



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2018 PERFORMANCE BUDGET**

Antitrust Division

FY 2018 Congressional Budget Submission

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I. Overview

A. Introduction

The Antitrust Division is committed to its mission of promoting economic competition through enforcing and providing guidance on antitrust laws and principles. Its vision is an environment in which U.S. consumers receive goods and services of the highest quality at the lowest price and sound economics-based antitrust enforcement principles are applied.

In recent years, the Division has aggressively pursued far-reaching criminal cartel activity and important civil matters while reviewing a large number of premerger filings, many involving complex issues and global conglomerates. To administer its caseload, the Division's request includes \$164,663,000 in FY 2018, which is equal to the FY 2017 Annualized Continuing Resolution level.

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

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address:

<http://www.justice.gov/02organizations/bpp.htm>.



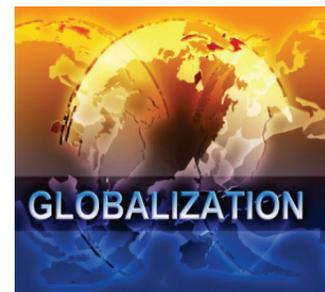
B. Issues, Outcomes, and Strategies

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

Enforcement Program	Major Matter Exemplars
<p align="center">Criminal</p>	<p>Financial Fraud Enforcement (see Exemplar - pg. 34) (Real Estate, Securities and Commodities)</p> <p>Automobile Parts (see Exemplar – pg. 37)</p> <p>Ocean Shipping (see Exemplar – pg. 40)</p> <p>Capacitors (see Exemplar – pg. 40)</p> <p>Generic Pharmaceuticals (see Exemplar – pg. 41)</p>
<p align="center">Civil Merger/Non-Merger</p>	<p><u>Merger (pg. 41)</u> Anthem/Cigna and Aetna/Humana (see Exemplar – pg. 41)</p> <p>Anheuser-Busch InBev/SABMiller (see Exemplar - pg. 42)</p> <p>Haliburton/Baker Hughes (see Exemplar – pg. 43)</p> <p><u>Non-Merger (pg. 44)</u> U.S. v. DIRECTV Litigation (see Exemplar – pg. 44)</p> <p>HSR Act Enforcement (see Exemplar – pg. 45) (ValueAct Capital, Duke Energy)</p>

Globalization

Corporate leaders continue to seek a global presence as an element of long-term economic success, and more companies are transacting a significant portion of their business in countries outside of where they are located. For example, in the United States international trade (defined as exports and imports of goods and services) was \$4.9 trillion in FY 2016.¹



¹ “U.S. International Trade in Goods and Services, February 2017.” *United States Department of Commerce, Bureau of Economic Analysis*, April 2017. Viewed on April 12, 2017 at <https://www.bea.gov/newsreleases/international/trade/2017/pdf/trad0217.pdf>.

The internationalization of the business marketplace has had a direct and significant impact on antitrust enforcement in general, and specifically, on the Antitrust Division's workload. A significant number of the premerger filings received by the Division involve foreign acquirers, acquirees, major customers and competitors, and/or divestitures.

This also impacts our criminal enforcement program. The Division places a particular emphasis on combating international cartels that target U.S. markets because of the breadth and magnitude of the harm that they inflict on American businesses and consumers. Of the grand juries opened through the end of FY 2016, approximately **35 percent** were associated with subjects or targets located in foreign countries. Of the approximate **\$11 billion** in criminal antitrust fines and penalties imposed by the Division between FY 1997 and the end of FY 2016, approximately **98 percent** were in connection with the prosecution of international cartel activity. In addition, approximately **91 foreign defendants** from France, Germany, Italy, Japan, South Korea, Taiwan, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom have served, or have been sentenced to serve, prison sentences in the United States as a result of the Division's cartel investigations.

The Division's criminal enforcement program overall, including enforcement against international cartels, has resulted in an increase in criminal fines. Up until 1994, the largest corporate fine imposed for a single Sherman Act count was \$6 million. Today, fines of \$10 million or more are commonplace, including many fines in excess of \$100 million. In FY 2016, total criminal antitrust fines obtained were just over **\$399 million**.

In FY 2015, the Division was instrumental in the Department's investigation of the foreign currency exchange (FX) spot market, which resulted in five major banks agreeing to plead guilty to felony charges. Four banks – Citicorp, JPMorgan Chase & Co., Barclays PLC, and The Royal Bank of Scotland plc – agreed to plead guilty to conspiring to manipulate the price of U.S. dollars and euros exchanged in the FX spot market and to pay criminal fines totaling more than **\$2.5 billion**. The \$925 million fine obtained from one of the banks was the largest criminal fine ever obtained for an antitrust charge. A fifth bank, UBS AG, agreed to plead guilty to manipulating the London Interbank Offered Rate (LIBOR) and other benchmark interest rates and pay a \$203 million criminal penalty, after breaching its non-prosecution agreement resolving the LIBOR investigation. In conjunction with previously announced settlements with regulatory agencies in the United States and abroad, the total fines and penalties paid by these five banks for their conduct in the FX spot market was nearly **\$9 billion**.

As discussed above, our work no longer takes place solely within the geographic borders of the U.S. In our enforcement efforts we find parties, potential evidence, and impacts abroad, all of which add complexity, and ultimately cost, to the pursuit of matters. Whether that complexity and cost results from having to collect evidence overseas or from having to undertake extensive inter-governmental negotiations in order to depose a foreign national, it makes for a very different, and generally more difficult investigatory process than would be the case if our efforts were restricted to conduct and individuals in

the U.S. The markets and competitors affecting U.S. businesses and consumers are more international in scope, and the variety of languages and business cultures that the Division encounters has increased. Consequently, the Division must spend more for translators and translation software, interpreters, and communications, and Division staff must travel greater distances to reach the people and information required to conduct an investigation effectively and expend more resources to coordinate our international enforcement efforts with other countries and international organizations.

International Competition Advocacy - The Antitrust Division actively works to encourage sound global enforcement of competition laws, pursuing this goal by strengthening bilateral ties with antitrust agencies worldwide, participating in multilateral organizations, and working with countries that are in the process of adopting antitrust laws. To date, the Division has entered into antitrust cooperation agreements with fifteen foreign governments – Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Germany, India, Israel, Japan, Korea, Mexico, Peru, and Russia, and we are active participants in international organizations such as the International Competition Network (ICN), which the Division co-founded, and the Competition Committee of the Organization for Economic Development (OECD). Our engagement prioritizes cartel enforcement, international cooperation, particularly on mergers, procedural fairness and, where appropriate, antitrust policy convergence. Efforts to promote best practices in these areas help enhance global and U.S. antitrust enforcement and reduce the burden on U.S. companies that operate in international markets.



Cartel enforcement is an example of the success of the Division’s global engagement. Worldwide consensus continues to grow that international cartel activity is pervasive and is victimizing consumers everywhere. For fiscal years 2000 to 2016, the affected annual sales in the U.S. of cartels prosecuted by the Division totaled \$37.7 billion, and a conservative estimate of the consumer benefits from the prosecutions is \$3.9 billion. The Antitrust Division’s commitment to detect and prosecute international cartel activity is shared with foreign governments throughout the world, many of whom cooperate with the Division through mutual legal assistance treaties and pursue cartel activity in their own country.

The Division is a strong advocate for effective anti-cartel enforcement around the world. As effective global cartel enforcement programs are implemented and criminal cartel penalties adopted, the overall detection of large, international cartels increases, as does the Division’s ability to collect evidence critical to its enforcement efforts on behalf of American consumers. In the past decade, dozens of jurisdictions have increased penalties for cartel conduct, improved their investigative powers and introduced or revised amnesty

programs. For example, Canada and Mexico have recently adopted or strengthened criminal sanctions for hard core cartel conduct. In addition, jurisdictions such as Australia, Brazil, Canada, Japan, New Zealand, and South Korea have made revisions to their cartel amnesty policies making them more consistent with the United States.

The Division also regularly cooperates with its international counterparts in its civil conduct and merger enforcement activities. Engagement with international counterparts helps give cooperating agencies a fuller picture of the merger or conduct under investigation and its potential competitive effects. Working closely with other jurisdictions also helps avoid the prospect of multiple jurisdictions' propounding conflicting theories of harm or adopting inconsistent remedies, and makes sure that parties can actually comply with a remedy that may be imposed by multiple jurisdictions. In any given year, the Division works on dozens of investigations with an international dimension, most of which involve cooperation with competition agencies in other jurisdictions.

Multilateral engagement is equally important in supporting the Division's antitrust enforcement agenda. In October 2001, with leadership from the Antitrust Division, ICN, which is comprised of competition authorities from 14 jurisdictions, was launched. The Division continues to play an important role in ICN, building consensus, where appropriate, among antitrust authorities on sound competition principles and provides support for new antitrust agencies in enforcing their laws and building strong competition cultures. As of 2016, the ICN has grown to include 132 agencies from 120 jurisdictions.

Similarly, since the 1960s, the Division has regularly participated in meetings of the OECD's Competition Committee (CC). The CC has three primary goals: to identify best practices in competition policy and antitrust enforcement, to foster convergence among national antitrust policies, and to promote increased cooperation among antitrust agencies. The CC has produced several non-binding OECD recommendations that have been helpful in advancing our enforcement interests. Over the years the CC has also produced a number of useful studies (*e.g.*, leniency, impact of hard core cartels), held roundtables on many antitrust subjects, and pushed many members in a generally de-regulatory and market-oriented direction. The CC's Working Party No. 3 (WP3) covers enforcement and international cooperation. WP3 has traditionally been chaired by a Division representative (AAG or DAAG).



Intellectual Property

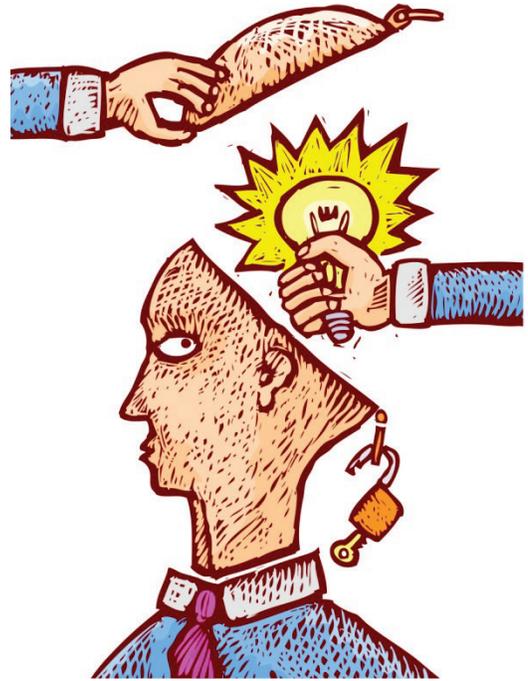
Invention and innovation are critical in promoting economic growth, creating jobs, and maintaining our competitiveness in the global economy. Intellectual property (IP) laws create exclusive rights that provide incentives for innovation. Antitrust laws ensure that new proprietary technologies, products, and services are bought, sold, traded and licensed in a competitive environment. Together, antitrust enforcement and IP protection promote the innovation necessary for economic success. Issues involving IP have arisen in various parts of the Division's recent work, as described below.

Patent Assets in Antitrust Cases and Business Reviews – The Division analyzes acquisitions of significant patent assets closely to ensure competition is protected and invention and innovation are advanced. The Division also investigates allegations that companies are using their intellectual property in a way that violates the antitrust laws, and challenges those activities where appropriate.

In addition, the Division has a business review process that enables companies concerned about the legality of proposed activity under the antitrust laws to ask the Department of Justice for a statement of its current enforcement intentions with respect to that activity. After completing an investigation, the Department publishes its business review letter, explaining its intentions. In February 2015, the Division analyzed a proposed update by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) to clarify its standards association's patent policy and concluded it was unlikely to challenge the proposal.

International Advocacy – The Division regularly engages in international competition advocacy projects promoting the use of sound analysis of competition complaints involving intellectual property rights in multinational fora, such as the Organization for Economic Cooperation and Development, United Nations Conference on Trade and Development (UNCTAD), and the Asian Pacific Economic Cooperation, as well as with our antitrust enforcement counterparts in other jurisdictions, including China, the European Commission, India, Japan, and Korea.

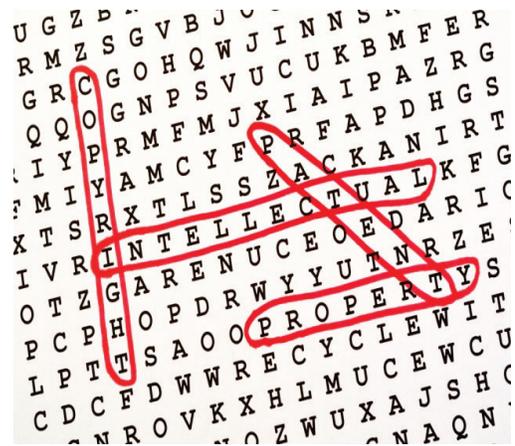
To ensure that U.S. businesses can fully and appropriately utilize their important intellectual property rights, it is crucial that other jurisdictions approach the intersection of antitrust and intellectual property in ways that promote both competitive markets and respect for intellectual property rights. The Division is committed to advocating that all jurisdictions enforce competition laws in ways that create the right incentives to promote



innovative activity. In October 2016, the Division participated in a roundtable organized by UNCTAD on the interface between antitrust enforcement and policy and intellectual property.

Interagency Initiatives – The Division regularly participates in interagency activities that promote competition advocacy where antitrust and intellectual property law and policy intersect.

In January 2017, the Division, with the Federal Trade Commission, [issued an update](#) to the [Antitrust Guidelines for the Licensing of Intellectual Property](#) to reflect intervening changes in statutes, case law, and enforcement policy. The update builds on the success of the 1995 IP Licensing Guidelines, which guided enforcement decisions and policy documents involving antitrust and intellectual property law, provided a model for foreign jurisdictions, and aided business planning.



Appellate Filings - The Division provides its views in Supreme Court and appellate cases involving intellectual property that have a significant potential to affect competition and may in other ways contribute actively to the development of a brief.

In October 2016, the United States submitted an amicus brief urging the Supreme Court to decline to hear an appeal in *SmithKline Beecham Corp. v. King Drug Company* – a case in which the Third Circuit ruled that a patent settlement agreement that required the patent owner, a branded drug manufacturer, to pay a generic drug entrant to stay out of the market was not immune from antitrust challenge even though the payment was not in the form of cash. The Supreme Court declined to hear the case, leaving the Third Circuit’s ruling in place.

Economic Concentration

Ongoing economic concentration across industries and geographic regions also increases the Division’s workload. Where there is a competitive relationship between or among the goods and/or services produced by the parties, the analysis necessary for thorough merger review becomes more complex. Competitive issues and efficiency defenses are more likely to surface in such reviews, adding complexity and cost to the Division’s work.

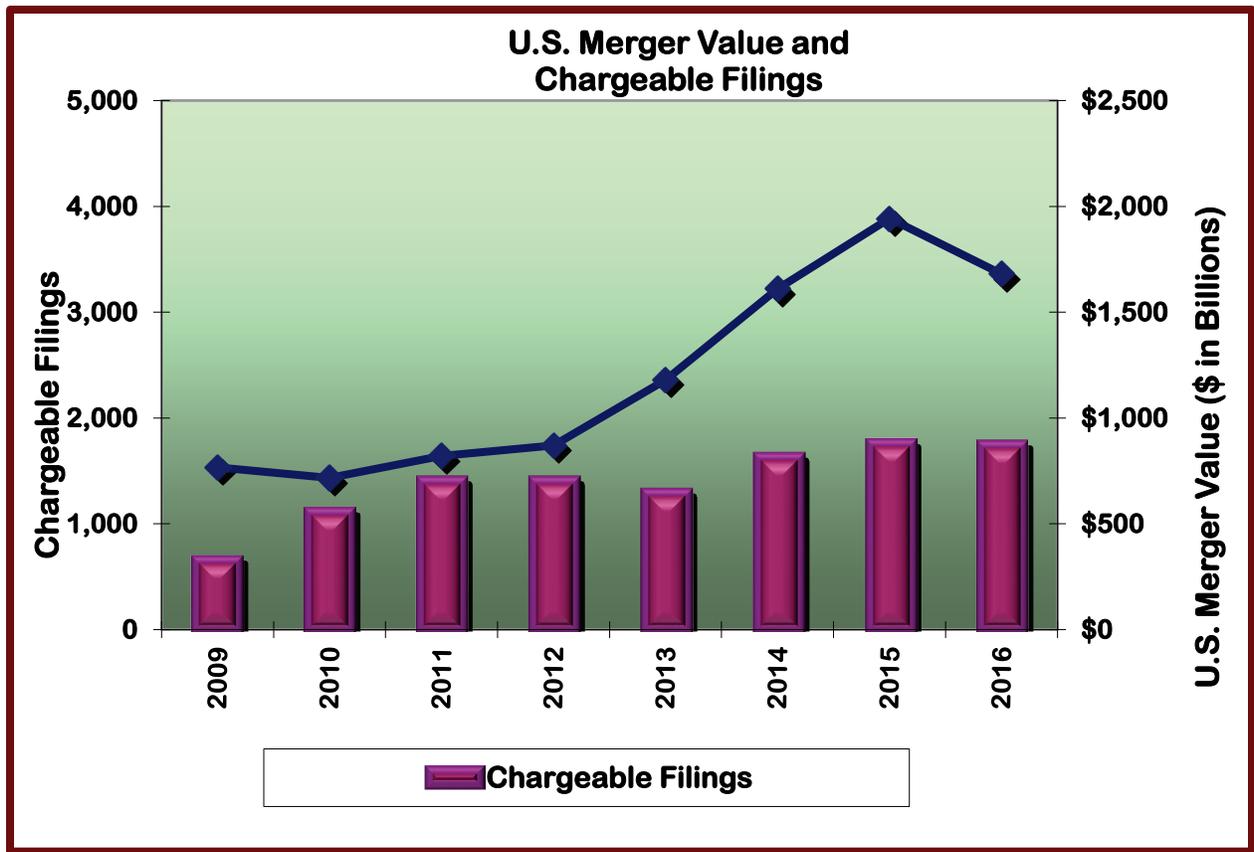


Figure 1

As shown in Figure 1, the overall economic downturn that began in calendar year 2008 affected merger deals in 2009 and the year finished with \$767 billion in U.S. merger value. However, merger and acquisition activity has improved since calendar year 2009. In calendar year 2016, worldwide merger and acquisition volume reached \$3.7 trillion and U.S. volume reached an annual total of \$1.7 trillion.³

According to the KPMG 2017 M&A Market Pulse Survey, “U.S. merger and acquisition (M&A) activity is expected to remain steady in 2017, compared to deal levels of 2016,” and 84 percent of M&A professionals surveyed are planning at least one acquisition in 2017.⁴

³ “Investment Banking Scorecard.” *The Wall Street Journal*. Viewed on April 12, 2017 at <http://graphics.wsj.com/investment-banking-scorecard/>.

⁴ “KPMG M&A Pulse: Deal Activity Expected To Be Steady In 2017.” *KPMG*, November 2016. Viewed on April 12, 2017 at <https://home.kpmg.com/us/en/home/media/press-releases/2016/11/kpmg-ma-pulse-deal-activity-expected-to-be-steady-in-2017.html>.

Technological Change and the Changing Face of Industry

Technological change continues to create new businesses and industries virtually overnight, and its impact on the overall economy is enormous. The emergence of new and improved technologies in robotics, transportation, wireless communications, Over-the-Top (OTT) services such as Voice over Internet Protocol (VoIP) and mobile collaboration, biometrics and online security continues and intensifies.



We will see even more advances in technology in coming years as the telecommunications upheaval continues to transform services traditionally offered to subscribers by network operators, such as voice calls, messaging and video content delivery. Global mobile subscriptions reached close to 7.5 billion in 2016 and are expected to grow to 8.9 billion by 2022 according to the Ericsson Mobility Report, published by Ericsson in November 2016.⁵

Clearly, being ‘connected’ while on-the-go has become essential to the American daily lifestyle, and this connectivity demand continues to result in rapidly emerging newer and faster networks, services, applications and equipment. By 2022, it’s estimated that the number of smartphone subscriptions alone is set to reach 6.8 billion, a substantial increase over the 3.9 billion smartphone subscriptions in 2016. Mobile video traffic is set by 2022 to grow to around 75 percent of all mobile data traffic, an increase of 25% over 2016 traffic levels.⁶

As more consumers turn to Over-the-Top services (Internet or broadband-based services that replicate services traditionally offered to subscribers by network operators, such as messaging, voice calls and video content delivery) expanding technologies such as wireless video streaming and Voice over Internet Protocol (VoIP), stand to grow dramatically over the next several years. According to Digital TV Research, OTT revenue is expected grow to \$64.8 billion in 2021 compared to \$29.4 billion in 2015.⁷



⁵ “Ericsson Mobility Report – On the Pulse of the Networked Society.” *Ericsson*, November 2016: 2. Viewed on April 12, 2017 at <https://www.ericsson.com/assets/local/mobility-report/documents/2016/ericsson-mobility-report-november-2016.pdf>.

⁶ “Ericsson Mobility Report – On the Pulse of the Networked Society” *Ericsson*, November 2016: 2, 14. Viewed on April 12, 2017 at <https://www.ericsson.com/assets/local/mobility-report/documents/2016/ericsson-mobility-report-november-2016.pdf>.

⁷ “OTT TV & video revenues to generate \$65 billion.” *Digital TV Research*, July 19, 2016. Viewed on April 12, 2017 at <https://www.digitaltvresearch.com/press-releases?id=170>.

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

Technological Change and Information Flows

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

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



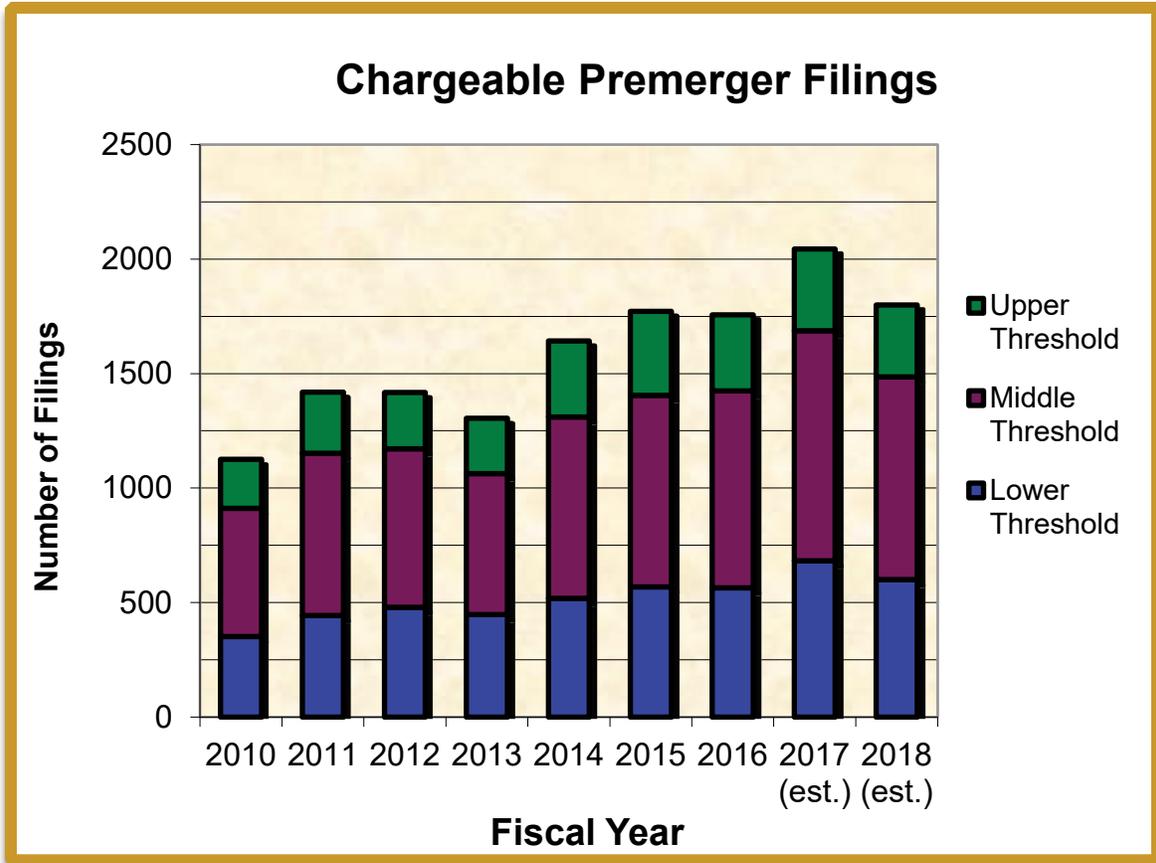
Results

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

- From FY 2009 through the end of FY 2016, as a result of the Division's efforts, over **\$9.5 billion in criminal fines and penalties** were obtained against antitrust violators. In FY 2016, the Division obtained just over **\$399 million** in criminal fines.
- In the area of criminal enforcement, the Division continues to move forcefully against hard-core antitrust violations such as price-fixing, bid rigging and market allocation agreements. A significant number of our prosecutions have involved **international price-fixing cartels**, impacting billions of dollars in U.S. commerce. **Since FY 1997, defendants have been sentenced to pay approximately \$11 billion in criminal fines and penalties to the U.S. Treasury, including more than \$7 billion just since the beginning of FY 2008.**
- In FY 2016, as the result of Division enforcement efforts, 14 corporations and 36 individuals were sentenced due to antitrust violations. Prison sentences between FY 2000 and the end of FY 2016 were an **average of approximately 21 months**, close to two and a half times the 8-month average sentence of the 1990's. Prison sentences since FY 1990 have resulted in approximately **740 years** of imprisonment in cases prosecuted by the Antitrust Division, with **261 defendants** sentenced to imprisonment of one year or longer.
- Coupled with the increasing frequency and duration of defendants' incarceration was a rise in monetary restitution by criminal defendants. From FY 2004 through the end of FY 2016, restitution generated by the Division was over **\$109 million**.
- Despite a workload of increasingly complex cases, the Antitrust Division has made great strides in combating anticompetitive behavior across industries and geographic borders and has saved consumers billions of dollars by ensuring a competitive and innovative marketplace. **Since FY 1998, the first year for which data is available, the Division, through its efforts in all three enforcement areas - merger, criminal and civil non-merger - is estimated, conservatively, to have saved consumers \$47 billion.**

Revenue Assumptions

Estimated FY 2018 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. In the January 2017 update to its “Budget and Economic Outlook: 2017 to 2027”, the Congressional Budget Office predicts that “Economic growth over the next two years would remain close to the modest rate observed since the end of the recession in 2009.”⁸



Premerger Filing Fee Thresholds Effective Feb 27, 2017	
Value of Transaction	Filing Fee
Lower: \$80.8M - <\$161.5M	\$45,000
Middle: \$161.5M - <\$807.5M	\$125,000
Upper: \$807.5M plus	\$280,000

Figure 2

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

Based upon estimates calculated by the Congressional Budget Office and the Federal Trade Commission (FTC), fee collections of \$225.4 million for FY 2018 are expected. Hart-Scott-Rodino (HSR) filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division.

⁸ “The Budget and Economic Outlook: 2017 to 2027.” *Congressional Budget Office*, January 2017: 1. Viewed on April 12, 2017 at <https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/reports/52370-budeconoutlook.pdf>.

Environmental Accountability

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

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



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

Summary

The Division is continually challenged by an increasingly international and complex workload that spans enforcement areas and requires considerable resources to manage. With our children destined to inherit the resulting markets, the importance of preserving economic competition in the global marketplace cannot be overstated. The threat to consumers is very real, as **anticompetitive behavior leads directly to higher prices and reduced efficiency and innovation**. In recognition of the importance of its mission, the Antitrust Division requests a total appropriation of \$164,663,000 in support of 695 positions and 695 estimated FTE.

FY 2018 Total Budget Request by Program Area

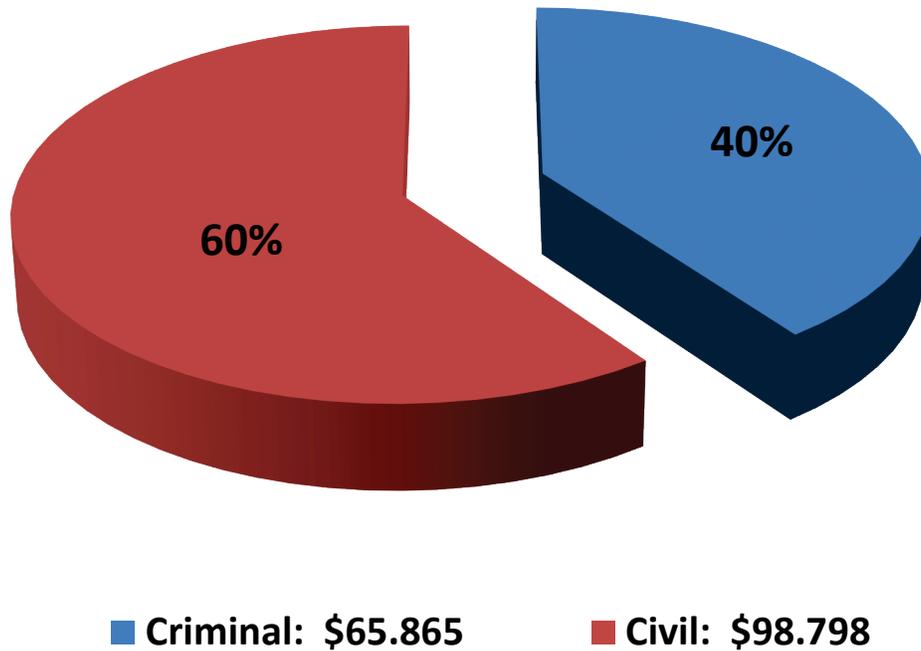


Figure 3

C. Full Program Costs

The Antitrust Division contains one Decision Unit (Antitrust) and can be divided into two broad program areas:

- Criminal Enforcement
- Civil Enforcement

In recent years, approximately 40 percent of the Division's budget and expenditures can be attributed to its criminal program and approximately 60 percent of the Division's budget and expenditures can be attributed to its civil program. The FY 2018 budget request assumes this same allocation.

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

D. Performance Challenges

External Challenges

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

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

Internal Challenges

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

Information Technology (IT) Expenditures

The Antitrust Division's IT budget will continue to support several broad Information Technology areas essential to carrying out its mission. These Information Technology areas include:

- *Data Storage* – Electronic storage and processing capability, vital to the mission of the Antitrust Division, continues to expand, growing exponentially since FY 2003, when 12 terabytes (12 trillion bytes) of capacity readily satisfied Division demands. By FY 2010 requirements surpassed 100 terabytes and the Division expects electronic analytical capacity needs to **reach 2,233 terabytes (TB) by FY 2017 and 3,260 TB by FY 2018.**
- *Data Security* – Monitoring and effecting actions to ensure that system design, implementation, and operation address and minimize vulnerabilities to various threats to computer security, including carrying out security planning, risk analysis, contingency planning, security testing, intrusion detection, and security training.
- *Litigation Support Systems* – Providing litigation support technologies that encompass a wide range of services and products that help attorneys and economists acquire, organize, develop, and present evidence. Providing courtroom presentation and related training to the legal staff to develop staff courtroom skills and practice courtroom presentations using state-of-the-art technology.

- *Office Automation* – Providing staff technological tools comparable to those used by opposing counsel, thereby ensuring equitable technological capabilities in antitrust litigation. These tools are used for desktop data review and analysis, computer-based communication, the production of time-critical and sensitive legal documents, and preparing presentations and court exhibits.
- *Management Information Systems* – Developing, maintaining, and operating data and information systems which support management oversight, direction of work, budget, and resources of the Division. Various tracking systems help ensure timely and efficient conduct of the Division’s investigations through use of automated, web-based tools.
- *Telecommunications* – Developing, providing, maintaining, and supporting networks and services required for voice and data communications among the Division’s offices, with outside parties, and in support of federal telework objectives.
- *Web Support* – Developing and maintaining the Division’s Internet and internal ATRnet site. Posting case filings, documents and data related to cases and investigations; designing and developing new applications, providing public access to key Division information, and ensuring compliance with web standards and guidelines, including guidelines for usability and accessibility.

II. Summary of Program Changes

No program changes.

III. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

Salaries and Expenses, Antitrust Division

For expenses necessary for the enforcement of antitrust and kindred laws, [\$164,977,000] \$164,663,000 to remain available until expended: Provided, That, notwithstanding any other provision of law, fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection (and estimated to be [\$124,000,000] \$112,700,000 in fiscal year [2016] 2018), shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [2016] 2018; so as to result in a final fiscal year [2016] 2018 appropriation from the general fund estimated at [\$40,977,000] \$51,963,000.

Analysis of Appropriations Language

No substantive changes proposed.

IV. Program Activity Justification

A. Decision Unit: Antitrust

Antitrust Division Fiscal Year 2018 Congressional Budget Submission Decision Unit Justification (dollars in thousands)			
Decision Unit: Antitrust - TOTAL	Direct Positions	Estimate FTE	Amount
2016 Enacted	830	689	\$164,977
2017 Continuing Resolution	830	694	\$164,663
Adjustments to Base and Technical Adjustments	-135	1	\$0
2018 Current Services	695	695	\$164,663
2018 Request	695	695	\$164,663
Total Change 2017 – 2018	-135	1	\$0

Note: FY 2016 FTE is actual.

1. Program Description

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

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



Criminal Enforcement - Within the Criminal strategy, the Antitrust Division must address the increased globalization of markets, constant technological change, and a large number of massive criminal conspiracies the Division is encountering. These matters transcend national boundaries, involve more technologically advanced and subtle forms of criminal behavior, and impact more U.S. businesses and consumers than ever before. The requirements -- whether in terms of staff time, travel and translation costs, or automated litigation support -- of fighting massive criminal conspiracies effectively is great. Matters such as the Division's ongoing investigation in the auto parts industry (page 37) exemplify the increasingly complex nature of Division workload in the criminal area and demonstrate that successful pursuit of such matters takes time and resources.

Civil Enforcement - Under the Civil strategy, the Division seeks to promote competition by blocking potentially anticompetitive mergers before they are consummated and pursuing non-criminal anticompetitive behavior such as group boycotts and exclusive dealing. The Division's Civil strategy seeks to maintain the competitive structure of the

national economy through investigation and litigation of instances in which monopoly power is sought, attained, or maintained through anticompetitive conduct and by seeking injunctive relief against mergers and acquisitions that may tend substantially to lessen competition. The Division's Merger Review work can be divided into roughly three categories:

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

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

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

Review of New and Existing Laws - Given the dynamic environment in which the Antitrust Division must apply antitrust laws, refinements to existing law and enforcement policy are a constant



consideration. Division staff analyzes proposed legislation and draft proposals to amend antitrust laws or other statutes affecting competition. Many of the hundreds of legislative proposals considered by the Department each year have profound impacts on competition and innovation in the U.S. economy. Because the Division is the Department's sole resource for dealing with competition issues, it significantly contributes to legislative development in areas where antitrust law may be at issue.

For example, the Division has filed numerous comments and provided testimony before state legislatures and real estate commissions against proposed legislation and regulations that forbid buyers' brokers from rebating a portion of the sales commission to the consumer or that require consumers to buy more services from sellers' brokers than they may want, with no option to waive the extra items.

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

In addition, the Division seeks opportunities to deploy its employees to serve the needs of the federal government for a broad variety of policy matters that involve competition policy to include:

- Detailing Division employees to federal agencies and other parts of the Administration and
- Actively participating in White House interagency task forces

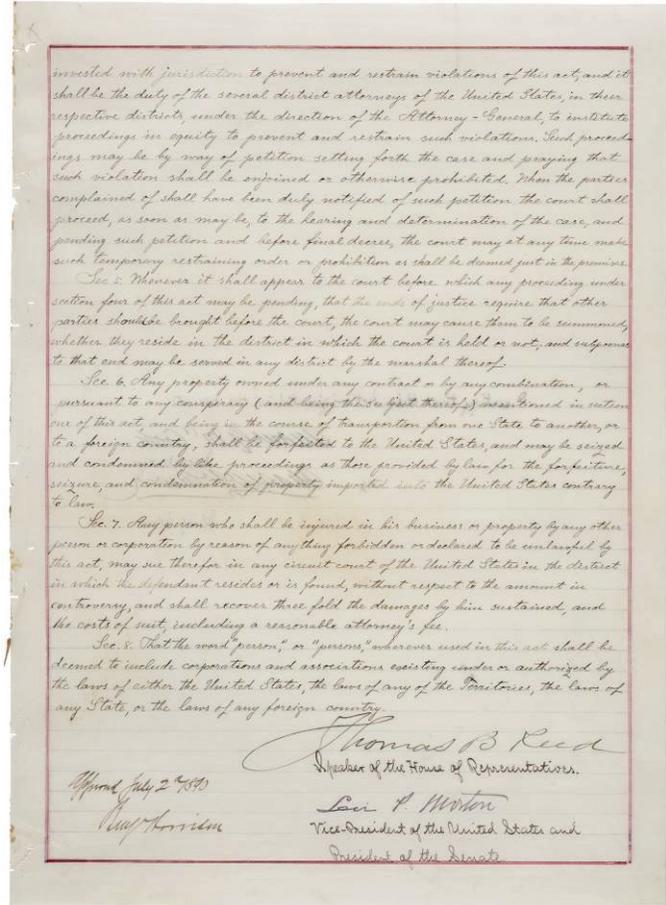
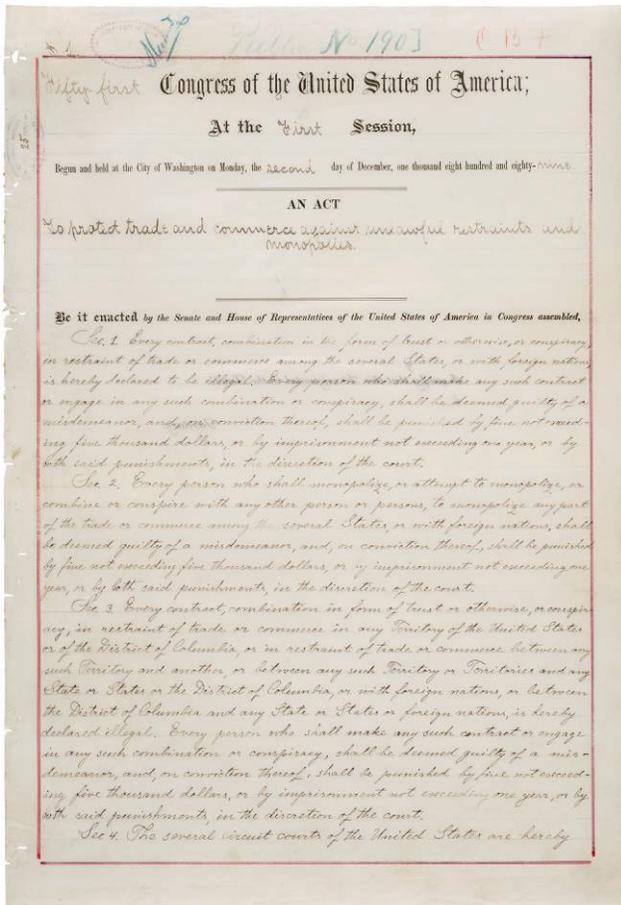
International Advocacy – The Antitrust Division continues to work toward bringing greater cooperation to international enforcement, promoting procedural fairness and transparency both at home and abroad, and achieving greater convergence, where appropriate, to the substantive antitrust standards used by agencies around the world. The Division pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, and working with countries that are in the process of adopting antitrust laws. One of the most notable examples of the Division's international efforts includes its participation in the



International Competition Network (ICN). The 15th annual conference of the ICN was held in Singapore in April 2016 where ICN members approved new work on crafting remedies in merger review, agency assessment and performance measurement, cartel investigative powers, market studies, competition agency ethics programs, and advocacy to the business community.

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

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



(An Act to protect trade and commerce against unlawful restraints and monopolies ("Sherman Antitrust Act"), July 2, 1890; 51st Congress, 1st Session, Public Law #190; Record Group 11, General Records of the U.S.)

2. Performance and Resource Tables

Decision Unit/Program: Antitrust

WORKLOAD/RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2016		FY 2016		FY 2017		Current Services Adjustments and FY 2018 Program Changes		FY 2018 Request	
Workload - Number of HSR Transactions Received		1,635		1,833		1,635		0		1,635	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Antitrust		694	\$164,977	689	\$171,903	694	\$164,663	1	\$0	695	\$164,663
TYPE	PERFORMANCE/RESOURCES	FY 2016		FY 2016		FY 2017		Current Services Adjustments and FY 2018 Program Changes		FY 2018 Request	
Program Activity	1. Criminal	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		278	\$65,991	276	\$68,761	278	\$65,865	0	\$0	278	\$65,865
Performance Measure – Criminal	Number of Active Grand Juries	75		88		75		0		75	
	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected				Not Projected		Not Projected		Not Projected	
Program Activity	2. Civil	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		416	\$98,986	413	\$103,142	416	\$98,798	1	\$0	417	\$98,798

TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	Target	Actual	Projected	Changes	Requested (Total)
		FY 2016	FY 2016	FY 2017	Current Services Adjustments and FY 2018 Program Changes	FY 2018 Request
Performance Measure – Merger	Number of Preliminary Inquiries Opened	70	65	70	0/0	70
Performance Measure – Civil Non-Merger	Number of Active Investigations	70	43	50	0/0	50
Performance Measure – Civil Merger and Non-Merger	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected	\$129,834	Not Projected	Not Projected	Not Projected
Outcome – Criminal, Civil (Merger and Civil Non-Merger)						
Consumer Savings	Criminal: Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$62	Not Projected	Not Projected	Not Projected
	Civil: Total Civil (Merger and Non-Merger) Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$2,272	Not Projected	Not Projected	Not Projected
Success Rates	Criminal - Percentage of Cases Favorably Resolved	90%	87%	90%	0	90%
	Civil - Percentage of Cases Favorably Resolved	80%	96%	80%	0	80%

TABLE DATA DEFINITIONS:

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

Criminal, Civil Merger and Civil Non-Merger performance measure target adjustments for FY 2017 through FY 2018 projections are based on an analysis of FY 2007 through FY 2016 actual amounts.

Criminal Performance Measure:

During the course of the year, if the Antitrust Division subpoenas individuals to, questions witnesses before, presents information to, or otherwise has contact with a grand jury for one of our investigations, it is considered an **Active Grand Jury**. In some instances, the Division may conduct an investigation during the course of the year, but not bring witnesses before or present evidence to the applicable grand jury until a subsequent year. For example, it may require a significant amount of investigatory time or coordination with foreign enforcement authorities to obtain critical evidence for presentation to a grand jury. Such instances are also considered Active Grand Juries.

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

Civil Performance Measures:

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

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

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

In estimating the Dollar Volume of U.S. Commerce Affected in a civil non-merger case, staffs estimate an aggregate volume of commerce for each relevant domestic market affected by the anticompetitive practice or agreement. Obviously, many anticompetitive practices or agreements are more extensive, sometimes far more extensive, than are formally charged; hence we believe that the Dollar Volume of U.S. Commerce Affected is an underestimate of the actual value.

Outcome:

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

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

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

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

The **Success Rate for Civil Matters** includes:

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

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

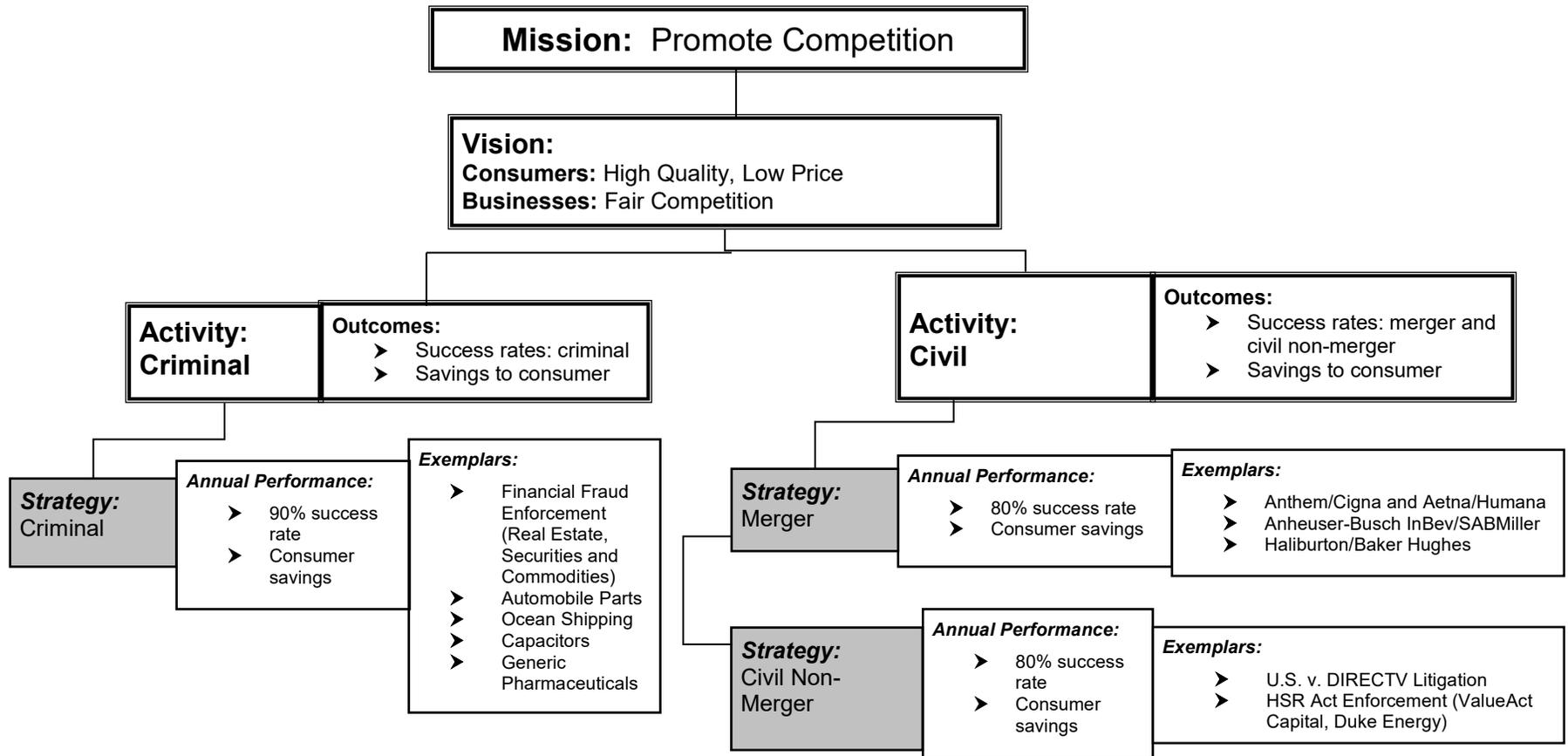
Performance Measure Report - Historical Data

Decision Unit: Antitrust

Performance Report and Performance Plan Targets		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016		FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure: Criminal	Number of Active Grand Juries	87	75	78	88	75	95	75	75
Performance Measure: Criminal	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	\$4,469	\$2,296	\$2,931	\$178,004	Not Projected	\$621	Not Projected	Not Projected
Performance Measure: Civil Merger	Number of Preliminary Inquiries Opened	74	64	80	67	70	65	70	70
Performance Measure: Civil Non-Merger	Number of Active Investigations	46	38	34	37	70	43	50	50
Performance Measure: Civil (Merger and Non-Merger)	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	\$437,410	\$46,457	\$239,122	\$216,998	Not Projected	\$129,834	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Criminal	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$447	\$230	\$293	\$107	Not Projected	\$62	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Civil	Civil (Merger and Non-Merger) - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$8,966	\$909	\$3,378	\$3,387	Not Projected	\$2,271	Not Projected	Not Projected
Outcome Measure: Success Rate - Criminal	Criminal - Percentage of cases favorably resolved	93%	100%	92%	98%	90%	87%	90%	90%
Outcome Measure: Success Rate - Civil (Merger and Non-Merger)	Civil - Percentage of cases favorably resolved	100%	90%	100%	100%	80%	96%	80%	80%

3. Performance Measurement Framework

Antitrust Division, Department of Justice
Performance Measurement Framework
 FY 2018



4. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

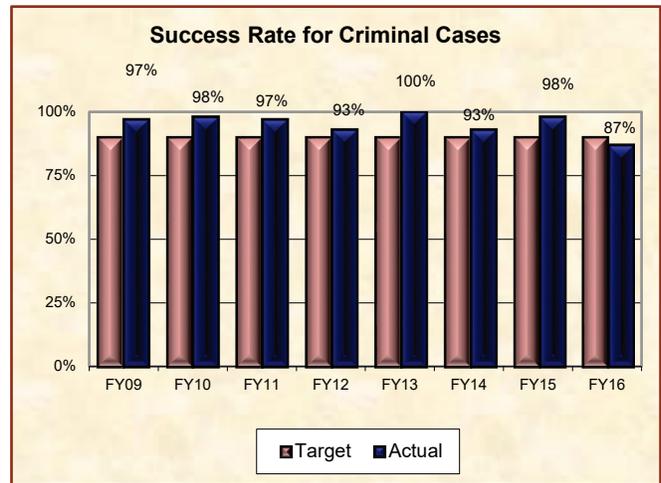
Prosecute International Price Fixing Cartels

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

In the criminal enforcement area, the Division continues to provide economic benefits to U.S. consumers and businesses in the form of lower prices and enhanced product selection by dismantling international private cartels and restricting other criminal anticompetitive activity.

In FY 2016, the Division successfully resolved 87 percent of criminal matters. This measure is a consolidated measure shared with all other litigating components within the Department. As a whole, the Department exceeded its target by successfully resolving 93 percent of its cases. The Division expects to meet or exceed its goals for FY 2017 and FY 2018.

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

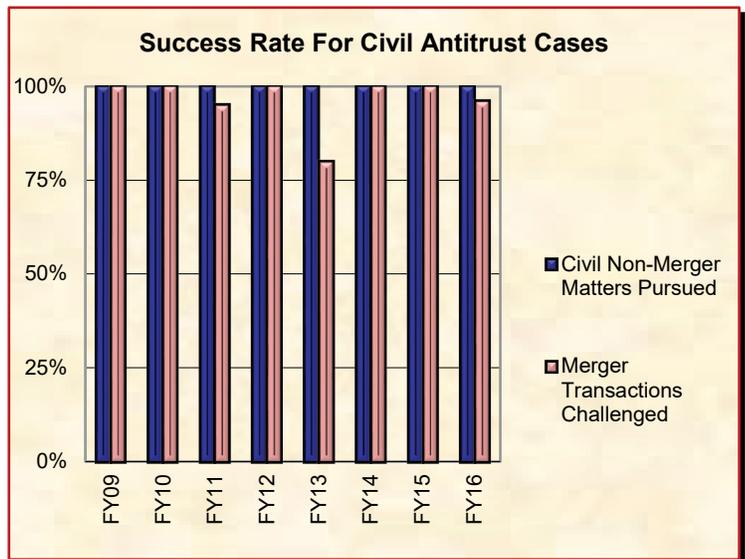


Civil Enforcement

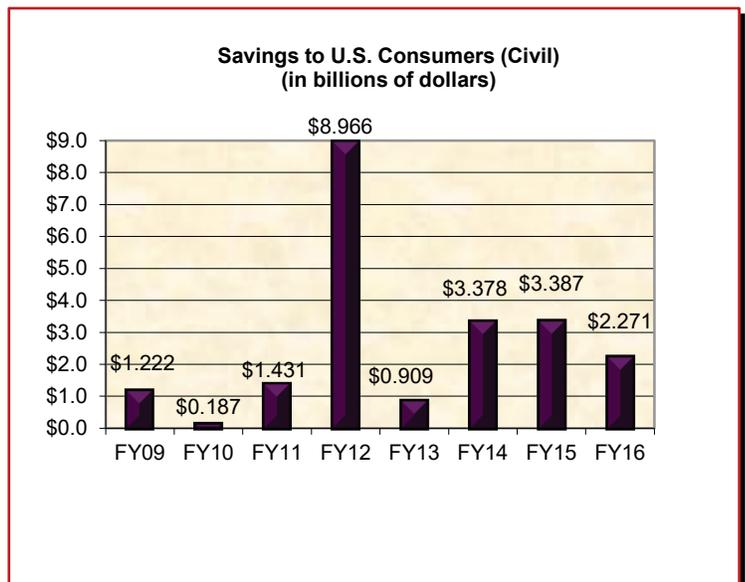
The charts below illustrate the Civil Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Civil Antitrust Cases and Savings to U.S. Consumers (as a result of the Antitrust Division's Civil enforcement efforts).

The success rate for civil non-merger matters includes investigations in which business practices were changed after the investigation was initiated, a case was filed with consent decree, or a case was filed and litigated successfully. The Division's success in preventing anticompetitive behavior in the civil non-merger area has been notable.

The success rate for merger transactions challenged includes mergers that are abandoned, fixed before a complaint is filed, filed as cases with consent decrees, filed as cases but settled prior to litigation, or filed and litigated successfully. Many times, merger matters involve complex anticompetitive behavior and large, multinational corporations and require significant resources to review. The Division's Civil Merger Program successfully resolved 96 percent of the matters it challenged in FY 2016 and expects to meet or exceed its goals for FY 2017 and FY 2018.



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





ANTITRUST DIVISION

b. Strategies to Accomplish Outcomes

Prosecute International Price Fixing Cartels

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

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

Civil Enforcement

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



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

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

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

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

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



5. Exemplars - Criminal

A. Financial Fraud Enforcement

Introduction and Background

The Sherman Antitrust Act authorizes the Antitrust Division to bring criminal prosecutions against those who conspire with competitors to fix prices, rig bids, or allocate customers, territories, markets, or sales or production volumes. Enforcing the Sherman Act is a critical component of the Department's overall battle against financial fraud. Of the 51 criminal cases the Antitrust Division filed in FY 2016, many involved serious financial fraud, accounting for a significant portion of the \$458 million total criminal fines imposed. Altogether, 19 corporations and 51 individuals were charged and the courts imposed 22 prison sentences totaling 7,249 days of incarceration. The Division brought these cases in investigations of important industries, including real estate, auto parts, financial services, deep-sea ocean shipping of roll-on, roll-off cargo, capacitors, and generic pharmaceuticals, to name just a few.



Mortgage and Foreclosure Fraud

In calendar year 2011, the Antitrust Division began investigating patterns of collusion among real estate speculators. Instead of competitively bidding at public auctions held on the steps of courthouses and municipal buildings around the country, groups of speculators have conspired to keep auction prices artificially low. These schemes include speculators paying each other off to refrain from bidding, or holding unofficial "knockoff" auctions among themselves. While the country continues to face unprecedented home-foreclosure rates, this collusion is aimed at eliminating competition at foreclosure auctions. This artificially drives down foreclosed home prices, enriching the colluding speculators at the expense of homeowners, municipalities and lending institutions. These collusive schemes have a far-reaching negative impact, because they affect home prices in neighborhoods where the foreclosed properties are located. Similar collusive conduct has also been detected among bidders at auctions for public tax liens.



To combat this anticompetitive epidemic, the Antitrust Division, in conjunction with the FBI, developed a Real Estate Foreclosure Initiative. The initiative includes outreach and training efforts designed to raise awareness within the investigative community and the public about bid rigging and fraud at real estate-foreclosure and tax-lien auctions. The initiative includes information sharing and coordinated enforcement efforts with our law-enforcement partners to facilitate identifying, investigating, and prosecuting bid-rigging and collusive conduct at public auctions.

To date, as a result of the Division's efforts, 127 individuals and three companies have been charged in connection with real estate-foreclosure and tax-liens conspiracies across the United States that suppress and restrain competition to the detriment of communities and already-financially distressed homeowners. Of the three companies charged, all have pleaded guilty. Of the individuals, 106 have pleaded guilty, seven have been convicted after trial, two were acquitted, and the remaining individuals are under indictment. The Division has four upcoming trials against those remaining defendants.

Securities and Commodities Fraud

The Antitrust Division is integral to the Department's ongoing efforts to combat securities, commodities, and investment frauds. These so-called "Wall Street" frauds have plagued the nation's markets, businesses and consumers, and continue to act as a drag on the nation's ability to sustain a full economic recovery.

Of particular note are prosecutions involving manipulation of benchmark interest rates, which undermined financial markets worldwide and directly affected the rates referenced by financial products held by and on behalf of companies and investors around the world.

LIBOR (London Interbank Offered Rate)

One of these benchmark interest rates, LIBOR, serves as the primary benchmark for short-term interest rates globally and is used as a reference for many interest-rate contracts, mortgages, credit cards, student loans and other consumer lending products. Pursued jointly with the Criminal Division, the Antitrust Division's investigation of LIBOR manipulation has resulted in deferred prosecution agreements with four banks (the Royal Bank of Scotland, Rabobank, Lloyds Banking Group and Deutsche Bank AG), charges filed against RBS Securities Japan and DB Group Services (UK) Limited, indictments or information filed against eleven former traders, eight of whom have either been convicted or pleaded guilty, and criminal complaints filed against three former brokers and two former traders, all for their roles in manipulating LIBOR and related benchmark interest rates.



The Division has obtained **over \$1.3 billion** in criminal fines and penalties in this ongoing investigation.

The broader investigation relating to LIBOR and other benchmark rates has benefited from a wide-ranging cooperative effort among various enforcement agencies both in the United States and abroad. The FBI, SEC, the Commodity Futures Trading Commission, the U.K. Financial Conduct Authority and Serious Fraud Office, the Japanese Ministry of Justice, the Japan Financial Services Agency, the Swiss Financial Market Supervisory Authority, the Dutch Public Prosecution Service, and the Dutch Central Bank have played a major role in the LIBOR investigation. The total of global criminal and regulatory fines, penalties and disgorgement obtained by authorities is over \$8 billion.

Foreign Exchange Rates

As a result of the Division's investigation of collusion in the foreign-currency exchange spot market, four major banks and two foreign currency exchange traders have pleaded guilty to felony antitrust charges, and three traders have been indicted.



Altogether, the banks—Citicorp, JPMorgan Chase & Co., Barclays PLC, and The Royal Bank of Scotland plc—paid criminal fines totaling more than \$2.5 billion. A fifth bank, UBS AG, pleaded guilty to manipulating the LIBOR and other benchmark interest rates and paid a \$203 million as a criminal penalty for breaching its December 2012 non-prosecution agreement in the LIBOR investigation. Working together with the Criminal Division and other regulators and

enforcers in the United States and abroad, the Antitrust Division investigated and prosecuted a conspiracy affecting currencies at the heart of international commerce and undermining the integrity and competitiveness of foreign currency exchange markets that account for hundreds of billions of dollars worth of transactions every day. The five parent-level pleas were a testament to the Department's commitment to vigorously prosecute all those who manipulate the economic system to their own advantage at the expense of the public and investors.

In addition to the criminal penalties levied against the banks, civil enforcement authorities also imposed substantial penalties. The Office of the Comptroller of the Currency fined Bank of America, Citigroup, and JP Morgan Chase a total of **\$950 million** in November 2014. The Commodity Futures Trading Commission and the United Kingdom's Financial Conduct Authority imposed penalties totaling over **\$1.4 billion and \$1.7 billion**, respectively, on five banks. These included Citibank, HSBC, JPMorgan Chase, Royal Bank of Scotland and UBS. The Division continues to play a leading role in investigating the global manipulation of foreign exchange rates.

Over the past year, the Division’s investigation into manipulation of the foreign exchange market resulted in charges against five individuals. Two foreign currency exchange traders pleaded guilty for participating in a price-fixing conspiracy of Central and Eastern European, Middle Eastern, and African (CEEMA) currencies, and three former traders were indicted on charges of conspiring to manipulate the price of the U.S. dollar and euro exchanged in the foreign exchange spot market.

B. Automobile Parts Investigation

Introduction

The Antitrust Division continues to prosecute the illegal business practices of major automobile parts suppliers in an investigation spanning three continents and involving the Federal Bureau of Investigation, the European Union, Canada’s Competition Bureau, the Japanese Fair Trade Commission, and the Korean Fair Trade Commission. The investigation quickly went beyond its initial focus on conspiracies involving sales of wire harnesses used in auto bodies and related products, and has continued to steadily expand as the Division investigates and prosecutes conspiracies involving other parts and additional suppliers. The collusion in the auto parts industry affected American automobile manufacturing companies and many foreign producers.



The automobile parts investigation is the **largest criminal investigation the Antitrust Division has ever pursued**, both in terms of its scope and the potential volume of commerce affected by the alleged illegal conduct. The ongoing cartel investigation of price-fixing and bid-rigging in the automobile parts industry has yielded **charges against 48 companies and 65 individuals** and **over \$2.9 billion in criminal fines** in the investigation thus far. Thirty-two individuals have pleaded guilty or agreed to plead guilty and serve prison terms, including 31 foreign nationals – two of whom agreed to serve two years in prison.

Background and Investigation

The Division’s investigation initially examined only “wire harnesses”—the distribution system of cables and connectors that carry electronic information throughout an automobile. Since then, the investigation expanded to include alternators, starters, air flow meters, valve timing control devices, fuel injection components, ignition coils, electronic throttle bodies, motor generators, instrument panel clusters, electronic control units, heater control panels, various sensors, seatbelts, airbags, hoses, steering wheels, and more component parts of automobiles.

The Antitrust Division continues to investigate whether the auto parts companies that provide component parts to vehicle manufacturers such as Chrysler, Ford, General Motors, Honda and Toyota, participated in illegal anti-competitive cartel conduct, with some suspected activity dating as far back as 2000. Specific charges to date include conspiring to allocate markets, fix prices, and rig bids.

Many conspirators that have pleaded guilty carried out their conspiracies by agreeing during meetings and conversations to allocate the supply of an automobile product on a model-by-model basis and to coordinate price adjustments requested by automobile manufacturers in the United States and elsewhere. They sold the auto parts to manufacturers at non-competitive, rigged and fixed prices, and monitored the prices to make sure those involved in the conspiracies adhered to the agreed upon bid-rigging and price-fixing schemes.

Results

Corporate fines in excess of \$50 million and the associated jail sentences for corporate executives in the auto parts investigation since the beginning of FY 2011 include:

Yazaki Corporation	<ul style="list-style-type: none"> • \$470 million—the second largest criminal fine ever for an antitrust violation • Wire harnesses and related products, instrument panel clusters, fuel senders • 6 executives ranging from 14 months to 2 years
Bridgestone Corporation	<ul style="list-style-type: none"> • \$425 million • Anti-vibration rubber parts • 1 executive, 18 months
Furukawa Electric Company Ltd.	<ul style="list-style-type: none"> • \$200 million • Wire harnesses and related products • 3 executives ranging from one year and one day to 18 months
Hitachi Automotive Systems, Ltd.	<ul style="list-style-type: none"> • \$195 million (starter motors, alternators, and other products) • \$55.48 million (shock absorbers) • 1 executive, 15 months
Mitsubishi Electric Corporation	<ul style="list-style-type: none"> • \$190 million • Starter motors, alternators, ignition coils
Mitsuba Corporation	<ul style="list-style-type: none"> • \$135 million • Windshield wiper systems and other products • 1 executive, 13 months
Nishikawa Rubber Co. Ltd	<ul style="list-style-type: none"> • \$130 million • Automotive body sealing products

Toyo Tire & Rubber Co., Ltd.	<ul style="list-style-type: none"> • \$120 million • Anti-vibration rubber and constant-velocity-joint boots • 1 executive, one year and one day
Jtekt Corporation	<ul style="list-style-type: none"> • \$103 million • Bearings, steering assemblies
DENSO Corporation	<ul style="list-style-type: none"> • \$78 million • Electronic control units and heater control panels • 6 executives ranging from one year and one day to 16 months
Takata Corporation	<ul style="list-style-type: none"> • \$71.3 million • Seatbelts • 4 executives ranging from 14 months to 19 months
NSK Ltd.	<ul style="list-style-type: none"> • \$68.2 million • Bearings
Corning International K.K.	<ul style="list-style-type: none"> • \$66.5 million • Ceramic substrates
Kayaba Industry Co., Ltd. d/b/a KYB Corporation	<ul style="list-style-type: none"> • \$62 million • Shock absorbers
Robert Bosch GmbH	<ul style="list-style-type: none"> • \$57.8 million • Spark plugs, standard oxygen sensors, and starter motors
Koito Manufacturing Co., Ltd.	<ul style="list-style-type: none"> • \$56.6 million • Automotive lighting fixtures and high intensity discharge ballasts
NGK Spark Plug Co., Ltd.	<ul style="list-style-type: none"> • \$52 million • Spark plugs, oxygen and air fuel ratio sensors

Conclusion

The illegal activity of these and other conspirators had a significant impact on automotive manufacturers in the United States. Some of the conspiracies went on for at least a decade. The conduct also potentially affected commerce on a global scale in other markets where automobiles are manufactured and/or sold.

Criminal antitrust enforcement remains a top priority of the Antitrust Division. The automobile parts investigation is continuing, and the Division anticipates additional fines and prison sentences, as well as two trials in the upcoming year. The importance of rooting out this type of illegal criminal conduct cannot be overstated. It negatively impacts the United States economy and results in higher prices for consumers and businesses.

C. Ocean Shipping Investigation

Background and Investigation

The Antitrust Division has continued a wide-ranging and successful investigation of collusion in the deep-sea freight transportation industry. This conspiracy involved sales of international shipping services for roll-on, roll-off cargo—non-containerized cargo that can be rolled onto and off of an ocean-going vessel. Examples include new and used cars and trucks, and construction and agricultural equipment. The conspiring companies agreed on prices, allocated customers, and agreed to refrain from bidding against one another, and to exchange customer pricing information. The conspirators then charged fees in accordance with their agreements for international ocean-shipping services for certain roll-on, roll-off cargo to and from the United States and elsewhere at collusive and non-competitive prices.



Results

Prosecutions to date have held four shipping companies responsible for their participation in the conspiracy. Their criminal sentences after guilty pleas collectively amounted to over \$230 million. Eight executives have been charged for their participation in the conspiracy; four have pleaded guilty and were sentenced to terms of imprisonment ranging from 14 to 18 months, and four have been indicted. The Antitrust Division conducted this investigation with the FBI's Baltimore Field Office, along with assistance from the U.S. Customs and Border Protection Office of Internal Affairs, Washington Field Office/Special Investigations Unit.

D. Capacitors

Background and Investigation

The Antitrust Division investigated a conspiracy to suppress and eliminate competition for electrolytic capacitors sold to customers in the U.S. and elsewhere by fixing prices and rigging bids. Electrolytic capacitors, which store and regulate electrical current, are used in a variety of electronic products, including computers, televisions, car engine and airbag systems, home appliances, and office equipment.

Results

To date, six companies and ten individuals have been charged in the ongoing investigation. Six companies have agreed to plead guilty and pay fines totaling over \$38 million. An executive agreed to plead guilty and serve a prison term of a year and a day. The investigation is being conducted by the Antitrust Division's San Francisco Office and the FBI's San Francisco Field Office.

E. Generic Pharmaceuticals

Background and Investigation

The Antitrust Division investigated price fixing, bid rigging, and market allocation in the generic pharmaceutical industry. The investigation has uncovered collusion that affected sales of two important generic drugs: an antibiotic called doxycycline hyclate and glyburide, a medicine used to treat diabetes. The investigation is ongoing.



Results

The Division charged the former CEO and the former president of a generic drug company, alleging that the two former executives conspired to fix prices, rig bids, and allocate customers for an antibiotic (doxycycline hyclate delayed-release). The Division also alleged that the former executives conspired to fix prices and allocate customers for a medicine used to treat diabetes (glyburide). Those individuals have both pleaded guilty in January 2017 and are awaiting sentencing. The investigation is being conducted by the Antitrust Division's Washington Criminal I Section with the assistance of the FBI's Philadelphia Division, the FBI headquarters' International Corruption Unit, the United States Postal Service Office of Inspector General and the U.S. Attorney's Office for the Eastern District of Pennsylvania.

6. Exemplars – Civil

A. Merger

Anthem/Cigna and Aetna/Humana

In 2015, two of the largest health insurance mergers in history were announced. Anthem and Cigna agreed to merge, as did Aetna and Humana, in deals that would significantly consolidate one of the most important industries for consumers in the United States. After thorough investigations of both transactions, the Division announced lawsuits to block each merger in the summer of 2016. In an unprecedented undertaking, the Division litigated and tried both major merger challenges at the same time, in separate proceedings before different judges.

Anthem sought to acquire Cigna for \$54 billion in a deal that the Division determined would substantially lessen competition in the health insurance industry in dozens of markets across the country. The Division tried the case before Judge Amy Berman Jackson, presenting 28 fact witnesses, five experts, and deposition excerpts from more

than 100 individuals. Judge Jackson ruled in favor of the Division and blocked the proposed merger, finding it was likely to substantially lessen competition in the market for the sale of medical health insurance to national accounts in fourteen states and in the sale of medical insurance to large group employers in Richmond, Virginia. The matter is currently on appeal before the U.S. Court of Appeals for the District of Columbia Circuit.

Also in the summer of 2015, Aetna sought to acquire Humana in a deal valued at \$37 billion. As with Anthem and Cigna, the Division conducted a thorough investigation of the transaction. The Division ultimately concluded the Aetna/Humana deal would harm competition in two distinct product areas: Medicare Advantage (MA) sold to individual seniors in 364 counties across the United States, and commercial health insurance sold to individuals and families on the public exchanges created by the Affordable Care Act in 17 counties in Florida, Georgia, and Missouri.



The Division filed its lawsuit against Aetna and Humana on the same day that it sued to block Anthem/Cigna, but conducted a separate litigation and trial under the courts' orders. Judge John Bates set a highly accelerated five-month trial schedule, culminating in a 13-day bench trial in December 2016. The court heard testimony from 31 live witnesses, admitted over 1,200 trial exhibits, and received 350 pages of post-trial briefing. On February 8, 2017, Judge Jackson ruled in favor of the Division and blocked the proposed merger. Aetna and Humana abandoned their proposed transaction on February 14, 2017.

The Division's trial wins against these health insurance mergers preserve competition in markets critical to the health and well-being of American consumers.

Anheuser-Busch InBev/SABMiller

U.S. consumers spend over \$100 billion per year on beer. Anheuser-Busch InBev (ABI) is the largest beer brewer in the U.S., accounting for approximately 47 percent of beer sales across the U.S., and its brands include Budweiser, Bud Light, and Michelob, among others. MillerCoors, the joint venture between SABMiller and Molson Coors Brewing Company through which SABMiller operates in the United States, is the second largest beer brewer in the U.S., accounting for 25 percent of beer sales. Its more than 40 brands of beer include Coors Light and Miller Lite.

In November 2015, ABI agreed to acquire SABMiller in a proposed merger that would have eliminated the head-to-head competition between ABI and MillerCoors. The Division conducted an investigation that determined the merger would harm competition between the companies, and would likely lessen distribution options for the craft beer companies that compete with both of the merging brewers.

On July 20, 2016, the Division filed suit to block the merger. Simultaneously with its complaint, the Division filed a proposed settlement that will preserve competition between these two largest beer brewers in the United States. The settlement requires ABI to divest SABMiller's equity and ownership stake in MillerCoors, as well as other assets needed to protect MillerCoors' competitiveness, including perpetual, royalty-free licenses to certain products and ownership of international rights to the Miller brands of beer. The settlement will also preserve and promote competition in the U.S. beer industry by imposing restrictions on ABI's distribution practices and ownership of distributors, and requiring ABI to provide the Division with notice of future acquisitions, including acquisitions of beer distributors and craft brewers, prior to their consummation.



Halliburton/Baker Hughes

Oilfield services are integral in extracting oil and natural gas from below ground. The United States oil and gas industries rely on critical services such as drilling, well construction, fracking, and oilfield measurement and evaluation. Only three firms in the United States are capable of performing the full range of these services. Halliburton and Baker Hughes are two of those firms.

In November 2014, Halliburton and Baker Hughes announced their \$34.6B merger agreement. The Division conducted an extensive investigation that delved into the details of the numerous products and services on which the companies directly compete. Ultimately, the Division determined the transaction, if unchallenged, would have resulted in a duopoly in numerous markets. In 23 different product markets the merger would have eliminated head-to-head competition that has led to lower prices, better products and services, and innovation.

The Division sued to block the merger of Halliburton and Baker Hughes in April 2016 in the U.S. District Court for the District of Delaware. On May 1, Baker Hughes exercised its contractual right to terminate the merger, abandoning the transaction and preserving the benefits of competition between Halliburton and Baker Hughes.

B. Non-Merger:

The Division continues to vigorously police anticompetitive activity outside the merger context, initiating civil enforcement actions in numerous industries to protect consumers and the competitive process.

United States v. DIRECTV Litigation

Consumers have few competitive choices in video distribution markets, often only the cable company and two satellite providers in their local market. They rely on competition between those providers to determine the video packages that will be offered to them and the price of those services. In Los Angeles, many local providers declined to carry the Dodgers Channel, giving Dodgers fans no way to watch their team's games.

The Division conducted an extensive investigation of reported contacts between video distribution competitors in the Los Angeles area related to the Dodgers Channel. That investigation uncovered that DIRECTV had acted as the ringleader of a series of unlawful information exchanges, sharing competitively sensitive information with Cox, Charter, and AT&T during the companies' negotiations about Dodgers Channel carriage. The lead content executive at DIRECTV had been in regular contacts with key executives of his competitors, discussing forward-looking competitively sensitive information about their companies' plans to carry—or not carry—the Dodgers Channel.

On November 2, 2016, the Division filed a lawsuit in the United States District Court for the Central District of California to stop DIRECTV and its corporate successor AT&T from unlawfully sharing competitively sensitive information with rivals. The complaint alleged that the companies engaged in information exchanges in order to increase their bargaining leverage and reduce the risk that they would lose subscribers if they decided not to carry the channel but a competitor chose to do so. The complaint further alleged that the information exchanged was a material factor in the companies' decisions not to carry the Dodgers Channel.



On March 23, 2017, AT&T agreed to a proposed settlement now pending with the Court. The settlement obtains all of the relief sought by the Division in its lawsuit. It ensures that DIRECTV and AT&T do not illegally share competitively sensitive information with their rivals, requires the companies to monitor certain communications, and requires the implementation of antitrust training and compliance programs. The Division's successful investigation and prosecution of this conduct will prevent future anticompetitive information sharing in the cable television industry.

HSR Act Enforcement

The Division remains vigilant against violations of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a, the “HSR Act”), which ensures that the Division will have an opportunity to review potentially anticompetitive transactions before they are consummated. The Division enforced the HSR Act in two important cases in the past year.

ValueAct Capital

In the fall of 2014, Baker Hughes and Halliburton—two of the three largest providers of oilfield services—announced their merger. Shortly thereafter, ValueAct purchased over \$2.5 billion in stock of the companies without filing HSR notifications, making ValueAct among the largest shareholders of each company. ValueAct did not file notifications, claiming that its acquisitions were exempt from the HSR Act because they were “solely for the purpose of investment” and did not exceed 10 percent of the outstanding voting securities of either issuer. See 15 U.S.C. § 18a(c)(9) (the “investment-only exemption”). Under the HSR Rules, voting securities are acquired “solely for the purpose of investment” if the person acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer. 16 C.F.R. § 801.1(i)(1).

The Division’s investigation revealed that ValueAct did not qualify for the investment-only exemption because it intended to participate in the business decisions of both companies. Specifically, ValueAct intended to use its position as a major shareholder of both Halliburton and Baker Hughes to obtain access to management, to learn information about the companies and the merger in private conversations with senior executives, to influence those executives to improve the chances that the Halliburton-Baker Hughes merger would be completed, and ultimately to influence other business decisions regardless of whether the merger was consummated. Pursuant to a settlement filed July 12, 2016, ValueAct agreed to pay the largest ever HSR civil penalty of \$11 million to resolve the allegations.

Duke Energy

In August 2014, Duke Energy agreed to terms to purchase Osprey from Calpine, a competing seller of wholesale electricity nationally and in Florida. As part of the acquisition, and prior to expiration of the HSR waiting period, Duke entered into a “tolling agreement” whereby Duke immediately began exercising control over Osprey’s output, and immediately began reaping the day-to-day profits and losses from the plant’s business.

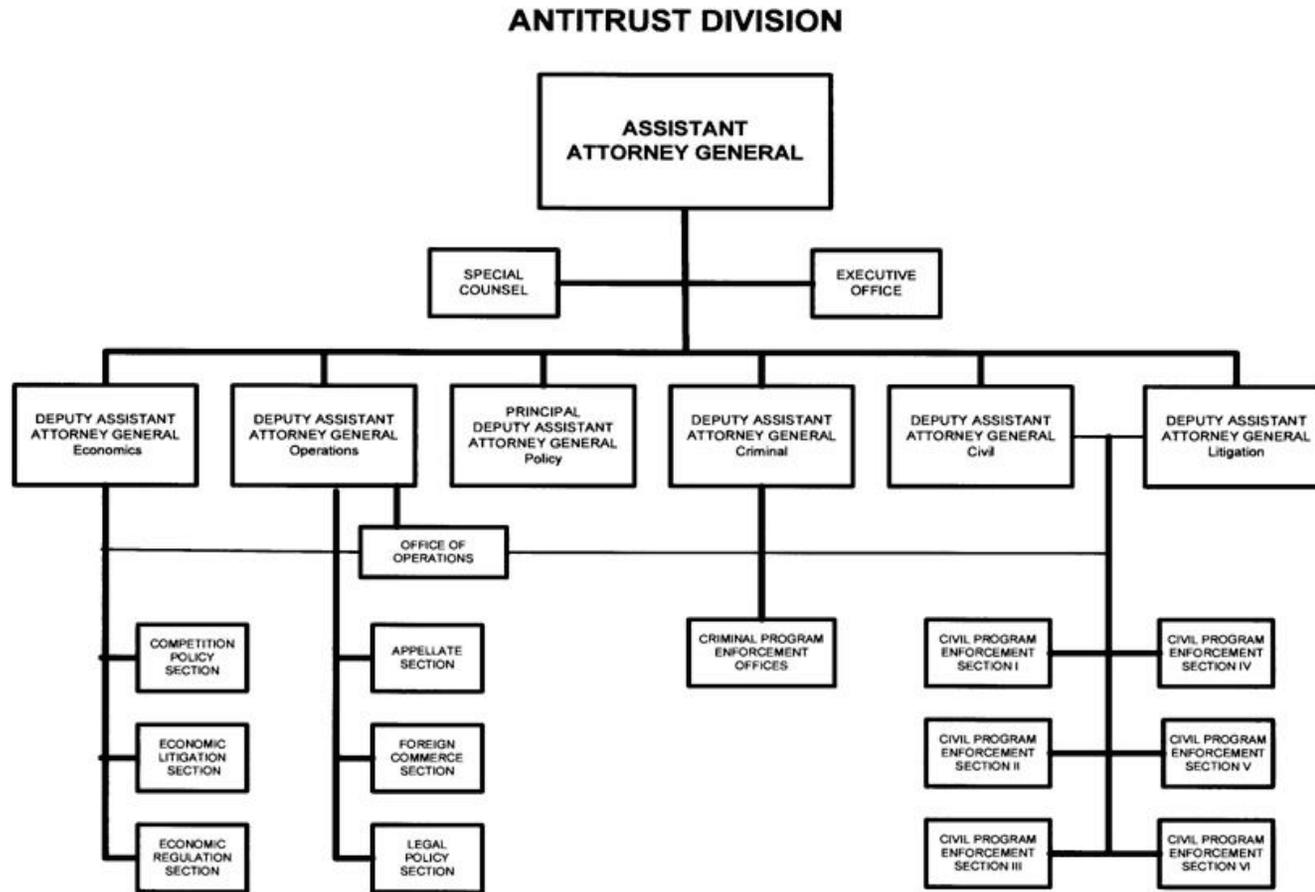


Duke, for example, assumed control of purchasing all the fuel for the plant, arranging for delivery of that fuel, and arranging for transmission of all energy generated. Duke retained the profit (or loss) from the difference between the price of the energy generated at Osprey and the cost to generate the energy, bearing all the risk of changes in the market price for fuel and the market price for energy. Based on these potential risks and rewards, Duke decided exactly how much energy would be generated by the plant on an hour-by-hour basis, and relayed those detailed instructions each day to plant personnel. Duke treated Osprey as it treated its own plants in making business decisions about output. Thus, Duke's tolling agreement with Calpine gave it significant operational control over the Osprey plant, and allowed Duke to assume the risks and potential benefits of changes in the value of Osprey's business.

The Division determined that the combination of Duke's agreement to purchase Osprey and the tolling agreement transferred beneficial ownership of Osprey's business to Duke before Duke had fulfilled its obligations under the HSR Act. Pursuant to a settlement filed simultaneously with the complaint, Duke agreed to pay a civil penalty of \$600,000 to resolve the case.

V. Exhibits

A. Organizational Chart



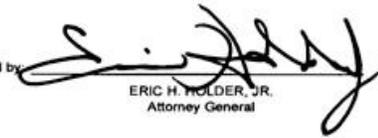
Approved by:  Date: 5/16/13
ERIC H. HOLDER, JR.
Attorney General

Exhibit A - Organizational Chart

Summary of Requirements

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

	FY 2018 Request		
	Positions	Estimate FTE	Amount
2016 Enacted 1/	[830]	689	164,977
Total 2016 Enacted	[830]	689	164,977
2017 Continuing Resolution	[830]	694	164,977
2017 Rescission - 0.1901%	0	0	-314
Total 2017 Continuing Resolution	[830]	694	164,663
Base Adjustments			
Pay and Benefits	-[135]	1	-121
Domestic Rent and Facilities	0	0	106
Other Adjustments	0	0	15
Total Base Adjustments	-[135]	1	0
Total Technical and Base Adjustments	-[135]	1	0
2018 Current Services	[695]	695	164,663
2018 Total Request	[695]	695	164,663
2017 - 2018 Total Change	-[135]	1	0

^{1/} FY 2016 FTE is actual

Summary of Requirements

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Program Activity	FY 2016 Enacted			FY 2017 Continuing Resolution			FY 2018 Technical and Base Adjustments			FY 2018 Current Services		
	Positions	Actual FTE	Amount	Positions	Est. FTE	Amount	Positions	Est. FTE	Amount	Positions	Est. FTE	Amount
Antitrust Division	[830]	694	164,977	[830]	694	164,663	-[135]	1	0	[695]	695	164,663
Total Direct	[830]	694	164,977	[830]	694	164,663	-[135]	1	0	[695]	695	164,663
Balance Rescission			0			0			0			0
Total Direct with Rescission			164,977			164,663			0			164,663
Reimbursable FTE		0			0			0			0	
Total Direct and Reimb. FTE		694			694			1			695	
Other FTE:												
LEAP		0			0			0			0	
Overtime		0			0			0			0	
Grand Total, FTE		694			694			1			695	

Program Activity	2018 Increases			2018 Offsets			2018 Request		
	Positions	Est. FTE	Amount	Positions	Est. FTE	Amount	Positions	Est. FTE	Amount
Antitrust Division	0	0	0	0	0	0	[695]	695	164,663
Total Direct	0	0	0	0	0	0	[695]	695	164,663
Balance Rescission			0			0			0
Total Direct with Rescission			0			0			164,663
Reimbursable FTE		0			0			0	
Total Direct and Reimb. FTE		0			0			695	
Other FTE:									
LEAP		0			0			0	
Overtime		0			0			0	
Grand Total, FTE		0			0			695	

Justifications for Technical and Base Adjustments

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

	Positions	Estimate FTE	Amount
Pay and Benefits			
1 <u>2018 Pay Raise - 1.9%</u> This request provides for a proposed 1.9 percent pay raise to be effective in January of 2018. The amount request, \$1,620,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$1,255,000 for pay and \$365,000 for benefits.)	0	0	1,620
2 <u>Annualization of 2017 Pay Raise - 2.88%</u> This pay annualization represents first quarter amounts (October through December) of the 2017 pay increase of 2.88% included in the 2017 Appropriation. The amount requested \$676,000, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$524,000 for pay and \$152,000 for benefits).	0	0	676
3 <u>Attrition and/or Administrative Savings</u> To reform the federal government and reduce the federal civilian workforce as directed by OMB Memorandum M-17-22, Department components will identify savings through attrition and/or administrative adjustments.	-[20]	0	-3,060
4 <u>Health Insurance</u> Effective January 2018, the component's contribution to Federal employees' health insurance increases by 9.2 percent. Applied against the 2017 estimate of \$5,353,000, the additional amount required is \$495,000.	0	0	495
5 <u>Position Rightsizing Adjustment</u> As directed by OMB Memorandum M-17-22, Department components will eliminate vacancies to reflect on-board levels.	-[115]	1	0
6 <u>Retirement</u> Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on U.S. Department of Justice Agency estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 0.8 percent per year, for both LEO and Non-LEO, based on the past 5 years of DOJ retirement data. The requested increase of \$148,000 is necessary to meet our increased retirement obligations as a result of this conversion.	0	0	148
Subtotal, Pay and Benefits	-[135]	1	-121
Domestic Rent and Facilities			
1 <u>GSA Rent</u> GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$45,000 is required to meet our commitment to GSA. The costs associated with GSA rent were derived through the use of an automated system, which uses the latest inventory data, including rate increases to be effective FY 2018 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. GSA provides data on the rate increases.	0	0	45
2 <u>Guard Service</u> This includes Department of Homeland Security (DHS) Federal Protective Service charges, Justice Protective Service charges and other security services across the country. The requested increase of \$61,000 is required to meet these commitments.	0	0	61
Subtotal, Domestic Rent and Facilities	0	0	106
Other Adjustments			
1 <u>Security Investigations</u> For FY 2018, the request includes an increase for security investigations totalling \$15,000.	0	0	15
Subtotal, Other Adjustments	0	0	15
TOTAL DIRECT TECHNICAL and BASE ADJUSTMENTS	-[135]	1	0

Crosswalk of 2016 Availability

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Program Activity	FY 2016 Enacted			Reprogramming/Transfers			Carryover	Recoveries/ Refunds	FY 2016 Availability		
	Positions	Actual FTE	Amount	Positions	Actual FTE	Amount	Amount	Amount	Positions	Actual FTE	Amount
Antitrust Division	[830]	694	164,977	0	0	0	13,892	425	[830]	694	179,294
Total Direct	[830]	694	164,977	0	0	0	13,892	425	[830]	694	179,294
Balance Rescission			0			0	0	0			0
Total Direct with Rescission			164,977			0	13,892	425			179,294
Reimbursable FTE		0			0					0	
Total Direct and Reimb. FTE		694			0					694	
Other FTE:											
LEAP FTE		0			0					0	
Overtime		0			0					0	
Grand Total, FTE		694			0					694	

Reprogramming/Transfers:

Carryover:

ATR brought forward \$13,892 from prior years' salaries and expenses funding.

Recoveries/Refunds:

As of September 30, 2016, ATR recoveries totaled \$425, of which \$0 was made available in FY 2016.

Crosswalk of 2017 Availability

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Program Activity	FY 2017 Continuing Resolution			Reprogramming/Transfers			Carryover	Recoveries/ Refunds	FY 2017 Availability		
	Positions	Est. FTE	Amount	Positions	Est. FTE	Amount	Amount	Amount	Positions	Est. FTE	Amount
Antitrust Division	[830]	694	164,663	0	0	0	7,134	0	[830]	694	171,797
Total Direct	[830]	694	164,663	0	0	0	7,134	0	[830]	694	171,797
Balance Rescission			0			0	0	0			0
Total Direct with Rescission			164,663			0	7,134	0			171,797
Reimbursable FTE		0			0					0	
Total Direct and Reimb. FTE		694			0					694	
Other FTE:											
LEAP FTE		0			0					0	
Overtime		0			0					0	
Grand Total, FTE		694			0					694	

Reprogramming/Transfers:

Carryover:

ATR brought forward \$7,134 from prior years' salaries and expenses funding.

Recoveries/Refunds:

Summary of Reimbursable Resources

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Collections by Source	2016 Actual			2017 Estimate			2018 Request			Increase/Decrease		
	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount
Civil Rights Division	0	0	0	0	0	40	0	0	0	0	0	-40
Department of Justice (Justice Management Division)	0	0	1,500	0	0	1,250	0	0	0	0	0	-1,250
Environment and Natural Resource Division	0	0	150	0	0	0	0	0	0	0	0	0
Federal Trade Commission	0	0	5	0	0	0	0	0	0	0	0	0
Office of Attorney Recruitment/Management	0	0	9	0	0	0	0	0	0	0	0	0
U.S. Attorneys	0	0	1	0	0	0	0	0	0	0	0	0
Council of the IGs on Integrity and Efficiency	0	0	2	0	0	0	0	0	0	0	0	0
Commodity Futures Trading Commission	0	0	1	0	0	0	0	0	0	0	0	0
Office of the Pardon Attorney	0	0	300	0	0	0	0	0	0	0	0	0
U.S. Patent and Trademark Office	0	0	5	0	0	0	0	0	0	0	0	0
Budgetary Resources	0	0	1,973	0	0	1,290	0	0	0	0	0	-1,290

Obligations by Program Activity	2016 Actual			2017 Estimate			2018 Request			Increase/Decrease		
	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount	Reimb. Pos.	Reimb. FTE	Amount
Antitrust Division	0	0	1,973	0	0	1,290	0	0	0	0	0	-1,290
Budgetary Resources	0	0	1,973	0	0	1,290	0	0	0	0	0	-1,290

Detail of Permanent Positions by Category

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Category	FY 2016 Enacted		FY 2017 Continuing Resolution		FY 2018 Request				
	Direct Pos.	Reimb. Pos.	Direct Pos.	Reimb. Pos.	ATBs	Program Increases	Program Offsets	Total Direct Pos.	Total Reimb. Pos.
Security Specialists (080)	[3]	0	[3]	0	[1]	0	0	[4]	0
Social Science, Psychology, Welfare (0100-0199)	[60]	0	[60]	0	-[10]	0	0	[50]	0
Personnel Management (0200-0260)	[11]	0	[11]	0	-[1]	0	0	[10]	0
Clerical and Office Services (0300-0399)	[138]	0	[138]	0	-[58]	0	0	[80]	0
Accounting and Budget (500-599)	[9]	0	[9]	0	0	0	0	[9]	0
Paralegals / Other Law (900-998)	[180]	0	[180]	0	-[20]	0	0	[160]	0
Attorneys (905)	[380]	0	[380]	0	-[45]	0	0	[335]	0
Business & Industry (1100-1199)	[5]	0	[5]	0	-[1]	0	0	[4]	0
Library (1400-1499)	[3]	0	[3]	0	[1]	0	0	[4]	0
Mathematics and Statistics Group	[9]	0	[9]	0	0	0	0	[9]	0
Information Technology Mgmt (2210-2299)	[32]	0	[32]	0	-[2]	0	0	[30]	0
Total	[830]	0	[830]	0	-[135]	0	0	[695]	0
Headquarters Washington D.C.	[680]	0	[680]	0	-[110]	0	0	[570]	0
US Fields	[150]	0	[150]	0	-[25]	0	0	[125]	0
Foreign Field	0	0	0	0	0	0	0	0	0
Total	[830]	0	[830]	0	-[135]	0	0	[695]	0

Summary of Requirements by Object Class

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Object Class	FY 2016 Actual		FY 2017 Continuing Resolution		FY 2018 Request		Increase/Decrease	
	Act. FTE	Amount	Direct FTE	Amount	Direct FTE	Amount	Direct FTE	Amount
11.1 - Full-time permanent	689	65,706	694	67,291	695	62,845	1	-4,446
11.3 - Other than full-time permanent	0	14,714	0	15,000	0	14,074	0	-926
11.5 - Other personnel compensation	0	1,648	0	1,700	0	1,576	0	-124
<i>Overtime</i>	0	0	0	0	0	0	0	0
<i>Other Compensation</i>	0	0	0	0	0	0	0	0
11.8 - Special personal services payments	0	237	0	237	0	237	0	0
Total	689	82,305	694	84,228	695	78,732	1	-5,496
Other Object Classes								
12.1 - Civilian personnel benefits		24,435		24,400		22,800	0	-1,600
13.0 - Benefits for former personnel		119		120		120	0	0
21.0 - Travel and transportation of persons		1,848		2,000		2,000	0	0
22.0 - Transportation of things		324		350		350	0	0
23.1 - Rental payments to GSA		21,734		21,682		21,727	0	45
23.2 - Rental payments to others		246		231		231	0	0
23.3 - Communications, utilities, and miscellaneous charges		2,057		1,300		1,300	0	0
24.0 - Printing and reproduction		249		350		350	0	0
25.1 - Advisory and assistance services		695		750		750	0	0
25.2 - Other services from non-federal sources		31,609		30,386		30,288	0	-98
25.3 - Other goods and services from federal sources		2,678		2,800		2,815	0	15
25.4 - Operation and maintenance of facilities		398		400		400	0	0
25.6 - Medical care		99		100		100	0	0
25.7 - Operation and maintenance of equipment		749		800		800	0	0
26.0 - Supplies and materials		1,134		1,400		1,400	0	0
31.0 - Equipment		1,481		500		500	0	0
Total Obligations		172,160		171,797		164,663	0	-7,134
Net of:								
Unobligated Balance, Start-of-Year		-13,892		-7,134		0	0	7,134
Transfers/Reprogramming		0		0		0	0	0
Recoveries/Refunds		-425		0		0	0	0
Balance Rescission		0		0		0	0	0
Unobligated End-of-Year, Available		7,134		0		0	0	0
Unobligated End-of-Year, Expiring		0		0		0	0	0
Total Direct Requirements		164,977		164,663		164,663		0
Reimbursable FTE								
Full-Time Permanent	0		0		0		0	0