International Developments in Anti-Cartel Enforcement

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Trends in International Anti-Cartel Enforcement

- Changing laws and rising corporate and individual sanctions
- New/expanding/awakening anti-cartel authorities with greater detection tools
- Continuing proliferation of Corporate Leniency Programs
- Increasing international coordination and information sharing among competition enforcers
- Still growing number of jurisdictions investigating and sanctioning suspected international cartel activity with consecutive and sometimes overlapping sanctions
- Mounting legal challenges to the extraterritorial reach of national antitrust laws and to claims seeking follow-on private damage claims in European Member States and elsewhere
Changing Laws and Rising Sanctions

The number of jurisdictions that prioritize the vigorous enforcement of cartel (and FCPA) laws is increasing globally, as are the risks and costs of detection.

• The penalties for companies and their executives are on an unprecedented scale.

• The United States, European Union, Germany, France, Japan, China, Korea, Singapore, Brazil, and other jurisdictions continue to reset the bar with record-level fines for cartel violations.

• Unprecedented sanctions are also the result of newly adopted laws carrying higher sanctions, including individual and/or criminal sanctions.

• China, Singapore, South Africa, and Chile are among the newest jurisdictions to target multinational companies suspected of engaging in international cartel activity.

• The risk of detection has risen along with the sanctions.
Expanded Investigative Powers and Enforcement: Since January 2013

• New laws increasing the powers of enforcers to investigate and sanction cartel activity (see, e.g., the United Kingdom, Austria, Denmark, Germany, Poland, Korea, Mexico, El Salvador)

• Record cartel sanctions imposed (see, e.g., EU, Germany, France, Turkey, Denmark, United States, Japan, Korea, China, Singapore, Taiwan, Malaysia, Brazil, South Africa)

• Unprecedented level of enforcement activity in rapidly emerging jurisdictions (see, e.g., China, Singapore, Taiwan, South Africa, Chile, Mexico, Peru, Colombia)

• First-of-a-kind developments relating to the criminal prosecution of individuals (see, e.g., Denmark, Japan, Korea, United States, Brazil)

• Continued proliferation of Leniency Programs (see, e.g., China, Chile, Colombia, Peru, Poland, Mauritius)

• The first extradition of an individual charged with an antitrust crime (United States)
Numerous Enforcers Targeting Auto Parts Industry

• Numerous jurisdictions are reported to be investigating collusion in the auto-parts industry involving price fixing, bid rigging, and customer and/or market allocation agreements:

  – The United States (DOJ)
  – European Union (EC)
  – Japan (JFTC)
  – China (NRDC)
  – Canada (CCB)
  – South Korea (KFTC)
  – South Africa (CC)
  – Singapore (CCS)
  – Brazil (CADE)
  – Mexico (COFECE)
  – Australia (ACCC)
Auto Parts: U.S. DOJ Milestones

- Unprecedented international cooperation and global enforcement
  - US DOJ credits JFTC for first detecting some of the conduct announced at Attorney General press conference

- Biggest investigation in U.S. history leads to record outcomes (to date):
  - Number of companies prosecuted (33)
  - Total fines imposed (US $2.4 billion)
  - Largest “Penalty-Plus” upward fine enhancement imposed (US $100M+)
  - Number of individuals prosecuted (52)
  - Number of individuals sentenced to incarceration (29)
  - Number of individuals who are considered “fugitives” (23)
  - Longest jail sentences served for cooperating non-U.S. defendants (24 months)
Auto Parts and Ball Bearings: Non-U.S. Fines

Auto parts and ball bearing producers have already been sanctioned by eight different jurisdictions to date:

- **Japan** fined automotive ball bearings and auto parts producers approximately JPY 25 billion (US $212 million); Japan’s Ministry of Justice also brought criminal cases and imposed criminal sanctions against bearing companies and their executives.
- **Korea** fined automotive ball bearings manufacturers KRW 77.8 billion (US $71 million) and referred the matter for criminal prosecution to the Justice Ministry.
- **China** fined auto parts suppliers a record total of CNY 1.24 billion (US $200 million).
- **Singapore** imposed its first fines sanctioning international cartel activity against Japanese ball bearing producers SGD 9.3 million (US $7.4 million).
- **The EU** fined automotive ball bearing manufacturers EUR 953 million (US $1.1 billion).
- **Canada** fined auto parts suppliers CAD 56 million (US $45 million).
- **Australia** fined automotive ball bearings suppliers AUD 5 million (US $4 million).
U.S. Private Damage Exposure

- U.S. civil private damage exposure will likely exceed criminal fines.
- Civil suits have been filed covering 29 types of auto parts.
- Companies are being sued in separate class actions filed by end-users, intermediaries (auto dealers), and direct purchasers, as well as automotive manufacturers and state attorneys general that have filed individual actions.
  - Because of joint-and-several liability and automatic trebling of damages under U.S. law, adverse judgments could bankrupt some companies.
  - Nine auto part suppliers are reported to have reached negotiated settlements, but none of the settlements cover all of the companies’ civil damage exposure.
  - The civil suits are moving slowly, with the first set of cases filed still pending after three years and trial unlikely until 2018 or later.
- Auto-part suppliers also face class-action suits in Canada covering 28 types of auto parts.
The Long and Grueling Journey

• The auto-parts investigation became public in February 2010 when FBI agents in the United States simultaneously executed search warrants together with competition enforcers in Europe and Asia.
  – The U.S. DOJ must bring charges within five years from the last act taken in furtherance of the cartel activity ("Statute of Limitations") and will typically conclude that a company’s involvement in cartel activity terminates when it is subject to a search (e.g., February 2015).

• Based on past precedent, U.S. civil damage actions involving auto parts will continue to be litigated well beyond 2020.

• While the U.S. DOJ’s investigation is winding down, other jurisdictions are just getting started:
  – In October 2014, South Africa’s Competition Commission ("CC") launched an investigation of suspected cartel activity from 2000 to 2014 by 82 automotive component manufacturers relating to the sale of 121 automotive components to 14 automotive manufacturers.
Developments in the United States
United States: Corporate and Individual Sanctions

• The U.S. Department of Justice’s Antitrust Division (“U.S. DOJ”) secured over $1 billion in criminal fines in each of the last three consecutive years (FY 2012-14), and a record $1.27 billion in criminal fines during FY 2014.

• In February 2014, a $425 million fine was obtained against an auto parts producer which had its fine increased by over $100 million under the U.S. DOJ’s “Penalty Plus” policy, which punishes a company that fails to “voluntarily” disclose conduct to the Antitrust Division when it discovers it first in connection with another investigation.

• In July 2014, the Ninth Circuit Court of Appeals upheld a $500 million fine against a Taiwanese LCD producer (AUO Optronics) and 3-year jail sentences imposed on the company’s Chairman and Vice-Chairman.
  – The company and its executives were convicted at trial in March 2012.

• In December 2013, a District Court judge in Puerto Rico imposed a 5-year jail sentence on the former president of a shipping company who was convicted at trial – the longest jail sentence ever imposed for a single-count criminal antitrust violation.
Total Criminal Fines from Antitrust Division Investigations (FY 2002–2013)
Average Length of Prison Sentence (FY 2003-2014)

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U.S. DOJ Extradition of Foreign Nationals

• This year marked a major development in the DOJ’s efforts to extend its reach to defendants outside the United States. The DOJ successfully secured the extradition of the first foreign national to face charges of violating the U.S. antitrust laws.

  – In April 2014, Romano Pisciotti, an Italian national, was extradited from Germany to the United States after being detained on an Interpol Red Notice.
    • Pisciotti pled guilty before his trial and is now serving a two-year prison sentence.

  – In November 2014, John Bennett, a Canadian businessman, was extradited from Canada to the United States in connection with a fraud and bid-rigging scheme involving federal environmental clean up contracts.
    • Bennett is currently confined to home detention awaiting a November 2015 trial date.

  – NOTE: Previously, in March 2010, a U.K. executive (Ian Norris) was extradited from the U.K to the U.S. for obstructing a U.S. DOJ antitrust investigation and served 18 months in prison after his conviction at trial.
Policy Developments in the Antitrust Division

• The Antitrust Division has historically not interjected itself into corporate governance issues, such as decisions whether to terminate an employee, as is done in the rest of the Department of Justice.

• In September 2012, the sentencing court, at the Antitrust Division’s urging, appointed a corporate monitor for AU Optronics for the duration of its three-year probation after it was convicted at trial.

• In September 2014, Antitrust Division officials published two policy speeches stating that the Division will likely seek probation, including the imposition of corporate monitors, at the sentencing of a company if it:
  – is a recidivist;
  – fails to implement an effective compliance program, or has no plans to implement such a program; or
  – retains an employee in a key management position who in the Antitrust Division’s view is both culpable in the charged conduct and has failed to fully accept responsibility by reaching a disposition with the government.
Use of Probation and Court-Ordered Monitors

• The Antitrust Division *will not* object if a company continues to employ culpable individuals who admit guilt and cooperate with its investigation.
  
  — However, it is typically only non-U.S. companies who seek to continue to employ such employees.

• The Antitrust Division *will* object if a company retains senior executives that the government believes are culpable and who have not accepted responsibility.

• The Antitrust Division has stated that it will likely seek court-supervised terms of probation, including the imposition of a court-ordered monitor, against a company that retains a senior executives falling into any of these categories at the time of sentencing:
  
  • the individual has been carved out of a corporate plea agreement and has not reached a disposition with the Antitrust Division.

  • the individual refuses to submit to U.S. jurisdiction to plead guilty or contest the charges at trial (includes individuals who initially cooperated with the investigation but were later unable to reach a disposition with the government).

  • the individual was convicted at trial of violating the U.S. antitrust laws.
Developments in Europe
Developments in Europe (2013-2014)

- New laws increasing the powers of enforcers to investigate and sanction cartel activity
- Record-setting fines
- Expanded criminal and administrative sanctions against individuals for cartel activity by Member States
- New fining guidelines for cartel activities
- Expanded use of leniency programs
- Increased private damage filings
- New EU Competition Commissioner
European Commission Sanctions

On the supranational European Union level, the European Commission ("EC") enforces cross-border antitrust violations in the 28 Member States, and it imposes the largest corporate fines in cartel cases in the world.

• In 2012, the EC levied the then-highest ever cartel fine per matter (€1.47 million in the TV/computer monitor tubes case) and also imposed the then-second and third highest corporate fines in history (€705 million and €688 million, respectively).

• In December 2013, the EU re-set the bar again by imposing a record €1.71 billion in fines in connection with its LIBOR investigation.

• In March 2014, the EU imposed €953 million in fines in its automotive bearings cartel investigation, including a €370 million fine against Schaeffler, and imposed a total of €1.68 billion in fines in FY 2014.

• There has been a 1,500 percent increase in the average EU fine over the last 20 years (see Slide 22).
Fines Levied by the European Commission (in millions) (2008-2014)
Average Fines Levied by the European Commission (in millions) (1990 - 2014)
European Commission Legislative Developments

• On November 26, 2014, the European Council adopted a Directive designed to facilitate damages actions by companies and individuals that have suffered as a result of cartel activity. EU Member States must incorporate the final Directive into their own national laws within two years.

  – History: The European Court of Justice had already held in the early 2000s that any citizen or business that suffers harm as a result of an infringement of antitrust laws is entitled to compensation from the infringers. However, actions for damages must be brought before civil courts of the Member States under the respective national tort and procedural laws.

    • So far, actions have been brought before courts in the UK (discovery system), the Netherlands and Germany (both with relatively low court fees).

    • Professional Cartel Damage Claimants who bundle potential claims in a U.S.-style class action are entering the European market.

    • The EC has sought to remove the main obstacles standing in the way of effective compensation, and guarantee a minimum protection for citizens and businesses, across all Member States.

• The Directive covers the disclosure of documents (including protections for immunity and leniency materials), statute of limitation periods, joint and several liability, the passing-on defense, collective actions, and quantification of harm.
European Commission Legislative Developments (cont.)

• Key elements include:
  – The new regime has sought to confirm the evidentiary value of National Competition Authority ("NCA") decisions and national court judgments that an infringement has occurred.
  – The Directive enables both direct and indirect purchasers claims. However, the Directive also obliges Member States to consider fully a “passing-on” defense where damage claims are made.
  – The Directive establishes that Member States’ national courts must be able to order a defendant or a third party to disclose relevant documents required by a claimant who presents “a reasoned justification” as to “the plausibility of its claim.” On November 26, 2014, the European Council adopted a Directive designed to facilitate damages actions by companies and individuals that have suffered as a result of cartel activity.
• Impact: It is difficult to predict the impact of the Damages Directive because the law is still in its infancy. However, it is clear that courts in the adopting Member States will have great influence in developing the contours of the Directive and its application (see, e.g., Belgium at Slide 26).
Austria

**Legislative Developments:** Amended Austrian Competition Act entered into force on March 1, 2013, aimed to enhance the efficiency and effectiveness of competition law enforcement.

- Provides extended investigation powers for the Federal Competition Authority (“FCA”) – the FCA may now issue formal information requests and impose fines for non-compliance of up to €75,000 (US $100,000).

- Extends the scope of the rules governing the search of premises, giving the FCA the power to demand explanations of facts and documents subject to the investigation, as well as to demand access to electronic documents.

- FCA received an express right to seal rooms during the course of investigations.
Belgium

• **Legislative Developments:** In August 2014, the Belgian Competition Authority (“BCA”) adopted new Guidelines regarding the calculation of fines, which entered into force on November 1, 2014. The new Guidelines are more in line with existing EU practices.

• **Enforcement:** In August 2013, the Belgian Competition Council imposed its third largest fine ever – €14.7 million (US $20 million) – when it found that all three large Belgian cement producers, their trade association, and the National Centre for Technical and Scientific Research for the Cement Industry had infringed Article 101 TFEU and the national equivalent by conspiring to delay the adoption of an industry standard regarding the use of a particular ingredient in ready-mix concrete.

• **Private Damage Actions:** On November 24, 2014, the Brussels Commercial Court ruled on the first-ever follow-on damages action brought by the European Commission concerning one of its own antitrust decisions. The Commission had filed a damages suit in 2008 seeking compensation for damages suffered by EU institutions due to the anticompetitive behavior of members of an elevator and escalator manufacturer cartel it had itself fined approximately €1 billion (US $1.19 billion). However, the Brussels Commercial Court, in applying standard Belgian civil liability law, found that the Commission had failed to prove the required causal link between the market sharing agreement and the alleged surcharges paid by EU institutions.
Denmark

Legislative Developments: Competition Act revised in March 2013 to provide for expanded criminal sanctions against individuals for cartel activities.

- An individual may be imprisoned for up to 18 months for cartel participation if the infringement was intentional and is of a serious nature.
- Fines increased to DKK 4 million (US $708,500) for a minor offense and DKK 20 million (US $3.45 million) and upwards for a “very serious infringement.”

Enforcement Developments:

- On March 7, 2014, the Danish authorities granted full immunity for the first time to a leniency applicant.
- In November 2014, a construction company was fined a record $1.7 million fine and its senior executive was fined $4,200 relating to alleged cartel conduct between 2007 and 2009. The investigation has thus far led to fines of nearly $6.7 million.
Germany

Legislative Developments:

• German Act against Restraints of Competition ("ARC") significantly amended in June 2013.
  
  – Several changes concerning merger control and unilateral conduct.
  
  – Significant influence on antitrust law enforcement in Germany – cartel infringers now required to report turnover to the Federal Cartel Office ("FCO") for fine calculation purposes.
  
  – Where companies undergo at least partial succession in law, FCO may now impose a fine on the successor of the antitrust infringer not to exceed the amount of the original fine imposed prior to the succession in law.
Legislative Developments, cont’d:

- FCO published new fining guidelines in June 2013 focused on company size – large conglomerate companies may face significantly higher fines in the future, while fines for smaller single-product companies are likely to decrease.
  - 10%-of-turnover limit for cartel fines now applied as a sanction for the worst possible antitrust infringement.
  - Key factors for calculating fines under the new deadlines:
    - The company’s group turnover; and
    - The turnover that was achieved in the market in which the anticompetitive practice took place for the duration of the infringement.
Germany (cont.)

Enforcement Highlights:

• FCO imposed antitrust enforcement fines totaling approx. €240 million (US $314 million) in 2013, including fines of €103 million and €88 million against individual companies.

• In FY 2014, FCO imposed fines of approx. €1 billion, including a record fine of €195.5 million against an individual company.

Private Damage Actions:

• The state-owned German railway operator and logistics company, Deutsche Bahn AG (“DB”), filed the biggest ever follow-on damage claim for an amount of €1.8 billion (US $2.4 billion) before a court in Cologne against the members of an alleged air cargo cartel.
United Kingdom

Legislative Developments:

• Enterprise and Regulatory Reform Act of 2013 (“ERRA”) made a number of changes designed to remove current difficulties with prosecuting individuals under the criminal cartel offense.

  – Eliminates the requirement to prove that the individual acted “dishonestly.”

  – Provides for a number of specific defenses and excludes from the scope of the offense arrangements notified to customers or published in the prescribed way.

  – Created the Competition and Markets Authority (“CMA”) on April 1, 2014, which has increased investigative powers, including compulsory interview powers for current and former employees of companies under investigation, and the ability to impose financial penalties for failure to comply with investigative steps.

    • CMA published its Criminal Cartel Prosecution Guidance setting out the principles the CMA will apply in determining whether to institute proceedings against an individual

    • CMA published three “60-second summary” guidance notes: one for company directors on how to avoid cartel infringements, one on limiting risk in relation to handling competitors’ information, and one on trade association dos and don’ts.
United Kingdom (cont.)

Legislative Developments, cont’d:

• Consumer Rights Bill, published in June 2014, aims to facilitate private damages actions in the UK for competition law infringement.
  – Gives the Competition Appeal Tribunal ("CAT") the power to hear stand-alone and follow-on damages actions and the power to grant injunctions.
  – Provides for revisions to the limitation periods for bringing damages actions stemming from infringements of competition rules and provides for the introduction of a “fast-track” procedure for SMEs.
  – Conditional on the CAT making a collective proceedings order, any CAT authorized representative may bring a collective action on behalf of a class of persons for harm suffered as a result of competition law violations, and class members who wish to be excluded may opt out of the action.
  – The Bill is going through the parliamentary process and is expected to come into force on October 1, 2015.

Enforcement Highlight:

• In March 2014, the CMA secured a guilty plea in its first criminal prosecution since May 2010.
• CMA is expected to step up its enforcement efforts in 2015. It has received significant additional funding for cartel enforcement and is investing further in its intelligence, investigation and enforcement capabilities
Poland

Legislative Developments: Poland’s parliament approved extensive amendments to the country’s antitrust law in June 2014, which are expected to enter into force in early 2015.

- Extends the power of the Office of Competition and Consumer Protection (the “UOKiK”) to impose fines on individuals.
  - Enables the authority to levy an administrative fine of up to €500,000 against company manager(s) responsible for anti-competitive agreements.
  - Previously, individuals could be fined under Polish competition law only for procedural errors.
- Expands Poland’s leniency program.
  - Full immunity granted only to the company that first informs the authority of illegal practices.
  - Introduces a “leniency plus” system—additional fine reductions of up to 30% available to companies that are not first in line to self-report collusive activity, provided they supply information regarding additional anti-competitive practice not already known to the authority.
Spain

Enforcement Highlights:

- The Spanish Supreme Court (“Tribunal Supremo”) issued a seminal ruling on follow-on cartel damage claims in November 2013.
  - Established a rebuttable presumption as to the binding nature of the factual findings of Competition Authorities.
  - Established the acceptability, under Spanish law, of the “passing on” defense.

- The judicial bodies in Spain have been active in relation to the reduction or annulment of fines imposed by the CNMC.
  - On April 15, 2014, the AN annulled a CNMC decision imposing a fine of more than €5 million (US $6.2 million) on Rhenus Logistics as successor of IHG Logistics Iberia, with which Rhenus had previously merged.
  - On April 21, 2014, the Spanish National Court (“Audiencia Nacional”, or “AN”) ordered the CNMC to reduce a fine of €440,000 (US $540,000) imposed on a regional association of travel agents on the grounds that it was disproportionate and jeopardized the viability of the association.
Developments in Asia & the Pacific
**Developments in Asia & the Pacific (2013-2014)**

- Record-setting fines
- First prison sentences in Korea for individuals involved in cartel activity
- First referral of businesses and executives for criminal prosecution for international cartel activity
- Multiple Asian authorities sanctioning the same conduct/companies
Hard Hitting Asian Enforcers
(within 8 months in 2014)

- **China**: August 2014, NDRC imposes *record fines* on Japanese auto parts makers (US $151 million).

- **Singapore**: May 2014, CCS imposes its *first fines* sanctioning international cartel activity involving Japanese ball bearing producers (US $7.4 million).

- **Japan**: March 2014, JFTC imposes *record fine* on Japanese shipping company (US $129 million).

- **Korea**: January 2014, KFTC imposes *record bid-rigging fine in construction investigation* (US $123 million).
Japan: Sanctions

• In both 2012 and 2013, the Japanese Fair Trade Commission (“JFTC”) collected surcharges totaling ¥22 billion (US $211 million).

• This year, the JFTC conducted raids at five electronics companies to gather information related to alleged bid rigging regarding tenders for digital firefighting emergency radios.

• In March 2014, the JFTC surpassed its 2012 and 2013 year-end totals when it imposed combined fines totaling ¥22.7 billion (US $223.5 million) on four international ocean shipping companies.
  – One of the companies received the highest corporate fine (“surcharge”) ever imposed by the JFTC: ¥ 13.1 billion (US $129 million).
  – The U.S. DOJ and Chile have also brought criminal cases and imposed fines involving the same ocean shipping companies for the same conduct.
First Companies and Individuals Criminally Prosecuted in Both Japan and the United States

- The JFTC’s investigation and sanctioning of ball bearing producers led to ¥13.4 billion (US $132 million) in administrative “surcharges” or fines.

- After imposing its surcharges, the JFTC referred the sanctioned companies, as well as executives from each company, to the Japanese Ministry of Justice for criminal prosecution.

- Three companies and seven executives were criminally prosecuted and convicted in a Tokyo District court with the companies receiving fines and the individuals, suspended jail sentences.

- The ball bearing producer who reported the conduct to the JFTC received protection from both administrative and criminal sanctions for the company and its executives.

- The JFTC’s criminal referrals in its ball bearing investigation included the first companies criminally prosecuted in two jurisdictions.
  - Two ball bearing producers paid criminally fines totaling over $170 million in the U.S.
  - The U.S. DOJ Attorney General credited the JFTC with detecting some of the cartel conduct targeting U.S. automotive production and providing assistance to the U.S. DOJ’s auto parts and ball bearing investigations.

- Although both the Japanese Ministry of Justice and the U.S. DOJ Antitrust Division criminally prosecuted ball bearing executives, no overlap presently exists in the individuals charged.
Japan: The Advisory Panel Report

• On December 24, 2014, the Advisory Panel on Administrative Investigation Procedures Under the Anti-Monopoly Act issued its Report on the JFTC’s investigative procedures.

• The much-anticipated Report recommended further review and consultation on a number of issues, but failed to recommend any changes to the fundamental and procedural rights and privileges guaranteed to companies under JFTC investigation. For example:
  
  – **On-the-Spot Inspections.** While the subject of an on-the-spot inspection may have an attorney present, the presence of an attorney is not a right such that a company may refuse an inspection until an attorney arrives.

  – **Seized Documents.** It is appropriate for the JFTC to allow companies to copy materials being seized by the JFTC that are deemed necessary for the daily business operations of the company, so long as the copying does not interfere with the inspection.

  – **Attorney-Client Privilege.** The attorney-client privilege is not recognized in JFTC investigations.

  – **Representation at Depositions.** The presence of an attorney during a deposition is not permitted, nor are video or audio recordings allowed to be taken.
Korea: Enforcement Highlights

• In January 2014, the Korea Fair Trade Commission (‘‘KFTC’’) imposed its largest ever fine for construction-related bid rigging, totaling KRW 132 billion (US $123 million) against 21 companies for bid rigging for the construction of a subway train line in Korea.

• In February 2014, Korea imposed its first prison sentences for individual executives involved in two separate cartel schemes.
  – Busan Eastern District Court sentenced three individuals to six months’ imprisonment for rigging bids on tenders to supply cables to nuclear power plants.
  – Seoul Central District Court incarcerated a number of executives found guilty of participating in a bid-rigging cartel stemming from a public parks project.
  – Defendants were incarcerated immediately following sentencing and the sentences were served.

• In October 2014, the KFTC penalized six paper manufacturing companies a total of KRW 10.7 billion (US $9.7 million) for colluding to raise the selling price of cup base paper used in disposable paper cups and paper meal containers.

• In November 2014, the KFTC imposed fines totaling KRW 11.4 billion (US $10.4 million) against five multinational chemical manufacturers for setting prices and quantities for chemical initiators and hardeners.

• The KFTC issued fines totaling KRW 77.8 billion (US $71 million) and filed criminal accusations against nine Japanese and German ball bearings suppliers with the Prosecutor’s Office.
Korea: Policy Developments

- In July 2014, the KFTC signed a bilateral cooperation agreement with the Japanese Fair Trade Commission (“JFTC”). The KFTC announced that the two authorities would collaborate on “matters of mutual interest,” including cross border mergers and acquisitions and international cartels.

- In August 2014, the KFTC amended its Guidelines on Criminal Referral for Violation of the Monopoly Regulation and Fair Trade Law (“FTL”), subjecting individuals to criminal referral who are directly responsible for the FTL violation or obstruct or impede the KFTC’s investigation.
  - Individuals who later actively cooperate with the KFTC’s investigation may be exempted from criminal referral.

- In November 2014, the Korean and Chinese governments negotiated a proposed bilateral trade agreement, part of which would provide Korean companies with similar due process and appeals protections as domestic Chinese companies during antitrust investigations in China. The proposed trade agreement is scheduled to be signed during the first half of 2015.

- In November 2014, the KFTC’s former chairman, Noh Dae-lae, resigned and was replaced by Jeong Jae Chan, who is expected to follow the path of his predecessor and continue to aggressively target international cartels and bid rigging schemes.
China: Enforcement Developments (NDRC)

• In January 2013, the National Development and Reform Commission (“NDRC”) imposed fines and behavioral remedies on six producers of LCD panels for allegedly engaging in market-sharing and price-fixing agreements.
  – NDRC ordered the six parties to return RMB 172 million (US $28.0 million) in overcharged amounts to Chinese television companies, confiscated other illegal gains in the amount of RMB 36.75 million (US $6.0 million), and imposed fines of RMB 144 million (US $23.4 million).
  – This was the first instance where the NDRC sanctioned international cartel activity – the same or similar conduct has been sanctioned by the United States, European Union, Japan and Korea.

• In March 2014, the NDRC joined the United States, Japan, Korea, Taiwan and the EU in opening investigations of the capacitors industry by reportedly conducting dawn raids of companies in China.

• In May 2014, the NDRC fined seven manufacturers of eyeglasses and contact lenses a total of over RMB 19 million (US $3.1 million) – constituting between 1% and 2% of their prior year’s sales – for resale price maintenance.
China (NDRC) Enforcement Developments (cont.)

• In August 2014, the NDRC fined twelve Japanese auto parts and ball bearing suppliers a record total of CNY 1.24 billion (US $200 million) for horizontal infractions involving allegations of collusion to fix prices for products sold to automakers in China.

  – Sumitomo Electric Industries Ltd. faced the heaviest fine at CNY 290.4 million (US $47 million) – the largest antitrust penalty that the NDRC has imposed on a single company for suspected cartel activity.

  – One auto parts supplier and one ball bearings producer obtained leniency under China’s Corporate Leniency Program and were exempted from sanctions.

• In September 2014, NDRC imposed China’s first antitrust fines on a foreign automaker, imposing penalties on both Chrysler and a joint venture between Chinese automaker FAW and German automaker Volkswagen.

  – FAW-Volkswagen was fined CNY 248.6 million (US $40 million) and Chrysler was fined CNY 31.7 million (US $5.1 million) for alleged price fixing.
China (cont.)

Enforcement Developments (SAIC)

• In May 2014, the State Administration for Industry and Commerce (“SAIC”), responsible for regulating non-pricing antitrust behavior, fined six fireworks wholesalers in Inner Mongolia CNY 538,700 (US $94,000) for an unlawful division of the fireworks retail market. The fines represented 7% to 8% of the companies’ annual revenues.

• In August 2014, the local Wuxi Administration for Industry and Commerce of Chongqing Municipality fined four quarry operators a combined CNY 400,000 (US $64,000) for conspiring to divide up the local sand and gravel market.

• In September 2014, the local Zhejiang Province Administration for Industry and Commerce announced fines against eight companies and the local concrete producers association a total of CNY 1,720,000 (US $277,000) for an unlawful market-allocation agreement.

Legislative Developments

• In November 2014, the People’s Congress approved amendments to the country’s Administrative Litigation Law that will come into force in May 2015, empowering companies to bring civil lawsuits against government entities for abuse of administrative power that eliminates or restricts competition.
Singapore, Malaysia, Taiwan and Turkey

**Singapore:** The Competition Commission of Singapore ("CCS") issued what it characterized as its first-ever decision against a global cartel in May 2014.

- Imposed fines totaling more than S$9.3 million (US $7.4 million) on four Japanese manufacturers of ball and roller bearings along with their Singapore subsidiaries.

**Malaysia:** In September 2013, Malaysia’s Competition Commission issued its first-ever financial penalties for antitrust violations.

- Fined Malaysia Airlines (majority-owned by the Malaysian government) and AirAsia 10 million ringgit (US $3.13 million) each for entering into a prohibited market-sharing agreement in the Malaysian air transport market.

**Taiwan:** In March 2013, the Taiwan Fair Trade Commission fined nine power companies a record NT$6.32 billion (US $213 million), accusing the power companies of agreeing to refuse to negotiate lower rates for the power they sold to Taiwan Power Company over a four-year period.

- In November 2014, Taipei’s Administrative High Court overturned the decision, finding that the Commission’s case had no basis in competition law because the nine companies could not be classed as competitors in an open market; the court characterized the matter as a contractual dispute rather than collusion.
- The TFTC said it will appeal against the ruling at Taiwan’s Supreme Administrative Court.

**Turkey:** Turkey imposed record domestic fines in March 2013 when the country’s Competition Authority issued fines of 1.1 billion Turkish lira (US $620 million) against 12 of the country’s banks for colluding over interest rates.

- One bank received a 213 lira (US $102 million) penalty – the largest fine ever imposed on a single entity in Turkey.
Developments in Latin America
Developments in Latin America (2013-2014)

- New laws increasing competition authorities’ powers to sanction cartel activity
- Record-setting fines
- Increased anti-cartel enforcement actions
- First use of recently introduced corporate leniency programs
- Brazil: unprecedented structural penalties imposed; new settlement procedures utilized
Brazil

- Brazil’s Administrative Council for Economic Defense (“CADE”) announced a record-setting fine and the agency’s first ever structural remedy in May 2014.
  - CADE’s tribunal fined six companies, six individuals, and three industry organizations involved in a cement cartel a record BRL 3.1 billion (US $1.3 billion) for allegedly conspiring to fix prices, divide markets, and create barriers to entry.
  - CADE also ordered the companies to divest any cross-shareholdings and reduce their concrete service assets by 20% in certain markets, and barred them from cooperating on projects or buying assets from one another for five years.
- A Brazilian court imposed a record jail sentence of 10 years and 3 months and a BRL 378.9 million (US $165 million) fine on a convicted Brazilian air cargo executive.
- In August 2014, CADE fined a German pharmaceutical company for tacitly participating in a cartel roughly 14 years after initiating its investigation.
- CADE adopted new settlement guidelines in March 2013 and applied them in a number of cases in the past year.
Mexico

• **Constitutional Amendment:** In June 2013, the government amended Article 28 of the Mexican Constitution to address competition within the Mexican telecommunications sector.
  
  – Among other changes, the amendment brought independence to Ifetel, the specialized telecommunications regulator – it is expected to aggressively enforce competition laws, including those prohibiting cartel conduct.

• **Legislative Developments:**
  
  – In 2014, Mexican President Enrique Peña Nieto backed a new competition bill recently enacted by Mexico’s Congress.
    
    • Expected to give antitrust regulators heightened powers.
    
    • Ratifies the fines companies face for anticompetitive practices, which were raised in 2011.

  – Mexico’s Federal Criminal Code was also amended in 2014 to include felonies for breach of antitrust provisions. The Code makes it a felony to exchange information with the purpose or effect of fixing prices, restricting supply, dividing markets, and rigging bids.

  – Additionally, a new criminal sanction makes it a felony to alter, destroy, or disturb documents, electronic files, or any evidence during a COFECE investigation.
Peru

- **Enforcement Developments:** 2014 brought increased action by Peru’s Instituto Nacional de Defensa de la Competencia y de la Proteccion de la Propiedad Intelectual (“INDECOPI”), which had previously brought only three charges for antitrust violations since 2009.

  - In April, Indecopi initiated proceedings against 132 Peruvian and Chilean taxi drivers for alleged price fixing in relation to the international transportation of passengers by road.
  
  - In June, Indecopi raided the headquarters of major distributors of liquefied petroleum gas on the suspicion that the companies had colluded to fix gas prices and initiated proceedings against 19 total liquid gas producers.
  
  - In July, an INDECOPI official announced that two investigations had been initiated as a result of its newly adopted leniency program; the official also disclosed that INDECOPI had collaborated with the Chilean competition authority in an investigation involving bus stations/terminals.
Colombia

• In 2013, the Superintendence of Industry and Commerce (“SIC”) imposed a record fine of COP 30 billion (US $16 million) on six people and three companies for colluding to win government contracts.
  – Marks the first time the SIC has fined natural persons as market actors, allowing the SIC to apply fines double what would otherwise be the maximum penalty for individuals.

• In 2014, the SIC filed statements of objections against the country’s five largest diaper companies and 44 current and former employees, in a case marking the first use of its leniency program granting full immunity from prosecution to one cooperator and a 50 percent reduction for a second company that came forward.
Chile: Enforcement Developments

• Chile’s Supreme Court affirmed the first successful prosecution resulting from a leniency application in the country’s four-year-old leniency program in September 2013.
  
  – The Supreme Court upheld the ruling by Chile’s Competition Tribunal (“TDLC”) against a subsidiary of Whirlpool for its alleged involvement in collusion related to refrigerant compressor manufacturers, but cut the fine in half.
  
  – Chile joined Brazil, Mexico, the United States, Canada and the European Commission in investigating and sanctioning the compressor manufacturers of international cartel activity.

• The TDLC upheld, for the first time ever, the imposition of the maximum available fine of UTA 30,000 (US $25 million) in a decision regarding companies representing 80% of the poultry meat market for an alleged market-sharing agreement.

• TDLC imposed new sanctions on the road transportation sector, finding that the transportation companies had fixed and simultaneously increased the prices of tickets in their respective areas of operation.
Chile: International Ocean Shipping Case

• In February 2015, Chile’s National Economic Prosecutor (“FNE”) filed cases against six ocean shipping companies and sought a total of $75 million in fines.

• FNE announced that one company was not sanctioned and another had its fine reduced for providing timely cooperation on the matter.

• The companies are alleged to have engaged in anticompetitive activity dating back to 2000 relating to the shipping of cars by sea to Chile from Europe, the United States and Asia.

• FNE’s investigation was conducted concurrently with enforcers in other countries, and Chile became the third jurisdiction to impose sanctions on the conduct following fines imposed in Japan and the United States.

• FNE’s filing is pending before the TDLC, the competition tribunal that will decide whether to affirm the charges and the proposed fines.
El Salvador

• The Salvadoran legislature is currently considering significant reforms to its competition laws that would allow regulators to address a wider variety of anticompetitive conduct.
  – The proposed reforms would give competition regulators criminal law enforcement power – currently, they may levy only civil penalties.
• In July 2014, the country’s Supreme Court affirmed its ability to sanction companies for not cooperating with or for hindering investigations.
• In September 2014, El Salvador’s Competition Authority stated that it planned to investigate the bean market to determine if the main suppliers had agreed to increase their prices.
Developments in Africa
South Africa

• In October 2014, the Competition Commission launched a large investigation into alleged price fixing, market allocation, and bid rigging from 2000 to 2014 by 82 automotive parts suppliers related to the pricing for 121 different automotive parts.
  – The Competition Commission joins as many as a dozen or more competition enforcers investigating the auto parts industry.
  – The Competition Commission’s investigation is reportedly being advanced by multiple leniency applicants.

• The Competition Commission continued conducting dawn raids of various companies in 2014.
  – In July 2014, the CC raided the offices of Precision and Sons, Eldan Auto Body, and Vehicle Accident Assessment Centre as part of its ongoing investigation into collusive conduct in the market for auto body repairs.
  – In December 2014, the CC raided Investchem and Akulu Marchon as part of its ongoing investigation into collusive conduct in the market for a range of surfactant products.

• In 2013, the South Africa Competition Commission imposed its largest ever collective fine in a single investigation – a 1.46 billion rand (US $140 million) fine imposed against 15 construction companies charged with bid rigging in connection with the 2010 World Cup.
Mauritius

In March 2014, the Competition Commission of Mauritius (“CCM”) launched its first cartel investigation.

- The CCM investigated two beer companies suspected of colluding to allocate sales in Madagascar and Mauritius.

- One of the companies was the first to apply for either full or partial leniency under the CCM’s leniency program. In June 2014, the CCM recommended penalties of MUR 6.6 million (approx. US $215,000) on the applicant and MUR 20.3 million (approx. US $662,000) on the non-applicant.

- The CCM may see its enforcement powers expand – the Prime Minister has announced his intention to further empower the CCM in order to better fight cartels.
For more information, please see:


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