



ANTITRUST UPDATE | AUGUST 17, 2009

STIMULUS PACKAGE EXPECTED TO TRIGGER INCREASED CRIMINAL ANTITRUST ENFORCEMENT: GOVERNMENT OFFICIALS BELIEVE ECONOMIC INSTABILITY HAS MADE MARKETS MORE VULNERABLE TO COLLUSION

The Antitrust Division of the US Department of Justice has announced that it has dedicated significant resources to assist agencies to detect and deter criminal antitrust offenses related to funds under the American Recovery and Reinvestment Act ("ARRA"). The Division believes that higher levels of concentration and economic instability have made markets more vulnerable to collusion and other fraudulent activity related to competition in government procurement. Labeled the Antitrust Division Recovery Initiative, the Division has developed a special program to assist vulnerable ARRA funded agencies. As part of the program, the Division is providing training to the investigative arms of the agencies as well as the procurement officials responsible for the expenditure of the funds. Training of over 8,000 agents, auditors, grant recipients, and other procurement officials has already occurred.

THE PRACTICAL IMPACT

This program is likely to trigger closer scrutiny of teaming, subcontracting and other contractor collaborations. It may also lead to more receptive audiences for competitor complaints about practices such as supplier exclusivity arrangements.

Even if without foundation, a government antitrust investigation can lead to devastating consequences. The expense, business disruption, and potential suspension or debarment alone can cause serious loss. Moreover, if executives do not fully understand the consequences and succumb to collusive temptations, even if for a reason such as avoiding potential liquidated damages for delays, the Antitrust Division will seek to prosecute.

The Antitrust Division's criminal enforcement in recent years has obtained increasingly higher criminal fines and longer jail sentences for offenders. In the first six months of the current fiscal year, nearly \$1 billion in criminal fines were obtained against corporate defendants and the longest jail sentence for a single antitrust violation was imposed. In the last three years, over \$2 billion in criminal fines and more than 162 years in jail time have been imposed in cases prosecuted by the Antitrust Division.

These developments should cause companies of any size – from multinationals to smaller enterprises -- that do, or seek to do, business with ARRA funded agencies to undertake training programs tailored to the specific potential antitrust issues that affect particular contracting areas and which effectively bring home the message of compliance.

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