

DOJ's scrutiny of antitrust violations in US government procurement picks up steam

By Robert E. Bloch, Esq., Kelly B. Kramer, Esq., Stephen M. Medlock, Esq., and Marie C. Notter, Esq.,
Mayer Brown*

JULY 28, 2021

On June 25, 2021, the Antitrust Division of the US Department of Justice ("DOJ") announced¹ that Belgian security firm G4S Secure Solutions NV ("G4S") had agreed to plead guilty to violations of the Sherman Act for conspiring to rig bids and fix prices of contracts to provide security services to US and NATO military installations in Belgium.

G4S's plea agreement and the indictment of Seris Security and its executives are the highest-profile steps taken by the DOJ's Procurement Collusion Strike Force.

If the plea agreement is accepted by the court, G4S will pay a \$15 million criminal fine. Belgian security firm Seris Security NV ("Seris"), three Seris executives and the former CEO of G4S were indicted a few days later.²

G4S's plea agreement and the indictment of Seris Security and its executives are the highest-profile steps taken by the DOJ's Procurement Collusion Strike Force ("PCSF"). The PCSF is a multi-agency effort formed by the DOJ in 2019 to stop collusion and bid rigging in government procurement and is the most recent version of similar strike forces formed over the past 30 years that have had the same goal.

The PCSF is charged with focusing on detecting, investigating and prosecuting antitrust crimes related to federal procurement contracts, grants and government program funding. It brings significant prosecutorial firepower to bear — including the resources of the Antitrust Division, five criminal enforcement sections of the DOJ, over 20 US Attorney's Offices, the FBI and federal inspectors general.

PCSF's indictments and plea agreements likely will not end with G4S and Seris. Public sources indicate that the PCSF has nearly 20 active grand jury investigations. Moreover, a significant aspect of the PCSF's mission is training procurement officials, auditors and data analysts to detect potential collusion.

Finally, the PCSF has significant tools for developing investigative leads, including:

- The Antitrust Division's Corporate Leniency Program, which provides that if a party is the first to inform the government of an antitrust violation and fully cooperates with the investigation, it will not have to plead guilty or face indictment;
- Whistleblower protections that prohibit employers from taking steps to punish antitrust whistleblowers;
- Large quantities of US government procurement data that can be monitored for "red flags" of collusion, such as incumbents always winning bids, a sudden increase in bid pricing, bids that are much higher than estimates, regular suppliers refusing to submit bids, bidders taking turns winning and winning bidders frequently subcontracting with losing bidders.

Executives found to have participated in antitrust violations are subject to up to \$1 million in criminal fines and up to 10 years in prison.

Antitrust charges carry significant penalties. Corporations found guilty of antitrust violations, such as price fixing and bid rigging, can be fined up to \$100 million or twice the total loss caused by the violation.

And, significantly for government contractors, antitrust violations can lead to suspension and debarment proceedings. Executives found to have participated in antitrust violations are subject to up to \$1 million in criminal fines and up to 10 years in prison.

Finally, companies that are publicly charged with having committed antitrust violations can expect to face related civil litigation (and treble damage claims) based on False Claims Act and other antitrust theories of liability.

This recent enforcement activity is a reminder that all companies that do business with the US government, whether in the United States or abroad, are at risk for increased criminal antitrust scrutiny.

Notes

¹ <https://bit.ly/3rDc5hf>

² <https://bit.ly/3Btf3cj>

About the authors



(L-R) **Robert E. Bloch**, a partner in **Mayer Brown's** Antitrust & Competition Practice, defends national corporations, nonprofit entities and corporate officials in criminal and civil investigations. He can be reached at rbloch@mayerbrown.com.

Kelly B. Kramer, a partner and co-leader of the firm's White Collar Defense & Compliance Practice, represents companies and individuals

in criminal cases and government investigations. He can be reached at kkramer@mayerbrown.com. **Stephen M. Medlock**, a partner in the firm's Antitrust & Competition Practice, represents clients in complex multidistrict class actions and grand jury investigations. He can be reached at smedlock@mayerbrown.com. **Marie C. Notter**, an associate and member of the firm's Litigation & Dispute Resolution Practice, focuses on complex litigation in federal court. She can be reached at mnotter@mayerbrown.com. All of the authors are based in Washington, D.C. This article was originally published July 8, 2021, on the firm's website. Republished with permission.

This article was first published on Westlaw Today on July 28, 2021.

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