



ANTITRUST DIVISION

FY 2024 Performance Budget Congressional Justification (CJ) Submission

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I. Overview

A. Introduction

The mission of the Antitrust Division (Division) is to promote economic competition by enforcing and providing guidance on antitrust laws and principles. For over forty years, corporate consolidation through mergers and acquisitions played an outsized role in the American economy, yet the Antitrust Division has lacked sufficient resource to review - and challenge when necessary - mergers that threaten to harm competition. 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. The Division's civil program also maintains competition through conduct investigations into non-criminal, anticompetitive behavior, such as monopolistic practices. Notably, these conduct investigations currently include inquiries in the tech sector and an ongoing, landmark case against Google.

The Division also maintains an active criminal program that prosecutes illegal activity in order to punish such misconduct when it occurs and deter anticompetitive conduct in the future. Criminal anticompetitive conduct distorts the free-market system and hurts American consumers who often pay higher prices as a result. The Division is currently in the midst of numerous criminal investigations, including investigations and prosecutions in critical sectors such as agriculture, labor, healthcare, public procurement, and pharmaceuticals. As in the Division's civil program, its criminal prosecutors routinely face off against sophisticated counsel with nearly unlimited defense budgets—therefore, it is imperative the Division have the resources needed to be successful and litigate these cases effectively.

To administer its caseload, the Division's FY 2024 budget request includes \$324,821,000, which reflects an increase of \$99,821,000 over the FY 2023 Enacted Budget, including a program increase of \$66,279,000 and base adjustments of \$33,542,000.

B. Issues, Outcomes, and Strategies

Long evolving trends such as the expanding globalization of markets, increasing economic consolidation across industries, and rapid technological change have fundamentally changed the marketplace. These factors, added to the existing number and intricacy of investigations, significantly affect the Division’s overall workload. Many current and recent matters demonstrate the large, complex, and international nature of the casework encountered by the Division, as the following table and exemplars demonstrate.

Enforcement Program	Major Matter Exemplars	
Civil	<p><u>Non-Merger:</u></p> <ul style="list-style-type: none"> • Poultry Compensation Information Exchange Litigation • American Airlines/JetBlue Litigation • Google Litigation • Online Platform Investigations • National Association of Realtors • Endeavor/Live Nation • Section 7A Cases • Amicus Briefs <ul style="list-style-type: none"> • FIFA/United States Soccer Federation • Apple and Meta Platforms • Statements of Interest <ul style="list-style-type: none"> • 568 Presidents Group • Baseball • Pickert Medical Group 	<p><u>Page #</u> 36</p>
	<p><u>Merger:</u></p> <ul style="list-style-type: none"> • Booz Allen Hamilton/EverWatch • Cargotec/Konecranes • Verzatec/Crane • UnitedHealth Group/Change Healthcare • U.S. Sugar/Imperial Sugar • S&P/IHS Markit • Lactalis/Kraft Heinz • Penguin Random House/Simon & Schuster • Neenah/US Foundry • General Shale/Meridian Brick • BancorpSouth/Cadence Bank • Gray/Quincy • Tupy/Teksid 	<p>40</p>

	<ul style="list-style-type: none"> • Aon/Willis Towers Watson • Zen-Noh/Bunge • Huntington/TCF • Stone Canyon/US Salt/Morton Salt • Republic/Santek • Harvard Pilgrim Health Care/Health Plan Holdings • Visa/Plaid • Intuit/Credit Karma • Waste Management/Advanced Disposal Services • Liberty Latin America/AT&T Puerto Rico • Geisinger Health/Evangelical Hospital 																						
Criminal	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="text-align: right; border-bottom: 1px solid black;">Page #</th> </tr> </thead> <tbody> <tr> <td><u>Health Care Markets:</u></td> <td style="text-align: right;">48</td> </tr> <tr> <td> <ul style="list-style-type: none"> • Generic Pharmaceuticals • Oncology </td> <td></td> </tr> <tr> <td><u>Agriculture:</u></td> <td style="text-align: right;">50</td> </tr> <tr> <td> <ul style="list-style-type: none"> • Canned Tuna • Broiler Chickens • Farmland </td> <td></td> </tr> <tr> <td><u>Labor Market</u></td> <td style="text-align: right;">50</td> </tr> <tr> <td> <ul style="list-style-type: none"> • Essential Healthcare Workers • Aerospace Workers Involved in Aircraft Design, Manufacture, and Service </td> <td></td> </tr> <tr> <td><u>Protecting Government Victims, Promoting Competition and Save Taxpayer Dollars:</u></td> <td></td> </tr> <tr> <td> <ul style="list-style-type: none"> • Procurement Collusion Strike Force • Government Victims: Domestic </td> <td style="text-align: right;">51</td> </tr> <tr> <td><u>International Enforcement:</u></td> <td style="text-align: right;">55</td> </tr> <tr> <td> <ul style="list-style-type: none"> ➤ PCSF: Global ➤ Government Victims ➤ Collusion in Repair and Maintenance Contracts on U.S. Military Installations in South Korea </td> <td></td> </tr> </tbody> </table>		Page #	<u>Health Care Markets:</u>	48	<ul style="list-style-type: none"> • Generic Pharmaceuticals • Oncology 		<u>Agriculture:</u>	50	<ul style="list-style-type: none"> • Canned Tuna • Broiler Chickens • Farmland 		<u>Labor Market</u>	50	<ul style="list-style-type: none"> • Essential Healthcare Workers • Aerospace Workers Involved in Aircraft Design, Manufacture, and Service 		<u>Protecting Government Victims, Promoting Competition and Save Taxpayer Dollars:</u>		<ul style="list-style-type: none"> • Procurement Collusion Strike Force • Government Victims: Domestic 	51	<u>International Enforcement:</u>	55	<ul style="list-style-type: none"> ➤ PCSF: Global ➤ Government Victims ➤ Collusion in Repair and Maintenance Contracts on U.S. Military Installations in South Korea 	
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	<ul style="list-style-type: none"> ➤ Bid-Rigging in Contracts to Secure Military Installations in Belgium ➤ Defrauding the U.S. Department of Defense in False Laboratory Reports 	
	<ul style="list-style-type: none"> • Fugitive Pleas 	
	<u>Financial Markets:</u>	56
	<u>E-Commerce</u>	57
	<u>Commercial Construction:</u>	57
	<ul style="list-style-type: none"> • Concrete Repair and Construction • Commercial Insulation • Commercial Flooring 	

Record Civil Caseload

The economic recovery that began in 2021 continues to fuel a record number of merger filings—more than 3,400 in FY21 and over 3,000 in FY22. The increase in the number, size, and complexity of merger deals has, in turn, led to the most contested civil antitrust litigation matters in more than 20 years.

Economic concentration increases the risks of anticompetitive outcomes, increasing 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.

As consolidation and merger activity in the economy continues 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 rises. Each deal brings its own complexities and potential harm that the Division staff must review, magnifying the impact of increased merger activity on the Division’s workload. For example, the Division recently investigated, and was prepared to litigate, a proposed transaction that threatened to harm competition in the sale of container handling equipment to U.S. port customers and terminal operators that move consumer products, medicines, and other important goods through the global supply chain. The Division’s investigation and coordination with international enforcement partners resulted in the parties’ abandonment of the transaction. Additionally, the Division is currently pursuing litigation in three filed merger cases, challenging Penguin Random House’s acquisition of Simon & Schuster, U.S. Sugar’s acquisition of Imperial Sugar, and UnitedHealth’s acquisition of Change Healthcare. The Division also litigated against Verzatec’s

acquisition of Crane until May 26, 2022, when the companies abandoned their planned merger in the face of the Division’s lawsuit.

As the merger case load has increased, so too has the demand for the Division to pursue civil non-merger work. For example, the Division frequently receives requests from members of Congress to initiate conduct investigations into critical industries, and members of Congress have publicly called for more active enforcement of anticompetitive conduct. The Division also typically receives 1,000–1,500 complaints each year through its Citizen Complaint Center, most of which concern anticompetitive conduct.

The Division is currently conducting multiple high-profile, resource-intensive civil conduct investigations in the tech sector, in addition to litigating its landmark case against Google. These cases are resource intensive because they involve complex fact patterns and require evaluation of conduct over many years. In addition, the Division is litigating to block an unprecedented series of agreements between American Airlines and JetBlue through which the two airlines plan to consolidate their operations in Boston and New York City and has opened significant civil investigations to evaluate potentially anticompetitive conduct in the U.S. debit card market, the beef packing industry, the poultry industry, the health care industry, and the real estate industry. The Division has also identified high-priority areas—like the use of non-compete agreements in labor markets and the existence of interlocking directorates among competing corporations that may violate Section 8 of the Clayton Act—that warrant closer examination.

Restoring Staffing to Historical Levels

As President Biden recently explained, “forty years ago, we chose the wrong path, in my view . . . and pulled back on enforcing laws to promote competition.”¹ The President went on to explain that “the experiment failed,” and that “we have to get back to an economy that grows from the bottom up and the middle out.” The Division’s resources were severely reduced in the 1980s as part of an intentional policy decision to narrow the scope of antitrust enforcement. That drawdown and its negative impacts on enforcement are detailed in a comprehensive 1990 GAO report.² This has long term adverse impacts on the Division’s ability to enforce the antitrust laws. One of the principal policy objectives of the Department of Justice and the Administration, however, is to reinvigorate antitrust enforcement.

The Antitrust Division is requesting additional resources in order to enable the Division to address historically high investigative, litigative, and program support workload. To meet the current challenges presented by the complex and unprecedented workload of the Division’s civil and criminal enforcement programs, the Division requests \$37.5 million in personnel costs to fund 363 positions, including 166 attorneys, 94 paralegals, 28 economists, and 75 program and administrative support staff, and \$28.8 million in non-

¹ [Remarks by President Biden At Signing of An Executive Order Promoting Competition in the American Economy | The White House](#)

² [GGD-91-2 Justice Department: Changes in Antitrust Enforcement Policies and Activities \(gao.gov\) \(explaining that as a result of shifts in enforcement policies and priorities, the Division staff was cut nearly in half over the course of the 1980s, leading to resource constraints that “impeded the Division’s antitrust enforcement.”\)](#)

personnel costs.

New Competition Initiatives

The Antitrust Division needs additional resources to fulfill new mandates that it has undertaken on behalf of the Administration.

President Biden's Executive Order

Structural and programmatic changes are required to respond to and implement the increased work required as the Division works with myriad federal agencies to develop and implement new initiatives under President Biden's [July 9, 2021 Executive Order on Promoting Competition in the American Economy](#). Since release of the Executive Order (EO), the Administration has continued to increase the prioritization of antitrust enforcement and, through the White House Competition Council it created, drive new projects and programs that demand significant resources. Under the EO, these projects include applicable reviews, revisions, and reports (with relevant agencies) regarding horizontal and vertical merger guidelines; bank merger oversight; antitrust guidance protecting workers from wage collusion; threats to competition in markets for beer, wine, and spirits; competition in air transportation; competition in the mobile application ecosystem; and competition in labor markets.

White House Competition Council

In this regard on January 24, 2022, the President hosted the second Competition Council meeting with a majority of the cabinet, the Attorney General, and the Assistant Attorney General for Antitrust. In pursuit of related projects, the Division has been tasked with significantly expanding partnerships with numerous federal agencies in ways that materially increase resource demands. For example, at the Competition Council's request, the Division initiated at the January 2022 meeting a new program to assist other federal agencies in bringing and winning meritorious cases under competition-related statutes.

Increased Criminal Enforcement

The Division's request also provides for expanded criminal enforcement, including under Section 2 of the Sherman Act (which hasn't been charged criminally since the 1970s), along with attorneys in support of the Division's Supply Chain Initiative and the Department's Procurement Collusion Strike Force (PCSF).

The Division's criminal workload has continued to expand. The Division ended FY 2022 with over 150 pending grand jury investigations, the most in 30 years. As of December 2022, the ATR has 16 pending trials for indicted criminal cases arising out of more than a dozen investigations into various industries. These cases involve conspiracies concerning health care, for example, fixing prices for generic drugs, conspiracies relating to bid rigging and other criminal conduct affecting government procurement, and conspiracies that directly target the American worker. Notably, this includes trials against 13

companies and 44 individuals, five of which were executives at the highest levels: company Presidents and CEOs.

Recently, the Division secured guilty verdicts after trials against a former engineering executive charged with bid-rigging and fraud schemes targeting the North Carolina Department of Transportation and a former employee of the Department of Energy charged with conspiracy to defraud the United States as well as making false statements to federal agents. In the Division's first two criminal prosecutions alleging collusion in labor markets, the courts presiding over the cases affirmed that wage-fixing and no-poach conduct constituted criminal violations of the Sherman Act.

In February 2022, in the wake of persistent price increases, the Antitrust Division and the Federal Bureau of Investigation (FBI) developed an initiative to deter, detect, and prosecute those who would exploit supply chain disruptions to engage in collusive conduct. As part of the initiative, the Antitrust Division is prioritizing investigations where competitors may be exploiting supply chain disruptions for illicit profit and is undertaking measures to proactively investigate collusion in industries particularly affected by supply disruptions. The Antitrust Division has also formed an international working group on supply chain collusion with the Australian Competition and Consumer Commission, the Canadian Competition Bureau, the New Zealand Commerce Commission and the United Kingdom Competition and Markets Authority. The group is developing and sharing intelligence and utilizing existing international cooperation tools to detect and combat collusive schemes.

The Division also leads the PCSF, an interagency group of enforcers combatting anti-competitive conspiracies that target government spending on goods and services at all levels, including the billions of dollars at risk from collusion and bid-rigging on projects funded by the \$1.2 trillion Investment in Infrastructure and Jobs Act (IIJA). PCSF has, since its inception in November 2019, trained more than 20,000 agents and procurement officials and opened more than 65 grand jury investigations. Those efforts are showing results—the PCSF has recently reached a resolution in an international case where the defendants rigged bids on an U.S. Army contract valued at more than \$75 million.³ Investigated and obtained a guilty plea from a public official who participated in a bid-rigging conspiracy that targeted his employer;⁴ had a defendant plead guilty to rigging bids for food sold to the Department's Bureau of Prisons;⁵ and indicted a military contractor for rigging bids and defrauding the U.S. on U.S. Army contracts in Texas, Michigan, and California worth over \$15 million.⁶ The Department established the PCSF because the potential harm from collusion in public procurement is significant. Indeed, as the Organization for Economic Cooperation and Development (OECD) has noted, eliminating bid rigging and other forms of collusion in procurement could save the

³ See paragraph 4(b) of the [plea agreement for U.S. v. G45 Secure Solutions NV](#)

⁴ U.S. Dep't of Justice, Former Caltrans Contract Manager Pleads Guilty to Bid Rigging and Bribery (Apr. 11, 2022), <https://www.justice.gov/opa/pr/former-caltrans-contract-manager-pleads-guilty-bid-rigging-and-bribery>.

⁵ U.S. Dep't of Justice, Inland Empire Man Agrees to Plead Guilty in Bid-Rigging Scheme to Obtain Contracts to Provide Food to Federal Prison Facilities (Apr. 5, 2022), <https://www.justice.gov/usao-cdca/pr/inland-empire-man-agrees-plead-guilty-bid-rigging-scheme-obtain-contracts-provide-food>.

⁶ U.S. Dep't of Justice, Military Contractor Indicted for \$15 Million Bid-Rigging Scheme and Conspiracy to Defraud the United States (May 20, 2022), <https://www.justice.gov/opa/pr/military-contractor-indicted-15-million-bid-rigging-scheme-and-conspiracy-defraud-united>.

government 20 percent of expended funds—or more.⁷ With last year’s passage of the \$1.2 trillion in infrastructure spending in the IJA, the amount at risk is staggering. Using the OECD estimate, \$240 billion in taxpayer funds could be lost to bid rigging and collusion. This risk is not theoretical—the Division *already* has obtained evidence of conspirators discussing IJA funding as a motivating factor. Since the President signed the IJA, the PCSF has ramped up its all-of-government efforts to proactively combat IJA-related collusion through enhanced awareness, outreach, training, and detection efforts with existing and new partner departments and agencies. The PCSF will similarly need to increase its investigation and prosecution efforts as IJA funds begin flowing and projects go out for bid.

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 \$7.1 trillion in calendar year 2020⁸ and \$8.4 trillion in calendar year 2021.⁹ Calendar year 2022 data will be available on March 23, 2023.

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 the Division’s 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.

The Division’s criminal enforcement program overall, including enforcement against international cartels, has resulted in an increase in criminal fines and penalties. Up until 1994, the largest corporate fine imposed for a single Sherman Act count was \$6 million. Today, fines and penalties of \$10 million or more are commonplace, including fines in excess of \$100 million.

The Division’s work no longer takes place solely within the geographic borders of 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. Parties and potential evidence are increasingly

⁷ See the *Fighting bid rigging in public procurement* [page](#) on the OECD website

⁸ “U.S. International Transactions: Year 2020 Historical Comparisons.” *United States Department of Commerce, Bureau of Economic Analysis*, March 23, 2021. Viewed on March 26, 2021 at <https://www.bea.gov/sites/default/files/2021-03/trans-annual20-hist.pdf>.

⁹ “U.S. International Transactions: Third Quarter 2022 and Year 2021.” *United States Department of Commerce, Bureau of Economic Analysis*, December 21, 2022. Viewed on February 16, 2023 at <https://www.bea.gov/data/intl-trade-investment/international-transactions>.

located abroad, adding complexity and cost to these investigations. 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, they combine for a very different, and generally more difficult investigatory process than would be the case if the Division's efforts were restricted to conduct and individuals in the U.S.

Continued Commitment to International Antitrust Enforcement - The Department of Justice represents the United States in matters involving foreign affairs and law enforcement. The Antitrust Division actively works to encourage sound global enforcement of competition laws, pursuing this goal by strengthening bilateral ties with competition agencies worldwide, participating in multilateral organizations, and working with jurisdictions that are in the process of adopting and enhancing their competition laws and enforcement. Efforts to promote best practices among competition agencies around the world enhance global and U.S. antitrust enforcement.

The Division continued to pursue its international antitrust agenda despite the COVID-19 pandemic. The Division leveraged existing bilateral relationships, as well as longstanding ties to multilateral organizations, to facilitate the shift to a virtual environment in FY 2021. The Division anticipates continuing virtual engagement post-pandemic, yet recognizes that its bilateral and multilateral relationships, which enabled a swift adaptation to the current circumstances, were built upon the strength of in-person engagement. The Division has begun a return to in-person engagement.

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. The Division's engagement prioritizes international cooperation on criminal (cartel), civil conduct, and merger enforcement and, where appropriate, competition policy convergence. A particular focus of engagement with our foreign counterparts is competition enforcement in digital markets. For example, in December 2021, the Division, with the Federal Trade Commission (FTC) and the European Commission, launched the U.S.-EU Joint Technology Competition Policy Dialogue (TCPD). Both through the TCPD and other cooperation efforts, the Division intends to collaborate to ensure and promote fair competition, as vigorous and effective competition enforcement benefits consumers, businesses, and workers around the world.

The Division's cartel enforcement program continues to reflect the success of its global engagement. Worldwide consensus is growing that international cartel activity is pervasive and victimizing consumers everywhere. From FY 2010 to FY 2021, the total fines and penalties obtained in Division cartel cases was just over \$9.7 billion, with many of these cases involving at least some foreign activity or actors. Many international counterparts assist with the Division's cartel investigations by providing mutual legal assistance and pursue such activity in their own jurisdictions with assistance from the Division. International cartel cooperation facilitates dialogue on investigative strategies, the timing of key investigative steps, such as the execution of search warrants, and fine methodology.

As noted above, in November 2019, the Division spearheaded the formation of the PCSF, an interagency partnership to combat antitrust crimes and related schemes targeting public procurement. In FY 2021, the Division launched PCSF Global, which is designed to strengthen relationships with foreign-located federal agents, increase collaboration with international enforcers, and detect, investigate, and prosecute antitrust offenses that target U.S. government spending abroad. This has been a successful initiative. For example, PCSF Global is investigating a criminal antitrust conspiracy targeting security services provided in Belgium to, among others, U.S. government agencies and government-sponsored/funded entities. These security services include individual guards protecting physical buildings and providing mobile monitoring and electronic surveillance.

The Division also regularly cooperates with international counterparts in its civil investigations. Such engagements provide cooperating competition agencies with a fuller picture of the merger or conduct under investigation and its potential competitive effects. Working closely with other competition agencies also helps avoid the prospect of propounding conflicting theories of harm or adopting inconsistent remedies, and ensures 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 involve cooperation with other competition agencies. In FY 2022, for example, the Division reviewed the proposed merger of *Cargotec* and *Konecranes* and worked closely with competition agencies in a number of jurisdictions, including Australia, the EU, Israel, New Zealand, and the United Kingdom.

In addition to bilateral cooperation, multilateral engagement through such organizations as the International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD) and the United Nations Committee on Trade and Development (UNCTAD), substantially supports the Division's international antitrust agenda. For example, in October 2001, the Division, in conjunction with 13 other competition agencies, including the FTC, launched the ICN. Since its inception, the ICN



has grown to 140 agencies from 129 jurisdictions. The Division continues to play an important role in the ICN, building consensus among competition agencies on sound competition principles, where appropriate, and providing support for new and developing competition agencies building strong competition cultures and enforcing the laws in their jurisdictions. In FY 2022, the Division

assumed the co-chair position of the ICN Cartel Working Group, an important position from which to lead the battle against cartels. The Division will serve in this leadership role for 3 years and, as such, will play a key role in developing the agenda for the organization and help guide the conversation on international enforcement cooperation.

Finally, through its technical assistance program, the Division consults with and helps train competition agencies that are in the process of adopting and enhancing their competition laws and enforcement. As part of its virtual transition during the pandemic, the Division began providing technical assistance to competition agencies entirely through digital communications platforms. Administering these programs virtually made them more accessible, leading to a greater number of programs with higher attendance

from participating jurisdictions. Post-pandemic, the Division expects to continue to incorporate virtual training into a portion of its overall technical assistance program.

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.

International Advocacy – The Division regularly engages in international competition advocacy and technical assistance to promote the application of sound competition principles to cases involving IP 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, and the United Kingdom.

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

Appellate Filings – The Division provides its views, to the Office of the Solicitor General and to other Department components, on Supreme Court and appellate cases involving IP that have a significant potential to affect competition and may in other ways contribute actively to the development of a brief. The Division also files amicus briefs in private antitrust cases involving IP issues.

The Effects of the Digital Transformation on Antitrust Enforcement

The dramatic changes in the economy from the growth of technology have created significant challenges for the Antitrust Division. These developments are not limited to digital markets; every industry, from finance to healthcare, energy to retail, has been transformed by the internet, the ubiquity of data and other digital developments. In addition, technology has fundamentally changed how companies do business and retain communications, which has drastically increased the burden on Division resources to investigate violations of the antitrust laws. The Antitrust Division needs to invest significant resources to adapt to these challenges. For example:

- 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. Many other domestic and international competition agencies have established data units composed of data scientists, data engineers, and other technology and behavioral specialists. These units provide support to the case teams through use of data science, digital forensics, and technology insight. Due to lack of resources, the Antitrust Division has been unable to establish the type of data unit now seen in many smaller and less well-established competition agencies.
- From financial services to farming, the Division's investigations require up-to-the-minute understanding of market realities in the industries it investigates. Yet the Division does not employ a single industry expert on staff, a particularly pressing need in industries such as agricultural science and health care. In addition, despite a highly technical monopolization case against Google and additional ongoing investigations, the Division's staff does not include a single technologist. The FTC, however, has nine technologists in its Office of the Chief Technologist and Office of Technology Research and Investigation.
- The evolution of electronic communication has resulted 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 telephone logs, seized data and bank records, the Division now regularly obtains information from social media providers, cloud service providers, and physical media such as hard drives and computer servers containing the e-mail traffic and documents of companies under investigation. Many of these data sources are non-standard and require additional processing before they can be reviewed. The number of documents and data submitted to the Division by companies under investigation has increased exponentially: In FY 2021, the Division reviewed over 150 TB of data, nearly five times more than in FY 2015. The cost to adequately review this data has likewise increased.

Appellate Advocacy

The Antitrust Division has been active in the U.S. Supreme Court and the federal courts of appeals, both in appeals from the Division's own actions and in cases where views are offered as an amicus party. The Division also provided advice to other DOJ components and to the Office of the Solicitor General on competition issues in various non-antitrust cases at the certiorari and merits stages before the Supreme Court.

The Division conducted important appeals in its own cases. In *United States v. Lischewski*, the Division opposed a petition for certiorari from a Ninth Circuit decision upholding the conviction of the former CEO of Bumble Bee Foods for price fixing. At the Division's urging, the Supreme Court declined to consider whether longstanding case law holding price fixing per se unlawful under the Sherman Act should be jettisoned as unconstitutional; accordingly, the Supreme Court left in place the former CEO's price-fixing conviction. The Division also briefed and presented oral argument in the criminal appeal in *United States v. Aiyer*, which challenged the district court's refusal to consider competitive effects in assessing the validity of an indictment charging a per se violation of the Sherman Act; the court's rulings on the admissibility of competitive-effects

evidence on the issue of intent; and the court’s handling of post-trial allegations of juror misconduct. Consistent with the Division’s arguments, the Second Circuit rejected these challenges and affirmed the judgment of conviction.

The Division also continued to maintain an active amicus program, filing numerous briefs in private cases in the courts of appeals and district courts to protect the Division’s enforcement interests and promote competition in the U.S. economy. The Division filed a pair of important amicus briefs in cases involving alleged anticompetitive conduct by dominant digital platforms. In *State of New York v. Facebook*, the Division discussed the correct legal standards for analyzing and remedying Facebook’s alleged exclusionary conduct for building a “moat” around its monopoly in personal social networking services. And in *Epic Games v. Apple*, the Division addressed the district court’s misapplication of the Sherman Act in several ways that would harm effective enforcement of the antitrust laws. The Division also helped courts protect competition in several other important industries. In *In re Rail Freight Fuel Surcharge Antitrust Litigation*, the D.C. Circuit relied significantly on the Division’s amicus brief in setting the evidentiary rules for a case involving an alleged conspiracy among railroads, and in *PLS.Com v. National Association of Realtors*, the court ruled consistently with the Division’s amicus brief in reversing dismissal of an antitrust claim alleging anticompetitive conduct in the real-estate industry. Other subjects of lower court filings in this time frame have included the appropriate treatment of horizontal no-poach agreements, the importance of private antitrust enforcement as a complement to government enforcement, and how association rules can provide direct evidence of Section 1’s concerted-action requirement.

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 the Surface Transportation Board, in petitions for review and appeals in the federal appellate courts.

Results

While specific Performance Measures are addressed in the Decision Unit Justification section of this submission, several interesting statistics relative to the Division’s performance include:

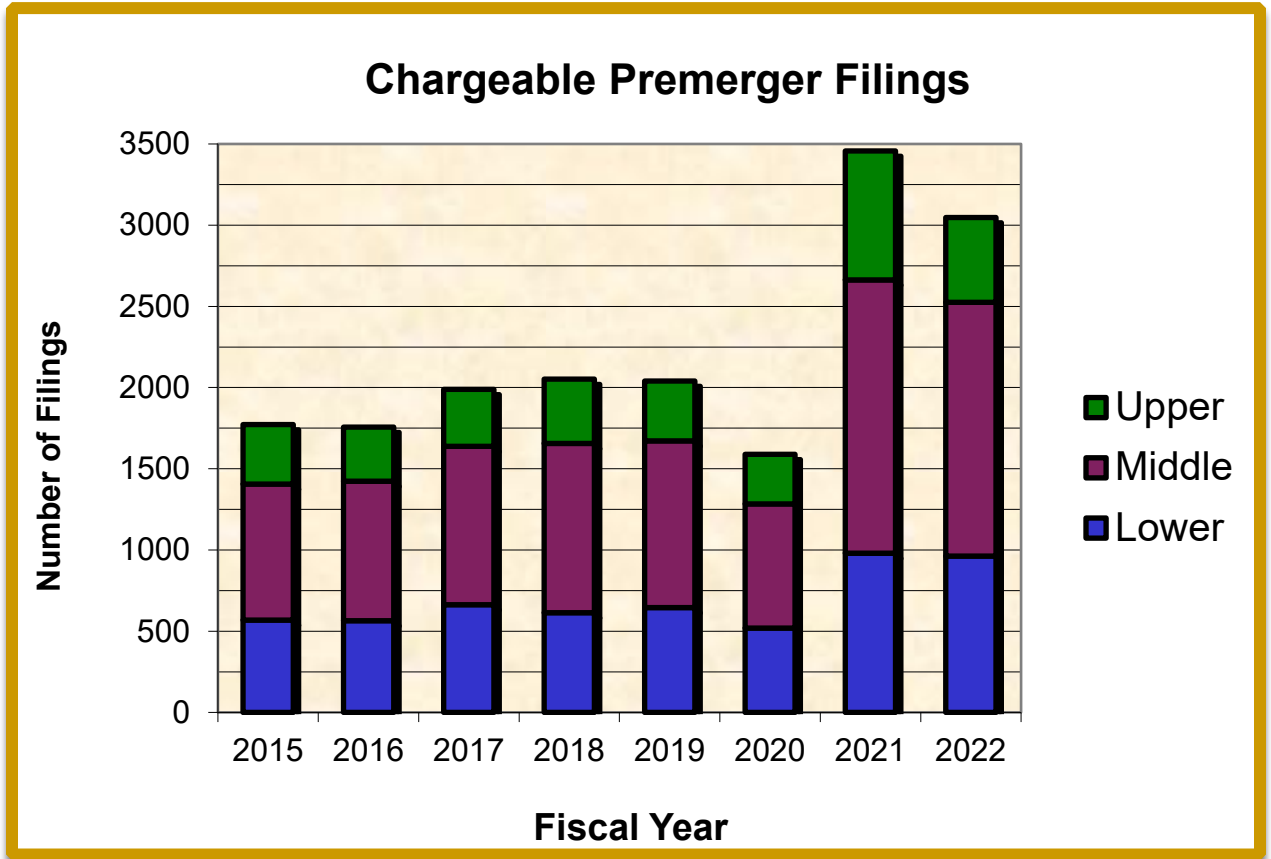
- In the area of criminal enforcement, the Division continues to move forcefully against hard-core antitrust violations such as price fixing, bid rigging, and market allocation agreements. A significant number of the Division’s prosecutions have involved **international price fixing cartels**, affecting billions of dollars in U.S. commerce. **In the last eleven years (FY 2012 – FY 2022), defendants have been sentenced to pay approximately \$9.3 billion in criminal fines and penalties to the U.S. Treasury. In FY 2021, the Antitrust Division obtained \$151 million in criminal fines and penalties in Division cases.**
- In FY 2021, as the result of Division enforcement efforts, **14 corporations and 29 individuals** were sentenced due to antitrust violations. Prison sentences from FY 2011 through FY 2020 **averaged approximately 17 months**, more than two

times the 8-month average sentence of the 1990's. During the same ten-year time period, prison sentences resulted in more than **314 years** of imprisonment in cases prosecuted by the Antitrust Division, with **127 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. In the last ten years (FY 2012 – FY 2022) restitution generated by the Division was more than **\$35 million.**

Revenue Assumptions

Estimated FY 2022 and FY 2023 filings and fee revenue consider the relative optimism of current medium-range economic forecasts. In its May 2022 report “The Budget and Economic Outlook: 2022 to 2032,” the Congressional Budget Office predicts annual growth beginning in 2023 to be 4.5 percent and to average between 3.5 percent and 3.9 percent from 2024 to 2032.¹⁰



Premerger Filing Fee Thresholds	
Effective February 27, 2023	
Value of Transaction	Filing Fee
< \$161,500,000	\$30,000 (was \$45,000)
\$161,500,000 - < \$500,000,000	\$100,000 (was \$125,000)
\$500,000,000 - < \$1,000,000,000	\$250,000 (was \$280,000)
\$1,000,000,000 - < \$2,000,000,000	\$400,000 (new fee tier)
\$2,000,000,000 - < \$5,000,000,000	\$800,000 (new fee tier)
≥ \$5,000,000,000	\$2,250,000 (new fee tier)

Figure 2

(Consistent with q2 direction, pre-merger filing fee threshold amounts are adjusted annually based on inflation)

¹⁰ CBO’s Economic Projections for 2022 to 2032, available at https://www.cbo.gov/publication/58147#_idTextAnchor266.

The Congressional Budget Office estimates that this new fee schedule will generate over \$1.4 billion in additional revenue from 2023 to 2027. Hart-Scott-Rodino (HSR) filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division.

The Division’s Strategy to Reinvigorate Antitrust Enforcement, Combat Fraud, and Protect Consumers

The Division continues to seek to reinvigorate antitrust enforcement, combat fraud, and protect consumers by:

- Reviewing and blocking potentially anticompetitive mergers;
- Investigating and litigating civil conduct that violates the antitrust laws; and
- Investigating and prosecuting criminal antitrust violations.

The Division’s FY 2024 budget request seeks to empower the Division to pursue these enforcement efforts more effectively, and at a scale proportional to the need, by (1) increasing its roster of attorneys, paralegals, economists, and support staff and (2) modernizing its technology infrastructure to provide much-needed litigation-support tools and services.

This budget request comes at a time where increased enforcement activity has stretched its staff and technology infrastructure to their limits—a problem that is particularly acute given that the Division routinely faces off against the nation’s most elite law firms and companies with virtually unlimited resources.

For example, the Division has suspended high-priority civil conduct investigations because it needed to reassign staff to mergers reviews, which must be completed on a statutorily mandated timeline. As a result, conduct investigations have been abandoned because evidence has gone stale. Similarly, the Division’s outdated technology infrastructure cannot accommodate the Division’s current workload, which exacerbates the staffing shortfall and reduces the Division’s capacity to take on new matters. For example, because of insufficient computing resources and IT staff, it often takes several weeks before document and data productions can be processed for attorney review. This backlog is so severe that top Division leadership meet each Monday to prioritize which document productions will be loaded in the coming week, and which will be pushed down the queue. The Division’s staffing and technology challenges are particularly acute.

The Division’s FY 2024 budget request is designed to continue the process of providing the Division with the resources needed to overcome its staffing and technological shortfalls, thereby enabling it to more effectively enforce the antitrust laws, fight fraud, and protect American consumers.

The staffing request in the Division’s budget proposal would seek to enable the Division to devote the attorneys, paralegals, economists, and support staff needed to enforce the antitrust laws and protect American consumers. For example, the proposed budget would:

- Allow the Division to protect consumers by allocating sufficient staff to investigate and (if needed) block the increasingly numerous, high-dollar-value, and complex mergers reviewed by the Division;
- Provide the staff needed to complete the Division’s landmark litigation against Google; and properly staff the Division’s numerous high-priority investigations (including those

- in digital markets); and
- Increase the Division’s capacity to prosecute and deter criminal antitrust violations by providing the staff needed to try 20 active criminal trials (including against Teva, the world’s largest generic pharmaceutical company); staff the Division’s over 150 open grand jury investigations and any resulting litigation; and expand the PCSF, whose mission is to protect taxpayers by investigating collusion, fraud, and corruption in government procurement but which currently only has 1.5 full-time-equivalent attorneys.

In sum, enforcing the antitrust laws, combatting fraud, and protecting consumers are at the core of the Division’s mission, and the FY 2024 budget request would equip the Division with the staffing and IT resources it needs to effectively carry out its mission.

Summary

The Division is continually challenged by an increasingly international and complex workload that spans enforcement areas and requires considerable resources to manage. 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 \$324,821,000 in support of 1,385 positions and 1,204 estimated FTE.

FY 2024 Total Budget Request by Program Area

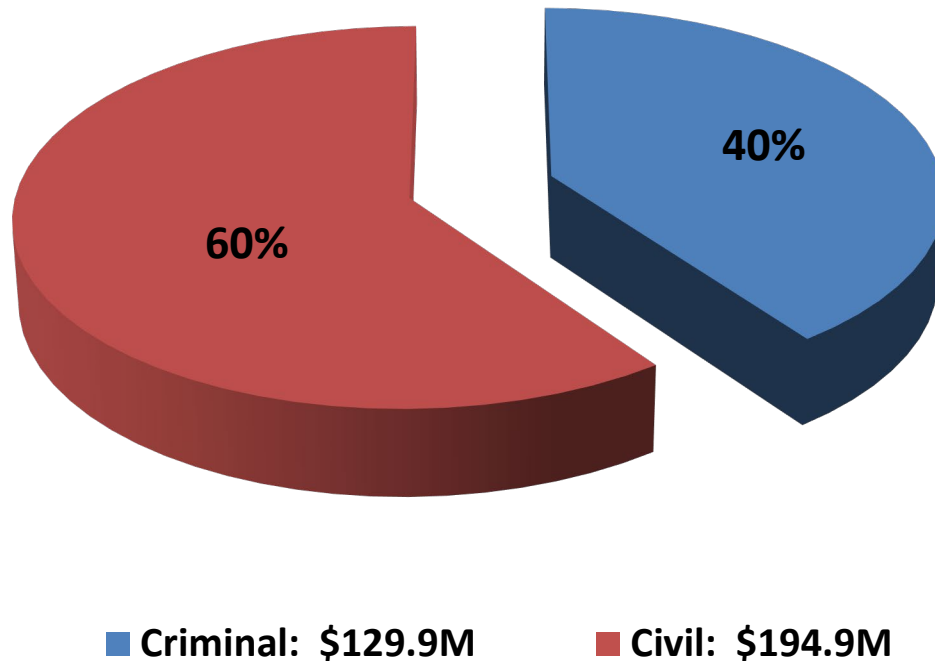


Figure 3

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 with the remaining, approximately 60 percent attributed to its civil program. The FY 2024 budget request assumes this same allocation. It also incorporates all costs to include mission costs related to cases and matters and oversight and policy, as well as 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. These internal challenges include:

- Developing a litigation unit with special expertise including trial experts, filter teams, special matter paralegals, document review specialists and litigation support services.
- Generating, accelerating, and expanding the impact of the Division through real time filings, briefs, and litigation.
- Changing the language of antitrust law to make enforcement more accessible and responsive to consumers, workers, and small businesses.
- Identifying and meeting challenges on the horizon by bolstering expertise, partnering with other agencies, and investing in IT.

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.

The IT 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. This area also includes 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. This includes 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, such as guidelines for usability and accessibility.

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Increased and Expanded Antitrust Enforcement	Increase and expansion of staffing level to address historically high workload within the Antitrust Division.	363	182	\$66,279	59

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, [\$225,000,000] *\$324,821,000*, to remain available until expended of which not to exceed \$5,000 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 [\$190,000,000] *\$323,000,000* in fiscal year [2023] *2024*, 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 [2023]*2024*, so as to result in a final fiscal year [2023] *2024* appropriation from the general fund estimated at [\$35,000,000] *\$1,821,000*.

Analysis of Appropriations Language

No substantive changes proposed.

IV. Program Activity Justification

Decision Unit: Antitrust

<i>Antitrust</i>	Direct Positions	Estimated FTE	Amount (\$000)
2022 Enacted	[907]	689	\$192,776
2023 Enacted	[1,022]	887	\$225,000
Adjustments to Base and Technical Adjustments	[0]	135	\$33,542
2024 Current Services	[1,022]	1,022	\$258,542
2024 Program Increases	[363]	182	\$66,279
2024 Program Offsets	[0]	0	\$0
2024 Request	[1,385]	1,204	\$324,821
Total Change 2023-2024	[363]	317	\$99,821

<i>[Name of Decision Unit]-Information Technology Breakout (of Decision Unit Total)</i>	Direct Positions	Estimated FTE	Amount (\$000)
2022 Enacted	[32]	31	\$38,274
2023 Enacted	[79]	53	\$41,650
Adjustments to Base and Technical Adjustments	[0]	26	\$248
2024 Current Services	[79]	79	\$41,898
2024 Program Increases	[30]	15	\$13,409
2024 Program Offsets	[0]	0	\$0
2024 Request	[109]	94	\$55,307
Total Change 2023-2024	[30]	41	\$13,657

A. 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 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. Matters such as the Division’s ongoing investigation in the generic pharmaceuticals industry exemplify the increasingly complex and important nature of Division workload in the criminal area. The Antitrust Division also focuses on protecting taxpayer dollars through its leadership of the PCSF. The PCSF is an interagency effort designed to deter, detect, investigate, and prosecute bid rigging and related crimes that undermine government procurement processes. The PCSF has increased scrutiny on procurement collusion and related fraud in response to the COVID-19 pandemic. During times of crisis, when exigent Government spending increases, the need for effective deterrence of potential bad actors, and successful detection and prosecution of actual bad actors, is particularly acute. The PCSF’s coordinated and collaborative response includes engagement with the Pandemic Response Accountability Committee, an interagency body providing oversight on CARES Act spending; the Department’s COVID-19 Fraud Enforcement Task Force; and multiple working groups dedicated to deterring and detecting fraud, collusion, and misconduct related to pandemic-response spending.

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 monopolization, 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.



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. 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.

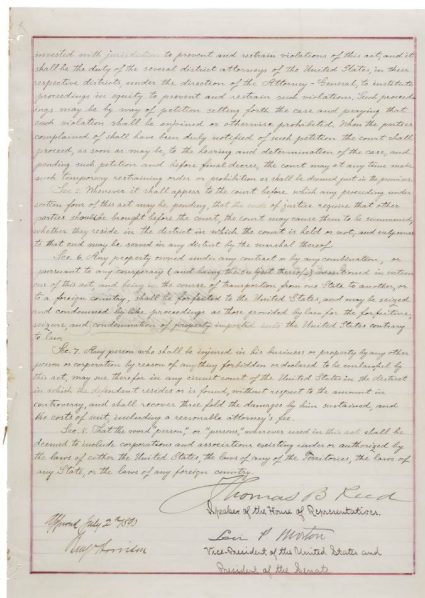
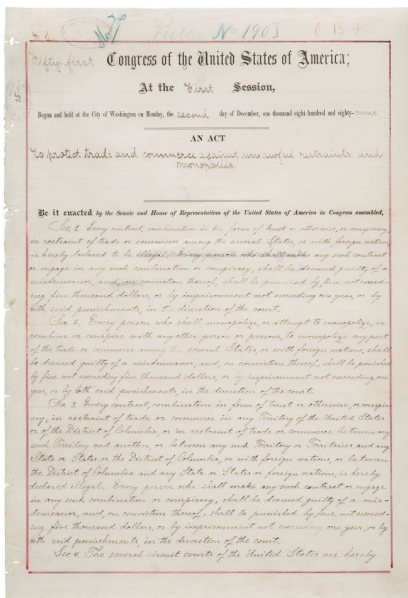
In addition, the Division seeks opportunities to deploy its employees to serve the needs of

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;
- Detailing Division employees to Congressional offices; 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, including the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN), and working with countries that are in the process of adopting antitrust laws.

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.)

B. Performance Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Antitrust Division												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Changes		FY 2024 Request	
Total Costs and FTE (Reimbursable: FTE are included, but costs are bracketed and not included in totals)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			777	192,776	689	207,906	887	225,000	317	99,821	1,204	324,821
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Changes		FY 2024 Request	
Program Activity	CRIMINAL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			311	80,470	276	83,162	355	90,000	127	39,600	482	129,600
Performance Measure:	Number of Active Grand Juries		85		151		95		0		95	
Outcome Success Rate:	Total Dollar Value of Savings to U.S. Consumers (\$ in millions)		Not Projected		Available March 2023		Not Projected		Not Projected		Not Projected	
Program Activity	CIVIL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			466	112,306	413	124,744	532	135,000	190	60,221	722	195,221
KPI:	Number of active civil non-merger investigations		50		51		50		10		60	
Performance Measure:	Number of Active Investigations		50		51		50		0		50	
Outcome Success Rate:	Total Civil (Merger and Non-Merger) Dollar Value of Savings to U.S. Consumers (\$ in millions)		Not Projected		Available March 2023		Not Projected		Not Projected		Not Projected	

TABLE DATA DEFINITIONS:

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

Criminal and Civil key performance indicators (KPIs), performance measure and outcome success rate target adjustments for FY 2021 through FY 2023 projections are based on an analysis of FY 2008 through FY 2020 actual amounts.

Program Activity: Criminal

Performance Measure: During the course of the year, if the Antitrust Division subpoenas individuals to, question 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 investigate 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.

Outcome Success Rate: There are two components to the Division's 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. The Division is more limited in its 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), the Division believes it goes a long way toward describing the outcome of its work and ties directly to the Division's 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.

Program Activity: Civil

Key Performance Indicator: Number of active civil non-merger investigations result includes the following:

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 end outcome of the Division's work in the Civil Non-Merger Enforcement Strategy is the Savings to U.S. Consumers that arise from its successful elimination and deterrence of anticompetitive behavior. There are two components to the Division's 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. The Division is more limited in its ability to estimate price effect, and thus rely on a conservative one percent figure for its estimate. The Division believes our consumer savings figure to be a very conservative estimate.

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: 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.

Outcome Success Rate: The Division's estimates of consumer savings derive initially from its best measurement of volume of commerce in the relevant markets with which it was concerned. For the majority of merger matters, the Division 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, the Division developed conservative estimates of consumer benefits drawing on the details learned in the investigation. The Division notes 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, the Division believes 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, the Division is unable to approach measuring them. Although there clearly are significant limitations to this estimate (as with any estimate), the Division believes it goes a long way toward describing the outcome of its work and ties directly to its 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 the Division's work in the Civil Non-Merger Enforcement Strategy is the Savings to U.S. Consumers that arise from its successful elimination and deterrence of anticompetitive behavior. There are two components to the Division's 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. The Division is more limited in its ability to estimate price effect, and thus rely on a conservative one percent figure for its estimate. The Division believes our consumer savings figure to be a very conservative estimate.

PERFORMANCE MEASURE TABLE					
Decision Unit: Antitrust Division					
Strategic Objective	Performance		FY 2022	FY 2023	FY 2024
			Actual	Target	Target
4.1	Key Performance Indicator: Civil	Number of active civil non-merger investigations	51	50	60
4.1	Performance Measure: Criminal	Number of Active Grand Juries	151	95	95

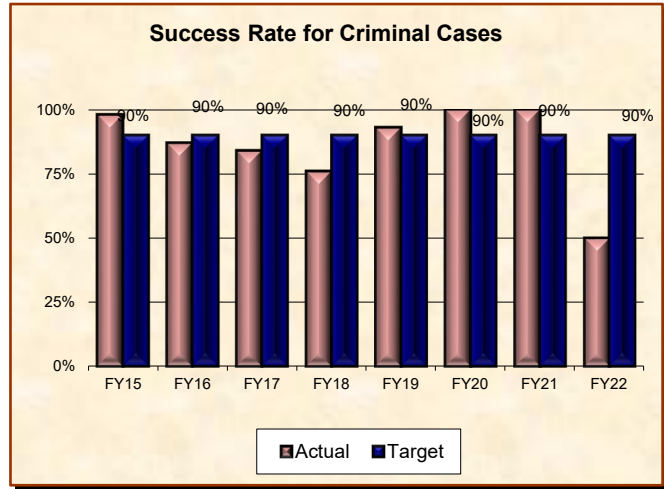
C. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

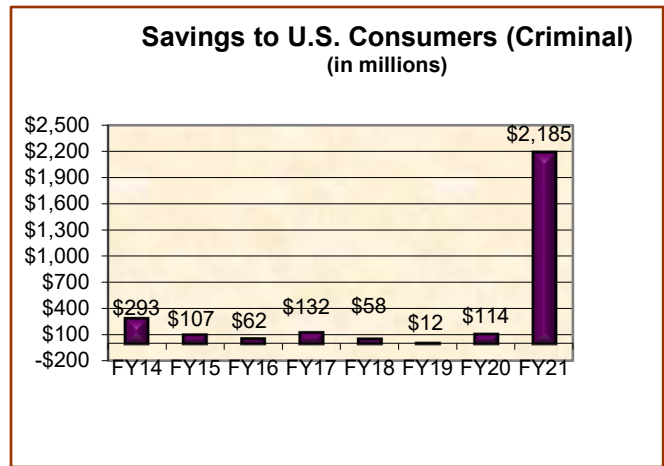
The charts below illustrate the Criminal Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Antitrust Criminal Cases and Savings to U.S. Consumers (as a result of the Antitrust Division’s criminal enforcement efforts). It is the Division’s goal to achieve a successful 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 2022, the Division successfully resolved 50 percent of criminal matters. While taking an aggressive stance against criminal antitrust violations, the success rate of matters has declined due to prosecuting more cases instead of accepting settlements.



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. Fiscal year 2022 cost savings data is still being gathered.



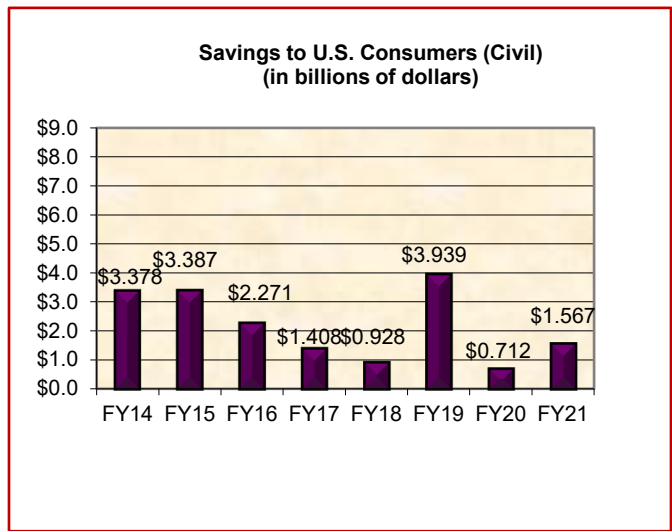
Civil Enforcement

The Savings to U.S. Consumers chart below illustrates the Civil Outcome Performance Measures for the Antitrust Decision Unit (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, requiring significant resources to review. The Division's Civil Merger Program successfully resolved over 97 percent of the matters it challenged in FY 2013 - FY 2022 that have since reached full conclusion and expects to meet or exceed its success rate goal for FY 2023 and FY 2024.

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. Fiscal year 2022 cost savings data is still being gathered. Targeted levels of performance are not projected for this indicator. Fiscal year 2022 cost savings data is still being gathered.





Civil Enforcement

The Division's civil strategy is comprised of two key activities - Merger and Civil Non-Merger enforcement. Seven 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 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 received.

The number of merger transactions reviewed includes all HSR filings the Division receives of proposed or consummated mergers that are below HSR filing thresholds but 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 the seven litigating sections in Washington, DC and the San Francisco Office, although other sections and offices occasionally provide support if necessary. The Division's Civil Non-Merger activities work in parallel with the Antitrust Division's Criminal enforcement, including enforcement 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.

Violations of both Section 1 and Section 2 of the Sherman Act are felony offenses that have been and can be prosecuted using criminal and civil processes. 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 or a flagrant offense with evidence of plain criminal intent, 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 and that a defendant knowingly joined the conspiracy. 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 also prosecutes violations of Section 2 of the Sherman Act, which prohibits conspiracies to monopolize, 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, the Division's 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 anticompetitive 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, and violations of Section 2. 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.



D. Exemplars – Civil

A. Non-Merger

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

Poultry Compensation Information Exchange Litigation

On July 25, 2022, the Division filed a civil antitrust complaint to stop three of the nation’s largest poultry companies—Cargill, Sanderson Farms, and Wayne Farms—and data consultant WMS & Co. and its president G. Jonathan Meng from suppressing the pay of hundreds of thousands of poultry processing plant workers and to stop Sanderson and Wayne Farms from engaging in deceptive practices regarding their contracts with poultry growers. According to the complaint, 21 competing chicken and turkey processors spent over 20 years collaborating and assisting each other in making compensation decisions, exchanging compensation information, and facilitating such collaborations and exchanges through industry consultants, and this agreement resulted in poultry processing plant workers receiving less compensation than they would have earned had the processors competed fairly for their labor. The complaint also alleges that the “tournament system” used to pay growers camouflages the true range of financial outcomes for growers and violates the Packers and Stockyard Act. Concurrent with the complaint, the Division filed a proposed settlement, pursuant to which defendants are prohibited from sharing or facilitating the sharing of competitively sensitive information among competitors and required to cooperate with the United States’ ongoing investigation. Additionally, under the terms of the proposed settlement with Cargill, Sanderson Farms, and Wayne Farms, the court will appoint a global monitor to ensure compliance with the terms of the settlement and the antitrust laws. Those defendants will also pay restitution to affected poultry processing workers. Further, the proposed settlement with Sanderson and Wayne Farms changes the method by which those defendants compensate the growers that raise their poultry and requires them to comply with the USDA’s Agriculture Marketing Service’s June 8, 2022 proposed rule regarding “Transparency in Poultry Grower Contacting and Tournaments.” The lawsuit is pending in federal court in Baltimore.

United States, et al. v. American Airlines and JetBlue Airways Litigation

On September 21, 2021, the Division, along with six states and the District of Columbia, filed a civil antitrust action to block an unprecedented series of agreements between American Airlines and JetBlue through which the two airlines will consolidate their operations in Boston and New York City. The Division alleges that this extensive combination, which the companies call the “Northeast Alliance,” will not only eliminate competition in Boston and New York City, but will harm air travelers across the country by significantly diminishing JetBlue’s incentive to compete with American elsewhere, further consolidating the already highly concentrated airline industry. Trial is scheduled for September 2022 in federal court in Boston.

United States v. Google Litigation

On October 20, 2020, the Division filed a landmark civil enforcement action against Google. The Division alleges that the company has used a range of anticompetitive tactics to maintain and extend monopolies in markets for search and search advertising, to the detriment of American consumers and advertisers.

As the complaint alleges, for many years Google has had a monopoly in general search, which includes search engines that can handle queries of all types. Google's overall market share in general search is now over 85 percent; its share is even higher on mobile devices, at nearly 95 percent. Google monetizes its search monopoly by selling ads on the search results pages. As in many markets, to become a successful search engine a company must be able to effectively distribute its product to consumers. Google has used its monopoly power to exclude rivals from the search distribution channels they would need to achieve sufficient scale to challenge Google's monopolies. About 80 percent of searches are covered by the combination of Google's exclusionary contracts and Google's own properties, leaving only a small fraction potentially available for competitors. Google has described some of its exclusionary agreements as "[i]nsurance polic[ies] that preserve[] our search and assistant usage."

A bipartisan group of 14 states are co-plaintiffs with the Division. An additional 38 states and territories filed suit against Google in December 2020, incorporating the Division's allegations and adding certain additional claims. The two suits have been consolidated for pretrial proceedings in federal court in Washington, DC. Discovery is ongoing and trial is scheduled for September 2023.

Online Platform Investigations

In addition to its litigation against Google, the Division is in the midst of large-scale investigations into the diverse business practices of the world's largest online platform companies. These investigations each involve potentially anticompetitive business practices spanning many years, and many permutations of business models in technologically complex industries. The Division has made great progress in these investigations in FY 2022: developing the facts about many different business practices and contractual relationships, cultivating industry and economic experts, amassing legal research to understand the best way to apply precedent to these unique facts, and working collaboratively with a large number of state and foreign jurisdictions who are looking into similar theories of harm. The online platform investigations are entering a critical phase as the Division moves into FY 2023.

National Association of Realtors (NAR)

On July 1, 2021, the Division filed a notice of withdrawal of consent to a proposed settlement with NAR and to voluntarily dismiss its complaint without prejudice. The Division determined that the settlement did not adequately protect the Division's rights to investigate other conduct by NAR that could impact competition in the real estate market and may harm home sellers and home buyers. The Division took this action to permit a broader investigation of NAR's rules and conduct to proceed without restriction. The Division had filed a complaint and proposed settlement on November 19, 2020. The

complaint alleged that NAR established and enforced certain rules and policies that illegally restrained competition in residential real estate services. The proposed settlement sought to remedy those illegal practices and encourage greater competition among realtors, but it also prevented the Division from pursuing other antitrust claims relating to NAR's rules. Under a stipulation signed by the parties and entered by the court, the Division has sole discretion to withdraw its consent to the proposed settlement. NAR subsequently filed a Petition to Set Aside (or alternatively modify) the Civil Investigatory Demand issued by the Division, which has been pending with the court since November 11, 2021.

Endeavor/Live Nation

On June 21, 2021, the Division announced that two executives of Endeavor Group—CEO and Director Ariel Emanuel, and President Mark Shapiro—resigned from their positions on the Live Nation Entertainment Board of Directors after the Division expressed concerns that their positions created an illegal interlocking directorate in violation of Section 8 of the Clayton Act. Endeavor and Live Nation compete closely in many sports and entertainment markets. Both Live Nation and Endeavor, through their wholly owned and minority owned subsidiaries, promote and sell tickets and VIP packages that include tickets, lodging, and travel accommodations to live music, sporting, and other entertainment events. Based on U.S. revenues, the interlock did not qualify for any of Section 8's safe harbors.

Section 7A Cases

The Division, at the request of the FTC, filed three lawsuits and concurrent settlements alleging violations of the pre-transaction notification and waiting period requirements of the HSR Act.

On September 2, 2021, the Division filed suit against Richard D. Fairbank, the CEO of Capital One Financial Corporation, for his failure to file HSR notifications with respect to his acquisition of voting securities of Capital One in 2018. Pursuant to the proposed settlement, Mr. Fairbank agreed to pay a \$637,950 civil penalty. The court entered the settlement on December 19, 2021.

On December 22, 2021, the Division filed suit against Clarence L. Werner, the founder of Werner Enterprises, for his failure to file HSR notifications with respect to acquisitions of voting securities of Werner Enterprises from May 2007 through February 2020. Pursuant to the proposed settlement, Mr. Werner agreed to pay a \$486,900 civil penalty. The court entered the settlement on April 21, 2022.

On December 22, 2021, the Division filed suit against Biglari Holdings Inc., with respect to acquisitions of voting securities of Cracker Barrel Old Country Store, Inc. in 2020. Pursuant to the proposed settlement, Biglari Holdings agreed to pay a \$1.4 million civil penalty.

Amicus Briefs

The Division has filed a number of notable amicus briefs in the last year.

i. FIFA/United States Soccer Federation

On October 14, 2021, the Division filed an amicus brief in *Relevant Sports, LLC v. United States Soccer Federation, Inc.*, No. 21-2088 (2d Cir. Argued Apr. 7, 2022). In this case, plaintiff soccer promoter Relevant Sports filed a complaint against the Fédération Internationale de Football Association (FIFA)—the membership association that serves as soccer’s world governing body—and one of its members, the United States Soccer Federation. The plaintiff alleged that these defendants violated Section 1 of the Sherman Act by adopting and enforcing a market-division policy that prohibits staging official-season soccer matches off home soil. The district court dismissed the complaint, holding that the plaintiff failed to plead concerted action. The court held that the alleged market-division policy was not “direct evidence” of concerted action because the plaintiff failed to allege an “agreement to agree” to adopt the policy. On appeal from the motion-to-dismiss decision, the Division filed an amicus brief in the United States Court of Appeals for the Second Circuit in support of neither party, arguing that an association rule governing members’ separate businesses is direct evidence of concerted action subject to Section 1 of the Sherman Act. The Division participated as amicus curiae in oral argument on April 7, 2022.

ii. Apple and Meta Platforms

In January 2022, the Division filed amicus briefs in two cases challenging the market dominance of companies Apple and Facebook. In its amicus brief in *Epic Games, Inc. v. Apple Inc.*, No. 21-16506 (9th Cir. Sept. 13, 2021), filed January 27, 2022, the Division criticized the district court’s 2021 decision to dismiss all federal antitrust claims brought by Epic Games, arguing that the court read Sections 1 and 2 of the Sherman Act “narrowly and wrongly” and failed to balance the benefits and harms of Apple’s policies to determine their overall competitive effect. In its amicus brief in *New York et al. v. Meta Platforms, Inc.*, No. 21-7078 (D.C. Cir. July 29, 2021), filed January 28, 2022, the Division criticized the district court for “fundamentally misapply[ing]” Section 2 of the Sherman Act when dismissing the states’ claim by disaggregating the underlying anticompetitive acts, erroneously classifying all of the platform conduct as unilateral refusals to deal, and misapplying law on antitrust remedies.

Statements of Interest

i. 568 Presidents Group

On July 7, 2022, the Division filed a Statement of Interest in the pending class action lawsuit of *Henry et al. v. Brown University et al.*, 2022 WL 95121 (N.D. Ill. Jan. 9, 2022). This case pertains to higher education institutions within the “568 Presidents Group,” which is a group of nonprofit universities that have agreed to follow a “Consensus Methodology” for calculating a prospective student’s expected family contribution in the context of need-based financial aid awards. The 568 Presidents Group engages in this practice pursuant to the statutory 568 Exemption from Sherman Act liability, which allows agreements among certain schools “to use common principles of professional judgment for determining need.” H.R. Rep. No. 105–144, at 2-3 (1997). The plaintiffs allege that the schools’ agreement to follow this Consensus Methodology

effectively eliminates competition between these defendant institutions over need-based financial aid awards, amounting to a price-fixing conspiracy in violation of Section 1 of the Sherman Act. On April 15, 2022, the defendants moved to dismiss the Amended Complaint. The Division submitted a Statement of Interest to address two issues: (1) the scope of the 568 Exemption and (2) the application of the per se rule to this case.

ii. Baseball

On June 15, 2022, the Division filed a Statement of Interest in *Nostalgic Partners, LLC et al. v. The Office of The Commissioner of Baseball*, No. 1:21-cv-10876 (S.D.N.Y. Dec. 20, 2021). Plaintiffs in this case are a group of minor league baseball teams who are former “affiliates” of major league baseball teams. Plaintiffs allege that the Professional Development League—the new minor league system implemented after the 2020 expiration of the Professional Baseball Agreement—involves a horizontal group boycott among major league teams against 40 minor league teams (including plaintiffs) who can no longer compete to affiliate with major league teams or even play against other affiliates. Plaintiffs also allege that the new Professional Development League system involves a horizontal agreement among major league teams “that has artificially reduced and capped output” of minor league affiliations below the level “that would otherwise occur in an unconstrained market.” Defendant moved to dismiss the complaint on three grounds—one of which is reliance on baseball’s “exemption” from the antitrust laws. The United States filed a Statement of Interest to set forth its views on the proper scope of the baseball exemption.

iii. Pickert Medical Group

On February 25, 2022, the Division filed a Statement of Interest in the case of *Samuel Beck et al. v. Pickert Medical Group, P.C., et al.*, No. CV21-02092 (Nev. Dist. Ct. Nov. 22, 2021). This case pertains to post-employment non-compete restraints for anesthesiologists in Northern Nevada. The plaintiff anesthesiologists filed a complaint against Pickert Medical Group, challenging the validity of defendant’s non-compete restraints under Nevada state law. Although the Division takes no position on the merits of plaintiffs’ claims under Nevada state law, the Division filed a Statement of Interest to highlight the antitrust implications of the post-employment restraints at issue in this case to assist the court in its resolution of related state-law questions.

B. Merger:

Booz Allen Hamilton/EverWatch

On June 29, 2022, the Division filed a civil antitrust lawsuit to block Booz Allen Hamilton Holding Corporation’s proposed acquisition of EverWatch Corp., alleging violations of both Section 1 of the Sherman Act and Section 7 of the Clayton Act. The complaint alleges that the merger agreement threatens imminent competition for a government contract to provide operational modeling and simulation services to the National Security Agency (NSA), thus violating Section 1 of the Sherman Act because it immediately reduced each company’s incentive to bid aggressively. Unless enjoined, the transaction would violate Section 7 of the Clayton Act by substantially lessening—and in this case, eliminating—competition for this defense contract, leaving NSA to face a

monopoly bidder. A preliminary injunction hearing is scheduled for September 15-16, 2022.

Cargotec/Konecranes

On March 29, 2022, Cargotec Corporation abandoned its intended merger of equals with Konecranes Plc one day after the Division informed the parties that the settlement proposal was not sufficient to address concerns that the proposed combination would eliminate important competition in four types of shipping container handling equipment used by port customers to move goods in the global supply chain. The proposed transaction would have eliminated intense competition between Cargotec and its closest rival, Konecranes, in markets that are already highly concentrated. In particular, the merger would have led to illegal consolidation in the manufacture and supply of four types of container handling equipment that allows the equipment to move containers between different modes of transportation in the supply chain. Cargotec and Konecranes are also at the forefront of automating port operations and reducing carbon emissions by electrifying equipment—megatrends that are likely to drive purchasing decisions from port customers in the coming years.

Verzatec/Crane

On March 17, 2022, the Division filed a civil antitrust lawsuit to block Grupo Verzatec S.A. de C.V.'s proposed acquisition of Crane Composites, Inc. The transaction would have resulted in a merger to monopoly in the market for the production and sale of pebbled fiberglass reinforced plastic (FRP) wall panels, whose low cost, durability, and sanitary performance characteristics make it the wall covering of choice for many restaurants, grocery stores, hospitals, and convenience stores across the United States. Verzatec and Crane are each other's biggest competitors, and the merger threatened to eliminate their intense competition, harming American businesses. On May 26, 2022, the parties abandoned their merger.

UnitedHealth Group/Change Healthcare

On February 24, 2022, the Division, together with Attorneys General of Minnesota and New York, filed a civil antitrust lawsuit to block UnitedHealth Group Inc.'s \$13 billion proposed acquisition of Change Healthcare Inc. As alleged in the complaint, the proposed merger would give United—which owns the largest health insurer in the United States—access to a vast amount of its rival health insurers' competitively sensitive information. Post-acquisition, United would be able to use its rivals' information to gain an unfair advantage and harm competition in health insurance markets. The proposed acquisition would eliminate Change as an independent and innovative firm that today provides a variety of participants in the health care ecosystem with vital software and services. This includes electronic data interchange (EDI) clearinghouse services, which transmit claims and payment information between insurers and providers, and first-pass claims editing solutions, which review claims under the health insurer's policies and relevant treatment protocols. In fact, Change is United's only major rival for first-pass claims editing technology. Trial is scheduled for August 2022 in federal court in the District of Columbia.

U.S. Sugar/Imperial Sugar

On November 23, 2021, the Division filed a civil antitrust lawsuit to stop United States Sugar Corporation’s acquisition of Imperial Sugar Company. U.S. Sugar sells all of its refined sugar through United Sugars Corporation, a marketing cooperative owned by U.S. Sugar and three other refined sugar producers. United Sugars and Imperial compete head-to-head to supply refined sugar to customers throughout the Southeast, resulting in lower prices, better quality, and more reliable service. The proposed acquisition would further consolidate an already consolidated industry, resulting in United Sugars and American Sugar Refining (also known as “Domino”) controlling the vast majority of refined sugar sold in the Southeast and enhancing the likelihood that they will coordinate with each other and refrain from competing aggressively. Trial was held April 18-21, 2022; a decision is pending.

S&P/IHS Markit

On November 12, 2021, the Division filed a complaint challenging the proposed merger of S&P and IHS Markit. The complaint alleged that, as originally structured, the merger would have eliminated significant head-to-head competition between S&P and IHS Markit in providing price reporting agency (PRA) services for refined petroleum products, coal, and petrochemicals. Concurrent with the complaint, the Division filed a settlement to remedy the competitive harm alleged in the complaint. The settlement requires that the merging parties divest IHS Markit’s PRA businesses before proceeding with the merger. The Division approved Dow Jones as the acquirer for the divestiture. In addition, the settlement required the merging parties to end a 20-year non-compete with GasBuddy, a popular crowd-sources retail gas price information app that has prevented GasBuddy—a company well-positioned to enter the retail gas price market—from launching a competing data service. The court entered the settlement on March 21, 2022.

Lactalis/Kraft Heinz

On November 10, 2021, the Division filed a civil antitrust lawsuit to block B.S.A. S.A.’s (Lactalis) \$3.2 billion acquisition of The Kraft Heinz Company’s natural cheese business in the United States. Lactalis’s U.S. subsidiary, Lactalis American Group Inc., and Kraft Heinz have been the two largest suppliers of feta cheese—sold under their respective Président and Athenos brands—to grocery stores and other retailers in the United States. They also have been the two largest suppliers of ricotta cheese—sold under their respective Galbani and Polly-O brands—to grocery stores and other retailers in the New York City metropolitan area and four metropolitan areas in Florida: Miami/Ft. Lauderdale, Tampa/St. Petersburg, Orlando, and Jacksonville. The complaint alleged that the transaction, as originally proposed, would have led to higher-priced and lower-quality feta and ricotta cheeses in the United States. To address these concerns, the Division concurrently filed a settlement that required Lactalis and Kraft Heinz to divest Kraft Heinz’s Athenos business and Polly-O business. The divestitures, including the worldwide rights to the entire Athenos and Polly-O portfolios, will place the divestiture buyers in the position to market and promote all the cheeses sold under these brands. The court entered the settlement on March 15, 2022.

Penguin Random House/Simon & Schuster

On November 2, 2021, the Division filed a civil antitrust lawsuit to block Penguin Random House's proposed acquisition of Simon & Schuster. As alleged in the complaint, the proposed acquisition would enable Penguin Random House, which is already the largest book publisher in the world, to exert outsized influence over which books are published in the United States and how much authors are paid for their work. The publishing industry is already highly concentrated and only five publishers, known as the "Big Five," are regularly able to offer high advances and extensive marketing and editorial support, making them the best option for authors who want to publish a top-selling book. The proposed acquisition would put Penguin Random House in control of close to half the market for acquiring publishing rights to anticipated top-selling books, leaving hundreds of individual authors with fewer options and less leverage. Trial is scheduled for August 2022 in federal court in the District of Columbia.

Neenah/US Foundry

On October 14, 2021, the Division filed a civil antitrust complaint challenging Neenah Enterprises Inc.'s proposed acquisition of substantially all of the assets of U.S. Holdings, Inc.'s subsidiary, U.S. Foundry and Manufacturing Corporation. According to the complaint, Neenah and US Foundry are two of only three significant suppliers of gray iron municipal castings in eleven eastern and southern states. Gray iron municipal castings are customized molded iron products such as manhole covers and frames used to access subterranean areas and grates and drains used to direct water in roadway, parking, and industrial areas. Concurrent with the complaint, the Division filed a settlement to remedy the competitive harm alleged in the complaint. The settlement required that the merging parties divest over 500 gray iron municipal castings patterns and related assets. The Division approved D&L Foundry Inc. as the divestiture buyer. The court entered the settlement on January 31, 2022.

General Shale/Meridian Brick

On October 1, 2021, the Division filed a civil antitrust complaint challenging General Shale Inc.'s proposed acquisition of Meridian Brick LLC. According to the complaint, General Shale and Meridian Brick are two of the largest suppliers of residential brick in eight separate local markets in six states. The complaint alleged that, as originally structured, the proposed transaction would have eliminated substantial competition in those eight markets and led to higher-priced and lower-quality residential brick. Concurrent with the filing of the complaint, the Division filed a settlement to remedy the competitive harm alleged in the complaint. The settlement required the parties to divest three manufacturing facilities, 14 distribution yards and showrooms, and six mines for extracting input materials used in the manufacture of residential brick. The Division approved RemSom LLC as the divestiture buyer. The court entered the settlement on January 31, 2022.

BancorpSouth/Cadence Bank

On August 30, 2021, the Division entered into a Letter of Agreement with BancorpSouth and Cadence Bank pursuant to which the two companies agreed to sell seven branches in Mississippi to resolve antitrust concerns arising from Huntington's planned acquisition of TCF Bank. The divestiture of the 13 branches will ensure that bank customers in those

areas have access to competitively priced products and services. The Division approved Horizon Bank as the divestiture buyer. At the same time, the Division also sent a conditional letter to the FDIC, advising the FDIC that the Division would not challenge the merger provided that the parties abide by the commitments in the Letter of Agreement. The FDIC approved the merger in October 2021. The Division approved The First Bancshares, Inc. (TFB) as the divestiture buyer and, on December 3, 2021, the parties closed the sale of these seven branches to TFB.

Gray/Quincy

On July 28, 2021, the Division filed a civil antitrust complaint challenging Gray Television's acquisition of Quincy Media. According to the complaint, the transaction would eliminate head-to-head competition between Gray and Quincy broadcast television stations in seven local markets in Arizona, Illinois, Iowa, Kentucky, and Wisconsin, resulting in the merged entity being able to charge cable and satellite companies higher retransmission fees to carry its broadcast television stations and to charge local businesses higher prices to advertise on its broadcast television stations. Concurrent with the complaint, the Division filed a settlement to remedy the competitive harm alleged in the complaint. The settlement required that the merging parties divest broadcast television stations in the seven local markets. The Division approved Allen Media as the divestiture buyer. The court entered the settlement on October 25, 2021.

Tupy/Teksid

On July 1, 2021, auto parts supplier Tupy agreed to restructure its acquisition of Teksid after the Division raised concerns that the merger would result in higher prices and reduced quality and timeliness of production for crucial components used in heavy-duty engines. As initially proposed, the deal would have combined the two most significant suppliers of engine blocks and cylinder heads for heavy-duty engines to customers in North America. Following the Division's investigation and restructuring, Tupy will acquire only Teksid's iron operations in Brazil and Portugal. Teksid will retain its iron operations in Mexico and continue to compete with Tupy to supply U.S. customers.

Aon/Willis Towers Watson

On June 16, 2021, the Division filed a civil antitrust lawsuit to block Aon's \$30 billion proposed acquisition of Willis Towers Watson. The transaction would have brought together two of the "Big Three" global insurance brokers, who can offer global service, sophisticated data and analytics, and a breadth and depth of knowledge and expertise that other brokers do not offer. The merger threatened to eliminate competition, raise prices, and reduce innovation for American businesses, employers, and unions that rely on these important services. The merger would have eliminated important competition in five markets. On July 26, 2021, the parties abandoned their merger.

Zen-Noh/Bunge

On June 1, 2021, the Division filed a civil antitrust complaint challenging Zen-Noh Grain Corp.'s acquisition of 35 operating and 13 idled grain elevators from Bunge North America Inc. According to the complaint, the defendants are two of only a small number

of competing grain purchasers in nine geographic areas. As originally structured, the complaint alleged that the combined company likely would have been able to pay less for grain and lower the quality of services offered to farmers. Concurrent with the filing of the complaint, the Division filed a settlement to remedy the competitive harm alleged in the complaint. The settlement requires that Zen-Noh divests nine grain elevators in nine geographic areas. The Division approved Viserion Grain LLC as the divestiture buyer.

Huntington/TCF

On May 10, 2021, the Division entered into a Letter of Agreement with Huntington Bancshares and TCF Financial Corporation pursuant to which the two companies agreed to sell 13 branches in Michigan to resolve antitrust concerns arising from Huntington's planned acquisition of TCF Bank. At the same time, the Division also sent a conditional letter to the FRB, advising the FRB that the Division would not challenge the merger provided that the parties abide by the commitments in the Letter of Agreement. FRB approved the merger on May 25, 2021. The divestiture of the 13 branches will ensure that bank customers in those areas have access to competitively priced products and services. The Division approved Horizon Bank as the divestiture buyer.

Stone Canyon/US Salt/Morton Salt

On April 19, 2021, the Division filed a civil antitrust complaint challenging the acquisition of Morton Salt Inc. by Stone Canyon Industry Holdings LLC and its portfolio company, SCIH Salt Holdings Inc. According to the complaint, Morton and SCIH's wholly-owned subsidiary, US Salt LLC, are two of only three producers that manufacture and distribute round-can table salt in the United States. The complaint also alleges that Morton and US Salt are the only firms producing pharmaceutical-grade salt in the United States and Canada, which is a critical ingredient for dialysis treatment, intravenous saline solution, and other medical products that must meet stringent purity standards. The complaint further alleges that Morton and US Salt are two of only three major suppliers that manufacture and distribute bulk evaporated salt in the northeastern United States, which is used in various industries including food processing and chemical manufacturing. The complaint alleges that the merger would eliminate competition between Morton and US Salt for all of these evaporated salt products, likely leading to higher prices, reduced supply availability, lower quality products, and longer delivery times. Concurrent with the filing of the complaint, the Division filed a settlement to remedy the competitive harm alleged in the complaint. The settlement requires that Stone Canyon and SCIH divest US Salt, including their refinery and other assets used in the production of its evaporated salt products. The Division approved Emerald Lake Capital Management as the divestiture buyer. The court entered the settlement on August 10, 2021.

Republic/Santek

On March 31, 2021 the Division filed a civil antitrust complaint challenging Republic Services Inc.'s acquisition of Santek Waste Services LLC. According to the complaint, Republic and Santek both provide small container commercial waste collection and municipal solid waste disposal services. In each of the six local markets alleged in the complaint, Republic and Santek compete vigorously against each other and are two of

only a few significant providers of one or both of these essential services. The combination of the two companies would eliminate head-to-head competition between them and threaten the lower prices and better service that customers have realized from that competition. Concurrent with the filing of the complaint, the Division filed a settlement to remedy the competitive harm alleged in the complaint. The settlement requires Republic and Santek to divest landfills, transfer stations, hauling locations, and waste collection routes in Alabama, Georgia, Tennessee, and Mississippi and waste collection routes and associated assets in Texas. The Division approved Kinderhook Industries LLC as the divestiture buyer for the assets in Alabama, Georgia, Tennessee, and Mississippi, and Waste Connections Inc. as the divestiture buyer for the assets in Texas. The court entered the settlement on July 1, 2021.

Harvard Pilgrim Health Care/Health Plan Holdings

In December 2020, the Division and the Attorney General of New Hampshire filed a civil antitrust complaint challenging the proposed merger of Harvard Pilgrim Health Care and Health Plan Holdings (formerly known as the Tufts Health Plan). The complaint alleged that, as originally structured, the merger would have led to higher prices, poorer quality, and reduced choice for many consumers throughout the state of New Hampshire. Concurrent with the complaint, the Division and New Hampshire filed a settlement to remedy the competitive harm alleged in the complaint. The settlement requires that the merging parties divest Health Plan Holdings' commercial health insurance business in New Hampshire before proceeding with the merger. The Division approved UnitedHealth Group Inc. as the acquirer for the divestiture. The settlement will preserve competition for the sale of commercial health insurance to small, private employers in New Hampshire. The court entered the settlement on March 22, 2021.

Visa/Plaid

In November 2020, the Division filed a civil antitrust lawsuit to block Visa Inc.'s proposed acquisition of Plaid Inc. Visa is a global payments company and, according to the complaint, has monopoly power in the market for online debit—a payment type accepted by the majority of U.S. merchants, which accounts for billions of dollars in commerce each year. Plaid is a financial data aggregator whose technology enables consumers to provide their banking information to fintech applications. According to the complaint, Plaid planned to enter the online debit market with a product that would have competed with Visa's lucrative debit products, so Visa sought to buy Plaid for \$5.3 billion as an "insurance policy" to neutralize a "threat to our important US debit business." The Division's lawsuit alleged that Visa was a monopolist in online debit, and its proposed acquisition would extinguish a nascent competitor which had the potential to disrupt online debit with a low-cost, innovative product.

On January 12, 2021, Visa and Plaid announced that the companies had terminated their merger agreement. The abandonment of this deal preserves critical competition in the market for online debit, benefiting millions of American consumers and merchants.

Intuit/Credit Karma

In November 2020, the Division filed a civil antitrust lawsuit challenging Intuit Inc.'s

acquisition of Credit Karma Inc. According to the lawsuit, Intuit's TurboTax has enjoyed a dominant position in the market for digital do-it-yourself (DDIY) tax preparation products for more than a decade, but has been challenged by Credit Karma Tax since it entered and disrupted the industry four years ago. The complaint alleged the merger, as originally structured, would eliminate this important competition and lead to higher prices, lower quality, and less choice for consumers. To address these concerns, Intuit and Credit Karma agreed to divest Credit Karma Tax to Square Inc. This divestiture will ensure robust competition for DDIY tax preparation products relied on by millions of American taxpayers. The court entered the settlement on August 2, 2021.

Waste Management/Advanced Disposal Services

In October 2020, the Division and the Attorneys General of Florida, Illinois, Minnesota, Pennsylvania, and Wisconsin filed a civil antitrust complaint challenging the proposed merger of Waste Management, Inc. and Advanced Disposal Services, Inc. The complaint alleged that the merger involved two of only a few significant providers of certain types of waste services in local markets across a number of states and that the merger, as originally proposed, would eliminate head-to-head competition between Waste Management and Advanced Disposal and threaten the lower prices and better services that customers had realized from that competition. The Division and the states also filed a settlement that required the sale of assets covering landfills, transfer stations, hauling locations, and waste collection routes. The Division approved GFL Environmental Inc. as the up-front buyer of all of the divestiture assets. This settlement will preserve competition for customers of these services in over 50 local markets. The court entered the settlement on May 3, 2021.

Liberty Latin America/AT&T Puerto Rico

In October 2020, the Division filed a civil antitrust complaint challenging Liberty Latin America Ltd.'s acquisition of AT&T Inc.'s telecommunications operations in Puerto Rico and the U.S. Virgin Islands. The lawsuit alleged that Liberty and AT&T were two of the three largest wireline telecommunications providers in Puerto Rico and, if consummated, the transaction would have eliminated competition between them to provide fiber-based connectivity and telecommunications to enterprise customers in Puerto Rico, which would likely lead to increased prices and lower-quality services. To address these concerns, Liberty and AT&T agreed to divest various assets and customer accounts to WorldNet Telecommunications, Inc. This divestiture will ensure that customers in Puerto Rico continue to benefit from competition in wireline telecommunications services. The court entered the settlement on February 3, 2021.

Geisinger Health/Evangelical Hospital

On August 5, 2020, the Division filed a civil antitrust lawsuit seeking to enjoin Geisinger Health's partial acquisition of its close rival, Evangelical Community Hospital. The complaint alleged that the hospitals compete for patients in a six-county area in central Pennsylvania. According to the complaint, the partial acquisition would have created significant entanglements between Geisinger and Evangelical, likely leading to higher prices, lower quality, and reduced access to high-quality inpatient hospital services for patients in central Pennsylvania.

On March 3, 2021, the Division announced a settlement with the parties that would resolve the antitrust concerns. Under the terms of the proposed settlement, Geisinger's interest in Evangelical will be capped, its interest will be passive, and it will not be able to exercise any control or influence over Evangelical's strategic business decisions. The settlement also requires the two hospitals to implement antitrust compliance programs. At the same time, the settlement allows the procompetitive aspects of the hospitals' agreement to go forward, including upgrades to Evangelical's electronic health records and patient care. The settlement will preserve competition for patient care in central Pennsylvania. The court entered the settlement on September 16, 2021.

E. Exemplars – Criminal

The Antitrust Division prosecutes violations of the Sherman Act. The Sherman Antitrust Act (15 U.S.C. § 1, 2) criminalizes conspiracies among competitors—both corporations and individuals—to fix prices, rig bids, or allocate customers, territories, markets, or sales or production volumes, as well as conspiracies to monopolize and attempted and actual monopolization. Prosecuting criminal violations of the Sherman Act is a critical component of the Department's overall mission to protect consumers and the competitive process. The Division has investigated and prosecuted Sherman Act violations for more than a century. While its criminal enforcement has focused on price-fixing, bid-rigging, and allocation conspiracies in recent decades, the Division is now also devoting resources to investigating criminal monopolization offenses in an effort to better protect the American consumer and preserve competition in U.S. markets.

In FY 2020 - FY 2021, the Division obtained the conviction after trial of four individuals including an executive, indicted several senior executives, obtained a criminal fines above the Sherman Act's \$100 million statutory maximum, expanded an interagency partnership to safeguard public procurement from collusion both domestically and globally, and prosecuted antitrust violations affecting generic drugs, cancer patients, grocery store staples, labor markets, federal agencies, e-commerce, and particularly vulnerable consumers, including the elderly and taxpayer-funded schools and hospitals. The Division's investigations into violations in many of these industries remain ongoing. Indeed, the Division ended FY 2022 with the highest total number of pending grand jury investigations since FY 1991.

As of December 2022, the ATR has 16 pending trials for indicted criminal cases arising out of more than a dozen investigations into various industries. These cases involve conspiracies concerning health care, for example, fixing prices for generic drugs, conspiracies relating to bid rigging and other criminal conduct affecting government procurement, and conspiracies that directly target the American worker. Notably, this includes trials against 13 companies and 44 individuals, five of which were executives at the highest levels: company Presidents and CEOs

A. Health Care Markets

Particularly in a time of prolonged crisis, the Division remains committed to rooting out illegal conduct that corrupts our vital healthcare markets, whether the collusion cheats

customers at the pharmacy counter or robs cancer patients of competition for critical treatments.

i. Generic Pharmaceuticals

The Division's ongoing generic drugs investigation targets price fixing, bid rigging, and customer allocation schemes in one of the most important industries for the health and pocketbooks of American consumers. The investigation began with Division prosecutors' proactive efforts to uncover the causes of exorbitant price increases in recent years on various long off-patent generic drugs. To date, the investigation has resulted in charges against seven generic pharmaceutical companies and four executives for conspiring to fix prices, rig bids, and/or allocate customers for essential drugs relied on by millions of American consumers, including the elderly and vulnerable, to treat a range of diseases and chronic conditions such as high cholesterol, arthritis, hypertension, seizures, various skin conditions, and blood clots. Of those seven companies, five have agreed to resolve the allegations by deferred prosecution agreements (DPAs), under which they've admitted involvement in the charged conduct, agreed to cooperate in the Division's ongoing investigation, and collectively agreed to pay over \$426 million in criminal penalties. In a parallel investigation premised on the antitrust violations, the Civil Division resolved with the same five companies—three as part of global resolutions—which agreed to pay a total of \$455 million in addition to the criminal penalties recovered. Two companies—Teva Pharmaceuticals USA Inc. and Glenmark Pharmaceuticals Inc., USA—were indicted and await trial.

In addition to the corporate charges, four executives have been charged in the investigation, three of those executives have pleaded guilty, and a former senior Taro executive is awaiting trial following his indictment for participating in two antitrust conspiracies and making a false statement to the FBI.

ii Oncology

In another example of collusion affecting our vital healthcare markets, in April 2020, Florida Cancer Specialists (FCS)—one of the largest privately held oncology practices in the United States—was charged with and admitted to participating in a long-running conspiracy to allocate medical oncology services in a three-county area in Southwest Florida. The conspiracy lasted over 15 years and FCS's revenue from cancer treatments affected by the conspiracy totaled more than \$950 million.

The conspiracy allowed FCS to operate with minimal competition in Southwest Florida. The conspiracy also limited cancer patients' choices in treatment options, particularly because it limited integrated care options.

FCS admitted to its crime and agreed to resolve the criminal charge by a DPA, under which it agreed to cooperate in the Division's ongoing investigation and pay a statutory maximum \$100 million criminal penalty. In order to remedy the harm caused by the longstanding conspiracy, the DPA also required that FCS waive certain non-compete provisions so that its current and former oncologists and other employees are free to open or join a competing oncology practice in Southwest Florida.

In September 2020, the founder and former president of FCS was indicted for his participation in the conspiracy.

B. Agriculture

i. Canned Tuna

The Division's investigation into price fixing in the packaged seafood market began at the end of calendar year 2016 and arose from a parallel civil merger investigation. The investigation has led to charges against four executives and two companies.

Three executives pleaded guilty to participating in a conspiracy to fix prices for packaged seafood sold in the U.S. The fourth executive, the former President and Chief Executive Officer of Bumble Bee Foods, was convicted in December 2019 following a four-week jury trial in San Francisco. In June 2020, he was sentenced to serve 40 months in prison. In July 2021, his conviction was affirmed on appeal by the Ninth Circuit.

Bumble Bee pleaded guilty and was sentenced to pay a \$25 million criminal fine. StarKist also pleaded guilty. In September 2019, following a series of contested sentencing hearings, a district court judge sentenced StarKist to pay a \$100 million statutory maximum fine.

ii. Farmland

The Division has also aggressively prosecuted bid rigging affecting farmers.

In May 2021, the Division obtained an indictment against two individuals for rigging the sale of farmland and timber rights. The indictment alleges that two individuals demanded and accepted a \$40,000 side-payment to stop bidding on the farmland, artificially suppressing the price of the land sold at auction. Trial is began in August 2022.

These indictments, along with the prior investigation in the canned tuna industry, illustrates the Division's commitment to holding companies and executives accountable for collusion that affects staple foods and agricultural markets more broadly.

C. Labor Market

The Division continues its commitment to aggressively investigating and prosecuting antitrust conspiracies affecting the labor market and has brought six indictments for conspiracies affecting workers since December 2020. Trial courts that have ruled on pretrial motions to dismiss challenging these charges have unanimously ruled in the Division's favor. These rulings significantly advanced the law concerning the prosecution of no-poach and wage-fixing agreements, affirming that this conduct can be prosecuted criminally as a violation of the Sherman Act.

i. Essential Healthcare Workers

In January 2022 four managers of home health care agencies were indicted for

participating in a conspiracy to suppress the wages and restrict the job mobility of essential workers during the COVID-19 pandemic. According to the indictment, these managers conspired to eliminate competition for the services of Personal Support Specialists by agreeing to fix the rates paid to these workers and by agreeing not to hire each other's workers.

Trials are also pending in two other cases where healthcare companies are charged with conspiring to constrain employees' job mobility. The SCA case, which involves charges that Surgical Care Affiliates, LLC, and a related entity, participated in conspiracies not to solicit for employment senior level employees from competitors, is scheduled for trial on January 9, 2023. The VDA case involves charges that VDA OC LLC (formerly Advantage On Call LLC) and its former manager participated in a conspiracy to allocate employee nurses and fix the wages of those nurses. Trial is set for March 4, 2023.

ii. Aerospace Workers Involved in Aircraft Design, Manufacture, and Service

The Division's prosecution of labor cases has expanded beyond the healthcare space. In December 2001, a former manager of a major aerospace engineering company and five executives of outsource engineering suppliers were indicted for participating in a long-running conspiracy to restrict the hiring and recruiting of employees among their respective companies. The conspiracy affected thousands of engineers and other skilled aerospace workers involved in the design, manufacturing, and servicing of aircraft components for both commercial and military purposes. Trial is set for March 27, 2023.

D. Protecting Government Victims, Promote Competition & Save Taxpayer Dollars

i. Procurement Collusion Strike Force

To protect taxpayer dollars from antitrust crimes and related schemes that undermine competition for government procurement and grant and program funding the Department created the Procurement Collusion Strike Force (PCSF). Founded in November 2019, the Division-led PCSF is a nationwide, interagency partnership among 22 U.S. Attorneys' Offices (USAOs), the FBI, and multiple federal Offices of Inspector General to combat antitrust crimes and related schemes in government procurement, grant, and program funding at all levels of government—Federal, state, and local.

A key part of the PCSF's mission is training key stakeholders on antitrust risks in the procurement process to enhance detection. Domestically, the PCSF has trained more than 22,000 agents, attorneys, auditors, analysts, and procurement officials on how to detect and report possible bid rigging schemes.

The PCSF's 22 district teams have experienced exponential growth with active participation of more than 675 federal, state, and local in-district working partners that bolster the Division's investigative and prosecution efforts.

Since its inception, the PCSF has opened more than 60 investigations across the country and has received numerous citizen complaints of possible illegal conduct for potential investigation. Those efforts are showing results—the PCSF has recently reached a resolution in an international case where the defendants rigged bids on a U.S. Army

contract valued at more than \$75 million;¹¹ investigated and obtained a guilty plea from a public official who participated in a bid-rigging conspiracy that targeted his employer;¹² had a defendant plead guilty to rigging bids for food sold to the U.S. Bureau of Prisons;¹³ and indicted a military contractor for rigging bids and defrauding the United States on U.S. Army contracts in Texas, Michigan, and California worth over \$15 million.¹⁴ These cases—and others—are described in further detail below.

As the PCSF prepares to enter its third year, this interagency group of enforcers is focusing on continued and emerging risks to taxpayer funds. The Department established the PCSF because the potential harm from collusion in public procurement is significant. Indeed, as the Organization for Economic Cooperation and Development (OECD) has noted, eliminating bid rigging and other forms of collusion in procurement could save the government 20 percent of expended funds—or more.¹⁵ The passage of the \$1.2 trillion Investment in Infrastructure and Jobs Act (IIJA) in 2021 puts a staggering amount of federal dollars at risk. Using the OECD estimate, \$240 billion in taxpayer funds could be lost to bid rigging and collusion. This risk is not theoretical—the Division already has obtained evidence of conspirators discussing IIJA funding as a motivating factor. Since the President signed the IIJA, the PCSF has ramped up its all-of-government efforts to proactively combat IIJA-related collusion through enhanced awareness, outreach, training, and detection efforts with existing and new partner departments and agencies. The PCSF will similarly need to increase its investigation and prosecution efforts as IIJA funds begin flowing and projects go out for bid.

At present, however, the PCSF lacks dedicated funding and consists of only a single full-time-employee (FTE), its director, and partial FTEs and other employees who work on PCSF projects and matters in addition to their regular workload. Securing adequate dedicated funding for the PCSF would enable it to investigate and prosecute more procurement-related schemes and deter wrongdoing by training even more procurement officials and government contractors on antitrust risks associated with the procurement process.

ii. Government Victims: Domestic

The PCSF's continues to pursue and support numerous investigations and litigation. Several ongoing investigations illustrate the Division's longstanding commitment to safeguarding the integrity of the public procurement process, protecting taxpayer dollars from collusion, and holding responsible those who victimize the Government.

¹¹ See paragraph 4(b) of the [plea agreement for U.S. v. G45 Secure Solutions NV](#).

¹² U.S. Dep't of Justice, Former Caltrans Contract Manager Pleads Guilty to Bid Rigging and Bribery (Apr. 11, 2022), <https://www.justice.gov/opa/pr/former-caltrans-contract-manager-pleads-guilty-bid-rigging-and-bribery>.

¹³ U.S. Dep't of Justice, Inland Empire Man Agrees to Plead Guilty in Bid-Rigging Scheme to Obtain Contracts to Provide Food to Federal Prison Facilities (Apr. 5, 2022), <https://www.justice.gov/usao-cdca/pr/inland-empire-man-agrees-plead-guilty-bid-rigging-scheme-obtain-contracts-provide-food>.

¹⁴ U.S. Dep't of Justice, Military Contractor Indicted for \$15 Million Bid-Rigging Scheme and Conspiracy to Defraud the United States (May 20, 2022), <https://www.justice.gov/opa/pr/military-contractor-indicted-15-million-bid-rigging-scheme-and-conspiracy-defraud-united>.

¹⁵ "Fighting bid rigging in public procurement" *Organization for Economic Cooperation and Development*. Viewed on September 16, 2021. www.oecd.org/competition/bidrigging.

a. Equipping America’s Warfighters: Schemes Target Defense Spending at the U.S. Department of Defense

In June 2022, a grand jury in Georgia returned a three-count indictment against a military contractor, its President and Vice President, and an owner of a competitor company. Each defendant was charged with one count of conspiracy to defraud the U.S. and two counts of major fraud. The scheme—a \$7 million one—lasted a little over two years. In it, the defendants conspired by preparing and procuring purported “competitive quotes” from other companies. In reality, those “competitive quotes” were intentionally inflated sham quotes, submitted to ensure the sole-source awards. The conspirators also made false statements, representations and material omissions to federal government contracting officials regarding cost estimates being “independent” and sham quotes being “competitive.”

In April 2022, a Florida grand jury indicted three defendants in a conspiracy to rig bids for custom promotional products that the U.S. Army and Air Force purchased. The three defendants conspired to eliminate competition and determined who among their companies would be the pre-determined winner. To carry out this scheme, they exchanged bid templates and submitted bids to military customers on each other’s behalf. Two of the defendants were also charged with separate conspiracies to defraud the U.S. by creating shell companies to use to submit sham bids and falsely represent themselves as independent companies, despite the fact that the defendants controlled all of the companies.

b. Disabled Veteran Entrepreneurs: Recent Trial of Fraudster Who Took Advantage of Set-Aside Program

The Federal Government has a series of programs designed to provide opportunities to disadvantaged communities to participate in public procurement. The PCSF is dedicated to combatting fraud and collusion in these programs so that they can continue to assist underserved and disadvantaged communities.

Recently, the PCSF concluded a long-running investigation into service-disabled veteran-owned small businesses (SDVOSB) set-aside fraud.¹⁶ In June 2022, a jury in the Western District of Texas returned guilty verdicts in *U.S. v. Padron*, convicting the defendant of conspiracy to defraud the United States and six counts of wire fraud for his role in a SDVOSB set-aside fraud scheme. The defendant obtained more than \$240 million in SDVOSB government contracts he was not entitled to, by concealing the ultimate ownership and control of the company that won the contracts. In addition to this guilty verdict, previously, two other co-conspirators pleaded guilty for their roles in this conspiracy.¹⁷

c. Rigging Bids for Prison Food: *U.S. v. Porras*

¹⁶ <https://www.justice.gov/opa/pr/construction-company-owner-convicted-fraud-securing-more-240-million-contracts-intended>.

¹⁷ <https://www.justice.gov/opa/pr/construction-company-owners-pleaded-guilty-defrauding-federal-program-intended-service>.

The Division remains committed to protecting taxpayer funds by prosecuting conduct that subverts the competitive process by which the Government buys and sells goods and services. In a recent example, in April 2022, a former contractor of a food-supply company that supplied food to the U.S. Bureau of Prisons, was charged with and pleaded guilty to one count of bid rigging.¹⁸ The defendant admitted that he conspired with someone at another company to rig bids. The co-conspirators decided in advance who would submit the low bid—and thus presumably win. They did so for more than five years, on more than 100 contracts, with a total value approaching \$2 million.

d. Highways, Bridges, and Infrastructure: State Departments of Transportation and the Schemes that Target Them

Infrastructure projects, including those to build, replace, or repair America’s highways and bridges, are often targets for collusion, which deprives the government of the benefits of free, open competition. The majority of highway funding is provided by the United States and then administered by state departments of transportation.¹⁹ Two recent PCSF investigations demonstrate that risk—and the value of effective detection and enforcement.

In February 2022, the Division concluded the investigation into bid rigging and fraud that targeted North Carolina drainage projects. After a week-long trial, a jury returned guilty verdicts against the defendant, a former executive, for rigging bids and submitting false certifications on *more than 300* projects funded by the state of North Carolina between 2009 and 2018.²⁰ Previously, in June 2021, the defendant’s employer pleaded guilty, agreed to pay a multi-million dollar fine, and provide monetary restitution to the victim, the State of North Carolina.²¹

More recently, the Division announced the first charge in an ongoing investigation into bid rigging and other criminal conduct that targeted the California Department of Transportation (“CalTrans”).²² In April 2022, a former CalTrans employee pleaded guilty to conspiring with contractors and others to rig bids on state government contracts and bribery concerning programs receiving federal funds. The defendant participated in a bid-rigging conspiracy that targeted his employer for more than five years; he also received bribes in the form of cash payments, wine, furniture, and home remodeling.

e. Upcoming Trials Involving Government Victims

Division prosecutors are also preparing for trial in four other cases in courts across the country involving fraud and bid-rigging schemes affecting federal spending. In November 2022, the Division is proceeding to trial in central Florida against three individuals who rigged bids on customized promotional products sold to the U.S. Army (discussed above). In February 2023, trial is scheduled in the Eastern District of Texas

¹⁸ <https://www.justice.gov/usao-cdca/pr/inland-empire-man-agrees-plead-guilty-bid-rigging-scheme-obtain-contracts-provide-food>.

¹⁹ See, e.g., <https://www.fhwa.dot.gov/federal-aidessentials/federalaid.cfm>.

²⁰ <https://www.justice.gov/opa/pr/former-engineering-executive-convicted-rigging-bids-and-defrauding-north-carolina-department>.

²¹ <https://www.justice.gov/opa/pr/engineering-firm-pleads-guilty-decade-long-bid-rigging-and-fraud-scheme>.

²² <https://www.justice.gov/opa/pr/former-caltrans-contract-manager-pleads-guilty-bid-rigging-and-bribery>.

against a military contractor who rigged bids and engaged in a conspiracy to defraud the U.S. on public military contracts for projects in Texas, Michigan, and California, worth approximately fifteen million dollars. The Division also has four indicted cases impacting the procurement process where the trial dates have not been set. These cases charge:

- Four defendants who conspired to fix prices, rig bids and allocate customers for defense-related security services, including a multimillion-dollar contract issued in 2020 to provide security services to the U.S. Department of Defense for military bases and installations in Belgium (discussed below);
- A Minnesota-based concrete repair and construction corporation and its CEO, who engaged in a conspiracy to rig bids for public concrete repair and construction contracts in the Twin Cities (discussed below);
- Two Korean nationals who conspired to rig bids and fix prices, and committed wire fraud, in connection with obtaining contracts to repair and maintain medical facilities for U.S. military forces in the Korean Peninsula (discussed below); and
- One company and three individuals who engaged in a conspiracy to defraud the United States in connection with military support services contracts totaling more than \$7 million (discussed above).

E. International Enforcement

i. PCSF: Global

PCSF: Global is a partnership among the PCSF, trial attorneys from criminal sections, the International Section, and a range of U.S. law enforcement agencies. Established in 2021, PCSF: Global has three closely related goals: to deter misconduct impacting U.S. taxpayer dollars spent overseas (to include generation of procurement training materials for U.S. and foreign enforcers), to generate and prosecute international cartel cases impacting U.S. government interests overseas, and to continue to strengthen relationships with key competition agencies around the world. As described below, the PCSF: Global partnership has already resulted in multiple filed cases where defendants allegedly conspired to extract more than their fair share of taxpayer dollars from the United States.

ii. Government Victims

a. Collusion in Repair and Maintenance Contracts on U.S. Military Installations in South Korea

In March 2022, working together with the U.S. Army Criminal Investigations Division, the Division indicted two South Korean contractors for conspiring to rig bids and fix prices for subcontract work—repair and maintenance work—on U.S. military installations in South Korea.²³ Those two contractors were also charged with six counts of wire fraud. The defendants obtained millions of dollars in repair and maintenance subcontracts through their fraudulent scheme. A trial date is not yet set.

b. Bid-Rigging in Contracts to Secure Military Installations in Belgium

²³ <https://www.justice.gov/opa/pr/contractors-indicted-rigging-bids-subcontract-work-and-defrauding-us-military-bases-south>.

In June 2021, the Division indicted a Belgian-based security service company and three foreign-national executives for a conspiracy to rig bids for contracts to provide security services for the Department of Defense military bases and installations in Belgium, including a contract worth more than \$77 million. A trial date is not yet set. A second Belgian security firm, pleaded guilty for its role in the same bid-rigging conspiracy and agreed to pay a \$15 million criminal fine. This was the first international resolution obtained by the PCSF.

c. Defrauding the U.S. Department of Defense in False Laboratory Reports

In March 2021, a South Korean national pleaded guilty for participating in a scheme to defraud the U.S. Department of Defense. For more than three years, the defendant submitted hundreds of falsified or materially altered laboratory reports, misrepresenting to U.S. military officials that laboratory testing and analysis had been performed on samples taken from U.S. installations located in South Korea, when, in many cases, no such testing was performed. The Defendant has not yet been sentenced.

iii. Fugitive Pleas

The Division continues to prosecute international cartels, including those where indicted defendants remain fugitives from justice. In March 2022, a German national, and former president of a parking heater manufacturing company, pleaded guilty for his role in a five-year-long price-fixing conspiracy for aftermarket parking heaters sold in the United States and elsewhere in North America. The defendant was indicted by a Michigan grand jury in December 2015, but fled to Canada and remained a fugitive for five years. In December 2020, the defendant was arrested while attempting to enter the Canary Islands and remained incarcerated in a Spanish facility until his plea. He was sentenced to time served.

F. Financial Markets

The Division continued its prosecution of collusive conduct that undermined financial markets worldwide.

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

In FY 2020, an Antitrust Division trial team prosecuted a case involving a conspiracy to fix prices and rig bids in the global foreign currency market, in a scheme that took money from customers, including those trading on behalf of pension and retirement funds of the elderly. In November 2019, after a three-week trial in the Southern District of New York, the jury returned a guilty verdict. In September 2020, the defendant was sentenced to serve eight months in prison and to pay a \$150,000 criminal fine. In FY 2021, the Second Circuit upheld the conviction. The opinion was issued in May 2022.

G. E-Commerce

The Division continues to investigate and prosecute anti-competitive collusion in markets that affect Americans every day. Division prosecutors are preparing for trial in an ongoing investigation into those who sell on e-commerce sites.

To date, four individuals have pleaded guilty for fixing the prices of DVDs and Blue-Ray Discs sold on the Amazon Marketplace. In March 2022, the Division charged two individuals and four companies that sell DVDs and Blue-Ray Discs on Amazon's platform for price-fixing. Trial is set for summer of 2023.

H. Commercial Construction

The Division has three separate investigations into collusion in the commercial construction industry targeting particularly vulnerable victims, including hospitals, schools, and local governments.

i. Concrete Repair and Construction

The Division and the FBI – with assistance from the U.S. Attorney's Office for the District of Minnesota – are investigating a conspiracy to rig bids on concrete repair and construction contracts in the state of Minnesota. In March 2022, a Minnesota-based concrete repair and construction company and its CEO were charged with participating in a conspiracy to rig bids for public concrete repair and construction contracts in Minnesota. According to the indictment, the conspiracy – which lasted for almost five years – concerned bids submitted on concrete repair and construction contracts for at least four municipalities in Minnesota, including local governments and school districts in the Minneapolis-St. Paul area. The case is now pending trial. In September 2021, another Minnesota concrete contractor pleaded guilty for his involvement in the conspiracy.

ii. Commercial Insulation

The Division, the U.S. Attorney's Office for the District of Connecticut, the FBI, and the Defense Criminal Investigative Service are jointly investigating fraud and bid rigging affecting \$45 million of commercial insulation contracts for facilities throughout New England, including schools and hospitals. Insulation contractors install insulation on construction projects at universities, hospitals, and other public and private entities.

To date, four individuals and two companies have pleaded guilty in the ongoing investigation. In September 2021, one company was sentenced; the remaining individuals and company have not yet been sentenced. The individuals have also agreed to pay restitution to the victims and to resolve civil forfeiture cases connected to the criminal charges.

iii. Commercial Flooring

The Division is also investigating bid rigging and price fixing among commercial flooring contractors. The conspiracy to suppress and eliminate competition in the commercial flooring market spanned the better part of a decade and victimized schools, hospitals, and charities in the greater Chicago area.

To date, seven individuals and three corporations have been charged in the ongoing investigation. One individual was indicted, and six individuals and three companies have agreed to plead guilty and accept responsibility for their participation in the conspiracy. Most recently, the former president of a Chicago-based flooring contractor was indicted for engaging in a money laundering conspiracy to conceal kickback payments he authorized to an account executive for a large flooring manufacturer, in exchange for low prices. The conspiracy lasted for about five years. The case is now pending trial.

V. Program Increases by Item

Item Name:	<u>Increased and Expanded Antitrust Enforcement</u>
Strategic Goal:	<u>Ensure Economic Opportunity and Fairness for All</u>
Strategic Objective:	<u>Reinvigorate Antitrust Enforcement and Protect Consumers</u>
Budget Decision Unit(s):	<u>Antitrust</u>
Organizational Program:	<u>Antitrust Division</u>

Program Increase: Positions: 363 Atty: 166 FTE: 182 Dollars: \$66,279,000

Description of Item

The Antitrust Division is requesting additional resources in order to enable the Division to address historically high investigative, litigative, and program support workload. To meet the current challenges presented by the complex and unprecedented workload of the Division's civil and criminal enforcement programs, the Division requests \$37.5 million in personnel costs to fund 363 positions, including 166 attorneys, 94 paralegals, 28 economists, and 75 program and administrative support staff, and \$28.8 million in non-personnel costs.

Justification

Overview

Over the past several years, there has been a historic spike in market-driven enforcement activity, an Executive Order that has resulted in an expansive set of responsibilities, and the availability of more and more reliable data regarding the pace of merger filings. This budget request addresses the necessary structural and programmatic changes required to respond to a historic market-driven spike in enforcement activity and to implement the increased work required as the Division works with myriad federal agencies to develop and implement new initiatives under President Biden's [July 9, 2021 Executive Order on Promoting Competition in the American Economy](#). These include, among other things, the year long, resource intensive work necessary to update the merger guidelines, and the numerous other responsibilities assigned to the Division under the Executive Order.

Background

The Division has experienced an unprecedented surge in enforcement activity that shows no signs of slowing. Technological change has increased workloads, as the conveniences of electronic review have been overwhelmed by an explosion in the amount of evidence the Division must take in and sort through in every case. Average matters now routinely take in and analyze millions of pages of documents, up from hundreds in that era. As the Division's fellow enforcers at home and abroad invested in lawyers, industry experts, and teams of data scientists, the Division has tried with limited resources to effectively enforce the antitrust laws in our modern economy.

As noted above, the Division's resources were severely reduced in the 1980s, which has long term adverse impacts on the Division's ability to enforce the antitrust laws. One of the principal policy objectives of the Department of Justice and the Administration, however, is to

reinvigorate antitrust enforcement. As President Biden recently explained, “forty years ago, we chose the wrong path, in my view . . . and pulled back on enforcing laws to promote competition.”²⁴ The President concluded that “the experiment failed,” and that “we have to get back to an economy that grows from the bottom up and the middle out,” and on July 9, 2021 signed an Executive Order that “commits the federal government to full and aggressive enforcement of our antitrust laws.” Likewise, the Attorney General recently “urg[ed] Congress to allocate the resources we need to reinvigorate our [antitrust] enforcement efforts and ensure a competitive economy for all Americans.”²⁵

Since release of the Executive Order, the Administration has continued to increase the prioritization of antitrust enforcement and, through the White House Competition Council created, drive new projects and programs that demand significant resources. Under the Executive Order, these projects include applicable reviews, revisions and reports (with relevant agencies) regarding: horizontal and vertical merger guidelines; bank merger oversight; antitrust guidance protecting workers from wage collusion; threats to competition in markets for beer, wine, and spirits; competition in air transportation; competition in the mobile application ecosystem; and competition in labor markets.

In this regard on January 24, 2022, the President hosted the second Competition Council meeting with a majority of the cabinet, the Attorney General, and the Antitrust Division’s Assistant Attorney General. In pursuit of related projects, the Division has been tasked with significantly expanding partnerships with numerous federal agencies in ways that materially increase resource demands. For example, at the Competition Council’s request, the Division initiated at the January 2022 meeting a new program to assist other federal agencies in bringing and winning meritorious cases under competition-related statutes. Meanwhile, the Division leads the PCSF, an interagency group of enforcers combatting anti-competitive conspiracies that target government spending on goods and services at all levels, including the billions of dollars at risk from collusion and bid-rigging on projects funded by the \$1.2 trillion Investment in Infrastructure and Jobs Act (IIJA). Similarly, the first Competition Council meeting on September 10, 2021, generated an expansive array of additional requirements for the Division, including providing government-wide training on competition issues and providing resources to support other agencies’ competition-related rulemaking efforts.

Staffing for Increased and Expanded Antitrust Enforcement - \$37.474 million (363 positions)

This enhancement request will fund the following current requirements.

Increased Monopolization Enforcement – The need for monopolization enforcement has increased dramatically as a result of fundamental changes in the economy. Seismic shifts in the economy have spurred the emergence of powerful new digital and other gatekeepers that control ever-increasing amounts of Americans’ personal, social, and economic lives. There is bipartisan recognition that the Division should investigate and, where appropriate, bring lawsuits to break up monopolies. However, the Division’s Civil Conduct Task Force (responsible for assisting in the investigation and prosecution of civil non-merger matters) has been severely reduced,

²⁴ [Remarks by President Biden At Signing of An Executive Order Promoting Competition in the American Economy | The White House.](#)

²⁵ [Remarks by Attorney General Merrick B. Garland at the Roundtable on Promoting Competition and Reducing Prices in the Meatpacking Industry, January 3, 2022.](#)

consisting of only six attorneys. Since 1998, the Division has filed only one major Section 2 case—the Google Search litigation filed in 2020. The Division is now working to build-up capabilities that meet the current demand. Moreover, this build-up must occur while the Division’s civil program is also litigating three major cases filed since mid-September (in the publishing, airline, and refined sugar industries), and the Google Search litigation (on which over 60 permanent and term attorneys have worked), while facing historic levels of merger filings, and engaging in multiple high-priority investigations in technology, agriculture, and other high-priority markets.

Expanded Criminal Enforcement – The Division’s criminal workload has continued to expand. Additional cases have been indicted, including a six-defendant case charging executives and managers from some of the country’s largest defense contractors in a labor-market conspiracy. And, as noted above, a ten-defendant trial that ran from October to December will be re-tried in June 2023. The result is not only the incurrence of additional costs associated with a complex, remote trial but diverting eight experienced attorneys on the trial team (amounting to around 7.5 percent of the criminal program attorneys) from other investigations and litigation. As a result, the Division’s request includes additional first chair trial lawyers.

Beyond expanding civil litigation, the Division’s request also provides for expanded criminal enforcement, including under Section 2 of the Sherman Act (which hasn’t been charged criminally since the 1970s), along with attorneys in support of an important initiative to prosecute collusion affecting the nation’s supply chain that the Division expects to announce in February 2022 and resources dedicated to the above noted PCSF. The PCSF has, since its inception in late 2019, trained more than 17,000 agents and procurement officials, opened more than 50 grand jury investigations, and reached a resolution in an international case where the defendants rigged bids on a U.S. Army contract valued at more than \$75 million.²⁶ The Department established the PCSF because the potential harm from collusion in public procurement is significant. Indeed, as the Organization for Economic Cooperation and Development (OECD) has noted, eliminating bid rigging and other forms of collusion in procurement could save the government 20 percent of expended funds—or more.²⁷ With the recent passage of the \$1.2 trillion in infrastructure spending in the IJA, the amount at risk is staggering. Using the OECD estimate, \$240 billion in taxpayer funds could be lost to bid rigging and collusion. This risk is not theoretical—the Division *already* has obtained evidence of conspirators discussing IJA funding as a motivating factor. Since the President signed the IJA, the PCSF has ramped up its all-of-government efforts to proactively combat IJA-related collusion through enhanced awareness, outreach, training, and detection efforts with existing and new partner departments and agencies. The PCSF will similarly need to increase its investigation and prosecution efforts as IJA funds begin flowing and projects go out for bid. At present, however, the PCSF is unfunded and consists of only a single full-time employee, its director, and partial FTEs and other employees who work on PCSF projects and matters in addition to their regular workload. In order to appropriately safeguard the IJA’s funds, and to ensure that this one-in-a-generation opportunity for infrastructure improvement is not concurrently a once-a-generation chance for bad actors to profit, the PCSF needs additional resources.

Underenforced Industry Regulation – President Biden’s Competition Executive Order recognizes

²⁶ See paragraph 4(b) of the [plea agreement for U.S. v. G45 Secure Solutions NV](#).

²⁷ See the *Fighting bid rigging in public procurement* [page](#) on the OECD website.

that numerous industries suffer from a lack of competition, partly because industry-specific regulation has gone underenforced. Congress devised a range of specific competition laws in industries such as banking, agriculture, and shipping, but the agencies that oversee them have not always been able to fully pursue and litigate cases. Through the Competition Executive Order, the President has prioritized enforcement of these statutes, and the Department is working closely with numerous agencies on ways to more effectively pursue enforcement that protects competition. This will significantly expand resource demands on the Division and require developing new capabilities from the ground up to establish a comprehensive program to enforce and assist with enforcement of competition statutes and rules across the economy.

Equipping the Division to Litigate – With a record number of matters in litigation today, the Division’s bench of first-chair trial lawyers is beyond capacity, as are the Division’s litigation support services. Based on the Division assessment of the current enforcement needs, the Division’s goal is to be able to litigate *30 civil and 30 criminal cases at a time*. Although expansion to this level of litigation won’t happen overnight, it’s based on a pipeline of problematic mergers, conduct, and criminal investigations. The Division’s current workforce is not of a sufficient size or experience to meet this demand. Increases in this enhancement area will help build a workforce of skilled litigators required to meet the increased litigation pace.

Data Unit – In FY 2021, the Division reviewed over 122 TB of data, nearly four times more than in FY 2015. To address a similar— but less significant— increase, in 2018 the UK CMA created a 50-person data unit. To keep pace with its fellow enforcers, the Division seeks funding for a new data unit on par with the UK’s. The new unit will prepare the Division for more efficient and effective investigations, litigation theories tied to the realities of data-driven markets, and further the Division’s ability to detect wrongdoing.

Additional Support for Increased and Expanded Antitrust Enforcement - \$28.805 million

In addition to the antitrust enforcement areas outlined, the Division requests funding for the following non-personnel requirements:

Buildout Costs for New Positions – The Division requests non-recurring costs of buildout for basic office space associated with the new positions requested. The square footage costs were determined using the latest data available based on the Department’s programming requirements. This cost assumes a typical office suite with moderate finishes, including offices and workstations, conference rooms, reception areas and kitchens in the Washington DC area.

Support from Industry Experts and Technologists – From financial services to farming, the Division’s investigations require up-to-the-minute understanding of market realities in the industries it investigates. Yet the Division does not employ a single industry expert on staff, a particularly pressing need in industries such as agricultural, science, and health care. The FTC, in contrast, operates a successful industry fellowship program. To keep pace with the Division’s fellow enforcers and to litigate a generational monopolization case against Google and additional ongoing investigations, the Division is requesting to enter into agreements with state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other organizations to gain the needed technology and industry expertise.

Document Review Unit – Antitrust investigations and litigation are extremely document

intensive. The average number of documents produced in a fiscal year has doubled from 3 million in FY 2016 to 6 million in FY 2022. To address this, the Division seeks to follow the lead of the Civil Division's Consumer Protection Bureau, as well as many of the law firms that the Division faces off against, and enter into agreements to employ 18 contractors to provide privilege expertise and dedicated resources to conduct filter reviews, rather than diverting resources from criminal investigations and active litigation.

Like the Consumer Protection Bureau, the contractors would be managed by a Litigation Support unit, including a chief, assistant chief, administrative assistant, and 15 paralegals. The new unit would free the Division's attorneys and paralegals to focus on pending investigations and litigation, rather than reviewing an ever-expanding number of documents produced in the Division's investigations. Moreover, the Division's scarce criminal attorney ranks are often drawn upon to work as a filter team to review investigative material containing potentially privileged information. To address the same issue, the Department's Criminal Division stood up a privilege review team in 2020.

Establish Modern IT Capabilities – The Antitrust Division is currently operating in an IT environment based on legacy technology from the 1980s and 1990s where the majority of its infrastructure is built on hardware and software that is end of life. In addition to presenting a daily impediment to case work, the current state of IT operations puts the Division's ability to execute its mission at risk, and requires costly investments to simply maintain outdated systems that do not meet the Division's needs.

As part of this initiative, the Division will migrate away from legacy IT configurations to a 21st century technology stack and revitalize core capabilities to address the following deficiencies: implement and deploy monitoring tools; upgrade network infrastructure; establish dedicated network engineering teams; drastically improve network speed and bandwidth constraints; establish a mature software development lifecycle framework; establish a program management office (PMO); enhance the Division's security posture; and stabilize disaster recovery capabilities. The recurring cost for contractor support is being prioritized to allow the start of strategic planning efforts needed to map out how to fully implement these modern IT capabilities.

Summary

In order to increase and expand enforcement of the nation's antitrust laws, the Division is requesting \$37.5 million and 363 additional positions for FY 2024, including 166 attorneys, 94 paralegals, 28 economists, and 75 program and administrative support staff, and \$28.8 million in non-personnel costs.

Achieving this level of staffing and support will give the Division's dedicated staff the tools they need to fulfill its important mission on behalf of American consumers, workers, and taxpayers. It will also boost morale and help the Division continue to attract and retain talented employees. Persistent funding shortages at the Division have played a leading role in its multi-year ranking at the bottom of the survey of the best places to work in the Federal Government. Division employees are routinely asked to work long hours and do more with less, which, among other issues, negatively impacts the ability to retain the talent necessary to handle complex, multi-year investigations that comprise the majority of the Division's work.

The requested additional resources for FY 2024 will enable the Division to fulfill its critical role of protecting American consumers and promoting competition in vital markets for digital platforms, agriculture, food, farmland, public procurement, and labor.

Impact on Performance

In his prepared remarks on April 26, 2022, before the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, the Attorney General stated that “A fair economy is foundational to the American dream” highlighting the critical work of the Division in terms of “carry[ing] out its critical mission of promoting competition in the American economy and protecting workers, consumers, and businesses alike.” The Division’s FY 2024 request reflects a level of resources that enables the Department to fully enforce the nation’s antitrust laws. With the additional requested resources, the Division estimates that its performance measure target of 85 active grand juries will increase by 20 in FY 2024, resulting in a new target of 115 active grand juries.

Funding

1. Base Funding

FY 2022 Enacted				FY 2023 Enacted				FY 2024 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
907	471	777	\$192,776	1,022	490	887	\$225,000	1,022	490	1,022	\$258,542

2. Personnel Increase Cost Summary

Type of Position/Series	FY 2024 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2nd Year	3rd Year	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Security Specialists (0080)	\$611	7	\$155	\$83	\$34	\$578	\$240
Economists (0110)	\$3,156	28	\$211	\$122	\$16	\$3,405	\$455
Personnel Management (0200-0299)	\$611	7	\$155	\$83	\$34	\$578	\$240
Clerical and Office Svcs (0300-0399)	\$262	3	\$155	\$83	\$34	\$248	\$103
Accounting and Budget (0500-0599)	\$175	2	\$155	\$83	\$34	\$165	\$69
Attorneys (0905)	\$21,340	166	\$236	\$137	\$8	\$22,816	\$1,277
Paralegals (0950)	\$5,769	94	\$104	\$48	\$3	\$4,526	\$316
Financial Analysts (1160)	\$2,931	26	\$211	\$122	\$16	\$3,162	\$422
Info Technology Mgmt (2210)	\$2,619	30	\$155	\$83	\$34	\$2,478	\$1,028
Total Personnel	\$37,474	363	\$1,537	\$844	\$213	\$37,957	\$4,150

3. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Buildout/Space	\$8,385	\$23	363	-\$8,385	\$0
Industry Experts and Technologists	\$4,416	\$245	18	\$0	\$0
Document Review Unit	\$5,214	\$5,214	1	\$0	\$0
Establish Modern IT Capabilities	\$10,790	\$10,790	1	\$0	\$0
Total Non-Personnel	\$28,805	\$16,272	383	-\$8,385	\$0

4. Justification for Non-Personnel Annualizations

The buildout costs associated with the 363 new positions are non-recurring.

5. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	1,022	481	1,022	\$195,338	\$63,204	\$258,542	\$0	\$0
Increases	363	166	182	\$37,474	\$28,805	\$66,279	\$37,957	\$4,150
Grand Total	1,385	647	1,204	\$232,812	\$92,009	\$324,821	\$37,957	\$4,150

6. Affected Crosscuts

Cyber

VI. Exhibits