

# THE U.S. APPROACH TO CARTEL ENFORCEMENT IN PUBLIC PROCUREMENTS



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While bid rigging and other offenses relating to procurement fraud are nothing new in the history of the Antitrust Division's criminal enforcement efforts, the Division's prioritization of and organization regarding these offenses changed in late 2019. The Procurement Collusion Strike Force ("PCSF") and procurement cases have become mainstays of the U.S. DOJ Antitrust Division's criminal cartel enforcement efforts since that time. Through a combination of its durable design, favorable circumstances for its growth, and the Antitrust Division's own diligence in building a network that spans the procurement landscape and prioritizes procurement cases, the PCSF is poised to play a prominent role in U.S. cartel enforcement and maintain the Division's enforcement focus on public procurements in the coming years. This article analyzes the PCSF's development and progress to date and assesses the initiative's progress so far in its own "detect and deter" mission.

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Public procurements long have been a focus of antitrust enforcement. The large amount of taxpayer dollars spent in public procurements, frequent opportunities for competitors to communicate through teaming agreements and subcontracting arrangements, iterative nature of many government procurement processes, and limited number of viable competitors due to the technical specificity of certain bids all combine to create opportunities for competitors to agree to rig bids. And because public procurements are attractive opportunities for would-be colluders, they are also logical places for antitrust authorities to apply heightened scrutiny.

Competition agencies around the globe in recent years have innovated new approaches and engaged in greater collaboration in their enforcement efforts regarding public procurements, raising the stakes for businesses and individuals engaged in government contracting. This article examines the evolution of one of those developments – the United States Department of Justice Antitrust Division’s Procurement Collusion Strike Force (PCSF) initiative – and analyzes a number of trends that have influenced the growth of the PCSF, which has become central to U.S. cartel enforcement efforts.

## I. THE PCSF INITIATIVE

In the United States, bid rigging is a *per se* violation of the Sherman Act and investigated by the Antitrust Division as a criminal offense. While the Antitrust Division’s pursuit of bid rigging and related offenses impacting procurement is nothing new, the way that the Division has organized and institutionalized its efforts to combat procurement fraud is one of the most notable developments in U.S. cartel enforcement from the last several years.

In November 2019, the Division launched the PCSF to better detect and deter bid rigging and related collusive conduct that impacts public procurements.<sup>2</sup> Styled as a “virtual strike force,” the PCSF is, in essence, an ongoing interagency partnership between the Antitrust Division, 22 U.S. Attorney’s Offices, and 11 national law enforcement agencies that commits agency resources to the investigation and prosecution of potential procurement violations at the federal, state, and local levels.

The PCSF takes a two-pronged approach, reflecting its “detect and deter” mission.

First, through the PCSF, Antitrust Division prosecutors and their federal law enforcement partners engage in outreach to all stakeholders in public procurements. PCSF prosecutors and agents meet regularly, share best practices, and discuss areas of concern. They also prioritize efforts to train agents, contracting officials, and others to understand the harms from and spot the indicators of potential antitrust violations in public procurements.

To date, the PCSF has trained over 23,000 individuals representing over 500 agencies, at all levels of government.<sup>3</sup> Through these efforts, it has built a network of procurement stakeholders who are aware of and looking for the warning signs of antitrust offenses and reporting to law enforcement agents any suspicious behaviors that may signal bid-rigging, thereby enhancing the Antitrust Division’s capacity to detect these violations or deterring them in the first instance.

Second, leveraging this platform, law enforcement agents and the PCSF’s prosecutors – including those from both the Antitrust Division and partner U.S. Attorney’s Offices – coordinate in the investigation and prosecution of any potential problems. Backed by the institutional commitments from law enforcement partners (who themselves have been better trained to spot and develop evidence of bid rigging) to investigate vigorously and pairing the subject matter expertise of Antitrust Division prosecutors with the Assistant United States Attorneys’ command of district-level procedures and practices, the PCSF model purports to deploy more efficiently and effectively to combat procurement violations, from the inception of any investigation to the completion of any resultant litigation.

As with its outreach and education function, data suggest that the PCSF has made progress in this part of its mission. In September 2022, the Antitrust Division’s Assistant Attorney General (“AAG”) testified to Congress that the PCSF’s work has led to over 60 criminal investigations, which in turn have resulted in the criminal prosecution of more than 30 individuals and companies.<sup>4</sup> In cases involving both domestic and international procurements, the Division has secured numerous convictions across several matters, leading to prison sentences for individuals between from 12-27 months, as well as corporate fines and multiple criminal indictments awaiting trial.

<sup>2</sup> <https://www.justice.gov/opa/pr/justice-department-announces-procurement-collusion-strike-force-coordinated-national-response>.

<sup>3</sup> <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-antitrust-division-testifies-senate-judiciary>.

<sup>4</sup> *Id.*

## II. THE COSTS OF PROCUREMENT FRAUD

The costs for companies and individuals found guilty of violating the antitrust laws in public procurements can be high.

First, because these violations are criminal in the United States, individuals can be sent to prison and courts can impose significant fines on corporate offenders found guilty of violations. Second, *in addition to possible criminal penalties*, corporations may face parallel civil investigations or litigation that could impose further penalties and restitution obligations. For instance, if a company has certified to the government an independent price determination that later is determined to be untrue because bid rigging took place, a company could be liable under the False Claims Act.<sup>5</sup> Third, investigation of or a conviction for bid rigging or another antitrust violation can lead to an agency-level suspension or debarment of companies from future procurements.

The possibility of temporary suspension during the pendency of an investigation or debarment from government contracting for a set period of time following a conviction stands out as a unique and critical consideration with respect to violations affecting public procurements. These actions impact a company's ability to engage in procurements and conduct business on an ongoing basis. While a criminal penalty for past conduct will hurt, subsequent debarment as a result of an antitrust offense can amount to a corporate death sentence for businesses that depend on obtaining future government contracts.

In the United States, suspension or debarment as a consequence of an antitrust violation is subject to an independent inquiry and decision by the agency that is considering suspension or debarment, not the Antitrust Division. But a criminal conviction – which is subject to a finding of wrongdoing at the law's highest burden of proof – exceeds the applicable standards in the administrative proceeding and therefore can be dispositive proof for an agency considering debarment.

Recognizing this, the Division can and does advise agencies considering debarment of the fact, manner, and extent of a defendant's cooperation with its investigation,<sup>6</sup> which often leads to a decision not to suspend or debar the defendant. This can happen because U.S. debarment is a forward-looking inquiry that focuses on whether, having committed a violation, a contractor is likely to commit future violations. DOJ's input on this question can be – and in the past has been – persuasive to other agencies' decisions not to debar.

## III. RIGHT PLACE, RIGHT TIME

One reason for the success of the PCSF has been that, at several points, it has been favorably positioned vis-à-vis external factors that were not anticipated at its inception. The PCSF consistently has proved to be suited to its moment, finding itself in contexts that were favorable to its reception and growth at several points, from the COVID-19 pandemic to the recent surge in infrastructure spending.

### A. COVID-19

The “virtual strike force” model wasn't created in anticipation of a global pandemic, but it proved resilient when, just months after announcing the creation of the PCSF, COVID-19 shut down the U.S. government along with the rest of the world. While the PCSF became more “virtual” than anyone intended for it to be, because (i) its first-year plan focused on outreach to various law enforcement agencies and other procurement stakeholders and (ii) its intended structure did not depend on members being located in the same place, the pandemic disrupted the PCSF's work far less than it impacted litigation and investigations.

In a speech delivered at the one-year anniversary of the PCSF, the then-AAG of the Antitrust Division said that “the first year was about proving the concept, and about standing up the in-district teams, building relationships, and getting the word out.” He noted that the PCSF's virtual nature rendered it “uniquely well-positioned to deploy interactive technology” and reported that the PCSF “didn't miss a beat” during the pandemic, with over 8,000 individuals from over 500 agents trained through PCSF efforts.<sup>7</sup>

<sup>5</sup> See, e.g. <https://www.justice.gov/opa/pr/seven-south-korean-companies-agree-pay-approximately-31-million-settle-civil-false-claims-act#:~:text=Seven%20South%20Korea-based%20companies%20have%20agreed%20to%20pay,work%20on%20U.S.%20military%20bases%20in%20South%20Korea>.

<sup>6</sup> See Antitrust Division Model Corporate Plea Agreement at ¶ 23, available at <https://www.justice.gov/atr/page/file/1490321/download>.

<sup>7</sup> <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-future-antitrust>.

The COVID-19 pandemic proved advantageous to the PCSF in another way, by bringing into starker relief the potential impacts of procurement collusion. While the antitrust world was familiar with crisis cartels, the immediacy, urgency, and scale of the pandemic – along with the vast amounts of public expenditures that it prompted – focused the attention of other stakeholders on the antitrust risks in procurements. The PCSF leaned in to the situation, specifically directing training and outreach related to procurement officials overseeing CARES Act funding at agencies on the front lines of the American pandemic response, including the Centers for Disease Control and Federal Emergency Management Agency.<sup>8</sup>

### ***B. Biden Executive Order on Competition***

The original conception of the PCSF proved useful again in the early years of the Biden Administration, when the PCSF found itself in a position to benefit from – and to transition easily across presidential administrations due to – its interagency structure.

More than any recent administration, the Biden Administration has prioritized aggressive antitrust enforcement. In July 2021, President Biden’s Executive Order on Competition in the American Economy<sup>9</sup> directed a “whole of government” approach to competition and said that all federal agencies “should further the polices set forth in [the] order by, among other things, adopting pro-competitive regulations and approaches to procurement and spending.”<sup>10</sup>

The PCSF therefore again found itself flying with a tailwind, benefiting from both its organization, which always contemplated interagency collaboration, and from the White House’s direction that all agencies pay attention to competition issues, specifically in their procurements.

### ***C. Infrastructure Spending***

The PCSF once again appears well positioned to meet the moment and to lead enforcement efforts related to the recent surge in U.S. infrastructure spending.

The Biden Administration has signed into law legislation – including the Inflation Reduction Act and the bipartisan Infrastructure Investment and Jobs Act – that provides more than a trillion dollars in federal funding for infrastructure projects, spanning a wide range of administration priorities: highways and bridges; public transit systems; a nationwide network of electric vehicle charging stations; improving ports and deepening waterways; repairs to and development around airports; and technologies for the generation, transmission, and storage of clean energy. In other words, projects that all rely on public procurements. During the first year since the passage of the bipartisan Infrastructure Act, the administration already has announced nearly \$200 billion in funding for almost 7,000 separate projects,<sup>11</sup> and there are hundreds of millions of dollars more that will be spent on infrastructure under the Infrastructure Act and Inflation Reduction Act.

Seizing on this, Antitrust Division officials have singled out infrastructure spending as a focus of the Division’s criminal antitrust enforcement efforts due to “its impact for Americans and the vast amount of government resources currently devoted to infrastructure.”<sup>12</sup> Additionally, in November 2022, the PCSF added four additional national-level enforcement partners, expressly identifying their roles overseeing allocating financing for procurements and grants to fund infrastructure projects: the inspectors general (IGs) of the Departments of Transportation, Energy, and Interior, as well as the Environmental Protection Agency IG.<sup>13</sup>

## **IV. EXPANSION PLANS**

When it started in late 2019, the PCSF was in many ways a pilot project. It had just five law enforcement partners and focused its work in its thirteen original partner districts. It has expanded rapidly since then. Not only has it expanded its membership and more than doubled its partner law enforcement agencies (including the most recent additions in November 2022) and added nine additional U.S. Attorney Offices, but the PCSF

<sup>8</sup> *Id.*

<sup>9</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

<sup>10</sup> *Id.*

<sup>11</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/15/fact-sheet-one-year-into-implementation-of-bipartisan-infrastructure-law-biden-%E2%81%A0harris-administration-celebrates-major-progress-in-building-a-better-america/>.

<sup>12</sup> <https://www.justice.gov/opa/speech/director-procurement-collusion-strike-force-daniel-glad-delivers-remarks-aba-section>.

<sup>13</sup> <https://www.justice.gov/opa/pr/justice-department-s-procurement-collusion-strike-force-announces-four-new-national-law>.

also has claimed a broader enforcement mandate, expanded its geographic focus and mission through its PCSF Global initiative, and is working to expand its toolkit with new and more advanced detection techniques.

### **A. An Expanded Mandate?**

Like the bid-rigging offense, charging non-antitrust, criminal offenses that impact public procurements is nothing new for the Antitrust Division. It always has had the ability and authority, as a matter of prosecutorial discretion, to investigate and prosecute “Title 18” offenses (so called because of their location in the U.S. Code) such as fraud and bribery, either alongside or in place of antitrust charges. The Division, for example, was an active participant in the prosecution of various offenses relating to military procurements conducted in Iraq and Afghanistan in the early and mid-2000s. As part of those war zone-related efforts, Division prosecutors charged numerous individuals and companies in cases that did not include Sherman Act charges. These offenses included conspiracy to defraud the government,<sup>14</sup> bribery,<sup>15</sup> money laundering,<sup>16</sup> and tax crimes.<sup>17</sup>

But the Division’s appetite for charging Title 18 offenses has not been consistent over time, and there have been more recent stretches in which the Division charged these crimes in far fewer cases.

Under the PCSF, however, Title 18 offenses are back at the Antitrust Division, which has read its enforcement mandate relating to procurements to extend beyond the antitrust laws. In an October 2021 speech, the PCSF’s director confirmed that in addition to Sherman Act offenses, “our focus also includes prosecuting other competition-corrupting crimes uncovered during our investigations.”<sup>18</sup> In support of this position and reading of its mandate, the Division has noted the similarities between cartel offenses and other fraud-based crimes: perpetrators of both seek to garner illicit profits, and both frequently involve elements of deceit or concealment.<sup>19</sup>

The Division’s actions speak louder than its words in this regard. PCSF cases have charged a wide variety of other crimes, including major fraud and conspiracies to defraud the federal government,<sup>20</sup> violations relating to federal set-aside programs and wire fraud,<sup>21</sup> and paying bribes relating to procurements.<sup>22</sup> In some cases, these Title 18 violations were not paired with any antitrust charge.

### **B. An Expanded Footprint: PCSF Global**

As noted, the PCSF began as a domestic initiative, focused on a limited number of federal judicial districts. But its roots always ran deeper than these local districts. Indeed, it was an overseas case – the Korean fuels investigation<sup>23</sup> – that provided the earliest example of what the PCSF could be. In the Korea fuels matter, an investigative team with agents from multiple law enforcement agencies worked with prosecutors to investigate a decade-long conspiracy to rig bids for fuel supply contracts to U.S. military facilities on the Korean peninsula. As a result of the investigation, five Korean companies agreed to pay over \$150 million in criminal fines and over \$200 million in separate civil settlements and seven individuals were indicted for bid rigging and conspiring to defraud the government.

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14 *United States v. Christopher West et al.*, Case No. 08-cr-00669 (N.D. Ill. Jun. 18, 2009) (Indictment), available at <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/05/22/06-18-09christopher-west-superseding-indictment.pdf>; *United States v. Charles Finch et al.*, Case No. 10-cr-00333 (D. Hi. Jun. 8, 2010) (Indictment), available at <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/05/22/06-18-10charles-finch-superseding-indictment.pdf>.

15 *Id.*

16 *United States v. Finch et al.*, *supra* note 14.

17 *United States v. Tijani Saani*, Case No. 08-cr-00203 (D.D.C. May 16, 2008) (Indictment), available at <https://www.justice.gov/atr/case-document/indictment-121>.

18 See fn. 2.

19 Philip Andriole & Chris Maietta, “The PCSF: A Global Presence for a Global Problem,” DOJ J. Fed. L. and Practice, Dec. 2022, available at <https://www.justice.gov/usao/page/file/1559136/download>.

20 *United States v. Envistacom*, Case No. 22-cr-00197 (N.D. Ga. May 25, 2022) (Indictment), available at <https://www.justice.gov/opa/press-release/file/1538326/download>.

21 *United States v. Padron*, Case No. 21-cr-00124 (W.D. Tx. Mar. 17, 2021) (Indictment) available at <https://www.justice.gov/opa/press-release/file/1377051/download>.

22 *United States v. Miller*, Case No. 22-cr-00206 (E.D. Ca. Oct. 6, 2022) (Indictment) available at <https://www.justice.gov/opa/press-release/file/1558641/download>.

23 *United States v. Hyundai Oilbank Co., Ltd. et al.*, Case No. 18-cr-00152 (S.D. Oh. Sep. 27, 2018) (Superseding Indictment), see <https://www.justice.gov/opa/pr/more-charges-announced-ongoing-investigation-bid-rigging-and-fraud-targeting-defense>.

In some ways, therefore, it was less surprising when, in late 2020, the PCSF got into the export business through its PCSF Global initiative.<sup>24</sup> The PCSF Global program represents a variation on the PCSF theme. Identical to the PCSF's domestic efforts, it works with U.S. law enforcement personnel stationed outside of the United States to detect and investigate possible collusion impacting federal funds spent outside of the country, such as at U.S. military bases and embassies. Likewise, PCSF Global has an outreach mission. In addition to training U.S. personnel stationed abroad, PCSF Global programs also train personnel at other competition and procurement authorities as part of efforts to create an overall culture of procurement compliance, as well as to enhance the capacity to detect potential violations. PCSF Global programs already have reached enforcers in Europe, Asia, and Africa.<sup>25</sup>

By mid-2021, the Division obtained proof of concept on the PCSF Global initiative, obtaining guilty pleas<sup>26</sup> and indictments<sup>27</sup> from its investigation of antitrust offenses relating to contracts for security services at U.S. military bases and installations in Belgium. In March 2022, the Division brought an additional case under the PCSF Global umbrella, charging two South Korean nationals with rigging bids and fixing prices for subcontract work done at U.S. military bases in South Korea, as well as several counts of wire fraud.<sup>28</sup>

### ***C. An Expanded Toolkit: The Data Analytics Project***

The PCSF also has worked to expand its toolkit to combat collusive offenses that impact procurements.

The use of screening tools against public bidding datasets long has been a topic of interest to competition enforcers. Historically, few jurisdictions have developed their capacity to perform these screens effectively.<sup>29</sup> With developments in technology, however, “there is a generalized increasing interest in the use of technology and artificial intelligence to support competition enforcement,” with several competition authorities in the process of developing data screens that can enhance the detection of possible cartel conduct in public procurements.<sup>30</sup>

The United States is among these jurisdictions, and one of the focus areas of the PCSF has been its Data Analytics Project. DOJ acknowledges that the nature of government procurement in the United States – characterized by decentralized agency procurements across multiple levels of government – limits its ability to detect procurement collusion, and that “[t]o detect procurement-related crime, the PCSF needs cutting edge analytics tools.”<sup>31</sup>

In the face of this reality, the approach of the PCSF has differed from many other jurisdictions. Rather than attempting to build a one-size-fits-all data analytics program, the Antitrust Division has put itself forward as a subject matter expert for other federal agencies interested in developing their own data analytics tools.<sup>32</sup> By training data scientists, auditors, and investigators at other agencies, encouraging good “bid data hygiene” across federal agencies, and facilitating the sharing of expertise, the PCSF hopes to spur multiple federal agencies in the United States to develop their own screening tools for better detection of anomalies that may suggest collusion in the procurements that those agencies oversee.

The Data Analytics Project has also placed itself in learning mode and looked to other competition authorities for experience, expertise, and guidance. Data screens have already been credited in successful cartel enforcement actions in several jurisdictions, including Mexico, Brazil,

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24 See <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-future-antitrust/>.

25 See Andriole & Maietta, fn 19, at 96.

26 *United States v. G4S Secure Solutions NV*, Case No. 21-cr-00432 (D.D.C. Jun. 25, 2021), available at <https://www.justice.gov/opa/pr/belgian-security-services-firm-agrees-plead-guilty-criminal-antitrust-conspiracy-affecting>; *United States v. Bart Verbeeck*, Case No. 21-cr-00574 (D.D.C. Sep. 13, 2021), see <https://www.justice.gov/opa/pr/former-security-services-executives-plead-guilty-rigging-bids-department-defense-security>.

27 *United States v. Seris Security NV et al.*, Case No. 21-cr-00443 (D.D.C. Jun. 29, 2021), available at <https://www.justice.gov/opa/pr/belgian-security-services-company-and-three-former-executives-indicted-bid-rigging-us>.

28 *United States v. Hyuk Jin Kwon and Hyun Ki Shin*, Case No. 22-cr-00049 (W.D. Tx. Mar. 16, 2022), <https://www.justice.gov/opa/pr/contractors-indicted-rigging-bids-subcontract-work-and-defrauding-us-military-bases-south>.

29 OECD (2022), Data Screening Tools in Competition Investigations, OECD Competition Policy Roundtable Background Note, [www.oecd.org/daf/competition/data-screening-tools-in-competition-investigations-2022.pdf](http://www.oecd.org/daf/competition/data-screening-tools-in-competition-investigations-2022.pdf).

30 *Id.*

31 OECD (2022), Data Screening Tools for Competition Investigations, Note by United States, Nov. 28, 2022, available at [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2022\)35/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2022)35/en/pdf).

32 *Id.*

Korea, Italy, and Switzerland,<sup>33</sup> and international cooperation to continue the development and refinement of screens as a cartel detection tool is a prime example of soft cooperation that can enhance enforcement across several jurisdictions as well as individual authorities' detection capabilities.

The progress that the PCSF and its partner agencies in the Data Analytics Project make in the coming years could be a driver of efficiency and efficacy in procurement investigations. A key first step will be developing workable datasets across federal agencies. In this regard, President Biden's Executive Order on Competition bolstered the PCSF's efforts with its "whole of government" mandate and emphasis on improving procurement practices to enhance competition.

## V. IS IT WORKING?

The PCSF and procurement cases have become mainstays of the Antitrust Division's criminal cartel enforcement efforts. Through a combination of its durable design, favorable circumstances for its growth, and the Antitrust Division's own diligence in building a network that spans the procurement landscape and prioritizes procurement cases, the PCSF is poised to play a prominent role in U.S. cartel enforcement and maintain the Division's enforcement focus on public procurements in the coming years.

But other than marking its progress and noting its growth and ambition, are there signs that the PCSF is succeeding in its "detect and deter" mission?

At a minimum, beyond the numbers that the Antitrust Division cites as metrics of its success, its enforcement record provides some important proof of concept. Consider just two examples.

The antitrust world paid attention to *United States v. Zito*<sup>34</sup> because of the nature of the charge: the Division's first criminal prosecution under Sherman Act § 2 in nearly fifty years. But past that headline, the record of the case showed the value of the resources the PCSF has committed to outreach across the procurement ecosystem.

The case record demonstrated that every step in the procurement chain worked as the PCSF hoped it would: The contractor who was approached by the defendant to allocate the market for state procurements reported the offer to collude to the Federal Highway Administration. FHA officials in turn reached out to agents at the Department of Transportation IG. DOT IG agents in turn reached out to prosecutors. And all of this happened in a short-enough span of time that the original informant then could cooperate with the government investigation by recording a number of subsequent calls with the defendant, on which critical evidence was captured to substantiate a criminal charge and induce a plea agreement that relied heavily on intent evidence.

The fact pattern of *Zito* shows the value of enhanced awareness and that increased alacrity by investigators can lead to more effective enforcement against procurement violations. This is the PCSF model of building connections, and it played out in a textbook fashion to the Antitrust Division's benefit in the case. *Zito* demonstrates the value of PCSF outreach efforts to both enhance detection of these offenses and send the key deterrent message to would-be colluders: you never know when you're being recorded.

With respect to the PCSF's goals of deterring procurement fraud, in January 2023, in *United States v. Padron*,<sup>35</sup> a judge sentenced the former owner of a construction company to 27 months in prison plus a fine of \$1.75 million after a jury earlier convicted him of conspiracy to defraud the government and multiple counts of wire fraud. The sentence followed the defendant's conviction for his role in a scheme to obtain over \$240 million worth of government contracts under a federal program intended to benefit service-disabled veterans.

The *Padron* case is perhaps the best example to date that PCSF-driven enforcement efforts can result in deterrence. The sentence is impressive by any measure and particularly in the context of Antitrust Division prosecutions. It is also notable that the defendant was not charged with an antitrust violation in the case, which would appear to validate the PCSF's pursuit of criminal charges beyond the Sherman Act § 1 offense.

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33 See D. Pachnou & D. Westrik, "Interest In Cartel Screens is Increasing," Competition Policy International, Jan 10, 2023, available at <https://www.competitionpolicyinternational.com/developments-in-cartel-screening/>.

34 Case No. 22-cr-00113 (D. Mt. Sep. 19, 2022) (Information); available at <https://www.justice.gov/opa/pr/executive-pleads-guilty-criminal-attempted-monopolization>.

35 Case No. 21-cr-00124 (W.D. Tx. Mar. 17, 2021) (Indictment) available at <https://www.justice.gov/opa/press-release/file/1377051/download>; see also <https://www.justice.gov/opa/pr/construction-company-owner-sentenced-fraud-securing-millions-dollars-contracts-intended>.



Finally, defendants cannot be sentenced before they are found guilty. Division prosecutors secured the defendant's conviction on multiple counts after a six-day jury trial, showing that Antitrust Division prosecutors can win these cases and that procurement violations resonate with lay jurors.

Whether other PCSF initiatives will produce similar results remains to be seen.

Amidst thousands of ongoing government procurements at the federal, state, and local level, the progress of the Data Analytics Project could be a key driver of PCSF efficiency in case selection and deployment of Antitrust Division and law enforcement resources. The Data Analytic Project's success will depend not only on the development of more effective screens but also on the PCSF's efforts to promote the adoption of better data collection, retention, and normalization across procuring agencies. Examples from international cartel enforcers suggest the possibilities of this investigative tool, but the nature of public procurements in the United States differs significantly from these jurisdictions, so their adaptability to the U.S. context and ability to produce similar results domestically is not yet known.

Similarly, what will be the PCSF Global program's impact? Will the Antitrust Division's outreach to other competition enforcers create a stronger enforcement web across the globe and lead to more cross-border cartel investigations like the Korea fuels case? Do foreign contractors working with U.S. government procurements abroad need to be on heightened notice that the likelihood of detection and effective prosecution has increased? To be determined.

Perhaps most importantly, in an era of significant spending on U.S. infrastructure, will we see more and bigger cases from the PCSF? With over a trillion dollars in spending authorized by the Biden Administration, there is no question that this will be a focus of the PCSF, which has signaled in both word and deed that its partners have eyes on procurements related to these funds. The number and nature of cases that the Antitrust Division brings relating to infrastructure will be key indicators of both the PCSF's scale and sophistication in its fourth year.

## **VI. CONCLUSION**

Now more than three years into its existence, the PCSF appears to be entrenched as a central component of the Antitrust Division's criminal enforcement efforts, and its work has proved to be a bright spot on DOJ's prosecutorial record. There are no signs that the Division will move away from either the PCSF concept or its focus on crimes affecting public procurements, and future developments may see the PCSF grow even more as a focus of U.S. criminal antitrust enforcement.



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