

DOJ Cracks Down on Inflation-Related Collusion

FEBRUARY 22, 2022

On February 17, 2022, the Department of Justice (DOJ) announced that it would be cracking down on those taking advantage of the ongoing supply chain crisis by colluding to raise prices.

January 2022 was an unfortunately historic period for the American economy—the consumer price index for all items rose 0.6%, driving up annual inflation by 7.5%, which is the fastest price rise since 1982. This troubling phenomenon is primarily due to the ongoing COVID-19 crisis. The virus has caused massive labor shortages across industries, resulting in firms struggling to find adequate means for trade and transportation. At the same time, some parties are accused of taking advantage of these trends by secretly colluding to raise prices. No more, says the DOJ.

In a [press release](#), Assistant Attorney General Jonathan Kanter of the DOJ’s Antitrust Division proclaimed that “[t]emporary supply chain disruptions should not be allowed to conceal illegal conduct. . . . The Antitrust Division will not allow companies to collude in order to overcharge consumers under the guise of supply chain disruptions.” To prevent such behavior, Mr. Kanter announced that the Antitrust Division and FBI have joined forces to launch a new initiative. First, the agencies will prioritize existing investigations where competitors may be exploiting supply chain disruptions for profit. Second, the Antitrust Division itself will undertake measures to proactively investigate collusion in industries particularly affected by supply chain disruptions. Finally, the Antitrust Division has formed a working group focusing on global supply chain collusion with partner agencies around the globe, including the Australian Competition and Consumer Commission, the Canadian Competition Bureau, the New Zealand Commerce Commission, and the UK Competition and Markets Authority. The working group is using existing international cooperation tools to develop and share intelligence to detect and combat collusion.

Notably, this initiative is only the most recent undertaking by the federal government directed at supply chain disruptions caused by the pandemic. For example, in June 2021, the Biden administration formed a White House task force to “address supply and demand mismatches that emerged in several sectors.” Additionally, the Antitrust Division entered into a [memorandum of understanding with the Federal Maritime Commission](#) to collaborate and redouble their efforts to enforce antitrust laws and Shipping Act protections applicable to the maritime industry.

TAKEAWAY

Companies should take this announcement seriously because the DOJ has been true to its word in the past. For example, in the early days of the pandemic, the DOJ issued a [public warning to those colluding against frontline workers](#). Today, that warning has led to several [prosecutions](#) against companies and individuals for enacting alleged no-poach and wage-fixing agreements with competitors.

Given the breadth of this new initiative, businesses should be on heightened alert for any potential antitrust violations and should reach out to experienced antitrust counsel to assess their risk profile and compliance programs.

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