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**Title:** Multiple Prosecutions Point to Huge Damages from Auto-Parts Cartels

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**Abstract:**

This is an interim report on what has been called “the largest criminal investigation the Antitrust Division has ever pursued.” It provides preliminary information on the nature of the allegations, the global scope of the investigations, and the magnitude of damages.

**Keywords:** cartel, international, damages, criminal prosecution

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*“The auto parts investigation is the largest criminal investigation the Antitrust Division has ever pursued, both in terms of its scope and the potential volume of commerce affected by the alleged illegal conduct”* (Sharis A. Pozen, Acting AAGA, January 30, 2012)

## **Multiple Prosecutions Point to Huge Damages from Auto-Parts Cartels**

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### **Overview**

A large number of price-fixing investigations have been launched in the past two years by at least five antitrust authorities around the world targeting industries manufacturing mechanical and electrical automotive parts. The EC apart, all the authorities are employing criminal laws and procedures to unearth information; all five enjoy the cooperation of amnesty applicants.

Scores of auto parts are involved. While it is difficult to be precise at this stage, it appears that 12 separate cartels are under investigation, most of them global in scope. About 60 companies have been identified so far as targets of these probes, with that number likely to grow as more prosecutions are finalized.

As of November 2012, a total of \$1.1 billion in corporate fines have been imposed. At the rate these cases are evolving, there is a good chance that monetary penalties eventually may climb to \$5 billion or more.<sup>1</sup> Moreover, individual penalties are escalating. The DOJ has so far indicted 18 auto-parts executives, of which 13 have agreed to prison sentences totaling 183 months.

### **Auto-Parts Cartels Are Historically Unusual**

If one goes back 23 years, the number of auto-supply industries convicted of illegal cartel behavior is rather small, given the large size of the automotive sector. I have scoured a large scale data set of

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<sup>1</sup> The current world-record holder is the vast *Air Cargo* cartel, which has an accumulated \$4.2 billion in penalties.

international cartels<sup>2</sup> and found three to eight<sup>3</sup> (see Table 1) that predate the current 2010-2012 wave of 12 cartels (Table 2). Some of the eight related cartels do not compare to the mostly mechanical-electrical manufactured parts in the current wave.<sup>4</sup> Perhaps the most comparable predecessor is *Auto Glass*, a 2004-2005 EU cartel that resulted in record fines of \$1.76 billion.

The 12 alleged auto-industry cartels comprise only about 1% of the total number of international cartel detected in the past 23 years.

## Industry Structure and Conduct

Industry structure and customary practices make many auto-supply industries fertile ground for overt price fixing. For the products alleged to have been price-rigged, there are few suppliers that tend to be geographically clustered. For example, the four Japanese suppliers of *Auto Lighting Products* control well over 90% of national supply. To some extent, auto-makers' policies of running qualification programs for suppliers created barriers to entry and ultimately contributed to a high degree of supplier concentration for assembly plants in most markets.

Moreover, "Competitors regularly meet at a variety of events, such as trade fairs or workshops organized by OEMs, which creates opportunities for illegal discussions" (Bird & Bird 2012). The auto industry's labor market has a reputation for being segmented from that of other industries. Managers and executives of auto suppliers and their clients tend to move jobs by circulating to other companies in the auto subsector. Legal sharing of technical information between rival suppliers may morph into sharing of sales transactions, prices, or information on future plans.

However, countervailing these oligopolistic conditions is the fact that auto makers are also few in number and have a reputation for being tough, well informed buyers. Auto parts suppliers tend to work closely with the assemblers on product designs because of frequent model changes. The presumed "sophistication" of the buyers (the OEMs) made collusion unlikely. Moreover, some suppliers – especially those supplying Japanese brands -- were nearly controlled their buyers.

The auto industry is the prototypical "global industry." That is, its sourcing methods are virtually identical across markets with significant auto assembly: North America, the EU, Japan, China, Brazil, and others. Auto parts are bought through Requests for Proposals (i.e., "tenders") issued by

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<sup>2</sup> The *Private International Cartels (PIC)* data set has unrivaled legal-economic information on nearly 900 cartels and 7000 cartelists.

<sup>3</sup> Two more were investigated but dropped or cleared by the authorities. In one unique case (*Aftermarket Auto Air Filters*), the DOJ was misled by a putative whistle-blower later indicted for lying to investigators. A third alleged cartel (Automobiles, Canadian imports to US) was dismissed after one company settled.

<sup>4</sup> The *Indian Tires*, *Canadian Auto Imports*, *Auto Manufacturing in Turkey*, *Truck Manufacturing in EU*, and *FEFC Shipping* cartels are cases in point. Even *Automotive Refinishing Paint* is not comparable because customers were auto body shops, not auto OEMs.

the auto makers. These RFPs contain tight quality and design specifications. When a proposal (a bid) was submitted, virtually the only consideration was price. The RFPs imposed product homogeneity, thus eliminating one potential factor that tends to frustrate the formation and smooth operation of cartels. In short, bid rigging was made easier. Once a bid was accepted, supply contracts typically lasted for several years (until a car model was totally redesigned), which also prevents entry.

A Surcharge Order of the Japan FTC outlines how two suppliers of windshield wipers organized one cartel. Mitsuba and Denso agreed to let one of them win an RFP from Fuji Heavy Industries in June 2000; in September 2002 this *pas de deux* was repeated for Suzuki; and Nissan was the victim of a third rigged bid in March 2003 (JFTC 2012: 2).<sup>5</sup> One of the more bizarre episodes was described by the Japan FTC's report on the *Small Electric Motor Auto Systems* cartel. One of the cartelists was Calsonic Kansei, which is largely owned and controlled by Nissan Motors. Calsonic/Nissan rigged high prices on starters and generators sold only to Fuji Heavy Industries, maker of Subaru cars, and one of the smaller Japanese auto makers. Thus, Nissan benefitted strategically in the auto market because it was able to impose through collusion extra manufacturing costs on a rival's brand.

## Origins

There is uncertainty about how the current wave of auto-parts cases began. One story is that it began with complaints from some EU auto assemblers about failures to get responses from wiring harness manufacturers to requests for bids in late 2009. Other sources say that in late 2009 a whistle-blower approached the Canadian Competition Bureau (CCB) to apply for amnesty (Johnson Winter 2012). The CCB sent requests to five other parts suppliers and shared its findings with other antitrust authorities.

Whatever the initial impetus, in February 2010 three antitrust authorities conducted coordinated raids worldwide. The DOJ, EC, and JFTC raided manufacturers of three types of auto parts: *Wiring Harnesses*, *Fuel Senders*, and *Instrument Panel Clusters*. Perhaps aided by Amnesty-Plus programs, further cartels were investigated: *Aftermarket Sheet Metal*<sup>6</sup> in 2010; *Aftermarket Auto Lights* in July 2010; *Occupant Safety Systems* and *Auto Refrigerants* in February 2011; *Auto Bearings*, *Aftermarket Auto Lights*<sup>7</sup>, and *Small Electric Motor Components* in July 2011; *New Auto Lights* in March 2012; *Thermal Systems* in

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<sup>5</sup> This Surcharge Order demonstrates the difficulty of precisely demarcating cartels. The Order identifies cartelization by seven companies of four non-substitutable parts (generators, starters, wiper systems, and radiator/fan assemblies). The unifying factor is small electric motors and the presence of Denso Corp. in all four sub-markets. Never did more than four companies rig bids for a specific part; often it was only two.

<sup>6</sup> This cartel was apparently discovered by U.S. private plaintiffs, and the role of government investigations, if any, is unclear.

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July 2012; and *Auto Marine Shipping* in September 2012. The Canadian Competition Bureau joined in fairly early.

Press reports and some cartel-fine decisions have identified several amnesty recipients. Furukawa Electric Co. was granted immunity in the *Wiring Harnesses* cartel by the JFTC; Denso Corp. was granted immunity in the *Thermal Systems* cartel by the JFTC; JTECK Corp. was granted immunity in the *Auto Bearings* cartel by the JFTC. Doubtless several more leniency recipients will be revealed in the next couple of years.

Clearly, close cooperation and coordination among these far-flung antitrust authorities has greatly aided in the rapid dissemination of information needed to begin the multiple investigations.

Consider this statement by experienced antitrust experts about investigations in Canada:

“Massive enforcement resources appear to be at play in the ongoing auto parts inquiry which, from early estimations, appears poised to become the biggest cartel case in history. From documents filed with the Ontario courts, we know that the Bureau’s investigation began with the wire harness raids in February 2010 and has grown exponentially since then. The size of the Canadian inquiry is remarkable — as of October 2011, the Bureau claims to have:

- 10 co-operating parties in the inquiry;
- issued at least 15 “target” letters and numerous subpoenas (“Section 11 orders”); and
- granted 164 markers to its co-operating parties across a broad range of products.

The latter figure is particularly impressive and would, under normal circumstances, reflect *years* of enforcement efforts. Clearly it is the result of the enormous scope of the automobile manufacturing supply chain, and the effects of “amnesty plus” applications” (Low et al. 2012).

## **A Huge Array of Products**

At this stage, it is hard to know how many cartels were operating, whether they were interrelated, and where they colluded. However, after studying the available information, 12 markets seem to have been affected.<sup>8</sup> Within some of these cartels, many products are encompassed. For example, such a seemingly well defined product as wiring harnesses encompasses many related products: automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, high voltage wiring, electronic control units, fuse boxes, relay boxes, and junction blocks.

At least eight of the 12 car-parts cartels are global, but some may turn out to be single-jurisdiction schemes (Table 2).

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<sup>8</sup> The list may not be exhaustive. Catalytic converters and electronic navigation & entertainment systems have been suggested as affected auto-parts products.

## **Market Sizes are Large**

Information about the precise market definitions for the cartels is only slowly emerging. However, I have been able to find or make estimates of affected commerce for a few of the cartels.<sup>9</sup> The U.S. *Auto Bearings* industry was worth about \$14 billion over the seven-year collusive period. The ten-year-plus collusion in *Auto Lighting Products* generated sales in Japan alone of \$19 to \$29 billion. *Auto Shipping* was reported to be a \$6-billion-per-year industry worldwide. *Wiring Harnesses* had an estimated \$185 billion in affected sales.

## **Duration of Collusion**

The information currently available indicates that these cartels have endured for above-average lives. The typical international cartel lasts for a median age of six or seven years. For the eight cartels with preliminary information, the mean average duration was 7.9 years (Table 2).

## **Antitrust Prosecutions**

Most of the auto-parts prosecutions are in their infancy, yet already government fines imposed amount to almost \$1.1 billion. U.S. fines account for about \$870 million of that total. Seven companies have agreed to pay U.S. fines above \$10 million: Yazaki Corp. \$470 million, Furukawa Electric Co. \$200 million, Denso Corp. \$78 million, Depo Auto Parts Industrial Co. \$43 million, Fujikura Ltd \$20 million, Tokai Rika Co. \$17.7 million, and Autoliv \$14.5 million. Five of these companies' parents are headquartered in Japan; indeed, half of the 60 mentioned as suspects are Japanese firms. Major U.S. and German firms are also under suspicion.

The Japan FTC has moved very quickly, fining seven auto-parts firms a total of \$211 million. Yazaki Corp.'s fine of \$127 million set a new Japanese antitrust record. Moreover, the JFTC has referred four firms and seven executives for criminal prosecution in *Auto Bearings*, the first criminal antitrust prosecution in four years. Canada has imposed one small fine. The EC's eight known auto-parts prosecutions will take another two to four years to be decided. Given the large size of the EU's auto industry, the fines that are imposed in auto parts will be an important test for the Almunia commissionership, which has started out with low levels of fines in its first two years.

Leniency and Amnesty-Plus policies must have played significant roles in detection of the auto-parts cartels.

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<sup>9</sup> Some of these estimates are based on apparently reliable assertions about affected sales in only one year from which I projected sales to the entire collusive period.

“Part of the investigations seems to be related to what is sometimes referred to as the ‘snowball effect’ of leniency programs. Companies that are caught in an investigation often carry out a detailed internal audit to determine whether other business divisions are involved in illegal conduct as well. If this is the case, they typically will file a leniency application, i.e. they will disclose this conduct voluntarily to the authorities in order to be exempt from fines for infringements in these other business areas. Under the US ‘Amnesty Plus’ program, there is even a double incentive for companies to make such a voluntary self-disclosure” (Bird & Bird 2012).

Private damages suits have been launched for nearly all of the auto-parts cartels, but only one settlement has heretofore been announced. In the *Aftermarket Auto Lights* case, Depo Auto Parts Industrial Co. agreed to pay \$25 million to direct purchasers. Historically, private settlements in cartel cases have greatly exceeded U.S. fines. An unusual feature of private antitrust litigation so far is the relative absence of direct-purchaser class actions for damages; mostly, indirect-purchaser cases have been filed. For many of the auto-parts cartels the victims are a very few large auto makers, thus the necessary requirement of “numerosity” is absent.

### **Concluding Remarks and Speculations**

Most cartels are formed after a sustained period on falling prices and profits. Auto manufacturers have long placed strong pressures on their suppliers to reduce prices of their inputs. Did the assemblers push too hard on price reductions before collusion began and thereby trigger an existential response?

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\*Most of the information in this paper is taken from the Web pages of the antitrust agencies, trade magazines, and Internet searches. These are too numerous to list.



| Table 1. Related Auto and Auto-Parts Cartels, 1990-2012 |       |                      |                |                      |                        |                             |
|---|-------|----------------------|----------------|----------------------|------------------------|-----------------------------|
| Name  | Firms | Authority            | Discovery      | Collusion            | Penalties<br>(\$ mil.) | Notes                       |
| Auto Batteries<br>manufacturing, Korea                  | 4     | KR                   | 11/10/200<br>4 | 6/03-9/04            | 1.6                    |                             |
| Tires, India  | 5     | IN                   | 2010           | 2005-2010            | 0                      | cleared                     |
| Automotive<br>Refinishing Paint<br>(Global?)            | 5     | US+CA+<br>EU+<br>PVT | 6/4/2001       | 1/93-12/00           | 106                    | 3 govt.<br>probes<br>closed |
| Automotive welding<br>electrodes, France                | 5     | FR                   | 12/16/201<br>0 | 2002-2005            | 0.133                  |                             |
| Automobiles,<br>Canadian imports, US                    | 8     | US PVT               | 2003           | 1/2001-<br>3/06?     | 36                     | Later<br>dismissed          |
| Auto manufacturing<br>& distrib, Turkey                 | 19    | TR                   | 9/9/2009       | 2006-<br>9/2009      | 148                    | TR Record<br>Fines          |
| Aftermarket Auto Air<br>Filters, US                     | 11    | US                   | 8/6/2008       | 1/1/99-<br>3/31/2008 | 0                      | False<br>Accusation         |
| Auto glass (Carglass),<br>EU                            | 4     | EC                   | 2/24/2007      | 2/24/2007            | 1757                   |                             |
| Shipping FEFC<br>(autos to/from Far<br>East), Global    | 4     | EC                   | 3/28/2003      | 1995-2003            | consent                |                             |
| Truck Manufacturing,<br>EU                              | 6     | UK then<br>EC        | 9/16/2010      | ?                    | 0                      |                             |
|   |       |                      |                |                      |                        |                             |

Source: Private International Cartels spreadsheet (2012)

| Table 2. Recent Alleged Auto-Parts Cartels, Detected 2010-2012  |       |                                   |                |                      |                        |  |
|---|-------|-----------------------------------|----------------|----------------------|------------------------|--|
| Name  | Firms | Auth-<br>ority                    | Discov-<br>ery | Collusion            | Penalties<br>(\$ mil.) | Notes  |
| Auto Occupant Safety<br>Systems   | 7     | US EC<br>US<br>PVT                | 2/11/201<br>1  | 1/1/2005-<br>2/2011  | 20                     |  |
| Auto Lights,<br>Aftermarket   | 5     | US<br>PVT<br>US CA                | 7/22/201<br>0  | 7/21/2001-<br>9/2008 | 75                     |  |
| Auto Bearings   | 6     | JP EC<br>US<br>PVT                | 7/27/201<br>1  | 2004-7/2011          |                        |  |
| Auto Refrigerants   | 2+    | EC                                | 2/2011         | ?                    |                        |  |
| Auto Parts, Sheet<br>Metal, Aftermarket   | 4     | US<br>PVT                         | 2010           | 2003-2008            |                        |  |
| Auto Thermal Systems  | 7     | US EC                             | 7/13/201<br>2  | 1/1/2000-<br>2011    | 83 part                |  |
| Auto Marine Shipping  | 7+    | JP EC<br>US CA                    | 9/6/2012       | ?                    |                        |  |
| Auto Small Electric<br>Motor Components   | 4+    | JP                                | 7/2011         | 11/2000-<br>7/2011   | 32.5                   | 1 <sup>st</sup> criminal<br>case in 4<br>years in<br>Japan |
| Auto Wiring<br>Harnesses  | 11    | US JP<br>CA EC<br>AU<br>US<br>PVT | 2/23/201<br>0  | 1/1/2000-<br>2011?   | 875 part               | DOJ<br>punishes 11<br>executives                           |
| Auto Fuel Senders   | 2+    | US EC<br>JP<br>US<br>PVT          | 2/23/201<br>0  | 3/2004-<br>2/2010    | 597 part               |  |
| Auto Instrument<br>Panel Clusters   | 2+    | US EC<br>JP<br>US<br>PVT          | 2/2010         | 12/2002-<br>2/2010   | 597 part               |  |
| Auto parts, New Auto<br>Lights  | 4     | JP                                | 3/2012         | 3/2000-<br>3/2012    |                        |  |
|   |       |                                   |                |                      |                        |  |
| Total   | 61+   |                                   |                |                      | 1,107 plus             |  |
| Source: <i>Private International Cartels</i> spreadsheet (2012)   |       |                                   |                |                      |                        |  |
| Note: Yazaki Corp pays \$597 million in penalties for three separate cartels. Denso pays \$78 million for two separate cartels. |       |                                   |                |                      |                        |  |