

July 11, 2013

2013 MID-YEAR CRIMINAL ANTITRUST AND COMPETITION LAW UPDATE

To Our Clients and Friends:

The first half of 2013 has seen a marked drop in announcements of plea agreements and fines imposed by the Antitrust Division of the U.S. Department of Justice ("DOJ"). But it would be a mistake to interpret the reduced numbers as reflecting a slowdown in U.S. enforcement. The U.S. antitrust bar is aware that the Antitrust Division's pipelines are full of pending prosecutions, but finalizing those prosecutions has been slowed both by the complications of managing a large number of interrelated cases and by a significant change in the Division's policy with respect to corporate plea agreements. Regarding the latter, while the Antitrust Division announced the new policy in April 2013—which concerns the criteria for identifying in corporate plea agreements those employees who might face prosecution and the public identification of them (discussed below)—it was widely, but informally, understood in the U.S. antitrust bar that the Antitrust Division had put plea negotiations with corporations "on hold" while the Antitrust Division's previous policy was under review. Now that the new policy is in effect, all indications are that announcements of plea agreements, investigations, and prosecutions will soon revert to recent levels.

Price fixing, bid rigging, and other cartel enforcement remains robust around the world. The European Commission ("EC") and individual member states and others continue to engage in robust enforcement. The level of fines imposed by the EC exceeds last year's record pace. Several raids and other inspections have been disclosed, promising continued investigations and high levels of activity in the years to come. Brazil and China continue to make headlines. Whereas Brazil remains Latin America's leading antitrust enforcer and has recently adopted a high-profile leniency program, China is just starting to make use of its newly adopted laws. In fact, during 2013, the Chinese antitrust authority imposed a record individual fine of CNY 118 million (\$19 million). This is the first individual fine in China to exceed the \$1 million threshold.

A) U.S. Enforcement

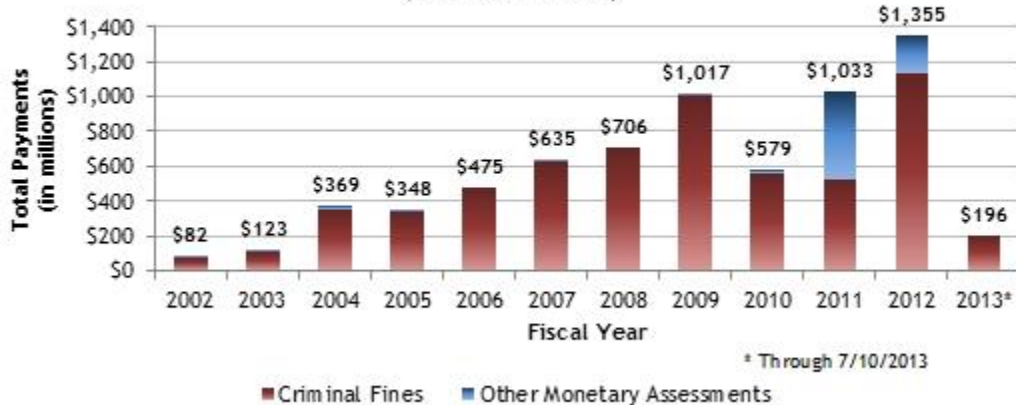
1) Overview of U.S. Enforcement Trends

a) Criminal Fines & Other Monetary Assessments

The Antitrust Division has secured payments totaling almost \$196 million stemming from its criminal investigations in FY 2013. Although this figure marks a substantial drop from prior years, we expect the trend to reverse in the coming months due to a number of pending investigations that are likely to yield large fines.

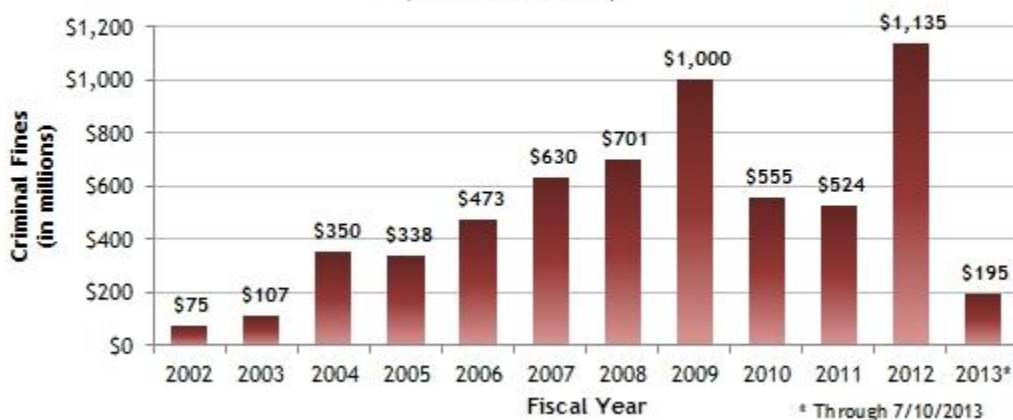
We continue to assess the Antitrust Division's performance by considering all of its available monetary sanctions, including criminal fines, restitution, disgorgement, and penalties (for the reasons explained at length in the 2011 Year-End Criminal Antitrust Update). As the Antitrust Division continues to embrace prosecutorial tools such as non-prosecution agreements and multi-agency investigations, we believe this combined metric offers a more accurate gauge of its achievements.

Total Criminal Fines & Other Monetary Assessments from Antitrust Division Investigations (FY 2002-2013)



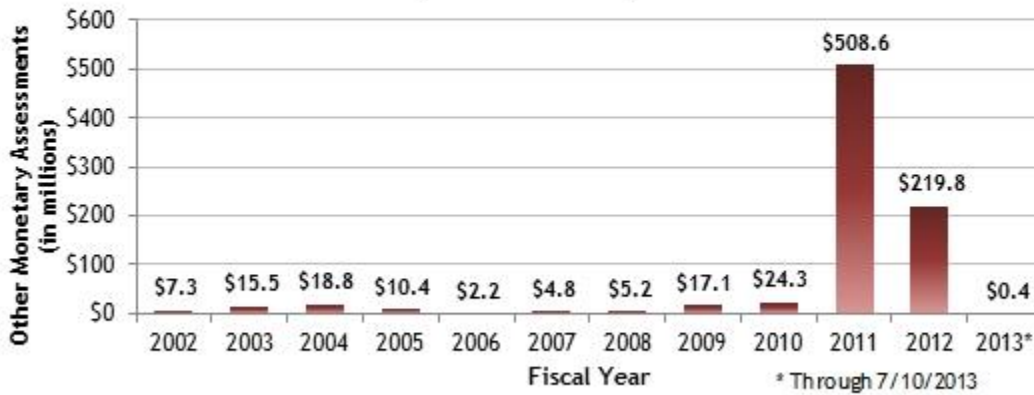
To date in FY 2013, defendants in Antitrust Division investigations have been sentenced or have agreed to pay more than \$195 million in criminal fines.

Total Criminal Fines from Antitrust Division Investigations (FY 2002-2013)



In contrast to the prior two fiscal years, the Antitrust Division has collected few monetary assessments from offenders for restitution, disgorgement, and various penalties so far in FY 2013.

Other Monetary Assessments (Restitution, Disgorgement, & Penalties) from Antitrust Division Investigations (FY 2002-2013)

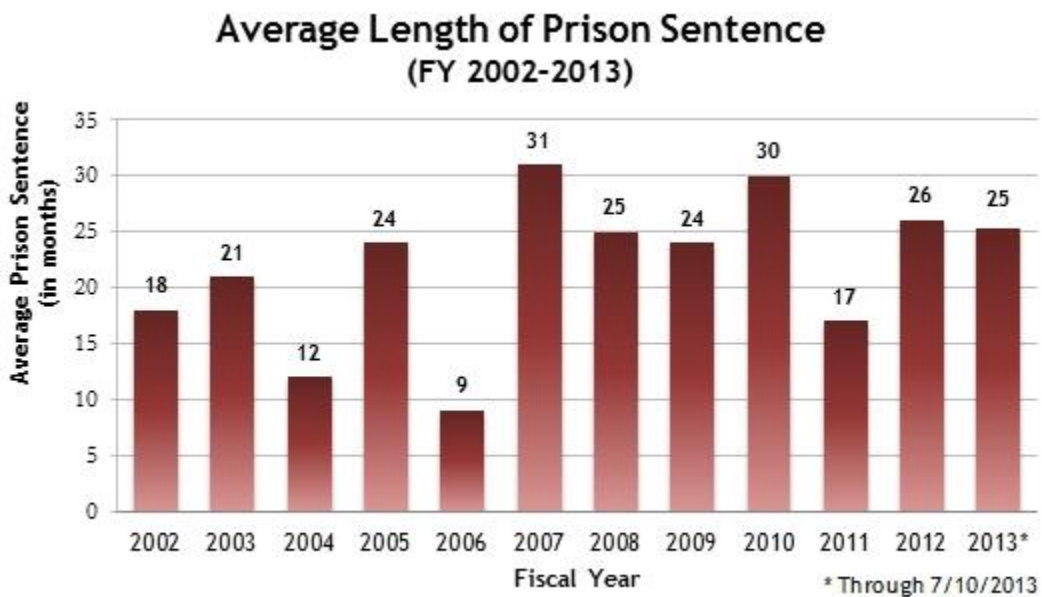


Ninety-nine percent of the Antitrust Division's criminal fines announced thus far in FY 2013 are from six corporate agreements that arise out of four investigations. As discussed in more detail below, the Royal Bank of Scotland fine is the result of a Deferred Prosecution Agreement with both the Antitrust Division and Criminal Division and covers both antitrust and non-antitrust offenses. The remaining five fines are the result of negotiated plea agreements.

Criminal Fines of More than \$1 Million for Sherman Act Violations Imposed or Agreed to During FY 2013 (October 2012–June 2013)		
Company	Investigation	Criminal Fine
Royal Bank of Scotland plc	LIBOR	\$150,000,000
Tokai Rika Co., Ltd	Auto Parts (Heater Control Panels)	\$17,700,000
Yusen Logistics Co., Ltd.	Freight Forwarding	\$15,428,207
Eagle Eyes Traffic Industrial Co., Ltd	Auto Parts (Aftermarket Auto Lights)	\$5,000,000
"K" Line Logistics, Ltd.	Freight Forwarding	\$3,507,246
Crusader Servicing Corp.	Municipal Tax Liens	\$2,000,000

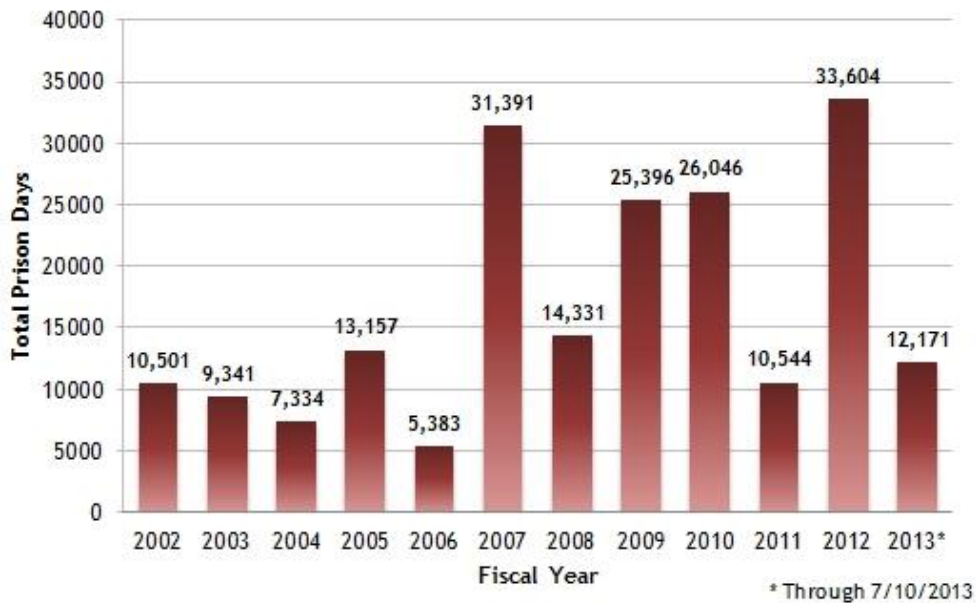
b) Prison Sentences

The Antitrust Division appears to be on pace to match the record-setting prison sentences it obtained in FY 2012. The DOJ's average prison sentence so far in FY 2013 is slightly longer than 25 months.[1] As we reported in our 2012 Year-End Criminal Antitrust Update, the gap between sentences obtained for foreign nationals and U.S. citizens seemed to be closing as the DOJ has been securing longer sentences for foreign nationals. But in 2013, for example, the sentences imposed on or negotiated by U.S. citizens remain, on average, about three times longer than those for foreign nationals.[2]



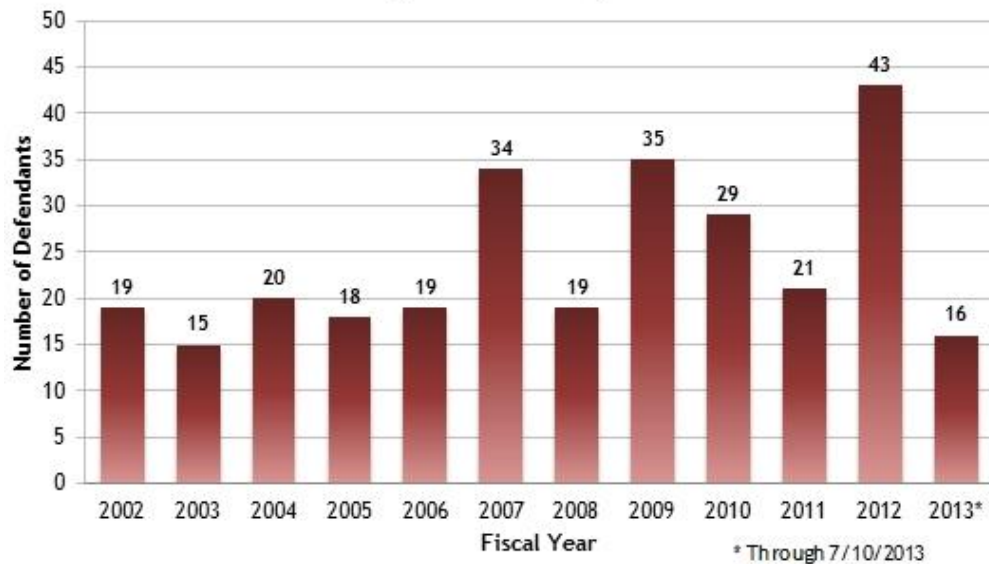
The total number of prison days this year shows that with respect to individuals the DOJ is maintaining a stringent approach. And the aggregate prison time to date for all individuals sentenced in antitrust cases is also accumulating rapidly, with defendants cumulatively sentenced to over 33 years of time in prison.[3]

Total Prison Days Sentenced (FY 2002-2013)



This year, 16 individual defendants have been sentenced to serve prison sentences; based on the number of pending plea agreements and trial verdicts, discussed in more detail below, we anticipate that several more will be sentenced before year-end.[4]

Number of Defendants Sentenced to Prison (FY 2002-2013)



In sum, while the pace of plea announcements and scheduling of sentencing hearings has slowed, the force of the DOJ's enforcement efforts has not. Significant fines and meaningful prison sentences remain central to the DOJ's criminal antitrust enforcement.

2) **Developments in International Investigations**

a) **LIBOR**

In 2013 the Antitrust Division entered into its first ever Deferred Prosecution Agreement ("DPA"), although it has previously negotiated and entered into Non-Prosecution Agreements ("NPAs"). Despite speculation that this recent increased use of NPAs (as discussed in more detail in our 2011 Year-End Criminal Antitrust Update) and DPAs indicated a shift in policy. The Antitrust Division, which has historically been extremely reticent to use such tools, continues to insist that it "disfavors the use of [nonprosecution] agreements and DPAs."^[5] Deputy Assistant Attorney General Scott Hammond has explained that there is no general "exception for financial institutions permitting the use of NPAs or DPAs."^[6] Instead, for example, NPAs were appropriate in the municipal bond investigation due to the heavily regulated nature of the banking industry and significant collateral consequences of a criminal conviction in those industries; the fact that the case predominantly involved conspiracies to defraud municipalities (rather than more traditional antitrust crimes affecting consumers); and the substantial number of settlements already entered into with other state and federal enforcement authorities.^[7]

The Antitrust Division's first DPA also marked the first imposition of a fine by a U.S. competition authority in the ongoing investigation of possible manipulation of the London Interbank Offered Rates ("LIBOR") and other interest rate benchmarks. On February 6, 2013, the Antitrust Division announced that it had entered into a DPA with the Royal Bank of Scotland plc ("RBS") for its role in an alleged price-fixing conspiracy to manipulate Yen LIBOR and Swiss Franc LIBOR.^[8] The DOJ's Criminal Division was also a party to the DPA.^[9]

The DOJ alleged that RBS derivatives traders requested favorable Yen LIBOR and Swiss Franc submissions from the RBS employees responsible for making submissions. By adjusting RBS's submissions, the traders allegedly increased the profitability of their derivatives transactions that were tied to Yen LIBOR and Swiss Franc. In addition to this alleged internal manipulation within RBS, the DOJ alleged that RBS traders conspired to manipulate the submissions of other banks that made Yen LIBOR submissions.^[10]

In the DPA, RBS agreed to pay a \$100 million fine beyond the \$50 million fine imposed upon RBS Securities Japan and to admit to its role in the misconduct. As a condition of the agreement, RBS's Japanese subsidiary—RBS Securities Japan Limited—agreed to plead guilty to a single count of wire fraud and to pay a \$50 million fine.^[11] That plea was entered on April 12, 2013.

The Division has also filed criminal price fixing charges against one individual: Thomas Alexander William Hayes, a former trader at UBS A.G. and Citibank.^[12]

b) Thin Film Transistor-Liquid Crystal Displays ("TFT-LCD")

The DOJ continues to achieve successes in its international cartel case against Taiwan-based AU Optronics Corporation, its U.S. subsidiary AU Optronics Corporation America, and certain high-ranking executives for participation in price fixing of certain large-sized TFT-LCD panels. On April 29, AU Optronics executive Shiu Lung Leung was sentenced to twenty-four months in prison and a \$50,000 criminal fine. As discussed in more detail in our 2012 Year-End Criminal Antitrust Update, the first trial of Mr. Leung resulted in a hung jury, but he was convicted after a second jury trial in November 2012.[13]

As we also reported in our 2012 Year-End Criminal Antitrust Update, AU Optronics and its U.S. subsidiary were the first corporate defendants in an international cartel case to go to trial in more than a decade. At the conclusion of that trial, both companies, as well as two senior-level executives, were convicted. The companies and executives are presently appealing those convictions, as well as the fines and sentences imposed, to the U.S. Court of Appeals for the Ninth Circuit. In February, the government dismissed its cross-appeals of the fines and sentences. At trial, the jury agreed with the government's collective gain theory, finding that the maximum fine to which AU Optronics was exposed was \$1 billion.[14] At sentencing, the judge found no error in that finding, but even so, she ordered AU Optronics to pay a \$500 million fine, recognizing that the "financial ramifications to these defendants have already been massive, and they are not over yet. There's still a lot of civil suits out there." [15] Central to that appeal is an issue of first impression concerning the application of the alternative fines statute. The alternative fine statute authorizes a fine of twice the gains resulting from the charged offense where "any person derives pecuniary gain from the offense." AU Optronics argues on appeal, as it did in the district court, that gains should be calculated based only on those gains attributable to the individual defendant. Alternatively, AU Optronics maintains that if a fine is calculated based on the collective gains of the conspiracy participants, it must be limited by "principles of collective responsibility." [16] AU Optronics argues for a collective maximum fine for co-conspirators under a theory similar to civil joint and several liability. It contends that any sentence should be offset by the \$715 million in fines paid by other LCD defendants, leaving only \$285 million for a potential AU Optronics fine. Conversely, the government maintains that gains should be determined based on the collective gain of all members in the price-fixing conspiracy. AU Optronics claims that adopting the DOJ's view would lead to "grotesquely draconian consequences" if minor individual defendants are held responsible for the conspiracy's collective gains. [17]

The AU Optronics defendants also argue that the convictions should be reversed because the government failed to prove a rule of reason case (rather than a per se case) due to the foreign nature of the conduct, that the indictment was deficient because it failed to plead the requirements of the Foreign Trade Antitrust Improvement Act ("FTAIA"), that the government failed to prove the elements of the FTAIA, that the jury was not properly instructed as to the intent element of an antitrust violation under the FTAIA, and that the DOJ failed to prove venue in the Northern District of California.

The resolution of the sentencing issue in particular will have far-reaching consequences for defendants charged with price-fixing conspiracies under the Sherman Act. The case has not yet been set for oral argument.

The DOJ's TFT-LCD investigation has been a hallmark prosecution. The DOJ has obtained the convictions of eight companies sentenced to pay criminal fines totaling \$1.39 billion and thirteen executives sentenced to serve prison terms ranging from six to thirty-six months.[18] The investigation continues. AU Optronics employee Borlong ("Richard") Bai is scheduled to begin trial on September 23, 2013. Although indicted on June 10, 2010, Bai remained in Taiwan and failed to appear in court to face the charges against him until earlier this year.

c) Auto Parts

The Antitrust Division continues to obtain plea agreements with lengthy prison sentences and meaningful fines in its ongoing investigation of price-fixing and bid-rigging in the auto parts industry. On May 21, executives Yuji Suzuki and Hiroshi Watanabe of DENSO Corporation—which agreed to pay a \$78 million corporate fine in January 2012—agreed to plead guilty to participating in an international conspiracy to fix prices and rig bids for automotive components sold to Toyota.[19] Suzuki agreed to serve sixteen months in prison for his participation in collusion with respect to heater control panels and electronic control units and Watanabe agreed to serve fifteen months for his role in collusion related to heater control panels.[20] Each agreed to pay a \$20,000 criminal fine and to cooperate with the Division's ongoing investigation.[21]

The Antitrust Division has announced that this investigation is its largest ever.[22] To date, the DOJ has secured guilty pleas or agreements to plead guilty from nine companies and fourteen executives in the auto parts industry.[23] Collectively, the corporations have been sentenced to pay more than \$809 million in criminal fines.[24]

d) Municipal Bonds

The DOJ continues to push the Municipal Bond investigation, discussed in our 2012 Year-End Criminal Antitrust Update, towards completion.

After pleading guilty on the eve of trial in 2012, former CDR Financial Products executives Zevi Wolmark and Evan Zarefsky were sentenced in April for their role in conspiring with several financial institutions to rig the competitive bidding process for municipal bonds. Wolmark was sentenced to 18 months in prison, two years of supervised release, and a \$500,000 criminal fine. Zarefsky was sentenced to 8 months in prison, two years of supervised release, and a \$17,500 criminal fine.[25] The founder of CDR Financial Products, David Rubin, pleaded guilty in December 2011, and is currently scheduled to be sentenced in October.[26]

Thus far, DOJ has filed criminal charges against one financial services corporation and 20 former executives of such in the municipal bonds investigation. 19 of the 20 executives and the corporation have pleaded guilty or been convicted; one former executive is currently awaiting trial.[27] Sentencing dates for 7 individuals who have pleaded guilty have been pushed back to the second half of 2013.

3) Developments in Domestic Investigations

a) Coastal Water Freight Transportation

The DOJ continues its investigation, discussed in our 2011 Year-End Criminal Antitrust Update and our 2012 Year-End Criminal Antitrust Update, into collusive conduct with respect to coastal water freight transportation between the continental United States and Puerto Rico.

In January, former president of Sea Star Line LLC, Frank Peake, was convicted by a jury for participation in a conspiracy to fix rates and surcharges for water transportation of freight between the continental United States and Puerto Rico.[28] His sentencing is scheduled for August 23, 2013.[29]

More recently, a former executive of Crowley Liner Services, Inc. was indicted by a grand jury in Puerto Rico for his participation in the same conspiracy to fix prices for freight services.[30] Thomas Farmer is charged with selling freight services between Puerto Rico and the United States at collusive and noncompetitive rates and surcharges pursuant to agreements reached with co-conspirators.[31] Farmer has moved to transfer venue to the Middle District of Florida, where he resides.[32]

b) Real Estate and Tax Lien Auctions

The Antitrust Division's ongoing national investigation into individuals and companies engaged in collusive conduct related to certain public auctions for real estate foreclosures and municipal tax liens, discussed in our 2012 Year-End Criminal Antitrust Update, produce additional results in 2013.

In FY 2013, Robert Williams, Gilbert Chung, Peter McDonough, Michael Renquist, Mohammed Rezaian, Wesley Barta, Irma Galvez, Stan Kahan, and Joseph Vesce of Northern California agreed to plead guilty to engaging in collusive conduct in public real estate foreclosure auctions, bringing the total number of plea agreements resulting from the Northern California investigation to 35.[33]

In addition to those plea agreements, the Antitrust Division sought and obtained a superseding indictment against Andrew Katakis, adding a charge of obstruction of justice to a prior indictment for conspiracy to rig bids and commit mail fraud at real estate foreclosure auctions in California.[34] Katakis, who was served with a subpoena from the DOJ and FBI, allegedly destroyed evidence by deleting subpoenaed electronic records and overwriting them to ensure that they could not be recovered.[35] Katakis was originally indicted with four others, one of whom has since pleaded guilty; the three remaining defendants are scheduled to stand trial in November 2013 in the Eastern District of California.[36]

The DOJ's results are not limited to California. In Alabama, father and son Robert and Jason Brannon, along with their company J & R Properties, LLC, were sentenced after pleading guilty to rigging bids and committing mail fraud at real estate foreclosure auctions.[37] According to the plea agreements, the collusive scheme caused financial institutions and homeowners to suffer artificially suppressed purchase prices at those auctions.[38] Both father and son were sentenced to 20 months. Jointly with

their company, the Brannons must pay \$21,983 in restitution to the victims of their bid-rigging scheme.[39]

The Department also secured its twelfth guilty plea related to municipal tax lien auctions in New Jersey. The plea agreements describe agreements not to bid against other conspirators to ensure that the participants enjoyed a higher rate of return. Norman Remick is the ninth individual to agree to plead guilty to the bid-rigging scheme in New Jersey; three corporations have pleaded guilty.[40]

4) Judicial Developments

In *Smith v. United States*, the United States Supreme Court held that the burden of proving withdrawal from a conspiracy falls on the defendant.[41] The case concerned an alleged conspiracy to distribute various drugs rather than an antitrust conspiracy, but the Court's reasoning is likely to be applied in antitrust cases.

5) Developments in the Antitrust Division

a) Departure of Deputy Assistant Attorney General Scott D. Hammond

On July 3, 2013, Deputy Assistant Attorney General Scott D. Hammond announced that he will be stepping down from government service in October. Hammond has served over twenty years in the Antitrust Division, with the last eight as Deputy Assistant Attorney General. Hammond has been lauded by his colleagues as "*the* international leader of anti-cartel enforcement" and one of the founding figures of the leniency program.[42] During his tenure, the DOJ set records in nearly every category by which enforcers are measured, including the amounts of criminal antitrust fines, the number of defendants and foreign-located defendants, the number of prison sentences, the duration of prison sentences, and more. As observed by Law360, Hammond "Leaves Big Shoes to Fill." [43]

b) Changes in the Treatment of Individuals

On April 12, the Antitrust Division announced two significant changes to its policy with respect to the treatment of individuals in investigations involving corporate entities.[44] The Antitrust Division's plea agreements with corporations have typically included a broad commitment not to prosecute the corporation's employees and a list of individuals who were "carved-out" of the non-prosecution commitment. Before the change in policy, an employee could be "carved out" for any of three reasons: (1) because the employee was believed to be culpable; (2) because the employee had refused to cooperate with the investigation; or (3) because the employee was believed to have potentially relevant information but could not be located. Now the Division will no longer carve out an employee for a reason unrelated to culpability. In other words, going forward, only those employees who are believed to have been involved in criminal wrongdoing and who are potential targets of the investigation may be carved out. The Division will continue to demand the full cooperation of those who seek to benefit from the non-prosecution protection of a corporate plea or leniency agreement.

The second change concerns the Division's prior practice of including the names of all carved-out employees in publicly filed corporate plea agreements. Now, the Division will list the names of

carved-out employees in an appendix, which the Division will seek leave of the court to file under seal. The Division said that the reason for this new practice is that "it is ordinarily not appropriate to publicly identify uncharged third-party wrongdoers."^[45] This brings the Antitrust Division's policy and practice in line with that of other DOJ units, which have adopted policies against publicly naming uncharged third parties according to the Principles of Federal Prosecution.^[46]

As of the date of this update, the DOJ has not publicly announced plea agreements finalized under this new practice. As a result, it remains to be seen whether the adoption of the new policy will significantly affect the number of individuals who are carved out. It also remains to be seen whether courts will grant the DOJ's requests for leave to file under seal the names of the carved out employees, although we expect that most courts will do so.

c) Changes to Plea Agreements

The Supreme Court's recent decision in *Peugh v. United States*, is likely to result in changes to the model plea agreement used by the Antitrust Division.^[47] In *Peugh*, the Court held that the Constitution's *Ex Post Facto* Clause prohibits a federal court from sentencing a defendant based on U.S. Sentencing Guidelines promulgated after the commission of a crime where the new advisory sentencing range is more punitive—recommends a longer guideline range for the term of imprisonment or a higher fine range—than the range under the Sentencing Guidelines in effect at the time of the offense. Before this decision the Division's standard plea agreement stated that while the Sentencing Guidelines were not mandatory, "the Court must consider the Guidelines *in effect on the day of sentencing*, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence."^[48] That provision is likely to be changed in light of the *Peugh* decision. As of the date of this update, the DOJ had not posted an updated model plea agreement reflecting the Court's decision.

This appears to be the second change this year to the Antitrust Division's model plea agreement. Plea agreements filed in 2013 also now provide that "[p]ursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce or loss attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b)."^[49]

6) International Cooperation

a) Bilateral and Multilateral Relationships

Collaboration in global cartel enforcement remains both frequent and fruitful for the Antitrust Division.^[50] In testimony before the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights on April 16, 2013, Assistant Attorney General William J. Baer reiterated the importance of international cooperation to the Division's criminal enforcement program.^[51] He highlighted as examples two recent investigations: the auto parts investigation, in which the Antitrust Division is cooperating with antitrust enforcers in Japan, the EU, and Canada, among others; and the air cargo cases, in which the Antitrust Division coordinated with counterparts at the Australian

Competition and Consumer Commission ("ACCC"), European Commission, New Zealand Commerce Commission ("NZCC"), U.K. Office of Fair Trading ("OFT"), and other agencies.[52] Assistant Attorney General Baer also emphasized the recent memoranda of understanding entered into with antitrust enforcers in China and India, discussed in our 2012 Year-End Criminal Antitrust Update.[53]

We first discussed the Division's involvement in the negotiation of the Trans-Pacific Partnership Free Trade Agreement in our 2012 Mid-Year Criminal Antitrust Update. That agreement will strengthen antitrust cooperation among participating nations, including Australia, New Zealand, Singapore, and Chile.[54] In April 2013, the members welcomed Japan to the negotiations, pending the successful completion of domestic procedures by each country.[55] Meanwhile, negotiations continued in the first half of 2013, with the latest (17th) round of negotiations taking place in May in Peru.[56] The next round of negotiations is set to take place July 15-25, 2013 in Malaysia.[57]

b) International Organizations

The Antitrust Division remains active in the Organization for Economic Cooperation and Development ("OECD") and the International Competition Network ("ICN"), as well as other international organizations designed to facilitate cooperation and deepen relationships among international competition authorities.

The Antitrust Division played a major role in the recent OECD/ICN Survey on International Enforcement Co-operation: Status Quo and Areas for Improvement, which assessed enforcement agencies' current practices as well as future thinking on international enforcement cooperation.[58] The survey was sent to 120 members of the ICN; the resulting report—issued in this year—was based on 55 responses.[59] The report found that international cooperation is a policy priority for the vast majority of agencies.[60] Of the agencies that reported having sufficient experience with such international cooperation, 98% found that it had been useful to their enforcement strategies.[61] In cartel cases specifically, the most frequently reported uses of international cooperation were sharing public information and sharing information regarding the status of investigation, while coordination of the investigation itself (for example, dawn raids and sanctions) appeared to be less frequent.[62]

The ICN, which the Antitrust Division helped create in October 2001, held its 12th annual conference from April 24-26, 2013 in Poland.[63] Over 500 delegates from 80 antitrust agencies around the world participated. Assistant Attorney General Baer and Federal Trade Commission Chairwoman Edith Ramirez led the U.S. delegation.[64] The conference highlighted, among other things, the efforts of the Cartel Working Group, which is co-chaired by the DOJ, the Japan Fair Trade Commission ("JFTC"), and Germany's Bundeskartellamt.[65]

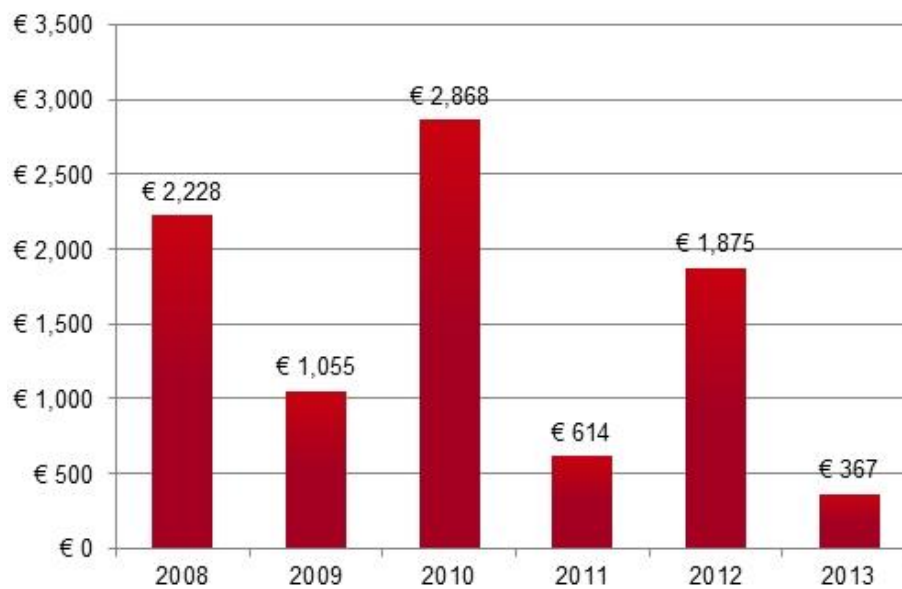
B) Global Enforcement

1) European Union Developments

a) Fines

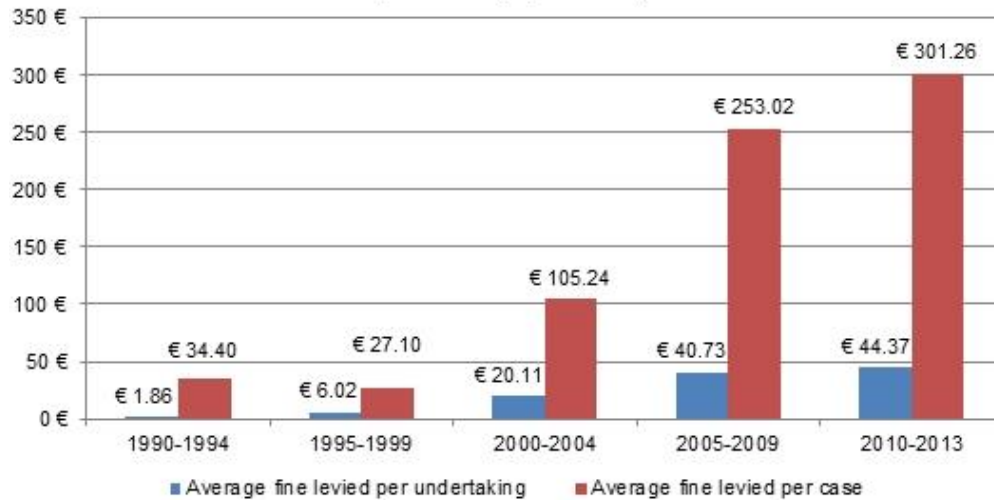
Following the record year reported in our 2012 Year End Criminal Antitrust Update, the European Commission ("EC" or "Commission") remains on pace for another year of noteworthy enforcement. To date, the EC has sanctioned members of three cartels in 2013 and levied €367 million (nearly \$480 million) in fines, which exceeds the four fines totaling more than €268 (\$333.4 million) imposed during the first half of 2012.[66]

**Fines Levied on Cartels by the European Commission
(in millions) (2008-2013)**



* Through 7/10/2013

**Average Fines Levied on Cartels by the European Commission
(in millions) (1990-2013)**



* Through 7/10/2013

i) Iberian Telecommunications Market

In January, the EC fined Telefónica and Portugal Telecom €79 million (\$104.75 million) for agreeing not to compete with each other in their respective home markets of Spain and Portugal.[67] At issue were non-compete clauses the companies inserted in their agreements governing Telefónica's acquisition of Vivo (a Brazilian mobile operator) from Portugal Telecom.[68] The EC found these clauses to be in breach of the European rules prohibiting anti-competitive agreements and noted that these types of non-compete clauses are considered to be one of the most serious violations of EU competition law, as they are likely to result in higher prices and less choices for consumers.[69] The EC also found that in addition to restricting competition on the Spanish and Portuguese telecommunications markets, the agreement hampered the integration of the European telecommunications sector.[70]

ii) Synthetic Rubber

In March, the EC issued a second Statement of Objections to ENI S.p.A. and Polimeri Europa S.p.A (now Versalis S.p.A.) noting that it intended to re-impose a 50% fine enhancement for recidivism, representing €90.75 million (\$119.8 million).[71] The EC had imposed the aggravated fine for recidivism based on the finding that in addition to participating in the synthetic rubber cartel that was the subject of the investigation, the companies had previously participated in the polypropylene cartel and PVC II cartel.[72] The General Court of the EU ("General Court") nullified the fines in 2011 on the ground that the Commission had not relied on sufficient evidence to support its finding that the three cartel participations had been committed by the same undertaking.[73] Where a Commission decision is annulled on the basis of insufficient reasoning, the EC is entitled to re-open the investigation and to reach the same conclusion in a new decision, on the basis of the same facts, if its reasoning satisfies the requisite legal standard.[74]

iii) Wire Harnesses

On July 10, 2013, the EC imposed fines of over €141 million (\$182 million) on Yazaki Corp., Furukawa Electric Co. Ltd., S-Y Systems Technologies Europe (GmbH), and Leoni AG for bid rigging in connection with the sale of wire harnesses to Toyota, Honda, Nissan, and Renault.^[75] According to the Commission, the participants rigged a series of tenders for the supply of wire harnesses for Toyota and Honda vehicles, and rigged—or attempted to rig—single tendering procedures in relation to particular Nissan and Renault vehicles. The fines resulted from negotiated settlements with the EC. Each company received both leniency credit and an additional 10% reduction for agreeing to the settlements procedure.^[76] The EC named Sumitomo Electric Industries Ltd as the immunity applicant and said that absent immunity, Sumitomo would have faced fines of over €290 million (\$378 million).^[77] In its press release, the EC described the conduct as "five cartels" with different participants, periods of duration, and means of operation.^[78]

b) The Courts' Views on the EC's Fines

The EC has seen two important judicial developments so far in 2013. First, in June, the General Court upheld the Commission's decision of 2008 to impose a €4.97 million fine (\$6.39 million) on members of an aluminum-fluoride cartel.^[79] The Court dismissed Fluorsid & Minmet's appeal in its entirety and held that the Commission had met the legal standard to prove the existence of the cartel by relying on a report of a meeting where the alleged cartelists agreed to increase prices by 20%.^[80]

Second, on July 4, 2013, the Court of Justice of the EU ("Court of Justice"), Europe's highest court, delivered one of its most important rulings in recent years by confirming a 2011 ruling by the General Court.^[81] In 2011, the General Court annulled an approximately €100 million fine (\$129.6 million) that had been imposed on the Dutch company Aalberts for allegedly fixing prices, exchanging commercial information, and allocating markets in the sector for copper fittings between June 2003 and April 2004.^[82] The General Court held that although the company's subsidiaries participated in meetings during which other companies colluded to restrict competition, there was not enough information on the file to justify the imposition of a fine on the parent company.^[83] The Court of Justice, which assesses only errors of law, upheld the ruling by the General Court in its entirety.^[84] Given recent EC fines on parent companies in investigations such as cathode ray tubes, this decision is a significant one, although whether it will be limited to the facts before the Court remains to be seen.

c) Legislative Developments

The EC decided not to prolong or renew the current Guidelines on the application of EU antitrust rules to maritime transport services after public consultation regarding the usefulness and necessity of sector-specific Guidelines for the industry. The Guidelines will therefore expire on September 26, 2013.^[85]

d) Raids and On-Going Investigations

Although the level of fines imposed during the first half of 2013 was lower than that for the equivalent period in previous years, the same cannot be said in relation to dawn raids. At least five unannounced inspections have been conducted at companies' premises in the sugar, oil, biofuel, cargo train transport, and telecommunications sectors.[86] In the sugar sector, the EC focused on alleged cartel activities regarding the supply of white sugar.[87] In the oil and biofuels sectors, the EC is known to have raided the premises of several major oil companies as well as those of the price reporting agency Platts. The Commission is investigating whether these companies and possibly others have colluded, first by reporting distorted prices to Platts in order to manipulate the published prices for several oil and biofuel products, and second by excluding others from participating in the price reporting process carried out by Platts.[88]

In the financial sector, the EC continued its scrutiny of the Credit Default Swaps ("CDS") information market and extended the scope of its investigation to the International Swaps and Derivatives Association ("ISDA"), an association of financial institutions involved in the over-the-counter trading of derivatives.[89] On July 1, 2013, the EC issued a Statement of Objections to 13 of the world's largest investment banks including Bank of America Merrill Lynch, Barclays, BNP Paribas, Bear Stearns, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, Royal Bank of Scotland, and UBS, as well as ISDA and data service provider Markit. In its Statement, the EC took the preliminary view that these banks appeared to have acted collectively to shut out exchanges from the market because they feared that exchange trading would have reduced their revenues from acting as intermediaries in the over-the-counter trading market.[90]

In the telecommunications sector, on July 9, 2013 Commission officials initiated unannounced inspections at the premises of a number of companies active in the provision of Internet connectivity in several Member States. The Commission indicated that it "has concerns that the companies concerned may have violated EU antitrust rules that prohibit the abuse of a dominant market position (Article 102 of the Treaty on the Functioning of the European Union - TFEU)." The Commission did not name the companies being investigated.[91]

e) Legislative Developments: Private Actions & Implications For Leniency Applicants

The Commission recently prepared a draft Directive on Antitrust Damages Actions to facilitate private actions at a national level against infringers of EU competition laws.[92] By harmonizing national regimes, the draft Directive—which, if passed, will have to be adopted by all 28 Member States—aims to remove the obstacles created by divergences between national laws and to make it easier to bring private claims against antitrust infringers in EU Member State courts.

To avoid weakening the EC's anti-cartel enforcement through the expansion of private claims, the Draft Directive also proposes safeguards for leniency applicants and settling parties against the disclosure of key submissions made to antitrust authorities. In addition, companies that have successfully applied for immunity will generally be liable only for the harm caused by their share of a

cartel and not for the harm caused by their co-conspirators. This is similar to the U.S. approach, which provides protection from joint and several liability only to the leniency applicant.^[93] The draft Directive also explicitly recognizes the possibility of a cartel member invoking the "passing-on-defense," which will be available provided that it is legally possible for the person at the next level in the supply chain to bring a claim.^[94]

2) Other Significant International Investigations & Developments

a) Trends

i) Antitrust Reforms and Super-Regulators

The European financial crisis has undeniably affected how countries address their competition law enforcement priorities. National competition authorities are clearly conscious of how they are spending resources.^[95] For example, in Europe, several countries including Austria, Belgium, the Czech Republic, Finland, Germany, the Netherlands, Spain, and the UK have recently reformed, or are in the process of reforming, their antitrust/competition law agencies to expedite procedures, reduce costs, and increase effectiveness with the aim of optimizing resource allocation.

Austria. The amended Austrian Competition Act entered into force on March 1, 2013, and aims to enhance the efficiency and effectiveness of competition law enforcement by: (i) introducing a new *de minimis* threshold for cartels; (ii) introducing a new legal basis for damages actions; and (iii) enabling the Federal Competition Authority ("FCA") or Federal Cartel Prosecutor to make a finding that the immunity applicant participated in a cartel. In addition, the FCA now has the power to: (i) request information by means of administrative decisions; (ii) seal premises, ask questions, and call for police assistance during inspections; and (iii) request information from criminal prosecution cases.^[96]

Belgium. The amended Belgian Competition Law was adopted in April 2013 and completely reformed the Belgian Competition Authority ("BCA") from a two-body structure partly reporting to the Federal Agency for Economic Affairs into a fully independent single body with three organs and an independent budget. The new BCA should be functional in the late fall of 2013. All procedures will be significantly shortened and simplified. The investigatory phase will be limited to two years, and the decision-making phase to one year, while all procedures will be carried out in accordance with the "fast track" or summary proceedings under Belgian Law. In addition, the BCA's investigators will have more powers, including the power to negotiate and accept settlements during the investigatory phase.^[97]

Czech Republic. The Czech Republic amended its leniency program in late 2012 to strengthen legal certainty for leniency applicants and to encourage companies to make use of available programs. In addition, the Office for Protection of Competition implemented its enforcement priorities in an attempt to save public resources.^[98]

Finland. The Finnish Competition Authority and the Finnish Consumer Agency merged into the Finnish Competition and Consumer Authority ("FCCA"), effective January 1, 2013. The aim of the reform is to significantly increase the administrative efficiency of the agencies.^[99]

Germany. The German Competition Act was significantly amended in June 2013. While the amended legislation did not change the organizational structure of the Bundeskartellamt (the German Antitrust Authority), the changes also aim at increasing the Bundeskartellamt's efficiency and enforcement powers, for example by extending the authority's power to request from cartelists information required for the imposition of cartel fines. This builds on the introduction by the Bundeskartellamt in 2012 of an anonymous electronic reporting tool for whistleblowers who seek to report cartel activities. According to a report published by the Bundeskartellamt in June 2013, more and more insiders are making use of this tool which allows for anonymous two-way communication with the German authority.

Netherlands. The Dutch Competition Authority ("NMa"), the Independent Post and Telecommunications Authority, and the Dutch Consumer Authority merged on April 1, 2013, creating a new "super-regulator": the Authority for Consumers and Markets ("ACM"). The merger of the three authorities into a single independent authority is aimed at significantly increasing the effectiveness and efficiency of market supervision in the Netherlands and is expected to result in annual savings of €7.4 million (\$9.5 million).[100]

Spain. After more than a year of debate and criticism from different sources, including the European Commission, the Spanish parliament created a new "super-regulator," the National Commission for Markets and Competition ("CNMC").[101] The CNMC, which should be functioning before the end of October, brings together the National Competition Authority ("CNC") and seven sectoral regulators (including, among others, those responsible for stock exchanges, telecommunications and energy sectors) into one new institution led by a Board of 10 members. The CNMC will have four sector-specific investigatory teams: Competition; Telecommunications and Audiovisual; Energy; and Transport and Post. The new Authority will be obliged to publish all decisions and orders once notified, with its decisions being subject to appeal before the Chamber for Contentious Administrative Proceedings of the National High Court ("Audiencia Nacional"). The CNMC is expected to bring annual savings of €28 million (\$37 million), as well as to provide a better oversight and supervisory function.

U.K. The Enterprise and Regulatory Reform Act 2013 ("ERRA 2013") received Royal Assent on April 25, 2013. The Act merges the current Competition Commission and Office of Fair Trading ("OFT") to create a new single Competition and Markets Authority ("CMA"), which will be responsible for merger control, market studies, market investigations, administrative investigations into cartels and other breaches of the Competition Act, and for prosecutions of the criminal cartel offence. The CMA, will function fully starting on April 1, 2014, will remain independent of Ministerial control. In the areas of cartel enforcement and competition investigations, the CMA will have increased investigative powers compared to the OFT, 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.[102]

ii) Penalties for Individuals

Penalties directed against individuals are becoming increasingly common, with several jurisdictions taking steps to implement new systems allowing sanctions against individuals, sometimes of a criminal nature.

For example, the new Belgian Competition Law introduced penalties against "natural persons." Individuals who participate in "hardcore" cartel infringements may be liable for an administrative fine of €100 to €10,000 (\$128 to \$1,280).[103]

Denmark's revised Competition Act also now provides for expanded criminal sanctions against individuals for cartel activities. An individual may be imprisoned for up to 18 months for participating in a cartel, provided that the infringement was committed intentionally and is of a serious nature. In addition, the level of fines has been increased to DKK 4 million (\$708,500) for a minor offense and DKK 20 million (\$3.45 million) and upwards for a "very serious infringement." [104]

With the Enterprise Act 2002, the U.K. was the European pioneer in introducing criminal sanctions against individuals who engaged in cartel conduct (defined narrowly as price fixing, market sharing, output limitation, and bid rigging). The ERRA 2013 makes a number of changes that are designed to remove current difficulties with prosecuting individuals. The key change is the elimination of the requirement to prove that the individual acted "dishonestly." To alleviate concerns that this change would result in legitimate conduct being criminalized, the Act provides for a number of specific defenses and excludes from the scope of the offense arrangements that are notified to customers or published in the prescribed way. Prosecutorial guidance will be published and subject to consultation before the changes become effective.[105]

During the first half of 2013, indictments against individuals were also issued in other jurisdictions, including Brazil, Canada, and Israel.[106]

iii) International Cooperation

The first half of 2013 saw the implementation of two new bilateral cooperation agreements, one between the EU and Switzerland, and the other between India and Australia. The EU and Switzerland Agreement, signed in May 2013, strengthens cooperation between the EC and the Swiss Competition Commission. The Agreement allows the two competition agencies to coordinate, cooperate, and exchange information and evidence gathered during their investigations, subject to strict conditions protecting business secrets and personal data. The Agreement will become effective once it has been approved by the European and Swiss Parliaments.[107]

The ACCC enhanced cooperation with the Competition Commission of India ("CCI") by signing a Memorandum of Understanding on Cooperation ("MOU") on June 3, 2013. The MOU provides for the "sharing of information on significant developments in competition policy and enforcement" in both jurisdictions.[108]

b) Argentina

So far this year has seen several major victories by the Argentinian Competition Authority ("CNDC"). In particular, on May 8, 2013, the Supreme Court dismissed appeals filed by a number of cement companies that had been fined more than ARS 308 million (\$61 million) in 2005. This fine, the highest ever at the time, was imposed against six companies that had allegedly fixed the prices of cement between 1981 and 1999.[109]

c) Australia

The first half of 2013 found the ACCC involved in nine proceedings relating to competition enforcement. Eight cases were carried over from the previous year and one new case was brought against Visa Inc. for alleged misuse of market power. The markets covered by the proceedings included travel, construction, and financial services. The ACCC also revealed that its investigations of the fuel and supermarket industries were progressing.[110]

In April 2013, the Federal Court in Adelaide ordered a penalty of AUD 1.35 million (\$1.24 million) against Viscas Corporation, a Japanese cable supplier, with respect to bid rigging and price fixing charges brought by the ACCC. Viscas admitted that in September 2003 it reached an anti-competitive arrangement with other Japanese and European suppliers of land cables in relation to an invitation to tender issued by Snowy Hydro Limited. Under the agreement, the parties agreed that a European supplier would tender the lowest price and the European suppliers themselves would decide who would submit the lowest price. Proceedings against two other corporations—Prysmian Cavi e Sistemi Energia S.R.L, and Nexans S.A.—are still pending.[111]

d) Brazil

One year following the adoption of the new Brazilian Competition Act,[112] Brazil's Administrative Council for Economic Defence ("CADE") continues to secure its position as Latin America's most active National Competition Authority. During this first half of the year, CADE has not only participated in a number of major global investigations, such as the TFT-LCD, CRT (cathode ray tube) and the air cargo cartel probes, but has also targeted a number of local sectors, most of which relate to basic goods or services. Given that two major global sporting events are to take place in Brazil in the near future, it is not surprising that CADE is looking closely at anticompetitive agreements relating to basic products and services such as bread, ambulance services, IT services, and fuel supply.[113] CADE's actions in the fuel sector have been especially aggressive. On March 6, 2013, CADE imposed fines totaling BRL 120 million (\$55 million) on six alleged local price-fixing cartels in cities across the country.[114]

A BRL 38 million (\$17.5 million) fine was also imposed during this first half of the year on ECAD (Brazil's copyright collecting society) as well as on six associations representing artists.[115] CADE alleged that ECAD was charging abusive prices and engaging in cartel-like activities by fixing the prices to be paid for the reproduction of the works of its artists. Following the sanction by CADE, an Enquiry Commission of the Senate that had been investigating ECAD's functioning for over a year proposed tough measures to correct the "degeneration" of that entity. The measures included the

indictment of key personnel as well as a proposed regulation to increase the transparency of ECAD.[116]

Also, as anticipated in our 2012 Year End Criminal Antitrust Update, in March 2013 CADE published new rules governing settlement procedures in antitrust investigations.[117] Under the proposed rules, the first infringer to settle would receive a reduction in the estimated fine of 30% to 50%, the second settlement between 25% and 40%, and all other settlements up to 25%. If the investigation has already been completed and the case is pending before a tribunal, the settlement would reduce the estimated fine up to 15%. Also, contrary to what was the case in previous regulations, the admission of guilt becomes a *conditio sine qua non* for the initiation of settlement discussions. Within the first months of 2013 prior to the adoption of the new rules, CADE settled two antitrust investigations with Air France-KLM in an air cargo cartel case (BRL 14 million or \$6.5 million), and with Philip Morris in relation to anti-competitive exclusivity agreements (BRL 250,000 or \$115,000).[118]

e) Canada

The Canadian Competition Bureau ("CCB") continued its pursuit of cartelists in the first half of 2013. The Canadian courts sanctioned two cartels, and the CCB brought criminal charges against members of another cartel.

In March 2013, the Quebec Superior Court of Justice sentenced five individuals for participating in a price-fixing cartel for retail gasoline. The CCB investigation into the gasoline cartel has led to criminal charges against 39 individuals and 15 companies for criminal price fixing. To date, 33 individuals and seven companies have pleaded guilty or been found guilty, with fines totaling more than CAD 3 million (\$2.9 million). Six individuals have been sentenced to imprisonment totaling 54 months.[119]

The CCB has continued its investigation into the auto parts industry in which it has secured the largest criminal fine in its history. In April 2013, the Ontario Superior Court of Justice imposed a fine totaling CAD 30 million (\$29 million)—the highest fine to date—on Yazaki Corporation ("Yazaki") for its role in an international cartel with other Japanese suppliers regarding the supply of motor vehicle components to Honda and Toyota. Yazaki was the second defendant to plead guilty in the largest bid rigging investigation undertaken by the CCB, Furukawa having pleaded guilty earlier in April. Furukawa received a CAD 5 million (\$4.8 million) fine for rigging bids for electrical boxes sold to Honda between 2000 and 2010. Both Yazaki and Furukawa cooperated with the CCB under its Leniency Program and otherwise would have faced still higher fines.[120]

The CCB also brought criminal charges against Nestlé Canada Inc., Mars Canada Inc., and ITWAL Limited (the national network of independent wholesale distributors) as well as three individuals for conspiring, agreeing, or arranging to fix prices for chocolate confectionery products. Hershey Canada Inc. is likely to receive lenient treatment for its cooperation with the CCB under the Leniency Program. The CCB has indicated it may seek a fine of up to CAD 10 million (\$9.6 million) and imprisonment of up to five years.[121]

Also during the same month, the CCB brought criminal charges after a four-year investigation against an employee of First Porter Consultancy for entering into an agreement to rig bids for federal government contracts for real estate advisory services.[122]

f) China

The first half of 2013 confirmed the rise of the three Chinese antitrust agencies and, in particular, of the National Development and Reform Commission ("NDRC"). During the first half of the year, the NDRC—which during prior years had mainly enforced the Chinese Price Law rather than the Anti-Monopoly Law—twice set record fines. The first of these, addressed in our *2012 Year-End Criminal Antitrust Update*, was imposed on six companies for allegedly participating in a cartel to fix the price of TFT-LCD panels sold in China. This was the first time in which China joined its U.S. and EU counterparts in a global cartel investigation. The fines imposed by NDRC totaled CNY 353 million (\$57 million), with the highest individual fine reaching CNY 118 million (\$19 million). Prior fines imposed by NDRC had not exceeded \$1 million. In addition to the penalties, the NDRC secured commitments from the companies to strictly observe Chinese laws, supply Chinese TV makers in a fair way with new technologies, and extend warranties for LCDs in China from 18 up to 36 months.[123]

A month later, in February 2013, state-owned distillers Kweichou Moutai and Wuliangye Yibin were fined CNY 449 million (\$72.5 million) for alleged resale price maintenance ("RPM") practices. According to the NDRC, the two companies fixed the prices their distributors had to charge and penalized distributors that failed to comply with the pricing restrictions. This fine sends a powerful message regarding the NDRC's willingness to apply the Anti-Monopoly Law against state-owned companies and its commitment to curtailing unlawful RPM practices.[124]

g) France

The Autorité de la concurrence ("Adlc") remained very active in the first half of 2013 and imposed significant fines. Most noteworthy is the €79 million (\$104.3 million) fine imposed against participants in a chemical products cartel.[125] In addition to its anti-cartel enforcement, the Adlc also adopted several opinions in relation to the functioning of several markets, including the press, Mobile Virtual Network Operators, the pooling of mobile networks, the wholesale market for leased lines, natural gas, and the online sale of medicinal products.[126] Opinions such as these usually mark the beginning of more comprehensive investigations into the referenced sectors.

h) Germany

In a landmark ruling on February 26, 2013, the Bundesgerichtshof (Federal Court of Justice) rejected the appeals of the record €660 million fine (\$871 million) imposed by the Bundeskartellamt in 2003 against 12 cement companies and their representatives for their participation in a market allocation cartel (subsequently reduced to €278.7 million, or \$363.6 million, by the first instance appeals court).[127] For the first time, Germany's highest Court confirmed that the competition law provisions allowing a fine of up to 10% of the worldwide turnover of the infringing party to be imposed are in accordance with the terms of the German Constitution. While the Court found that the fines were imposed in accordance with German law, it reduced the total fine by 5% due to the long duration of the

court proceedings. Nevertheless, the total fine is the highest ever imposed in German cartel proceedings. More importantly, the Court deviated from European cartel law in that it found that the 10%-of-turnover limit of cartel fines should not be regarded as a capping threshold, but as the maximum value of the possible range of fines.[128]

In June 2013, the Bundeskartellamt published new fining guidelines in accordance with the Court's findings.[129] The 10%-of-turnover limit is now applied as a sanction for the worst possible antitrust infringement. The key factors for calculating fines according to the guidelines are the company's group turnover and the turnover that was achieved on the market in which the anti-competitive practice took place for the duration of the infringement. In comparison to the old guidelines, the new guidelines focus on the size of the company. Based on the Federal Court's decision and the revised fining guidelines of the Bundeskartellamt, it can be expected that large conglomerate companies may face significantly higher fines in the future while fines for smaller one-product companies are likely to decrease.

On April 15, 2013, the Düsseldorf Higher Regional Court increased the €180 million (\$237.7 million) fine imposed by the Bundeskartellamt in 2007 on five members of a liquefied gas cartel to a total of €244 million (\$322.2 million). The Court increased the fines in light of the additional insights regarding the duration and gravity of the cartel, which operated a system of customer protection agreements for the sale of liquefied petroleum gas for standard tanks between July 1997 and April 2005.[130]

The Bundeskartellamt has also had a very active six months and is on track to beat the 2012 record year (€316 million / \$417 million) in terms of total fines imposed for cartel infringement. In its first act of antitrust enforcement of 2013, the Bundeskartellamt fined 11 confectionery manufacturers and their sales representatives over €60 million (\$79.2 million) for several cartel infringements, with Mars GmbH receiving full immunity from fines under the leniency program. According to the Bundeskartellamt, the infringements consisted of price fixing and the exchange of price and other confidential competitive information, including information about the state of negotiations with food retailers and planned price increases.

In addition, the Bundeskartellamt concluded its investigation into a flour mill cartel by imposing a total fine of more than €41 million (\$54 million) against 22 companies, a trade association and their respective representatives for anti-competitive agreements regarding the sale of flour (which is in addition the €24 million in fines (\$30 million) imposed in this case in 2011). The Bundeskartellamt alleged the cartel members had agreed on prices, customer allocation, and supply volumes and had coordinated capacity over a period of many years. The Bundeskartellamt calculated the fines on the basis of the gravity and duration of the companies' involvement in the cartel, but also took into account the companies' economic viability in light of the heavy fines already imposed by the French and Dutch Competition Authorities for similar practices in their respective jurisdictions.[131]

In March 2013, the Bundeskartellamt made clear that it will severely sanction collusive exchanges of information. Six manufacturers of branded drugstore products, the trademark association Markenverband e.V., and their representatives were fined €39 million (\$51.5 million) for anti-

competitive exchanges of confidential business information. Nine other companies had already been fined €24 million in previous proceedings in 2008 and 2011.[132] In addition, the Bundeskartellamt imposed a fine of €20 million (\$26.4 million) on Nestlé Deutschland AG for exchanging highly confidential and competitive business information in the consumer goods market. The Bundeskartellamt had already fined Kraft Foods Deutschland GmbH, Unilever Deutschland Holding AG and Dr. August Oetker Nahrungsmittel in 2011 a total of €38 million (\$50.2 million). Mars GmbH escaped the imposition of penalties, as it was the first company to provide the Bundeskartellamt with relevant evidence under the leniency program.[133]

i) Greece

The first half of 2013 found the Hellenic Competition Commission ("HCC") particularly active in the concrete production sector. In March, the HCC imposed a fine of €94,621 (\$124,900) on five companies active in Crete for price fixing, limiting production, and exchanging information.[134] Two months later, two companies active in the construction and concrete production sectors were fined €72,000 (\$95,000) for jointly obstructing an on-site inspection.[135]

Also in March 2013, the HCC opened an *ex officio* investigation into the driving school sector in relation to price fixing and agreements to limit the provision of services.[136]

j) India

The Competition Commission of India ("CCI") imposed one fine—a INR 522 million (\$10 million) fine against the Board for Control of Cricket in India for an alleged abuse of dominance.[137] This drop in enforcement proceedings strongly contrasts with the large number of rulings adopted by the Competition Appellate Tribunal ("Compat") during the first half of the year.

In May, Compat granted a stay regarding the collection of INR 63.07 billion (\$1.04 billion) in fines imposed on 11 cement manufacturers for coordinating prices. The stay and acceptance of the companies' appeal of the fine was, however, conditioned upon the payment of a INR 6 billion (\$100 million) penalty within one month of the ruling.[138] In April, Compat substantially reduced the fines imposed by the CCI against several explosives manufacturers. Although the parties' appeals were dismissed, Compat found that the CCI had failed to consider mitigating circumstances alleged by the parties and therefore reduced the original fine of INR 600 million (\$9.89 million) by 90%.[139]

Both of the underlying enforcement actions by the CCI were reported in our 2012 Year-End Criminal Antitrust Update.

k) Japan

In the first half of 2013, the Japan Fair Trade Commission ("JFTC") sanctioned participants in three separate industries. First, the JFTC imposed a fine totaling ¥4.7 billion (\$46.5 million) on automotive lamp manufacturers Koito Manufacturing Co, Ichikoh Industries Ltd., and Stanley Electric Co. Ltd. for engaging in bid rigging.[140] Second, the JFTC fined bearing manufacturers NTN Corporation, NSK Ltd., Nachi-Fujikoshi Corp., and JTEKT Corp. a total of ¥13.4 billion (\$132 million) for conspiring to

fix prices.[141] Finally, 10 manufacturers of sugar syrup were fined ¥2.5 billion (\$24.8 million) for engaging in price-fixing, primarily during meetings of the Nippon Starch Saccharification Industry Association.[142]

l) Netherlands

The new Authority for Consumers and Markets ("ACM"), which as noted above has been operational since April 1, 2013, allowed the expiration of a fine of €150,000 (\$198,000) previously imposed on an ex-employee for not cooperating during an investigation. In doing so, the ACM acknowledged that former employees can rely on their right to stay silent and cannot be obliged to answer questions about their former employer in the course of an ACM competition investigation.

Before integrating into the ACM, the Dutch Competition Authority ("NMa") cracked down on four cartels. The NMa wrapped up one of the most extensive investigations in the history of Dutch competition enforcement by imposing a second fine on a notorious real estate cartel. The fine totaled €6.4 million (\$8.25 million) and was imposed on 65 real estate agents. The NMa had already imposed a €6.3 million (\$8.12 million) fine in December 2011 on the 14 most active members (which was later reduced to €4 million or \$5.16 million). The cartel allegedly manipulated property foreclosure auctions between 2000 and 2009 by auctioning the real estate for a second time in an "after auction" procedure for a higher price.[143]

The NMa also sanctioned three taxi companies and six of their executives for engaging in two separate cartels to manipulate bids for specialized transportation for students, persons with a handicap, the elderly and medical patients. The three taxi companies were fined more than €8.5 million (\$10.9 million). The six executives each received a fine of up to €120,000 (\$154,700).[144]

Finally, the NMa fined seven producers of onions a total of €4 million (\$5.16 million) for cartel conduct. The companies had allegedly concluded illegal agreements and exchanged sensitive information regarding the destruction of parts of prepared fields in 2009 in an attempt to reduce the availability of onions in order to raise prices.[145]

m) Pakistan

In an Order dated April 30, 2013, the Competition Commission of Pakistan ("CCP") annulled the so-called International Clearing House ("ICH") agreement among all 14 licensed Long Distance & International ("LDI") telecommunications service operators in Pakistan and imposed a penalty of 7.5% of the annual turnover of each LDI for their violation of the Competition Act. The CCP found that the ICH Agreement, designed to permit LDI Operators to fix the prices and allocate the quota of incoming international calls in Pakistan amongst themselves, "was designed and implemented as a typical 'Cartel' where there would be no incentive for any LDI operator to improve sales or enhance quality of service or for that matter to invest in improving its network. Further, with fixed quotas there would be far less incentive for any LDI Operator to bring in additional traffic from overseas operators." [146] The highest fine of PKR 8.3 billion (\$83 million) fell on Pakistan Telecommunication Company Limited ("PTCL"). [147]

Another important fine imposed by the CCP during this first half of the year was on the Institute of Chartered Accountants of Pakistan ("ICAP"). The PKR 25 million (\$250,000) fine was imposed on the basis that ICAP acted as an association of undertakings when issuing a recommendation prohibiting its members from offering training opportunities to non-ICAP accountancy students.[148]

n) Portugal

In addition to conducting unannounced inspections at the premises of several banks for the exchange of sensitive business information), the Portuguese Competition Authority ("AdC") made substantial efforts to redesign its enforcement framework following the enactment of a new Competition Law in May 2012.[149] A new leniency program, new procedural guidelines, and new guidelines for the setting of fines have all been published in 2013.[150] These publications, together with the new Competition Law, are aimed to bring the Portuguese Competition Law regime in line with European rules. All were enacted during the last months of Manuel Sebastião's chairmanship of the AdC. Although Sebastião's five-year term came to an end in March 2013, he will continue to serve as Acting Chairman until the new President is appointed.[151]

At the same time, 2013 gave the newly-created Court of Competition, Regulation and Supervision the opportunity to adopt its first ruling, in which it confirmed a €340,000 (\$438,000) fine imposed by the AdC less than a year earlier against Lactogal, Portugal's largest dairy, for fixing prices and margins with 55 of its distributors.[152]

o) South Africa

In April 2013, the South Africa Competition Commission ("SACC") referred six glass manufacturers and distributors to the Competition Tribunal for administrative sanctions for engaging in cartel conduct between 1995 and 2007. The companies were found to have engaged in price fixing, market allocation and the fixing of trading conditions for float, laminated, and toughened glass in the Gauteng, Free State and Western Cape regions. The SACC is seeking an administrative penalty of 10% of each company's annual turnover.[153]

In May and June 2013, the Competition Tribunal heard the case brought by the SACC against Sasol Chemical Industries Ltd. and Safripol (Pty) Ltd. for collusion resulting in excessive pricing of polypropylene and propylene. The SACC asked the Competition Tribunal to impose an administrative penalty of 10% of Sasol's annual turnover.[154]

p) South Korea

In January 2013, the Korea Fair Trade Commission ("KFTC") imposed fines in three antitrust investigations, including: (i) four school reference book publishers which were fined a total KRW 900 million (\$769,700) for conspiring not to raise the discount rate of study-aid books in online and discount bookstores over 15% and colluding with the Korea Federation of Bookstore Association;[155] (ii) SK Telecom Co., which was fined KRW 1 million (\$875.00) for imposing unfair disadvantages on competitors by coercing mobile phone retailers to refuse the sales promotions of its competitors in favor its own products;[156] and (iii) Fissler Korea, which was fined KRW 170 million (\$148,750) for

imposing a minimum resale price for its cookware products during the period of May 2007 to July 2011.[157]

In March 2013, the KFTC also fined nine life insurance companies KRW 20 billion (\$17.5 million) for fixing commission rates for variable insurance policies. Three of the companies—Kyobo Life, Shinan Life, and MetLife Korea—were also referred to the Prosecutor's Office for criminal prosecution. In May, the Prosecutor's Office found that the KFTC had not provided sufficient evidence to support criminal charges. In addition, the Prosecutor's Office found that the companies had been acting under guidelines provided by Korea's financial regulator.[158]

Finally, the KFTC sanctioned a plate glass cartel KRW 38 billion (\$33.25 million) in June 2013. KCC Corporation and HanGlas Industires colluded not compete on prices from 2006 to 2008, which increased prices by 10%. KCC Corp. was exempt from its fine of more than KRW 22 billion (\$18.8 million) because it provided valuable evidence under the Leniency Program.[159]

Changes may be in store for the second half of the year. On April 23, 2013, Mr. Noh Dae-Lae took office as the new Chairman of the KFTC.[160] Mr. Noh is a former senior finance ministry official and chief of Korea's arms procurement agency. He was the second nominee for the post. The first nominee, Mr. Han-Man Soo, had to step down amid allegations of tax evasion. Mr. Noh's appointment also created controversy as he was accused of failing to report KRW 250 million (\$218,750) in income.[161]

q) Spain

During the first half of the year in which it commemorates its 50th birthday, the Spanish Competition Authority ("CNC") continued increasing its enforcement of competition rules in line with what has been occurring over the past years.[162] Although the CNC will be merged into a "super-regulator" before the end of the year (as discussed above), the CNC's enforcement pattern is unlikely to change.

During the first half of 2013, the CNC adopted fining decisions totaling more than \$100 million. The largest set of fines, which totaled more than €44 million (\$56.7 million), was imposed against an alleged cartel of envelope manufacturers. In its decision, the CNC alleged that 15 companies fixed prices and shared the market for more than 30 years. The largest single fine imposed amounted to more than €20 million (\$25.8 million). Payment of this fine was, however, allowed to lapse given that the infringer had blown the whistle to uncover the cartel. Other large fines were imposed against polyurethane foam manufacturers (more than €26 million or \$33.5 million), paper product manufacturers (more than €9 million or \$11.6 million), and against the Port Authority of Barcelona and two logistic associations (more than €20 million or \$25.8 million).

In terms of investigative patterns, the CNC continued focusing on anti-competitive practices by distribution networks (dawn raids were conducted in relation to the distribution of motor vehicles, fuel for motor vehicles, and maintenance of Opel vehicles), as well as in deregulated sectors, including ports, railways, and their related services. Moreover, the CNC acted firmly against recommended prices made by trade associations and, during the first half of the year, penalized the imposition of such prices by several bodies, including the Professional Association of Civil Engineers (€200,000 or

\$257,700), the Trade Association of Travel Agencies of Tenerife in relation to the prices of excursions (€440,000 or \$567,000), and the Professional Association of Valuation Experts (€200,000 or \$257,700). Dawn raids were also conducted in the sectors of corrugated cardboard, waste management, and refrigerated road transport.

Finally, the CNC finalized its consultation on its proposed amendments to its Leniency Program. Although a Leniency Program already existed in Spain, and has become a useful tool to uncover secret cartels for some time, the amendments aim to clarify the steps that must be taken by those wishing to benefit from the Leniency Program. The final amendments are likely to be published before the end of the year.

r) Switzerland

The Competition Commission ("COMCO") opened a number of investigations in the first half of 2013, ranging from tunnel cleaning companies,[163] live sports broadcasting on Pay-TV,[164] and road construction and civil engineering.[165]

Additionally, COMCO imposed fines of CHF 16.5 million (\$16.9 million) against book distributors for limiting the distribution of books written in French[166] and fines of CHF 500,000 (\$513,000) against construction companies for bid rigging.[167]

s) United Arab Emirates

The Federal Competition Law of the UAE, which was enacted on October 23, 2012, came into force on February 23, 2013.[168]] Although there have not yet been any enforcement or implementation measures, the Law lays down rules on cartels, abuse of dominance, and merger control. The grace period for complying with the Law ends on August 23, 2013. The Ministry of Economy is expected to be the institution supervising the enforcement of competition rules.

t) United Kingdom

The first half of 2013 has seen strong enforcement action by both the Office of Fair Trading ("OFT") and the Competition Commission ("CC"), as well as important legislative developments.

In February 2013, the OFT reached a settlement with Mercedes-Benz and three of its commercial vehicle dealers (Cicely, Road Range, and Enza) regarding collusive practices in breach of competition law. The companies admitted to having colluded to allocate markets, coordinate prices, and exchange commercially sensitive information, and agreed to pay a fine of £2.6 million (\$4 million) fine. One dealer, H&L Garages, did not settle with the OFT and received a fine of £242,076 (\$373,100). Another dealer, Northside, received immunity from a penalty, as it was the first company to provide the OFT with valuable evidence under the OFT's leniency program.[169]

In May, the CC issued its provisional findings and possible remedies following its in-depth investigation into the aggregates, cement, and ready-mix concrete markets. Having provisionally found significant restrictions of competition on the cement markets, including evidence of price

coordination between the top three cement producers, the CC is proposing the imposition of divestiture remedies on some or all of the top three producers. If imposed, this would be only the second time that divestiture remedies have been ordered by the CC in a market investigation.

On the legislative front, in addition to the ERRA 2013 and the consultation on private actions, the UK Government is proposing significant changes to the competition appeals regime, including potentially moving to a judicial review (rather than full merits review standard) or limiting the grounds of appeal or circumstances in which new evidence can be admitted on appeal. Other possible changes include the introduction of target timescales for appeals and methods to keep oral hearings to a minimum. The consultation period is open until mid-September 2013.[170]

On July 8, 2013, the OFT published its revised leniency guidance.[171] Significantly, following concerns raised during the consultation and comment period for the revisions to the guidance, the OFT confirmed that it will not require waivers of legal professional privilege (LPP) as a condition of leniency in either civil or criminal investigations. However, the OFT will require a review by independent counsel of material over which LPP is claimed unless the position is clear and uncontroversial. The OFT will select, instruct, and fund the independent counsel on a case-by-case basis. The OFT may also inquire whether a leniency applicant may be prepared to waive privilege voluntarily during the course of a possible criminal cartel prosecution but will treat any response neutrally (*i.e.*, without either adverse consequences or additional advantage tied to the waiver decision). The revised leniency guidance contains quick-reference charts and tables for ease of use and is accompanied with two "quick guides" meant to clearly explain leniency to businesses,[172] and individuals respectively.[173]

[1] We tabulated the average prison sentence using publicly available data reflecting the total prison days sentenced and total number of defendants receiving prison sentences during each fiscal year. For the underlying data for years prior to FY2012, see U.S. Dep't of Justice, Antitrust Div., Antitrust Division Workload Statistics, FY 2003–2012 [hereinafter FY 2003–2012 Workload Statistics], *available at* <http://www.justice.gov/atr/public/workload-statistics.pdf>; U.S. Dep't of Justice, Antitrust Div., Antitrust Division Workload Statistics, FY 2002–2011 [hereinafter FY 2002–2011 Workload Statistics] U.S. Dep't of Justice, Antitrust Div., Antitrust Division Workload Statistics, FY 2001–2010 [hereinafter FY 2001–2010 Workload Statistics]; U.S. Dep't of Justice, Antitrust Div., Antitrust Division Workload Statistics, FY 2000–2009 [hereinafter FY 2000–2009 Workload Statistics].

[2] We tabulated the average prison sentence using publicly available data reflecting the total prison days sentenced, the total number of defendants receiving prison sentences during each fiscal year, and the citizenship of those pleading guilty.

[3] The underlying data for years before FY 2012 can be found in the Antitrust Division Workload Statistics. *See supra* note 1.

[4] *See, e.g.*, discussion *infra* Sections 4(a), 5(a), and 5(d).

- [5] *DOJ Not Wavering on Antitrust Guilty Pleas, Officials Say*, Law360, Apr. 10, 2013, available at <http://www.law360.com/articles/431781/doj-not-wavering-on-antitrust-guilty-pleas-official-says>.
- [6] Global Competition Review, Volume 15, Issue 4, April/May 2012 (quoting Deputy Assistant Attorney General Scott Hammond answering a question regarding whether use of NPAs or DPAs would increase, "do I anticipate seeing NPAs and DPAs in antitrust prosecutions in the future? The answer to that is no. We have a policy that disfavors the use of NPAs and DPAs for antitrust crimes, and that policy remains in effect.").
- [7] *Id.*
- [8] Press Release, U.S. Dep't of Justice, RBS Securities Japan Limited Agrees to Plead Guilty in Connection with Long-Running Manipulation of LIBOR Benchmark Interest Rates (Feb. 6, 2013), available at http://www.justice.gov/atr/public/press_releases/2013/292421.htm.
- [9] Deferred Prosecution Agreement, United States v. The Royal Bank of Scotland plc, No. 3:13-cr-00074-MPS (D. Conn. Apr. 12, 2013), ECF No. 5, available at <http://www.justice.gov/iso/opa/resources/28201326133127414481.pdf>.
- [10] Deferred Prosecution Agreement, United States v. The Royal Bank of Scotland plc, No. 3:13-cr-00074-MPS (D. Conn. Apr. 12, 2013), available at <http://www.justice.gov/iso/opa/resources/28201326133127414481.pdf>; Plea Agreement, United States v. RBS Securities Japan Limited, No. 3:13-cr-0073-MPS (D. Conn. Apr. 12, 2013), ECF No. 4, available at <http://www.justice.gov/iso/opa/resources/217201326133540747939.pdf>.
- [11] Plea Agreement, United States v. RBS Securities Japan Limited, No. 3:13-cr-0073-MPS (D. Conn. Apr. 12, 2013).
- [12] Press Release, U.S. Dep't of Justice, UBS Securities Japan Co. Ltd. to Plead Guilty to Felony Wire Fraud for Long-running Manipulation of LIBOR Benchmark Interest Rates (Dec. 19, 2012), available at <http://www.justice.gov/opa/pr/2012/December/12-ag-1522.html>.
- [13] Press Release, U.S. Dep't of Justice, AU Optronics Corporation Executive Sentenced for Role in LCD Price-Fixing Conspiracy (Apr. 29, 2013), available at http://www.justice.gov/atr/public/press_releases/2013/296336.pdf. Mr. Leung's post-trial motions were denied at the April 29, 2013 sentencing hearing and by written order issued May 2, 2013.
- [14] *See* Order, United States v. AU Optronics Co., No. 3:09-cr-00110 (N.D. Cal. Mar. 6, 2013), ECF No. 1119.
- [15] *See* Transcript of Sentencing Hearing, United States v. AU Optronics Co., No. 3:09-cr-00110 (N.D. Cal. Sept. 20, 2012), ECF No. 963.
- [16] Brief for Defendants-Appellants at 79-83, United States v. AU Optronics Corp., Nos. 12-10500, 12-10514, 12-10558 (9th Cir. Feb. 4, 2013), ECF No. 19-1.

[17] *Id.*

[18] Press Release, U.S. Dep't of Justice, AU Optronics Corporation Executive Sentenced for Role in LCD Price-Fixing Conspiracy (Apr. 29, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/296336.pdf.

[19] Press Release, U.S. Dep't of Justice, Two DENSO Corporation Executives Agree to Plead Guilty for Price Fixing and Bid Rigging on Auto Parts Installed in U.S. Cars (May 21, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/297030.htm.

[20] *Id.*

[21] *Id.*

[22] U.S. Dep't of Justice, Antitrust Div., Division Update Spring 2012, *available at* www.justice.gov/atr/public/division-update/2012/criminal-program.html. For a discussion of the scope of the auto parts investigation, see our 2012 Year-End Criminal Antitrust Update.

[23] Press Release, *supra* note 43.

[24] *Id.*

[25] Judgments, United States v. Rubin/Chambers, Dunhill Ins. Servs. Inc., No. 09-cr-01058 (S.D.N.Y. Apr. 23, 2013), ECF Nos. 412, 413.

[26] Docket Entry, United States v. Rubin/Chambers, Dunhill Ins. Servs. Inc., No. 09-cr-01058 (S.D.N.Y. Apr. 23, 2013), ECF No. 414.

[27] Press Release, U.S. Dep't of Justice, Former Financial Services Broker Sentenced to Serve 18 Months in Prison for Role in Conspiracies Involving Investment Contracts for the Proceeds of Municipal Bonds (Jan. 3, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/290872.htm.

[28] Press Release, U.S. Dep't of Justice, Former Executive Convicted for Role in Price-Fixing Conspiracy Involving Coastal Freight Services Between the Continental United States and Puerto Rico (Jan. 29, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/291962.htm. Sea Star Line LLC pleaded guilty in December 2011 and agreed to pay a \$14.2 million criminal fine. *Id.*

[29] Order Granting Motion to Continue, United States v. Peake, No. 3:11-cr-00512 (D.P.R. May 20, 2013), ECF No. 201.

[30] Press Release, U.S. Dep't of Justice, Former Shipping Executive Indicted for Role in Price-Fixing Conspiracy Involving Coastal Freight Services Between the Continental United States and Puerto Rico (Mar. 21, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/294992.htm.

[31] Indictment at 4, *United States v. Farmer*, No. 3:13cr-00162 (D.P.R. Mar. 21, 2013), ECF No. 1.

[32] Defendant's Memorandum in Support of the Motion to Transfer Venue at 1–2, *United States v. Farmer*, No. 3:13-cr-00162 (D.P.R. May 14, 2013), ECF No. 32. Frank Peake similarly moved for a transfer of venue, which the court denied. *Id.* at 1. Farmer argues that circumstances have changed since the Peake trial and that the government's widely known investigation into other freight carriers has biased the Puerto Rican public. *Id.*

[33] Press Release, U.S. Dep't of Justice, Four Northern California Real Estate Investors Agree to Plead Guilty to Bid Rigging at Public Foreclosure Auctions (June 27, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/299045.htm; Press Release, U.S. Dep't of Justice, Northern California Real Estate Investor Agrees to Plead Guilty to Bid Rigging at Public Foreclosure Auctions (June 18, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/298712.htm; Press Release, U.S. Dep't of Justice, Northern California Real Estate Investor Agrees to Plead Guilty to Bid Rigging at Public Foreclosure Auctions (Apr. 16, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/295842.htm; Press Release, U.S. Dep't of Justice, Two Northern California Real Estate Investors Agree to Plead Guilty to Bid Rigging at Public Foreclosure Auctions (Mar. 7, 2013), *available at* <http://www.justice.gov/opa/pr/2013/March/13-at-277.html>; Press Release, Northern California Real Estate Investor Agrees to Plead Guilty to Bid Rigging at Public Foreclosure Auctions (Feb. 5, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/292375.pdf.

[34] Superseding Indictment, *United States v. Katakis*, No. 2:11-cr-0511 (E.D. Cal. May 8, 2013), ECF No. 136.

[35] *See id.*

[36] Press Release, U.S. Dep't of Justice, Northern California Real Estate Investor Indicted on Additional Charge (May 8, 2013), *available at* <http://www.justice.gov/opa/pr/2013/May/13-at-526.html>.

[37] Press Release, U.S. Dep't of Justice, Two Alabama Real Estate Investors and Their Company Sentenced for Their Roles in Bid-Rigging and Mail Fraud Conspiracies Involving Real Estate Purchased at Public Foreclosure Auctions (May 20, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/297007.pdf.

[38] Indictment at 5, 7–8, *United States v. Brannon*, No. 1:12-cr-00139 (S.D. Ala. June 28, 2012), ECF No. 1.

[39] Press Release, U.S. Dep't of Justice, Two Alabama Real Estate Investors and Their Company Sentenced for Their Roles in Bid-Rigging and Mail Fraud Conspiracies Involving Real Estate Purchased at Public Foreclosure Auctions (May 20, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/297007.pdf.

[40] Press Release, U.S. Dep't of Justice, New Jersey Investor Pleads Guilty for Role in Bid-Rigging Scheme at Municipal Tax Lien Auction (Apr. 25, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/296272.htm.

[41] *Smith v. United States*, 133 S. Ct. 714 (2013).

[42] Ron Knox, *Hammond to Depart DOJ*, Global Competition Review, July 3, 2013, *available at* <http://globalcompetitionreview.com/news/article/33746/hammond-depart-doj>.

[43] Melissa Lipman, *DOJ's Hammond Leaves Big Shoes To Fill*, Law360, July 8, 2013, *available at* <http://www.law360.com/articles/455474/doj-s-hammond-leaves-big-shoes-to-fill>.

[44] Press Release, U.S. Dep't of Justice, Statement of Assistant Attorney General Bill Baer on Changes to Antitrust Division's Carve-Out Practice Regarding Corporate Plea Agreements (Apr. 12, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/295747.htm.

[45] *Id.*

[46] United States Attorney's Manual 9-27.760, *available at* http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/27mcrm.htm ("In the context of public plea and sentencing proceedings, . . . in the absence of some significant justification, it is not appropriate to identify . . . a third-party wrongdoer unless that party has been officially charged with the misconduct at issue.").

[47] *Peugh v. United States*, 133 S. Ct. ___, No. 12-62 (June 10, 2013).

[48] *See, e.g.*, Plea Agreement, *United States v. Mohammed Rezaian*, Case 3-13-cr-002460CRB, Dkt. 5 (May 2, 2013).

[49] *Id.*

[50] Oversight of the Enforcement of the Antitrust Laws: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary, 113th Cong. 8-9 (2013) (statement of William J. Baer, Assistant Attorney General, U.S. Dep't of Justice, Antitrust Div.), *available at* <http://www.justice.gov/atr/public/testimony/295840.pdf>.

[51] *Id.*

[52] *Id.* at 8.

[53] *Id.* at 9.

[54] *See* Press Release, Office of the U.S. Trade Rep., Trans-Pacific Partnership Negotiations Maintain Strong Momentum (May 24, 2013), *available at* <http://www.ustr.gov/about-us/press-office/press-releases/2013/may/tpp-negotiations-strong-momentum>.

[55] Press Release, Office of the U.S. Trade Rep., Obama Administration Notifies Congress of Intent to Include Japan in Trans-Pacific Partnership Negotiations (Apr. 24, 2013), *available at* <http://www.ustr.gov/about-us/press-office/press-releases/2013/april/congressional-notification-japan-tpp>.

[56] Press Release, Office of the U.S. Trade Representative, *supra* note 9.

[57] *Id.*

[58] U.S. Dep't of Justice Antitrust Div. Update Spring 2013: International Program, *available at* <http://www.justice.gov/atr/public/division-update/2013/international-program.html>.

[59] OECD Competition Comm., *International Enforcement Co-operation: Secretariat Report on the OECD/ICN Survey on International Enforcement Co-operation* 27, 30 (2013), *available at* <http://www.oecd.org/daf/competition/InternEnforcementCooperation2013.pdf>.

[60] *Id.* at 36.

[61] *Id.* at 39.

[62] *Id.* at 71.

[63] Press Release, U.S. Dep't of Justice, International Competition Network Advances Convergence through Initiatives on Enforcement Cooperation and Investigative Process (Apr. 26, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/296310.htm.

[64] *Id.*

[65] *Id.*

[66] *See, e.g., Global Cartel Fines Down In 2013, But Big Probes Loom*, Law360, June 28 2013, *available at* <http://www.law360.com/articles/453974/global-cartel-fines-down-in-2013-but-big-probes-loom>; *EU TrendMonitor – Almunia legacy to take shape with major cases wrapping up and important legislative initiatives imminent*, Financial Times, February 19 2013, *available here*.

[67] Press Release, European Commission, Commission fines Telefónica and Portugal Telecom €79 million For Illegal Non-Compete Contract Clause (Jan. 23, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-39_en.htm.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] Press Release, European Commission, Commission Sends Second Statement Of Objections To ENI And Versalis In Synthetic Rubber Cartel After General Court Judgment (Jan. 3, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-179_en.htm.

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] Press Release, Antitrust: Commission fines producers of wire harnesses €141 million in cartel settlement (July 10, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-673_en.htm.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *See* Case T-404/08, *Fluorsid SpA & Minmet Fin. Co. v Comm'n* (June 18, 2013), *available at* <http://curia.europa.eu/juris/liste.jsf?language=en&num=T-404/08>.

[80] *Id.*

[81] *See* Case c-287/11 P, *Comm'n v. Aalberts Indus. NV & Others* (July 4, 2013), *available at* <http://curia.europa.eu/juris/documents.jsf?num=C-287/11>.

[82] Case T-385/06, *Aalberts Indus. NV & Others v. Comm'n*, 2011 ECR II-1223.

[83] *Id.*

[84] Case C-287/11 P, *Alberts Indus.* *supra* note 80.

[85] Press Release, European Commission, Antitrust: Commission Decides not to Prolong Maritime Transport Authority Guidelines, *available at* http://europa.eu/rapid/press-release_IP-13-122_en.htm.

[86] Press Release, European Commission, Commission confirms inspections in the sector of cargo train transport services (June 19, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-586_en.htm.

[87] Press Release, European Commission, Commission confirms unannounced inspections in the sugar sector (May 15, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-443_en.htm.

- [88] Press Release, European Commission, Commission confirms unannounced inspections in oil and biofuel sectors (May 14, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-435_en.htm.
- [89] Press Release, European Commission, Commission extends CDS information market investigation to International Swaps and Derivatives Association (ISDA) (Mar. 26, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-286_en.htm.
- [90] Press Release, European Commission, Commission sends statement of objections to 13 investment banks, ISDA and Markit in credit default swaps investigation (July 1, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-630_en.htm.
- [91] Press Release, European Commission, Antitrust: Commission confirms unannounced inspections in Internet connectivity services (July 11, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-681_en.htm.
- [92] Proposal for a Directive of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (2013/0185 (COD)), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0404:FIN:EN:PDF>.
- [93] *See* Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. No. 108-237, § 213(b), 118 Stat. 665, 666 (codified as amended at 15 U.S.C. § 1 note).
- [94] *See* Gibson Dunn's Client Alert, *European Commission Takes First Steps Towards EU Antitrust Damages Claims* (June 14, 2013), *available at* <http://www.gibsondunn.com/publications/pages/ECTakesFirst%20Steps-Towards-EU-Antitrust-Damages-Claims.aspx>.
- [95] In parallel, the EU has recently consulted on raising its *de minimis* threshold for its state aid jurisdictions in order to avoid wasting resources on minor cases. *See* http://ec.europa.eu/competition/consultations/2013_de_minimis/index_en.html.
- [96] Antitrust and Competition Act – Amendment Act 2012 (Kartell- und Wettbewerbsrechts-Änderungsgesetz 2012) (1804 d.B.), *available at* <http://www.parlament.gv.at/PAKT/VHG/XXIV/II/01804/index.shtml>.
- [97] Statement Prosecutor-General Stulens of the Belgian Competition Authority of 5 April 2013 "Kartels zijn als moeilijk te jagen everzwijnen," *available here*.
- [98] European Competition Network Brief 01/2013, *available at* http://ec.europa.eu/competition/ecn/brief/01_2013/brief_01_2013_short.pdf.
- [99] European Competition Network Brief 01/2013, *available at* http://ec.europa.eu/competition/ecn/brief/01_2013/brief_01_2013_short.pdf.

- [100] Press Release, ACM, Autoriteit Consument & Markt van kracht (Feb. 26, 2103), *available at* <https://www.acm.nl/nl/publicaties/publicatie/11217/Autoriteit-Consument-en-Markt-van-start/>.
- [101] Press Release, National Gazette (June 5, 2013), *available at* <http://www.boe.es/boe/dias/2013/06/05/pdfs/BOE-A-2013-5940.pdf>. As noted in our 2012 Year End Criminal Antitrust Update, the new Authority faced fierce opposition from the opposition parties in Parliament and triggered criticism from both the European Commission and most of the authorities to be merged. The European Commission even commented that the proposed authority "does not guarantee that it will carry out its regulatory activity in an effective and independent way."
- [102] Ali Nikpay, Competition Law Journal, Forward, Concurrences, *UK Competition Regime: All Change or More of the Same?* (February 2013).
- [103] European Competition Network Brief 02/2013, European Union (June 2013), *available at* http://ec.europa.eu/competition/ecn/brief/02_2013/be_new.pdf.
- [104] European Competition Network Brief 01/2013, European Union (Jan. 2013), *available at* http://ec.europa.eu/competition/ecn/brief/01_2013/dk_act.pdf.
- [105] See Enterprise and Regulatory Reform Act, 2013, part 4, c. 4 § 190A, *available at* <http://www.legislation.gov.uk/ukpga/2013/24/enacted>
- [106] For Brazil and Canada, *see* sections 7.d and 7.e; for Israel, *see* Leo Szolnoki, *Israel goes after renowned bookstore chain*, Global Competition Review, Jan. 17, 2013, *available at* <http://globalcompetitionreview.com/news/article/32916/israel-goes-renowned-bookstore-chain/>.
- [107] See Press Release, European Commission, European Union and Switzerland sign Cooperation Agreement in Competition Matters (May 17, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-444_en.htm.
- [108] Press Release, Ministry of Company Affairs, Government of India, MOU Signed Between Competition Commission of India and Australian Competition and Consumer Commission (ACCC) (June 5, 2013), *available at* <http://www.pib.nic.in/newsite/erelease.aspx?relid=96432>.
- [109] La Corte confirmó multas por \$ 310 millones a cementeras, Clarin, May 9, 2013, *available at* http://www.ieco.clarin.com/empresas/Corte-confirmando-multas-millones-cementeras_0_916108446.html.
- [110] ACCCount, Australian Competition and Consumer Commission, 7 (May 9, 2013), *available at* <http://transition.accc.gov.au/content/item.phtml?itemId=1112398&nodeId=f807e016d59ef2f2de4c38e7661c2c9d&fn=ACCCCount%201%20January%20to%2031%20March%202013.pdf>.
- [111] Press Release, Australian Competition and Consumer Commission, Japanese cable supplier to pay \$1.35 million penalty for cartel conduct (Apr. 5, 2013), *available at*

<http://www.accc.gov.au/media-release/japanese-cable-supplier-to-pay-135-million-penalty-for-cartel-conduct>.

[112] For additional information, see our 2012 Year-End Criminal Antitrust Update.

[113] *See, e.g.*, Press Release, Administrative Council for Economic Defence, Cade condemns cartel of bread in Federal District (May 31, 2013), *available at* <http://www.cade.gov.br/Default.aspx?73c657a272a77c8793a0b082d179>; Press Release, Administrative Council for Economic Defence, Superintendent asks for the condemnation of cartel in ambulance bid rigging (May 31, 2013), *available at* <http://www.cade.gov.br/Default.aspx?73c657a272a77c8793a0b082d178>.

[114] Press Release, Administrative Council for Economic Defence, Cade Applies 120 million BRL in Fines against Fuel Cartels (Mar. 6, 2013), *available at* <http://www.cade.gov.br/Default.aspx?2215e533c258ac7680cd9fb480c1>.

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