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# Automotive Webinar Q1/2015 - Cartels in the Automotive Sector

Die Automobilindustrie im Fokus der Kartellbehörden  
*Collusive practices in the eye of the storm*

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# Today's Agenda

- Introduction
- Investigations in the EU, North America, Asia and Brazil
- Why the automotive sector?
- Conclusions

## Sky-rocketing cartel fines!

- 2014 fines worldwide increased by 31% from previous year
- Reaching about \$5.3 billion
- EU Commission issued €1.67 billion in fines in 2014
  - 2010-2014: average fine per undertaking: €45.76 million
  - 1990-1994: average fine per undertaking: €2.92 million
  - Increased percentage of companies entering into settlement agreements with the Commission

## Sky-rocketing cartel fines!

- US agencies issued fines of \$1.27 billion in 2014
- The auto parts investigation is the largest international cartel case we have seen so far

# European Union

European Commission's fines for cartels in the broader automotive sector (2013/14)								
Case Number	Title	Product market	Fine	No of U/T involved	Form of collusion	Duration of collusion	Leniency	Settlement
39922	Bearings	Car and truck bearings	€953 million	6	Price fixing Exchange of information	7 years	JTEKT (100%) NSK (40%) NFC (30%) SKF (20%) Schaeffler (20%)	JTEKT (10%) NSK (10%) NFC (10%) SKF (10%) Schaeffler (10%) NTN (10%)
39801	Polyurethane Foam	Foam for mattresses, sofas and car seats	€114 million	4	Price fixing	5 years	Vita (100%) Recticel (50%) Eurofoam (50%)	Vita (10%) Carpenter (10%) Recticel (10%) Eurofoam (10%)
39748	Automotive wire harnesses	Wire harnesses	€141 million	4	Price fixing Allocation of supplies Bid rigging	From 2 months to 9 years	Sumitomo (100%) Yazaki (30% and 50%) Furukawa (40%) SYS (40%, 45%) Leoni (20%)	Sumitomo (10%) Yazaki (10%) Furukawa (10%) SYS (10%) Leoni (10%)

# European Union

- **EU (1)**

- **Case COMP 39922 - March 2014**
- The Commission fined producers of car and truck bearings €953 million (settlement)
- Two European companies (SKF and Schaeffler) and four Japanese companies (JTEKT, NSK, NFC and NTN) operated a cartel in the market for automotive bearings
- Customers (*i.e.* car, truck or car part manufacturers) select their suppliers through Requests for Quotations (RFQ), and often request yearly discounts (Annual Price Reductions (APR)) from their suppliers

# European Union

- **EU (2)**

- Companies coordinated the passing-on of steel price increases to their customers, colluded on RFQ and APR, and exchanged commercially sensitive information for more than seven years
- JTEKT benefited from immunity and avoided a fine of €86 million
- *“one of the largest cartel investigations ever conducted in a particular sector. Overall, more than 100 products and more than 70 companies are or have been investigated by the Commission”* (Former Competition Commissioner Almunia)

# European Union

- **EU (3)**

- **Case COMP 39801 - January 2014**
- The Commission fined producers of foam for mattresses, sofas and car seats €114 million
- Four producers coordinated the prices of various types of foam for nearly five years in 10 EU Member States
- The cartel aimed at passing on raw material price increases of bulk chemicals to customers, and avoiding aggressive price competition
- Price coordination meetings at all levels of European management



# European Union

- **EU (4)**

- Members usually met on the occasion of European and national associations
- Vita benefited from immunity and avoided a fine of €61.7 million
- **Case COMP 39748 - July 2013**
- The Commission fined producers of wire harnesses €141 million for the cartel for the supply of wire harnesses to Toyota, Honda, Nissan and Renault
- Yazaki paid €125 million

# European Union

- **EU (5)**

- Sumitomo, Yazaki, Furukawa, SYS and Leoni coordinated prices and allocation of supplies
- Sumitomo benefited from immunity and avoided a fine of €291 million
- In July 2012 the Commission carried out dawn raids in the sector of thermal systems for cars
- In June 2011 the Commission carried out dawn raids in the sector of seatbelts, airbags and steering wheels
- Since 2011 the Commission investigates Daimler, MAN and Volvo for price fixing

# European Union

- **Germany**

- In February 2013 the *Bundeskartellamt* conducted unannounced inspections of ArcelorMittal FCE Germany GmbH, ThyssenKrupp and Voestalpine in relation to suspected practices regarding steel for automotive customers
- In December 2014 the case was closed due to the lack of evidence
- In early 2014 the *Bundeskartellamt* opened an investigation into anticompetitive conduct among automotive heat shield manufacturers

# North America

- **USA (1)**

- In 2014 the Antitrust Division of the Department of Justice (DOJ) secured record high fines, approximately \$1.27 billion as compared to the previous high of \$1.13 billion in 2012 and \$1.02 billion in 2013
- Over 60% of the 2014 total fines resulted from the ongoing investigation of the automotive sector
- The automotive parts investigation in the US is the largest criminal investigation the DOJ has ever pursued both in terms of its scope and the potential volume of trade affected by an alleged illegal conduct

# North America

- **USA (2)**

- The DOJ focuses on prosecuting foreign corporations and individuals with a particular focus on Japan
- To date the Antitrust Division has secured plea agreements with 31 companies, 24 of which were imposed fines in excess of \$10 million
- Fines include the third and fourth largest criminal fines ever imposed in the US for antitrust violations
  - \$425 million against Bridgestone in 2014
  - \$470 million against Yazaki in 2012

# North America

- **USA (3)**

- The DOJ “*continues to vigorously prosecute companies and individuals*” involved in price fixing in the auto parts industry, executing Attorney General *Eric Holder’s* promise to “*check under every hood and kick every tire*”, dedicating significant resources to “*the largest criminal investigation the Antitrust Division has ever pursued*”

# North America

- **USA (4)**

- Fines of more than \$1 million during 2014

- Bridgestone Corp - \$425 million
    - Toyo Tire & Rubber Co, Ltd - \$120 million
    - Takata Corp - \$71.3 million
    - Koito Manufacturing Co, Ltd - \$56.6 million
    - NGK Spark Plug Co. Ltd - \$52.1 million
    - Toyoda Gosei Co. Ltd - \$26 million
    - Showa Corp. - \$19.9 million
    - Aisan Industry Co., Ltd - \$6.86 million
    - *et al.*

# North America

- **USA (5)**

- In February 2014 Bridgestone pled guilty and agreed to pay \$425 million for price fixing, bid rigging and sales allocation in the anti-vibration rubber parts industry
- In August 2014 NGK Spark plead guilty and agreed to pay \$52.1 million for bid rigging and price fixing of standard oxygen sensors, spark plugs and air fuel ration sensors
- In September 2014 Toyoda Gosei Co. agreed to plead guilty and to pay \$26 million for price fixing and bid rigging for automotive hoses, airbags and steering wheels
- *et al.*



# North America

- **USA (6)**

- To date, the DOJ charged 49 individuals with 29 individuals having pled guilty to sentences ranging from a year to two years
  - In July 2014 an executive at G.S. Electech Inc. pled guilty to fix prices of speed sensor wire assemblies used in anti-lock brake systems sold to Toyota and agreed to serve a 13-month prison sentence
  - In July 2014 the Division filed a plea agreement with an executive with Bridgestone Corp. who agreed to serve a 18-month sentence
  - In December 2014 the Division secured plea agreements with an executive with T. RAD Co. Ltd, and an executive with Mitsuba Corp. One agreed to serve a one-year sentence, the other agreed to serve a 13-month prison sentence
  - In January 2015 a former Toyoda Gosei executive agreed to plead guilty to a conspiracy involving automotive hoses and to serve an one-year sentence

# USA

Furukawa Electric Co Ltd.	Diamond Electric Mfg. Co. Ltd	Valeo Japan Co. Ltd
Yazaki Corporation	Panasonic Corp.	Yamashita Rubber Co. Ltd
Denso Corporation	Hitachi Automotive Systems Ltd.	Takata Corporation
G.S. Electech Inc.	JTEKT Corporation	Toyo Tire and Rubber Co. Ltd.
Fujikura Ltd.	Mitsuba Corporation	Stanley Electric Co. Ltd.
Autoliv Inc.	MELCO (Mitsubishi Electric Corporation)	Koito Manufacturing Co. Ltd.
TRW Deutschland Holding GmbH	Mitsubishi Heavy Industries Ltd.	Aisan Industry Co. Ltd.
Nippon Seiki Co. Ltd	NSK Ltd.	Bridgestone Corp.
Tokai Rika Co. Ltd	T.RAD Co. Ltd	

# North America

- **Canada (1)**

- In December 2014 Yamashita Rubber Co., Ltd pled guilty to bid rigging and accepted a fine of almost \$3.6 million
- In August 2014 Denso Corp. was fined almost \$2.5 million after pleading guilty for conspiring with other Japanese manufacturers
- Earlier in 2014 Panasonic, NSK and Yamashita were fined \$4.3 million, \$4 million and 4 million respectively
- In 2013 JTEKT, Yazaki and Furukawa were fined \$5 million, \$30 million and \$5 million for bid rigging

# North America

- **Canada (2)**

- Bid rigging concerned switches and sensors, wheel hub unit bearings, wire harnesses and electrical boxes
- Overall the Canadian Competition Bureau's investigation resulted in seven company guilty pleas and over \$45 million in fines
- No individual has pled guilty yet
- CCB looks to increase penalties for individuals convicted of criminal antitrust violations

# Asia

- **China (1)**

- The National Development and Reform Commission (NDRC) is increasing scrutiny of multinational undertakings
- Foreign companies paid more than three-quarters of the CNY 2.8 billion (approx. \$455 million) fines between 2011 and 2014
- Concerns relate to administrative proceeding
  - Lack of transparency
  - Inadequate safeguards
  - Protecting domestic undertakings by targeting foreign companies for enforcement actions

# Asia

- **China (2)**

- In November 2014 a trade deal between South Korea and China reportedly included provisions that South Korean companies operating in China receive the same treatment under Chinese antitrust law than domestic companies
- In December 2014 China reached an agreement with US which provides foreign companies with fair treatment, transparency and due process during enforcement of Chinese antitrust law

# Asia

## • China (3)

- In September 2014 NDRC fined a JV between FAW and Volkswagen and Chrysler for price-fixing
  - A fine of \$40.5 million was imposed on Audi (VW) because of monopolistic agreements with ten dealers to maintain high prices for cars and replacement parts; NDRC also fined eight Audi dealers \$4.9 million
  - Chrysler was fined \$5.2 million because of conspiring with dealers to keep prices high
- In August 2014 Daimler was found guilty of manipulating prices of after-sales services - no fine
- BMW dealers were fined \$260,000 for engaging in price manipulation

# Asia

- **China (4)**

- In August 2014 twelve Japanese car parts manufacturers were imposed a fine of €152 million - the largest antitrust fine ever imposed in China

- *“The companies involved had frequently conducted bilateral or multilateral talks in Japan, negotiating prices and agreeing on quotes for orders... This damaged the legitimate interest of downstream manufacturers and consumers” (NDRC)*

- Fines ranged between 6% and 8% of their relevant turnover

- Sumitomo received highest fine (approx. \$47 million) - the largest antitrust fine ever imposed by the NDRC on a single undertaking



# Asia

- **China (5)**

- First investigation concerned price fixing of motor starters, alternators, throttle bodies and wire harnesses
- Conspirative meetings of eight producers were held in China to agree on price quotations from 2000 to 2011
- Hitachi benefited from immunity and avoided a fine
- Second investigation concerned bearings
- Four manufacturers held meetings in Japan and Shanghai from 2000 to 2011 to discuss price increase strategies and timing and pace of increases
- Nachi-Fujikoshi benefited from immunity and avoided a fine

# Asia

- **China (6)**

- Why so late?

- The NDRC's auto parts investigation began in May 2014 while in other jurisdictions such as the US, EU and Japan they had already started around early 2010
    - The main reason for this delay is lack of clarity regarding the NDRC leniency program and immunity
    - It was not until April 2014 that the alleged cartel was reported for the first time to the NDRC after the reporting company had already been subject to a NDRC dawn raid for another case in March 2014

# Asia

- **Japan**

- In January 2012 the Japan Fair Trade Commission (JFTC) issued cease and desist orders and surcharge payment orders to three automotive parts producers (Yazaki Corp., Sumitomo Electric Industries Ltd., Fujikura Ltd.)
- The products concerned were wire harnesses, relay block, fuse block and junction block
- Total amount of fine was up to €95 million
- Yazaki was ordered to pay €70 million, Sumitomo €15,4 million and Fujikura €8.5 million

# Asia

- **South Korea (1)**

- In December 2013 the Korea Fair Trade Commission (KFTC) imposed fines on foreign auto parts manufacturers of up to \$109 million for fixing prices on windshield wipers and instrument panel clusters
- The KFTC collaborated with the US and the EU antitrust authorities by conducting joint investigations and exchanging information
- In November 2014 the KFTC imposed a fine of KRW 77.8 billion (approx. \$70.7 million) on six Japanese and German bearing suppliers that had jointly fixed prices, quantity and prospective clients of bearings for fourteen years

# Asia

- **South Korea (2)**

- Fines were imposed on the following companies

- NSK (KRW 33 million )
    - JTEKT (KRW 10 million)
    - Fujikoshi (KRW 3.7 million)
    - Schaeffler Korea (KRW 16.5 million)
    - Hanwha (KRW 8.4 million)
    - Minebea (KRW 4.9 million)

# Asia

- **India**

- The Competition Commission of India (CCI) imposed fines on fourteen OEM for suppressing competition in the market for spare parts
- The total fine was up to INR 25.54 billion (approx. \$422 million)
- OEM include Maruti Suzuki, Tata Motors, Daimler, BMW India and General Motors
- The CCI held that the companies had failed to make authorized spare parts available in the market, which has restricted “the expansion of spare parts and independent repairers segment of the economy to its full potential, at the cost of the consumer, service providers and dealers”

# Asia

- **Singapore**

- In May 2014 the Competition Commission imposed a fine of \$7.42 million on three Japanese producers for price fixing of ball and roller bearings
- Nachi-Fujikoshi Corp was fined \$6 million, NSK Ltd. and NTN Corp. were fined \$1 million and \$4 million respectively
- JTEKT benefited from immunity
- Collusion was estimated to have lasted for more than 30 years

# South America

- **Brazil (1)**

- In 2007 the National Association of Auto Parts Manufacturers (ANFAPE) in Brazil filed a complaint against Volkswagen, Fiat and Ford because of alleged abusive exercise of industrial property rights against independent auto parts manufacturers
- CADE's Reporting Commissioner held that the exercise of industrial property rights could be illegitimate as far as independent manufacturers of car parts are prohibited from operating in the relevant market
- The procedure is still pending



# South America

- **Brazil (2)**

- In January 2013 CADE fined SFK do Brasil Ltda with 1% of its gross revenue in the year preceding the initiation of the investigation - which lasted more than twelve years
- Infringement concerned resale price fixing in the relevant product market of bearings, seals, greases, lubricants, tools in general and monitoring/surveillance equipment
- SFK could not demonstrate efficiency of RPM and received a relatively high fine taking into account the duration of the infringement (seven months)
- High fines – and low efficiency at CADE!

# South America

- **Brazil (3)**

- In September 2014 CADE initiated a proceeding following a leniency application from Bosch GmbH and Bosch Ltda. concerning a cartel in the spark plugs market
- Bosch together with NGK Spark Plug Co Ltda were the only participants in the alleged cartel which is estimated to have lasted for a period of thirteen years (2000-2013)
- A note issued by CADE refers to price fixing, customer allocation, market partitioning and exchange of commercially sensitive information
- Case is still in early stage

# Collusive practices in the spotlight

- Collusive practices mainly concern
  - Price fixing
  - Bid rigging
  - Market allocation and
  - Exchange of sensitive information

## Why the automotive sector?

- Structured procurement process determined by OEM
- High degree of transparency of procurement process
  - Communications do not have to be very intensive to decrease uncertainty
- Competitive RFQ but relatively few and often identical suppliers
- Suppliers know each other through supply/directed supply relationships
- Frequent contacts among suppliers

# Why the automotive sector?

- Varying relationship between suppliers
  - Bidding jointly vs. competing against each other
- Varying function of suppliers (Tier I, Tier II, Tier III)
- Qualified suppliers under pressure to bid or lose qualified status
- High barriers to entry
  - It may take years to win access to supply contracts
  - Lumpy demand: contracts are long and non-contestability
  - Displacement of established suppliers is rare
- ECN and international cooperation of antitrust authorities

# Conclusion

- High risk of detection
- Global markets – global investigations
- Compliance is essential
  - Custom-made compliance program that take into account the specifics of the automotive industry, in particular the risks of information exchange
- Consider leniency
  - Almost all cartel investigations are initiated through leniency – in EU and elsewhere

Thank you!



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