



DEPARTMENT OF JUSTICE

“Changes”*: Readyng the Antitrust Division for Technological Evolution in the Financial Sector and Beyond

MAKAN DELRAHIM
Assistant Attorney General
Antitrust Division
U.S. Department of Justice

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Thank you, Michael, for that kind introduction. I appreciate the opportunity to “come back” to Stanford University and the Rock Center for Corporate Governance. Today is bittersweet. I can’t help but recall fondly the last time I spoke at Stanford a mere six months ago. I would have enjoyed traveling to my home state of California to be together in person today. Under the circumstances, we are conducting today’s event by Zoom and, remotely, I am wishing everyone health, happiness...and childcare. That last wish, of course, is for those of you like me, who have young children testing the bounds of virtual camp, learning, and cabin fever.

In February, I gave the opening remarks at a workshop we held jointly with Stanford on venture capital and antitrust. In those remarks, I observed that both venture capital and antitrust are often about predicting the future competitive dynamics of competition. This is not pure guesswork; rather, we draw on our experience and make educated predictions. These tough decisions are necessary not only to survive but to thrive. As the actress Lauren Bacall said, “standing still is the fastest way of moving backwards in a rapidly changing world.”

Very few observers could accuse the Antitrust Division under my watch of “standing still.” Today, I am pleased to announce three new changes within the Antitrust Division to continue to evolve with the modern economy and to make us more efficient as we do our work to protect competition. These changes draw on my experiences from nearly three years as Assistant Attorney General, and reflect the economic evolution that began before my time at the Division and also before the time when my co-panelist here today, Renata, was in charge of the Antitrust Division.

* DAVID BOWIE, HUNKY DORY (RCA 1971).

First, we are reallocating the commodities, or the industries we review, across the civil enforcement sections. In Washington DC, civil enforcement is divided across six sections, each with responsibility for specific commodities. We make changes from time to time to ensure we build expertise efficiently and to reflect changes in the economy. Since the last commodity reorganization, nearly twenty years ago, the economy has undergone major shifts. Fintech is disrupting and revolutionizing the financial and banking sectors. Media, entertainment, and telecommunications are rapidly converging. Digital platforms and technology companies are among the most valuable and powerful in our economy.

The Antitrust Division must be ready to respond. Until now, the enforcement of mergers and conduct in the financial services, banking, and credit card businesses have been spread across three different sections at the Division. Media and telecommunications have been divided between two sections. Under the new re-organization I am announcing today, we will dedicate a single section to all of the financial services. We will combine our media and telecommunications work. This, in turn, will allow our longtime technology section to focus 100% of its energy on the growing digital economy and the unique characteristics of certain current and emerging platform-based business models.

The new financial services-focused section will build expertise across the waterfront of fintech, making it well positioned to understand how new entrants in these areas may spur competition with and among traditional players. This section can make the most of some recent matters and initiatives we've been pursuing at the Division.

We remain active in banking and financial services. In 2019, we reviewed the BB&T-SunTrust merger and required a multibillion-dollar divestment across seven geographic markets.

We are currently reviewing several significant financial technology transactions, including Visa/Plaid among others that are not public yet.

More than just policing transactions as they come in, we need to be prepared to take proactive steps to protect competition in these markets.

In June 2020, SEC Chairman Jay Clayton and I announced a first-ever Memorandum of Understanding between our two agencies. The MOU extends the strong working relationship between the SEC and Antitrust Division. It will lead to even greater collaboration and cooperation to ensure that we maintain the efficient and competitive financial markets on which American investors rely. Moreover, we are equipping our staff with the tools to understand these markets as they evolve. Over the past year, I launched a new training initiative and we have enrolled our attorneys and economists, myself included, in courses at MIT's Sloan School of Management to better understand the emerging implications of blockchain technology and artificial intelligence.

Combining our media and telecommunications commodities reflects the new reality that these industries have been and are converging. Most Americans, especially these days, are enjoying their entertainment through streaming services, and not traditional broadcast or linear cable television. Many have cut the proverbial cord and are consuming media through mobile and other services. It no longer makes sense for one Division section to handle broadcast television and another to handle cable. Combining these responsibilities reflects the integration in these industries and will streamline our enforcement and review in these sectors.

Finally, it is no surprise that technology and digital platforms are increasingly a focus of antitrust review. The section currently called TFS—Technology and Financial Services—has spent a lot of time on the “T” of late and this alone must be a full-time job. The section’s

financial responsibilities will move so it can continue building upon its expertise in the digital economy and existing and emerging platform-based business models.

Reallocating the commodities is just the first change we are announcing today. The second is the creation of the Office of Decree Enforcement and Compliance, known as ODEC. This new office will have primary responsibility for enforcing judgments and consent decrees in civil matters. The Office will work closely with Division attorneys, monitors, and compliance officers to ensure the effective implementation of and compliance with these agreements.

ODEC will serve as the dedicated watchdog for judgment and decree compliance. Reinvigorating and rationalizing the Antitrust Division's approach to consent decrees has been one of my major initiatives as Assistant Attorney General, and I first laid out my vision for this office in 2018 at the University of Chicago. Protecting competition requires getting the right answer. Sometimes that means allowing procompetitive mergers to close without taking any enforcement action. Sometimes that means suing to block a transaction. Sometimes it means allowing a merger to proceed subject to a settlement embodied in a consent decree. In the coming weeks, I will announce changes to the Antitrust Division's merger remedy manual that will more accurately reflect and publicize the remedies the Division seeks in merger enforcements.

A settlement, we must remember, is a commitment by merging parties to the Division and to the public. It protects competition only if enforced effectively. The reality is that there are over 150 consent decrees in effect from the past ten years alone. Too often, companies make promises to the American people only to turn their back on these obligations. With ODEC, we will make these commitments a priority and enforce them proactively. No longer will lax compliance go unnoticed.

For instance, just this past Friday we moved to amend the judgment related to the CenturyLink/Level3 merger because the merged company was not living up to its obligations. Among other things, we required CenturyLink to accept the appointment of an independent monitor and pay the United States to defray the costs of the investigation. This action follows closely on the heels of our recent consent decree enforcement against Live Nation. There, our investigation found large-scale violations. Our enforcement action resulted in significant decree modifications, reimbursement of millions in fees, and extension of the decree with Live Nation. Most significantly, in both enforcement actions, we insisted on new standard provisions that will lead to better enforcement, especially now that the Antitrust Division has an office like ODEC singularly dedicated to proactive compliance.

ODEC will be the Antitrust Division's primary contact for whistleblowers or complainants who have information regarding potential violations of settlements with the Antitrust Division.

I'm pleased that Larry Reicher has agreed to lead ODEC. Larry won the Department of Justice's highest award for his leadership in reviewing and terminating nearly 800 outdated judgments as part of the Judgment Termination Initiative, and now he aggressively will enforce those which remain.

The third change I am announcing today is the creation of the Civil Conduct Task Force. The CCTF in my opinion, is an initiative whose time has been long overdue. This task force will focus full time on civil non-merger work to ensure that the statutory timing demands of merger cases do not overtake the Division's ability to move forward our important civil conduct work.

The CCTF is designed to supplement the work of the sections, helping to ensure that when they get busy with merger reviews, there is still an independent group of dedicated attorneys with the mandate to execute against aggressive timelines in our non-merger cases. I am excited to see the CCTF build competencies that are unique to civil conduct cases, where the key questions, and the posture of the parties under investigation, are quite different from merger investigations. Yet, the design of the CCTF will ensure that these competencies are shared with the civil sections and the field offices when they lead conduct cases as well.

That is because the CCTF will be comprised of both a core group of fully dedicated attorneys and, in addition, attorney designees from each of the six civil sections and our three field offices. All members of the task force will be staffed on CCTF-lead civil conduct investigations. The section designees will channel the expertise of the section to improve the casework of the CCTF and will perform the same role in reverse when the civil section leads a conduct investigation. The CCTF also will have responsibility to field citizen complaints about alleged anticompetitive conduct. With its Division-wide perspective, the CCTF will be able to help prioritize complaints and investigations for effective enforcement.

These three organizational changes—reallocation of the civil sections, establishment of the Office of Decree Enforcement and Compliance, and creation of a Civil Conduct Task Force—are designed to lead to more efficient and effective allocation of resources within the Antitrust Division and more proactive enforcement when there is no statutory deadline like we have for merger reviews. These changes are all designed to ensure we are fully prepared for the antitrust enforcement challenges of today and tomorrow.

We have some of the finest legal and strategic minds in the country assembled today, so I'm excited now to turn to the Q&A and then a panel discussion. Rodge, Renata, I am honored

to be with you today. I don't think you need an invitation to ask the hard questions, but I will provide you one anyway. Let's open your lines so I can answer any questions you may have about the reorganization at the Division, and then I look forward to our panel on significant developments at the intersection of antitrust and financial services.