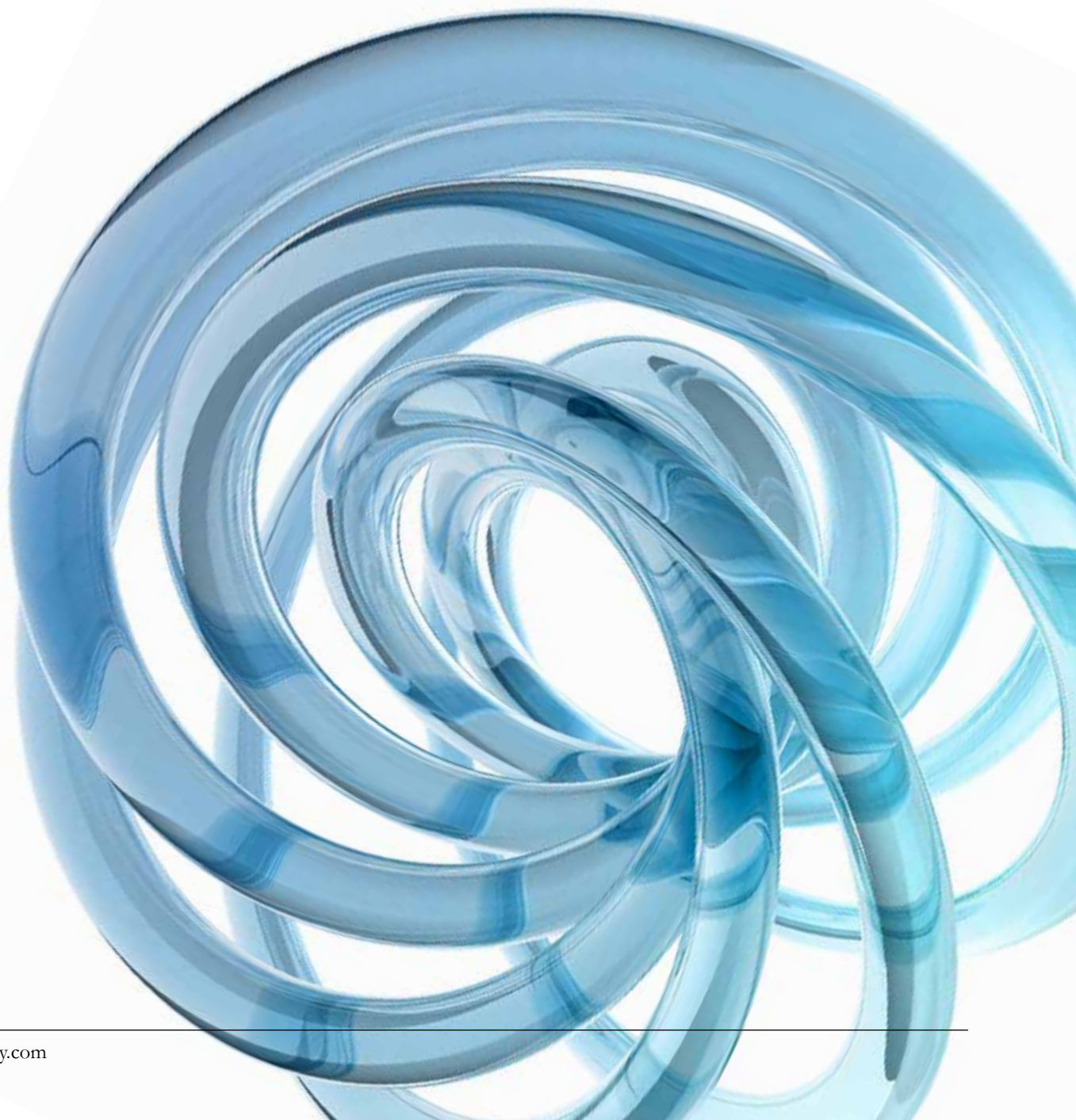


# ALLEN & OVERY

## Global Cartel Enforcement

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Key findings: Mid-year 2017



## Mid-year 2017 global cartel fine levels

In the first half of 2017, fine totals are currently at USD1.64 billion. But this figure is heavily influenced by nearly USD1bn in fines the European Commission re-imposed on air cargo carriers this year after its 2010 decision against those same carriers was quashed by the EU General Court. With this decision removed, the fine totals are significantly behind where they stood in 2016 at the mid-year.

## Emerging Trends

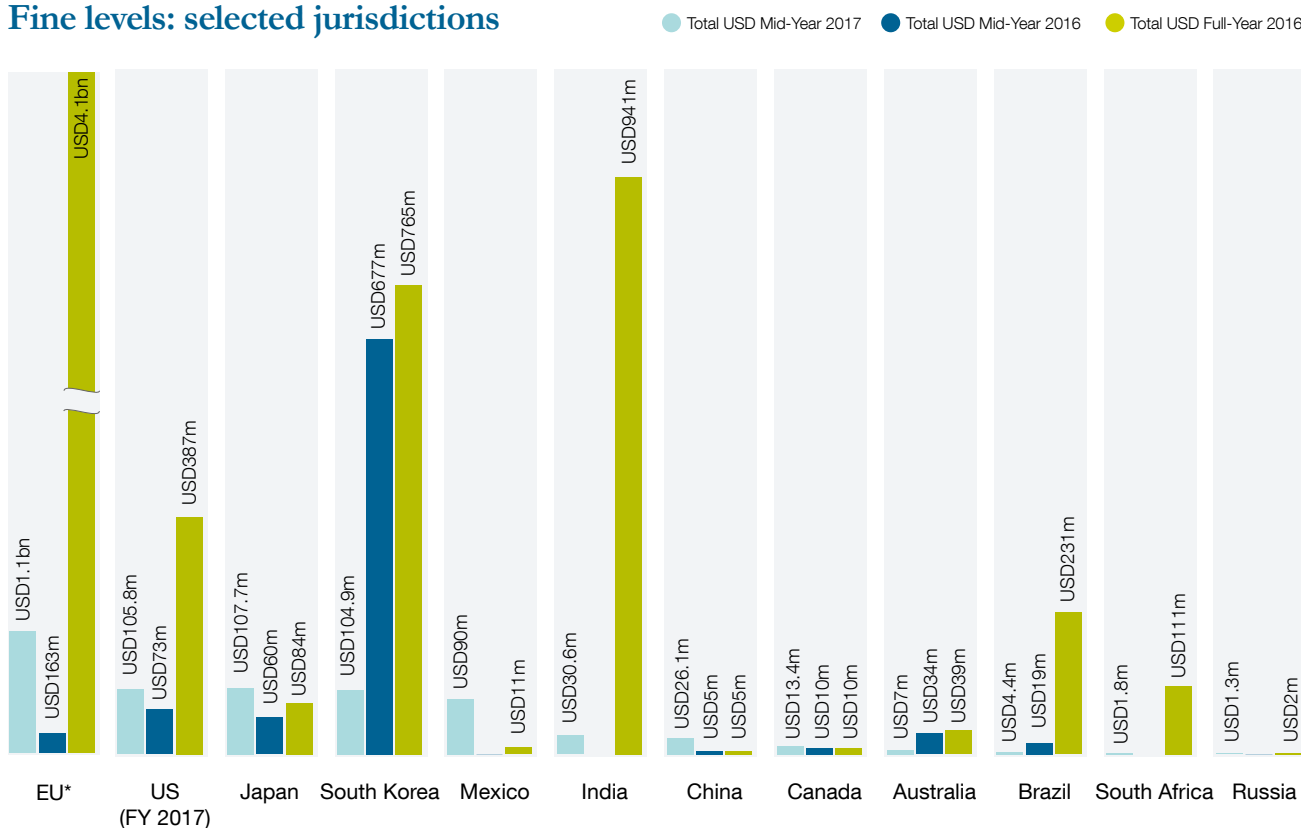
**Shifting Sands:** The impact of the change in the U.S. Administration and anticipated shift in leadership of U.S. Department of Justice (DOJ) antitrust criminal cases now that Brent Snyder, former acting assistant general at the DOJ, has stepped down (in January), remains to be seen. Brexit’s influence on the UK Competition and Markets Authority (CMA) is also an area to watch as the year progresses.

**Digital Disruption:** There is a divergence of views between the U.S. and the EU regarding how pricing algorithms could lead to collusion. The U.S. view is that existing antitrust principles are flexible enough to account for such technological advancements, whereas the EU is contemplating the need for regulatory intervention. The DOJ’s online poster cases in 2016 established that companies could form cartels by agreeing to use the

same pricing algorithm, and more cases seem likely to come, including the two investigations recently launched by Brazil’s antitrust enforcer relating to the use of algorithmic software.

**Rising Stars:** Fine totals by more mature regimes are consistent with previous years, while certain rising competition enforcers, such as China, India and Mexico, had a notable surge of activity early in the new year.

### Fine levels: selected jurisdictions



\* Figures not to scale.

Statistics from selected jurisdictions are approximate and reflect fine levels and exchange rates at the time of writing and may not be exhaustive. 2017 U.S. statistics are for the U.S. fiscal year to date, which began on 1 October 2016. All other countries’ statistics cover the first six months of the 2017 calendar year.

# Insights into key jurisdictions

## AMERICAS

### United States

The DOJ is slightly ahead of pace compared to this time last year largely due to two significant fines. These include a USD55.4 million fine imposed on Hitachi Automotive for conspiring to fix the prices of shock absorbers sold to Suzuki and Toyota, and the USD25m fine (with a novel post-sale escalation clause) imposed on Bumble Bee Foods for conspiring to fix the prices of shelf-stable tuna.

### Brazil

Brazil's antitrust enforcer, the Administrative Council for Economic Defence (CADE), made headlines in early 2017, but not for the number or amount of imposed fines. Rather, CADE was raided by prosecutors in May as part of a corruption and bribery probe. Along with the tumultuous start to the year, CADE had a significant drop in its mid-year fine total.

### Canada

So far this year, Canada has imposed only a single fine. This was for USD13.4m, putting the total slightly ahead of where Canada was last year. It was imposed upon car parts manufacturer Mitsubishi Electric for participating in an international bid-rigging conspiracy with a Japanese car manufacturer.

### Mexico

As predicted in our 2016 full-year report, Mexico's Federal Economic Competition Commission (COFECE) has had an active start to 2017. The upward trend in imposed fines has continued, with COFECE imposing USD90m so far this year, compared to merely USD10.6m in all of 2016.

In fact, COFECE issued record-breaking penalties in May of this year for USD52.7m against four pension funds and 11 individuals.

### Chile

While Chile's Fiscalía Nacional Económica (FNE) has not imposed any significant fine, there has been a notable development with a consumer action brought in relation to a cartel case. CMPC paid USD159m in restitution for fixing the price of toilet paper and tissue paper. An agreement to compensate consumers was reached with Sernac, Chile's government consumer advocacy agency, after CMPC received an exemption from FNE in 2015 for its participation as a cooperating defendant in the matter.

## EUROPE, MIDDLE EAST AND AFRICA

### European Union

The European Commission (EC) has been by far the most aggressive enforcer in the first half of the year, with fines imposed totalling just over USD1bn. This is largely a result of the re-adopted decision in the air cargo matter. In 2010, the EC fined 11 airlines for fixing the prices of air cargo flights, but in 2015 the General Court quashed the decision on procedural grounds. This past March, the EC addressed the procedural errors and issued a new decision imposing USD833.2m in fines, which largely mirrored those imposed in the 2010 decision.

### European Member States

The first part of the year has shown activity throughout the European Member States, but significantly fewer fines have been imposed to date as compared to this time last year. So far, the Member States have imposed fines totalling USD120.3m; whereas at this point last year the Member States had collectively imposed a total of USD573.3m in fines. However, with many investigations still ongoing, Member State enforcement is expected to remain aggressive in pursuit of domestic cartel activity and is certainly an area to watch in the second half of 2017.

### Russia

Russia's anti-cartel enforcement has remained relatively quiet again so far this year. To date, the Federal Antimonopoly Service (FAS) has closed three cases and imposed only USD1.3m in fines.

### South Africa

South Africa had another slow start to the year, imposing only one fine, totalling USD1.8m.

## ASIA PACIFIC (APAC)

### Australia

In contrast to 2016, during the past six months the Australian Competition and Consumer Commission (ACCC) has issued only one fine, totalling USD7m, against an automotive manufacturer. By this time last year, the ACCC had issued a total of four fines, equalling USD34.3m. We may, however, expect to see increased activity in the second half of the year, as the ACCC is awaiting judgments and penalty outcomes in a number of proceedings, including in relation to its successful High Court appeal proceedings against Flight Centre for attempted price-fixing with three international airlines.

### China

China's National Development and Reform Commission (NDRC) had a slow start to the year with two small matters in January and March, compared to the nine matters resolved by mid-year 2016. In May, however, in a bold move against well-connected industry players, the NDRC announced that it intended to impose fines against 51 power generator companies, totalling roughly USD26.1m, a total which would mark a dramatic increase from previous years when these fines are confirmed.

### India

There has been an upsurge in cases prosecuted and fines imposed by the Competition Commission of India (CCI) so far in 2017. The CCI has prosecuted two cases and imposed USD30.6m in fines in the past six months.

### Japan

The Japan Fair Trade Commission (JFTC) imposed USD107.7m in fines in the first half of the year. This is a marked increase on the JFTC fine total for mid-year 2016. This increase in fines is largely due to two large fines imposed on companies in the manufacturing and energy sectors, amounting to USD60m.

### South Korea

Despite a significant drop in total fines compared with the same time last year, South Korea still had an active first six months of 2017, imposing fines in 13 matters. The largest fine imposed by the Korea Fair Trade Commission (KFTC) was for USD61.4m against four construction companies for bid-rigging.

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FOR MORE INFORMATION, PLEASE CONTACT ONE OF THE KEY CONTACTS BELOW, OR YOUR USUAL ALLEN & OVERY CONTACT:

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