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## Price pressure may lie behind price fixing

### More details of probe expected soon

By [Chad Halcom](#) and [Dustin Walsh](#)

A long federal investigation into price fixing collusion among automotive suppliers has yet to answer one lingering question: Why is it happening?

One answer: Blame the automakers.

Sheldon Stone, partner at Birmingham-based financial advisory and turnaround firm **Amherst Partners LLC**, and Richard Hilgert, automotive equity analyst for Chicago-based **Morningstar Inc.**, believe the price fixing is a result of the automakers' own pricing pressures.

"These suppliers, they've been beaten over the head for years, margins are razor thin," Hilgert said. "The customers (automakers) carve up the market on things other than just low prices, so I don't know how the (**U.S. Department of Justice**) is able to put together an antitrust case when it's so customer driven.

"If anyone should be blamed and held accountable for higher vehicle prices to the consumer, it's the automaker, not the supplier," he said.

Stone agreed.

"The proliferation of fraud over the last two to three years is unprecedented," he said. "But it's not because you have criminals in these companies, you have executives that are being forced to behave in a way that is incongruent with their personal and corporate value system because of continual pricing pressures."

But Jeff Lipshaw, a past vice president and general counsel at the former **AlliedSignal Inc.**, past partner at **Dykema Gossett PLLC** and now associate professor at **Suffolk University Law School** in Boston, said he wouldn't be surprised if pressured suppliers went rogue and then an automaker demanded an inquiry.

"Auto suppliers compete by platform. Competition or bidding shifts from platform to platform, the suppliers bid for a place on that platform and they are each in concentrated industries," he said. "They have only so many customers, so it's not beyond the pale that

several rogues would say, 'let's all go in to one customer at the same price.' And the (automaker) finally says, 'this can't be a coincidence,' and does something about it."

**Van Conway, president of Birmingham-based Conway MacKenzie Inc., said he is still researching the collusion investigation but he would be surprised if much of it has to do with suppliers to domestic automakers.**

**"The (domestic automakers) know more about your margin than you do sometimes. They know your labor content, they know your material costs. Sometimes they even buy your steel and ship it to you, accountants come look at your books, all as a part of doing business with them," he said.**

**"It's not like you can easily wink at a couple of guys in a room and get the prices marked up 10 percent. Could you do it on something? Maybe within a small component of the business that nobody has time to inspect. That's still illegal, but I just don't know how (pervasive) that would be."**

#### **More details may surface soon**

The federal investigation into price-fixing collusion among automotive suppliers started with wire-harness makers but has branched into other component makers that include safety systems and auto tooling.

While only insiders at the Department of Justice Antitrust Division and their counterparts overseas know the full scope of the global investigation, more details could surface as early as the end of November, attorneys said.

So far, though, **Furukawa Electric Co. Ltd.** and three of its executives agreed to enter guilty pleas in Detroit. Japan's Fair Trade Commission last year raided Furukawa's Tokyo offices, along with those of **Sumitomo Electric Industries Ltd.** and **Yazaki Corp.**, around the same time that FBI investigators raided **Yazaki North America Inc.** in Canton Township, **Denso Corp.** in Southfield and **Tokai Rika Group North America** in Plymouth Township. The FBI also sought documents earlier this month from Aurora, Ontario-based **Magna International Inc.**, and earlier this year the **European Commission** made unannounced visits to **Lear Corp.**, **TRW Automotive Holdings Corp.**'s occupant safety systems division and a subsidiary of **Autoliv Inc.** in Germany.

When the dust settles, total fines for collusion could exceed \$5 billion if all of the companies that have been tied to the investigation so far are found guilty, by local attorney estimates.

Federal fines for price-fixing cases are up to \$100 million, or twice the income or its victims' losses, whichever is greater.

Wire-harness maker Furukawa, the only company indicted to date, has already agreed to a \$200 million fine (its entire net income for 2010 was about \$38 million), and other

firms' exposure could be greater depending on sales or market share.

Last week, Hirotsugu Nagata, 46, former CFO and general manager of sales at U.S. subsidiary **American Furukawa Inc.** in Plymouth from 2004 to 2009, pleaded guilty to conspiracy to restrain trade in violation of the Sherman Antitrust Act, along with Junichi Funo, 41, assistant general manager of Honda sales at American Furukawa until 2009. Both men await sentencing Jan. 11

Furukawa will formalize its plea agreement at **U.S. District Court** in Detroit on Nov. 14, and one remaining executive, Tetsuya Ukai, awaits a court date Nov. 10.

Holly Leese, senior vice president, secretary and general counsel at **Chrysler Group LLC**, said her department at the automaker wasn't even aware of a wire-harness segment to the federal probe until Justice officials announced the plea deal with Furukawa Electric and its executives Sept. 29.

"There are two other investigations from the (**Federal Trade Commission**) where we were contacted very early and asked a lot of discovery questions involving pricing policy and purchasing terms. But this aspect of it involving wire harnesses was news to me," she said.

Leese would not elaborate on the other investigations. Attorneys in her department are now tracking the wire-harness investigation, she said, but the company is not contemplating a civil lawsuit against suppliers at the moment.

Kelly Cusinato, communications manager at **General Motors Co.**, said the automaker is still reviewing whether to litigate or to source wire harness work with other companies as a result of the federal investigation.

David Leitch, group vice president and general counsel at **Ford Motor Co.**, did not immediately return calls seeking comment.

### **Cooperation may reduce penalties**

Some companies may end up making deals.

The DOJ Antitrust Division's corporate leniency policy allows for deals with companies that offer to assist the government before or during a federal investigation.

That can include amnesty for corporations that are first to inform the government or to acknowledge their own role, or "amnesty plus" agreements for a company that isn't first to come forward but reports involvement in a separate conspiracy, said principal and commercial litigation attorney Matthew Leitman of Detroit-based **Miller Canfield Paddock and Stone PLC**, who has represented companies in past investigations.

"It could be that the same person blew the whistle in both industries," Lipshaw said. "One

thing to look for might be whoever does business in both safety restraints and harnesses."

For example, **Delphi Corp.** in Troy has a safety and interior systems division and formed a wire-harness joint venture company with Furukawa in 2004: **Delphi Furukawa Wiring Systems LLC**. Lear also works in wire-harness systems and offers safety products in its seating division, while TRW supplies some wire-harness fasteners. But no company has yet acknowledged having an amnesty or leniency agreement.

Deals can make the difference between emerging relatively unscathed or with crippling fines that threaten survival.

George Donnini, a shareholder at **Butzel Long PC**, said last week at a meeting of the **Society of Automotive Analysts** in Southfield that the government in this case has been assuming a 10 percent profit margin on colluding operations before doubling it to calculate potential fines.

Based on that, market leader Yazaki potentially could face a fine in excess of \$1.7 billion for 2010 alone if it were indicted and found guilty. A Sumitomo fine potentially could be as much as \$1.3 billion and a Delphi fine potentially as much as \$968 million, based on market share.

Lear and Magna had net income of \$438 million and \$973 million in 2010 respectively, but it remains unclear how far the federal investigation extends into their various business operations.

### **Pulling contracts unlikely**

With fewer and fewer suppliers, automakers won't pull contracts from the indicted companies for a long time, partly for fear of giving another competitor too much pricing power, analysts said.

"If companies are being indicted and executives are being convicted, or pleading, it will affect business in the short term, but probably not more than 24 months," Stone said.

Stone speculated that automakers will likely force their hand and want suppliers to "clean house" following indictments, meaning they will insist on the departure of key executives or colluders to ensure trust moving forward.

"If you're a shareholder or customer, you won't want to get caught in the crossfire," he said. "You'll insist executives be removed."

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