**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| **In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION** | 12-md-02311<br>Honorable Marianne O. Battani |
| **In Re: BEARINGS CASES** | 2:12-cv-00500-MOB-MKM |
| **THIS RELATES TO:**<br><br>**ALL BEARINGS CASES** | |

**THE NTN DEFENDANTS' SUPPLEMENTAL REPLY IN SUPPORT OF THEIR MOTION TO DISMISS THE COMPLAINTS**

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Pursuant to the Court's leave granted on June 4, 2014, NTN Corporation and NTN USA Corporation (collectively, "NTN") respectfully submit this supplemental brief in support of their Motion to Dismiss the Direct Purchaser Consolidated Amended Class Action Complaint ("DPP Complaint"), No. 2:12-cv-00501, ECF No. 100, the Dealership Consolidated Class Complaint ("Dealership Complaint"), No. 2:12-cv-00502, ECF No. 67 (both filed on August 21, 2013), and the End-Payors' Corrected Consolidated Amended Class Action Complaint ("EPP Complaint"), No. 2:12-cv-00503, ECF No. 69, filed on September 19, 2013 (collectively, the "Complaints").

## INTRODUCTION

For the first time at the hearing, having no other response to NTN's motion to dismiss, Plaintiffs advanced a brand-new theory of global U.S. antitrust jurisdiction that is both wrong as a matter of law under the Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a ("FTAIA"), and unsupported by anything alleged in Plaintiffs' Complaints, *i.e.*, that certain foreign charges against NTN regarding foreign antitrust violations that involve the sale of bearings in Japan and Europe (but not the U.S.) support a claim under various federal and state antitrust laws in the U.S. on the basis that NTN "knew" that some bearings sold in Japan and Europe to foreign makers of cars could end up in automobiles subsequently exported to the U.S.:

> To take an example, Harry Martin, my original client, imports Volkswagens. If you have an enormous price-fixing cartel in the common market, the largest maker of cars in the common market is Volkswagen, and there will be NTN or its co-conspirator ball bearings in every Volkswagen that comes in, and it doesn't matter whether the [*sic*] NTN when they were fixing the price to Volkswagen said oh, gee, they are going to the U.S. or they just knew it. If they fixed it and they knew it they are guilty, full stop, summary judgment.[1]

This does not withstand legal analysis. The foreign legal proceedings cited by Plaintiffs as the only basis for denying NTN's motion cannot stave off dismissal where, as here, Plaintiffs

[1] Tr. 101:2-11.

have not alleged any facts in the Complaints to link the alleged foreign violations to the very different conspiracy alleged against NTN in the United States.[2]

To begin with, Plaintiffs' arguments about alleged global markets (which appear nowhere in their Complaints), *see* Tr. 99:1-12, and claims under federal and state antitrust laws for the alleged price-fixing of bearings sold overseas, are precluded by the FTAIA. That statute was enacted by Congress in 1982 to, among other things, stop the "rampant extraterritorial application" of U.S. antitrust laws to foreign sales with the purpose of avoiding both the "serious risk of interference with a foreign nation's ability independently to regulate its own commercial affairs" as well as address many foreign countries' "resentment at the apparent effort of the United States to act as the world's competition police officer." *Motorola Mobility LLC v. AU Optronics Corp.*, 746 F.3d 842, 846 (7th Cir. 2014) ("*Motorola Mobility*").[3]

To effectuate its purposes, the FTAIA requires much more than a showing that a defendant allegedly "knew" that an allegedly price-fixed bearing sold in a foreign country could end up in, or even affect, the United States. The FTAIA instead bars the application of U.S. antitrust law to foreign conduct unless it meets the FTAIA's (i) exclusion for "import trade or import commerce"; or (ii) has a "direct, substantial, and reasonably foreseeable effect" on U.S. commerce that proximately causes a plaintiff's claim (known as the "domestic effects" exception). *F. Hoffman-La Roche, Ltd. v. Empagran S.A.*, 542 U.S. 155, 161-62 (2004)

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[2] *See, e.g.*, *In re Elevator Antitrust Litig.*, 502 F.3d 47, 52 (2d Cir. 2007) ("Allegations of anticompetitive wrongdoing in Europe—absent any evidence of linkage between such foreign conduct and conduct here—is merely to suggest (in defendants' words) that 'if it happened there, it could have happened here'").

[3] Moreover, Plaintiffs' new theory of liability for the foreign violation allegations is waived because they failed to include it in their briefs. *See, e.g.*, *Atl. Cas. Ins. Co. v. Cheyenne Cntry.*, 515 F. App'x 398, 403 (6th Cir. 2013) (declining to consider new theory raised by defendant for the first time at oral argument); *United States ex rel. Marlar v. BWXT Y-12, LLC*, 525 F.3d 439, 450 n.6 (6th Cir. 2008).

("*Empagran I*"). Plaintiffs' new arguments about global markets and foreign charges against NTN fail to meet either test. Nor do Plaintiffs allege facts connecting the conduct subject to the foreign violations to effects on any bearings purchased by Plaintiffs as components or otherwise within the United States.

## ARGUMENT

### I. THE COMPLAINTS DO NOT ALLEGE FACTS THAT MEET THE FTAIA'S EXCEPTION FOR IMPORT COMMERCE

At the hearing, counsel for Plaintiffs argued that the allegations in their Complaints about foreign antitrust violations sufficiently state antitrust claims because some bearings were imported to this country either as components or as part of imported automobiles. Tr. 101:2-25. Such claims do not invoke the import exception to the FTAIA. Instead, as explained in the *Potash* case cited by Plaintiffs at the hearing, to qualify for the exception, the Complaints must allege facts to plausibly show that the import trade in question "has been substantially and intentionally affected by an anticompetitive arrangement." *Minn-Chem, Inc. v. Agrium, Inc.*, 683 F.3d 845, 855 (7th Cir. 2012) ("*Potash*"). Here, there are no factual allegations in the Complaints that the foreign charges against NTN involve any anticompetitive arrangement with respect to bearings imported to the U.S. To the contrary, the foreign charges involve bearings sold at certain times in Japan and Europe—not bearings imported to the U.S. Nor are there any allegations that the foreign charges involve any anticompetitive arrangement relating to the importation of automobiles containing bearings to the U.S. These deficiencies alone preclude Plaintiffs from invoking the import exception.

Moreover, to qualify for the exception, Plaintiffs must also allege that it was the *Defendants* who imported the products that were the subject of the anticompetitive arrangement

and not some independent third party (such as an automobile manufacturer like Volkswagen).[4] The purpose of these tests is to "allay any concern that a foreign company that does any import business at all in the United States would violate the Sherman Act whenever it entered into a joint-selling arrangement overseas regardless of its impact on the American market." *Potash*, 683 F.3d at 857. Here, it is clear that the EPPs' and Dealer Plaintiffs' claims are based on imports of automobiles not made by any Defendant and that the DPPs' claims relate to imported bearings not alleged to be the subject of any anticompetitive arrangement. For both reasons, Plaintiffs cannot invoke the import exception.[5]

## II. THE COMPLAINTS ALSO DO NOT ALLEGE FACTS THAT WOULD MEET THE FTAIA'S "DOMESTIC EFFECTS" EXCEPTION

Having failed to allege facts to qualify for the import test, Plaintiffs' only recourse is to argue that the alleged foreign violations satisfy the "domestic effects" exception. That exception, however, requires much more than a "situation in which action in a foreign country filters through many layers and finally causes a few ripples in the United States." *Motorola*

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[4] *In re TFT-LCD (Flat Panel) Antitrust Litig.*, Nos. M 07–1827 SI, C 09–5840 SI, 2010 WL 2610641, at *5 (N.D. Cal. June 28, 2010) ("The dispositive inquiry is whether the conduct of the defendants, not plaintiffs, involved import trade or commerce.") (citation omitted) (internal quotation marks omitted).

[5] Indeed, in all three Complaints, there is a sum total of three allegations specific to "imports." First is the wholly conclusory allegation that bearings manufactured abroad by Defendants and sold for use in automobiles either manufactured in the U.S. or manufactured abroad and sold in the U.S. constitute import commerce (under the FTAIA, this is wrong as a matter of law, as explained above). EPP Compl. ¶ 18; Dealership Compl. ¶ 22. Second is the conclusory allegation that prices for certain bearings imported to the U.S. from unnamed parties in Japan increased "during the time period of the admitted conspiracy in Japan." DPP Compl. ¶¶ 109, 111. And, third that certain Defendants "on average" export approximately 55% of their bearings to the U.S. *and* Europe (no number is alleged for the U.S. alone), and that "the U.S." (not any specific Defendant) imports 40% of its bearings overall from unnamed sellers in unnamed locations in Asia. DPP Compl. ¶ 117. None of these allegations is sufficient to apply the import exception, as none plausibly show that NTN engaged in an anticompetitive agreement that applied to Defendants' importation of either bearings (there are no allegations of this in the foreign antitrust charges cited) or automobiles containing bearings (which Defendants did not import at all).

*Mobility*, 746 F.3d at 844. Plaintiffs must allege facts that plausibly show that (i) NTN's foreign conduct caused a direct, substantial *and* reasonably foreseeable effect on U.S. commerce that (ii) also gives rise to Plaintiffs' U.S. antitrust claims. *Empagran I*, 542 U.S. at 161-62. Allegations that Defendants "harbored an inchoate hope or intention that their [products] would reach the United States [are] insufficient." *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07–md–01819 CW, 2010 WL 5477313, at *7 (N.D. Cal. Dec. 31, 2010).

In particular, Plaintiffs have not alleged any facts to plausibly show that the "direct" prong can be met with respect to the alleged foreign antitrust violations of NTN. To constitute a "direct" effect under the FTAIA, it is not enough that the alleged price fixing by NTN in Japan or Europe of bearings sold in those countries had a "ripple" effect in a global market on the price of either bearings or automobiles sold in the U.S. Instead, the "direct" test requires that the purported effect in the U.S. must follow from the challenged conduct "without deviation or interruption," and *not* following a winding chain of speculative events.[6] *United States v. LSL Biotechs.*, 379 F.3d 672, 680 (9th Cir. 2004) ("*LSL*"). As the Seventh Circuit just held, a price-fixed component sold abroad—such as a bearing sold in Japan or Europe—alleged to have then affected the prices of a finished product sold in the U.S. is not "direct" under the FTAIA's test. *Motorola*, 746 F.3d at 844; *see also In re Intel Corp. Antitrust Litig.*, 476 F. Supp. 2d 452, 456 (D. Del. 2007) ("*Intel*") (holding that the FTAIA "explicitly bars antitrust actions alleging

[6] The Second Circuit has alternatively held that the test for directness is whether there is a "reasonably proximate causal nexus" between defendants' alleged conduct abroad and the effects in the U.S. *Lotes Co., Ltd. v. Hon Hai Precision Indus. Co., Ltd.*, No. 13–2280, 2014 WL 2487188, at *14 (2d Cir. June 4, 2014). But even under that formulation, there are no allegations in the Complaints here that plausibly show that the foreign antitrust violations charged against NTN involved conduct which proximately caused any effects on the sale of bearings or automobiles in the United States. Indeed, the chain of alleged causation is not even set forth in the Complaints or in any of the alleged foreign violations so there is no possible way for Plaintiffs to meet any formulation of the "direct" test.

restraints in foreign markets for inputs . . . that are used abroad to manufacture downstream products . . . that may later be imported into the United States") (citation omitted) (internal quotation marks omitted)[7]; *United Phosphorus, Ltd. v. Angus Chem. Co.*, 131 F. Supp. 2d 1003, 1014 (N.D. Ill. 2001) ("*Phosphorus*") (same)[8].

At oral argument, Plaintiffs gave yet another reason why they cannot meet the "direct" test with respect to bearings sold by NTN in Japan and the EU—such bearings, to the extent they were imported from the U.K. or Japan during the period from 1989 through 2011, and again from November 2013 to March 2014, were subject to antidumping orders, which were then revoked with an effective date of September 15, 2011. Tr. 99:13-15; Ball Bearings and Parts

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[7] The courts' decisions in *Potash* and *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 822 F. Supp. 2d 953 (N.D. Cal. 2011) ("*TFT-LCD*") do not provide any basis for Plaintiffs to satisfy the FTAIA's direct test with respect to NTN. *Potash* involved specific allegations in the complaint of "a benchmark price intended to govern later U.S. sales" and defendants allegedly "applied those prices to [their] U.S. sales." *Potash*, 683 F.3d at 859. As for *TFT-LCD*, defendants' "relationships [with the OEMs] took place in large part within the United States," price negotiations took place in the U.S., defendants specifically targeted actions taken by management of OEMs located in the U.S., and defendants monitored U.S. prices of finished products to learn how much they could charge for the components at issue. *TFT-LCD*, 822 F. Supp. 2d at 963, 967 n.5. There are no similar allegations about NTN in the Complaints here. To the contrary, the only allegations Plaintiffs rely upon against NTN are those relating to the foreign antitrust charges, none of which contain any plausible basis to show a "direct" effect on the sale of bearings or automobiles sold in the U.S. Additionally, unlike here, the allegedly price-fixed component in *TFT-LCD* represented a large portion of the cost of the finished products sold in the U.S. (in some cases exceeding 60%), in comparison to the absence of any similar claims about the percentage costs that bearings represent of an automobile (which would obviously be infinitesimal).

[8] At oral argument, Plaintiffs proposed another novel theory citing *Potash*: that they have a valid claim so long as it was conceivable to Defendants that bearing prices set abroad might have had some kind of effect on prices of bearings made and sold in the U.S. Tr. 103:10-18. Apparently this is based on the notion that a price set in one market affects prices set worldwide. Tr. 99:1-8. Such a theory is not alleged in the Complaints and, in any event, it is not the law even under *Potash*, where plaintiffs alleged "a benchmark price intended to govern later U.S. sales" and that defendants actually "applied those prices to [their] U.S. sales," (*i.e.*, the allegations were not that a price set in one place presumably affected prices everywhere). *Potash*, 683 F.3d at 859. Further, there is likely no basis under Fed. R. Civ. P. 11 to allege as much in an amended complaint.

Thereof From Japan and the United Kingdom: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders, 79 Fed. Reg. 16,771 (Mar. 26, 2014) (attached as Exhibit 1). As the Ninth Circuit has held, "directness" is practically impossible in such a situation:

> [T]he government's argument about the directness of the effect of seed prices on tomato prices is undermined by the United States' recent agreement with Mexican farmers to set a floor on the price of tomatoes shipped from Mexico to the United States. . . . The government initiated the investigation that led to the agreement because it was determined that Mexican tomato growers were selling their product in the United States at *less than fair value*. This agreement, and the concerns that give rise to it, *belie the United States' argument that [defendant] could raise the prices ultimately paid by American tomato consumers*.

*LSL*, 379 F.3d at 682 (emphasis added) (citation omitted) (internal quotations marks omitted). The antidumping orders thus present one more reason why Plaintiffs cannot plausibly satisfy the "direct" test with respect to NTN's alleged foreign antitrust violations. The antidumping orders, moreover, make it impossible for Plaintiffs to argue that it is plausible that if NTN fixed prices for bearings in a market such as Japan, it was required to charge the same prices in the U.S., when the premise of the antidumping order Plaintiffs cite is that companies were charging lower prices in the U.S. for bearings (not the same prices) than what they charged in Japan.[9]

Finally, Plaintiffs cannot meet the "substantial" test of the FTAIA with respect to the sale of automobiles in the U.S. It simply is not possible that price-fixing a tiny component (such as a bearing) abroad, which is then combined with tens of thousands of other components to form a car, could have a "substantial" effect on the price of that car when sold in the U.S.[10]

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[9] The "very threat the antidumping statute [19 U.S. Code § 1673] was meant to counter" was foreign manufacturers setting their prices "below the fair value" of a product. *United States v. Eurodif S.A.*, 555 U.S. 305, 321 (2009).

[10] *See, e.g, Intel*, 476 F. Supp. 2d at 456 ("[A]llegations that Intel engaged in overseas conduct which resulted in higher PC prices" in the U.S. "are not direct domestic effects of any alleged foreign conduct of Intel, but secondary and indirect effects that are also the by-product of numerous factors relevant to market conditions and the like.") (citation omitted) (internal quotation marks omitted); *see also Phosphorus*, 131 F. Supp. 2d at 1014.

## III. THE FTAIA ALSO BARS PLAINTIFFS' STATE ANTITRUST CLAIMS

The FTAIA's import commerce and domestic effects exceptions apply equally to the claims that Plaintiffs have brought under state law, *i.e.,* antitrust claims under the laws of 24 states and the District of Columbia.[11] In each of these states, the legislature has passed a "harmonization statute" or the courts have decided that the state antitrust laws should be interpreted in accordance with federal antitrust laws.[12] Those state law claims must be

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[11] **Arizona**: Ariz. Rev. Stat., §§ 44-1401, *et seq.*; **California**: Cal. Bus. & Prof. Code, §§ 16700, *et seq.*; **D.C.**: D.C. Code Ann. §§ 28-4501, *et seq.*; **Hawaii**: Haw. Rev. Stat. Ann. §§ 480-1, *et seq.*; **Illinois**: 740 Ill. Comp. Stat. §§ 10/1, *et seq.*; **Iowa**: Iowa Code §§ 553.1, *et seq.*; **Kansas**: Kan. Stat. Ann., §§ 50-101, *et seq.*; **Maine**: Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*; **Michigan**: Mich. Comp. Laws Ann. §§ 445.771, *et seq.*; **Minnesota**: Minn. Stat. Ann. §§ 325D.49, *et seq.*; **Mississippi**: Miss. Code Ann. §§ 75-21-1, *et seq.*; **Nebraska**: Neb. Rev. Stat. §§ 59-801, *et seq.*; **Nevada**: Nev. Rev. Stat. Ann. §§ 598A.010, *et seq.*; **New Hampshire**: N.H. Rev. Stat. §§ 356:1, *et seq.*; **New Mexico**: N.M. Stat. Ann. §§ 57-1-1, *et seq.*; **New York**: N.Y. Gen. Bus. Law §§ 340, *et seq.*; **North Carolina**: N.C. Gen. Stat. §§ 75-1, *et seq.*; **North Dakota**: N.D. Cent. Code §§ 51-08.1-01, *et seq.*; **Oregon**: Or. Rev. Stat. §§ 646.705, *et seq.*; **South Dakota**: S.D. Cod. Laws Ann. §§ 37-1-3.1., *et seq.*; **Tennessee**: Tenn. Code Ann. §§ 47-25-101, *et seq.*; **Utah**: Utah Code Ann. §§ 76-10-911, *et seq.*; **Vermont**: 9 Vt. Stat. Ann. §§ 2451, *et seq.*; **West Virginia**: W.Va. Code §§ 47-18-1, *et seq.*; **Wisconsin**: Wis. Stat. §§ 133.01, *et seq.*

[12] **Arizona**: Ariz. Rev. Stat. Ann. § 44-1412; *Brooks Fiber Comm'n of Tucson, Inc. v. GST Tucson Lightwave, Inc.*, 992 F. Supp. 1124, 1130 (D. Ariz. 1997); **California**: *Vinci v. Waste Mgmt., Inc.*, 36 Cal. App. 4th 1811, 1814 n.1 (1995); *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 269 F. Supp. 2d 1213, 1224-1225 (C.D. Cal. 2003); **D.C.**: D.C. Code § 28-4515; *Peterson v. Visa U.S.A., Inc.*, No. Civ. A. 03-8080, 2005 D.C. Super. 2005 WL 1403761, *9 (D.C. Super. April 22, 2005); **Hawaii**: Haw. Rev. Stat. § 480-3; *Courbat v. Dahana Ranch, Inc.*, 141 P.3d 427, 435 n.6 (Haw. 2006); **Illinois**: *People v. Crawford Distrib. Co.*, 291 N.E.2d 648, 652-53 (Ill. 1972); **Iowa**: Iowa Code § 553.2; *Davies v. Genesis Med Ctr.*, 994 F. Supp. 1078, 1103 (S.D. Iowa 1998); **Kansas**: *Orr v. Beamon*, 77 F. Supp. 2d 1208, 1211-12 (D. Kan. 1999), aff'd 4 F. App'x 647 (10th Cir. 2001); **Maine**: *Davric Maine Corp. v. Rancourt*, 216 F.3d 143, 149 (1st Cir. 2000); **Michigan**: Mich. Comp. Laws § 445.784; **Minnesota**: *Midwest Commc'n, Inc. v. Minn. Twins, Inc.*, 779 F.2d 444, 454 (8th Cir. 1985); *Keating v. Philip Morris, Inc.*, 417 N.W.2d 132, 136 (Minn. Ct. App. 1987); *State v. Duluth Bd. of Trade*, 121 N.W. 395, 399 (Minn. 1909); **Mississippi**: *Walker v. U-Haul Co. of Miss.*, 734 F.2d 1068, 1071 n.5 (5th Cir. 1984); **Nebraska**: Neb. Rev. Stat. § 59-829; **New Hampshire**: N.H. Rev. Stat. Ann. § 356:14; *Minuteman, LLC v. Microsoft Corp.*, 795 A.2d 833, 836 (N.H. 2002); **Nevada**: Nev. Rev. Stat. § 598A.050; **New Mexico**: N.M. Stat. § 57-1-15; **New York**: *Sperry v. Crompton Corp.*, 863 N.E.2d 1012, 1018 (N.Y. 2007); *Aimcee Wholesale Corp. v. Tomar Prod., Inc.*, 237 N.E.2d 223, 225 (N.Y. 1968); **North Carolina**: *Rose v. Vulcan Materials Co.*, 194 S.E.2d 521, 530 (N.C.

interpreted, therefore, in accordance with the limits in the FTAIA. The same analysis applies with respect to Plaintiffs' state consumer protection or unfair competition claims, which are modeled after the Federal Trade Commission Act ("FTCA"), 15 U.S.C. §§ 41-58.[13] As with the FTAIA, that statute requires that foreign conduct have a "direct, substantial, and reasonably foreseeable effect" on domestic commerce, tests Plaintiffs cannot meet. 15 U.S.C. § 45(a)(3)(A).

In addition, the Constitution's Commerce and Supremacy Clauses independently bar Plaintiffs' state claims. The Commerce Clause preempts state antitrust regulations to the extent

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1973); **North Dakota**: *AG Acceptance Corp v. Glinz*, 684 N.W.2d 632, 638-40 (N.D. 2004); *Beckler v. Visa U.S.A., Inc.*, No. 09-04-C-00030, 2004 WL 2115144 *3 (N.D. Dist. Ct. Aug. 23, 2004); **Oregon**: Or. Rev. Stat. § 646.715(2); *Jones v. City of McMinnville*, No. 05-35523, 244 F. App'x 755 at *8 (9th Cir. 2007); **South Dakota**: *Byre v. City of Chamberlain*, 362 N.W.2d 69, 74 (S.D. 1985); **Tennessee**: *Tenn. ex rel. Leech v. Levi Strauss & Co.*, No. 79-722-III, 1980 WL 4696 *2 n.2 (Tenn. Ch. Ct. Sept. 25, 1980); **Utah**: Utah Code Ann. § 76-10-926; *Evans v. State*, 963 P.2d 177, 181 (Utah 1998); **Vermont**: *Fucile v. Visa U.S.A., Inc.*, No. S1560-03 CNC, 2004 WL 3030037 *3 (Vt. Super. Dec. 27, 2004); **West Virginia**: W.Va. Code § 47-18-16; *Gray v. Marshall County Bd. of Edu.*, 367 S.E.2d 751, 755 (W.Va. 1988); **Wisconsin**: *Ford Motor Co. v. Lyons*, 405 N.W.2d 354, 367 (Wis. Ct. App. 1987).

[13] For each state, the statute Plaintiffs allege is listed first, and the statute or case harmonizing state and federal consumer protection law or otherwise establishing why Plaintiffs cannot state a consumer protection claim is listed second: **Arkansas**: Ark. Code Ann. §§ 4-88-101 *et seq.*; Ark. Code, §§ 4-88-101-112; **California**: Cal. Bus. & Prof. Code, §§ 17200, *et seq.*; *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 185 (1999); *Bowen v. Ziasun Technologies, Inc.*, 116 Cal. App. 4th 777, 788-89 (2004); **D.C.**: D.C. Code §§ 28-3901, *et seq.*; *American Financial Services v. FTC*, 767 F.2d 957 (D.C. Cir. 1985); **Florida**: Fla. Stat. §§ 501.201, *et seq.*; Fla. Stat. § 501.202(3); **Hawaii**: Haw. Rev. Stat. §§ 480, *et seq.*; Haw. Rev. Stat. § 480-2(b); **Massachusetts**: Mass. G.L. c. 93A, *et seq.*; Mass. G.L. c. 93A § 2(b); **Missouri**: Mo. Rev. Stat. §§ 407.010, *et seq.*; *Duvall v. Silvers, Asher, Sher & McLaren, M.D.'s*, 998 S.W.2d 821, 824-27 (Mo. Ct. App. 1999); *In re New Motor Vehicles Can. Export Antitrust Litig.*, 350 F. Supp. 2d 160, 190-92 (D. Me. 2004); **Montana**: Mont. Code, §§ 30-14-103, *et seq.*, and §§ 30-14-201, *et. seq.*; Mont. Code Ann., §§ 30-14, parts 1 and 2; **New Mexico**: N.M. Stat. § 57-12-1, *et seq.*; N.M. Stat. § 57-12-4; **New York**: N.Y. Gen. Bus. Law §§ 349, *et seq.*; *State v. Colo. State Christian Coll. of Church of Inner Power, Inc.*, 76 Misc. 2d 50, 54, 346 N.Y.S.2d 482, 487 (N.Y. Sup. Ct. 1973); *People ex rel. Spitzer v. Applied Card Sys., Inc.*, 805 N.Y.S.2d 175, 178 (N.Y. App. Div. 2005); **North Carolina**: N.C. Gen. Stat. §§ 75-1.1, *et seq.*; *Henderson v. U. S. Fid. & Guar. Co.*, 488 S.E.2d 234, 239 (N.C. 1997); **Rhode Island**: R.I. Gen. Laws §§ 6-13.1-1, *et seq.*; R.I. Gen. Laws §§ 6-13.1-3; **South Carolina**: S.C. Code Ann. §§ 39-5-10, *et seq.*; S.C. Code § 39-5-20(b) ; **Vermont**: 9 Vt. §§ 2451, *et seq.*; Vt. Stat. Ann. tit. 9, §§ 2451; 2453(b).

necessary to maintain a uniform national antitrust policy.[14] This is essential in the realm of foreign commerce, which is exclusively relegated to federal control. Similarly, the Supremacy Clause requires the preemption of state law when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000) (citation omitted) (internal quotation marks omitted). Unquestionably, "'foreign commerce is pre-eminently a matter of national concern'.... Here, Congress has spoken under the FTAIA ... [and] Congress' intent would be subverted if state antitrust laws were interpreted to reach conduct which the federal law would not." *Intel*, 476 F. Supp. 2d at 457 (quoting *Japan Line, Ltd. v. Cnty. of Los Angeles*, 441 U.S. 434, 448 (1979)). Plaintiffs' state claims therefore fail for this reason as well.

## CONCLUSION

For all of the reasons set forth above, Plaintiffs cannot stave off dismissal of their claims against NTN by relying solely on foreign antitrust charges against NTN in Japan and Europe, as these charges only relate to bearings sold in those countries, and there is no federal or state antitrust jurisdiction permitted under the FTAIA for Plaintiffs to assert a claim against the alleged indirect "effects" that such foreign violations could have had in the U.S. Simply put, there are no factual allegations in the Complaints capable of plausibly stating a U.S. antitrust claim against NTN.

June 16, 2014

Respectfully submitted,

WINSTON & STRAWN LLP

By: /s/ A. Paul Victor (w/consent)

[14] *See, e.g., Flood v. Kuhn*, 407 U.S. 258, 284 (1972) (dismissing state antitrust claims because "state antitrust regulation would conflict with federal policy" and because of the need for national uniformity in the regulation of baseball).

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