



ANTITRUST DIVISION

FY 2025 Performance Budget Congressional Justification (CJ) Submission

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I. Overview

A. Introduction

The mission of the Antitrust Division (Division or ATR) is to promote competition and protect the marketplace through the enforcement of the nation's antitrust laws. To do this, the Division maintains robust civil and criminal programs.

The Division's civil enforcement program encompasses the investigation of conduct that violates the antitrust laws and thousands of potentially anticompetitive mergers each year. As the American economy has grown and markets have become more complicated, so too have the types of cases before the Division. Increasingly, the Division's investigations involve cutting-edge technologies such as artificial intelligence and large language models. For instance, the Division has two active cases against Google—one focused on its conduct in the market for search and the other in online advertising technology. To police this conduct appropriately, the Division must make significant investments in technology, data scientists, and technologists. At the same time, investigations have become more intensive as the nature of the marketplace continues to evolve and as new technologies have transformed how business is conducted. Document counts for a typical investigation have increased almost exponentially in recent years and routinely exceed millions of records. That makes investigations and lawsuits time-consuming and costly, since the issues are often complex and the stakes are high for American consumers, workers, and the economy.

Additionally, the Division's criminal program prosecutes antitrust crimes in order to address and deter anticompetitive conduct that distorts the free-market system at the expense of American consumers and workers. The Division is currently in the midst of numerous criminal investigations, including investigations and prosecutions in critical sectors such as agriculture, labor, healthcare, government procurement, and pharmaceuticals. Therefore, it is imperative the Division have the resources needed to be successful and litigate these cases effectively.

To administer its caseload, the Division's FY 2025 budget request includes \$288,000,000, including 993 positions, of which 476 are attorneys. This request includes a program increases of \$52,484,000 for Increased Antitrust Enforcement, Technology and Data Modernization Support, and Information Technology Operations Sustainment.¹

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/budget-and-performance>

¹ Amounts included herein referring to the FY 2024 Continuing Resolution reflect an Annualized Continuing Resolution level.

B. Issues, Outcomes, and Strategies

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

Enforcement Program	Major Matter Exemplars	Page
Civil	<u>Merger:</u>	33
	Litigated Cases:	33
	<ul style="list-style-type: none"> • United States, et al. v. American Airlines and JetBlue Airways • United States v. Bertelsmann SE & Co., et al • United States v. ASSA ABLOY AB et al. • United States and Plaintiff States v. JetBlue Airways and Spirit Airlines • Other Litigations That Changed Merger Outcomes 	34
	Abandoned Transactions:	
	<ul style="list-style-type: none"> • Tenaris/Benteler • China International Containers Group/Maersk • Non-Public Abandonments of Seven Potentially Anticompetitive Mergers in Important Industries 	
	<u>Anticompetitive Conduct:</u>	35
	Litigation and Settlements:	
	<ul style="list-style-type: none"> • United States v. Google (Search Litigation) • United States v. Google (AdTech Litigation) • Poultry Compensation Information Exchange Litigation • United States v. Activision Blizzard, Inc. 	
	Investigations Targeting Directors Serving on Boards of Competitors.	38
	Amicus Briefs:	38
<ul style="list-style-type: none"> • Robinson/Jackson Hewitt • Tesla/LADA • Giordana/Saks • Illinois/Elite Staffing • Illinois/Colony Display • Choker & DeMarco/Pet Emergency Clinic & Nat'l 		

	<p>Veterinary Assocs.</p> <ul style="list-style-type: none"> • Top Agent Network/National Ass'n of Realtors • Nostalgic Partners/Office of the Commissioner of Baseball • Deslandes/McDonald's • Chase Manufacturing/Johns Manville Corp. <p>Statements of Interest: 42</p> <ul style="list-style-type: none"> • In re RealPage Rental Software Antitrust Litig. • Verax Biomedical/American National Red Cross • Fuentes/Jiffy Lube • In re Deere & Co Repair Servs. Antitrust Litig • Borozny/Raytheon Technologies Corp
Criminal	<p style="text-align: right;"><u>Page #</u></p> <p><u>Health Care Markets:</u> 45</p> <ul style="list-style-type: none"> • Generic Pharmaceuticals <p><u>Labor Market</u> 46</p> <ul style="list-style-type: none"> • Essential Healthcare Workers <p><u>Protecting Government Victims, Promoting Competition and Save Taxpayer Dollars:</u> 46</p> <ul style="list-style-type: none"> • Procurement Collusion Strike Force • Government Victims: Domestic <p><u>International Enforcement:</u> 50</p> <ul style="list-style-type: none"> ➤ Transmigrantes ➤ PCSF: Global ➤ Fugitive Pleas <p><u>E-Commerce</u> 52</p>

Record Civil Caseload

Merger Enforcement

The economic recovery that began in 2021 led to a record number of merger filings—more than 3,400 in FY 2021 and over 3,000 in FY 2022. That increase in the number, size, and complexity of transactions led in turn to the most contested civil antitrust trials in FY 2022 and the first half of FY 2023 in more than 20 years even while macroeconomic conditions caused merger filings to return to more historical averages.

Setting aside recent surges in merger filings, long-term trends in the U.S. and world economy have increased the Division's merger enforcement workload. A generation-long increase in economic concentration increases the chance that future mergers will lead to anticompetitive outcomes. Increased mergers between companies that operated at different stages of the supply chain (e.g., "vertical" mergers) requires in-depth analyses of several markets, rather than a single market. Additionally, the Division must analyze a merger's impact on both customers and workers, not just consumers. Furthermore, global supply changes have increased the complexity of the Division's analyses, and increased use of electronic communications have substantially increased the amount of data the Division must review for each merger.

Several recent mergers and joint ventures that the Division has investigated and litigated illustrate these trends. For example:

- In the last 18 months the Division has twice had to proceed to trial to protect competition in the domestic airline industry.
 - In late 2022, the Division took to trial the Northeast Alliance, an agreement between American Airlines and JetBlue that suppressed competition for millions of passengers in Boston and New York; a judge permanently enjoined that joint venture in summer 2023.
 - In late 2023, the Division conducted a six-week trial to block JetBlue's acquisition of Spirit, which would have resulted in billions of dollars of harm to consumers on hundreds of routes across the country, especially cost-conscious flyers. The court permanently enjoined that merger in January 2024.
- In October 2022, the Division obtained a permanent injunction blocking the proposed merger of the parent copies of Penguin Random House and Simon & Schuster, two of the five largest publishers in the United States, based on the threat the merger posed to best-selling authors.
- In February 2022, the Antitrust Division and the states of New York and Minnesota filed suit against United Health Group, the largest healthcare company in the country, seeking to block its proposed acquisition of Change Healthcare, a leading healthcare technology company. The merger threatened to eliminate direct competition between United Health and Change and also to strengthen United Health's market-leading position in several related healthcare markets.
- In July 2022, the Division sued to invalidate the merger agreement between Booz Allen Hamilton Holding Corporation and Everwatch Corp., who were likely to be the only bidders for an important National Security Agency contract.

- In August 2022, the Division sued to block the proposed merger between two of the largest door-lock manufacturers in the world, including one based in Sweden. The case went to trial in April 2023. In May 2023, the Division reached a settlement with the parties.

Despite these challenges, since November 2021, the Division has obtained abandonments in more than a dozen mergers either as a result of the Division filing suit or being prepared to do so, in cases involving crucial international supply chains, manufacturing and food distribution, software, and financial services.

Civil Conduct Enforcement

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

The combination of increased economic activity (leading to more mergers of greater complexity) and increased enforcement focus on long-term roadblocks to a freer and fairer economy have led to an unprecedented period of civil antitrust enforcement. Since April 2022, the Division has tried eight merger or civil conduct cases, including a ten-week trial against Google for maintaining its monopoly among internet search engines and a month-long trial against JetBlue and Spirit airlines to block a merger that threatens to increase prices for cost-conscious customers. The Division expects a similar or even-more-intensive trial schedule in 2024 based on current enforcement patterns. In addition to *U.S. v. Google* (Search) and *U.S. v. JetBlue & Spirit*, the Civil Program is also actively challenging Google's monopoly in internet display advertising (*U.S. v. Google* (Ad Technology)) and a long-running information exchange that suppressed competition that farmers, meat-packing workers, and customers should have otherwise enjoyed (*U.S. v. Agri Stats*).

In the last year, the Division has reached important enforcement settlements in other agricultural cases. In *U.S. v. Koch Foods*, it filed a complaint and settlement designed to stop violations of the Sherman Act and Packers and Stockyards Act so that contract chicken growers had a fair chance to recoup their investments. In *U.S. v. George's*, the Division extended a decree covering wage-sharing agreements to a fourth major poultry processor.

The Antitrust Division (ATR) reached other important enforcement milestones in the first half of 2023. For example, in *United States v. ASSA ABLOY*, the Division obtained an important decree designed to ameliorate the harm a merger among smart-lock makers would cause. In *United States v. Activision*, ATR obtained a decree designed to prevent agreements that suppressed wages among e-sports teams. Several other mergers or anticompetitive acts were abandoned before ATR was required to bring suit.

Enforcement activity is likely to remain at an extraordinarily high level throughout 2024. In addition to completing the Google Search, Google Ad Tech, and Agri Stats cases, ATR will be required to make enforcement decisions on multi-billion dollar mergers that have the potential to reshape key parts of the technology, healthcare, health insurance, and food service industries.

The Antitrust Division will also be required to continue to invest significant resources to investigate anticompetitive agreements or monopolization in the technology, agriculture, financial, real estate, and entertainment industries.

Other recent enforcement actions have protected working Americans from employer collusion. For example, the Division filed consent decrees to end a long-running conspiracy among four poultry processors (Cargill, Sanderson Farms, Wayne Farms, and George's), a data consultant (Webber, Meng, Sahl, and Company) and its president (G. Jonathan Meng), to exchange information about wages and benefits for poultry processing plant workers. The consent decrees commit the processors to a court-appointed monitor and to pay \$90.6 million total in restitution for poultry processing plant workers who were harmed by the conspiracy. The Division also filed a consent decree prohibiting Activision Blizzard, one of the world's largest video game developers and publishers, from suppressing wages and imposing rules that limited compensation for players in Activision's professional esports leagues.

Increased Criminal Enforcement

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

The Division's criminal workload has continued to expand. In FY 2023, ATR conducted 154 grand jury investigations, the most in 30 years, and obtained 28 criminal convictions, including the first Section 2 criminal monopolization conviction in approximately fifty years. ATR obtained over \$267 million in criminal fines and restitution—including the largest penalty ever imposed for a purely domestic cartel. And, for the first time ever, ATR secured \$50 million in free pharmaceuticals for people in need, along with a requirement that corporate wrongdoers divest products that were at the heart of their illegal conspiracy.

As of January 1, 2024, ATR is conducting 156 grand jury investigations and has pending indictments against 6 individuals and 2 corporations arising out of investigations into various industries. ATR has at least two major cases set to go to trial in calendar year 2024—including ATR's first Section 2 criminal monopolization trial since at least the 1970s. ATR's indicted cases involve conspiracies relating to bid rigging and other criminal conduct affecting the United States' military and government procurement programs, a conspiracy that directly targeted American healthcare workers, and a violent conspiracy to monopolize an export industry near the U.S.-Mexico border.

Recently, the Division secured guilty verdicts after trials against a former engineering executive charged with bid-rigging and fraud schemes targeting the North Carolina Department of Transportation and a former employee of the Department of Energy charged with conspiracy to defraud the United States as well as making false statements to federal agents. Furthermore, the Division secured a guilty verdict against three individual defendants on all three counts—one count of conspiracy to defraud and two counts of major fraud—securing a guilty plea against the company in that same case.

The Division also leads the Department's PCSF, an interagency partnership of enforcers

dedicated to combatting antitrust crimes and related schemes in government procurement, grant, and program funding at all levels of government—Federal, state and local. The PCSF has two objectives: (1) deterrence through outreach and training; and (2) more effective detection, investigation, and prosecution of these crimes. Since its inception in 2019, the PCSF has opened more than 100 criminal investigations and trained more than 31,000 people on the risks that collusion poses in public procurement. In that time, the PCSF and the Antitrust Division have investigated and prosecuted over 65 companies and individuals involving over \$500 million worth of government contracts, resulting in more than \$65 million in criminal fines and restitution.

In April 2023, the Division launched a Big Tech Task Force with the U.S. Attorney’s Office for the Northern District of California. The task force aims to pool investigative resources to develop leads on unlawful conduct perpetrated by large technology companies with a substantial presence in the San Francisco Bay Area. At present, task force members include prosecutors from the Division’s San Francisco office and the U.S. Attorney’s Office, including supervisors in the corporate fraud team. While still in its infancy, the task force already has one joint investigation and anticipates opening more investigations in the coming months with the participation of the Federal Bureau of Investigations (FBI).

Enhanced Competition Advocacy

In FY 2023, the Antitrust Division enhanced its competition advocacy program by filing a number of comments in regulatory dockets concerning initiatives by other federal agencies that affect competition. The Division filed comments to the following federal agencies:

- Department of Commerce: National Telecommunications and Information Administration
- Department of Commerce: United States Patent and Trademark Office
- Federal Energy Regulatory Commission
- Federal Maritime Commission
- Federal Trade Commission
- Securities and Exchange Commission
- Surface Transportation Board

The Division’s competition comments addressed a wide range of topics including patent quality, opening the patent bar to competition, consumer privacy, ocean shipping, labor markets, including the effects of non-compete agreements on labor markets, and transportation (railways), energy, and financial markets.

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. The Division also provided advice to other Department of Justice (DOJ) components and to the Office of the Solicitor General on competition issues in various non-antitrust cases at the certiorari and merits stages before the Supreme Court.

The Division conducted important appeals in its own cases. In *United States v. Lischewski*, the

Division opposed a petition for certiorari from a Ninth Circuit decision upholding the conviction of the former CEO of Bumble Bee Foods for price fixing. At the Division's urging, the Supreme Court declined to consider whether longstanding case law holding price fixing per se unlawful under the Sherman Act should be jettisoned as unconstitutional; accordingly, the Supreme Court left in place the former CEO's price-fixing conviction. The Division also briefed and presented oral argument in the criminal appeal in *United States v. Aiyer*, which challenged the district court's refusal to consider competitive effects in assessing the validity of an indictment charging a per se violation of the Sherman Act; the court's rulings on the admissibility of competitive-effects evidence on the issue of intent; and the court's handling of post-trial allegations of juror misconduct. Consistent with the Division's arguments, the Second Circuit rejected these challenges and affirmed the judgment of conviction.

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

In addition to its role in antitrust cases, the Division serves as the statutory respondent for several other government agencies, including the Federal Communications Commission and the Surface Transportation Board, in petitions for review and appeals in the federal appellate courts.

International Work

International Cartel Enforcement

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

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

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

Additionally, the Division's work no longer takes place solely within the geographic borders of the United States. The markets and competitors affecting U.S. businesses and consumers are more international in scope, and the variety of languages and business cultures that the Division encounters has increased. Parties and potential evidence are increasingly located abroad, adding complexity and cost to investigations. Whether that complexity and cost results from having to collect evidence overseas or from having to undertake extensive inter-governmental negotiations in order to access evidence or speak with witnesses, they combine for a very different, and generally more difficult investigatory and litigation process than would be the case if the Division's efforts were restricted to conduct and individuals in the United States.

International Cooperation

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

The Division successfully pursues its international antitrust agenda in a hybrid environment, engaging with foreign counterparts and multilateral organizations both virtually and in-person. The addition of virtual engagement brought about by the pandemic has enabled the Division to expand its zone of influence to jurisdictions previously less accessible, while continued in-person engagement ensures strong ties with critical enforcement partners.

To date, the Division has entered into antitrust cooperation agreements with fifteen foreign jurisdictions— Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Germany, India, Israel, Japan, Korea, Mexico, Peru, and Russia. The Division's engagement prioritizes international cooperation on criminal (cartel) matters, civil conduct, and merger enforcement and, where appropriate, competition policy convergence. A particular focus of engagement with our foreign counterparts is competition enforcement in digital markets. For example, in December 2021, the Division, with the Federal Trade Commission (FTC) and the European Commission, launched the U.S.-EU Joint Technology Competition Policy Dialogue (TCPD). Through the TCPD and other cooperation efforts, the Division intends to collaborate to ensure and promote fair competition, as vigorous and effective competition enforcement benefits consumers, businesses, and workers around the world.

The Division's cartel enforcement program continues to reflect the success of its global engagement. International cartel activity is pervasive and victimizes consumers everywhere. From FY 2010 to FY 2023, the total fines and penalties obtained in Division cartel cases was just

over \$10.1 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.

The Division also regularly cooperates with international counterparts in its civil investigations. Such engagements provide cooperating competition agencies with a fuller picture of the merger or conduct under investigation and its potential competitive effects. Working closely with other competition agencies also helps avoid the prospect of pursuing conflicting theories of harm or adopting inconsistent remedies and ensures that parties can actually comply with the remedies imposed by multiple jurisdictions. In any given year, the Division works on dozens of investigations with an international dimension, most involve cooperation with other competition agencies. In FY 2022, for example, the Division reviewed the proposed merger of Cargotec and Konecranes and worked closely with competition agencies in a number of jurisdictions, including Australia, the EU, and the United Kingdom. The Division worked closely with the German Bundeskartellamt in reviewing the aborted China International Marine Container's aborted deal with AB Moller Maersk to acquire Maersk Container Industry, and with Canada, the EU, and the United Kingdom on S&P Global, Inc.'s merger with IHS Markit Ltd.

In addition to bilateral cooperation, multilateral engagement through such organizations as the International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD) and the United Nations Committee on Trade and Development (UNCTAD), substantially supports the Division's international antitrust agenda. For example, in October 2001, the Division, in conjunction with 13 other competition agencies, including the FTC, launched the ICN. Since its inception, the ICN has grown to 140 agencies from 129



jurisdictions. The Division continues to play an important role in the ICN, building consensus among competition agencies on sound competition principles, where appropriate, and providing support for new and developing competition agencies building strong competition cultures and enforcing the laws in their jurisdictions. In FY 2022, the Division assumed the co-chair position of the ICN

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

Finally, through its technical assistance program, the Division consults with and helps train competition agencies that are in the process of adopting and enhancing their competition laws and enforcement. This is a critically important investment in building U.S. leadership abroad and counteracting the growing influence of the Chinese Belt & Road initiative and BRICS alliance, particularly in Latin America, Africa, and the Asia Pacific region. The Division undertakes both virtual and in-person training within its overall technical assistance program.

International Advocacy

The Division regularly engages in international competition advocacy and technical assistance to promote the application of sound competition principles to cases involving Intellectual Property (IP) rights. This advocacy takes place in multinational fora, such as the Organization for Economic Cooperation and Development (OECD), as well as on a bilateral basis with antitrust enforcement counterparts in jurisdictions such as Canada, China, the European Union, India, Japan, and Korea, and the United Kingdom. For example, the Antitrust Division worked collaboratively with other enforcers to contribute to the OECD's revised principles for competition enforcement involving intellectual property rights and also evaluated guidelines from other enforcement agencies that concerned intellectual property. These efforts require resources from both the International and Competition Policy & Advocacy Sections of the Division.

Interagency Initiatives

The Division regularly participates in interagency activities that promote competition advocacy where antitrust and IP law and policy intersect. Division leadership and staff maintain close ties to their counterparts at the U.S. Patent and Trademark Office (USPTO), the Department of Commerce, the U.S. Trade Representative, and other federal agencies, as well as engage in regular communications regarding topics that implicate antitrust and IP. For example, the Antitrust Division is participating in an interagency working group, along with the USPTO, United States Department of Agriculture (USDA), and the FTC to discuss ways to protect competition and prevent anticompetitive licensing practices in agricultural products including seeds. Given the nature of the Division's expertise its interagency role often touches on important trade and international policy initiatives underway across the Federal Government. The Antitrust Division also engaged in competition advocacy supporting the USPTO's efforts to expand access to the patent bar and improve patent quality.

The Effects of the Digital Transformation on Antitrust Enforcement

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

- The economic paradigm is shifting so rapidly that the Division has to continue developing and employing new analytical tools, which allow it to respond quickly and appropriately. For example, many other domestic and international competition agencies have established data units composed of data scientists, data engineers, and other technology and behavioral specialists. These units provide support to case teams through use of data science, digital forensics, and technology insight. With additional resources, the Antitrust Division can establish a data unit that would improve the effectiveness and efficiency of their enforcement efforts.

- The evolution of electronic communication has resulted in an increase in the amount and variety of data and materials that the Antitrust Division reviews in the course of an investigation. In addition to telephone logs, seized data and bank records, the Division now regularly obtains information from social media providers, cloud service providers, and physical media such as hard drives and computer servers containing the e-mail traffic and documents of companies under investigation. Many of these data sources are non-standard and require additional processing before they can be reviewed. The number of documents and data submitted to the Division by companies under investigation has increased exponentially: In FY 2022, the Division reviewed over 158 TB of data, nearly five times more than in FY 2015. The Division reviewed over 140 TB of data in FY 2023. The cost to adequately review this data has likewise increased.

Horizon Scanning, Emerging Technologies, and Intellectual Property

Invention and innovation are essential to promoting economic growth, creating jobs, and maintaining our competitiveness in the global economy. In order to respond to new challenges presented by emerging technologies, including artificial intelligence, and rapidly changing markets, the Antitrust Division has devoted significant resources to assessing potential harms to competition that may arise through the use of nascent technologies deployed in a variety of industries including transportation, banking, healthcare, labor, and agriculture. The Antitrust Division remains vigilant, staying ahead of technological advances and disruptions in these industries to ensure that emerging technologies develop in the ways that generate the most value to consumers and workers, i.e., through robust competition.

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. In some instances, IP rights can be used anticompetitively to gain or maintain a monopoly or otherwise restrict competition.

Whole-of-Government Approach to Competition

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

President Biden's Executive Order

The Antitrust Division continues to implement [President Biden's 2021 Executive Order on Promoting Competition in the American Economy](#) that requires significant resources. Structural and programmatic changes have been required to respond to and implement the increased work required as the Division works with more than a dozen federal agencies to develop and implement new initiatives promoting competition across all the American economy. Since release of the Executive Order (EO), the Administration has continued to increase the prioritization of antitrust enforcement and, through the White House Competition Council it created, drive new projects and programs that demand significant resources. Under the EO,

these projects have included applicable reviews, revisions, and reports (with relevant agencies) regarding horizontal and vertical merger guidelines; bank merger oversight; antitrust guidance protecting workers from wage collusion; competition in air transportation; competition in agricultural markets including meat and poultry and seeds; competition in the mobile application ecosystem; and competition in labor markets.

In addition, the Antitrust Division has implemented an Administration initiative to assist other federal agencies in bringing and winning meritorious cases under competition-related statutes and incorporating competition considerations into their regulatory responsibilities. The Division has forged important relationships at several federal agencies that we did not have just last year and regularly corresponds with these agency contacts about their competition-related initiatives. We also provide technical support and expertise. For example, the Antitrust Division provided technical assistance to the Department of Transportation (DOT) in connection with DOT's challenge to an anticompetitive airline merger. This additional support to federal regulatory agencies requires significant Division resources including staffing.

Finally, over the past two fiscal years, the Division has signed six additional Memoranda of Understanding with federal regulatory agencies including the Department of Agriculture, Department of Health and Human Services, and Department of Labor, that involve the Antitrust Division providing support and sharing expertise related to the agencies' competition-related work.

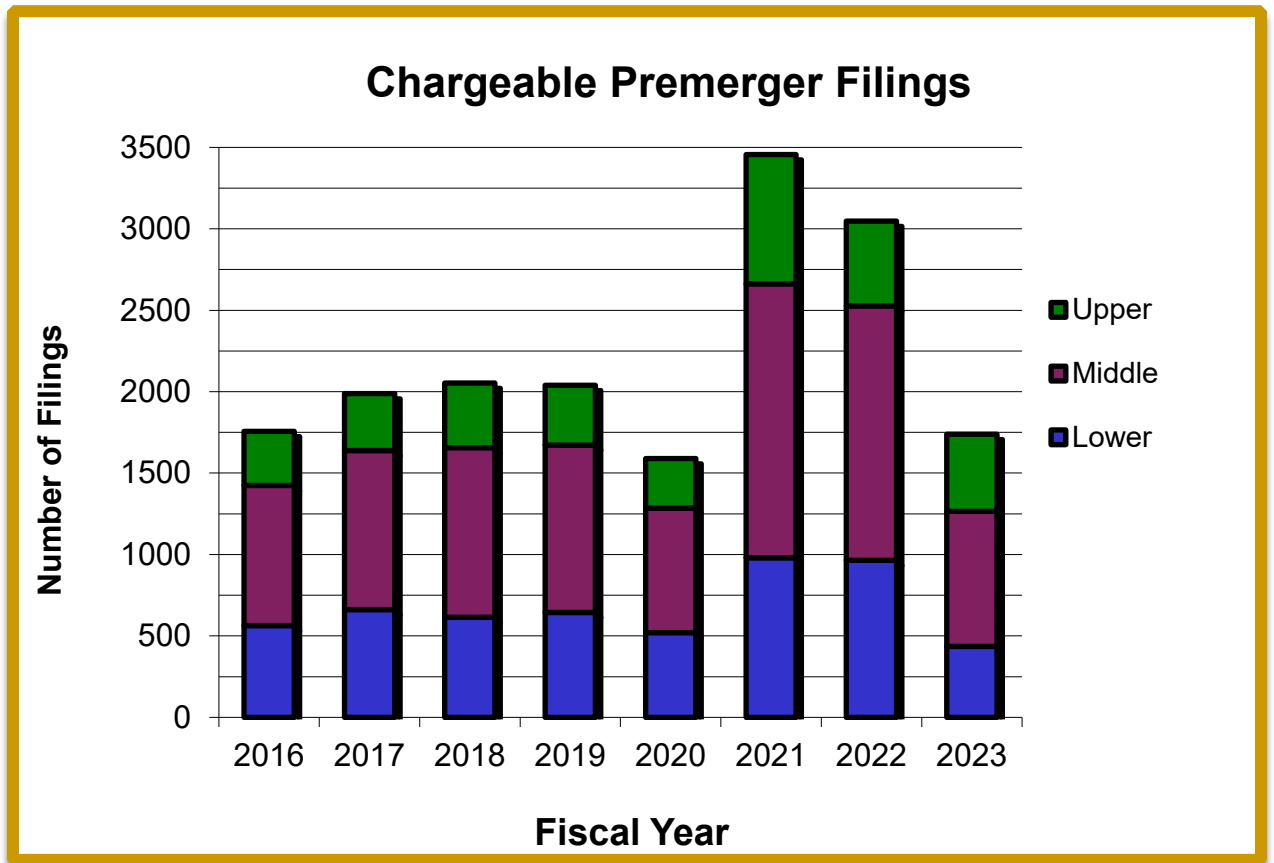
Outcomes

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

- In the area of criminal enforcement, the Division continues to move forcefully against hard-core antitrust violations such as price fixing, bid rigging, and market allocation agreements. A significant number of the Division's prosecutions have involved **international price fixing cartels**, affecting billions of dollars in U.S. commerce. **In the last eleven years (FY 2013 – FY 2023), defendants have been sentenced to pay approximately \$7.9 billion in criminal fines and penalties to the U.S. Treasury. In FY 2023, the Antitrust Division obtained \$267 million in criminal fines and penalties in Division cases.**
- In FY 2023, as the result of Division enforcement efforts, **12 corporations and 32 individuals** were sentenced due to antitrust violations. Prison sentences from FY 2013 through FY 2023 **averaged approximately 14 months**, 40 percent more than the 8.4-month average sentence of the 1990's. During the same period (FY 2013-FY 2023), prison sentences resulted in more than **221 years** of imprisonment in cases prosecuted by the Antitrust Division, with **89 defendants** sentenced to imprisonment of one year or longer.
- Coupled with the increasing frequency and duration of defendants' incarceration was a rise in monetary restitution by criminal defendants. From FY 2013 to FY 2023, restitution generated by the Division was more than **\$86 million**.

Revenue Assumptions

Estimated FY 2024 and FY 2025 filings and fee revenue consider the relative optimism of current medium-range economic forecasts. In its February 2024 report “The Budget and Economic Outlook: 2024 to 2034,” the Congressional Budget Office predicts annual growth beginning in 2024 to be 4.4 percent and to average between 3.8 percent and 4.0 percent from 2025 to 2034.²



Premerger Filing Fee Thresholds Effective February 22, 2024	
Value of Transaction	Filing Fee
< \$173,300,000	\$30,000
\$173,300,000 - < \$536,500,000	\$105,000
\$536,500,000 - < \$1,073,000,000	\$260,000
\$1,073,000,000 - < \$2,146,000,000	\$415,000 (new fee tier)
\$2,146,000,000 - < \$5,365,000,000	\$830,000 (new fee tier)
≥ \$5,365,000,000	\$2,335,000 (new fee tier)

Figure 2

(Pre-merger filing fee threshold amounts are adjusted annually based on inflation)

² CBO’s Economic Projections for 2022 to 2032, available at https://www.cbo.gov/publication/58147#_idTextAnchor266.

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

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

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

- Reviewing and blocking potentially anticompetitive mergers;
- Investigating and litigating civil conduct that violates the antitrust laws;
- Investigating and prosecuting criminal antitrust violations; and
- Expanding antitrust cooperation across the Federal Government pursuant to President Biden's Executive Order, while also changing the language of antitrust law to make enforcement more timely, accessible and responsive.

The Division's FY 2025 budget request seeks to empower the Division to pursue these enforcement efforts more effectively, and at a scale proportional to the need, by increasing its roster of attorneys, paralegals, economists, and support staff.

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

The Division's outdated technology infrastructure cannot accommodate the Division's current workload, which exacerbates staffing shortfalls and reduces the Division's capacity to take on new matters. For example, it often takes several weeks before document and data productions can be processed for attorney review and the Division was recently forced to pull paralegals and attorneys from current investigations and cases to respond to a time sensitive discovery request. This backlog is so severe that top Division leadership meet each Monday to prioritize which document productions will be loaded in the coming week, and which will be pushed down the queue. The Division's staffing and technology challenges are particularly acute.

The Division's FY 2025 budget request is designed to continue the process of providing the Division with the resources needed to overcome its staffing shortfalls, thereby enabling it to more effectively enforce the antitrust laws, fight fraud, and protect American consumers and workers.

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

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

in digital, food and agriculture, airline, health insurance, and labor markets).

- Increase the Division's capacity to prosecute and deter criminal antitrust violations by providing the staff needed to try 20 active criminal trials (including against Teva, the world's largest generic pharmaceutical company); staff the Division's over 150 open grand jury investigations and any resulting litigation; and expand the PCSF, whose mission is to protect taxpayers by investigating collusion, fraud, and corruption in government procurement.
- Allow the Division to: (i) expand antitrust cooperation through dialogues with State and international partners (such as the annual Spring Enforcers Summit), and train, provide regulatory comments, execute interagency memoranda of understanding, and pursue actions with and on behalf of other federal agencies; and (ii) increase the Division's ability to provide real time, accessible responses through statements of interest and speeches and workshops concerning antitrust issues and policy statements and guidelines (such as the merger guidelines being developed with the FTC), as well as the Division's citizen complaint center and on-line agriculture competition complaint portal (with USDA).

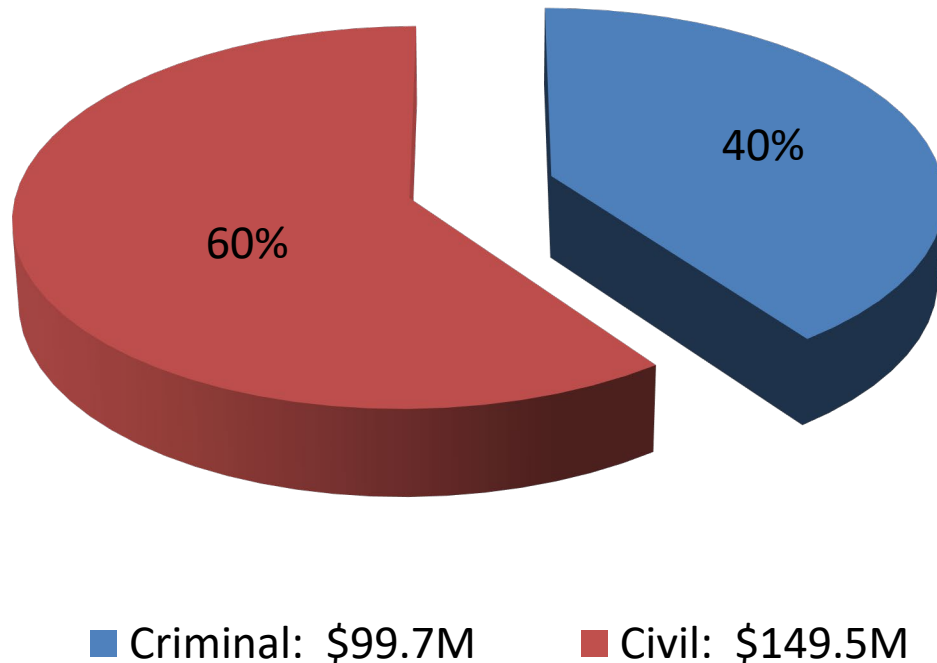
In sum, enforcing the antitrust laws, combatting fraud, and protecting consumers and workers are at the core of the Division's mission, and the FY 2025 budget request would equip the Division with the staffing and IT resources it needs to effectively carry out its mission.

Summary

The Division is continually challenged by an increasingly international and complex workload that spans enforcement areas and requires considerable resources to manage. The importance of preserving economic competition in the United States and around the world cannot be overstated. The threat to American consumers and workers is very real, as **anticompetitive behavior leads directly to higher prices and reduced wages and efficiency and innovation**. In recognition of the importance of its mission, the Antitrust Division requests a total appropriation of \$288,000,000 in support of 993 positions and 952 estimated FTE³.

³ The estimates presented in this submission and the budget appendix do not reflect the enactment of the Consolidated Appropriations Act, 2024. The Antitrust Division does not currently estimate any carryover funding for FY 2025. The Division will provide updated estimates as part of its 2024 spending plan.

FY 2025 Total Budget Request by Program Area



C. Full Program Costs

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

- Criminal Enforcement
- Civil Enforcement

In recent years, approximately 40 percent of the Division's budget and expenditures can be attributed to its criminal program with the remaining, approximately 60 percent attributed to its civil program. The FY 2025 budget request assumes this same allocation. It also incorporates all costs to include mission costs related to cases and matters and oversight and policy, as well as overhead.

D. Performance Challenges

External Challenges

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

- Increasing economic consolidation across industries and geographic regions
- Globalization of the business marketplace
- Rapid technological change, such as artificial intelligence, are dramatically altering the marketplace in unexpected ways.

Internal Challenges

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

- Developing a Litigation Program with special expertise including trial experts, filter teams, special matter paralegals, document review specialists, and litigation support services.
- Generating, accelerating, and expanding the impact of the Division through real time filings, briefs, and litigation.
- Making antitrust law more accessible and responsive to the citizen. For years, it has seemed inaccessible to the non-expert.
- Identifying and meeting challenges on the horizon by bolstering expertise, partnering with other agencies, and investing in IT.

Information Technology (IT) Expenditures

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

The IT areas include:

- *Data Storage* – Electronic storage and processing capability, vital to the mission of the Antitrust Division, continues to expand, growing exponentially since FY 2003, when 12 terabytes (12 trillion bytes) of capacity readily satisfied Division demands. By FY 2010 requirements surpassed 100 terabytes, and the Division now requires electronic analytical capacity needs in excess of **3,000 terabytes**.

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

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Increased Antitrust Enforcement,	<ul style="list-style-type: none"> Increase staffing level to address historically high workload within the Antitrust Division. 	83	42	\$13,682	53
Technology and Data Modernization Support	<ul style="list-style-type: none"> Increase operations and maintenance (O&M) resources for TMF initiatives. 	0	0	\$14,901	59
IT Operations Sustainment	<ul style="list-style-type: none"> Provide dedicated services contract support to sustain current IT operations. 	0	0	\$23,901	63

III. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

Salaries and Expenses, Antitrust Division

For expenses necessary for the enforcement of antitrust and kindred laws, [\$225,000,000] \$288,000,000, to remain available until expended of which not to exceed \$5,000 shall be available for official reception and representation expenses: Provided, That notwithstanding any other provision of law, fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection (and estimated to be [\$190,000,000] \$341,900,000 in fiscal year [2024] 2025, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further, That such collections collected in fiscal year 2025 in excess of \$288,000,000 shall be credited to this account and shall be available in future fiscal years only to the extent provided in advance in appropriations Acts.* Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [2024] 2025, so as to result in a final fiscal year [2024] 2025 appropriation from the general fund estimated at [\$35,000,000] \$0.

Analysis of Appropriations Language

The added proviso allows for fee collections in excess of the appropriated amount to be retained by the Antitrust Division and indicates that such excess collections will only be available for obligation in future fiscal years to the extent such amounts are appropriated in advance.

IV. Program Activity Justification

Decision Unit: Antitrust

<i>Antitrust</i>	Direct Positions	Estimated FTE	Amount (\$000)
2023 Enacted	[1,022]	758	\$225,000
2024 Annualized Continuing Resolution	[910]	910	\$225,000
Adjustments to Base and Technical Adjustments	[0]	0	\$10,516
2025 Current Services	[910]	910	\$235,516
2025 Program Increases	[83]	42	\$52,484
2025 Program Offsets	[0]	0	\$0
2025 Request	[993]	952	\$288,000
Total Change 2024-2025	[83]	42	\$63,000

Information Technology Breakout (of Decision Unit Total)	Direct Positions	Estimated FTE	Amount (\$000)
2023 Enacted	[79]	53	\$41,650
2024 Annualized Continuing Resolution	[0]	0	\$41,650
Adjustments to Base and Technical Adjustments	[0]	13	\$1,284
2025 Current Services	[79]	66	\$42,934
2025 Program Increases	[2]	1	\$328
2025 Program Offsets	[0]	0	\$0
2025 Request	[81]	67	\$43,262
Total Change 2024-2025	[2]	1	\$1,612

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 and one Chief Economist reporting to the Assistant Attorney General.



1. Criminal Enforcement

In pursuit of its criminal enforcement strategy, the Antitrust Division addresses the increased globalization of markets, constant technological change, and massive, complex, and difficult-to-detect criminal conspiracies. These matters transcend national boundaries, involve increasingly technologically advanced efforts to avoid detection of sophisticated criminal behavior, and affect more U.S. businesses and consumers than ever before. Matters such as the Division's ongoing investigation in the generic pharmaceuticals industry exemplify the increasingly complex and important nature of Division workload in the criminal area. The Antitrust Division also focuses on protecting taxpayer dollars through its leadership of the PCSF. The PCSF is an interagency effort designed to deter, detect, investigate, and prosecute bid rigging and related crimes that undermine government procurement processes. During times of crisis, when exigent government spending increases, the need for effective deterrence of potential bad actors, and successful detection and prosecution of actual bad actors, is particularly acute. The PCSF's coordinated and collaborative response includes participation and engagement with interagency working groups devoted to overseeing increased federal funding resulting from the Infrastructure Investment and Jobs Act (IIJA), the crisis in Ukraine, the CARES Act, and other spending authorizations.

2. 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 other, non-criminal anticompetitive conduct. The Division's civil enforcement seeks to maintain the competitive structure of the national economy by preventing firms from acquiring or maintaining monopoly power through anticompetitive means 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.

3. Competition Advocacy

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

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

Review of New and Existing Laws – Given the dynamic environment in which the Antitrust Division must apply antitrust laws, refinements to existing law and enforcement policy are a constant consideration. Division staff analyzes proposed legislation and draft proposals to amend antitrust laws or other statutes affecting competition. Because the Division is the Department’s sole resource for dealing with competition issues, it significantly contributes to legislative development in areas where antitrust law may be at issue.

For example, the Division has filed numerous comments and provided testimony before state legislatures and real estate commissions against proposed legislation and regulations that forbid buyers’ brokers from rebating a portion of the sales commission to the consumer or that require consumers to buy more services from sellers’ brokers than they may want, with no option to waive the extra items.

Education, Speeches, and Outreach – The Division seeks to reach the broadest audience in raising awareness of competition issues and, to do so, provides guidance through its business review program, outreach efforts to business groups and consumers, and the publication of antitrust guidelines. Division personnel routinely give speeches to a wide variety of audiences including industry groups, professional associations, and antitrust enforcers from international, state, and local agencies.

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

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



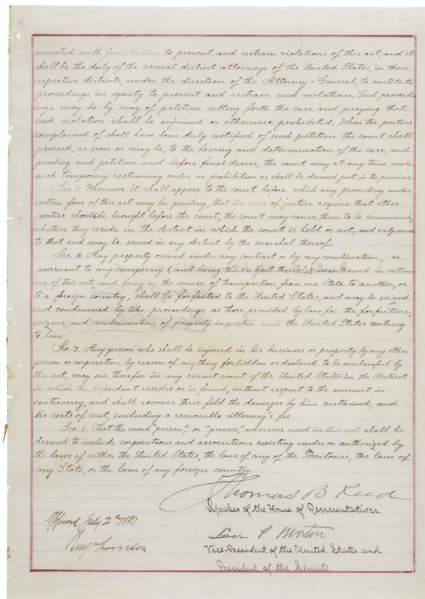
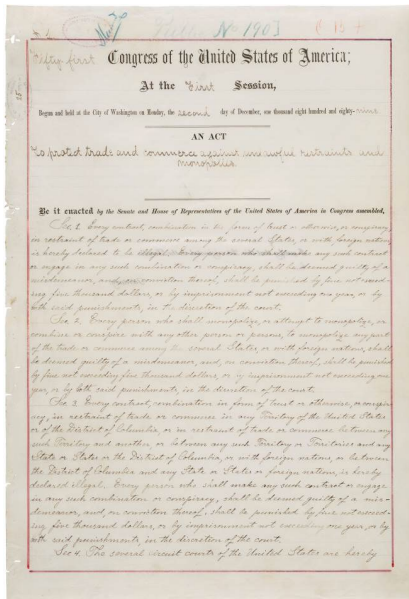
- Detailing Division employees to Congressional offices; and
- Actively participating in White House interagency task forces.

4. 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 may substantially 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.)

Performance Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Antitrust Division												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2023		FY 2023		FY 2024		Current Services Adjustments and FY 2025 Program Changes		FY 2025 Request	
Total Costs and FTE (Reimbursable: FTE are included, but costs are bracketed and not included in totals)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			887	225,000	758	222,071	910	225,000	42	63,000	952	288,000
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Changes		FY 2025 Request	
Program Activity	CRIMINAL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			355	90,000	303	88,828	364	90,000	17	25,200	381	115,200
Performance Measure:	Number of Active Grand Juries		95		154		95		25		120	
Outcome Success Rate:	Total Dollar Value of Savings to U.S. Consumers (\$ in millions)		Not Projected		Not Projected		Not Projected		Not Projected		Not Projected	
Program Activity	CIVIL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			532	135,000	455	133,243	546	135,000	25	37,800	571	172,800
KPI:	Number of active civil non-merger investigations		50		18		60		10		60	
Performance Measure:	Number of Active Investigations		50		45		50		0		50	
Outcome Success Rate:	Total Civil (Merger and Non-Merger) Dollar Value of Savings to U.S. Consumers (\$ in millions)		Not Projected		Not Projected		Not Projected		Not Projected		Not Projected	

TABLE DATA DEFINITIONS:

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

Criminal and Civil key performance indicators (KPIs), performance measure and outcome success rate target adjustments for FY 2023 through FY 2025 projections are based on an analysis of annual and long-term goals.

Program Activity: Criminal

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

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

Program Activity: Civil

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

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

The end outcome of the Division's work in the Civil Non-Merger Enforcement Strategy is the Savings to U.S. Consumers that arise from its successful elimination and deterrence of anticompetitive behavior. There are two components to the Division's estimate of consumer savings: the volume of commerce affected by the anticompetitive behavior and the price effect of the behavior. Volume of commerce is estimated based on the best available information from investigative and public sources, and it is annualized and confined to U.S. commerce. The Division is more limited in its ability to estimate price effect, and thus rely on a conservative one percent figure for its estimate. The Division believes our consumer savings figure to be a very conservative estimate.

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

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

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

PERFORMANCE MEASURE TABLE						
Decision Unit: Antitrust Division						
Strategic Objective	Performance Measures		FY 2023	FY 2023	FY 2024	FY 2025
			Target	Actual	Target	Target
FY 22-23	Agency Priority Goals	Number of formalized partnerships with state, federal, and international partners	33	123	NA	NA
FY 22-23	Agency Priority Goals	Percent of federal judicial districts the Department has engaged with related to the effects of mergers and acquisitions	100%	100%	NA	NA
FY 22-23	Agency Priority Goals	Implementing of the policy measures suggested in Presidential Executive Orders on competition	100%	100%	NA	NA
FY 24-25	Agency Priority Indicator	Percent of pending grand jury investigations resolved	NA	NA	75%	75%
FY 24-25	Agency Priority Indicator	Percent of pending civil non-merger investigations resolved	NA	NA	75%	75%
4.1	Key Performance Indicator: Civil	Number of active civil non-merger investigations	50	18	60	60
4.1	Performance Measure: Criminal	Number of Active Grand Juries	95	154	95	120

V. Performance, Resources, and Strategies

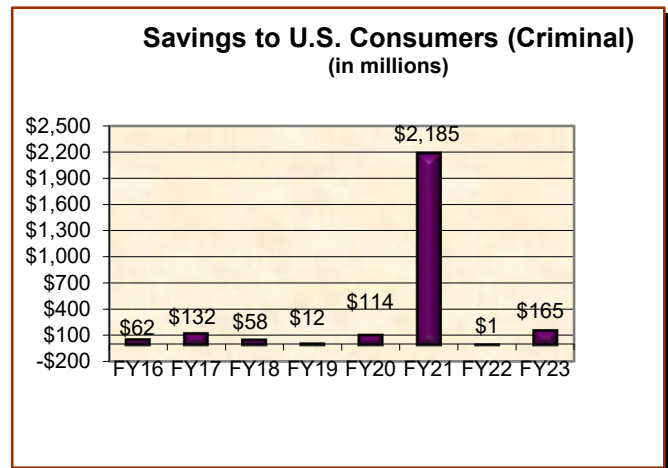
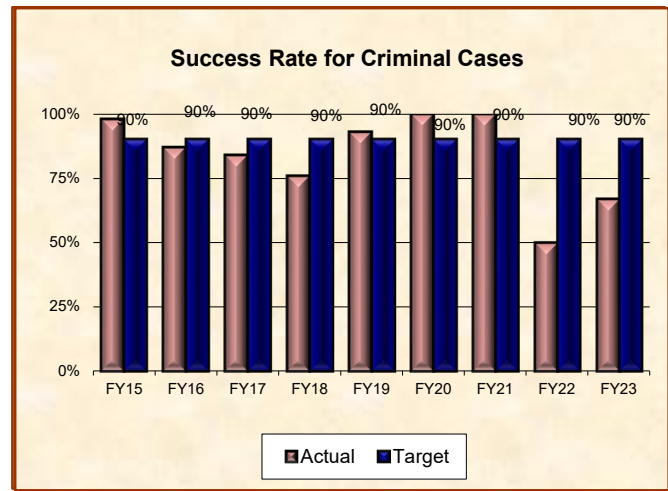
A. Performance Plan and Report for Outcomes

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

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

In FY 2023, the Division successfully resolved 67 percent of criminal matters. While taking an aggressive stance against criminal antitrust violations, the success rate of matters has declined due to prosecuting more cases instead of accepting settlements.

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



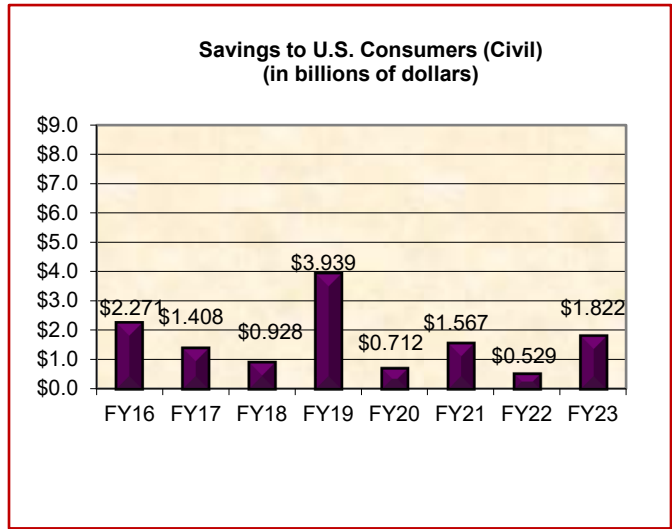
B. Civil Outcome Performance Measures

The Savings to U.S. Consumers chart below illustrates the Civil Outcome Performance Measures for the Antitrust Decision Unit (as a result of the Antitrust Division’s civil enforcement efforts).

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

The success rate for merger transactions challenged includes mergers that are abandoned, fixed before a complaint is filed, filed as cases with consent decrees, filed as cases but settled prior to litigation, or filed and litigated successfully. Many times, merger matters involve complex anticompetitive behavior and large, multinational corporations, requiring significant resources to review. The Division’s Civil Merger Program successfully resolved over 97 percent of the matters it challenged in FY 2014 - FY 2023 that have since reached full conclusion and expects to meet or exceed its success rate goal for FY 2024 and FY 2025.

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.



C. Exemplars – Civil

A. Merger

i. Litigated Cases

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

On September 21, 2021, the Division, along with six states and the District of Columbia, filed a civil antitrust action to block an unprecedented series of agreements between American Airlines and JetBlue. This defacto merger allowed the two airlines to consolidate their operations in Boston and New York City. At trial in October 2022, the Division convincingly proved that this extensive combination, which the companies call the “Northeast Alliance,” will eliminate competition in Boston and New York City. And the Division proved that the agreements would have harmed air travelers across the country by significantly diminishing JetBlue’s incentive to compete with American elsewhere, further consolidating the already highly concentrated airline industry. In July 2023, the district court entered a permanent injunction dissolving the airlines’ agreements. JetBlue has announced that it was terminating the Northeast Alliance and forgoing an appeal, American Airlines has appealed, No. 23-1802 (1st Cir.). The United States will file its answering brief in this appeal by March 5, 2024.

United States and Plaintiff States v. JetBlue Airways and Spirit Airlines

In March 2023, the Division filed a civil antitrust lawsuit to block JetBlue Airways Corporation’s proposed \$3.8 billion acquisition of its largest and fastest-growing ultra-low-cost rival, Spirit Airlines, Inc. The Division’s complaint was joined by the Attorneys General of the Commonwealth of Massachusetts, the State of New York, the District of Columbia, California, Maryland, New Jersey, and North Carolina. The complaint alleged that Spirit’s low-cost, no-frills flying option has brought lower fares and more options to routes across the country, making it possible for more Americans – particularly price sensitive consumers who pay their own fares – to travel. JetBlue’s acquisition of Spirit would eliminate the “Spirit Effect,” where Spirit’s presence in a market forces other air carriers, including JetBlue, to lower their fares. The deal also would eliminate half of the ultra-low-cost capacity in the United States. Unless enjoined, the transaction would violate Section 7 of the Clayton Act and lead to higher fares and fewer seats, harming millions of consumers on hundreds of routes. The trial was conducted in late 2023 and in January 2024 the court issued an order blocking the merger.

United States v. Bertelsmann SE & Co., et al.

(Proposed Merger of Penguin Random House and Simon & Schuster)

In October 2022, the U.S. District Court for the District of Columbia blocked book publisher Penguin Random House’s proposed \$2.2 billion acquisition of Simon & Schuster. The court found that the merger would have harmed competition in the market for the U.S. publishing rights to anticipated top-selling books. The court’s decision followed a thirteen-day trial in August 2022. As alleged in the complaint, the proposed acquisition would have enabled Penguin Random House, which is already the largest book publisher in the world, to exert outsized influence over which books are published

in the United States and how much authors are paid for their work. At the time of filing the complaint, the publishing industry was already highly concentrated and only five publishers, known as the “Big Five,” were regularly able to offer high advances and extensive marketing and editorial support, making them the best option for authors who want to publish a top-selling book. The proposed acquisition would have put Penguin Random House in control of close to half the market for acquiring publishing rights to anticipated top-selling books, leaving hundreds of individual authors with fewer options and less leverage. Shortly after the court’s ruling, Penguin Random House and Simon & Schuster announced they would not appeal the decision.

United States v. ASSA ABLOY AB et al.

On September 15, 2022, the Division filed a civil antitrust lawsuit to block ASSA ABLOY AB’s proposed \$4.3 billion acquisition of the Hardware and Home Improvement division of its rival, Spectrum Brands Holdings Inc. ASSA ABLOY and Spectrum were two of the three largest producers of residential door hardware in the concentrated, \$2.4 billion U.S. industry. The complaint, filed in the U.S. District Court for the District of Columbia, alleged the parties have competed for years to be leaders in the U.S. markets for premium mechanical door hardware and for smart locks. The proposed transaction would have transformed these markets, giving ASSA ABLOY a near-monopoly in premium mechanical door hardware and more than a 50% share in smart locks, leaving only one significant competitor.

In May 2023, the Division reached a settlement with the parties, which is pending court approval. Under the agreement, ASSA ABLOY must divest certain assets to Fortune Brands Innovations, Inc. that are designed to allow Fortune to compete in the markets for premium mechanical door hardware and smart locks used in residential and multifamily buildings. The settlement also includes a provision that requires a court-appointed monitor to evaluate later the effectiveness of the remedy and, if necessary to maintain the competitive intensity of the smart locks market, seek divestiture of additional intellectual property from ASSA ABLOY.

Other Litigations That Changed Merger Outcomes

In 2022, the Division filed suit to block two other mergers. Although the Division did not ultimately prevail at trial in those cases, the Division’s lawsuits caused the merging parties to alter their deals to reduce the chance their mergers would harm competition. In one case, UnitedHealth Group agreed to divest a far larger portion of its first-pass claims editing technology. In another case, Booz Allen Hamilton and EverWatch Corporation agreed to submit separate and uncoordinated bids for an important contract issued by the National Security Agency.

ii. Abandoned Transactions

Adobe/Figma

In September 2022, Adobe, maker of Photoshop, Acrobat, and Illustrator, announced plans to acquire Figma, a leading designer of web-based collaboration software, for about \$20 billion in cash and stock. This acquisition would

have eliminated Adobe's incentive to compete with Figma on collaboration software and the threat Figma posed to Adobe's Photoshop and Illustrator software monopolies. In December 2023, Adobe and Figma announced they would abandon the transaction after the Division, as well as antitrust enforcers in the United Kingdom and Europe, expressed concern about its threat to competition in those markets.

Tenaris/Benteler

In July 2022, Tenaris proposed to acquire its major competitor Benteler Steel/Tube Manufacturing Corp. for approximately \$460M. The parties abandoned this transaction in February 2023 after the Division's investigation uncovered evidence that the deal would not only reduce head-to-head competition for some kinds of steel pipes but also the potential foreclosure of distributors.

China International Containers Group/Maersk

In September 2021, China International Marine Containers Group announced that it planned to buy Maersk Container Industry and its China-based affiliate. The Division's investigation revealed that the transaction would have combined two of the world's four suppliers of insulated container boxes and refrigerated shipping containers and would have consolidated control of the world's production of insulated container box and refrigerated shipping containers in Chinese state-owned or state-controlled enterprises. The transaction risked higher prices and less innovation in this crucial infrastructure for global trade. In August 2022, China International confirmed that it had abandoned the proposed acquisition.

Non-Public Abandonments of Seven Potentially Anticompetitive Mergers in Important Industries

Since the beginning of 2022, the Division's scrutiny of potentially anticompetitive mergers has led to the abandonment of seven other mergers that threatened competition across important industries like artificial intelligence, renewable energy, television broadcasting, and data solutions. Further details of those transactions and the Division's efforts cannot be disclosed because the Division's investigations remain non-public.

B. Anticompetitive Conduct

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

i. Litigation and Settlements

United States v. Google (Search Litigation)

In October 2020, the Division filed a landmark civil enforcement action against Google. A bipartisan group of 14 states are co-plaintiffs with the Division. An additional 38 states and territories filed suit against Google in December 2020, incorporating the

Division’s allegations and adding certain additional claims. The two suits have been consolidated for pretrial proceedings in federal court in Washington, DC.

The complaint alleges that Google used multiple anticompetitive tactics over many years to maintain its monopoly position in search. Google’s maintains a monopoly in search, with a more than 85 percent market share on desktops and 95 percent on mobile devices. Google uses its monopoly power to exclude rivals from the search distribution channels making it impossible to challenge Google’s monopolies. About 80 percent of searches are covered by the combination of Google’s exclusionary contracts and Google’s products, leaving only a small fraction potentially available for competitors. Google’s anticompetitive intent is apparent in its documents: Google has described some of its exclusionary agreements as “[i]nsurance polic[ies] that preserve[] our search and assistant usage.”

The trial began in September 2023. Closing arguments will be held in May 2024.

United States v. Google (AdTech Litigation)

On January 24, 2023, the Division filed another civil enforcement action against Google, this time for monopolizing multiple digital advertising technology products in violation of Sections 1 and 2 of the Sherman Act. Seventeen states have since joined the Division’s lawsuit against Google.

The complaint alleges that Google used anticompetitive means for 15 years to monopolize the tools and platforms that help advertisers buy, and publishers sell, digital advertising. Google’s conduct included acquiring competitors, forcing adoption of its own tools, and manipulating digital advertising auctions. As a result of Google’s illegal monopoly, and by its own estimates, Google pockets on average more than 30% of the advertising dollars that flow through its digital advertising technology products.

Discovery is ongoing and trial is likely to begin in summer 2024.

Poultry Compensation Information Exchange Litigation

On July 25, 2022, the Division filed a civil antitrust complaint and concurrent proposed settlement to stop three of the nation’s largest poultry companies—Cargill, Sanderson Farms, and Wayne Farms—and data consultant WMS & Co. and its president G. Jonathan Meng from suppressing the pay of hundreds of thousands of poultry processing plant workers and to stop Sanderson and Wayne Farms from engaging in deceptive practices regarding their contracts with poultry growers. On May 17, 2023, the Division filed an amended complaint and settlement proposal.

The complaint alleged 20 years of collaboration on wages between 21 competing chicken and turkey processors that suppressed wages for plant workers. It also alleged a history of camouflaging the true range of financial outcomes for growers by using a “tournament system” to pay growers, in violation of the Packers and Stockyard Act.

Under the settlement, the defendants must pay restitution to the workers, change the tournament system, pay workers fairly, and must cooperate with the Division’s ongoing

investigation. Defendants may not share competitively sensitive information amongst each other or other competitors. The court also appointed a global monitor to ensure compliance with the settlement. The district court entered the consent decree on June 5, 2023.

On May 17, 2023, the Division filed an amended complaint and proposed settlement with George's, Inc. and George's Foods, LLC. Much like the earlier settlement agreement, the proposed consent decree with George's forbids the sharing of competitively sensitive information, requires cooperation with the United States' investigation, ensures restitution to workers, and imposes a 7-year antitrust monitor. After completing the Tunney Act process, the United States moved for the district court to enter the proposed consent decree on August 15, 2023.

United States v. Activision Blizzard, Inc.

On April 3, 2023, the Division filed a civil antitrust complaint and concurrent proposed settlement with the U.S. District Court for the District of Columbia against one of the world's largest video game developers and publishers for imposing rules that limited competition for players in Activision's Overwatch and Call of Duty professional esports leagues and suppressed the wages of esports players in these leagues, in violation of the Sherman Act. The complaint alleged that Activision, two esports leagues owned by Activision, and the independently owned teams in each league implemented a so-called Competitive Balance Tax. The Tax penalized teams in the Overwatch and Call of Duty Leagues if a team's player compensation exceeded a threshold set by Activision.

Under the settlement, which the court entered July 11, 2023, Activision is prohibited from imposing any rule that would, directly or indirectly, limit player compensation in any of Activision's professional esports leagues, or that would tax, fine, or otherwise penalize any team for exceeding a certain amount of compensation for its players. Activision must also end all Competitive Balance Taxes in its professional esports leagues, implement revised antitrust compliance and whistleblower protection policies, and provide notice and an explanation of the final judgment to teams and players in its professional esports leagues.

ii. Investigations Targeting Directors Serving on Boards of Competitors

In the fall of 2022, the Division launched a concerted effort to identify and address potential violations of Section 8 of the Clayton Act, which prohibits directors and officers from serving simultaneously on the boards of competitors because such competitors may facilitate or coordinate collusion and suppress competition. To date the Division has opened approximately 20 investigations into potential Section 8 violations. These investigations have led to the 15 director resignations from 11 company boards. The Division's efforts to identify and resolve potential Section 8 violations continues, and Division staff are increasingly focused on identifying potential Section 8 violations in existing investigations.

iii. Amicus Briefs

1. *Robinson v. Jackson Hewitt*

On October 20, 2023, the Division filed an amicus brief in *Robinson v. Jackson Hewitt, Inc.*, No. 2:19-cv-9066 (D.N.J). The plaintiffs in this case—three former Jackson Hewitt employees—allege that Jackson Hewitt and its franchisees agreed not to compete with each other for certain employees. In response to the district court’s invitation, the United States filed an amicus brief explaining how Section 1 applies to no-poach agreements in the franchise context and pointed out facts in the record that are relevant to the issues presented. The United States took no position on the ultimate merits of the plaintiffs’ claims. The amicus brief explained that a no-poach agreement in the franchise context is subject to per se condemnation when (1) the agreement eliminates horizontal competition for employees; and (2) the defendants cannot establish that the agreement is appropriately related to, and reasonably necessary to achieve the procompetitive goals of, a broader procompetitive undertaking. Even when the no-poach agreement is between a franchisor and a franchisee that operate at different levels of the franchise system, the agreement may be horizontal and thus per se illegal if the parties actually or potentially compete for workers’ labor services. The brief also pointed to facts in the record suggesting the alleged agreement was horizontal, including the fact that Jackson Hewitt competed with its franchisees for employees and that Jackson Hewitt may have organized and enforced the alleged no-poach agreement. The court has not yet issued a decision on the motion to dismiss.

2. *Tesla v. LADA*

On October 19, 2023, the Division filed an amicus brief supporting neither party in *Tesla, Inc. v. Louisiana Automobile Dealers Association*, No. 23-30480 (5th Cir.). In this case, Tesla has alleged a conspiracy between car dealerships, a trade association, and commissioners of the Louisiana Motor Vehicle Commission to exclude Tesla from the Louisiana market by restricting Tesla’s business model of selling, leasing, distributing, and servicing electric vehicles directly to consumers, rather than through local, franchised dealerships. The district court dismissed Tesla’s claims against the commissioners on the ground that Tesla’s complaint did not plausibly allege that an agreement was made. In an apparent alternative holding, the district court then stated that Tesla’s allegations did not show that the commissioners intended to engage in a conspiracy for the purpose of restraining trade. The United States’ amicus brief explained that this was an incorrect articulation of the legal standard for Section 1 claims and urged the Fifth Circuit to correct the district court’s misstatement. The brief pointed to Supreme Court and Fifth Circuit precedents establishing that anticompetitive purpose is not an element of a Section 1 claim. Instead, plaintiffs must show only concerted action and anticompetitive effects. Tesla’s appeal remains pending.

3. *Giordano v. Saks*

On August 7, 2023, the Division filed an amicus brief supporting the plaintiffs-appellants in *Giordano v. Saks, Inc.*, No. 23-600 (2d Cir.). The plaintiffs are former Saks employees who allege that Saks conspired with five luxury brands that sell goods and apparel at Saks not to solicit or hire certain Saks employees. The plaintiffs contend that

this conspiracy constitutes a per se Section 1 violation. The district court dismissed three of the plaintiffs' claims as time-barred and dismissed the remaining claim on the ground that the per se rule did not apply. The district court held that the ancillary restraints defense to the per se rule applied because the alleged agreement accompanied a collaborative business relationship. On appeal, the United States filed an amicus brief arguing that the district court improperly applied the ancillary-restraints defense. The amicus brief pointed out that defendants bear the burden of proving this defense, which typically requires a fact-intensive inquiry, and argued that the elements of the defense do not appear on the face of the plaintiffs' complaint. The United States further argued that the district court misapplied the continuing-violation doctrine in concluding that some of the plaintiffs' claims were barred by the statute of limitations. The amicus brief explained that, under Supreme Court precedent, a cause of action accrues each time the defendants commit an overt act that injures the plaintiffs in furtherance of an ongoing antitrust conspiracy. The plaintiffs' appeal remains pending.

4. Illinois v. Elite Staffing

On June 13, 2023, the Division filed an amicus brief in *State of Illinois ex rel. Raoul v. Elite Staffing, Inc.*, No. 128763 (Ill. Sup. Ct.). This is a state-government enforcement action under the Illinois Antitrust Act (IAA) against a display manufacturer (Colony) and three staffing agencies that contracted to provide Colony temporary workers. Illinois alleges that the staffing agencies conspired both to fix the wages of temporary workers at Colony locations and not to solicit or hire each other's employees at these locations, and that Colony participated in these conspiracies. After the trial court denied a motion to dismiss, the Illinois Supreme Court accepted for interlocutory review the question of whether the IAA applies to labor services. The United States filed an amicus brief setting forth its views on the scope of the labor exemptions under federal antitrust law, which Illinois courts generally consider as a guide in construing the IAA. Here, the lower Illinois courts noted that the IAA contains a labor exemption that is similar to the labor exemption in Section 6 of the Clayton Act. The United States' amicus brief explained that the labor exemptions in federal antitrust law apply only to certain agreements that facilitate collective bargaining but do not exempt agreements among employers to fix wages or allocate workers. Thus, the brief argued, naked agreements to fix wages or allocate workers are subject to per se treatment under federal antitrust laws. The United States further argued that a categorical antitrust exemption for employment agreements would decrease labor market competition and harm workers. The Illinois Supreme Court heard argument in this case on November 15, 2023. The court has not yet issued a decision.

5. Illinois v. Colony Display

On June 13, 2023, the Division filed an amicus brief in *State of Illinois ex rel. Raoul v. Colony Display LLC*, No. 128767 (Ill. Sup. Ct.). This appeal stems from the same enforcement action described above regarding Elite Staffing. After the trial court denied a motion to dismiss, the Illinois Supreme Court accepted for interlocutory review the question of whether the IAA's per se rule applies to horizontal agreements facilitated by a vertical noncompetitor. The United States filed an amicus brief setting forth its views on the applicability of the per se rule to such agreements under federal antitrust law, which Illinois courts generally consider as a guide in construing the IAA. The United

States’ amicus brief argued that the United States Supreme Court and Courts of Appeals have consistently held that per se illegal horizontal conspiracies remain per se illegal even if a vertically related firm participates. The amicus brief also argued that, under federal law, a vertically related firm that participates in a per se illegal restraint is subject to per se liability. The Illinois Supreme Court heard argument in this case on November 15, 2023. The court has not yet issued a decision.

6. Choker & DeMarco v. Pet Emergency Clinic & Nat’l Veterinary Assocs.

On March 30, 2023, the United States filed an amicus brief supporting the plaintiffs-appellants in *Choker et al. v. Pet Emergency Clinic et al.*, Nos. 22-35650, 22-35698, 22-35711 (9th Cir.). The plaintiffs—veterinarians who previously worked for one of the defendant veterinary clinics—alleged that Pet Emergency Clinic (PEC) conspired to monopolize veterinary services in the local market by, among other things, planning to acquire a competitor and impose non-compete provisions on PEC’s employees and shareholders, which resulted in the plaintiffs’ loss of employment. The district court dismissed the complaint, reasoning that the former-employee plaintiffs lacked antitrust standing because they were not customers or competitors of the defendant clinic. The United States’ amicus brief argued that the district court failed to recognize numerous ways in which the antitrust laws protect the interests of workers, including by treating workers as potential competitors of their employers in appropriate cases. The United States participated in oral argument on December 8, 2023, and asked the court to correct the district court’s overbroad statements that could be construed to limit workers’ ability to bring antitrust claims. The court has not yet issued a decision.

7. Top Agent Network v. National Ass’n of Realtors

On March 13, 2023, the United States filed an amicus brief supporting neither party in *Top Agent Network, Inc. v. National Ass’n of Realtors et al.*, No. 21-16494 (9th Cir.). The plaintiff—a small real-estate platform that provides an alternative to the dominant multiple-listing services affiliated with the defendant National Association of Realtors (NAR)—alleged that one of NAR’s rules hampers its ability to compete with NAR in providing real-estate brokers with listing services. The district court granted defendants’ motion to dismiss, reasoning that although the plaintiff properly alleged the rule had anticompetitive effects, the plaintiff lacked antitrust standing because its own business model was inherently anticompetitive. The United States’ amicus brief explained that the district court committed several errors, including focusing on the wrong product market, assuming the plaintiff’s business model was anticompetitive, and presuming that having such a business model would bar a plaintiff from seeking antitrust relief. On August 28, 2023, the Ninth Circuit issued an unpublished memorandum disposition vacating the district court’s opinion and remanding for reconsideration in light of an intervening opinion. 2023 WL 5526711.

8. Nostalgic Partners v. Office of the Commissioner of Baseball

On January 30, 2023, the Division filed an amicus brief in *Nostalgic Partners, LLC et al. v. The Office of The Commissioner of Baseball*, No. 22-2859 (2d Cir.). Plaintiffs in this case are a group of minor league baseball teams who are former “affiliates” of major

league baseball teams. Plaintiffs allege that the Professional Development League—the new minor league system implemented after the 2020 expiration of the Professional Baseball Agreement—involves a horizontal group boycott among major league teams against 40 minor league teams (including plaintiffs) who can no longer compete to affiliate with major league teams or even play against other affiliates. Plaintiffs also allege that the new Professional Development League system involves a horizontal agreement among major league teams “that has artificially reduced and capped output” of minor league affiliations below the level “that would otherwise occur in an unconstrained market.” The district court dismissed the complaint based on the “baseball’s exemption” to the antitrust laws established by a 1922 Supreme Court case. The United States filed an amicus brief in support of neither party setting forth its views on the proper scope of the baseball exemptions. The United States’ amicus brief pointed out that the Supreme Court itself has observed that this exemption is “of dubious validity.” *Radovich v. Nat’l Football League*, 352 U.S. 445, 450 (1957). Because the plaintiffs had conceded that the alleged conduct fell within the scope of the baseball exemption, however, the United States did not take a position on whether the exemption applied. Instead, the amicus brief argued that the Second Circuit should not extend the baseball exemption in its ruling. On June 20, 2023, the Second Circuit affirmed the district court’s dismissal of the complaint in an unpublished summary order. 2023 WL 4072836. The court relied on the plaintiffs’ concession that the baseball exemption barred their claims and noted that “we must continue to apply Supreme Court precedent unless and until it is overruled by the Supreme Court.”

9. *Deslandes v. McDonald’s*

On November 9, 2022, the Division and the Federal Trade Commission filed an amicus brief in *Deslandes v. McDonald’s USA, LLC*, Nos. 22-2333, 22-2334 (7th Cir.). Plaintiffs, former employees at McDonald’s restaurants, allege that McDonald’s Corporation and a McDonald’s subsidiary violated Section 1 of the Sherman Act by forming a conspiracy with McDonald’s franchisees. The terms of the conspiracy allegedly were that (1) franchisees would not solicit or hire individuals currently or recently employed by other franchisees or by McDonald’s and (2) McDonald’s would not solicit or hire individuals currently or recently employed by franchisees. On a Rule 12(c) motion for judgment on the pleadings, the district court dismissed the Section 1 claim on the ground that plaintiffs had not stated a claim under the per se rule, the quick-look doctrine, or the rule of reason. The Division and the FTC filed an amicus brief setting forth their views on Section 1’s application to no-hire/no-solicitation agreements. The brief argued that the district court committed at least two legal errors: It misapplied the ancillary-restraints doctrine, and it misinterpreted the Supreme Court’s 2021 decision in *NCAA v. Alston*, 141 S. Ct. 2141. On August 25, 2023, the Seventh Circuit vacated the district court’s order and remanded. 81 F.4th 699. In an opinion by Judge Easterbrook, the Seventh Circuit held that the district court erred by classifying the no-hire/no-solicitation agreements as ancillary restraints. Judge Easterbrook’s opinion criticized the district court for treating benefits to consumers as justifying detriments to workers, noting that *Alston* forbade this approach. The court also properly recognized that the ancillary restraints doctrine is a defense that defendants bear the burden of raising and establishing. *Deslandes* is the first appellate decision recognizing that naked horizontal no-poach agreements are per se unlawful under Section 1 of the Sherman Act. McDonald’s has filed a petition for certiorari. No. 23-562.

10. Chase Manufacturing v. Johns Manville Corp.

On October 12, 2022, the Division filed an amicus brief in *Chase Manufacturing, Inc. v. Johns Mansville Corp.*, No. 22-1164 (10th Cir.). Chase Manufacturing sued Johns Mansville under Section 2 of the Sherman Act, alleging that Johns Mansville undertook wide-ranging efforts to prevent its customers from dealing with Chase, a new rival in the market for calcium silicate. The district court granted summary judgment to Johns Mansville on Chase’s Section 2 monopolization claim. It held that Chase’s claim failed to satisfy the two-part test set forth by the Tenth Circuit in *Novell, Inc. v. Microsoft Corp.*, 731 F.3d 1064 (10th Cir. 2013). The Division filed an amicus brief arguing that the district court erred by extending Novell’s two-part test—which applies to a dominant firm’s refusal to deal with a rival—to a monopolist’s imposition of anticompetitive conditions on customers, which raises significantly different antitrust policy concerns. On October 25, 2023, the Tenth Circuit agreed, holding that the district court erred by applying the Novell test to the claims in this case. 84 F.4th 1157. Instead, the court held, the district court should have looked to the reality of the calcium silicate market and the practical effects of the defendant’s conduct.

iv. Statement of Interest

1. In re RealPage Rental Software Antitrust Litig.

On November 20, 2023, the United States filed a statement of interest in *In re RealPage Rental Software Antitrust Litigation*, No. 3:23-md-3071 (M.D. Tenn.). This multi-district litigation concerns price-fixing claims against RealPage, a software company, and residential landlords who use RealPage’s services. The plaintiffs allege that RealPage unlawfully combines competing landlords’ decision making on housing prices, which anticompetitively raises multifamily rental housing prices. The defendants filed motions to dismiss on the ground that the plaintiffs failed to adequately allege a Section 1 violation. The United States’ statement of interest argued that the defendants’ alleged use of RealPage’s pricing algorithm constitutes a Section 1 violation because the defendants knowingly combining their sensitive, nonpublic pricing and supply information in an algorithm that they rely upon in making pricing decisions, with the knowledge and expectation that other competitors will do the same. The statement of interest pointed out that whether firms effectuate a price-fixing scheme through a software algorithm or through human-to-human interaction should be of no legal significance. The United States participated in oral argument on the motions to dismiss on December 11, 2023. The court has not yet issued a decision.

2. Verax Biomedical v. American National Red Cross

On August 4, 2023, the United States filed a statement of interest in *Verax Biomedical, Inc. v. American National Red Cross*, No. 1:23-cv-10335-PBS (D. Mass.). The plaintiff—a supplier of blood testing products previously used by the American Red Cross’s hospital customers—sued the Red Cross for alleged antitrust violations. The Red Cross moved to dismiss, arguing that, as a “a Federally chartered instrumentality of the United States,” 36 U.S.C. § 300101(a), it is not subject to the federal antitrust laws. The United States’ statement of interest explained, however, that Red Cross is properly

subject to the antitrust laws. Under *U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S.736 (2004), the Red Cross is a “person”—not “part of” the U.S. government—because, among other things, it is constituted as a “corporation”; it is neither controlled nor supervised by the federal government; it performs private as well as public functions; and its statutory label as “instrumentality” is narrowly focused on its status under state taxation law. On September 28, 2023, the court held oral argument on the motion to dismiss and took the motion under advisement. The court has not issued a decision.

3. *Fuentes v. Jiffy Lube*

On June 12, 2023, the Division filed a statement of interest in *Fuentes v. Jiffy Lube International, Inc.*, No. 2:18-cv-05174-AB (E.D. Pa.). The intervenor-plaintiff, a former employee of a Jiffy Lube franchisee, alleged that Jiffy Lube violated Section 1 of the Sherman Act by conspiring with Jiffy Lube’s franchisees to ensure that (1) franchisees would not solicit or hire individuals currently or recently employed by other franchisees or by Jiffy Lube; and (2) Jiffy Lube would not solicit or hire individuals currently or recently employed by franchisees. The defendants moved to dismiss, and, in briefing on the motion, both the plaintiff and the defendant relied on the amicus brief submitted by the Division and the Federal Trade Commission in *Deslandes v. McDonald’s USA, LLC*, 81 F.4th 669 (7th Cir. 2023). The Division’s statement of interest explained the principles that apply to no-hire/no-solicitation agreements under Section 1, including the principles used to determine whether the agreements are horizontal and, if so, ancillary. The statement of interest argued that no-hire and no-solicitation agreements in franchise contracts can constitute horizontal agreements subject to per se condemnation. On September 14, 2023, the district court granted the defendants’ motion to compel arbitration and, in light of this ruling, denied the defendants’ motion to dismiss as moot. 2023 WL 5984284.

4. *In re Deere & Co. Repair Servs. Antitrust Litig.*

On February 14, 2023, the Division filed a Statement of Interest in *In re Deere & Company Repair Services Antitrust Litigation*, No. 3:22-cv-50188 (N.D. Ill.). Plaintiffs – a putative class of farms and farmers that own and use equipment manufactured by Deere & Company (Deere)—alleged that Deere has violated Sections 1 and 2 of the Sherman Act by preventing them from performing certain repairs on Deere-branded agricultural equipment and, thus, restraining trade and monopolizing an aftermarket for “Deere Repair Services.” Deere moved for judgment on the pleadings on the ground that defining such an aftermarket required allegations that Deere “either [1] hid its repair policies from customers before they bought a Tractor, or [2] changed those policies after the fact.” The United States’ statement of interest explained that such a legal rule was too narrow and contravened both the Supreme Court’s decision in *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992), and the weight of circuit court authority. The statement of interest pointed out that the Supreme Court had rejected the type of formalistic presumptions suggested by the defendants in favor of a fact-specific analysis of actual market realities. On November 27, 2023, the district court denied Deere’s motion for judgment on the pleadings. ECF No. 159. The court agreed with the United States and refused to adopt Deere’s proposed presumptions, noting that Deere was asking for the same type of factual presumption that the Supreme Court

“emphatically rejected in Kodak.”

5. *Borozny v. Raytheon Technologies Corp.*

On February 13, 2023, the Division filed a statement of interest in *Borozny v. Raytheon Technologies Corp.*, No. 21-cv-1657 (D. Conn.), a suit alleging a conspiracy among aerospace companies not to hire or solicit each other’s employees. The district court denied a motion to dismiss the complaint, holding that the complaint plausibly alleged a naked, horizontal market allocation—a per se violation of Section 1 of the Sherman Act. In so holding, however, the court opined that market definition is an element of a per se claim. The plaintiffs moved for reconsideration on this point, and the United States filed a statement of interest arguing that market definition is not required for conduct that is subject to the per se rule. On May 30, 2023, the district court denied the plaintiffs’ motion for reconsideration but clarified that the plaintiffs were not required to either prove market power or engage in a “burdensome inquiry into actual market conditions.” 2023 WL 3719649.

D. Exemplars – Criminal

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

In FY 2022-23, the Division obtained the conviction of four individuals (including an executive), indicted several senior executives, obtained criminal fines above the Sherman Act’s \$100 million statutory maximum, expanded an interagency partnership to safeguard public procurement from collusion both domestically and globally, and prosecuted antitrust violations affecting generic drugs, cancer patients, grocery store staples, labor markets, federal agencies, e-commerce, and particularly vulnerable consumers, including the elderly and taxpayer-funded schools and hospitals. The Division’s investigations into violations in many of these industries remain ongoing. Indeed, the Division ended FY 2022 with the highest total number of pending grand jury investigations since FY 1991.

As of December 2023, the Division has six pending trials for indicted criminal cases arising out of investigations into various key sectors of the economy. These cases involve conspiracies concerning wildfire equipment and firefighting services to the Federal Government in the Western United States, conspiracies relating to bid rigging and other criminal conduct affecting other government procurement, and conspiracies

that directly target the American worker.

A. Health Care Markets

Particularly in a time of prolonged crisis, the Division remains committed to rooting out illegal conduct that corrupts our vital healthcare markets, whether the collusion cheats customers at the pharmacy counter or robs cancer patients of competition for critical treatments.

Generic Pharmaceuticals

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

In August 2023, two companies—Teva Pharmaceuticals USA Inc. and Glenmark Pharmaceuticals Inc., USA—reached landmark criminal resolutions with the Antitrust Division that were announced. The companies will pay a combined total of \$255 million in criminal penalties. Additionally, both companies must divest a key product line on which they conspired to raise prices. This marks the first time where the Division has secured structural relief for a criminal antitrust violation. Teva must also donate \$50 million in generic drugs to humanitarian organizations.

B. Labor Markets

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

Essential Healthcare Workers: The Lopez Case

Trials are also pending in one other case where an executive involved in healthcare is charged with conspiring to constrain employees' job mobility.

The Lopez case arises out of a one-count felony indictment of defendant Eduardo Lopez, who held executive positions at three different home health agencies. For each company, Lopez oversaw recruitment, hiring, retention and assignments of nurses and other health care staff. Lopez and other unnamed co-conspirators are charged with agreeing to suppress and eliminate competition for the services of nurses between March 2016 and May 2019. Trial is currently set for March 2024.

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

i. Procurement Collusion Strike Force

To protect taxpayer dollars from antitrust crimes and related schemes that undermine competition for government procurement and grant and program funding, the Department created the Procurement Collusion Strike Force (PCSF). Founded in November 2019, the Division-led PCSF is a nationwide, interagency partnership among 22 U.S. Attorneys' Offices (USAOs), the FBI, and multiple federal Offices of Inspector General to combat antitrust crimes and related schemes in government procurement, grant, and program funding at all levels of government—Federal, state, and local. Since its inception, the PCSF has opened more than 100 criminal investigations and trained more than 31,000 people on the risks that collusion poses in public procurement. In that time, the PCSF and the Antitrust Division have investigated and prosecuted over 65 companies and individuals involving over \$500 million worth of government contracts, resulting in more than \$65 million in criminal fines and restitution.

As the PCSF enters its fifth year, this interagency group of enforcers is focusing on continued and emerging risks to taxpayer funds. The Department established the PCSF because the potential harm from collusion in public procurement is significant. Indeed, as the Organization for Economic Cooperation and Development (OECD) has noted, eliminating bid rigging and other forms of collusion in procurement could save the government 20 percent of expended funds—or more. In November, the PCSF hosted its first summit to convene its law enforcement partners from across the country to discuss emerging threats and strategies to confront them. AAG Kanter, DAAG Kumar, PCSF Director Daniel Glad and other department officials were joined by representatives from among the PCSF's 11 national law enforcement partners and 22 U.S. Attorneys' Offices. Summit participants discussed the heightened areas of procurement collusion risk resulting from the Infrastructure Investment and Jobs Act, the Inflation Reduction Act of 2022, the Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act of 2022 and supplemental funding in response to the invasion of Ukraine.

ii. Government Victims: Domestic

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

a. Idaho Wildfire Investigation and Grand Jury Indictment

In December 2023, a federal grand jury in Boise, Idaho, returned an indictment in an Antitrust Division investigation charging two individuals for their participation in a conspiracy to rig bids, allocate territories, and defraud the U.S. Forest Service between February 2014 until March 2023. The seven-count felony indictment alleges that the defendants' conspiracy affected contracts for firefighting services for wildfires in Idaho and throughout the Western United States. The resource-intensive investigation involved a wiretap, which allowed the Government to obtain recordings of key statements that will be extremely useful at trial. The district court has not yet announced the trial date in this case.

b. Military Contractors Convicted and Sentenced for Participation in Procurement Fraud Scheme: *U.S. v. Envistacom, LLC*

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

In March 2023, a federal jury convicted three military contractors of one count of conspiring to defraud the United States and two counts of major fraud for an alleged SBA 8(a) Business Development program government contract fraud scheme involving subcontractor Envistacom. In December, the last of the three convicted defendants was sentenced. The former Envistacom president and co-founder was sentenced to six months in prison and ordered to pay a \$250,000 criminal fine; the former owner of the prime contractor company was sentenced to four months in prison and ordered to pay a \$50,000 criminal fine; and the former Envistacom vice president was sentenced to 12 months of home confinement.

Between 2014 and 2016, the defendants targeted sole-source set aside contracts and coordinated in preparing and procuring sham quotes for government contracts totaling over \$7.8 million. The sham quotes were intentionally high to ensure the sole-source awards to the co-conspirator prime contractor company. The defendants fraudulently prepared "independent" government cost estimates, and made false statements, representations, and material omissions to federal contracting officials regarding these estimates being legitimate independent cost estimates and the sham quotes being "competitive."

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

Infrastructure projects, including those to build, replace, or repair America's highways and bridges, are often targets for collusion, which deprives the Government of the benefits of free, open competition. The majority of highway funding is provided by the United States and then administered by state departments of transportation.⁴ Two recent PCSF investigations demonstrate that risk—and the value of effective detection and

⁴ See, e.g., <https://www.fhwa.dot.gov/federal-aidessentials/federalaid.cfm>.

enforcement.

In FY 2022-2023, an investigation involving California Department of Transportation (“Caltrans”) improvement and repair contracts led to a series of convictions of a state employee Caltrans contract manager and co-conspirators from the construction industry for bid-rigging and bribery offenses. The Caltrans contract manager and his co-conspirators thwarted the competitive bidding process for Caltrans contracts to ensure that companies controlled by the co-conspirators submitted winning bids and would be awarded contracts at inflated prices. From 2015 to 2019, their scheme involved contracts cumulatively worth more than \$8 million. In exchange for steering these contracts to the co-conspirator companies, the Caltrans contract manager received 10% or more of the value of the Caltrans contracts subject to the scheme—bribes in the form of cash payments, cases of wine, furniture, and remodeling services, to include \$130,000 worth of remodeling and construction services at the contract manager’s house and hundreds of thousands of dollars in cash payments. In 2022, the Caltrans contract manager, the owner of a construction company, and an individual from another construction company all pleaded guilty to rigging bids and involvement in the bribery scheme. The construction company owner, who was a leader and organizer of the scheme and recruited others into it, was sentenced to serve 78 months in prison and pay nearly \$1 million in restitution. The former government employee was sentenced to 49 months’ incarceration, and the other contractor was sentenced to 45 months’ incarceration.

In April 2022, the Antitrust Division announced the Division would vigorously enforce Section 2 of the Sherman Act. Section 2 of the Sherman Antitrust Act prohibits the acquisition or maintenance of monopoly power, as well as attempts and conspiracies to acquire or maintain monopoly power, via anticompetitive means. Monopoly power is the power to control prices in or exclude competition from a relevant market. Agreements between competitors to gain collective control over a market—by, for example, fixing market prices, implementing output restrictions, or driving current or potential competitors out of the market—may be prosecuted criminally under Section 2.

Mere months after the Assistant Attorney General’s announcement, in September 2022, the PCSF secured the first Section 2 conviction in more than 40 years in *United States v. Zito*. The investigation centered on publicly funded highway maintenance projects—specifically crack sealing—in Wyoming and surrounding states funded by the U.S. Department of Transportation. As reported in court records, the defendant—the owner and president of a crack sealing business—attempted to monopolize the Wyoming and Montana markets for highway crack-sealing projects. The defendant did this by proposing market-allocation agreement to his company’s main, and often only, competitor for such projects. Under the terms of the agreement the defendant proposed to that competitor, the defendant would stop bidding on publicly funded highway crack sealing projects in South Dakota and Nebraska, and his competitor would stop bidding on such projects in Montana and Wyoming.

The competitor, however, immediately contacted the Government and began cooperating with law enforcement. The competitor recorded over a dozen phone calls with the defendant, during which the defendant persisted in attempts to convince the competitor to strike a deal and carve up the geographic market. The defendant explained his rationale for proposing the allocation: he was looking to expand his business in Montana and

elsewhere but wanted “to do it in a way that we get along because I really feel like you guys are the only ones that can compete with us. There’s not very many companies that can put the kind of asphalt we can put down. So I guess I would rather get along with you guys in particular and come to some agreement than butt heads.”

The defendant also offered to give his competitor \$100,000 as compensation for the lost business in Wyoming and Montana, which would be disguised as sham transaction to hide the collusion. The defendant explained that, in order to make the agreement appear legal, the money he would pay his competitor to stay out of the Montana and Wyoming markets “should probably include some sort of equipment, like a broken-down kettle in the yard or something that is just going to waste.” The defendant then produced a sham written agreement that falsely stated that the money he was paying his competitor was for the purpose of acquiring construction equipment.

The defendant was charged with and pleaded guilty to one count of attempted monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. He was sentenced to home confinement, probation, and a criminal fine.

d. Recent Charges and Trials Involving Government Victims

I. Military Tactical Vehicles Investigation

In July 2022 and January 2023, respectively, two owners of several military contracting companies pleaded guilty to rigging bids in violation of 15 U.S.C. § 1 for over \$17 million of repair contracts for military tactical vehicles for the Red River Army Depot in Texarkana, Texas. John “Mark” Leveritt and Aaron Stephens, the defendants, took turns submitting complementary bids for multi-million-dollar repair contracts on tanker vehicles and related services between 2013 and until at least 2018. Both defendants were sentenced on August 22, 2023. Aaron Stephens was sentenced to 18 months’ imprisonment and ordered to pay a \$50,000 fine. John “Mark” Leveritt was sentenced to 6 months’ imprisonment and ordered to pay a \$300,000 fine.

II. Michigan Asphalt Investigation

Three individual executives and one company have agreed to plead guilty to related schemes to rig bids for asphalt paving services contracts in the State of Michigan between August and December 2023 in the U.S. District Court in Detroit.

Kevin Shell, Vice President of Estimating for Clarkston-based F. Allied Construction Company Inc., conspired with two unnamed asphalt paving companies and their employees to rig bids in each other’s favor. Shell participated in the two conspiracies from June 2013 through June 2019, and from July 2017 through May 2021, respectively. The two conspiracies operated in much the same way: the co-conspirators coordinated each other’s bid prices so that the agreed-upon losing company would submit intentionally non-competitive bids. These bids gave customers the false impression of competition when, in fact, the co-conspirators had already decided among themselves who would win the contracts.

Clarkston-based F. Allied Construction Company Inc. (Allied) and its president, Andrew

Foster, conspired with two asphalt paving companies and their employees to rig bids in each other's favor. Allied and Foster participated in the two conspiracies from June 2013 through June 2019, and from July 2017 through May 2021, respectively. The co-conspirators coordinated each other's bid prices so that the agreed-upon losing company would submit intentionally non-competitive bids. These bids gave customers the false impression of competition when, in fact, the co-conspirators already had decided among themselves who would win the contracts.

Daniel Israel, along with other individuals working for the company where Israel was formerly the president, conspired with another asphalt paving company and its employees to rig bids in each other's favor. The conspiracy began at least as early as March 2013 and continued until at least as late as November 2018. Under the terms of the conspiracy, the co-conspirators coordinated each other's bid prices so that the agreed-upon losing company would submit intentionally non-competitive bids. These bids gave customers the false impression of competition when, in fact, the co-conspirators already had decided among themselves who would win the contracts.

III. U.S. v. Padron

In June 2022, a federal jury in San Antonio, Texas, convicted the owner of several companies in the construction industry for his role in a long-running scheme to defraud the United States. Michael Angelo Padron, along with co-conspirators Michael Wibracht and Ruben Villarreal, conspired to defraud the United States to obtain valuable government contracts under programs administered by the Small Business Administration (SBA). The evidence showed that Padron conspired to install Villarreal, a service-disabled veteran, as the ostensible owner of a general construction company held out as a Service-Disabled Veteran-Owned Small Business (SDVOSB). Padron, along with his co-conspirator and business partner Wibracht, exercised disqualifying financial and operational control over the construction company. The conspirators concealed that control in order to secure over \$240 million in government contracts that were set aside for SDVOSBs in order to benefit their larger, nonqualifying businesses. In January 2023, Padron was sentenced to 27 months in prison and ordered to pay a \$1.75 million fine for his role in the long-running scheme.

D. International Enforcement

i. Transmigrantes

In December 2022, an 11-count indictment was unsealed charging 12 individuals in a long-running, multi-faceted conspiracy to monopolize the transmigrante forwarding industry in the Los Indios, Texas, border region near Harlingen and Brownsville, Texas. Transmigrantes are individuals who transport used vehicles and other goods from the United States through Mexico for resale in Central America. Transmigrante forwarding agencies are businesses that provide services to transmigrante clients, including helping those clients complete the customs paperwork required to export vehicles into Mexico.

Carlos Favian Martinez, 36, of Mission, Texas; Marco Antonio Medina, 32, of Brownsville, Texas; Rigoberto Brown, 38, of Brownsville, Texas; Pedro Antonio Calvillo Hernandez, 47, of Tamaulipas, Mexico; Roberto Garcia Villareal, 56, of San Benito,

Texas; Miguel Hipolito Caballero Aupart, 70, of Brownsville, Texas; Sandra Guerra Medina, 68, of Rancho Viejo, Texas; and Mireya Miranda, 56, of La Feria, Texas, conspired to fix prices and allocate the market for transmigrante services in violation of Section 1 of the Sherman Act. They also allegedly conspired to monopolize the same market in violation of Section 2 of the Sherman Act. They implemented price-fixing agreements and created a centralized entity known as “The Pool” to collect and divide revenues among the conspirators.

Transmigrante agency owners and industry participants who refused to charge the fixed prices, pay into the pool or pay an extortion tax were subjected to threats, intimidation and acts of violence against themselves and their families, employees, associates and businesses.

Martinez, Medina, Calvillo and Garcia, along with Diego Ceballos-Soto, 48, of Matamoros, Mexico, and Carlos Yzaguirre, 63, of Mission, Texas, were also charged with one count of conspiracy to interfere with commerce by extortion. The indictment alleges several violent acts perpetrated against transmigrante industry participants and individuals closely associated with them who disrupted the scheme or refused to pay the extortion fees. Martinez, Ceballos-Soto and Yzaguirre were also charged with one count of interference in commerce by extortion. They allegedly forced one transmigrante agency owner to pay more than \$80,000 for operating outside of the Pool and failing to pay the extortion tax.

Finally, Martinez, Medina, Calvillo, Ceballos-Soto and Yzaguirre, along with Juan Hector Ramirez Avila, 32, of Brownsville, Texas; and Jose de Jesus Tapia Fernandez, 44, of Brownsville, Texas, were charged with money laundering conspiracy and substantive counts of money laundering related to the underlying scheme.

ii. PCSF: Global

PCSF: Global is a partnership among the PCSF, trial attorneys from criminal sections, the International Section, and a range of U.S. law enforcement agencies. Established in 2021, PCSF: Global has three closely related goals: to deter misconduct impacting U.S. taxpayer dollars spent overseas (to include generation of procurement training materials for U.S. and foreign enforcers), to generate and prosecute international cartel cases impacting U.S. government interests overseas, and to continue to strengthen relationships with key competition agencies around the world. PCSF: Global’s work in the deterrence and outreach space includes efforts create communities of interest among federal law enforcement officers stationed in Europe, Africa, and Asia, with training and education provided virtually and in person. PCSF: Global is also participating in initiatives with other parts of the Department and the broader U.S. law enforcement community directed at detecting, investigating, and prosecuting criminal schemes that target U.S. spending in critical areas, including in Eastern Europe.

For instance, in September 2023, South Korean company J&J Korea, Inc. was sentenced for its role in a bid-rigging and fraud scheme involving repair and maintenance subcontract work at U.S. military hospitals in South Korea. The subcontract work related in part to a U.S. Army Corps of Engineers (USACE) contract providing for operation and maintenance support services at U.S. military facilities around the world. The contract

required the prime contractor to use a competitive bidding process when awarding subcontract work under the contract. However, the defendant and its co-conspirator, another South Korean company, agreed to submit rigged bids to ensure that the defendant won most of the subcontract work in South Korea under the USACE contract. The scheme caused the Department of Defense to overpay for the defendant's services in the amount of approximately \$3.6 million. The sentencing followed a May 2023 guilty plea to one count of wire fraud and one conspiracy to restrain trade. The defendant was ordered to pay a criminal fine of \$5 million and \$3.6 million in restitution. In March 2022, two officers of the defendant company were indicted by a grand jury in connection with the same conduct.

iii. Fugitive Pleas

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

E. E-Commerce

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

I. Amazon DVDs

Two Amazon marketplace sellers and four of their companies have pleaded guilty to price fixing DVDs and Blu Ray Discs. The four corporate entities are the first corporate defendants to plead guilty and the owners are the fifth and sixth individuals in the scheme, which was uncovered through a longstanding antitrust investigation.

In the U.S. District Court for the Eastern District of Tennessee, Bruce Fish of Hayfield, Minnesota, along with BDF Enterprises, Inc., a corporate entity owned by Fish, admitted to participating in a conspiracy to fix the prices of DVDs and Blu-Ray discs sold on the Amazon marketplace. Victor Btsh of Brooklyn, New York, and three New York corporate entities of which Btsh is the sole or majority owner, pleaded guilty to the same conspiracy.

Btsh and Fish, along with their four corporate entities, agreed with co-conspirators to raise and maintain the prices of DVDs and Blu-Rays sold in Amazon marketplace storefronts, resulting in those products being sold at collusive and noncompetitive prices. Amazon Marketplace is an e-commerce platform that enables third-party vendors to sell new or used products alongside Amazon's own offerings. Amazon Marketplace is owned and operated by Amazon.com, Inc.

VI. Program Increases by Item

A. Increased Antitrust Enforcement

Budget Decision Unit(s): Antitrust

Organizational Program: Antitrust Division

Program Increase: Positions 83 Atty 32 FTE 42 Dollars \$13,682,000

Description of Item

The Antitrust Division is requesting \$13.7 million in additional resources to enable the Division to address historically high investigative, litigative, and program support workload, and at a scale proportional to the need, by increasing its roster of attorneys, paralegals, economists, and support staff.

To meet the current challenges presented by complex and unprecedented workload, the Division requests \$11.0 million in personnel costs to fund 83 positions, including 32 attorneys, 25 paralegals, 8 economists, and 18 program and administrative support staff, and \$2.7 million in non-personnel costs.

Justification

Overview

The mission of the Antitrust Division is to promote economic competition and protect the marketplace through the enforcement of the nation's antitrust laws. To do this, the Division maintains robust civil and criminal programs. The Division's civil enforcement focuses on conduct that violates the various antitrust laws as well as annually investigating thousands of potentially anticompetitive mergers. As the American economy has grown more complicated, so too have the types of cases before the Division. Increasingly, the Division's investigations must understand cutting edge technologies such as artificial intelligence and large language models.

The Division's FY 2025 program request addresses the necessary structural and programmatic changes required to respond to a historic market-driven spike in enforcement activity and to implement the increased work required to overcome its staffing and technological shortfalls, thereby enabling it to more effectively enforce the antitrust laws, fight fraud, and protect American consumers and workers. The Antitrust Division also continues to implement [President Biden's 2021 Executive Order on Promoting Competition in the American Economy](#), which requires significant resources to expand antitrust cooperation across the Federal Government, while also changing the language of antitrust law to make enforcement more timely, accessible, and responsive.

The Division works with more than a dozen federal agencies to develop and implement new initiatives to promote competition across all economic sectors. These include, among other things, the year long, resource intensive work necessary to update the merger guidelines, and the numerous other responsibilities assigned to the Division under the Executive Order.

Background

The Division's FY 2025 program request comes at a time where increased enforcement activity has stretched its staff and technology infrastructure to their limits—a problem that is particularly acute given that the Division routinely faces off against the nation's most elite law firms and companies with virtually unlimited resources.

Increased Antitrust Enforcement

Staffing for Increased Antitrust Enforcement - \$11.0 million (83 positions)

Increased Criminal Enforcement

The Division requests additional resources for increased criminal enforcement, including under Section 2 of the Sherman Act (which, until recently, had not been prosecuted criminally since the 1970s), along with attorneys in support of the Division's Supply Chain Initiative and the Department's Procurement Collusion Strike Force (PCSF).

The Division's criminal workload has continued to expand. As of May 2023, the Division currently had over 150 pending grand jury investigations, the most in 30 years. As of May 2023, ATR also had 10 pending trials for indicted criminal cases arising out of investigations into various industries. These cases involve conspiracies concerning health care, for example, fixing prices for generic drugs, conspiracies relating to bid rigging and other criminal conduct affecting government procurement, and conspiracies that directly target American workers. By combining traditional Sherman Act charges with related charges, such as fraud, obstruction, and Title 15 Section 2 criminal theories, the Criminal Program has begun to take advantage of a fuller arsenal of charges to deter this conduct. Expanded ranges of charges require more investigative steps, such as additional witness interviews, additional documents, and additional employee time—all of which translate to a need for increased funding.

Additional cases have been indicted, including a six-defendant case charging executives and managers from some of the country's largest defense contractors in a labor-market conspiracy. The result is not only the incurrence of additional costs associated with a complex, remote trial but diverting eight experienced attorneys on the trial team (amounting to around 7.5% of the criminal program attorneys) from other investigations and litigation. As a result, the Division's budget request includes additional first chair trial lawyers.

The PCSF will similarly request to increase its investigation and prosecution efforts as IJA funds begin flowing and projects go out for bid. At present, however, the PCSF lacks resources and consists of only a single permanent employee, two detailees from other sections within the Division, and only partial FTEs who work on PCSF projects and matters on details or in addition to their regular workload. In order to appropriately safeguard the IJA's funds, and to ensure that this one-in-a-generation opportunity for infrastructure improvement is not concurrently a once-a-generation chance for bad actors to profit, the PCSF needs additional resources.

Increased Civil Enforcement

The dramatic changes in the economy from the growth of technology have created significant

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

The Division is currently conducting multiple high-profile, resource-intensive civil conduct investigations in the tech sector, in addition to litigating two landmark cases against Google. These cases are resource intensive because they involve complex fact patterns and require evaluation of conduct over many years. In addition, last fall the Division took to trial and successfully blocked an unprecedented series of agreements between American Airlines and JetBlue through which the two airlines planned to consolidate their operations in Boston and New York City. The Division also has opened significant civil investigations to evaluate potentially anticompetitive conduct in the U.S. debit card market, the agricultural industry, the ticketing industry, the health care industry, and the real estate industry. The Division's enforcement efforts around Section 8 of the Clayton Act have continued as well. To date, those efforts have led thirteen directors to resign from the boards of directors of competing companies.

Other recent enforcement actions have protected workers. The Division filed consent decrees to end a long-running conspiracy among four poultry processors (Cargill, Sanderson Farms, Wayne Farms, and George's), a data consultant (Webber, Meng, Sahl, and Company) and its president (G. Jonathan Meng), to exchange information about wages and benefits for poultry processing plant workers. The consent decrees commit the processors to a court-appointed monitor and to pay \$90.6 million total in restitution for poultry processing plant workers who were harmed by the conspiracy. The Division also filed a consent decree prohibiting Activision Blizzard, one of the world's largest video game developers and publishers, from suppressing wages and imposing rules that limited compensation for players in Activision's professional esports leagues.

Equipping the Division to Litigate – As of December 2023, there were 30 matters in litigation (4 civil and 26 criminal). The Division's bench of first-chair trial lawyers is beyond capacity, as are its litigation support services. Based on the Division's assessment of the current enforcement needs, the Division's goal is to be able to litigate 30 civil and 30 criminal cases at a time. Although expansion to this level of litigation won't happen overnight, it's based on a pipeline of problematic mergers, conduct, and criminal investigations. The Division's current workforce is not of a sufficient size or experience to meet this demand. Additional funding for this effort will help build a workforce of skilled litigators required to meet the increased litigation pace.

Additional Support for Increased Antitrust Enforcement - \$2.682 million

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

Buildout Costs for New Positions – The Division requests non-recurring costs of buildout for basic office space associated with the new positions requested in the FY 2025 budget request. The square footage costs were determined using the latest data available based on the Department's programming requirements. This cost assumes a typical office suite with moderate finishes, including offices and workstations, conference rooms, reception areas and kitchens in the Washington DC area.

Summary

Achieving the below level of staffing and support will give the Division's dedicated staff the tools they need to fulfill its important mission on behalf of American consumers, workers, and taxpayers. It will also boost morale and help us continue to attract and retain talented employees. Persistent funding shortages at the Division have required employees to routinely work long hours which, among other issues, negatively impacts the ability to retain the talent necessary to handle complex, multi-year investigations that comprise the majority of the Division's work.

The requested additional resources for FY 2025 will enable the Division to fulfill its critical role of protecting American consumers and workers; and promoting competition in vital markets for digital platforms, agriculture, food, farmland, public procurement, and labor.

Impact on Performance

In his prepared remarks on April 26, 2022, before the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, the Attorney General stated that "A fair economy is foundational to the American dream" highlighting the critical work of the Division in terms of "carry[ing] out its critical mission of promoting competition in the American economy and protecting workers, consumers, and businesses alike." The Division's FY 2025 request reflects a level of resources that enables the Department to fully enforce the nation's antitrust laws. With the additional requested resources, the Division estimates that its performance measure target of 95 active grand juries will increase by 25 in FY 2025, resulting in a new target of 120 active grand juries.

Funding

1. Base Funding

FY 2023 Enacted				FY 2024 Continuing Resolution				FY 2025 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
1022	490	887	\$225,000	910	444	910	\$225,000	910	444	910	\$235,516

2. Personnel-Increase Cost Summary

Type of Position/Series	FY 2025 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2nd Year	3rd Year	FY 2026 (net change from 2025)	FY 2027 (net change from 2026)
Economists (0110)	\$1,278	8	\$299	\$133	\$23	\$1,062	\$184
Clerical and Office Svcs (0300-0399)	\$791	6	\$238	\$98	\$11	\$586	\$66
Accounting and Budget (0500-0599)	\$132	1	\$238	\$98	\$11	\$98	\$11
Attorneys (0905)	\$5,242	32	\$301	\$132	\$14	\$4,209	\$450
Paralegals (0950)	\$1,939	25	\$131	\$50	\$4	\$1,250	\$94
Financial Analysts (1160)	\$958	6	\$299	\$133	\$23	\$797	\$138
Info Technology Mgmt (2210)	\$659	5	\$238	\$98	\$11	\$488	\$55
Total Personnel	\$11,000	83				\$8,490	\$999

3. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2025 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2026 (net change from 2024)	FY 2027 (net change from 2025)
Buildout/Space	\$2,682	\$32	83	-\$2,682	\$0

Total Non-Personnel	\$2,682	\$32	83	-\$2,682	\$0
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4. Justification for Non-Personnel Annualizations

Buildout Costs: The \$2.7 million buildout costs associated with the 83 new position requests are non-recurring.

5. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2026 (net change from 2025)	FY 2027 (net change from 2026)
Current Services	910	444	910	\$154,893	\$80,623	\$235,516	\$0	\$0
Increases	83	32	42	\$11,000	\$2,682	\$13,682	\$8,490	\$999
Grand Total	993	476	952	\$165,893	\$83,305	\$249,198	\$8,490	\$999

B. Technology and Data Modernization Support

Budget Decision Unit(s): Antitrust

Organizational Program: Antitrust Division

Program Increase: Positions 0 Atty 0 FTE 0 Dollars \$14,901,000

Description of Item

The Antitrust Division's request for \$14.9 million in additional resources is aimed at improving its efficiency, productivity, and ability to deliver better results in complex antitrust investigations. The funding would fuel critical operation and maintenance (O&M) activities, ensuring the continued effectiveness of advancements made possible by the Technology Modernization Fund (TMF) investment in FY 2024.

Justification

As the digital revolution transforms markets and business models, the complexity of antitrust investigations is skyrocketing. To safeguard competition, promote innovation, protect consumers, and ensure proper enforcement, the Division is undergoing comprehensive technology modernization initiatives. In fiscal year 2024, ATR was granted TMF resources to address the persistent technical shortcomings faced by the Division which have led to a lack of enforcement. This strategic effort involves five key initiatives: IT service management, matter and document management workflow, document review platform, citizen complaint portal, and data ingestion and analysis. These initiatives aim to unlock greater effectiveness and efficiency, enhance data analysis, and represents a crucial adaptation to the ever-evolving landscape of antitrust investigations.

The initiatives being implemented will make significant improvements to ATR's IT operational stability, asset management, and reporting capabilities through modern analytics. This will be achieved by providing modern tools to manage IT assets and deploy software at the enterprise level, replacing outdated custom applications with a modern matter management system, and delivering the capacity to upload, store, review, and produce a rapidly increasing amount of data associated with ATR investigations.

Realizing the full potential of this transformative initiatives hinges on securing ongoing funding for O&M. Continuous support is crucial to guarantee the longevity and effectiveness of the modernized IT infrastructure. Additionally, as data volumes and complexities rise, sustained investment in O&M ensures ATR's preparedness to handle evolving challenges. Furthermore, O&M safeguards the reliability and accessibility of the reporting process, guaranteeing seamless interaction with the public.

ATR's digital transformation strategy represents a bold step toward a more efficient, data-driven, and ultimately, more effective enforcement of antitrust regulations. By securing the necessary O&M funding, ATR can empower its investigators with the tools they need to navigate the complexities of the modern marketplace and deliver superior results for stakeholders.

Impact on Performance

Obtaining funding for O&M is essential to support the initiatives being discussed, which requires ongoing maintenance and support to ensure its longevity and effectiveness. An ongoing investment in O&M is crucial to ensuring that the reporting process remains efficient, reliable, and accessible and that ATR is well-equipped to handle the increasingly complex antitrust investigations and meet its responsibilities effectively. With the proper support, the upgraded IT systems may operate efficiently and securely, leading to increased productivity and optimal outcomes.

Funding

1. Base Funding

FY 2023 Enacted				FY 2024 Continuing Resolution				FY 2025 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
0	0	0	0	0	0	0	\$8,945	0	0	0	\$8,945

2. Personnel-Increase Cost Summary

Type of Position/Series	FY 2025 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2nd Year	3rd Year	FY 2026 (net change from 2025)	FY 2027 (net change from 2026)
Not Applicable	0	0	0	0	0	0	0
Total Personnel	0	0				0	0

3. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2025 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2026 (net change from 2025)	FY 2027 (net change from 2026)
Technology and Data Modernization Support	\$14,901	\$14,901	1	\$18,737	\$19,299
Total Non-Personnel	\$14,901	\$14,901	1	\$18,737	\$19,299

4. Justification for Non-Personnel Annualizations

Technology and Data Modernization Support: The Division estimates \$14.9 million in external labor and equipment/hardware requested in FY 2025 to be recurring. In FY 2026, \$18.7 million is anticipated as recurring costs for the contract, with costs increasing to \$19.3 million in FY 2027 in anticipation of increased costs each option year.

5. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2026 (net change from 2025)	FY 2027 (net change from 2026)
Current Services	0	0	0	0	\$8,945	\$8,945	\$0	\$0
Increases	0	0	0	0	\$14,901	\$14,901	\$18,737	\$19,299
Grand Total	0	0	0	\$0	\$23,846	\$23,846	\$18,737	\$19,299

C. Information Technology Operations Sustainment

Budget Decision Unit(s): Antitrust

Organizational Program: Antitrust Division

Program Increase: Positions 0 Atty 0 FTE 0 Dollars \$23,901,000

Description of Item

The Antitrust Division is requesting \$23.9 million in additional resources to enable the Division to address historically high investigative, litigative, and program support workload, and at a scale proportional to the need, by providing necessary information technology operations sustainment that will enable the Division to provide much-needed litigation-support.

Justification

In FY 2020, the Division executed a review of the IT infrastructure and cloud storage capabilities. The purpose of the review was to identify gaps, as well as present recommendations on how to enhance network configuration, applications, development methods and other IT resources to optimize ATR's IT program for a future state of excellence.

To achieve this goal, the Division needs dedicated IT services support to sustain program management, project management, engineering, systems architecture, cloud engineering and integration services, operations support and other critical support services. Services provided through the support contract will assist the Division's Technology Directorate in maintaining and maturing operations to keep ATR's information system infrastructure always available and fully operational, not only during traditional day-to-day activities, but also during continuity of operations events. Services will also provide lean but efficient and effective O&M of IT infrastructure and operations support while adhering to industry's best practices resulting in continuous service improvement as defined by the Information Technology Infrastructure Library (ITIL). The requested resources for dedicated information technology services contract support will allow the Division to migrate away from legacy IT configurations to a 21st century technology stack and revitalize core capabilities.

Impact on Performance

While sound IT operations are important for any organization, they are especially critical for the Antitrust Division, whose mission relies on the ability to quickly upload, review, and produce large sums of data. The current IT posture hinders mission execution, disadvantages the Division against far better resourced adversaries, and zaps employee morale. For example, the Division pays \$5.82 for each lost second of employee time with the resulting total cost of lost time due solely to delays with the Division's document management system reaching near \$7.5 million per year. In addition to inconvenience and lost employee time, the state of the IT operations is at a critical juncture where the litigation demands on the Division exceed the ability to provide the IT services necessary to adequately meet those demands. By securing increased funding for its IT operations, the Division can invest in modern technologies and skilled personnel, significantly improving its ability to handle complex cases as well as enhance data security and ensure system uptime, minimizing costly disruptions and lost productivity, thereby transforming the Division into a high-performing and efficient organization,

Funding

1. Base Funding

FY 2023 Enacted				FY 2024 Continuing Resolution				FY 2025 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
0	0	0	0	0	0	0	0	0	0	0	0

2. Personnel-Increase Cost Summary

Type of Position/Series	FY 2025 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2nd Year	3rd Year	FY 2026 (net change from 2025)	FY 2027 (net change from 2026)
Not Applicable	0	0	0	0	0	0	0
Total Personnel	0	0				0	0

3. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2025 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2026 (net change from 2025)	FY 2027 (net change from 2026)
Information Technology Operations Sustainment	\$23,901	\$23,901	1	\$24,471	\$25,205
Total Non-Personnel	\$23,901	\$23,901	1	\$24,471	\$25,205

4. Justification for Non-Personnel Annualizations

Information Technology Operations Sustainment: Division estimates \$23.9 million in external labor, equipment/hardware, and miscellaneous costs requested in FY 2025 to be recurring. In FY 2026, \$24.5 million is anticipated as recurring costs for the contract, with costs increasing to \$25.2 million in FY 2027 in anticipation of increased costs each option year.

5. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2026 (net change from 2025)	FY 2027 (net change from 2026)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	0	0	0	0	\$23,901	\$23,901	\$24,471	\$25,205
Grand Total	0	0	0	\$0	\$23,901	\$23,901	\$24,471	\$25,205

VII. Exhibits