

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re PVC Pipe Antitrust Litigation

THIS DOCUMENT RELATES TO:

All Actions

Case No. 1:24-cv-07639

Hon. LaShonda A. Hunt

PUBLIC REDACTED VERSION

MEMORANDUM OF LAW
IN SUPPORT OF OPPOSED MOTION BY PIPELIFE JET STREAM, INC.
TO DISMISS PLAINTIFFS' CONSOLIDATED CLASS ACTION COMPLAINTS

Defendant Pipelife Jet Stream, Inc. (“Jet Stream”) moves to dismiss Plaintiffs’ Consolidated Class Action Complaints¹ under Federal Rule of Civil Procedure 12(b)(6) for failing to state a claim against Jet Stream. Jet Stream joins Defendants’ joint motion to dismiss but writes separately to highlight how Plaintiffs’ complaints are particularly deficient as to Jet Stream.

Even based on Plaintiffs’ telling, Jet Stream was nothing more than a bit player in the PVC marketplace. [REDACTED] NCSP Comp. ¶ 214, it sold only municipal PVC pipe (and not plumbing pipe or conduit), *id.* ¶ 119 & Fig. 9, it is not a vertically integrated producer of both PVC resin and PVC pipe, *id.* ¶ 575, and thus lacked any alleged ability to use PVC resin sales to monitor and enforce any alleged agreement, *id.* ¶ 580, and in every instance in which Plaintiffs allege Jet Stream announced a price increase, it was merely following price increases announced by other converters. *See* § A, *infra*. Merely imitating competitors and practicing follow-the-leader pricing in a market Plaintiffs allege to be concentrated, *see, e.g.*, DPP Compl. ¶ 277, is rational profit-maximizing conduct and not, as a matter of law, supportive of knowing participation in any conspiracy. *See In re Text Messaging Antitrust Litig.*, 782 F.3d 867, 871 (7th Cir. 2015) (“[T]he fewer the firms, the easier it is for them to engage in ‘follow the leader’ pricing . . . which means coordinating their pricing without an actual agreement to do so.”).² And Plaintiffs’ allegations establish only that Jet Stream communicated with Donna Todd to understand prevailing conditions

¹ As in Defendants’ joint brief, Jet Stream refers herein to (1) the self-styled “Non-Converter Seller Purchaser Class Plaintiffs” Corrected Second Consolidated Class Action Complaint, ECF No. 467, as the “NCSP Compl.,” (2) the End User Class Plaintiffs Consolidated Class Action Complaint, ECF No. 398, as the “EUCP Compl.,” and (3) the Direct Purchaser Plaintiff Class Second Consolidated Amended Class Action Complaint, ECF No. 360, as “DPP Compl.”

² *See also In re Text Messaging*, 782 F.3d at 879 (“We can . . . , without suspecting illegal collusion, expect competing firms to keep close track of each other’s pricing and other market behavior and often find it in their self-interest to imitate their behavior.”); *Kleen Prods., LLC v. Int’l Paper*, 276 F. Supp. 3d 811, 819 (N.D. Ill. 2017) (“[A] firm may follow a competitor’s lead in pricing and production. . . . However it is referred to, the crucial thing is that such conduct is lawful.”), *aff’d sub nom., Kleen Prods. LLC v. Ga.-Pac. LLC*, 910 F.3d 927 (7th Cir. 2018).

in the market, not to coordinate price increases, conduct that does not support its plausible participation in any alleged conspiracy.

Plaintiffs' Sherman Act and state law claims should be dismissed.

A. Allegations that Jet Stream Was Merely A Bit Player and Pricing Follower Do Not Establish Its Participation in Any Conspiracy.

Plaintiffs' allegations establish the following about Jet Stream:

- It is a small producer of PVC pipe. *See* NCSP Compl. ¶ 214 ([REDACTED]); EUP Compl. ¶ 432 (identifying “top five producers of PVC Municipal Pipe,” a list that does not include Jet Stream).
- As a producer of primarily only municipal pipe, *see* NCSP Compl. ¶ 119 & Fig. 9, [REDACTED]. *Id.* ¶¶ 271, 428 (plumbing pipe) & *id.* ¶ 395 (conduit); *see also id.* ¶ 186 ([REDACTED]).
- Jet Stream does not produce PVC resin, *see* NCSP Compl. ¶ 575, an important input to production of PVC. *See, e.g.,* DPP Compl. ¶ 13 (stating that resin is a “primary input” into PVC pipes). Plaintiffs allege “[u]pon information and belief” that vertically integrated PVC producers used resin production as an “enforcement mechanism” by reducing supply to other PVC producers or monitoring their resin use. NCSP Compl. ¶ 580. Because it does not produce PVC resin and relies on larger companies (including competitors) for resin supply, Jet Stream could not engage in the strategic use of resin supply Plaintiffs assert contributed to their alleged conspiracy.
- During the period in which Plaintiffs allege PVC prices increased significantly, Jet Stream operated under capacity constraints that eliminated any incentive to reduce price in order to increase sales. *See* NCSP Compl. ¶ 333 ([REDACTED]); DPP Compl. ¶ 118 [REDACTED].

██████). Under these conditions, when Jet Stream was selling all it could produce at prevailing prices, following market prices was the only economically rational course for Jet Stream.

As a consequence of its small size, sales of only municipal PVC pipe, and dependence on other competitors, Jet Stream was only a follower of market pricing during the period in which Plaintiffs allege prices increased significantly. As the following chart summarizes, Plaintiffs do not allege a single instance over a three-year period in which Jet Stream was the first converter to raise its prices. Based on Plaintiffs' allegations, Jet Stream was merely reacting to others' increases previously disclosed or reported by Donna Todd.³

Date of Alleged Jet Stream Price Increase	Converters Jet Stream Followed	Citation to Plaintiffs' Complaints
██████	██████	DPP Compl. ¶ 118
██████	████████████████████	NCSP Compl. ¶ 262
██████	████████████████████	NCSP Compl. ¶¶ 265–68
██████	████████████████████	NCSP Compl. ¶¶ 326–27
██████	████████████████████	NCSP Compl. ¶¶ 330–31
██████	████████████████████	EUP Compl. ¶ 342
██████	████████████████████	NCSP Compl. ¶ 373
██████	████████████████████	EUP Compl. ¶¶ 290, 354–58
██████	████████████████████	DPP Compl. ¶ 201, 204–06
██████	████████████████████	NCSP Compl. ¶ 457–58
██████	████████████████████	EUP Compl. ¶¶ 399–400; DPP Compl. ¶ 215
██████	██████	EUP Compl. ¶ 409; NCSP Compl. ¶ 461b
██████	████████████████████	DPP Compl. ¶¶ 231–34

³ NCSP Plaintiffs allege that *PVC & Pipe Weekly* reported on November 5, 2021 that ██████████. NCSP Compl. ¶ 263. ██████████. In any event, “a firm acting independently may choose to raise prices . . . because it anticipates (or hopes) that its competitors, likewise acting independently and in their best interests may follow the same course of action” and such behavior “does not evidence coordination.” *Kleen Prods., LLC*, 276 F. Supp. 3d at 819.

As Judge Posner observed in *Text Messaging*, following other competitors' pricing is rational behavior for a market participant acting independently, 782 F.3d at 871–72.⁴ As such, it “falls short” of establishing its plausible participation in any alleged conspiracy. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553–54 (2007).⁵

B. Jet Stream's Communications with Donna Todd Do Not Support Its Participation in Any Conspiracy.

Plaintiffs allege no communications between Jet Stream and any other PVC producer. Their claims as to Jet Stream are based on (1) periodic price increase announcements shared with and disseminated by Donna Todd to a large group of companies including Jet Stream's customers, and (2) four inquiries by Jet Stream employees to Donna Todd concerning what other converters were charging. Neither supports Jet Stream's plausible participation in any alleged conspiracy.

As explained in Defendants' joint motion, pricing announcements, including those from Jet Stream, that Donna Todd shared via her email distribution lists were hardly non-public, competitively sensitive information. *See* Mem. of L. in Supp. of Defs.' Mot. to Dismiss at 8, 22. Plaintiffs themselves acknowledge that [REDACTED], *see, e.g.* NCSP Compl. ¶¶ 13, 241, and that [REDACTED]. *Id.* ¶¶ 428, 430. Public announcements of price increases do not support an inference of an agreement concerning those

⁴ *See also Kleen Prods.*, 910 F.3d at 935 (observing that following price increases “can be consistent with rational self interest” and a firm might “reach that conclusion without any conscious coordination with competitors”); *Wash. Cnty. Health Care Auth., Inc. v. Baxter Int'l Inc.*, 328 F. Supp. 3d 824, 832 (N.D. Ill. 2018) (dismissing complaint after finding that one competitor following the lead of another in a concentrated market would have been in each company's “independent interests [and] not particularly probative of collusion”).

⁵ In addition to being only a follower of other converters' prices, Jet Stream was not even a consistent follower of others' prices, reflecting that its pricing decisions were made independently and not pursuant to any agreement with competitors. *See* NCSP Compl. ¶ 217 ([REDACTED]); *id.* ¶ 393 ([REDACTED]).

prices. *See Rsr. Supply Corp. v. Owens-Corning Fiberglas Corp.*, 971 F.2d 37, 53 (7th Cir. 1992). And circulation of publicly available information does not establish a plausible conspiracy claim. *See Maple Flooring Mfrs. Ass'n v. United States*, 268 U.S. 563, 582–83 (1925).

Other than communications containing Jet Stream's pricing announcements, Plaintiffs allege only the following four communications between Jet Stream employees and Donna Todd:

- [REDACTED]

[REDACTED]

[REDACTED]. EUP Compl. ¶ 248; DPP Compl. ¶ 100.

- [REDACTED]

[REDACTED]. *Id.* ¶ 120.

- [REDACTED]

[REDACTED]. *Id.* ¶ 183.

These four communications over a four-year period constituted the kind of competitive intelligence gathering that is not only lawful, but essential for independent pricing decisions. Based on Plaintiffs' own allegations, these activities were necessitated by the fact that [REDACTED] [REDACTED], *see, e.g.*, NCSP Compl. ¶ 217 [REDACTED] [REDACTED]. *See, e.g.*, EUP Compl. ¶ 186. As explained in Defendants' joint motion, inquiries intended to inform individual pricing decisions are not indicative of any conspiracy. *See* Mem. in Supp. of Defs.' Mot. to Dismiss at 22–24.

C. Conclusion

For the foregoing reasons, and for those stated in Defendants' joint motion (which Jet Stream joins), Plaintiffs' Sherman Act and state law claims against Jet Stream should be dismissed.

Dated: October 30, 2025

Respectfully submitted,

s/Timothy Ray

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