

Destruction of Evidence During Antitrust Investigation Leads to Stiff Sentence

March 2, 2017

The DOJ's investigation into price fixing and bid rigging in the automotive parts industry has yielded another conviction, but not one for violation of the antitrust laws. Instead, a company executive recently pleaded guilty to obstruction of justice and was sentenced to serve 14 months in prison.

The action is a reminder to companies and executives that are under investigation for antitrust violations or believe that they may become targets – whether based in the US or elsewhere around the world – of the need to preserve documents and the potential for significant criminal penalties for failure to do so.

Futoshi Higashida was an executive at Nishikawa Rubber Company in Japan and its US joint venture, Nishikawa Cooper LLC, in Michigan. According to the DOJ's indictment, upon learning that other automotive parts companies and their employees had been prosecuted for antitrust crimes in the United States, Higashida instructed employees to delete emails, cellular phone records and other documents discussing competitor prices and reflecting communications with competitors. In doing so, Higashida specifically warned employees that the records could be used by the US government as evidence of antitrust crimes, which could lead to imprisonment and substantial fines.

Higashida agreed to plead guilty to two counts, conspiracy to obstruct an investigation and attempted obstruction of justice, and agreed to serve a 14-month prison term, pay a fine and cooperate with the government's ongoing investigation and prosecution of violations in the automotive parts industry. He was sentenced in February.

Higashida's sentence is comparable to the sentences imposed on defendants who have pleaded guilty to antitrust crimes in the automotive parts industry, which have generally ranged from 12 to 15 months.

"The Antitrust Division takes just as seriously pursuing individuals ... who attempt to hide the facts as it does the subversion of the competitive process," according to DOJ's acting assistant attorney general.

A total of 65 individuals and 47 companies have been charged in the Antitrust Division's investigations into price fixing, bid rigging and other anticompetitive conduct in the auto parts industry.

Prudent companies should maintain antitrust compliance policies and regularly train employees about the need to comply with antitrust law. In addition to substantive information on complying with antitrust laws, including not fixing prices with competitors, those policies should give employees guidance on what to do if they suspect antitrust violations within the company, including where to report suspected violations and the potential penalties for destroying documents.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Michael Attanasio	mattanasio@cooley.com
San Diego	+1 858 550 6020
Howard Morse	hmorse@cooley.com
Washington, DC	+1 202 842 7852

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.