



Red Notice

A Monthly Update on Global Investigations and Prosecutions

AUGUST 2011

INTRODUCTION

Thank you for reading the August edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld. The past month was once again marked by evidence of aggressive anti-bribery enforcement on both sides of the Atlantic, with the SEC and the UK's Financial Services Authority both levying fines over \$10 million on multinational companies for alleged bribes overseas. Additionally, Goldman Sachs is confronted with yet another reputational issue as its dealings with the Libyan Investment Authority came to light in a recent SEC filing. On the antitrust front, just as Sharis A. Pozen ascends to acting head of DOJ's antitrust division, the division and the FTC have announced that they will have a new partner in enforcement – China's three antitrust agencies. Also in Asia, Japan's auto parts manufacturers are the latest target of a growing international antitrust investigation in the auto industry.

ANTI-CORRUPTION DEVELOPMENTS

Goldman Sachs Facing Foreign Corrupt Practices Act Investigation

Goldman Sachs Group Inc. (GS), the fifth- biggest U.S. bank by assets, is being probed about its compliance with the U.S. Foreign Corrupt Practices Act, the firm acknowledged in a filing with the Securities and Exchange Commission on August 9th. The Wall Street Journal previously reported that SEC regulators are probing Goldman Sachs's dealings with the Libyan Investment Authority, particularly the firm's alleged offer to pay the LIA \$50 million to recoup losses incurred by Goldman options trades. Read the articles from [Bloomberg](#) and [The Wall Street Journal's corruption blog](#).

Overseas 'Facilitation Payments' Unacceptable, Says Charity Commission

New guidance from the UK Government's [Charity Commission](#) says facilitation payments given by charities operating overseas to local individuals who enable aid work to take place are "an unacceptable use of charity funds." The guidance warns that facilitation payment constitute bribery under the UK's Bribery Act 2010, which came into force this month, and could result in prosecution, despite the Commission's acknowledgement that some charities provide assistance in areas where these payments are "deeply embedded" in the culture. Read the [full story](#) at *Third Sector*.

Willis Group Is Fined \$11 Million by U.K.'s FSA Over Suspicious Payments

Willis Group Holdings Ltd., the world's third-largest insurance broker, was fined 6.9 million pounds (\$11 million) by the UK's Financial Services Authority for \$227,000 in suspicious payments. The FSA believes the payments could be bribes paid to attract and retain clients overseas. Willis is conducting a "past-payment review" and must report any further findings of corrupt payments. The UK's Serious Fraud Office considered opening a criminal investigation, but eventually agreed with the FSA that a regulatory approach was

more appropriate. These fines are the latest in FSA's efforts to combat bribery in the insurance industry. FSA began reviewing the anti-bribery systems and controls at commercial insurance brokerages in 2008, resulting in fines to insurance broker Ann Ltd



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Commercial insurance brokerages in 2009, resulting in fines to insurance broker AIG Ltd. for failing to prevent suspicious payments. Similarly, FSA recently announced it is beginning to review the anti-bribery systems and controls of investment banks. Find the [story](#) at *Bloomberg*.

SEC Slaps \$16 Million Fine on Diageo for Bribery

Spirits maker Diageo PLC has paid a penalty of over \$16 million to settle allegations from the SEC of corrupt practices in India, Thailand and South Korea. The SEC accused Diageo of making illegal payments of over \$2.7 million to various government officials in the three countries. Particularly, the SEC alleged that Diageo "made over \$1.7 million in illicit payments to hundreds of Indian government officials responsible for purchasing or authorising the sale of its beverages." Further, the SEC claimed that the company "yielded more than \$11 million in ill-gotten gains," as a result of the payments. Diageo and Diageo India, the company's Indian subsidiary, sell well-known brands such as Johnnie Walker whisky and Smirnoff vodka. Read the [details](#) at the *Business Standard*.

Telecom Executives Convicted Over Payments To Haiti's State-Owned Telecom Company

Two former executives of Terra Telecommunications Corp. were convicted by a federal jury for their roles in a scheme to bribe officials at Haiti's state-owned telecom company. The president and executive vice president of the Miami-based Terra, which had several contracts with the state-owned company, authorized more than \$890,000 in payments between November 2001 and March 2005 to shell companies to be used for bribes for officials. Read the story at [WSJ corruption blog](#) and read the [DOJ's statement](#).

ANTITRUST ENFORCEMENT DEVELOPMENTS

Pozen Appointed Acting Assistant Attorney General of the DOJ Antitrust Division

Attorney General Eric Holder recently appointed Sharis A. Pozen as Acting Assistant Attorney General of the Antitrust Division of the U.S. Department of Justice. Pozen, who came to the Division in 2009, served as a key deputy to former Assistant Attorney General Christine Varney and has been called "instrumental in the overall enforcement and management of the division." Read more in the DOJ [press release](#).

FTC and DOJ Sign Antitrust Memorandum of Understanding With Chinese Antitrust Agencies

The Federal Trade Commission and the Department of Justice's Antitrust Division recently took an important step toward increased cooperation and collaboration among U.S. and Chinese antitrust authorities by signing an antitrust memorandum of understanding (MOU) with China's three antitrust agencies. The MOU will not affect existing law in either country, but provides for consultations among all five antitrust agencies as well as separate communications between individual agencies. Get the full scoop from the FTC [press release](#).

International Auto Parts Investigation Spreads

Japanese auto parts makers were the latest target in an ongoing global antitrust probe into the automotive industry. Seven auto parts makers, including Denso Corp. and Calsonic Corp., were allegedly raided by Japan's Fair Trade Commission related to suspected price fixing on auto parts such as windshield wipers and radiators. The raids were part of an investigation of auto parts makers for allegedly fixing prices ahead of requests for bids from auto makers seeking parts for new car models. Find the [story](#) from *Intelliasia*.

Wal-Mart/Massmart Deal Has Antitrust Green Light But Faces Hurdle From South African Government

South Africa's Competition Tribunal approved, with limited conditions, Wal-Mart's \$2.4 billion purchase of 51 percent of South Africa-based discount retailer Massmart. The South African government, however, is unhappy with how the Tribunal conducted the hearing and recently appealed the Tribunal's decision in South Africa's Competition

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Appeal Court. The government's appeal will not likely impact the transaction because the government has not raised substantive arguments against the merger, but it may send a negative message about South Africa's openness to foreign investment. Read the [article](#) from *Reuters*.

AKIN GUMP PUBLICATIONS AND SPEAKING ENGAGEMENTS

SCCE Compliance and Ethics Institute

September 12-14, 2011 – Las Vegas, NV

Akin Gump's [Brady Dugan](#) will be a panelist on September 13 on the panel "Are You Ready for the Global Competition Cops?" This panel will address recent competition enforcement trends in the US and Europe, leniency programs at the DOJ and at the European Commission, and responding to a multi-jurisdictional competition investigation. SCCE's Annual Compliance & Ethics Institute is the primary education and networking event for professional working in compliance and ethics around the world. Click [here](#) for complete conference details and registration information.

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