

Automotive Bearings Price-Fixing Allegations Survive the Foreign Trade Antitrust Improvements Act (FTAIA) Defense

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On August 26, 2014, the Eastern District of Michigan denied a motion by a Japanese manufacturer and its U.S.-based subsidiary (NTN Corporation and NTN USA Corporation) to dismiss the direct and indirect purchaser complaints in *In re Bearings*, 2:12-cv-00500-MOB-MKM (E.D. Mich. Aug. 26, 2014), one of the cases in the *In re Automotive Parts Antitrust Litigation* MDL, No. 12-md-02311. Following an investigation by the Japan Fair Trade Commission in 2013, NTN admitted to participating in a conspiracy to fix prices for bearings, which the complaints describe as “friction-reducing devices that allow one moving part to glide past another moving part.”

According to NTN, the plaintiffs were trying to use NTN’s participation in a price-fixing conspiracy in Japan to “link NTN to a different conspiracy in the United States” simply because NTN had “knowledge that some of its bearings sold in foreign markets would enter the United States market.” This “theory of global United States antitrust jurisdiction,” NTN contended, is prohibited by the Foreign Trade Antitrust Improvements Act (FTAIA).

The court was unpersuaded. The plaintiffs’ allegations depicting foreign investigations were not merely attempts to recover for conduct that occurred in other countries; rather, the existence of foreign investigations and guilty pleas was what “render[ed] Plaintiffs’ claims of a conspiracy directed at the United States plausible.” According to the court, the FTAIA arguments did not apply to NTN USA, which was alleged to have manufactured and sold bearings in the United States. And “[w]ith respect to NTN, Plaintiffs allege[d] that NTN USA manufactured and sold price-fixed bearings directly into the United States market *at the direction of NTN*.” The court concluded that “[t]he conduct at issue in this case is not the type of conduct Congress sought to exclude from the Sherman Act’s reach.”

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