

Antitrust Update: Fishy Pricing Practices Net Tuna Executives Federal Convictions for Antitrust Violations

Following a price-fixing investigation years in the making, the U.S. Department of Justice has secured two guilty pleas from senior executives of a national seafood company alleged to have conspired to fix the price of canned tuna, and more charges are expected to follow.

Just before the start of the New Year, two senior vice presidents at Bumble Bee Foods pled guilty for their roles in an alleged antitrust conspiracy with other seafood packaging companies to fix the price of canned tuna. According to criminal complaints filed in December 2016 by the Justice Department in California federal court, the alleged conspirators "engaged in conversations and discussions and attended meetings with representatives of other major packaged-seafood-producing firms," "agreed and reached mutual understandings during these conversations, discussions, and meetings, to fix, raise, and maintain the prices of packaged seafood sold in the United States," and "negotiated prices and issued price announcements for packaged seafood in accordance with the agreements and mutual understandings reached."

The executives agreed to pay a criminal penalty and to cooperate in the government's tuna price probe, which is being carried out by the San Francisco offices of the Justice Departments' Antitrust Division and the Federal Bureau of Investigation. To send a clear message about the costs of engaging in anticompetitive behavior, federal authorities have stepped up their efforts in recent years to pursue criminal charges against *individuals* involved in antitrust conspiracies in addition to their corporations.

While the Justice Department continues to pursue criminal charges in the alleged seafood pricing conspiracy, other players in the seafood industry are pursuing civil antitrust claims based on the same conduct. Earlier this month, a federal court in San Diego allowed a massive civil antitrust class action lawsuit to proceed against several seafood giants, including Bumble Bee, Tri-Union Seafoods and StarKist.

The original class action complaint was filed by Olean Wholesale Grocery Cooperative in 2015, and dozens of similar lawsuits filed in courts across the

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country were transferred to California and consolidated with Olean's suit. Other companies that have also sued the alleged conspirators include Wal-Mart Stores, Inc., Meijer, Inc., Publix Super Markets, Inc., Kroger Co., Albertsons Companies, LLC, Hy-Vee, Inc., and Winn-Dixie Stores, Inc.

These lawsuits allege a conspiracy born of years of close cooperation between the companies, including a joint advertising campaign, co-packing of products between the companies, and participation in the same industry foundation where they purportedly had opportunities to collude. The plaintiffs have asked the court to award treble damages, plus attorneys' fees and other costs, and to enjoin the companies and their affiliates from engaging in any further anticompetitive activity.

The federal court in San Diego overseeing the litigation recently issued a ruling on the defendants' motion to dismiss, holding that the plaintiffs' claims related to price fixing in the tuna market could go forward.

"The recent criminal charges stemming from the Justice Department's tuna price-fixing investigation and the decision by a California federal court to let an antitrust class action proceed against several industry giants should serve as a reminder to all companies and their executives to exercise caution when interacting with their competitors," said Laura Brenner, chair of Reinhart's Commercial and Competition Law Group.

For example, participating in a trade association along with your competitors can be a helpful (and legal) way to accomplish goals that are shared by the industry members, such as establishing industry standards and lobbying before legislatures or government agencies. With adequate safeguards, these activities do not pose an antitrust risk.

But dealings among competitors can violate the law if not done in the appropriate way. For instance, it is illegal to use a trade association to standardize prices among the association members. This includes not just overt agreements, but also less obvious means of collusion, such as exchanging sensitive pricing information to encourage uniformity. Involving antitrust counsel to provide training and supervision can help avoid antitrust problems.

The antitrust laws are nuanced, and well-meaning individuals and companies can unwittingly commit violations that result in substantial penalties if they are not careful. If you would like to know more about how you or your company can safeguard against antitrust risks, please contact [Laura Brenner](#) or a member of



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