

# Cartel Watch

## Fifth Edition

In this fifth 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

- **Nine Auto Parts Companies and Two Executives Plead Guilty:** On September 26, 2013, the DOJ announced that nine auto parts companies and two executives with auto parts companies agreed to plead guilty to price-fixing various auto parts. Charges were filed in federal courts in the Eastern District of Michigan, the Southern District of Ohio, and the Northern District of Ohio. The combined corporate fines were over \$740 million, nearly doubling the total fines that companies have paid in the auto parts investigation, which now stands at over \$1.6 billion. In addition, one Japanese executive and one American executive, who had each served as executives of US subsidiaries of their respective Japanese companies, agreed to prison terms of 12 months and 14 months, respectively. The DOJ press release stated that the various auto parts involved in the price-fixing agreements to which the companies pled guilty were sold to Chrysler, Ford, and General Motors, as well as to the US subsidiaries of Honda, Mazda, Mitsubishi, Nissan, Toyota, and Fuji Heavy Industries (Subaru). The full list of defendants pleading guilty, including their fines or sentences, and the auto parts involved in each plea, is available at [http://www.justice.gov/atr/public/press\\_releases/2013/300969b.pdf](http://www.justice.gov/atr/public/press_releases/2013/300969b.pdf)
- **Takata Corp. Fined \$71.3 Million – Seat Belts:** On October 9, 2013, Takata Corp. (Takata) announced that it had reached a plea agreement with the DOJ to plead guilty for its role in an alleged conspiracy to fix the prices of seat belts sold to car manufacturers. Charges were filed in federal court in the Eastern District of Michigan. Takata agreed to pay a \$71.3 million fine. Takata and other occupant safety systems manufacturers are in the midst of a follow-on class action lawsuit in the Eastern District of Michigan based on their alleged conspiratorial conduct to fix the prices of seat belts, airbags, and steering systems. *United States v. Takata Corp.*, No. 2:13-cr-20741 (E.D. Mich.).
- **G.S. Electech Executive Indicted – Speed Sensor Wire Assemblies:** A federal grand jury in the Eastern District of Kentucky indicted Shingo Okuda, a Japanese executive at G.S. Electech, Inc., 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 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. 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.).

- **Fujikura Executives Indicted – Wire Harnesses and Related Products:** On September 19, 2013, a federal grand jury in the Eastern District of Michigan indicted two former executives of an auto parts company for their roles in a conspiracy to fix prices and rig bids of wire harnesses and related products. Ryoji Fukudome and Toshihiko Nagashima, Japanese nationals and former executives of Fujikura Ltd. (Fujikura), are charged with engaging in a conspiracy to fix, stabilize, and maintain the prices of wire harnesses and related products sold to Fuji Heavy Industries (Subaru) in the United States and elsewhere. Fujikura agreed to plead guilty in April 2012 for its role in that conspiracy and to pay a \$20 million fine. Both Mr. Fukudome and Mr. Nagashima were carved out of Fujikura's plea agreement, which was filed on June 21, 2012. *United States v. Ryoji Fukudome and Toshihiko Nagashima*, No. 2:13-cr-20689 (E.D. Mich.).
- **Panasonic Executive Indicted – Auto Switches and Sensors:** On September 24, 2013, the DOJ announced an indictment that it had filed against Shinichi Kotani, a Japanese national and Panasonic executive, for his role in an alleged conspiracy to fix prices for automotive switches and sensors. The indictment states that Mr. Kotani was an employee at Panasonic Automotive Systems of America in the United States from April 2008 to July 2009 and was at other relevant times employed by Panasonic in Japan. The indictment alleges that Mr. Kotani and unnamed co-conspirators supplied switches and sensors to Toyota for installation in vehicles manufactured and/or sold in the United States and elsewhere. *United States v. Shinichi Kotani*, No. 2:13-cr-20700 (E.D. Mich.).

## DOJ Recommends Seven-Year Prison Sentence for Shipping Executive

The DOJ filed a sentencing memorandum in federal court in the District of Puerto Rico, recommending that a shipping executive be sentenced to 87 months in prison for his role in a price-fixing scheme. Frank Peake, the former president of Sea Star Line, was convicted of participating in a conspiracy to fix shipping rates and surcharges for water transportation of freight between the continental US and Puerto Rico from at least late 2005 to April 2008. If the court agrees with the DOJ's proposed sentence, it would be the longest sentence ever given to an antitrust violator. The DOJ stated that this was the largest domestic conspiracy the department had ever handled, affecting billions of dollars in commerce, and that Peake exercised significant control over other conspirators. Notably, Peake was the only defendant in the conspiracy to take his chances at trial and refuse to cooperate with the DOJ and plead guilty. *USA v. Peake*, No. 11-cr-00512-JAF (D.P.R.).

## Follow-On US Civil Class Action Update

### HannStar Loses LCD Conspiracy Trial; Toshiba Prevails Over Best Buy

On September 3, 2013, Best Buy's long-running case against Toshiba and HannStar Display Corp. (HannStar) culminated when the jury returned a verdict finding for Toshiba after a six-week trial in federal court in the Northern District of California. Jurors unanimously found that HannStar had conspired with other LCD manufacturers to fix prices of LCD panels, but Toshiba did not. Prior to the trial, the DOJ had previously fined HannStar \$30 million for its participation in conspiratorial price-fixing meetings in Taiwan, but Toshiba was never indicted. The jury awarded Best Buy \$7.5 million in damages of the \$770 million it requested, finding that Best Buy had passed on the vast majority of added costs to its customers. Best Buy was one of many plaintiffs who opted out of participating in the direct purchaser class action brought against the LCD manufacturers. *In re: TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827 (N.D. Cal.).

## **Taiwanese Auto Lights Manufacturers Forfeited Benefits of ACPERA**

On August 26, 2013, a federal judge in the Central District of California issued a rare opinion interpreting the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (ACPERA). ACPERA incentivizes cartel whistleblowers by limiting a successful amnesty applicant's civil liability to actual, rather than treble, damages, based only on its own sales in exchange for cooperation in both the DOJ criminal case and any follow-on civil lawsuit. The court granted the plaintiffs' motion for an order that defendants TYC Brother Industrial Co. Ltd. (TYC) and Genera Corp. (Genera) forfeited the benefits of limited civil liability provided under ACPERA. The court ruled that TYC and Genera did not provide the plaintiffs with timely cooperation and failed to substantially cooperate more than complying with standard federal rules governing discovery. The court noted that ACPERA requires an amnesty applicant to provide a "full account" of "all facts known" and "all documents" that are "potentially relevant to the civil action." ACPERA, §213(b). By contrast, the court concluded that Genera and TYC concealed information relevant to the price-fixing conspiracy from the plaintiffs, notably delaying disclosure of the conspiracy's start date. The defendants had disclosed this fact to the DOJ. *In re: Aftermarket Auto. Lighting Prod. Antitrust Litig.*, No. 2:09-ml-02007, 2013 WL 4536569 (C.D. Cal. Aug. 26, 2013).

## **Auto Parts Makers Motion for Immediate Appeal Denied**

On September 6, 2013, the Honorable Marianne O. Battani denied the requests of Lear Corp. (Lear) and Kyungshin-Lear Sales and Engineering, LLC (KL Sales) to immediately appeal the decision on their motions to dismiss, which we reported on here <http://antitrust.weil.com/articles/auto-parts-class-actions-proceed-after-motions-to-dismiss-denied/>. The judge in the Eastern District of Michigan, presiding over 12 auto parts civil suits, found that no substantial ground for a difference of opinion existed to warrant an immediate appeal to the Sixth Circuit. KL Sales and Lear had argued that the plaintiffs did not allege specific, plausible facts that they participated in the alleged wire harness conspiracy,

since neither company has been investigated by the DOJ or even been "contacted" by the DOJ. The DOJ previously obtained guilty pleas and corporate fines from three other companies for alleged participation in the wire harness cartel: Furukawa Electric Co., Ltd. (\$200 million), Yazaki Corp. (\$470 million, including two other auto parts), and Fujikura, Ltd. (\$20 million). Lear also argued that there is no law on this issue in the Sixth Circuit, in which general allegations of a conspiracy are used to import a defendant who has not pled guilty or admitted wrongdoing when other defendants have done so. The court held that the participation of KL Sales and Lear in the alleged conspiracy was plausible based on conditions in the wire harness market, including market concentration, high barriers to entry, the capability of producing products for use in any vehicle, and opportunities to conspire at industry trade associations. The court also found that an appeal would be inefficient, since the multi-district litigation involves numerous other auto parts and defendants, and would be faster resolved at one time at the conclusion of the litigation. *In re: Auto. Parts Antitrust Litig.*, *In re: Wire Harness Cases*, No. 2:12-cv-00100 (E.D. Mich.).

## **International Developments**

### **EU Court Reduces EC Fine for Bathroom Fixtures Cartel by \$271 million**

Five companies that were formerly part of the American Standard business in Europe appealed the European Commission's decision to impose fines of €326 million for participation in a price-fixing conspiracy that allegedly lasted from 1992 to 2004. In 2010, the EC fined 17 manufacturers of sinks, faucets, baths, and other bathroom fixtures a total of €622 million. On September 16, 2013, the EU General Court in Luxembourg largely upheld the five companies' appeals and reduced the fine by around €203 million to around €123 million in total. The court reduced the fine for two reasons. First, the court found that the infringement relating to ceramic products in Italy lasted only for 11 months, as this was the period during which sensitive information was disclosed to other ceramics suppliers. For the remaining period, information had been disclosed only to companies

that did not supply ceramics, which the court found was not capable of having an impact on competition. Second, while the EC had granted the applicants partial immunity for disclosing information relating to infringements in France and Belgium, when the EC calculated the amount of the fine, it incorrectly took into account sales revenues relating to the practices for which partial immunity had been granted, contrary to the EC's 2002 leniency guidelines. Case T-380/10, *Wabco Europe and Others v. European Commission* (September 16, 2013).

### Cartel Fine Tracker - Q3 2013

The DOJ's lead cartel enforcement attorney, Scott Hammond, retired on October 1, 2013, announcing \$820.9 million in fines during his last quarter. Nearly all of these fines came from the auto parts sector. An EC fine levied in 2010 for bathroom fixtures was reduced this quarter, decreasing the EU's fines for FY2013 to negative numbers. The JFTC 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 in Q3 2013 (7/1-9/30)	Fines by Investigation in Q3 2013
United States	USD 989.8 Million	USD 168.9 Million	—	USD 820.9	<b>USD 744.3 Million</b> Auto Parts – 9/26/13  <b>USD 57.6 Million</b> Auto Parts & Battery Cells – 7/18/2013  <b>USD 19 Million</b> Auto Parts (Ignition Coils) – 7/16/2013
EU*	EUR (-128) Million (approx. USD -171.5 Million)	EUR (-66) Million (approx. USD (-87.6) Million)	EUR 141 Million (approx. USD 187.1 Million)	EUR (-203) Million (approx. USD 271 Million)	EUR (-203) Million – Bathroom Fixtures – 9/16/2013
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)	—	—

\*Cartel fines imposed by the EC in 2013 without factoring in appellate court decisions in 2013 total €141.8 million.

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