



## **DEPARTMENT OF JUSTICE**

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**PROMOTING COMPETITION AND INNOVATION**  
**THROUGH VIGOROUS ENFORCEMENT OF THE ANTITRUST LAWS**  
**ON BEHALF OF CONSUMERS**

**Remarks as Prepared for the**  
**Brookings Institution**

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## **I. Introduction**

Good morning, and thank you for inviting me here today.

My time at the division has been a remarkable experience and I welcome this opportunity—during my last week as Acting Assistant Attorney General—to highlight the division’s great work and achievements on behalf of American consumers. I hope that in doing so, I can also offer you an insider’s view of the last three-and-a-half years at the division.

Just over four years ago, then-candidate Barack Obama pledged that, as president, he would direct his administration “to reinvigorate antitrust enforcement.”<sup>1</sup> Within days of his inauguration, President Obama followed up on his campaign pledge by nominating Christine Varney as Assistant Attorney General for the Antitrust Division.<sup>2</sup> At her confirmation hearing, Christine Varney made clear her commitment to strong antitrust enforcement. She stated that “[i]n these tough economic times, more than ever . . . clear and consistent antitrust enforcement . . . is essential to a growing and healthy free market, both at home and abroad.”<sup>3</sup> She also promised that, if confirmed, she would ensure that the antitrust laws would be “vigorously enforced.”<sup>4</sup> Indeed, after

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<sup>1</sup> Statement of Senator Barack Obama for the American Antitrust Institute (Sept. 27, 2007), *available at* [http://www.antitrustinstitute.org/files/aai-%20Presidential%20campaign%20-%20Obama%209-07\\_092720071759.pdf](http://www.antitrustinstitute.org/files/aai-%20Presidential%20campaign%20-%20Obama%209-07_092720071759.pdf).

<sup>2</sup> Press Release, White House, President Barack Obama Announces Key DOJ Appointees (Jan. 22, 2009), *available at* [http://www.whitehouse.gov/the\\_press\\_office/PresidentBarackObamaAnnouncesKeyDOJAppointees/](http://www.whitehouse.gov/the_press_office/PresidentBarackObamaAnnouncesKeyDOJAppointees/).

<sup>3</sup> *Confirmation Hearings on Federal Appointments Before the S. Comm. on the Judiciary*, 111<sup>th</sup> Cong. 618 (2009) (statement of Christine A. Varney, Nominee, Assistant Att’y Gen., Antitrust Div., U.S. Dep’t of Justice), *available at* <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg61992/html/CHRG-111shrg61992.htm>.

<sup>4</sup> *Confirmation Hearings on Federal Appointments before the S. Comm. on the Judiciary*, 111<sup>th</sup> Cong. (2009), *available at* <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg61992/html/CHRG-111shrg61992.htm>.

she arrived at the division, Attorney General Holder remarked that the Antitrust Division is “open for business.”<sup>5</sup>

Those were the promises, and in the last three-and-a-half years we acted. Since January 20, 2009, the division has challenged a total of **57** mergers. These challenges covered a number of industries, including technology and telecommunications, financial services, healthcare, and agriculture. Some of our challenges led to parties abandoning their transactions, others resulted in parties agreeing to fully address our competitive concerns. And, of course, sometimes we sued to block anticompetitive transactions. There also were times where we concluded that a proposed transaction did not raise competitive concerns, and in these instances we moved quickly and efficiently, closing our investigation and informing the parties that they could proceed.

Since January 2009, we also challenged anticompetitive conduct in 18 civil non-merger cases, again, primarily focusing on contracting practices that illegally reduce competition in the financial services, technology, and healthcare industries. Most recently, we challenged such conduct by Apple and five major book publishers—Hachette, Harper Collins, Simon & Schuster, Macmillan and Penguin.<sup>6</sup>

And, we criminally prosecuted unlawful conduct in 244 criminal cases, resulting in more than \$2 billion in criminal fines and more than 80 thousand days of jail time for criminal defendants, including prosecutions in the municipal bonds, air cargo, real estate and autoparts sectors, to name only a few.

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<sup>5</sup> Christopher Leonard, *Farmers Tell Feds Considering Antitrust Action that Big Poultry Companies Control Industry*, STAR TRIB. (Minn.), May 21, 2010, [http://www.startribune.com/templates/Print\\_This\\_Story?sid=94618149](http://www.startribune.com/templates/Print_This_Story?sid=94618149).

<sup>6</sup> Press Release, U.S. Dep’t of Justice, Justice Department Reaches Settlement with Three of the Largest Book Publishers and Continues to Litigate against Apple Inc. and Two Other Publishers to Restore Price Competition and Reduce E-Book Prices (Apr. 11, 2012), *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/282133.pdf](http://www.justice.gov/atr/public/press_releases/2012/282133.pdf).

In all of these enforcement actions, we focused on preserving competition for consumers and businesses, so they could benefit from the lower prices, higher quality goods and services, and increased innovation that is spurred by an open and competitive marketplace.

From this catalogue of achievements three key themes emerge, each of which I will discuss today. First, the division is prepared to litigate and win. Second, we are focused on and have prioritized enforcement and advocacy work in areas that have the greatest impact on consumers. Third, we recognize that our actions are watched—both domestically and internationally—and we have acted to ensure our message is effective and our efforts are collaborative.

## **II. The Timeline**

Before I expand upon these themes, I also want to share with you our path for getting there. That path tells a clear story of a division focused on effectively and efficiently enforcing the antitrust laws for the benefit of American consumers.

I joined the division as Chief of Staff and Counsel in February of 2009, after practicing antitrust law for more 20 years, both in private practice and at the FTC, but had not worked in the Antitrust Division. I knew it would be important to understand the division's internal processes and operations in order to effectively carry out the division's mission and vigorously enforce the antitrust laws, so early on I focused on such efforts.

Christine Varney was confirmed in April 2009 and soon after, she took a strong first step toward reinvigorating enforcement at the division when she withdrew the Section 2 Report issued by the previous administration. As she noted at the time, the

Section 2 Report “raise[d] many hurdles to government antitrust enforcement.”<sup>7</sup> Its withdrawal sent a clear signal that the division was prepared to serve its proper role as a cop on the beat for antitrust.

Our work also began with some of the less visible, yet critical, tasks that confront any new leadership at the division. We evaluated matters, both civil and criminal, that were in the pipeline. And we laid the groundwork for gathering an experienced and effective front office team. This team included a number of seasoned practitioners and policy experts, most of whom came to us with more than 20 years of antitrust experience.

There was some speculation about whether and to what extent we would follow through on the promise of “vigorous enforcement.”<sup>8</sup> With our team in place, we showed our commitment to that pledge.

By January 2010, we challenged Ticketmaster’s acquisition of Live Nation and entered into a settlement with the parties that allowed the transaction to proceed while safeguarding competition in the affected markets.<sup>9</sup> This innovative settlement included both a structural remedy and a conduct component. The proposed transaction had both horizontal and vertical aspects, and we determined that a hybrid remedy would be the most effective way to resolve its competitive issues.

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<sup>7</sup> Christine A. Varney, Assistant Att’y Gen., Antitrust Div., U.S. Dep’t of Justice, Vigorous Antitrust Enforcement in this Challenging Era, Remarks as Prepared for the Center for American Progress 7 (May 11, 2009), *available at* <http://www.justice.gov/atr/public/speeches/245711.htm>.

<sup>8</sup> *See, e.g.,* John D. Harkrider, *Obama: The First Year*, ANTITRUST, Summer 2010, at 8 *available at* [http://www.americanbar.org/content/dam/aba/publishing/antitrust\\_source/harkrider\\_Anti\\_Summer10\\_2.aut\\_hcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/harkrider_Anti_Summer10_2.aut_hcheckdam.pdf) (“Although there was a widespread perception that Obama would reinvigorate antitrust enforcement soon after he was inaugurated, some commentators have suggested that there was more bark than bite to Candidate Obama’s promises.”)

<sup>9</sup> *See* Press Release, U.S. Dep’t of Justice, Justice Department Requires Ticketmaster Entertainment Inc. to Make Significant Changes to its Merger with Live Nation Inc. (Jan. 25, 2010), *available at* [http://www.justice.gov/atr/public/press\\_releases/2010/254540.pdf](http://www.justice.gov/atr/public/press_releases/2010/254540.pdf). The court approved the Final Judgment in July 2010. *See* *United States v. Ticketmaster Entm’t, Inc.*, No. 1:10-cv-00139 (D.D.C. July 30, 2010), *available at* <http://www.justice.gov/atr/cases/f260900/260909.pdf>.

Soon after, in March 2010, the division informed Blue Cross Blue Shield of Michigan and Physicians Health Plan of Mid-Michigan that it would sue to block their proposed merger, which would have given Blue Cross-Michigan nearly 90 percent of the commercial health insurance market in the Lansing, Michigan area.<sup>10</sup> The parties subsequently abandoned the transaction, preserving competition in the market.<sup>11</sup>

In October 2010, the division brought suit against Visa, MasterCard and American Express, challenging their rules that restricted merchants accepting their cards from offering discounts or otherwise encouraging consumers to use a lower fee card.<sup>12</sup> We settled the case with Visa and MasterCard,<sup>13</sup> which agreed to rescind the anticompetitive rules—our case against American Express is ongoing.

That same month, the division also brought suit against Blue Cross Blue Shield of Michigan, challenging its use of most-favored nation (MFN) clauses in its contracts with hospitals.<sup>14</sup> We argued that the clauses caused Michigan hospitals to raise their prices to Blue Cross's competitors and insulated Blue Cross from competition, causing Michigan consumers to pay more for their healthcare services and health insurance. The division continues to litigate this case.

The division's vigorous enforcement efforts continued in 2011. In January 2011, we challenged the proposed Comcast/NBC-Universal joint venture and entered into a

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<sup>10</sup> See Press Release, U.S. Dep't of Justice, Blue Cross Blue Shield of Michigan and Physicians Health Plan of Mid-Michigan Abandon Merger Plans (Mar. 8, 2010), *available at* [http://www.justice.gov/atr/public/press\\_releases/2010/256259.pdf](http://www.justice.gov/atr/public/press_releases/2010/256259.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> See Complaint for Equitable Relief for Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, United States v. American Express Co., No. 1:10-cv-4496 (E.D.N.Y. Oct. 4, 2010), *available at* <http://www.justice.gov/atr/cases/f262800/262864.pdf>.

<sup>13</sup> See Final Judgment as to Defendants MasterCard Int'l Inc. and Visa Inc., *American Express Co.*, No. 1:10-cv-4496 (E.D.N.Y. July 20, 2011), *available at* <http://www.justice.gov/atr/cases/f262800/262864.pdf>.

<sup>14</sup> See Complaint, United States v. Blue Cross Blue Shield of Mich., No. 2:10-cv-15155 (E.D. Mich. Oct. 18, 2010), *available at* <http://www.justice.gov/atr/cases/f263200/263235.pdf>.

settlement with the parties that effectively preserved competition in the important technology and media markets impacted by the transaction.<sup>15</sup> Similar to the Ticketmaster settlement, this consent decree included both structural and conduct elements. We worked closely with the Federal Communications Commission in this case to reach a result that fully protects competition.<sup>16</sup>

In February 2011, we entered into a consent decree with United Regional, a Texas hospital, forbidding it from entering into contracts with commercial health insurers that inhibit the insurers from doing business with United Regional's competitors.<sup>17</sup>

In May 2011, after we threatened to block their proposed merger in court, the NASDAQ OMX Group and IntercontinentalExchange abandoned their proposed acquisition of NYSE Euronext.<sup>18</sup> The same month, the division also successfully challenged H&R Block's proposed acquisition of TaxAct, a digital, do-it-yourself tax preparation software provider.<sup>19</sup>

In August 2011, we challenged AT&T's proposed acquisition of T-Mobile.<sup>20</sup> The parties abandoned their deal in December 2011.<sup>21</sup>

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<sup>15</sup> See Press Release, U.S. Dep't of Justice, Justice Department Allows Comcast-NBCU Joint Venture to Proceed with Conditions (Jan. 18, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/266149.pdf](http://www.justice.gov/atr/public/press_releases/2011/266149.pdf). The court approved the final judgment in September 2011. See Final Judgment, United States v. Comcast Corp., No. 1:11-cv-106 (D.D.C. Sept. 1, 2011), *available at* <http://www.justice.gov/atr/cases/f274700/274713.pdf>.

<sup>16</sup> See U.S. Dep't of Justice, *supra* note 15.

<sup>17</sup> See Press Release, U.S. Dep't of Justice, Justice Department Reaches Settlement with Texas Hospital Prohibiting Anticompetitive Contracts with Health Insurers (Feb. 25, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/267648.pdf](http://www.justice.gov/atr/public/press_releases/2011/267648.pdf). The court entered the final judgment in this case in September 2011. See United States v. United Reg'l Health Care Sys., No. 7:11-cv-00030 (N.D. Tex. Sept. 29, 2011), *available at* <http://www.justice.gov/atr/cases/f276000/276027.pdf>.

<sup>18</sup> See Press Release, U.S. Dep't of Justice, NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition of NYSE Euronext after Justice Department Threatens Lawsuit (May 16, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/271214.pdf](http://www.justice.gov/atr/public/press_releases/2011/271214.pdf).

<sup>19</sup> See Complaint, United States v. H&R Block, Inc., No. 1:11-cv-00948 (D.D.C. May 23, 2011), *available at* <http://www.justice.gov/atr/cases/f271500/271579.pdf>.

<sup>20</sup> See Second Amended Complaint, United States v. AT&T Inc., No. 1:11-cv-1560 (D.D.C. Sept. 30, 2011), *available at* <http://www.justice.gov/atr/cases/f275700/275756.pdf>.

The division focused its criminal efforts on sectors critical to American consumers and to the country's economic recovery. For example, we worked with a number of other federal agencies on a wide-ranging and successful investigation into bid-rigging and fraud conspiracies in the municipal bonds investments market.<sup>22</sup> Through this investigation our law enforcement partners have been able to recoup hundreds of millions of dollars through restitution, penalties and disgorgement agreed to by the firms involved. JPMorgan Chase agreed to pay a total of \$228 million; UBS AG agreed to pay a total of \$160 million; Wachovia agreed to pay \$148 million; Bank of America agreed to pay \$137.3 million; and GE Funding Capital Market Services agreed to pay a total of \$70 million.<sup>23</sup> Furthermore, putting a stop to this pernicious conduct means that communities across the United States will have more money for important projects, such as better roads and school improvements.

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<sup>21</sup> See Press Release, U.S. Dep't of Justice, Justice Department Issues Statements Regarding AT&T Inc.'s Abandonment of its Proposed Acquisition of T-Mobile USA Inc. (Dec. 19, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/278406.pdf](http://www.justice.gov/atr/public/press_releases/2011/278406.pdf).

<sup>22</sup> See, e.g., Press Release, U.S. Dep't of Justice, CDR Financial Products Executive and Former Executive Plead Guilty in New York to Bid-Rigging and Fraud Conspiracies Related to Municipal Bond Investments (Jan. 9, 2012), *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/278967.pdf](http://www.justice.gov/atr/public/press_releases/2012/278967.pdf); Press Release, U.S. Dep't of Justice, GE Funding Capital Market Services Inc. Admits to Anticompetitive Conduct by Former Traders in the Municipal Bond Investments Market and Agrees to Pay \$70 Million to Federal and State Agencies (Dec. 23, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/278581.pdf](http://www.justice.gov/atr/public/press_releases/2011/278581.pdf).

<sup>23</sup> See Press Release, U.S. Dep't of Justice, JPMorgan Chase Admits to Anticompetitive Conduct by Former Employees in the Municipal Bond Investments Market and Agrees to Pay \$228 Million to Federal and State Agencies (July 7, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/272815.pdf](http://www.justice.gov/atr/public/press_releases/2011/272815.pdf); Press Release, U.S. Dep't of Justice, UBS AG Admits to Anticompetitive Conduct by Former Employees in the Municipal Bond Investments Market and Agrees to Pay \$160 Million to Federal and State Agencies (May 4, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/270720.htm](http://www.justice.gov/atr/public/press_releases/2011/270720.htm); Press Release, U.S. Dep't of Justice, Wachovia Bank N.A. Admits to Anticompetitive Conduct by Former Employees in the Municipal Bonds Investments Market and Agrees to Pay \$148 Million to Federal and State Agencies (Dec. 8, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/278076.pdf](http://www.justice.gov/atr/public/press_releases/2011/278076.pdf); Press Release, U.S. Dep't of Justice, Bank of America Agrees to Pay \$137.3 Million in Restitution to Federal and State Agencies as a Condition of the Justice Department's Antitrust Corporate Leniency Program (Dec. 7 2010), *available at* [http://www.justice.gov/atr/public/press\\_releases/2010/264827.htm](http://www.justice.gov/atr/public/press_releases/2010/264827.htm); Press Release, U.S. Dep't of Justice, GE Funding Capital Market Services Inc. Admits to Anticompetitive Conduct by Former Traders in the Municipal Bond Investments Market and Agrees to Pay \$70 Million to Federal and State Agencies (Dec. 23, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/278581.pdf](http://www.justice.gov/atr/public/press_releases/2011/278581.pdf).



Our real estate cases have targeted conspiracies to rig bids for selected properties offered at public auctions in a number of localities around the country. Our investigation has shown that, among other forms of illegal conduct, conspirators would designate a bidder to buy a property at a public auction. They then would hold a second, private auction among the conspirators. The amount above the public auction price the winning bidder paid at this second, illicit auction was the conspirators' illegal profit, which they divided among themselves. This investigation already has resulted in dozens of guilty pleas and numerous conspirators will serve jail sentences. We continue to focus on stopping this type of illegal activity that limits competition in our housing markets and harms already financially distressed homeowners.

The division also has an ongoing investigation into an international price-fixing and bid-rigging conspiracy in the automobile parts industry—a sector of obvious importance to American consumers.<sup>24</sup> This is the largest criminal investigation the division has ever pursued, measured by the potential volume of commerce involved.<sup>25</sup> As a result of this investigation, to date, the division has imposed more than \$750 million hundreds of millions of dollars of fines.<sup>26</sup> Courts also have imposed significant jail terms on executives implicated in the conspiracy, including two of the executives who have agreed to serve two years in prison—the longest prison term imposed on a foreign national voluntarily submitting to U.S. jurisdiction for an antitrust violation.<sup>27</sup>

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<sup>24</sup> See Press Release, U.S. Dep't of Justice, Remarks as Prepared for Delivery by Acting Assistant Attorney General Sharis A. Pozen at the Briefing on Department's Enforcement Action in Auto Parts Industry (Jan. 30, 2012), *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/279740.pdf](http://www.justice.gov/atr/public/press_releases/2012/279740.pdf).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Overall, the success of our criminal program during this time period has been remarkable. As I noted before, since 2009, we have prosecuted 244 criminal cases and obtained billions of dollars in fines against criminal conspirators.

Early on we also focused on competition advocacy, including advocacy efforts in the courts through the filing of amicus briefs in important antitrust cases. This included a brief filed in *American Needle*, which offered the first opportunity for the Obama Administration to participate in an antitrust case before the U.S. Supreme Court.<sup>28</sup> In that case, the Court reached its first decision since 1992 in favor of an antitrust plaintiff.<sup>29</sup> The Court's decision, which was in keeping with the Solicitor's General's brief and the division's views, adopted a functional and pragmatic analysis based on the specific facts of each situation, as opposed to the categorical rule laid out by the Seventh Circuit and the National Football League.<sup>30</sup>

We also filed amicus briefs in two reverse-payment cases—*Cipro*<sup>31</sup> and *K-Dur*.<sup>32</sup> Together these briefs also brought us more in line with the Federal Trade Commission's (FTC's) position on reverse-payment cases where pharmaceutical companies producing brand-name drugs pay firms making generics not to exercise the entry rights provided under the Hatch-Waxman Act. We have called for a presumptive illegality standard—we declined to advocate a rule that all reverse-payment settlements are *per se* illegal. Instead

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<sup>28</sup> Brief for the United States as Amicus Curiae, *Am. Needle, Inc. v. Nat'l Football League*, 130 S. Ct. 2201 (2010) (No. 08-661), *available at* <http://www.justice.gov/atr/cases/f246500/246555.pdf>.

<sup>29</sup> *Am. Needle, Inc.*, 130 S. Ct. 2201 (2010).

<sup>30</sup> *Id.*

<sup>31</sup> Brief for the United States in Response to the Court's Invitation, *Ark. Carpenters Health & Welfare Fund v. Bayer AG (In re Ciprofloxacin Hydrochloride Antitrust Litig.)*, No. 05-2851-cv(L) (2d Cir. Jul. 6, 2009), *available at* <http://www.justice.gov/atr/cases/f247700/247708.pdf>.

<sup>32</sup> Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellants, *In re K-Dur Antitrust Litig.*, No. 10-2077 (3d Cir. May 18, 2011), *available at* <http://www.justice.gov/atr/cases/f271300/271395.pdf>.

we recognized that some settlements might be procompetitive by allowing the parties to avoid unnecessary litigation. The *K-Dur* case is pending in the Third Circuit.

This timeline demonstrates that the division has been extraordinarily active in both our criminal and civil programs. But, as I noted at the outset, I want to provide my “insider’s” view of what one can conclude from all of these actions.

### **III. Focusing on Litigation**

First, from the beginning, we were very focused on ensuring the division’s litigation program was as strong as possible. I am pleased to report that effort has been successful. For anyone who ever questioned whether the division could litigate and win in court, that question can now be answered strongly in the affirmative.

As I briefly mentioned, in October 2011, the division won its first contested merger in nine years when it successfully stopped the proposed acquisition of TaxAct by H&R Block—a merger that would have left the 40 million Americans who use digital, do-it-yourself tax preparation software with only two major competitors.<sup>33</sup> We alleged that the transaction would lead to higher prices, lower quality products and less innovation, and after hearing the evidence, the U.S. District Court for the District of Columbia agreed, finding that the proposed transaction violated Section 7 of the Clayton Act.<sup>34</sup>

Soon after that victory, we were successful in our litigation to stop the proposed acquisition by AT&T of T-Mobile—again, a transaction that would have profoundly harmed consumers.

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<sup>33</sup> See Complaint, *United States v. H&R Block, Inc.*, No. 1:11-cv-00948 (D.D.C. May 23, 2011), available at <http://www.justice.gov/atr/cases/f271500/271579.pdf>.

<sup>34</sup> Memorandum Opinion, *H&R Block, Inc.*, No. 1:11-cv-00948 (D.D.C. Nov. 10, 2011), available at <http://www.justice.gov/atr/cases/f277200/277287.pdf>.

We just filed suit against Apple and five publishers for an alleged conspiracy that led to higher prices for eBooks. Three publishers have settled. Stay tuned to this important litigation.

Our criminal program also has had great litigation successes. For example, just last month, after an eight-week trial, a federal jury in San Francisco convicted AUO, its American subsidiary and their two former top executives for their participation in a five-year conspiracy to fix the prices of LCD panels sold worldwide—those are the screens we all rely on for our computers, televisions, and tablets.<sup>35</sup>

The AUO case was a historic first in that the jury determined, beyond a reasonable doubt, that the conspirators' gain from their illegal conduct was at least \$500 million, raising the potential fine for each company from a statutory maximum of \$100 million to \$1 billion. The jury's decision on this illegal gain, and to hold the companies and their top executives accountable, should send a strong deterrent message to board rooms around the world. If you engage in illegal anticompetitive conduct, you still will be held accountable for your actions.

These are just a few examples of the division's recent litigation successes, and they reflect an overall effort to ensure that our litigation program has the necessary resources to win in court.

The division always has attracted the best lawyers in the country and we continue to do so today. We have a career staff with many skilled trial attorneys who also have a deep understanding of antitrust analysis and jurisprudence. To lead their efforts, we early on hired a trial lawyer who was a member of the American College of Trial Lawyers to

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<sup>35</sup> Press Release, U.S. Dep't of Justice, Taiwan-Based AU Optronics Corporation, Its Houston-Based Subsidiary, and Former Top Executives Convicted for Role in LCD Price-Fixing Conspiracy (Mar. 13, 2012), *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/281032.pdf](http://www.justice.gov/atr/public/press_releases/2012/281032.pdf).

serve as a deputy assistant attorney general, and we have maintained that practice. Most recently, we institutionalized that level of leadership by establishing a career position—Director of Litigation—filled by a senior litigation attorney who can continue to build on the division’s litigation expertise. Also, in certain cases, like AT&T, we brought on board seasoned, outside litigators, who work side by side with our career staff to achieve a winning result.

Here is the bottom line: the Antitrust Division isn’t afraid to litigate, and when it does, it wins.

#### **IV. Pocketbook Issues**

Second, these litigation efforts—and indeed all of our work—have been in keeping with our key priorities, which involve preserving competition in industries that provide consumers with products and services essential to their daily lives. Identifying priorities was particularly important given the economic climate in which this administration began. Our front office convened at the division at one of the most difficult points in recent American history. The financial crisis and resulting recession created significant challenges for the division, while limiting the resources we had at our disposal to meet those challenges. With this as a back-drop, from the beginning we made known that ensuring competitive markets was vital to our country’s economic recovery. And that meant vigorous enforcement of the antitrust laws. We learned from the Depression era, when efforts made to lessen antitrust enforcement backfired and hurt recovery. In this environment, we knew that we could have the greatest impact and do the most good by focusing our resources on what I call “pocketbook” industries—those sectors where threats to competition can have a great impact on the family budgets of

most Americans. These include: telecommunications and other high-technology services, financial services, healthcare and agriculture.

Having identified early on that we would focus our efforts on key sectors, we did our homework: we met with experts in each of these industries to help educate us on their nuances and to identify potential competition issues. We looked at each industry as a whole, analyzing the challenges each presented and where our involvement could do the most good.

For example, in the telecommunications and high-technology areas, we recognized the central role innovation plays, and we have worked to ensure an open and level playing field that allows that innovation to occur. Our approach to the Comcast/NBC-Universal transaction is a good example. The division recognized that Comcast's traditional and online rivals need access to NBC's programming to compete effectively against Comcast. Under the consent decree we entered into with the parties, the Comcast/NBC joint venture is required to make available to online video distributors (OVDs) the same package of broadcast and cable channels that it sells to traditional distributors.<sup>36</sup> Further, it must offer OVDs broadcast, cable, and film content that is similar to, or better than, the content OVDs receive from the JV's programming rivals.<sup>37</sup> The settlement also prohibits Comcast from retaliating against any broadcast network, cable programmer, or studio for licensing content to a competing cable, satellite or telephone company, or OVD. It also bars Comcast from retaliating against any cable,

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<sup>36</sup> Final Judgment, *United States v. Comcast Corp.*, No. 1:11-cv-106, 9-11 (D.D.C. Sept. 1, 2011), *available at* <http://www.justice.gov/atr/cases/f274700/274713.pdf>.

<sup>37</sup> *Id.* at 11-14.

satellite or telephone company, or OVD for obtaining video content from a competing broadcast network, cable programmer, or studio.<sup>38</sup>

We've all witnessed the ever-changing marketplace in this industry, where people watch TV on laptops, tablets, and hand held devices. Today, our settlement is helping to maintain an open and fair content distribution marketplace and ensure new content for those evolving distribution models. Since our settlement was filed, OVDs continue to sign significant deals for NBCU content. For example, in July 2011, Netflix secured a multi-year renewal of its contract with NBCU and Amazon announced a deal with NBCU expanding Amazon Prime's access to Universal Pictures' film library.<sup>39</sup>

We also recognized that undue concentration was a looming threat to competition in some telecommunications markets. This concern was front and center when the division moved to block the proposed acquisition of T-Mobile by AT&T. This transaction would have combined two of only four wireless carriers with nationwide networks, and it would have eliminated a company, T-Mobile, which has been an important source of competition and innovation among national carriers. For example, T-Mobile was responsible for rolling out the first nationwide high-speed network. The division recognized that had the deal been consummated, many consumers likely would have seen higher prices, lower quality services, fewer choices and less innovative products in this industry which is so important to our daily lives. The parties'

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<sup>38</sup> *Id.* at 19.

<sup>39</sup> Julianne Pepitone, *Netflix Renews Contract for NBCUniversal Movies and TV*, CNNMONEY.COM, July 13, 2011, [http://money.cnn.com/2011/07/13/technology/netflix\\_nbc/index.htm](http://money.cnn.com/2011/07/13/technology/netflix_nbc/index.htm); Brian Stelter, *In Deal with NBC, Amazon Seeks to Widen Its Video Streaming Service*, N.Y. TIMES, July 29, 2011, <http://www.nytimes.com/2011/07/29/business/media/in-deal-with-nbc-amazon-seeks-to-widen-its-video-streaming-service.html>.

abandonment of their transaction was a victory for the millions of American consumers who rely on mobile wireless telecommunication services.

Here again, we see the early success of our efforts. Already, T-Mobile has recommitted itself to its “challenger strategy.” In late February 2012, just two months after AT&T abandoned its acquisition, T-Mobile announced a \$4 billion investment to modernize its network and deploy 4G LTE service. T-Mobile also plans to aggressively pursue business customers, expand its sales force, ramp up advertising spending and remodel its retail stores.<sup>40</sup>

Most recently, we announced our challenge to an illegal agreement between Apple and five of the largest book publishers in the United States—Hachette, HarperCollins, MacMillan, Penguin and Simon & Schuster. As outlined in our complaint, these companies conspired to end e-book retailers’ freedom to compete on price.<sup>41</sup> As a result of this agreement, we allege consumers paid millions of dollars more for their e-books.<sup>42</sup>

At the same time we filed our complaint, we reached a settlement that, if approved by the court, would resolve our challenge against Hachette, HarperCollins and Simon & Schuster, and would require those companies to grant retailers—such as Amazon and Barnes & Noble—the freedom to reduce prices on their e-book titles.<sup>43</sup> At its heart, this case is about protecting competition, not competitors. And most importantly, it is about lower eBook prices for consumers. As I stated when we

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<sup>40</sup> See Press Release, T-Mobile USA, Inc., T-Mobile USA Announces Reinvigorated Challenger Strategy (Feb. 23, 2012), <http://newsroom.t-mobile.com/articles/ReinvigoratedChallengerStrategy>.

<sup>41</sup> Complaint, *United States v. Apple, Inc.*, No. 1:12-cv-02826 (S.D.N.Y. Apr. 11, 2012), *available at* <http://www.justice.gov/atr/cases/f282100/282135.pdf>.

<sup>42</sup> *Id.* at 5.

<sup>43</sup> [Proposed] Final Judgment, *Apple, Inc.*, No. 1:12-cv-02826 (S.D.N.Y. Apr. 11, 2012), *available at* <http://www.justice.gov/atr/cases/f282100/282141.pdf>.



announced this action, our proposed remedy demonstrates that the antitrust laws are flexible and can keep pace with technology and a rapidly changing industry.<sup>44</sup> Indeed, our settlements with the three publishers have a five-year term with a two-year “cooling off” period, representing a desire to balance the need to ensure competition is restored in this important and evolving market, while not inhibiting its growth and innovation. Our case against Apple, MacMillan and Penguin remains ongoing so as to ensure an open and competitive marketplace while we are in the early stages of emerging electronic book technology.

Another important issue we saw in the technology sector is the sometimes challenging interaction between competition law and intellectual property (IP) law. The intersection of these bodies of law is significant because so many of our most innovative industries rely heavily on patents and other forms of IP. These rights grant control over important inventions and technologies and create salutary innovation incentives. However, antitrust enforcement remains critical in these sectors to ensure that IP rights are not abused to limit competition.

These issues were central to our investigations of Google’s acquisition of Motorola Mobility; Apple’s, Microsoft’s and Research in Motion’s acquisition of certain Nortel Networks patents; and the acquisition by Apple of certain Novell patents. In each of these investigations, the division took a hard look at the potential ability and incentives of the acquiring companies to use the patents they were seeking to illegally foreclose

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<sup>44</sup> Press Release, U.S. Dep’t of Justice, Remarks as Prepared for Delivery by Acting Assistant Attorney General Sharis A. Pozen at the E-Books Press Conference (Apr. 11, 2012), *available at* <http://www.justice.gov/atr/public/speeches/282147.pdf>.

competition.<sup>45</sup> We especially were concerned about certain “standard essential patents” (SEPs) that Motorola and Nortel had pledged to license to industry participants as part of their participation in standard setting organizations.<sup>46</sup> We analyzed whether the purchasing companies could use these SEPs to raise rivals’ costs or otherwise foreclose competition.<sup>47</sup> During our investigation, a number of the companies involved—including Apple, Google and Microsoft—made commitments regarding their proposed SEP licensing policies.<sup>48</sup> Apple and Microsoft in particular made clear commitments to license the SEPs they acquired in these deals on fair, reasonable and non-discriminatory terms and to forgo seeking injunctions in disputes involving SEPs.<sup>49</sup> The division ultimately concluded that none of these transactions was likely to substantially lessen competition in any relevant market and it announced its closure of these investigations in February 2012.<sup>50</sup>

In the financial services sector, we also saw a range of anticompetitive conduct that was hurting consumers. An example is the credit card companies’ merchant restrictions challenged in our settled case against MasterCard and Visa and our ongoing litigation with American Express.<sup>51</sup> Such restrictions prohibit merchants from offering discounts to consumers for using a particular brand or type of card, from promoting a preferred credit card brand and informing consumers about the costs of using particular

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<sup>45</sup> See Press Release, U.S. Dep’t of Justice, Statement of the Department of Justice’s Antitrust Division on its Decision to Close its Investigations of Google Inc.’s Acquisition of Motorola Mobility Holdings Inc. and the Acquisitions of Certain Patents by Apple Inc., Microsoft Corp. and Research in Motion Ltd. (Feb. 13, 2012), *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/280190.pdf](http://www.justice.gov/atr/public/press_releases/2012/280190.pdf).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Complaint for Equitable Relief for Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, United States v. American Express, No. 1:10-cv-04496, (E.D.N.Y. Oct. 4, 2010), *available at* <http://www.justice.gov/atr/cases/f262800/262864.pdf>.

cards.<sup>52</sup> These rules stifle interbrand competition among card companies and allow the card companies to maintain high prices for their network services.

Financial services markets also were threatened by excessive concentration due to illegal mergers such as NYSE's proposed acquisition of Nasdaq. The division informed the companies that it would file a lawsuit to block and the parties abandoned.<sup>53</sup> The proposed acquisition would have substantially eliminated competition for corporate stock listing services, opening and closing stock auction services, off-exchange stock trade reporting services, and real-time proprietary equity data products.

On the criminal side, our muni bonds investigation—which I mentioned earlier—demonstrated that bid rigging was costing local communities significant amounts of money, funds that could have been used for important public services.

In the healthcare sector, we recognized that concentration in the market for health insurance could lead to American consumers paying more for insurance and hospital services. We also recognized that a potential solution for this problem is entry into these markets. To make sure that such entry is possible, the division had to stop incumbent insurers from erecting illegal barriers to entry. To this end, we have concentrated on challenging contracting practices that favored incumbents and limited entry. This is why we are challenging Blue Cross Blue Shield of Michigan's MFNs. It is also why we required New West Health Services to divest the majority of its commercial health insurance business to a third-party buyer, Pacific Source, as a precondition to five of New West's six hospitals entering into a six-year exclusive agreement to purchase health

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<sup>52</sup> *Id.* at 11.

<sup>53</sup> See Press Release, U.S. Dep't of Justice, NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition of NYSE EURONEXT after Justice Department Threatens Lawsuit (May 16, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/271214.htm](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

insurance from Blue Cross of Montana.<sup>54</sup> Concerns about concentration in the health insurance markets also prompted the division's opposition to Blue Cross-Michigan's proposed acquisition of Physicians Health Plan of Mid-Michigan.<sup>55</sup>

Most recently, we required Humana Inc. and Arcadian Management Services Inc. to divest assets relating to Arcadian's Medicare Advantage business in 51 counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas.<sup>56</sup> Medicare Advantage allows individuals eligible for Medicare, primarily senior citizens, to enroll in a privately provided Medicare Advantage plan instead of traditional Medicare. In establishing the Medicare Advantage program, Congress intended that vigorous competition among private Medicare Advantage insurers would lead insurers to offer seniors a rich set of affordable benefits, provide a wide array of health-insurance choices and be responsive to the demands of seniors. Approximately 71,000 people are enrolled in Medicare Advantage plans in the 51 counties and parishes at issue, accounting for more than \$700 million in annual commerce. The transaction, as originally proposed, would likely have resulted in higher prices, fewer choices and lower quality Medicare Advantage plans purchased by Medicare beneficiaries. Instead, the divestitures preserve competition so that Medicare beneficiaries benefit from lower prices, better quality services, and more innovative products for their health care needs.

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<sup>54</sup> See Press Release, U.S. Dep't of Justice, Justice Department Requires Divestiture to Preserve Health-Insurance Competition in Montana (Nov. 8, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/277133.pdf](http://www.justice.gov/atr/public/press_releases/2011/277133.pdf).

<sup>55</sup> See U.S. Dep't of Justice, *supra* note 10.

<sup>56</sup> Press Release, U.S. Dep't of Justice, Justice Department Requires Divestitures in Humana Inc.'s Acquisition of Arcadian Management Services Inc. (Mar. 27, 2012), *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/281616.pdf](http://www.justice.gov/atr/public/press_releases/2012/281616.pdf).

Also in the health care sector, we brought our first traditional monopolization case since 1999.<sup>57</sup> There, we entered into a settlement with United Regional, a Texas hospital, forbidding it from entering into contracts with commercial health insurers that inhibit insurers from doing business with United Regional's competitors.<sup>58</sup>

United Regional dominated the market for hospital services in the Wichita Falls area and was the region's only provider of certain essential services, making it a "must-have" hospital for health plans.<sup>59</sup> When faced with a competitive threat by another facility, Kell West, United Regional responded by entering into a series of exclusionary contracts with commercial health insurers serving the area.<sup>60</sup> These contracts imposed a significant pricing penalty if an insurer contracted with any facility that competed with United Regional. Because of these contracts, United Regional's rivals could not obtain their own contracts with most major insurers and were not included in those insurers' networks, substantially hindering their ability to compete.

Faced with the division's challenge to these practices, United Regional agreed to a settlement that, among other provisions, prohibits it from entering into or enforcing exclusionary contracts with insurers.<sup>61</sup>

The court gave final approval to the settlement last fall, and already Kell West has successfully negotiated contracts with several major insurers that formerly had contracted

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<sup>57</sup> Press Release, U.S. Dep't of Justice, Justice Department Reaches Settlement with Texas Hospital Prohibiting Anticompetitive Contracts with Health Insurers (Feb. 25, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/267648.pdf](http://www.justice.gov/atr/public/press_releases/2011/267648.pdf).

<sup>58</sup> Final Judgment, *United States v. United Reg'l Health Care Sys.*, No. 7:11-cv-00030 (N.D. Tex. Sept. 29, 2011), *available at* <http://www.atrnet.gov/subdocs/2011/276027.pdf>.

<sup>59</sup> Complaint, *United Reg'l Health Care Sys.*, No. 7:11-cv-00030, 2 (N.D. Tex. Feb. 25, 2011), *available at* <http://www.atrnet.gov/subdocs/2011/267651.pdf>.

<sup>60</sup> Competitive Impact Statement, *United Reg'l Health Care Sys.*, No. 7:11-cv-00030, 3 (N.D. Tex. Feb. 25, 2011), *available at* <http://www.atrnet.gov/subdocs/2011/267653.pdf>.

<sup>61</sup> Final Judgment, *United Reg'l Health Care Sys.*, No. 7:11-cv-00030 (N.D. Tex. Sept. 29, 2011), *available at* <http://www.atrnet.gov/subdocs/2011/276027.pdf>.

only with United Regional for hospital services, giving patients greater choices for their hospital services.<sup>62</sup>

Agriculture is another industry that this front office focused on when we arrived in 2009. Like telecommunications, financial services, and healthcare, agriculture has a direct impact on the family budget. To gain a thorough understanding of our agricultural marketplaces, in 2010, the division and the U.S. Department of Agriculture jointly hosted a series of workshops on competition in the agriculture sector. The commitment to this effort was demonstrated by Attorney General Holder's and Secretary Vilsack's attendance at the workshops. The agencies hosted five workshops across the country, focusing on the row-crop, hog, poultry, dairy and livestock industries. Our goal was to learn from the experiences of farmers, cooperative members, processors and academic specialists about how these industries function on the ground. What we heard at the workshops was a human perspective on the problems many participants are facing across agricultural markets as these industries become more concentrated.

Many of the issues identified at the workshops fall outside the purview of the antitrust laws. For example, some workshop participants emphasized the importance of general fairness in these markets, as well as safety, promotion of foreign trade and environmental concerns—issues which will require public or private solutions beyond what is possible under the antitrust laws.

Other issues identified at the workshops highlighted the continued importance of vigorous antitrust enforcement in the agriculture sector, which we have acted on, for example, our court challenge to Dean Foods Company's consummated acquisition of

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<sup>62</sup> See, e.g., *Find a Physician*, UNITEDHEALTHCARE, [http://www.uhc.com/find\\_a\\_physician.htm](http://www.uhc.com/find_a_physician.htm) (follow "Find a Hospital or Health Care Facility" hyperlink; then select the "UnitedHealthcare Options PPO" plan; then select "Hospital" under the "Facilities" heading; and then search ZIP code 76310).

Foremost Farms USA's Consumer Products Division and Foremost's dairy processing plants in Wisconsin.<sup>63</sup> That case resulted in a settlement that required Dean to divest an important Wisconsin milk processing plant and a valuable brand name and to notify the division before acquiring any additional processing plants if the purchase price exceeds \$3 million.<sup>64</sup> Another example of our commitment to enforcement in the agriculture sector is our court challenge to George's Foods' acquisition of Tyson Foods' Harrisonburg, Va. chicken processing plant.<sup>65</sup> Our settlement in that case required George's to make capital improvements to the Harrisonburg plant that the division anticipates will lead to a significant increase in the number of chickens processed by the facility.<sup>66</sup>

It is no coincidence that we took actions in industries important to consumers' pocketbooks, and the results of those actions already are evidenced—competition and innovation were allowed to flourish.

## **V. Focus on Transparency**

Finally, in setting our priorities and undertaking enforcement actions, we have understood that our efforts are watched closely both domestically and internationally. Domestically, we always keep in mind the message our cases send to the business

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<sup>63</sup> See Press Release, U.S. Dep't of Justice, Justice Department Files Antitrust Lawsuit Against Dean Foods Company (Jan. 22, 2010), *available at* [http://www.justice.gov/atr/public/press\\_releases/2010/254435.pdf](http://www.justice.gov/atr/public/press_releases/2010/254435.pdf).

<sup>64</sup> See Press Release, U.S. Dep't of Justice, Justice Department Reaches Settlement with Dean Foods Company (Mar. 29, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/269072.pdf](http://www.justice.gov/atr/public/press_releases/2011/269072.pdf). The court approved the settlement in July 2011. See Final Judgment, *United States v. Dean Foods Co.*, No. 10-cv-59 (E.D. Wis. July 29, 2011), *available at* <http://www.justice.gov/atr/cases/f273400/273469.pdf>.

<sup>65</sup> See Press Release, U.S. Dep't of Justice, Justice Department Files Antitrust Lawsuit Challenging George's Inc.'s Acquisition of Tyson Foods Inc.'s Harrisonburg, VA., Poultry Processing Complex (May 10, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/270975.pdf](http://www.justice.gov/atr/public/press_releases/2011/270975.pdf).

<sup>66</sup> Press Release, U.S. Dep't of Justice, Justice Department Reaches Settlement with George's Inc. (June 23, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/272510.pdf](http://www.justice.gov/atr/public/press_releases/2011/272510.pdf). The court approved the settlement in November 2011. See Final Judgment, *George's Foods, LLC*, No. 5:11-cv-00043 (W.D. Va. Nov. 4, 2011), *available at* <http://www.justice.gov/atr/cases/f278500/278560.pdf>.

community, and seek to provide transparency about our analysis. We have done this in many ways—through our policy statements and guidelines, filed cases and competitive impact statements and our speeches, to name a few. We understand that businesses want certainty, and we realize that our actions deter others considering or undertaking anticompetitive mergers and conduct.

As part of this effort, early on, we endeavored to work with the FTC to update the Horizontal Merger Guidelines. The last major update of the guidelines was in 1992 and important gaps had developed between actual agency practice and the guidelines’ text. The agencies released their updated guidelines in 2010.<sup>67</sup> They are not a radical departure from the earlier guidelines, but rather provide clarity on the agencies’ analysis of proposed transactions.

The guidelines focus on competitive effects and the improved economic tools the agencies have at their disposal to predict such effects. They explain in detail how the agencies employ these tools, including diversion ratios and merger simulations.<sup>68</sup> The guidelines also offer a detailed discussion of how the agencies treat merging parties’ claims of transaction efficiencies. In particular, this discussion makes clear that the agencies do not treat mere internal gains to the parties as a consumer benefit. As the guidelines state, “the Agencies are mindful that the antitrust laws give competition, not internal operational efficiency, primacy in protecting consumers.”<sup>69</sup> Our work on the revised guidelines also was an opportunity for us to collaborate with the FTC—an effort we have continued, with great success, throughout my time at the division.

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<sup>67</sup> U.S. DEP’T OF JUSTICE AND FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES (2010), *available at* <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>.

<sup>68</sup> *Id.* § 6.1.

<sup>69</sup> *Id.* § 10.



In June 2011, the division also issued a revised merger remedies policy guide to reflect the significant changes in the merger landscape since the previous guide was released in 2004.<sup>70</sup> In particular, the past several years have shown a marked increase in complex vertical mergers and mergers with transnational impact, many of which have been in dynamic and innovative industries. We understood that we needed to employ remedies more flexibly to meet these new challenges. The updated merger remedies policy guide states that in horizontal merger matters the division will continue to rely primarily on structural remedies, sometimes in combination with conduct remedies. However, the division has found that for many vertical transactions, tailored conduct relief can prevent competitive harm while preserving a merger's efficiencies.<sup>71</sup> As the merger remedies policy guide makes clear, "[i]n all cases, the key is finding a remedy that works, thereby effectively preserving competition in order to promote innovation and consumer welfare."<sup>72</sup> Like the 2010 Horizontal Merger Guidelines, the updated merger remedies policy guide more accurately describes current division practice and increases transparency for the benefit of businesses, the antitrust bar and the general public.

We also are committed to continued reliance on economic analyses as a basic underpinning of our cases, while remaining cognizant of its appropriate role within merger analysis and enforcement. We assign division economists to every matter that comes before us, and these economists play a key role in the development of our cases. However, the importance of economic analysis differs from case to case. In some matters, the economic evidence may be crucial. In others, different kinds of evidence,

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<sup>70</sup> U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION POLICY GUIDE TO MERGER REMEDIES (rev. ed. 2011), available at <http://www.justice.gov/atr/public/guidelines/272350.pdf>.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 2.

such as documentary evidence, may be the key to our case. In that second category of cases, economic evidence may corroborate our primary evidence.

H&R Block is a good example of this type of case. In this case, the court relied primarily on the documentary evidence in defining the relevant market and reaching its ultimate conclusion that the merger violated Section 7 of the Clayton Act. The court credited many aspects of the division's expert economic testimony, but stated that it would treat that testimony only "as another data point suggesting that" digital do-it-yourself tax preparation software "is the correct relevant market."<sup>73</sup> This decision validates our approach to economic evidence: it is very important in merger analysis and litigation, but it is just one form of evidence that should be relied on in determining whether a merger is unlawful.

We also appreciate that our actions are watched not just here in the United States, but around the world as well. In our global economy, where many of our important transactions have cross-border implications, our relationships with international jurisdictions are more important than ever. We have nourished these relationships over the past three-and-a-half years, strengthening ties with established jurisdictions and creating ties with important new antitrust authorities, such as the BRICS—Brazil, Russia, India, China and South Africa—with which we have ongoing cooperative efforts. All of these efforts are valuable. They result in more effective and efficient cooperation with international jurisdictions on transnational cases and lead to more effective and consistent enforcement. The proof is found in many of our recent cases, in which we were able to work collaboratively with our colleagues across the globe.

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<sup>73</sup> Memorandum Opinion, *United States v. H&R Block, Inc.*, No. 1:11-cv-00948, 40 (D.D.C. Nov. 10, 2011), *available at* <http://www.justice.gov/atr/cases/f277200/277287.pdf>.

The most recent example is our eBooks investigation, where we cooperated closely with the European Commission throughout the course of our respective investigations.<sup>74</sup> This also was another example of our close collaboration with the states—in this case Connecticut and Texas. The state attorneys general have been and will continue to be very important partners in our law enforcement efforts. As I said when the eBooks enforcement action was announced, never before have we seen this kind of global cooperation on a civil antitrust enforcement matter.

We also have emphasized and promoted concepts of procedural fairness and transparency in a variety of international forums, including as part of the Competition Committee of the Organisation for Economic Co-operation and Development and the International Competition Network.

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As I prepare to leave the division, I take great pride in looking back and confirming that since our front office arrived in 2009, we have worked alongside our dedicated career staff to make good on the President's pledge to reinvigorate antitrust enforcement. Upon my departure, Joe Wayland will take over as Acting Assistant Attorney General. As he knows well from his tenure as a Deputy Assistant Attorney General at the division, he will be well-supported by the rest of the front office and our expert staff as he continues to effectuate this pledge. As the Attorney General reiterated just this month, the Antitrust Division remains open for business.<sup>75</sup> As I look towards the

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<sup>74</sup> Press Release, U.S. Dep't of Justice, Justice Department Reaches Settlement with Three of the Largest Book Publishers and Continues to Litigate against Apple Inc. and Two Other Publishers to Restore Price Competition and Reduce E-Book Prices (Apr. 11, 2012), *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/282133.pdf](http://www.justice.gov/atr/public/press_releases/2012/282133.pdf).

<sup>75</sup> Eric Holder, Att'y Gen., U.S. Dep't of Justice, Remarks at E-Books Press Conference (Apr. 11, 2012), *available at* <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1204111.html>.

horizon I clearly can see the continued importance of our work to economic growth and consumers' pocketbooks, and know that with the commitment of its leadership and career staff the division will continue its tradition of success.

Thank you.