Morgan Lewis

2015 GLOBAL CARTEL ENFORCEMENT REPORT

GLOBAL COMPETITION AGENCIES CONTINUE TO AGGRESSIVELY ENFORCE CARTEL LAWS

Although some major US Department of Justice (DOJ) investigations are ending, increased international cooperation and new probes confirm expanding cartel enforcement.

As in recent years, competition authorities worldwide continued to aggressively investigate and prosecute cartel activity in 2015. The United States led the way with a total of $3.8 billion in cartel fines. The European Union countries and Japan also garnered significant fines this year, although down from last year. Taiwan imposed its largest criminal antitrust fine ever in 2015: $177 million for a cartel of capacitor manufacturers. Although the longstanding DOJ auto parts investigation is winding down in 2016, the DOJ continues its aggressive cartel enforcement in other industries. The DOJ has already opened new investigations and accelerated other investigations, including in the capacitors, resistors, other electronic components, e-commerce, financial services, and generic pharmaceuticals industries. Other countries continue to investigate and pursue various auto parts companies.

Increasingly more countries are considering whether to criminalize cartel conduct, such as Chile, which is currently debating the ramifications of making cartel violations a crime. Indonesia and New Zealand also considered but ultimately rejected legislation to criminalize cartel conduct in 2015. This trend not only increases the stakes for

companies and individuals in the countries that make cartel violations a crime, but also potentially makes extradition a more powerful tool in the DOJ's cartel-fighting arsenal. Most extradition treaties have a "dual criminality requirement" (i.e., the conduct at issue must constitute a crime both in the extraditing and receiving country). This requirement has posed a challenge to past efforts by the DOJ to prosecute executives located outside the United States. It is probably no coincidence that the DOJ has increasingly stressed the importance of extradition in its cartel enforcement agenda. It is likewise no coincidence that the DOJ is seeking to push the boundaries of its jurisdiction, arguing for the extension of US antitrust laws to cartel conduct outside the United States.

Finally, the United States, Canada, and other countries have underscored in 2015 the importance of effective corporate compliance programs to mitigate criminal cartel liability or, in the case of ineffective compliance programs, to create cartel liability. The United States provided the first fine reductions in cartel cases in 2015 for "effective compliance programs." Canada and the UK have also recently announced incentives for compliance programs, and others (such as France and Colombia) are also seriously considering them.

CONTENTS

TRENDS

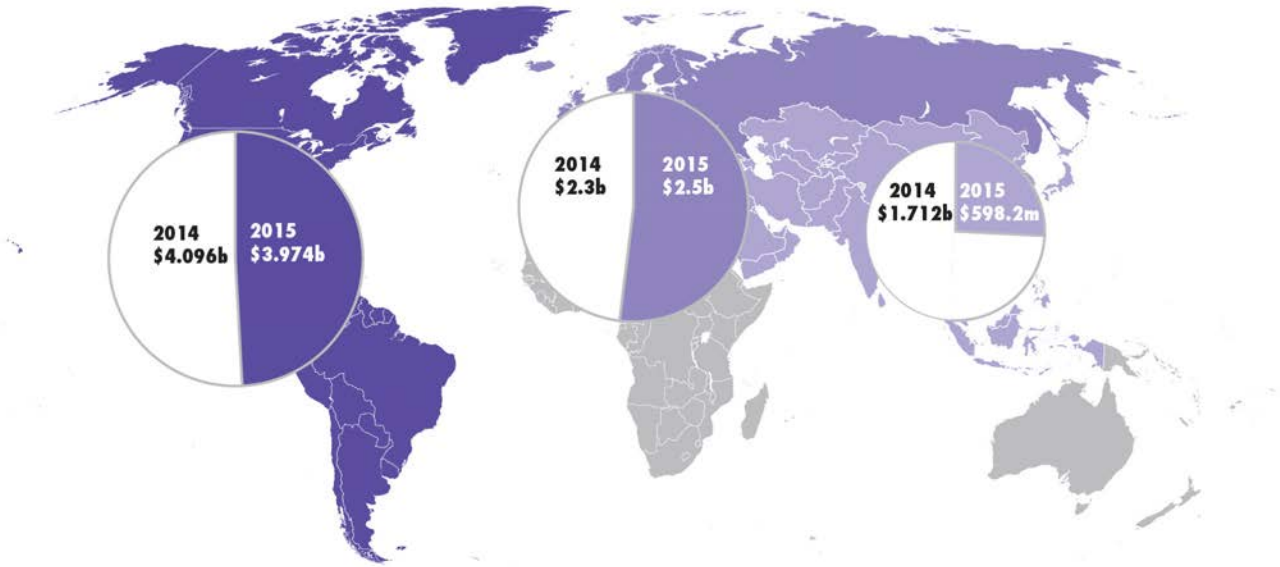
EMERGING AND CONTINUING TRENDS IN CARTEL ENFORCEMENT

- **Global Cartel Fines Are Mixed:** Cartel fine totals in 2015 were driven by a handful of large matters. Most of the record $3.8 billion in cartel fines collected by the United States in 2015 derived from the global investigations of collusion concerning foreign exchange markets. Countries within the European Union assessed $2.5 billion in cartel fines in 2015, slightly higher than the $2.3 billion assessed in 2014. Most of the European fines resulted from financial benchmark investigations and a French investigation of the freight forwarding industry in that country. Also, the Japanese Fair Trade Commission (JFTC) assessed approximately $57 million in fines in 2015, a fraction of the $398 million assessed in 2014. The JFTC fines are, however, in line with historical levels. 2014 fine totals were unusually high, driven largely by a $223 million fine on roll-on/roll-off shipping companies. (See page 6.)
- **Industries in Focus:** 2015 saw significant enforcement actions and significant new investigations in the automotive, financial services, electronic component, transportation, real estate, and pharmaceutical industries. Looking ahead, the DOJ is focusing on new industries, including those engaged in e-commerce and electronic components. (See page 12.)
- **Various Countries Consider Criminalization of Cartel Violations:** In general, competition agencies continue to consider whether to criminalize cartel conduct. For example, Chile's legislators are considering a bill to introduce criminal penalties for individuals, with possible ramifications of up to 10 years of prison time. However, other countries, such as Indonesia and New Zealand, have rejected efforts to impose criminal sanctions on antitrust breaches. Politicians in Indonesia argued that criminalizing the antitrust laws would unfairly harm small business owners, who were unfamiliar with that country's competition law. New Zealand rejected a criminalization measure based on the argument that criminalization would have a chilling effect on procompetitive company collaboration. (See page 1.)
- **Taiwan Steps into the Cartel Enforcement Spotlight:** 2015 has shown the Taiwan Fair Trade Commission (TFTC) to be aggressive in investigating and prosecuting alleged cartel conduct by using new powers granted by an amendment of the Taiwan Fair Trade Act. In February 2015, Taiwan amended the Fair Trade Act to allow the TFTC to infer the existence of collusive agreements from market structure, characteristics of products of service, costs and profit considerations, and economic rationality of the conduct under review. In December 2015, the TFTC fined seven aluminum capacitor companies and three tantalum capacitor companies $177 million. (See page 15.)
- **Joint DOJ Investigations and Prosecutions Continue:** The DOJ's Antitrust Division has been teaming with other divisions of the DOJ, particularly the Criminal Division, to pursue joint investigations and prosecutions of cartel conduct. This trend has increased the complexity of responding to and resolving cartel investigations. Earlier this year, a company that received amnesty from the Antitrust Division was prosecuted by the Criminal Division for the same conduct underlying its amnesty application and was forced to pay a fine in connection with the Libor investigation. (See page 16.)

- **Continued Uncertainty Concerning the Extraterritorial Application of US Antitrust Law:** In June 2015, the US Supreme Court denied requests to resolve conflicting lower court decisions regarding the scope of the Foreign Trade Antitrust Improvements Act (FTAIA). The standards that govern the application of the Sherman Antitrust Act to conduct that occurs outside the United States remain a source of contention, uncertainty, and litigation. (See page 24.)
- **Increasing International Cooperation:** Countries that seek to bolster their competition agencies have also been cooperating with one another. For example, China's National Development and Reform Commission (NDRC) recently signed a Memorandum of Understanding with the Federal Antimonopoly Service of Russia (in September 2015), the JFTC (in October 2015), and the Australian Competition and Consumer Commission (ACCC) (in November 2015). Global coordination is increasingly the norm in international cartel investigations. (See page 30.)
- **Auto Parts Investigation Winding Down:** Although the auto parts cartel investigations are winding down in the United States, competition agencies in Europe, Asia, Australia, South America, and Africa continue to aggressively probe alleged price fixing and bid rigging that involve various types of automotive parts. (See page 18.)
- **Prison Sentences:** The DOJ charged 66 individuals and 20 corporations in fiscal year 2015 (from October 2014 through September 2015). However, looking at individual prison sentences for calendar year 2015 (January through December), 11 individuals were sentenced to prison, and 15 individuals pleaded guilty but have not yet been sentenced. Four of the individuals sentenced this calendar year were defendants in the real estate bid-rigging investigation based out of the Antitrust Division's San Francisco Field Office. Eight individuals have pleaded guilty in the real estate bid-rigging investigation but have not yet been sentenced. Between October and December 2014, the beginning of Fiscal Year 2015, the majority of the individuals who either pleaded guilty or were indicted by the DOJ were defendants in various real estate auction cases. (See page 10.)
- **Compliance Remains at the DOJ's Forefront:** DOJ leaders continue to emphasize the importance of effective compliance programs in both detecting potential cartel violations and mitigating corporate criminal exposure if such misconduct exists. (See page 26.)

2015 CARTEL FINES

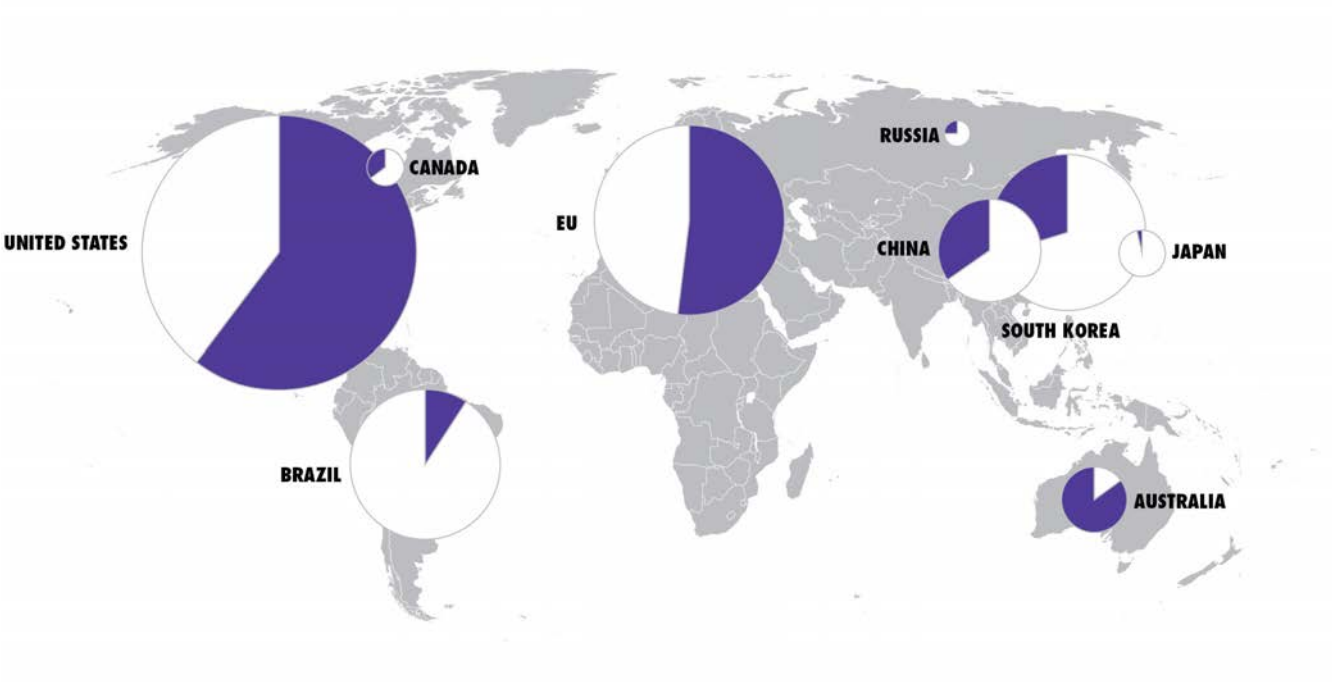
TOTAL GLOBAL CARTEL FINES 2014–2015



2014	**AMERICAS**			**EUROPE**	**ASIA**			
	$4.096b			**$2.3b**	**$1.712b**			
	United States	Brazil	Canada		China	Japan	South Korea	Russia
	$2.48b	$1.6b	$16m		$290.2m	$398.5m	$1.01b	$13.3m
2015	**AMERICAS**			**EUROPE**	**ASIA**			
	$3.974b			**$2.5b**	**$598.2m**			
	United States	Brazil	Canada		China	Japan	South Korea	Russia
	$3.8b	$165m	$8.7m		$153.9m	$13.9m	$426m	$4.4m

b = billion
m = million

CARTEL FINES BY JURISDICTION 2014–2015



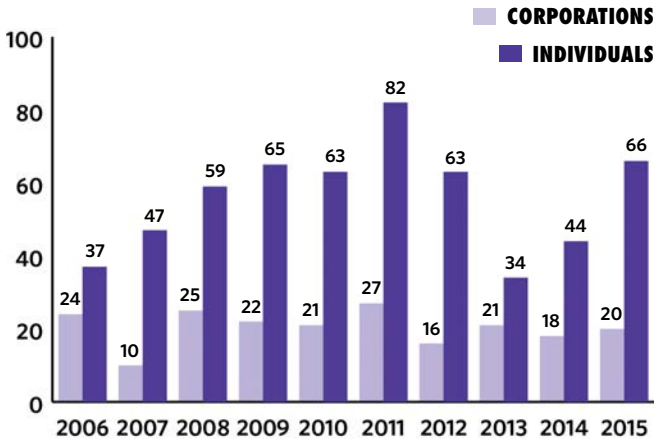
	UNITED STATES	EU	SOUTH KOREA	BRAZIL	CHINA	AUSTRALIA	JAPAN	CANADA	RUSSIA
2014	$2.48b	$2.30b	$1.01b	$1.6b	$290.2m	$3.2m	$398.5m	$16m	$13.3m
2015	$3.8b	$2.50b	$426m	$165m	$153.9m	$18.06m	$13.9m	$8.7m	$4.4m

b = billion
m = million

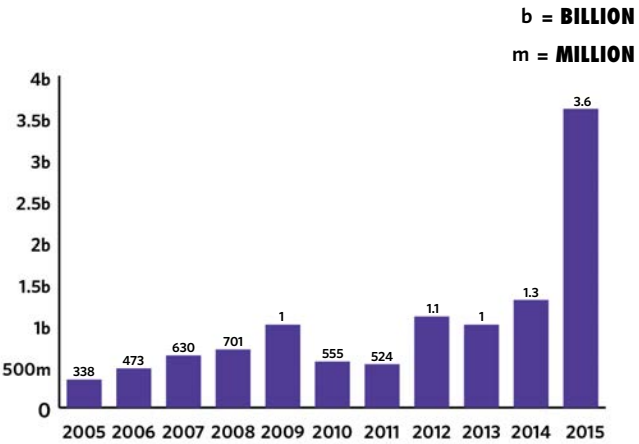
CRIMINAL ENFORCEMENT

DOJ TREND CHARTS THROUGH FISCAL YEAR 2015 (OCT. 2014–SEPT. 2015)

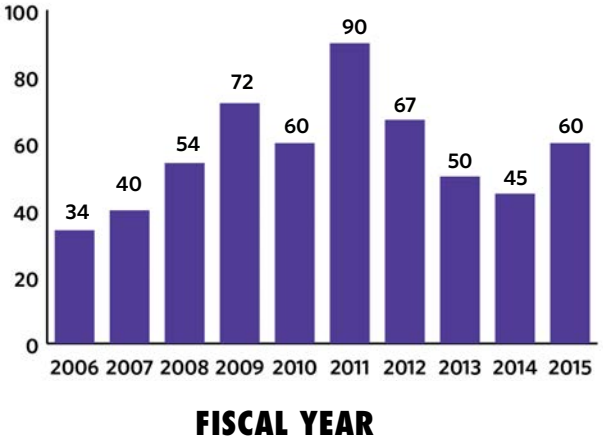
CORPORATIONS & INDIVIDUALS CHARGED



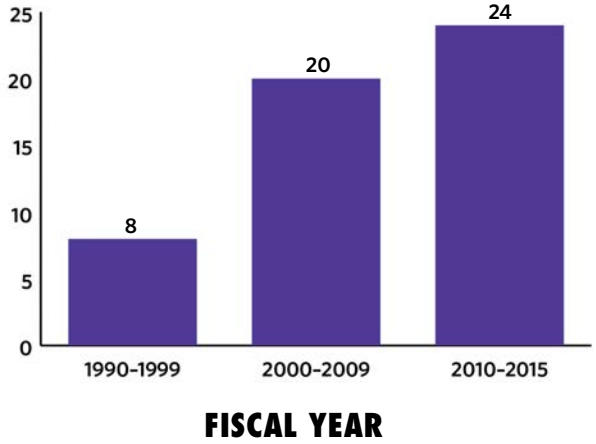
TOTAL CRIMINAL FINES & PENALTIES



TOTAL CRIMINAL CASE FILES



AVERAGE PRISON TIME (MONTHS)

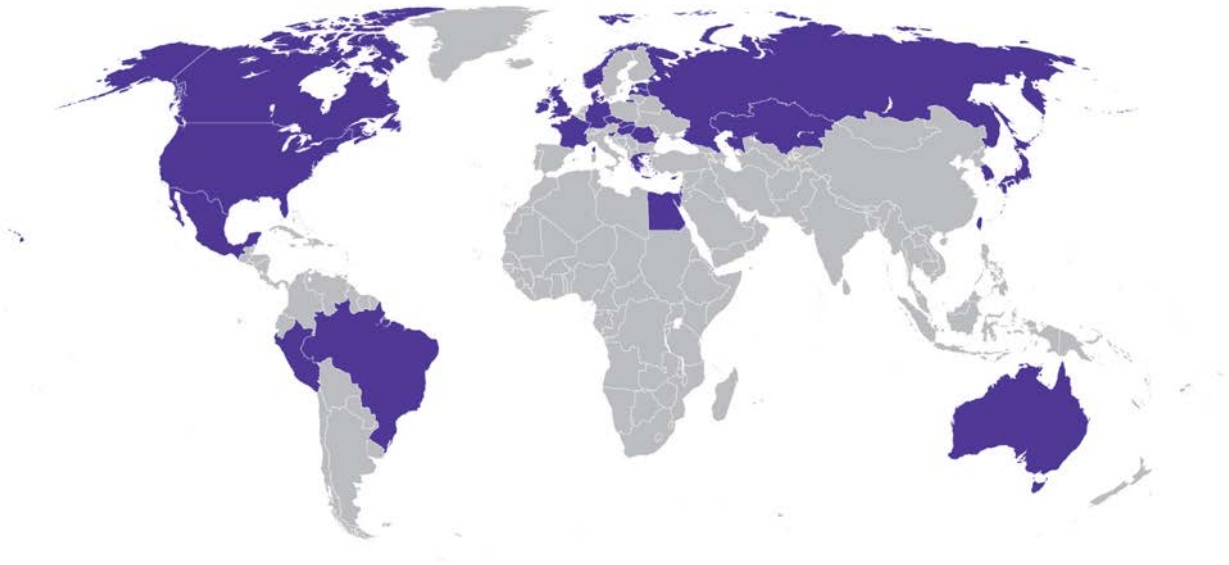


Note: All totals reflected on this page are for the DOJ fiscal years at issue, whereas the fines and penalties we summarize elsewhere in the report are on a calendar-year basis.

Source: http://www.justice.gov/atr/criminal-enforcement-fine-and-jail-charts

INDIVIDUAL CRIMINAL PENALTIES

JURISDICTIONS WITH CRIMINAL PENALTIES FOR CARTEL ACTIVITIES

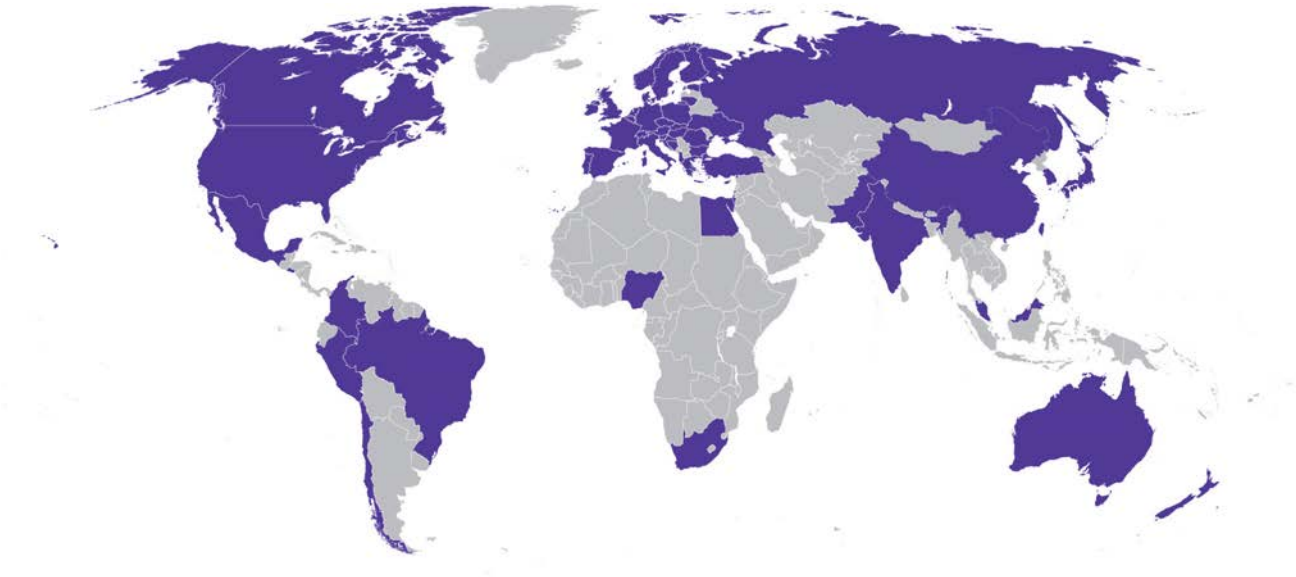


- Australia
- Brazil
- Canada
- Cyprus
- Czech Republic
- Denmark
- Egypt
- Estonia
- France
- Germany
- Greece
- Hungary
- Ireland
- Israel
- Japan
- Kazakhstan
- Latvia
- Malta
- Mexico
- Norway
- Peru
- Romania
- Russia
- Slovak Republic
- Slovenia
- South Korea
- Taiwan
- United Kingdom
- United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

SIGNIFICANT INDIVIDUAL PRISON TERMS FOR CARTEL OFFENSES (WORLDWIDE)

- **US Federal Appeals Court Affirms Coastal Shipping Executive's 60-Month Sentence**—Frank Peake, United States: 60 months/$25,000 fine. Peake, a former shipping executive, was found guilty by a federal jury in Puerto Rico for his role in a conspiracy to fix prices, rig bids, and allocate markets in the coastal shipping market between Puerto Rico and the mainland United States in January 2013. In December 2013, a federal judge sentenced Peake to 60 months in prison, which is the longest-ever prison sentence for an antitrust violation to date. In October 2015, the US Court of Appeals for the First Circuit affirmed Peake's conviction and sentence. (See page 14.)
- **US Federal Appeals Court Affirms Liquid Crystal Executive's 24-Month Sentence**—Shui Lung Leung, United States: 24 months/$50,000 fine. Leung, a liquid crystal display (LCD) executive, was sentenced in April 2013 for his role in a global LCD price-fixing conspiracy. On appeal, he argued that the district court erred in its denial of his motion for a new trial and request for an evidentiary hearing. Leung argued that his motion, which was supported by a juror's affidavit alleging that other jurors discussed the evidence against the defendant before deliberations, should have been considered by the district court. The district court held, and in August 2015, the Ninth Circuit affirmed that the juror's affidavit was barred by Federal Rule of Evidence 606(b), which states that a juror may not testify about any statement that occurred during jury deliberations during an inquiry into the validity of a verdict. The court found that any communications by jurors discussing the case before deliberations was a failure to follow court instructions and not an indication of any juror's dishonest intentions. In affirming the district court's decision, Leung's 24-month sentence remains.
- **Canadian Executive Receives Conditional Sentence for Bid Rigging**—Stephen Forgie, Canada: 18 months. Conditional sentence—first six months' house arrest/$17,000 fine. Forgie, an employee of an IT company, admitted to participating in a conspiracy, along with the company's owner and a co-employee, to rig bids for Canadian federal government contracts.
- **Cargo Executives Receive Prison Sentence for Price Fixing**—Toru Otoda, United States, 18 months/$20,000 fine; Hiroshige Tanioka, United States, 18 months/$20,000 fine; Susumu Tanaka, United States, 15 months/$20,000 fine; and Takashi Tamaguchi, United States, 14 months/$20,000 fine. Otoda, Tanioka, Tanaka, and Tamaguchi, executives with international shipping carriers, all pleaded guilty to a conspiracy to rig bids, fix prices, and allocate customers and routes.
- **Auto Parts Executive Pleads Guilty**—Takashi Toyokuni, United States, 15 months/$20,000 fine. Toyokuni pleaded guilty to his role in a conspiracy to rig bids and fix prices on starters, alternators, air flow meters, valve timing control devices, fuel injection systems, electronic throttle bodies, ignition coils and inverters, and motor generators.
- **Automotive Hose Executive Receives One-Year Term for Role in Auto Parts Conspiracy**—Makoto Horie, United States: One year and one day/$20,000 fine. Horie, an employee of a Japanese automotive hose manufacturer, pleaded guilty to conspiring to fix prices, rig bids, and allocate sales of automotive hoses sold to an automobile company in the United States.
- **Georgia Real Estate Investor Pleads Guilty to Bid-Rigging Conspiracy**—Eric Hulsman, United States, eight months/$100,000 fine. Hulsman pleaded guilty to his role in a conspiracy to rig bids at public foreclosure auctions in the Atlanta area.
- **Executive Sentenced for Steel Tank Market Offense—** Nigel Snee, UK, six months/no monetary fine. Snee pleaded guilty to conspiring to fix prices, allocate markets, and rig bids in the galvanized steel tank market in the UK. Two other alleged coconspirators took their cases to trial and were acquitted. Commentary on the trial suggests that the acquittal resulted from the jury's conclusion that the charged individuals did not act "dishonestly."

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
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- 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 IN THE CROSSHAIRS: 2015 AND 2016

ANALYSIS

Major international cartel investigations in the pharmaceutical, transportation, and electronic components industries were either initiated or expanded in 2015.

1. **PHARMACEUTICALS**
2. **TRANSPORTATION**
3. **ELECTRONIC COMPONENTS**

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—from targeted companies about various generic drugs.

- 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

- 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 DOJ has expanded the scope of its investigation into other generic pharmaceuticals.

TRANSPORTATION

- **French Authorities Fine Parcel Courier Companies for Price Fixing:** In December 2015, France's Antitrust Authority fined 20 parcel courier companies a total of $733 million for fixing prices on the cost of cargo shipments, including fuel costs. According to reports, the cartel conduct took place at meetings held in conjunction with a French professional trade union body. The cartel meetings were held in secret, and no notes were made of these discussions.
- **Recent DOJ Acquittal:** A federal jury in the US District Court for the District of Puerto Rico returned a not-guilty verdict in *United States v. Thomas Farmer.* This three-week trial has most likely concluded the years-long probe into charges of price fixing and bid rigging in the coastal shipping trade between the mainland United States and Puerto Rico. This case, as well as several others within the last 10 years, is proof that—although a significant risk—cartel defendants can show reasonable doubt at trial and prevail.
- **Affirming Longest DOJ Cartel Sentence:** In October 2015, the US Court of Appeals for the First Circuit affirmed the conviction of Frank Peake, an executive tried and convicted in January 2013 in the US District Court for the District of Puerto Rico as a conspirator in the above-mentioned coastal shipping investigation. Noting that Peake participated in "one of the largest antitrust conspiracies in the history of the United States," the court rejected all of Peake's claims, including the validity of his indictment, the scope of the government's search warrant, and the district court's denial of his motion to change venue. The district court sentenced Peake to 60 months' imprisonment, which he also challenged, unsuccessfully, before the First Circuit. In December 2015, the First Circuit denied Peake's petition for rehearing en banc and panel rehearing.
- **Ocean Shipment Charges and Convictions:** In October 2015, three former ocean freight executives were indicted by a grand jury in the US District Court for the District of Maryland for an alleged international price-fixing conspiracy for the sale of international ocean shipments of roll-on/roll-off cargo to and from the United States and elsewhere. To date, four other executives have pleaded guilty and have been sentenced to prison. Three companies have also pleaded guilty and have paid more than $136 million in criminal fines in the United States and more than $223 million in cartel fines to the JFTC.

EXPANDING ELECTRONIC COMPONENTS

- The capacitors investigation has drawn the scrutiny of several cartel regulators worldwide, including the United States, China, EU, Japan, Korea, Brazil, and Taiwan.
- In what may be a first for both countries, the United States is cooperating with China's NDRC in the capacitors investigation.
- In November 2015, a new grand jury investigating the alleged capacitors conspiracy was expanded to also include the resistor industry. Many of the same companies produce both capacitors and resistors.
- 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 objections in November 2015 against capacitor manufacturers in Asia.
- In December 2015, according to press reports, the DOJ began investigating potential cartel activity in the market for diodes. The reports indicate that this probe evolved from the capacitors and resistors investigations.

INDUSTRIES UNDER SCRUTINY

FINANCIAL BENCHMARKS INVESTIGATIONS CONTINUE

ANALYSIS

2015 saw significant fines levied against financial institutions for their roles in the manipulation of various benchmarks—including Libor and various foreign exchange markets. This year also saw an aggressive stance by prosecutors both in the United States and in the UK to try individuals for their alleged roles in manipulating Libor and other benchmarks. 2016 marks the end of the Obama administration, and the DOJ may seek to wind up any major plea agreements and indictments before the next president is inaugurated in January 2017.

- In April 2015, a major financial institution agreed to pay a total of $2.5 billion to US and UK regulators as part of a settlement over claims that traders at the bank manipulated Libor and similar interest rates priced in euros and yen.

In May 2015, six global financial institutions agreed to pay more than $2.5 billion to the DOJ and $1.6 billion to the Federal Reserve to settle claims that they manipulated the global foreign exchange markets. One financial coconspirator paid an additional combined penalty of approximately $1.3 billion for its conduct to the New York State Department of Financial Services, the Commodity Futures Trading Commission (CFTC), and the UK's Financial Conduct Authority.

- In July 2015, based in part on the plea deal with one of six banks that had pleaded guilty in a US currency rigging probe, Brazil opened an investigation of an alleged foreign exchange cartel formed by 15 of the world's largest banks.
- Plaintiffs in a massive multidistrict litigation (MDL) are appealing a March 2013 opinion in the US District Court for the Southern District of New York dismissing their antitrust claims on the grounds that the process by which the defendant banks submitted Libor quotes (used to determine Libor rates) was not competitive, and the plaintiffs therefore had not alleged competition-related injuries. The Court of Appeals for the Second Circuit originally declined to hear the interlocutory appeal because other claims in the MDL were still pending. In January 2015, the Supreme Court determined, however, that the plaintiffs had a right to immediate appeal. Oral argument took place in November 2015, and the matter is pending before the Court.
- In August 2015, Tom Hayes, a former trader with two different banks and the first person to stand trial for manipulating Libor, was sentenced to 14 years in prison after being found guilty of conspiracy to rig the benchmark rate. A UK jury unanimously found that Hayes manipulated Libor with the help of other traders and brokers to benefit his own trading positions. The sentence, which is among the longest for a financial crime in the UK, came nearly three years after the first fine was levied against a different bank. Authorities in the United States and UK have levied $9 billion in fines against banks and brokerage firms since the Libor scandal broke.
- In November 2015, after eight and a half hours of deliberation, a US jury found former bank executive Anthony Allen and former trader Anthony Conti guilty of Libor rigging to benefit their banking colleagues after prosecutors presented damning evidence, including emails that showed both defendants actively participating in fixes. In 2012, the bank that employed Allen and Conti agreed to pay more than $1 billion in civil and criminal fines to authorities in the Netherlands, the UK, and the United States and reached a deferred

prosecution agreement with the DOJ. Three other former traders, Paul Robson, Lee Stewart, and Takayuki Yagami, pleaded guilty to conspiracy to fix rates and testified against Allen and Conti.

- Another executive, Asia-based trading head Paul Thompson, faces trial in the United States after his October 2015 arrest in Australia. A seventh former bank executive, Tetsuya Motomura, has been indicted in New York but has not appeared. An eighth bank trader, Damon Robbins—whose name came up often at Allen and Conti's trial—is a potential defendant.

- As of 2015's third quarter, the total amount that banks paid to settle civil lawsuits tied to allegations that traders manipulated the currency market has reached almost $2 billion following a round of settlement agreements with five additional banks. Specifically, the banks are accused of fixing prices by agreeing to widen the spread between the prices at which they buy and sell currency, manipulating benchmark rates, and exchanging confidential customer information.
- In September 2014, a purported class of investors in interest rate derivative transactions tied to ISDAFIX from January 2006 to January 2014 sued many of the world's largest financial institutions, accusing them of colluding to set the ISDAFIX benchmark rate at artificial levels. Motion to dismiss briefing concluded this summer, but oral argument has not yet been scheduled. A ruling is likely in early 2016.
- The CFTC reported that, including its 2015 actions, it has imposed more than $4.6 billion in penalties in 15 actions against banks and brokers to address Forex, Libor, and ISDAFIX benchmark abuses and to ensure the integrity of global financial benchmarks.
- In August and September 2015, a rash of class action lawsuits were filed against banks alleging manipulation of the $12.7 trillion US Treasury market. The DOJ is also investigating trader activity in the Treasury market and, in particular, whether information in the Treasury auction market is being shared improperly by banks. Motion to dismiss briefing will commence in early 2016.

AUTO PARTS INVESTIGATION WINDING DOWN IN UNITED STATES BUT PROGRESSING WORLDWIDE

ANALYSIS

The DOJ's global investigation into the auto parts industry continued in 2015 for its sixth year. Signs point to this investigation beginning to wind down in the United States, such as the DOJ's recent focus on individual (rather than corporate) plea agreements and indictments.

A total of 38 companies and 58 executives have been charged in the ongoing investigation and have agreed to pay more than $2.6 billion in criminal fines. Defendants prosecuted in this investigation have received sentences ranging from 12 months and one day to 24 months.

Although the DOJ's investigation in the auto parts industry is winding down, other jurisdictions, such as South Africa, Brazil, and South Korea, actively continue to pursue auto parts investigations.

- In February 2015, Brazil's Council for Economic Defence (CADE) announced that it would expand its investigation of anticompetitive conduct in the auto parts industry to include clutch facings, thermal systems, and windshield wipers. CADE stated that it had evidence of at least 11 companies and 51 individuals who restricted competition in the requests for quotations for these parts. In July, Brazil opened an investigation into two auto parts makers, citing potential price collusion in safety belts, airbags, and steering wheels. In November, Brazil opened its eighth auto parts investigation, this time focusing on electrical component manufacturers. Excluding the parts mentioned above, since 2014, CADE has opened cartel investigations against the manufacturers of spark plugs, antifriction bearings, clutch facings, thermal systems, windshield wipers, and bumpers.
- In March 2015, the Korea Fair Trade Commission (KFTC) fined three Japanese-based auto parts companies approximately $3.2 million for rigging prices on exhaust gas temperature sensors.
- The KFTC imposed fines of approximately $5.1 and $1.9 million on two South Korean auto parts companies for engaging in a price-fixing and market allocation conspiracy on double tapered roller bearings used in automatic transmission automobiles.
- In September 2015, a Japanese-based firm pleaded guilty in the United States for its role in a conspiracy to fix prices and rig bids on ceramic substrates for automotive catalytic converters. This company also pleaded guilty to obstruction of justice (as a result of its employees destroying and concealing files), deleting emails, and misleading investigators.
- Also in September 2015, a Japanese-based firm agreed to plead guilty and pay a $62 million fine in the United States for its role in a conspiracy to fix prices of shock absorbers installed in cars and motorcycles sold to US consumers.
- South Africa continues its probe into alleged price-fixing conduct against more than 80 auto parts companies.

DOJ PROSECUTES FIRST E-COMMERCE PRICE-FIXING CASE—FOCUSES ON ALGORITHMS

In April 2015, the DOJ announced that an e-commerce executive agreed to plead guilty for conspiring to fix the prices of posters sold online. The defendant agreed to pay a $20,000 fine and cooperate in the ongoing investigation.

ANALYSIS

Two issues are worth noting in this matter: First, this is the first e-commerce cartel case that the DOJ has prosecuted. Second, the DOJ focused on the pricing algorithms that the defendant and his coconspirators used to implement and police their agreements and set prices. Expect competitors' use of these tools to be considered a new "red flag" by cartel enforcers in the future and information about these tools to be the subject of subpoenas in future investigations.

- The DOJ has confirmed "an ongoing federal antitrust investigation into price fixing in the online wall décor industry," which the Antitrust Division's San Francisco Field Office is investigating. In December 2015, the DOJ announced that a San Francisco federal grand jury indicted an individual and his UK-based company for its role in this conspiracy.
- The UK's Competition and Markets Authority has publicly stated that it carried out dawn raids in December 2015 in a related investigation.

REAL ESTATE INVESTIGATION CONTINUES

ANALYSIS

In 2015, the DOJ continued its aggressive enforcement of the Sherman Act at public real estate foreclosure auctions in Northern California, Georgia, Alabama, and other states. The Antitrust Division's Washington Criminal II Section, created in 2014, has spent many of its resources 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 these cases were brought in connection with President Barack Obama's Financial Fraud Enforcement Task Force, which is 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 of the Northern District of California as a result of the DOJ's ongoing investigations into bid rigging and fraud at public foreclosure auctions in Northern California.
- To date, the DOJ has filed 10 criminal cases in Georgia as a result of the ongoing investigation.

COLOR DISPLAY TUBE INVESTIGATION PROSECUTES FIRST INDIVIDUAL

ANALYSIS

In November 2015, a former executive of a large Taiwan-based color display tube (CDT) manufacturing company pleaded guilty for its participation in a global conspiracy to fix the prices of CDTs. CDTs are a type of cathode ray tube used in computer monitors and other devices.

- This defendant, a former director of sales, is the first individual prosecuted in this investigation. In 2011, a manufacturing company pleaded guilty and paid a $32 million criminal fine for its role in the CDT conspiracy. Four other indicted individuals remain fugitives.

OTHER INDUSTRIES UNDER INVESTIGATION

ANALYSIS

Cement Industry: In July 2015, Brazil's CADE upheld fines of $930 million against six companies, three trade associations, and six individuals found to be operating a cement cartel. The announcement reaffirms penalties initially announced in May 2014.

- In December 2015, India's Competition Appellate Tribunal revoked the Competition Commission of India's (CCI) order imposing a $950 million penalty on 11 cement companies for allegedly conspiring to manipulate production capacity and to fix cement prices. The Competition Appellate Tribunal held that the CCI's investigation was procedurally unfair.
- In November 2015, Italy's antitrust authority opened a price-fixing investigation into four of Italy's top cement companies. The Italian government also carried out inspections in these companies' offices.

Uniform Suppliers: Russia's Federal Antimonopoly Service is investigating 42 uniform suppliers that contract with the Ministry of the Interior. Several of the suppliers at issue were subject to similar investigations and found liable in 2012, with fines totaling approximately $506,000.

MAJOR DEVELOPMENTS

THE DOJ PROMISES MORE EXTRADITIONS

ANALYSIS

The DOJ's Antitrust Division has continued its emphasis on extraditing foreign nationals who violate cartel laws. In its auto parts investigation, the DOJ has indicted several foreign nationals with the intention of extraditing them to the United States to face trial. Director of Criminal Enforcement Marvin Price, Jr. of the Antitrust Division stated that "Certainly one of the options we will consider will be extraditing [foreign nationals indicted in the auto parts case] from the country where they are located." The DOJ faces barriers in its efforts, however, including political pushback from foreign countries hesitant to send their citizens to the United States for trial.

- **Extradition First:** In April 2014, the Antitrust Division obtained its "first ever extradition on [an] antitrust charge"—an Italian national and a former executive with a marine hose company was extradited from Germany to the US District Court for the Southern District of Florida.
- **Latest Extradition Case:** In November 2014, the DOJ obtained the extradition of a Canadian national on fraud charges arising from an alleged bid-rigging scheme. This individual's trial is set to begin in February 2016.
- **More Extraditions Expected:** In May 2015, Assistant Attorney General for Antitrust Bill Baer stated before the US House Judiciary Committee that the DOJ will work with ministries of justice worldwide to seek extraditions to the United States. Deputy Assistant Attorney General Brent Snyder has said that with the growing number of countries criminalizing cartel conduct globally, the days of "safe havens" abroad are over and the possibility of extradition of individuals accused of collusion will increase. Most of the extradition treaties that the United States has with other countries require "dual criminality" for extradition to be allowed. The limited number of jurisdictions that impose criminal penalties for antitrust violations has proved a barrier to past attempts by the DOJ to extradite individuals in cartel cases. As the number of jurisdictions with criminal penalties expands, however, that barrier will diminish.
- For more information on the DOJ cases, see Extradition in International Antitrust Enforcement Cases from *The Antitrust Source* (April 2015).

PROTECTIONS FOR CARTEL WHISTLEBLOWERS

On July 22, 2015, the US Senate passed S. 1599, the Criminal Antitrust Anti-Retaliation Act of 2015. This bill is now pending in the US House. If passed by the House and signed into law by the president, the bill would prohibit an employer from retaliating against an employee who reports on or provides information about an actual or suspected criminal antitrust violation.

ANALYSIS

Unlike the False Claims Act or the whistleblower provisions in Dodd-Frank, there is no monetary incentive for a whistleblower to report suspected illegal conduct. Both the False Claims Act and Dodd-Frank provisions reward whistleblowers with up to 30% of any government recovery.

- In September 2015, the EU announced that it is considering a whistleblower program to report cartel conduct. This announcement comes after the 2012 start of the German cartel authority's anonymous whistleblower program.
- Neither the EU's proposed program nor the German program provides a monetary incentive for whistleblowers to report suspected illegal conduct.

KEY JUDICIAL DEVELOPMENTS

FTAIA—SUPREME COURT DECLINES CERTIORARI REVIEW

The scope of the Foreign Trade Antitrust Improvements Act remains uncertain, but the DOJ will likely continue to push the envelope on foreign conduct.

- **Supreme Court:** The extraterritorial reach of the Sherman Act remains an important issue with significant legal uncertainty. In June 2015, the Supreme Court refused to resolve a circuit split between the Seventh and Ninth Circuits interpreting the scope of the FTAIA, the statute that defines the standards for applying the Sherman Act extraterritorially. These two related cases involve the same general set of facts about the same price-fixing conspiracy. (*See Motorola Mobility LLC v. AU Optronics, et al.,* 775 F.3d 816 (7th Cir. 2014, *amended* Jan. 12, 2015), *cert denied*, 135 S. Ct. 2837 (2015); *United States v. Hsuing, et al.*, 778 F.3d 738 (9th Cir. 2015), *cert. denied*, 135 S.Ct. 2837 (2015)). In the *Motorola* case, the Seventh Circuit found that claims based on purchases outside the United States are barred. In *AU Optronics*, however, the Ninth Circuit upheld a $500 million fine based in part on sales outside the United States. In the wake of the Supreme Court's denial of certiorari, the scope of the FTAIA is left open for further developments in the lower courts.
- **Ninth Circuit:** In January 2015, the Ninth Circuit amended its decision in *United States v. Hsuing, et al.*, 778 F.3d 738 (9th Cir. 2015), *cert. denied*, 135 S.Ct. 2837 (2015), which upheld the criminal conviction of defendants in the LCD price-fixing prosecution, holding that the FTAIA did not apply because the government sufficiently pleaded and proved that the conspirators engaged in import commerce—a specific carve out from the FTAIA. The amended decision added language to hold that the conduct in question was sufficiently direct, substantial, and reasonably foreseeable with respect to its effect on US commerce, a point on which the original opinion had specifically withheld judgment.
- **Seventh Circuit:** In January 2015, the Seventh Circuit amended its decision in *Motorola Mobility LLC v. AU Optronics Corp.* 775 F.3d 816 (7th Cir. 2014), amended January 12, 2015, in which it had held that the FTAIA blocked Motorola's claims for damages related to non-US purchases of price-fixed components by its foreign subsidiaries. Because the foreign subsidiaries purchasing the component products directly felt the injury, the higher prices paid downstream for the finished devices in the United States did not "give rise to" Motorola's injury. The amended opinion added language to emphasize that the effect of the anticompetitive conduct did not "give rise to an antitrust cause of action" within the meaning of the FTAIA because Motorola and its foreign subsidiaries were not divisions of a single integrated enterprise, but rather foreign corporations. Motorola "can't pick and choose from the benefits and burdens of United States corporate citizenship" (775 F.3d at 822).
- **District Court Cases:** In January 2015, the District Court for the Southern District of New York confronted FTAIA issues in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* (Nos. 13 Civ. 7789 (LGS), 13 Civ. 7953 (LGS), 14 Civ. 1364 (LGS), 2015 WL 363894, at *1 (S.D.N.Y. Jan. 28, 2015)). Two of the three cases alleging a long-running conspiracy among the world's largest banks to manipulate the benchmark rates in the foreign exchange market were brought by foreign plaintiffs on behalf of those who traded foreign currency in South Korea and in Norway. The complaints were dismissed because the conduct alleged implicated exclusively foreign activity that did not sufficiently affect US commerce. Because the defendants' conduct was directed at manipulating prices charged for extraterritorial foreign exchange transactions, the import commerce exclusion to the FTAIA did not apply. The domestic effects exception did not apply because the complaints did not allege "how any domestic effect proximately caused Foreign Plaintiffs' injury" (*In re ForEx*, 2015 WL 363894 at *14-15).

ANALYSIS

Although the scope and reach of the FTAIA—which governs the extraterritorial application of the Sherman Act—is uncertain, the DOJ will not likely cease prosecuting foreign conduct that may be several steps removed from US commerce. Although the Seventh Circuit's March 2014 *Motorola* decision created some confusion regarding the

validity of prosecutions of extraterritorial conduct, the January 2015 amended decision rested on grounds that do not affect the government's ability to prosecute companies that collude on goods bound for US commerce. Specifically, the court held that both private plaintiffs and prosecutors must meet the first prong of the FTAIA: that the foreign conduct have a "direct, substantial, and reasonably foreseeable" effect on US domestic commerce or import trade. Private plaintiffs must also meet the second FTAIA prong: that the effect on US commerce "give[s] rise" to their Sherman Act claim. However, that second requirement does not apply to prosecutions brought by the DOJ. In the aftermath of the Seventh Circuit's clarification of the law, expect the DOJ to continue to aggressively investigate and prosecute extraterritorial behavior that, in the DOJ's opinion, affects US commerce.

ACPERA DAMAGES LIMITATION EXTENDS TO RICO CLAIMS

In June 2015, the US District Court for the Eastern District of California, in an issue of first impression, rendered an order finding that the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (ACPERA), which caps civil antitrust damages for defendants who entered into a leniency agreement with the DOJ's Antitrust Division, also extends to Racketeer Influenced and Corrupt Organizations Act (RICO) claims related to the underlying antitrust violations.

The court noted that a plain reading of the statute, as well as legislative intent and history, all allow for extending the damages limitation to charges relating to Sherman Act violations.

ANALYSIS

This expansion of the ACPERA presents companies that face the decision of whether to seek leniency with an additional reason to cooperate with the government. This decision also gives the DOJ another tool to tout the effectiveness of its leniency program to potential corporate applicants.

EU GENERAL COURT OVERTURNS AIR CARGO FINES

In December 2015, the General Court of the European Union, Europe's second highest court, annulled $859 million in fines on 11 air cargo carriers for price-fixing fuel surcharges and security fees in the air cargo market. The European Commission imposed these penalties in 2010.

ANALYSIS

The court held that the commission had considered four distinct cartel infringements in its fine analysis, while the grounds for the commission's decision were based on one single and continuous conspiracy period. The court said that companies must be able to understand and contest their liability and that the commission's method was contrary to that. The court did not focus on whether the commission could ultimately prove any cartel conduct.

COMPLIANCE

THE ERA OF INCREASED EMPHASIS ON A CULTURE OF COMPLIANCE BEGINS

ANALYSIS

The DOJ's Antitrust Division has historically refused to provide compliance credit to any company found to have engaged in a cartel. That policy changed in 2015, when the Antitrust Division gave its first two fine reductions for effective compliance programs. The Antitrust Division's assistant attorney general and the deputy assistant attorney general both made important speeches in 2015 concerning the importance of effective antitrust compliance programs and indicated that the Antitrust Division would consider companies' culture of compliance in determining the appropriate fines for cartel cases.

Since the DOJ first offered compliance credit to a major bank in May 2015 in connection with its investigation into the foreign currency exchange spot market, additional details have emerged about what the DOJ might consider in deciding whether to credit pleading companies for compliance efforts. Deputy Assistant Attorney General for Criminal Enforcement Brent Snyder, in June remarks at the Sixth Annual Chicago Forum on International Antitrust Issues, elaborated on what sorts of "extraordinary efforts" a company must make to overcome DOJ skepticism about company compliance in the wake of cartel activity. Snyder said that the DOJ was "persuaded that there were demonstrable differences in the way that [the bank] substantiated what it did to improve its compliance and corporate culture as compared to the other banks that were charged with violating the Sherman Act." In particular, Snyder noted that senior executives must "lead by example" and create a culture of compliance by creating a "zero tolerance compliance environment." Snyder also noted that companies must "make responsible personnel decisions" about employees that violate compliance policies. Compliance credit may now be in the forecast for companies that find themselves embroiled in a cartel investigation but move swiftly and decisively to address the precipitating circumstances.

In October 2015, the DOJ filed a motion for downward departure in an auto parts case against a manufacturer that planned to plead guilty. In recommending a downward departure from the federal sentencing guidelines, the DOJ 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 DOJ 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.

In addition to the carrot of lower fines, the DOJ also wielded a heavy stick in 2015 against companies that failed to upgrade their compliance programs after being targeted in antitrust investigations. In May 2015, a major bank pleaded guilty to conspiring to manipulate the foreign exchange market. Prior to this guilty plea, in December 2012, this bank had negotiated a nonprosecution agreement for its role in manipulating the Libor financial benchmark. The DOJ found that the bank's role in the foreign exchange conspiracy violated its 2012 nonprosecution agreement. As such, the bank agreed to plead guilty and pay a $203 million fine in connection with its Libor conduct. In a May 2015 press conference, DOJ Criminal Division Assistant Attorney General Leslie Caldwell stated that "[the bank's] compliance program and remedial measures following the discovery of Libor manipulation did not detect the collusive and deceptive sales-related conduct in the foreign exchange markets. And its conduct in the original Libor matter, for which it initially was not prosecuted in part because of its representations about enhancements to its compliance program, was far more serious than that of any other bank."

Also in 2015, Assistant Attorney General Bill Baer for the first time publicly indicated that the Antitrust Division may consider increasing the use of third-party monitors as part

of the terms of a negotiated plea or settlement agreement. Imposing a monitor in an Antitrust Division case is viewed as a severe penalty associated with postconviction sentencing, at least in part because monitorships are often expensive, intrusive, and sometimes involve adversarial relationships.

Baer's comments, however, suggest that the Antitrust Division seeks to once again promote corporate compliance through a carrot-and-stick approach in which the threat of a monitorship is paired with the offer of incentives to adopt and implement a robust compliance program. Companies that adopt such programs as part of their response to a US investigation may be able to seek credit in the form of reduced sanctions, probation avoidance, and the possibility of a corporate monitor as part of negotiated resolutions.

- Canada and the UK have also recently announced incentives for compliance programs; others (such as France and Colombia) are seriously considering them as well.
- On March 31, 2015, a federal court issued a summons to a cartel defendant to respond to allegations that it violated its probation for a criminal price-fixing conviction through failure to implement an effective antitrust compliance program. This development highlights the DOJ's recent focus on the importance of antitrust compliance programs.
- Hong Kong's competition regulator issued guidance in November 2015 designed to help small- and medium-sized companies ensure their compliance with the special administrative region's first-ever competition law. The Hong Kong Competition Commission issued its so-called tool kit titled "How to Comply with the Competition Ordinance," which is designed to help businesses review their business practices and develop a strategy to comply with the competition statute that took effect on December 14, 2015. The tool kit advises businesses that they can comply with the competition ordinance by taking three key steps: (1) identifying potential risks that could occur in the course of dealing with competitors, suppliers, and customers; (2) creating a strategy to mitigate those risks; and (3) conducting regular reviews.
- In August 2015, Brazil's CADE published a preliminary version of guidelines for internal compliance programs, which can mitigate sanctions in the event of a competition violation.

KEY POLICY DEVELOPMENTS

DOJ POLICY AND SENTENCING—YATES MEMORANDUM FOCUSES ON PROSECUTION OF INDIVIDUALS

ANALYSIS

In September 2015, the DOJ's deputy attorney general issued a memorandum detailing guidance to federal prosecutors regarding prosecution of individuals in white collar cases. The memorandum notes the following:

- Corporations will be eligible for cooperation credit only if they provide the DOJ with "all relevant facts" relating to all individuals responsible for misconduct, regardless of seniority level.
- Both criminal and civil DOJ investigations should focus on investigating individuals "from the inception of the investigation."
- Criminal and civil DOJ lawyers should be in "routine communication" with one another, including by criminal lawyers notifying civil counterparts "as early as permissible" when conduct giving rise to potential individual civil liability is discovered.
- "Absent extraordinary circumstances," the DOJ should not agree to a corporate resolution that provides immunity to potentially culpable individuals.
- The DOJ should have a "clear plan" to resolve open investigations of individuals when a case against a corporation is resolved.
- Civil lawyers should focus on individuals as well and take into account issues such as accountability and deterrence in addition to the ability to pay.

The Yates memorandum identifies an exception to the corporate resolution requirement listed above for policies like the DOJ's cartel leniency policy. The memorandum notes that "absent extraordinary circumstances or approved departmental policy such as the Antitrust Division's Corporate Leniency policy," federal prosecutors should not agree to a corporate resolution that includes an agreement to dismiss charges against, or provide immunity for, individual employees. This exception preserves the Antitrust Division's corporate leniency policy. As such, and as Snyder was reported as confirming in September 2015, the Yates memorandum will not likely lead to significant changes in DOJ antitrust enforcement. The Antitrust Division has been prosecuting senior executives in cartel cases for many years.

The Yates memorandum should not surprise in-house or defense counsel. Deputy Attorney General Sally Quillian Yates is the latest in a long line of DOJ senior officials who have authored memoranda and made statements emphasizing the importance of prosecuting individuals in white collar cases. The Yates memorandum does indicate, however, that the DOJ may start to aggressively use lower-ranking employees, through leniency and plea deals, to prosecute high-level executives. The memorandum may be a preview of a blitz by the Obama administration, in its last year, to prosecute high-ranking executives in all manner of white collar cases, including criminal antitrust.

RUSSIA EXPANDS CRIMINAL ANTITRUST LENIENCY PROGRAM AND UPDATES CRIMINAL LIABILITY FOR CRIMINAL ANTITRUST OFFENSES

On March 8, 2015, Russian President Vladimir Putin signed a federal law, which, inter alia, expands the country's leniency program. The new law relieves a business entity or individual from criminal liability if it was the first cartel participant to voluntarily report the activity, actively facilitated the cartel's exposure, paid restitution for losses caused by the cartel, or otherwise took action to make up losses caused by the cartel. Prior to the amendment, the law only provided relief from administrative liability.

Also on March 8, 2015, President Putin signed a federal law amending Article 178 of the Criminal Code of the Russian Federation, updating the country's criminal liability rules for cartel offenses. This amendment abolishes criminal liability for repeatedly abusing market dominance (i.e., successful prosecution of three offenses within three consecutive years) as well as a firm's unreasonable refusal to conclude an agreement with a competitor or for refusal to remove a barrier to enter a market.

Article 178 is thus narrowed and criminalizes the restriction of competition by competing businesses where the conduct involves high profits or causes major damage to individuals, companies, or the state. In turn, the new law increases the profit and loss thresholds that trigger criminal cartel investigations tenfold: "Large profits" and "very large profits" have been increased from RUB5 million and RUB25 million to RUB50 million and RUB250 million, respectively. "Major damage" values have also increased from RUB1 million to RUB10 million, and "particularly high" damage increased from RUB3 million to RUB30 million.

INTERNATIONAL COOPERATION REMAINS STRONG

- In November 2015, antitrust authorities from Brazil, Russia, India, China, and South Africa (BRICS) signed a Memorandum of Understanding to ease information exchanges between the agencies. The arrangement would allow the agencies to assist one another on antitrust investigations and merger reviews. Officials in one country would, for example, help their counterparts notify companies when they come under investigation. The latest draft of the agreement specifies that the authorities will set up a committee to help facilitate communication among officials. The agencies would be allowed to withhold documents if they are forbidden under national laws to disclose the documents. If a confidential document is handed over, the receiving agency must protect it from disclosure. Brazil's antitrust authority is still seeking an opinion on the draft text from its internal legal team.
- The ACCC and the JFTC recently signed a cooperation arrangement, which will enable the two agencies to assist each other with investigations and exchange information more freely. By entering into the cooperation arrangement, Australia and Japan seek to establish a framework for "constructive cooperation." The arrangement includes provisions for (1) notification (each authority will endeavor to notify the other of enforcement activities likely to affect the important interests of the other authority), (2) information exchange (each authority will give due consideration to sharing information obtained during the course of an investigation), and (3) coordination of enforcement activities (each authority will endeavor to render assistance to one another's enforcement activities and consider the coordination of their enforcement activities). The cooperation agreement also extends to enforcement activities.
- US, Canadian, and Mexican officials met in spring 2015 in Mexico City to discuss their ongoing work to ensure effective antitrust enforcement cooperation in their increasingly interconnected markets. The meetings were held among Chairwoman Edith Ramirez of the Federal Trade Commission, Assistant Attorney General Bill Baer, Canadian Commissioner of Competition John Pecman, and President Alejandra Palacios Prieto of the Mexican Federal Economic Competition Commission.
- The Dominican Republic and Spain's competition authorities agreed to a wide-ranging technical cooperation agreement. The heads of the two antitrust regulators signed the agreement, which was described as "unprecedented" in scope, in Paris on November 2, 2015.
- Portugal and Spain's competition authorities have agreed to increase bilateral cooperation in light of the growing market integration between the two countries. Both authorities agreed to work together more closely at a bilateral forum held in Lisbon in October 2015.
- In October 2015, the JFTC and the NDRC announced a plan to sign a memorandum of understanding. Both authorities will exchange information on cartels involving Japanese and Chinese companies and will conduct on-site investigations simultaneously if needed. The countries also plan to cooperate on increasing the transparency of their antimonopoly policies to make it easier for Japanese and Chinese firms to do business in each other's country.
- In September 2015, China's State Administration for Industry and Commerce signed a memorandum of understanding with Russia's antitrust bureau to increase cooperation between the two countries in antitrust and unfair competition.
- In September 2015, the DOJ and Federal Trade Commission signed a memorandum of understanding with the KFTC that promotes increased cooperation and communication among the competition agencies in the United States and South Korea. The memorandum of understanding includes a mutual acknowledgment that antitrust cooperation is important and includes an intention to coordinate when pursuing enforcement activities on matters under common review.
- The Republic of Serbia's Commission for Protection of Competition and Montenegro's Agency for Protection of Competition signed a memorandum of mutual understanding and cooperation in June 2015. The memorandum continues to promote successful cooperation and development of bilateral relations by ensuring conditions for efficient functioning of market products and services.

OUR PRACTICE

In November 2014, Morgan Lewis completed a transaction with Bingham McCutchen, creating a powerhouse of an antitrust practice, with nearly 60 lawyers specializing in antitrust and competition law. 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 Mark Krotoski and Michael Whitlock. Mark was the Assistant Chief of the National Criminal Enforcement Section in the DOJ's Antitrust Division. Michael was a Senior Trial Attorney also from the National Criminal Enforcement Section of DOJ's Antitrust Division. Mark and Michael are part of a deep bench that includes 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.

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.

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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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