



DEPARTMENT OF JUSTICE

ADVANCED CRIMINAL ANTITRUST WORKSHOP

A Practical Approach to Criminal Investigations

"CRIMINAL ANTITRUST ENFORCEMENT
AGAINST INTERNATIONAL CARTELS"

By

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CRIMINAL ANTITRUST ENFORCEMENT AGAINST INTERNATIONAL CARTELS

Highest Priority Of The Antitrust Division

The investigation and prosecution of international cartels is one of the highest -- if not the highest -- priorities of the Antitrust Division. In today's global economy, international enforcement of U.S. antitrust laws is essential to the preservation of our free market economy. International cartels cannot and will not be permitted to victimize American businesses and customers with impunity.

To appreciate why the Division is putting such emphasis on international cartel activity, consider that nearly one quarter of the U.S. Gross Domestic Product is accounted for by export and import trade. While this increased trade has many benefits, the openness in trade also allows international cartels to flourish. These cartels tend to be more complex, broader in geographic scope, and larger in terms of affected volumes of commerce than domestic antitrust conspiracies. Of course, international cartels are the same as domestic conspiracies in one sense -- they defraud and harm American consumers.

My remarks today will include: the increasing concentration of Division resources on investigating and prosecuting international cartels; some of the legal and practical challenges we face in international cartel enforcement; and some policy considerations that are unique to international matters. As you might expect, international cartel enforcement raises a number of difficult and, oftentimes, novel issues. In fact, because a number of issues have arisen for the first time in connection with recent plea negotiations and plea agreements, this is the first statement of the Division regarding certain policies, and exceptions to those policies, in our international enforcement.

A Look At An International Cartel -- The Citric Acid Conspiracy

It has been our experience with international cartels that they tend to be complex, highly sophisticated, and extremely broad in their impact -- both in terms of geographic scope and in the amount of commerce affected by the conspiracy. The conspiracies to fix prices and allocate sales in the food and feed additives industry provide perfect examples. To date, investigations in

this industry have resulted in criminal charges against six companies and five individuals, convicted defendants from four countries on three continents, and fines of more than \$170 million. The latest company to be sentenced, Haarmann & Reimer Corporation, the U.S. subsidiary of the German based pharmaceutical giant Bayer AG, recently pled guilty and paid a \$50 million fine for its participation in a conspiracy to fix prices and allocate sales in the citric acid market worldwide. Previously, Archer Daniels Midland Company paid \$70 million for its participation in the international lysine conspiracy, and another \$30 million for conspiring with Haarmann & Reimer and others in the citric acid conspiracy. The citric acid investigation is ongoing, which prevents me from discussing the scope of the investigation or the details of the conspiracy. However, I can give you a sense of the elaborateness of the citric acid cartel by recounting how the conspiracy was described to the court at Haarmann & Reimer's recent sentencing.

The citric acid cartel was one of the most complex antitrust conspiracies ever uncovered by the Division. High-level executives at the firms held secret meetings throughout the world where they agreed on the broad terms of the conspiracy. This group of executives were referred to by the cartel as "the masters." A second level of executives, called "the sherpas," were then responsible for working out the details and implementation of the agreement. The members of the cartel also agreed to a sophisticated enforcement system to police their agreement. First, the conspirators agreed on the prices the firms would charge for citric acid and the precise percentage of the total citric acid market that each participant was allowed to sell worldwide. The agreed-upon volumes were so precise that the conspirators actually agreed on market share allocations down to the tenth of a decimal point. Next, each company shared its monthly figures for worldwide sales with its co-conspirators so that they could see whether each company was staying within its allotted sales volume percentage. Finally, the conspirators devised a compensation system whereby the cartel members reviewed the sales of each conspirator at the end of the year, and any company that sold more than its allotted share in one year was required in the following year to purchase the excess from another conspirator that had not reached its volume allocation target in that preceding year.

In this case, most of the members of the cartel were located abroad. The members agreed to increase the price of citric acid. So, what was the impact of this conspiracy on American consumers? Citric acid sold by the

members of this cartel is used as a food additive and preservative in products found in nearly every home in the United States, such as soft drinks and processed food, as well as in detergents, pharmaceuticals and cosmetic products. Therefore, to some degree, this conspiracy affected virtually every American consumer. According to the government's calculations, Haarmann & Reimer's sales of citric acid in the United States alone during the conspiracy totaled \$400 million. Given the magnitude of the affected commerce, the United States would have sought a fine far in excess of \$50 million had Haarmann & Reimer not agreed to come in early and cooperate in our investigation. Later, I'll have more to say on the special nature of Haarmann & Reimer's cooperation.

The lysine and citric acid prosecutions are prime examples of the Division's recent efforts in combating international cartels. However, I would not want to leave the impression that the lysine and citric acid investigations are unique in their enormity or that these matters dominate our investigative docket. To the contrary, we are currently investigating a number of matters that potentially affected larger volumes of commerce than the lysine or citric acid conspiracies. Obviously, I can't talk about the specifics of these on-going investigations, so you will have to stay tuned. However, I have some statistical information that will give you a sense of the emphasis the Division is placing on international enforcement and the fruits that this strategy is bearing.

Statistical Trends

In 1993, the Division began the reallocation of its resources to concentrate on national and international matters. The reallocation strategy has proven to be extremely productive from many perspectives, including: the number of major antitrust conspiracies detected and investigated; the large increase (both absolute numbers and percentage of total) in the matters on our criminal case docket involving foreign defendants; and the record-breaking fines that have been imposed. For example:

- **Investigations.** On the investigative side, over 20 U.S. antitrust grand juries currently are looking into suspected international cartel activity. The subjects and targets of these investigations are located in 20 different countries and on 4 continents. In some of these investigations, the volume of commerce affected by the

suspected conspiracy is over \$1 billion per year; in others, over \$500 million per year; and in over half of the investigations, the volume of commerce affected is well over \$100 million over the term of the conspiracy.

- **Cases.** With respect to foreign-defendant prosecutions, the Division has been successful recently in cracking international cartels and obtaining the conviction of the major conspirators. In fact, when you compare the number of cases involving foreign defendants over the past year with figures from FY 1991, just five years ago, the comparisons are staggering. For example, in FY 1991, only 1% of the corporate defendants in the cases brought by the Division were foreign, and there were no charges brought against a foreign individual defendant during that fiscal year. (In the four previous years, from FY 1987-1990, the Division did not bring a single case against a foreign corporation or a foreign individual.) In stark contrast, from the beginning of FY 1996 to the end of last month, January 1997, 20 percent of the corporate defendants in our cases were foreign-based and 27 percent of the individual defendants were foreigners.
- **Sentences.** Finally, the cases that we are bringing against international cartels are resulting in record-breaking fines. To date, the lysine and citric acid cases already have resulted in over \$170 million in fines agreed to or imposed in the past six months. To put the \$170 million figure into context, consider that the Division established a record for total corporate fines in FY 1995 when it collected a little over \$40 million in fines. Moreover, the Division has now had seven corporations pay fines of \$10 million or more in the past 17 months. By contrast, if we return to our five-year comparison, the highest corporate fine that had ever been imposed for a single Sherman Act count as of FY 1991 was only \$2 million.

CHALLENGES ASSOCIATED WITH INVESTIGATING AND PROSECUTING INTERNATIONAL CARTELS

The statistics I have presented tell you why the Division is putting such emphasis on rooting out international cartels. In citing these statistics, I do not want to leave the impression that we are discriminating against foreign firms; we don't do that, just as we don't give favorable treatment to U.S. firms. What these numbers do show is that we have been much more successful recently in uncovering and prosecuting international cartels that harm American businesses and consumers. However, as you might expect, international cartel enforcement raises a number of challenging, and oftentimes, novel issues -- for the government and for defense counsel -- which I will address next.

Challenge I: Documents And Witnesses Located Abroad

The most typical problem we face in our investigations of international cartels is that key documents and witnesses are located abroad - - out of the reach of U.S. subpoena power and search and seizure authority. In such cases, national boundaries may present the biggest hurdle to a successful prosecution of the cartel.

The Answer: Increased Cooperation With The Division's Counterparts Abroad

- **Division Providing Technical Assistance To Foreign Antitrust Agencies**

Fortunately, with the steady movement towards a world economy, other nations are beginning to develop and enforce their own antitrust laws and are increasingly willing to cooperate in Division matters. The Division, together with the Federal Trade Commission, has taken the lead in nurturing this trend by working with other countries to draft and begin enforcement of national antitrust laws on a sound basis. During the past six years, Division staff have provided technical assistance to new antitrust agencies in nearly 30 countries on four continents, from Albania to Zimbabwe. Moreover, we currently have long-term advisors working in the antitrust agencies in Russia and Ukraine, and over the years we have had long-term advisors in six other countries in Central and Eastern Europe.

- Cooperation Agreements

While encouraging these countries to enact and enforce antitrust laws is in the long-term interests of the United States, we also have sought more immediate law enforcement gains by negotiating cooperation agreements with the antitrust agencies of some of our major trading partners, including Australia, Canada, the EU, and Germany. These agreements require the parties to cooperate on antitrust matters, although they do not override existing confidentiality laws. Indeed, the United States and the European Commission have negotiated an agreement on the application of "positive comity" principles in the enforcement of U.S. and European Union antitrust laws. The new agreement would strengthen the positive comity provisions of the 1991 US-EU agreement on antitrust cooperation, thereby deepening our law enforcement cooperation with the European Union.

- Mutual Legal Assistance Treaties

Moreover, the Justice Department in recent years has made a major effort to negotiate mutual legal assistance treaties (MLATs) that provide for a broad range of assistance, including taking statements from witnesses, obtaining documents and other physical evidence, and executing searches and seizures. The United States currently has MLATs in force with approximately 20 countries, and approximately 10 more MLATs have been signed but are not yet ratified or in force. As many of you know, our MLAT with Canada specifically contemplates assistance in antitrust matters, and we and the Canadians have so used it in numerous matters. What you may not know is that we also are beginning to invoke other MLATs, as well as making increasingly successful use of the more traditional letters rogatory procedure in countries where we have no MLATs.

- Cartel-Specific Agreements To Share Investigative Information

In addition to working towards cooperation agreements of general application, the Division has initiated an effort, personally led and supervised by Acting Assistant Attorney General Joel Klein, to step up cooperation aimed at hard-core cartels (price fixing, bid rigging, and horizontal market allocation). For example, the United States recently proposed an initiative in the Competition Law and Policy Committee of the Organization for Economic Cooperation and Development (OECD) to work towards an agreed recommendation urging member countries to enforce laws prohibiting hard-core cartel activity and to enter bilateral or multilateral agreements to share investigative information in such cases. Preliminary reactions from several of our trading partners have been positive, and there are reasons why we think this area is ripe for progress. First, identifying the type of egregious anticompetitive conduct that constitutes a hard-core cartel is a relatively straightforward matter. There is a general consensus in most instances

about the anti-competitive effects of this conduct. Second, investigations of hard-core cartel activity rarely focus on sensitive trade secrets or prospective business plans. Thus, business community concerns about the sharing of information with foreign antitrust authorities, such as in connection with mergers and other economically complex inquiries, are far less germane to the sharing of information for cartel enforcement purposes.

- **Cooperation Agreements -- The End Result**

Cooperation agreements with other countries break down the barriers to obtaining evidence caused by national boundaries and maximizes the evidence available to each country. A requesting country can obtain evidence from a requested country that otherwise would be completely outside the requesting country's jurisdiction and discovery power. Moreover, with two or more countries working together, there are increased resources directed toward a single conspiracy. Thus, the progress that is being made in cooperation agreements with the Division's counterparts abroad should send the message that there are fewer and fewer places for conspirators to hide.

**Example: Agreements By Requested Country To Use
Its Investigative Authority To Assist Requesting Country**

Cooperation agreements often present an opportunity to take advantage of the best of each country's available investigative tools in gaining access to documents and witnesses that are outside of one of the country's jurisdiction. For example, our federal grand jury system is unique and its investigative powers are a very effective tool for uncovering antitrust conspiracies. Information gathered in a federal grand jury investigation may be made available to foreign law enforcement authorities under certain circumstances, such as pursuant to a Mutual Legal Assistance Treaty (MLAT) request. Another example is the use of search warrants. In our disposable plastic dinnerware investigation, the Canadian government, at our request, was able to obtain a warrant to search the Canadian office of the parent company pursuant to our MLAT with Canada. The Division also obtained search warrants for three corporations located in the United States. What followed was the Royal Canadian Mounted Police, in coordination with the FBI, simultaneously executed search warrants at offices of target corporations in, respectively, Montreal, Canada and three U.S. cities: Boston, Los Angeles, and Minneapolis. The operation involved over 50 Canadian Mounties and U.S. FBI Agents. The evidence of the conspiracy was so strong in the documents seized by authorities in both countries that the Division did not have to make major concessions in plea agreements in order to build a prosecutable case against all the participants. Three corporations pled guilty and were fined in excess of \$9 million. All seven individual defendants, including two Canadian nationals, pled guilty and

served time in U.S. prisons, with the two ringleaders sentenced to 15 and 21 months, respectively.

Example: Joint Investigations

When the Division uncovers an international cartel that fixes prices or carves up markets on a global scale, instead of simply sharing evidence with other countries so that they can separately investigate the cartel's impact on their markets, the Division may consider conducting a joint investigation with foreign antitrust authorities. Over the last few years, the United States and Canada have conducted the first joint criminal antitrust investigation; namely, the thermal facsimile paper investigation. The Canadian and U.S. investigative staffs worked together on issues such as: sharing of documents obtained by subpoena and search warrant; sharing of documents obtained from foreign defendants pursuant to plea agreements; jointly interviewing witnesses; joint document analysis; and conducting parallel and coordinated plea negotiations. The results were impressive on both sides of the border. In the United States, three American corporations, four Japanese corporations, and a Japanese national have pled guilty to antitrust violations. The corporations paid criminal fines totaling more than \$10 million and the Japanese national paid a fine of \$165,000, although recently one American corporation and one of its executives were acquitted at trial. In Canada, five corporations -- consisting of three American firms, one Canadian firm, and one Japanese firm -- have pled guilty and have paid fines of roughly \$3 million. With the promise of additional cooperation agreements with our foreign counterparts, the Division will have more opportunities in the future to conduct similar joint investigations with foreign antitrust authorities that benefit law enforcement (and consumers) in both countries.

Challenge II: Jurisdictional Issues

A second obstacle that we face in prosecuting international cartels is obtaining personal jurisdiction over alien defendants. If foreign cartels can avoid criminal prosecution in the United States by remaining outside of the jurisdiction of U.S. courts, then they will free to victimize American businesses and consumers with impunity.

Obtaining Jurisdiction Over The Corporate Defendant

Obtaining personal jurisdiction over foreign corporate defendants has not been a significant problem in our international cartel enforcement. We are usually able to show that a company has a sufficient presence in the United States, through

its own activities and/or its management and control of its U.S. subsidiaries, to justify the exercise of personal jurisdiction over it. In assessing whether a firm has a sufficient presence within the United States, courts may consider a firm's contacts in the United States, both as they relate to the specific cause of action and to its more general business activities, such as a U.S. office, a U.S. bank account to pay for product purchasing or company expenses, or officers or directors traveling to the United States to conduct business. In addition, the valid service of a criminal summons upon a corporate officer or managing agent also may be legally sufficient to establish personal jurisdiction over a foreign company.

**Obtaining Jurisdiction Over The Individual
Defendant: The Division's MOU With The INS**

Obtaining jurisdiction over non-resident aliens charged with antitrust offenses may raise significant problems for the Division. For the most part, our cooperation agreements with foreign antitrust authorities have focused on the challenge of obtaining foreign-located evidence as opposed to the extradition of culpable defendants. For that reason, many alien defendants are able to escape prosecution so long as they are willing to forfeit their ability to travel into the United States or into any other country with whom we have an extradition treaty applicable to antitrust offenses.

However, for aliens who are targets or defendants in criminal antitrust matters, exclusion from the United States may be a significant penalty. These individuals are almost always executives of international businesses who put a high premium on their ability to travel without fear of being detained or arrested. The inducement of "getting the matter behind them" and avoiding deportation or exclusion from the United States is so great that criminal aliens are sometimes willing to accept responsibility in the United States for the criminal conduct in return for a promise of future immigration relief -- accepting responsibility will generally include: submitting to U.S. jurisdiction; pleading guilty to the antitrust offense; cooperating with the investigation; paying a substantial fine; and possibly serving time in prison.

In March of 1996, the Division entered into a Memorandum of Understanding ("MOU") with the INS which heightens the value and certainty of the immigration relief which the Division can offer to cooperating aliens in plea agreements. The MOU establishes a protocol whereby the Antitrust Division may petition the INS to

preadjudicate the immigration status of a cooperating alien witness before the witness enters into a plea agreement or pleads to a crime.

The MOU allows the Division to petition the INS for a range of immigration relief which would allow the alien to continue or resume travel into the United States. The Division would submit such a petition with the INS during plea negotiations with the alien. Therefore, before entering into plea agreements or submitting to U.S. jurisdiction, cooperating aliens will receive written assurances in their plea agreements as to how the INS will treat their conviction.

The MOU is unique in the Department of Justice. Previously, a protocol did not exist which would require the INS to preadjudicate the immigration status of a cooperating alien before he was convicted of a felony offense. Heretofore, cooperating aliens could not be assured that they would receive the benefit of immigration relief by agreeing to cooperate and plead guilty, even though the promise of immigration relief may have been the foremost, indeed only, incentive from the alien's perspective for entering into such an agreement. Now the alien contemplating accepting responsibility in the United States and cooperating with an investigation may ascertain his exact immigration status and ability to travel into the United States before he enters a plea agreement. The removal of this uncertainty creates a strong inducement which will undoubtedly result in more aliens agreeing to plead guilty and cooperate in our cases. As such, the MOU provides the Division with a critical additional tool to meet the challenge of investigating and prosecuting international cartel activity.

It is important to understand that the MOU is not only instrumental in inducing foreigners to plead guilty and cooperate in our cases, but it also facilitates our ability to enter into plea agreements with the corporate defendant as well. For example, the MOU was instrumental in securing the momentous plea agreements in the lysine investigation in August 1996. On one hand, the United States would not have entered into plea agreements with the three Asian firms (two Japanese and one Korean), under the existing terms, without securing a guilty plea from a culpable executive from each one of these companies. On the other hand, the foreign individual and corporate defendants were unwilling to go forward with the contemplated plea agreements without a promise of immigration relief by the INS. The Division's ability to secure the requested relief on behalf of the alien prior to the entry of the guilty plea was a major factor in each side's willingness to close these deals. Similarly, in the citric acid investigation, the promise of unencumbered travel into the United States was a major inducement which allowed us to secure the guilty plea of Haarmann & Reimer and its executive; without it, we might not have had a deal with the company or the individual.

Subject Matter Jurisdiction

Another jurisdictional issue has been raised recently by the district court's decision in United States v. Nippon Paper Industries, Co. As this case is currently

on appeal to the First Circuit, my remarks will be limited to what the Division has said in appeal briefs. In that case, we charged the defendant with conspiring with other Japanese manufacturers of thermal facsimile paper, through meetings held in Tokyo, to increase the price of fax paper sold to consumers in the United States. The manufacturers effectuated the conspiracy by selling the fax paper to trading houses in Japan at inflated prices, and ensuring that the trading houses sold fax paper to customers in the United States at still higher, fixed prices. As the district court construed it, the indictment did not allege that any of the conspiratorial conduct occurred in the United States. This, the court held, required dismissal of the indictment. The reason? In the court's view, the Sherman Act does not reach a conspiracy in which the conspiratorial conduct takes place entirely abroad.

The Division appealed from this ruling, which we believe is plainly wrong. Obviously (and this is why the problem is similar to personal jurisdiction), if a cartel can avoid liability under the Sherman Act merely by taking care that all conspiratorial conduct is undertaken abroad, the cartel can inflict severe economic harm in this country with impunity. But the Supreme Court made clear in Hartford Fire Insurance Co. v. California, 509 U.S. 764 (1993), a civil case, that the Sherman Act reaches foreign conduct producing substantial intended effects here. There is no basis, we believe, for saying that the Sherman Act reaches foreign conduct in civil cases but not in criminal cases, and we hope the First Circuit will issue a decision reversing the district court soon.

ISSUES REGARDING DIVISION DISCLOSURE OF INFORMATION TO FOREIGN COUNTRIES

One issue that has arisen with increasing frequency in matters involving foreign firms or individuals is whether the Division will either agree not to disclose information provided pursuant to a plea agreement to a foreign government, or -- alternatively -- to provide notice to the information provider before making such a disclosure.

As many of you know, the Division's longstanding policy -- and that of the Department as a whole -- is not to enter into such agreements. There are several reasons for this policy. First, in our various MLATs, the United States has undertaken binding international obligations to provide assistance to foreign law enforcement agencies in certain circumstances. An agreement that in any way limits our ability to provide information to a foreign government could raise questions about our obligation under the MLATs. Second, because many of our MLATs provide that governments making MLAT requests may also insist that their requests remain confidential, we must avoid unqualified promises to provide notice to information providers of requests for their information from our MLAT partners. Finally, it is our strong belief, and our repeatedly confirmed experience, that international cooperation is essential to effective enforcement of the antitrust laws in the United States. If we typically agreed to withhold information from our

foreign counterparts, we would expect our foreign counterparts to reciprocate by making such promises in their own investigations. And that would undermine meaningful international cooperation.

Notwithstanding these concerns, the Division received approval from the Department to make an exception to longstanding policy in two of the plea agreements entered into in the food and feed additives investigations. In the Kyowa Hakko plea agreement in the lysine investigation, the United States agreed to provide at least seven days written notice to the defendant before making available to a foreign government information provided under the plea agreement. The notice provision -- which is the first of its kind in the Division's experience -- was agreed to because Kyowa's cooperation, and the timing of its cooperation, were critical to the development of several interrelated lysine prosecutions. However, to avoid requiring us to violate our treaty obligations, the language of the provision explicitly made our obligation to provide notice conditional: "unless . . . such notice would violate any treaty obligations of the United States or any court order or might jeopardize the integrity of any criminal investigation."

The Division also made an exception in its policy of not placing restrictions on our ability to share information with foreign law enforcement authorities in our plea agreement with Haarmann & Reimer in the citric acid investigation. The agreement states that we "will disclose information voluntarily provided by" the defendant pursuant to the plea agreement, "and otherwise not then currently available to the United States, only for use in proceedings brought by the United States and will not otherwise disclose such information unless required to do so by court order." The Division received permission from the Department for an exception from the general policy, because the information was crucial to the very significant citric acid prosecutions and, as a practical matter, we had no other means of obtaining it without entering into such an agreement. We believe that our treaty partners will understand the appropriateness of entering into such agreements in rare cases where necessary to obtain crucial information that could not otherwise be obtained. In our view, it makes little sense to construe an MLAT to require disclosure to a foreign government of information that we could not obtain if the MLAT were so construed.

The set of facts and circumstances that contributed to the decision to deviate from the Division policy in each of these cases was unique. These agreements should not raise questions as to our commitment to cooperating with foreign law enforcement authorities, as our policy in these areas has not changed.

CREDIT FOR SECURING THE COOPERATION OF OTHERS

Before I conclude, I would like to mention the Division's new policy of giving a defendant additional credit for securing the cooperation of other co-conspirators. Although this is not an international-specific issue, it came up for the first time in the Division's plea agreement with Haarmann & Reimer in the citric acid investigation. In that case, the Division requested a downward departure from Haarmann & Reimer's sentence calculated under the Sentencing Guidelines for two reasons: (1) Haarmann & Reimer provided cooperation and substantial assistance in the investigation; and (2) Haarmann & Reimer played a significant role in securing the cooperation of other co-conspirators; that is, it encouraged other companies involved in the conspiracy to come forward and cooperate. The Division was willing to recognize this type of cooperation for the first time because of the likely positive impact on the detection, investigation, and prosecution of violations -- domestic and international.

However, you should know that, not unlike amnesty, there is a maximum of only one such "extra credit" per investigation, and it goes to the firm that takes the lead in securing multi-firm cooperation. A firm that is cooperating and providing substantial assistance, and therefore is deserving of a reduction in the fine imposed, should receive a separate, cumulative reduction for securing the cooperation of others only if: (1) that firm was the first to take steps to encourage its co-conspirators to cooperate with the government; and (2) that firm's encouragement was both significant and effective in causing one or more conspiring firms to report their involvement in the conspiracy, cooperate in the investigation, and accept responsibility. At the other extreme would be a group of, say, four conspirators who got together and discussed whether they should all cooperate with the government; upon deciding to do so, each would seek "extra credit" for their role in causing the other three to cooperate. The Division would not give extra credit to each of the group in this scenario; to do so would affront the principle. The appropriate application of the principle of extra credit for securing the cooperation of others has tremendous potential on both sides: the prospect for the government of increased cooperation in investigating and prosecuting conspiracies, and an incentive to the firm contemplating cooperation to encourage others to do the right thing -- an incentive worth possibly tens of millions of dollars.