<u>Broiler Chicken Antitrust Indictment Q&A</u>
Jayson Penn, Roger Austin, Mikell Fries and Scott Brady

What is the criminal charge against Penn, Austin, Fries, and Brady?

- The Department of Justice's Antitrust Division announced a criminal felony charge against Jayson Penn, Roger Austin, Mikell Fries, and Scott Brady, current and former executives in the chicken industry.
- Penn, Austin, Brady, and Fries are each charged with one count of violating Section 1 of the Sherman Act for their participation in a criminal antitrust conspiracy to fix the price of and rig bids for broiler chicken products sold in the United States.
- Broiler chickens are chickens raised for human consumption and sold to restaurants, including many well-known fast food chains, and supermarkets across the country.
- The charge was filed in the United States District Court for the District of Colorado in Denver.

Who are Penn, Austin, Fries, and Brady? Are they high-level executives?

- Penn is the current President and Chief Executive Officer at a major broiler chicken producer headquartered in Colorado ("Supplier-1").
- Austin is a former Vice President at Supplier-1.
- Fries is the President and a member of the board at a competing chicken producer headquartered in Georgia ("Supplier-2").
- Brady is a Vice President at Supplier-2.

What information can you provide about the broiler chicken industry?

- Restaurants and grocery stores generally purchase broiler chickens by receiving bids from, or negotiating prices and price-related terms like discounts with, chicken producers. Bidding and negotiations usually occur annually. Annual negotiations establish prices and discount levels for a particular time period, often the following calendar year.
- The prices for broiler chicken products are typically directly tied to the price for 8-piece bone-in broiler chicken products. For example, dark meat is often priced at a certain number of cents per pound less than, or "back" from, the price per pound of 8-piece bone-in chicken products.

What specifically did these executives do?

- The indictment alleges that the defendants conspired to rig bids and fix prices by agreeing to submit aligned bids, prices, and discounts.

How does this investigation fit into the Division's priorities?

- Rooting out collusion affecting household staples, particularly food products, is a top priority for the Division.
- Chicken fits within that priority. According to the National Chicken Counsel, more than 90% of American adults eat chicken.[1]

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[1] *See* National Chicken Counsel, *US Chicken Consumption Report* at 22 (July 2018), *available at* http://www.wattagnet.com/ext/resources/Images-by-month-year/18_07/US-Chicken-Consumption_FINAL_Report_240718.pptx.

- In December 2019, the Department obtained the conviction at trial of the former Chief Executive Officer and President of Bumble Bee Foods, LLC for participating in a conspiracy to fix prices of canned tuna. Additionally, three other executives and two companies pleaded guilty in the investigation, including StarKist Co., which was sentenced to pay a $100 million criminal fine, the statutory maximum, for its role in a conspiracy.

How long did the conspiracy run?

- The indictment charges a conspiracy that began in 2012 and continued through early 2017.

Is the charged conduct related to the COVID-19 pandemic?

- No.
- The current pandemic has, however, reaffirmed the importance of the Division's efforts to safeguard critical markets and hold those who cheat accountable. Indeed, the Division has announced several important criminal charges and resolutions in recent months, including two involving the health care markets.
- In April, for example, a leading cancer treatment center admitted to participating in a long-running conspiracy to allocate medical and radiation oncology treatments for cancer patients in Southwest Florida. To resolve the felony charge, the company agreed to pay a $100 million criminal penalty—the statutory maximum—and cooperate in the Division's ongoing investigation. *See* https://www.justice.gov/opa/pr/leading-cancer-treatment-center-admits-antitrust-crime-and-agrees-pay-100-million-criminal.
- A week later, a generic pharmaceutical company admitted to fixing the price of a widely used cholesterol medication. To resolve the felony charge, the company agreed to pay a $24.1 million criminal penalty and cooperate with the Division's ongoing investigation. *See* https://www.justice.gov/opa/pr/generic-pharmaceutical-company-admits-fixing-price-widely-used-cholesterol-medication.

What is the status of the investigation? Will there be other defendants?

- These charges are the first in an ongoing investigation.