

2024 Global Cartel Forecast

January 2024

The cartel fine figures for 2023 reflect modest to flat overall growth in enforcement as compared to the last two years. These figures, however, still pale in comparison to the annual fine totals posted by authorities up until several years ago, when the U.S., EU and other stalwart enforcers regularly boasted annual fine figures totaling in the billions. Headwinds caused by dockets consisting largely of domestic and arguably novel cartel cases appear to be a primary driver of the continued lull in the fine figures. But there is reason to believe the winds may be changing for 2024, with enforcers demonstrating a renewed focus on pursuing international cartels and more traditional, hard-core cartel conduct.

In 2023, the U.S. Department of Justice's Antitrust Division saw an appreciable uptick in fines compared to the last two years, primarily due to a handful of significant plea deals. On the whole, however, this was not a particularly banner year for the Division. In addition to posting relatively modest fine figures, the Division lost three of the cartel cases it tried to verdict¹ and also saw a prior trial conviction overturned on appeal.² Nonetheless, we expect no less vigorous enforcement from the Division in 2024, as the Division digests the lessons learned from this year's setbacks and continues to revamp its enforcement agenda. We expect, for example, the Division to be far more selective in the cases it chooses to pursue in the labor market arena going forward, as well as to tack its primary focus back to matters evidencing more traditional, hard core cartel conduct. Evidencing this trend, in the closing weeks of 2023, the Division took the unprecedented step of voluntarily dismissing pending indictments relating to three different investigations that it no longer deemed worthy of pursuing to trial.³

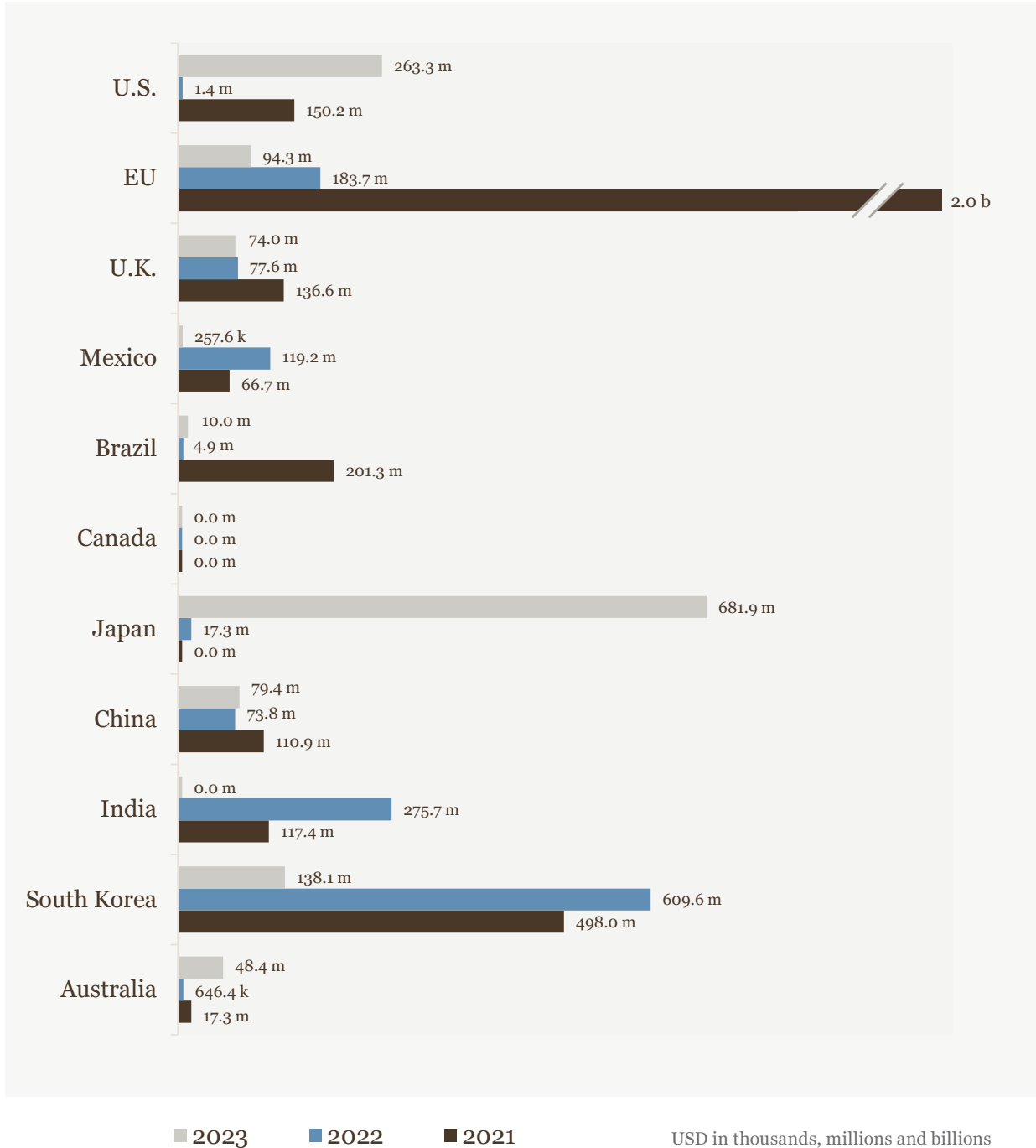
Fine figures for 2023 remained low elsewhere in the world as well, with regulators seeming to have been slow to shake off the pandemic-era cobwebs. But the momentum building from late in 2023 may foreshadow a return to more aggressive global enforcement in 2024. Indeed, across Europe, dawn raids have been on the rise, with authorities like the U.K. Competition Markets Authority (CMA) and the European Commission (EC) seeking to aggressively pursue new investigations. Authorities in Asia have been equally active, with the Japan Fair Trade Commission (JFTC) imposing a record-setting 100 billion yen fine against three utilities companies for

¹ *United States v. O'Brien, et al.*, No. 8:22-cr-00130, (M.D. Fla.); *United States v. Manahe et al.*, No. 2:22-cr-00013 (D. Maine); *United States v. Patel, et al.* No. 3:21-cr-220 (V AB) (D. Conn.).

² *United States v. Brewbaker*, No. 22-4544 (4th Cir. 2023).

³ *United States v. Surgical Care Affiliates*, No. 3-21-cr-00011-L (N.D. Tex.); *United States v. Aprahamian*, No. 2:20-cr-000064 (E.D. Pen.); *United States v. Bescond, et al.*, No. 17-464 (E.D.N.Y.).

Select Year-to-Year Comparison^{4 5}



⁴ 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, 2022 to September 30, 2023. All other statistics include enforcements in the 2023 calendar year. Fine totals include the amounts imposed during the relevant fine period, and exclude fines that were reduced, adjusted or re-imposed from prior years.

⁵ 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 Reporting Rates of Exchange, available [here](#) (as modified in September 2023).

no-poach, price-fixing and bid-rigging agreements. And so too have authorities across Latin America, including Brazil's competition authority (CADE), which imposed fines in a variety of sectors—most notably in liquefied petroleum, but also procurement, tech, cables and brokerage services—and has signaled through new guidance and its handling of an investigation regarding worker compensation that it plans to cast its cartel enforcement net even broader through more aggressive investigations of benchmarking and industry information sharing practices.

Each of these developments signals the likelihood that we may see overall global cartel enforcement intensify in 2024.

Trends to Watch for in 2024

A Return to International Cartel Enforcement

In 2023, we saw a glimpse of global cartel enforcers returning their focus to international cartel cases and we expect that focus to sharpen in 2024. For the past several years, the focus of cartel enforcement in the U.S. and abroad has primarily been domestic, with enforcers paying little more than lip service to international cartel efforts. This year was different. Global enforcers not only talked the talk but walked the walk, revealing coordinated efforts by multiple jurisdictions to launch investigations into the fragrances⁶ and admixture⁷ industries. We expect that these efforts may only be early signs of what's to come from a return to greater international cooperation and coordination among global cartel enforcers.



Prioritizing Government Procurement Frauds

Enforcers around the world are focused on sniffing out activity that costs taxpayers money by harming public procurement processes—both within their borders and abroad—and competition authorities are teaming with other government agencies in this effort.

The U.S. Antitrust Division's Procurement Collusion Strike Force, for example, recently expanded to include four additional U.S. law enforcement agencies, and this past year it contributed about \$12 million to the U.S. DOJ's FY 2023 cartel fines and recoveries, including a \$9 million recovery related to U.S. military installations in South Korea.⁸ The JFTC commenced criminal proceedings arising from an investigation into bid rigging related to advertising around the Tokyo 2020 Summer Olympics.⁹ A Seoul court issued penalties against pharmaceutical companies and employees for rigging public procurement tenders for vaccines.¹⁰ Brazil's Comptroller General's Office announced plans to expand its cartel enforcement in collaboration with CADE by increasing its focus on suspected cases of bid-rigging in public procurement.¹¹ And Chile's Supreme Court

6 *CMA Launches Investigation Into Fragrances and Fragrance Ingredients*, CMA (Mar. 7, 2023), available [here](#).

7 *CMA Launches Investigation Into the Supply of Chemicals for Use in Construction Industry*, CMA (Oct. 17, 2023), available [here](#).

8 Justice Department's Procurement Collusion Strike Force Announces Four New National Law Enforcement Partners as it Enters its Fourth Year, Dep't of J. (Nov. 15, 2022), available [here](#); *Subcontractor Sentenced to Pay Nearly \$9 Million in a Criminal Fine and Restitution for Rigging Bids and Defrauding the U.S. Military*, Dep't of J. (Sep. 12, 2023), available [here](#).

9 <https://www.jftc.go.jp/en/pressreleases/yearly-2023/February/230228.html>

10 <https://www.seoul.co.kr/news/newsView.php?id=20230201500208>

affirmed fines for an anticompetitive agreement in the market for forest firefighting services, harming multiple government entities.¹²

Going forward, we expect enforcers will remain heavily focused on procurement risks both in the U.S. and abroad in connection with the continuing COVID-19 recovery, the Paris 2024 Summer Olympics, infrastructure improvements, the conflict in Ukraine and preparations for the 2026 FIFA World Cup.¹³

Competitive Benchmarking / Information Sharing as a Catalyst for Enforcement

Enforcers have cautioned that once-accepted competitive benchmarking and industry information sharing techniques may now serve as a catalyst for cartel inquiries. In the U.S., the Antitrust Division signaled this shift in approach by withdrawing 30-year old policy statements that provided a safe harbor for industry information sharing, replacing them with only a warning that times have changed and that any form of information sharing will be closely scrutinized for its potential to facilitate collusion.¹⁴ The U.K.'s CMA fired a similar shot over the bow in its latest guidance, highlighting as an example of business cartel conduct the sharing of sensitive information about terms and conditions offered to employees.¹⁵ In Brazil, CADE also issued new cartel fine guidelines identifying the exchange of information as a type of cartel conduct,¹⁶ and in 2023, CADE was pursuing at least three probes centered on information sharing—including one focused on employee compensation

information and another where public filings suggest CADE may even view certain information sharing as inherently illegal. Whether authorities will find evidence that benchmarking or information sharing practices actually led to collusion in any particular industry remains unclear, but what is clear is that enforcers appear primed to want to dig in and find out.¹⁷

Aggressive Use of the Tools in the Investigative Tool Kit

While the pandemic years hampered in-person efforts, agencies have evidenced a renewed vigor post-pandemic in using aggressive enforcement techniques. The U.S. Antitrust Division recently announced an investigation into bid-rigging of forest-firefighting services that was brought as a result of the use of wiretaps,¹⁸ a tool rarely used in cartel cases. In similar fashion, in Europe, the past year saw a remarkable increase in the number of dawn raids launched by the EC. In total, the EC undertook seven raids in 2023—a 75% increase from the four raids in 2022 (and vastly higher than the single raid conducted in 2021). This trend was also reflected by national-level enforcement activity amongst some EU member states, with countries including Italy (seven raids), Poland (four raids) and Spain (six raids) seeing significant spikes in 2023. Similarly, in Japan, the JFTC conducted at least seven raids. As agencies re-double their efforts to reinvigorate enforcement post-pandemic, we expect to see increasing reliance on more aggressive investigative tools in cartel matters.

11 <https://www.cnnbrasil.com.br/politica/cgu-vai-ampliar-atuacao-contra-carteis-diz-ministro/>

12 <https://www.fne.gob.cl/corte-suprema-confirma-condena-por-colusion-a-empresas-que-combaten-incendios-forestales-mediante-aviones-cisterna/>

13 *Director of the Justice Department's Procurement Collusion Strike Force Daniel Glad Delivers Remarks to the Seventh Annual White-Collar Criminal Forum at the University of Richmond Law School*, Dep't of J. (Sep. 14, 2023), available [here](#); *Justice Department's Procurement Collusion Strike Force Holds Its First Summit to Discuss Strategies to Combat Emerging Threats*, Dep't of J. (Nov. 17, 2023), available [here](#); *United States, Mexico, and Canada Launch Joint Initiative to Detect Collusive Schemes Seeking to Exploit the 2026 FIFA World Cup*, Dep't. of J. (Sept. 22, 2023), available [here](#).

14 *Justice Department Withdraws Outdated Enforcement Policy Statements*, Dep't of J. (Feb. 3, 2023), available [here](#).

15 *Guidance: Employers advice on how to avoid anti-competitive behaviour*, CMA (Feb. 9, 2023), available [here](#).

16 *Dosimetria de multas de cartel*, CADE (Sep. 2023), available [here](#).

17 *Principal Deputy Assistant Attorney General Doha Mekki of the Antitrust Division Delivers Remarks at GCR Live: Law Leaders Global 2023*, Dep't of J. (Feb. 2, 2023), available [here](#).

18 *Executives Charged with Bid Rigging, Territorial Allocation and Defrauding the U.S. Forest Service After a Wiretap Investigation*, Dep't of J. (Dec. 15, 2023), available [here](#).

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