



# **DEPARTMENT OF JUSTICE**

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## **Richard A. Powers' Remarks at Fordham's 48<sup>th</sup> Annual Conference on International Antitrust Law and Policy**

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**Remarks as Prepared for the Fordham's 48th Annual Conference  
on International Antitrust Law and Policy**

**New York, New York**

**October 1, 2021**

Good morning. Thank you, James, for that introduction. And thank you to the conference organizers for continuing this wonderful tradition of gathering antitrust enforcers from around the world for a discussion about the enforcement and policy issues of the moment.

As many of you know, the Fordham Conference is a special one for the international competition community; it is the longest running conference focusing specifically on international competition policy issues. It was here 20 years ago that our community bound itself together in the wake of September 11th to create the International Competition Network. Impressively, this gathering is now in its 48<sup>th</sup> iteration, and I am so pleased to be with you today.

This is the first conference I have attended in person since the onset of the pandemic in 2020. I am delighted that we can be gathered physically after so many months apart. I want to extend a warm welcome to my colleagues who traveled to be here today, especially my international colleagues who flew to New York for this occasion.

Of course, our pandemic-related challenges are not over. And we will mourn the incomprehensible loss of human life for many years to come. Nonetheless, I am hopeful that we can harness this moment in our shared history to foment new ideas and a common commitment to economic justice grounded in our respective competition laws.

“[C]ompetition keeps the economy moving and keeps it growing. Fair competition is why capitalism has been the world’s greatest force for prosperity and growth.”<sup>1</sup> In recognition of this principle, the President has made competition enforcement a priority for his Administration. In July, he signed an Executive Order on Promoting Competition in the

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<sup>1</sup> See President Joseph R. Biden, Remarks by President Biden at Signing of an Executive Order Promoting Competition in the American Economy (July 9, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/09/remarks-by-president-biden-at-signing-of-an-executive-order-promoting-competition-in-the-american-economy/>.

American Economy.<sup>2</sup> The Order elevates the Antitrust Division’s competition mission to an Administration priority and urges all Executive Branch agencies to consider competition when carrying out their respective missions. The Order takes an actual and figurative “whole-of-government” approach to competition.

The U.S. Department of Justice (Department or DOJ) is committed to fulfilling its competition mandate. In recently defining the Department’s top priorities, Attorney General Merrick Garland placed antitrust enforcement at the center of the Department’s goal of ensuring economic opportunity and fairness.<sup>3</sup> To deliver on that mission, the Administration and the Department have committed to getting the necessary resources in the hands of our talented enforcement and advocacy teams. Specifically, we understand that Congress, with the support of the Department, is considering legislation that would fund the Division at a level that would allow it to rebuild its staffing and infrastructure to the levels needed to carry out its mission through vigorous antitrust enforcement.

Promoting free and fair competition for consumers and workers in the myriad of economic sectors we police requires us to be fully engaged across every one of our program areas. What does that look like in action? It means bringing civil enforcement actions like Aon/WTW and AA/Jet Blue, engaging in competition advocacy as we did with our amicus filings on behalf of the student-athletes in *NCAA v. Alston*, participating in a robust international dialogue on how to promote competition in digital markets, deepening our engagement with other federal agencies pursuant to the Executive Order, and bringing criminal cases to promote

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<sup>2</sup> Exec. Order No. 14,036, 86 Fed. Reg. 36,987 (July 9, 2021).

<sup>3</sup> Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice, Statement before the United States Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies (June 9, 2021), <https://www.appropriations.senate.gov/imo/media/doc/Statement%20of%20Attorney%20General%20Merrick%20Garland%20-%20June%209,%2020213.pdf>.

competition in the agriculture sector. Today, I want to focus on two priority areas for the Antitrust Division that have been discussed here this week where our work will promote economic opportunity and fairness: labor markets and international engagement.

## **LABOR MARKET ENFORCEMENT**

Competitive labor markets are essential to a properly functioning market-based economy. As many observers have noted, antitrust enforcement has historically not focused much on labor markets. Where it did so, early on, often it was at the expense of collective bargaining and other labor union activities.<sup>4</sup> Notwithstanding this history, the Division has become increasingly alert to and concerned by business conduct and transactions that harm competition for working people. If it was important for enforcers to protect competition in labor markets decades ago — and I believe it was — it is *essential* now. Workers around the world are recovering from the pandemic-fueled recession, a crisis that comes just 10 years after the global economy had just begun to show signs of improved health after the Financial Crisis. At least one estimate suggests that between 2007 and 2011, one fourth of American families lost at least 75 percent of their wealth, and more than half of all families lost at least 25 percent of their wealth.<sup>5</sup> As workers rebuild, competitive labor markets are critical to their financial security, and to the ability of honest businesses to recruit talent that drives innovation.

Over the last several years, the Division has increased its substantive knowledge and enforcement capacity in labor markets. Let me describe a few important events in turn.

Between 2010 and 2012, the Division filed civil enforcement actions against Adobe, Apple, eBay, Google, Intel, Intuit, Lucasfilm, and Pixar for entering into unlawful agreements

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<sup>4</sup> See, e.g., *Loewe v. Lawlor*, 208 U.S. 274 (1908).

<sup>5</sup> Fabian T. Pfeffer et al., *Wealth Disparities Before and After the Great Recession*, 650 ANNALS AM. ACAD. POL. & SOC. SCI. 98, 98-123 (Nov. 2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4200506/>.

not to compete for each other's workers through various means.<sup>6</sup> These enforcement actions were important for a few reasons. First, they made clear that companies that do not compete to make or sell the same products or services nonetheless compete vigorously in labor markets. That is why they have incentives to collude in a labor market in the first instance. Second, the investigation reaffirmed that agreements to allocate labor markets are no different than agreements to allocate markets by territory or customer.

Around the same time, labor economists began to sound the alarm about stagnating wage growth and other indicia of an uneven recovery from the Financial Crisis.<sup>7</sup> The U.S. antitrust agencies also became concerned about employer conduct that harmed workers. In October 2016, the Division, in conjunction with the U.S. Federal Trade Commission, issued the *Antitrust Guidance to Human Resource Professionals* (the Guidance).<sup>8</sup> Principally, that document educated and informed business and human resource professionals about how the antitrust laws apply to hiring and compensation decisions. Through examples and explanations drawn from prior enforcement actions, the Guidance drew particular attention to labor market allocation agreements (so-called "no-poach" agreements), wage-fixing agreements, and information sharing.

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<sup>6</sup> Final Judgment, *United States v. eBay, Inc.*, No. 12-cv-5869 (N.D. Cal. Sept. 2, 2014), ECF No. 66; Final Judgment, *United States v. Adobe Sys., Inc.*, No. 1:10-cv-1629 (D.D.C. Mar. 18, 2011), ECF No. 17; see Final Judgment, *United States v. Lucasfilm Ltd.*, No. 1:10-cv-2220 (D.D.C. May 9, 2011), ECF No. 6-1; Press Release, U.S. Dep't of Justice, Justice Department Requires Six High Tech Companies to Stop Entering into Anticompetitive Employee Solicitation Agreements (Sept. 24, 2010), available at <https://www.justice.gov/opa/pr/justice-department-requires-six-high-tech-companies-stop-entering-anticompetitive-employee>.

<sup>7</sup> See, e.g., LAWRENCE MISHLE ET AL., ECON. POL'Y INST., WAGE STAGNATION IN NINE CHARTS (Jan. 6, 2015), <https://files.epi.org/2013/wage-stagnation-in-nine-charts.pdf>; Jon D. Wisman, *Wage stagnation, rising inequality and the financial crisis of 2008*, 37 CAMBRIDGE J. OF ECON. 921, available at <https://doi.org/10.17606/mc7a-f327>.

<sup>8</sup> U.S. DEP'T OF JUSTICE, & FED. TRADE COMM'N, ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS (Oct. 2016), available at <https://www.justice.gov/atr/file/903511/download>.

Beginning in October 2016, the Division made a series of public statements that, going forward, it intends to criminally prosecute naked labor market allocation and wage-fixing conspiracies.<sup>9</sup> The agency's considerable experience investigating and challenging these restraints made clear that they are just as irredeemable as agreements to fix product prices and allocate markets – conduct that the Division has prosecuted for over 100 years. Indeed, the notion that employment markets somehow ought to be shielded from the scrutiny of the antitrust laws is an extraordinary misreading of the law. The Supreme Court held long ago that the Sherman Act applies equally to all industries and markets, including labor markets.<sup>10</sup> Outside of the reach of the labor exemptions, the conduct of employers is not entitled to special treatment under the U.S. antitrust laws. The Division views rooting out collusion in labor markets to be part of its mission to deter, detect, and prosecute cartels more generally. Accordingly, the Division has invested the substantial time and resources required to ensure vigorous competition in labor markets because the proper administration of the law requires it.

Our public announcements and statements provided both transparency and education to the public about our priorities, which serve the important goals of increasing deterrence and encouraging the reporting of suspected conspiracies by concerned citizens to the government. Indeed, the Division saw a notable increase in the number of citizens who reported alleged conspiracies to the Division after October 2016. Since that time, labor market investigations

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<sup>9</sup> Renata B. Hesse, Acting Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, The Measure of Success: Criminal Antitrust Enforcement During the Obama Administration, Remarks at the 26th Annual Golden State Antitrust, UCL and Privacy Law Institute (Nov. 3, 2016), *available at* <https://www.justice.gov/opa/speech/file/908301/download>.

<sup>10</sup> *Anderson v. Shipowners' Ass'n of Pac. Coast*, 272 U.S. 359 (1926).

have comprised a growing portion of our docket. Thus far, we have charged four criminal cases for alleged collusion in labor markets.<sup>11</sup>

The Division also thinks about the restoration of competition in setting remedial measures. In particular, the Division may require provisions regarding labor market competition in corporate criminal resolutions where the charged conduct restrained or had an impact on worker mobility. Last year, we charged and entered into a Deferred Prosecution Agreement (DPA) with Florida Cancer Specialists (FCS) for its participation in a long-running market allocation scheme for cancer treatment services.<sup>12</sup> In addition to a \$100 million penalty, the DPA included a term requiring FCS not to enforce its non-competes for four years, which was designed to help remedy the harm caused by the market allocation agreement at issue. The Division will continue to seek remedies that account for the harm that anticompetitive conduct inflicts on consumers and workers alike.

At bottom, the Division is committed to prosecuting naked conspiracies in labor markets because they rob workers of competitive wages, benefits, and other terms of employment. While this work is principally criminal enforcement, we are not blind to the social impact of this work. Free market competition for workers can mean the difference between saving for a home, sending kids to college, and leaving a toxic workplace, or not. Work is also fundamental to our dignity. As enforcers, we know firsthand what it means to ascribe dignity and values to work. I

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<sup>11</sup> Indictment, *United States v. Jindal*, No. 4:20-cr-00358 (E.D. Tex. Dec. 9, 2020); Indictment, *United States v. Surgical Care Affiliates, LLC*, No. 3:21-CR0011-L (N.D. Tex. Jan. 5, 2021); Indictment, *United States v. Hee et al.*, No. 2:21-cr-00098-RFB-BNW (D. Nev. Mar. 30, 2021); Indictment, *United States v. DaVita, Inc.*, No. 21-cr-00229-RBJ (D. Colo. July 14, 2021).

<sup>12</sup> Press Release, U.S. Dep't of Justice, Leading Cancer Treatment Center Admits to Antitrust Crime and Agrees to Pay \$100 Million Criminal Penalty (Apr. 30, 2020), *available at* <https://www.justice.gov/opa/pr/leading-cancer-treatment-center-admits-antitrust-crime-and-agrees-pay-100-million-criminal>.

see it clearly in my own work and that of the career public servants who devote long hours, nights, and weekends to protecting consumers, workers, and honest businesses.

Therefore, the true impact of our criminal labor market enforcement transcends restitution calculation and criminal fines. This is especially true for vulnerable and low-wage workers. Robust competition for employment services accrues to the benefit of all workers, especially women, racial and ethnic minorities, and rural Americans. During the housing crisis, black and Latinx families lost a greater percentage of wealth than white families.<sup>13</sup> And in the aftermath of the Great Recession, between 2010 and 2013, the wealth of black and Latinx families continued to fall as white families began to recover.<sup>14</sup> Observers have also expressed concerns about the potential for the pandemic to exacerbate wealth inequality.<sup>15</sup>

Importantly, criminal prosecution of labor market conspiracies is the tip of the spear; the Division's focus on labor markets extends beyond its cartel program. The Division is also committed to using its civil authority to detect, investigate, and challenge anticompetitive non-compete agreements, mergers that create or enhance monopsony power in labor markets, the unilateral exercise of monopsony power, and information sharing by employers.

The Division also has an important competition advocacy mission. Among other things, our advocacy work helps educate the public, which can serve the important goals of deterrence

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<sup>13</sup> Anne Lowrey, *Wealth Gap Among Races Has Widened Since Recession*, THE NEW YORK TIMES (Apr. 29, 2013), available at [https://www.nytimes.com/2013/04/29/business/racial-wealth-gap-widened-during-recession.html?\\_r=0](https://www.nytimes.com/2013/04/29/business/racial-wealth-gap-widened-during-recession.html?_r=0).

<sup>14</sup> NEIL BHUTTA ET AL., FED. RESERVE SYS., DISPARITIES IN WEALTH BY RACE AND ETHNICITY IN THE 2019 SURVEY OF CONSUMER FINANCES (Sept. 28, 2020), available at <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

<sup>15</sup> See, e.g., MICHAEL BATTY ET AL., FED. RESERVE SYS., WEALTH INEQUALITY AND COVID-19: EVIDENCE FROM THE DISTRIBUTIONAL FINANCIAL ACCOUNTS (Aug. 30, 2021), available at <https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-covid-19-evidence-from-the-distributional-financial-accounts-20210830.htm>.

and transparency. Examples of competition advocacy include statements of interest and amicus briefs in labor competition cases. As I mentioned earlier, the Division recently filed an amicus brief in *NCAA v. Alston* on behalf of college student-athletes.<sup>16</sup> In that case, the Supreme Court ruled in a 9-0 decision this summer that colleges could not agree to limit the education-related benefits offered to students, rejecting an argument that these limits preserved amateurism and widened consumer choice by providing a unique product – amateur college sports as distinct from professional sports.<sup>17</sup> Before *NCAA v. Alston*, the Division filed a number of amicus briefs and statements of interest urging courts to uphold the per se rule for naked restraints in labor markets, including *In re Railway Employee No-Poach Antitrust Litigation*,<sup>18</sup> *Seaman v. Duke University*,<sup>19</sup> and *Aya v. AMN Healthcare*.<sup>20</sup>

Whether through its civil and criminal enforcement efforts, or through competition advocacy, the Division will continue to ensure that American workers receive the benefit of competition.

The work of the Division ensuring competitive labor markets undoubtedly benefits American workers. But given my audience, I'd also like to highlight the important international dimensions of competition in labor markets. Conspiracies affecting American workers are sometimes hatched in other jurisdictions. In *United States v. Knorr-Bremse et al.*, the Division entered into a consent decree with Knorr-Bremse AG and Westinghouse Air Brake Technologies

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<sup>16</sup> Brief for the United States as Amicus Curiae Supporting Respondents, *NCAA v. Alston*, 141 S. Ct. 2141, 210 L. Ed. 2d 314 (2021).

<sup>17</sup> *NCAA v. Alston*, 141 S. Ct. 2141, 210 L. Ed. 2d 314 (2021).

<sup>18</sup> Statement of Interest of the United States, *In Re: Railway Industry Employee No-Poach Antitrust Litigation*, 395 F. Supp. 3d 464 (W.D. Pa. 2019) (No. 2:18-mc-00798-JFC).

<sup>19</sup> Statement of Interest of the United States, *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758 (M.D.N.C. 2019).

<sup>20</sup> Brief of Amicus United States of America in Support of Neither Party, *Aya Healthcare Serv., Inc. v. AMN Healthcare, Inc. et al.*, 9 F.4th 1102 (9th Cir. 2021).

Corporation (Wabtec), two of the world's largest rail equipment suppliers, to resolve a department lawsuit alleging that the companies had for years maintained unlawful agreements not to compete for each other's employees.<sup>21</sup> As alleged in the complaint, one of the conspiracies covering U.S. workers was formed in Berlin.<sup>22</sup> Such cross-border collusion in labor markets is likely to increase. As remote work becomes more prevalent, labor markets will become less confined by geographic limitations, and companies competing for workers across borders may be tempted to enter into unlawful agreements. We must remain vigilant.

We also laud the work of international competition authorities that use their tools to make labor markets more competitive. While competition policy is not conducive to a one-size-fits-all approach, I note that many international enforcers have used their enforcement authority to root out labor-market conspiracies with admirable results:

- The French Competition Authority launched an investigation into collusion in the linoleum floor coverings market and uncovered an agreement between competitors not to solicit each other's employees, which resulted in substantial fines;<sup>23</sup>
- In Italy, eight modelling agencies were fined for entering price-fixing and wage-fixing agreements;<sup>24</sup>
- In Indonesia, six tire manufacturers were fined for participation in a cartel that included an agreement not to poach each other's workers;<sup>25</sup>

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<sup>21</sup> Press Release, U.S. Dep't of Justice, Justice Department Requires Knorr and Wabtec to Terminate Unlawful Agreements Not to Compete for Employees (Apr. 3, 2018) *available at* <https://www.justice.gov/opa/pr/justice-department-requires-knorr-and-wabtec-terminate-unlawful-agreements-not-compete>.

<sup>22</sup> Complaint, *US v. Knorr-Bremse AG*, No. 1:18-CV-00747-CKK, 2018 WL 4386565 (D.D.C. July 11, 2018).

<sup>23</sup> Press Release, Autorité de la Concurrence, Décision no 17-D-20 du 18 octobre 2017, relative à des pratiques mises en oeuvre dans le secteur des revêtements de sols résilients (Oct. 19, 2017) *available at* <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-des-revetements-de-sols-resilients>.

<sup>24</sup> Press Release, Autorità Garante della Concorrenza e del Mercato, I789 - Intesa anticoncorrenza, multa Antitrust da 4.5 milioni a 8 aziende di modelle e a associazione categoria Assem, *available at* <https://www.agcm.it/media/comunicati-stampa/2016/11/alias-8448>.

<sup>25</sup> Press Release, Komisi Pengawas Persaingan Usaha, KPPU Won the Tire Cartel Cessation in Supreme Court (June 6, 2018), *available at* <https://eng.kppu.go.id/kppu-won-the-tire-cartel-cassation-in-supreme-court/>.

- In Spain, the Council of the National Competition Commission launched an investigation into cartels in the freight-forwarding market and security services sector which uncovered freight-forwarding no poach conduct and yielded substantial fines;<sup>26</sup>
- Earlier this year, the Turkish Competition Authority announced multiple investigations into anticompetitive conduct in labor markets;<sup>27</sup>
- And just last week in Mexico, COFECE announced that soccer clubs were issued fines for imposing a cap on women soccer players' salaries.<sup>28</sup>

These actions show that labor market competition is not just a concern in the United States, but an issue we face in many jurisdictions. Domestic and cross-border employers are on notice: the risks of colluding in labor markets are numerous, and agencies around the globe are willing to challenge anticompetitive agreements harming workers.

## INTERNATIONAL ENGAGEMENT

I want to turn now to the other priority area that I mentioned earlier: international engagement. The Antitrust Division must internationally engage to be effective in the modern world. Such engagement allows us to effectively push in the same direction as our partners to amplify our enforcement efforts. Failing to do this, however, leads to international fragmentation and disjointed policies that can undermine the incentives to innovate and compete.

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<sup>26</sup> Comisión Nacional de los Mercados y la Competencia, Resolución del Consejo - Clemencia, Existencia de práctica prohibida (EXPTE. S/0120/08, Transitarios) (July 31, 2010), *available at* <https://www.cnmc.es/expedientes/s012008>.

<sup>27</sup> Press Release, Rekabet Kurumu, İşgücü piyasasına yönelik centilmenlik anlaşmaları nedeniyle Türkiye genelinde 32 teşebbüs hakkında soruşturma açıldı (April 20, 2021) *available at* <https://www.rekabet.gov.tr/tr/Guncel/isgucu-piyasasına-yonelik-centilmenlik-a-d8bc3379bea1eb11812e00505694b4c6>.

<sup>28</sup> Press Release, COFECE, COFECE sanciona a 17 clubes de la Liga MX, a la Federación Mexicana de Fútbol y 8 personas físicas por coludirse en el mercado de fichaje de las y los futbolistas (Sept. 23, 2021), *available at* <https://www.cofece.mx/cofece-sanciona-a-17-clubes-de-la-liga-mx-a-la-federacion-mexicana-de-futbol-y-8-personas-fisicas-por-coludirse-en-el-mercado-de-fichaje-de-las-y-los-futbolistas/>.

Our experience over the last fifty years informs the Antitrust Division's international approach today. In that sense, I believe I can share three high-level principles that are likely to guide our future international engagement:

First, the Antitrust Division can and will engage in candid and effective dialogue and cooperation both bilaterally and multilaterally. This approach is particularly important when it comes to the digital economy. There is much to learn about digital markets, as these are complicated areas that often involve novel factual and legal issues. I am pleased that we are learning from each other and sharing experiences with regards to digital markets, including in OECD's Competition Committee, the International Competition Network, and the G7.

Bilaterally, as you may know, in June, the United States and the European Union established the Trade and Technology Council, a platform for discussion to advance bilateral and multilateral cooperation on multiple fronts.<sup>29</sup> The Department of Justice is pleased to participate in this effort. In parallel with the Council, the U.S. and EU competition agencies established a Joint Technology Competition Policy Dialogue to focus on competition policy and enforcement in the digital sector. The Antitrust Division also has discussed potential legislative changes to competition enforcement standards with many of our other international partners.

Second, case cooperation builds better outcomes, driving effective, efficient competition enforcement that benefits consumers. This work remains a priority for the Antitrust Division, and we believe that by investing in the tools to make case cooperation work better, we invest in building a better, stronger economy. Simply put, our enforcement outcomes are better when we can cooperate with our international partners.

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<sup>29</sup> Press Release, White House, U.S.-EU Summit Statement (June 15, 2021) *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/u-s-eu-summit-statement/>.

As such, the Department is staunchly committed to working with our international partners on civil and criminal antitrust enforcement. The level of engagement between our case teams today is extraordinary; we communicate with our international counterparts nearly every day to identify issues of common interest, strengthen our approach on those issues, and avoid inconsistent outcomes. That includes cooperating with 14 jurisdictions on 21 civil merger and non-merger matters just since January. On the criminal side, when feasible, the Division shares information with our counterparts to ensure our parallel criminal investigations compliment, rather than hinder, each other.

But we are not content with the status quo. We can make it better. To that end, the Antitrust Division is also committed to building out the policy and legislative tools that will improve cooperation. For example, the DOJ recently led an effort within the International Competition Network (ICN) focused on improving cooperation in cartel enforcement. The ICN Guidance on Cross-Border Leniency Cooperation was published a little over a year ago and provides competition agencies with practical, real-world tips for engaging more closely and more effectively with international partners.

While we were examining these issues globally, the Antitrust Division took a close look at our own internal procedures with respect to cooperation, and we have made them better. For example, we developed best practices for our prosecutors to apply in cartel matters and when working with our enforcement partners. This analysis could not have come at a better time, as the pandemic closed borders and complicated issues of conducting cross-border investigations became even more acute.

Last September, we were also proud to announce a new multilateral cooperation and assistance framework with our partners in Australia, New Zealand, Canada, and the United

Kingdom. The Framework is a memorandum of understanding focused on reinforcing and improving existing cooperation and coordination tools among the agencies, and it also includes a commitment to negotiate enhanced cooperation agreements with one another. To facilitate the negotiation of enhanced cooperation agreements, the Framework includes a Model Agreement, a template for such agreements that addresses exchange of confidential information and providing investigative assistance to other agencies. You may ask why our agencies chose to enter into this Framework right now. While each of our agencies can rely on national legislation that is intended to promote international cooperation, we have learned from years of working together that navigating the differences in the laws of our respective jurisdictions has proved challenging in practice. The Framework demonstrates our shared recognition of the challenges posed by cross-border evidence gathering in competition investigations and provides a road map, through the Model Agreement, to further deepen our cooperation. We are glad to see the OECD and ICN joint project on international cooperation analyzing these same issues.

We are also looking at our own cooperation tools. Our ability to enter into enhanced cooperation agreements is based on the International Antitrust Enforcement Assistance Act, the IAEAA. We have one IAEAA agreement in place with Australia, which has been used successfully by both our agencies to exchange confidential information and provide investigative assistance in cases. We are thinking about ways that we can use this platform more often and in ways to better serve us all in fostering mutual assistance in competition cases.

Third, and finally, I would like to channel President Biden's Executive Order on Competition and suggest a broader conversation in the international competition community concerning a whole-of-government approach to competition. By this I mean robust thinking about how the competition community can work with the institutions that regulate the global

economy, just as the U.S. the Executive Order on Promoting Competition directs us to engage our regulatory counterparts in the U.S.

The Department of Justice is eager to engage in that type of brain storming, as is the U.S. And we are excited that next week's OECD Ministerial, which the United States will chair, includes a ministerial breakout session to explore how we can promote fair and robust competition across all sectors and create a just and level playing field for workers and businesses alike. We should build on that session and consider how we can better promote competition across all sectors to encourage inclusive, resilient, and sustainable growth.

We will leave questions about the best forum for these discussions for later when we have had a greater chance to consult with our colleagues from abroad. We, however, stand ready, willing, and excited to assist in developing this concept.

## **CONCLUSION**

These are exciting and daunting times, both for the global competition community and the world at large. But I am an optimist, and I believe there is much we can do to ensure that a post-pandemic global economy is "fair, open and competitive."<sup>30</sup> We cannot, however, go it alone. We must work together, across agencies and across borders, to enforce the competition laws that serve as the charter of our economic liberty. For our part, I can commit to you all that the Antitrust Division will do just that.

Thank you.

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<sup>30</sup> Press Release, U.S. Dep't of Justice, Statement of Attorney General Merrick Garland on the Justice Department's Implementation of the Executive Order on Promoting Competition in the American Economy (July 9, 2021), <https://www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland-justice-department-s-implementation-executive>.