

Resources

Supply Shocks: Possible Legal Fallout from Recent Hurricanes and Tropical Storms for Suppliers and Manufacturers

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Dykema is closely monitoring the potential threat of legal fallouts in the wake of supply shocks caused by Hurricane Harvey and the other hurricanes and tropical storms threatening North America. One fallout seen already is the declaration of force majeure by some suppliers. The Dykema commercial litigation department has prepared a “tip sheet” on disaster-related force majeure declarations. For a copy of this “tip sheet,” please click [here](#).

In addition, supply shocks often tempt competing suppliers to collude on price increase announcements or tempt purchasers to develop a collective response targeted at suppliers of impacted products or raw materials. For example, in the wake of prior storms impacting the gulf coast and the Japanese tsunami, we have seen antitrust government investigations and/or lawsuits involving producers of polyurethane and other chemicals; producers of products incorporating petroleum-based chemicals; providers of construction services and materials; and gasoline retailers and wholesalers.

Purchasers of potentially impacted raw materials and products should be alert to price increase announcements from suppliers that appear to be coordinated (in terms of timing and/or amount). You may want to pursue these matters with the appropriate state or federal authorities.

This might also be a particularly good time to remind your procurement and sales personnel to be extremely cautious in communicating with competitors and purchasers of raw materials and products potentially impacted by supply shocks. For example, sales personnel from competing companies may attempt to coordinate price increase announcements. Procurement personnel may be tempted to coordinate with other purchasers of similar materials (including purchasers that may not be in the same industry) to jointly resist raw material price increases. These activities may expose the participating companies and personnel to criminal and/or civil liability under applicable state and federal antitrust laws.

The antitrust laws apply in full force to anticompetitive collusion among competing sellers or purchasers, regardless of whether the collusion was in response to supply shocks that commonly impact competing buyers and sellers.

While price fixing, bid rigging, output restrictions and market and customer allocation are *per se* illegal, there may be permissible joint, efficiency-enhancing, activities that competing suppliers and purchasers can undertake in response to supply shocks caused by hurricanes and tropical storms. It is advisable to carefully analyze proposed joint activities to ensure that they do not stray into potentially anticompetitive collusive activities.

For more information on these topics, please contact Laura Baucus (248-203-0796 or lbaucus@dykema.com), Howard Iwrey (248-203-0526, hiwrey@dykema.com), or your Dykema relationship attorney.

Attorneys

Laura C. Baucus

Howard B. Iwrey

Practice Areas

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