

# Are You the Next Target? DOJ's Auto Parts Criminal Investigations Expand

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## Introduction

Recently, the Department of Justice (DOJ) made clear that its international criminal investigations into collusion by auto parts manufacturers are expanding. The investigations have already led to corporate fines close to US\$1 billion and criminal charges against a dozen auto parts executives. Even if DOJ was not signaling expansion, the types of prosecutions seen to date are consistent with additional charges being filed. With this latest expansion warning from DOJ, however, companies in the industry that were not made part of the initial round of investigations should prepare for the possibility that the expanding investigations may prompt a visit by DOJ and the Federal Bureau of Investigation (FBI).

### The Investigations to Date

The auto parts investigations first become public in September 2011 when the DOJ announced a US\$200 million corporate fine and jail sentences for several executives of a Japanese manufacturer of automotive wire harnesses. Automotive wire harnesses are wiring and related components used in a car's electrical distribution system, which are sold to original equipment manufacturers – automobile manufacturers. Since then, it has become clear that DOJ and the FBI are investigating allegations of a number of different conspiracies among companies that manufacture parts for the OEM market and among companies that manufacture parts for the automotive aftermarket.

The conspiracies alleged among OEM parts manufacturers that have been publicly announced affect the following products: wire harnesses; anti-vibration rubber parts; electronic control units; fuel senders; heater control panels; instrument panel clusters; speed sensor wire assemblies; seatbelts; and a separate conspiracy involving seatbelts, airbags and steering wheels. One or more companies or individuals have agreed to plead guilty to criminal conspiracies involving each of these products. So far, nine different corporations have admitted to participating in one or more of these conspiracies and have agreed to pay over US\$800 million in criminal fines. Squire Sanders is also involved in additional investigations by the DOJ of other products that have so far not been made public.

The DOJ is investigating separately a conspiracy alleged among manufacturers and distributors of auto lights sold in the automotive aftermarket. The DOJ has brought charges against four companies and four individuals in this investigation. To date, DOJ has obtained over US\$43 million in corporate fines and has entered plea agreements with jail time for the individuals involved.

The large number of investigations in the auto parts industry has been given significant resources by DOJ. The matters have been investigated by FBI agents from multiple field offices around the country, who are reportedly employing aggressive investigative techniques such as using cooperators to secretly record conversations with competitors. The Antitrust Division has assigned teams of attorneys from its National Criminal Enforcement Section in Washington, DC, as well as from its Chicago and San Francisco field offices, and criminal charges have been filed in federal courts in Michigan, Ohio and California.

Moreover, the investigations are being coordinated with competition authorities around the world. Public statements have confirmed the involvement of the Japan Fair Trading Commission and the competition authorities in the European Commission and Australia. Canada has prosecuted the aftermarket auto parts matter; Canada may also be involved in the OEM investigation. DOJ is known

to coordinate with competition authorities worldwide, so other countries with a strong competition authority and a significant automobile parts supplier presence, such as Brazil and Korea, are likely to be involved in the investigations.

## The DOJ's Warning That the Investigations Are Expanding

The head of the Antitrust Division's criminal program spoke about the investigations at an event in Detroit. Scott Hammond, the Deputy Assistant Attorney General, explicitly noted that the auto parts investigations are "broader than what we've announced so far."<sup>1</sup> This is not surprising as cartel investigations by DOJ provide incentives for companies to provide information about conspiracies affecting other products. When a company is facing the prospect of a criminal conviction and a steep fine for participating in a criminal cartel, it can potentially lower its fine if the company provides information about a cartel involving another product. Referred to as "amnesty plus," this is a part of the Antitrust Division's formalized leniency program. In recent years, amnesty plus has enabled the Antitrust Division to leverage many of its cartel investigations into new products. If amnesty plus is being used in the auto parts investigations, the result will be investigations of new conspiracies, covering new products and potentially involving new companies and individuals that have not been part of the investigations to date.

Hammond also noted that the auto parts investigations are likely to be the largest criminal investigations in the history of the Antitrust Division, both in terms of the impact on US consumers, and in terms of the number of companies and executives involved in the investigations. For comparison, the recent air transport criminal antitrust investigations by DOJ resulted in criminal charges filed against 22 airlines and more than 20 executives. The companies involved in the airlines investigations paid more than US\$1.8 billion dollars in criminal fines.

## Steps to Take Going Forward

If, as DOJ predicts, the auto parts investigations will become the Antitrust Division's largest ever criminal matter, the industry can expect additional products to become the focus of the investigations, and additional companies and individuals to be facing criminal charges. Companies who may have felt relieved that the first wave of investigations had passed them by should brace for the next wave. The antitrust and white collar groups at Squire Sanders have former DOJ lawyers with significant expertise in these matters who are well-situated to provide advice; the practice is providing representation in one of the investigations.

Each auto parts manufacturer, even if it is not currently involved in the investigations, may want to make an assessment of the risks facing it. That process includes the delicate task of realistically assessing the criminal liability facing the company. But even if the company decides it has no criminal liability, the risks include the costs of responding to a government investigation, and potentially the costs of responding to civil litigation. Those companies that may have criminal liability must decide how to deal with the liability. That process includes determining: what individual exposure may exist among the company's employees; determining the cost of dealing with the company's criminal and civil liability; and determining the costs of dealing with collateral consequences that may flow from any criminal liability, such as debarment from government contracts.

The DOJ's investigations have already engulfed a significant portion of the auto parts industry. The warning from DOJ that the investigations are expanding, while unwelcome news, should put companies on notice: if you have not already done so, now is the time to consider how to identify and mitigate the risks stemming from these investigations. Squire Sanders' lawyers can provide advice on how to do that.

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<sup>1</sup> *Automotive News*, February 15, 2013.



For more information regarding the Department of Justice auto parts criminal investigations, please contact your principal Squire Sanders lawyer or one of the individuals listed in this publication.

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