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Destruction of Evidence During Antitrust Investigation Leads to Stiff Sentence

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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.

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