



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2019 PERFORMANCE BUDGET**

Antitrust Division

FY 2019 Congressional Budget Submission

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I. Overview

A. Introduction

The mission of the Antitrust Division is to promote economic competition through enforcing and providing guidance on antitrust laws and principles. Corporate consolidation through mergers and acquisitions is playing an increasingly significant role in the American economy, and it is crucial that the Antitrust Division have funding sufficient to enable it to review—and challenge when necessary—mergers that threaten to harm competition. For example, the Division’s review of AT&T’s acquisition of Time Warner consumed significant resources over more than a year, and resolution of the lawsuit seeking to enjoin the merger will likely stretch well into 2018. Such merger investigations and challenges are time consuming and costly, which is to be expected because the issues are often complex and the stakes are high for American consumers and the economy. In 2018, the Division expects to complete extensive reviews of CVS/Aetna, Bayer/Monsanto, Disney/Fox, Sinclair/Tribune, and other transactions that will be announced over the course of the year. Some industry observers predict the rate of major mergers will continue to increase significantly well into 2019.

The Division also maintains an active criminal program that prosecutes cartel activity in order to punish such conduct when it occurs and deter cartel conduct in the future. Criminal cartels distort the free market system and hurt American consumers who often pay higher prices as a result. The Division is currently in the midst of numerous cartel investigations, including a wide-ranging probe into criminal price fixing of generic drugs, conduct that has increased the price of prescription drugs and ripped off everyday consumers who take those drugs. As in our civil program, our criminal prosecutors routinely face off against sophisticated counsel with nearly unlimited defense budgets—it is imperative they have the resources they need to do so effectively.

The Division consistently generates more funding for U.S. taxpayers than it expends. On a budget of \$162.2 million in FY 2015, the Division took in \$115.7 million in civil filing fees and its criminal program obtained \$3.6 billion in fines for corporate wrongdoing. Similarly in FY 2016, the Division was budgeted \$164.9 million, but took in \$114.2 million in civil filing fees and obtained \$399.0 million in criminal fines.

To administer its caseload, the Division’s request includes \$164,663,000 in FY 2019, reflecting an increase of \$806,000 over the FY 2018 Continuing Resolution level. At this level of funding, the Division will successfully meet its mission while absorbing various cost increases. Included in this submission is an appropriations language change requesting \$2,000 be available for official reception and representation expenses.

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 consolidation across industries, and rapid technological change. These factors, added to the existing number and intricacy of our investigations, significantly affect 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 demonstrate.

Enforcement Program	Major Matter Exemplars
<p align="center">Civil Merger/Non-Merger</p>	<p><u>Merger (pg. 24)</u> AT&T/Time Warner Inc. (Exemplar – pg. 24) Anthem/Cigna and Aetna/Humana (Exemplar – pg. 24) Chicago Tribune/Sun Times (Exemplar – pg. 25) Entercom/CBS (Exemplar – pg. 26) Parker-Hannifin (Exemplar – pg. 26)</p> <p><u>Non-Merger (pg. 27)</u> U.S. v. DIRECTV Litigation (Exemplar – pg. 27) HSR Act Enforcement (Exemplar – pg. 28) (ValueAct Capital, Duke Energy)</p>
<p align="center">Criminal</p>	<p>Generic Pharmaceuticals (Exemplar – pg. 30) Real Estate Foreclosure Auction Fraud (Exemplar - pg. 31) Financial Fraud (Exemplar – pg. 31) Ocean Shipping (Exemplar – pg. 32) Electrolytic Capacitors (Exemplar – pg. 33) Packaged Seafood (Exemplar – pg. 33)</p>

Economic Consolidation

Ongoing economic concentration across industries and geographic regions increases the risks of anticompetitive effects from transactions and as a result increases the Division's merger enforcement 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.

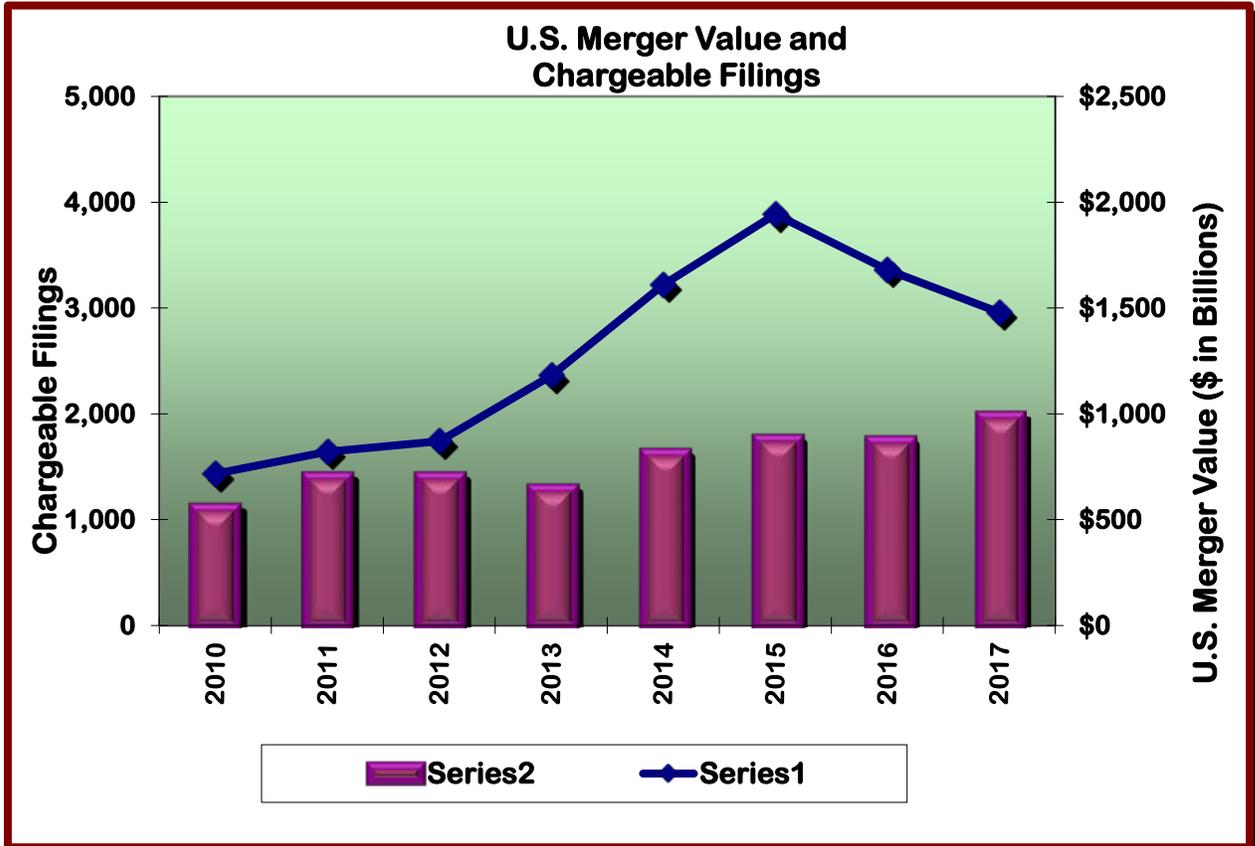


Figure 1

Merger activity has been steadily increasing since the recession and will likely continue to increase as the economy grows. As shown in Figure 1, the overall economic downturn that began in calendar year 2008 affected merger deals in 2010 and the year finished with \$717 billion in U.S. merger value. However, merger and acquisition activity has improved since calendar year 2010. In calendar year 2017, worldwide merger and acquisition volume reached \$3.6 trillion and U.S. volume reached an annual total of \$1.5 trillion.¹

¹ "Investment Banking Scorecard." *The Wall Street Journal*. Viewed on January 5, 2018 at <http://graphics.wsj.com/investment-banking-scorecard/>.

As consolidation and merger activity in the economy continue to increase, the Division's workload increases in even greater proportion. The Division is responsible for reviewing each transaction, so as the numbers of deals increase its workload necessarily increases. The increasing pace of deals, however, also increases the complexity and potential for harm from the transactions the Division reviews, magnifying the impact of increased merger activity on the Division's workload.

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 \$5.1 trillion in FY 2017.²

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.

Increased globalization also affects 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 2017, approximately **32 percent** were associated with subjects or targets located in foreign countries. Of the approximate **\$14 billion** in criminal antitrust fines and penalties imposed by the Division between FY 1997 and the end of FY 2017, approximately **98 percent** were in connection with the prosecution of international cartel activity. In addition, approximately **92 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 2017, total criminal antitrust fines obtained were over **\$66 million**.

² "U.S. International Trade in Goods and Services, November 2017." *United States Department of Commerce, Bureau of Economic Analysis*, January 2017. Viewed on January 5, 2018 at <https://www.bea.gov/newsreleases/international/trade/2018/pdf/trad1117.pdf>.

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 effects 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. Efforts to promote best practices among antitrust enforcement agencies around the world enhance global and U.S. antitrust enforcement and reduce the burden on U.S. companies that operate in international markets.

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. In addition, 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 international cooperation on cartel and merger enforcement, and advocacy regarding procedural fairness and, where appropriate, antitrust policy convergence.

The Division's cartel enforcement program reflects 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 many of these cartels involved at least some foreign activity or actors. The Antitrust Division's commitment to detect and prosecute international cartel activity is shared with foreign governments throughout the world, many of whom assist with the Division's investigations by providing mutual legal assistance, and also pursue cartel activity in their own countries with assistance from the Division.

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 criminalized cartel conduct, 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 revised their cartel leniency 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 the remedies 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.

In addition to bilateral case cooperation, multilateral engagement is equally important in supporting the Division's antitrust enforcement agenda. In October 2001, the Antitrust Division, in conjunction with 13 other competition agencies, launched ICN. The Division continues to play an important role in ICN, building consensus, where appropriate, among antitrust authorities on sound competition principles and providing support for new antitrust agencies in enforcing their laws and building strong competition cultures. As of 2017, the ICN has grown to include 135 agencies from 122 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. A Division representative (AAG or DAAG) has traditionally chaired WP3.

Intellectual Property

Invention and innovation are essential to 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 vital to 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 that competition is protected and that incentives for invention and innovation are preserved. The Division also investigates allegations that companies are using their intellectual property in ways that violate 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. In recent years, intellectual property issues have led several companies to seek business reviews from the Division. After completing an investigation, the Division publishes its business review letter, explaining its intentions.

International Advocacy – The Division regularly engages in international competition advocacy projects to promote the application of sound competition principles to cases involving intellectual property rights. This advocacy takes place in multinational fora, such as the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development (UNCTAD), and the Asian Pacific Economic Cooperation, as well as on a bilateral basis with antitrust enforcement counterparts in jurisdictions such as Canada, China, the European Union, India, Japan, and Korea.

To ensure that patent holders, including U.S. businesses, can fully and appropriately exercise 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 preserve incentives to innovate. Throughout 2017, the Division also engaged in multiple trainings and conversations with counterpart agencies regarding issues at the intersection of antitrust and intellectual property law.

Interagency Initiatives – The Division regularly participates in interagency activities that promote competition advocacy where antitrust and intellectual property law and policy intersect. Division staff maintain close ties to their counterparts at the U.S. Patent and Trademark Office, Department of Commerce, U.S. Trade Representative, and other federal agencies, and engage in regular communications regarding topics that implicate antitrust and intellectual property. Given the nature of the Division’s expertise our interagency role often touches on important trade and international policy initiatives underway across the federal government.

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 addition to its role in antitrust cases, the Division serves as the statutory respondent for several other government agencies, including the Federal Communications Commission and Surface Transportation Board.

Technological Change and the Changing Face of Industry

The need for careful consideration of antitrust issues in evolving technology markets continues to consume significant Division resources. 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 continues and intensifies in a range of industries, such as robotics, transportation, wireless communications, Over-the-Top (OTT) services such as Voice over Internet Protocol (VoIP) and online video, mobile collaboration, biometrics and online security.

We will see even more advances in technology in the 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 7.8 billion in 2017 and are expected to grow to 9.1 billion by 2023 according to the Ericsson Mobility Report, published by Ericsson in November 2017.³

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 2023, it is estimated that the number of smartphone subscriptions alone is set to reach 7.3 billion, a substantial increase over the 4.4 billion smartphone subscriptions in 2017. Mobile video traffic is set by 2023 to grow to around 75 percent of all mobile data traffic, an increase of 20% over 2017 traffic levels.⁴

³ “Ericsson Mobility Report.” *Ericsson*, November 2017: 30. Viewed on January 5, 2018 at <https://www.ericsson.com/assets/local/mobility-report/documents/2017/ericsson-mobility-report-november-2017.pdf>.

⁴ “Ericsson Mobility Report.” *Ericsson*, November 2017: 11, 30. Viewed on January 5, 2018 at <https://www.ericsson.com/assets/local/mobility-report/documents/2017/ericsson-mobility-report-november-2017.pdf>.

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 to grow to \$83.4 billion in 2022 compared to \$37.0 billion in 2016.⁵

The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the Antitrust Division. While the antitrust laws are flexible enough to handle technological change, it does put burdens on Division resources. The economic paradigm is shifting so rapidly that the Division has to continue developing and 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.

⁵ "OTT and Pay TV to bring in \$283 billion." *Digital TV Research*, December 2017: 1. Viewed on January 5, 2018 at <https://www.digitaltvresearch.com/ugc/press/220.pdf>.

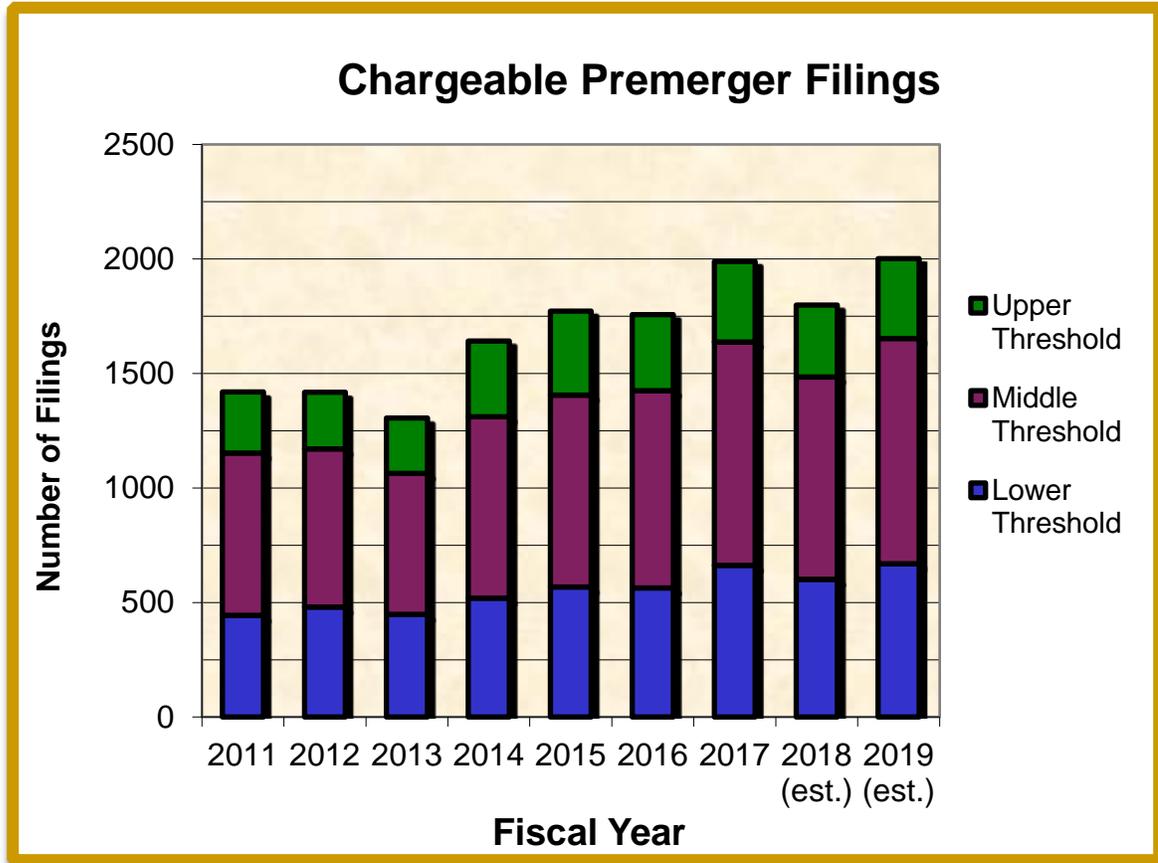
Results

Several interesting statistics relative to the Division's performance include:

- From FY 2009 through the end of FY 2017, as a result of the Division's efforts, over **\$9.6 billion in criminal fines and penalties** were obtained against antitrust violators. In FY 2017, the Division obtained just over **\$66 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**, affecting billions of dollars in U.S. commerce. **Since FY 1997, defendants have been sentenced to pay over \$14 billion in criminal fines and penalties to the U.S. Treasury, including more than \$10 billion just since the beginning of FY 2008.**
- In FY 2017, as the result of Division enforcement efforts, 11 corporations and 52 individuals were sentenced due to antitrust violations. Prison sentences between FY 2000 and the end of FY 2017 were an **average of approximately 20 months**, over two times the 8-month average sentence of the 1990's. Prison sentences since FY 1990 have resulted in more than **750 years** of imprisonment in cases prosecuted by the Antitrust Division, with over **260 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 2017, restitution generated by the Division was over **\$111 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 \$48 billion.**

Revenue Assumptions

Estimated FY 2019 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. In the June 2017 report “An Update to the Budget and Economic Outlook: 2017 to 2027”, the Congressional Budget Office predicts, “Economic growth is projected to remain modest, averaging slightly above 2.0 percent through 2018 and averaging somewhat below that rate for the rest of the period through 2027.”⁶



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 \$250.8 million for FY 2019 are expected. Hart-Scott-Rodino (HSR) filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division.

⁶ “An Update to the Budget and Economic Outlook: 2017 to 2027.” *Congressional Budget Office*, June 2017: 1. Viewed on January 5, 2018 at <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52801-june2017outlook.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 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 U.S. and around the world cannot be overstated. The threat to American 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 2019 Total Budget Request by Program Area

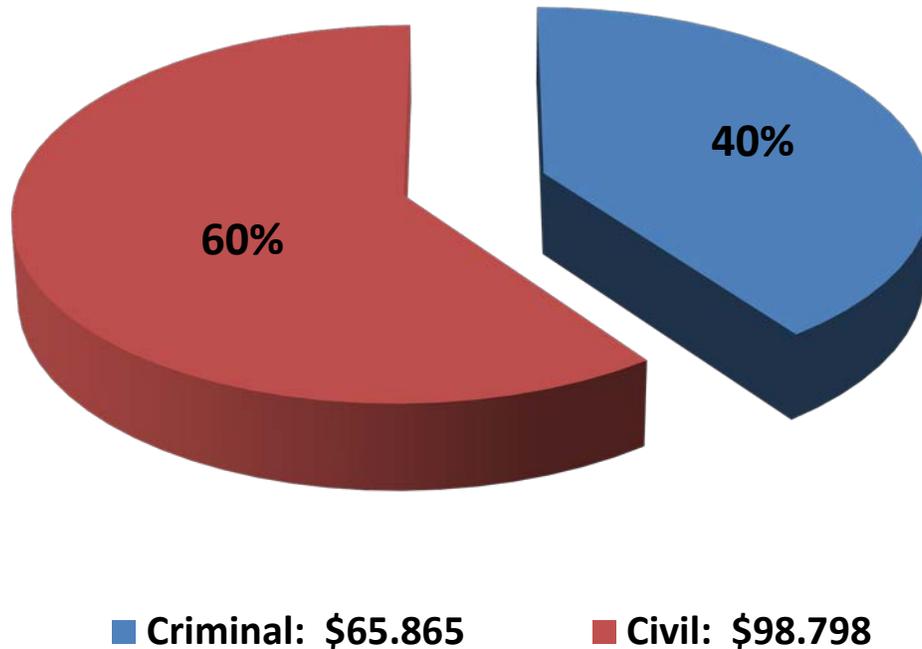


Figure 3

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 2019 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:

- Increasing economic consolidation across industries and geographic regions
- Globalization of the business marketplace
- 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. The nature of the Division's work requires it to receive and analyze vast amounts of competitively sensitive business information (including strategic plans and pricing and cost information) from companies across all sectors of the economy. The Division must ensure that this sensitive information is kept secure; both so that companies continue to provide it in further reviews, and because of the significant direct costs of inappropriate dissemination. 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 now requires electronic analytical capacity needs in excess of **3,000 terabytes**.
- *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 that 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, [\$164,663,000] \$164,663,000, to remain available until expended, *of which not to exceed \$2,000 shall be available for official reception and representation expenses*: 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 [\$112,700,000] \$125,400,000 in fiscal year [2018] 2019), 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 [2018] 2019, so as to result in a final fiscal year [2018] 2019 appropriation from the general fund estimated at [\$51,963,000] \$39,263,000.

Analysis of Appropriations Language

In support of the Antitrust Division's international efforts, reception and representation fund authority is requested in the amount of \$2,000 to continue building and maintaining important international relationships. The funds will be used to pay for gifts or tokens of appreciation to visiting dignitaries and to fund official activities that further the mission of the Division, such as official receptions held in honor of visiting dignitaries.

IV. Program Activity Justification

A. Decision Unit: Antitrust

Antitrust Division Fiscal Year 2019 Congressional Submission Decision Unit Justification (dollars in thousands)			
Decision Unit: Antitrust - TOTAL	Direct Positions	Estimate FTE	Amount
2017 Enacted	715	694	\$164,977
2018 Continuing Resolution	695	695	\$163,857
Adjustments to Base and Technical Adjustments	0	0	\$806
2019 Current Services	695	695	\$164,663
2019 Request	695	695	\$164,663
Total Change 2018 – 2019	0	0	\$806

<i>Antitrust Division - Information Technology Breakout</i> (of Decision Unit Total)	Direct Positions	Estimate FTE	Amount
2017 Enacted	35	35	\$33,950
2018 Continuing Resolution	35	35	\$34,629
Adjustments to Base and Technical Adjustments	0	0	\$693
2019 Current Services	35	35	\$35,322
2019 Request	35	35	\$35,322
Total Change 2018-2019	0	0	\$693

1. Program Description

The Antitrust Division promotes competition and protects American consumers from economic harm by enforcing the 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 focuses on two main law enforcement 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 currently has six supervisory Deputy Assistant Attorney General (DAAG) positions reporting directly to the Assistant Attorney General.



Criminal Enforcement – In pursuit of its criminal enforcement strategy, the Antitrust Division addresses the increased globalization of markets, constant technological change, and massive, complex, and difficult-to-detect criminal conspiracies. These matters transcend national boundaries, involve more technologically advanced and subtle forms of criminal behavior, and affect more U.S. businesses and consumers than ever before. To effectively investigate and prosecute criminal antitrust offenses, the Division requires significant resources – such as staff time, travel and translation costs, and automated litigation support. Matters such as the Division’s ongoing investigation in the general pharmaceuticals industry (page 40), exemplify the increasingly complex and important nature of Division workload in the criminal area.

Civil Enforcement – In pursuit of its civil enforcement 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 transactions notified by the parties under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) through statutorily mandated filings;
- Review of transactions 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. Division personnel routinely give speeches 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.

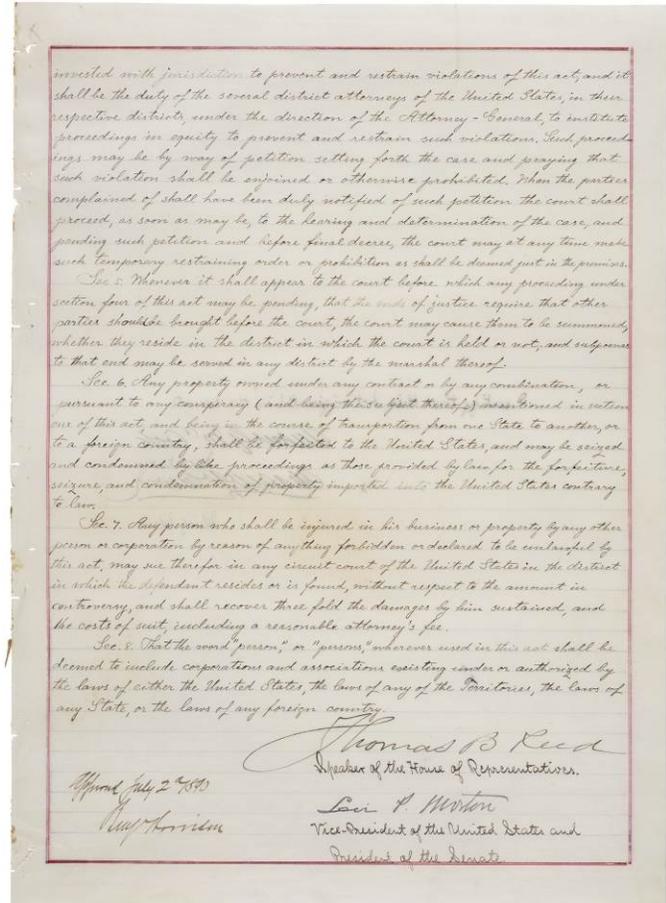
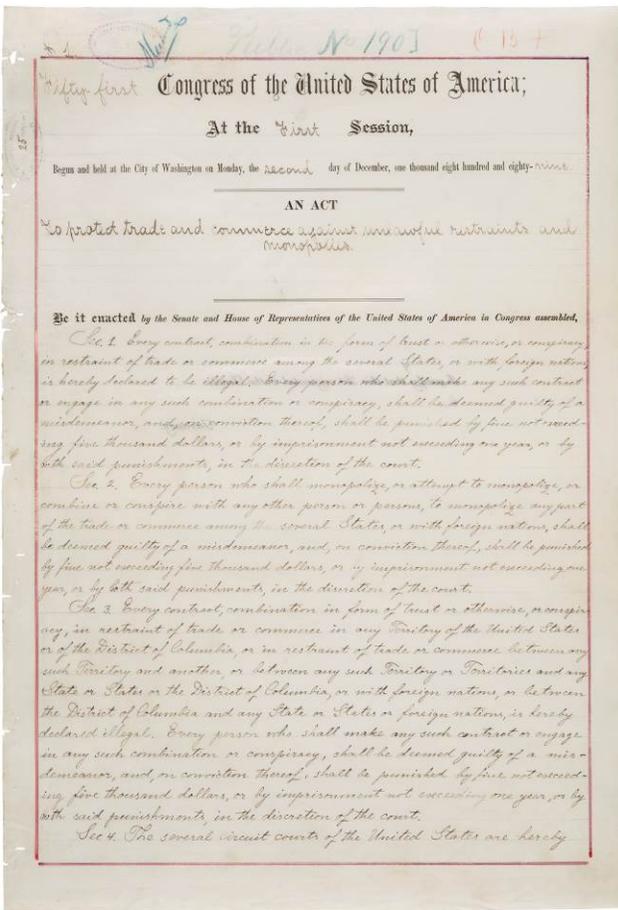


One of the most notable examples of the Division’s international efforts includes its participation in the International Competition Network (ICN). The 16th annual conference of the ICN was held in Portugal in May 2017 where ICN members “adopted new recommended practices for merger review, addressing notification thresholds, remedies, and efficiencies; a framework for analyzing unilateral conduct; guiding principles for market studies; and a report on setting cartel fines.”⁷

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.

⁷ “International Competition Network Adopts Recommended Practices on Merger Notification and Review and New Work on a Framework for Analyzing Unilateral Conduct.” *Federal Trade Commission*, May 2017. Viewed on January 9, 2018 at <https://www.ftc.gov/news-events/press-releases/2017/05/international-competition-network-adopts-recommended-practices>.

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

Performance Materials will be provided at a later date.

3. Performance Measurement Framework

Performance Materials will be provided at a later date.

4. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

Performance Materials will be provided at a later date.

b. Strategies to Accomplish Outcomes

Performance Materials will be provided at a later date.

5. Exemplars – Civil

A. Merger

AT&T/Time Warner Inc.

On November 20, 2017, the Division filed a civil antitrust lawsuit to block AT&T/DirecTV's proposed acquisition of Time Warner Inc. The complaint alleges that the \$108 billion acquisition would substantially lessen competition, leading prices for current services to go up, and the development of new online services to slow down.



According to the complaint, the combined company would use its control over Time Warner's valuable and highly popular networks to hinder its rivals by forcing them to pay hundreds of millions of dollars more per year for the right to distribute those networks. The combination represents one of the largest mergers in the history of the telecommunications industry and would adversely impact this important industry for American consumers for years to come. The Division's lawsuit against AT&T/Time Warner is scheduled to go to trial in March 2018.

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 Division's trial win was affirmed on appeal by 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.

Chicago Tribune/Chicago Sun-Times

In May 2017, the Division opened an investigation into the proposed acquisition of the *Chicago Sun-Times* by the owner of the *Chicago Tribune*, based on significant concerns about the merger of the two daily newspapers in the Chicago area. The merging parties claimed that the *Sun-Times* was a so-called "failing firm," and argued that for this reason, the owner of the *Tribune* should be permitted to proceed with the acquisition notwithstanding the fact that the merger would create a newspaper monopoly in Chicago.

The Division focused its investigation on whether the *Sun-Times* was in fact a failing company, and specifically, on the efforts that the owners of the *Sun-Times* had made to shop the assets to other buyers. The Division required the owners of the *Sun-Times* to undertake a public sale process, and monitored the process very closely. Ultimately, the public shop process yielded an alternative buyer that had no stake in any other newspaper, and therefore posed no competitive concerns. The alternative buyer consummated its purchase of the *Sun-Times* in July, and the Division closed its investigation. The Division's investigation thus preserved newspaper competition in Chicago, while also sending an important message to the business community regarding the importance of publicly shopping assets rather than defaulting to anticompetitive merger agreements.

Entercom/CBS Radio

In 2017, Entercom, the owner of 126 broadcast radio stations in 28 metropolitan markets, agreed to acquire all of CBS's broadcast radio stations in a transaction that would have allowed Entercom to cease competing in local markets where Entercom and CBS owned dueling radio stations. The Division was concerned that the diminished competition would result in higher prices for national and local advertisers, who rely on radio advertising as a cost-efficient medium for targeting potential customers. Following an in-depth investigation, the Division concluded that harm would be likely in three markets where the Entercom- and CBS-owned stations that were particularly close substitutes based on their content and target demographic audience: Boston, Massachusetts; San Francisco, California; and Sacramento, California.

The Division negotiated a settlement with the parties, pursuant to which they agreed to divest five stations in Boston, four stations in San Francisco, and four stations in Sacramento to Division-approved buyers. The settlement was filed in the District of Columbia in November 2017.

Parker-Hannifin

Aviation fuel must be filtered properly to remove particulate contaminants and water droplets before it is delivered into commercial or military aircraft. The failure to filter aviation fuel properly can result in engine failure, with potentially catastrophic consequences. To protect public safety, the U.S. airline industry mandates the use of aviation fuel filtration systems and filtration elements that have been subjected to rigorous testing and qualification requirements. Only those aviation fuel filtration products qualified by the Energy Institute (EI) may be used to filter aviation fuel for use in U.S. commercial and military planes.

Before Parker-Hannifin Corporation's acquisition of CLARCOR Inc., Parker-Hannifin and CLARCOR were the only two manufacturers of EI-qualified aviation fuel filtration systems and filter elements in the United States and were engaged in vigorous head-to-head competition. That competition enabled customers to negotiate better pricing and to receive more innovative products and better terms of service. The transaction eliminated that competition.

In September 2017, the Division filed a civil lawsuit challenging the consummated transaction and seeking to restore the competition that this transaction eliminated. In December 2017, the Division filed a proposed settlement that requires Parker-Hannifin to divest the filtration business that it had acquired from CLARCOR. The settlement, if approved by the court, would resolve the lawsuit and restore competition in the aviation fuel filtration markets that the underlying merger eliminated.

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 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 few years.

ValueAct Capital

In April 2016, the Division announced a historic settlement with ValueAct capital to resolve its violation of the reporting and waiting requirements of the HSR Act. 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 January 2017, the Division reached a settlement to resolve Duke Energy’s violation of the reporting and waiting requirements of the HSR Act. Duke Energy had agreed in 2014 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.



6. Exemplars - Criminal

The Sherman Antitrust Act (15 U.S.C. § 1) authorizes the Antitrust Division to bring criminal prosecutions against corporations and individuals who conspire with competitors to fix prices, rig bids, or allocate customers, territories, markets, or sales or production volumes. Prosecuting criminal violations of Section 1 of the Sherman Act is a critical component of the Department's overall mission to protect consumers and the competitive process.

In FY 2017, the Antitrust Division filed 24 cases. Altogether, 8 corporations and 27 individuals were charged for antitrust offenses. These crimes affected important American industries, including generic pharmaceuticals, financial services, real estate, automotive parts, deep-sea shipping of roll-on, roll-off cargo, electrolytic capacitors, online sales of customized promotional products, and packaged seafood. The Division's investigations into violations in many of these industries remain ongoing.

The Division obtains significant sentences against both corporations (including criminal fines) and individuals (including criminal fines and prison terms). In FY 17, courts imposed **over \$2.785 billion in criminal fines**, and **30 prison sentences totaling 7,861 days of incarceration**, against defendants in Antitrust Division cases.

A. Generic Pharmaceuticals

The Division is also investigating 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 delayed-release and glyburide, a medicine used to treat diabetes. The investigation is ongoing.

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 doxycycline hyclate delayed-release. The Division also alleged that the former executives conspired to fix prices and allocate customers for glyburide. Those individuals both pleaded guilty in January 2017 and are awaiting sentencing.



B. Real Estate Foreclosure Auction Fraud

The Antitrust Division began investigating patterns of collusion among real estate speculators in 2011. 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. 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.



To date, as a result of the Division’s efforts, one hundred and thirty one individuals and three companies have been charged in connection with real estate-foreclosure 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, 112 have pleaded guilty, 12 have been convicted after trial, 3 were acquitted, and the remaining individuals are under indictment. The Division has two upcoming trials against remaining defendants, one against real estate investors charged with rigging foreclosure auctions in the Southern District of Florida and one against an individual charged with rigging auctions in the Eastern District of California.

C. Financial Fraud

The Division also continued its investigation and prosecution of collusion regarding manipulation of benchmark interest rates and foreign exchange 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)

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 informations filed against eleven former traders, six 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. A trial is set for June 2018 against two individual defendants.

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

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 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 prosecute vigorously all who manipulate the economic system to their own advantage at the expense of the public and investors.

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. 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; the trial against these three is set for June 2018, the same month as the upcoming trial in the LIBOR matter.



D. Ocean Shipping

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, agreed to refrain from bidding against one another, and agreed 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.

Prosecutions to date convicted under § 1 have held five shipping companies responsible for their participation in the conspiracy. Their criminal sentences after guilty pleas collectively amounted to over \$255 million.

Eleven 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 seven have been indicted.



E. Electrolytic Capacitors

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.

To date, eight companies and ten individuals have been charged in the ongoing investigation. Seven companies have agreed to plead guilty. Three companies have been sentenced to pay a total of \$29.6 million. An executive agreed to plead guilty and serve a prison term of a year and a day.

F. Packaged Seafood

The Antitrust Division is investigating price fixing, bid rigging, and market allocation in the packaged seafood industry. That investigation has uncovered collusion among the suppliers of packaged seafood in the United States.

Thus far, the investigation has resulted in four filed cases: three against executives, all of whom have pleaded guilty to participating in a conspiracy to fix prices for packaged seafood sold in the U.S. Bumble Bee, a major packaged seafood company, also pleaded guilty, and was sentenced to pay a \$25 million criminal fine, which will be increased to as much as \$81.5 million in the event of a sale of Bumble Bee by a parent company.

V. Exhibits