



Car Parts Cartel: Alternators and Starters

The European Commission fined car part producers Euro 137.8 million by way of cartel settlement
What does this mean for you?

The Settlement

On 27 January 2016, the European Commission reached a settlement in relation to cartel for car parts (alternators and starters) and imposed fines totalling Euro 137,789,000, on **Melco (Mitsubishi Electric)** and **Hitachi**. Another cartel participant, Denso, was not fined because it revealed the existence of the cartel to the Commission benefiting from the leniency programme. All companies acknowledged their involvement and agreed to settle the case to benefit from the reduction of the fine.

Over the period of five years, between **September 2004 and February 2010**, the three Japanese car parts manufacturers coordinated prices and allocated customers or projects with regards to alternators and starters. The cartel affected European customers because alternators and starters were also sold directly to car manufacturers in the EEA. These parts are the main components of car engines.

The settlement is only one part of a series of multi-jurisdictional investigations into suspected cartels in the car parts sector. The European Commission already fined suppliers of automotive bearings, wire harnesses in cars, flexible foam used (inter alia) in car seats and parking heaters in cars and trucks. Investigations are ongoing in relation to other car parts, for example occupant safety systems, thermal systems and exhaust systems.

How does this apply to you?

Car manufacturers who purchased alternators and starters from the participants during the operation of the cartel (approximately 2004 to 2010) and **consumers** who ultimately bought cars with the cartelised products installed in them may be entitled to claim damages in the UK courts for the 'overcharges' resulting from the cartel. In simple terms, the damages may be calculated as a difference between the price paid and the price that would have prevailed in a non-cartelised market.

New rules for actions for damages

On 1 October 2015, the Consumer Rights Act 2015 entered into force. The Act aims to facilitate actions for damages following competition law infringements and makes class-actions seemingly easier, as the 'opt-in' regime is replaced by collective actions on an 'opt-out' basis.

Funding a claim

The costs to pursue a complex litigation will be a key factor for businesses and individuals when considering the merits of pursuing a damages action. However, there are many ways to fund competition damages actions which can significantly reduce claimants' exposure to costs. Options range from the traditional private client retainer to third party funding as well as getting a group of potential claimants together in a joint or parallel action or an action via a trade body. In some instances, the way in which you fund your litigation can offload risk onto

the law firm or a third party in return for a share of the potential damages. To help illustrate this, we have set out below a brief overview of the types of funding that are most common when bringing a competition damages claim.

Third Party Funding

Third party funding typically involves a commercial funder agreeing to pay some or all of a claimant's legal fees (and disbursements) in return for a fee. This fee is usually a proportion of the proceeds recovered as part of the litigation process whether by judgment or settlement. If the claim is unsuccessful then the funder loses its investment and is not entitled to receive any payment from the claimant.

After the Event Insurance

The usual rule in English and Scottish disputes is that the loser pays the costs (or a proportion of those costs) of the winner. This means that in complex cases the incidence of costs can be a big issue and, indeed, can determine whether a case should be pursued.

After the Event Insurance ('ATE') is a form of legal expenses insurance which is taken out after a legal dispute has arisen. An ATE insurance policy insures the claimant against potential liability in the event you lose the case. An ATE policy typically covers claimant's own disbursements, including Counsels' fees, and the other side's costs (subject to a maximum limit). ATE,



if disclosed, can also be used as a tactical weapon to encourage settlement as the other side will know that an insurer has conducted an independent analysis of the merits of the case and decided it was strong enough to cover.

How can we help?

Our team of competition law experts and litigators have experience of follow-on damages claims, third party funding and ATE. In fact we acted for Albion Water Limited in its successful claim for follow-on damages against Welsh Water using third party funding and ATE – the first and only case (so far) to be funded in this way before the Competition Appeal Tribunal. We are able to provide advice to any parties who may be considering claiming compensation. If you would like to know more, please contact John Schmidt, Jane Wessel or Guy Harvey.

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