e-Competitions
Antitrust Case Laws e-Bulletin

Concurrences
Antitrust Publications & Events

January 2024

# The US Supreme Court declines to hear an appeal concerning a judgment sharing agreement among major US meat suppliers in the case concerning broiler chicken industry *(ACR / Amick / Cargill / Case Farms…)*

**ANTICOMPETITIVE PRACTICES, AGREEMENT (NOTION), INVESTIGATIONS / INQUIRIES, AGRICULTURE / FOOD PRODUCTS , PRICE FIXING, SETTLEMENT, PRICE INCREASE, EFFECT ON COMPETITION, UNITED STATES OF AMERICA**

US Supreme Court, *Order List 601 U.S.* , Order List, 8 January 2024

Alyse F. Stach | Baker & Hostetler (Philadelphia)

**e-Competitions News Issue January 2024**

## Supreme Court will not review judgment-sharing agreement among defendants in Broiler Chicken Case*

In its Jan. 8 order list, the Supreme Court declined to hear an appeal concerning a "judgment sharing agreement" among major U.S. meat-supplier defendants in the *Broiler Chicken antitrust* case (*In re Broiler Chicken Antitrust Litigation*, N.D. Ill. Case No. 1:16-cv-08637). The agreement allows defendants to proportionally share any adverse judgment related to the case. Broiler chicken buyers had urged the court to review the agreement, claiming that the agreement hurts the buyers' ability to negotiate settlements in the case. Under the judgment-sharing agreement, a defendant can opt out if it enters into a "qualified settlement," which requires the settling plaintiffs to agree to subtract such settlement amount from any future judgments in the case. Plaintiffs argued that the agreement shielded the defendants from the impact of joint and several liability.

The *Broiler Chicken* case, originally filed in 2016, is ongoing and alleges that the largest producers of broiler chicken conspired to fix, raise and maintain prices of broiler chicken.

The Supreme Court's denial of review of the judgment-sharing agreement came without any explanation, as is customary. The buyers were looking to reverse the Seventh Circuit Court of Appeals panel's decision to keep in place an Illinois district court's order preserving the judgment-sharing agreement. The Illinois district court acknowledged that the judgment-sharing agreement could impede settlements but found no law or court precedent that would justify striking the agreement and that nothing in the agreement "destroys plaintiffs' entitlement to the full remedies under the law for a trial verdict in their favor." The Seventh Circuit found that it did not have jurisdiction because the collateral order doctrine allowing for mid-case appeals of certain decisions did not apply.

This document is protected by copyright laws and international copyright treaties. Non-authorised use of this document constitutes a violation of the publisher's rights and may be punished by up to 3 years imprisonment and up to a € 300 000 fine (Art. L 335-2 CPI). Personal use of this document is authorised within the limits of Art. L 122-5 CPI and DRM protection.

In petitioning the Supreme Court for review, the plaintiffs argued that the agreement was "antithetical to the federal antitrust regime" and must be invalidated before a final judgment is issued. Whether the plaintiffs' fears that similar judgment-sharing agreements will "dramatically tilt[] the settlement playing field" in defendants' favor are founded remains to be seen. For now, the Supreme Court will not be weighing in.

***Article published on Baker Hostetler website *(click here)*, republished in e-Competitions with the courtesy of the author(s). The original title of this article appears below the e-Competitions title. Authors are welcome to write an alternative article on this case/text, provided they have no relationships with a party or related third party. Article will need e-Competitions Board approval before publication.**

This document is protected by copyright laws and international copyright treaties. Non-authorised use of this document constitutes a violation of the publisher's rights and may be punished by up to 3 years imprisonment and up to a € 300 000 fine (Art. L 335-2 CPI). Personal use of this document is authorised within the limits of Art. L 122-5 CPI and DRM protection.