



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2011 PERFORMANCE BUDGET**

Antitrust Division

FY 2011 Congressional Budget Submission

Table of Contents

I. Overview	2
A. Introduction	2
B. Issues, Outcomes, and Strategies	4
C. Full Program Costs	13
D. Performance Challenges	14
II. Appropriations Language and Analysis of Appropriations Language	14
III. Decision Unit Justification	15
A. Decision Unit: Antitrust	15
1. Program Description	15
2. Performance and Resource Tables	19
3. Performance Measurement Framework	27
4. Performance, Resources, and Strategies	28
5. Exemplars - Civil	32
6. Exemplars – Criminal	34
7. Program Assessment	38
IV. Exhibits	39
A. Antitrust Division Organization Chart	
B. Summary of Requirements	
C. Program Increases by Decision Unit - <i>Not Applicable</i>	
D. Resources by DOJ Strategic Goal/Objective	
E. Justification for Base Adjustments	
F. Crosswalk of 2009 Availability	
G. Crosswalk of 2010 Availability	
H. Summary of Reimbursable Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Increases/Offsets – <i>Not Applicable</i>	
K. Summary of Requirements by Grade	
L. Summary of Requirements by Object Class	
M. Status of Congressionally Requested Studies, Reports, and Evaluations – <i>Not Applicable</i>	

I. Overview

A. Introduction

The Antitrust Division takes very seriously its mission to promote competition in the U.S. economy through enforcement of, improvements to, and education about antitrust laws and principles. Its vision is an environment in which U.S. consumers receive goods and services of the highest quality at the lowest price and sound economics-based antitrust enforcement principles are applied. The Division supports the Department's Strategic Goal II, Objective 2.7, "Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction." Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.usdoj.gov/jmd/2011justification/>.

To perform its mission effectively and achieve its goals in the face of an increasingly complex and global economy, the Division must expend significant resources. In recent years, the Division has aggressively pursued far-reaching criminal cartel activity and important civil matters while reviewing a large number of premerger filings, many involving complex issues and global conglomerates. Merger volume steadily increased from 2003 through the first half of 2008, falling off at the end of 2008 because of worsening economic conditions. Merger volume picked-up toward the end of 2009 as credit markets continued to recover and cash-rich companies regained confidence in the economy. This upward trend is expected to continue in 2010 and 2011. To administer its caseload, the President's Budget includes \$167.028 million in FY 2011, reflecting an increase of \$3.858 million over the FY 2010 President's Budget Request.

It is critical that the Division have adequate resources to keep abreast of a workload, which more and more involves large, multi-national corporations and anticompetitive behaviors that are pervasive and difficult to detect. By protecting competition across industries and geographic borders, the Division's work serves as a catalyst for economic efficiency and growth with benefits accruing to both American consumers and American businesses.

- In FY 2009, as a result of the Division's efforts, just over \$1 billion in criminal fines were obtained against antitrust violators. This amount helped the Department substantially in offsetting spending in various priority programs and becomes available to the Congress in funding the Department's Crime Victims Fund.
- Electronic storage capability, vital to the mission of the Antitrust Division, continues to expand significantly, growing exponentially since FY 2003, when 12 terabytes (12 trillion bytes) of storage capacity readily satisfied Division requisite demands. Within six short years, demand grew by 738 percent and by FY 2009 storage and processing requirements surpassed 100 terabytes. The Division expects its electronic storage capacity requirements to nearly double by FY 2013 when it anticipates the need to support up to 180 terabytes of storage.
- **Financial Rescue Effort** - During the recent economic turmoil, the Federal Reserve Bank consulted with the Antitrust Division on proposed large commercial and investment bank consolidations. These reviews, (Bank of America, Merrill Lynch, Lehman Brothers, Barclays, Goldman Sachs, Morgan Stanley, Citigroup, Wachovia and Wells Fargo) required short, statutorily-mandated turnaround times.

Information Technology (IT) Expenditures

The Antitrust Division's FY 2011 budget request does not include IT enhancements and its steady-state IT budget will continue to support several broad Information Technology areas essential to carrying out its mission. These Information Technology areas include:

- *Office Automation* - - Providing staff technological tools comparable to those used by opposing counsel, thereby ensuring equitable technological capabilities in antitrust litigation. These tools are used for desktop data review and analysis, computer-based communication, the production of time-critical and sensitive legal documents, and preparing presentations and court exhibits.
- *Litigation Support Systems* - - Providing litigation support technologies that encompass a wide range of services and products that help attorneys and economists acquire, organize, develop, and present evidence. Providing courtroom presentation and related training to the legal staff to develop staff courtroom skills and practice courtroom presentations using state-of-the-art technology.
- *Management Information Systems* - - Developing, maintaining, and operating data and information systems which support management oversight, direction of work, budget, and resources of the Division. Various tracking systems help ensure timely and efficient conduct of the Division's investigations through use of automated, web-based tools.
- *Telecommunications* - - Developing, providing, maintaining, and supporting networks and services required for voice and data communications among the Division's offices and with outside parties.
- *Data Storage* – Storing increasingly large amounts of electronic discovery submitted by parties under investigation by the Division. The IT revolution has vastly increased the amount of information that business entities produce and store, and it is a significantly increasing challenge for the Division to keep up with these huge volumes of information.
- *Data Security* - - Monitoring and effecting actions to ensure that system design, implementation, and operation address and minimize vulnerabilities to various threats to computer security, including carrying out security planning, risk analysis, contingency planning, security testing, intrusion detection, and security training.
- *Web Support* – Developing and maintaining the Division's Internet and ATRnet sites. Posting case filings and documents related to cases and investigations on these sites; designing and developing new pages, and updating existing pages, ensuring that the sites comply with Web standards and guidelines, including guidelines for usability and accessibility.

B. Issues, Outcomes, and Strategies

Fundamental changes continue in the business marketplace, including the expanding globalization of markets, increasing economic concentration across industries, rapid technological change, significantly expanding numbers of business bankruptcies and failing firms, and substantial government investment in previously private business enterprise. These factors, added to the existing number and intricacy of our investigations, significantly impact the Division's overall workload. Many current and recent matters demonstrate the increasingly complex, large, and international nature of the matters encountered by the Division, as the following table and exemplars indicate.

Enforcement Program	Major Matter Exemplars
Criminal DOJ Strategic Goal II Objective 2.7	Airline Passenger and Cargo Pricing (see Exemplar - pg. 34) Economic Recovery Initiative (see Exemplar - pg. 36)
Civil Merger/Non-Merger DOJ Strategic Goal II Objective 2.7	JBS S.A./National Beef Packing Company (see Exemplar - pg. 32) PNC Financial Services Group/National City Corporation (see Exemplar – pg. 32) Google, Inc. and Yahoo!, Inc. (see Exemplar – pg. 33) National Association of Realtors (NAR) (see Exemplar – pg. 33)

Globalization

Corporate leaders have increasingly come to realize that a global presence is necessary for long-term economic success. More and more companies from around the world are transacting a significant portion of their business in other countries. Nowhere is this more evident than in the United States where international trade (defined as exports and imports of goods and services) was \$3.5 trillion in FY 2009.¹

The internationalization of the business marketplace has had a direct and significant impact on antitrust enforcement in general, and specifically, on the Division's workload. A significant number of the premerger filings received by the Division involve foreign acquirers, acquirees, major customers and competitors, and/or divestitures. However, it is not just our merger program that has been impacted by widespread globalization

¹United States Department of Commerce, Bureau of Economic Analysis, "U.S. International Trade in Goods and Services", <http://www.bea.gov/newsreleases/international/trade/2009/pdf/trad1009.pdf>, December 2009.

In our criminal enforcement program, the Division has witnessed a tremendous upsurge in international cartel activity in recent years. The Division places a particular emphasis on combating international cartels that target U.S. markets because of the breadth and magnitude of the harm that they inflict on American businesses and consumers. Of the grand juries opened in FY 2009, **48 percent** were associated with subjects or targets located in foreign countries and of the approximate **\$5.7 billion** in criminal antitrust fines imposed by the Division between FY 1997 and the end of FY 2009, approximately **97 percent** were imposed in connection with the prosecution of international cartel activity. In addition, the Division increased the number of foreign nationals prosecuted and sent to jail in connection with its cartel investigations. Approximately **43 foreign defendants** from Canada, France, Germany, Japan, South Korea, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom have served, or have been sentenced to serve, prison sentences as a result of the Division's cartel investigations.

A little more than a decade ago, the largest corporate fine ever imposed for a single Sherman Act count was \$6 million. However, in the past ten years, fines of \$10 million or more have become commonplace, with the Division now obtaining fines of more than \$100 million. In FY 2009, as the result of Division enforcement efforts, a total of nearly **\$1 billion** in criminal fines were assessed against antitrust violators, including a single fine of **\$400 million** assessed against LG Display Co., Ltd. /LG Display America, the second largest criminal fine in Antitrust Division history. In FY 2008, as a result of the Division's ongoing investigation of the Air Transportation industry, a fine of **\$350 million** was imposed on Air France-KLM. This fine was the third largest criminal fine in Antitrust Division history. These fines are eclipsed only by the \$500 million fine imposed in 1999 against F. Hoffmann-La Roche for its participation in the vitamins cartel. The impact of these heightened penalties has been an increase in the participation of large firms in the Division's Corporate Leniency Program, bringing more and larger conspiracies to the Division's attention before they can inflict additional harm on U.S. businesses and consumers.

Our work no longer takes place solely within the geographic borders of the U.S. In our enforcement efforts we find parties, potential evidence, and impacts abroad, all of which add complexity, and ultimately cost, to the pursuit of matters. Whether that complexity and cost results from having to collect evidence overseas or from having to undertake extensive inter-governmental negotiations in order to depose a foreign national, it makes for a very different, and generally more difficult investigatory process than would be the case if our efforts were restricted to conduct and individuals in the U.S. The markets and competitors affecting U.S. businesses and consumers are more international in scope, and the variety of languages and business cultures that the Division encounters has increased. Consequently, the Division must spend more for translators, interpreters, and communications, and Division staff must travel greater distances to reach the people and information required to conduct an investigation effectively and expend more resources to coordinate our international enforcement efforts with other countries and international organizations.

International Competition Advocacy - The Antitrust Division is actively working with international organizations to encourage the adoption, regulation, and enforcement of competition laws as worldwide consensus continues to grow that international cartel activity is pervasive and is victimizing consumers everywhere. Total cartel sales of \$1.2 trillion in 2005 contained illegal overcharges of \$300 billion, a 25 percent premium paid for by consumers and businesses worldwide.² The Antitrust Division's commitment to detect and prosecute international cartel activity is shared with foreign governments throughout the world, resulting in the establishment of antitrust cooperative agreements among competition law enforcement authorities across the globe. Since 1999, the Division has entered into antitrust cooperation agreements with four foreign governments – Brazil, Israel, Japan, and Mexico. These agreements complement agreements previously reached with Australia, Canada, the European Union, and Germany.

In addition, as encouraged by the Division, antitrust authorities around the world are becoming increasingly aggressive in investigating and punishing cartels that adversely affect consumers. As effective global cartel enforcement programs are implemented and criminal cartel penalties adopted, the overall detection of large criminal conspiracies increases along with the Division's ability to collect evidence critical to its enforcement efforts on behalf of American consumers. Successes in this area of competition advocacy include:

- In January 2007, Australia expanded its amnesty policy which is now consistent with the United States, United Kingdom, European Union, and Canada.
- Antitrust legislation was passed by China in August 2007. The long anticipated – drafting began in 1994 – antimonopoly law took effect in August 2008 and bans monopolistic agreements and practices such as cartels and price-fixing and includes practices similar to those used in the United States. The adoption of this first-ever antitrust legislation is a significant first step for the Chinese.
- The European Union and United Kingdom overhauled antitrust regulations which reflect more closely the model used in the United States.
- Japan adopted major revisions to its Antimonopoly Act in April 2005.

One specific area of success has been the use of the Antitrust Division's highly effective Corporate Leniency Program as a best-practice model for similar corporate leniency programs adopted by antitrust authorities around the world. As an example, South Korea reformed its existing leniency policy in April 2005 to clarify the benefits companies can expect if they self-report about cartel involvement and the potential penalties if they are caught as a cartel participant.

Efforts such as these help enhance global antitrust enforcement and reduce the burden on law abiding companies who operate in international markets. In addition, they promote international uniformity and help bring cartel prosecution in line with international best practices.

² Connor, John M. "Statistics on Modern Private International Cartels, 1990-2005", *The American Antitrust Institute - Working Paper 07-01*, January 10, 2007.

The Division continues to make international cooperation and antitrust policy convergence a priority and pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, and working with countries that are in the process of adopting antitrust laws. With support from the Antitrust Division, the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN) are assisting substantially in Division efforts to achieve a more uniform worldwide understanding and application of central antitrust enforcement principles. With leadership from the Antitrust Division, the International Competition Network was initiated in October 2001 as a worldwide organization of 14 antitrust agencies formed to promote greater substantive and procedural convergence among antitrust authorities on sound competition principles and to provide support for new antitrust agencies in enforcing their laws and building strong competition cultures. In March 2007, the ICN welcomed its 100th member and now comprises 107 agencies from 96 jurisdictions. The eighth annual conference of the International Competition Network was held in Zurich, Switzerland in June 2009 where ICN members worked together to promote superior methods in competition policy and enforcement in the areas of cartels, mergers, unilateral conduct and competition advocacy.

Concentration

Hand-in-hand with globalization goes the trend toward economic concentration occurring across industries and geographic regions. Where there is a competitive relationship between or among the goods and/or services produced by the parties, the analysis necessary for thorough merger review becomes more complex. Competitive issues and efficiency defenses are more likely to surface in such reviews, adding complexity and cost to the Division's work.

As shown in Figure 1, U.S. merger volume steadily increased over the five-year period beginning in calendar year 2003, expanding from just over \$500 billion in 2003 to \$1.6 trillion in calendar year 2007. The overall economic downturn that began in calendar year 2008 resulted in a drop in merger deals in 2009 and the year finished with under \$1 trillion in U.S. Merger value. Although U.S. merger deals in 2009 were low overall, the fourth quarter was strong, and announced deal volume more than doubled compared to the same period in 2008.³

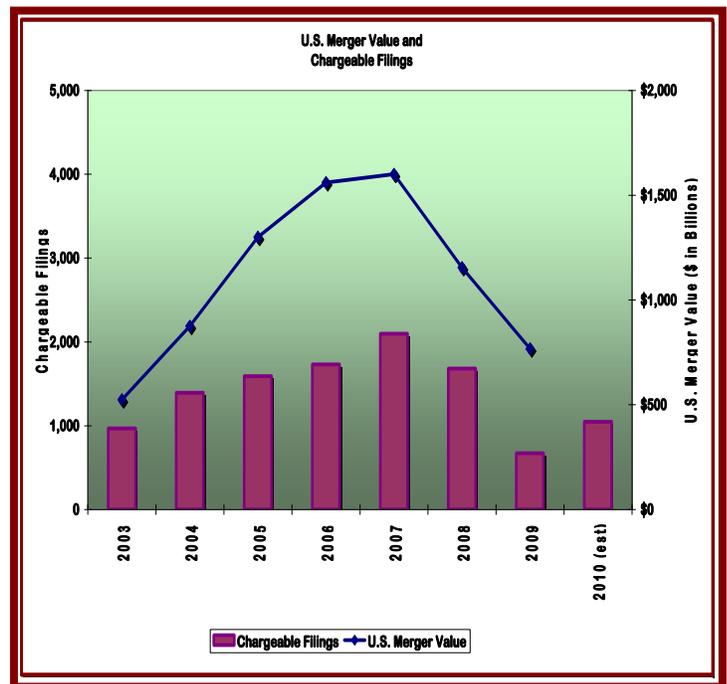


Figure 1

³ Jeffrey McCracken, & Dana Cimilluca. (2010, January 4). Year-End Review of Markets & Finance 2009 --- Global M&A May Have Hit Bottom. *Wall Street Journal (Eastern Edition)*, p. R.7. Retrieved January 5, 2010, from Wall Street Journal. (Document ID: 1931942051).

Worldwide, total merger and acquisition volume was down 22 percent between 2008 and 2009, ending the year at \$2.3 trillion. While the economic slump has affected companies around the globe, several recent factors, including the relatively weak dollar, low interest rates and companies flush with cash hoards and optimism about the future of the global economy are enticing many companies to the merger table. According to Ernst & Young, 33 percent of U.S. company CEO's plan to make an acquisition in 2010. In addition, a recent Boston Consulting Group survey of the largest European companies found that one in five of those companies intends to make a major acquisition in 2010. Asia and Latin America also are projected to be major players in 2010 deal activity.⁴

Technological Change and the Changing Face of Industry

Technological change continues to create new businesses and industries virtually overnight, and its impact on the overall economy is enormous. Despite the bursting of the high-tech bubble in 2001, the emergence of new and improved technologies, such as wireless communications, Voice over Internet Protocol (VoIP), biometrics, hand-held computing and online security, continues and intensifies.

Certainly, we will see even more advances in technology in coming years as the telecommunications upheaval continues to transform traditional industry business models. One such transformation is in wireless communication and connectivity. There were an estimated 276.6 million wireless subscribers in the United States as of June 30, 2009 according to the Cellular, Telecommunications and Internet Association (CTIA).⁵ In addition, according to a July 2009 Wireless Internet Use Report published by the Pew Research Center, more than half of Americans – 56 percent - have accessed the internet wirelessly on some device (laptop, cell phone, MP3 player, or game console) and 32 percent have done so using a mobile device. The Pew Research 2009 Survey also found that in the sixteen month period between their 2007 and 2009 surveys, there was a 73 percent increase in the rate at which Americans went online with their handheld devices on a typical day.⁶ Clearly, being 'connected' has become essential to the American daily lifestyle.

As more consumers turn to high-speed broadband, wireless Internet access, and search for more efficient and cost effective methods of communication, emerging technologies such as Voice over Internet Protocol (VoIP), or what is also known as Broadband Telephony, stand to grow dramatically over the next several years. As published in a research report by Infonetics Research, there were nearly 80 million people worldwide subscribed to VoIP services in 2007.⁷

4 Aguilina, Frank. "Dealmaking: Get Ready for an Upswing in 2010", *Business Week*, December 27, 2009, retrieved January 7, 2010 http://www.businessweek.com/print/investor/content/dec2009/pi20091228_458047.htm.

5 CTIA – "Wireless Quick Facts", www.ctia.org, June 2009, retrieved January 7, 2010. <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>.

6 Pew Internet & American Life Project, "Wireless Internet Use", July, 2009, retrieved August 20, 2009. <http://pewinternet.org/Reports/2009/12-Wireless-Internet-Use.aspx>.

7 "Survey: 80 million VoIP users in 2007", www.telappliant.com, March 3, 2008, retrieved August 20, 2009. <http://www.telappliant.com/voip-news/18493019/survey-80-million-voip-users-in-2007>.

The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the Antitrust Division's resources. The economic paradigm is shifting so rapidly that the Division must employ new analytical tools, which allow it to respond quickly and appropriately. It must be vigilant against anticompetitive behavior in the new economy where the Internet and cutting-edge information technology may facilitate the rapid entry and dominance of emerging markets.

Technological Change and Information Flows

Technological change is occurring at a blistering pace, as evidenced by the proliferation of wireless communication enhancements; the near daily evolution of mobile handheld devices, computer components, peripherals and software; and the growing use of video teleconferencing technology to communicate globally.

As the tools of the trade become more sophisticated, there appears to be a corresponding growth in the subtlety and complexity with which prices are fixed, bids are rigged, and market allocation schemes are devised. The increased use of electronic mail, and even faster, more direct methods of communication, such as text and instant messaging, has fostered this phenomenon. Moreover, the evolution of electronic communication results in an increase in the amount and variety of data and materials that the Antitrust Division must obtain and review in the course of an investigation. In addition to hard-copy documents, telephone logs, and other information from public sources, including the Internet, the Division now receives magnetic tapes, CD's, and even computer servers containing the e-mail traffic and documents of companies under investigation.

Results

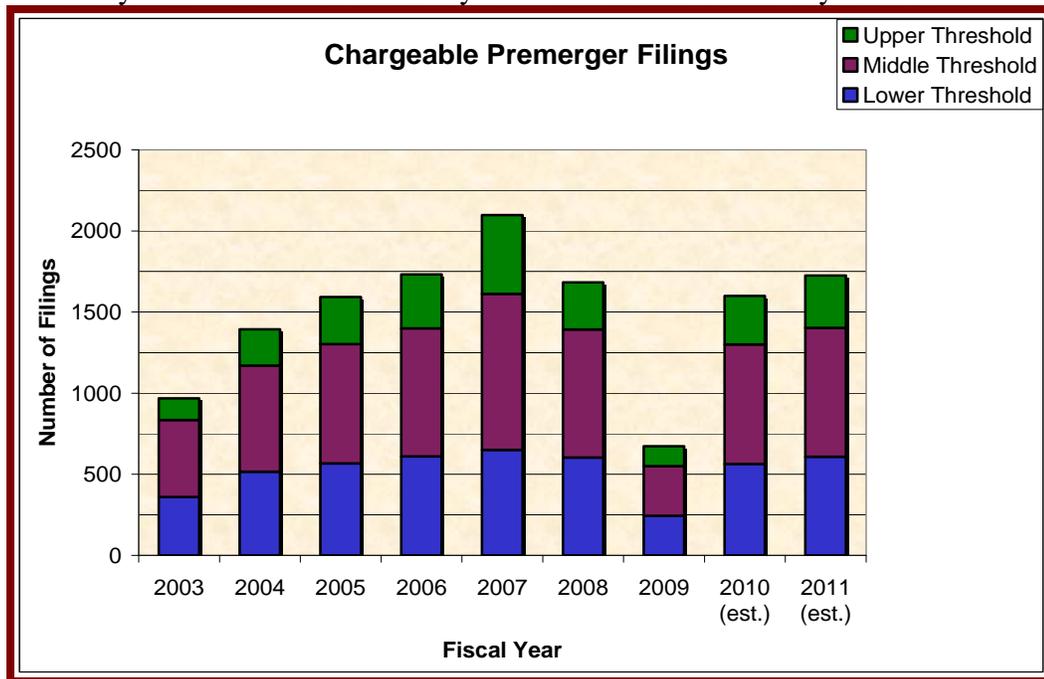
While specific GPRA Performance Measures are addressed in the Decision Unit Justification section of this submission, several interesting statistics relative to the Division's performance include:

- In FY 2009, as a result of the Division's efforts, just over \$1 billion in criminal fines - currently the **second highest annual amount in the Division's history** - were obtained against antitrust violators, a 1.4 percent increase over FY 2008, the third highest fine year, when \$701 million in criminal fines were obtained. This amount helped the Department substantially in offsetting spending in various priority programs and becomes available to the Congress in funding the Department's Crime Victims Fund.

- In the area of criminal enforcement, the Division continues to move forcefully against hard-core antitrust violations such as price-fixing, bid rigging and market allocation agreements. A significant number of our prosecutions in recent years have involved international price-fixing cartels, impacting billions of dollars in U.S. commerce. **Since FY 1997, defendants have been sentenced to pay nearly \$5.7 billion in criminal fines to the U.S. Treasury, including more than \$1.6 billion just since the beginning of FY 2008.**
- The Division believes that individual incarceration has a greater deterrent effect than fines alone and continues to emphasize prison terms for individuals who participate in antitrust criminal behavior. Prison sentences between FY 2000 and the end of FY 2009 climbed to an **average of over 20 months**, approximately two and a half times the 8-month average sentence of the 1990's. These prison sentences have resulted in **348 years** of imprisonment imposed on antitrust offenders, with **145 defendants** receiving jail sentences of one year or longer. In FY 2009, as the result of Division enforcement efforts, 17 corporations and 44 individuals were sentenced due to antitrust violations. Coupled with the increasing frequency and duration of defendants' incarceration was a rise in monetary restitution by criminal defendants. From FY 2004 through the end of FY 2009, restitution generated by the Division was approximately **\$58 million**.
- Despite a workload of increasingly complex cases, the Antitrust Division has made great strides in combating anticompetitive behavior across industries and geographic borders, and has saved consumers billions of dollars by ensuring a competitive and innovative marketplace. **Since FY 1998, the first year for which data is available, the Division, through its efforts in all three enforcement areas - merger, criminal and civil non-merger is estimated, conservatively, to have saved consumers \$24.9 billion.**

Revenue Assumptions

Estimated FY 2010 and FY 2011 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. The August 2009 Congressional Budget Office, Budget and Economic Outlook anticipates that over the next few years, the economy will continue its relatively slow and tentative recovery from the recession.⁸



Premerger Filing Fee Thresholds Effective Feb 21, 2010	
Value of Transaction	Filing Fee
Lower: \$63.4M - <\$126.9M	\$45,000
Middle: \$126.9M - <\$634.4M	\$125,000
Upper: \$634.4M plus	\$280,000

Figure 2

(Consistent with statutory direction, pre-merger filing fee threshold amounts are adjusted annually based on the U.S. Gross Domestic Product Index and are reflected in the table above)

As the second half of 2009 realized predicted economic growth, merger deals that had been ready to go but had been waiting improved market conditions, began filing as businesses regained confidence in the marketplace. While Hart-Scott-Rodino (HSR) filings and fee revenue resulted in FY 2009 totals lower than FY 2008, fourth quarter FY 2009 premerger filings increased 89 percent over second quarter and 26 percent over the third quarter. An increased level of merger activity is expected to continue throughout FY 2010 and FY 2011.

Based upon estimates calculated by the Congressional Budget Office and the Federal Trade Commission (FTC), fee collections of \$204 million for FY 2010 and \$220 million for FY2011 are expected. The HSR filing fee revenue is divided evenly between the Antitrust Division and Federal Trade Commission.

⁸ “The Budget and Economic Outlook: An Update.” *Congressional Budget Office*, August 2009, c.2, p.1.

Environmental Accountability

The Antitrust Division is mindful of responsible environmental management and has implemented processes to encourage awareness throughout the Division, including:

- Adherence to environmental standards during the procurement process to ensure products meet the recommended guidelines of the Department of Energy's energy efficiency standards, the Environmental Protection Agency's designated recovered material and bio-based products specifications, and the Department of Justice's Green Purchase Plan requirements.
- The Antitrust Division's newly occupied Washington D.C. Liberty Square building includes many environmentally sound features including: zoned climate control for efficiencies in heating and air conditioning, motion sensed overhead lighting to minimize wasted energy in unoccupied space, and a recycling program throughout the building for paper, plastic, glass, and newspaper.
- The Division encourages employees to only print documents when absolutely necessary and, whenever possible, print double-sided in an effort to save on the Division's paper requirements.

The Division will continue to implement additional programs as further guidance is received from the Department.

Summary

The Division is continually challenged by an increasingly international and complex workload that spans enforcement areas and requires considerable resources to manage. With our children destined to inherit the resulting markets, the importance of preserving economic competition in the global marketplace cannot be overstated. The threat to consumers is very real, as **anticompetitive behavior leads directly to higher prices and reduced efficiency and innovation**. In recognition of the importance of its mission, the Antitrust Division requests an FY 2011 budget increase of \$3.858 million and a total appropriation of \$167.028 million, in support of 880 positions, and 851 work years.

The FY 2011 Antitrust Division budget request of \$167.028 million supports Departmental Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. The Division's criminal and civil programs are both included in Strategic Objective 2.7: Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction.

FY 2011 Total Budget Request by Strategic Goal Strategic Goal II - Strategic Objective 2.7

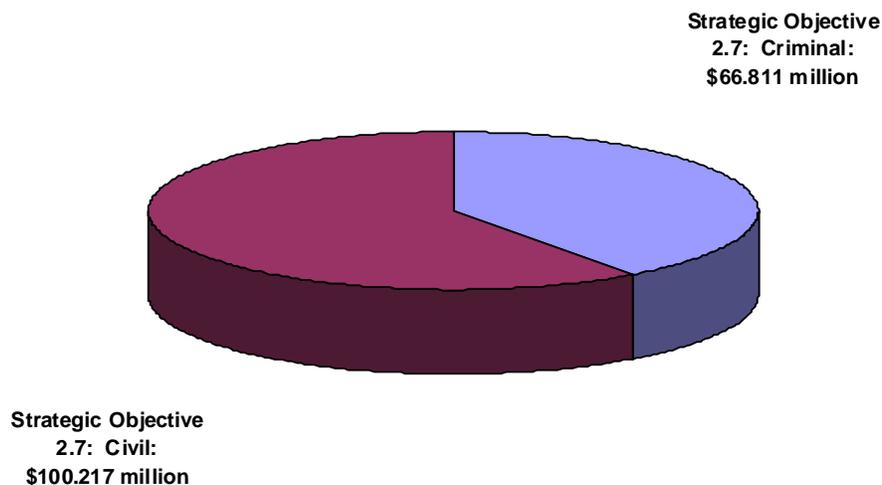


Figure 3

C. Full Program Costs

The Antitrust Division contains one Decision Unit (Antitrust). Within this Decision Unit the Division supports the Department's Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. This Strategic Goal defines the two broad program areas:

- Criminal Enforcement
- Civil Enforcement

In recent years, 40 percent of the Division's budget and expenditures can be attributed to its criminal program and 60 percent of the Division's budget and expenditures can be attributed to its civil program. The FY 2011 budget request assumes this same allocation.

This budget request incorporates all costs to include mission costs related to cases and matters, mission costs related to oversight and policy, and overhead.

D. Performance Challenges

External Challenges

As detailed in the Issues, Outcomes, and Strategies section, the Antitrust Division faces many external challenges that require flexibility and adaptability in order to pursue its mission. These external challenges include:

- Globalization of the business marketplace
- Increasing economic concentration across industries and geographic regions
- Rapid technological change

Internal Challenges

Much like its external challenges, highly unpredictable markets and economic fluctuations influence the Division's internal challenges. To accommodate these ever-changing factors, the Division must continuously and diligently ensure proper allocation and prudent use of its limited resources.

II. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

Salaries and Expenses, Antitrust Division

For expenses necessary for the enforcement of antitrust and kindred laws, [\$163,170,000] \$167,028,000 to remain available until expended: Provided, That, notwithstanding any other provision of law, fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection (and estimated to be [\$102,000,000] \$110,000,000 in fiscal year [2010] 2011), shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [2010] 2011, so as to result in a final fiscal year [2010] 2011 appropriation from the general fund estimated at [\$61,170,000] \$57,028,000.

[] - Proposed Deletion

XXX – Proposed New Language

Analysis of Appropriations Language

No substantive changes are proposed.

III. Decision Unit Justification

A. Decision Unit: Antitrust

Antitrust Division Fiscal Year 2011 Congressional Budget Submission Decision Unit Justification			
Decision Unit: Antitrust - TOTAL	Permanent Positions	FTE	Amount
2009 Enacted	880	851	\$157,788,000
2010 Enacted	880	851	\$163,170,000
Adjustments to Base and Technical Adjustments	0	0	\$3,858,000
2011 Current Services	880	851	\$167,028,000
2011 Request	880	851	\$167,028,000
Total Change 2010 - 2011	0	0	\$3,858,000

1. Program Description

The Antitrust Division promotes competition and protects consumers from economic harm by enforcing the Nation's antitrust laws. Free and open competition benefits consumers by ensuring lower prices and new and better products. The perception and reality among consumers and entrepreneurs that the antitrust laws will be enforced fairly and fully is critical to the economic freedom of all Americans. Vigorous competition is also critical to assure the rapid innovation that generates continued advances in our standard of living and our competitiveness in world markets.

At its highest level, the Division has two main strategies - Criminal and Civil. All of the Division's activities can be attributed to these two strategies and each strategy includes elements related to investigation, prosecution, and competition advocacy. To direct its day-to-day activities, the Division has established five supervisory Deputy Assistant Attorney General (DAAG) positions reporting directly to the Assistant Attorney General. Each of these DAAGs has oversight of a specific program including Civil Enforcement, Civil Litigation, Criminal Enforcement, Economic Analysis, and International Enforcement.

Criminal Enforcement - Within the Criminal strategy, the Antitrust Division must address the increased globalization of markets, constant technological change, and a large number of massive criminal conspiracies the Division is encountering. These matters transcend national boundaries, involve more technologically advanced and subtle forms of criminal behavior, and impact more U.S. businesses and consumers than ever before. The requirements -- whether in terms of staff time, travel and translation costs, or automated litigation support -- of fighting massive criminal conspiracies effectively is great. Matters such as the Division's recent Airline Passenger and Cargo Pricing investigation (page 34) and Economic Recovery Initiative (page 36) prosecutions exemplify the increasingly complex nature of Division workload in the criminal area and demonstrate that successful pursuit of such matters takes time and resources.

Civil Enforcement - Under the Civil strategy, the Division seeks to promote competition by blocking potentially anticompetitive mergers before they are consummated and pursuing non-criminal anticompetitive behavior such as group boycotts and exclusive dealing. The Division's Civil strategy seeks to maintain the competitive structure of the national economy through investigation and litigation of instances in which monopoly power is sought, attained, or maintained through anticompetitive conduct and by seeking injunctive relief against mergers and acquisitions that may tend substantially to lessen competition. The Division's Merger Review work can be divided into roughly three categories:

- Review of HSR transactions brought to our attention by statutorily mandated filings
- Review of non-HSR transactions (those not subject to HSR reporting thresholds); and
- Review of bank merger applications.

Competition Advocacy - As an advocate of competition, the Antitrust Division seeks the elimination of unnecessary regulation and the adoption of the most competitive means of achieving a sound economy through a variety of activities on the national and international stages. Areas in which the Division pursues competition advocacy initiatives include:

Regulatory Issues - The Antitrust Division actively monitors the pending actions of federal, state, and local regulatory agencies either as statutorily mandated, as in the case of telecommunication and banking markets, or through review of those agencies' dockets and industry or other publications and through personal contacts in the industries and in the agencies. Articulation of a pro-competitive position may make the difference between regulations that effectively do no antitrust harm and actively promote competitive regulatory solutions and those that may negatively impact the competitiveness of an industry. Examples of regulatory agencies before which the Division has presented an antitrust viewpoint include the Federal Communications Commission, Securities and Exchange Commission and the Federal Energy Regulatory Commission.

Review of New and Existing Laws - Given the dynamic environment in which the Antitrust Division must apply antitrust laws, refinements to existing law and enforcement policy are a constant consideration. Division staff analyze proposed legislation and draft proposals to amend antitrust laws or other statutes affecting competition. Many of the hundreds of legislative proposals considered by the Department each year have profound impacts on competition and innovation in the U.S. economy. Because the Division is the Department's sole resource for dealing with competition issues, it significantly contributes to the legislative development in areas where antitrust law may be at issue. For example, the Division has filed numerous comments and provided testimony before state legislatures and real estate commissions against proposed legislation and regulations that forbid buyers' brokers from rebating a portion of the sales commission to the consumer or that require consumers to buy more services from sellers' brokers than they may want, with no option to waive the extra items.

Education, Speeches, and Outreach – The Division seeks to reach the broadest audience in raising awareness of competition issues and provides guidance through its business review program, outreach efforts to business groups and consumers, and the publication of antitrust guidelines and policy statements aimed at particular industries or issues. In addition, Division personnel routinely give speeches addressing these guidelines and policy statements to a wide variety of audiences including industry groups, professional associations, and antitrust enforcers from international, state, and local agencies.

International Advocacy – The Antitrust Division continues to make international cooperation and antitrust policy convergence a priority and pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, and working with countries that are in the process of adopting antitrust laws. One of the most notable examples of the Division's international efforts includes its participation in the International Competition Network (ICN). In June 2009, the ICN held a conference in Zurich attended by more than 450 delegates and competition experts from more than 80 antitrust agencies and organizations throughout the world. At this eighth annual conference, the ICN adopted new Recommended Practices for substantive merger analysis and presented two new reports on the analysis of tying and bundled discounting and loyalty discounts and rebates under unilateral conduct laws.

With support from the Antitrust Division, the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN) are assisting substantially in Division efforts to achieve a more uniform worldwide understanding and application of central antitrust enforcement principles.

Laws Enforced: There are three major federal antitrust laws: the Sherman Antitrust Act, the Clayton Act and the Federal Trade Commission Act. The Sherman Antitrust Act has stood since 1890 as the principal law expressing the United States' commitment to a free market economy. The Sherman Act outlaws all contracts, combinations and conspiracies that unreasonably restrain interstate and foreign trade. The Department of Justice alone is empowered to bring criminal prosecutions under the Sherman Act. The Clayton Act is a civil statute (carrying no criminal penalties) that was passed in 1914 and significantly amended in 1950. The Clayton Act prohibits mergers or acquisitions that are likely to lessen competition. The Federal Trade Commission Act prohibits unfair methods of competition in interstate commerce, but carries no criminal penalties.

2. Performance and Resource Tables

Decision Unit/Program: Antitrust

DOJ Strategic Goal/Objective: Criminal, Civil

WORKLOAD/ RESOURCES		Final Target		Actual		Projected		Changes		Requested (Total)	
		FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Changes		FY 2011 Request	
Workload - Number of HSR Transactions Received		1,635		729		1,635					
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Antitrust		851	\$157,788	851	\$157,788	851	\$163,170	0	\$3,858	851	\$167,028
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Changes		FY 2011 Request	
Program Activity	1. Criminal	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		340	\$63,115	340	\$63,115	340	\$65,268	0	\$1,543	340	\$66,811
Performance Measure – Criminal	➤ Number of Active/Pending Preliminary Investigations	60		126		60					
	➤ Number of Active Grand Juries Domestic/International	95/35		175/65		95/35		0		95/35	
	➤ Pleas/Cases Favorably Resolved	Not Projected		67		Not Projected					
	➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Resolved (\$ in millions)	Not Projected		\$6,056		Not Projected		Not Projected		Not Projected	
Program Activity	2. Civil	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		511	\$94,673	511	\$94,673	511	\$97,902	0	\$2,315	511	\$100,217

		Final Target	Actual	Projected	Changes	Requested (Total)
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	FY 2009	FY 2009	FY 2010 Enacted	Current Services Adjustments and FY 2011 Program Changes	FY 2011 Request
Performance Measure – Merger	➤ Number of HSR Transactions Reviewed	1,635	729	1,635		
	➤ Number of HSR Preliminary Investigations Opened Domestic/International Aspects	82/32	46/11	82/32	0/0	82/32
	➤ Number of Non-HSR Preliminary Investigations Opened Domestic/International Aspects	31/9	19/5	31/9	0/0	31/9
	➤ Number of Bank Merger Applications	850	469	850		
	➤ Pleas/Cases Favorably Resolved	8	12	8		
	➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins (\$ in millions)	Not Projected	\$73,942	Not Projected	Not Projected	Not Projected
	➤ Dollar Volume of Commerce Affected in Relevant Markets for All Bank Mergers Wins (\$ in millions)	Not Projected	\$572	Not Projected	Not Projected	Not Projected
Performance Measure – Civil Non-Merger	➤ Number of Active Investigations - Domestic/ International Aspects	77/18	73/16	77/18	0/0	77/18
	➤ Number of Cases Filed Domestic/International Aspects	2/1	3/0	2/1		
	➤ Pleas/Cases Favorably Resolved	2	11	2		
	➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions)	Not Projected	\$20,687	Not Projected	Not Projected	Not Projected
Efficiency Measure	Increase in Criminal and Civil active investigations and HSR (Hart-Scott-Rodino Improvements Act of 1976) transactions reviewed per FTE	16.0	8.1	16.2		
Outcome – Criminal, Merger, Civil Non-Merger						
Consumer Savings	➤ Total Criminal Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$605.6	Not Projected	Not Projected	Not Projected
	➤ Total Civil Merger Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$1,015	Not Projected	Not Projected	Not Projected
	➤ Total Civil Non-Merger Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$207	Not Projected	Not Projected	Not Projected
Success Rates (% of Cases Favorably Resolved)	➤ Success Rate for Criminal Matters	90%	97%	90%	0	90%
	➤ Number of Civil Merger "Successes"/Number of Merger Challenges and Resolutions During our Investigation	80%	100%	80%	0	80%
	➤ Number of Civil Non-Merger "Successes"/ Number of Matters Challenged Where Division Expressed Concern	80%	100%	80%	0	80%

Program Activity Data Definition, Validation, Verification, and Limitations:

Dollars and FTE: HSR related performance measures for FY 2010 through FY 2011 projections are based on an analysis of FY 2002 through FY 2009 actual amounts.

Criminal Performance Measure:

When a complaint or referral initially is received, or the Antitrust Division identifies a matter, we develop information from the complainant and from trade publications and other sources. Once we develop a sufficient factual and legal basis for further investigation, a **Preliminary Inquiry (PI)** may be authorized. Once approved, a PI may take from a few weeks to several months to conduct, and at that point we make a determination about whether to proceed by grand jury or to close the PI. Thus a PI is often more than a quick assessment, which is usually done when a matter is initially received or identified, and less than a formal grand jury investigation. The number of active PIs is indicative of the Division's baseline workload. (Note that a PI is not a necessary pre-grand jury stage; if the Division has sufficient factual and legal basis from the complaint or referral, a decision may be made to proceed immediately by grand jury without further investigation through a PI.)

During the course of the year, if the Antitrust Division subpoenas individuals to, questions witnesses before, presents information to, or otherwise has contact with a grand jury for one of our investigations, it is considered an **Active Grand Jury**. In some instances, the Division may conduct an investigation during the course of the year, but not bring witnesses before or present evidence to the applicable grand jury until a subsequent year. For example, it may require a significant amount of investigatory time or coordination with foreign enforcement authorities to obtain critical evidence for presentation to a grand jury. Such instances are also considered Active Grand Juries. A grand jury investigation is considered international when the conduct under investigation involves possible adverse impact on U.S. domestic or foreign commerce and any one of the following criteria is met: (1) one or more of the subjects, targets, or witnesses in the investigation is not a U.S. citizen or U.S. business organization; (2) one or more of the subjects, targets, or witnesses in the investigation, although a U.S. citizen or U.S. business organization, is not located in the U.S.; (3) relevant information or evidence is located outside the U.S.; (4) conduct potentially illegal under U.S. law occurred outside the U.S.; or (5) substantive foreign government consultation or coordination is undertaken in connection with the investigation. **Number of Active International Grand Juries** demonstrates the scope of our international investigations, which generally are more complex and require more resources than domestic investigations.

Pleas / Cases Favorably Resolved includes those defendants charged during the fiscal year pursuant to a plea agreement, or indicted in any fiscal year and who pled guilty or were found guilty at trial this fiscal year.

The **Dollar Volume of U.S. Commerce Affected** is estimated by the Antitrust Division based upon the best available information from investigative and public sources. It serves as a proxy for the potential effect of anticompetitive behavior. Suspect conspiracies are more extensive, sometimes far more extensive, than are formally charged in an indictment, hence we believe that the Dollar Volume of U.S. Commerce Affected is an underestimate of the actual value. In estimating the Dollar Volume of Commerce Affected in a criminal investigation, staffs include the sales of all products affected by the conspiracy.

Civil Performance Measure:

The Antitrust Division's Merger Enforcement Strategy can be roughly divided into three categories: review of **Hart-Scott-Rodino (HSR)** transactions brought to our attention by statutorily-mandated filings; review of **Non-HSR** transactions, *i.e.*, those not subject to HSR reporting thresholds; and review of bank merger transactions. Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires certain enterprises that plan to merge or to enter into acquisition transactions to notify the Antitrust Division and the FTC of their intention, and to submit certain information to us. These HSR premerger notifications provide advance notice of potentially anticompetitive transactions and allow the Division to identify and attempt to block such transactions before they are consummated. The **Number of HSR Transactions Reviewed** includes all HSR filings the Division reviews. HSR and Non-HSR transactions may be investigated and prosecuted under Section 7 of the Clayton Act, or under Sections 1 and 2 of the Sherman Act. Referrals for Non-HSR matters come from outside the Division, via competitors or consumers, and are generated from within the Division, based on staff knowledge of industries and information about current events. **Bank Merger Applications**, brought to our attention statutorily via the Bank Merger Act, the Bank Holding Company Act, the Home Owners Loan Act, and the Bridge Bank section of the Federal Deposit Insurance Act, are reviewed through a somewhat different process. It is the Division's statutory responsibility, under three of the four statutes, to provide appropriate bank regulatory authorities with a report on the competitive effects of all depository institution merger and acquisition transactions that are submitted to those agencies for approval.

Given the increasing globalization of today's marketplace, much of the Division's workload involves HSR and non-HSR mergers which have international aspects. The following definition addresses the Division's international work in general and includes some references that are not directly applicable to the Merger Enforcement Strategy. Generally, cases are determined to have **International Aspects** if they have the potential to adversely impact U.S. domestic or foreign competition, and if any one of five criteria is met, leading to increased complexity and greater resource requirements. A case is considered international when: (a) one or more involved parties (where "involved party" may be an individual or corporation that is the subject or target, or potential subject or potential target, of an HSR or non-HSR merger investigation or case; or otherwise a participant or potential participant in an investigation or case) is not a U.S. citizen or a U.S. business; (b) one or more involved parties is not located in the U.S.; (c) potentially relevant information is located outside the U.S.; (d) conduct potentially illegal under U.S. law occurred outside the U.S.; or (e) substantive foreign government consultation or coordination is undertaken in connection with the matter.

When a merger filing initially is received through the HSR process, or the Antitrust Division identifies a potentially anticompetitive Non-HSR merger, we develop information from the filing, the parties or complainant, trade publications, and other public sources. Once we develop a sufficient factual and legal basis for further investigation, a **Preliminary Inquiry (PI)** may be authorized. Once authorized, we investigate further and make a determination about whether to proceed by Second Request or Civil Investigative Demand (CID), or to close the PI. A PI may take from a few weeks to several months to conduct. Thus a PI is often more than a quick assessment, which is usually done when a matter is initially received or identified, and necessarily precedes a Second Request or CID investigation. It is a critical step in the investigatory process, and the **Number of PIs Opened** is indicative of the Division's baseline workload.

The **Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins** and the **Dollar Volume of Commerce Affected in Relevant Markets for All Bank Mergers Wins** are estimated by the Antitrust Division based upon available, credible information. They serve as proxies for the potential effects of possibly anticompetitive merger transactions given our Strategy and ultimately our Vision. This indicator has been revised to reflect only those HSR and Non-HSR merger cases in which the Division's efforts led to a reduction in anticompetitive behavior. This indicator includes the Dollar Volume of U.S. Commerce Affected in instances where we have counted an HSR, Non-HSR and bank merger wins. While we have used existing data sources in the Division to compile the **Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins**, we acknowledge some limitations in our data that result in the cumulative underestimate of the value presented here. In the HSR merger and bank merger areas, we are required to review a significant number of applications, many of which are determined to pose no competitive issues. No Preliminary Inquiry is opened in these cases, but Division resources are still employed to ensure that the transactions being proposed will do no harm to the competitive environment.

Number of Active Investigations is indicative of Division's baseline civil non-merger workload. Staff identifies and investigates alleged violations of Section 1 and 2 of the Sherman Act and Section 3 of the Clayton Act. Many times, civil non-merger investigations take more than a year to develop sufficient evidence to file a case or close the investigation. Because staff may be working on an investigation for more than a year, this indicator accounts for the number of investigations with hours actually reported during the fiscal year, as opposed to the number of open investigations during the fiscal year.

Pleas / Cases Favorably Resolved includes the Number of Matters in Which Practices Changed After Investigation Initiated, Number of Cases Filed with Consent Decrees, Number of Cases Not Settled at Filing but Settled During Litigation, and Number of Cases Litigated to Judgment Successfully. In general, adequate relief in a civil antitrust case is relief that will: (1) stop the illegal practices alleged in the complaint, (2) prevent their renewal, and (3) restore competition to the state that would have existed had the violation not occurred.

Total Dollar Volume of U.S. Commerce Affected Where Pleas / Cases Favorably Resolved is estimated by the Antitrust Division based upon the best available information from investigative and public sources. The volume of commerce serves as a proxy for the potential effect of anticompetitive behavior. In estimating the Dollar Volume of U.S. Commerce Affected in a civil non-merger case, staffs estimate an aggregate volume of commerce for each relevant domestic market affected by the anticompetitive practice or agreement. Obviously, many anticompetitive practices or agreements are more extensive, sometimes far more extensive, than are formally charged; hence we believe that the Dollar Volume of U.S. Commerce Affected is an underestimate of the actual value.

Efficiency Measure:

ATR will realize efficiency with an increase in activities (Criminal and Civil active investigations and HSR transactions reviewed) utilizing the same or fewer FTE. These activities play an essential role in relation to the long-term outcome measure, "Percent of cases favorably resolved."

Outcome:

It is difficult to fully or precisely capture in a single number, or even a variety of numbers, the ultimate outcome of our Enforcement Strategy. It is not always clear just how far-reaching the effects of a particular conspiracy are; it is not always possible to determine the magnitude of the price increase that relates directly to a particular conspiracy; we cannot consistently translate into numbers the competitive impact of a given conspiracy; nor can we gauge the deterrent effects of our enforcement efforts, though we and those who have written on the subject believe that such effects exist and are strong. Nonetheless, we believe that an end outcome, if not the ultimate outcome, of our work in this area is the **Savings to U.S. Consumers** that arise from our successful elimination and deterrence of criminal conspiracies, the protection of competition in the U.S. economy, and our deterrence of anticompetitive behavior.

Criminal: There are two components to our estimate of **consumer savings**: the price effect of the conspiracy and the annual volume of commerce affected by the conspiracy. Volume of commerce is estimated based on the best available information from investigative and public sources. This results in an underestimate of consumer savings, as the vast majority of conspiracies exist for well over a year. We are more limited in our ability to estimate price effect, and thus in most cases rely on the 10 percent figure in the U.S. Sentencing Guidelines Manual (November 1, 1997; Section 2R1.1; Application Note 3; page 227) as the "average gain from price-fixing" (used in determining fines for convicted organizations) for our estimate in price fixing, bid rigging, and other criminal antitrust conspiracies. Although there are significant limitations to this estimate (as with any estimate), we believe it goes a long way toward describing the outcome of our work and ties directly to our vision of an environment in which U.S. consumers receive goods and services of the highest quality at the lowest price and sound economics-based antitrust enforcement principles are applied.

Civil: Our estimates of **consumer savings** derive initially from our best measurement of volume of commerce in the relevant markets with which we were concerned. For the majority of merger matters, we calculated consumer savings by also using a formula that makes a realistic assumption about the oligopolistic interaction among rival firms and incorporates estimates of pre-merger market shares and of market demand elasticity. In a few merger wins, primarily vertical mergers and those in which the anticompetitive effects included predicted reductions in innovation or other special considerations, it would not have been appropriate to apply that formula. For those wins, we developed conservative estimates of consumer benefits drawing on the details learned in the investigation. We note that the volume of commerce component of the calculation is estimated based on the best available information from investigative and public sources, and it is annualized and confined to U.S. commerce. Given the roughness of our methodology, we believe our consumer savings figure to be a conservative estimate in that it attempts to measure direct consumer benefits. That is, we have not attempted to value the deterrent effects (where our challenge to or expression of concern about a specific proposed or actual transaction prevents future, similarly-objectionable transactions in other markets and industries) of our successful enforcement efforts. While these effects in most matters are very large, we are unable to approach measuring them. Although there clearly are significant limitations to this estimate (as with any estimate), we believe it goes a long way toward describing the outcome of our work and ties directly to our Vision of an environment in which U.S. consumers receive goods and services of the highest quality at the lowest price and sound economics-based antitrust enforcement principles are applied. The end outcome of our work in the Civil Non-Merger Enforcement Strategy is the **Savings to U.S. Consumers** that arise from our successful elimination and deterrence of anticompetitive behavior. There are two components to our estimate of consumer savings: the volume of commerce affected by the anticompetitive behavior and the price effect of the behavior. Volume of commerce is estimated based on the best available information from investigative and public sources, and it is annualized and confined to U.S. commerce. We are more limited in our ability to estimate price effect, and thus rely on a conservative one percent figure for our estimate. We believe our consumer savings figure to be a very conservative estimate.

The **Success Rate for Criminal Matters** provides an overall view of the Division's record, looking at situations where the Division determines there to be anticompetitive issues and noting our "success rate" in the outcomes for those situations. The Success Rate for Criminal Matters was calculated using the following formula: the denominator includes the sum total of the following: (1) all cases filed in the given fiscal year in which there was either a guilty plea, conviction at trial, acquittal at trial, directed verdict, dismissal of charges or other final disposition of the matter in the same fiscal year, plus (2) all cases filed in prior years in which there was either a guilty plea, conviction at trial, acquittal at trial, directed verdict, dismissal of charges or other final disposition of the matter in the given fiscal year. The numerator includes only those cases from the denominator that resulted in guilty pleas or convictions at trial, subtracting those cases that resulted in acquittals, directed verdicts, or the dismissal of charges. Cases are defined here as every individual or corporation charged by either information or indictment. Note that these statistics do not include cases that are pending, such as pending indictments of foreign nationals who remain fugitives in our international cartel prosecutions. **This measure is part of a consolidated DOJ litigating component data element and actual performance is reported as a consolidated measure in the annual Performance & Accountability Report.**

Number of Merger "Successes"/Challenges provides an overall view of the Division's record, looking at situations where the Division determines there to be anticompetitive issues and noting our "success rate" in the outcomes for those situations. A success in this context may be any one of the positive outcomes that includes the Number of Mergers Abandoned Due to Division Actions Before Compulsory Process Initiated, Number of Mergers Abandoned Due to Division Actions After Compulsory Process Initiated Without Case Filed, Number of Mergers "Fixed First" without Case Filed, Number of Mergers Cases Filed with Consent Decree, Number of Merger Cases Filed but Resolved Prior to Conclusion of Trial, and Number of Merger Cases Litigated Successfully to Judgment with No Pending Appeals. **This measure is part of a consolidated DOJ litigating component data element and actual performance is reported as a consolidated measure in the annual Performance & Accountability Report.**

Matters Challenged Where the Division Expressed Concern include those in which: a complaint has been filed; the subject or target of an investigation has been informed that the Assistant Attorney General (AAG) has authorized the filing of a complaint; the subject or target of an investigation has been informed that the staff is recommending that a complaint be filed, and the subject or target changes its practices in a way that causes the matter to be closed before the AAG makes a decision whether to file a complaint; or the subject or target of an investigation has been informed that the staff has serious concerns about the practice, and the subject or target changes its practices in a way that causes the matter to be closed before the staff makes a recommendation to file a complaint. **This measure is part of a consolidated DOJ litigating component data element and actual performance is reported as a consolidated measure in the annual Performance & Accountability Report.**

Performance Measure Report - Historical Data

Decision Unit: Antitrust

Performance Report and Performance Plan Targets		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009		FY 2010	FY 2011
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measures Civil: Merger	Civil Merger - Number of Bank Merger Applications	966	1,112	943	1,042	1,028	652	850	469	850	
	Civil Merger - Number of HSR Transactions Reviewed	990	1,458	2,121	1,890	2,199	1,727	1,635	729	1,635	
	Civil Merger - Number of HSR PIs Opened - Domestic Aspects	65	71	83	73	76	66	82	46	82	82
	Civil Merger - Number of HSR PIs Opened - International Aspects	22	14	28	23	30	29	32	11	32	32
	Civil Merger - Number of Non-HSR PIs Opened - Domestic Aspects	27	17	23	23	25	19	31	19	31	31
	Civil Merger - Number of Non-HSR PIs Opened - International Aspects	6	12	5	3	9	7	9	5	9	9
	Civil Merger - Pleas / Cases Favorably Resolved	14	8	4	16	12	16	8	12	8	
	Civil Merger - Dollar Volume of Commerce Affected in Relevant Markets for All Bank Mergers Wins (\$ in millions)	\$28	\$135	\$0	\$0	\$266	\$0	N/A	\$572	N/A	N/A
	Civil Merger - Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins (\$ in millions) - Civil Merger	\$29,280	\$733	\$1,696	\$100,707	\$2,039	\$11,870	N/A	\$73,942	N/A	N/A

Performance Measure Report - Historical Data

Decision Unit: Antitrust

Performance Report and Performance Plan Targets		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009		FY2010	FY 2011
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measures Civil: Non-Merger	Civil Non-Merger - Number of Active Investigations - Domestic Aspects	81	92	80	73	52	57	77	73	77	77
	Civil Non-Merger - Number of Active Investigations - International Aspects	16	14	21	16	9	11	18	16	18	18
	Civil Non-Merger - Number of Cases Filed - Domestic Aspects	5	4	9	4	3	6	2	3	2	
	Civil Non-Merger - Number of Cases Filed - International Aspects	0	0	1	0	0	0	1	0	1	
	Civil Non-Merger - Pleas / Cases Favorably Resolved	8	4	15	7	8	9	2	2	2	
	Civil Non-Merger - Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions)	\$88,485	\$44,200	\$6,554	\$125	\$928	\$4,215	N/A	\$20,687	N/A	N/A
Performance Measures Criminal	Criminal - Number of Active Grand Juries - Domestic	145	147	155	152	141	167	95	175	95	95
	Criminal - Number of Active Grand Juries - International	56	63	63	66	58	62	35	65	35	35
	Criminal - Number of Active/Pending Preliminary Inquiries (PI)s	144	121	131	103	90	125	60	126	60	
	Criminal - Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions)	\$915	\$1,162	\$3,307	\$550	\$5,612	\$210.4	N/A	\$6,056	N/A	N/A
	Criminal - Pleas/Cases Favorably Resolved	42	44	44	53	51	56	N/A	67	N/A	

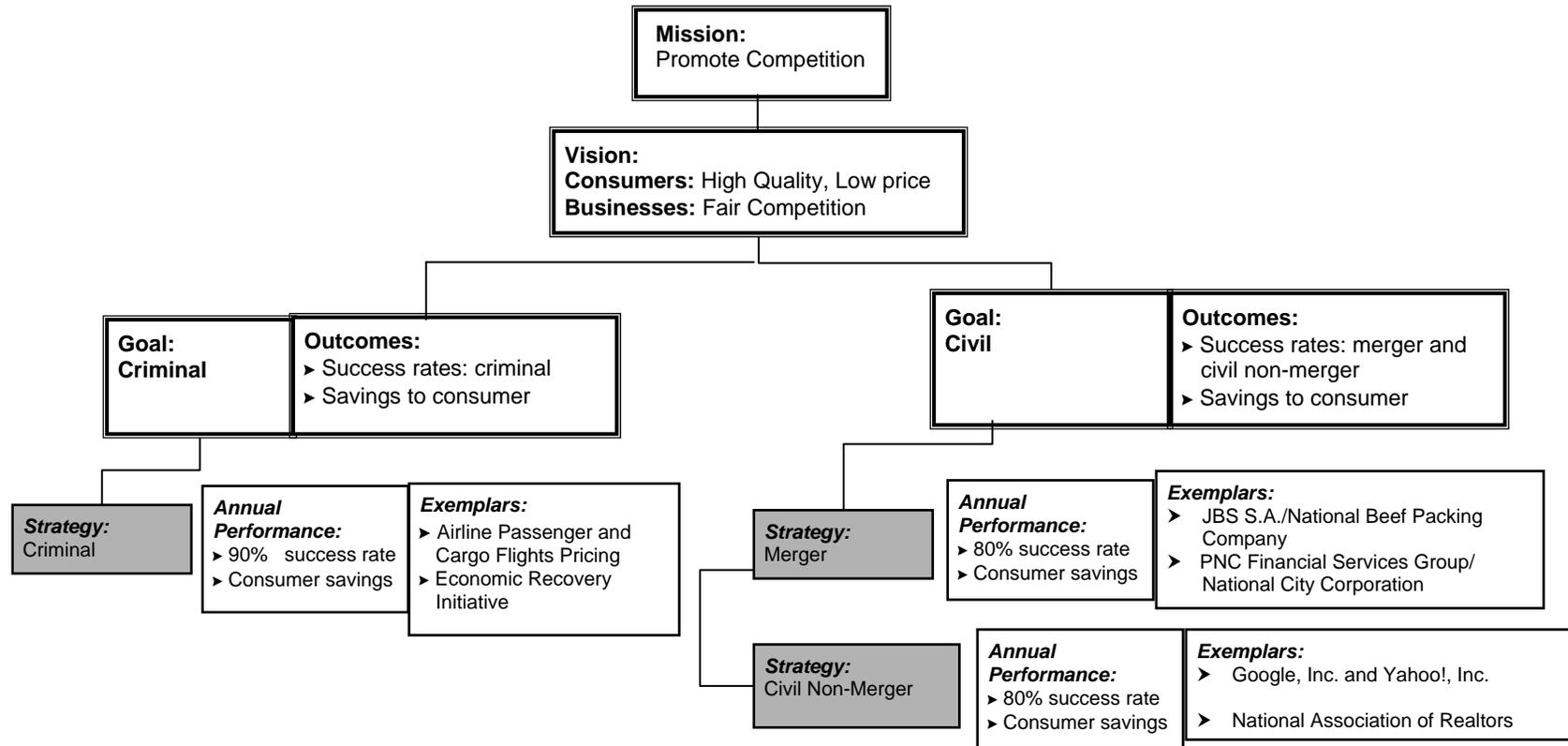
Performance Measure Report - Historical Data

Decision Unit: Antitrust

Performance Report and Performance Plan Targets		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009		FY2010	FY 2011
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Efficiency Measure	Increase in Criminal and Civil active investigations and HSR (Hart-Scott-Rodino Improvements Act of 1976) transactions reviewed per FTE	N/A	16.9	18.6	17.4	16.5	15.6	16.0	8.1	16.2	
Outcome Measures: Civil: Merger, Non-Merger & Criminal	Civil Merger - Percentage of cases favorably resolved - Merger	93.00%	80.00%	100.00%	100.00%	100.00%	100.00%	80.00%	100.00%	80.00%	80.00%
	Civil Non-Merger - Percentage of cases favorably resolved	100.00%	100.00%	100.00%	100.00%	114.00%	100.00%	80.00%	100.00%	80.00%	80.00%
	Criminal - Percentage of cases favorably resolved - (Success Rate for Criminal Matters)	97.00%	88.00%	96.00%	100.00%	98.00%	85.00%	90.00%	97.00%	90.00%	90.00%
	Civil Merger - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$1,420	\$15	\$99	\$1,951	\$149	\$461.6	N/A	\$1,015	N/A	N/A
	Civil Non-Merger - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$888	\$0	\$65	\$1.3	\$17	\$48.1	N/A	\$207	N/A	N/A
	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$91	\$115.7	\$330	\$55	\$561	\$21	N/A	\$606	N/A	N/A

3. Performance Measurement Framework

Antitrust Division, Department of Justice
Performance Measurement Framework
FY 2011



4. Performance, Resources, and Strategies

The Antitrust Decision Unit contributes to the Department's Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. Within this Goal, the Decision Unit's resources specifically address Strategic Objective 2.7: Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction.

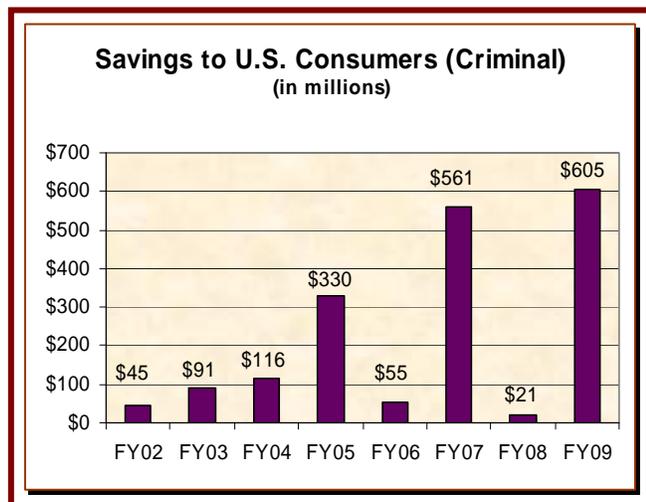
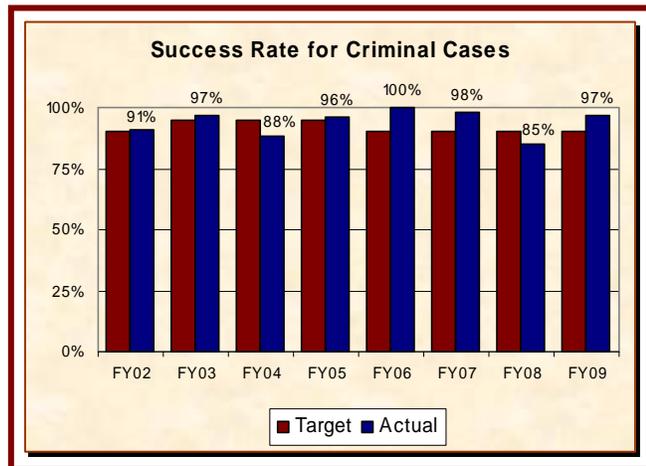
a. Performance Plan and Report for Outcomes

Prosecute International Price Fixing Cartels

The charts below illustrate the Criminal Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Antitrust Criminal Cases and Savings to U.S. Consumers (as a result of the Antitrust Division's criminal enforcement efforts). It is the Division's goal to achieve a successful outcome in every case it tries. The Antitrust Division has been aggressive in its pursuit of criminal anticompetitive behavior.

In the criminal enforcement area, the Division continues to provide economic benefits to U.S. consumers and businesses in the form of lower prices and enhanced product selection by dismantling international private cartels and restricting other criminal anticompetitive activity. In FY 2009, the Division successfully resolved 97 percent of criminal matters. This measure is a consolidated measure shared with all other litigating components within the Department. As a whole, the Department exceeded the target by successfully resolving 92 percent of its cases. The Division expects to meet or exceed its goals for FY 2010 and FY 2011.

The estimated value of consumer savings generated by the Division's criminal efforts is contingent upon the size and scope of the matters encountered and thus varies significantly.

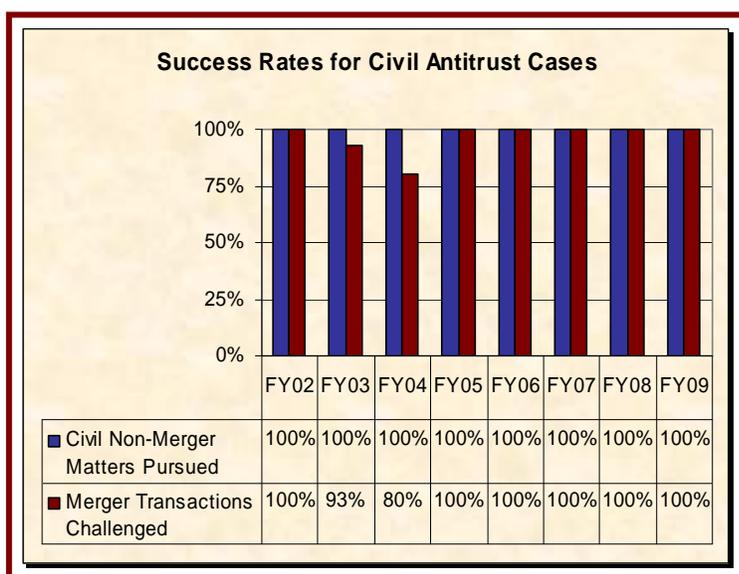


Civil Enforcement

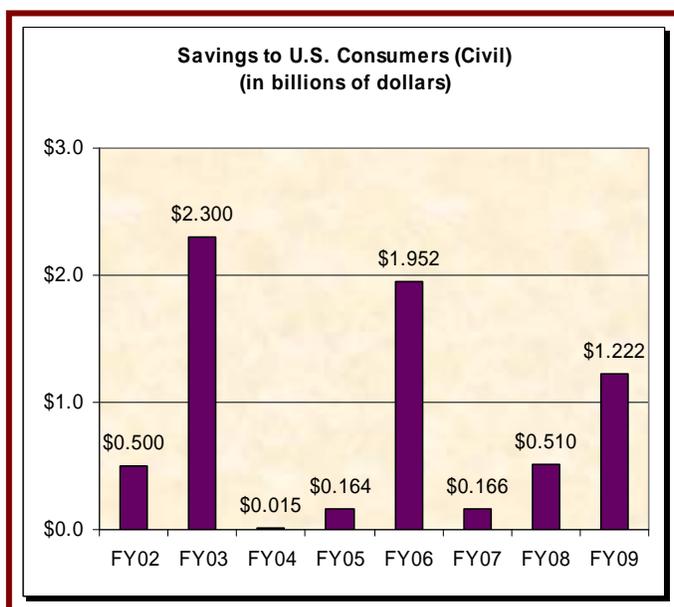
The charts below illustrate the Civil Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Civil Antitrust Cases and Savings to U.S. Consumers (as a result of the Antitrust Division's Civil enforcement efforts).

The success rate for civil non-merger matters includes investigations in which business practices were changed after the investigation was initiated, a case was filed with consent decree, or a case was filed and litigated successfully. The Division's success in preventing anticompetitive behavior in the civil non-merger area has been notable. The Division successfully resolved every matter it challenged in FY 2009 and expects to meet or exceed its goals for FY 2010 through FY 2011.

The success rate for merger transactions challenged includes mergers that are abandoned, fixed before a complaint is filed, filed as cases with consent decrees, filed as cases but settled prior to litigation, or filed and litigated successfully. Many times, merger matters involve complex anticompetitive behavior and large, multinational corporations and require significant resources to review. Similar to Civil Non-Merger, Civil Merger successfully resolved 100 percent of the matters it challenged in FY 2009 and expects to meet or exceed its goals for FY 2010 through FY 2011.



The estimated value of consumer savings generated by the Division's civil enforcement efforts in any given year depends upon the size and scope of the matters encountered and thus varies considerably. Targeted levels of performance are not projected for this indicator.



b. Strategies to Accomplish Outcomes

Prosecute International Price Fixing Cartels

Utilizing seven geographically dispersed Field Offices and one Section in Washington, DC, the Antitrust Division deters private cartel behavior by investigating and challenging violations of Section 1 of the Sherman Act, including such *per se* (in and of themselves, clearly illegal) violations as price fixing, bid rigging, and horizontal customer and territorial allocations. Wide ranges of investigatory techniques are used to detect collusion and bid rigging, including joint investigations with the FBI and grand jury investigations. When businesses are found actively to be engaged in bid rigging, price fixing, and other market allocation schemes that negatively affect U.S. consumers and businesses (no matter where the illegal activity may be taking place), the Division pursues criminal investigations and prosecutions.

The global reach of modern cartels and their significant effects on U.S. consumers highlights the critical importance of international advocacy and coordination efforts. Increased cooperation and assistance from foreign governments continues to enhance the Division's ability to detect and prosecute international cartel activity. In addition, the Division's Individual and Corporate Leniency Programs, revised in recent years for greater effectiveness, have proven critical in uncovering criminal antitrust violations. Greater time and resources are devoted to investigation-related travel and translation, given the increasingly international operating environment of the criminal conspiracies being encountered. In all instances, if the Division ultimately detects market collusion and successfully prosecutes, the Division may obtain criminal fines and injunctive relief.

Civil Enforcement

The Division's Civil strategy is comprised of two key activities - Merger Review and Civil Non-Merger work. Six Washington, DC, Sections and two Field Offices participate in the Division's civil work. This activity serves to maintain the competitive structure of the national economy through investigation and litigation of instances in which monopoly power is sought, attained, or maintained through anticompetitive conduct and by seeking injunctive relief against mergers and acquisitions that may tend substantially to lessen competition.

Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR), requires certain enterprises that plan to merge or to enter into acquisition transactions to notify the Antitrust Division and the Federal Trade Commission (FTC) of their intention and to submit certain information. These HSR premerger notifications provide advance notice of potentially anticompetitive transactions and allow the Division to identify and block such transactions before they are consummated. HSR premerger reviews are conducted under statutorily mandated time frames. This workload is not discretionary; it results from the number of premerger filings we receive.

The number of merger transactions reviewed includes all HSR filings the Division receives and, also, reviews of recently consummated mergers that are below HSR filing thresholds but which present possible anti-competitive issues. HSR and non-HSR transactions may be investigated and prosecuted under Section 7 of the Clayton Act, or under Sections 1 and 2 of the Sherman Act. Referrals for non-HSR matters come from both outside the Division, via competitors or consumers, and from within the Division, based on staff knowledge of industries and information about current events.

Bank merger applications, brought to the Division's attention statutorily via the Bank Merger Act, the Bank Holding Company Act, the Home Owners Loan Act, and the Bridge Bank Section of the Federal Deposit Insurance Act, are reviewed through a somewhat different process.

The majority of the Division's Civil Non-Merger work is performed by four litigating sections in Washington, DC, although other Washington sections and some field offices provide support when necessary. Our Civil Non-Merger activities pick up, to some degree, where the Antitrust Division's Criminal strategy leaves off, pursuing matters under Section 1 of the Sherman Act in instances in which the allegedly illegal behavior falls outside bid rigging, price fixing, and market allocation schemes, the areas traditionally covered by criminal prosecutory processes. Other behavior, such as group boycotts or exclusive dealing arrangements, that constitutes a "...contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce..." is also illegal under Section 1 of the Sherman Act. It is typically prosecuted through the Division's Civil Non-Merger Enforcement Strategy.

A distinction between the Criminal and Civil Non-Merger activities is that conduct prosecuted through the Criminal strategy is considered a *per se* violation of the law, whereas conduct reviewed under the Civil Non-Merger activity may constitute a *per se* violation of the law or may be brought using a rule-of-reason analysis. *Per se* violations are violations considered so clearly anticompetitive that the Division must prove only that they occurred. Violations brought under a rule-of-reason analysis, on the other hand, are those that may or may not, depending on the factual situation, be illegal. In these instances, the Division must not only prove that the violation occurred, but must also demonstrate that the violation resulted in anticompetitive effects. In addition to pursuing matters under Section 1 of the Sherman Act, the Division's Civil Non-Merger component also prosecutes violations of Section 2 of the Sherman Act, which prohibits monopolization and attempted monopolization, and Section 3 of the Clayton Act, which prohibits tying. Tying is an agreement by a party to sell one product on the condition that the buyer also purchase a different or *tied* product, or at least agree that he will not purchase that *tied* product from any other supplier. Whether addressing matters under Sections 1 or 2 of the Sherman Act or Section 3 of the Clayton Act, our Civil Non-Merger enforcement activities rely upon civil compulsory process to investigate the alleged violation.

5. Exemplars - Civil

A. Merger

JBS S.A./National Beef Packing Company

In February 2008, JBS S.A., based in Brazil and the world's largest beef packer, announced plans to merge with the National Beef Packing Company, the fourth largest beef packer in the United States.

In October 2008, the United States filed a case alleging that JBS S.A.'s proposed acquisition of National Beef Packing Company would likely lessen competition in the purchase of fed cattle and in the sale of USDA-graded boxed beef to retailers in violation of Section 7 of the Clayton Act. Seventeen states joined the lawsuit. The acquisition would have created the largest U.S. beef packer, with an ability to slaughter more than 40,000 head of cattle per day (or more than one third of U.S. fed cattle packing capacity) and annual beef sales of more than \$14 billion.

According to the Division's Complaint, JBS's acquisition of National would have substantially restructured the beef packing industry by eliminating a competitively significant packer and placing more than 80 percent of domestic fed cattle packing capacity in the hands of three firms: JBS, Tyson Foods Inc., and Cargill Inc. It would have eliminated head-to-head competition between JBS and National and made interdependent or coordinated conduct among JBS and the other two significant packers more likely. The Complaint alleged that the proposed merger likely would have resulted in lower prices paid to cattle suppliers and higher beef prices for consumers.

On February 20, 2009, JBS announced that the merger had been called off because of the Division's challenge to the deal and the inability of the parties to reach an agreement in settlement talks.

PNC Financial Services Group / National City Corporation

In October 2008, PNC announced plans to acquire National City for approximately \$5.5 billion in stock and cash making PNC the fifth largest bank in the United States.

Division staff reviewed the competitive effects of this transaction, including its impact on retail and small business banking. As a result of its review, the Division announced in December 2008 that PNC Financial Services and National City Corporation had agreed to sell 61 of National City's branch banking offices in western Pennsylvania, with deposits that totaled approximately \$4.1 billion, in order to resolve competitive concerns about the companies' merger. In addition, the companies agreed to divest approximately half of National City's lending and related business with middle market customers — generally, businesses with lending needs of more than \$1 million — in the Pittsburgh area, and virtually all of that business in the Erie area. With the divestitures, the Division determined that the merger would not have a significantly adverse effect on competition in local markets for retail banking, small business banking and middle market banking services.

The proposed merger was subject to the final approval of the Board of Governors of the Federal Reserve System. The Division advised the Federal Reserve Board that it would not challenge the merger provided that the agreed-upon divestitures occurred and the parties' commitments to the Division were included as a condition in the event the Federal Reserve Board entered an order allowing the transaction, which it did on December 16, 2008.

PNC completed its acquisition of National City on December 31, 2008 and now has approximately \$289 billion in assets and \$180 billion in total deposits.

B. Non-Merger

Google, Inc. and Yahoo!, Inc.

Google, Inc. and Yahoo!, Inc. entered into an agreement in June 2008 allowing Yahoo! to distribute Google's search advertising on its own web site and to receive up to 90 percent of the gross revenues collected by Google from advertisers, plus a bonus if a volume threshold was attained.

The two companies abandoned the agreement in November 2008 after the Division informed the companies that it would file a lawsuit to block the agreement. If implemented, the Division concluded that Google and Yahoo! would have become collaborators rather than competitors for a significant portion of their search advertising businesses, materially reducing important competitive rivalry between the two companies.

Google had a market share in excess of 70 percent in the markets for search engines and Google and Yahoo! had combined shares of over 90 percent. Google and Yahoo! compete with each other in many ways, but particularly through the investments they make to improve their ability to match user search queries with appropriate advertising. Under the proposed agreement, the Division found that Yahoo! would have significantly reduced incentives to invest in these advertising improvements, ultimately denying consumers the benefits of competition-lower prices, better service and greater innovation.

National Association of Realtors (NAR)

After a lengthy investigation, the Division announced in May 2008 that it had negotiated a settlement with the National Association of Realtors (NAR) requiring NAR to allow Internet-based residential real estate brokers to compete with traditional brokers. NAR is a trade association of more than 1.2 million residential real estate members who operate in local real estate markets nationwide.

In its civil lawsuit, the Division challenged NAR policies and rules that obstructed real estate brokers who use innovative Internet-based tools. Under the terms of the settlement, NAR agreed to repeal its anticompetitive policies and require affiliated multiple listing services (MLSs) to repeal their rules that were based on these policies. As a result of the settlement, brokers participating in a NAR-affiliated MLS will not be permitted to withhold their listings from brokers who serve their customers through virtual office websites (VOWs). In addition, brokers will be able to use VOWs to educate consumers, make referrals, and conduct brokerage services.

The settlement prevents traditional brokers from deliberately impeding competition and will enhance competition in the real estate brokerage industry, resulting in more choice, better service, and lower commission rates for consumers.

6. Exemplars – Criminal

A. International Airline Passenger and Cargo Pricing

Introduction and Background

International air transportation costs, for both passengers and cargo, affect every American either through the purchase of airline tickets or the purchase of consumer goods. Air cargo alone generated worldwide revenues of \$50 billion in 2005, accounting for 12percent of the airline industry's revenues.

In investigations covering three continents and involving many governmental entities including the Department of Justice, the European Commission and the United Kingdom's Office of Fair Trading, price fixing conspiracies were uncovered setting prices for air cargo rates and passenger fares.

The investigations are far-reaching and ongoing. In August 2007, the Antitrust Division announced that two airlines, British Airways (based in the United Kingdom) and Korean Air Lines (based in South Korea) agreed to plead guilty and each pay a fine of \$300 million for their roles in these price fixing conspiracies. Between April 2008 and June 2008 seven airlines agreed to plead guilty and pay total fines of \$675 million. In addition, between January 2009 and April 2009, six air cargo carriers agreed to plead guilty and pay total fines of \$339 million.

Total criminal fines imposed against these airlines, some of the world's largest, in the Division's ongoing cargo and fuel surcharge fee investigations in the air transportation industry total more than \$1.6 billion, marking the highest total amount of fines ever imposed in an Antitrust Division investigation.

Investigation

The Antitrust Division's investigations are focused on the period of January 2000 through February 2006 for air cargo and passenger services. In February 2006, the Department of Justice, with the support of international competition authorities, raided various airline offices in Asia, Europe, and the United States.

The investigations include international air cargo flights and long-haul international passenger flights, including flights in and out of the United States. Air transportation costs for both passengers and cargo include a base rate plus various surcharges, such as fuel and post-September 11th security surcharges. The base rate plus various charges for air cargo are collectively referred to as 'cargo rates' and the base rate plus various charges for air passengers is known as 'passenger fare'.

Specifically, the Division is investigating price fixing for air cargo rates and passenger fares.

Results

To date, the Department has successfully obtained criminal fines of over \$1.6 billion and guilty pleas from fifteen airlines and four executives including:

Fines Obtained from August 2007 through April 2009

Air France and KLM Airlines - \$350 million
British Airways - \$300 million
Korean Air Lines - \$300 million
Cargolux Airlines International - \$119 million
Japan Airlines - \$110 million
LAN Cargo and Aerolinhas Brasileiras - \$109 million
Qantas Airways Limited - \$61 million
Cathay Pacific Airways - \$60 million
SAS Cargo Group - \$52 million
Asian Airlines - \$50 million
Nippon Cargo Airlines - \$45 million
Martinair Holland - \$42 million
EL AL Israel Airlines - \$15.7 million

The four airline executives who have pleaded guilty for their involvement in the illegal activity worked for Qantas Airways, SAS Cargo Group, Martinair Holland, and British Airways. The executives have been sentenced to serve a total of 28 months in jail.

Both Virgin Atlantic and Lufthansa AG have been conditionally accepted into the Antitrust Division's Corporate Leniency Program. The Division's Corporate Leniency Program allows a qualifying company that is the first to voluntarily disclose its participation in an antitrust crime and which fully cooperates in the subsequent investigation to avoid criminal conviction and a heavy fine. Virgin Atlantic entered the program after reporting its participation with British Airways in the passenger fuel surcharge conspiracy. The United Kingdom's Office of Fair Trading also has a leniency policy and has indicated that Virgin is not expected to face a fine. Lufthansa was conditionally accepted into the Division's program after it disclosed its role in the international air cargo conspiracy in which British Airways and Korean Air were participants.

Conclusion

As a result of the price fixing conspiracy in the airline industry, American consumers and businesses paid more for air transportation costs. Passengers pay hundreds of millions of dollars in ticket prices each year, and the conspiracy raised the price on virtually every ticket purchased between 2004 and 2006 for the conspirators' long-haul international flights

This exemplar demonstrates the ever-increasing international scope of the Division's investigations and highlights the importance of international law enforcement cooperation in prosecuting global cartels.

B. Economic Recovery Initiative

Introduction and Background

Enforcement of the Sherman Antitrust Act, which authorizes the Antitrust Division to bring criminal prosecutions against those that are involved in contracts, business combinations and conspiracies that unreasonably restrain the nation's free market economy, is a critical component of the Division's mission. One major aspect of the Division's responsibility in this area is to protect taxpayer dollars used to fund government projects and programs.

With the passage of the American Recovery and Reinvestment Act of 2009 (ARRA), signed by President Obama in February 2009, the Division's role to uphold the American public's expectation that our nation's \$787 billion investment in economic recovery will not fall victim to fraud and other illegal activity was clearly evident. Accordingly, within one month of the Recovery Act becoming Public Law, the Antitrust Division launched an "Economic Recovery Initiative" to assist in ensuring successful results from implementation of the Recovery Act.

Development and Implementation of the Economic Recovery Initiative

Guidance issued by the Office of Management and Budget (OMB) to heads of government agencies immediately after passage of the Recovery Act clearly stated that with a stimulus the size of ARRA and the requirement to distribute the funds timely, particular attention must be given to make sure that "funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated."

The Economic Recovery Initiative represents the Antitrust Division's commitment to assist federal, state, and local agencies receiving Recovery Act funds to ensure that measures are in place to protect procurement and program funding processes from bid-rigging and other fraudulent conduct, as well as to ensure that those who seek to corrupt the competitive bidding process are prosecuted to the fullest extent of the law. A principle aim of the Initiative is training government officials to prevent, detect, and report efforts by parties to unlawfully profit from stimulus awards before those awards are made and taxpayer money is wasted. This focus reflects the Antitrust Division's experience from investigating and prosecuting fraud that the potential risk of collusion and fraud relating to lucrative government contracts is dramatically minimized when an early and strong emphasis is placed on prevention and detection.

"Red Flags of Collusion" Training – A key component of the Economic Recovery Initiative is training agency procurement and grant officials, auditors, and investigators at the national, regional, and local levels on techniques for identifying "red flags of collusion" *before* the award of Recovery Act funds. This training teaches procurement and grant officials to identify collusion warning signs through case illustrations and a

four-step analytical process called M.A.P.S. The M.A.P.S. training teaches procurement and grant officials to identify problems with the **M**arket of potential competitors for an award; **A**pplications or paperwork submitted by competitors for an award; **P**atterns that have developed over time for awards of particular products and services; and **S**uspicious behavior they are exposed to during the process of an award, and then to report those problems to their Inspector General's (IG) office, the Antitrust Division or other appropriate regulatory authority.

Partnering with the IG Community and State Authorities – The “red flags of collusion” training offered by the Antitrust Division focuses on pre-award collusion indicators, that arise before a government award is made. The Division has partnered with a broad network of IGs and law enforcement authorities for the numerous federal, state, and local agencies who are overseeing the distribution of Recovery Act funds to combine the Division's pre-award training with the traditional post-award training offered by those offices.

To date, the Antitrust Division has conducted or scheduled training for twenty federal agencies, thirty-six states and two U.S. territories receiving Recovery Act funds. Through its federal, state, and local efforts to date, the Division has already conducted nearly 350 training presentations to over 20,000 agents, auditors and procurement and grant officials nationwide. The Division's training effort is ongoing.

Public Outreach – The Antitrust Division has invited the public to learn more about and participate in making the Economic Recovery Initiative a success. Information about the Initiative is available on the Department of Justice web site at <http://www.usdoj.gov/atr> and a description of the Initiative and a link to the Antitrust Division web site is also available on the official Recovery Act website at www.recovery.gov.

Conclusion

The Antitrust Division is committed to deterring fraudulent and criminal conduct aimed at undermining the government's procurement processes and the economy at large, through swift and just prosecutions. The Economic Recovery Initiative demonstrates the Division's equally important commitment to providing government officials the tools they need to prevent and root out these forms of fraudulent and criminal conduct before that conduct results in a single dollar of loss to the American taxpayer.

7. Program Assessment

During FY 2005, the Antitrust Division was assessed through OMB's Program Assessment along with five other litigating components (Civil; Criminal; Civil Rights; Environment and Natural Resources; and Tax) collectively named the General Legal Activities (GLA) Program.

OMB's findings include the following:

- The Program effectively achieves its goal of resolving cases in favor of the government. Favorable resolutions, in turn, punish and deter violations of the law; ensure the integrity of federal laws and programs; and prevent the government from losing money through unfavorable settlements or judgments.
- The Program collaborates effectively with its partners, notably the US Attorneys Offices. The two programs work closely to share expertise, make referrals, and designate cases for prosecution, while minimizing any overlap of responsibilities.
- The Program exhibits good management practices. This includes strong financial management, collecting and using performance information to make decisions, and holding managers accountable for program performance.

IV. Exhibits