

Red Notice

A Monthly Update on Global Investigations and Prosecutions



NOVEMBER 2012

INTRODUCTION

Welcome to November's edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, U.S. authorities' long-awaited FCPA guidance is released, along with clarified guidance from the Serious Fraud Office relating to the U.K. Bribery Act. Barclays faces an FCPA investigation just months after settling interest rate manipulation charges with DOJ. On the cartel enforcement front, the auto parts industry investigation nets convictions of another executive and three more companies. As the LCD price-fixing cases wind down, Asia's electronics manufacturers now face price-fixing allegations related to lithium ion batteries, and several of the world's largest oil companies may pay significant fines to South African regulators. In the criminal export violation world, a British millionaire pleads guilty to charges of illegal export of defense articles to Iran.

Thank you as always for reading *Red Notice*.

ANTI-CORRUPTION CASES

Justice Department and SEC Release Joint "Resource Guide" on FCPA

Earlier this month, the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) jointly released their highly-anticipated FCPA "Resource Guide," a 130-page document outlining the 30 year old bribery law's requirements and the considerations used by the agencies in enforcing it. According to DOJ, the Guide is intended to provide "helpful information to enterprises of all sizes – from small businesses doing their first transactions abroad to multinational corporations with subsidiaries around the world." This marks the first time either agency has released formal guidance on the FCPA, though DOJ issues "opinion procedure releases" upon request. Many of DOJ's prior opinion procedure releases are reflected in the newly-published Guide. Read the [Guide](#), DOJ's [statement](#) and [fact sheet](#) on the Guide's release, and Akin Gump's [client alert](#) highlighting the Guide's most important and noteworthy aspects.

DOJ Expands Barclays Scrutiny, Initiates FCPA Investigation

In a filing to London Stock Exchange late last month, U.K. multinational bank Barclays PLC disclosed a current investigation by DOJ and SEC. According to the bank, the government is investigating whether Barclays' "relationships with third parties who assist Barclays win or retain business are compliant" with the FCPA. Barclays adds that it is "fully co-operating with the DOJ and SEC." October's announcement comes just four months after Barclays agreed to pay USD \$160 million in connection with the DOJ investigation into manipulation of LIBOR rates. Read the regulatory [filing](#), and [coverage](#) at *Main Justice*.

UK Prosecutors Release Revised Bribery Act Guidance

The U.K.'s Serious Fraud Office (SFO), the agency responsible for enforcing the UK Bribery Act, released revised guidance last month outlining the agency's new approach to companies that self-report violations of the Act. SFO's previous guidance demonstrated a strong preference to "settle self-referral cases... civilly where-ever possible." The new guidance takes a somewhat harsher stance, noting only that the SFO will consider a company's self-reporting a violation among other factors in deciding whether to prosecute the offending entity. Read the SFO's ["Questions and answers"](#) about the revised [guidance](#) and [coverage](#) at *Corruption Currents*.

INTERNATIONAL CARTEL ENFORCEMENT DEVELOPMENTS

Fines and Prison Terms Continue In Auto Parts Industry Cartel Probe

DOJ's wide ranging series of investigations into price-fixing and bid-rigging in various sectors of the auto parts industry has already yielded an unprecedented amount of fines and numerous convictions for the industry's companies and executives. The convictions continued over the past month, as (1) an executive of an Ohio auto parts supplier agreed to serve prison time; (2) a Japanese company agreed to pay over USD \$15 million in fines; and (3) a Taiwanese auto lights company and its California distributor agreed to fines; all in connection with guilty pleas to price fixing-charges. Hiroshi Yoshida, an executive at the US subsidiary of a Japanese auto parts company, agreed to plead guilty and serve one year in prison for his role in a price-fixing and bid-rigging scheme in the anti-vibration parts market. (*US v. Yoshida*, No. 12-CR-00515 (N.D. Ohio)) Yoshida is the twelfth executive to plead guilty in the auto parts investigation. Tokai Rika Co. Ltd., became the ninth company to plead guilty in the investigation, agreeing to pay a USD \$17.7 million in fines to settle charges that it fixed prices for heater control panels installed in cars and obstructed the investigation. (*US v. Tokai Rika Co., Ltd.*, No. 12-CR-20711 (E.D. Mich.)) Taiwan's Eagle Eyes Traffic Industrial Co. Ltd. and California's E-Lite Automotive Inc. also pled guilty to price-fixing charges and will pay USD \$5 million in fines. (*US v. Hsu et al.*, No. 11-CR-00488 (N.D. Cal.)) Overall, DOJ's auto parts investigations have yielded more than USD \$790 million in criminal fines, with two of the companies that have agreed to plead guilty still awaiting sentencing. All twelve executives who have pleaded guilty in connection with the probe received prison terms ranging from one year to two years. Read DOJ's releases on the [Yoshida](#), [Tokai Rika](#), and [Eagle Eyes/E-Lite](#) guilty pleas.

New Class Actions Allege Lithium Ion Battery Price-Fixing Conspiracy

On the heels of the Justice Department's successful prosecution of seven LCD display screen manufacturers which obtained USD \$890 million in fines, many of the same manufacturers now face a series of civil class action lawsuits alleging that the manufacturers participated in a price-fixing cartel in the market for a different product – lithium ion batteries. (*E.g., Young v. LG Chem, Ltd.*, No. 12-CV-5129 (N.D. Cal.)). The plaintiffs in ten class actions filed against Panasonic, LG, Sony, Samsung, Sanyo, Hitachi and their respective US subsidiaries accuse the companies of coordinating several of the largest price-fixing schemes in the recent past, suggesting that the companies have combined to control prices in the lithium ion battery market in a similar fashion. Allegedly, U.S. and European Union authorities continue to investigate the manufacturers for lithium ion battery price-fixing. The Judicial Panel on Multidistrict Litigation will consider requests by two plaintiff's counsel to consolidate the cases in federal district court in either New Jersey or Northern California. Read the [coverage](#) at Law.com.

International Oil Giants Face Price-Fixing Charges in South Africa

South Africa's Competition Commission announced late last month that a wide-ranging investigation lasting over two years uncovered decades of collusive conduct on the part of subsidiaries of Chevron, Shell, Total and BP among others. The Commission referred the case to South Africa's Competition Tribunal and seeks a fine of 10 percent of each companies' South Africa revenues from 2011. Authorities claim that the companies exchanged information to "align their strategies" in the diesel and commercial fuel markets, allegedly a practice at the South African subsidiaries dating back to the late 1980's. In addition to these charges, the Commission continues to investigate the companies' activities in other South African energy product markets. Read the [coverage](#) at *Bloomberg*.

CRIMINAL EXPORT VIOLATION DEVELOPMENTS

British Millionaire Pleads Guilty to Charges of Illegal Export of Defense Articles to Iran

On November 1, British millionaire Christopher Tappin pleaded guilty to one count of aiding and abetting illegal exports of defense articles to Iran. Reversing his previous not-guilty plea, Tappin admitted to conspiring to export Zinc/Silver Oxide Reserve Batteries, a special component of the Hawk Air Defense Missile. The batteries are on the U.S. Munitions List as a defense article. Using false documentation, Tappin planned to transfer the batteries to the U.K. and on to Iran without an export license from 2005-2007, in violation of export control regulations. Tappin, a retired shipping magnate, was extradited to the U.S. in early 2012. According to the plea agreement, Tappin will serve 33 months in prison and pay a fine of USD \$11,357.14, the amount that would have been his profit from the transaction. The other two men involved in the scheme have been sentenced to 20 and 24 months in federal prison. Read the DOJ's [release](#), *Reuter's* [coverage](#) and the *BBC's* [coverage](#).

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Red Notice is a monthly publication of Akin Gump Strauss Hauer & Feld LLP. The Anti-Corruption Developments and International Cartel Enforcement Developments are edited by [Jacob Weixler](#). The Export Control and Sanctions Enforcement section is edited by Mary Penfield.

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