

Appendix A

1 INSTRUCTION NO. 16

2 PRICE FIXING

3 The Indictment charges the defendants with conspiring to fix prices. A conspiracy to fix
4 prices is an agreement or mutual understanding between two or more competitors to fix, control,
5 raise, lower, maintain, or stabilize the prices charged, or to be charged, for products or services.

6 The aim and result of every price-fixing agreement, if successful, is the elimination of
7 one form of competition.

8 A price-fixing conspiracy is commonly thought of as an agreement to establish the same
9 price; however, prices may be fixed in other ways. Prices are fixed if the range or level of prices
10 is agreed upon by the conspirators. They are fixed because they are agreed upon. Thus, any
11 agreement to raise or lower a price, to set maximum prices, to stabilize prices, to set a price or
12 price range, or to maintain a price is illegal.

13 If you should find that the defendants entered into an agreement to fix prices, the fact
14 that the defendants or their coconspirators did not abide by it, or that one or more of them may
15 not have lived up to some aspect of the agreement, or that they may not have been successful in
16 achieving their objectives, is no defense. The agreement is the crime, even if it is never carried
17 out.

18 If the conspiracy charged in the Indictment is proved, it is no defense that the
19 conspirators actually competed with each other in some manner or that they did not conspire to
20 eliminate all competition. Nor is it a defense that the conspirators did not attempt to collude
21 with all of their competitors. Similarly, the conspiracy is unlawful even if it did not extend to
22 all products sold by the conspirators or did not affect all of their customers.

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24 AUTHORITY: ABA Section of Antitrust Law, *Model Jury Instructions in Criminal Antitrust*
25 *Cases 57* (2009).