

Cartel Watch

Volume 2, Issue 2

In this issue of *Cartel Watch*, we continue our US and international coverage of select notable developments in cartel enforcement and follow-on civil antitrust class action lawsuits.

Criminal Enforcement Update

First Extradition on Antitrust Charge Nabs Former Marine Hose Executive in Germany

In the first successfully litigated extradition on an antitrust charge, Romano Piscioti, an Italian national, was brought to Miami, Florida on April 4, 2014, almost ten months after his arrest in Germany during a layover at Frankfurt Airport. It was reported that Piscioti was on his way home to Italy after a business trip to Nigeria. He faces a one-count felony indictment for his alleged participation in the marine hose worldwide bid-rigging conspiracy which began as early as 1999 and continued through 2007. Piscioti is a former executive of Parker ITR Srl, a marine hose manufacturer with headquarters in Italy. Piscioti is accused of conspiring to allocate shares of the marine hose market among conspirators, using a price list for marine hose to set prices, and agreeing to not compete with conspirators by not bidding on certain projects or submitting intentionally high bids. To date, five companies and nine individuals have pleaded guilty in the US Department of Justice's ongoing marine hose investigation. Notwithstanding the time that has passed since the marine hose conspiracy was discovered, companies and individuals are still being investigated and charged for their roles in the case. The Department of Justice's press release on the extradition is available here: http://www.justice.gov/atr/public/press_releases/2014/304888.htm.

DOJ Imposes \$8.9 Million Criminal Fine on Ocean Car Carrier

On February 27, 2014, Chilean shipping company Compañía Sud Americana de Vapores (CSAV) agreed to plead guilty and to pay an \$8.9 million fine in what may be the first in a series of cartel enforcement actions in the international automotive shipping industry. According to the information filed in federal court, CSAV participated in a conspiracy to rig bids, fix prices, and allocate customers for shipping services for non-containerized "roll-on, roll-off cargo," such as cars; trucks; and construction, mining, and agricultural equipment. Additional pleas and fines may occur in the US and abroad; an investigation into this industry has been ongoing since European and Japanese antitrust regulators raided the offices of several companies in September 2012. (See note below regarding JFTC action.)

Denso Executive Pleads Guilty to Obstruction of Justice Charges

In February 2014, a former director of Japan-based Denso Corp. agreed to plead guilty to a one-count felony obstruction of justice charge as part of the Antitrust Division's investigation into a conspiracy to fix the prices of heater control panels installed in cars sold in the US and elsewhere. Upon learning in early 2010 that the FBI had executed a search warrant on Denso's US subsidiary, Kazuaki Fujitani, general manager of the Toyota Sales Division at the time, deleted numerous e-mails and electronic documents evidencing communications between Denso and one or more of its competitors regarding requests for Toyota's price quotation for heater control panels for the Toyota Avalon. Fujitani has agreed to serve a sentence of one year and one day in a US prison. The plea agreement is subject to the approval of the US District Court for the Eastern District of Michigan in Detroit. In March 2012, Denso pleaded guilty and was ordered to pay a \$78 million criminal fine for its role in conspiracies to fix the prices of heater control panels and electronic control units. *US v. Fujitani*, No. 14-cr-20087 (E.D. Mich, Mar. 11, 2014)

Follow-On US Civil Class Action Update

Motorola Cannot Proceed with LCD Price-Fixing Claims Made by Its Subsidiaries Abroad

In a significant Foreign Trade Antitrust Improvements Act (FTAIA) development, a three-judge panel on the US Court of Appeals for the Seventh Circuit ruled on March 27, 2014, to uphold a district court judgment dismissing Motorola's claims against LCD manufacturers based on subsidiaries' purchases. The court stated that the effect of alleged price-fixing on LCD sales made to Motorola's units abroad that were later installed into cellphones shipped to the US for resale by Motorola was indirect and barred by the FTAIA. Such conduct did not satisfy the "domestic effects" exception to the FTAIA because it did not have a "direct, substantial, and reasonably foreseeable effect" on US commerce, nor did its effect in the US "give rise to" Motorola's antitrust claim. The court noted that the case was one "in which action in a foreign country filters through many layers and

finally causes a few ripples in the United States." The court also warned against the overextension of the Sherman Act and the need to avoid tension with foreign countries over US efforts to monitor worldwide competition policy. (See our note on the district court ruling here: <http://antitrust.weil.com/cartel-watch/cartel-watch-volume-2-issue-1/>.)

Plaintiffs in CRT Price-Fixing Case Fail to Obtain EU Statement of Objections in US Discovery

On March 26, 2014, the federal judge overseeing the multidistrict antitrust litigation brought by direct purchasers of cathode ray tubes (CRTs) refused to unseal the December 2012 European Commission decision that fined CRT manufacturers €1.47 billion. Judge Samuel Conti found that "comity outweighs discovery in this instance" and that both EC Regulation and the Treaty of the Functioning of the European Union require the EC to refrain from disclosing information acquired or exchanged pursuant to the EU's competition laws. Nevertheless, Judge Conti noted that the decision could include relevant facts that are within the scope of plaintiff's discovery and urged the EU to release a public version soon. Plaintiffs asserted that the decision is vital to their case because it will provide detailed facts about the alleged conspiracy, including duration, geographic reach, and defendants' collusive pricing activities. (*In re: Cathode Ray Tube Antitrust Litigation*, 3:07-cv-05944, N.D. Cal.)

Samsung SDI Settles CRT Price-Fixing Allegations with DPP Class for \$33 million

Samsung SDI has agreed to pay \$33 million to a direct-purchaser class as the latest manufacturer to settle allegations of price-fixing made by direct purchasers of cathode ray tubes used in televisions and computer monitors. The agreement is the largest of seven settlements to date in the direct-purchaser class action, which was originally filed in 2007. Chunghwa, Philips, Panasonic, LG, Toshiba, and Hitachi have previously reached settlements with direct-purchaser class. Hitachi's and Samsung SDI's settlements remain subject to court approval. (*In re: Cathode Ray Tube Antitrust Litigation*, 3:07-cv-05944, N.D. Calif.)

Summary Judgment Granted for Chocolate Makers Despite Evidence of Canadian Conspiracy

A federal court granted summary judgment in favor of Nestlé, Hershey, and Mars in antitrust actions accusing the chocolate makers of conspiring over US prices. The US District Court for the Middle District of Pennsylvania found that plaintiffs' evidence was inadequate to support their claims, notwithstanding evidence of a different Canadian conspiracy. Nestlé USA, Inc.; The Hershey Co.; Mars, Inc.; and Mars Snackfood US, LLC control more than 75 percent of the US chocolate confectionary market. In 2002, 2004, and 2007, the defendants reacted to significant increases in the cost of cocoa and raised the prices of their products in a nearly simultaneous fashion. Plaintiffs relied heavily on evidence of a conspiracy in Canada: Mars Canada, Nestlé Canada, Hershey Canada, and Cadbury Adams each settled a 2008 civil action lawsuit alleging a conspiracy to fix prices on chocolate in Canada and, in 2013, Canada's Competition Bureau filed criminal charges against the chocolate makers stemming from the same alleged conspiracy. Hershey Canada pled guilty and paid a \$4 million fine to settle the criminal charges. The US District Court's decision impacts 91 consolidated civil actions brought by major retailers and a certified class of direct purchasers. For additional analysis, visit <http://antitrust.weil.com> (Article, US Antitrust Suit Dismissed Notwithstanding Evidence of Canadian Conspiracy, Mar 18, 2014).

Developments Outside the US

JFTC Orders Record-Breaking Sanctions on Ocean Carriers

In one of the first enforcement actions resulting from a global investigation of the automotive shipping industry, Japan's antitrust regulator imposed fines totaling ¥22.7 billion (\$223.5 million) on four carriers, the second-largest total cartel fine ever levied by the agency. The JFTC found that Nippon Yusen Kabushiki Kaisha Line (NYK Line), Kawasaki Kisen Kaisha Line, Wallenius Wilhelmsen Logistics, and Nissan Motor Car Carrier participated in a conspiracy to rig bids and fix rates on auto shipping routes between North America, Europe, the Middle East, and Oceania.

A fifth participant, Mitsui O.S.K. Lines, avoided sanctions by taking advantage of the JFTC's Leniency Program, meaning it was the first company to come forward to report the cartel. NYK Line received the highest fine ever imposed by the JFTC (¥13.1 billion or \$129 million), surpassing auto parts maker Yazaki, which was ordered to pay ¥9.6 billion in January 2012. The JFTC's press release is available here: <http://www.jftc.go.jp/en/pressreleases/yearly-2014/March/140318.html>.

EU Law to Encourage Private Competition Actions Nears Finalization

In March 2014, European Union lawmakers and Member States came another step closer to finalizing a cartel litigation law aimed at encouraging private competition actions by enabling private plaintiffs to effectively pursue antitrust damages claims. The European Commission's proposals would implement a series of reforms that are designed to make it easier for victims of illegal cartel behavior to recover damages in court. According to a spokesman for the European Commission, a compromise has been reached between the European Parliament and the Council that is expected to pave the way for the legislators to finalize the measure in the coming months. For prior commentary on the law's development, visit <http://antitrust.weil.com> (Cartel Watch: Volume 2, Issue 1, Feb. 18, 2014).

France Approves a Consumer Class Action Law

On March 18, 2014, French lawmakers published the Hamon Law, a new measure that provides for group lawsuits brought over consumer protection and antitrust violations. The law, adopted on February 13, makes it easier for private antitrust class actions to be brought on behalf of consumers. Unlike US class action procedure, only Government-approved consumer groups may bring class actions, and the actions must be brought on behalf of at least two consumers. Companies may not join together to seek competition damages. Other consumers in the class can opt in to the action within a time-limit set by the judge (between two to six months) after the finding of liability has been communicated. French Law No. 2014-344, entered into force Mar. 17, 2014.

For additional analysis, visit <http://antitrust.weil.com> (Alert, France Adopts a Class-action System “à la française,” Mar 31, 2014).

European Commission Holds Financial Investor Liable for Cartel Infringement by Portfolio Company

On April 2, 2014, the European Commission imposed fines of approximately €302 million on producers of underground and submarine high voltage power cables for engaging in market sharing and customer allocation worldwide for almost ten years. The decision holds several parent companies of the cartel participants jointly and severally liable for the period during which they exercised a “decisive influence” over the infringing companies, including Goldman Sachs, which acquired one of the participants (Prysmian SpA) in 2005. Prysmian received the largest individual fine of almost €105 million, of which Goldman Sachs is jointly and severally liable for around €37 million. The investigation, which dates back to January 2009, focused on the manufacturers of high voltage power cables, typically used to connect generation capacity to the transmission grid or to interconnect power grids between different countries. ABB received full immunity for being the first participant to reveal the existence of the cartel, while the remaining 11 manufacturers were fined almost €302 million. For the European Commission’s press release, visit http://europa.eu/rapid/press-release_IP-14-358_en.htm.

Russian Enforcer Finds Uzbek Mobile Services Companies Liable for Competition Violations in First Extraterritorial Application of Russia’s Antimonopoly Law

On February 26, the Federal Antimonopoly Service (FAS) in Russia found Rubicon Wireless Communication, Ltd. and Uzmobility, a branch of Uzbektelecom, liable for violations of Russia’s antimonopoly law. The FAS determined that the two Uzbekistani mobile operators formed an agreement to push their main competitor, Uzdunrobit, out of the Uzbek market, which resulted in a reduction in the volume of international roaming connection between Uzbekistan and Russia in violation of Article 11 of

the competition law. The FAS further found that the agreement violated the rights and interests of Uzdunrobit, the largest mobile operator in Uzbekistan and a subsidiary of a Russian telecom company. This case marks the first time that the FAS has applied the principle of extraterritoriality to anticompetitive agreements between foreign companies with effects on Russia’s domestic market. In previous cases at least one party to the agreement was a Russian company. The press release is available at http://en.fas.gov.ru/news/news_33544.html.

Cartel Fine Tracker - Q1 2014

The beginning of 2014 has proved active for the US DOJ, European Commission, and JFTC. We expect the global auto parts investigation and the ocean car carrier probe will continue to contribute to fine tallies across all three jurisdictions throughout the rest of the year.

Jurisdiction	Fines in Q1 2014 (1/1-3/31)
United States	USD 497.36 Million
EU	EUR 114 Million (approx. USD 156.7 Million)
Japan	JPY 25.3 Billion (approx. USD 248.7 Million)

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If you have questions concerning the contents of this issue of *Cartel Watch*, or would like more information about Weil's Antitrust/Competition practice, please speak to your regular contact at Weil, to the editorial board, or to the contributing authors:

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