



# ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION  
FY 2020 PERFORMANCE BUDGET**

# **Antitrust Division**

## **FY 2020 Congressional Budget Submission**

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# I. Overview

## A. Introduction

The mission of the Antitrust Division is to promote economic competition through enforcing and providing guidance on antitrust laws and principles. Corporate consolidation through mergers and acquisitions is playing an increasingly significant role in the American economy, and it is crucial that the Antitrust Division have funding sufficient to enable it to review—and challenge when necessary—mergers that threaten to harm competition. For example, the Division’s review of T-Mobile’s acquisition of Sprint has already consumed significant resources this year. Such merger investigations and challenges are time consuming and costly, which is to be expected because the issues are often complex and the stakes are high for American consumers and the economy. In 2018, the Division completed extensive reviews of Bayer/Monsanto, Disney/Fox, Sinclair/Tribune, CVS/Aetna, and Cigna/ESI. Moreover, it expects that more transactions will be announced over the course of the year. Some industry observers predict the rate of major mergers will continue to increase significantly well into 2019 and 2020.

The Division also maintains an active criminal program that prosecutes cartel activity in order to punish such conduct when it occurs and deter cartel conduct in the future. Criminal cartels distort the free market system and hurt American consumers who often pay higher prices as a result. The Division is currently in the midst of numerous cartel investigations, including an investigation into criminal price fixing of generic drugs, conduct that has increased the price of prescription drugs and ripped off everyday consumers who take those drugs. As in our civil program, our criminal prosecutors routinely face off against sophisticated counsel with nearly unlimited defense budgets—it is imperative they have the resources they need to do so effectively.

The Division consistently generates more funding for U.S. taxpayers than it expends. On a budget of \$162.2 million in FY 2015, the Division took in \$115.7 million in civil filing fees and its criminal program obtained \$3.6 billion in fines for corporate wrongdoing. In FY 2016, the Division was budgeted \$164.9 million, but took in \$114.2 million in civil filing fees and obtained \$399.0 million in criminal fines. Similarly in FY 2017, the Division was budgeted \$164.9 million, but took in \$125.4 million in civil filing fees and obtained \$66.9 million in criminal fines. On a budget of \$164.9 million in FY 2018, the Division obtained \$171.6 million in criminal fines.

To administer its caseload, the Division’s request includes \$166,755,000 in FY 2020, reflecting an increase of \$1,778,000 over the FY 2019 Continuing Resolution level. At this level of funding, the Division will successfully meet its mission while absorbing various cost increases.

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>.

**B. Issues, Outcomes, and Strategies**

Fundamental changes continue in the business marketplace, including the expanding globalization of markets, increasing economic consolidation across industries, and rapid technological change. These factors, added to the existing number and intricacy of our investigations, significantly affect 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 demonstrate.

<b>Enforcement Program</b>	<b>Major Matter Exemplars</b>
<p align="center"><b>Civil Merger/Non-Merger</b></p>	<p><b><u>Merger (pg. 35)</u></b>            CVS/Aetna (Exemplar – pg. 35)             Bayer/Monsanto (Exemplar – pg. 35)             AT&amp;T/Time Warner Inc. (Exemplar – pg. 36)             Parker-Hannifin (Exemplar – pg. 36)             General Electric/Baker Hughes (Exemplar – pg. 37)             Dow Chemical/E.I. DuPont De Nemours &amp; Co. (Exemplar – pg. 37)</p> <p><b><u>Non-Merger (pg. 38)</u></b>            Television Broadcasters Information Sharing Settlement (Exemplar – pg. 38)             Atrium Health Anticompetitive Steering Settlement (Exemplar – pg. 38)             Knorr and Wabtec No Poach Settlement (Exemplar – pg. 39)             HSR Act Enforcement (Exemplar – pg. 39)</p>
<p align="center"><b>Criminal</b></p>	<p>Korea Fuel Supplies (Exemplar – pg. 40)             Generic Pharmaceuticals (Exemplar – pg. 41)             Real Estate Foreclosure Auction Fraud (Exemplar – pg. 41)             Financial Fraud (Exemplar – pg. 42)             Electrolytic Capacitors (Exemplar – pg. 43)             Packaged Seafood (Exemplar – pg. 43)</p>

## Economic Consolidation

Ongoing economic concentration across industries and geographic regions increases the risks of anticompetitive effects from transactions and as a result increases the Division's merger enforcement 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.

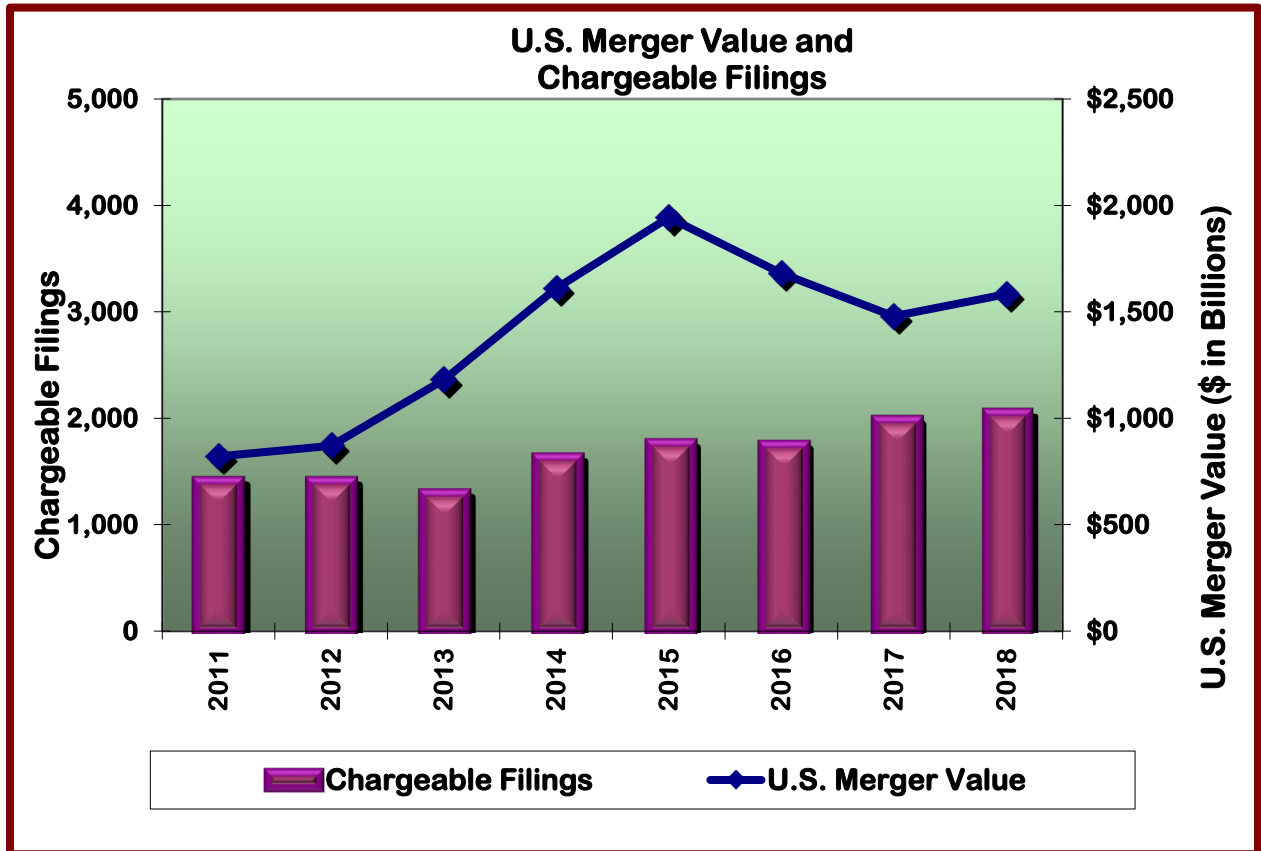


Figure 1

Merger activity has been steadily increasing since the recession and will likely continue to increase as the economy grows. As shown in Figure 1, the overall economic downturn that began in calendar year 2008 affected merger deals in 2011 and the year finished with \$821 billion in U.S. merger value. However, merger and acquisition activity has improved since calendar year 2011. In calendar year 2018, worldwide merger and acquisition volume reached \$3.9 trillion and U.S. volume reached an annual total of \$1.6 trillion.<sup>1</sup>

<sup>1</sup> "Investment Banking Scorecard." *The Wall Street Journal*. Viewed on January 3, 2019 at <http://graphics.wsj.com/investment-banking-scorecard/>.

As consolidation and merger activity in the economy continue to increase, the Division's workload increases in even greater proportion. The Division is responsible for reviewing each transaction, so as the numbers of deals increase its workload necessarily increases. The increasing pace of deals, however, also increases the complexity and potential for harm from the transactions the Division reviews, magnifying the impact of increased merger activity on the Division's workload.

## **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 \$5.6 trillion in FY 2018.<sup>2</sup>

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.

Increased globalization also affects our criminal enforcement program. The Division places a particular emphasis on combating international cartels that target U.S. markets because of the breadth and magnitude of the harm that they inflict on American businesses and consumers. Of the grand juries opened through the end of FY 2018, approximately **49 percent** were associated with subjects or targets located in foreign countries. Of the approximate **\$14.5 billion** in criminal antitrust fines and penalties imposed by the Division between FY 1997 and the end of FY 2018, approximately **98 percent** were in connection with the prosecution of international cartel activity. In addition, approximately **93 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 2018, total criminal antitrust fines obtained were over \$171 million.

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 effects abroad,

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<sup>2</sup> "U.S. International Trade in Goods and Services, November 2018." *United States Department of Commerce, Bureau of Economic Analysis*, February 2019. Viewed on February 7, 2019 at [https://www.bea.gov/system/files/2019-02/trad1118\\_4.pdf](https://www.bea.gov/system/files/2019-02/trad1118_4.pdf).

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 actively works to encourage sound global enforcement of competition laws, pursuing this goal by strengthening bilateral ties with antitrust agencies worldwide, participating in multilateral organizations, and working with countries that are in the process of adopting antitrust laws. Efforts to promote best practices among antitrust enforcement agencies around the world enhance global and U.S. antitrust enforcement and reduce the burden on U.S. companies that operate in international markets.

To date, the Division has entered into antitrust cooperation agreements with fifteen foreign governments – Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Germany, India, Israel, Japan, Korea, Mexico, Peru, and Russia. In addition, we are active participants in international organizations such as the International Competition Network (ICN), which the Division co-founded, and the Competition Committee of the Organization for Economic Development (OECD). Our engagement prioritizes international cooperation on cartel and merger enforcement, and advocacy regarding procedural fairness and, where appropriate, antitrust policy convergence. In addition to promoting sound enforcement generally, these efforts help create a more stable legal environment for U.S. companies operating abroad.

The Division's cartel enforcement program reflects the success of the Division's global engagement. Worldwide consensus continues to grow that international cartel activity is pervasive and is victimizing consumers everywhere. For fiscal years 2000 to 2016, the affected annual sales in the U.S. of cartels prosecuted by the Division totaled \$37.7 billion, and many of these cartels involved at least some foreign activity or actors. The Antitrust Division's commitment to detect and prosecute international cartel activity is shared with foreign governments throughout the world, many of whom assist with the Division's investigations by providing mutual legal assistance, and also pursue cartel activity in their own countries with assistance from the Division.

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, as does 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 criminalized cartel conduct, 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 revised their cartel leniency policies making them more consistent with the United States.

The Division also regularly cooperates with its international counterparts in its civil conduct and merger enforcement activities. Engagement with international counterparts helps give cooperating agencies a fuller picture of the merger or conduct under investigation and its potential competitive effects. Working closely with other jurisdictions also helps avoid the prospect of multiple jurisdictions' propounding conflicting theories of harm or adopting inconsistent remedies, and makes sure that parties can actually comply with the remedies imposed by multiple jurisdictions. In any given year, the Division works on dozens of investigations with an international dimension, most of which involve cooperation with competition agencies in other jurisdictions.

In addition to bilateral case cooperation, multilateral engagement is equally important in supporting the Division's antitrust enforcement agenda. In October 2001, the Antitrust Division, in conjunction with 13 other competition agencies, launched ICN. The Division continues to play an important role in ICN, building consensus, where appropriate, among antitrust authorities on sound competition principles and providing support for new antitrust agencies in enforcing their laws and building strong competition cultures. The ICN has grown to include 135 agencies from 122 jurisdictions.

Similarly, since the 1960s, the Division has regularly participated in meetings of the OECD's Competition Committee (CC). The CC has three primary goals: to identify best practices in competition policy and antitrust enforcement, to foster convergence among national antitrust policies, and to promote increased cooperation among antitrust agencies. The CC has produced several non-binding OECD recommendations that have been helpful in advancing our enforcement interests. Over the years the CC has also produced a number of useful studies (*e.g.*, leniency, impact of hard core cartels), held roundtables on many antitrust subjects, and pushed many members in a generally de-regulatory and market-oriented direction. The CC's Working Party No. 3 (WP3) covers enforcement and international cooperation. A Division representative (AAG or DAAG) has traditionally chaired WP3.



To promote competition and due process for companies doing business across the globe, the Division regularly reaches out to our international counterparts in efforts to harmonize practices around those that best promote competition and to help ensure that competition laws around the world are enforced efficiently, effectively, and fairly. In June 2018, the Division, in partnership with leading antitrust agencies around the world, advanced an effort to better align with one another on a core set of procedural norms through the Multilateral Framework on Procedures in Competition Law Investigation and Enforcement (or “MFP”). The Division is working closely with international colleagues to achieve consensus on, and publicly commit to, fundamental procedural protections necessary to ensure due process such as non-discrimination, transparency, timely resolution, confidentiality, conflicts of interest, proper notice, opportunity to defend, access to counsel, and judicial review.

Given the complex array of antitrust issues addressed with sister competition agencies across the globe, the Division is also improving the way we tackle these issues internally. For example, the Division in 2018 established formal internal working groups that incorporate staff from all sections in the Division. These working groups meet regularly to learn about new and ongoing international issues, share ideas, discuss best practices, forge consensus, and identify the people and resources that can help address these challenges.

## **Intellectual Property**

Invention and innovation are essential to 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 IP protection promote the innovation vital to economic success. Issues involving IP have arisen in various parts of the Division’s recent work, as described below.

Patent Assets in Antitrust Cases and Business Reviews – The Division analyzes acquisitions of significant patent assets closely to ensure that competition is protected and that incentives for invention and innovation are preserved. The Division also investigates allegations that companies are using their intellectual property in ways that violate the antitrust laws, and challenges those activities where appropriate.

In addition, the Division has a business review process that enables companies concerned about the legality of proposed activity under the antitrust laws to ask the Department of Justice for a statement of its current enforcement intentions with respect to that activity. In recent years, intellectual property issues have led several companies to seek business reviews from the Division. After completing an investigation, the Division publishes its business review letter, explaining its intentions.

International Advocacy – The Division regularly engages in international competition advocacy projects to promote the application of sound competition principles to cases involving intellectual property rights. This advocacy takes place in multinational fora, such as the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development (UNCTAD), and the Asian Pacific Economic Cooperation, as well as on a bilateral basis with antitrust enforcement counterparts in jurisdictions such as Canada, China, the European Union, India, Japan, and Korea.

To ensure that patent holders, including U.S. businesses, can fully and appropriately exercise their important intellectual property rights, it is crucial that other jurisdictions approach the intersection of antitrust and intellectual property in ways that promote both competitive markets and respect for intellectual property rights. The Division is committed to advocating that all jurisdictions enforce competition laws in ways that preserve incentives to innovate. Throughout 2017, the Division also engaged in multiple trainings and conversations with counterpart agencies regarding issues at the intersection of antitrust and intellectual property law.

Interagency Initiatives – The Division regularly participates in interagency activities that promote competition advocacy where antitrust and intellectual property law and policy intersect. Division staff maintain close ties to their counterparts at the U.S. Patent and Trademark Office, Department of Commerce, U.S. Trade Representative, and other federal agencies, and engage in regular communications regarding topics that implicate antitrust and intellectual property. Given the nature of the Division’s expertise our interagency role often touches on important trade and international policy initiatives underway across the Federal Government.

Appellate Filings - The Division provides its views in Supreme Court and appellate cases involving intellectual property that have a significant potential to affect competition and may in other ways contribute actively to the development of a brief. In addition to its role in antitrust cases, the Division serves as the statutory respondent for several other government agencies, including the Federal Communications Commission and Surface Transportation Board.

### **Technological Change and the Changing Face of Industry**

The need for careful consideration of antitrust issues in evolving technology markets continues to consume significant Division resources. 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 continues and intensifies in a range of industries, such as robotics, transportation, wireless communications, Over-the-Top (OTT) services such as Voice over Internet Protocol (VoIP) and online video, mobile collaboration, biometrics and online security.

We will see even more advances in technology in the 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 8 billion in 2018 and are expected to grow to 8.9 billion by 2024 according to the Ericsson Mobility Report, published by Ericsson in November 2017.<sup>3</sup>

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 2024, it is estimated that the number of smartphone subscriptions alone is set to reach 7.2 billion, a substantial increase over the 5 billion smartphone subscriptions in 2018. Mobile video traffic is set by 2024 to grow to around 74 percent of all mobile data traffic, an increase of 14% over 2018 traffic levels.<sup>4</sup>

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 Digital TV Research, OTT revenue is expected to grow to \$129 billion in 2023 compared to \$53 billion in 2017.<sup>5</sup>

The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the Antitrust Division. While the antitrust laws are flexible enough to handle technological change, it does put burdens on Division resources. The economic paradigm is shifting so rapidly that the Division has to continue developing and 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.

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<sup>3</sup> “Ericsson Mobility Report.” *Ericsson*, November 2018: 30. Viewed on February 7, 2019 at <https://www.ericsson.com/assets/local/mobility-report/documents/2018/ericsson-mobility-report-november-2018.pdf>.

<sup>4</sup> “Ericsson Mobility Report.” *Ericsson*, November 2018: 15, 30. Viewed on February 7, 2019 at <https://www.ericsson.com/assets/local/mobility-report/documents/2018/ericsson-mobility-report-november-2018.pdf>.

<sup>5</sup> “Global OTT revenues to climb to \$129 billion.” *Digital TV Research*, September 2018: 1. Viewed on February 7, 2019 at [https://www.digitaltvresearch.com/ugc/Global%20OTT%20TV%20and%20Video%20Forecasts%202018%20TOC\\_sample\\_214.pdf](https://www.digitaltvresearch.com/ugc/Global%20OTT%20TV%20and%20Video%20Forecasts%202018%20TOC_sample_214.pdf).

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.

### **Appellate Advocacy**

The Antitrust Division's Appellate Section has been active in the U.S. Supreme Court and courts of appeals, both in appeals from its own actions and in cases where the Division offers its views as an amicus party.

In 2018, the Supreme Court heard and ruled on the Division's case in *United States v. American Express Co.* The Supreme Court also has sought the views of the United States in multiple antitrust cases at the certiorari stage. For example, the Supreme Court in 2018 considered *Animal Science Products v. Hebei Welcome Pharmaceutical Co.*, a price-fixing case addressing whether courts were "bound to defer" on international comity grounds to the Chinese government's statement that the defendants' actions were required by law. The United States successfully urged the Court to grant certiorari to review the Second Circuit's ruling, and submitted an amicus brief in support of petitioners on the merits. The Antitrust Division also participated as amicus at the certiorari and merits stages in *Apple v. Pepper*, a case regarding the indirect purchaser rule set forth in the Supreme Court's *Hanover Shoe* and *Illinois Brick* decisions.

In addition, the Division has embarked on an effort to expand its amicus program and significantly increase its participation in antitrust cases before they reach the Supreme Court. The goal of this effort is to help shape the development and application of antitrust law in the earliest stages of private litigation. The subjects of lower court filings have included the limits of antitrust immunities, how to remedy an anticompetitive merger consistent with the public interest, the appropriate limits on the duty of a company to deal with its competitors, the legal test to apply to no-poach agreements, and the limited role for antitrust law to police commitments that patent holders make to standard setting organizations.

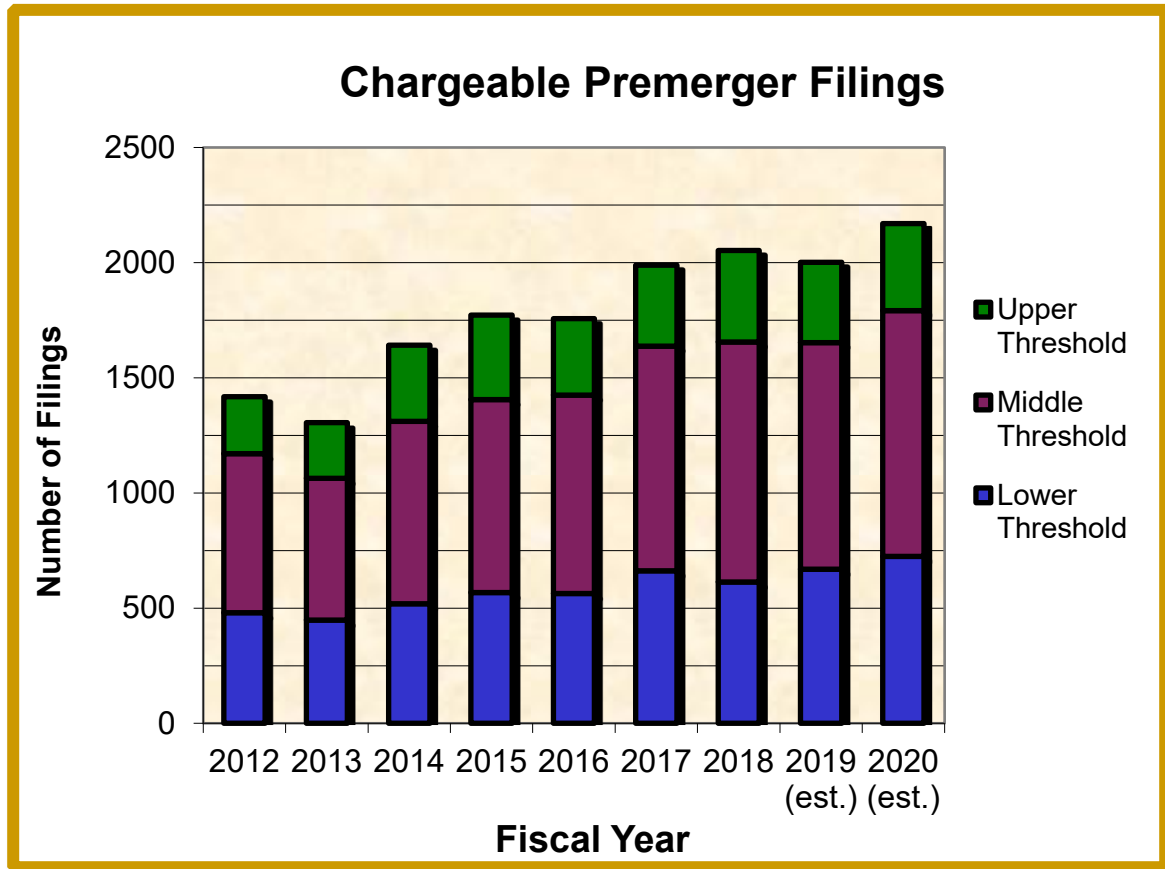
## Results

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 2018, as a result of the Division's efforts, over **\$9.8 billion in criminal fines and penalties** were obtained against antitrust violators. In FY 2018, the Division obtained just over **\$171 million** in criminal fines.
- 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**, affecting billions of dollars in U.S. commerce. **Since FY 1997, defendants have been sentenced to pay over \$14.5 billion in criminal fines and penalties to the U.S. Treasury, including more than \$10.5 billion just since the beginning of FY 2008.**
- In FY 2018, as the result of Division enforcement efforts, 9 corporations and 59 individuals were sentenced due to antitrust violations. Prison sentences between FY 2000 and the end of FY 2018 were an **average of approximately 20 months**, over two times the 8-month average sentence of the 1990's. Prison sentences since FY 1990 have resulted in more than **770 years** of imprisonment in cases prosecuted by the Antitrust Division, with over **270 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 2017, restitution generated by the Division was over **\$116 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 **\$49 billion.**

## Revenue Assumptions

Estimated FY 2020 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. In the April 2018 report “The Budget and Economic Outlook: 2018 to 2028”, the Congressional Budget Office predicts, “Between 2018 and 2028, actual and potential real output alike are projected to expand at an average annual rate of 1.9 percent.”<sup>6</sup>



Premerger Filing Fee Thresholds Effective Feb 28, 2018	
Value of Transaction	Filing Fee
Lower: \$84.4M - <\$168.8M	\$45,000
Middle: \$168.8M - <\$843.9M	\$125,000
Upper: \$843.9M 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 \$272 million for FY 2020 are expected. Hart-Scott-Rodino (HSR) filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division.

<sup>6</sup> “The Budget and Economic Outlook: 2018 to 2028.” *Congressional Budget Office*, April 2018: 1. Viewed on February 7, 2019 at <https://www.cbo.gov/system/files?file=115th-congress-2017-2018/reports/53651-outlook.pdf>.

## **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 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 U.S. and around the world cannot be overstated. The threat to American 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 a total appropriation of \$166,755,000 in support of 695 positions and 695 estimated FTE.

### FY 2020 Total Budget Request by Program Area

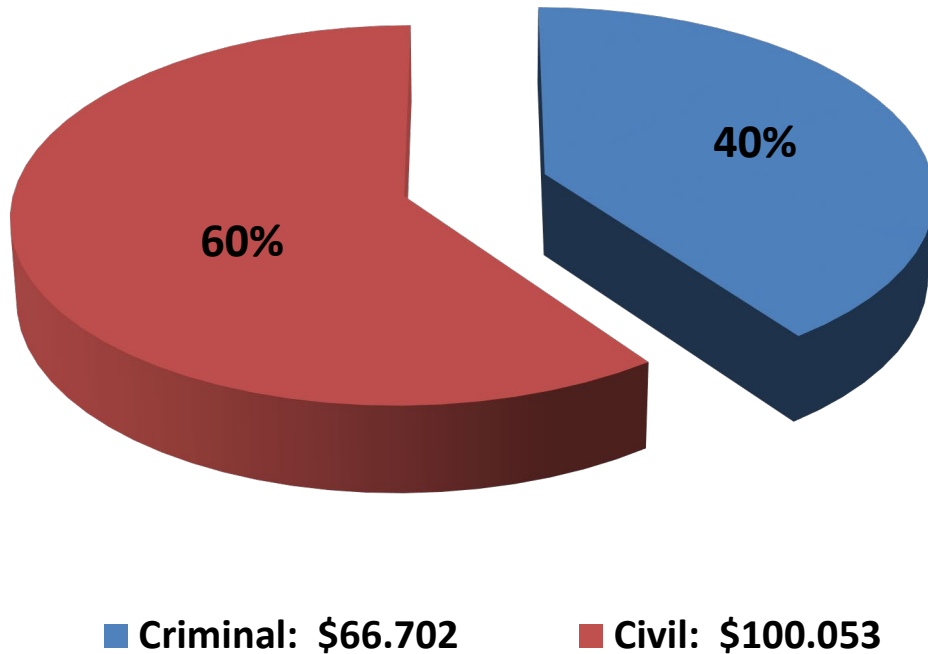


Figure 3

#### C. Full Program Costs

The Antitrust Division contains one Decision Unit (Antitrust) and can be divided into 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 2020 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:

- Increasing economic consolidation across industries and geographic regions
- Globalization of the business marketplace
- 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. The nature of the Division's work requires it to receive and analyze vast amounts of competitively sensitive business information (including strategic plans and pricing and cost information) from companies across all sectors of the economy. The Division must ensure that this sensitive information is kept secure; both so that companies continue to provide it in further reviews, and because of the significant direct costs of inappropriate dissemination. 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 now requires electronic analytical capacity needs in excess of **3,000 terabytes**.
- *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 that 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, [~~\$164,663,000~~] \$166,755,000, to remain available until expended, of which not to exceed \$2,000 shall be available for official reception and representation expenses: 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 [~~\$125,400,000~~] \$136,000,000 in fiscal year [2019]2020), 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 [2019]2020, so as to result in a final fiscal year [2019]2020 appropriation from the general fund estimated at [~~\$39,263,000~~] \$30,755,000.*

Note.—A full-year 2019 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2019 (Division C of P.L. 115–245, as amended). The amounts included for 2019 reflect the annualized level provided by the continuing resolution.

#### Analysis of Appropriations Language

No substantive changes proposed.

## IV. Program Activity Justification

### A. Decision Unit: Antitrust

<b>Antitrust Division</b> <b>Fiscal Year 2020 Congressional Submission</b> <b>Decision Unit Justification</b> (dollars in thousands)			
<b>Decision Unit: Antitrust - TOTAL</b>	<b>Direct Positions</b>	<b>Estimate FTE</b>	<b>Amount</b>
2018 Enacted	656	658	\$164,977
2019 Continuing Resolution	656	672	\$164,977
Adjustments to Base and Technical Adjustments	39	23	\$1,778
2020 Current Services	695	695	\$166,755
2020 Request	695	695	<b>\$166,755</b>
<b>Total Change 2019 – 2020</b>	<b>39</b>	<b>23</b>	<b>\$1,778</b>

<b><i>Antitrust Division - Information Technology Breakout</i></b> <b>(of Decision Unit Total)</b>	<b>Direct Positions</b>	<b>Estimate FTE</b>	<b>Amount</b>
2018 Enacted	31	31	\$34,839
2019 Continuing Resolution	31	31	\$35,538
Adjustments to Base and Technical Adjustments	0	0	\$709
2020 Current Services	31	31	\$36,247
2020 Request	31	31	\$36,247
<b>Total Change 2019-2020</b>	<b>0</b>	<b>0</b>	<b>\$709</b>

#### 1. Program Description

The Antitrust Division promotes competition and protects American consumers from economic harm by enforcing the 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 focuses on two main law enforcement 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 currently has six supervisory Deputy Assistant Attorney General (DAAG) positions reporting directly to the Assistant Attorney General.



**Criminal Enforcement** – In pursuit of its criminal enforcement strategy, the Antitrust Division addresses the increased globalization of markets, constant technological change, and massive, complex, and difficult-to-detect criminal conspiracies. These matters transcend national boundaries, involve increasingly technologically advanced efforts to avoid detection of sophisticated criminal behavior, and affect more U.S. businesses and consumers than ever before. To effectively investigate and prosecute criminal antitrust offenses, the Division requires significant resources – such as staff time, travel and translation costs, and automated litigation support. Matters such as the Division’s ongoing investigation in the general pharmaceuticals industry (page 41) exemplify the increasingly complex and important nature of Division workload in the criminal area.

**Civil Enforcement** – In pursuit of its civil enforcement 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 transactions notified by the parties under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) through statutorily mandated filings;
- Review of transactions 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. Division personnel routinely give speeches 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

*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.



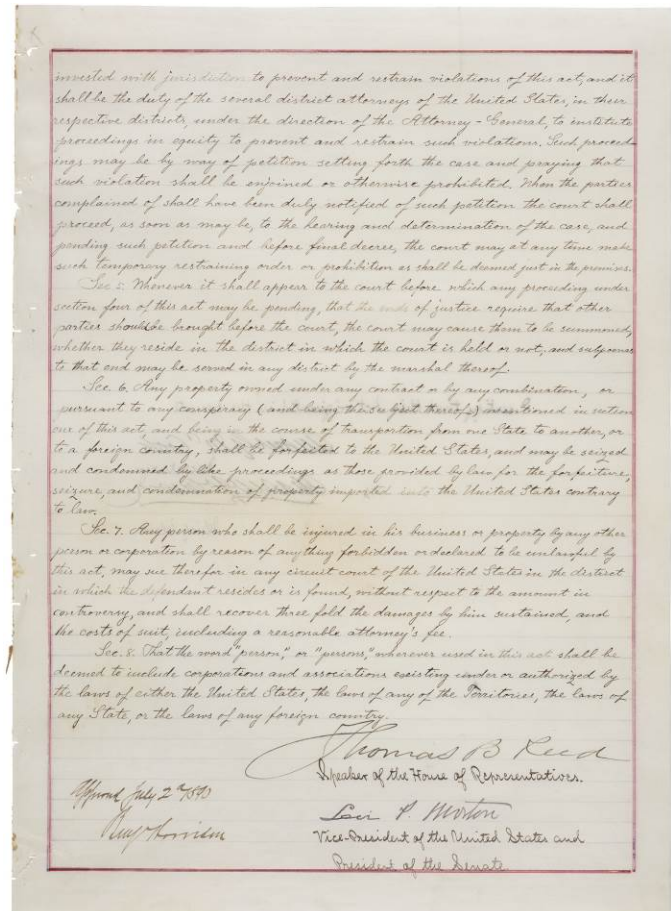
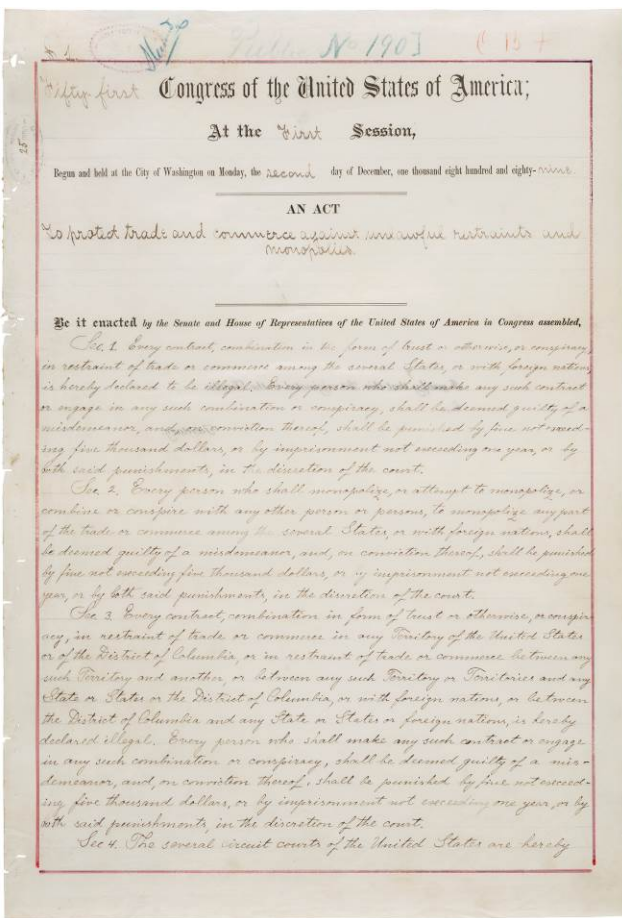
One of the most notable examples of the Division’s international efforts includes its participation in the International Competition Network (ICN). The 17th annual conference of the ICN was held in New Delhi in March 2018 where ICN members adopted guiding principles for procedural fairness and new recommendations for merger review.<sup>7</sup>

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.

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<sup>7</sup> “International Competition Network Adopts Recommended Guiding Principles for Procedural Fairness and New Recommendations for Merger Review. *Federal Trade Commission*, March 2018. Viewed on August 28, 2018 at <https://www.ftc.gov/news-events/press-releases/2018/03/international-competition-network-adopts-guiding-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 4: Strategic Objective 4.1: Uphold the rule of law and integrity in the proper administration of justice

WORKLOAD/RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2018		FY 2018		FY 2019		Current Services Adjustments and FY 2020 Program Changes		FY 2020 Request	
<b>Workload</b> - Number of HSR Transactions Received		1,635		2,116		1,635		0		1,635	
<b>Total Costs and FTE</b>		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
<b>Antitrust</b>		674	\$164,977	658	\$165,797	672	\$164,977	23	\$1,778	695	\$166,755
TYPE	PERFORMANCE/RESOURCES	FY 2018		FY 2018		FY 2019		Current Services Adjustments and FY 2020 Program Changes		FY 2020 Request	
<b>Program Activity</b>	<b>1. Criminal</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		270	\$65,991	263	\$66,319	269	\$65,991	9	\$711	278	\$66,702
<b>Performance Measure – Criminal</b>	Number of Active Grand Juries	75				75		0		75	
	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected				Not Projected		Not Projected		Not Projected	
<b>Program Activity</b>	<b>2. Civil</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		404	\$98,986	395	\$99,478	403	\$98,986	14	\$1,067	417	\$100,053

		Target	Actual	Projected	Changes	Requested (Total)
TYPE	PERFORMANCE/RESOURCES	FY 2018	FY 2018	FY 2019	Current Services Adjustments and FY 2020 Program Changes	FY 2020 Request
Performance Measure – Merger	Number of Preliminary Inquiries Opened	70	65	70	0/0	70
Performance Measure – Civil Non-Merger	Number of Active Investigations	50	31	50	0/0	50
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	\$20,420	Not Projected	Not Projected	Not Projected
<b>Outcome – Criminal, Civil (Merger and Civil Non-Merger)</b>						
Consumer Savings	Criminal: Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$58	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	\$928	Not Projected	Not Projected	Not Projected
Success Rates	Criminal - Percentage of Cases Favorably Resolved	90%	76%	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 2019 through FY 2020 projections are based on an analysis of FY 2008 through FY 2018 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**

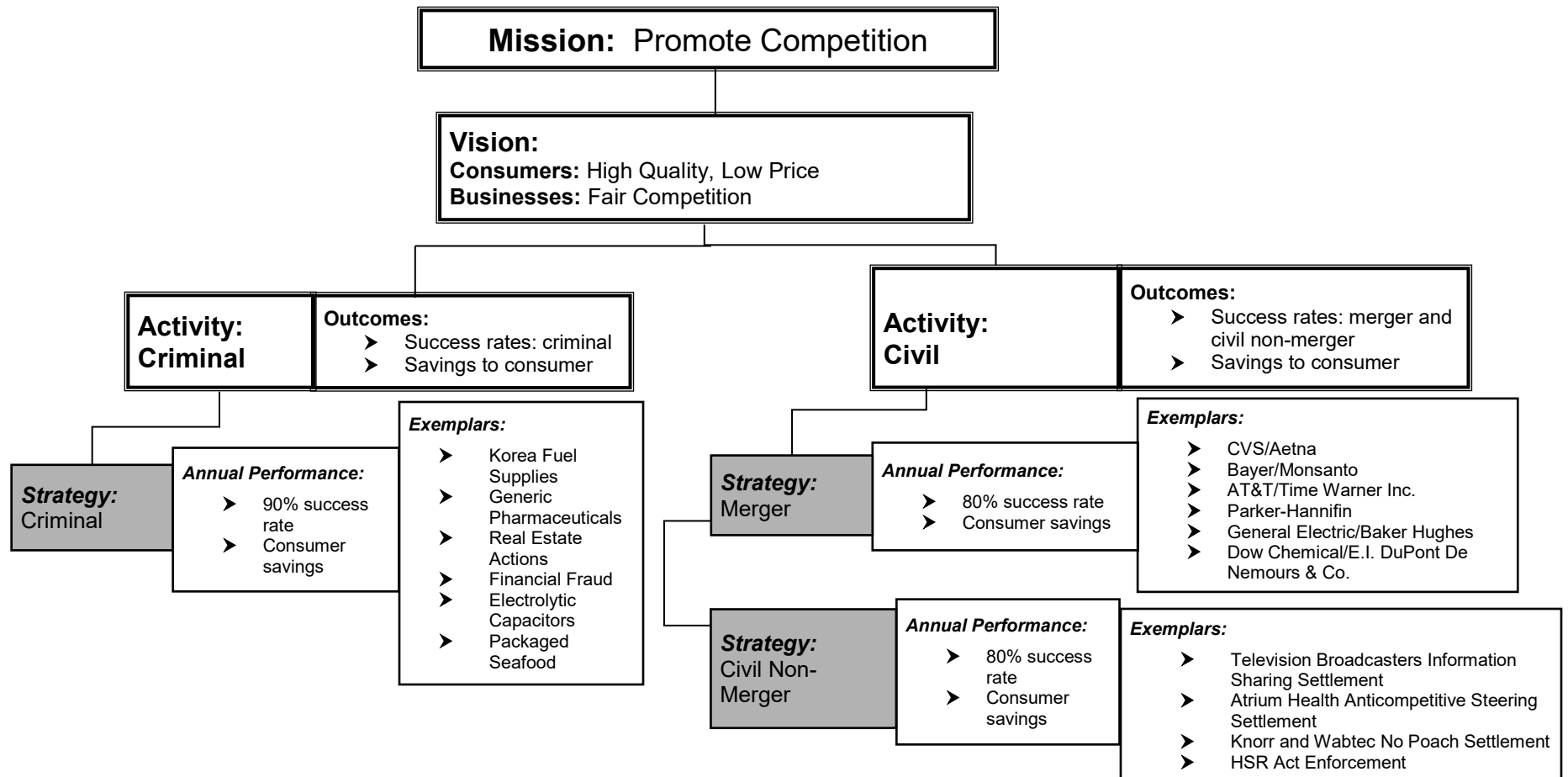
**Decision Unit: Antitrust**

**DOJ Strategic Goal 4: Strategic Objective 4.1: Uphold the rule of law and integrity in the proper administration of justice**

Performance Report and Performance Plan Targets		FY 2014	FY 2015	FY 2016	FY 2017	FY 2018		FY 2019	FY 2020
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
<b>Performance Measure: Criminal</b>	Number of Active Grand Juries	78	88	95	110	75	114	75	75
<b>Performance Measure: Criminal</b>	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	\$2,931	\$178,004	\$621	\$1,314	Not Projected	\$578	Not Projected	Not Projected
<b>Performance Measure: Civil Merger</b>	Number of Preliminary Inquiries Opened	80	67	65	57	70	65	70	70
<b>Performance Measure: Civil Non-Merger</b>	Number of Active Investigations	34	37	43	26	50	31	50	50
<b>Performance Measure: Civil (Merger and Non-Merger)</b>	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	\$239,122	\$216,998	\$129,834	\$118,432	Not Projected	\$20,420	Not Projected	Not Projected
<b>Outcome Measure: Consumer Savings - Criminal</b>	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$293	\$107	\$62	\$132	Not Projected	\$58	Not Projected	Not Projected
<b>Outcome Measure: Consumer Savings - Civil</b>	Civil (Merger and Non-Merger) - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$3,378	\$3,387	\$2,271	\$1,408	Not Projected	\$928	Not Projected	Not Projected
<b>Outcome Measure: Success Rate - Criminal</b>	Criminal - Percentage of cases favorably resolved	92%	98%	87%	84%	90%	76%	90%	90%
<b>Outcome Measure: Success Rate - Civil (Merger and Non-Merger)</b>	Civil - Percentage of cases favorably resolved	100%	100%	96%	100%	80%	100%	80%	80%

3. Performance Measurement Framework

*Antitrust Division, Department of Justice*  
**Performance Measurement Framework**  
**FY 2020**



#### 4. Performance, Resources, and Strategies

The Antitrust Decision Unit contributes to the Department’s Strategic Goal 4: “Promote Rule of Law, Integrity, and Good Government”. Within this Goal, the Decision Unit’s resources specifically address Strategic Objective 4.1: “Uphold the rule of law and integrity in the proper administration of justice”.

##### a. Performance Plan and Report for Outcomes

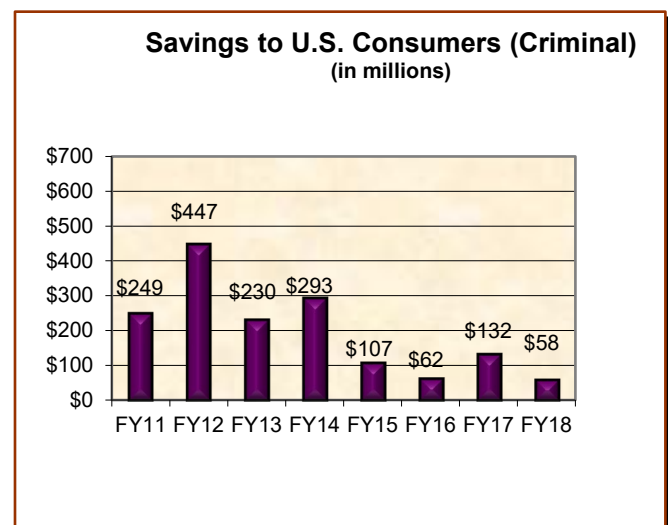
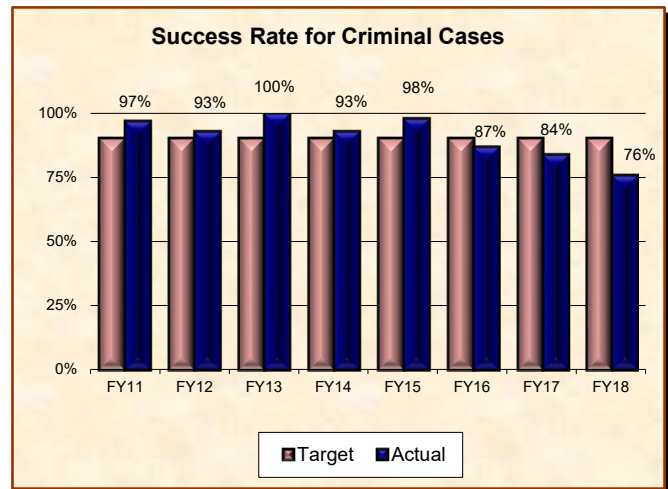
##### Prosecute International Price Fixing Cartels

The charts below illustrate the Criminal Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Antitrust Criminal Cases and Savings to U.S. Consumers (as a result of the Antitrust Division’s criminal enforcement efforts). It is the Division’s goal to achieve a successful outcome in every case it tries. The Antitrust Division has been aggressive in its pursuit of criminal anticompetitive behavior.

In the criminal enforcement area, the Division continues to provide economic benefits to U.S. consumers and businesses in the form of lower prices and enhanced product selection by dismantling cartels and restricting other criminal anticompetitive activity.

In FY 2018, the Division successfully resolved 76 percent of criminal matters. The Division expects to meet or exceed its goals for FY 2019 and FY 2020.

The estimated value of consumer savings generated by the Division’s criminal efforts is contingent upon the size and scope of the matters resolved each year and thus varies significantly.



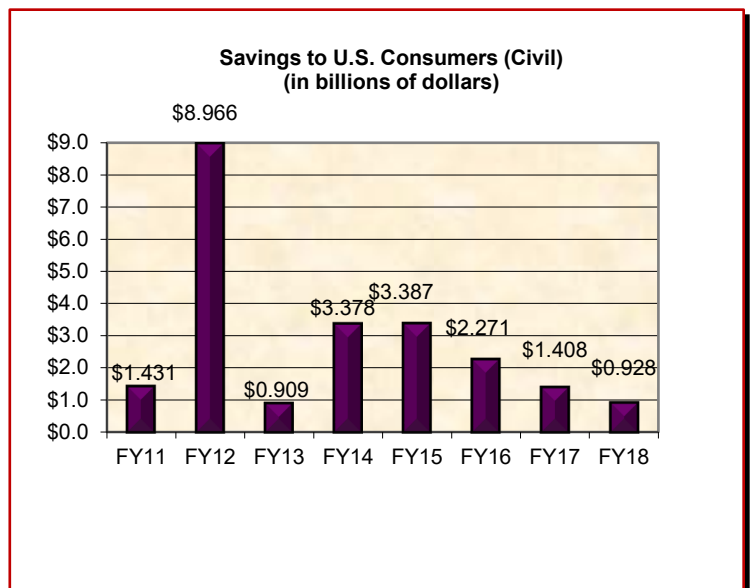
## Civil Enforcement

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

The success rate for civil non-merger matters includes investigations in which business practices were changed after the investigation was initiated, a case was filed with consent decree, or a case was filed and litigated successfully. The Division’s success in preventing anticompetitive behavior in the civil non-merger area has been notable.

The 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 2012–2018 that have since reached full conclusion and expects to meet or exceed its success rate goal for FY 2019 and FY 2020.

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.







## **b. Strategies to Accomplish Outcomes**

### **Civil Enforcement**

The Division's civil strategy is comprised of two key activities - Merger and Civil Non-Merger enforcement. Six Washington, DC litigating sections, the appellate section, and offices in Chicago, New York, and San Francisco participate in the Division's civil work. This activity serves to maintain the competitive structure of the national economy through investigation and litigation of 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 transactions and allow the Division to identify and block potentially anticompetitive 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 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 six litigating sections in Washington, DC, although other sections and offices occasionally provide support if 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 hardcore *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 it 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.

## Prosecute International Price Fixing Cartels

With three geographically dispersed regional offices and two criminal 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 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 brings successful prosecutions, the Division may obtain criminal fines and injunctive relief.



## **5. Exemplars – Civil**

### **A. Merger**

#### **CVS/Aetna**

In October 2018, the Division required important divestitures following its investigation into CVS's acquisition of Aetna. According to the Division's complaint, the combination of CVS, which markets its Medicare Part D individual prescription drug plans under the "SilverScript" brand, and Aetna would cause anticompetitive effects, including increased prices, inferior customer service, and decreased innovation in sixteen Medicare Part D regions covering twenty-two states. The complaint alleges that the loss of competition between CVS and Aetna would result in lower-quality services and increased costs for consumers, the federal government, and ultimately, taxpayers.

Under the terms of the proposed settlement filed at the same time as the complaint in the District Court for the District of Columbia, Aetna must divest its individual prescription drug plan business to WellCare Health Plans, Inc. and allow WellCare the opportunity to hire key employees who currently operate the business. Aetna must also assist WellCare in operating the business during the transition and in transferring the affected customers through a process regulated by the Centers for Medicare and Medicaid Services, an agency within the U.S. Department of Health and Human Services.

#### **Bayer/Monsanto**

In 2016, Bayer agreed to acquire Monsanto in a merger valued at approximately \$66 billion. As originally proposed, the deal would have resulted reduced competition in 17 distinct agricultural product markets fitting into four broad categories: (1) genetically modified seeds and traits; (2) foundational herbicides; (3) seed treatments; and (4) vegetable seeds. Additionally, the transaction would have significantly affected innovation in the agricultural sector, since, in the absence of the merger, Bayer and Monsanto would have intensified competition in offering "integrated solutions," i.e., combinations of seeds, traits, and crop protection products, supported by digital farming technologies and other services.

In May 2018, after a substantial investigation, the Division secured the largest negotiated merger divestiture ever, valued at approximately \$9 billion. The settlement requires divestitures in all the affected markets, along with various supporting assets, to fully prevent any competitive effects of the merger. The Division filed a proposed final judgment in the District Court for the District of Columbia, which the court approved on February 8, 2019.

### **AT&T/Time Warner Inc.**

On November 20, 2017, the Division filed a civil antitrust lawsuit to block AT&T/DirecTV's proposed acquisition of Time Warner Inc. The complaint alleges that the \$108 billion acquisition would substantially lessen competition, leading prices for current services to go up, and the development of new online services to slow down.

According to the complaint, the combined company would use its control over Time Warner's valuable and highly popular networks to hinder its rivals by forcing them to pay hundreds of millions of dollars more per year for the right to distribute those networks. The combination represents one of the largest mergers in the history of the telecommunications industry and would adversely impact this important industry for American consumers for years to come. After a six week trial, the district court ruled against the Division in mid-June, allowing the deal to proceed. The Division appealed the district court's decision to the Court of Appeals for the District of Columbia Circuit. The court heard oral argument on December 6, 2018, on an expedited review schedule. On February 26, 2019, the court issued a ruling that took issue with the district court's opinion in several respects, but ultimately upheld the judgment after finding that the district court did not commit clear error.

### **Parker-Hannifin**

Aviation fuel must be filtered properly to remove particulate contaminants and water droplets before it is delivered into commercial or military aircraft. The failure to filter aviation fuel properly can result in engine failure, with potentially catastrophic consequences. To protect public safety, the U.S. airline industry mandates the use of aviation fuel filtration systems and filtration elements that have been subjected to rigorous testing and qualification requirements. Only those aviation fuel filtration products qualified by the Energy Institute (EI) may be used to filter aviation fuel for use in U.S. commercial and military planes.

Before Parker-Hannifin Corporation's acquisition of CLARCOR Inc., Parker-Hannifin and CLARCOR were the only two manufacturers of EI-qualified aviation fuel filtration systems and filter elements in the United States and were engaged in vigorous head-to-head competition. That competition enabled customers to negotiate better pricing and to receive more innovative products and better terms of service. The transaction eliminated that competition.

In September 2017, the Division filed a civil lawsuit challenging the consummated transaction and seeking restore the competition that this transaction eliminated. In December 2017, the Division filed a proposed settlement that requires Parker-Hannifin to divest the filtration business that it had acquired from CLARCOR. In April 2018, the court approved the settlement, resolving the lawsuit and restore competition in the aviation fuel filtration markets that the underlying merger eliminated.

### **General Electric/Baker Hughes**

On June 12, 2017, the Division filed a complaint, along with a proposed final judgment, resolving its challenge to General Electric's acquisition of Baker Hughes, two of the leading providers of refinery process chemicals in the United States. The proposed final judgment required GE to divest its Water & Process Technologies business unit, which included its refinery process chemicals and services unit, to a named buyer, SUEZ, S.A.

Under the terms of the decree, GE was to complete its divestitures to Suez by approximately the end of September 2017, or, if the United States exercised its discretion to grant an extension, by approximately the end of 2017. After consummating the GE/Baker Hughes merger, GE informed the United States that it would be unable to complete the divestiture until 2018, outside of the agreed-upon timeframe, because in 19 foreign jurisdictions there were legal and other barriers to Suez operating the assets.

On October 16, 2017, the court entered a modified final judgment that added two provisions to the final judgment designed to encourage GE to complete the divestiture promptly. The modified final judgment encouraged prompt divestiture in two ways: (1) it required GE to begin making daily incentive payments as of January 1, 2018, until the divestiture is completed and (2) it required GE to reimburse the United States for attorney's fees and costs incurred in addressing the delay.

### **Dow Chemical/E.I. DuPont De Nemours & Co.**

On June 15, 2017, the Division and several states filed a complaint and proposed final judgment resolving their challenge to the merger of The Dow Chemical Company and E.I. DuPont de Nemours and Company, two of the leading companies in both crop protection chemicals and treated seeds in the United States. Each company also manufactured a number of petrochemicals.

The Division alleged that the proposed merger likely would have reduced or eliminated competition in the markets for broadleaf herbicides for winter wheat and chewing pest insecticides, and would have tended to create a monopoly in the markets for acid copolymers and ionomers in the United States, resulting in higher prices and reduced services and innovation in these markets.

The settlement required DuPont to divest its Finesse-formulated herbicide products and its Rynaxypyr-formulated insecticide products, along with the assets used to develop, manufacture, and sell those products. Dow Chemical also was required to divest its Freeport, Texas acid copolymers and ionomers manufacturing unit and associated assets.

## **B. Non-Merger:**

The Division continues to vigorously police anticompetitive activity outside the merger context, initiating civil enforcement actions in numerous industries to protect consumers and the competitive process.

### **Television Broadcasters Information Sharing Settlement**

On November 13, 2018, the Division filed a complaint against seven broadcast television companies for agreeing to reciprocally exchange competitively sensitive information relevant to many advertising spot markets. The complaint alleges that by exchanging such information, the broadcasters were better able to anticipate their competitors' pricing conduct, which in turn helped inform the stations' own pricing strategies and negotiations with advertisers. As a result, the information exchanges distorted the normal price-setting mechanism in the spot advertising process and harmed the competitive process.

The Division obtained settlement agreements from the parties that prohibit the sharing of such competitively sensitive information. The proposed settlements further require broadcasters to cooperate in the Department's ongoing investigation and to adopt rigorous antitrust compliance and reporting measures to prevent similar anticompetitive conduct in the future. The settlements were filed in the District Court for the District of Columbia and are awaiting final judgment.

### **Atrium Health Anticompetitive Steering Settlement**

In June 2016, the Division filed a lawsuit against Atrium Health, formerly known as Carolinas HealthCare System, challenging provisions that prohibit steering in the hospital system's contracts with major health insurers. Steering is a method used by insurers to offer consumers options to reduce some of their healthcare expenses. As alleged in the complaint, insurers are increasingly designing health benefit plans that give patients financial incentives to choose more cost-effective hospitals and physicians. Increased consumer access to these health benefit plans invigorates competition between providers to offer lower premiums and better overall healthcare services.

The Division alleged that Atrium, the dominant hospital system in the Charlotte area, used its market power to restrict health insurers from encouraging consumers to choose healthcare providers that offer better overall value. The restrictions also constrained insurers from providing consumers and employers with information regarding the cost and quality of alternative health benefit plans.

The Division reached a settlement agreement with Atrium Health in November 2018, in which the Division was joined by the North Carolina Attorney General's Office. The proposed settlement prevents Atrium from enforcing steering restrictions in its contracts with health insurers. It also bars Atrium from seeking contract terms or taking actions that would prohibit, prevent, or penalize steering by insurers in the future. The settlement is awaiting final judgment in the Western District of North Carolina.

## **Knorr and Wabtec No Poach Settlement**

On April 3, 2018, the Antitrust Division filed a civil antitrust lawsuit against Knorr-Bremse AG and Westinghouse Air Brake Technologies Corporation (“Wabtec”), and with it simultaneously filed a civil settlement. The complaint alleges that these companies and a third company, Faiveley Transport, reached naked no-poach agreements beginning as early as 2009 and continuing until at least 2015, in violation of Section 1 of the Sherman Act. A no-poach agreement involves an agreement with another company not to compete for each other’s employees, such as by not soliciting or hiring them.

The competitive impact statement, filed simultaneously with the complaint, explains that these no-poach agreements are properly considered per se unlawful market allocation agreements under Section 1 of the Sherman Act. In the relevant labor markets, the agreements eliminated competition in the same irredeemable way as agreements to fix product prices or allocate customers, and they were not reasonably necessary for any collaboration between the firms. These no-poach agreements distorted competition to the detriment of employees by depriving them of the chance to bargain for better job opportunities and terms of employment.

The settlement is a strong, first-of-its-kind remedy that contains several provisions intended to terminate each defendant’s no-poach agreements and prevent future violations. It includes: (a) a broad injunction prohibiting each defendant from entering into or maintaining no-poach agreements among themselves and with other employers that will be in force for seven years; (b) an affirmative obligation to cooperate in any Division investigation of other potential no-poach agreements between the defendant and any other employer; (c) a requirement that each defendant affirmatively notify its U.S. employees and recruiters and the rail industry at large of the settlement and its obligations; and (d) the Division’s new consent decree provisions designed to improve the effectiveness of the decree and the Division’s future ability to enforce it.

The final judgment was entered in this matter on July 11, 2018.

## **HSR Act Enforcement**

The Division remains vigilant against violations of the HSR Act, which ensures that the Division will have an opportunity to review potentially anticompetitive transactions before they are consummated. The Division enforced the HSR Act in several important cases in the past few years.

### ***James Dolan***

In December 2018, the Division, at the request of the Federal Trade Commission (FTC), filed a lawsuit against James Dolan for violating the premerger notification and waiting period requirements of the Hart-Scott-Rodino (HSR) Act of 1976 when he acquired voting securities of Madison Square Garden Company in 2017. At the same time, the Division filed a proposed settlement, subject to approval by the court, under which Dolan has agreed to pay a \$609,810 civil penalty to resolve the lawsuit.



### ***Mitchell P. Rales***

In January 2017, the Division, at the request of the Federal Trade Commission (FTC), filed a lawsuit against investor Mitchell P. Rales for violating the HSR Act in October 2011 by failing to report voting shares valued in excess of \$131.9 million that his wife acquired in Colfax. The complaint also alleged that Rales violated the HSR Act in January 2008, by failing to report voting shares valued in excess of \$597.9 million that he acquired in Danaher. Under the terms of a proposed final judgment filed at the same time as the complaint, Rales agreed to pay a \$720,000 civil penalty to resolve the lawsuit. On April 12, 2017, the court entered the final judgment.

## **6. Exemplars - Criminal**

The Sherman Antitrust Act (15 U.S.C. § 1) authorizes the Antitrust Division to bring criminal prosecutions against corporations and individuals who conspire with competitors to fix prices, rig bids, or allocate customers, territories, markets, or sales or production volumes. Prosecuting criminal violations of Section 1 of the Sherman Act is a critical component of the Department's overall mission to protect consumers and the competitive process.

In FY 2018, the Antitrust Division filed 18 cases. Altogether, 5 corporations and 28 individuals were charged for antitrust offenses. These crimes affected important American industries, including financial services, real estate (both real estate owned housing and foreclosure auctions), packaged seafood, electrolytic capacitors, freight forwarding, and Sierra Army Depot contracts. The Division's investigations into violations in many of these industries remain ongoing.

The Division obtained significant sentences against both corporations (including criminal fines) and individuals (including criminal fines and prison terms). In FY 2018, courts imposed over \$199 million in criminal fines, and 21 prison sentences totaling 5,983 days of incarceration, against defendants in Antitrust Division cases.

### **A. Korea Fuel Supplies**

On November 14, the Division announced resolution of criminal charges and civil claims against South Korea-based companies SK Energy Co. Ltd., GS Caltex Corporation, and Hanjin Transportation Co. Ltd. arising from a decade-long bid-rigging conspiracy that targeted fuel supply contracts to U.S. military bases in South Korea.

The defendants agreed to plead guilty to criminal charges and pay at least \$82 million in criminal fines. *See U.S. v. SK Energy Co. Ltd.*, 18-cr-239 (S.D. Oh.); *U.S. v. GS Caltex Corporation*, 18-cr-240 (S.D. Oh.); *U.S. v. Hanjin Transportation Co., Ltd.*, 18-cr-241 (S.D. Oh.).

In separate civil settlements, the three companies also agreed to resolve parallel civil antitrust and False Claims Act violations and pay an additional \$154 million in total. *See U.S. v. G.S. Caltex, et al.*, 18-cv-1456 (S.D. Oh.). As a result of defendants' conduct, the

United States Department of Defense paid substantially more for fuel supply services in South Korea than it would have had the defendants competed for the fuel supply contracts. Under Section 4A of the Clayton Act, the United States may obtain treble damages when it has been injured by an antitrust violation. The civil settlement paid by each defendant exceeds the amount of the individual overcharge and reflects the value of defendants' ongoing cooperation commitments and the cost savings realized by avoiding extended litigation. These cases were the Division's first significant settlements under Section 4A of the Clayton Act in many years.

The payments will also resolve civil claims that the United States has under the False Claims Act for making false statements to the government in connection with their agreement not to compete. The Civil Division has entered into separate settlement agreements with the companies to resolve these claims.

The investigation is ongoing.

### **B. Generic Pharmaceuticals**

The Antitrust Division is investigating price fixing, bid rigging, and market allocation conspiracies in the generic pharmaceutical industry. The investigation began with Division prosecutors' proactive efforts to uncover the explanation for significant price increases in recent years on dozens of long-off patent generic drugs. Two former executives have pleaded guilty to participating in a conspiracy to fix the prices of certain drugs. See *U.S. v. Glazer*, 16-cr-506 (E.D. Pa.); *U.S. v. Malek*, 16-cr-508 (E.D. Pa.). Those individuals both pleaded guilty and are awaiting sentencing.

The investigation is ongoing.

### **C. Real Estate Foreclosure Auction Fraud**

The Antitrust Division began investigating patterns of collusion among real estate speculators in 2011. Instead of competitively bidding at public auctions held on the steps of courthouses and municipal buildings around the country, groups of speculators have conspired to keep auction prices artificially low. These schemes include speculators paying each other off to refrain from bidding, or holding unofficial "knockoff" auctions among themselves. This artificially drives down foreclosed home prices, enriching the colluding speculators at the expense of homeowners, municipalities and lending institutions. These collusive schemes have a far-reaching negative impact, because they affect home prices in neighborhoods where the foreclosed properties are located.

To date, as a result of the Division's efforts, 140 individuals and three companies have been charged in connection with real estate-foreclosure conspiracies across the United States that suppress and restrain competition to the detriment of communities and already-financially distressed homeowners. Of the three companies charged, all have pleaded guilty. Of the individuals, 124 have pleaded guilty, 12 have been convicted after trial, three were acquitted, and one individual, charged with rigging auctions in the Eastern District of California, remains under indictment.

## **D. Financial Fraud**

The Division also continued its investigation and prosecution of collusion regarding manipulation of benchmark interest rates and foreign exchange rates, which undermined financial markets worldwide and directly affected the rates referenced by financial products held by and on behalf of companies and investors around the world.

### ***LIBOR (London Interbank Offered Rate)***

LIBOR serves as the primary benchmark for short-term interest rates globally and is used as a reference for many interest-rate contracts, mortgages, credit cards, student loans and other consumer lending products. Pursued jointly with the Criminal Division, the Antitrust Division's investigation of LIBOR manipulation has resulted in deferred prosecution agreements with four banks (the Royal Bank of Scotland, Rabobank, Lloyds Banking Group and Deutsche Bank AG), charges filed against RBS Securities Japan and DB Group Services (UK) Limited, indictments or informations filed against eleven former traders, eight of whom have either been convicted or 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.

In the LIBOR matter (Indictment, *U.S. v. Connolly & Black*, No. 1:16-cr-00370-CM (S.D.N.Y. May 31, 2016), <https://www.justice.gov/atr/file/867186/download>), the Division secured convictions against both defendants after a month-long trial.

The Division has obtained over \$1.3 billion in criminal fines and penalties in this ongoing investigation.

### ***Foreign Exchange Rates***

As a result of the Division's investigation of collusion in the foreign-currency exchange spot market, five major banks and two foreign currency exchange traders have pleaded guilty to felony antitrust charges, and four traders have been indicted.

Working together with the Criminal Division and other regulators and enforcers in the United States and abroad, the Antitrust Division investigated and prosecuted a conspiracy affecting currencies at the heart of international commerce and undermining the integrity and competitiveness of foreign currency exchange markets that account for hundreds of billions of dollars' worth of transactions every day.

In 2018, the Division's investigation into manipulation of the foreign exchange market resulted in the fifth corporate guilty plea from a major bank's U.S. subsidiary; BNP Paribas pleaded guilty to participating in a price-fixing conspiracy affecting Central and Eastern European, Middle Eastern, and African (CEEMEA) currencies. In January 2018, the bank agreed to pay a \$90 million fine. *See U.S. v. BNP Paribas USA, Inc.*, 18-cr-61 (SDNY). This followed the guilty pleas, in January 2017, of two foreign currency exchange traders for their role in the conspiracy to fix prices of CEEMEA currencies.

*See U.S. v. Katz*, 17-cr-3 (S.D.N.Y); *U.S. v. Cummins*, 17-cr-26 (S.D.N.Y). Additionally in 2017, Citicorp, JPMorgan Chase & Co., Barclays PLC, and The Royal Bank of Scotland plc were ordered to pay criminal fines totaling more than \$2.5 billion for conspiring to manipulate the price of U.S. dollars and euros exchanged in the foreign currency exchange (FX) spot market.

In May 2018, a grand jury sitting in the Southern District of New York charged Akshay Aiyer, a former JP Morgan foreign exchange currency trader, with one count of conspiracy to restrain trade in violation of 15 U.S.C. § 1. *See U.S. v. Aiyer*, 18-cr-333 (S.D.N.Y.). The trial is currently scheduled for October 2019 before Judge Koeltl.

#### **D. Electrolytic Capacitors**

The Antitrust Division investigated a conspiracy to suppress and eliminate competition for electrolytic capacitors sold to customers in the U.S. and elsewhere by fixing prices and rigging bids. Electrolytic capacitors, which store and regulate electrical current, are used in a variety of electronic products, including computers, televisions, car engine and airbag systems, home appliances, and office equipment.

To date, eight companies and ten individuals have been charged in the ongoing investigation. All charged companies have plead guilty. In October 2018, Nippon Chemi-Con was sentenced to pay a \$60 million criminal fine, the largest fine imposed in the conspiracy. Altogether, the eight corporations have been fined over \$150 million for their participation in the capacitors conspiracy. Two executives have pled guilty and were each sentenced to serve a prison term of a year and a day.

#### **E. Packaged Seafood**

The Division's investigation into price fixing in the packaged seafood market arose from a parallel civil merger investigation. To date, the investigation has led to charges against four executives and two companies. *See U.S. v. Cameron*, 16-cr-501 (N.D. Cal.); *U.S. v. Worsham*, 16-cr-535 (N.D. Cal.); *U.S. v. Bumble Bee Foods, LLC*, 17-cr-249 (N.D. Cal.); *U.S. v. Hodge*, 17-cr-297 (N.D. Cal.); *U.S. v. Starkist Co.*, 18-cr-513 (N.D. Cal.).

Three executives have plead guilty to participating in a conspiracy to fix prices for packaged seafood sold in the U.S. The fourth executive, Christopher Lischewski, the President and Chief Executive Officer of Bumble Bee Foods, was indicted in May 2018. Division prosecutors are preparing for trial against him, which is scheduled for November 2019. *See U.S. v. Lischewski*, 18-cr-203 (N.D. Cal.).

Bumble Bee has been sentenced to pay a \$25 million criminal fine, which will be increased to as much as \$81.5 million in the event of a sale of Bumble Bee by a parent company. StarKist pleaded guilty for its role in the conspiracy to fix prices of packaged seafood sold in the U.S. and faces a criminal fine of up to \$100 million. StarKist's sentencing hearing is scheduled for May 22, 2019.

## **V. Exhibits**