



Red Notice

A Monthly Update on Global Investigations and Prosecutions

September 2011

INTRODUCTION

In the September edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP, we check in on the changing anti-bribery landscape and the latest enforcement actions against some of the world's most prominent tech companies.

The anxiously-anticipated UK Bribery Act is in effect, and the first prosecution is in the books, though the real contours of the Act's enforcement are yet to come. The infamous 'Shot Show' FCPA prosecution continues to re-write the book on anti-corruption enforcement, perhaps providing a glimpse into future DOJ discovery practices in prosecutions resulting from larger investigations. And the UK's Financial Services Authority chimes in on the discussion over crafting anti-corruption policies and procedures in light of the Bribery Act.

In Antitrust enforcement news, Google deals with investigations on three continents, and companies strike back at what they view as the 'overly-expansive' power of the European Commission. DOJ's ongoing investigation into the aftermarket auto parts industry nets another guilty plea, and the South African antitrust authority allows interested NGOs to intervene in its consideration of a merger between a DuPont subsidiary and a local agribusiness.

ANTI-CORRUPTION DEVELOPMENTS

First UK Bribery Act Charges Filed

The UK's Crown Prosecution Service (CPS) announced that it filed charges in its first prosecution under the newly-effective Bribery Act late last month. While the act focuses primarily on foreign bribery, CPS filed its first charges against a London administrative law clerk accused of soliciting a bribe to "influence the course of criminal proceedings." This prosecution targets a relatively small, domestic bribe, but the charges may signify the beginning of an era of aggressive anti-bribery enforcement across the globe by UK authorities. The Bribery Act, which went into effect on July 1 of this year, is thought to be the strictest anti-corruption law in the world and carries a maximum sentence of 10 years imprisonment. Read the [full story at *Corruption Currents*](#), the [CPS press release](#), and UK [Serious Fraud Office's guidelines to prosecutors](#) for enforcing the Bribery Act.

DOJ Changes Approach to Discovery in FCPA Sting Cases

The Justice Department's undercover tactics in the notorious 'Shot Show' prosecution are nothing new, but the latest development may signal a change in the way defendants and their counsel access discovery in cases to come. More than a dozen arms industry executives and employees have been charged in connection with an FCPA sting where undercover agents posed as officials from the ministry of defense of an African nation. DOJ hired an outside contractor to store and marshal access to the hundreds of thousands of pages of documents and the information from over 75 computers taken in the sting. The contractor will charge defendants and their counsel for access to the materials, a move which the defendants criticize as overly-restrictive. Read the [full story at the *BIT*](#) and



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which the defendants entered as every footnote. Read the [full story at the DOJ](#) and the [DOJ's filing in the case](#).

Oracle Under Bribery Investigation on Africa Deals

According to reports, the FBI and the SEC are inquiring into the Central and Western African dealings of California-based software giant Oracle Corp. Specifically, investigators are scrutinizing the company's activities in Africa to discern whether the company secured sales of its database and applications software using improper payments. Oracle received Ethisphere's coveted "World's Most Ethical Company" designation in 2009 and now owns the dubious distinction with eight other WME companies of being named to the list and later facing FCPA scrutiny. Read the [full story at WSJ](#) and [Prof. Mike Koehler's take at the FCPA Professor blog](#).

FSA Warns Firms Over Anti-Corruption Rules

With much of the attention related to anti-corruption enforcement focused on the Bribery Act, the UK's Financial Services Authority issued a reminder that financial firms have a "separate, regulatory obligation to identify and assess corruption risk." The FSA's most recent financial crime newsletter reiterates the agency's ability to take regulatory action against firms that fail to adequately address corruption risks, and eschew policies and processes to mitigate those risks, regardless of whether the FSA has any evidence of actual corruption. The Bribery Act allows UK prosecutors to charge individuals involved in corrupt practices as well as companies that fail to prevent bribery. However, as the FSA warns, the scope of the Bribery Act is different from the affirmative duties the FSA imposes on firms to proactively fight corruption, so companies must be mindful of both standards when crafting an anti-corruption program. Read the [full story at FT Adviser](#) and the [Financial Crime Newsletter from the FSA](#).

ANTITRUST ENFORCEMENT DEVELOPMENTS

Regulators Raid Google's South Korea Offices in Connection with Antitrust Complaint

The US-based internet titan Google now faces antitrust investigations on three continents as officials from the Korean Fair Trade Commission raided Google's offices in Seoul earlier this month. South Korea's two top internet portals filed a complaint with regulators alleging that Google is improperly stifling competition in the mobile search market. Google has pledged to cooperate with regulators on this investigation, but the raid only adds to Google's problems as it also address antitrust investigations in the US and Europe. Read the [full story from Reuters](#).

Companies Challenge Methods Involved in EU Antitrust Probes

Nine companies are striking back against what they believe to be the overly-expansive power of European Commission investigators by filing challenges in the EU's Court of Justice in Luxembourg. The companies claim investigators overstepped their authority through excessive and disproportionate document requests and executing unnecessary raids in 2009. The complaints follow earlier demands by Intel, the US-based tech company, for more fair treatment by the European Commission. Some say the Commission's powers are too wide-ranging, for instance, by allowing unannounced inspections of company offices. Read the [coverage at Bloomberg Businessweek](#).

South African Antitrust Tribunal Allows NGOs to Intervene

South Africa's Competition Tribunal will allow two NGOs to intervene in its proceedings over a merger for the first time in its 12-year history. The African Centre for Biosafety and Biowatch South Africa will join the tribunal's consideration of the merger between South African seed company Pannar Seeds and DuPont subsidiary Pioneer Hi-Bred

International. The tribunal will limit the NGO's participation to a discrete set of issues, namely the merger's effect on pricing and availability of certain seeds for small-scale farms. Read the [full story at BusinessReport](#).

California Auto Industry Firm Agrees to Guilty Plea in Price-Fixing Conspiracy

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Conspiracy

An on-going investigation into the aftermarket auto lights industry claimed its latest victory late last month, securing a plea agreement from Sabry Lee (USA) Inc., the first company charged in the investigation. According to the Justice Department, Sabry Lee participated in a price-fixing conspiracy for roughly two years with other participants in the industry. The company agreed to pay a fine and assist DOJ in the ongoing investigation. Read the [FBI Press Release](#).

AKIN GUMP PUBLICATIONS AND SPEAKING ENGAGEMENTS

UBS Nonprosecution Agreement for Antitrust Violations: New Trend or Anomaly?

October 3, 12:00-1:00 p.m. – Washington, DC

Presented by the ABA White Collar Crime Committee, Antitrust Subcommittee, Akin Gump's Brady Dugan will be part of a panel discussing the DOJ Antitrust Division's recent decision to enter into nonprosecution agreements (NPAs) with JPMorgan Chase & Co. and with UBS AG to resolve an antitrust bid rigging investigation. This panel, hosted in Akin Gump's Washington, DC office, will examine the significance of these agreements and whether they signal a new direction in the resolution of antitrust investigations against major corporations. Visit the [subcommittee website](#) for additional details, or [email Brady Dugan to RSVP](#).

FCPA Due Diligence in Cross-Border M&A: How to Avoid Buying a Felony

October 25, 12:00-1:30 p.m. – Houston, TX

Akin Gump Strauss Hauer & Feld LLP, along with Merrill Corporation, presents a panel discussion of best practices for due diligence in cross-border M&A Deals. The panel will address: uncovering possible corrupt practices during the financial and legal pre-M&A due diligence; red flags in M&A to avoid exposure to FCPA sanctions; and possible delays or cancellations of a deal that can result from failing to perform due diligence. [Click here](#) to RSVP to attend.

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