



Red Notice

A Monthly Update on Global Investigations and Prosecutions

NOVEMBER 2010

INTRODUCTION

We are pleased you can join us for the November issue of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld. Although the holidays are fast approaching, enforcement authorities do not seem to be in a festive mood, levying hefty fines related to bribery in the oil and gas sector, cartel activity in the air-freight and cathode ray industries and antitrust violations in food sectors. Companies have also seen an increase in shareholder suits linked to the rise in FCPA investigations and will soon face an even tougher approach to bribery by the U.K. Serious Fraud Office. Read more about these developments and others below.

ANTI-CORRUPTION DEVELOPMENTS

\$236.5 Million Settlement Announced in Oil & Gas Bribery Case

Six oil and gas service companies and freight forwarding company Panalpina World Transport Holding Ltd. will pay \$236.5 million to resolve a three-year probe by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) into overseas bribery in the oil services industry. The case demonstrates the DOJ's and SEC's commitment to snuffing out foreign bribery and the settlement brings the amount of criminal penalties assessed by DOJ this year for cases related to the Foreign Corrupt Practices Act (FCPA) to over \$1 billion. Read the [story](#) in *The New York Times*.

Increase in FCPA Enforcement Causes Spike in Shareholder Suits

Companies facing investigation under the FCPA should note that they may be vulnerable to shareholder suits. Increased enforcement of the FCPA over the past few years has sparked a related increase in shareholder suits against U.S. public companies. Companies under investigation for bribery often must disclose such investigations to investors as "material events," which can precipitate a drop in stock prices and lead to shareholder suits. Read the [article](#) in *Reuters*.

US Chamber of Commerce Urges Congress to Amend FCPA

The U.S. Chamber of Commerce is pressing Congress to amend the FCPA by clarifying ambiguities in the Act, adding defenses and limiting a company's liability for acts of subsidiaries or prior actions of companies it has acquired. The suggested changes could provide more certainty and ease FCPA burdens on the business community. Read the U.S. Chamber of Commerce [paper](#).

Serious Fraud Office Will Adopt "Zero Tolerance Approach" to Bribery

With the new U.K. Bribery Act taking effect in April, 2011, the Serious Fraud Office is promising to get tough on multinationals that offer kickbacks or bribes to foreign officials. Companies with ties to the U.K. should seek guidance on the new bribery rules as any company with British offices or U.K. subsidiaries will be subject to the act. Read the [article](#) in *The Guardian*.

Companies With Ties to U.S. and U.K. Should Evaluate Potential Exposure



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to Anti-bribery Laws

The 2010 Global Fraud Survey by Kroll reveals that only a third of companies with potential exposure to the FCPA or U.K. Bribery Act believe the laws apply to them. As bribery enforcement continues to increase, companies with links in the U.S. or U.K. should review their compliance programs and assess risks to ensure they do not run afoul of anti-bribery rules. Read the [story](#) in *The Wall Street Journal* and find the report [here](#).

ANTITRUST ENFORCEMENT DEVELOPMENTS

DOJ Continues to Bring Charges in its Airlines Investigation

The last month has seen a flurry of activity by the Antitrust Division of DOJ in announcing charges against individuals and corporations involved in various cartels in the airline industry. A Miami grand jury [indicted](#) two executives of Luxembourg-based Cargolux Airlines International S.A., who are alleged to have participated in a conspiracy to fix and coordinate air cargo surcharges. In a separate [indictment](#) returned by the Miami grand jury, four former airline executives were charged with participating in a conspiracy to fix surcharges on air cargo shipments from the United States to South and Central America following Hurricanes Katrina and Rita. And All Nippon Airways Co. Ltd. reached a [plea agreement](#) with DOJ in which it agreed to plead guilty and to pay a \$73 million criminal fine for its role in a conspiracy to fix international air cargo rates, as well as a conspiracy to fix unpublished passenger fares on tickets purchased in the United States.

DOJ Indicts Executives in Cathode Ray Industry

In what appears to be an expansion of the long-running investigations and prosecutions by the Antitrust Division's San Francisco office of the LCD display industry, a San Francisco grand jury indicted three former executives of a cathode ray tube manufacturer for their alleged roles in a conspiracy to fix the price of color display tubes. Each are foreign nationals; it is not clear whether the DOJ will be able to bring the three to trial. Read the [write-up](#) in *Global Competition Review*.

Airlines Face \$1.11 Billion Fine in Cartel Case

The European Commission fined eleven airlines a total of \$1.11 billion, the fourth-largest fine in a cartel case, for participating in a global cartel to fix air-freight tariffs. The probe into air cargo price fixing has been global, with countries from the U.S. to New Zealand conducting investigations. Find the [article](#) in *The Wall Street Journal*.

OFT and Competition Commission to Merge

The U.K. Office of Fair Trading and the Competition Commission plan to merge in an effort to streamline competition procedures. The proposed merger faces mixed reviews with competition lawyers hoping for greater efficiency but wary that cutting out the two-tier system may lessen objectivity in the second phase of the investigation process. Read the [story](#) on *Legalweek.com*.

Record Antitrust Fines Levied Against South African Cereal Maker

Pioneer Foods Ltd. paid 500 million rand (\$72 million) to settle antitrust cases for price fixing, collusion, exclusionary conduct and anti-competitive conduct in various food sectors such as flour, maize, poultry and eggs. The settlement payments combined with a 195.7 million rand fine by the South African Competition Commission mark the largest overall settlement the Commission has imposed on a single company. Read the [story](#) from *Bloomberg*.

AKIN GUMP PUBLICATIONS AND SPEAKING ENGAGEMENTS

Staying Compliant Amid Growing Antibribery and Corruption Enforcement

December 2, 2010 – New York, NY

Akin Gump Strauss Hauer & Feld LLP, Ernst & Young and *The Metropolitan Corporate Counsel* are proud to sponsor "Staying Compliant Amid Growing Antibribery and

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Corruption Enforcement," a complimentary seminar for compliance officers, general counsel and finance and accounting professionals. This seminar will provide participants with the necessary tools to create policies, controls and auditing/monitoring programs to detect and prevent corruption within their companies. The panelists will provide an overview of current trends in U.S. enforcement, international development, industry considerations, international controls and civil enforcement actions and will address merger/acquisition agreements, anticorruption due diligence and transactions as part of financial due diligence. *Approval for CLE Skills and Ethics credits in New York has been requested.* [Register online](#) to attend.

ABA Antitrust 2010 Fall Forum

November 18, 2010 – Washington, DC

Akin Gump partner Brady Dugan will participate in a panel discussion entitled "International Cartel Enforcement: A New Era of Cooperation" at the 2010 ABA Antitrust Fall Forum on Thursday, November 18. Details regarding the conference and registration information are available [online](#).

Roundtable: Compliance and Litigation Issues as Foreign Corrupt Practices Act Enforcement Is On The Rise

Akin Gump's Paul W. Butler, Mark J. MacDougall, Edward L. Rubinoff, Wynn H. Segall and Thomas McCarthy, Jr. discuss the implications of increased bribery and corruption enforcement in this [article](#) from Metropolitan Corporate Counsel.

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