in Spain has rapidly increased. The so-called “*Trucks Cartel Litigation*” has generated thousands of judgements and dozens of referrals to the CJEU. These judgements and referrals have allowed national courts and the CJEU to clarify several legal questions, such as the temporal application of the [Damages Directive](#), the liability of subsidiaries CJEU(C-882/19 [Sumal](#)), and the judicial estimation of the harm (see, and transnational notification of claims, for instance: [C-267/20 Volvo and DAF](#)).

While the Spanish Supreme Court is reviewing the first-second instance judgements of the years 2018 and 2019 issued in relation to the truck cartel, the existing 70 first-instance commercial courts are facing the next wave of antitrust damage claims, this time against the so-called “*Car Manufacturers Cartel*”. These follow-on claims are based on a decision of the Spanish Competition Authority of the year 2015. Mass litigation is not a new phenomenon in Spain, but it presents several issues that can have a meaningful impact on developing the private enforcement of European antitrust law.

The origin of the dispute

On 23 July 2015, the Spanish Antitrust authority -Comisión Nacional de los Mercados y de la Competencia (CNMC)- fined 18 car manufacturers and two consultancies 131.4 million € for exchanging commercially sensitive information between February 2006 and August 2013. According to the decision, the infringements had an impact on prices, also at the level of the consumers.

The sanctioned car manufacturers were Automóviles Citroën España, B&M Automóviles España, BMW Ibérica, Chevrolet España, Chrysler España, Fiat Group Automobiles Spain, Ford España, General Motors España, Honda Motor Europe Limited Sucursal en España, Hyundai Motor España, Kia Motors Iberia, Mazda Automóviles España, Mercedes Benz España, Nissan Iberia, Peugeot España, Renault España Comercial, Toyota España and Volvo Car España. [In the years 2021 and 2022, the Spanish Supreme Court \(‘Tribunal Supremo’\) confirmed the sanctions and the existence of an infringement in the case of 13 of the undertakings.](#) There is still one ruling pending.

In the meantime, hundreds or maybe thousands of follow-on actions against some of the sanctioned

manufacturers or their car dealers were filed before several commercial courts in Spain. In most of the known cases, the claim refers to one single vehicle, typically purchased by a consumer, and the amount of the dispute is below 6.000 €. In the year 2022, the courts published at least eight judgements with different results, ranging from the full dismissal of the claim to a partial estimation of the claimed amount that arises from 3% to up to 10% of the purchase price plus interests from the date of the purchase.

According to the [press](#), there may also be specific collective discovery actions filed by consumer associations, that were dismissed in the first instance. Although Spain has a collective action system in place, its practical relevance is limited since the procedural requirements make this type of action extremely difficult. This may change in the near future after the transposition of [Directive 2020/1828](#) into Spanish Law. [1]

This new wave of mass claims against the Car Cartel presents several elements that are already generating new questions:

- Most of the affected purchasers are consumers and individual persons,
- The claimed amount is usually under 6.000 €,
- There are 18 sanctioned companies, all of them with different domiciles in Spain.
- Additionally, some cartelists participated in the cartel for several years, whereas others participated only for one year.

On 13 October 2022, the Spanish Supreme Court took the first decision regarding these cases ([ATS 13977/2022 – ECLI:ES:TS:2022:13977A](#)). The first questions about jurisdiction that have been raised have a procedural nature, but they may well have an impact on material aspects of all the pending and future disputes, as will be described in the following paragraphs.

The facts

At the beginning of last year, a private person filed a claim against the Spanish subsidiary of Honda (with seat in Barcelona) before the commercial courts of Zaragoza. On 22 March 2022, the commercial court of Zaragoza declared that it had no jurisdiction and that the claim had to be referred to the courts of the defendant's domicile, Barcelona. On 27 April 2022, the commercial court of Barcelona concluded that it had no jurisdiction since the claimant is a consumer and should therefore have the right to file his claim in his domicile and requested the Spanish Supreme Court to decide on the matter of jurisdiction. On 13 October 2022, a few months later, the Supreme Court decided about jurisdiction. This decision has caused an intense debate about the handling of this type of claim and about the right to effective access to justice for consumers in antitrust follow-on claims.

Type of procedure

Spanish procedural law foresees two types of procedures: ordinary trials and abbreviated or verbal trials for small amounts of claims. According to Article 249.1.4 of the Spanish Procedural Code ([Ley de Enjuiciamiento Civil](#)), antitrust damage claims should be subject to the ordinary procedure if they do not exclusively deal with a claim for payment.

The procedure for claims for payments is determined by the amount of the claim. Claims up to 6.000 € will be subject to the abbreviated procedure, whereas the rest of the claims will follow the ordinary procedure. In this case, the Supreme Court considers that the main object of a follow-on claim is to determine the amount of the compensation. According to the decision of the Supreme Court, this question is far more relevant than other legal topics, such as the liability of the sanctioned company or the causality. The Supreme Court considers that this short and more economical procedure follows the principles of effectiveness and equivalence established by Article 4 of the Damages Directive 104/2014 since the consumer will then have a fast judgement and access to the requested compensation. It shall be noted that the abbreviated procedure limits the procedural path to one hearing and one instance if the claim is below 3.000 €.

Jurisdiction issues

Following the above-described line of considerations, the Supreme Court also takes a relatively “*private international law approach*” permitting the jurisdiction of the claimant’s domicile, in this case, a consumer. According to this decision, the principles of effectiveness and equivalence open the forum of the consumer’s domicile. [2] A claim in the domicile of the defendant would become too expensive and burdensome for a consumer making the exercise of compensation rights practically impossible or excessively difficult.

First judgements after the decision of the Spanish Supreme Court

The first judgements, such as the judgement of the Commercial Court n° 1 of Pontevedra of the same date, 13.10.2022, (case number 117/2022), opted for the ordinary proceeding with the possibility of an appeal. From that date on, courts followed the conclusions of the Supreme Court and thus have been applying the abbreviated procedure. These judgements also reached the following conclusions:

- **Legal framework:** The judgements confirm the application of the new private enforcement rules in the Spanish civil procedural code (Articles 72 to 80 Ley de Enjuiciamiento Civil) foreseen after the transposition of Directive 104/2014, even if the cartel took place before the transposition of the Directive.
- **Time limitation:** Following the recent ECJ judgement in Volvo and DAF, the limitation period of five years established by Article 10 of the Damages Directive applies to this cartel sanctioned by the Spanish Competition Authority in 2015. The time limitation period of five years starts with the final judgement against each defendant, apart from the leniency applicants Volkswagen and Seat (their decision is final and binding since 2015). Taking this into account, claims against the different manufacturers (apart from Volkswagen and Seat) will be possible in some cases until the end of 2026.
- **Presumption of harm:** All judgements consider that the exchange of information is a collusive agreement that causes damages as described in the Guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements. As a result of the exchange, the participants were aware of the main economic figures and results, the profits per department, the expenditure figures, or the net profit before tax, among others.
- **Joint and several liability:** Concerning the joint and several liability, the published judgements

conclude that any victim could ask for compensation from any cartel member if the facts took place during the participation of that cartel member in the conduct.

- **Quantification and estimation of harm:** All judgements reject the expert reports of the defendants but also the reports of the claimants. The courts, therefore, opt for the judicial estimation of the harm as foreseen in Article 17 of the Damages Directive.

The results of the judicial estimation depend mainly on the quality of the claim and the expert report and range from an estimation of compensation of 7% of the purchase price to a full dismissal of the claim (see, for instance: Commercial Court of Madrid nº5, 1099/2022, judgement of the 21.11.2022, 1098/2022, and Commercial Court of Elche nº 3, case 372/2022, judgement of the 14.12.2022).

Practical consequences

The Decision of the Supreme Court in the car cartel litigation has the following practical consequences:

- Some Spanish courts are now producing final judgements concerning individual and small compensation amounts in follow-on antitrust damage claims within 12 months or less. Courts take a proactive approach regarding the estimation of damages.
- Defendants will have to deal with thousands of small amounts of claims in more than 70 courts across Spain.
- Collective claims or bundled claims will follow the ordinary procedure and will have access to the appeal before the provincial courts and the Supreme Court.

[1] See hereto the draft published in January 9th 2023: [Anteproyecto de Ley de acciones de representación para la protección de los intereses colectivos de los consumidores](#).

[2] Article 52.3. of the Spanish Civil procedure (LEC): “Where the rules of the preceding paragraphs do not apply to disputes arising out of individual actions brought by consumers or users, the court of their domicile or the court referred to in Articles 50 and 51 shall, at the choice of the consumer or user, have jurisdiction”.

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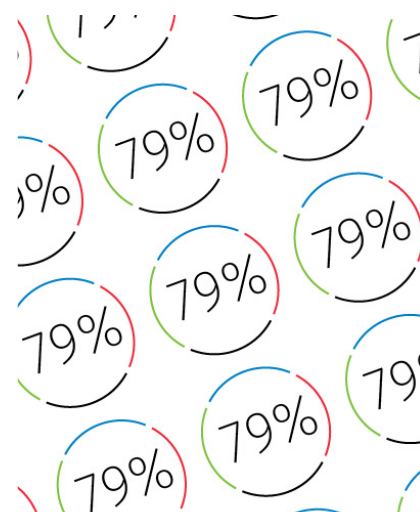
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