



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2022 PERFORMANCE BUDGET**

Antitrust Division

FY 2022 Congressional Budget Submission

Table of Contents

I. Overview	2
A. Introduction	2
B. Issues, Outcomes, and Strategies	3
C. Full Program Costs	155
D. Performance Challenges	166
II. Summary of Program Changes	188
III. Appropriations Language and Analysis of Appropriations Language	188
IV. Program Activity Justification	19
A. Decision Unit: Antitrust	19
1. Program Description	19
2. Performance and Resource Tables	233
3. Performance Measurement Framework	288
4. Performance, Resources, and Strategies	29
5. Exemplars – Civil	344
6. Exemplars – Criminal	411
V. Program Increases by Item	49
VI. Exhibits	555
A. Organizational Chart	
B. Summary of Requirements	
B. Summary of Requirements by DU	
C. FY 2022 Program Changes by DU	
D. Resources by Strategic Goal and Objective	
E. Justifications for Technical and Base Adjustments	
F. Crosswalk of FY 2020 Availability	
G. Crosswalk of FY 2021 Availability	
H-R. Summary of Reimbursable Resources	
H-S. Summary of Sub-Allotments and Direct Collections Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Changes	
K. Summary of Requirements by Object Class	

I. Overview

A. Introduction

The mission of the Antitrust Division is to promote economic competition through enforcing and providing guidance on antitrust laws and principles. Corporate consolidation through mergers and acquisitions is playing an increasingly significant role in the American economy, and it is crucial that the Antitrust Division have funding sufficient to enable it to review—and challenge when necessary—mergers that threaten to harm competition. 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 also maintains an active criminal program that prosecutes cartel activity in order to punish such conduct when it occurs and deter cartel conduct in the future. Criminal cartels distort the free market system and hurt American consumers who often pay higher prices as a result. The Division is currently in the midst of numerous cartel investigations, including an investigation into criminal price fixing of generic drugs, conduct that has increased the price of prescription drugs and ripped off everyday consumers who take those drugs. As in our civil program, our criminal prosecutors routinely face off against sophisticated counsel with nearly unlimited defense budgets—it is imperative they have the resources they need to do so effectively.

The Division consistently generates more funding for U.S. taxpayers than it expends. In FY 2020 the Division was appropriated \$166.8 million, but took in \$101.6 million in civil filing fees and obtained \$529.4 million in criminal fines. Similarly, in FY 2019 the Division was appropriated \$165.0 million, but took in \$129.4 million in civil filing fees and obtained \$364.7 million in criminal fines.

To administer its caseload, the Division's FY 2022 budget request includes \$201,176,000, which reflects an increase of \$16,652,000 over the FY 2021 Enacted Budget, including a program increase of \$8,400,000 and base adjustments of \$8,252,000.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <https://www.justice.gov/doj/fy-2021-CJ>.

B. Issues, Outcomes, and Strategies

Fundamental changes continue in the business marketplace, including the expanding globalization of markets, increasing economic consolidation across industries, and rapid technological change. These factors, added to the existing number and intricacy of our investigations, significantly affect the Division’s overall workload. Many current and recent matters demonstrate the increasingly complex, large, and international nature of the matters encountered by the Division, as the following table and exemplars demonstrate.

Enforcement Program	Major Matter Exemplars
Civil	<p style="text-align: right;"><u>Page #</u> 34</p> <p><u>Non-Merger:</u></p> <ul style="list-style-type: none"> • Google Litigation • Online Platform Investigations • National Association for College Admission Counseling (NACAC) • Embedded SIMs • Civil Conduct Task Force
	<p style="text-align: right;">36</p> <p><u>Merger:</u></p> <ul style="list-style-type: none"> • Harvard Pilgrim Health Care/Health Plan Holdings • Visa/Plaid Inc. • Intuit/Credit Karma • Waste Management/Advanced Disposal Services • Liberty Latin America / AT&T Puerto Rico • Geisinger Health/Evangelical Hospital • CPI/General Dynamics SATCOM • Dairy Farmers of America/Dean Foods • Cengage Learning/McGraw-Hill • United Technologies Corp/Raytheon • Novelis Inc./Aleris Corp. • Consent Decree Enforcement: <ul style="list-style-type: none"> ➤ T-Mobile/Sprint/Dish ➤ Century Link/Level 3 ➤ Live Nation/Ticketmaster

Criminal	<u>Page #</u>
	<u>Health Care Markets:</u> 41
	<ul style="list-style-type: none"> • Generic Pharmaceuticals • Oncology
	<u>Grocery Store Staples:</u> 4
	<ul style="list-style-type: none"> • Canned Tuna • Broiler Chickens
	<u>Labor Market</u> 44
	<u>Prosecutions and Policy Changes to Protect Government Victims, Promote Competition and Save Taxpayer Dollars:</u> 44
	<ul style="list-style-type: none"> • Procurement Collusion Strike Force • Government Victims: <ul style="list-style-type: none"> ➢ Korea Fuel Supplies ➢ Detroit Demolition ➢ GSA Auctions
	<u>Financial Markets:</u> 46
	<ul style="list-style-type: none"> • Foreign Exchange Market • Pre-Release American Depository Receipts
<u>Components for Consumer Electronics</u> 47	
<u>Commercial Construction:</u> 47	
<ul style="list-style-type: none"> • Commercial Insulation • Commercial Flooring 	

Economic Consolidation

Ongoing economic concentration across industries and geographic regions increases the risks of anticompetitive effects from transactions and, as a result, increases the Division’s merger enforcement workload. Where there is a competitive relationship between or among the goods and/or services produced by the parties, the analysis necessary for thorough merger review becomes more complex. Competitive issues and efficiency defenses are more likely to surface in such reviews, adding complexity and cost to the Division’s work.

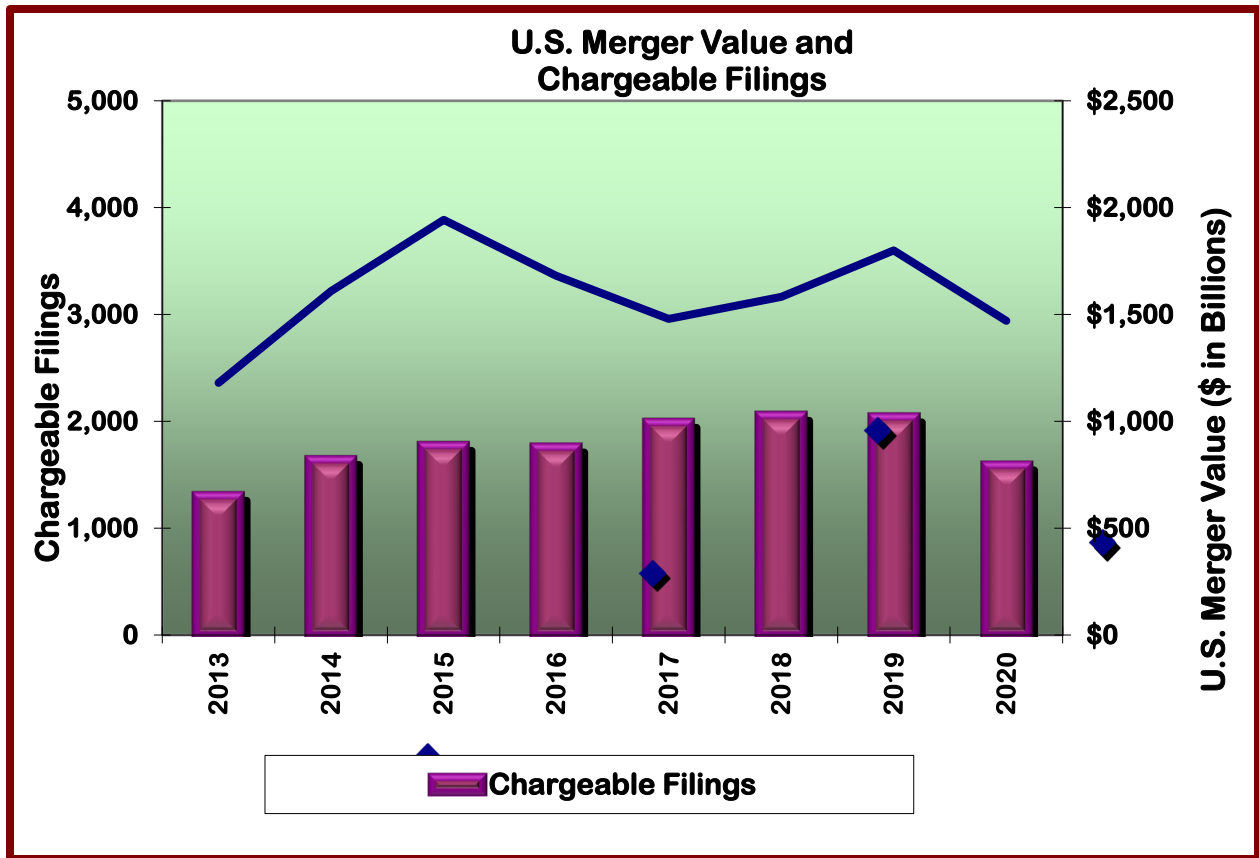


Figure 1

Merger activity has been steadily increasing since the recession and will likely continue to increase as the economy grows. As shown in Figure 1, the overall trend in U.S. merger value has increased between calendar years 2013 and 2020. In calendar year 2020, worldwide merger and acquisition volume reached \$3.6 trillion and U.S. volume reached an annual total of \$1.5 trillion. A comparison of 2019 and 2020 shows a decline in both filings and merger values due to the ongoing COVID economic impact. However, indicators show a sharp recovery taking off in 2021.¹

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

Globalization

Corporate leaders continue to seek a global presence as an element of long-term economic success, and more companies are transacting a significant portion of their business in countries outside of where they are located. For example, in the United States

¹ “Investment Banking Scorecard.” *The Wall Street Journal*. Viewed on March 26, 2021 at <http://graphics.wsj.com/investment-banking-scorecard/>.

international trade (defined as exports and imports of goods and services) was \$7.1 trillion in calendar year 2020.²

The internationalization of the business marketplace has had a direct and significant impact on antitrust enforcement in general, and specifically, on the Antitrust Division's workload. A significant number of the premerger filings received by the Division involve foreign acquirers, acquirees, major customers and competitors, and/or divestitures.

Increased globalization also affects our criminal enforcement program. The Division places a particular emphasis on combating international cartels that target U.S. markets because of the breadth and magnitude of the harm that they inflict on American businesses and consumers.

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. In our enforcement efforts, we find parties, potential evidence, and effects abroad, all of which add complexity, and ultimately cost, to the pursuit of matters. Whether that complexity and cost results from having to collect evidence overseas or from having to undertake extensive inter-governmental negotiations in order to depose a foreign national, it makes for a very different, and generally more difficult investigatory process than would be the case if our efforts were restricted to conduct and individuals in the U.S. The markets and competitors affecting U.S. businesses and consumers are more international in scope, and the variety of languages and business cultures that the Division encounters has increased.

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 and reduce the burden on U.S. companies that operate in international markets.

Despite the COVID-19 pandemic, the Division continues to pursue its international antitrust agenda, albeit in a virtual environment. To facilitate the shift, the Division leveraged existing bilateral relationships, as well as longstanding ties to multilateral organizations. The Division anticipates continuing virtual engagement post-pandemic,

² "U.S. International Transactions, Fourth Quarter and Year 2020." *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>.

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.

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. Our engagement prioritizes international cooperation on criminal (cartel), civil conduct, and merger enforcement, and advocacy regarding procedural fairness and, where appropriate, competition policy convergence. In addition to promoting sound enforcement generally, these efforts help create a more stable legal environment for U.S. companies operating abroad. In FY20, the Division signed the Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities (MMAC). Together with competition agencies in Australia, Canada, New Zealand and the United Kingdom, this framework builds on prior agreements and robust collaboration while simultaneously creating a new model cooperation agreement. The model agreement is expected to serve as a template for subsequent agreements by signatories that would facilitate cooperation in both cartel and civil investigations.

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 FY11 to FY20, the total fines and penalties obtained in Division cartel cases was just over \$9 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. For example, in FY20, the Division worked closely with the Department's Criminal Division Office of International Affairs and their international counterparts to extradite two fugitives from Europe in connection with its *Air Cargo* and *Auto Parts* investigations.

The Division also regularly cooperates with international counterparts in its civil investigations. Such engagement provides 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 of which involve cooperation with other competition agencies. In FY20, for example, the Division reviewed the proposed merger of *McGraw-Hill* and *Cengage* and worked closely with competition agencies in a number of jurisdictions, including Australia, 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 UN 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 Federal Trade Commission, 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 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 FY20, the Division continued efforts to lead the implementation of the ICN Framework on

Competition Agency Procedures (CAP) signed in 2019. With 73 competition agency signatories to date, this historic multilateral agreement recognizes fundamental principles of transparency and procedural fairness in competition enforcement and promotes review mechanisms to ensure that participating agencies abide by these norms. The Division also led efforts in FY20 to develop guidance on enhancing cross-border leniency cooperation in cartel investigations. The guidance aims to make international cartel enforcement more effective and reduce disincentives for prospective leniency applicants.

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.

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

In addition, the Division has a business review process that enables companies concerned

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

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

To ensure that patent holders, including U.S. businesses, can fully and appropriately exercise their important intellectual property rights, it is crucial that other jurisdictions approach the intersection of antitrust and intellectual property in ways that promote both competitive markets and respect for intellectual property rights. The Division is committed to advocating that all jurisdictions enforce competition laws in ways that preserve incentives to innovate. Throughout 2019, the Division also engaged in multiple trainings and conversations with counterpart agencies regarding issues at the intersection of antitrust and intellectual property law.

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

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

Technological Change and the Changing Face of Industry

The need for careful consideration of antitrust issues in evolving technology markets continues to consume significant Division resources. Technological change continues to create new businesses and industries virtually overnight, and its impact on the overall economy is enormous. The emergence of new and improved technologies continues and intensifies in a range of industries, such as robotics, transportation, wireless

communications, Over-the-Top (OTT) services such as Voice over Internet Protocol (VoIP) and online video, mobile collaboration, biometrics and online security.

We will see even more advances in technology in the coming years as the telecommunications upheaval continues to transform services traditionally offered to subscribers by network operators, such as voice calls, messaging and video content delivery. Global mobile subscriptions equaled 8 billion in 2020 and are expected to grow to 8.8 billion by 2026 according to the Ericsson Mobility Report, published by Ericsson in November 2020.³

Clearly, being ‘connected’ while on-the-go has become essential to the American daily lifestyle, and this connectivity demand continues to result in rapidly emerging newer and faster networks, services, applications and equipment. By 2026, it is estimated that the number of smartphone subscriptions alone is set to reach 7.5 billion, a substantial increase over the 6.1 billion smartphone subscriptions in 2020.⁴

As more consumers turn to Over-the-Top (OTT) services (Internet or broadband-based services that replicate services traditionally offered to subscribers by network operators, such as messaging, voice calls and video content delivery) expanding technologies such as wireless video streaming and Voice over Internet Protocol (VoIP), stand to grow dramatically over the next several years. According to Digital TV Research, OTT revenue is expected to grow to \$167 billion in 2025; more than double the \$83 billion recorded in 2019.⁵

The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the Antitrust Division. While the antitrust laws are flexible enough to handle technological change, it does put burdens on Division resources. The economic paradigm is shifting so rapidly that the Division has to continue developing and employ new analytical tools, which allow it to respond quickly and appropriately. It must be vigilant against anticompetitive behavior in the new economy where the Internet and cutting-edge information technology may facilitate the rapid entry and dominance of emerging markets.

Technological Change and Information Flows

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

³ “Ericsson Mobility Report.” *Ericsson*, November 2020. Viewed on March 26, 2021 <https://www.ericsson.com/4adc87/assets/local/mobility-report/documents/2020/november-2020-ericsson-mobility-report.pdf>.

⁴ “Ericsson Mobility Report.” *Ericsson*, November 2020. Viewed on March 26, 2021 at <https://www.ericsson.com/4adc87/assets/local/mobility-report/documents/2020/november-2020-ericsson-mobility-report.pdf>.

⁵ “Global OTT TV and Video Forecasts” *Digital TV Research*, May 2020. Viewed on March 26, 2021 at <https://www.digitaltvresearch.com/products/product?id=285>.

As the tools of the trade become more sophisticated, there appears to be a corresponding growth in the subtlety and complexity with which prices are fixed, bids are rigged, and market allocation schemes are devised. The increased use of electronic mail, and even faster, more direct methods of communication, such as text and instant messaging, has fostered this phenomenon. Moreover, the evolution of electronic communication results in an increase in the amount and variety of data and materials that the Antitrust Division must obtain and review in the course of an investigation. In addition to hard-copy documents, telephone logs, seized data, bank records and other information from public sources, 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 Division is using search warrants and seized data far more frequently than in years past.

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 also conducted several important appeals in its own cases. In *Sabre*, the Division persuaded the Third Circuit to vacate a trial court decision ruling against the Division and allowing a merger between two providers of airline booking services; the Third Circuit held, consistent with the Division's argument, that because the merging parties abandoned their merger, they caused the case to become moot. In *United States v. Sanchez*, the Division opposed a petition for certiorari from a Ninth Circuit decision upholding the conviction of several defendants for rigging bids in real-estate foreclosure auctions. At the Division's urging, the Supreme Court declined to review whether longstanding case law holding bid rigging per se unlawful under the Sherman Act should be jettisoned as unconstitutional. The Division also briefed the criminal appeal in *United States v. Worthing*, which challenged both the district court's refusal to allow the defendant in a bid-rigging prosecution to withdraw his guilty plea and the length of his sentence. Consistent with the Division's arguments, the Ninth Circuit dismissed as waived the challenge to the guilty plea and affirmed the reasonableness of the sentence.

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 subjects of lower court filings in this time frame have included how exemptions from the antitrust laws should be construed narrowly so as to protect competition and consumers, how no-poach agreements unrelated to legitimate collaborations are per se unlawful, and how private antitrust enforcement is an important complement to government enforcement and should not be constrained by unreasonably high bars to bringing claims.

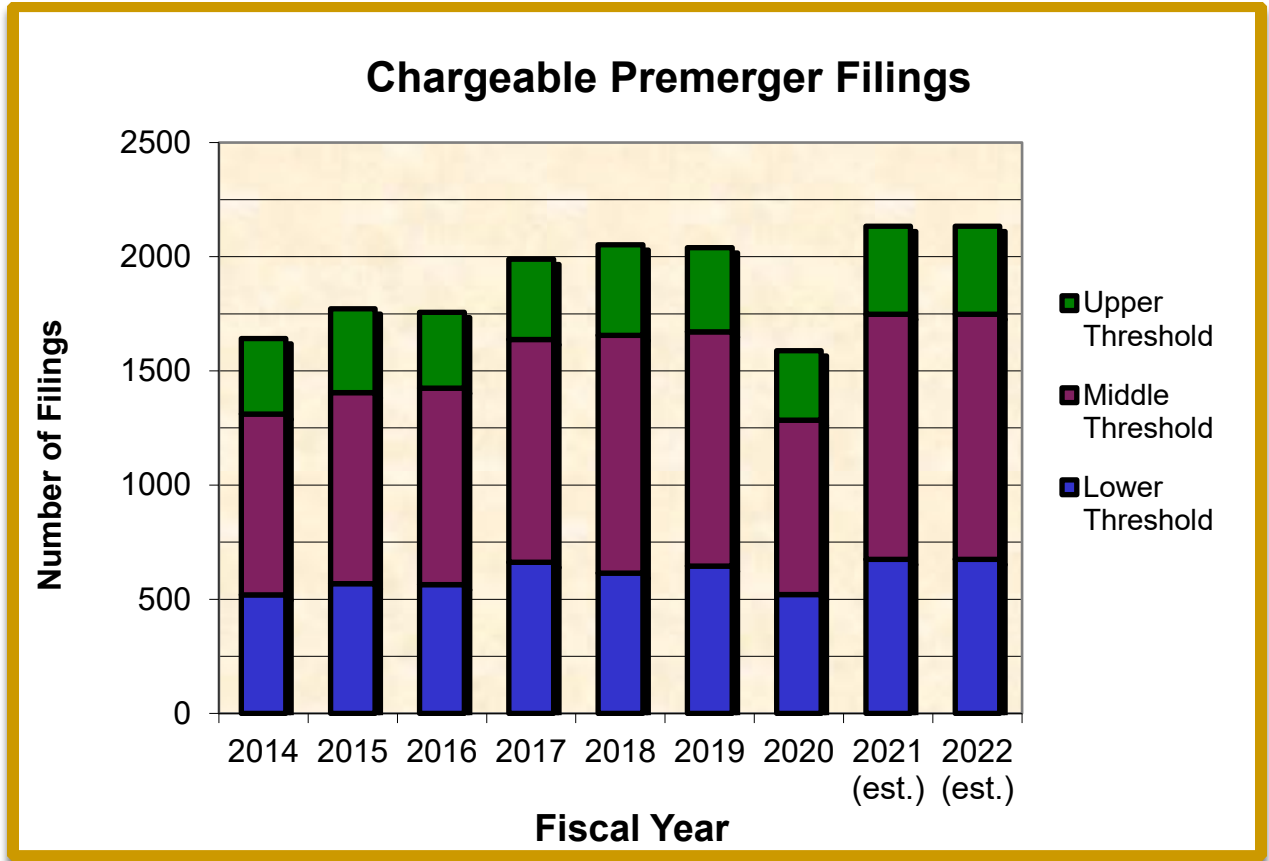
Results

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

- 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 ten years (FY 2011 – FY 2020), defendants have been sentenced to pay approximately \$9.4 billion in criminal fines and penalties to the U.S. Treasury. In FY 2020, courts imposed \$634 million in criminal fines and penalties in Division cases.**
- In FY 2020, as the result of Division enforcement efforts, **12 corporations and 14 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 2011 – FY 2020) restitution generated by the Division was more than **\$35 million.**

Revenue Assumptions

Estimated FY 2021 and FY 2022 filings and fee revenue consider the relative optimism of current medium-range economic forecasts. In its January 2021 report “The Budget and Economic Outlook: 2021 to 2031,” the Congressional Budget Office predicts annual growth beginning in 2021 to average 2.6 percent through 2025 and from 2026 to 2031 to grow at an average rate of 1.6 percent per year.⁶



Premerger Filing Fee Thresholds Effective March 4, 2021	
Value of Transaction	Filing Fee
Lower: \$92.0M - <\$184.0M	\$45,000
Middle: \$184.0M - <\$919.9M	\$125,000
Upper: \$919.9M plus	\$280,000

Figure 2

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

Based upon estimates calculated by the Congressional Budget Office and the FTC, fee collections of \$272 million for FY 2022 are expected. Hart-Scott-Rodino (HSR) filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division.

⁶ “The Budget and Economic Outlook: 2021 to 2031.” *Congressional Budget Office*, January 2021: ‘At A Glance’. Viewed on March 26, 2021 at <https://www.cbo.gov/system/files/2021-02/56970-Outlook.pdf>.

Summary

The Division is continually challenged by an increasingly international and complex workload that spans enforcement areas and requires considerable resources to manage. With our children destined to inherit the resulting markets, the importance of preserving economic competition in the U.S. and around the world cannot be overstated. The threat to American consumers is very real, as **anticompetitive behavior leads directly to higher prices and reduced efficiency and innovation**. In recognition of the importance of its mission, the Antitrust Division requests a total appropriation of \$201,176,000 in support of 830 positions and 753 estimated FTE.

FY 2022 Total Budget Request by Program Area

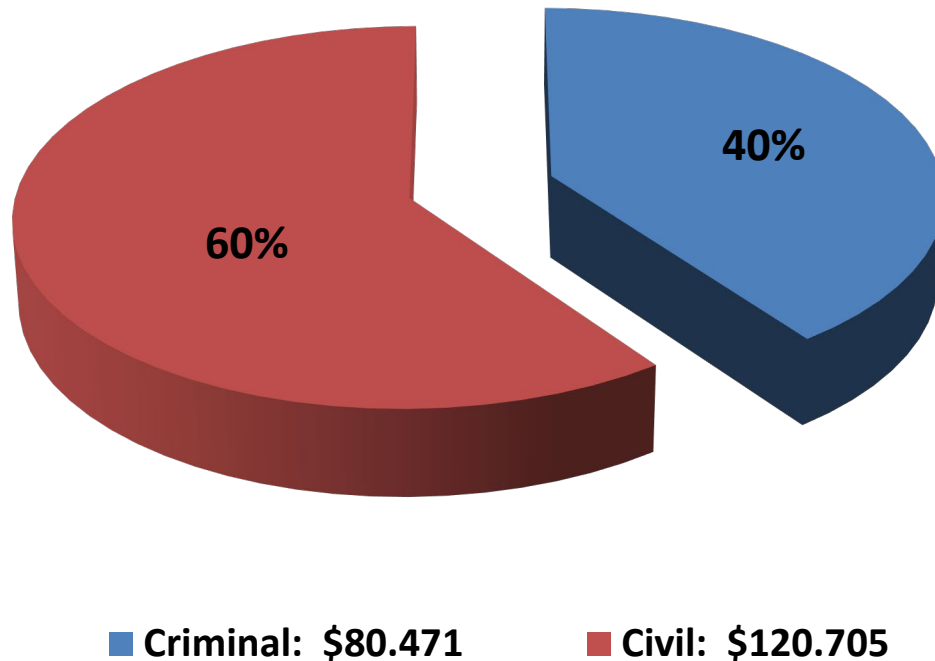


Figure 3

C. Full Program Costs

The Antitrust Division contains one Decision Unit (Antitrust) and can be divided into two broad program areas:

- Criminal Enforcement
- Civil Enforcement

In recent years, approximately 40 percent of the Division's budget and expenditures can be attributed to its criminal program and approximately 60 percent of the Division's budget and expenditures can be attributed to its civil program. The FY 2022 budget request assumes this same allocation.

This budget request incorporates all costs to include mission costs related to cases and matters, mission costs related to oversight and policy, and overhead.

D. Performance Challenges

External Challenges

As detailed in the Issues, Outcomes, and Strategies section, the Antitrust Division faces many external challenges that require flexibility and adaptability in order to pursue its mission. These external challenges include:

- Increasing economic consolidation across industries and geographic regions
- Globalization of the business marketplace
- Rapid technological change

Internal Challenges

Much like its external challenges, highly unpredictable markets and economic fluctuations influence the Division's internal challenges. To accommodate these ever-changing factors, the Division must continuously and diligently ensure proper allocation and prudent use of its resources.

Information Technology (IT) Expenditures

The Antitrust Division's IT budget will continue to support several broad Information Technology areas essential to carrying out its mission. The nature of the Division's work requires it to receive and analyze vast amounts of competitively sensitive business information (including strategic plans and pricing and cost information) from companies across all sectors of the economy. The Division must ensure that this sensitive information is kept secure; both so that companies continue to provide it in further reviews, and because of the significant direct costs of inappropriate dissemination. These Information Technology areas include:

- *Data Storage* – Electronic storage and processing capability, vital to the mission of the Antitrust Division, continues to expand, growing exponentially since FY 2003, when 12 terabytes (12 trillion bytes) of capacity readily satisfied Division demands. By FY 2010 requirements surpassed 100 terabytes and the Division now requires electronic analytical capacity needs in excess of **3,000 terabytes**.
- *Data Security* – Monitoring and effecting actions to ensure that system design, implementation, and operation address and minimize vulnerabilities to various threats to computer security, including carrying out security planning, risk analysis, contingency planning, security testing, intrusion detection, and security training.
- *Litigation Support Systems* – Providing litigation support technologies that encompass a wide range of services and products that help attorneys and economists acquire, organize, develop, and present evidence. Providing

courtroom presentation and related training to the legal staff to develop staff courtroom skills and practice courtroom presentations using state-of-the-art technology.

- *Office Automation* – Providing staff technological tools comparable to those used by opposing counsel, thereby ensuring equitable technological capabilities in antitrust litigation. These tools are used for desktop data review and analysis, computer-based communication, the production of time-critical and sensitive legal documents, and preparing presentations and court exhibits.
- *Management Information Systems* – Developing, maintaining, and operating data and information systems that support management oversight, direction of work, budget, and resources of the Division. Various tracking systems help ensure timely and efficient conduct of the Division’s investigations through use of automated, web-based tools.
- *Telecommunications* – Developing, providing, maintaining, and supporting networks and services required for voice and data communications among the Division’s offices, with outside parties, and in support of federal telework objectives.
- *Web Support* – Developing and maintaining the Division’s Internet and internal ATRnet site. Posting case filings, documents and data related to cases and investigations; designing and developing new applications, providing public access to key Division information, and ensuring compliance with web standards and guidelines, including guidelines for usability and accessibility.

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Antitrust Enforcement Enhancement	To enhance the Division's efforts promoting competition and protecting consumers from economic harm.	66	48	\$8,400	49

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, [\$184,524,000] \$201,176,000, to remain available until expended: Provided, That notwithstanding any other provision of law, fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection (and estimated to be [\$150,000,000] \$136,000,000 in fiscal year [2021]2022), 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 [2021]2022, so as to result in a final fiscal year [2021]2022 appropriation from the general fund estimated at [\$34,524,000] \$65,176,000.

Analysis of Appropriations Language

No substantive changes are proposed.

IV. Program Activity Justification

A. Decision Unit: Antitrust

Antitrust Division Fiscal Year 2022 Congressional Submission Decision Unit Justification (dollars in thousands)			
Decision Unit: Antitrust – TOTAL	Direct Positions	Estimate FTE	Amount
2020 Enacted	695	595	\$166,755
2021 Enacted	740	659	\$184,524
Adjustments to Base and Technical Adjustments	24	46	\$8,252
2022 Current Services	764	705	\$192,776
2022 Program Increases	66	48	\$8,400
2022 Request	830	753	\$201,176
Total Change 2021 – 2022	90	94	\$16,652

Antitrust Division - Information Technology Breakout (of Decision Unit Total)	Direct Positions	Estimate FTE	Amount
2020 Enacted	31	31	\$36,942
2021 Enacted	31	31	\$38,050
Adjustments to Base and Technical Adjustments	0	0	-\$249
2022 Current Services	31	31	\$37,801
2022 Program Increases	0	0	\$473
2022 Request	31	31	\$38,274
Total Change 2021-2022	0	0	\$224

1. Program Description

The Antitrust Division promotes competition and protects American consumers from economic harm by enforcing the antitrust laws. Free and open competition benefits consumers by ensuring lower prices and new and better products. The perception and reality among consumers and entrepreneurs that the antitrust laws will be enforced fairly and fully is critical to the economic freedom of all Americans. Vigorous competition is also critical to assure the rapid innovation that generates continued advances in our standard of living and our competitiveness in world markets.

At its highest level, the Division focuses on two main law enforcement strategies - criminal and civil. All of the Division's activities can be attributed to these two strategies and each strategy includes elements related to investigation, prosecution, and competition advocacy. To direct its day-to-day activities, the Division currently has six supervisory Deputy Assistant Attorney General (DAAG) positions reporting directly to the Assistant Attorney General.



Criminal Enforcement – In pursuit of its criminal enforcement strategy, the Antitrust Division addresses the increased globalization of markets, constant technological change, and massive, complex, and difficult-to-detect criminal conspiracies. These matters transcend national boundaries, involve increasingly technologically advanced efforts to avoid detection of sophisticated criminal behavior, and affect more U.S. businesses and consumers than ever before. Matters such as the Division’s ongoing investigation in the generic pharmaceuticals industry (page 43) exemplify the increasingly complex and important nature of Division workload in the criminal area.

Civil Enforcement – In pursuit of its civil enforcement strategy, the Division seeks to promote competition by blocking potentially anticompetitive mergers before they are consummated and pursuing non-criminal anticompetitive behavior such as group boycotts and exclusive dealing. The Division’s civil strategy seeks to maintain the competitive structure of the national economy through investigation and litigation of instances in which monopoly power is sought, attained, or maintained through anticompetitive conduct and by seeking injunctive relief against mergers and acquisitions that may tend substantially to lessen competition. The Division’s merger review work can be divided into roughly three categories:

- Review of transactions notified by the parties under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) through statutorily mandated filings;
- Review of transactions not subject to HSR reporting thresholds; and
- Review of bank merger applications.

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

Regulatory Issues - The Antitrust Division actively monitors the pending actions of federal, state, and local regulatory agencies either as statutorily mandated, as in the case of telecommunication and banking markets, or through review of those agencies' dockets and industry or other publications and through personal contacts in the industries and in the agencies.

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.



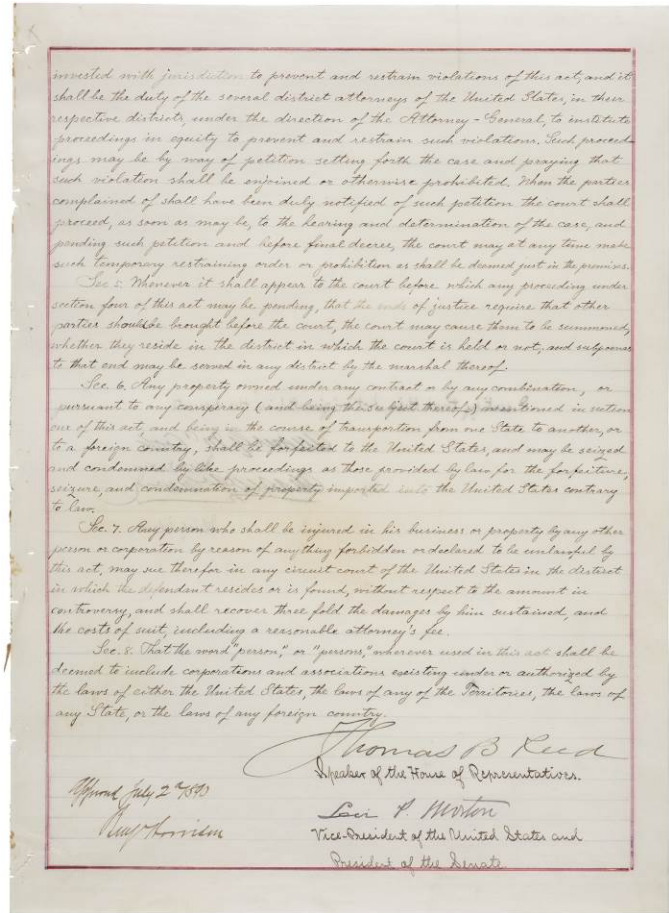
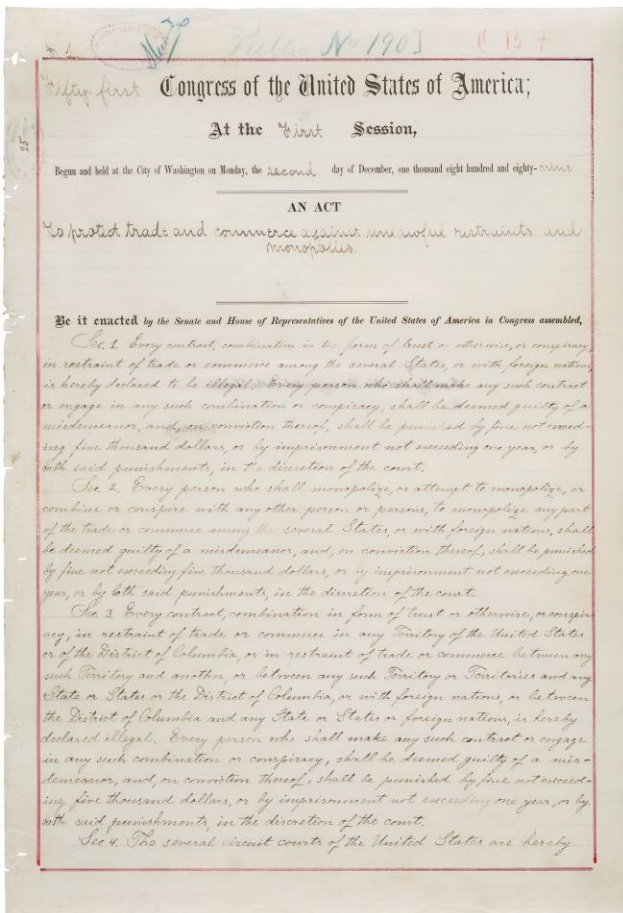
In addition, the Division seeks opportunities to deploy its employees to serve the needs of the Federal Government for a broad variety of policy matters that involve competition policy to include:

- Detailing Division employees to federal agencies and other parts of the Administration; 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.)

2. Performance and Resource Tables

Decision Unit/Program: Antitrust

WORKLOAD/RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2020		FY 2020		FY 2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 Request	
Workload - Number of HSR Transactions Received		1,635		1,589		1,800				1,800	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Antitrust		595	\$166,755	608	\$175,612	659	\$184,524	94	\$16,652	753	\$201,176
TYPE	PERFORMANCE/RESOURCES	FY 2020		FY 2020		FY 2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 Request	
Program Activity	1. Criminal	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		238	\$66,702	243	\$70,645	264	\$73,810	38	\$6,661	302	\$80,471
Performance Measure – Criminal	Number of Active Grand Juries	75		130		75		10		85	
	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected		\$905		Not Projected		Not Projected		Not Projected	
Program Activity	2. Civil	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		357	\$100,053	365	\$105,367	395	\$110,714	56	\$9,991	451	\$120,705

		Target	Actual	Projected	Changes	Requested (Total)
TYPE	PERFORMANCE/RESOURCES	FY 2020	FY 2020	FY 2021	Current Services Adjustments and FY 2022 Program Changes	FY 2022 Request
Performance Measure – Merger	Number of Preliminary Inquiries Opened	70	60	70	0/0	70
Performance Measure – Civil Non-Merger	Number of Active Investigations	50	27	50	0/0	50
Performance Measure – Civil Merger and Non-Merger	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected	\$4,600	Not Projected	Not Projected	Not Projected
Outcome – Criminal, Civil (Merger and Civil Non-Merger)						
Consumer Savings	Criminal: Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$114	Not Projected	Not Projected	Not Projected
	Civil: Total Civil (Merger and Non-Merger) Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$598	Not Projected	Not Projected	Not Projected
Success Rates	Criminal - Percentage of Cases Favorably Resolved	90%	100%	90%	0	90%
	Civil - Percentage of Cases Favorably Resolved	80%	100%	80%	0	80%

TABLE DATA DEFINITIONS:

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

Criminal, Civil Merger and Civil Non-Merger performance measure target adjustments for FY 2021 through FY 2022 projections are based on an analysis of FY 2008 through FY 2020 actual amounts.

Criminal Performance Measure:

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

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

Civil Performance Measures:

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

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

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

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

Outcome:

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

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

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

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

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

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

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

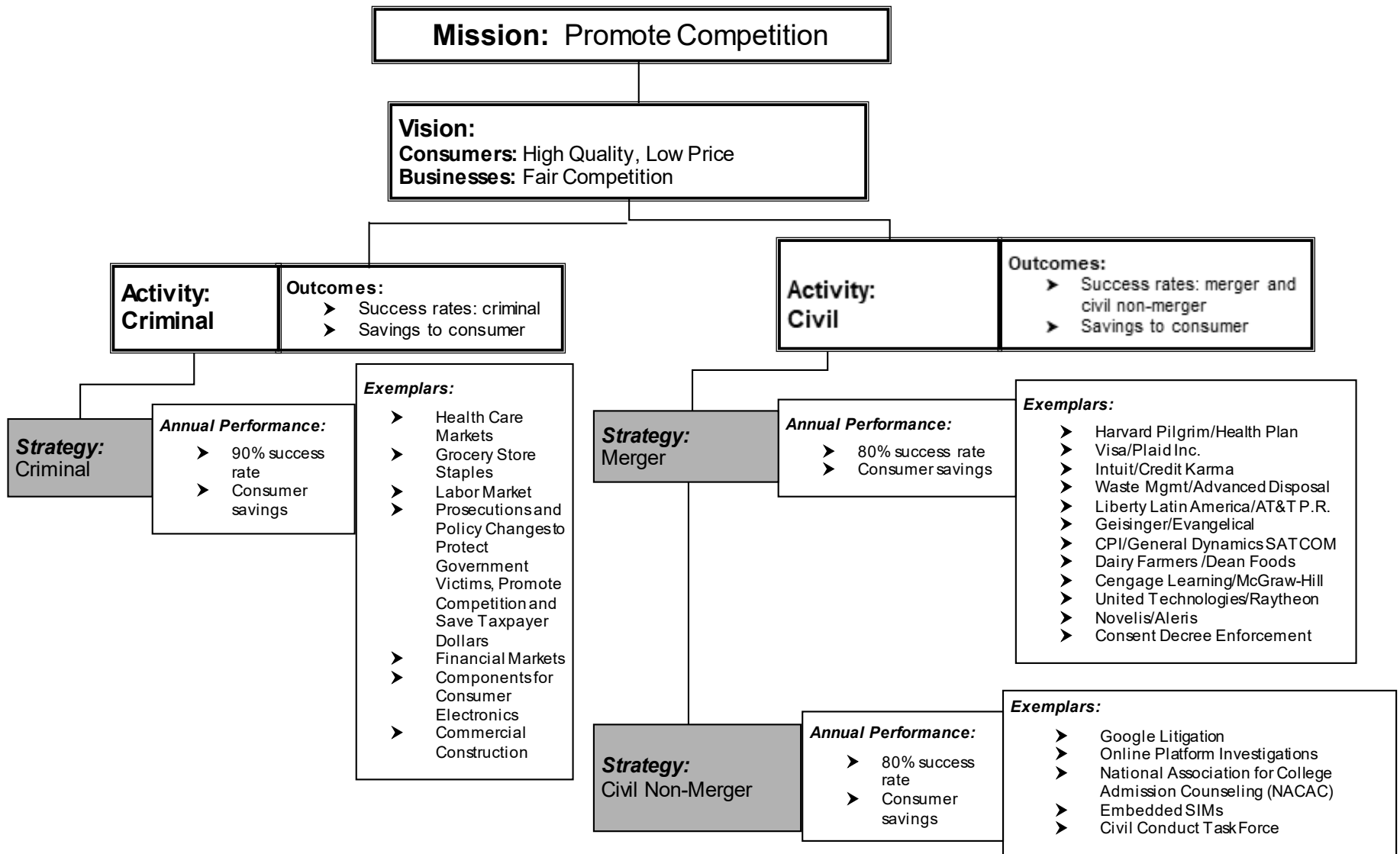
Performance Measure Report - Historical Data

Decision Unit: Antitrust

Performance Report and Performance Plan Targets		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020		FY 2021	FY 2022
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure: Criminal	Number of Active Grand Juries	95	110	114	107	75	130	75	85
Performance Measure: Criminal	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	\$621	\$1,314	\$578	\$120	Not Projected	\$905	Not Projected	Not Projected
Performance Measure: Civil Merger	Number of Preliminary Inquiries Opened	65	57	65	71	70	60	70	70
Performance Measure: Civil Non-Merger	Number of Active Investigations	43	26	31	39	50	27	50	50
Performance Measure: Civil (Merger and Non-Merger)	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	\$129,834	\$118,432	\$20,420	\$183,376	Not Projected	\$4,600	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Criminal	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$62	\$132	\$58	\$12	Not Projected	\$114	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Civil	Civil (Merger and Non-Merger) - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$2,271	\$1,408	\$928	\$3,939	Not Projected	\$598	Not Projected	Not Projected
Outcome Measure: Success Rate - Criminal	Criminal - Percentage of cases favorably resolved	87%	84%	76%	93%	90%	100%	90%	90%
Outcome Measure: Success Rate - Civil (Merger and Non-Merger)	Civil - Percentage of cases favorably resolved	96%	100%	100%	88%	80%	100%	80%	80%

3. Performance Measurement Framework

Antitrust Division, Department of Justice
Performance Measurement Framework
FY 2022



4. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

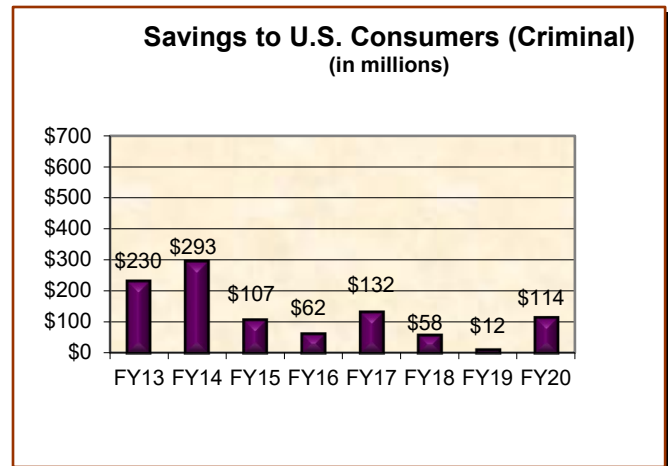
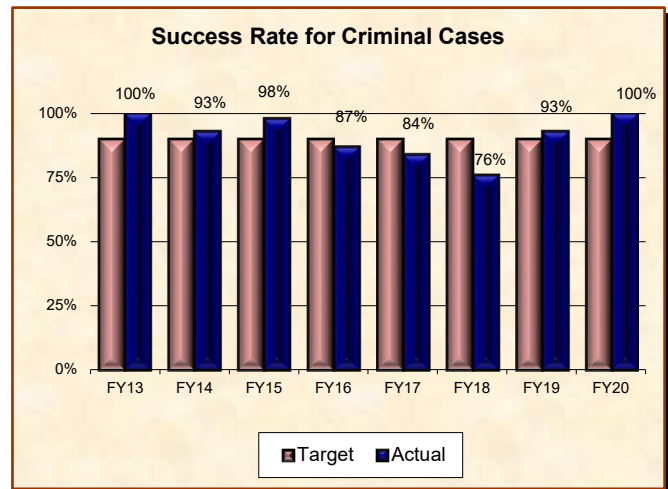
Prosecute International Price Fixing Cartels

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

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

In FY 2020, the Division successfully resolved 100 percent of criminal matters. The Division expects to meet or exceed its goals for FY 2021 and FY 2022.

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



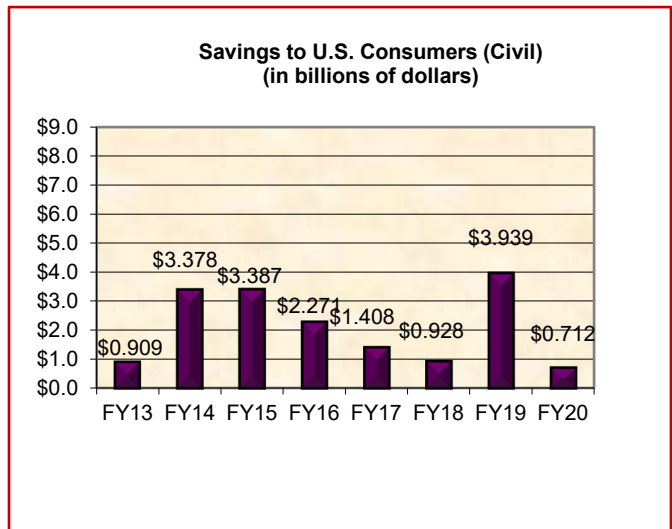
Civil Enforcement

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

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

The success rate for merger transactions challenged includes mergers that are abandoned, fixed before a complaint is filed, filed as cases with consent decrees, filed as cases but settled prior to litigation, or filed and litigated successfully. Many times, merger matters involve complex anticompetitive behavior and large, multinational corporations and require significant resources to review. The Division’s Civil Merger Program successfully resolved 100 percent of the matters it challenged in FY 2013–2020 that have since reached full conclusion and expects to meet or exceed its success rate goal for FY 2021 and FY 2022.

The estimated value of consumer savings generated by the Division’s civil enforcement efforts in any given year depends upon the size and scope of the matters proposed and resolved and thus varies considerably. Targeted levels of performance are not projected for this indicator.





b. Strategies to Accomplish Outcomes

Civil Enforcement

The Division's civil strategy is comprised of two key activities - Merger and Civil Non-Merger enforcement. Six Washington, DC litigating sections, the appellate section, and offices in Chicago, New York, and San Francisco participate in the Division's civil work. This activity serves to maintain the competitive structure of the national economy through investigation and litigation of anticompetitive conduct and by seeking injunctive relief against mergers and acquisitions that may tend substantially to lessen competition.

Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR), requires certain enterprises that plan to merge or to enter into acquisition transactions to notify the Antitrust Division and the FTC of their intention and to submit certain information. These HSR premerger notifications provide advance notice of transactions and allow the Division to identify and block potentially anticompetitive transactions before they are consummated. HSR premerger reviews are conducted under statutorily mandated time frames. This workload is not discretionary; it results from the number of premerger filings we receive.

The number of merger transactions reviewed includes all HSR filings the Division receives and reviews of proposed or consummated mergers that are below HSR filing thresholds but which present possible anti-competitive issues. HSR and non-HSR transactions may be investigated and prosecuted under Section 7 of the Clayton Act, or under Sections 1 and 2 of the Sherman Act. Referrals for non-HSR matters come from both outside the Division, via competitors or consumers, and from within the Division, based on staff knowledge of industries and information about current events.

Bank merger applications, brought to the Division's attention statutorily via the Bank Merger Act, the Bank Holding Company Act, the Home Owners Loan Act, and the Bridge Bank Section of the Federal Deposit Insurance Act, are reviewed through a somewhat different process.

The majority of the Division's Civil Non-Merger work is performed by six litigating sections in Washington, DC, although other sections and offices occasionally provide support if necessary. Our Civil Non-Merger activities pick up, to some degree, where the Antitrust Division's Criminal strategy leaves off, pursuing matters under Section 1 of the Sherman Act in instances in which the allegedly illegal behavior falls outside bid rigging, price fixing, and market allocation schemes, the areas traditionally covered by criminal prosecutory processes. Other behavior, such as group boycotts or exclusive dealing arrangements, that constitutes a "...contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce..." is also illegal under Section 1 of the Sherman Act. It is typically prosecuted through the Division's Civil Non-Merger Enforcement Strategy.

A distinction between the Criminal and Civil Non-Merger activities is that conduct prosecuted through the Criminal strategy is considered a hardcore *per se* violation of the law, whereas conduct reviewed under the Civil Non-Merger activity may constitute a *per se* violation of the law or may be brought using a rule-of-reason analysis. *Per se* violations are violations considered so clearly anticompetitive that the Division must prove only that they occurred. Violations brought under a rule-of-reason analysis, on the other hand, are those that may or may not, depending on the factual situation, be illegal. In these instances, the Division must not only prove that the violation occurred, but must also demonstrate that the violation resulted in anticompetitive effects. In addition to pursuing matters under Section 1 of the Sherman Act, the Division's Civil Non-Merger component also prosecutes violations of Section 2 of the Sherman Act, which prohibits monopolization and attempted monopolization, and Section 3 of the Clayton Act, which prohibits tying. Tying is an agreement by a party to sell one product on the condition that the buyer also purchase a different or *tyed* product, or at least agree that it will not purchase that *tyed* product from any other supplier. Whether addressing matters under Sections 1 or 2 of the Sherman Act or Section 3 of the Clayton Act, our Civil Non-Merger enforcement activities rely upon civil compulsory process to investigate the alleged violation.

Prosecute International Price Fixing Cartels

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

The global reach of modern cartels and their significant effects on U.S. consumers highlights the critical importance of international advocacy and coordination efforts. Increased cooperation and assistance from foreign governments continues to enhance the Division's ability to detect and prosecute international cartel activity. In addition, the Division's Individual and Corporate Leniency Programs have proven critical in uncovering criminal antitrust violations. Greater time and resources are devoted to investigation-related travel and translation, given the increasingly international operating environment of the criminal conspiracies being encountered. In all instances, if the Division ultimately detects market collusion and brings successful prosecutions, the Division may obtain criminal fines and injunctive relief.



5. Exemplars – Civil

A. 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.

United States v. Google Litigation

On October 20, 2020, the Division filed a landmark civil enforcement action against Google alleging 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, D.C. Discovery is ongoing and trial is scheduled for September 2023.

Online Platform Investigations

In addition to its litigation against Google, the Antitrust 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 2021: 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 2022.

National Association for College Admission Counseling (NACAC)

In December 2019, the Division filed a civil lawsuit against the National Association for College Admission Counseling (NACAC), alleging that NACAC established and enforced illegal restraints on the ways in which colleges compete to recruit students. The Division simultaneously filed a proposed consent decree.

NACAC is the leading national trade association for college admissions, and its college members compete aggressively for college students, both incoming freshmen and transfer students. One condition of NACAC membership is adherence to its Code of Ethics and Professional Practices, which sets forth mandatory rules for how members must engage in college admissions and recruiting. These rules included prohibitions or severe restrictions on (1) directly recruiting transfer students; (2) offering incentives of any kind to college applicants who applied via the Early Decision process; and (3) recruiting incoming college freshmen after May 1. The complaint alleged these rules hampered competition in the recruiting of students and were not reasonably necessary to any separate, legitimate procompetitive collaboration between NACAC members.

Under the consent decree, NACAC has agreed to remove rules regarding recruitment of (1) transfer students; (2) prospective Early Decision applicants; and (3) prospective incoming freshmen after May 1. The consent further restrains NACAC from establishing or enforcing any similar rule in the future. The consent decree was approved by the court in April 2020.

Embedded SIMs

In November 2019, the Division announced that it had completed its nearly two-year long investigation into the standard-setting activities of the GSM Association (GSMA), a trade association for mobile network operators. Simultaneously, the Division issued a business review letter to GSMA related to its proposed new set of standard-setting procedures.

The Division's investigation revealed that GSMA used its industry influence to steer the design of embedded SIMs (eSIMs) technology in mobile devices. The mobile communications industry has begun to migrate away from traditional SIM cards—removable plastic cards preprogrammed to connect to a single mobile network—and toward innovative eSIM cards that perform the same function as SIMs but are soldered into devices and can be remotely programmed and re-programmed to connect to different operators' mobile networks. This process is known as Remote SIM Provisioning (RSP). According to the Division's investigation, GSMA and its mobile network operator members used an unbalanced standard-setting process, with procedures that stacked the deck in their favor, to enact an RSP Specification that included provisions designed to limit competition among networks.

The Division expressed its concerns to GSMA and, in response, GSMA drafted new standard-setting procedures that incorporate more input from non-operator members of the mobile communications industry. As a result, the new procedures will curb mobile network operators' ability to use GSMA standards anticompetitively to prevent the emergence of disruptive competition from eSIM technology. The new procedures are more likely to create procompetitive benefits for mobile device consumers.

Civil Conduct Task Force

In August 2020, the Division created the Civil Conduct Task Force (“CCTF”). This group of Division attorneys works across the civil sections and field offices to identify conduct investigations that require additional focus and resources. As an independent unit, the task force has the dedicated resources and a consistent mandate to investigate and, ultimately, prosecute civil conduct violations of the antitrust laws in collaboration with attorneys from the other civil litigating sections who have relevant industry experience.

B. Merger:

Harvard Pilgrim Health Care/Health Plan Holdings

In December 2020, the 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 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.

Visa/Plaid

In November 2020, the Division sued 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 of 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 complaint 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.

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.

Liberty Latin America/AT&T Puerto Rico

In October 2020, the Division filed a 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, 2020, 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.

CPI/GD SATCOM

In May 2020, the Division filed a complaint challenging the acquisition of General Dynamics SATCOM Technologies Inc. ("GD SATCOM") by Communications and Power Industries ("CPI"). The complaint 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, resulting in a monopoly for these products and thus lower quality, higher prices, and longer delivery times for these products. To address these concerns, the parties agreed to divest ASC Signal to preserve competition for critical equipment that enables communication links for the United States military and businesses in remote areas. The court entered the final judgment on May 28, 2020.

Dairy Farmers of America/Dean Foods

In May 2020, the Division concluded its investigation into proposed acquisitions by Dairy Farmers of America Inc. and Prairie Farms Dairy Inc. of fluid milk processing plants from Dean Foods Company out of bankruptcy. The department's investigation was conducted against the backdrop of unprecedented challenges in the dairy industry, with the two largest fluid milk processors in the U.S. (Dean and Borden Dairy Company) in bankruptcy, and Dean faced with imminent liquidation.

To resolve the Division's competitive concerns regarding DFA's acquisition, the Division required the divestiture of three fluid milk processing plants located in northeastern Illinois, Wisconsin, and New England. During its investigation, the department also expressed concerns to DFA and Dean about the potential loss of competition if DFA were to acquire a number of Dean's fluid milk processing plants in the Upper Midwest, and DFA subsequently ceased its efforts to acquire those plants. This settlement ensured the continued operation of dozens of fluid milk plants and that supermarkets, schools, convenience stores, hospitals, and other consumers of fluid milk are not harmed by the loss of Dean's processing plants due to its bankruptcy.

The Division also closed its investigation into Prairie Farms' proposed acquisition of fluid milk processing plants from Dean in the South and Midwest after concluding that the plants at issue likely would be shut down if not purchased by Prairie Farms because of Dean's distressed financial condition and the lack of alternate operators who could timely buy the plants.

Cengage Learning/McGraw-Hill

On May 4, 2020, Cengage Learning Holdings II Inc. and McGraw-Hill Education Inc. announced they would abandon their proposed transaction after the Antitrust Division communicated to the parties its serious concern with the transaction. This merger would have combined the second and third largest publishers of textbooks in the United States, a market long dominated by three major participants. When evaluating the likely competitive effects of this deal, the Division's primary concern was the transaction's likely impact on American students. The Division conducted a rigorous investigation into the likely competitive effects of the transaction, focusing on issues of innovation as well as price. The Division determined that Cengage and McGraw-Hill compete aggressively in the development of courseware technology, an increasingly important area due to the expansion of online and remote learning. The abandonment of this deal preserves critical competition in the market for textbook publishing that benefits American students.

United Technologies Corp./Raytheon

On March 26, 2020, the Antitrust Division announced a settlement requiring significant divestitures to resolve its competitive concerns regarding United Technologies Corporation and Raytheon Company's planned merger of equals. The settlement required the parties to divest three businesses: (1) Raytheon's military airborne radio business (these radios allow for secure voice, data, and video communications to and from aircraft, and which are installed on every airplane and helicopter currently used by the Department of Defense); (2) UTC's military GPS business; and (3) UTC's optical systems business (this business supplies certain components for spaced-based electro-optical/infrared (EO/IR) reconnaissance satellites, which provide DOD and U.S. intelligence community customers with essential information, including early warning of missile launches for aviation and maritime applications). These significant divestitures protect the American taxpayer by preserving competition that leads to lower costs and increased innovation in critical military and defense products.

Novelis Inc./Aleris Corp.

On Sept. 4, 2019, the Antitrust Division filed a civil antitrust lawsuit seeking to block Novelis Inc.'s proposed acquisition of Aleris Corporation. The lawsuit sought to preserve competition in the North American market for rolled aluminum sheet for automotive applications, commonly referred to as aluminum auto body sheet ("ABS"). According to the complaint, the transaction would combine two of only four North American producers of aluminum auto body sheet. Aluminum ABS is used to produce aluminum parts for automobiles to make vehicles lighter, more fuel-efficient, safer and more durable.

Prior to filing the complaint, the Division reached an agreement with defendants to refer the matter to binding arbitration if the parties were unable to resolve the United States' competitive concerns with the defendants' transaction within a certain period of time. Fact discovery proceeded under the supervision of the district court. Pursuant to the arbitration agreement, following the close of fact discovery, the matter was referred to binding arbitration to resolve the issue of product market definition. A ten-day

arbitration hearing concluded in early March 2020, marking the first time the Antitrust Division has used its authority under the Administrative Dispute Resolution Act of 1996 (5 U.S.C. § 571 et seq.) to resolve a matter. Kevin Arquit, an experienced antitrust lawyer and former Director of the FTC’s Bureau of Competition, served as the arbitrator. On March 9, 2020, the arbitrator ruled for the United States, holding that aluminum auto body sheet constitutes a relevant product market, as the United States had alleged. Because the Department prevailed, the United States filed a proposed final judgment with the U.S. District Court for the Northern District of Ohio that requires Novelis to divest Aleris’s entire aluminum ABS operations in North America to preserve competition in the relevant market. This arbitration procedure provided certainty and efficiency, as well as allowing the defendants to close their transaction subject to foreign regulatory review. Novelis reimbursed the United States \$2.4 million for all of its litigation costs and paid the arbitrator’s fees.

Consent Decree Enforcement

In August 2020, the Antitrust Division established the Office of Decree Enforcement and Compliance (ODEC). Although the Division favors remedies that do not require subsequent oversight, continued policing is sometimes necessary to enforce judicial decrees. For example, the landmark *United States v. Microsoft* case resulted in a decree that required years of oversight enforcement. A small but expert centralized team dedicated to such compliance efforts is the best way to proactively ensure that enforcement starts from the first day of any such decree. In addition to monitoring, ODEC has the composition and expertise to enforce compliance through litigation. The office will lead efforts including standardizing decree enforcement and interpretation, monitoring compliance, and then litigating to enforce when necessary. With ODEC, the Division has a unit dedicated to these efforts for more vigilant and streamlined enforcement.

The necessity for this new office is exemplified by the Division’s recent enforcement actions against consent decree violations, such as:

i. T-Mobile/Sprint/DISH

T-Mobile and Sprint proposed to merge in April 2018. Two years later, a court approved the final judgment, binding the merged firm and divestiture buyer DISH to a series of actions that would restore competition lost by the merger and more efficiently use fallow spectrum. A robust monitoring trustee team supports DOJ’s efforts to ensure both T-Mobile and DISH live up to their commitments during the seven-year period of the Final Judgment.

ii. CenturyLink/Level 3 Communications

Soon after the entry of the 2018 CenturyLink/Level 3 Communications judgment, CenturyLink violated its terms by soliciting customers that switched to the buyer of the divestiture assets. In August 2020, after an investigation in which CenturyLink admitted its violation, the United States enforced the judgment, filing an unopposed motion to amend it. As part of the settlement, CenturyLink agreed (1) to extend the non-solicitation period by two years in the relevant geography; (2) to accept the

appointment of an independent monitor; and (3) to pay the United States to defray the costs of the Department's investigation of CenturyLink's violations of the court order.

iii. Live Nation/Ticketmaster

Almost immediately after the entry of the 2010 Ticketmaster/Live Nation judgment, the Division began to receive complaints of ongoing violations of that decree. Investigation and enforcement efforts stagnated despite repeated violations by the merged parties. This past year, the Division aggressively enforced the decree and obtained reimbursement from the parties for the Division's investigation. The new settlement with Live Nation clarified the decree's terms for future conduct to ensure easier enforcement of any further violations and extended the length of the decree to 2025.

6. Exemplars - Criminal

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

In FY 2020 and so far this year, the Division obtained the conviction after trial of a CEO, indicted several senior executives, obtained four criminal fines and penalties at or above the Sherman Act's \$100 million statutory maximum, launched and expanded an interagency partnership to safeguard public procurement from collusion, and prosecuted antitrust violations affecting generic drugs, cancer patients, grocery store staples, labor markets, federal agencies, financial markets, electronic components, 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 2020 with the highest total number of open grand jury investigations since FY 2009. The Division also initiated more grand jury investigations in FY 2020 than in any year since FY 2003.

In FY 2020, despite extremely challenging circumstances due to the COVID-19 pandemic, the Division charged eleven corporations and 22 individuals. The Division obtained significant sentences against both corporations (including criminal fines and penalties) and individuals (including prison terms and criminal fines). In FY 2020, the Division obtained over \$529 million in criminal fines and penalties, and prison sentences totaling 3,145 days of incarceration, including the former CEO and President of Bumble Bee Foods, who was sentenced to 40 months in jail.

A. Health Care Markets

Particularly in a time of 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. Two companies were indicted and await trial.

Most recently, in August 2020, Teva Pharmaceuticals USA Inc. was indicted for its role in three conspiracies to fix prices and rig bids of generic drugs. It was charged in the same case as Glenmark Pharmaceuticals Inc., USA, which was indicted in July 2020. Teva and Glenmark are charged with conspiring with each other and with Apotex Corp. to fix the price of cholesterol medication. Apotex has admitted its role in the conspiracy and entered into a DPA under which it agreed to pay a \$24.1 million criminal penalty in May 2020. Glenmark and Teva are awaiting trial. Teva is also charged with conspiring with Taro Pharmaceuticals and separately conspiring with Sandoz, Inc.

In July 2020, Taro Pharmaceuticals U.S.A., Inc. was charged for participating in two conspiracies to fix prices, rig bids, and allocate customers for over \$500 million in sales of generic drugs relied upon by American consumers to prevent and control seizures, and to treat bipolar disorder, pain and arthritis, and various skin conditions. The company entered into a DPA under which it admitted participation in the charged conspiracies, agreed to cooperate in the Division's ongoing investigation, and agreed to pay a \$205.7 million criminal penalty—the highest ever for a domestic cartel.

In March 2020, Sandoz Inc. was charged for participating in four conspiracies to fix prices, rig bids, and allocate customers for over \$500 million in sales of generic drugs. The company entered into a DPA pursuant to which it admitted to participating in the four charged conspiracies, agreed to cooperate in the ongoing investigation, and agreed to pay a \$195 million criminal penalty.

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 Federal Bureau of Investigation (FBI).

ii. Oncology

In another example of collusion affecting our vital healthcare markets, in April 2020, Florida Cancer Specialists—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. He is awaiting trial.

B. Grocery Store Staples

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.

Bumble Bee 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. Broiler Chickens

In June 2020, four senior executives from two major broiler chicken producers, including a CEO and president, were indicted for participating in a five-year conspiracy to fix prices and rig bids for chicken sold to American grocery stores and restaurants. In October 2020, six additional individuals—including one former CEO—were indicted for their participation in the same conspiracy, as well as charging one of the individuals with making false statements to federal law enforcement and obstruction of justice. A trial date has not been set.

In February 2020, one of the largest broiler chicken suppliers, Pilgrim's Pride Corporation pleaded guilty to its part in the conspiracy and was sentenced to pay a criminal fine of more than \$107 million. The investigation is ongoing.

The indictment, 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 our most basic necessity, food.

C. Labor Market

The Division is committed to aggressively investigating and prosecuting antitrust conspiracies affecting the labor market, and has brought three indictments for conspiracies affecting the labor market since December 2020. The Division continues to investigate other conspiracies affecting the labor market.

Most recently, in March 2021, a healthcare staffing company, VDA OC LLC (formerly Advantage On Call LLC) and its former manager were indicted for their participation in a conspiracy to allocate employee nurses and fix the wages of those nurses. The trial date has not yet been set.

In January 2021, healthcare company Surgical Care Affiliates, LLC, and a related entity were indicted for their participation in conspiracies not to solicit for employment senior-level employees from competitors. Trial is set for November 2, 2021.

In December 2020, the former owner of a Texas-based in-home physical therapy company was indicted for participating in a conspiracy to fix prices by lowering the rates paid to healthcare workers by his company and a conspiracy to obstruct a separate investigation by the Federal Trade Commission. A trial date has not yet been set.

D. Prosecutions and Policy Changes to Protect 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, in November 2019, the Department announced the Procurement Collusion Strike Force (PCSF). The PCSF is a nationwide interagency partnership among the Division, 22 U.S. Attorneys' Offices (USAOs), the FBI, and multiple federal Offices of Inspector General to promote competition in the public procurement process and safeguard taxpayer dollars from collusion.

Led by the Division, the PCSF has seen early success, and continues to aggressively fulfill its mission, even amid the pandemic. Indeed, in November 2020, as the PCSF celebrated its first anniversary, it expanded from its original cohort of 13 USAOs to 22 USAOs, and from five national law enforcement partners to seven.

First, a key part of the PCSF's mission is training federal, state, and local procurement and grant officers, as well as agency auditors and investigators, on antitrust risks in the

procurement process. Prior to the pandemic, the PCSF conducted over 30 in-person outreach presentations across the United States. In response to the pandemic, the PCSF quickly and seamlessly adjusted to virtual outreach and customized its training to the heightened risks presented by the current crisis. Since the presidential declaration of a national emergency, the PCSF has provided interactive virtual training to more than 10,000 representatives from 500 federal, state, and local agencies.

Second, the PCSF's 22 district teams have experienced exponential growth with active participation of more than 400 federal, state, and local in-district working partners that bolster the Division's investigative and prosecution efforts.

Third, the PCSF has more than two dozen active and ongoing grand jury investigations across the country and has received numerous citizen complaints of possible illegal conduct for potential investigation.

Whether in light of the more than \$2 trillion of pandemic relief spending or the billions in annual discretionary government spending, funding to support the PCSF's mission is critical. Yet the PCSF lacks dedicated funding and has achieved its early accomplishments on a shoestring budget relying primarily on the Division's existing resources. 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. According to the Organization for Economic Cooperation and Development, eliminating antitrust crimes such as bid rigging could reduce public procurement costs by 20 percent or more.

ii. Government Victims

Beyond the PCSF, several investigations illustrate the Division's commitment to safeguarding the integrity of the public procurement process, protecting taxpayer dollars from collusion, and holding responsible those who victimize the Government.

a. Korea Fuel

In 2018 and 2019, the Division resolved criminal charges and civil claims against five South Korea-based companies arising from a decade-long bid rigging conspiracy that targeted fuel supply contracts to U.S. military bases in South Korea. The defendants pleaded guilty to criminal charges and were sentenced to pay over \$158 million in criminal fines.

Seven executives were indicted for defrauding the Federal Government and participating in the bid rigging conspiracy. One executive was also charged with obstruction.

In separate civil settlements, the five companies also resolved parallel civil antitrust and False Claims Act violations and paid an additional \$205 million. As a result of the defendants' conduct, the United States Department of Defense paid substantially more for fuel supply services in South Korea than it would have had the defendants competed for the fuel supply contracts. Under Section 4A of the Clayton Act, the United States may obtain treble damages when it has been injured by an antitrust violation. These cases

were the Division's first significant settlements under Section 4A of the Clayton Act in many years.

b. Detroit Demolition

The Antitrust Division partnered with the U.S. Attorney of the Eastern District of Michigan, the Special Inspector General of the Troubled Asset Relief Program, and the FBI to investigate and prosecute a bribery and fraud scheme affecting the Detroit Demolition Program, a federally-funded program to help protect home values, preserve home ownership, and promote economic growth.

A former Detroit city official and a former executive pleaded guilty to conspiracy to commit bribery and honest services fraud on contracts worth millions of dollars. In September 2019, each was sentenced to 12 months in prison.

c. GSA Auctions

The Division is investigating a conspiracy to rig bids submitted to the General Services Administration (GSA) for surplus government equipment sold at online auctions. GSA offers the general public the opportunity to bid electronically on a wide variety of federal assets, including computer equipment that is no longer needed by government agencies. GSA sells that equipment via its online auctions, and the proceeds of the auctions are distributed to the government agencies or the U.S. Treasury general fund.

To date, two individuals have pleaded guilty and have agreed to cooperate in the ongoing investigation. In January 2020, a Missouri businessman was indicted for participating in the conspiracy to rig bids for surplus government equipment. The defendant is awaiting trial.

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.

E. Financial Markets

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

i. Foreign Exchange Market

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 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.

To date, the Division has charged five companies and six individuals in its investigation of collusion in the foreign exchange (FX) spot market. Four major banks have pleaded guilty and agreed to pay collectively more than \$2.5 billion in criminal fines for their participation in an antitrust conspiracy in the euro-U.S. dollar FX spot market. Another bank pleaded guilty and agreed to pay a \$90 million criminal fine for its participation in an antitrust conspiracy involving emerging market FX prices. Two former traders have also pleaded guilty in connection with the antitrust conspiracy involving emerging market FX prices.

ii. Pre-Release American Depository Receipts

The Division prosecuted a conspiracy to submit rigged bids to borrow pre-release American Depository Receipts (ADRs).

Worldwide, thousands of publicly traded companies list their shares of common stock only on foreign stock exchanges. Most U.S. investors are unable to purchase or sell such foreign shares. The Securities and Exchange Commission, however, permits four U.S. depository banks to create ADRs, which represent foreign ordinary shares and can be traded in the United States. Through the purchase and sale of ADRs, U.S. investors gain exposure to and receive dividends from companies whose common stock is listed only on foreign stock exchanges.

Two broker dealers and two executives pleaded guilty to criminal charges for their involvement in a conspiracy to borrow pre-release ADRs from U.S. depository banks at artificially suppressed rates. They have been sentenced to pay criminal fines in excess of \$5 million.

F. Components for Consumer Electronics

From liquid crystal displays and dynamic random-access memory to electrolytic capacitors, the Division has a track record of successfully prosecuting international conspiracies involving electronic components that affect American consumers.

Most recently, the Division announced an electronic components investigation into a global conspiracy to fix prices for suspension assemblies used in hard disk drives. In December 2019, NHK Spring Co., a Japanese manufacturer of suspension assemblies incorporated into computers or sold as stand-alone electronic storage devices, was sentenced to pay a \$28.5 million fine after pleading guilty for its role in the conspiracy. In February 2020, two former NHK executives were indicted for their role in the long-running, global price-fixing conspiracy.

G. Commercial Construction

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

i. Commercial Insulation

The Division, the U.S. Attorney 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 one company have pleaded guilty in the ongoing investigation and await sentencing. These individuals have also agreed to pay restitution to the victims and to resolve civil forfeiture cases connected to the criminal charges.

ii. 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, five individuals and two corporations have been charged with and agreed to accept responsibility for their participation in the conspiracy. The investigation is ongoing.

V. Program Increases by Item

Item Name: **Antitrust Enforcement Enhancement**

Budget Decision Unit(s): Antitrust

Organizational Program: Antitrust Division Civil and Criminal Enforcement Programs

Program Increase: Positions [66] Atty [38] FTE 48 Dollars \$8,400,000

Description of Item

The Antitrust Division takes seriously its ongoing mission of protecting American consumers by promoting economic competition through enforcement of the antitrust laws. To meet the challenges presented by the significant additional workload of the Division’s civil and criminal enforcement programs, and to continue protecting American consumers from anticompetitive mergers, monopolization, and domestic and international cartels, the Division requests \$8.4 million to provide funding for 66 positions, including 38 attorneys, 23 paralegals, and 5 economists.

Justification

Initiative One: Online Platform Investigations & Google Litigation

Positions 32 Atty 17 FTE 31 Dollars \$5,150

(This initiative includes the conversion of 15 attorneys and 12 paralegals from current term employees to permanent positions, and the hiring of two new attorneys and three economists.)

In July 2019, the Antitrust Division announced that it is reviewing how market-leading online platforms have achieved market power and whether they are engaged in practices that have reduced competition, stifled innovation, or otherwise harmed consumers.

This investigation resulted in the Division’s October 2020 civil enforcement action against Google. The Division’s complaint alleges that Google has unlawfully maintained and expanded its monopolies in general internet search and search advertising markets, which has resulted in harm to American consumers and advertisers. The company’s overall share of the general search market is 88 percent—with a share on mobile devices of nearly 95 percent—and Google monetizes its search monopoly by selling ads on the search results page. The Division alleges that Google uses exclusionary agreements with Android device manufacturers, cellphone carriers, Apple, and third-party browsers that, when combined with Google’s own properties, cover about 80 percent of searches, 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.”

Fourteen State Attorneys General have joined the Division's lawsuit, which has been consolidated for pre-trial proceedings with another suit brought by the Attorneys General of an additional 38 States and territories (and which incorporated the Division's allegations by reference). The Division is currently in the midst of fact discovery in the litigation, which involves the negotiation of dozens of subpoenas with Google and third parties; the review of millions of documents; and coordination with economic and industry experts. The trial is scheduled for September 2023.

In addition to the Google litigation, the Antitrust Division continues to conduct large-scale investigations in other online platform markets. These investigations each involve potentially anticompetitive business practices spanning many years and many permutations of business models and competitive landscapes. These investigations involve dozens of civil investigative demands (CIDs) issued to a wide range of market participants, the review of enormous quantities of data and documents, and complex economic analysis. These investigations have also garnered significant attention from state and international enforcers, and coordinating across jurisdictions itself requires an enormous effort and dedicated staff. The Division expects the interest and requirements for coordination to grow substantially as it uncovers conduct that is concerning to the enforcers in these jurisdictions.

As of April 2021, the Division has hired 25 new attorneys, 1 new statistician, and 24 new paralegals to two-year term positions to work on the online platforms matters, as well as 1 new permanent attorney, for a total of 51 positions. The Division is currently relying on one-time and limited sources of funding for these term positions, which is unsustainable. The Antitrust Division also retained industry experts, economic experts, and purchased commercial datasets to understand the effects of changes in business practices affecting the online ecosystems at issue in the Division's investigations.

The Antitrust Division's litigation with Google and its ongoing tech investigations—which may result in additional litigation in FY 2022—will require extending the employment of many of the two-year term staff by making those positions permanent. The Division will also encounter significant additional litigation expenses as it pursues fact and expert discovery in the Google case and continues its investigations in other online platform markets.

In order to have the resources to pursue the potentially anticompetitive acts in disparate lines of business simultaneously, the Division will need to add two additional attorneys, three additional economists, and convert 27 of the term-appointed hires into permanent positions (15 attorneys and 12 paralegals). The Division's FY 2022 request also includes an adjustment-to-base to stabilize the online platform investigations with \$3.2 million in permanent funding for the other 24 positions hired for the matters (11 attorneys, 12 paralegals, 1 statistician). In total, the President's Budget, through a combination of the adjustment-to-base and enhancement, requests permanent funding for all positions currently hired to work on the online platforms matters.

Initiative Two: Criminal Prosecution of Cartels

Positions 12 Atty 7 FTE 6 Dollars \$1,134

Modern cartel investigations are complex, resource intensive, and time consuming. Criminal antitrust investigations often involve longstanding conspiracies among high-level executives. Investigating and prosecuting those conspiracies can involve combing through millions of records. Moreover, many investigations focus on conspirators who operate in foreign countries

and target U.S. consumers and businesses, like in conspiracies to supply fuel to U.S. military bases in Korea and to fix prices for components incorporated into computers and other electronic devices. In the fuel-supply cases, the Division not only obtained \$156 million in criminal fines, but also \$207 million in damages for the U.S. Government.

Investigating conspiracies like these requires the Division to obtain and translate millions of documents and to work closely with enforcers throughout the world. Likewise, the rise of electronic communications and difficulties detecting and recovering communications using novel transmission methods have also increased the cost and complexity of our investigations. As a result, Division investigations and prosecutions require significant resources to gather evidence, including in addressing encryption issues associated with new methods of communication and collusion. For example, recent investigations have encountered schemes perpetrated by encrypted messaging applications and social media platforms.

The Division continues to vigorously prosecute domestic and international cartels. From FY 2011 to FY 2020, the Division charged 433 individuals and 158 companies, resulting in more than \$9 billion in criminal antitrust fines and penalties, and, where imprisonment was imposed, an average sentence of nearly 17 months. (The criminal fines collected by the Division go to the Department's Crime Victims Fund, which aids victims of crime with support and services, whereas criminal penalties go to the U.S. Treasury.)

The Division's current investigations involve a range of industries critical to American consumers, workers, and taxpayers. Most recently, the Division has brought charges for antitrust crimes affecting the labor markets, health care, and critical food staples such as chicken and fish. Those charges include wage-fixing and employee allocation, collusion involving generic drug makers, an allocation scheme involving cancer treatment centers, and price fixing and bid rigging involving chicken and canned tuna. For example, the Division has charged three cases involving collusion in labor markets affecting employees of health care companies, such as school nurses. The Division has also worked to strengthen cartel enforcement in other countries, and to pursue the extradition of foreign nationals who violated the U.S. antitrust laws. For example, in early 2020, the Division secured its second- and third-ever extraditions for antitrust charges when a former air cargo executive was extradited from Italy and an auto parts executive was extradited from Germany.

Cartel enforcement work is expected to continue to increase in FY 2021 and FY 2022. The Division closed FY 2020 with 127 pending grand jury investigations, the highest total since FY 2009. Furthermore, the Division initiated more grand jury investigations in FY 2020 than any year since 2003. The Division has ongoing investigations into collusive behavior among major generic pharmaceutical companies, leading food suppliers, healthcare providers, and their employees.

Finally, recent years have seen a record-setting number of cases going to trial. In FY 2017, nine criminal cases went to trial—the highest total in the last two decades. Our two most recent criminal trials resulted in guilty verdicts. In November 2019, a former currency trader was found guilty of conspiring to fix prices and rig bids in the global foreign currency exchange market. And in December 2019, following a four-week trial, the former CEO of Bumble Bee Foods, LLC was found guilty of fixing prices of canned tuna. This trial wave shows no sign of slowing. Division prosecutors are currently preparing for 14 trials against 25 individuals and seven

companies. If all 14 trials proceed in FY 2021, it will mark the largest number of trials in the modern era of antitrust enforcement, since the advent of the modern leniency policy in 1993.

As with the Division's ongoing investigations, the upcoming trials are both resource-intensive and complex. Several involve high-level executives, including corporate presidents and CEOs. Many are document intensive. For example, in the generic drug investigation, two companies and one individual await trial in Philadelphia, Pennsylvania. In August 2020, a federal grand jury returned a superseding indictment against two drug companies, Teva Pharmaceuticals USA, Inc. and Glenmark Pharmaceuticals Inc., USA. They are charged with conspiring to fix prices, rig bids, and allocate customers for generic drugs. The Teva-Glenmark indictment follows the February 2020 indictment of a former generic drug company executive for conspiring to fix prices, rig bids, and allocate customers, along with making a false statement to federal agents who were investigating those conspiracies. Both trials are expected to be resource intensive. And both have been designated complex in part due to the volume of discovery—over 20 million records. The corporate defendants have assembled significant litigation teams and argued conviction would jeopardize each company's continued existence because of Department of Health and Human Services regulations governing mandatory debarment. In order to meet these complex, resource intensive, and time-consuming demands of modern cartel investigations, ATR is requesting \$1.1 million and 12 positions (7 attorneys, 4 paralegals, 1 economist) for FY 2022.

Initiative Three: Procurement Collusion Strike Force

Positions 22 Atty 14 FTE 11 Dollars \$2,116

To protect taxpayer dollars from antitrust crimes and related schemes that undermine competition for government procurement, grant, and program funding, in November 2019, the Department announced the Procurement Collusion Strike Force (PCSF). The PCSF is a nationwide interagency partnership among the Antitrust Division, 22 U.S. Attorneys' Offices (USAOs), the Federal Bureau of Investigation, and multiple Federal Offices of Inspector General to promote competition in the public procurement process and safeguard taxpayer dollars from collusion. Led by the Antitrust Division, the PCSF has seen early success, and continues to aggressively fulfil its mission amid the pandemic. Indeed, in November 2020, as the PCSF celebrated its first anniversary, it expanded from its original cohort of 13 USAOs to 22 USAOs, and from five national law enforcement partners to seven.

First, a key part of the PCSF's mission is training federal, state, and local procurement and grant officers, as well as agency auditors and investigators, on antitrust risks in the procurement process. Prior to the pandemic, the PCSF conducted over 30 in-person outreach presentations across the United States. In response to the pandemic, the PCSF quickly and seamlessly adjusted to virtual outreach and customized its training to the heightened risks presented by the current crisis. Since the presidential declaration of a national emergency, the PCSF has provided interactive virtual training to more than 10,000 representatives from nearly 500 federal, state, and local agencies. The PCSF also partnered with the federal Inspector General community to deliver virtual training specific to the pandemic to over 1,000 criminal investigators and auditors.

Second, the PCSF's 22 district teams have experienced exponential growth with active participation of more than 400 federal, state, and local in-district working partners that bolster the Division's investigative and prosecution efforts.

Third, the PCSF has already opened more than three dozen grand jury investigations across the country and has received numerous citizen complaints of possible illegal conduct for potential investigation.

In light of the more than \$2 trillion in recent pandemic relief funding, as well as the billions in annual discretionary government spending, funds to support the PCSF's mission are necessary and critical. Yet the PCSF currently lacks dedicated funding and has achieved its early accomplishments on a shoestring budget relying primarily on the Division's limited existing resources. Securing adequate, dedicated funding for the PCSF would enable it to investigate and prosecute procurement-related schemes and to deter wrongdoing by training even more procurement officials and government contractors on antitrust risks associated with the procurement process. According to the Organisation for Economic Co-operation and Development, eliminating antitrust crimes, such as bid rigging, could reduce public procurement costs by 20 percent or more. ATR is requesting \$2.1 million and 22 positions (14 attorneys, 7 paralegals, and 1 economist) for the Procurement Collusion Strike Force in FY 2022.

Impact on Performance

Because of Initiative Three alone, the Division estimates that grand juries will increase by 10, which increases its performance measure target to 85 active grand juries for FY 2022.

Funding

1. Base Funding

FY 2020 Enacted				FY 2021 Enacted				FY 2022 Current Services			
Pos	Atty	FTE	Amount (\$000)	Pos	Atty	FTE	Amount (\$000)	Pos	Atty	FTE	Amount (\$000)
695	335	595	\$166,755	740	363	659	\$184,524	764	374	705	\$192,776

2. Personnel Increase Cost Summary

Type of Position/Series	FY 2022 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				1st Year	2nd Year	FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Economists (110)	\$520	5	\$189	\$99	\$6	\$495	\$30
Attorneys (905)	\$2,682	23	\$214	\$116	\$7	\$2,668	\$161
Attorneys (905) – Term to Permanent	\$3,480	15	\$232	\$7	\$6	\$105	\$90
Paralegals (950)	\$590	11	\$93	\$40	\$3	\$440	\$33
Paralegals (950) – Term to Permanent	\$1,128	12	\$94	\$3	\$3	\$36	\$36
Total Personnel	\$8,400	66	\$822	\$265	\$25	\$3,744	\$350

3. Non-Personnel Offset Cost Summary

Not Applicable.

4. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Atty	FTE	Personnel	Non-Personnel	Total	FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Current Services	764	374	705	\$89,092	\$103,684	\$192,776		
Increases	66	38	48	\$8,400	\$0	\$8,400	\$3,744	\$350
Grand Total	830	412	753	\$97,492	\$103,684	\$201,176	\$3,744	\$350

5. Affected Crosscuts

Not Applicable.

VI. Exhibits