

Cartel Watch

Volume 2, Issue 1

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

Auto Parts

- **Aisan Industry Co., Ltd. Agrees to Plead Guilty to Price-Fixing – Electronic Throttle Bodies** – On February 2, 2014, Aisan Industry Co., Ltd. (Aisan) agreed to plead guilty to a single count of violating Section One of the Sherman Act. The indictment is based on alleged conduct that affected the price of electronic throttle bodies sold to Nissan Motor Co., Ltd. and certain of its subsidiaries in the US and elsewhere. Subject to court approval, the company agreed to pay \$6.68 million in criminal fines and to cooperate with the US Department of Justice's (DOJ) ongoing criminal investigation into alleged price-fixing of various auto parts. Including Aisan, 25 companies have now pled guilty or agreed to plead guilty during the DOJ's investigation, which has yielded more than \$1.8 billion in fines. *United States v. Aisan Industry Co., Ltd.* No. 2:14-cr-20047 (E.D. Mich.).
- **Koito Agrees to Plead Guilty – Lighting Fixtures and High-Intensity Discharge Lamp Ballasts** – On January 16, 2014, the DOJ announced that Koito Manufacturing Co., Ltd. (Koito) agreed to plead guilty to two counts of conspiring to fix prices for auto lighting fixtures and lamp ballasts. Subject to court approval, the company agreed to pay \$56.6 million in criminal fines and to cooperate with the DOJ's ongoing criminal investigation into alleged price-fixing of various auto parts. *United States v. Koito Manufacturing Co., Ltd.*, No. 2:14-cr-20021 (E.D. Mich.).
- **Two Former Diamond Electric Mfg. Co., Ltd. Executives Agree to Plead Guilty to Price-Fixing – Ignition Coils** – On January 31, 2014, Shigehiko Ikenaga and Tatsuo Ikenaga, former executives of Diamond Electric Manufacturing Co., Ltd., agreed to plead guilty to conspiring to fix the price of ignition coils sold to Ford Motor Co., Toyota Motor Corp., Fuji Heavy Industries Ltd. (Subaru), and certain of their subsidiaries for installation in vehicles manufactured in the US and elsewhere. Under the plea agreements, each of the defendants pled guilty to a single count of violating Section One of the Sherman Act. Shigehiko Ikenaga agreed to serve 16 months in prison; Tatsuo Ikenaga agreed to serve 13 months in prison. *United States v. Shigehiko Ikenaga*, No. 2:14-cr-20045 (E.D. Mich.); *United States v. Tatsuo Ikenaga*, No. 2:14-cr-20046 (E.D. Mich.).

LIBOR:

- **RBS Securities Japan Ltd. Sentenced for Manipulation of Yen LIBOR** – RBS Securities Japan Limited (RBS Japan), a subsidiary of the Royal Bank of Scotland plc, was sentenced on January 6, 2014 for its role in manipulating the Japanese Yen LIBOR rate. According to the DOJ, RBS Japan derivatives traders manipulated the Yen LIBOR rate at various times between 2006 and 2011 in order to benefit their trading positions. The sentence approves the terms of an April 23, 2013 plea agreement between RBS Japan and the DOJ in which RBS Japan pleaded guilty to one count of wire fraud and agreed to pay a \$50 million fine. *United States v. RBS Securities Japan Ltd.*, No. 13-cr-00073 (D. Conn.).
- **Former Rabobank Traders Charged with Yen LIBOR Manipulation** – The DOJ filed criminal charges on January 13, 2014 in federal trial court in Manhattan, New York, against three former Japanese Yen derivatives traders from Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank). They are accused of conspiring to manipulate the Yen LIBOR rate. According to the DOJ's complaint, from at least 2006 through at least January 2011, all three traders agreed to make false and fraudulent Yen LIBOR submissions for the benefit of their trading positions. As covered in a [previous Cartel Watch](#), in October 2013, US and European regulators fined Rabobank more than \$1 billion in connection with manipulating LIBOR and Euribor rates. The DOJ's press release is available here: <http://www.justice.gov/opa/pr/2014/January/14-crm-038.html>.

Individual Sentenced to Five Years in Prison for Price-Fixing

On December 6, 2013, the DOJ announced that the former president of Sea Star Line LLC was sentenced to serve five years in prison for his participation in a conspiracy to fix rates and surcharges for ocean cargo between the continental US and Puerto Rico. The sentence followed a two-week trial and is believed to be the longest-ever prison sentence for a US antitrust violation. As reported in a previous issue

of [Cartel Watch](#), the DOJ had recommended a seven-year sentence. Three companies, including Sea Star Line LLC, have pled guilty and been ordered to pay more than \$46 million in criminal fines in connection with this DOJ investigation. Six individuals, including the former Sea Star Line LLC president, have been sentenced to prison sentences from seven months to five years. *United States v. Peake*, No. 3:11-cr-00512 (D.P.R.).

Follow-On US Civil Class Action Update

State Attorney General Actions – The US Supreme Court ruled in a unanimous decision on January 14, 2014 that the Mississippi Attorney General's case against several manufacturers for the alleged price-fixing of liquid crystal displays (LCD) could not be removed to federal court under the Class Action Fairness Act (CAFA) of 2005. The LCD defendants argued that the suit should qualify as a "mass action" under CAFA and proceed in federal court because, as a *parens patriae* action, it represented the interests of more than 100 parties-in-interest. The Court found that Congress intended a "mass action" to involve monetary claims brought by 100 or more people who propose to try those claims jointly as named plaintiffs. Since the State of Mississippi was the only named plaintiff in the action, the Court ruled that the case may not be removed to federal court and will be remanded to state court. The decision may encourage more *parens patriae* actions by states, resulting in lawsuits being brought for the same alleged conduct in state court by state Attorneys General and in federal court by private plaintiffs. *Mississippi v. AU Optronics Corp. et al.*, No. 12-1036 (S. Ct.). For more background on this case, see the last issue of [Cartel Watch](#).

Foreign Trade Antitrust Improvements Act – On January 23, 2014, a federal trial court in Chicago, Illinois, concluded that Motorola Mobility, Inc. (Motorola) could not bring claims arising out of the LCD defendants' sales and delivery of LCD screens to Motorola's affiliates outside the US. In granting the LCD defendants' motion for reconsideration, the Chicago trial court found "clear error" with prior rulings on this subject by a federal trial court in San Francisco, California, which oversaw the pretrial

phase of the multidistrict litigation arising out of the alleged conspiracy by LCD makers. Specifically, the Chicago trial court found that these claims by Motorola fell outside both exceptions to the Foreign Trade Antitrust Improvements Act of 1982 (FTAIA) – which generally shields foreign conduct from the reach of US antitrust laws – and thus did not give rise to a cause of action under Section One of the Sherman Act. The Chicago trial court refused to reconsider the San Francisco trial court's earlier decision that such sales were not imports, finding the LCD defendants did not directly bring their products into the US. However, the Chicago trial court concluded that the extraterritorial sales were too far removed from US commerce to proximately cause a "domestic effect." *Motorola Mobility, Inc. v. AU Optronics Corp. et al.*, No. 09-C-6610 (N.D. Ill.).

First Class Action Settlement in Auto Parts

Cases – On January 7, 2014, attorneys for Nippon Seiki Co., Ltd. and its US subsidiaries (together, Nippon Seiki) announced a \$4.56 million settlement with indirect purchaser plaintiffs for claims against Nippon Seiki in the instrument panel clusters (IPC) case in the Eastern District of Michigan. The deal requires Nippon Seiki to cooperate with plaintiffs in their lawsuits against other IPC manufacturers, including Denso and Yazaki, by providing documents and making its employees available for interviews. However, the proposed settlement does not include the direct purchaser IPC lawsuit against Nippon Seiki. The plaintiffs moved for preliminary approval of the proposed settlement on December 23, 2013. Nippon Seiki previously agreed with the DOJ to plead guilty and pay a \$1 million fine in August 2012. *In re: Automotive Parts Antitrust Litigation*, No. 2:12-md-02311 (E.D. Mich.).

International Developments

Brazil: First Settlement under New Cartel Settlement Rules

On December 18, 2013, Brazil's Administrative Council for Economic Defense (CADE) announced a settlement agreement with Swiss robotics company ABB Ltd. in connection with alleged price-fixing of underground and submarine power cables. The

company will pay 1.5 million reais (approximately \$637,000). This is the first settlement under CADE's new settlement rules, which provide reduced fines for companies that admit to participation in a conspiracy and agree to cooperate with CADE's cases against remaining co-conspirator companies. CADE's press release is available here: <http://www.cade.gov.br/Default.aspx?55e839c050c55ad92c192b055be1>.

UK Competition Regulator Announces Criminal Charges Against Individual for Cartel Offense

On January 27, 2014, the UK's Office of Fair Trading (OFT) charged Peter Nigel Sneer with violating the criminal cartel offense of the Enterprise Act 2002. The OFT alleged that from 2004 to 2012, Mr. Sneer dishonestly agreed to allocate customers, fix prices, and rig bids relating to the supply of galvanized steel tanks for water storage in the UK. The OFT is conducting a parallel civil investigation. This is only the third time that UK authorities have criminally charged an individual with a cartel offense since 2003, when they were first granted power to do so. Reforms taking effect in April are expected to make it easier for the UK authorities to bring criminal cartel charges against individuals, because they will no longer need to demonstrate that an individual "dishonestly" participated in such offenses. Mr. Sneer, however, was charged under the current law and is scheduled to reappear in court in February for a preliminary hearing. OFT's press release is available here: <http://www.offt.gov.uk/news-and-updates/press/2014/04-14#.UukjlvluV8E>.

European Commission Fines Foam Manufacturers

On January 29, 2014, the European Commission (EC) imposed a €114 million fine against flexible polyurethane foam manufacturers for engaging in a cartel. Vita, Carpenter, Recticel, and Eurofoam, suppliers of foam used in mattresses, sofas, and car seats, agreed to settle the EC's infringement investigation in exchange for reductions in fines. The EC found that from 2005 to 2010, the manufacturers coordinated the price of various types of foam in ten EU Member States. This is the tenth case decided under the EC's settlement procedure, under which parties acknowledge their cartel participation in

exchange for a 10% reduction in fines. The settlement also allows the EC to apply a simplified and quicker investigation procedure. Vita received full immunity for revealing the alleged cartel, avoiding a €61.7 million fine. In addition, Recticel, Eurofoam, and Greiner received 50% fine reductions under the EC’s leniency procedures as reward for their cooperation during the investigation. The EC’s press release is available here: http://europa.eu/rapid/press-release_IP-14-88_en.htm.

China: “Horizontal” Agreement Civil Case under China’s Anti-Monopoly Law

In November 2013, the Beijing Second Intermediate People’s Court issued a ruling in the first horizontal agreement case reviewed under China’s Anti-Monopoly Law since its introduction in 2008. Although there have been prior horizontal agreement rulings, they relied upon earlier legislation. In a private action, the court found that the Beijing Seafood Wholesale Industry Association’s rules on setting prices for scallops and prohibiting sales of scallops to non-members violated China’s Anti-Monopoly Law. The decision is available here: <http://bj2zy.chinacourt.org/public/detail.php?id=1152>.

Cartel Fine Tracker – 2013: Year in Review

On November 14, 2013, William Baer, head of the DOJ’s Antitrust Division, testified to the US Senate that the DOJ had obtained approximately \$1.02 billion in fines in fiscal year 2013.¹ More than 80% of the Division’s fines were issued in connection with the ongoing investigations into the auto parts industry.

Jurisdiction	Total Fines in 2013
United States	USD 1.436 Billion
EU ²	EUR 1.897 Billion (approx. USD 2.569 Billion)
Japan	JPY 21.52 Billion (approx. USD 218.2 Million)

1. The DOJ’s 2013 fiscal year ran from 10/1/2012 to 9/30/2013.
2. Cartel fines imposed by the EC in 2013, when factoring in appellate court decisions in 2013, total €1.628 billion.

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