

Newsletter, 26 January 2012

## Global automotive supply antitrust investigations reach historic dimensions

Update of Commeo Newsletter of 31 August 2011

In August 2011<sup>1</sup> we reported about the various investigations which the European Commission (“Commission“) opened in 2011 into several automotive components markets. The investigations are part of a global probe into alleged anticompetitive behaviour among suppliers to the automotive industry. During the last months, the investigations have been spread to further jurisdictions and component segments and have developed to the largest US antitrust investigation in history.

The investigations were initially initiated by the US authorities in early 2010. By now, antitrust authorities of three continents (besides the Commission the competent authorities of Australia, Japan and Canada) have joined the investigations which concern at least 20 suppliers and several component segments affecting more than 100 products. The parts involved are sold to automotive manufacturers and in the aftermarket. The investigations concern price-fixing and bid-rigging by the suppliers vis-à-vis their customers, the OEMs. Director of criminal enforcement in the antitrust division of the US Department of Justice (“DOJ“) Terzaken told *Automotive News*<sup>2</sup> that there was “certainly nothing on the record” that would parallel the investigations in terms of breadth and the scope of commerce involved.

The main investigations currently under way are briefly summarized in the following:

### *Automotive electrical/electronic components*

In February 2010, the **Commission** conducted unannounced inspections at the premises of suppliers active in the sector of electrical and electronic distribution systems (especially “wiring harnesses“) in Germany, France and the UK.<sup>3</sup> Although the Commission did not identify the companies concerned, it is known that Denso, Lear, German Leoni Group, Systems Technologies Europe and Yazaki were raided. Visteon and Delphi received a request for information.

On behalf of the **DOJ** the FBI raided the offices of three parts suppliers of Toyota, namely Yazaki North America, Denso International and Tokai Rita. In September 2011, Furukawa Electric Co. entered into a plea deal with the DOJ that included a fine of \$200 million and imprisonment for three US-based company executives. **Japan’s Fair Trade Commission** (“FTC“) conducted raids at the offices of Yazaki, Sumitomo Electric Industries, Fujikura and Furukawa Electric, all of which are automotive parts suppliers associated with Toyota. Last week, the FTC issued cease and desist orders targeting at Yazaki, Sumitomo and Fujikura. They have to adopt a resolution to terminate their illegal conduct and are ordered to make surcharge payments of approx. €130 million.

### *Automotive occupant safety systems*

Following unannounced inspections of companies active in the manufacturing, supply and distribution of piston engines by the **Commission** in May 2011 (including *inter alia* MAN, General Electric, Tognum and Caterpillar)<sup>4</sup>, the authorities drew their attention to suppliers of automotive occupant safety

<sup>1</sup> Commeo Newsletter “[Automotive suppliers remain subject to scrutiny by cartel authorities around the world](#)” of 31 August 2011.

<sup>2</sup> Automotive News, “[As price fixing probe grows, suppliers wait and worry](#)” of 19 December 2011.

<sup>3</sup> Case COMP/39.748, [MEMO/10/49](#).

<sup>4</sup> Case COMP/39.894, [MEMO/11/355](#).

systems, also suspecting an illegal cartel. The Commission and the **DOJ** conducted raids at the premises of several suppliers of seatbelts, airbags and steering wheels and sent requests for information.<sup>5</sup> Among the companies concerned are Swedish Autoliv, US-based TRW Automotive Holdings Corp. and TK Holdings, the North American subsidiary of Japanese Takada.

#### *Automotive starters, ignitions and alternators*

In August 2011, several companies including *inter alia* Mitsubishi Electric and Hitachi confirmed the receipt of information requests by the **Commission** seeking information on possible anticompetitive conduct on the market for starters, ignitions, alternators, ballast and other components used in cars. The Commission's investigation is connected with raids carried out by **Japan's FTC** in February 2011 at the premises of Denso, Hitachi and Mitsubishi Electric on the very same market.

#### *Automotive ball bearings*

Two months ago, the **Commission** started an investigation into the market for ball bearings for automotive and industrial use.<sup>6</sup> Bearing manufacturers SKF, Jtekt, Nachi, NSK, NTN and Schaeffler's units INA and FAG confirmed that they have been raided by EU competition officials in their offices in Germany, Netherlands, France and Sweden. The raids follow similar inquiries in **Japan** in early 2011 when NSK, Jtekt, Nachi and NTN were searched by the FTC.

#### *Gas refrigerants*

The latest investigation opened by the **Commission** in the automotive industry targets at Honeywell and Dupont.<sup>7</sup> The investigation looks into the patent disclosure procedures around a new refrigerant used in automotive air-conditioning. The Commission responds to complaints alleging that both companies have entered into anticompetitive joint development, licensing and production arrangements as regards the development of the new generation of refrigerants. There is also a potential US aspect to the case, with the **US Federal Trade Commission** alerted to the conduct.

## Comment

The entire automotive industry market - with a focus on, but not limited to suppliers<sup>8</sup> - is still under intense scrutiny from antitrust authorities around the world. DOJ official Terzaken expects that the investigations will continue to expand: "There is much more to come". According to the press, two dozen class-action lawsuits have been filed in the US on behalf of consumers and auto dealers seeking potential damages. Therefore, companies active in the industry should more than ever be prepared to show that their business behaviour is in accordance with national and European competition law and review their antitrust compliance procedures or, as the case may be, make use of the leniency programmes which the antitrust laws of the jurisdictions involved provide for.

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<sup>5</sup> [MEMO/11/395](#).

<sup>6</sup> [MEMO/11/766](#).

<sup>7</sup> Case COMP/39.822, [MEMO/11/1560](#).

<sup>8</sup> In January 2011, the Commission conducted raids at the premises of European manufacturers of commercial vehicles such as MAN, Scania, Volvo, Daimler, Renault and Iveco ([MEMO/11/29](#)), companies which are partly also subject to civil investigation by the UK's Office of Fair Trading ([CE/9349-10](#)). Both authorities suspect illegal price-fixing.