

Antitrust Criminal Enforcement on the Horizon

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With the end of summer and fall right around the corner, the U.S. Department of Justice (DOJ), Antitrust Division is gearing up for several crucial displays of its criminal enforcement priorities across multiple jurisdictions. The Antitrust Division [suffered a setback in the spring](#), when the court, in the Antitrust Division's most recent effort to secure criminal convictions for labor market violations of Section 1 of the Sherman Act, granted directed verdicts for the defendants, which ended the case before it was sent to the jury. But the upcoming prosecutions offer opportunities for redemption. The Antitrust Division will still face challenges, particularly during a retrial of a market allocation conspiracy that was disrupted by extreme weather last fall, and its first criminal monopolization prosecution since the 1970s.

Upcoming Criminal Trials

United States v. Carlos Martinez, Marco Medina, Pedro Antonio Calvillo Hernandez, Roberto Garcia Villareal, Miguel Hipolito Caballero Aupart, Sandra Guerra Medina, Mireya Miranda, Diego Ceballos-Soto, Carlos Yzaguirre, Juan Hector Ramirez Avila, Jose de Jesus Tapia Fernandez (S.D. Tex. 4:22cr560)

In the Southern District of Texas, the Antitrust Division was set to go to trial on August 28, against 11 individuals on an 11-count [indictment](#) alleging an 11-year price fixing, market allocation, criminal monopolization conspiracy for transgrante services in and around the Los Indios Texas Port of Entry and Brownsville-Harlingen, TX metropolitan area, as well as charges of extortion and money laundering. Now, the parties will appear on September 28 for another status conference. The indictment alleges violations of both Section 1 (price fixing and market allocation) and Section 2 (criminal monopolization) of the Sherman Act. As Troutman Pepper [noted](#) when the indictment was first announced in December 2022, this monopolization prosecution is the first for the Antitrust Division since the late 1970s and demonstrates the Antitrust Division's attempt to make good on promises to utilize Section 2's criminal enforcement potential.

United States v. Lawrence O'Brien, Bruce LaRoche, Thomas Dailey (M.D. Fla. 8:22cr130) and United States v. William Harwin (M.D. Fla. 2:20cr115)

In the Middle District of Florida, the Antitrust Division has been preparing for two prosecutions — one for price fixing and a retrial in September for market allocation. On August 21, the Antitrust Division began a jury trial against three owners/operators of various companies selling customized promotional products to the U.S. Army. In a three-count [superseding indictment](#) returned in December, the Antitrust Division alleges the defendants engaged in a five-year conspiracy to fix prices and rig bids for customized promotional products sold to the U.S. Army, as well as charges of defrauding the U.S. by creating and submitting sham bids to circumvent purchasing requirements. According to the superseding indictment, the sham bids, which were drafted by the co-conspirators, gave the

appearance of competition, but were not competitive. The court denied a motion to dismiss the antitrust count, finding the original indictment sufficient. Last month, the court [ruled](#) that it would exclude evidence and arguments that defendants' conduct was justified either because their prices were reasonable or warranted by market conditions, that defendants provided an efficient or valuable service, or that defendants lacked specific intent to restrain trade. The court, however, [deferred ruling](#) until trial whether to preclude any ancillary-restraint defense. The case is now in its third week of trial.

In early September, the Antitrust Division was slated to be back in the Middle District of Florida for the retrial of Dr. William Harwin, founder of an oncology group, who is alleged to have engaged in a [17-year conspiracy](#) to allocate the market for medical and radiation oncology treatments for cancer patients between his oncology group Florida Cancer Specialists & Research Institute LLC, and competitor 21st Century Oncology in southwest Florida. Last September, after the completion of an 11-day jury trial and start of jury deliberations, the court [declared a mistrial](#) when Hurricane Ian interrupted deliberations and forced closure of the courthouse for an extended period of time. Late last month, Dr. Harwin changed his plea and pled guilty. Sentencing is to be scheduled for a later date. As part of the guilty plea, Dr. Harwin admitted to entering into a mutual understanding that his oncology group Florida Cancer Specialists & Research Institute LLC would provide certain treatments and competitor 21st Century Oncology would provide other treatments. Dr. Harwin acknowledged that this understanding violated the Sherman Act.

Criminal Pleas, Sentencings, and Other Resolutions

In addition to these trials, the Antitrust Division is preparing for sentencing after securing guilty pleas related to price fixing and bid rigging conspiracies in military contracting and e-commerce cases. The Antitrust Division also entered into a deferred prosecution agreement to resolve price fixing charges against a pharmaceutical company.

United States v. John Mark Leveritt (E.D. Tex. 5:22cr13) and United States v. Aaron Stephens (E.D. Tex. 5:22cr10)

In the Eastern District of Texas, Mark Leveritt and Aaron Stephens were sentenced on August 22 in connection with pleading guilty to rigging bids on military contracts for work performed at the Red River Army Depot in Texarkana and the U.S. Contracting Command in Warren, MI over a five-year period, in violation of the Sherman Act. According to the factual bases accompanying the plea agreements, Leveritt and Stephens conspired to rig multiple bids on government contracts worth more than \$17 million by giving the false impression of competition. Leveritt admitted to falsely representing himself as an employee of one business so that he could obtain government contracts that were set aside for qualifying businesses, which were required to be owned and operated by certain categories of minority, disadvantaged, or disabled persons. Leveritt also provided gifts and other items of value, such as tickets to the 2011 World Series game, tickets to two college football games, and two expenses-paid family vacations to Las Vegas, including flights, hotel, and meals, to government employees working at the Red River Army Depot.

Leveritt agreed that for purposes of sentencing, the volume of commerce attributable to him was more than \$8 million. Leveritt was sentenced to six months imprisonment and ordered to pay a \$300,000 fine. Stephens agreed that for purposes of sentencing, the volume of commerce attributable to him was more than \$9 million regarding the six bids at issue on government contracts worth more than \$17.2 million. Stephens received a sentence of 18

months imprisonment and a \$50,000 fine.

United States v. Victor Btsh, Bruce Fish, BDF Enterprises, Inc. Michelle's DVD Funhouse Inc., MJR Prime LLC, and Prime Brooklyn LLC (E.D. Tenn. 3:22cr24)

On August 23, Victor Btsh and three companies he owns, Michelle's DVD Funhouse Inc, MJR Prime LLC, and Prime Brooklyn LLC, were sentenced after each pled guilty earlier this year to engaging in a three-year price fixing conspiracy regarding DVDs and Blu-Ray Discs sold through the Amazon Marketplace platform, in violation of the Sherman Act. Btsh received a sentence of 18 months imprisonment and a \$38,000 fine. The companies received five years' probation and fines ranging from \$61,844 to \$156,000. Five other defendants — four individuals and one company — charged in the Eastern District of Tennessee in similar price fixing schemes had already pled guilty and been sentenced. BDF Enterprises, Inc. was ordered to pay a fine of \$185,250 and its owner Bruce Fish was sentenced to six months in prison, with an additional six months of home detention. When the guilty pleas were announced, Assistant Attorney General Jonathan Kanter remarked that “[a]s e-commerce has become a cornerstone of the economy, it is vital to protect fair and open competition in online marketplaces. Conspiring to fix prices, wherever that conduct may occur, harms competition.”

United States v. Teva Pharmaceuticals USA, Inc. (E.D. Pa. 2:20cr200)

On August 21, Teva Pharmaceuticals USA, Inc. entered into a [deferred prosecution agreement](#) (DPA) to resolve antitrust criminal charges that it engaged in three different conspiracies to increase the prices of three different drugs sold in the U.S. As part of the DPA, Teva agreed to pay a \$225 million fine and divest one of the business lines involved in the conspiracy. Teva also agreed to a monitor to oversee the divestiture. Finally, Teva agreed to donate \$50 million of important medications to humanitarian organizations. The Teva resolution is the Antitrust Division's sixth involving the pharmaceutical industry and generic drugs.

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