

United States Department of Justice
Antitrust Division

Criminal Antitrust Presentation

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The Historical Perspective

- “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”
– Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*



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The Cost of Collusion

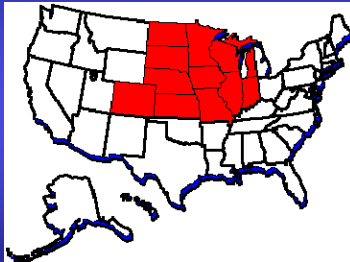
- Conspiracies are Lengthy
- Often Spread to Other Related Goods and Services
- The Result is that Victims are Overcharged and Defrauded



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- Field Offices
 - Chicago
 - Cleveland
 - New York
 - Philadelphia
 - Atlanta
 - Dallas
 - San Francisco



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- Washington Litigating Sections
 - Litigation I
 - Litigation II
 - Litigation III
 - NCES
 - Networks & Technology
 - Telecommunications & Media
 - Transportation, Energy & Agriculture



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Antitrust Division Enforcement

- Criminal (sole authority)
- Merger (joint enforcement with FTC)
- Civil Non-Merger (joint enforcement with FTC)



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Criminal Enforcement

- Sherman Act, 15 U.S.C. § 1
 - Every contract, combination, in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal ... [a violator] shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$100,000,000 if a corporation, or if any other person, \$1,000,000, or by imprisonment not exceeding ten years.



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Additional Statutes Enforced

- **General Fraud**
 - Mail Fraud, 18 U.S.C. § 1341
 - Wire Fraud, 18 U.S.C. § 1343
- **Crimes of Other Principals**
 - Aiding and Abetting, 18 U.S.C. § 2
 - Conspiracy to Defraud, 18 U.S.C. § 371
- **Fraud Against the Federal Government**
 - Bribery of a Public Official, 18 U.S.C. § 201
 - False Claims Against the Government, 18 U.S.C. § 287
 - Tax Fraud, 26 U.S.C. § 7201
 - Theft/Bribery on Federally Funded Programs, 18 U.S.C. § 666
- **Crimes Relating to Hindering an Investigation**
 - Perjury, 18 U.S.C. § 1621
 - Subornation of Perjury, 18 U.S.C. § 1622
 - Obstruction of Justice, 18 U.S.C. § 1503
 - False Statements to the Grand Jury, 18 U.S.C. § 1623



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Sources of Antitrust Cases

- Employees
 - Current or Former
 - Relatives of Employees
- Customers/Purchasing Agents
Contracting Officials/Auditors
 - Suspicious Patterns
 - Incriminating Remarks
- Competitors
 - Invited into Conspiracy
- Corporate Amnesty Program



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Criminal Antitrust Investigations

- Methods and Tools
 - CWs—Ongoing Conspiracies
 - Audio & Video Recordings (including wiretaps)
 - Search Warrants
 - Drop-in Interviews
 - Subpoenas (Grand Jury) (often many documents)
 - International—Treaties/MLATs
 - Grand Jury Witnesses



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Conditions Favorable to Collusion

- Few Sellers
 - five or less
- Standardized (commodity) Products
- Contacts Between Competitors



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Unreasonable Restraints of Trade

- Criminal Violations:
 - Price Fixing
 - Bid Rigging
 - Market Allocation



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What is Price Fixing?

- Agreement to raise, lower, or maintain prices
- Agreement not to negotiate on price
- Agreement to limit discounts, rebates or promotions
- Agreement on price formulas or guidelines



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Price Fixing Example

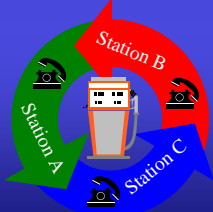
- A: “Will you agree to raise your price for salted peanuts to \$1.99 a pound?”
- B: “Yes. Let’s raise the price at noon tomorrow.”



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Iowa Gas Price Fixing Case

Prices Communicated Between Gasoline Stations Along I-80 Every Morning



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Vitamins Price Fixing



- **Worldwide conspiracy affecting supplements & food additives**
 - Buyers were large food manufacturers, including Tyson’s & Kellogg’s
 - Defendants paid U.S. customers more than \$1 billion in damages
- **Highest fines yet**
 - Hoffman-La Roche - **\$500 million**
 - BASF - **\$225 million**
- **Amnesty leads to multiple prosecutions:**
 - Over two dozen prosecutions of companies and individuals
 - Swiss citizen--former BASF director of manufacturing--submitted to U.S. jurisdiction, pled guilty

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Indicators of Price fixing

- Competitors Raise Prices Simultaneously
- Competitors Eliminate Discounts Simultaneously
- Competitors Refer to “Industry-Wide” Prices or “Industry Price Schedules”
- Price Increase Announcements Similarly Phrased or Contain Common Errors

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What is Bid Rigging?

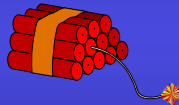
- Bid Rotation
 - Competitors agree to take turns being the low (winning) bidder
- Bid Suppression
 - Competitor agrees not to bid
- Complementary Bid
 - Competitor agrees to bid high



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Bid Rigging Example

- A: "I'd like to win the bid to demolish the Water Street Bridge. If I get the job for \$850,000, I can make some good money. Can you submit a comp bid?"
- B: "Sure. I'll come in at \$900,000 if you'll let me have the next one."
- A: "Okay. I'll plan on it."



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Bus Bodies Bid Rigging Exhibit

- Second Phase of Conspiracy Meetings
 - After bid allocations were discussed
- Use of Pricing Sheet
 - Determine base price
 - Add options
 - Subtract Trade-in
- Designated Winner bids below that price; others bid above

Item	Quantity	Unit Price	Total Price
1.000000	1	100000	100000
2.000000	1	150000	150000
3.000000	1	200000	200000
4.000000	1	250000	250000
5.000000	1	300000	300000
6.000000	1	350000	350000
7.000000	1	400000	400000
8.000000	1	450000	450000
9.000000	1	500000	500000
10.000000	1	550000	550000
11.000000	1	600000	600000
12.000000	1	650000	650000
13.000000	1	700000	700000
14.000000	1	750000	750000
15.000000	1	800000	800000
16.000000	1	850000	850000
17.000000	1	900000	900000
18.000000	1	950000	950000
19.000000	1	1000000	1000000
20.000000	1	1050000	1050000
21.000000	1	1100000	1100000
22.000000	1	1150000	1150000
23.000000	1	1200000	1200000
24.000000	1	1250000	1250000
25.000000	1	1300000	1300000
26.000000	1	1350000	1350000
27.000000	1	1400000	1400000
28.000000	1	1450000	1450000
29.000000	1	1500000	1500000
30.000000	1	1550000	1550000
31.000000	1	1600000	1600000
32.000000	1	1650000	1650000
33.000000	1	1700000	1700000
34.000000	1	1750000	1750000
35.000000	1	1800000	1800000
36.000000	1	1850000	1850000
37.000000	1	1900000	1900000
38.000000	1	1950000	1950000
39.000000	1	2000000	2000000
40.000000	1	2050000	2050000
41.000000	1	2100000	2100000
42.000000	1	2150000	2150000
43.000000	1	2200000	2200000
44.000000	1	2250000	2250000
45.000000	1	2300000	2300000
46.000000	1	2350000	2350000
47.000000	1	2400000	2400000
48.000000	1	2450000	2450000
49.000000	1	2500000	2500000
50.000000	1	2550000	2550000
51.000000	1	2600000	2600000
52.000000	1	2650000	2650000
53.000000	1	2700000	2700000
54.000000	1	2750000	2750000
55.000000	1	2800000	2800000
56.000000	1	2850000	2850000
57.000000	1	2900000	2900000
58.000000	1	2950000	2950000
59.000000	1	3000000	3000000
60.000000	1	3050000	3050000
61.000000	1	3100000	3100000
62.000000	1	3150000	3150000
63.000000	1	3200000	3200000
64.000000	1	3250000	3250000
65.000000	1	3300000	3300000
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68.000000	1	3450000	3450000
69.000000	1	3500000	3500000
70.000000	1	3550000	3550000
71.000000	1	3600000	3600000
72.000000	1	3650000	3650000
73.000000	1	3700000	3700000
74.000000	1	3750000	3750000
75.000000	1	3800000	3800000
76.000000	1	3850000	3850000
77.000000	1	3900000	3900000
78.000000	1	3950000	3950000
79.000000	1	4000000	4000000
80.000000	1	4050000	4050000
81.000000	1	4100000	4100000
82.000000	1	4150000	4150000
83.000000	1	4200000	4200000
84.000000	1	4250000	4250000
85.000000	1	4300000	4300000
86.000000	1	4350000	4350000
87.000000	1	4400000	4400000
88.000000	1	4450000	4450000
89.000000	1	4500000	4500000
90.000000	1	4550000	4550000
91.000000	1	4600000	4600000
92.000000	1	4650000	4650000
93.000000	1	4700000	4700000
94.000000	1	4750000	4750000
95.000000	1	4800000	4800000
96.000000	1	4850000	4850000
97.000000	1	4900000	4900000
98.000000	1	4950000	4950000
99.000000	1	5000000	5000000
100.000000	1	5050000	5050000



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Post-Tension Concrete Construction Case



Bidders	Bridge 1	Bridge 2	Bridge 3	Bridge 4	Bridge 5	Bridge 6
VSL	Low	High	High	High	High	High
Prescon	High	Low	High	High	High	High
Post-Tensioning Solute Steel	High	High	Low	High	High	High
L.R. Yegge Western Concrete	High	High	High	Low	High	High



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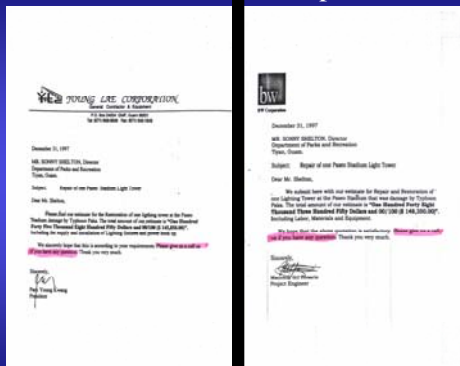
Typhoon Repair Projects-Guam

- **Paseo Light Tower**
 - Deok Shin Corporation \$134,000
 - Young Lae Corporation \$145,850
 - BW Corporation \$148,350
- **Wettengel Football Field**
 - Cho Iron Works \$126,000
 - Deok Shin Corporation \$134,800
 - C.Y. Development Co. \$138,300
- **Ypao Beach Pavilion & Cabanas**
 - BW Corporation \$145,000
 - QL International Devel. \$155,280
 - New Development Corp. \$158,280



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Exhibits from Guam Repair Case



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Indicators of Bid Rigging

- Rotation of Winning Bids Among Competitors
- New competitor wins bid at much lower price than previous winning bidder
- Same Firm Wins Bids Over Time
- Losing Firm Receives Sub-contract Award
- Bid Prices for all companies Suddenly Increase With No Logical Cost Explanation
- Similarities in the Actual Bids--Common Errors, Postmarks, Fax Numbers



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What are Allocation Schemes?


- Any Agreement Not to Compete for Specific:
 - Territories
 - Customers
 - Products
 - Volume




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Allocation Scheme Example

- A: “We’re beating each other up, B. I’ll agree to stay out of the masonry jobs in Jonesville if you agree to let me have Smithville.”



- B: “Sounds good. I’ll take Jonesville and you can have all the business in Smithville.”



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Traffic Signals Case

Company B

Co. A = High Bid
Co. B = Low Bid
Co. C = High Bid

Company C

Co. A = High Bid
Co. B = High Bid
Co. C = Low Bid

Company A

Co. A = Low Bid
Co. B = High Bid
Co. C = High Bid

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Audiometrics Case

- “Marketing Agreement” between two distributors of audiometric test equipment
- Agreed to stay out of each other’s state:
 - Wisconsin
 - Minnesota
 - Minneapolis suburbs and portion of Wisconsin

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Audiometrics Agreement Letter

- “Marketing Agreement”
- “will define specific sales and service territories that neither company shall encroach”
- “with no competition”

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Indicators of Allocation Schemes

- Competitors suddenly stop selling in a territory
- Competitors suddenly stop selling to a customer
- Competitor refers customers to other competitors



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Suspicious Statements Indicating Price Fixing, Bid Rigging, or Allocation

- Use of the royal “we”:
 - “WE decided to raise prices.”
 - “WE decided company X would be the low bidder.”
- “The price war is over, prices will go up.”
- “It was our turn.”
- “That is our customer.”
- “We were supposed to be the low bidder.”



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Electrical Construction Contracts

- Contracts Awarded Every Six Months -- Assume All Bids Above Estimate and Lowest Bidder Wins Contract

Contract No. 1

Contractor A - \$1,800,000
Contractor B - \$1,944,000
Contractor C - \$2,088,000
Contractor D - \$2,232,000

Contract No. 2

Contractor C - \$800,000
Contractor B - \$1,100,000
Contractor D - \$1,800,000

Contract No. 3

Contractor D - \$650,000
Contractor B - \$800,000
Contractor A - \$1,000,000

Contract No. 4

Contractor B - \$1,800,000
Contractor A - \$2,100,000
Contractor D - \$2,100,000
Contractor C - \$2,300,000

Contract No. 5

Contractor C - \$1,000,000
Contractor A - \$1,500,000
Contractor B - \$1,900,000
Contractor D - \$1,575,000

Contract No. 6

Contractor D - \$1,150,000
Contractor B - \$1,510,000
Contractor A - \$1,525,000



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Restitution to Victims

- In Addition to Fines & Jail
- Mandatory
 - 18 U.S.C. § 3663
 - USSG § 8B1.1 and § 5E1.1
- Average Gain 10%
 - USSG § 2R1.1 Commentary
- Also Required of Amnesty Applicants



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Treble Damages - Private Litigation

- Section 4 of the Clayton Act
 - 15 U.S.C. § 15
- Victims of Conspiracy
- Amnesty applicant may only have to pay single damages
- Prove Amount of Damage -- Amount Automatically Trebled
 - Plus Attorney's Fees and Cost of Litigation



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What You Can Do to Discourage Collusion


- Write Specifications With an Eye Toward Inclusion
- Consolidate Small Bids into Larger Bid (or Reverse)
 - whatever will attract the most bidders
- Actively Seek Out New Bidders or Encourage a Large Number of Bidders
- Pre-Approve All Joint Ventures for Need
- Don't Allow Subcontracting to Losing Bidders
- Require "No Collusion," "Independent Price," or "No Contact" Certifications
- Listen & Report!



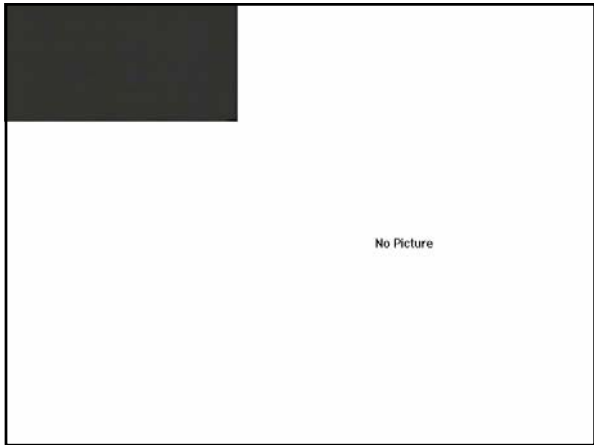
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Certificate of Non-Collusion

- 1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (a) those prices, (b) the intention to submit an offer, or (c) the methods or factors used to calculate the prices offered;
- 2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- 3. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.



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