

DOJ-Agri Stats Settlement Offers Key Benchmarking Lessons

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In light of the court approval on Sept. 12 of the [U.S. Department of Justice's settlement](#) with [Agri Stats Inc.](#) in the [U.S. District Court for the District of Minnesota](#), new guidance for antitrust guardrails on competitor benchmarking lessons has emerged.

This article discusses that guidance and related issues.

Across a broad spectrum of industries, companies widely rely on benchmarking programs to inform strategic decisions, both in selling products and services and in buying inputs.

Take, for example, the [U.S. Supreme Court's](#) 1978 decision in *U.S. v. U.S. Gypsum Co.*, in which the "exchange of price data and other information among competitors does not invariably have anticompetitive effects" and may well "increase economic efficiency and render markets more, rather than less, competitive."^[1]

Also take the 1969 decision in *U.S. v. Container Corp. of America*. There, the Supreme Court has also flagged the risk that exchanges of price and other commercially sensitive information can tend to produce "price uniformity" and have the effect of "chilling the vigor of price competition."^[2]

What, then, should companies make of these seemingly contradictory pronouncements? How can a market participant, or a third-party intermediary who provides benchmarking services, stay on the right side of the line in the eyes of regulators and courts?

Former Safety Zones

For decades, companies relied on guidance published by the U.S. Department of Justice Antitrust Division and the [Federal Trade Commission](#), often called the safety zone or safe harbor, which included criteria for permissible information exchanges between competitors, under which:



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- A third party had to manage the exchange;
- The underlying information had to be at least three months old;
- The data had to be aggregated in a way that masked individual sources; and
- Each reported statistic had to be based on data from at least five contributing companies, with no one company's information accounting for more than 25% on a weighted basis of the statistic.[3]

If benchmarking programs met those criteria, they generally would not be challenged by the U.S. antitrust enforcement agencies.

But the DOJ and the FTC withdrew that guidance in February 2023,[4] calling it outdated and no longer reflective of market realities.[5]

The withdrawal left companies involved in competitive benchmarking without clear guidance as to what the DOJ and FTC would consider acceptable going forward.

In the years since, the DOJ filed statements of interest in private antitrust litigation spanning several industries, each offering a preview of the legal reasoning that would eventually shape the Agri Stats settlement's specific requirements.

In pork-industry litigation targeting information sharing and benchmarking involving Agri Stats, for example, the DOJ argued that aggregation alone does not immunize an exchange from liability.[6]

In a separate case, the Feb. 27 decision in *In re: Frozen Potato Products Antitrust Litigation*, concerning benchmarking among frozen potato product producers, the DOJ took the position that courts should ask whether an exchange tends to suppress competition, regardless of whether the underlying data is aggregated, anonymized or historical.[7]

But these statements did not provide the kind of specific guidance about benchmarking

program design and parameters that the former DOJ-FTC safety zone had offered.

Agri Stats Settlement Fills the Vacuum

Three and a half years later, a federal court's approval of a settlement between the DOJ and several states and a provider of benchmarking services in the agriculture sector finally may help fill that vacuum.[8]

Agri Stats is a data-sharing and consulting firm that generates benchmarking reports on pricing, output and costs in the chicken, turkey and pork industries.

The DOJ, joined by California, Minnesota, North Carolina, Tennessee, Texas and Utah, sued Agri Stats in 2023, alleging that Agri Stats facilitated the exchange of competitively sensitive price and other information among competing producers to the detriment of competition in those markets.

After three years of litigation, the court's approval of the DOJ settlement resolves those issues. The settlement comes on the heels of earlier settlements Agri Stats reached with private plaintiffs in related broiler chicken, turkey and pork price-fixing litigation.

The settlement allows Agri Stats to continue operating, but places restrictions on what types of data it may collect and report, the aggregation and aging that data must undergo before publication, and the terms on which it must make available its reports for purchase.

Collectively, these obligations mark the most granular guidance the DOJ has issued since withdrawing the safety zone on where permissible benchmarking ends and unlawful competitor information sharing begins, a distinction with real consequences for any company participating in similar data-pooling arrangements, regardless of industry.

Specifically, Agri Stats must take four steps.

Stop providing sales reports or nonpublic pricing data exclusively to producers.

The DOJ says processors systematically mined the data for opportunities to raise prices. Instead, Agri Stats must make available its distributed information to all interested domestic purchasers on reasonable, nondiscriminatory terms, which the DOJ says it expects will close the information gap and improve market transparency.

Cease reporting production, cost and labor data broken out at firm or facility level.

The DOJ says that granularity let processors fine-tune their own pricing and output based on rivals' data.

Comply with new restrictions on how current its shared information may be.

The DOJ found that near-current data let competing processors track, and coordinate, market dynamics in near real time. As a general matter, reported data must average at least 45 days old, rising to at least 90 days for data tied to production decisions.

Meet key metrics so reported data is not dominated by one or a few participants.

As a general matter, no single contributor may account for more than 70% of the data behind a report, and each reported statistic must draw from at least three contributors.

Notably, while the DOJ's 2023 withdrawal of the safety zone was generally seen as portending more restrictive enforcement going forward, some of these conditions are actually less restrictive than the former safety zone.

The former safety zone required all reported data to be at least 90 days old (not just 45), and required each data point to consist of data from at least four providers (not just three) with no single provider's data accounting for more than 25% (not 75%) of each reported statistic.

In the competitive impact statement filed in support of the settlement, The DOJ laid out the analytical framework underlying the restrictions in the settlement, explaining that information sharing among competitors threatens competition to the extent it increases market observability, the degree to which rival companies can see into one another's pricing, output, and strategic decision-making.[9]

The DOJ pointed to four attributes that drive that risk higher:

- How competitively sensitive the information is — i.e., whether it touches price, output or cost directly;

- How granular it is — broken out by company, facility, customer or product;
- How recent it is — current versus historical; and
- How reliable it is — verifiable, for instance through third-party audit.

Agri Stats' sales reports, the DOJ explained, checked every box — distributing granular, audited pricing data by company and facility on cycles as short as six to 13 days. Compounding the problem, the DOJ said, Agri Stats declined to sell those same reports to meat purchasers, workers, farmers and other market participants, creating potentially harmful information asymmetry.

Beyond the substantive restrictions it imposes, the settlement requires Agri Stats to accept an independent monitor charged with overseeing compliance, to stand up an internal antitrust compliance program, and to grant the DOJ and the plaintiff states ongoing inspection rights over its records.

Broader Lessons

The Agri Stats settlement thus may restore some modicum of predictability to both market participants and benchmarking program operators as to how the DOJ perceives the line between permissible benchmarking and an anticompetitive agreement between competitors.

To be sure, much of the content of the Agri Stats settlement is specific to the meat industry, and analyses of exposure will necessarily be industry-specific. Three broad lessons nevertheless emerge.

First, aggregating and anonymizing data is not itself a safe harbor — the resulting reports still must be structured so recipients cannot trace data back to a specific contributor.

Second, sticking to purely historical information remains good practice, though what counts as "historical" will depend on the particular industry.

Third, both sellers and buyers need equal access to reports to prevent one side from gaining an informational edge.

It is important to recognize that the DOJ's views and court approval reflected in the Agri Stats settlement do not bind the DOJ in future cases involving other companies or other industries. Nor do they eliminate potential exposure from private lawsuits alleging that benchmarking programs drove up prices to anticompetitive levels.[10]

The issues addressed by the settlement are also distinct from, though in some ways relate to, those posed by multiple competitors using algorithmic pricing software that generate price recommendations based on those companies' data.[11]

Even so, the court's approval of the Agri Stats settlement represents a significant milestone.

In an area fraught with shifting winds and uncertainty over the past few years, market participants and benchmarking providers are likely to consider it an advancement for transparency and to benefit from the concrete guidance it offers.

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[1] [United States v. U.S. Gypsum Co.](#) , 438 U.S. 422, 441 n.16 (1978).

[2] [United States v. Container Corp. of America](#) , 393 U.S. 333, 337 (1969).

[3] Department of Justice and FTC Antitrust Enforcement Policy Statements in the Health

Care Area (Sept. 15, 1993),

https://www.justice.gov/archive/atr/public/press_releases/1993/211661.htm; Statements of Antitrust Enforcement Policy in Health Care (Aug. 1, 1996),

<https://www.justice.gov/atr/media/1378581/dl>. Although these Statements were nominally directed to the health care industry, they were widely interpreted by practitioners and courts as applying more broadly.

[4] Press Release No. 23-137, Dep't of Justice, Justice Department Withdraws Outdated Enforcement Policy Statements (Feb. 3, 2023),

<https://www.justice.gov/archives/opa/pr/justice-department-withdraws-outdated-enforcement-policy-statements>.

[5] Prepared Remarks of Principal Deputy Assistant Attorney General Doha Mekki of the Antitrust Division at GCR Live: Law Leaders Global 2023 (Feb. 2, 2023) (Mekki Remarks),

https://www.justice.gov/archives/opa/speech/principal-deputy-assistant-attorney-general-doha-mekki-antitrust-division-delivers-0#_ftnref12.

[6] Statement of Interest, [In re: Pork Antitrust Litigation](#) , No. 0:18-cv-01776-JRT-JFD (D. Minn. Oct. 1, 2024), <https://www.justice.gov/atr/media/1371806/dl>.

[7] Statement of Interest, In re: Frozen Potato Products Antitrust Litigation, No. 1:24-cv-11801 (N.D. Ill. Feb. 27, 2026), <https://www.justice.gov/atr/media/1429466/dl?inline>.

[8] Order granting Motion for Entry of Final Judgment, United States v. Agri Stats Inc., No. 0:23-cv-03009 (D. Minn. Sept. 10, 2026), ECF No. 763.

[9] Competitive Impact Statement, United States v. Agri Stats Inc., No. 0:23-cv-03009 (D. Minn. Sept. 10, 2026), ECF No. 750, <https://www.justice.gov/atr/media/1442401/dl?inline>.

[10] In a recent case in the [Northern District of Illinois](#), plaintiffs accused owners of luxury hotel brands of sharing competitive pricing information about room rates. [Segal v. Amadeus IT Grp.](#), S.A., 2026 WL 879583, at *2 (N.D. Ill. Mar. 31, 2026). The district court dismissed the complaint but the case is currently on appeal.

[11] See, e.g., [Cornish-Adebiyi v. Caesars Entmt. Inc.](#) , 184 F.4th 172 (3d Cir. 2026) (reversing dismissal of complaint against casino hotels and dynamic-pricing algorithmic software provider).

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