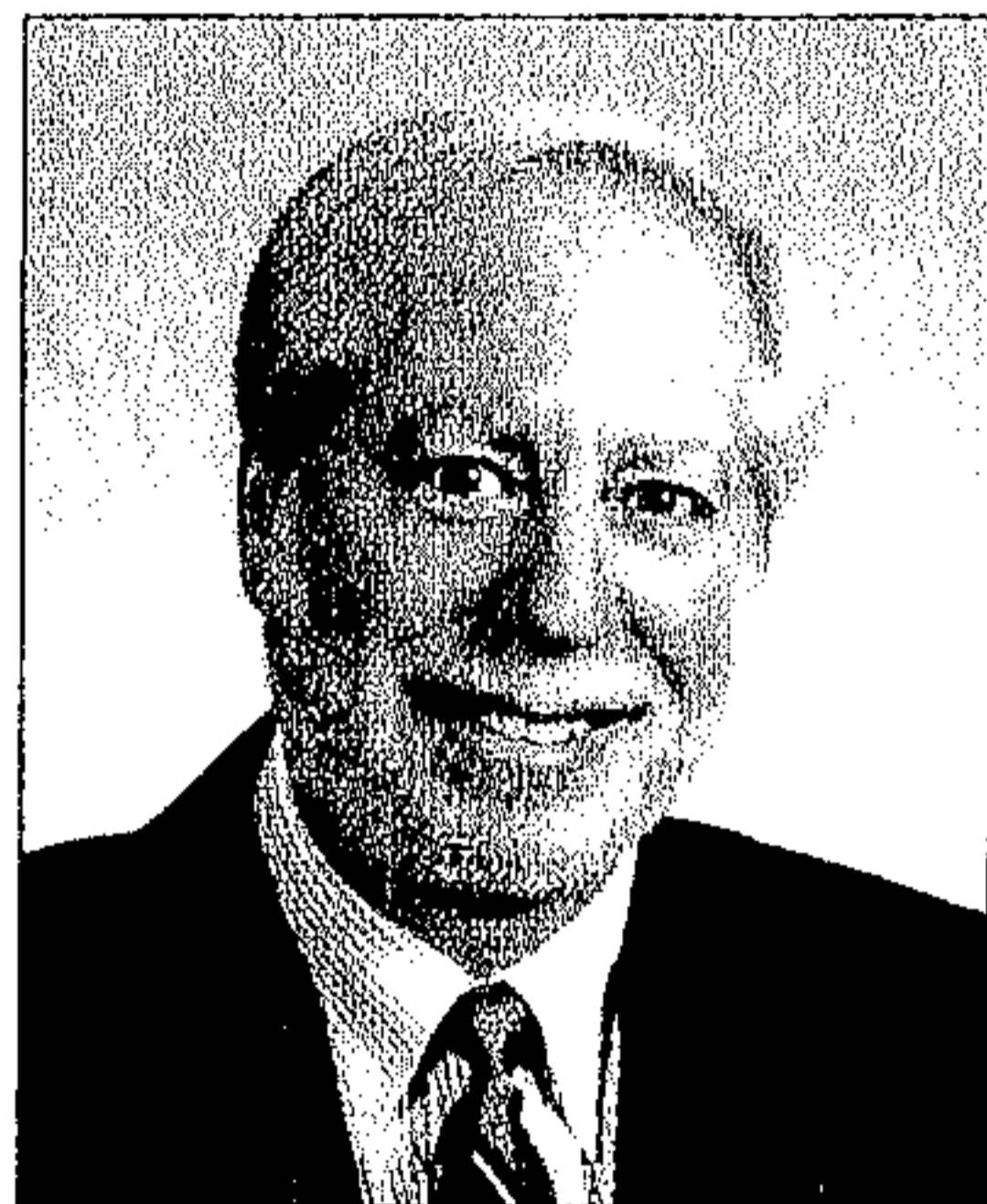


FTC Investigation Update: A Light at the End of the Tunnel?



Former FTC attorney David Federbush.



NAMM lawyer Veronica Kayne.



Law professor Jubba Ghosh.

There have been multiple developments on the ongoing FTC investigation into the music products industry, and the smoke is clearing to cull facts from wild guesses, reality from rumors. And according to a law professor and a former Federal Trade Commission (FTC) lawyer, any hope this investigation would be defused by the recent Supreme Court decision that to some extent allows manufacturers to set prices on their products has turned out to be wishful thinking.

Most important, some closest to the case are now betting on a dismissal, and in the not-to-distant future.

NAMM president and CEO Joe Lamond saw fit to devote the opening portion of his Summer NAMM state-of-the-industry address to a Q&A with NAMM's attorney Veronica Kayne of the law firm Haynes and Boone on the issue. Lamond set the tone by acknowledging the investigation "has cost into the six figures in legal fees" for several companies and organizations.

At the core it all comes down to this: are music instrument makers conspiring to fix prices?

We do know that the FTC has recently "narrowed the scope" of the investigation and is focusing on investigating the possibility of price-fixing as it relates to MAP, and looking into whether or not competitors are talking to each other illegally in this regard. "My best guess is that the FTC is not interested in any one manufacturer's

policy," Kayne said. "They are looking at parallel or collusive activities with respect to Minimum Advertised Price (MAP) policy," she added at a July 27th NAMM breakfast meeting. She termed this focus as an investigation of "horizontal" conduct (manufacturer-to-manufacturer) as opposed to "vertical" conduct among manufacturers, distributors, and retailers.

An *MMR* source close to the case and speaking on the condition anonymity said that the FTC is in fact comparing apples and oranges — they are not comparing the pricing activities of one guitar maker to another, for example, but comparing a guitar maker to a brass instrument maker. It's as if they don't understand the differences between the instruments or that they'd be absolutely no benefit for a pro audio company to be in cahoots with a string instrument manu-

