

# Antitrust Enforcement in California: How You Can Help

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## Introduction

Antitrust enforcement is an important weapon in the consumer protection arsenal. Vigorous, competitive marketplaces help consumers by ensuring fair prices for goods and services, the availability of an array of products, and quality goods and services. Diligent antitrust enforcement also helps businesses by protecting them from unfair competition and providing a level playing field on which to compete.

This brochure is designed to help you better understand the sometimes complex nature of antitrust violations. It contains a summary of antitrust laws and other relevant background information.

At the Attorney General's Office there is a sizeable group of attorneys, investigators, and legal analysts devoted to antitrust investigations and litigation.

There also is an important role to be played by you. Antitrust violations are sometimes difficult to detect. Information from consumers, business people and government employees can be instrumental in law enforcement efforts to uncover illegal activities.

## What Are the Antitrust Laws?

The antitrust laws are a system of California and federal laws that prohibit unwarranted restraints on free and open competition in commerce. These laws allow the Attorney General to bring civil and criminal legal actions against individuals and businesses acting in restraint of trade. District attorneys can bring similar actions for antitrust offenses centered in their respective counties. Furthermore, the law provides that anyone injured by an antitrust offense may recover from the wrongdoer three times the damages suffered.

## Why Are the Antitrust Laws Important to You?

### As a consumer or taxpayer

Antitrust offenses almost always raise the prices paid by consumers for goods or services. Being forced to pay illegally high prices is the equivalent of having money stolen from your pocket. Even relatively small price increases can have tremendous overall effects statewide. California's economy and consumers can suffer from the economic dislocations caused by antitrust offenses. And when state or local governments pay too much for goods or services because of antitrust violations, either taxes must be raised or government services must be reduced.

### As a business owner

The cost of doing business affects the profit a business will make. If the price of goods or services used by your business is raised by antitrust restraints, your cost of doing business will rise. Some antitrust offenses,

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such as boycotts, can make it impossible for you to do business.

## **As a businessperson or an employee of a business**

Antitrust violations are not just ways of doing business – they are serious crimes for which the penalties are severe. If anyone inside or outside your company asks you to violate the antitrust laws, they are asking you to commit a felony for which you could go to prison. Additionally, a business violating the antitrust laws is liable to its victims for three times the amount that the victims are injured.

## **As a government employee**

Government agencies, large and small, rely on competitive bidding for their significant purchases. Competitive bidding programs are particularly susceptible to antitrust violations. As a governmental employee who can detect antitrust violations, you are the first-line defense against antitrust losses for the public treasury and for the citizenry.

## **What To Look For**

It is not possible to give a complete list and description of possible antitrust offenses in a publication of this size. However, the following discussion will identify the most important activities of which you should be aware.

### **Horizontal price-fixing**

It is illegal for business competitors to have any agreement to raise, stabilize or otherwise affect prices. The agreement need not be in writing or otherwise formalized. Even an informal understanding between competitors concerning prices is illegal. The agreement need not set specific prices; any agreement affecting price levels is

illegal. Even a practice of exchanging price information with competitors, where this practice affects prices, violates the antitrust laws. Even an attempt at price-fixing can be illegal.

Example: The owners of three major appliance stores meet informally and agree that the retail prices of refrigerators are too low. They promise to notify one another before deviating from their established prices. From then on, they offer consumers fewer price reductions on refrigerators. The store owners have engaged in horizontal price-fixing.

### **Bid-rigging**

Bid-rigging occurs when business competitors agree in some way to affect the outcome of competitive bids. Submission of identical bids, if done pursuant to an agreement of the bidders, is one form of bid-rigging. Agreements among bidders to take turns in winning bids, to allocate opportunities to bid, or simply not to bid on certain contracts, are other examples of bid-rigging and all are illegal.

Example: A number of office machine distributors agree that, in bidding for government purchases of photocopying-scanning machines, the distributors will take turns discounting from their list prices. Each distributor will bid at a discount only when it is his or her turn. These distributors have rigged bids.

### **Other agreements among competitors**

In addition to price-fixing and bid-rigging, any other agreement among business competitors which restrains competition is usually illegal. For example, boycotts (agreements by competitors not to sell to particular customers or not to buy from particular suppliers), market or customer

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allocations (agreements among competitors affecting to whom or where each will sell), and output limitations (agreements among competitors to limit overall quantities marketed) are almost always illegal, regardless of justification. Joint ventures undertaken by competitors can be legal, within certain limits.

Example: Two shoe manufacturers agree to stop selling to a discount shoe store because its retail prices are deemed too low. The manufacturers have engaged in an illegal boycott.

## **Vertical price-fixing (resale price maintenance)**

Any agreement between a seller and a buyer regarding the price at which the buyer resells a product is illegal.

Example: A manufacturer of light bulbs complains to a hardware store because the store is selling bulbs to consumers below the suggested retail price. The store promises that it will in the future keep its light bulb price within 10 percent of the suggested retail price. The manufacturer and the store have engaged in vertical price-fixing.

## **Other seller-buyer agreements**

While agreements between a buyer and a seller that affect prices are always illegal under California law, agreements that in other ways restrict the buyer's freedom to resell products can also be illegal. These agreements include restrictions on where and to whom the buyer may resell the product. Such restraints are illegal whenever they harm competition more than they help it.

Example: A furniture manufacturer discovers that two of its wholesale distributors are trying to sell its products to the same retail store and that each distributor

is offering discounts in order to make the sale. The manufacturer forbids one of the wholesalers to sell to the store. The manufacturer may have placed an unlawful restriction on that wholesaler.

## **Tying**

A seller sometimes requires a buyer to purchase a product that the buyer does not want in order to be allowed to buy a product that the buyer does want. Such requirements are called tying arrangements. Tying is generally illegal if the seller has some degree of control over the market for the product that the buyer wants.

Example: The owner of the only mobile home park in a county requires anybody who wants to lease a space in the park to purchase a mobile home exclusively from a select group of dealers, which have financial relationships with the park owner. Other brands of mobile homes are banned at the park. This arrangement constitutes tying under the antitrust laws.

## **Monopoly**

A business may not unfairly keep others from competing with it. Businesses may and should compete vigorously to obtain and to retain customers. Growth through superior ability and efficiency is not illegal. However, a business with significant market power may not, without legitimate business justification, take actions that exclude or handicap its competitors.

Example: The owner of three of the four ski areas in a popular resort town stops participating in a popular joint marketing plan to offer lift tickets that are good at any of the four ski areas, including the one operated by a small competitor. The owner of the three ski areas is monopolizing that market, if there is no legitimate business

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justification for the refusal to deal any longer with the smaller competitor.

## Mergers

Under federal statutory law, businesses may not merge with or acquire other businesses when the effect may be substantially to lessen competition. The purpose of this statute is to stop at early stages the anticompetitive effects of increasing industrial concentration or market power. Such mergers and acquisitions may result in higher prices for consumers and other buyers. Mergers between competitors are more likely to raise antitrust concerns, but mergers between companies in other relationships, such as supplier and customer, may also be illegal.

Example: An isolated county has three hospitals. Two hospitals are large and provide a wide range of medical services. The third hospital is smaller and provides fewer services. Because of driving distances, it is very unlikely that patients in the county will go to hospitals outside of the county. It is also very unlikely that any new hospitals will be built in the county in the foreseeable future. If the two large hospitals merge, the transaction will violate the law.

## What You Can Do

California is a large state with a vast economy, and law enforcement agencies rely upon concerned citizens to help detect crime. This reliance is particularly acute in the field of antitrust law, where subtle restraints might never come to light unless alert citizens help point them out. If you have reason to believe that any of the violations discussed in this publication are being committed, please contact the Attorney General's Antitrust Section.

## What the Attorney General Can Do

The Attorney General vigorously enforces the antitrust laws and acts upon any information indicating antitrust violations that affect the California public. Such actions can include investigations, and, when necessary, court actions. In some cases, the Attorney General's Office might be able to advise you that your inquiry should be directed to an appropriate federal agency, local district attorney or private counsel. (The Attorney General cannot act as a lawyer for, or give legal advice to, private individuals or businesses.)

The Attorney General's Office stands ready to protect California's citizens, and the economy on which they rely, from illegal restraints of trade. This effort can be greatly enhanced by concerned citizens helping to identify violations of law.

*To report a possible antitrust violation or to request additional copies of this publication, contact:*

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