UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA	)	Criminal No. 1:16-CR-00078
	)	
	)	Filed: August 9, 2016
v.	)	
	)	Violation: 15 U.S.C. § 1
HITACHI AUTOMOTIVE SYSTEMS, LTD.	)	
	)	
	)	Judge: Michael R. Barrett
	)	
Defendant.	)	
	)	

UNITED STATES SENTENCING MEMORANDUM

Hitachi Automotive Systems, Ltd. ("HIAMS" or the "Defendant") is scheduled to appear before this Court for sentencing on February 16, 2017, at 10:00 a.m. The Defendant is charged with violating the Sherman Act, 15 U.S.C. § 1. The United States submits this Sentencing Memorandum to provide the Court with sufficient information that it may meaningfully exercise its sentencing authority under 18 U.S.C. §§ 3553 and 3572.

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States recommends that the Court sentence the Defendant to pay to the United States a $55.48 million criminal fine, payable in full before the fifteenth day after the date of judgment. Because this recommended fine amount is within the agreed-upon fine range set forth in Paragraph 9 of the Plea Agreement, pursuant to Paragraph 9(b) of the Plea Agreement, the Defendant will not oppose this fine recommendation. The United States also recommends that the Court sentence the Defendant to a term of probation of two (2) years with the conditions enumerated in paragraph 9(d) of the Plea Agreement. Since restitution is not mandatory for violations of 15 U.S.C. § 1, and in light of availability of civil causes of action

pursuant 15 U.S.C. § 15, the United States recommends that the Court not sentence the Defendant to pay restitution. Finally, the Defendant should be sentenced to pay a $400 special assessment. *See* Plea Agreement, ¶ 9, Docket No. 003.

I. BACKGROUND

The Sherman Act makes it illegal for competitors to eliminate competition among themselves by allocating markets, rigging bids, and fixing prices. The subversion and elimination of competition for business, whether done through agreement to divide up business by allocating customers or markets; fix prices charged to customers; or rig bids submitted to customers, typically results in the customer paying more than it should have for the work done or the product supplied. The Defendant has admitted that, through its employees, it conspired with other shock absorbers manufacturers to do these things made illegal by the Sherman Act.

Shock absorbers are part of the suspension system on automobiles. They absorb and dissipate energy to help cushion vehicles on uneven roads leading to improved ride quality and vehicle handling. Shock absorbers are also called dampers.

On August 9, 2016, the United States filed a one-count criminal Information charging the Defendant with participating in a combination and conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to allocate markets of, rig bids for, and to fix, stabilize, and maintain the prices of shock absorbers sold to Suzuki Motor Corporation and Toyota Motor Corporation, and certain of their subsidiaries (collectively, the "Automobile Manufacturers"), in violation of the Sherman Act, 15 U.S.C. § 1. *See* Docket No. 2.

II. SUMMARY OF THE OFFENSE

During the period charged in the Information, from at least as early as the mid-1990s and continuing until as late as summer 2011 (the "Charging Period"), Defendant and its predecessors in interest, were corporations organized and existing under the laws of Japan with their principal place of business in Tokyo, Japan.[1] During the Charging Period, the Defendant, and certain of its subsidiaries were engaged in the manufacture and sale of shock absorbers to Automobile Manufacturers in the United States and elsewhere for installation in vehicles manufactured and sold in the United States and elsewhere. During the Charging Period, one of the Defendant's subsidiaries was Hitachi Automotive Systems Americas, Inc., which has headquarters in Kentucky, and plants, offices, and facilities in Kentucky, Michigan, Georgia, and California.

During the Charging Period, Defendant and its co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to allocate markets of, rig bids for, and to fix, stabilize, and maintain the prices of certain shock absorbers sold to Automobile Manufacturers in the United States and elsewhere. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among Defendant and its co-conspirators. In furtherance of the conspiracy, the Defendant, through its managers and employees, engaged in discussions and attended meetings with co-conspirators employed by other manufacturers of shock absorbers.

[1] For purposes of this Memorandum, reference to "HIAMS" and "Defendant" includes conduct engaged in by its predecessors in interest. HIAMS predecessors in interest include Hitachi Automotive Systems Group of Hitachi, Ltd., Tokico, Ltd., and Unisia Automotive, Ltd. Tokico was purchased by Hitachi Automotive Systems Group of Hitachi, Ltd. in 2004. Tokico USA was the predecessor in interest to Hitachi Automotive Systems Americas, Inc. and operated in the United States from the late 1980s until approximately 2004 when it was purchased by Hitachi Automotive Systems Group of Hitachi, Ltd. Hitachi Automotive Systems Group of Hitachi, Ltd. became HIAMS in 2009. HIAMS is a wholly-owned subsidiary of Hitachi, Ltd.

During these discussions and meetings, agreements were reached to allocate markets of, rig bids for, and to fix, stabilize, and maintain the prices of certain shock absorbers sold to Automobile Manufacturers in the United States and elsewhere. After entering into a Plea Agreement with the United States, the Defendant has cooperated in the United States' ongoing investigation.

III. UNITED STATES' FINE METHODOLOGY AND FACTORS TO CONSIDER IN DETERMINING THE SENTENCE

The jointly recommended criminal fine was calculated using sales figures submitted to the United States by the Defendant and the victims of the conspiracy. Based on these sales figures, the United States calculates the volume of commerce under U.S.S.G. § 2R1.1(d) to total approximately $102.74 million. The affected volume of commerce consists of sales of certain shock absorbers in the United States by the Defendant's U.S. subsidiary to Toyota.

A. Sentencing Guidelines Fine Calculation

In determining and imposing sentence the Court must consider the kinds of sentence and sentencing range established by the advisory Sentencing Guidelines, 18 U.S.C. § 3553(a)(4). The Sentencing Guidelines procedure for calculating the Guidelines fine range for a corporation charged with an antitrust offense is set forth below. Organizations, such as the Defendant, are sentenced pursuant to Chapter 8 of the Sentencing Guidelines. In the case of antitrust violations, in addition to the provisions of Chapter 8, special instructions with respect to determining fines for organizations are found in the Antitrust Guideline, U.S.S.G. § 2R1.1.

Under the Sentencing Guidelines, the first step in determining a defendant's fine range is to determine the base fine.[2] The controlling Guideline applicable to the count charged is U.S.S.G. § 2R1.1(d)(1), pursuant to which the base fine is 20% of the approximately $102.74 million in affected commerce, or approximately $20.55 million.

The next step is to determine the culpability score for a defendant. The base culpability score is 5. *See* U.S.S.G. § 8C2.5(a). The Defendant is a corporation with more than 5,000 employees, and the offense involved certain high-level personnel of the Defendant, which adjusts the culpability score upward by 5 points. *See* U.S.S.G. § 8C2.5(b)(1). The Defendant clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, which adjusts the culpability score downward by 1 point. *See* U.S.S.G. § 8C2.5(g)(3). The resulting total culpability score is 9.

The culpability score is then used to determine the minimum and maximum multipliers. A culpability score of 9 corresponds to a minimum multiplier of 1.80 and a maximum multiplier of 3.60. *See* U.S.S.G. § 8C2.6.

Applying the multipliers to the base fine of $20.55 million yields a Guidelines fine range for the Defendant of $36.99 million to $73.98 million. *See* U.S.S.G. § 8C2.7.

B. Statutory Factors to Consider at Sentencing

In addition to the advisory Sentencing Guidelines, the Court must consider the other factors set forth in 18 U.S.C. §§ 3553(a) and 3572 in determining and imposing sentence. The Court's sentence must be sufficient, but not greater than necessary, to

[2] The starting point for determining the base fine is § 8C2.4. It states that the base fine is the greatest of three alternatives: (1) the amount from a table in § 8C2.4(d) corresponding to the offense level; (2) "the pecuniary gain to the organization from the offense"; or (3) "the pecuniary loss from the offense caused by the organization." U.S.S.G. §8C2.4(a). It also provides that "if the applicable offense guideline in Chapter Two includes a special instruction for organizational fines, that special instruction shall be applied, as appropriate." *Id.* § 8C2.4(b). For antitrust offenses, a special instruction in § 2R1.1(d)(1) directs the Court to use 20 percent of the volume of affected commerce instead of pecuniary loss.

comply with the purposes set forth in 18 U.S.C. § 3553(a)(2). Because the Defendant in this case is a corporation, not all of the statutory factors apply. Below, the factors that are most relevant to the sentencing of this Defendant are highlighted.

1. Relevant Section 3553 Factors

a. The History, Characteristics, and Cooperation of the Defendant (3553(a)(1))

In September 2013, HIAMS was charged with violating the Sherman Act in connection with the manufacture and sale of certain specified auto parts. *See U.S. v. Hitachi Automotive Systems, Ltd.* (*HIAMS I*), Case No. 2:13-CR-20707 (E.D. Mich.)(filed September 26, 2013). HIAMS agreed to plead guilty to this charge and in November 2013, it was sentenced to pay a fine of $195 million. Despite this prior charge, HIAMS is not considered a recidivist under the Guidelines, because the conduct charged in the present case occurred during the same time period as the conduct charged in *HIAMS I* and the conspiracy in the present case ended in 2011, prior to the charges in *HIAMS I*. *See* U.S.S.G. § 8C2.5(c).

Nonetheless, it is troubling that HIAMS did not uncover and report the conduct charged in this case when it was under investigation in the first case. Additionally, *HIAMS I* is not the first or last time companies related to, or subsidiaries of, Hitachi, Ltd., HIAMS' parent company, have been charged with antitrust violations.[3] The United States took these previous convictions into account during plea negotiations in this case, particularly with respect to the recommendation of a fine in the middle of the Guidelines

[3] *See U.S. v. Hitachi Chemical Co., Ltd.*, Case No. 16-CR-00180 (N.D. Cal.)(filed April 27, 2016); *U.S. v. Hitachi Metals, Ltd.*, Case No. 14-CR-00394 (N.D. Ohio)(filed October 31, 2014); *U.S. v. Hitachi-LG Data Storage, Inc.*, Case No. 11-CR-00724 (N.D. Cal.)(filed September 30, 2011); *U.S. v. Hitachi Displays Ltd.*, Case No. 09-CR-00247 (N.D. Cal.)(filed March 10, 2009).

fine range as well as the government's recommendation that HIAMS be sentenced to a term of probation of two years. *See infra* Section III (C) at p. 14. Pursuant to U.S.S.G. § 8C2.8(a)(7) and Application Note 5, one of the factors a Court can consider in determining the specific fine within the Guidelines range is any prior civil or criminal misconduct by the organization other than that counted under § 8C2.5(c). Thus the Court should consider HIAMS' guilty plea in *HIAMS I* as well as the other Hitachi-related cases identified in footnote 3, in finding that a fine in the middle of the Guidelines range is appropriate in this case.

Furthermore, had HIAMS reported the shock absorbers conspiracy during the first investigation, it would have been eligible for leniency pursuant to the Antitrust Division's Corporate Leniency Policy, and not faced charges or a criminal fine for that conduct. The Leniency Policy provides huge incentives for corporations, including those under investigation, to uncover and report additional criminal violations of the antitrust laws. However, if a company that is under investigation for criminal violations of the antitrust laws fails to uncover and report additional violations, and, as happened in this case, those violations are subsequently uncovered, the Antitrust Division has publically stated that at sentencing that company should face higher penalties.[4]

[4] This policy is referred to as the Antitrust Division's Penalty Plus policy. Pursuant to that policy, because HIAMS did not report the shock absorbers conspiracy at the time of the first investigation, the starting point for the fine is at least the midpoint of the Guidelines fine range. *See* Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement, Antitrust Division, U.S. Department of Justice, Measuring the Value of Second-In Cooperation in Corporate Plea Negotiations, Speech before the ABA Section of Antitrust Law Spring Meeting (March 29, 2006), *available at* https://www.justice.gov/atr/speech/measuring-value-second-cooperation-corporate-plea-negotiations. While the Antitrust Division's Leniency policy provides a carrot for companies to cooperate and report other instances of antitrust violations, the Penalty Plus policy provides the stick for those companies that choose not to fully cooperate. *See also* Frequently Asked Questions About the Antitrust Division's Leniency Program and Model Leniency Letters, p. 11 (update published January 26, 2017), *available at* https://www.justice.gov/atr/page/file/926521/download.

Additionally, HIAMS' cooperation in the government's shock absorbers investigation was not timely. HIAMS was the last corporate defendant to cooperate and plead guilty in this investigation. HIAMS was served with a grand jury subpoena related to shock absorbers in April 2014. Given its recent guilty plea to an antitrust crime involving the manufacture and sale of other auto parts, HIAMS was uniquely positioned to quickly and completely cooperate. However, despite the previous conviction, it appears that HIAMS took a wait and see approach. It did not begin cooperating until after one of its co-conspirators pled guilty in late 2015. Nonetheless, while not timely, HIAMS' agreement to plead guilty shows that it has clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct in this case. *See* U.S.S.G. § 8C2.5(g) and comment 13.

In determining the appropriate fine within the Guidelines range, "the court may consider the relative importance of any factor used to determine the range" including "aggregating or mitigating factor[s] used to determine the culpability score." *See* U.S.S.G. § 8C2.8(b). The Sentencing Guidelines recognize the importance of early cooperation and rewards early and full cooperation with a reduction of the culpability score. *See* U.S.S.G. § 8C2.5(g). Consistent with the Guidelines, the Antitrust Division has publically stated that later cooperators generally will not receive the same rewards as earlier cooperators in determining an appropriate fine.[5] Given the importance of timely cooperation, it is appropriate in this case for the Court to consider HIAMS' delayed

[5] *See* Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement, Antitrust Division, U.S. Department of Justice, Measuring the Value of Second-In Cooperation in Corporate Plea Negotiations, Speech before the ABA Section of Antitrust Law Spring Meeting (March 29, 2006), *available at* https://www.justice.gov/atr/speech/measuring-value-second-cooperation-corporate-plea-negotiations.

cooperation in determining the appropriate fine within the Guidelines range and sentence HIAMS to pay a fine in the middle of the Guidelines range.

The importance of conducting internal investigations designed to uncover additional antitrust violations and timely cooperation set forth in the publically disseminated policies of the Antitrust Division detailed above are consistent with the policies set forth in the Sentencing Guidelines and provide predictability and transparency for corporate defendants facing sentencing for violations of the antitrust laws. Applying these policies to HIAMS will maintain consistency and thus avoid unwarranted sentence disparities among similarly situated defendants. 18 U.S.C. § 3553(a)(6).

While HIAMS' cooperation was not timely, since reaching a Plea Agreement in July 2016, HIAMS has fully cooperated in the Antitrust Division's on-going investigation of the shock absorbers industry. To date, HIAMS has provided a proffer of the conduct it was involved in relating to shock absorbers and provided additional proffers of the expected testimony of certain employees who were involved in, or had knowledge of, the conspiracy. Pursuant to the Plea Agreement, HIAMS has also produced documents from Japan relevant to the conduct at issue and provided translations of those documents. Pursuant to the Plea Agreement, HIAMS has made employees who are located outside of the United States and thus beyond the reach of grand jury subpoena, available for interviews in the United States and has provided translators to facilitate those interviews.

Therefore, the government recommends that HIAMS be sentenced to pay a fine of $55.48 million which is in the middle of the Guidelines range, but at the low end of the agreed-upon fine range of not more than $59.18 million, but at least $55.48 million set

forth in paragraph 9 of the Plea Agreement. The agreed-upon fine range was intended to incentivize and reward HIAMS for cooperation provided after it agreed to plead guilty and before it is sentenced. Because HIAMS has cooperated in the Antitrust Division's on-going investigation, the government has recommended a fine at the low end of the agreed-upon range.

b. The Seriousness of the Offense (3553(a)(2)(A))

Antitrust conspiracies are by their very nature serious offenses. Antitrust crimes strike a blow to the heart of the nation's economy -- competition. When competition is eliminated, as it was here, consumers are likely to pay higher prices for goods and services. According to the background comments in the Antitrust Guideline, "there is near universal agreement that restrictive agreements among competitors, such as horizontal price-fixing (including bid-rigging) and horizontal market-allocation, can cause serious economic harm." U.S.S.G. § 2R1.1, commentary (backg'd.).

c. Deterrence and Protecting the Public from Further Crimes of the Defendant (3553(a)(2)(B) and (C))

A fine in the middle of the Guidelines fine range is also appropriate in this case because the substantial criminal fine of $55.48 million recommended in this case provides adequate deterrence to criminal conduct and is necessary to deter future criminal violations of the antitrust laws. *See generally* U.S.S.G. § 8C2.8 and § 2R1.1, comment. (backg'd.).

Finally, as discussed below, HIAMS has begun to implement an enhanced compliance policy to educate its employees to ensure that the company does not violate the antitrust laws in the future. The implementation of an effective compliance program

will protect the public from future violations of the antitrust laws. *See* U.S.S.G. § 8C2.8(a)(11).

2. Relevant Section 3572 Factors

a. Preventing Recurrence of the Offense -- Compliance (3572(a)(8))

In July 2011, HIAMS was simultaneously searched in the United States and Japan in connection with investigations of violations of antitrust laws. Shortly thereafter, HIAMS issued a notice to its employees prohibiting contacts with employees at competitor companies. However, it was not until early 2013, after it settled antitrust charges in Japan, that HIAMS implemented an enhanced compliance policy. The enhanced compliance policy, which was approved by Japan's antitrust authority, included increased training, an enhanced "hotline" for reporting potential antitrust violations, and a provision for punishment, including possible termination, for employees who violate antitrust laws.

At that same time, the company also began an audit of its sales divisions to determine if there were any additional violations of antitrust laws. However, perhaps because the emphasis on compliance was new, the cartel conduct related to shock absorbers was not uncovered during the audits in 2013. More likely, however, the conduct was not uncovered because, as HIAMS top management acknowledged during a training presentation in October 2014, many employees viewed the compliance program as a façade since supervisors routinely approved cartel conduct that violated the antitrust laws. Further, those cartels had operated for decades with no consequence and for decades employees had been trained that meeting with competitors and reaching agreements was how business was conducted. Employees, therefore, likely did not feel

the need report their participation in cartels because they did not believe that the company was serious about the need to comply with the antitrust laws. Management also acknowledged that there had been an inadequate deployment and implementation of the internal reporting system.

After this acknowledgement HIAMS stepped up efforts to design and implement an enhanced compliance program to detect and ultimately prevent violations the antitrust laws by fostering a corporate culture of compliance. HIAMS established a compliance office with a Director of Compliance, and by mid-2015, compliance officers were appointed for all group companies worldwide. Throughout 2014 and into 2015, HIAMS increased and emphasized antitrust training, including implementing e-learning. New rules relating to contacts with competitors were developed and implemented for all employees, the hotline was enhanced to include electronic reporting, and the company instituted a "Special Confession Program," designating an "amnesty" month during which employees were encouraged to report all violations of the antitrust laws in the last ten years with no fear of negative consequences. Finally, in July 2015, HIAMS instituted "Compliance Day" to coincide with the anniversary of the day the search warrants were served in the first investigation. This day is devoted to training about antitrust violations, including a discussion of the consequences of antitrust violations to the company, to prevent future violations. Direction for these changes came not only from the president of HIAMS, but was also directed by Hitachi, Ltd., the parent company of HIAMS.

Nonetheless, in April 2014, when confronted with allegations of violations of the antitrust laws relating to shock absorbers, the company's response was slow and, as noted above, HIAMS did not cooperate in the government's investigation until after one of its

co-conspirators pleaded guilty in late 2015. Furthermore, HIAMS has also been slow to discipline culpable employees, which is a key component to an effective compliance program. Employees that were involved in the conduct that resulted in *HIAMS I* were not disciplined until June 2015.

On paper HIAMS' enhanced antitrust compliance policy has the hallmarks of an effective compliance policy, including direction from top management at the company, training, anonymous reporting, proactive monitoring and auditing, and provision for disciplining employees who violate the policy. The question remains, however, if the paper policy can change the culture of the company that has existed for decades and prevent recurrence of the offense. To ensure that HIAMS remains focused on implementing a robust antitrust compliance policy, the Antitrust Division recommends that the Court sentence HIAMS to a two-year term of probation during which the Court, Probation, and the Antitrust Division can monitor HIAMS' continued implementation of its enhanced antitrust compliance policy.

b. Discipline of Culpable Actors (3572 (a)(8))

In January 2016, several HIAMS employees who were implicated in the shock absorbers conduct were effectively demoted and no longer have sales responsibilities. It should be noted that these demotions did not occur until more than 18 months after HIAMS was notified of the allegations of antitrust violations relating to shock absorbers.

c. The Defendant's Financial Position (3572 (a)(1))

The Defendant is a solvent corporation and has agreed to pay the recommended fine of $55.48 million within 15 days of the final judgment.

Finally, it is the position of the Department of Justice that sentences determined pursuant to the Sentencing Guidelines are reasonable and take into account the statutory factors that require the sentence imposed reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence, and protect the public. Additionally, sentences determined pursuant to the Sentencing Guidelines avoid unwarranted sentence disparities among defendants.

C. Probation

Pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years. In considering whether to impose a term of probation, and the length and conditions of any term of probation, the Court should consider the factors set forth in 18 U.S.C. § 3553. *See* 18 U.S.C. § 3562. However, as noted above, because HIAMS is a corporation, many of those factors do not apply. For the same reason, many of the conditions of probation set forth in 18 U.S.C. § 3563 are not applicable. The conditions of probation set forth in 18 U.S.C. § 3563 fall into two categories: mandatory and discretionary. Mandatory conditions that apply to corporations include: that the defendant not commit another crime during the term of probation (18 U.S.C. § 3563(a)(1)); that the defendant make restitution (if appropriate) and pay the special assessment (18 U.S.C. § 3563(a)(6)); that the defendant notify the Court of changes in economic circumstances that would interfere with the defendant's ability to pay fines, restitution, or the special assessment (18 U.S.C. § 3563(a)(7)); and that the defendant pay the fine (18 U.S.C. § 3563(a)). Pursuant to 18 U.S.C. § 3563(b) the Court can order additional discretionary conditions that are related to the factors set forth in 18 U.S.C. § 3553.

The Court should also consider the factors in U.S.S.G. § 8D1.1 which set forth the circumstances under which a sentence to a term of probation is required. These circumstances include ordering a term of probation to secure payment of the special assessment, the fine, or restitution, U.S.S.G. § 8D1.1(a)(1) and (2), or to ensure implementation of an effective compliance program, U.S.S.G. § 8D1.1(a)(6) and (8). "The term of probation should be sufficient, but not more than necessary, to accomplish the court's specific objectives in imposing the term of probation." U.S.S.G. § 8D1.2, Application Note 1.

In this case, the United States recommends that HIAMS be sentenced to a term of probation of two years with conditions set forth in Paragraph 9(d)(i) of the Plea Agreement. The Defendant does not join in this recommendation. Pursuant to Paragraph 9(d)(iii) of the Plea Agreement, the imposition of probation by the Court will not void the Plea Agreement.

The United States believes that a term of probation of two years is sufficient time to enable the Court, the Probation Office, and the United States to monitor the continued implementation of HIAMS' enhanced antitrust compliance program and evaluate the effectiveness of that program to ensure that HIAMS does not violate the antitrust laws in the future.

As set forth in Paragraph 9(d)(i) of the Plea Agreement, the United States recommends the Court impose the following conditions in this case.

(1) The Defendant shall continue to implement and maintain an effective antitrust compliance program.

(2) The Defendant shall promptly report to the Antitrust Division all credible information it has regarding criminal violations of the U.S.

> antitrust laws that the Defendant, any of its Related Entities, or any of their current or former directors, officers, or employees committed after August 23, 2011. For the purposes of this subsection (2), the Defendant will be deemed to have all information within the awareness of its Board of Directors, management, or legal and compliance personnel.
>
> (3) The Defendant shall report once per year to the Probation Office and to the Antitrust Division regarding all aspects of its antitrust compliance program, beginning no later than one year after the date of conviction.
>
> (4) Pursuant to U.S.S.G. § 8D1.3(a), Defendant will not commit another federal, state, or local crime during the term of probation.
>
> (5) Should the Defendant fail to fully implement and maintain an effective antitrust compliance program, fail to make timely and complete reports regarding its antitrust compliance program, or fail to report credible information regarding criminal violations of the U.S. antitrust laws, the United States reserves the right to seek from the Court an order requiring the Defendant to hire an independent, court-appointed monitor, at the Defendant's expense, to fully implement and maintain an effective antitrust compliance program.

Condition (4) is a mandatory condition. *See* 18 U.S.C. § 3563(a)(1) and U.S.S.G. § 8D1.3(a). The other conditions recommended by the United States are reasonably necessary to ensure that HIAMS continues to implement and maintain an effective antitrust compliance program to deter future antitrust violations and to protect the public from further crimes of the Defendant. *See* 18 U.S.C. § 3553(a)(2)(B) and (C), 18 U.S.C. § 3563(b)(15), U.S.S.G. § 8D1.3(c), and U.S.S.G. § 8D1.4(b).

D. Restitution

The United States recommends that the Court not sentence the Defendant to pay restitution. Restitution is not mandatory for violations of 15 U.S.C. § 1, and fashioning a restitution order in this case would complicate and prolong the sentencing process. *See* 18 U.S.C. § 3663(a)(1)(B)(ii). Additionally, the United States and HIAMS have agreed to recommend that restitution is not appropriate in this case in light of the availability of

civil causes of action, 15 U.S.C. § 15, that potentially provide for a recovery of a multiple of actual damages. *See* Plea Agreement ¶ 9(e).

E. Special Assessment

In addition to any fine imposed, the Court should order HIAMS to pay a $400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B).

IV. RECOMMENDED SENTENCE

Pursuant to the 11(c)(1)(C) Plea Agreement between the United States and HIAMS, based on the cooperation provided by HIAMS during the period after it agreed to plead guilty and the date of its sentencing, the United States recommends that the Court sentence HIAMS to pay a fine of $55.48 million payable in full before the fifteenth day after the date of judgment. Since this fine is within the range of $55.48 million to $59.18 million set forth in Paragraph 9 of the Plea Agreement, pursuant to the Plea Agreement, HIAMS will not object to the imposition of this fine. This fine is within the Guideline's fine range and takes into consideration that HIAMS was the last company involved in the shock absorbers conspiracy to agree to plead guilty and cooperate in the government's investigation and that HIAMS did not uncover and report its involvement in the shock absorbers conspiracy when it was under investigation for similar conduct relating to other auto parts, as well as the cooperation that HIAMS has provided since it agreed to plead guilty and accept responsibility in this case.

Pursuant to the 11(c)(1)(C) Plea Agreement between the United States and HIAMS, the United States and HIAMS, also recommend that no order of restitution be entered in this case and that a $400 special assessment be imposed.

Finally, the United States recommends that as part of HIAMS' sentence the Court impose a term of probation of two years with the conditions specified in paragraph 9(d)(i) of the Plea Agreement.

The sentence recommended in this case takes into account the factors enumerated in 18 U.S.C. §§ 3553, 3563, and 3572, as well as factors enumerated in the Sentencing Guidelines, and is a sentence sufficient, but not greater than necessary, to reflect the seriousness of the offense, to promote respect for the law, and to afford adequate deterrence.

V. CONCLUSION

For these reasons, the United States recommends that the Court impose a sentence requiring the Defendant to pay a fine of $55.48 million, payable within 15 days of judgment, no order of restitution, a two year term of probation, and to pay a $400 special assessment.

Respectfully submitted,

s/Carla M. Stern
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UNITED STATES DISTRICT COURT
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WESTERN DIVISION

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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Respectfully submitted,

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