

Assessing Your Risks in Antitrust

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Effective Compliance Programs



High Level Commitment
or Tone at the Top

Code of Conduct

Oversight & Autonomy
by Compliance Staff

Adequate Global Compliance
Resources

Specific Policies and Procedures

Comprehensive Internal Audits –
Rotational and Proactive

Robust Internal Controls

Risk Assessment Processes

Regular Training and Guidance

Hotline

Internal Investigation

Enforcement, Discipline, and Incentives

Organizational Justice

Third Party Management

M&A Due Diligence Procedures

Integration of Newly Acquired Entities

* Effective compliance programs must be tailored to the company's specific business and risks and be dynamic to evolve with the business and its risks.

Complexities of Antitrust Compliance – U.S. and EU



Effective antitrust compliance program = zero violations or first to detect

U.S. have provided very limited guidance on antitrust compliance programs

Amnesty or leniency is the big carrot – will not also give credit for a compliance program

Cartel violation without leniency = a failed compliance program

Contrast with FCPA and UK Bribery Act

Necessity of Antitrust Compliance Program?

To comply with the law

Builds stakeholder confidence

Build company reputation for compliance

Prevent disastrous violation from occurring

- Potential enormous criminal/civil fines
- Employee jail time
- Customer class action lawsuits
- Shareholder class action lawsuits
- Potential debarment from government contracts
- Enormous brand/company reputational damage

Increase chance of detection and qualifying for leniency

Cost of failure heavily outweighs the cost of compliance



Absolutely!

Antitrust Risk Assessment



There is no 'off the shelf' or 'one size fits all' antitrust compliance program

Needs to be company/industry risk based

Every company, even companies in the same industry, can have different antitrust risk factors.

Need to conduct a proper regulatory risk assessment – know your company, industry, and jurisdiction(s) and the risks that exist.

Are you starting from scratch, or do you have a developed general compliance program?

What has been your company's (and your competitors') historical record in compliance, specifically in antitrust matters?

Cartels

Cartel Risk?

- Which countries do you operate in?
- Potential penalties?
- Commodity product?
- Number of players in your industry?
- Opportunity? (conferences, trade associations, JVs)
 - Very important to get a handle on trade associations and other potential competitor contact!
 - Due diligence
 - Risk analysis
 - Safeguards
- Bids/tenders?
- Information exchanges?



Monopolization and Vertical

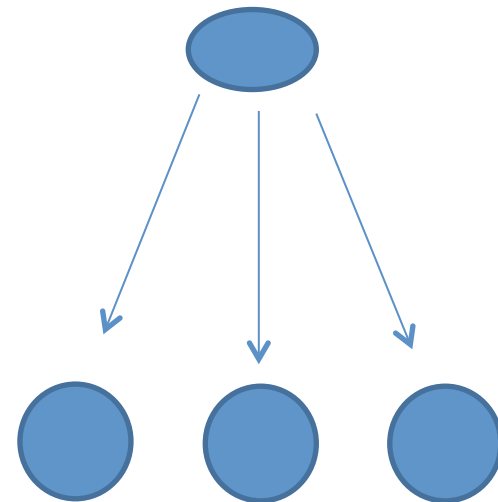
Monopolization Risk?

- Market power
- Barriers to entry
- Abuse of a dominant position?
- Refusals to deal
- Very much a jurisdictional risk



Vertical Risk?

- Are you using an indirect sales model?
- Hub and spoke risk?
- Are you employing any forms of RPM?
- Are you using exclusive territories?



Mergers & Acquisition

M&A Risk?

- Are you making the correct regulatory filings and are they complete?
- Is your business properly trained for 'initial discussions'?
- Does your M&A team and business have appropriate safeguards to firewall information during due diligence?
- Is the M&A team and business properly informed of dangers of 'gun jumping'?



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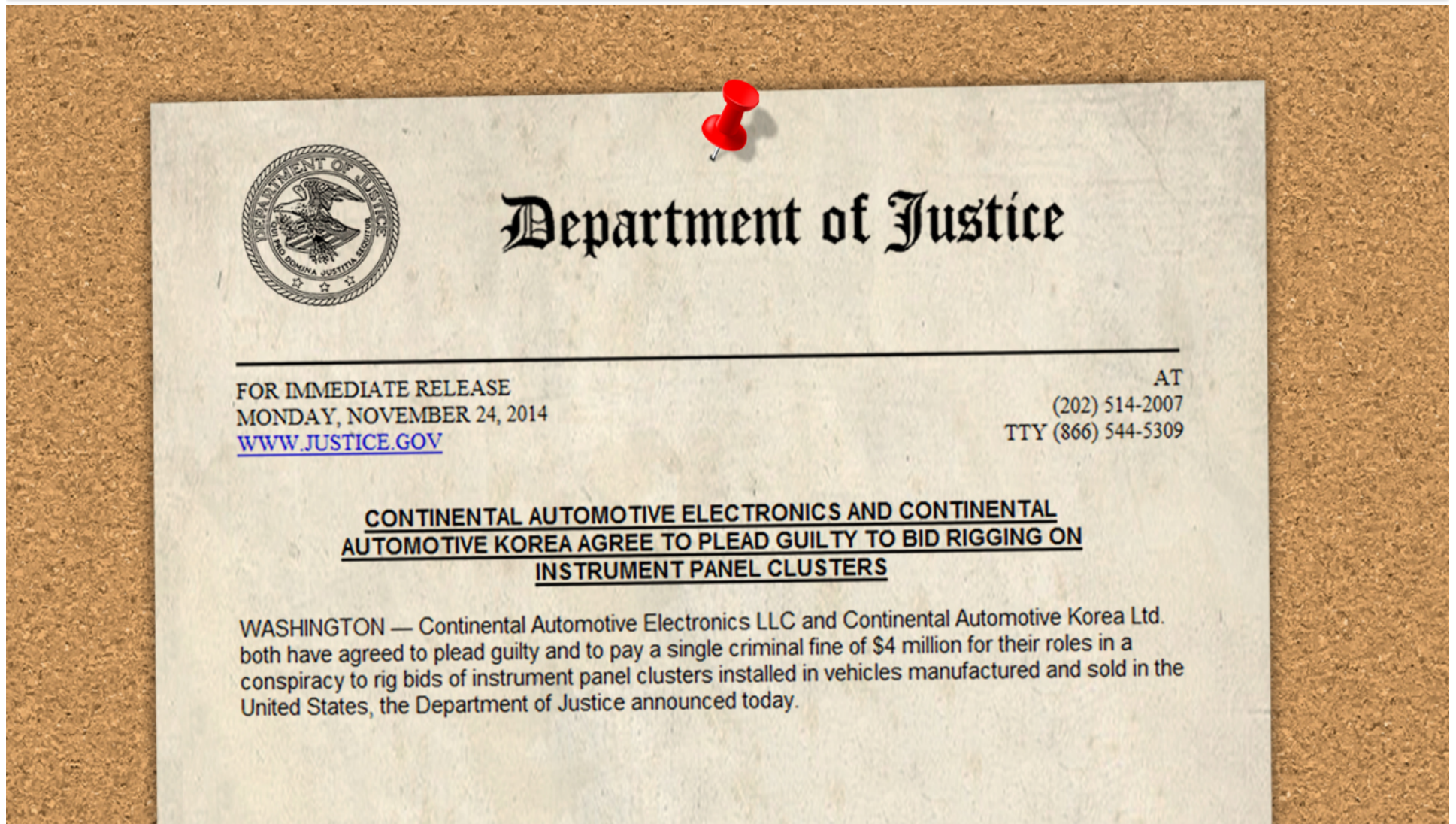


“I Never Thought This Would Happen”

- May 2007: Two executives arrested at 5 AM in their Houston hotel
 - Long-time employees attending international conference
- Trade association – gone bad
 - Price & bidding information shared via Executive Director
 - Was the way business “has always been done”
- Offices of numerous companies searched
 - Criminal fines > \$15 M
 - Civil penalties > \$30 M
 - Potential Debarment
- Both managers
 - Fired
 - Personally fined - \$100 K
 - Jailed - 2 years
- No personal gain other than bonus



2014 – Different Business & Country



Global Antitrust Laws Are Very Similar

Don't get caught in the details, look at the basics

Impact of behavior

- Pro-competitive vs. anti-competitive?
- Reduce uncertainty vs. maintain/increase uncertainty?
- Reduce prices vs. increase (or maintain) prices?

Underlying principles are similar

- Are market forces liberated or restrained?
- Are consumers harmed or helped?
- Want *your* suppliers in this position?



More Like Drug Dealing than Bribery

Businesses operate in The Land of Behavior

- Processes can make it harder & less lucrative to siphon money

Policies & processes don't stop conspiracies

- Only takes two to tango
- No real controls
- No need for complicity or willful blindness
- Desire to “help the company”



Be Thoughtful Before Adding Controls

Think things through before instituting “controls”

- How will you use the data?
- Is it reliable?
- Will it be updated?
- Is it naturally sustainable?
- Can you audit it?
- How would this sound on cross examination?



Education is often the best prevention

- Isolated compliance “processes” can hurt your company

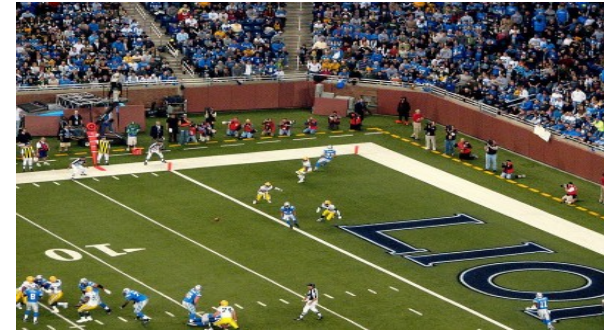
Market dominant companies can do something



Switching from Defense to Offense

Your company can be a victim via purchasing

- Occurring through different industries
 - Auto parts
- Detect by looking for patterns
- Questions:
 - Do prices hold steady while natural resources prices decrease or not increase as much as markets indicate?
 - Is there a pattern in vendor selection?
 - What can you measure?



M&A - Getting to Closing

Do your best, but be ready for surprises

- Second requests on different views of the market
- Unanticipated country reviews
- Short intervals to sell



Different Regulators Have Different Processes & Cultures

