



Red Notice

A Monthly Update on Global Investigations and Prosecutions

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INTRODUCTION

Welcome back to *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld. The past month has featured legislative developments on both sides of the Atlantic relating to anti-corruption. In the U.S., the Dodd-Frank Act and its whistleblower provisions provide the Securities and Exchange Commission (SEC) with another weapon in its fraud enforcement arsenal, while in the U.K., the decision to delay implementation of the Bribery Act has some predicting further revisions to, and perhaps a weakening of, the Act.

Amid these legislative developments, fraud, corruption and cartel enforcement has continued unabated, with millions of dollars in fines and a bevy of new investigations announced since July. Private parties are getting in on the act as well, with an FCPA-based shareholder derivative suit in the U.S. and the ongoing air cargo cartel civil litigation in the U.K. *Red Notice* discusses these developments and others below.

ANTI-CORRUPTION ENFORCEMENT EFFORTS

Financial Reform Allows SEC to Pay FCPA Whistleblowers

Within the recently passed financial reform legislation (the Dodd-Frank Act) are provisions that give the SEC additional power to regulate complex securities and combat securities fraud. Notably, the law allow the SEC to pay whistleblowers in matters within the SEC's jurisdiction, including, for example FCPA cases. Commentators have voiced concern that the provision provides an incentive for employees to report matters first to the SEC instead of raising the issue with their employer. Read the articles from [The New York Times Dealbook](#) and [Law360](#).

General Electric Agrees to Pay Millions in FCPA Case

GE is one of the most recent companies to learn that the SEC is enforcing the Foreign Corrupt Practices Act (FCPA) around the world. According to the SEC's complaint, GE paid \$3.6 million in bribes to the Iraqi Health Ministry and Iraqi Oil Ministry to win contracts under the U.N. Oil-For-Food Program. To settle the case, GE agreed to pay the SEC \$23.4 million. Read [The Washington Post article](#).

Could FCPA "Sting Cases" be the Wave of the Future?

Smith & Wesson Holding Company (Smith & Wesson) recently announced that the Department of Justice (DOJ) is investigating the company for potential FCPA violations. This announcement came shortly after the DOJ's sting operation in which 22 people were indicted for allegedly paying bribes for defense supply contracts. Read the [article](#) from *The Wall Street Journal*.

FCPA Derivative Suit Filed Against Avon Directors

Although there is no private right of action under the FCPA, there is still the potential for shareholder derivative actions. An Avon shareholder has filed a derivative suit against Avon's officers and directors in the Southern District of New York in the wake of the company's self-disclosure to the SEC. The suit alleges that the directors failed to properly



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company's own disclosure to the SEC. The suit alleges that the directors failed to properly monitor Avon's FCPA compliance programs. Read the [article](#) from *Law360*.

INTERNATIONAL ANTI-CORRUPTION DEVELOPMENTS

UK Bribery Act Delayed Until April 2011

The UK Ministry of Justice recently announced that the UK Bribery Act will not take effect until April 2011. Prior to this announcement, it was expected that the Bribery Act would take effect before the end of 2010. The UK cites the delay as being based on fear among UK companies that they will be unable to swiftly comply with the laws, resulting in lost profits. Read a summary of the Act in the [Akin Gump client alert](#), and [commentary](#) from *Eurasia Review*.

Pharmaceutical Companies Appear to be the Next Target for FCPA Investigations

Recently, the DOJ and SEC sent letters to four major Fortune 500 companies, including AstraZeneca PLC; Baxter International Inc.; Eli Lilly & Co.; and Bristol Myers Squibb Co. informing them that they are being investigated for potential FCPA violations. The focus of the investigations is on the business that these companies conduct in Brazil, China, Germany, Greece, Italy, Poland, Russia and Saudi Arabia. This expansive investigation suggests that the agencies are turning their FCPA focus to pharmaceutical companies. Read the [article](#) from *Pharma Times*.

INTERNATIONAL CARTEL ENFORCEMENT

Volvo Files Private Action Against Car Glass Maker in the UK

In a sign that private damages actions in antitrust actions may become more common in Europe, Volvo has filed a private action in the UK against the Pilkington Group. The suit against the glass maker is based on its alleged participation in the car glass cartel. Read the *Law360* [article](#).

British Airways Expands the Air Cargo Civil Litigation in the UK

British Airways, in an effort to minimize its damages associated with the class action lawsuit alleging an international air cargo cartel, has brought 32 of its competitors into the lawsuit filed against it in the UK by plaintiffs alleging harm from an air cargo cartel. Among those named by British Airways include Qantas, Air France-KLM, Emirates and Cathay Pacific. Read the *Global Competition Review* [article](#).

European Commission Enters "Hybrid Settlement" in Animal Feed Cartel

The European Commission fined 13 companies for their involvement in an animal feed cartel that has allegedly been in operation since 1969. All but one of the companies involved used the EC's new settlement procedures. This hybrid settlement permitted a simultaneous decision for the settling companies as well as the company opting not to settle. Read the *European Commission's* [press release](#) and an [article](#) from *Global Competition Review*.

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