



# Red Notice

A Monthly Update on Global Investigations and Prosecutions

FEBRUARY 2011

## INTRODUCTION

We are happy to have you back for the February edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. Tensions ran high in January after the U.K. announced a second delay to the U.K. Bribery Act and many banks and private-equity firms were looking over their shoulders as the SEC began a probe of potential FCPA violations in their dealings with sovereign wealth funds. This past month also saw groundbreaking developments in global cooperation in antitrust enforcement as the U.S. DOJ announced it would take sentences handed down by enforcement authorities from other jurisdictions into account if certain requirements were met and the OECD began working closely with Mexican authorities to fight bid-rigging in public procurement. Read up on these developments and others below.

## ANTI-CORRUPTION DEVELOPMENTS

### Second Delay to U.K. Bribery Act

The U.K. Bribery Act has been delayed for a second time due to an ongoing review of the Act's regulatory impact and the Ministry of Justice's failure to timely publish clear guidance for companies. The latest delay has no specific timeframe, but the Act will come into effect three months after guidance is published. Anticorruption watchdog group Transparency International U.K. has heavily criticized the delay saying it raises doubts about the government's commitment to the Act and recently released "[Bribery Act: Myth and Reality](#)" (PDF), a paper debunking some of the myths surrounding the Act. Read the [story](#) in the *Telegraph* and a [client alert](#) from Akin Gump.

### SEC Conducts Antibribery Probe of Bank and Private-Equity Firm Dealings With Sovereign Funds

The Securities and Exchange Commission ("SEC") is investigating whether banks and private-equity firms violated the Foreign Corrupt Practices Act ("FCPA") in their dealings with sovereign wealth funds ("SWFs"). The SEC has sent letters of inquiry to at least ten banks and private-equity firms asking about the firms' business with SWFs. As the U.S. government has used the FCPA to probe entire industries, this investigation may lead to increased scrutiny of the entire U.S. financial services sector. Read the [article](#) in the *Wall Street Journal* and the Akin Gump [client alert](#).

### Tyson Foods Settles Bribery Probe and Avoids Prosecution

Tyson Foods, Inc. has agreed to pay more than \$5 million to the SEC and the DOJ to resolve an investigation into bribes paid by Tyson's Mexican subsidiary, Tyson de Mexico, to veterinarians who inspected its Mexican plants. Tyson voluntarily reported the violation to the SEC and Department of Justice ("DOJ") and has entered a deferred prosecution agreement under which it can avoid criminal prosecution if it implements rigorous internal

controls and cooperates fully with the DOJ. Read the DOJ [press release](#).

### British KBR Agent Will be Extradited to the U.S. on Bribery Charges



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A man hired by a KBR-run joint venture to secure \$6 billion in contracts from Nigerian officials will be extradited to the U.S. to face charges under the FCPA. Joint venture partners KBR and its ex-parent Halliburton, French Technip SA and Italian Saipem have settled with U.S. investigators for taking part in the bribery plot. Find the [article](#) in *Reuters*.

## ANTITRUST ENFORCEMENT DEVELOPMENTS

### Global Antitrust Update: Foreign Antitrust Enforcement May Deter U.S. Enforcement

Cooperation in global antitrust enforcement has reached a new level; the U.S. DOJ Antitrust Division has said that in price fixing cases where enforcement from other jurisdictions adequately punishes harm to the U.S. and consumers, it is willing to decrease or eliminate sentences for companies and executives. The U.S. DOJ may take a back seat to another jurisdiction's sentence for anticompetitive activity where the sentence would satisfy U.S. deterrence interests. An assessment of whether U.S. interests are satisfied would include several factors: (1) Has the U.S. coordinated and cooperated with the foreign authority issuing the fine? (2) Is the target individual and/or corporation the same for both jurisdictions? (3) Are both jurisdictions alleging the same single, overarching conspiracy? (4) Does the U.S. believe the foreign authority adequately punished the cartel activity? U.S. authorities say it will be rare that the U.S. will take a back seat in punishing anticompetitive activity, but it did so recently in the marine hose cartel case, allowing the executives involved in the case to face criminal prosecution in U.K., rather than U.S. courts. While the DOJ's position on cooperative enforcement currently applies only to criminal sentences, taking antitrust fines charged by other jurisdictions into account when handing down fines would accomplish the same objective of taking a back seat when adequate punishment has been achieved. Stay tuned for further updates on this innovative development and read the [article](#) in *Global Competition Review* (subscription required).

### Belgium to Investigate iPad Newspaper Subscription Policy

The Belgian government has announced plans to investigate Apple's new iPad subscription policy on grounds of anticompetitive behavior. Belgium is concerned that Apple's mandate that any iPad subscription to a newspaper or magazine must be accessed via Apple's iTunes store, which will come into effect April 1, 2011, abuses Apple's dominance in the tablet market because it forces customers to purchase content that can only be viewed on the iPad. If the investigation raises significant concerns, the matter may be referred to the European Competition Commission. Find the [article](#) in *Bloomberg*.

### European Truckmakers Raided in Cartel Investigation

European authorities raided major European truck manufacturers, including top firms Daimler & Volvo, as part of an investigation into potential violations of E.U. antitrust rules. The investigation follows a British price-fixing probe into the truck industry that occurred last September. Violators of the E.U. antitrust rules may face hefty fines; the European Commission has levied more than 12 billion Euros (\$16 billion USD) against cartels in the last five years. Read the [story](#) from *Reuters*.

### The OECD Will Help Mexico Crack Down on Government Contract Bid-Rigging

As part of a groundbreaking partnership, the Organisation for Economic Co-operation and Development ("OECD") will work with the Mexican Competition Authority and Mexico's Social Security Department to implement OECD guidelines to fight bid-rigging in public procurement, train Mexican procurement officers and improve rules and procedures. This marks the first time the OECD will work with a government to apply OECD guidelines. Find the [article](#) on OECD's website.

## RECENT SETTLEMENTS

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Below are brief summaries of some of the most notable recent settlements in the areas of antitrust and anti-corruption, with links to additional details.

### **Qantas Will Settle U.S. Price-Fixing Suit for \$26 Million**

[Details](#) from *ABC News*.

### **SEC and DOJ Enforcement Actions Against Maxwell Technologies Result in \$13.65 Million in Penalties and Disgorgement**

Read the DOJ [press release](#).

### **Ex-Innospec CEO Will Pay \$229,000 to Resolve SEC Foreign Bribery Charges**

[Details](#) from *Reuters*.

## **AKIN GUMP PUBLICATIONS AND SPEAKING ENGAGEMENTS**

### **American Conference Institute's Advanced Forum on Whistleblower Enforcement and Compliance**

*March 29-30, 2011, New York, NY*

Akin Gump Partner Brady Dugan will be speaking on a panel entitled "Damage Control: What to Do When You've Broken the Rules" addressing compliance tips and strategies on how to proceed after a whistleblower claim has been made against your organization. Visit the [American Conference Institute website](#) for a full [conference overview and registration information](#).

### **FTC Revises Hart-Scott-Rodino Thresholds; Minimum Size of Transaction Test Increases to \$66 Million**

On January 21, 2011, the Federal Trade Commission (FTC) announced the latest annual revision to the size thresholds governing premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, Section 7A of the Clayton Act, 15 U.S.C. § 18a (the "HSR Act"). The HSR Act requires parties to transactions meeting certain size and other tests to file premerger notification forms with both the FTC and the DOJ Antitrust Division and observe a mandatory waiting period prior to closing. The size threshold changes will be effective 30 days after formal notice is published in the Federal Register. Read the full [client alert](#) from Akin Gump.

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