

REGULATORY INTELLIGENCE

Financial services cartel enforcement review for 2021, trends for 2022

Published 15-Feb-2022 by

Mark Krotoski and Omar Shah, Morgan, Lewis & Bockius

Cartel enforcement continued at a brisk pace during 2021, and early indications for 2022 suggest this momentum will continue.

Summary of fines

The European Commission once again led the way in 2021, levying the most money in terms of total fines — 1.7 billion euros (\$2 billion). This was the highest amount [reported](#) by the European Commission since 2017, when fines totalling 1.9 billion euros (\$2.1 billion) were imposed.

In 2021, the three largest fines overall were imposed by the European Commission, including two in the financial services sector:

- July 8: 875.1 million euros (\$985.8 million) — five car manufacturers fined for colluding "to restrict competition in the area of emission cleaning technology for diesel cars", reported to represent the first cartel enforcement action "based solely on a restriction of technical development".
- May 20: 371.3 million euros (\$418.2 million) — seven investment banks [fined](#) for participating in a trading cartel in the primary and secondary market for European government bonds.
- December 2: 344.3 million euros (\$387.8 million) — five banks [fined](#) 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.

For further details, see the Global Cartel Enforcement Report [table](#), which lists the top 23 fines for 2021).

The financial services sector continued to be subject to enforcement last year. In addition to the second- and third-largest fines imposed during 2021 (noted above), the European Commission fined three investment banks 28.4 million euros (\$31.9 million) 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".

Other significant cartel enforcement fines in 2021 included: South Korea (steelmakers and concrete pile manufacturers exchanging sensitive information), 1.02 billion won (\$864.5 million); Brazil (school meals cartel, collusion on automotive filter aftermarket and collusion on tubes and fittings), 3.7 billion real (\$655.6 million); China (concrete and cement price fixing), 1.7 billion yuan (\$268.3 million); and India (breweries agreeing on prices), 8811.75 billion rupee (\$117.2 million). The United States reported the lowest annual fines — \$150.1 million — since 2017, largely consisting of a price-fixing conviction of one of the largest chicken producers. Year-on-year, the United States reported a significant drop in total fines during 2020, when \$639 million was levied. As the restrictions under COVID-19 are lifted, however, enforcement activity is likely to resume with greater focus.

Cartel enforcement initiatives**United States**

The United States took forward a number of enforcement initiatives during 2021. First, on July 9, President Joe Biden signed an "[Executive Order on Promoting Competition in the American Economy](#)", which includes 72 "initiatives" to be implemented by 12 federal agencies to prevent anti-competitive conduct in the economy.

The order mandates a "whole-of-government competition policy" and calls on multiple departments, including the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ), to "fairly and vigorously" enforce the nation's antitrust laws and to consider revising and strengthening existing agency policies.

Secondly, on February 19, the U.S. Department of Labor [announced](#) that the Occupational Safety and Health Administration (OSHA) had begun investigating whistleblower complaints of retaliation under the Criminal Antitrust Anti-Retaliation Act, enacted on December 23, 2020.

The statute 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 allegations. For more information, see [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](#).

Finally, 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 U.S. attorneys' offices and seven national law enforcement agencies.



One case resulted in the first PCSF international case. 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 U.S. Department of Defense for military bases and installations in Belgium.

The company agreed to a \$15 million fine. 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.

European Union

In a speech entitled "A New Era of Cartel Enforcement", Margrethe Vestager, executive vice-president of the EU, confirmed in October 2021 that the European Commission will focus on labor market competition, including no-poach and wage-setting agreements.

This is part of the European Commission's recent enforcement drive, which has increasingly focused on types of cartel conduct other than classic price-fixing cases. One example has been its enforcement against several car manufacturers for colluding to restrict technical development in car emissions technology.

It has also investigated several purchaser cartels. This trend is set to continue, while at the same time the European Commission is engaging in a dialogue with business to see how its leniency program can be improved to uncover more cases.

Post-Brexit, there is now also parallel enforcement in the EU and the UK of major international cartels under civil procedures; previously the UK's Competition and Markets Authority could only initiate investigations alongside the European Commission under its criminal jurisdiction.

Asia-Pacific

On November 17, Taiwan's government doubled the maximum reward for whistleblowers 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.

The following day, China's National Anti-Monopoly Bureau (NAMB) was inaugurated in Beijing. The new bureau will be responsible, inter alia, for cartel enforcement. The move came after China identified antitrust work as a priority for 2022. Finally, on December 29, South Korea introduced new cartel enforcement measures and enhanced penalties, doubling the maximum fine amounts for cartels.

COVID-19 impact on cartel investigations

COVID-19 continues to have an impact on cartel enforcement. For example, some cartel enforcement tools have been affected by the prolonged pandemic. Enforcers are constrained in their ability to conduct dawn raids and many regulators continue to work remotely.

The use of dawn raids is, however, expected to increase as the pandemic subsides. In fact, the European Commission intends to step up its enforcement efforts in this area and has already conducted dawn raids in the wood pulp and life sciences sectors during the third quarter of 2021.

The European Commission has also explored the possibility of conducting "virtual inspections" using electronic communication to collect documents remotely. Similar efforts to adapt enforcement tools are likely in future. The pandemic has also resulted in the redirection of enforcement resources to monitor fraud, price gouging and related schemes associated with the exploitation of pandemic assistance funds.

2022 areas of focus

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

Since the October 2016 announcement of the [Antitrust Guidance for Human Resource Professionals](#) by the Antitrust Division and FTC, the United States has focused on labor market competition enforcement including "no-poach" agreements and wage-fixing. Five criminal cases are pending in the U.S. healthcare and aerospace industries.

More recently, other enforcement agencies have opened labor market investigations and/or issued guidelines or statements on labor market competition including 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). The international trend on labor market competition enforcement is expected to continue.

Companies should consider reviewing their compliance and whistleblower programs to address antitrust risk in this area.

[Complaints Procedure](#)

