

# Morgan Lewis



## 2016 MID-YEAR GLOBAL CARTEL ENFORCEMENT REPORT

### CARTEL ENFORCEMENT ACTIVITY PROMISES TO REMAIN BUSY IN THE COMING MONTHS AND INTO 2017

Cartel enforcement remains a priority for competition authorities around the world. Global cartel fines totaled more than \$6 billion through August, putting 2016 on pace to meet or exceed last year's annual total. Fines in the United States were lower in the first part of 2016 than they were in the same period of 2015, based largely on the absence this year of a case approaching the size of the fines handed down by the US Department of Justice (USDOJ) in connection with the foreign exchange investigation in 2015. There were still, however, several substantial fines imposed in connection with the ongoing auto parts, shipping, and capacitors investigations.

The slower fining pace of the United States was offset by very large fines imposed in the European Union, India, and Korea. The European Commission imposed its largest fine

ever—nearly €3 billion (\$3.3 billion)—on truck manufacturers. India followed suit with fines totaling Rs 6700 crores (\$1 billion) on cement manufacturers. And Korea imposed fines of 352 billion won (\$321 million) on 13 companies involved in bidding for contracts to build liquefied natural gas tanks.

Aside from a handful of large cases, the majority of cartel enforcement in 2016 was focused on domestic cartels. The USDOJ continued to work through a backlog of cases involving alleged collusion in real estate foreclosure auctions, with many trials scheduled for late 2016 and early 2017. Elsewhere, investigations of domestic cartels in basic necessities and commodities resulted in significant fines and enforcement proceedings.

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# TRENDS

## EMERGING AND CONTINUING TRENDS IN CARTEL ENFORCEMENT

- Slow Start to the Year in United States and European Union.** Cartel fines in the early part of 2016 were significantly lower than in 2015 for the two jurisdictions—the United States and the European Union—that have consistently imposed the largest cartel fines in the past. However, that changed dramatically in July, with the European Commission imposing its largest fine ever in a single cartel case. So far this year, as in past years, the global fine totals are driven by a handful of large cases (see p. 5).
  - Largest Fine in a Pure Antitrust Cartel Case.** In July, the European Commission imposed a \$3.3 billion fine on various manufacturers of heavy duty trucks for coordinating pricing, including with regard to the costs of complying with emissions regulations (see p. 7). This is the largest fine ever imposed in a single cartel case that did not involve allegations of other legal violations. Earlier cases involving financial benchmarks resulted in higher overall fines, but those cases involved fraud and securities claims in addition to antitrust claims.
  - Active Asian Enforcement.** South Korea and Japan were particularly active in the first half of 2016, imposing fines totaling hundreds of millions of dollars in a series of cases focusing primarily on bid rigging in connection with infrastructure and other public procurement projects (see p. 9).
  - Focus on Domestic Cartels.** Although there were new fines and plea agreements announced in certain international cartel matters—involving, for example, auto parts, capacitors, and shipping (see pp. 15-17)—significantly more of the global anti-cartel enforcement agenda in 2016 has been dedicated to domestic cartel conduct. As noted above, South Korea and Japan imposed large fines on companies operating bid rigging and price fixing cartels for various infrastructure projects and products (see p. 9). Colombia imposed the largest cartel fine in its history for a domestic cartel focused on paper products (see p. 7). Italy imposed its two largest cartel fines in history for domestic cartels relating to television service and vending machines (see p. 7). And very substantial resources have been devoted in the United States to prosecuting—including through trial—various individual cases involving bid rigging of local real estate foreclosure auctions.
  - Criminalization Trend.** The number of countries that have criminalized cartel conduct continues to expand.
- Both South Africa and Chile passed laws making cartel violations criminal in the early part of 2016 (see p. 10) and Australia, which has long had legislation allowing for criminal prosecution, filed its first criminal cartel case against a shipping company as part of the global investigation of roll-on roll-off shipping (see p. 15). In the United States, the US Department of Justice (USDOJ) has placed renewed emphasis on individual criminal liability (see pp. 24-25).
- Extradition.** The spread of criminalization also increases the risks of extradition for individuals in global investigations. Most extradition treaties contain dual criminality requirements, and the limited number of countries criminalizing cartel violations has left a number of “safe havens” for individuals the USDOJ has sought to prosecute in antitrust cases. Those safe havens are dwindling, however, and the USDOJ continues to indicate an intention to pursue extraditions aggressively. For example, in 2016, an individual extradited from Canada in a joint antitrust and fraud investigation was sentenced on the fraud counts to 63 months in jail (see p. 11).
  - More Trials in the United States.** The USDOJ promises to be particularly busy over the next year in criminal antitrust trials. There is a long backlog of trials scheduled in the wide-reaching real estate foreclosure auction investigation (see p. 20). In addition, a large number of individuals have been indicted in auto parts, financial benchmarks, and chemicals investigations (see pp. 17-19). A number of those individuals are located outside the United States and thus not currently scheduled for trial, but there are nevertheless a number of individuals in those investigations who are moving toward trial. In addition, the USDOJ indicted two Japanese auto parts manufacturers in prosecutions focused on different auto parts and different alleged cartels (see p. 17). These are the first corporate indictments in antitrust enforcement actions by the USDOJ in more than five years. Those trials are scheduled for 2017.
  - International Cooperation.** Enforcement authorities throughout the world continue to forge closer ties, executing formal cooperation agreements and working together on cartel investigations. An example of this close cooperation is the recent joint investigation and prosecution of an auto body sealing company, which

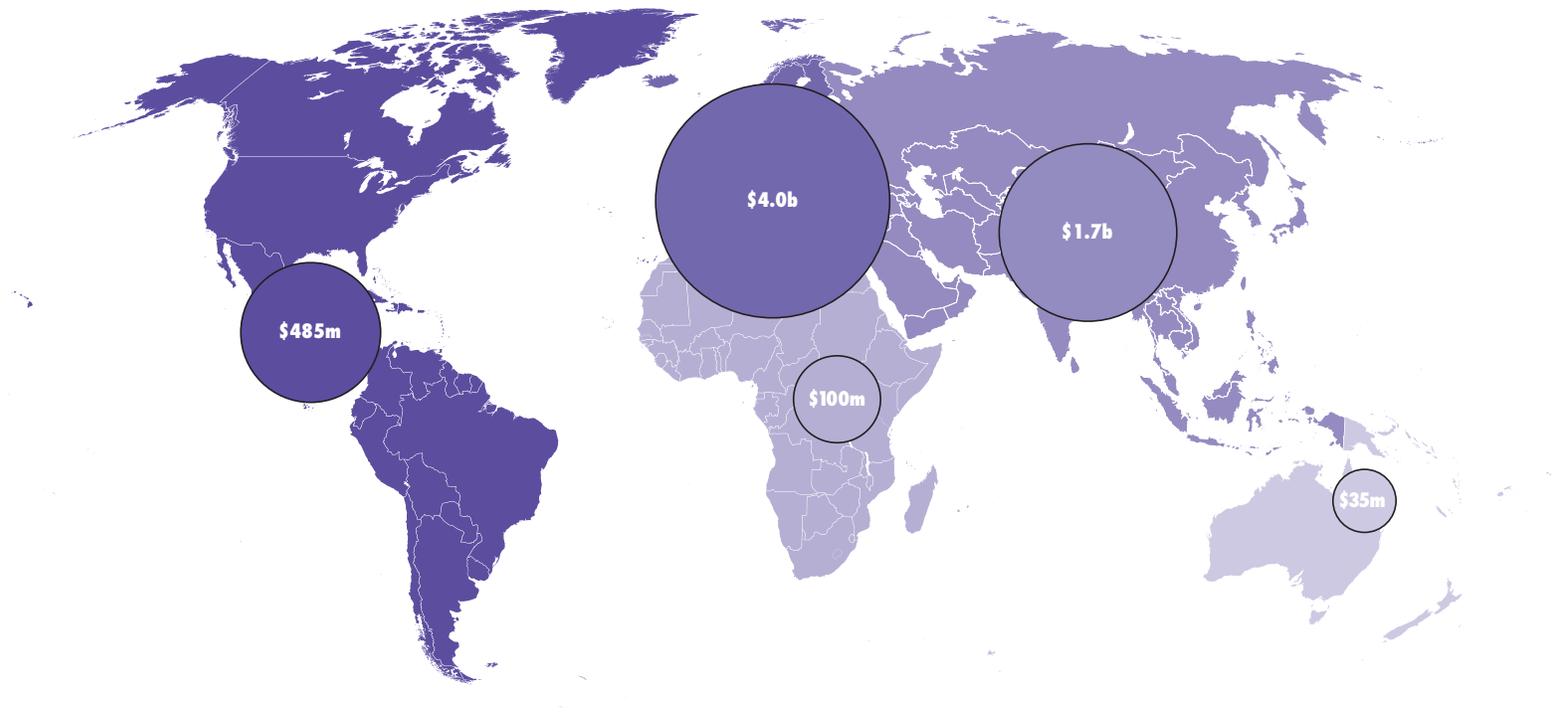
was conducted jointly by the USDOJ and Canada's Competition Bureau (CCB). The USDOJ included Canadian revenues in its fine calculations in that case, and the CCB imposed no independent fines as part of the coordinated investigation (see p. 7). This type of coordination—the first of its kind—provides one possible solution to the burgeoning problem of duplicative fines.

- **Challenges to New Types of Coordination.** Two enforcement actions in the first part of 2016 are notable for their focus on coordination through nontraditional means. Both the United States and the United Kingdom pursued prosecutions of, and secured guilty pleas from, two online poster companies alleged to have coordinated their pricing through computer algorithms (see p. 21).

Such “virtual coordination” may become a greater focus of enforcement attention in the future given the rising importance of online marketplaces. In addition, the European Commission announced earlier this year the resolution of its long-running investigation into ocean shipping companies for coordinating pricing through public price announcements. The Commission found no evidence of direct anticompetitive communication between the companies, but it imposed behavioral remedies (to which the companies agreed) requiring the companies to change the way they communicated pricing changes to the market (see pp. 26-27).

# MID-YEAR 2016 CARTEL FINES

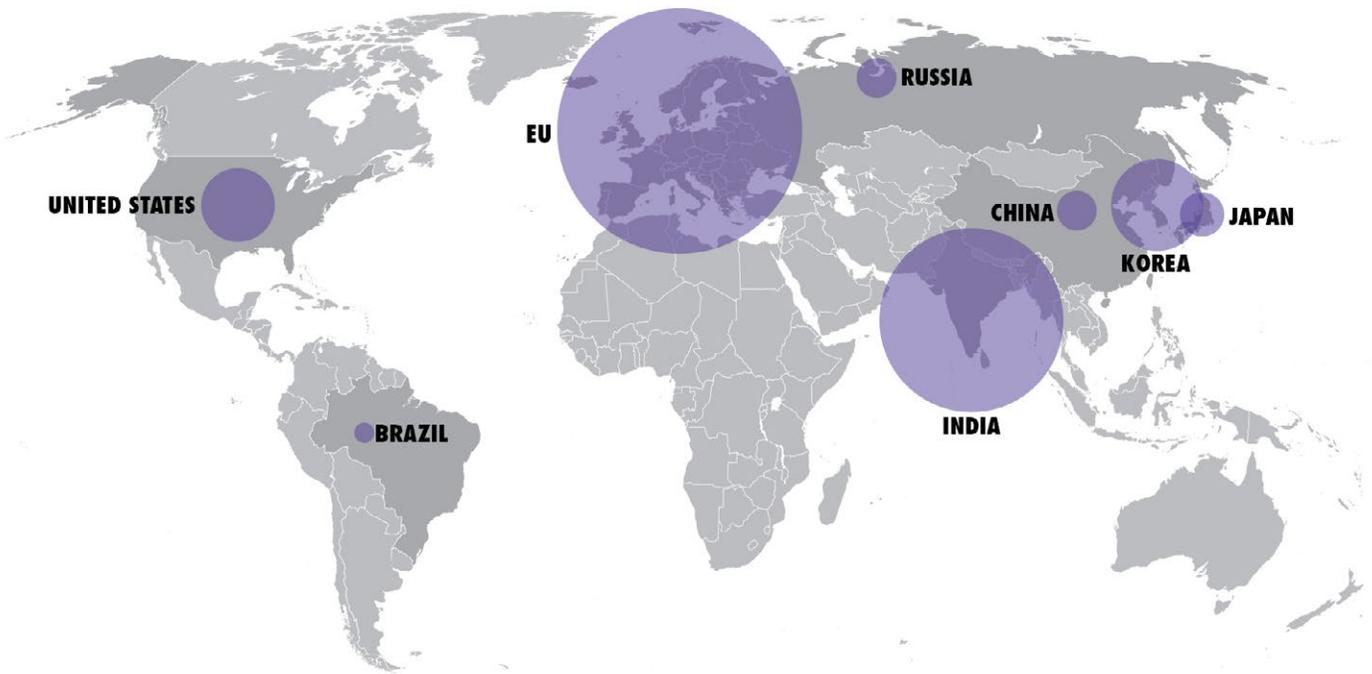
(THROUGH AUGUST 2016)



TOTAL GLOBAL FINES: \$6.4B									
AMERICAS: \$485m		EUROPE: \$4.0b		ASIA: \$1.7b				AFRICA: \$100m	OCEANIA: \$35m
UNITED STATES	BRAZIL	EUROPEAN UNION		RUSSIA	CHINA	KOREA	INDIA	JAPAN	
\$366m	\$26m	\$3.4b		\$67m	\$67m	\$523m	\$1b	\$73m	

b = billion  
m = million

## CARTEL FINES BY JURISDICTION 2015–2016



UNITED STATES	BRAZIL	EUROPEAN UNION	RUSSIA	CHINA	INDIA	KOREA	JAPAN
\$366m	\$26m	\$3.4b	\$67m	\$67m	\$1b	\$523m	\$73m

b = billion  
m = million

# NOTABLE CORPORATE FINES

## AMERICAS

- United States: Auto Body Sealing Products.** On July 20, the USDOJ announced that a Japanese auto parts manufacturer had agreed to plead guilty to fixing prices and rigging bids for body sealing products used in automobiles, and to pay a fine of \$130 million. The USDOJ coordinated closely with the CCB on the investigation and the decision regarding fines. The USDOJ fine was based on sales by the defendant in both the United States and Canada, and thus the fine imposed by the USDOJ also resolved the CCB's investigation.
- United States: Roll-On Roll-Off Shipping.** On July 13, a Norwegian shipping company agreed to plead guilty to fixing prices of roll-on roll-off shipping services and to pay a \$98.9 million fine in the United States.
- United States: Ceramic Substrates.** On May 16, the Japanese subsidiary of a US multinational corporation agreed to plead guilty and pay a \$66.5 million fine for fixing prices of ceramic substrates used in catalytic converters for automobiles in the United States.
- United States: Shock Absorbers.** The USDOJ announced that a Japanese automotive parts supplier had agreed to plead guilty and pay a \$55.5 million fine for participating in a conspiracy to fix prices and rig bids for shock absorbers. The same company had earlier entered a guilty plea with regard to price-fixing of other automotive parts, and the USDOJ indicated that the company's shock absorber fine was increased for failing to report the shock absorber conduct at the time of the earlier investigation. The company also agreed to serve a three year period of probation and reform its antitrust compliance policies.
- Colombia: Paper Products.** On May 26, Colombia's Superintendency of Industry and Commerce announced that it had fined the companies and senior employees 185 billion pesos (\$63.4 million) for operating a cartel for over a decade that artificially raised the price of toilet paper, napkins, and kitchen towels. A leniency application from one of the participants was rejected because it failed to fulfill its obligations when it misstated relevant aspects of the investigation and failed to disclose evidence.
- Canada: Power Steering.** The CCB imposed a fine of C\$13 million (\$10 million) on a Japanese auto parts manufacturer for fixing prices of certain electric powered steering assemblies sold to Honda. This was the second largest fine imposed by the CCB in an antitrust case.
- Brazil: Refrigerant Compressors.** On March 16, Brazil's Council for Economic Defense (CADE) fined three manufacturers of refrigerant compressors 21.3 million Brazilian reais (\$6.5 million) for their participation in an international cartel that established illegal agreements to fix prices between 1996 and 2008.

## EUROPE

- European Union: Trucks.** On July 19, the European Commission issued a decision fining five heavy duty truck manufacturers a total of €2.93 billion (\$3.3 billion) for colluding on truck prices and passing on the costs of complying with emissions regulations. This is the highest fine ever imposed by the Commission in a pure antitrust case.
- European Union: Alternators and Starters.** On January 27, the European Commission imposed fines of €137.8 million (\$154.5 million) on two Japanese auto parts companies for participating in a cartel for alternators and starters.
- Spain: Adult Diapers.** Spain's competition authority fined eight adult diaper makers, their association, and four executives a total of €128.8 million (\$144.4 million) for forming a cartel for products eligible for subsidies and bought through pharmacies. It is the first time that Spain's National Authority on Markets and Competition (CNMC) has fined executives in an antitrust probe.
- Italy: Vending Machines.** Italy's competition authority imposed the highest fine in the authority's history, totaling €100 million (\$112 million), on 11 entities (including a trade association) operating in the Italian food and beverage vending machines market that were found to have entered into market sharing and price fixing agreements.
- Italy: Broadcasting.** On April 20, the Italian Competition Authority announced that it had fined Italy's main television operators in the pay-TV market €66 million (\$74 million) for bid rigging. In 2014, the entities had agreed to alter the outcome of tenders for the Series A broadcasting rights for the years 2015–2018.
- Germany: Beer.** On May 9, Germany's Federal Cartel Office (FCO) imposed a total fine of €90.5 million (\$101.5 million) on nine retailers for resale price maintenance of shop prices for beer.

- **Germany: Heating and Air Conditioning.** The FCO imposed total fines of €21.3 million (\$23.9 million) on nine wholesalers and one individual involved in the sanitary, heating, and air conditioning sector that allegedly coordinated the calculation of gross price lists and sales prices over several years. Although the group's members issued their own gross price lists based on the information exchanged, the FCO found a price alignment due to the wholesaler's common calculation basis.
- **Finland: Information Services.** On March 23, the Finnish Competition and Consumer Authority (KKV) imposed total fines of €12.5 million (\$140 million) on two since-merged companies for price fixing and information exchange in the course of their merger talks between 2006 and 2009.
- **Finland: Transportation Services.** The Finnish Competition and Consumer Authority (KKV) presented the Market Court with a proposal for a €38 million (\$43 million) penalty concerning seven of the sector's major bus companies, the Finnish Bus and Coach Association, and Matkahuolto. The FCCA has also ordered Matkahuolto to stop anticompetitive actions that are forcing bus companies out of business.
- **Romania: Electricity.** The Romanian Competition Authority imposed total fines of €37 million (\$41 million) on 10 electricity traders for concluding anticompetitive agreements.
- **Turkey: Cement.** The Turkish Competition Authority imposed fines totaling 71 million lira (\$24 million) on six cement companies for dividing local markets and rigging bids in the Aegean region of Turkey.
- **Hungary: Banking.** On January 11, two Hungarian banks were fined 4 billion Hungarian forints (\$15 million) for operating the "BankAdat" database for 12 years, which allowed banks to share private, confidential, and strategic data with each other. "BankAdat" provided banks with up-to-date information about the market, market processes, efficiency, business policies, and strategies of competitors.
- **Russia: Military Uniform and Gear.** The Russian Federal Antimonopoly Service (FAS) imposed fines totaling 3.5 billion rubles (\$54 million) on 90 companies for rigging bids to supply military uniform and gear to the Russian military. The companies were found to have rigged bids in dozens of electronic auctions held over several years. In addition to the fines, the FAS referred the case to public prosecutors to open a criminal enforcement proceeding.
- **Russia: Energy.** The Russian FAS fined two energy trading companies approximately 790 million rubles (\$12 million) for anticompetitive behavior that restricted the business practice of other companies and increased the price for energy supply.



## ASIA

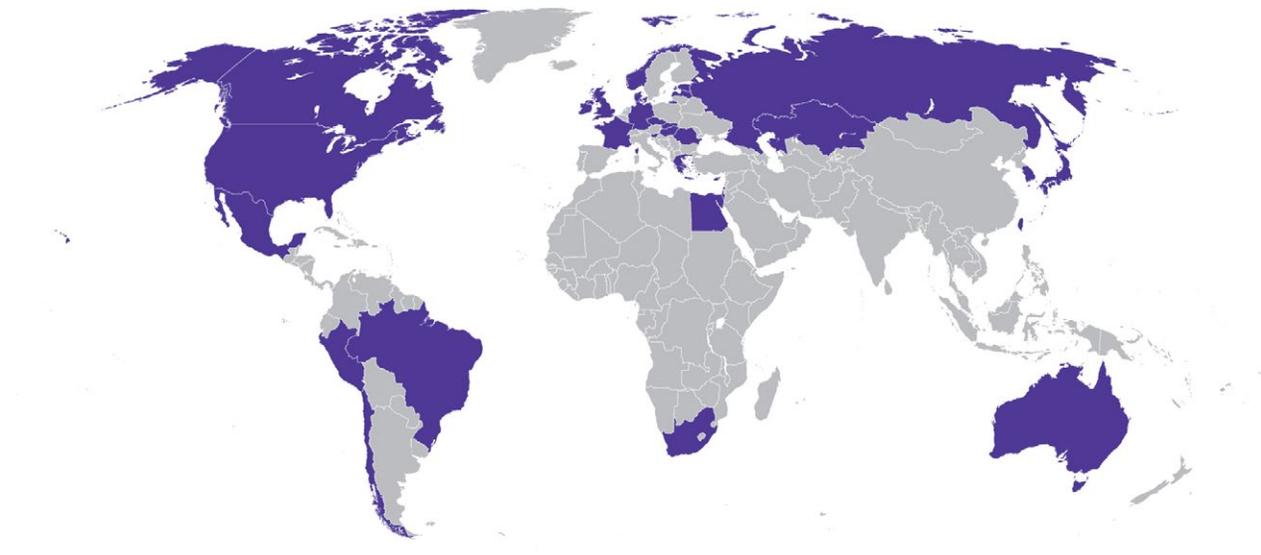
- **India: Cement.** The Competition Commission of India (CCI) imposed its largest collective fine ever in August on 10 cement manufacturers and a related trade association. The CCI found that the cement manufacturers had coordinated their pricing through the exchange of competitively sensitive information. Fines totaled Rs 6700 crore (\$1 billion).
- **Indonesia: Cattle.** The Indonesian Commission for the Supervision of Business Competition (KPPU) imposed fines of 106 billion rupiah (\$8 million) on various cattle sellers for fixing prices and rigging bids at cattle auctions. The KPPU has been very active in 2016 in evaluating markets for food products.
- **Korea: LNG Storage Tanks.** On April 26, the Korea Fair Trade Commission (KFTC) imposed a combined fine of 351.6 billion won (\$317 million) against 13 construction companies for bid-rigging for liquefied natural gas (LNG) storage tanks.
- **Korea: Corrugated Cardboard Paper.** On March 11, the KFTC imposed penalty surcharges of 118.4 billion won (\$107 million) on 12 manufacturers for fixing prices of corrugated cardboard paper.
- **Japan: Capacitors.** On March 29, the Japan Fair Trade Commission (JFTC) issued cease and desist orders and surcharge payment orders totaling approximately ¥7 billion (\$68 million) to the manufacturers for fixing the price of aluminum electrolytic and tantalum electrolytic capacitors.
- **China: Roll-On Roll-Off Shipping.** China imposed fines of 407 million yuan (\$61 million) on seven Japanese shipping companies for coordinating prices for roll-on roll-off shipping services. The same companies, or some subset of them, have also been fined for the same conduct by Japan, the United States, and Peru.
- **Taiwan: Cargo Loading Services.** In April, the Taiwan Fair Trade Commission (TFTC) imposed fines totaling 72.6 million New Taiwan Dollars (\$2.3 million) on 20 companies for engaging in a cartel with regard to cargo loading services.

## AFRICA

- **South Africa: Steel.** A manufacturer of steel products agreed to pay a fine of 1.5 billion rand (\$104 million) to resolve several price-fixing investigations by the South African Competition Commission (SACC). The fine resolves allegations of price-fixing with regard to flat steel and scrap metal. In addition to the fine, the company agreed to limit the EBIT on its sales of flat steel in South Africa to 10% for five years, and not to engage in price discrimination for other products.

# INDIVIDUAL CRIMINAL PENALTIES

## ● JURISDICTIONS WITH CRIMINAL PENALTIES FOR CARTEL ACTIVITIES



- Australia
- Brazil
- Canada
- Chile
- Cyprus
- Czech Republic
- Denmark
- Egypt
- Estonia
- France
- Germany
- Greece
- Hungary
- Ireland
- Israel
- Japan
- Kazakhstan
- Latvia
- Malta
- Mexico
- Norway
- Peru
- Romania
- Russia
- Slovak Republic
- Slovenia
- South Africa
- South Korea
- Taiwan
- United Kingdom
- United States

## SIGNIFICANT INDIVIDUAL PRISON TERMS FOR CARTEL OFFENSES (WORLDWIDE)

**President of Canadian Environmental Services Company Receives Long US Prison Term.** John Bennett, the second non-US national extradited to the United States to face trial in an antitrust case, was convicted of bid rigging and fraud in connection with bidding for environmental services contracts to clean superfund sites in the United States. Mr. Bennett was sentenced to 63 months in jail for these crimes (with the length of the sentence based on the fraud counts) and ordered to pay a \$12,500 fine and \$3.8 million in restitution.

**Georgia Real Estate Investors Agree to Prison Terms.** On April 21, a Georgia real estate investor was sentenced to three months in prison; upon release from prison, the investor will be placed on supervised release for a term of three years. Another investor in Georgia was earlier sentenced to four months in prison with a three year supervised release to commence upon release.

**First Prison Term in Heir Location Services Investigation.** The president and sole owner of a Massachusetts based heir location services firm pleaded guilty to one count of violation of 15 USC § 1 and was sentenced to a one year prison term as part of the USDOJ's investigation into a customer allocation agreement among heir location services providers. Another heir location services company and its president have recently been indicted as part of the same investigation.

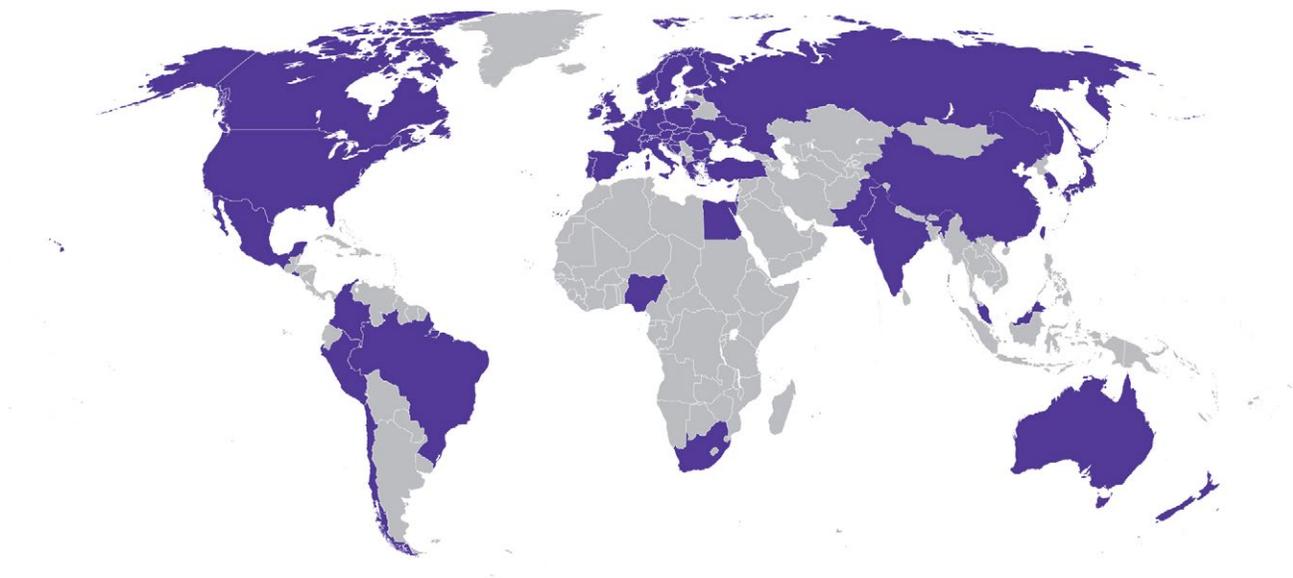
**Canadian Court Sentences Executive to Suspended Prison Sentence and Education.** In August, a Canadian court sentenced an executive of an IT services firm to an 18 month suspended sentence for bid rigging public procurement contracts for IT services to be provided to Canadian schools. In addition, the sentence imposed on the executive the unusual requirement of having to provide presentations to other organizations and businesspeople on the importance of antitrust compliance.

**UK Conviction of Executive Charged With Conspiring to Fix Prices of Pre-Cast Concrete Drainage Pipes.** On March 21, the former chief executive of a pre-cast concrete drainage company agreed to plead guilty to one count under section 188 of the Enterprise Act 2002, the criminal cartel offence. The sentence is pending, but the former executive faces up to five years in prison and an unlimited fine.

**More Japanese Auto Parts Executives Agree to Serve Prison Terms in United States.** On April 20, the former president of a Japanese auto parts company agreed to plead guilty and serve an 18 month sentence in the United States for fixing prices of body sealing products used in automobiles.

**Israel Imposes Prison Sentences on Presidents of Conspiring Bread Companies.** On January 13, the presidents of two bread companies in Israel were sentenced to one year prison terms and fined significant amounts for participating in a conspiracy to fix the price of bread sold in Israel. The Israel Antitrust Authority's (IAA's) action signaled an increased enforcement focus on cartel violations in Israel and a greater willingness to utilize criminal penalties as part of that enforcement focus. Consistent with that use of criminal penalties, the IAA also opened a criminal investigation into travel agencies that resulted in nine arrests on suspicion of participation in a conspiracy to fix prices and divide markets for travel services.

## JURISDICTIONS WITH CARTEL IMMUNITY/LENIENCY PROGRAMS



- Albania
- Australia
- Austria
- Belgium
- Bosnia & Herzegovina
- Brazil
- Bulgaria
- Canada
- Chile
- China
- Colombia
- Croatia
- Czech Republic
- Cyprus
- Denmark
- Egypt
- El Salvador
- Estonia
- Finland
- France
- Germany
- Greece
- Hong Kong
- Hungary
- India
- Ireland
- Israel
- Italy
- Japan
- Lithuania
- Luxembourg
- Malaysia
- Mexico
- Netherlands
- New Zealand
- Nigeria
- Norway
- Pakistan
- Peru
- Poland
- Portugal
- Romania
- Russia
- Singapore
- Slovak Republic
- Slovenia
- South Africa
- South Korea
- Spain
- Sweden
- Switzerland
- Taiwan
- Turkey
- Ukraine
- United Kingdom
- United States

# INDUSTRIES UNDER SCRUTINY

## ANALYSIS

Several long-running investigations continued to result in significant enforcement attention and results in the first part of 2016. We detail developments in six key investigations in this section of the report.

- 1. PHARMACEUTICALS**
- 2. SHIPPING**
- 3. ELECTRONIC COMPONENTS**
- 4. AUTO PARTS**
- 5. FINANCIAL BENCHMARKS**
- 6. REAL ESTATE AUCTIONS**

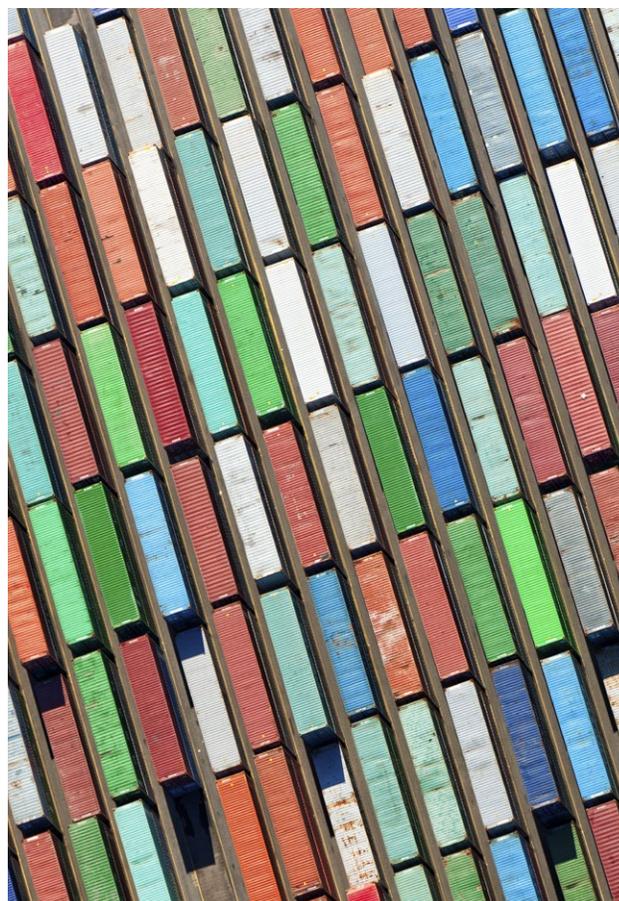
## PHARMACEUTICALS

- **Congressional Focus:** In October 2014, Senator Bernard Sanders of Vermont (chairman of the Subcommittee on Primary Health and Retirement Security in the Senate Committee on Health, Education, Labor, and Pensions) and Representative Elijah Cummings of Maryland (ranking member of the House of Representatives' Committee on Oversight and Government Reform) announced that they were opening an investigation into "recent staggering price increases for generic drugs." Both congressional committees have issued various subpoenas requesting pricing information from targeted companies about various generic drugs.
- **Pending Federal and State Investigations:** Various state attorneys general, as well as a federal grand jury, have also issued subpoenas to targeted companies requesting pricing information—as well as any information regarding communications among competitors—about various generic drugs.
- **Additional Subpoena/Process Activity:** Several additional companies reported receiving grand jury subpoenas and/or process from state attorneys general seeking information concerning their marketing and sale of certain generic pharmaceutical products, suggesting that the investigation continues to expand.
- **Expansion of Drugs Included in Investigation:** Recent reports of grand jury subpoenas indicate that authorities have intensified their investigation into pricing and communications related to generic digoxin and doxycycline. It is very likely, based on prior price-fixing investigations, that the USDOJ has expanded the scope of its investigation into other generic pharmaceuticals.
- **Drugs Included in Investigation to Date:** Based upon public information the generic drugs at issue thus far in this investigation include the following:
  - › Digoxin
  - › Doxycycline hyclate
  - › Albuterol sulfate
  - › Glycopyrrolate
  - › Divalproex sodium extended release
  - › Pravastatin sodium
  - › Neostigmine methylsulfate
  - › Benazepril/hydrochlorothiazide
  - › Isuprel
  - › Nitropress
  - › Pyrimethamine



## SHIPPING

- The global investigation of roll-on roll-off shipping services continued to produce additional prosecutions in early 2016. Dawn raids were conducted globally of various roll-on roll-off shipping companies in September 2012. At least the following countries have engaged in investigations and announced prosecutions: the United States, China, Japan, Chile, New Zealand, and Australia.
- In the United States, four companies have pled guilty and agreed to pay fines totaling more than \$230 million. In addition, eight executives have been charged as part of the investigation, with four of those executives pleading guilty and agreeing to serve lengthy jail terms. The most recent fine of \$98.9 million, imposed on a Norwegian company, was announced in July 2016.
- China also imposed fines totaling 407 million yuan on seven roll-on roll-off shipping companies in early 2016. The same seven companies were previously fined ¥22.7 billion (\$221 million) by the JFTC in 2014 and 4.4 billion pesos (\$6.6 million) by Chile.
- The investigation also reportedly includes Peru, Australia, and New Zealand. In August, the Australian authorities brought their first-ever corporate criminal case against an alleged cartel participant, targeting one of the roll-on roll-off shipping companies investigated as part of this global investigation.



## ELECTRONIC COMPONENTS

- The capacitors investigation has drawn the scrutiny of several cartel regulators worldwide, including in the United States, China, the European Union, Japan, Korea, Brazil, and Taiwan.
- In what may be a first for both countries, the United States is cooperating with China's National Development and Reform Commission (NDRC) in the capacitors investigation.
- In November 2015, a new grand jury investigating the alleged capacitors conspiracy was expanded to include the resistor industry (many of the same companies produce both capacitors and resistors). The USDOJ indicated in court filings in July 2016, however, that it has decided to close its resistors investigations without further action.
- In September 2015, a Japanese electronic components manufacturer agreed to plead guilty and pay a \$13.8 million fine in response to a one-count felony charge for the company's role in a conspiracy to fix prices for electrolytic capacitors sold to customers in the United States. In December 2015, the TFTC fined seven aluminum capacitor companies and three tantalum capacitor companies \$177 million. The European Commission also issued statements of objection in November 2015 against capacitor manufacturers in Asia.
- In December 2015, according to press reports, the USDOJ began investigating potential cartel activity in the market for diodes. The reports indicate that this probe evolved from the capacitors and resistors investigations.
- The capacitors investigation has continued to produce additional prosecutions in the early part of 2016:
  - › On March 29, the JFTC issued cease and desist orders and surcharge payment orders totaling approximately ¥7 billion (\$68 million) to the manufacturers for fixing the price of aluminum electrolytic and tantalum electrolytic capacitors.
  - › A Japanese capacitor manufacturer also pled guilty in March to fixing prices of electrolytic capacitors and agreed to pay a fine of \$3.8 million. In addition, the manufacturer agreed to serve a three year period of probation and to revise its compliance policies and procedures.
- › In August, the USDOJ announced that three additional companies had agreed to plead guilty to participating in the same cartel. The amounts of the fines have not yet been announced.
- › The KFTC indicated that it intends to issue charges and a decision imposing fines on capacitor manufacturers in the coming months.



## AUTO PARTS

### UNITED STATES

As the USDOJ's auto parts investigation is winding down, there have been a number of plea agreements announced and indictments entered so far this year related to dozens of different auto parts. As of August, a total of 64 persons and 45 companies have been charged and have agreed to pay more than \$2.8 billion in criminal fines as part of the USDOJ's investigation into the auto parts industry.

In March, the first parts manufacturer involved in producing and selling power window switches agreed to plead guilty and pay a \$4.55 million criminal fine for conspiring to rig bids on those products to be installed in Honda Civics sold to US consumers.

In April, Keiji Kyomoto, a former executive of an automotive body sealing products supplier based in Hiroshima, Japan, and former president of its US joint venture, pleaded guilty in the US District Court for the Eastern District of Kentucky to a single-count indictment for bid rigging and price fixing. The executive was sentenced to serve 18 months in a US prison for his role in a conspiracy to fix prices and rig bids for the sale of automotive body sealing products sold in the United States. As part of his plea agreement, Kyomoto also agreed to pay a \$20,000 criminal fine.

In May, the Japanese subsidiary of a US-based multinational agreed to plead guilty and pay a \$66.5 million criminal fine for conspiring to fix prices, rig bids, and allocate the market for ceramic substrates sold in the United States and elsewhere and used in catalytic converters supplied to automobile manufacturers in the United States and elsewhere. This was the first announced enforcement action with regard to ceramic substrates.

Also in May, a federal grand jury in the US District Court for the Eastern District of Michigan returned an indictment against Nobuhiko Niwa, a former auto parts executive, for his alleged participation in a conspiracy to fix prices, rig bids, and allocate the market for ceramic substrates used in catalytic converters supplied to automobile manufacturers in the United States and elsewhere.

In June, a federal grand jury in the US District Court for the Southern District of Ohio returned an indictment charging a Japanese auto parts manufacturer and its US subsidiary, as well as an executive (Akitada Tazumi) with conspiring to

rig bids for and fix the prices of automotive body sealing products. In a separate indictment filed in the same court, a different Japanese parts manufacturer, its US subsidiary, and four company executives were charged with conspiring to fix prices, allocate customers, and rig bids for automotive steel tubes sold in the United States and elsewhere.

In July, a Japanese rubber parts manufacturer agreed to plead guilty and pay a \$130 million criminal fine for its role in a conspiracy to fix the prices of and rig the bids for automotive body sealing products installed in cars sold to US consumers.

### CANADA

The CCB's investigation into the auto parts industry has been ongoing since April 2013 and has resulted in nine guilty pleas and over C\$70 million (\$54 million) in fines imposed by Canadian courts. On December 9, 2015, the CCB announced a fine of C\$1.7 million (\$1.3 million) imposed on a Japanese tire company for rigging bids for anti vibration components. In April 2016, a Japanese manufacturer and supplier of auto parts pleaded guilty to the bid rigging of electronic power steering gears sold to Honda for cars manufactured in Canada. The fine was the second largest fine ever ordered by a court in Canada for a bid rigging offence.

### BRAZIL

Over the course of last year, Brazil's CADE instituted administrative proceedings against 10 companies alleged to have participated in an international cartel in the manufacture of wire harnesses and electrical components. CADE stated that it had evidence of at least 90 individuals who were involved in the alleged price fixing, bid rigging, and information exchanges. CADE settled with one company in July 2015, and the company agreed to pay a fine of 55.8 million reals (\$17 million). In addition, CADE has opened investigations of auto parts companies involved in the production of spark plugs, anti-friction bearings, brake pads, thermal systems, clutch facings, thermal systems, windshield wipers, automotive safety devices, and bumpers. More recently, CADE conducted searches on manufacturers of other auto parts, including automotive lighting, access mechanisms, emergency switches, and clutch facings.

## KOREA

The KFTC has continued its investigation into alleged price fixing and market allocation by automotive parts manufacturers. In May 2015, the KFTC imposed penalties of approximately 7.5 billion won (\$6.8 million) against German and Japanese auto bearing manufacturers for agreeing on prices from 2001 to 2008. In March 2016, the KFTC issued another penalty—a combined 1.14 billion won (\$1 million)—against two Japanese manufacturers of starter motors.

## FINANCIAL BENCHMARKS

### ANALYSIS

The first half of 2016 has seen significant activity in both government prosecutions and private litigation related to the manipulation of various financial benchmarks—including LIBOR and various foreign exchange markets. As the administration of President Barack Obama winds down, US regulators may attempt to wrap up their benchmark rate investigations, and the focus may shift from banks to individual bank employees. Litigation, however, is beginning to heat up as several cases have survived preliminary motions to dismiss and discovery is underway.

### LIBOR

- In May, the US Court of Appeals for the Second Circuit reversed a district court decision that dismissed investors' antitrust claims against 16 large banks. The appeals court found that the plaintiffs had pled facts sufficient to sustain claims that they paid artificial prices as a result of the alleged manipulation of the USD Libor benchmark.
- In July, the UK trial of five former employees of a UK-headquartered bank concluded with the jury finding three of the defendants guilty of USD Libor manipulation, but unable to reach a verdict on the remaining two employees. Two Libor traders—Jay Merchant and Alex Pabon—received sentences of six and a half years and two years and nine months, respectively. Jonathan Mathew, a Libor submitter, was sentenced to four years.

## FX

- In March, the UK's Serious Fraud Office (SFO) closed its investigation into misconduct in the foreign exchange (FX) market. After a year and a half investigation, the SFO concluded that while there were reasonable grounds to suspect wrongdoing, there was insufficient evidence for a realistic prospect of conviction under UK law.
- In March, the KFTC fined two banks for colluding to manipulate foreign exchange swap transactions. In April, the KFTC widened its investigation to include 10 additional banks.
- In June, the European Union reportedly sought documents from banks in an effort to ramp up its FX probe—over a year after the United States and the United Kingdom extracted several billion dollars in fines from the banks. The uptick in activity suggests that the European Union might issue a statement of objections or settle with the banks in the second half of 2016.
- In July, the global head of a major global bank's foreign exchange trading desk was arrested at JFK International Airport as he was boarding a flight to London. He and another FX trader were charged in connection with a scheme to jack up the price of a currency in advance of a \$3.5 billion transaction. The charges were the first brought against individuals by the USDOJ in connection with its FX investigation.

## ISDAFIX

- In May 2016, the US Commodity Futures Trading Commission (CFTC) ordered a US-based bank to pay \$250 million for attempted manipulation and false reporting of US dollar ISDAFIX benchmark rates. The order alleged that the bank, an ISDAFIX panel bank, made false rate submissions and engaged in trading activity with the intent to artificially influence USD ISDAFIX rates. The CFTC has been investigating ISDAFIX manipulation for over four years, and the Citibank Order is only the second enforcement action taken against a bank to date. Citibank also agreed to pay the CFTC an additional \$175 million to resolve claims that it tried to manipulate the Yen Libor and Euroyen Tibor interest rate benchmarks.

## SIBOR/SOR

- In July 2016, a class action lawsuit was filed in the US District Court for the Southern District of New York alleging that a group of banks conspired to manipulate the Singapore Interbank Offered Rate (SIBOR) and the Singapore Swap Offer Rate (SOR) by submitting artificial interest rate quotes and engaging in manipulative trades to maximize their own profits in SIBOR and SOR-based derivatives at the expense of plaintiffs and the purported class. SIBOR/SOR manipulation has been investigated by the Monetary Authority of Singapore (MAS), the CFTC, and the UK Financial Conduct Authority (FCA), but this is the first private class action related to these claims.

## TREASURY MARKET

- In March, roughly nine months into its US Treasury market manipulation probe, the USDOJ reportedly has zeroed in on a handful of banks. The investigation apparently was narrowed based on communications obtained by the USDOJ that allegedly implicate the banks and potentially other banks in wrongdoing. The USDOJ is investigating whether such banks are improperly using and sharing information on the demand for Treasuries to increase their profit in the secondary market for when-issued Treasuries securities. The US Securities and Exchange Commission (SEC), New York's Department of Financial Services, the CFTC, and the European Commission are also investigating potential manipulation of the Treasury market.



## REAL ESTATE AUCTIONS

In 2016, the USDOJ continued its aggressive enforcement of the Sherman Act at public real estate foreclosure auctions in Northern California, Georgia, Alabama, and North Carolina. The Antitrust Division's Washington Criminal II Section, created in 2014, has devoted significant resources to investigating and prosecuting these cases. The Antitrust Division's San Francisco Field Office has also prosecuted many of these cases in Northern California.

- All of the cases were brought in connection with President Obama's Financial Fraud Enforcement Task Force, an interagency task force formed to investigate and prosecute financial crimes.
- To date, 56 individuals have pleaded guilty to criminal charges in the District Court for the Northern District of California as a result of the USDOJ's ongoing investigations into bid rigging and fraud at public foreclosure auctions in Northern California.

- To date, the USDOJ has filed 20 criminal cases in Georgia as a result of the ongoing investigation. Of those charged, 18 have either pled guilty or agreed to plead guilty.
- To date, 14 defendants have been prosecuted in the ongoing investigation of the Alabama real estate foreclosure industry.
- More than 100 individuals have been charged since the investigation began.

The investigation is taking significant USDOJ resources to prosecute out of various offices. Multiple trials are scheduled in late 2016 and early 2017 in California and Georgia. In the California cases, a federal judge recently excluded wiretap evidence that had been gathered by the FBI without a warrant (individuals were taped as they spoke outside of courthouses where real estate foreclosure auctions were held). This highlights the aggressiveness of the FBI in seeking information in cartel investigations.



# MAJOR DEVELOPMENTS

## COLLUSION BY ALGORITHM

Although price-fixing investigations most frequently arise in mature markets that involve fungible commodities, the investigation into online retail price fixing by the USDOJ and UK regulators proves that, despite the absence of the usual conditions that make a market ripe for collusion, no industry is immune from criminal antitrust scrutiny. The use of computer pricing algorithms may be an increasing area of focus for criminal antitrust regulators.

In April 2015, the USDOJ's Antitrust Division announced that David Topkins, a former executive of an e-commerce seller of wall decor, had pled guilty to a one-count felony charge for conspiring to fix the prices of posters sold in the United States through an online marketplace in 2013. As a result of the plea, Topkins agreed to pay a \$20,000 criminal fine and to cooperate with the USDOJ in its ongoing investigation into price-fixing in the online wall decor industry. Subsequently, in late 2015, a UK-based poster retailer was jointly raided by the FBI and UK law enforcement, and charges were leveled in December 2015 against the company and one of its directors, Daniel Aston. The company has recently agreed to resolutions with both the USDOJ and the UK's Competition and Markets Authority (UK CMA), which require the company to pay a \$50,000 fine in the United States and a fine of £163,000 in the UK. The UK fine was part of a civil proceeding by the CMA, which also is cooperating with the USDOJ in connection with a separate criminal investigation.

The co-conspirators in the USDOJ's online posters investigation were third-party sellers on Amazon Marketplace that used commercially available algorithm-based pricing software that operates by using competitor pricing information in accordance with rules the seller sets. The USDOJ claimed that the two companies agreed with one another to generate computer code that would enable the software to coordinate their poster prices.

In press releases, the USDOJ has touted these prosecutions as being the first to specifically target alleged coordinated behavior in the e-commerce space. Former Assistant Attorney General Bill Baer commented that "[The Antitrust Division] will not tolerate anticompetitive conduct, whether it occurs in a smoke-filled room or over the internet using

complex pricing algorithms. American consumers have the right to a free and fair marketplace online, as well as in brick and mortar businesses." And in subsequent statements, USDOJ officials have expressed a continued interest in prosecuting supposed cartel behavior among online retailers.

Although unique in many respects, the USDOJ's online poster prosecutions are not entirely surprising, nor are they beyond the scope of the Division's established enforcement agenda. For example, the USDOJ's civil lawsuit against ATP Co. in the early 1990s challenged similar (though less technologically advanced) alleged collusive behavior. In the ATP Co. case, the USDOJ alleged that various airlines were colluding to fix fare prices through ATP's computerized fare dissemination services. In particular, the USDOJ alleged that ATP Co. was a "central source for the collection, organization, and dissemination of fare information for virtually every domestic airline," which enabled the airlines to implement and police their unlawful agreement to fix domestic flight fares. In this respect, ATP Co.'s fare collection and dissemination services served a similar function to the algorithm software that is at the center of the USDOJ's investigation of online poster price-fixing that yielded pleas from the companies at issue. The ATP Co. case, therefore, foreshadowed—at least in part—the current online investigation.

Moreover, based on the publically available information, it appears that, although they used computer algorithms as an implementation and policing mechanism, the alleged co-conspirators in the USDOJ's online posters investigation reached an agreement to fix prices that was not different in character than the type of "smoke-filled room" conspiracies that former AAG Baer referenced. The existing prosecutions, therefore, do not represent a material departure from the US government's past enforcement efforts.

Perhaps the larger question, then, is whether the USDOJ's online retail prosecutions signal an intention to expand criminal prosecutions to price coordination among rivals where no traditional agreement is present and pricing algorithms provide the sole basis for the government's proof of concerted action. If the answer to that question is in the affirmative, it would place a wide swath of commercial

conduct by a broad scope of potential defendants in the cross-hairs of the USDOJ or private class action plaintiffs, given the prevalence of online algorithms and price optimization software among retailers that operate online. In addition, such an expansion of the existing enforcement approach by the USDOJ would bring to the fore the issues of whether computers using algorithms can legally agree and whether the threat of curtailing independent use of online algorithmic pricing tools actually is detrimental to competition (inasmuch as such tools at least arguably foster transparency, which in turn can lead to lower prices).

Whatever the future holds for the USDOJ's interest in the pricing behavior of online retailers, firms with internet retail operations should be attuned to the recent USDOJ activity in this area and consider that activity in devising antitrust compliance strategies, as well as in carrying out their day-to-day operations.

## COMPLIANCE

### ANALYSIS

In our January 2016 Cartel Enforcement Report, we noted that the USDOJ Antitrust Division's historical refusal to provide compliance credit to any company found to be engaged in a cartel, and its recent policy shift (starting in 2015) to reduce criminal fines for effective compliance programs. In 2015, we saw the Antitrust Division give its first two fine reductions for effective compliance programs. Last year also saw both the Assistant Attorney General for Antitrust and the Deputy Assistant Attorney General for Criminal Enforcement give seminal speeches discussing the importance of effective cartel compliance programs, as well as an indication that the Antitrust Division would consider companies' culture of compliance in determining the appropriate fines for cartel cases.

The first half of 2016 has seen further comment from senior USDOJ antitrust officials noting the Department's belief in the importance of effective corporate cartel compliance programs. In February, in a mock hypothetical exercise at the American Bar Association/International Bar Association International Cartel Workshop held in Tokyo, Deputy Assistant Attorney General Brent Snyder restated the Antitrust Division's position on compliance programs. That is, a company pleading guilty for cartel violations can receive credit for a "culture-changing, . . . forward-looking" remedial compliance program that begins as soon as the violation is uncovered. In another February speech before

the Yale Global Antitrust Enforcement Conference, Snyder noted that corporations must have antitrust compliance as part of their culture—"from the top down." Snyder also noted that the USDOJ would seek probation and corporate monitors in criminal resolutions where companies fail to "demonstrate serious compliance efforts."

Snyder's comments are reflected in a downward departure memorandum filed by the USDOJ in October 2015 in an auto parts case against a manufacturer that planned to plead guilty. In recommending a downward departure from the federal sentencing guidelines, the USDOJ noted the following: First, the management, starting at the top, directed a full investigation, fully cooperated, and instituted policies to ensure that the company "would never again violate the antitrust laws." In addition, the USDOJ noted that this company changed its compliance culture, including direction from top management at the company, anonymous reporting, proactive monitoring and auditing, and discipline of employees who violated the policy.



The USDOJ has indeed highlighted a compliance culture as a part of its cartel enforcement this year. In April, two West Virginia hospital systems settled a USDOJ civil suit alleging that they conspired to illegally allocate territories for marketing healthcare services in violation of the Sherman Act. The proposed settlement prohibits the two hospitals from agreeing with each other, or any other healthcare providers, to divide any service, customer, or geographic territory. More interestingly, however, is that the hospitals must implement an antitrust compliance program and permit compliance inspections by the USDOJ. The proposed settlement would expire after five years.

This year has also seen an emphasis on cartel compliance by the Brazilian competition authority CADE. In January, CADE published guidelines on competition compliance programs outlining what CADE views as crucial to an effective compliance program.

CADE lists the following as features of a robust compliance program (note some of the parallels between CADE's guidance and the various comments made by senior USDOJ officials in 2015 and 2016):

- **Commitment from the Top**—Compliance culture must be driven from the top down and noted in such documents as a company's code of conduct. There also must be ramifications for breaking cartel compliance initiatives, such as an impact on an employee's salary.
- **Appropriate Resources**—A company must allocate sufficient resources to ensure the success of any compliance program.
- **Autonomy and Independence**—There must be a person heading compliance who has sufficient autonomy and independence to make decisions that impact the company as a whole.
- **Risk Analysis**—Any compliance program must undertake an analysis to determine any risks associated with the company's activities.
- **Risk Mitigation**—This would include appropriate cartel training to employees, monitoring, and internal discipline.
- **Program Review**—A company must regularly review its compliance program to ensure its effectiveness.

## REFOCUSING ON INDIVIDUAL ACCOUNTABILITY IN CARTEL ENFORCEMENT FOLLOWING THE USDOJ YATES MEMO

As noted in our last report, in September 2015, the USDOJ announced a major policy shift to focus on greater individual accountability in criminal prosecutions and civil cases. The policy, which was announced by the second-highest ranking USDOJ official (Deputy Attorney General (DAG) Sally Yates) is known as the Individual Accountability Policy and often referred to as the “Yates Memo.”

The policy is based on “six key steps” implemented “to strengthen” USDOJ’s “pursuit of individual corporate wrongdoing” (see adjacent box for a listing of the steps). Since the September 2015 announcement, the policy has been further defined in a series of speeches by senior USDOJ officials.

After the policy was announced, some initial questions were raised about what impact it may have on cartel enforcement. The USDOJ has now confirmed internal changes by the Antitrust Division.

In February 2016, Deputy Assistant Attorney General Brent Snyder, who oversees criminal enforcement at the USDOJ, explained that changes have been implemented following the Yates Memo:

- 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 and that we bring cases against individuals as quickly as evidentiary sufficiency permits to minimize the risk that cases will be time-barred or that evidence will become stale from the passage of time. We are also undertaking a more comprehensive review of the organizational structure of culpable companies to ensure that we are identifying and investigating all senior executives who potentially condoned, directed, or participated in the criminal conduct.

In May, DAG Sally Yates underscored the Antitrust Division changes in a speech. In particular, she noted the policy impact on the “carve out” and “carve in” decision on which executives are prosecuted under a corporate plea agreement. As DAG Yates explained, “Antitrust prosecutors are taking a hard look at which individuals are ‘carved in’—and thus receive protections against prosecution—and ‘carved out’ of a corporate agreement. Now, after the new policy, they are erring on the side of ‘carving out,’ in order to ensure that those individuals most responsible for wrongdoing are not given a pass.”

In June, during a litigation conference, DAAG Snyder underscored the Antitrust Division’s resolve in identifying and holding accountable the highest-level executives responsible for the conduct—even in the most challenging of cases. He noted that “after the Yates memo, when applying the principles of federal prosecution weighs in favor of bringing a case against an individual, we are even more inclined than before to charge and try even the toughest cases.” As he recognized, “[w]e’ll win some of those trials, and we’ll probably lose some of those trials. But in every one, the same values inform our discretion and our judgment: accountability for those who commit antitrust offences against the public.”

Looking ahead, it is clear that the Yates Memo has impacted all USDOJ Divisions, including the Antitrust Division. The Antitrust Division announced that it will focus on individual culpability earlier during an investigation. The impact of the policy will likely be seen in the corporate plea agreement “carve outs.” We will continue to monitor and report on these developments.

## **Individual Accountability Policy (Yates Memo)**

### **Six Key Steps**

1. To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct.
2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.
3. Criminal and civil attorneys handling corporate investigations should be in routine communication with one another.
4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.
5. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires, and declinations as to individuals in such cases must be memorialized.
6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

## ASSESSING ANTITRUST RISK OF PRICE ANNOUNCEMENTS —EU COMMISSION DECISION IN CONTAINER SHIPPING

In July, the EU Commission adopted a decision rendering legally binding commitments offered by 14 container liner shipping companies to settle the Container Shipping case. The carriers have made no admission of liability of infringement under EU law, but must respect the commitments or face a fine of up to 10% of their worldwide turnover—without the Commission having to find an infringement of the EU antitrust rules. This decision brought to an end the Commission’s long-running own-initiative investigation that it had commenced by dawn raids on the offices of the major container liner shipping companies in May 2011. A separate own-initiative investigation by the Russian Federal Antimonopoly Service (FAS) is continuing.

The EU Commission’s investigation found that the 14 carriers had regularly announced their intended future increases of freight prices on their websites, via the press, or in other ways. These price announcements, known as General Rate Increases (GRI) announcements, did not indicate the fixed final price for the service concerned, but only the amount of the increase in US-dollars per transported container unit (twenty-foot equivalent unit (TEU)), the affected trade route, and the planned date of implementation. They generally concerned sizable increases of several hundred US-dollars per TEU. GRIs were made typically three to five weeks before their intended implementation date, and during that time some or all of the other carriers announced similar intended rate increases for the same or similar route and same or similar implementation date. Announced GRIs were sometimes postponed or modified by some carriers, possibly aligning them with the GRIs announced by other carriers.

The Commission considered that as GRIs provided only partial information on future prices and were not binding, customers could not rely on them, while competitors could adjust prices without the risk of losing customers. The Commission argued that carriers were therefore using GRIs to signal competitors as to their future pricing intentions, which reduced uncertainty and decreased their incentive to compete. The Commission concluded that such practices could lead to higher prices for container liner shipping services and harm competition and customers, in breach of EU and European Economic Area (EEA) competition rules’

ban on concerted practices between companies (Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement).

In order to address the Commission’s concerns, the 14 carriers offered the following commitments (not applicable to bilateral negotiations or agreements):

- No further publication or communication of GRIs (i.e., changes to prices expressed solely as an amount or percentage of the change); and
- future price announcements to be made not more than 31 days before their entry into force, to take the form of binding maximum prices (subject to bilaterally negotiated discounts), and to include at least the five main elements of the total price (base rate, bunker charges, security charges, terminal handling charges, and peak season charges if applicable).

This is an important decision in a controversial area. Since the Commission’s failed attempt in its 1984 decision in the Wood Pulp case (annulled by the European Court of Justice in 1993 ) to find that making regular price announcements without further evidence of collusion constituted an infringement of EU law, the Commission has repeatedly sought to address the issue of potentially anticompetitive conduct in oligopolistic markets without success (e.g., it suffered another major defeat when its decision to block a merger in the package holiday sector in its 1999 decision in Airtours was annulled by the European Court of First Instance in 2002 ).

Thus, Container Shipping represents a rare success for the Commission in its attempt to control unilateral conduct in oligopolistic markets and/or markets in which there is a high level of price transparency. While it may be argued that Container Shipping should be confined to the particular factual circumstances of the container shipping sector, it seems likely in practice to have significant effects, both direct (e.g., on the ongoing FAS investigation into container shipping in Russia) and indirect, on future enforcement practice in the European Union and possibly in other jurisdictions around the world that have modelled their laws on EU law.

Companies that are reviewing their current price announcement practices or are contemplating making price announcements in the future should therefore consider the timing, content, and binding nature of such announcements when assessing potential EU antitrust risk. A checklist of questions to consider is set out below.

## Assessing EU Antitrust Risk of Price Announcements

### Four Key Questions

1. Is your industry highly concentrated and/or is pricing in your industry highly transparent (e.g., industry players have easy access to, and regularly monitor, pricing data)?
2. Do your price announcements contain sufficient information (e.g., the main elements on which the ultimate price will be calculated) for customers to rely on when making their purchasing decisions?
3. Are your price announcements made more than one month in advance of the time when customers place significant orders?
4. Are your price announcements in the form of a binding maximum price or can they be adjusted upwards later?

Commission Decision 85/202/EEC of 19 December 1984 OJ [1985] L85/1

*Ahlström Osakeyhtiö and others v Commission*, ECLI:EU:C:1993:120

Case No IV/M.1524 - *Airtours/First Choice* OJ [2000] L93/1

*Airtours v Commission*, ECLI:EU:T:2002:146

## OUR PRACTICE

Morgan Lewis has acted as US, European, and global coordinating counsel for multinational corporations in virtually every major international cartel investigation of the last 20 years, guiding clients through every stage of the US cartel litigation process—from initial investigation through final resolution. Our antitrust lawyers have coordinated multijurisdictional cartel investigations and civil litigation and defended some of the world's largest corporations in high-stakes treble damages class actions involving allegations of price fixing and other cartel conduct.

We also assist clients in establishing compliance programs to prevent or detect potential cartel conduct that may result in substantial criminal liability. We help design compliance programs that mitigate the sentencing consequences in the criminal justice system that are consistent with recent DOJ compliance standards.

More than 20 Morgan Lewis lawyers have previously served as prosecutors with the DOJ, including partners that have direct experience prosecuting cartel matters. Our team includes the former Assistant Chief of the National Criminal Enforcement Section in the DOJ's Antitrust Division, as well as the former Assistant Attorney General in charge of the Antitrust Division, the US Attorney for the District of Delaware, the former White House Counsel, Chief of Staff at the Antitrust Division, Counselor to the head of the Antitrust Division, Assistant Chief in the Antitrust Division's National Criminal Enforcement Section, and Trial Attorney in the Antitrust Division's National Criminal Enforcement Section.

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The authors of this report compiled the information within using publicly available sources only.

Dollar figures from selected jurisdictions are approximate and reflect fine levels and exchange rates at the time of writing and may not be exhaustive.

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