

2017 Global Cartel Enforcement Report

January 2018

Cartel fine totals for 2017 reflect record lows as compared to recent years, particularly for perennial powerhouse enforcers like the United States Department of Justice and European Commission. In the United States, the Department of Justice imposed its lowest fine total in nearly fifteen years of just \$119 million. The European Commission fared only modestly better, imposing just \$1.4 billion (\$1 billion of which was the result of a single fine) as compared to its \$4.1 billion total from last year. Across the board, worldwide fine totals typically decreased or held steady from 2016.

Despite the substantial dip in fine figures, there is reason to believe that 2017 may be an anomaly or the proverbial “calm before the storm.” There was no shortage of dawn raids reported in the news in 2017, suggesting last year’s fine totals may simply reflect that regulators are in the early days of the investigative lifecycle of their next generation of cases. There are also reports of large matters on the verge of resolution that if concluded, may result in fine totals rebounding in 2018.

2018: What to Watch for

Globalism vs. Nationalism

The worldwide nationalist trend suggests that regulators may turn inward and focus their attention on domestic bad-actors. Side-effects may include decreased coordination across jurisdictions and increased uncertainty for companies that face the prospect of dealing with multiple enforcement agencies simultaneously.

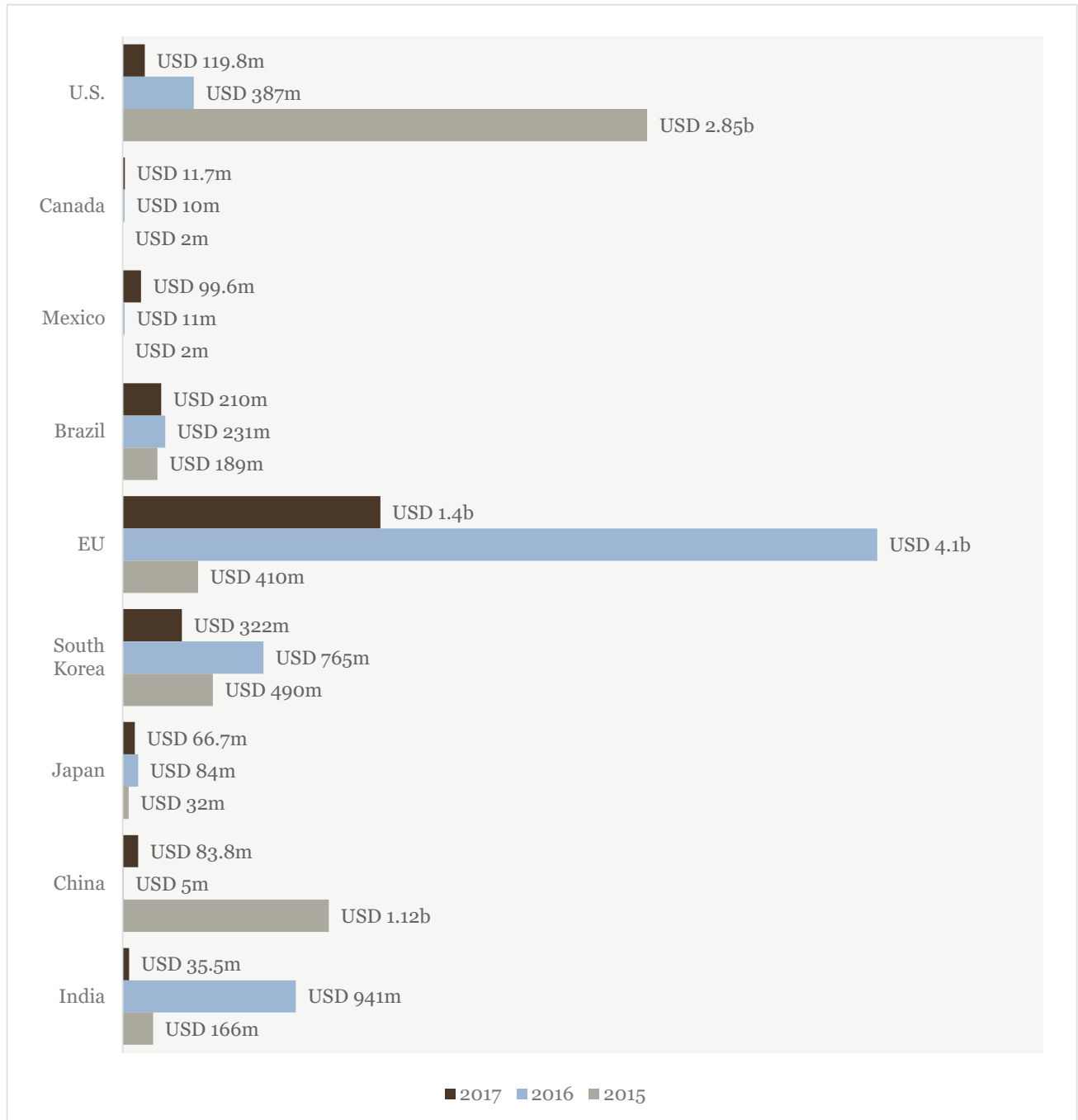
Pricing Algorithms

As business continues to shift to online platforms, regulators are increasingly focused on the use of pricing algorithms. The United States and European Commission tossed their hats into the ring on the issue earlier this year and had more company by year end. In late 2017, the German Bundeskartellamt announced its intent to investigate cartels that collude using pricing software, and the Australian Competition and Consumer Commission announced the creation of a data analytics unit to support investigations into the improper use of pricing algorithms.

No-Poach Agreements

With the new U.S. administration, many Obama-era policies have been reversed or abandoned. One that has not is the Department of Justice’s intent to criminally prosecute no-poaching and wage-fixing agreements. In fact, the DOJ’s top antitrust enforcer told the markets to expect that criminal indictments will be handed down as soon as this year for no-poaching agreements already under investigation.

Select Year-to-Year Comparison*†



* Statistics from selected jurisdictions are approximate and reflect fine levels and exchange rates at the time of writing and may not be exhaustive. Statistics reflecting penalties for the U.S. include those in the U.S. fiscal year, October 1, 2016 to September 30, 2017. All other statistics include enforcements in the 2017 calendar year.

† Fine amounts were based on the local currency and converted to U.S. dollars using the December 2017 currency exchange rates reported by the United States Treasury's Bureau of the Fiscal Service, available at <https://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/itin-12-31-17.pdf>

Americas

The \$119 million in fines imposed by the United States Department of Justice's Antitrust Division was the lowest amount imposed by the agency in fifteen years.[‡] The Division's largest fine of the year was a \$42 million penalty against Nichicon Corporation for its participation in a price fixing scheme related to electrolytic converters. Nichicon was the seventh conspirator to be charged in the conspiracy. In another long-running investigation, the Antitrust Division added a \$21 million fine against Höegh Autoliners AS to the four prior fines in the roll-on, roll-off cargo shipping cartel. The agency imposed four fines in the electronics and automotive sectors in 2017, consistent with the global trend of enforcement activity in these areas.

Notable "First"

Makan Delrahim, the Assistant Attorney General for the Antitrust Division, stated that over the first few months of 2018 the DOJ will be announcing indictments for what will be the first-ever criminal antitrust charges for no-poach agreements.

Mexican cartel fines ramped up from \$11 million in 2016 to \$99.6 million in 2017, led by major enforcement actions targeting the pension fund industry (\$55.8 million in total fines against four pension funds and eleven individuals) and shipping industry (\$29.5 million in total fines against seven companies).

In Canada, the Competition Bureau held steady in its enforcement activity, imposing approximately \$11.7 million in fines compared to \$10 million in 2016. The enforcement against Mitsubishi Electric Corporation for its role in a car parts bid-rigging conspiracy comprised over 90% of the 2017 total, and brought the Bureau's total fines against the car parts cartel members to over \$66 million.

Though its total fines dropped slightly from 2016, Brazil's Administrative Council for Economic Defence ("CADE") had an active year, bringing nearly thirty enforcement actions against cartel participants. In its largest individual settlement to date, CADE fined construction firm UTC Engenharia approximately \$37.9 million for its role in rigging bids for Petrobras contracts. Other noteworthy enforcement actions included CADE's \$39.9 million fine against Siemens and VA Tech Transmissão for cartel activity in the electricity transmission and distribution components market.

[‡] Though the U.S. Department of Justice Antitrust Division participated in a \$775 million fine against a participant in the LIBOR cartel, this fine was excluded from the U.S. fine totals because the substantive violation charged was wire fraud.

Europe

More than a year after it settled with five truck manufacturers for coordinating prices and the introduction of emission technologies, the European Commission (EC) imposed a \$1.06 billion fine against Scania, the final remaining cartel participant. Though diminutive compared to the Scania fine, the EC's four enforcement actions against manufacturers and suppliers of various automotive components, totaling \$341 million, should not be overlooked, as they are indicative of continued enforcement interest in the automotive sector.

EU member countries had a strong showing in 2017 and issued multiple significant fines for cartel activity:

- France: The French Autorité de la concurrence fined three flooring suppliers and their trade association a total of \$363 million for a price-fixing conspiracy that lasted twenty-three years.
- Italy: The Italian Autorità Garante della Concorrenza e del Mercato imposed a \$168 million fine against eight manufacturers of wire mesh and steel used to reinforce concrete. Less than a week later, the agency announced a \$220 million fine against eleven cement producers for price-fixing.
- Spain: Spain's competition agency, the Comisión Nacional de los Mercados y la Competencia, fined two rail operators and eight companies \$77.5 million for allocating traction services.

Notable "First"

Greece's Hellenic Competition Commission (HCC) entered into its first-ever cartel settlement with eight companies in the cosmetics sector. The HCC implemented the settlement procedure in 2016 to allow companies that voluntarily admit to cartel activity to receive a fine reduction. In its first application, the HCC granted the eight companies a 15% fine reduction.

APAC

Chinese regulators imposed a total of \$82 million in fines in 2017, a significant increase from the meager \$5.3 million in 2016 but well short of the \$1.12 billion imposed in 2015. Though active in enforcement, the National Development and Reform Commission has stalled in its efforts to add leniency benefits to its enforcement toolbox: more than a year after publishing drafts for public comment, the Commission has yet to finalize its guidelines on disgorgement, fine calculation, and leniency.

Following a solitary but significant \$941 million fine in 2016, the Competition Commission of India (CCI) experienced a more varied and more modest 2017 that featured four enforcement actions totaling \$35.5 million in fines. The Commission's largest fine of the year, a \$32 million penalty against seven local cement makers, was a continuation of a sector-wide investigation into bid-rigging.

The Japanese Fair Trade Commission (JFTC) netted a mediocre \$66.7 million total fines in 2017, primarily stemming from the Commission's \$56 million penalty against companies that allocated customers and coordinated bids for equipment tenders by fire departments across Japan. Four of the

five cartel participants utilized the JFTC's expansive leniency policy, which allows for up to five applicants in a single conspiracy, and received immunity or penalty reductions for their cooperation with the investigation.

The South Korean Fair Trade Commission's total fines took a noticeable downturn in 2017, dropping from \$765 million in 2016 to \$322 million in 2017. Nevertheless, the KFTC imposed the largest penalty in the region this year—\$81.3 million—against six steel pipe manufacturers rigging bids in procurement tenders by Korea Gas Corporation. This enforcement was emblematic of Korea's continued enforcement activity in the construction industry.

Notable "First"

In January 2017, the CCI for the first time granted a penalty reduction for a leniency applicant. Pyramid Electronics received a 75% fine reduction for confessing to misconduct related to bid-rigging in tenders by the Indian Railways.



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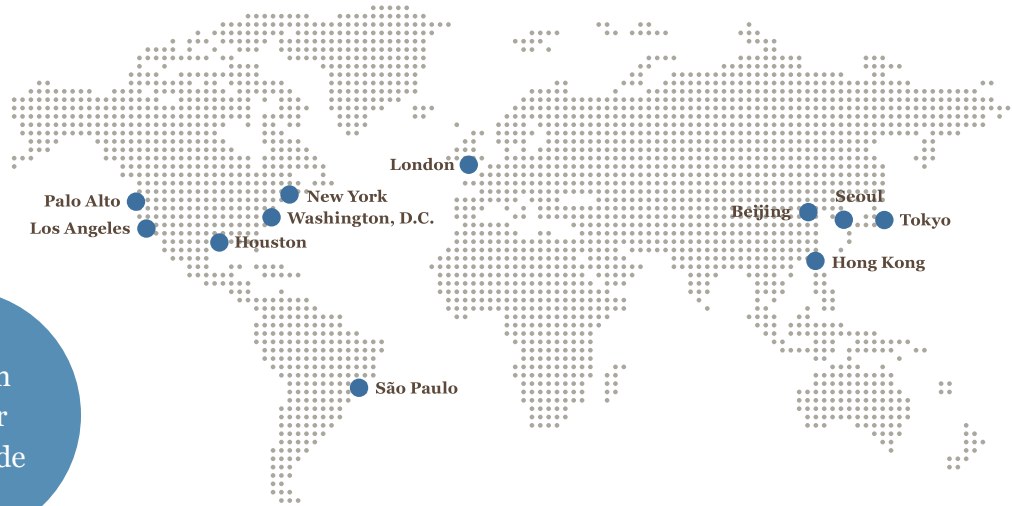


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