IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

v.

EAGLE EYES TRAFFIC INDUSTRIAL CO., LTD.; E-LITE AUTOMOTIVE, INC.; HOMY HONG-MING HSU; and YU-CHU LIN, a/k/a DAVID LIN,

Defendants.
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No. CR 11-00488 RS

ORDER DENYING MOTION TO DISMISS INDICTMENT OR, IN THE ALTERNATIVE, FOR RULING AS A MATTER OF LAW RE: RULE OF REASON

I. INTRODUCTION

Defendants in this price-fixing prosecution move to dismiss the indictment or, in the alternative, request a ruling as a matter of law that the rule of reason applies to this case because the challenged conduct occurred, at least in part, overseas. The government opposes the motion, and insists that price-fixing is a *per se* violation of the Sherman Act. In consideration of the briefing, the arguments raised at the pretrial hearing, and for all the reasons set forth below, the motion is denied.

II. BACKGROUND

As prior orders in this matter have related, defendant Eagle Eyes Traffic Industrial Co., Ltd. ("Eagle Eyes"), is a Taiwanese corporation that manufactured aftermarket auto lights sold in the United States, among other places; individual defendants Yu-Chu Lin and Homy Hong-Ming Hsu were chairman and vice chairman of Eagle Eyes, respectively, during the relevant period. E-Lite Automotive, Inc. ("E-Lite"), an entity affiliated with Eagle Eyes, is a California corporation that distributed aftermarket auto lights to customers in the U.S. The Grand Jury returned a Superseding Indictment charging each defendant with one count of conspiracy to fix prices for aftermarket automobile lights under § 1 of the Sherman Act. The government contends the alleged conspiracy operated from 2001 to 2008, and consisted of meetings and other communications between

competitors in Taiwan and the United States that resulted in an agreement to fix prices according to set formulas, the issuance of a price list to customers, the monitoring and enforcement of the agreed-upon price structure, and efforts to conceal the conspiracy and its activities.

II. DISCUSSION

Under Section 1 of the Sherman Act, conduct that is not deemed *per se* illegal is to be judged under the rule of reason. The rationale behind application of the *per se* presumption of illegality is that certain practices virtually always restrict competition and decrease output, and lack any redeeming pro-competitive virtues. *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007); *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 5 (1958) (*per se* practices are "presumed to be unreasonable therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use"). Because no analysis is required to determine that *per se* restraints are anti-competitive, no further showing of harm is necessary; instead, such effects may be presumed. *Id.* By contrast, analysis under the rule of reason of the competitive impact of particular conduct is appropriate "where the economic impact of the challenged practice is not obvious." *Harkins Amusement Enters., Inc. v. Gen. Cinema Corp.*, 850 F.2d 477, 486 (9th Cir. 1988) (citation and quotation marks omitted).

As defendants concede, horizontal market division and price-fixing arrangements among competitors almost always fall into the *per se* category. In fact, conspiring to fix prices has long been held to be a *per se* violation of § 1 of the Sherman Act. *See, e.g., United States v. Trenton Potteries Co.*, 273 U.S. 392 (1927); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940) ("for over forty years this Court has consistently and without deviation adhered to the principle that price-fixing agreements are unlawful per se"). That remains as true today as it was some eighty years ago. *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004) (collusion among competitors is "the supreme evil of antitrust").

Defendants nonetheless insist that application of the *per se* rule is not appropriate here because some of the alleged conduct occurred overseas. In urging application of the rule of reason to this case, defendants rely heavily on an isolated opinion from the Court of Appeals, *Metro Industries, Inc. v. Sammi Corp.*, 82 F.3d 839 (9th Cir. 1996), which they invoke for the principle

that "application of the per se rule is not appropriate where the conduct in question occurred in another country." *Id.* at 844-45. Defendants quote extensively (if selectively) from the opinion, in support of their view: "Thus the potential illegality of actions occurring outside the United States requires an inquiry into the impact on commerce in the United States, regardless of the inherently suspect appearance of the foreign activities." *Id.* at 845.

While the identified passages of *Metro Industries* appear to offer defendants some assistance at first blush, as the government rightly points out, the case concerned a "previously unexamined business practice," quite unlike the matter at bar. Specifically, *Metro Industries* involved a Korean design registration system that gave manufacturers an exclusive right to export a registered product design for three years. The Ninth Circuit declined to apply a *per se* presumption of illegality to the practice, reasoning:

> The Korean registration system is not a classic horizontal market division agreement in which competitors at the same level agree to divide up the market for a given product. Metro does not point to, and we have not found, a single instance in which an arrangement similar to the Korean manufacturer-exporter design registration system has undergone judicial scrutiny in the Sherman Act context. The novelty of this arrangement "strongly supports application of rule-of-reason analysis."

Id. at 844 (internal citation omitted). In light of the foregoing, it is apparent that the novelty of the arrangement at issue in *Metro Industries* figured prominently in the Court's decision to apply the rule of reason, rather than the *per se* standard. As another case decided in this District recently explained, *Metro Industries* does not stand for the proposition that "all Sherman Act cases based on foreign conduct are rule of reason cases." *United States v. Hsuan Bin Chen*, No. CR 09-0110, 2011 WL 332713 at *3 (N.D. Cal. Jan. 29, 2011). *See also eMag Solutions, LLC v. Toda Kogyo Corp.*, 426 F. Supp. 2d 1050, 1061 (N.D. Cal. 2012) ("*Metro Industries* does not hold that a case that alleges a per se violation of § 1 of the Sherman Act, but which also involves some 'foreign conduct'… requires application of the 'rule of reason' analysis."). As the Court in *Hsuan Bin Chen* further noted, the courts routinely apply the *per se* standard to international price-fixing cartels that injure American consumers, regardless of whether some of the cartel's activities occurred abroad. *See, e.g., United States v. Nippon Paper Indus., Co.*, 109 F.3d 1, 6-7 (1st Cir. 1997).

The other precedents identified by defendants do not support a contrary conclusion. In

Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1, 19-20 (1979), the Supreme Court, applying the rule of reason, excepted from antitrust liability a blanket licensing scheme operated by two industry associations (themselves subject to a consent decree with the Department of Justice). The copyright licenses at issue in *Broadcast Music* were unique: they provided licensees with rights to millions of musical compositions, and permitted the parties on both sides of the deal to side step individual negotiations that would have been prohibitively expensive, and largely duplicative. *Id.* at 20-22. The Court regarded this as, effectively, a "new product," and applied the rule of reason accordingly. *Id.* In so doing, it found that in the absence of the blanket licensing arrangement, there would simply be fewer licenses granted, and diminished economic efficiency. *Id.* at 21. It therefore approved the transactions. Here, the government alleges ordinary price-fixing agreements between competitors, and as a result, the comparison to *Broadcast Music* is inapt.

Defendants also invoke *NCAA v. Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984) to suggest that some horizontal price-fixing arrangements merit rule of reason analysis. Like *Broadcast Music*, *NCAA* is easily distinguished as a case in which the "horizontal restrains on competition [were] essential if [the] product [was] to be available at all." *Id.* at 101. In *NCAA*, plaintiff challenged the National Collegiate Athletic Association's practice of prohibiting member institutions from competing amongst each other to secure television coverage of college football games. While acknowledging the potential for anticompetitive effects of such regulation, the Court noted its "respect" for the league's "historic role in the preservation and encouragement of intercollegiate amateur athletics," and, as in *Broadcast Music*, concluded: "what is critical is that this case involves an industry in which horizontal restraints on competition are essential if the product is to be available at all." *Id.* at 101. Even the league's adversary "concede[d] that the great majority of the NCAA's regulations enhance competition among member institutions." *Id.* at 103. The present case manifests none of these unusual circumstances.

Although defendants insist that this case departs from the ordinary price-fixing prosecution because the defendants are not "dominant players" in the market for aftermarket auto lights, the Supreme Court has squarely rejected the position that the alleged conspirators' relative lack of

market power is significant for antitrust purposes. *NCAA*, itself teaches that, "[a]s a matter of law, the absence of proof of market power does not justify a naked restriction on price or output." 468 U.S. at 109. "The likelihood that horizontal price and output restrictions are anticompetitive is generally sufficient to justify application of the *per se* rule without inquiry into the special characteristics of a particular industry." *Id.* at 100 n.21. *Accord Socony-Vacuum*, 310 U.S. at 244 (market power is not an element of a violation of § 1 of the Sherman Act). Here, defendants cannot identify any novel aspect or pro-competitive features of the alleged conspiracy. Instead, they merely protest that the government has not adequately pleaded the anti-competitive effects of price-fixing – but that is precisely the purpose of the *per se* rule. No such showing is necessary here.

III. CONCLUSION

The motion is denied.

IT IS SO ORDERED.

Dated: 9/11/12

RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE