



JUNE 2010

## INTRODUCTION

**Welcome** to the inaugural edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this monthly e-bulletin, we will address key developments from the past month relating to investigations and prosecutions that cross multiple jurisdictions. Each edition of *Red Notice* will focus on the important developments that may affect companies whose business interests span multiple jurisdictions.

In this edition, we look at significant developments in international cartel enforcement and recent developments in the trend toward global enforcement of anti-bribery and anti-corruption laws.

Click to [subscribe](#) to receive future editions of *Red Notice*.

## NOTABLE INTERNATIONAL CASES

### UK Office of Fair Trading's First Attempt at Contested Criminal Cartel Prosecution Fails

Earlier this month, the UK Office of Fair Trading's case against British Airways, the first litigated prosecution for price-fixing in the UK, collapsed. Because the OFT "spectacularly failed" in its first attempt to win a trial conviction against cartel offenders, there is now a question as to how enthusiastic the OFT will be to bring similar cases in the future. Read the [article](#) from *Global Competition Review*.

### Daimler Bribery Case Settles

The Daimler case is the most recent example of the US government's escalation of its crackdown on violations of American bribery laws. Companies that do business in the United States should take note as this is one of the most expansive and far-reaching cases brought against a foreign corporation; similar cases may be on the horizon. Read the Department of Justice [press release](#) and the [article](#) from *The New York Times*.

## REGULATION AND ENFORCEMENT DEVELOPMENTS

### Organization for Economic Co-Operation and Development Issues Anti-Bribery Compliance Recommendations

The Organization for Economic Co-Operation and Development (OECD) recommendations represent the input of 38 nations and signal a major shift in the global promotion of anti-bribery compliance and ethics programs. The OECD's anti-bribery compliance guide may well lead to increased standardization of anti-bribery compliance, which would be a welcome result for multinational companies attempting to implement anti-bribery compliance programs in multiple jurisdictions. Read the OECD [recommendations](#) and the [article](#) from *The FCPA Blog*.

### Proposed Amendments to U.S. Sentencing Guidelines

The United States Sentencing Commission has proposed changes to the US Sentencing Guidelines that are noteworthy for corporations concerned about FCPA risks. Under the proposed amendments, companies may still receive credit for an "effective" compliance



**Paul W. Butler**

[pbutler@akingump.com](mailto:pbutler@akingump.com)  
202.887.4069

[Download to Outlook](#)



**J. Brady Dugan**

[bdugan@akingump.com](mailto:bdugan@akingump.com)  
202.887.4152

[Download to Outlook](#)



**Mark J. MacDougall**

[mmacdougall@akingump.com](mailto:mmacdougall@akingump.com)  
202.887.4510

[Download to Outlook](#)

proposed amendments, companies may still receive credit for an effective compliance program even if high-level personnel were involved in the violation. In addition, the proposed amendments recognize retaining an outside compliance advisor as a remedial action that may help companies avoid severe sanctions. Read the [proposed amendments](#) (PDF) and the [article](#) from *Law.com*.

### **UK Passes New Anti-Bribery Act**

A heads-up to companies that do business in the UK—passage of the UK Bribery Act signifies an impending increase in anti-bribery enforcement. The new Act covers bribery inside and outside of the UK and creates a new offense for failing to prevent bribery. Companies that transact business in the UK should expect an increase in anti-bribery oversight and investigations. Read the [article](#) from *Risk.net*.

### **European Commission Reaches First Cartel Case Settlement in DRAM Case**

The European Commission (EC) settlement of the DRAM, or memory chip, case is the first cartel case settled as a result of the EC's recently instituted "settlement" procedures. In the past, the EC had no method of cutting short the administrative proceedings, i.e. no equivalent of reaching a plea bargain without going to trial. The new settlement procedures will hopefully be a positive development for companies, leading to a faster resolution of cases before the EC. Read the EC [press release](#).

### **European Competition Commission May Ease Cartel Fines Against Companies in Financial Difficulty**

Companies accused of violating cartel laws in Europe that are facing financial hardship may get a break from the European Competition Commission. In a speech on May 12, European Competition Commissioner Joaquin Almunia hinted that the Commission may be willing to consider financial hardship arguments when issuing cartel fines. This will bring EU cartel law somewhat closer to US law, where section 8C3.3 of Sentencing Guidelines allows a reduction in corporate fines based on an inability to pay. Read the [article](#) from *Global Competition Review*.

### **Investors and Development Banks Pressure Companies to Combat Bribery and Corruption**

In addition to recent anti-bribery developments by various governmental entities, firms may face increasing pressure to fight bribery and corruption from the private sector. Those found to have engaged in wrongdoing may also face debarment by development banks. Read the [article](#) from *Business Ethics*.

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

### **WMACCA Global Issues Forum: Privilege and Privacy Issues in Global Investigations**

*June 15, 8:00-10:00 a.m. – McLean, VA*

Akin Gump partner Paul Butler will be speaking at this free online CLE program, the second in a three-part series on global investigations, focusing on the complications of attorney-client privilege and privacy issues in a global investigation. The program will discuss considerations regarding who should conduct an investigation when the investigation goes global; whether the attorney-client privilege or work product privilege attach to an investigation in a foreign jurisdiction; what privacy considerations are relevant in foreign jurisdictions; what can be disclosed to US authorities at the conclusion of the investigation; and what information will be kept under privilege from US authorities. [Click here](#) to register.

### **Global Antitrust Enforcement and Compliance Summit**

*July 20-July 21 – Washington, DC*

Akin Gump partner Brady Dugan will be moderating a panel on cartel enforcement in the US, Brazil and Canada at this conference addressing increased international agency cooperation and current compliance challenges facing antitrust counsel. [Click here](#) for full agenda and registration information

---

**AKIN GUMP  
STRAUSS HAUER & FELD LLP**

[akingump.com](http://akingump.com) | 14 offices worldwide | over 800 Lawyers

Editor: [Mollie McGowan](#)

© 2010 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party.

If you would like to update your information or opt out from our mailing list, please [click here](#).