October 18, 2024

Dear Attorney General Bonta, Secretary Garcia, Chair Randolph, and Legal Secretary Sapp:

We are writing to urge further attention to manufacturer behavior in the market for cleaner heavy-duty trucks that implicates both California's climate and clean air policies and its continued efforts to support a positive business environment, especially for small businesses. In our view, immediate oversight is warranted.

California truckers face real cost challenges, and the state, under Governor Newsom's California Climate Commitment, has invested billions in incentives to support these businesses as they transition to cleaner vehicles. However, there is now evidence (cited below and attached) that the few companies manufacturing trucks compliant with California rules may be employing pricing and production strategies that could erode the benefit of the state's investments, limit supply of some key models, and raise truck prices for ordinary businesses. These strategies, which appear to be being used by dominant market actors, have broad implications for consumers up and down the supply chain. These strategies appear to be operating in multiple states, and would have the additional effect of eroding clean air and climate progress.

Because these matters critically affect California's own market, and air quality – as well as that of other states – **we believe California officials should review these manufacturer behaviors for compliance with relevant state and federal antitrust law, unfair business practice law, and consumer protection statutes, partnering with federal regulators where appropriate**.

The truck market generally warrants protective attention because it is such a concentrated one; a few manufacturers, generally aligned through their trade group, the Engine Manufacturers Association, dominate sales, both in state and nationally. That means manufacturers have market power which can unreasonably affect small businesses, as well as communities exposed to truck pollution. Market power may operate with particular force in California and in states that follow its rules because only certain cleaner combustion trucks and zero emission trucks can be sold in these states – meaning that changes in production and pricing for just a subset of truck products in already concentrated market can have large, immediate, effects on trucking fleets and other supply chain businesses.

Specifically, CARB staff recently documented at least three such manufacturer behaviors with regard to both the Advanced Clean Trucks (ACT) rule, which requires growing sales of zero emission trucks, and with the Heavy-Duty Low NOx Omnibus Rule (HDO), which requires combustion trucks to cut tailpipe pollution. It appears these strategies, individually and collectively, could have large market impacts.

These strategies, per the memo, include (1) **supply restrictions** on HDO-compliant engines, (2) **tying requirements** that dealers of HDO compliant engines tie sales of such engines to a set sales ratio of zero emission trucks, whether or not buyers demand those additional vehicles (thereby restricting overall supply of HDO compliant engines and shifting truck maker compliance costs directly to buyers), and (3) what appear to be **substantial price increases** for some ACT-compliant zero emission truck models, even though prices are falling for similar models in Europe. Several corporate communications regarding these policies are attached to this letter substantiating CARB's memo.

While companies have a right to lobby governments, the question here is their behavior with regard to consumers. These specific restrictions in the market itself, appearing in multiple states from multiple manufacturers, raise questions about the legitimate use of market power, and, per reporting, the associated shifts in costs and compliance burdens to consumers in ways that raise questions about consumer protection. To our knowledge, these policies appear to be underway, by multiple manufacturers, in many states that have adopted HDO and ACT, and were a critical factor in Oregon's recent decision to propose rolling back HDO requirements for at least one year. We are not aware of any other roll-backs of this sort in recent history, shrinking the market for clean vehicles and slowing the pace of transition, to the detriment of consumers, market competition, and the environment.

As Oregon regulators wrote, consistent with the strategies CARB flagged in the memo above, "some manufacturers are:

- Expected to have limited availability of Low NOx Omnibus compliant engine families.
- Expected to limit their use of available compliance flexibilities like credit purchases and emission offset projects.
- Expected to place restrictions on dealers that order new vehicles such as requiring a zero-emission vehicle to be sold prior to releasing any diesel-powered vehicles for sale."

Per Oregon, "[a] pause in implementation for one year is being proposed to avoid severe restrictions in supply of new vehicles based on these manufacturer business decisions." We are informed that the Commonwealth of Massachusetts, which also plans to implement HDO next year, is facing similar challenges, and that states which intend to implement ACT and HDO in 2026 and 2027 are also facing issues.

Thus, these strategies may have both California and national implications for the truck market, as well as for clean air and climate policy. As the country continues to recover from inflationary spikes and supply chain constrictions, these corporate strategies appear to push in exactly the opposite direction by potentially raising prices and constraints for our supply chain.

This is not the first time that such questions have required government attention. For instance, the European Commission has previously fined heavy-duty truck makers for truck pricing collusion, suggesting that the practice can occur in the truck market, and that companies warrant careful oversight. Though we allege no specific violations here, we do believe that attention is warranted to review the facts on the ground.

Here, CARB and Oregon have both pointed to significant supply restrictions and pricing issues that implicate those laws. California has a further interest here because of its existing state investments in this market, which may now be in some jeopardy, and its climate and clean air policies, which CARB asserts face implementation challenges as a result of corporate behavior. Moreover, CARB previously reached an agreement with manufacturers to generally further the transition to cleaner vehicles to which the state, at least, had faithfully adhered; the spirit, at least, of that agreement now appears under pressure from manufacturers.

We hope you will ask manufacturers to provide information to the state, and to federal oversight bodies, to demonstrate that their actions comply with relevant law. Small truckers and fleets deserve cost-effective access to clean trucks. Moreover, the related clean truck rules rules are critical to environmental justice, public health, and climate protection, and cost-effective compliance with them is of considerable importance to small businesses state- and nation-wide.

Thank you for all you do for the people of California.

Sincerely,

Craig Holt Segall
SVP, Evergreen Action

CC:

Dr. Steve Cliff, EO, CARB, and CARB Executive Office

FTC West Coast Bureau Heads
EPA Region 9 Regional Administrator

Attachment 1: Additional Supporting Files

In addition to linked documents in the letter, we have compiled the following materials for review.

- Presentation from Daimler regarding sales limitations (attached)
  - Note Slides 10 and 11, limiting diesel engine availability, slide 5 specifying tying requirements, and slide 1, applying policy to all dealers
- Letter to Isuzu Dealerships in Oregon regarding sales limits
  - Note statement from Isuzu Commercial Trucks President stating that sales of specific diesel truck lines will be discontinued in relevant states
- Letter from Trask Chassis on sales limits
  - Indicating sales limitations in all 50 states, and stating tying ratio requirements for combustion truck sales
- Letter from Ballard Truck Center (MA) on sales limits
  - Describing "devastating" financial impacts of sales ratio requirements
- Letter from Oregon Department of Environmental Quality to Volvo Trucks making inquiries regarding OEM compliance strategies
  - Our understanding is that several manufacturers received a similar letter. Oregon DEQ notes in its letter that "[b]ased on our conversations with dealers, the manufacturers appear to have very similar market strategies"
- November_2023_MSRC_Agenda_Final.pdf (cleantransportationfunding.org)
  - MSRC had a presentation last fall that showed their projects were being quoted higher and higher prices for Class 8 ZEV tractors.
- Volvo Dealer letter to NY (see attached)
  - Volvo dealer letter talking to NY about the trouble 'if ratios are applied to me'.
- https://ww2.arb.ca.gov/sites/default/files/barcu/board/mt/2024/mt052324.pdf)May 23,2024 CARB Board Meeting_
  - James Wheeler, President of Municipal Maintenance Equipment, talks about trouble getting diesel chassis because the dealers aren't selling enough ZEVs (despite CARB's published data that there are enough ACT credits in the market)
  - "So we could buy the clean emissions. They're willing to buy the credits to offset. We just don't have that method, so all truck sales are running through California truck dealers. And there's a limited supply through California truck dealers, because they're not selling enough electrics yet. So ACT is limiting their ability to supply and there is no national supply currently."
- Tow-Truck Companies Warn CARB of Obstacles to Meeting ZEV Mandates | Regulation Status | newsdata.com

    - A trade press recap of May 23rd, 2024, Board Hearing testimony and discussion that included whether OEMs were actually using the credits and flexibilities available to them:
- [How regulations impact truck buying and operation right now (fleetequipmentmag.com)]
    - Cummins talking about OEM strategies
    - "This year's ICE-based truck sales in California have been affected," said Jim Nebergall, executive director of market strategy at Cummins. The range of impact on the market is between 30-50% according to figures shared by Cummins and other industry leaders.
    - "As Cummins, we're impacted because OEMs won't place an engine order on us unless they can actually sell it, and they can only sell it if they have sold enough zero-emissions vehicles. It's a dynamic real-time calculation to boot," Swenson added."
- [CARB regulations are causing sales challenges for dealers | Trucks, Parts, Service (truckpartsandservice.com)]
    - Eric Bassett, Owner of Riverview International Trucks, says because CARB's rules designate units into categories for Class 7-8 tractors (with a fifth wheel) and Class 4-8 trucks (without one), he's been able to place more orders for Class 8 chassis, straight trucks and medium-duty units. But those sales also have stipulations. Because of ACT's ZEV sales requirement, Bassett says this year he is required to sell and deliver one ZEV unit to earn ten ICE order slots.