

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



MARCH 2012

## INTRODUCTION

**Welcome** to March's *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, we note that the DOJ has dropped its FCPA prosecution based on the arms industry sting after suffering multiple setbacks earlier this year. In another highly-watched FCPA case, the former CEO of KBR has finally been sentenced, and a medical device manufacturer agrees to a hefty fine to settle its FCPA charges. A French engineering giant has agreed to pay a fine to the World Bank in addition to its exclusion from almost all development bank-funded projects. On the antitrust front, Japanese auto parts suppliers agree to pay over \$500 million in fines, while four of their executives are sentenced to jail time. The extensive, multinational probe of banks' interest rate practices deepens as UBS steps forth to cooperate. In addition, UK authorities threaten more investigations in the banking industry if competition does not yield reforms for consumers.

Thank you as always for reading *Red Notice*.

## ANTICORRUPTION DEVELOPMENTS

### After Setbacks, DOJ Drops FCPA Sting Case

The Justice Department suffered two setbacks earlier this year in the second trial related to the 2009 FCPA sting which resulted in charges against 22 people in the arms industry. A federal jury acquitted two defendants, and Judge Richard Leon declared a mistrial after the jury appeared deadlocked in its deliberations on three remaining defendants. This followed Judge Leon's declaring a mistrial in the prosecution of the first defendants from the sting after the jury appeared deadlocked last summer. Before beginning its third trial related to the sting in mid-March of this year, the DOJ announced that it will not pursue charges against the 16 remaining defendants. The announcement seemingly puts an end to the sting case, which drew initial attention because of the FBI's use of undercover agents posing as government officials, and signaled the Justice Department's more vigorous FCPA enforcement approach to some commentators. Read the [coverage](#) of the second trial and the [coverage](#) of the DOJ's decision at *The Wall Street Journal*.

### Former KBR Chief Exec Sentenced to 2 ½ Years in Prison in Nigerian Bribery Case

The former chief of engineering and construction services firm KBR was sentenced late last month to 30 months in federal prison in *US v. Stanley*, No. 08-CR-00597 (S.D. Tex.). Albert "Jack" Stanley pled guilty in 2008 to a decade-long conspiracy to bribe Nigerian officials to obtain \$6 billion in contracts. Nigerian authorities instituted an additional prosecution related to the scheme in December 2010, charging current and former KBR and Halliburton (KBR's former parent company) executives, including former US Vice President Dick Cheney. The Nigerian case was dismissed after Halliburton and authorities agreed to a \$35 million settlement. Read the [coverage](#) at *Law.com*.

### Medical Device Manufacturer Agrees to \$22.2 Million FCPA Settlement

Early last month, Smith & Nephew Inc., a medical device manufacturer with US headquarters in Tennessee, agreed to pay \$16.8 million to the DOJ (*US v. Smith & Nephew, Inc.*, No. 12-CR-00030 (D.D.C.)) and \$5.4 million to the SEC (*SEC v. Smith & Nephew PLC*, No. 12-CV-00187 (D.D.C.)) to settle FCPA charges. The company is accused of violating the FCPA through payments of over \$9.4 million

to its Greek distributor, some of which were passed along to publicly-employed health care providers. The relatively large fines and disgorgement remedies were imposed, despite the DOJ's acknowledgement of the company's cooperation with the investigation the company's "self-

acknowledgment of the company's cooperation with the investigation, the company's "own investigation," as well compliance improvements made by the company. Read the DOJ [release](#) and [coverage](#) from *Bloomberg Businessweek*.

### French Engineering Group Agrees to Pay \$9.5 Million in World Bank Bribery Case

Late last month, The World Bank Group announced that it reached an agreement with Alstom SA that disqualifies two Alstom subsidiaries from The World Bank projects for three years, and requires Alstom to pay approximately USD \$9.5 million in restitution. The agreement settles The World Bank's investigation and proceedings against Alstom Hydro France and Alstom Network Schweiz AG (Switzerland). Alstom SA acknowledges that its subsidiaries made an improper payment of 110,000 Euros to a consultant firm controlled by a former senior government official in Zambia. Under The World Bank's agreement with the other major multi-lateral development banks, the two Alstom subsidiaries at issue are also disqualified from all projects financed by The African Development Bank, The Asian Development Bank, The European Bank for Reconstruction and Development, and The Inter-American Development Bank Group. Read The World Bank Group's [release](#) and the [coverage](#) from *The Wall Street Journal*.

## ANTITRUST ENFORCEMENT DEVELOPMENTS

### Japanese Auto Parts Suppliers Plead Guilty, Agree to Pay \$548 Million

Yazaki Corporation (*US v. Yazaki Corp.*, No. 12-CR-20064 (E.D. Mich.)) and DENSO Corporation (*US v. DENSO Corp.*, No. 12-CR-20063 (E.D. Mich.)) agreed to plead guilty and pay criminal fines totaling \$548 million late last month in connection with DOJ's ongoing investigation into price fixing and bid rigging in the auto parts industry. Four executives also agreed to plead guilty and will serve US federal prison time ranging from 15 to 24 months. Later, an executive of a Taiwanese company also pled guilty in the conspiracy (*US v. Hsu*, No. 12-CR-00121 (N.D. Cal.)). Acting Assistant Attorney General Sharis Pozen called the investigation the largest the antitrust division has ever pursued. Also earlier this year, Pozen announced her resignation from the DOJ, effective April 30. Read the DOJ's press [release](#) on the guilty pleas, Pozen's [speech](#), and the Department's [release](#) on Pozen's departure.

### Interbank Offered Rate Probe Spans the Globe

Regulators around the globe have turned their attention to a potentially far-reaching collusion scheme between banks to manipulate interbank offered rates, particularly the London Interbank Offered Rate (LIBOR), Tokyo Interbank Offered Rate (TIBOR), and the European Interbank Offered Rate (EurIBOR). According to authorities, banks may have helped competitors manipulate rates in one currency in exchange for manipulation in a different currency, among other collusive schemes. In February, sources indicated that investigators uncovered lax internal controls which allowed traders and employees making interest rate submissions to communicate. Switzerland's UBS AG is the first bank to cooperate with investigators, handing over results from its internal investigation which showed that employees colluded to rig the LIBOR. Read the *Bloomberg* coverage of [the probe](#) and [UBS' cooperation](#).

### UK Warns Banks of Upcoming Investigations if Competition Does Not Improve

In February, the UK's Office of Fair Trading (OFT) warned banks operating in the country that if competitive reforms were not adopted, a referral to the Competition Commission would be next. According to the OFT, banks have been reluctant to improve customer service, including making it easier for customer to switch banks. OFT's head suggested that British authorities may refer the matter to the UK's Competition Commission to investigate whether the blame lies within the structure of the UK's banking sector or another cause. Read the [coverage](#) on the OFT [speech](#) at the BBC.

## CONTACT INFORMATION

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