

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE TURKEY ANTITRUST
LITIGATION

Case No. 1:19-cv-08318

Hon. Sunil R. Harjani, U.S.D.J.
Hon. Keri L. Holleb Hotaling,
U.S.M.J.

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

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INTEREST OF THE UNITED STATES

The United States submits this Statement of Interest under 28 U.S.C. § 517, which permits the Attorney General to direct any officer of the Department of Justice to attend to the interests of the United States in any case pending in a federal or state court.

The United States has a strong interest in the correct application of the antitrust laws. The United States enforces Section 1 of the Sherman Act, 15 U.S.C. § 1, both under the per se rule, *see, e.g., United States v. Aiyer*, 33 F.4th 97 (2d Cir. 2022); *United States v. Lischewski*, 860 F. App'x 512 (9th Cir. 2021); *United States v. Apple, Inc.*, 791 F.3d 290 (2d Cir. 2015), and under the rule of reason, *see, e.g., United States v. Am. Airlines Grp. Inc.*, 121 F.4th 209 (1st Cir. 2024); *United States v. Visa U.S.A., Inc.*, 344 F.3d 229 (2d Cir. 2003).

The turkey industry represents allegedly \$5 billion in annual sales of products (*see, e.g.,* Compl. of Amory Investments LLC (Doc. 1, No. 1:21-cv-06600) ¶ 2; Am. Compl. of Carina Ventures LLC (Doc. 112, No. 1:23-cv-16948 (S.D. Tex.)) ¶ 1) that are an important source of protein for Americans, and whole turkeys are symbolic of the national Thanksgiving holiday. The United States has a strong interest in ensuring that courts apply the correct legal principles when analyzing alleged price fixing and unlawful exchanges of competitively sensitive information in this industry. The United States is currently challenging an anticompetitive information exchange in the agriculture sector: *United States v. Agri Stats, Inc.*, No. 23-3009, 2024 WL 2728450 (D. Minn. May 28, 2024).¹ And the United States has filed amicus briefs and statements of interest in other food and agriculture industry cases involving alleged per se

¹ The United States and six states sued Agri Stats under Section 1 based on its conduct in the broiler chicken, pork, and turkey industries. The court there recently denied Agri Stats' motion for summary judgment. *See United States v. Agri Stats, Inc.*, No. 23-3009, Doc. 477 (D. Minn. Feb. 24, 2026).

violations and unlawful information exchanges. *See, e.g.*, Br. for the United States and Federal Trade Commission as Amici Curiae in Supp. of Neither Party, *Deslandes v. McDonald's USA, LLC*, Nos. 22-2333, 22-2334, Doc. 51 (7th Cir. Nov. 18, 2022), <https://www.justice.gov/atr/case-document/file/1552391/dl?inline> (applicability of per se rule); Statement of Interest of the United States, *In re Frozen Potato Prods. Antitrust Litig.*, No. 1:24-cv-11801, Doc. 266 (N.D. Ill. Feb. 27, 2026), <https://www.justice.gov/atr/media/1429466/dl?inline> (information-exchange issues); Statement of Interest of the United States, *In re Pork Antitrust Litig.*, No. 0:18-cv-01776, Doc. 2616 (D. Minn. Oct. 1, 2024), <https://www.justice.gov/atr/media/1371806/dl> (information-exchange issues).

In this case, one of Defendants' summary judgment motions misconstrues the scope of the per se rule, asking this Court to recognize an intermediate category of "hybrid" restraints between vertical and horizontal agreements based on *United States v. Brewbaker*, 87 F.4th 563 (4th Cir. 2023). But *Brewbaker* is not the law in the Seventh Circuit, which—like the Supreme Court—does not recognize "hybrid" restraints as a valid category of antitrust analysis. Defendants also mischaracterize several legal standards applicable to information-exchange claims. Contrary to their arguments, competitors' exchanges of competitively sensitive information are not "presumptively lawful"; can be anticompetitive even if they do not consist of individual competitors' information; and do not require direct econometric evidence of market-wide price increases.

The United States takes no position on Defendants' other arguments, on the ultimate disposition of the summary judgment motions, or on the truth of any party's factual representations.

BACKGROUND

There are two primary elements for claims under Section 1 of the Sherman Act. *See Am. Needle, Inc. v. NFL*, 560 U.S. 183, 186 (2010); *Omnicare, Inc. v. UnitedHealth Grp., Inc.*, 629 F.3d 697, 705 (7th Cir. 2011). First, the plaintiff must show the existence of a “contract, combination, or conspiracy” (i.e., “concerted action”). *Am. Needle*, 560 U.S. at 186. Second, the plaintiff must establish that the concerted action is unreasonable (i.e., anticompetitive). *See id.* (“whether [the concerted action] unreasonably restrains trade”). As to the first primary element—the existence of concerted action—antitrust law categorizes restraints on competition as “horizontal” or “vertical.” Horizontal restraints are “agreement[s] among competitors on the way in which they will compete with one another.” *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 99 (1984); *see also Ohio v. American Express Co.*, 585 U.S. 529, 543 n.7 (2018) (“[H]orizontal restraints involve agreements between competitors not to compete in some way.”); *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 229 (D.C. Cir. 1986) (“[H]orizontal restraints . . . eliminate some degree of rivalry between persons or firms who are actual or potential competitors.”). On the other hand, when “firms at different levels of distribution” agree on matters over which they do not compete, those agreements are “vertical.” *Bus. Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 730 & n.4 (1988); *see also Brown Shoe Co. v. United States*, 370 U.S. 294, 323 (1962).

As to the second primary element, restraints “can be unreasonable in one of two ways.” *Am. Express*, 585 U.S. at 540. Some restraints are unreasonable per se based on their inherently anticompetitive “nature and character.” *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 64–65 (1911); *see also, e.g., NCAA v. Alston*, 594 U.S. 69, 89 (2021). These per se unlawful restraints include horizontal agreements to fix prices, *United States v. Socony-Vacuum Oil Co.*,

310 U.S. 150, 218 (1940), of which horizontal “agreement[s] on output” are a subspecies, *California Dental Ass’n v. FTC*, 526 U.S. 756, 777 (1999) (quoting *General Leaseways, Inc. v. National Truck Leasing Ass’n*, 744 F.2d 588, 594-95 (7th Cir. 1984)); to rig bids, *United States v. Fenzl*, 670 F.3d 778, 780 (7th Cir 2012) (explaining that bid rigging is a form of horizontal price fixing); or to allocate markets, *Palmer v. BRG of Ga., Inc.*, 498 U.S. 46, 49–50 (1990) (per curiam). See 15 U.S.C. § 7a note (Findings; Purpose of 2020 Amendment) (“Conspiracies among competitors to fix prices, rig bids, and allocate markets are categorically and irredeemably anticompetitive and contravene the competition policy of the United States.”). Restraints that are not unreasonable per se are evaluated under the “rule of reason,” a “fact-specific assessment” of “the restraint’s actual effect on competition.” *Am. Express*, 585 U.S. at 541 (cleaned up).

In this case, the amended complaints alleged two claims: a rule of reason claim based on an alleged conspiracy to exchange competitively sensitive information, and a per se claim based on an alleged conspiracy to fix prices by restraining the supply of turkey products. See *In re Turkey Antitrust Litig.*, 642 F. Supp. 3d 711, 721 (N.D. Ill. 2022). This Court previously denied a joint motion to dismiss the per se claim. See *id.* at 715.

Now, on summary judgment, certain Defendants ask this Court to adopt several rigid rules of law. Defendant Tyson/Hillshire² argues that the alleged price fixing conspiracy cannot be subject to the per se rule because Tyson/Hillshire’s relationship to its alleged co-conspirators was vertical, and alternatively that “if a party serves as both a buyer/seller *and* a competitor to the other parties to an agreement, the restraint ‘doesn’t fit neatly into either the horizontal or

² “Tyson/Hillshire” refers to Tyson Foods, Inc., Tyson Fresh Meats, Inc., Tyson Prepared Foods, Inc., and The Hillshire Brands Co.

vertical definition—it fits into both” and is a “hybrid restraint” for which the “presumption in favor of a rule-of-reason standard applies.” Tyson/Hillshire Mem. (Doc. 1601) at ECF 23 n.13 (quoting *United States v. Brewbaker*, 87 F.4th 563, 576-79 (4th Cir. 2023)). Defendant Agri Stats seems to argue that information-exchange claims are subject to an elevated burden of proof or must overcome a “presumption” of lawfulness. And all Defendants contend that information-exchange claims must be based on the exchange of individual competitors’ competitively sensitive information and must be proved by direct econometric evidence of market-wide price increases.

ARGUMENT

I. *Brewbaker* Is Not the Law in This Circuit.

This Court should decline Tyson/Hillshire’s invitation to rely on the out-of-circuit decision in *Brewbaker*. That decision is inconsistent with longstanding Supreme Court and Seventh Circuit precedent and wrongly decided.

Specifically, the Supreme Court repeatedly has treated as horizontal—and thus potentially subject to per se condemnation—agreements among competitors over how they will compete, even when the parties also have a vertical relationship. In *Palmer*, for example, the Court held an agreement “unlawful on its face” under the per se rule against horizontal market allocations even though one of the parties not only competed with, but also (vertically) licensed materials from, the other. 498 U.S. at 47, 49–50. Similarly, in *Socony-Vacuum*, the Court held that a conspiracy, whose members included competing oil refiners and their vertically related customers, was horizontal price fixing and hence per se unlawful. 310 U.S. at 166–69 & n.4, 218-19; see *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 133 (1998) (citing *Socony-Vacuum* as

an example of a horizontal price-fixing case).³

Deslandes v. McDonald's USA, LLC, 81 F.4th 699 (7th Cir. 2023), is the same. *Deslandes* concerned an “anti-poach[ing]” clause in McDonald’s franchise agreements. While McDonald’s had a vertical relationship with its franchisees, the anti-poaching clause restrained competition between McDonald’s and its franchisees because McDonald’s itself ran many non-franchised McDonald’s restaurants, and those restaurants also were subject to the “anti-poach clause” and competed against the franchised restaurants for labor. *See id.* at 703. This Circuit held that, because “workers at franchised outlets could not move to corporate outlets, or the reverse,” the anti-poaching agreement was properly characterized as “horizontal” and was per se unlawful unless it satisfied the criteria for an ancillary-restraints defense. *Id.* This is in accord with the Supreme Court’s understanding in *Bd. of Regents* of what horizontal means, i.e., “an agreement among competitors on the way in which they will compete with one another,” 468 U.S. at 99. Earlier Seventh Circuit decisions followed the same approach. *See Toys “R” Us v. FTC*, 221 F.3d 928, 934-36 (7th Cir. 2000) (affirming FTC’s determination that when a large toy retailer induced vertically-related toy manufacturers to boycott warehouse clubs by denying the clubs the toys they needed, the restraint was horizontal); *Polk Bros. v. Forest City Enterprises, Inc.*, 776 F.2d 185, 187, 189 (7th Cir. 1985)

³ *See also, e.g., United States v. Gen. Motors Corp.*, 384 U.S. 127, 129, 145 (1966) (group boycott among competing car dealers, as well as a vertically related car manufacturer, was per se unlawful); *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 208–09, 211–13 (1959) (group boycott among competing manufacturers and distributors, as well as a vertically related retailer, was per se unlawful); *United States v. Paramount Pictures*, 334 U.S. 131, 140–42 (1948) (holding, in case involving defendants that competed but also had vertical distribution relationships, that “all the defendants” were part of a “horizontal” “price-fixing conspirac[y]”); *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457, 461, 465 (1941) (group boycott among competing garment retailers, their vertically related suppliers (competing garment manufacturers), and the manufacturers’ vertically related suppliers (competing textile producers) was per se unlawful).

(describing challenged restraint as “horizontal” even though the parties had a lease agreement with each other).

Many other courts of appeals decisions are in accord, treating restraints as horizontal when they restrain competition between parties who agreed to the restraint, even when the parties to the agreement also had a vertical relationship. *See, e.g., Aya Healthcare Services, Inc. v. AMN Healthcare, Inc.*, 9 F.4th 1102, 1109 (9th Cir. 2021) (holding that agreement not to compete for labor was a “horizontal” restraint, even though parties were in a “subcontractor-subcontractee relationship”); *United States v. Apple, Inc.*, 791 F.3d 290, 321-22 (2d Cir. 2015) (holding that agreement was horizontal and per se unlawful even though participants were (1) Apple and (2) book publishers that competed with each other but were vertically related to Apple); *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 336–37, 344 (3d Cir. 2010) (holding that plaintiffs pleaded a per se unlawful bid-rigging conspiracy among insurers, even though “the conspiracy was instigated, coordinated, and policed” by a vertically related broker).

As these cases show, when the parties to an agreement are related both as competitors and as supplier-customers, the orientation of the agreement depends on the nature of the restraint it imposes: If the parties agree to restrict their competition with each other, the agreement is horizontal. *See, e.g., Apple*, 791 F.3d at 297 (“[T]he Sherman Act outlaws *agreements* that unreasonably restrain trade and therefore requires evaluating the nature of the restraint, rather than the identity of each party who joins in to impose it, in determining whether the per se rule is properly invoked.”)⁴ *Brewbaker*, by determining the orientation of the restraint based on the

⁴ Courts have applied the same analysis in the context of dual-distribution relationships, where a manufacturer both sells its products through distributors (and thus has a vertical relationship with those distributors) and distributes the products itself (and thus competes with its distributors). *See Ill. Corporate Travel, Inc. v. Am. Airlines, Inc.*, 889 F.2d 751, 753 (7th Cir. 1989). Consistent with *Board of Regents’* definition of horizontality, the dual-distribution cases

defendants' business relationships instead of focusing on the nature of the restraint, is inconsistent with this long line of Supreme Court and appellate precedent and wrongly decided.

The “hybrid” restraints approach not only contravenes precedent, but also misapprehends another important principle of antitrust law: the ancillary-restraints defense. This defense is the established framework for addressing defendants' claims that a horizontal restraint should be exempted from the per se rule and considered together with a vertical (or other) collaboration among the defendants under the rule of reason. *See Texaco Inc. v. Dagher*, 547 U.S. 1, 7 (2006); *Deslandes*, 81 F.4th at 705. When defendants properly raise such a defense, the correct course is to assess whether they have established the defense's elements—not to create a novel “hybrid” restraints category, as *Brewbaker* did. *See Brewbaker*, 87 F.4th at 576, 578 (discussing “hybrid” restraints without referencing ancillary-restraints defense). The elements of the defense are that the restraint is (1) “subordinate and collateral” to a “legitimate business collaboration” among the defendants and (2) reasonably necessary to achieve a procompetitive objective of the collaboration. *Deslandes*, 81 F.4th at 706 (Ripple, J., concurring) (citations omitted); *Aya Healthcare*, 9 F.4th at 1109.

Here, Plaintiffs allege that turkey processors that normally compete against each other conspired to cut production, reduce supply, and thereby to raise prices. *See In re Turkey*, 642 F. Supp. 3d at 717-20 (plaintiffs allege that defendants are competing producers and sellers of turkey who communicated with each other to coordinate several rounds of production cuts). To

treat restraints between dual-distributing manufacturers and their dealers as horizontal when the parties agree on the way they will compete with one another at the distribution level, *see, e.g., Pitchford v. PEPI, Inc.*, 531 F.2d 92, 101, 104 (3d Cir. 1975); *Hobart Bros. v. Malcolm T. Gilliland, Inc.*, 471 F.2d 894, 899 (5th Cir. 1973), and as vertical when the parties agree on the terms of their supply relationship, *see, e.g., AT&T Corp. v. JMC Telecom, LLC*, 470 F.3d 525, 531 (3d Cir. 2006); *Red Diamond Supply, Inc. v. Liquid Carbonic Corp.*, 637 F.2d 1001, 1004 (5th Cir. 1981).

determine the orientation of the restraint, this Court must assess whether the alleged conspiracy is an agreement among competitors about the way in which they compete with one another. If so, the restraint is horizontal; if not, it is vertical.

II. Information-Exchange Claims Are Not Subject to Categorical Legal Rules or Elevated Burdens of Proof.

Defendants' summary judgement motions also misstate the legal standards applicable to information-exchange claims under Section 1 of the Sherman Act. Agri Stats asserts that "information exchanges among competitors are presumptively lawful" unless they meet certain criteria. Agri Stats Mem., Doc. 1585 at ECF 17. All Defendants argue that "there is no evidence that the Producer Defendants exchanged the kind of information through Agri Stats reports that would have even theoretically allowed them to coordinate price increases or production cuts." Joint Mem., Doc. 1580 at ECF 51. And all Defendants appear to argue that a plaintiff must adduce direct econometric evidence "that the exchange *actually* restricted market-wide output or *actually* raised market-wide prices," Joint Mem., Doc. 1580 at ECF 61, and that this evidence must be a "before-and-after" regression analysis showing net price increases, *see id.* at ECF 65; Agri Stats Mem., Doc. 1585 at ECF 24. Defendants are wrong in suggesting (a) that a plaintiff must overcome a legal "presumption" or evidentiary standard higher than the normal preponderance of the evidence, (b) that exchanges of competitively sensitive information must consist of *individual* competitors' information, and (c) that an information-exchange claim can be proved only by "direct" evidence in the form of a "before-and-after" regression.

A. Information-Exchange Claims Are Not Subject to Elevated Legal or Evidentiary Presumptions.

Information-exchange claims are subject to a "fact-specific assessment," *Alston*, 594 U.S. at 81 (citation omitted), under the rule of reason that accounts for "facts peculiar to the business

to which the restraint is applied; its condition before and after the restraint was imposed; [and] the nature of the restraint and its effect, actual or probable.” *Bd. of Trade of Chi. v. United States*, 246 U.S. 231, 238 (1918). Courts analyzing standalone information-exchange claims typically consider “[a] number of factors” to determine the likelihood of harm to competition, including “the structure of the industry involved” and “the nature of the information exchanged,” *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978), and “whether the data are made publicly available,” *Todd v. Exxon Corp.*, 275 F.3d 191, 213 (2d Cir. 2001);⁵ *see Omnicare, Inc.*, 629 F.3d at 710 (“[l]ooking at the pricing information that was exchanged”). There is no special legal presumption that the exchange is reasonable, other than the preponderance of the evidence standard applicable to all elements of the claim. *See, e.g., In re Processed Egg Prods. Antitrust Litig.*, 962 F.3d 719, 725 (3d Cir. 2020) (verdict form asked whether jury found by a preponderance that conspiracy unreasonably restrained supply); *In re Lorazepam & Clorazepate Antitrust Litig.*, 467 F. Supp. 2d 74, 81 (D.D.C. 2006) (plaintiff must prove by a preponderance that restraint is unreasonable).⁶ Moreover, “[a]ntitrust plaintiffs do not face a heightened burden to defeat summary judgment.” *Kleen Prods, LLC v. Georgia-Pacific LLC*, 910 F.3d 927, 934 (7th Cir. 2018).

⁵ Agri Stats tries to rely on *Todd*, but that decision is consistent with this fact-bound approach, *see* 275 F.3d at 212 (plaintiffs stated an information-exchange claim because, although data “was aggregated and distributed by a third-party consulting firm,” the defendants received the “data broken down to subsets consisting of as few as three competitors”), and did not apply any legal “presumption” in favor of the defendant.

⁶ The preponderance of evidence standard applies to other elements, too. To prove an agreement, a plaintiff needs “evidence that would allow a trier of fact to nudge the ball over the 50-yard line and rationally to say that the existence of an agreement is more likely than not.” *Kleen Prods, LLC v. Georgia-Pacific LLC*, 910 F.3d 927, 934 (7th Cir. 2018). *See also East Troy Lueptow, Inc. v. C&S Wholesale Grocers, Inc.*, 957 F.3d 879, 881 (8th Cir. 2020) (jury instructions correctly required proof of all elements of Section 1 claim by a preponderance).

B. An Information-Exchange Claim is Not Limited to Individual Competitors' Information.

Defendants also err by implying that there is a legal requirement that plaintiffs must present evidence of individualized or non-aggregated production, pricing, or other data exchanged by competitors. Such data is not required if the circumstances as a whole indicate a tendency for anticompetitive harm. For example, in *Todd* the Second Circuit (Sotomayor, J.) concluded that salary information distributed by a third-party consulting firm was “problematic,” even though it had been aggregated, when recipients could obtain subsets of the data comprising as few as three firms. 275 F.3d at 212. The narrowness of the subsets of data and the periodic updates to them enabled the firms to glean information about their competitors’ budget plans and to coordinate their salaries in response. *See id.*; *cf. N. Texas Specialty Physicians v. FTC*, 528 F.3d 346, 363, 365 (5th Cir. 2008) (upholding FTC’s conclusion that high-level reporting of “mean, median, and mode” of polling responses was anticompetitive because it helped the organization encourage members on the low end of the range to raise their minimum rates in line with their peers). A court in this district similarly held that plaintiffs had alleged an information-exchange claim where, “although Agri Stats ostensibly anonymized the data in the reports, the data was so detailed that Turkey Defendants were able to infer which data corresponded to which Defendant.” *Olean Wholesale Grocery Coop., Inc., v. Agri Stats, Inc.*, No. 19 C 8318, 2020 WL 6134982, at *6-7 (N.D. Ill. Oct. 19, 2020); *see In re RealPage, Inc., Rental Software Antitrust Litig. (No. II)*, 709 F. Supp. 3d 478, 510, 525-28 (M.D. Tenn. 2023) (upholding information-exchange claim even though at least some data “was aggregated and anonymized”).

More recently, in a case alleging an information exchange similar to the exchange alleged here, and similarly based on agricultural producers sharing information with Agri Stats and receiving Agri Stats reports in return, the court considered these precedents and refused to create

a safe harbor from liability for aggregated information. *In re Pork Antitrust Litig.*, 781 F. Supp. 3d 758, 870-71 (D. Minn. 2025). “Regardless of whether the data was aggregated or disaggregated, information exchanges that provide only aggregated data can violate the antitrust laws, even where the information is not linked to specific competitors.” *Id.* at 870. “There is no requirement that the reports contain individual competitor price or production information to generate anticompetitive effects” because “the legality of information exchanges that report only aggregated data depends on whether the information exchange tends to suppress competition, not on the format of the reported data.” *Id.* at 870-71 (citing *United States v. Am. Linseed Oil Co.*, 262 U.S. 371, 390 (1923)). “Therefore, even without individual competitor price or production information, Defendants’ information exchange could still violate § 1.” *Id.* at 871.⁷

In any event, for information-exchange claims as with any other, the rule of reason is intended to be flexible—entailing an “enquiry meet for the case.” *Cal. Dental Ass’n v. FTC*, 526 U.S. 756, 781 (1999). Defendants’ argument implies a categorical rule, but no single factor, including whether the exchanged information is aggregated or individualized, is dispositive. Instead, courts look to the particular facts of each information-exchange case, conducting a flexible inquiry to give due consideration to whether the “principal tendency” of the restraints at issue is to harm competition. *Id.*; see also *Todd*, 275 F.3d at 195 (assessing whether the alleged data exchange had “anticompetitive potential”).

⁷ Defendants cite *In re Broiler Chicken Antitrust Litig.*, 702 F. Supp. 3d 635, 678-79 (N.D. Ill. 2023), but that decision granted summary judgment on an information-exchange claim based “on the specific evidence and arguments” in that case, *In re Pork*, 781 F. Supp. 3d at 868 n.59, and without considering any precedent or the defendants’ market power. The court granted summary judgment based on causation, because the record showed that the “literal exchange of the [Agri Stats] proprietary reports [among the defendants] was the cause of any anticompetitive effect,” not the information that Agri Stats provided to each individual producer. *In re Broiler Chicken*, 702 F. Supp. 3d at 679. The court did not purport to announce or follow a general rule that the information exchanged, to be anticompetitive, must be linked to individual competitors.

C. Direct Econometric Evidence Is Not Required.

Defendants also are incorrect to suggest that proof of an information-exchange claim requires direct econometric evidence of market-wide price increases, and in the form of a “before-and-after” regression analysis. Their suggested rule is incorrect for two reasons: first, they improperly heighten the requirement for what qualifies as “direct” evidence of an anticompetitive effect; and second, they disregard the “indirect” method of proof, for which proof of direct anticompetitive effects is not required.

Under the burden-shifting framework for most claims subject to the rule of reason, the plaintiff has “the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market.” *Am. Express*, 585 U.S. at 541. A plaintiff can satisfy this first step in either of two ways: *first*, by “direct evidence” of anticompetitive effects, meaning “proof of actual detrimental effects on competition, such as reduced output, increased prices, or decreased quality” (internal quotation marks, brackets, and citation omitted); or, *second*, by “[i]ndirect evidence,” meaning “proof of market power plus some evidence that the challenged restraint harms competition.” *Id.* at 542; *Kraft Foods Glob., Inc. v. United Egg Producers, Inc.*, No. 11-CV-8808, 2024 WL 4346418, at *23 (N.D. Ill. Sept. 30, 2024) (same). Courts have applied this framework specifically to information-exchange claims and held that plaintiffs can meet their initial burden by either direct or indirect evidence. *See, e.g., In re Pork*, 781 F. Supp. 3d at 868 (plaintiffs’ burden on an information-exchange claim “can be satisfied with a showing of direct or indirect evidence”); *Brown v. JBS USA Food Co.*, 773 F. Supp. 3d 1193, 1224 (D. Colo. 2025) (plaintiffs can establish anticompetitive effects in an information-exchange claim “directly” or “indirectly”); *In re Local TV Advertising Antitrust Litig.*, No. 18-C 6785, 2020 WL 6557665, at *13 (N.D. Ill. Nov. 6, 2020) (ruling on

information-exchange claim that “[p]laintiffs can show proof of anticompetitive effects either directly or indirectly”).

Even in cases based on “direct” evidence, there is no legal requirement that a plaintiff perform a “before-and-after” regression analysis. For example, in *O’Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015), the court held that plaintiffs did not have to show a decrease in output. Instead, “the NCAA schools [agreement] to value the athletes’ NILs at zero” constituted “an anticompetitive effect” that “satisfied the plaintiffs’ initial burden under the Rule of Reason.” *Id.* at 1071 (citation omitted). The court also noted that “in *Board of Regents*, a Rule of Reason case, the [Supreme] Court held that the NCAA’s television plan had ‘a significant potential for anticompetitive effects’ without delving into the details of exactly how much the plan restricted output of televised games or how much it fixed the price of TV contracts.” *Id.* at 1072. Similarly, in *Sullivan v. NFL*, 34 F.3d 1091, 1101 (1st Cir. 1994), the court explained that “regardless of the exact price effects of the NFL’s [team ownership] policy,” the policy had an actual anticompetitive effect because it made the market “plainly unresponsive to consumer demand for ownership interests in NFL teams.” The supporting evidence was testimony “that fans are interested in buying shares in NFL teams” and the example of the “public offering of the Boston Celtics professional basketball team which demonstrated . . . fan interest in buying ownership of professional sports teams.” *Id.*; see also *Addamax Corp. v. Open Software Found., Inc.*, 152 F.3d 48, 53 (1st Cir. 1998) (“It is technically an overstatement to say that actual anticompetitive impact is a requirement of liability in a rule-of-reason case” because “a sufficiently high *risk* of an anticompetitive effect, coupled with marginal benefits” might be sufficient).

In addition, under the “indirect” evidence route, it is sufficient to show that the defendants have market power plus “ground[s] for believing that the challenged behavior could harm competition in the market.” *Tops Mkts., Inc. v. Quality Mkts., Inc.*, 142 F.3d 90, 97 (2d Cir. 1998); *see also Spanish Broad. Sys. of Fla. v. Clear Channel Communications*, 376 F.3d 1065, 1072 (11th Cir. 2004) (indirect evidence includes showing that defendant’s behavior “had the potential for genuine adverse effects on competition”) (citation omitted). The evidence “need not always be extensive or highly technical,” and it is “sufficient that the plaintiff prove the defendant’s conduct, as matter of economic theory, harms competition.” *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 983 (9th Cir. 2023).

CONCLUSION

The Court should decline to follow *Brewbaker* as inconsistent with Supreme Court and Seventh Circuit precedent and apply the proper legal framework when analyzing Defendants’ information-exchange arguments.

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Dated: March 25, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2026, I electronically filed the foregoing Statement of Interest by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

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