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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN I

Case: 2:16-cr-20341
Judge: Cox, Sean F.
MJ: Patti, Anthony P.
Filed: 05-11-2016 At 11:11 AM
IND USA V NOBUHIKO NIWA (BG)

UNITED STATES OF AMERICA,

v.

NOBUHIKO NIWA,

Defendant.
_____ /

Violation: 15 U.S.C. § 1 (Conspiracy to Restrain Trade)

INDICTMENT

THE GRAND JURY CHARGES:

Description of the Offense

1. Beginning at least as early as July 1999, and continuing until on or about July 2011, the exact dates being unknown to the Grand Jury, in the Eastern District of Michigan and elsewhere, Nobuhiko Niwa ("the defendant") and his co-conspirators knowingly engaged in a combination and conspiracy to suppress and eliminate competition by allocating customers and market shares, rigging bids, and fixing prices for ceramic substrates ("substrates") sold in the United States and elsewhere, and used in the emissions control systems of automobiles manufactured and/or sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and his 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.

2. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and his co-conspirators, the substantial terms of which were to suppress and eliminate competition by allocating customers and market shares, rigging bids, and fixing prices for substrates sold in the United States and elsewhere, and

used in the emission control systems of vehicles manufactured by automobile manufacturers and their subsidiaries, affiliates, and suppliers in the United States and elsewhere ("Automobile Manufacturers"). Those Automobile Manufacturers included General Motors LLC, Ford Motor Company, Chrysler, and Honda Motor Company, Ltd.

Defendant and His Co-Conspirators

3. During the time period covered by this Indictment, Company A was a corporation organized and existing under the laws of the United States with its principal place of business in Corning, New York, and an office in Troy, Michigan. Company A was engaged in the business of manufacturing and selling substrates, directly and indirectly, to Automobile Manufacturers in the United States, including General Motors LLC and Ford Motor Company, and elsewhere. Company B was a wholly owned subsidiary of Company A, organized and existing under the laws of Japan, with its principal place of business in Tokyo, Japan. Company B's mobile emissions division marketed and managed the direct and indirect sales of substrates manufactured by Company A in the United States to certain Automobile Manufacturers, including Honda Motor Company, Ltd.

4. The defendant is a resident of Japan. From at least as early as July 1999 until at least July 2011, the defendant was employed by Company B as Director and Senior Director of its mobile emissions division. In those roles, the defendant reported to Company A executives in the United States and provided input on pricing for certain United States and Japanese Automobile Manufacturers, including certain of their subsidiaries, affiliates, and suppliers in the United States. As an agent of Company A, the defendant knowingly joined and participated in the conspiracy from at least as early as July 1999 and continuing until at least July 2011.

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

6. Whenever in this Indictment 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

7. Substrates are crucial emissions control system parts that capture pollutants in gasoline and diesel exhaust systems. Substrates consist of uncoated ceramic monoliths with a fine honeycomb structure that, after being coated by third parties with a mix of metals and other chemicals, are incorporated into automotive catalytic converters. Catalytic converters are emissions control devices that convert certain pollutants in an exhaust gas stream into less harmful gases through catalytic chemical reactions. Internal combustion engines in automobiles typically have one or two catalytic converters.

8. When purchasing automotive parts, including substrates, Automobile Manufacturers typically 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 Automobile Manufacturers in response to RFQs, and Automobile Manufacturers may 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 two to three years before the start of production. Automobile manufacturers

procure parts in the United States and elsewhere for vehicles manufactured or sold in the United States.

Manner and Means of the Conspiracy

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

a. participating in meetings and communications in the United States and elsewhere to coordinate bids and price quotations to be submitted to certain Automobile Manufacturers in the United States and elsewhere at collusive and noncompetitive prices, and to coordinate on market share in the United States and elsewhere;

b. directing, authorizing, and consenting to the participation of subordinate employees in such meetings;

c. agreeing, during those meetings and communications, to allocate market shares and customers in the United States and elsewhere;

d. agreeing, during those meetings and communications, to coordinate pricing to be submitted to certain Automobile Manufacturers in the United States and elsewhere at collusive and noncompetitive prices;

e. agreeing, during those meetings and communications, not to compete against each other on certain bids by submitting intentionally collusive and noncompetitive bids to certain Automobile Manufacturers in the United States and elsewhere;

f. exchanging, during those meetings and communications, manufacturing capacity and sales volume information in the United States and elsewhere;

g. agreeing, during those meetings and communications, to coordinate price adjustments requested by certain Automobile Manufacturers in the United States and elsewhere;

h. negotiating prices, and submitting bids, price quotations, and price adjustments to certain Automobile Manufacturers in the United States and elsewhere in accordance with the illegal agreements reached;

i. supplying substrates to certain Automobile Manufacturers in the United States and elsewhere at collusive and noncompetitive prices; and

j. accepting payment for substrates sold in the United States and elsewhere at collusive and noncompetitive prices.

Trade and Commerce

10. During the time period covered by this Indictment, the conspirators' manufacturing and sales of substrates occurred in a continuous and uninterrupted flow of interstate and import trade and commerce. Company A manufactured its substrates in Erwin, New York, and Blacksburg, Virginia. Company A's substrates were sold in interstate commerce, shipped in interstate commerce, and used in automobiles manufactured in various states in the United States. Substrates sold by the conspirators, and payments for those substrates, traveled in interstate and import trade and commerce.

11. During the time period covered by this Indictment, the defendant and his co-conspirators managed the sales of and sold, directly and indirectly, substantial quantities of substrates to Automobile Manufacturers in the United States and elsewhere.

12. During the time period covered by this Indictment, the business activities of the defendant and his co-conspirators in connection with the sale of substrates, which was the

subject of the charged conspiracy, were within the flow of, and substantially affected, interstate and import trade and commerce.

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

A TRUE BILL.

/s/ Grand Jury Foreperson
Grand Jury Foreperson

Dated: May 11, 2016

/s/ Brent Snyder
Brent Snyder
Deputy Assistant Attorney General
Antitrust Division
United States Department of Justice

/s/ Lisa Phelan
Lisa M. Phelan
Chief, Washington Criminal I Section
Antitrust Division
United States Department of Justice

/s/ Marvin Price
Marvin N. Price, Jr.
Director of Criminal Enforcement
Antitrust Division
United States Department of Justice

/s/ Paul Gallagher
Paul T. Gallagher
Jon B. Jacobs
Emma M. Burnham
Jay D. Owen
Washington Criminal I Section
Antitrust Division
United States Department of Justice
450 5th St. NW, Suite 11300
Washington, DC 20530
(202) 532-4570
Paul.Gallagher2@atr.usdoj.gov