



Red Notice

A Monthly Update on Global Investigations and Prosecutions

May 2011

INTRODUCTION

Thanks for joining us for the May issue of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In the past month we have seen important developments in the FCPA realm as employees of state-owned enterprises were considered to be foreign officials in the Lindsey Manufacturing Bribery Case, as well as significant news out of China as China's Supreme People's Court issued draft guidance on civil litigation under China's Anti-monopoly Law and China's National Development and Reform Commission fined a foreign company for the first time under China's Price Law. Samsung was also blindsided by a U.S. District Court's refusal to accept its settlement offer in the ongoing grand jury investigation of color display tube price fixing and America Movil planned to appeal the record \$1 Billion fine assessed against it by Mexico's Federal Competition Commission. Find these stories and more below.

ANTI-CORRUPTION DEVELOPMENTS

Guilty Verdict in Lindsey Manufacturing Bribery Case

In a California District Court case, the jury found two executives of Lindsey Manufacturing, a California emergency electricity tower-maker, guilty of one count of conspiring to bribe Mexican officials at a state-owned utility and five specific bribery counts under the Foreign Corrupt Practices Act (FCPA). The executives face up to five years in prison for the conspiracy count and five years for each of the five bribery counts. A big take-away from the case is that employees of state-owned enterprises may be considered foreign officials under the FCPA. Read the [story](#) from *Bloomberg* and stay tuned for further developments.

Johnson & Johnson Faces Shareholder Suit Over \$78 Million Bribery Settlements

After paying \$78 million to settle charges in the U.S. and U.K. against its DePuy Inc. unit for allegedly bribing Greek surgeons to buy its implants, as well as charges in the U.S. for an alleged kickbacks scheme to win contracts under the United Nations Oil-for-Food program in Iraq, Johnson & Johnson now faces a shareholder derivative suit over the payment and alleged failure to adequately disclose the situation to shareholders. The shareholder lawsuit alleges that Johnson & Johnson's board of directors breached its duty to shareholders by hiding the nature of the offenses and failing to implement internal controls to uncover FCPA violations. Get the [scoop](#) from *Mass Device*.

Rockwell Automation Settles FCPA Case for \$1.8 Million

Rockwell Automation settled civil violations of the books and records and internal controls provisions of the FCPA by forfeiting \$1.8 million in profits plus interest and a \$400,000 penalty. Rockwell discovered the potential violations at a Chinese subsidiary during its financial review process and self-reported to the SEC. Although the DOJ declined to

prosecute, the SEC pursued the case. Rockwell demonstrates why some companies are reluctant to self-disclose FCPA violations, as they often face unpredictable and incongruent agency responses. Find the [story](#) from *Industry Week*



Paul Butler

Partner

pbutler@akingump.com

202.887.4069

 [Download to Outlook](#)



Brady Dugan

Partner

bdugan@akingump.com

202.887.4152

 [Download to Outlook](#)



Mark MacDougall

Partner

mmacdougall@akingump.com

202.887.4510

 [Download to Outlook](#)

Editor: [Mollie McGowan](#)

[Attorneys in Related Practices](#)

independent agency responses. Find the [story](#) from *Industry Week*.

Study Finds Oil Firms Most Vulnerable Under UK Bribery Act

British-listed oil and gas companies face the greatest risk of investigation under the new UK Bribery Act, according to a study by Ernst & Young. Life science and consumer products sectors have the second and third-highest level of risk. Companies in these sectors should thus take steps to ensure that they have effective compliance programs in place to mitigate potential exposure under the Act. Find the [article](#) from *Reuters*.

ANTITRUST ENFORCEMENT DEVELOPMENTS

European Commission Will Reveal Fines Sooner

In a speech at the International Conference on Competition in Berlin, Joaquin Almunia, Vice President of EC Competition Policy announced that the EC plans to give companies accused of violating EU antitrust laws information about potential fines sooner in the investigation process, as part of its Statement of Objections. Receiving fine information earlier in an investigation is good news for companies as it will assist them in assessing the gravity of the alleged violation and resources that may need to be devoted to the investigation and potential fines. Find Almunia's [speech](#) on the E.U. website.

Clarification of Rules May Bring More Private Antitrust Litigation in China

China's Supreme People's Court (SPC) has issued draft guidance on civil litigation under China's Anti-monopoly Law (AML) that addresses burden of proof, standing, time limits, potential stand-alone and follow-on actions and provides clarification of the AML. Until now, lack of detail and clarity under the AML has hindered enforcement of the law. There is speculation that the SPC guidance may increase the potential for private suits in China against foreign companies, as judges will likely feel more comfortable hearing such cases after the final judicial interpretation is published. Read the [article](#) from the *International Bar Association*.

Judge Refuses Samsung SDI's \$32 Million Price Fixing Plea Deal

U.S. District Judge William Alsup has refused to approve Samsung SDI Co.'s payment of \$32 million to settle charges of participating in a conspiracy to fix display tube prices. The judge accused lawyers on both sides of attempting to "railroad" a deal that did not provide compensation for victims. Samsung was prepared to enter a guilty plea, the first in a federal grand jury investigation into color display tube price fixing, on the condition that the settlement be approved by Judge Alsup. Stay tuned for further developments in the case and read the [story](#) from the *San Francisco Chronicle*.

General Court Upholds €10.2 Million Fine on Visa

The General Court has upheld a €10.2 Million Fine that the European Commission imposed on Visa International and Visa Europe for anticompetitive conduct. The conduct at issue involved Visa's refusal to accept Morgan Stanley's European subsidiary into Visa International or Visa Europe membership because Morgan Stanley owned the Discover Card network, considered Visa's competitor. Although Morgan Stanley withdrew its complaint to the Commission in 2006 after it reached an agreement with Visa Europe making it part of the Visa network, the Commission still fined Visa based on Morgan Stanley's exclusion from the UK acquiring market for six and a half years. Read the E.U. [press release](#).

China Issues First-Time Fine Under Price Law Against Unilever

China's National Development and Reform Commission (NDRC) has, for the first time, fined a foreign company under China's Price Law. Unilever is the unlucky target of the first-time fine of \$308,000 for announcing price increases that allegedly disrupted market prices

and led to hoarding. The NDRC sought to make an example of Unilever and deter other companies from similar practices. Although Unilever was not charged under China's Anti-monopoly law, the NDRC indicated that such charges are possible in future cases. Find the [story](#) from *Bloomberg*.

America Movil Disputes \$1 Billion Antitrust Fine

Questions/Comments:

[Contact Us](#)

[Archived Editions](#)

[Subscribe to Red Notice](#)

America Movil Disputes \$1 Billion Antitrust Fine

America Movil SAB plans to appeal the record \$1 Billion fine assessed against it by Mexico's Federal Competition Commission (FCC), as it believes the fine is based on misconceptions about the industry. In addition to the fine, the FCC has ordered America Movil's Mexican unit, Telcel, to cease practices that limit competition in the market for completing calls. The FCC found that America Movil's competitors must pay more to connect calls to Telcel users than its own customers pay to call one another. According to the FCC, this practice hurts competition and abuses Telcel's market power in Mexico, where it has 71 percent of the market. Read the [article](#) from *Bloomberg* and stay tuned for further developments.

AKIN GUMP
STRAUSS HAUER & FELD LLP

akingump.com | 14 offices worldwide | over 800 lawyers



www.twitter.com/akin_gump

© 2011 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](#).