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**Global Antitrust Compliance – Assessing
Antitrust Risks and Creating an Effective
Antitrust Compliance Program**

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All material covered in this presentation is the personal opinion of the presenters and is not a representation of JP Morgan or The Chemours Company

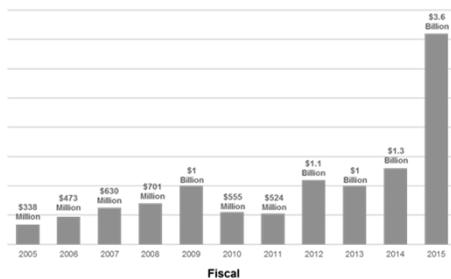
What We Will Cover

- Overview of global legislation, antitrust enforcement activity and trends in the evolving antitrust compliance environment
- Learn how to conduct a comprehensive, global risk assessment to uncover antitrust risk in your organization
- Learn how to effectively promote antitrust compliance in your organization and create an effective antitrust compliance program to mitigate global risk

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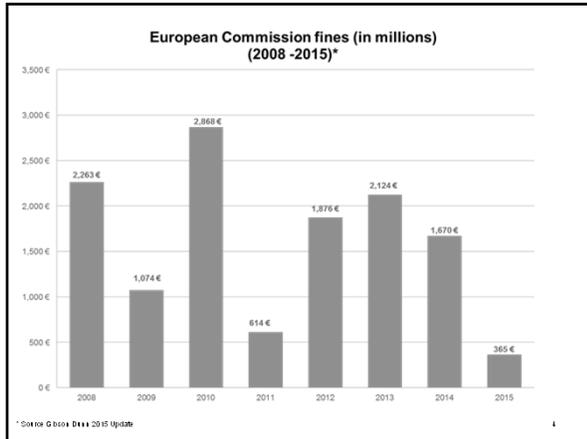
U.S. Cartel Fines Hit All-Time High in 2015

Total Criminal Fines & Penalties*



*Source: Antitrust Division Criminal Enforcement Trends

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U.S. and EU Regulatory Perspective on Antitrust Compliance

- Effective antitrust compliance programs = no violations or first to detect
- Will not reward preexisting antitrust compliance programs where have a violation and not first to report
- Expect compliance perfection - Why? According to regulators, antitrust is different because
 - ✓ Amnesty is available
 - ✓ Usually involves senior employees and is a corporate act, no rogue employees

Necessity of Antitrust Compliance Program

- Compliance with the law
- Build company reputation for compliance and stakeholder confidence
- Prevent disastrous violation from occurring
 - ❖ Potential enormous criminal/civil fines in multiple jurisdictions
 - ❖ 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
- Emerging credit for effective antitrust compliance programs (e.g. Canada, Brazil, Hong Kong, Singapore, even U.S. for "forward looking" antitrust compliance programs)

Complexities of Forming an Antitrust Compliance Program
- Anticorruption Comparison

Anticorruption Compliance	Antitrust Compliance
Significant Specific Guidance from Regulators	Sparse guidance, rather high level and vague
Best practices aplenty – compliance ideas more transferrable between companies	Nascent – need more tailored approach
Easier to explain and train – (“don’t bribe”)	Antitrust is complex and not easily explained or trained
Crime usually leaves a trail (ie. a payment leaves the company or is in the financials)	“Secret” crime which is hard to detect and may not leave a paper trail
Critical mass of adoption through third party due diligence	More nascent stages

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Key Components of Effective Antitrust Compliance Programs

- Be sure to win “tone from the top” and senior management commitment/oversight specifically on competition matters
- Be certain competition compliance is specifically addressed in the code of conduct
- Drafting a policy
- Risk assessment
- Tailored trainings
- Detective controls
- Mergers and acquisitions
- Internal reporting (e.g. hotline) and investigations
- Appropriate discipline/incentives



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.

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Business and Industry Risk Assessment

- There is no “off the shelf” or “one size fits all” compliance program.
- 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 are present.
- Are you starting from scratch, or do you have a developed compliance program?
- What has been your company’s historical record in compliance, specifically in antitrust matters?

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Cartel Risk

- Which countries do you operate and potential penalties?
- Commodity product?
- Number of players in your industry? Barriers to entry?
- Competitor Interaction and Opportunity? (e.g. - Conferences, Trade Associations, Joint Ventures)
 - ❖ Very Important to get a handle on your trade associations and other competitor contact!
 - ❖ Due Diligence
 - ❖ Risk Analysis
 - ❖ Safeguards
- Bids/Tenders?
 - ❖ Government bidding?
- Information Exchanges?
- Employee Rotation Amongst Industry?



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Information Sharing or Exchange Risk

- Which countries do you operate and potential penalties?
 - ❖ Hub and Spoke Risk?
 - ❖ One Way Risk?
- How often? What is business justification?
- Forum for Exchange?
 - ❖ Trade Associations
 - ❖ Joint Ventures
 - ❖ Distributors, Customers
- Risk Analysis
- Safeguards



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Monopolization and Vertical Restraint Risks

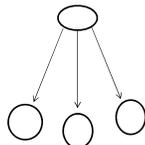
Monopolization

- Market power
- Barriers to entry
- Abuse of a dominant position?
 - ❖ Tying products
 - ❖ Predatory tactics
 - ❖ Refusing to deal
- Very much a jurisdictional risk



Vertical Restraints

- Are you using an indirect sales model?
- Are you employing any forms of RPM?
- Are you using exclusive territories?
- Do you need third party antitrust protection (e.g. due diligence, contracts, training)



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Tailored Trainings



On-line

- Create an on-line module that is engaging, sleek and will resonate with your employees
- Preferably for new hires and annually for at least high risk employees
- Tailor your trainings to your company's specific antitrust risks

Live

- If done well, best bang for your compliance buck
- How do you make antitrust training understandable and entertaining?
 - ❖ Definitely stay clear of legalese (e.g. "per se" and "rule of reason")
 - ❖ Use real life examples – tailored for audience, business, and region you are training
- Consider bespoke trainings – investigators, sourcing , etc.

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Auditing and Detective Controls

- Auditing of your Antitrust compliance program's controls and procedures
- Cartel detection - is it really feasible to uncover a clandestine cartel?
- Detective controls are part of an effective antitrust compliance program!
- Considerations
 - ❖ Very difficult to implement and expensive
 - ❖ Must be risk based – businesses/jurisdictions
 - ❖ Data privacy



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Auditing and Detective Controls – Possible Options

- Ongoing proactive or reactive email/communication surveillance
- Proactive field audit
 - ❖ Work with audit team to develop an audit program - look at bids, stable market shares, etc.
- Targeted transaction reviews
- Segregation of duty pricing controls
- Trade association audits
- Pricing or data screens
- T&E audits
- Mock dawn raids
- Questionnaires



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Mergers and Acquisitions

- Is your business properly trained for “initial discussions?”
- Antitrust due diligence on target company
- 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?”
- Integration of acquired company into your antitrust compliance program



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Internal Reporting and Investigations

- Must have a reporting system (hotline) for any effective compliance program
 - ❖ Can be anonymous
 - ❖ Must have adequate resources to investigate
 - ❖ Investigations must be given high priority to garner employee faith in the system
 - ❖ Strict discipline for employees found to commit violations.
- You have a cartel or other serious antitrust allegation, what do you do?
 - ❖ Have your “break the glass” plan ready



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Questions?
