U.S. Department of Justice
Washington, D.C. 20530

Antitrust Enforcement and the Consumer

Many consumers have never heard of antitrust laws, but when these laws are effectively and responsibly enforced, they can save consumers millions and even billions of dollars a year in illegal overcharges. Most states have antitrust laws, and so does the federal government. Essentially, these laws prohibit business practices that unreasonably deprive consumers of the benefits of competition, resulting in higher prices for inferior products and services.

This pamphlet was prepared to alert consumers to the existence and importance of antitrust laws and to explain what you can do for antitrust enforcement and for yourself.

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Assistant Attorney General
Antitrust Division

1. What Do The Antitrust Laws Do For The Consumer?

Antitrust laws protect competition. Free and open competition benefits consumers by ensuring lower prices and new and better products. In a freely competitive market, each competing business generally will try to attract consumers by cutting its prices and increasing the quality of its product or services. Competition and the profit opportunities it brings also stimulate businesses to find new, innovative and more efficient methods of production.

Consumers benefit from competition through lower prices, better products and services. Inefficient firms or companies that fail to understand or react to consumer needs may soon find themselves losing out in the competitive battle.

When competitors agree to fix prices, rig bids or allocate customers, consumers lose the benefits of competition. The prices that result when competitors agree in these ways are artificially high; such prices do not accurately reflect cost and therefore distort the allocation of society's resources. The result is a loss not only to U.S. consumers and taxpayers, but also the U.S. economy.

When the competitive system is operating effectively, there is no need for government intrusion. The law recognizes that certain arrangements between firms -- such as competitors cooperating to perform joint research and development projects --may benefit consumers by allowing the firms that have reached the agreement to compete more effectively against other firms. The government therefore does not prosecute all agreements between companies, but only those that threaten to raise prices to consumers or to deprive them of new and better products.

But when competing firms get together to fix prices, to limit output, to divide business between them, or to make other anticompetitive arrangements that provide no benefits to consumers, the government will act promptly to protect the interest of American consumers and taxpayers.

2. What Are The Federal Antitrust Laws, And What Do They Prohibit?

There are three major federal antitrust laws: The Sherman Antitrust Act, the Clayton Act and the Federal Trade Commission Act.

The Sherman Antitrust Act has stood since 1890 as the principal law expressing our national commitment to a free market economy in which competition free from private and governmental restraints leads to the best results to the consumers. Congress felt so strongly about this commitment that there was only one dissenting vote to the Act.

The Sherman Act outlaws all contracts, combinations, and conspiracies that unreasonably restrain interstate trade. This includes agreements among competitors to fix prices, rig bids and allocate customers. The Sherman Act also makes it a crime to monopolize any part of interstate commerce. An unlawful monopoly exists when only one firm provides a product or service, and it has become the only supplier not because its product or service is superior to others, but by suppressing competition with anticompetitive conduct. The Act is not violated simply when one firm's vigorous competition and lower prices take sales from its less efficient competitors; rather, that is competition working properly.

Sherman Act violations are punished as criminal felonies. The Department of Justice alone is empowered to bring criminal prosecutions under the Sherman Act. Individual violators can be fined up to $350,000 and sentenced to up to 3 years in federal prison for each offense; corporations can be fined up to $10 million for each offense. Under some circumstances, the fines can go even higher.

The Clayton Act is a civil statute (it carries no criminal penalties) that was passed in 1914 and significantly amended in 1950. The Clayton Act prohibits mergers or acquisitions that are likely to lessen competition. Under the Act, the government challenges those mergers that a careful economic analysis shows are likely to increase prices to consumers. All persons considering a merger or acquisition above a certain size must notify both the Antitrust Division and the Federal Trade Commission. The Act also prohibits certain other business practices that under certain circumstances may harm competition.

The Federal Trade Commission Act prohibits unfair methods of competition in interstate commerce, but carries no criminal penalties. It also created the Federal Trade Commission to police violations of the Act.

The Department of Justice also often uses other laws to fight illegal activities, including laws that prohibit false statements to federal agencies, perjury, obstruction of justice, conspiracies to defraud the United States and mail and wire fraud. Each of these crimes carries its own fines and imprisonment terms which may be added to the fines and imprisonment terms for antitrust law violations.

3. How Are Antitrust Laws Enforced?

There are three main ways in which the federal antitrust laws are enforced: criminal and civil enforcement actions brought by the Antitrust Division of the Department of Justice, civil enforcement actions brought by the Federal Trade Commission and lawsuits brought by private parties asserting damage claims.

The Department of Justice uses a number of tools in investigating and prosecuting criminal antitrust violations. Department of Justice attorneys often work with agents of the Federal Bureau of Investigation (FBI) or other investigative agencies to obtain evidence. In some cases, the Department may use court authorized searches of business, consensual monitoring of phone calls and informants equipped with secret listening devices. The Department may grant immunity to individuals or corporations who provide timely information that is needed to prosecute antitrust violations, such as bid rigging or price fixing.

A provision in the Clayton Act also permits private parties injured by an antitrust violation to sue in federal court for three times their actual damages plus court costs and attorneys' fees. State attorneys general may bring civil suits under the Clayton Act on behalf of injured consumers in their states, and groups of consumers often bring suits on their own. Such follow-on civil suits to criminal enforcement actions can be a very effective additional deterrent to criminal activity.

Most states also have antitrust laws closely parallelling the federal antitrust laws. The state laws generally apply to violations that occur wholly in one state. These state laws are enforced similarly to federal laws through the offices of state attorneys general.

4. How Do Antitrust Violators Cheat The Consumer?

The worst antitrust offenses are price fixing and bid rigging. Price fixing occurs when two or more sellers agree that they will increase prices a certain amount, or that they won't sell below a certain price. Bid rigging most commonly occurs when two or more firms agree not to bid against each other to supply products or services to local, state or federal government agencies, or when they agree on the level of their individual bids. Such price-fixing and bid-rigging agreements, unlike joint research agreements for example, provide no plausible offsetting benefits to consumers. Also, these agreements are generally secret, and the participants mislead and defraud customers by continuing to hold themselves out as competitors despite their agreement not to compete.

There can be no doubt that price fixing and bid rigging harm consumers and taxpayers by causing them to pay more for products and services and by depriving them of other byproducts of true competition. Nor is there usually any question in the minds of violators that their conduct is unlawful. It has been estimated that such practices can raise the price of a product or service by more than 10 percent, and that American consumers and taxpayers pour billions of dollars each year into the pockets of price fixers and bid riggers. People who take consumer and taxpayer money this way are thieves.

5. What Kinds Of Cases Has The Justice Department Brought?

Because of the harm that bid rigging and price fixing cause, the Justice Department's number one antitrust priority is criminal prosecution of those activities. The Department has obtained price-fixing and bid-rigging convictions in the soft drink, motion picture, trash-hauling, road-building, electrical contracting and dozens of other industries involving hundreds of millions of dollars in commerce. And in recent years, grand juries throughout the country have investigated possible violations with respect to fax paper, display materials, explosives, plumbing supplies, doors, aluminum extrusions, carpet, bread, and many more products and services. The Department also has recently been investigating and prosecuting bid rigging in connection with Defense Department and other government procurement.

Consider one important example of successful antitrust enforcement -- the Antitrust Division's criminal cases against milk and dairy products suppliers. The Division has uncovered evidence that dairy companies have been conspiring since at least the early 1980's to rig bids to supply milk and other dairy products to public school districts and other public institutions in several states. The Florida Attorney General's Office first noticed suspicious-looking bid patterns by milk suppliers and brought this information to the attention of the Antitrust Division's Atlanta field office in 1986. The Division began a grand jury investigation which uncovered a state-wide conspiracy to rig bids to public school districts in Florida and evidence of similar conspiracies in other states. Since May 3, 1988, the Division has filed 134 milk bid-rigging cases, involving 81 corporations and 84 individuals. Criminal fines totaling more than $69.8 million have been imposed on corporations and individuals, and 29 individuals have been sentenced to jail. The Division has reached civil damage settlements with defendants in excess of $8 million.

The scope of the Antitrust Division's investigation of bid rigging by dairy firms includes sales to public schools, the military and other public institutions (such as jails), as well as possible bid rigging on wholesale prices, affecting all consumers. The Division's investigations of this industry are continuing.

6. What Can You Do For Antitrust Enforcement And For Yourself?

Because they are by their nature secret, price-fixing and bid-rigging conspiracies are difficult to detect and prove. For that reason law enforcement officials rely on complaints and information from consumers and competitors. A very large percentage of all federal antitrust investigations results from complaints received from consumers or businessmen by phone, mail or in person.

On the federal level, you can contact the Antitrust Division at its Washington office or any of its field offices, which were established in major metropolitan areas to encourage people with complaints to come forward (see p. 11). You can also reach the Antitrust Division through any of the offices of the United States Attorney, which are found in most cities throughout the United States. The Antitrust

Division's home offices are in the Main Justice Building at Tenth Street and Pennsylvania Avenue, N.W., in Washington, D.C.

The Federal Trade Commission also has a Washington office, as well as regional offices. The FTC is headquartered at Sixth Street and Pennsylvania Avenue, N.W. in Washington, D.C. FTC and Antitrust Division field office addresses and telephone numbers are listed at the end of this pamphlet.

7. How Can You Know If The Antitrust Laws Are Being Violated?

If any person knows or suspects that competitors, suppliers or even an employer are violating the antitrust laws, that person should alert the antitrust agencies so that they can determine whether to investigate. If you suspect your own company, remember that antitrust violations can be a federal felony; if you know about a violation and you say nothing, in certain circumstances you yourself could later be held criminally responsible and, in addition to losing your job and your reputation in your community, you could be subject to substantial fines and even imprisonment.

Price-fixing and bid-rigging conspiracies are most likely to occur where there are relatively few sellers that have to get together to agree. The larger the group of sellers, the more difficult it is to come to an agreement and enforce it.

Keep an eye out for tell-tale signs. For example:

-- generally, any evidence that two sellers of similar products have agreed to price their products a certain way, to sell only a certain amount of their product, or to sell only in certain areas or to certain customers;

-- large price changes involving more than one seller of very similar products of different brands, particularly if the price changes are of equal amount and occur at the same time;

-- a seller's statement that ”We can't sell to you; according to our agreement, so-and-so (the seller's competitor) is the only firm that can sell to you;"

-- fewer competitors than normal submit bids on a project;

-- competitors submit identical bids;

-- the same company repeatedly has been the low bidder who has been awarded contracts for a certain service or in a particular area;

-- bidders seem to win bids on a fixed rotation;

-- there is an unusual and unexplainable large dollar difference between the winning bid and all other bids;

-- the same bidder bids substantially higher on some bids than on others, and there is no logical cost reason to explain the difference.

These signs are by no means conclusive evidence of antitrust violations. More investigation by trained lawyers and economists would be required to determine that. But they may be indications, and the people who enforce the antitrust laws want to hear about them.

8. What Is The Public's Role In Antitrust Enforcement?

Effective antitrust enforcement requires public support. Public ignorance and apathy can weaken antitrust enforcement more than anything else. Whether you are a business person or a consumer, if you encounter business behavior that seems to violate the antitrust laws, do not hesitate to inform the enforcement agencies of your suspicions. That is often the only way violations can be uncovered, and failing to uncover and punish antitrust violations not only penalizes consumers and taxpayers but also penalizes the vast majority of honest businesspeople who scrupulously observe the antitrust laws.

If you detect an antitrust violation, you can perform a triple public service: (1) you can help put an end to unlawful conduct that is costing consumers millions or even billions of dollars; (2) you can put money in the form of criminal penalties into the federal treasury; and (3) you can help recover other unlawful charges, because the government or affected consumers may bring an antitrust action to collect damages.

You can write or call the Antitrust Division of the Department of Justice at any of the following locations:

601 D Street, N.W.
Washington, D.C. 20530
(202) 514-3543

Richard B. Russell Building
Suite 1176
75 Spring Street, S.W.
Atlanta, Georgia 30303
(404) 331-7100

Rookery Building
Suite 600
209 South LaSalle Strcet
Chicago, Illinois 60604
(312) 353-7530

Plaza Nine Building
55 Erieview Plaza, Suite 700
Cleveland, Ohio 44114-1816
(216) 522-4070

Thanksgiving Tower
Suite 4950
1601 Elm Street
Dallas. Texas 75201
(214) 880-9401

Room 3630
26 Federal Plaza
New York, New York 10278-0096

(212) 264-0390

Curtis Center
One Independence Square West
7th & Walnut Streets, Suite 650
Philadelphia, Pennsylvania 19106
(215) 597-7401

450 Golden Gate Avenue
Box 36046
San Francisco, California 94102
(415) 436-6660

You can write or call the Federal Trade Commission at any of the following locations:

6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-2222
TDD (202) 326-2502

Suite 5M35
60 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 656-1399

Suite 810
101 Merrimac Street
Boston, Massachusetts 02114-4719
(617) 424-5984

Suite 1860
55 East Monroe Street
Chicago, Illinois 60603
(312) 353-4423

Suite 200
1111 Superior Avenue
Cleveland, Ohio 44114
(216) 263-3410

Suite 1523
1961 Stout Street
Denver, Colorado 80294-0101
(303) 844-2271

Suite 2150
1999 Bryan Street
Dallas, Texas 75201-6808
(214) 979-0213

Suite 13209
11000 Wilshire Boulevard
Los Angeles, California 90024
(310) 824-4300

Suite 1300
150 William Street
New York, New York 10038
(212) 264-1207

Suite 570
901 Market Street
San Francisco, California 94103
(415) 356-5270

2806 Federal Building
915 Second Avenue
Seattle, Washington 98174
(206) 220-6363