

Cartel Watch

Volume 3, Issue 2

In this issue of *Cartel Watch*, we continue our coverage of notable developments in U.S. and international cartel enforcement and provide our Cartel Fine Tracker for Q1 2015.

U.S. Criminal Enforcement

Attorney General Holder Discusses Antitrust Enforcement at an ABA Antitrust Conference

Then-Attorney General Eric Holder delivered the keynote speech on April 17 at the ABA's Antitrust Law Spring Meeting in Washington, D.C. Holder extolled the accomplishments of the Department of Justice ("DOJ") under his watch, saying that for the past six years "we have worked tirelessly to realize antitrust law's promise of robust marketplaces and fair competition." He stated that when there were threats to that promise and when violations were discovered, "we have been prepared to litigate in full, no matter how complex the case." Holder elaborated that, "[w]hether it involves price fixing of computer components or bid rigging in real estate foreclosure auctions, we have pursued all forms of criminal conduct – running the gamut from local wrongdoing to transnational crime."

Holder said the commitment to vigorous antitrust enforcement extends as far back as 2007 when then-Senator Barack Obama vowed that, if he were elected president, he would step up enforcement in a comprehensive way to "ensure that the benefits of competition are fully realized by consumers." Holder noted that the DOJ's actions have sent a "clear and consistent message" that anticompetitive conduct would not be tolerated.

Updates in Automotive Parts Antitrust Investigations and Civil Litigations

- **Hitachi Executive Pleads to Auto Parts Conspiracy:** On April 23, the DOJ announced that a Japanese executive at Hitachi Automotive Systems Ltd. ("Hitachi") agreed to plead guilty for his role in a conspiracy to fix the prices of various automotive parts sold to several OEMs. Takashi Toyokuni was previously indicted by a federal grand jury in the Eastern District of Michigan in September 2014 for his role in a conspiracy to bid-rig and fix the prices of starter motors, alternators, air flow meters, valve timing control devices, fuel injection systems, electronic throttle bodies, ignition coils and inverters and/or motor generators. The affected OEMs were noted as Ford, GM, Nissan, Toyota, Honda, and certain of their subsidiaries.

The plea agreement charges Toyokuni with participating in the alleged conspiracy from January 2000 through February 2010. Toyokuni agreed to serve 15 months in a U.S. prison and to pay a \$20,000 criminal fine.

Hitachi pled guilty on Nov. 6, 2013 for its role in a conspiracy to fix the prices of various auto parts and paid a \$195 million criminal fine. Three other individuals from Hitachi were also charged in the September 2014 indictment, but only Toyokuni has agreed to plead guilty thus far.

Including Mr. Toyokuni, 52 individuals have been charged by the DOJ, and 30 of those individuals have agreed to plead guilty and pay criminal fines and serve jail sentences of at least one year. 35 companies have pled guilty or agreed to plead guilty to price-fixing in the auto parts industry. Almost \$2.5 billion in criminal fines have been imposed.

- **Yamada Pleads to Auto Parts Conspiracy Affecting Sales of Manual Steering Columns:** Yamada Manufacturing Co. Ltd. has agreed to plead guilty to participating in a conspiracy to fix prices and rig bids for manual (non-electric or non-hydraulic) steering columns (“Manual Steering Columns”). Yamada agreed to pay a criminal fine of \$2.5 million. On April 28, the DOJ filed a one-count Information against Yamada in the U.S. District Court for the Southern District of Ohio. The Information alleges that Yamada conspired to fix prices for Manual Steering Columns sold only to Honda and certain of its subsidiaries from 2007 to 2012. To date, there is no Manual Steering Columns auto part case in the Automotive Parts Antitrust Litigation, though there is a case covering Electric Powered Steering Assemblies.
- **Bosch Pleads to Conspiracy Affecting Certain Auto Parts:** On April 1, the DOJ announced that auto parts supplier Robert Bosch GmbH agreed to plead guilty for its role in a conspiracy to bid-rig and fix the prices of spark plugs, oxygen sensors, and starter motors sold to automobile and internal combustion engine manufacturers for installation into vehicles and engines. Bosch, a German manufacturer, will pay a \$57.8 million fine.

According to the Information filed in the Eastern District of Michigan district court, the spark plugs and oxygen sensors were sold to DaimlerChrysler AG, Ford, General Motors, and Andreas Stihl AG & Co. The starter motors were allegedly sold to Volkswagen AG and certain of its subsidiaries in the United States.

Bosch’s participation in the spark plug and oxygen sensor conspiracy allegedly lasted from as early as January 2000 until at least July 2011, and for starter motors, from at least as early as January 2009 until June 2010.

- **Former T-Rad Executive Indicted for Alleged Role in Price Fixing of Radiators:** On May 14, a federal grand jury in the Eastern District of Michigan issued an indictment against a former T-Rad Co. executive for his alleged role in a conspiracy to fix the prices of radiators sold to Honda and Toyota. The indictment alleges that Michitaka Sakuma and unnamed co-conspirators conspired to fix the prices of radiators beginning in at least October 2003, and continuing until at least February 2010. The indictment further alleges that T-Rad and its co-conspirators manufactured and sold radiators in the United States, in Japan for export to the United States for installation in vehicles assembled in the United States, and in Japan for vehicles assembled in Japan and exported to the United States. In 2013, T-Rad pled to antitrust violations involving its sales of radiators and automatic transmission fluid warmers.

Deutsche Bank Pleads to LIBOR Manipulation, Pays \$2.5 Billion

In April 2015, Deutsche Bank AG agreed to a deferred prosecution agreement, an independent monitor, and a \$2.5 billion fine to resolve U.S. and U.K. authorities’ claims that its traders manipulated the London Interbank Offered Rate (“LIBOR”). LIBOR is a leading benchmark interest rate used in financial products and transactions around the world. Deutsche Bank is the sixth major financial institution that has admitted to misconduct connected to LIBOR, and its \$2.5 billion fine is the largest penalty to date in the LIBOR investigation.

Deutsche Bank entered into a deferred prosecution agreement and admitted its role in manipulating LIBOR and participating in a price-fixing conspiracy in violation of the Sherman Act by rigging Yen LIBOR contributions with other banks. The agreement requires the bank to continue cooperating with the Department of Justice (“DOJ”) in its ongoing investigation, to pay a \$625 million penalty beyond the fine imposed upon DB Group Services (UK) Limited and to retain a corporate monitor for the three-year term of the agreement. DB Group Services (UK) Limited, a wholly owned subsidiary of Deutsche Bank AG (Deutsche Bank) also agreed to plead guilty to one count of wire fraud for its role in the LIBOR manipulation and pay an additional \$150 million fine.

The DOJ has previously announced resolutions with five other banks for their roles in manipulation of benchmark interest rates, including Barclays Bank PLC, UBS AG, The Royal Bank of Scotland plc, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank) and Lloyds Banking Group plc. Twelve individuals have also been charged as a result of this investigation, of which three individuals have pleaded guilty.

Shipping Executive Acquitted by Jury in Antitrust Case

On May 8, a jury in Puerto Rico acquitted a Florida executive who faced charges relating to antitrust violations affecting freight services to Puerto Rico. Thomas Farmer, a former vice president of price and yield management for Crowley Liner Services Inc., faced up to \$1 million in fines and 10 years in prison for his alleged role in working with competing companies to manipulate rates and surcharges for shipments of certain goods to Puerto Rico.

Five other executives at other shipping and transportation companies have pleaded guilty to their roles in the conspiracy or to hiding evidence and, in January 2013, a Puerto Rican jury convicted another executive, Frank Peake, for his involvement in the conspiracy. In December, Peake was sentenced to five years in prison, a sentence which the DOJ noted was, at that time, the longest-ever imposed for an antitrust violation. In addition, three companies have

paid a total of over \$46 million in criminal fines in connection with the conspiracy.

Truck Dealer Class Action Filed Against Manufacturer of Truck Parking Heaters

In March 2015, Michigan-based Espar Inc., a manufacturer of removable vehicle heaters, pled guilty to one count of violating the Sherman Act for price fixing these devices, known as parking heaters. Truck drivers who sleep in their cabs use the devices to keep warm without using a lot of gasoline or idling their trucks.

Shortly after Espar pled guilty to price fixing, a putative class of commercial truck dealers filed a class action against Espar in New York federal court. The class action complaint alleges that Espar conspired with similar manufacturers to fix prices for the devices that typically cost between \$800 and \$1500. While Espar agreed to pay a criminal fine of nearly \$15 million, its plea agreement did not require the company to pay restitution to those harmed by the conspiracy, according to the complaint.

International Developments

European Court of Justice Upholds Fines Imposed on Three Banana Sellers for Information Exchange

In a judgment published on March 19, 2015, the European Court of Justice (“ECJ”) explicitly stated that companies sharing commercially sensitive material are liable for cartel violations without the European Commission (“EC”) needing to show anti-competitive effect. Rather, the exchange of information between competitors affecting the “timing, extent and details” of market conduct is anti-competitive by object.

In so holding, the ECJ dismissed Dole Foods’ appeal of the judgment and fine it incurred for participation in a banana cartel. The EC had found that, between 2002 and 2003 Dole, Weichert, and Chiquita routinely discussed and disclosed their pricing intentions shortly before setting them.

In a press release, the EC noted that “[t]his [information exchange] had the object of creating competitive conditions that do not correspond to the

normal conditions on the market without collusive contracts, and therefore gave rise to a concerted practice between the companies with the object to restrict competition.”

As a result, Dole must pay its €45.6 million fine plus costs. Chiquita notified the EC about the conspiracy and received immunity from a €83.2 million fine. Dole, Weichert and Del Monte (Weichert’s partner) remained to pay the €60.3 million between them. Del Monte has brought a separate appeal against the decision, but challenges the ruling on parental liability grounds.

KFTC Fines Five Automotive Parts Companies

The Korea Fair Trade Commission (KFTC) has levied a combined \$3.1 million in fines, in addition to conduct remedies, on five manufacturers of automotive parts for their alleged price-fixing. Denso Corporation, Denso Korea Automotive, NGK, Yura Tech, and Woojin Industry are alleged to have fixed prices of products including ignition coils, spark plugs, and exhaust gas temperature sensors (EGTS).

The alleged price fixing affected bids submitted to Hyundai Kia Motor between at least 2008 and 2011. Denso and NGK were found to have conspired on bids submitted to supply EGTS; Denso Korea Automotive and Yura Tech colluded in fixing the prices of ignition coils; and Woojin Industry and Yura Tech fixed the bid prices of spark plugs.

According to reports, a KFTC official stated that the competition agency would continue its rigorous investigation of cartels.

KFTC Faces Record of Returning Fines After Appeals

In the past five years, the Korea Fair Trade Commission (KFTC) has returned over \$305 million in fines collected after its victories have been reversed on appeal.

According to reports, the KFTC has imposed \$4.36 billion in fines from 2010 to 2014 but has had to return almost 7 percent of its gains. The KFTC has paid \$33.6 million in interest in addition to the \$305 million returned after target companies have appealed and won reversal of the fines imposed.

Cartel Fine Tracker – Q1 2015

Jurisdiction	Fines Imposed
U.S. Department of Justice	\$867 million
JFTC	¥7.06 billion
European Commission	€14.96 million

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