

Worldwide Antitrust Fines Set Record for 2016

by STEVE FELLMAN, TAUC GENERAL COUNSEL

TODAY, MORE THAN one hundred countries have anti-trust laws, most modeled after U.S. laws. Why have other countries developed such a strong interest in antitrust over the last 20 years? The answer is simple: antitrust enforcement has proved to be a great source of revenue for governments throughout the world.

Let's look at the numbers. In 2016, it is reported that worldwide antitrust fines totaled \$6.7 billion dollars. The European Union brought in fines of \$4.1 billion, and other countries also benefited from the bonanza – for example, India collected \$941 million and South Korea collected \$765 million. The European Union picked up total fines of \$4.1 billion last year.

By contrast, the U.S. Antitrust Division reported a sharp drop in collected fines in 2016 – just \$387 million, down from a whopping \$2.85 billion in 2015. But don't assume that the smaller total indicates the U.S. is going soft on antitrust. A record number of cases were settled in 2015, enabling the Antitrust Division to move its limited resources to a series of new cases. It would not be surprising to see Antitrust Division fines in 2017 doubling or even tripling 2015's numbers.

Contractors must remain aware that bid-rigging is one of the major antitrust concerns not only in the U.S. but worldwide. Bid-rigging includes not only agreements on what to bid, but also agreements *not* to bid on certain projects; agreements to submit unreasonably high bids to assist a competitor get the bid at a more reasonable number; and agreements to submit non-responsive bids. In fact, even an "innocent" conversation between competitors regarding a pending RFP could be a basis for a bid rigging charge. All contractors should be aware of what constitutes bid-rigging and should have a written antitrust compliance program. See TAUC's Antitrust Policy Statement at www.tauc.org/antitrust.

Contractors found guilty of bid-rigging face more than significant fines. According to a recent Department of Justice memo, the Yates Memo, the individuals who actually engage in the illegal activity will be prosecuted. Bid-rigging is a criminal violation of the antitrust laws. Individuals convicted of bid rigging are guilty of a felony and face a mandatory jail sentence of up to ten years.

As governments become more conservative, agencies will be pushed

to engage in activities that show a positive benefit to the economy. Antitrust enforcement is one of those activities. In 2016, the Antitrust Division budget was \$165 million. That investment of tax revenue resulted in income (fines) of \$387 million. Every private company would give its eye teeth to generate that type of return on investment. Contractors can expect antitrust enforcement efforts directed at practices such as bid rigging to continue under the Trump Administration.

We recommend that all contractors not only have a written antitrust compliance program but also conduct annual continuing education sessions with key employees to make sure that they fully understand their responsibilities under the antitrust laws. For further information contact me, Steve Fellman, at sfellman@gkgglaw.com.



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\$6.7
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THE EUROPEAN UNION
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