Antitrust Scrutiny Heightens In The Cannabis Industry

By **Robin Crauthers** (August 7, 2025, 3:44 PM EDT)

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Companies in the budding cannabis sector may be surprised to learn that their distribution, wholesale and retail partners are subject to the antitrust laws.

However, two recent cases, Redbud Roots Inc. v. Shenzhen Smoore Technology Co. and MJ's Market Inc. v. Jushi Holdings Inc. illustrate the antitrust risks associated with distribution agreements, pricing policies and exclusionary conduct in the cannabis industry.

These cases in the U.S. District Court for the Northern District of California and the U.S. District Court for the District of Massachusetts, respectively, teach companies and counsel in this space that they should be aware that the antitrust laws prohibit agreements that restrain trade under Section 1 of the Sherman Antitrust Act, and illegal monopolies under Section 2.

Redbud Roots v. Shenzhen Smoore

On April 10, Redbud Roots, a Michigan-based cannabis processor and cultivator, **filed an antitrust lawsuit** accusing Shenzhen Smoore Technology and various U.S. distributors of conspiring to fix prices, lock out competitors and allocate customers in violation of Section 1.

Redbud alleged Smoore cut off fair market access and manipulated wholesale prices.

Smoore and its distributors — Greenlane Holdings, Jupiter Research, 3Win and Canna Brand — which are direct competitors with each other at the wholesale distribution level, entered into a written and signed agreement to (1) not charge their customers below the minimum prices agreed to by all defendants, and (2) not compete with the other defendants, including Smoore's customers.

Redbud alleged the defendants' anticompetitive conduct artificially fixed the price of Smoore's vapes in violation of Section 1. Redbud further alleged that defendants agreed to a monthly price exchange and instructed their employees not to compete with one another.

Redbud's complaint also pleaded a scheme to detect and punish cheating among the horizontal competitors, including Smoore's withholding of distributors' security deposits in cases of noncompliance.

The lawsuit seeks treble damages and injunctive relief on behalf of a nationwide class of direct purchasers of Smoore-manufactured cannabis oil vaping devices sold in the United States from 2016 to present.

Smoore filed a motion to dismiss in June. Smoore's motion defends the distributor agreements as procompetitive dual distribution agreements. Dual distribution agreements are agreements between a manufacturer and a retailer or distributor where the manufacturer also competes with the distributor or retailer by selling direct.

Courts have generally found the procompetitive benefits of a dual distribution agreement outweigh any anticompetitive effect of the agreement. The defendants also argue that pricing contained in the agreements are guidelines that merely suggest pricing to the distributors, and not an agreement to set prices.

The court has not decided the motion to dismiss.

MJ's Market v. Jushi Holdings

MJ's Market Inc. alleged that Jushi Holdings Inc. conspired with Nature's Remedy sellers to prevent MJ's entry into the Tyngsborough, Massachusetts retail market.

After MJ's secured local permitting, Jushi and its partners allegedly initiated regulatory objections and state court lawsuits intended to overturn the permitting approval — actions MJ's characterized as sham petitioning to establish monopoly control. According to the complaint, Jushi acquired Nature's Remedy soon after the town approved MJ's application.

The Jushi-Nature's Remedy transaction included $15 million in additional merger consideration that was contingent on no competitors opening in the area. MJ's entry meant that the former owners of Nature's Remedy would not receive the additional $15 million consideration.

MJ's claimed that Jushi and Nature's Remedy's former owners preserved Jushi's monopoly by blocking its entry into the Tyngsborough retail market.

Jushi filed a motion to dismiss arguing, in part, that the plaintiff lacked antitrust standing and its conduct is immune under the Noerr-Pennington Doctrine, which permits government petitioning with immunity from antitrust laws. On Feb. 5, U.S. District Judge Margaret Guzman **denied** a motion to dismiss, allowing the plaintiff's Sherman Act and state antitrust claims to proceed.

The judge held that MJ's had plausibly alleged it had antitrust standing and that Jushi's conduct fell outside the Noerr-Pennington doctrine holding that the plaintiff plausibly alleged the use of sham litigation and pretextual objections as part of an exclusionary scheme. With the complaint sustained, the case has proceeded to discovery and antitrust claims are moving forward.

Conclusion

The cases above show that cannabis companies are not immune to federal or state antitrust laws. Given the expense of litigation or government investigation, companies should seek antitrust compliance training for all business people who engage with pricing, customers, distributors, wholesalers or competitors.

Counsel should review the U.S. Department of Justice Antitrust Division's recent antitrust compliance guidelines. Here are five takeaways from these matters.

Agreements

Price fixing, bid rigging or market allocating agreements are per se violations of the antitrust laws, but not all agreements violate the antitrust laws. Distribution and wholesale agreements, for example, are examined under the rule-of-reason standard, which permits defendants to put forth procompetitive justifications for entering the agreement.

Procompetitive justifications can include efficiencies, brand protection, quality protection and customer demand. Agreements between competitors therefore require careful drafting and consideration.

Merger, Acquisitions, and Transaction Agreements

Antitrust principals should be considered before including clauses in merger or acquisition agreements that are contingent on one or both of the parties engaging in conduct that restrains competition. While earnouts and contingent consideration are common in transactions, they can become problematic if the clause motivates excluding competitive entry. When antitrust enforcement agencies or courts detect these arrangements, they may view them as horizontal allocation agreements in disguise.

Pricing

Companies at each level of the distribution chain should unilaterally set their prices. Wholesalers and distributors considering resale price maintenance arrangements should note that the legality of the practice is highly jurisdictional and fact-dependent.

Competitively Sensitive Information Exchanges

The antitrust laws prohibit competitively sensitive information exchanges between competitors. Competitively sensitive information is nonpublic, granular current or future-looking information related to pricing, customers, suppliers, or any other information that would give a competitor advantage in a competitive event.

Petitioning the Government

Companies with significant market share that petition the government to protest licensing, land use permissions or other regulatory grants that would affect the competitive field should also consider the antitrust implications of the petitions.

The MJ's case underscores that Noerr-Pennington immunity does not protect all petitioning. Courts are increasingly willing to scrutinize whether lawsuits or objections are a pretext for anticompetitive exclusion, especially when tied to financial incentives or broader schemes. Companies that rely on petitioning to block competitors must ensure those actions are well founded and not strategically abusive.

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