UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION

United States of America, Plaintiff, *v.* **Tokai Kogyo Co., Ltd.**, **Green Tokai Co., Ltd.**, and **Akitada Tazumi**, Defendants.	Case No. 1:16cr63 Judge Timothy S. Black

United States' Response to Defendants' Joint Trial Brief

In their joint trial brief, the defendants argue that they should be permitted at trial to submit impermissible evidence and arguments that the Court has already rejected. Specifically, the defendants seek to (1) inject the civil rule-of-reason standard in this criminal case alleging a *per se* violation of the Sherman Act, (2) offer alternative translations of exhibits without regard to the translations' reliability, and (3) offer cumulative extrinsic evidence of witnesses' prior inconsistent statements. For the reasons explained in this response, the Court should deny any attempts to introduce such evidence and arguments at trial.

First, the defendants are charged with bid rigging, price fixing, and sales allocation—all of which the Supreme Court has repeatedly held are *per se* violations of the Sherman Act and are therefore not subject to a rule-of-reason analysis. The defendants' attempt to shoehorn the rule of reason into this case flies in the face of this

Court's granting in part a motion to exclude precisely the types of arguments and evidence that the defendants are attempting to advance.[1] (*See* Tr. of Oct. 13, 2017 Mots. Hr'g, at 60–65; Doc. No. 130, United States' Mot. to Exclude Improper Evid. and Args. Relating to Lack of Intent or Effect, Justification and Economic Reasonableness, Impossibility of Success, or Ignorance of the Law.)

Second, contrary to the defendants' assertions, the Court may exclude unreliable translations from the jury's consideration, especially where translations are not based solely on the original document. It is blackletter law that the Court is to determine whether evidence is admissible, and translations of Japanese-language documents are not exempt from the Court's gatekeeping scrutiny.

Finally, the defendants' plan to call investigators to testify about a witness's prior inconsistent statement, *even if that witness acknowledges the inconsistent statement when testifying*, will unnecessarily prolong the trial with cumulative evidence. Accordingly, such extrinsic evidence should be excluded under Federal Rule of Evidence Rule 403.

[1] The defendants also have proposed to introduce jury instructions regarding the rule-of-reason standard. (*See* Defs.' Proposed Jury Instructions Nos. 10–13.) The United States opposes such instructions and will separately file objections to them.

Argument

I. The Defendants May Not Inject the Rule-of-Reason Standard into this Criminal Prosecution Alleging a *Per Se* Unlawful Conspiracy in Violation of the Sherman Act

A. The Rule of Reason Does Not Apply Here Because the Scope of the Charge Is Defined by the Indictment, Which Alleges Only *Per Se* Violations of the Sherman Act

The indictment charges the defendants, Tokai Kogyo and Green Tokai, with knowingly entering into and engaging in a conspiracy to allocate sales of, rig bids for, and fix, maintain, and stabilize prices of body seals sold to Honda in the United States and elsewhere, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. While many alleged antitrust violations are assessed under the "rule of reason"—which considers, among other things, potential pro-competitive justifications for the conduct—the "rule of reason does not govern all restraints." *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007). "Some types of restraints . . . have such predictable and pernicious anticompetitive effect, and such limited potential for procompetitive benefit, that they are deemed unlawful *per se*." *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997). The "*per se* approach permits categorical judgments with respect to certain business practices." *Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 289 (1985). Thus, "[t]he *per se* rule, treating categories of restraints as necessarily illegal, eliminates the need to study the reasonableness of an individual restraint in light of the real market forces at work." *Leegin*, 551 U.S. at 886; *see In re Cardizem CD Antitrust Litig.*, 332 F.3d 896, 906–07 (6th Cir. 2003) ("The *per se* approach . . . applies a 'conclusive presumption' of illegality to certain types of agreements; where it applies, no consideration is given to the

intent behind the restraint, to any claimed pro-competitive justifications, or to the restraint's actual effect on competition.")· (citations omitted)).

The *per se* rule of illegality applies to the conduct charged here—a conspiracy to fix prices, rig bids, and allocate sales. *See Expert Masonry, Inc. v. Boone Cty.*, 440 F.3d 336, 344 (6th Cir. 2006) (collecting cases). An agreement among competitors—i.e., a horizontal agreement—to fix prices is the "archetypal example" of a *per se* unlawful agreement. *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980). Horizontal agreements to divide markets also are *per se* unlawful because, as the Supreme Court has explained, market-allocation and price-fixing agreements have "similar economic effect[s]." *Leegin*, 551 U.S. at 904; *see also id.* at 886 ("Restraints that are *per se* unlawful include horizontal agreements among competitors to fix prices or to divide markets." (citations omitted)); *Palmer v. BRG of Ga., Inc.*, 498 U.S. 46, 49 (1990) ("This Court has reiterated time and time again that '[h]orizontal territorial limitations . . . are naked restraints of trade with no purpose except stifling of competition.' Such limitations are *per se* violations of the Sherman Act." (citation omitted)).

The defendants acknowledge that the government has charged a *per se* "horizontal" agreement among competitors, but they invite this Court to ignore the charged conduct and instead focus on a wholly distinct "vertical" relationship with its customer, Honda. (Doc. No. 163, Defs.' Trial Br., PageID 2786.) The defendants then argue that—notwithstanding the actual charge they face—the jury should evaluate the

case *as if* the government had charged a vertical agreement between the defendants and Honda subject to rule-of-reason analysis. (*See id.* at PageID 2781, 2788–90.)

But the indictment defines the scope of the charge. *See United States v. Miller*, 471 U.S. 130, 138–40 (1985); *Stirone v. United States*, 361 U.S. 212, 217 (1960) ("[A] court cannot permit a defendant to be tried on charges that are not made in the indictment against him."). The government has not alleged that a vertical agreement between the defendants and Honda violates the Sherman Act; rather, it has charged a purely horizontal price-fixing, bid-rigging, and sales-allocation conspiracy among suppliers *to* Honda. (Doc. No. 1, Indictment, *passim*.) *See United States v. Apple, Inc.*, 791 F.3d 290, 323–24 (2d Cir. 2015), *cert. denied* 136 S. Ct. 1376 (2016) (holding that *per se* rule applied to charged horizontal conspiracy among publishers to raise ebook prices, even where conspiracy was implemented through vertical agreements with publishers' distributer).

The jury is not tasked with rendering judgment on conduct not alleged in the indictment. *United States v. Siemaszko*, 612 F.3d 450, 469–70 (6th Cir. 2010) (explaining that "presentation of evidence and jury instructions which modify essential elements of the offense charged" would result in "constructive amendment" to indictment (citations omitted)). Simply put, the jury should render a verdict on the charge actually brought against the defendants. If the government proves beyond a reasonable doubt that the alleged horizontal conspiracy existed, that the defendants knowingly joined it, and that it was in the flow or, or affected, interstate commerce, the jury should return guilty

verdicts; if the government fails to prove each of the offense's elements, the jury should acquit the defendants.

For these reasons, the Court should reject the defendants' request to allow jury instructions regarding the rule of reason, just as courts entertaining similar requests have repeatedly done in criminal cases alleging *per se* violations. *See, e.g., United States v. Gen. Elec. Co.*, 869 F. Supp. 1285, 1301 (S.D. Ohio 1994) (explaining that issuing "rule of reason" instruction where the government alleged a conspiracy to fix prices "would have constituted an improper constructive amendment of the indictment." (citing *United States v. Ford*, 872 F.2d 1231, 1235 (6th Cir.1989)); *United States v. All Star Indus.*, 962 F.2d 465, 473 (5th Cir. 1992) (rejecting "rule of reason" instruction proposed by defendants based on their argument that victim—which was in vertical relationship with conspirators—dictated conspirators' bids and conspirators interacted only with victim); *United States v. Koppers Co.*, 652 F.2d 290, 297 (2d Cir. 1981) (rejecting "rule of reason" instruction even where alleged competitor co-conspirators themselves had some vertical relationship); *United States v. Fischbach & Moore, Inc.*, 750 F.2d 1183, 1196 (3d Cir. 1984) (rejecting defendant's proposed "rule of reason" instruction in price-fixing and bid-rigging case on ground that defendant's conduct, even if the victim had large market power as defendant contended, "did not fall in any 'gray zone' requiring a reasonableness instruction" (citation omitted)).

B. Evidence of the Alleged Conspiracy's Pro-Competitive Justifications and Lack of Effects Is Not Admissible

Many of the defendants' arguments already have been addressed by the Court in its ruling on the United States' Motion *In Limine* to Exclude Improper Evidence and Arguments Relating to Lack of Intent or Effect, Justification and Economic Reasonableness, Impossibility of Success, or Ignorance of the Law. (Doc. No. 130.) In the course of granting in part the government's motion, the Court "confirm[ed] the understanding that evidence will not be permitted if it serves no purpose other than to support arguments relating to improper evidence, lack of intent or effect, justification and economical reasonableness, impossibility of success, or ignorance of the law." (Tr. of Oct. 13, 2017 Mots. Hr'g, at 60.)

Despite the Court's ruling and the applicable law, the defendants suggest that they still intend to offer evidence for these impermissible purposes. The defendants state, among other things, that "*Honda's suppliers might have understood and 'agreed'* which suppliers would partner with Honda on the design, costing and development of certain body seals, *but that was only because* Honda had already determined its supplier strategy for those parts and already informed the suppliers." (Doc. No. 163, Defs.' Trial Br., PageID 2786 (emphasis added).) But it is blackletter law in this circuit and elsewhere that the conspiratorial agreement itself is the crime in a *per se* Sherman Act case. *United States v. Hayter Oil Co. of Greeneville, Tenn.*, 51 F.3d 1265, 1270 (6th Cir. 1995) ("Because the price-fixing agreement itself constitutes the crime, the government is only required to prove that the agreement existed during the statute of limitations period and that the

defendant knowingly entered into that agreement."). It is irrelevant whether the alleged conspiratorial agreement was successful or had little or no effect on competition. *See United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224, n.59 (1940) ("It is the contract, combination . . . or conspiracy, in restraint of trade or commerce which § 1 of the Act strikes down, whether the concerted activity be wholly nascent or abortive on the one hand, or successful on the other."(citations and quotation marks omitted)); *United States v. Trenton Potteries Co.*, 273 U.S. 392, 402 (1927). And, having alleged a *per se* violation, the government need not prove that the defendants had a specific intent to restrain trade or knowledge that the restraint would likely result in anti-competitive effects. *See In re Se. Milk Antitrust Litig.*, 739 F.3d 262, 271 (6th Cir. 2014) (explaining that in *per se* case, "no consideration is given to the intent behind the restraint, to any claimed pro-competitive justifications, or to the restraint's actual effect on competition"); *United States v. Coop. Theatres of Ohio, Inc.*, 845 F.2d 1367, 1373 (6th Cir. 1988) (explaining that it was "unnecessary to engage in the 'incredibly complicated and prolonged economic investigation' under the rule of reason standard where . . . the alleged agreement is a 'naked restraint' with no possible pro-competitive justification").

Despite this clear precedent, the defendants persist in inviting the Court to allow inadmissible evidence so that they can divert the jury's attention away from their conduct and toward Honda. For example, the defendants seek to introduce evidence that they maintain shows that their relationship with Honda is "procompetitive." (Doc. No. 163, Defs.' Trial Br., PageID 2794.) But the defendants are not charged with entering into an

anticompetitive conspiracy with *Honda*; they are charged with conspiring with their competitors. Thus, evidence of the purportedly "pro-competitive" relationship between a defendant and the alleged victim is non-responsive to the charged crime, and the defendants have not articulated a permissible, relevant basis for how such evidence could "inform the jury's evaluation of the alleged conspiracy." (*Id.*) The defendants also attempt to rely on the ancillary-restraints doctrine, (*id.* at PageID 2791–93), which "governs the validity of restrictions imposed by a legitimate business collaboration, such as a business association or joint venture, on nonventure activities." *Texaco Inc. v. Dagher*, 547 U.S. 1, 7 (2006). But the ancillary-restraints doctrine provides no basis to justify a *per se* unlawful conspiracy between the defendants and another supplier. As courts have repeatedly held, naked agreements of the type alleged here cannot be defended by reference to possible pro-competitive justifications.[2] *Coop. Theatres.*, 845 F.2d at 1373.

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[2] Defendants mistakenly rely on *United States v. Kemp & Assocs., Inc.*, Case No. 2:16-cr-403-DS (D. Utah Aug. 28, 2017), a wrongly decided out-of-circuit case in which the district court suggested, among other things, that the purportedly "unique and unusual" nature of the industry at issue precluded application of the *per se* rule to a horizontal customer-allocation agreement. (*See* Doc. No. 163, Defs.' Trial Br., PageID 2790, 2793.)

Kemp is directly contrary to Supreme Court precedent, and the United States' appeal of the decision is pending. *See Arizona v. Maricopa Cnty. Med. Soc'y*, 457 U.S. 332, 351 (1982) (rejecting "the argument that the *per se* rule must be rejustified for every industry that has not been subject to significant antitrust litigation"); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 222 (1940) ("[T]he Sherman Act . . . establishes one uniform rule applicable to all industries alike."); *United States v. Kemp & Assocs. Inc.*, No. 17-4148 (10th Cir.).

In any event, the auto-parts industry at issue here is not unique; 48 companies and 65 executives in the industry have been subject to criminal antitrust enforcement for similar price-fixing, bid-rigging, and sales-allocation conspiracies in recent years. *See Kiekert AG to Plead Guilty to Bid Rigging Involving Auto Parts, Office of Public Affairs*,

Finally, because price-fixing, bid-rigging, and allocation cases typically involve customers as victims—and thus by necessity involve a vertical relationship between a defendant supplier and a victim—the defendants' approach would turn *every* criminal antitrust case into a rule-of-reason case, converting criminal antitrust trials like this one from a straightforward inquiry about the defendant's conduct ("Did the defendant enter into a price-fixing agreement with a competitor?") to a referendum on the conspiracy's ultimate economic effects. Indeed, "the *per se* rule would lose all the benefits of being '*per se*' if conspirators could seek to justify their conduct on the basis of its purported competitive benefits in every case." *United States v. Apple, Inc.*, 791 F.3d 290, (2d Cir. 2015); *see Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 289 (1985) (explaining that the "*per se* approach permits categorical judgments with respect to certain business practices that have proved to be predominantly anticompetitive, thereby enabling courts to "avoid the 'significant costs' in 'business certainty and litigation efficiency' that a full-fledged rule-of-reason inquiry entails" (citations omitted)). There simply is no reason here to upend decades of case law regarding the proper application of the *per se* rule.

United States Department of Justice (Mar. 7, 2017), *available at* https://www.justice.gov/opa/pr/kiekert-ag-plead-guilty-bid-rigginginvolving-auto-parts. *Kemp*'s flawed analysis provides no basis to apply the rule of reason to such a conspiracy among auto-parts suppliers.

II. Translations Must Be Reliable to Be Presented to the Jury

Defendants argue that the Court is prohibited from screening disputed translations before they are placed in front of the jury because, by doing so, the Court would improperly be taking questions of fact out of the jury's hands. (*See* Doc. No. 163, Defs.' Trial Br., PageID 2795–97.) But it is the Court's role to determine what evidence the jury may properly consider. *See* Fed. R. Evid. 104(a), 401, 402, 403. And it is within the Court's discretion to exclude from evidence translations that the Court deems unreliable. *See, e.g., Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 693 F. App'x 650, 651 (9th Cir. 2017) (concluding that district court did not abuse discretion by excluding "recording of a conversation in Russian . . . and an accompanying transcript" where "district court found that the transcript was unreliable because the translation [was partial and] included numerous ellipses" (citing Fed. R. Evid. 901)); *United States v. Upia-Frias*, 422 F. App'x 78, 82 (3d Cir. 2011) (concluding that district court did not abuse discretion by excluding from evidence disputed translations of transcribed audio recordings because "the jury heard the witness's translation" and excluding dueling transcripts "was far better than allowing the jury to only have a disputed transcript, or the obvious confusion that would have resulted from allowing the jury to use two conflicting transcripts of the same conversation").

Thus, the Court's planned approach, as stated at the motions hearing on October 13, is appropriate: the Court may determine the admissibility of each disputed translation with the aid of a Japanese translator appointed by the Court under Federal Rule of Evidence 706. *See, e.g., United States v. Bonds*, 12 F.3d 540, 567 (6th Cir. 1993) ("Federal Rule of Evidence 706 permits the court on its own to appoint an expert

witness."); *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1310–11 (11th Cir. 1999) (discussing with approval district judge's practice of making admissibility determinations by "using court-appointed technical advisors under Rule 104 to help evaluate the 'reliability and relevance' of the scientific evidence" (citing *Hall v. Baxter Healthcare Corp.*, 947 F. Supp. 1387 (D. Or. 1996)).

The Court's exercise of this gatekeeping role is critical to avoid the presentation of unreliable, and thus inadmissible, translations to the jury. Here, the United States has serious concerns about several of the defendants' proposed translations of both government and defense exhibits. On October 20, the United States submitted to the Court a comprehensive table of the disputes related to the government's exhibits, per the Court's order at the motions hearing. As illustrated by a handful of examples in the table below, the defendants' proposed translations of many of the exhibits omit or change key words, or add words that are not in the original Japanese-language document.

Exhibit No.	Bates Nos.	United States' Proposed Translation of Disputed Language	Defendants' Proposed Translation of Disputed Language
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

In addition, in conversations with the United States, defense counsel has repeatedly suggested that the defendants should be allowed to insert or omit words when translating defense exhibits based on the *intent* of the documents' authors, who are defense witnesses. But that is the province of witness testimony, not exhibit translations.[3]

There may be some instances where the Court-appointed translator determines that both proposed translations are reliable. In those cases, the United States agrees that both translations may be presented to the jury. But the Court is not a bystander to this process. The Court's gatekeeping role is essential to ensure that the jury is given reliable tools to accomplish the defendants' stated purpose of "uncover[ing] the truth and fairly determin[ing] whether either Green Tokai or Tokai Kogyo violated Section 1 of the Sherman Act." (Doc. No. 163, Defs.' Trial Br., PageID 2780.)

III. The Court May Properly Exclude Cumulative Extrinsic Evidence of Witnesses' Prior Inconsistent Statements under Rule 403

The defendants' final argument is that they "must be permitted to offer extrinsic evidence of prior inconsistent statements to safeguard their Sixth Amendment rights," even if a government witness admits having made a prior inconsistent statement. (Doc. No. 163, Defs.' Trial Br., PageID 2801.) By "extrinsic evidence," the defendants are

[3] To illustrate, imagine an e-mail that says "I'm going to kill my husband!" The e-mail must be translated faithfully, even if its author *really* meant, "I can't believe my husband forgot to pick up the dry-cleaning!" The author of the e-mail is free to testify that the latter is what she *meant*, but the text of the e-mail must be accurately and reliably translated regardless of the author's unwritten intent.

referring to "calling as a witness the investigator to whom the prior inconsistent statement was made, and then asking the investigator whether the witness made the prior inconsistent statement." (*Id.* at 2799.)

It is within the district court's discretion whether to admit cumulative extrinsic evidence of a witness's prior testimony under Rule 613(b) or to exclude it under Rule 403. *See, e.g., United States v. Young*, 248 F.3d 260, 268–69 (4th Cir. 2001); *BankAtlantic v. Blythe Eastman Paine Webber, Inc.*, 955 F.2d 1467, 1476 (11th Cir. 1992); *United States v. Young*, 248 F.3d 260, 268–69 (4th Cir. 2001); *United States v. Nickolson*, 362 F. App'x 864, 865 (9th Cir. 2010). Indeed, some circuits forbid the introduction of cumulative extrinsic evidence, applying a bright-line rule that proof of a witness's prior inconsistent statement "may be elicited by extrinsic evidence *only* if the witness on cross-examination denies having made the statement." *United States v. Devine*, 934 F.2d 1325, 1344 (5th Cir. 1991) (citation omitted) (emphasis added); *see also United States v. Soundingsides*, 820 F.2d 1232, 1241 (10th Cir. 1987). The Sixth Circuit has not explicitly adopted that rule, but it has consistently left the decision to the district court's discretion. *See, e.g., United States v. Whalen*, 578 F. App'x 533, 541-42 (6th Cir. 2014) (concluding that district court did not plainly err by refusing to admit extrinsic evidence in this situation); *United States v. Davis,* 28 F.3d 1214, 1994 WL 362061, at *3 (6th Cir.1994) (unpublished table disposition) (ruling that a "district court's refusal to admit [a witness's] affidavit under Rule 613 was harmless, if error, as the substance of the inconsistent statement was before the jury and admission of the affidavit itself would have been cumulative").

The Court should limit the defendants' planned presentation of this cumulative evidence. Simply put, the defendants propose calling *another* witness to testify to prior inconsistencies, even if the witness who was interviewed has already admitted the inconsistency. But Federal Rule of Evidence 613(b) does not confer a right to introduce cumulative extrinsic evidence of a witness's prior inconsistent statement when that witness has already admitted to making the statement on cross-examination, and such a practice will serve only to waste time and sow confusion among the jurors. *See* Fed. R. Evid. 403. Moreover, the defendants' representation that they intend to offer such extrinsic evidence only when impeachment of the witness is "unclear and confusing for the jury" merely invites mid-trial disputes about whether a witness's admission of a prior inconsistent statement was "confusing for the jury." (Doc. No. 163, Defs.' Trial Br., PageID 2799.) The Court has no duty to entertain these disputes nor to admit cumulative evidence.

Finally, this issue does not, as the defendants suggest, implicate their Sixth Amendment right to confront witnesses. The Supreme Court "has never held that the Confrontation Clause entitles a criminal defendant to introduce *extrinsic evidence* for impeachment purposes." *Nevada v. Jackson*, 569 U.S. 505 (2013) (emphasis in original). Moreover, "the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (emphasis in original); *see also Delaware v. Van Arsdall*, 475 U.S. 673, 678–79 (1986).

Accordingly, "trial judges retain wide latitude . . . to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Van Ardsall*, 475 U.S. at 679 (citations and internal quotation marks omitted).

Finally, the extrinsic evidence here consists of testimony by FBI agents and DOJ personnel regarding the contents of their 302s and interview reports, which this Court has held are "not a statement of the witness" but rather "summar[ies] written by someone else." (Tr. of Oct. 13, 2017 Mots. Hr'g, PageID 48.) For this reason, the defendants' citation to *Gordon v. United States*, 344 U.S. 414 (1953), is inapposite. That case concerned the government's failure to produce to the defendants documented statements of a witness, which the Court found erroneous in part because the documents could be introduced under the "best evidence" rule. *Id.* at 421. Here, unlike in *Gordon*, the extrinsic evidence is not a documented prior statement of a witness but rather the testimony of an interviewer regarding what that witness said. Accordingly, it is Rule 403—not the best-evidence rule—that governs the Court's analysis here. Because the probative value of such extrinsic evidence "is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence," it should be excluded. Fed. R. Evid. 403.

Conclusion

For the above reasons, the arguments in the defendants' trial brief should be rejected by this Court. As explained, the rule of reason does not apply in this case, and the defendants' trial brief provides no reason for the Court to reconsider its decision to exclude improper evidence of the conspiracy's purportedly pro-competitive justifications or lack of economic effect. Moreover, contrary to the defendants' arguments, it is the Court's role to screen disputed translations for reliability before such translations are presented to the jury. Finally, the Court retains the discretion to exclude the defendants' extrinsic evidence as cumulative under Federal Rule of Evidence Rule 403.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which electronically notifies counsel for the defendants who have appeared in this matter.

Respectfully submitted,

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