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# AntitrustConnect Blog

## The Auto Parts Antitrust Case: Is This What Success Looks Like?

Joe Murphy (Compliance Strategists) · Thursday, October 31st, 2013

Wow, what a success! The Antitrust Division recently announced that its investigations in the auto parts market uncovered “separate conspiracies to fix the prices of more than 30 different products sold to US car manufacturers ....” [1] This adds to the results thus far in the investigation, with guilty pleas from 20 companies and fines of over \$1.6 billion. Seventeen executives are either in or headed to prison. And ongoing investigations mean more are in the works. In the words of the head of criminal enforcement in the Division, “The deterrent impact of their sentences should resonate in boardrooms around the world.”

But wait, should this make us feel comfortable about antitrust enforcement and compliance? These conspiracies started as early as 2000 and went on for as much as a decade. Cartel participants attended meetings in the U.S., the home of all this fierce enforcement. I thought all those big cases and large fines we saw in the last two decades were already “sending a message.” If the Division sent a message with fines of as much as \$500 million and years of prison terms, then who is it who actually got this message? And if leniency is the be all and end all of enforcement, with conspirators trembling in their boots at the prospect of being turned in, how on earth could 20 different companies (or more) engage in hard core price fixing for a decade? Where is this big deterrent effect we are supposed to be seeing?

If this is the definition of success, then I wonder what failure looks like. And if this is how success is measured can we look forward to even more decade-long cartels injuring even larger numbers of companies and consumers? Maybe next time the Division will be even more successful and unearth conspiracies with 30 companies lasting twenty years, with aggregate fines in the tens of billions. Wow, I can hardly wait.

I think we are missing something here. We need to start asking some hard questions. Maybe an enforcement policy that consists primarily of waiting for the phone to ring for conspirators to turn in their colleagues in the leniency program is not enough. Maybe imposing yet bigger fines and putting people in prison for longer terms is not enough (particularly when the U.S. is starting to challenge the concept that putting more and more non-violent criminals in prison is an unmitigated good). Maybe toting up fines and prison numbers is not the same as a comprehensive crime-prevention policy.

My view is that it is time for a shift. I am not satisfied with having crime sprees last for a decade before they are found out. I want to see more aggressive efforts, not simply to react after crimes

come to light, but to prevent them and ferret them out much earlier. To me, a ten-year cartel of this size is an unqualified failure. On balance I am glad the Division eventually found it, but I would rather they had stopped it early in its life. Unfortunately, I do not see any signs of interest in this approach in the Division. And outside the Division, there is even argument that these enormous fines, which obviously did not scare the 20 auto parts makers and their many managers, need to be increased even more. In other words, if something does not work the answer is to do more of it. Really?

So what does this mean specifically? Here are some suggestions:

1. Stop considering the leniency program as the sole cure for cartels. It is not. It has its place, but a single enforcement tool is not a substitute for a comprehensive strategy.
2. Start looking into more advanced techniques to find cartels. The work by Rosa Abrantes-Metz and other economists [2] offers enormous promise for this purpose.
3. Take a serious interest in promoting much more effective and vigorous corporate compliance and ethics programs. Right now these company programs are mostly not strong enough and are not using techniques designed to unearth cartels. This is a natural outgrowth of the Division's disdain for compliance programs and its one-size-fits-all approach of refusing to consider any compliance programs in any aspect of its enforcement activities.
4. Require those in leniency programs to adopt strong compliance programs. These can become role models and laboratories for developing more effective deterrence and early detection techniques. Plus, it helps send the message that those who engage in cartels need to change their ways, even if they escape fines and jail by being the first to report this crime.
5. Stop measuring the Division's success solely in terms of fines and jail terms. This is not success — it is a sign of failure.

Of all of these, the promotion of effective compliance and ethics programs holds the most promise. The Division could start today simply by appointing one senior person to at least begin looking into the area of compliance and ethics programs. It could liaise with its colleagues in other parts of the Justice Department who already do consider compliance programs. In fact, a good start would be to study the portions of the DOJ/SEC Resource Guide to the U.S. Foreign Corrupt Practices Act [3] devoted to compliance programs. It could work with international groups like the OECD and the ICN to promote this approach jointly with other authorities. The giant global cartels call for a coordinated effort by global enforcement authorities. Some, such as the FNE in Chile and the French Competition Authority, have already shown leadership in recognizing and promoting effective compliance programs; the Division could learn much from working with them.

Price fixing is a crime. Violators should be punished. But the Division needs to examine what its goal is. We should all work together to end this curse and not cheer when the crimes get bigger and more harmful as reflected by bigger fines and longer jail terms. There is much that could be done to prevent these crimes if the Division really wants to end cartels. Compliance and ethics professionals are ready to help when the Division calls.

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1. "DOJ's Auto Parts Probe Yields Guilty Pleas from Nine Manufacturers, Two Executives," 105 Bloomberg/BNA Antitrust & Trade Regulation Report 416 (Sept. 27, 2013)

2. See Abrantes-Metz, Bajari & Murphy, "Antitrust Screening: Making Compliance Programs

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Robust,” [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1648948](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1648948)

3. US Department of Justice and US Securities and Exchange Commission, FCPA: A Resource Guide to the US Foreign Corrupt Practices Act (Nov. 14, 2012), <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>

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