

Antitrust Division Announces Three More Corporate Capacitor Pleas

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The Antitrust Division has announced that three more companies have agreed to plead guilty in the electrolytic capacitor investigation. According to a DOJ press release of August 22, ([here](#)) Rubycon Corp, Elna Co, and Holy Stone Holdings Co, have agreed to plead guilty to fixing the prices of electrolytic capacitors sold in the United States and elsewhere. Rubycon and Elna (Japanese companies) and Holy Stone (Taipei based) will each plead guilty to a single count of price-fixing. The press release quotes Deputy Assistant Attorney General Brent Snyder of the Justice Department's Antitrust Division: "The Antitrust Division has now charged five companies and one individual for their participation in this international price-fixing conspiracy."

There have been two previous corporate guilty pleas in the investigation. NEC TOKIN Corp. was sentenced to pay a fine of \$13.8 million in January 2016, and Hitachi Chemical was sentenced to pay a fine of \$3.8 million in June 2016. There has only been one individual charged. Takuro Isawa, a former Global Sales General Manager for an unidentified capacitor manufacturer, was indicted in 2015, but is a fugitive.

This is an interesting case from the outside looking in. First, the period of the alleged cartel is exceptionally long. The charging language in each case reads:

From at least as early as September 1997 and continuing until in or about

January 2014....conspiratorsknowingly entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices and rigging bids of certain electrolytic capacitors in the United States and elsewhere.

The fines seem very low for such a long-lived cartel. The fines called for by the plea agreement for the three new companies to plead is not yet known, but the \$13.8 for NEC TOKIN and \$3.8 million for Hitachi are quite low by international cartel standards. Not every defendant participated in the cartel for its full duration. For example, according to the filings, Holy Stone took part in the conspiracy from April 2010 until about January 2014, while Elna and Rubycon participated from about August 2002 to January 2014. The indictment against Takuro Isawa, the lone individual charged to date, alleges that he was involved in the cartel from in or about August 2002 until at least March 18, 2010.

The cartel certainly appears to have been of the “hard-core” “supreme evil of antitrust” variety. The charging documents allege, among other bad acts, that the defendants:

- Participated at times in meetings, conversations and communications with each other in China, Germany, Japan, Singapore, Taiwan and the United States.
- Collected, exchanged, monitored and discussed information on prices, bids, sales, supply, demand, shipping and the production of electrolytic capacitors.

Lastly, the case is likely to raise difficult issues of the application of the FTAIA to the cartel’s conduct. While the Informations allege that the defendants sold capacitors directly into the United States, the charging documents also allege “component price-fixing,” that is, capacitors were incorporated into products intended for sale into the United States. The defendants:

- “Also sold foreign manufactured electrolytic capacitors outside the United States for incorporation into products including computers, television and gaming systems that were sold in or for delivery to the United States” and
- “During the time period identified in Paragraph 2, the charged conspiracy had a substantial and intended effect in the United States.....”

FTAIA issues will likely play a larger role in the private class action price fixing suits. The DOJ cases have all been accompanied by plea agreements. While the fines are low, they of course, must bear some relation to the volume of commerce. It is unknown from the plea agreements how much of the fine was based on commerce that was direct sales of capacitors in the United States versus capacitors that were part of components assembled overseas and shipped into the United States. But the plaintiffs in the civil class action will no doubt be trying to include as much “component” price fixing as possible to raise the damage calculation. Given that capacitors can cost less than a penny each (though are many capacitors in an electronics product), difficult FTAIA questions likely lie ahead.

For earlier Cartel Capers posts on the capacitor investigation and plea agreements, see [Hitachi Chemical Sentenced for Role in Capacitor Cartel](#).

Thanks for reading.