



703 Perspectives on Competition & Antitrust Compliance in the U.S. & Europe

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Faculty Biographies

Christopher Crowder

Christopher Crowder is chief legal counsel-international, for The Scotts Miracle-Gro Company, a consumer lawn and garden products company with its European headquarters located in Lyon, France.

His legal and financial training includes positions in the mergers and acquisitions and corporate finance departments of the New York headquarters of Skadden, Arps, Slate, Meagher & Flom, LLC, and in the New York and San Francisco corporate finance groups of Citigroup, Inc.'s Global Investment Bank. He clerked for the Honorable Andrew G.T. Moore of the Delaware Supreme Court.

Mr. Crowder graduated with honors from the Schools of Business and Law at St. Louis University.

Richard V. Hansum

Richard V. Hansum is a counsel in the upstream special projects section of Exxon Mobil Corporation's law department, located in Houston. He specializes in antitrust and competition law, and also has responsibilities for international trade regulation matters. Mr. Hansum has 29 years of company service, including assignments in the legal offices serving production, marketing, nuclear, and chemical clients.

Following his graduation from Cornell University's College of Engineering, Mr. Hansum spent four years on active duty as an officer in the U.S. Navy, then returned to Ithaca to attend the Cornell Law School, graduating cum laude.

Lisa M. Phelan

Lisa Phelan has served for over three years as the chief of the National Criminal Enforcement Section of the Antitrust Division of the United States Department of Justice in Washington, DC. In that capacity she supervises teams of attorneys, paralegals, and agents who investigate and prosecute national and international price fixing and bid rigging cartels. She gives frequent speeches on Division policy matters to business, legal, and law enforcement groups, and coordinates international prosecutions with foreign law enforcement officials.

Ms. Phelan previously served as a senior trial attorney in the Antitrust Division, prosecuting as lead counsel notable international conspiracy cases, including U.S. v. Nippon Paper and U.S. v. Mitsubishi International Corporation. She also served as a special assistant to the Deputy Assistant Attorney General for Criminal Enforcement, reviewing criminal and civil case recommendations, immunity requests, and complaints.

Ms. Phelan has long been an active member of the ABA's antitrust section, serving as vice chair of the criminal practices and procedures committee from 1999-2003. She has been involved in organizing and participating in the semi-annual Cartel Conference hosted by the ABA since its inception.

Ms. Phelan is a graduate of the American University, with a B.A. and a graduate of the American University, Washington College of Law, with a J.D.

Ann G. Rappleye

Ann G. Rappleye is chief counsel, antitrust at Wyeth. Her responsibilities include all aspects of antitrust including litigation, regulatory, and advice.

Prior to joining Wyeth she served as chief counsel, antitrust at International Paper Company. Ms. Rappleye received a B.S. from Yale College and is a graduate of New York University School of Law.

Perspectives on Competition and Antitrust Compliance in the U.S. and Europe

The Association of Corporate Counsel
October 18, 2005

Presented by
Richard V. Hansum
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Exxon Mobil Corporation

Overview of an Effective Compliance Program

- Clear and unequivocal Antitrust Policy supported by Management
- Training and counseling for employees all levels
- Annual worldwide reporting procedures

October 18, 2005

Antitrust Policy

- "It is the policy of Exxon Mobil Corporation that all of its directors, officers, and employees shall, in carrying out their duties to the Corporation, comply with the antitrust and competition laws of the United States and with those of any other country or group of countries which are applicable to the Corporation's business.

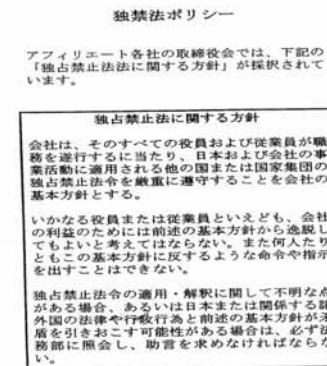
"No director, officer, or employee should assume that the Corporation's interest ever requires otherwise. Moreover, no one in the Corporation has authority to give any order or direction that would result in a violation of this policy.

"It is recognized that, on occasion, there may be legitimate doubt as to the proper interpretation of the law. In such a circumstance, it is required that the directors, officers, and employees refer the case through appropriate channels to the Law Department for advice."

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Antitrust Policy (cont'd)

- All majority owned affiliates throughout the world have adopted similar policies



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Antitrust Policy (cont'd)

- A few countries do not have their own antitrust laws
 - It may still be necessary to comply with US or EU law if local conduct affects US domestic or export commerce or trade among the member states of the EU
 - There is a Company practice of avoiding conduct that would be a "hard-core" violation of the antitrust laws in all countries

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Antitrust Policy (cont'd)

- Compliance with Company policies is a Management responsibility and monitored by Controller's. However, the Law Department has the role of administering compliance program activities
- Managers personally communicate their support for the compliance program to employees in written and electronic form
- Managers routinely introduce the lawyers who make antitrust presentations to help Company personnel spot and understand antitrust and competition law issues in their day to day work

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Training and Counseling

- Antitrust training sessions are held every year in headquarters as well as field locations in all countries. They are personally conducted by Company lawyers and typically take about an hour. The discussions include
 - Basic antitrust and competition law concepts and requirements
 - Enforcement trends and penalties
 - The application of the laws to various real-life situations, such as trade associations and joint operations
 - The need for careful writing
 - Questions from the participants, with follow-up as appropriate

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Training and Counseling (cont'd)

- For the sake of efficiency and consistency, model presentations are developed at headquarters and distributed to local affiliate and division lawyers to customize the reviews for their particular audiences
- The frequency of antitrust and competition law reviews varies depending on the nature of the function
 - ALL employees receive antitrust training as part of the Business Practice Reviews that are conducted by each organization once every four years
 - Some affiliates and divisions also provide antitrust training sessions every second year, for example the Upstream Research Company that is not directly involved in commercial matters
 - Business units that are directly involved in commercial activities such as marketing conduct their antitrust training annually

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Training and Counseling (cont'd)

- The selection of invitees is also a matter of judgment, but at the least includes
 - Managers and supervisors
 - Personnel who participate in trade associations or similar organizations
 - Personnel who are involved in information exchanges or benchmarking
 - Personnel who handle competitive information or develop forecasts and plans

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Training and Counseling (cont'd)

- Personnel who deal with customers, suppliers, or the public
- Personnel who deal with other companies in joint operations
- Personnel who deal with government officials or national oil companies
- Personnel who work on mergers, acquisitions, divestitures, or joint ventures
- Recent hires and transferees

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Training and Counseling (cont'd)

- In addition to holding formal antitrust and competition law training sessions, the Law Department continuously provides advice and assistance in this area to employees at all levels, including
 - Reviews of significant Management plans and decisions
 - Reviews of proposed business projects and programs
 - Reviews of trade association memberships and activities
 - Reviews of information exchanges and benchmarking projects
 - Reviews of significant external communications

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Training and Counseling (cont'd)

- Law makes a number of compliance guides available to all Company personnel through the distribution of written materials as well as postings on an intranet site which every employee can access, including
 - Antitrust and Competition Law Compliance Guide
 - Guidelines for Trade Associations
 - Guidelines for Information Exchanges and Benchmarking
 - Guidelines for Written Materials
 - Consent decrees

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Training and Counseling (cont'd)

- All Company lawyers are expected to be generally familiar with the current antitrust and competition laws
 - Orientation programs for lawyers cover the antitrust and competition laws
 - Once every three years, the Law Department holds an in-house seminar taught by an expert from academia or a law firm
 - Lawyers attend outside CLE seminars
 - The Law Library subscribes to antitrust and competition law newsletters and other publications, and circulates those materials to interested lawyers

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Reporting Procedures

- All executive, managerial, professional, and technical personnel annually affirm their compliance with the Company's core policies, including antitrust
- In every country where ExxonMobil has employees, a Company lawyer is designated as the contact for reporting antitrust compliance activities at the end of every year

Attachment A ANTITRUST COMPLIANCE REPORTING RESPONSIBILITY (Outside U.S.)			
Country	Lawyer	Country	Lawyer
Algeria	J. Collins	Bangladesh	P.K. Lee
Angola	W.M. Sutton	Belgium (Brussels Regional Office)	C. Cawley
Argentina	J.A. Pardo	Belgium (All Other)	P. Huisman
Aruba	R.W. Brown	Belize	R. W. Brown
Austria	D. Worrall	Bermuda	R. W. Brown
Azerbaijan	M.V. Gabel	Brazil	S.S. Noronha
Bahamas	R.W. Brown	Burkina Faso	A. Aloco

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Reporting Procedures (cont'd)

- The country records describe
 - Local Management's role in the compliance program
 - Antitrust training received by Company employees
 - The Law Department's principal antitrust compliance efforts, including actual examples of significant preventive antitrust efforts
 - Reviews of files
 - Significant developments, such as new antitrust laws, government investigations, litigation, and merger filings
 - Continuing legal education for Company lawyers
 - Senior Management's assessment of the program's effectiveness, including managers' written endorsements of their country reports

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Reporting Procedures (cont'd)

- The antitrust law specialists for ExxonMobil's three major operating organizations -- Upstream, Downstream and Chemicals -- review all of the country reports which provide information on a geographic basis and prepare annual compliance reports for the functional company presidents to sign and send to their contact directors
- The antitrust law specialists also prepare reports on significant antitrust developments in each country where ExxonMobil operates
- The Litigation Section of the Law Department prepares a report on all pending U.S. antitrust cases and investigations involving the Company either as a defendant or a plaintiff
- The General Counsel annually briefs the Board on antitrust matters, using information contained in the country and developments reports

October 18, 2005



DEPARTMENT OF JUSTICE

Panel on Perspectives on Competition & Antitrust
Compliance in the US & Europe

"An Overview Of Recent Developments In The Antitrust Division's Criminal Enforcement Program"

LISA M. PHELAN
Chief, National Criminal Enforcement Section
Antitrust Division
U.S. Department of Justice

Before the
Association of Corporate Counsel
2005 Annual Meeting

Washington, DC

October 18, 2005

An Overview Of Recent Developments In The Antitrust Division's Criminal Enforcement Program

The detection, prosecution, and deterrence of cartel offenses is the highest priority of the Antitrust Division. The Division places a particular emphasis on combating international cartels that target U.S. markets because of the breadth and magnitude of the harm that they inflict on American businesses and consumers. This enforcement strategy has succeeded in cracking dozens of international cartels, securing convictions and jail sentences against culpable executives, and obtaining record-breaking corporate fines. For example:

- Over the last five years, over 80 individuals have served, or are currently serving, prison sentences in cases prosecuted by the Antitrust Division. A total of 18 foreign nationals from 9 different countries have submitted to U.S. jurisdiction and been sentenced to incarceration in U.S. prisons.
- The five longest jail sentences in the Division's history have all been imposed in the last five years – including a 10 year jail sentence in one case.
- The trend towards more frequently imposed and longer average prison terms for antitrust offenders has resulted in an average jail sentence over the past three years of approximately 18 months – nearly two and one-half times the average jail sentence in the 1990's.
- Since FY 1997, over \$2 billion in criminal fines have been imposed in Division cases, well over 90 percent of this total were obtained in connection with the prosecution of international cartel activity.
- In FY 2004, \$360 million in criminal fines were obtained against 17 corporations and 15 individuals. This total includes a \$160 million criminal fine imposed against Infineon Technologies AG – the third largest criminal antitrust fine ever – for its role in a conspiracy to fix prices of dynamic random access memory ("DRAM") sold to computer manufacturers. In addition, five other companies agreed to pay fines of \$10 million or more in FY 2004. It is noteworthy that the Supreme Court's decision in Blakely v. Washington, 124 S.Ct. 2531 (2004), has not limited the Division's ability to obtain heavy fines as four of the six corporate defendants who agreed to pay fines of \$10 million or more last year involved cases that were filed after the Blakely decision.

As outlined further in the summary below, the stakes will continue to rise for companies and their executives who engage in antitrust offenses. In June 2004, the maximum penalties for Sherman Act violations were raised significantly by Congress. The new law, the Antitrust

Criminal Penalty Enhancement and Reform Act of 2004, increases the maximum Sherman Act fine corporate fine to \$100 million, the maximum individual fine to \$1 million, and the maximum Sherman Act jail term to 10 years. The increased sentences will bring antitrust prison sentences in line with those for other white-collar crimes and ensure that corporate fines accurately reflect the enormous harm inflicted by cartels to our economy. The Act also enhances the incentive for corporations to self report illegal conduct by limiting the damages recoverable from an applicant to the Division's Corporate Leniency Program, that also cooperates with private plaintiffs in their damage actions against remaining cartel members, to the damages actually inflicted by the amnesty applicant's conduct. Moreover, increased cooperation and coordination among antitrust authorities are ensuring that national borders do not act as obstacles to the successful investigation and prosecution of targets abroad.

INTERNATIONAL CARTEL ENFORCEMENT

Investigations. Currently, there are approximately 50 sitting grand juries investigating suspected international cartel activity. International cartel investigations account for more than a third of the Division's grand jury investigations. The subjects and targets of the Division's international investigations are located on 6 continents and in nearly 25 different countries. However, the geographic scope of the criminal activity is even broader than these numbers reflect. Our investigations have uncovered meetings of international cartels in well over 100 cities in more than 35 countries, including most of the Far East and nearly every country in Western Europe.

Cartels Prosecuted. Since the beginning of FY 1997, the Division has prosecuted international cartels affecting well over \$10 billion in U.S. commerce. The Division has prosecuted international cartels operating in a number of sectors including vitamins, textiles, construction, food and feed additives, food preservatives, chemicals, graphite electrodes (used in steel making), fine arts auctions, ocean tanker shipping, marine construction, marine transportation services, synthetic rubber and dynamic random access memory. The cartel activity uncovered in these cases has cost U.S. businesses and consumers many hundreds of millions of dollars annually.

Fines Imposed. Of the over \$2 billion dollars in criminal fines imposed in Division cases since FY 1997, well over 90 percent were obtained in connection with the prosecution of international cartel activity. The Division has obtained fines of \$10 million or more against U.S., Dutch, German, Japanese, Belgian, Swiss, British, Luxembourgian, Norwegian, and Liechtenstein-based companies. In 39 of the 46 instances in which the Division has secured a fine of \$10 million or greater, the corporate defendants were foreign-based. These numbers reflect the fact that the typical international cartel likely consists of a U.S. company and three or four of its competitors that are market leaders in Europe, Asia, and throughout the world. (See Attached Chart of Sherman Act Violations Yielding a Fine of \$10 Million or More.)

Foreign Corporate Defendants. Since the beginning of FY 1998, roughly 50 percent of corporate defendants in criminal cases brought by the Division were foreign-based. In FY 2001, the percentage of foreign-based firms charged by the Division rose to nearly 70 percent, and then returned to around 35 percent over the past three years.

PROSECUTION OF INDIVIDUALS

The Division has long supported the belief that the best and surest way to deter and punish cartel activity is to hold the most culpable individuals accountable by seeking jail sentences. For reasons that cannot be explored in this summary, that view has taken hold.¹ Antitrust offenders are being sent to jail with increasing frequency and for longer periods of time.

Jail Sentences Have Increased. The average jail sentence in the 1990's was 8 months but has nearly doubled over the past five years. The average jail sentence rose to 10 months in FY 2000, to 15 months in FY 2001, to 18 months in FY 2002, to 21 months in FY 2003, and back to 12 months in FY 2004. In the last five years, over 100 years of imprisonment have been imposed on antitrust offenders, with more than 40 defendants receiving jail sentences of one year or longer, including 9 defendants in FY 2004.

Conviction Of Foreign Executives. The Division has prosecuted foreign executives from Austria, Belgium, Canada, France, Germany, Italy, Japan, Korea Mexico, Norway, the Netherlands, Sweden, Switzerland, and the United Kingdom for engaging in cartel activity, resulting in heavy fines and, in some cases, imprisonment. Since FY 2001, roughly one-fourth of the individual defendants in our cases have been foreign nationals. Foreign defendants from Canada, France, Germany, Sweden, Switzerland, the Netherlands, Norway, the United Kingdom, and Japan have served, or are currently serving, prison sentences in U.S. jails for violating U.S. antitrust laws.

Tracking Down International Fugitives. In 2001, the Division adopted a policy of placing indicted fugitives on a "Red Notice" list maintained by INTERPOL. A red notice watch is essentially an international "wanted" notice that, in many INTERPOL member nations, serves as a request that the subject be arrested, with a view toward extradition. Multiple fugitive defendants have already been apprehended through a Division INTERPOL red notice. The Division will seek to extradite any fugitive defendant apprehended through the INTERPOL red notice watch. The Division's use of red notices clearly raises the stakes for foreign executives who hope to avoid prosecution by simply remaining outside of the United States. With the stiffening resolve that foreign governments are taking toward punishing cartel activity and their increased willingness to assist the United States in prosecuting cartel activity, the safe harbors for antitrust offenders are rapidly shrinking.

INCREASED COOPERATION WITH FOREIGN ANTITRUST AUTHORITIES

Our ability to detect and prosecute international cartel activity has been enhanced by the increased cooperation and assistance that we have received from foreign governments, and from their own enforcement efforts. Cooperation among competition law enforcement authorities has undergone a sea change in the past five years. Over the past several years there has been a growing worldwide consensus that international cartel activity is pervasive and is victimizing businesses and consumers everywhere. This shared commitment to fighting international cartels has led to the establishment of cooperative relationships among competition law enforcement authorities around the world in order to more effectively investigate and prosecute international cartels.

International Anti-Cartel Enforcement Workshops. In the autumn of 1999, the Division hosted the first-ever international meeting of cartel investigators and prosecutors. Representatives from the competition law enforcement agencies of over 25 countries and the EU gathered in Washington for a two-day program devoted to the practical aspects of investigating and prosecuting international cartels. The event was such a success that the United Kingdom's Office of Fair Trading hosted a similar conference in November 2000 in Brighton, England attended by representatives of 26 jurisdictions, the Canadian Bureau of Competition hosted the third workshop in November 2001, and the fourth International Cartels Workshop was hosted by the three Brazilian competition law enforcement agencies in Rio de Janeiro in September 2002. A fifth workshop, hosted by the EC, was held in Brussels in 2003. Last year, from November 20-23, the sixth international cartel workshop, and for the first time a separate workshop focusing solely on leniency programs, was held in Sydney, Australia under the umbrella of the International Competition Network (ICN). Perhaps even more important than the exchange of ideas and "best practices" at these meetings, the workshops have provided enforcers with the opportunity to develop close working relationships, which then serve as the basis for future formal and informal cooperation. This informal cooperation among competition law enforcers is best evidenced by a number of recent investigations in which dawn raids, searches, service of grand jury subpoenas, and drop-in interviews were coordinated to occur simultaneously in multiple jurisdictions.

Assistance In Obtaining Foreign-Located Evidence. The improved cooperation with foreign law enforcement authorities already has provided us with increased access to foreign-located evidence and witnesses that has proven to be instrumental in the cracking of a number of international cartels. While there are constraints as to what can be revealed about the nature of this assistance, there is one example and one compelling statistic that demonstrate the breadth of this cooperation. The example -- our investigation of bid-rigging on wastewater treatment plant construction contracts in Egypt, which were funded by USAID, was assisted by the execution of search warrants by foreign authorities on the Division's behalf to seize evidence abroad. In that investigation, over 100 German police officers assisted in the simultaneous execution of search warrants on multiple companies at several locations across Germany. The searches induced cooperation from subjects of the investigation, which previously had been lacking, and that was

critical to the success of the cases we later brought. The statistic -- in the past few years, foreign authorities from five different countries have executed search warrants at our request in more than a half-dozen of our international cartel investigations. This is a remarkable advancement in international cooperation.

Cooperation And Coordination Of Investigations. Our cooperation with foreign antitrust authorities has never been better or more effective. In February of 2003, four enforcement authorities, the Antitrust Division, the EC Directorate-General for Competition, the Canadian Competition Bureau, and the Japanese Fair Trade Commission, coordinated searches and drop-in interviews in an unprecedented level of cooperation. This represented the first time that an international cartel investigation had gone overt simultaneously in four jurisdictions. As noted in the EC's press release, inspectors from the EC and Member States searched 14 companies located in six Member States as a part of these parallel efforts. Overall, more than 250 investigators and agents were involved in the simultaneous launching of these investigations on three continents. Such coordination among multiple jurisdictions will occur more frequently and be a part of the next frontier of cartel investigations. Due to the recent changes in the EC's leniency policy, we have seen more simultaneous amnesty applications, which have resulted in more opportunities for multi-jurisdictional cooperation. It is no longer uncommon for international antitrust authorities to discuss investigative strategies and to coordinate searches, service of subpoenas, drop-in interviews, and the timing of charges in order to avoid the premature disclosure of an investigation and the possible destruction of evidence. Such cooperation will lead to more effective antitrust enforcement in the future and the detection, prosecution, and elimination of more cartels.

Adoption Of Legislation And Agreements To Foster Cooperation. Another example of governments' increased willingness to assist each other in the enforcement of anti-cartel laws can be seen in the May 2001 agreement between the U.K. and U.S. governments to remove a "side letter" to the U.K.-U.S. Mutual Legal Assistance Treaty ("MLAT"), which had excluded antitrust matters from the scope of the cooperation provisions of the MLAT. The types of assistance in antitrust matters that the U.K. can now provide to the Division include the use of the U.K. courts to take testimony from witnesses, obtain documents, and assist in the collection of criminal fines. In addition, the U.K. government recently adopted legislation that creates a new criminal offense for individuals who engage in hardcore cartel activity and provides for maximum jail sentences of up to five years for antitrust offenders. The criminalization of cartel offenses in the U.K. and the passage of the U.K. Extradition Act of 2003 may also make it possible in the near future to extradite individuals involved in cartels from the U.K. to face antitrust charges in the United States. In addition, in the past few years, the Division has entered antitrust cooperation agreements with four foreign governments -- Brazil, Israel, Japan, and Mexico. These new agreements complement agreements previously reached with Australia, Canada, the European Union, and Germany, and will foster cooperation between the U.S. and those governments with respect to the investigation and prosecution of international cartels and other aspects of antitrust enforcement. In November 1999, the Division's International Antitrust Enforcement Assistance Agreement with Australia became effective. This agreement is a comprehensive antitrust mutual legal assistance agreement, which allows the two countries to

exchange evidence and assist each other's civil and criminal antitrust investigative efforts. The exchange of evidence between antitrust enforcement authorities certainly will increase in the years to come. In 1998 the OECD encouraged member countries to "co-operate with each other in enforcing their laws against [hard core] cartels" and the OECD's Competition Law and Policy Committee's Working Party 3 currently is considering a set of recommended practices to govern the formal exchange of evidence between competition law enforcement authorities. The adoption of recommended practices by the OECD will assist member countries to remove obstacles to effective co-operation in the enforcement of laws against hard-core cartels (including the adoption of national legislation and/or entering bilateral agreements) and will result in increased exchanges of evidence between competition law enforcement authorities.

Increased Foreign Enforcement. Of course, antitrust authorities in Asia, Canada, Europe, and around the world are not merely assisting our investigations. They also have become increasingly aggressive in investigating and sanctioning cartels that victimize their consumers. Seemingly with each passing day, the antitrust community learns of a foreign government that has enacted a new antitrust law, created a new cartel investigative unit, obtained a record antitrust fine, or developed a new Corporate Leniency program. In addition, foreign competition law enforcement agencies are imposing increasingly stiff penalties for hardcore cartel conduct. Some recent fines imposed by the EC make the point. Recently the EC imposed fines against: (1) the four members of the sorbates cartel totaling more than 138 million euro; (2) the five members of the carbon and graphite products cartel totaling 101 million euro; (3) the five members of the organic peroxides cartel totaling nearly 70 million euro. Other recent developments in foreign enforcement include record-breaking fines imposed against members of the vitamin cartel by Australian authorities and against members of the graphite electrode cartel by the Korean competition agency. In addition, Israel has recently joined the list of nations that have sentenced antitrust offenders to jail sentences. This heightened, worldwide commitment to investigating and severely sanctioning international cartels surely is shrinking the safe harbors for cartel activity.

CRIMINAL FINES

Since the beginning of FY 1997, the Division has obtained well over \$2 billion dollars in criminal fines. This total includes thirty-nine corporate fines of \$10 million or more, seven fines of \$100 million or more, and one fine of \$500 million -- the largest criminal fine ever imposed in the United States under any criminal statute.

Corporate Fines Have Increased Dramatically. International cartels affect massive volumes of commerce. In some matters currently under investigation, the volume of commerce affected by the suspected conspiracy is over \$1 billion per year and in roughly two-thirds of our international investigations, the volume of commerce affected is over \$100 million over the term of the conspiracy. Because international cartels affect such a large volume of U.S. commerce and the U.S. Sentencing Guidelines fines are based in large part on the amount of commerce affected by the cartel, fines obtained by the Division have increased dramatically since FY 1997.

- **Year-End Total Fines.** In the 10 years prior to FY 1997, the Division obtained, on average, \$29 million in criminal fines annually. In FY 1997, the Division collected \$205 million in criminal fines -- which was 500 percent higher than during any previous year in the Division's history. In FY 1998, the Division obtained over \$265 million in criminal fines. In FY 1999, the Division secured over \$1.1 billion. In FYs 2000-2003, fines obtained exceeded \$150 million, \$280 million, \$75 million, and \$107 million respectively. The fines obtained by the Division in FY 04 totaled over \$350 million, the second largest in Antitrust Division history, including six fines of \$10 million or more.
- In March 2004, U.S. manufacturer Crompton Corporation agreed to plead guilty and pay a \$50 million criminal fine and in July 2004, German manufacturer Bayer AG agreed to plead guilty and pay a \$66 million criminal fine for their participation in an international conspiracy to fix prices in the rubber chemicals market.
- In July 2004, De Beers Centenary AG submitted to U.S. jurisdiction, pled guilty and was sentenced to pay a \$10 million criminal fine to resolve a 1994 indictment for conspiring to fix the price of industrial diamonds worldwide in 1991 and 1992.
- In September 2004, Infineon Technologies AG, a German manufacturer of dynamic random access memory (DRAM), agreed to plead guilty and to pay a \$160 million criminal fine, the third largest criminal fine in the history of the Antitrust Division, for participating in an international conspiracy to fix prices in the DRAM market.
- In September 2004, Bayer Corporation, the Pittsburgh subsidiary of German firm Bayer AG, agreed to plead guilty and pay a \$33 million criminal fine for participating in a conspiracy to fix prices of polyester polyols, a chemical used in a number of consumer products, including plastic grocery bags, shoe soles and automotive parts.
- **Higher Top-End Fines.** Ten years ago the largest corporate fine ever imposed for a single Sherman Act count was \$6 million. However, today fines of \$10 million or more have now been imposed against 46 corporate defendants and one individual defendant. During FY 04, six corporate fines of \$10 million or more for Sherman Act offenses were obtained. The Division has obtained fines of \$100 million or more in seven cases:
 - **\$500 million** against F. Hoffmann-La Roche (vitamin cartel - May 1999), largest fine ever imposed in a U.S. criminal prosecution of any kind;

- **\$225 million** against BASF AG (vitamin cartel - May 1999);
- **\$160 million** against Infineon Technologies AG (DRAM - September 2004);
- **\$135 million** against SGL Carbon AG (graphite electrodes cartel - May 1999);
- **\$134 million** against Mitsubishi Corp. (graphite electrodes cartel - May 2001);
- **\$110 million** against UCAR International (graphite electrodes cartel - April 1998); and
- **\$100 million** against Archer Daniels Midland Company (lysine and citric acid cartels - October 1996).

CORPORATE LENIENCY PROGRAM

In August 1993, the Division revised its Corporate Leniency Program to make it easier and more attractive for companies to come forward and cooperate with the Division.² Three major revisions were made to the program: (1) amnesty is automatic if there is no pre-existing investigation; (2) amnesty may still be available even if cooperation begins after the investigation is underway; and (3) all officers, directors, and employees who cooperate are protected from criminal prosecution.³ As a result of these changes, the Leniency Program is the Division's most effective generator of international cartel cases, and it is the Department's most successful leniency program. Moreover, it has served as a model for similar corporate leniency programs that have been adopted by antitrust authorities around the world.

Application Rate. The revised Corporate Leniency Program has resulted in a surge in amnesty applications. Under the old policy, the Division obtained roughly one amnesty application per year. Under the new policy, the application rate has jumped to roughly two per month. As a result of this increased interest, the Division frequently encounters situations where a company approaches the government within days, and in some cases less than one business day, after one of its co-conspirators has secured its position as first in line for amnesty. Of course, only the first company to qualify receives amnesty.

Case Generator. Since the Division revised its leniency program, cooperation from amnesty applications has resulted in scores of convictions and close to \$2 billion in criminal fines. In fact, the majority of the Division's major international investigations have been advanced through the cooperation of an amnesty applicant.

Foreign Authorities Following The U.S. Model. The extraordinary success of the Division's leniency program has generated widespread interest around the world. We have advised a number of foreign governments in drafting and implementing effective leniency programs in their jurisdictions. As a result, countries such as Australia, Brazil, Canada, the Czech Republic, France, Germany, Ireland, Korea, and the United Kingdom have announced new or revised leniency programs, with still other countries in the process of following. Most significant was the European Union's recent adoption of a revised leniency program in February 2002. The new program establishes a far more transparent and predictable policy than its predecessor and brings the EC's program closely in line with the Division's Corporate Leniency Policy. In fact, in greatly reducing the amount of discretion involved in assessing amnesty applications and in creating the opportunity for companies to qualify for full immunity after an investigation has begun, the blockbuster revisions are similar to the ones made by the Division when we successfully expanded our program in August 1993. The convergence in leniency programs has made it much easier and far more attractive for companies to simultaneously seek and obtain leniency in the United States, Europe, Canada, and in other jurisdictions where the applicants have exposure.

Amnesty Rewards. The vitamin, graphite electrodes, fine arts auctions, USAID construction, and rubber chemicals investigations offer five prime examples of the stunning incentives and rewards to companies and their executives that take advantage of the Amnesty Program. In each of these matters, the amnesty applicant paid zero dollars in criminal fines, and its cooperating executives received nonprosecution protection.

- **Vitamins.** In the vitamin investigation, the amnesty applicant's cooperation directly led to F. Hoffmann-La Roche's (HLR) and BASF AG's decision to plead guilty and pay fines of \$500 million and \$225 million, respectively. Six Swiss and German executives from HLR and BASF were convicted for their role in the reported conspiracy, and all served time in U.S. prisons.
- **Graphite Electrodes.** In the graphite electrodes investigation, the second company in the door after the amnesty applicant paid a \$32.5 million fine, the third company in paid a \$110 million fine, and a fourth company pled guilty and paid a \$135 million fine. Mitsubishi was later convicted at trial for its role as an aider and abettor of the cartel and was sentenced to pay a \$134 million fine. Two U.S. executives were sentenced to lengthy prison terms and paid over \$2 million in fines, and a German executive was fined \$10 million.
- **Fine Arts Auctions.** The amnesty applicant's cooperation directly resulted in Sotheby's decision to plead guilty and pay a \$45 million fine. Sotheby's former Chairman, Alfred Taubman, was subsequently convicted at trial and sentenced to one year in jail and a \$7.5 million fine.

- **USAID Construction.** The assistance of an amnesty applicant led to the conviction of four companies who engaged in a scheme to rig bids on water treatment construction contracts funded abroad by the United States Agency for International Development (USAID). Fines totaling more than \$140 million were imposed in addition to over \$10 million in restitution to the U.S. government. A U.S. executive for one of the late pleading companies was convicted at trial and sentenced to three years imprisonment.
- **Rubber Chemicals.** The amnesty applicant's cooperation resulted in the prosecution of Crompton Corporation and Bayer AG and fines totaling \$116 million. In addition, three Crompton executives and five Bayer executives were carved out of the non-prosecution protection of the corporate plea agreements leaving them subject to prosecution. Recently, two Crompton executives and a Bayer executive agreed to plead guilty to participating in the rubber chemicals conspiracy and are cooperating with the investigation.

Amnesty Plus. Currently, there are roughly 50 sitting grand juries investigating suspected international cartel activity. Nearly half of these investigations were initiated by evidence obtained as a result of an investigation of a completely separate industry. For example, a new investigation results when a company approaches the Division to negotiate a plea agreement in a current investigation and then seeks to obtain more lenient treatment by offering to disclose the existence of a second, unrelated conspiracy. Under these circumstances, companies that choose to self-report and cooperate in a second matter can obtain what is referred to as "Amnesty Plus." In such a case, the company will receive amnesty, pay zero dollars in fines for its participation in the second offense, and none of its officers, directors, and employees who cooperate will be prosecuted criminally in connection with that offense. Plus, the company will receive a substantial additional discount by the Division in calculating an appropriate fine for its participation in the first conspiracy.

Penalty Plus. Companies that elect not to take advantage of the Amnesty Plus opportunity risk potentially harsh consequences. If a company participated in a second antitrust offense and does not report it, and the conduct is later discovered and successfully prosecuted, where appropriate, the Division will urge the sentencing court to consider the company's and any culpable executives' failure to report the conduct voluntarily as an aggravating sentencing factor. We will request that the court impose a term and conditions of probation for the company pursuant to U.S.S.G. §8D1.1, and we will pursue a fine or jail sentence at or above the upper end of the Guidelines range. Moreover, where multiple convictions occur, a company's or individual's Guidelines calculations may be increased based on the prior criminal history. In one recent "penalty plus case," the Division asked the court to depart upward from the top of the guidelines range pursuant to U.S.S.G. § 5K2.0 due to the company's recidivism as an antitrust offender, and to impose a sentence that was almost 30% above the top of the guideline fine range. In that case, the VOC was \$17 million and the company paid a fine of \$12 million – 70% of the VOC. Furthermore, three of the executives were "carved out" of the plea agreement. If the company had reported the conduct when it had the chance in connection with the earlier

prosecution, it would have paid zero fine and its executives, who now are subject to prosecution, would have been given full nonprosecution protection. For a company, the failure to self-report under the Amnesty Plus program could mean the difference between a potential fine as high as 80 percent or more of the volume of affected commerce versus no fine at all on the Amnesty Plus product. For the individual, it could mean the difference between a lengthy jail sentence and avoiding jail altogether.

Confidentiality Policy. The Division's policy is to treat as confidential the identity of amnesty applicants and any information obtained from the applicant. The Division will not disclose an amnesty applicant's identity, absent prior disclosure by or agreement with the applicant, unless authorized by court order. Further, in order to protect the integrity of the Amnesty Program, the Division has adopted a policy of not disclosing to foreign authorities, pursuant to cooperation agreements, information obtained from an amnesty applicant unless the amnesty applicant agrees first to the disclosure. Notwithstanding this policy, the Division frequently obtains waivers to share information with another jurisdiction in cases where the applicant has also sought and obtained leniency from that jurisdiction. Such waivers are helpful in ensuring that the Division is able to coordinate investigative steps with the other jurisdictions involved. In addition, amnesty applicants may issue press releases or, in the case of publicly traded companies, submit public filings announcing their conditional acceptance into the corporate amnesty program thereby obviating the need to maintain their anonymity.

RECENT LEGISLATIVE AMENDMENTS

On June 22, 2004 President Bush signed into law H.R. 1086, which includes the Antitrust Criminal Penalty Enhancement and Reform Act of 2004. The Act increases the maximum Sherman Act corporate fine to \$100 million, the maximum individual fine to \$1 million, and the maximum Sherman Act jail term to 10 years. The Act also enhances the incentive for corporations to self report illegal conduct by limiting the damages recoverable from a corporate amnesty applicant, that also cooperates with private plaintiffs in their damage actions against remaining cartel members, to the damages actually inflicted by the amnesty applicant's conduct.

The increase in criminal penalties will bring antitrust penalties in line with those for other white-collar crimes and will ensure the penalties more accurately reflect the enormous harm inflicted by cartels in today's marketplace. In addition, the detrebling provision of the Act removes a major disincentive for amnesty applications and hence, will lead to the exposure of more cartels, making the Division's Corporate Leniency Program even more effective in detecting and prosecuting cartels. The detrebling amendment applies to a corporation and its executives, who cooperate with the government investigation through the Antitrust Division's Corporate Leniency Policy. The amendment limits the liability of a successful leniency applicant and its executives to single damages without joint and several liability -- i.e., the applicant would only be liable for actual, compensatory damages attributable to the harm its own conduct caused. In return, the bill requires the applicant and its executives to provide full cooperation to the victims in their lawsuit against the other conspirators for treble damages. Because all other conspirator firms remain

jointly and severally liability for treble damages caused by the conspiracy, the victims' potential total recovery is not reduced by this legislation. Furthermore, the amendment likely will (1) increase the number of criminal antitrust conspiracies that are exposed and prosecuted; (2) increase compensation to victims of criminal antitrust conspiracies through the required cooperation provided to the victims by the amnesty applicant; (3) further de-stabilize, and deter the formation of, criminal antitrust conspiracies by creating an additional major incentive to self-report the violation; (4) reduce the costs of investigating and prosecuting criminal antitrust conspiracies; and (5) reduce the cost for victims to recover the damages they suffer from criminal antitrust conspiracies.

FOOTNOTES

*This presentation is a revised and updated version of a presentation given by Scott D. Hammond, Deputy Assistant Attorney General, to the American Bar Association in January 2005.

1 For more information on Division policies and initiatives directed toward the prosecution of individual offenders, see, "Negotiating the Waters of International Cartel Prosecutions" speech by Gary R. Spratling, Deputy Assistant Attorney General, Antitrust Division, before Thirteenth Annual National Institute On White Collar Crime (March 4, 1999), *available at* <http://www.usdoj.gov/atr/public/speeches/2275.htm>; and "When Calculating the Costs and Benefits of Applying for Corporate Amnesty, How Do You Put a Price Tag on an Individual's Freedom?" speech by Scott D. Hammond, Director of Criminal Enforcement, Antitrust Division, before Fifteenth Annual National Institute On White Collar Crime (March 8, 2001), *available at* <http://www.usdoj.gov/atr/public/speeches/7647.htm>.

2 Antitrust Division, U.S. Department Of Justice, Corporate Leniency Policy (1993), *available at* <http://www.usdoj.gov/atr/public/guidelines/0091.htm>.

3 For more information on the requirements and application of the Division's Amnesty Program, see, Antitrust Division, U.S. Department of Justice Corporate Leniency Policy (1993), *available at* <http://www.usdoj.gov/atr/public/guidelines/0091.htm>; "Cornerstones of an Effective Leniency Program" speech by Scott D. Hammond, before ICN Workshop on Leniency Programs (November 22 - 23, 2004), *available at* <http://www.usdoj.gov/atr/public/speeches/206611.htm>; "When Calculating the Costs and Benefits of Applying for Corporate Amnesty, How Do You Put a Price Tag on an Individual's Freedom?" speech by Scott D. Hammond, Fifteenth Annual National Institute On White Collar Crime (March 8, 2001), *available at* <http://www.usdoj.gov/atr/public/speeches/7647.htm>; "Detecting And Detering Cartel Activity

Through An Effective Leniency Program," speech by Scott D. Hammond, before International Workshop on Cartels (November 21-22, 2000), *available at* <http://www.usdoj.gov/atr/public/speeches/9928.htm>; "Making Companies An Offer They Shouldn't Refuse," speech by Gary R. Spratling, before Bar Association of the District of Columbia's 35th Annual Symposium on Associations and Antitrust (February 16, 1999), *available at* <http://www.usdoj.gov/atr/public/speeches/2247.htm>; "The Corporate Leniency Policy: Answers To Recurring Questions," speech by Gary R. Spratling, Deputy Assistant Attorney General, Antitrust Division, before ABA Antitrust Section 1998 Spring Meeting (April 1, 1998), *available at* <http://www.usdoj.gov/atr/public/speeches/1626.htm>.



Session 703: Perspectives on Competition Compliance

Lisa Phelan – US Department of Justice
Chris Crowder – Scotts Miracle-Gro
Carter Simpson – Exxon Mobil

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The US Antitrust Perspective

- 100 Attorneys dedicated full-time to the investigation and prosecution of criminal antitrust violations.
- Core Mission: enforce the Sherman Act, which makes it a felony offense for two or more persons or corporations to make an agreement to restrain trade.

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Crimes under The Sherman Act

- Price Fixing
- Bid Rigging
- Customer Allocation
- Market Allocation



Penalties under The Sherman Act

- For individual executives – up to 10 yrs in prison.
- For Corporations – Criminal fines of up to \$100 million, or more if twice the gain or loss from the crime was higher.
- Related crimes, such as fraud, bribery or obstruction of justice offenses, in conjunction with Sherman Act offenses, can double jail terms significantly increase fines.



Significant Jail Terms

- Over the last 5 years, over 80 individuals have served or are serving prison sentences in cases prosecuted by the Antitrust Division.
- This includes 18 foreign nationals from 9 different countries.



Significant Corporate Fines

- Over the last seven years, more than \$2 billion in criminal fines have been imposed in Division cases.
- Corporations paying these fines have ranged from multinational Fortune 500 Companies like Archer Daniels Midland to local road construction firms.



Diverse Industries

- Industry sectors have included:
 - vitamins
 - textiles
 - food and feed additives
 - rubber products
 - chemicals
 - marine transport
 - graphic electrodes
 - fine arts auctions

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Recent Example

- “SAMSUNG to Pay \$300 Million For Price Fixing Scheme”
-- Wall Street Journal, October 13, 2005
- Just last week, Korean technology giant Samsung was charged with price fixing on DRAM Chips and agreed to plead guilty and pay \$300 million in criminal fines

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International Reach of U.S. Law

- The Division policy, upheld by courts, is to enforce the Sherman Act against all violators, foreign or domestic, and regardless of where in the world conspiratorial cartel meetings are held.
- It is no defense that violators were not aware of, or do not understand, U.S. laws against collusion.



Pernicious Effects

- The Division aggressively enforces the Criminal antitrust laws because...
 - Cartels have a pernicious and destructive effect on our nation's economy
- Congress and the courts support that effort by granting stiffer penalties limits and imposing tougher punishments.



Effects of Collusion in an Industry

- Harms consumers
- Also Harms businesses – many products are interim products sold to other businesses
- Stifles innovation and creativity



Leniency Program

- Unique among U.S. Criminal prosecution offices.
- Corporations that detect and report a Sherman Act violation or conspiracy can COMPLETELY AVOID CRIMINAL ANTITRUST CHARGES AND PENALTIES.
- PLUS, under new legislation passed in 2004, those same corporations may also be able to avoid paying treble damages in any related civil damage actions.



Requirements for Amnesty

- 1st in the door
- Not the Ringleader
- Full cooperation by the company and its employees



Amnesty Benefits

- NO CRIMINAL PROSECUTION FOR CORPORATION OR ITS COOPERATING EMPLOYEES
- \$0 fine vs. up to \$100 million or 2X the gain or loss
- NO jail time for execs vs. up to 10 years per violation
- Maximum of single damages vs. Treble Damages in civil damage case



Amnesty Rewards

- Compare Amnesty applicant in Vitamins Cartel:
 - \$0 fine vs. Hoffman – La Roche paying \$500 million; BASF - \$225 million
 - No charges or jail for executives vs. 6 Swiss and German Executives serving significant jail time



Amnesty PLUS

- Missed being the first in the door?
- Can still get substantially reduced penalties if you bring forward a second offense.
- Reduced fine/penalties on original offense and no prosecution on second offense.



Advice to Corporate Counsel?

- Educate your people about ATR laws.
- Discourage Meetings and Conversations with competitors without counsel in attendance.
- Have a strong compliance program that is designed to detect these violations.
- If you discover a violation has or may have occurred, contact the Division **PROMPTLY** to see if **AMNESTY** is still available. (You needn't identify yourself or your company initially).



The European Union Perspective

- Goal: Common Market
 - Integration achieved by free movement of goods, services and people
- Articles 81 and 82 of Treaty of Rome
 - Must affect trade among the member states
 - "Cross-border affects" interpreted broadly
- National Competition Laws



Article 81

- Prohibits
 - any agreement or practice between two or more undertakings which...
 - affects trade among member states, and...
 - which has the object or effect of preventing, restricting or distorting competition...
 - to an appreciable extent.
- Exemptions:
 - *de minimis*
 - block exemptions



Article 81 (cont'd)

- Horizontal
 - Between companies operating at the *same* level of the supply chain (competitors)
 - ie: restricting price, allocating markets
- Vertical
 - Between companies operating at *different* levels of the supply chain
 - ie: wholesaler and distributor, resale price maintenance, tying



Article 82

- Applies to firms having a "Dominant Position"
 - Market Shares > 40%
- Deemed to have a "special relationship"
- Prohibits behavior which exploits this position in an anti-competitive manner
 - e.g.: predatory pricing, discrimination



Penalties

- Agreement unenforceable
- The Commission has the power to assess fines of up to 10% of Worldwide turnover
 - Recent fines have been as high as €498m
- 3rd party suits to recover damages resulting from the anticompetitive behavior
 - Commission considering raising damages to encourage private prosecution



Modernization (Reg 1/2003)

- Self-Assessment
- Decentralized Enforcement
- Increased Powers



Self-Assessment

- Old System:
 - Notification
 - Advise and Consent
- New System:
 - Deterrence and Remediation
- Result: Less certainty, increased risk



Decentralization

- EU increased to 25 member states
- National Competition Authorities (NCA)
 - Commission no longer exclusive
 - Can take jurisdiction where significant Community Interest
- Encourages private enforcement



Increased Powers

- Already had power to conduct "Dawn Raids"
 - Unannounced search of business premises
 - Power to take documents, search computers
- Now, power to:
 - Search homes and cars
 - Seal the office
 - Interrogate employees on the spot



Anticipating Dawn Raids

- A thorough competition compliance program should anticipate a Dawn Raid
 - Educate your Management
 - Written instructions for Receptionist
 - Documentation (Authorization v Decision)
 - Outside counsel (fax order)
 - Designate a representative speaker
 - Check other offices
 - Take notes / keep detailed lists
 - Privilege!!!



Privilege

- 1982 *AM&S*: The ECJ recognized the concept of legal privilege in EC law based upon common criteria in national laws
 - Note: Not as to non-EU counsel
- But, limited to “*independent lawyers*”, i.e., lawyers not bound by a relationship of employment
- Now, the issue of in-house privilege being reviewed by the Court of First Instance in *Akzo Nobel Chemicals Ltd*



Akzo Nobel

- Commission conducts Dawn Raid
- Some documents were e-mails containing legal advice from Akzo's In-House lawyer prepared in the context of an internal compliance review for discussion with outside counsel
- The In-House counsel was a member of the Dutch bar enjoying full privilege under its national law
- Commission inspected the documents and declined to recognize privilege since In-House



Akzo Nobel (cont'd)

- Akzo argues that privilege should apply to in-house lawyers for two reasons:
 - 1) properly qualified and subject to adequate rules of professional ethics and discipline enforced by the professional association to which the lawyer belongs
 - Many, but not all, of Member States now recognize privilege for in-house counsel members of the Bar
 - 2) Modernization and self-assessment require increased legal analysis and NCAs will share data



Akzo Nobel (cont'd)

- President of CFI provisionally rules that privilege may apply to in-house counsel
- Commission appeals and ECJ annuls the CFI on procedural grounds
 - ECJ reasoned that if privileged, EC cannot use in evidence, and therefore the procedural question of urgency is absent
- ECJ expected to issue decision on merits in 2006



Akzo Nobel (cont'd)

- The Cursory Glance: EC argues that it must inspect allegedly privileged documents to make its own interpretation
- Only those which are questionable will be put under seal
- But, Akzo argues the mere inspection taints the privilege – no "acute amnesia"



Compliance Implications

- Dawn Raid:
 - Should you allow the Commission to inspect a document you consider privileged?
 - Failure to comply can result in penalties of 1% of sales
 - Broadly agreed, however, to place in sealed envelope without inspection
- Compliance:
 - President of CFI: "it could not be excluded that the documents in question were prepared for the sole purpose of obtaining legal advice and that they should therefore be privileged."



Mock Dawn Raids

- Part of Active Risk Management Strategy
- Also, tactic for testing preparedness
- Requires sensitive control
- Possible lighter touch – spot audits



National Laws

- As noted, countries are split:
 - Privilege applies, for example, in Greece, Ireland, the United Kingdom, Germany and Spain
 - But, does not apply in France, the Netherlands, Italy and Luxembourg
 - Discovery varied so impact is questionable



National Laws – The UK

- Competition Law:
 - **Competition Act 1998**
 - Chapters I & II mirror Articles 81 & 82
 - **Enterprise Act 2002**
 - Introduces criminal penalties for individuals
 - Provides Office of Fair Trading broad investigatory powers
- Privilege
 - Yes, if member of the bar and *dominant purpose* of obtaining or giving legal advice or with a view towards litigation
 - Use care in restricting distribution to core group



National Laws – France

- Competition Law:
 - Transparency & Restrictive Trade Practices
 - Long history of criminal liability
- Privilege
 - No – In-house lawyers cannot be "avocats", i.e.: members of the Bar
 - Currently, serious negotiations underway to permit qualified in-house counsel to become designated members of the French Bar

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An Effective Compliance Program

- Clear and unequivocal policy
- Supported by Management
- Clearly designated as a management responsibility, not purely Law Department
- Appropriate training and counseling for employees at all levels
- Annual worldwide monitoring and reporting procedures

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The ExxonMobil Policy

- "It is the policy of Exxon Mobil Corporation that all of its directors, officers, and employees shall, in carrying out their duties to the Corporation, comply with the antitrust and competition laws of the United States and with those of any other country or group of countries which are applicable to the Corporation's business.
- "No director, officer, or employee should assume that the Corporation's interest ever requires otherwise. Moreover, no one in the Corporation has authority to give any order or direction that would result in a violation of this policy.
- "It is recognized that, on occasion, there may be legitimate doubt as to the proper interpretation of the law. In such a circumstance, it is required that the directors, officers, and employees refer the case through appropriate channels to the Law Department for advice."

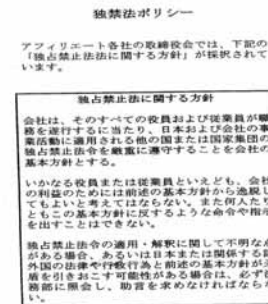
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The ExxonMobil Policy (cont'd)

- All majority-owned affiliates throughout the world have adopted similar policies



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The ExxonMobil Policy (cont'd)

- A few countries do not have their own antitrust laws
 - It may still be necessary to comply with US or EU law if local conduct affects US domestic or export commerce or trade among the member states of the EU
 - There is a Company practice of avoiding conduct that would be a "hard-core" violation of the antitrust laws in all countries



Compliance Implementation

- The major operating companies (Refining & Supply, Fuels Marketing, Exploration, Chemicals, etc.) and all majority-owned affiliates worldwide have adopted standardized Antitrust Compliance Programs, which detail things such as training schedules, reporting requirements, etc.
- The Company clearly specifies that Compliance is a Management responsibility. However, the Law Department assists the line businesses in administering compliance program activities



Compliance Implementation (cont'd)

- Managers personally communicate their support for the compliance program to employees in written and electronic form
- Managers routinely are present to introduce the lawyers who make antitrust training presentations.
- Annually, the President of each operating company personally reports to the Chairman, both in person and by letter:
 - on significant antitrust matters in the operating company,
 - that all required antitrust training has been completed and
 - that the President is satisfied that the Antitrust Compliance Program is being effectively implemented.



Training and Counseling

- Antitrust training sessions are held every year in headquarters as well as field locations in all countries. They are personally conducted by Company lawyers and typically take about an hour. The discussions include
 - Basic antitrust and competition law concepts and requirements keyed to the clients' business
 - Enforcement trends and penalties
 - Discussion of the specific types of antitrust and competition law issues they may encounter in their business and the application of the laws to various real-life situations, such as trade associations and joint operations
 - The need for careful writing
 - Questions from the participants, with follow-up as appropriate



Training and Counseling (cont'd)

- Conscious decision to have the training done by the business lawyers, rather than central antitrust experts
 - The business lawyers are the first line of defense for issue spotting and counseling; the best way to learn a subject is to teach it
 - Also, keeps the training from being a dry recitation of principles and allows the presentations to be geared toward problems the clients encounter in their day-to-day work.
- For the sake of efficiency and consistency, some model presentations are developed at headquarters and distributed to local affiliate and division lawyers for their use.
- However, they are expected to customize the reviews for their particular audiences, or better yet, to develop their own.
 - Some use quizzes, “game show” formats, hypotheticals, or other devices



Training and Counseling (cont'd)

- The frequency of antitrust and competition law reviews varies depending on the nature of the function
 - ALL employees receive antitrust training as part of the Business Practice Reviews that are conducted by each organization once every four years
 - All salaried employees above the clerical level are trained at least every two years
 - Managers, more senior supervisors and many others receive antitrust training annually



Training and Counseling (cont'd)

- The selection of invitees is also a matter of judgment, but at the least, includes recent hires and transferees as well as personnel that:
 - Participate in trade associations or similar organizations
 - Are involved in information exchanges or benchmarking
 - Handle competitive information or develop forecasts and plans
 - Deal with customers, suppliers, or the public
 - Deal with other companies in joint operations
 - Deal with government officials or national oil companies
 - Work on mergers, acquisitions, divestitures, or joint ventures



Training and Counseling (cont'd)

- In addition to holding formal antitrust and competition law training sessions, the Law Department continuously provides advice and assistance in this area to employees at all levels, including
 - Reviews of significant Management plans and decisions
 - Reviews of proposed business projects and programs
 - Reviews of trade association memberships and activities
 - Reviews of information exchanges and benchmarking projects
 - Reviews of significant external communications



Training and Counseling (cont'd)

- Law makes a number of compliance guides available to all Company personnel through the distribution of written materials as well as postings on an intranet site which every employee can access, including
 - Antitrust and Competition Law Compliance Guide
 - Guidelines for Trade Associations
 - Guidelines for Information Exchanges and Benchmarking
 - Guidelines for Written Materials
 - Consent decrees



Training and Counseling (cont'd)

- All Company lawyers are expected to be generally familiar with the current antitrust and competition laws
 - Orientation programs for lawyers cover the antitrust and competition laws
 - Once every three years, the Law Department holds an in-house seminar taught by an expert from academia or a law firm
 - Lawyers attend outside CLE seminars
 - The Law Library subscribes to antitrust and competition law newsletters and other publications, and circulates those materials to interested lawyers



Reporting Procedures

- All executive, managerial, professional, and technical personnel annually affirm their compliance with the Company's core policies, including antitrust
- In every country where we have employees, a Company lawyer is designated as the contact for reporting antitrust compliance activities at the end of every year

Attachment A ANTITRUST COMPLIANCE REPORTING RESPONSIBILITY (Outside U.S.)			
Country	Lawyer	Country	Lawyer
Algeria	J. Collins	Bangladesh	P.K. Lee
Angola	W.M. Sutton	Belgium (Brussels Regional Office)	C. Cawley
Argentina	J.A. Pardo	Belgium (All Other)	P. Huisman
Aruba	R.W. Brown	Belize	R. W. Brown
Austria	D. Worrall	Bermuda	R. W. Brown
Azerbaijan	M.V. Gabel	Brazil	S.S. Noronha
Bahamas	R.W. Brown	Burkina Faso	A. Aloco



Reporting Procedures (cont'd)

- The country reports describe
 - Local Management's role in the compliance program
 - Antitrust training received by Company employees
 - The Law Department's principal antitrust compliance efforts, including actual examples of significant preventive antitrust efforts
 - Reviews of files
 - Significant developments, such as new antitrust laws, government investigations, litigation, and merger filings
 - Continuing legal education for Company lawyers
 - Senior Management's assessment of the program's effectiveness, including managers' written endorsements of their country reports



Reporting Procedures (cont'd)

- The antitrust law specialists for ExxonMobil's three major operating organizations -
- Upstream, Downstream and Chemicals -- prepare annual compliance reports for the functional company Presidents to sign and send to their contact directors
- The antitrust law specialists also prepare reports on significant antitrust developments in each country where ExxonMobil operates
- The Litigation Section of the Law Department prepares a report on all pending U.S. antitrust cases and investigations involving the Company either as a defendant or a plaintiff
- The antitrust law specialists also summarize all of these materials into a presentation/report that each of the General Counsels for Upstream, Downstream, and Chemical, along with their functional company Presidents, orally delivers to the Chairman, the applicable Contact Director, the Corporation's General Counsel
- Finally, the Corporation's General Counsel annually briefs the Board on antitrust matters, using information contained in the country and developments reports