Criminal Enforcement Update

Auto Parts

- **Showa Corp. Fined $19.9 Million for Price-Fixing – Steering Assemblies:** On April 23, 2014, the DOJ announced that Showa Corp., a Japanese auto parts manufacturer, agreed to plead guilty for its role in a conspiracy to fix prices and rig bids of pinion-assist type electric powered steering assemblies sold to Honda in the United States and elsewhere. Showa Corp. agreed to pay a $19.9 million criminal fine for its participation in the conspiracy, which lasted from at least 2007 until September 2012, according to the information filed in the United States District Court in the Southern District of Ohio. Showa Corp. is the 27th company to plead guilty in connection with the DOJ’s investigation into price-fixing in the auto parts industry. More than $2.3 billion in criminal fines have been imposed. *United States v. Showa Corp.*, No. 1:14-cr-00044 (S.D. Ohio).

- **G.S. Electech Executive Agrees to Serve More Than One Year in Prison – Speed Sensor Wire Assemblies:** A G.S. Electech executive agreed to plead guilty and serve thirteen months in a US prison, according to a sentencing memorandum filed by the DOJ in the Eastern District of Kentucky on June 6, 2014. Shingo Okuda, a Japanese executive at G.S. Electech, Inc., was indicted on September 11, 2013, for his role in an alleged conspiracy to fix prices and rig bids of speed sensor wire assemblies used on antilock brake systems. The indictment was based on alleged conduct that affected auto parts sold to Toyota Motor Corp. and Toyota Motor Engineering and Manufacturing North America Inc. in the United States and elsewhere. Mr. Okuda is the 25th executive to plead guilty in the auto parts investigation. G.S. Electech pled guilty in May 2012 and was fined $2.75 million. *United States v. Shingo Okuda*, No. 2:13-cr-00051 (E.D. Ky.).

- **Tokai Rika Executive Indicted for Obstructing Justice and Price-Fixing – Heater Control Panels:** A federal grand jury in the Eastern District of Michigan indicted Hitoshi Hirano, a Japanese executive at Tokai Rika Co. Ltd., on May 22, 2014, for his role in an alleged conspiracy to fix prices and rig bids of heater control panels. The indictment is based.
on alleged conduct that affected auto parts sold to Toyota Motor Corp. and Toyota Motor Engineering and Manufacturing North America Inc. in the United States and elsewhere. Mr. Hirano, who was an executive managing sales director at Tokai Rika, was also charged with obstruction of justice based on allegations that he knowingly persuaded and attempted to persuade employees to destroy documents and delete electronic data that may have evidenced antitrust crimes. Tokai Rika pled guilty on December 12, 2013, for its role in the heater control panel conspiracy and agreed to pay a $17.7 million criminal fine. United States v. Hitoshi Hirano, No. 2:14-cr-20293 (E.D. Mich.).

- Takata Executive Indicted for Price-Fixing — Seatbelts: On June 5, 2014, a federal grand jury in the Eastern District of Michigan indicted a former executive of Takata Corp. for his role in a conspiracy to fix prices and rig bids of seatbelts. Gikou Nakajima, a Japanese national, was charged with engaging in a conspiracy to rig bids for and fix, stabilize, and maintain the prices of seatbelts sold to Toyota Motor Corp., Honda Motor Company Ltd., Nissan Motor Co. Ltd., Mazda Motor Corp., Fuji Heavy Industries Ltd., and certain of their subsidiaries in the United States and elsewhere. On December 5, 2013, Takata Corp. agreed to plead guilty and pay a $71.3 million criminal fine for its role in that conspiracy. Four other Takata Corp. executives have pled guilty and agreed to serve time in a US prison and pay criminal fines for participating in the conspiracy. United States v. Gikou Nakajima, No. 2:14-cr-20324 (E.D. Mich.).

Top DOJ Cartel Prosecutor Discusses Italian Extradition Case and Waiver Policy for Corporate Leniency Applicants

On June 5, 2014, DOJ Deputy Assistant Attorney General Brent Snyder commented on two aspects of DOJ’s cartel enforcement efforts. First, Mr. Snyder remarked on the extradition of Romano Pisciotti, an Italian national and former executive of marine hose manufacturer Parker ITR Srl, one of the companies that pled guilty to the DOJ for price-fixing in the marine hose industry (which we reported on in our last Cartel Watch available here: http://antitrust.weil.com/cartel-watch/cartel-watch-volume-2-issue-2/). Mr. Snyder reflected that the Pisciotti case indicated that there are “fewer and fewer safe havens” for individual cartel participants to avoid US prosecution due to “more and more jurisdictions that are adopting criminal antitrust statutes.” Mr. Snyder emphasized that Pisciotti’s successful extradition resulted from the fact that he was picked up in Germany, and the German statute on extradition only protects German nationals. “You may believe you live in a country that will not extradite you to the United States. But if you want to get on an airplane, you want to travel to another country, you are going to increasingly be at a higher risk of being detained and extradited to the US,” he remarked.

Second, Mr. Snyder also commented on DOJ waiver policy for corporate leniency applicants. Generally, DOJ policy is to ask amnesty applicants to sign a waiver to allow the DOJ to share information obtained from the applicant in the investigation with other international competition authorities. Mr. Snyder framed an amnesty applicant’s decision on whether or not to grant a waiver as “a choice” and acknowledged that “there [are] no repercussions for the leniency applicants who choose not to give it.”

Follow-On Us Civil Class Action Update

Second Circuit Broadens the Reach of U.S. Antitrust Law to Foreign Conduct

On June 4, 2014, the Second Circuit issued its opinion in Lotes Co. v. Hon Hai Precision Industry Co. (Foxconn) and affirmed the SDNY’s dismissal of the dispute over competition in the USB connector market. In affirming the dismissal of the lawsuit, the Second Circuit adopted the Seventh Circuit’s test to determine whether foreign conduct is subject to US antitrust law under the Foreign Trade Antitrust Improvements Act (FTAIA) by having a “direct, substantial and reasonably foreseeable effect” on US commerce. Like the Seventh Circuit, the Second Circuit requires a plaintiff to show that there is a “reasonably proximate causal nexus” between a defendant’s alleged conduct and the plaintiff’s alleged harm. The Second Circuit expressly rejected the
Ninth Circuit’s more stringent test, which requires plaintiffs to show that the harm was the “immediate consequence” of the alleged wrongdoing. Further, the Second Circuit held that the FTAIA requirements are substantive and merits-based elements of an antitrust claim, not jurisdictional in nature, thereby expressly overruling its prior decision in *Filetech S.A. v. France Telecom S.A.*, 157 F.3d 922 (2d Cir. 1998). Days after the ruling, the DOJ wrote a letter to the Ninth Circuit, urging the court to use the Second Circuit’s ruling when deciding the appeal in the *AU Optronics* case. For more information, please see an in-depth look at this ruling on our blog, available at [http://antitrust.weil.com/articles/second-circuit-clarifies-international-reach-of-the-antitrust-laws-in-lotes-ftaia-decision/](http://antitrust.weil.com/articles/second-circuit-clarifies-international-reach-of-the-antitrust-laws-in-lotes-ftaia-decision/). *Lotes Co. v. Hon Hai Precision Industry Co.* (Foxconn), No. 13-2280, 2014 WL 2487188 (2d Cir. Jun. 4, 2014).

**Auto Parts Makers Reach Class Action Settlements with Plaintiffs – Occupant Safety Systems**

On June 2, 2014, Autoliv Inc. announced that it had reached a tentative settlement agreement with three classes of plaintiffs to exit the auto parts multidistrict litigation in the Eastern District of Michigan. Autoliv will pay plaintiffs a total of $65 million with $40 million going to direct purchasers, $6 million to auto dealers, and $19 million to end-payors or purchasers of vehicles containing occupant safety systems. The exact amount of the settlement will depend on whether any direct purchasers opt out of the direct purchaser settlement. Under the terms of the deal, Autoliv could back out of the agreement if too many class members opt out, or could pay as little as $24 million to direct purchasers. Autoliv previously pled guilty for its role in a conspiracy to fix the prices of occupant safety systems and agreed to pay $14.5 million in criminal fines. Just two days later, on June 4, 2014, Yazaki Corp. and TRW Deutschland Holding GmbH announced preliminary settlements with end-payors and auto dealers in the same occupant safety system class action as Autoliv. The terms of the settlements, including the amount each company will pay, have not yet been released. The settlement only pertains to the occupant safety systems litigation and Yazaki remains a defendant in the instrument panel clusters, wire harnesses, and fuel senders litigations. *In re: Auto. Parts Antitrust Litig., In re: Wire Harness Cases*, No. 2:12-cv-00100 (E.D. Mich.).

**International Developments**

**European Court of Justice Breaks Ground for Umbrella Claims – Providing Evidence Remains Challenging**

By its decision of June 5, 2014, the European Court of Justice (ECJ) broadened liability of cartellists by admitting a right to compensation of so-called umbrella damages. Umbrella damages accrue where non-cartellist companies in a given market adapt their pricing to a level maintained by a cartel active in the same market, the general price level being higher compared to a market unaffected by cartel activity. Damages of this kind were at stake in the underlying proceedings before the Highest Court of Austria: The Austrian ÖBB Infrastruktur, a subsidiary of the Austrian Railways, claimed damages from several companies which were involved in the lifting cartel proceedings of the EU Commission. ÖBB Infrastruktur based its claims on having purchased overpriced lifting equipment from third party suppliers not involved in the cartel. The Highest Court ascertained that Austrian law does not admit compensation of umbrella damages for lack of a direct causal link between the cartel activity and the damages incurred, such link being generally excluded where no contractual link exists between the cartellists and the claimant. Though the Highest Court deferred to the ECJ for a preliminary ruling on whether EU law requires the national laws of the Member States to allow for the collection of umbrella damages from cartel members.

In its decision, the ECJ did not challenge the Member States’ competence as to legislation on damage compensation. However, in order to ensure full effectiveness of EU law, the Member States’ laws must not categorically block any kind of damage claim for violations of EU competition law. National rules on damages claims following on from antitrust infringements must not be less favorable than other
national rules governing similar domestic actions. A general exclusion of compensation for the loss caused by umbrella pricing is inconsistent with EU law, the ECJ pronounced.

Despite the ECJ’s recent ruling, it will remain difficult to provide sufficient evidence for the damages incurred. Besides the involvement of the defendants in the cartel, a claimant will have to prove the higher price level in the market and that it was engendered by the cartel. It is now up to the courts and legislatures of the Member States to decide how to ensure that harmed customers can efficiently collect umbrella damages.

**Korea and China Competition Authorities Announce Auto Parts Investigation and Findings**

According to *PaRR*, China’s National Development and Reform Commission (NDRC) has opened a formal investigation into price-fixing in the auto parts industry. A source told *PaRR* that many companies had applied for leniency with the NDRC in May with most being Japanese auto parts manufacturers. Previously, the NDRC issued a report on February 18, 2014, explaining that it had opened an *informal* investigation to “collect information” on the auto parts industry. The NDRC has not charged any auto parts manufacturers with price-fixing to date.

In addition to this news from China, *PaRR* also reported that the Korea Fair Trade Commission (KFTC) expects to release findings in a number of auto parts cartel investigations sometime in 2014. According to two Seoul-based antitrust attorneys, companies in about ten auto parts markets are expected to face penalties for the effects of alleged price-fixing on the South Korean auto market. In December 2013, the KFTC fined Denso, Continental and Bosch KRW 114.6bn ($108 million) for allegedly bid-rigging the supply of instrument panel clusters and windshield wipers to Hyundai Kia Motor.