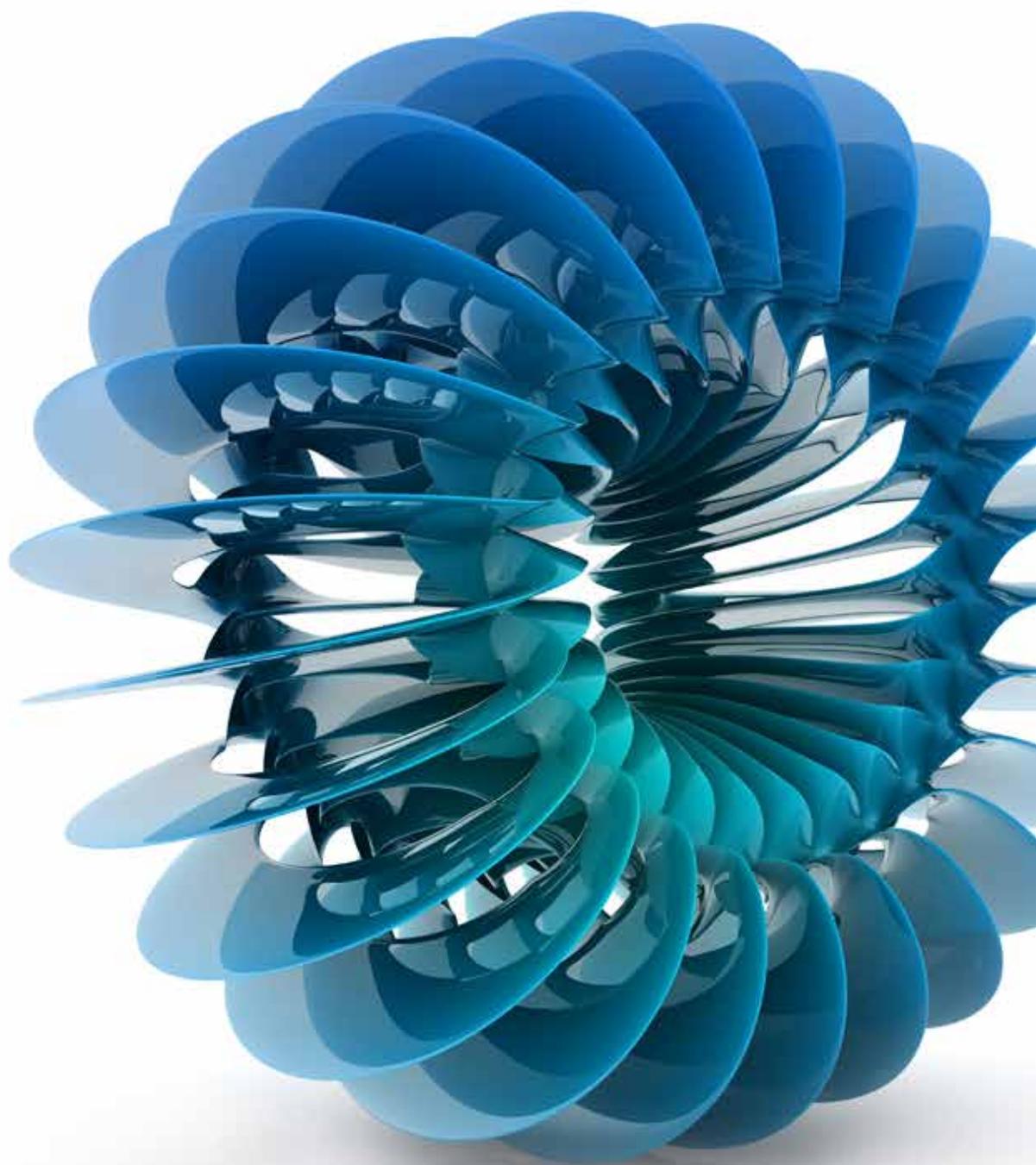


ALLEN & OVERY



Global Cartel Enforcement

2016 (Full-Year) Cartel Report

Introduction

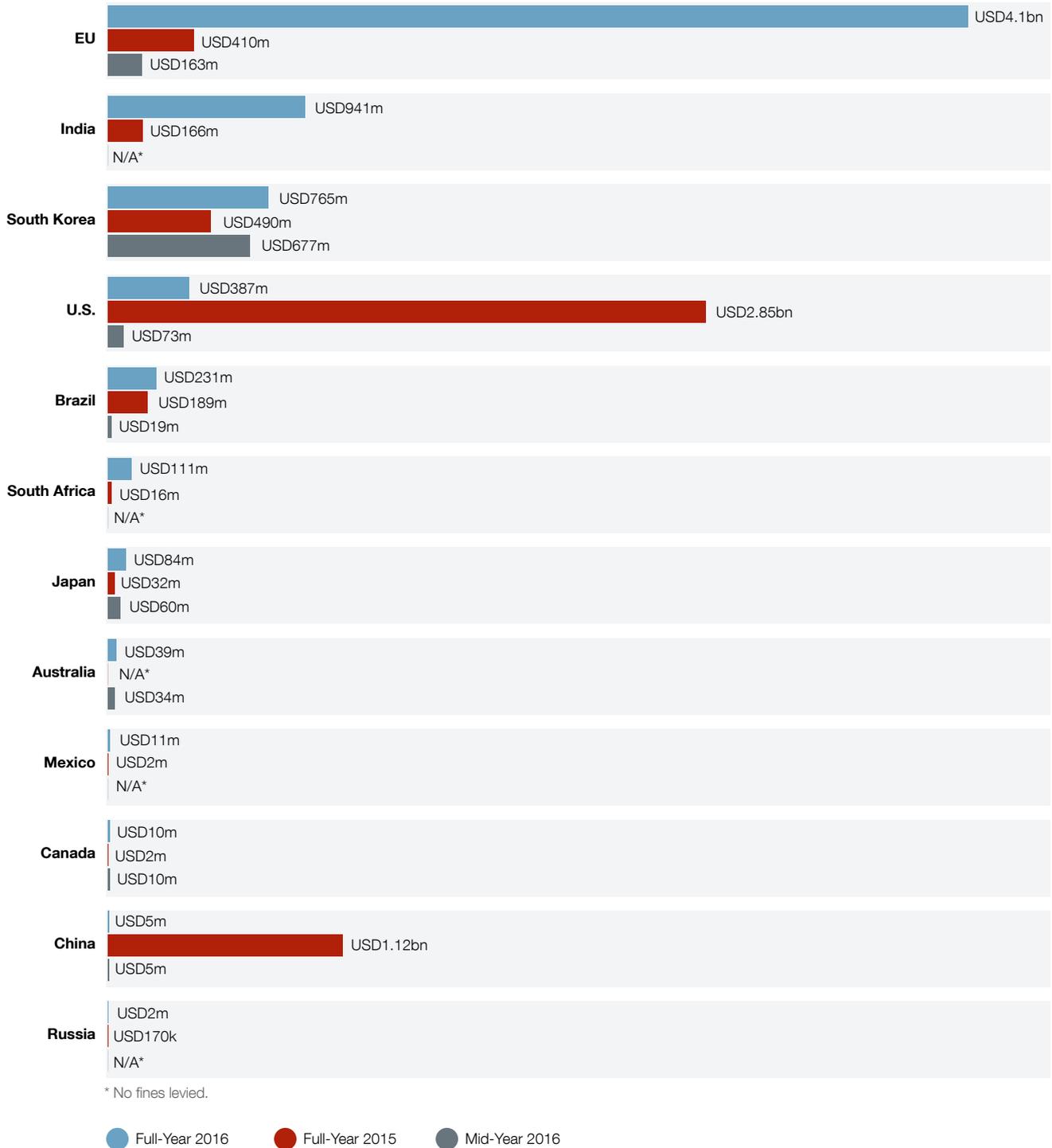
Once again, prosecutions across the globe were the overarching theme of cartel enforcement in 2016. Mature and developing competition authorities alike demonstrated an appetite for substantial fines and aggressive enforcement – from the European Commission (a perennial powerhouse) that imposed its largest amount in fines ever of over USD4.09 billion, to the Korea Fair Trade Commission (a recent “five-star-rated” antitrust enforcer) that topped APAC enforcers with USD764.81 million in fines, to the South African Competition Commission (a relative newcomer) that levied its largest single cartel fine ever of USD110.7m. The theme is likely to continue, with enforcement regimes expanded in Chile and on the way to being implemented in ASEAN countries such as Thailand and the Philippines. This year also ushered in renewed commitments to international co-operation from antitrust enforcers, culminating in an update by U.S. authorities to their Antitrust Guidelines for International Enforcement and Cooperation that was proposed “to reflect the growing importance of antitrust enforcement in a globalized economy...”.

But 2016 comes to a close among swirling political winds that warn of more inwardly focused, nationalistic times to come. The backlash against globalisation was felt most dramatically with votes in the U.S. and the UK. The new political headwinds against globalisation suggest that co-operations could be scaled back, which could change strategic decision-making for multinationals. And cartel enforcement is likely to be no exception. While any changes are unlikely to result in less cartel enforcement, evolving views on jurisdiction, comity and adequate deterrence will no doubt pose new challenges for authorities seeking to co-ordinate, and thus for companies trying to navigate, global cartel investigations.

What to watch for in 2017:

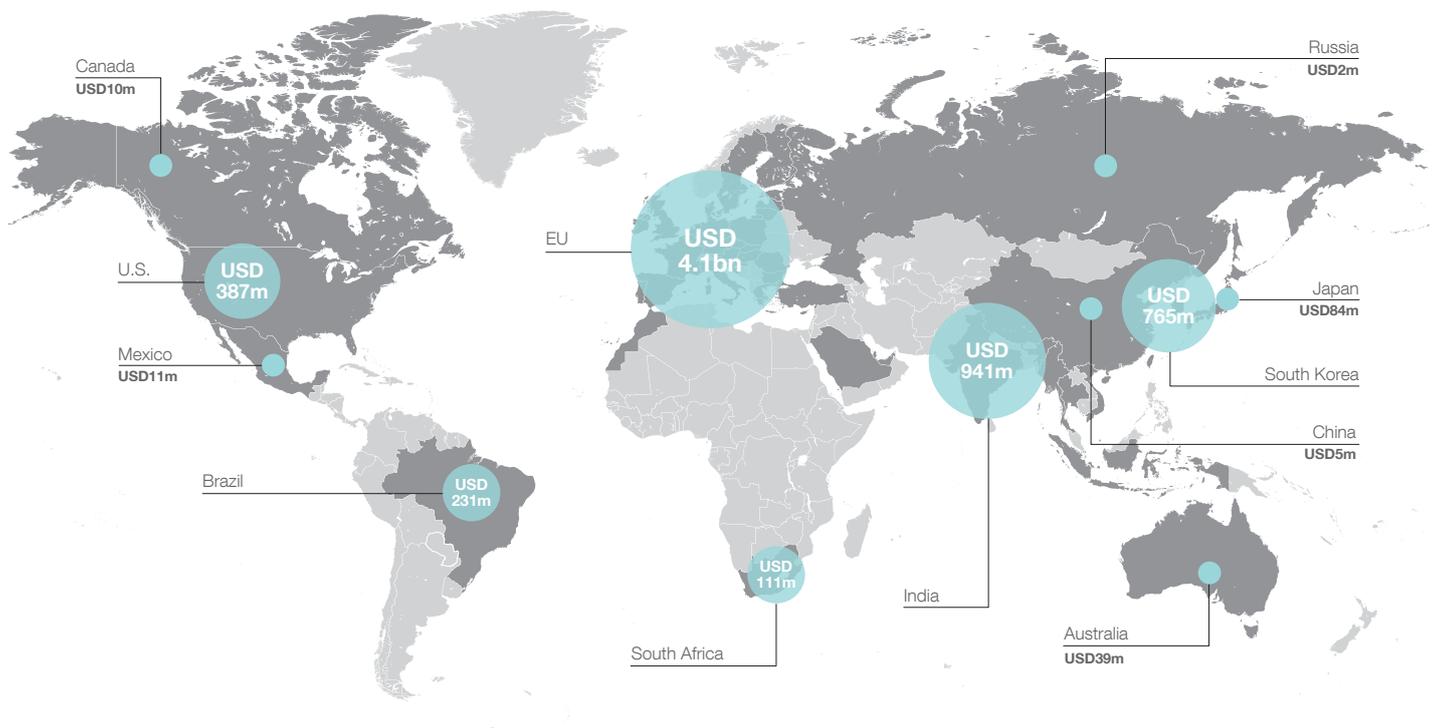
- **From the U.S.:** It appears unlikely that the U.S. will breach the USD1bn fine mark again in FY2017. The Antitrust Division's fine total dropped precipitously this year following the high watermark of USD2.85bn in FY2015. A similarly modest enforcement year appears to be in store for the Division, as its public investigations appear focused on more tailored markets and it faces the prospect of engaging in protracted litigation in connection with recently indicted cases.
- **From Europe:** We expect substantial fines from the European Commission again in 2017. This is likely to be the result, in large part, of the Commission's numerous reported, but as yet unresolved, financial services investigations.
- **From APAC:** We expect the Korea Fair Trade Commission to continue its aggressive streak, with the authority vowing to increase its monitoring of cartel-related activity, particularly in the intermediary goods, commodities and public sectors.
- **From BRICS:** Despite its slumping figures for the past two years, we expect to see Brazil's Administrative Council for Economic Defense (CADE) post substantial fines in 2017. In November, CADE reported that it maintained about 30 active investigations linked to Operation Car Wash, the investigation and prosecution of corruption and collusion in Petrobras contracting, and that it is set to receive 300% more applications for leniency in 2016 than in 2015.

Select cartel fine comparison



Statistics from selected jurisdictions are approximate and reflect fine levels and exchange rates at the time of writing and may not be exhaustive. 2016 U.S. statistics are for the U.S. fiscal year to date, which began 1 October 2015. All other countries' statistics cover the 2016 calendar year.

2016 global cartel fine levels



	EU	India	South Korea	US	Brazil	South Africa	Japan	Australia	Mexico	Canada	China	Russia
USD	USD4.1bn	USD941m	USD764m	USD387m	USD231m	USD111m	USD84m	USD39m	USD11m	USD10m	USD5m	USD2m
EUR	EUR3.7bn	EUR847m	EUR689m	EUR348m	EUR214m	EUR98m	EUR76m	EUR35m	EUR10m	EUR9m	EUR4m	EUR1.8m

Statistics from selected jurisdictions are approximate and reflect fine levels and exchange rates at the time of writing and may not be exhaustive. 2016 U.S. statistics are for the U.S. fiscal year to date, which began 1 October 2015. All other countries' statistics cover the 2016 calendar year.

Americas

United States

After posting a record-shattering year in 2015 with fines totalling USD2.85bn, the United States Department of Justice's (DOJ) Antitrust Division (Division) imposed only USD386.8 million in fines for FY2016. This marks the lowest fine total in 10 years. Notably, 2015 was marked as an outlier due to the conclusion of the foreign exchange cases, which accounted for approximately 90% of the total fines.

While the financial markets remained a primary focus for the Division in 2016, they were not the only markets under scrutiny. The auto parts industry was at the top of the Division's enforcement agenda in 2016, with the industry accounting for nearly two-thirds of the Division's fines in FY2016. The Division's largest fine this past year was for USD130m

against Nishikawa Rubber for participating in a conspiracy to fix prices and rig bids relating to automotive body sealing products in both the U.S. and Canada. Another substantial fine in the industry was a USD66.5m fine imposed on Corning International Kabushiki Kaisha for fixing prices for ceramic substrates used in vehicle emission control systems. A fine totalling USD55.5m was levied on Hitachi Automotive Systems for conspiring to fix prices for shock absorbers installed in cars sold in the U.S. And Rubycon Corporation was fined USD12m for fixing prices and rigging bids on certain electrolytic capacitors.

Individual prosecutions were a priority for the Division in 2016. The Division has continued to announce indictments against individuals involved in cases

such as LIBOR (two individuals), capacitors (nine individuals), and auto parts (four individuals). Most recently, the DOJ announced its first charges against individuals in its on-going investigations into alleged cartels in the packaged seafood industry (two individuals) and generic drugs (two individuals).

The Division's focus on individual accountability is likely to continue in 2017. Deputy Assistant Attorney General Brent Snyder announced earlier this year that the DOJ had adopted new internal procedures to identify culpable individuals early on in the investigation process and that a focus on companies' organisational structures will look to identify all senior executives who potentially condoned, directed or participated in cartel conduct.

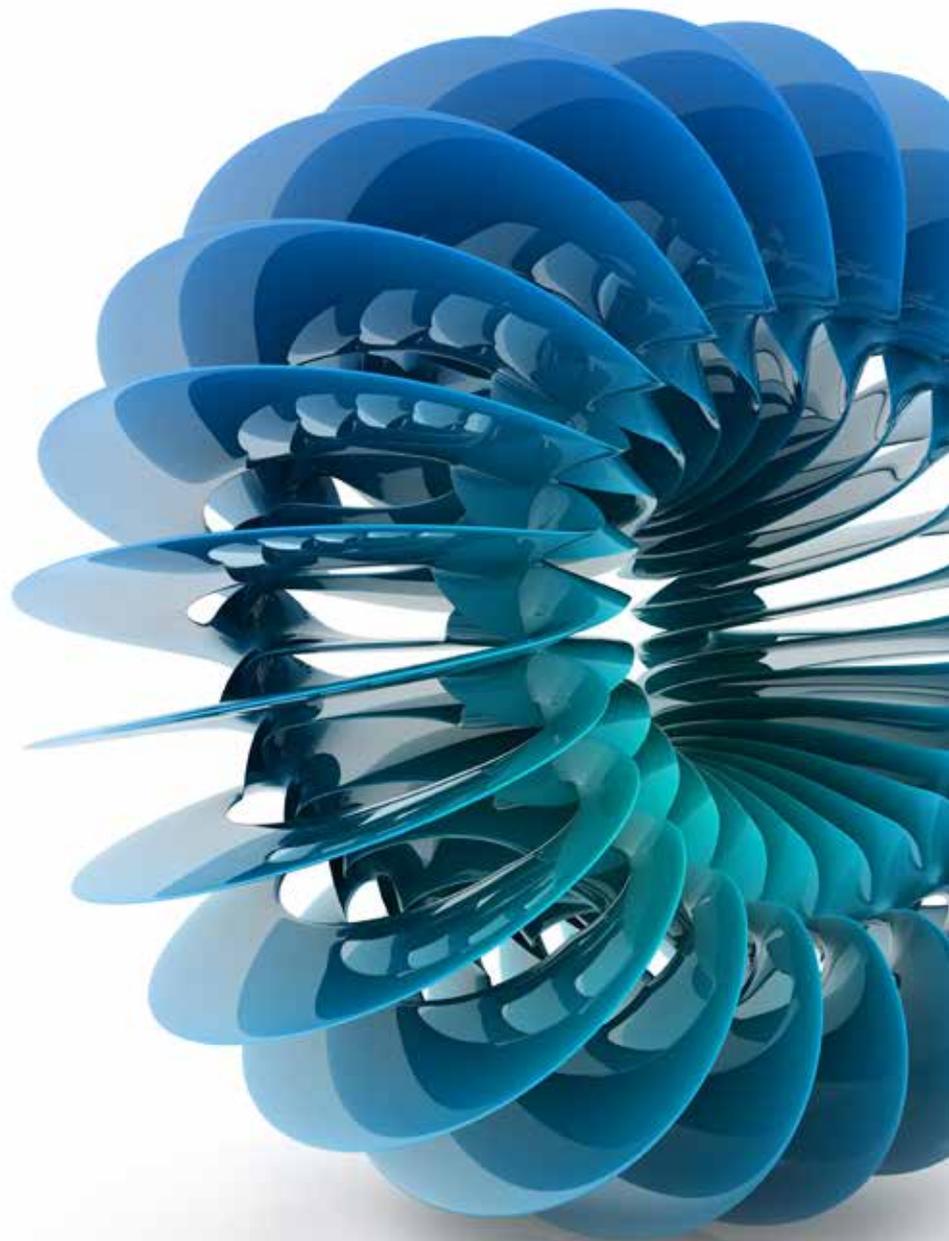
Key fact

Prosecutions of individuals involved in cartel activity were a priority area for the DOJ in 2016 and this trend is anticipated to continue in 2017.



Other focal points on the policy front include the DOJ's announcement of new guidelines, entitled "Antitrust Guidance for Human Resources Professionals", which place a focus on criminally prosecuting no-poach and wage-fixing agreements. Going forward, these agreements will be deemed per se illegal absent a formal collaboration between employers. In November, the DOJ also revealed a renewed commitment to international co-operation by issuing proposed revisions to its "International Enforcement and Cooperation Guidelines".

Looking ahead to next year, President-elect Donald J. Trump could influence a shift in competition enforcement through his new administration. While he has yet to outline a comprehensive competition policy, signs indicate he may favour an aggressive agenda for antitrust enforcement, particularly in certain sectors.



Brazil

After a slow start to the year, cartel-related fines levied by the Administrative Council for Economic Defense (CADE) picked up significantly in the second half of 2016. The regulator ended the year with total cartel fines of USD230.71m, far below its record-breaking 2014 level but a substantial uptick from the USD189m level reached in 2015.

CADE's activity over the course of the year shows that its steady pipeline of investigations continues to bear fruit. The largest of these fines, a total of USD89m levied upon six orange juice producers and their trade association, represented the culmination of over a decade of investigation and litigation related to the anticompetitive practices in that industry. Similarly, CADE's other large fines over the course of 2016 – in foreign exchange benchmark

rates, electrical transmission components, roll-on roll-off cargo services and auto parts – all relate to sectors that have been the subject of long-running investigations in Brazil and around the world.

More such cases may be yet to come. It was reported in November that CADE maintained about 30 active investigations linked to Operation Car Wash, the investigation and prosecution of corruption and collusion in Petrobras contracting, and that CADE is set to receive 300% more applications for leniency in 2016 than in 2015. It was recently disclosed that one of these applicants, the construction firm Andrade Gutierrez SA, sought leniency in connection to contracts for the high-profile Belo Monte hydroelectric project. These investigations by CADE

form part of a larger picture in which Brazilian, U.S., and other national authorities have sought and obtained billion-dollar settlements in related corruption and fraud cases – most recently the 21 December 2016 announcement of a USD3.6bn global settlement reached with construction and engineering giant Odebrecht and its petrochemical arm, Breskam. The DOJ has referred to this as an “unparalleled bribery and bid-rigging scheme” and investigations are still continuing in other Latin American countries such as Chile. The scope of these ongoing efforts suggests that significant settlements linked to construction, engineering and infrastructure services could be on the horizon for 2017.

Key fact

The CADE's long-running investigation into the orange juice market concluded with the imposition of a USD89m fine, its largest single fine of the year.

Canada

After a quiet enforcement year in 2015, the Canadian Competition Bureau (CCB) rebounded in 2016 with fines levied on both corporations and individuals engaged in cartel activities. Fines in 2016 totalled over USD10m, five times higher than the 2015 total. This figure was driven in large part by a fine against Showa Corporation for bid-rigging activity in the auto parts industry, an investigation started in 2013 that has resulted in nine guilty pleas and nearly USD60m in fines.

Outside of the auto parts industry, the CCB levied four different fines for bid-rigging against companies in the construction industry. It also entered into a plea agreement with a former employee of an IT company charged

with the bid-rigging of government contracts. As part of this plea agreement, the individual concerned has agreed to be actively involved in the CCB's compliance and awareness efforts, and will give numerous speeches and presentations on complying with Canadian cartel laws.

This is the first time an individual found guilty of cartel activity has been required to engage in active compliance promotion on behalf of the CCB. This new development could highlight a new enforcement technique the CCB will seek to deploy in future cases.

Key fact



Total fines imposed by the CCB in 2016 (over USD10m) were five times higher than in 2015.

Mexico

Despite being relatively dormant in the cartel enforcement sphere since its reorganisation, Mexico's Federal Economic Competition Commission (COFECE) showed signs of increasing activity in the second half of 2016. After issuing only one set of fines, against regional bus operators, in 2015 and none in the first half of 2016, COFECE announced fines in three cases in the second half of this year. Actions against sugar producers, automotive air conditioning compressors and ferry operators resulted in a total of USD10.76m in fines, compared to just USD1.67m 2015.

In the ferry case, COFECE imposed the maximum fines allowed by law on the companies involved and levied double fines on two of the individuals involved for recidivism. The doubling of fines for recidivism is a penalty that was last used in 2011. Meanwhile, the air compressor case – which involved sales by Mitsubishi Heavy Industries and Denso Corporation to General Motors Mexico – represented a shift by COFECE to looking beyond local industries, such as transport services, to examine the business activities of multinationals within the Mexican market. Together, these developments signal the potential for more active and aggressive enforcement in Mexico in 2017.

Key fact



In the ferry operators case COFECE imposed the maximum fines possible and doubled the fines on two individuals involved for recidivism.

South America

While Chile imposed no additional fines in the second half of 2016, keeping its fine total at USD66m, Colombia more than doubled its fine total by issuing a fine for USD70.3m against three disposable diaper (nappy) companies for participating in a price-fixing cartel from 2001 to 2012. This brings Colombia's fine total to USD129.3m for the year.

As anticipated in our 2016 Mid-Year Cartel Report, the Chilean parliament approved (in July 2016) new regulations for combatting anticompetitive activity. Although these regulations cover all aspects of competition law, the most striking additions may be in cartel enforcement: the new regulations raise the fine for cartel activity for the first time in the nation's history. Instead of the old maximum fine amount of USD22.5m, the new regulations allow corporations to be fined the equivalent of 30% of turnover generated by the misconduct or double the economic benefit received. Additionally, the

Fiscalia Nacional Economica may for the first time impose criminal sanctions for cartel activity, with possible imprisonment of up to 10 years for individuals found guilty of conduct related to hardcore cartel activity.

While there are additional levels of approval required before the regulations become law, there is little indication that they will not be passed. Chilean regulators indicate that the criminal enforcement of cartel activity, bolstered by these new regulations, will be a key focus for next year. They also acknowledge, however, that the reform could be a work in progress, meaning that it may still be some months before the first case testing the new regulations is brought.

Several other South American countries have advanced similar reforms. Argentina, perhaps inspired by Chile, has released a proposed reform to national cartel enforcement. This takes the form of regulations, which are currently available and subject to public

comment, and which include steeper fines for cartel participation and a new leniency programme. In May 2016, Peru also sought to reform its competition laws, with a renewed focus on its leniency programme. These reforms are designed to provide greater transparency for potential leniency applications, clarifying the level of co-operation required for potential benefits while stipulating potential levels of immunity applicants may receive. Both Argentina and Peru cite a desire to align with international norms as the impetus behind their reforms.

Despite these recent reforms, at this juncture it remains unclear as to how – if at all – the agencies involved will actually change cartel enforcement. If the trend of increased enforcement around the globe is a guide, however, it is safe to assume that these South American regulators will shortly be using their increased powers with greater regularity.

Key fact

Chile now has significantly stricter sanctions available for cartel activity, including fines of 30% of turnover and up to 10 years' imprisonment of individuals.

Europe, Middle East, & Africa (EMEA)

European Union

The European Commission (Commission) had a slow start to 2016, issuing only three fines, totalling USD162.7m, but finished the second half of the year strong by imposing a year-end total of over USD4.09bn in fines. This marks a record-breaking year for the Commission, issuing its largest-ever fine total. In comparison, the Commission issued only USD410m in fines in 2015. A large fine total was anticipated this year since public reports had indicated that the Commission would conclude a number of its investigations, specifically in the auto and financial sectors, but the scale of fines nevertheless exceeded expectations.

The largest fine levied by the Commission this year was for cartel activity in the auto parts sector. The fine was issued against five truck producers for a combined total of USD3.2bn and was the sole fine issued in the second half of the year. The Commission found that five companies colluded for 14 years in pricing trucks, passing the cost of environmental compliance on to consumers.

The next largest fines were imposed against three banks for allegedly manipulating the EURIBOR interest rate benchmark; Credit Agricole, HSBC and JPMorgan Chase were fined a total of USD521m.

The value of co-operation in Commission investigations was also on display again this year. The third largest fine of the year, again in the auto parts sector, was issued against Mitsubishi Electric and Hitachi for a combined total of USD149.8m. The two companies, along with Denso, were found to have co-ordinated prices and allocated customers or projects related to alternators and starters. Denso was not fined in the matter because it alerted the Commission to the existence of the cartel and received full immunity. And the fines levied against the remaining two companies were reduced by almost a third each for their co-operation with the investigation, illustrating the Commission's clear commitment to crediting those who co-operate with it during investigations.

On the policy front, Commissioner Vestager used the auto parts cases to reiterate the Commission's commitment to prosecuting cartel conduct that affects European consumers even when the meetings relating to the conduct itself took place outside of Europe. Vestager has not been afraid to close open cartel cases and the General Court's decision at the end of 2015 to annul the Commission's ruling in the Airfreight cartel case has caused a reduction in the opening of new cartel cases that may continue through 2017. The ruling was a significant defeat for the Commission, and Vestager has been left to pick up the pieces. She is halfway through her mandate, and in the past year, which has been notable for an emphasis on tax policy cases and state aid, her actions have been met with mixed reactions by the European Union and the international community. Heading into 2017, a close eye will also be kept on the enforcement implications of the United Kingdom's planned exit from the European Union.

Key fact

2016 saw the Commission issue a record-breaking total of USD4.09bn in fines for cartel activity.

European Member States

Continuing a trend that emerged last year, European Member States remained aggressive this year in their pursuit of domestic cartel activity. For example:

- Spain issued the largest fine by a Member State this year: a fine of USD143.2m for price-fixing by eight producers of diapers (nappies) for adults. In addition to imposing the largest fine, Spain has closed more cartel cases than any other Member State. Spain's Comisión Nacional de los Mercados y la Competencia remained active in the second half of the year, imposing fines totalling nearly USD100m in closing an additional seven cases in the auto, construction and service sectors.
- Italy imposed two significant fines in 2016: a USD119.8m fine was levied for bid-rigging related to a public tender to provide cleaning services to schools worth over EUR1.63bn, and a USD112.6m fine was imposed on 11 suppliers of vending machines and a trade body for allocation in the market and engaging in bid-rigging as part of a non-aggression pact.

Italy's competition authority also launched a cartel probe into 15 medical oxygen firms, which may contribute to 2017 being another active year.

- Germany was very active in 2016, imposing considerable fines and opening a series of new investigations. The two largest cartel fines imposed by the authority were a USD103.2m fine for anticompetitive price maintenance in the beverage retail sector and a USD24m combined fine on nine wholesalers for fixing prices of heating and air conditioning products used in restrooms. The authority also concluded the long-running rail cartel investigation, imposing USD118m in fines on nine rail manufacturers. In addition, the Bundeskartellamt announced a probe into the country's healthcare and household waste markets and launched a series of dawn raids investigating, among other areas, the agricultural, automotive supplier and pharmaceutical sectors.
- The Competition and Markets Authority (CMA) in the United Kingdom had a notable "first" this year – exercising its authority to

disqualify a former managing director of an online retailer for five years for price-fixing. This marks the first time the CMA has used its disqualification powers in a competition case.

- Cartel enforcement has also been high on the agenda across Central and Eastern Europe. There have been an increasing number of dawn raids and leniency procedures, and cash bounties for cartel whistleblowers have been introduced in Slovakia and Hungary. Bid-rigging, especially in the construction and IT sectors, will be a continued area of focus in the coming year.
- Many other Member States were active in 2016, including Belgium, the Czech Republic, Denmark, France, Hungary, Latvia, Netherlands, Poland, Romania, and Slovakia. The construction and transportation sectors accounted for about one-third of the fines imposed in Europe by these Member States.

With many ongoing investigations, Member State enforcement remains an area to watch in 2017.

Key fact

The UK CMA has issued its first-ever director disqualification order in a competition case.

Russia

Russia's anti-cartel enforcement remains subdued. The Federal Antimonopoly Service (FAS) issued one cartel fine in 2016 against five Crimean gas station operators for a total of RUB129m (USD2m). However, in November, an appellate court denied an appeal from five major shipping companies against the FAS's finding that they colluded over the level of freight surcharges. While no fine has yet been levied, the court's decision clears the way for the FAS to impose one in the very near future.

The FAS noted earlier this year that it would focus on prosecuting "quality" cartel cases over "quantity", and that it would seek to use softer enforcement methods rather than fines. This did not mean that the FAS scaled back its enforcement activities. It continues to pursue Apple for fixing the prices of its smartphones among rival retailers, and opened a new probe into similar alleged conduct by Samsung in late November. The FAS also raided two major PC manufacturers for evidence of price-collusion and ruled against 34 sugar mills in another price-fixing conspiracy.

Key fact



The FAS has continued its investigations into price-fixing in the smartphone, PC manufacturing and sugar mills sectors, while indicating a policy shift away from fines to softer enforcement methods.

South Africa

After a slow start to 2016, the South Africa Competition Commission (SACC) finished the year with some notable cases. The SACC levied the largest cartel fine in its history via a settlement of ZAR1.5bn (USD110.7m) against ArcelorMittal South Africa Limited (AMSA). The SACC alleged that AMSA was a key participant in at least three different conspiracies involving some major players in the South African steel and scrap metal industries. This settlement is only the first in an investigation that began as early as 2008 with dawn raids against the various parties. Additional fines and settlements can be expected against more conspirators as the enforcement action continues to unfold. In its other major fine of the year, the SACC imposed a fine of ZAR8.6m (USD544,517) on two bicycle

manufacturers following a contested collusion hearing before the Competition Tribunal.

The past few months have also kept the SACC busy, as it filed new cases in business areas as diverse as the newspaper, railway, airline, coffee, textile, gear pump and security-service industries, and initiated new investigations into the cargo-shipping industry. Such a flurry of activity confirms a trend toward more active enforcement, which many analysts predicted earlier this year when South Africa shifted to holding individual executives criminally liable for cartel activity and signed a memorandum of understanding with the other BRICS countries to co-operate more closely in competition cases.

Key fact



**USD
110.7m**

The SACC imposed its largest-ever cartel fine on participants in conspiracies in the steel and scrap metal sectors.

Asia Pacific (APAC)

Australia

In stark contrast to 2015, when no fines were imposed, the Federal Court of Australia imposed four cartel fines in 2016, for a total of USD39m, in proceedings commenced by the Australian Competition and Consumer Commission (ACCC). The largest fine, for USD14m, was imposed upon Cement Australia Pty Ltd and related companies for restricting competition by denying competitors access to flyash, a cheap partial substitute for cement in ready-mix concrete (however, the ACCC has appealed the level of penalty to the Full Court, as it had submitted at trial that penalties over AUD90m were appropriate). There were two fines imposed in the laundry detergents cartel – USD13.7m against Colgate-Palmolive and USD7m against Woolworths. The fourth fine was imposed against Zelko Lendich, a former director of Egg Corporation Limited, for USD91,000, for attempting to induce a cartel arrangement between competing egg producers. On 14 December 2016, the Federal Court imposed a fine of USD6.6m against Australia and New Zealand Banking Group Limited, as well as one for USD4.4m against Macquarie Bank Limited, following proceedings commenced by the ACCC on a consent basis in relation to alleged

attempts to fix the benchmark rate for the Malaysian ringgit. The trial judge commented he “would have imposed higher penalties, possibly significantly higher penalties, in respect of each of the attempted contraventions, were it not for the fact that the parties had agreed on the penalties”.

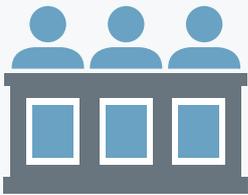
More is certain to come in this space, given that the ACCC is awaiting the court’s penalty outcomes in a number of cartel proceedings, including in proceedings against Yazaki Corporation relating to price-fixing of motor vehicle wire harnesses, against Prysmian Cavi E Sistemi S.R.L relating to the supply of high-voltage land cables in Australia and against travel agent Flight Centre in relation to attempts to induce three international airlines to enter into price-fixing arrangements (following the ACCC’s successful appeal to the High Court, the matter will now return to the Full Federal Court for the determination of the penalty). ACCC Chairman Rod Sims continues to advocate for higher penalties to be awarded by courts, and particularly that the sanctions be “commercially relevant”; that is, they must be high enough for businesses not to see them as merely an acceptable risk of doing business.

The ACCC brought its first and second criminal cartel cases in 2016, both in connection with the international transportation of vehicles. In the first criminal cartel case ever brought by the ACCC, global shipping company Nippon Yusen Kabushiki Kaisha (CNYKK) pleaded guilty to a criminal cartel charge for anticompetitive behaviour. The court has yet to impose a sentence against NYKK. On 15 November 2016, the ACCC filed its second criminal cartel case, this time against Kawasaki Kisen Kaisha (K-Line), a Japanese-based shipping company, for the same international shipping cartel. It is likely that there will be more criminal cartel charges in relation to this conspiracy, given that the ACCC’s investigation into other alleged cartellists is on-going. ACCC Chairman Rod Sims has also opined that, given the ACCC has around 10-12 in-depth criminal cartel investigations under way, he expects to commence one or two criminal prosecutions per year.

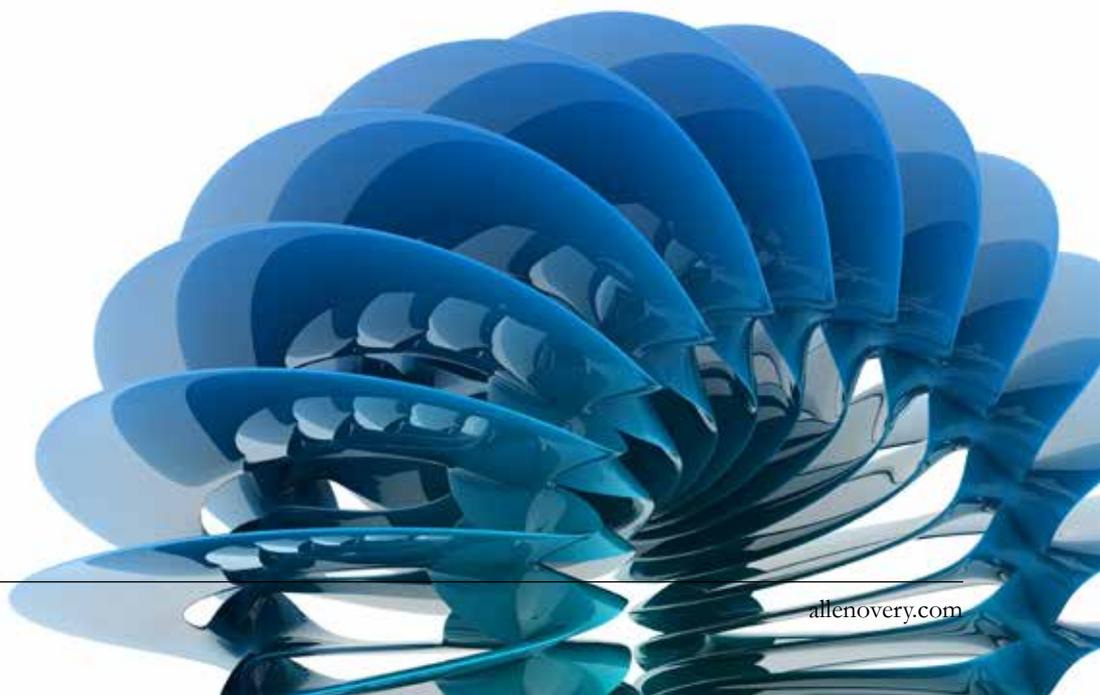
Key facts



ACCC Chairman Rod Sims argues for the imposition of fines which are high enough to avoid them being viewed as an acceptable risk of doing business.



Criminal cartel cases were brought for the first time by the ACCC and are expected to become a regular feature of Australian enforcement activity.



China

China's National Development and Reform Commission (NDRC) imposed a total of USD5.3m in fines in 2016 – a significant decline from the USD1.12bn in fines imposed by it in 2015. The bulk of the fines were imposed on pharmaceutical companies (USD1.6m) and vegetable wholesalers (USD1.27m).

The remaining fines were imposed on insurance companies, concrete companies and local motor vehicle inspection-services companies, as well as certified public accountants.

China continues to increase its focus on competition law. The NDRC issued draft guidelines on leniency applications in cartel cases, which were submitted to the Anti-Monopoly

Commission in June. It also signed MOUs with the Canadian Competition Bureau, the South African Competition Commission and the Japan Fair Trade Commission in an effort to increase its effectiveness and profile in international cartel matters by building closer relationships with other competition authorities.

India

The Competition Commission of India (CCI) imposed only one fine this year. This was imposed upon 11 cement companies for a total of USD941m. It is not the result of a new case or action, but follows on from a fine initially imposed in 2012. The Competition Appellate Tribunal

subsequently (last December) asked the CCI to reconsider the matter.

The CCI has gone through a leadership change this year, with Devender Kumar Sikri, a former officer of the Indian Administrative Service, taking over as the new CCI Chairman

in January. Former Chairman Ashok Chawala overcame many obstacles to establish the agency, but it continues to face a number of challenges, including a lack of sufficient enforcement resources.

Japan

Japan's Fair Trade Commission (JFTC) imposed USD83.9m in fines over the course of 2016, well over double the previous year's total. Buoyed by nearly USD60m in fines resulting from price-fixing in the capacitors industry in March, in September the JFTC added over USD17m in fines imposed upon various construction firms for bid-rigging related to highway repair projects in Northern Japan. A total of 20 companies were issued cease and desist orders in relation to

their work to rebuild areas devastated by the 2011 earthquake and subsequent tsunami; officials of three of the companies received prison terms ranging from 14 to 18 months. The JFTC also fined three communications equipment companies approximately USD4m for bid-rigging related to an electrical company tender, reducing the fines for two of three companies and exempting the third entirely under its leniency programme.

A series of raids in late 2016, as the JFTC moved to investigate price-fixing in the asphalt industry, bid-rigging for medical protective gear and collusion between railway uniform suppliers, indicate a busy year ahead. The JFTC also continued efforts to co-ordinate with other international enforcers, reaching an information-sharing agreement with EU authorities in mid-March and a co-operation agreement with China's Ministry of Commerce in mid-April.

Key fact

Japan imposed USD83.9m in fines in 2016, well over double the 2015 total.

South Korea

The Korea Fair Trade Commission's (KFTC) robust enforcement efforts have continued in 2016, with fines totalling USD764.81m. This number marks a sharp increase in the fines issued by the KFTC in 2015 (totalling USD 490.7m), but a decrease from the total for 2014 (USD1.01bn).

Breaking with trends of previous years, the KFTC issued the greatest total of fines against manufacturing-related cartels, with the cumulative fines imposed in 2016 reaching USD410.43m. In 2016, three of the four highest fines were imposed against manufacturing-related cartels, including a group of six cement manufacturers (roughly USD167.58m), a group of 12 linerboard manufacturers (USD98.12m) and a cartel of 45 paper manufacturers (USD88.66m).

The KFTC also continued its focus on construction-related cartels by imposing a total of USD330.89m in fines. The largest single fine imposed by the KFTC this year was USD305.6m in relation to a cartel of 13 construction firms accused of rigging bids for LNG construction projects. Fines were also levied in other industries, including the automotive, energy, transportation, telecommunications and service industries. The KFTC finished the year by issuing its largest fine ever imposed on a single company against US chipmaker Qualcomm for USD865m. This fine was for unilateral conduct, but shows the KFTC's unremitting pursuit of competition law enforcement.

In late June 2016, the KFTC released its plans for monitoring cartels for the remainder the year. It announced that it planned to continue to increase its monitoring of cartel-related activity, focusing on intermediary goods, commodities and the public sector.

In November 2016, the KFTC was given the first ever "five-star" antitrust rating for an enforcement watchdog in Asia by Global Competition Review. The KFTC joined the ranks of other "five-star" agencies, including Germany's Federal Cartel Office, France's Competition Authority and the US Federal Trade Commission and DOJ. It gained this accolade in recognition of its procedural fairness, win-loss ratio in court and enforcement of cartel-related activity.

Key fact



Fines imposed by South Korea in 2016 totalled USD764.81m, a sharp increase from the USD490.7m total in 2015, the majority in relation to manufacturing-related cartels.

Other developments

Rapid changes have been taking place, with other countries in the APAC region tackling new drafting and implementation of competition laws. At the onset of 2016, the Philippine Competition Commission elected its first chairman, following its formation in July 2015. In October, Thailand's government approved amendments to the Trade Competition Act. The amendments are directed at attracting more investment and protecting against unfair trade practices within the country.

Indonesia was an active APAC enforcer in 2016, and Pakistan, New Zealand and Singapore also each issued a significant fine:

- Following a flurry of activity in 2015, Indonesia's Commission for the Supervision of Business Competition (KPPU) has maintained its vigorous enforcement efforts under new chairman Dr. Muhammad Syarkawi Rauf, imposing a total of USD25m in fines in seven cartel cases during 2016. In a significant victory for the KPPU, the Supreme Court of Indonesia recently upheld the agency's decision to fine members of a conspiracy to fix the price of SMS text messages. The KPPU also focused on Indonesia's construction and agricultural sectors, levying fines on construction contractors in four different bid-rigging cases and against members of a beef price-fixing conspiracy. On the policy front, the KPPU has long sought an increase in the financial penalties that it can impose, and an amendment to allow such an increase is currently pending before the Indonesian parliament.
- The Competition Commission of Pakistan fined a national poultry trade association over USD940,000 for fixing prices of poultry products.
- New Zealand's Commerce Commission emphasised other consumer protection regimes over cartel enforcement during 2016, yet nonetheless did impose fines totalling over USD11.5bn upon real estate agencies that carried out an agreement to pass on the entire cost of listing properties on a real estate website to the agencies' customers.
- In March 2016, the Competition Commission of Singapore imposed fines totalling over USD658,000 against 10 financial advisers for collectively pressuring a competitor to withdraw an offer from the life insurance market.
- We may expect to see future enforcement activity in the APAC region, with newly-established competition regulators in Hong Kong and the Philippines.
- The Hong Kong Competition Ordinance entered into effect one year ago. The Hong Kong Competition Commission is ramping up enforcement, with around 10 cases currently under in-depth investigation, some of which might be brought to the Competition Tribunal in 2017.
- The Philippine Competition Act was passed in July 2015, and the Philippine Competition Commission has recently invested in building capacity to undertake cartel investigations.

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