Background

Texas-based e-commerce company Zaappaaz, Inc.—doing business as Wist Promotions, Inc., Wristbands.com, and CustomBands.com—and its president have agreed to plead guilty to conspiring to fix prices for customized promotional products sold online in the United States, including wristbands and lanyards. The U.S. Department of Justice (“DOJ”) alleges that conspirators fixed prices through in-person meetings and communications using social media platforms and encrypted messaging applications, such as Facebook, Skype, and WhatsApp.

Significance

The charges reflect that the DOJ is focused on detecting and prosecuting collusive activity in e-commerce. In a statement, DOJ Antitrust Division Acting Assistant Attorney General Andrew Finch asserted that these “charges are a clear sign of the Division’s commitment to uncovering and prosecuting collusion that affects internet sales.” The DOJ’s ability to uncover the alleged conspiracy despite the alleged conspirators using encrypted messages further suggests that the DOJ is keeping pace of developments in communications technologies. According to Finch: “Criminals cannot evade detection by communicating online and using encryption.”

The Sherman Act imposes criminal penalties for price fixing of up to $100 million for a corporation and $1 million for an individual, along with up to 10 years in prison. The fine may be increased to twice the amount that the conspirators gained from the illegal acts or twice the amount lost by the victims of the crime if either of those amounts exceeds the maximum fine.

In short

The case demonstrates a continuing trend of the DOJ Antitrust Division bringing charges against e-commerce price-fixing conspiracies. The Antitrust Division’s first e-commerce case in 2015 was against a Texas-based e-commerce company for fixing prices for customized promotional products sold online in the United States, including wristbands and lanyards. In a statement, the DOJ Antitrust Division Acting Assistant Attorney General Renata Hesse announced the Division’s commitment to protecting e-commerce price-fixing conspiracies.

The case demonstrates a continuing trend of the DOJ Antitrust Division bringing charges against e-commerce price-fixing conspiracies.

THREE KEY TAKEAWAYS

1. Companies should expect ongoing DOJ scrutiny of all pricing coordination among e-commerce competitors.

2. Companies should ensure that business interactions and communications among competitors do not amount to efforts to set prices, reduce discounts, allocate sales, or otherwise invite antitrust scrutiny.

3. Companies should not expect encrypted messaging applications to conceal collusion activities from antitrust authorities.

YOU MIGHT BE INTERESTED IN:

Insight

Culpable Employees Protect Some Dispositions May

DOJ Obtains Price-Fixing Guilty Plea from E-Commerce Company and Top Executive

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Over Takeovers by Expands Authority

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