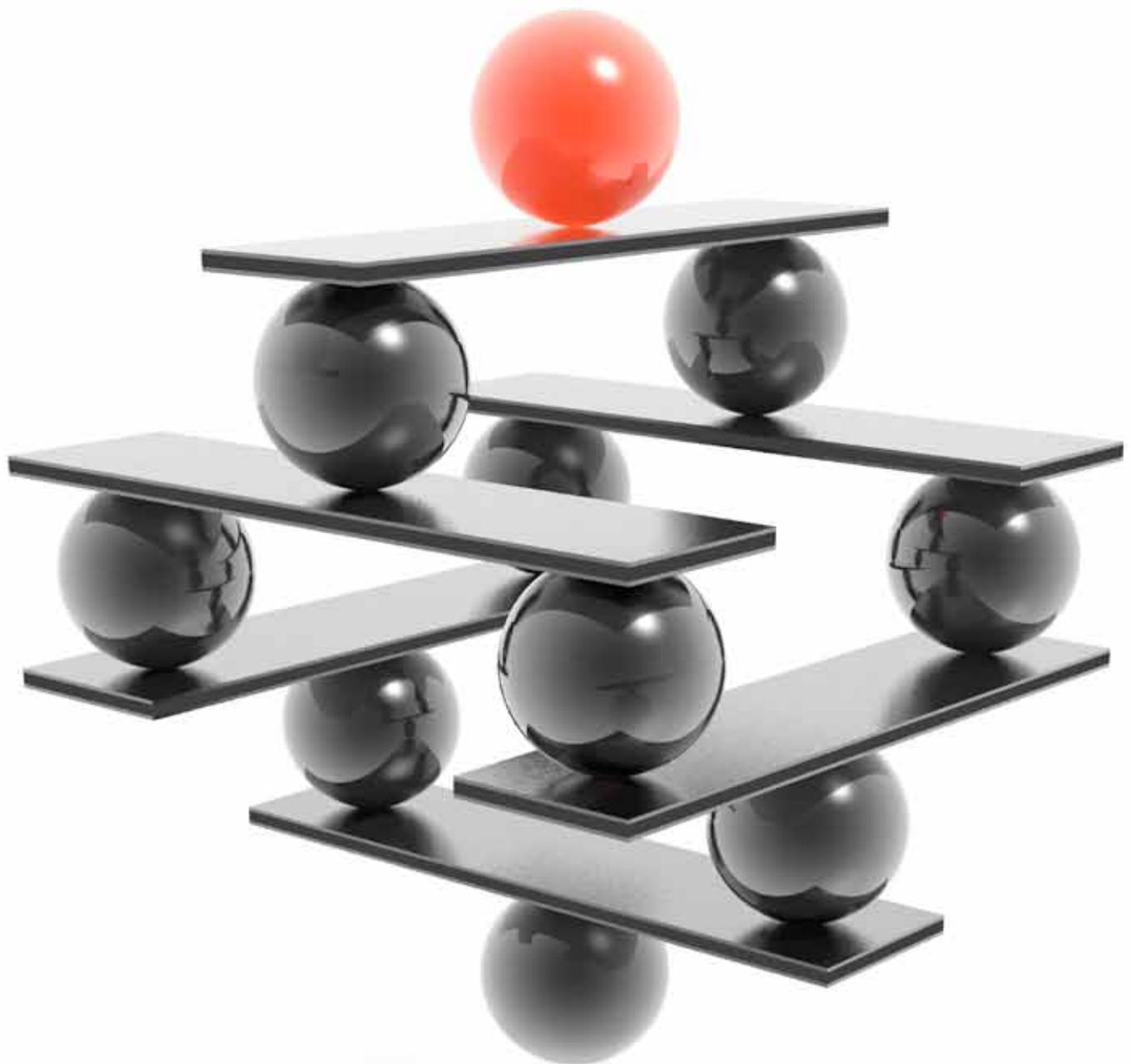


ALLEN & OVERY



Global Cartel Enforcement

2013 Year in Review

Prioritization and globalization drive higher fine totals from fewer investigations

Although the record-breaking fines of 2012 proved to be a tough act to follow, the era of aggressive antitrust enforcement continued in 2013. While fewer new investigations emerged this past year, authorities nonetheless imposed record-level penalties. It was a year defined primarily by the substantial regulatory settlements imposed against the global LIBOR and auto parts cartels.

With more to come in the LIBOR and auto parts investigations, we expect substantial fine figures to be the norm again in 2014. We also expect the financial services sector to continue to command the spotlight in the coming year. New investigations into the financial services sector emerged in 2013 that will further unfold in 2014, with top U.S. and EU officials warning that these latest investigations may be the most significant yet.

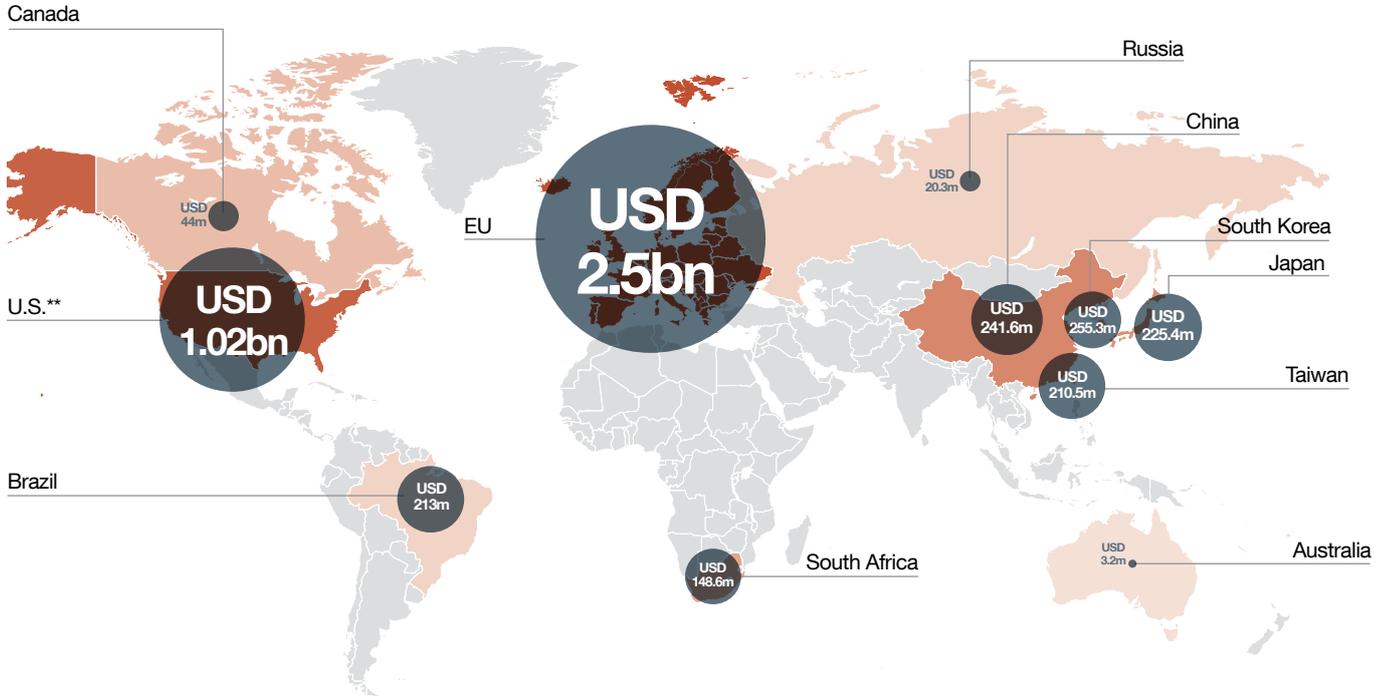
But 2014 will not be without its challenges for antitrust authorities. The resource constraints born of the global financial crisis will continue to slow the pace of new investigations, as well as impact the depth of the investigations authorities are able to pursue in any one sector. Prioritizing matters and targets of investigations will be a critical task for authorities for the foreseeable future, with authorities struggling to draw lines between those they will and will not pursue in a way that is both transparent and fair.

The globalization of antitrust enforcement will also pose a continuing challenge for authorities. The mass proliferation of antitrust enforcement, rising penalties, and the seemingly boundless extraterritorial reach of national laws continue to complicate coordination efforts and create a risk of

duplicative penalties. Matters such as auto parts and LIBOR highlight the problems posed by the regulatory enforcement thicket that now exists in complex, global matters. Multiple agencies in scores of countries are more frequently pursuing and punishing the same basic conduct, but under different laws and with no regard to concepts like successive prosecution and double jeopardy. Moving forward, authorities will face serious questions about whether there is a better way to coordinate resolution of global enforcement matters to accomplish appropriate deterrence without tipping the balance toward over-punishment.

In the evolving regulatory environment, multinational corporations are well advised to maintain a global perspective in addressing potential cartel liability. An international approach greatly enhances the efficiency of investigative processes, enables multi-jurisdictional negotiations on sanctions, and significantly reduces the costs for the corporations involved. More importantly, a global strategy prevents additional liability that might otherwise result from unawareness or inconsistency. Whether a corporation chooses to defend or cooperate, it must give due consideration to the global implications of each step along the way.

GLOBAL FINE LEVELS



*Statistics from selected jurisdictions are approximate and reflect fine levels and exchange rates at the time of writing and may not be exhaustive.
 **U.S. statistics cover the U.S. fiscal year, which runs from October 1 to September 30. All other countries' statistics cover the 2013 calendar year.

	EU	U.S.	China	Japan	Brazil	Taiwan	South Korea	South Africa	Canada	Russia	Australia
USD	2.5bn	1.02bn	241.6m	225.4m	213m	210.5m	255.3m	148.6m	44m	20.3m	3.2m
EUR	1.9bn	756m	181.3m	168.3m	161m	162m	184.1m	113.2m	33.4m	15.3m	2.4m

“Moving forward, authorities need to find a better way to coordinate global cartel enforcement matters to ensure appropriate deterrence without tipping the balance towards overpunishment.”

John Terzaken

U.S.

2013 marked a changing of the guard for U.S. cartel enforcement. In January, Bill Baer was sworn in as the new Assistant Attorney General of the Antitrust Division. Four other positions in the hierarchy of the Division's criminal program were also filled this past year, including the Deputy Assistant Attorney General for Criminal Enforcement and the Chiefs of the Chicago, New York and San Francisco field offices. In each case, these positions were filled by career prosecutors from the Division.

Amid these changes, the Antitrust Division's fines exceeded USD1 billion for the second year in a row. In the final days of fiscal year 2013, the Division signed plea agreements in the auto parts investigations that accounted for USD740 million of the total. The statistics also reflect the Division's focus on prosecuting foreign companies and their subsidiaries, which represented 100% of this fiscal year's fines against corporations.

The Division has also continued to aggressively pursue individuals. In early December, a court imposed the longest jail sentence for an antitrust offense in U.S. history. Frank Peake, the former president of shipping company, Sea Star Line LLC, was sentenced to five years in prison for his role in a price-fixing cartel. This was the latest in a trend of increasing penalties against individuals, particularly senior executives, for antitrust offenses. The Division is now imprisoning approximately double the number of defendants it did in the 1990s. In addition, defendants are serving longer terms. The average prison sentence imposed on antitrust defendants last year was over two years – more than three times the average of the 1990s.

Such ever-increasing penalties were the subject of a recent Congressional hearing, where the Division was urged to shift its punitive enforcement approach to make greater use of behavioral remedies. This change in emphasis may, however, already be underway. Earlier this past year, Assistant Attorney General Baer remarked that the Division will make a practice out of requesting that convicted corporations hire compliance monitors, as it recently did against AU Optronics in the LCD case. Behavioral remedies were also included in non-prosecution agreements with members of the Municipal Bonds cartel, and in a deferred prosecution agreement with RBS in the LIBOR investigation.

The auto parts and LIBOR matters will likely continue to drive the Division's enforcement agenda in fiscal year 2014. Although budget cuts have restrained the Antitrust Division's resources, Assistant Attorney General Baer told Congress that criminal enforcement will remain a top priority. Already, the Division has imposed substantial fines in the auto parts investigation, which Attorney General Holder described as "the largest criminal investigation the Antitrust Division has ever pursued both in terms of its scope and the commerce affected by the illegal conduct." Further, Holder warned that the U.S. investigation of benchmark manipulation is ongoing.

EU

The European Commission exceeded its 2012 fines (EUR1.88bn) with a total of EUR1.9bn in 2013.

Even when accounting for the various reductions in fines granted to companies by European courts this past year (to the tune of approximately EUR280m), the revised total should still be considered high.

Until December, the number of fines issued was relatively low. In July, the Commission fined wire harness suppliers nearly EUR142m in the ongoing auto parts investigation, in which leniency applicant Sumitomo avoided a fine of over EUR291m. In November, the Commission also tackled a cartel involving European North Sea shrimp traders with fines of nearly EUR29m.

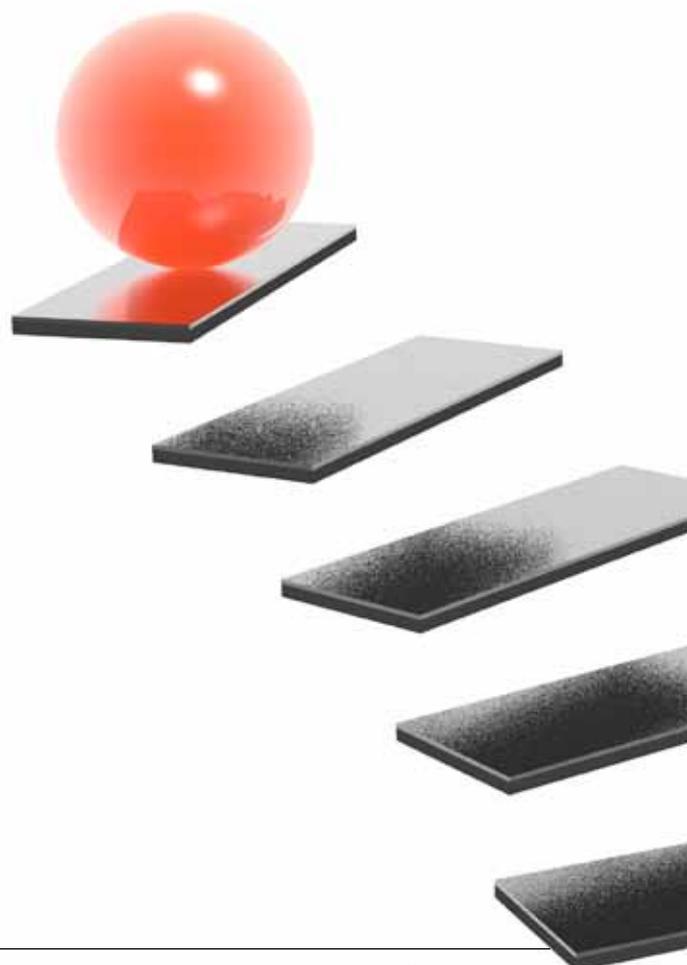
The significant enforcement figures for 2013 are almost entirely due to the record-breaking EUR1.71bn fine levied against six banks just weeks ago, for their involvement in a conspiracy to manipulate LIBOR and Euribor benchmarks. UBS and Barclays received full immunity from prosecution for whistle-blowing on the cartel and cooperating with the Commission, saving them from colossal fines of EUR2.5bn and EUR690m respectively. Several other banks received substantial reductions in fines for cooperating.

Major prosecutions already seem likely for 2014.

The Commission has warned that December's fines were by no means the end of its investigation into benchmark manipulation, particularly with regard to the three banks that did not settle. The Commission is also due to complete its ongoing investigation into various sectors of the auto parts market in the near future. Still further, seven regulators including the Commission are handling a global investigation into foreign exchange rate manipulation. Competition Commissioner Almunia said in November that the Commission would start directing more resources to the foreign exchange investigation once it had finished settling the LIBOR/Euribor investigation. In addition, the Commission issued a Statement of Objections to several banks involved in the credit default swap market, which is likely to reach decision in 2014.

The Commission's enforcement efforts do not stand alone in Europe. Individual Member States' competition authorities have made a number of successful prosecutions. There has been substantial cartel enforcement activity in Belgium, France, Germany, the Netherlands, Poland and Spain. Following the trend of pursuing financial institutions, there have also been notable fines in Turkey, of EUR467m, and Hungary, of EUR32m, related to collusion in interest rate and foreign exchange markets respectively.

On the other hand, Member States did not receive the benefit of a harmonized system for private antitrust enforcement in 2013. Commissioner Almunia criticized the EU Parliament for delaying the measure, and urged them to make progress before the end of the legislative term.



Canada

Like the U.S., Canada's Competition Commission underwent a leadership change in 2013. Newly appointed Commissioner John Pecman has expressed a renewed commitment to cooperate with other antitrust agencies, and introduced a Transparency Initiative and Criminal Cartel Whistleblowing Initiative to engage the public's assistance in detecting possible criminal cartel issues.

Commissioner Pecman's tenure is off to an aggressive start. Fines totaled USD44m in 2013, surpassing the 2012 fine total of USD22m. The majority of the total came from fines imposed on participants in the global auto parts cartel, including a record USD28.5m million against Yazaki. The Commission also obtained substantial penalties against Hershey for a cartel in the chocolate industry (USD3.8m) and Cathay Pacific Airlines for its role in the global air cargo cartel (USD1.4m).

Australia

The Australian Competition and Consumer Commission (ACCC) experienced a slow enforcement year, collecting a cumulative USD3.2m in cartel fines resulting from a land cable cartel (USD1.3m) and automobile bearings cartel (USD1.9m). This pales in comparison to ACCC's record breaking 2012 total of USD49m. In addition, the ACCC suffered a setback in November when Australia's Federal Court dismissed allegations of price-fixing made against ANZ after a decade-long enforcement effort in the home loans market. Conversely, the ACCC succeeded in a price fixing claim against the travel agency Flight Centre, with the penalty decision still pending. Both decisions have been appealed.

Meanwhile, in 2013, private enforcement statistics momentarily surged when Norcast, S.ár.L allegedly a victim of a bid-rigging conspiracy, obtained a fine of USD22.4m against Bradken, Ltd., the first company to be found liable for such conduct. Unusually, the parties reached a settlement agreement setting aside the penalty prior to the appeal hearing. Australian cartel enforcement may rebound in 2014, as investigations are still apparently pending and further proceedings commenced in relation to an alleged laundry detergent cartel. Also, following reports of frustration among Australian judges at their perceived lack of power to impose adequate fines on antitrust offenders, the Australian government has announced plans to conduct a "root and branch review" of the competition law system, which could lead to reforms of the cartel enforcement process.

The BRICS

Competition authorities from the emerging economies of Brazil, Russia, India, China, and South Africa (the BRICS) made their presence felt in 2013 and signaled their growing importance to the increasingly crowded global enforcement landscape. In November, the BRICS gathered in Delhi, India to discuss the progress and challenges for competition law enforcement in their jurisdictions. The meeting culminated with the signing of the Delhi Accord, under which the BRICS vowed to strengthen both technical cooperation, and cooperation on competition policy. After the strong year of antitrust enforcement in the BRICS, the Delhi Accord is further evidence that these authorities will continue to have a powerful impact into 2014.

Brazil

Brazil's Administrative Council for Economic Defense (CADE) ended 2013 with total fines of USD213m. Notable penalties include, among others, USD55m against a fuel cartel in March, USD8.7m against another fuel cartel in June, USD123m against air cargo companies in August, and USD7.8m against liquid gas distributors in September.

CADE did, however, suffer some significant setbacks this past year. The USD17m fine secured in March, against a music distribution agency and related copyright associations, was slashed by 92 percent in September by a Brazilian Federal Court to USD1.2m after a court determined that CADE's original decision breached defense rights. In addition, Brazil's leniency program came under scrutiny in August when a Brazilian judge agreed to provide Siemens' leniency agreement to the state government of Sao Paulo, which is now suing Siemens for damages for its role in an alleged construction cartel in Sao Paulo and Brasilia.

The agency will look to put these setbacks behind it next year. CADE is scheduled to issue a ruling in a cement cartel case in 2014. Also, CADE has already announced an investigation into Google similar to that undertaken by U.S. and European authorities, and yet another fuel cartel investigation. It has said that the proper functioning of its leniency program is a priority, and it will need to recover its reputation on this front to reassure companies that leniency

applications are worth making. Further, penalties against individuals appear to be gaining traction as concepts of antitrust law become more widely recognized. Public prosecutors in Sao Paulo, for example, recently called for maximum prison sentences for cartelists to be doubled to ten years.

Russia

The Russian Federal Antimonopoly Service (FAS) finished the year with two cartel fines totaling USD20.3m, falling short of its 2012 level (USD31m). The larger fine (USD16.8m) was imposed against seven producers of polyvinylchloride chemicals. The Head of the FAS Cartel Department, Alexander Kinev, warned that FAS continues to pay "special attention" to the chemicals sector. Also, in November, FAS imposed a USD3.5m fine against a group of fishing cooperatives for collusive conduct in the market for various products made from Pollock. FAS suggested that the investigation is ongoing and that further fines will be handed down "in the near future."

India

The Competition Commission of India imposed just one fine this past year of USD1m on 11 rubber shoe manufacturers for rigging bids on public contracts for rubber soles. This lies in stark contrast with last year's record fines, which included nearly USD1.1bn levied against cement manufacturers and the Cement Manufacturers' Association.

The huge fines in the cement market announced India's arrival on the world stage of criminal antitrust enforcement, but were criticized for failing to take into account that the parties involved were multi-product companies and that fines should therefore not have been calculated based on their entire turnover. In November, this issue was addressed by India's Competition Appellate Tribunal, which issued a judgment in a separate case recognizing the concept of "relevant turnover" in the calculation of penalties in cartel cases. It remains to be seen what impact this ruling will have on cartel fines in 2014.

China

This year, the Chinese National Development and Reform Commission (NDRC) handed out cartel fines of USD61m. Including fines for resale price maintenance, the total figure for 2013 rises to USD241.6m. This past year's results reflect China's growing presence in international antitrust enforcement. Notably, January marked the NDRC's first extraterritorial application of China's Anti-Monopoly law, when it imposed a USD56.6m fine on non-Chinese producers of TFT-LCD panels. Also, in August, fines of nearly USD110m were imposed on baby formula producers for resale price maintenance. Although not a cartel case, the decision is noteworthy for the fact that five out of the six companies prosecuted were not headquartered in mainland China, further signaling that the NDRC is becoming comfortable pursuing foreign companies.

China's regulators have also demonstrated their commitment to cooperate with other enforcement authorities. In addition to signing the Delhi Accord with its fellow BRICS-countries, the NDRC has announced plans to work with regulators in other jurisdictions, such as the U.S. and Europe, to discuss a recent alliance between the world's three largest container shipping companies. This development comes one year after China signed a Memorandum of Understanding with the European Commission to cooperate on antitrust investigations.

South Africa

South Africa's Competition Commission made waves in 2013 when it fined 15 construction firms a total of USD140m. These fines followed an investigation into collusive conduct related to building-contracts. Notably, the Commission made use of a fast track settlement procedure to avoid the time and expense of a full investigation.

Asia Pacific

Antitrust enforcement in the Asia Pacific region continued to expand this past year, as the region has caught on to the global trend of enhanced penalties, extraterritorial enforcement and cross-border cooperation with counterpart agencies.

Taiwan

The Taiwanese Fair Trade Commission, which has been active for over 10 years, had a record-breaking year in 2013 when it fined nine power companies USD210.5m for price fixing. This is the highest penalty it has issued to date, and the first time it applied the maximum penalties allowed in its fining guidelines – 10% of turnover in Taiwan for the preceding fiscal year.

South Korea

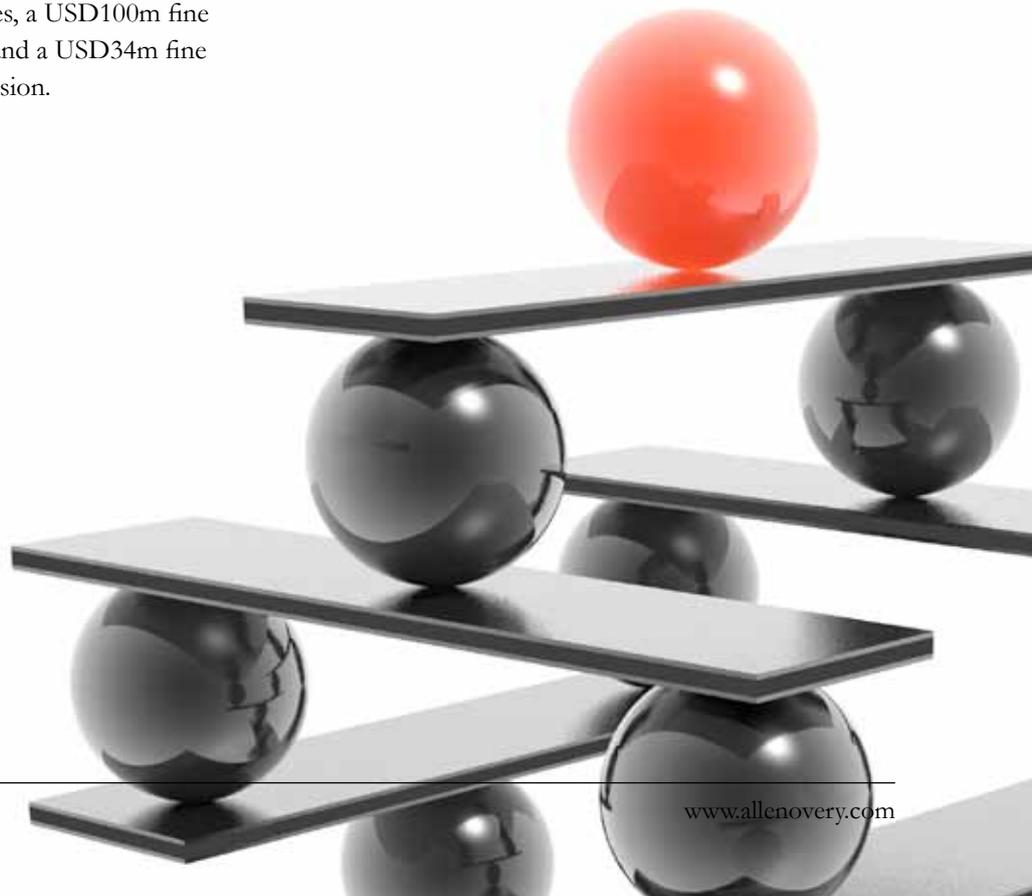
The Korea Fair Trade Commission (KFTC) broke its fining records in 2012 and has had another active year in 2013, achieving fines of USD255.3m against criminal antitrust offenders. Noteworthy fines included a USD104m fine against six foreign-vehicle importers and distributors for colluding to fix the prices of vehicles, a USD100m fine against five white paperboard makers, and a USD34m fine against two plate-glass makers for collusion.

Japan

In 2013, the Japanese Fair Trade Commission imposed fines of USD225.4m, falling slightly short of 2012 levels (USD235m). A substantial proportion of the total came from auto parts cartel fines against producers of headlights (USD49m) and bearings (USD140.4m). Additional fines were imposed against makers of industrial starch adhesive (USD2.6m), manufacturers of high-fructose corn syrup, starch syrup, and glucose for concerted pricing conduct (USD26.3m), as well as engineering companies for bid rigging (USD7.1m).

Malaysia & Hong Kong

Malaysia and Hong Kong are home to the two newest enforcement regimes in the Asia Pacific region. The Hong Kong competition law has not yet come into force, and it may be further delayed until 2015, according to some estimates. Meanwhile, the Malaysian Competition Authority imposed its first fine of USD6m against Air Asia and Malaysia Airlines.



Key contacts

If you require advice on any of the matters raised in this document, please call any of the contacts listed below or your usual contact at Allen & Overy.

John Terzaken
Partner, Washington, D.C.
john.terzaken@allenoververy.com

Dirk Arts
Partner, Brussels
dirk.arts@allenoververy.com

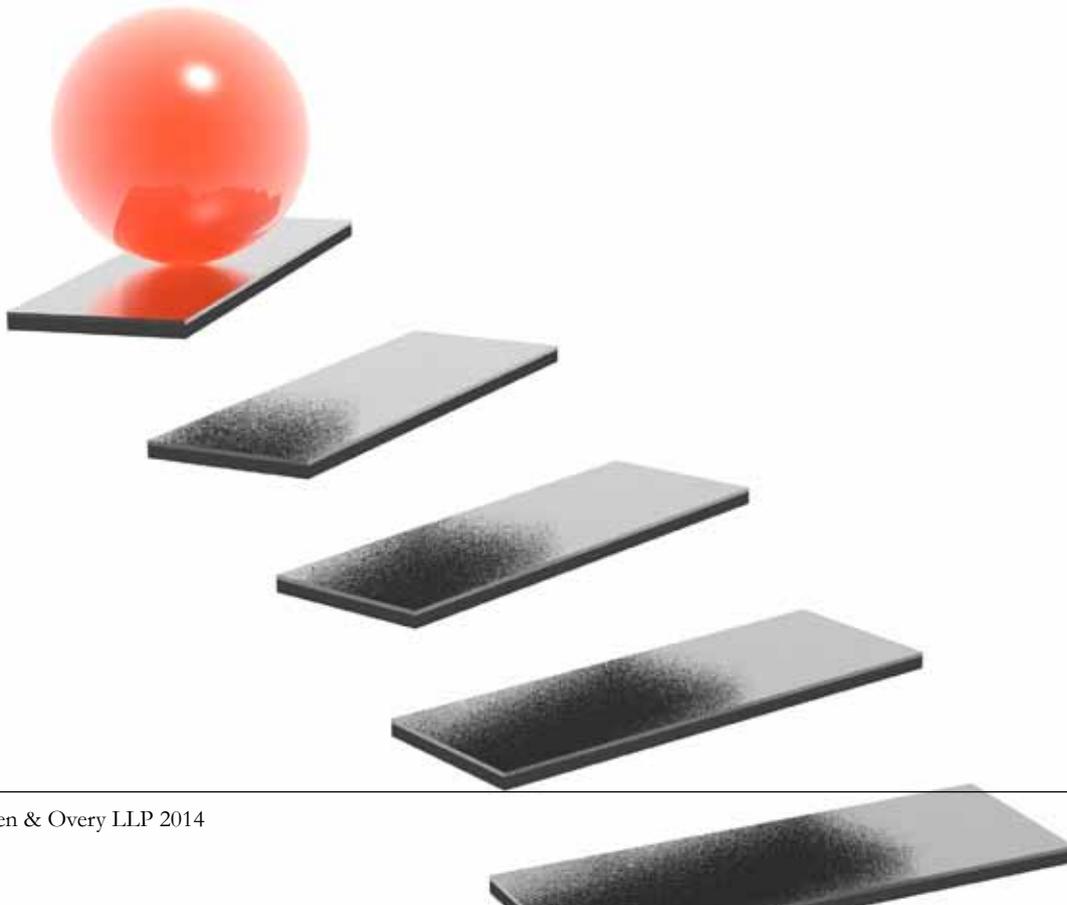
Philip Mansfield
Partner, London
philip.mansfield@allenoververy.com

Peter McDonald
Partner, Sydney
peter.mcdonald@allenoververy.com

Florence Ninane
Partner, Paris
florence.ninane@allenoververy.com

François Renard
Counsel, Beijing
francois.renard@allenoververy.com

Michael Reynolds
Partner, Brussels/Washington, D.C.
michael.reynolds@allenoververy.com



Our Global Team

Americas



Elaine Johnston
Partner, New York
Tel +1 212 610 6388
elaine.johnston@allenoverly.com



John Terzaken
Partner, Washington, D.C.
Tel +1 202 683 3877
john.terzaken@allenoverly.com



Michael Feldberg
Partner, New York
Tel +1 212 610 6360
michael.feldberg@allenoverly.com



Todd Fishman
Partner, New York
Tel +1 212 756 1130
todd.fishman@allenoverly.com

Asia Pacific

Australia



Peter McDonald
Partner, Sydney
Tel +612 9373 7582
peter.mcdonald@allenoverly.com



François Renard
Counsel, Beijing
Tel +86 10 6535 4359
francois.renard@allenoverly.com

Europe

Belgium



Dirk Arts
Partner, Brussels
Tel +32 2 780 2924
dirk.arts@allenoverly.com



Martin Bechtold
Partner, Brussels/Frankfurt
Tel +32 2 780 2960
martin.bechtold@allenoverly.com

France



Michael Reynolds
Partner, Brussels/Washington, D.C.
Tel +32 2 780 2950
michael.reynolds@allenoverly.com



Jürgen Schindler
Partner, Brussels/Hamburg
Tel +32 2 780 2920
juergen.schindler@allenoverly.com



Vanessa Turner
Partner, Brussels
Tel +32 2 780 2957
vanessa.turner@allenoverly.com



Olivier Fréget
Partner, Paris
Tel +33 1 40 06 5010
oliver.freget@allenoverly.com

Germany



Florence Ninane
Partner, Paris
Tel +33 1 40 06 5322
florence.ninane@allenoverly.com



Michel Struys
Partner, Brussels/Paris
Tel +33 1 40 06 5035
michel.struys@allenoverly.com



Ellen Braun
Partner, Hamburg
Tel +49 40 82 221 2137
ellen.braun@allenoverly.com



Silvia D'Alberti
Partner, Rome
Tel +39 06 6842 7603
silvia.dalberti@allenoverly.com

Netherlands



Paul Glazener
Partner, Amsterdam
Tel +31 20 674 1113
paul.glazener@allenovery.com



Leigh Hancher
Of Counsel, Amsterdam
Tel +31 20 674 1122
leigh.hancher@allenovery.com



Tom Ottervanger
Of Counsel, Amsterdam
Tel +31 20 674 1758
tom.ottervanger@allenovery.com



Kees Schillemans
Partner, Amsterdam
Tel +31 20 674 1649
kees.schillemans@allenovery.com

Poland



Marta Sendrowicz
Partner, Warsaw
Tel +48 22 820 6255
marta.sendrowicz@allenovery.com



Antonio Martinez
Partner, Madrid
Tel +34 91 782 9952
antonio.martinez@allenovery.com

United Kingdom



Alasdair Balfour
Partner, London
Tel +44 20 3088 2865
alasdair.balfour@allenoverly.com



Antonio Bavasso
Partner, London
Tel +44 20 3088 2428
antonio.bavasso@allenoverly.com



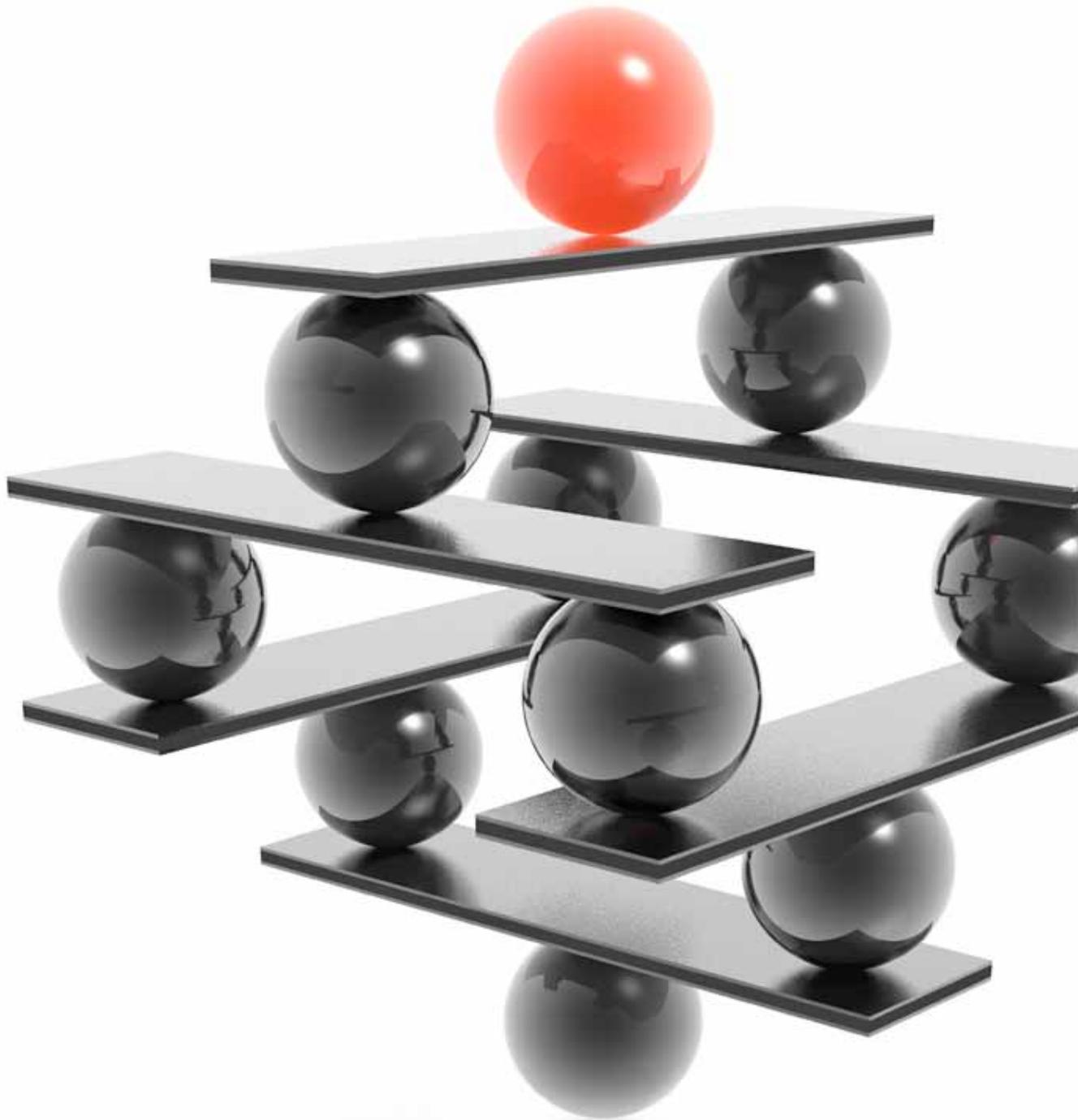
Mark Friend
Partner, London
Tel +44 20 3088 2440
mark.friend@allenoverly.com



Jonathan Hitchin
Partner, London
Tel +44 20 3088 4818
jonathan.hitchin@allenoverly.com



Philip Mansfield
Partner, London/Brussels
Tel +44 20 3088 4414
philip.mansfield@allenoverly.com



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