

Cartels & Government Investigations



In an aggressive enforcement landscape, a company's choice of cartel counsel is critical. Axinn takes an integrated approach and handles all aspects of criminal investigations, including compliance programs, internal investigations, government investigations, criminal proceedings, and civil litigation.

The firm recognizes that success requires a clear understanding of its clients' goals and values, and of the unique challenges posed by every investigation. It uses this understanding to provide real strategic options rather than a "one-size-fits-all" approach.

The firm's lawyers have worked on the largest price fixing investigations of the past decade, novel investigations involving collusion by algorithm, labor markets, and criminal monopolization claims, and have represented companies and individuals in cartel investigations by the U.S. Department of Justice, the Australian Competition and Consumer Commission, the United Kingdom Competition and Markets Authority, Brazil's Administrative Council for Economic Defense, the Canadian Competition Bureau, the European Commission, and other worldwide authorities.

Axinn's attorneys together have more than 100 years of collective DOJ and FTC experience. The team includes former federal prosecutors, the FTC's Chief Trial Counsel, and Antitrust Division leaders with oversight of the Division's criminal investigations, trials, and policy initiatives.

Select Representative Experience

- Defended multiple Fortune 500 clients in nonpublic DOJ, FTC, and State AG investigations
- Represented Google in various investigations of its business practices in the U.S. and other jurisdictions
- Successfully closed an investigation into algorithmic price fixing within months of being retained following a search warrant at our client's headquarters
- Defended multiple clients in criminal auto parts and air cargo cartel investigations
- Represented leniency applicants in several DOJ price fixing, bid rigging, and no poach investigations
- Successfully closed a no poach investigation on behalf of a corporate subject
- Defended multiple individuals in non-public DOJ no poach, price fixing, and public procurement fraud investigations
- Conducted internal investigations in industries ranging from consumer goods and manufacturing to health care and technology for issues including price fixing, market allocation, fraud, and labor-market collusion; each matter was successfully resolved without government or private enforcement
- Represented a European company (Tomkins) in the successful defense of an appeal by the EC to the European Court of Justice

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Navigating No Poach & Wage Fixing

Know the antitrust rules of the road

It is easy to run into legal problems when talking to another company about hiring issues. And these are no longer just civil issues—the U.S. Department of Justice is now aggressively prosecuting these cases criminally, against both companies and individuals.

Agreements between competing employers (1) not to poach, solicit, or hire employees or (2) to set compensation (e.g., wages, salaries, or benefits) at a certain level can be illegal. Any companies that hire from the same pool of talent are considered “competitors,” including suppliers and subcontractors.

The rules against these agreements apply to all types of employees, from highly compensated executives to nonexempt employees. Convictions can result in prison time for individuals of up to 10 years for individuals, and criminal fines of up to \$100 million or more for companies. Violations can also lead to significant civil damages in class action litigation.

What You Can Do to Avoid These Issues

Do not discuss or agree with another company about:

- Future wages, salaries, benefits, or other compensation terms to offer employees
- Refusing to solicit or hire each other’s employees
- Any intention not to compete aggressively for candidates
- Exchanging information about employment terms

Do:

- Compete for labor
- Make independent decisions regarding hiring or compensation practices
- Establish compliance training regarding no poach and wage fixing violations
- Consult antitrust counsel if issues about recruiting and hiring practices arise

Understanding the pitfalls you and your company face—and knowing how to avoid them—can make the difference between “business as usual” and jail time.

Questions? Contact any of Axinn’s antitrust partners for more information. axinn.com/antitrust