U.S. Demanding Harsh Penalties For Price Fixers

Paul Elias, Associated Press

SAN FRANCISCO (AP) — The U.S. Department of Justice is demanding that a "remorseless" Taiwanese company pay a $1 billion fine and two former top executives each serve 10 years in prison for their roles as central figures in what prosecutors called the most serious price-fixing cartel ever prosecuted by the U.S.

The proposed sentences would be the stiffest penalty ever meted out for price-fixing convictions if a federal judge adopts the DOJ's position at sentencing Thursday. The DOJ argues the sentences are necessary to punish a company that unfairly forced U.S. consumers to pay billions more than they should have for electronics and to deter others from engaging in price fixing.

The DOJ lawyers made the demands, which include $1 million fines for each of the executives, in court filings Tuesday. They are wrapping up a years-long investigation of a global price-fixing scheme that artificially increased the price of LCD screens used in televisions, computers and other electronic products made by Apple Inc., Dell Computers and many of the largest high-tech companies in the United States.

"The conspiracy affected every family, school, business, charity, and government agency that paid more to purchase notebook computers, computer monitors, and LCD televisions during the conspiracy," prosecutors concluded in arguing for the criminal penalties.

AU Optronics and the other co-conspirators are also the targets of class action lawsuits filed by customers, retailers and consumers.

In July, the company, along with Toshiba and LG, agreed to pay a combined $571 million to settle one of the lawsuits. Other manufactures, including Hitachi, Sharp and Samsung, agreed in December to pay $538 million to settle.

U.S. District Judge Susan Illston is expected to sentence AU Optronics and its two top executives. Seven other Asian manufacturers and 22 of their executives have previously pleaded guilty and agreed to pay a combined $890 million in fines. The 10 executives who have been sentenced so far received prison terms ranging from six months to a little more than year in prison.

It's the largest criminal antitrust case ever prosecuted by the DOJ, surpassing the break-up of a vitamin cartel in the late 1990's that netted $875 million in criminal fines.

To date, F. Hoffmann-La Roche Ltd.'s $500 million fine for participating in the vitamin price-fixing scheme remains the largest antitrust fine. The DOJ's annual collection of antitrust criminal fines only topped $1 billion once in the past 10 years,

according to a report compiled by the law firm Gibson Dunn.

A jury found AU Optronics, its former president H.B Chen and former executive vice president Hui Hsiung guilty and acquitted two others. The jury couldn't agree on a verdict for a fifth executive, and prosecutors dropped charges.

AU Optronics refused to plea bargain with the DOJ, becoming the only company to go to trial. Its lawyer Dennis Riordan says the company plans to appeal the conviction after Illston recently refused to overturn the jury's verdict issued in March.

Riordan says a $1 billion fine is out of proportion to the penalty paid by Hoffman, writing in court papers that "it is difficult to believe that the conduct in this case was more than two times more egregious than the almost ten-year conspiracy to fix the price" of vitamins. He says a fine of a $1 billion will cripple the company financially and is arguing for a penalty of less than $285 million.

Lawyers representing the executives contend the harsh penalties sought by the DOJ are in retaliation for the company's refusal to settle the case before trial. The lawyers are arguing for sentences similar to those given to the other executive who have pleaded guilty and received less than a year in prison.

They said in court papers that a 10-year sentence "would be more than twice the length of the longest jail sentence ever imposed on any defendant nationwide for violating the antitrust laws in the 100-plus-year history of the Sherman Act," which made price-fixing among competitors illegal.

Prosecutors counter that the AU Optronics executives and the company do deserve harsher treatment than the others who pleaded guilty and helped with the investigation.

"Defendants cannot credibly ask this court to treat them more favorably than their coconspirators who accepted responsibility and provided substantial assistance to the investigation," Assistant U.S. Attorney Peter Huston argued.

Prosecutors say the conspiracy began on Sept. 14, 2001, in a luxury hotel in Taipei, Taiwan, and ended when the FBI raided AU Optronics' Houston office in December 2006. In between, executives from the companies met more than 60 times in luxury hotels throughout Taiwan to set prices for the world market, racking up $72 billion in sales during that time.

Prosecutors say the executive dubbed the gatherings "crystal meetings," which were attended at first by top company officials and later by middle managers. Prosecutors allege the top executives began sending their underlings to the meetings after important customers began suspecting the manufacturers were scheming to fix prices. The underlings also began conducting a series of one-on-one meetings rather than gathering all at once after the DOJ announced it was prosecuting makers of certain types of computer memory chips.

Nonetheless, prosecutors said they compiled overwhelming evidence through emails and documents detailing decisions made at the meetings. They argue for the harsh penalties to punish what they describe as AU Optronics' brazen behavior and to send a message to what they say is a growing problem.

"In the past dozen years, new cartels have continued to spring up in spite of the many fines of more than $100 million imposed in cartel cases," the prosecutors wrote. "The continuing discovery of new cartels throughout the world is evidence that the fines imposed to date — as large as they are — have failed to provide adequate deterrence and that potential cartelists continue to see fines as an acceptable cost of doing business."

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