

Cartel Snapshot: The Latest on Active Antitrust Investigations

Friday, November 9, 2018

Overview of Current Cartel Investigations

Although the third quarter of 2018 saw guilty pleas and new indictments in several current Department of Justice (DOJ) investigations, 2018 continues a downward trend in antitrust enforcement. At its current pace, DOJ's annual 2018 fines will end around \$300 million—well short of the billion-dollar plus highs in 2014 and 2015, during the height of the auto parts and foreign exchange investigations. The same downward trends exists in the EU, where the European Commission did not render any cartel decisions in the third quarter of 2018. Nonetheless, in a sign of things to come, the Commission took significant procedural steps in the ethanol benchmarks and car emissions cases.

US Developments

- We learned of two new DOJ investigations in the third quarter. First, two executives were arrested on charges of fixing prices of freight forwarding services of containerized goods destined for international shipping. This investigation appears to be distinct from the DOJ's investigation of roll-on/roll-off international shipping services for vehicles. Second, a foam maker stated in its July 2018 complaint against several chemical companies that the DOJ is investigating the polyurethane industry. The DOJ has not announced an investigation in the polyurethane industry, but one defendant in the foam maker's case confirmed the existence of the investigation.
- The DOJ secured two more guilty pleas in its ongoing investigation into bid rigging of public real estate foreclosure auctions, one in Mississippi and one in Florida. Unlike the typical case involving auctions on the courthouse steps, the Florida case involved a real estate investor rigging bids in online public foreclosure auctions.
- Eleven state attorneys general have initiated investigations into the use of "no-poach" clauses in employment contracts. The Washington State Attorney General is most active, obtaining agreements from 30 nationwide franchise chains to eliminate the practice of including no-poach clauses in their franchise contracts. While the Washington AG's investigation first focused on fast-food chains, its investigation has since expanded into other industries.

EU Developments

- The Commission sent a Statement of Objections to two companies in the biofuels sector for conduct concerning ethanol benchmarks. A third company is in settlement talks with the Commission.
- In July 2018, the General Court of the EU confirmed a fine that the Commission had imposed on an investment bank for the conduct of its subsidiary in the power cables cartel on the basis of the parental liability presumption. This is noteworthy because the investment bank held less than 91% of the subsidiary's shares.
- In September 2018, the Commission opened an in-depth investigation into possible collusion between German car manufacturers on emissions control systems.
- Also in September, the Commission sent a Statement of Objections to a rail company for obstructing its investigation during a dawn raid. The company provided incorrect information and deleted data from a



Article By [Stephen Vaughn](#)
[Louise-Astrid Aberg](#)
[McDermott Will & Emery Antitrust Alert](#)

[Antitrust & Trade Regulation](#)
[Environmental, Energy & Resources](#)
[Global](#)
[All Federal](#)
[European Union](#)

computer. The dawn raid was part of an investigation in the rail passenger transport sector.

[Read full article.](#)

© 2019 McDermott Will & Emery

Source URL: <https://www.natlawreview.com/article/cartel-snapshot-latest-active-antitrust-investigations>