

Walmart amplifies claims of small grocers in poultry price-fixing case

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The antitrust lawsuits against the world's largest poultry processors that are moving through an Illinois district court feature plenty of David and Goliath narratives — dozens of farmers, small grocers and regional wholesalers are being pitted against powerful conglomerates like Tyson Foods and Sanderson Farms.

But the plaintiff that has received the most attention for its claims that the poultry giants illegally colluded to set prices is itself an industry titan: Walmart.

In normal circumstances, the Arkansas-based retailer is a domineering force that isn't afraid to buy up competitors and expand to new market sectors. But in the poultry anti-trust matter it has taken up the cause of the proverbial little guy.

Legal experts say this may add credibility the overall allegations that the small number of companies controlling the broiler chicken market conspired over eight years to underpay growers and overcharge wholesalers, retailers and restaurants for their product.

The case kicked off in 2016, when foodservice distributor Maplevale Farms, Inc. sued Koch Foods, Sanderson, Tyson and several smaller processors representing almost the entire market. Also named was Agri Stats, a private statistics-sharing service owned by Eli Lilly and Co. that provides subscribers granular data about everything from egg laying to product mixes at different facilities. Several other plaintiffs — [including restaurant conglomerate Darden](#), Walmart and the two largest U.S. food distributors, US Foods and Sysco — joined.

But what has piqued the interest of anti-trust observers is that all four companies, beginning with US Foods and Sysco in 2018, filed separate suits, an indication that they are especially confident in their complaint, said Peter Carstensen, professor of law emeritus at the University of Wisconsin and a former lawyer in the Justice Department's antitrust division.

Carstensen said his "estimates of liability went up significantly" when large corporations started filing separate suits, which Walmart did in late May. In doing so, they opt out of any potential deal as part of the class action, but are still able to share information and resources with the affiliated plaintiffs in the Maplevale case, he said. And, if plaintiffs in the class action suit start settling or don't get the kind of recovery they hoped for, the big firms can forge ahead.

In its suit against the chicken processors — with the notable exemption of Tyson, which counts Walmart as one of its largest accounts — Walmart makes the same claim of injury that any small company would: that overpaying for chicken hurt its bottom line, either because it had to sell chickens to consumers at a loss or charge more while selling fewer birds.

A Walmart spokesperson said he could not comment on why Walmart named or didn't name certain defendants. By filing a separate complaint, he said, "we believe we can best protect our business."

But the irony of "concentrators" like Walmart taking legal action against other large firms isn't lost on Joe Maxwell, a fourth-generation hog farmer and long-time Missouri lawyer and politician who now serves as

the executive director of the [Organization for Competitive Markets](#), an advocacy group representing independent ranchers and farmers. But "you have to be one of the big dogs to get any reaction," he said.

That reaction may have come in the form of intervention by the Department of Justice, which issued subpoenas in the Maplevale case earlier in the year and [told the District Court of Northern Illinois in June](#) to stop discovery, which could signal the possibility of criminal charges.

"It's a predictor, but it's not a perfect predictor," said Robert Steinbuch, a professor of law at the University of Arkansas, Little Rock, said of the DOJ's actions.

In a matter with several concurrent cases, dozens of parties and a "number of moving parts," the involvement of big companies like Walmart rather than just a handful of consumers who allege they overpaid for chicken breast lends credibility to the underlying claims, he said.

"I think anything that gives the imprimatur of credibility causes the Justice Department and others to look more closely than at just an individual level," Steinbuch said.

The DOJ declined to comment on the case. For their part, Tyson and other large processors have all vehemently denied allegations of collusion and anti-competitive behavior.

Subhed: A previous successful case

Walmart was also a plaintiff in a [recent case against StarKist](#) and other companies in the highly consolidated canned tuna industry. The resulting federal investigation led to guilty pleas and millions of dollars in fines.

Maxwell said he doesn't want to discredit the Justice Department's involvement in the poultry case, but that it's clear that complaints from individuals "at lower levels in the supply chain" don't evoke the same response that those from larger corporations do.

For example, Tyson and other processors have faced numerous lawsuits over the years from growers who claim the processors require them to take out substantial loans to finance equipment and renovations that in effect tie them to the companies they contract with.

A group of farmers filed a [class action suit](#) in Oklahoma in 2017 that has yet to go to trial. They claim the companies conspired to suppress the prices paid to growers while preventing them from seeking contracts with competitors as part of so-called no-poach agreements. When they complained about this or other alleged unfair practices, they claim the companies retaliated by sending dead chicks or spoiled feed.

But cases from farmers have "led to zero action out of this administration," Maxwell said. He referenced USDA Secretary [Sonny Perdue's decision to reverse Obama-era rules](#) that made it easier for farmers to sue processors under provisions the 1921 Packers and Stockyards Act, which was drafted to curb anti-competitive behavior.

Walmart can certainly survive a hit to its bottom line much more easily than tiny regional firms or the farmers that Maxwell represents. But the optics are significant nonetheless, Carstensen said.

"When you have a company that does not like antitrust laws get involved, they're saying we've looked at the evidence and we think we've got a darn good case. These guys are not going to risk relationships without believing they have a strong case."