

Cartel Watch

Fourth Edition

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

Criminal Enforcement Update

DOJ's Lead Cartel Enforcement Attorney to Resign

Effective October 1, 2013, Scott D. Hammond will resign from his post as Deputy Assistant Attorney General for Criminal Enforcement in the Antitrust Division of the US Department of Justice (DOJ). Since 2005, Mr. Hammond has led the DOJ's efforts to aggressively prosecute global cartels and secure major fines against corporations and long jail sentences against individuals, as well as to improve the effectiveness, transparency, and benefits of the DOJ's leniency program and coordination among international enforcers. Despite this change in leadership at the Division, no major changes in cartel enforcement policy are on the horizon. For additional analysis, visit <http://antitrust.weil.com> (Alert, DOJ's Deputy Assistant Attorney General for Cartel Enforcement to Resign, July 10, 2013).

DOJ Reaches Guilty Pleas for Price-Fixing of Heater Control Panels, Electronic Control Units, Seat Belts, and Ignition Coils

In the past month, plea agreements were reached in relation to price-fixing conspiracies concerning heater control panels, electronic control units, seat belts, and ignition coils.

- **Heater Control Panels and Electronic Control Units:** On August 5, 2013, two executives of Denso Corp. pled guilty and were sentenced by a judge in a federal court in Detroit, Michigan for their role in a price-fixing conspiracy relating to electronic control units and/or heater control panels. Hiroshi Watanabe was sentenced to serve 15 months in a United States prison for his role in a price-fixing conspiracy relating to heater control panels sold to Toyota. *United States v. Hiroshi Watanabe*, No. 13-cr-20381 (E.D. Mich.). Yuji Suzuki was sentenced to serve 16 months in a United States prison for his role in a price-fixing conspiracy relating to heater control panels and electronic control units sold to Toyota. *United States v. Yuji Suzuki*, No. 13-cr-20382 (E.D. Mich.). Further, Messrs. Watanabe and Suzuki were each ordered to pay a fine of \$20,000 and will cooperate with the DOJ's ongoing investigation.
- **Seat Belts:** Takayoshi Matsunaga, a Japanese national and employee of Autoliv Inc., agreed on July 16, 2013 to plead guilty, serve one year and one day in a United States prison, pay a \$20,000 fine, and cooperate with the DOJ's ongoing investigation, for his role in a price-fixing conspiracy relating to certain seatbelts sold to Toyota in the US and elsewhere. *United*

States v. Takayoshi Matsunaga, No. 13-cr-20523 (E.D. Mich.). In June 2012, Autoliv agreed to plead guilty and pay a \$14.5 million fine for its role in a price-fixing conspiracy relating to seatbelts, airbags, and steering wheels installed in US cars.

- **Ignition Coils:** Diamond Electric Manufacturing Co., Ltd. agreed on July 16, 2013 to plead guilty and pay a \$19 million fine for its role in a price-fixing conspiracy related to ignition coils. This marks the first criminal fine in the United States related to ignition coils and the first case in the DOJ's auto parts investigation that involved direct sales of parts to an automobile company headquartered in the US. The criminal information states that Diamond Electric sold ignition coils to Ford, Toyota, Fuji Heavy Industries, and certain subsidiaries in the United States and abroad. *United States v. Diamond Electric Mfg. Co., Ltd.*, No. 13-cv-20524 (E.D. Mich.).

Follow-On US Civil Class Action Update

Auto Parts Class Actions Proceed After Motions to Dismiss

On June 6, 2013, a judge in a federal court in Detroit, Michigan denied the majority of motions to dismiss filed by defendant wire harness manufacturers in connection with the private treble-damage class action lawsuits filed there against manufacturers and suppliers of automobile parts. The court denied the defendants' motion to dismiss the direct purchaser action in its entirety on the grounds that the plaintiffs pled the alleged conspiracy with adequate specificity – the direct purchaser plaintiffs satisfied *Twombly/Iqbal* standards and stated a plausible federal antitrust claim – and that the plaintiffs are direct purchasers entitled to money damages. The court partially granted and partially denied the defendants' motions to dismiss the automobile dealer plaintiffs' and end-payor plaintiffs' complaints, permitting all of the federal antitrust claims to survive. For additional analysis, visit <http://antitrust.weil.com> (Article, Auto Parts Class Actions Proceed After Motions to Dismiss Denied, July 23, 2013).

Ford Files Antitrust Lawsuit for Wire Harnesses

On July 16, 2013, Ford Motor Company filed a lawsuit in a federal court in Detroit, Michigan against Fujikura Ltd. and Fujikura Automotive America LLC. This is

the first civil antitrust action filed by a major automobile manufacturer against an auto parts supplier related to the current antitrust investigation. The lawsuit alleges that Fujikura took part in a conspiracy to rig bids for, and to fix prices of, automobile wire harness systems and related products. Ford seeks treble damages, attorneys' fees, litigation costs, and injunctive relief. *Ford Motor Co. v. Fujikura Ltd. et al.*, No. 13-cv-13055 (E.D. Mich.).

Best Buy and Toshiba Head to Trial in LCD Civil Case

After a series of last-minute settlements by Target, Eastman Kodak, LG, and others, Best Buy remains the sole plaintiff, and Toshiba and HannStarr the sole defendants, in multi-district litigation pitting retailers against LCD manufacturers. On July 23, a jury in a federal court in San Francisco heard Best Buy's opening statements alleging that the conspiracy cost the company more than \$800 million in overcharges on laptops and TVs purchased both directly and indirectly from 1998 to 2006. In June, Toshiba filed a summary judgment motion on the basis that its executives did not attend the now-infamous "Crystal Meetings." Earlier this month, the court denied Toshiba's motion and found that sufficient evidence exists for a jury to find that Toshiba participated in the overall price-fixing conspiracy even if it did not attend the meetings. *In re: TFT-LCD (Flat Panel) Antitrust Litigation*, No. 3:07-md-01827 (N.D. Cal.).

AAI Recommends Doubling Cartel Fines

In a July 8 letter to the US Sentencing Commission (USSC), the American Antitrust Institute (AAI) asked the USSC to revamp part of the formula used to calculate fines for antitrust offenses. Since 1987, the current formula assumes that the illegal price-fixing increases prices by 10 percent. The AAI argued this presumption is outdated and pointed to a recent study that found price-fixing actually increases prices by more than 20 percent. In order to maximize deterrence, raising the presumption to 20 percent would "double the amounts in the recommended antitrust fine range." The letter is available at <http://www.antitrustinstitute.org/~antitrust/sites/default/files/USSCAALetter.pdf>.

Developments Outside the US

EC Fines Producers of Wire Harnesses €141 Million

On July 10, 2013, the European Commission (EC) announced fines totaling €141 million, imposed upon Sumitomo, Yazaki, Furakawa, S-Y Systems Technologies, and Leoni for operating cartels relating to the supply of wire harnesses to Toyota, Honda, Nissan, and Renault. The EC explained this was the first result in the EC's broader investigation of cartels in the market for auto parts. Under the EC's leniency program, Sumitomo received full immunity in exchange for revealing the existence of the cartels to the EC, which precluded Sumitomo from paying a fine of more than €291 million. The other companies received reductions in their fines in exchange for their cooperation with the EC.

UK's OFT Publishes New Leniency Guidance

The United Kingdom's Office of Fair Trading (OFT) announced new leniency guidance for businesses and individuals who cooperate with cartel investigations. The guidelines provide clearer guidance on the level of cooperation that will be required and further detail on the procedures to follow in applying for leniency. The OFT also announced an important policy decision. In an October 2011 draft guidance, the regulator sought authority to require attorneys of leniency applicants to waive attorney-client privilege in criminal cases. Now, the OFT has decided it will not require leniency applicants to waive privilege in any instance, which is an important win for defendants who may face follow-on civil litigation. The new guidance is available at http://www.of.gov.uk/shared_of/reports/comp_policy/OFT1495.pdf.

New German Fining Guidelines for Serious Antitrust Violations

In response to a decision from the Federal Court of Justice, Germany's Federal Cartel Office released new guidelines for calculating fines for serious antitrust offenses such as market allocation and price-fixing. Although the previous guidelines looked at the company's turnover in the German market as well as the company's annual turnover worldwide, the

new guidelines place greater emphasis on the second factor. As a result, larger companies with significant worldwide revenues outside Germany may face higher fines in the future.

EU Court Upholds Parental Liability for Cartel Conduct

On July 11, 2013, the Court of Justice of the European Union issued a ruling that reinforced parental liability for the cartel conduct of a subsidiary. This overruled the lower court and reinstated a €270,000 fine against Stichting Administratiekantoor Portielje, a family trust owning almost 100 percent of defendant Gosselin Group NV, for involvement in a cartel for moving and logistics services. Case C-440/11 P, *European Commission v. Stichting Administratiekantoor Portielje and Gosselin Group NV* (July 11, 2013).

JFTC Fines Sugar Syrup Cartel

In June, the Japan Fair Trade Commission (JFTC) issued a cease-and-desist order and total fines of 2.5 billion yen (USD \$26.8 million) against eight producers of high-fructose corn syrup, starch syrup, and glucose located in Brazil. According to the JFTC, agreements to raise the price of syrups and glucose were made during meetings of the Nippon Starch Saccharification Industry Association. Under the JFTC's leniency program, the first applicant, Japan Cornstarch, escaped the fine, and the second applicant, Gun Ei Chemical, received a fine reduction of 30 percent for its timely cooperation following a dawn raid.

Dawn Raids by Brazil's CADE

On July 4, 2013, Brazil's Administrative Council for Economic Defense (CADE) raided the offices of 13 companies located in Brazil, in connection with CADE's investigation into alleged cartel bid-rigging for the sale of rail cars and for maintenance and construction of rail lines and subways. These raids stem from information learned through a leniency applicant, according to CADE, which believes that the alleged collusion may have resulted in higher prices paid by the government for certain rail contracts.

Cartel Fine Tracker – Q2 2013

After fines levied in 2008 on the automotive glass and bananas cartels were reduced earlier this year, the EU returned to the positive with fines for five makers of wire harnesses. Enforcement activity in Japan continued this quarter, while the US did not announce any corporate fines for cartel activity.

Jurisdiction	Total Fines in 2013	Fines in Q1 2013 (1/1-3/31)	Fines in Q2 2013 (4/1-6/30)	Fines by Investigation in Q2 2013
United States	USD 168.9 Million	USD 168.9 Million	—	—
EU	EUR 75 Million (approx. USD 99.5 Million)	EUR (-66) Million (approx. USD (-87.6) Million)	EUR 141 Million (approx. USD 187.1 Million)	EUR 141 Million – Wire Harnesses – 7/10/2013
Japan	JPY 20.77 Billion (approx. USD 211.1 Million)	JPY 18.1 Billion (approx. USD 183.9 Million)	JPY 2.67 Billion (approx. USD 27.1 Million)	JPY 98.16 Million – Municipal Construction Projects – 5/22/2013 JPY 2.57 Billion – High-Fructose Corn Syrup and Starch Syrup and Glucose – 6/13/2013

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