



Department of Justice

STATEMENT

OF

**WILLIAM J. BAER
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION**

AND

**RONALD T. HOSKO
ASSISTANT DIRECTOR
CRIMINAL INVESTIGATIVE DIVISION
FEDERAL BUREAU OF INVESTIGATION**

BEFORE THE

**SUBCOMMITTEE ON ANTITRUST, COMPETITION
POLICY AND CONSUMER RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

HEARING ON

**“CARTEL PROSECUTION: STOPPING PRICE FIXERS
AND PROTECTING CONSUMERS”**

PRESENTED ON

NOVEMBER 14, 2013

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Chairman Klobuchar, Ranking Member Lee, and distinguished members of the Subcommittee, thank you for inviting us to appear before you today to discuss how cartels steal money from American consumers and why criminal enforcement against cartels is a cornerstone of the work of the Department of Justice’s Antitrust Division. The FBI is a key and long-standing partner in virtually all Antitrust Division cartel investigations. Working together we are making a difference for American consumers.

The subcommittee is right to spotlight cartel misconduct. This criminal misbehavior, whether international, national or local, harms both American consumers and businesses. The courts agree. They unanimously condemn cartel offenses “because of their pernicious effect on competition and lack of any redeeming virtue,” *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 5 (1958), and describe criminal antitrust offenses as “the supreme evil of antitrust,” *Verizon v. Trinko*, 540 U.S. 398, 408 (2004). Judicial precedent and common sense tell us the same thing: price fixing, bid rigging, and other criminal antitrust crimes cause direct and unambiguous antitrust harm.

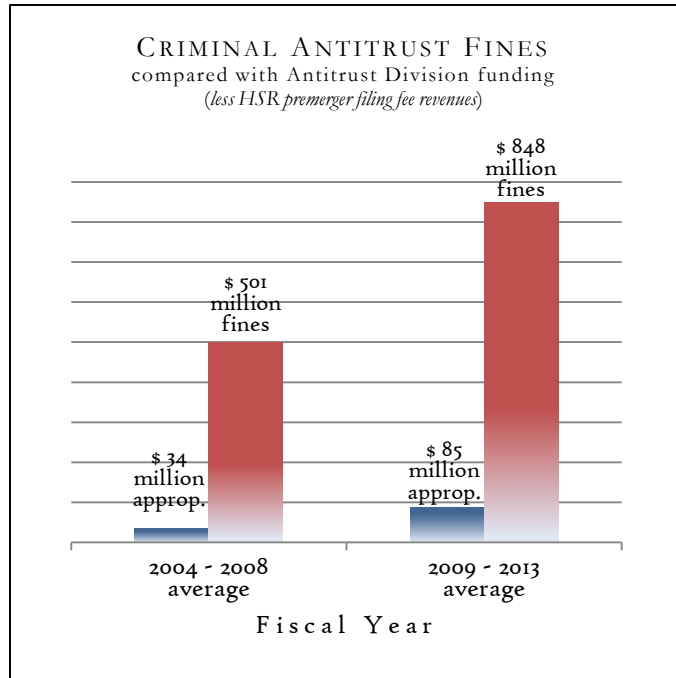
Our efforts to uncover and prosecute cartel behavior are, and need to be, robust. We target domestic and international cartels and prosecute those who rob consumers of their hard-earned dollars—both corporations and individuals, whether foreign or domestic. The Antitrust Division and the FBI use all available investigative tools to detect and prosecute violators of U.S. antitrust laws.

The Department of Justice applies resources and expertise from its Fraud Section, Antitrust Division, Civil Division, Public Integrity Section, Office of International Affairs, and the Asset Forfeiture and Money Laundering Section, as well as U.S. Attorneys' Offices across the country to support prosecutions relating to these criminal cases. The FBI assists the Antitrust Division through its International Corruption Unit (ICU), which, in addition to antitrust offenses, investigates allegations of corruption of U.S. public officials and fraud against the U.S. Government (among others). The FBI found conceptual and analytical synergy in grouping these activities since investigations in any one of these areas has the potential to lead to operational intelligence in another, and its robust liaison relationships with foreign law enforcement and regulatory officials often aid the investigations. Moreover, the FBI's assistance in Antitrust Division investigations benefit ICU personnel, who gain expertise in conducting multinational criminal investigations and navigating judicial processes supporting those matters.

Aggressively pursuing criminal price fixers and bid riggers benefits us in many ways. Enforcement ensures that the specific bad conduct is eliminated. At the same time, other wrongdoers are put on notice and are dissuaded from continuing their illegal conduct. Finally, those contemplating price fixing realize the serious adverse consequences and are deterred from committing the crime in the first instance. At the end of the day, our enforcement actions result in lower prices for consumer goods and services, including computers, televisions, automobiles, shipping, hospital services, and financial services.

Let us start with our most recent cartel enforcement statistics. During Fiscal Year 2013 the Antitrust Division filed 50 criminal cases, and obtained \$1.02 billion in criminal fines. The criminal antitrust fines imposed in these cases reflect the harm that cartels inflict on consumers; under the Sentencing Guidelines they take into account the total value of sales affected by the defendant's participation in the cartel. In those 12 months we charged 21 corporations and 34 individuals and courts imposed 28 prison terms with an average sentence of just over two years per defendant.

American taxpayers are well-served by effective cartel enforcement. In the last ten fiscal years, the Antitrust Division has obtained criminal fines averaging nearly \$675 million per year. That is more than 10 times its average annual appropriation



of \$60 million (net of the division's share of offsetting collections of Hart-Scott-Rodino fees collected by the FTC). In just the last five fiscal years the division averaged nearly \$850 million in criminal fines versus an average appropriation of about \$85 million (again, net of HSR fees). These fines do not go to the Antitrust Division, but rather are contributed to the Crime Victims Fund, which helps victims of all types of crime throughout the country. They are provided assistance with medical and counseling expenses, assistance in the form of shelter,

crisis intervention, and justice advocacy, and money for state and local services to crime victims.

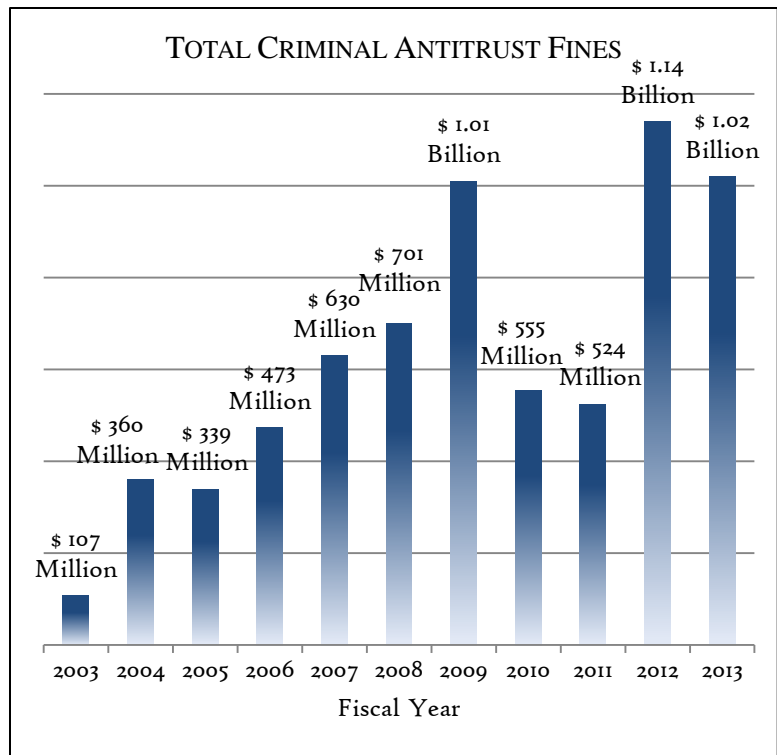
The Evolution of Cartel Enforcement at the Antitrust Division

The Antitrust Division's cartel enforcement successes are the result of many years of building and implementing an enforcement strategy that couples strong sanctions with incentives for voluntary disclosure and timely cooperation. The Antitrust Division's Corporate Leniency Program is a particularly effective investigative tool for detecting large-scale international price-fixing cartels. But, it is not the only tool. The division and the FBI uncover cartel behavior using a variety of tools, including internal investigative efforts, customer complaints and submissions to our Citizen Complaint Center, outreach efforts with law enforcement agents, information from auditors, trade groups, business and law students, suspicious documents uncovered in civil investigations, and everyday news stories. Collaboration with federal and state agencies is also key to detecting and investigating cartels.

Our progress in detecting and prosecuting cartels can be traced to a deliberate change in strategy and approach implemented over the last two decades. In the early 1990's, recognizing the harm that international cartels pose to American businesses and consumers, the division made investigating and prosecuting international cartels a top priority. What did we do?

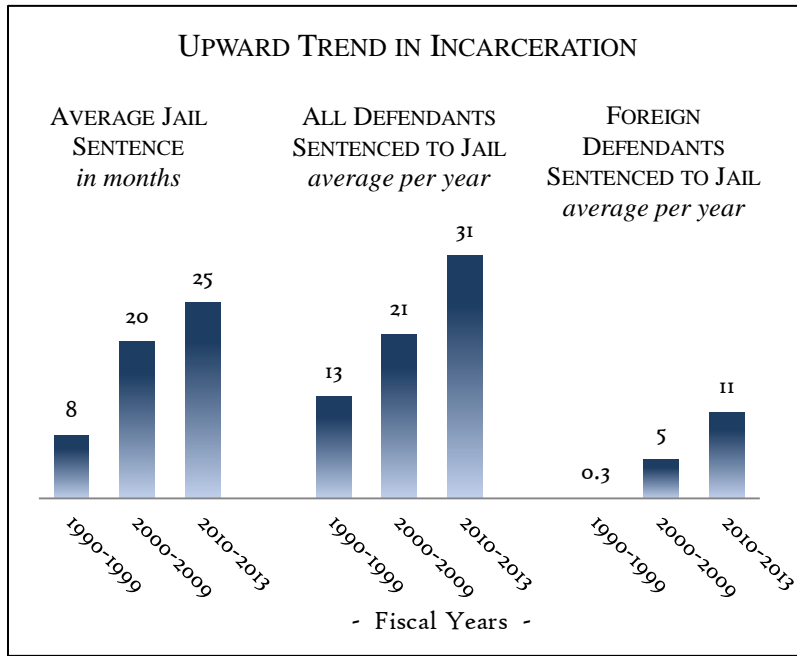
- We adopted a corporate leniency program that provides incentives for companies, both domestic and foreign, to investigate and self-report to the Antitrust Division their involvement in antitrust crimes. This dramatically increased the rate of self-disclosure by corporations.
- We strengthened our ties with the FBI to partner better on investigations, make more use of FBI covert techniques and financial expertise, and expedite our investigation and prosecutions.
- We engaged bilaterally and multilaterally with competition authorities around the world to achieve a general consensus on attacking cartels and coordinating our approach to detection, investigation and prosecution.

These strategies have resulted in a dramatic increase in exposing the world's largest price-fixing cartels. In recent years we prosecuted cartels involving air transportation (more than \$1.8 billion in criminal fines obtained), liquid crystal displays (more than \$1.39 billion in criminal fines obtained), and auto parts. Attorney General Holder recently described the auto parts investigation as 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. The investigation is far from over. Thus far we have obtained more than \$1.6



billion in fines. In each of these matters, the FBI is a strong partner with the Antitrust Division, providing invaluable contributions to our investigations, including in interviews, searches, and forensic work.

Criminal fines cannot and do not tell the whole story. Large criminal penalties make cartel behavior less attractive. But the threat of jail time for the company officials responsible for injuring consumers is itself a powerful deterrent. The



Antitrust Division has pursued stiff penalties against individuals. Today more individuals involved in cartel activity are being sent to jail and are being jailed for longer periods of time than ever before. In the 1990's, jail sentences for Antitrust Division defendants averaged eight months. Today the average prison sentence for Antitrust Division defendants is 25 months. Culpable foreign

nationals who injure American consumers do not escape our grasp either. In the last four years, courts have sentenced an average of 11 foreign nationals to jail per year. That compares with a total of three foreign nationals sentenced to jail in the ten years from 1990 through 1999.

Specific Cartel Enforcement

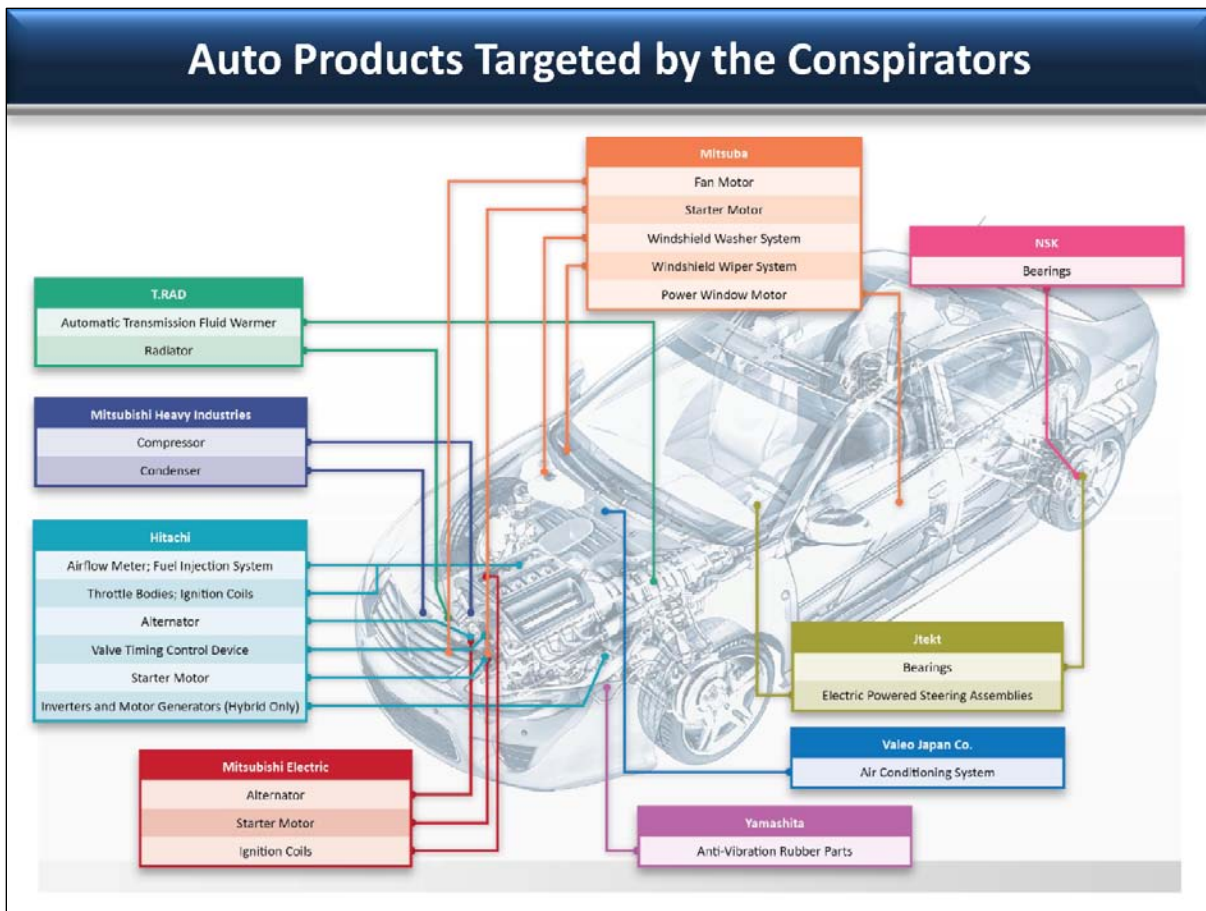
Our ongoing and recent activities demonstrate how effective cartel enforcement makes an enormous, measurable difference to consumers and the economy. I will start with large-scale international cartels that affect wide swaths of the economy and then I will turn to more local cartels that also have demonstrable adverse effects.

Investigations of large international cartels pose significant challenges—with documents, witnesses, and wrongdoers often located outside the U.S. We have developed over time a shared commitment with enforcers around the world to fighting international cartels. We work closely in addressing these challenges.

This has significantly increased our ability to effectively investigate and prosecute these cartels. Cooperation with our sister agencies around the world allows for coordinated raids in cross-border cartel investigations, helping to preserve crucial evidence, increases access to foreign-located evidence, and induces cooperation from foreign subjects of investigations that previously had been lacking.

Our ongoing auto parts investigation exemplifies how the Antitrust Division and the FBI cooperate with our foreign counterparts. The investigation included FBI search warrants executed on the very same day and conducted at the very same time as searches by enforcers in other countries. During the ongoing investigation the department has coordinated with antitrust agencies of Japan, Canada, the Republic of Korea, Mexico, Australia, and the European Commission.

What has this effort thus far produced? To date the division has charged a total of 21 companies and 21 executives. All 21 companies have either pleaded guilty or have agreed to plead guilty. The immediate victims of these conspiracies include such automotive manufacturers as Ford, General Motors, Chrysler, Honda, Toyota, Nissan, Subaru, Mazda and Mitsubishi. The parts involved included safety



systems such as seatbelts, airbags, and antilock brake systems, making it costlier for car makers to provide many safety features. Many car models were fitted with multiple parts that were fixed by the auto parts suppliers. In September, Attorney General Holder announced nine corporate guilty pleas involving more than \$740 million in criminal fines. Those September charges involved more than a dozen separate conspiracies spanning over a decade and involving numerous auto parts suppliers from around the globe that targeted U.S. manufacturing, U.S. businesses and U.S. consumers. The cases filed to date involve conduct affecting over \$8 billion in auto parts sold to car manufacturers in the U.S. and parts used in more than 25 million cars purchased by American consumers. The multiple conspiracies charged in September affected U.S. automobile plants in 14 states: Alabama, California, Georgia, Illinois, Indiana, Kansas, Kentucky, Michigan, Mississippi, Missouri, Ohio, Tennessee, Texas, and Wisconsin. And as the Attorney General said in the recent announcement, our work in this area is not finished.

Cartels involving components of finished products are not unique to the auto industry. For example, the joint Antitrust Division/FBI investigation into LCD panels uncovered long-running price-fixing conspiracies that affected some of the largest computer manufacturers in the world, including Hewlett Packard, Dell and Apple. These conspiracies injured every family, school, business, charity and government agency that paid more for notebook computers, computer monitors and LCD televisions during the conspiracy. The conspirators fixed the prices of at least \$23.5 billion in panels that came into the United States, either as raw panels or incorporated in finished products. At last year's trial of AUO, one of the cartel ringleaders, the division's economic expert testified that the conspirators increased their margin by an average of \$53 for each and every flat panel the conspirators made over the course of four years. This figure demonstrates concretely the very real costs this price-fixing conspiracy imposed on American businesses and consumers. The division has obtained more than \$1.39 billion in criminal fines in this investigation.

In recent years we detected and prosecuted a number of cartels affecting shipping services. An increase in shipping prices can influence the prices of a wide array of goods. The division, with the assistance of the FBI, uncovered a number of conspiracies involving air cargo services affecting over \$20 billion in commerce, and the air cargo investigation led to the discovery of conspiracies involving freight forwarding services affecting over \$350 million in commerce, and air passenger transportation involving over \$4 billion in commerce. In the air cargo and freight forwarding conspiracies, various fees and surcharges were imposed on customers for shipments of goods to and from the U.S., including agreements on

the amount and timing of surcharges in the period before the Christmas holiday shopping season. We obtained total fines of over \$1.9 billion in the air transportation and freight forwarding investigations, coordinating with the Australian Competition and Consumer Commission, the European Commission, the New Zealand Commerce Commission, the U.K. Office of Fair Trading, the Japan Fair Trade Commission, the Brazilian competition agency, and other agencies. And, the division has an ongoing investigation into price fixing, bid rigging and other anticompetitive conduct in the coastal water freight transportation industry. So far, three companies and six individuals have pleaded guilty or have been convicted at trial, and have been ordered to pay more than \$46 million in criminal fines in a price-fixing conspiracy involving coastal freight services between the continental United States and Puerto Rico.

In addition, the division's investigation into bid rigging in municipal bonds markets has been conducted with the assistance of the FBI and Internal Revenue Service – Criminal Investigation, and also coordinated with other federal and state law enforcement agencies that have parallel investigations, including the U.S. Securities and Exchange Commission, the Office of the Comptroller of the Currency and the Federal Reserve Bank of New York, and a working group of 20 State Attorneys General. This investigation, like others, demonstrates how coordination of parallel investigations enhances our ability to identify and prosecute significant crimes. To date, a total of 20 individuals have been charged as a result of the department's ongoing municipal bonds investigation and 19 have been convicted or pleaded guilty, and one company has pleaded guilty. Those implicated have agreed to pay a total of nearly \$745 million in restitution, penalties, and disgorgement to federal and state agencies. Conspirators went to great lengths to defraud municipalities across the country, from soliciting intentionally losing bids for investment agreements to paying out kickbacks to manipulate the competitive bidding process. These actions deprived American towns and cities of competitive interest rates for the investment of tax-exempt bond proceeds used by municipalities for various public works projects, such as building or repairing schools, hospitals and roads, water pollution abatement projects, and low-cost housing, and to refinance outstanding debt. These complex, seemingly uninteresting backroom deals have a real impact on taxpayers, who should benefit from a municipal bond issue and are ultimately responsible for paying it off. In addition, corrupt bidding schemes serve to weaken the public's trust in the municipal bond market and prevent public entities from enjoying the benefits of a true competitive bidding process.

While large-scale international cartels can involve significant volumes of commerce, the FBI and the Antitrust Division are acutely aware that local or regional cartels also have the potential to significantly harm consumers. In local communities the division continues to uncover collusive schemes among real estate speculators aimed at eliminating competition at real estate foreclosure auctions. The division continues to investigate with the FBI and HUD inspectors general bid rigging and fraud in local real estate markets in Alabama, California, Georgia, and North Carolina. The division and FBI have uncovered patterns of misconduct through which conspirators worked together to keep public auction prices artificially low by making agreements not to bid against one another, instead designating a winning bidder to obtain selected properties at public real estate foreclosure auctions. Conspirators also conducted their own unofficial “knockoff” auctions open only to members of the conspiracy—often taking place at or near the courthouse steps where the public auctions were held—paying each other off and diverting money to co-conspirators that otherwise would have gone to pay off the mortgage and other holders of debt secured by the properties, and, in some cases, the defaulting homeowner. The division’s real estate foreclosure auction investigations have resulted in recent cases against 64 individuals and 3 companies. Altogether, these investigations have uncovered bid rigging and fraud on auctions involving more than 3,400 foreclosed homes, and have caused more than \$23 million in loss, primarily to mortgage holders. The division also has uncovered similar schemes involving public tax lien auctions, including an ongoing investigation of tax lien auctions in New Jersey that has resulted in guilty pleas from 11 individuals and three companies.

Conclusion

Together, the FBI’s and the Antitrust Division’s dedicated public servants are working hard to hold both corporations and individuals responsible for cartel behavior. American consumers are the beneficiaries of that dedication. We are honored to be part of this hard-working team and to be associated with a law enforcement mission that is delivering real benefits to American consumers.