

October 13, 2023

WEBSTER, CHAMBERLAIN & BEAN, LLP – NONPROFIT ALERT

Department of Justice – Information-Sharing Antitrust Case Against Agri Stats Inc.

The Department of Justice has filed an antitrust suit against Agri Stats Inc. alleging an illegal price-fixing scheme through the company's information sharing program. This action marks the first notable case in the wake of the Department's revision earlier this year of several "safe harbors" for association information sharing programs and could have a significant impact on the development of the law in this area.

Introduction

On September 28th, the Department of Justice filed a civil antitrust lawsuit in the District of Minnesota against Agri Stats Inc., alleging that the company violated federal antitrust law by "collecting, integrating and distributing competitively sensitive information related to price, cost and output among competing meat processors." Processors participating in Agri Stats Inc. account for more than 90 percent of broiler chicken sales, 80 percent of pork sales, and 90 percent of turkey sales in the United States.

The Complaint

More specifically, the complaint alleges that Agri Stats Inc. has produced comprehensive weekly and monthly reports for participating companies that then allegedly use the data to set prices and output levels. It states that Agri Stats acted as the "accountant" for the industry, collecting the sensitive information from processors and then organizing it into detailed reports which would then be sent back out to its subscribers (the same processors).

The government argues that Agri Stats Inc. cannot seek the cover of the defense that the reports themselves were anonymized, arguing instead that the reports were only "loosely anonymized" and that Agri Stats was aware that the reports were being used in an anti-competitive fashion.

Case Background and Prior Actions

The Department of Justice previously investigated Agri Stats Inc. for a period of two years over ten years ago and closed its case in 2012 without taking action against the company. Agri Stats has been subject in recent years to private class actions regarding its sharing of information related to the chicken, pork, and turkey markets. The Department of Justice is now seeking a permanent injunction that would prevent the company from continuing to engage in this alleged activity.

Agri Stats Inc. has released a statement in which it claims that the government's lawsuit is "contrary to the law and the facts." The company further claims that its information sharing program has in fact had pro-competitive effects, arguing that its program has helped to "drive increased efficiency . . . ultimately provid[ing] more chicken, pork, and turkey to consumers for less money."

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Antitrust Enforcement – Information Sharing

In the context of antitrust enforcement, this marks the first major action since the Department of Justice withdrew three “safe harbors” for information sharing activity through third parties in February of this year. The case also demonstrates a shift in the Department’s approach to such cases: the existence of prior investigations or past legal victories on the part of the defendant – as has been the case for Agri Stats – will not deter such suits. A U.S. district court earlier this year had cleared Agri Stats of any wrongdoing in connection with an alleged price-fixing scheme – but this has not deterred the government’s newest action.

Conclusion

Though the case is still in its early stages, it highlights the importance of associations having clear and robust antitrust compliance programs in place. The Department’s complaint – among other items – alleges that Agri Stats does not have an antitrust compliance program or any antitrust training. Ensuring a strong program for antitrust compliance is one of the more proactive means of getting out in front of any potential allegations.

Tracking this case moving forward can help to serve as a useful guide for how the Department of Justice will be approaching information sharing programs for years to come. Indications point strongly towards increased enforcement and a Department that is growing increasingly willing to bring enforcement actions. Associations should take note of this Department of Justice action and ensure that their antitrust compliance programs are adequate.

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