

## Antitrust Division ends the year with two trial victories

10 December 2019

Over the last several weeks, the Antitrust Division of the Department of Justice (the Division) obtained two recent trial victories, providing much-needed wins after the October 2018 acquittal of three foreign-exchange traders. These convictions followed two separate years-long investigations: one into price fixing in the tuna industry and the other involving price fixing for foreign-exchange rates.

### **Jury convicts former tuna executive**

On 3 December, a California jury found a former CEO of a tuna company guilty of one felony count of conspiring to fix prices of canned tuna in violation of the Sherman Act. The former CEO now faces up to 10 years in prison and a fine of US\$10 million. During the trial, which lasted four weeks, the Division put on witness testimony from a number of former executives from tuna companies – the two executives had pled guilty to the price fixing conspiracy, and one had received immunity. The Division bolstered their witness testimony with phone records showing calls between the tuna companies, as well as email evidence suggesting a conspiracy. The former CEO took the stand in his own defense and insisted he did not instruct his employees to enter into pricing agreements.

### **Jury convicts former foreign exchange trader Akshay Aiyer**

On 20 November former foreign exchange trader Akshay Aiyer was convicted of one count of conspiring to fix prices and rig bids and offers for certain Central and Eastern European, Middle Eastern, and African (CEEMEA) currencies, in violation of the Sherman Act. During the three-week-long trial, the Division put on two cooperating witnesses who had pleaded guilty to conspiracy charges. Prosecutors also used transcripts of chat room conversations, arguing that they showed Aiyer and his alleged co-conspirators discussed their plan to cheat customers and laughed about it. Finally, the government put on witnesses from two asset management companies that had requested currency swaps to show the real-world harm of Aiyer's conduct. Aiyer's attorney argued that the chat room transcripts were merely evidence of juvenile behavior on the part of the traders and not evidence of criminal activity. Aiyer did not testify in his own defense. The New York jury, however, convicted Aiyer after less than four hours of deliberation.

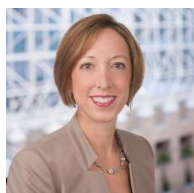
Both the tuna executive's and Aiyer's convictions were much-needed wins for the Division after previous juries acquitted three former foreign exchange traders who were charged with fixing prices and rigging bids in the U.S. dollar/Euro foreign exchange market in October 2018. In the 2018 trial, the government only put on one witness - an immunized cooperating witness. The

Division otherwise largely relied on chat transcripts taken from the defendants' chat room, called "the cartel," to corroborate the prosecution's lone witness. The jurors found the evidence insufficient and acquitted all three defendants.

The division learned from the 2018 trial, and in both the forex and tuna case presented multiple cooperating witnesses and relied on a broader array of documentary evidence. As a result of the more robust evidence offered at these trials, juries convicted each defendant in less than four hours. These convictions are a much-needed boost to the Division's litigation threat in future cases and a big win for prosecutors.

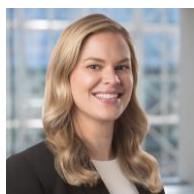
Companies should anticipate that the Division will be willing and able to try cases for which it can marshal sufficient evidence. Given the threat of litigation in these cases, a robust compliance program designed to prevent and detect cartel conduct is even more important to reduce the risk of an antitrust investigation and any resulting litigation or penalties. For assistance in developing an effective compliance program, please consult experienced outside counsel.

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