

Antitrust Enforcement in California

How You Can Help



State of California Department of Justice

Attorney General's Message

Antitrust enforcement is an important weapon in our consumer protection arsenal. A vigorous, competitive marketplace helps consumers by ensuring fair prices, the availability of an array of products, and quality goods and services. Diligent antitrust enforcement also helps businesses by protecting them from unfair competition and providing a level playing field.

I am pleased to make available this pamphlet designed to help you better understand the sometimes complex nature of antitrust violations. It contains a brief summary of antitrust laws and other relevant background information.

As Attorney General, I am committed to protecting Californians from costly antitrust violations and making sure there is fair competition in our markets. As part of this effort, I have bolstered resources in my antitrust section, including the number of staff, to aid in uncovering and prosecuting illegal antitrust activities.

There also is an important role to be played by you. Antitrust violations are sometimes difficult to detect. Information from consumers, business people and government employees can be instrumental in our efforts to detect illegal activities. I encourage you to share with my office any information you might have concerning a possible antitrust violation.

Along with my staff, I look forward to working with you. Together, we can protect fair competition in our California markets.

Bill Lockyer, Attorney General

What Are The Antitrust Laws?

The antitrust laws are a system of California and federal laws that prohibit unwarranted restraints on free and open competition. They allow the Attorney General to bring civil and criminal legal actions against individuals and businesses acting in restraint of trade. District attorneys can bring similar actions for antitrust offenses centered in their counties. The law provides that anyone injured by an antitrust offense may recover from the wrongdoer three times the damages suffered.

Why Are The Antitrust Laws Important To You?

As a consumer or taxpayer

Antitrust offenses almost always raise the prices paid by consumers. Being forced to pay illegally high prices is the equivalent of having money stolen from your pocket. Even relatively small price increases can have a tremendous overall effect statewide. The state's economy and consumers suffer from the economic dislocations caused by antitrust offenses. And, when state or local governments pay too much for goods or services because of antitrust violations, either taxes must be raised or services must be reduced.

As an owner of a business

The cost of doing business affects the profit a business will make. If the price of goods or services used by your business is raised by antitrust restraints, your cost of doing business will rise. Some antitrust offenses, such as boycotts, can make it impossible for you to do business.

As a business person or an employee of a business

Antitrust violations are not just ways of doing business—they are serious crimes for which the penalties are severe. If anyone inside or outside your company asks you to violate the antitrust laws, they are asking you to commit a felony for which you could go to prison. Additionally, a business violating the antitrust laws is liable to its victims for three times the amount they are injured.

As a government employee

Government agencies, large and small, rely on competitive bidding for their significant purchases. Because of their importance, competitive bids are particularly susceptible to antitrust violations. As a governmental employee who can detect antitrust violations, you are the first-line defense against antitrust losses for the public treasury and for the people the government serves.

What To Look For

It is not possible to give a complete list and description of possible antitrust offenses in a publication of this size. However, the following discussion will identify the most important activities of which you should be aware.

Horizontal price-fixing

It is illegal for any competitors to have any agreement to raise, stabilize or otherwise affect prices. The agreement need not be in writing or otherwise formalized—even an informal understanding concerning prices between competitors is illegal. The agreement need not set specific prices—any agreement affecting price levels is illegal. Even a practice of exchanging price information with competitors, where this practice affects prices, violates the antitrust laws.

Example: The owners of three major appliance stores meet informally and agree that the prices of refrigerators are too low. They promise to notify one another before deviating from their established prices. From then on, they offer fewer price reductions on refrigerators. The store owners have engaged in horizontal price-fixing.

Bid-rigging

Bid-rigging is an important type of horizontal price-fixing in which competitors agree in some way to affect the outcome of competitive bids. Submission of identical bids, if done pursuant to an agreement of the bidders, is one form of bid-rigging. Agreements among bidders to take turns in winning bids, to allocate opportunities to bid, or simply not to bid on certain contracts, are all examples of bid-rigging and are all illegal.

Example: A number of office machine distributors agree that, in bidding for government purchases of typewriters, they will take turns discounting from list price. Each distributor will bid at a discount only when it is his turn. The distributors have rigged the bids.

Other agreements among competitors

In addition to price-fixing, any other agreement among competitors which restrains competition is usually illegal. For example, boycotts (agreements by competitors not to sell to particular customers or not to buy from particular suppliers), market or customer allocations (agreements among competitors affecting to whom or where each will sell), and output limitations (agreements among competitors to limit overall quantities marketed) are almost always illegal, regardless of justification. Joint ventures undertaken by competitors can be legal, within certain limits.

Example: Two shoe manufacturers agree to stop selling to a discount shoe store because its prices are too low. The manufacturers have engaged in a boycott.

Vertical price-fixing (resale price maintenance)

Any agreement between a seller and a buyer regarding the price at which the buyer resells a product is illegal. Any attempt by a seller to have a buyer enter into such an agreement is also illegal.

Example: A manufacturer of light bulbs complains to a hardware store because the store is selling bulbs below the suggested retail price. The store promises that it will in the future keep its light bulb price within 10 percent of the suggested retail price. The manufacturer and the store are engaged in vertical price-fixing.

Other agreements between sellers and buyers

While agreements between a buyer and a seller that affect prices are always illegal, agreements that restrict the buyer's freedom to resell products can also be illegal. These agreements include restrictions on where and to whom the buyer may resell the product. Such restraints are illegal whenever they harm competition more than they help it.

Example: A clothing manufacturer discovers that two of its wholesale distributors are trying to sell its product to the same store and that they are offering discounts in order to make the sale. The manufacturer forbids one of the wholesalers to sell to the store. The manufacturer has placed a customer restriction on the wholesaler.

Tying

Sellers sometimes require a buyer to purchase a product the buyer does not want in order to be allowed to buy a product the buyer does want. Such requirements are called tying arrangements. Tying is generally illegal where the seller has some degree of control over the market for the product the buyer wants.

Example: A wholesale book distributor is the only company distributing a best-selling book in the city, but it requires bookstores to buy a certain number of less popular books if they want the best-seller. The distributor is imposing a tying arrangement.

Monopoly

A business may not unfairly keep others from competing with it. Businesses may and should compete vigorously to obtain customers, and growth through superior ability and efficiency is not illegal. However, a business with significant market power may not, without any legitimate business justification, take actions that exclude or handicap its competitors.

Example: The owner of three of the four ski areas in a popular resort stops participating in a popular joint marketing plan to offer lift tickets that are good at any of the four ski areas at the resort. If there is no legitimate business justification for the refusal other than to harm its smaller competitor, the owner of the three ski areas is monopolizing the market at that resort.

Mergers

Businesses may not merge with or acquire other businesses, when the effect may be substantially to lessen competition. The purpose of this federal statute is to stop the anticompetitive effects of increasing concentration or market power at an early stage. Such mergers and acquisitions may result in higher prices for consumers and other buyers. Mergers between competitors are more likely to raise concerns, but mergers between companies in other relationships, such as supplier and customer, may also be illegal.

Example: An isolated county has three hospitals. Two hospitals are large and provide a wide range of medical services. The third hospital is smaller and provides fewer services. Because of driving distances, it is very unlikely that patients will go to hospitals outside of the county. It is also very unlikely that any new hospitals will be built within the county in the foreseeable future. If the two large hospitals seek to merge, the transaction will violate the law.

What You Can Do

California is a large state with a vast economy, and law enforcement agencies rely upon concerned citizens to help them detect crime. This is particularly true in the field of antitrust, where subtle restraints might never come to light unless alert citizens help point them out. If you have reason to believe any of the violations discussed in this publication are being committed, please contact the Attorney General's Antitrust Section.

What The Attorney General Will Do

The Attorney General vigorously enforces the antitrust laws and acts upon any information indicating antitrust violations that affect the California public. Such actions can include formal or informal investigation, and when necessary, a court action. In some cases, the Attorney General's Office might be able to advise you that your inquiry should be directed to an appropriate district attorney or federal agency or to private counsel. The Attorney General can not act as a lawyer for, or give legal advice to, private individuals or businesses.

Remember, the Attorney General stands ready to protect the citizens of the State of California and the economy on which they rely from illegal restraints of trade. However, this can only be done to the extent that concerned citizens help identify violations of law.

To report a possible violation or to request additional copies of this publication, contact the:

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