



Department of Justice

STATEMENT OF

**MAKAN DELRAHIM
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION
U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND
ANTITRUST LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

FOR A HEARING ON

OVERSIGHT OF THE ANTITRUST ENFORCEMENT AGENCIES

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Statement of Makan Delrahim
Assistant Attorney General, Antitrust Division
U.S. Department of Justice
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Committee on the Judiciary
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Chairman Marino, Ranking Member Cicilline, and distinguished members of the Subcommittee, it is an honor for me to appear before you today on behalf of the Antitrust Division of the Department of Justice. I want to thank especially Chairman Marino and Ranking Member Cicilline for your support of the efforts of the Antitrust Division to fairly and effectively enforce the antitrust laws. I appreciate the important role this Committee plays in our constitutional system of checks and balances. I view my position as the Assistant Attorney General for Antitrust as that of a protector of the rights of all American consumers to the fruits of vigorous competition. When competitive markets function properly, innovators have important incentives to innovate, and disruptors have important incentives to transform markets. For consumers, dynamic competition produces lower prices and higher quality goods and services. Free market competition is a bedrock principle of the American economy, and protecting, preserving, and promoting competition through the enforcement of our antitrust laws is a vital function of our government. I, and all employees of the Antitrust Division, are dedicated to carrying out that mission to the very best of our abilities.

The Antitrust Division has been extraordinarily busy in our daily efforts to protect consumers, workers, and entrepreneurs through sound and vigorous antitrust enforcement and competition advocacy throughout the government. My testimony today will review our extensive efforts in criminal and civil enforcement and many of our recent new initiatives to promote competition.

The following are some highlights of the Division's recent accomplishments and initiatives.

COMPETITION ADVOCACY AND OTHER NEW INITIATIVES:

- ***Engaged in advocacy*** regarding antitrust law and intellectual property in the context of standards setting organizations (SSOs): Advocated views on the analysis of antitrust law and intellectual property in the context of the adoption and implementation of SSO-developed standards, so as to maximize innovation incentives.
- ***Improved consent decree process***, including a renewed emphasis on structural relief when possible, and the incorporation of standard provisions in all settlements to make consent decrees more enforceable and less regulatory.
- ***Announced Office of Decree Enforcement*** within the Division to better enforce the terms of consent decrees entered into with parties to a merger.
- ***Strengthened Amicus Program*** in the Division, and have filed amicus briefs and statements of interest as part of our competition policy and advocacy work.
- ***Hosted a series of three roundtable discussions*** this past spring on competition and deregulation. The discussions focused on exemptions and immunities from the antitrust

laws, consent decrees, and the consumer cost of anticompetitive regulations. A report on these roundtables was published on November 14, 2018. Planning for additional roundtables and workshops is underway as part of the Division's competition and advocacy work.

- ***Promoted competition in the real estate industry*** by co-hosting a public workshop with the Federal Trade Commission (FTC) in June to examine recent developments in residential real estate brokerage competition.
- ***Engaged in advocacy*** regarding medical certification: Advocated that states should consider the benefits of facilitating greater competition among legitimate certifying bodies.
- ***Established James F. Rill Fellowship Program*** at the Division, and the inaugural fellow is currently being selected.
- ***Established Jackson-Nash Address Series*** to recognize the contributions of former Supreme Court Justice Robert H. Jackson and Nobel Laureate economist John Nash, and to honor the speaker, recognizing and celebrating the role of economics in the mission of the Division.

CIVIL HIGHLIGHTS:

- ***Protected and Restored Competition in a Number of Key Industries Impacting American Consumers*** and obtained significant civil settlements. A few of the markets impacted by the Division's efforts include crop protection chemicals and seed treatments (one of the largest ever merger divestitures), radio stations, nationwide telecommunication fibers, and entertainment.
- ***Litigated matters*** in industries ranging from nuclear waste management and hospitals to aviation fuel products.
- ***Litigated first vertical merger case to judgment in 40 years*** in *United States v. AT&T/DirectTV and Time Warner*—what some in the press have dubbed the “antitrust trial of the century”—which continues on appeal.
- ***Pursued enforcement under Section 4A of the Clayton Act*** seeking treble damages on behalf of the United States and obtaining approximately \$150 million for a scheme by three oil companies to target U.S. Department of Defense fuel supply contracts in South Korea by bid rigging, price fixing, and other anticompetitive conduct.
- ***Challenged the unlawful exchange of competitively sensitive information*** among television broadcast companies to distort competition in spot advertising markets and reached a settlement that prohibits the unlawful conduct.
- ***Launched Judgment Termination Initiative*** involving a comprehensive review of nearly 1,300 legacy judgments and filing motions in courts across the country to terminate ones that no longer serve to protect competition.
- ***Opened review of Paramount Consent Decrees***, which have regulated how certain movie studios distribute films to movie theatres since the Supreme Court's decision in *United States v. Paramount*, 334 U.S. 131 (1948).
- ***Modernizing merger review process***, with recent announcement of series of improvements to enhance and speed up the merger review process.

CRIMINAL HIGHLIGHTS:

- **Investigated and prosecuted criminal antitrust violations** across many sectors of the economy, with over \$3.243 billion in criminal fines imposed in Fiscal Years (FYs) 2016-17. In FY 2017, investigated and prosecuted individual cases that resulted, in the *highest* number of individuals sentenced to prison terms since 2012. (30 individuals were sentenced to prison terms in FY 2017.)
- **Devoted substantial resources to individual prosecutions and sentencings.**
 - Over FYs 2016-17, 52 defendants in Antitrust Division cases have been sentenced to prison terms, totaling 15,110 days of incarceration.
 - Many of the Division’s individual convictions were the result of investigations into anticompetitive conduct at public real estate foreclosure auctions. This conduct was widespread and harmed homeowners and others.
- **Won an important criminal trial:** In the LIBOR matter (Indictment, *U.S. v. Connolly & Black*, No. 1:16-cr-00370-CM (S.D.N.Y. May 31, 2016), <https://www.justice.gov/atr/file/867186/download>) we secured convictions against both defendants after a month-long trial.
- **A record-setting number of criminal cases (nine) went to trial in FY 2017**—the highest number in the last two decades.
- **Actively engaged in outreach and training for agents at offices of inspectors general** at numerous federal agencies. Such engagement and training arms these agents with the ability to detect and report antitrust crimes. In many instances these agencies also join our investigative efforts.
- **Implemented no-poach initiative**, investigating and prosecuting “no-poach” and wage-fixing agreements.
- **Updated Leniency Program information** designed to increase transparency and self-reporting of cartel behavior.
- **Held a public roundtable discussion on “the role that corporate antitrust compliance programs play** in preventing and detecting antitrust violations and ways to further promote corporate antitrust compliance.”
- **Hosted event on the 25th anniversary of the Division’s Leniency Program**

INTERNATIONAL HIGHLIGHTS:

- **Established Antitrust Division International Working Group**, with representation from each section within the Division, with the goal of learning about new and ongoing international issues and discussing best practices.
- **Increased International Engagement**
 - **Advanced a core set of procedural norms through the Multilateral Framework on Procedures in Competition Law Investigation and Enforcement** (or “MFP”), working in partnership with leading antitrust agencies around the world.
 - **Led the Department’s USMCA negotiation team** and continue to serve as the Departmental point on trade coordination issues.

- ***Participated in bilateral and multilateral meetings with foreign competition agencies, including the 2018 Trilateral Meeting*** in Mexico City to discuss antitrust enforcement with Canada and Mexico.
- ***Promoted effective enforcement of antitrust and competition laws across the globe***, visiting or hosting agencies from a variety of jurisdictions to discuss enforcement, including: Argentina, Australia, Brazil, China, El Salvador, the European Union, Georgia, Guatemala, Hong Kong, Honduras, India, Korea, Moldova, the Philippines, and Ukraine.
- ***Coordinated 22 technical assistance programs*** in FY 2018 to such diverse jurisdictions as Australia, El Salvador, Guatemala, Georgia, Honduras, Hungary, Hong Kong, India, Ireland, Korea, Mexico, the Philippines, Ukraine, and Vietnam. All but two of these programs were financed from sources outside the Antitrust Division (e.g., U.S. Agency for International Development (USAID), the Organization for Economic Cooperation and Development (OECD), or the local competition authority) and many of them were coordinated with the FTC.
- ***Engagement in the Division's Visiting International Enforcers' Program (VIEP)***, a two-week intensive exchange program for senior agency personnel designed to deepen institutional and personal ties with our foreign counterparts.

Criminal Enforcement

The Division investigated and prosecuted antitrust violations across many sectors of the economy, with over \$3.243 billion in criminal fines imposed in FYs 2016-17. In the most recent fiscal year, the Division investigated and prosecuted individual cases that resulted in the highest number of individuals sentenced to prison terms since 2012. The Division also has made efforts to increase self-reporting of cartel behavior through its clarification of its amnesty program.

Criminal enforcement has long been a vital tool to protect competition and consumers. The Sherman Act has been a criminal statute ever since it was signed into law in 1890. Antitrust violations such as price-fixing, bid-rigging, and market allocation unambiguously disrupt the integrity of the competitive process, harm consumers, and reduce faith in the free market system. Such harmful agreements among competitors are subject to a rule of per se illegality, and individuals who engage in such conduct appropriately face criminal accountability along with the corporations they serve. At the Division, we focus our criminal enforcement efforts on holding culpable corporations and individuals accountable, including high-level executives.

In an important example, the Division brought charges against and obtained guilty pleas from executives of a generic pharmaceutical company for price fixing, bid rigging, and customer allocation for an antibiotic and a drug used to treat diabetes. (*E.g.*, Plea Agreement, *U.S. v. Glazer*, 2:16-cr-00506 (E.D. Pa. Jan. 9, 2017), <https://www.justice.gov/atr/case-document/file/931381/download>.) It is particularly galling that, when healthcare prices in the United States are already high, certain corporations and executives engaged in anticompetitive activities at the expense of individuals who depend on critical medications.

In another area that has a profound impact on American consumers, the Division actively prosecuted bid rigging and fraud relating to real estate foreclosure auctions. By the end of

FY 2018, 138 individuals and 3 companies have been charged as a result of the Division's investigations of bid rigging and fraud relating to real estate foreclosure auctions in California, Alabama, North Carolina, Florida, Georgia, and Mississippi. (*E.g.*, Press Release, U.S. Dep't of Justice, Seventh Mississippi Real Estate Investor Pleads Guilty to Conspiring to Rig Bids At Public Foreclosure Auctions (July 19, 2018), <https://www.justice.gov/opa/pr/seventh-mississippi-real-estate-investor-pleads-guilty-conspiring-rig-bids-public-foreclosure>.) On an individual basis, each of these cases may be relatively small, but on an aggregate basis, these cases and the similar crimes we deter through our enforcement are important to the economy. Consumers will be protected from investors who subvert competition and line their pockets by illegal bid rigging and fraud while diverting money from the homeowners and mortgage holders entitled to any proceeds.

The Division has many open criminal investigations. The Division is trying more criminal cases than ever before and obtaining more prison sentences for individuals than in recent years. Corporate leaders and business executives who consider deviating from the rules of our free enterprise system should take notice.

Moreover, the American public should know that the Antitrust Division is looking out for their salaries, as well. We have put employers on notice that agreements between employers that eliminate competition for hiring employees in the form of no-hire or non-solicitation agreements (often referred to as "no-poach" agreements) are per se violations of the Sherman Act when they are not ancillary to legitimate collaborations. In October 2016, the Division reminded the business community that no-poach and wage-fixing agreements can be prosecuted as criminal violations when they are not reasonably necessary to a separate, legitimate transaction or collaboration between employers. As a matter of prosecutorial discretion, the Division will pursue no-poach agreements terminated before October 2016 through civil actions. Defendants should anticipate potential criminal enforcement actions for any such naked no-poach agreements we uncover that post-date our October 2016 guidance, although we reserve discretion as appropriate in making our ultimate determinations.

The Division will continue to be diligent in detecting and deterring collusion that harms American consumers, and we will remain focused on crucial industries that affect Americans deeply, such as real estate, food, financial services, and health care, just to name a few.

Civil Enforcement

Our merger review program is perhaps the best known of the Division's many functions, as key mergers generate not only extensive media interest but also typically touch the everyday lives of the American public. Protecting American consumers and businesses from anticompetitive mergers is an essential element of the Division's mission.

The Division has been confronting huge mergers that cover large swaths of the U.S. economy that touch nearly every consumer, including telecommunications and entertainment (AT&T/Time Warner), agriculture (Bayer/Monsanto, Dow/Dupont), aerospace (UTC/Rockwell), and health care (CVS/Aetna), among many others. We invest large portions of our limited resources to evaluate these massive transactions to ensure that consumers remain protected and competition is preserved. As a result, we have been extraordinarily busy in our merger review program.

One prominent example of our efforts on behalf of the American consumer is our review and challenge of AT&T's \$108 billion acquisition of Time Warner, one of the largest transactions in U.S. history. After the matter did not settle, we litigated in the district court for the District of Columbia the first vertical merger case that went to judgment in 40 years. We have appealed the district court's decision and are proceeding before the Court of Appeals for the District of Columbia Circuit on an expedited review schedule. (Proof Brief of Appellant United States of America, *U.S. v. AT&T Inc.*, No. 18-5214 (D.C. Cir. Aug. 6, 2018), <https://www.justice.gov/atr/case-document/file/1085516/download>.)

AT&T/Time Warner is only one of the mega-mergers we have focused on in the past year. In May, in response to Bayer's proposed \$66 billion acquisition of Monsanto, we secured a \$9 billion divestiture to protect consumers. (Competitive Impact Statement, *U.S. v. Bayer AG & Monsanto Co.*, No. 1:18-cv-01241 (D.D.C. May 29, 2018), <https://www.justice.gov/atr/case-document/file/1066681/download>.) Bayer and Monsanto were two of the largest agricultural companies in the world, and they competed to provide farmers with a broad range of seed and crop protection products. After a thorough investigation, we concluded that the proposed merger would have likely resulted in higher prices, lower quality, and fewer choices to farmers, and ultimately American consumers, across a wide array of seed and crop protection products. The merger also threatened to stifle the innovation in agricultural technologies that has produced significant benefits to American farmers and consumers.

We were able to negotiate appropriate solutions to those competitive problems, including divestitures to BASF, a global chemical company with a multi-billion-dollar crop protection business. Through these divestitures, we achieved a robust structural solution that preserves competition from horizontal and vertical concerns raised by the merger. The settlement also addressed incentives to compete through innovation by requiring divestitures of certain intellectual property and research capabilities. These innovation-focused divestitures include "pipeline" R&D projects and Bayer's nascent "digital agriculture" business. The settlement also reflected important efforts to strengthen the enforceability and effectiveness of our consent decrees.

In another large agricultural matter, the Division obtained important divestitures associated with Dow's acquisition of DuPont. (Competitive Impact Statement, *U.S. & Plaintiff States v. Dow Chemical Co. & E.I. Du Pont de Nemours & Co.*, No. 1:17-cv-01176 (D.D.C. June 15, 2017), <https://www.justice.gov/atr/case-document/file/973951/download>.) The Division's structural remedies were focused on preserving viable, ongoing businesses that preserve needed competition in the agricultural sector.

In October, the Division concluded an investigation into the merger of two aerospace businesses, UTC and Rockwell. The Division required the parties to divest two businesses critical to the safe operation of aircraft in order for the merger to proceed—(a) specialized systems that remove ice from the wing of an aircraft and (b) certain actuators for large aircraft that ensure that the aircraft maintains altitude during flight—so that competition in those markets would be preserved. (Competitive Impact Statement, *U.S. v. United Technologies Corporation & Rockwell Collins, Inc.*, No. 1:18-cv-02279-RC (D.D.C. Oct. 10, 2018), <https://www.justice.gov/opa/press-release/file/1099846/download>.)

Also in October, we required important divestitures following our investigation into CVS's acquisition of Aetna. The merger risked anticompetitive effects in Medicare Part D

prescription drug plan markets for individuals across twenty-two states, and so the Division required the divestiture of Aetna's Medicare Part D prescription drug plan business for individuals to preserve competition. (Competitive Impact Statement, *U.S. et al. v. CVS Health Corporation & Aetna Inc.*, No. 1:18-cv-02340 (D.D.C. Oct. 10, 2018), <https://www.justice.gov/opa/press-release/file/1099846/download>.)

For the foreseeable future, the Division's merger enforcement activities will continue ahead at full steam. We continue to vigorously enforce the laws and review pending transactions in order to preserve robust competition for the millions of Americans who rely on private health insurance products.

I would note that these efforts, especially when we pursue litigation against very large mergers, which often involve threats to competition in multiple markets, are resource intensive. Not only do they require substantial devotion of personnel, but they also require increasingly large outlays for experts and document review.

Thanks to the hard work and dedication of the Antitrust Division staff, we have often been able to resolve large and significant transactions within six months, as illustrated in the recent Disney/Fox and Cigna/Express Scripts investigations. Nonetheless, doing all we can to modernize and speed up the process of merger review is a worthy goal. To that end, I recently announced a series of changes in how we approach the merger review process at the Division. As part of this improved process, we will post a model voluntary request letter and a model timing agreement on our website. Going forward, we will also make some changes to what we generally agree to in timing agreements. We will generally seek to collect documents from fewer custodians and to take fewer depositions. Provided the parties agree to faster and earlier productions, make certain commitments on privilege, and agree to longer post-complaint discovery (if necessary), we will shorten the time from the parties certifying compliance to the Division making a decision to 60 days or less, with the proviso that the responsible deputy can extend that time period if he or she deems it necessary. With respect to Civil Investigative Demand enforcement, we will bring enforcement actions if necessary to ensure timely and complete compliance. We are also withdrawing the 2011 Policy Guide to Merger Remedies. The 2004 Policy Guide to Merger Remedies will be in effect until we release an updated policy. (Makan Delrahim, Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, *It Takes Two: Modernizing the Merger Review Process*, Remarks as Prepared for the 2018 Global Antitrust Enforcement Symposium (Sept. 25, 2018), <https://www.justice.gov/opa/speech/file/1096326/download>.)

In addition to our merger review program, the Division also expends substantial resources investigating and, when appropriate, challenging non-merger conduct that may have the unlawful effect of depriving consumers of the fruits of robust competition. Some of these conduct issues are straightforward applications of antitrust principles. For example, the Division has successfully challenged unlawful agreements among South Central Michigan hospitals to not market their services to customers in each other's territories. In February, following almost three years of litigation, the Division entered into a resolution of its litigation with the last of these hospitals: Henry Ford Allegiance Health ("Allegiance"), which operates a 475-bed hospital in Jackson County, Michigan. (Competitive Impact Statement, *U.S. & Mich. v. W.A. Foote Mem'l Hosp. D/B/A Allegiance Health*, No. 5:15-cv-12311 (E.D. Mich. Feb. 27, 2018), <https://www.justice.gov/atr/case-document/file/1043601/download>.)

Some of these conduct issues target not everyday consumers, but the U.S. government. One of the Antitrust Division's top priorities is protecting taxpayer dollars. On November 14, 2018, three oil companies plead guilty to criminal charges and fines for their involvement in a decade-long bid-rigging conspiracy that targeted contracts to supply fuel to United States Army, Navy, Marine, and Air Force bases in South Korea. Under Section 4A of the Clayton Act, the Division also civilly pursued treble damages and obtained payments of approximately \$150 million in relief. (Competitive Impact Statement, *U.S. v. GS Caltex Corp. et al.*, No. 2:18-cv-01456 (S.D. Ohio Nov. 14, 2018), <https://www.atrnet.gov/subdocs/2018/359653.pdf>.) Going forward, the Division will continue to ensure that the United States is fully compensated when it is the victim of anticompetitive conduct.

In another conduct case, the Division challenged seven broadcast television companies that had agreed to reciprocally exchange competitively sensitive information relevant to many advertising spot markets. (*U.S. v. Sinclair Broadcast Group, Inc. et al.*, No. 1:18-cv-02609 (D.D.C. Nov. 13, 2018), <https://www.atrnet.gov/subdocs/2018/359602.pdf>.) 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. The Division obtained a settlement agreement from the parties that prohibits the sharing of such competitively sensitive information.

Some conduct issues are complex and require close study for when and how they affect competition and how they should be analyzed under the antitrust laws. For example, I have given speeches focusing on how policies adopted by a SSO should ensure that a diversity of views are represented, that patent holders have adequate incentives to innovate and create new technologies, and that licensees have appropriate incentives to implement those technologies. (E.g., Makan Delrahim, Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, The "New Madison" Approach to Antitrust and Intellectual Property Law (Mar. 16, 2018), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-keynote-address-university>.) Because SSOs can promote innovation but also provide opportunities for competitors to harm competition, it is critical to examine closely the proper role of antitrust law and take enforcement or advocacy efforts that appropriately maximize incentives for innovation.

Along with our specific enforcement actions, the Division continues to pursue policy initiatives to strengthen our civil enforcement program. One such initiative is to streamline and improve the Division's use of consent decrees and other remedies, guided by the view that antitrust enforcement is law enforcement, not regulation. (See Makan Delrahim, Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Remarks at the Antitrust Division's Second Roundtable on Competition and Deregulation (Apr. 26, 2018), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-antitrust-divisions-second>.) The Division will favor structural relief such as divestitures that rely on free market competitive processes to remedy competitive concerns with a merger rather than behavioral relief that regulates conduct. Doing so places risks of failure on the merging parties and relies on ongoing mechanisms to enforce settlement terms.

A crucial aspect of a consent decree is the ability to enforce it to ensure that the remedy that was necessary to preserve competition is fully implemented. In that regard, we have implemented a number of changes in the Division's practices to strengthen our ability to ensure decree compliance. First, we are now incorporating a set of provisions as standard improvements in our consent decrees that will make decrees more enforceable. Under these provisions, negotiated with the settling parties, the Division may establish a violation of a consent decree by a preponderance of the evidence (rather than the more exacting clear and convincing evidence standard), thereby using the same standard in a decree violation lawsuit that applies to proving liability in a civil antitrust case in the first instance.

Another of the new provisions permits the government to apply for an extension of a decree's term if the court finds a violation of the decree. An additional new term requires defendants to reimburse the taxpayers for attorneys' fees, expert fees, and costs incurred in connection with any consent decree enforcement effort. After a certain number of years, typically five, another new provision gives the Division the ability to terminate a decree upon notice to the court and defendants if it concludes in its discretion the decree is no longer necessary to protect competition. We are also establishing a new Office of Decree Enforcement in the Division to dedicate Division personnel to ensuring proactive enforcement of consent decrees.

Last, but not least, we are in the midst of a robust effort to review nearly 1,300 so-called "legacy" judgments, some of which date back about a century. Our review considers changes in industry conditions, changes in economics, and changes in law to determine whether these decrees are necessary to protect competition and consumers. Some of them may be affirmatively harmful to competition. We have posted for public comment judgments proposed for termination in approximately 60 district courts throughout the country. (*Judgment Termination Initiative*, Antitrust Div., U.S. Dep't of Justice, <https://www.justice.gov/atr/JudgmentTermination>) We have begun the process of filing motions in federal district courts to terminate decrees that are no longer needed to protect competition. In August, the U.S. District Court for the District of Columbia granted our first motion to terminate 19 such judgments. (Order Terminating Final Judgments, *U.S. v. American Amusement Ticket Manufacturers Association*, 1:18-mc-00091-BAH (D.D.C Aug. 15, 2018), <https://www.justice.gov/atr/page/file/1089031/download>.) As part of this effort, we announced our review and invited public comment on the Paramount Consent Decrees, which for over seventy years have regulated how certain movie studios distribute films to movie theatres. (Press Release, U.S. Dep't of Justice, Department of Justice Opens Review of Paramount Consent Decrees (Aug. 2, 2018), <https://www.justice.gov/opa/pr/departments-justice-opens-review-paramount-consent-decrees>.) These ongoing efforts will continue to identify and eliminate unnecessary restrictions on individuals and businesses who remain subject to legacy decrees so that we may better focus the Division's resources and attention on protecting competition.

Policy and Program Initiatives

Apart from our direct enforcement efforts, the Division has implemented a wide range of initiatives designed to advance competition both nationally and internationally. These efforts do not always draw the same interest as our enforcement cases, but can be just as essential, if not more so, to our efforts to protect American consumers and businesses. I will discuss briefly a few of them.

International: Multilateral Framework on Procedures

Today, companies must regularly navigate the antitrust and competition enforcement authorities that now exist across the globe. To promote competition and due process, the United States regularly reaches out to our international counterparts in efforts to harmonize practices around those that best promote competition and to help ensure that competition laws around the world are enforced efficiently, effectively, and fairly. In June, the United States, in partnership with leading antitrust agencies around the world, advanced an effort to better align with one another on a core set of procedural norms through the Multilateral Framework on Procedures in Competition Law Investigation and Enforcement (or “MFP”). (See Makan Delrahim, Assistant Att’y Gen., Antitrust Div., U.S. Dep’t of Justice, Remarks on Global Antitrust Enforcement at the Council on Foreign Relations (June 1, 2018), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-global-antitrust-enforcement>.) We are working closely with our international colleagues to achieve consensus on, and publicly commit to, fundamental procedural protections necessary to ensure due process such as non-discrimination, transparency, timely resolution, confidentiality, conflicts of interest, proper notice, opportunity to defend, access to counsel, and judicial review.

Given the complex array of antitrust issues we address with our sister competition agencies across the globe, we are also improving the way we tackle these issues internally. For example, we established formal internal working groups that incorporate staff from all sections in the Division. These working groups meet regularly, sometimes with input from outside speakers. The goal is to learn about new and ongoing international issues, share ideas, discuss best practices, forge consensus, and identify the people and resources that can help address these challenges.

Appellate: Amicus Initiative

The Division has recently expanded our amicus program to increase our participation in private litigation not only in the Supreme Court, but at the district and appellate courts as well. In that way, we can more proactively and more effectively promote appropriate use of antitrust and competition principles across the judiciary. In FY 2018, the Division filed five statements of interest at the district court and seven amicus briefs in the Supreme Court and lower federal appeals courts in cases where the United States is not a party, as compared to just three such amicus briefs in FY 2017.

Thought Leadership

Through workshops and roundtables, the Division provides a forum for industry participants, academics, consumer advocates, and other interested parties to discuss important developments in particular business sectors, the appropriate scope of various legal doctrines, or recent advancements in our understanding of relevant economic principles.

On three dates this spring, the Division held a series of public roundtable discussions to explore the relationship between competition and regulation and its implications for antitrust enforcement. (*Public Roundtable Discussion Series on Regulation & Antitrust Law*, ANTITRUST DIV., U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/CompReg> (last updated June 25, 2018).) Specific issues included exemptions and immunities from the antitrust laws, the most effective and appropriate scope for consent decrees, and the consumer costs of anticompetitive

regulations. Our speakers spanned a diverse range of policy perspectives and stakeholder viewpoints. These were fruitful discussions that are already shaping our actions at the Division, such as recent improvements to the Division’s consent decree practices. On November 14, 2018, the Division issued a report, containing the information collected at the hearings, which summarizes the key points of consensus in the roundtable discussions.

In April, the Division hosted a public Roundtable on Criminal Antitrust Compliance to engage with inside and outside corporate counsel, foreign antitrust enforcers, international organization representatives, and other interested stakeholders on the topic of criminal antitrust compliance. (Public Roundtable on Criminal Antitrust Compliance, ANTITRUST DIV., U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/public-roundtable-antitrust-criminal-compliance> (last updated Sept. 10, 2018).) More than 100 participants attended and discussed the role that antitrust compliance programs play in preventing and detecting criminal antitrust violations, and ways to further promote corporate antitrust compliance.

In June, the Division also held a joint workshop with the FTC on competition in residential real estate brokerage markets. (Public Workshop: What’s New in Residential Real Estate Brokerage Competition, ANTITRUST DIV., U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/events/public-workshop-competition-real-estate> (last updated June 25, 2018).) The workshop drew a diverse array of industry participants, thought leaders, and stakeholders. This is a sector that has merited recent competition advocacy from the Division to state officials, and the diverse viewpoints from the workshop will inform the Division’s advocacy and enforcement efforts going forward. We continue to closely monitor industry developments and the state of competition.

In addition to workshops and roundtables, the Division has also established the Jackson-Nash Addresses, a new lecture series to inspire and educate Division staff and the public about cutting-edge issues and developments in the field. (Press Release, U.S. Dep’t of Justice, Antitrust Division Establishes the “Jackson-Nash Address” and Announces Professor Alvin Roth as Inaugural Speaker (Feb. 8, 2018), <https://www.justice.gov/opa/pr/antitrust-division-establishes-jackson-nash-address-and-announces-professor-alvin-roth>.) Through extraordinary, distinguished guest speakers, we recognize and celebrate the role of economics in advancing the objectives of the antitrust laws and the mission of the Division. In so doing, the series will honor the weighty contributions to the field of antitrust from former Supreme Court Justice Robert H. Jackson and Nobel laureate economist John Nash. We are proud that our inaugural address featured Alvin Roth and our second address featured George Akerloff, both Nobel Prize winning economists, who are lauded for important contributions to game theory and markets characterized by asymmetric information, respectively. Our third address will feature a third Nobel Prize winning economist, Professor Roger Myerson, whose research focuses on the “revelation principle” and the development of mechanisms to induce agents to reveal truthfully their private information in contexts, such as through auctions.

Looking to the Future

It is indeed an exciting time to be at the Antitrust Division as we work to achieve important results for American consumers. One of the not-so-secret secrets to our success is our talented and devoted staff. It is critical that the Division continues to attract and retain bright, talented, and passionate individuals—whether they be attorneys, economists, paralegals, or support staff.

One way we will draw talent is through the recently established James F. Rill Fellowship Program. (The James F. Rill Fellowship, ANTITRUST DIV., U.S. DEP'T OF JUSTICE, <https://www.justice.gov/oarm/james-f-rill-fellowship> (last updated Aug. 13, 2018).) The Fellowship is designed to provide elite candidates of the Honors Program with a special opportunity to participate in antitrust enforcement actions and in the development and implementation of antitrust policy. I feel fortunate that through this fellowship I can honor one of the greats in the antitrust field, a man whose contributions span public service and private practice, administrations of all stripes, and the field of competition law not just domestically but across the globe. I hope that the fellowship will draw future great contributors to the field of antitrust. I look forward to working with this Committee on finding further means to ensure the Antitrust Division has the resources and talent it needs to protect and promote competition.

Conclusion

I have been the AAG of the Antitrust Division for a little over one year now, and it has been an exhilarating experience. I am honored to work with this Committee and to be working with the dedicated women and men of the Antitrust Division to protect American consumers. We have done much, but much more remains to be done. I look forward to the coming challenges, knowing the importance of our work.

Mr. Chairman, thank you for the opportunity to speak here today. I look forward to further discussion of these issues.