

ANTITRUST INVESTIGATIONS

The Sherman Antitrust Act (15 U.S.C. § 1) makes it illegal for competitors to rig bids, fix prices, or allocate markets for any goods or services in the United States. Historically, the classic example was the group of competitors meeting in the smoke-filled back room to increase prices or decrease output in order to control a market. Today, the more typical cases involve competitors communicating via email or text message to encourage each other to increase prices to an agreed-upon level.

Participation in these cartels to fix prices or rig bids can carry a ten year prison sentence, and fines in the tens of millions of dollars. Because these cases carry such significant penalties, the Government is willing to devote substantial resources to investigating alleged violations.

Competition authorities across the globe have made increased antitrust enforcement a priority during the past two decades. The U.S. Department of Justice, Antitrust Division (“DOJ”), has collected criminal fines in excess of \$7B in the past five years, and imposed lengthy prison sentences against targets in bid rigging and price fixing cases. In addition, authorities in the United States often coordinate investigations with foreign competition authorities, who have imposed even greater sanctions in the past decade.

The DOJ often proceeds with “dawn raids” and detailed grand jury subpoenas to obtain the evidence it requires to make cases. The typical scenario unfolds with federal agents conducting simultaneous raids at the headquarters for each alleged co-conspirator, seizing all of the relevant files on hand, and making copies of their email servers and portable electronic devices. They will also typically try to interview corporate agents during the course of the raids. The DOJ may seize every email for the past 5 years and will subpoena a similar amount of information, as well.

After reviewing the seized information, the DOJ will likely begin interviewing corporate agents, either in the grand jury or by “drop in interviews” at the corporate employees’ homes. This is in an effort to find witnesses who can corroborate the information that the DOJ has already obtained or to lay a foundation for the electronic evidence that has been seized. Often times the investigations are jointly conducted with international antitrust authorities – which will conduct similar investigations abroad and share that evidence with the authorities in the U.S. The net result of this cooperation is that a very complex and far-reaching investigation can be implemented in a fairly short period of time.

The increasing sanctions, combined with joint investigations by U.S. and foreign enforcement agencies, point to the necessity of having experienced and motivated criminal antitrust counsel. With over 35 years of experience in dealing with antitrust investigations, the Dillon Law Group has handled some of the largest matters that the Antitrust Division has brought. Our objective is, if at all possible, to avoid criminal sanctions – and to minimize exposure if liability is unavoidable.

Bill has counseled clients in numerous domestic and international antitrust issues. He has worked on investigations involving:

- Concrete and paving
- Pharmaceuticals
- Poultry and agribusiness
- Petrochemicals
- Civil construction
- Dairy and agricultural price fixing
- Paper products
- Sewer construction
- Real estate auctions
- Air cargo shipments

Mr. Dillon worked for decades at the Antitrust Division, as well as in United States Attorney's Offices. Our team has played key roles in the largest antitrust investigations in the past two decades. Bill has represented a number of subjects in antitrust investigations, both domestic and international. In addition, he has counseled numerous clients on compliance issues to avoid potential criminal exposure in antitrust matters.

Experience matters when your company has been implicated in a bid rigging, price fixing, or market allocation investigation. Bill has handled dozens of criminal antitrust matters and knows from experience what is necessary to prevail at trial or at the negotiating table. At the Dillon Law Group, we represent executives and individuals in a wide array of investigations and stand ready to assist you in addressing the matter that concerns you now.

Antitrust Division Leniency Program

Beginning in the mid-1990s the U.S. Department of Justice, Antitrust Division (“DOJ”), embarked upon a “Leniency Program” for corporations that self-report illegal antitrust activities. It began as a method of modest encouragement of corporate housecleaning in antitrust matters but has grown into the model used by nations around the globe to detect and prosecute hardcore criminal antitrust cases, such as bid rigging and price fixing.

The U.S. DOJ Leniency Policy is available here:
<https://www.justice.gov/atr/file/810281/download>

This policy has become the model enforcement tool for antitrust enforcement agencies in the U.S., Asia, Europe, and South America.

Under the program, a corporation will be given complete immunity from criminal charges if it comes forward to report illegal activity before the DOJ has received information about the illegal cartel. This requires prompt and candid reporting of the prohibited activity by the corporate entity. Additionally, the company must not have been the ringleader or coerced other participants in the cartel. If the corporation perfects its leniency application, all officers and employees who cooperate with the DOJ can also avoid all criminal sanctions by providing truthful testimony.

In addition, a corporation can still receive leniency from the Antitrust Division even after there is an investigation – provided that the corporation is the first in the door to the DOJ to report and seek amnesty. A corporation that deals in a fungible product is particularly susceptible to criminal antitrust violations. Other product markets that often develop antitrust concerns are:

- Beverages
- Pharmaceuticals
- Health care providers
- Petroleum retailers
- Civil construction industry
- Electrical contractors
- Plumbing contractors
- Poultry processors
- Computer chip distribution
- Freight and shipping companies
- Government-funded construction projects
- Automotive parts
- Containerized shipping
- Air cargo
- Commercial concrete and cement

Individuals who are aware of antitrust violations, or who participated in the illegal activity, may also apply for antitrust leniency under the Individual Leniency Policy. That policy can be reviewed here: <https://www.justice.gov/atr/individual-leniency-policy>

When considering applying for leniency under the Antitrust Division Leniency Program, experience and credibility with the Division matters more than anything. The Dillon Law Group has handled numerous amnesty matters and has experience where it matters most. Only the first applicant to the DOJ can receive the benefits of protection from criminal sanctions – so careful timing can be of paramount importance. At the Dillon Law Group, we represent executives and other individuals in a wide array of

investigations and stand ready to assist you in addressing the matter that concerns you now.

Discuss your case with an attorney at the Dillon Law Group by calling our office at **404.713.3283**. We are glad to discuss your situation in a free consultation, to see if we can be of assistance. Or contact us at william@dillonlawgroup.com.