



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2016 PERFORMANCE BUDGET**

Antitrust Division
FY 2016 Congressional Budget Submission
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I. Overview

A. Introduction

The Antitrust Division is committed to its mission of promoting 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." 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 has steadily regained momentum since global economic conditions caused a downturn in 2008 and volume is projected to continue climbing in fiscal years 2015 and 2016. To administer its caseload, the Division's request includes \$164,977,000 in FY 2016, reflecting annual cost adjustments of \$2,731,000 over the FY 2015 President's Budget.

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.

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>.

- From FY 2009 through the end of FY 2014, as a result of the Division's efforts, over **\$5.3 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 fraud, 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. 35)
- **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, and rapid technological change. 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. 35) (Real Estate, Municipal Bonds and Economic Recovery) Automobile Parts (see Exemplar – pg. 39)
Civil Merger/Non-Merger DOJ Strategic Goal II Objective 2.6	American Airlines/US Airways (see Exemplar – pg. 42) Bazaarvoice, Inc./PowerReviews, Inc.(see Exemplar - pg. 43) American Express, MasterCard and Visa – Credit Card Merchant Restraints (see Exemplar - pg. 45) eBooks (see Exemplar – pg. 46)

Globalization

Corporate leaders continue to seek a global presence as an element of long-term



economic success, and more companies are transacting a significant portion of their business in countries outside of where they are located. For example, in the United States international trade (defined as exports and imports of goods and services) was \$5.2 trillion in FY 2014.¹

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.

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

¹United States Department of Commerce, Bureau of Economic Analysis, "U.S. International Trade in Goods and Services", <http://www.bea.gov/newsreleases/international/trade/2014/pdf/trad1014.pdf>, December 2014.

the breadth and magnitude of the harm that they inflict on American businesses and consumers. Of the grand juries opened through the end of FY 2014, approximately **50 percent** were associated with subjects or targets located in foreign countries. Of the approximate **\$10 billion** in criminal antitrust fines imposed by the Division between FY 1997 and the end of FY 2014, approximately **98 percent** were imposed in connection with the prosecution of international cartel activity. In addition, approximately **88 foreign defendants** from France, Germany, Italy, 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. Today, fines of \$10 million or more are commonplace, including many fines in excess of \$100 million. In FY 2014, total criminal antitrust fines obtained were just over **\$1.2 billion**. As a result of the Division's ongoing investigation into price fixing and bid rigging in the auto parts industry, Bridgestone Corporation agreed in February 2014 to pay a **\$425 million** criminal fine for its role in a conspiracy to fix the prices of rubber parts sold to U.S. car manufacturers and installed in cars sold in the United States and elsewhere. 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. “For the international cartels discovered during 1990-2007 with known sales, total U.S. affected sales were \$1.5 trillion. More importantly, the U.S. overcharges generated by these discovered cartels are projected to be approximately \$375 billion.”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 thirteen foreign governments – Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Germany, India, 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, Canada and Mexico have recently adopted or strengthened criminal sanctions for hard core cartel conduct. In addition, jurisdictions such as Australia, Brazil, Canada, Japan, New Zealand, and South Korea have made revisions to their cartel amnesty policies making them more consistent with the United States.



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.

² Connor, John M. The United States Department of Justice Antitrust Division’s Cartel Enforcement: Appraisal and Proposals. Washington, DC: American Antitrust Institute (June 2008).

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 2014, the ICN has grown to include 128 agencies from 115 jurisdictions. The 13th annual conference of the ICN was held in Marrakesh, Morocco in April 2014 where ICN members adopted new recommended practices for predatory pricing analysis and competition assessment, and approved new work product on international merger enforcement cooperation, confidentiality protections during investigations, leniency policy and digital evidence gathering.



Intellectual Property

Invention and innovation are critical in promoting economic growth, creating jobs, and maintaining our competitiveness in the global economy. Intellectual property (IP) laws create exclusive rights that provide incentives for innovation. Antitrust laws ensure that new proprietary technologies, products, and services are bought, sold, traded and licensed in a competitive environment. Together, antitrust enforcement and 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. A number of these areas are highlighted below.

Patent Assets in Antitrust Cases and Business Reviews - The Division analyzes acquisition of significant patent assets closely to ensure competition is protected and invention and innovation are advanced. The Division also investigates allegations that companies are using their intellectual property in a way that violates the antitrust laws, and challenges those activities where appropriate.

Patent Assertion Entities - In December 2012, the Department of Justice and the Federal Trade Commission (FTC) held a joint public workshop to explore the impact of Patent Assertion Entity (PAE) activities on innovation and competition. Along with many others in Congress, the White House, and our partner agencies, the Antitrust Division is working to better understand the impacts of PAEs, and to figure out where to draw the line between monetization of patent rights and activities that are harmful.

- ❖ DOJ-PTO Policy Statement - In January 2013, the Division and the U.S. Patent & Trademark Office (PTO) issued a policy statement recommending that the U.S. International Trade Commission (ITC) undertake fact-based, case-specific decisions regarding the

enforcement of a patent essential to a standard that is encumbered by a commitment to license that patent on reasonable and non-discriminatory (RAND) or fair, reasonable, and nondiscriminatory (FRAND) terms to those implementing the standard. When appropriately taking the effect of its exclusion order remedies on competitive conditions in the U.S. economy and on U.S. consumers into



account it may be inconsistent with the public interest to issue exclusion order in cases where the infringer is acting within the scope of the patent holder's F/RAND commitment and is able, and has not refused, to license the patent on F/RAND terms. In a well-publicized matter, the U.S. Trade Representative recently cited extensively to the statement when disapproving an ITC exclusion order for the first time in over two decades.

- ❖ Appellate Filings - The Division's views concerning the possibility of a government amicus brief, or the content of an amicus brief in response to an invitation from the court, are routinely sought in most intellectual property cases in the Supreme Court and some in the courts of appeals. The Division provides its views in cases that have a significant potential to affect competition and may in other ways contribute actively to the development of a brief.

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.

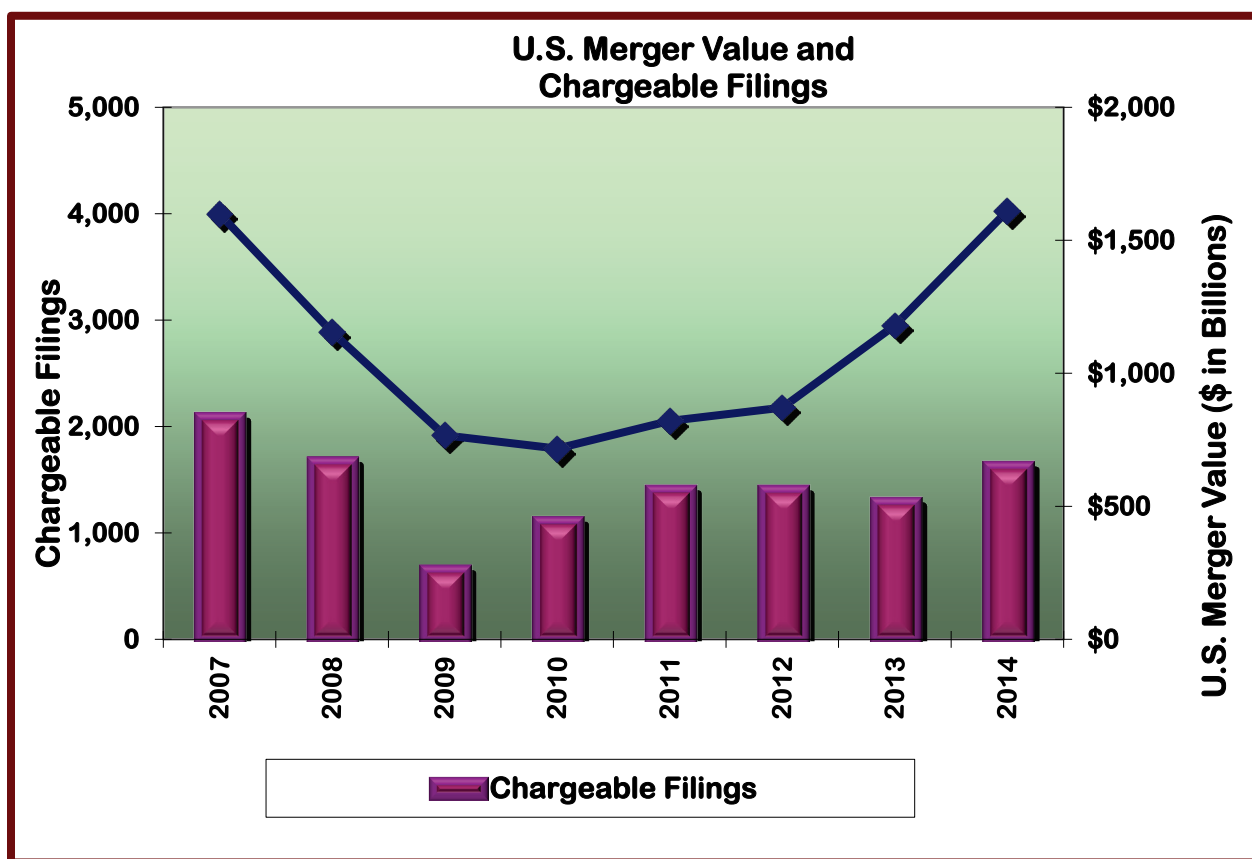


Figure 1

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 improved in calendar year 2010 and has steadily increased each year since. In calendar year 2014, worldwide merger and acquisition volume reached \$3.6 trillion, the third highest full year volume on record and U.S. volume reached its highest level on record, with an annual total of \$1.6 trillion.³

³ Dealogic Quarterly Reviews, Global M&A Review - Full Year 2014, http://www.dealogic.com/media/120242/dealogicm_areview_summary_-fullyear2014.pdf, viewed on 1/7/2014.

Relative stability around the globe as well as moderate growth from corporations has created a level of optimism among investment bankers not seen in recent years. According to the KPMG 2015 M&A (Mergers and Acquisitions) Outlook Survey Report, U.S. companies are encouraged by low interest rates, record stock prices, improving employment numbers, and an abundance of cash. In fact, 82 percent of M&A professionals surveyed are planning at least one acquisition in 2015 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 in robotics, transportation, wireless communications, Over-the-Top (OTT) services such as Voice over Internet Protocol (VoIP) and mobile collaboration, biometrics and online security continues and intensifies.

We will see even more advances in technology in coming years as the telecommunications upheaval continues to transform services traditionally offered to subscribers by network operators, such as voice calls, messaging and video content delivery. Global mobile subscriptions reached close to 7.1 billion in 2014 and are expected to grow to 9.5 billion by 2020 according to the Ericsson Mobility Report, published by Ericsson in November 2014.⁵



Clearly, being ‘connected’ while on-the-go has become essential to the American daily lifestyle, and this connectivity demand continues to result in rapidly emerging newer and faster networks, services, applications and equipment. By 2020, it’s estimated that 90 percent of people aged six years and over will have mobile phones when the number of smartphone subscriptions alone is set to reach 6.1 billion, a substantial increase over the 2.7 billion smartphone subscriptions in 2014. Mobile video traffic is set by 2020 to have increased tenfold and constitute around 55 percent of all mobile data traffic.⁶

⁴ Nachman, Sherrie. “2015 M&A Outlook Survey Report” www.kpmg.com, December 2014, page 1, retrieved January 8, 2015.
<http://www.execed.kpmg.com/content/PDF/kpmg-ma-outlook-2015-web.pdf>

⁵ Qureshi, Rima. “Ericsson Mobility Report – On the Pulse of the Networked Society” www.ericsson.com, November 2014, pgs. 4-6 retrieved January 7, 2015. <http://www.ericsson.com/res/docs/2014/ericsson-mobility-report-november-2014.pdf>

⁶ Qureshi, Rima. “Ericsson Mobility Report – On the Pulse of the Networked Society” www.ericsson.com, November 2014, pgs. 11-13 retrieved January 7, 2015. <http://www.ericsson.com/res/docs/2014/ericsson-mobility-report-november-2014.pdf>

As more consumers turn to Over-the-Top services (Internet or broadband-based services that replicate services traditionally offered to subscribers by network operators, such as messaging, voice calls and video content delivery) expanding technologies such as wireless video streaming and Voice over Internet Protocol (VoIP), stand to grow dramatically over the next several years. According to Chetan Sharma Consulting, OTT revenue grew 433% in 2014 and OTT services are having a world-wide impact, especially in Japan and Korea.⁷



The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the Antitrust Division. 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 Sharma, Chetan. "Mobile Predictions 2015", *Chetan Sharma Consulting*, January 1, 2015, retrieved January 8, 2015
<http://www.chetansharma.com/blog/2015/01/01/mobile-predictions-2015/>

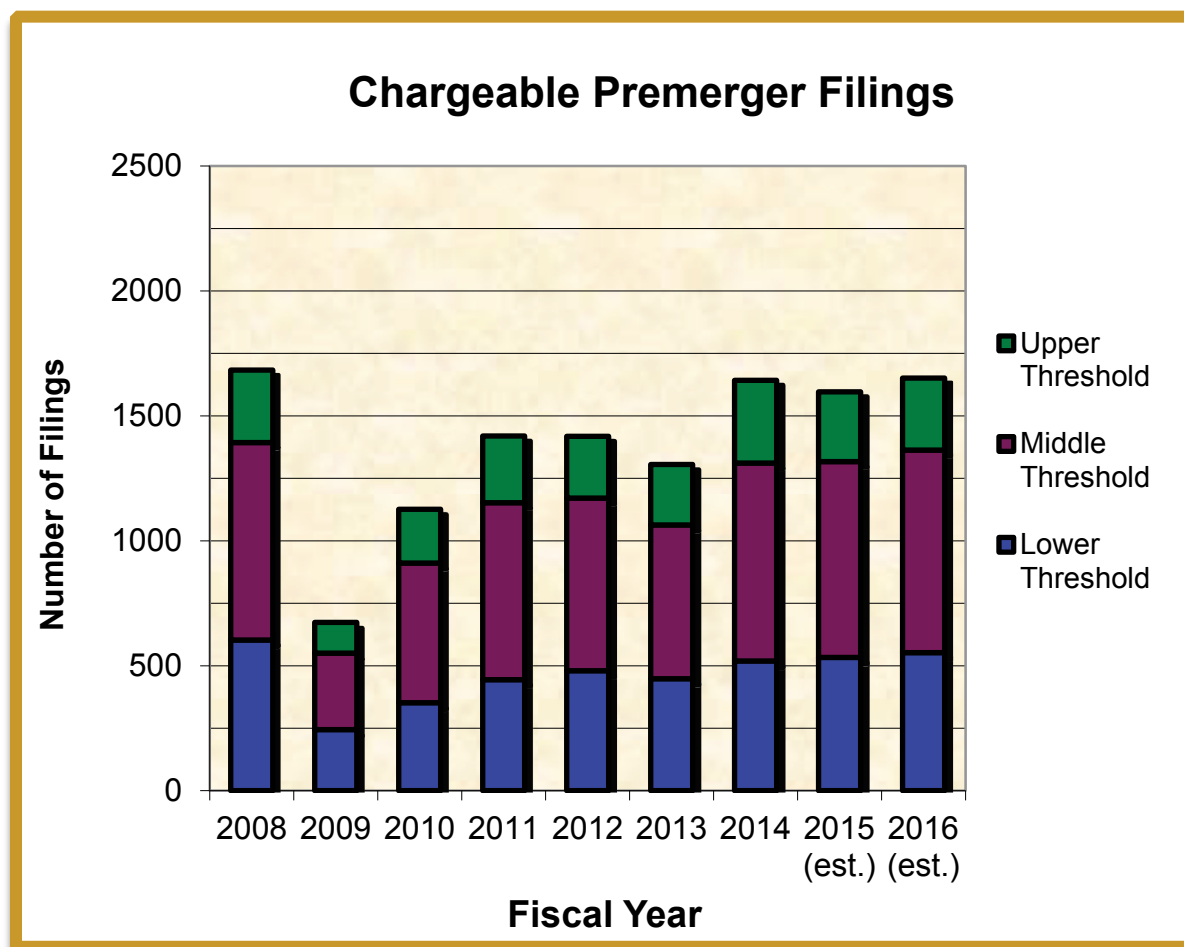
Results

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 2014, as a result of the Division's efforts, over **\$5.3 billion in criminal fines** were obtained against antitrust violators. In FY 2014 alone the Division obtained just over **\$1.2 billion** in criminal fines, the fifth time the Division has reached this level of obtained fines in its history.
- 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 approximately \$10 billion in criminal fines to the U.S. Treasury, including more than \$6 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 2014, as the result of Division enforcement efforts, 25 corporations and 35 individuals were sentenced due to antitrust violations. Prison sentences between FY 2000 and the end of FY 2014 were an **average of approximately 22 months**, close to three times the 8-month average sentence of the 1990's. Prison sentences since FY 1990 have resulted in approximately **708 years** of imprisonment in cases prosecuted by the Antitrust Division, with **246 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 2014, restitution generated by the Division was approximately **\$100 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 \$41 billion.**

Revenue Assumptions

Estimated FY 2015 - 2016 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. In the August 2014 update to its “Budget and Economic Outlook: 2014 to 2024”, the Congressional Budget Office predicts that the economy will grow at a faster rate in 2015 than in 2014 and will continue to grow at a moderate rate for the next few years.⁸



Premerger Filing Fee Thresholds Effective Feb 20, 2015	
Value of Transaction	Filing Fee
Lower: \$76.3M - <\$152.5M	\$45,000
Middle: \$152.5M - <\$762.7M	\$125,000
Upper: \$762.7M plus	\$280,000

Figure 2

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

Based upon estimates calculated by the Congressional Budget Office and the Federal Trade Commission (FTC), fee collections of \$207 million for FY 2016 are expected. HSR filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division.

⁸ “An Update to the Budget and Economic Outlook: 2014 to 2024.” *Congressional Budget Office*, August 2014, p.1, http://www.cbo.gov/sites/default/files/45653-OutlookUpdate_2014_Aug.pdf

The Budget proposes to increase the HSR fees and index them for the percentage annual change in the gross national product. The fee proposal would also create a new merger fee category for mergers valued at over \$1 billion. Under the proposal, the fee increase would take effect in 2017 and would potentially bring in fee revenues of \$340 million.

Environmental Accountability

The Antitrust Division is mindful of responsible environmental management and has implemented processes to encourage awareness throughout the Division, including:



- Adherence to environmental standards during the procurement process to ensure products meet the recommended guidelines of the Department of Energy's energy efficiency standards, the Environmental Protection Agency's designated recovered material and bio-based products specifications, and the Department of Justice's Green Purchase Plan requirements.
- The Antitrust Division's central Washington D.C. Liberty Square building meets many LEED (Leadership in Energy and Environmental Design) criteria and includes many environmentally sound features including: zoned climate control for efficiencies in heating and air conditioning, motion sensed overhead lighting to minimize wasted energy in unoccupied space, and a building wide recycling program for paper, plastic, glass, and newspaper.
- The Division encourages employees to print documents only when 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 2016 budget increase of \$2,731,000 to address annual cost adjustments and a total appropriation of \$164,977,000 in support of 830 positions.

The FY 2016 Antitrust Division budget request of \$164,977,000 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."

FY2016 Total Budget Request by Strategic Goal Strategic Goal II - Strategic Objective 2.6

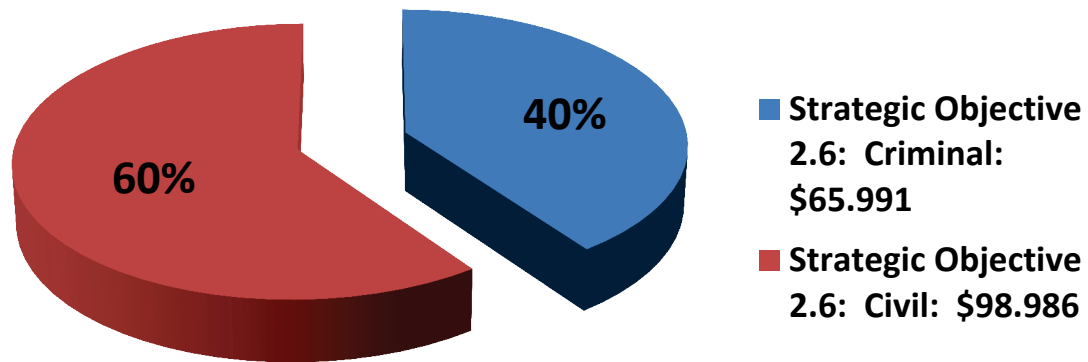


Figure 3

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 2016 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 resources.

Information Technology (IT) Expenditures

The Antitrust Division's IT budget will continue to support several broad Information Technology areas essential to carrying out its mission. 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 **reach 745 terabytes (TB) by FY 2015 and 1016 TB by FY 2016.**
- *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

No program changes.

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, [\$162,246,000] \$164,977,000 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 [\$100,000,000] \$103,500,000 in fiscal year [2015] 2016), 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 [2015] 2016; so as to result in a final fiscal year [2015] 2016 appropriation from the general fund estimated at [\$62,246,000] \$61,477,000.

Analysis of Appropriations Language

No substantive changes proposed.



IV. Program Activity Justification

A. Decision Unit: Antitrust

Antitrust Division Fiscal Year 2016 Congressional Budget Submission Decision Unit Justification (dollars in thousands)			
Decision Unit: Antitrust - TOTAL	Direct Positions	Estimate FTE	Amount
2014 Enacted	830	598	\$160,400
2015 Enacted	830	654	\$162,246
Adjustments to Base and Technical Adjustments	0	0	\$2,731
2016 Current Services	830	654	\$164,977
2016 Request	830	654	\$164,977
Total Change 2015 - 2016	0	0	\$2,731

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, Criminal Enforcement, Litigation, Operations, and Economic Analysis.



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 investigation in the auto parts industry (page 39) 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 analyzes 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 addition, the Division seeks opportunities to deploy its employees to serve the needs of the federal government for a broad variety of policy matters that involve competition policy to include:

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

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.

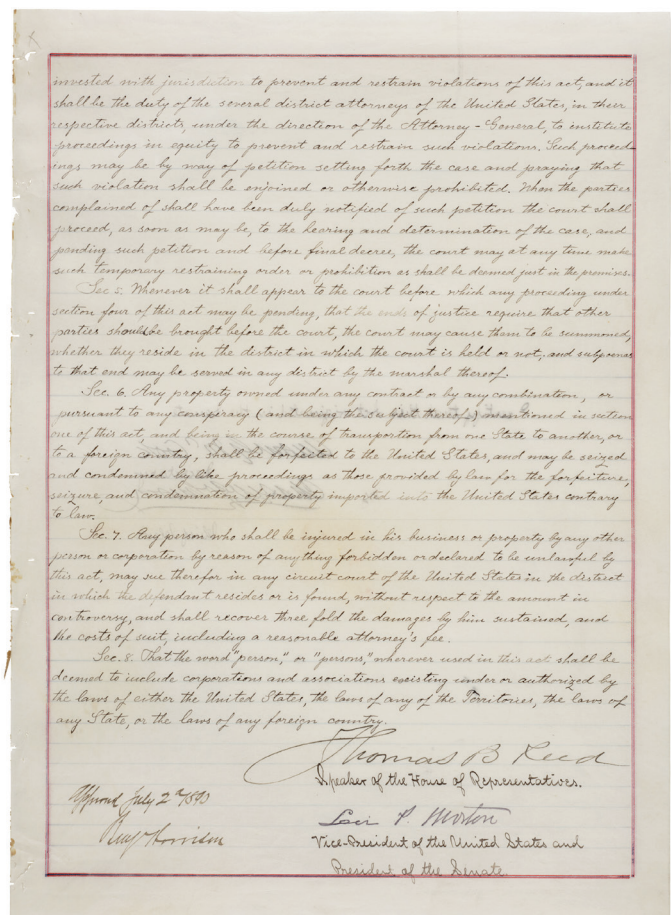
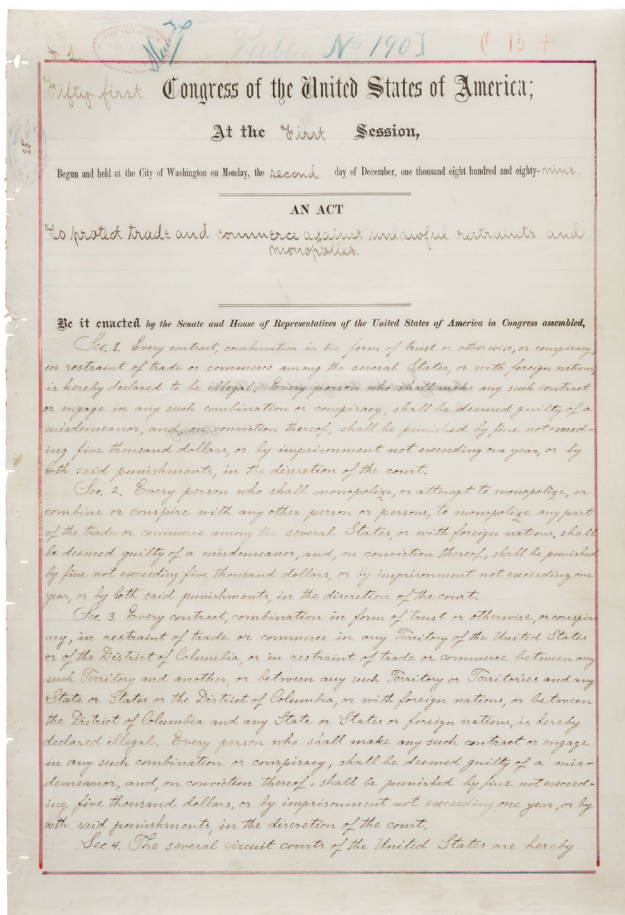


The Division pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, and working with countries that are in the process of adopting antitrust laws. One of the most notable examples of the Division's international efforts includes its participation in the International Competition Network (ICN). In April 2014, at its 13th annual conference in Marrakesh, Morocco with more

than 500 delegates and competition experts from more than 90 antitrust agencies in attendance, members adopted new recommended practices for predatory pricing analysis and competition assessment, and approved new work product on international merger enforcement cooperation, confidentiality protections during investigations, leniency policy and digital evidence gathering.

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 II: Strategic Objective 2.6: Criminal, Civil

WORKLOAD/RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2014		FY 2014		FY 2015		Current Services Adjustments and FY 2016 Program Changes		FY 2016 Request	
Workload - Number of HSR Transactions Received		1,635		1,159		1,635		0		1,635	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Antitrust		654	\$160,400	598	\$155,746	654	\$162,246	0	\$2,731	654	\$164,977
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	FY 2014		FY 2014		FY 2015		Current Services Adjustments and FY 2016 Program Changes		FY 2016 Request	
Program Activity	1. Criminal	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		262	\$64,160	239	\$62,298	262	\$64,898	0	\$1,093	262	\$65,991
Performance Measure – Criminal	Number of Active Grand Juries	75		72		75		0		75	
	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected		\$2,931		Not Projected		Not Projected		Not Projected	
Program Activity	2. Civil	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		392	\$96,240	359	\$93,448	392	\$97,348	0	\$1,638	0	\$98,986

TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	Target	Actual	Projected	Changes	Requested (Total)
		FY 2014	FY 2014	FY 2015	Current Services Adjustments and FY 2016 Program Changes	FY 2016 Request
Performance Measure – Merger	Number of Preliminary Inquiries Opened	70	61	70	0/0	70
Performance Measure – Civil Non-Merger	Number of Active Investigations	70	34	70	0/0	70
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	\$39,395	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	\$293	Not Projected	Not Projected	Not Projected
	Civil: Total Civil (Merger and Non-Merger) Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$3,378	Not Projected	Not Projected	Not Projected
Success Rates	Criminal - Percentage of Cases Favorably Resolved	90%	93%	90%	0	90%
	Civil - Percentage of Cases Favorably Resolved	80%	100%	80%	0	80%

TABLE DATA DEFINITIONS:

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

Criminal, Civil Merger and Civil Non-Merger performance measure target adjustments for FY 2014 through FY 2016 projections are based on an analysis of FY 2005 through FY 2013 actual amounts.

Criminal Performance Measure:

During the course of the year, if the Antitrust Division subpoenas individuals to, questions witnesses before, presents information to, or otherwise has contact with a grand jury for one of our investigations, it is considered an **Active Grand Jury**. In some instances, the Division may conduct an investigation during the course of the year, but not bring witnesses before or present evidence to the applicable grand jury until a subsequent year. For example, it may require a significant amount of investigatory time or coordination with foreign enforcement authorities to obtain critical evidence for presentation to a grand jury. Such instances are also considered Active Grand Juries.

The **Dollar Volume of U.S. Commerce Affected** is estimated by the Antitrust Division based upon the best available information from investigative and public sources. It serves as a proxy for the potential effect of anticompetitive behavior. Suspect conspiracies are more extensive, sometimes far more extensive, than are formally charged in an indictment, hence we believe that the Dollar Volume of U.S. Commerce Affected is an underestimate of the actual value. In estimating the Dollar Volume of Commerce Affected in a criminal investigation, staffs include the sales of all products affected by the conspiracy.

Civil Performance Measures:

When a merger filing initially is received through the HSR process, or the Antitrust Division identifies a potentially anticompetitive Non-HSR merger, we develop information from the filing, the parties or complainant, trade publications, and other public sources. Once we develop a sufficient factual and legal basis for further investigation, a **Preliminary Inquiry (PI)** may be authorized. Once authorized, we investigate further and make a determination about whether to proceed by Second Request or Civil Investigative Demand (CID), or to close the PI. A PI may take from a few weeks to several months to conduct. Thus a PI is often more than a quick assessment, which is usually done when a matter is initially received or identified, and necessarily precedes a Second Request or CID investigation. It is a critical step in the investigatory process and the **Number of PIs Opened** is indicative of the Division's baseline workload.

Number of Active Investigations is indicative of Division's baseline civil non-merger workload. Staff identifies and investigates alleged violations of Section 1 and 2 of the Sherman Act and Section 3 of the Clayton Act. Many times, civil non-merger investigations take more than a year to develop sufficient evidence to file a case or close the investigation. Because staff may be working on an investigation for more than a year, this indicator accounts for the number of investigations with hours actually reported during the fiscal year, as opposed to the number of open investigations during the fiscal year.

The **Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins** and **all Non-Merger Pleas/Cases Favorably Resolved** are estimated by the Antitrust Division based upon investigative information and credible public sources. The volume of commerce serves as a proxy for the potential effect of possibly anticompetitive behavior. This indicator has been revised to reflect only those HSR and Non-HSR merger cases in which the Division's efforts led to a reduction in anticompetitive behavior. This indicator includes the Dollar Volume of U.S. Commerce Affected in instances where we have counted an HSR, Non-HSR and bank merger wins. While we have used existing data sources in the Division to compile the **Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins**, we acknowledge some limitations in our data that result in the cumulative underestimate of the value presented here. In the HSR merger and bank merger areas, we are required to review a significant number of applications, many of which are determined to pose no competitive issues. No Preliminary Inquiry is opened in these cases, but Division resources are still employed to ensure that the transactions being proposed will do no harm to the competitive environment.

In estimating the Dollar Volume of U.S. Commerce Affected in a civil non-merger case, staffs estimate an aggregate volume of commerce for each relevant domestic market affected by the anticompetitive practice or agreement. Obviously, many anticompetitive practices or agreements are more extensive, sometimes far more extensive, than are formally charged; hence we believe that the Dollar Volume of U.S. Commerce Affected is an underestimate of the actual value.

Outcome:

It is difficult to fully or precisely capture in a single number, or even a variety of numbers, the ultimate outcome of our Enforcement Strategy. It is not always clear just how far-reaching the effects of a particular conspiracy are; it is not always possible to determine the magnitude of the price increase that relates directly to a particular conspiracy; we cannot consistently translate into numbers the competitive impact of a given conspiracy; nor can we gauge the deterrent effects of our enforcement efforts, though we and those who have written on the subject believe that such effects exist and are strong. Nonetheless, we believe that an end outcome, if not the ultimate outcome, of our work in this area is the **Savings to U.S. Consumers** that arise from our successful elimination and deterrence of criminal conspiracies, the protection of competition in the U.S. economy, and our deterrence of anticompetitive behavior.

Criminal: There are two components to our estimate of **consumer savings**: the price effect of the conspiracy and the annual volume of commerce affected by the conspiracy. Volume of commerce is estimated based on the best available information from investigative and public sources. This results in an underestimate of consumer savings, as the vast majority of conspiracies exist for well over a year. We are more limited in our ability to estimate price effect, and thus in most cases rely on the 10 percent figure in the U.S. Sentencing Guidelines Manual (November 1, 1997; Section 2R1.1; Application Note 3; page 227) as the "average gain from price-fixing" (used in determining fines for convicted organizations) for our estimate in price fixing, bid rigging, and other criminal antitrust conspiracies. Although there are significant limitations to this estimate (as with any estimate), we believe it goes a long way toward describing the outcome of our work and ties directly to our vision of an environment in which U.S. consumers receive goods and services of the highest quality at the lowest price and sound economics-based antitrust enforcement principles are applied.

Civil: Our estimates of **consumer savings** derive initially from our best measurement of volume of commerce in the relevant markets with which we were concerned. For the majority of merger matters, we calculated consumer savings by also using a formula that makes a realistic assumption about the oligopolistic interaction among rival firms and incorporates estimates of pre-merger market shares and of market demand elasticity. In a few merger wins, primarily vertical mergers and those in which the anticompetitive effects included predicted reductions in innovation or other special considerations, it would not have been appropriate to apply that formula. For those wins, we developed conservative estimates of consumer benefits drawing on the details learned in the investigation. We note that the volume of commerce component of the calculation is estimated based on the best available information from investigative and public sources, and it is annualized and confined to U.S. commerce. Given the roughness of our methodology, we believe our consumer savings figure to be a conservative estimate in that it attempts to measure direct consumer benefits. That is, we have not attempted to value the deterrent effects (where our challenge to or expression of concern about a specific proposed or actual transaction prevents future, similarly-objectionable transactions in other markets and industries) of our successful enforcement efforts. While these effects in most matters are very large, we are unable to approach measuring them. Although there clearly are significant limitations to this estimate (as with any estimate), we believe it goes a long way toward describing the outcome of our work and ties directly to our Vision of an environment in which U.S. consumers receive goods and services of the highest quality at the lowest price and sound economics-based antitrust enforcement principles are applied. The end outcome of our work in the Civil Non-Merger Enforcement Strategy is the **Savings to U.S. Consumers** that arise from our successful elimination and deterrence of anticompetitive behavior. There are two components to our estimate of consumer savings: the volume of commerce affected by the anticompetitive behavior and the price effect of the behavior. Volume of commerce is estimated based on the best available information from investigative and public sources, and it is annualized and confined to U.S. commerce. We are more limited in our ability to estimate price effect, and thus rely on a conservative one percent figure for our estimate. We believe our consumer savings figure to be a very conservative estimate.

The **Success Rate for Criminal Matters** provides an overall view of the Division's record, looking at situations where the Division determines there to be anticompetitive issues and noting our "success rate" in the outcomes for those situations. The Success Rate for Criminal Matters was calculated using the following formula: the denominator includes the sum total of the following: (1) all cases filed in the given fiscal year in which there was either a guilty plea, conviction at trial, acquittal at trial, directed verdict, dismissal of charges or other final disposition of the matter in the same fiscal year, plus (2) all cases filed in prior years in which there was either a guilty plea, conviction at trial, acquittal at trial, directed verdict, dismissal of charges or other final disposition of the matter in the given fiscal year. The numerator includes only those cases from the denominator that resulted in guilty pleas or convictions at trial, subtracting those cases that resulted in acquittals, directed verdicts, or the dismissal of charges. Cases are defined here as every individual or corporation charged by either information or indictment. Note that these statistics do not include cases that are pending, such as pending indictments of foreign nationals who remain fugitives in our international cartel prosecutions. **This measure is part of a consolidated DOJ litigating component data element and actual performance is reported as a consolidated measure in the Annual Performance Report/Annual Performance Plan.**

The **Success Rate for Civil Matters** includes:

Number of Merger "Successes"/Challenges provides an overall view of the Division's record, looking at situations where the Division determines there to be anticompetitive issues and noting our "success rate" in the outcomes for those situations. A success in this context may be any one of the positive outcomes that includes the Number of Mergers Abandoned Due to Division Actions Before Compulsory Process Initiated, Number of Mergers Abandoned Due to Division Actions After Compulsory Process Initiated Without Case Filed, Number of Mergers "Fixed First" without Case Filed, Number of Mergers Cases Filed with Consent Decree, Number of Merger Cases Filed but Resolved Prior to Conclusion of Trial, and Number of Merger Cases Litigated Successfully to Judgment with No Pending Appeals. **This measure is part of a consolidated DOJ litigating component data element and actual performance is reported as a consolidated measure in the Annual Performance Report/Annual Performance Plan.**

Matters Challenged Where the Division Expressed Concern include those in which: a complaint has been filed; the subject or target of an investigation has been informed that the Assistant Attorney General (AAG) has authorized the filing of a complaint; the subject or target of an investigation has been informed that the staff is recommending that a complaint be filed, and the subject or target changes its practices in a way that causes the matter to be closed before the AAG makes a decision whether to file a complaint; or the subject or target of an investigation has been informed that the staff has serious concerns about the practice, and the subject or target changes its practices in a way that causes the matter to be closed before the staff makes a recommendation to file a complaint. **This measure is part of a consolidated DOJ litigating component data element and actual performance is reported as a consolidated measure in the Annual Performance Report/Annual Performance Plan.**

Performance Measure Report - Historical Data

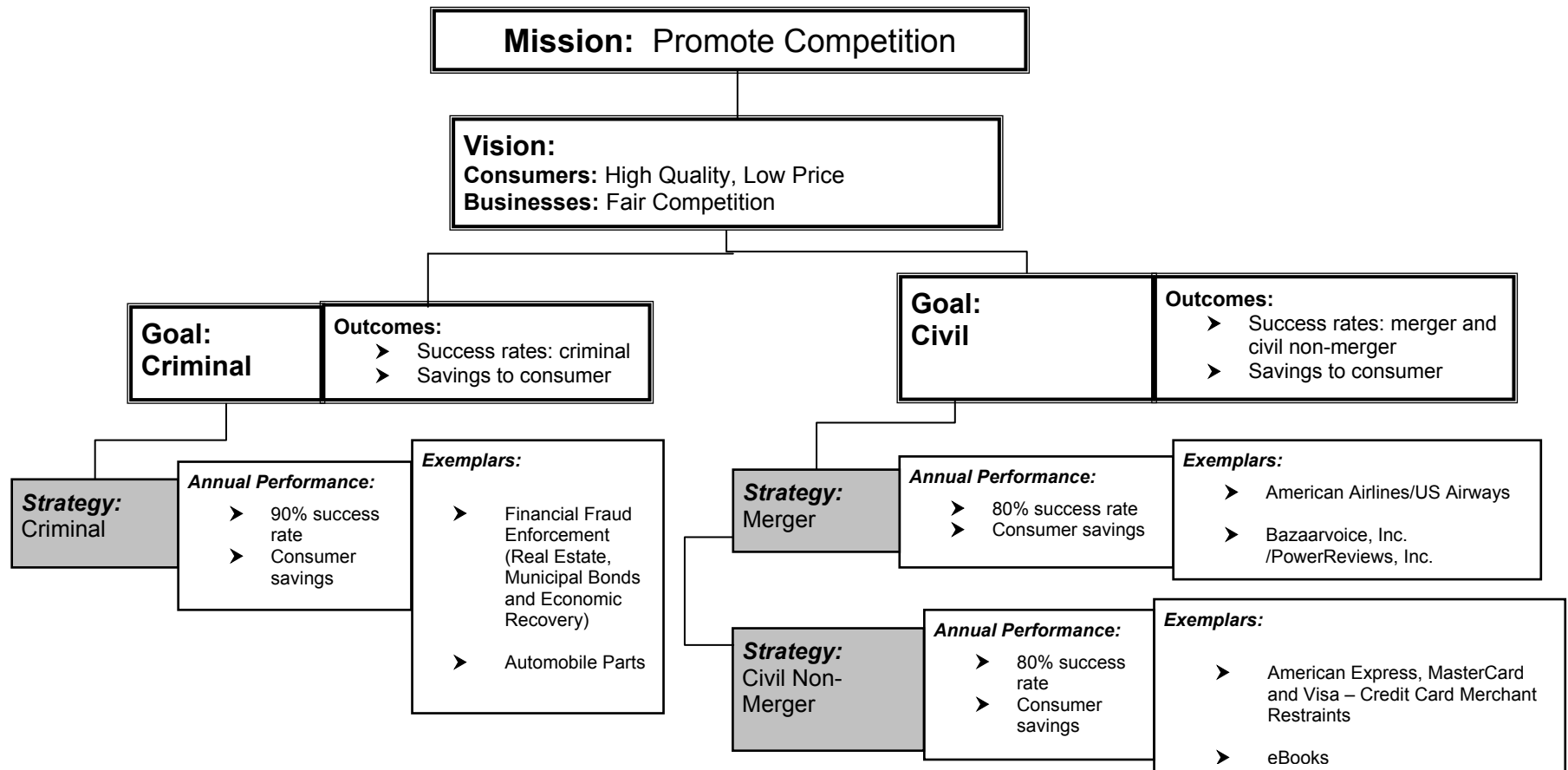
Decision Unit: Antitrust									
Performance Report and Performance Plan Targets		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014		FY 2015	FY2016
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure: Criminal	Number of Active Grand Juries	168	141	87	75	75	72	75	75
Performance Measure: Criminal	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	\$502	\$2,486.4	\$4,469	\$2,296	Not Projected	\$2,931	Not Projected	Not Projected
Performance Measure: Civil Merger	Number of Preliminary Inquiries Opened	64	90	74	64	70	61	70	70
Performance Measure: Civil Non-Merger	Number of Active Investigations	61	50	46	38	70	34	70	70
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)	\$8,114	\$129,069	\$437,410	\$46,457	Not Projected	\$39,395	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Criminal	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$50.2	\$248.6	\$447	\$230	Not Projected	\$293	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)	\$186.7	\$1431.1	\$8,965.6	\$909	Not Projected	\$3,378	Not Projected	Not Projected
Outcome Measure: Success Rate - Criminal	Criminal - Percentage of cases favorably resolved	98%	97%	93%	100%	90%	93%	90%	90%
Outcome Measure: Success Rate - Civil (Merger and Non-Merger)	Civil - Percentage of cases favorably resolved	100%	98%	100%	90%	80%	100%	80%	80%

3. Performance Measurement Framework

Antitrust Division, Department of Justice

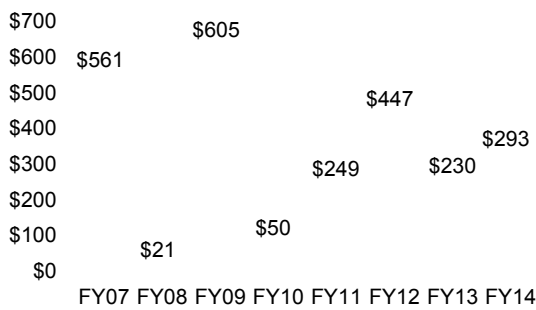
Performance Measurement Framework

FY 2016





Savings to U.S. Consumers (Criminal)
(in millions)



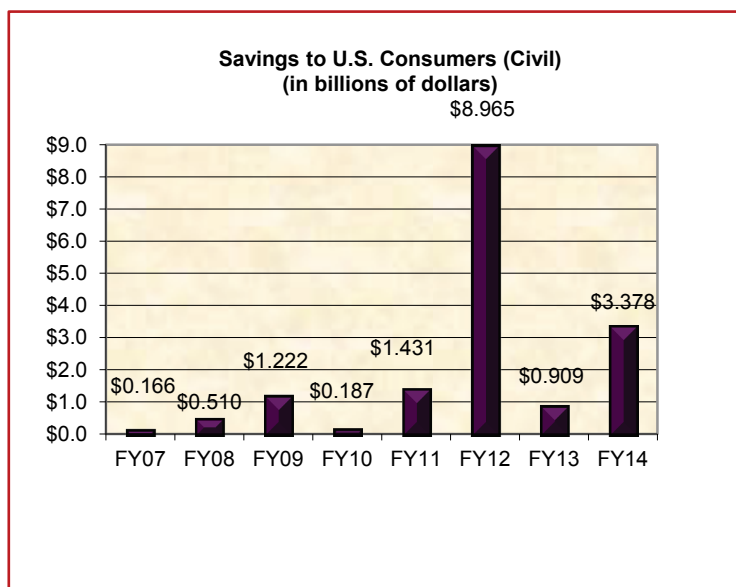
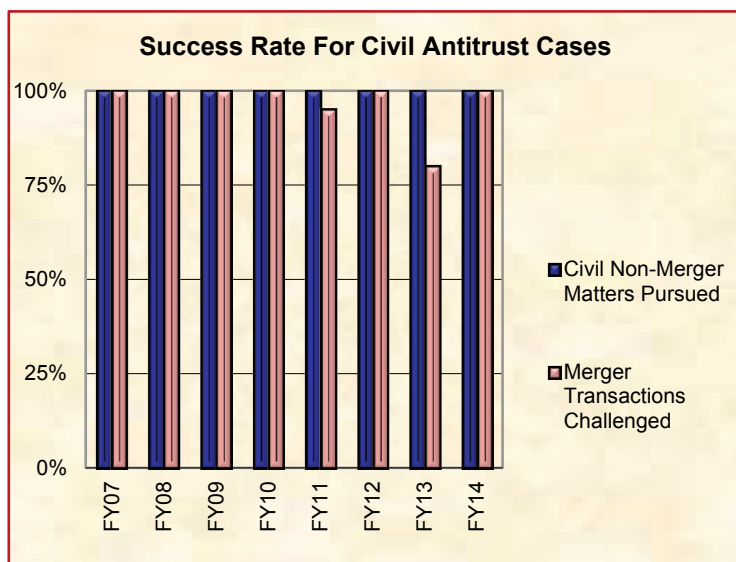
Civil Enforcement

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 2014 and expects to meet or exceed its goals for FY 2015 through FY 2016.

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 100 percent of the matters it challenged in FY 2014 and expects to meet or exceed its goals for FY 2015 and FY 2016.

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 regional offices and two sections in Washington, DC, the Antitrust Division deters private cartel behavior by investigating and challenging violations of Section 1 of the Sherman Act, including such *per se* (in and of themselves, clearly illegal) violations as price fixing, bid rigging, and horizontal customer and territorial allocations. Wide ranges of investigatory techniques are used to detect collusion and bid rigging, including joint investigations with the FBI and grand jury investigations. When businesses are found actively to be engaged in bid rigging, price fixing, and other market allocation schemes that negatively affect U.S. consumers and businesses (no matter where the illegal activity may be taking place), the Division pursues criminal investigations and prosecutions.

The global reach of modern cartels and their significant effects on U.S. consumers highlights the critical importance of international advocacy and coordination efforts. Increased cooperation and assistance from foreign governments continues to enhance the Division's ability to detect and prosecute international cartel activity. In addition, the Division's Individual and Corporate Leniency Programs, 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 regional 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 regional 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 *tyed* product, or at least agree that he will not purchase that *tyed* product from any other supplier. Whether addressing matters under Sections 1 or 2 of the Sherman Act or Section 3 of the Clayton Act, our Civil Non-Merger enforcement activities rely upon civil compulsory process to investigate the alleged violation.

c. Priority Goals

The Antitrust Division contributes to the FY 2014-2015 Priority Goal, "Reduce financial and healthcare fraud." In order to efficiently and effectively drive those investigations to resolution, by September 30, 2015, the Department of Justice will reduce by 3 percent, the number of financial and healthcare fraud investigations pending longer than 2 years.



5. Exemplars - 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 conspiracies with competitors to fix prices, rig bids, or allocate customers, territories, markets, or sales or production volumes, is a critical component of the Department's overall battle against financial fraud. Indeed, in FY 2014, the Division filed 45 criminal cases and obtained over \$1.2 billion in criminal fines. In these cases, 18 corporations and 44 individuals were charged, and courts imposed 21 jail terms totaling 16,534 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 2015, as a result of the Division's efforts, 92 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. Additionally, two individuals have been convicted after trial and another 26 defendants have been indicted and await trial. 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 are the Financial Fraud Enforcement Task Force's prosecutions involving manipulation of benchmark interest rates which undermined financial markets worldwide, directly affecting the rates referenced by financial products held by and on behalf of companies and investors around the world.

LIBOR (London Interbank Offered Rate) -- One of these benchmark interest rates, LIBOR, serves as the primary benchmark for short-term interest rates globally and is used as a reference rate for many interest rate contracts, mortgages, credit cards, student loans and other consumer lending products. The Antitrust Division's investigation of LIBOR manipulation, pursued jointly with the Criminal Division, has resulted in deferred prosecution agreements with three banks (the Royal Bank of Scotland, Rabobank and Lloyds Banking Group), charges filed against RBS Securities Japan, indictments or informations filed against six former traders, two of whom have pleaded guilty, and criminal complaints filed against three former brokers and two former traders, all for their roles in manipulating LIBOR and related benchmark interest rates.



The Division has obtained **\$561 million in criminal fines and penalties** in this ongoing investigation, and the total of global criminal and regulatory fines, penalties and disgorgement obtained by authorities is **over \$3.7 billion**.

The broader investigation relating to LIBOR and other benchmark rates has benefited from a wide-ranging cooperative effort among various enforcement agencies both in the United States and abroad. The FBI, SEC, the Commodity Futures Trading Commission, the U.K. Financial Conduct Authority and Serious Fraud Office, the Japanese Ministry of Justice, the Japan Financial Services Agency, the Swiss Financial Market Supervisory Authority, the Dutch Public Prosecution Service, and the Dutch Central Bank have played a major role in the LIBOR investigation.

Municipal Bonds -- Another key effort are the investigations by the Division and other federal agencies of 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 2015, the Division's ongoing investigation has resulted in criminal charges against 20 former executives of various financial services companies and one corporation. Seventeen of the 20 executives charged have pleaded guilty or were convicted at trial.

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.

Foreign Exchange Rates -- In 2014, the Division continued to pursue anticompetitive conduct in the financial services sector. We are playing a leading role in an investigation into the global manipulation of foreign exchange rates. This investigation is being pursued jointly with the Criminal Division and the conduct has also been scrutinized by a variety of U.S. and foreign regulators and prosecutors. Civil penalties have been imposed by enforcement authorities such as the Office of the Comptroller of the Currency who fined Bank of America, Citigroup, and JP Morgan Chase **a total of \$950 million** in November 2014. In addition, the Commodity Futures Trading Commission and the

United Kingdom's Financial Conduct Authority imposed penalties totaling over **\$1.4 billion and \$1.7 billion**, respectively, on five banks including Citibank, HSBC, JPMorgan Chase, Royal Bank of Scotland and UBS. The investigation is ongoing, and as Attorney General Holder said in November 2014, the Department is anticipating reaching the beginning stages of resolution relatively soon.

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, Procurement, and Grant Fraud Working Group of the Financial Fraud Enforcement Task Force. This 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.

B. Automobile Parts Investigation

Introduction

In an investigation spanning three continents and involving the Federal Bureau of Investigation (FBI), the European Union, Canada's Competition Bureau, the Japanese Fair Trade Commission, and the Korean Fair Trade Commission, the Antitrust Division is investigating the alleged illegal business practices of major automobile parts suppliers.

Initially, the investigation centered primarily on wire harnesses used in auto bodies and related products but later expanded into numerous other automobile parts. This investigation and the resulting penalties impact American automobile manufacturing companies and many foreign producers.

The automobile parts investigation is the **largest criminal investigation the Antitrust Division has ever pursued**, both in terms of its scope and the potential volume of commerce affected by the alleged illegal conduct. The ongoing cartel investigation of price-fixing and bid-rigging in the automobile parts industry has yielded **charges against 32 companies and 49 individuals** and **over \$2.4 billion in criminal fines** in the investigation thus far. More than a dozen of the foreign national executives charged have submitted to U.S. jurisdictions and agreed to serve prison sentences in the United States – two of whom agreed to serve two years in prison—the **longest prison terms** imposed on foreign nationals voluntarily submitting to U.S. jurisdiction for an antitrust violation.



Background and Investigation

Though the Division's investigation initially examined just "wire harnesses" that are the distribution system of cables and connectors that carry electronic information through the car, the investigation expanded to include alternators, starters, air flow meters, valve timing control devices, fuel injection components, ignition coils, electronic throttle bodies, motor generators, instrument panel clusters, electronic control units, heater control panels, various sensors, seatbelts, airbags, hoses, and steering wheels, among other parts.

The Antitrust Division is investigating whether the auto parts companies that provide component parts to vehicle manufacturers such as Chrysler, Ford, General Motors, Honda and Toyota participated in illegal anti-competitive cartel conduct, with some suspected activity dating back to 2000. Specific charges to date include market allocation, price-fixing and bid-rigging conspiracies.

In some cases, conspirators that have plead guilty to-date carried out the conspiracies by agreeing during meetings and conversations to allocate the supply of the automobile products on a model-by-model basis and to coordinate price adjustments requested by automobile manufacturers in the United States and elsewhere. They sold the auto parts to manufacturers at non-competitive, rigged and fixed prices and monitored the prices to make sure those involved in the conspiracies adhered to the agreed upon bid-rigging and price-fixing schemes.

Results

Individual corporate fines in excess of \$50 million and the associated jail sentences for corporate executives in the auto parts investigation since the beginning of FY 2011 include:

Yazaki Corporation	<ul style="list-style-type: none"> • \$470 million—the second largest criminal fine ever for an antitrust violation • Wire harnesses and related products, instrument panel clusters, fuel senders • 6 executives ranging from 14 months to 2 years
Bridgestone Corporation	<ul style="list-style-type: none"> • \$425 million • Anti-vibration rubber parts
Furukawa Electric Company Ltd.	<ul style="list-style-type: none"> • \$200 million • Wire harnesses and related products • 3 executives ranging from one year and one day to 18 months
Hitachi Automotive Systems, Ltd.	<ul style="list-style-type: none"> • \$195 million • Starter motors, alternators, and other products
Mitsubishi Electric Corporation	<ul style="list-style-type: none"> • \$190 million • Starter motors, alternators, ignition coils
Mitsuba Corporation	<ul style="list-style-type: none"> • \$135 million • Windshield wiper systems and other products • 1 executive, 13 months
Jtekt Corporation	<ul style="list-style-type: none"> • \$103 million • Bearings, steering assemblies
DENSO Corporation	<ul style="list-style-type: none"> • \$78 million • Electronic control units and heater control panels • 4 executives ranging from one year and one day to 16 months

Takata Corporation	<ul style="list-style-type: none"> • \$71.3 million • Seatbelts • 5 executives ranging from 14 months to 19 months
NGK Spark Plug Co., Ltd.	<ul style="list-style-type: none"> • \$52 million • Spark plugs, oxygen and air fuel ratio sensors

Conclusion

The criminal activity associated with the automobile parts investigation had a significant impact on automotive manufacturers in the United States, some of which had been occurring for at least a decade. The conduct also potentially affected commerce on a global scale in other markets where automobiles are manufactured and/or sold.

Criminal antitrust enforcement remains a top priority of the Antitrust Division. The automobile parts investigation continues and additional fines and jail sentences are expected to follow. The importance of rooting out this type of illegal criminal conduct cannot be overstated as it negatively impacts the United States economy and results in higher prices for consumers and businesses.

6. Exemplars – Civil

A. American Airlines / US Airways

Introduction

As airlines increase fares and raise fees, the Antitrust Division continues to pay very close attention to potential antitrust violations in the airline industry in order to protect American consumers. In 2012, business and leisure airline travelers spent more than \$70 billion on airfare for travel throughout the United States – a sizable portion of the U.S. economy.

Early in 2013 US Airways Group, Inc. and American Airlines' parent corporation, AMR Corp., proposed an \$11 billion merger of the two airlines, resulting in the world's largest airline. In August 2013 the Antitrust Division (joined by several plaintiff states), filed an antitrust lawsuit to challenge the proposed merger, stating that it would substantially lessen competition for commercial air travel in local markets throughout the United States and result in passengers paying higher airfares and receiving less service.



Background

As alleged in the Complaint, this merger would combine two of the four major “legacy” carriers, leaving “New American,” Delta, and United as the remaining major national network carriers. The merger would make it easier for these remaining legacy airlines to cooperate – rather than compete – on price and service, reduce head-to-head competition between U.S. Airways and American on numerous non-stop and connecting routes, and entrench the merged airline as the dominant carrier at Washington Reagan National Airport, where it would control 69 percent of the take-off and landing slots.

In contrast to the legacy carriers, other carriers (commonly referred to as “LCCs”) such as Southwest Airlines (“Southwest”), JetBlue Airways (“JetBlue”), and Virgin America, have less extensive networks and tend to focus more heavily on lower fares and other value propositions. For example, Southwest carries the most domestic passengers of any airline, however, its route network is limited compared to the four current legacy carriers, especially to significant business-oriented markets. Although the LCCs serve fewer destinations than the legacy airlines, they generally offer important competition on the routes that they do serve.

Conclusion

In November 2013, to settle the merger challenge, the Division announced that it would require US Airways and American Airlines to divest slots and gates at seven key airports in order to enhance system-wide competition. The divested slots and gates would pass to low cost carrier airlines such as JetBlue and Southwest, resulting in more choices and more competitive airfares for consumers. The merged airline, known as American Airlines Group, Inc., became official in December 2013.

The divestitures required by the decree were made during the first half of calendar year 2014, increasing the presence of low cost carrier airlines at Boston Logan International, Chicago O'Hare International, Dallas Love Field, Los Angeles International, Miami International, New York LaGuardia International and Ronald Reagan Washington National airports. The low cost carriers that acquired the divested assets have already increased service at these airports and are expected to begin additional service in the near future.

The access to key airports made possible by the divestitures is creating network opportunities for the purchasing carriers that would otherwise have been out of reach for the foreseeable future. Those opportunities will provide increased incentives for those carriers to invest in new capacity and expand into additional markets. Moreover, the settlement not only prevents the increased dominance of US Airways at Reagan National, it provides for expanded competition at this airport.

By challenging this merger and requiring divestitures, the ability of low cost carrier airlines to compete has been greatly enhanced, and is expected to ultimately save consumers millions of dollars in lower airfares and ancillary fees.

B. Bazaarvoice, Inc. / PowerReviews, Inc.

Introduction

American consumers continue to rely more and more on technological tools when making purchasing decisions. To ensure that appropriate competition exists in the online marketplace, the Antitrust Division makes a concerted effort to monitor merger activity among high tech companies, investigating those mergers which appear to violate antitrust law.

In June 2012 Bazaarvoice, Inc., the dominant commercial supplier of product ratings and reviews platforms in the U.S., acquired PowerReviews, Inc., its closest rival. Consumer-generated product ratings and reviews are a ubiquitous part of the online shopping experience and are displayed on retailers' and manufacturers' websites. This feature allows consumers to read feedback from authentic product owners before making a purchasing decision. This content is also a valuable asset for retailers and manufacturers because it can increase sales, decrease product returns and provide valuable data about consumer preferences and behaviors.

Background

Bazaarvoice's acquisition of PowerReviews was not required to be reported under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which requires companies to notify and provide information to the Division and Federal Trade Commission before consummating certain acquisitions.

The Division began its investigation shortly after the transaction closed and in January 2013 filed a civil antitrust lawsuit in the Northern District of California stating that the \$168.2 million transaction substantially lessened competition in the market for product ratings and reviews platforms in the U.S., resulting in higher prices and diminished innovation. The Division's lawsuit sought to restore the competition that was extinguished by the transaction.

The complaint alleged that before the merger transaction took place, PowerReviews was an aggressive price competitor and Bazaarvoice routinely responded to competitive pressure from PowerReviews. As a result of the competition between Bazaarvoice and PowerReviews, many retailers and manufacturers received substantial price discounts. As the complaint described, Bazaarvoice sought to stem competition through the acquisition of PowerReviews.

Conclusion

The three week trial began in September 2013. In January 2014, the U.S. District Court for the Northern District of California sided with the Division in finding that Bazaarvoice violated Section 7 of the Clayton Act by acquiring PowerReviews. On April 24, 2014, the Division and Bazaarvoice filed with the court a proposed Final Judgment that would remedy Bazaarvoice's illegal acquisition of PowerReviews. The proposed remedy required Bazaarvoice to sell all of the PowerReviews assets to a divestiture buyer and contained other provisions to fully restore competition in the provision of online product ratings and reviews. Bazaarvoice completed the divestiture and on December 2, 2014, the Court entered the Final Judgment, terminating the contested phase of this litigation.

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.



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

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.

Settlement with Visa and MasterCard

At the time of the complaint, the Division filed a settlement agreement with Visa and MasterCard. 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 accepted 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”

Continued Litigation with American Express

Defendant American Express chose not to be a party to the settlement, and the litigation against it has continued. Discovery and other pretrial process took place over 2010-2014.

In May 2014, the court rejected defendant’s request to throw out the case on legal grounds. During July-August 2014, the court conducted a six-week trial; the court’s decision is pending.

D. Non Merger: eBooks

Introduction

On April 11, 2012, the Department filed a civil antitrust lawsuit in the U.S. District Court for the Southern District of New York against Apple and five of the six major U.S. trade book publishers – Hachette Book Group (USA), HarperCollins Publishers L.L.C., Holtzbrinck Publishers LLC, which does business as Macmillan, Penguin Group (USA) Inc. and Simon & Schuster Inc. – for conspiring to end e-book retailers' freedom to compete on price by taking control of pricing from e-book retailers and substantially increasing the prices that consumers paid for e-books.

At the same time that it filed the lawsuit, the Department reached settlements with three of the publishers—Hachette, HarperCollins and Simon & Schuster. The two remaining publishers, Penguin and Macmillan, settled with the Department during discovery. Apple proceeded to trial, where the Department was joined by 33 states prosecuting parallel state claims.

Background

In close collaboration with state attorneys general and the European Commission’s Directorate General for Competition, the Department uncovered compelling evidence that the publishers’ fear of the digital world led them to conspire with each other to raise retail prices and slow consumers’ migration to e-books. Apple assisted and orchestrated the publishers’ efforts, in exchange for a guaranteed 30 percent margin and protection from having to compete against Amazon on price. As a result, on the day that Apple began selling its iPad with iBookstore capability, the prices that consumers paid for the publisher defendants’ e-books shot up at all outlets—by 30-



50 percent for the most popular titles.

Conclusion

In a 160-page opinion issued following a June 2013 trial, the court found that “the Publisher Defendants conspired with each other to eliminate retail price competition in order to raise e-book prices, and that Apple played a central role in facilitating and executing that conspiracy” in violation of Section 1 of the Sherman Act. The court noted that the Department made that showing “not just by a preponderance of evidence” but rather “through compelling direct and circumstantial evidence.”

The publisher settlements ensured that e-book retailers again would be able to compete on price, with consumers enjoying markedly lower e-book prices as a result. The injunction ultimately ordered against Apple, assuming it is upheld on appeal, will serve to enhance and safeguard that relief. In addition, the states secured well over \$150 million in consumer damages from the publishers and will secure \$400 million more from Apple if the liability verdict is upheld (substantially less if the case is remanded and nothing if the verdict is reversed).

V. Exhibits