Recent DOJ settlements, statements provide guidance to manage information sharing antitrust risk

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Two recent Department of Justice (DOJ) Antitrust Division settlements — one with rental pricing software provider RealPage and the other with meat industry benchmarking firm Agri Stats — continue antitrust enforcers' scrutiny of information sharing arrangements. Alongside other recent DOJ statements and private lawsuits, the settlements offer practical guidance for when competitor information exchanges may draw scrutiny: Risk turns on the nature of the information shared and how firms use it.

DOJ lawsuits and settlements underscore consistent themes

The DOJ sued RealPage in 2024 and Agri Stats in 2023, and the parties settled in November 2025 and May 2026, respectively. Although the industries and intermediaries differ, both matters focus on what data moved between competitors and how that data affects competitive decision-making.

RealPage involved alleged information sharing through revenue-management software for multifamily rental housing. The DOJ alleged that RealPage and landlords "unlawfully agree[d] to share and use competitively sensitive information for the properties that each landlord manages and leases." The government focused on nonpublic data used to train models and generate "price recommendations and unit-level pricing," as well as software features that allegedly aligned pricing.

According to the complaint, the software collected detailed, lease-level rents, concessions, occupancy, applications, and future availability, then used that information to generate price recommendations that suppressed competitive pricing among landlords.

The RealPage settlement targets both data use and software design. RealPage must stop using nonpublic data from competing properties — whether current or historical — when its software generates pricing recommendations, so those outputs rely only on a landlord's own data or publicly available information. RealPage may use competitor data to train its pricing algorithms only if the data is sufficiently old ("at least 12 months") and does not include information from "Active Leases."

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The decree also bars RealPage from making competitor data accessible "regardless of form, aggregation, anonymization, or age." It prohibits new market surveys for pricing or occupancy recommendations and bars RealPage-organized meetings that discuss market analyses based on nonpublic data or pricing strategies. The settlement still permits limited aged data for model training.

Agri Stats involved information exchanges among meat processors through reports and consulting. The complaint alleged that Agri Stats recruited processors "to exchange detailed information about their prices, costs, and production plans," then distributed reports that were "comprehensive, granular, current, and available exclusively to processors." The DOJ alleged that processors used the information to identify products priced below rivals, "forecast the plans of competitors," restrict production, and raise prices.

The Agri Stats settlement likewise targets the mechanics that can reduce uncertainty among competitors. It curtails the distribution of granular, nonpublic data, imposes recency limits, restricts individualized reporting, and requires increased transparency and monitoring.

DOJ lawsuits and settlements follow similar statements

The DOJ has advanced similar themes through statements of interest in private litigation. Those filings reject categorical safe harbors and instead emphasize a fact-specific inquiry that accounts for industry context and likely competitive effects.

In *In re Pork Antitrust Litigation*, for example, the DOJ argued that "information sharing alone can violate Section 1, even without proof of an agreement to fix prices." It also argued that "information exchanges that report only aggregated data can violate the antitrust laws, even where the information is not linked to specific competitors." The DOJ stressed factors such as sensitivity, granularity, public availability, and contemporariness.

[R]ecent developments provide a workable set of risk factors. Risk increases when the information is nonpublic, granular, recent, or forward-looking, particularly in concentrated markets or when exchanges reveal competitors' strategic decisions, pricing, or output.

In *In re Turkey Antitrust Litigation*, the DOJ argued that information-exchange claims are not "presumptively lawful," are not limited to individual competitors' data, and do not require direct proof of market-wide price increases. It also argued that "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."

And in *In re Frozen Potato Products Antitrust Litigation*, the DOJ again urged courts to avoid bright-line safe harbors. The statement described allegations that producers submitted weekly "sales and volume data in dollars, pounds, units, and product type" to a third-party platform and received reports comparing their own data with rivals' data. DOJ argued that courts should weigh factors such as industry structure, the nature of the information, and public availability, rather than assuming that aggregation or anonymization eliminates risk.

Recent private antitrust cases follow government enforcement trends

Recent private antitrust suits suggest that the information-sharing focus will not remain limited to government enforcement. In one recently filed class action complaint involving HVAC manufacturers, plaintiffs alleged that competitors used "frequent and repeated secret meetings, information sharing, communications, and public signaling" to coordinate price increases. The challenged information allegedly included member-only industry data, pricing intentions, and supply-related signals, and plaintiffs alleged that defendants used trade association mechanisms and public announcements to maintain price discipline.

A separate class action complaint involving convenience hardware stores alleges that a cooperative and its software provider collected current store-level price, sales, and inventory data and used it to generate reports and pricing guidance for competing stores. The theory turns on both the information and the use: detailed SKU-level, local, current, and nonpublic data allegedly allowed nearby stores to align prices and reduce local price competition.

Formal agency guidance withdrawn, but may be updated

This enforcement activity follows the antitrust agencies' withdrawal of guidance documents in this area. In 2023, the DOJ withdrew several health care policy statements, saying they were "overly permissive on certain subjects, such as information sharing." In December 2024, the agencies similarly withdrew the 2000 Antitrust Guidelines for Collaborations Among Competitors.

Those withdrawals left businesses with less formal agency guidance. The agencies appear to recognize the gap: In February 2026, they launched a joint public inquiry to update collaboration guidance. But until updated guidance issues, companies must look to statutes, case law, and enforcement actions to assess risk.

Looking ahead: Evaluating business risks

Despite the recent scrutiny, not every exchange of business information is unlawful. But the law remains unsettled: Neither *RealPage* nor *Agri Stats* reached trial, and some courts have rejected information-sharing claims where allegations lacked detail about the information shared or its use. Companies should therefore treat the settlements and statements as risk markers, not categorical rules.

Still, recent developments provide a workable set of risk factors. Risk increases when the information is nonpublic, granular, recent, or forward-looking, particularly in concentrated markets or when exchanges reveal competitors' strategic decisions, pricing, or output. Risk also increases when firms use shared information to set or recommend prices, align algorithms, monitor compliance, manage output, or discourage discounting.

Enforcers have also focused on intermediaries, software providers, and trade associations when information exchanges meaningfully reduce uncertainty among competitors or restrain independent business decision-making. Companies should review information-sharing programs, benchmarking tools, trade-association activities, and pricing software, and implement safeguards such as using public or historical data, limiting visibility into individual competitor behavior, and documenting procompetitive purposes.

Enforcers have signaled that this focus will continue, including in settings that involve algorithms and pricing software. In a May 2026 speech, DOJ Antitrust official Daniel Gladd described the core concern as "the substitution of shared

non-public competitive information for the independent decision-making that the antitrust laws require of competitors." That framing reinforces the practical compliance question: whether an exchange gives competitors a clearer view of each other's competitive choices and whether firms use it to soften competition.

Eliminating every conceivable risk is not practical; managing that risk is. Companies that ask these questions up front and build them into training and review processes will be better positioned in the current enforcement environment.

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