

Morgan Lewis

ANTITRUST & COMPETITION

**GLOBAL CARTEL
ENFORCEMENT
REPORT
2021**

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INTRODUCTION

While the global pandemic that began in 2020 continued throughout 2021, cartel enforcement activity increased among a number of leading enforcement jurisdictions.

Overall, global fines in 2021 were up by 229 percent compared with 2020, the first year of the global COVID-19 pandemic. The total for 2021 was **\$4.6 billion**, compared with **\$1.4 billion** in 2020. For some jurisdictions, the fine totals were lower than the fine levels before the pandemic in 2020.

Significant fine totals were noted in the European Commission, 1.7 billion euros (\$2 billion); South Korea, 1.02 billion won (\$864.5 million); Brazil, 3.7 billion real (\$655.6 million); China, 1.7 billion yuan (\$268.3 million), the United States, \$150.1 million; and India, 8811.75 billion rupee (\$117.2 million). The European Commission reported the highest cartel fines since 2017, when nearly 2 billion euros (\$2.1 billion) were imposed. The United States reported a significant drop in total fines over 2020, when \$639 million were imposed.

Enforcers continued to impose significant fines in specific investigations. Some examples include 875 million euros (\$983 million) by the European Commission in a case involving the collusion by five car manufacturers “to restrict competition in the area of emission cleaning technology for diesel cars”; 344 million euros (\$387.6 million) by the European Commission in the Foreign Exchange spot-trading cartel; 300 billion won (\$270.9 million) by the Korea Fair Trade Commission for seven steelmakers engaged in bid rigging and exchanging sensitive information; 8.64 billion rupees (\$117.1 million) by the Competition Commission of India against two breweries for agreeing on prices, restricting supplies, and dividing markets; \$107.9 million by the DOJ in the first price-fixing conviction by one of the largest chicken producers; and 102 billion won (\$88 million) by the Korea Fair Trade Commission against 24 concrete pile manufacturers for a price-fixing scheme for concrete piles used for construction projects.

SELECT GLOBAL CARTEL FINES*

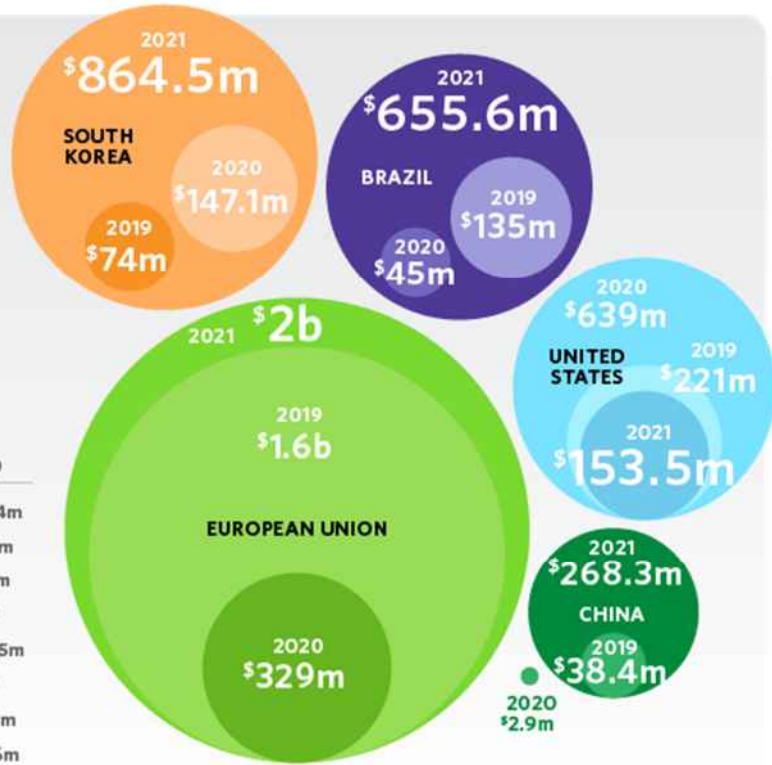
TOTAL GLOBAL 2021 FINES

\$4.6b ▲ 229%

TOTAL GLOBAL 2020 FINES

\$1.4b

OTHER COUNTRIES	2021	2020	2019
INDIA	\$117.2m	\$0	\$13.4m
MEXICO	\$80m	\$32m	\$9.3m
UNITED KINGDOM	\$46m	\$78m	\$60m
TAIWAN	\$51.8m	\$97m	\$2m
AUSTRALIA	\$33.4m	\$0	\$23.5m
SOUTH AFRICA	\$1.2m	\$543k	\$9m
CANADA	\$0	\$2.2m	\$4.4m
JAPAN	\$0	\$40k	\$676m



* Fine totals reflect enforcement activity from January 1 - December 21. They are based on publicly available information and may not be exhaustive.

SELECT GLOBAL CARTEL FINES*

THREE-YEAR COMPARISON



* Fine totals reflect enforcement activity from January 1 - December 21. They are based on publicly available information and may not be exhaustive.

Enforcers are increasing their focus on **labor market competition** issues, not only in the United States but also in Canada, Colombia, Mexico, and the European Union (both at the supranational level by the European Commission and by national enforcers in Poland and Portugal). Of note, competition authorities have launched investigations concerning labor market collusion in professional sports in Colombia, Mexico, Poland, and Portugal for football and basketball players. In December, the US Department of Justice's Antitrust Division (DOJ) brought its first criminal case in the aerospace industry following four pending criminal cases in the healthcare industry.

Global enforcers continue to focus on **digital markets**, including the role of algorithms and artificial intelligence in coordination and price fixing. In November, 13 competition agencies from the G7 countries and four guest countries issued a [Compendium of Approaches to Improving Competition in Digital Markets](#) that addressed, among other issues, potentially illegal coordination through algorithm.

Key sectors involving global cartel enforcement activity—and those that are likely to be a continuing focus in 2022—include aerospace, agriculture and food, construction, energy, financial services, healthcare and life sciences, infrastructure, procurement, retail and ecommerce, technology and the digital economy, telecommunications, and transportation.

New leadership was announced for enforcement agencies in Australia, Taiwan, and the United States.

COVID-19 Impact on Cartel Investigations

While total fines increased overall in 2021 for several competition agencies, fines in a number of jurisdictions were flat or lower than in 2020. COVID-19 remains a contributing factor to the slower pace of cartel investigations in several jurisdictions.

In two primary respects, the prolonged global pandemic, spanning more than 22 months, has had an impact on cartel investigations and fines. First, while enforcers have continued with investigations, the ability to conduct dawn raids and use other enforcement tools is hampered by the ups and downs of the pandemic and remote work of most enforcers. Some enforcers, including those in Brazil, noted that the pandemic was a contributing factor to fewer case resolutions. As a result, dawn raids can be expected to rebound strongly next year should the pandemic subside. Notably, the European Commission has stated that it intends to increase its enforcement efforts in this area and has already conducted dawn raids in the wood pulp and life sciences sectors in the third quarter of 2021.

The second impact from the global pandemic is the redirection of enforcement resources to monitor fraud, price gouging, and related schemes associated with public assistance funds during the pandemic, and conduct exploiting pandemic assistance. Many jurisdictions reorganized and created task forces including, for example, the Australian Competition & Consumer Commission's (ACCC) [COVID-19 Enforcement Taskforce](#).

KEY TRENDS AND DEVELOPMENTS

Expanding Enforcement on Labor Market Competition Issues

Labor Market US Enforcement: Recent speeches by high-ranking officials at the DOJ forecast vigorous antitrust enforcement in labor markets, particularly with respect to so-called “no poach” agreements (no-hire or nonsolicitation agreements), wage-fixing agreements, and unlawful information sharing among employers. One key speech on [October 1](#) noted that, “[t]he Division views rooting out collusion in labor markets to be part of its mission to deter, detect, and prosecute cartels more generally. Accordingly, the [Antitrust] Division has invested the substantial time and resources required to ensure vigorous competition in labor markets because the proper administration of the law requires it.” As part

of a broad effort on this issue, the DOJ also plans to use its civil enforcement authority to promote competition in labor markets.

On December 6 and 7, the DOJ and US Federal Trade Commission (FTC) held a [joint workshop](#) called “Making Competition Work: Promoting Competition in Labor Markets” to “discuss efforts to promote competitive labor markets and worker mobility.” The federal agencies intend to make labor market competition a continued enforcement priority.

DOJ Labor Market Criminal Cases: The Antitrust Division has four pending criminal “no poach” cases in Washington, DC, Colorado, Texas, and Nevada involving **healthcare companies**. In November, a district court in the Eastern District of Texas denied a motion to dismiss the indictment on the DOJ’s first-ever criminal wage-fixing case. The enforcement authority of the DOJ to prosecute agreements not to solicit is being challenged in two cases in which motions to dismiss are pending. Read [DOJ Antitrust Division Brings First Criminal Wage-Fixing Case: Continuing Enforcement on Labor Market Issues](#).

On December 16, an indictment was returned in a case charging six **aerospace executives** in a conspiracy to agree not to hire or solicit employees from each other’s companies. According to the DOJ, “[t]he conspiracy affected thousands of engineers and other skilled workers in the aerospace industry who perform services in the design, manufacturing and servicing of aircraft components for both commercial and military purposes.” This is the **first DOJ criminal no-poaching case outside the healthcare industry** and under the leadership of new Assistant Attorney General Jonathan Kanter (see summary below on New Antitrust Division Leadership), who stated on the announcement of the case that the DOJ and its law enforcement partners “will continue to hold individuals and companies accountable for criminal conduct aimed at depriving workers of the myriad benefits that flow from competition.” More labor market competition cases are anticipated.

Labor Market State Enforcement: State enforcement agencies also have aggressively pursued antitrust enforcement in labor markets. For example, on September 9, the New York Attorney General’s Antitrust Bureau announced that one of the four largest title insurance underwriters in the United States agreed to pay a civil penalty of \$1 million to resolve allegations that it entered into anticompetitive no-poach agreements with independent title agencies. The insurance underwriter also agreed to terminate its purported no-poach agreements and cooperate with New York’s ongoing investigations in this area.

Labor Market International Enforcement: While the United States has increased its focus on labor market competition since the announcement of the October 2016 [Antitrust Guidance for Human Resource Professionals](#) by the DOJ and FTC, other enforcers around the world have opened labor market investigations and/or issued guidelines or statements on enforcement in this area. Recent examples include the following:

- **Canada: Updated Guidelines:** On May 6, the Competition Bureau released its updated [Competitor Collaboration Guidelines](#) (CCGs). The CCGs confirm that “purchasing agreements, including employee non-poaching and wage-fixing agreements, may be subject to review under the reviewable matters provisions in” the Competition Act. More recently, on October 20, Commissioner of Competition Matthew Boswell [noted](#) that concerns had been identified about “[g]aps in our cartel law, which mean that those conspiracy provisions do not protect workers from egregious agreements between competitors that fix employees’ wages and restrict workers’ job mobility.”
- **Colombia: Professional Football Leagues:** On November 29, the Colombian competition authority, Superintendence of Industry and Commerce (SIC), announced an investigation against the organization that operates professional football leagues (División Mayor del Fútbol Profesional Colombiano), 16 professional soccer teams, and 20 individual club managers and league heads, based on a complaint that they were participating in an alleged no-poach agreement.

- **European Commission: New Enforcement Focus:** On October 22, Executive Vice President Margrethe Vestager confirmed in a speech titled "[A New Era of Cartel Enforcement](#)" that, for the first time, the commission will focus on labor market competition, including no-poach and wage-setting agreements, as means of "restricting talent from moving where it serves the economy best."
- **Mexico: Football Federation:** On September 23, the Board of Commissioners of the Federal Economic Competition Commission (COFECE) fined 17 clubs and eight people \$8.5 million (MX\$177.6 million) for colluding by (a) agreeing to maximum wage caps for women players (removing labor competition and deepening the gender pay gap) and (b) segmenting the market for male players (by restricting labor mobility through preventing them from negotiating and signing with new teams).
- **Poland: Basketball League:** On April 12, the Office of Competition and Consumer Protection [announced](#) an investigation against the men's basketball league and 16 teams, alleging collusion on "the terms for terminating the players' contracts and agree[ing] to withhold the players' remunerations among themselves."
- **Portugal: Football League:** On April 13, the Portuguese Competition Authority (AdC) issued Statements of Objections concerning a no-poach agreement involving the Portuguese Professional Football League and 31 football clubs participating in the 2019/2020 edition of the First and Second Professional Football Leagues. On April 26, the AdC [issued](#) a warning about anticompetitive agreements in the labor market. On September 21, the AdC [issued](#) a "[Best Practices Guide in Preventing Anticompetitive Agreements in Labor Markets](#)."
- **UK and US Trend:** For more information on how the laws in the United Kingdom and United States are increasingly taking a more restrictive view on the permitted scope of exclusivity and noncompete clauses, read [Exclusivity, Noncompetes, and No Poaching: Navigating UK and US Employment and Competition Laws](#) and [Mitigating the Risk of Enforcement Actions and Litigation from 'No Poach' and Other Agreements](#).

Novel Enforcement Actions

Broadened Enforcement on Cartel Conduct: Traditionally, cartel enforcement is focused on collusion involving price fixing, bid rigging, or market allocation. Two key cases highlight an expanded application of collusion and cartel conduct. Both cases raise questions as to whether this enforcement precedent may be used in future enforcement actions.

First, on July 8, the European Commission imposed an **875 million euros (\$983.5 million)** fine on five automobile manufacturers for colluding "to restrict competition in the area of emission cleaning technology for diesel cars." The commission [noted](#) that "this is the **first cartel prohibition decision based solely on a restriction of technical development** and not on price fixing, market sharing or customer allocation." The commission concluded that competition was reduced based on the "agreement on AdBlue tank sizes and ranges and a common understanding on the average estimated AdBlue-consumption." The automobile manufacturers "also exchanged commercially sensitive information on these elements. They thereby removed the uncertainty about their future market conduct concerning NOx-emissions cleaning beyond and above the legal requirements (so called 'over-fulfilment') and AdBlue-refill ranges."

The five companies admitted their cartel involvement as part of the settlement. One company avoided any fine after obtaining full immunity under the leniency program. Executive Vice President Vestager separately [commented](#), "[f]or over five years, the car manufacturers deliberately avoided to compete on cleaning better than what was required by EU emission standards. And they did it despite the relevant technology being available."

Second, on October 28, the Taiwan Fair Trade Commission (TFTC) imposed fines of **220 million Taiwan dollars (\$7.9 million)** and **65 million Taiwan dollars (\$2.3 million)** on two pharmaceutical companies based on an exclusive distribution agreement that was found to constitute concerted action. In the case, one Taiwanese pharmaceutical manufacturing company signed an exclusive distribution agreement with another pharmaceutical manufacturer providing exclusive agency to market the other's colon cancer medication in exchange for payment. As [noted](#) by the TFTC, after entering into the exclusive distribution agreement, "both companies established the **mutual understanding** for the former to acquire the exclusive agency to market the latter's" product. "In exchange, the former would pay the latter an amount of money. The practice of **restricting each other's business activities** was able to affect the supply-demand function in the colon cancer drug market in violation of" Taiwan's Fair Trade Act.

Digital Markets and Platforms Continued Focus

Focus on Digital Markets Competition and Considering New Standards for Digital Platforms:

Global enforcers continued to consider efforts to enhance competition enforcement in digital markets. As one recent example, on November 29, 13 competition agencies from the G7 countries and four guest countries (listed below) issued a [Compendium of Approaches to Improving Competition in Digital Markets \(the Compendium\)](#). The Competition and Markets Authority (CMA) hosted the gathering of competition agencies. The Compendium highlights approaches to competition in digital markets and details several initiatives. Key issues include the role of algorithms, examples of price fixing and information exchanges in digital markets, the sufficiency of current enforcement tools and whether legislative reforms are required, the role of privacy and consumer protection in enforcement, the need to strengthen institutional capacity, and the need for regulatory cooperation and international collaboration.

The G7 competition authorities include (1) Autorità Garante della Concorrenza e del Mercato (Italy); (2) Autorité de la concurrence (France); (3) Bundeskartellamt (Germany); (4) Competition Bureau (Canada); (5) CMA (United Kingdom); (6) DOJ (United States); (7) Directorate General for Competition (European Commission); (8) FTC (United States); and (9) Japan Fair Trade Commission (JFTC) (Japan). The four guest countries and authorities are (10) ACCC (Australia); (11) Competition Commission of India (CCI) (India); (12) Korea Fair Trade Commission (KFTC) (South Korea); and (13) Competition Commission South Africa (CCSA) (South Africa).

Other Recent Digital Market Competition Initiatives: Over the last few years, other countries have taken steps toward enforcing competition laws on digital platforms. More recent examples include the following:

- **Canada: New Digital Enforcement and Intelligence Branch:** On October 20, Commissioner of Competition Matthew Boswell [reported](#) that the new branch will "focus on issues in the digital economy."
- **Japan: Report:** On March 31, the JFTC issued a [report](#) titled "**Algorithms/AI and Competition Policy**" that was produced by a "Study Group on Competition Policy in Digital Markets." The report highlights "four scenarios of concerted practices by Algorithms/AI" including (1) monitoring algorithms, (2) parallel algorithms, (3) signaling algorithms, and (4) self-learning algorithms.
- **South Africa: Market Inquiry:** In May, the CCSA commenced an online intermediation platforms market inquiry. The inquiry concentrates on three areas: "(a) market features that may hinder competition amongst the platforms themselves, (b) market features that may give rise to discriminatory or exploitative treatment of business users, and (c) market features that may negatively impact on the participation of small and mid-size enterprises and/or historically disadvantaged firms."

- **Taiwan: Task Force:** On June 30, the TFTC established a task force to survey the digital platform industry. The TFTC indicated that, drawing on the task force’s survey, it will likely publish an economic policy White Paper on the digital economy.
- **United Kingdom: New Digital Markets Unit:** On April 7, the CMA [established](#) a Digital Markets Unit (DMU) to focus on the future pro-competition regime for digital markets. The DMU will oversee a new regulatory regime for the most powerful digital firms, promoting greater competition and innovation in these markets and protecting consumers and businesses from unfair practices.

New Leadership

New leadership has been announced with the following enforcers:

Australia: New Chair Nominated: On December 14, Gina Cass-Gottlieb was nominated to serve as the next chair of the ACCC. She is recognized as a leading competition lawyer. If confirmed, she would be the first female chair of the ACCC and her term would commence in March 2022. Current chair Rod Sims is stepping down in March after serving three terms.

Taiwan: New Chair: On February 1, May Lee became the new [TFTC](#) chair and began a four-year term. She promised to improve the TFTC’s administrative process and increase its transparency. Previously, she served as the head of the Department of Commerce, Ministry of Economic Affairs, and other government positions.

United States: Antitrust Division Assistant Attorney General: On November 16, the US Senate confirmed Jonathan Kanter, nominated by US President Joe Biden on July 20, as Assistant Attorney General for the Antitrust Division by a vote of 68-29. In his testimony before the US Senate Judiciary Committee, he forecasted an aggressive enforcement agenda across several industries, including technology, agriculture, and pharmaceuticals. His testimony also emphasized the importance of competition in labor markets, particularly in the context of overly broad noncompete clauses in labor contracts.

CORPORATE FINES

Top fines collected in 2021 from corporations in leading enforcement jurisdictions:

	Fine	Date	Country / Jurisdiction	Products and Notes
1.	875.1 million euros (\$985.8 million)	July 8	European Commission	Fined five car manufacturers for colluding “to restrict competition in the area of emission cleaning technology for diesel cars”; first cartel enforcement action “based solely on a restriction of technical development.”
2.	371.3 million euros (\$418.2 million)	May 20	European Commission	Fined seven investment banks for participating in a trading cartel in the primary and secondary market for European government bonds.
3.	344.3 million euros (\$387.8 million)	December 2	European Commission	Fined five banks for engaging in a Foreign Exchange (Forex) spot-trading cartel. This was the “sixth cartel investigation in the

				financial sector since 2013” and “the third leg” of the investigation into Forex.
4.	300 billion won (\$270.9 million)	January 26	South Korea	Fine imposed on seven steelmakers for bid rigging and exchanging sensitive information from 2010 to 2018.
5.	8.64 billion rupees (\$117.1 million)	September 24	India	Fined two breweries for agreeing on prices, restricting supplies, and dividing markets between 2009 and 2018, including through a trade group.
6.	\$107.9 million	February 23	United States	First price-fixing conviction by one of the largest chicken producers from as early as 2012 and continuing at least into 2017.
7.	102 billion won (\$88 million)	July 26	South Korea	Fined 24 concrete pile manufacturers for a price-fixing scheme involving concrete piles used for construction projects.
8.	82 billion won (\$72.2 million)	March 24	South Korea	Fined four auto parts manufacturers for bid rigging on weatherstrips between 2007 and 2018.
9.	340.8 million reais (\$60 million)	April 14	Brazil	Fined seven companies and seven individuals for participating in a school meals cartel based on public tenders between 2008 and 2013. The investigation included data from more than 40,000 procurement documents.
10.	48 million euros (\$54 million)	April 20	European Commission	Fined three EU railway companies for participating in a customer allocation cartel.
11.	32 million pounds (\$44.2 million)	March 31	United Kingdom	UK Payment Systems Regulator (PSR) fined three card issuers for agreeing not to compete to provide local authorities in the United Kingdom with prepaid cards given to individuals receiving welfare support. The investigation remains pending as to two other companies. This is the first enforcement action by the PSR since 2015, when it obtained concurrent competition authority.
12.	281.16 million renminbi (\$44.1 million)	July 23	China	Fined eight members of the Pre-Mixed Concrete Association for price fixing, output restriction, market division, and boycott.
13.	903 million pesos (\$43.3 million)	August 16	Mexico	Fined five companies and 21 individuals for colluding in the market for the

				distribution of medicines; 10 executives were disqualified from serving as directors, managers, or executives of the companies for terms ranging from six months to four years.
14.	235 million reais (\$41.6 million)	October 5	Brazil	Fined two companies and five individuals for colluding in the automotive filter aftermarket between 2001 and 2012.
15.	1.159 billion Taiwan dollars (\$41.5 million)	July	Taiwan	Fined two industrial electronic manufacturers for concerted actions.
16.	192.2 million reais (\$38.4 million)	June 30	Brazil	Fined five tube makers and six individuals for colluding on tubes and fittings between 2006 and 2013.
17.	31.7 million euros (\$35.6 million)	June 28	European Commission	Amended and re-adopted decisions in the Euro Interest Rate Derivatives cartel after the 2019 partial annulment by the General Court of the 2016 decision.
18.	225.69 million renminbi (\$35.4 million)	January 28	China	Fined eight cement companies for price fixing, output restriction, and market division.
19.	28.4 million euros (\$31.9 million)		European Commission	Fined three investment banks for coordinating trading strategies, sensitive pricing information, and prices "in a market in which investment and pension funds regularly buy and sell bonds on behalf of their investors and pensioners."
20.	20 million euros (\$22.5 million)	December 10	European Commission	Fined a Spanish company and its subsidiary for engaging in a cartel regarding "the wholesale price formation mechanism in the European ethanol market" between 2011 and 2014.
21.	20 million euros (\$22.5 million)	November 19	European Commission	Fined an Italian company and its subsidiary for price fixing, agreeing on market shares and volume quotas, allocating customers and markets, exchanging commercially sensitive information, and coordinating tenders in the canned vegetable sector between 2000 and 2013.
22.	25.1 billion won (\$21.2 million)	October 12	South Korea	Fined seven chicken producers for fixing prices of meat used in ginseng soup between July 2011 and July 2017.
23.	\$20 million	January 4	United States	Fined a ready-mix concrete company under a deferred prosecution agreement

				for price fixing and rigging bids from 2010 through July 2016; a second company was charged in the ongoing investigation.
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Other Notable Fines

Australia: Fourth Shipping Company Conviction: On February 5, a Norway-based shipping company was convicted of criminal cartel conduct and fined **24 million Australian dollars (\$17.1 million)** for shipping vehicles to Australia from Asia, Europe, and the United States on behalf of major car manufacturers. The conviction concluded the investigation, this being the fourth company fined for its involvement in a customer allocation agreement; fines now total **83.5 million Australian dollars (\$59.6 million)**.

Australia: Pharmaceutical Company Conviction: On November 16, an Australia-based pharmaceutical company pleaded guilty to three charges and admitted a further seven offenses involving price fixing, bid rigging, and market allocation cartel arrangements with other overseas pharmaceutical ingredient suppliers. Fines related to this conduct will be forthcoming.

Australia: Airline Conviction Sustained: On April 20, a federal court approved a payment plan for an Indonesia-based airline that dropped its appeal of a May 2019 conviction for colluding with other global airlines on fees and surcharges for air freight services on consumer goods. The airline agreed to pay the **19 million Australian dollars (\$15 million)** penalty, and a contribution to the ACCC's costs, in monthly instalments between December 2021 and December 2026.

Australia: Acquittal: On June 2, an Australian jury acquitted a rehabilitation aids company, its CEO, and a second executive of eight criminal cartel offenses. The charges related to alleged attempted price fixing and bid rigging involving the supply of assistive technology products used in rehabilitation and aged care, such as walking frames, bathroom aids, and similar items to assist people with disabilities.

Brazil: School Materials Bid-Rigging Cartel: On June 16, Administrative Council for Economic Defence (CADE) fined six companies and 12 individuals **97.4 million reais (\$19.25 million)** for engaging in a bid-rigging cartel involving the public acquisition of school materials.

Brazil: Public and Private Services: On September 16, CADE confirmed an investigation involving **42 companies and 43 individuals** alleged to have rigged bids concerning more than 4,700 public and private bids involving fire brigade, first responder, and building maintenance services.

Canada: Private Condominium Projects: On March 29, the Competition Bureau filed criminal charges against four companies and three individuals for conspiring to commit fraud and rig bids for condominium refurbishment contracts issued by private condominium corporations in the Greater Toronto area during 2009 and 2014.

Mexico: Mexican Football Federation: On October 4, the Board of Commissioners of COFECE fined three companies and nine individuals **313.4 million pesos (\$15.0 million)** for colluding in the market for baby diapers, products for feminine sanitary protection, and incontinence.

India: Steel Industry Investigation: On February 10, the CCI commenced a probe into the steel industry to determine whether cartels are responsible for recent large price increases. The CCI previously investigated the industry between 2008 and 2014 but found no evidence of wrongdoing.

India: Cement Manufacturers Investigation: On July 29, the Madras High Court directed the CCI to investigate allegations of potential cartels involving cement manufacturers. In December 2020, the CCI conducted raids of several cement manufacturers.

South Korea: Obstruction of Justice: On February 17, the KFTC filed its **first criminal obstruction charges** against a steel company and three employees for shredding documents related to the price-fixing investigation into the scrap steel sector.

EXECUTIVE AND INDIVIDUAL LIABILITY

Executive or individual liability remains an important consideration in global cartel enforcement activity. High-profile examples include:

Australia: Export Manager Conviction: On October 26, a former export manager of a pharmaceutical ingredient company pleaded guilty to criminal cartel conduct relating to his conduct involving price fixing, bid rigging, and market allocation cartel arrangements.

Canada: Rigged City Bids: On June 29, the Competition Bureau filed criminal charges against a fifth individual for conspiring to rig bids for City of Gatineau infrastructure contracts. A regional director at an engineering firm is accused of engaging in the bid-rigging scheme during 2003 and 2004. The first four charged individuals pleaded guilty for their roles in bid rigging on 21 infrastructure contracts and were sentenced to terms totaling five years and 11 months and community service totaling 260 hours.

United Kingdom: Disqualification of Roofing Materials Company Directors: On March 10, the CMA obtained the disqualification of three company directors following a finding that they formed a cartel in the roofing materials industry. Two of the company directors gave disqualification undertakings not to act as directors of any UK company for four years and three years, respectively. The third company director gave a disqualification undertaking not to act as a director of any UK company for six and a half years. The disqualifications followed fines totaling more than 9 million pounds (\$12.5 million) against companies that admitted their roles in the infringement and agreed to cooperate with the CMA.

United Kingdom: Disqualification of Construction Company Directors: On March 18, the CMA secured disqualification of two former directors of a Northern Ireland-based firm for their roles in an illegal construction cartel. The two former directors may not serve as directors of any UK company for 11 and 12 years, respectively.

United States: DOJ Mistrial in Chicken Price-Fixing Trial: On December 16, a federal judge in Colorado declared a mistrial in the prosecution against 10 poultry executives who are alleged to have conspired to fix chicken prices or rig bids in the US chicken market from 2012 to 2019. After a seven-week trial, the jury was unable to reach a verdict following four days of deliberation. The DOJ will decide whether to proceed with a new trial in 2022. In the investigation, two companies and 14 executives have been indicted.

United States: Online Retail Platform Seller Conviction: On July 23, an individual was convicted for conspiring to fix prices of DVDs and Blu-ray discs sold on Amazon Marketplace from May 2018 through October 2019. The investigation remains ongoing. The DOJ continues to prosecute online Sherman Act violations over the last several years.

OTHER CARTEL ENFORCEMENT DEVELOPMENTS

North America

Canada: Increased Budget: On October 20, Commissioner of Competition Boswell [announced](#) that the Competition Bureau would “receive an additional **\$96 million Canadian dollars (\$78 million)** over the next 5 years” to focus on three areas: (1) “new and more complex anticompetitive conduct, especially in digital markets”; (2) hiring for enforcement teams, including for litigation and external experts; and (3) “to advocate for pro-competitive regulatory and policy changes at all levels of government in Canada.”

Canada: Updated Competitor Collaboration Guidelines: On May 6, the Competition Bureau released its updated CCGs. Key changes include increased flexibility of the bureau to determine the appropriate section of the Competition Act for enforcement; clarification that “buy-side” agreements (such as no-poach and wage-fixing agreements) are subject only to section 90.1’s civil regime; reference to pricing algorithms as a potential means of price fixing; consideration of noncompete clauses in mergers and acquisitions; reviewability of consortium bids for competitive effects under section 90.1 of the act, even if the consortium’s members have informed the requesting party of the arrangement; and evaluation of research and development collaborations as between actual or potential competitors as potential “sham” agreements.

United States: White House Executive Order: On July 9, President Biden signed the sweeping [“Executive Order on Promoting Competition in the American Economy”](#) designed to “promote competition in the American economy, which will lower prices for families, increase wages for workers, and promote innovation and even faster economic growth.” According to the White House, the wide-ranging order includes 72 “initiatives” to be addressed by more than a dozen federal agencies to thwart anticompetitive conduct in several key segments of the economy, including healthcare (i.e., insurance, hospital, and prescription drug markets), telecommunications, agriculture, transportation, technology, and banking and consumer finance. The order mandates a “whole-of-government competition policy” and calls on multiple departments, including the FTC and DOJ, among others, to “fairly and vigorously” enforce the nation’s antitrust laws and to consider revising and strengthening existing agency policies. The order also “[e]ncourages the FTC and DOJ to strengthen antitrust guidance to prevent employers from collaborating to suppress wages or reduce benefits by sharing wage and benefit information with one another.”

United States: Whistleblower Protections: On February 19, the US Department of Labor (DOL) [announced](#) that the Occupational Safety and Health Administration (OSHA) had begun investigating whistleblower complaints of retaliation under the Criminal Antitrust Anti-Retaliation Act. The statute, enacted on December 23, 2020, provides new protections to an employee or another person who reports what he or she “reasonably believes to be a violation” of antitrust laws to the government, an internal supervisor, or company employee with authority to investigate the alleged allegations. Read [Double-Check Whistleblower Programs to Prep for Antitrust Anti-Retaliation Act](#) and [New Federal Protections for Whistleblowers Who Report Criminal Antitrust Violations and Impact on Labor Mobility Issues](#).

United States: DOJ Procurement Collusion Strike Force Efforts: The DOJ Procurement Collusion Strike Force (PCSF), [established](#) in November 2019 to combat antitrust crimes and related fraudulent schemes involving procurement and grant and program funding, continued its proactive enforcement efforts. The PCSF has grown to include members in the DOJ’s Antitrust Division, 22 US Attorneys’ Offices, and seven national law enforcement agencies.

On October 13, the PCSF director delivered a [speech](#) highlighting enforcement priorities, which include “set-aside fraud” and infrastructure. Set-aside fraud involves targeting programs designed to facilitate the participation of disadvantaged communities in public procurement. This fraud “cheat[s] the government procurement process” and “rob[s] opportunities” from disadvantaged communities. The PCSF will also prioritize antitrust and other violations involving infrastructure funding.

Other recent case examples include the following:

- On June 25, a Belgian security services company was convicted for conspiring to rig bids, allocate customers, and fix prices regarding a contract to provide security services to the US Department of Defense for military bases and installations in Belgium. The company agreed to a **\$15 million** fine. This is the **first international resolution** obtained by the PCSF. On October 18, two former employees of the same company pleaded guilty to charges stemming from the conspiracy. Both individuals are Belgian nationals residing in Belgium.
- On June 7, an engineering firm was convicted of a decade-long conspiracy to rig bids and defraud the North Carolina Department of Transportation. The court imposed a criminal fine of **\$7 million** and ordered the firm to pay more than **\$1.5 million in restitution** to the state government.

United States: Continued Use of “Deferred Prosecution” Agreements: In 2021, the DOJ continued its recent trend of entering into deferred prosecution agreements. In 2021, case examples included resolution with a ready-mix concrete company for fixing prices and rigging bids under a deferred prosecution agreement resulting in a \$20 million fine, and resolution with two providers of foreign-language services for conspiring to defraud the United States by impeding, impairing, obstructing, and defeating competitive bidding for a contract issued by the National Security Agency in 2017, resulting in criminal penalties of \$147,000 and \$140,000.

In prior years, the DOJ had resisted these agreements. In a [speech](#) on July 2021, the acting assistant attorney general defended the use of these agreements by the Antitrust Division, noting that “[a] deferred prosecution agreement is much closer to a guilty plea than leniency, which has unmatched benefits. Companies should understand that there’s no tactical advantage in deciding not to apply for leniency and instead holding out for a deferred prosecution agreement; a company that makes that choice will most certainly not be eligible for anything short of a criminal conviction.”

The acting assistant attorney general stressed the importance of robust antitrust compliance programs to detect and deter antitrust violations. And he indicated that the Antitrust Division would continue to credit compliance programs when making charging decisions in the same manner as the rest of DOJ does—a practice adopted by the Antitrust Division in 2019. For more information on antitrust compliance standards, read [Landmark Antitrust Division Policy to Incentivize Corporate Compliance and Mitigate Antitrust Risk](#).

Finally, the acting assistant attorney general also emphasized that the Antitrust Division will continue to implement its “marquee enforcement tool, the leniency program.” According to the acting assistant attorney general, the leniency program—which has not changed since the early 1990s—remains to be a “model of ... clear, transparent, [and] predictable enforcement.”

South America

Brazil: Leniency Program Milestone: In April, CADE [noted](#) 21 years had passed since Brazil’s Leniency Program was introduced in 2000 by Law 10149 and amended over the years, and that “101 agreements have already been signed, contributing to the investigations held by the agency.”

Brazil: Leniency Guide: In September 2021, CADE published a [guide](#) on evidence examination in leniency cases.

Europe

United Kingdom: CMA Annual Report: On March 23, the CMA [published](#) its annual plan for 2021/2022 and it was presented to Parliament. The report followed the end of the transition period on December 31, 2020 (during which the United Kingdom was no longer a member of the European Union but remained a member of the EU single-market and customs union). The report highlighted that the

CMA is “ready to launch complex cartel and antitrust cases and merger investigations with a global dimension that would have previously been reserved to the European Commission.” The CMA remains “committed” to using its powers “to investigate and prosecute individuals under the criminal cartel offence ... wherever appropriate.” The CMA plans to “clamp down on cartels and collusive behaviour which seek to keep prices up.”

United Kingdom: Testing the Boundaries of International Enforcement: On November 5, the High Court of England and Wales concluded that it lacks jurisdiction over cartel-damages claims brought against a Brazilian orange juice producer by more than 1,500 Brazil’s farmers and 50 local fruit farms, although the court confirmed that it can hear the claims against two of the company’s executives. The case is another example of the limits of enforcement authority for extraterritorial conduct that raise fact-specific issues.

United Kingdom: Temporary Suspension of Antitrust Enforcement for Fuel Industry: On September 26, the UK government [decided](#) to “temporarily exempt [the fuel] industry from the Competition Act 1998 for the purpose of sharing information and optimising supply.” The objective was to “ease temporary supply chain pressures brought on by the pandemic and the global economy rebounding around the world.”

Asia

China: New Enforcement Agency: On November 18, China’s **National Anti-Monopoly Bureau** (NAMB) was inaugurated in Beijing. The new bureau will be responsible for drafting measures and guidelines, organizing enforcement work, guiding fair-competition review work, and promoting enforcement, international cooperation, and exchange. Gan Lin was appointed Head of the NAMB. She has served as vice minister of the State Administration for Market Regulation (SAMR). The move comes after China prioritized antitrust work as a key task for the year.

China: Pending Amendments: A series of significant changes to antitrust law are under consideration in China.

On November 15, SAMR issued the **Guidelines for Overseas Anti-Monopoly Compliance of Enterprises**, which signal China’s preparation for integrating China’s antitrust practice with international standards. The guidelines caution Chinese companies of major antitrust rules and compliance requirements in foreign jurisdictions. They also recommend for Chinese companies engaging in business outside of China or engaging in domestic business but having an impact on overseas markets to establish teams responsible for overseas antitrust compliance to ensure overseas compliance as well as to mitigate noncompliance risks in foreign jurisdictions.

On October 19, draft amendments to the Anti-Monopoly Law were submitted to the Standing Committee of the National People’s Congress for first review.

- **“Hub-and-spoke” cartels:** Among several changes, the draft amendments would extend the cartel prohibition to any undertaking organizing other undertakings to reach agreements or provide substantive assistance for other undertaking to reach agreements. “Hub-and-spoke” cartels may be sanctioned under this provision.
- **Increased Penalties and Individual Liability:** The draft amendments propose to increase legal penalties and add individual liability for cartel violations. They would increase the fine up to 3 million renminbi (\$470,000) upon the undertakings if the undertakings are found to have reached but have not yet implemented the monopoly agreements. A fine of up to 1 million renminbi (\$160,000) would be imposed on individuals responsible for the undertaking’s cartel violations; this is the **first time** that individual liability was proposed for cartel violations. **Safe Harbor:** The draft amendments

propose a safe harbor for small-sized market players. Undertakings whose market shares in the relevant market are lower than a specific threshold to be set by the People's Republic of China antitrust agency are generally not subject to the prohibitive provisions unless there is evidence proving that the agreements entered into by these undertakings have anticompetitive effects.

On February 7, the Anti-Monopoly Commission of State Council issued the **Anti-Monopoly Guidelines on the Field of Platform Economies**, which represent a significant milestone in China's antitrust legislation. The guidelines clarify many long-debated antitrust issues in the cutting-edge platform economy and provide helpful guidance for market players and legal practitioners in the platform economy area, including guidance concerning collusion among competitors and information exchanges.

South Korea: New Amendments: Amendments to the Korean Monopoly Regulation and Fair Trade Act take effect on December 29, including new enforcement measures and enhanced penalties. For example, under the amendments an information exchange may establish a cartel and the maximum penalty rates and the maximum fixed amount fines are doubled for cartels.

Taiwan: Enhanced Whistleblower Payments: On November 17, Taiwan's government doubled the maximum reward an individual can receive for notifying authorities of cartel conduct. The law, the Measures for the Payment of Bonuses for Reporting Illegal Joint Acts, raises the maximum award from **\$50 million Taiwan dollars (\$1.8 million)** to **\$100 million Taiwan dollars (\$3.6 million)**. The Taiwanese Fair Trade Commission will allocate 30% of all cartel fines recovered to an "antitrust fund" to pay whistleblowers.

OUR CARTEL INVESTIGATIONS AND LITIGATION 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 30 years, guiding clients through every stage of the process.

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.

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