

PROF. DR. MATHIAS HABERSACK

Statement

on the duties of the Supervisory Board
in connection with cartel matters,

prepared for the Supervisory Board of Daimler AG

The undersigned holds the Chair of Civil Law and Corporate Law at Ludwig-Maximilian University in Munich. On behalf of the Supervisory Board of Daimler AG, he has prepared legal opinions in 2017, 2018, 2019, 2020 and 2021 on the obligations of the Supervisory Board of Daimler AG in connection with the proceedings of the European Commission AT.39824 – Trucks (“Truck Cartel”) and other possible violations of antitrust law. The results of these legal opinions can be summarized as follows:

1. a) The Supervisory Board of Daimler AG (hereinafter also referred to as “the Company”) has examined, with the involvement of legal counsel and the undersigned, whether in connection with the European Commission’s antitrust proceedings AT.39824 – Trucks, the Company is entitled to claims for damages against current or former members of the Board of Management; it has thus fully complied with its monitoring duties in this respect to date.

b) The Supervisory Board of Daimler AG has also complied in full with its duty to decide, in the interests of the Company and on the basis of information obtained from clarification of the facts, on the assertion of any claims for damages by the Company against current or former members of the Board of Management. The Company currently focuses on proceedings in connection with the truck cartel and other matters relating to possible antitrust-law violations (see below under 2.). Particularly in view of the fact that in the context of the possible pursuit of claims, relevant legal issues are still awaiting clarification by the Supreme Court’s ruling, it is in accordance with the duty of discretion that the Supervisory Board attaches considerable importance to these proceedings within the framework of its considerations. However, the Supervisory Board continues to be aware of the risk of limitation of any claims for liability of executive bodies and has taken appropriate measures in this regard.

c) Finally, the Supervisory Board is also acting in accordance with its duties when it does not disclose further details of the considerations upon which its decision not to assert claims for damages at present is based, insofar as they could have a negative impact on the interests of the Company.

2. The Supervisory Board of Daimler AG has also dealt with further matters involving possible antitrust-law violations, including the European Commission's accusation that Daimler had entered into agreements with competing manufacturers in violation of antitrust-law concerning the development and introduction of systems for reducing the emissions of gasoline and diesel cars. The European Commission initiated formal proceedings in this respect on September 18, 2018. In the statement of objections made on April 5, 2019, the Commission now accuses Daimler and other manufacturers of collusion in violation of antitrust law.

Daimler AG has filed a leniency application so that, if the application were accepted, full cancellation of any fine is expected. The corporate statements supporting the leniency application are based on extensive investigations by the company, carried out within the framework of the cooperation with the European Commission. Based on these investigations and after an analysis of the statement of objections, the Supervisory Board has – notwithstanding the fact that it has not been established to date whether the European Commission's accusation of violations of antitrust law is founded – initiated its own comprehensive and independent investigations. In this respect too, the Supervisory Board is aware of the risk of limitation of any claims for liability of executive bodies and has taken appropriate measures in this regard.

The Supervisory Board has to date thus fully complied with its obligations under stock corporation law also in this respect.

3. The Supervisory Board of Daimler AG is guided by the principles developed by the Second Civil Senate of the BGH (German Federal Court of Justice) in its “ARAG/Garmenbeck” verdict of April 21, 1997 (II ZR 175/95) regarding the obligations of a supervisory board in connection with examining the existence and assertion of claims for damages by a company against current or former members of a board of management.

4. According to the results of my legal opinions, the Supervisory Board of Daimler AG has so far complied in full with its obligations under stock corporation law.



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Prof. Dr. Mathias Habersack