



# Red Notice

A Monthly Update on Global Investigations and Prosecutions

OCTOBER 2010

## INTRODUCTION

Welcome back to *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld. As Fall begins, anti-corruption and antitrust enforcement efforts are in full swing. Authorities worldwide are stepping up and broadening the scope of anti-bribery enforcement, with the mining/energy and pharmaceutical industries being the latest targets of anticorruption efforts. In the antitrust world, international investigations have led to guilty pleas and large fines in the freight forwarding, air cargo and refrigerant compressor industries. The October issue of *Red Notice* discusses these stories and more below.

## ANTI-CORRUPTION DEVELOPMENTS

### U.S. House Passes Bill Banning FCPA Violators from Receiving Government Contracts

In September, the U.S. House of Representatives passed the Overseas Contractor Reform Act by a vote of 409 to 0. Under the bill, companies "found to be in violation" of the Foreign Corrupt Practices Act (FCPA) would be barred from receiving federal contracts. Because companies that are convicted of FCPA offenses or enter settlement agreements that require entrance of a guilty plea would be penalized, the legislation may incentivize companies to seek early settlements sans guilty pleas with the Department of Justice (DOJ) or Securities and Exchange Commission (SEC). Read the [bill](#) and an [article](#) from *Government Executive*.

### UK Bribery Act Stricter Than FCPA

Companies with ties to the UK should take note that the new UK Bribery Act ("the Act"), which will come into force in April 2011, will apply on a strict liability basis to all companies incorporated or "carrying on business" in the UK, even if the corrupt conduct occurs in another country. It is thus advisable that international companies with interests in the UK should analyze their anticorruption policies to ensure they will be in line with the Act once it comes into effect. Read the [article](#) by Akin Gump's [Wynn Segall](#) and [Justin Williams](#). The UK Ministry of Justice also recently published a [consultation paper](#) on the Bribery Act.

### Mining and Energy Companies Now Required to Disclose Payments to Foreign Governments

Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law by President Obama in July, mandates that publically-held mining and energy companies disclose on their annual reports to the U.S. Securities and Exchange Commission, payments made to the U.S. government or foreign governments for the purpose of commercial development of oil, natural gas or minerals. In a speech to the U.N. General Assembly in September, Mr. Obama highlighted that the disclosure provision in

the Dodd-Frank Act is part of a global effort to combat corruption in resource-rich countries. Read the [story](#) from *Business Ethics*.



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## SEC Increases Witness Cooperation Deals

Since January, SEC enforcement officials have promoted witness cooperation deals as a way to expedite cases; and they have seen results – signing 15 agreements in various matters, including FCPA violations. To combat concerns that coming forward in SEC civil actions could lead to criminal prosecution, the SEC has amended the terms of its proffer agreements to require authorities to pledge not to prosecute a person based on their proffer before they can access the proffer. Read the [article](#) on *emii.com*.

## Feds Target Drug Companies Under FCPA

Staying true to a promise by the head of the DOJ Criminal Division to prioritize investigations into foreign bribery by drug companies, federal investigators are currently involved in an industry-wide investigation of pharmaceutical companies for possible violations of the FCPA. Foreign governments often play a larger role in regulating and administering medicine than the U.S. government, making pharmaceutical companies especially vulnerable to potential FCPA violations in foreign countries. Read the [article](#) on the *Wall Street Journal Law Blog*.

## Raids and Arrests in Probe of Reserve Bank of Australia Affiliate

Law enforcement authorities in Australia, the UK and Spain launched raids and arrested two individuals related to claims that employees and agents of Securrency International PTY Ltd., an affiliate of the Reserve Bank of Australia, used millions of dollars in bribes to foreign officials to secure contracts for international polymer banknotes. The investigation highlights how antifraud agencies worldwide are cooperating to fight corruption. Read the [article](#) from *The Guardian*.

## ANTITRUST ENFORCEMENT DEVELOPMENTS

### Freight Forwarding Companies to Plead Guilty to Criminal Price-Fixing Charges

As a result of a joint investigation into the freight forwarding industry by the National Criminal Enforcement Section of the DOJ Antitrust Division, the FBI and the Department of Commerce's Office of Inspector General, six international freight forwarding companies agreed to plead guilty and pay criminal fines totaling \$50.27 million for their involvement in various conspiracies to fix prices for freight forwarding services for international air cargo shipments. The companies have also agreed to cooperate with the DOJ's ongoing antitrust investigation. Read the DOJ [press release](#).

### Air Cargo Cartelists Face Record Damages

More than 200 companies from 11 EU member states are seeking damages from Air France-KLM and Martinair that could exceed €500 million, Europe's largest-ever cartel damages claim, for their involvement in a price-fixing cartel. The case demonstrates that the trend towards bringing cartel damages claims in the US and UK is catching on in the EU. Read the [article](#) from *Global Competition Review*.

### Refrigerant Compressor Price-Fixing Investigation Leads to Guilty Pleas from Panasonic and Whirlpool Subsidiary

Panasonic Corporation and Embraco North America Inc., a Whirlpool Corporation subsidiary, will plead guilty to price fixing in violation of the Sherman Act and pay a total of \$140.9 million in criminal fines for their involvement in an international conspiracy in the refrigerant compressor industry. The guilty pleas are related to an ongoing investigation of the worldwide refrigerant compressors market by the DOJ and FBI. Read the DOJ [press release](#).

## UPCOMING EVENTS

CLE: Trends in Government Oversight for 2011

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Thursday, November 11, 2010

This program will provide an overview identifying common pitfalls and hazards to be avoided when responding to the growing number of executive branch and congressional investigations in 2011. This seminar will discuss trends in antitrust enforcement; other federal government contracting trends; congressional investigation trends to keep in mind; and new directions in export control and FCPA enforcement. Join Akin Gump partners Brady Dugan, Paul Butler, John Sopko, Scott Heimberg and Steven Ross. This seminar will fulfill 1.00 hour of CLE credit for the State Bar of New York. [Register online.](#)

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