

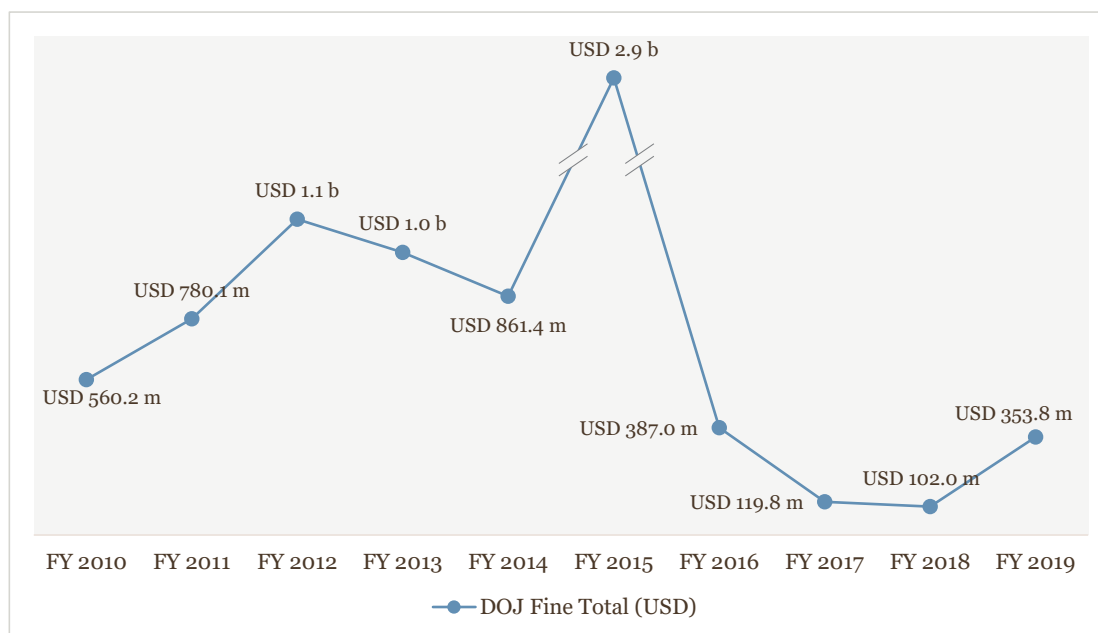
2019 Global Cartel Enforcement Report

January 2020

The decade ended with fine totals for perennial powerhouse cartel enforcers like the U.S., EU, and Japan seeing a slight uptick from the historically low fine figures witnessed in 2017 and 2018. Other global enforcers, however, fared less well, continuing the trend of achieving markedly lower fine totals than they secured at the start of the decade.

While the cause of the general downward spiral in fine totals this past decade is unclear—whether because of cyclical enforcement trends, shifting political views, increased compliance, or other reasons—the trend is certainly not reflective of any less aggressiveness on behalf of enforcers. Indeed, enforcers across the world closed the decade much the way they began it: sharpening their enforcement tools, growing their global ranks, and looking to make examples out of non-cooperators. Among other ways global enforcers hope to improve their investigative outlook for 2020 is by sweetening cooperation incentives: enforcers in the United States and Russia implemented new measures to award credit to cooperators with effective compliance programs; regulators in Pakistan and the European Union introduced improved reporting systems, leveraging new online tools to improve the convenience of cooperation; authorities in Japan and Hong Kong loosened restrictions on the number of firms that can apply for leniency and/or receive cooperation credit; and newcomers like Zambia announced the launch of new amnesty programs.

DOJ Fines Over the Decade¹



1. The figures below reflect the fines as agreed to and announced at the time imposed by the Antitrust Division.

What to Watch for in 2020

All Politics Is Local. Across the world, domestic cartel cases (as opposed to the more sprawling, global cartel cases of old) continue to dominate the landscape. There still appears to be substantial political will behind a continuation of this focus, particularly in the U.S., with public procurement and labor markets remaining the primary targets.

In November 2019, the Antitrust Division announced the creation of a new Procurement Collusion Strike Force tasked with investigating possible antitrust violations in the government procurement, grant, and program funding space at all levels of government. The Antitrust Division confirmed that more than a third of their open investigations relate to public procurement: a notable figure following Assistant Attorney General Makan Delrahim's testimony to Congress in September 2019 that the Antitrust Division had 91 pending grand jury investigations at the end of FY 2018. Comprised of prosecutors from the Antitrust Division, U.S. Attorneys' Offices, FBI, and multiple Inspector General offices, the new strike force highlights inter-agency cooperation, training for procurement officials, and a new citizen complaint reporting form.

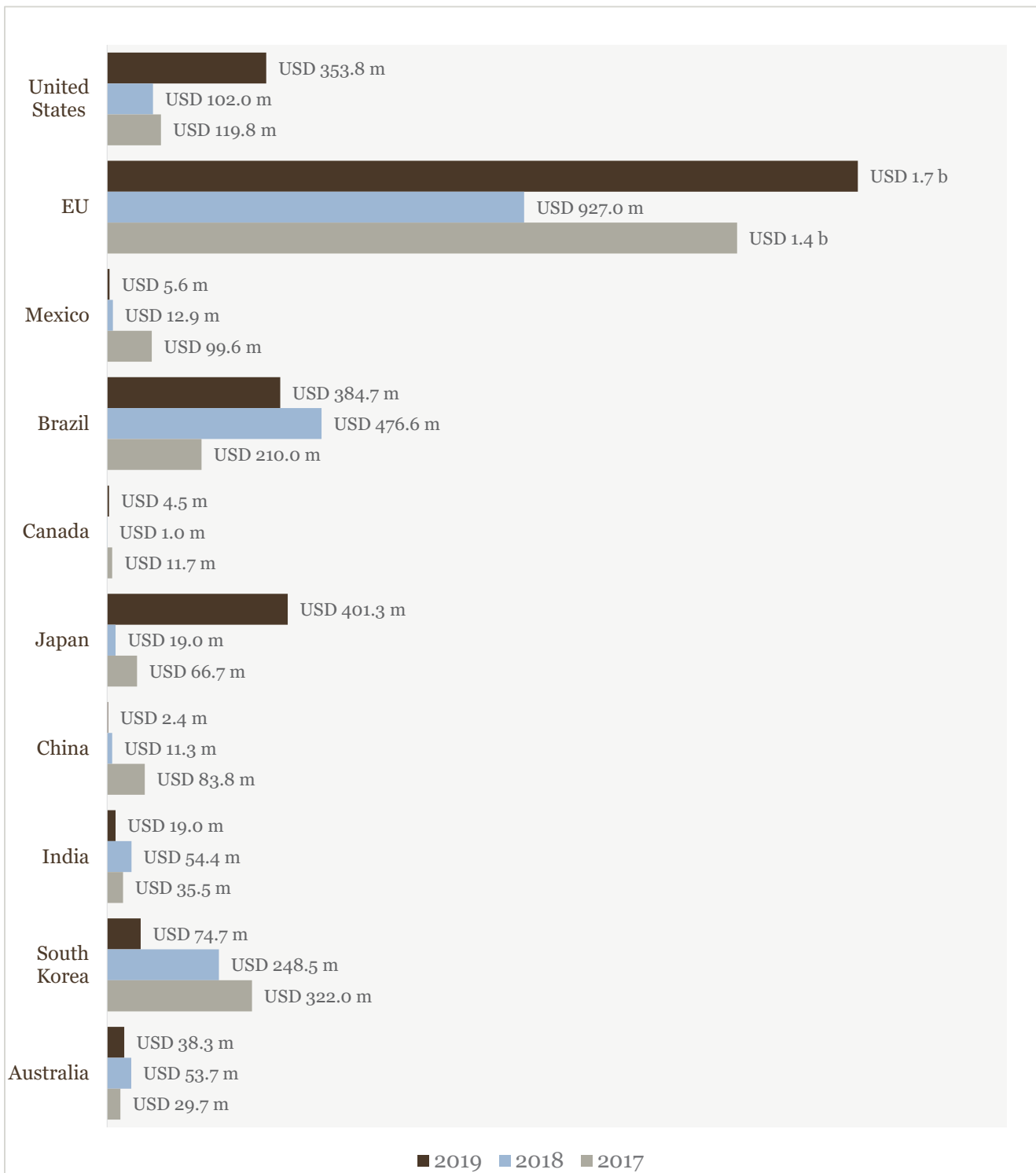
Since the announcement of the 2016 joint DOJ-FTC Antitrust Guidance for Human Resource Professionals, the Antitrust Division has been searching for the right action to flex its criminal enforcement muscles in the labor markets. Enforcement in the labor markets has remained a prominent topic in speeches by Antitrust Division officials, and in September 2019 the Division held the first of a two-part workshop series co-hosted by the Federal Trade Commission focused on antitrust issues in labor markets. With the first case for criminal enforcement

proving elusive, the Antitrust Division is under increasing scrutiny by Congress to show progress in the area this fiscal year.

Doubling Down on Tech. Confirming last year's predicted focus on digital markets, multiple enforcers have doubled down on scrutinizing the technology sector. In summer 2019, the Department of Justice announced that in response to widespread concerns, they intend to investigate how leading online platforms achieved market power, and whether their business practices stifled innovation or harmed consumers. In the same vein, the European Commission announced in 2019 that it has opened investigations into data practices by Amazon, Google and Facebook. Both the U.S. Federal Trade Commission and Korea's Fair Trade Commission launched specialized technology task forces to investigate potential anticompetitive conduct in the technology markets. Taking active measures to align the law and technology, Germany passed new antitrust laws specifically aimed at regulating digital markets.



Select Year-to-Year Comparison^{2 3}



2. Statistics from selected jurisdictions are approximate and reflect fine levels and exchange rates at the time of writing and may not be exhaustive. Statistics reflecting penalties for the U.S. include those in the U.S. fiscal year, October 1, 2018 to September 30, 2019. All other statistics include enforcements in the 2019 calendar year.

3. Fine amounts were based on the local currency and converted to U.S. dollars using the currency exchange rates reported by the United States Treasury's Bureau of the Fiscal Service, available at <https://fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/current.html> (as modified in December 2019).

Select Jurisdiction Commentary

United States

The Antitrust Division's annual fine total rose to \$353.8 million for FY 2019, with the largest fine of \$100 million against Starkist Co. for its role in price-fixing for canned tuna fish. FY 2019 began to yield results for some of the Division's most high profile cases. The Division brought the first corporate enforcement action in the long-running generic drugs investigation against Heritage Pharmaceuticals, entering into a deferred prosecution agreement and requiring the company to pay a fine of \$225,000 for its involvement in an alleged conspiracy to fix prices, rig bids, and allocate customers. Heir locator firm Kemp & Associates entered a guilty plea and agreed to pay a \$1.53 million fine for its role in a conspiracy to suppress competition for heir locator services. The resolution bookends the courtroom battle over the application of the *per se* rule to a unique customer allocation scheme; in July 2017, U.S. District Court for the District of Utah ruled that the alleged agreement would be tried under the rule of reason but ultimately reversed course after prompting by the Tenth Circuit and held that the *per se* rule did in fact apply.

European Union

The European Commission's fine total rebounded in 2019, buoyed by a EUR 1.068 billion fine against five banks for participation in two cartels in the spot foreign exchange (forex) market across numerous currencies. Additional fines imposed included a \$413.8 million fine against car safety equipment suppliers for exchanging information and coordinating conduct in the supply of parts (bringing the total EC fines for cartels in this sector to EUR 2.15 billion), a \$35.6 million fine against two companies for collusion among suppliers of canned vegetables, and the re-adoption of a \$17.5 million fine against five producers of reinforcing steel bars for price-fixing conduct.

Notable prosecutions in EU Member States include:

- **France:** The Autorité de la Concurrence imposed a EUR 415 million fine against four companies and an organization for exchanging competitive information that allowed them to restrict competition for restaurant vouchers and for agreements to foreclose entry of new players.
- **Germany:** Germany's Bundeskartellamt doubled its fines from the prior year, driven by EUR 646 million in fines against three steel suppliers for exchanging information and fixing

prices of supplements and surcharges for quarto plates between mid-2002 until June 2016.

- **Italy:** The Autorità Garante della Concorrenza e del Mercato (AGCM) imposed a series of notable fines, including: EUR 678 million against car manufacturers' captive banks for the exchange of sensitive information related to actual and future quantities and prices; EUR 235 million against six companies and two consortiums for rigging tender bids concerning cleaning and management of public buildings; and EUR 287 million against 35 companies and a trade association for fixing prices and output of corrugated cardboard.

Mexico

Fines in Mexico totaled approximately \$5.6 million in 2019, a decrease from the \$12.5 million dollars in fines imposed in 2018. These fines were the result of investigations in a variety of industries, including household products, airlines, and food products.

Canada

The Canadian Competition Bureau imposed a total of approximately \$4.5 million in criminal fines in 2019, an increase from the sole fine of under \$1 million imposed in 2018. Both fines imposed in 2019 were in connection with bid-rigging for municipal infrastructure contracts in Quebec by engineering firms.

Brazil

In a modest decrease from 2018, fines imposed by the Brazilian competition authority CADE totaled approximately \$384.7 million, mostly stemming from various auto parts cartel investigations, and investigations into bid-rigging for road, railway, and subway contracts. In December 2019, CADE published a study on methods to detect bid-rigging in public procurement as well as new guidelines to assist entities that design and execute bidding processes in order to deter and detect bid-rigging.

Japan

In Japan, fines totaled approximately \$401 million in 2019, up from approximately \$84 million in fines in 2018. The increase was largely due to a \$367.6 million fine levied against eight asphalt manufacturers for exchanging information on the price of asphalt mixture. In June 2019, the Antimonopoly Act was amended to, among other things, expand the duration of cartel conduct

considered from three to ten years and broaden the scope of sales revenues as a basis to calculate fines.

South Korea

Fines by the Korea Fair Trade Commission (KFTC) totaled \$74.6 million, a significant drop from \$322 million in 2017 and \$248.5 million in 2018. The largest fine of the year was a \$12.7 million fine imposed against three ready-mix concrete cooperatives for a conspiracy to rig bids for tenders by regional governments. In November 2019, the KFTC announced that it would revise bid-rigging evaluation rules in 2020 in an effort to strengthen deterrence of such conduct. The revision is expected to ban companies from participation in government tenders if they prospectively accumulate five or more penalty points under the guidelines used to evaluate the severity of cartel conduct.

China

Fines in China totaled approximately \$2.4 million in 2019, down from approximately \$5 million in 2018. Construction remained a key industry focus of enforcement, with five actions brought against companies in the road equipment, concrete, and brick manufacturing industries. In October 2019, the China Community Party announced plans to strengthen enforcement of antitrust laws and to improve fair competition throughout China.

India

In India, fines totaled approximately \$18.9 million, down from \$54 million in fines in 2018. The Competition Commission of India (CCI) seemed to face several setbacks this year, as India's National Company Law Appellate Tribunal stayed fines in one matter and the CCI dismissed complaints in another. The largest fine of the year was a \$10.5 million fine imposed against two pharmaceutical companies and two chemist associations for restricting the supply of certain pharmaceutical drugs.



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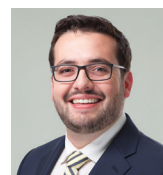


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