



# ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION  
FY 2021 PERFORMANCE BUDGET**

# **Antitrust Division**

## **FY 2021 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. Within the Department's Strategic Plan, the Division's efforts support Strategic Goal 4: "Promote Rule of Law, Integrity, and Good Government" and Strategic Objective 4.1: "Uphold the rule of law and integrity in the proper administration of justice". 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. 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.

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 an investigation 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. In FY 2019, the Division was appropriated \$164.9 million, but took in \$129.4 million in civil filing fees and obtained \$364.7 million in criminal fines. Similarly, in FY 2018, the Division was budgeted \$164.9 million, but took in \$133.0 million in civil filing fees and obtained \$171.6 million in criminal fines.

To administer its caseload, the Division's FY 2021 budget request includes \$188,524,000, which reflects an increase of \$21,769,000 over the FY 2020 President's Budget, including a program increase of \$8,250,000 and base adjustments of \$13,519,000.

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/CJ>.

**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.

<b>Enforcement Program</b>	<b>Major Matter Exemplars</b>	
<p align="center"><b>Civil Merger/Non- Merger</b></p>	<p><b><u>Merger:</u></b></p> <ul style="list-style-type: none"> <li>• Novelis/Aleris</li> <li>• Sabre/Farelogix</li> <li>• BB&amp;T/Sun Trust Banks</li> <li>• T-Mobile/Sprint</li> <li>• Quad/LSC Communications</li> <li>• Securis/Inmate Calling Solutions (ICS)</li> <li>• CVS/Aetna</li> </ul>	<p align="right"><b><u>Page #</u></b> <b>35</b></p>
	<p><b><u>Non-Merger:</u></b></p> <ul style="list-style-type: none"> <li>• National Association for College Admission Counseling (NACAC)</li> <li>• Embedded SIMs</li> <li>• Seaman v. Duke</li> <li>• Television Broadcasters Information Sharing Settlement</li> <li>• HSR Act Enforcement               <ul style="list-style-type: none"> <li>○ Canon/Toshiba</li> <li>○ James Dolan</li> </ul> </li> </ul>	<p align="right"><b>37</b></p>
<p align="center"><b>Criminal</b></p>	<p><b><u>Policy Changes to Promote Economic Competition and Save Taxpayer Dollars:</u></b></p> <ul style="list-style-type: none"> <li>• Procurement Collusion Strike Force (PCSF)</li> <li>• Compliance</li> </ul>	<p align="right"><b><u>Page #</u></b> <b>40</b></p>
	<p><b><u>Government Victims:</u></b></p> <ul style="list-style-type: none"> <li>• Korea Fuel Supplies</li> <li>• Generic Pharmaceuticals</li> <li>• Detroit Demolition</li> <li>• GSA Auctions</li> </ul>	<p align="right"><b>41</b></p>
	<p><b><u>Household Staples &amp; Consumer Goods:</u></b></p> <ul style="list-style-type: none"> <li>• Packaged Seafood</li> </ul>	<p align="right"><b>43</b></p>

	<ul style="list-style-type: none"> <li>• Components for Consumer Electronics</li> </ul>	
	<b><u>Financial Markets:</u></b>	<b>44</b>
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### 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.

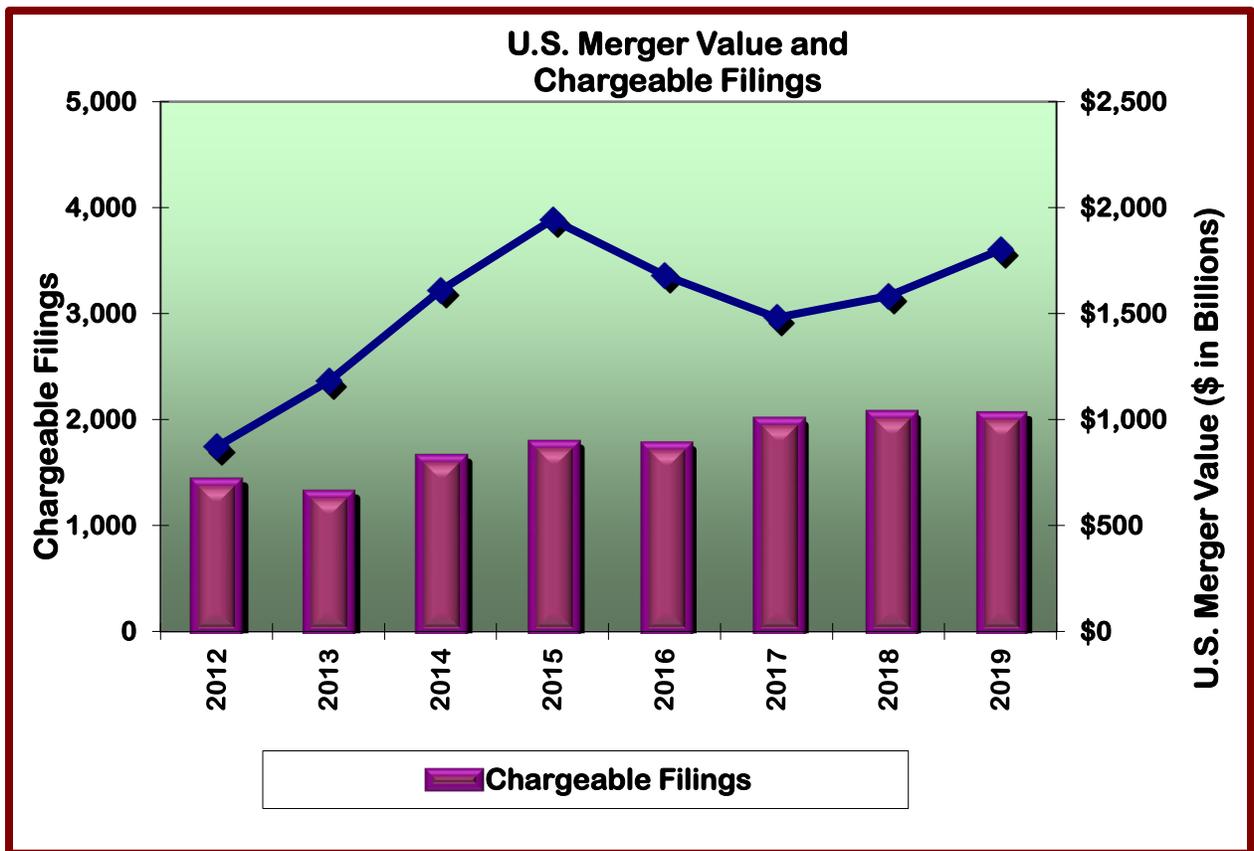


Figure 1

Merger activity has been steadily increasing since the recession and will likely continue to increase as the economy grows. As shown in Figure 1 on page 4, the overall trend in U.S. merger value has increased between calendar years 2012 and 2019. In calendar year 2019, worldwide merger and acquisition volume reached \$3.8 trillion and U.S. volume reached an annual total of \$1.8 trillion.<sup>1</sup>

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 \$5.2 trillion in FY 2019.<sup>2</sup>

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 2019, approximately **21 percent** were associated with subjects or targets located in foreign countries, compared to **49 percent** in FY 2018. Of the approximate **\$14.8 billion** in criminal antitrust fines and penalties imposed by the Division between FY 1997 and the end of FY 2019, approximately **97 percent** were in connection with the prosecution of international cartel activity. In addition, approximately **95 foreign defendants** from France, Germany, Italy, Japan, South Korea, Taiwan, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and Honduras have served, or have been sentenced to serve, prison sentences in the United States as a result of the Division's cartel investigations.

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<sup>1</sup> "Investment Banking Scorecard." *The Wall Street Journal*. Viewed on January 10, 2020 at <http://graphics.wsj.com/investment-banking-scorecard/>.

<sup>2</sup> "U.S. International Trade in Goods and Services, October 2019." *United States Department of Commerce, Bureau of Economic Analysis*, December 5, 2019. Viewed on December 18, 2019 at <https://www.bea.gov/news/2019/us-international-trade-goods-and-services-october-2019>.

The Division's criminal enforcement program overall, including enforcement against international cartels, has resulted in an increase in criminal fines and penalties. Up until 1994, the largest corporate fine imposed for a single Sherman Act count was \$6 million. Today, fines and penalties of \$10 million or more are commonplace, including fines in excess of \$100 million.

The Division's 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.

International Competition Advocacy and the Framework on Competition Agency Procedures - The Department of Justice, as part of the Executive Branch, represents the United States in matters involving foreign affairs. 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. Our engagement prioritizes international cooperation on cartel and merger enforcement, and advocacy regarding procedural fairness and, where appropriate, antitrust policy convergence. In addition to promoting sound enforcement generally, these efforts help create a more stable legal environment for U.S. companies operating abroad.

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. From fiscal years 2000 to 2019, the total fines and penalties obtained in cartel cases was just over \$13 billion, and many of these cartels involved at least some foreign activity or actors. The 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 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 cooperation, multilateral engagement is equally important in supporting the Division's antitrust enforcement agenda. In October 2001, the Division, in conjunction with 13 other competition agencies, launched the International Competition Network ("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 December 2019, the ICN includes 140 agencies from 129 jurisdictions. The Division and the U.S. Federal Trade Commission will co-host the ICN Annual Conference for the first time in the United States in May 2020.

On April 3, 2019, the Steering Group of the ICN unanimously approved a multilateral framework on procedures among antitrust enforcement agencies globally to promote fundamental due process in competition law investigation and enforcement. This framework was based on the principles of the Antitrust Division's Multilateral Framework on Procedures, which was developed in consultation with a dozen leading competition agencies from around the world. This historic multilateral agreement recognizes fundamental principles of transparency and procedural fairness in antitrust enforcement and promotes review mechanisms to ensure that participating agencies abide by these norms. The framework includes commitments such as non-discrimination; transparency and predictability; proper notice, access to information, meaningful and timely engagement, and opportunity to defend; timely resolution of proceedings; confidentiality protections; avoidance of conflict of interest; access to counsel and privilege; written enforcement decisions and public access to decisions; and availability of independent review of enforcement decisions.

The framework on Competition Agency Procedures ("CAP") opened for signature on May 1, 2019, and has now been joined by 72 enforcement agencies around the globe. Additionally, in June 2019, the Antitrust Division was selected as one of three co-chairs for the CAP, along with the Australian and German competition authorities.

## **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 2019, 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 exceeded 8 billion in 2019 and are expected to grow to 8.9 billion by 2025 according to the Ericsson Mobility Report, published by Ericsson in November 2019.<sup>3</sup>

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 2025, it is estimated that the number of smartphone subscriptions alone is set to reach 7.4 billion, a substantial increase over the 5.5 billion smartphone subscriptions in 2019. Mobile video traffic is set by 2025 to grow to around 76 percent of all mobile data traffic, an increase of 13% over 2019 traffic levels.<sup>4</sup>

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 \$159 billion in 2024; more than double the \$68 billion recorded in 2018.<sup>5</sup>

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.

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<sup>3</sup> “Ericsson Mobility Report.” *Ericsson*, November 2019: 34. Viewed on December 20, 2019 at <https://www.ericsson.com/4acd7e/assets/local/mobility-report/documents/2019/emr-november-2019.pdf>.

<sup>4</sup> “Ericsson Mobility Report.” *Ericsson*, November 2019: 13, 34. Viewed on December 20, 2019 at <https://www.ericsson.com/4acd7e/assets/local/mobility-report/documents/2019/emr-november-2019.pdf>.

<sup>5</sup> “Global OTT TV and Video Forecasts” *Digital TV Research*, June 2019: 1. Viewed on December 20, 2019 at <https://www.digitaltvresearch.com/products/product?id=239>.

## **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, seized data, bank records and other information from public sources, the Division now regularly obtains information from social media providers, cloud service providers, and physical media such as hard drives and computer servers containing the e-mail traffic and documents of companies under investigation. Many of these data sources are non-standard and require additional processing before they can be reviewed. The Division is using search warrants and seized data far more frequently than in years past.

## **Appellate Advocacy**

The Antitrust Division's Appellate Section has been active in the U.S. Supreme Court and courts of appeals, both in appeals from its own actions and in cases where the Division offers its views as an amicus party.

In FY 2019, the Supreme Court heard and ruled on a private antitrust case in which the United States participated as an amicus, *Apple v. Pepper*. That case involved the indirect purchaser rule set forth in the Supreme Court's *Hanover Shoe* and *Illinois Brick* decisions; the Court decided that consumers purchasing apps from Apple's electronic retail store would be treated as direct purchasers able to sue Apple for alleged antitrust violations that inflate the app prices. The Division also provided advice to other Department of Justice components and to the Office of the Solicitor General on competition issues in various non-antitrust cases at the certiorari and merits stages before the Supreme Court.

The Section also conducted several important appeals in the Antitrust Division's own cases in this time frame. In *United States v. AT&T*, the Division briefed and argued an appeal challenging a district court's decision to allow a vertical merger between AT&T and Time Warner to be consummated without condition. The Court of Appeals, though affirming the district court on a deferential standard of review, approved of the theoretical framework the Division used to evaluate the merger as well as corrected several errors of economics committed by the district court. In *United States v. Sanchez*, the Division successfully defended on appeal a criminal trial victory convicting several defendants of rigging bids in real estate foreclosure auctions. In particular, the Ninth Circuit rejected the defendants' argument that longstanding case law finding bid rigging per se unlawful

under the Sherman Act must be jettisoned as unconstitutional. The Division also briefed the criminal appeal in *United States v. Garay-Rodriguez*, in which the defendants have claimed their conspiracy to fix prices for school busing services did not involve or affect interstate commerce despite the fact that the buses, as well as federal funding used to purchase the busing services, came from out-of-state.

In addition, the Division has embarked on an effort to expand its amicus program and significantly increase its participation in antitrust cases before they reach the Supreme Court. The goal of this effort is to help shape the development and application of antitrust law in the earliest stages of private litigation to protect the Division's enforcement interests and promote competition in the U.S. economy. The subjects of lower court filings in FY 2019 have included how exemptions from the antitrust laws should be construed narrowly so as to protect competition and consumers, how no-poach agreements unrelated to legitimate collaborations are per se unlawful, how agency decisions not to pursue cases should not preclude private enforcement on the same issues, and how—in order to avoid chilling important incentives for innovation—antitrust law should play a limited role in policing commitments patent holders make to standard-setting organizations.

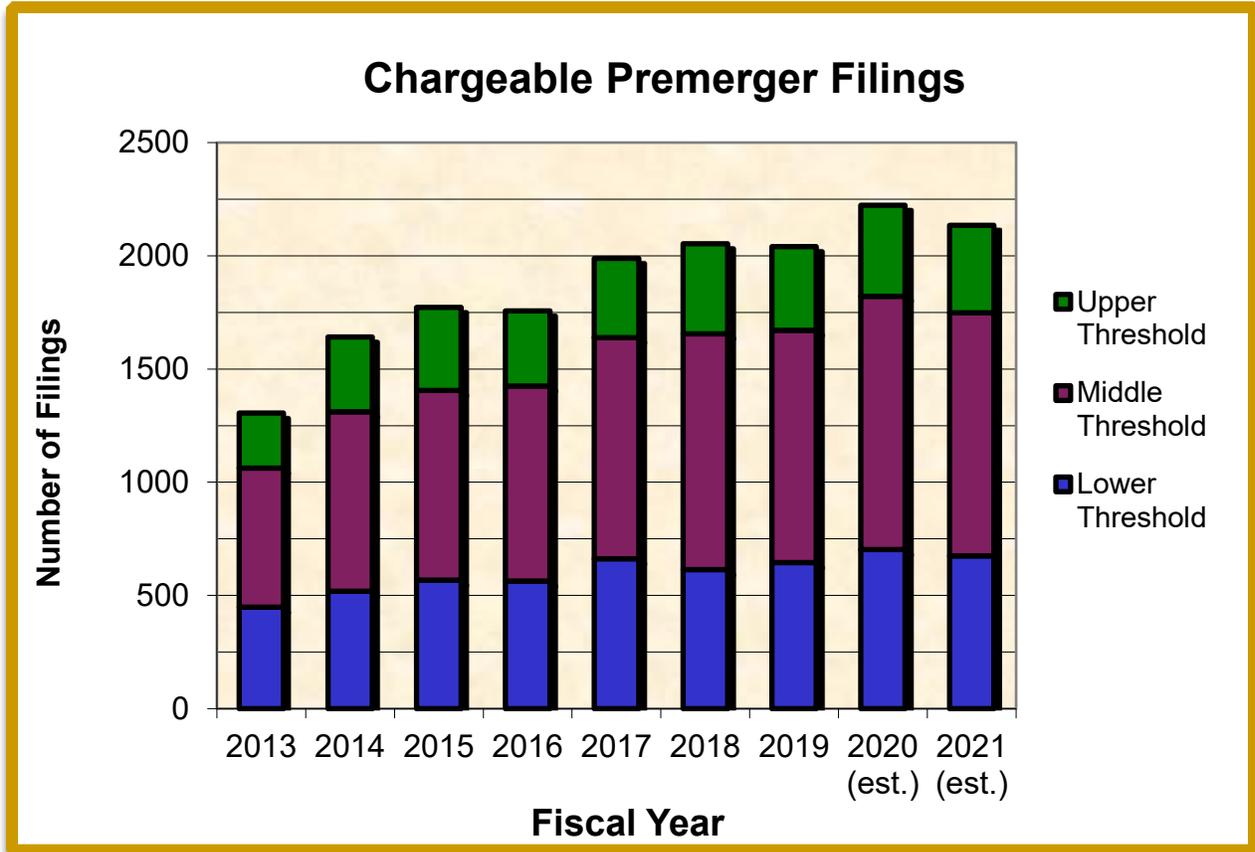
## Results

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 2019, as a result of the Division's efforts, over **\$10 billion in criminal fines and penalties** were obtained against antitrust violators. In FY 2019, the Division obtained just over **\$364 million** in criminal fines and penalties.
- 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 \$14.8 billion in criminal fines and penalties to the U.S. Treasury, including more than \$10.7 billion since the beginning of FY 2008.**
- In FY 2019, as the result of Division enforcement efforts, **10 corporations and 25 individuals** were sentenced due to antitrust violations. Prison sentences between FY 2000 and the end of FY 2019 **averaged approximately 19 months**, over two times the 8-month average sentence of the 1990's. Prison sentences since FY 1990 have resulted in more than **816 years** of imprisonment in cases prosecuted by the Antitrust Division, with more than **280 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 2019, restitution generated by the Division was over **\$117 million**.
- 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 over \$53 billion.

## Revenue Assumptions

Estimated FY 2021 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. In its January 2019 report “The Budget and Economic Outlook: 2019 to 2029”, the Congressional Budget Office predicts annual growth beginning in 2020 to average 1.7 percent through 2023 and from 2024 to 2029 to grow at an average rate of 1.8 percent per year.<sup>6</sup>



Premerger Filing Fee Thresholds Effective April 3, 2019	
Value of Transaction	Filing Fee
Lower: \$90.0M - <\$180.0M	\$45,000
Middle: \$180.0M - <\$899.8M	\$125,000
Upper: \$899.8M 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 \$136 million for FY 2021 are expected. Hart-Scott-Rodino (HSR) filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division.

<sup>6</sup> “The Budget and Economic Outlook: 2019 to 2029.” *Congressional Budget Office*, January 2019: ‘At A Glance’. Viewed on December 20, 2019 at <https://www.cbo.gov/system/files/2019-03/54918-Outlook-3.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 \$188,524,000 in support of 782 positions and 639 estimated FTE.

### FY 2021 Total Budget Request by Program Area

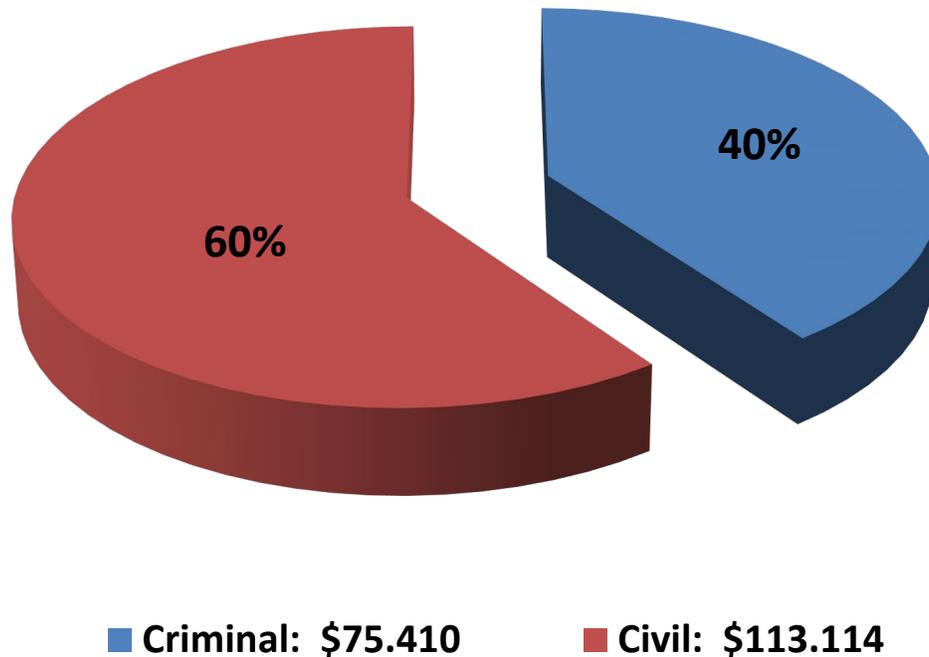


Figure 3

#### 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 2021 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

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Enhanced Antitrust Enforcement	To enhance the Division's efforts promoting competition and protecting consumers from economic harm.	87	44	\$8,250	47

## 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, [\$166,755,000] \$188,524,000, 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 [\$141,000,000] \$136,000,000 in fiscal year [2020] 2021), 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 [2020] 2021, so as to result in a final fiscal year [2020] 2021 appropriation from the general fund estimated at [\$25,755,000] \$52,524,000.

### 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

<b>Antitrust Division</b>			
<b>Fiscal Year 2021 Congressional Submission</b>			
<b>Decision Unit Justification</b>			
(dollars in thousands)			
<b>Decision Unit: Antitrust - TOTAL</b>	<b>Direct Positions</b>	<b>Estimate FTE</b>	<b>Amount</b>
2019 Enacted	656	574	\$164,977
2020 Enacted	695	595	\$166,755
Adjustments to Base and Technical Adjustments	0	0	\$13,519
2021 Current Services	695	595	\$180,274
2021 Program Increases	87	44	\$8,250
2021 Request	782	639	<b>\$188,524</b>
<b>Total Change 2020 – 2021</b>	<b>87</b>	<b>44</b>	<b>\$21,769</b>

<b><i>Antitrust Division - Information Technology Breakout (of Decision Unit Total)</i></b>	<b>Direct Positions</b>	<b>Estimate FTE</b>	<b>Amount</b>
2019 Enacted	31	31	\$35,538
2020 Enacted	31	31	\$36,247
Adjustments to Base and Technical Adjustments	0	0	\$1,803
2021 Current Services	31	31	\$38,050
2021 Request	31	31	\$38,050
<b>Total Change 2020-2021</b>	<b>0</b>	<b>0</b>	<b>\$1,803</b>

#### 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 increasingly technologically advanced efforts to avoid detection of sophisticated criminal behavior, and affect more U.S. businesses and consumers than ever before. Matters such as the Division’s ongoing investigation in the generic pharmaceuticals industry (page 42) 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.

*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. 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 18th annual conference of the ICN was held in Cartagena, Colombia in May 2019 where two new instruments on procedural fairness in competition law investigations and enforcement proceedings were introduced: The Framework for

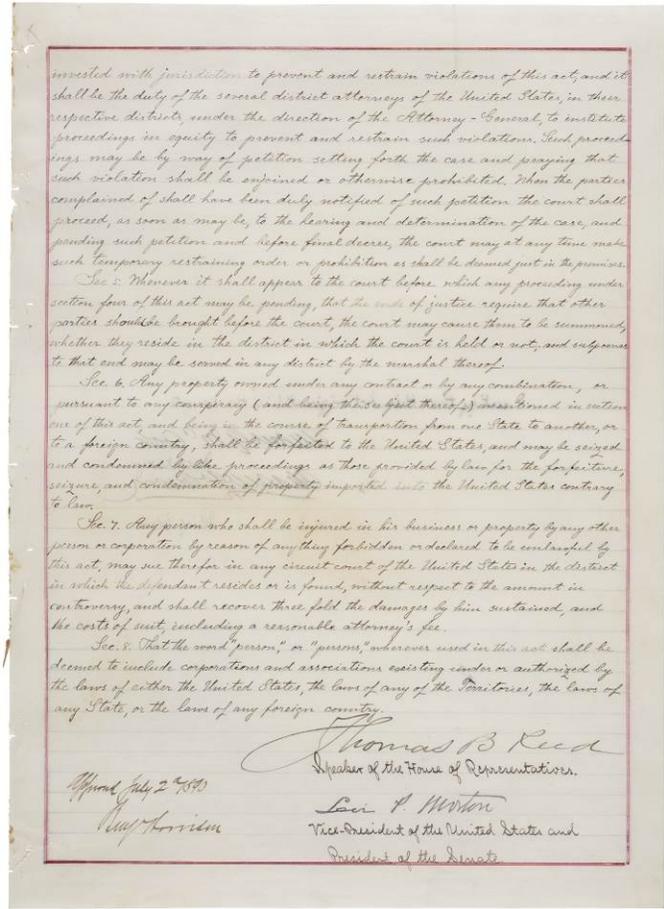
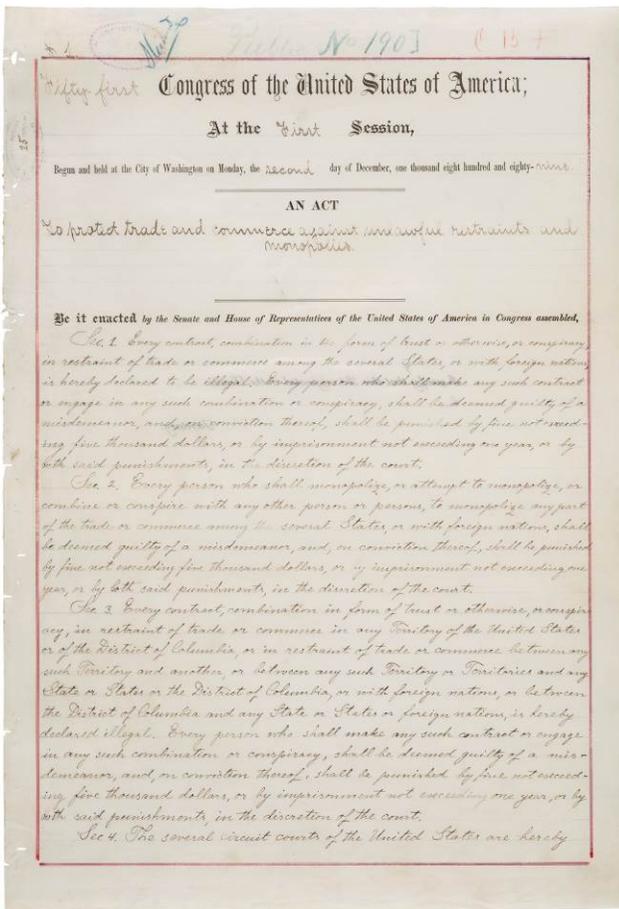
Competition Agency Procedures and Recommended Practices for Investigative Processes.<sup>7</sup>

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.

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<sup>7</sup> "2019 Annual Conference Press Release", *International Competition Network*, May 2019. Viewed on September 10, 2019 at <https://www.internationalcompetitionnetwork.org/featured/2019-annual-conference-press-release/>.

**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**

**DOJ Strategic Goal 4: Strategic Objective 4.1: Uphold the rule of law and integrity in the proper administration of justice**

WORKLOAD/RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2019		FY 2019		FY 2020		Current Services Adjustments and FY 2021 Program Changes		FY 2021 Request	
<b>Workload</b> - Number of HSR Transactions Received		1,635		2,095		1,635		0		1,800	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
<b>Antitrust</b>		658	\$164,977	574	\$160,528	595	\$166,755	44	\$21,769	639	\$188,524
TYPE	PERFORMANCE/RESOURCES	FY 2019		FY 2019		FY 2020		Current Services Adjustments and FY 2021 Program Changes		FY 2021 Request	
Program Activity	<b>1. Criminal</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		263	\$65,991	230	\$64,211	238	\$66,702	18	\$8,708	256	\$75,410
Performance Measure – Criminal	Number of Active Grand Juries	75		107		75		0		75	
	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected		\$120		Not Projected		Not Projected		Not Projected	
Program Activity	<b>2. Civil</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		395	\$98,986	344	\$96,317	357	\$100,053	26	\$13,061	383	\$113,114

		Target	Actual	Projected	Changes	Requested (Total)
TYPE	PERFORMANCE/RESOURCES	FY 2019	FY 2019	FY 2020	Current Services Adjustments and FY 2021 Program Changes	FY 2021 Request
<b>Performance Measure – Merger</b>	Number of Preliminary Inquiries Opened	70	71	70	0/0	70
<b>Performance Measure – Civil Non-Merger</b>	Number of Active Investigations	50	39	50	0/0	50
<b>Performance Measure – Civil Merger and Non-Merger</b>	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	\$183,376	Not Projected	Not Projected	Not Projected
<b>Outcome – Criminal, Civil (Merger and Civil Non-Merger)</b>						
<b>Consumer Savings</b>	Criminal: Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$12	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	\$3,939	Not Projected	Not Projected	Not Projected
<b>Success Rates</b>	Criminal - Percentage of Cases Favorably Resolved	90%	93%	90%	0	90%
	Civil - Percentage of Cases Favorably Resolved	80%	88%	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 2020 through FY 2021 projections are based on an analysis of FY 2008 through FY 2019 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**

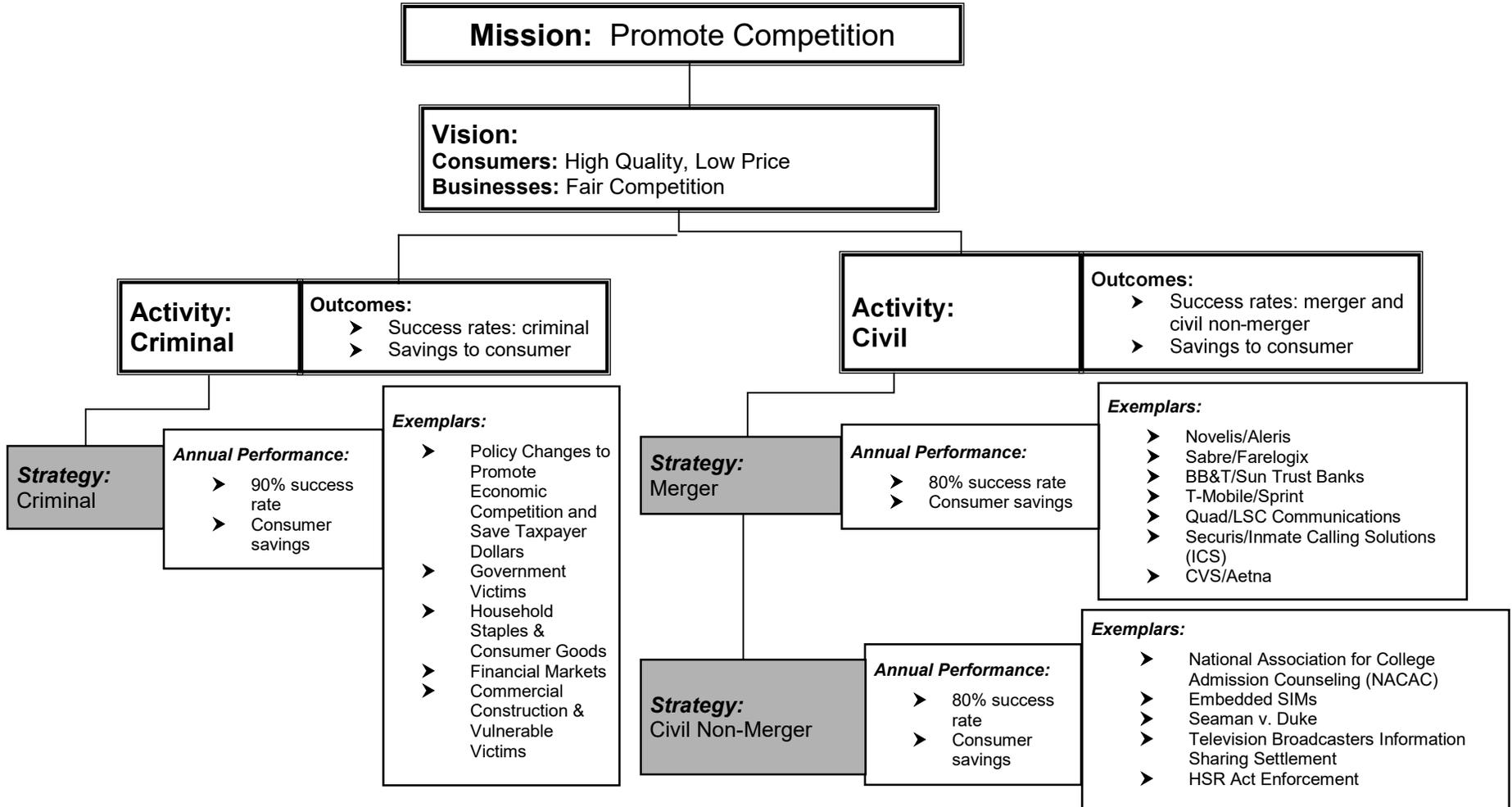
**Decision Unit: Antitrust**

**DOJ Strategic Goal 4: Strategic Objective 4.1: Uphold the rule of law and integrity in the proper administration of justice**

Performance Report and Performance Plan Targets		FY 2015	FY 2016	FY 2017	FY 2018	FY 2019		FY 2020	FY 2021
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
<b>Performance Measure: Criminal</b>	Number of Active Grand Juries	88	95	110	114	75	107	75	75
<b>Performance Measure: Criminal</b>	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	\$178,004	\$621	\$1,314	\$578	Not Projected	\$120	Not Projected	Not Projected
<b>Performance Measure: Civil Merger</b>	Number of Preliminary Inquiries Opened	67	65	57	65	70	71	70	70
<b>Performance Measure: Civil Non-Merger</b>	Number of Active Investigations	37	43	26	31	50	39	50	50
<b>Performance Measure: Civil (Merger and Non-Merger)</b>	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	\$216,998	\$129,834	\$118,432	\$20,420	Not Projected	\$183,376	Not Projected	Not Projected
<b>Outcome Measure: Consumer Savings - Criminal</b>	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$107	\$62	\$132	\$58	Not Projected	\$12	Not Projected	Not Projected
<b>Outcome Measure: Consumer Savings - Civil</b>	Civil (Merger and Non-Merger) - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$3,387	\$2,271	\$1,408	\$928	Not Projected	\$3,939	Not Projected	Not Projected
<b>Outcome Measure: Success Rate - Criminal</b>	Criminal - Percentage of cases favorably resolved	98%	87%	84%	76%	90%	93%	90%	90%
<b>Outcome Measure: Success Rate - Civil (Merger and Non-Merger)</b>	Civil - Percentage of cases favorably resolved	100%	96%	100%	100%	80%	88%	80%	80%

3. Performance Measurement Framework

*Antitrust Division, Department of Justice*  
**Performance Measurement Framework**  
 FY 2021



#### 4. Performance, Resources, and Strategies

The Antitrust Decision Unit contributes to the Department’s Strategic Goal 4: “Promote Rule of Law, Integrity, and Good Government”. Within this Goal, the Decision Unit’s resources specifically address Strategic Objective 4.1: “Uphold the rule of law and integrity in the proper administration of justice”.

##### a. Performance Plan and Report for Outcomes

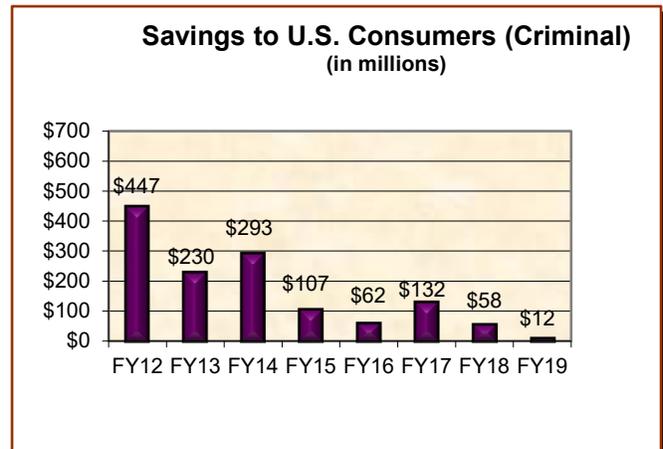
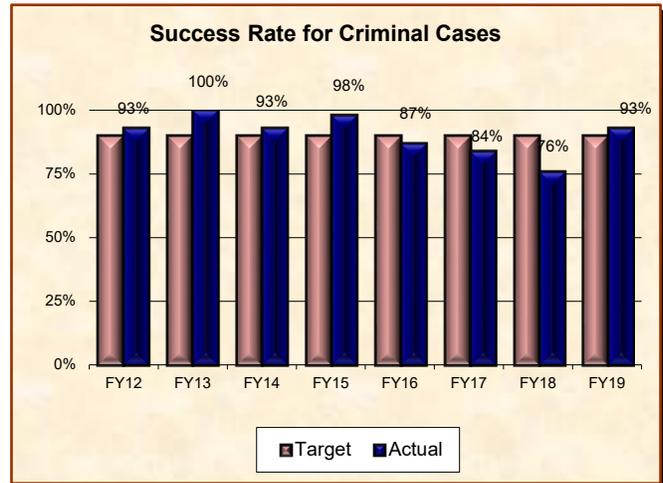
##### Prosecute International Price Fixing Cartels

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 cartels and restricting other criminal anticompetitive activity.

In FY 2019, the Division successfully resolved 93 percent of criminal matters. The Division expects to meet or exceed its goals for FY 2020 and FY 2021.

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.



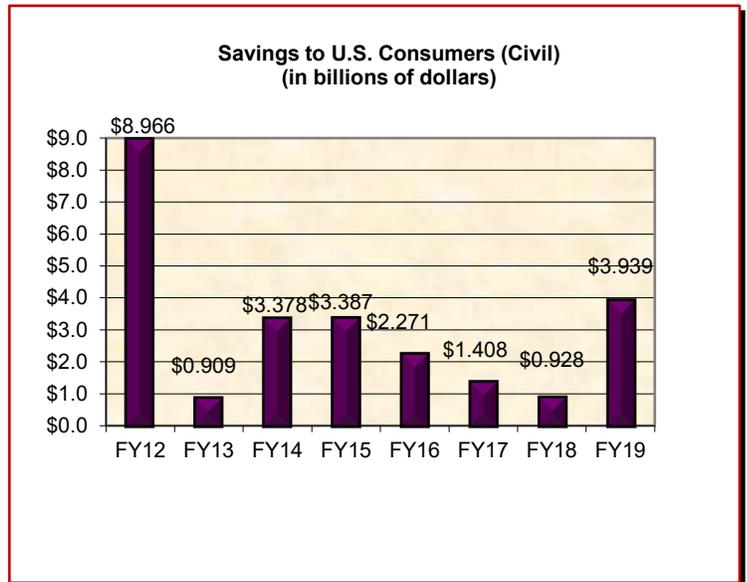
## Civil Enforcement

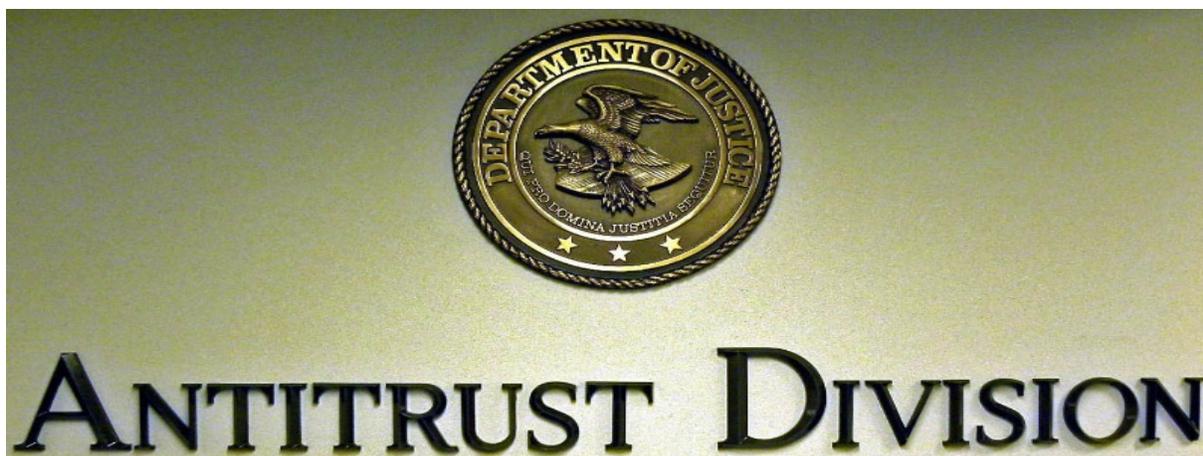
The charts below illustrate the Civil Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Civil Antitrust Cases and Savings to U.S. Consumers (as a result of the Antitrust Division’s civil enforcement efforts).

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 88 percent of the matters it challenged in FY 2012–2019 that have since reached full conclusion and expects to meet or exceed its success rate goal for FY 2020 and FY 2021.

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.





## **b. Strategies to Accomplish Outcomes**

### **Civil Enforcement**

The Division's civil strategy is comprised of two key activities - Merger and Civil Non-Merger enforcement. Six Washington, DC litigating sections, the appellate section, 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 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 transactions and allow the Division to identify and block potentially anticompetitive 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 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.

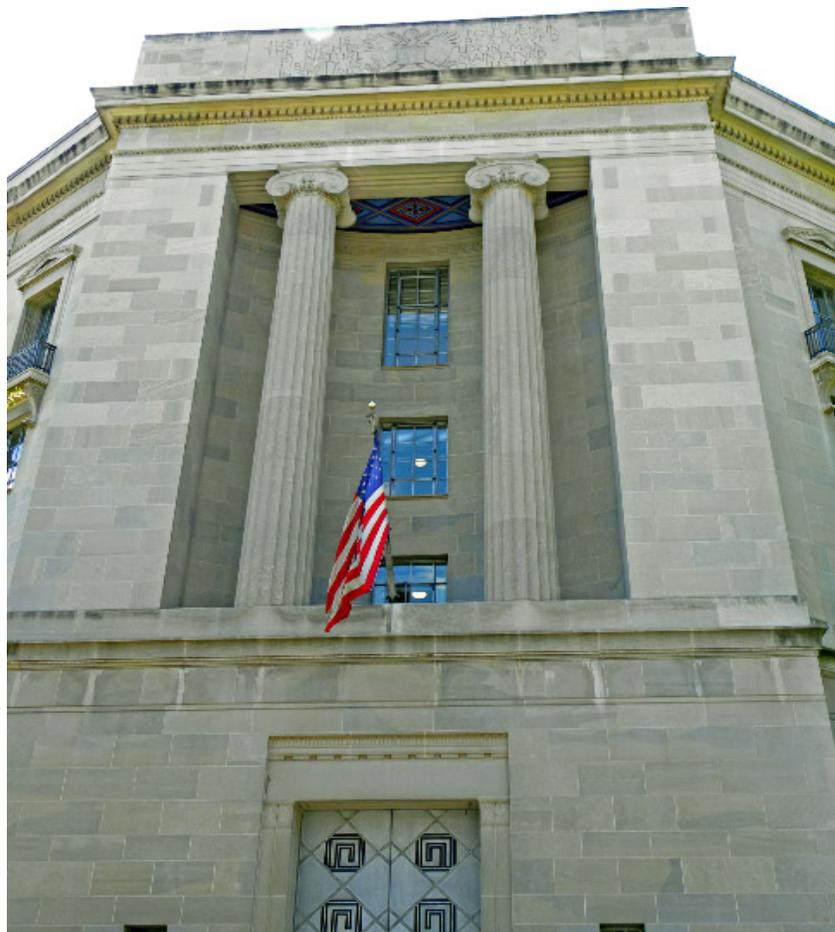
The majority of the Division's Civil Non-Merger work is performed by six litigating sections in Washington, DC, although other sections and offices occasionally provide support if necessary. Our Civil Non-Merger activities pick up, to some degree, where the Antitrust Division's Criminal strategy leaves 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 hardcore *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 it 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.

### **Prosecute International Price Fixing Cartels**

With three geographically dispersed regional offices and two criminal 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 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 brings successful prosecutions, the Division may obtain criminal fines and injunctive relief.



## **5. Exemplars – Civil**

### **A. Merger**

#### **Novelis/Aleris**

On September 4, 2019, the Division filed a civil antitrust lawsuit in seeking to block Novelis Inc.'s proposed acquisition of Aleris Corporation in order to preserve competition in the North American market for rolled aluminum sheet for automotive applications, commonly referred to as aluminum auto body sheet. According to the complaint, the transaction would combine two of only four North American producers of aluminum auto body sheet. Automakers rely on Novelis and Aleris to produce aluminum parts for automobiles to make cars lighter, more fuel-efficient, safer and more durable.

The Antitrust Division has agreed with defendants to refer the matter to binding arbitration to resolve the issue of product market definition. The arbitration will take place pursuant to the Administrative Dispute Resolution Act of 1996 (5 U.S.C. § 571 et seq.) and the Antitrust Division's implementing regulations (61 Fed. Reg. 36,896 (July 15, 1996)). This marks the first time the Antitrust Division is using this arbitration authority to resolve a matter.

#### **Sabre/Farelogix**

On August 20, 2019, the Division filed a civil antitrust suit in the U.S. District Court for the District of Delaware seeking to block Sabre Corporation's \$360 million acquisition of Farelogix, Inc. The Department said that Sabre and Farelogix compete head-to-head to provide booking services to airlines. Booking services are IT solutions that allow airlines to sell tickets and ancillary products through traditional brick-and-mortar and online travel agencies to the traveling public. The Department said that the acquisition would eliminate competition that has substantially benefitted airlines and consumers. In particular, the Division's lawsuit alleges that the transaction would allow Sabre, the largest booking services provider in the United States, to eliminate a disruptive competitor that has introduced new technology to the travel industry and is poised to grow significantly. Trial is scheduled to begin in late January 2020.

#### **BB&T/SunTrust**

In November 2019, the Division negotiated a significant divestiture package to resolve its concerns with the merger of BB&T Corporation and SunTrust Banks Inc. Pursuant to the Bank Holding Company Act and Bank Merger Act, the Division informed the Federal Reserve and the FDIC that it had identified harms in the markets for retail or small business banking services in seven geographic markets across three states. As a result, the Division entered into a Letter of Agreement with the parties that required divestitures of 28 branches with approximately \$2.3 billion in deposits. This Letter of Agreement was subsequently incorporated into the Federal Reserve's approval of the merger. This divestiture constitutes the largest divestiture in a bank merger in over a decade.

The Division subsequently approved First Horizon as the divestiture buyer. First Horizon operates branches across Tennessee, North Carolina, South Carolina, Florida, Mississippi, Texas, Virginia, and Georgia. The addition of the divested SunTrust

branches in North Carolina, Virginia, and Georgia will supplement First Horizon's existing network, and provide continued strong competition for retail banking services in these markets. Specifically, the divestiture will ensure that these banking customers will continue to have access to competitively priced banking products, including loans to small businesses, while preserving the investments in innovation and technology that the merger is expected to generate.

### **T-Mobile/Sprint**

On April 29, 2018, T-Mobile and Sprint agreed to combine their businesses in a transaction valued at approximately \$26 billion. The Antitrust Division conducted a comprehensive, fifteen-month investigation of the transaction, ultimately finding that the proposed transaction would substantially lessen competition in a nationwide market for retail mobile wireless services. Because the Division also recognized that the merger had the potential to unlock significant benefits for consumers, including increased access to higher quality 5G networks, it determined that a divestiture would preserve these benefits while protecting consumers from anticompetitive harm.

On July 26, 2019, the Division filed a civil antitrust complaint alongside a proposed final judgment. The proposed final judgment requires T-Mobile to divest to DISH Network Corp. Sprint's prepaid business, certain spectrum assets, certain cell sites and related infrastructure, and certain retail stores. The proposed final judgment also provides a transitional period during which DISH can operate on T-Mobile's network on extremely favorable terms while DISH builds out its own 5G network. The United States moved to enter its proposed final judgment on November 8. That motion remains pending before the court.

### **Quad/LSC Communications**

In June 2019, the Division filed a civil lawsuit seeking to block Quad/Graphics Inc.'s (Quad) proposed acquisition of LSC Communications Inc. (LSC). This deal would have combined the only two significant providers of magazines, catalog, and book printing services.

The complaint alleged that Quad and LSC are by far the largest printers in the United States and are relied upon by many of the largest publishers and retailers to ensure that high-quality products are printed and distributed on time. According to the complaint, each Quad and LSC viewed the other as its "#1 competitor," and intense head-to-head competition between the two companies directly benefitted consumers in the form of lower prices, higher quality services, and greater printing output. The complaint identified several internal party documents acknowledging the head-to-head competition between the two firms, describing it as a "two-horse race between LSC and Quad." The complaint further alleged that the proposed acquisition would end the "price war" between Quad and LSC, allowing the merged firm to dominate the magazine, catalog, and book printing markets. The parties abandoned the merger shortly after the Division filed its complaint.

### **Securus/Inmate Calling Solutions (ICS)**

In April 2019, Securus Technologies Inc. (Securus) abandoned its plans to acquire Inmate Calling Solutions LLC (ICS), after the Division informed the parties that it had significant concerns about the proposed merger. Securus and ICS are two of four major inmate telecommunications services (ITS) in the United States. Correctional facilities across the United States rely on specialized telecommunications companies to provide both basic phone service to inmates and the important security features the facilities require. For correctional facilities, ITS are an important source of revenue that helps support their operations. For inmates in these facilities, ITS are a key lifeline helping them stay connected to their loved ones.

The Division found that Securus and ICS had a history of competing aggressively to win state and local contracts. This competition manifested in the form of better financial terms, lower calling rates, and more innovative technology and services. After the parties abandoned the merger, the Division recognized that correctional facilities, inmates, and the families and friends of inmates would continue to benefit from robust competition between Securus and ICS. The Division also expressed its gratitude to the Federal Communications Commission and State Attorneys General for their cooperation during the investigation.

### **CVS/Aetna**

In October 2018, the Division required important divestitures following its investigation into CVS's acquisition of Aetna. According to the Division's complaint, the combination of CVS, which markets its Medicare Part D individual prescription drug plans under the "SilverScript" brand, and Aetna would cause anticompetitive effects, including increased prices, inferior customer service, and decreased innovation in sixteen Medicare Part D regions covering twenty-two states. The complaint alleges that the loss of competition between CVS and Aetna would result in lower-quality services and increased costs for consumers, the federal government, and ultimately, taxpayers.

Under the terms of the settlement filed at the same time as the complaint in the District Court for the District of Columbia, Aetna must divest its individual prescription drug plan business to WellCare Health Plans, Inc. and allow WellCare the opportunity to hire key employees who currently operate the business. Aetna must also assist WellCare in operating the business during the transition and in transferring the affected customers through a process regulated by the Centers for Medicare and Medicaid Services, an agency within the U.S. Department of Health and Human Services.

In May 2019, the district court held hearings regarding the proposed settlements and accepted testimony from nonparties. On September 4, 2019, the district court granted the United States' motion for final judgment and entered the settlement.

## **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.

## **National Association for College Admission Counseling (NACAC)**

In December 2019, the Division filed a civil lawsuit against the National Association for College Admission Counseling (NACAC), alleging that NACAC established and enforced illegal restraints on the ways in which colleges compete to recruit students. The Division simultaneously filed a proposed consent decree.

NACAC is the leading national trade association for college admissions, and its college members compete aggressively for college students, both incoming freshmen and transfer students. One condition of NACAC membership is adherence to its Code of Ethics and Professional Practices, which sets forth mandatory rules for how members must engage in college admissions and recruiting. These rules included prohibitions or severe restrictions on (1) directly recruiting transfer students; (2) offering incentives of any kind to college applicants who applied via the Early Decision process; and (3) recruiting incoming college freshmen after May 1. The complaint alleged these rules hampered competition in the recruiting of students, and were not reasonably necessary to any separate, legitimate procompetitive collaboration between NACAC members.

Under the proposed consent, NACAC has agreed to remove rules regarding recruitment of (1) transfer students; (2) prospective Early Decision applicants; and (3) prospective incoming freshmen after May 1. The proposed consent further restrains NACAC from establishing or enforcing any similar rule in the future, and requires NACAC to increase its antitrust compliance training for employees and members. The proposed consent decree is currently awaiting final court approval.

## **Embedded SIMs**

In November 2019, the Division announced that it had completed its nearly two-year long investigation into the standard-setting activities of the GSM Association (GSMA), a trade association for mobile network operators. Simultaneously, the Division issued a business review letter to GSMA related to its proposed new set of standard-setting procedures.

The Division's investigation revealed that GSMA used its industry influence to steer the design of embedded SIMs (eSIMs) technology in mobile devices. The mobile communications industry has begun to migrate away from traditional SIM cards—removable plastic cards preprogrammed to connect to a single mobile network—and toward innovative eSIM cards—which perform the same function as SIMs, but are soldered into devices and are capable of being remotely programmed and re-programmed to connect to different operators' mobile networks. This process is known as Remote SIM Provisioning (RSP). According to the Division's investigation, GSMA and its mobile network operator members used an unbalanced standard-setting process, with procedures that stacked the deck in their favor, to enact an RSP Specification that included provisions designed to limit competition among networks.

The Division expressed its concerns to GSMA and, in response, GSMA drafted new standard-setting procedures that will incorporate more input from non-operator members of the mobile communications industry. As a result, the new procedures will curb mobile network operators' ability to use GSMA standards anticompetitively to prevent the

emergence of disruptive competition that eSIM technology may unleash. The new procedures are, accordingly, more likely to create procompetitive benefits for mobile device consumers.

### **Seaman v. Duke**

In May 2019, the Division intervened in a private antitrust class action that challenged alleged agreements between Duke University and the University of North Carolina not to compete for each other's medical faculty. At the same time, the Department joined the parties' proposed settlement agreement for the limited purpose of obtaining the right to enforce an injunction designed to prevent the maintenance or recurrence of any unlawful no-poach agreements. Specifically, under the terms of the settlement, Duke is prohibited from entering, maintaining, or enforcing unlawful no-poach agreements for five years. This settlement was part of a larger effort by the Division to be active in enforcing the antitrust laws against practices that harm American workers and that educate the public about unlawful no-poach agreements in order to deter such agreements in the first place. The court entered the proposed settlement on September 25, 2019.

### **Television Broadcasters Information Sharing Settlement**

On November 13, 2018, the Division filed a complaint and settlement agreement in the District of Columbia against seven broadcast television companies for agreeing to reciprocally exchange competitively sensitive information relevant to many advertising spot markets. The complaint alleges that by exchanging such information, the broadcasters were better able to anticipate their competitors' pricing conduct, which in turn helped inform the stations' own pricing strategies and negotiations with advertisers. As a result, the information exchanges distorted the normal price-setting mechanism in the spot advertising process and harmed the competitive process. On June 17, 2019, the Division filed an amended complaint naming five additional broadcast television companies, as well as a settlement agreement with those companies.

The Division obtained settlement agreements from the twelve parties that prohibit the sharing of such competitively sensitive information. The proposed settlements further require broadcasters to cooperate in the Department's ongoing investigation and to adopt rigorous antitrust compliance and reporting measures to prevent similar anticompetitive conduct in the future.

### **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 several important cases in the past two years.

### ***Canon/Toshiba***

In June 2019, the Division, at the request of the Federal Trade Commission (FTC), filed a lawsuit against Canon Inc. and Toshiba Corporation for violating the premerger notification and waiting period requirements of the Hart-Scott-Rodino (HSR) Act of 1976

when Canon acquired Toshiba Medical Systems Corporation from Toshiba in 2016. At the same time, the Division filed a proposed settlement under which the companies agreed to pay \$2.5 million each to settle the charges. The settlement also requires the companies to implement HSR compliance programs and comply with inspection and reporting requirements, among other obligations imposed under the consent order. On October 8, 2019, the court entered the final judgment.

### ***James Dolan***

In December 2018, the Division, at the request of the Federal Trade Commission (FTC), filed a lawsuit against James Dolan for violating the premerger notification and waiting period requirements of the Hart-Scott-Rodino (HSR) Act of 1976 when he acquired voting securities of Madison Square Garden Company in 2017. At the same time, the Division filed a proposed settlement, subject to approval by the court, under which Dolan has agreed to pay a \$609,810 civil penalty to resolve the lawsuit.

## **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 2019, the Antitrust Division filed 26 cases. Altogether, 13 corporations and 15 individuals were charged for antitrust offenses. These crimes affected important American industries, including financial services, commercial construction, generic pharmaceuticals and electronic components, and victimized particularly vulnerable consumers including the elderly, government victims, and taxpayer-funded schools and hospitals. The Division's investigations into violations in many of these industries remain ongoing.

The Division obtained significant sentences against both corporations (including criminal fines and penalties) and individuals (including prison terms and criminal fines). In FY 2019, courts imposed over \$257 million in criminal fines and penalties, and 22 prison sentences totaling 3,928 days of incarceration, against defendants in Antitrust Division cases.

### **A. Policy Changes to Promote Economic Competition & Save Taxpayer Dollars**

The Division seeks to fulfill its mission to promote consumers and competition by deterring, detecting, and prosecuting criminal violations of the antitrust laws. Two of the Division's recent policy initiatives focus on the importance of deterrence and—through new incentives, initiatives, and relationships—augmenting its detection capabilities.

*i. Procurement Collusion Strike Force*

In November, the Department announced the Procurement Collusion Strike Force (PCSF), which is an interagency partnership among the Antitrust Division, multiple U.S. Attorneys' Offices, the Federal Bureau of Investigation, and multiple federal Offices of Inspector General. The objective of the PCSF is to deter, detect, investigate, and prosecute antitrust and related crimes that affect government procurement, grant, and program funding.

The Strike Force will harness the combined expertise and capacity of its partners to conduct targeted outreach to procurement officials and government contractors about antitrust risks in the procurement process. Further, it will facilitate collaboration across the law enforcement community in developing and using data analytics to detect potential antitrust crimes. The Strike Force will also leverage the existing resources and personnel of its partner agencies to jointly investigate and prosecute procurement-related crimes.

*ii. Compliance*

In July 2019, the Antitrust Division announced that, for the first time, it will consider and allow for crediting corporate compliance programs at the charging stage in criminal investigations. Now, when appropriate under the Justice Manual's Principles and the Division's Corporate Leniency Policy, corporate charges may be resolved by a deferred prosecution agreement (DPA) rather than a guilty plea and criminal conviction. To promote transparency, the Division also made public a guidance document that outlines its approach to evaluating antitrust compliance programs.

The goal of the policy change is to incentivize investments in corporate compliance and a commitment to good corporate citizenship. Corporate compliance efforts are the first line of defense against antitrust crimes. Ideally, robust antitrust compliance programs deter wrongdoing altogether, preventing the harm from anticompetitive conduct before it occurs. But when misconduct does occur, companies that have robust and otherwise effective compliance programs are better positioned to promptly detect it and self-report. Self-reporting not only furthers the Division's efforts at detecting misconduct and holding culpable individuals accountable, but it also enables companies to better mitigate their exposure.

**B. Government Victims**

Several investigations in FY 2019 illustrate the Division's commitment to safeguarding the integrity of the public procurement process, protecting taxpayer dollars from collusion, and holding responsible those who victimize the government.

*i. Korea Fuel Supplies*

In November 2018, the Antitrust Division announced resolution of criminal charges and civil claims against South Korea-based companies SK Energy Co. Ltd., GS Caltex Corporation, and Hanjin Transportation Co. Ltd. arising from a decade-long bid-rigging conspiracy that targeted fuel supply contracts to U.S. military bases in South Korea. The defendants pleaded guilty to criminal charges and were sentenced to pay over \$82 million

in criminal fines. *See U.S. v. SK Energy Co. Ltd.*, 18-cr-239 (S.D. Oh.); *U.S. v. GS Caltex Corporation*, 18-cr-240 (S.D. Oh.); *U.S. v. Hanjin Transportation Co., Ltd.*, 18-cr-241 (S.D. Oh.).

In March 2019, the Division unsealed a superseding criminal indictment charging two additional companies, Hyundai Oilbank Co. Ltd and S-Oil Corporation, and seven executives with defrauding the federal government and participating in the bid-rigging conspiracy. One executive was also charged with obstruction. The two companies pleaded guilty to the antitrust charge and have been sentenced to pay nearly \$75 million in criminal fines. *See United States v. Kim*, 18-cr-00152 (S.D. Oh.).

In separate civil settlements, the five companies also resolved parallel civil antitrust and False Claims Act violations and paid an additional \$205 million in total. *See U.S. v. G.S. Caltex, et al.*, 18-cv-1456 (S.D. Oh.); *U.S. v. Hyundai Oilbank Co. Ltd. et al.*, 19-cv-01037 (S.D. Oh.). As a result of the defendants' conduct, the United States Department of Defense paid substantially more for fuel supply services in South Korea than it would have had the defendants competed for the fuel supply contracts. Under Section 4A of the Clayton Act, the United States may obtain treble damages when it has been injured by an antitrust violation. The civil settlement paid by each defendant exceeds the amount of the individual overcharge and reflects consideration for ongoing cooperation commitments and the cost savings realized by avoiding extended litigation. These cases were the Division's first significant settlements under Section 4A of the Clayton Act in many years.

The payments also resolved civil claims that the United States had under the False Claims Act for the defendants making false statements to the government in connection with their agreement not to compete. The Civil Division has entered into separate settlement agreements with the companies to resolve these claims.

The investigation is ongoing.

## ***ii. Generic Pharmaceuticals***

The Antitrust Division is investigating price fixing, bid rigging, and market allocation conspiracies in the generic pharmaceutical industry. The investigation began with Division prosecutors' proactive efforts to uncover the explanation for significant price increases in recent years on dozens of long off-patent generic drugs.

To date, the Division has announced two corporate resolutions with generic pharmaceutical manufacturers. *See U.S. v. Heritage Pharmaceuticals Inc.*, 19-cr-00316 (E.D. Pa.); *U.S. v. Kavod Pharmaceuticals LLC (f/k/a Rising Pharmaceuticals LLC, f/k/a Rising Pharmaceuticals Inc.)*, 19-cr-00689 (E.D. Pa.). Both companies admitted to conspiring to fix prices, agreed to pay criminal penalties, and agreed to cooperate in the ongoing investigation. Two former executives have also pleaded guilty to participating in a conspiracy to fix the prices of certain drugs. *See U.S. v. Glazer*, 16-cr-506 (E.D. Pa.); *U.S. v. Malek*, 16-cr-508 (E.D. Pa.).

The Civil Division has entered into separate settlement agreements with the companies to resolve allegations under the False Claims Act related to the price-fixing conspiracy.

The investigation is ongoing.

***iii. Detroit Demolition***

The Antitrust Division is partnering with the U.S. Attorney of the Eastern District of Michigan, the Special Inspector General of the Troubled Asset Relief Program (SIGTARP) and the Federal Bureau of Investigation (FBI) to conduct a comprehensive criminal investigation into the federally-funded Detroit Demolition Program.

The United States Treasury Department created the Blight Elimination Program, which focused on helping communities demolish vacant houses. The program was paid for through the Hardest Hit Fund (HHF), a housing support program intended to protect home values, preserve home ownership and promote economic growth. The City of Detroit was one of the recipients of this HHF money. Approximately \$258 million in Hardest Hits Funds have been allocated to the City of Detroit since 2013.

In April, a former Detroit city official and a former executive pleaded guilty to conspiracy to commit bribery and conspiracy to commit honest services fraud on contracts worth millions of dollars. Each was sentenced to 12 months in prison.

The Division remains committed to prosecuting conduct that subverts the competitive process and to protecting taxpayer funds.

***iv. GSA Auctions***

The Antitrust Division is investigating a conspiracy to rig bids submitted to the General Services Administration (GSA) for surplus government equipment sold at online auctions.

The GSA operates GSA Auctions, which offers the general public the opportunity to bid electronically on a wide variety of federal assets, including computer equipment that is no longer needed by government agencies. GSA Auctions sells that equipment via its online auctions, and the proceeds of the auctions are distributed to the government agencies or the U.S. Treasury general fund.

To date, two individuals have pleaded guilty and have agreed to cooperate with the ongoing investigation. *See U.S. v. Holland*, 19-cr-00065 (D. Minn.); *U.S. v. Yurkovetsky*, 19-cr-00182 (D. Minn.).

**C. Household Staples & Consumer Goods**

***i. Packaged Seafood***

The Division's investigation into price fixing in the packaged seafood market began at the end of calendar year 2016 and arose from a parallel civil merger investigation. To date, the investigation has led to charges against four executives and two companies.

*See U.S. v. Cameron*, 16-cr-501 (N.D. Cal.); *U.S. v. Worsham*, 16-cr-535 (N.D. Cal.); *U.S. v. Bumble Bee Foods, LLC*, 17-cr-249 (N.D. Cal.); *U.S. v. Hodge*, 17-cr-297 (N.D. Cal.); *U.S. v. Starkist Co.*, 18-cr-513 (N.D. Cal.); *U.S. v. Lischewski*, 18-cr-203 (N.D. Cal.).

Three executives pleaded guilty to participating in a conspiracy to fix prices for packaged seafood sold in the U.S. The fourth executive, Christopher Lischewski, the former President and Chief Executive Officer of Bumble Bee Foods, was convicted in December following a four-week jury trial in the U.S. District Court for the Northern District of California in San Francisco.

Bumble Bee has been 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. StarKist also pleaded guilty for its role in the conspiracy to fix prices of packaged seafood sold in the U.S. In September 2019, following a series of contested sentencing hearings, a district court judge sentenced StarKist to pay a \$100 million statutory maximum fine.

#### ***ii.* Components for Consumer Electronics**

From liquid crystal displays and DRAM to electrolytic capacitors, the Antitrust Division has a track record of successfully prosecuting international conspiracies involving electronic components that affect American consumers. Most recently, the Division announced a new electronic components investigation into a global conspiracy to fix prices for suspension assemblies used in hard disk drives. In July 2019, NHK Spring Co., a Japanese manufacturer of suspension assemblies incorporated into computers or sold as stand-alone electronic storage devices, pleaded guilty and was sentenced to pay a \$28.5 million fine for its role in the conspiracy. *See U.S. v. NHK Spring Co. Ltd.*, 19-cr-20503 (E.D. Mich.).

The investigation is ongoing.

#### **D. Financial Markets**

The Division also continued its investigation and prosecution of collusive conduct that undermined financial markets worldwide and directly affected the rates referenced by financial products held by, and on behalf of, companies and investors in the United States and around the world.

#### ***i.* Foreign Exchange Rates**

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 that undermined the integrity and competitiveness of foreign currency exchange markets that account for hundreds of billions of dollars' worth of transactions every day.

In FY 2019, an Antitrust Division trial team prepared extensively for a trial in the Southern District of New York of defendant, Akshay Aiyer, a former JP Morgan foreign exchange currency trader, charged with one count of conspiracy to restrain trade in

violation of 15 U.S.C. § 1. In November 2019, after a three-week trial, the jury returned a guilty verdict. *See U.S. v. Aiyer*, 18-cr-333 (S.D.N.Y.).

To date, the Antitrust Division has charged five companies and six individuals in its investigation of collusion in the FX spot market. Four major banks have pleaded guilty and agreed to pay collectively more than \$2.5 billion in criminal fines for their participation in an antitrust conspiracy in the euro-U.S. dollar FX spot market. Another bank pleaded guilty and agreed to pay a \$90 million criminal fine for its participation in an antitrust conspiracy involving emerging market FX prices. Two former traders have also pleaded guilty in connection with an antitrust conspiracy involving emerging market FX prices.

The investigation is ongoing.

#### *ii. Pre-Release American Depository Receipts*

The Antitrust Division is investigating a conspiracy to submit rigged bids to borrow pre-release American Depository Receipts (ADRs).

Worldwide, thousands of publicly traded companies list their shares of common stock only on foreign stock exchanges. Most U.S. investors are unable to purchase or sell such foreign shares. The U.S. Securities and Exchange Commission, however, permits four U.S. depository banks to create ADRs, which represent foreign ordinary shares and can be traded in the United States. Through the purchase and sale of ADRs, U.S. investors are able to gain exposure to — including the ability to receive dividends from — companies whose common stock is listed only on foreign stock exchanges.

During the conspiracy, a U.S. depository bank began using an auction-style process for pre-release ADRs and invited broker-dealers to submit competitive bids for rates to borrow ADRs. In response, the conspiring firms and individuals intensified their coordination in an effort to increase artificially their profits under the auction-style process. On several occasions, these firms and individuals reached an agreement regarding the bids they would submit to U.S. depository banks. And on many occasions, they further agreed that they all would submit the same bid.

To date, two financial services firms have pleaded guilty to criminal charges for their involvement in a conspiracy to borrow pre-release ADRs from U.S. depository banks at artificially suppressed rates and agreed to pay criminal fines in excess of \$5 million. *See U.S. v. Banca IMI Securities Corp.*, 19-cr-00349 (S.D.N.Y.); *U.S. v. Industrial and Commercial Bank of China Financial Services*, 19-cr-00446 (S.D.N.Y.). Two executives have also pleaded guilty and agreed to cooperate with the ongoing investigation. *See U.S. v. Meyers*, 19-cr-00429 (S.D.N.Y.); *U.S. v. Volino*, 19-cr-00814 (S.D.N.Y.).

#### **E. Commercial Construction & Vulnerable Victims**

The Antitrust Division has two separate investigations into collusion in the commercial construction industry targeting particularly vulnerable victims, including hospitals and schools.

***i. Commercial Insulation***

The Division, the U.S. Attorney for the District of Connecticut, the FBI and the Defense Criminal Investigative Service (DCIS) are jointly investigating fraud and bid rigging affecting \$45 million of commercial insulation contracts for facilities throughout New England including schools and hospitals. Insulation installation contractors install insulation around pipes and ducts on renovation and new construction projects at universities, hospitals, and other public and private entities.

To date, three individuals have pleaded guilty in the investigation and are awaiting sentencing. These individuals have also agreed to pay restitution to the victims and to resolve civil forfeiture cases connected to the criminal charges. *See U.S. v. DeVoe*, 19-cr-00086 (D. Conn.); *U.S. v. Flynn*, 19-cr-00112 (D. Conn.); *U.S. v. Camara*, 19-cr-00189 (D. Conn.).

The investigation is ongoing.

***ii. Commercial Flooring***

The Division is also investigating bid rigging and price fixing among commercial flooring contractors. The conspiracy to suppress and eliminate competition in the commercial flooring market spanned the better part of a decade and victimized schools, hospitals, and charities in the greater Chicago area.

To date, four individuals and one corporation have been charged in the ongoing investigation. *See U.S. v. Gannon*, 19-cr-00302 (N.D. Ill.), *U.S. v. PCI FlorTech, Inc.*, 19-cr-00657 (N.D. Ill.), and *U.S. v. Delmar E. Church, Jr., et al.*, 19-cr-00917 (N.D. Ill.).

## V. Program Increases by Item

Item Name:	<b><u>Enhanced Antitrust Enforcement</u></b>
Strategic Goal:	<u>4: Promote Rule of Law, Integrity, and Good Government</u>
Strategic Objective:	<u>4.1: Uphold the rule of law and integrity in the proper administration of justice</u>
Budget Decision Unit(s):	<u>Antitrust</u>
Organizational Program:	<u>Antitrust Division Civil and Criminal Enforcement Programs</u>

Program Increase: Positions 87 Atty 55 FTE 44 Dollars \$8,250,000

### Description of Item

The Antitrust Division takes seriously its ongoing mission of protecting the American consumer by promoting economic competition through enforcement of antitrust laws. To meet the challenges presented by the significant additional workload of the Division's civil and criminal enforcement programs and to continue protecting American consumers from anticompetitive merger deals, monopolization, as well as domestic and international cartels that harm U.S. consumers and businesses, the Division requests \$8.25 million to provide funding for 87 positions including 55 attorneys, 27 paralegals, and 5 economists.

### Justification

**Merger Enforcement** -- The strong economic recovery has resulted recently in what many economic and legal experts have called a wave of mega-deals. The Division's workload statistics support this assessment. The number of mergers reviewed by the Division per year has increased substantially and so has the size and complexity of these deals. For example, between FY 2013 and FY 2019, the number of mergers the Division reviewed annually increased by more than 50%, from 1,326 in FY 2013 to 2,091 in FY 2019. The number of mergers per year valued at more than \$1 billion has also increased dramatically, from 128 in FY 2010, to 225 in FY 2014, to 284 in FY 2019. Nonetheless, the Division has fought hard to stop anticompetitive transactions that threatened to raise prices on key products and services for millions of hardworking Americans. These efforts maintain and promote competition in industries ranging from healthcare (Cigna-Anthem, Aetna-Humana, and CVS-Aetna), agriculture (Bayer-Monsanto, Dow-DuPont, and Deere & Co.-Precision Planting), and data privacy hardware (Thales-Gemalto), to common foods (Danone-Whitewave Foods), telecommunications (AT&T/Time Warner, T-Mobile/Sprint), and oil industry services (General Electric-Baker Hughes).

Merger reviews are complicated because they involve numerous product and service markets as well as complex remedies that need thorough vetting. In investigating these deals, the Division must devote considerable time and resources assessing their potential competitive effects, a process that requires close coordination with federal agencies, state regulators, and foreign antitrust enforcers who may have certain industry expertise and/or

may be conducting parallel investigations. If the Division deems a merger anticompetitive, it must seek an injunction from the federal courts. These proceedings are costly, resource intensive, and lengthy. They require a substantial commitment of lawyers, economists, and paralegals.

Most recently, the Division has been litigating two merger challenges simultaneously (Sabre/Farelogix and Novelis/Aleris), both of which are set to go to trial within days of each other. For the Novelis/Aleris challenge, the Division and the parties agreed to refer the matter to an arbitrator pursuant to the Administrative Dispute Resolution Act of 1996 and the Antitrust Division's implementing regulations. This marked the first time that the Division has invoked arbitration in a merger challenge.

In addition, the Division recently reviewed a merger and entered into a settlement agreement, which, if approved, could transform the U.S. wireless telecommunications industry. This merger could affect the cost and availability of wireless service throughout the United States. It could also affect the wireless carriers' drive to compete through innovation, including the speed and scope of the 5G wireless rollout in the United States. The complex considerations the Division considered included a web of telecommunications regulations, the fast-paced changes in a technologically advanced industry, and the potential for disruptive innovation that could vastly improve consumers' experience.

The Division also litigated the first-ever adversarial hearing to approve one of its negotiated consent decrees. The proceeding followed an 11-month, resource-intensive investigation into the merger of CVS and Aetna. The carefully crafted remedy required extensive vetting by the Division, and subsequently underwent a costly and lengthy review by the federal district court. This proceeding is a reminder that with increased interest in the federal antitrust laws, the Division's resources will be increasingly taxed on a per-deal basis.

Moreover, there are no signs that this "merger wave" is slowing down, which will add to the Division's already significant workload. For example, there have been recent announcements of proposed complex mergers involving health insurance, defense contracting, cloud-computing software, payment services, and banking.

**Monopolization Enforcement** -- In addition to merger review, the Division's civil sections also investigate violations of the Sherman Act, which includes a prohibition on monopolization. Unlike merger review, conduct investigations have no statutory deadline, and can thus last longer and be more resource intensive. At the same time, these investigations compete for the same civil resources as merger reviews, which must be completed on a tight timeframe whenever a proposed transaction is filed.

In investigating potential anticompetitive conduct, the Division must devote considerable time and resources to analyze the competitive landscape of the industry; it must also assess the target's business practices and the potential competitive effects from those practices. Investigations require issuing process on targets and third parties, reviewing millions of documents, interviewing witnesses, conducting economic analysis, engaging experts, and analyzing litigation risks. This investigative activity is continually getting more resource intensive as companies conduct more of their business over email and

other electronic records that the Division must review.

Additionally, the Division is receiving an increasing number of complaints about large technology companies and digital platforms, and is responding to calls to investigate whether those companies are engaging in anticompetitive conduct. There is intense interest in the investigation of Google, which the Division took over from the FTC in mid-2019. Moreover, Facebook also has confirmed publicly that it is subject to an investigation by the Division. Therefore, the Division's investigations in the technology sector will expand substantially in the next year. In late July 2019, the Justice Department announced that the Antitrust Division will review the practices of market-leading online platforms, focusing on whether and how those platforms have achieved market power and are engaging in practices that have reduced competition, stifled innovation, or otherwise harmed consumers. This review is underway and already has led to these significant investigations, and may lead to others as well.

Historically, monopolization enforcement in dynamic technology industries has required a significant commitment of Division resources. For example, the enforcement efforts against Microsoft, which the Division took over from the FTC in 1993 and litigated until 2001, cost the Division over \$13 million. The Microsoft litigation was an important win for the Division and for American consumers, paving the way for greater innovation and competition in the technology industry. Another instructive data point on the cost of enforcing the antitrust laws to prevent anticompetitive conduct in a large, complex, and highly integrated industry is the Division's investigation into credit card steering provisions, and the ensuing litigation against American Express, which began in calendar year 2010 and concluded in 2018. That matter cost the Division over \$32 million.

**Cartel Prosecution** -- Modern cartel investigations are complex, resource intensive, and time consuming. Many investigations focus on conspirators who operate in foreign countries and target U.S. consumers and businesses, like in conspiracies to supply fuel to U.S. military bases in Korea and to fix prices for electrolytic capacitors, which are used in numerous electronic devices. Investigating conspiracies like these requires the Division to obtain and translate millions of documents and to work closely with enforcers throughout the world. The rise of electronic communications and difficulties detecting and recovering communications using novel transmission methods have also increased the cost and complexity of our investigations.

Over the last 8 years, the Division has continued to vigorously prosecute domestic and international cartels. Since FY 2012, the Division has charged 329 individuals and 120 companies, resulting in more than \$8 billion in criminal antitrust fines and, where imprisonment was imposed, an average sentence of over 16 months. (The criminal fines collected by the Division go to the Department's Crime Victims Fund, which aids victims of crime with support and services.)

The Division's efforts to protect American consumers also include disrupting cartels that affect the elderly. For example, most recently the Division brought charges against two generic pharmaceutical companies and two executives for conspiring to fix prices for essential drugs, charged seven executives and one company in the commercial construction industry for bid-rigging and fraud schemes that victimized hospitals, and obtained guilty pleas from three executives and two companies whose agreement not to

compete affected heirs pursuing their rightful inheritances. In addition, the Division further protected Americans at the checkout line by breaking up a conspiracy to fix prices for tuna and other packaged seafood, including securing a \$100 million fine from StarKist Co., after a yearlong contested sentencing. Our prosecutors' efforts also uncovered a longstanding conspiracy to fix prices for ubiquitous electronic components (capacitors) and a conspiracy among broker-dealers to rig bids for financial instruments.

The Division also has worked to strengthen cartel enforcement in other countries, and to pursue the extradition of foreign nationals who violated U.S. antitrust laws. For example, a Dutch air cargo executive, who was a fugitive for almost ten years, was apprehended by Italian authorities in July 2019. After an Italian Court of Appeals ruled that she be extradited, she consented to extradition and agreed to plead guilty for participating in a worldwide price-fixing conspiracy.

Cartel enforcement work is expected to continue to increase in FY 2020 and 2021. The Division closed FY 2019 with 102 pending grand jury investigations, the highest total since FY 2010. Furthermore, the Division initiated more grand jury investigations in FY 2019 than any year since 2009.

Investigations into collusive behavior among major generic pharmaceutical companies and their employees are ongoing. Additionally, in recent years, the Division continued its efforts to protect taxpayer dollars and uncover conspiracies affecting the government. For example, the Division stopped a decade-long bid-rigging conspiracy among fuel suppliers that targeted American military bases in South Korea, and shut down collusion at auctions for surplus government equipment and a fraud scheme relating to government-funded demolition contracts in Detroit. In November 2019, the Division announced the Procurement Collusion Strike Force, which is a nationwide interagency partnership among the Antitrust Division, multiple U.S. Attorneys' Offices, the Federal Bureau of Investigation, and multiple federal Offices of Inspector General. The objective of the PCSF is to deter, detect, investigate, and prosecute antitrust and related crimes that affect government procurement, grant, and program funding.

Finally, the Division continues to actively plan for potential trials, sending a signal to defendants that the Division will pursue a given case to the fullest extent of the law. . Division prosecutors are currently preparing for two trials against defendants ranging from a real estate investor to the facilities manager of a U.S. Army Depot. These litigation efforts have resulted in a number of recent victories. For example, in fall 2019, a former currency trader and the former CEO of Bumble Bee Foods LLC were found guilty of antitrust charges. Litigating to hold senior executives accountable is resource and time intensive. Both cases required sizable teams, involved lengthy trials, and took over a year from indictment to verdict alone.

#### Impact on Performance

This enhancement supports the Department's FY 2018- 2022 Strategic Plan, Strategic Goal 4: Promote Rule of Law, Integrity, and Good Government, and Strategic Objective 4.1: Uphold the rule of law and integrity in the proper administration of justice.

## Funding

### Base Funding

FY 2019 Enacted				FY 2020 Enacted				FY 2021 Current Services			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
565	335	658	\$164,977	695	335	595	\$166,755	695	335	595	\$180,274

### Personnel Increase Cost Summary

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 <sup>st</sup> Year Adjustments	Number of Positions Requested	FY 2021 Request (\$000)	2 <sup>nd</sup> Year Annual-ization	FY 2022 Net Annualization (change from 2021) (\$000)	FY 2023 Net Annualization (change from 2022) (\$000)
Economists (0110)	\$176	\$96	5	\$470	\$97	\$490	\$30
Attorneys (0905)	\$212	\$116	55	\$6,350	\$115	\$6,300	\$20
Paralegals (0950)	\$90	\$53	27	\$1,430	\$41	\$1,110	\$70
<b>Total Personnel</b>	<b>\$478</b>	<b>\$265</b>	<b>87</b>	<b>\$8,250</b>	<b>\$253</b>	<b>\$7,900</b>	<b>\$120</b>

### Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)	FY 2023 Net Annualization (change from 2022) (\$000)
Current Services	695	335	595	\$180,274	\$0	\$180,274	\$0	\$0
Increases	87	55	44	\$8,250	\$0	\$8,250	\$7,900	\$120
<b>Grand Total</b>	<b>782</b>	<b>390</b>	<b>639</b>	<b>\$188,524</b>	<b>\$0</b>	<b>\$188,524</b>	<b>\$7,900</b>	<b>\$120</b>

## **V. Exhibits**