

ANTITRUST ENFORCEMENT

- **Antitrust Division**
- **Federal Trade Commission**
- **State Attorneys General**
- **Private Plaintiffs**

PURPOSE AND PRINCIPLES

- **The Antitrust Laws foster competition.**
- **Their purpose is not to protect competitors.**
- **Markets generally should be left to market forces.**
- **The Antitrust Division enforces the law to prevent noncompetitive market structures and to stop anticompetitive conduct.**

THE SHERMAN ACT (1890)

- **Section 1 prohibits agreements that unreasonably restrain commerce.**
 - **per se violations**
 - **the rule of reason**

- **Section 2 prohibits monopolization, attempted monopolization and conspiracies to monopolize.**

CRIMINAL PENALTIES

- **For individuals**
 - **imprisonment up to three years**
 - **finer up to \$350,000**

- **For corporations**
 - **finer up to \$10 million**

- **Alternative finer**
 - **twice the pecuniary loss by victims or twice the gross pecuniary gain derived from the violation, whichever is greater**

OTHER STATUTES

The Clayton Act (1914)

- **Section 7 prohibits mergers and acquisitions that may substantially lessen competition or tend to create a monopoly.**

The Federal Trade Commission Act (1914)

- **Authorizes the FTC to bring enforcement actions against unfair methods of competition in or affecting commerce.**

BENEFITS OF COMPLIANCE PROGRAMS

- **Avoidance of criminal and civil cases (against the company and others) and all direct and indirect expenses, worry and embarrassment.**
- **Early detection of violations giving the company self-reporting options, including possibly complete amnesty.**
- **Reduction of fines and other benefits at sentencing under the Sentencing Guidelines.**

DIVISION'S PREINDICTMENT CONSIDERATION OF FAILED COMPLIANCE PROGRAMS

Not likely to convince the Division to forego prosecution because:

- **No legal basis.**
- **Would undermine incentives to improve compliance programs.**
- **Would be potentially inconsistent with Sentencing Reform Act's goal of eliminating unwarranted disparity in charging and sentencing.**

EXAMPLES OF CRIMINAL CASES

- **U.S. v. Bolar Pharmaceutical Co. Inc., et al., No. HAR-92-0454 (D. Md. 1993)**

Two pharmaceutical manufacturers and top executives guilty of agreeing to sell a generic hypertension drug within a range of prices.

- **U.S. v. Lake Country Optometric Society, No. W-95-CR-114 (W.D. Tx. 1996)**

Optometrists agreed at Optometric Society meetings to increase prices for eye examinations.

- **Bid rigging is something to watch for with switch to competitive bidding.**

RECENT CIVIL CASE

U.S. v. Federation of Physicians and Dentists, Inc., No. 98-475 (D. Del. 1998)

As the purported “third-party messenger” for 90 percent of the orthopedic surgeons in Delaware, the Federation of Physicians and Dentists orchestrated a boycott to extract artificially high fees for independent orthopedic surgeons in Delaware.

RECENT CIVIL CASE

U.S. v. Dentsply International, Inc., No. 99-005 (D. Del 1999)

To unlawfully maintain its monopoly, the dominant manufacturer of artificial teeth in the United States (Dentsply) enforced restrictive dealing arrangements affecting more than 80% of the nation's tooth distributors. The arrangements deprived rivals of effective distribution networks, reduced competition and raised the prices of artificial teeth.

FOR MORE INFORMATION

You may contact the Antitrust Division regarding public documents by writing or calling:

**Antitrust Documents Group
Antitrust Division
U.S. Department of Justice
Suite 215, 325 7th Street, NW
Washington, D.C. 20530
(202) 514-2481**

You may also access public documents on the DOJ website:

<http://www.usdoj.gov/atr>

**The Fifth Annual National Congress
on Health Care Compliance**

February 6-8, 2002

**HEALTH CARE ANTITRUST
ENFORCEMENT AND COMPLIANCE**

**Presented by
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United States Department of Justice**