

Commercial Court refuses split liability and quantum trial in cartel competition damages claim which included a 'follow on claim' (*Daimler AG v Walleniusrederierna Aktiebolag*)

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Dispute Resolution analysis: Bryan J refused an application for a split trial in a partial follow-on cartel competition claim. Even though part of the claims were standalone, it was always going to be difficult to persuade the court into a split trial (liability and quantum) where the follow-on claims require no liability findings. Written by Adam Heppinstall, barrister, at Henderson Chambers.

Daimler AG v Walleniusrederierna Aktiebolag and other companies [\[2020\] EWHC 525 \(Comm\)](#) (11 February 2020)

What are the practical implications of this case?

The case provides another useful guide to when a court should order a split trial and as to what considerations should be taken into account. Where however, the claim is for follow on damages (even if, as here, in part only) it is highly unlikely that the court will order anything other than a combined liability and quantum hearing, indeed if the claim is only for follow on damages, a liability hearing may not be required at all. This application was therefore ambitious and unsurprisingly failed.

What was the background?

The car manufacturer, Daimler, is seeking recovery of overpayments for the deep-sea transport of vehicles following the finding of an unlawful cartel by the European Commission. The claim is both a 'follow on' claim for damages as well as a standalone claim. The case already has a long procedural history as it involves service out of the jurisdiction and a reference has already been made to the Court of Justice. The defendants applied for split trial proposing two alternatives, either jurisdiction first followed by all other issues second, or all liability issues first and quantum second. The court noted that it has power to order a split trial derived from [CPR 3.1\(2\)\(i\)](#) and also noted the guideline case of *Electrical Waste Recycling v Philips Electronics* [\[2012\] EWHC 38 \(Ch\)](#) where Hildyard J set out useful criteria for assessing such an application.

What did the court decide?

Bryan J emphatically rejected the application finding that 'a split trial would only be likely to result in delay, increased expense, and result in the overuse of scarce judicial resources' (para [36]). There was too much overlap between liability and quantum, especially in relation to the expert evidence, which will cover both. There would be little saving of time and expense as disclosure would not be cut down and there could be an appeal after the first liability trial. Bryan J noted that a split trial would cause 'false starts, setbacks and overall delay'. In particular, a split trial would delay Daimler's follow on damages claim while liability was decided on the standalone claim. He said that he considered 'this, along with the negative consequences of such a delay for trial management and the lack of quantifiable savings in time and expense by having two trials, to be key factors in the reaching of my decision' (para [37]). The reference to judicial resources in para [61] is interesting as it shows the courts taking into account impact on their time and costs, in a way in which they would not have done in the past.

Case details

- Court: High Court, Business and Property Courts
- Judge: The Honourable Mr Justice Bryan
- Date of judgment: 11 Feb 2020

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