



Red Notice

A Monthly Update on Global Investigations and Prosecutions

APRIL 2012

INTRODUCTION

Welcome to April's edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, the Justice Department surprises some by asking a federal judge to dismiss the guilty pleas of three defendants connected to the now-infamous FCPA sting case. As the debate about the FCPA's application and enforcement continues, Secretary Clinton weighed in with support for the law, the first cabinet-level official in the Obama administration to do so. Enforcement actions continue with fines against firms in the aviation and energy sectors, in addition to a court's order that a high profile former executive must pay restitution related to his participation in a kickback scheme. On the anti-cartel front, the EU levied massive fines against shipping companies and DOJ secured two more guilty pleas in its rapidly expanding auto parts industry investigation. Also, oil companies and airlines were forced to pay millions in fines to Canadian and South African antitrust authorities respectively to settle charges that they fixed prices on consumer goods.

Thank you as always for reading *Red Notice*.

ANTI-CORRUPTION DEVELOPMENTS

FCPA Sting: DOJ Asks Court to Dismiss Charges Against Defendants Who Pled Guilty

In a surprising turn of events, the Justice Department asked Judge Richard Leon to drop charges against three defendants indicted in the Department's 2010 sting who previously pled guilty to conspiring to violate the FCPA. The move means that the sting, which produced 22 indictments and was initially heralded as ushering in a new era of undercover bribery enforcement, has not led to a single conviction. The prosecutors' move comes after the Court dismissed similar charges against other defendants and the Department asked the Court to drop charges against the defendants' whose indictments had yet to come before the Court. Read the [coverage](#) at Lexology.

Despite Criticism and Failed Prosecutions, Secretary Clinton and DOJ Official Defend FCPA

The FCPA has come under scrutiny recently, partly from the US Chamber of Commerce which seeks to limit the law's application, and due in part to the Justice Department's string of recent, high-profile defeats in FCPA enforcement cases. Yet, others remain committed to the 35 year old law. Nathaniel Edmonds, an Assistant Chief of DOJ's Fraud Section responsible for the FCPA unit, acknowledged at a recent conference that the Department has experienced some challenges in trials of FCPA enforcement cases, but noted that the Department will continue to fight corruption and is in it for the long haul. Similarly, Secretary of State Hillary Clinton defended the law in a speech last week, declaring that the current administration is unequivocally opposed to weakening the FCPA and will take a strong stand when it comes to American companies bribing foreign officials. In a related story, Assistant Attorney General Lanny Breuer said he will meet with Chamber of Commerce representatives to discuss upcoming FCPA guidance that the Justice Department is expected to release sometime this year. Read the [coverage](#) of Edmonds' remarks, [coverage](#) of Secretary Clinton's speech and [coverage](#) of Breuer's meeting with the Chamber at Corruption Currents.

Former KBR Chief Pays Over US \$9 Million in Restitution to Former Firm

Last month's edition of *Red Notice* included coverage of the sentencing of former Kellogg, Brown & Root LLC Chairman and CEO Albert 'Jack' Stanley, which included a 30 month jail term and US \$10.8 million in restitution. Last week, Stanley paid his former company US \$9.25 million to partially satisfy the court-ordered restitution. The Judge in Stanley's case ordered restitution because of the kickbacks Stanley received when heading KBR, but ruled that the remaining US \$1.55 million can be paid in monthly installments of US \$1,000 after Stanley's release from prison. Some believe this accommodation stems from Stanley's cooperation with the DOJ and SEC, which allowed the agencies to collect over \$1.6 billion. Read the [coverage](#) of the Stanley prosecution at The FCPA Blog.

Simon. Read the [coverage](#) of the Stanley prosecution at the FCPA Blog.

Dun & Bradstreet Suspends China Operation for Privacy, FCPA Concerns

A New Jersey business information firm has temporarily shuttered its Chinese marketing operation until it can review allegations that its branch violated the FCPA and Chinese privacy laws. Dun & Bradstreet's SEC filing mid-last month said that the company was investigating reports that in-country employees violated the Foreign Corrupt Practices Act and certain other laws in [D&B's] China operations, but that the company voluntarily reported these matters to the DOJ and the SEC. The firm's China branch produced \$23 million in revenue last year. Read the [coverage](#) at Reuters.

Three Execs at Swiss Oil Driller Charged in Nigerian Bribery Scheme

Earlier this year, the former chief, a current subsidiary director, and the former controller of Noble Corp. were charged in an alleged bribery scheme involving Nigerian officials (SEC v. Jackson et al., No. 12-cv-00563 (S.D. Tex.)). According to the SEC, former chief executive Mark A. Jackson and current director of Noble's Nigerian subsidiary, James J. Ruehlen, paid Nigerian customs officials hundreds of thousands of dollars in bribes for falsified permit and permit extensions to avoid custom duties. Counsel for both Ruehlen and Jackson vow to contest the charges. Thomas O'Rourke, the company's former controller and head of internal audit, was also charged but settled the charges and agreed to a fine. Noble Corp. already agreed to pay US \$2.6 million to the Justice Department as part of a non-prosecution agreement, and US \$5.6 million in disgorgement and interest to the SEC. Read the [coverage](#) of the prosecutions at inAudit and the [SEC release](#).

US Lufthansa Subsidiary Agrees to Pay Over US \$11 Million to Settle FCPA Charges

The Justice Department recently targeted a European aircraft services giant's maintenance, repair, and overhaul company for alleged bribes paid by the company to officials in Mexico and Panama. Last month, Lufthansa Technik AG's Tulsa, Oklahoma-based subsidiary, BizJet International Sales and Support Inc., paid US \$11.8 million to settle charges that its employees paid bribes to officials at state-owned air fleets directly or through shell companies. In announcing the settlement, DOJ cited both Lufthansa Technik and BizJet for their extraordinary cooperation. Read the [coverage](#) at The FCPA Blog and the [release](#) from DOJ.

INTERNATIONAL CARTEL ENFORCEMENT DEVELOPMENTS

Freight Companies Fined Millions By European Commission

Late last month, the EU's antitrust authority fined logistics firms, including firms from the US, Europe, east Asia and the Middle East, a total of US \$225 million for fixing international shipping rates. According to the Commission, 13 of the world's largest logistic firms formed four separate cartels to control rates on routes originating or terminating in Europe. Germany's DHL Forward participated in the cartel but was immune from the fines because it brought the cartel activity to regulators' attention. Three other companies were given fines reduced by 5 to 50 percent based on their cooperation with regulators. Read the [coverage](#) at the Journal of Commerce.

Oil Companies Plead Guilty to Fixing Prices for Retail Gasoline in Canada

The Canadian Competition Bureau announced last month that it secured guilty pleas from two oil companies on charges that the company's regional representatives fixed prices for retail gasoline. Pioneer Energy and Canadian Tire Corp. agreed to pay a total of US \$2 million in fines, comply with court oversight for the next ten years, and educate their employees on Canada's Competition Act. Read the [story](#) at Marketwatch.

International Airlines Fined Approximately US \$5.6. Million by South African Regulator

South Africa's Competition Commission fined South African Airways and Singapore Airlines a total of R43.9 million South African rand (approximately US \$5.6 million) for allegedly participating in a scheme to fix prices on flights between Hong Kong and Johannesburg. A third airline, Cathay Pacific, cooperated with investigators and was not fined. The Commission has investigated collusion in the airline industry since 2008, including allegations of price-fixing on domestic routes, international air cargo, and pricing for the 2010 FIFA World Cup. Read the [coverage](#) at The Witness.

CONTACT INFORMATION

For more information about the stories highlighted in *Red Notice*, please contact:

J. Brady Dugan at 1.202.887.4152 or bdugan@akingump.com.

Contact information for attorneys in related practices can be found [here](#).

Red Notice, a monthly publication of Akin Gump Strauss Hauer & Feld LLP, is edited by [Jacob Weixler](#).

[Archived Editions](#) • [Subscribe to Red Notice](#)

akingump.com



www.twitter.com/akin_gump

© 2012 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party.

If you would like to update your information or opt out from our mailing list, please [click here](#).