



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2013 PERFORMANCE BUDGET**

Antitrust Division

FY 2013 Congressional Budget Submission

Table of Contents

I. Overview	2
A. Introduction	2
B. Issues, Outcomes, and Strategies	3
C. Full Program Costs	15
D. Performance Challenges	16
II. Summary of Program Changes	17
III. Appropriations Language and Analysis of Appropriations Language	18
IV. Decision Unit Justification	19
A. Decision Unit: Antitrust	19
1. Program Description	19
2. Performance and Resource Tables	25
3. Performance Measurement Framework	30
4. Performance, Resources, and Strategies	31
5. Exemplar - Criminal	36
6. Exemplars – Civil	39
V. Program Offsets by Item	43
VI. Exhibits	45
A. Antitrust Division Organization Chart	
B. Summary of Requirements	
C. FY 2013 Program Increases/Offsets by Decision Unit	
D. Resources by DOJ Strategic Goal/Objective	
E. Justification for Base Adjustments	
F. Crosswalk of 2011 Availability	
G. Crosswalk of 2012 Availability	
H. Summary of Reimbursable Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Changes	
K. Summary of Requirements by Grade	
L. Summary of Requirements by Object Class	
M. Status of Congressionally Requested Studies, Reports, and Evaluations – <i>Not Applicable</i>	

I. Overview

A. Introduction

The Antitrust Division is committed to its mission to promote economic competition through enforcing and providing guidance on antitrust laws and principles. Its vision is 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 Division supports the Department's Strategic Goal II, Objective 2.6, "Protect the federal fisc and defend the interests of the United States." Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.justice.gov/02organizations/bpp.htm>.

To perform its mission effectively and achieve its goals in the face of an increasingly complex and global economy, the Antitrust Division must expend significant resources. In recent years, the Division has aggressively pursued far-reaching criminal cartel activity and important civil matters while reviewing a large number of premerger filings, many involving complex issues and global conglomerates. Merger volume steadily increased from 2003 through the first half of 2008, falling off at the end of 2008 based upon tentative global economic conditions. Beginning in late 2009, as credit markets recovered and cash-rich companies regained business confidence; merger volume momentum gained speed and continued to increase throughout fiscal years 2010 and 2011. This upward trend is expected to continue throughout fiscal years 2012 and 2013. To administer its caseload, the President's Budget includes \$164.753 million in FY 2013, reflecting annual cost adjustments of \$5.166 million over the FY 2012 Enacted level.

It is critical that the Division have adequate resources to keep abreast of a workload, which more and more involves large, multi-national corporations and anticompetitive behaviors that are pervasive and difficult to detect. By protecting competition across industries and geographic borders, the Division's work serves as a catalyst for economic efficiency and growth with benefits accruing to both American consumers and American businesses.

- From FY 2009 through the end of FY 2011, as a result of the Division's efforts, over **\$2 billion in criminal fines** were obtained from antitrust violators.
- The Division is a key participant on the **President's Financial Fraud Enforcement Task Force**, detecting and prosecuting mortgage frauds, securities and commodities fraud, and illegal schemes preying on funds designated to assist in America's ongoing **economic recovery** as part of the **American Recovery and Reinvestment Act**. (see pg. 36)
- **Intellectual property** issues involving patents, copyrights, trademarks, or trade secrets are instrumental in the Division's work. Invention and innovation are critical in promoting economic growth, creating jobs, and maintaining our competitiveness in the global economy. Antitrust laws ensure new proprietary technologies, products, and services are bought, sold, traded and licensed in a competitive environment.

B. Issues, Outcomes, and Strategies

Fundamental changes continue in the business marketplace, including the expanding globalization of markets, increasing economic concentration across industries, rapid technological change, significantly expanding numbers of business bankruptcies and failing firms, and substantial government investment in business enterprise. These factors, added to the existing number and intricacy of our investigations, significantly impact 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 indicate.

Enforcement Program	Major Matter Exemplars
Criminal DOJ Strategic Goal II Objective 2.6	Financial Fraud Enforcement (see Exemplar - pg.36) (Real Estate, Municipal Bonds and Economic Recovery)
Civil Merger/Non-Merger DOJ Strategic Goal II Objective 2.6	AT&T, Inc./T-Mobile USA, Inc. (see Exemplar – pg 39) H&R Block, Inc./2SS Holdings, Inc. (TaxACT), (see Exemplar - pg. 40) American Express, MasterCard and Visa – Credit Card Merchant Restraints (see Exemplar - pg. 42)

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 \$4.6 trillion in FY 2011.¹



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.

¹United States Department of Commerce, Bureau of Economic Analysis, "U.S. International Trade in Goods and Services", <http://www.bea.gov/newsreleases/international/trade/2011/pdf/trad1011.pdf>, December 2011.

This also impacts our criminal enforcement program. The Division has witnessed a tremendous upsurge in international cartel activity in recent years. 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 in FY 2011, **35 percent** were associated with subjects or targets located in foreign countries. Of the approximate **\$6.4 billion** in criminal antitrust fines imposed by the Division between FY 1997 and the end of FY 2011, approximately **97 percent** were imposed in connection with the prosecution of international cartel activity. In addition, approximately **51 foreign defendants** from France, Germany, Japan, South Korea, Taiwan, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom have served, or have been sentenced to serve, prison sentences in the United States as a result of the Division's cartel investigations.

The Division's criminal enforcement program overall, including enforcement against international cartels, has resulted in an increase in criminal fines. Up until 1994 the largest corporate fine imposed for a single Sherman Act count was \$6 million. However, for more than a decade, fines of \$10 million or more have become commonplace, with the Division now obtaining fines of more than \$100 million. In FY 2011, as the result of Division enforcement efforts, a total of approximately **\$524 million** in criminal fines were obtained against antitrust violators. In FY 2009, a total of just over **\$1 billion** in criminal fines were obtained, including a single fine of **\$400 million** imposed against LG Display Co., Ltd. /LG Display America, the second largest criminal fine in Antitrust Division history. In FY 2008, as a result of the Division's ongoing investigation of the Air Transportation industry, a fine of **\$350 million** was imposed on Air France-KLM. This fine was the third largest criminal fine in Antitrust Division history. These fines are eclipsed only by the \$500 million fine imposed in 1999 against F. Hoffmann-La Roche for its participation in the vitamins cartel. The impact of these heightened penalties has been an increase in the participation of large firms in the Division's Corporate Leniency Program, bringing more and larger conspiracies to the Division's attention before they can inflict additional harm on U.S. businesses and consumers.

As discussed above, our work no longer takes place solely within the geographic borders of the U.S. In our enforcement efforts we find parties, potential evidence, and impacts abroad, all of which add complexity, and ultimately cost, to the pursuit of matters. Whether that complexity and cost results from having to collect evidence overseas or from having to undertake extensive inter-governmental negotiations in order to depose a foreign national, it makes for a very different, and generally more difficult investigatory process than would be the case if our efforts were restricted to conduct and individuals in the U.S. The markets and competitors affecting U.S. businesses and consumers are more international in scope, and the variety of languages and business cultures that the Division encounters has increased. Consequently, the Division must spend more for translators and translation software, interpreters, and communications, and Division staff must travel greater distances to reach the people and information required to conduct an investigation effectively and expend more resources to coordinate our international enforcement efforts with other countries and international organizations.

International Competition Advocacy - The Antitrust Division is actively working with international organizations to encourage the adoption, regulation, and enforcement of competition laws as worldwide consensus continues to grow that international cartel activity is pervasive and is victimizing consumers everywhere. Total cartel sales of \$1.2 trillion in 2005 contained illegal overcharges of \$300 billion, a 25 percent premium paid for by consumers and businesses worldwide.² The Antitrust Division's commitment to detect and prosecute international cartel activity is shared with foreign governments throughout the world, resulting in the establishment of antitrust cooperative agreements among competition law enforcement authorities across the globe. To date, the Division has entered into antitrust cooperation agreements with eleven foreign governments – Australia, Brazil, Canada, Chile, China, the European Union, Germany, Israel, Japan, Mexico and Russia.

In addition, antitrust authorities globally are becoming increasingly active in investigating and punishing cartels that adversely affect consumers. The Division is a strong advocate for effective anti-cartel enforcement around the world. As effective global cartel enforcement programs are implemented and criminal cartel penalties adopted, the overall detection of large, international cartels increases along with the Division's ability to collect evidence critical to its enforcement efforts on behalf of American consumers. In the past decade, dozens of jurisdictions have increased penalties for cartel conduct, improved their investigative powers and introduced or revised amnesty programs. For example, Australia, Canada, South Africa, and Russia have recently adopted or strengthened criminal sanctions for hard core cartel conduct. In addition, jurisdictions such as Brazil, the European Union, France, Germany, Japan and the UK have made revisions to their cartel amnesty policies making them more consistent with the United States.



² Connor, John M. "Statistics on Modern Private International Cartels, 1990-2005", *The American Antitrust Institute - Working Paper 07-01*, January 10, 2007.

Efforts such as these help enhance global antitrust enforcement and reduce the burden on law abiding companies that operate in international markets. In addition, they promote international uniformity and help bring cartel prosecution in line with international best practices.

The Division continues to prioritize international cooperation, procedural fairness and, where appropriate, antitrust policy convergence and 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.

In October 2001, with leadership from the Antitrust Division, the International Competition Network (ICN), comprised of competition authorities from 14 jurisdictions, was launched. The Division continues to play an important role in achieving consensus, where appropriate, among antitrust authorities on sound competition principles and also provides support for new antitrust agencies in enforcing their laws and building strong competition cultures. As of 2011, the ICN has grown to include 117 agencies from 103 jurisdictions. The tenth annual conference of the ICN was held in The Hague, the Netherlands in May 2011 where ICN members adopted new materials on how to assess market dominance, resolve cartel cases and manage competition projects effectively.



Intellectual Property

Invention and innovation are critical in promoting economic growth, creating jobs, and maintaining our competitiveness in the global economy. Intellectual property 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 the protection of intellectual property rights create an environment that promotes the innovation necessary for economic success. Issues involving patents, copyrights, trademarks, or trade secrets, arise in the Division's antitrust enforcement investigations, international competition advocacy, interagency initiatives, business review letters, and amicus filings in court cases. Three of these areas are highlighted below.

Patent Assets in Antitrust Cases - Recently there have been a number of proposed acquisitions that involve significant patent assets. The Division analyzes these issues closely to ensure competition is promoted and invention and innovation are advanced. For example, in 2011, Novell, Inc., sold approximately 862 software patents and pending patent applications to CPTN Holdings LLC, a consortium owned equally by Microsoft Inc., Oracle Corp., Apple Inc. and EMC Corp. CPTN paid Novell \$450 million for this patent portfolio, which included both U.S. and foreign issued software patents and pending applications.

The Division investigated this transaction under Section 7 of the Clayton Act. The effect of the sale of the patent portfolio on competitors who relied on open source software and Novell's practice of not asserting its patents against Linux systems was of particular concern in this case. The Division believed that the deal, as originally proposed, would jeopardize the ability of open source software, such as Linux, to continue to innovate and compete in the development and distribution of server, desktop, and mobile operating systems, middleware, and virtualization products.

To address these concerns, CPTN and its owners revised their agreements to acquire the patent portfolio from Novell including restructuring the sale and using licenses instead of outright sale, in some cases, in order to obtain rights to the patents. These changes were necessary to protect competition and innovation in the open source software community.

International Advocacy - The Division regularly engages in international competition advocacy projects promoting the use of sound analysis of competition complaints involving intellectual property rights in multinational fora, such as the World Intellectual Property Organization, the Organization for Economic Cooperation and Development, and the Asian Pacific Economic Cooperation, and in foreign jurisdictions, such as China.

To ensure that U.S. businesses may appropriately utilize 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 devotes substantial time and effort to advocating that all jurisdictions enforce competition laws in ways that create the right incentives for innovative activity to take place. The Division continues to focus on best practices to analyze the competitive impact of standard-setting activities involving intellectual property rights and on the pooling of patents.

Interagency Initiatives - The Division regularly participates in interagency activities where antitrust and intellectual property issues are implicated. Standard-setting activities can play a critical role in promoting innovation and are often used in information and communications sectors to facilitate interoperability of complementary products. The Division must ensure that the standard-setting process, including the use of intellectual property in that process, is not used in a manner that harms consumers.

The National Science and Technology Council's Subcommittee on Standards provides a forum for enabling more effective federal agency engagement in the development of standards in critical emerging technology areas, such as the smart electrical power grid and health information technology. Under the auspices of the Subcommittee, the Division worked closely with the National Institute of Standards and Technology and other federal government agencies to assess the role of government in the standard-setting process.

In October 2011, the Subcommittee released a report on [Federal Engagement in Standards Activities to Address National Priorities: Background and Proposed Policy Recommendations](#) that describes how the federal government currently engages in private-sector standard-setting activities and outlines proposed policy recommendations containing supplementary guidance to agencies engaging in these activities to address national priorities specified by Congressional mandate or Administration policy. The policy recommendations recognize, *inter alia*, the importance of standard-setting bodies having clear and unambiguous rules regarding the disclosure and licensing of intellectual property rights incorporated into their standards.

In May 2010, the Department of Justice, the Federal Trade Commission (FTC) and the Department of Commerce's Patent and Trademark Office (PTO) held a joint public workshop to address ways in which careful calibration and balancing of patent policy and competition policy can best promote incentives to innovate. This was the first time these three agencies jointly sponsored such an event. Panels of experts assembled from business, academia, and government examined issues of significant importance to patent and competition law and policy including how challenges posed by the patent backlog affect the competitive strategies of patent applicants and innovators, and the role of patents in connection with industry standards and the impact such standards have on competition.

Economic Concentration

Ongoing economic concentration across industries and geographic regions also increases the Division's 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.

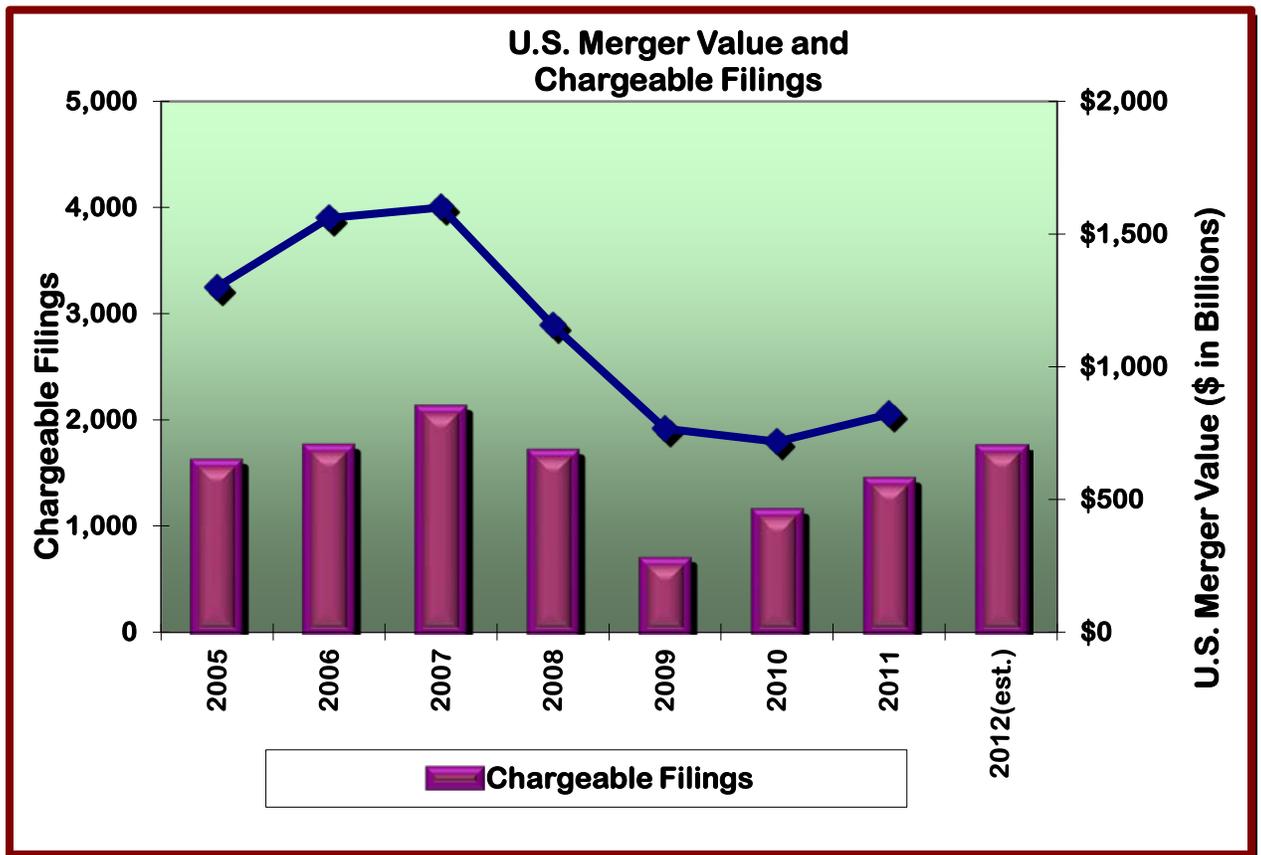


Figure 1

As shown in Figure 1, the overall economic downturn that began in calendar year 2008 resulted in a drop in merger deals in 2009 and the year finished with \$767 billion in U.S. merger value. However, merger and acquisition activity significantly improved in calendar years 2010 and 2011 with M&A announced deals in 2011 totaling \$820.6 billion, the highest annual total deal value since 2007 and 14.4 percent higher than 2010. Worldwide merger and acquisition volume in calendar year 2011 climbed by 2.5 percent and ended the year at \$2.178 trillion.³

³ "mergermarket M&A Round-up for Year End 2011", www.mergermarket.com, January 3, 2012, retrieved January 12, 2012 <http://www.mergermarket.com/pdf/Press-Release-for-Financial-Advisers-Year-End-2011.pdf>.

While the economic slump affected companies around the globe, strong fundamentals including robust cash positions, strengthening balance sheets and improved credit markets will result in a sizable increase in M&A transactions over the next 12 months according to an Ernst & Young December 2011 report. Notable deal activity is expected in the energy, healthcare and technology sectors.⁴

Technological Change and the Changing Face of Industry

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, such as wireless communications, Voice over Internet Protocol (VoIP), biometrics, hand-held computing and online security, continues and intensifies.

We will see even more advances in technology in coming years as the telecommunications upheaval continues to transform traditional industry business models. One such transformation is in wireless communication and connectivity. There were an estimated 322.9 million wireless subscribers in the United States, home to the most mobile internet users in the world, as of June 2011, according to the Cellular, Telecommunications and Internet Association (CTIA) Wireless Quick Facts Report. In the same December 2011 report, CTIA announced that as of June 2011, in the hands of U.S. consumers were 278.3 million data-capable devices, including 95.8 million smart phones/wireless PDA's and 15.2 million wireless-enabled laptops, notebooks or wireless broadband modems.⁵



Clearly, being 'connected' has become essential to the American daily lifestyle, and this connectivity demand continues to result in rapidly emerging newer and faster networks, applications and equipment. A July 2011 Pew Mobile Access Report published by the Pew Research Center found that 83 percent of U.S. adults have a cell phone of some kind. Of this group, 42 percent are smart phone owners, of which the vast majority - 87 percent - access the internet or email on their smart phone, including two-thirds that do so on a typical day.⁶

⁴ Ernst & Young - "Ernst & Young says fundamentals will finally prevail over uncertainty to get deals rolling in 2012" www.ey.com, December 7, 2011, retrieved January 18, 2012. <http://www.ey.com/US/en/Newsroom/News-releases/Ernst-and-Young-says-fundamentals-will-finally-prevail-over-uncertainty-to-get-deals-rolling-in-2012>

⁵ CTIA - "Wireless Quick Facts" www.ctia.org, December 2011, retrieved January 19, 2012. <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>.

⁶ Smith, Aaron. "35% of American adults own a smartphone" *Pew Internet & American Life Project*, July 11, 2011, retrieved January 19, 2012. <http://pewinternet.org/Reports/2011/Smartphones.aspx>

As more consumers turn to high-speed broadband, wireless Internet access, and search for more efficient and cost effective methods of communication, expanding technologies such as Voice over Internet Protocol (VoIP), or what is also known as Broadband Telephony, stand to grow dramatically over the next several years. Surveys by the Pew Research Center's Internet & American Life Project in February 2007 showed that 8 percent of American adult internet users (6 percent of all American adults) had placed calls online and 2 percent of internet users were making calls on any given day. Just four years later, in their May 2011 survey, the Pew Research Center found that 24 percent of American adult internet users (19 percent of all American adults) had placed calls online and 5 percent were making calls on any given day.⁷

The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the Antitrust Division's resources. The economic paradigm is shifting so rapidly that the Division must employ new analytical tools, which allow it to respond quickly and appropriately. It must be vigilant against anticompetitive behavior in the new economy where the Internet and cutting-edge information technology may facilitate the rapid entry and dominance of emerging markets.

Technological Change and Information Flows



Technological change is occurring at a blistering pace, as evidenced by the proliferation of wireless communication enhancements; the near daily evolution of mobile handheld devices, computer components, peripherals and software; and the growing use of video teleconferencing technology to communicate globally.

As the tools of the trade become more sophisticated, there appears to be a corresponding growth in the subtlety and complexity with which prices are fixed, bids are rigged, and market allocation schemes are devised. The increased use of electronic mail, and even faster, more direct methods of communication, such as text and instant messaging, has fostered this phenomenon. Moreover, the evolution of electronic communication results in an increase in the amount and variety of data and materials that the Antitrust Division must obtain and review in the course of an investigation. In addition to hard-copy documents, telephone logs, and other information from public sources, including the Internet, the Division now regularly receives magnetic tapes, CD's, and computer servers containing the e-mail traffic and documents of companies under investigation.

⁷ Rainie, Lee. "24% of internet users have made phone calls online", *Pew Internet and American Life Project*, May 30, 2011, retrieved January 19, 2012 <http://pewinternet.org/Reports/2011/13--Internet-phone-calls--Skype.aspx>

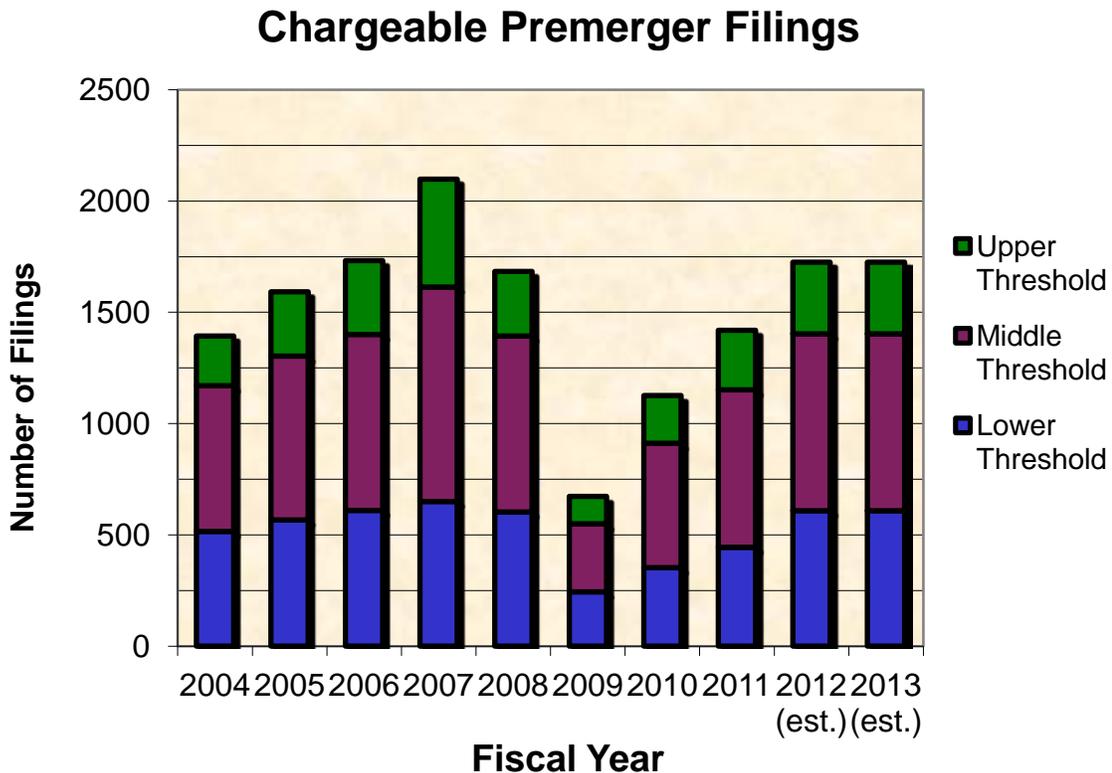
Results

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 2011, as a result of the Division's efforts, over **\$2 billion in criminal fines** were obtained against antitrust violators. In FY 2009 alone, over **\$1 billion in criminal fines** - currently the **second highest annual amount in the Division's history** - were obtained against antitrust violators, a 43 percent increase over FY 2008, the third highest fine year, when \$701 million in criminal fines were obtained.
- 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, impacting billions of dollars in U.S. commerce. **Since FY 1997, defendants have been sentenced to pay nearly \$6.4 billion in criminal fines to the U.S. Treasury, including more than \$2.3 billion just since the beginning of FY 2008.**
- The Division believes that individual incarceration has a greater deterrent effect than fines alone and continues to emphasize prison terms for individuals who participate in antitrust criminal behavior. In FY 2011, as the result of Division enforcement efforts, 12 corporations and 39 individuals were sentenced due to antitrust violations. Prison sentences between FY 2000 and the end of FY 2011 were an **average of approximately 21 months**, more than twice the 8-month average sentence of the 1990's. These prison sentences have resulted in approximately **444 years** of imprisonment imposed on antitrust offenders, with **173 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 2011, restitution generated by the Division was approximately **\$89 million.**
- Despite a workload of increasingly complex cases, the Antitrust Division has made great strides in combating anticompetitive behavior across industries and geographic borders and has saved consumers billions of dollars by ensuring a competitive and innovative marketplace. **Since FY 1998, the first year for which data is available, the Division, through its efforts in all three enforcement areas - merger, criminal and civil non-merger - is estimated, conservatively, to have saved consumers \$26.8 billion.**

Revenue Assumptions

Estimated FY 2012 - 2013 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. The August 2011 Congressional Budget Office, Budget and Economic Outlook anticipates the pace of the economic recovery will pick up a little in the second half of 2012 but will remain moderate for the next few years.⁸



Premerger Filing Fee Thresholds Effective Feb 24, 2011	
Value of Transaction	Filing Fee
Lower: \$66M - <\$131.9M	\$45,000
Middle: \$131.9M - <\$659.5M	\$125,000
Upper: \$659.5M plus	\$280,000

Figure 2

(Consistent with statutory direction, pre-merger filing fee threshold amounts are adjusted annually based on the U.S. Gross Domestic Product Index and are reflected in the table above)

Renewed confidence in economic conditions beginning in late 2009 resulted in a **67 percent increase in Hart-Scott-Rodino (HSR) filings** and a 73 percent increase in fee revenue in FY 2010. An increased level of merger activity continued throughout FY 2011 and is expected to continue throughout fiscal years 2012 and 2013.

Based upon estimates calculated by the Congressional Budget Office and the Federal Trade Commission (FTC), fee collections of \$220 million for FY 2012 and \$235 million for FY 2013 are expected. HSR filing fee revenue is divided evenly between the Antitrust Division and Federal Trade Commission.

⁸ "The Budget and Economic Outlook: An Update." *Congressional Budget Office*, August 2011, c.2, p.36.

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 recycling program throughout the building for paper, plastic, glass, and newspaper.
- The Division encourages employees to print documents only when absolutely necessary and, whenever possible, print double-sided in an effort to save paper.

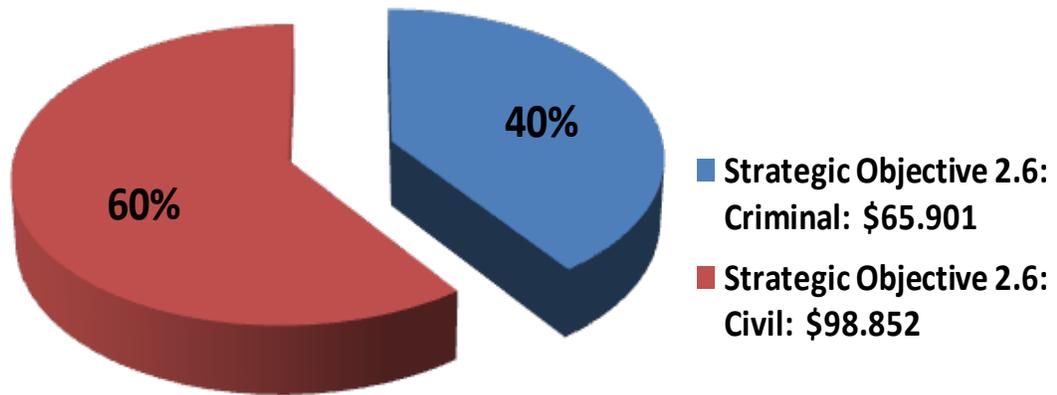
The Division will continue to implement additional programs as further guidance is received from the Department, Administration and Congress.

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 global marketplace cannot be overstated. The threat to 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 an FY 2013 budget increase of \$5.166 million to address annual cost adjustments and a total appropriation of \$164.753 million, in support of 880 positions and 851 work years.

The FY 2013 Antitrust Division budget request of \$164.753 million supports Departmental Strategic Goal II: Prevent Crime, Protect the Rights of the American People and Enforce Federal Law. The Division's criminal and civil programs are both included in Strategic Objective 2.6: Protect the federal fisc and defend the interests of the United States.

FY2013 Total Budget Request by Strategic Goal Strategic Goal II - Strategic Objective 2.6



C. Full Program Costs

The Antitrust Division contains one Decision Unit (Antitrust). Within this Decision Unit the Division supports the Department's Strategic Goal II: Prevent Crime, Protect the Rights of the American People and Enforce Federal Law. This Strategic Goal defines the 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 2013 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:

- Globalization of the business marketplace
- Increasing economic concentration across industries and geographic regions
- 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 limited resources.

Information Technology (IT) Expenditures

The Antitrust Division's FY 2013 budget request does not include IT enhancements, and its steady-state IT budget will continue to support several broad Information Technology areas essential to carrying out its mission. 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 expects electronic analytical capacity needs to **more than double to 200 terabytes by FY 2013**.
- *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 which 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				See Page
	Antitrust Division	Pos.	FTE	Dollars (\$000)	
IT Savings	IT Management Efficiencies	0	0	\$(404)	43

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, [\$159,587,000] \$164,753,000 to remain available until expended: 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 [\$108,000,000] \$117,500,000 in fiscal year [2012] 2013), 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 [2012] 2013; so as to result in a final fiscal year [2012] 2013 appropriation from the general fund estimated at [\$51,587,000] \$47,253,000.

[] - Proposed Deletion

XXX – Proposed New Language

Analysis of Appropriations Language

No substantive changes proposed.

IV. Decision Unit Justification

A. Decision Unit: Antitrust

Antitrust Division			
Fiscal Year 2013 Congressional Budget Submission			
Decision Unit Justification			
Decision Unit: Antitrust - TOTAL	Permanent Positions	FTE	Amount
2011 Enacted	880	851	\$163,170,000
2012 Enacted	880	851	\$159,587,000
Adjustments to Base and Technical Adjustments	0	0	\$5,570,000
2013 Current Services	880	851	\$165,157,000
2013 Program Offsets	0	0	-\$404,000
2013 Request	880	851	\$164,753,000
Total Change 2012 - 2013	0	0	\$5,166,000

1. Program Description

The Antitrust Division promotes competition and protects consumers from economic harm by enforcing the Nation's 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 has two main 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 has established five supervisory Deputy Assistant Attorney General (DAAG) positions reporting directly to the Assistant Attorney General. Each of these DAAGs has oversight of a specific program including Civil Enforcement, Civil Litigation, Criminal Enforcement, Economic Analysis, and International Enforcement.



Criminal Enforcement - Within the Criminal strategy, the Antitrust Division must address the increased globalization of markets, constant technological change, and a large number of massive criminal conspiracies the Division is encountering. These matters transcend national boundaries, involve more technologically advanced and subtle forms of criminal behavior, and impact more U.S. businesses and consumers than ever before. The requirements -- whether in terms of staff time, travel and translation costs, or automated litigation support -- of fighting massive criminal conspiracies effectively is great. Matters such as the Division's ongoing investigations in the municipal bond investments market and real estate foreclosure auctions (page 36) exemplify the increasingly complex nature of Division workload in the criminal area and demonstrate that successful pursuit of such matters takes time and resources.

Civil Enforcement - Under the Civil 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 HSR transactions brought to our attention by statutorily mandated filings
- Review of non-HSR transactions (those not subject to HSR reporting thresholds); and
- Review of bank merger applications.

Competition Advocacy - As an advocate of competition, the Antitrust Division seeks the elimination of unnecessary regulation and the adoption of the most competitive means of achieving a sound economy through a variety of activities on the national and international stages. Areas in which the Division pursues competition advocacy initiatives include:

Regulatory Issues - The Antitrust Division actively monitors the pending actions of federal, state, and local regulatory agencies either as statutorily mandated, as in the case of telecommunication and banking markets, or through review of those agencies' dockets and industry or other publications and through personal contacts in the industries and in the agencies. Articulation of a pro-competitive position may make the difference between regulations that effectively do no antitrust harm and actively promote competitive regulatory solutions and those that may negatively impact the competitiveness of an industry. Examples of regulatory agencies before which the Division has presented an antitrust viewpoint include the Federal Communications Commission, Securities and Exchange Commission and the Federal Energy Regulatory Commission.

Review of New and Existing Laws - Given the dynamic environment in which the Antitrust Division must apply antitrust laws, refinements to existing law and enforcement policy are a constant consideration. Division staff analyze proposed legislation and draft proposals to amend antitrust laws or other statutes affecting competition. Many of the hundreds of legislative proposals considered by the Department each year have profound impacts on competition and innovation in the U.S. economy. Because the Division is the Department's sole resource for dealing with competition issues, it significantly contributes to legislative development in areas where antitrust law may be at issue.



For example, the Division has filed numerous comments and provided testimony before state legislatures and real estate commissions against proposed legislation and regulations that forbid buyers' brokers from rebating a portion of the sales commission to the consumer or that require consumers to buy more services from sellers' brokers than they may want, with no option to waive the extra items.

Education, Speeches, and Outreach – The Division seeks to reach the broadest audience in raising awareness of competition issues and, to do so, provides guidance through its business review program, outreach efforts to business groups and consumers, and the publication of antitrust guidelines and policy statements aimed at particular industries or issues. Division personnel routinely give speeches addressing these guidelines and policy statements to a wide variety of audiences including industry groups, professional associations, and antitrust enforcers from international, state, and local agencies.

In August 2010, The Department of Justice and the Federal Trade Commission (FTC) issued revised Horizontal Merger Guidelines that outline how the federal antitrust agencies evaluate the likely competitive impact of mergers and whether those mergers comply with U.S. antitrust law. These changes mark the first major revision of the merger guidelines in 18 years and give businesses a better understanding of how the agencies evaluate proposed mergers.

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 Congressional committees, federal agencies and other parts of the Administration and
- Actively participating in White House interagency task forces in areas such as Internet Policy Principles, standard setting, and Accountable Care Organization (ACO) implementation.

Agriculture Hearings – In 2010, the Antitrust Division and the U.S. Department of Agriculture (USDA) held five joint public workshops to explore competition issues affecting the agricultural sector in the 21st century and the appropriate role for antitrust and regulatory enforcement in that industry. These were the first joint Department of Justice/USDA workshops ever to be held to discuss competition and regulatory issues in the agriculture industry. The goals of the workshops were to promote dialogue among interested parties and foster learning with respect to the appropriate legal and economic analyses of these issues as well as to listen to and learn from parties with real-world experience in the agricultural sector.

Workshops were held in Ankeny, Iowa; Normal, Alabama; Madison, Wisconsin, Fort Collins, Colorado and Washington, D.C.

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.



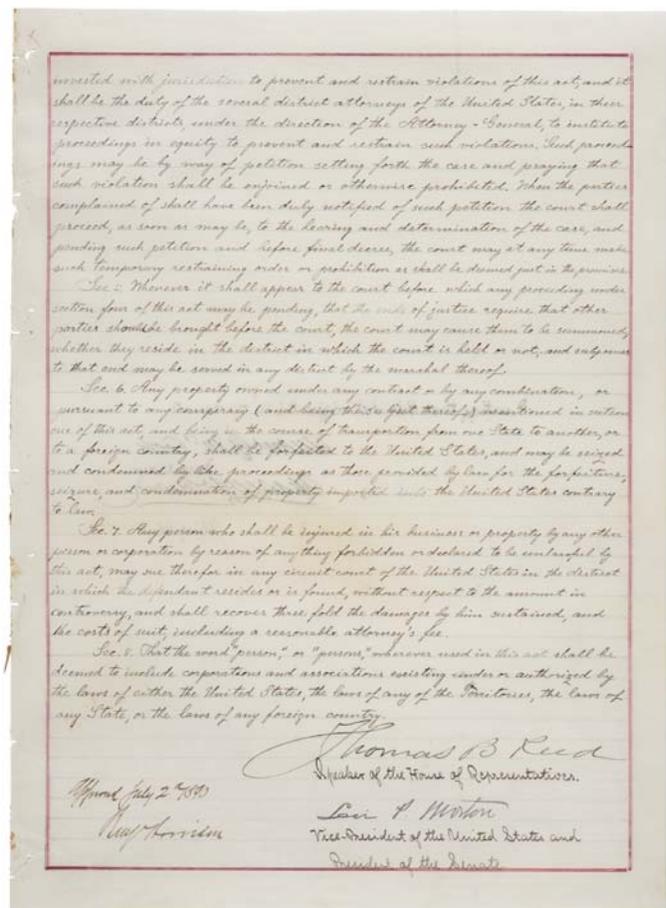
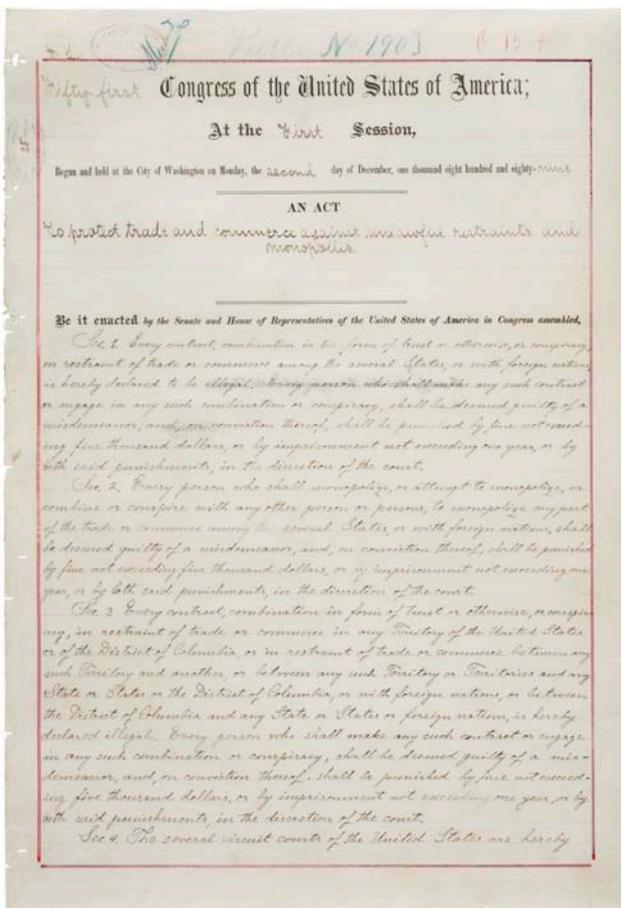
The Division pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, and working with countries that are in the process of adopting antitrust laws. One of the most notable examples of the Division's international efforts includes its participation in the International Competition Network (ICN). In May 2011, at its 10th annual conference in The Hague, the Netherlands, with

nearly 500 delegates and competition experts from more than 90 antitrust agencies in attendance, the ICN adopted new materials on how to assess market dominance, resolve cartel cases and manage competition projects effectively. The conference showcased the accomplishments of ICN working groups on mergers, unilateral conduct, cartels, competition advocacy, competition agency effectiveness, and the ICN Curriculum Project; a project to create a “virtual university” of training materials on competition law and practice.

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.



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/Objective: Criminal, Civil

WORKLOAD/ RESOURCES		Final Target		Actual		Projected		Changes		Requested (Total)	
		FY 2011		FY 2011		FY 2012		Current Services Adjustments and FY 2013 Program Changes		FY 2013 Request	
Workload - Number of HSR Transactions Received		1,635		1,450		1,635		0		1,635	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Antitrust		851	\$162,844	760	\$169,210	851	\$159,587	0	\$5,166	851	\$164,753
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	FY 2011		FY 2011		FY 2012		Current Services Adjustments and FY 2013 Program Changes		FY 2013 Request	
Program Activity	1. Criminal	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		340	\$65,138	304	\$67,684	340	\$63,835	0	\$2,066	340	\$65,901
Performance Measure – Criminal	Number of Active Grand Juries	95		141		95		0		95	
	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected		\$2,486.4		Not Projected		Not Projected		Not Projected	
Program Activity	2. Civil	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		511	\$97,706	456	\$101,526	511	\$95,752	0	\$3,100	511	\$98,852

TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	Final Target	Actual	Projected	Changes	Requested (Total)
		FY 2011	FY 2011	FY 2012	Current Services Adjustments and FY 2013 Program Changes	FY 2013 Request
Performance Measure – Merger	Number of Preliminary Inquiries Opened	110	90*	110	0/0	110
Performance Measure – Civil Non-Merger	Number of Active Investigations	77	50*	77	0/0	77
Performance Measure – Civil Merger and Non-Merger	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	\$129,069	Not Projected	Not Projected	Not Projected
Outcome – Criminal, Civil (Merger and Civil Non-Merger)						
Consumer Savings	Criminal: Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$248.6	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	\$1,431.1	Not Projected	Not Projected	Not Projected
Success Rates	Criminal - Percentage of Cases Favorably Resolved	90%	97%	90%	0	90%
	Civil - Percentage of Cases Favorably Resolved	80%	98%	80%	0	80%

TABLE DATA DEFINITIONS:

***Justification for Civil Merger and Civil Non-Merger targets not met in FY 2011:**

Civil Merger: Although merger activity remained somewhat depressed in FY2009, it began to build momentum throughout FY's 2010 and 2011 as market conditions improved, the economy continued to recover and businesses regained confidence in the marketplace. However, activity was such that FY2011 performance targets could not successfully be met.

Civil Non-Merger: Civil non-merger matters typically require extensive, highly complex and time-consuming analysis which often results in multi-year investigations that do not lend themselves to the parameters of standardized performance measurement.

Program Activity Data Definition, Validation, Verification, and Limitations:

Dollars and FTE: HSR related performance measures for FY 2010 through FY 2012 projections are based on an analysis of FY 2003 through FY 2009 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 & Accountability Report.**

The **Success Rate for Civil Matters** is determined **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 & Accountability Report.**

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 & Accountability Report.**

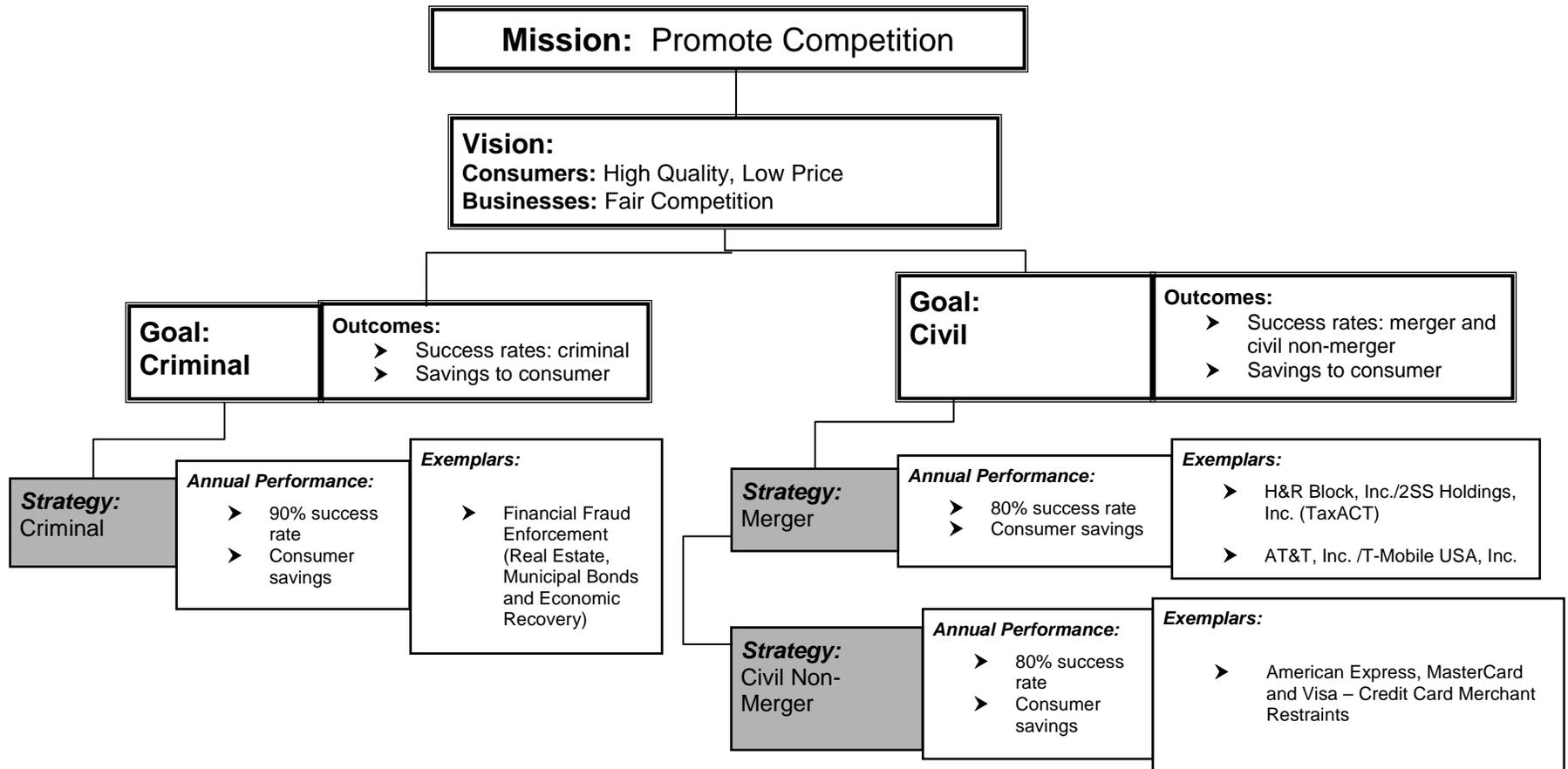
Performance Measure Report - Historical Data

Decision Unit: Antitrust

Performance Report and Performance Plan Targets		FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011		FY 2012	FY 2013
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure: Criminal	Number of Active Grand Juries	155	152	141	167	175	168	95	141	95	95
Performance Measure: Criminal	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	\$3,307	\$550	\$5,612	\$210	\$6,056	\$502	Not Projected	\$2,486.4	Not Projected	Not Projected
Performance Measure: Civil Merger	Number of Preliminary Inquiries Opened	106	96	101	85	65	64	110	90	110	110
Performance Measure: Civil Non-Merger	Number of Active Investigations	80	73	52	57	73	61	77	50	77	77
Performance Measure: Civil (Merger and Non-Merger)	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	\$8,250	\$100,832	\$2,967	\$16,085	\$94,629	\$8,114	Not Projected	\$129,069	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Criminal	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$330	\$55	\$561	\$21	\$606	\$50.2	Not Projected	\$248.6	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Civil	Civil (Merger and Non-Merger) - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$164	\$1,952.3	\$166	\$509.7	\$1,222	\$186.7	Not Projected	\$1,431.1	Not Projected	Not Projected
Outcome Measure: Success Rate - Criminal	Criminal - Percentage of cases favorably resolved	96%	100%	98%	85%	97%	98%	90%	97%	90%	90%
Outcome Measure: Success Rate - Civil (Merger and Non-Merger)	Civil - Percentage of cases favorably resolved	100%	100%	100%	100%	100%	100%	80%	98%	80%	80%

3. Performance Measurement Framework

Antitrust Division, Department of Justice
Performance Measurement Framework
FY 2013



4. Performance, Resources, and Strategies

The Antitrust Decision Unit contributes to the Department’s Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. Within this Goal, the Decision Unit’s resources specifically address Strategic Objective 2.6: Protect the federal fisc and defend the interests of the United States.

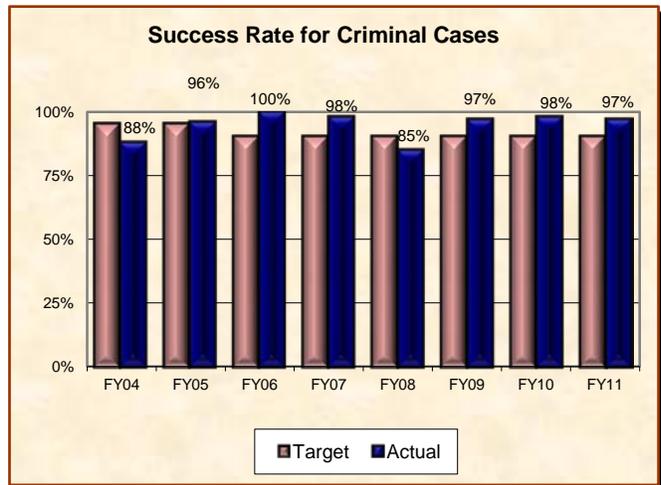
a. Performance Plan and Report for Outcomes

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 international private cartels and restricting other criminal anticompetitive activity. In FY 2011, the Division successfully resolved 97 percent of criminal matters. This measure is a consolidated measure shared with all other litigating components within the Department. As a whole, the Department exceeded its target by successfully resolving 93 percent of its cases. The Division expects to meet or exceed its goals for FY 2012 through FY 2013.

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.

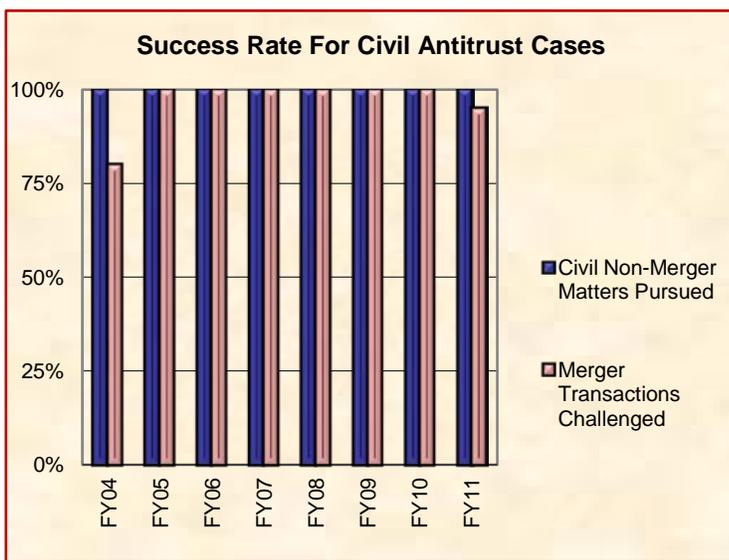


Civil Enforcement

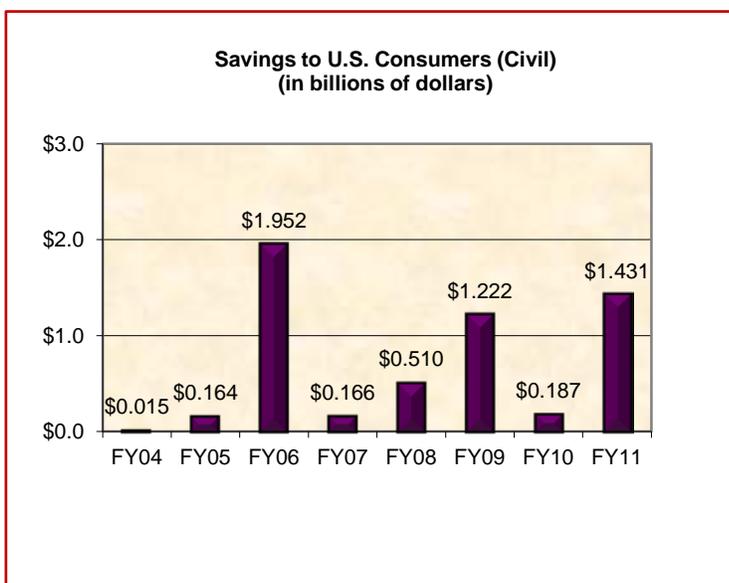
The charts below illustrate the Civil Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Civil Antitrust Cases and Savings to U.S. Consumers (as a result of the Antitrust Division's Civil enforcement efforts).

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 Division successfully resolved every matter it challenged in FY 2011 and expects to meet or exceed its goals for FY 2012 through FY 2013.

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 95 percent of the matters it challenged in FY 2011 and expects to meet or exceed its goals for FY 2012 through FY 2013.



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.





ANTITRUST DIVISION

b. Strategies to Accomplish Outcomes

Prosecute International Price Fixing Cartels

Utilizing geographically dispersed Field Offices and one Section 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, revised in recent years for greater effectiveness, 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 successfully prosecutes, the Division may obtain criminal fines and injunctive relief.

Civil Enforcement

The Division's Civil strategy is comprised of two key activities - Merger Review and Civil Non-Merger work. Six Washington, DC Sections and two Field Offices participate in the Division's civil work. This activity serves 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.

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 potentially anticompetitive transactions and allow the Division to identify and block such 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, also, 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 four litigating sections in Washington, DC, although other Washington sections and some field offices provide support as 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 *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 *tied* product, or at least agree that he will not purchase that *tied* 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.



5. Exemplar - Criminal

A. Financial Fraud Enforcement

Introduction and Background

Rigorous enforcement of the Sherman Antitrust Act, which authorizes the Antitrust Division to bring criminal prosecutions against those that are involved in contracts, business combinations, and conspiracies that unreasonably restrain the nation's free market economy, is a critical component of the Department's overall battle against financial fraud. Indeed, in Fiscal Year 2011, the Division filed 90 criminal cases (up from 60 cases in FY 2010) and obtained over \$520 million in criminal fines. In these cases, we charged 27 corporations and 82 individuals, and courts imposed 21 jail terms totaling 10,544 days of jail time. These cases and the underlying investigations were brought in a range of key industries, including real estate, auto parts, and financial services, to name a few.

Because of the importance of criminal antitrust enforcement to the fight against financial fraud, the Antitrust Division has played, and continues to play, a prominent role in the President's Financial Fraud Enforcement Task Force, Exec. Order No. 13519, 74 Fed. Reg. 60, 123 (Nov. 17, 2009). In particular, the Division is a key contributor to the efforts of the Task Force to detect and prosecute mortgage frauds, securities and commodities frauds, and frauds preying on funds dedicated to assist in the economic recovery pursuant to the American Recovery and Reinvestment Act.

Mortgage and Foreclosure Fraud



Since the beginning of calendar year 2011, the Antitrust Division has identified a pattern of collusive schemes among real estate speculators aimed at eliminating competition at real estate foreclosure auctions around the country. Instead of competitively bidding at public auctions for foreclosed properties, groups of real estate speculators work together to keep prices at public foreclosure auctions artificially low by paying each other to refrain from bidding or holding unofficial "knockoff" auctions among themselves. While the country continues to face unprecedented home foreclosure rates, the collusion taking place at public auctions on the steps of courthouses and municipal buildings around the country is artificially driving down foreclosed home prices and enriching the colluding real estate speculators at the expense of homeowners, municipalities and lending institutions. The impact of these collusive schemes is far-reaching because they negatively affect home prices in the neighborhoods where the foreclosed properties are located. Similar collusive conduct has also been detected among bidders for public tax liens.

To combat this anticompetitive epidemic, the Antitrust Division, in conjunction with the FBI, developed a Real Estate Foreclosure Initiative. The Initiative includes outreach and training efforts designed to raise awareness of the investigative community and public about bid rigging and fraud at real estate foreclosure and tax lien auctions. The Initiative also includes information sharing and coordinated enforcement efforts with our law enforcement partners meant to facilitate the identification, investigation, and prosecution of bid-rigging and collusive conduct at public auctions.

As of January 2012, as a result of the Division's efforts, 37 defendants have pleaded guilty to real estate foreclosure and tax liens conspiracies across the United States that suppress and restrain competition in ways that harm our communities and already-financially distressed homeowners. The Division is coordinating its Initiative through the Mortgage Fraud Working Group of the Financial Fraud Enforcement Task Force.

Securities and Commodities Fraud

The Antitrust Division has also been integral to the Department's efforts to combat securities, commodities, and corporate and investment frauds. These so called "Wall Street" frauds are at the root of many of the problems that have plagued the nation's markets, businesses and consumers, and continue to act as a drag on the nation's ability to sustain a full economic recovery.

Of particular note, during the past year, the Division, along with other federal agencies, has been investigating criminal conspiracies involving bid-rigging in the municipal bond investments market. The schemes under investigation involve unlawful agreements to manipulate the bidding process on municipal investment and related contracts – financial instruments which were used to invest the proceeds of, or manage the risks associated with, bond issuances by municipalities and other public entities. Critical municipal infrastructure, like roads, schools, and other projects, are supported by the bonds affected by these crimes.

As of January 2012, the Division's ongoing investigation has resulted in criminal charges against 18 former executives of various financial services companies and one corporation. Twelve of the 18 executives charged have pleaded guilty.



The investigation has also produced numerous resolutions with large financial institutions implicated in the schemes, including JPMorgan Chase, UBS AG, Wachovia Bank N.A., Bank of America, and GE Funding Capital Market Services, Inc. These financial institutions have agreed to pay a combined total of nearly **\$750 million in restitution**, penalties and disgorgement to federal and state agencies for their roles in the conduct.

The Division is coordinating its municipal bonds investigation and other efforts in the financial services industries with other members of the Securities, Commodities and Investment Fraud Working Group of the Financial Fraud Enforcement Task Force.

Economic Recovery Fraud

With the passage of the American Recovery and Reinvestment Act of 2009, signed by President Obama in February 2009, the Division's role to uphold the American public's expectation that our nation's \$787 billion investment in economic recovery will not fall victim to fraud and other illegal activity was clearly evident. Accordingly, within one month of the Recovery Act becoming Public Law, the Antitrust Division launched an "Economic Recovery Initiative" to assist in ensuring successful results from implementation of the Recovery Act.



The Economic Recovery Initiative represents the Antitrust Division's commitment to assist federal, state, and local agencies receiving Recovery Act funds to ensure that measures are in place to protect procurement and program funding processes from bid-rigging and other fraudulent conduct, as well as to ensure that those who seek to corrupt the competitive bidding process are prosecuted to the fullest extent of the law.

A principal aim of the Initiative is training government officials to prevent, detect, and report efforts by parties to unlawfully profit from stimulus awards before those awards are made and taxpayer money is wasted. This focus reflects the Antitrust Division's experience from investigating and prosecuting fraud that the potential risk of collusion and fraud relating to lucrative government contracts is dramatically minimized when an early and strong emphasis is placed on prevention and detection. Another cornerstone of the Initiative is promoting holistic enforcement of Recovery Act frauds – that is, ensuring that enforcement in this area not be limited to merely criminal and/or civil prosecution, but also includes potential administrative action and suspension and debarment measures.

The Division's Initiative remains a central part of the efforts of the Recovery Act Fraud Working Group of the Financial Fraud Enforcement Task Force. The Task Force's Recovery Act Fraud Working Group, which is co-chaired by the Assistant Attorney General for the Antitrust Division, is responsible for coordinating a national strategy to draw on all the resources and expertise of the Department, as well as other partner agencies, regulatory authorities, and Inspectors General throughout the Executive Branch, to ensure that taxpayer funds are safeguarded from fraud and abuse and that the Recovery Act effort is conducted in an open, competitive, and non-discriminatory manner.

6. Exemplars – Civil

A. AT&T, Inc. / T-Mobile USA, Inc.

Introduction

In March 2011, AT&T Inc. announced an agreement to purchase T-Mobile USA, Inc. from Deutsche Telekom AG (DT) for \$39 billion – a transaction that would combine the second and fourth-largest U.S. mobile wireless carriers. Mobile wireless telecommunications services are critically important, with more than 300 million mobile wireless devices in use today in the United States. The industry generates more than \$160 billion in annual U.S. revenues. Mobile wireless services include both voice and data provided to a variety of devices including, for example, feature phones, smartphones, data cards, tablets, and e-readers.



Background and Investigation

In August 2011, following an extensive investigation, the Division sued on behalf of the United States to block the transaction. Subsequently, seven states joined as plaintiff including New York, Washington, California, Illinois, Massachusetts, Ohio, and Pennsylvania -- and the Commonwealth of Puerto Rico.

The Division alleged the transaction would eliminate one of only four nationwide facilities-based mobile wireless telecommunications carriers, lessening competition across the United States for mobile wireless telecommunications services – including in 97 of the top 100 local markets. The four nationwide wireless providers account for more than 90 percent of mobile wireless connections. The Division’s investigation focused on the following harmful effects if the merger were allowed to proceed:

- As a significant number of customers tended to switch between AT&T and T-Mobile, the merger would cause a significant loss of head-to-head competition.
- Because T-Mobile was a price leader and an innovative competitor (for instance, being the first carrier to roll out 4G HSPA+ technology nationwide), the merger likely would have resulted in a loss of significant product variety and innovation.
- The reduction in the number of nationwide competitors from four to three likely would have increased the risk of coordinated interaction between carriers, particularly since T-Mobile was—and likely would continue to be—a disruptive influence on the marketplace.

- The merger would have reduced competition nationally for mobile wireless telecommunications services sold to enterprise and government customers. These customers tended to purchase services differently from individual consumers, have somewhat different needs, and rarely considered a non-nationwide or non-facilities-based provider.

Although the defendants argued that the transaction would generate substantial efficiencies, the magnitude of those efficiencies was greatly overstated and could generally be achieved by other less anticompetitive means.

Conclusion

Trial was set for February 2012. Substantial discovery ensued and included:

- Over one million documents produced by the defendants (in addition to the nearly two million produced during the investigation)
- Over 100 third parties served with subpoenas
- The response by both the Division and defendants to numerous interrogatories (i.e. formal, written questions asked by the opposing side)
- The exchange of initial witness lists, and the identification of 20 experts as potential testifiers

In the face of the Department's lawsuit, as well as concerns about the merger expressed by the Federal Communications Commission (FCC), the parties announced their abandonment of the transaction in December 2011. Had this merger been allowed to proceed, the harm to American consumers would likely have been billions of dollars a year in higher prices, as well as reduced choice and less innovation.

B. H&R Block, Inc. / 2SS Holdings, Inc. (TaxACT)

Introduction

In May 2011, the Department filed an antitrust lawsuit in the U.S. District Court for the District of Columbia seeking to block H&R Block, Inc.'s proposed acquisition of 2SS Holdings, Inc., the makers of the TaxACT digital do-it-yourself ("DDIY") tax preparation products. The Department alleged that H&R Block's acquisition of 2SS would substantially lessen competition in the market for DDIY tax preparation products by combining the second- and third-largest providers in this market.

Background and Investigation

DDIY tax preparation products allow U.S. taxpayers to file their individual tax returns without the difficulties of filling out tax forms by hand, and at a significantly lower cost than hiring a tax professional. With the help of a simple interview process performed through a computer, these products allow taxpayers to provide their personal and financial information, receive completed tax forms, and file their tax returns over the internet or by mail. DDIY tax preparation products are accessible by three different means: online through an internet browser, software installed on a personal computer and downloaded from the internet, and software installed on a personal computer from a disc. These products are used by a significant number of American taxpayers. Out of approximately 140 million Americans who filed individual tax returns in 2010, approximately 35 to 40 million of those taxpayers relied on DDIY products.



The DDIY tax preparation market is highly concentrated. As of tax season 2010, the three largest firms—Intuit (makers of TurboTax), H&R Block, and 2SS—collectively held a 90% share of this market. H&R Block’s acquisition of 2SS would have put that 90% share in the hands of two companies, potentially resulting in price increases for DDIY products of over 12%, and eliminating 2SS, which has been a particularly aggressive and innovative competitor. Over the past several years, 2SS has repeatedly forced the industry to offer taxpayers lower-priced and higher-quality DDIY products. The best example of 2SS’s leadership in the industry is the fact that it was the first company to offer consumers the ability to electronically file their federal individual tax returns for free. By allowing H&R Block to acquire 2SS, this dynamic and competitive force in the industry would have been eliminated, and American taxpayers would have lost the significant benefits of this competition.

Conclusion

The Department proceeded to trial in September 2011, and in October 2011 the court permanently blocked the acquisition. In an 86-page opinion, the court granted the Department’s motion for a permanent injunction and concluded that “anticompetitive effects are a likely result of the merger” As a result, 2SS will remain an option for American taxpayers looking to prepare their tax returns with a DDIY product, and taxpayers will continue to enjoy the benefits that 2SS offers as a competitive force in the DDIY market.

C. Non-Merger: American Express, MasterCard, and Visa: Credit Card Merchant Restraints

Introduction

In 2009, consumers used credit and charge cards issued by American Express, MasterCard, and Visa to make more than \$1.7 trillion in purchases. Merchants paid these three companies an estimated \$35 billion in acceptance costs or ‘swipe fees’. A swipe fee is paid every time a credit card is used and merchants must agree to certain rules, or restraints, in order to accept the cards for payment of purchases.



In October 2010, the Antitrust Division and seven states (Connecticut, Iowa, Maryland, Michigan, Missouri, Ohio, and Texas) filed a complaint against American Express, MasterCard, and Visa (the defendants) to prevent them from imposing on merchants certain restraints that insulate the defendants from competition in violation of the Sherman Act.

Background and Investigation

The three defendants provide network services for general purpose credit and charge cards. They operate the infrastructure necessary to authorize, settle, and clear payments made with their cards. Millions of merchants around the United States that accept these cards are consumers of network services.

According to the complaint, American Express, MasterCard and Visa maintained rules that prohibited merchants from encouraging consumers to use lower-cost payment methods when making purchases. For example, the rules prohibited merchants from offering discounts or other incentives to consumers in order to encourage them to pay with credit cards that cost the merchant less to accept. Ultimately, these rules result in consumers paying more for their purchases and increase merchants’ costs of doing business.

These restraints allow the defendants to maintain high prices for network services with confidence that no competitor will take away significant transaction volume through competition in the form of merchant discounts or benefits to customers that use lower cost payment options. The defendants’ prices for network services to merchants are therefore higher than they would be without the restraints. Because the restraints result in higher merchant costs, and merchants pass these costs on to consumers, retail prices are higher generally for consumers.

Conclusion

Shortly after filing the complaint, the Division reached a final judgment agreement with Visa and MasterCard. Defendant American Express was not a party to the settlement, and the litigation against it is continuing.

The final judgment generally prohibits Visa and MasterCard from enforcing any rule or agreement that prevents merchants from offering customers a discount for using a particular card for payment, expressing a preference for the use of a particular card, promoting a particular card, or communicating to customers the estimated costs incurred by the merchant when a customer pays with a particular card.

In July 2011, the Court agreed to the final judgment, agreeing that the Division had demonstrated that “the Proposed Final Judgment furthers the public interest by removing the anticompetitive impact of Visa’s and MasterCard’s anti-steering rules”

V. Program Offsets by Item

Item Name: IT Management Efficiencies

Budget Decision Unit(s): **Antitrust**

Strategic Goal(s) & Objective(s): **Strategic Goal II:** Prevent Crime, Protect the Rights of the American People and Enforce Federal Law.

Strategic Objective 2.6: Protect the federal fisc and defend the interests of the United States

Organizational Program: **Antitrust Division’s Enforcement Programs**

Component Ranking of Item: **1**

Program Reduction: Positions 0 Atty 0 FTE 0 Dollars -\$404

Description of Item

Efficiencies and cost savings in Information Technology areas.

Summary Justification

As part of its effort to increase IT management efficiency and comply with OMB’s direction to reform IT management activities, the Department is implementing a cost saving initiative as well as IT transformation projects. To support cost savings, the Department is developing an infrastructure to enable DOJ components to better collaborate on IT contracting; which should result in lower IT expenditures. In FY 2013 the Department anticipates realizing savings on all direct non-personnel IT spending through IT contracting collaboration. These savings will not only support greater management efficiency within components but will also support OMB’s IT Reform plan by providing resources to support major initiatives in Cybersecurity, data center consolidation, and enterprise e-mail systems. The savings will also support other Department priorities in the FY 2013 request. The offset to support these initiatives for the Antitrust Division is \$404,000.

Impact on Performance

This reduction to IT management demonstrates that the Division plans to institute substantive efficiencies without unduly taxing either the people or the mission of the Antitrust Division.

Non-Personnel Reduction Cost Summary

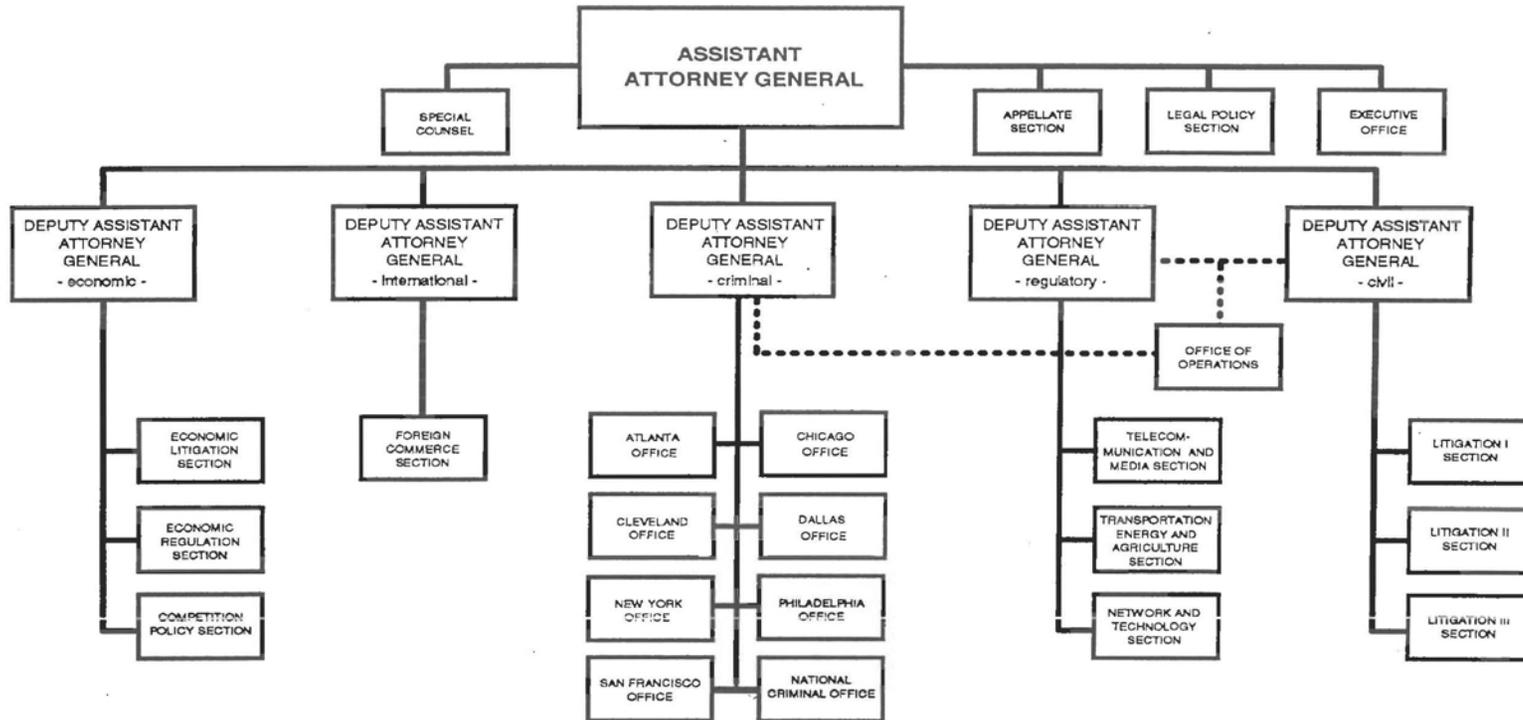
Non-Personnel Item	Unit	Quantity	FY 2013 Request (\$000)
IT Management Efficiencies	Various	Various	-\$404
Total Non-Personnel	Various	Various	-\$404



VI. Exhibits

A: Organizational Chart

ANTITRUST DIVISION



Approved by:  Date: September 18, 2001
JOHN D. ASHCROFT
Attorney General

B: Summary of Requirements

Summary of Requirements
 Antitrust Division
 Salaries and Expenses
 (Dollars in Thousands)

	FY 2013 Request		
	Perm. Pos.	FTE	Amount
2011 Enacted	880	851	\$162,844
2012 Enacted	880	851	\$159,587
2012 Rescissions	0	0	\$0
Total 2012 Enacted (with Rescissions)	880	851	159,587
Adjustments to Base			
Transfers:			
JCON and JCON S/TS	0	0	385
Office of Information Policy (OIP)	0	0	(29)
Professional Responsibility Advisory Office (PRAO)	0	0	(154)
Increases:			
Pay and Benefits	0	0	1,318
Domestic Rent and Facilities	0	0	793
Other Adjustments	0	0	3,257
Subtotal Increases	0	0	5,570
Total Adjustments to Base	0	0	5,570
Total Adjustments to Base and Technical Adjustments	0	0	5,570
2013 Current Services	880	851	165,157
Program Changes			
Offsets			
IT Savings	0	0	(404)
Subtotal Offsets	0	0	(404)
Total Program Changes	0	0	(404)
2013 Total Request	880	851	164,753
2012 - 2013 Total Change	0	0	5,166

NOTE: All FTE numbers in this table reflect authorized FTE, which is the total number of FTE available to a component. Because the FY 2013 President's Budget Appendix builds the FTE request using actual FTE rather than authorized, it may not match the FY 2012 FTE enacted and FY 2013 request reflected in this table.

Summary of Requirements
 Antitrust Division
 Salaries and Expenses
 (Dollars in Thousands)

Estimates by budget activity	2011 Appropriation Enacted			2012 Enacted			2013 Adjustments to Base and Technical Adjustments			2013 Current Services			2013 Increases			2013 Offsets			2013 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Antitrust Division	880	851	162,844	880	851	159,587	0	0	5,570	880	851	165,157	0	0	0	0	0	(404)	880	851	164,753
Total	880	851	\$162,844	880	851	\$159,587	0	0	\$5,570	880	851	\$165,157	0	0	\$0	0	0	(\$404)	880	851	\$164,753
Total Comp. FTE		851			851			0			851			0			0				851

C: Program Increases/Offsets By Decision Unit

FY 2013 Program Increases/Offsets By Decision Unit
Antitrust Division
(Dollars in Thousands)

Program Offsets	Location of Description by Decision Unit	Antitrust Division				Total Offsets
		Pos.	Agt./Atty.	FTE	Amount	
IT Savings	Antitrust Division	0	0	0	(404)	(404)
Total Offsets		0	0	0	(\$404)	(\$404)

D: Resources by DOJ Strategic Goal and Strategic Objective

**Resources by Department of Justice Strategic Goal/Objective
Antitrust Division
(Dollars in Thousands)**

Strategic Goal and Strategic Objective	2011 Appropriation Enacted		2012 Enacted		2013 Current Services		2013				2013 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Increases		Offsets		Direct, Reimb. Other FTE	Direct Amount \$000s
							Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s		
Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law												
2.6 Protect the federal fisc and defend the interests of the United States												
Antitrust Division - Criminal	340	65,138	340	63,835	340	66,063	0	0	0	(162)	340	65,901
Antitrust Division - Civil	511	97,706	511	95,752	511	99,094	0	0	0	(242)	511	98,852
Subtotal, Goal 2	851	162,844	851	159,587	851	165,157	0	0	0	(404)	851	164,753
GRAND TOTAL	851	\$162,844	851	\$159,587	851	\$165,157	0	\$0	0	(\$404)	851	\$164,753

E. Justification for Base Adjustments

Justification for Base Adjustments Antitrust Division

	<u>POS</u>	<u>FTE</u>	<u>Amount</u>
<u>Transfers</u>			
<u>JCON and JCON S/TS</u> : A transfer of \$385,000 is included in support of the Department's Justice Consolidated Office Network (JCON) and JCON S/TS programs which will be moved to the Working Capital Fund and provided as a billable service in FY2013.	0	0	385
<u>Office of Information Policy</u> : The component transfers for the Office of Information Policy (OIP) into the General Administration appropriation will centralize appropriated funding and eliminate the current reimbursable financing process. The centralization of the funding is administratively advantageous because it eliminates the paper-intensive reimbursement process.	0	0	-29
<u>Professional Responsibility Advisory Office</u> : The component transfers for the Professional Responsibility Advisory Office (PRAO) into the General Administration appropriation will centralize appropriated funding and eliminate the current reimbursable financing process. The centralization of the funding is administratively advantageous because it eliminates the paper-intensive reimbursement process.	0	0	-154
<u>Increases</u>			
<u>2013 Pay Raise</u> : This request provides for a proposed .5 percent pay raise to be effective in January of 2013. This increase only includes the general pay raise. The amount requested, \$381,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$290,000 for pay and \$91,000 for benefits).	0	0	381
<u>Retirement</u> : Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on OPM government-wide estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 1.3 percent per year. The requested increase of \$189,000 is necessary to meet our increased retirement obligations as a result of this conversion.	0	0	189
<u>FERS Regular/Law Enforcement Retirement Contribution</u> : On June 11, 2010, the Board of Actuaries of the Civil Service Retirement System recommended a new set of economic assumptions for the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). In accordance with this change, effective October 1, 2011 (FY2012), the normal cost of regular retirement under FERS will increase from the current level of 12.5% of pay to 12.7%. The FERS contribution for Law Enforcement retirement will increase from 27.0% to 27.6%. This will result in new agency contribution rates of 11.9% for regular personnel (up from the current 11.7%) and 26.3% for law enforcement personnel (up from the current 25.7%). The amount requested, \$150,000, represents the funds needed to cover this increase.	0	0	150
<u>Employees Compensation Fund</u> : The \$125,000 decrease reflects payments to the Department of Labor for injury benefits paid in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.	0	0	-125
<u>Health Insurance</u> : Effective January 2013, this component's contribution to Federal employees' health insurance premiums increased by 7.1 percent. Applied against the 2011 estimate of \$4,633,802, the additional amount required is \$329,000.	0	0	329
<u>Changes in Compensable Days</u> : The increased cost for one more compensable day in FY 2013 compared to FY 2012 is calculated by dividing the FY 2012 estimated personnel compensation \$86,049,600 and applicable benefits \$16,390,400 by 261 compensable days.	0	0	394

	<u>POS</u>	<u>FTE</u>	<u>Amount</u>
<u>General Services Administration (GSA) Rent:</u> GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$708,000 is required to meet our commitment to GSA. The costs associated with GSA rent were derived through the use of an automated system, which uses the latest inventory data, including rate increases to be effective in FY 2013 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. GSA provided data on the rate increases.	0	0	708
<u>DHS Security Charges:</u> The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$85,000 is required to meet our commitment to DHS, and cost estimates were developed by DHS.	0	0	85
<u>Base Adjustment:</u> The FY 2011 congressional appropriations conference process left the Antitrust Division at the reduced Senate mark level, while all other DOJ litigating components were restored to FY 2011 enacted levels. This adjustment restores the Division's base level funding.	0	0	3,257
Total Increase:	0	0	\$5,570
Total ATB:	0	0	\$5,570

F: Crosswalk of 2011 Availability

Crosswalk of 2011 Availability

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Decision Unit	FY 2011 Enacted Without Balance Rescissions			Balance Rescissions			Reprogrammings / Transfers			Carryover Amount	Recoveries Amount	2011 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount			Pos.	FTE	Amount
Antitrust Division	880	851	162,844	0	0	0	0	0	0	909	1,752	880	851	165,505
TOTAL	880	851	\$162,844	0	0	\$0	0	0	\$0	\$909	\$1,752	880	851	\$165,505
Total FTE		851			0			0					851	
Total Compensable FTE		851			0			0					851	

Carryover Amount: FY 2010 funds were carried over from the 15X0319 account. The Division brought forward **\$17,238** from prior years' salaries and expenses funding, of which **\$909** was made available.

The remaining carryover amount of **\$16,329** is not available for obligation in FY 2011 and is comprised of:
\$15,720 in FY 2007 HSR Fee collections in excess of the FY 2007 authorized level of \$129,000
and **\$609** in recoveries not made available in FY 2009; held for prior year real property taxes.

Recoveries: The amount shown includes \$1,752 in realized prior year recoveries which will be used for salaries and expenses of the Antitrust Division.

G: Crosswalk of 2012 Availability

Crosswalk of 2012 Availability

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Decision Unit	FY 2012 Enacted Without Balance Rescissions			Balance Rescissions			Reprogrammings / Transfers			Carryover Amount	Recoveries Amount	2012 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount			Pos.	FTE	Amount
Antitrust Division	880	851	159,587	0	0	0	0	0	0	1,544	0	880	851	161,131
TOTAL	880	851	\$159,587	0	0	\$0	0	0	\$0	\$1,544	\$0	880	851	\$161,131
Total FTE		851			0			0					851	
Total Compensable FTE		851			0			0					851	

Carryover Amount: FY 2011 funds were carried over from the 15X0319 account. The Division brought forward **\$17,873** from prior years' salaries and expenses funding, of which **\$1,544** was made available.

The remaining carryover amount of **\$16,329** is not available for obligation in FY 2012 and is comprised of:
\$15,720 in FY 2007 HSR Fee collections in excess of the FY 2007 authorized level of \$129,000
and **\$609** in recoveries not made available in FY 2009; held for prior year real property taxes.

H: Summary of Reimbursable Resources

Summary of Reimbursable Resources

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Collections by Source	2011 Enacted			2012 Planned			2013 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Environment and Natural Resource Division			190			160			200	0	0	40
Executive Office of the President - White House			47			0			0	0	0	0
Justice Management Division			5,000			7,400			0	0	0	(7,400)
Department of Commerce			5			17			0	0	0	(17)
Department of the Interior			154			0			0	0	0	0
Office of Attorney Recruitment Management			30			0			0	0	0	0
Budgetary Resources:	0	0	\$5,426	0	0	\$7,577	0	0	\$200	0	0	(\$7,377)

I: Detail of Permanent Positions by Category

Detail of Permanent Positions by Category

Antitrust Division
Salaries and Expenses

Category	2011 Enacted	2012 Enacted	2013 Request	
	Total Authorized	Total Authorized	Total Pr. Changes	Total Authorized
Social Science, Economics and Kindred (100-199)	66	66	0	66
Personnel Management (200-299)	10	11	0	11
Clerical and Office Services (300-399)	160	154	0	154
Accounting and Budget (500-599)	8	9	0	9
Attorneys (905)	390	390	0	390
Paralegals / Other Law (900-998)	200	200	0	200
Business & Industry (1100-1199)	5	5	0	5
Library (1400-1499)	3	3	0	3
Mathematics and Statistics (1500-1599)	9	9	0	9
Information Technology Mgmt (2210)	28	32	0	32
Security Specialists (080)	1	1	0	1
Total	880	880	0	880
Headquarters (Washington, D.C.)	633	633	0	633
U.S. Field	247	247	0	247
Total	880	880	0	880

J: Financial Analysis of Program Changes

Financial Analysis of Program Changes

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

	Offset IT Savings		Program Changes	
	Pos.	Amount	Pos.	Amount
Other services	0	(404)	0	(404)
Total, 2013 Program Changes Requested	0	(\$404)	0	(\$404)

K: Summary of Requirements by Grade

Summary of Requirements by Grade
 Antitrust Division
 Salaries and Expenses

	2011 Enacted w/Rescissions		2012 Enacted		2013 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Grades and Salary Ranges								
SES, \$119,554 - 179,700	32		32		32		0	
GS-15, \$123,758 - 155,500	340		340		340		0	
GS-14, \$105,211 - 136,771	56		56		56		0	
GS-13, \$89,033 - 115,742	52		52		52		0	
GS-12, \$74,872 - 97,333	45		45		45		0	
GS-11, \$62,467 - 81,204	40		40		40		0	
GS-10, \$56,857 - 73,917	3		3		3		0	
GS-9, \$51,630 - 67,114	75		75		75		0	
GS-8, \$46,745 - 60,765	28		28		28		0	
GS-7, \$42,209 - 54,875	170		170		170		0	
GS-6, \$37,983 - 49,375	7		7		7		0	
GS-5, \$34,075 - 44,293	25		25		25		0	
GS-4, \$30,456 - 39,590	6		6		6		0	
GS-2, \$24,865 - 31,292	1		1		1		0	
Total, Appropriated Positions	880		880		880		0	
Average SES Salary		\$174,387		\$174,387		\$175,259		
Average GS Salary		\$106,780		\$106,780		\$107,314		
Average GS Grade		12		12		12		

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Object Classes	2011 Actuals		FY 2012 Availability		2013 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation	569	\$71,394	596	\$70,188	596	\$71,110	0	\$922
11.3 Other than full-time permanent	191	12,193	255	12,227	255	12,430	0	203
11.5 Total, Other personnel compensation	0	951	0	323	0	323	0	0
<i>Overtime</i>	0	451	0	450	0	450	0	0
<i>Other Compensation</i>	0	0	0	0	0	0	0	0
11.8 Special personal services payments	0	328	0	222	0	222	0	0
Total	760	84,866	851	82,960	851	84,085	0	1,125
Other Object Classes:								
12.0 Personnel benefits		22,591		20,567		21,110		543
13.0 Benefits for former personnel		791		763		24		(739)
21.0 Travel and transportation of persons		1,561		1,400		1,400		0
22.0 Transportation of things		532		500		500		0
23.1 GSA rent		22,988		22,858		23,566		708
23.2 Moving/Lease Expirations/Contract Parking		174		169		169		0
23.3 Comm., util., & other misc. charges		1,585		1,700		1,700		0
24.0 Printing and reproduction		179		169		169		0
25.1 Advisory and assistance services		641		454		454		0
25.2 Other services from non-Federal sources		23,115		25,913		27,794		1,881
25.3 Other goods and services from Federal sources		1,921		1,900		2,102		202
25.4 Operation and maintenance of facilities		74		74		74		0
25.6 Medical care		219		219		219		0
25.7 Operation and maintenance of equipment		645		645		645		0
26.0 Supplies and materials		1,003		950		950		0
31.0 Equipment		1,070		950		950		0
32.0 Lease Hold Improvements		6		484		0		(484)
Total obligations		\$163,961		\$162,675		\$165,911		\$3,236
Unobligated balance, start of year		(17,238)		(17,873)		(16,329)		
Unobligated balance, end of year		17,873		16,329		16,329		
Recoveries of prior year obligations		(1,752)		(1,544)		(1,158)		
Total DIRECT requirements		162,844		159,587		164,753		