



## 2017 MID-YEAR GLOBAL CARTEL ENFORCEMENT REPORT

### **FINES SIGNIFICANTLY DOWN, SEVERAL ENFORCEMENT FIRSTS AND A STRONG PIPELINE OF NEW, MAINLY DOMESTIC CARTEL CASES AROUND THE WORLD**

#### **Global fines – significant decrease worldwide from 2016.**

Global cartel fines stood at **\$1.2 billion** – this is on track to be significantly lower than 2016 (full year 2016: **\$7.8 billion**). This trend appears to be cyclical and linked to the gradual winding down, particularly in the United States, of major international cartel investigations into, e.g., automotive parts.

The automotive parts investigation continues to be active with enforcement actions taken in 2017 in Australia, Brazil, Canada, the European Union (EU), South Korea, and the United States; and investigations are continuing in several jurisdictions. Similarly, in financial services, public and private enforcement actions against a range of international banks were taken in South Africa, the United Kingdom (UK), and the United States. We also expect to see further enforcement

in electronic components, financial services, pharmaceuticals, and shipping as well as in a number of domestic cartel investigations around the world, where there is a strong pipeline of cases launched or progressing in 2017.

2017 has so far seen a number of enforcement firsts around the world:

- the first leniency application granted in **India**;
- the **EU's** first whistleblower program;
- the **UK's** Financial Conduct Authority's (FCA) first antitrust dawn raid;
- the **UK** Competition and Market Authority's (CMA's) first advertising campaign for its whistleblower program;

- the highest penalty ever agreed in a CADE settlement in **Brazil**;
- the first structural remedy in a cartel case in **Brazil**;
- **Peru's** largest fine and first leniency agreement resulting in a penalty;
- the first decision under the new settlement regime in **Greece**;
- the first proceedings initiated before the Tribunal in **Hong Kong**;
- the first enforcement action by the New York State Department of Financial Services in the **United States** in relation to the FX investigations; and
- the first indictment in **Israel** for destruction of evidence within the context of antitrust offenses.

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# TRENDS

## EMERGING AND CONTINUING TRENDS IN CARTEL ENFORCEMENT

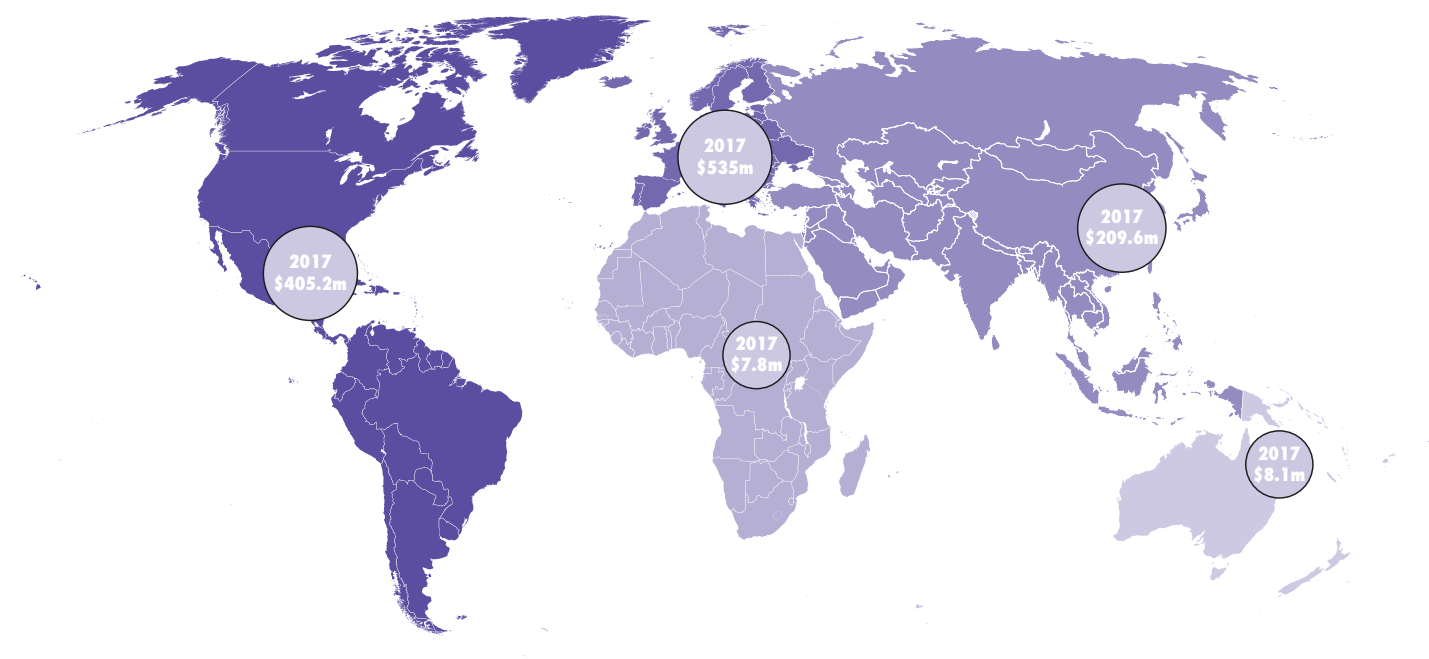
- **Decrease in leniency applications, increase in whistleblowing and dawn raids?** There has been speculation about a decrease in the number of leniency applications with some commentators pointing to the complexity of overlapping cartel enforcement regimes around the world as a possible cause. Although this may be coincidental, certain enforcement agencies appear to be giving great prominence to whistleblower programs as well as continuing the high level of dawn raids (although courts in Ireland and France have recently set limits on their use). For example, the European Commission launched a new whistleblower program and the CMA has also launched its first advertising campaign to highlight its reward program of up to **£1 million (\$1.3 million)** for whistleblowers (See p. 34).
- **A new wave of Mexican and Russian enforcement.** Mexico's Comision Federal de Competencia Economica (COFEC) (See p. 18) and Russia's Federal Antimonopoly Service (FAS) (See p. 22-23) continued to be among the most active cartel enforcers in the world with new case initiations or developments in mainly domestic cartels in a range of industries such as financial services, healthcare, and medical equipment.
- **Advantage plaintiffs in the United States under the FTAIA.** The recent decision of the US District Court for the Northern District of California, *In re Lithium Ion Batteries Antitrust Litigation*, constraining the "import commerce" and "domestic effects" exceptions to the FTAIA broadly to expand plaintiffs' ability to seek relief under the Sherman Act for purchases of products outside the United States (See p. 40).
- **...but India's Supreme Court assists defendants by limiting liability to relevant turnover.** India's Supreme Court rejected the attempt by the Competition Commission of India (CCI) to impose fines based on defendants' "total turnover" instead limiting it to "relevant turnover" to ensure that any penalty was related to the damage caused and the profits that accrued from the cartel activity. Interestingly, the Supreme Court cited a ruling of the Competition Appeal Court of South Africa in reaching its judgment (See p. 40).
- **RoboCartels and Artificial Intelligence (AI) – much ado about nothing or the rise of the machines?** Ever since legendary chess grandmaster Garry Kasparov lost at chess to IBM supercomputer Big Blue, there has been much angst among humans at the rise of AI. This was recently reinforced and deepened by the 2016 victory of Google DeepMind's AlphaGo program against 18-time world Go champion Lee Sedol. Several commentators have since speculated that AI will transform the world of cartels and cartel enforcement bolstered by initial cases involving human agreements implemented through computer algorithms. Will the future be of "robocartels" taking over global commerce or will there still be room for plucky but flawed humans to engage in cartel conduct in traditional smoke-filled (or at least vape-filled) rooms? Speaking at a conference hosted by Germany's Federal Cartel Office on March 16, Margrethe Vestager, the European Commissioner for Competition, said that enforcers need to be alert to automated systems that could be used to make price-fixing more effective. Vestager added that enforcers needed to deal with automated systems potentially leading to more effective cartels. Meanwhile, speaking at a conference hosted by Morgan, Lewis & Bockius LLP on May 23, Maureen Ohlhausen, Commissioner of the Federal Trade Commission (FTC), took the view that using algorithms in ways that do not offend traditional antitrust norms is unlikely to create novel liability scenarios and that she was "not yet afraid of the things that go beep in the night."
- **Brexit – will division lead to multiplication?** On March 29, the UK gave formal notice of its intention to withdraw from the EU in March 2019. This division of the UK from the rest of the EU is likely to result in a multiplication of procedures in terms of parallel civil investigations and leniency applications for international cartels that are currently handled under the European Commission's "one-stop shop." However, significant divergences in substantive law are unlikely to emerge for some time to come (if at all) due to the likely transitional arrangements in EU court precedents that are currently the subject of negotiations (See p. 36).



- **Leadership changes at the US Department of Justice (DOJ) underway:** Some significant leadership changes are pending in the DOJ's Antitrust Division. The Trump Administration nominated Makan Delrahim to head the division as assistant attorney general. Mr. Delrahim has experience in the government and private sectors. From 1998 to 2003, he served as a counsel, staff director, and chief counsel for the Senate Judiciary Committee. From 2003 to 2005, he was a deputy assistant attorney general in the Antitrust Division. Until January 2017, he worked in private practice. Since January 2017, Mr. Delrahim has been a deputy counsel to the president in the White House. On June 8, 2017, the Senate Judiciary Committee approved his nomination by a vote of 19-1. His nomination remains pending before the US Senate.
- With regard to cartel enforcement, in another significant development, Brent Snyder, deputy assistant attorney general for criminal enforcement, recently left the Antitrust Division after serving in the position since November 2013 and in the Antitrust Division since December 2003. His replacement has not yet been named. Mr. Snyder was recently selected for a three-year term beginning in September as the Chief Executive Officer for the Hong Kong Competition Commission. Once the assistant attorney general and deputy assistant attorney general for criminal enforcement positions are filled, the focus will turn to what, if any, changes may be made for cartel enforcement including for pending investigations, resource allocation, assignment and priorities, and on policy matters.

# MID-YEAR 2017 CARTEL FINES

(THROUGH JUNE 2017)

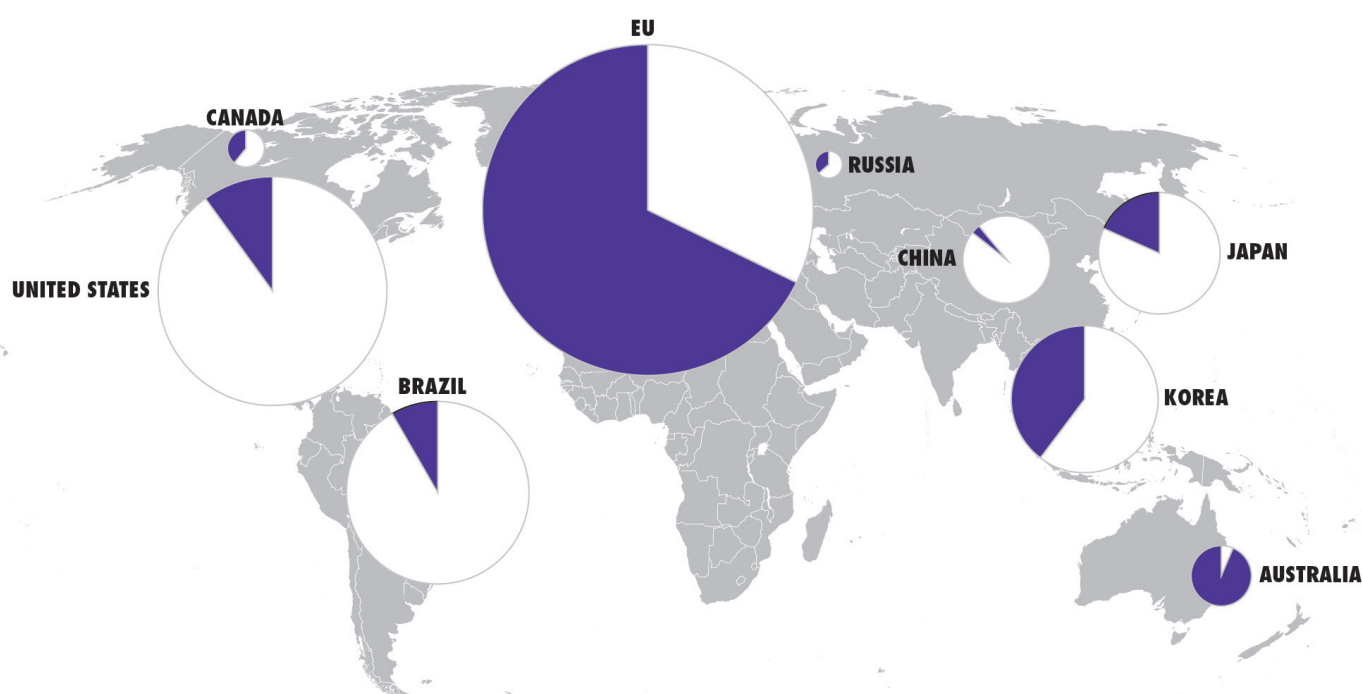


2017 TOTAL GLOBAL FINES: \$1.2b														
AMERICAS: \$405.2m				EUROPE: \$535m		ASIA: \$209.6m						AFRICA: \$7.8m	AUSTRALIA AND OCEANIA: \$8.1m	
UNITED STATES*	BRAZIL	CANADA	OTHER	EU	OTHER	CHINA	JAPAN	SOUTH KOREA	RUSSIA	INDIA	OTHER	SOUTH AFRICA	AUSTRALIA	NEW ZEALAND
*\$182.1m	\$107.3m	\$9.9m	\$105.9m	\$268m	\$267m	\$450,225	\$61.4m	\$105.2m	\$1.2m	\$31.9m	\$8.6m	\$7.8m	\$7m	\$1.04m

m = million

\*Includes individual and corporate fines announced by the Antitrust Division of the DOJ from January 1 - June 30. During this time, at least \$2.804 billion fines were entered into final judgment from settlements announced between 2015 - June 30, 2017."

## CARTEL FINES BY JURISDICTION 2017



	EU	UNITED STATES*	BRAZIL	SOUTH KOREA	JAPAN	CHINA	AUSTRALIA	CANADA	RUSSIA
2017	\$268m	*\$182.1m	\$107.3m	\$105.2m	\$61.4m	\$450,225	\$7m	\$9.9m	\$1.2m

m = million

\*Includes individual and corporate fines announced by the Antitrust Division of the DOJ from January 1 – June 30. During this time, at least \$2.804 billion fines were entered into final judgment from settlements announced between 2015 - June 30, 2017.

# NOTABLE CORPORATE FINES

The re-imposition by the European Commission of fines of **€776 million (\$833.9 million)** on 11 airlines on March 17 was the most significant fine of the year so far. Its original decision to impose fines in 2010 was annulled because the operative part of the decision was held by the EU's General Court to be inconsistent with its factual findings. It remains to be seen whether the European Commission's new decision will survive the renewed appeals brought by the defendant airlines. This process will also impact follow on actions in the UK, Germany, and the Netherlands in which direct and indirect purchasers from the airlines have claimed several billion dollars in damages.

## AMERICAS

- **United States: Financial Services.** On March 28, a financial services corporation was sentenced for its role in manipulating London Interbank Offered Rates (LIBOR) for the US dollar and several other currencies. The financial services corporation was ordered to pay a **\$150 million** fine. Judgment was entered on April 18.
- **Mexico: Financial Services.** On May 4, the COFECE fined four companies and 11 individuals a total of **1,100 million pesos (\$57.8 million)** for agreeing to limit the number of transfers between retirement fund administrators available to fund users.
- **Brazil: Construction.** On January 20, Brazil's Administrative Council for Economic Defense (CADE) sanctioned two companies for exchanging commercially sensitive information in an attempt to manipulate public bids in onshore engineering services, construction, and industrial assembly markets. One company will pay **125 million reais (\$39.1 million)** and the other has agreed to pay **47.8 million reais (\$15 million)**; the **125 million reais (\$39.1 million)** penalty marks the highest ever agreed in a CADE settlement.
- **Brazil: Fuel.** On April 7, CADE entered into an unprecedented cease-and-desist commitment with a fuel retailer, suspending its part in a price-fixing investigation. The company's four shareholders will pay a total of **149 million reais (\$48.15 million)** in administrative and damages settlement fines, as well as divest the company of gas station branches in key districts within the province of Brasilia. The structural remedy is a first in this type of settlement with the country's competition enforcer. The cease-and-desist commitment also requires the company to confess to the anticompetitive practice, stop the conduct, fully cooperate with the authorities, and implement a compliance program.
- **Mexico: Maritime Transport.** On June 19, the COFECE fined a number of competing maritime shipping companies for entering into agreements to allocate the market of maritime transport of construction, farming equipment, and automobiles from 2009 to 2012. The total fine imposed on the seven companies was **581.6 million pesos (\$31.9 million)**.
- **Peru: Paper Products.** On April 5, Peru's National Institute for Defence of Competition and Intellectual Property fined two toilet paper makers and 14 managers for price-fixing, marking the **largest fine** handed out by the Peruvian enforcer and its first leniency agreement that has resulted in a penalty. Two manufacturers had agreed on prices of toilet paper and other commercial conditions between 2005 and 2014 at secret meetings and by phone. One company came forward first and was immunized while the other company's fine was reduced by 50%. Even after the leniency reductions, the fine is the largest ever imposed by the authority. Both companies will have to establish a five-year compliance program, which includes hiring a compliance officer to help stop the companies from repeating such conduct. The companies were fined **\$16.05 million**.
- **United States: Seafood.** On May 8, a shelf-stable seafood company agreed to plead guilty and pay a **\$25 million** fine for its role to fix the prices of shelf-stable tuna fish sold in the United States. Judgment has not yet been entered.
- **Canada: Automotive Parts.** On April 25, an auto parts supplier was fined **C\$13.4 million (\$9.8 million)** for entering into agreements to rig bids with other companies for the sale of alternators and ignition coils between 2003 and 2006.
- **United States: Automotive Parts.** On March 7, an automotive parts manufacturer agreed to plead guilty and to pay a criminal fine for its role in a conspiracy to rig bids of side-door latches and latch mini-modules installed in cars sold in the United States and around the world. On June 12, judgment was entered, and the auto parts manufacturer was sentenced to a **\$6.16 million** fine.

- **Brazil: Construction.** On January 20, two companies signed a settlement agreement in an investigation of a bid-rigging cartel affecting a tender for construction of infrastructure at an electronuclear power plant in Angra dos Reis. Fines total **15.5 million reais. (\$3.09 million and \$1.9 million).**

## EUROPE

- **European Union: Air Cargo Services.** On March 17, the European Commission re-adopted its air cargo cartel decision, imposing broadly the same fines on airlines for fixing the price of fuel and security surcharges as it first did in 2010. The European Commission fined 11 airlines **€776 million (\$833.9 million)**. It stated that the airlines had agreed to fix prices of fuel and security surcharges covering flights into and from the European Economic Area (EEA) between 1999 and 2006. It also stated that the new decision addressed the mistake identified by the General Court in 2015 in annulling its previous decision by bringing the operative part of the decision in line with its factual findings. The Commission maintained its position that the airlines had participated in a cartel, and stated that the new decision remained identical in terms of the anticompetitive conduct it targeted. The Commission did not, however, issue a new statement of objections to the airlines, which could become an issue in potential appeals. For example, European Court of Justice Advocate-General Nils Wahl in December 2016 recommended in his opinion that the European Court of Justice (ECJ) should reject the European Commission's readopted concrete rebar decision, as a failure to issue new charges in that case prevented the defendants from requesting an oral hearing.
- **European Union: Automotive Parts.** On March 8, the European Commission fined six companies a total of **€155 million (\$166.5 million)** for taking part in one or more of four cartels concerning supplies of air conditioning and engine cooling components to car manufacturers in the EEA. All six suppliers acknowledged their involvement in the cartels and agreed to settle the case. The six car component suppliers addressed in this decision coordinated prices or markets, and exchanged sensitive information, for the supply of climate control components and engine cooling components to certain car manufacturers in the EEA.
- **Spain: Rail.** On March 6, the Spanish competition authority fined two rail companies a total of **€75.6 million (\$80 million)** for market-sharing arrangements that limited the extent to which other international companies could do business in Spain, thereby allowing them to capture 80 percent of the market for rail transport in the country.
- **European Union: Recycling.** On February 8, the European Commission fined three companies a total of **€68 million (\$72.3 million)** for fixing prices for purchasing scrap automotive batteries. A fourth company was not fined because it revealed the existence of the cartel to the Commission. From 2009 to 2012, the four recycling companies took part in a cartel to fix the purchase prices of scrap lead-acid automotive batteries in Belgium, France, Germany, and the Netherlands. Unlike in most cartels where companies conspire to increase their sales prices, the four recycling companies colluded to reduce the purchase price paid to scrap dealers and collectors for used car batteries. By coordinating to lower the prices they paid for scrap batteries, the four companies disrupted the normal functioning of the market and prevented competition on price. This behavior was intended to lower the value of used batteries sold for scrap, to the detriment of used battery sellers.
- **Italy: Healthcare.** On January 10, Italy's Antitrust Authority fined 11 medical supply companies **\$49.2 million** for rigging bids to supply three regional health authorities with the services and equipment required by outpatients who have difficulty breathing.
- **Portugal: Energy.** On May 5, the Portuguese Competition Authority imposed a fine of **€38.3 million (\$40.9 million)** on two energy companies for a market-sharing arrangement whereby one of them agreed not to compete in the commercialization of electricity in mainland Portugal for a period of two years.
- **Cyprus: Banks and Financial Services.** On January 27, the Cyprus Commission for the Protection of Competition (CCPC) found that an association of card-issuing banks engaged in price-fixing with respect to interchange fees and thereby infringed Article 3(1)(a) of the Cyprus Competition Act (Article 101(1)(a) TFEU). The CCPC also found that certain agreements between that association and third banks (that were not part of the association) constituted price-fixing in the area of interchange fees. The CCPC fined the association of card issuing banks **\$32.7 million**.



- Germany: Industrial Batteries.** On June 27, the Federal Cartel Office (FCO) imposed total fines of approximately **€28 million (\$ 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 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: Automotive Parts.** On June 21, the European Commission fined two companies a total of **€26.7 million (\$29.7 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 or daytime running lights. The cartel supplied these spare parts to manufacturers of passenger and commercial vehicles after the end of mass production of a car model. The Commission's investigation revealed that, for more than three years, the companies in question coordinated prices and other trading conditions for the supply of vehicle lighting systems across the EEA.
- Spain: Transport.** On March 15, the Spanish competition authority fined 34 transport companies and one association in the Balearic Islands a total of **€3.16 million (\$3.59 million)** for coordinating bids for tenders for school transport. It also fined eight companies a total of **€5.98 million (\$6.78 million)** for coordinating prices for excursions and passenger transfers on Mallorca.
- Spain: Construction.** On March 3, the Spanish Competition Authority fined 13 companies and a director of one of the companies a total of **€6.12 million (\$6.45 million)** for a 15-year market-sharing and price-fixing cartel in the supply of concrete in the Asturias region.
- European Union: Stationery Products.** On June 16, the European Commission readopted a cartel settlement decision against an envelope manufacturer and imposed a fine of **€4.7 million (\$5.2 million)** for its participation in a price-fixing cartel. The Commission's revised decision addresses the procedural error, identified by the General Court in annulling the previous decision, of a lack of sufficient reasoning concerning discretionary fine reductions and re-imposes a fine on the company. The new fine is identical to that imposed in the original decision.



- Norway: Publishing.** On March 22, the Norwegian Competition Authority fined four publishers a total of **NOK 32 million (\$3.7 million)** for entering into a collective boycott and exchanging competitively sensitive information.
- United Kingdom: Furniture.** On March 27, the CMA issued two decisions finding that three suppliers of furniture parts had infringed UK and EU competition law through bid-rigging and imposed fines of **£1.5 million (\$2 million)** and **£1.3 million (\$1.7 million)**, respectively.



- **United Kingdom: Model Agencies.** On March 27, the CMA fined five model agencies and their trade association **£1.5 million (\$2 million)** for colluding on prices. The CMA had found that the modeling agencies had taken part in a single, continuous infringement and/or concerted practice which had the object of preventing, distorting, or restricting competition in the supply of modelling services in the UK.
- **Belgium: Transport.** On May 9, Belgium's Competition Authority fined five railway infrastructure suppliers **€1.7 million (\$1.9 million)** for colluding on public contracts offered by the country's national railway network. The authority agreed a settlement with the five railway infrastructure suppliers. The Belgian authority found the companies had rigged tenders for the supply of railway infrastructure issued by a Belgian state-owned railway network operator after they had been shortlisted for its procurement process.
- **Greece: Consumer Goods.** On January 10, the Hellenic Competition Commission (HCC) imposed a total fine of **\$1.1 million** on eight entities for price-fixing with regard to the retail supply of cosmetics in Greece. This is the first decision of the HCC adopted under the new simplified settlement procedure.

## ASIA

- **Japan: Electronics.** On February 2, the Japan Fair Trade Commission (JFTC) issued a cease-and-desist order and surcharge payment orders in the amount of **6.3449 billion yen (\$56.4 million)** to suppliers of equipment for fire rescue digital radios for engaging in bid-rigging conduct.
- **India: Cement.** On January 19, the CCI levied a penalty of **Rs. 205.73 crores (\$31.9 million)** on seven cement companies for bid-rigging and cartelization of a tender floated by a central agency of one of the northern states in India.
- **South Korea: Energy.** On March 15, the Korea Fair Trade Commission ("KFTC") fined seven enterprises **4.987 billion (\$4.4 million)** for engaging in bid-rigging conduct relating to the supply of nondestructive testing services for nuclear plants between 2006 and 2012.
- **South Korea: Cargo Handling.** On March 20, the KFTC decided to impose remedies and a combined fine of **1.895 billion (\$1.69 million)** on two Korean companies manufacturing chain rollers for colluding to raise the price of standard chain rollers twice between 2010 and

2011. Chain rollers are an essential part used in cargo-handling equipment. The two companies held close to a 90% market share and their collusion resulted in price increases of 25-30%. The KFTC referred this case for criminal prosecution.

- **Kazakhstan: Pharmaceuticals.** On April 26, a state-owned healthcare company and another healthcare company were fined **\$4.1 million and \$368,000**, respectively, for cartel conduct between 2010 and 2015.
- **Indonesia: Automotive.** On February 20, Indonesia's Business Competition Supervisory Commission (KPPU) fined two manufacturers of scooters **47.5 billion rupiah (\$3.55 million)** for fixing prices of scooters.
- **Japan: Electronics.** On February 15, the JFTC issued cease-and-desist orders and surcharge payment orders in the amount of **319.21 million yen (\$2.8 million)** to suppliers of hybrid optical communication and transmission equipment to an electric power company for engaging in bid-rigging conduct.
- **Japan: Textile.** On March 10, the JFTC issued a cease-and-desist order and a surcharge payment order in the amount of **223 million yen (\$1.9 million)** to suppliers of vinylon and fire-resistant vinylon ordered by a technology and logistics company for engaging in bid-rigging conduct.

## AUSTRALIA AND OCEANIA

- **Australia: Automotive Parts.** On May 9, the Australian Federal Court imposed a fine of **\$9.5 million AUD (\$7 million)** on an auto parts supplier for rigging bids for the sale of wire harnesses with a competitor. The auto parts supplier was also required to pay 85% of the Australian Competition & Consumer Commission's (ACCC's) costs of the investigation. As of May 30, 2017, the ACCC has appealed the fine, arguing that it should be closer to **\$42-55 million AUD (\$32.2 million - \$42.2 million)** given the size of commerce at issue and the deterrent effect of fines.
- **New Zealand: Real Estate.** On April 10, the New Zealand High Court imposed a **\$1.45 million NZD (\$1.1 million)** fine on a real estate company and a **\$50,000 NZD (\$36,700)** fine on an individual director of the company for agreeing with other competitors to pass on the full cost of real estate listings through a certain real estate listing agency site.

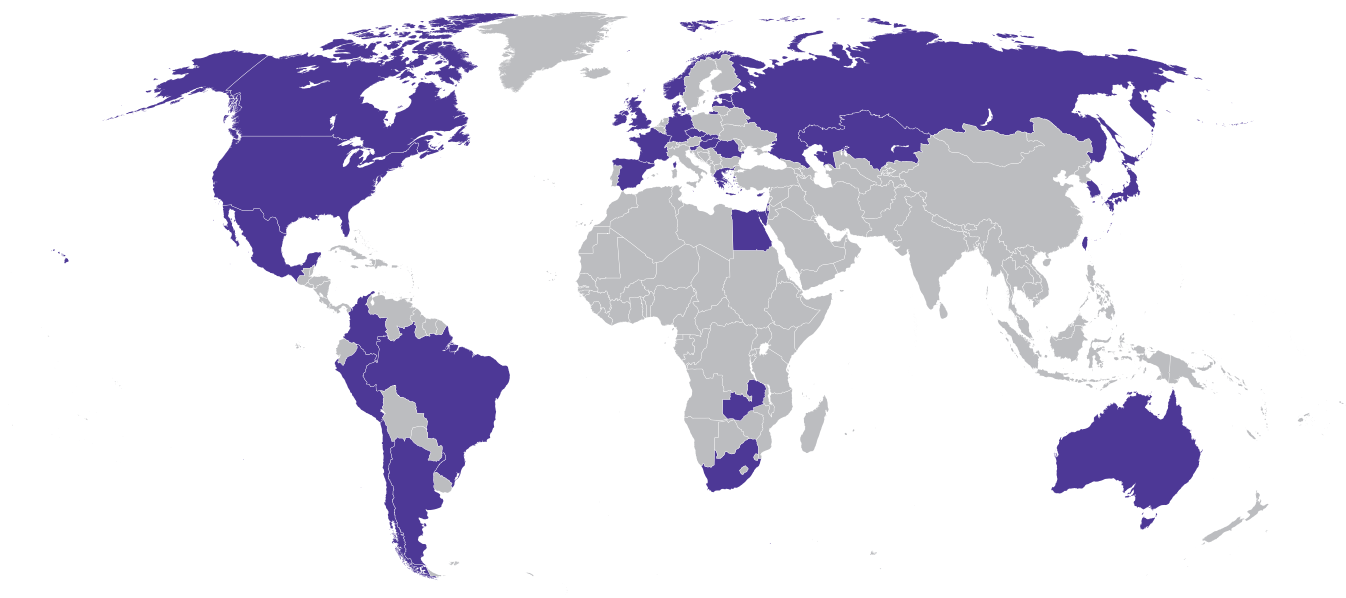
## AFRICA

- **South Africa: Banking.** On February 20, a bank settled an investigation by South Africa's Competition Authority into foreign exchange rate bid-rigging for **69 million rand (\$5.25 million)**.
- **South Africa: Media.** On May 30, an advertising sales company settled an investigation by South Africa's Competition Authority into collusion on prices and discounts offered to television advertisers for **\$1.7 million**.



# INDIVIDUAL CRIMINAL PENALTIES

## ● JURISDICTIONS WITH CRIMINAL PENALTIES FOR CARTEL ACTIVITIES



## THE FOLLOWING 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

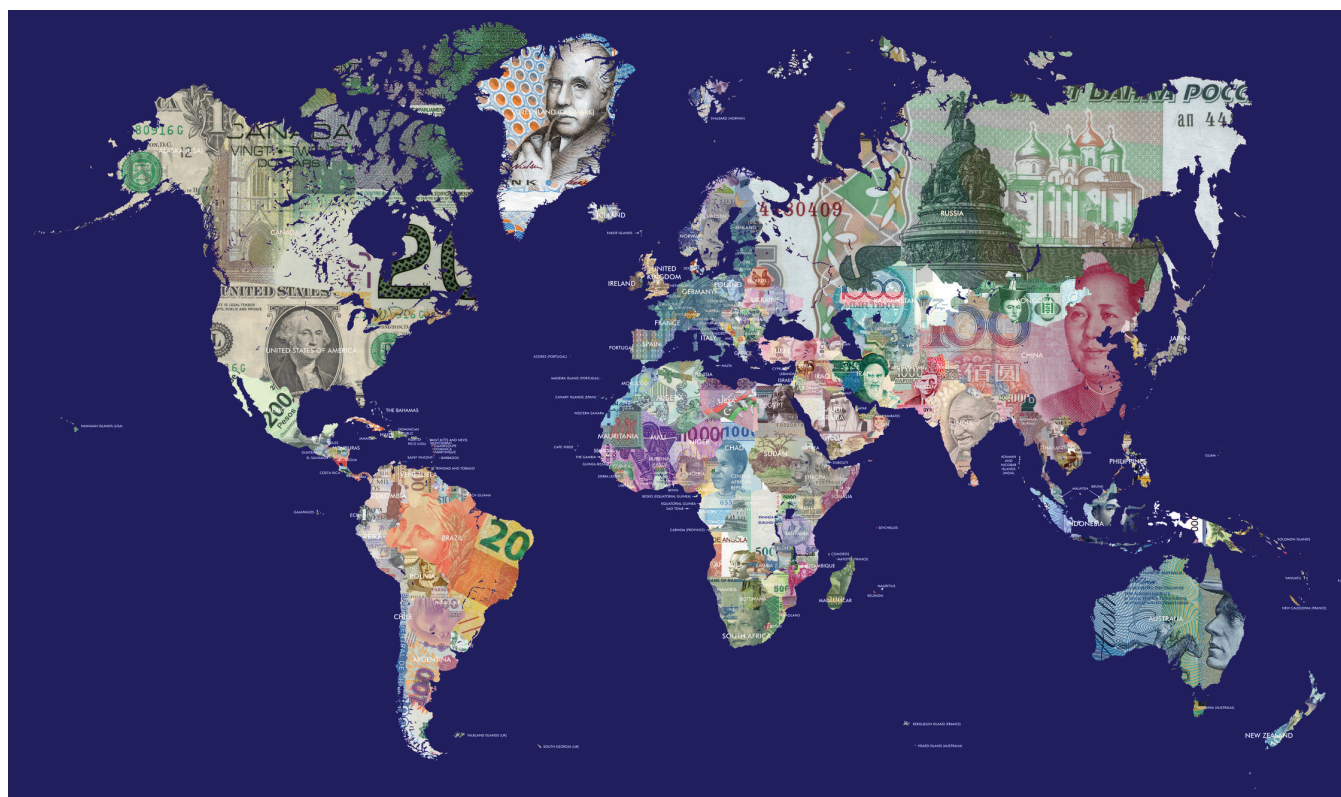
## SIGNIFICANT INDIVIDUAL PRISON AND OTHER SENTENCES FOR CARTEL OFFENSES (WORLDWIDE)

The most significant sentence so far in 2017 is the **30-month** sentence imposed on June 13 on a former Israel-based defense contractor for falsifying bid documents to make it appear that certain Foreign Military Financing (FMF) contracts had been competitively bid when they had not. The executive was extradited from Bulgaria in October 2016. The sentence is the second longest ever in a US extradition case (See p. 39).

### AMERICAS

- **United States: Fraud/Government Contracts.** On June 13, a former Israel-based defense executive 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 FMF 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 on January 21, and then extradited from Bulgaria in October. The conspirator pleaded guilty on March 13. Under the terms of the sentence, the conspirator was fined **\$7,500** and ordered to pay **\$41,170** in restitution. The conspirator was sentenced to a prison term of **30 months**.
- **United States: Obstruction of Justice.** On February 2, an executive of an automotive parts company pleaded guilty to a two-count indictment charging him with conspiring to obstruct justice and attempting to obstruct justice in Michigan. As part of the plea agreement, the conspirator agreed to serve **14 months** in prison and pay a **\$7,500** criminal fine. The individual was not prosecuted for the underlying antitrust violation that was the subject of the investigation but will serve prison time for destroying documents in connection with that investigation.
- **United States: Real Estate.** On April 26, 2017, three individuals were sentenced for their role in a conspiracy to rig bids at public real estate foreclosure auctions in Northern California. The individuals were sentenced to serve **8, 10, and 12 months** in prison, and to perform 579, 974, and 1,260 hours of community service in lieu of criminal fines.
- **United States: Real Estate.** On February 6, a Northern California man was convicted for his role in a conspiracy to rig bids at public real estate foreclosure auctions held in California. He was sentenced on June 7 to a prison term of **12 months and 1 day**.
- **United States: Electronics Components.** On February 8, the former executive of a Japanese-based electronics components corporation was charged in a conspiracy to suppress and eliminate competition for electrolytic capacitors by fixing prices and rigging bids. The conspirator agreed to plead guilty for roles in a conspiracy to fix prices and rig bids for electrolytic capacitors sold to customers in the United States and elsewhere and agreed to pay a criminal fine and serve a prison term of **12 months and 1 day**. The former executive agreed to cooperate with the Antitrust Division's ongoing investigation. On May 23, an order was entered sentencing the former executive to a prison term of 12 months and 1 day.
- **United States: Real Estate.** On April 10, an Alabama real estate investor was sentenced to serve **12 months and 1 day** in prison and ordered to pay **\$343,561** in restitution for his role in a bid-rigging conspiracy and a fraud scheme related to public real estate foreclosure auctions in Alabama. The conspirator pleaded guilty to bid-rigging and conspiracy to commit mail fraud in Alabama on June 14, 2016.
- **United States: Real Estate.** On March 15, a California real estate investor was sentenced for his role in a conspiracy to rig bids at public real estate foreclosure auctions in California to serve **12 months** of imprisonment and to pay a **\$74,899** criminal fine and **\$265,050** in restitution.
- **United States: Real Estate.** On September 29, 2016, 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. Between May 2008 and December 2010, the investor conspired to rig bids to obtain selected properties at public real estate foreclosure auctions in Alameda County. He was sentenced on January 11 to **10 months** in prison and ordered to pay a **\$20,000** criminal fine and **\$20,206** in restitution.

- United States: Construction.** On June 22, 2016, the former owners of a construction company pleaded guilty to conspiring to obstruct proceedings before a department or agency. The conspirator was sentenced on May 15 to a prison term of **seven months**, and ordered to pay **\$165,711** in restitution.
- United States: Real Estate.** On March 8, a California real estate investor was sentenced for his role in a conspiracy to rig bids at public real estate foreclosure auctions in California, and sentenced to **six months** of imprisonment.
- United States: Construction.** On November 15, 2016, an officer of a construction corporation pleaded guilty to a federal charge of conspiring to commit wire fraud. On April 25, the officer was sentenced to **six months** of imprisonment and ordered to pay a criminal fine of **\$35,000**. The officer's two companies were eligible to receive federal government contract set-asides for small, disadvantaged businesses. Judgment against the officer was entered on May 1.
- Mexico: Financial Services.** On May 4, the COFECE fined four companies and 11 individuals a total of **1,100 million pesos (\$57,863,425)** for agreeing to restrict the number of transfers between retirement fund administrators available to fund users.
- Puerto Rico: Transportation:** On January 26, following a week-long trial, a federal jury in Puerto Rico convicted four individuals for participating in bid-rigging and fraud conspiracies at an auction for public school bus transportation services. The four individuals were found guilty in the US District Court of the District of Puerto Rico, in San Juan, for conspiring to rig bids and allocate the market for public school bus transportation contracts in the municipality of Caguas from approximately August 2013 until May 2015. Each individual was also found guilty of conspiracy to commit mail fraud and four counts of mail fraud for defrauding the municipality of Caguas by fraudulently obtaining contracts for school bus transportation services.





## EUROPE

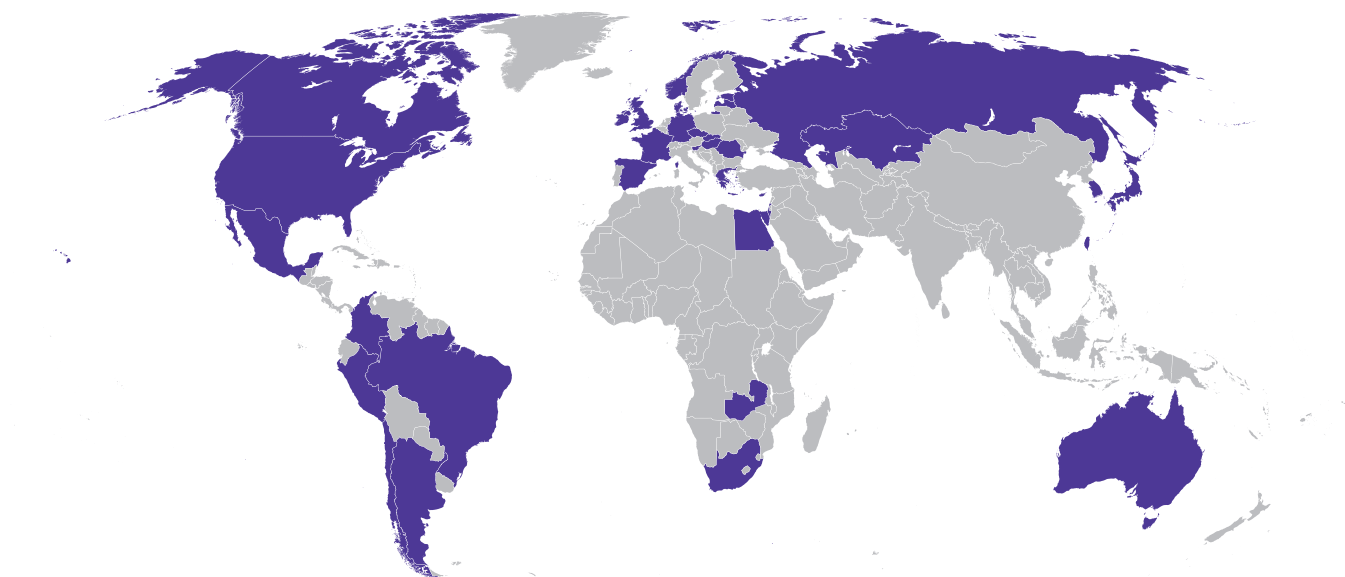
- **Ireland: Flooring.** On May 31, a company director of a flooring company was sentenced for the director's role in a conspiracy to rig bids in the procurement of flooring contracts for major international companies between 2012 and 2013, and for impeding a criminal prosecution. A **three-month** suspended sentence was imposed and the director was ordered to pay a fine of **€7,500 (\$8,427)**. In addition, the director was disqualified from acting as a company director for a period of five years. The director conspired with a competitor to set prices for certain tenders between 2011 and 2013 with intent to fix prices and share the market by over-bidding on alternating tenders.

## AUSTRALIA & OCEANIA

- **New Zealand: Real Estate.** On April 10, the New Zealand High Court ordered the director of a real estate company to pay a **\$50,000 NZD (\$34,824)** fine for his role in orchestrating an agreement between the real estate company and two additional real estate brokerage companies to pass on the full costs of utilizing a particular real estate listing service.



## ● JURISDICTIONS WITH CARTEL IMMUNITY/LENIENCY PROGRAMS



### COUNTRIES WITH 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

# NEW CASES AND DEVELOPMENTS

## AMERICAS

- Brazil: High-Tech.** On January 11, investigators at Brazil's CADE referred a case to its competition tribunal, recommending that it impose fines on six companies for forming an international optical disk drive cartel. CADE's internal tribunal will now hear opinions from the enforcer's attorney general and from public prosecutors before determining whether to fine the optical disk drive manufacturers. According to the authority's opinion published on December 30, 2016, the companies regularly exchanged sensitive information from 2003 to 2008 in order to rig bids and manipulate market supply to maintain high demand for the ODDs.
- Brazil: Forensic Hair Testing.** On January 20, a Brazilian court referred a cartel claim to Brazil's CADE that calls for two forensic hair testing laboratories to pay damages to a US-based competitor for causing significant profit loss by allegedly colluding to block its market access. The court found that starting in mid-2007, the two forensic hair testing laboratories had maintained several exclusivity agreements with collection sites, which blocked competitors' access to the Brazilian forensic hair testing market. The companies could pay more than **US \$1 million** in damages.
- Brazil: Building Maintenance Services.** On January 24, Brazil's CADE asked its decision-making tribunal to penalize a cartel that allegedly rigged bids in the supply of building maintenance services. The CADE has charged seven companies with rigging bids for both public and private building maintenance contracts, and has recommended fines against all of the companies involved.
- Colombia: Manufacturing Materials.** On May 16, Colombia's Superintendence of Industry and Commerce issued price-fixing and customer allocation charges against three concrete pipe manufacturers, explaining that the companies' conduct rigged the concrete sewage pipes market. The enforcer also filed charges against seven current and former executives of the companies. The enforcer began its investigation following a leniency application from one of the three manufacturers, which provided emails, WhatsApp messages, and testimony showing the existence of the alleged cartel; the enforcer did not disclose which company filed the application. The enforcer can impose fines of up to **\$25 million** on each company and **\$500,000** on each individual.
- Mexico: Industrial Oxygen Gas.** On February 2, the COFECE notified several entities that they were subject to a Statement of Probable Responsibility and that it had initiated the trial-like portion of the investigation into potential monopolistic practices (including bid-rigging and price-fixing) in the market for the production, distribution, and sale of industrial oxygen gas.
- Mexico: Medical Latex Products.** On February 2, the COFECE announced that it had informed several entities of a Statement of Probable Responsibility as a result of an investigation into possible monopolistic practices (including bid-rigging and price-fixing) in the market for the manufacture, distribution, and sale of medical latex products.
- Mexico: Healthcare.** On February 15, the COFECE announced that it had entered a criminal complaint with the Office of the Attorney General against unnamed individuals who allegedly colluded to coordinate the sale of certain goods sold in the health-care sector between 2009 and 2015. The Office of the Federal Public Prosecutor will continue the investigation and prosecute the case.
- Mexico: Food.** On March 1, the COFECE announced an investigation into potential monopolistic practices (including bid-rigging and price-fixing) for the production, distribution, and sale of corn tortillas in the Mexican State of San Luis Potosi.
- Mexico: Healthcare.** On March 21, the COFECE announced an investigation into possible bid rigging and price-fixing in the market for toothbrushes sold to healthcare organizations.
- Mexico: Chemicals.** On March 28, the COFECE announced to several unnamed companies that it was investigating them for alleged participation in cartel and monopolistic activity in the production, distribution, and sale of nitrogen and argon gases.
- Mexico: Food.** On April 7, the COFECE announced that it had notified several companies that it had opened a Statement of Probable Responsibility (a trial-like phase of the investigation conducted by COFECE's Technical Secretariat) for suspected monopolistic practices, including price-fixing, in the manufacture and distribution of tortillas in the Mexican State of Jalisco.
- Mexico: Financial Services.** On April 19, the COFECE announced that it was investigating the market for intermediation of Mexican government debt securities for potential price-fixing and monopolistic practices.

- **Mexico: Media Monitoring Services.** On May 25, the COFECE notified several companies that it had initiated the trial-like portion of an investigation into monopolistic practices in media monitoring services (e.g., news analysis, reporting, and dissemination services). The Investigative Authority released a Statement of Probable Responsibility that states that there is sufficient evidence to presume that the involved economic agents are likely to have participated in contracts, agreements, arrangements, or combinations between competing economic agents, with the purpose or effect to fix prices, restrict supply, allocate markets, and rig bids.
- **United States: Shipping.** On March 15, investigators with the DOJ Antitrust Division raided a Box Club meeting of shipping executives in San Francisco. Executives from a number of shipping companies were served with subpoenas in connection with an investigation into alleged price-fixing in the global container shipping industry.
- **United States: Real Estate.** On April 12, a former housing repair contractor pleaded guilty to one count of wire fraud in the US District Court in Minneapolis, admitting to participating in a scheme to defraud financial institutions in connection with foreclosed properties the financial institutions owned in the Minneapolis area. Sentencing will be set at a later date. This is the first case involving fraud and kickbacks relating to repair contracts for properties in the Minneapolis area owned by financial institutions. The maximum penalty for wire fraud is 20 years of imprisonment and a fine of \$1 million. The maximum fine may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine.
- **United States: Pharmaceuticals.** On May 2, search warrants were executed at the Michigan offices of a pharmaceutical company associated with an ongoing investigation by the DOJ Antitrust Division related to drug pricing in the pharmaceutical industry.
- **United States: Shipping.** On June 27, the US District Court in Baltimore indicted three shipping executives who were 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 the Port of Baltimore. So far in the investigation, 11 executives and four companies have been charged.

## EUROPE

- **Belgium: Chemicals.** On May 5, the Belgian Competition Authority (BCA) confirmed that it had conducted a dawn raid at the premises of an undertaking active in the distribution and sale of water softeners. The BCA has information about possible infringements of Article IV.1 of the Code of Economic Law and/or Article 101 TFEU.
- **Belgium: Kitchen Accessories.** On May 8, the BCA confirmed that it had conducted a dawn raid at the premises of an undertaking active in the distribution and sale of cooking utensils and wine accessories. The BCA has information about possible infringements of the Articles IV.1 and/or 2 of the Code of Economic Law and/or Articles 101 and/or 102 TFEU.
- **Belgium: Tobacco.** On May 29, the Investigation and Prosecution Service of the BCA confirmed that the BCA conducted dawn raids at the premises of manufacturers and wholesalers of tobacco products. The BCA has information about possible infringements of Article IV.1 of the Code of Economic Law and/or Article 101 TFEU.
- **Cyprus: Construction.** On January 17, the Cyprus Commission for the Protection of Competition (CCPC) issued a Statement of Objections against an association of undertakings active in the construction industry alleging that that association may have infringed Article 3(1)(b) of the Cyprus Competition Act and Article 101(1)(b) TFEU by inviting its members not to bid for a specific public works project in Cyprus.
- **European Union: Packaging.** On March 7, the European Commission conducted dawn raids on several unnamed paper companies across Europe, in the second series of raids in its investigation of a suspected cartel in the kraft paper industry. The European Commission stated that it was concerned that several kraft paper and industrial paper sack companies may have formed a cartel by fixing prices and allocating customers.
- **European Union: Telecommunications.** On April 25, the European Commission raided four mobile network operators in Sweden, following suspicions they may have prevented entry into the consumer-facing segment of Sweden's telecoms market. The raided companies indicated that the EU enforcer is investigating a possible abuse of a collective dominant position.

- **European Union: Chemicals.** In May, the European Commission reportedly conducted dawn raids at the premises of producers of ethylene, a chemical product used in the production of polyethylene, packaging and household plastics. The dawn raids are believed to have taken place in a number of EU countries (including Germany). The Commission also reportedly sent requests for information seeking to establish whether ethylene producers illegally exchanged competitively sensitive information in breach of Article 101 TFEU.
- **European Union: Insurance.** On July 4, the European Commission conducted dawn raids at the premises of companies active in motor insurance in the Republic of Ireland. The European Commission stated that it was concerned that the companies involved may have engaged in anticompetitive practices in breach of EU antitrust rules that prohibit cartels and restrictive business practices and/or abuse of a dominant market position (Articles 101 and 102 TFEU). The Commission officials were accompanied by their counterparts from the Irish Competition and Consumer Protection Commission.
- **France: Groceries.** On February 2, the French Competition Agency confirmed that it was dawn-raiding retailers in the island of Réunion for conduct concerning the supply and distribution of groceries.
- **France: Animal Remains.** On May 31, the French Competition Authority confirmed that its investigation services have raided the premises of companies suspected of having engaged in possible anticompetitive practices in the processing of animal remains.
- **Ireland: Live Events.** On January 26, Ireland's Competition and Consumer Protection Commission launched an investigation into suspected breaches of competition law regarding the provision of tickets and the operation of ticketing services for live events. The enforcer stopped short of giving information regarding the specific activity under investigation. Additionally, the enforcer did not disclose the names of the entities involved.
- **Ireland: Transport.** On February 6, Ireland's Competition and Consumer Protection Commission disclosed proceedings against entities suspected of bid rigging and potential cartel behavior in the procurement of publicly funded transport services. The case was opened in July 2016, when the enforcer conducted 20 dawn raids in Tipperary, Waterford, Limerick, and Kilkenny. The enforcer did not disclose the names of the entities involved.
- **Italy: Professional Services (Notary).** On January 11, the Italian Competition Authority (AGCM) opened an investigation into the Notarial Council of Milan after finding it had allegedly colluded to restrict the scope of notaries' work on the grounds of maintaining service quality. The enforcer raided the council's office after receiving documents and at least one audio recording from a whistleblower sent to the authority in July 2014.





The regional professional notary association allegedly tried to place limits on its members' workload and profits as a way to ensure a high quality of service. The council asked the notaries to report commercially sensitive information including fees, and it allegedly punished members whose average work output surpassed those artificial limits, according to a whistleblower.

- **Italy: Emergency Services.** On March 17, the AGCM dawn-raided a number of companies active in the provision of helicopter emergency medical and fire services to investigate whether these companies have been engaging in bid-rigging practices.
- **Italy: Real Estate Management Services.** On March 23, the Italian Antitrust Authority dawn-raided a number of companies to assess whether they engaged in bid-rigging practices with regard to the provision of real estate management services to public authorities and universities.
- **Italy: Packaging.** On March 30, the AGCM opened an investigation into 12 companies, their subsidiaries and a trade association following suspicions that they had rigged the market for corrugated cardboard and packaging. The AGCM said that the companies and trade association had made two pricing agreements and used an informal price list to fix prices. The trade association allegedly monitored the agreements by aggregating data on the amount of cardboard produced on a monthly and six-monthly basis. The Italian enforcer said the association also facilitated an illegal information exchange. The AGCM said that there is evidence that the companies have agreed on discounts since 2012. They also appear to have limited the type of cardboard supplied to some box manufacturers, denying them access to new products.
- **Poland: Agriculture.** On January 16, the Office of Competition and Consumer Protection (OCCP) announced the initiation of an investigation with respect to possible anticompetitive agreements between the distributors of industrial cattle feed. This investigation follows the OCCP's inquiry of the animal feed market during 2015 and 2016.
- **Poland: Cryptographic Equipment.** On April 19, the OCCP announced an investigation with respect to an anticompetitive agreement among three suppliers of cryptographic equipment in 2015 through rigging the bids of a public tender by the Polish Police.
- **Portugal: Transport.** On January 17, the Portuguese Competition Authority confirmed that it had carried out dawn raids in the sector of school transport in the context of an investigation for anticompetitive practices. The searches were motivated by indications of pricing practices in driving licenses, which are grounds for suspected violations of the Competition Law.
- **Portugal: River Cruises.** On April 18, Portugal's competition authority opened an investigation into the river cruise industry in Porto and Lisbon. The names of the companies raided were not revealed. The competition authority said that since January, it has raided 15 companies as part of its antitrust investigations, but did not specify the specific sectors or the number of probes it has opened.
- **Portugal: Retail.** On May 31, the Portuguese Competition Authority carried out dawn raids in the large retail sector. Both suppliers and distributors are included in these investigations for potential anticompetitive practices that harm final consumers. The authority has carried out dawn raids in this sector since the beginning of 2017. So far, 21 locations of 20 companies have been investigated.
- **Spain: Batteries.** On January 30, the Spanish Competition Authority initiated a disciplinary proceeding against several companies for potential restrictive practices in the market for used batteries.
- **Spain: Cargo Loading.** On February 16, the Spanish Competition Authority launched an investigation into the cargo-loading sector in the northwestern port of Vigo. This investigation into companies and labor unions concerns an agreement signed in 1996 that governs the supply of labor in the cargo-loading sector in the city, which allegedly goes beyond the coordination permitted by law.
- **Spain: Tobacco.** On February 28, and March 1 and 2, the Spanish Competition Authority carried out dawn raids at the headquarters of several companies involved in the manufacture, distribution, and marketing of cigarettes to investigate possible cartel conduct. After reviewing the data collected on the dawn raid, the authority decided to open a formal investigation against five companies on June 20, 2017.
- **Spain: Pharmaceuticals.** On March 21, the Spanish Competition Authority initiated an investigation into certain pharmaceutical companies for possible anticompetitive behavior. The behavior would consist of the establishment of distribution systems through which they would have implemented or would seek to implement a double price system, in addition to a collusive agreement between the laboratories in the design and establishment of these distribution systems.

- **Spain: Publishing.** On March 28, the Spanish Competition Authority opened an investigation into possible anticompetitive practices in the market for the publishing and commercialization of non-university textbooks, consisting of possible agreements or concerted practices between different entities, to limit or coordinate trade policies that can promote changes of reference publishers for textbooks of different non-university educational centers in Spain. On March 28, 29 and 30, the authority conducted dawn raids at the headquarters of several entities operating in this market.
- **Spain: Transport.** On May 22, the Spanish Competition Authority opened an investigation into a possible cartel in the market for the manufacture, installation, distribution, maintenance, and upgrade of systems for rail electrification and electromechanical equipment for railways. The investigation followed dawn raids, carried out between May 17 and May 19.
- **Spain: Construction.** On June 6, the Spanish Competition Authority opened an investigation into 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.
- **Sweden: Insurance Services.** On April 5, the Swedish Competition Authority (SCA) announced that it is investigating possible collusion by several companies in the insurance industry, particularly in the procurement process.
- **Sweden: Insurance Services.** On June 14, the SCA announced it had raided several companies in its investigation of anticompetitive practices relating to contracts in the insurance industry.
- **United Kingdom: Construction.** On February 28, the CMA opened an investigation into suspected anticompetitive behavior in the provision of products and/or services to the construction industry in the United Kingdom.
- **United Kingdom:** In early April, the Financial Conduct Authority (FCA), which is the UK's financial watchdog, launched a series of coordinated dawn raids in the aviation broking sector. The five aviation brokerage companies under probe are accused of sharing competitively sensitive information within the aviation (re)insurance sector. The investigation is the first antitrust investigation by the FCA since it inherited competition powers in 2015. The FCA has an advantage over other antitrust regulators as it has both competition and financial regulatory powers.

## MIDDLE EAST

- **Israel: Computer Equipment.** On February 26, the Israeli Antitrust Authority filed an indictment against five companies and 11 officers of those companies in connection with alleged bid rigging for projects for the Israel Aerospace Industries and other companies.

## ASIA

- **China: Chemicals:** On May 24, the National Development and Reform Commission (NDRC), the Chinese authority in charge of price-related antitrust violations, conducted at least three rounds of dawn raids in an investigation. One of the raids took place in April of this year, targeted chemicals companies in various provinces such as Sichuan and a few autonomous regions. The regulator is investigating possible price-fixing agreements between competitors.
- **Hong Kong: Information Technology.** On March 23, the Competition Commission commenced proceedings before the tribunal for the first time since the inception of the enforcement of competition law in Hong Kong. The proceedings were against five IT companies that allegedly engaged in bid-rigging. It concerned a tender relating to the supply and installation of a new IT server system. Alleging that they violated the First Conduct Rule, the Commission is seeking a pecuniary penalty and declaration.
- **Japan: Finance.** On March 15, the JFTC issued a warning to a company dealing in European government bonds that the company was likely in violation of a prohibition of section 3 (unfair restraint of trade) of the Antimonopoly Act. The company had exchanged pricing and customer information relating to European government bonds with another company. It also designated a successful bidder for certain transactions in European government bonds.
- **Russia: Cleaning Services.** On January 16, the FAS announced the initiation of proceedings against three participants in a tender for provision of daily cleaning services for a state university in Orenburg. The participants are suspected of price-fixing in order to eliminate bona fide participants from the tender.
- **Russia: Construction and Maintenance.** On January 27, the FAS initiated proceedings against three service providers suspected of price collusion in 14 state tenders for repair of public roads in Penza Region.



- **Russia: Medical Equipment.** On February 1, FAS held three service providers liable for bid rigging in state tenders for the maintenance of medical equipment in 23 local hospitals in Samara in May 2016. Total service cost exceeded **4 billion Russian Rubles (\$67.7 million)**.
- **Russia: Pharmaceuticals.** On February 1, the FAS completed an investigation of two medicine suppliers suspected of bid rigging 107 state tenders for supply of antibiotics, insulin, and cancer drugs of a total value of more than **414 million rubles (\$6.84 million)** to federal and local hospitals and passed the materials to the federal prosecution authorities, which are to decide on a criminal investigation under Article 178 of the Criminal Code of Russia.
- **Russia: Information Technology.** On February 6, the FAS initiated proceedings against three suppliers of personal computers and software developers suspected of bid rigging of state tenders held by the Federal Tax Service, the Federal Customs Service and Pension Fund of Russia. The total value of the state tenders was more than **2 billion rubles (\$33.6 million)**.
- **Russia: Medical Equipment.** On February 7, the FAS completed an investigation of two entities suspected of bid rigging in 26 state tenders for the supply of various medical devices used in X-ray surgery, and cardiology of the total value of more than **210 million rubles (\$3.47 million)** to federal and local hospitals. FAS will set administrative fines on the entities and then pass the case materials to the prosecution authorities, which will decide on a criminal investigation under Article 178 of the Criminal Code of Russia.
- **Russia: Medical Equipment.** On February 14, the FAS initiated proceedings against three Saint Petersburg based entities suspected of bid rigging in 87 state tenders for supply of medicines and medical devices of a total value of **66.6 million rubles (\$1.12 million)** to local hospitals in Karelia in 2014-2016.
- **Russia: Urban Development.** On March 1, the FAS initiated proceedings against four entities suspected of bid rigging in state tenders for urban development from March 2014 to August 2016. The FAS discovered 28 violations in the state tenders, which cost more than **2 billion rubles (\$33.8 million)**.
- **Russia: Medical Equipment.** On March 6, the FAS concluded that four entities shared information and coordinated their activities in 18 state tenders for supply of medical devices of a total value of more than **37 million rubles (\$622,836)** to state and municipal hospitals. The FAS now intends to bring an administrative action and impose fines on the entities of up to 50% of the tenders' price.
- **Russia: Healthcare.** On March 13, the FAS initiated proceedings against six healthcare service providers suspected of price collusion. Documents collected by the FAS during unscheduled on-site inspections in the service providers' premises served as evidence of the price agreement.
- **Russia: Youth Educational Events.** On March 16, the FAS initiated proceedings against two entities and an individual entrepreneur suspected of bid rigging of state tenders for organization of all-Russia educational events for children and young people and the supply of souvenirs.
- **Russia: Pharmaceuticals.** On March 22, the FAS initiated proceedings against eight undisclosed entities suspected of bid rigging in 131 state tenders for supply of medical devices of a total value of more than **1 billion rubles (\$16.9 million)** to local hospitals in Tyumen from 2013 to 2015. The FAS will pass case materials to the local prosecution authorities for initiation of a criminal investigation.
- **Russia: Maintenance and Construction.** On March 24, the FAS concluded that two entities coordinated their activities in state tenders for the repair of premises of state and municipal enterprises with a total value of more than **140 million rubles (\$2.35 million)**. The FAS will now bring an administrative action against these entities and impose fines on them of up to 50% of the tender value.

## AFRICA

- **Egypt: Medical Supplies.** On March 7, Egypt's Competition Authority referred seven medical equipment makers to the prosecutor's office for allegedly rigging bids after having conducted several dawn raids on the companies' offices.

# INDUSTRIES UNDER SCRUTINY

## ANALYSIS

Several long-running investigations continued to result in significant enforcement attention and outcomes in the first half of 2017. We detail developments in key investigations in this section of the report.

- 1. GENERIC DRUGS AND PHARMACEUTICALS**
- 2. AUTOMOTIVE PARTS**
- 3. FINANCIAL SERVICES UPDATE**
- 4. PACKAGED SEAFOOD**
- 5. REAL ESTATE**

## GENERIC DRUGS & PHARMACEUTICALS

### ANALYSIS

- The scope of investigations and litigations in the United States concerning potential collusion among generic pharmaceutical manufacturers continued to expand in early 2017. In addition, the United Kingdom is challenging an agreement between pharmaceutical manufacturers that is alleged to be anticompetitive and there are cases of first impression currently in the EU Courts on “pay for delay.” Given these recent developments, we anticipate that the pharmaceutical industry will continue to be a considerable area of focus in 2017.

### EUROPEAN UNION

- There are currently two “pay for delay” cases under appeal in front of the EU Courts. The first case concerns a European Commission’s decision of 2013, whereby the Commission found that a Danish originator and four generics competitors infringed EU competition law by delaying the entry of generic drugs into the market. The Commission effectively treated these arrangements as a form of horizontal marketing sharing. The decision imposed a fine of **€93.8 million (\$106.87 million)** and **€52.2 million (\$59.47 million)** on the originator and the generic manufacturers, respectively. In December 2016, in its first judgment on “pay for delay” agreements, the General Court upheld the Commission’s findings and the fines imposed on the parties. The court ruled that the commission was correct in finding that (i) irrespective of any patent dispute, generics competitors agreed with the originator to stay out of the market in return for value transfers and other inducements; and (ii) the agreements constituted a “restriction of competition by object.” The General Court’s judgment is under appeal before the ECJ. The second case concerns a Commission decision of 2014, whereby the EU regulator imposed fines totaling €427.7 million (\$487.28 million) on a French originator and five generic manufacturers for implementing a strategy to delay the entry of cheaper generic medicines in breach of EU antitrust rules. The Commission’s decision is being appealed in front of the General Court. The oral part of the General Court’s proceedings took place in June. Follow-on damages litigation is also pending in the UK in relation to this case.

### UNITED STATES

- **United States Criminal Charges:** On December 14, 2016, separate two-count felony charges were unsealed in the Eastern District of Pennsylvania against the former chief executive officer and the former president of a generic pharmaceutical company. The DOJ alleges that these individuals conspired to fix prices, rig bids, and allocate customers for doxycycline hyclate, an antibiotic; and glyburide, a diabetes medication. The charges refer to other unnamed co-conspirators as well. The two executives are currently scheduled to be sentenced in September.



- **United States Federal and State Investigations:** A federal grand jury that is believed to be located in the Eastern District of Pennsylvania, as well as various state attorneys general, have issued subpoenas to a growing list of companies requesting pricing information and any information regarding communications among competitors about various generic drugs. So far, at least 12 companies have disclosed receiving subpoenas involving more than a dozen medications as part of the ongoing investigation into pricing. Recent press reports suggest that in May, federal prosecutors searched the offices of a generic pharmaceutical manufacturer in connection with the DOJ's ongoing investigation.
- **United States State Attorney General Activity:** On December 15, 2016, the day after the DOJ unsealed criminal charges against two individuals, 20 state attorneys general filed a civil complaint in the District of Connecticut against several generic pharmaceutical manufacturers alleging that the companies conspired to fix prices, rig bids, and allocate customers for doxycycline hyclate and glyburide. The complaint alleges that individuals from the named defendants coordinated activities in person, over the phone, and via text messages as well as allegedly meeting in person at trade shows and over private dinners and at meetings. Additional states have joined in the litigation since its filing. In May, the two former executive officers of a generic pharmaceutical company that had previously agreed to plead guilty to felony charges by DOJ entered into settlement agreements with the states. The states alleged that these former executives agreed to allocate customers, rig bids, and fix prices for doxycycline and glyburide. Both executives agreed to pay separate **\$25,000** fines to the states and to cooperate with the states' ongoing investigations and litigation.
- **United States Private Civil Litigation:** In early 2017, numerous putative class actions brought by private litigants against dozens of generic pharmaceutical manufacturers were consolidated for discovery and pretrial purposes in the Eastern District of Pennsylvania in Philadelphia. Plaintiffs in these actions allege that the defendant manufacturers agreed to raise prices, manipulate bids, and allocate customers for a number of generic medications, including albuterol, amitriptyline, baclofen, benazepril HCTZ, clobetasol, clomipramine, desonide, digoxin, doxycycline IR and DR, divalproex, econazole, fluocinonide, glyburide, levothyroxine, lidocaine/prilocaine, pravastatin, propranolol, and ursodiol. Discovery in the consolidated cases is stayed until September at the DOJ's request.

## UNITED KINGDOM

- **United Kingdom CMA Lodges Statement of Objections Against Pharmaceutical Manufacturers:** In March, the CMA issued a statement of objections alleging that two pharmaceutical manufacturers entered into an unlawful supply agreement under which one of the manufacturers agreed to delay its entry into the market with a competing version of hydrocortisone tablets. Proceedings related to these allegations are ongoing.
- **Appeal against CMA's Paroxetine Decision:** In April 2016, the UK Competition Appeal Tribunal published notices of appeal of the CMA's decision to fine a number of pharmaceutical companies for agreeing to delay generic entry into the market for the drug paroxetine. In February 2016, the CMA had imposed fines totaling £44.99 million (\$57.94 million) on three pharmaceutical companies under Chapter I and Article 101 for a series of so-called "pay-for-delay" agreements that were aimed at delaying generic entry for the drug paroxetine. The CMA found that, between 2001 and 2004, the supplier of branded paroxetine had agreed to make payments and other value transfers totaling more than £50 million (\$64.4 million) to suppliers of generic versions of paroxetine that were aimed at delaying the potential entry of the generic firms on the UK market for paroxetine. The five-week hearing at the Competition Appeal Tribunal took place in February and March.
- **United Kingdom Private Litigation concerning Perindopril:** In 2011 and 2012, British health authorities from Scotland, England, Wales, and Northern Ireland filed damages claims with the High Court of Justice of England and Wales against a French pharmaceutical company. These claims followed on from European Commission proceedings concerning pay-for-delay agreements. The Commission decision of July 2014 had found that patent settlement agreements concluded between the French pharmaceutical company and its generic competitors had prevented or delayed the entry of cheaper generic versions of perindopril. The decision also found that the French pharmaceutical company had abused its dominant position in the market for perindopril by inducing such settlement agreements. In October 2016, the High Court allowed the French company to amend its defense in the follow-on damages actions.



## AUTOMOTIVE PARTS

### ANALYSIS

- In the United States, as the DOJ's auto parts investigation begins to conclude, there have been relatively few new plea agreements and indictments so far this year. As of May, **65 persons** and **48 companies** have been charged and have agreed to pay more than **\$2.9 billion** in criminal fines as part of the investigation. For a "snapshot" summary of all the charged cases, see the [appendenices](#).
- Outside the United States, notably in the European Union, Brazil, South Korea, and Australia, investigations and prosecutions continued in significant numbers and look set to continue for some time to come.

### UNITED STATES

- 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 to 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 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 to pay a **\$6.1 million** criminal fine for its role in a conspiracy to rig bids of side-door latches and latch mini modules sold to Ford Motor Company and installed in cars sold in the United States and elsewhere.

### CANADA

- The CCB's investigation of the auto parts industry has continued since April 2013 and has resulted in more than **C\$84 million (\$63.6 million)** in fines imposed by Canadian courts. In April 2017, the CCB announced a fine of **C\$13.4 million (\$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.

### BRAZIL

- On June 2, the CADE announced it was investigating one Swedish, one German, and three Japanese manufacturers for alleged price-fixing and market allocation. The CADE claims 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 them and agreeing not to compete with each other 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, the CADE established 11 administrative proceedings on different auto parts cartels, including spark plug segments, antifriction bearings, clutch linings, thermal systems, windscreen 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 actions.



## EUROPEAN UNION

- The European Commission's investigation of the auto parts industry has continued this year with additional fines. In March, the Commission fined six car air-conditioning and engine-cooling suppliers **€155 million (\$173 million)** for coordinating prices or markets and exchanging sensitive information.
- On June 21, the Commission fined two companies a total of **€26,744,000 (\$29.7 million)** for participating in an automotive lighting cartel. A third company was not fined since it revealed the cartel to the commission. All companies admitted their involvement and agreed to settle. Vehicle lighting systems include parts such as headlamps or 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. The commission's investigation revealed that, for more than three years, the companies in question coordinated prices and other trading conditions for the supply of vehicle lighting systems across the EEA.

## SOUTH KOREA

- The KFTC has continued its investigation into the auto parts industry. In January, it imposed fines of approximately **1.8 billion (\$1.6 million)** on two Japanese manufacturers for colluding on automotive oxygen sensor bids to General Motors.
- On June 26, the KFTC announced it had investigated and concluded that four Japanese and German manufacturers of bearings used in automobiles agreed not to compete in the same market from 2002 to 2009, allocating different products to supply in different markets. It was found that these four competitors contacted each other to exchange information to avoid competition. The KFTC imposed fines of **2.02 billion (\$1.78 million)** along with corrective remedies.

## AUSTRALIA

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



## FINANCIAL SERVICES UPDATE

### ANALYSIS

- In the first half of 2017, government prosecutions of the manipulation of various financial benchmarks—including LIBOR and various foreign exchange markets—have continued to decline as regulators wrap up trials. Private litigation is maturing and, in many significant cases, shifting from discovery to class certification. Other, lesser prominent, benchmark-related litigations remain in their infancy. A number of investigations have initiated in the insurance sector, particularly in the EU.

### LIBOR

- In February, federal prosecutors sought a reduced sentence for a trader 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 the trader's early cooperation and helpful testimony.
- In February, a judge in the Southern District of New York imposed a "no-prison" sentence on a former trader, based on his cooperation with US regulators on the Libor investigation. The trader also testified for the prosecution against two other traders.
- In March, a Connecticut federal court imposed at **\$150 million** criminal settlement on a large German bank's subsidiary that admitted that the company's traders manipulated Libor in several currencies. According to the 2015 guilty plea, the bank's traders 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 of a British bank were acquitted by a London jury in their retrial for alleged Libor manipulation. The pair was found not guilty of conspiring to manipulate Libor and a separate jury was unable to reach a verdict in their first trial in July 2016. The traders expressed relief and vindication after the verdict was announced.
- In June, 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 committee with selecting a new benchmark to bolster short-term lending in the wake of the Libor scandal. The committee 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.



## FOREIGN EXCHANGE

- In January, 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. The dealer is the first individual to plead guilty as a result of an investigation by the DOJ, FBI, and 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 February, a bank settled with South Africa's Competition Authority's investigation into alleged foreign exchange rate bid rigging for **69 million rand (\$5.25 million)**.
- In March, the DOJ reportedly closed its FX investigation with respect to a multinational German bank. Other regulators, however, are still investigating the bank's involvement in the alleged rigging of various FX markets.
- In May, New York State's Department of Financial Services (NYDFS) fined a French 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 NYDFS and could lead to charges against other banks.
- In May, Mexico's COFECE announced that it was investigating the market for intermediation of Mexican government debt securities for potential price-fixing and monopolistic practices.
- In June, a UK currency investment firm filed an application for "pre-action disclosure," a discovery mechanism available prior to filing a lawsuit, to London's commercial court asking that a Hong Kong, based multinational bank should be required to provide documents relating to three large foreign exchange orders executed by the court in 2006. The Hong Kong, based multinational bank had previously persuaded the UK based currency investment firm that it had not engaged in any wrongdoing but Justice Department charges against the bank caused the firm to take action.

## ISDAFIX

- In February, the US Commodity Futures Trading Commission (CFTC) ordered a multinational bank from Scotland 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-based multinational bank agreed to pay \$45 million to a group of investors that brought a class action against banks over alleged Euribor manipulation. The Hong Kong-based bank maintained that its role in the alleged manipulation was limited to a single day in March 2007.

## 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 Treasuries market. The DOJ has been investigating the US Treasuries market for more than two years to determine whether banks improperly used and shared information on the demand for Treasuries to increase their profit in the secondary market for when-issued Treasuries securities. The US Securities and Exchange Commission (SEC), the NYDFS, the CFTC, and the European Commission are also investigating potential manipulation of the Treasuries market.

## AUSTRALIAN BANK BILL SWAP RATE

- In May, investors who brought a class action against banks alleging manipulation of the Australian Bank Bill Swap Rate (BBSW), a key interest rate benchmark in Australia, filed briefs in opposition to the banks' motions to dismiss, arguing that they adequately pled their conspiracy claims against the banks. The banks' motions have not yet been decided.

## PACKAGED SEAFOOD

- On May 8, an American company that produces packaged seafood agreed to plead guilty for its role in a conspiracy to fix the prices of shelf-stable tuna fish, such as canned and pouch tuna, sold in the United States. According to a one-count felony charge filed in the US District Court for the Northern District of California in San Francisco, the packaged seafood company and its co-conspirators agreed to fix the prices of shelf-stable tuna fish from as early as the first quarter of 2011 through at least as late as the fourth quarter of 2013. In addition to agreeing to plead guilty, the company has agreed to pay a **\$25 million** criminal fine, which will increase to a maximum criminal fine of **\$81.5 million**, payable by a related entity, in the event of a sale of the company subject to certain terms and conditions. The company has also agreed to cooperate with the Antitrust Division's ongoing investigation. The plea agreement is subject to court approval. The charge against this packaged seafood company is the third to be filed—and the first to be filed against a corporate defendant—in the Antitrust Division's ongoing investigation into price-fixing among some of the largest suppliers of packaged seafood.
- On June 28, a former senior vice president of sales for a packaged seafood company pleaded guilty for his role in a conspiracy to fix the price of packaged seafood, such as canned tuna, sold in the United States. According to documents filed in this case, the former senior vice president for a packaged seafood company 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 on May 30 in US District Court for the Northern District of California in San Francisco. He has agreed to pay a criminal fine and cooperate with the Antitrust Division's ongoing investigation. He will be sentenced by the court at a later date.





## REAL ESTATE

### ANALYSIS

- There has been significant enforcement in the area of real estate foreclosure auctions in the United States, particularly in Alabama, California, Georgia, and North Carolina where investigations and prosecutions are ongoing. For example, DOJ has announced that 65 individuals have either pleaded guilty or been convicted at trial in the ongoing investigation of bid rigging at real estate foreclosure auctions in the Northern District of California. Additional indictments are pending against several other real estate investors who participated in the conspiracy. Furthermore, 23 individuals have been charged to date in the ongoing investigation of bid rigging at real estate foreclosure auctions in the Atlanta area. Twenty-two investors have pleaded guilty. In addition, 15 defendants have been prosecuted in the ongoing investigation of the Alabama real estate foreclosure auction industry, and the total restitution ordered by the US District Court for the Southern District of Alabama is more than **\$1 million**. There have also been investigations into real estate agents in Italy and New Zealand.

### ALABAMA

- On April 10, an Alabama real estate investor was sentenced to **12 months and 1 day** in prison and ordered to pay **\$343,561** in restitution for his role in a bid-rigging conspiracy and a fraud scheme related to public real estate foreclosure auctions in Alabama. The conspirator pleaded guilty to bid rigging and conspiracy to commit mail fraud in Alabama on June 14, 2016.

### CALIFORNIA

- On January 11, a Northern California real estate investor was sentenced to **10 months** in prison, and ordered to pay a **\$20,000** criminal fine and **\$20,206** restitution for his role in a conspiracy to rig bids at public real estate foreclosure auctions between May 2008 and December 2010 in Alameda County.
- In February, a federal jury convicted an individual for his role in a public real estate foreclosure auction conspiracy in Contra Costa County, California, after a one-week trial.



- On March 8, a California real estate investor was sentenced for his role in a conspiracy to rig bids at public real estate foreclosure auctions in California and sentenced to six months of imprisonment.
- On March 15, a California real estate investor was sentenced for his role in a conspiracy to rig bids at public real estate foreclosure auctions in California, and sentenced to **12 months** of imprisonment and ordered to pay a **\$74,899** criminal fine and **\$265,050** in restitution.
- On April 18, the DOJ announced that a federal jury in the Northern District of California convicted a real estate investor for his role in a conspiracy to rig bids at public foreclosure auctions in Contra Costa County in a conspiracy from about June 2008 to January 2011. Sentencing is set for August 2.
- On April 26, three individuals were sentenced for their roles in a conspiracy to rig bids at public real estate foreclosure auctions in Northern California. The individuals were sentenced to serve **8, 10, and 12 months in prison**, and to perform 579, 974, and 1,260 hours of community service in lieu of criminal fines.
- On June 7, a Northern California investor was sentenced to a prison term of **12 months and 1 day** for his role in a conspiracy to rig bids at public real estate foreclosure auctions held in California.

## GEORGIA

- In March, , an individual pleaded guilty in the US District Court for the Northern District of Georgia to bid rigging and fraud related to public real estate foreclosure auctions in Gwinnett County, Georgia.

## ITALY

- On March 23, the Italian Antitrust Authority dawn-raided a number of companies to assess whether they engaged in bid-rigging practices with regard to the provision of real estate management services to public authorities and universities.

## NEW ZEALAND

- On April 10, the New Zealand High Court imposed a **\$1.45 million NZD (\$1.1 million)** fine on a real estate company and a **\$50,000 NZD (\$36,700)** fine on an individual director of the company for agreeing with other competitors to pass on the full cost of real estate listings through a certain real estate listing agency site.



# KEY POLICY DEVELOPMENTS

## LENIENCY PROGRAMS

### INDIA

- While India has had a leniency policy under the Competition Act since 2009, it's only now, eight years later, on January 19, that the Competition Commission of India (CCI) has finally granted its first leniency. The CCI had initiated a suo-moto inquiry on the basis of information from the Central Bureau of Investigation (CBI) on April 1, 2014, regarding cartelization with respect to tenders floated in the railways sector for the supply of brushless DC fans and other such items. The CCI finally concluded that the parties had shared the market by way of allocation of tenders in the railways sector for brushless DC fans amongst themselves under agreement(s) and had engaged in bid rigging/ collusive bidding violating the provisions of the Competition Act.
- The CCI has imposed a penalty on certain parties calculated as 1.0 times their profit in the years 2012 to 2013 and on another party at the rate of 3% of its turnover for the years 2012 to 2013. The CCI also imposed penalties on certain individuals calculated at the rate of 10% of the average of their income for the last three preceding financial years.
- For the first time, the CCI has granted a reduction of penalty to an enterprise based on its application under Section 46 of the Competition Act and the Lesser Penalty Regulations, 2009. The CCI has granted a reduction of 75% of penalty to the enterprise party as well as to the officer responsible for the enterprise party's participation in the cartel.

### UNITED KINGDOM

- On June 30, the CMA announced a consultation on proposals for handling leniency applications within the regulated sectors. In particular, it is proposed to make the CMA the first point of contact within the UK Competition Network (UKCN) for all leniency applicants for the purpose of the single leniency "queue" system that allows applicants to only apply to one authority in order to be placed in the queue for leniency. The sectoral regulators with concurrent competition powers that are full members of the UKCN are the Office of Communications (Ofcom), the Gas and Electricity Markets Authority (Ofgem), the Utility Regulator (Northern Ireland), Water Services Regulation Authority (Ofwat), the Office of Rail and Road (ORR), the Civil Aviation Authority (CAA), the Financial Conduct

Authority (FCA) and the Payment Systems Regulator (PSR). The CMA and the sectoral regulators in the UKCN have concurrent powers to enforce the competition prohibitions in Chapters I and II of the Competition Act 1998 and Articles 101 and 102 of the Treaty on the Functioning of European Union in their respective sectors and to impose financial penalties in cases where an infringement of one or both the prohibitions has taken place.

## WHISTLEBLOWER PROGRAMS

### EUROPEAN UNION

- On March 16, the European Commission launched a new program that will facilitate anonymous whistleblowers in providing information to assist it in initiating new cartel investigations. Based on the new program, DG Competition began accepting encrypted, anonymous messages through an external service provider. The provider will relay messages without any identifying information or metadata. Speaking at a conference in Berlin on March 16, Commissioner Vestager said that while many cartels have been discovered because of the enforcer's leniency program, the authority "pay[s] attention to other methods as well." "That includes encouraging individuals to come forward when they have information about a cartel," she added. She also said that the new tool is similar to the whistleblowing program used by Germany's Federal Cartel Office, which launched in 2012.

### POLAND

- On April 10, the OCCP introduced a whistleblower program allowing individuals who become aware of cartel infringements to contact the OCCP by phone or e-mail anonymously.

### UNITED KINGDOM

- On March 20, the CMA launched its first advertising campaign to highlight its little-known whistleblower reward program that awards whistleblowers up to **£1 million (\$1.3 million)**. It should be noted that the award is only available to individuals who are not directly involved in the cartel conduct.

## COMPLIANCE PROGRAMS

- **United Kingdom:** The CMA published on January 24 an updated competition law risk short guide on compliance. Alongside the guide, the CMA has also published a one-page, 60-second summary looking specifically at director disqualification with advice for company directors.
- **Russia:** The FAS has developed a new draft law introducing amendments to the Competition Law and the Administrative Code, which has not been introduced to the State Duma yet. Under the draft, adoption of a compliance program should be considered as a mitigating factor when the penalty is imposed for anticompetitive behavior.
- **Kazakhstan:** The Entrepreneurial Code of Kazakhstan has recently been amended to include a short provision on “Antimonopoly Compliance.” In accordance with the changes, the government of Kazakhstan may adopt acts establishing competition rules for specific markets, and legal entities may adopt internal compliance rules. However, the code does not contain any sanctions or privileges for the legal entities that adopt such rules.

## LEGISLATION / GUIDANCE / COOPERATION AGREEMENTS

- **Argentina, Mexico, Chile, and Brazil:** On March 30, the chief prosecutor at Mexico’s COFECE announced a new strategic alliance among the antitrust enforcers in his country, Argentina’s National Commission for the Defence of Competition, Chile’s National Economic Prosecutor’s Office, and Brazil’s Administrative Council for Economic Defense. The Latin American enforcers already work well together on multijurisdictional mergers, and the new alliance would focus mainly on behavioral issues and cartels, which often cross borders and affect consumers in several countries. The group plans to invite Colombia and Peru enforcers to join the alliance and will meet annually to develop strategic action, discuss potential new cases and establish a clear agenda.
- **Canada:** On January 13, the Commissioner of the CCB met with the Chairperson of the Competition Commission of India to exchange information on enforcement and policy developments pursuant to a joint cooperation agreement signed by both countries in 2014.
- **Canada:** On May 11, the CCB announced a cooperation agreement between the CCB and the Japan Fair Trade Commission (JFTC) to share information, cooperate,

and coordinate with each other with respect to enforcement activities.



- **Canada and Colombia:** On June 21, 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.
- **Germany:** On March 31, the Federal Council adopted the 9th Amendment to the German Act against Restraints of Competition (Amended Law). The Amended Law, which is expected to take effect in the second quarter of 2017, largely extends the liability for cartel infringements by introducing a group liability. From now on, parent companies can be held liable for cartel infringements of their affiliates provided that the parent company and the cartel-infringing affiliate are to be considered as one undertaking. This shall be the case if one company exercises a controlling influence over another entity. With this change, Germany intends to harmonize its cartel liability provisions with European competition law. Also, all companies belonging to the same group will now be jointly and severally liable for the imposed fines. Furthermore, the Amended Law tightens the rules for the cartel liability in case of legal succession. The German legislation considered this change necessary as companies successfully avoided fines over the last years by restructuring and winding down the cartel law-infringing entity. Going forward, the FCO can impose fines on the (full or partial) legal as well as the economic successor of the actual entity whose representatives violated the German Competition Act. This new set of rules is accompanied by a provision allowing the FCO to fine a parent company even after the beginning of the procedure against its affiliate, provided the affiliate is restructured or dissolved during the FCO's investigation.
- **Romania:** On June 8, the Emergency Government Ordinance 39/2017 (EGO 39) entered into force and introduced a number of important changes to the Romanian Competition law. Specifically, EGO 39 adopted EU Damages Directive (2014/104/EU), thereby introducing a number of changes into Romanian competition law, including (1) a specific obligation incumbent upon modern retailers to provide information to the Romanian Competition Council (RRC), upon request, regarding their resale prices; and (2) additional powers of the RRC during dawn raids.

## BREXIT

- On March 29, the United Kingdom gave notice to the European Council and triggered the proceedings of Article 50, which would lead to the exit of the United Kingdom from the EU. Set out below is a summary of the issues likely to arise in cartel enforcement in the UK as a result of the UK's withdrawal from the EU, based on the assumption that Brexit will result in the UK leaving the EEA and the Single Market.
- It must be noted at the outset that Brexit will not change the fact that EU competition law will continue to apply to UK firms doing business across the EU, in the same way that agreements or conduct of US or Asian undertakings are currently subject to EU law where their agreements or conduct affects EU markets. However, Brexit will likely have an impact on the interpretation and enforcement of antitrust law, as well as on procedural matters.
- UK antitrust law is substantively similar to EU antitrust law, given that the Chapter I prohibition in the Competition Act 1998 (CA98) mirrors the Article 101 prohibition in the Treaty on the Functioning of the European Union. This similarity is enforced by Section 60 CA98, which requires that Chapter I of CA98 must be interpreted consistently with the jurisprudence of the ECJ. Given the UK government's stated intention to end the ECJ's jurisdiction in the UK, it follows that Section 60 will cease to bind the UK competition authorities and courts. While the UK authorities will likely continue to have regard to relevant ECJ judgments and EC decisions, divergences in practice may gradually emerge between the two systems. This divergence will be bolstered by the UK courts no longer being able to refer questions on the interpretation of EU law to the ECJ. The question of whether and to what extent precedents of the EU courts will have continuing authority in the UK is currently the subject of negotiations between the EU and the UK.
- A further substantive change concerns the EU's "block exemptions," which provide a safe harbor for agreements falling within their scope. Under Section 10 CA98, these block exemptions also apply to agreements governed by UK competition law. Post-Brexit, the nature and operation of this parallel exemption will need to be determined, and it is possible that the government will use this opportunity to remove or alter existing block exemptions, or create additional block exemptions.

- Another key change after Brexit is that it will be possible for a cartel to be subject to parallel civil investigations in the UK and the EU (an EU civil investigation parallel to a UK criminal investigation is already possible). Currently, where the European Commission opens a civil cartel investigation, national authorities are required to refrain from initiating their own civil investigations. After Brexit, this fetter will be removed, and conduct which has an impact on the EU as well as the UK may be the subject of a civil investigation by both the UK's CMA and the European Commission. Consequently, two different fines could be imposed on the basis of the same facts. Moreover, post-Brexit, any constraint on the UK prosecuting a civil cartel in order to avoid interfering with the European Commission's civil investigation of the same infringement would fall away.
- Procedurally, Brexit will have a number of consequences. For example, undertakings that have participated in a cartel and which seek to acquire civil immunity or leniency will need to file applications with both the CMA and the European Commission. Furthermore, with regard to private actions, the UK is one of the preferred jurisdictions for private competition litigation due to its active plaintiff bar, deep pools of litigation funding and more developed rules on disclosure. Currently, infringement decisions by the European Commission can form the basis for a follow-on damages action in the UK. It remains to be seen whether Brexit will alter the possibility for claimants to bring follow-on claims in the UK on the basis of an EU infringement decision.
- The immediate impact of Brexit will, therefore, be on procedural and investigatory matters, where the UK's withdrawal may lead to parallel investigations, and undertakings may need to submit multiple leniency applications. The greater impact of Brexit, in terms of a divergence in the interpretation and application of antitrust law, will take longer to emerge. However, regardless of the ultimate status of EU case law in the UK, it is likely that the EU's decisional practice and judgments will remain highly influential in practice in the UK for some time to come.



# KEY ENFORCEMENT DEVELOPMENTS

## OBSTRUCTION OF JUSTICE

- **United States: Obstruction of Justice.** On February 2, an executive of an automotive parts company pleaded guilty to a two-count indictment charging him with conspiring to obstruct justice and attempting to obstruct justice in Michigan. As part of the plea agreement, the conspirator agreed to serve **14 months** in prison and pay a **\$7,500** criminal fine. The executive, along with others, conspired from at least as early as June 2008 until at least September 2012 to delete emails and electronic records and to destroy documents referring to communications with competitors in contemplation of a federal investigation.
- **United States: Obstruction of Justice.** On March 23, a conspirator in a scheme to illegally control the tour-bus market in New York was sentenced to **15 months** in prison for attempting to conceal and destroy documents relevant to a civil antitrust investigation and for providing false and misleading statements during the course of civil antitrust litigation and ordered to pay a **\$5,000** criminal fine. The conspirator provided false and misleading information to investigators and to the United States during the course of a deposition taken as part of the litigation.
- **Israel:** On February 26, the Israeli Antitrust Authority announced indictments against five companies and 11 executives in connection with bid rigging with respect to the sale of computer equipment. According to the indictment, after one of the executives learned that the Antitrust Authority had launched an investigation, he erased incriminating email correspondence, which was later recovered by the Antitrust Authority. This led to an indictment being filed against the officer on account of destruction of evidence and is the first case in Israel in which an indictment has been filed for destruction of evidence within the context of antitrust offenses.
- **South Korea:** The KFTC has decided to impose combined fines of **312 million (\$272,831)** against a steel company and 11 staff members for interrupting a KFTC probe of the firm's trade practices. The commission conducted site investigations in December 2016 and February 2017, and company staff refused to submit requested documents and deleted related data. The employees claimed they could not hand over the data because they contained personal information on staff members. The KFTC found that such conduct was a violation of Article 69 of the Monopoly Regulation and Fair Trade Act.

## DAWN RAIDS

- **France:** On May 24, France's Supreme Court found that an electronics company's rights of defense were breached when the French competition authority conducted raids against the company in 2013.
- **Ireland:** On May 29, the Irish Supreme Court dismissed an appeal by the Competition & Consumer Protection Commission (CCPC) regarding the seizure of emails belonging to the former managing director of an Irish company under investigation for anticompetitive practices. The Supreme Court held that the CCPC had acted ultra vires in the exercise of its investigatory powers under s. 37 of the Competition and Consumer Protection Act 2014 as the warrant it had issued under the section lacked specificity and because it had failed to take any sufficient steps to avoid seizing large quantities of material well outside the scope of its investigation. A proper exercise of its investigatory powers would have required the CCPC to observe the principle of proportionality, either through a focused pre-search procedure permitting the affected party to make observations, or an effective post-search procedure for the same purpose.





## EXTRADITION

- United States:** Five foreign executives have been extradited and convicted since 2010, reinforcing the Antitrust Division's continued emphasis on extradition in recent years. On March 13, the division obtained its fifth conviction against a foreign executive who was extradited to face charges in the United States. In the last three years, three foreign executives have been extradited by the division and later convicted. The most recent case highlights the division's continued focus on extradition and its efforts to obtain convictions against foreign executives.
- This latest conviction involved the extradition of an Israeli executive, Yuval Marshak, who was arrested during his travel in Bulgaria. On January 21, 2016, the Antitrust Division obtained a sealed indictment charging Marshak with defrauding the Foreign Military Financing (FMF) program and with money laundering related to "falsif[ying] bid documents to make it appear that certain FMF contracts had been competitively bid when they had not." Under the FMF program, US funds are provided to foreign governments, including Israel, for the purchase of American-made military goods and services.
- After obtaining a sealed arrest warrant, the DOJ requested an Interpol Red Notice, which allows participating countries to request the arrest of designated individuals who are traveling in other countries. Following his arrest in July 2016 during his travel to Bulgaria, Marshak was extradited from Bulgaria on October 14, 2016, and transported in custody to the US District Court for the District of Connecticut, where he was ordered detained.
- On March 13, Marshak pled guilty to one count of mail fraud, two counts of wire fraud, and one count of major fraud against the United States. As is common in extradition cases, the Antitrust Division noted the international cooperation in the case including working "closely" with the government of Israel.

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

- [Antitrust Division Extraditions since 2010](#)
- [Extradition Lessons Learned from Mlex \(Nov 2016\)](#)

# KEY JUDICIAL DEVELOPMENTS

## FTAIA— NORTHERN DISTRICT OF CALIFORNIA CONTINUES BROADENING SCOPE OF “IMPORT COMMERCE” AND “DOMESTIC EFFECTS” EXCEPTIONS

A decision denying defendants’ motion to dismiss complaints filed in the *In re Lithium Ion Batteries Antitrust Litigation* in the United States District Court for the Northern District of California broadly construed two exceptions to the Foreign Trade Antitrust Improvements Act (FTAIA), potentially widening the path available to asserting claims under US law for anticompetitive sales made outside the United States. The case involves claims for the purchase of lithium ion batteries outside the United States that were incorporated into finished products (e.g., computers ultimately sold in the United States). Although the FTAIA generally prescribes application of the US antitrust laws to conduct “involving” foreign commerce, there are two exceptions to that general rule. First, the US antitrust law may apply to conduct that “involves import commerce”; and, second, conduct that causes “direct, substantial and reasonably foreseeable effects” on US commerce is subject to US law even if it involves foreign commerce. The decision addresses each of those exceptions. In concluding that plaintiffs had adequately alleged that the challenged conduct “involved import commerce” the court noted that the plaintiffs alleged that the United States is one of the

largest markets for the relevant products; that the relevant products sold to the plaintiffs would ultimately be incorporated into electronic goods by customers in the United States; and that the defendants knew or should have known that a substantial portion of the products sold to the plaintiffs’ affiliates would be manufactured into goods sold to US consumers. The court also held that the plaintiffs’ allegations (a) that the defendants’ conduct distorted market prices in the US and (b) that non-US negotiated prices were set by reference to prices approved by management in the United States were sufficient to support a “direct effects” exception to the FTAIA.

The court’s decision follows and furthers broad construction of the “import commerce” and “direct effects” exceptions adopted by other judges in the same district court. See also *In re Cathode Ray Tube (CRT) Antitrust Litigation*, 2016 WL 5725008 (N.D. Cal. Sept. 30, 2016); *In Re Capacitors Antitrust Litigation*, 2016 WL 5724960 (N.D. Cal. Sept. 30, 2016). Those decisions conflict with the construction of the same exceptions by certain other district courts. It remains to be seen what construction will ultimately prevail.

## INDIAN SUPREME COURT RELIES ON SOUTH AFRICAN DECISION AND UPHOLDS FINES ON “RELEVANT TURNOVER” INSTEAD OF “TOTAL TURNOVER”

On May 8, in a landmark judgment, the Supreme Court of India (SC) has adopted for the first time the concept of “relevant turnover” instead of “total turnover” while computing the penalty to be imposed on multiproduct companies. In 2012, the Director General of the Competition Commission of India (CCI) found four manufacturers of aluminum phosphate tablets guilty of collusive bidding. Aggrieved by the order of the CCI, the manufacturers approached the Competition Appellate Tribunal (COMPAT) which held that the manufacturers were engaging in anticompetitive practices. The COMPAT held that in the case of multiproduct companies, only “relevant turnover” of the product in question should be taken into consideration while imposing penalty and not the “total turnover” of entire company. The SC has endorsed this view of the COMPAT.

The essence of the CCI’s submission was that section 27 of the Competition Act, 2002 made it clear that the target of the penalty is the “person” or “enterprise” that has acted in violation of the Act, and not the product or service alone that is the subject matter of the violation. The manufacturers rebutted this argument by stating that section 27(b) should be constructed strictly as it is a penal provision. While considering cases of infringement of multiple enterprises, the fact that some may be single product companies and others multiproduct companies could result in highly inequitable results. Therefore, when the infringement is identical, there would be no justification for prescribing different maximum limits on penalties on multiproduct companies and single-product companies.

The SC cited the judgment of the Competition Appeal Court of South Africa and agreed with the decision that says the appropriate amount of penalty is to be determined by considering the damage caused and the profits that accrued from the cartel activity.

COMPAT reduced the fines imposed on one of the manufacturers from **630 million rupees (\$10.1 million)** to **30 million rupees (\$484,905)** and on the other manufacturer from **2.52 billion rupees (\$40.1 million)** to **77 million rupees (\$1.2 million)**. The SC recognized that as section 27 is a penal provision, it would act as a deterrent for others. The SC also noted that such an interpretation should not deviate from teaching a lesson to the violator to the death of the entity itself. The SC held that while the purpose and objective of the act is to discourage and stop

anticompetitive market practices, the purpose of penal provisions under section 27 of the Act can be adequately served by considering the relevant turnover. The SC also said it found that “adopting the criteria of relevant turnover for the purpose of imposition of penalty will be more in tune with ethos of India’s competition legislation and the legal principles which surround matters pertaining to imposition of penalties.”

The SC held that the doctrine of proportionality should be considered and “the penalty cannot be disproportionate and it should not lead to shocking results.” This is a welcome order and will provide relief to multiproduct companies, as it will allow them to assess risk with greater certainty.

## ROUNDUP OF OTHER RECENT JUDICIAL DEVELOPMENTS

- **European Union:** On January 10, the EU's General Court ordered the EU to pay more than **€50,000 (\$57,027)** in damages to a French company, finding that the court itself had breached the plastic bag manufacturer's right to adjudication within a reasonable period. The company is set to receive **€47,064 (\$53,678)** for the "material harm" suffered during the five years of litigation. The French company and its German subsidiary will also receive **€5,000 (\$5,702)** each in damages for "non-material harm." According to the General Court's ruling, the material harm award is intended to cover the costs of the companies' bank guarantee, and the two smaller payments for nonmaterial harm are intended to compensate for the unreasonably high amounts of uncertainty caused by the prolonged litigation.
- **European Union:** On February 1, the General Court ruled that, in the context of an appeal of a cartel decision before the General Court, a period of 20 months of inactivity between the end of the written procedure and the start of the oral part of the proceedings was excessive. It, therefore, ordered the EU to pay **€595,000 (\$678,627)** in damages to an industrial products company—the second judgment of its kind in the EU.
- **European Union:** On March 14, the ECJ held that the European Commission's public cartel decisions cannot feature verbatim information from the narrative section of leniency applications—and forced the enforcer's hearing officers to conduct more in-depth reviews of companies' confidentiality claims. The clarification came as the court dismissed an appeal by a German chemicals company of a 2015 General Court judgment, which had backed the European Commission's view that it could make information filed in leniency applications public in its decisions.
- **European Union:** On April 6, ECJ Advocate-General Nils Wahl opined that some agricultural producers are exempt from price-fixing bans—but said this would not cover French endive producers accused of price-fixing. The Advocate-General recommended that the ECJ rule that exemptions from EU competition law for the agricultural industry cover the activities of professional organizations that pool producers' resources or associations of such organizations. However, this would apply only to tasks specifically assigned to bodies in charge of marketing products. Wahl also said the ECJ should hold that the exemption would not automatically apply, and that it should not kick in if the conduct only helped to achieve general objectives that European regulators assigned to the agricultural bodies. National courts should assess whether practices are necessary or permitted to help achieve specific tasks assigned to the producers or associations.
- **European Union:** On April 27, the ECJ held that in proving the existence of a cartel, the European Commission can rely on evidence collected and provided by noncompetition agencies so long as the disclosing agency had a legal right to disclose the evidence to the competition agency. The ruling dismissed an appeal by a banana importer, which alleged that the Commission was not entitled to use as evidence documents collected during a national tax investigation by Italy's customs and finance police.
- **European Union:** On May 18, ECJ Advocate-General Maciej Szpunar recommended that two companies be held liable for their now-defunct joint venture implicated in the cathode ray tube cartels—even though the European Commission failed to send the joint venture a statement of objections during the antitrust investigation. According to the Advocate-General, the ECJ should dismiss the appeals brought against a European Commission decision that implicated them in two cartels. Even though the Commission did not send a statement of objections to their joint venture that was liable in part for the antitrust infringement, the Advocate-General opined that this failure had not breached the companies' rights to defense.
- **Italy:** On March 16, Italy's Council of State upheld a decision to annul a **€29 million (\$33.08 million)** fine on two insurance companies, after finding that the Italian Competition Authority had failed to show that the parallel conduct was due to illegal agreements. The enforcer fined the insurers for allegedly reaching anticompetitive agreements affecting 58 tenders by bus companies for the provision of insurance. The authority accused the insurers of operating a cartel by agreeing not to bid on certain tenders. The Council of State ruled that the evidence collected by the authority on meetings and other exchanges of information was insufficient to prove that the conduct of the parties resulted from anticompetitive agreements. The Council said the authority did not properly assess the features of the market to rule out an alternative explanation for the insurers' conduct.
- **Italy:** On April 20, a court overturned a decision by Italy's Antitrust Authority that a network of bank branches and two cooperative trade associations had rigged mortgage rates in Bolzano and Trento, after finding the organizations were not competitors.

## 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. More than 20 Morgan Lewis lawyers have previously served as prosecutors with the DOJ, including partners that have direct experience prosecuting cartel matters. Our team includes Mark Krotoski, former assistant chief of the National Criminal Enforcement Section in the DOJ's Antitrust Division, as well as a former assistant attorney general in charge of the Antitrust Division, US Attorney for the District of Delaware, White House counsel, chief of staff at the Antitrust Division, counselor to the head of the Antitrust Division, assistant chief in the Antitrust Division's National Criminal Enforcement Section, and trial attorney in the Antitrust Division's National Criminal Enforcement Section.

## AUTHORS



J. Clayton "Clay" Everett, Jr.  
Partner  
+1.202.739.5860  
clay.everett@morganlewis.com



Mark L. Krotoski  
Partner  
+1.650.843.7212  
mark.krotoski@morganlewis.com



Omar Shah  
Partner  
+44.20.3201.5561  
omar.shah@morganlewis.com

## SPECIAL THANK YOU TO THE FOLLOWING CONTRIBUTORS IN COMPILING THIS REPORT

- David Brenneman
- Kevin R. Schock
- Greta Louise Burkholder
- Irene De Beni
- Anastasia Dergacheva
- M. Luisa Di Lauro
- Nitin Jindal
- Oleg Egorov
- Philip Korotin
- Asset Nakupov
- Cindy Seunghee Hong
- Noah J. Kaufman
- Andrey Ignatenko
- Leonidas Theodosiou
- Michael Zymler
- Jayati Chitale
- Zachary M. Johns
- Noelia Martinez
- Michael Masling
- Tracey F. Milich
- Jitsuro Morishita
- Minna Lo Naranjo
- Feng Sheng
- Anthony R. Van Vuren
- Susan J. Welch
- Andrew Wellin



## OUR TEAM



Steven A. Reed  
Practice Group Leader  
+1.215.963.5603  
steven.reed@morganlewis.com



Darren S. Tucker  
Deputy Practice Group Leader  
+1.202.739.5860  
darren.tucker@morganlewis.com

### Beijing



Xizowei Ye  
Partner  
+86.10.5876.3689  
xiaowei.ye@morganlewis.com



Feng Sheng  
Associate  
+86.10.5876.3578  
feng.sheng@morganlewis.com

### Boston



Daniel L. Goldberg  
Partner  
+1.617.951.8327  
daniel.goldberg@morganlewis.com



Samuel Rowley  
Partner  
+1.617.951.8692  
samuel.rowley@morganlewis.com



Daniel S. Savrin  
Partner  
+1.617.951.8674  
daniel.savrin@morganlewis.com



Thane D. Scott  
Partner  
+1.617.951.8040  
thane.scott@morganlewis.com



Noah J. Kaufman  
Associate  
+1.617.341.7590  
noah.kaufman@morganlewis.com

### Brussels



Izzet M. Sinan  
Partner  
+32.2.507.7522  
izzet.sinan@morganlewis.com



Irene De Beni  
Associate  
+32.2.507.7525  
irene.debeni@morganlewis.com



Noelia Martinez  
Associate  
+32.2.507.7535  
noelia.martinez@morganlewis.com

### Chicago



Kenneth Kliebard  
Partner  
+1.312.324.1774  
kenneth.kliebard@morganlewis.com

### Dubai



Rebecca L. Kelly  
Partner  
+971.4.312.1830  
rebecca.kelly@morganlewis.com

### Frankfurt



Michael Masling  
Associate  
+49.69.714.00.753  
michael.masling@morganlewis.com



Frances Murphy  
Partner  
+44.20.3201.5631  
frances.murphy@morganlewis.com



Melanie Ryan  
Partner  
+44.20.3201.5460  
melanie.ryan@morganlewis.com



Omar Shah  
Partner  
+44.20.3201.5561  
omar.shah@morganlewis.com



Chris Warren-Smith  
Partner  
+44.20.3201.5450  
chris.warren-smith@morganlewis.com



Joanna Christoforou  
Of Counsel  
+44.20.3201.5688  
joanna.christoforou@morganlewis.com

### Los Angeles



Brian M. Hom  
Associate  
+1.213.612.7373  
brian.hom@morganlewis.com

### Moscow



Roman A Dashko  
Partner  
+7.495.212.2517  
roman.dashko@morganlewis.com



Anastasia Dergacheva  
Associate  
+7.495.212.2516  
anastasia.dergacheva@morganlewis.com



Oleg Egorov  
Associate  
+7.495.212.2594  
oleg.egorov@morganlewis.com



Andrey Ignatenko  
Associate  
+7.495.212.2407  
andrey.ignatenko@morganlewis.com

### New York



Gary A. Adler  
Partner  
+1.212.309.6140  
gary.adler@morganlewis.com



Stacey Anne Mahoney  
Partner  
+1.212.309.6930  
stacey.mahoney@morganlewis.com



Harry T. Robins  
Partner  
+1.212.309.6728  
harry.robins@morganlewis.com



Kenneth I. Schacter  
Partner  
+1.212.309.6865  
kenneth.schacter@morganlewis.com



Richard S. Taffet  
Partner  
+1.212.309.6795  
richard.taffet@morganlewis.com



M. Luisa Di Lauro  
Associate  
+1.212.309.6842  
luisa.dilauro@morganlewis.com



Andrew (Drew) Wellin  
Associate  
+1.212.309.6154  
andrew.wellin@morganlewis.com

### Paris



Alexandre Bailly  
Partner  
+33.1.53.30.44.59  
alexandre.bailly@morganlewis.com



Xavier Haranger  
Associate  
+33.1.53.30.44.28  
xavier.haranger@morganlewis.com

### Philadelphia



Nathan J. Andrisani  
Partner  
+1.215.963.5362  
nathan.andrisani@morganlewis.com



Brendan R. Fee  
Partner  
+1.215.963.5136  
brendan.fee@morganlewis.com



John J. Pease, III  
Partner  
+1.215.963.5575  
john.pease@morganlewis.com



Steven A. Reed  
Partner  
+1.215.963.5603  
steven.reed@morganlewis.com



Frank A. DeSimone  
Associate  
+1.215.963.4649  
frank.desimone@morganlewis.com



Zachary M. Johns  
Associate  
+1.215.963.5340  
zachary.johns@morganlewis.com



Kevin R. Schock  
Associate  
+1.215.963.5070  
kevin.schock@morganlewis.com

## OUR TEAM (CONTINUED)

### San Francisco



**Geoffrey T. Holtz**  
Partner  
+1.415.442.1414  
geoffrey.holtz@morganlewis.com



**Frank B. Kenamer**  
Partner  
+1.415.442.1228  
frank.kenamer@morganlewis.com



**Donn P. Pickett**  
Partner  
+1.415.442.1320  
donn.pickett@morganlewis.com



**Brian C. Rocca**  
Partner  
+1.415.442.1432  
brian.rocca@morganlewis.com



**Kent M. Roger**  
Partner  
+1.415.442.1140  
kent.roger@morganlewis.com



**Sujal J. Shah**  
Partner  
+1.415.442.1386  
sujal.shah@morganlewis.com



**Colin C. West**  
Partner  
+1.415.442.1121  
colin.west@morganlewis.com



**Minna Lo Naranjo**  
Associate  
+1.415.442.1192  
minna.naranjo@morganlewis.com



**Susan J. Welch**  
Associate  
+1.415.442.1157  
susan.welch@morganlewis.com

### Shanghai



**Todd Liao**  
Partner  
+86.21.8022.8799  
todd.liao@morganlewis.com



**Dora Wang**  
Of Counsel  
+86.21.8022.8576  
dora.wang@morganlewis.com

### Silicon Valley



**Mark L. Krotoski**  
Partner  
+1.650.843.7212  
mark.krotoski@morganlewis.com

### Singapore



**Daniel Chia**  
Partner  
+65.6389.3053  
daniel.chia@morganlewis.com

### Tokyo



**Benjamin O. Lang**  
Partner  
+81.3.4578.2532  
benjamin.lang@morganlewis.com



**Tsugumichi Watanabe**  
Partner  
+81.3.4578.2509  
tsugumichi.watanabe@morganlewis.com

### Washington, DC



**David R. Brenneman**  
Partner  
+1.202.739.5056  
david.brenneman@morganlewis.com



**Clayton "Clay" Everett, Jr.**  
Partner  
+1.202.739.5860  
clay.everett@morganlewis.com



**Jonathan M. Rich**  
Partner  
+1.202.739.5433  
jonathan.rich@morganlewis.com



**Jon R. Roellke**  
Partner  
+1.202.739.5754  
jon.roellke@morganlewis.com



**Scott A. Stempel**  
Partner  
+1.202.739.5211  
scott.stempel@morganlewis.com



**Willard K. Tom**  
Partner  
+1.202.739.5389  
willard.tom@morganlewis.com



**Darren S. Tucker**  
Partner  
+1.202.739.5740  
darren.tucker@morganlewis.com



**Hill B. Wellford**  
Partner  
+1.202.739.5729  
hill.wellford@morganlewis.com



**Greg Wells**  
Of Counsel  
+1.202.739.5816  
gregory.wells@morganlewis.com



**Greta L. Burkholder**  
Associate  
+1.202.739.5894  
greta.burkholder@morganlewis.com



**Cindy Hong**  
Associate  
+1.202.739.5359  
cindy.hong@morganlewis.com



**Tracey F. Milich**  
Associate  
+1.202.739.5917  
tracey.milich@morganlewis.com



**Jits Morishita**  
Associate  
+1.202.739.5356  
jitsuro.morishita@morganlewis.com



**Anthony R. Van Vuren**  
Associate  
+1.202.739.5843  
anthony.vanvuren@morganlewis.com

### Wilmington



**Colm F. Connolly**  
Partner  
+1.302.574.7290  
colm.connolly@morganlewis.com

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