

# COMPETITION MATTERS

Fostering Fair Competition in the Marketplace



Spring 2020

## [Viruses are not the Only Dangers That Lurk in Times of Crisis](#)

Crises can bring out the best in people. In times of war, natural disasters, or pandemics like COVID-19, heroic individuals always seem to rise to the occasion.

All across Ohio, brave healthcare workers and first responders are putting their lives on the line to care for the sick, despite the all-too-frequent shortage of personal protective equipment (PPE). Grocery store employees and delivery workers are working long, exhausting hours to get needed food and supplies into the hands of Ohioans sequestered at home.

Sadly, crises can also tempt those with unscrupulous motives to take advantage of the situation for personal gain. For that reason, all consumers – individuals, businesses, and governmental purchasers – need to be alert and aware of the possibility of this kind of wrongdoing and to report it immediately if it occurs. Government agencies and political subdivisions should be especially watchful for the following types of schemes.

### **Schemes targeting government bodies:**

Government purchasers suffer the effects of market shortages just as much as individual consumers do. And in times of crisis, vulnerable citizens turn to government agencies, to state university hospitals, and to public assistance programs for goods and services more than ever. Take the current shortage of respirator masks, for example. This form of PPE is vital equipment for busy EMS squads, emergency room personnel, nurses, and doctors and thus is in extremely high demand at present. State and local government entities across the country, along with private healthcare providers, are desperately searching for supplies of respirator masks for their employees to no avail. Product hoarders intent on profiteering from the crisis are increasing the shortages exponentially. Spikes in demand combined with insufficient supply are a formula for drastic price increases.

Critical shortages and rising prices can trigger unsolicited e-mail messages from unfamiliar companies offering to supply the needed goods. Such offers should be treated cautiously,

however. While they *could* be legitimate, they also could be: (1) tempting, authentic-looking e-mails containing links that inject harmful malware into your system with a single click of your mouse; or (2) offers that promise to deliver goods of a certain standard or certification but in reality, deliver shoddy or even counterfeit products. Bad actors are counting on the fact that you will be distracted enough by the crisis at hand to let down your guard. Government enforcers are seeing an uptick in both types of fraudulent solicitation.

No matter how severe a shortage you are facing, give a second and third look at any unsolicited offer. Be sure your organization's anti-virus and anti-malware software is up-to-date, and seek the advice of an IT security professional if you have any doubts before clicking a link. If an unsolicited offer comes from a completely unknown source, do some checking on the web to see if they appear to be legitimate. Call the seller (don't e-mail using their links) and ask for references.

For those agencies who may have grant monies to administer during or after this crisis, remember that large pots of grant monies motivate bid-riggers and fraudulent applicants to make a play for funds that rightfully belong to others. Scrutinize those bids and applications carefully for any irregularity, ask questions, and disqualify those that fail to provide complete information.

### **Reporting suspected fraudulent or illegal activity:**

The Ohio Attorney General's Office and the United States Department of Justice are partnering to stop the unethical few from taking advantage of the COVID-19 crisis to profit at the expense of the public that you serve. We encourage you to report suspected scams to [OhioProtects.org](https://ohioprotects.org) or [Justice.gov/Coronavirus](https://justice.gov/coronavirus). Those scams could include:

- Hoarding and resale at greatly inflated prices of PPE or other products in critical shortage;
- Sales of counterfeit PPE, testing kits, or similar products;
- Suspected bid-rigging or fraudulent grant applications; or
- Marketing of claimed COVID-19 cures, vaccines, or treatments.

We need your help in finding and stopping fraudulent and anticompetitive schemes. We're in this together!

## **TV Screens and Karaoke Bars – A Strange Case of Collusion**

In a competitive market, businesses will try to attract consumers by offering low prices or improving the quality of goods or services offered, which are advantageous to consumers. When businesses abandon competition to engage in anticompetitive conduct, however, consumers are forced to pay higher prices and are deprived of new or better goods or services. As such, the antitrust laws seek to foster and protect competition among businesses by putting an end to anticompetitive conduct—such as price-fixing.

Price-fixing occurs when two or more competing businesses conspire with each other to set pricing at certain price points in order to increase revenue. Price-fixing, as a consequence, reduces the incentive for businesses to attract prospective consumers by discounting prices or improving quality, depriving consumers of the beneficial by-products of competition.

In 2012, Shiu Lung Leung, a former senior manager in the Desktop Display Business Group at AU Optronics Corp., was found guilty in federal court for participating in a scheme to fix the prices of Liquid Crystal Display (LCD) panels used in televisions, computer monitors, and smart phones. According to court documents, for years, Leung met in hotel rooms with top executives at competing companies on a regular basis. At what they called “crystal meetings,” the executives planned and coordinated how they would keep LCD panel prices high. As time passed, however, the conspirators began to worry that law enforcement might be getting suspicious. To throw the authorities off the track, they sent secretaries and other non-executive employees to exchange information and plans with their competitors at karaoke bars and tea rooms throughout Taiwan. This anticompetitive scheme occurred from about 2001 to about 2006.

In 2013, Leung was sentenced to serve 24 months in prison and to pay a \$50,000 criminal fine. Additionally, Leung’s co-conspirators were charged, pleaded guilty or been convicted, and sentenced for their participation in the price-fixing scheme.

The LCD case serves as a reminder of one of the red flags of collusion – competitors who regularly socialize with one another. While there is nothing inherently wrong with competitors who have dinner together or attend sporting events together – or whose employees sing karaoke together on a regular basis – it is something that public purchasers should document in their notes when they learn of it. It may be nothing but good fun, or it could be something more.

If you suspect unscrupulous behavior like this, or have questions about how to recognize anticompetitive activity, please call the Antitrust Section of the Ohio Attorney General’s Office at 614-466-4328.

## **[It Pays to Stay in School](#)**

Judy Green was a public schoolteacher of more than 30 years, who used her knowledge of the E-Rate program, a funding program for schools, to market an illegal bid-rigging scheme to low-income, undeserved community schools.

The E-Rate program allowed poorer community schools an opportunity to receive funding for telecommunication and Internet access. Green met many of her clients at conferences, approaching school administrators and offering to help their schools obtain E-Rate funding. Green benefited by assisting her clients with the application because it was a complicated

process and the instructions were less than clear. She manipulated the application if it was questioned or reviewed.

To qualify for E-Rate funding, the schools needed to pay a 10% co-pay of the costs and equipment. Green promised that the co-pay would be forgiven. To do this, Green selected contractors who would offer to donate “bonus” equipment such as personal computers, monitors and a variety of equipment that benefited from internet connections. This “bonus” equipment was considered “ineligible” for E-rate funds.

Green’s scheme involved bid-rigging, using complex Request for Proposals, commonly known as “RFPs.” The specifications for the projects were “ridiculous” and deterred responses from competitors, which limited competition. Green’s selected contractors received an advanced copy of the RFPs and worked to her specifications. The contractors would submit their bids as instructed by Green, inflating their bids to cover the cost of the “bonus” equipment promised by Green. Green orchestrated many parts in obtaining funding for the school. In the end, the districts would choose Green’s choice of contractor to implement their technology projects.

In September 2007, Judy Green was convicted of 22 counts of fraud, bid-rigging and conspiracy to commit wire fraud. Green controlled the bidding process and was instrumental in “multiple bid-rigging conspiracies.” This anticompetitive behavior is prohibited under the Sherman Act.

Green’s story serves as an important reminder for all public entities. Use extra caution when considering whether to contract with consultants who make unsolicited offers to help you secure grant money or other funding.

The Ohio Attorney General’s Office has received recent reports of aggressive consultants who have succeeded in getting paid for services that either aren’t really needed, are of poor quality, or both. Sadly, public schools seem to be a favorite target of these individuals.

Many consultants are honest and provide great value to their public entity clients. Green was not one of them. Let’s hope this former teacher has now been educated regarding the law.