

# DOJ Serves Up a Statement of Interest with a Side of Fries

A photograph of a modern building's curved glass facade, showing multiple stories with windows, set against a light blue sky.

4 MIN READ

March 5, 2026, 1:14 PM

By: Lisl J. Dunlop, Kenina J. Lee, Aigerim Saudabayeva

Last Friday, the DOJ filed a Statement of Interest in *In Re Frozen Potato Products Antitrust Litigation*, a multidistrict price fixing litigation filed in the Northern District of Illinois against four producers of frozen potato products that used PotatoTrack, a third-party data analytics platform. With the food supply chain top of mind for the Trump administration, this Statement of Interest follows a series of similar statements that the DOJ has put forth in other civil litigation cases in the food and agricultural industry involving allegations of information exchange through third-party intermediaries (see, e.g., *In re Granulated Sugar* and *In Re Pork*) and reflects a continuing emphasis by the DOJ to view information exchange allegations as standalone Section 1 violations.

## ***In re Frozen Potato Background***

A class of direct purchasers (retail chain grocery stores and other food distributors) brought this case against the four dominant processors of frozen potato products, McCain, Lamb Weston, J.R. Simplot, and Cavendish Farms, who are alleged to account for nearly 98% of the annual market for frozen potato products. Each of these defendants uses and contributes data to PotatoTrack, a data analytics platform that plaintiffs claim provides its users detailed reports on other users' pricing strategy, output, product lines, and market share. With an alleged 98% market share, the four market participant defendants who used PotatoTrack were, in effect, the only producers of frozen potato products. Plaintiffs allege that in exchange for their data,

the Defendants received reports showing their data on one side and data from the three other Defendants, their sole competitors, on the other side, in turn, continuously agreeing to exchange competitively sensitive information in violation of Section 1. Further, Plaintiffs allege that access to each Defendant's competitive information "reduced uncertainty that each should have faced from not knowing what their competitors were offering, and intending to offer, with respect to the price in the Frozen Potato market." These may not be features of other information exchanges that observe the former DOJ/FTC guidelines aimed to protect against anticompetitive effects.

## **The DOJ's Statement of Interest**

The DOJ's Statement of Interest in *In re Frozen Potato* emphasizes two main points:

First, the DOJ reiterates the position it has taken in prior Statements of Interest: information exchanges can be considered "concerted action" under Section 1 of the Sherman Act where users mutually expect to receive reciprocal information. The DOJ argues that a formal agreement is not necessary to find concerted action, citing to a Supreme Court case from the 1960s for the proposition that an agreement can be inferred from "a request by each defendant of its competitor for information as to the most recent price charged or quoted, whenever it needed such information and whenever it was not available for another source." *United States v. Container Corp. of America*, 393 U.S. 333, 335 (1969). While *Container Corp.* did not involve allegations of information exchange through third parties, the DOJ nevertheless argues that concerted action can also be found when firms exchange information on the understanding that reciprocal information will be provided, even through benchmarking products.

Second, the DOJ argues that courts should not view standalone information exchange allegations with a presumption of legality and appears to argue in favor of application of the "rule of reason's 'fact-specific assessment,'" stating that there is no set list of the features an information exchange needs to have to qualify an information exchange as anticompetitive. Notably, the DOJ states that courts consider a number of factors in analyzing standalone information-exchange claims, including the structure of the industry involved, nature of the information exchanged, and whether the data are made publicly available. The DOJ argued that the potato producer defendants were "wrong" to suggest that plaintiffs could not establish anticompetitive effects despite concessions that PotatoTrack reports included only aggregated and backward-looking market data. In support of this statement, the DOJ again referred back to *Container Corp.*, noting that the alleged information exchange there, while historical, allowed defendants to determine "the current price which a customer would need to pay in order to obtain products from the defendant furnishing data." It further cited to a Second Circuit case where the information exchange claim involved a third-party aggregator, but where the defendants "received the 'data broken down to subsets consisting of as few as three competitors.'"

With the DOJ's latest Statement of Interest, and its ongoing involvement in two active litigations against third-party aggregators on information exchange theories, one of which is set for trial this May, we can expect the DOJ's heightened scrutiny to continue. The DOJ's emphasis on a fact-specific inquiry in its latest Statement of Interest, however, suggests that companies should carefully consider the facts surrounding any third-party data aggregation or benchmarking platform they use and/or contribute to, including the nature of the information

involved, number of participants, and recency of the data exchanged, to assess the relative antitrust risks of the arrangement. As evidenced in this Statement of Interest, while the DOJ does not view precautions that would have fallen under the safe harbors of the withdrawn DOJ/FTC information sharing guidelines such as backward-looking and aggregated data as necessarily sufficient to negate anticompetitive effects, it concedes that the key question is whether the exchange has a tendency to suppress competition, inviting the opportunity to show the procompetitive benefits of a specific exchange.



## Related People

---

Lisl J. Dunlop  
Kenina J. Lee  
Aigerim Saudabayeva

## Related Services

---

Antitrust

To subscribe to our publications, [click here](#).

## News & Insights

- AHLA Health Care Transactions Program 2026  
**SPONSORSHIP    ANTITRUST**
- IPWatchdog Sixth Annual Live Conference  
**SPEAKING ENGAGEMENT    INTELLECTUAL PROPERTY**
- ABA White Collar Crime Institute 2026  
**SPEAKING ENGAGEMENT**
- GCR Live Cartels: 2026  
**SPEAKING ENGAGEMENT    ANTITRUST**
- PLI Fundamentals of Taking and Defending Depositions 2026  
**SPEAKING ENGAGEMENT    LITIGATION & TRIALS**
- SCCE 14th Annual European Compliance & Ethics Institute  
**SPEAKING ENGAGEMENT    ANTITRUST**
- California Adopts Broad Premerger Notification Requirement  
**AXINN VIEWPOINTS    ANTITRUST**
- John Harkrider and Craig Minerva Win 2026 Law360 Distinguished Legal Writing Award  
**NEWS    ANTITRUST**
- Noerr Competition Day 2026  
**SPEAKING ENGAGEMENT    ANTITRUST**
- Axinn Adds Three Seasoned Antitrust Litigators, Reinforcing Trial Bench and West Coast Presence  
**NEWS    ANTITRUST**

