



European Law Enforcement Against Antitrust Conspiracies—Recent Trends

Over the last few years, the level of cartel enforcement against antitrust conspiracies across the European Union has increased significantly. While the number of cross-border cartel investigations undertaken by the European Commission has slightly declined,¹ national authorities' activity across Europe has increased considerably, in terms of the volume of domestic investigations and the levels of fines. This is particularly true for the competition authorities of the largest EU Member States. Some of these authorities' cartel enforcement activities have been operating at a consistently high level for some years; others recently have taken steps to strengthen their antitrust enforcement policies. A short overview of the national competition authorities' most recent activities is provided below.

Activities of National Competition Authorities

France. The French Competition Authority ("FCA") has for some time been one of the most active and tough antitrust enforcers among all the national competition authorities in the EU. The last couple of years certainly confirm the trend: In both 2014 and 2015, the FCA closed four investigations and in each year imposed fines of approximately €900 million. One of the main cases,

closed in December 2015, concerned two anticompetitive agreements relating to price increases in the parcel delivery sector. Fines were imposed on 20 competitors and a trade union for engaging in anticompetitive practices and amounted to a total fine of €672.3 million.² Another key case concerned a cartel in the fresh dairy products sector (yogurts, cheese, milk-based desserts, etc.) where the FCA imposed fines of €192.7 million for an anticompetitive agreement concerning dairy products sold under retailers' own-brand labels.³ While the FCA has indicated that a similar level of fines would not be reached in 2016, the fact remains that enforcement has been on the increase in recent years.⁴

Germany. The 2015 enforcement activity of the German Competition Authority, which is the *Bundeskartellamt* or Federal Cartel Office ("FCO"), largely continued the trend of the previous few years. In 2015, the number of investigations closed by the FCO grew to 11 (nine in the previous year), with total fines of approximately €208 million (compared to €1.12 billion in 2014)⁵. The fines were imposed on 45 companies and 24 individuals. The investigations involved various products and sectors, such as automotive part manufacturers, mattress manufacturers, providers of container transport services, and manufacturers of prefabricated garages.

The first half of 2016 confirms the same trend, with the FCO imposing fines of approximately €99 million on a conspiracy involving wholesalers active in the sanitary, heating, and air conditioning sector. In one of his last speeches, the FCO's president confirmed that cartel prosecution remains the authority's core competence.

Italy. Over the last two years, the Italian Competition Authority ("ICA") has significantly increased its antitrust enforcement activity.

In 2015, the ICA closed 14 antitrust cases, more or less in line with the number of investigations in the previous year. Total fines imposed under the antitrust rules amounted to a total of almost €238 million, up 63 percent compared to the total fines imposed in the previous year. Remarkably, the average duration of each investigation was 18 months, significantly less than at EU level.

The ICA has focused its activity on those sectors that have a strong impact on consumer welfare, such as pharmaceuticals, transport, and local public services. There has been a specific focus on the fight against cartels involving public procurement (bid rigging).⁶

Other than classic price-fixing activity, the Italian watchdog has especially focused on information exchanges between competitors, either as activities facilitating the implementation of cartels or as independent antitrust violations in their own right.⁷

Spain. In Spain also, the antitrust fight has recently intensified, becoming a priority of the *Comision Nacional de los Mercados y la Competencia* ("CNMC"). In 2015, the CNMC issued 14 cartel decisions against more than 250 undertakings and imposed record fines exceeding €500 million, as opposed to only four investigations and total fines of approximately €14 million in the previous year. In 2016, the CNMC declared that its program of action against cartels will become even more intense and prioritized.

As in Italy, the CNMC has also taken up the fight against cartels in public procurement bid rigging in Spain. For this purpose, the CNMC set up a working group to scrutinize suspicious activities using a special screening system.

United Kingdom. The UK's new Competition and Markets Authority ("CMA")⁸ had a relatively slow start, as reflected in the level of cartel fines imposed in the last few years, but recently has increased its enforcement activity by opening some high-profile civil cartel investigations in a variety of sectors, including modeling, supply of products to the furniture industry, cleaning services, estate and letting agency advertising, ophthalmology services, and pharmaceuticals.

A key feature of the UK cartel enforcement regime is a renewed focus on criminal enforcement. The first criminal cartel trial in more than six years (in the galvanized steel tanks sector) took place in 2015; two individuals were acquitted by the jury, one other already had pleaded guilty and received a six-month suspended sentence. The CMA has one further ongoing criminal cartel investigation in relation to precast concrete drainage pipes. However, significantly, the law has been changed to make it easier for the CMA to bring criminal prosecutions with the removal of the requirement for the CMA to prove that the individuals acted dishonestly. This is expected to result in an increase in the number of successful prosecutions in the future.

The CMA's last annual report underscores that cartel enforcement remains a "major priority" and that it intends to open or conclude at least one criminal cartel case and four civil investigation cases between 2015 and 2016.

Conclusions

Antitrust enforcement remains at the core of the national competition authorities' enforcement activities across the EU. The statistics also show a trend toward an increasing number of domestic cartel investigations by national authorities across the EU, with a corresponding slight decrease in the number of EU cross-border cartel investigations by the Commission. It is possible that the reduction in the number of Commission investigations is due to the fact that the national authorities have become more active in enforcement within the EU. This is positively encouraged by the Commission, which has also prioritized the need for procedural convergence within the European Competition Network, including in relation to the calculation of penalties.⁹

Together with the increased experience and confidence of the national authorities, the level of overall exposure to anti-trust investigations for engaging in cartel activities in the EU is likely to remain high, if not increase, in the future, notwithstanding any apparent decline in EU-wide investigations. In addition, the Commission appears to have a particular focus on international cartels, involving significant cooperation with the United States and other international agencies.

Jones Day has compiled [best-practice guidance on how to handle dawn raids](#) for each of the jurisdictions mentioned above, which can be found [here](#).

Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com/contactus/.

European Union

Alexandre G. Verheyden

Brussels

+32.2.645.15.09

averheyden@jonesday.com

Belgium

Philipp Werner

Brussels

+32.2.645.15.45

pwerner@jonesday.com

France

Eric Barbier de La Serre

Paris

+33.1.56.59.38.11

ebarbierdelaserre@jonesday.com

Germany

Johannes Zöttl

Düsseldorf

+49.211.5406.5511

jzoettl@jonesday.com

Italy

Mario Todino

Brussels

+32.2.645.15.26

Milan

+39.02.7645.4001

mtodino@jonesday.com

Spain

Raimundo Ortega

Madrid

+34.91.520.3947

rortega@jonesday.com

United Kingdom

Alan Davis

London

+44.20.7039.5151

adavis@jonesday.com

Endnotes

- 1 Since 2014, the European Commission's enforcement activity has dropped in terms of numbers and amount of fines: while in 2014 the Commission concluded 10 cases and imposed a total of €1,689.49 million in fines, in 2015 it only closed five investigations with total fines of €364.53 billion.
- 2 French Competition Authority, decision 15-D-19.
- 3 French Competition Authority, decision 15-D-03.
- 4 Global Competition Review, “An Interview with Bruno Lasserre” (July 2016).
- 5 However, as the FCO has also pointed out in its Annual Report, 2014 was an extraordinary year given that the Authority concluded three very complex proceedings (in the beer, sausage, and sugar markets).
- 6 In particular, see cases I785–Gara Consip Servizi di Pulizia nelle Scuole, December 22, 2015; I782–Gare per Servizi di Bonifica e Smaltimento di Materiali Inquinanti e/o Pericolosi presso gli Arsenali di Taranto, La Spezia ed Augusta, November 18, 2015.
- 7 See cases I701–Vendita al Dettaglio di Prodotti Cosmetici, December 15, 2010; I791 Mercato del Noleggio Autoveicoli a Lungo Termine, ongoing.
- 8 The Office of Fair Trading and the Competition Commission were replaced by a single competition authority, the CMA, on April 1, 2014.
- 9 See [Communication on the application of Reg. 1/2003](#).

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our “Contact Us” form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.