



2017 GLOBAL CARTEL ENFORCEMENT REPORT

CARTEL FINES REMAIN LOW DESPITE ACTIVE ENFORCEMENT

Cartel fines were significantly lower in 2017 than in recent years. **Global fines totaled a little more than \$4.2 billion in 2017**, about half the \$7.8 billion of fines in 2016.

The lower fine totals, however, are not indicative of the level of enforcement activity. Enforcement authorities around the world remain extremely active, with a significant number of new investigations and substantial enforcement actions. The trend toward globalization of cartel enforcement was evident in 2017, with new enforcement authorities becoming active and more established authorities coordinating investigations and enforcement actions in international cartel matters.

Unlike in recent years, there were no blockbuster multimillion dollar fines in 2017, but the overall level of enforcement activity was consistent with prior years. More enforcement attention has been focused on domestic cartels and individual prosecutions. Several new major investigations were launched in 2017, and significant potential enforcement actions are in the pipeline.

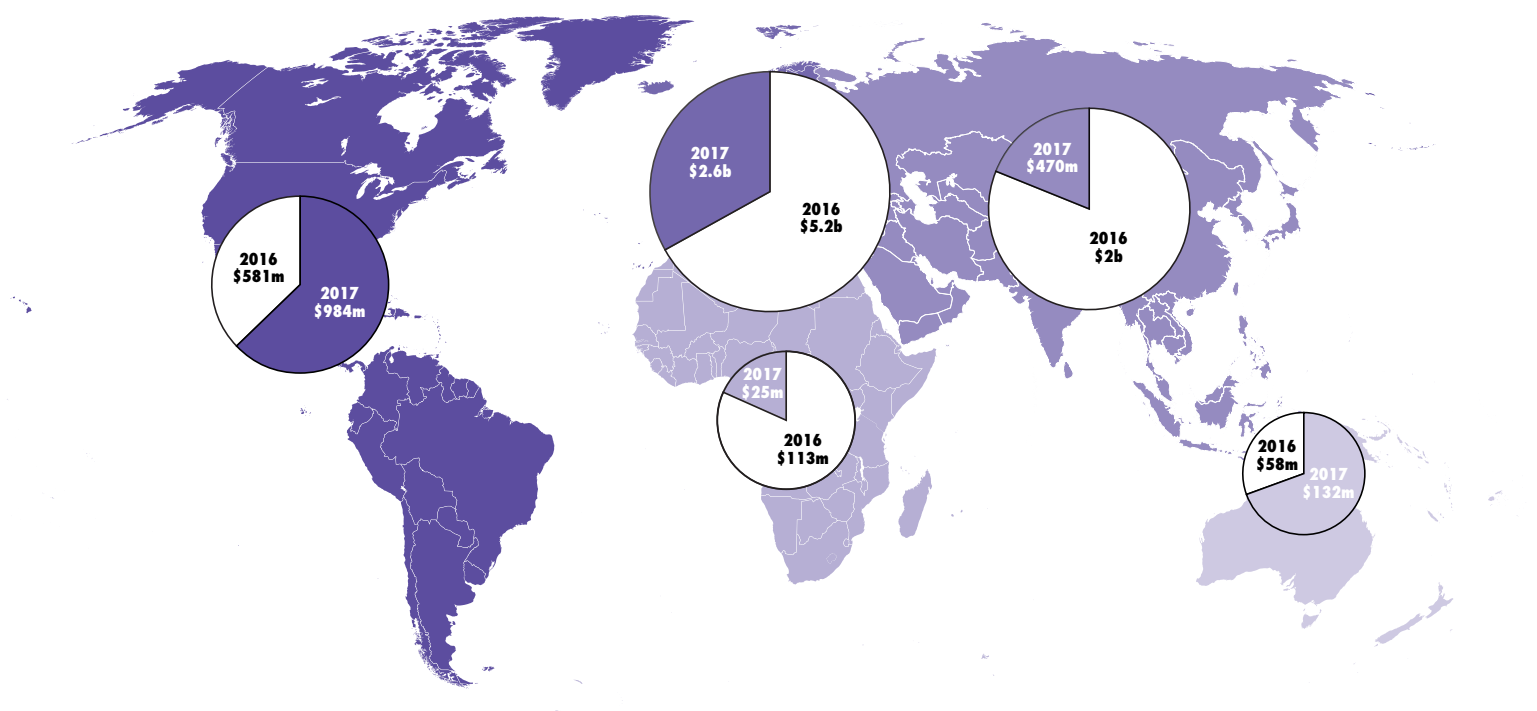
CONTENTS

TRENDS	3
2017 CARTEL FINES	4
Notable Cartel Fines	6
Individual Criminal Penalties	14
Significant Individual Prison and Other Sentences for Cartel Offenses	15
Jurisdictions with Cartel Immunity/Leniency Programs	18
DAWN RAIDS, NEW INVESTIGATIONS, AND NEW CASES	19
INDUSTRIES UNDER SCRUTINY	24
Automotive Parts	24
Electrolytic Capacitors	26
Financial Benchmarks	27
Real Estate	30
KEY POLICY DEVELOPMENTS	31
Criminalization Trend Continues	31
Leniency Policies	31
Whistleblower Protections.....	32
KEY ENFORCEMENT DEVELOPMENTS	33
Cooperation and Coordination	33
Cases Arising from Transactional Review	33
KEY JUDICIAL DEVELOPMENTS	34
Extradition	34
Dawn Raids	36
Extraterritoriality	36
Per Se Versus Rule of Reason in the United States	37

TRENDS

- **Fine totals were down in 2017.** Global cartel fines in 2017 totaled a little more than \$4.2 billion, roughly half the level in each of the last three years (See p. 4). This is a reflection of the fact that fewer blockbuster cases were brought to fruition in 2017, rather than reflecting a decrease in enforcement activity generally. The eye-popping fine totals in recent years have been driven by several large cases: (a) heavy duty trucks in 2016; (b) foreign exchange in 2015; and (c) auto parts and financial benchmarks in 2014. Certain aspects of those large cases are still working their way through the global enforcement system, but there was no single case that produced multibillion dollar fines in 2017, which was a change from past years.
 - **Focus on domestic cartels.** Although there was significant enforcement activity around the world directed at international cartels—particularly in the auto parts and shipping industries—there was also a significant uptick in enforcement directed at domestic cartels in 2017. China's National Development and Reform Commission (NDRC) brought a number of high-profile cases against domestic cartels in a number of industries, resulting in significant fines and other remedial action (See p. 8). US authorities devoted a significant amount of their resources to prosecution of local real estate cartels and to an investigation of the generic pharmaceutical industry (See p. 19). Additionally, the European member states accounted for more fines in 2017 (See p. 10).
 - **Auto parts, financial services, roll-on/roll-off (RORO) shipping, and other international cartel matters produced fines in multiple jurisdictions.** Despite the increased focus on domestic cartels, several industries were the focus of enforcement action in multijurisdictional international cartel investigations. The auto parts investigations that resulted in fines totaling \$2.9 billion in the United States also produced enforcement action in many other countries in 2017 (See p. 25). The same is true of the various financial benchmark investigations (See p. 27) and RORO shipping probes (See p. 7, 8, and 13).
 - **The enforcement map is growing.** The trend toward more widespread and global anti-cartel enforcement continued in 2017. There are now more than 100 countries that have some form of competition or antitrust law, and all of those laws prohibit cartels.
- More countries are prioritizing anti-cartel enforcement and devoting significant resources to the efforts. More than 60 countries now have antitrust leniency policies (See p. 31) and more than 30 countries impose criminal penalties for cartel violations (See p. 31). Economic powerhouses such as China and India are increasingly active, with a substantial uptick in cartel investigations and enforcement actions. India granted its first leniency application in 2017; China focused on cartel enforcement as a key policy plank in its continuing efforts to liberalize its economy (See p. 9). Mexico and Russia also were extremely active in 2017, each initiating a significant number of new cases and imposing substantial fines (See p. 4).
- **But the world is shrinking.** Not only has the number of active enforcement agencies proliferated but the reach of those authorities has lengthened. The United States, the European Union, Australia, and Japan all issued judicial decisions in 2017 confirming the extraterritorial reach of their antitrust laws, and applying those laws to conduct that takes place wholly outside their borders (See p. 36). The laws apply extra territorially, and antitrust enforcers are becoming increasingly aggressive—and are having increasing success—in reaching across borders to enforce their laws. The DOJ's Antitrust Division secured its fifth successful extradition of an individual early last year, and the Advocate General of the European Union recently endorsed an earlier extradition of a European citizen in an antitrust case, concluding that extradition was necessary to ensure that the laws are enforced (See p. 34). The result of these trends is that companies need to be aware of and concerned about antitrust compliance, wherever they are located, and cartel enforcement.
 - **Asia is rising.** The 21st century has been dubbed the "Asian century," reflecting the rising economic clout of the region. The rise of certain Asian economies, and maturation of others, has been mirrored by an increased focus across the region on antitrust enforcement generally, and cartel enforcement particularly. China has devoted increasing attention to fighting cartels operating in its economy, with several major investigations producing large fines in 2017 (See p. 8-9). Other major economies in the region, including Japan and South Korea, remain extremely active in cartel enforcement as well (See p. 4). This trend is expected to continue.

TOTAL GLOBAL CARTEL FINES 2016–2017

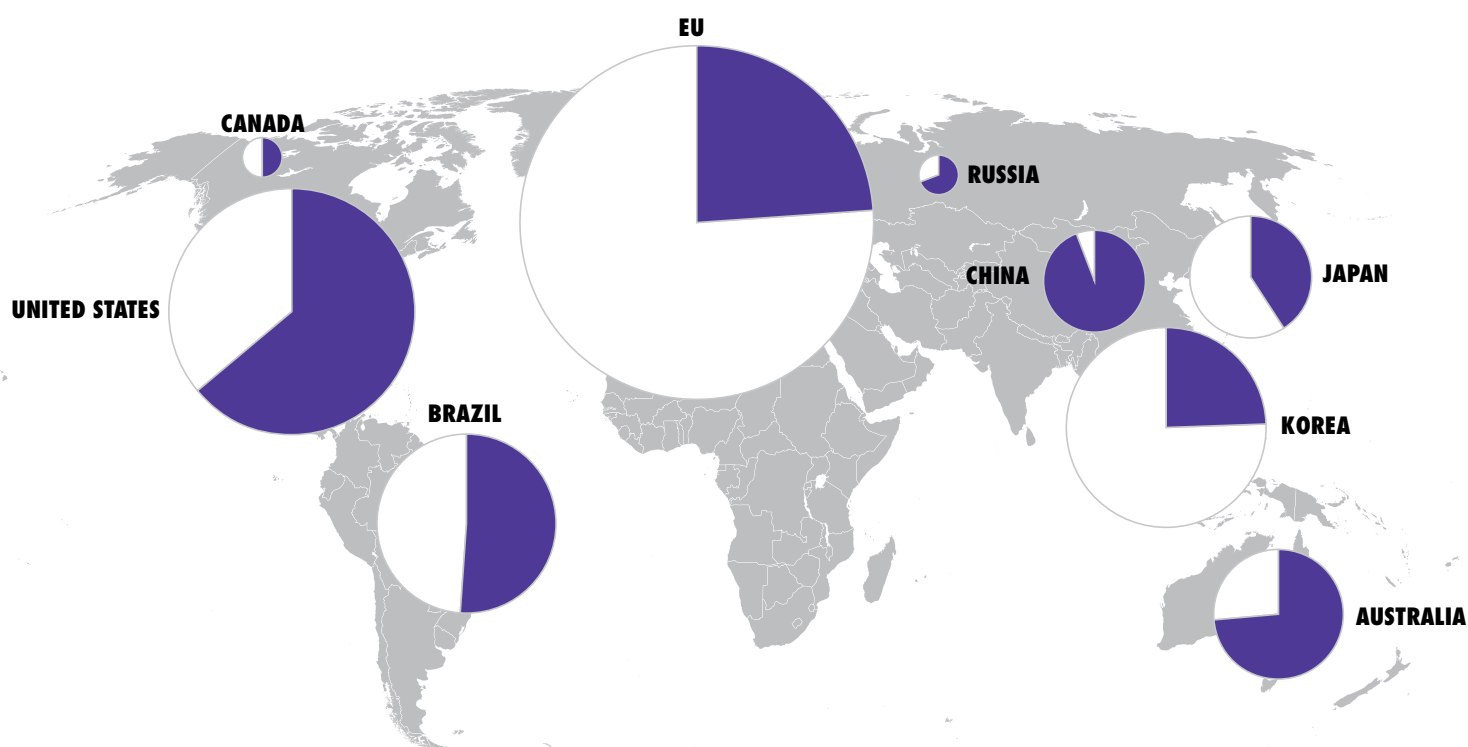


2017 TOTAL GLOBAL FINES: \$4.2b														
AMERICAS: \$984m				EUROPE: \$2.6b		ASIA & RUSSIA: \$470m					AFRICA: \$25m	AUSTRALIA AND OCEANIA: \$132m		
UNITED STATES	BRAZIL	CANADA	OTHER	EU	OTHER	CHINA	JAPAN	SOUTH KOREA	RUSSIA	OTHER	SOUTH AFRICA	AUSTRALIA	NEW ZEALAND	
\$603m	\$149m	\$10m	\$222m	\$1.3b	\$1.3b	\$82m	\$61m	\$259m	\$18m	\$50m	\$25m	\$130m	\$2m	

2016 TOTAL GLOBAL FINES: \$7.9b														
AMERICAS: \$581m				EUROPE: \$5.2b		ASIA & RUSSIA: \$2b					AFRICA: \$113m	AUSTRALIA AND OCEANIA: \$58m		
UNITED STATES	BRAZIL	CANADA	OTHER	EU	OTHER	CHINA	JAPAN	SOUTH KOREA	RUSSIA	OTHER	SOUTH AFRICA	AUSTRALIA	NEW ZEALAND	
\$337m	\$141m	\$10m	\$93m	\$4.1b	\$1.1b	\$5m	\$88m	\$766m	\$8m	\$1.0b	\$113m	\$46m	\$12m	

b = billion
m = million

CARTEL FINES BY JURISDICTION 2016–2017



	EU	US	BRAZIL	SOUTH KOREA	JAPAN	CHINA	AUSTRALIA	CANADA	RUSSIA
2017	\$1.3b	\$603m	\$149m	\$259m	\$61m	\$82m	\$130m	\$10m	\$18m
2016	\$4.1b	\$337m	\$141m	\$766m	\$88m	\$5m	\$46m	\$10m	\$8m

b = billion
m = million

NOTABLE CARTEL FINES

AFRICA

- **South Africa: Auto Parts.** In November, the Competition Tribunal of South Africa approved a settlement between the Competition Commission and a maker of car safety systems in the amount of **150 million rand (\$10.8 million)** for its role in fixing the prices of various safety components that were sold to car manufacturers.
- **South Africa: Chemicals.** In October, the Competition Tribunal approved settlements between the Competition Commission and suppliers of chemicals used in certain soaps in the amount of approximately **27 million rand (\$2.7 million)** collectively for their admitted role in fixing the prices and dividing the market for the manufacture and supply of inputs used in various household detergents and personal use soaps.
- **South Africa: Maize.** In August, the Competition Tribunal approved settlements between the Competition Commission and two milled white maize sellers for approximately **22 million rand (\$1.75 million)** collectively for their admission that they fixed the price of milled white maize.
- **South Africa: Cables.** In June, the Competition Tribunal approved a **13 million rand (\$1 million)** settlement with a power cable supplier for its admitted role in schemes to fix the selling price of power cables to wholesalers, distributors, and original equipment manufacturers from May 2001 to at least 2010, and to divide markets by allocating customers in the market for the supply of power cables from 2001 through 2007.
- **South Africa: Cables.** In November, the Competition Counsel sought approval for a settlement agreement with a power cable supplier in the amount of **4.7 million rand (\$329,000)** for its agreement to fix prices and divide the market for the sale of power cables to wholesalers, distributors, and original equipment manufacturers from 2001 to 2012.
- **South Africa: Maize and Wheat.** In November, the Competition Tribunal approved a settlement between the Competition Commission and a milled maize and wheat supplier in the amount of **4.3 million rand (\$309,000)** for its participation in meetings where prices were fixed for those products, even though the supplier never itself implemented those fixed prices.
- **South Africa: Maize.** In June, the Competition Tribunal approved a settlement between the Competition Commission and a milled white maize seller for **4.2 million rand (\$342,000)** after the seller admitted it fixed the price of milled white maize.
- **South Africa: Fire Protection Systems.** In July, the Competition Tribunal approved settlements between the Competition Commission and two suppliers of fire control and protection systems for **1.2 million rand (\$95,000)** collectively for their admission that they fixed the prices, divided markets, and engaged in collusive bidding in the market for the supply, installation, and maintenance of fire control and protection systems.
- **South Africa: Bricks.** In August, the Competition Tribunal approved a settlement between the Competition Commission and a masonry brick maker in the amount of **300,000 rand (\$23,000)** for its admitted role in price-fixing and market division in the market for masonry bricks by agreeing with a competitor on customer allocations and the prices they would quote customers.
- **South Africa: Moving Services.** In June, the Competition Tribunal approved a settlement agreement and fine of **212,000 rand (\$16,000)** with a furniture relocation service provider for its admitted role in collusively submitting covered bids 44 times when bidding for contracts in the market for furniture removal services.
- **South Africa: Pumps.** In July, the Competition Tribunal approved a settlement between the Competition Commission and a servicer of certain hydraulic gear pumps in the amount of **104,000 rand (\$8,000)** for its role in dividing the market by allocating customers with a competitor.

AMERICAS

- **United States: Foreign Exchange.** New York State's banking regulator imposed a fine of \$350 million on a European headquartered international bank in May for colluding with other banks on foreign exchange transactions. This was the first fine imposed by the state banking regulator for cartel violations and follows earlier fines by the DOJ and other US authorities concerning the same conduct.
- **Colombia: Cement.** The three largest cement manufacturers operating in Colombia were collectively fined **\$68 million** in December for fixing cement prices from 2010 through 2012.

- **United States: Capacitors.** In July, a Japanese electronics company agreed to plead guilty for its role in a conspiracy to fix prices for electrolytic capacitors sold to customers in the United States and elsewhere. According to the one-count felony charge filed in the US District Court for the Northern District of California, the corporation conspired with others to suppress and eliminate competition for electrolytic capacitors from as early as November 2001 until December 2011. In addition to pleading guilty, the corporation has agreed to pay a **\$42 million** criminal fine and cooperate with the DOJ Antitrust Division's ongoing investigation. The plea agreement is subject to court approval. Including this corporation, seven companies and 10 individuals have been charged for participating in a long-running conspiracy to fix the price of a critical component in electronic devices.
- **Mexico: RORO Shipping.** The Federal Economic Competition Commission (COFEC) fined a number of competing maritime shipping companies for entering into agreements to allocate the market for maritime transportation of construction, farming equipment, and automobiles from 2009 to 2012. The total fine imposed on the seven companies is **581.6 million pesos (\$30.2 million)**.
- **Brazil: LPG Distributors.** In November, the Administrative Council for Economic Defense (CADE) signed settlement agreements worth **106 million reais (\$33 million)** with two liquefied petroleum gas distributors for participating in a cartel in the northeast region of the country. Four directors and sales managers from each company also agreed to fines totaling **1.35 million reais (\$419,000)**, and criminal cases are ongoing before the Court of the State of Paraíba.
- **Mexico: Latex Gloves.** COFEC leveled fines totaling **257 million pesos (\$13 million)** on five latex glove manufacturers and more than a dozen individuals for rigging bids from 2009 through 2015 on latex gloves to be delivered to Mexican government institutions.
- **Brazil: Maintenance Services.** In August, CADE condemned five companies for bid rigging in the building maintenance services market. The total fines imposed were **11.9 million reais (\$3.8 million)**. CADE also prohibited a company considered to be one of the leaders of the cartel from participating in public bids for a period of five years. Three separate companies that signed a cease-and-desist agreement and pledged cooperation in connection with the investigation will have to pay an aggregate pecuniary contribution of **19.5 million reais (\$6.2 million)**.
- **United States: Auto Parts.** In March, an automotive parts manufacturer based in Heiligenhaus, Germany, agreed to plead guilty and pay a **\$6.1 million** criminal fine for its role in a conspiracy to rig bids of side-door latches and latch minimodules installed in cars sold in the United States and elsewhere. Side-door latches secure car doors to the body. Latch minimodules include the side-door latch and all related mechanical operating components, including the electronic lock function. Judgment was entered in June.
- **Brazil: Cathode Ray Tubes.** In October, CADE signed agreements with two cathode ray tube manufacturers in an international cartel investigation in the manufacturing and selling of cathode ray tubes for color televisions. A total of **15.4 million reais (\$4.7 million)** will be collected as a fine.
- **United States: Ecommerce.** In August, an ecommerce company and its top executive agreed to plead guilty to conspiring to fix prices for customized promotional products sold online to customers in the United States. The company and its president agreed to plead guilty to a one-count criminal violation of the Sherman Act. According to the felony charges filed in the US District Court for the Southern District of Texas in Houston, the conspirators attended meetings and communicated in person and online. The investigation has revealed that the conspirators used social media platforms and encrypted messaging applications such as Facebook, Skype, and Whatsapp, to reach and implement their illegal agreements. Specifically the defendants and their co-conspirators agreed, from as early as 2014 until June 2016, to fix the prices of customized promotional products sold online, including wristbands and lanyards. In addition to agreeing to plead guilty, the company has agreed to pay a **\$1.9 million** criminal fine.
- **Mexico: Taxis.** In September, the COFEC fined five companies and four individuals a total of **23.6 million pesos (\$1.2 million)** for agreeing to fix, raise, arrange, or manipulate the price of taxi services.
- **Argentina: Healthcare.** In August, Argentina's competition watchdog announced more than **22.7 million pesos (\$1.3 million)** in fines to 15 Salta health clinics and a local trade association for forming a price-fixing cartel between December 2011 and December 2013. The steepest penalty paid by a health clinic was 3.14 million pesos.

- **Canada: Construction.** In October, a ventilation systems installation company pleaded guilty to bid rigging with another provider of ventilation systems for three condominium development projects. The company was fined **\$375,000 Canadian (\$292,000)**.
- **Canada: Building Services.** In June, a ventilation systems installation company pleaded guilty to bid rigging on a condominium development project. The company conspired with two competitors to rig the outcome of the ventilation installation contract. The court fined the company **\$140,000 Canadian (\$105,000)** in the case brought by the Canadian Competition Bureau (CCB).
- **Canada: Sewer Services.** In November, a sanitation company pleaded guilty to bid rigging contracts related to specialized sewer service contracts in Quebec in 2010 and 2011. The Quebec Superior Court fined the company **\$85,000 Canadian (\$66,000)**. The court stayed individual charges against the company CEO.

ASIA & RUSSIA

- **China: PVC.** In September, China's National Development and Reform Commission (NDRC) imposed fines totaling **457 million renminbi (\$69.2 million)** on 18 PVC resin enterprises due to repeated price collusion that pushed up market prices significantly. The companies reached a price-fixing agreement with competitors through a private group set up on social media app WeChat. This is the largest fine imposed by the NDRC in a domestic cartel case.
- **South Korea: RORO Shipping.** Ten automobile shipping companies registered in Norway, Japan, and Chile were fined by the Korea Fair Trade Commission (KFTC) for manipulating their bids and allocating the market among themselves. Specifically, they agreed to submit bids at higher prices or collectively refuse to participate in certain bids, and divided up shipping routes among themselves between 2002 and 2012. The KFTC fined the companies **43 billion won (\$40 million)** collectively and referred them to the prosecutor's office for criminal charges.
- **South Korea: Conveyor Belts.** The KFTC fined four manufacturers of conveyor belts for engaging in bid rigging activity. They separately agreed to set prices to retailers between 1999 and 2013. The manufacturers were fined about **38 billion won (\$35 million)**.
- **South Korea: Auto Parts.** The KFTC found that three South Korean and Japanese auto parts suppliers colluded to affect bids for gas pumps by exchanging bid prices



and predetermining the winner of the bids from 2007 to 2009. They also were found to have colluded and allocated the market for variable valve timing (VVT) among themselves during the same period. The KFTC fined them a total of **37.1 billion won (\$34 million)**.

- **South Korea: Construction.** The KFTC imposed a penalty of **23.3 billion won (\$21.4 million)** on five construction companies that agreed on the bid price for a track installation project between Osong and Gwangju in high-speed railway construction issued by the Korea Railroad Authority.
- **South Korea: Cables.** Seven cable manufacturers were found to have engaged in bid rigging activities in 37 bids for cable procurement between 2011 and 2013. They predetermined the winner and allocated the share among themselves. The KFTC fined them a total of **16.1 billion**

won (\$14.8 million) and referred the case to the prosecutor's office for criminal charges.

- **China: Electricity Generation.** In August, a total of 23 power companies in northern China's Shanxi Province, including subsidiaries of four state-owned enterprises supervised by the central government, were fined over price-fixing. After checking sales data, the antimonopoly department found that the companies involved had carried out the price-fixing agreement. The 23 companies were fined **72.9 million renminbi (\$11 million)** altogether.
- **Russia: Uniforms.** In June and July, the Federal Antimonopoly Service (FAS) imposed fines totaling **606 million rubles (\$10.2 million)** on 90 companies involved in rigging bids to supply military uniforms and gear to the Russian Ministry of Interior. The companies were found to have rigged bids in dozens of electronic auctions held from 2014 through 2016.
- **South Korea: Construction.** Three ASCON unions and three REMICON unions were found to have engaged in bid rigging activities in bids placed by the government. They were alleged to have submitted predetermined and coordinating bids. The KFTC imposed a total of **7.4 billion won (\$6.8 million)** in fines on the unions.
- **Russia: Cables.** In June, the FAS imposed fines totaling more than **337 million rubles (\$5.9 million)** on seven producers of oil-submersible cable for the conclusion of an anticompetitive agreement whereby the companies agreed to divide markets and fix sale prices in relation to tenders held by oil companies in 2014-2015.
- **Kazakhstan: Petroleum.** Forty-seven entities operating in the retail fuel market were fined in Kazakhstan for the total amount of approximately **957 million tenge (\$2.9 million)** for antimonopoly law violations. Groundless increases of prices by various fuel market entities in 2016-2017 were classified by the Antimonopoly Committee as anticompetitive concerted actions.
- **Kazakhstan: Pharmaceutical Products.** Several decisions by Kostanay and Pavlodar regional courts were issued in relation to a cartel in the field of pharmaceutical products, resulting in fines and restitution totaling more than **500 million tenge (\$1.5 million)**.
- **China: Paper.** In July, the NDRC instructed the Zhejiang Provincial Price Bureau to issue its decision on a paper monopoly case in which the Hangzhou Fuyang District Paper-Making Association organized 17 paper makers to reach and implement a price monopoly agreement on white paper rolls. The bureau shut down the association and imposed a combined fine of **7.8 million renminbi (\$1.2 million)** on 17 companies to prevent illegal price rises and protect fair market competition.
- **South Korea: Railroads.** The KFTC detected collusions between two companies in five separate bids opened by the Korea Railroad Corporation in which they agreed on winners and bid prices for purchasing electronic interlocking devices between 2011 and 2013. The KFTC imposed a fine of **796 million won (\$730,000)** and referred the companies to the prosecutor's office for criminal charges.
- **Singapore: Electrical Services.** In November, the Competition Commission of Singapore fined three companies a total of **\$626,000 Singapore (\$465,000)** for bid rigging during a bid for the provision of lighting and electrical services for a Formula One race.
- **China: Property Management Service.** In June, the NDRC imposed a fine of **2.5 million renminbi (\$384,000)** on 49 property management firms for entering into a horizontal pricing agreement. The Beijing Association of Property Services Assessment organized its members (the 49 property management firms) that were competitors in the industry on many occasions through meetings and email to agree on fees for property services.
- **South Korea: Construction.** The KFTC found that three South Korean companies engaged in bid rigging to obtain construction business of installing platform screen doors in certain sections of the South Korean subway. They predetermined the winner and exchanged bid prices to coordinate in a bid. The KFTC fined them a total of **265 million won (\$244,000)**.
- **Russia: Construction.** In November, FAS imposed fines totaling **13.2 million rubles (\$223,000)** on three entities for bid rigging of state tenders for repair of roads in the Omsk region in 2016.
- **Russia: Public Utilities.** In June, FAS fined two public utility service providers **4 million rubles (\$73,000)** for colluding on state contracts for water and electricity supply and wastewater disposal. FAS found that the service providers exchanged information on the state tenders and shared infrastructure for bidding.
- **South Korea: Telephone Equipment.** The KFTC found that two South Korean companies colluded in procurement bids for telephone equipment by agreeing on bid prices and winners four times between 2009 and 2014. The KFTC imposed fines of **58 million won (\$54,000)** collectively on both companies.

EUROPEAN UNION

- European Union: Trucks.** In September, the European Commission imposed a fine of more than **880 million euros (\$1 billion)** on a manufacturer of trucks for colluding with five other manufacturers on truck pricing and on passing on the costs of new technologies to meet stricter emission rules. In July 2016, the Commission reached a settlement decision with the other five manufacturers. The sixth manufacturer (which received the 880 million euro fine) decided not to settle with the Commission, resulting in the Commission's investigation against the company being carried out under the standard cartel procedure.
- France: Flooring Products.** In October, the French Competition Authority fined three floor makers **302 million euros (\$357 million)** for fixing prices, sharing commercially sensitive information, and signing a charter barring each company from advertising the individual environmental performance of its products. Two of the companies submitted applications for leniency and had their penalties reduced substantially as a result.
- Italy: Cement.** In July, the Italian Competition Authority fined 11 cement manufacturers, a cement distributor, and a trade association more than **184 million euros (\$214 million)** for fixing prices and exchanging sensitive information. The competition authority found a single continuous infringement lasting from 2011 to 2016 and indicated that the cement companies colluded on prices by issuing coordinated price lists, which were identical both in content and timing, and that they exchanged information to announce price increases and through a cement trade association. The strategy included agreeing on the time and amount of price list increases, communicating the future adoption of price list increases in advance, and monitoring the price hikes. The enforcer said the trade association helped the companies obtain up-to-date information about volumes of cement delivered to each area of the country in order to monitor relevant market positions. The agency also imposed a **1,500 euros (\$1,800)** fine on a cement distributor for distributing price lists to other producers, despite the companies not being active on the relevant market. The authority reduced the fines on the companies by half, after taking into account the harm the 2007 financial crisis caused to the construction sector. The cement fine is one of the largest that the Italian enforcer has imposed to date.
- Italy: Rebar.** In July, the Italian Competition Authority fined eight producers of rebar and welded wire mesh more than **140 million euros (\$161 million)** for fixing prices and exchanging sensitive information. The authority reduced the fines on the companies by half after taking into account the harm the 2007 financial crisis inflicted on the steel industry. The authority said the crisis depressed the downstream construction market, which led to turmoil in the industry. According to the authority, the eight steel producers conspired at meetings held with a trade association and the price commission of a local chamber of commerce. The authority said the eight companies covered more than 80% of supply in Italy for the two products. The collusion lasted from 2010 to 2016; a wholesale steel products dealer filed a complaint with the authority in 2011 and an investigation was launched in 2015.



- **Greece: Construction.** In August, the Hellenic Competition Commission (HCC) announced that 15 undertakings active in the construction sector had each participated in at least one of several anticompetitive agreements in relation to tenders for public infrastructure projects. The HCC imposed a cumulative fine of **80.7 million euros (\$95 million)** on 10 of these entities. The various anticompetitive behaviors spanned more than 30 years (1981-2012) and consisted of bid rigging; specifically, agreeing which party would submit the winning bid, submitting cover bids, and agreeing to jointly execute the respective works before submitting their respective bids.
- **Spain: Rail.** In March, the Spanish Competition Authority fined rail companies a total of **75.6 million euros (\$81 million)** for blocking the liberalization of the rail transport sector. The companies limited the extent to which other international companies could do business in Spain, putting the companies into a position of preferred supplier and client, allowing them to capture 80% of the market for rail transport in the country.
- **Spain: Cables.** The Spanish Competition Authority fined five separate electric cable cartels **44.7 million euros (\$53.1 million)** for fixing prices and distributing contracts among themselves. The 11 companies involved make and/or distribute low- and medium-tension electric cables. They are based in Spain and Portugal. The regulator also fined the industry association **80,000 euros (\$95,000)**.
- **European Union: Auto Parts.** In November, the European Commission imposed an aggregate fine of **34 million euros (\$40 million)** on five manufacturers for taking part in one or more of four cartels for the supply of car seatbelts, airbags, and steering wheels to Japanese car manufacturers in the European Economic Area (EEA). All five suppliers acknowledged their involvement in the cartels and agreed to settle the case. Two manufacturers were not fined for some of the cartels as they revealed their existence to the commission (thereby avoiding fines of approximately **74 million euros and 15 million euros**, respectively). Two other manufacturers received fine reductions under the leniency and settlement programs. The commission's decision is part of a series of major investigations into cartels in the automotive parts sector. The commission has already fined suppliers of automotive bearings, wire harnesses in cars, flexible foam used in car seats, parking heaters in cars and trucks, alternators and starters, air conditioning and engine cooling systems, and lighting systems.
- **Cyprus: Fuel.** In November, the Cyprus Commission for the Protection of Competition (CPC) fined four fuel companies a cumulative **20.7 million euros (\$32.1 million)** for separately colluding with the proprietors of their respective fuel stations to fix the prices of petrol and diesel. The four fuel companies were held to have separately fixed prices with the proprietors of their petrol stations between October 2004 and December 2005.
- **Germany: Industrial Batteries.** In June, the Federal Cartel Office (FCO) imposed total fines of approximately **28 million euros (\$31.5 million)** on two manufacturers of industrial batteries for agreeing on significant pricing components (raw material surcharges) for lead and traction batteries between 2004 and 2014. The FCO initiated the case upon a leniency application and did not impose a fine on the respective leniency applicant. Further, the FCO concluded the investigation against three other undertakings and against the relevant association without the imposition of a fine due to their insignificant level of participation in the infringement.
- **European Union: Auto Lighting.** In June, the European Commission fined two companies a total of **26.7 million euros (\$30 million)** for participating in an automotive lighting cartel. A third company was not fined as it revealed the cartel to the commission. All companies admitted their involvement and agreed to settle. Vehicle lighting systems include parts such as headlamps and daytime running lights. The cartel concerned the supply of these spare parts to manufacturers of passenger and commercial vehicles after the end of mass production of a car model.
- **Italy: Auditing Services.** In November, the Italian Antitrust Authority imposed an aggregate fine of **23.7 million euros (\$27.5 million)** on four auditing firms because they had allocated lots among themselves within a 2015 government tender for the provision of technical assistance to public administration in the management of EU structural funds. The authority granted a 5% "compliance program" discount to three of the auditing firms, but refused to cut the fine of the fourth firm as the latter implemented a new compliance program too late. The firms that obtained the discount implemented new compliance programs before or soon after the Italian enforcer issued a statement of objections in July, but the other firm put its program in place in September; the Italian authority said the firm had been provided with insufficient time to evaluate the new measures.

- **Greece: Cosmetics.** In October, the HCC announced that it had fined six companies active in the wholesale trade of luxury cosmetics a total of **18.8 million euros (\$22 million)** for indirect fixing of retail prices. The six wholesalers were found to have indirectly fixed retail prices by agreeing to set uniform levels of discounts when selling to retailers. As well as fining the companies, the HCC ordered them to stop the conduct and has threatened the firms with a daily 10,000 euro penalty for noncompliance.
- **Germany: Tugboat Services.** In December, Germany's FCO imposed fines totaling **13 million euros (\$15.3 million)** on three tugboat companies for engaging in a decade-long market allocation conspiracy. According to the FCO, the participants agreed on market share quotas, and then allocated customer contracts to achieve those quotas. A fourth company received amnesty for reporting the violation; a fifth remains under investigation.
- **European Union: Envelopes.** In June, the European Commission readopted a cartel settlement decision against an envelope manufacturer and imposed a fine of **4.7 million euros (\$5.3 million)** for participating in a price-fixing cartel. The envelope manufacturer and four other manufacturers agreed to settle the case in December 2014. In December 2016, the General Court annulled the fine against one envelope manufacturer due to lack of sufficient reasoning concerning discretionary fine reductions (case T-95/15). The judgment did not question the liability for the cartel, which the company had itself acknowledged in the settlement procedure. The commission's revised decision addresses the procedural error identified by the court and reimposes a fine on the company. The new fine is identical to the fine imposed in the original decision.
- **United Kingdom: Lighting.** In June, the Competition and Markets Authority (CMA) announced the total fine imposed on the participants in a cartel in the light fittings sector to be **2.7 million pounds (\$3.5 million)**. In May, the CMA announced that three lighting companies and their shared parent company had participated in agreements and/or concerted practices with resellers to restrict the lowest price at which their products might be sold.
- **Norway: Electrician Services.** In September, the Norwegian Competition Authority fined five companies a total of **18.5 million krone (\$2.4 million)** for agreeing on identical prices and exchanging other competitively sensitive information during a bid for the maintenance and repair of electrical installations in schools in Oslo.
- **Portugal: Driving Schools.** In September, the Portuguese Competition Authority fined the Portuguese Driving Schools Association and its president a total of nearly **414,000 euros (\$487,000)** for fixing a minimum price for driving licenses. The alleged conduct harmed competition in the market for driving schools in the Greater Lisbon and Setubal areas. The fixing of minimum prices started in September 2016, and was to be applied by about 170 driving schools. The president of the association was also found to have committed an infringement for having known about the practice and for taking no action to prevent it or put it to an end.
- **Greece: Cosmetics.** In August, the HCC announced that a cosmetics company had been fined nearly **154,000 euros (\$180,000)** for horizontal price-fixing and exchanging confidential information in relation to the retail prices of its cosmetic products. Another eight companies had been charged with the same offenses but chose to settle with the HCC in February.
- **Denmark: Plumbing Services.** In July, a Danish plumbing company entered into a settlement with the Danish State Prosecutor for infringing the Danish Competition Act. The infringement concerned five cases of bid rigging in the Copenhagen area in which the company exchanged information on prices and other terms and coordinated prices with one of its competitors. The infringement took place in the period from April 2012 until August 2013. The company has accepted to pay a fine of **1 million krone (\$155,000)**.
- **Czech Republic: Building Materials.** The Office for the Protection of Competition investigated a prohibited agreement between two competitors on the refractory claystone market in Czech Republic upon the application of one of their customers. The cartel conduct consisted of limiting production, customer allocation, and pricing. One cartel participant escaped the fines under the leniency program, while the other participant in the cartel achieved a 20% reduction in sanctions by meeting the settlement conditions with fines totaling **2 million koruna (\$85,000)**.
- **Poland: Building renovation services.** In June, the Office of Competition and Consumer Protection (OCCP) imposed total fines of **130,000 zloty (\$35,000)** on three construction companies for bid rigging in the context of four tenders organized by a Polish district in 2015.

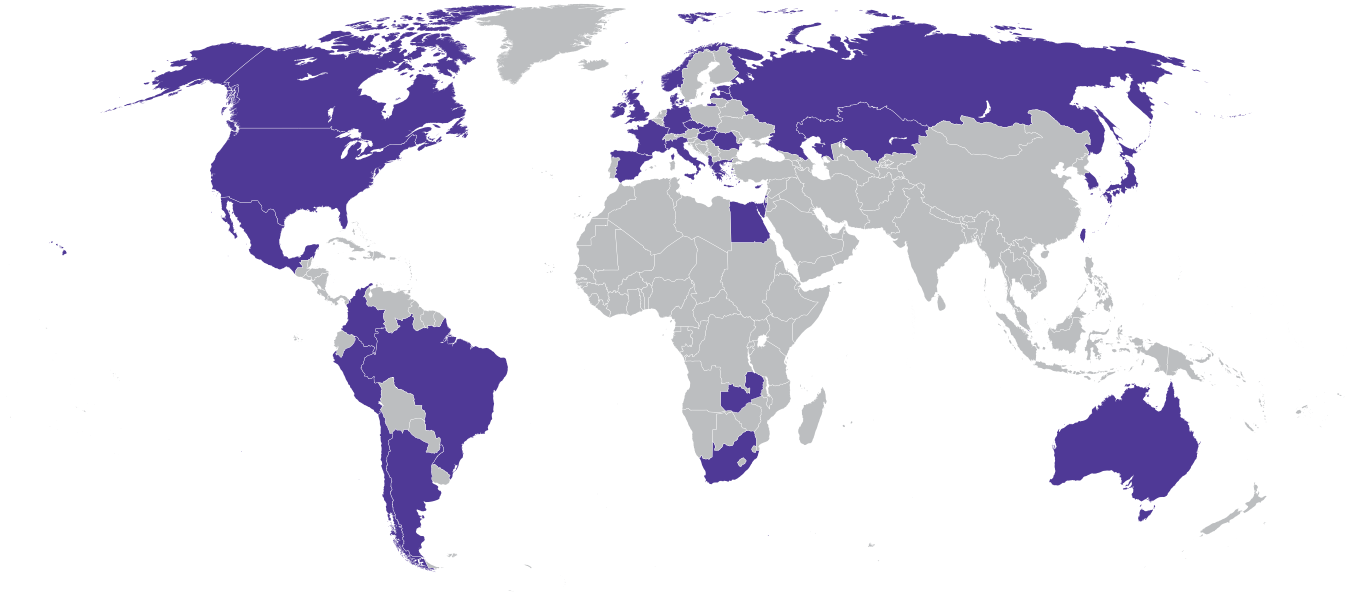
- **Cyprus: Construction.** The CPC fined an industry association for having issued a press release and a circular discouraging its members from participating in a tender regarding public works in the city of Paphos. The CPC found that the said conduct infringed Article 3(1)(b) of the Cyprus Competition Act (the equivalent Cyprus law provision to Article 101(1)(b) TFEU) and imposed a fine of **2,120 euros (\$2,500)**.

OCEANIA

- **Australia: RORO Shipping.** The Australia Competition & Consumer Commission obtained the first successful criminal prosecution under the criminal cartel sections of the Competition and Consumer Act 2010 (CCA) when it obtained a criminal fine against an ocean cargo shipping company of **\$25 million Australian (\$20 million)** for engaging in anticompetitive agreements to restrict the importation of vehicles via ocean shipping to Australia beginning in 1997. The company agreed to plead guilty to a criminal violation of the CCA, and a judge determined the value of the criminal fine, which is the second-highest fine awarded for a violation of Australia's competition laws.
- **Australia: Cables.** In July, the Full Federal Court found an electric cable company guilty of fixing prices and allocating projects with competitors for high voltage land cables and accessories sold to customers through bid tenders in 2003. The company agreed to pay a fine of **\$3.5 million Australian (\$2.8 million)** for its role in the agreements despite the fact that the company did not win a contract to provide the cables during the relevant time.
- **New Zealand: Real Estate Listings.** A New Zealand court found a real estate agency guilty of engaging in anticompetitive conduct by agreeing with competitors to pass on the cost of real estate listing fees to vendors. The real estate agency will pay a fine of **\$1.05 million New Zealand (\$786,000)**.

INDIVIDUAL CRIMINAL PENALTIES

● JURISDICTIONS WITH CRIMINAL PENALTIES FOR CARTEL ACTIVITIES



36 COUNTRIES HAVE CRIMINAL PENALTIES FOR CARTEL VIOLATION OR CONVICTIONS:

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

SIGNIFICANT INDIVIDUAL PRISON AND OTHER SENTENCES FOR CARTEL OFFENSES (WORLDWIDE)

AMERICAS

- **Brazil: Petroleum Gas.** In November, four directors and sales managers from two liquefied petroleum gas distributors agreed to pay fines in connection with cartel activity in northeastern Brazil that included market division, price increases, and fixed minimum resale prices. Executives from one company must pay **250,000 reais (\$77,536)** in total, with executives from the second company receiving a total fine of **1.1 million reais (\$341,000)**.
- **Canada: Construction.** In October, an employee of an air conditioning construction company pleaded guilty to engaging in bid rigging with unnamed firms for ventilation services on condominium development projects. The employee will serve **50 hours of community service**.
- **Mexico: Corn Tortillas.** In November, the Board of Commissioners for Mexico's Federal Economic Competition Commission fined two individuals **350,000 pesos (\$18,000)** for fixing and maintaining prices on corn tortillas in coordination with the Jalisco state Secretary for Rural Development between February 2016 and February 2017.
- **United States: Real Estate.** In June, a federal jury convicted three Northern California real estate investors for their roles in a conspiracy to rig bids at public real estate foreclosure auctions held in Alameda County, between June 2008 and January 2011. Two of these investors were also convicted on charges of conspiring to rig bids at foreclosure auctions in Contra Costa County, California between July 2008 and January 2011. The investors 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. They then held second, private auctions at or near the courthouse steps where the public auctions were held, awarding the properties to conspirators who submitted the highest bids.
- **United States: Real Estate.** In June, after being convicted at trial, a Lafayette, California, man was sentenced to **12 months and one day in prison** for his role in a conspiracy to rig bids at public real estate foreclosure auctions in Northern California. He was charged in a December 2014 indictment returned by a federal grand jury in the US District Court for the Northern District of California. He was convicted of conspiring to rig bids at real estate foreclosure auctions in Contra Costa County. In addition to his term of imprisonment, he was sentenced to **three years of supervised release** and ordered to complete **100 hours of community service**.
- **United States: Government Contracts.** In June, a former Israel-based defense contractor was sentenced after pleading guilty to one count of mail fraud, two counts of wire fraud, and one count of major fraud against the United States in the US District Court for the District of Connecticut. The conspirator and others falsified bid documents to make it appear that certain foreign military financing contracts had been competitively bid when they had not. The conspirator was previously charged in an indictment returned by a federal grand jury in the District of Connecticut and then **extradited from Bulgaria**. The conspirator pleaded guilty. Under the terms of the sentence, the conspirator was fined **\$7,500** and ordered to pay about **\$41,000** in restitution. The conspirator was sentenced to a **prison term of 30 months**.
- **United States: Real Estate.** In June, a Northern California real estate investor pleaded guilty for his role in a conspiracy to rig bids at public real estate foreclosure auctions in Northern California. The investor pleaded guilty to one count of bid rigging in the Northern District of California in Oakland. He was charged in a 2015 indictment returned by a federal grand jury. Between September 2008 and continuing until in or about January 2011, the investor conspired with others not to bid against one another, instead designating a winning bidder to obtain selected properties at public real estate foreclosure auctions in Alameda County. The selected properties were then awarded to the conspirators who submitted the highest bids in second, private auctions. The private auctions often took place at or near the courthouse steps where the public auctions were held.

- United States: Packaged Seafood.** In June, a former senior vice president of sales for a packaged seafood company pleaded guilty for his role in a conspiracy to fix the prices of packaged seafood, such as canned tuna, sold in the United States. He and his co-conspirators agreed to fix the prices of packaged seafood from as early as 2011 through 2013. He pleaded guilty to a one-count criminal information filed in the Northern District of California in San Francisco. He agreed to pay a criminal fine and cooperate with the DOJ Antitrust Division's ongoing investigation. He will be sentenced by the court at a later date. Three executives, including the former senior vice president of sales, have pleaded guilty for their participation in this conspiracy.
- United States: Real Estate.** In July, after being convicted at trial, a Northern California real estate investor was sentenced for his role in a conspiracy to rig bids at public real estate foreclosure auctions. He was charged in a 2014 indictment returned by a federal grand jury in the Northern District of California. He was convicted in 2016 of conspiring to rig bids at foreclosure auctions in Alameda County. In July, he was sentenced to serve **21 months in prison** and **three years of supervised release**. In addition to his term of imprisonment, he was ordered to pay a criminal fine of nearly **\$326,000**.
- United States: Real Estate.** In September, after being convicted at trial, a Northern California real estate investor was sentenced for his role in a conspiracy to rig bids at public real estate foreclosure auctions. He was charged in a 2014 indictment returned by a federal grand jury in the Northern District of California. He was convicted of conspiring to rig bids at real estate foreclosure auctions in Contra Costa County. He was sentenced to serve **18 months in prison** and **three years of supervised release**. In addition to his term of imprisonment, he was ordered to pay a criminal fine of **\$20,000**. Between June 2008 and January 2011, he conspired with others not to bid against one another for selected properties, instead designating a bidder to win the property at the auction. The members of the conspiracy then held second, private auctions to award the properties to members of the conspiracy and determine payoffs for those who had agreed not to bid against one another at the public auctions.



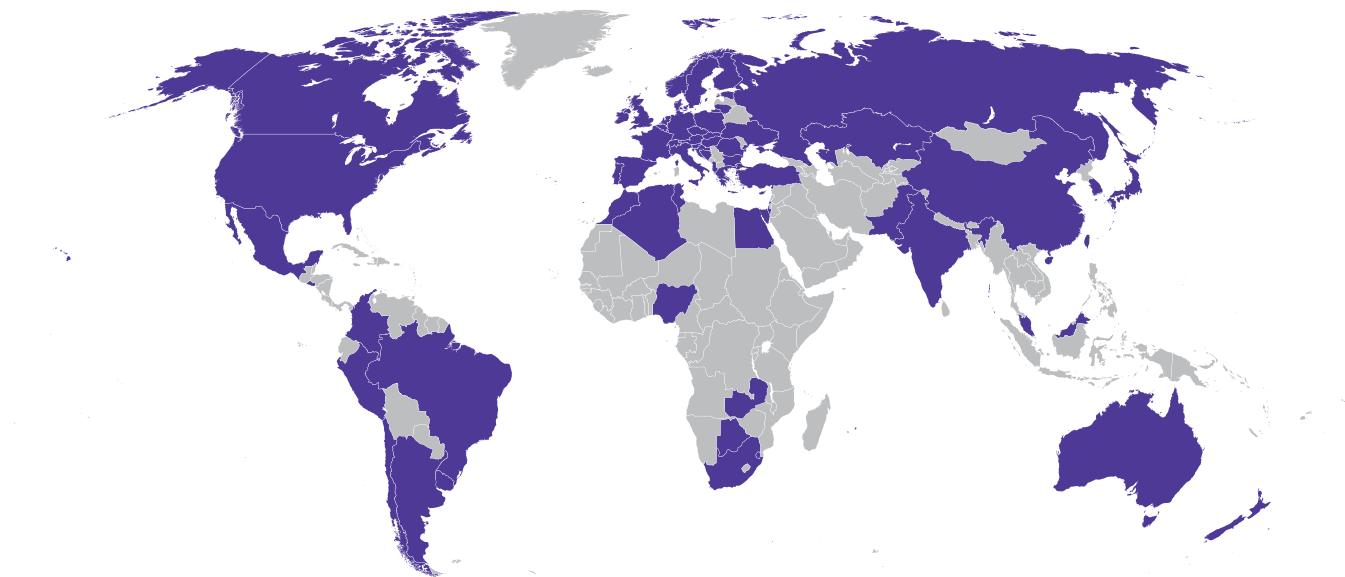
- **United States: Real Estate.** In October, a real estate investor was sentenced for his role in a conspiracy to rig bids at public real estate foreclosure auctions in Northern California. He was charged in a 2011 indictment returned by a federal grand jury in the Northern District of California. He pleaded guilty to two counts of bid rigging at real estate foreclosure auctions in Alameda and Contra Costa counties, and was sentenced to serve **14 months in prison** and **three years of supervised release**. In addition to his term of imprisonment, he was ordered to pay a criminal fine of **\$10,000** and nearly **\$653,000** in restitution.
- **United States: Real Estate.** In October, a real estate investor pleaded guilty for his role in a conspiracy to rig bids at public real estate foreclosure auctions in Northern California. He was charged in a 2014 indictment returned by a federal grand jury in the Northern District of California and pleaded guilty to one count of bid rigging. According to court documents, he participated in a conspiracy to rig bids by agreeing to refrain from bidding against other co-conspirators at public real estate foreclosure auctions in San Mateo County. The conspiracy began no later than August 2008 and continued until January 2011.
- **United States: Real Estate.** In November, a real estate investor was sentenced for his role in a conspiracy to rig bids at public real estate foreclosure auctions in Northern California. He was charged in a 2015 indictment returned by a federal grand jury in the Northern District of California. He pleaded guilty to one count of bid rigging at real estate foreclosure auctions in Alameda County. He was sentenced to serve **12 months in prison** and **three years of supervised release**. In addition to his term of imprisonment, he was ordered to pay nearly **\$150,000** in restitution.
- **United States: Real Estate.** In November, two real estate investors were sentenced for their role in a conspiracy to rig bids at public foreclosure auctions in Northern California. They were charged in a 2014 indictment returned by a federal grand jury in the Northern District of California. They were convicted after trial of conspiring to rig bids at foreclosure auctions in Alameda County. The first real estate investor was also convicted of bid rigging in Contra Costa County. The second real estate investor was sentenced to serve **18 months in prison**. In addition, the second investor

was ordered to pay a criminal fine of **\$20,000**. The first real estate investor was sentenced to serve **21 months in prison** and ordered to pay a criminal fine of approximately **\$88,000**.

EUROPE

- **United Kingdom: Precast Concrete Drainage Products.** In September, a company director was sentenced to a **two-year suspended prison sentence** for dishonestly agreeing with others to divide supply, fix prices, and divide customers between 2006 and 2013 in respect of precast concrete drainage products. The company director was also made the subject of a **six-month curfew order** from 6:00 pm to 6:00 am as well as being **disqualified from acting as a company director for seven years**.

● JURISDICTIONS WITH CARTEL IMMUNITY/LENIENCY PROGRAMS



66 COUNTRIES HAVE CARTEL IMMUNITY/LENIENCY PROGRAMS:

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

DAWN RAIDS, NEW INVESTIGATIONS & NEW CASES

Cartel enforcement authorities around the world were active in 2017, launching many new investigations and bringing many new cases.

Many of the 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](#).

DAWN RAIDS IN THE SECOND HALF OF 2017

- **European Union: Ethylene.** In July, the European Commission confirmed that in May it carried out unannounced inspections in several EU member states at the premises of companies active in ethylene purchasing. The commission suspected that the companies concerned may have violated EU antitrust rules prohibiting cartels and restrictive business practices (Article 101 of the Treaty on the Functioning of the European Union). Ethylene is an input for the production of numerous chemical and plastic products.
- **European Union: Cars.** In October, the European Commission raided several German car manufacturers following concerns that they may have violated EU cartel rules. In July, the European Commission and Germany's competition enforcer had confirmed they were reviewing information that suggested that certain German car manufacturers colluded to restrain the price of crucial emissions technology. The United States also launched an investigation of the same companies in October.
- **United States: Generic Drugs.** Several companies involved in manufacturing, marketing, and selling generic pharmaceuticals announced in May and September that search warrants had been executed at their offices in connection with an investigation by the DOJ's Antitrust Division.
- **Italy: Football Broadcasting Rights.** In July, the Italian Competition Authority conducted a dawn raid at the premises of three media rights companies for suspected bid rigging affecting football broadcasting rights. The companies operate in the management, marketing, and distribution of TV sport broadcasting rights. The authority believes the three companies may have rigged tenders put forward by the Italian Football League for the sale of the rights to broadcast Italian football games internationally. The tournaments included in the package were Italy's top two divisions, Series A and Series B, as well as other tournaments organized by the Italian league. The authority said the companies may have rigged tenders that took place in 2009, 2011, and 2014. Altogether, the rigged bids span from the 2010-2011 season to the 2017-2018 season. The Authority said it has preliminarily found that the conduct was a single continuous infringement that might still be ongoing, and could be related to other tender procedures.
- **Portugal: Railway Maintenance.** In July, the Portuguese Competition Authority confirmed that it carried out dawn raids at the premises of nine companies in Lisbon and Oporto, following suspicions of anticompetitive practices relating to a cartel in the railway maintenance sector which may substantiate an infringement. The suspicions resulted from a complaint presented in the context of the Fighting Collusion in Public Procurement campaign that the authority has been carrying out since 2016.
- **Norway: Alarms.** In June, the Norwegian Competition Agency confirmed that it conducted a dawn raid to determine if there was illegal cooperation in the market for alarm and security services.
- **Portugal: Insurance.** In July, the Portuguese Competition Authority announced that it carried out dawn raids at the premises of four companies in Lisbon in the context of a new antitrust proceeding. The raids were carried out under the suspicion of anticompetitive practices relating to cartels in the insurance sector that substantiate the suspicions of infringement.

- **Spain: Cigarettes.** The Spanish Competition Authority is investigating possible anticompetitive practices in the market for the manufacture, distribution, and marketing of cigarettes, consisting of exchanges of information and/or agreements between market operators, directly or through third parties, of prices, trading conditions, and/or market closures. To this end, simultaneous inspections were carried out in early 2017 at the headquarters of several companies operating in this market. In June, the authority decided to open an official investigation into five tobacco producers suspected of sharing information illegally about the manufacture, distribution, and sale of cigarettes.
- **Spain: Construction and Restoration of Infrastructures and Building.** The Spanish Competition Authority is investigating possible anticompetitive practices in the national markets for construction and restoration of infrastructures and buildings. The probe is related to alleged market-sharing accords that involve fixing commercial terms or exchanging sensitive commercial information.
- **Spain: Industrial Assembly and Maintenance Services.** In July, the Spanish Competition Authority carried out raids at various companies offering industrial assembly and maintenance services. The unnamed companies are suspected of market sharing, particularly in the petrochemical and energy sectors. The raids took place in collaboration with agents from Spain's regional competition authorities.
- **Spain: Seafood.** The Spanish Competition Authority is investigating potential anticompetitive practices in the seafood industry. In October, the authority carried out inspections at the headquarters of different entities operating in this market. The companies are suspected of possible anticompetitive practices, consisting of agreements for setting prices and/or market distribution, as well as exchanges of sensitive commercial information on prices, quantities, and/or commercial conditions.
- **Sweden: Insurance.** The Swedish Competition Authority announced it had raided several companies in connection with its investigation of anticompetitive practices concerning contracts in the insurance industry.

OTHER NEW INVESTIGATIONS AND ENFORCEMENT ACTIONS

AFRICA & MIDDLE EAST

- **Egypt: Poultry.** In August, Egypt's Competition Authority referred an investigation of suspected price-fixing by poultry suppliers to criminal prosecutors.
- **Israel: Travel/Youth Delegations.** In July, the Antitrust Authority and the Economic Department at the State Attorney's Office announced that it was considering issuing indictments, subject to a hearing, for market allocation schemes, fraud, and money laundering to four companies and 10 suspects. The suspects allegedly fixed bids with respect to providing youth delegations to Poland between 2010 and 2016 pursuant to tenders issued by the Israeli Ministry of Education.

AMERICAS

- **Brazil: Airbag Modules, Seatbelts, and Steering Wheels.** In June, CADE announced it was investigating one Swedish, one German, and three Japanese manufacturers for alleged price-fixing and market allocation. CADE claims that it has strong evidence that the companies shared commercially and competitively sensitive information such as prices, volumes, and production capacity. The companies are also accused of allocating new business opportunities among themselves and agreeing not to compete with one another for deals that had been struck with suppliers to purchase airbag modules, seat belts, and steering wheels. The practices were conducted by at least 29 individuals linked to the companies through emails, phone calls, and face-to-face meetings between 2005 and 2011. Between 2014 and 2017, CADE has brought 11 administrative proceedings in relation to different auto parts cartels. These include spark plug segments, antifriction bearings, clutch linings, thermal systems, windshield wipers, and safety devices. All 11 proceedings are still ongoing. CADE stated that four other markets have been the subject of dawn raids that could result in the initiation of more administrative proceedings.
- **Brazil: Motor Valves.** In June, CADE announced its 12th auto parts cartel investigation: this time into manufacturers of motor valves, valve guides, and valve

seats, and focusing on aftermarket sales to independent distributors and manufacturers rather than sales to automakers. The investigation targets four automotive parts companies for price-fixing and market allocation.

- **Brazil: Roadway Construction Services.** In July, CADE announced the investigation of bid rigging in highways works of Arco do Rio de Janeiro. The inquiry started with a leniency agreement. The alleged violations encompassed the price-fixing of proposals, conditions, and participation. Moreover, the companies allegedly coordinated costs, budgets, and prices; divided the market, through consortium formation, cover proposals, proposals suppression, and subcontracting promises; and shared commercial and competitively sensitive information. The investigation targets eight primary companies and 15 secondary participants.
- **Brazil: Airport Coffee Shop Services.** In August, CADE opened an investigation into alleged bid rigging on tenders for the installation of coffee shops at airports across the country. The enforcer alleged that the companies used a blocking strategy when submitting bids for the tenders. The companies colluded to ensure they passed the first bidding phase, which shortlists three potential bidders, and then would refrain from bidding or submit cover bids in favor of the company that it was agreed would win the bidding.
- **Brazil: Gas.** In August, CADE recommended prosecuting 35 gas stations, 22 individuals, three distributors and a trade association for fixing the price of fuel in the southern city of Joinville. Investigators said that from June to December 2013 the defendants colluded to fix prices and coordinated their behavior to eliminate competition. The cartel was implemented through phone calls and meetings of representatives of the gas stations and distributors. Five individuals have already been sentenced to two-to-three-year jail terms.
- **Brazil: Roadway Construction Services.** In October, CADE announced an investigation into the construction sector examining alleged bid rigging for major road work in Rio de Janeiro. In particular, CADE is targeting the companies' bids to construct the Transcarioca and Transbrasil corridors, which are dedicated to bus traffic. CADE named five construction companies and 10 individuals who are under investigation for rigging bids for the supply of engineering and construction services to the City of Rio de Janeiro between the end of 2009 and 2014. The investigation stems from a June 2017 leniency agreement with one construction company.
- **Mexico: Watt-Hour Meters.** In October, the Mexican Federal Economic Competition Commission announced that it had opened an investigation into potential monopolistic practices, including bid rigging and



allocation of markets, of watt-hour meters purchased by the Mexican government through public tenders.

- **United States: Shipping.** In June, a federal court in Baltimore indicted three shipping executives charged with participating in a long-running conspiracy to allocate certain customers and routes, rig bids, and fix prices for the sale of international ocean shipments of roll-on, roll-off cargo to and from the United States and elsewhere, including to and from the Port of Baltimore. The indictment alleges that the executives conspired with their competitors to allocate certain customers and routes for the shipment of cars and trucks, as well as construction and agricultural equipment. The executives accomplished their scheme by, among other things, attending meetings in Baltimore County and elsewhere during which they agreed not to compete against one another, refraining from bidding or agreeing on the prices they would bid for certain customers and routes. In addition, the executives agreed with competitors to fix, stabilize, and maintain rates charged to customers of international ocean shipping services.
- **United States: Air Cargo.** The US DOJ opened an investigation of several Chinese airlines in November 2017 concerning air cargo shipping services. This is believed to be the first criminal antitrust investigation by the US DOJ of Chinese companies.

ASIA AND RUSSIA

- **Hong Kong: Renovation Services.** In August, the Competition Commission commenced proceedings in the Competition Tribunal against 10 construction and engineering companies alleging that they violated the First Conduct Rule by agreeing on market sharing and price-fixing, and/or engaging in concerted practices of the same nature in relation to the provision of renovation services at Phase 1 of On Tat Estate, a public rental housing estate in Kwun Tong, Kowloon. The Commission is seeking pecuniary penalties and corrective remedies.
- **Kazakhstan: Supermarkets.** The Antimonopoly Committee of Kazakhstan started an investigation with respect to seven major supermarkets in the city of Taraz due to a potential price cartel.
- **Russia: Locking and Sealing Devices.** In July, the FAS opened an investigation into four producers of locking and sealing devices for the railway industry following suspicions that they divided the market by territory and

facilitated illegal exchange of information on prices at tenders held by customers.

- **Russia: Food and Beverage.** In August, the FAS held five entities liable for bid rigging during state tenders for the supply of food and beverages for the needs of the Russian Ministry of Interior between November 2014 and February 2015. The FAS will be imposing fines on cartel participants. Materials of the case have also been passed on to prosecutors to decide on whether to commence a criminal investigation.
- **Russia: Tickets.** In August, the FAS announced an investigation into three major air carriers following a request from the Ministry of Transport of the Sakha (Yakutia) Republic and multiple press reports that the companies significantly increased round-trip airfares to Yakutsk in July.
- **Russia: Food and Beverage.** In October, the FAS announced an investigation into four entities following suspicions they divided markets and agreed on prices during 106 state tenders with a total value of approximately 4.5 billion rubles (\$77.9 million) for supply food and beverages to social organizations, including schools and hospitals, in the Ulyanovsk region.
- **Russia: Implants and Other Medical Devices.** In October, the FAS announced an investigation into three entities and an individual entrepreneur following suspicions that they rigged state tenders for the supply of implants and other medical devices used in traumatology, with a value totaling 1 billion rubles (\$1.3 million), in 11 regions of Russia between 2015 and 2017.
- **Taiwan: CPAP Machines.** In November, the Chairperson of Taiwan's competition authority (Taiwan Fair Trade Commission (TFTC)) confirmed that an investigation had been launched into suspected collusion between entities within the Taiwanese healthcare and medical equipment industry and foreign manufacturers of continuous positive airway pressure (CPAP) machines. The investigation was launched pursuant to an anonymous petition posted in February on a government website. The petition alleged that Taiwanese medical distributors and hospitals were colluding with foreign producers of CPAP machines to set prices of the devices at abnormally high levels.

EUROPE

- **Ireland: Healthcare and Medical Equipment.** In October, the Irish Competition and Consumer Protection Commission (CCPC) announced that it was examining information provided to it in relation to potentially anticompetitive conduct in the private nursing home sector. Media reports suggest that a number of private nursing home operators discussed a potential boycott of the Fair Deal scheme run by the Irish government.
- **Spain: Cargo Loading in Ports.** Spain's competition authority has launched an investigation into the cargo-loading sector in the northwestern port of Vigo. The investigation into companies and labor unions concerns a 1996 agreement governing the supply of labor in the cargo-loading sector of the city, which goes beyond the coordination permitted by law. The authority has 18 months to investigate the case, which stems from information submitted to the regulator.
- **United Kingdom: Building and Construction.** In July, the CMA announced that it had opened an investigation into suspected anticompetitive arrangements in relation to the supply of design, construction, and fit-out services in the United Kingdom.
- **United Kingdom: Medical Equipment.** In October, the CMA opened an investigation into suspected anticompetitive agreements and/or concerted practices (and suspected abuse of dominance) in relation to the supply of certain generic pharmaceutical products in the United Kingdom. The CMA is expected to provide an update on the investigation in April 2018.
- **China: Chemicals.** NDRC opened an investigation of several chemical companies in December 2017 concerning pricing practices in the sale of chemicals.

INDUSTRIES UNDER SCRUTINY

AUTOMOTIVE PARTS

ANALYSIS

- While the investigation into the automotive parts industry in the United States is winding down, active investigations are underway around the world. A number of enforcers are announcing new investigations into this sector or ramping up their reviews, and this likely will continue well into 2018. For a complete summary of the auto parts investigations worldwide, please see our summary [appendix table](#).

UNITED STATES

- As the DOJ's auto parts investigation winds down relatively few new plea agreements and indictments were announced last year. As of December, a total of 65 individuals and 48 companies had been charged and agreed to pay more than **\$2.9 billion** in criminal fines as part of the DOJ's investigation into the auto parts industry. These numbers have not changed.
- In February, Futoshi Higashida, the former president of a US joint venture of an automotive body-sealing products supplier based in Hiroshima, Japan, pleaded guilty in the US District Court of the Eastern District of Michigan to a two-count indictment charging him with conspiring to obstruct justice and attempting to obstruct justice. The executive was sentenced to serve 14 months in a US prison for his role in conspiring to destroy documents referring to communications with competitors, in contemplation of a federal investigation. As part of his plea agreement, Higashida also agreed to pay a **\$7,500** criminal fine.
- In March, an automotive parts manufacturer based in Heiligenhaus, Germany, agreed to plead guilty and pay a **\$6.1 million** criminal fine for its role in a conspiracy to rig bids of side-door latches and latch minimodules sold to Ford Motor Company and installed in cars sold in the United States and elsewhere.
- In November, a Japanese auto parts manufacturer and its US subsidiary were found not guilty of criminal claims by the DOJ that the companies conspired with others to fix prices and rig bids for automotive body-sealing products. The company was indicted in 2016. Even though there were cooperating witnesses and alleged co-conspirators that pleaded guilty, the jury acquitted the company after a 13-day trial in the Southern District of Ohio.

BRAZIL

- In 2017, Brazil's CADE continued to investigate auto parts companies involved in the production of spark plugs, antifriction bearings, brake pads, ceramic substrates, dampers, thermal systems, windshield wipers, automotive safety devices, and clutch facings for alleged price-fixing and information exchanges.
- In May, CADE initiated an investigation of three companies for an alleged cartel in the market for exhaust systems and their components. The investigation so far has identified nine individuals who allegedly colluded with their competitors in person, over the phone, and by email from 2003 to 2014.
- In June, CADE initiated an investigation of five companies for an alleged cartel in the market for airbag modules, seatbelts, and steering wheels. According to CADE, the regulator has strong evidence that manufacturers fixed prices and jointly established discounts and price levels. The investigation so far has identified 29 individuals who allegedly colluded with their competitors in person, over the phone, and by email from 2005 to 2011.



- In December, CADE initiated an investigation into the aftermarket and Original Equipment Manufacturer (OEM) market for the following parts: engine pistons, bearings, pins, connecting rods, ring carriers, rings and sealing gaskets, and piston engine rings.

CANADA

- The CCB's investigation of the auto parts industry has continued since April 2013 and has resulted in more than **\$84.7 million Canadian (\$66 million)** in fines imposed by Canadian courts. In April, the CCB announced a fine of **13.4 million Canadian dollars (\$10.2 million)** imposed on a Japanese company for rigging bids for alternators sold to Honda and Ford and ignition coils sold to General Motors. In December, the CCB announced a fine of **\$550,000 Canadian (\$389,000)** imposed on a Japanese company for rigging bids for spark plugs sold to General Motors in 2005. This is the 12th guilty plea involving the CCB's investigation into auto parts.

EUROPEAN UNION

- The European Commission's investigation of the auto parts industry has continued this year with additional fines, bringing the total to more than **1.6 billion euros (\$1.9 billion)**. In March, the European Commission fined six Tier-1 car air-conditioning and engine cooling suppliers **155 million euros (\$173 million)** for coordinating prices or markets and exchanging sensitive information. In June, the commission fined two German companies **26.7 million euros (\$29.8 million)** for colluding to fix prices for automotive lighting parts. In November, the commission imposed a **34 million euros (\$40.1 million)** fine against five auto parts manufacturers for colluding to fix prices of car seat belts, airbags, and steering wheels sold to Japanese car manufacturers.

SOUTH KOREA

- The KFTC has continued its investigation into the auto parts industry. In January, it imposed fines of approximately **1.8 billion won (\$1.6 million)** against two Japanese manufacturers for colluding on automotive oxygen sensor bids to General Motors. In November, the KFTC fined three companies **37.1 billion won (\$33.3 million)** for rigging bids for fuel pumps and variable valve-timing systems.

AUSTRALIA

- In May, an Australian judge fined a Japanese auto parts manufacturer **\$9.5 million Australian (\$7.2 million)** for bid rigging of wire harnesses sold to Toyota. The Australian Competition and Consumer Commission had sued the company in 2012 and sought much higher fines for the illegal conduct.

SOUTH AFRICA

- In November, the Competition Tribunal of South Africa approved a settlement between the Competition Commission and a maker of car safety systems in the amount of **135 million rand (\$1.0 million)** for its role in fixing the prices of various safety components that were sold to car manufacturers.

ELECTROLYTIC CAPACITORS

ANALYSIS

- As reported in past editions of the Global Cartel Enforcement Report, enforcement authorities in several jurisdictions initiated cartel investigations regarding the pricing and sale of electrolytic capacitors in 2014. In the intervening years, enforcement authorities in Taiwan and the United States have imposed significant fines on various electrolytic capacitors manufacturers. Eight companies were fined by the TFTC, and eight companies and 10 individuals have been charged by the DOJ for participating in a conspiracy to fix prices of electrolytic capacitors.
- The investigation remains active in the United States, with several companies agreeing in 2017 to plead guilty to criminal violations of the US antitrust laws in connection with their pricing and sales of electrolytic capacitors. Several of the plea agreements contained significant fine reductions based both on the companies' cooperation with the investigation and arguments concerning their inability to pay more substantial fines. While certain of the plea agreements have been accepted by the courts, several others have been rejected, with the courts requiring the parties both (a) to negotiate new agreements and (b) to submit more substantial evidence to justify the sentences being sought in the plea agreements.
- One of the largest manufacturers of electrolytic capacitors is contesting the DOJ's charges. The trial in that case is set for October 2018.
- The investigation also remains active in the European Union. In November 2015, the European Commission issued a statement of objections to ten manufacturers of electrolytic capacitors too. The European Commission alleges that manufacturers held bilateral and multilateral meetings between 1997 and 2014 to commercially sensitive information in violation of EU law.

FINANCIAL BENCHMARKS

ANALYSIS

- In 2017, national government prosecutions of banks for the manipulation of various financial benchmarks—including LIBOR and various foreign exchange markets—continued to decline as regulators wrap up trials. Regulators continued, however, to pursue rate manipulation cases against individual traders and rate submitters. In the United States, state attorneys general were also actively pursuing claims against alleged manipulators. Private litigation was maturing and, in many significant cases, shifting from discovery to class certification. Other less-prominent benchmark-related litigations remained in their infancy.

LIBOR

- In February, federal prosecutors sought a reduced sentence for Takayuki Yagami, a European banktrader, who was the first to plead guilty to charges that he conspired to manipulate Yen Libor. In seeking a downward departure from the sentencing guidelines, prosecutors noted Mr. Yagami's early cooperation and helpful testimony.
- In February, a US District Court for the Southern District of New York judge imposed a "no-prison" sentence on Lee Stewart, a former trader, based on his cooperation with US regulators on the Libor investigation. Mr. Stewart also testified for the prosecution against two other traders from the same bank.
- In March, a Connecticut federal court signed off on a \$150 million settlement by a subsidiary of a European bank admitting that the company's traders helped Libor in several currencies. According to the 2015 guilty plea, traders at the bank repeatedly requested between 2003 and 2010 that Libor rate submitters enter rate quotes that benefited the traders' positions rather than the rates that complied with the benchmark's requirements.
- In April, two former traders, Stylianos Contogoulas and Ryan Reich, were acquitted by a London jury in their retrial for alleged Libor manipulation. They were found not guilty of conspiring to manipulate Libor. A separate jury was unable to reach a verdict in their first trial in July 2016.

- In June, the Alternative Reference Rate Committee (ARRC), a committee of large banks convened by the Federal Reserve, voted to adopt an interest rate benchmark from the Treasuries-backed repurchase agreement market (repo) as an alternative to the use of Libor. Regulators tasked the ARRC with selecting a new benchmark to bolster short-term lending in the wake of the Libor scandal. The ARRC selected the repo rate as the alternative to Libor after considering a number of factors including the depth and robustness of the underlying market, the rate's usefulness to market participants, and its consistency with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.
- In August, US prosecutors charged two French bankers as part of a larger scheme to manipulate Libor. The bankers are accused of submitting artificially low rates that were used to set US dollar Libor benchmark rates in order to improve the bank's reputation and credit rating.



- In October, a German bank agreed to pay \$220 million to settle damages claims brought by 45 states that the German bank manipulated Libor benchmark rates. The German bank is only the second bank to conclude a multistate settlement, following a settlement by another European bank with states in August 2016. The company said the settlement resolves the bank's final pending US regulatory inquiry related to Libor.
- In November, Alex Pabon, a former trader, argued in a UK court that his criminal conviction for Libor manipulation should be overturned because an expert who testified on behalf of the UK's Serious Fraud Office was contacting traders during his testimony. The appeal could be significant because the same expert was used in four other Libor trials, including the trial of alleged ringleader Tom Hayes. Mr. Pabon was convicted in June 2016 and sentenced to a term of two years and nine months in prison.

FX

- In January, Jason Katz, a dealer of Central and Eastern European, Middle Eastern, and African (CEEMEA) currencies, pleaded guilty to participating in a price-fixing conspiracy in the Foreign Exchange (FX) market. Mr. Katz is the first individual to plead guilty as a result of an investigation by the DOJ, FBI, and Federal Deposit Insurance Corporation (FDIC), into antitrust and fraud crimes in the FX market, and the third individual to be charged. In 2015, four major banks pleaded guilty and agreed to pay collectively more than \$2.5 billion in criminal fines for their participation in an antitrust conspiracy to manipulate the price of US dollars and euros exchanged in the FX market.
- In March, the DOJ reportedly closed its FX investigation with respect to a major German bank. Other regulators, however, are still investigating the German bank's involvement in the alleged rigging of various FX markets.
- In May, the New York State's Department of Financial Services (NYSDFS) fined a European bank \$350 million for alleged collusion with rivals to manipulate FX prices and benchmark rates, carrying out fake trades, and improperly sharing details on customer orders with traders at other banks. This was the first FX-related

action by the NYSDFS and could lead to charges against other banks.

- In June, ECU Group, a UK currency investment firm, filed an application for "pre-action disclosure," a discovery mechanism available prior to filing a lawsuit, in London's Commercial Court requesting that HSBC be required to provide documents relating to three large foreign exchange orders executed in 2006. HSBC had previously persuaded ECU that it had not engaged in any wrongdoing but the DOJ charges against the bank caused ECU to take this action.
- In November, a Swiss bank agreed to pay \$135 million to settle an investigation by the NYSDFS. The New York regulator has been investigating whether banks used algorithms to front-run or otherwise manipulate foreign exchange rates.

ISDAFIX

- In February, the US Commodity Futures Trading Commission (CFTC) ordered a Scottish bank to pay \$85 million for attempted manipulation and false reporting of US dollar ISDAFIX benchmark rates. The order alleged that the bank, an ISDAFIX panel bank, made false rate submissions and engaged in trading activity with the intent to artificially influence US dollar ISDAFIX rates. The CFTC has been investigating ISDAFIX manipulation since 2012. This is the fourth ISDAFIX settlement to date, bringing the CFTC's fine total to \$570 million.

EURIBOR

- In January, a Hong Kong bank agreed to pay \$45 million to a group of investors that brought a class action against banks over alleged Euribor manipulation. HSBC maintained that its role in the alleged manipulation was limited to a single day in March 2007.
- In May, it was announced that the UK trial of six traders accused of rigging Euribor would be delayed until January 2018. This would be the fifth trial brought by the UK's Serious Fraud Office against individual traders accused of benchmark rate manipulation.

- In June, a German bank agreed to pay \$170 million to settle an investor lawsuit alleging a conspiracy to manipulate Euribor. The class action accuses banks of conspiring to rig Euribor and fix prices of Euribor-based derivatives from June 2005 to March 2011 in violation of US antitrust law. A number of banks were dismissed from the lawsuit in February.

TREASURY MARKET

- In May, four large financial institutions were reportedly subpoenaed by the DOJ as part of a criminal investigation into possible manipulation of the US Treasury market. The DOJ has been investigating the market for more than two years to determine whether banks improperly used and shared information on the demand for US Treasuries to increase their profit in the secondary market. The US Securities and Exchange Commission (SEC), NYSDFS, the CFTC, and the European Commission are also investigating potential manipulation of the market.
- In November, a large class action complaint alleging manipulation of US Treasury securities was substantially amended to include new claims that dealers conspired to restrict the development of competing trading platforms and to jointly boycott entities that sought to introduce competing platforms. The suit alleges the banks tried to restrict the development of electronic trading platforms in order to preserve fees they are able to generate in a bifurcated market.

BBSW

- In May, investors who brought a class action against banks alleging manipulation of the Bank Bill Swap Rate (BBSW), a key interest rate benchmark in Australia, filed briefs in opposition to the banks' motions to dismiss, arguing that investors adequately pleaded their conspiracy claims against the banks. The banks' motions have not yet been decided.
- In November, the Australian Securities & Investments Commission accepted enforceable undertakings from two Australian banks in relation to the alleged manipulation of BBSW. The undertakings came on the heels of a finding by the Federal Court that the two banks engaged in "unconscionable conduct" in seeking to change where BBSW was set on certain dates. Each bank has agreed to pay fines and penalties totaling \$50 million Australian (\$38 million).

SIBOR/SOR

- In August, a US judge partially dismissed a class action complaint alleging a conspiracy to manipulate the Singapore Interbank Offered Rate (SIBOR) and the Singapore Swap Offer Rate (SOR). The district court dismissed the claims against foreign banks on personal jurisdiction grounds, finding that the complaint "contain[ed] no plausible allegations that any conduct related to the conspiracy to manipulate SIBOR and SOR occurred within the United States." The court also found that one of the named plaintiffs lacked antitrust standing. The plaintiffs are expected to file an amended complaint.

REAL ESTATE

- Real estate investigations and prosecutions remain a central focus of the DOJ. The DOJ's initial real estate investigations were an outgrowth of task forces created to address fraudulent behavior in the wake of the 2008 financial crisis. Those investigations uncovered widespread collusion concerning bidding at local real estate foreclosure auctions, resulting in a significant number of guilty pleas, indictments, prosecutions, and convictions. Separate investigations have focused on real estate foreclosure auctions in Alabama, California, Georgia, and North Carolina.
- While these investigations have not produced very high fines—the defendants have almost all been individuals and the conduct in each case has been focused on local foreclosure auctions—they have required significant resources to investigate and prosecute and have received a high number of convictions. Many of the cases have proceeded to trial, with the DOJ securing dozens of convictions in those cases. In total, more than 100 individuals have either pleaded guilty to rigging bids for real estate foreclosure auctions following the collapse of the real estate markets in 2008 or been convicted of the same offenses following a trial. Nearly all of those individuals were sentenced to some period of incarceration in connection with these violations.
- The investigations, moreover, are not over. A significant number of additional cases are scheduled for trial in 2018.
- As described in the 2017 [Mid-Year Global Cartel Enforcement Report](#), moreover, the United States is not the only country to focus attention on real estate markets. Antitrust enforcement authorities in several other countries—including Italy and New Zealand—are investigating or have brought cases concerning alleged collusion in real estate markets.



KEY POLICY DEVELOPMENTS

CRIMINALIZATION TREND CONTINUES

The trend toward criminalizing cartel conduct continued unabated last year, as Taiwan considers legislation to criminalize antitrust violations and South Korea is considering new legislation to streamline criminal prosecutions.

TAIWAN

- In September, the chairperson of the TFTC announced that the agency is considering whether to propose the amendment of the Taiwanese Fair Trade Act to provide the TFTC with a mandate to carry out criminal enforcement for certain types of antitrust violations. The chairperson has said that allowing the TFTC to carry out criminal investigations might provide a means by which the competition authority could gain search and seizure powers, which it currently lacks.

SOUTH KOREA

- In November, the KFTC announced a report by an internal task force for making certain proposals to improve South Korea's competition and fair trade enforcement regime. The announcement included two points relevant to cartel enforcement.
- First is a proposal to improve South Korea's "criminal referral" system for pursuing criminal sanctions against violators of competition and fair trade law. Under the current regime, in order to initiate a criminal prosecution, the KFTC must generally first issue a "criminal referral" to the Prosecutor's Office after finding that the violation "substantially hampers competition." However, while the KFTC's current guidelines provide concrete standards for seeking criminal referrals against corporate defendants, they do not provide clear standards for determining when to issue criminal referrals against individual defendants. KFTC Chairperson Sang-Jo Kim had also emphasized his view that a lack of criminal referrals against individuals was a factor leading to repeat offenses. As a result, in a media briefing prior to the announcement of the report, Chairperson Kim said he intended to amend the KFTC's guidelines to provide specific guidance on issuing criminal referrals against individuals and more

aggressively pursue criminal referrals of individuals, from high-level executives to working-level employees.

- Second is a proposal allowing private actors to seek "punitive damages" in cartel cases. Although South Korean competition law now allows injured parties to sue for damages caused by cartel activity, such lawsuits are generally limited to recovering actual damages only. The report included several proposals to allow recovery of anywhere between three to 10 times actual damages, which would incentivize the filing of more private actions seeking to recover damages caused by illegal cartel activity.

LENIENCY 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 Union. Brazil has recently updated its leniency policy and program to make it more effective.

BRAZIL

- In September, Brazil's competition watchdog, CADE, published updates to its leniency and settlement guidelines, which include giving its investigative branch more scope in interviews and clarifying the rules for its leniency plus program.
- The new guidelines on leniency and settlement procedures allow investigators to broaden the scope of interviews with immunity applicants to include the wider facts of the case—instead of interviews focusing only on evidence that applicants present to the enforcer.
- CADE also clarified its leniency plus program, under which companies that are not the first to blow the whistle can receive an additional 30% reduction if they inform CADE of a new cartel of which it is not already aware. The enforcer said that companies that are the first to enter settlement proceedings, as well as using its leniency plus program, will see their discounts increased from 53.3% to 66.7%. Companies that are second-in for settlements that use leniency plus will receive 60% reductions, rather than the previous 50%.
- CADE clarified that it can coordinate with other international enforcers about when to release information from immunity or leniency agreements to avoid jeopardizing other investigations. It said the

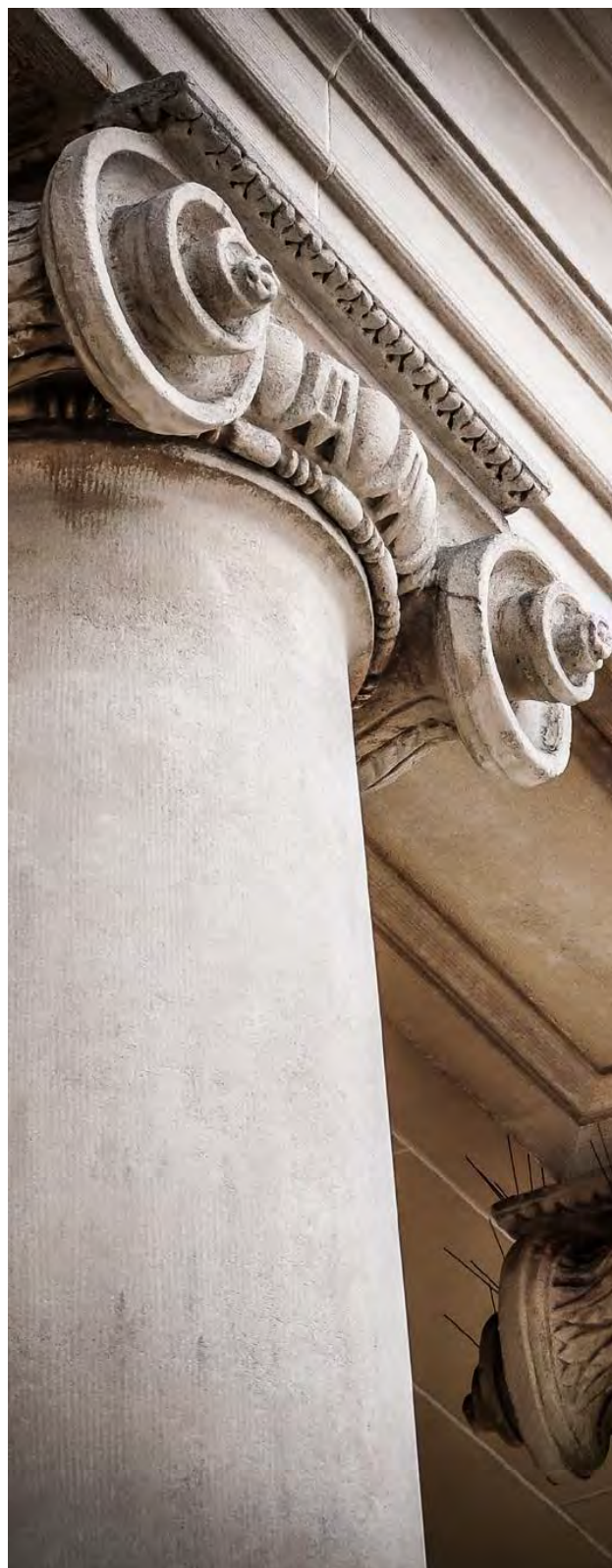
content of immunity agreements will remain restricted absent court orders, or unless companies involved agree to disclosure. CADE also said companies involved in immunity procedures must not disclose details to foreign authorities without its authorization.

- CADE introduced fixed deadlines for individuals accused of anticompetitive conduct to join settlement agreements reached by their companies. Individuals already listed as defendants when agreements are reached have six months to join; defendants that are named after agreements are reached have 60 days to join the deals.

WHISTLEBLOWER PROTECTIONS

As noted in our [2017 Mid-Year Cartel Enforcement Report](#), several jurisdictions have introduced legislation to protect individuals who report cartel violations from retaliation by their employers. This legislation is intended to remove or limit impediments to individual employees reporting cartel violations to the authorities. With leniency applications diminishing in recent years, enforcement authorities are seeking other tools for discovering and prosecuting cartel conduct, and whistleblower programs are a key part of that effort.

The US Senate passed whistleblower protection legislation for cartel cases in November. The legislation, which is 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 before it becomes a law and is signed by the President.



KEY ENFORCEMENT DEVELOPMENTS

COOPERATION AND COORDINATION

Cartel enforcement authorities continue to build ties and strengthen their enforcement coordination. Cooperation among enforcement authorities is common, particularly in global cartel investigations. Several new agreements were reached in the second half of 2017 that allow coordination among authorities.

- **Sweden, Finland, Norway, Denmark, Iceland, Greenland:** The competition authorities in the Nordic countries have entered into a cooperation agreement that makes it easier for them to exchange information and provide assistance to one another during dawn raids.
- **Canada, Colombia:** The competition authorities of Canada and Colombia signed a memorandum of understanding to communicate, cooperate, and share information on enforcement issues between the two agencies.

CASES ARISING FROM TRANSACTIONAL REVIEW

- The packaged seafood investigation and prosecution in the United States, which has resulted in multiple guilty pleas, prison terms for certain executives, and fines in the tens of millions of dollars, arose out of a review in the context of a merger control submission. Documents evidencing potential cartel activity were discovered in the context of preparing for the antitrust enforcement authorities' review of a potential transaction between two of the three largest packaged seafood companies in the world, resulting in a leniency application that started the investigation. Other recent investigations have also involved companies involved in significant mergers and acquisitions (M&A) transactions requiring antitrust review. Please see our [article](#) concerning best practices in merger reviews to protect against the risk of cartel investigations.
- Separately, the Chinese over-the-counter equity trading system—often referred to as the country's new third board—is now vetting companies issuing new equities for their compliance with competition law. In November, Officials at the exchange asked in a letter to a company seeking a listing to explain a questionable market-sharing agreement that could violate China's competition laws. If allowed in other cases, this could be an important precedent and a gateway into further cartel investigations. As with M&A transactions, this development highlights the need to review antitrust compliance in advance of any significant commercial transaction, and to have strong antitrust compliance policies in place.

KEY JUDICIAL DEVELOPMENTS

EXTRADITION

Extradition is an increasingly important tool for cartel enforcement authorities, allowing authorities to reach across borders to exercise criminal jurisdiction over individuals residing in other countries. The DOJ's Antitrust Division has made it a priority to develop this enforcement tool, and has successfully extradited a number of individuals in recent years.

The law in this area continues to develop. In November, Advocate-General (AG) Yves Bot rendered an opinion to the European Court of Justice concerning the extradition of an Italian national, Romano Pisciotti, to the United States on criminal antitrust charges. The Regional Court of Berlin referred the case in March 2016 for the Court of Justice to rule on whether the decision to extradite Mr. Pisciotti from Germany to the United States violated EU law. The court had indicated that the German government had likely breached EU laws. Mr. Pisciotti filed an action for damages against the German government, arguing that it had violated EU antidiscrimination laws. The German constitution does not allow for the extradition of its own citizens, which Mr. Pisciotti said discriminated against non-German nationals. The AG's opinion concludes that the extradition was justified because it prevented an individual from escaping punishment for illegal conduct. The AG said there was "no alternative measure" to extradition that would uphold the principle of freedom of movement but at the same time prevent an individual from avoiding punishment for alleged crimes committed. The AG said the restriction of such fundamental freedoms can only be justified if it is based on objective considerations and a less restrictive measure was not available. Mr. Pisciotti became the first EU citizen to be extradited to the United States on antitrust grounds, in 2014. He pleaded guilty and agreed to spend two years in a US federal prison, after being indicted for allegedly conspiring to rig bids, fix prices, and allocate sales for marine hoses sold in the United States. The United States also issued an arrest warrant for Uwe Bangert, a German national who was implicated in the same cartel, but he avoided extradition because of his nationality.



For further information on the Antitrust Division's history of extradition, and discussing extradition risks more generally, please see:

- [Antitrust Division Extraditions since 2010](#)
- [Extradition Lessons Learned from Mlex](#)

EXTRADITIONS BY THE ANTITRUST DIVISION

NO.	NAME / CITIZENSHIP	DATE / COUNTRY OF EXTRADITION	CHARGES ORIGINALLY FILED	INVESTIGATION	RESOLUTION	NOTES
1	Ian P. Norris / British citizen	March 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 only on Counts (2) through (4); July 27, 2010 trial conviction on one count of conspiring to obstruct justice, acquitted on remaining counts; sentenced to serve 18 months in prison and 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
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, pleaded 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 nonantitrust charges
3	Romano Piscioti / Italian citizen	April 3, 2014 / Germany	March 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	April 24, 2014 pleaded guilty to sole Sherman Act count; sentenced to serve 24 months in prison and pay a \$50,000 fine (including credit for nine months and 16 days held in custody during extradition proceedings in Germany)	Arrest warrant (under an Interpol Red Notice) based on sealed charges while traveling in Germany; described by DOJ as “the first successfully litigated extradition on an antitrust charge”
4	John Bennett / Canadian citizen	Nov. 14, 2014 / Canada	Aug. 31, 2009 charged with two counts: (1) kickback and fraud conspiracy and (2) major fraud against the United States	Federal Creosote Superfund Site Investigation	March 16, 2016, trial conviction on two counts for (1) committing major fraud against the United States and (2) conspiring to provide kickbacks and to commit major fraud; sentenced to 63 months in prison, two years of supervised release, a \$12,500 fine and \$3.8 million in restitution	Fought extradition for more than five years; trial conviction following three-week jury trial
5	Yuval Marshak / Israeli citizen	Oct. 14, 2016 / Bulgaria	Jan. 21, 2016 sealed charging five counts: (1)-(2) two counts of wire fraud, (3) mail fraud, (4) major fraud against the United States, and (5) international money laundering	Foreign Military Financing Program Investigation	Pending trial in 2017	Arrest warrant (under an Interpol Red Notice) during travel

DAWN RAIDS

- **United Kingdom:** In November, the English High Court handed down a judgment on a challenge by a pharmaceutical company of a Section 28 search warrant issued to the CMA in connection with an investigation into anticompetitive agreements between the objecting pharmaceutical company and another pharmaceutical company. This was the first time the Section 28 search warrant process had been challenged. The challenge was partially successful. This case is now on appeal to the Court of Appeal.
- **Brazil: Connections of Polypropylene and Polyvinyl Chloride.** In November, CADE, the Federal Prosecution Service, and the Federal Police conducted a dawn raid in connection with an alleged cartel in public bids for the acquisition of connections of polypropylene and polyvinyl chloride, used in basic sanitation public works. Potential bid rigging, between 2004 and 2015, in at least 100 public bids from 14 Brazilian states is being investigated. The companies allegedly submitted cover proposals and jointly defined the winning bidders.
- A Section 28 warrant is granted when there are reasonable grounds to suspect that documents required under Sections 26 and 27 search powers have not and will not be produced. The CMA argued that the Section 28 warrant was justified because of new information it had received, which it refused to disclose on public interest grounds. The court held that the CMA would have to disclose this additional information to the pharmaceutical company, but in redacted form.
- The CMA opened an investigation in April 2016 in relation to suspected anticompetitive agreements between two pharmaceutical companies in relation to the supply of two products. In October, the CMA carried out a dawn raid at the objecting companies' premises, under a Section 28 warrant. On the same day, the objecting company applied to partially discharge or vary the warrant.

EXTRATERRITORIALITY

- With many markets now global in scope, and the number of different antitrust enforcement agencies growing each year, the territorial scope and limitations of different antitrust laws is an increasingly important issue in cartel enforcement. Most countries apply their antitrust laws extraterritorially to any conduct that produces material effects in domestic markets. The nuances of that extraterritorial application vary from jurisdiction to jurisdiction, and continue to evolve through legislative and judicial developments, but the trend is clear. Two more countries recently affirmed that, consistent with this trend, their antitrust laws reach across borders to capture cartel conduct that produces effects on their domestic economies.
- **Australia:** In June, the Australian High Court found that the Australian Competition & Consumer Commission's (ACCC) interpretation of Australian competition law was correct, and that several airlines had violated Australian competition law when they entered into agreements on fuel, security, customs, and insurance surcharges on flights to Australia. The High Court agreed with the ACCC that such conduct was construed to take place in a "market in Australia" and thus violated Australian competition law, despite the fact that the air cargo contracts at issue were sold outside Australia.
- **Japan:** In December, the Japanese Supreme Court held for the first time that Japan's Anti-Monopoly Law applied to prohibit cartel agreements reached outside of Japan concerning prices charged for component products sold outside Japan, so long as the conduct affected competition in any market that "includes Japan." The case involved an appeal from a fine imposed on the Malaysian subsidiary of a South Korean company concerning picture tubes sold in Malaysia to affiliates or subcontractors of Japanese television and monitor manufacturers. The Supreme Court held that the Anti-Monopoly Law applied because the cartel affected "competition" in the Japanese market concerning the sales of televisions and monitors.

PER SE STANDARD VERSUS RULE OF REASON IN THE UNITED STATES

- In August, the United States District Court for the District of Utah issued a decision that potentially could have a significant impact on cartel enforcement in the United States. The case involved a criminal prosecution of an heir location company and one of its executives for allegedly conspiring with one of its competitors to allocate customers for heir location services. Customer allocation agreements, like other forms of cartel agreements such as price-fixing, are typically evaluated under the per se standard in the United States. Defendants accused of a per se violation are not entitled to defend claims against them by arguing that their agreements promoted competition or otherwise produced beneficial effects. A violation exists so long as an agreement concerning one of the per se illegal categories is proven.
- The general standard for other types of antitrust violations in the United States is called the Rule of Reason. Under that standard, the court is required to weigh the procompetitive benefits of challenged conduct against its anticompetitive effect. Rule of Reason violations are much more difficult to prove, and there are more significant defenses available to defendants in cases involving Rule of Reason violations.
- The DOJ typically only pursues criminal prosecutions of violations that would be considered per se illegal under US law. That is both for policy reasons—the per se offenses are considered the most harmful antitrust violations, and violations that have no redeeming virtues—and for practical reasons—it is difficult to prove a rule of reason violation to the criminal standard of “beyond a reasonable doubt.”
- The district court decision in the heir location services case, however, concluded that the customer allocation agreement in that case should be evaluated under the Rule of Reason, instead of the per se rule. The court applied the Rule of Reason standard because the court concluded that the agreement produced “efficiencies” by avoiding the need for the competing heir location services to invest redundant resources to find heirs for certain customers. The DOJ’s prosecution collapsed in the face of this decision.
- The DOJ has appealed the ruling, and it remains to be seen whether it will be upheld on appeal. It also remains to be seen whether other courts will adopt the rationale of this case, or whether it will be rejected in other contexts given the unique characteristics of the heir location services market that was at issue. If it does stand, and is applied in other market contexts, however, it could significantly affect cartel enforcement in the United States.

OUR PRACTICE

Morgan Lewis has acted as US, European, and global coordinating counsel for multinational corporations in virtually every major international cartel investigation of the last 20 years, guiding clients through every stage of the process. Our antitrust lawyers have coordinated multijurisdictional cartel investigations and civil litigation and defended some of the world's largest corporations in high-stakes treble damages class actions involving allegations of price-fixing and other cartel conduct. We also assist clients in establishing compliance programs to prevent or detect potential cartel conduct that may result in substantial criminal liability. We help design compliance programs that mitigate the sentencing consequences in the criminal justice system that are consistent with recent DOJ compliance standards. 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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