

Procurement Collusion ★ Strike Force ★

Coordinated national response to collusion
and antitrust crimes in public procurement



Combating Collusion in Public Procurement: Criminal Antitrust Enforcement & the PCSF Association of Government Accountants, Fraud Conference, November 22, 2021

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Poll 1: Question for You

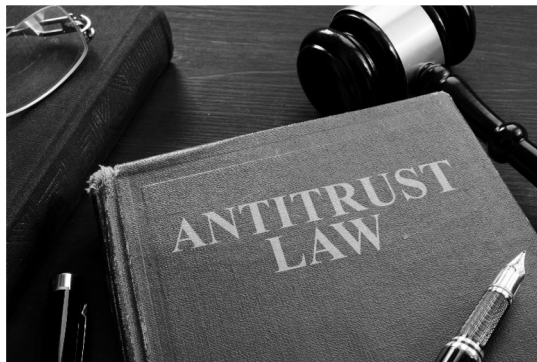
My familiarity with ***antitrust*** crimes is:

- A. Non-existent
- B. Somewhat familiar...I've seen it in the headlines
- C. Very familiar... I've been involved in an antitrust investigation





Today's Roadmap





Procurement Collusion Strike Force (PCSF)

Coordinated national response to combat antitrust crimes and related schemes in government procurement at federal, state, and local levels

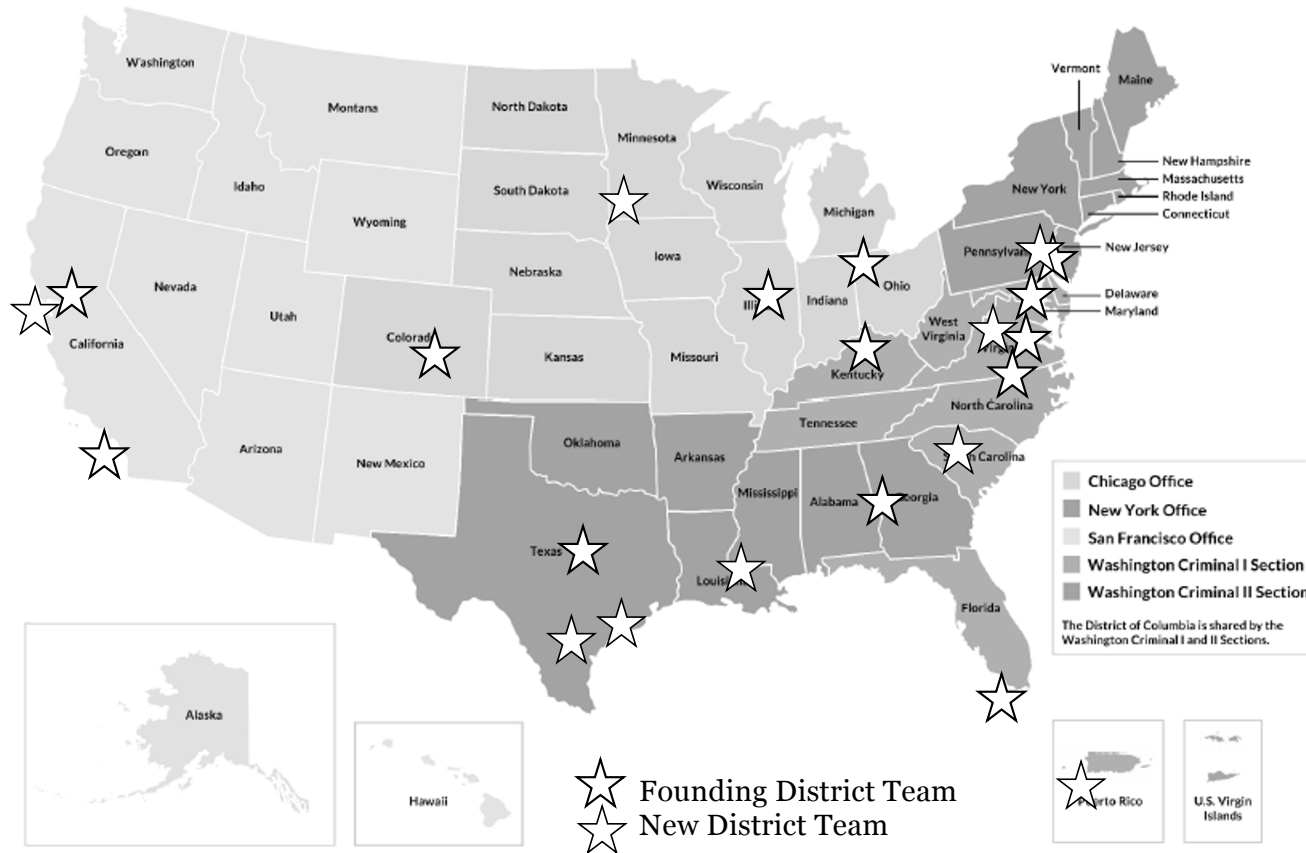
Collective experience and expertise of the Antitrust Division, U.S. Attorneys' Offices, OIGs, and FBI to:

- Prevent antitrust and related crimes on the front end of the procurement process
- Detect, investigate, and prosecute crimes on the back end





PCSF District Teams





The Sherman Act: 15 U.S.C. § 1

“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”



Elements of a Sherman Act Violation:

- **Conspiracy to restrain trade**
 - Price Fixing
 - Customer/Market Allocation
 - Bid Rigging
- **Knowingly joined—intended to agree**
- **Interstate or foreign commerce**
- **Statute of limitations: Generally 5 years**



The Costs of Collusion

Why Do We Care?

- Victims: overcharged & defrauded
- Victims: aggregate harm in \$\$\$ and number of victims
- Conspiracies: lengthy in time and effect
- Conspiracies: often spread to other related goods/services



❖ Criminal Antitrust Violations

1. Price Fixing Agreements
2. Bid Rigging Agreements
3. Allocation Agreements



Price Fixing Agreements

- Competitors agree to fix or otherwise determine the prices at which their products or services are sold.
- **Agreements include:**
 - Charge the same price or raise prices together
 - Add fees or other surcharges
 - Eliminate discounts or have uniform discounts
 - Establish minimum or floor prices



Price Fixing: Example

Competitor A: “Will you agree to raise your price for salted peanuts to \$1.99 a pound?”

Competitor B: “Yes. Let’s raise the price at noon tomorrow.”

Case Example – Packaged Seafood Investigation

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE Tuesday, June 16, 2020

Former Bumble Bee CEO Sentenced To Prison For Fixing Prices Of Canned Tuna

Christopher Lischewski, former Chief Executive Officer and President of Bumble Bee Foods LLC, was sentenced to serve 40 months in jail and pay a \$100,000 criminal fine for his leadership role in a three-year antitrust conspiracy to fix prices of canned tuna, the Department of Justice announced.

Lischewski was charged on May 16, 2018, in an indictment returned by a federal grand jury in San Francisco. After a four-week trial in late 2019, he was convicted on the single count of participating in a conspiracy to fix prices of canned tuna. In imposing Lischewski's 40-month prison sentence, the Court found that Lischewski was a leader or organizer of the conspiracy and that it affected over \$600 million dollars of canned tuna sales.

"The sentence imposed today will serve as a significant deterrent in the C-suite and the boardroom," said Assistant Attorney General Makan Delrahim of the Justice Department's Antitrust Division. "Executives who cheat American consumers out of the benefits of competition will be brought to justice, particularly when their antitrust crimes affect the most basic necessity, food. Today's sentence reflects the serious harm that resulted from the multi-year conspiracy to fix prices of canned tuna."

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE Wednesday, September 11, 2019

StarKist Ordered to Pay \$100 Million Criminal Fine for Antitrust Violation

Leading Producer Receives Highest Corporate Fine in Packaged Seafood Investigation

StarKist Co. was sentenced to pay a criminal fine of \$100 million, the statutory maximum, for its role in a conspiracy to fix prices for canned tuna sold in the United States. StarKist was also sentenced to a 13-month term of probation.

StarKist faced a criminal fine of up to \$100 million, the statutory maximum, for its participation in a conspiracy to fix the prices of canned tuna fish from as early as November 2011 through at least as late as December 2013. As part of today's sentencing hearing, U.S. District Judge Edward M. Chen found that StarKist had not proven that its financial circumstances justified a lower criminal fine. The Antitrust Division opposed StarKist's request for a fine reduction,

- Price-fixing conspiracy involving three largest canned seafood suppliers in the United States
- Charged two corporations
 - \$125 million in fines
- Charged four high-level executives
 - Three pleaded guilty
 - Former CEO of Bumble Bee Foods convicted after four-week trial, sentenced to 40 months' incarceration





Bid Rigging Agreements

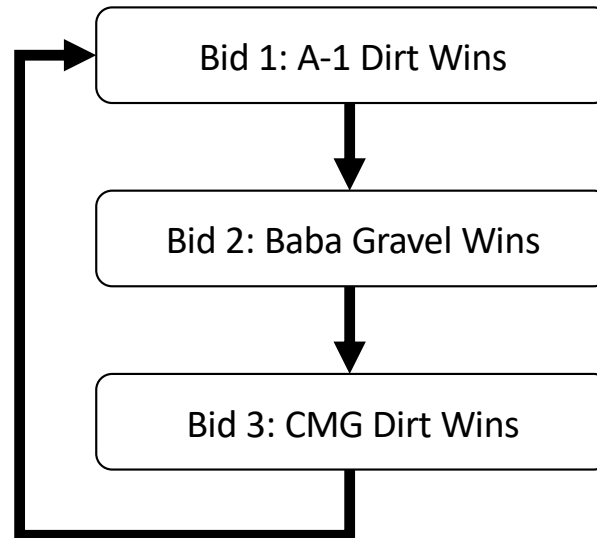
Competitors agree in advance who will win the bid.

Types of Bid Rigging:

- Bid Rotation or Allocation
- “Complementary” or “Cover” Bids
- Bid Suppression or Limitation



Bid Rotation Example





Cover Bid Example

Bidder 1: “I’d like to win the bid to demolish the Water Street Bridge. If I get the job for \$850,000, I can make some good money. Can you submit a bid above mine?”

Bidder 2: “Sure. I’ll come in at \$900,000 if you’ll let me have the next one.”

Bidder 1: “Okay. I’ll plan on it.”

Case Example – Puerto Rico School Buses

- Bid rigging for local school bus services in Puerto Rico by private contractors
- Federal grants from DoE paid for bus services in low-resource areas
- Four individuals convicted of Sherman Act and mail fraud violations

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, February 6, 2018

School Bus Company Owners Sentenced to Prison for Bid Rigging and Fraud Involving Puerto Rico Public School Bus Services

Four owners of school bus transportation companies were sentenced today for participating in bid rigging and fraud conspiracies related to school bus transportation contracts in Puerto Rico, the Department of Justice announced.

Gavino Rivera Herrera, Luciano Vega Martínez, Alfonso Gonzalez Nevarez, and René Garay Rodríguez were convicted after trial in 2017 in the U.S. District Court for the District of Puerto Rico in San Juan. The jury found that they conspired to rig bids and allocate the market for public school bus transportation contracts in the municipality of Caguas from approximately August 2013 until May 2015. Each was also found guilty of conspiracy to commit mail fraud and four counts of mail fraud for defrauding the municipality of Caguas to obtain contracts for school bus transportation services.

For their roles in the collusive and fraudulent conduct, defendants Vega Martínez, Gonzalez Nevarez, and Garay Rodríguez were each sentenced to serve 12 months and a day in prison. Defendant Rivera Herrera was sentenced to a term of two years' probation, the first six months to be served in home confinement, after a departure based on the defendant's medical condition. Restitution will be imposed in an amount to be decided at a later date.





Allocation Agreements

Competitors agree to divide up a market, usually by:

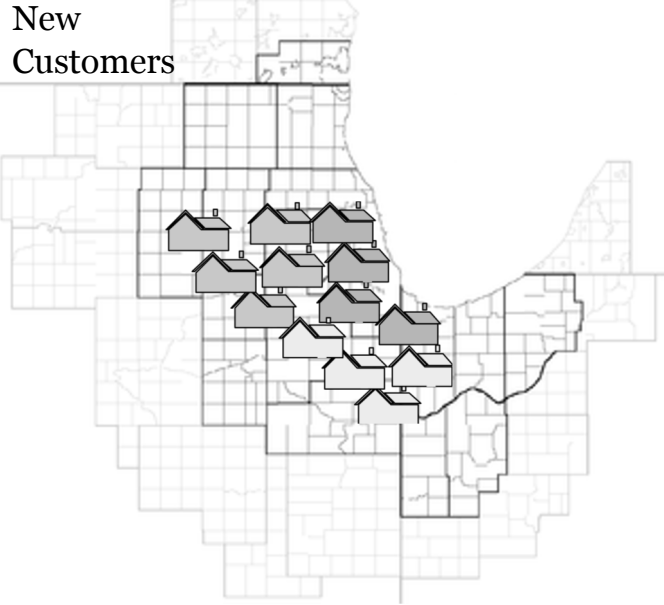
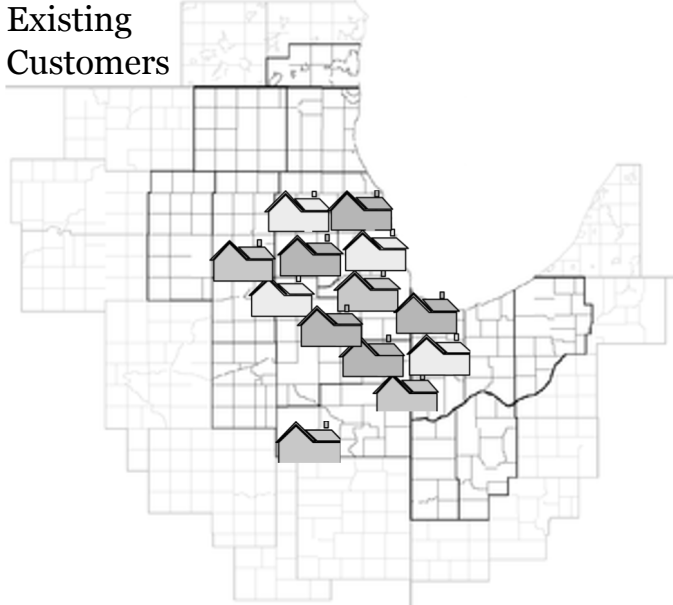
Geographic area

Customer

Product



Geographic Allocation Example



- Company A**
- Company B**
- Company C**

Case Example – Florida Oncology

JUSTICE NEWS

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, April 30, 2020

Leading Cancer Treatment Center Admits to Antitrust Crime and Agrees to Pay \$100 Million Criminal Penalty

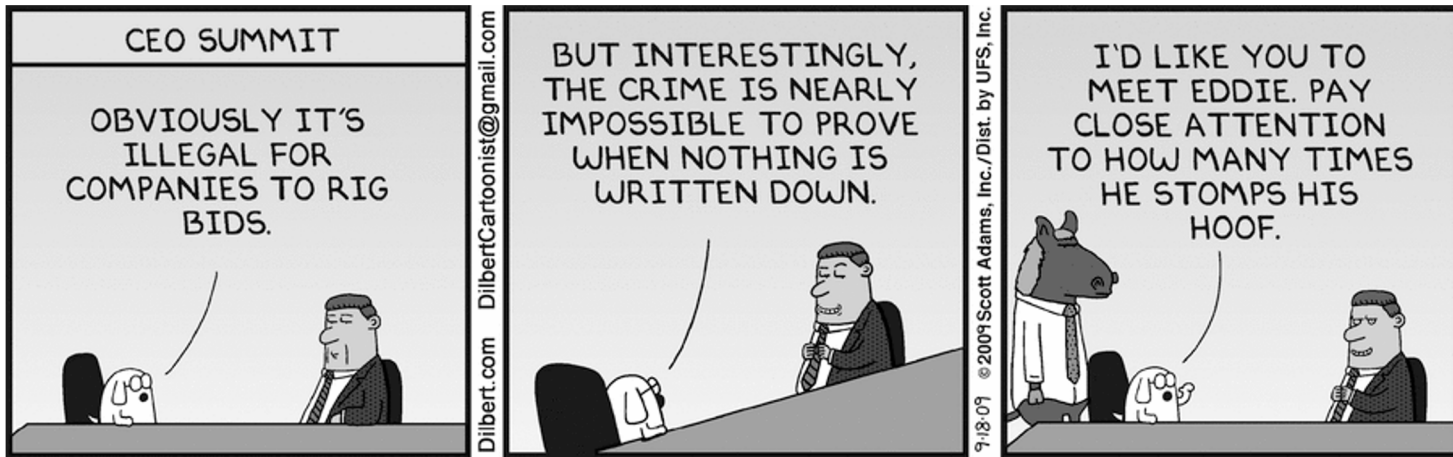
Florida Cancer Specialists & Research Institute LLC (FCS), an oncology group headquartered in Fort Myers, Florida, was charged with conspiring to allocate medical and radiation oncology treatments for cancer patients in Southwest Florida, the Department of Justice announced. This charge is the first in the department's ongoing investigation into market allocation in the oncology industry.

According to a one-count felony charge filed today in the U.S. District Court in Fort Myers, Florida, FCS participated in a criminal antitrust conspiracy with a competing oncology group in Collier, Lee, and Charlotte counties (Southwest Florida). FCS and its co-conspirators agreed not to compete to provide chemotherapy and radiation treatments to cancer patients in Southwest Florida. Beginning as early as 1999 and continuing until at least 2016, FCS entered into an illegal agreement that allocated chemotherapy treatments to FCS and radiation treatments to a competing oncology group. This conspiracy allowed FCS to operate with minimal competition in Southwest Florida and limited valuable integrated care options and choices for cancer patients.

- Agreement between competing oncology practices to allocate chemotherapy and radiation treatment to cancer patients
- Affected three Southwest Florida counties
- Statutory max criminal penalty of \$100M



U.S. Department of Justice, Antitrust Division



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❖ **Criminal Investigations**

Penalties & Consequences

Sources of Investigative Leads

Investigative Tools

Other Crimes the Antitrust Division Prosecutes

Criminal Penalties **Penalties Are Significant** Other Consequences

Individuals:

Incarceration up to 10
years

Corporations: Fines up
to \$100 million or twice
gain/loss

Volume of commerce
drives the sentence for
both individuals and

- **Clayton Act, § 4A**
- **Restitution**
- **Civil lawsuits for three
times the damages**
- **Debarment**

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