

# Top Global Antitrust Issues Facing the Automotive Sector

**Legal Issues Council  
Original Equipment Suppliers Association**

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# Top Antitrust Issues

1. Cartel Enforcement
2. Information Exchange
3. Damage Litigation
4. Aftermarket restrictions
5. Distribution / Vertical Restraints

# Cartel Enforcement: Autoparts



## Under investigation:

- > 100 products
- > 70 companies

## EU

- *Ball bearings* - €953m
- *Wire Harnesses* - €142m
- *Foam Seat* - €114m
- *Parking heaters* - €68m
- *Exhausts; seatbelts, airbags and steering wheels; electric components; thermal systems; transmission systems; lighting systems; braking systems*

## South Africa

- *82 automotive parts manufacturers, collusion in respect of 121 parts*

## Brazil

- *Spark plugs, antifriction bearings, clutch coats, thermal systems (radiators, capacitors, air conditioning, heating, ventilation systems), windshield wipers, car safety, shock absorbers, bumpers (decision pending)*
- *Wire Harnesses, electrical components, lighting (headlights, taillights, brake lights), hazard switches (blinkers, arrow keys); access mechanisms (cylinders, door handles, locks, steering locks) and clutches (expected)*

## Mexico

- *harnesses, direction sensors, air conditioning compressors, electrical switches (closed), car audio (closed)*

## China

- *alternators, starters, throttle body, wire harnesses: 1.2 billion yuan fine*

Former EU Competition Commissioner Almunia:

***“if one adds up one by one all the components which might be cartelised, this could almost make a whole car!”***

Also investigating:

**Australia, Canada, India, Japan, Singapore, South Korea**

Total issued fines globally estimated around **€9.5bn**

## Cartel Enforcement: Other Trends and Developments

- Investigations in other parts of supply chain/neighbouring sectors
  - EU: truck manufacturers (DAF, Daimler, MAN and Volvo, *ongoing*)
  - Germany: car soundproofing suppliers (EUR 75 million)
  - Spain: hundreds of Spanish car dealers of VW, Audi, Seat, Opel, Toyota, Hyundai fined over 55 million EUR
  - South Africa: automotive body repairs, tyres
- NEW: Hub and spoke cartels (EU)
  - supplier acting as intermediary between dealers to ensure “market stability”
  - aggregating parts supplier passing on information about component input suppliers

# Information Exchange

- Law on information exchange very strict in EU: pure exchange of sensitive commercial information between competitors is hardcore violation
  - information on prices, customers, raw materials costs, future commercial plans
    - Spain: 21 OEMs and consultancies fined EUR 171 million (information exchange on distribution and after sales services)
    - Switzerland: vehicle leasing and financing raids (exchange of information on leasing rates, financing conditions)
- Increasing enforcement focus in LatAm:
  - Brazil, Mexico (draft guidelines on information exchange)

# Damage litigation

- EU Damage Directive
  - Harmonisation of current national rules on damage actions (discovery, statute of limitations, measure of damage, presumptive effects)
  - To be implemented by all Member States by 27 December 2016
- Significant damage litigation globally on car parts cases
  - Most common fora: UK, Germany, the Netherlands
  - Automotive Glass: PSA suing in UK courts, AXA Insurance in German courts

# Aftermarket (1/2)

- Very strict rules in EU
  - access to technical information for independent repairers
  - parts manufacturers and dealers must be free to supply parts to independent aftermarket
  - vehicle manufacturers making warranty conditional on all repairs (including non-warranty) being carried out within authorised network: likely violation of EU competition law
    - idem for obligation to use branded spare parts for non-warranty repairs
  - Numerous complaints and investigations (e.g. Portugal, Slovakia, Hungary: sector inquiry)

## Aftermarket (2/2)

- China: new guidelines and regulations regarding access to technical information and spare parts for independent repairers
- Russia: Code of Conduct imposed by FAS used as benchmark for enforcement
  - independent repairers must have access to spare parts
- Emerging enforcement in LatAm



# Distribution / Vertical Restraints (1/2)

- EU: very strict rules, rapidly growing enforcement focus
- Significant enforcement in LatAm, South Africa, Russia, China
- Key enforcement areas
  - Resale price maintenance
    - Numerous cases in China, South Africa, LatAm, EU
  - Territorial restrictions
    - Switzerland: BMW fined CHF 156 million for restricting parallel imports into Switzerland
  - NEW: online sales restrictions
    - Germany: investigation into online sales restrictions of new vehicles (Ford, Opel, PSA)

## Distribution / Vertical Restraints (2/2)

- Russia: FAS Code of Conduct as benchmark for enforcement (dealer appointment criteria and policies, duration of agreements, non-discrimination obligation)
- China: NDRC Guidelines in preparation
  - inspired by EU rules on parallel imports, online sales, territorial restrictions

Questions?