

ANTITRUST TRADE AND PRACTICE

Expert Analysis

Auto Parts and Antitrust: A Cautionary Tale

In September 2011, the Department of Justice formally announced the first settlement in its investigations into an international automobile parts price-fixing and bid-rigging conspiracy.¹ What has become the largest criminal antitrust investigation in American history began with the guilty plea of a Japanese automotive wire harness manufacturer. As the first casualty of the inquiry into an auto parts cartel, the company was required to pay a \$200 million fine, and three executives were sentenced to prison terms ranging from one year to 18 months.²

In the three years since the guilty plea, the Justice Department has continued the auto parts investigations, charging more than 30 individuals and 27 companies with antitrust violations, collecting more than \$2.3 billion in fines, and demonstrating its resolve in ferreting out bid-rigging, customer allocation and price-fixing across a wide range of industries. With new indictments as recently as Oct. 17, 2014, the investigation continues to move forward at full steam.

Background

While a wire harness manufacturer was the first company to be indicted in the investigations, the Justice Department initially investigated three other parts manufacturers. In February 2010, 18 months before the September 2011 announcement, the Justice Department (partnering with the FBI) conducted a series of raids in Detroit.³ They targeted the offices of three Toyota Motors suppliers. Following information gathered from these raids, the department expanded its investigation to include \$5 billion worth of auto parts, including parts manufacturers of steering wheels, seat belts, ignition coils, windshield wipers, rubber



By
**Shepard
Goldfein**



And
**James A.
Keyte**

vibration dampeners and many other products.

Although the Justice Department's investigations first became public in February 2010, for many of the companies being investigated the department believed that the alleged anticompetitive colluding took place beginning nearly a decade earlier, from as early as 2000 through at least 2010. According to one of the department's criminal complaints, numerous auto parts companies agreed to allocate the supply of auto parts on a model-by-model basis for specific model parts and coordinate price adjustments requested by automobile manufacturers.⁴ These agreements allegedly occurred in a variety of ways, but most commonly involved the conspirators meeting in private locations, destroying paper trails, and trading coded emails.⁵

According to the Justice Department, as a result of these concerted actions "automobile manufacturers paid non-competitive and higher prices for parts in cars sold to U.S. consumers."⁶ The Justice Department believes that manufacturers then passed these higher prices on to consumers: "it's a very, very safe assumption that U.S. consumers paid more, and sometimes significantly more, for their automobiles as a result of this conspiracy."⁷

Settlements and Implications

When the Justice Department accepted the first guilty plea in 2011, the \$200 million fine was one of the largest ever imposed by the depart-

ment in a criminal antitrust context. In the years that followed, the Justice Department continued to impose and collect record-breaking fines related to the investigations, including a \$470 million fine from one company, the second largest criminal antitrust fine ever imposed.⁸

In addition to the unprecedented fines collected by the department, the auto parts investigations have had various implications for the Justice Department's antitrust agenda. Two settlements are particularly noteworthy for their circumstances and consequences.

Obstruction. The Justice Department alleged that from January 2000 until at least February 2010, the largest auto parts manufacturer in the world engaged in bid-rigging and price-fixing for electronic control units and heater control panels.⁹ In March 2012, the company pleaded guilty to the conspiracy charges and agreed to pay a \$78 million fine. For their role in the conspiracy, six executives were also indicted and agreed to plead guilty for the conspiracy. One of the executives, a former director, was indicted for obstruction of justice and sentenced to one year and one day in prison for destroying emails and other documents after learning about the February 2010 raid on the company's Detroit offices. According to the Justice Department, the destroyed documents contained discussion between the company and its competitors coordinating bids for the heater control panels on the Toyota Avalon.¹⁰

Obstruction of justice indictments generally are very unusual in the criminal antitrust context, but beginning with the executive's indictment the Justice Department has stated that it will "vigorously prosecute individuals who destroy evidence in an attempt to conceal their participation in illegal conspiracies."¹¹ Within months of this proclamation, the Justice Department indicted its second executive for obstruction of justice. Like the first, a former employee at an investigated company was accused of destroying paper and electronic documents after learning about the FBI raid and encouraging other employees to do the same.¹²

SHEPARD GOLDFEIN and JAMES KEYTE are partners at Skadden, Arps, Slate, Meagher & Flom. NAJLA LONG, an associate at the firm, assisted in the preparation of this column.

Thus far, no corporations have been charged with obstruction of justice, but two companies detailed how they destroyed evidence in their respective plea agreements.¹³ Given the Justice Department's willingness to prosecute destruction of evidence for individuals, it's likely that similar indictments for companies are not far off.

Amnesty Plus. Another major auto parts manufacturer was also indicted for similar bid-rigging conspiracies, but involving different products. The Justice Department alleged that the company engaged in bid-rigging and price-fixing for anti-vibration rubber products between January 2001 and December 2008.¹⁴ The company's sales of the product totaled approximately \$750 million during the length of the conspiracy. In February 2014, it agreed to plead guilty and pay a \$425 million criminal fine, the fourth-largest in history.¹⁵

Unlike many of the other defendants, however, this company was accused of being a "recidivist" that had been investigated and indicted for a different antitrust violation in 2011. In October of that year, it pleaded guilty and paid a \$28 million fine for violations of the Foreign Corrupt Practices Act in the marine hose industry. But, the company did not use that opportunity to admit involvement in the auto vibration product conspiracy. This failure to disclose was factored into its \$425 million fine.

The added fine is an example of the Justice Department's emphasis on cooperation from criminal defendants. As Assistant Attorney General Thomas Barrett discussed in 2006, the department views defendant cooperation as "invaluable in detecting cartels and in collecting the evidence necessary to obtain a conviction."¹⁶ And the Justice Department's emphasis on criminal cooperation has been evident throughout the investigations. The many plea agreements reached demonstrate the success of the antitrust division's leniency program. Called "Amnesty Plus," the program allows a company that is being investigated for one conspiracy to report its involvement in a separate conspiracy and receive leniency in that separate conspiracy.¹⁷

As the initial auto parts investigation centered on wire harnesses, companies in the alleged cartel that produced other auto parts, but were being investigated for the original conspiracy, were able to admit their involvement to receive a better plea agreement. The exact number of companies that took advantage of the "Amnesty Plus" policy is unknown, but is likely considerable. The spread of the auto parts investigations from wire harnesses to encompassing more than 30 products has been widely attributed to companies self-reporting their involvement to the department.

It is important to note that the Justice Department has moved to block discovery of all leniency agreements related to the auto parts investigation in order to maintain the efficacy of the program.¹⁸ According to the department, releasing information about the leniency agreements to citizens seeking to bring

civil suits would have chilling effects on future companies that would have otherwise taken advantage of "Amnesty Plus."

Other Implications

The success of the auto parts investigation also reflects the importance of international cooperation amongst competition agencies. Since the early stages of the investigation, the Justice Department has coordinated with competition agencies in Japan, the European Union, Canada, Korea, Mexico and Australia.¹⁹ This coordination extended beyond the simple investigation as the division has leveraged these relationships to force the many foreign nationals indicted in the conspiracy to submit voluntarily to U.S. jurisdiction. It is rare for foreign nationals to serve any time for price-fixing violations of American antitrust law, but rather than have their names placed on international watch lists and their travel severely limited, all of the non-citizen executives who have entered pleas with the Antitrust Division have agreed to serve their time in U.S. prisons.

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In a similar vein, the auto parts investigation has highlighted the Justice Department's commitment to fully prosecuting criminal violations of antitrust law. To date, the department has sought criminal penalties against more than 37 auto parts executives in addition to their companies. And even after collecting more fines than in any other criminal antitrust investigation, Attorney General Eric Holder has promised that the investigation will continue as investigators "check under every hood and kick every tire."²⁰

Conclusion

The Justice Department's investigation has targeted a significant portion of the auto parts industry. Companies that have been spared thus far should not rest easy as the investigation is still ongoing. Until the formal conclusion and moving forward, members of the auto parts industry should take steps to identify potential risks and ensure that they are in full compliance with U.S. antitrust laws. Moreover, the Justice Department has highlighted the importance of being forthcoming in the investigation process.

The success of the "Amnesty Plus" program

coupled with Bridgestone's financial penalty for not disclosing other anticompetitive behavior suggest that the Justice Department is committed to seeking defendant cooperation in future criminal antitrust investigations.

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1. Press Release, U.S. Department of Justice, Furukawa Electric Co. Ltd. and Three Executives Agree to Plead Guilty to Automobile Parts Price-Fixing and Bid-Rigging Conspiracy (Sept. 29, 2011), http://www.justice.gov/atr/public/press_releases/2011/275503.htm.

2. Id.

3. Kevin Krolicki et. al., "FBI raids 3 Japanese auto parts makers near Detroit," REUTERS, (Feb. 24, 2010), <http://www.reuters.com/article/2010/02/24/toyota-raid-idUSN2412560320100224>.

4. Press Release, U.S. Department of Justice, Yazaki Executive Agrees to Plead Guilty to Price Fixing on Automobile Parts Installed in U.S. Cars (Aug. 16, 2012), http://www.justice.gov/atr/public/press_releases/2012/286113.htm.

5. Id.

6. Press Release, U.S. Department of Justice, Furukawa Electric Co. Ltd. and Three Executives Agree to Plead Guilty to Automobile Parts Price-Fixing and Bid-Rigging Conspiracy (Sept. 29, 2011) http://www.justice.gov/atr/public/press_releases/2011/275503.htm.

7. Eric Tucker, "Auto parts price-fixing probe rattles industry," ASSOCIATED PRESS, (May 25, 2014) <http://bigstory.ap.org/article/auto-parts-price-fixing-probe-rattles-industry>.

8. Press Release, U.S. Department of Justice, Yazaki Corp., DENSO Corp. and Four Yazaki Executives Agree to Plead Guilty to Automobile Parts Price-Fixing and Bid-Rigging Conspiracies (Jan. 30 2012) http://www.justice.gov/atr/public/press_releases/2012/279734.htm.

9. Plea Agreement at 3, *U.S. v. DENSO Corp.*, 2:12-CR-20063 (E.D.Mich. 2012).

10. Vin Gurreri, "Denso Exec Gets Year in Prison for Role in Auto Parts Cartel," LAW360, (June 30, 2014) <http://www.law360.com/articles/552958/denso-exec-gets-year-in-prison-for-role-in-auto-parts-cartel>.

11. Press Release, U.S. Department of Justice Office of Public Affairs, Former DENSO Corp. Executive Agrees to Plead Guilty to Obstructing Automotive Parts Investigation (Feb. 20, 2014) <http://www.justice.gov/opa/pr/former-denso-corp-executive-agrees-plead-guilty-obstructing-automotive-parts-investigation>.

12. Indictment at 7, *U.S. v. Hitoshi Hirano*, 2:14-CR-20293 (E.D.Mich. 2014).

13. Plea Agreement at 6, *U.S. v. Mitsubishi Electric Corp.*, 2:13-CR-20710 (E.D. Mich. 2013); Plea Agreement at 5, *U.S. v. Hitachi Automotive Systems Ltd.*, 2:13-CR-20707 (E.D.Mich. 2013).

14. Plea Agreement at 3, *U.S. v. Bridgestone Corp.*, 3:14-CR-00068 (N.D. Ohio 2014).

15. Press Release, U.S. Department of Justice, Bridgestone Corp. Agrees to Plead Guilty to Price Fixing on Automobile Parts Installed in U.S. Cars (Feb 13, 2014) http://www.justice.gov/atr/public/press_releases/2014/303743.htm.

16. Thomas O' Barnett, Criminal Enforcement of Antitrust Laws: The U.S. Model (Sept. 14, 2006) (transcript available at <http://www.justice.gov/atr/public/speeches/218336.htm>).

17. Press Release, U.S. Department of Justice, Frequently Asked Questions Regarding the Antitrust Division's Leniency Program and Model Leniency Letters (Nov. 19, 2008) <http://www.justice.gov/atr/public/criminal/239583.htm>.

18. Melissa Lipman, "DOJ Fights to Shield Leniency Docs in Auto Parts MDL," LAW360, (Oct. 18, 2013) <http://www.law360.com/articles/481446/doj-fights-to-shield-leniency-docs-in-auto-parts-mdl>.

19. Press Release, U.S. Department of Justice Office of Public Affairs, Nine Automobile Parts Manufacturers and Two Executives Agree to Plead Guilty to Fixing Prices on Automobile Parts Sold to U.S. Car Manufacturers and Installed in U.S. Cars (Sept. 26, 2013) <http://www.justice.gov/opa/pr/nine-automobile-parts-manufacturers-and-two-executives-agree-plead-guilty-fixing-prices>.

20. Alex Lawson, "Parts Supplier for Honda Hit with \$20M Price-Fixing Fine," LAW360, (May 29, 2014) <http://www.law360.com/articles/548441/why-auto-suppliers-must-focus-on-anti-trust-compliance>.