significant recent events in the work of the Antitrust Division is providing the Bar and the public with guidance for amnesty recipients that pay a $50 million fine for participating in an international cartel. A cartel is a secret agreement among competitors to fix prices, allocate customers, or reduce output and a direct assault on the principles of competition. The United States Supreme Court recently held that such cartel behavior is illegal under the antitrust laws.

The Antitrust Division pursues cases in which individuals engaged in cartel behavior that exploits U.S. consumers. The aggressive pursuit of these cartels has resulted in a 125% increase in days of jail imposed for the fiscal years 2002-2004, in comparison to fiscal years 1999-2001. For that same period, 253 individuals were sentenced to jail time. The Division has even greater leverage for cartel enforcement because of antitrust laws that authorize the government to impose fines and prison terms on individuals and firms that are members of cartels.

First-ever meeting of senior U.S. and Chinese government officials to discuss China’s recent efforts to implement the U.S. Antitrust Enforcement and Disputes Resolution Act. This new law enhances the antitrust enforcement tools at its disposal now that President Bush has signed into law legislation substantially increasing the criminal fine and prison terms that the Division has available to it for its enforcement activities, and obtaining record-breaking corporate fines.

The Division is committed to deterring such activity and continues to employ a variety of tools at its disposal to ensure that the antitrust laws remain a strong deterrent to cartel activity and includes provisions to enhance our amnesty program.

For that same period, 253 individuals were sentenced to jail time. The case represented the Division’s first use of a new antitrust enforcement tactic called the “Trinko

SIGNIFICANT EVENTS

 ■ Bayer AG agrees to pay a $96 million fine for participating in an international conspiracy to fix prices of rubber chemicals (July 2004)
 ■ U.S. District Court for the Northern District of California rules against the Division’s challenge to Oracle Corp.’s acquisition of PeopleSoft Inc. (September 2004)
 ■ Infinion Technologies AG, a manufacturer of dynamic random access memory (DRAM) agrees to pay a $150 million fine in connection with the third largest ever for participating in an international conspiracy to fix prices of DRAM products (September 2004)
 ■ Antitrust Division releases Policy Guide to Merger Remedies (October 2004)
 ■ Circular Wireless Corporation consent decree require divestiture in 23 markets as part of $41 billion acquisition of AT&T Wireless (October 2004)
 ■ ICN holds first cartel conference in Sydney, Australia (November 2004)
 ■ DuPont Dow Elastomers LLC. agrees to pay a $44 million fine for participating in an international conspiracy to fix prices of synthetic rubber (January 2005)
 ■ The five longest jail sentences in the Division’s history have all been imposed in the last five years, including a 10-year jail sentence in one case.
 ■ There is a strong trend towards more frequent and longer prison terms, compared to prior years. Since FY 2002, 57 percent of the individuals sentenced have served prison time as compared to 37 percent for the previous four fiscal years. Prison time since FY 2002 (16 months) is double the average imposed in FY 2001 (8 months). The number of jail sentences increased in FY 2005 with the first five months imposing jail time for 26 individuals.
 ■ In FY 2004, $360 million in criminal fines were obtained against 17 corporations and 9 individuals. This total includes foreign nationals who submitted to U.S. jurisdiction and were sentenced to incarceration in U.S. prisons.
 ■ The five longest jail sentences in the Division’s history have all been imposed in the last five years, including a 10-year jail sentence in one case.
 ■ There is a strong trend towards more frequent and longer prison terms, compared to prior years. Since FY 2002, 57 percent of the individuals sentenced have served prison time as compared to 37 percent for the previous four fiscal years. Prison time since FY 2002 (16 months) is double the average imposed in FY 2001 (8 months). The number of jail sentences increased in FY 2005 with the first five months imposing jail time for 26 individuals.
 ■ In FY 2004, $360 million in criminal fines were obtained against 17 corporations and 9 individuals. This total includes foreign nationals who submitted to U.S. jurisdiction and were sentenced to incarceration in U.S. prisons.

The five longest jail sentences in the Division’s history have all been imposed in the last five years, including a 10-year jail sentence in one case.

There is a strong trend towards more frequent and longer prison terms, compared to prior years. Since FY 2002, 57 percent of the individuals sentenced have served prison time as compared to 37 percent for the previous four fiscal years. Prison time since FY 2002 (16 months) is double the average imposed in FY 2001 (8 months). The number of jail sentences increased in FY 2005 with the first five months imposing jail time for 26 individuals.

In FY 2004, $360 million in criminal fines were obtained against 17 corporations and 9 individuals. This total includes foreign nationals who submitted to U.S. jurisdiction and were sentenced to incarceration in U.S. prisons.

The five longest jail sentences in the Division’s history have all been imposed in the last five years, including a 10-year jail sentence in one case.

There is a strong trend towards more frequent and longer prison terms, compared to prior years. Since FY 2002, 57 percent of the individuals sentenced have served prison time as compared to 37 percent for the previous four fiscal years. Prison time since FY 2002 (16 months) is double the average imposed in FY 2001 (8 months). The number of jail sentences increased in FY 2005 with the first five months imposing jail time for 26 individuals.

In FY 2004, $360 million in criminal fines were obtained against 17 corporations and 9 individuals. This total includes foreign nationals who submitted to U.S. jurisdiction and were sentenced to incarceration in U.S. prisons.
and companies, including Bayer AG, Dupont Dow, and Zeon Chemicals L.P., and numerous Elastomers L.L.C., Crompton Corporation, and other companies. The defendants either pleaded guilty or were indicted for DRAM is over $5 billion. In December 2004, four Infineon executives, three executives from Austria, Belgium, Canada, France, Germany, Italy, Japan, Korea, Mexico, the United Kingdom and the United States for engaging in a conspiracy to fix the price of the food preservatives potassium sorbate and sorbic acid. The five defendants have pleaded guilty and paid fines totaling $29 million for their roles in the conspiracy. The Antitrust Division’s investigation of the citric acid case was followed by the DRAM and rubber-related cartels. The Antitrust Division is tracking down international fugitives. The extraordinary success of the Divisions leniency program has generated widespread interest around the world. The Division has worked with many foreign agencies in drafting and implementing effective leniency programs in their jurisdictions. As a result, countries such as Australia, Brazil, Canada, France, Germany, Italy, Japan, Korea, the United Kingdom and the United States have amended or adopted their own leniency programs, with still other countries (e.g., Japan) in the process of devising their own programs.

The criminalization of cartel offenses in the U.K. and the passage of the U.K. Extra­dict of 2000 have paved the way for future extradition of individuals involved in cartels from the U.K. to face antitrust charges in the United States. Convergence in Leniency Programs. The extraordinary success of the Divisions leniency program has generated widespread interest around the world. The Division has worked with many foreign agencies in drafting and implementing effective leniency programs in their jurisdictions. As a result, countries such as Australia, Brazil, Canada, France, Germany, Italy, Japan, Korea, the United Kingdom and the United States have amended or adopted their own leniency programs, with still other countries (e.g., Japan) in the process of devising their own programs.

Criminal Fines Have Increased. The divestiture of the Antitrust division has removed a major disincentive for amnesty applicants and will lead to the exposure of more cartels, making the Division’s Corporate Leniency Program even more effective in detecting and prosecuting price-fixing. The divestiture applies to a corporation and its executives who coop­erate through the Antitrust Division’s Leniency Policy. The legislation limits the liability of a successful leniency appli­cant and its executives to single damages without joint and several liability, so the applicant would only be liable for actual, compensatory damages attributable to the harm its own conduct caused—if the applicant and its executives provide cooperation to the victims in their lawsuit against other conspirators for treble damages. The amount of the legislation is to increase the number of successful antitrust criminals that are exposed and prosecuted; increase compensation to victims of criminal antitrust conspiracies through the required cooperation provided to the victims by the amnesty applicant; further destabilize, and deter the formation of, future criminal antitrust conspiracies by creating a strong new incentive to self-report the violation; reduce the costs of investigating and prosecuting crimi­nal antitrust conspiracies; and reduce the cost for victims to recover the damages they suffer from criminal antitrust conspiracies.

Jail Sentences Have Increased. The DRAM and rubber-related cartels have been among the many, Ireland, Korea, and the United Kingdom as well as the U.S. and the European Union. At the time under the umbrella of the International Competition Network (ICN), the workshop, which was attended by more than 200 antitrust officials and non-governmental ad­visors, aimed to examine the current state of antitrust cooperation, covered a range of issues and the cooperation between the Office of the Antitrust Division and the Japanese Fair Trade Commission–coordinate­red searches and drop-in interviews. The extraordinary success of the Divisions leniency program has generated widespread interest around the world. The Division has worked with many foreign agencies in drafting and implementing effective leniency programs in their jurisdictions. As a result, countries such as Australia, Brazil, Canada, France, Germany, Italy, Japan, Korea, the United Kingdom and the United States have amended or adopted their own leniency programs, with still other countries (e.g., Japan) in the process of devising their own programs.

Cooperation and Coordination of Investigations. The Divisions cooperation with foreign antitrust authorities has been more effective. In one investigation in February 2004, four enforcement author­ities—the Antitrust Division, the European Commission, and the Japanese Fair Trade Commission—cooperated closely in the investigation and the red notice was issued in the U.K. Mutual Legal Assistance Treaty (MLAT), which had excluded antitrust matters from the scope of the cooperation provi­sions of the MLAT. The types of assis­tance in antitrust matters that a U.S. agency can now provide to the Division include the use of its unique extradition laws to obtain witness from victims, obtain docu­ments, and assist in the collection of criminal fines.

Maintaining Momentum on Anti-Cartel Convergence. Continued progress on convergence in this area, as in others, depends in important part on the willingness of jurisdictions to respect the legitimate enforcement concerns of their partners, as the pending Emparagroup litigation illus­trates. The United States in recent years has been a frequent target of the D.C. Circuit urged the court to reject plain­tiffs remarkably expansive theory of Sherman Act jurisdiction. We empha­sized that allowing lawsuits of this kind threatens adverse effects on both U.S. and foreign cartel enforcement. Six foreign governments filed amicus briefs supporting that view, representing both significant example of interna­tional convergence.

Amenities, idiosyncrasies of private plaintiffs in their damage actions against remaining cartel members. Damages recoverable from a corporate amnesty applicant that also cooperates $1 million, and the maximum Sherman Act jail term to 10 years. The Act also increased the maximum corporate fine to $100 million. The DRAM and rubber-related cartels result in total fines of over $660 mil­lion in the United States and Europe. The DOJ case served as a red notice watch is essentially an interna­tional red notice, and launches a criminal investiga­tion. During the fall of 2004, the Japanese govern­ment enforcers, using the combination of significant penalties and effective amnesty programs. A cooperation has been more effective and obviously beneficial to en­forcers in the United States, Europe, and Japan. For example, in the competition to fight international cartels has led to the establishment of cooperative relation­ships and enhanced policy convergence among competition enforcers around the world. Recent months have seen important suc­cesses in furthering the global fight against international cartelism through the variety of methods detailed below.

New Legislation. On February 2, 2005, the Australian Government announced that it will soon introduce legislation amending its compe­tion law to introduce criminal penalties for serious cartel conduct.

In the fall of 2004, the Japanese govern­ment submitted legislation to its Diet propos­ing major changes to the Japanese Antitrust Act that would authorize the Japanese Fair Trade Commission to adopt a Corporate Leniency Program. The proposed amend­ments are designed to improve the success of the administrative fine that the FTC imposes on cartel participants.

The criminalization of cartel offenses in the U.K. and the passage of the U.K. Extra­dict of 2000 have paved the way for future extradition of individuals involved in cartels from the U.K. to face antitrust charges in the United States. Convergence in Leniency Programs. The extraordinary success of the Divisions leniency program has generated widespread interest around the world. The Division has worked with many foreign agencies in drafting and implementing effective leniency programs in their jurisdictions. As a result, countries such as Australia, Brazil, Canada, France, Germany, Italy, Japan, Korea, the United Kingdom and the United States have amended or adopted their own leniency programs, with still other countries (e.g., Japan) in the process of devising their own programs.

The criminalization of cartel offenses in the U.K. and the passage of the U.K. Extra­dict of 2000 have paved the way for future extradition of individuals involved in cartels from the U.K. to face antitrust charges in the United States. Convergence in Leniency Programs. The extraordinary success of the Divisions leniency program has generated widespread interest around the world. The Division has worked with many foreign agencies in drafting and implementing effective leniency programs in their jurisdictions. As a result, countries such as Australia, Brazil, Canada, France, Germany, Italy, Japan, Korea, the United Kingdom and the United States have amended or adopted their own leniency programs, with still other countries (e.g., Japan) in the process of devising their own programs.

The sixteenth Annual International Cartel Workshop took place at the University of Maryland, College Park. The workshop focused on the current state of antitrust cooperation, covered a range of issues and the cooperation between the Office of the Antitrust Division and the Japanese Fair Trade Commission–coordinate­red searches and drop-in interviews. The extraordinary success of the Divisions leniency program has generated widespread interest around the world. The Division has worked with many foreign agencies in drafting and implementing effective leniency programs in their jurisdictions. As a result, countries such as Australia, Brazil, Canada, France, Germany, Italy, Japan, Korea, the United Kingdom and the United States have amended or adopted their own leniency programs, with still other countries (e.g., Japan) in the process of devising their own programs.

The extraordinary success of the Divisions leniency program has generated widespread interest around the world. The Division has worked with many foreign agencies in drafting and implementing effective leniency programs in their jurisdictions. As a result, countries such as Australia, Brazil, Canada, France, Germany, Italy, Japan, Korea, the United Kingdom and the United States have amended or adopted their own leniency programs, with still other countries (e.g., Japan) in the process of devising their own programs.

Continued from page 1 column 4 — Profile: Scott Hammond, Deputy Assistant Attorney General for Criminal Enforcement

Scott Hammond, Deputy Assistant Attorney General for Criminal Enforcement

Senior Counsel to the Deputy Assistant Attorney General for Criminal Enforcement. He continued his duties as Senior Counsel until becoming the Director of Criminal Enforcement in 2000, a position he held until becoming the Deputy Assistant Attorney General for Criminal Enforcement in 2005.

During Hammonds tenure as Director of Criminal Enforcement, the fifth largest cartel sent cases in the Divisions history. The case involved the掩饰 affecting more than $10 billion in U.S. and foreign cartel fines were levied against price fixes.

Hammonds graduated from the Univer­sity of North Carolina at Chapel Hill in 1985 and received his J.D. in 1988, also from the University of North Carolina.

Hammond lives in Silver Spring, Maryland, with his wife and three sons.
First, Division staff was encouraged to use the initial 39-day HSR waiting period aggressively to close matters not candidates for further litigation. Major merger investigations included solving open information and document requests and engaging with the parties on important issues through early consultations.

Second, staff was asked to use its knowledge to the fullest extent possible. Assistant Attorney General James, however, recognized that Second Requests with “appropriate timing and procedural protections for the Division in the event of protracted investigations” are focused on critical issues because of the improved dialogue between staff and the parties.

The Division looks forward to further gains from a cooperative and responsible approach to merger review from both Second Division staff and merging parties. As Charles, I said at the outset, “it takes two to tango.”

Third, the post-Second Request issuance period was to be marked by regular consultation with the merging parties and negotiated scheduling agreements.

On review, it appears that the Division and Bar are doing well on ten of these three fronts.

There have been big improvements in Second Division staff of the initial 39-day HSR waiting period. Voluntary closings of Second Requests in parties in almost every matter that result in the issuance of a Second Request. The average number of days from the date of post-Second Request and the other agency to resolution of that condition was just under three days. Now it is about six days.

The benefits of the Initiative might have been even greater, however, if some of the gains were not compromised by the clear line of work being done. The work being done. The major merger investigations included solving open information and document requests and engaging with the parties on important issues through early consultations.

In fact, the biggest change in prac- tice during the initial waiting period is the greater use by the Bar of the technique of withdrawing and refiling an HSR filing to give staff an additional 15/30 day review before filing an HSR Request. In the fiscal year 2002, that happened to 35 cases. That happened to 35 cases. That happened to 35 cases.

Interestingly, the biggest change in prac- tice during the initial waiting period is the greater use by the Bar of the technique of withdrawing and refiling an HSR filing to give staff an additional 15/30 day review before filing an HSR Request. In the fiscal year 2002, that happened to 35 cases. That happened to 35 cases. That happened to 35 cases.

In the fiscal year 2003, that happened to 45 cases. That happened to 45 cases. That happened to 45 cases.

In the fiscal year 2004, that happened to 35 cases. That happened to 35 cases. That happened to 35 cases.

In the fiscal year 2005, that happened to 35 cases. That happened to 35 cases. That happened to 35 cases.

In the fiscal year 2006, that happened to 35 cases. That happened to 35 cases. That happened to 35 cases.

In the fiscal year 2007, that happened to 35 cases. That happened to 35 cases. That happened to 35 cases.

In the fiscal year 2008, that happened to 35 cases. That happened to 35 cases. That happened to 35 cases.

In the fiscal year 2009, that happened to 35 cases. That happened to 35 cases. That happened to 35 cases.
**Engage**

Emergencies

Emergencies began when several foreign purchasers of vitamins for delivery and use overseas purchased vitamins of an individual vitamin that had also victimized U.S. consumers. The district court originally dismissed the case for failure to comply with the Foreign Trade Antitrust Improvements Act (FTAIA), 15 U.S.C. 25. The FTAIA, however, could not avoid the effect of the anti-competitive activities of the other countries in the United States and the court of appeals reversed. The Supreme Court then decided to hear the case.

The government, in an amicus brief and oral argument by Assistant Attorney General Paul ert Jr., the Court’s opinion indicated that a plaintiff could impose liability on monopolists who involved regulated industries.

**Trinko**

The United States urged the Supreme Court to grant review in Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, S.C. 386 (2004), to clarify the relationship between the Sherman Act and the Communications Act of 1934, as well as liability standards under Section 2 of the Sherman Act. The Court of Appeals took the context of a brief suit brought by a group of former customers of Trinko’s communications industry. But courts have applied the antitrust laws to encompass profitable transactions in the interest of competition, and the Sherman Act does not impose liability on monopolists who do not impose a general duty on monopolies to aid their competitors.

The Court granted review and, following briefing and oral argument by Solicitor General Theodore D. Olson, ruled that the Communications Act of 1996, as well as liability standards under Section 2 of the Sherman Act, do not impose a general duty on monopolies to aid their competitors.

Trinko’s decision involved regulated industries in the absence of a clear indication that Congress intended otherwise and that the Sherman Act does not impose a general duty on monopolies to aid their competitors.

The Court granted review in the case of United States v. Microsoft Corp., 512 U.S. 81, 114 S. Ct. 2295 (1994). It held that when a defendant knowingly and independently causes foreign injury, the FTAIA bars the suit in reaching this result, the court relied heavily on: the principle of statutory construction that we have recognized as a requirement of the Sherman Act that the Court held did not intend to expand the Sherman Act’s reach beyond what the text and the plain meaning of the statute would require. The court observed that Congress in enacting the FTAIA did not intend to expand the Sherman Act’s reach beyond what the text and the plain meaning of the statute would require.

Trinko has thus borne important implications for courts in determining whether a case is within the Sherman Act.

The Court’s majority decision in United States v. Microsoft, 529 U.S. 696, 120 S.Ct. 1953 (2000), held that Microsoft violated the Sherman Act in developing and distributing the Windows Media Player as a bundling device to keep consumers from purchasing rival products. The court concluded that Microsoft had successfully competed with itself and that the requisite element of injury to competition had been satisfied.

The courts’ decision was followed by the United States Department of Justice, which for the first time in its history, imposed a civil antitrust settlement in the form of a consent order that would have the effect of creating a broad antitrust settlement that would have the effect of creating a broad antitrust settlement that would.

Trinko upheld the FTAIA as a limitation on the Sherman Act’s reach as a result of the decision was followed by the United States Department of Justice, which for the first time in its history, imposed a civil antitrust settlement in the form of a consent order that would have the effect of creating a broad antitrust settlement that would.

**United States v. Microsoft Corp.**

On June 30, 2000, the en banc D.C. Circuit Court of Appeals issued its decision in United States v. Microsoft Corp., and its two accompanying judgments entered by the District Court in both the Department of Justice and the Commission. The court reversed and remanded the case for the parties to brief and argue the issues presented by the Supreme Court’s decision and the Final Judgment.

The Division has a team of lawyers and economists engaged in a comprehensive complaint monitoring and enforcement effort to fight illegal activity along with the assistance of the Technical Committee.

The court’s decision was followed by the United States Department of Justice, which for the first time in its history, imposed a civil antitrust settlement in the form of a consent order that would have the effect of creating a broad antitrust settlement that would.

The Division believes that the rules of antitrust law have evolved to encompass the interests of consumers and businesses, and that the court’s decision in United States v. Microsoft Corporation, Inc., 512 U.S. 696, 114 S. Ct. 2295 (2000).

The Division believes that the rules of antitrust law have evolved to encompass the interests of consumers and businesses, and that the court’s decision in United States v. Microsoft Corporation, Inc., 512 U.S. 696, 114 S. Ct. 2295 (2000).