

Conspiring Against Competition

Illegal Corporate Price-Fixing in the U.S. Economy



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EXECUTIVE SUMMARY

Large companies operating in the United States have, since the beginning of 2000, paid \$96 billion in fines and settlements to resolve allegations of covert price-fixing and related anti-competitive practices in violation of antitrust laws.

Illegal pricing conspiracies have occurred in a wide range of industries, affecting the cost of products ranging from everyday grocery items and auto parts to chemicals and electronic components. In industries such as financial services and pharmaceuticals, just about every major corporation (or a subsidiary) has been a defendant in one or more cases. Banks, credit card companies and investment firms dominate the top tier, accounting for nine of the ten most penalized corporations by total dollars.

These are the key findings from an extensive examination of government agency announcements and court records by the Corporate Research Project of Good Jobs First as part of the expansion of the [Violation Tracker](#) database.

Of the more than 2,000 cases in which companies made payments to resolve civil and criminal price-fixing allegations, 357 were brought by the Antitrust Division of the U.S. Justice Department and other federal regulators. Those yielded \$26 billion in penalties. Another 269 cases were brought by state attorneys general (\$15 billion); and 1,407 class action lawsuits were initiated by private plaintiffs (\$55 billion).

Of the \$96 billion in penalties, over one-third (\$33 billion) was paid by banks and investment firms, mainly to resolve claims that they schemed to rig interest-rate benchmarks such as LIBOR. The second most penalized industry, at \$11 billion, is pharmaceuticals, due largely to

owners of brand-name drugs accused of illegally conspiring to block the introduction of lower-cost generic alternatives.

Price-fixing happens most frequently in business-to-business transactions, though the higher costs are often passed on to consumers. Apart from finance and pharmaceuticals, the industries high on the penalty list include: electronic components (\$8.6 billion in penalties), automotive parts (\$5.3 billion), power generation (\$5 billion), chemicals (\$3.9 billion), healthcare services (\$3.5 billion), and freight services (\$3.4 billion). Information technology's total is relatively low, at \$1.7 billion, apparently reflecting that industry's heavy reliance on advertising rather than revenue from users.

Nineteen companies (or their subsidiaries) paid \$1 billion or more each in price-fixing penalties. At the top of this list are Visa Inc. (\$6.2 billion), Deutsche Bank (\$3.8 billion), Barclays (\$3.2 billion), MasterCard (\$3.2

billion) and Citigroup (\$2.7 billion). The most heavily penalized non-financial company is Teva Pharmaceutical Industries, which with its subsidiaries has shelled out \$2.6 billion in multiple generic-delay cases.

Many of the defendants in price-fixing cases are subsidiaries of foreign-based corporations. They account for 57 percent of the cases we documented and 49 percent of the penalty dollars. The country with the largest share of those penalties is the United Kingdom, largely because of big banks such as Barclays and NatWest (in the interest-rate benchmark cases) and pharmaceutical companies such as GlaxoSmithKline and AstraZeneca (in generic-delay cases).

Along with alleged conspiracies to raise the prices of goods and services, we found about three dozen cases involving schemes to depress

wages or salaries. These include cases in which employers such as poultry processors were accused of colluding to fix wage rates as well as ones in which companies entered into agreements not to hire people who were working for each other. These no-poach agreements inhibit worker mobility and tend to depress pay levels—similar to the effect of non-compete agreements employers often compel workers to sign.

Despite the billions of dollars corporations have paid in fines and settlements, price-fixing scandals continue to emerge on a regular basis, and numerous large corporations have been named in repeated cases. Higher penalties could help reduce recidivism, but putting a real dent in price-fixing will probably require aggressive steps to deal with the underlying structural reality that makes it more likely to occur: excessive market concentration.

INTRODUCTION

Capitalism is typically portrayed as a system of constant competition in which prices are determined by supply and demand. Producers of goods and services are said to constantly vie with one another in the quest for sales.

In truth, however, large companies often evade competition and instead collude with one another to control markets to their mutual benefit—and to the disadvantage of consumers, who end up paying higher prices. This is the world of price-fixing and other anti-competitive practices cooked up secretly by purportedly rival corporate executives.

It can also be a realm of criminality. Passed in response to the growing domination of the U.S. economy by giant trusts such as Standard Oil, the Sherman Antitrust Act of 1890 outlawed a variety of practices that impede competition. Its main provisions are Section 1, which bans conspiracies in constraint of trade, and Section 2, which bars actual or attempted monopolies.

Enforcement of the Sherman Act can occur through either criminal or civil means, and cases may be brought against business entities or individuals. The primary enforcer is the Antitrust Division of the Department of Justice. The Federal Trade Commission is responsible

for enforcing other antitrust laws such as the Clayton Act. Civil price-fixing lawsuits may also be brought under the Sherman Act by state governments or private parties.

For the first 40 years after the enactment of the Sherman Act, Section 1 price-fixing cases were rare. The volume picked up in the 1940s and 1950s but really took off in the 1960s in the wake of a major scandal involving leading companies in the electrical equipment industry. That case was the first time big-business executives were jailed for antitrust violations.

During the late 1990s, the Antitrust Division ramped up its activities, bringing cases in industries ranging from graphite electrodes and animal feed additives to bulk vitamins and music compact discs. Those enforcement actions prompted follow-on private litigation

in which plaintiffs were able to use the evidence brought to light in the federal cases to get companies to pay substantial monetary settlements.

States also became more vigilant. Attorneys general, acting either individually or jointly in multistate actions, brought cases against a variety of companies and industries. In some instances, state AGs have worked in concert with federal prosecutors.

Over the past quarter century, this three-pronged offensive against price-fixing by federal prosecutors, state AGs, and plaintiffs' lawyers has resulted in tens of billions of dollars in fines and settlements. This report provides an overview of more than 2,000 such cases documented for inclusion in [Violation Tracker](#). Details on each of these cases can be found in that database.

FINDINGS

Since January 2000, corporations across the U.S. economy have paid \$96 billion in fines and settlements to resolve allegations of price-fixing and similar anti-competitive practices. These penalties resolved more than 2,000 cases covering a wide range of goods and services—from simple items such as packaged ice and shoes to electronic components and pharmaceuticals. Many of the corporate defendants are household names, and along with domestic companies they include U.S. subsidiaries of corporations headquartered around the world.

Cases originate from three sources: federal agencies, especially the Antitrust Division of the U.S. Department of Justice; state attorneys

general; and private class action lawsuits. Our case figures refer to the number of instances in which an individual company paid a fine or settlement to a government agency or group of plaintiffs. Many agency actions or private lawsuits are brought against multiple corporate defendants, and lawsuits may have different categories of plaintiffs. Antitrust cases rarely go to trial.

As shown in Table 1, private class actions, often brought in the wake of Justice Department cases, account for by far the largest number of cases and more than half of penalties paid, though the lowest average penalty per case.

The average penalty is highest in the federal category, which in addition to 284 DOJ actions includes cases brought by the Federal Trade Commission (9), the Commodity Futures Trading Commission (42) and the Federal Energy Regulatory Commission (22). The FERC and CFTC cases involve alleged manipulation of energy and financial markets.

Ninety percent of the DOJ cases were brought as criminal actions, though in two dozen of those 258 cases the defendants were offered a non-prosecution or deferred prosecution agreement. These arrangements allowed the companies to avoid entering a guilty plea while paying a substantial penalty. The DOJ also brings actions against individual corporate executives, but those cases are outside the scope of this research.

Among the state cases, 150 were initiated by the

AG of a single state, while 109 were brought jointly by AGs of multiple states. Also included in this category are three cases handled by the New York Department of Financial Services and seven cases initiated by local prosecutors in California and New York.

The class action category used here includes what are known as multi-district cases. These come about when a large number of related lawsuits are centralized in a single federal court district and are tried or settled together. Class action settlements are usually made public and require court approval.

Settlements in some multi-district cases that are not technically class actions may conclude in confidential settlements, such that we could not include them here. This means that the actual price-fixing penalty total is even higher than our tabulation.

Table 1. Overview of Price-Fixing Cases Resolved from January 2000 to March 2023

	Cases	Total Fines and Settlements	Average Fines and Settlements per Case
DOJ and other federal cases	357	\$26 billion	\$72 million
State attorneys general cases	269	\$15 billion	\$57 million
Class actions	1,407	\$55 billion	\$39 million
TOTAL	2,033	\$96 billion	\$47 million

MOST PENALIZED SECTORS AND INDUSTRIES

Price-fixing conspiracies have been litigated throughout the U.S. business world. To illustrate the range, we tagged each of the 2,000 cases with both a broad sectoral category and a more specific industrial group. Table 2 shows the breakdown by six sectors: Consumer Products, Financial Services, Healthcare, Industrial Products, Information Technology, and Other Services.

The most-penalized sector by dollars is Financial Services, which reflects the involvement of major banks and investment firms in a series of cases alleging conspiracies to manipulate interest-rate benchmarks.

The most-penalized sector by number of cases (and second by dollars) is Industrial Products. This reflects large multi-district actions such as those involving alleged price-fixing by scores of automotive parts producers.

Healthcare—including pharmaceuticals and medical equipment as well as healthcare services—accounts for more than \$15 billion

in penalties. Much of this total comes from cases in which drugmakers were alleged to have conspired to delay the introduction of lower-cost generic alternatives to expensive brand-name products (see Pay for Delay box).

Many of the cases in the Other Services category come from actions against utilities and related companies over the manipulation of energy prices. Another big portion derives from several sprawling cases in freight and logistics.

The Consumer Products sector has relatively low numbers, suggesting that price-fixing happens more frequently in connection with business-to-business transactions. Of course, when manufacturers have higher costs, they are likely to pass them along to consumers.

Information Technology also stands out for its small number of cases and relatively low penalty total. This is likely an outcome of the sector's heavy reliance on advertising rather than user revenue.

Table 2: Breakdown of Price-Fixing Cases by Sector, January 2000 to March 2023

	Total Fines and Settlements	Cases
Finance	\$37.2 billion	325
Industrial Products	\$24.3 billion	1,005
Healthcare	\$15.9 billion	248
Other Services	\$11.5 billion	278
Consumer Products	\$5.4 billion	168
Information Technology	\$1.7 billion	9
TOTAL	\$96 billion	2,033

Turning to more specific industry groups, we find that more than 30 of them have paid \$100 million or more in price-fixing penalties. As shown in Table 3, sixteen of those industries have totals in excess of \$1 billion.

Cases brought against banking and investment firms—mainly the interest-rate-benchmark manipulation actions mentioned above—account for the largest penalty total, at \$33 billion. Also included here are several giant settlements paid by Visa and Mastercard to resolve allegations they conspired to raise the swipe fees paid by merchants, which are likely to result in higher prices for consumers.

Pharmaceuticals are second at over \$11 billion, largely as a result of more than 130

cases involving alleged schemes to block the introduction of generic alternatives (see Pay for Delay box). Next is the electrical and electronic equipment industry, in which large numbers of companies, including foreign producers, have been accused of conspiring to fix prices of components such as computer chips and displays.

The industry with the largest number of individual cases (363) is automotive parts, whose penalty total is above \$5 billion. Here, too, many foreign companies have been among the defendants and have paid multiple settlements covering many different products, ranging from bearings and hoses to air conditioning units and fuel injection systems.

Table 3: Industries with Over \$1 billion in Price-Fixing Penalties, January 2000 to March 2023

	Total Fines and Settlements	Cases
Banking and investment	\$33.3 billion	264
Pharmaceuticals	\$11.5 billion	189
Electrical and electronic equipment	\$8.6 billion	245
Automotive parts	\$5.3 billion	363
Utilities and power generation	\$5.0 billion	49
Chemicals	\$3.9 billion	171
Healthcare services	\$3.5 billion	28
Freight and logistics	\$3.4 billion	112
Other financial	\$2.1 billion	26
Food products	\$2.0 billion	100
Insurance	\$1.8 billion	34
Software	\$1.7 billion	9
Oil and gas	\$1.6 billion	27
Tobacco	\$1.4 billion	6
Airlines	\$1.3 billion	24
Miscellaneous services	\$1.2 billion	34

Pay for Delay

Among the 2,000 cases summarized in this report are 134 that involve an indirect form of price-fixing. They stem from arrangements in which producers of brand-name drugs whose patent protection was ending allegedly made deals to block or postpone the introduction of lower-cost generic alternatives. These actions, often called “pay for delay” cases, may be brought against the brand-name producer, the generic supplier or both.

Pay-for-delay cases have yielded \$9.8 billion in fines and settlements since 2000. The biggest penalty was a \$1.2 billion payment made in 2015 by Cephalon Inc., a subsidiary of Teva Pharmaceutical Industries, to settle

Federal Trade Commission allegations that the company illegally blocked generic competition to its blockbuster sleeping disorder drug Provigil.

Seven parent companies (or their subsidiaries) have paid more than \$500 million each in pay-for-delay penalties:

- Teva Pharmaceutical: \$2.5 billion (19 cases)
- AbbVie: \$1.5 billion (21 cases)
- GlaxoSmithKline: \$790 million (12 cases)
- Sun Pharmaceuticals: \$750 million (7 cases)
- Pfizer: \$668 million (5 cases)
- Novartis: \$550 million (6 cases)
- Bristol-Myers Squibb: \$543 million (11 cases)

MOST PENALIZED CORPORATIONS

Nearly 1,300 different companies have been identified as defendants in our list of price-fixing cases. After matching these to the universe of parent companies in Violation Tracker, we were able to identify which parents have themselves or through their subsidiaries paid the most price-fixing penalties across their U.S. operations.

More than 130 parent companies (with their subsidiaries) have penalty totals in excess of \$100 million; more than 40 over \$500 million; and 19 above \$1 billion (the latter are shown in Table 4). At the top of the list is Visa Inc.,

which paid both the largest penalty (\$4.1 billion) and the fourth largest (\$2 billion).¹

Banks, credit card companies and financial firms dominate the top tier, accounting for nine of the ten biggest totals. Teva Pharmaceutical Industries, which along with its subsidiaries has been involved in multiple cases involving alleged efforts to block generic drugs, is the only non-financial company in the top ten.

There is more diversity in the rest of the \$1 billion-plus group, which includes energy

¹ A \$2.67 billion settlement with the Blue Cross Blue Shield Association in 2022 is the second largest penalty in our compilation, but that amount was to be paid by the member companies of the association. Court documents did not specify how much each member would pay. We thus exclude it from this tally of most penalized corporations.

companies Kinder Morgan and NRG Energy, electronics producers Samsung and LG, and tobacco giant Altria.

The totals in Table 4 are based on current parent-subsidary relationships. We also examined the totals based on the historical

parents—i.e., the parents at the time of the penalty announcements—and found that list to be quite similar. One significant difference is the appearance on the historical list of the now-defunct energy trading company Enron, which with its subsidiaries amassed nearly \$2 billion in penalties for energy-market manipulation.

Table 4: Current Parent Companies and Subsidiaries with Over \$1 billion in Price-Fixing Penalties, January 2000 to March 2023

	Total Fines and Settlements	Cases
Visa	\$6.23 billion	4
Deutsche Bank	\$3.76 billion	20
Barclays	\$3.24 billion	21
MasterCard	\$3.20 billion	4
Citigroup	\$2.68 billion	16
Teva Pharmaceutical Industries	\$2.65 billion	23
UBS	\$2.32 billion	15
JPMorgan Chase	\$2.17 billion	20
NatWest Group PLC	\$1.74 billion	12
American International Group	\$1.65 billion	5
AbbVie	\$1.57 billion	24
Kinder Morgan	\$1.57 billion	6
Samsung	\$1.45 billion	18
LG	\$1.33 billion	11
Microsoft	\$1.27 billion	4
NRG Energy	\$1.27 billion	6
Altria	\$1.22 billion	3
Exxon Mobil	\$1.08 billion	1
HSBC	\$1.05 billion	14

Wage-Fixing and No-Poach Agreements

Along with conspiracies to raise prices, we found about three dozen cases involving efforts to depress wages or salaries. This can occur in a direct or indirect way. In the direct approach, employers in a specific labor market agree not to pay wages above a certain level. The most significant wage-fixing cases have occurred in the poultry processing industry, where companies including Pilgrim's Pride have paid over \$40 million in antitrust settlements. Groups of hospitals in Michigan and upstate New York have paid over \$70 million to resolve allegations they conspired to depress the wages of nurses.

The indirect cases are ones in which employers in an industry agree not to hire

people who work for a competitor. These no-poach agreements inhibit worker mobility and tend to depress pay levels—similar to the effect of non-compete agreements employers often compel workers to sign.

The largest no-poach settlement occurred in 2015, when Apple, Google, Intel and Adobe Systems agreed to pay a total of \$415 million to class action plaintiffs. Cases have also occurred in blue-collar occupations. For example, in 2022 a group of trucking companies paid over \$11 million to settle a lawsuit challenging their use of a no-poach agreement covering drivers. Several other no-poach cases are pending in the courts.

PRICE-FIXERS FROM ABROAD

Price-fixing seems to go together with globalization. Companies with parents based outside the United States are frequent defendants in actions brought by the Justice Department, state attorneys general and private plaintiffs. Overall, foreign parents and their subsidiaries account for 1,168 cases (57 percent of our list) and \$47 billion in fines and settlements (49 percent).

The parents in those cases are headquartered in 37 countries. Nearly two dozen of these nations have penalty totals in excess of \$100 million, and eleven are above \$1 billion (the latter are shown in Table 5).

The country with the largest share of these penalties is the United Kingdom, largely because its big banks such as Barclays, NatWest and HSBC and their subsidiaries have amassed over \$6 billion in fines and settlements. Pharmaceutical companies GlaxoSmithKline and AstraZeneca and their subsidiaries account for another \$1 billion.

Japan has almost as much in penalty dollars and far more cases. Two industries there have extensive case histories: auto parts companies paid over \$4 billion in more than 200 fines and settlements, while electronics companies paid over \$2 billion in more than 100 cases.

Germany is third largely because of Deutsche Bank and its subsidiaries, whose \$3.8 billion in fines and settlements make it the most penalized foreign parent on our list.

Switzerland ranks fourth mainly because of the bank UBS and the drugmaker Novartis, while South Korea comes in fifth largely because of the electronics giants Samsung and LG.

All these results are based on the headquarters countries of current parents. As with the parent rankings, redoing those calculations based on parents at the time of the penalty announcements does not change things much overall. However, on that historical sort, Japan edges out the UK mainly because Sharp Corporation, founded in Japan, is now owned by Taiwan-based Foxconn.

Table 5. Current Parent Headquarters Countries with Over \$1 billion in Price-Fixing Penalties, January 2000 to March 2023

	Total Fines and Settlements	Cases
United States	\$48.95 billion	864
United Kingdom	\$9.30 billion	109
Japan	\$8.76 billion	477
Germany	\$5.78 billion	130
Switzerland	\$4.41 billion	51
South Korea	\$4.23 billion	61
Taiwan	\$2.66 billion	61
Israel	\$2.52 billion	22
France	\$2.10 billion	61
Netherlands	\$1.63 billion	16
Canada	\$1.60 billion	34
India	\$1.01 billion	19

CONCLUSION

Price-fixing and related anti-competitive practices have been found throughout the U.S. economy. While more common in business-to-business transactions, they ultimately affect the prices paid by consumers and thus contribute to inflation.

Large corporations in a wide range of industries have been accused of participating in illegal price conspiracies and have paid tens of

billions of dollars to resolve the charges. These monetary penalties are not, however, doing enough to deter the misconduct. Price-fixing scandals continue to emerge on a regular basis, and numerous large corporations have been repeatedly penalized. As with other forms of corporate crime, recidivism is rampant.

Steeper penalties would likely help deterrence. The average settlement or penalty we found is

less than \$50 million and the median is below \$9 million. Given that the defendants are often some of the largest corporations in the world, these amounts are trivial. At least one state, Oregon, is discussing increasing its maximum penalty for antitrust violations from \$250,000 to \$1 million.

Yet it is unlikely that higher penalties, by themselves, would put an end to price-fixing conspiracies. In a small number of cases, we have seen settlements in excess of \$1 billion, but even those do not seem to have brought about significant changes in corporate behavior.

Even the prosecution of individual executives, which is more common in price-fixing than in

other forms of corporate crime, does not seem to provide enough deterrence.

Putting a real dent in price-fixing will probably require aggressive steps to deal with the structural phenomenon that makes it more likely to occur: excessive market concentration. When a small number of companies dominate an industry, collusion is easier.

Oligopolies are not just a cause of inflation. They exacerbate social and economic inequality, and thus weaken democracy. Curbing their power will not only address price-fixing but also move us closer to a just society.

METHODOLOGY

The data in this report is based on information collected to create entries for the Violation Tracker database. The details of cases brought by the Justice Department, other federal regulators and state attorneys general come from the agencies themselves, usually in the form of press release announcements posted on their websites. We include all cases in which there is a monetary penalty of at least \$5,000.

Gathering information on class action and multi-district lawsuits is more challenging. Every federal lawsuit is documented in the PACER database, but that resource is not well indexed. This makes it difficult to separate cases that resulted in significant verdicts and

settlements from those that were dropped or decided in favor of the defendants. There is no centralized database of state actions.

To get around this problem, we took a different approach. We used a variety of sources to identify significant price-fixing cases and then used PACER and state court records to document them. The most useful of these sources are: the archives of the online legal publication Law360.com; the case lists on the website of the Judicial Panel on Multidistrict Litigation; the Verdicts & Settlements resource on the Lexis service; the website Lawyersandsettlements.com; and the following papers covering cases from the early 2000s:

Robert H. Lande and Joshua P. Davis. Benefits from Private Antitrust Enforcement: Forty Individual Case Studies. University of San Francisco Law Research Paper No. 2011-22 (2008). https://scholarworks.law.ubalt.edu/all_fac/750/

Joshua P. Davis and Robert H. Lande. Summaries of Twenty Cases of Successful Private Antitrust Enforcement. University of San Francisco Law Research Paper No. 2013-01. https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1746&context=all_fac

John M. Connor. Private Recoveries in International Cartel Cases Worldwide: What do the Data Show? American Antitrust Institute Working Paper No. 12-03. October

16, 2012. <https://www.antitrustinstitute.org/work-product/aai-working-paper-no-12-03-private-recoveries-in-international-cartel-cases-worldwide-what-do-the-data-show/>

Dan E. Gustafson, Patrick Cafferty and Bernard Persky. Indirect Purchase Settlement Data Base Updated. American Antitrust Institute Working Paper No. 10-03. July 27, 2010. <https://www.antitrustinstitute.org/wp-content/uploads/2018/10/AAI-Working-Paper-No-10-03.pdf>

Once we assembled the case information, we linked the defendant companies to their ultimate corporate parents using our proprietary Violation Tracker parent matching system.

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