# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

# UNITED STATES OF AMERICA,

Plaintiff,

v.

TOKAI RIKA CO., LTD.,

Defendant.

Case:2:12-cr-20711 Judge: Roberts, Victoria A. MJ: Komives, Paul J. Filed: 10-30-2012 At 09:09 AM INFO USA V. TOKAI RIKA CO., LTD (DA )

Count I: 15 U.S.C. § 1 Count II: 18 U.S.C. § 1512(b)(2)(B)

#### **INFORMATION**

# COUNT ONE CONSPIRACY TO RESTRAIN TRADE (15 U.S.C. § 1)

# THE UNITED STATES, ACTING THROUGH ITS ATTORNEYS, CHARGES:

## **Defendant and Co-Conspirators**

1. Tokai Rika Co., Ltd. ("Defendant") is a corporation organized and existing under the laws of Japan, with its principal place of business in Nagoya, Japan. During the period covered by this Count, Defendant was engaged in the business of manufacturing and selling Heater Control Panels ("HCPs") to Toyota Motor Corporation and Toyota Motor Engineering & Manufacturing North America, Inc. ("Toyota"), for installation in vehicles manufactured and sold in the United States and elsewhere.

2. Various corporations and individuals, not made defendants in this Count, participated as co-conspirators in the offense charged in this Count and performed acts and made statements in furtherance of it.

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3. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

## **Background of the Offense**

During the period covered by this Count:

4. Defendant and its co-conspirators supplied HCPs to Toyota for installation in vehicles manufactured and sold in the United States and elsewhere. Defendant and its co-conspirators manufactured HCPs (a) in the United States for installation in vehicles manufactured and sold in the United States, (b) in Japan for export to the United States and installation in vehicles manufactured and sold in the United and sold in the United States, and (c) in Japan for installation in vehicles manufactured in Japan for export to and sale in the United States.

5. HCPs are located in the center console of an automobile and control the temperature of the interior environment of a vehicle. When purchasing HCPs, automobile manufacturers issue Requests for Quotation ("RFQs") to automotive parts suppliers on a model-by-model basis for model specific parts. Automotive parts suppliers submit quotations, or bids, to the automobile manufacturers in response to RFQs, and the automobile manufacturers award the business to the selected automotive parts supplier for the lifespan of the model, which is usually four to six years. Typically, the bidding process for a particular model begins approximately three years prior to the start of production. Japanese automobile manufacturers procure parts for U.S.-manufactured vehicles both in Japan and the United States.

### **Conspiracy to Restrain Trade**

6. From at least as early as September 2003 and continuing until at least February 2010, the exact dates being unknown to the United States, Defendant and its co-conspirators participated in a combination and conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of HCPs sold to Toyota in the United States and elsewhere. The combination and conspiracy engaged in by Defendant and its co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

7. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among Defendant and its co-conspirators, the substantial terms of which were to rig bids for, and to fix, stabilize, and maintain the prices of HCPs sold to Toyota in the United States and elsewhere.

### Manner and Means of the Conspiracy

8. For purposes of forming and carrying out the charged combination and conspiracy, Defendant and its co-conspirators did those things that they combined and conspired to do, including, among other things:

a. participating in meetings, conversations, and communications in the United States and Japan to discuss the bids and price quotations to be submitted to Toyota in the United States and elsewhere;

b. agreeing, during those meetings, conversations, and communications, on bids and price quotations to be submitted to Toyota in the United States and elsewhere;

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c. agreeing, during those meetings, conversations, and communications, to allocate the supply of HCPs sold to Toyota in the United States and elsewhere on a model-by-model basis;

d. agreeing, during those meetings, conversations, and communications, to coordinate price adjustments requested by Toyota in the United States and elsewhere;

e. submitting bids, price quotations, and price adjustments to Toyota in the United States and elsewhere in accordance with the agreements reached;

f. selling HCPs to Toyota in the United States and elsewhere at collusive and noncompetitive prices;

g. accepting payment for HCPs sold to Toyota in the United States and elsewhere at collusive and noncompetitive prices;

h. engaging in meetings, conversations, and communications in the United States and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme; and

i. employing measures to keep their conduct secret, including using code names and choosing meeting places and times to avoid detection.

### **Trade and Commerce**

9. During the period covered by this Count, Defendant and its co-conspirators sold to Toyota in the United States and elsewhere substantial quantities of HCPs manufactured in the United States and shipped from outside the United States and from other states in a continuous and uninterrupted flow of interstate and foreign trade and commerce. In addition, substantial quantities of equipment and supplies necessary to the production and distribution of HCPs by Defendant and its co-conspirators, as well as payments for HCPs sold by Defendant and its co-

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conspirators, traveled in interstate and foreign trade and commerce. The business activities of Defendant and its co-conspirators in connection with the production and sale of HCPs that were the subject of the charged conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

## Jurisdiction and Venue

10. The combination and conspiracy charged in this Count was carried out, at least in part, in the Eastern District of Michigan within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

# COUNT TWO OBSTRUCTION OF JUSTICE (15 U.S.C. § 1512(b)(2)(B))

# THE UNITED STATES, ACTING THROUGH ITS ATTORNEYS, CHARGES:

11. Each and every allegation contained in paragraphs 1 through 3 of Count One of this Information is realleged and reasserted here as if fully set forth in this Count.

#### **Background of the Offense**

During the period covered by this Count:

12. Defendant and its executives and employees became aware that Defendant's

United States subsidiary was the subject of a criminal investigation in the United States.

Specifically, Defendant and its executives and employees became aware that the Federal Bureau

of Investigation ("FBI") had executed a search warrant on Defendant's United States subsidiary.

#### **Obstruction of Justice**

13. In or about February 2010, an executive of Defendant, acting on Defendant's behalf, knowingly and corruptly attempted to persuade and did persuade employees of

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Defendant, with intent to cause and induce them to alter, destroy, mutilate, and conceal objects with intent to impair the objects' integrity and availability for use in an official proceeding, that is the federal grand jury sitting in the Eastern District of Michigan investigating, among other things, possible federal criminal antitrust violations occurring in the automotive parts industry and committed by Defendant and others, in violation of 18 U.S.C. § 1512(b)(2)(B).

## **Description of the Offense**

14. After becoming aware of the FBI search of Defendant's United States subsidiary, an executive of Defendant directed employees to delete electronic data and destroy paper documents likely to contain evidence of antitrust crimes in the United States and elsewhere. As a result, electronic data were deleted and paper documents were destroyed, including data and documents evidencing antitrust crimes in the United States and elsewhere, and some of the deleted electronic data and destroyed paper documents were non-recoverable.

### Jurisdiction and Venue

15. Under 18 U.S.C. § 1512(h) there is extraterritorial Federal jurisdiction over the offense charged in this Count.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1512(b)(2)(B).

Dated: October 30, 2012

<u>s/ Joseph Wayland</u> Joseph Wayland Acting Assistant Attorney General Antitrust Division United States Department of Justice <u>s/ Lisa M. Phelan</u> Lisa M. Phelan Chief, National Criminal Enforcement Section Antitrust Division United States Department of Justice

<u>s/ Scott D. Hammond</u> Scott D. Hammond Deputy Assistant Attorney General Antitrust Division United States Department of Justice

<u>s/ Marvin Price</u> Marvin Price Director of Criminal Enforcement Antitrust Division United States Department of Justice <u>s/ Kathryn Hellings</u> Kathryn Hellings Matthew Lunder Trial Attorneys United States Department of Justice Antitrust Division National Criminal Enforcement Section 450 5th St. NW, Suite 11300 Washington, DC 20530-0001 United States Department of Justice