



Red Notice

A Monthly Update on Global Investigations and Prosecutions

APRIL 2011

INTRODUCTION

Welcome to the April edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. This month the U.K. government published the much-anticipated guidance for its Bribery Act, and has pushed back its effective date until this July. There is a link below to an Akin Gump client alert covering the basics in the guidance. In other anti-corruption developments, the defendants in the "shot-show" FCPA sting are asking the judge to throw out the case since the "government official" being bribed was a fake. Contract driller Hercules is reported to be under investigation related to FCPA allegations, and the OECD is seeking improvements to the anti-bribery laws in Germany and Canada. On the antitrust enforcement front, the European Commission has used its settlement authority again in a cartel investigation of laundry detergent makers—Unilever and Procter & Gamble settled with the EC for € 315.2 million. And both the Australian and New Zealand competition authorities have reached settlements in their airline price fixing investigations. And in an interesting development that may have implications for the rule in Europe holding that a parent company is liable for the cartel conduct of its subsidiaries, the EC cut the fine previously imposed on subsidiaries of ArcelorMittal for their involvement in a steel cartel. Find these developments and more below.

ANTI-CORRUPTION DEVELOPMENTS

UK Bribery Act is Almost Here

The U.K. finally issued long-awaited guidance for the U.K. Bribery Act and has announced that the Act will come into force on July 1, 2011. The guidance helps clarify the circumstances under which foreign companies may be subject to the Act as well as when companies may be exposed to potential liability under the Act based on actions by third-parties. Now that an effective date has been set and guidance issued, companies should take steps to ensure that their compliance practices are in line with the new Act by July 1st. Read the [client alert](#) from Akin Gump and the [story](#) from the *New York Times*.

Fake Foreign Official and Sham Deal in Bribery Sting Complicate FCPA Case

Last year, after an undercover foreign bribery sting, U.S. authorities charged 22 people for allegedly participating in a conspiracy to bribe a foreign official as part of an arms deal in violation of the Foreign Corrupt Practices Act (FCPA). The foreign official in the sting and the deal to sell \$15 million in arms and equipment, however, were fake. Defense lawyers have decried the government's invention of a crime and urged the U.S. Court of Appeals for the D.C. Circuit to throw out the case. Find the [article](#) on *Law.com* and stay tuned for the outcome.

Hercules Faces Investigation Related to FCPA Allegations

The Securities Exchange Commission (SEC) and the Department of Justice (DOJ) are reportedly investigating Hercules Offshore Inc., a contract driller based in Houston, for potential violations of the FCPA. Hercules has international operations in Mexico, Nigeria



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**

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potential violations of the FCPA. Hercules has international operations in Mexico, Nigeria, India, Malaysia and Saudi Arabia. This investigation should remind companies in the oil and gas industry that the government's focus on the industry for FCPA violations is not yet over. Read the [article](#) from *Nasdaq*.

OECD Flags Concerns Over Bribery Law in Canada and Enforcement in Germany

In a report issued in March, the Organisation for Economic Co-operation and Development's (OECD) working group on bribery has recommended that German companies strengthen their internal controls and audit systems, which they are not currently required to implement, and take steps to legally protect whistleblowers, as whistleblowers are not currently protected by German labor laws. Within one year, Germany must follow up orally on implementation of the report's recommendations and must submit a written report within two years. Another OECD report expresses significant concerns about the enforcement capabilities of Canada's anti-bribery law, especially given the size of Canada's economy and its involvement in industries such as mining and exploration, which are at high risk of bribery violations. Since the Canadian government passed legislation to comply with OECD's global anti-bribery convention in 1999, only one company has been found guilty of bribing a foreign official. Get the OECD [report](#) on Germany, the [story](#) on Germany from *Compliance Week* and the [scoop](#) on Canada from the *Montreal Gazette*.

ANTITRUST ENFORCEMENT DEVELOPMENTS

Unilever and Proctor & Gamble Settle Laundry Detergent Cartel Case for € 315.2 Million

The EC has reached a settlement with Unilever and Proctor & Gamble -- they will pay € 315.2 million (\$465 million) for their involvement in a laundry detergent cartel that operated in Belgium, France, Germany, Greece, Italy, Portugal, Spain and the Netherlands between 2002 and 2005. Under the settlement agreement, the EC cut fines by 10 percent in exchange for the companies' admission that they took part in the cartel. Henkel, a German company, received immunity for revealing the cartel to the commission. Read the [EC press release](#).

Air Cargo Investigation Continues in Australia and New Zealand

Japan Airlines recently reached a settlement with the Australian Competition and Consumer Commission (ACCC) for its role in the international air cargo cartel. Japan Airlines admitted to conspiring to fix air cargo surcharge rates and will pay a € 4 million fine. Separately, Qantas Airways, British Airways and Cargolux reached settlements with New Zealand's Commerce Commission and agreed to pay penalties for their participation in the international cartel. Read the [news release](#) on Japan Airlines from the ACCC and the [article](#) on British Airways, Qantas and Cargolux from *IFW*.

ArcelorMittal's Fine Reduction May Lead to Revision of E.U. Rules on Cartel Fines

The EC recently reduced ArcelorMittal's fines, which were earmarked for its subsidiaries that participated in a steel producer cartel, by 80-percent. The commission reduced the fines because the subsidiaries were unable to pay and ArcelorMittal was not legally obligated to pay the fines for them. The E.U.'s competition commissioner commented that regulators will no longer set the maximum fine on subsidiaries at 10 percent of the parent company's annual revenue. The commissioner suggested that a revision of the EC's guidelines may be necessary. Read the [story](#) from *Bloomberg*.

RECENT SETTLEMENTS

Johnson & Johnson to Pay \$70 Million For FCPA Violations

[Details](#) from *Nasdaq*.

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JGC Corporation to Pay \$218.8 Million Criminal Penalty in FCPA Case

Read the DOJ [press release](#).

IBM Will Pay \$10 Million to Settle SEC Bribery Claims

[Details](#) from *Bloomberg*.

U.K. Solicitor Pleads Guilty to Role In Bribery Case

Read the DOJ [press release](#).

AKIN GUMP PUBLICATIONS AND SPEAKING ENGAGEMENTS

DOJ Settlement with Texas Hospital Prohibits Anticompetitive Contracts with Health Insurers

On February 25, 2011, in a small but significant case out of Texas, *United States v. United Regional Health Care System*, the Department of Justice (DOJ) brought its first action in over 10 years against a monopolist engaging in anticompetitive conduct. DOJ's complaint, filed along with a proposed consent judgment, offers important insight into DOJ's present intentions regarding Sherman Act Section 2 enforcement, generally, as well as issues related to competition in the health care sector. Read the full [client alert](#) from Akin Gump.

UK Bribery Act to Come into Force on July 1, 2011; Final Guidance Issued

On March 30, 2011, the U.K. government announced that the new U.K. Bribery Act will come into force on July 1, 2011. At the same time, final joint prosecution guidance has been issued by the Serious Fraud Office (SFO) and the Director of Public Prosecutions (DPP) on the approach toward enforcement, and the U.K. Ministry of Justice has issued final guidance on "adequate procedures" that commercial organizations can put in place to comply with the Act and avoid the risk of criminal prosecution for failing to prevent bribery. This guidance is generally good news for business, since it helps clarify the extent to which non-U.K. entities may be subject to the new regime, as well as the conditions under which third-party activities may expose a company to potential liability under the U.K. law. Read the full [client alert](#) from Akin Gump.

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