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## Kuehne & Nagel Pays \$28M To End Cargo Price-Fixing Claims

By **Megan Leonhardt**

Law360, New York (September 14, 2012, 4:54 PM ET) -- Kuehne & Nagel International AG on Friday agreed to pay \$28 million to settle antitrust claims in a proposed class action that the company conspired with a slew of other companies to fix prices in the international freight forwarding industry.

The Switzerland-based shipping logistics company reached an agreement to exit a civil suit that claimed Kuehne & Nagel's surcharges for freight forwarding services violated the Sherman Act, according to a statement released Friday.

"With this settlement we will be able to finally conclude the painful litigation in the U.S. related to past antitrust allegations," Kuehne & Nagel Chairman Karl Gernandt said.

Under the terms of the settlement — which still requires court approval — Kuehne & Nagel will pay \$28 million, as well as any proceeds won from a pending related class action against airlines.

The suit was lodged in January 2008, accusing the freight forwarders of using the trade group Freight Forward International — whose members together control more than 25 percent of the market share in air freight forwarding — to "meet and engage in collusive conduct under the pretext of engaging in lawful activity."

"Beginning at least as early as Jan. 1, 2001, and continuing until the present, the exact dates unknown to plaintiffs at this time, defendants engaged in a continuing conspiracy or combination in restraint of trade in violation of the Sherman Act," according to an amended complaint filed in October 2010.

Several defendants have already reached settlements in order to exit the class action, including Japanese freight forwarder United Aircargo Consolidators Inc. and Expeditors International of Washington Inc. U.S. District Judge John Gleeson preliminarily signed off on United Aircargo's \$295,000 deal on Wednesday, while Expeditors International gained preliminary approval in May.

Friday's settlement is not the first time Kuehne & Nagel has paid to settle antitrust claims over its freight forwarding. The company already agreed to pay \$9.9 million in September 2010 to settle similar criminal allegations that alleged Kuehne & Nagel and five others took part in one or more price-fixing conspiracy between 2002 and 2007.

In addition to Kuehne & Nagel, BAX Global Inc. EGL Inc., Geologistics International Management (Bermuda) Ltd., Panalpina World Transport (Holding) Ltd. and Schenker AG were each charged with price-fixing in violation of the Sherman Act, which carried a maximum fine

of \$100 million per offense.

According to the DOJ, the companies conspired to impose fees on customers purchasing international freight-forwarding services for air cargo to the U.S. by agreeing during meetings to coordinate various charges on customers purchasing these services, among other things.

One tactic several of the companies employed was conspiring to charge customers a fee on shipments to the U.S. to cover the cost of complying with a mandate that U.S. Customs and Border Protection be notified via the Air Automated Manifest System of the contents of a shipment as many as four hours prior to its arrival in the country.

Other alleged conspiracies involved imposing a New Export System fee on air shipments from the U.K., slapping a Currency Adjustment Factor fee on air shipments from China and adding a Peak Season Surcharge fee to shipments from Hong Kong.

Attorneys for the parties were not immediately available for comment Friday.

The plaintiffs are represented by Lockridge Grindal Nauen PLLP, Gustafson Gluek PLLC, Lovell Stewart Halebian Jacobson LLP and Cotchett Pitre & McCarthy LLP.

Kuehne & Nagel is represented by David K. Monroe of Galland Kharasch Greenberg Fellman & Swirsky PC and by Richard B. Cooper of Cooper Brown & Behrle PC.

The case is Precision Associates Inc. et al. v. Panalpina World Transport (Holding) Ltd. et al., case number 1:08-cv-00042, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Bill Donahue and Django Gold. Editing by John Quinn.

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