

INTRODUCTION

Contributed by: Mark Rosman, Proskauer

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Contributing Editor



Mark Rosman is a partner at Proskauer. A first-chair trial lawyer with over 30 years' experience litigating in both the public and private sectors, Mark is a seasoned litigator,

representing companies and individuals in connection with national and international antitrust and criminal matters, including cartel defence, criminal enforcement investigations,

and merger and civil non-merger cases. He previously served as assistant chief of the national criminal enforcement section of the DOJ's Antitrust Division, and as special assistant to the directors of enforcement at the Antitrust Division's office of operations. Mark is a prolific author on antitrust law, and has extensive experience in handling Foreign Corrupt Practices Act (FCPA) violations, fraud investigations, bribery, etc.

Proskauer

Eleven Times Square
New York
NY 10036-8299
USA

Tel: +1 212 969 3000
Fax: +1 212 969 2900
Email: kdonner@proskauer.com
Web: www.proskauer.com



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Global Overview for Cartels 2025

"You can't step into the same river twice."

– Heraclitus

"What is actual is actual only for one time. And only for one place." – T.S. Eliot

"Change. You can change." – Tears for Fears

Introduction

While change may be an inevitable and constant force with which to be reckoned, 2025 presents a year of sweeping changes and unique challenges for business people, competition lawyers, and regulators alike. The year presents astonishing political, technological, and socio-economic transition.

The prospect of new tariffs and trade wars greatly complicates the competitive landscape and underscores how intimately connected and inextricably intertwined commerce is among nations. From a technological perspective, the introduction of artificial intelligence promises to not just change but transform business, economics, and indeed life as we know it.

Challenging and uncertain economic times give birth to cartels. But amidst all this change, one constant counter-trend emerges: cartel enforcement. Across the globe, a near universal view remains among agencies and courts that cartel behaviour harms consumers by raising prices and reducing output, and needs to be stopped.

Against this backdrop, welcome to the Chambers Cartels 2025 Global Overview. Here, readers will find the current state of play for cartel enforcement and private damages suits in 12 countries and the EU, across three continents.

Frameworks

In many cases, there have been significant and sometimes nuanced changes to cartel laws, procedures and personnel. The contributing authors, all chosen experts in their jurisdictions, will cover the legal and procedural frameworks in their respective countries: What constitutes a violation? Which are the key procedures of which to be aware?

The experts will describe the various leniency and whistle-blower regimes: Does a leniency programme exist and how does it work? They will describe the enforcement framework, giving insights into local cartel regulators and how each works: Who is responsible for cartel enforcement? How do they run an investigation?

Remedies will be covered as well so that companies and practitioners can fully understand the potential fines and consequences of cartel sanctions in each jurisdiction. Over 40 countries have laws imposing some kind of criminal penalties on cartel participants. So, it is important to know: Are there criminal penalties involved? Can employees go to jail for cartel offences?

One potentially significant consequence that flows from cartel regulation is the risk of private civil litigation and follow-on damages: What is the risk of being sued by customers or consumers? How much is at stake? In America, almost as night follows day this risk is extremely high. As more countries adopt a private damages regime, this risk grows.

This guide and its contributing authors will cover, by jurisdiction, these topics and any respective changes in depth. But the common thread remains that cartel enforcement is a worldwide priority and will continue to be so especially during and in the aftermath of economic crisis and

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societal upheaval. This leads to the expanded section at the end of this guide outlining trends, which harks back to the theme of this introduction: change.

Trends

As Yoda explained in the underrated Star Wars Episode 1, *The Phantom Menace*, “Fear is the path to the dark side”. Similarly, change, like the trends below, breeds uncertainty. Uncertainty leads to fear and unease. Fear and unease can lead to cartel behaviour. Questions arise: Will we miss our quarterly sales targets again? Will customers accept another price increase if our costs continue to go up? How can we be sure that our competitors will pass on a cost increase and not take our market share? Under such circumstances and pressure, and as has happened many times in the past, managers are tempted to ask the sales team to find out what the competitors are doing. The salespeople may in turn reach out to their trusted counterparts or friends at the competing companies to find out for sure what the competitors intend to do. And so it goes.

Crisis cartels

The 9/11 crisis brought the airlines together, where they communicated and widely adopted fuel and security surcharges in response to the crisis. This conduct ultimately resulted in global government and private enforcement with billions of dollars in fines and jail time in, and extradition to, the United States for some executives.

Similarly, the volatility resulting from the 2008 financial crisis caused banks to come together and collude on LIBOR, foreign currency exchanges, and other financial products – again, followed by aggressive cartel enforcement, massive fines and follow-on damages, and jail time.

With the COVID-19 pandemic barely in the rear-view mirror, recent inflationary pressures, and now newly introduced tariffs, one can only ask: How will businesses cope? Are compliance programmes up to the task? And what are various jurisdictions doing to bust up the next big international or domestic cartel?

Recently, there have been news reports about “tariff surcharges”. Of course, a surcharge unilaterally derived is not a violation of law. But when an industry adopts a uniform surcharge, regulators sit up and take note.

Roger Alford, Principal Deputy Assistant Attorney General at the US Department of Justice’s Antitrust Division, in response to a climate of tariff setting, recently discussed the need for authorities to remain vigilant for signs of collusion. He warned that the imposition of trade barriers could reduce foreign competition which in turn could lead to greater market concentration and less competition. This in turn could increase the risk of collusion on pricing or output. In this example, the DOJ is putting companies on notice to use caution during these turbulent economic times (Khushita Vasant, *US DOJ’s Alford Warns of Risk of Anticompetitive Behavior in Response to Tariffs*, MLEX (4 April 2025)).

Artificial intelligence and pricing algorithms

Over the past decade, certain kinds of technology have developed as an industry-wide tool that can help businesses manage inventory and set pricing based on current, or recent, supply and demand data. With widespread industry adoption of such a common algorithm, regulators have begun to view this technology with deep suspicion. Can a pricing algorithm function at the centre in a new version of the classic hub-and-spoke conspiracy? Are the smoke-filled rooms of the cartels of yesteryear being replaced

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by a virtual reality involving a program designed to raise prices and maximise profits?

While it would seem reasonable to assume that some evidence of a meeting of the minds or the human hand would still be needed to prove a price-fixing agreement among competitors, the United States government seems to be leaning otherwise. For example, the US Department of Justice in recent years has taken the view that use of such algorithms, under certain circumstances, can be tantamount to collusion and a violation per se of antitrust laws (Department of Justice, Statement of Interest of the United States, *In re: RealPage, Rental Software Antitrust Litigation*, Case No 3:23-MD-3071 (15 November 2023)).

Similarly, as a past Chairperson of the US Federal Trade Commission foreshadowed a few years ago, “Everywhere the word algorithm appears, please insert the words a guy named Bob. Is it OK for a guy named Bob to collect confidential pricing strategy information from all the participants in a market, and then tell everybody how they should price? If it isn’t OK for a guy named Bob to do it, then it probably isn’t OK for an algorithm to do it either” (Maureen K. Ohlhausen, Acting Chairman, US Fed. Trade Comm’n, [Should We Fear the Things that Go Beep in the Night? Some Initial Thoughts on the Intersection of Antitrust Law and Algorithmic Pricing](#) (23 May 2017)).

The rapid developments in and increasingly widespread use of artificial intelligence also will present questions and challenges related to cartel conduct and enforcement. Depending on how business train and use AI, could it become a way to facilitate cartel behaviours? To what extent will business people rely on AI to advise or coach them through delicate competitor com-

munication? Conversely, will regulators be able to use AI to help detect or monitor suspicious pricing patterns or cartel conduct? We may not know the answers to these and related questions for some time, but practitioners around the globe will need to start considering how clients and regulators will make use of this extraordinary technology.

Information sharing

With an increased focus on compliance training, business people around the globe are increasingly aware of the risks of engaging in cartel behaviours. Nevertheless, grey-area conduct involving sharing of confidential and competitively sensitive commercial information, related to pricing, margins, costs, and output, for example, appears to be flourishing. In many jurisdictions, because it can have the effect of reducing competitive uncertainties to the customer’s disadvantage, competition regimes and regulators view sharing of this type of information as a potential cartel offence.

At the same time, companies have many legitimate reasons to exchange certain types of information, especially when facing common obstacles such as supply shortages or regulatory concerns. Thus, knowing the laws and the current enforcement landscape in key jurisdictions is critical for business.

Environmental, social and governance cartels

Along these lines of pro-competitive reasons for information sharing, many jurisdictions are adopting environmental, social and governance (ESG) mandates or policies which have in turn brought businesses together for industry discussion. It is important to understand, by jurisdiction, if there is any guidance issued by authorities about avoiding cartel behaviour while discussing adoption of ESG standards. To comply with ESG

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mandates, companies need to understand the implications of sharing strategies and information that could affect pricing or output.

Labour market allocation

Many jurisdictions now view agreements not to hire or solicit employees (“no poach”) or agreements related to wages as cartel offences. In the United States, this conduct is viewed as criminal conduct (see *United States v DaVita Inc.*, No 1:21-cr-00229 (D. Col.); see also *United States v Lopez*, No 2:23-cr-00055 (D. Nev.); DOJ Press Release, [Jury Convicts Home Health Agency Executive of Fixing Wages and Fraudulently Concealing Criminal Investigation](#) (14 April 2025)).

However, when necessary to a joint venture, potential acquisition or other business collaboration, such discussions can be legitimate and legal. Understanding where the lines are drawn in this new and expanding area of enforcement is critical.

Messaging applications and chat platforms

Another form of technology presents challenges in cartel cases: messaging apps and chat platforms. The use of email and text messaging is rapidly being replaced by communications through messaging applications and

chat platforms. Many such apps are designed to be ephemeral and are not archived or saved. Increasingly, employees are communicating internally and externally through messaging applications, and when using their personal devices, mixing business and personal communications on the same device.

The key evidence in a cartel matter often involves written competitor communications. If such communication takes place through ephemeral messaging, counsel and companies seeking to understand the facts may be stymied. Regulators now expect companies to find a way to preserve and maintain such communications or face penalties such as fines, contempt or even obstruction of justice ([Case COMP/40882 – IFF – deletion of data, Comm’n Decision](#) (24 June 2024); see also: *United States v DaVita Inc.*, No 1:21-cr-00229 (D. Col.)).

Conclusion

Change is a constant. In the face of such turbulence, it is important to review guides like this one, that will help practitioners and companies understand the dynamics and nuances of cartel practice across the globe. Having such information at the ready and for reference will help to successfully navigate and adapt to these challenges.