

Antitrust Division Re-Organization – Frequently Asked Questions

August 20, 2020

The Office of Decree Enforcement and Compliance

1. What is the impetus for the formation of the Office of Decree Enforcement and Compliance?

I announced the efforts to create the ODEC approximately two years ago, at the University of Chicago, as a key initiative to reinvigorate affirmative enforcement oversight of civil judgments and consent decrees.

We, of course, work to minimize behavioral decrees that require continued oversight by the Division, but they are a reality. In fact, there are over 150 decrees from the past 10 years alone. As I reviewed some of the recent decrees such as the Live Nation/Ticketmaster decree and the recently expired Comcast/Universal decrees it became clear the Division had not prioritized enforcement of these decrees to the degree the public deserved.

2. What are ODEC's responsibilities?

The Office will have primary responsibility in affirmatively enforcing civil settlement decrees and also oversight regarding the selection and supervision of compliance monitors.

For criminal matters, the Office will work with the criminal sections on a key criminal initiative I announced last year: crediting corporate compliance programs at the charging stage, when appropriate. ODEC will act a resource for criminal sections as they analyze corporate compliance programs and will advise them as parties seek credit.

3. Where will ODEC sit in the org chart?

ODEC will work under the Office of the Chief Legal Advisor. It will work with the Senior Director of Investigations and Litigation and other Division leadership when, for instance, a decree enforcement action moves closer to litigation or when its criminal role is part of a charging decision.

4. What is ODEC's mandate as to existing judgment enforcement in the civil sections?

ODEC will conduct an inventory of the Division's hundreds of judgments and prioritize those matters in most urgent need of additional resources. Once it identifies these priorities, it will work with each section to decide on appropriate proactive action plan for strict compliance with the obligations of the parties.

The industry expert sections will continue to be involved and support ODEC's functions.

5. When will the Office be formed?

The Office is being formed today (8/20/2020) with Larry Reicher as its inaugural chief. We will staff up the office over the next few weeks, based on an internal application process.

The Civil Conduct Task Force

6. What is the impetus for the formation of the Civil Conduct Task Force?

The purpose of the task force is to ensure that the Antitrust Division is consistently and aggressively investigating and moving forward our civil non-merger conduct matters.

The dedicated group of attorneys with a Division-wide view allows us to prioritize matters according to a consistent, harmonized process, and it allows a dedicated group of attorneys to become experts at some of the unique skills required for investigating and litigating conduct cases.

7. Don't the sections already do an outstanding job with conduct enforcement? Aren't pivotal cases such as the Atrium/Carolinas steering restrictions case, the Apple eBooks case, and the BCBS of Michigan case testaments to the Division's successful approach to conduct cases?

Yes, the purpose of the group is to build on the Division's recent history of success with conduct enforcement by increasing the resources devoted to conduct cases and developing greater civil non-merger skillset capabilities.

8. When will the task force be formed?

The task force is in the process of being formed now. I am interviewing the finalists to leader this task force next week. We will staff the task force further based on a currently on-going internal applications process.

9. Is this a new section?

The task force is not a new litigating section but it is a new unit that will have independence from the existing sections.

It is different from the FTC's structure of separate sections for conduct and merger enforcement. Our litigating sections at the Division will still handle both merger and conduct work and some attorneys assigned to the litigating sections will work in a dual role as part of the task force.

In some instances, attorneys assigned to the litigating sections will be staffed on CCTF-lead cases, and in other instances, CCTF attorneys will work closely section-lead cases.

10. What will happen with conduct matters that are currently active in the sections?

Active and fully staffed matters will continue to be managed in the sections, and will receive support as necessary from the CCTF. We will determine any moves of current matters on a case-by-case basis.

11. How many members will there be in the task force?

There will be 13 core attorney members of the task force: four full time attorneys that are independent from any other section or office, and one attorney designated to serve on the task force from each of the six civil litigating section and each field office (San Francisco, New York, and Chicago).

Economists will be staffed on a matter-by-matter basis, as is currently the practice for all matters in the Division.

There will be several other advisors, for instance from Appellate, who will regularly serve with the task force.

12. What will be the criteria for determining whether the CCTF pursues a conduct matter that is currently open but has been “back burnered” due to a lack of resources?

One of the functions of the task force will be to take a fresh look at existing conduct matters that have not received sufficient resources to date and, in consultation with the section’s CCTF designee and management, recommend to the Front Office whether the matter should be closed or proceed, reinvigorated with additional resources.

13. Would the task force have responsibility for reviewing public complaints relating to alleged anticompetitive conduct?

The CCTF will field complaints, relying on the commodity or industry expertise of its relevant section-designee member.

The CCTF, in conjunction with the relevant section’s management, will analyze the merit of opening an investigation and will make a recommendation to the Front Office.

The Commodity Realignment

14. Which commodities will be re-assigned?

Financial services, fintech, debit and credit cards, banking, and non-health insurance will be

brought together in the section formerly known as MEP.

Media, entertainment, and broadcasting will be brought together with telecommunications in the section formerly known as TEL.

Commodities or services delivered via platform technology (e.g., food delivery via app) will be housed in the section formerly known as TFS.

15. Why is the Division reallocating commodities?

To bring commodities together that are in the same or adjoining industries (e.g., credit and debit card networks and banking), and also to account for emerging goods and services, such as fintech, which will challenge traditional banking players.

In order to more equitably distribute large and small matters among the six civil sections in Washington, DC.

16. When will the commodity reallocation go into effect?

We will begin assigning incoming HSRs according to the new organization within the next two weeks.

17. What about existing investigations in the commodities current home section? Will they be transferred?

We will approach this on a case-by-case basis, depending on resources. There are very few existing investigations that would be impacted. While we have several financial services matters open, MEP is already handling most of those matters.

18. Will existing decrees be reassigned as well based on commodities? Will the new Office of Decree Enforcement and Compliance have any impact on the reassigning of decrees?

Yes, decrees will be reassigned on a case-by-case basis. In addition, the newly created ODEC will play a primary role in monitoring and enforcing decrees and it will work in conjunction with the section responsible for the implicated commodity.

19. Will any sections be renamed? What will the new names be?

We are working on an official request to change the Antitrust Division org chart, which if approved would reflect the following name changes to more closely align with matter distribution:

- Media, Entertainment, and Professional Services → Financial Services, Fintech, and Banking
- Telecommunications and Broadband → Media, Entertainment, and Communications
- Technology and Financial Services → Technology and Digital Platforms