

**Morgan Lewis**

**ANTITRUST & COMPETITION**

A magnifying glass with a dark frame is positioned over a world map. The lens is focused on the Asian continent, specifically showing India and China. The map is colorful, with various countries in different shades. The text 'GLOBAL CARTEL ENFORCEMENT REPORT MID-YEAR 2018' is overlaid in white, bold, sans-serif font on the left side of the image.

**GLOBAL CARTEL  
ENFORCEMENT  
REPORT**  
**MID-YEAR 2018**

# CONTENTS

# CONTENTS

# INTRODUCTION

**The first half of 2018 showed a marked increase in fines from the same period in 2017, several enforcement firsts, and a strong pipeline of new, mainly domestic cartel cases around the world.**

In fact, three countries imposed their largest cartel fines to date in 2018: **Egypt** for **5.58 billion Egyptian pounds (\$316.2 million)** against four pharmaceutical companies; **Australia** for **\$46 million Australian (\$34.6 million)** against a wire harnesses manufacturer; and **Singapore** for **\$19.6 million Singapore (\$14.7 million)** against five capacitor manufacturers.

At **\$2.17 billion**, total global fines for the first half of 2018 far exceeded the **\$1.2 billion** in fines for the same period in 2017.

**During the first half of 2018, significant fines issued by other enforcers include:**

- **395 million euros (\$486.5 million)** European Commission: five maritime car carriers for participating in a cartel concerning intercontinental maritime transport of vehicles
- **5.58 billion Egyptian pounds (\$316.2 million)** Egypt: four pharmaceutical companies for fixing prices on small-and medium-sized pharmacists
- **254 million euros (\$311.6 million)** European Commission: eight producers of capacitors for coordinating future behavior and avoiding price competition
- **91 million euros (\$112.8 million)** Spain: four banks for agreeing to offer interest-rate derivatives
- **76 million euros (\$93.6 million)** European Commission: three spark plug companies for agreeing on prices and the share of supplies to specific customers and the respect of historical supply rights
- **301 million reais (\$92.8 million)** Brazil: cartel involving processors of frozen orange juice concentrate
- **75 million euros (\$92.4 million)** European Commission: three car part suppliers involved with hydraulic braking systems (HBS) and the supply of electronic braking systems (EBS) for coordinating pricing elements
- **\$90 million** United States: an international financial services company for conspiring in the foreign currency exchange (FX) market
- **68 million euros (\$83.8 million)** Spain: nine courier companies for carving up the market for courier and business-parcel delivery services
- **289.5 million reais (\$79.5 million)** Brazil: 18 companies, 39 individuals, and three unions for cartel conduct in the sea salt market

- **31 million euros (\$38 million)** Cyprus: eight banks for fixing the domestic interchange fee for bank and credit cards as well as merchant service charges
- **22.7 billion won (\$20.9 million)** South Korea: five marine-cable companies for rigging bids for cables used on LNG, container, and other ships
- **73.1 million lei (\$18.8 million)** Romania: six companies and a local electricity holding for bid-rigging
- **15.7 billion won (\$14.6 million)** South Korea: 27 ready-mix concrete companies for setting prices and output of ready-mix concrete
- **\$12 million** United States: a Japanese automotive parts manufacturer for conspiring to fix prices, rig bids, and allocate customers for automotive steel tubes
- **42.9 million reais (\$11.6 million)** Brazil: two financial institutions and one individual for cartel conduct in the foreign exchange market involving the Brazilian real and offshore currencies
- **11.6 billion won (\$ 10.8 million)** South Korea: four wholesalers making consignment sales in agricultural product markets for farmers and others for agreeing to fix commissions for produce sold in a local agricultural produce market
- **10.8 billion won (\$10.1 million)** South Korea: 14 companies for rigging bids to provide aerial photography services to the Korean government

A key issue that continues to gain attention concerns the **costs and burdens of the leniency program**. The role of international cooperation and options to make the process more efficient is being considered by leading enforcers. (See p. 58)

A new area of enforcement concerns **no-poaching agreements** and **wage-fixing agreements**. This conduct is subject to criminal and civil enforcement in the US and is also the focus of the Hong Kong Competition Commission and the Japan Fair Trade Commission. (See p. 64)

The role of **algorithms in antitrust enforcement** is an issue discussed and studied by enforcers around the world and will be the subject of continuing debate, study, and hearings in the foreseeable future by a number of enforcers. (See p. 67)

# TRENDS

## Emerging and Continuing Trends in Cartel Enforcement

- **Evaluating the Costs and Benefits of Leniency on the Eve of the 25th Anniversary for the Modern US Leniency Program:** The US Department of Justice (DOJ) will commemorate the 25th anniversary of its modern Leniency Program, which was substantially revamped and revitalized in August 1993. Over the past few decades, the US program has been a model for other global enforcers. The commemoration also provides a chance to review the costs and benefits of the Leniency Program and assess whether changes should be considered. In a recent speech, Acting Deputy Assistant Attorney General Richard Powers noted that international enforcers “can increase our cooperation and our shared commitment to coordinating, where and to the extent possible, to decrease burdens on applicants” and noted the need to “engag[e] with foreign enforcers, and also the defense bar, to examine possible ways to reduce unnecessary burdens on leniency applicants.” This review may result in enhancing the attractiveness of leniency and promoting greater efficiencies. (See page 58).
- **New Enforcement Actions and Investigation Focus on No-Poaching and Wage-Fixing Agreements:** In 2018, the DOJ has commenced enforcement actions for no-poaching agreements and made clear that criminal investigations are pending for conduct after October 2016. A significant civil enforcement action was filed in April involving two of the world’s largest rail equipment suppliers. The no-poaching agreements in that case preceded October 2016 when the DOJ and Federal Trade Commission (FTC) jointly announced their focus in this area. International issues and exposure are raised based on potential enforcement activity in other jurisdictions, including in Hong Kong and Japan. (See page 64).
- **US Supreme Court Decides Deference Standard for Evaluating Foreign Government Statements Regarding the Meaning of Their Laws:** A unanimous US Supreme Court held that US courts “should accord respectful consideration to a foreign government’s submission” interpreting foreign law, “but is not bound to accord conclusive effect to the foreign government’s statements.” This landmark ruling will impact antitrust and other cases involving the application and interpretation of foreign law. (See page 76).
- **Largest Egypt Fine:** On March 1, the Egyptian Competition Authority fined four pharmaceutical companies **5.58 billion Egyptian pounds (\$316.2 million)** for fixing prices for small and medium-sized pharmacists in Egypt. This is the largest fine in the history of the Egyptian Competition Authority. (See page 24).
- **Largest Australian Fine:** On May 16, the Full Federal Court of Australia issued its largest fine to date under the Competition and Consumer Act of 2010 by fining an auto parts manufacturer **\$46 million Australian (\$34.6 million)** for engaging in anticompetitive cartel conduct in the provision of wire harnesses for the Toyota Camry. The fine was based on conduct during 2003 until 2008. (See page 23).

- **Focusing on Future Higher Australian Penalties:** The Organisation for Economic Co-operation and Development (OECD) issued a report noting that Australia's penalties were significantly lower than those imposed by other countries for similar competition law violations. Australia Competition & Consumer Commission (ACCC) Chairman Rod Sims responded that "Australia needs higher penalties for breaches of the competition laws by larger companies" and "the ACCC needs to rethink its approach." (See page 23).
- **Largest Singapore Fine:** On January 5, the Competition and Consumer Commission of Singapore (CCCS) imposed financial penalties totaling \$19.6 million Singapore (\$14.7 million) on five capacitor manufacturers for fixing prices and exchanging confidential sales, distribution, and pricing information for aluminum electrolytic capacitors. This fine is the highest financial penalty imposed by CCCS to date. (See page 19).
- **Pending US Extradition Proceedings:** On June 21, the DOJ confirmed in a court filing that it is seeking to extradite a United Kingdom citizen from Spain. This would be the sixth extradition by the DOJ in an antitrust case if approved. (See page 69).
- **Individuals Under Investigation for the First Time in Poland:** The Poland Office of Competition and Consumer Protection is investigating allegations of market allocation by fitness club companies and agreements to exclude competitors. As part of the investigation involving 16 companies, for the first time the enforcement agency is investigating seven individuals who may be subject to fines as high as **2 million zloty (\$530,000)**. (See page 42).
- **US Department of Justice: Government Damages Considered.** The DOJ is considering reviving the practice of seeking damages on the federal government's behalf when it is the victim of a price-fixing agreement or other antitrust

violation. The DOJ used this practice to a greater degree in the 1970s, but not as frequently in recent years. Senior officials have noted this practice may be used in the DOJ's ongoing investigation into the price-fixing of generic drugs. (See page 52).

- **Algorithms and Antitrust Enforcement:** The use of algorithms has raised new questions for antitrust enforcers. Some algorithm cases have been prosecuted as cartel violations. The issue has been raised in speeches by leading enforcers. The role of antitrust enforcement in addressing the effects of pricing algorithms is part of a continuing debate. (See page 67).

Other developments on this issue include:

- **Federal Trade Commission Focus:** On June 20, the FTC announced that it will "hold a series of public hearings on whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection enforcement law, enforcement priorities, and policy." One identified topic is "the consumer welfare implications associated with the use of algorithmic decision tools, artificial intelligence, and predictive analytics."
- **Luxembourg Competition Agency Allows Algorithms by Taxi Competitors to Set Prices Notwithstanding Horizontal Agreement:** On June 8, Luxembourg's competition agency allowed horizontal taxi competitors to set rates determined by an algorithm. After considering relevant factors, including the use of neutral and objective criteria, the agency granted an exemption to the horizontal agreement. (See page 67).

— **France and Germany Joint Project:**

On June 19, the competition authorities in France and Germany announced a joint project to review algorithms and “their potential anticompetitive effects” and to assess “algorithms’ detection and examination” in an effort to provide “a deeper understanding of algorithms.” (See page 68).

- **New Argentina Law on the Defense of Competition:** On May 23, a major competition law became effective in Argentina. A new independent agency, the Autoridad Nacional de Competencia (National Competition Authority), will be established. Other reforms include increased fines, a presumption illegality for certain cartels (including for competitor agreements to fix prices, rig bids, restrict output, and allocate markets), and a national leniency program. (See page 62).
- **China: Consolidation of Antitrust Agencies:** In March, the Chinese legislature took a significant step to consolidate antitrust agencies into one agency, the State Administration for Market Regulation, which is directly supervised by the State Council. So far, the Chinese government has provided limited information as to how the consolidation will take effect. However, the consolidation is expected to result in more unified guidance on the interpretation and application of China’s antitrust laws and regulations, greater consistency in enforcement, and more enforcement activism with increased resources to conduct large-scale enforcement actions.
- **China: Special Enforcement Campaign of Fair Competition Review:** In April, the State Administration for Market Regulation (SAMR) launched a new round of special enforcement campaign of fair competition review of the public services industry from April to November. In this

review, local Administration for Industry and Commerce (AIC) agencies are required to report the enforcement statistics to SAMR by the end of 2018. The AICs will also record the information regarding the violators in the National Credit Information Publicity System and publish details of representative cases in a timely manner.

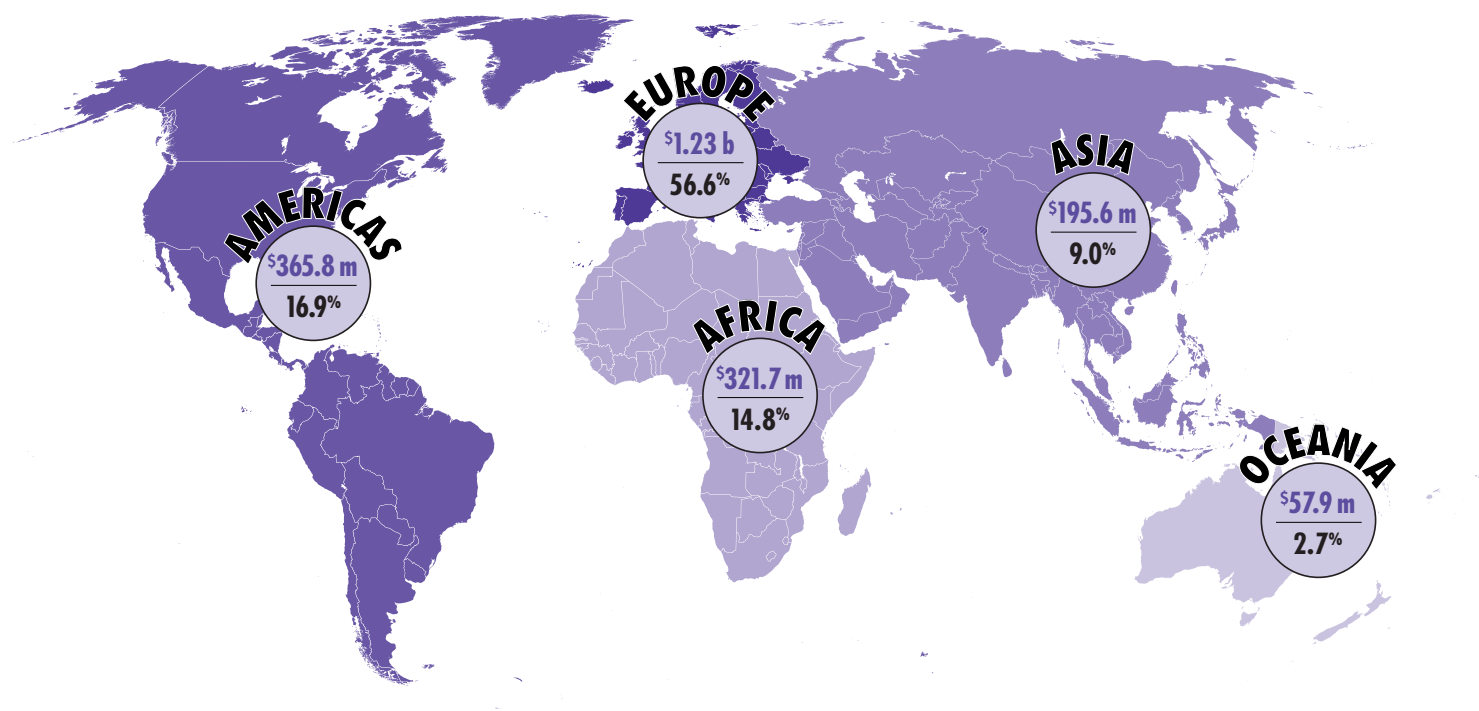
- **Spain: New Investigation Unit:** Spain’s competition authority, the National Commission for Markets and Competition, is setting up a specialized new economic intelligence unit to boost detection of cartels and reduce the authority’s reliance on complaints and leniency applications. The new unit will “carry out a wide variety of market screening activities, including structural and behavioral screens, with a special focus in the detection of bid-rigging in public procurement activities.
- **DOJ Criminal Leadership Changes:** The Antitrust Division of the US Department of Justice (DOJ) has selected Richard Powers as the new acting deputy assistant attorney general to oversee criminal enforcement efforts. Mr. Powers previously served in the Antitrust Division as a trial attorney prosecuting cartel and fraud cases in the DOJ’s Atlanta and New York offices. Some of his cases included prosecutions in the air cargo price-fixing investigation, bid-rigging charges in the real estate foreclosure auction investigation, and conspiracy and fraud cases involving the financial services industry, including the manipulation of municipal bonds and London Interbank Offered Rates (LIBOR). Most recently, he served as a trial attorney in the Healthcare Fraud Unit in the Fraud Section of the Criminal Division in the Eastern District of New York. He is a graduate of the US Military Academy at West Point and the University of Alabama Law School, and he received a

Bronze Star while serving in Iraq. His first speech on June 5 at the Organisation for Economic Co-operation and Development in Paris, focused on the Leniency Program. (See page 58).

- **Hong Kong: New Members of Competition Commission.** Members of the commission have been appointed for a new two-year term commencing May 1, 2018. Anna Wu Hung-yuk has been re-appointed as the commission's chairperson and nine new members were appointed.
- **Norway: Competition Report.** On March 23, Norway's competition authority released the results of a survey of Norwegian business leaders showing that many leaders believe illegal cooperation takes place in Norway, primarily in the form of price-fixing, exchange of sensitive information, and market sharing. The regulator announced it would be intensifying its investigation of suspected cartels.
- **Singapore: Administrative Update:** In April, the Competition Commission of Singapore took on the new name of the Competition and Consumer Commission of Singapore to reflect its new role in enforcing the Consumer Protection (Fair Trading) Act.
- **United Kingdom: New Digital Campaign:** In February, the Competition and Markets Authority (CMA) launched a new digital campaign encouraging people to be "Safe, not Sorry" if they think they may have involved themselves in cartel activity and to make sure they are the first to report it to the CMA. Witnesses—those not involved themselves but who have seen something untoward—are also asked to "Do the Right Thing" by reporting it to the CMA. The CMA saw a 30% increase in tip offs in 2017, following the launch of its first digital campaign. As part of the new campaign, the CMA is reminding people that, if they come forward with information about their involvement, they can receive significant reductions in fines and avoid being disqualified from running a company. If they are the first to come forward, they can receive total immunity, including from criminal prosecution. Witnesses who blow the whistle can receive a reward of up to £100,000 (about \$132,000).

# GLOBAL CARTEL FINES THROUGH JUNE 2018: \$2.17 BILLION

Fines by jurisdiction, with percentages of total global fines



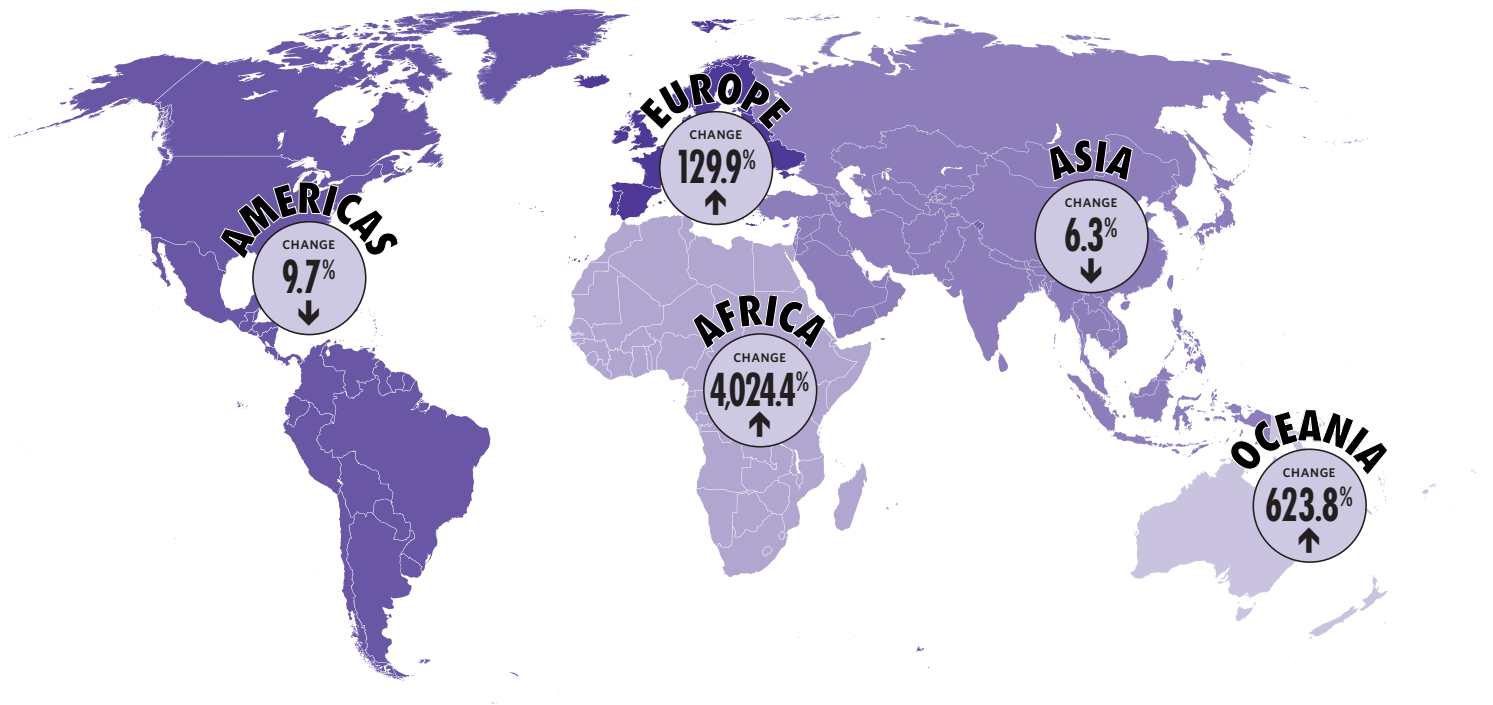
	FINES* BY JURISDICTION	% OF TOTAL GLOBAL FINES
<b>EUROPE</b>	<b>\$1.23 b</b>	<b>56.6%</b>
European Union	\$890.5 m	
Other	\$336.9 m	
<b>AMERICAS</b>	<b>\$365.8 m</b>	<b>16.9%</b>
United States	\$109.8 m	
Brazil	\$185.4 m	
Canada	\$0.1 m	
Other	\$70.5 m	

	FINES* BY JURISDICTION	% OF TOTAL GLOBAL FINES
<b>ASIA</b>	<b>\$195.6 m</b>	<b>9.0%</b>
South Korea	\$134.0 m	
Japan	\$17.6 m	
Russia	\$11.0 m	
India	\$8.0 m	
China	\$0.5 m	
Other	\$24.5 m	
<b>AFRICA</b>	<b>\$321.7 m</b>	<b>14.8%</b>
Egypt	\$316.5 m	
South Africa	\$5.2 m	
<b>OCEANIA</b>	<b>\$57.9 m</b>	<b>2.7%</b>
Australia	\$57.9 m	

\*Through June 30, 2018, and based on publicly available information where available.

# MID-YEAR GLOBAL CARTEL FINES

## HOW 2018 COMPARES WITH 2017



	2018	2017	% CHANGE
<b>TOTAL GLOBAL FINES*</b>	<b>\$2.17 b</b>	<b>\$1.17 b</b>	<b>86.2% ↑</b>
<b>EUROPE</b>	<b>\$1.23 b</b>	<b>\$535.0 m</b>	<b>129.9% ↑</b>
European Union	\$890.5 m	\$268.0 m	232.3% ↑
Other	\$336.9 m	\$267.0 m	26.8% ↑
<b>AMERICAS</b>	<b>\$365.8 m</b>	<b>\$405.2 m</b>	<b>9.7% ↓</b>
United States	\$109.8 m	\$182.1 m	39.7% ↓
Brazil	\$185.4 m	\$107.3 m	72.8% ↑
Canada	\$0.1 m	\$9.9 m	99.9% ↓
Other	\$70.5 m	\$105.9 m	33.4% ↓

	2018	2017	% CHANGE
<b>ASIA</b>	<b>\$195.6 m</b>	<b>\$208.8 m</b>	<b>6.3% ↓</b>
South Korea	\$134.0 m	\$105.2 m	27.4% ↑
Japan	\$17.6 m	\$61.4 m	71.3% ↓
Russia	\$11.0 m	\$1.2 m	816.7% ↑
India	\$8.0 m	\$31.9 m	74.9% ↓
China	\$0.5 m	\$0.5 m	0.0%
Other	\$24.5 m	\$8.6 m	184.9% ↑
<b>AFRICA</b>	<b>\$321.7 m</b>	<b>\$7.8 m</b>	<b>4,124.3% ↑</b>
Egypt	\$321.7 m	\$0.0 m	↑
South Africa	\$5.2 m	\$7.8 m	33.3% ↓
<b>OCEANIA</b>	<b>\$57.9 m</b>	<b>\$8.0 m</b>	<b>623.8% ↑</b>
Australia	\$57.9 m	\$7.0 m	727.1% ↑
New Zealand	\$0.0 m	\$1.0 m	↓

\*Through June 30, 2018, and based on publicly available information where available.

# 2018 CARTEL FINES

Notable Corporate Fines.....	13
Significant Individual Prison and Other Sentences for Cartel Offenses.....	27
Significant Cases Pending Trial or Sentencing.....	30
Countries with Cartel Immunity/ Leniency Programs.....	34



# Notable Cartel Fines

## AMERICAS

**Brazil: Oranges.** On February 28, the Administrative Council for Economic Defense announced an agreement in a cartel investigation in the market for the purchase of oranges for the production of concentrated fruit juice concentrate. The parties acknowledged their participation in the investigated pipeline, agreed to cease the practice, cooperate with the investigations, and pay a pecuniary contribution calculated on the basis of the total value of purchases of third-party oranges in 1998, **301 million reais (\$92.8 million)**. According to the leniency agreement and evidence obtained from the search and seizure, a cartel was formed from 1999 to 2006 between the processors of frozen orange juice concentrate, with price adjustment for the producers' orange acquisition, division of market, and exchange of competitively sensitive information.

**United States: Foreign Currency Exchange.** On January 26, an international financial services company pleaded guilty to participating in a price fixing conspiracy in the foreign currency exchange (FX) market. According to the one-count information filed in the US District Court for the Southern District of New York, between September 2011 and July 2013, the company conspired to suppress and eliminate competition by fixing prices in Central and Eastern European, Middle Eastern, and African currencies, in violation of Section 1 of the Sherman Act. The conspiracy involved manipulation of prices on an electronic FX trading platform through the creation of non-bona fide trades, coordination of bids and offers on that platform, and agreements on currency prices to quote specific customers, among other conduct. At the June 4 sentencing hearing, the court imposed the recommended criminal fine agreed to by the parties of **\$90 million**. Both the government and the defendant company recommended no probation, in light of, among other factors, the bank's

substantial efforts relating to compliance and remediation. The court did not impose probation. The company also agreed to cooperate with the government's ongoing criminal investigation into the FX market and to report relevant information to the government. The defendant company is the sixth major bank to plead guilty as a result of the DOJ's ongoing investigation into antitrust and fraud crimes in the FX market.

**Brazil: Sea Salt.** On May 23, the Tribunal of the Administrative Council for Economic Defense announced a total fine of **289.5 million reais (\$79.5 million)** for 18 companies, 39 individuals, and three unions for a cartel conduct in the sea salt market. The evidence produced during the investigation showed that those involved frequently met for the purpose of defining the prices charged, controlling the supply of the product, and dividing the market between them. This conduct was supported by an association and two trade unions in the sector. The coordination between salt producers and refineries affected the entire production chain in Brazil and lasted at least from 1992 to 2012.

**Peru: Shipping.** On May 14, the National Institute for the Defense of Free Competition and the Protection of Intellectual Property fined six shipping company a total of approximately **144 million sol (\$44 million)** for participating in a global roll-on, roll-off shipping cartel. The investigation revealed that the companies held meetings to establish a communication framework to share commercially sensitive information and cost-cutting strategies. The shipping companies also exchanged customer lists and allocated specific car manufacturers as "exclusive customers."

**United States: Automotive Steel Tubes.** On May 31, a Japanese automotive parts manufacturer pleaded guilty and was sentenced to pay a **\$12 million** criminal fine for its role in a criminal conspiracy to fix prices, rig bids, and allocate customers for automotive

steel tubes incorporated into vehicles sold in the United States and elsewhere. Automotive steel tubes are used in fuel distribution, braking, and other automotive systems, and are sometimes divided into two categories—chassis tubes and engine parts. Chassis tubes, such as brake and fuel tubes, tend to be located in the body of a vehicle while engine parts—such as fuel injection rails, oil level tubes, and oil strainer tubes—are associated with the function of a vehicle's engine. The manufacturer pleaded guilty to a charge contained in an indictment returned by a grand jury on June 15, 2016, in the US District Court for the Southern District of Ohio. According to the plea agreement, the manufacturer participated in a conspiracy to suppress and eliminate competition by agreeing to fix prices, allocate customers, and rig bids for automotive steel tubes sold to automobile manufacturers in Japan and incorporated into vehicles sold in the United States, in violation of the Sherman Act.

**Brazil: Foreign Exchange.** On June 13, the Tribunal of the Administrative Council for Economic Defense (CADE) approved three Cease and Desist Agreements to settle a cartel probe in the foreign exchange market, involving the Brazilian real and offshore currencies. The agreements were signed between CADE and two financial institutions and one individual. The total fines include **42.9 million reais (\$11.6 million)**. In the agreements negotiated with CADE's General Superintendence, the signatories acknowledged their participation in anticompetitive conduct, committed to cease the practices, and collaborate with the antitrust agency in all aspects of the investigation helping to clarify the facts.

**Colombia: Private Security Companies.** On January 30, the Superintendence of Industry and Commerce confirmed a sanction against seven private security and surveillance companies for bid-rigging and manipulating several public procurement processes with different governmental entities in Colombia (i.e., against the attorney general, Aviation Force Authority, and others). The private security companies

created a fake organization that participated in the bidding processes. The fine was for **\$14 billion pesos (\$4.8 million)**.

**Mexico: Condoms and Latex Catheters.** In March 20, Mexico's Federal Economic Competition Commission imposed a fine of **112.9 million pesos (\$6 million)** on five companies and seven named individuals for rigging bids, fixing prices, and allocating customers from 2009 through 2013 for the sale of condoms and latex catheters sold to healthcare companies.

**Peru: Energy.** On January 10, the National Institute for the Defense of Free Competition and the Protection of Intellectual Property fined a cartel of 16 liquefied petroleum gas (LPG) companies in an ongoing probe of the country's fuel sector. The companies colluded to fix the price per liter of LPG at a service station in northern Peru. The regulator fined the companies a total of **9.7 million sol (\$3 million)** and ordered them to take part in a three-year competition policy training program.

**Brazil: Phone Reload.** On June 13, the Tribunal of the Administrative Council for Economic Defense imposed fines on two companies and six individuals for cartel practices in the market of distribution of electronic reload for prepaid phones. The imposed fines sum up to **1.6 million reais (\$431,000)**. The investigation was initiated from a leniency agreement. During the evidentiary stage, it was verified that the parties held meetings to fix prices, divide market, and exchange sensitive information among themselves. The anticompetitive practices would have lasted, at least, from 2007, when the prepaid phones reload market had an economic impact of 3.5 billion reais, and 2009.

**Mexico: Media Monitoring Services.** On January 30, Mexico's Federal Economic Competition Commission imposed a fine of **7.3 million pesos (\$364,000)** on three media monitoring service companies and five individuals for fixing market research prices and bid responses to government agencies for media monitoring and related services between 2012 and 2016.

**Brazil: Automotive Parts.** On May 9, the Tribunal of the Administrative Council for Economic Defense announced settlements agreements in two cartel investigations related to auto parts manufacturers. The fines totaled **2.8 million reais (\$778,000)**. The parts at issue included valves for engines, valve guides, and valve seats for one company, and wire harness and electric and electronic components (including electronic control units, junction boxes, automotive dashboards and displays, systems with ABS sensor cable, high voltage cables, components for electric and hybrid vehicles, antenna, and connectors) for a second company. The parties admitted participation in the investigated conduct, committed to cease the practice, and to collaborate with the antitrust body in the elucidation of the facts. There is evidence that some companies set prices and commercial conditions, divided the market between competitors, and exchanged commercially and competitively sensitive information, aligned price increases, combined percentages, and readjusted dates.

**Argentina: Marketing of Medicines:** On January 26, the Argentina Ministry of Commerce fined the Pharmaceutical College of Tucumán, the Pharmacy Association of Tucumán, and the Circle of Pharmacies of the South a total of **\$6.4 million pesos (\$327,000)** for price cartelization, regulating advertising investments, and determining operating hours.

**Colombia: Cement Companies.** On June 18, the Colombian Highest Administrative Court confirmed the sanction imposed by the Superintendence of Industry and Commerce in 2008 of **\$923 million pesos (\$316,000)** to three large Colombian cement companies for the following allegations: engaging in a tacit collusion with the purpose to raising cement prices between June and December 2005 and market allocation among the cement companies during the same period. After 10 years of litigation, the sanction was confirmed by the Highest Administrative Court and it cannot be challenged.

**Canada: eBooks.** On January 9, Canada's Competition Bureau entered into a consent agreement to settle allegations that a publisher had entered into a price-fixing agreement for ebooks being sold to consumers over a popular electronic platform. The publisher agreed to modify its practices and donate \$150,000 Canadian (\$116,00) worth of ebooks and print books to encourage reading.

**Peru: Road transport.** On April 20, the National Institute for the Defense of Free Competition and the Protection of Intellectual Property fined five companies for a price-fixing agreement for a total of **352,402 sol (\$107,500)**.

**Brazil: Soft Drinks.** On June 20, the Tribunal of the Administrative Council for Economic Defense (CADE) signed a cease and desist agreement with a Brazilian association. The agreement was established under an administrative proceeding that investigates alleged anticompetitive practices intended to standardize the commercial practices of their associates. The investigation over the alleged practices was initiated after an associate was reported in November 2015. According to the whistleblower, the anticompetitive practices involved the standardization of commercial practices through the exchanging of sensitive information; the monitoring of commercial behavior to verify which of the associates would have been practicing low prices; and the imposition of sanctions to those associates that failed to comply with the anticompetitive agreements, such as expelling them from the association. As imposed by the agreement, the association committed itself to abstain from practicing any of the conduct investigated in the administrative proceeding, as well as adopt measures to assure that they will not happen again. Furthermore, the indicted party must provide CADE documents, information, and other materials concerning the investigated facts in the proceeding and pay, as a pecuniary contribution of **110,000 reais (\$29,000)**.

**Argentina: Sanatoriums and Clinics.** On May 30, the Argentina Ministry of Commerce fined four sanatoriums and clinics **\$320,000 pesos (\$12,900)** based on a price-fixing agreement involving medical services to students traveling to Bariloche on school trips. The investigation, which began in 2013, was conducted by the National Commission for the Defense of Competition, based on complaints.

## EUROPE

**European Commission: Ocean Carrier Services.** On February 21, the European Commission found that five maritime car carriers participated in a cartel concerning intercontinental maritime transport of vehicles, and imposed a total fine of **395 million euros (\$486.5 million)**. For almost six years, from October 2006 to September 2012, the five carriers formed a cartel in the market for deep-sea transport of new cars, trucks, and other large vehicles, such as combine harvesters and tractors, on various routes between Europe and other continents. The commission's investigation revealed that, to coordinate anticompetitive behavior, the carriers' sales managers met at each other's offices, in bars, restaurants, or at other social gatherings, and were in contact over the phone on a regular basis. In particular, they coordinated prices, allocated customers, and exchanged commercially sensitive information about elements of the price, such as charges and surcharges added to prices to offset currency or oil price fluctuations.

**European Commission: Capacitors.** On March 21 eight producers of capacitors were fined **254 million euros (\$311.6 million)** by the European Commission for participating in cartel. The commission's investigation found that from 1998 to 2012, nine Japanese companies participated in multilateral meetings and engaged in bilateral or trilateral contacts to exchange commercially sensitive information. The objective was to coordinate future behavior and avoid price competition. In particular, the companies

exchanged information on future prices and pricing intentions, and on future supply and demand information. In some instances, the participants also concluded price agreements and monitored their implementation. The investigation began in 2014 after an immunity application was submitted.

**Spain: Interest Rate Derivatives.** On February 14, four banks were fined a total of **91 million euros (\$112.8 million)** for agreeing to charge above-market prices for interest-rate derivatives. The Spanish Competition Authority, the National Commission for Markets and Competition, said the derivatives were used as hedging instruments for the interest-rate risk associated with syndicated loans for financing projects.

**European Commission: Spark Plugs.** On February 21, the commission found that three companies had participated in a cartel concerning supplies of spark plugs to car manufacturers in the European Economic Area (EEA) and imposed a total fine of **76 million euros (\$93.6 million)**. Spark plugs are automotive electric devices built in petrol engines of cars, delivering high-voltage electric sparks to the combustion chamber. The cartel lasted from 2000 until 2011, and aimed at avoiding competition by respecting each other's traditional customers and maintaining the existing status quo in the EEA's spark plugs industry. The three companies exchanged commercially sensitive information and in some instances agreed on the prices to be quoted to certain customers, the share of supplies to specific customers, and the respect of historical supply rights.

**European Commission: Braking Systems.** On February 21, the commission found two cartels relating to braking systems. The first concerned the supply of hydraulic braking systems; the second the supply of electronic braking systems. The commission imposed a total fine of **75 million euros (\$92.4 million)**. In both cartels, the three car-part suppliers aimed at coordinating their market behavior by exchanging sensitive information,

including on pricing elements. The coordination took place at bilateral meetings and through phone conversations or email exchanges.

**Spain: Courier Services.** On March 3, a total of nine courier companies were fined more than **68 million euros (\$83.8 million)** for cartel conduct specifically for carving up the market for courier and business-parcel delivery services, by the National Commission for Markets and Competition. Some courier companies make marketing agreements with other companies that complement their distribution networks for some services. The investigation of the authority showed that, in the framework of these agreements, some companies concluded verbal agreements of "non-aggression". Through these agreements, the companies involved in the commercial relationship undertook not to make commercial offers to any of their competitor's clients.

**Cyprus: Credit and Bank Card Interchange Fees.** On February 13, the Cyprus Commission for the Protection of Competition announced that it had unanimously decided that an association comprised of eight banks fixed the domestic interchange fee for bank and credit cards as well as merchant service charges and assessed total administrative fines of **31 million euros (\$38 million)**.

**Romania: Electricity Equipment.** On January 8, Romania's Competition Council sanctioned six companies and a local electricity holding for participating in anticompetitive agreements to bid in public auctions in a manner that enabled each company to win contracts. This cartel activity resulted in an artificial increase in equipment purchase prices and higher electricity bills for consumers. The fine was **73.1 million lei (\$18.8 million)**. The Competition Council did not fine one of the sanctioned companies because it provided evidence of the agreements and received immunity under the leniency program.

**Spain: Advertising.** On May 7, the National Commission for Markets and Competition fined five advertising agencies a total of **7.23 million euros**

**(\$8.6 million)** for exchanging information about the allocation of public institutions' advertising spend over an 18-month period, ending in May 2016. Three managers were also sanctioned a total of **109,000 euros (\$130,000)**.

**Switzerland: Construction.** In April, Switzerland's Competition Commission fined five construction companies a total of **7.5 million Swiss francs (\$7.6 million)** for widespread bid-rigging. Another company avoided fines due to the expiration of the statute of limitations. This is agency's eighth investigation into bid-rigging in the Swiss canton of Graubünden. Two probes reportedly remain ongoing, with upward of 40 companies involved across the investigations.

**Romania: Security Services.** On January 19, Romania's Competition Council sanctioned 33 companies and four associations for fixing the minimum price on the security market by setting an agreed-upon minimum hourly rate for their services. The fine was **23.4 million lei (\$6.2 million)**. Five of the sanctioned companies admitted to participating in the cartel and benefited from a reduction in the fine.

**United Kingdom: Bagged Household Fuels, Including Coal, Fire Logs, and Charcoal.** On March 2, the Competition and Markets Authority (CMA) announced that following a complaint made to the cartels hotline, a settlement agreement had been reached with two of the UK's largest suppliers of household charcoal and coal. Under the terms of the agreement, the two companies involved admitted to rigging competitive tenders to supply two of the UK's largest supermarkets. For each of the tenders concerned, it was agreed that one of the household fuel suppliers would submit a higher bid that was deliberately designed to lose, in order to allow the existing supplier to retain the customer. Additionally, both companies admitted to exchanging confidential pricing information. The CMA imposed fines totaling approximately **3.5 million British pounds (\$4.9 million)**, which includes a 20% reduction as a result of the companies admitting breaching competition

law. The CMA concluded that the market-sharing arrangements entered into by the companies were not necessary or justified, and as such were in breach of Chapter I of the Competition Act 1998.

**Russia: Technological Equipment.** On June 21, the Federal Antimonopoly Service fined four entities more than **200 million rubles (\$3.1 million)** for maintaining prices from 2014 through 2017 at 11 state tenders for the supply of technological equipment for the Ministry of Defense.

**Russia: IT System Units.** On June 7, the Federal Antimonopoly Service fined two companies **163.2 million rubles (\$2.6 million)** for bid-rigging at a state tender for the supply of system units for automatic processing used by the Federal Information Center established by the Central Election Commission of Russia.

**Spain: Legal Fees.** On March 12, the National Commission for Markets and Competition fined bar associations for a collective price recommendation, in breach of cartel rules. The watchdog sanctioned nine associations from regions—including Barcelona, Seville, and Valencia—a total of **1.45 million euros (\$1.8 million)**.

**Denmark: Construction.** On January 11, Denmark's Competition and Consumer Authority announced it had entered into a settlement with a construction company related to alleged bid-rigging. The company agreed to a fine of **3.2 million kroners (\$525,500)**.

**Slovakia: Water, Gallons, and Dispensers.** On April 11, the Antimonopoly Office of the Slovak Republic, Division of Cartels, imposed fines totaling **281,200 euros (\$348,200)** on two undertakings for an agreement based on the coordination of their activities in the field of providing a drinking regime, particularly by supplying water, gallons, and dispensers, including related services, between 2013 and 2014. The undertakings coordinated their activities through

the scheme of anticompetitive practices consisting of a price-fixing agreement, market sharing and coordination of their behavior in tender.

**Russia: IT Services.** On June 7, the Federal Antimonopoly Service imposed fines totaling **16.3 million rubles (\$260,800)** on two entities for bid-rigging at state tenders for the provision of IT services to the Federal State Statistics Service and state budgetary enterprise Informative City in 2016.

**Ukraine: Tires.** In April, three Ukrainian tire manufacturers were fined approximately **6.4 million hryvnia (\$250,000)** by the Ukraine Antimonopoly Committee for rigging bids during the Ukrainian postal service's requests for quotations for tires in June and December of 2015. The investigation was conducted in conjunction with the National Anti-Corruption Bureau of Ukraine, a state law enforcement agency that investigates corruption and prepares cases for prosecution.

**Lithuania: Notary Fees.** On April 27, the Lithuanian Competition Council announced fines of **88,400 euros (\$105,000)** against the Lithuanian Chamber of Notaries for price-fixing.

**Latvia: Food products.** On March 9, the Competition Council of Latvia imposed fines on two grocery retailers for abuse of their dominant market position. A council investigation revealed that the retailers had imposed groundless sanctions on many of their suppliers for supposed infractions such as inaccurate prices and incomplete execution of orders. Finding that the imposition of these sanctions was groundless, the Competition Council levied fines on the two retailers totaling **74,000 euros (\$86,300)**.

**Poland: Standard Certification Services.** On January 25, Poland's Office of Competition and Consumer Protection imposed a fine of 461,590 zloty on a standard certifying company for fixing prices for management system certification services with

another company. The agency reduced this fine by half, to about **230,800 zloty (\$70,000)**, because the company partially participated in the leniency program. No fine was imposed on the other company because it cooperated under the leniency program.

**France: Tobacco Security.** On March 13, France's competition authority announced a fine of **46,000 euros (\$53,000)** against a tobacco security company for exchanging confidential information with a competitor regarding prices and clients.

**Latvia: Waste Management Services.** On March 21, the Competition Council of Latvia imposed a fine of **36,700 euros (\$45,000)** on a Latvian waste management company. Following an investigation, the council concluded that the company had abused its dominant market position by imposing groundless cooperation conditions on its customers and by charging different customers different prices for identical services.

**France: Wine.** On May 23, France's competition authority announced a fine of **20,000 euros (\$23,000)** on French winemakers for having established and disseminated annual price lists with the goal of increasing bulk wine prices.

**Russia: Office and Network Equipment.** On June 7, the Federal Antimonopoly Service imposed a fine of **833,300 rubles (\$13,400)** on one of the two participants in an anticompetitive agreement whereby they agreed to maintain prices at a reverse auction for a supply of branded office and network equipment to a subsidiary of a major Russian palladium, nickel, and platinum producer. The agency is to decide on a fine for the other cartel participant soon.

**Denmark: Decision.** On February 28, the Danish Competition Council announced it had found that the association of passenger carriers had violated the Danish Competition Act by coordinating its members' bids on tenders where the association also placed

a bid. The council ordered the association to end the practice immediately and refrain from any action having the same or similar object or effect in the future.

## ASIA

**South Korea: Marine Cable.** On June 14, the Korea Fair Trade Commission (KFTC) announced that five marine-cable companies had rigged bids for cables used on LNG, container, and other ships. The KFTC referred two companies to the Prosecutor's Office for criminal prosecution, and fined all five companies a total of **22.7 billion won (\$20.9 million)**.

**Singapore: Capacitors.** On January 5, the Competition and Consumer Commission of Singapore (CCCS) issued an Infringement Decision against five capacitor manufacturers for price-fixing and exchanging confidential sales, distribution, and pricing information for aluminum electrolytic capacitors. The CCCS issued financial penalties totaling **\$19.6 million Singapore (\$14.7 million)**. According to the CCCS, the "cartel activity started as far back as 1997 and senior level employees of the Parties attended the meetings in Singapore with unfailing regularity—almost on a monthly basis up until 2013." The fine is the highest financial penalty imposed by the CCCS to date and was the third case for the agency involving a global cartel. The investigation was opened following a leniency application.

**South Korea: Ready-Mix Concrete.** On April 13, the Korea Fair Trade Commission (KFTC) announced its finding that 27 ready-mix concrete companies had set prices and output of ready-mix concrete, from 2009 to 2016. As one company had already gone out of business, the KFTC referred the remaining 26 companies to the Prosecutor's Office for criminal investigation, and fined them a total of **15.7 billion won (\$14.7 million)**.

**South Korea: Agricultural Product Consignment Sales.** On June 6, the Korea Fair Trade Commission (KFTC) announced that five wholesalers making consignments sales in agricultural product markets for farmers and others had agreed to fix commissions for produce sold in a local agricultural produce market. The KFTC fined four of these companies a total of **11.6 billion won (\$10.9 million)**.

**South Korea: Aerial Photography.** On March 16, the Korea Fair Trade Commission (KFTC) announced its finding that 14 companies had rigged bids to provide aerial photography services to the Korean government, from 2009 to 2013. The KFTC referred 11 companies to the Prosecutor's Office for criminal prosecution, and fined all 14 companies a total of **10.8 billion won (\$10.1 million)**.

**Japan: Suspension for Hard Disk Drives.** On February 9, the Japan Fair Trade Commission (JFTC) issued a cease-and-desist order and surcharge payment orders to the manufacturers of suspension for hard disk drives. The JFTC found that the manufacturers substantially restrained competition in the sale of suspension for the Japanese customer by agreeing to maintain sales price of suspension. The total amount of the surcharge to be paid is **1.1 billion yen (\$9.9 million)**.

**South Korea: Cement.** On June 27, the Korea Fair Trade Commission fined nine ready-mix concrete cooperatives **10.2 billion won (\$9.1 million)** for the May 2015 bid-rigging of public procurement bids and allocating contracts in three provinces.

**India: Airline Fuel.** On March 7, it was announced that the Competition Commission of India had fined three airlines for concerted action in fixing a fuel-related component of freight charges. In total, the three airlines were fined **54.4 million rupees (\$8.4 million)**.

**Japan: Paving.** On February 28, the Japan Fair Trade Commission (JFTC) issued a cease-and-desist order and surcharge payment orders to several construction companies participating in the bidding of paving work.

The JFTC found that the construction companies substantially restricted competition in by designating successful bidders and enabling them to submit the winning bids. The total amount of the surcharge to be paid is **770.7 million yen (\$6.5 million)**.

**South Korea: Concrete Road Maintenance.** On January 4, the Korea Fair Trade Commission (KFTC) announced its finding that nine construction companies had rigged bids for concrete road maintenance contracts from 2012 to 2015. The KFTC referred the construction companies to the Prosecutor's Office for criminal prosecution, and fined eight of them a total of **6.8 billion won (\$6.4 million)**.

**South Korea: Liquefied Petroleum Gas.** On March 9, the Korea Fair Trade Commission (KFTC) announced its finding that eight companies had rigged bids for selling liquefied petroleum gas to the Korean military, from 2007 to 2013. The KFTC referred six companies to the Prosecutor's Office for criminal prosecution, and fined all eight a total of **5.9 billion won (\$5.5 million)**.

**Russia: Pharmaceuticals.** On January 9, the Federal Antimonopoly Service imposed fines totaling **260 million rubles (\$4.2 million)** on six pharmaceutical wholesalers for bid-rigging of state tenders for a supply of medicines and medical devices to local hospitals in the Tyumen Region, from 2013 through 2015. One of the six companies applied for the leniency program but was denied because the mandatory conditions have not been met.

**South Korea: Pipeline GIS Services.** On January 12, the Korea Fair Trade Commission (KFTC) announced its finding that nine pipeline geographic information system (GIS) services companies had rigged bids for GIS services from 2009 to 2014. The KFTC referred seven companies and four individuals to the Prosecutor's Office for criminal prosecution, and fined all nine companies a total of **3.3 billion won (\$3.1 million)**.

**South Korea: Cement.** On June 18, the media reported that the Seoul Central District Court found that five cement manufacturers and their executives had illegally fixed cement prices between 2010 and 2014. The court imposed a fine totaling from **800 million won (\$723,500) to 950 million won (\$859,100)**, with executives from three companies given prison sentences from 10 months to 1 year.

**Russia: Construction Works.** On February 28, the Federal Antimonopoly Service imposed fines totaling **41.6 million rubles (\$740,000)** on two companies for bid-rigging of 14 state tenders for the performance of construction work in the Tambov Region from August to December 2014.

**South Korea: Cleaning and Surgical Supplies.** On February 13, the Korea Fair Trade Commission (KFTC) announced its finding that 24 companies had rigged bids for government contracts to purchase masks, paper towels, surgical equipment, and other supplies from 2005 to 2014. The KFTC referred one company and five individuals to the Prosecutor's Office for criminal prosecution, and fined all 24 companies a total of **650 million won (\$600,000)**.

**South Korea: External Auditing Services for Apartment Complexes.** On April 27, the Korea Fair Trade Commission (KFTC) announced its finding that a local certified public accountant association had impermissibly restricted competition among accounting firms by setting a rule in 2015 requiring compensation for external audits of apartment complexes to be set on a time-charge basis with a minimum 100-hour requirement. The KFTC referred the organization and two individuals to the Prosecutor's Office for criminal prosecution, and fined the organization a total of **500 million won (\$468,000)**.

**Japan: Uniforms.** On January 12, the Japan Fair Trade Commission issued a cease-and-desist order and surcharge payment orders to distributors selling uniforms to Japan Railway companies, finding that they substantially restrained competition in

distributing uniforms by designating successful bidders and enabling those bidders to submit the winning bids. The total amount of the surcharge to be paid is **45.3 million yen (\$407,300)**.

**South Korea: Repainting and Waterproofing Services.** On January 17, the Korea Fair Trade Commission (KFTC) announced its finding that 17 companies had rigged bids for repainting and waterproofing services for 17 apartment complexes, from 2010 to 2013. The KFTC referred 12 companies and one individual to the Prosecutor's Office for criminal prosecution, and fined all 17 companies a total of **397 million won (\$371,900)**.

**South Korea: Bridge Support Manufacture and Installation.** On April 20, the Korea Fair Trade Commission (KFTC) announced its finding that five companies had rigged bids for a bridge support manufacture and installation for a major domestic construction company in 2013. The KFTC referred three companies to the Prosecutor's Office for criminal prosecution, and fined all five companies a total of **396 million won (\$369,500)**.

**China: Civil Defense Equipment.** On March 26, the Shaanxi Provincial Price Bureau published a decision in which it imposed a fine of **2.2 million renminbi (\$350,000)** on 13 civil air defense equipment companies for price-fixing. The agency found that the companies held regular meetings to collectively fix the price of civil air defense doors since the second half of 2015. Moreover, in April 2016, the companies set up a self-discipline platform and entered into three agreements to divide the market and further align prices. The agency concluded that such conduct constituted a horizontal anti-monopoly agreement giving rise to anticompetitive effects in the relevant product market across province. The fine accounts for 1% to 3% of the concerned companies' total revenue in 2016.

**South Korea: Security Fencing.** On February 19, the Korea Fair Trade Commission (KFTC) announced its finding that two companies had rigged bids for

security fencing projects by a local port authority. The KFTC referred both companies and two individuals to the Prosecutor's Office for criminal prosecution, and fined both companies a total of **276 million won (\$258,700)**.

**South Korea: Public Transportation Card Payment System Installation.** On March 26, the Korea Fair Trade Commission (KFTC) found that two companies had rigged bids for providing installation services for a new public transportation card payment system in Seoul. The KFTC fined both companies a total of **251 million won (\$233,000)**.

**South Korea: Chartered Bus Services.** On May 28, the Korea Fair Trade Commission (KFTC) announced that a local chartered bus association had unlawfully restricted competition among chartered bus companies by setting the prices for which they would bid to provide chartered buses to local schools in the Daegu region, and to not provide chartered buses to third-party travel companies bidding to provide such services. The KFTC fined the organization a total of **163 million won (\$151,700)**.

**China: Concrete.** On January 8, the Beijing Development Research Center (DRC) published its **500,000 renminbi (\$76,800)** fine on the Beijing Concrete Association (BCA) for price-fixing, the maximum penalty that may be imposed on a trade association in China. BCA was found to have organized meetings among its members to facilitate the signing of a cartel agreement, aiming to fix the price of premixed concrete across Beijing. Further, the parties to the agreement also put in place mechanisms to monitor the implementation of the agreed prices. Beijing DRC believes BCA's conduct significantly restricted competition in Beijing's concrete market by discouraging market players to improve quality and reduce costs, and harming downstream customers' interest. When determining the fine, Beijing DRC took into account the following aggravating factors: (i) BCA took the lead in drafting the agreement and organizing the meetings; (ii) BCA

abused its power of supervising the industry; and (iii) BCA was investigated by Beijing DRC in 2010 for similar conduct, which was suspended due to BCA's commitment to cease the alleged anticompetitive conduct.

**Pakistan: Paint.** On April 25, the Competition Commission of Pakistan fined a paint and coating company **5 million rupees (\$43,300)** for imposing unlawful minimum resale prices and imposing price-fixing agreements on its dealers.

**South Korea: Step-Up Transformers.** On February 20, the Korea Fair Trade Commission (KFTC) announced its finding that two companies had rigged bids to sell step-up transformers to a domestic nuclear and hydroelectric company in 2013. The KFTC referred one company to the Prosecutor's Office for criminal prosecution, and fined both companies a total of **40 million won (\$37,300)**.

**India: Pharmaceuticals.** On January 9, the Competition Commission of India fined two chemist and druggist associations **2.2 million rupees (\$35,000)** for their anticompetitive interference with the entry of new drugs and retailers into the market.

**China: Freight.** On January 31, it was announced that the Anhui Administration for Industry and Commerce (AIC) imposed a fine of **100,000 renminbi (\$15,900)** on Huainan Freight Chamber (HFC) for reaching a cartel agreement. On July 1, 2016, HFC organized a meeting where it asked its members to procure insurance services from only five designated companies. To ensure compliance, HFC also put in place a penalty mechanism. Anhui AIC believed HFC's conduct amounted to entering into a cartel agreement in the role of a facilitator. Considering that HFC has cooperated in the investigation and voluntarily modified its conduct, Anhui AIC imposed a relatively light fine.

**China: Home Furnishings.** On April 3, the State Administration for Industry and Commerce (SAIC) published the order of administrative penalty issued

by the Shandong Administration for Industry and Commerce (AIC) against six home furnishing retailers in Shandong province for concerted refusal to deal. The six home furnishing retailers were each fined **100,000 renminbi (\$15,400)**. According to the decision, the retailers entered into a cartel agreement to prevent their in-store vendors from participating in promotional events organized by a third party. The agreement restricted vendors from dealing with third parties and online platforms, and infringed their rights to choose transaction counterparties. The Shandong AIC also found that the agreement prejudiced consumers' right to choose products. The Shandong AIC concluded that the six furnishing retailers have violated China's Anti-Monopoly Law. In consideration of their commitment to rectify their illegal conduct and abolish the monopolistic agreement, Shandong AIC imposed a fine of 100,000 renminbi against each of the six furnishing retailers.

**Malaysia: Tuition and Day Care Services.** On February 8, the Malaysia Competition Commission issued a proposed decision against seven tuition and day-care centers for fixing fees and charges for tuition and day-care services, with proposed fines for all the centers totaling **33,100 ringgit (\$8,400)**.

**Kazakhstan: Registration of Domain Addresses.** On April 2, it was announced that a local information technology company was found by the local antimonopoly department to have entered into illegal agreements on the market and was fined **2.1 million tenge (\$6,300)**. A specialized administrative court issued a decision fining the company.

**Kazakhstan: Car Dealerships.** On March 6, it was announced that two car dealerships selling cars from one manufacturer were found to have participated in a cartel and fined a combined **1.4 million tenge (\$4,100)**, with **3.2 million tenge (\$9,550)** of illegal income confiscated. The cartel's aim was to coordinate actions for procurement

purposes in certain regions in Kazakhstan. Local specialized administrative courts issued resolutions fining the dealerships.

## OCEANIA

**Australia: Wire Harnesses.** On May 16, in response to an appeal by the Australia Competition & Consumer Commission (ACCC) over a low fine imposed on a convicted cartel, the Full Federal Court of Australia imposed a fine on an auto parts manufacturer of **\$46 million Australian (\$34.6 million)** for engaging in anticompetitive cartel conduct in the provision of wire harnesses for the Toyota Camry. The fine is the largest ever ordered under the Competition and Consumer Act of 2010, and is an increase over the initial fine imposed on the company of just \$9.5 million Australian. The ACCC argued successfully that the auto parts maker had coordinated with a competitor to rig bids for wire harnesses to a particular customer from 2003 until 2008 and that a higher fine was warranted as a deterrent.

**Australia: Air Cargo Services.** Australia's Federal Court ordered an international airline to pay **\$15 million Australian (\$11.1 million)** for fixing prices on fuel surcharges for air cargo services provided from Hong Kong and Singapore to Australia between 2002 and 2007. The Australia Competition & Consumer Commission has previously obtained fines against 13 other air cargo carriers for their participation in the price-fixing cartel.

**Australia: Air Passenger Tickets.** On April 4, Australia's Full Federal Court of Australia ordered Australia's largest travel agency to pay a fine of **\$12.5 million Australian (\$9.6 million)** for attempting to fix the prices of passenger tickets with three airlines between March 2006 and May 2009. The fine is also

an increase over the \$11 million Australian initially imposed by the trial court in March 2014, which both the travel agency and the Australia Competition & Consumer Commission appealed to the Full Federal Court. The court determined that the increase to the fine was warranted to deter future cartel efforts.

**Australia: High-Voltage Land Cables.** The Full Federal Court of Australia dismissed the appeal by a company convicted in 2016 of engaging in anticompetitive conduct with respect to the supply of high-voltage land cables for the Snowy Mountains Hydro Electric Scheme in 2003. The court found the company guilty of anticompetitive conduct in 2016, and the company appealed. In addition to dismissing the appeal, the court ordered the company to pay a fine of **\$3.5 million Australian (\$2.8 million)**.

## AFRICA

**Egypt: Pharmaceutical Distributors.** On March 1, the Egyptian Competition Authority fined four pharmaceutical companies **5.58 billion Egyptian pounds (\$316.2 million)** for fixing prices for small and medium-sized pharmacists in Egypt. The agency received a complaint in 2015 from a pharmacists trade group. During the investigation, which included dawn raids, investigators learned that the companies entered into a verbal agreement in 2013 and a written agreement in 2014. The fine is the largest ever issued by the Egyptian Competition Authority.

**South Africa: Unsaturated Polyester Resins.** On May 9, a resin manufacturer admitted to price-fixing and market division transgressions, and agreed to pay a fine of **29.7 million rand (\$2.4 million)**. The fine stems from an investigation launched in 2017 which concluded that two resin manufacturers had agreed to fix the price of resins and related products, and divide the market by allocating customers

**South Africa: Advertising.** On March 16, two parties named in the Competition Commission's large-scale prosecution of media companies admitted that they had participated in price-fixing and the fixing of trading conditions. The conspiracy centered on the participants' agreeing to offer similar discounts and payment terms to certain advertising agencies. One media company will pay a settlement of **13.8 million rand (\$1.2 million)** while the second will pay **1.1 million rand (\$91,500)**.

**South Africa: Railway Construction and Maintenance Services.** On February 6, the Competition Commission reached a settlement agreement for **8.4 million rand (\$701,300)** with a railway construction company for an agreement to allocate railway construction and maintenance tenders.

**South Africa: Advertising.** On February 16, two parties named in the Competition Commission's large-scale prosecution of media companies admitted they had participated in price-fixing and the fixing of trading conditions. The conspiracy centered on the participants' agreeing to offer similar discounts and payment terms to certain advertising agencies. One media company will pay **5.8 million rand (\$500,000)** while the other will pay **2.2 million rand (\$191,200)**.

**Egypt: Poultry.** On March 2, Egypt's competition authority announced fines totaling **4.5 million Egyptian pounds (\$255,400)** against 12 individuals from nine companies for their participation in a cartel designed to lower prices for chicks and thus foreclose imports.

**Zambia: Poultry.** On March 27, the Board of Commissioners of the Competition and Consumer Protection Commission fined four hatcheries **7% percent of their annual turnover** for fixing trade conditions and setting production quotas in a long-running cartel case. Further, the board ordered them to terminate the agreement and to independently



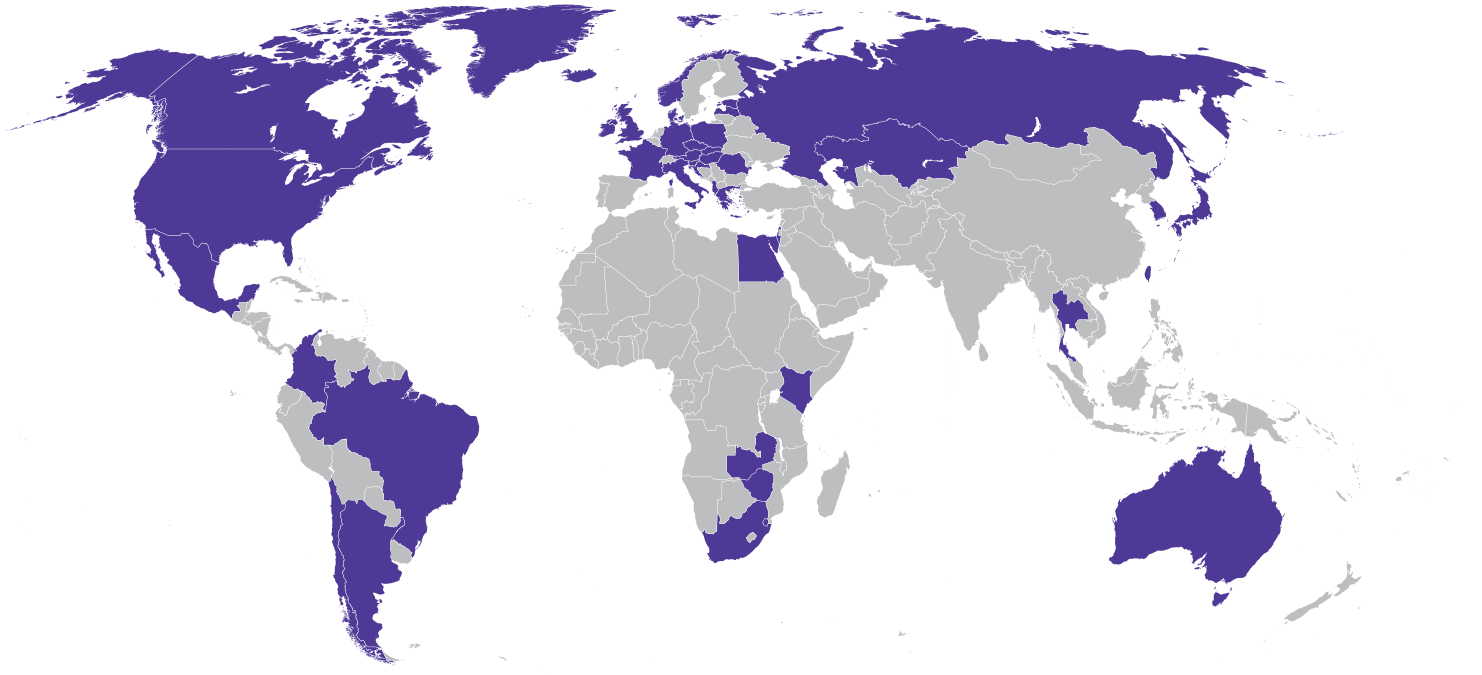
set a time requirement for pre-booking that is viable and auditable. The fine comes after a four-year investigation that revealed the hatcheries had, through the Poultry Association of Zambia, agreed to develop and implement a common policy requiring poultry farmers to book day-old chicks four weeks in advance.

**South Africa: Advertising.** On April 26, a tribunal approved a **966,700 rand (\$77,700)** settlement from a media company that agreed to settle charges relating to price-fixing and the fixing of trading conditions. The case relates to the Competition Commission's large-scale prosecution of media companies for price-fixing and the fixing of trading conditions.

**South Africa: Advertising.** On May 8, two parties named in the Competition Commission's large-scale prosecution of media companies admitted they had participated in price-fixing and the fixing of trading conditions. The conspiracy centered on the participants' agreeing to offer similar discounts and payment terms to certain advertising agencies. One media company will pay a settlement of **1 million rand (\$80,300)** while the second will pay **424,000 rand (\$33,600)**.

**South Africa: Moving Services.** On May 16, a tribunal confirmed a settlement agreement in the amount of **438,300 rand (\$35,200)** between the Competition Commission and a moving company for the company's involvement in a furniture removal cartel that fixed the price of e-toll levies charged to customers.

# 43 COUNTRIES HAVE CRIMINAL PENALTIES FOR CARTEL VIOLATIONS OR CONVICTIONS



Argentina

Australia

Austria

Brazil

Canada

Chile

Colombia

Croatia

Czech Republic

Denmark

Egypt

Estonia

France

Germany

Greece

Greenland

Hong Kong

Hungary

Iceland

Ireland

Israel

Italy

Japan

Kazakhstan

Kenya

Latvia

Malta

Mexico

Norway

Poland

Romania

Russia

Slovakia

Slovenia

South Africa

South Korea

Swaziland

Taiwan

Thailand

United Kingdom

United States

Zambia

Zimbabwe

# Significant Individual Prison and Other Sentences for Cartel Offenses

## AMERICAS

**United States: Real Estate.** On March 21, a real estate investor was sentenced for his role in conspiracies to rig bids at public real estate foreclosure auctions in Northern California. The indictment was filed on November 19, 2014, in the Northern District of California. He was convicted at trial on June 2, 2017, for conspiring to rig bids at foreclosure auctions in Alameda and Contra Costa counties. The defendant was sentenced to serve **30 months in prison** and to serve three years of supervised release. He also was ordered to pay a criminal fine of **\$1.4 million**. According to court documents, the defendant conspired with others to rig bids to obtain hundreds of properties sold at foreclosure auctions. The conspirators designated the winning bidders to obtain selected properties at the public auctions, and negotiated payoffs among themselves in return for not competing with one another. They subsequently conducted private auctions among themselves at or near the courthouse steps where the public auctions were held, awarding the properties to the conspirators who submitted the highest bids in those private auctions.

**United States: Real Estate.** On May 9, five real estate investors were sentenced for their role in a conspiracy to rig bids, in violation of the antitrust laws, at public real estate foreclosure auctions in Northern California. The defendants were charged with and convicted of bid-rigging at real estate foreclosure auctions in San Mateo and San Francisco counties, California. Prison terms included **15 months, eight months, six months, four years of probation** (including five months in a halfway house), and **three years of probation** (including 10 months in a half-way house). The aggregate amount of total

finest and restitution is **\$6.8 million** (including a \$2 million criminal fine; a \$500,000 criminal fine; a \$1.4 million criminal fine and \$156,100 in restitution; a \$1.2 million criminal fine and \$127,800 in restitution; and a \$1.2 million criminal fine and \$110,200 in restitution). Between 2008 and January 2011, the defendants and other bidders conspired not to bid against one another for selected properties, instead designating a winning bidder and negotiated payoffs among themselves in return for not competing with one another.

**United States: School Bus Transportation Contracts.** On February 6, four owners of school bus transportation companies were sentenced for participating in bid-rigging and fraud conspiracies related to school bus transportation contracts in Puerto Rico. The defendants were convicted after a 2017 trial in the US District Court for the District of Puerto Rico in San Juan. The jury found that they conspired to rig bids and allocate the market for public school bus transportation contracts in the municipality of Caguas from approximately August 2013 until May 2015. Each was also found guilty of conspiracy to commit mail fraud and four counts of mail fraud for defrauding the municipality to obtain contracts for school bus transportation services. For their roles in the collusive and fraudulent conduct, **three defendants** were each sentenced to serve **12 months and one day in prison**. The fourth defendant was sentenced to a term of two years of probation, the first six months to be served in home confinement, after a departure based on the defendant's medical condition. Restitution will be imposed in an amount to be decided at a later date. The four school bus company owners carried out the conspiracy by agreeing to allocate contracts for transportation routes awarded by the municipality.

Trial evidence showed the conspirators submitted fraudulent certifications and received award letters by certified mail in connection with their conspiracy to defraud the municipality.

**Colombia: Water Utility Service Company.**

On March 20, the Superintendence of Industry and Commerce imposed a fine on the Water Utility Service Company in Bogota and on two of its legal representatives/officers for **\$351 million pesos (\$120,400)** and **\$35 million pesos (\$12,000)** for tolerating the anticompetitive conduct.

**Colombia: Private Security Companies.**

On January 30, the Superintendence of Industry and Commerce confirmed a fine imposed against seven private security and surveillance companies and 14 individuals with an aggregated sum of **\$726 million pesos (\$248,900)**, ranging from **\$1 million (\$342,000)** to **\$325 million (\$111,400)** for bid-rigging.

**United States: Water Treatment.**

On January 3, a former executive of a water treatment chemicals manufacturer headquartered in Lafayette, Indiana, pleaded guilty in the District of New Jersey for his role in a conspiracy to eliminate competition by rigging bids, allocating customers, and fixing the price for liquid aluminum sulfate sold to municipalities and pulp and paper companies in the United States. The former director of sales and marketing, admitted to agreeing with competitors, from approximately 2005 until February 2011, not to compete for contracts for liquid aluminum sulfate, a coagulant used by municipalities to treat drinking and waste water, and by pulp and paper companies in their manufacturing processes. According to court documents, he and his co-conspirators agreed not to pursue each other's historical customers. To carry out that agreement, he and his co-conspirators discussed prices to be quoted to customers and

submitted intentionally losing bids to favor the intended winner. Including the defendant, two individuals and one company have pleaded guilty to charges arising from this federal investigation of collusion in the liquid aluminum sulfate industry. On April 11, the former executive received a sentence of **two years of probation.**

## EUROPE

**United Kingdom: Estate Agencies.** The Competition and Markets Authority (CMA) secured undertakings from two directors of an estate agency temporarily disqualifying them for 3.5 years and 3 years, respectively, from being directors of any UK company. The two directors worked for an estate agency that was one of many in the area engaged in a cartel by agreeing to fix their minimum commission rates at 1.5%. This price-fixing agreement ultimately denied home owners the opportunity to get a better deal elsewhere when selling their property, contrary to Chapter 1 of the Competition Act of 1998. The CMA fined five estate agents a total of **370,000 British pounds (\$498,500)** for operating the cartel.

**Lithuania: Notaries.** On April 27, 2018, the Lithuanian Competition Council imposed fines ranging from **100 euros to 20,800 euros (\$118 to \$24,700)** against members of the Presidium of the Lithuanian Chamber of Notaries for price-fixing.

**Spain: Advertising Agencies.** On May 7, 2018, the National Commission for Markets and Competition fined five advertising agencies a total of **7.2 million euros (\$8.6 million)** for exchanging information about the allocation of public institutions' advertising spend over a period of 18 months ending in May 2016. Three managers were also sanctioned a total of **109,000 euros (40,000 euros, 32,000 euros, and 37,000 euros, respectively) (totaling \$126,300).**

## ASIA

**South Korea: Cement.** On June 18, the media reported that the Seoul Central District Court found that five cement manufacturers and their executives had illegally fixed cement prices between 2010 and 2014. The court imposed a fine totaling from approximately **800 million won (\$723,500) to 950 million won (\$859,100)**, with executives from three companies issued prison sentences from **10 months to 1 year**.



# Significant Cases Pending Trial or Sentencing

A number of significant cases have recently been charged and a conviction and/or sentence remain pending:

## AMERICAS

**Mexico: Financial Services.** On January 12, Mexico's Federal Economic Competition Commission (COFECE) announced that it had notified market participants of probable liability for anticompetitive conduct (refusal to deal and price discrimination) in the market for the generation, processing, and commercialization of credit information. COFECE's announcement marks the start of the trial-like procedure, and is the culmination of a two-year investigation first announced in January 2015 and concluded on September 25, 2017, when the Investigative Authority issued a Statement of Probable Responsibility. The Technical Secretariat of COFECE will conduct a trial-like procedure and the companies will have the right to present evidence and arguments to the commission.

**Mexico: Air Travel.** On January 21, Mexico's Federal Economic Competition Commission (COFECE) announced that it had notified market participants of probable liability for anticompetitive conduct (price-fixing) in the passenger air travel base price market. COFECE's announcement marks the start of the trial-like procedure, and is the culmination of a two-year investigation first announced in February 2015 and concluded on November 21, 2017, when the Investigative Authority issued a Statement of Probable Responsibility. The Technical Secretariat of COFECE will conduct a trial-like procedure and the companies will have the right to present evidence and arguments to the commission.

**Mexico: Financial Services.** On January 29, Mexico's Federal Economic Competition Commission (COFECE) announced that it had notified market

participants of probable liability for anticompetitive conduct for fixing prices and allocating markets in the market for the transportation, custody, and processing of securities. COFECE's announcement marks the start of the trial-like procedure, and is the culmination of a two-year investigation announced in May 2015. The Technical Secretariat of COFECE will conduct a trial-like procedure and the companies will have the right to present evidence and arguments to the commission.

**United States: Real Estate.** On February 15, two real estate investors pleaded guilty for their roles in a conspiracy to rig bids at public real estate foreclosure auctions in Mississippi. Felony charges against the defendants were filed on February 1 in the US District Court for the Southern District of Mississippi. According to court documents, from at least as early May 22, 2012, through at least as late as March 22, 2017, the defendants conspired with others to rig bids, designating a winning bidder to obtain selected properties at public real estate foreclosure auctions in the Southern District of Mississippi. Co-conspirators made and received payoffs in exchange for their agreement not to bid.

**Mexico: Eggs.** On March 19, Mexico's Federal Economic Competition Commission (COFECE) announced that it had notified market participants of probable liability for anticompetitive conduct for fixing prices of eggs. COFECE's announcement marks the start of the trial-like procedure, and is the culmination of a two-year investigation initiated in March 2015 and concluded in November 2017. The Technical Secretariat of COFECE will conduct a trial-like procedure and the companies will have the right to present evidence and arguments to the commission.

**United States: Real Estate.** On April 10, three real estate investors pleaded guilty for their roles in a conspiracy to rig bids at public real estate foreclosure auctions in Mississippi. Including these three defendants, five real estate investors have pleaded guilty in this conspiracy. Separate felony charges against these defendants were filed on April 3 in the US District Court for the Southern District of Mississippi. According to court documents, from at least as early as January 12, 2012, through at least as late as April 19, 2017, the first defendant conspired with others to rig bids, designating a winning bidder to obtain selected properties at public real estate foreclosure auctions in the Southern District of Mississippi. The second defendant participated in the conspiracy from as early as April 14, 2010, through as late as February 25, 2015, and the third defendant's participation began as early as January 12, 2012, through as late as March 31, 2017. Co-conspirators made and received payoffs in exchange for their agreement not to bid. The primary purpose of the conspiracy was to suppress and restrain competition in order to obtain selected real estate offered at public foreclosure auctions at non-competitive prices. When real estate properties are sold at these auctions, the proceeds are used to pay off the mortgage and other debt attached to the property, with any remaining proceeds paid to the homeowner. According to court documents, these conspirators paid and received money in connection with their agreement to suppress competition, which artificially lowered the price paid at auction for such homes.

**United States: Financial Services.** On May 10, a federal grand jury returned an indictment against a former currency trader at a major US bank for his alleged role in a conspiracy to manipulate prices in the foreign currency exchange (FX) market. The one-count indictment, filed in the US District Court for the Southern District of New York, charges the former currency trader with conspiring to fix prices and rig bids and offers in Central and Eastern

European, Middle Eastern, and African (CEEMEA) currencies, which were generally traded against the US dollar and euro. According to the indictment, from at least as early as October 2010 through at least July 2013, the ex-currency trader, along with other New York-based CEEMEA traders working for rival banks, participated in a conspiracy designed to suppress competition in order to increase each trader's profits and decrease each trader's losses. The ex-currency trader and his co-conspirators carried out this agreement by engaging in near-daily conversations through private electronic chat rooms, telephone calls, and text messages, in which they exchanged trading positions, confidential customer information, planned pricing for customer orders, and other categories of competitively sensitive information. The ex-currency trader and his co-conspirators then used this information to coordinate their live trading in CEEMEA currencies, including, at times, by certain traders refraining from trading against the others. Throughout the conspiracy, the former currency trader and his co-conspirators took affirmative steps to conceal their anticompetitive behavior. This indictment follows the guilty pleas on January 4 and 12, 2017, of two former CEEMEA traders who were charged in connection with the same conspiracy in which the ex-currency trader is alleged to have participated. In addition, on January 10, 2017, three former UK-based traders for major banks were indicted for conspiring to fix prices and rig bids for the euro-US dollar currency pair. Trial is presently set in that matter for October 2018.

**United States: Packaged Seafood.** On May 16, a federal grand jury returned an indictment against the president and chief executive officer of a leading packaged seafood company for participating in a conspiracy to fix prices for packaged seafood sold in the United States. The indictment, filed in the US District Court for the Northern District of California in San Francisco, charged the executive with participating in a conspiracy to fix prices of packaged seafood beginning in or about November 2010 until

December 2013. A federal judge has denied the CEO's request to travel to Cartagena, Colombia, during the case.

**Chile: Large Fine Sought.** On May 31, 2018, Chile's competition authority filed before its competition tribunal an injunction for collusion against a trade association of surgeons and 111 doctors specializing in surgery, after finding that they colluded to set the fees the surgeons charge for their medical services. The authority asked the tribunal to impose a fine of 1,000 Annual Tax Units (approximately \$569 million) on the trade association and the doctors. It also requested that the competition tribunal dissolve the trade association.

**United States: Real Estate.** On June 18, 2018, a Mississippi real estate investor became the sixth real estate investor to plead guilty in connection with the ongoing investigation into bid-rigging at public real estate foreclosure auctions in Mississippi. Felony charges against the investor were filed on June 8 in the US District Court for the Southern District of Mississippi. According to those charges, from at least as early as April 20, 2010, through at least as late as August 21, 2015, the investor conspired with others not to bid against one another for selected public real estate foreclosure auctions in the Southern District of Mississippi. Co-conspirators made and received payoffs in exchange for their agreement not to bid. Sentencing is pending.

**United States: Real Estate.** On June 20, a real estate investor pleaded guilty for his role in a conspiracy to rig bids, in violation of antitrust law, at online public foreclosure auctions in Florida. He is the first defendant to plead guilty in this conspiracy. Felony charges of bid-rigging were filed against him on November 2, 2017, in the US District Court for the Southern District of Florida. According to court documents, from around January 2012 through around June 2015, he conspired with others to rig

bids during online foreclosure auctions in Palm Beach County. Sentencing is pending.

**Canada: Public Works Contracts.** On June 26, the Canadian Competition Bureau charged four former executives with criminal charges in connection with alleged price-fixing in response to tenders for public works and allocation of contracts issued by the City of Gatineau, located in western Québec. The alleged activities took place before 2010, and the four individuals may be subject to up to five years in prison and a criminal fine subject to the court's discretion. Potential prison terms for conduct that occurred after March 2010 are now up to 14 years with a fine of up to \$25 million Canadian (\$19 million).

**Canada: Engineering Industry.** On June 26, criminal charges were filed against four individuals for conspiring to rig bids in 21 city contracts during 2004 and 2008 for the City of Gatineau, Québec. The individuals served as executives at four engineering firms.

**Canada: Provincial Street Lighting Contracts.** On June 27, the former president of a private company pleaded guilty to two bid-rigging counts involving street lights in Québec province. The bids were submitted in 2004 and 2009 based on an agreement with a competitor. The investigation was aided by the Immunity Program.

**United States: Electrolytic Capacitors.** On June 27, a second executive of a Japan-based capacitor manufacturer pleaded guilty for his role in a conspiracy to fix prices and rig bids for electrolytic capacitors sold to customers in the United States and elsewhere. A December 2016 indictment, filed in the US District Court of the Northern District of California, charged the executive with participating in a conspiracy to suppress and eliminate competition of electrolytic capacitors by fixing prices and rigging bids. The charge alleges the executive participated in the conspiracy from January 2009 to January 2012.

While the executive agreed to serve one year and one day in prison, sentencing will be determined by the court and is set for October 2018. As part of his plea agreement, the executive also agreed to cooperate with the ongoing investigation in which eight companies and 10 individuals have been charged.

## ASIA

**Russia: Food and Beverages.** On March 23, the Federal Antimonopoly Service held two companies liable for bid-rigging at state tenders for supply of food and beverages to North Caucasus Division of the Ministry of Interior from May to August 2018. The agency has yet to impose fines on the companies.

**Russia: Medical Devices.** On March 26, the Federal Antimonopoly Service held three wholesalers and an individual entrepreneur liable for big rigging at 117 state tenders for a supply of medical devices to local state hospitals within eight regions of Russia with a value totaling 660 million rubles (\$10.5 million) from 2014 to 2017. The agency has yet to impose fines on the cartel participants. The case file has also been passed to prosecutors to decide on criminal investigation.

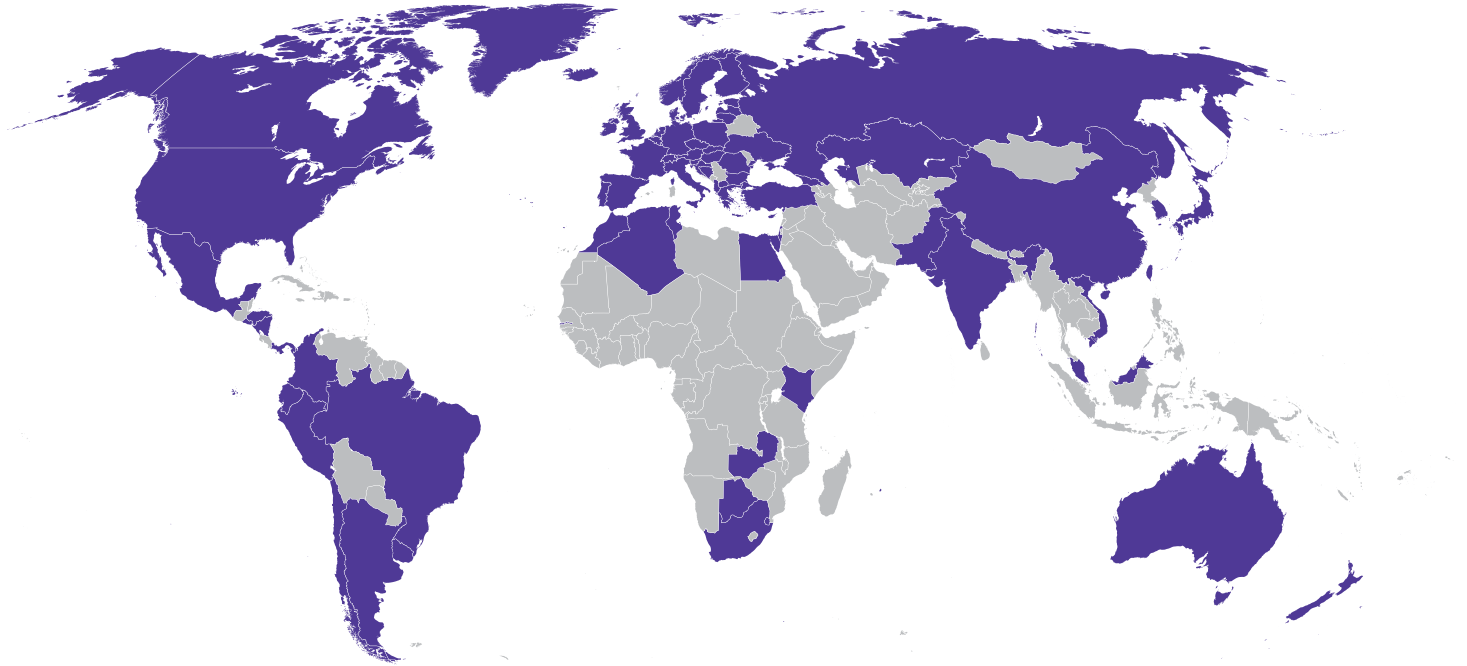
**Russia: Railway Lock and Seal Devices.** On March 28, the Federal Antimonopoly Service held five lock and seal devices suppliers liable for division of the market by customers and maintenance of prices from 2008 to 2017. One of the five companies was coordinating economic activities of the other companies by setting prices and conditions of sale of the products. The agency has not yet imposed fines on the companies. The case has passed to prosecutors to decide on a criminal investigation.

**Turkey: Gas Stations.** On March 29, the Turkish Competition Authority announced that it had concluded its investigation into whether 30 gas stations colluded to fix and increase the price of gasoline in Adiyaman province and found the 30 gas stations had colluded. Each undertaking will be subject to administrative fines, which have not yet been reported.

**Russia: Information Technology Services.** On April 19, the Federal Antimonopoly Service held two service providers liable for bid-rigging at 22 state tenders for provision of IT services with a value totaling 140 million rubles (\$2.2 million) from November 2015 through February 2018. Both companies have voluntarily agreed to cease further participation in the cartel agreement. The agency has yet to impose fines on the companies.

**Russia: Medical Devices.** On April 27, the Federal Antimonopoly Service held two pharmaceutical wholesalers liable for bid-rigging of 14 state tenders for a supply of medical devices with the value totaling 195 million rubles (\$3.1 million) by using automated robotics or “pricing bots” (an algorithm-based software that monitors proposals of other bidders and sets prices in accordance with the parties' unlawful agreement). The agency has yet to impose fines on the companies.

# 78 COUNTRIES HAVE CARTEL IMMUNITY/LENIENCY PROGRAMS



Albania	El Salvador	Kenya	Singapore
Algeria	Estonia	Latvia	Slovakia
Argentina	European Union	Lithuania	Slovenia
Australia	Finland	Luxembourg	South Africa
Austria	France	Macedonia	South Korea
Belgium	Gambia	Malaysia	Spain
Bosnia & Herzegovina	Georgia	Mauritius	Sweden
Botswana	Germany	Mexico	Switzerland
Brazil	Greece	Morocco	Swaziland
Bulgaria	Greenland	Netherlands	Taiwan
Canada	Honduras	New Zealand	Tunisia
Chile	Hong Kong	Nicaragua	Turkey
China	Hungary	Norway	Ukraine
Colombia	Iceland	Pakistan	Uruguay
Croatia	India	Panama	United Kingdom
Czech Republic	Ireland	Peru	United States
Cyprus	Israel	Poland	Vietnam
Denmark	Italy	Portugal	Zambia
Ecuador	Japan	Romania	
Egypt	Kazakhstan	Russia	

# DAWN RAIDS, NEW INVESTIGATIONS, AND NEW CASES

## Cartel enforcement authorities around the world were active in the first half of 2018, launching many new investigations and bringing many new cases.

Multiple investigations were initiated with dawn raids, where enforcement agencies exercise their authority to search and seize documents, electronic media, and other tangible materials. These search-and-seizure exercises are often carried out in the early morning, which is why they are often referred to as dawn raids. Dawn raids are often not publicized by enforcement authorities. Here we highlight those dawn raids that were publicly reported.

Companies are advised to have plans in place to deal with dawn raids should they occur so employees know how to react and how to avoid creating problems through obstructive behavior. Please see our [Dawn Raid Golden Rules](#).

### AMERICAS

**Canada: Media.** On March 12, Canada's Competition Bureau announced that it had raided the offices of three news companies on suspicion that they were engaged in anticompetitive conduct in violation of Canada's Competition Act.

**Colombia: Public Agency Bid-Rigging.** In April, the Superintendence of Industry and Commerce launched an investigation against 23 companies for colluding in 101 procurement biddings with a variety of governmental entities, such as the National Police, the Attorney General's Office, and the Food and Drug Administration, among others.

**Colombia: Food Bid-Rigging.** In May, the Superintendence of Industry and Commerce opened an investigation into seven companies involved in bid-rigging conduct in the procurement of food for the military and armed forces.

### EUROPE

**France: Inter-Island Air travel in Guadeloupe and French Guyana.** On January 12, France's national competition regulator raided companies in Guadeloupe and French Guyana suspected of having engaged in anticompetitive practices in the inter-island air passenger traffic sector.

The agency neither commented on the identity of the companies nor on the practices implemented.

**European Commission: Kraft Paper.** On January 15, the European Commission conducted an unannounced inspection of a Kraft Paper company. The investigation is related to prior “unannounced inspections in 2016 and 2017 in the sector of Kraft Paper and industrial paper sacks” focused on price-fixing and customer allocation.

**France: Tobacco.** On January 24, France’s national competition regulator announced that it had raided the premises of companies suspected of having engaged in possible anticompetitive practices in the production, importation, and distribution of tobacco products. The agency neither commented on the identity of the companies nor on the practices implemented.

**Norway: Books.** On February 9, Norway’s competition authority announced that it had completed an unannounced inspection at the premises of several companies involved in the Norwegian book market. The inspection relates to potential sharing of sensitive information in the book market.

**France: Cosmetics.** On March 1, France’s national competition regulator announced that it had raided the premises of companies suspected of having engaged in possible anticompetitive practices in the sector of distribution of cosmetics in France and Belgium. The agency neither commented on the identity of the companies nor on the practices implemented.

**Italy: Private Security Services.** On March 3, Italy’s competition authority conducted dawn raids at five security-services providers as part of its probe into whether the companies cooperated over public tenders.

**France: Freight Transport.** On April 6, France’s national competition regulator announced that it raided the premises of companies suspected of having engaged in possible anticompetitive practices in the road freight transport sector. The agency neither commented on the identity of the companies nor on the practices implemented.

**European Commission: Sports Media Rights.** On April 10, the European Commission conducted unannounced inspections “in several” member states at “companies active in the distribution of media rights and related rights pertaining to various sports events and/or their broadcasting.” The investigation is focused on suspected cartels and restrictive business practices. Other national competition authorities also participated in the dawn raids.

**Slovakia: Ink and Toner Cartridges.** From April 10 to April 12, the Antimonopoly Office of the Slovak Republic executed a dawn raid on the premises of unnamed undertakings operating in the purchase, sale, and distribution of original ink and toner cartridges for printers, copiers, and fax machines following suspicions that there could be agreements restricting competition and/or abuse of dominant position, namely in connection with participating and submitting bids in public procurement.

**Poland: Photographic Equipment, Compressors, Trucks and Truck Components, Branding and Marketing Services.** On April 13, Poland’s Office of Competition and Consumer Protection announced that since the beginning of the year, as part of investigations into anticompetitive agreements, it had conducted four searches affecting the following sectors: distribution of photographic equipment; distribution of compressors; sales of trucks and truck components; and branding and marketing agencies.

**Norway: Grocery Operators.** On April 13, Norway's competition authority confirmed that it had conducted dawn raids at the premises of several grocery operators. The raids were conducted as part of an investigations into the exchange of strategic pricing information among grocers.

**Poland: Musical Instruments.** On April 17, Poland's Office of Competition and Consumer Protection initiated a search of the premises of three entities in the musical instruments market to determine if they were operating under a competition-restricting agreement.

**European Commission: Metal Packaging.** On April 24, the European Commission conducted unannounced inspections in several member states on metal packaging companies. The investigation is focused on suspected cartels and restrictive business practices. The investigation was originally conducted by Germany's competition authority (Bundeskartellamt), which determined that the anticompetitive conduct under investigation "extended to markets outside Germany, in several Member States." The commission is conducting the investigation based on "EU antitrust rules on cooperation with the National Competition Authorities."

**Poland: Sports Gear.** On May 15, Poland's Office of Competition and Consumer Protection initiated a search of the premises of two companies intended to verify whether they were colluding to restrict competition in the sports gear market.

**Albania: Leasing Storage Facilities.** On May 17, Albania's competition authority announced the opening of a preliminary investigation into the market of leasing of facilities for storage and sales of agro-industrial products in the city of Tirana.

**Italy: Horse Racing.** On May 29, Italy's competition authority decided to reopen an investigation

procedure against an Italian association. The investigation—initiated following reports from an amateur sports association and a sports-promotion body—is aimed at ascertaining the violation of obligations of Articles 101 and/or 102 of the Treaty on the Functioning of the European Union through conduct aimed at preventing the holding of amateur equestrian events and competitions by competing sports organizations.

**European Commission: Styrene Monomer.** On June 5, the European Commission conducted dawn raids in several member states at the premises of companies active in styrene monomer purchasing in conjunction with other national competition authorities. The investigation is focused on potential violations of the EU antitrust rules concerning cartels and restrictive business practices (Article 101 of the Treaty on the Functioning of the European Union). Styrene monomer is a base material used in a variety of chemical products, including plastics, resins, rubbers, and latexes.

**Luxembourg: Transport.** On June 11, Luxembourg's competition authority granted an exemption to an online taxi booking platform used by its drivers and competitors that employs a pricing algorithm to determine the cost of all journeys. The agency acknowledged the existence of a price-fixing agreement between competitors, but recognized that the agreement created sufficient gains in efficiency and consumer benefits to justify an individual exemption from national competition laws.

**Luxembourg: Retail Food Distribution.** On June 13, 2018 Luxembourg's competition authority issued a decision recognizing the existence of a price-fixing agreement between companies active in retail food distribution. However, the agency acknowledged that the cooperation agreement had pro-competitive effects in the market and, therefore, did not impose fines.



## ASIA

### **China: Dynamic Random Access Memory (DRAM).**

On May 31, China's National Development and Reform Commission (NDRC) dawn raided offices of Micron Technology, Samsung, and SK Hynix in Beijing, Shanghai, and Shenzhen. This was a follow-up action of NDRC's December 2017 investigation of the three companies for suspected price-fixing collusion. NDRC's investigation was initiated after the agency received complaints from insiders in the smart-phone industry claiming DRAM prices in China continued to increase due to the dominance of foreign companies. From December 2017 to May 2018, NDRC reportedly met with representatives from Micron Technology and Samsung as part of their investigation into these companies' alleged monopolistic price-fixing conduct. This investigation is ongoing. If these companies' price-fixing collusion is later confirmed, they could face hefty fines estimated to be in the range of \$800 million to \$8 billion.

# New Investigations and Enforcement Actions

Some cartel investigations are publicly announced by enforcement agencies in contrast to the unannounced dawn raids previously noted. In this section, we highlight some noteworthy new investigations and enforcement actions.

## AMERICAS

**Mexico: Steel.** On February 13, Mexico's Federal Economic Competition Commission announced the initiation of an investigation into steel acquired by public authorities on government land. The agency is investigating potential bid-rigging or allocation of customers and markets.

**Mexico: Liquefied Petroleum Gas.** On February 22, Mexico's Federal Economic Competition Commission announced the initiation of an investigation into potential bid-rigging and market allocation for liquefied petroleum gas used for transportation and electricity generation.

**Brazil: Hard Drives.** On April 4, the Tribunal of the Administrative Council for Economic Defense announced that it opened an investigation against five hard-drive manufacturers. The companies may have divided the market and combined prices. The companies also may have shared sensitive information, mainly in relation to prices, tenders, volumes, capacity, and taxes.

**Mexico: Corn Tortillas.** On April 5, Mexico's Federal Economic Competition Commission announced the initiation of an investigation into potential bid-rigging and market allocation for corn tortillas.

**El Salvador: Liquefied Petroleum Gas.** On April 12, El Salvador's competition authority announced an investigation, which it initiated in March, into a possible cartel among four companies in the industrial market for liquefied petroleum gas. By now, the

evidentiary phase of the investigation has closed, and the next step is for the agency's board of directors to decide whether the companies violated the country's competition law.

**Mexico: Personal Care Products.** On May 3, Mexico's Federal Economic Competition Commission announced the initiation of an investigation into potential bid-rigging and market allocation for personal care products manufactured with cellulose, cellulose pulp, and byproducts.

**Mexico: Transportation of Passengers.** On May 17, Mexico's Federal Economic Competition Commission announced that it had initiated an investigation into potential anticompetitive conduct for passenger transportation on federal roads in the state of Tamaulipas. The alleged conduct being investigated includes contracts and agreements among competitors to fix prices, limit supply, rig bids, and allocate markets for passenger transportation on federal roads with fixed itineraries and routes. The agency initiated the investigation on November 17, 2017, but only announced on May 17.

**Mexico: Public Works.** On May 24, Mexico's Federal Economic Competition Commission announced that it had initiated an investigation into potential anticompetitive conduct for highway maintenance and repair on the federal roads from Cuernavaca to Acapulco. The alleged conduct being investigated includes agreements among competitors to fix prices, limit supply, rig bids, and allocate markets. The agency initiated the investigation on November 30, 2017, but only announced it on May 24.

**United States: MDI.** In early June, the US Department of Justice issued subpoenas to several producers of methylene diphenyl diisocyanate (MDI). The DOJ's investigation is focused on alleged price-fixing of MDI, which is a key ingredient used in manufacturing polyurethane.

**United States: Secondary Trading Market for US Agency Bonds.** In early June, the US Department of Justice began an investigation concerning collusion involving bonds issued by US agencies, including Fannie Mae and Freddie Mac.

**Mexico: Sugar.** On June 12, Mexico's Federal Economic Competition Commission announced that it had initiated an investigation into potential anticompetitive conduct for the sale of sugar cane. The alleged conduct being investigated includes agreements among competitors to fix prices, limit supply, rig bids, and allocate markets. The agency initiated the investigation on November 30, 2017. It has previously investigated the industry within the last five years, and imposed fines of 88.8 million pesos (\$4.5 million) on some companies for engaging in anticompetitive conduct.

## EUROPE

**Slovakia: Construction and Reconstruction Work.** On January 7, the Antimonopoly Office of the Slovak Republic, Division of Cartels, initiated administrative proceedings in the matter of a possible cartel agreement in relation to a contract for the realization of constructions work. On the basis of the investigation conducted, the agency obtained information indicating that three undertakings coordinated their activity during public procurement process by submitting bids for the realization of construction and reconstruction work at a rehabilitation facility and facility for retirees funded by the European Structural and Investment Funds.

**Italy: Blood Collection Services.** On January 10, Italy's antitrust authority announced that it had opened an investigation into two companies over a possible competition law breach during a tender for blood-collection services. The regulator suspects the companies may have collaborated on the tender process in violation of EU antitrust rules.

**Bulgaria: Energy.** On January 22, the Bulgarian Commission for Protection of Competition launched a sector inquiry into the country's energy markets in order to investigate suspected cartel activity. The investigation was launched in response to claims made by businesses alleging collusion between energy traders to keep prices artificially high.

**Ireland: Waster Collection.** As of January 22, Ireland's Competition and Consumer Protection Commission (CCPC) has been investigating a complaint into alleged market sharing between waste collection firms. The CCPC was allegedly provided with a recording of a staff member stating that waste collection companies divide areas of a city between themselves, which is contrary to Chapter 1 of the Competition Act of 1998.

**Albania: Vehicles.** On February 8, Albania's competition authority announced the opening of a preliminary investigation into the market of technical control service for vehicles in Albania.

**Spain: Rail Electrification Systems.** On February 8, the National Commission for Markets and Competition announced that it has extended an ongoing probe into a possible cartel on the market for the production and maintenance of systems for rail electrification and electromechanical equipment for railways to include an additional company as well as 15 managers of companies already hit by the investigation. The agency is looking into whether the businesses and individuals in question manipulated public tenders.

**Italy: Telecom Services.** On February 15, Italy's antitrust authority announced that it opened an investigation into four telecom operators and the national telecom industry association, suspecting them of breaching EU cartel rules. The regulator said in a statement that its probe would ascertain whether the group had "coordinated its commercial strategy" following the introduction of new regulatory obligations.

**Spain: Broadcasting Advertising.** On February 22, the National Commission for Markets and Competition confirmed that it is investigating two broadcasters over concerns that they colluded in restricting competition in the broadcasting advertising market. The companies are thought to have required advertisers and media agencies to fulfil quotas on advertising spend on their respective channels, and jointly contracted advertising for certain channels among both operators. The authority has 18 months to file charges if the suspicions are confirmed.

**United Kingdom: Residential Estate Agency Services.** On March 2, the Competition and Markets Authority (CMA) initiated investigations in the residential estate agency sector into a suspected infringement of Chapter 1 of the Competition Act 1998. The CMA has confirmed that the investigations were launched after intelligence was received following its investigation into residential estate agency services in Somerset, England. The CMA will confirm in September 2018 whether or not they will proceed with the investigation.

**Italy: Health and Safety Contracts.** On March 14, Italy's competition authority announced that it is investigating 14 companies over suspected illegal coordination in bids for health and safety services contracts. Officials from the country's antitrust and financial-crime agencies carried out inspections at some of the companies involved the day before.

**Spain: Petrochemical and Energy Infrastructure Markets.** On March 20, the National Commission for Markets and Competition announced that it had opened a case against 26 companies and eight managers for possible collusion in the petrochemical and energy infrastructure markets. The companies are suspected of dividing up contracts for industrial assembly and maintenance in those sectors. The decision follows an inspection of five companies' headquarters last year. The agency has 18 months to close the case.

**Romania: Eggs.** On March 28, Romania's Competition Council launched an investigation into the country's egg production and marketing market following a preliminary assessment conducted in search of justification behind an increase in the price of eggs. The council suspects that a cartel of large egg importers limited egg deliveries at the end of 2017 in an effort to artificially increase prices. The council performed dawn raids of premises belonging to nine targeted suppliers and has concluded that a wider investigation into the market is necessary.

**United Kingdom: Musical Instruments.** On April 17, the Competition and Markets Authority opened five new investigations into suspected anticompetitive agreements in the musical instruments sector. The investigations concern alleged anticompetitive agreements and/or concerted practices in relation to musical instruments and equipment, and are being carried out under Chapter 1 of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the European Union.

**Denmark: Demolition Services.** On April 18, Denmark's Competition and Consumer Authority announced that Denmark's State Prosecutor for Serious Economic and International Crime had issued charges against six demolition companies and eight

senior executives for alleged bid-rigging of more than 90 contracts over two and a half years. Denmark plans to pursue prison sentences for the individuals. If convicted, this would be the first instance of Denmark using the power to impose prison sentences that was given to the enforcer in 2013 when Denmark's Competition Act was amended.

**Albania: Tobacco.** On May 1, Albania's competition authority opened a preliminary investigation into the market of production, collection, processing, and export of tobacco.

**United Kingdom: Roofing Materials.** As of May 2, the Competition and Markets Authority decided to continue to gather information in a probe investigating potential anticompetitive arrangements in the roofing sector. The investigation was opened in July 2017 into possible breaches of Chapter 1 of the Competition Act 1998 and Article 101 the Treaty on the Functioning of the European Union. A further update is expected in July 2018.

**Spain: Waste Management.** On May 3, the National Commission for Markets and Competition announced that it is investigating companies active on the market for waste management and urban sanitation. The regulator is concerned that the companies allocated public and private customers and agreed on commercial conditions amongst themselves.

**Spain: Technical Services.** On May 25, the National Commission for Markets and Competition announced that it has initiated disciplinary proceedings against two companies for possible practices that restrict competition in the provision of technical assistance services. Specifically, the possible anticompetitive behavior would consist, firstly, in a limitation to the independent technical assistance services to meet orders requested by customers in territories outside those assigned under exclusive regime and, secondly, in the pricing of such official technical assistance services.

**United Kingdom: Energy.** On May 31, the UK's energy regulator, Ofgem, accused two energy suppliers and a software company of entering into anticompetitive agreements. Ofgem has issued a statement of objections to the parties accusing them of engaging in an anticompetitive agreement preventing the two suppliers from targeting each other's customers through face-to-face sales between at least January and September 2016. The parties are also suspected of exchanging commercially sensitive information about their customers to facilitate the agreement. Ofgem has concurrent powers with the Competition and Markets Authority to investigate and take enforcement action in relation to alleged infringements of UK competition law.

**Poland: Electronic Surveillance Systems.** On June 5, Poland's Office of Competition and Consumer Protection announced that it is investigating whether certain entrepreneurs colluded in a government tender for electronic surveillance systems.

**Poland: Fitness Clubs.** On June 29, Poland's Office of Competition and Consumer Protection announced an investigation concerning market allocation by fitness club companies and agreements to exclude competitors. Sixteen companies are involved in the investigation. For the first time, the agency is investigating seven individuals who may face fines as high as 2 million zloty (\$530,000).

## ASIA

**Pakistan: Poultry.** On January 11, the Competition Commission of Pakistan initiated an investigation into possible collusion between several operators in the poultry market.

**India: Condoms.** On February 12, the Competition Commission of India announced that it had opened an investigation into 10 condom manufacturers.

The agency alleges the 10 manufacturers coordinated their submissions to a 2014 government tender for 504 million male latex condoms.

**Russia: Forensic Equipment.** On January 24, the Federal Antimonopoly Service held nine companies liable for bid-rigging of state tenders for supply of forensic equipment to laboratories of the Ministry of Interior and Russian Federal Center of Forensic Inquiry. The agency has yet to impose fines on the companies.

**Russia: Pharmaceuticals.** On February 8, the Federal Antimonopoly Service held two pharmaceutical companies and Moscow-based state hospitals liable for price collusion for medicines, baby and dietary foods, and medical devices with a total value of 644 million rubles (\$10.3 million) from 2014 to 2016. The state hospitals have been ordered to cease and desist. The agency has yet to impose fines on the companies. The case file has been sent to prosecutors to decide on criminal investigation.

**Russia: Road Repairs.** On February 9, the Federal Antimonopoly Service announced an investigation into three companies following suspicions they rigged four state tenders for repair of roads in Samara with the value totaling 4 billion rubles (\$63.7 million).

**Turkey: Chemotherapy Medicine Preparation.** On February 21, the Turkish Competition Authority announced that it had completed its preliminary inquiry into six preparers of chemotherapy medicine and determined that there was sufficient evidence to open an investigation to determine whether the preparers engaged in bid-rigging.

**Turkey: Mail/Package/Freight Transporters.** On March 14, the Turkish Competition Authority announced that it had completed an ex officio preliminary inquiry into nine mail/package/freight transporters that purchase and resell international transport services and determined there was sufficient

evidence to open an investigation to determine whether the transporters allocated customers. An additional 23 undertakings were added to the investigation in September 2017.

**Kazakhstan: Coal.** On March 20, Kazakhstan's competition authority announced the conclusion of an investigation into coal suppliers. In September-October 2017, a deficit of coal occurred in the Akrobo Region, which led to an increase of prices. The local antimonopoly department then conducted an investigation in which two coal-supply companies were found to have participated in a cartel. This case is currently under review by a specialized administrative court.

**Russia: Food and Beverages.** On March 23, the Federal Antimonopoly Service held two companies liable for bid-rigging of state tenders for a supply of food and beverages to the North Caucasus Division of the Ministry of Interior, from May to August 2018. The agency has yet to impose fines on the companies.

**Russia: Railway Lock and Seal Devices.** On March 28, the Federal Antimonopoly Service held five lock-and-seal device suppliers liable for division of the market by customers and maintenance of prices from 2008 to 2017. One of the five companies was coordinating the economic activities of the others by setting prices and conditions for the sale of the products. The agency has yet to impose fines on the companies. The case has been passed to prosecutors to decide on criminal investigation.

**Kazakhstan: Supermarkets.** On April 2, Kazakhstan's competition authority announced that the local antimonopoly department in Taraz concluded an investigation with respect to seven large supermarkets in the city. The investigation found five of the investigated entities to have participated in a cartel with the purposes of coordinating the prices of specific goods. The cases are currently under review by the specialized administrative court of Taraz.

**Russia: Food and Beverage.** On April 5, the Federal Antimonopoly Service announced an investigation into two companies following suspicions they rigged a number of state tenders for a supply of food and beverage products to social organizations in Bashkortostan Republic.

**Russia: Fuel.** On April 23, the Federal Antimonopoly Service initiated proceedings against 10 oil traders suspected of anticompetitive agreements or concerted practice. The companies bought and resold fuel to each other a number of times before selling to petrol stations in Crimea and exchanged commercial information on proposed activities.

**Turkey: Cement.** On May 28, the Turkish Competition Authority announced that it had completed a preliminary inquiry into two cement manufacturers in Isparta province and determine there was sufficient evidence to open an investigation into whether the undertakings fixed cement prices and allocated customers.

**Russia: Communication Equipment.** On May 11, the Federal Antimonopoly Service initiated proceedings against eight companies suspected of maintaining prices for radio stations, locomotive antennas, and other communication equipment intended for use in the railway industry. An update is expected in early July 2018.

**South Korea: Fuel.** In June, the media reported that, in response to a similar inquiry launched by the US Department of Justice, South Korea's competition authority was investigating domestic fuel suppliers for alleged bid-rigging regarding the supply of fuel to the US military in South Korea.

**Russia: Heat Stabilizers.** On June 13, the Federal Antimonopoly Service held two entities liable for bid-rigging at tenders for a supply of heat stabilizers with the value totaling 15 billion rubles (\$239,000) to one of the major Russian oil companies, from 2012

through 2017. The agency has yet to impose fines on the companies. Based on the agency's finding, public prosecutors in the Tyumen Region have initiated a criminal investigation against the chief executives of both entities.

## OCEANIA

**Australia: Healthcare.** On February 15, the Australia Competition and Consumer Commission announced charges brought against a healthcare company, its managing director, and a former employee regarding cartel conduct in the healthcare industry, specifically with respect to products used in rehabilitation services.

**Australia: Detergent.** On February 20, the Australia Competition and Consumer Commission announced that it has appealed a 2017 Federal Court decision dismissing its allegations that a laundry detergent manufacturer had engaged in cartel conduct with two competitor laundry detergent manufacturers to agree to provide only ultra-concentrate, rather than standard concentrate, detergent.

**Australia: Ocean Freight Shipping Services.** On April 5, the Australia Competition and Consumer Commission announced that a shipping company agreed to plead guilty to engaging in anticompetitive conduct regarding the provision of international shipping services for vehicles to Australia. The company will be sentenced by the Federal Court in November 2018.

**New Zealand: Pharmacy Services.** On April 26, New Zealand's Competition Commission announced a suit against a pharmacy company and two directors for allegedly fixing prices with a competitor in violation of Part 2 of the New Zealand Commerce Act. The conduct allegedly began at a regional meeting of pharmacy companies in April 2016.

**Australia: Financial Products and Services.** On June 5, the Australian Competition and Consumer Commission announced that it had charged three major financial institutions and six individual current or former senior executives with criminal cartel conduct related to agreements between the financial institutions with respect to trading in one of the institution's shares. The agency alleges the conduct was related to an institutional share placement in August 2015.

## AFRICA

**South Africa: Advertising.** On February 27, South Africa's Competition Commission announced that 28 media companies have been referred to the Competition Tribunal for prosecution on charges of price-fixing and the fixing of trading conditions related to their agreement to offer similar discounts and payment terms to advertising agencies that place ads with particular agencies. Two other media companies previously admitted to the charges and reached a settlement with the commission.

**South Africa: Glasswool Insulation.** On February 28, South Africa's Competition Commission announced the prosecution of two construction material companies for price-fixing and dividing markets for glasswool insulation.

**South Africa: Motor Safety Products.** On March 14, South Africa's Competition Commission announced that a manufacturer of airbags, seatbelts, steering wheels, and driver airbags has been referred for prosecution for collusion during a tender issued by a car manufacturer. The prosecution resulted from a leniency application from a manufacturer who had participated in the collusion.

**South Africa: Blankets.** On April 11, South Africa's Competition Commission announced that two textile companies face prosecution on charges of collusive tendering and price-fixing in relation to a National Treasury tender to supply blankets to the Department of Correctional Services from April 2015 through March 2016. The prosecution stems from a 2016 investigation into possible collusive tendering.

## Closed Investigations

**Netherlands: Ports.** On April 4, the Netherlands Authority for Consumers and Markets ended its cartel investigation in the bunker sector of the Amsterdam-Rotterdam-Antwerp triangle. Although it was established that between 2011 and 2014 discussions about a price-fixing agreement were held, the authority concluded that such conduct did not result in an actual cartel agreement.

**Hungary: Household Paper Products.** On May 28, Hungary's competition authority issued a press release announcing the termination of its cartel proceeding initiated against manufacturers of household paper products. The proceedings were terminated after the agency's investigation into whether the manufacturers conspired to raise prices for set periods of time and whether they shared sensitive information with each other did not produce enough evidence to establish guilt.

# INDUSTRIES UNDER SCRUTINY

Packaged Seafood.....	47
Electrolytic Capacitors.....	48
Financial Services.....	49
Generic Drugs and Pharmaceuticals.....	52
Automotive Parts.....	53
Real Estate.....	55



## Packaged Seafood

The US Department of Justice continues its ongoing investigation and prosecution concerning packaged seafood producers for conspiring to fix the prices of packaged seafood sold in the United States.

In May 2018, the DOJ obtained an indictment charging the president and chief executive officer of a US company that produces packaged seafood for participating in a conspiracy to fix prices from November 2010 until December 2013. The case, which is pending in the Northern District of California in San Francisco, may proceed to trial. The executive is the fourth individual to be prosecuted in the investigation.

The DOJ had obtained earlier convictions in the investigation including:

- May 2017: a US company that produces packaged seafood pleaded guilty for its role in a conspiracy to fix the prices of shelf-stable tuna, such as canned and pouch tuna, sold in the United States as early as the first quarter of 2011 through at least as late as the fourth quarter of 2013. Under the plea agreement, the company agreed to pay a \$25 million criminal fine, which will increase to a maximum criminal fine of \$81.5 million, payable by a related entity, in the event of a sale of the company subject to certain terms and conditions. This is the same US company for which the president and CEO was indicted in May 2018.
- June 2017 and December 2016: three executives—including two senior vice presidents of sales and a senior vice president of trade marketing had pleaded guilty for conspiring to fix prices.

For more information about how the criminal conduct was discovered during the course of a merger review, see [Merger Review in Seafood Industry Highlights Importance of Regular Antitrust Counseling and Compliance Training](#).





## Electrolytic Capacitors

A number of enforcers continue their investigation and fines involving ongoing capacitor investigations. Recent cases have resulting in significant fines.

- **European Commission: Electrolytic Capacitors.**

On March 21, the European Commission fined eight producers of electrolytic capacitors **254 million euros (\$311.6 million)** for participating in a cartel. The commission determined that from 1998 to 2012 nine Japanese companies participated in multilateral meetings and engaged in bilateral or trilateral contacts to exchange commercially sensitive information.

- **Singapore:** On January 5, the Competition and Consumer Commission of Singapore (CCCS) imposed a fine of **\$19.6 million Singapore (\$14.7 million)** on five capacitor manufacturers for fixing prices and exchanging confidential sales, distribution, and pricing information for aluminum electrolytic capacitors. The fine represents the highest imposed by the CCCS thus far.

- **United States:** The Department of Justice has charged eight companies and 10 individuals with participating in a conspiracy to fix prices of electrolytic capacitors. The DOJ has described capacitors as “a fundamental component of electrical circuits and are used primarily to store and regulate electrical current. Electrolytic capacitors, including aluminum and tantalum types, are a major subcategory of capacitors. Electrolytic capacitors are found in many products that use electricity, run on a battery, or plug into a socket. Desktop and notebook computers, flat-screen televisions, DVD players, video and still digital cameras, gaming systems, car engine and airbag systems, home appliances, office equipment, and motherboards and other printed circuit boards are some of the products that contain electrolytic capacitors.”

# Financial Services

In the first half of 2018, some government prosecutions of the manipulation of various financial benchmarks—including London Interbank Offered Rates (LIBOR) and various foreign exchange markets—have continued by international enforcers as well as by the US Department of Justice and state enforcers. Private litigation remains active. Recent cases are highlighted below.

## LONDON INTERBANK OFFERED RATES (LIBOR)

- In January, the UK's Financial Conduct Authority fined a former trader **250,000 British pounds (\$340,000)** and banned him from “performing any function in relation to any regulated financial activity.” These penalties were imposed following a finding that he engaged in misconduct that included efforts to manipulate the Japanese yen LIBOR.
- In March, a federal judge in New York issued a mixed class certification ruling in the long-running US dollar LIBOR litigation denying entirely class certification for exchange-based and lender plaintiffs while denying in part class certification for over-the-counter (OTC) plaintiffs. Class certification was granted only with respect to the OTC plaintiffs' claims against two financial institutions.
- In March, the FCA fined a former trader approximately **180,000 British pounds (\$245,000)** and banned him from “performing any function in relation to any regulated financial activity” for allegedly engaging in misconduct that threatened the integrity of the Swiss franc and Japanese yet LIBOR benchmarks.
- In March, the UK Court of Appeal dismissed an appeal by former Barclays LIBOR trader Alex Pabon, who was one of three men convicted for conspiracy to defraud for LIBOR-rigging. On appeal, Mr. Pabon argued that an expert witness called by the Serious Fraud Office gave testimony outside of his expertise as demonstrated by texts and emails the expert sent while giving evidence. The court criticized the witness but upheld Mr. Pabon's conviction. The ruling is significant as the expert was also a witness in other LIBOR trials.
- In April, a federal judge in New York preliminarily approved settlements by two financial institutions (for **\$100 million** and **\$240 million**) in litigation accusing several banks of manipulating the LIBOR benchmark. These settlements bring the total settlement amount in the case to \$590 million.
- In June, a financial institution agreed to pay 41 states and the District of Columbia **\$100 million** to resolve allegations that the bank manipulated the LIBOR benchmark by making fraudulent submissions regarding borrowing costs in order to protect its reputation. Five million dollars will cover investigation costs and other expenses; the remaining \$95 million will be available for distribution to eligible governments and non-profits with “Libor-linked Citibank investment contracts.” Read more [here](#).

## FOREIGN CURRENCY EXCHANGE (FX) MARKET

- In January, an international financial services company pleaded guilty to participating in a price-fixing conspiracy in the FX market between September 2011 and July 2013. In June, the company was sentenced to pay a criminal fine of **\$90 million**.
- In May, a federal grand jury in New York returned an indictment against a former currency trader at a major US bank for his alleged role in a conspiracy to manipulate prices in the FX market. Trial is set for October 2018.
- In May, a financial services company was fined a total of **\$109.5 million** for ineffective oversight of its FX business. Though the bank had policies in place to regulate its FX business, inadequate enforcement allowed traders to share confidential customer information with competitors and use that information to adjust ask prices and generate higher profits. The total settlement amount was evenly distributed between the New York Department of Financial Services and the Federal Reserve Board, which each receiving \$54.8 million.
- In June, the New York State Department of Financial Services fined a financial services company **\$205 million** for improper conduct that occurred from 2007 to 2013 in the bank's FX business. This conduct included alleged coordination among banks to influence market prices by disclosing confidential customer information with traders from other banks in online chatrooms.

## US DOLLAR INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION FIX (USD ISDAFIX)

- In February, the US Commodity Futures Trading Commission issued an order settling charges that a German financial services company attempted to manipulate the USD ISDAFIX benchmark from January 2007 to May 2012 through false rate submissions and manipulative trading. The German bank agreed to pay a **\$70 million** penalty and to take steps to strengthen its internal controls to settle the matter.
- In May, a federal judge in New York granted final approval of a **\$408.5 settlement** with 10 banks accused of engaging in misconduct intended to manipulate the ISDAFIX benchmark between 2006 and 2014. In June, the five remaining defendants agreed to settle the class action for a combined **\$96 million**.
- In June, a financial services company agreed to pay the US Commodity Futures Trading Commission **\$65 million** to settle allegations that it engaged in conduct intended to manipulate the ISDAFIX benchmark between 2007 and 2012. The alleged conduct included trading interest rate swaps during the ISDAFIX polling window and making artificial rate submissions intended to manipulate the benchmark.

## EURO INTERBANK OFFERED RATE (EURIBOR)

- In March, a former trader pleaded guilty to conspiracy to defraud weeks before his trial on Euribor benchmark-rigging offenses. Before pleading guilty, he was in the process of challenging a Financial Conduct Authority decision to fine him as much as **10 million British pounds (\$14 million)** for Euribor manipulation, which would be a record for the regulator. The action was put on hold pending the outcome of the criminal case.
- In April, former traders went on trial facing charges of conspiracy to defraud. Each defendant is accused of collaborating to make false Euribor submissions in order to artificially influence the benchmark. The charges were brought against the five traders, and a sixth who pleaded guilty prior to trial, following an investigation into interbank lending and rate manipulation.
- In May, a federal judge granted final approval to investor settlements with three financial services companies totaling \$309 million (for **\$170 million, \$94 million, and \$45 million**). The banks settled with Euribor investors who accused them of conspiring to rig the interest rate benchmark. **\$68.7 million** in fees and **\$1.6 million** in class counsel expenses were also approved by the federal judge.

## SINGAPORE INTERBANK OFFERED RATE (SIBOR)/SWAP OFFER RATE (SOR)

- In April, a federal judge in New York granted a motion to dismiss a suit brought against several banks alleging SIBOR and SOR manipulation from 2007 to 2011. The judge dismissed the suit for failure to adequately plead the conspiracy claim, and granted plaintiffs leave to amend the complaint.

## BANK BILL SWAP RATE (BBSW)

- In January, the Australian Securities and Investments Commission filed legal proceedings in the Federal Court against the Commonwealth Bank of Australia (CBA) alleging BBSW manipulation by CBA traders between January and October 2012.

# Generic Drugs and Pharmaceuticals

- **US Federal Investigations:** A federal grand jury believed to be located in the Eastern District of Pennsylvania, as well as various state attorneys general, have issued subpoenas to a growing list of companies requesting pricing and any other information regarding communications among competitors about various generic drugs. So far, more than a dozen drug companies have disclosed receiving subpoenas involving more than a dozen medications as part of the ongoing investigation into pricing. In mid and late 2016, putative class actions were filed by private litigants against certain generic manufacturers. Following the announcement of criminal charges and the filing of the state attorneys general civil complaint, dozens of putative class actions were filed by private litigants against a host of generic manufacturers and distributors with allegations similar to those made by the attorneys general.
  - **Prior Charges:** The US Department of Justice recently stated in prepared remarks that its investigation into the industry is ongoing. To date, the DOJ has not announced any specific developments in its investigation since criminally charging two executives of a pharmaceutical company in December 2016 for fixing prices and allocating customers for the medications doxycycline hyclate and glyburide. Those individuals pleaded guilty to the charges and sentencing is expected later this year.
  - **Investigative Challenges:** According to media reports, challenges faced by prosecutors have delayed their progress. Nonetheless, an April report suggested that at least two companies and several executives are likely to be indicted in the coming months, possible as early as late summer.
- **US State Attorney General and Private Civil Litigation Activity:** On December 15, 2016, the day following the DOJ's unsealing of criminal charges against two pharmaceutical executives, 20 state attorneys general filed a civil complaint in the District of Connecticut against numerous generic pharmaceutical manufacturers alleging the companies conspired to fix prices, rig bids, and allocate customers for doxycycline hyclate and glyburide. Shortly thereafter, putative class actions were filed against dozens of generic manufacturers and distributors.
  - **State Enforcement Litigation:** State attorneys general recently amended their civil complaint to add new manufacturers as defendants, two individual executives as named defendants, and more medications. The amended complaint alleges an overarching conspiracy involving 15 drug products. In a news release accompanying the filing of the amended civil complaint, the state attorneys general noted their investigation is ongoing and "continues to uncover additional evidence, and we anticipate bringing more claims involving additional companies and drugs at the appropriate time."
  - **Pending Class Actions:** In August 2017, the private plaintiff class actions were consolidated for discovery purposes in the Eastern District of Pennsylvania. Shortly thereafter, the state attorneys general's civil actions were consolidated for discovery purposes in the same court. Limited discovery in these cases was permitted to begin in early 2018, while certain types of discovery that could impact the DOJ's ongoing investigation are stayed at this time. There are now more than 31 medications named across the various complaints filed to date.

## Automotive Parts

The US Department of Justice's auto parts investigation has largely concluded. However, some remaining new cases continue to be prosecuted. As of June, **65 persons** and **49 companies** have been charged and have agreed to pay more than **\$2.9 billion in criminal fines** as part of the investigation which is the largest conducted by the DOJ to date. Find a snapshot summary of all the charged cases [here](#).

- Outside the United States—most notably in the European Commission, Australia, and Brazil—investigations and prosecutions continued in significant numbers and look set to continue for some time.

**United States: Automotive Steel Tubes.** On May 31, a Japanese automotive parts manufacturer entered into a plea agreement and was sentenced to pay a **\$12 million** criminal fine for conspiring to fix prices, rig bids, and allocate customers for automotive steel tubes incorporated into vehicles sold in the United States and elsewhere. The plea agreement resolved an indictment filed in June 2016 in the Southern District of Ohio.

### EUROPE

On February 21, the European Commission resolved cases against six companies involving automotive parts:

- **Spark Plugs.** Three suppliers of spark plugs to car manufacturers in the European Economic Area were fined a total of **76 million euros (\$93.6 million)** for a cartel from 2000 until 2011. According to investigators, the companies exchanged commercially sensitive information and in some instances agreed on the prices to be quoted to certain customers, the share of supplies to specific customers, and the respect of historical supply rights. The investigation



began following an immunity application. The applicant received full immunity for revealing the existence of the cartel, thereby avoiding a fine of about 1 million euros.

- **Braking Systems.** Three suppliers were found to have participated in two braking system cartels involving the supply of (1) hydraulic braking systems (HBS) from February 2007 to March 2011, and (2) electronic braking systems (EBS) from September 2010 to July 2011. The commission imposed a total fine of **75 million euros (\$92.4 million)**. In both cartels. The coordination took place at bilateral meetings and through phone conversations or email exchanges. The investigation began following an immunity application. In the HBS cartel, an immunity applicant received full immunity for revealing the cartel, thereby avoiding a fine of about 54 million euros. In the EBS cartel, another applicant received immunity for revealing the cartel, thereby avoiding a fine of 22 million euros.

**Australia: Wire Harnesses.** On May 16, the Full Federal Court of Australia issued its largest fine to date under the Competition and Consumer Act of 2010 by fining an auto parts manufacturer **\$46 million Australian (\$34.6 million)** for engaging in anticompetitive cartel conduct in the provision of wire harnesses for the Toyota Camry. The fine, the largest ever ordered under the act, was based on conduct from 2003 until 2008.

**Brazil: Automotive Spare Parts.** On May 9, the Tribunal of the Administrative Council for Economic Defense announced settlement agreements in two cartel investigations related to auto spare parts including valves for engines, valve guides, and valve seats for one company and wire harness and electric and electronic components (including electronic control units, junction boxes, automotive dashboards and displays, systems with ABS sensor cable, high voltage cables, components for electric and hybrid vehicles, antenna and connectors) for a second company. The fines totaled **2.8 million reais (\$778,000)**.

# Real Estate

The US Department of Justice continues to be active in its ongoing investigation in multiple states concerning bid-rigging at public real estate foreclosure auctions. More than 100 individuals have been convicted by plea agreement or following a trial in Alabama, Northern California, Georgia, Mississippi, and North Carolina. These cases also have resulted in a number of trial convictions which draw upon more enforcement resources.

During the first half of 2018, the DOJ has prosecuted the following cases:

- **California:** On March 21, a real estate investor was sentenced to 30 months in prison and ordered to pay a **\$1.3 million criminal fine** following his trial conviction in June 2017 for conspiring to rig bids at foreclosure auctions in northern California.
- **Northern California:** On May 9, five real estate investors were sentenced to prison terms of **15 months, eight months, six months, four years of probation** (including five months in a halfway house), **three years of probation** (including 10 months in a halfway house) along with total fines and restitution total **\$6.8 million** for conspiring to rig bids at auctions for selected properties in northern California.
- **Mississippi:** On June 18, the DOJ announced the sixth real estate investor to be convicted in Mississippi for bid-rigging at public real estate foreclosure auctions in Mississippi.
- **Florida:** On June 20, the DOJ announced the first conviction for a conspiracy to rig bids at online public foreclosure auctions in Florida.



# KEY POLICY DEVELOPMENTS

New DOJ ‘No Piling On’ Policy on Cartel Enforcement.....	57
Leniency Programs and Policies.....	58
Whistleblower Protection Legislation: Criminal Antitrust Anti-Retaliation Act.....	60
New Secure and Anonymous Austria Whistleblowing System.....	60
Compliance Programs.....	61
New Laws, Policies, and Guidance.....	62



# New DOJ 'No Piling On' Policy on Cartel Enforcement

On May 9, Deputy Attorney General Rod Rosenstein announced a new US Department of Justice "No Piling-On" policy at the New York City Bar White Collar Crime Institute. The policy's objective is to "encourage coordination among Department components and other enforcement agencies when imposing multiple penalties for the same conduct." As Mr. Rosenstein explained, the policy name refers to a football metaphor when "a player jump[s] on a pile of other players after the opponent is already tackled."

The [policy](#), which has been added to the US Attorneys' Manual, has four "core features":

- To reiterate the DOJ's current policy that no DOJ attorney shall invoke the threat of criminal prosecution for the purpose of extracting a larger settlement out of a company in a civil case.
- To direct DOJ divisions "to coordinate with one another, and achieve an overall equitable result." This may include "crediting and apportionment of financial fines, forfeitures, and penalties, and other means of avoiding disproportionate punishment."
- To encourage DOJ attorneys "to coordinate with other federal, state, local, or foreign authorities seeking to resolve a case with a company for the same misconduct."
- To set forth specific factors to consider in assessing "whether multiple penalties serve the interests of justice," including "the egregiousness of the misconduct; statutory mandates regarding penalties; the risk of delay in finalizing a resolution; and the adequacy and timeliness of a company's disclosures and cooperation with the Department."

The policy has two applications to cartel enforcement in the United States. First, some recent large prosecutions by the Antitrust Division have involved other DOJ components such as the Criminal Division in the financial services cases. The policy will promote coordination in these cases.

Second, many cartel cases involve enforcement by international enforcers. Under the third core feature, the DOJ policy will promote coordination with "foreign authorities seeking to resolve a case with a company for the same misconduct."

The new policy was noted in a May 31 speech by Principal Deputy Assistant Attorney General Andrew Finch, at the American Bar Association's Antitrust in Asia Conference in Seoul, noting the policy seeks to promote coordination "when possible, with other agencies, including foreign enforcement authorities, that are seeking to impose penalties for the same misconduct" and "is designed to prevent inconsistent, incompatible, or unnecessary, truly duplicative enforcement efforts."

While the policy is binding on the DOJ, it does not establish any independent rights by third parties. The policy can be referenced in negotiations with the DOJ and considered with other enforcers.

# Leniency Programs and Policies

Leniency programs remain a key part of the cartel enforcement framework, and many countries have adopted leniency programs modeled on the successful programs in the United States and European Commission. [For a list of countries with Leniency Programs, see page 34] In many jurisdictions, leniency programs generate many or most of the cartel investigations for enforcement agencies. Recent debate has emerged concerning areas to improve the leniency process.

## UNITED STATES

Later this year, the US Department of Justice plans to celebrate the 25th anniversary of the modern version of its Corporate Leniency Program. The DOJ first established its leniency program in 1978, however, few leniency applications were submitted under the original program.

In 1993, the DOJ substantially modified its Corporate Leniency Program, and in 1994, it established the Leniency Program for Individuals. Since the modern program was adopted, senior DOJ officials have noted consistently over the years that most DOJ investigations have begun under the program.

Notwithstanding the many cases that have arisen under the program, some recent questions have been raised concerning the effectiveness of, and costs associated with, the program in the United States and other jurisdictions. Some have asked whether the costs associated with seeking leniency have become too high for some cases based on the need to (1) seek leniency in multiple jurisdictions with different demands and requirements; and (2) face possible damages litigation in various jurisdictions throughout the world. In the United States, civil cooperation is governed by the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (ACPERA). Under ACPERA, an applicant that receives leniency in a criminal case may limit its civil liability to single damages without joint and several liability if it “has provided satisfactory cooperation to” the civil plaintiffs.

In a June 5 speech at the Organisation for Economic Co-operation and Development (OECD) in Paris, Acting Deputy Assistant Attorney General Richard Powers contended leniency provides substantial benefits: “As worldwide exposure increases, so do the potential benefits of leniency. The benefits of seeking leniency therefore still outweigh the increasing costs.”

The role for coordination among enforcers is key to ensuring an effective, efficient leniency process. In a May 31 speech at the American Bar Association’s Antitrust in Asia Conference in Seoul, Principal Deputy Assistant Attorney General Andrew Finch said:

**We will have to work internationally to ensure that reporting regimes in various jurisdictions are not so complex that it becomes impossible for a company seeking leniency in multiple jurisdictions to navigate. When a firm or individual applies for leniency simultaneously across multiple jurisdictions, our international cooperation efforts must consciously try to preserve the applicant’s incentives to cooperate. That includes taking steps to ensure that jurisdictions can effectively proceed with their investigations and prosecutions in a way that does not undermine the common goal of our leniency programs.**

In his June speech, Mr. Powers noted that enforcers can take concrete steps to cooperate and coordinate for a more efficient leniency process. The coordination steps can include efforts to:

- 1) try to coordinate timelines and deadlines to allow the applicant to meet them in multiple jurisdictions;
- 2) tailor our document demands to get the necessary evidence from the leniency applicant without unnecessary burden; and
- 3) where possible, coordinate the timing and locations of interviews to alleviate burdens on applicants and employees.

Mr. Powers remained open to “engaging with foreign enforcers, and also the defense bar, to examine possible ways to reduce unnecessary burdens on leniency applicants.” The operation, incentives, costs, and benefits for leniency remains an important policy issue in the United States and other jurisdictions.

## AUSTRIA

On February 7, Austria’s competition authority issued a new handbook on its leniency program. The handbook includes updates based on the Cartel and Competition Law Amendment Act of 2017 and Section 209b of the Austrian Criminal Procedure Code. The handbook notes that the liability of the first leniency applicant is normally limited to the applicant’s direct and indirect customers or suppliers. Additionally, immunity from criminal proceedings may extend to employees of a company that has provided a significant contribution concerning the antitrust infringement. Find the handbook [here](#).

## CANADA

The Canadian Competition Bureau released a draft of its revised Immunity and Leniency Programs for public comment. Proposed changes include a cooperation credit of up to 50% and up to an additional 10% to 20% credit for having a corporate compliance program in place.

## MAURITIUS

On January 23, the Competition Commission of Mauritius announced that it had made a permanent modification to its leniency program. Under the change, “initiators of cartels or coercers of cartels may henceforth apply for leniency and benefit from a 50 per cent reduction in fines.” The previous program permitted “temporary offers and [was] open only to initiators.” The commission noted that this “proactive measure” adds to the “toolkit” in cartel enforcement. According to the commission, seven confidential investigations focused “mainly” on cartel investigations remain pending.

## NEW ZEALAND

On June 29, New Zealand’s Commerce Commission updated its policy and guidelines concerning leniency, noting that the “updated policy and guidelines clarify what the Commission expects from parties involved in cartel conduct who apply for immunity or cooperation concessions, as well as what they can expect from the Commission.”

## PHILIPPINES

Leniency programs for criminal conduct are currently being developed. Although no leniency program is currently in place, in January 2018 the Philippine Competition Commission stated that it is developing a program that would encourage whistleblowers to speak out against business cartels and other anticompetitive practices in accordance with its obligations under Section 35 of the Philippine Competition Act.

## VIETNAM

The Vietnam National Assembly introduced the fifth draft of its competition law that, for the first time, introduces a leniency program. The program has some limitations, such as only being available to the first three successful applicants, and largely remains generalized. However, the program conforms Vietnam's competition laws to international norms. It is expected to become effective on January 1, 2019.

## United States: Whistleblower Protection Legislation: Criminal Antitrust Anti-Retaliation Act

We continue to monitor the legislation passed by the US Senate in November 2017 that would establish whistleblower protection for cartel cases. The legislation, titled the Criminal Antitrust Anti-Retaliation Act of 2017, provides a civil remedy to individuals who are fired or otherwise discriminated against for reporting potential criminal antitrust violations. The legislation still must be adopted by the House of Representatives and signed by the president.

## Austria: New Secure and Anonymous Austria Whistleblowing-System

On February 8, Austria's competition authority initiated a new whistleblowing system to protect informants. Information can be securely sent to the agency and the individuals "remain completely anonymous." Under this program, the "information can neither be traced back to [the agency] nor by other third parties. This ensures that you can remain completely anonymous and your documents are treated confidentially." Find the program [here](#).

# Compliance Programs

Compliance programs are essential to prevent, detect, and mitigate potential cartel violations. The early detection of a cartel issue, for example, may allow a company to seek leniency or amnesty. The design and development of effective compliance programs can be used in some jurisdictions to mitigate the potential fines or penalties.

Many enforcers continue to issue guidance and policy updates on compliance.

## TURKEY

Turkey's competition authority has issued a guidance letter to encourage companies to adopt compliance programs. It highlights five elements: (1) determination and support of top management, (2) presence of proper policy and procedures, (3) continuous training, (4) systematic assessment, (5) consistent discipline and incentive practices, providing a checklist to help a company assess its exposure to antitrust laws. Recent decisions by the agency have granted reductions in fines based on the adoption of compliance programs prior to judgment.

# New Laws, Policies, and Guidance

**Argentina: New Law on the Defense of Competition:** On May 18, a new competition law was enacted constituting a major reform. The law, which became effective on May 23, establishes a new independent agency, the National Competition Authority. Five members will serve on the tribunal. A specialized court in Buenos Aires will hear appeals.

Among the modifications, the new law:

- Establishes a presumption of illegality for hard-core cartels (“absolutely restrictive of competition and are presumed to cause harm”), such as competitor agreement to fix prices, rig bids, restrict output, and allocate markets;
- Increases fines to the higher of the following two alternatives: (i) up to 30% of the turnover for the infringing product multiplied by the years of infringement (subject to a cap) or (ii) twice the economic benefit from the infringement. If the fine cannot be determined under these methods, the fine is capped at \$4 billion Argentinian (\$167 million);
- Establishes the first national leniency program under a marker registration system; and
- Modifies the law to allow for private damages actions as follow-on claims.

**Bulgaria: Damages Directive.** On January 3, more than one year after the December 27, 2016, deadline, Bulgaria transposed the EU’s Private Damages Directive (2014/104/EU) into national law. The new law makes it easier for victims of cartel and abuse of dominance infringements of EU antitrust rules to prove and claim damages.

**Chile: Prosecutorial Guidance.** On February 23, Chile’s Competition Authority published the draft of its Internal Guide for the Interposition of Complaints for the Crime of Collusion, which specifies the criteria it will use to file complaints against those accused of collusion. The draft was available for public comment until April 13. On June 28, the agency released its Internal Guidelines for Filing Complaint by the Crime of Collusion. Among the criteria that will guide the authority’s decisions are the magnitude of the effects and of the economic benefits produced by the collusive agreement, its temporal extension, its geographic scope, and the nature of the product market.

**Vietnam: New Competition Law.** In September 2017, the Vietnam National Assembly published the fifth draft of a new competition law. The revised legislation is expected to become law in January 2019 and is aimed at bringing the country in line with current international standards. The draft distinguishes between horizontal and vertical anticompetitive agreements, implements merger control thresholds, and mandates publication of Vietnam’s competition authority’s decisions, among other reforms.

# KEY ENFORCEMENT DEVELOPMENTS

Criminal Investigations and  
Civil Enforcement Actions on No-Poaching  
and Wage-Fixing Agreements.....64

Questions About the Use of  
Algorithms and Anti-trust Enforcement.....67

Extradition.....69

Other Noteworthy Developments.....73



## UNITED STATES

# Criminal Investigations and Civil Enforcement Actions on 'No Poaching' and 'Wage-Fixing' Agreements

In a series of speeches by senior Antitrust Division officials at the US Department of Justice, the DOJ has noted that a number of criminal investigations are pending concerning “no poaching” agreements and that the first criminal charges will be filed soon. The DOJ is also considering civil enforcement actions along with the Federal Trade Commission (FTC).

In October 2016, the DOJ and FTC jointly issued the Antitrust Guidance for Human Resource Professionals (the Antitrust HR Guidance), which signaled for the first time that the DOJ would “proceed criminally against naked wage-fixing or no-poaching agreements.” The Antitrust HR Guidance explicitly noted that this conduct may be considered per se illegal, meaning that companies could not normally escape liability by seeking to explain or justify such agreements. Senior DOJ officials have said that naked wage-fixing or no-poaching agreements after October 2016 will be considered for criminal prosecution.

On April 3, the DOJ announced a significant civil enforcement action with two of the world’s largest rail equipment suppliers to resolve a department lawsuit alleging the companies had for years maintained unlawful agreements not to compete for each other’s employees. The DOJ civil action further alleged that the companies entered into similar “no-poach” agreements with a third-rail equipment supplier, which one of the settling parties acquired in November 2016. The three companies were based in the United States, Germany, and France, highlighting the global nature of this issue. According to the complaint, the no-poach agreements between the three firms restricted competition for US rail industry workers, which limited their access to better job opportunities, restricted their mobility, and deprived them of competitively significant information they could have used to negotiate for better terms of employment.

Under the terms of the proposed settlement, the rail supply companies are prohibited from entering, maintaining, or enforcing no-poach agreements with any other companies, subject to limited exceptions. The settlement also requires the rail supply companies to implement rigorous notification and compliance measures to preclude their entry into these types of anticompetitive agreements in the future. The settlement includes several new provisions designed to improve the effectiveness of the decree and the Antitrust Division’s future ability to enforce it. For example, the parties have agreed that the division may prove any alleged violations of the decree by a preponderance of the evidence, and that they will reimburse US taxpayers for the costs of investigating and enforcing any violations.

## GLOBAL ENFORCEMENT ISSUES

Conduct involving no-poaching and wage-fixing agreements may subject companies to enforcement in other jurisdictions. Courts and competition regulators in Europe (Spain, the Netherlands, and Croatia) have all made major findings in the last eight years against companies in relation to national non-poaching agreements made in the freight forwarding, hospitals, and information technology employment sectors.

## HONG KONG

On April 9, the Hong Kong Competition Commission issued new guidance that these agreements may be subject to enforcement. For wage-fixing agreements, the commission noted: “Businesses that reach an agreement on any element of compensation for employees are fixing the price of labour. Compensation in this context is not limited to salaries but also include benefits and allowances such as insurance benefits, housing allowances or severance payments.”

On non-poaching agreements, the commission stated: “Businesses that reach an agreement in relation to the solicitation or hiring of each other’s employees, for example, an agreement to refuse to hire each other’s employees, are engaging in market sharing by allocating sources of supply.”

The crux of this development is that companies should compete with each other for employees regardless of whether they are competitors in the downstream market. The commission warned that concerted action by companies in their employment activities could lead to reduced wages, fewer benefits and reduced opportunities, thereby harming employees.

In an attempt to increase public awareness of potential anticompetitive issues arising from recruitment and employment of employees, the commission published an advisory bulletin inviting human resources professionals, employers, and employees at large to comment on and pose questions regarding implications on their practices. The commission’s Competition Ordinance as related to competition in the labor market bars employers from coordinating employment practices among businesses.

Specifically, employers were advised not to enter into an agreement or engage in concerted practices regarding terms and conditions of employment, including but not limited to salaries and benefits. The commission set out the following three types of anticompetitive agreements that would violate the First Conduct Rule of the Competition Ordinance:

- Wage-fixing agreements
- Non-poaching agreements
- Exchange of sensitive information

In sum, just as companies are prohibited from communicating with each other regarding price or other business sensitive information, employers should not (1) exchange employees’ compensation levels, including other benefits such as housing allowances or severance payments; (2) exchange competitively sensitive information regarding their hiring strategies or intentions; and (3) agree not to hire each other’s employees to the effect of allocation of labor.

The commission explained that it had encountered numerous cases where companies coordinated employment practices, and therefore decided to take measures because it is “important for competition to be working effectively in the labour market which affects the Hong Kong workforce and the economy in general.” To maintain competition, employers should make their employment decisions independently.

## JAPAN

On February 15, the Study Group on Human Resource and Competition Policy—chaired by Fumio Sensui, a professor at Kobe University, and established by the Japan Fair Trade Commission within the Competition Policy Research Center—published a report on applications of the Antimonopoly Act to competition for human resources. The report pointed out that as a general principle, the act would be triggered upon reaching of an agreement among multiple businesses (employers) related to compensation of service providers (employees). The report also noted that agreements by multiple businesses (employers) limiting the transfer and switching of jobs of the service providers (employees), including professional sports players, may trigger enforcement of the Antimonopoly Act.

The report clarified issues from the perspective of reduction in free competition, unfairness of competitive means, and abuses of superior bargaining positions regarding these individual acts by businesses (employers):

- (1) imposing confidentiality obligation;
- (2) imposing non-compete obligation;
- (3) imposing exclusivity obligation;
- (4) limiting the use of work products for the services provided; and
- (5) proposing inaccurate terms prior to engagement.

Specifically, the report listed imposing broad confidentiality and non-compete obligation as undesirable acts. It further listed offering of ambiguous terms for the service provided as undesirable acts, and prompted the businesses (employees) to provide documents specifying the terms for engagement (including compensation) and to treat such documents outside of the confidentiality obligations imposed on the service providers (employees).

The report explained that competition for human resources is “expected to intensify due to diversification of work styles and labor shortage along with labor population decline” and that the report serves to “facilitate pleasant environment for individual workers.”

We will continue to monitor this issue. For more information, see:

[Law Flash: DOJ Confirms Active ‘No-Poaching’ Criminal Investigations in Healthcare and Other Industries](#) (May 22, 2018)

[LawFlash: DOJ’s First Enforcement Action for ‘No-Poaching’ Agreements Since the Landmark Antitrust Guidance for HR Professionals](#) (April 12, 2018)

[Law Flash: Are Your Employment Practices in Breach of Antitrust Law?](#) (March 30, 2018)

[LawFlash: DOJ Antitrust Division Announces Imminent Criminal Prosecution for ‘No Poaching’ Agreements](#) (February 6, 2018)

# Questions About the Use of Algorithms and Antitrust Enforcement

While ecommerce retailers and other businesses commonly use algorithms (a detailed set of computer instructions or rules) to sift through swaths of data, assess demand, and set prices, competition regulators also are increasingly using algorithms as investigational tools. As in securities fraud enforcement, antitrust regulators are beginning to appreciate the potential of algorithms to detect aberrant pricing levels across industries as a potential indicator of cartel conduct. It has been reported that competition authorities from Brazil, India, Switzerland, the United Kingdom, and the European Union have begun to use of algorithms to detect suspected collusion. Such tools have the potential to lead to additional investigations beyond those initiated by more conventional investigatory sources, such as leniency applicants and whistleblowers.

The rise of algorithmic prices brings with it potential antitrust compliance issues. In 2015, the US Department of Justice brought its first criminal antitrust charges against two ecommerce retailers who used algorithms to fix the prices of posters sold through Amazon.com's Marketplace. A UK national indicted by the DOJ for price-fixing posters is awaiting extradition proceedings in Spain, which, if successful, would be the sixth extradition for the DOJ Antitrust Division. (See page 69). In Russia, the Federal Antimonopoly Service determined on April 27 that two pharmaceutical wholesalers engaged in bid-rigging by using automated robotics or "pricing bots" (algorithms). (See page 52).

## FEDERAL TRADE COMMISSION HEARINGS

The Federal Trade Commission recently announced that it will hold hearings beginning in September to address whether technological developments and changes in the economy require adjustment to competition laws, enforcement priorities, and policy. One focus of these hearings will be the consumer welfare implications of algorithmic decision tools and artificial intelligence.

## LUXEMBOURG COMPETITION AGENCY DECISION

Some competition agencies may conclude that under certain circumstances the use of algorithms may offer pro-competitive efficiencies. On June 8, Luxembourg's competition authority considered a complaint concerning the use of algorithms to set rates used by horizontal taxi competitors. Notwithstanding that the agency concluded the competitors entered into a horizontal agreement, it granted an exemption after considering four factors: (1) the agreement provided for efficiencies; (2) a fair share of the efficiencies were offered to the consumer; (3) the service was indispensable; and (4) the agreement was necessary, adequate and proportionate. The agency concluded that neutral and objective criteria were applied to lower prices.

## FRANCE AND GERMANY JOINT PROJECT

On June 19, the competition authorities of France and Germany jointly noted: “The increasing use of algorithms by companies is an issue of considerable debate as regards their effects on the competitive functioning of markets and to a wider extent on society.” The agencies announced a joint project in which they plan to develop “a typology of algorithms and studying their potential anticompetitive effects” and “also assess algorithms’ detection and examination” and review the issue with “a deeper understanding of algorithms.”

## CURRENT DEBATE

How regulators will approach these growing issues remains an open question. On the one hand, some commenters have called for a fundamental reexamination of what an “agreement” means under antitrust laws where humans may have no involvement in pricing after an initial set of rules is deployed. On the other, commenters like FTC Commissioner Maureen Ohlhausen have dismissed algorithms as nothing unique under antitrust laws: “Whether it is phone calls, text messages, algorithms or Morse code, the underlying legal rule is the same—agreements to set prices among competitors are always unlawful.”

Regardless of which side one is on, it’s clear that the use of algorithms in investigations and cartel detection will continue to rise, and the use of algorithmic pricing will continue to raise new compliance and enforcement issues.

# Extradition

## UNITED STATES

On June 21, the US Department of Justice confirmed in a court filing that it is pursuing extradition proceedings of a UK citizen in Spain who was charged in the US with using algorithms to fix the prices of posters sold through Amazon.com's Marketplace. This would be the sixth individual extradited in a case prosecuted by the DOJ's Antitrust Division. The most recent case highlights the division's continued focus on extradition and its efforts to obtain convictions against foreign executives.

The Antitrust Division has made it a priority to develop this enforcement tool, and has successfully extradited a number of individuals in recent years. Five foreign executives have been extradited and convicted since 2010, reinforcing the division's continued emphasis on extradition. In the last four years, three foreign executives have been extradited and later convicted.

Prior DOJ extraditions in antitrust cases are summarized in the table on the next page.

For more information on prior extraditions by the Antitrust Division, see:

[Extradition in International Antitrust Enforcement Cases](#) (April 2015)

[Extradition Lessons Learned from Mlex](#) (Nov 2016)

[DOJ's Antitrust Division Convicts Fifth Extradited Foreign Executive](#) (March 16, 2017)

[Significant Prison Term in Latest Extradition Case by DOJ's Antitrust Division](#) (June 19, 2017)

# ANTITRUST DIVISION EXTRADITIONS SINCE 2010

No.	Name/ Citizenship	Date/ Country of Extradition	Charges Originally Filed	Investigation	Resolution	Notes
1	Ian P. Norris/ British Citizen	Mar. 23, 2010/ United Kingdom	Sept. 24, 2003, original counts filed; superseding charges filed Oct. 15, 2003 included four counts: (1) conspiring to fix prices for certain carbon products sold in the United States (Sherman Act); (2) conspiring to obstruct justice; (3) corruptly persuading and attempting to corruptly persuade other persons with intent to influence their testimony; and (4) corruptly persuading other persons to alter, destroy, mutilate, or conceal documents with the intent to impair their availability for use in an official proceeding	Carbon Graphite investigation	Extradited from the UK to face prosecution on only Counts (2) through (4); July 27, 2010 trial conviction on one count of conspiring to obstruct justice; acquitted on remaining counts; sentenced to 18 months in prison, a three-year term of supervised release, and a \$25,000 fine; conviction was affirmed on appeal	Fought extradition for six-and- a-half years, contending that the charges were not covered under prior UK extradition law; conviction based on obstruction of justice charge and not Sherman Act charge

No.	Name/ Citizenship	Date/ Country of Extradition	Charges Originally Filed	Investigation	Resolution	Notes
2	David Porath/ Israeli and US citizen	Feb. 16, 2012/ Israel	Feb. 18, 2010, charged with (1) conspiring to rig bids, (2) conspiring to defraud the Internal Revenue Service, and (3) filing a false tax return	New York Presbyterian Hospital investigation concerning award of contracts	July 11, 2012, pled guilty as charged; sentenced to time served (just under one year) and a one-year term of supervised release with three months of home confinement, and ordered to pay a \$7,500 fine and \$78,980 in restitution	Extradition based on Sherman Act and other non-antitrust charges
3	Romano Piscioti/ Italian citizen	Apr. 3, 2014/ Germany	Mar. 28, 2011, sealed indictment charging one count of rigging bids, fixing prices, and allocating market shares involving sales of marine hose; indictment unsealed by court order on Aug. 5, 2013	Marine Hose investigation	Apr. 24, 2014, pled guilty to sole Sherman Act count; sentenced to 24 months in prison (including credit for nine months and 16 days held in custody during extradition proceedings in Germany) and a \$50,000 fine	Arrest warrant (under an Interpol Red Notice) based on sealed charges while traveling in Germany; described by the DOJ as "the first successfully litigated extradition on an antitrust charge"

No.	Name/ Citizenship	Date/ Country of Extradition	Charges Originally Filed	Investigation	Resolution	Notes
4	John Bennett/ Canadian citizen	Nov. 14, 2014/ Canada	Aug. 31, 2009, charged with two counts: (1) kickback and fraud conspir- acy and (2) major fraud against the United States	Federal Creosote Superfund site investiga- tion	Mar. 16, 2016, trial conviction on two counts for (1) commit- ting major fraud against the United States and (2) conspir- ing to provide kickbacks and to commit major fraud; sentenced to 63 months in prison, two years of super- vised release, a \$12,500 fine, and \$3.8 million in restitution	Fought extra- dition for more than five years; trial conviction followed three- week jury trial
5	Yuva Marshak/ Israeli citizen	Oct. 14, 2016/ Bulgaria	Jan. 21 2016, sealed indictment charging two counts of wire fraud, one count of mail fraud, one count of major fraud against the United States, and one count of in- ternational money laundering	Foreign Military Financing pro- gram investiga- tion	Mar. 13, 2017, pled guilty to mail fraud, two counts of wire fraud, and major fraud against the United States; sentenced to 30 months in prison, a \$7,500 fine, and \$41,170 in restitution	Arrest warrant (under an Inter- pol Red Notice) while traveling in Bulgaria

# Other Noteworthy Developments

## AUSTRALIA

**OECD Report and Comparative Analysis on Fines.** The Australian Competition & Consumer Commission (ACCC) announced that it would reconsider its policies for fines and penalties for violations of the competition laws in response to an Organisation for Economic Co-operation and Development (OECD) report that determined Australia's penalties were significantly lower than those imposed by the European Union, the United Kingdom, Germany, Japan, South Korea, and the United States for similar competition law violations.

As noted in the report, [Pecuniary Penalties for Competition Law Infringements in Australia](#): “The result of this comparison is that the amount of pecuniary penalties imposed for competition law infringements in Australia is significantly lower, in both absolute and relative terms, than the amounts imposed in other OECD jurisdictions, particularly as regards large companies or conduct that lasted for a long period of time.” Based on the comparative analysis, the report determined that “the average Australian penalty would have to be increased **12.6 times** to reach the level of the average penalty in the comparator jurisdictions.”

Among other recommendations, the OECD encouraged the ACCC to amend its policies to be more in line with other jurisdictions and deter violations of the competition laws.

[In a speech responding to the report](#), ACCC Chairman Rod Sims said: “To achieve deterrence, Australia needs higher penalties for breaches of the competition laws by larger companies. To achieve this, the ACCC needs to rethink its approach. What is different today is that as we engage further in that debate, we now have an independent assessment by the OECD of the strengths and weaknesses of the current competition law penalty regime in Australia. We can all now use this report as a key reference point for further evidence-based consideration and discussion.”



## COLOMBIA

**New OECD Member.** On May 25, Colombia became a member of the Organisation for Economic Co-operation and Development (OECD). Since the OECD made recommendations to Colombia's competition law in 2016, new policies or regulations could be anticipated.

## MEXICO

**Cross-Border Agreement.** Mexico's Federal Economic Competition Commission entered into a cooperation agreement with the European Commission. The parties agreed to cooperate on issues related to competition in Mexico and the European Union, coordinate enforcement actions, refer cases to the other competition authority if warranted, and cooperate on technical issues, including the exchange of public officials.

## UNITED STATES

**FTC Public Hearings.** On June 20, the Federal Trade Commission announced its plans to hold public hearing between September 2018 and January 2019 to discuss a broad range of issues addressing antitrust and consumer protection, including the roles of algorithmic decision making, artificial intelligence, and predictive analytics, and whether these technological innovations can facilitate coordination. (See page 7).

# KEY JUDICIAL DEVELOPMENTS

US Supreme Court Ruling on Judicial Deference to Foreign Government's Interpretation of Its Own Law.....	76
District Court Reconsiders the Sherman Act's Per Se Rule.....	77
Judicial Questions Raised About Determining Criminal Restitution in Cartel Cases.....	78
Other Noteworthy Rulings.....	79



# US Supreme Court Ruling on Judicial Deference to Foreign Government's Interpretation of Its Own Law

On June 14, 2018, the US Supreme Court decided an issue that will have a significant impact on antitrust cases that necessitate courts' determination of foreign laws. The question was framed by the Court: "When foreign law is relevant to a case instituted in a federal court, and the foreign government whose law is in contention submits an official statement on the meaning and interpretation of its domestic law, may the federal court look beyond that official statement?"

## DISTRICT COURT LITIGATION AND TRIAL

The case before the Supreme Court stems from a multidistrict litigation involving price-fixing allegations against four Chinese manufacturers of vitamin C imported into the United States. Before the district court, the manufacturers argued that Chinese laws and regulations required them to coordinate regarding their export prices and volumes. China's Ministry of Commerce (MOFCOM) intervened in the case, submitting an amicus brief providing an interpretation of Chinese law supporting the defendants' position. However, the district court rejected MOFCOM's interpretation of Chinese law, concluding based on other legal sources that Chinese law did not require the collusion alleged by the plaintiffs. The case proceeded to trial, and the jury awarded the plaintiffs \$147 million in damages.

## APPELLATE REVIEW

On appeal, the US Court of Appeals for the Second Circuit reversed the judgment in September 2016. The appellate court held that the district court abused its discretion in not dismissing the case on international comity grounds. The appellate court faulted the district court for failing to give proper consideration to MOFCOM's formal statement, on behalf of the Chinese government, "that Chinese law required Defendants to set prices and reduce quantities of vitamin C sold abroad." *In re Vitamin C Antitrust Litigation*, 837 F.3d 175, 178 (2d Cir. 2016). According to the Second Circuit, the district court was "bound to defer" to the foreign government's interpretation so long as it was "reasonable under the circumstances presented."

## HIGH COURT REVERSAL

Opinion written by Justice Ruth Bader Ginsburg, reversed the Second Circuit's decision, and held that "[a] federal court should accord **respectful consideration** to a foreign government's submission, but is **not bound to accord conclusive effect** to the foreign government's statements." (Emphasis added.) The case was remanded for further consideration based on the Supreme Court standard and clarification as to how much weight to give to a foreign government's statement. The Supreme Court clearly answered the question posed: "in ascertaining foreign law, courts are not limited to materials submitted by the parties, but may consider any relevant material or source." The case is [\*Animal Science Products Inc. v. Hebei Welcome Pharmaceutical Co.\*](#), No. 16-1220, 585 U.S. \_ (2018). For more information, see [US Supreme Court to Hear International Case Involving Alleged Price-Fixing](#) (January 24, 2018)

# District Court Reconsiders the Sherman Act's Per Se Rule

Based on long-standing US Supreme Court precedent, Section 1 of the Sherman Act typically treats offenses such as horizontal price-fixing, bid-rigging, and horizontal customer allocation as per se illegal. However, on August 28, 2017, Judge David Sam of the US District Court for the District of Utah applied the rule of reason to customer allocation charges brought by the US Department of Justice.

The defendants, Kemp & Associates, argued that the agreement at issue—a set of guidelines governing joint activity—did not have the anticompetitive characteristics of a customer allocation agreement, and that the court could not simply rely on the government's labeling of the restraint of trade alleged in the indictment. They argued that, instead, the court should look at the agreement as a whole and conduct a detailed and case-specific analysis in the context of the particular industry to determine whether the per se or rule of reason standard applies. In attempting to differentiate the agreement from the classic customer allocation agreement, the defendants highlighted that (1) the customer allocation took place in the context of a small and highly unusual industry (heir location services), (2) the agreement only applied under the limited circumstance in which two firms had invested significant resources to produce the same product for the same estate, (3) the agreement was more in common with a joint venture that enhanced efficiency and had procompetitive benefits, and (4) only a small number of estates were affected by the agreement. The court agreed with the defendants, finding that the rule of reason standard applied. Given that the DOJ does not criminally prosecute rule of reason cases, the court's finding amounted to a dismissal of the indictment.

On May 16, the US Court of Appeals for the Tenth Circuit heard oral argument on the appeal. The DOJ argued that the district court's departure from binding precedent that such agreements are per se illegal threatens to undermine the government's ability to prosecute antitrust conspiracies that have long been condemned as per se illegal. The DOJ requested that the appellate court reject a standard where the per se rule must be justified on a case-by-case basis. The Tenth Circuit's decision could have a major impact on how courts review typical per se illegal agreements and on the DOJ's ability to prosecute cases. We will continue to monitor this case, *United States v. Kemp & Associates Inc. and Daniel J. Mannix*, No. 17-4148 (10th Cir.), and its impact on cartel enforcement.

# Judicial Questions Raised About Determining Criminal Restitution in Cartel Cases

In US criminal case, a federal court is required to determine and issue an order of restitution at the time of sentencing under the Mandatory Victims Restitution Act, which mandates restitution for certain categories of offenses. However, restitution is not requested in most criminal antitrust cases since separate civil cases are filed to recover damages including treble damages. In a recent case, a federal judge in California asked the parties to brief the issue as to why restitution should not be ordered at sentencing in the federal criminal antitrust case.

A manufacturer of electrolytic capacitors had provided key cooperation to the US Department of Justice which led to a reduced fine. The company, the DOJ, and the Probation Office jointly recommended a criminal fine of \$3.8 million and agreed that restitution should not be awarded. Immediately before the company's sentencing hearing, counsel for direct purchaser plaintiffs in the civil cases before the same court for the first time raised the question of whether restitution should be awarded as part of the sentence. The US District Court for the Northern District of California was willing to allow briefing on the restitution issue.

The company, the DOJ, and indirect purchaser plaintiffs all submitted briefs on the issue opposing the request for various reasons, including (1) that ordering restitution would breach the plea agreement, (2) the need for complex loss calculations during sentencing, (3) the difficulty of identifying victims that would delay the criminal proceedings, (4) the diminishing prospect of settlement in the civil cases if restitution is ordered, and (5) the complications in determining indirect purchaser recovery through criminal restitution.

After extensive briefing, while the court ultimately declined to order restitution by minute order and vacated the hearing on the issue without explanation, allowing briefing on the restitution issue in and of itself was significant. Courts generally do not award criminal restitution in antitrust cases. Many criminal antitrust cases have parallel civil cases filed on behalf of the victims at the time of sentencing, so allowing restitution would potentially allow for recovery of multiple damages.

We may never fully know why the district court judge ordered briefing on the issue. However, if other courts contemplate restitution in criminal proceedings, it could greatly complicate plea negotiations and create complex issues in the interplay between calculations of fines at sentencing and damages in civil cases.

# Other Noteworthy Rulings

## EUROPE

**Croatia: Burden of Proof.** On February 1, the Constitutional Court of Croatia upheld a complaint filed by seven of the country's largest security providers, finding that their right to a fair trial had been infringed upon because Croatia's competition authority did not meet the appropriate standard of proof for establishing the existence of an operating cartel agreement. On March 17, 2015, the regulator found each company to have entered into a cartel agreement to fix the cost of their services and fined them accordingly. The primary evidence relied upon was a magazine article that gave an account of an October 2013 meeting at which the companies agreed to a minimum price for security services. The High Administrative Court of Croatia affirmed the decision. In upholding the complaint subsequently filed, the Constitutional Court of Croatia provided a new interpretation of the standard of proof required for the regulator to establish cartel existence and impose fines—one that may potentially result in challenges to the regulator's ability to efficiently enforce and supervise competition law.

**Norway: Court Modified Fines.** On June 28, the District Court in Oslo upheld a finding by the Norwegian Competition Authority that four publishers violated competition law by entering into a group boycott of a distributor and exchanging competitively sensitive information. The court, however, found that the competition authority improperly inflated its fine by basing calculations on total revenue rather than only on revenue from the products affected by the illegal conduct. The initial fine of \$3.2 million was reduced to \$1.6 million.

**United Kingdom: Document Access.** On February 3, the UK Competition Appeal Tribunal ordered a participant in a ball-bearing manufacturer cartel case to disclose patent and license documents for an upcoming damages claim. This follows a European Commission settlement decision finding that between April 4, 2004, and July 25, 2011, the defendants infringed Article 101 the Treaty on the Functioning of the European Union by restricting price competition in the market for bearings sold to car, truck, and automotive component makers.

**Netherlands: Construction.** On May 8, an appellate court in the Netherlands reduced an 8-year-old bid-rigging fine by 83% after finding that the national competition authority overrode the proportionality guidelines for the sake of deterrence.

## 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 20 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 US Department of Justice (DOJ) compliance standards. Our team includes a number of former high-level government enforcers with superior insights into enforcement agendas and practices around the world, including a former assistant chief of the National Criminal Enforcement Section in the DOJ's Antitrust Division, and several lawyers who have direct experience prosecuting cartel matters with the DOJ.

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