The Legal 500 Country Comparative Guides

United States: Cartels

This country-specific Q&A provides an overview to cartels laws and regulations that may occur in United States.

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1. **What is the relevant legislative framework?**

   Under federal law, Section 1 of the Sherman Act (15 USC § 1) prohibits 'every contract, combination . . . or conspiracy . . . in restraint of trade.' State antitrust laws such as the Donnelly Act (New York) also ban cartel activity within their respective states. A criminal cartel offense is comprised of four elements: (1) an agreement, (2) between two or more competitors, (3) that restrains trade, and (4) that affects either interstate commerce or import commerce.

   In the US, there are a number of industry-specific defences or exemptions from antitrust scrutiny. These defences and exemptions include: a labour exemption for unions; the state action doctrine (exempting conduct by the states that is 'clearly articulated and affirmatively expressed as state policy' and 'actively supervised by the state itself'); petitions to the government (Noerr-Pennington doctrine); agricultural cooperative price setting (Clayton Act and Capper-Volstead Act); agreements between ocean common carriers filed with the Federal Maritime Commission (Shipping Act); export trade associations (Webb-Pomerene Act) and sports league broadcasting (Webb-Pomerene Act) and baseball.

2. **To establish an infringement, does there need to have been an effect on the market?**

   Criminal cartel violations do not require an effect on the market and are unlawful per se. By judicial precedent, this includes certain horizontal restraints including price-fixing, bid-rigging, output restrictions, and geographic, market and customer allocation. Other agreements between competitors, such as joint ventures, licence agreements and exchanges of information, fall under the 'rule of reason,' which requires analysis of competitive effects.

3. **Does the law apply to conduct that occurs outside the jurisdiction?**

   The extraterritorial reach of US antitrust laws is governed by the concepts of personal jurisdiction and the application of the Foreign Trade Antitrust Improvements Act [FTAIA]. US courts analyse whether the participants in a cartel (companies and individuals) have enough contacts with the forum to satisfy the exercise of jurisdiction. The courts have held that a defendant who 'purposefully avails' itself of the benefits of the forum, such that it invokes the protections of the forum's law, is subject to the jurisdiction of that forum.

   The FTAIA and the cases interpreting it govern the scope of US antitrust laws. Under the FTAIA, foreign conduct falls within the scope of US antitrust laws if the conduct: i) arises under the US antitrust laws; and ii) has a direct, substantial and reasonably foreseeable effect on US commerce. Case law suggests that wholly foreign commerce, in which a defendant does not cause the product at issue to come into the US, may not satisfy the FTAIA as the conduct does not 'arise under' the US antitrust laws.

4. **Which authorities can investigate cartels?**

Criminal cartel cases in the US are investigated by the Department of Justice [DOJ]. State attorneys general also have authority under their state laws to investigate and prosecute cartel cases.

5. **What are the key steps in a cartel investigation?**

The DOJ usually initiates investigations of cartel conduct when either (a) a leniency application is made or (b) the DOJ learns of a potential cartel from public sources, such as news, complaints by victims, or other government sources. The DOJ will then turn to overt investigative steps (as discussed in 2.3).

There are no specific deadlines in a DOJ investigation, except for the applicable statute of limitations. The DOJ must bring charges within five years of the date of an offence. Sherman Act conspiracies are a 'continuing violation,' which means they are deemed to continue, and the limitation period does not begin to run, until they are abandoned or their objects are attained. If a defendant can establish that he or she affirmatively withdrew from the conspiracy, the statute of limitations begins to run on the date of withdrawal as to that defendant.

6. **What are the key investigative powers that are available to the relevant authorities?**

The government has a number of investigative tools at its disposal, including wiretaps, search warrants, interviews, and subpoenas.

The government conducts voluntary interviews of individual witnesses and may have a cooperating witness place a covert, monitored phone call or initiate a monitored email exchange with alleged co-conspirators. The government can conduct a non-consensual wiretap of telephones or email with a demonstration of probable cause, which involves a detailed review by the court, and court approval.

Search warrants are often used in the form of a 'dawn raid,' so labelled because the Federal Bureau of Investigation [FBI] executes the warrant in the early morning hours. A search warrant is directed at a location, such as a corporate office, employee's home, or international office, and/or devices such as computers, data repositories, cell phones, personal data devices, and servers. Subjects of a search warrant must refrain from destroying records/evidence and cannot impede the execution of the search.

The FBI typically will attempt to interview employees during a dawn raid or at any stage of the investigation. Employees are permitted to participate in these interviews, but they are not required to do so. They also may choose to participate with counsel present. Outside counsel can monitor the search and can represent participants in interviews. An individual must take care not to make false statements or hinder the FBI agents in the execution of a search warrant, to avoid criminal penalties under 18 U.S.C. §1001 and concerns regarding the

obstruction of justice.

The DOJ also can serve grand jury subpoenas for documents and testimony. The DOJ first must convene a grand jury, who acts as an investigative body to determine whether there is adequate basis for bringing a criminal charge against a suspect. A grand jury may investigate 'merely on the suspicion that the law is being violated, or even just because it wants assurance that it is not.' *United States v. Morton Salt*, 338 U.S. 632, 642 (1950).

A subpoena is a written, legally enforceable demand that a party produce records or testimony before a grand jury on a given date. Individuals can claim a Fifth Amendment privilege against self-incrimination and refuse to produce documents but legal entities that are not individuals, such as corporations, cannot.

7. **On what grounds can legal privilege be invoked to withhold the production of certain documents in the context of a request by the relevant authorities?**

Confidential communications by a client to and from an attorney for the purpose of obtaining legal advice are subject to attorney-client privilege. This includes communications by business people to and from in-house counsel. In most US jurisdictions, the privilege will attach to communications with foreign attorneys if the advice involves US law or relates to a US proceeding. If not, the foreign country's privilege rules will be in control, which may be less protective of privilege.

8. **What are the conditions for a granting of full immunity? What evidence does the applicant need to provide? Is a formal admission required?**

The DOJ operates a cartel leniency programme that applies to criminal antitrust violations only. It provides full immunity from prosecution by the DOJ for the first company to report and acknowledge its role in cartel behaviour and to cooperate with the DOJ's investigation, subject to other conditions. The DOJ does not apply discretion and accepts every leniency applicant that meets the requirements of the programme.

To obtain leniency, the applicant must be the first to report, must have promptly and effectively terminated its role in the cartel, must fully disclose all relevant facts regarding the illegal activity, must fully cooperate with the government investigation, and must make restitution to victims. The DOJ must also determine that granting leniency to the applicant would not be unfair to others.

If a company receives immunity, all current directors, officers, and employees of the company who admit their involvement in the illegal activity as part of the corporate confession will receive leniency in the form of not being charged criminally for the illegal antitrust activity.

If an applicant satisfies the requirements of the Antitrust Criminal Penalty Enhancement and

Reform Act [ACPERA], the applicant may become eligible for benefits in private civil cases.

9. **What level of leniency, if any, is available to subsequent applicants and what are the eligibility conditions?**

Leniency is available only to the first party to qualify. There is no formal leniency programme for other cooperating parties. However, judges may consider a company's cooperation as a mitigating factor for sentencing, and the DOJ may treat later-cooperating parties with more leniency in its investigations or plea bargaining, which may result in a reduced sentence or fine.

In addition, the DOJ announced in July 2019 that it would begin considering corporate compliance programmes at the charging stage of investigations. Under this new policy, prosecutors are instructed to evaluate the effectiveness of companies' antitrust compliance programmes in making charging decisions. The DOJ has released a guidance document outlining factors that prosecutors should consider in evaluating compliance programmes. In general, prosecutors will ask whether the compliance programme is well designed, whether it is being applied earnestly and in good faith, and whether it works. The DOJ's new approach permits prosecutors to enter into deferred prosecution agreements with companies that are not eligible for leniency if the relevant factors, including the adequacy and effectiveness of the company's antitrust compliance programme, weigh in favour of doing so. The DOJ will continue to disfavour non-prosecution agreements for companies that do not receive leniency under its formal leniency programme.

10. **Are markers available and, if so, in what circumstances?**

The DOJ operates a marker system under which a company can claim a place in line for leniency based on disclosing the product and the nature of the conduct. The company can then 'perfect' its marker by providing an additional quantum of information and/or documents to substantiate the presence of a cartel.

11. **What is required of immunity/leniency applicants in terms of ongoing cooperation with the relevant authorities?**

A leniency applicant must fully cooperate with the government investigation, including testimony at any trials of co-conspirators. Such cooperation also may involve producing executives for interviews and grand jury testimony, as well as producing documents to the DOJ no matter where the documents are located. Leniency is typically provided in the form of a conditional leniency letter that becomes final once the party has completed its cooperation.

There are no ongoing confidentiality obligations by leniency recipients. However, the DOJ must keep confidential the identity of the applicant, the fact it was granted leniency, and the substance of any negotiations with the applicant or other parties.

In civil litigation, the documents produced by the applicant to the DOJ in the leniency process may be discoverable. Oftentimes, however, the DOJ will intervene in civil cases to seek a stay of discovery if the DOJ's criminal investigation is still on-going when the civil litigation proceeds to discovery. The discoverability of documents is governed by federal rules of civil procedure, and often by protective orders negotiated between the parties as to the confidentiality designations of the documents and their use at trial.

12. **Does the grant of immunity/leniency extend to immunity from criminal prosecution (if any) for current/former employees and directors?**

Former directors, officers, and employees are presumptively not included in the immunity and must be explicitly included. The DOJ has no obligation to extend leniency to these individuals. Nonetheless, if a company receives immunity, the company's directors, officers, and employees may also receive immunity if they fully cooperate with the investigation. If the individual does not fully cooperate, however, DOJ will likely exclude that individual from the conditional leniency letter.

13. **Is there an 'amnesty plus' programme?**

The DOJ has an 'amnesty plus' programme. If a cooperating party applies for leniency regarding a separate cartel, the party may receive full leniency with respect to the newly-disclosed cartel, in addition to considerable discount on the fines associated with the initially-investigated cartel violation. This programme serves as an incentive for parties to confess to illegal conduct that is outside the scope of the existing investigation.

14. **Does the investigating authority have the ability to enter into a settlement agreement or plea bargain and, if so, what is the process for doing so?**

A firm or individual can agree to plead guilty to settle pending or proposed criminal charges. Plea discussions may begin at any stage of the investigation. The court does not involve itself in plea discussions but has an independent obligation to review and approve or modify proposed agreements. In many cases, the court defers to the agreement reached by the parties, as long as it believes the agreement is fair and reasonable.

Plea agreements may be structured to include a stipulated sentence that the courts must accept or reject along with the plea or the parties can agree to a plea that includes a recommended sentence or sentencing range but gives the court discretion as to the actual sentence. The court must consider the United States Sentencing Guidelines, in particular § 2R1.1 which provides a formula for calculating an offence level associated with a cartel offence. The offence level translates into a range of imprisonments and a fine level.

15. **What are the key pros and cons for a party that is considering entering into settlement?**

There are significant benefits to entering into settlement with an investigating entity. Parties may avoid a lengthy, costly, and public trial and may limit damage to the company's reputation brought on by the investigation. Parties may also benefit from a known and negotiated fine, rather than the uncertainty of a trial.

However, a guilty plea or verdict can be admissible as prima facie evidence in a private antitrust suit as to matters actually and necessarily decided in a government case. The company and its officers may be debarred from governmental bidding processes as a result of a conviction.

An additional consideration is the DOJ's use of the 'omnibus question.' At the conclusion of a settlement negotiation, the DOJ may ask whether the company has any information whatsoever, direct or indirect, relating to cartel conduct with respect to other products in the industry or in any other industry. If the DOJ determines that the company did not answer truthfully, it may revoke any grant of amnesty and may prosecute the company for perjury. If this occurs, the DOJ will generally seek a more severe punishment for the additional crime under its 'penalty plus' policy. Before a guilty plea, the company must be reasonably certain that it has disclosed all behaviour relevant to the investigation and to any other potential antitrust cartel conduct in order to truthfully address the omnibus question.

16. **What is the nature and extent of any cooperation with other investigating authorities, including from other jurisdictions?**

The US authorities cooperate extensively with non-US authorities. It is common for authorities around the world to coordinate on the timing of dawn raids and other such enforcement actions and cooperation may be specified in the various mutual legal assistance treaties [MLATs] that the US has in place with other governments. The US government may not share information gathered through a grand jury process or search warrant without the consent of the subject of the investigation.

In 2012, the DOJ articulated a four-part analysis regarding whether to exercise discretion in response to a parallel foreign enforcement action. The DOJ considers (1) Is there a single, overarching international conspiracy?, (2) Is the harm to US business and consumers similar to the harm caused abroad?, (3) Does the sanction imposed abroad take into account the harm caused to US businesses and consumers?, and (4) Will the sentence imposed abroad satisfy the deterrent interests of the United States. Depending on these factors, the DOJ may reduce the scope or penalties of an investigation or may waive prosecution.

17. **What are the potential civil and criminal sanctions if cartel activity is established?**

The DOJ may impose sanctions only through an action in court. Even if a person or firm agrees to plead guilty, a court must approve the plea agreement and impose a sentence. Companies typically face heavy fines and may also be placed on probation. The maximum fine for a corporation is USD100 million, or alternatively twice the gain or twice the loss caused

by the criminal conduct. Individuals face potential jail time of up to ten years; fines up to USD1 million, or alternatively twice the gain or twice the loss caused by the criminal conduct; or both.

18. **What factors are taken into account when the fine is set? In practice, what is the maximum level of fines that has been imposed in the case of recent domestic and international cartels?**

The judge determines the sentence based a variety of factors including the formula provided by the United States Sentencing Guidelines, which are advisory not mandatory; the recommendation of the prosecution; the arguments of the defence; and the information provided by the United States Probation Office. In the case of a company, the plea agreement typically recommends or sets a fine amount.

The DOJ argues that fines larger than USD 100 million are possible through 18 U.S.C. § 3571, which provides that when a person derives pecuniary gain from the defendant's offense, the defendant 'may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.' In 2014, the Ninth Circuit Court of Appeals upheld a fine of USD500 million against AU Optronics, following a jury trial. In March 2020, Sandoz agreed to pay a $195 criminal penalty in connection with the DOJ's investigation of the generic pharmaceuticals industry.

19. **Are parent companies presumed to be jointly and severally liable with an infringing subsidiary?**

Generally, a corporate parent is not liable for the acts of its subsidiary and a parent and its subsidiary are not considered single entities for the purposes of criminal or civil liability. However, in certain situations it is possible for the actions of the subsidiary to be imputed to the corporate parent. A parent could be liable if it participated in the unlawful cartel activity or if the subsidiary could be considered the 'alter ego' of the parent. US courts have found that a subsidiary is considered an 'alter ego' of its parent where: (1) there is such a unity of interest and lack of respect given to separate identity of parent and subsidiary that personalities and assets of parent and subsidiary are indistinct, and (2) adherence to the corporate fiction sanctions fraud, promotes injustice, or leads to an evasion of legal obligations.

20. **Are private actions and/or class actions available for infringement of the cartel rules?**

Private plaintiffs may sue in federal court and may seek treble monetary damages and injunctive relief under the Sherman Act. Additionally, the Clayton Act provides a private right of action to any person injured in his business or property to seek injunctive relief, treble damages and attorneys' fees. A 'person' includes an individual; an entity such as a

corporation; a US state on behalf of itself or its residents and a foreign government.

Most private civil antitrust suits involving alleged cartels are brought in the form of class actions. In a class action, a representative plaintiff sues on behalf of all similarly situated entities who must be certified as a class under Rule 23 of the Federal Rules of Civil Procedure, which is a significant hurdle. The representative plaintiff must show four factors: numerosity (that the class is so numerous that joinder of every individual plaintiff is impracticable); commonality (that there are questions of law or fact common to the class); typicality (that the claims or defences of the class representatives are typical of the class); and adequacy of representation (that the class representatives will adequately represent the interests of the class). Plaintiffs must prove that common questions of law and fact will predominate over any individual questions and that a class action is the best method for adjudicating the dispute. Once certified, participation in the class is not compulsory, class members will be given an opportunity to opt out to pursue their own claims individually.

In the case of both individual plaintiffs and class actions, to recover overcharge damages under federal law, plaintiffs must show that they are direct purchasers as required by the Supreme Court's *Illinois Brick* decision, or that they fit into an exception to *Illinois Brick*. They must also show antitrust standing under the Supreme Court's *Associated General Contractors* decision, *i.e.*, that their injury was proximately caused by the defendant's anti-competitive conduct. Numerous states have repealed the *Illinois Brick* doctrine by statute or judicial decision, and therefore allow recoveries under state law for indirect purchasers.

Federal law requires that a plaintiff suffer an injury to business or property proximately caused by the antitrust violation, and the violation must occur in the flow of, or substantially affect, interstate commerce. Federal claims are brought in a federal district court where the defendant resides or transacts business. State court suits may be transferred to a federal court under the Class Action Fairness Act.

21. **What type of damages can be recovered by claimants and how are they quantified?**

Claimants may seek compensatory damages, which are automatically trebled under US law, and prospective injunctive relief. Punitive damages are not available in federal antitrust suits. Damages are quantified based on the amount of overcharge paid by the plaintiff as a result of the cartel activity. Plaintiffs are also entitled to compensation for attorneys' fees and costs of litigation. Furthermore, defendants face joint and several liability with fellow defendants in private civil suits.

22. **On what grounds can a decision of the relevant authority be appealed?**

Appeals as of right may be taken from final judgments of the district court. Defendants may appeal a guilty verdict resulting from a criminal trial. The government may not appeal a verdict of acquittal due to the constitutional prohibition of double jeopardy.

In civil cases, defendants and plaintiffs have the right to appeal adverse rulings. An interlocutory appeal can be made if extraordinary circumstances prevent the case from being properly decided if the appeal was not heard. To do so, the appealing party must request that the court certify the order for immediate interlocutory appeal.

23. **What is the process for filing an appeal?**

The deadline to appeal in a civil case is usually 30 days from the entry of the judgment or order being appealed if the US, its agency or officer is not a party, and 60 days from the entry of the judgment or order being appealed if the US, its agency or officer is a party (Fed. R. App. P. 4(a)). For criminal defendants, the deadline is usually 14 days from the date of entry of the judgment, or from the government's notice of appeal filing, whichever is later (Fed. R. App. P. 4).

Parties appeal federal district court decisions to the federal circuit court of appeals for that court's geographic region. The appeal may be decided on the basis of written briefs alone or oral argument may be scheduled. The appeal is heard by a panel of judges. In extremely rare cases, the decision may be reviewed en banc—by a larger group of judges of the circuit court.

Appeals are raised to the US Supreme Court from the circuit courts by filing a writ of certiorari, the grant of which is very rare (about 2 percent).

24. **What are some recent notable cartel cases (limited to one or two key examples, with a very short summary of the facts, decision and sanctions/level of fine)?**

The generic drugs cartel investigation is worth noting. This investigation involves allegations of price fixing, bid rigging, and customer allocation in the generic pharmaceuticals industry. The DOJ has brought charges against several companies and individuals. In December 2016, DOJ charged two former executives of Heritage Pharmaceuticals, Inc. for their role in fixing the prices of two generic drugs. The two executives pleaded guilty and are awaiting sentencing. In June 2019, Heritage entered into a deferred prosecution agreement with the DOJ on a single count of conspiring to fix prices, rig bids, and allocate customers for the generic drug glyburide. The DOJ has also entered into deferred prosecution agreements with two other pharmaceutical companies: Rising Pharmaceuticals, Inc. and Sandoz Inc. In February 2020, a federal grand jury returned an indictment against a former executive of Taro Pharmaceuticals, and a former executive of Sandoz pleaded guilty.

Beginning in 2016, several putative class actions were filed on behalf of direct purchasers, end-payors, and indirect resellers. The class actions were consolidated into a multi-district litigation in the Eastern District of Pennsylvania. In August 2017, the class plaintiffs filed complaints alleging various generic pharmaceutical manufacturers participated in individual conspiracies to fix prices for 18 drugs. The class plaintiffs have filed additional complaints asserting that numerous defendants engaged in a larger conspiracy to fix prices and allocate markets across the industry. To date, over 40 defendants are involved in the multi-district

litigation. State attorneys general for 47 states, DC and Puerto Rico also filed a civil suit alleging 18 companies and 2 individuals participated in a conspiracy to fix prices and divide markets for 15 generic drugs. The attorneys general suit was consolidated into the multidistrict litigation. *In re Generic Pharmaceuticals Pricing Antitrust Litig.*, No. 2:16-md-2724 (E.D. Pa.). In May 2019, the state attorneys general filed a new complaint alleging an industry-wide conspiracy centered around Teva Pharmaceuticals to fix prices and divide markets for over 100 generic drugs. The states' earlier complaint also alleged an industry wide, multi-drug conspiracy, but centered around Heritage Pharmaceuticals.

25. **What are the key recent trends (e.g. in terms of fines, sectors under investigation, applications for leniency, approach to settlement, number of appeals, etc.)?**

There has been a recent downward trend in the antitrust enforcement of cartels. Though the DOJ saw criminal and civil fines totalling over USD1 billion in recent years (USD1.3 billion in 2014 and USD3.6 billion in 2015), these numbers have dropped dramatically (USD399 million in 2016, USD67 million in 2017, and USD172 million in 2018). Similarly, the total number of criminal cases filed by the DOJ has gone down (60 in 2015, 51 in 2016, 24 in 2017, and 18 in 2018), as have the number of corporations and individuals charged (respectively: 66 and 20 in 2015, 52 and 19 in 2016, 27 and 8 in 2017, and 28 and 5 in 2018). 2019 saw a slight uptick in the DOJ's cartel enforcement activity. The DOJ collected more than USD217 million in fines and pursued 15 corporate entities and 41 individuals for criminal antitrust or related conduct by filing criminal charges, reaching plea deals or deferred prosecution agreements. The DOJ continues to actively investigate a number of industries and has recently revealed several new investigations.

Another recent trend in the DOJ's cartel enforcement has been the use of deferred prosecution agreements, often combined with civil settlements, rather than guilty pleas. The DOJ has entered into deferred prosecution agreements with three companies in connection with its investigation of the generic pharmaceuticals industry: Heritage Pharmaceuticals, Rising Pharmaceuticals, and Sandoz. Two of these companies, Heritage and Rising, also agreed to separate civil settlements resolving allegations under the False Claims Act predicated on their antitrust conduct. The DOJ entered into deferred prosecution agreements with these pharmaceutical companies in part because guilty pleas would have resulted in their mandatory exclusion from all federal health care programs for a period of at least five years.

A recent policy change announced by the DOJ may lead to more deferred prosecution agreements going forward. In July 2019, the DOJ announced that it would begin to consider companies' compliance programmes at the charging stage of investigations, as discussed above. The DOJ's new policy permits prosecutors to enter into deferred prosecution agreements with companies that are not eligible for leniency if the robustness of the company's antitrust compliance programme, combined with other relevant factors, weighs in favour of doing so. The DOJ has argued that this policy change will not undermine incentives for companies to seek leniency under the DOJ's formal leniency programme, and has noted that leniency marker requests have remained steady since the compliance policy

announcement.

26. **What are the key expected developments over the next 12 months (e.g. imminent statutory changes, procedural changes, upcoming decisions, etc.)?**

The Antitrust Criminal Penalty Enhancement & Reform Act [ACPERA] is due to sunset in June 2020, and Congress must vote on its reauthorization. This federal statute reduces the civil damages exposure of a leniency recipient if the company provides plaintiffs with timely, satisfactory cooperation. In April 2019, the DOJ held a public roundtable discussion to solicit input from stakeholders in advance of the necessary congressional reauthorization.

The DOJ is expected to continue its focus on 'no-poach' or 'no-hire' clauses in employment contracts. In 2016, the FTC and DOJ released joint guidance arguing that anti-poaching agreements between employers are per se illegal. In 2018, DOJ Assistant Attorney General Makan Delrahim stated that the DOJ will criminally investigate and prosecute such agreements. Since that time, one case has been brought by the DOJ, and eleven state attorneys general have initiated antitrust investigations into the use of 'no-poach' agreements by franchise-based fast food operations in their states. The states involved are California, Illinois, Massachusetts, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, and Washington. The DOJ continues to pursue a number of active criminal investigations into no-poach agreements. In a November 2019 speech, Deputy Assistant Attorney General Richard Powers stated that no-poach agreements remain one of the DOJ's highest priorities.

In the same speech, Powers stated that the DOJ will continue its focus on individual accountability for criminal antitrust offenses. In the past year, the DOJ charged and prosecuted corporate executives across a number of industries. Powers noted that the DOJ charges around three individuals for each corporate co-conspirator.

Finally, the DOJ is increasing its focus on deterring, investigating, and prosecuting collusion affecting government procurement. In November 2019, the DOJ announced the formation of a new Procurement Collusion Strike Force [PCSF], which will be an interagency partnership between the DOJ's Antitrust Division and other federal agencies. Powers has stated that the DOJ is committed to rooting out collusion affecting government victims and that the formation of the PCSF reflects this commitment.