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**WEBSTER, CHAMBERLAIN & BEAN, LLP – NONPROFIT ALERT**

**FEDERAL COURT REJECTS ANTITRUST CLAIM REGARDING INFORMATION EXCHANGE**

**Background**

This past February, the Department of Justice (the “DOJ”) withdrew its support from three antitrust enforcement policy statements with applicability that includes the issue of information exchanges amongst competitors. In July, the Federal Trade Commission (the “FTC”) also withdrew its support for these safe-harbor policy statements. The actions by the Federal antitrust enforcement authorities have resulted in some uncertainty amongst associations, for which statistical reporting programs are a longstanding activity. For our prior update on the DOJ withdrawal, please see: [DOJ-Information-Sharing-Policy-2.17.23.pdf \(wc-b.com\)](#).

**Case Summary**

The first significant case after the DOJ withdrawal from the information exchange safe harbor policy statement came out of the Northern District of Illinois in late June. In the case *In re Broiler Chicken Litigation*, the Plaintiffs alleged that AgriStats, a company that provides statistical benchmarking reports for the broiler chicken industry, disseminated data that could have allowed chicken producers to fix prices and engage in anticompetitive behavior. Information published in the benchmark reports included sales information, cost reduction opportunities, and industry averages. The Plaintiffs alleged that based on the information provided, companies could accurately deanonymize the data, providing an opportunity to collude and fix prices. However, the Court ultimately granted the Defendants’ motion for summary judgment against the Plaintiff because, among other things, the reports did not include price data that could be de-anonymized, and the Court’s reasoning generally adhered to traditional principles regarding the legality of information exchange programs. The court’s decision supports the principle that information exchanges are not inherently anticompetitive.

**What Nonprofits Need to Know**

While the safe harbors have been withdrawn by the FTC and DOJ, the result of this case suggests that courts could continue using the variety of factors and traditional principles established in them to inform their analysis of whether information exchanges are impermissibly anticompetitive. Other cases involving similar issues continue to be litigated so associations should continue to monitor developments in this area.

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