

Client Alert

Antitrust Practice Group

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EU Court Decision Significantly Reduces Cartel Fines in Marine Hose Investigation

On May 17, 2013, the EU General Court partially annulled a 2009 European Commission decision in the Marine Hose cartel case and significantly reduced the fine imposed on hose manufacturer Parker ITR by nearly 75% from 25.61 million euros to 6.4 million euros. As part of its ruling, the Court found that the Commission had incorrectly calculated the period of the infringement by Parker ITR and found that the Commission had not demonstrated a sufficient “structural link” between Parker ITR and a predecessor entity that had engaged in cartel activity. It therefore annulled the share of the fine relating to activities before January 2002, the date on which Parker-Hannifin acquired ITR.

Background

In January 2009, the European Commission fined five marine hose manufacturers and related entities for participating in anticompetitive schemes to allocate tenders issued by their customers, agree on price lists and quotas, and collude in other ways. Marine hoses are used to load oil and other petroleum products from vessels to onshore and offshore facilities. The Commission issued fines ranging from 4.9 million euros up to 58.5 million euros for the companies’ role in the cartel starting as early as 1986.

The marine hose business operated by Parker ITR was initially established in 1966 by a company called Pirelli Treg SpA. After a series of ownership changes in the 1990s, Parker-Hannifin acquired the marine hose business that became Parker ITR in January 2002 from a company called ITR, a subsidiary of Saiag SpA.

Parker ITR was fined 25.61 million euros based on the Commission’s evidence relating to periods of time both before and after the January 2002 acquisition. Parker ITR, with its parent company Parker-Hannifin, was among five companies petitioning the EU General Court for an annulment of the Commission’s 2009 decision or a reduction in fines imposed on them.

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The EU General Court's Decision Regarding Economic Continuity

Appealing the Commission fine, Parker argued that it cannot be held liable for an infringement of the competition laws prior to the date in January 2002 when Parker-Hannifin acquired 100% of the shares of the business from ITR and Saiag. In its decision reducing Parker ITR's cartel fine by nearly 75%, the EU General Court agreed and found that where an entity involved in a cartel transfers a part of its business to an independent third party, the criterion of economic continuity prohibits the Commission from holding the independent third party liable for cartel conduct in which it did not participate,¹ unless the entities "have structural links which link them economically and organizationally" or there has been a transfer to avoid antitrust law penalties. Neither of these rationales applied here. Accordingly, Parker-Hannifin (and Parker ITR) could not be found responsible for the behavior of predecessor entities for the period prior to January 2002, when it acquired the marine hose business. The Court therefore significantly reduced the fine assessed to Parker ITR.

Comparison with U.S. Enforcement

The EU General Court's significant reduction of Parker ITR's cartel fine is notable because it conflicts with concepts of successor liability in U.S. cartel and other criminal cases. U.S. law does not include an economic continuity requirement. In the U.S., criminal liability generally will not abate at the time of a merger or stock acquisition but will follow from the predecessor entity to the post-merger successor corporation.² Thus, a post-merger successor corporation can be held responsible for criminal acts committed years before the merger by a company that no longer exists. Indeed, in the investigation and prosecution of the Marine Hose cartel in the United States, Parker ITR was charged with and plead guilty to cartel conduct dating back to 1999 – three years before Parker's acquisition of the business.³ The charge reflects the U.S. view that Parker is responsible for the prior cartel conduct and subjected Parker to a fine based in part on that prior conduct.

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¹ The EU General Court concluded that ITR, as well its prior owner, Saiag, was responsible for infringements of competition law during the period of time from 1990 until January 2002, prior to the purchase of ITR by Parker-Hannifin. The Commission did not issue a fine to ITR or its prior owners because of its view that such action would be time-barred.

² See, e.g., *United States v. Wilshire Oil Co. of Texas*, 427 F.2d 969, 974 (10th Cir. 1970) (acquiring entity liable for a conspiracy to fix the price of asphalt sold to state highway departments entered into by agent of acquired entity prior to merger); *United States v. Alamo Bank of Texas*, 880 F.2d 828, 829 (5th Cir. 1989) (bank prosecuted for violations of the Bank Secrecy Act that had been committed by acquired bank "three or four years prior to the merger"); *United States v. Shields Rubber Corp.*, 732 F.Supp 569, 571-72 (W.D. Pa. 1989) (defendant successor corporation indicted for violations of the federal customs laws over four years after the predecessor corporation, alleged to have committed the acts, went out of existence).

³ DOJ Press Release, Italian Subsidiary of U.S.-Based Company Agrees to Plead Guilty for Participating in International Price-Fixing Conspiracy (Feb. 16, 2010), available at http://www.justice.gov/atr/public/press_releases/2010/255258.htm.