

# Client Alert

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## The Implications of DOJ's Auto Parts Price-Fixing Enforcement Actions

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### BACKGROUND

In plea agreements filed by the U.S. Department of Justice (DOJ) on September 26, 2013, nine automobile parts manufacturers agreed to pay more than \$740 million in criminal fines to resolve charges of price-fixing of more than 30 different auto part products.<sup>1</sup> These plea agreements are the most recent and significant developments in what DOJ has called the “largest criminal investigation the Antitrust Division has ever pursued.” Additional charges regarding auto parts are anticipated, both in the U.S. and in other jurisdictions where investigations are also pending.

The first charges in this investigation were first filed in 2011. A total of 20 companies now have agreed to pay more than \$1.6 billion in fines, and 17 executives have agreed to serve time in prison. The investigation continues. Earlier this week, the German Federal Cartel Office conducted dawn raids at additional investigation targets.

### KEY TAKEAWAYS

- **The plea agreements reflect the success of DOJ's “amnesty plus” policy**, pursuant to which DOJ offers leniency to a cooperating company that provides information about its involvement in a separate antitrust conspiracy. The auto parts industry investigation began with an investigation of conduct relating to a single product: wire harnesses.
- **The plea agreements highlight the increasing importance of cooperation among international competition agencies.** In their announcement, DOJ officials highlighted the efforts of their partner enforcement agencies, particularly the Japanese Fair Trade Commission. At least 20 companies have each paid fines of more than \$5 million as a result of the investigation. The companies pleading guilty on Thursday agreed to pay fines ranging from \$11 million to \$195 million.
- **The plea agreements continue a trend of increased DOJ criminal antitrust enforcement efforts.** DOJ will collect well over \$1 billion in criminal antitrust fines—an unprecedented amount—from companies in 2013. So far this year, 14 companies have pleaded guilty to Sherman Act violations.
- **The plea agreements also reflect DOJ's continued commitment to prosecuting individuals for criminal antitrust violations.** Two former executives of U.S. subsidiaries of Japan-based auto parts suppliers pleaded guilty and agreed to serve 12- and 14-month prison terms; 17 other individuals entered into pleas in recent months. In the past three years, the average prison sentence for Sherman Act violations has been 25 months. The DOJ has also successfully tried cases involving individuals, securing

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<sup>1</sup> The announcement is available at <http://www.justice.gov/opa/pr/2013/September/13-at-1074.html>.

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the conviction last year of three employees of a Taiwanese company for their involvement in the TFT-LCD panel cartel; DOJ is currently retrying a case against another TFT-LCD defendant.

### IMPLICATIONS FOR NON-U.S. COMPANIES

**The application of U.S. antitrust law to foreign activity remains an area of considerable uncertainty.** The Foreign Trade Antitrust Improvement Act of 1982, which governs the extraterritorial applicability of the Sherman Act, has confounded courts. Nevertheless, DOJ and civil plaintiffs continue to take an expansive view of the “extraterritorial” application of U.S. antitrust law, a view that some federal courts have embraced.

**DOJ’s increased foreign antitrust enforcement presents the prospect of staggering damages liability for companies.** Defendants in criminal antitrust cases face exposure to civil liability for treble damages in follow-on suits filed in federal and state courts. Class plaintiffs and individual customers at each level of a distribution chain, as well as state attorneys general, have been active in asserting claims in the wake of DOJ plea agreements. Even though federal law restricts civil antitrust exposure to the immediate purchaser of a price-fixed product, the states have a dizzying variety of black-letter rules and amorphous standards that allow indirect purchasers to seek relief, even when the direct purchaser has already obtained damages.

**DOJ’s increased foreign antitrust enforcement also has significant implications for foreign nationals.** While the individuals charged on Thursday were U.S. nationals, DOJ puts pressure on foreign nationals indicted in criminal antitrust cases to submit to U.S. jurisdiction by placing their names on the Interpol Red Notice Watch list. Thus, even if an individual targeted by DOJ resides in a country that would refuse to extradite to the United States, the individual still faces the possibility of extradition if he or she were to travel to a country that would extradite to the United States. That threat has forced many foreign nationals to submit to U.S. jurisdiction and enter into plea agreements with DOJ.

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