



# Division Update *Spring* 2021

## Letter from Acting AAG Richard Powers



**Richard Powers**  
*Acting Assistant Attorney General*

I am pleased to present the Antitrust Division's Spring Newsletter, which illustrates the outstanding work by the Division over the past year. Thanks to the dedication of the Division's employees, we've continued our efforts on behalf of American consumers, workers, and taxpayers despite the crisis posed by COVID-19. Our teams have been putting in long hours remotely, even as many staff members balance their work with family obligations. Their hard work has paid off in the past year with victories for consumers in merger cases including Visa/Plaid,

Geisinger/Evangelical, CPI/GD Satcom, Waste Management/Advanced Disposal, and Harvard Pilgrim/Tufts—as well as the landmark Section 2 litigation against Google. Last year, the criminal program obtained fines and penalties totaling \$529 million—a five-year high—against defendants including generic drug companies and a cancer treatment center. And most recently, one of the nation's largest chicken producers pled guilty to price fixing and was sentenced to pay a \$107 million criminal fine. Moreover, since the pandemic began, criminal teams have indicted nine cases totaling 25 defendants. The Appellate Section has authored or co-authored briefs in important cases concerning the [state action doctrine](#), the application of the antitrust laws to [amateur sports leagues](#), and [concerted action in labor markets](#). The Competition Policy and Advocacy Section has worked overtime to rapidly issue business review letters regarding coordination between businesses designed to combat COVID-19, and the International Section has ably

navigated the challenge of organizing the ICN annual conference remotely.

As the Acting Assistant Attorney General, it is my privilege to work with the Division's phenomenal staff as we continue our critical work through this transition period. The civil servants who work for the Division are deeply invested in promoting competition and making the economy fairer for all Americans. I am grateful to them and intend to make sure that all employees are fully supported and empowered to do their important work and that we remain a process driven organization.

Diversity is critical to the Division's mission. We are committed to a workplace grounded in fairness and equality, along with a workforce that is tolerant and representative of a range of personal and professional backgrounds and perspectives. In support of a more just and inclusive Antitrust Division, our managers are being trained to consider diversity in the hiring process to the fullest extent allowed by law and Department of Justice policy.

In the United States, we have multiple antitrust enforcers, including our colleagues at the FTC and the offices of the attorneys general of each state. We aim to cooperate with our partners whenever possible, and, should we disagree, we will work together to resolve our differences in a way that balances our respective interests and furthers our collective goal of promoting competition and maintaining a fair economy. We are also constantly in touch with our international partners at competition authorities across the globe, as we must be, given the worldwide scope of modern anticompetitive behavior.

The coming months will undoubtedly be eventful ones, but I am confident that the Division will rise to any challenges that come our way. The Division's criminal sections will continue investigating and prosecuting not only the price fixing of consumer and food products, but also per se illegal collusion that harms American workers. And we will continue the fight against

collusion affecting government spending and taxpayer dollars—including the vast sums of money allocated to maintain economic stability and fight the pandemic. The Division's civil sections will continue to protect and promote competition across the economy by investigating mergers and policing anticompetitive civil conduct. For the foreseeable future, Section 2 violations will continue to be a focus for civil investigations. And finally, our Appellate, Competition Policy and Advocacy, and International sections will continue to represent the interests of American consumers in appellate courts, with domestic stakeholders, and around the world.

When the Division's new leadership arrives, it will find that our talented career staff have continued to carry out the Division's mission during this transition period, despite the ongoing pandemic and our limited resources. We look forward to welcoming our incoming leadership team and working alongside them.



## Diversity Committee Update

From supporting the Justice Department's Diversity and Inclusion Dialogue Program (DIDP) to creatively re-imagining diversity programs for the virtual telework environment, the Division's Diversity Committee has brought together employees from around the Division over the past year to promote a more inclusive culture.

This year, the Committee hosted the Antitrust Division's Seventh Annual Diversity Celebration featuring remarks from Voviette Morgan, FBI Special Agent in Charge (SAC) of the Criminal Division for the Los Angeles Field

Office—the only female African-American special agent in charge.

The Committee is proud to report on several other accomplishments from its five subcommittees: Disability; Management Culture, Retention, and Training (MCRT); Outreach; Support Staff; and Women's Subcommittee.

Following the successful "Disability and Inclusion Speaker Series" session with Dr. Kay Redfield Jamison, Co-Director of the Mood Disorders Center and professor at Johns Hopkins University, the Disability Subcommittee continued to promote mental health awareness by

## New Faces in the Division



**Amanda Barnes**  
*Trial Attorney, New York Office*

*What was your background before joining the Antitrust Division?*

I joined the Division through the Honors Program from the American University Washington College of Law. At AUWCL I was a member of the American University Law Review, Vice Chair of the Student Bar Association's Election Commission and the South Asian Law Student Association. I represented a client in D.C. Superior Court as a student attorney in the Civil Advocacy Clinic and taught a year-long constitutional law class in a D.C. public school as a Marshall-Brennan Constitutional Literacy Project teaching fellow. Prior to law school I graduated from Hamilton College with a B.A. in classical studies and worked on a(n unsuccessful) NYC City Council campaign, at an executive recruiting firm, and as a litigation paralegal at a large law firm.

*Why did you decide to join the Division?*

I was drawn by the Division's mission-driven work—the idea of protecting the American consumer from injuries and



Clockwise from top left: Matthew Hammond (Ass't Chief, Telecommunications and Broadband Section), FBI SAC Voviette Morgan, Tee St. Matthew-Daniel (Ass't Chief, New York Office), and Michelle Rindone (Ass't Chief, International Section). Hammond and St. Matthew-Daniel served as Co-Chairs of the Diversity Committee this past year. Not pictured: Jeff Negrette (Trial Attorney, Civil Conduct Task Force) who rotated in as a Co-Chair of the Diversity Committee at the beginning of 2021.

providing mental health information and resources on the Division's intranet. In a similar vein, MCRT focused on education and sponsored implicit bias training, attended by more than 50% of the Division's employees. The highly anticipated program focused on mitigating the impact of unconscious bias in key workplace situations and achieving long-term behavioral change.

The Women's Subcommittee, in collaboration with the Antitrust Division's Career Development Working Group and Executive Office, launched stand-alone lactation and wellness rooms in Antitrust Division offices to be used by employees in need of privacy.

The Outreach Subcommittee hosted a series of virtual recruiting panels for 2021 college graduates to encourage more applications to the Division's Paralegal Program from historically underrepresented groups. Each panel featured a candid discussion between current paralegals, paralegal supervisors, and/or trial attorneys about their paths to the Department of Justice. Students were also able to ask questions about public service, career development, transitioning from college to work, and simply being successful in a dynamic workplace where diversity is celebrated and supported. The Outreach Subcommittee also hosted a



harms they are not in a position to see, let alone combat.

*What do you like best about your current work?*

My favorite thing about my current work is being able to work closely with and learn from experienced trial attorneys. In the six months I have been with the Division I have had so many opportunities to learn about and observe good lawyering thanks to the attorneys who have taken me under their wings!



**Mark Chicu**  
*Economist*

*What was your background before joining the Antitrust Division?*

I was at an economic consulting firm for over seven years, working mainly in antitrust across a broad range of industries. Before that, I completed my Ph.D. in economics at Northwestern University, and specialized in industrial organization, thinking about the same kinds of issues that confront us every day here in the Antitrust Division.

*Why did you decide to join the Division?*

The Antitrust Division is the best place to be for someone interested in the issues raised by antitrust. On top of that, the colleagues are outstanding, the

virtual “Intern Day” for the Division’s summer interns.

The Support Staff Subcommittee hosted a very successful Paralegal Flash Mentoring Program, which provided critical connections and career counseling for Division paralegals. Relaunched in 2020 as a virtual event, it drew first-time participants from the Division’s Chicago, New York, and San Francisco offices.

Finally, the Committee launched a new Veteran’s Subcommittee, which will focus on improving the recruitment and retention of veterans and reservists, and increasing awareness of their valuable contributions to the Division’s mission. The Committee has ambitious plans for the coming year and intends to continue promoting diversity, inclusion, equity, and access initiatives.



## Civil Enforcement Organizational Changes

This past year, the Antitrust Division created two new offices within its civil enforcement program—the Civil Conduct Task Force and the Office of Decree Enforcement and Compliance, renamed the Office of Civil Operations and clarified its responsibilities, and reapportioned commodities within the civil litigating sections. The Division also promoted a number of new managers and other career attorneys throughout the civil enforcement program.

The Civil Conduct Task Force (“CCTF”) works with the Division’s other civil litigating sections as well as the Division’s New York, Chicago, and San Francisco offices to identify and pursue conduct investigations that require additional focus and resources. CCTF is dedicated to investigating and prosecuting civil violations of the antitrust laws in collaboration with attorneys from the other civil litigating sections who have relevant industry experience. Lee Berger has been named Chief of CCTF and Miriam (Mimi) Vishio has been named Assistant Chief. CCTF’s full-time staff includes two career attorneys, Jeffrey Negrette and Kathleen Kiernan, who have experience working on conduct matters in sections

across the Division. In addition, one attorney from each of the other civil litigating sections has been designated to spend part of their time working with CCTF.

The Office of Decree Enforcement and Compliance (“ODEC”) has primary responsibility for judgment enforcement in civil matters and works with the Division’s civil litigating sections, judgment monitors, and compliance officers to ensure that consent decrees are effectively implemented and parties comply with the decrees’ requirements. ODEC also advises the Division’s criminal sections when parties seek credit at the charging stage for corporate compliance programs. Lawrence (Larry) Reicher has been named Chief of ODEC. Ashley Kaplan and Michele Trichler joined ODEC in 2021 as trial attorneys to work on all aspects of ODEC’s mission.

The Office of Civil Operations (“OPS”) (formerly the Office of Operations) was renamed to reflect its primary focus on the civil enforcement program. OPS coordinates and implements policies and procedures affecting the Division’s civil enforcement program and serves as a resource for the Division’s civil

mission to protect consumers is highly motivating, and the collegiality and close collaboration between economists and attorneys makes it an excellent place to work.

*What do you like best about your current work?*

Staff—regardless of rank—are given a lot of responsibility and are put in a position to make really significant contributions to their cases. It’s been very rewarding to play a major role in the course of an investigation.



**Alex Gross**  
*Economist*

*What was your background before joining the Antitrust Division?*

I entered the Division directly from graduate school (University of Virginia).

*Why did you decide to join the Division?*

I liked the idea of my work having an immediate and tangible impact compared to academic research. I also believe in the mission of the Division to protect American consumers, which is an important motivator for me.

*What do you like best about your current work?*

I like that I’m able to apply many of the skills I learned in grad

litigating sections on issues of Division policy and practice. It advises civil staff on substantive and procedural issues and reviews and analyzes all civil recommendations submitted for Front Office approval (e.g., second requests, civil investigative demands, settlements, recommendations for enforcement actions). OPS facilitates collaboration across the Division's civil enforcement program. Amy R. Fitzpatrick has been named Chief of OPS. OPS is also staffed with a number of Counsel for Civil Operations: Tracy Fisher, Soyung (Jenny) Choe, and Elizabeth A. Gudis. They are experienced career attorneys with a combined 35 years of service with the Division and a broad range of experience in the Division's civil enforcement program.

The Division recently reallocated and redistributed responsibility for a number of commodities across its civil litigating sections, in order to balance the workload across the sections and consolidate expertise in similar commodities within each section. Several sections have been renamed to reflect their new mix of commodities.

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## Spotlight on Litigation

In the face of the unique challenges posed by the pandemic, the Antitrust Division has remained undeterred in challenging violations of the antitrust laws. The Division has numerous upcoming criminal trials. In addition, an upcoming civil trial against Google—scheduled for 2023—has attracted widespread public attention.

### Criminal Litigation

The Division's prosecutors are preparing for 13 trials against 24

The renamed sections are: Financial Services, FinTech, and Banking (FFB); Media, Entertainment, and Communications (MEC); and Technology and Digital Platforms (TDP). The new section names were approved by Congress on January 4, 2021.

Finally, in addition to the individuals mentioned above, the Division promoted a number of other talented and dedicated career employees to positions of leadership within the civil enforcement program: Jennifer Dixon was named Assistant Chief of the Competition Policy and Advocacy Section; Nickolai Levin was named Assistant Chief of the Appellate Section; William Jones was named Counsel to the Director of Civil Litigation; Chan Mazumdar was named Special Counsel for Agriculture; James Attridge was named Acting Chief of Staff to the Assistant Attorney General; Cory Brader Leuchten was named Senior Counsel to the Assistant Attorney General; Thomas DeMatteo was named Attorney Advisor to the Assistant Attorney General; and Daniel Guarnera was named Counsel to the Assistant Attorney General.



individuals and six companies in jurisdictions across the country—including nine cases charged since the COVID-19 declaration of emergency in March 2020. If all 13 trials proceed this year, it will mark the largest number of trials in the modern era of criminal antitrust enforcement, since the advent of the modern leniency policy in 1993. The Division's litigation efforts demonstrate its commitment to protecting competition in critical

school to practical, tangible problems. Not everyone gets the luxury of working in their field, so I'm grateful for that. Also, I've learned a lot from working with the attorneys. I enjoy seeing how economics fits into the puzzle of a case, and I've found that there's a lot of fruitful feedback between economists and attorneys.



**Malika Krishna**  
*Economist*

*What was your background before joining the Antitrust Division?*

Prior to joining the Division, I worked in economics consulting for several years.

*Why did you decide to join the Division?*

Having had the opportunity to work with Division economists and attorneys while I was in consulting, I wanted to join EAG because I had seen the high quality of work, focus on economics, collegial environment, and commitment to getting to the right answer.

*What do you like best about your current work?*

I like that we are always learning in this job because every industry is different, every case is different, and therefore the economics is different. I find our

markets, including food, healthcare, labor markets, and financial services.



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## Food

The Division is committed to ensuring that companies and executives that conspire to fix prices for household staples are held accountable, and that American consumers benefit from competition when purchasing the most basic necessity, food.

In the packaged seafood industry, the former CEO and president of Bumble Bee Foods, LLC was convicted following a four-week trial in San Francisco. In June 2020, [he was sentenced](#) to serve 40 months in prison and to pay a \$100,000 fine for his leadership role in a conspiracy to fix prices of canned tuna in the United States. This conviction followed the guilty pleas of three tuna-industry executives and two major packaged seafood companies, [Bumble Bee](#) and [Starkist](#), which were sentenced to pay \$25 million and \$100 million in criminal fines, respectively.

In the broiler chicken industry, one of the country's largest broiler chicken providers, [Pilgrim's Pride Corp. \(PPC\)](#), [pleaded guilty](#) to its part in a conspiracy to fix prices and rig bids in the sale of broiler chicken products. In February 2021, PPC was sentenced to pay approximately \$107 million as a criminal fine. PPC's conviction followed the [indictment of ten individuals](#), including two former CEOs of PPC, for their roles in the conspiracy. The case against the individuals is pending in Denver, Colorado.



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## Healthcare

Amid the pandemic, the Division has redoubled its efforts to prosecute illegal conduct that corrupts vital healthcare markets.

In August 2020, a federal grand jury returned a superseding indictment against two generic pharmaceutical companies, [Teva Pharmaceuticals USA, Inc. and Glenmark Pharmaceuticals Inc., USA](#), for their participation in conspiracies to fix prices, rig bids, and allocate customers for generic drugs. The Teva-Glenmark indictment follows the February 2020 [indictment of a former senior executive](#) in the generic-pharmaceutical industry, for his role in conspiracies to fix prices, rig bids, and allocate customers for generic drugs, and for making a false statement to federal agents who were investigating those conspiracies. The cases are pending in Philadelphia, Pennsylvania.

In September 2020, a federal grand jury [indicted the founder and former president of Florida Cancer Specialists & Research Institute LLC \(FCS\)](#) for his participation in a conspiracy to allocate medical and radiation oncology treatments for patients in Southwest Florida. The indictment charges him with conspiring with a competing oncology group to suppress competition relating to cancer treatments offered by the companies in southwest Florida. The conspiracy limited the choices available to cancer patients for integrated care and enabled FCS and the competing oncology group to operate in the region with minimal competition. FCS was charged by information in April 2020,

work at the Division to be creative and exciting.



**Alisa Mastro**  
*Trial Attorney, San Francisco Office*

*What was your background before joining the Antitrust Division?*

Before joining the Division, I worked in private practice in Washington, D.C. where I got exposure to both transactional and criminal antitrust matters. I was fortunate to work with and learn from experienced and supportive antitrust lawyers, including DOJ alumni, on a variety of matters touching on different industries and issues. While at the firm, I had the opportunity to move to California for a secondment at a client where I learned about antitrust and competition issues from the in-house perspective.

*Why did you decide to join the Division?*

It began with a great internship experience with another DOJ division during law school. And ever since antitrust became my area of practice I've wanted to contribute to the Division's important work. While in private practice I became interested in industries that have become a focus for the Division, so I jumped at the opportunity to work on these challenging and

and entered a deferred prosecution agreement where it [agreed to pay a \\$100 million criminal penalty](#). The case is pending in Fort Myers, Florida.



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## Labor Market

The Division remains focused on protecting the American worker by ensuring labor markets are free from collusion, particularly in critical sectors like the healthcare industry. In the past year, the Division filed two indictments involving healthcare labor markets—one charging an individual with his role in a wage-fixing conspiracy, and one charging a company for its role in an employee allocation (or “no-poach”) conspiracy. As explained in the Antitrust Guidance for Human Resource Professionals issued in 2016, agreements among employers to refuse to solicit or hire each other’s employees (so-called “no-poach” agreements), or to fix rates or wages, eliminate competition in the same irredeemable way as agreements to allocate customers or fix product prices. These conspiracies can harm workers in a variety of ways, including depriving them of competitive wages, mobility, and the ability to bargain for better terms of employment or job opportunities.

In December 2020, a federal grand jury [indicted the former owner](#) of a Texas-based in-home physical therapy company for participating in a conspiracy to fix prices by lowering the rates paid to healthcare workers by his company, and for obstructing the Federal Trade Commission’s earlier, separate investigation into his conduct. The indictment charges that he

conspired to pay lower rates to certain physical therapists and physical therapist assistants in North Texas. The case is pending in Sherman, Texas.

In January 2021, a federal grand jury [indicted Surgical Care Affiliates, LLC](#) (SCA) and its related entity for participating in conspiracies not to solicit senior-level employees from its competitors. SCA owns and operates outpatient medical-care centers across the country. The indictment charges SCA with entering into and engaging in two separate bilateral conspiracies with other healthcare companies to suppress competition between them for the services of senior-level employees. The case is pending in Dallas, Texas.



Photo credit: -goldy-/iStock /Getty Images PlusPlus

## Financial Services

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

In September 2020, a former currency trader at a major multinational bank was [sentenced to serve eight months in prison](#) and to pay a \$150,000 fine, for his participation in a conspiracy to manipulate prices for emerging-market currencies in the global foreign-currency-exchange market. He was convicted after a three-week trial in New York in late 2019. This conviction followed the guilty pleas of two former currency traders. Several major financial institutions pleaded guilty as a result of investigations into the financial sector, and they were collectively sentenced to pay over \$2.5 billion in criminal fines.

fascinating issues when I had the chance.

*What do you like best about your current work?*

Even though we’ve all been working remotely, it has been so engaging to work with smart, dedicated attorneys and economists on novel and complex issues. I also love diving into factual investigation to understand different products and markets.



**Lily Okamuro**  
*Trial Attorney, Financial Services, Fintech, and Banking Section*

*What was your background before joining the Antitrust Division?*

I have a B.A. in economics from U.C. Berkeley, a J.D. from Georgetown University Law Center, and came to the Division from Ropes & Gray’s Antitrust Group. Prior to joining Ropes & Gray, I worked in Dechert’s Antitrust Group.

*Why did you decide to join the Division?*

I’ve wanted to work for the Division ever since my second year of college. My microeconomics professor would animate her lectures with war stories from her time in EAG, including her work on U.S. v. ATPCO, and I thought it sounded like the most exciting career. Fast

## United States v. Google

On October 20, 2020, the Division [filed a civil lawsuit against Google](#) alleging that Google 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%; its share is even higher on mobile devices, at nearly 95%. Google monetizes its search monopoly by selling ads on the search results pages. The complaint alleges that two search advertising markets have been affected by Google’s conduct and that Google also has a monopoly in each of those markets.

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% 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.”

For search engines, some of the most important distribution channels are the preset default positions on various search access points on computers and mobile devices. Defaults are sticky and exert a strong influence over users’ choice of search engine; the fact that end users can generally change the default search engine does not resolve the matter when, as one Google executive bluntly put it, “most users just use what comes on the device.”

Google’s exclusionary agreements fall into four main buckets. First, Google uses an interlocking set of contracts with Android device manufacturers and carriers to “[o]wn the ecosystem” and ensure that it is the dominant search provider on Android devices. These

forward over ten years, a SLIP internship in TEA, and almost five years of building my resume through private practice, I finally took my shot and applied to be a Tech Fellow.

*What do you like best about your current work?*

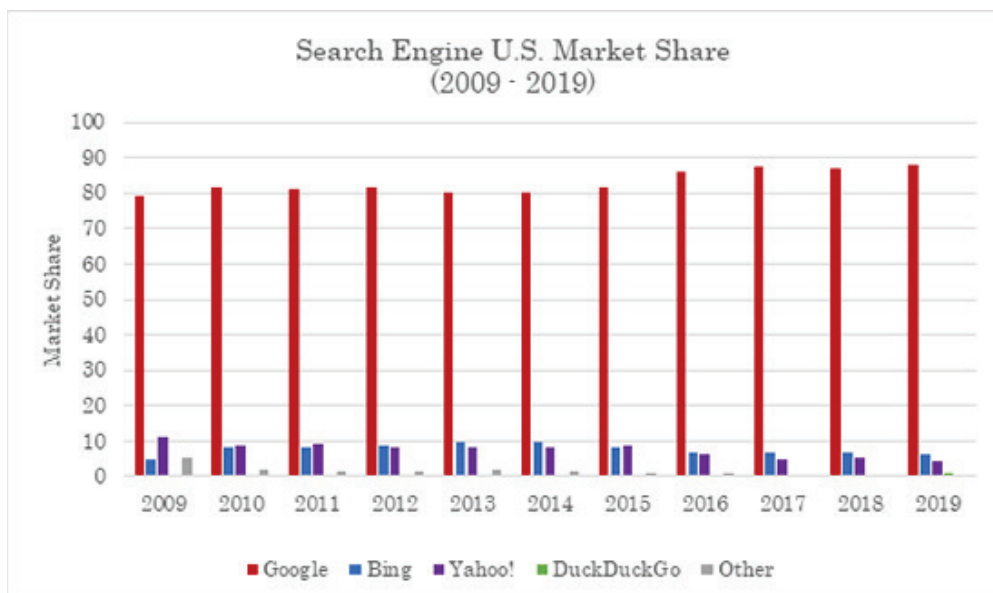
Since joining the Division, I have worked on the Visa/Plaid team. My favorite assignment was fact witness development during the litigation. It was rewarding watching the team’s story come together and strategizing with my partner about how different potential fintech witnesses might help tell that story. No witness was perfect, so it was a constant dialogue of pros, cons, and overall strategy.



**Ryan Sandrock**  
*Trial Attorney, San Francisco Office*

*What was your background before joining the Antitrust Division?*

I was born in Ohio but then moved to Chicago because the Division broke up AT&T (my dad worked for AT&T in Ohio and went to work for a “Baby Bell” in Chicago after divestiture). After college, I was a high school teacher and cross-country coach in Louisiana. Then, after law school, I practiced at Sidley Austin for a long time, in both Chicago and San Francisco. At





contracts force Android manufacturers to preinstall a bundle of Google apps chosen by Google and secure premium placement of Google search access points. Second, Google enters into agreements that require Android distributors to make Google the preset default general search provider across all preinstalled search access points on an Android device. In return, Android distributors receive a share of search advertising revenue from those devices. Third, Google has exclusionary agreements with Apple. Apple's mobile devices account for 60% of mobile device usage in the United States. Google pays billions of dollars to Apple each year to be the exclusive preset default general search engine for Apple's primary search access points. Fourth, Google uses revenue-sharing agreements to control search

distribution on other browsers, including those used on desktops.

Following well-established antitrust law, such as the D.C. Circuit's *United States v. Microsoft* (2001) decision, the Division alleges Google violated Section 2 of the Sherman Act by entering into these anticompetitive and exclusionary distribution agreements.

A bipartisan group of 14 states are co-plaintiffs with the Division. An additional 38 states and territories, led by Colorado and Nebraska, filed suit against Google on December 17, 2020, incorporating the Division's allegations and adding certain additional claims. The two complaints have been consolidated for pretrial proceedings in federal court in Washington, D.C. Discovery is ongoing and trial is scheduled for September 2023.



## Spotlight on Response to COVID-19

At the outset of the COVID-19 pandemic, the Division issued (jointly with the FTC) a [statement that provides guidance for business collaboration efforts](#) and outlines an expedited business review letter process for proposed conduct concerning COVID-19-related public health and safety efforts. The Agencies made clear that, during this national emergency, some collaborations between individuals or businesses could be procompetitive and necessary to respond to the exigencies of the pandemic. Under the expedited business review process, the Agencies aim to respond to and resolve all COVID-19-related requests related to pandemic health and safety within seven calendar days.

Since March 2020, the Division has issued six expedited business review

letters to support pandemic health and safety. These letters addressed proposed competitor collaborations critical to the response to the COVID-19 pandemic and in most cases undertaken in collaboration with federal organizing officials. Covered topics included the development of common quality standards for collecting COVID-19 convalescent plasma, the production of monoclonal antibody therapies, a distribution program for personal protective equipment (PPE), an information exchange for depopulating unmarketable hogs, and a medication distribution program.

- [Letter to Baxalta, Emergent BioSolutions, Grifols Therapeutics, and CSL Plasma](#)
- [Letter to ecoHair Braiders Association](#)

Sidley, I worked with Scott Lassar, who led the price-fixing case against ADM, and Sam Miller, who led the first Division case against Microsoft. I litigated many antitrust cases, mostly Section 2, on the defense side.

*Why did you decide to join the Division?*

I joined the Division because I wanted to be part of the review of online platforms. There is a renewed recognition of the importance of competition in the digital economy.

*What do you like best about your current work?*

I enjoy that everyone in the Division has a deep understanding of antitrust law. It is helpful to work with economists and attorneys who have thought more about core antitrust issues than probably anyone else. And it is fun to be able to use Illinois Brick and Brown Shoe as shorthand, knowing that your colleagues don't need further explanation.



**Lara Trager**  
*Trial Attorney, Financial Services, Fintech, and Banking Section*

*What was your background before joining the Antitrust Division?*

I studied political theory, law, economics, and public policy, and was privileged to spend many

- [Letter to McKesson Corporation, Cardinal Health, Owens & Minor, Inc., Medline Industries, Inc., and Henry Schein, Inc.](#)
- [Letter to AmerisourceBergen Corporation](#)
- [Letter to National Pork Producers Council](#)
- [Letter to Eli Lilly and Company, AbCellera Biologics, Amgen, AstraZeneca, Genentech, and GSK](#)

Staff from across the Division worked with urgency and care to bring each of these reviews to a conclusion within the seven-calendar-day target, while still conducting robust analyses and ensuring appropriate competition safeguards were applied to these competitor collaborations.

The Division issued a second joint statement with the FTC in April 2020 reaffirming its commitment to preserving competition in labor markets and curbing anticompetitive conduct by those who take advantage of the pandemic to enter unlawful wage-fixing or no-poach agreements. In addition, the Division has also created the [Antitrust Issues and Your Small Business](#) public web page to provide guidance to small business owners on prohibited conduct during the crisis. In terms of internal procedural changes for public health and safety, the Division now permits the electronic filing of Hart-Scott-Rodino submissions and conducts all meetings by phone or video conference, absent extenuating circumstances.



## The Past Year in the Economic Analysis Group

This last year has been one of continued growth and accomplishment for the Antitrust Division's Economic Analysis Group (EAG). We welcomed an impressive new cohort of Ph.D. economists, including Mark Chicu (Northwestern '13), Alex Gross (UVA '20), Malika Krishna (NYU Stern '16), Sam Krumholz (UCSD '20), and Hal Van Gieson (Yale '92).

Economic analysis has been important to the Division's criminal investigations, including its investigation into antitrust conspiracies in the generic pharmaceutical industry. EAG staff has evaluated bidding and pricing behavior to assist prosecutors in their investigations and calculated volume of commerce to assist prosecutors in determining appropriate corporate criminal fines and penalties. In the [generics investigation](#), EAG staff also worked to quantify the loss to victims

and the gain to participants in antitrust crimes. This marks the first time in a decade—since the Division's landmark conviction in *United States v. AU Optronics*, resulting in a \$500 million fine—that the Division is proceeding to trial under the Alternative Fine Statute.

EAG also made significant contributions to several of the Division's higher profile civil matters, both litigated and settled. EAG's analyses of market definition and nascent competition in two-sided transactions platforms for online debit were central to the Division's challenge of [Visa's proposed acquisition of Plaid](#), which was abandoned before trial. The robust merger settlements achieved by the Division in the [HPhC/Tufts](#) health insurance merger and [the Liberty Latin America/AT&T](#) fiberoptic network merger reflect the empirical evaluations of market definition and competitive

years in private practice in New York City, at two different firms. My work focused on antitrust litigation and competition law and afforded the opportunity to work alongside and opposite some of the best. Sprinkled in over the years were working at an early online platform during college, in the chambers of a Federal Circuit Court Judge during law school, with several law and philosophy professors teaching and assisting with research, and at a litigation support services firm. My first job, in high school, was selling shoes...for which it is fair to say I am not cut out.

*Why did you decide to join the Division?*

It is a fascinating and exciting time to be in antitrust. I am passionate about the intersection of antitrust and technology in particular, and about the importance of the Division's mission and enforcement work, especially right now. When I saw an opening that offered the opportunity to be involved, I jumped at it.

*What do you like best about your current work?*

The people are incredible. The caliber and commitment here at the Division—to doing what is right and best for the American economy and consumer, under the facts and law—are inspiring. There is an energy and dedication to public service here which it is wonderful to be a part of.



effects performed by Division economists.

EAG economists were also vital members of the groups tasked with other first-order priorities for the

Division. These included the drafting of the [2020 Vertical Merger Guidelines](#), a process that involved identifying the primary elements of vertical merger analyses, as informed

by the academic literature and experience from applications, to provide guidance and illustrative examples to the antitrust and business communities.

## Civil Program Update

### Recent Merger Settlements

Over the past year the Division entered into more than ten merger settlements involving a wide range of industries and competitive issues. Generally, the remedies involved structural relief, and a number of matters involved up-front buyers, local markets, and cooperation with state enforcers. Among the settlements are (1) Harvard Pilgrim Health Care and Health Plan Holdings; (2) Waste Management, Inc. and Advanced Disposal Services, Inc.; (3) Liberty Latin America and AT&T; and (4) Communications Power Industries LLC and General Dynamics SATCOM Technologies Inc.



Photo credit: everydayplus/iStock/Getty Images Plus

#### Harvard Pilgrim Health Care/Health Plan Holdings

In December 2020, the Antitrust Division and the Attorney General of New Hampshire filed a complaint challenging the proposed merger of Harvard Pilgrim Health Care and Health Plan Holdings (formerly known as Tufts Health Plan). The complaint alleged that the merger, as originally structured, would have led to higher prices, poorer quality, and reduced choice for many consumers throughout the state of New Hampshire. The Division and New

Hampshire [filed a settlement](#) to resolve the competitive harm alleged in the complaint. The settlement required that Harvard Pilgrim and Health Plan Holdings divest Tufts Health Freedom Plan Inc.—Health Plan Holdings’ commercial health insurance business in New Hampshire—in order to proceed with their merger. The Division approved UnitedHealth Group Inc. as the up-front buyer of Tufts Freedom. The settlement will preserve competition for the sale of commercial health insurance to private employers in New Hampshire with fewer than 100 employees. This matter was handled by the Healthcare and Consumer Products Section.



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#### Waste Management/Advanced Disposal Services

In October 2020, the Antitrust Division and the Attorneys General of Florida, Illinois, Minnesota, Pennsylvania, and Wisconsin filed a 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 [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. This matter was handled by the Defense, Industrials, and Aerospace Section.



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#### Liberty Latin America/AT&T

In October 2020, the Antitrust Division [filed a complaint](#) challenging the acquisition of AT&T Inc.’s telecommunications operations in Puerto Rico and the U.S. Virgin Islands by Liberty Latin America Ltd. The Division alleged that Liberty and AT&T were two of the three largest wireline telecommunications providers in Puerto Rico and that the

acquisition, as originally proposed, would have eliminated competition between the parties to provide fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico, likely resulting in increased prices and lower-quality services for these customers. To address these competitive concerns, Liberty and AT&T agreed to divest certain fiber-based telecommunications assets and customer accounts. The Division approved WorldNet Telecommunications, Inc. as the up-front buyer. The settlement includes an option for a monitoring trustee. This settlement, which was entered by the court on February 3, 2021, will ensure that customers in Puerto Rico continue to benefit from competition

in the provision of these services. This matter was handled by the Media, Entertainment, and Communications Section.



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### CPI/GD SATCOM

In May 2020, the Antitrust Division [filed a complaint](#) challenging the acquisition of General Dynamics SATCOM Technologies Inc. (“GD SATCOM”) by Communications and Power Industries LLC (“CPI”). The Division alleged that GD SATCOM and CPI were the only two suppliers of certain satellite antenna equipment to the Department of Defense and to commercial

customers. Consequently, the acquisition, as originally proposed, would have resulted in a monopoly for these products and would have eliminated the higher quality, lower prices, and shorter delivery times that resulted from competition between the parties. To address the Division’s antitrust concerns, the parties agreed to divest ASC Signal, in order to preserve competition for critical equipment that enables important communication links for the United States military and commercial customers in remote areas. The settlement, which was entered by the court on May 28, 2020, did not require an up-front buyer. This matter was handled by the Defense, Industrials, and Aerospace Section.



## Protecting Nascent Competition: Visa and Plaid Abandon Anticompetitive Merger

On January 13, 2020, Visa announced plans to acquire Plaid, a successful financial technology (fintech) startup, for \$5.3 billion.

Consumers use Visa debit cards to pay for goods and services directly from their bank account, including hundreds of billions of dollars in online purchases each year. Visa is accepted by the majority of U.S. merchants and earns billions of dollars each year processing these online debit payments. Plaid is a financial data aggregator whose technology enables consumers to provide their banking information to fintech applications like Acorns, Betterment, and Robinhood.

The Division [sued to block the merger](#) in November 2020 in the Northern District of California, challenging the acquisition as a violation of both Section 7 of the Clayton Act and Section 2 of the Sherman Act. According to the complaint, Plaid planned to leverage its existing technology—including connections to 200 million consumer bank accounts in the U.S.—to launch an online debit product that would compete with Visa at a lower cost to merchants.

## Fair Play: CID Compliance and Avoiding Privilege Gamesmanship Continue to Be Enforcement Priorities

In October 2020, the Division filed a [civil action against Bain & Company](#) to enforce its compliance with a civil investigative demand (CID) issued to Bain in connection with Visa’s proposed acquisition of Plaid. According to the complaint, Bain withheld thousands of relevant documents relating to consulting work it performed for Visa. Bain claimed the consulting project was subject to a blanket privilege because it was conducted at the direction of Visa’s outside counsel. The Division alleged, however, that the requested



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The complaint alleged that Visa is a monopolist in online debit, extracting billions of dollars in swipe fees from merchants and consumers each year, and that Visa sought to buy Plaid as an “insurance policy” to neutralize a “threat to our important US debit business.” One Visa executive drew an island “volcano” to illustrate Plaid’s disruptive potential, whose current capabilities are just “the tip showing above the water,” warning that “[w]hat lies beneath, though, is a massive opportunity—one that threatens Visa.”

According to the complaint, Visa’s CEO recognized that the Plaid acquisition did “not hunt on financial grounds,” but justified the extraordinary purchase price as a “strategic, not financial” move because “[o]ur US debit business i[s] critical and we must always do what it takes to protect this business.”

On January 12, 2021, Visa and Plaid announced that the [companies had terminated their merger agreement](#).

The complaint in Visa/Plaid demonstrates the Division’s commitment to blocking anticompetitive acquisitions of nascent competitors by dominant firms. In 2019, the Division similarly [sued to block Sabre’s acquisition of Farelogix](#), alleging that the transaction would have allowed Sabre, the largest booking services provider in the U.S., to eliminate a disruptive competitor. The Division remains vigilant in ensuring dominant firms do not unlawfully protect their market power to the detriment of consumers.



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materials were simply business strategy documents not entitled to privilege.

This enforcement action exemplifies the Division’s ongoing efforts to enforce CID compliance and ensure companies—both parties and third parties—do not inappropriately withhold documents using unfounded privilege claims. In 2018, the Division updated its model timing agreement, including provisions asking merging parties to precisely designate documents as privileged in order to avoid longer review. And just last year the Division rejected a certification of second request compliance in a significant merger investigation because of the parties’ inadequate privilege logs.

The Division respects the attorney-client privilege and the work product doctrine and the need for a careful review process to protect these materials. But privilege gamesmanship—and overuse of privilege to shield relevant documents from production—will not be tolerated. The recent enforcement action against Bain highlights the Division’s careful scrutiny of privilege claims and its commitment to ensuring companies honor their obligations under the CID statute, 15 U.S.C. § 1311 et seq. (1994).



## Resolution of the Antitrust Division’s Challenge to Geisinger Health’s Partial Acquisition of Evangelical Community Hospital

In March 2021, the Antitrust Division [announced a settlement](#) resolving civil antitrust litigation filed in August 2020 challenging an agreement between Geisinger Health and Evangelical Community Hospital that amounted to an anticompetitive partial acquisition of Evangelical by Geisinger. The Division alleged that Geisinger and Evangelical are close

competitors for inpatient general acute-care hospital services for patients in a six-county area in central Pennsylvania. The partial-acquisition agreement created significant entanglements between the hospitals, reducing their incentives to compete against each other and increasing the likelihood of

coordination, harming patients in central Pennsylvania.

Under the hospitals’ original agreement, Geisinger was to obtain a 30% ownership interest in Evangelical in exchange for providing \$100 million to Evangelical for use on projects to be approved by Geisinger.

The agreement also gave Geisinger certain rights with respect to future transactions and joint ventures. Absent the Division's challenge, the agreement would have set Geisinger up as a critical source of funding for Evangelical for the foreseeable future, provided opportunities for Geisinger to influence Evangelical's strategic decisions, and would have made it difficult for Evangelical to partner with other healthcare entities. The Division alleged that the provisions of the partial-acquisition agreement functioned together to substantially lessen competition and unreasonably restrain trade in the market for inpatient hospital services in central Pennsylvania.

The settlement caps Geisinger's investment and otherwise limits entanglements between the two hospitals to preserve hospital



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competition in central Pennsylvania. The terms of the proposed final judgment are intended to prevent Geisinger from exercising any form of control or influence over Evangelical and to maintain the two hospitals' incentives to compete with each other on both quality and price. In addition to capping Geisinger's ownership interest in Evangelical at a 7.5% passive interest, the settlement restricts Geisinger from increasing its ownership interest in Evangelical, making any loan or providing any line of credit to Evangelical, and exerting any control over Evangelical's expenditure of funds. Both hospitals

are also each required to implement an antitrust compliance program.

The settlement addresses the harm from the partial acquisition while allowing the procompetitive aspects of the hospitals' agreement to move forward. For this reason, the settlement permits Evangelical to obtain new information technology systems from Geisinger to allow Evangelical to upgrade its electronic health records system and improve the delivery of care to patients in central Pennsylvania. In addition, the funds associated with Geisinger's passive investment can be used for specific projects that will benefit patients and the community.

## Criminal Program Update

### Generic Drugs Investigation Targets Anticompetitive Schemes

The Division remains committed to rooting out illegal conduct that corrupts critical healthcare markets. That work is more important now than ever before.

In recent years, the Division has uncovered price-fixing, bid-rigging, and customer-allocation schemes in one of the most important markets for the health and wallets of American consumers: the generic drug industry. Indeed, nearly 90% of all prescriptions in the United States are filled with generic drugs.

To date, the investigation has resulted in charges against seven

generic pharmaceutical companies and four senior executives for conspiring to fix prices, rig bids, and allocate customers for essential generic drugs relied on by millions of American consumers, including the elderly and vulnerable, to treat a range of diseases and conditions. Of the four executives charged, three have pleaded guilty. Of the seven companies, five have admitted to the charged conduct and entered into

deferred prosecution agreements (DPAs) to resolve the charges, under which they collectively agreed to pay over \$426 million in criminal penalties for collusion that affected over \$1 billion of generic drug sales. Most recently, in July 2020, Taro Pharmaceuticals U.S.A., Inc. was [charged for participating in two conspiracies](#) to fix prices, rig bids, and allocate customers that impacted over \$500 million in sales



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of generic drugs used to prevent and control seizures and treat bipolar disorder, pain and arthritis, and various skin conditions. The company entered into a DPA to resolve the charges under which it agreed to pay a \$205.7 million criminal penalty—the highest ever for a domestic cartel.

The criminal cases are being prosecuted by attorneys in the Division's Washington Criminal I and II sections and the Chicago Section, with assistance of the USPS Office of Inspector General, the Federal Bureau of Investigation's Washington Field Office, and the U.S. Attorney's

Office for the Eastern District of Pennsylvania.

The companies and executives that have resolved the charges have agreed to provide ongoing cooperation, including against two companies—Teva and Glenmark—and one executive currently awaiting trial.



## PCSF Expansion and Early Success

The [Procurement Collusion Strike Force](#) (PCSF) is a district-based, virtual strike force, where dedicated Division attorneys work with Assistant U.S. Attorneys and agents from federal, state, and local entities with two complementary goals: conducting outreach to increase awareness and deterrence of antitrust and other criminal violations in government contracts, grants, and programs; and leveraging the combined talents and resources of the enforcement community to detect, investigate, and prosecute violations. Since its launch in November 2019, the initial PCSF's 13 district teams, consisting of Division attorneys and agents from five partner agencies immediately started discovering like-minded agents, investigators, prosecutors, and analysts in their areas of responsibility and training scores of individuals in recognizing antitrust red flags.

Its first year generated waves of interest, training requests, and leads, spurring the PCSF to expand last November. It welcomed [nine U.S. Attorney's Offices and two new national partners](#): the Air Force Office of Special Investigations and



the Department of Homeland Security OIG. To date, the Strike Force is active in almost a quarter of U.S. judicial districts and coordinates with 486 members from 48 agencies and offices.

The PCSF recognizes that the first step in opening investigations and bringing prosecutions is awareness. The PCSF has sponsored trainings on recognizing antitrust crimes to over 10,000 agents, investigators, analysts, auditors, attorneys, and procurement officers from over 500 offices and agencies. As PCSF attorneys and agents followed up on the resulting potential collusion tips, they uncovered conduct to contribute to the nearly three dozen PCSF-related investigations opened to date.

PCSF investigations span the range of procurement collusion and fraud matters, from defense and national security to public works projects, and

from domestic investigations into conduct primarily within a single district to international investigations into conduct affecting U.S. government procurement in multiple states, nationwide, and overseas. One investigation involving eleven offices and agencies reflects the PCSF's incredible partnerships.

District teams are not the only way Division prosecutors get involved in the PCSF—many instead tackle leveraging bid data and partnering with agencies to implement collusion analytics through the PCSF Data Analytics Project. The Data Analytics Project began the conversation about the use of data analytics to combat bid rigging with four webinars in 2020. More than 1,000 data scientists, analysts, and auditors attended these virtual workshops, and the PCSF plans more in the coming year. Afterwards, Data Analytics Project attorneys engaged with dozens of agency analytics

shops in order to encourage them to build analytical tools to detect collusion; the attorneys offered training in suspicious bid patterns and provided connections to other analytics teams. Other recent efforts include interfacing with procurement platforms as sources of data and advocating for collection and retention of bid data across government.

The Data Analytics Project is not the PCSF's only new endeavor. [PCSF presentations to international groups](#) and Division investigations with foreign competition authorities paved the way for the PCSF to launch PCSF: Global, an effort to build connections with enforcement counterparts and tackle potential collusion in bids for the staggering amount of U.S. funds spent abroad.

Division attorneys in the criminal and international sections are working on this project.

As the PCSF begins its second year with expanded ranks, it is gearing up to bring investigations to the recommendation and disposition stage, to build out the PCSF data analytics program, and to expand its reach with PCSF: Global.



## Investigation into Procurement Irregularities at the Department of Energy Strategic Petroleum Reserve Results in Guilty Plea and Indictment

In July 2020 and February 2021, [a company and an individual were charged](#) with a conspiracy to defraud the United States and violate the Procurement Integrity Act (41 U.S.C. §§ 2102 and 2105), in violation of 18 U.S.C. § 371. According to the charging documents, an employee of the Department of Energy's prime contractor conspired with a subcontractor, Cajan Welding & Rentals Ltd., to impair the government's procurement process by providing nonpublic pricing and cost information to Cajan in advance of its bids, in order to give it a competitive advantage in obtaining subcontracts to provide equipment and services to the Strategic Petroleum Reserve.

The Strategic Petroleum Reserve is the nation's stockpile of oil that can be drawn upon during times of

emergency. It is managed and operated by a prime contractor, which obtains equipment and maintenance services for the Reserve through a procurement process that seeks competitive bids from subcontractors. The charged individual served as a subcontract manager's technical representative, and his involvement in the procurement process included preparing nonpublic pricing and cost estimates for the government. The alleged conspiracy began at least as early as February 2002 and continued at least as late as October 2016, during which time the defendant provided these nonpublic pricing and cost estimates to Cajan in advance of its bids, sometimes by email. Cajan used this information to prepare its bids, and during the course of the conspiracy period,

Cajan received over 50 subcontracts worth approximately \$15 million. The indictment alleges that the defendant had a personal and business relationship with Cajan's owner (now deceased), and that he received financial benefits from Cajan. The indictment also charges that he made false statements to federal agents by asserting that he had not provided any nonpublic pricing information to Cajan.

The company, Cajan Welding & Rentals, Ltd., pleaded guilty, and in December 2020 was [sentenced to a criminal fine of \\$400,000](#). The individual was [indicted in February 2021](#), and trial is currently set to begin on May 24, 2021. The cases are the result of an investigation by the Department of Energy Office of Inspector General, in partnership with the Antitrust Division's Washington Criminal II Section and the U.S. Attorney's Office in the Eastern District of Louisiana.



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## North Carolina Drainage Investigation Leads to Grand Jury Indictment for Bid Rigging and Fraud

In October 2020, engineering firm [Contech Engineered Solutions LLC](#) and its former executive were [indicted](#) on charges of conspiring to rig bids, conspiring to commit mail fraud, and committing mail and wire fraud in connection with a nearly decade-long scheme affecting aluminum structure projects for the North Carolina Department of Transportation (NCDOT).

Throughout the alleged conspiracy, Contech, a manufacturer of aluminum pipe and fittings and other products, and its co-conspirator, a dealer of Contech's products, bid on numerous NCDOT aluminum structure projects. Aluminum structures control the flow of water underneath and around roads, bridges, and overpasses, providing water drainage, erosion control, and sewage management. During the time period alleged in the indictment, NCDOT increasingly used aluminum structures, as opposed to steel or concrete, for its drainage projects.

According to the indictment, the former executive obtained—or directed another to obtain—bid prices from Contech's competitor on the aluminum structure projects in advance, and then intentionally



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inflated Contech's bids to be higher than its co-conspirator's bid, while falsely certifying that the bids were submitted free of collusion. He allegedly manipulated Contech bids by increasing the price by a certain percentage above its competitor's, in order to give the appearance of submitting a good faith, competitive bid to NCDOT. Upon submitting the intentionally inflated bid prices and subsequently losing the projects to its co-conspirator, Contech then supplied all of the aluminum pieces for those projects.

The indictment alleges that the conspiracy primarily involved Contech soliciting bid prices over the phone. The parties also occasionally met in person, or exchanged emails and text messages, to share pricing information used to create cover bids. According to the indictment, the co-conspirators used the mails and wires in furtherance of the scheme.

On March 15, 2021, the court denied Contech's motion to apply the rule of reason to the case. The case will be

tried in the Eastern District of North Carolina as a horizontal bid-rigging case under the per se rule, as alleged in the indictment. A trial date has not yet been set.

This indictment is part of a criminal investigation into the aluminum structures industry, conducted by the Division's Washington Criminal I Section, with the assistance of the USPS Office of Inspector General, the U.S. Department of Transportation Office of Inspector General, and the U.S. Attorney's Office for the Eastern District of North Carolina.

This prosecution emphasizes the Division's commitment to combatting collusion in government contracting, which raises the prices and diminishes the quality of the goods and services paid for by U.S. taxpayers. The Division, whether working with longstanding law enforcement partners or as part of the Procurement Collusion Strike Force, including the use of data analytics, will continue its efforts to detect, investigate, and prosecute these crimes.

### International Program Update

## Continued Commitment to International Enforcement

The year 2020 marked the 150th anniversary of the Department of Justice. During this hallmark year, the

Antitrust Division continued its long tradition of working closely with competition agencies from around

the globe to advance competition enforcement and policy.

In response to the COVID-19 pandemic, the Division's International Section fully transitioned to a virtual workspace. This shift enabled the Division to continue its important international work while supporting the health and best interests of the global community. To facilitate the change, the Division leveraged its existing bilateral relationships and ties to multilateral organizations, such as the OECD and ICN, to sustain communication and cooperation despite these challenging times.

### Cooperation Agreements

One of the Antitrust Division's most significant international achievements of the past year is the signing of the [Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities](#) (MMAC) in September 2020. The MMAC, signed with competition agencies in Australia, Canada, New Zealand, and the United Kingdom, builds on these competition agencies' prior multilateral agreements and robust record of collaboration while simultaneously creating a new model cooperation agreement. The model agreement is expected to serve as a template for subsequent agreements among signatories that would facilitate future cooperation in both criminal and civil matters. Though the signatories could not gather in person for the signing ceremony, the MMAC's virtual signing further demonstrates the Division's adaptability and steadfast commitment to its partners in cross-border competition enforcement.

In November 2020, the Division also entered into another important

agreement—a [Memorandum of Understanding \(MOU\) with the Korean Prosecution Service](#). The MOU is a testament to the deepening cooperative relationship between the Division and the Korean Prosecution Service on cartel investigations and policy issues. The MOU also encourages the agencies to host joint training programs and to share information on policy and enforcement developments.

### Bilateral Cooperation

In FY 2020, Antitrust Division case teams cooperated with 15 competition agencies on 26 merger and civil nonmerger matters. Similarly, the Division cooperated with numerous competition agencies in its cross-border cartel investigations. Many of these matters involved coordination with multiple competition agencies.

For example, in reviewing the [proposed merger of McGraw-Hill and Cengage](#), the Division worked closely with a number of competition agencies, including the Australian Consumer and Competition Commission, the New Zealand Commerce Commission, and the U.K.'s Competition and Markets Authority. In another example, the Division cooperated closely with the Israel Competition Authority and the U.K.'s Competition and Markets Authority in connection with the proposed merger of Taboola and Outbrain.

The Division also underscored its commitment to bringing fugitives to justice. Working closely with the Department's Criminal Division Office of International Affairs and their international counterparts, the

Division extradited two fugitives from Europe during FY 2020. The [first defendant](#) was a former air cargo executive who was indicted for her involvement in a long-running worldwide conspiracy to fix prices of air cargo. She was extradited from Italy and pled guilty in January 2020. The [second defendant](#) was a former automotive parts executive who was indicted for his role in an international market allocation and bid-rigging conspiracy involving the sale of instrument panel clusters to several automobile producers. He was extradited from Germany and pled guilty in March 2020.

On these matters and numerous others, international cooperation facilitated effective investigations and enforcement. For example, the Division worked closely with several competition agencies to accommodate parties' requests to proceed with depositions remotely, sometimes from foreign countries, in order to avoid travel during the pandemic. Our international counterparts helped the Division understand and comply with potential international legal obligations associated with taking depositions remotely. This invaluable cooperation allowed the Division to advance its investigations while allowing witnesses to remain safely in or near their homes.

Another Division initiative was to share its enforcement experience with foreign jurisdictions, providing information on established best practices in support of sister agencies for the benefit of appellate courts reviewing their decisions. Under this "international amicus" effort, the Division provided support to two

agencies relating to cartel enforcement, and held discussions with other agencies.

## Multilateral Cooperation

The Antitrust Division also worked closely with international colleagues through multilateral organizations, such as the Organization for Economic Co-operation and Development (OECD) and International Competition Network (ICN).

Among its myriad undertakings, the Division, along with the FTC, made substantial contributions to the preparation of forthcoming OECD recommendations on transparency and procedural fairness and on competitive neutrality. A delegation from the Division also participated in virtual meetings of the OECD's Competition Committee in June 2020 and December 2020. Topics discussed this year in the

Competition Committee included conglomerate effects of mergers, killer acquisitions, the role of competition policy in promoting economic recovery, and criminalization of cartels and bid-rigging markets. The U.S. submissions on these topics, as well as the submissions by other OECD members, are available on the [OECD Competition Committee's website](#).

In the ICN, the Division led efforts to develop "[Guidance on Enhancing Cross-Border Leniency Cooperation](#)." Published in July 2020, the guidance addresses key areas of coordination between competition agencies and provides practical tips for the day-to-day issues confronting agency case teams. The guidance aims to make international enforcement efforts more effective and reduce disincentives for prospective leniency applicants. The Division also continued to lead efforts to

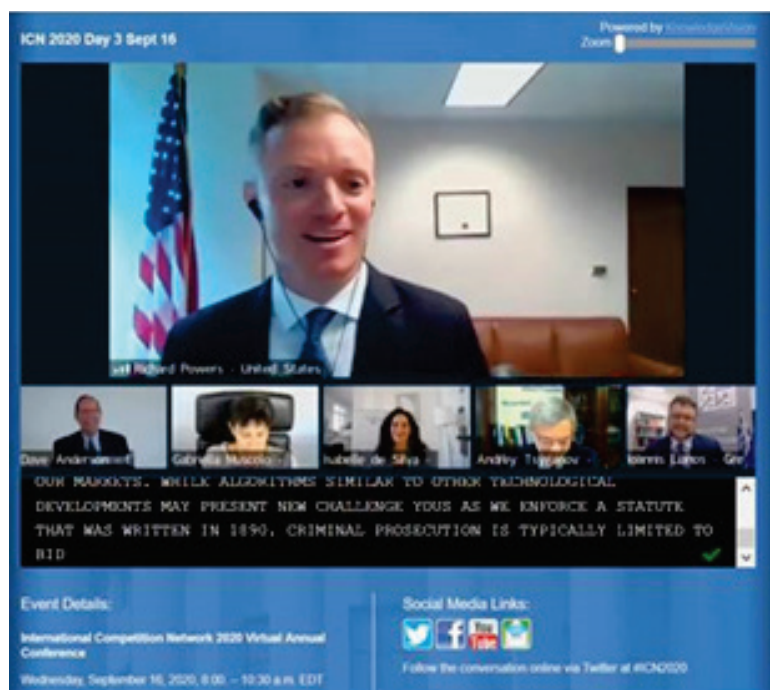
implement the [Framework on Competition Agency Procedures](#) (CAP). Since its launch in May 2019, over 70 competition agencies have committed to strengthening procedural fairness in competition enforcement via the CAP.

The Division and the FTC also co-hosted the first virtual [ICN Annual Conference](#) in September 2020. The conference examined a range of competition enforcement and policy issues, including those involving the digital economy. Over 2500 delegates from around the world participated, including agency leadership and staff, as well as competition experts from international organizations and legal, business, and academic communities.

## Technical Assistance

As a part of its virtual transition, the Antitrust 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 events with higher attendance rates from both Division staff and participating jurisdictions.

In FY 2020, the Division participated in 24 technical assistance programs for numerous jurisdictions, including Barbados, the Dominican Republic, Georgia, Lithuania, Kenya, Kuwait, Malaysia, Mexico, Moldova, Morocco, New Zealand, Nigeria, Peru, the Philippines, Spain, and Ukraine. Of these programs, nine were in-person and 15 were virtual.



Richard Powers participates in the ICN 2020 virtual conference.

## Competition Advocacy

### New Legislation Supports More Effective Antitrust Enforcement

Over the past year, the Antitrust Division supported a number of legislative changes to strengthen the antitrust laws. A major legislative priority was the reauthorization of the Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA). Congress enacted ACPERA in 2004 to incentivize corporations to self-report and cooperate pursuant to the Division's Corporate Leniency Policy. On October 1, 2020, an [extension of ACPERA](#) that repealed its sunset provision became law, ensuring that ACPERA will continue to support the Antitrust Division's Leniency Program.

Congress also sought to bolster the Antitrust Division's criminal program by passing longstanding legislation that extended protections to whistleblowers in criminal antitrust cases. On December 23, 2020, the [Criminal Antitrust Anti-Retaliation Act](#), which prohibited employers from retaliating against certain



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individuals who report criminal antitrust violations, was signed into law. Together, the passage of the Criminal Antitrust Anti-Retaliation Act and ACPERA will support the Antitrust Division's ability to detect, investigate, and prosecute criminal antitrust violations.

Another recent legislative change focused on the scope of exemptions to the antitrust laws. On January 13, 2021, the [Competitive Health Insurance Reform Act of 2020](#), which limited the antitrust exemption available to health insurance companies under the McCarran-Ferguson Act, was signed into law. The McCarran-Ferguson Act exempted certain conduct that constituted the "business of

insurance" from the federal antitrust laws. The Competitive Health Insurance Reform Act amended the McCarran-Ferguson Act to clarify that, except for certain activities that improve health insurance services for consumers, the conduct of health insurers remains subject to the antitrust laws.

In recognition of the Antitrust Division's critical role at this time, Congress is in the process of drafting new legislation to make the Division better funded and more effective. The Division welcomes congressional support for its mission. It intends to engage fully with the process and provide Congress with the information that it needs.



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