



CARTEL ENFORCEMENT

GLOBAL REVIEW – JUNE 2017



STRICT GLOBAL ENFORCEMENT OF CARTELS CONTINUES IN 2017

Competition authorities around the world continue to prioritise investigating and prosecuting cartel conduct.

In many jurisdictions, this focus has fuelled a steady increase in financial penalties levied against companies operating in targeted industries or sectors. In 2017, the European Commission has already imposed cartel fines of almost €1 billion.

In other jurisdictions, competition authorities have renewed their focus on individual accountability. The United States continues to be the leading jurisdiction in prosecuting individuals under criminal cartel laws – with the US Department of Justice noting in February 2017 that a total of more than 60 individuals have pleaded guilty or been convicted of criminal charges as part of its ongoing investigations into bid rigging in real estate auctions in California.

Bid rigging, vertical price fixing and the impact of technologies such as pricing algorithms look set to become hot topics in cartel enforcement in 2017. Key sectors of focus this year will likely include health and life sciences, transport, construction, financial services, consumer goods and technology. Enhanced tools and protections for cartel whistleblowers is another development on the agenda in a number of jurisdictions.

DLA Piper's 2017 global review of cartel enforcement provides insights into trends that have emerged around the world in recent years, using our global network of competition and antitrust lawyers to track the latest developments in cartel enforcement.

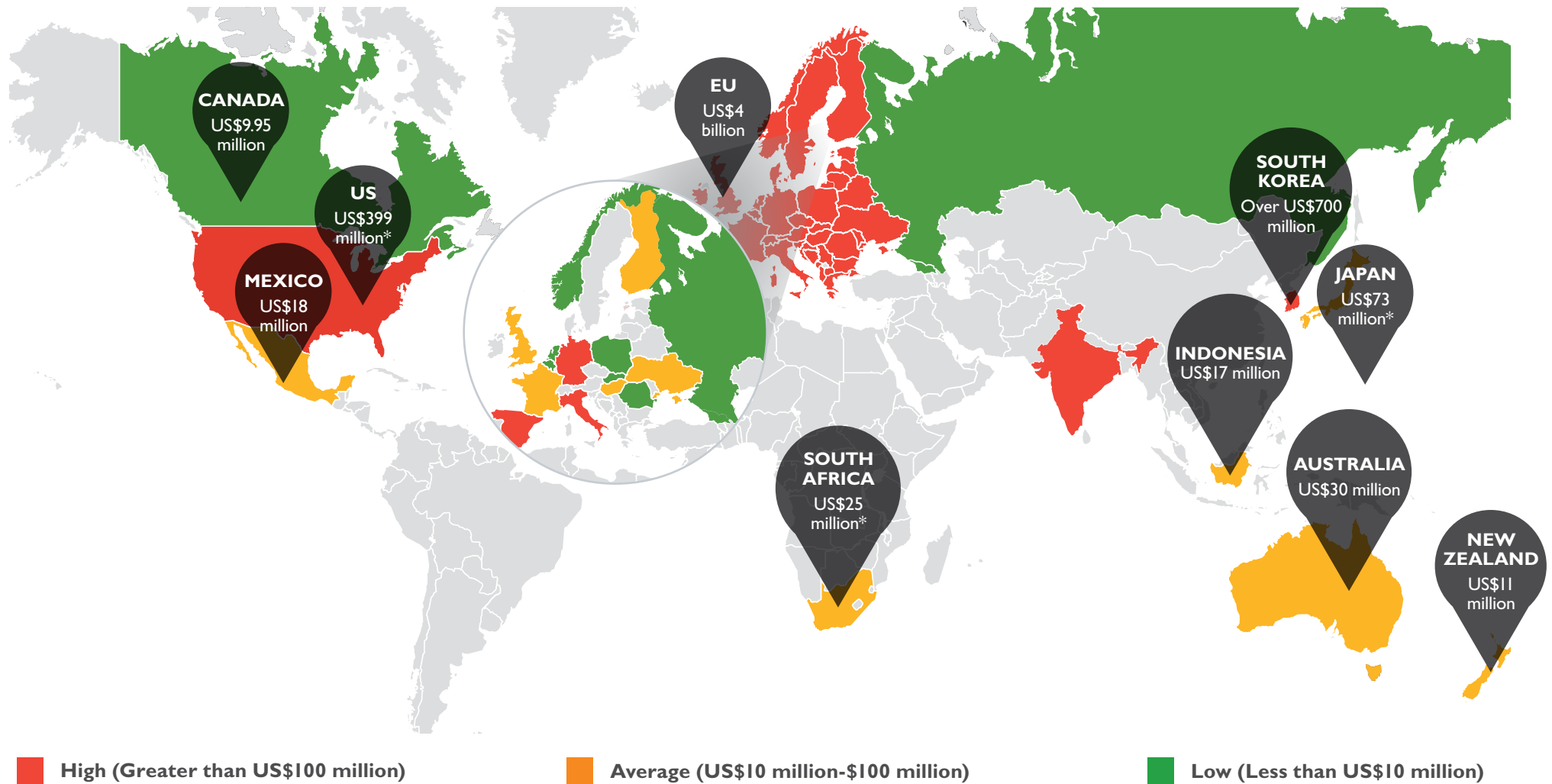


CONTENTS

GLOBAL CARTEL ENFORCEMENT ACTIVITY	4	Russia.....	21
2016 global penalties.....	4	Slovakia	22
Penalty trends around the world	5	Spain	23
Criminal enforcement.....	6	Ukraine	24
THE GLOBAL ENFORCEMENT MIX – EMERGING TRENDS	7	United Kingdom	25
Prosecuting individuals.....	7	AMERICA.....	26
Private enforcement.....	8	United States	26
Cartel investigations and international co-operation.....	8	Canada.....	27
Focus sectors.....	9	Mexico	28
COUNTRY SNAPSHOT	10	ASIA PACIFIC	29
EUROPE.....	10	Australia	29
European Union	10	China	30
Belgium	11	Hong Kong	31
Finland.....	12	India	32
France.....	13	Indonesia.....	33
Georgia	14	Japan.....	34
Germany.....	14	Malaysia.....	35
Hungary.....	15	New Zealand	36
Italy	16	Philippines	36
Netherlands	17	Singapore	37
Norway	18	South Korea	38
Poland	19	Taiwan.....	39
Romania	20	AFRICA.....	40
		South Africa	40
		MORE INFORMATION	41





GLOBAL CARTEL ENFORCEMENT ACTIVITY













2016 GLOBAL PENALTIES



Annual penalties are estimates only and are based on penalties publicly reported in each jurisdiction in 2016 (by calendar year or fiscal year) and USD exchange rate as at 1 January 2017. Penalties may be subject to review or appeal. For more information, see the Country Snapshot section. *Data for US, Japan and South Africa based on fiscal year ending during 2016.

PENALTY TRENDS AROUND THE WORLD (IN USD)

		2015	2016	TREND
EUROPE				
	EU	384 million	\$4 billion	^
	Belgium	\$183 million	\$4.1 million	v
	Finland (proposed fines)	\$58,000	\$40 million	^
	France	\$927 million	\$17.5 million	v
	Georgia	\$21 million	0	v
	Germany	\$220 million	\$131 million	v
	Hungary	\$11.4 million	Over \$13.6 million	^
	Italy	\$247 million	\$217 million	v
	Netherlands	\$16 million	0	v
	Norway	\$745,000	\$752,000	≈
	Poland	\$246,000	\$35,000	v
	Romania	\$43.7 million	\$4.4 million	v
	Russia	\$4 million	\$2.1 million	v
	Slovakia	\$5.8 million	\$3 million	v
	Spain	\$578 million	\$316 million	v
	Ukraine	\$8.7 million	\$10.2 million	^

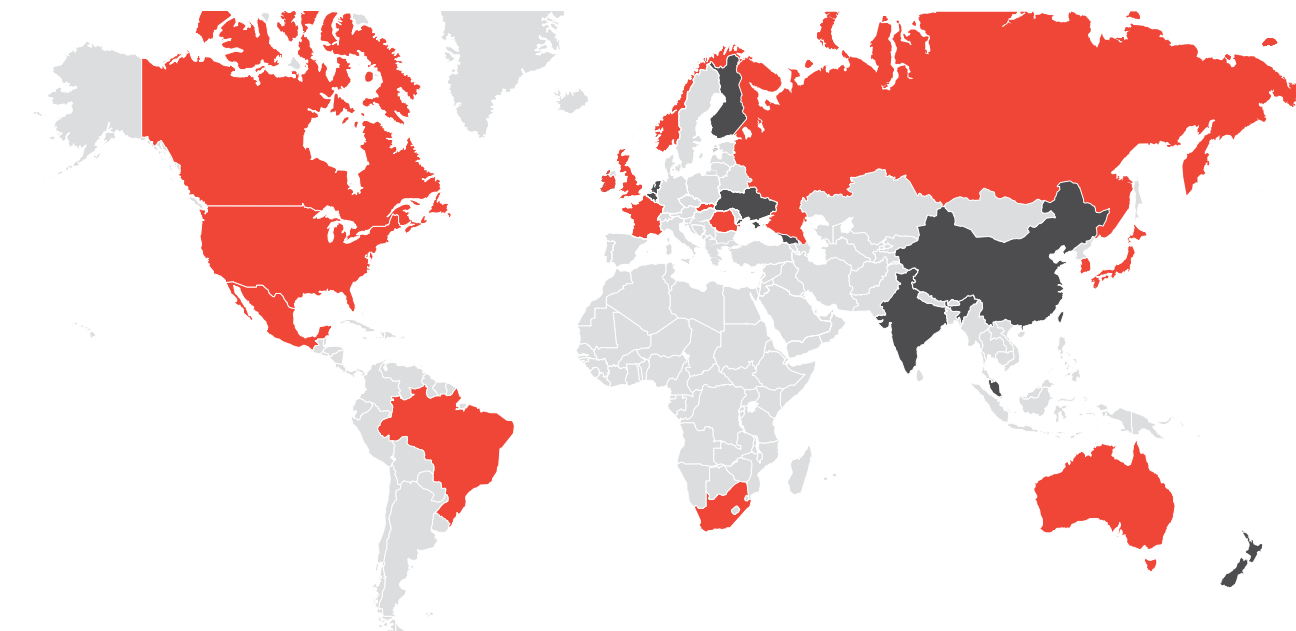
		2015	2016	TREND
	United Kingdom	\$1.4 million	\$61.1 million	^
AMERICA				
	United States*	\$3.6 billion	\$399 million	v
	Canada	\$2.1 million	\$9.95 million	^
	Mexico	\$2.6 million	\$17.7 million	^
ASIA PACIFIC				
	Australia	0	\$30.3 million	^
	India	\$381 million	\$221 million	v
	Indonesia	\$12.6 million	\$16.8 million	^
	Japan*	\$147 million	\$72.8 million	v
	New Zealand	\$2.5 million	\$11.5 million	^
	Singapore	\$0	\$3.9 million	^
	South Korea	\$418 million	Over \$700 million	^
AFRICA				
	South Africa*	\$18.7 million	\$24.6 million	^

Annual penalties are rounded estimates only and are based on penalties publicly reported in each jurisdiction in 2016 (by calendar year or fiscal year) and USD exchange rate as at 1 January 2017. Penalties may be subject to review or appeal. For more information, see the Country Snapshot section. *Data for US, Japan and South Africa based on fiscal year ending during 2016.

CRIMINAL ENFORCEMENT

The United States continues to lead the way in criminal enforcement of cartels and imprisoning individuals involved in cartels, but an increasing number of jurisdictions also have criminal cartel laws. In 2016, South Africa became another jurisdiction to introduce individual criminal liability for cartels.

JURISDICTIONS WITH CRIMINAL CARTEL LAWS:



In **Canada** in 2015-2016, two individuals were given 18 month conditional sentences with the first six months to be served under house arrest and 60 or 90 hours of community service respectively.

In the **United Kingdom** in 2015, a director of a company was given a suspended six-month prison sentence and ordered to do 120 hours community service for criminal cartel conduct concerning the supply in the UK of galvanised steel tanks for water storage. In 2016, one individual pleaded guilty to the criminal cartel offence in the United Kingdom following an investigation into suspected cartel conduct in respect of the supply of precast concrete drainage products. He has not yet been sentenced as the investigation is ongoing.

“

Pursuing and successfully prosecuting those who engage in criminal cartel activity is an important part of our role and we have continued to invest in our cartels and criminal enforcement capabilities...

**UK Competition and Markets Authority
Annual Report 2015-16**

”

CRIMINAL CARTEL LAWS

Some jurisdictions (such as Germany, Hungary, Italy, Poland and Spain) have only criminalised aspects of cartel conduct, such as bid rigging.

The enforcement of cartels through criminal laws means that individuals involved in a cartel may face imprisonment. Jurisdictions in which prison sentences have recently been imposed for cartel conduct include the **United States** and **Japan** (suspended sentences).

NO CRIMINAL CARTEL LAWS

In the **United States**:

- In 2015, 12 individuals were sentenced to prison. The average length of prison sentence was 402 days.
- In 2016, 13 individuals were sentenced to prison. The average length of prison sentence was 476 days.

THE GLOBAL ENFORCEMENT MIX – EMERGING TRENDS

PROSECUTING INDIVIDUALS

There is an increasing focus on prosecuting individuals involved in cartels (in addition to the corporations for which they act) among many competition authorities around the world.

In some jurisdictions, such as Australia and the UK, this has seen authorities seek disqualification orders (which prevent an individual from managing a corporation for a period of time) in addition to monetary penalties.

“

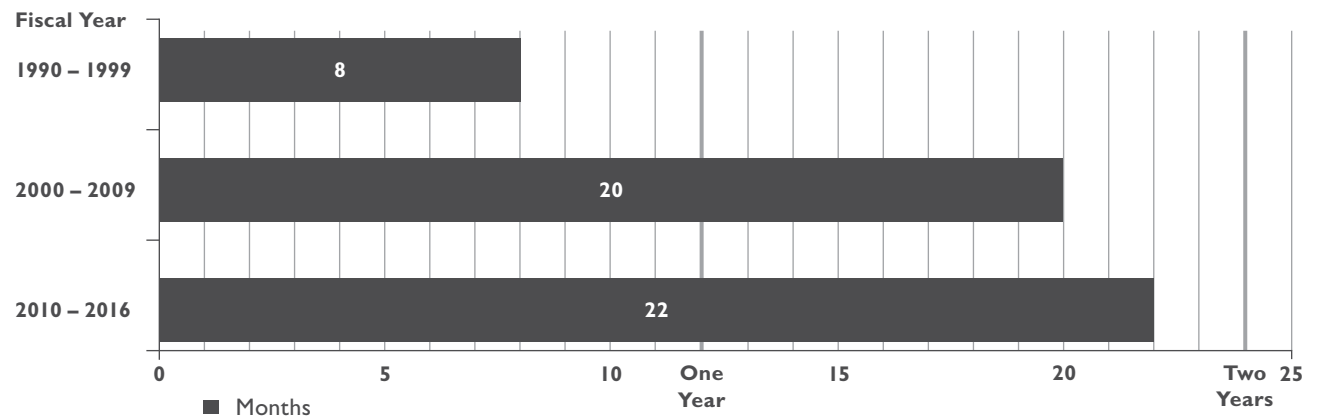
Cartel conduct is an enduring priority for the [Australian Competition and Consumer Commission] and unfortunately we continue to see too much of this activity. I fear that only jail sentences for individuals in prominent companies will send the appropriate deterrence messages...

Australian Competition and Consumer Commission Chairman, February 2017

”

Imprisonment is the most severe potential consequence for individuals involved. US data shows that the average prison sentence in the United States is on an upward trend, with the average prison sentence between 2010-2016 being almost 2 years.

AVERAGE PRISON SENTENCE FOR CARTELS IN THE US



Source: Department of Justice, [Criminal Enforcement Trends Charts](#)

US Department of Justice data also shows that the Department of Justice has generally prosecuted two to three times as many individuals as corporations for breaches of US antitrust laws in recent years.

“

Our record with respect to individual accountability speaks for itself. But we are embracing the Deputy Attorney General's directive to do even better. We have adopted new internal procedures to ensure that each of our criminal offices systematically identifies all potentially culpable individuals as early in the investigative process as feasible...

US Department of Justice Deputy Assistant Attorney General Brent Snyder, February 2016

”

PRIVATE ENFORCEMENT

While this review focuses on penalties obtained by competition authorities, private actions are also an important aspect of cartel enforcement. For example, in the US, a report by Emeritus Professor, Dr John Connor, indicates that private settlements yield approximately 2.6 times the financial penalties imposed by the authorities.¹

In the EU, the implementation of the Damages Directive could lead an increase in private damages actions for cartels. The Directive aims to remove obstacles to compensation, including by providing private parties with easier access to evidence and establishing a rebuttable presumption that cartels cause harm.

CARTEL INVESTIGATIONS AND INTERNATIONAL CO-OPERATION

Immunity regimes continue to be a key tool to detect cartels around the globe. Dawn raids also occur frequently in major jurisdictions such as the US and EU. In 2017, a renewed focus on whistleblower protections for individuals in some jurisdictions is likely. For example, in March 2017, the European Commission announced that it had introduced a new tool to make it easier for individuals to alert the Commission about secret cartels while maintaining their anonymity.

The Japanese competition authority received **102 reports** under its leniency program in FY2015 (up from 61 reports in FY2014).

Developments in technology used by cartel participants could increasingly cause hurdles for investigators in the coming years, with recent reports indicating that the US Department of Justice has been investigating a cartel that used an encrypted chat app.²

Although domestic cartels were prevalent in the cartel enforcement activities in many jurisdictions around the world in 2016, international cartels continue to be prosecuted and international co-operation between competition/antitrust authorities remains an important developing feature in cartel enforcement. This is reiterated in new guidelines released by the US Department of Justice and Federal Trade Commission in mid-January 2017, *Antitrust Guidelines for International Enforcement and Cooperation*, which note that, as at 2017, over 130 jurisdictions have antitrust laws and the US antitrust agencies have thus ‘expanded their efforts and committed greater resources to building and maintaining strong relationships with foreign authorities’.

“

Increasingly, the Agencies’ investigations involve conduct, entities, individuals, and information located outside the United States. The Agencies employ a combination of their own investigative tools and cooperation with foreign authorities in investigating and seeking appropriate remedies in certain international matters.

US Department of Justice and Federal Trade Commission Antitrust Guidelines for International Enforcement and Cooperation, January 2017

”

Data from the US also shows that corporations fined over US\$10 million for cartels in recent years included many corporations from outside the US, such as:

- Foreign currency exchange – Great Britain, Northern Ireland and Scotland
- Automobile parts – Japan and Germany
- Shipping – Norway and Japan
- LCD panels – Korea, Taiwan and Japan

¹ John M Connor, ‘Private Recoveries in International Cartel Cases Worldwide: What Do the Data Show?’ (Working Paper No 12 03, The American Antitrust Institute, 15 October 2012) 9.

² R Vandeford, ‘DOJ antitrust enforcers uncovered cartel that largely used encrypted chats — an agency first, official says’, (MLex Global Antitrust, 3 February 2017).

FOCUS SECTORS

Key sectors that are likely to be a continuing focus in cartel enforcement activity around the world in 2017 include:



Health and life sciences



Transport – such as shipping,
automotive and aviation



Construction



Financial services



Technology and e-commerce



Retail and consumer goods



Energy



Real estate

COUNTRY SNAPSHOT

EUROPE

EUROPEAN UNION

	2015	2016	TREND
 EUROPEAN UNION	€364,531,000	€3,726,976,000	^

Cartel enforcement continues to be a top priority of the European Commission. In 2015 and 2016, a steady number of decisions were made (5 in 2015 and 6 in 2016), while new investigations were also opened and a similar number of decisions is expected in the future.

In 2016, the European Commission imposed the highest fines in the history of cartel investigations in Europe, both in terms of the fines imposed for a single case and on an individual company. The Commission found that truck producers colluded for 14 years on truck pricing and passing on the costs of compliance with stricter emission rules. Total fines in the case exceeded €2.9 billion, with the two highest individual fines since 1969 of approximately €1 billion for one company and over €752 million for another company.

The European Commission finished its investigation into Euro interest rate derivatives in 2016 (following its decision relating to Yen interest rate derivatives in 2015). Other recent cartel decisions show the European Commission's commitment to fighting cartels regardless of the sector in which the violations occur – for example, recent cartel cases include cases relating to industrial goods and services (such as alternators and starters, steel abrasives and trucks), as well as consumer goods (such as retail food packaging, optical disc drives, rechargeable batteries and canned mushrooms).

Leniency applications remain the most important tool in the European Commission's toolkit and a number of cartel investigations (including the recent truck producers cartel) are initiated on the basis of leniency applications.

Investigations expected to continue in 2017 include investigations relating to ethanol benchmarks and electrolytic capacitors. No big legislative changes are expected in the area of cartel enforcement this year, and the European Commission is expected to use the current framework for fighting illegal cartels, including the 2006 Guidelines on fines, which could lead to a very significant fines.



“

Preventing and punishing cartels is one of the Commission's top priorities.

Commissioner Vestager, 8 February 2017

”

BELGIUM

		2015	2016	TREND
	BELGIUM	€174,000,000	€3,900,000	V


There were two cartel (settlement) decisions in Belgium in 2016, one in the market for industrial batteries and the other relating to river cruises. This followed only one decision in 2015 relating to the sale of drug, perfume and hygiene products, in which total fines imposed by the Belgian Competition Authority (**BCA**) totalled €174 million. The BCA also conducted three dawn raids in 2016, two involving the pharmaceutical sector and the other involving infrared cabins.

On 2 May 2017, the BCA imposed total fines of approximately €1.8 million under the settlement procedure on five companies for a cartel in the context of a public contract (the companies agreed which company would win which tender). The cartel was denounced to the BCA by one of the companies under the leniency program.

Many BCA investigations appear to be triggered by leniency applications under the BCA's leniency guidelines. New leniency guidelines were adopted by the BCA in 2016 and now include provisions relating to leniency for individuals.



FINLAND

		2015	2016	TREND
	FINLAND	€55,000	€38,000,000	⤴

Based on fines proposed by the Finnish Competition and Consumer Authority

The Finnish Competition and Consumer Authority (**FCCA**) is continuing to seek higher penalties in cartel cases. In 2016, the highest penalties proposed by the FCCA (€38 million) were for a suspected bus cartel involving the bus and coach association, seven coach companies and a transport service provider. The matter is currently pending at the Market Court.

A working group set up by the Ministry of Economic Affairs and Employment recently submitted its report examining and proposing amendments to the Finnish Competition Act. The central amendments concerning cartels proposed by the working group include, inter alia:

- Increasing the potential maximum penalty payment imposed on trade associations by taking into account the turnovers of the 10 largest member companies in addition to the turnover of the trade association itself in the calculation of the penalty payment.
- A new provision entitling the FCCA to propose structural remedies for competition law infringements.
- A provision enabling penalty payments of EUR 100,000 (or up to 1% of the turnover) for violations of the procedural rules of the Competition Act, such as the obligation to provide information.
- Amendments to the inspection rights allowing the FCCA to continue inspections at their own or other state authority's premises after a dawn raid as well as to hear the company representatives when conducting an inspection outside the company's business premises (i.e. for example at a company representative's home).

It is expected that the proposals will move forward to the Parliament during 2017, and enter into force shortly after the amendments have been enacted.



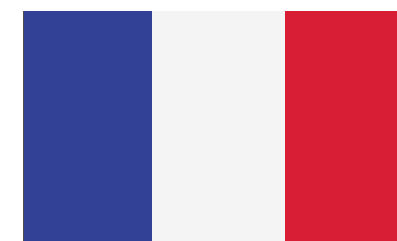
FRANCE

		2015	2016	TREND
	FRANCE	€881,370,000	€16,648,000	V

As the annual report for 2016 has not yet been published by the French Competition Authority, the 2016 estimate is only based on decisions publicly available.

In its fight against anti-competitive agreements, the French Competition Authority (**FCA**) gives special attention to negotiated procedures. The revision of two procedures in 2015 illustrates the determination of the FCA to make them more attractive for companies:

- A new settlement procedure was introduced in the French Commercial Code in August 2015 (known as the 'Macron Law'). The new procedure aims to provide more predictability and a controlled risk of fines for companies, which will now be able to anticipate the maximum amount of the fine incurred. The settlement procedure has been used in two cases to date, including in one cartel case.
- On 3 April 2015, the FCA published a new leniency procedural notice consolidating its decision-making practice and clarifying certain points with a view to enhancing transparency and predictability for companies. According to this notice, the FCA will now systematically publish a press release following a dawn raid, in order to reinforce equality of access to the leniency program between companies that are visited and those that are not. The notice also provides ranges of fine reductions for partial leniency, also called second stage or 'type 2', in order to provide more predictability for applicants in terms of the level of reduction that they are likely to receive. The ranges partially overlap to ensure balance between time of application and the added value of the information contributed.



In 2015, two of the four fine decisions in cartels were leniency cases, and are amongst the highest penalties to date with penalties of approximately €193 million imposed in the dairy product market and €672 million imposed in the delivery service market.

In October 2016, Isabelle De Silva was appointed President of the FCA by decree, succeeding Bruno Lasserre at the Presidency of the Authority. Under Lasserre's presidency, the FCA issued total fines of €5.8 billion. His very active policy during 12 years has given to the FCA enlarged powers, more capacities and credibility with French consumers. This presidency change may impact the general FCA policy and particular attention will be given to the first 2017 decisions.

In 2017, we expect:

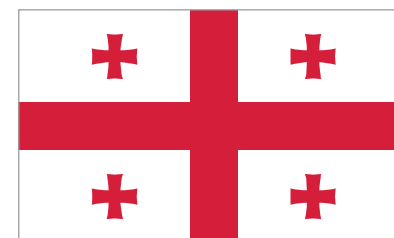
- New guidelines on settlement – a public consultation was supposed to be launched during autumn 2016.
- An increased number of settlements, as settlements remove the risk of the FCA having its decisions challenged before courts on how fines have been calculated and significantly reduce the duration of an investigation. The first decision issued by the FCA under the new presidency is a settlement in the sector of decorative tableware and kitchenware.
- A stronger focus on competition protection in French overseas departments/territories to continue, in particular with the implementation of a new competition authority in New Caledonia and the first year of practice of the Polynesian competition authority. In 2016, the FCA issued two decisions related to overseas territories, including one cartel.

GEORGIA

		2015	2016	TREND
	GEORGIA	GEL 54,698,329	0	V

The first major case of the Georgian Competition Agency (which was created in April 2014) involved an alleged cartel in the petroleum market. In 2015, the Georgian Competition Agency sanctioned five major fuel suppliers, three smaller fuel companies and 22 other franchisees/agents of one of the major fuel suppliers for anti-competitive concerted practices in the Georgian petroleum market. Total fines imposed were GEL 54,698,329. The decision has been appealed in 9 separate proceedings.

The Georgian Competition Agency conducted three cartel investigations into alleged concerted practices 2015 and one in 2016. The European experience is relied on by parties and courts in Georgia given the lack of local practice in competition law.

**GERMANY**

		2015	2016	TREND
	GERMANY	€208,000,000	€124,500,000	V

After a record breaking year in 2014 with more than €1.1 billion of administrative fines imposed by the German competition authority, the Bundeskartellamt/Federal Cartel Office (**FCO**), the recent two years have been more moderate with fines of approximately €208 million in 2015 and €124 million in 2016. However, this does not mean that cartel enforcement is easing and the FCO emphasises that cartel enforcement remains an enduring priority.

One of the FCO's key focus topics in 2016 was digitalisation and its effects on competition and competition law, and political discussions are taking place in Germany as to whether the FCO should be given further competencies in the future for enforcing consumer protection in the digital economy. The FCO has not had a specific industry focus in terms of cartel enforcement, and has imposed fines in a range of sectors. For example, landmark cases in Germany in 2016 included cartel fines imposed on:

- TV studios for participation in an anti-competitive information exchange system (€3.1 million).
- Nine wholesalers and an individual involved in the sanitary, heating and air conditioning sector on account of concluding anti-competitive agreements (around €21.3 million).
- A toy manufacturer for vertical price fixing (RPM). The FCO has also imposed fines of €260.5 million on various food retailers for vertical price fixing in the last few years.



An amendment to the Act against Restraints of Competition has passed the Federal Parliament and is expected to come into force in the second quarter of 2017. The key aspects of the reform are the introduction of a new transaction value threshold in the context of the merger control regime, the implementation of the EU Damages Directive, the facilitation of cooperation between publishing companies and the incorporation of provisions that should guarantee corporate liability. The implementation of the EU Damages Directive aims to facilitate claims for cartel damages and will lead to several changes to the German regime, particularly in relation to the procedural situation of indirect purchasers, limitation periods and disclosure requirements. However, courts may not order the disclosure of leniency applications/ settlement agreements and immunity applicants will generally be exempt from joint and several liability.

“

Again in 2016 the Bundeskartellamt received many tip-offs about competition law infringements. 59 companies informed the authority about infringements in their sector by making use of the authority's leniency programme (key witness programme). The Bundeskartellamt also obtained valuable knowledge of infringements by other means, e.g. via the anonymous whistle blower system on its website. With the assistance of the criminal investigation departments and public prosecutors, the authority carried out 17 dawn raids at a total of 85 companies and four private homes.

Bundeskartellamt – Review of 2016 and Future Prospects, 10 January 2017

”

HUNGARY

		2015	2016	TREND
	HUNGARY	3,350 MILLION HUF	OVER 4 BILLION HUF	▲

One of the main priorities of the Hungarian Competition Authority (**GVH**) is cartels. The landmark case of 2016, in which the GVH imposed a fine of more than HUF 4 billion (EUR 13 million), was an information cartel case against a banking association and commercial banks. Information exchanges between competitors are on the radar of the GVH regardless of whether they are in a transactional ('gun jumping') context or stand-alone.

Although cartel fines have heavily increased in Hungary in the past few years, the GVH has started to apply a different approach to small and medium enterprises (**SMEs**) due to recent changes in the competition legislation. The changes mean that the GVH may issue warnings to SMEs instead of fines if an SME commits an infringement for the first time and the infringement has not been committed in a public procurement cartel. In 2016, the GVH warned SMEs for the first time in a matter involving the medicine and food supplement industry and also required each undertaking to adopt competition law compliance programmes.

One of the newest tools of the GVH in cartel enforcement is the 'Cartel Chat', which was introduced last year. This is an anonymous contact system for providing information and asking questions about cartels. Supplemented with leniency marketing campaigns, the GVH expects an increase in the number of leniency applications. The Hungarian Competition Act also changed significantly in 2017, with changes including amendments to the current Hungarian leniency rules to allow an application for leniency in case of vertical price-fixing agreements and changes to the settlement rules so that the GVH can offer an increased percentage reduction of a fine (from 10% to 30%).



ITALY

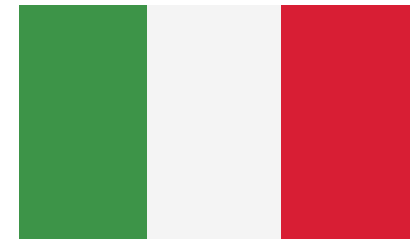
		2015	2016	TREND
	ITALY	€234,862,240.78	€206,050,368.91	V

Cartel enforcement is considered the most harmful infringement prosecuted by the Italian competition authority, *Autorità Garante della Concorrenza e del Mercato* or AGCM (the **ICA**).

The level of enforcement against cartels and anti-competitive agreements in Italy was intense in 2015 and 2016. For example, in 2015, the ICA opened eight new investigation proceedings related to anti-competitive agreements and concluded fourteen proceedings. In 2016, the ICA opened six new cases relating to cartels, anti-competitive agreements and public procurement and concluded six proceedings.

Although total fines in 2016 are lower than 2015, the average value of sanctions in 2016 was higher. The highest sanction imposed by the ICA in 2016 was approximately €100.75 million. In 2015, the ICA's highest fine was approximately €114 million, in relation to a cartel involving companies participating to a public tender for cleaning services in public educational buildings. However, an appeal against the ICA's decision was upheld and, in December 2016, the ICA restated the sanctions imposed on two undertakings involved in the cartel and approved a reduction of approximately €73 million on the total amount.

The release of guidelines in late 2014 on the method of setting antitrust fines and certain provisions on tenders was a significant development in Italian cartel enforcement. Prior to the adoption of the guidelines, the ICA set fines by applying the European Commission guidelines. The ICA Guidelines are intended to ensure transparency and the predictability of decisions of the ICA in setting fines.



The Authority has opened a number of proceedings in order to investigate the existence of obstacles put in place by the companies to the correct functioning of the markets, confirming that the battle against cartels is the main objective of the investigative activity of the Authority... the correct functioning of the public tender procedures is one of the priorities.

ICA Annual Report 2015



NETHERLANDS

		2015	2016	TREND
	NETHERLANDS	€15,200,000	0	V

In 2016, the maximum penalties for infringement of competition law were substantially increased. Infringements of Dutch competition law can now be fined up to €900,000 or 10% of the annual turnover of the undertaking that violated competition law. The maximum fine can be multiplied by the number of years that the cartel infringement lasted (with a maximum of four years and a minimum of one year). In addition, the fine can be increased by 100% in the case of a repeated offence. The Authority for Consumers and Markets (**ACM**) may also impose fines of up to €900,000 on individuals responsible for a violation of Dutch competition law by an undertaking.

In the five cases that led to an infringement decision in 2015, the ACM fined six companies and seven individuals. Fines were imposed on employees that were actually involved in the illicit arrangement as well as management. This confirms a trend that – where possible – individuals are held accountable for infringements of the cartel prohibition.

A novelty in the decisional practice of the ACM is the ‘settlement decision’. The fines imposed in 2015 all followed settlement discussions between the ACM and the companies involved, despite the lack of a formal settlement policy. In cases involving coldstores, only one of the companies involved settled, making this a ‘hybrid’ case. It is expected the settlement instrument will be used more often by ACM in the future.

In 2017, we expect:

- Continuation of a policy of ‘problem-solving supervision’, using all instruments available. Other than formal sanction procedures and fines these include ex-officio publications, guidelines, warnings and commitment decisions.
- Results of ex-officio market studies of the ACM, including a study into online platforms and into barriers encountered by FinTech companies.
- More follow-on damages actions. The Netherlands has already presented itself as an attractive jurisdiction for follow-on damages actions. The implementation of the EU Damages Directive will be a further incentive for parties to start civil litigation.

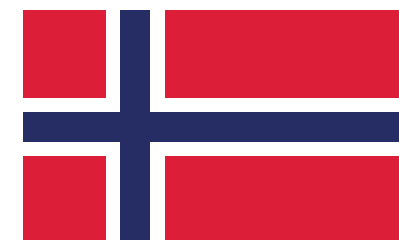
NORWAY

		2015	2016	TREND
	NORWAY	NOK 6,440,000	NOK 6,500,000	≈

The Norwegian Competition Authority (**NCA**) spent approximately 30% of its resources in 2014 and 2015 on cartel investigations and exploitation of dominant position. Whilst cartel investigations can be initiated ex officio by the NCA, it is generally more practical for investigations to be initiated after a complaint or on the basis of a leniency application.

Recent cartel cases in Norway include:


- In June 2016, the NCA notified four publicists that it intends to impose penalties totalling NOK 23 million for illegal co-operation. In March 2017, the four publicists were fined NOK 32 million (being an increase to the first notified possible fines).
- In September 2016, the NCA completed a raid at an airplane transportation company, and the investigation is ongoing.
- The EFTA Surveillance Authority (ESA) is currently investigating the Norwegian banking industry for alleged cartel activity relating to preventing a provider of e-payment solutions to establish in the Norwegian market.



Recent and upcoming legislative/policy changes in Norway include:

- The Norwegian Minister of Trade and Industry has asked the NCA to be more aggressive in reporting private individuals for competition law breaches. Since the law entered into force in 2004, no individuals (or companies, which until 1 January 2014 could be prosecuted under the competition regulations) have been subject to criminal prosecutions. The NCA has, as it has previously done on several occasions, (re-)confirmed that it will adjust its practice to comply with the new instructions. It remains to be seen whether the instructions will give rise to actual increased reporting.
- A new settlement procedure entered into force 1 July 2016, allowing the Competition Authority to settle cartel cases through a simplified procedure. The procedure is inspired by EU/EEA law, and reduces the possible fine by 10% if the parties admit liability for involvement in a cartel and offer available evidence. This settlement reduction may be awarded in addition to the leniency reduction, where applicable.
- The EU Damages Directive is expected to be incorporated into the EEA Agreement and implemented in Norwegian law. The timeframe is currently uncertain. However, the Norwegian Ministry of Trade, Industry and Fisheries circulated a public consultation paper in summer 2016 that proposed various amendments to the Competition Act. It is expected that the directive will lead to an increase in damages claims under Norwegian courts.

POLAND

		2015	2016	TREND
	POLAND	1,029,124 PLN	146,956 PLN	V

Administrative penalties in bid rigging cases

Although cartel enforcement is an enduring priority for Poland’s competition authority, the Office of Competition and Consumer Protection (**UOKiK** – *Urząd Ochrony Konkurencji I Konsumentów*) has not been very active in finding infringements in the form of cartels. Fighting bid rigging remains a top priority of the UOKiK but enforcement activity is generally limited to small markets and small market players, as reflected in the total amount of fines imposed in 2015 and 2016. Significant fines are imposed for vertical anti-competitive agreements, in particular RPM.

In 2017 in Poland, we expect more cartel enforcement and:

- A constant focus on bid rigging practices due to the high number of infrastructure projects financed partially from EU funds (such as highways and railroads).
- The introduction of new enforcement tools such as recognition of whistle-blowers (employees), in addition to leniency and leniency plus.




“

Fighting collusion is particularly difficult in the age of high-speed technological development. This does not mean, however, that the participants of collusion can sleep peacefully. Antitrust authorities are also developing their own methods of detecting cartels.

UOKiK President, October 2016

”

ROMANIA

		2015	2016	TREND
	ROMANIA	RON 188,580,652	RON 18,986,366	V

The Romanian Competition Council (**RCC**) has been consistently focusing on cartel enforcement in recent years, and one of its key strategic goals is to increase the ability to detect and investigate cartels. This focus manifested in 2015 and 2016, when seven cartel cases were sanctioned by the RCC. These cases included two applications for leniency, one of which was rejected by the RCC. Participants in two of the other cases benefitted from reduced fines for acknowledging their involvement in the cartel. All investigations included dawn raids conducted by the RCC.

The most significant recent fine was imposed in 2015 in a case involving the largest Romanian energy producer and 10 of its contractual partners (mainly energy traders), which were sanctioned for both horizontal and vertical agreements. The energy producer's contractual partners allegedly exercised in common their purchasing power and coordinated their competitive behaviour in setting trading conditions. The fine amounting to RON 165 million represented around 70% of the total value of the fines imposed by the RCC in 2015.

The main focus of the RCC appears to be on bid rigging practices, which were sanctioned in three of the recent cases. The sectors on which the RCC has focused are oil, gas and energy, taxi services, automatic processing of mail and marine towage services.

In 2016, new RCC guidelines on the method of setting fines, including specific rules on settlement, were issued. The settlement procedure is largely similar to the one available at EU level, but the procedure under Romanian law is broader in that it is available not only for cartels, but also for other competition law breaches.

In 2017, we expect:

- A continuous focus on bid rigging cases and government procurement in general.
- A potential increase in private damages cases following the adoption of legislation implementing EU Damages Directive.

IN 2015, THE RCC CONDUCTED **61 DAWN RAIDS** IN THE CONTEXT OF EIGHT INVESTIGATIONS.

RUSSIA

		2015	2016	TREND
	RUSSIA	RUB 245,000,000	RUB 129,000,000	▼

Based on public data. No official statement on the overall amount of the fines imposed.

Russia's competition authority, the Federal Antimonopoly Service of Russia (**FAS**), continues to develop and enforce Russia's cartel laws. Although official statistics for 2016 have not been published, a number of significant cases were prosecuted by FAS in 2016 with total fines estimated to be around RUB 129 million.

New amendments to article 14.32 of the Russian Code on Administrative Offences (**Amendments**) entered into force on 28 April 2017 and establish new penalties for concluding anti-competitive agreements, implementing concerted practices and coordinating economic activities.

Following the Amendments, penalties for anti-competitive agreements and concerted practices vary depending on the degree of "public risk". Prior to the Amendments, there was generally a single form of liability for any type of anti-competitive agreement or concerted practice – up to 15% of the amount of the annual proceeds from the sale of goods on the market (on which the offence is committed) (**Annual Proceeds**), or of the annual expenses for acquiring goods on the market (on which the offence is committed) (except for agreements restricting competition in tenders) (**Annual Expenses**). Now the fine will depend on the type of infringement.

According to the Amendments the lower limit of the fine for legal entities that are participants in cartel agreements increased from 1% to 3% of the Annual Proceeds, or of the Annual Expenses. In addition, the upper threshold of 3%, which previously existed: (i) for companies whose Annual Proceeds or Annual Expenses exceeded 75% of the company's total annual proceeds; or (ii) if the offence was committed on a market of goods where the state regulation of prices was applied, has been excluded. This means that the general upper threshold of 15% should be applied.

Another set of amendments to the Russian Administrative Offence Code is currently being discussed. FAS proposes to implement administrative liability (turnover fines) for obstruction of dawn raids.

Based on the public statements of FAS officials, not many antimonopoly cases result in criminal liability. This is because of the scarce number of grounds for imposing it (criminal liability applies only where a cartel caused large-scale damage or resulted in large scale income for the guilty party). It should be noted that no criminal liability for a company is set by Russian law, only criminal liability for companies' executives. According to FAS statements, criminal cases are initiated mainly in public procurement cartels.

In 2016, FAS initiated more than 400 cases regarding anti-competitive agreements, **around 80% involving cartels**. The majority of cartels in Russia are public procurement cartels.



SLOVAKIA

		2015	2016	TREND
	SLOVAKIA	€5,543,142	€2,872,343	V

Cartel enforcement in Slovakia is under the supervision of the Antimonopoly Office of the Slovak Republic (**AOSR**). In 2015, the AOSR issued nine penalty decisions (many of which are still pending and not valid because of appeals). One of the notable decisions dealt with two corporate entities that conduct business in the area of information and communications technology who were alleged to have collaborated in competing for a public procurement contract. Their joint penalty amounted to more than €600,000.

An amendment to competition legislation in April 2016 has widened the powers of the AOSR in relation to punishing coordination in public procurement, public tenders or other similar collusive tendering (bid rigging). Bid rigging conspiracies may be punished by the AOSR with a fine and also a ban on participation in public procurement for up to three years. The only exception is if the AOSR reduced the fine due to the leniency program.

New legislation was also introduced in 2016 in Slovakia to implement the EU Damages Directive, which will further aid the AOSR in combating cartels. The legislation includes a new definition of cartel specifically tailored for the relevant legislation and sets out how to more precisely calculate damages resulting from a cartel.

Based on recent developments, we expect that the AOSR will focus on public procurement and similar proceedings in order to punish bid rigging and cartels in 2017.



IN 2015, THE AOSR RECEIVED **94 COMPLAINTS** AND **UNDERTOOK**
24 GENERAL INVESTIGATIONS IN RELATION TO CARTELS.

SPAIN

		2015	2016	TREND
	SPAIN	€549,000,000	€300,000,000	V

Sanctioning directors for cartel conduct is an important recent trend in Spain. Directors can be fined up to €60,000. In May 2016, four individuals were fined by the Spanish Competition Authority (**CNMC**) for a cartel in the adult diapers sector. Directors of companies involved in two further cartels have also been fined since (nine individuals in a rail infrastructure investigation and two individuals in the private security and fund delivery business).

In 2015, the CNMC had a particular interest in the automotive sector, imposing a record fine on car manufacturers and distributors for a sensitive information exchange that allegedly reduced competition and determined car prices between 2006 and 2013. 21 car manufacturer and distributor companies were fined, with total fines of €171 million imposed. One company benefitted from the leniency programme for disclosing the cartel.

The waste management sector has also been a focus of the CNMC. Fines of up to €98.2 million were imposed on 39 companies and three associations. The punished behaviours included price fixing, bid rigging and reaching non-compete agreements between 2000 and 2013 affecting both public and private clients.

Investigating bid rigging is expected to be a focus of the CNMC in coming years.



IN ITS 2016 STRATEGIC PLAN, THE CNMC DISCLOSED THAT IT WILL CREATE SCREENING SYSTEMS TO IDENTIFY BID RIGGING PRACTICES AND ENHANCE COLLABORATION WITH OTHER PUBLIC ADMINISTRATIONS TO DETECT SUCH PRACTICES.

UKRAINE

		2015	2016	TREND
	UKRAINE	UAH 236,000,000	UAH 274,000,000	▲

In 2016, the majority of cartel cases in Ukraine related to collusive tendering and price fixing in fuel, pharmaceutical and transportation markets. The largest fine imposed in 2016 for concerted actions involved oil traders. In October 2016, the Antimonopoly Committee of Ukraine (**AMC**) imposed fines on seven oil traders of approximately UAH 204 million for alleged anti-competitive concerted practices. According to the AMC, during the period 2013-2016, the defendants were simultaneously or nearly simultaneously changing the retail petrol and diesel fuel prices at their fuel stations.

Another recent landmark case in Ukraine involved fines of approximately UAH 203.6 million imposed on a number of the biggest product retailers in 2015. The AMC's investigation found that the retail chains were allegedly colluding with each other by exchanging important information through a market research company. Some of the defendants in the case have appealed the AMC's decision to the court, so the decision is not yet final.

In 2016, the AMC also published a new version of the Methodology for Calculating Fines for Competition Law Violations, which changes the rules for determining the amount of basic fines for cartel violations.



UNITED KINGDOM

		2015	2016	TREND
	UNITED KINGDOM	GBP£1,118,000	GBP£49,520,000	^

2015 saw the Competition and Markets Authority's (**CMA's**) first criminal prosecution for the amended Cartel Offence under the Enterprise Act 2002 and it is expected that the new strict liability offence will make it easier for the CMA to obtain criminal convictions.

Individual accountability has also become a stronger focus for the CMA. It secured a suspended prison sentence for an individual director and, in a separate case, the first disqualification of a director of a company found to have infringed competition law.

While it depends upon the nature of the United Kingdom's exit from the European Union, Brexit may also present the CMA with an opportunity to move towards a more prosecutorial model and focus on individual liability as the primary enforcement mechanism.

The first applications to bring a class action under the Competition Appeal Tribunal's (**CAT's**) new follow-on opt-out collective proceedings regime were also seen in 2016. These concerned a 2014 OFT decision that various retailers had entered into anti-competitive arrangements concerning mobility scooters and a European Commission decision that MasterCard imposed unlawful fees on transactions processed through its network. In the former case, whilst the application was not granted as a result of issues with the proposed subclasses, the decision indicated the CAT's rigorous approach to the new regime. This may be echoed in the Mastercard case, a collective damages claim for GBP 14 billion, in which judgment is expected to be published in 2017.



In 2017, we also expect:

- An increase in the number of new investigations (particularly among small and medium-sized businesses following the CMA's use of warning letters after a 2015 case concerning an ophthalmologist association creating anti-competitive pricing agreements) following a 2016 National Audit Office report highlighting the low number of cartel enforcement cases brought by the CMA.
- An increased number of criminal investigations. The CMA has stated that it is 'working on a number of intelligence leads, with a view to opening further cases in due course'.
- An increased pace in investigations. 2016 has seen the start of this trend, with one investigation concerning modelling agencies and price-fixing, which did not involve a settlement, concluding in 20 months.
- An increased appetite on the part of claimants to use the UK and the CAT as a venue for competition law private enforcement, as demonstrated by the growth in private litigation and also the early class action cases mentioned above.

“

We intend to further step up the pace, scale and impact of our enforcement against anticompetitive or unfair practices, and therefore propose to increase our targets for opening new cases.

CMA Annual Plan consultation 2017/18

”

AMERICA

UNITED STATES

		2015	2016	TREND
	US	\$3,600,000,000	\$399,000,000	V

Based on fiscal years ending September 2015 and September 2016

2015 was a banner year for the U.S. Department of Justice (**DOJ**), Antitrust Division, as it secured large fines in the global auto parts and foreign exchange currency manipulation investigations. Those investigations have slowed, however, and in 2016 the Division secured more modest fines, primarily from the auto parts, ocean shipping cargo, and capacitors investigations.

At this time, it is not clear whether the Antitrust Division has a major, cross-border cartel investigation that will dominate its 2017 agenda. As a result, the DOJ has shifted its focus to smaller, domestic investigations, which are less likely to achieve the record fines secured in 2015.

Furthermore, with the global auto parts investigation slowing, the number of plea agreements with and indictments of corporate executives is likely to decline in 2017.

Notably, the Antitrust Division's recent cartel investigations appear to have derived from sources other than the leniency program. For example, the generic drug investigation was launched after Congress, the media, and the public pressured the government to investigate increasing drug prices. Similarly, the canned seafood investigation appears to have been sparked by the Antitrust Division's investigation of price-fixing in the industry rather than a leniency applicant. It remains to be seen whether this is a trend.

In 2017, we expect:

- Modest fines in the absence of any large, global investigations.
- A focus on smaller, domestic investigations, including into the generic drug and canned seafood industries.



CANADA

		2015	2016	TREND
	CANADA	CAD\$2,850,000	CAD\$13,378,000	^

The Competition Bureau (**Bureau**) is placing greater emphasis on the prevention and investigation of bid rigging in the public procurement context. In a speech in October 2016, the Commissioner of Competition reported that the Bureau is undertaking several new initiatives, including:

- Collaborating with the Royal Canadian Mounted Police and Public Services and Procurement Canada (**PSPC**) to launch a dedicated hotline for tipsters to report fraud, corruption and bid rigging related to federal government contracts.
- Working with PSPC to develop data screening algorithms that sift through data from bid submissions for signs of agreements between competitors.
- Advocating public procurement agencies to require bidders to sign Certificates of Independent Bid Determination to acknowledge their awareness and compliance with competition law.



The estimated total penalties cited above do not include the US\$130 million fine imposed on an automotive supplier in the US. In a somewhat unusual development, while the Bureau investigated the conduct for its impact on Canada, the Bureau did not recommend charges in Canada having regard to the disposition of the US investigation.

On 1 April 2016, a Japanese manufacturer and supplier of automobile components pleaded guilty to one count of bid rigging for participating in an international conspiracy involving a secret illegal arrangement with another supplier of electric power steering gears sold to a motor company for cars manufactured in Canada. The CAD\$13 million fine imposed by the Ontario Superior Court of Justice represents the second largest fine ever ordered by a court in Canada for a bid rigging offence.

The Bureau, in consultation with the Public Prosecution Service of Canada and the Bar Associations in Canada and the US, is working to update its Leniency and Immunity Programs and anticipates releasing its proposed changes for public consultation soon.

MEXICO

		2015	2016	TREND
	MEXICO	\$53,080,436.83 PESOS	\$366,286,134.92 PESOS	▲

Includes civil penalties only

On 7 July 2014, the new Federal Economic Competition Law entered force as part of a suite of structural reforms designed to enhance competition, toughen penalties for anti-competitive practices, strengthen the Mexican Antitrust Commission (**COFECE**) and provide the COFECE with additional investigative authority.


There were about 12 cartel investigations in progress in 2016. COFECE is likely to continue to seek tougher penalties in cartel cases, including through fines and company dissolution orders. COFECE has also recently announced that it is filing, before the Mexican Attorney General's Office, a claim against pharmaceutical employees' for allegedly increasing the prices of medicines.



**IN 2017, WE EXPECT THAT THE FOLLOWING SECTORS WILL
 BE A CONTINUING FOCUS OF CARTEL ENFORCEMENT ACTIVITY IN MEXICO:**
PHARMACEUTICAL | GROUND TRANSPORTATION – SUCH AS TAXI AND BUS
FOOD AND BEVERAGE – SUCH AS POULTRY | AVIATION

ASIA PACIFIC

AUSTRALIA

		2015	2016	TREND
	AUSTRALIA	0	AUD\$42,120,000	^

Cartel enforcement is an enduring priority for Australia's competition authority, the Australian Competition and Consumer Commission (ACCC). The launch of the first criminal cartel prosecutions in 2016 against two shipping companies signals that criminal enforcement is set to become more prominent in Australia. The ACCC is reported to be 'aiming for a steady stream of one to two criminal cases per year'.

The ACCC is continuing to seek higher penalties in cartel cases and has shown a willingness to appeal penalties when it does not consider they will provide sufficient deterrence. Some of the highest penalties to date were awarded in 2016, with an AUD\$18 million penalty imposed on a laundry detergent supplier and AUD\$9 million imposed on a supermarket involved in the same case. Penalties were also imposed in the financial services sector for attempted cartel conduct by banks in relation to the benchmark rate for the Malaysian ringgit. More recently, in May 2017, penalties of AUD\$9.5 million were imposed on a supplier of wire harnesses for cartel conduct, and the ACCC has appealed the penalty decision to seek a higher penalty.



Individual accountability is becoming a stronger focus for the ACCC. A sales director in the laundry detergent case was disqualified from managing corporations for seven years, while an individual involved in an alleged cartel in the egg industry was fined AUD\$120,000.

In 2017 in Australia, we expect:

- A focus on cartels through agency and distribution arrangements, following the ACCC's success in an appeal in late 2016 regarding price fixing between airlines and travel agents and its launch of cartel proceedings relating to roofing distribution arrangements.
- Recent focus areas of the ACCC, such as agriculture, the health sector and construction, to continue to be in the spotlight.
- Legislative changes to the cartel prohibitions to be debated, including to clarify the jurisdictional reach of the prohibitions and exceptions for joint ventures, following the introduction of a bill containing proposed amendments to competition law in March 2017.



The fact we have around a dozen in-depth investigations suggests there is too much cartel conduct occurring in Australia. We need to send a strong message regarding cartel conduct and the Commonwealth Department of Public Prosecution laying Australia's first criminal cartel charges in July 2016 will certainly help with that. In the meantime, business executives should take notice of our recent civil actions.

ACCC Annual Report 2015-16



CHINA



CHINA

China's principal competition statute is the Antimonopoly Law (**AML**), which took effect in 2008. The AML 'monopoly agreement' rules (modelled on European practice) prohibit cartels and other anti-competitive horizontal and vertical restraints. The National Development and Reform Commission (**NDRC**) and its provincial counterparts have primary administrative enforcement responsibility with respect to price-related violations, while the State Administration of Industry and Commerce (**SAIC**) and its provincial counterparts ("**AIC's**") have primary responsibility for non-pricing violations.

The NDRC and SAIC were largely dormant during the first four years after the AML took effect, with scattered enforcement actions targeting local level cartels. Enforcement has intensified dramatically since 2013, with high-profile actions targeting prominent state-owned enterprises and foreign companies for resale price maintenance, international cartels, and abuse of dominance.

In 2016 and early 2017, the NDRC and SAIC at the national and local levels imposed fines exceeding RMB 15 million for cartel activity.

The NDRC's cartel enforcement focused on domestic supply of active pharmaceutical ingredients (APIs). In July 2016, the NDRC fined three domestic pharmaceutical companies RMB 2.6 million for fixing prices and allocating sales territories for the sale of estazolam. Similarly, in January 2016, the NDRC fined five other domestic pharmaceutical companies RMB 3.99 million for agreeing to uniform prices and price increases and allocating sales territories for the sale of allopurinol. Between April 2016 and January 2017, local NDRC agencies in Shaanxi Province, Guizhou Province and Shanxi Province fined a total of 54 automobile inspection centres RMB 7.3 million for price-fixing and other collusion in the provision of inspection services. Also in early 2017, Jilin Province NDRC fined two telecommunications companies roughly RMB 28,000 for price-fixing.

Meanwhile, cartel enforcement by the AIC's focused on concerted practices in local service markets that resembled joint ventures more than secretive cartels. In March 2016, the SAIC fined 23 local accounting firms in Shandong province RMB 1.98 million for participating in a formal scheme to coordinate their activities through adherence to several standard commercial policies and pool revenues from local audit activities in a common bank account for annual allocation to local firms based on head count and past market shares. In May 2016, the Hubei AIC fined a local association of insurance companies in Wuhan, Hubei RMB 200,000 for organising a "leading group" to coordinate key policies in vehicle insurance and a common service centre to administer vehicle insurance policies (reduced from the initial proposed fine of RMB 500,000 due to the agency's active cooperation in the investigation). In September 2016, the Anhui AIC fined three producers of password tokens RMB 410,000 for market allocation practices. In December 2016, the Henan AIC fined five fireworks companies RMB 658,000 for collusion. In March 2017, the Guangxi AIC fined one insurance association and nine member companies for organising and participating in a cartel agreement to allocate the local market.

Separately, the NDRC and the Ministry of Transport launched a joint probe into the setting of terminal handling charges by shipping companies in 2016. In March 2017, the NDRC announced that eleven shipping companies had voluntarily reduced their THCs in response to the probe.

In 2017, cartel enforcement by the NDRC and SAIC is likely to continue focusing on collusion in domestic markets for food, consumer goods, and services impacting ordinary Chinese consumers and follow-on probes of international cartels impacting China.



HONG KONG



HONG KONG

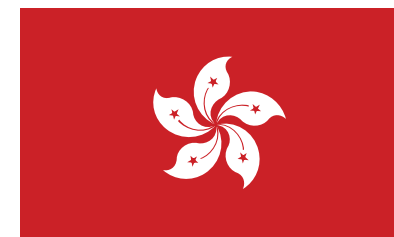
Hong Kong's principal competition law is the Competition Ordinance (Cap 619) (**Competition Ordinance**), which was passed in June 2012 and took effect on 14 December 2015. Hong Kong's Competition Commission (**HKCC**) enforces the Competition Ordinance.

In 2016, the HKCC published a report and launched a campaign to combat big-rigging cartels in Hong Kong.

The HKCC also issued a Block Exemption Order in 2016 for Vessel Sharing Agreements (**VSAs**), which generally applies if the parties to the VSA (1) have a collective market share of less than 40%; (2) were not required to engage in cartel conduct; and (3) were free to withdraw from the VSA without incurring a penalty on giving reasonable notice. However, the exemption was not extended to cover Voluntary Discussion Agreements as the CC did not see such agreements as sufficiently enhancing overall economic efficiency to justify being granted a Block Exemption Order.

Between December 2015 and February 2017, the HKCC received over 2,000 complaints and enquiries regarding potential violations, with roughly half of the complaints involving anti-competitive agreements such as cartels. Around 130 cases have been escalated for further assessment, of which 13% have proceeded to in-depth investigation stage. The HKCC has made substantial use of its compulsory evidence gathering powers in conducting its investigations. In March 2017, the HKCC initiated its first case before the Competition Tribunal, alleging that five technology companies had engaged in bid rigging.

The HKCC has also invested substantial efforts in competition advocacy and educational initiatives targeting trade associations and professional groups.



INDIA

		2015	2016	TREND
	INDIA	INR 25,920,000,000	INR 15,020,000,000	V

Key recent cases in India have involved the cement industry. In one case, the Competition Commission of India (**CCI**) held that a cement manufacturers association engaged in prohibited horizontal activity by collecting and circulating information about wholesale and retail prices and details on production and dispatches of cement companies to its members and monetary fines were imposed.

Another case involving the same cartel activity had also been redirected to the CCI from the erstwhile Monopolies and Restrictive Trade Practices Commission (the CCI's predecessor). The parties to this case were substantially the same as the First Cement Cartel, except for one additional party. As the CCI had already penalised the parties in the first case, it limited its findings to the additional party only and imposed a fine of INR 3 billion for the same violation of the Indian Competition Act. That party appealed the decision to the Competition Appellate Tribunal (**COMPAT**) on the grounds of the violation of the principles of natural justice due to an unfair hearing, pre-determined mind-set and bias. COMPAT found a violation of the principles of natural justice, quashed the CCI's finding and remitted the case back to the CCI for fresh adjudication.

In January 2017, the CCI penalised three firms for bid rigging in tenders by the Indian Railways for the procurement of fans in 2013. The CCI held that the firms had agreed to allocate tenders amongst themselves in contravention of the Competition Act. The CCI based its findings on evidence that the firms exchanged information on planned pricing for upcoming tenders, records of numerous calls amongst the key

persons of these firms before and during the period of the tenders, by the admissions of one of the participating firms.

The CCI has identified the following sectors as enforcement priorities:

1. Real Estate (which has topped the list every year since 2009 and has had over thrice as many investigations as the next sector on the list between 2009-2017)
2. Financial Services
3. Media and Entertainment
4. Pharmaceuticals and Healthcare
5. Petroleum/Gas
6. IT Services.

The Indian Competition Act has adopted a leniency programme for the imposition of lesser penalties for cartel whistle-blowers. While some applications were made for lesser penalties, none of them matured into a decision in 2016 in India.



INDONESIA

		2015	2016	TREND
	INDONESIA	APPROX. IDR 170.1 BILLION	APPROX. IDR 226.8 BILLION	▲

Indonesia's principal competition statute is the Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, which is enforced by the Indonesian Business Competition Supervisory Commission (**KPPU**). KPPU Regulation No. 4 of 2010 regarding Cartels clarifies the KPPU's approach to cartel enforcement, the elements of a cartel, and the nature of evidence triggering KPPU cartel investigations.

The KPPU's enforcement efforts have principally targeted cases of bid rigging and other manipulation of public tenders, often implicating foreign-owned vendors and state-owned purchasers. Since 2010, KPPU leaders shifted more attention to alleged cartels (and abuse of dominance) in domestic markets for pharmaceutical, food, and transportation products of immediate importance to average consumers. KPPU continues to focus on the food, energy and mining, financial services, infrastructure, and health sectors.

On 22 April 2016, the KPPU fined 32 operators of cattle feedlots approximately IDR 107 billion (USD 8.2m) for restricting the supply of cattle in an effort to bolster beef prices in the Jakarta region. On 13 October 2016, the KPPU fined Indonesian poultry companies roughly IDR 119.6 billion (USD 9.1m) for culling chickens in order to increase prices. The cull was allegedly carried out under the supervision of the agriculture ministry at the behest of the poultry producers.

On 20 February 2017, the KPPU fined two motor scooter suppliers IDR 25 billion (USD 1.87m) and IDR 22.5 billion, respectively, for allegedly fixing prices of 110 cc-125 cc automatic motor scooters. These two companies were widely reported to account for over 95% of the market, and the long running investigation drew substantial attention within Indonesia.

Proposed amendments to Indonesia's competition law have advanced through the relevant parliamentary committees as of early 2017, but the timing of their enactment remains uncertain. These proposed amendments would significantly expand the scope of Indonesia antitrust enforcement, including by introducing extraterritorial jurisdiction, establishing a leniency program and expanding antitrust coverage of intellectual property related abuses.



JAPAN

		2015	2016	TREND
	JAPAN	JPY 17,143,030,000	JPY 8,510,760,000	▼

Based on fiscal years ending March 2015 and March 2016. Total penalties are civil penalties only.

The attitude of the Japanese competition authority (**JFTC**) to investigating cartels is becoming more aggressive. The JFTC has been seeking a more globally harmonised implementation of the Japanese Antimonopoly Act; such as by introducing an incentive system to seek cooperation in investigations and considering changes in the activities of global enterprises. The JFTC also declared in 2016 that it would focus on dealing with global cartels and we therefore expect that the JFTC will continue to focus on global cartel enforcement in 2017.


In the fiscal year ending March 2016, the JFTC prosecuted one case under criminal cartel provisions (involving 10 entities and 11 individuals), and 9 cases under the civil cartel provisions (the majority of which related to bid rigging). Several cases are pending at the Supreme Court relating to prison sentences imposed on individuals and a criminal penalty imposed on an entity.

The JFTC has already obtained large fines in the current fiscal year that started on April 2016, including over 6 billion yen imposed in relation to bid rigging by manufacturing distributors of emergency digital radio equipment in February 2017 (one of the companies was fined over 3 billion yen), 480 million yen in relation to bid rigging in tenders for disaster restoration paving works in September 2016 and 402.91 million yen in relation to bid rigging for electric power security communication equipment in July 2016.



AS AT EARLY 2017, THERE ARE ACTIVE DISCUSSIONS OCCURRING IN JAPAN REGARDING RAISING THE AMOUNTS OF SURCHARGES TO PREVENT CARTELS AND OTHER ILLEGAL ACTIVITIES

MALAYSIA

		2015	2016	TREND
	MALAYSIA	RM 952,974	DATA NOT YET AVAILABLE	N/A

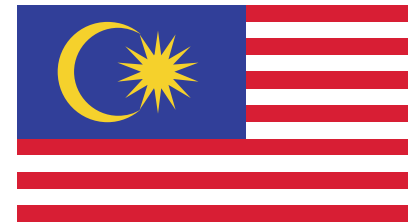
Malaysia's principal competition law is the Competition Act 2010, which took effect on 1 January 2012. The Malaysian Competition Commission (**MyCC**) enforces the Malaysian Competition Act.

Since its establishment in 2011, the MyCC's enforcement efforts have largely targeted straightforward cartel activity in local markets orchestrated by domestic trade associations. Notable examples include investigations of the Cameron Highlands Floriculturists Association, Pan-Malaysia Lorry Owners Association, and Sibü Confectionery and Bakery Association.


In 2016, the MyCC examined an atypical 'hub and spoke' cartel – a concerted practice whereby a common vendor coordinated the pricing practices of competitors. The MyCC found that four container depot operators and one information technology service provider fixed the prices of depot gate charges by administering a common rebate system. The MyCC fined the five companies RM 645,774 for 'vertical agreements by way of concerted practices' resulting in uniform fees and rebates.

In 2017, the Competition Appeal Tribunal (CAT) dismissed an appeal brought by the technology company.

The MyCC has prioritised public education initiatives, but has also signalled the possibility of more muscular enforcement in the future. On 14 March 2017, Domestic Trade, Cooperatives and Consumerism Minister Datuk Seri Hamzah Zainuddin said that the MyCC is committed to ensuring a level playing field free from anti-competitive activities: "Our main goal is to deter market manipulation and cartel practices that tend to deprive consumers' choice. MyCC presence is being strongly felt by the local and international business communities in helping us into achieving this goal."



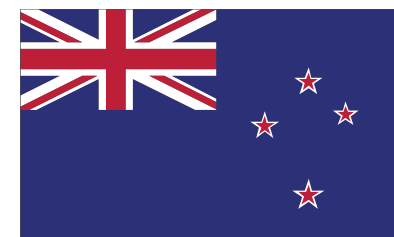
NEW ZEALAND

		2015	2016	TREND
	NEW ZEALAND	NZ\$3,600,000	NZ\$16,530,000	^

Real estate was the key sector of interest in cartel enforcement in New Zealand in 2016, with over NZ\$16 million of penalties imposed on real estate companies in relation to alleged arrangements to pass on costs of advertising a property on a property listing site.

A Bill to amend the cartel prohibitions that was introduced in 2011 remains before Parliament and could be passed in 2017. Although the proposed criminalisation of cartel conduct has been removed from the Bill, the proposed changes (which include expanding the current prohibition on price fixing to include other forms of cartel conduct such as market allocation and output restrictions, and introducing a new 'collaborative activity' exemption) could still have important implications for businesses operating in New Zealand.

The New Zealand Commerce Commission remains vigilant in investigating and pursuing cartel enforcement, and is aware that the small size of the New Zealand market can create opportunities for collusion. The Commerce Commission has articulated a continued focus on the prevention and detection of domestic cartels in its Statement of Performance Expectations for 2016/2017.



PHILIPPINES

	PHILIPPINES
---	-------------

The Philippines' principal competition law is the Philippine Competition Act (**PCA**) or R.A. 10667, which took effect on 8 August 2015, and the Implementing Rules and Regulations took effect on 18 June 2016. The Philippine Competition Commission (**PCC**) enforces the Philippine Competition Act and began operations on 1 February 2016. The PCA provides a phase-in period, allowing businesses to conform their practices to the PCA by August 2017. Although PCC personnel have undergone training in anticipation of future cartel investigations, no such enforcement actions have been initiated yet.



SINGAPORE

		2015	2016	TREND
	SINGAPORE	SGD 0	SGD 5,682,725	^

Singapore's principal competition law is the Competition Act (Chapter 50B), which took effect on 1 January 2006. The Competition Commission of Singapore (**CCS**) enforces the Competition Act. Over the last decade, the CCS has focused its enforcement efforts on cartels and other anti-competitive conduct in Singapore's domestic services and retail distribution markets. On 17 March 2016, the CCS fined ten financial advisory firms a total of SGD 909,302 for pressuring a competitor to withdraw a competitive rebate offer for life insurance products offered through an online portal. On 21 March 2017, the CCS issued a proposed infringement decision finding that three engineering firms had engaged in bid rigging in connection with tenders for electrical services for the Formula 1 Singapore Grand Prix races from 2015 to 2017. On 6 April 2017, the CCS issued a proposed infringement decision finding that five electronics companies had engaged in price fixing and unlawful exchange of confidential business information in respect of the sale, distribution and pricing of Aluminium Electrolytic Capacitors ("AECs") to customers in Singapore. (At the time of writing, these decisions have not been finalised).



“

A second area is the growing use of machine algorithms in e-marketplaces, and how this changes the nature of competition enforcement... E-Commerce is providing consumers with greater convenience, better services and a wide variety of products. It has also brought about greater price transparency. So what's not to like?

Unfortunately, technology has also given potential cartelists the ability to facilitate collusion between firms, as monitoring each other's behaviour becomes easier. The risk of co-ordinated outcomes may also increase with the growing use of 'robo-sellers' – systems that use pricing algorithms, in combination with extensive market data to set prices. Such systems are better at detecting and punishing deviant behaviour and are less tempted than their human counterparts to deviate from the collusive outcome.

Mr Aubeck Kam, Chairman CCS, 2016

”

SOUTH KOREA

	2015	2016	TREND
 SOUTH KOREA	504,950,000,000 KRW	787,000,000,000 KRW as at July 2016	▲

There is a growing recognition in South Korea that criminal prosecutions against key executives may be more effective in deterring cartel behaviour than fines worth billions against corporate entities, as reflected by the establishment of a fair trade investigation bureau within the Seoul District Public Prosecutors' Office in 2015. Since its inception, the bureau has vigorously prosecuted major cartel cases, such as bid rigging relating to a construction contract worth 4 trillion KRW (approximately US\$3.4 billion).

Adding to the current focus on strict deterrence, the Korea Fair Trade Commission (**KFTC**) announced that from April 2016 it would deny leniency applicants their exemption from (or reduction in) fines if they divulge information to third parties regarding their application before the KFTC has completed its review of the matter. This stricter leniency rule is expected to prevent cartel participants from conspiring to avert the investigations. Leniency applicants, however, are free to apply for leniency in foreign countries, as foreign governments in this case do not fall under the definition of 'third parties'.

The KFTC has also refined its leniency rules regarding 'Amnesty Plus', which is designed to promote the detection of cartels.



TAIWAN



TAIWAN

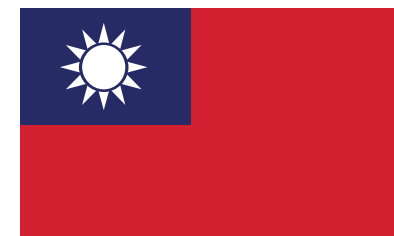
Taiwan's principal competition law is the Taiwanese Fair Trade Act (**FTA**), which took effect on 5 February 1999 (amended as of 2015). The Taiwanese Fair Trade Commission (**FTC**) enforces the FTA.

In June 2015, an amendment to the FTA came into effect, creating the "Antitrust Whistleblower Rewards Program". Based on this new programme, cartel whistleblowers who provide high quality and sensitive information may become entitled to a finder's fee. This indicates an inclination towards much more aggressive antitrust enforcement.

On 21 April 2016, with the assistance of a confidential whistleblower, the FTC uncovered a cartel in the container yard services market, implicating twenty-one enterprises for imposing horizontal constraints through price fixing. The FTC paid the whistle-blower a lump sum of USD\$15,500. This programme is expected to be a pivotal development in the FTC's antitrust enforcement activities.


Recent cartel decisions include:

- The FTC imposed fines totalling NT\$2.19 million on seventeen human resources agencies for establishing a mutual understanding to charge fishing boat owners additional fees for hiring foreign fishermen.
- Four enterprises in the red vermicelli noodles market formed a horizontal agreement to increase the prices of red vermicelli noodles in the northern region of Taiwan. The FTC held this to be a violation of the FTA, ordered the parties to cease such activity and imposed fines totalling NT\$660,000.
- Twenty-one enterprises formed a horizontal agreement to resume collection of charges for use of loading equipment from businesses exporting CFS cargo weighing less than 3 tonnes, thus adversely affecting trade in the container yard services market. The FTC held this to be a violation of the FTA, ordered the parties to cease such activity and imposed fines totalling NT\$72.60 million.
- Six enterprises in the gravel market formed a horizontal agreement to jointly increase gravel prices. The FTC held this to be a violation of the FTA and imposed fines totalling NT\$1.6 million.
- Seven aluminium capacitor companies participated in meetings or bilateral communication to exchange sensitive business information involving prices, terms of business, quantity, etc., to the extent that it adversely affected the capacitors' market in Taiwan. The FTC held this to be a violation of the FTA and imposed fines totalling NT\$5,796,600,000.



AFRICA

SOUTH AFRICA

	2015	2016	TREND
 SOUTH AFRICA	R257,374,000	R338,010,000	^

Based on fiscal years 1 April 2014 to 31 March 2015 and 1 April 2015 to 31 March 2016

2016 saw the introduction of criminal liability for cartel conduct in South Africa. As of 1 May 2016, directors and managers can be held criminally liable for causing a company to engage in, or 'knowingly acquiescing' to a company's involvement in, price-fixing, market division or collusive tendering.

In November 2016, the Competition Tribunal confirmed the largest (agreed) administrative penalty imposed in South Africa to date, in terms of which a South African steel producer paid R1.5 billion in settlement of six complaints.



During the 2015/2016 fiscal year, penalties were imposed in the following sectors:

- Transportation and storage
- Construction
- Manufacturing
- Wholesale and retail trade – repair of motor vehicles and motorcycles
- Electricity gas steam and air conditioning supply
- Water supply – sewerage waste management and remediation activities.

Significant cartel investigations initiated by the Competition Commission during the 2015/2016 fiscal year include investigations into:

- The automotive components sector, specifically the manufacturers of automotive components
- Wholesale suppliers of Liquefied Petroleum Gas
- Particle board manufacturers
- Furniture removal companies
- Various banks and financial institutions alleged to have fixed prices in relation to bids, offers and bid offer spreads in respect of trade in US Dollar and South African Rand (USD/ZAR) currency pair (this matter was referred to the Competition Tribunal for adjudication in February 2017).

“

*During the 2015/16 financial year, the Commission initiated **133 cartel investigations**. The majority of these investigations were in the automotive components sector. A total of 38 cartel investigations were completed. Of these, 22 were referred to the Tribunal for prosecution, while 16 were not prosecuted. The Commission received ten [Corporate Leniency Policy] applications and granted four, while the balance of six was under assessment as at year end.*

South Africa Competition Commission's 2015/2016 Annual Report

”

MORE INFORMATION

DLA Piper is a global law firm with lawyers located throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For more information, please contact a member of our Global Cartel team:

EUROPE

European Union

Bertold Bär-Bouyssière

Partner

bertold.bar-bouysiere@dlapiper.com

Daniel Colgan

Partner

daniel.colgan@dlapiper.com

Austria

Claudine Vartian

Partner

claudine.vartian@dlapiper.com

Florian Schuhmacher

Senior Legal Consultant

florian.schuhmacher@dlapiper.com

Belgium

Bertold Bär-Bouyssière

Partner

bertold.bar-bouysiere@dlapiper.com

Daniel Colgan

Partner

daniel.colgan@dlapiper.com

Yoichi Shibasaki

Of Counsel

yoichi.shibasaki@dlapiper.com

Finland

Mikko Huimala

Partner

mikko.huimala@dlapiper.com

France

Edouard Sarrazin

Partner

edouard.sarrazin@dlapiper.com

Germany

Jan Dreyer

Partner

jan.dreyer@dlapiper.com

Michael Holzhauser

Partner

michael.holzhaeuser@dlapiper.com

Daniel Sharma

Partner

daniel.sharma@dlapiper.com

Hungary

András Posztl

Partner

andras.posztl@dlapiper.com

Gábor L. Molnár

Partner

gabor.molnar@dlapiper.com

Italy

Domenico Gullo

Partner

domenico.gullo@dlapiper.com

Alessandro Boso Caretta

Partner

alessandro.bosocaretta@dlapiper.com

Netherlands

Léon Korsten

Partner

leon.korsten@dlapiper.com

Martijn van Wanroij

Legal Director

martijn.vanwanroij@dlapiper.com

Norway

Kjetil Haare Johansen

Partner

kjetil.johansen@dlapiper.com

Poland

Krzysztof Wiater

Partner

krzysztof.wiater@dlapiper.com

Romania

Livia Zamfiropol

Partner

livia.zamfiropol@dlapiper.com

Russia

Azamat Abdulmenov

Senior Associate

azamat.abdulmenov@dlapiper.com

Slovakia

Michaela Stessl

Partner

michaela.stessl@dlapiper.com

Spain

Jose Maria Jiménez-Laiglesia

Partner

josemaria.jimenez-laiglesia@dlapiper.com

Ukraine

Galyna Zagorodniuk

Partner

galyna.zagorodniuk@dlapiper.com

United Kingdom

Sam Szlezinger

Partner
sam.szlezinger@dlapiper.com

Alexandra Kamerling

Partner
alexandra.kamerling@dlapiper.com

Sarah Smith

Partner
sarah.e.smith@dlapiper.com

AMERICA

United States

David H. Bamberger

Partner
david.bamberger@dlapiper.com

Lesli C. Esposito

Partner
lesli.esposito@dlapiper.com

Lisa Tenorio-Kutzkey

Partner
ltk@dlapiper.com

Canada

Catherine Pawluch

Partner
catherine.pawluch@dlapiper.com

Kevin Wright

Partner
kevin.wright@dlapiper.com

Mexico

Jorge Benejam

Partner
jorge.benejam@dlapiper.com

ASIA PACIFIC

Australia

Simon Uthmeyer

Partner
simon.uthmeyer@dlapiper.com

Fleur Gibbons

Partner
fleur.gibbons@dlapiper.com

Asia

Nathan Bush

Partner
nathan.bush@dlapiper.com

Sammy Fang

Partner
sammy.fang@dlapiper.com

Takahiro Nonaka

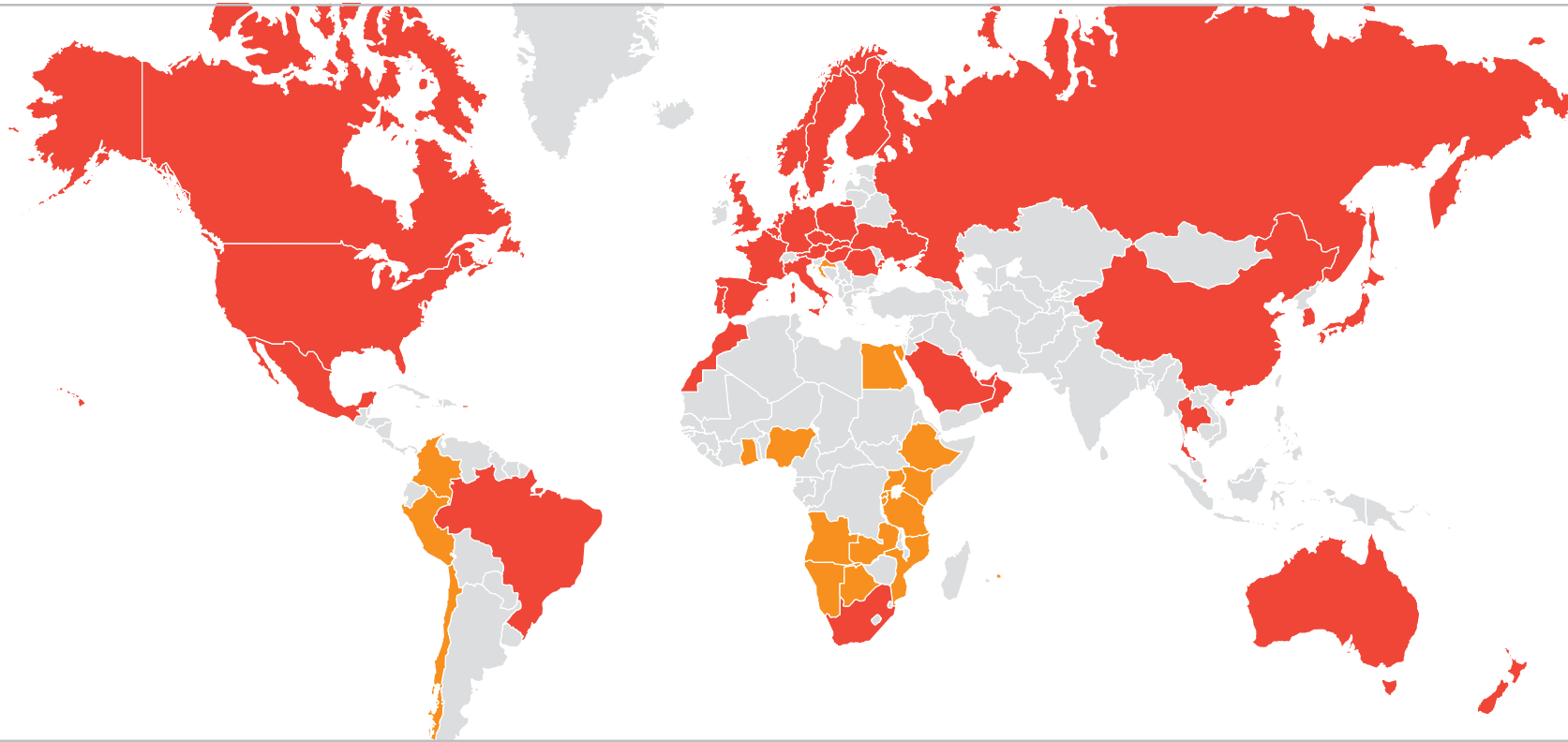
Of Counsel
takahiro.nonaka@dlapiper.com

AFRICA

South Africa

Janine Simpson

Director
janine.simpson@dlapiper.com



DLA PIPER

AUSTRALIA
Brisbane
Melbourne
Perth
Sydney

AUSTRIA
Vienna

BAHRAIN
Manama

BELGIUM
Antwerp
Brussels

BRAZIL
São Paulo

CANADA
Calgary
Edmonton
Montreal
Toronto
Vancouver
Yellowknife

CHINA
Beijing
Hong Kong
Shanghai

CZECH REPUBLIC
Prague

DENMARK
Aarhus
Copenhagen

FINLAND
Helsinki

FRANCE
Paris

GERMANY
Cologne
Frankfurt
Hamburg
Munich

HUNGARY
Budapest

ITALY
Milan
Rome

JAPAN
Tokyo

KUWAIT
Kuwait City

LUXEMBOURG
Luxembourg

MEXICO
Mexico City

MOROCCO
Casablanca

NETHERLANDS
Amsterdam

NEW ZEALAND
Auckland
Wellington

NORWAY
Oslo

OMAN
Muscat

POLAND
Warsaw

PORTUGAL
Lisbon

QATAR
Doha

ROMANIA
Bucharest

RUSSIA
Moscow
St. Petersburg

SAUDI ARABIA
Al Khobar
Jeddah
Riyadh

SINGAPORE
Singapore

SLOVAK REPUBLIC
Bratislava

SOUTH AFRICA
Johannesburg

SOUTH KOREA
Seoul

SPAIN
Madrid

SWEDEN
Stockholm

THAILAND
Bangkok

UKRAINE
Kyiv

UNITED ARAB EMIRATES
Abu Dhabi
Dubai

UNITED KINGDOM
Birmingham
Edinburgh
Leeds

Liverpool
London
Manchester
Sheffield

UNITED STATES
Albany
Atlanta
Atlantic City
Austin
Baltimore
Boston
Chicago
Dallas
Houston
Los Angeles
Miami

Minneapolis
New York
Northern Virginia
Philadelphia
Phoenix
Raleigh
Sacramento
San Diego
San Francisco
San Juan
Seattle
Short Hills
Silicon Valley
Washington, DC
Wilmington

RELATIONSHIP FIRMS

ANGOLA
Luanda

BOTSWANA
Gaborone

BURUNDI
Bujumbura

COLOMBIA
Bogota

CHILE
Santiago

CROATIA
Zagreb

EGYPT
Cairo

ETHIOPIA
Addis Ababa

GHANA
Accra

KENYA
Nairobi

MAURITIUS
Port Louis

MOZAMBIQUE
Maputo

NAMIBIA
Windhoek

NIGERIA
Lagos

PERU
Lima

RWANDA
Kigali

TANZANIA
Dar es Salaam
Mwanza

UGANDA
Kampala

ZAMBIA
Lusaka

COOPERATION FIRM

BRAZIL
Rio de Janeiro
São Paulo

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved. | JUN17 | 3213720

