



GLOBAL CARTEL ENFORCEMENT REPORT: EARLY 2015

2014 TAKEAWAY — GLOBAL COMPETITION AGENCIES REMAIN AGGRESSIVE IN CARTEL ENFORCEMENT

As in recent years, 2014 saw competition authorities worldwide continue to aggressively investigate and prosecute cartel activity. Although the US Department of Justice (DOJ) may have pioneered aggressive cartel enforcement, it no longer necessarily obtains the highest fines, nor is it now alone in seeking imprisonment as a punishment. In 2014, the European Union led the way on cartel fines. The jurisdiction with the second-highest cartel fine amount was Brazil, whose Administrative Council for Economic Defense (CADE) made good on its leaders' promises earlier in 2014 to seek aggressive cartel fines. The DOJ, finishing multiyear investigations and prosecutions into

cartel activity in the auto parts industry, came in third place for Sherman Act fines. Asian competition agencies rounded out the majority of cartel fines this year, focusing on a myriad of industries, including, but not limited to, capacitors, concrete, shipping, cardboard, and construction.

Global competition enforcement agencies—led not only by the DOJ but also by authorities in Europe, South America, and Asia—continue to aggressively investigate and prosecute international cartels. All indications are that this trend will continue in the future.

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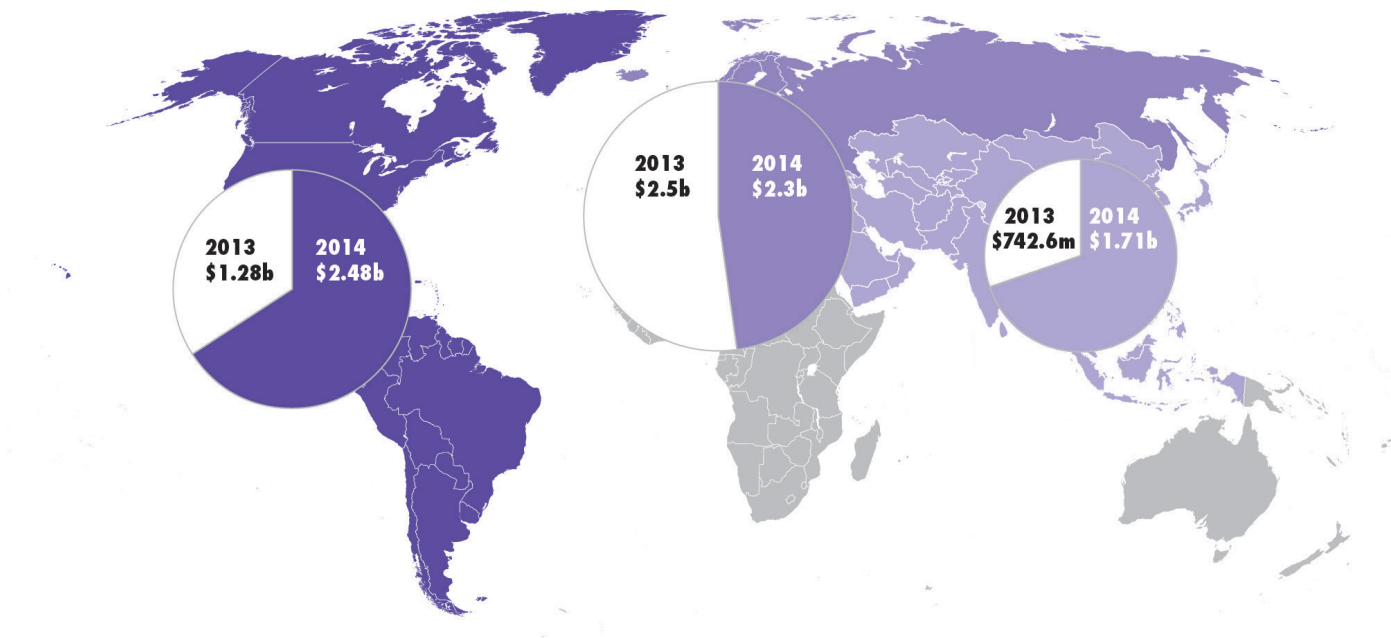
TRENDS

EMERGING AND CONTINUING TRENDS IN CARTEL ENFORCEMENT

- Industries Under Investigation:** The automotive and financial services industries continued to be a focus of cartel enforcement activity in 2014, but so did many other industries, including electronics, food, and construction. (See page 11)
- Fines Continue to Increase:** Cartel fines continue to increase around the world. The EU collected more than \$2 billion last year; Brazil and South Korea each collected more than \$1 billion. The DOJ's Sherman Act fines dropped below \$1 billion for the first time since fiscal year 2011, totaling just more than \$860 million. However, if one includes the non-Sherman Act fines from the Libor investigation and cases that involved other charges, the DOJ reported that it "collected \$1.861 billion in criminal fines and penalties resulting from Antitrust Division prosecutions." (See page 6)
- Longer Prison Terms:** Individuals convicted of cartel offenses in the United States face longer prison terms than ever before, and other countries have also started to impose prison terms for individuals in cartel cases. Last year, the DOJ obtained "the longest prison sentence ever imposed involving an antitrust crime" following a jury trial conviction involving multiple bid-rigging, fraud, and kickback schemes. According to the DOJ, the "average sentence of 26 months" for the 21 individuals convicted of cartel offenses in the United States last year was "the third-highest average ever." Canada and South Korea imposed their first-ever prison terms on individuals convicted of cartel offenses. (See page 8)
- The Increasing Importance of Corporate Compliance:** The head of the Antitrust Division made clear that the DOJ will "reserve the right to insist on probation, including the use of [corporate] monitors, if doing so is necessary to ensure an effective compliance program and to prevent recidivism." Companies found to have ineffective compliance programs face greater fines and liability in the United States as well as the possible burden of an ongoing, embedded corporate monitor. Canada published new guidelines for cartel fines that provide discounts for companies with effective compliance programs. (See page 21)
- The International Reach of the Sherman Act:** International enforcement remains a key area to watch in 2015. Cartel enforcement has stepped up around the world, with more countries imposing stiffer penalties for cartel offenses. At the same time, the DOJ has been aggressive in seeking to apply US antitrust law to conduct that occurs outside the United States. Three significant cases addressed the extraterritorial scope of the Sherman Act under the Foreign Trade Antitrust Improvements Act (FTAIA) in 2014. (See page 19)
- More Extraditions on the Horizon?:** The DOJ extradited two foreign executives last year, including the "first successfully litigated extradition on an antitrust charge." Companies and executives should anticipate the United States to be more aggressive in seeking extraditions in the future. As shown last year, international travel presents unique risks for extradition. (See page 20)
- Obstruction of Justice:** The DOJ continues to obtain convictions and file charges for obstruction of justice in cases. Obstruction of justice, which is typically triggered by document destruction or false statements to enforcement authorities, results in higher fines and longer prison terms. (See page 23)

2014 CARTEL FINES

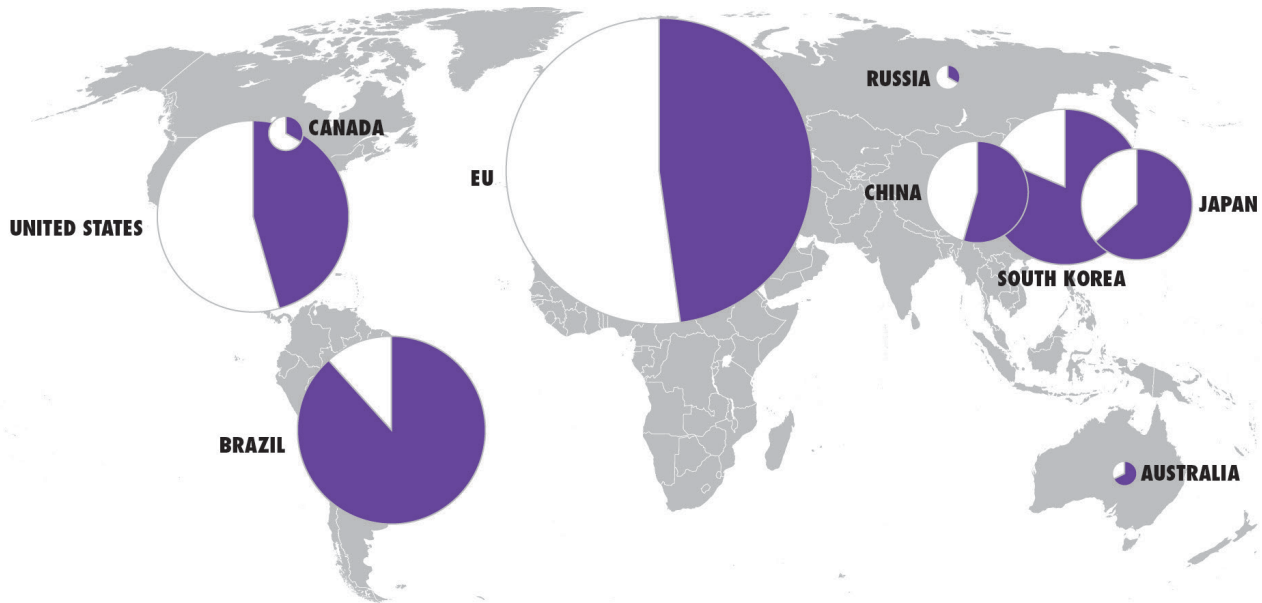
TOTAL GLOBAL CARTEL FINES: 2013–2014



2013	AMERICAS			EUROPE	ASIA			
	\$1.28b			\$2.5b	\$742.6m			
	US	Brazil	Canada		China	Japan	South Korea	Russia
	\$1.02b	\$213m	\$44m		\$241.6m	\$225.4m	\$255.3m	\$20.3m
2014	AMERICAS			EUROPE	ASIA			
	\$2.48b			\$2.3b	\$1.71b			
	US	Brazil	Canada		China	Japan	South Korea	Russia
	\$861.4m	\$1.60b	\$16m		\$290.2	\$398.5	\$1.01b	\$13.3m

b = billion
m = million

CARTEL FINES BY JURISDICTION 2013–2014



	EU	BRAZIL	UNITED STATES	SOUTH KOREA	JAPAN	CHINA	AUSTRALIA	CANADA	RUSSIA
2013	\$2.50b	\$213m	\$1.02b	\$255.3m	\$225.4m	\$241.6m	\$3.2m	\$44m	\$20.3m
2014	\$2.30b	\$1.60b	\$861.4m	\$1.01b	\$398.5m	\$290.2m	\$20.4m	\$16m	\$13.3m

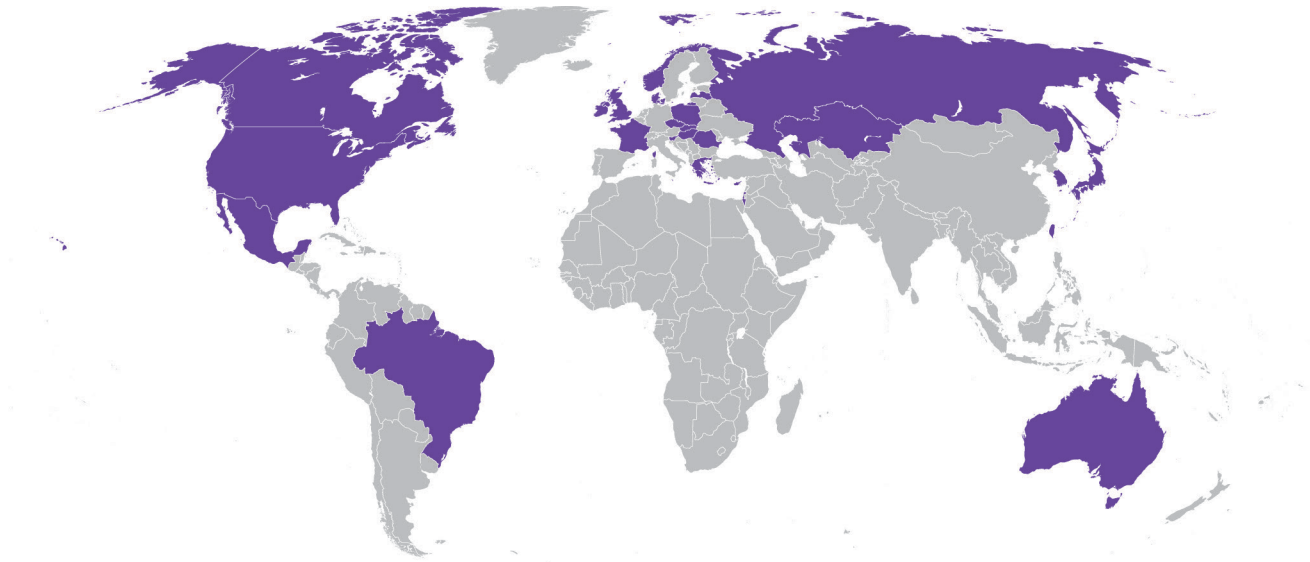
b = billion
m = million

SIGNIFICANT GLOBAL CASE FINES: 2014

- Brazil Fines Cement Companies \$1.4 Billion:** In May, a CADE tribunal fined six companies, six individuals, and three industry organizations a record BRL3.1 billion (US\$1.4 billion) for conspiring to fix prices, divide the market, and create barriers to entry in the cement market.
- The EU Fines Automotive Bearings Companies \$1.2 Billion:** In March, the European Commission imposed fines on two European companies and three Japanese companies totaling €953 million (\$1.2 billion) for participating in a cartel concerning automotive bearings.
- Fourth-Highest Company Fine in the United States in February:** A Japan-based company agreed to plead guilty and to pay a \$425 million criminal fine for its role in a conspiracy to fix prices of automotive antivibration rubber parts. According to the DOJ, the fine was increased by more than \$100 million because the company failed to report the conduct at issue when it was investigated and paid a fine in a separate cartel case.
- France Fines Cleaning Products Companies €606 million and Personal Hygiene Companies €345 million:** In December, France's Competition Authority fined eight companies €345 million for running a cartel in the personal hygiene market. Eleven companies received a €606 million sanction for collusion in the cleaning products market.
- India Imposes \$422 Million in Fines on Automotive Companies:** In August, India's antimonopoly regulator, the Competition Commission of India, issued fines on 14 automobile companies for a total of \$422 million for violating trade norms in the spare parts and after-sale services market, affecting about 20 million customers.
- Italy Fines Pharmaceutical Companies €180 million:** In March, the Italian Competition Authority (ICA) found that two pharmaceutical companies infringed Article 101 of the Treaty on the Functioning of the European Union (TFEU) by taking part in an anticompetitive agreement in the market for ophthalmic drugs used to treat some serious vascular eyesight conditions, including age-related macular degeneration, the main cause of blindness in developed countries.
- European Commission Fines Polyurethane Foam Companies €114 million:** In January, the European Commission fined four producers of flexible polyurethane foam a total of €114 million (US\$139 million) for colluding to coordinate the sales prices of various types of foam.
- Germany Fines Food Companies €725 million in Three Separate Cases:** The German FCO imposed fines of €338 million on 21 sausage manufacturers, €280 million on three sugar manufacturers, and €107 million on five beer manufacturers in three separate cases in 2014. The FCO found that there had been cartels to fix prices of those products in Germany.
- Japan Fines Car Carriers \$227 Million:** The Japanese Federal Trade Commission (JFTC) imposed surcharge orders totaling ¥22.7 billion (\$227 million) on five ocean shipping companies engaged in the sale of car carrier services for participating in cartel activity. The DOJ subsequently imposed fines of \$125 million on two of the same companies.
- Auto Parts Companies Fined \$200 million by China:** China's National Development and Reform Commission (NDRC) fined eight auto parts companies collectively 1.2 billion yuan (\$198 million).

INDIVIDUAL CRIMINAL PENALTIES

JURISDICTIONS WITH CRIMINAL PENALTIES FOR CARTEL ACTIVITIES



With Criminal Penalties for Cartel Activities:

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

SIGNIFICANT INDIVIDUAL PRISON TERMS FOR CARTEL OFFENSES – WORLDWIDE

In fiscal year 2014, DOJ “obtained jail terms for 21 individual defendants, with an average sentence of 26 months, the third-highest average ever”

- **Longest US Jail Sentence Ever for a Cartel Offense in the United States.** Gordon McDonald (United States), 14 years + \$50,000 fine: McDonald was convicted following a jury trial for participating in multiple bid-rigging, kickback, and fraud conspiracies with three subcontractors in return for kickbacks of more than \$1.5 million. The prison term, based on multiple offenses, is “the longest prison sentence ever imposed involving an antitrust crime” by the DOJ.
- **Executive Extradited From Germany Sentenced to Two Years in US Prison.** Romano Piscioti (United States), two years + \$50,000 fine: A former executive of a marine hose manufacturer of Parker ITR Srl and manager of its Oil & Gas Business Unit, was extradited from Germany in early April 2014, pled guilty, and was sentenced for participating in a conspiracy to rig bids, fix prices, and allocate market shares of marine hose. The DOJ noted that this case was the “first successfully litigated extradition on an antitrust charge.” (See also Extradition issues on page 20)
- **First South Korean Jail Sentences for Cartel Offenses.** Various South Korean Executives (Korea), two years: In February 2014, Korea imposed the first prison sentences on individuals engaging in cartel activity in Korea. On February 5, 2014, the Busan Eastern District Court sentenced three individuals to six months in prison for cartel activity related to supplying cables to nuclear power plants. The next day, the Seoul Central District Court sentenced several executives who were found guilty of participating in a bid-rigging cartel stemming from a public parks project. Many of the executives received suspended prison sentences or fines, but the court sentenced the senior executive who played a leading role in the cartel to two years in prison.
- **Brazil Imposes Record Jail Sentence of More Than 10 Years.** Following CADE’s investigation of the international air cargo industry, a Brazilian court imposed a record jail sentence of 10 years and three months and a BRL378.9 million (\$165 million) fine on a convicted Brazilian air cargo executive.
- **Yusuke Shimasaki (United States), 18 months:** A former Bridgestone Corp. executive agreed to plead guilty and to serve a lengthy term in prison for his role in an international conspiracy to fix prices and rig bids of automotive antivibration rubber parts.
- **Kazumi Umahashi (United States), 13 months:** A former executive of Japan-based Mitsuba Corporation has agreed to plead guilty and serve time in prison for conspiring to fix the prices of windshield wiper systems and starter motors installed in cars.
- **Shingo Okuda (United States), 13 months + \$20,000 fine:** An executive of Japanese auto parts maker G.S. Electech Inc. pleaded guilty and was sentenced for his role in an international conspiracy to rig bids and fix prices on auto parts used on antilock brake systems installed in US cars.
- **Shigehiko Ikenaga and Tatsuo Ikenaga (United States), 13 months:** The former president and vice president of Osaka, Japan-based Diamond Electric Mfg. Co. Ltd. agreed to plead guilty for their participation in a global conspiracy to fix prices of ignition coils installed in cars sold in the United States and elsewhere.
- **Satoru Horisaki (United States), one year and one day + \$20,000 fine:** An executive of Denso Corp. pled guilty and was sentenced for conspiring to fix the prices of instrument panel clusters, also known as meters, installed in cars.
- **Kazuaki Fujitani (United States), one year and one day:** A former executive of Denso Corp. pled guilty to an obstruction of justice charge concerning the DOJ investigation into a conspiracy to fix the prices of heater control panels installed in cars.
- **Elvio Lancione and Michael Teixeira (Canada), four months + community service:** Two ECU executives pleaded guilty to fixing surcharges for the supply of export consolidation services. The Ontario Superior Court sentenced Lancione to two concurrent conditional sentences of four months and 30 hours of community service and sentenced Teixeira to two concurrent three-month conditional sentences and 20 hours of community service.

GLOBAL CARTEL ENFORCEMENT REMAINS AGGRESSIVE

In 1993, the DOJ adopted its current Leniency Program, which guarantees amnesty to the first participant in a cartel to self-report the violation and cooperate with the DOJ's investigation. The program has become the DOJ's most effective tool in uncovering and prosecuting cartels, accounting for a significant majority of all cartel prosecutions in the last two decades.

Following the success of the DOJ's program, more than 50 other countries have adopted similar programs to encourage self-reporting of cartel violations. Given the cooperation among different enforcement authorities around the world

and the global publicity surrounding cartel enforcement actions, companies that seek leniency in one jurisdiction almost uniformly also decide to seek leniency or immunity in other potentially affected jurisdictions at the same time. This has led to an explosion in global cartel enforcement efforts in the last decade.

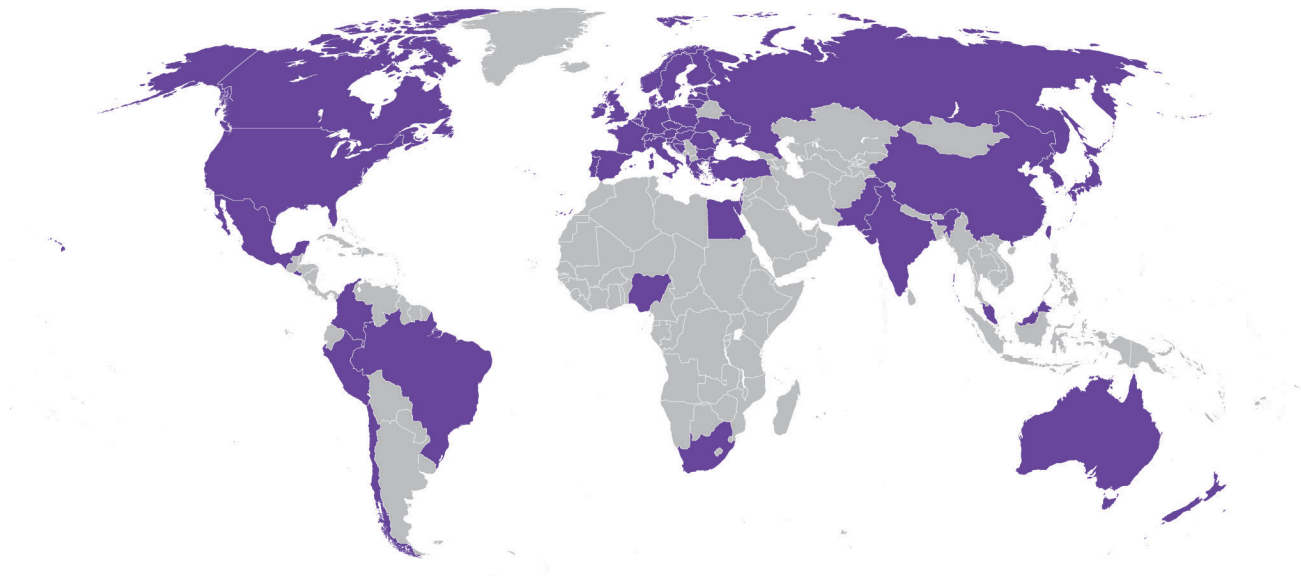
The US Corporate Leniency Program affords full criminal immunity to the first company (and its employees) that reports a cartel to the DOJ and successfully qualifies under the program.

- › The program creates a race to be first to the prosecutor's door.
- › Similar programs have been adopted by 50 other countries. The program is the biggest source of cartel cases for the United States and other countries.

The DOJ uses the Leniency Plus program to uncover collusion in other industries/regions.

- › Under Leniency Plus, a company under investigation by the DOJ discloses the existence of a second, unrelated conspiracy in a completely separate industry or market to receive immunity in a "new" investigation and more favorable treatment (fine discount) in the "old" investigation.
- › Similar programs have been adopted in more than 50 other countries.

JURISDICTIONS WITH CARTEL IMMUNITY/LENIENCY PROGRAMS



● With Cartel Immunity/Leniency Programs:

- Australia
- Austria
- Belgium
- Brazil
- Bulgaria
- Canada
- Chile
- China
- Colombia
- Croatia
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hong Kong
- Hungary
- India
- Ireland
- Israel
- Italy
- Japan
- Korea
- Lithuania
- Luxembourg
- Malaysia
- Mexico
- Netherlands
- New Zealand
- Nigeria
- Norway
- Poland
- Portugal
- Romania
- Russia
- Singapore
- Slovak Republic
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- Taiwan
- Turkey
- Ukraine
- United Kingdom
- United States

INDUSTRIES IN THE CROSSHAIRS

2014 INTERNATIONAL CARTEL ENFORCEMENT

- Because of the incentives afforded by various Leniency Plus programs and the scope of the information that must be provided in response to a cartel investigation, cartel enforcement tends to move from product to product within a particular industry.
- Industries That Were the Focus of International Enforcement in 2014

- 1. AUTOMOTIVE**

- 2. FINANCIAL SERVICES**

- 3. ELECTRONICS**

- 4. FOOD**

- 5. CONSTRUCTION (CEMENT)**



AUTO PARTS

- Began in February 2010, with coordinated dawn raids and search warrants in the United States, Canada, Europe, and Japan.
- Initially focused on wire harness products. Through Amnesty Plus or Leniency Plus and expanded investigations across the globe, the investigation has now expanded to involve investigations of more than 100 parts.
- DAAG Hammond 2013: “The detection of one auto part conspiracy has led to the discovery of other conspiracies involving a new set of products, a new group of conspirators and a new list of victims.”
- Ongoing, coordinated investigations in the United States, Europe, Canada, Brazil, China, Japan, South Korea, South Africa, Mexico, Singapore, and Australia.
- Total Global Fines to Date: \$4.1 billion.

United States: In the ongoing auto parts investigation, so far the DOJ has charged “33 companies and 50 individuals.” According to the DOJ, “[a]ll of the charged companies have pleaded guilty or have agreed to plead guilty and to pay a combined total of more than \$2.4 billion in fines”

European Union: €1.2 billion in fines, more than 100 parts under investigation, and significant additional enforcement action coming

Canada: \$56 million in fines and seven companies charged

Japan: ¥34 billion in fines and the ongoing criminal trial of various individuals involved in alleged bid-rigging cartel of automotive bearings

China: Fines totaling CNY1.24 billion and the largest cartel fine ever (CNY290.4 million) imposed on a single company

Brazil: Dawn raids in multiple product lines in 2014

South Africa: In October 2014, South Africa’s Competition Commission (SACC) announced an auto parts investigation involving more than 80 auto parts suppliers and more than 120 auto parts, including inverters, electric power steering systems, glow plugs, rear sunshades, pressure regulators, and spark plugs



FINANCIAL BENCHMARKS

- Coordinated investigations in the United States, Europe (European Commission and authorities in the UK, Switzerland, Germany, and the Netherlands), and Japan.
- The total global fines imposed by competition authorities for all benchmark investigations is more than \$4 billion, which includes criminal fines or penalties and fines for “cartel” conduct.
- The total global fines by competition and noncompetition authorities for all benchmark investigations is more than \$10.3 billion, which includes the \$4.3 billion in FOREX fines from November 2014.

United States

- › Ongoing DOJ investigations into potential manipulation of LIBOR, EURIBOR, and other global benchmark rates, including the ISDAfix and FOREX benchmarks.
- › Various divisions within the DOJ (Antitrust, Criminal, and the Federal Bureau of Investigations) were involved in the financial benchmarks investigations. The CFTC has also worked in tandem with US criminal prosecutors reportedly referring evidence of criminal behavior related to banks’ alleged manipulation of ISDAfix to the DOJ.
- › In 2014, the DOJ fined Lloyds Banking Group plc \$86 million for LIBOR manipulation.
- › Criminal charges were filed against eight individuals alleging wire fraud and bank fraud in LIBOR and EURIBOR. But no antitrust charges were filed despite specific allegations that traders had coordinated Yen LIBOR submissions with traders at another bank.

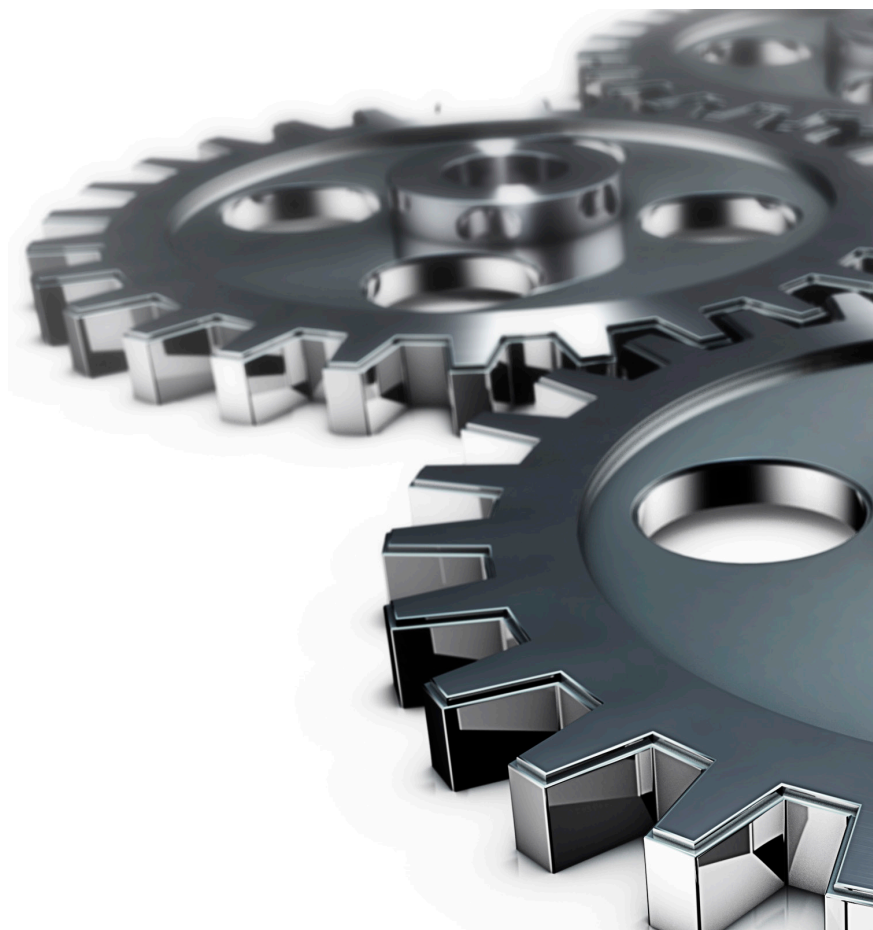
- › In 2014, the DOJ obtained \$561 million in criminal fines and penalties in its ongoing financial benchmarks investigation. To date, the DOJ has obtained more than \$1.1 billion in the financial benchmarks investigation.
- › The CFTC obtained \$1.4 billion in monetary penalties from five banks in its FOREX investigation. The DOJ has yet to announce criminal fines and penalties in the FOREX investigation.

Europe

- › The European Commission (EC) has emphasized that financial cartels are a top priority.
- › In December 2013, the EC fined banks approximately €1.71 billion for conduct related to the EURIBOR and Yen LIBOR pursuant to its settlement procedure. In 2014, the EC issued a Statement of Objections to three additional nonsettling banks and one broker outlining alleged EURIBOR infringements.
- › The EC also fined companies approximately €94 million for (i) a Swiss Franc LIBOR (benchmark interest rate) cartel and (ii) a Swiss Franc interest rate derivatives cartel that did not seek to influence a benchmark.

INDUSTRIAL BEARINGS

- Industrial bearings investigations are likely an outgrowth of an auto parts case.
- Ongoing DOJ criminal investigation into industrial bearings confirmed in May 2014; previous DOJ charges and pleas related to automotive bearings only.
- The Japan Fair Trade Commission and China's NDRC have imposed fines for both automotive bearings and industrial bearings.
- Brazil's CADE confirmed an automotive and industrial bearings investigation that spans two decades and involves 15 companies.
- In 2014, Competition Commission of Singapore imposed fines totaling more than US\$9.3 million on four Japanese manufacturers of industrial bearings.
- Australia's Competition and Consumer Commission imposed fines of AUD\$3 million in its industrial bearings investigation.



CAPACITORS

- Beginning in March 2014, coordinated investigations began in the United States, China, Japan, the European Union, Korea, and Taiwan.
- The first-known globally coordinated dawn raids involving China.
- May be an outgrowth of the auto parts investigation—leniency plus application by a defendant in the auto parts investigation.
- In June 2014, the JFTC executed dawn raids at several companies in its continuing capacitors investigation.
- In October 2014, the DOJ publicly acknowledged its ongoing grand jury investigation in court filings.



REAL ESTATE

- The DOJ continues its aggressive enforcement of the Sherman Act at public real estate foreclosure auctions in Northern California, Georgia, Alabama, and other states.
- In Northern California, so far “51 individuals have agreed to plead or have pleaded guilty” concerning “bid rigging and fraud at public real estate foreclosure auctions” and 21 real estate investors have separately been charged in five indictments.
- Separate investigations remain ongoing in other states.



OCEAN SHIPPING SERVICES

- The DOJ continues its investigation of companies concerning a “conspiracy to fix prices, allocate customers, and rig bids of international ocean shipping services for roll-on, roll-off cargo, such as cars and trucks, to and from the United States.”
- To date, the DOJ has obtained agreements from three corporations “to plead guilty and to pay criminal fines totaling more than \$136 million” in the ongoing investigation.
- The investigation is also focusing on the prosecution of individual executives.

KEY DEVELOPMENTS IN CARTEL INVESTIGATIONS AND LITIGATION

CARTEL DAMAGES LITIGATION GOES GLOBAL

- 2014 may be remembered as the tipping point for the globalization of follow-on damages litigation in cartel matters. Criminal and administrative authority to penalize cartel behavior has spread across the globe over the last 20 years. Private cartel enforcement is the next wave—more extensive and more effective cartel damages litigation. There were several notable developments in this regard in 2014.
 - › On December 15, 2014, the European Union issued a directive requiring all member states to pass litigation within two years that would allow more effective follow-on damages actions.
 - › Key provisions include:
 - Mechanisms for courts to order disclosure of “relevant evidence” by a party or third party. Many member states currently do not allow discovery.
 - A decision by a National Competition Authority (NCA) finding an infringement establishes irrefutable proof of a violation in the same member state as the relevant NCA and, at least, prima facie evidence of a violation in every other member state.
 - Undertakings found to violate the law are jointly and severally liable for the full amount of any damages, with the exception of immunity recipients that will generally only be jointly and severally liable to their direct or indirect customers.
 - Undertakings will have rights to contribution among themselves, with the amounts of contributions to be determined by each undertaking’s “relative responsibility for the harm caused.”
 - Passing-on defenses will be available, with a mandatory burden shifting scheme adopted.
- › For more information about the European Union’s directive on damages actions, please see our LawFlash, “EU Issues Cartel Damages Directive.” [http://www.morganlewis.com/pubs/Antitrust_LF_EUIssuesCartelDamagesDirective_17nov14?source=homepg]
- **Consumer Rights Bill Introduced in UK Parliament**
 - › Although it has broader applicability, the Consumer Rights Bill currently under consideration in the UK was introduced in part to remedy perceived limitations on effective private enforcement in cartel matters.
 - › Among the innovations proposed is an “opt out” class action procedure, which mirrors the US class action system in some respects.
 - › The legislation remains pending before Parliament.
- **Class Action Reforms Under Consideration in Korea**
 - › Korea is also considering legislative reforms to expand the procedural rights of damages claimants in cartel cases.
 - › The Korea Financial Telecommunications & Clearings is reportedly consulting with the Korean Ministry of Justice about new legislation to introduce the class action procedure to cartel damages actions in Korea.
- The proposed legislation would be called the Draft Law on Financial Investment Products and Antitrust/Fair Trade Class Action Lawsuits and could be introduced in the National Assembly soon.

RECENT FTAIA LITIGATION

- The courts continue to consider the reach and limits to the enforcement of the Sherman Act outside the United States in a recent series of cases under the FTAIA. This will continue to be a key area to monitor. Some of the highlights in the last year include:
 - › In June and July 2014, the Second and Ninth circuits joined the Third and Seventh in holding that FTAIA is not a limitation on the subject matter jurisdiction of the federal courts, but rather is a substantive requirement of the Sherman Act.
 - › In June 2014, the Second Circuit affirmed dismissal on FTAIA grounds of a case against a Morgan Lewis client, holding that, even if a patent lawsuit in China might hypothetically have the requisite effect on consumers in the United States, any such US effect could not “give rise” to an antitrust claim by an alleged infringer that claimed to have been hindered in competing against the patentee.
 - › In July 2014, the Ninth Circuit upheld the criminal conviction of defendants in the liquid crystal display price-fixing prosecution, holding that the government sufficiently pleaded and proved that the conspirators engaged in import commerce with the United States, and therefore, that the FTAIA did not apply.
 - › In November 2014, the Seventh Circuit held that, with respect to components that were purchased abroad at prices elevated by a price-fixing conspiracy and incorporated into other devices before being imported into the United States, the importer of those devices could not sue for damages under the US antitrust laws. The court reasoned that even if the higher prices paid by US consumers of those devices were “direct, substantial, and reasonably foreseeable” effects of the conspiracy, the prices paid by consumers did not “give rise” to the importer’s injury. Instead, the importer was injured, if at all, by the higher prices its foreign subsidiaries paid abroad for the components.



EXTRADITION

- In 2014, the Antitrust Division demonstrated its ability to extradite foreign executives to the United States in two separate antitrust cases.
- In April 2014, an Italian executive was extradited from Germany to federal court in Florida. His indictment was unsealed after he was arrested during international travel. He pled guilty and was sentenced to serve 24 months in prison and ordered to pay a \$50,000 fine. (See also Romano Pisciotto case noted on page 8)
- In November 2014, a Canadian executive was extradited from Canada to a federal court in New Jersey. Demonstrating its resolve and determination, the Antitrust Division pursued extradition for more than five years until the executive was delivered to the United States.
- The two 2014 cases are consistent with the aggressive approach of the Antitrust Division to expand the enforcement and reach of the Sherman Act around the world. Based on this trend, it is expected that the Antitrust Division will look for more opportunities to extradite foreign executives.
- Since 2010, the Antitrust Division has successfully extradited four foreign executives.
- For more information, see our LawFlash, "Antitrust Division Reinforces Its Resolve and Ability to Extradite Foreign Executives." [http://www.morganlewis.com/pubs/Antitrust_LF_DivisionReinforcesResolveAbilitytoExtraditeForeignExecs_03dec14]

COMPLIANCE

- In September 2014, the Antitrust Division announced a significant change in policy focus concerning the need for effective corporate antitrust compliance programs. The division will now “insist” on corporate probation where a company’s compliance program is not deemed effective and will request an external corporate monitor at the company’s expense if necessary.
- A company on probation remains under the continuing jurisdiction of the court and risks being hauled back to court for any violations of court-imposed probation conditions.
- Given the greater emphasis on compliance programs, companies can only help themselves by ensuring that they have an effective compliance program in place. The compliance program can serve the companies’ interests by preventing and detecting conduct that may expose them to criminal liability or mitigating the penalties and consequences in the criminal justice process.
- In contrast, other countries have a more defined incentive approach to compliance. For example, in September 2014, the Canada Competition Bureau commissioner noted that a company may receive a “reduction in fines for companies that qualify for leniency and that are found to possess a credible and effective corporate compliance program.”
- For more information, see our LawFlash, “DOJ Warning About Corporate Compliance Programs, Probation, and External Compliance Monitors.” [http://www.morganlewis.com/pubs/Antitrust_LF_DOJWarningCompliancePrograms_06nov14]

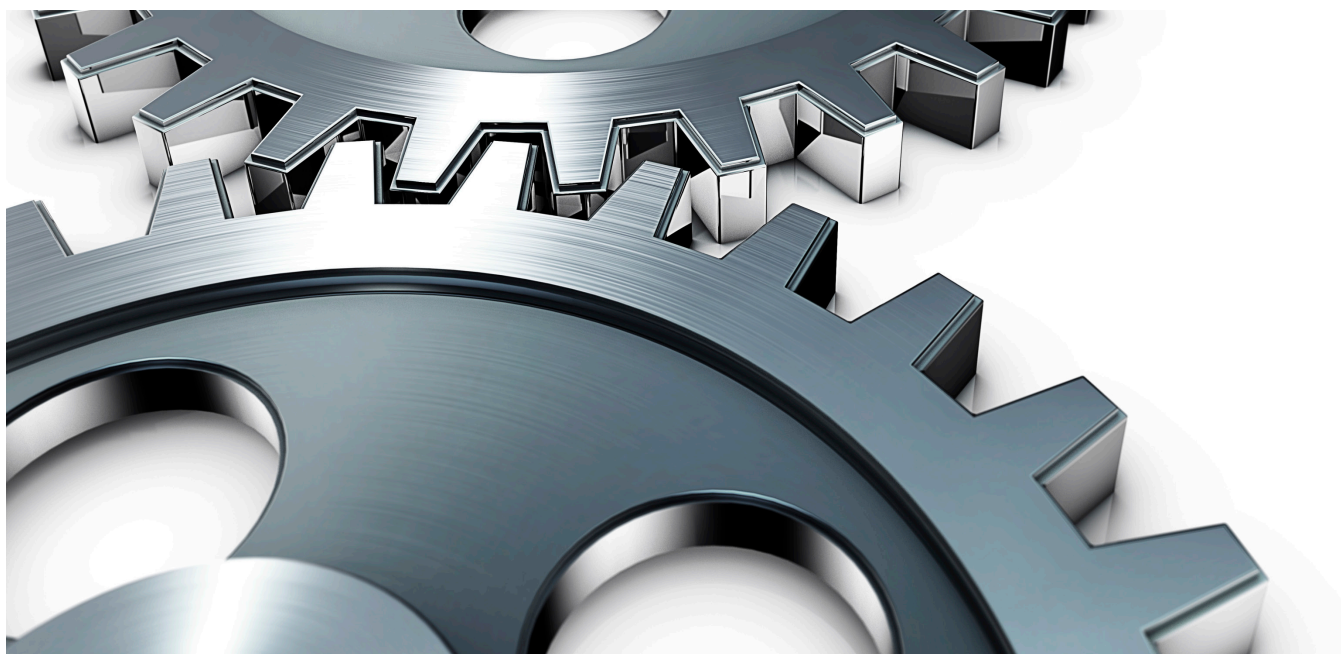


INTERNATIONAL COOPERATION

- Coordination/Dawn Raids
 - › The auto parts investigation involved coordination among the DOJ's Antitrust Division, the JFTC, the EC, the Canadian Competition Bureau, the Korea Fair Trade Commission, Mexico's Federal Economic Competition Commission, and the Australian Competition and Consumer Commission. A more recent example of coordination of dawn raids and investigations involved exhaust systems in March 2014.
 - › Coordination of investigations and dawn raids also appears to have taken place with respect to the capacitors, which are passive electrical components that store energy in many electronic products. The JFTC, the Korea Fair Trade Commission, China's NDRC, the DOJ's Antitrust Division, and the Taiwan Fair Trade Commission are reported to have coordinated their efforts in launching the capacitors investigation in March 2014.
- Cooperation Agreements
 - › The trend of bilateral and multilateral cooperation agreements focus on cartel and other anticompetitive conduct has continued with a series of formal agreements and informal arrangements.
 - › In April 2014, Brazilian authorities and the JFTC signed an agreement to cooperate in enforcement actions. The agreement provides, among other things, for the sharing of information, notification of enforcement actions that might be important to the other country, and potential coordination of enforcement actions.
 - › An agreement between the European Union and the Swiss Confederation announced in 2013 came into force in 2014 that will strengthen cooperation between the EC and the Swiss Competition Commission. The agreement provides a framework for coordination and cooperation of enforcement activities and provides for regular contacts in order to discuss policy issues and enforcement efforts and priorities and for mutual notification of enforcement activities affecting each other's important interests. Unlike many other cooperation agreements, the agreement also includes provisions on the exchange of evidence obtained by the competition authorities when they investigate.
 - › In September 2014, the United States entered into an antitrust cooperation agreement with Colombia's Superintendency of Industry and Commerce, the agency that enforces Colombia's competition laws. The agreement contains provisions for antitrust enforcement cooperation and coordination, conflict avoidance and consultations with respect to enforcement actions, and technical cooperation.
 - › Although still more informal in nature, the Canadian Competition Bureau has announced that it is working to develop relationships with China's state-owned Assets Supervision and Administration Commission, Ministry of Commerce of the People's Republic of China, State Administration for Industry and Commerce, and NRDC in an effort to facilitate future communication and collaboration among the agencies to enable collaboration toward efficient and effective competition enforcement.

OBSTRUCTION OF JUSTICE

- The DOJ continues to use obstruction statutes in cartel investigations.
 - › In 2014, the Antitrust Division continued to aggressively prosecute obstruction of justice by filing charges against, and obtaining convictions from, executives and companies. (See case example on page 8)
 - › In many of these cases, the destruction of records, including electronic records, follows dawn raids. Obstruction of justice usually results in a higher sentence and possibly additional counts of conviction.
 - › Companies should take steps to avoid the additional penalties, including higher fines and prison terms, resulting from obstruction of justice, which usually aggravates the facts and outcome of the case.
- DOJ Domestic Enforcement remains strong as well.
 - › During 2014, the DOJ continued to aggressively enforce domestic cartel activity.
- › The Antitrust Division created an additional Washington field office, known as Washington Criminal Section II, to investigate and prosecute cases remaining from closed field offices and to investigate potential Sherman Act violations in the mid-Atlantic and South.
- › Real estate auction fraud cases: The Antitrust Division continues to prosecute individuals allegedly engaged in bid rigging and fraud at public foreclosure auctions. In March, a Sacramento federal jury convicted two defendants for rigging bids to obtain properties at real estate auctions.
- › In the case prosecuted by the San Francisco office of the Antitrust Division, at the end of 2014, 51 individuals had either been convicted or agreed to plead guilty. An additional 21 real estate investors were recently charged in five multicount indictments.



OUR PRACTICE

In November 2014, Morgan Lewis completed a transaction with Bingham McCutchen, creating a powerhouse of an antitrust practice, with nearly 60 lawyers specializing in antitrust and competition law. More than 20 Morgan Lewis lawyers have previously served as prosecutors with the DOJ, including partners that have direct experience prosecuting cartel matters. Our team includes Mark Krotoski, who joined us from the DOJ in October 2014, where he was Assistant Chief of the National Criminal Enforcement Section in the DOJ's Antitrust Division. Mark is part of a deep bench that includes the former Assistant Attorney General in charge of the Antitrust Division, the United States Attorney for the District of Delaware, the former White House Counsel, Chief of Staff at the Antitrust Division, Counselor to the head of the Antitrust Division, Assistant Chief in the Antitrust Division's National Criminal Enforcement Section, and Trial Attorney in the Antitrust Division's National Criminal Enforcement Section.

Morgan Lewis has acted as U.S., 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 U.S. cartel litigation process, from initial investigation through final resolution. Our antitrust lawyers have coordinated multijurisdictional cartel investigations and civil litigation and defended some of the world's largest corporations in high-stakes treble damages class actions involving allegations of price-fixing and other cartel conduct.

We also assist clients in establishing compliance programs to prevent or detect potential cartel conduct that may result in substantial criminal liability. We help design compliance programs that mitigate the sentencing consequences in the criminal justice system that are consistent with recent DOJ compliance standards.

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The authors of this report compiled the information within using publicly available sources only.

Dollar figures from selected jurisdictions are approximate and reflect fine levels and exchange rates at the time of writing and may not be exhaustive.

U.S. figures cover the DOJ's fiscal year, which runs from October 1 to September 30. All other countries' figures cover the 2014 calendar year.

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