



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2023 PERFORMANCE BUDGET**

Antitrust Division
FY 2023 Congressional Budget Submission

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I. Overview

A. Introduction

The mission of the Antitrust Division (Division) is to promote economic competition through enforcing and providing guidance on antitrust laws and principles. Corporate consolidation through mergers and acquisitions is playing an increasingly significant role in the American economy, and it is crucial that the Antitrust Division have funding sufficient to enable it to review—and challenge when necessary—mergers that threaten to harm competition. Such merger investigations and challenges are time consuming and costly, which is to be expected because the issues are often complex and the stakes are high for American consumers and the economy. The Division’s civil program also maintains competition through conduct investigations into non-criminal, anticompetitive behavior, such as monopolistic practices. Notably, these conduct investigations currently include inquiries in the tech sector and an ongoing, landmark case against Google.

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

To administer its caseload, the Division’s FY 2023 budget request includes \$273,006,000, which reflects an increase of \$71,830,000 over the FY 2022 President’s Budget, including program increases of \$65,894,000 and base adjustments of \$5,936,000.

B. Issues, Outcomes, and Strategies

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

Enforcement Program	Major Matter Exemplars
Civil	<p style="text-align: right;"><u>Page #</u> 33</p> <p><u>Non-Merger:</u></p> <ul style="list-style-type: none"> • Google Litigation • Online Platform Investigations • National Association for College Admission Counseling (NACAC) • Embedded SIMs • Civil Conduct Task Force
	<p style="text-align: right;">35</p> <p><u>Merger:</u></p> <ul style="list-style-type: none"> • Aon/Willis Tower Watson • Tupy/Tekid • Harvard Pilgrim Health Care/Health Plan Holdings • Visa/Plaid Inc. • Intuit/Credit Karma • Waste Management/Advanced Disposal Services • Liberty Latin America / AT&T Puerto Rico • Geisinger Health/Evangelical Hospital • CPI/General Dynamics SATCOM • Dairy Farmers of America/Dean Foods • Cengage Learning/McGraw-Hill • United Technologies Corp/Raytheon • Novelis Inc./Aleris Corp. • Consent Decree Enforcement: <ul style="list-style-type: none"> ➢ T-Mobile/Sprint/Dish ➢ CenturyLink/Level 3 ➢ Live Nation/Ticketmaster

Criminal	<u>Page #</u>
	<u>Health Care Markets:</u> 42
	<ul style="list-style-type: none"> • Generic Pharmaceuticals • Oncology
	<u>Grocery Store Staples:</u> 43
	<ul style="list-style-type: none"> • Canned Tuna • Broiler Chickens
	<u>Labor Market</u> 44
	<u>Prosecutions and Policy Changes to Protect Government Victims, Promote Competition and Save Taxpayer Dollars:</u> 45
	<ul style="list-style-type: none"> • Procurement Collusion Strike Force • Government Victims: <ul style="list-style-type: none"> ➢ Korea Fuel Supplies ➢ Detroit Demolition ➢ GSA Auctions ➢ Security Services ➢ Upcoming Trials
	<u>Financial Markets:</u> 48
	<ul style="list-style-type: none"> • Foreign Exchange Market • Pre-Release American Depository Receipts
<u>Components for Consumer Electronics</u> 49	
<u>Commercial Construction:</u> 49	
<ul style="list-style-type: none"> • Commercial Insulation • Commercial Flooring 	

Increased Civil Caseload

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

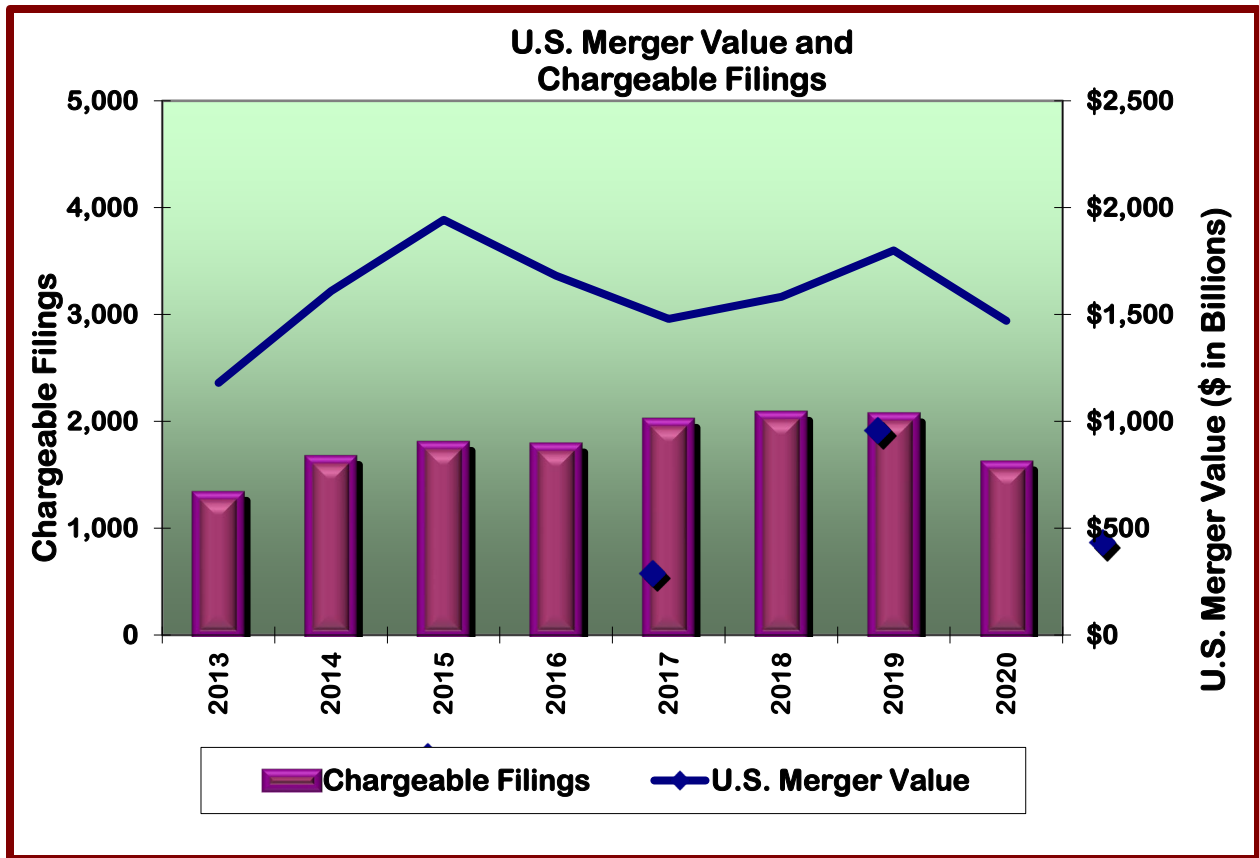


Figure 1

Merger activity has risen in recent years, as shown in Figure 1, and will likely continue to increase as the economy grows. In calendar year 2020, worldwide merger and acquisition volume reached \$3.6 trillion and U.S. volume reached an annual total of \$1.5 trillion. A comparison of 2019 and 2020 showed a decline in both filings and merger values due to the ongoing COVID-19 economic impact. However, the Division saw a sharp recovery in 2021 with the review of 3,457 mergers, which shattered the previous record for merger filings in a year (2,201 in FY 2007) under the current version of the merger filing law.

As consolidation and merger activity in the economy continue to increase, the Division’s workload increases in even greater proportion. The Division is responsible for reviewing each transaction, so as the numbers of deals increase its workload necessarily rises. Moreover, as number of deals increases, so too does the number of complex and potentially harmful transactions that the Division staff must review, magnifying the impact of increased merger activity on the Division’s workload.

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

conduct.

The Division is currently conducting multiple high-profile, resource-intensive civil conduct investigations in the tech sector, in addition to litigating its landmark case against Google. These cases are resource intensive because they involve complex fact patterns and require evaluation of conduct over many years. In addition, the Division has opened significant civil investigations to evaluate potentially anticompetitive conduct in the U.S. debit card market, the beef packing industry, the health care industry, and the airline industry. The Division has also identified other possible investigations—including in high-priority areas like the use of non-compete agreements in labor markets—that have yet to be opened.

Globalization

Corporate leaders continue to seek a global presence as an element of long-term economic success, and more companies are transacting a significant portion of their business in countries outside of where they are located. For example, in the United States international trade (defined as exports and imports of goods and services) was \$7.1 trillion in calendar year 2020¹ and \$2.1 trillion as of quarter 3 calendar year 2021.²

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

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

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

The Division's work no longer takes place solely within the geographic borders of the U.S. 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. Enforcement efforts, now find parties, potential

¹ "U.S. International Transactions: Year 2020 Historical Comparisons." *United States Department of Commerce, Bureau of Economic Analysis*, March 23, 2021. Viewed on March 26, 2021 at <https://www.bea.gov/sites/default/files/2021-03/trans-annual20-hist.pdf>.

² "U.S. International Transactions: Third Quarter Year 2021 Historical Comparisons." *United States Department of Commerce, Bureau of Economic Analysis*, December, 21, 2021. Viewed on February 25, 2022 at <https://www.bea.gov/data/intl-trade-investment/international-transactions>.

evidence, and effects abroad, all of which add complexity, and ultimately cost, to the pursuit of matters. Whether that complexity and cost results from having to collect evidence overseas or from having to undertake extensive inter-governmental negotiations in order to depose a foreign national, it makes for a very different, and generally more difficult investigatory process than would be the case if the Division's efforts were restricted to conduct and individuals in the U.S.

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

Despite the COVID-19 pandemic, the Division continues to pursue its international antitrust agenda, albeit in a virtual environment. To facilitate the shift, the Division leveraged existing bilateral relationships, as well as longstanding ties to multilateral organizations. The Division anticipates continuing virtual engagement post-pandemic, yet recognizes that its bilateral and multilateral relationships, which enabled a swift adaption to the current circumstances, were built upon the strength of in-person engagement.

To date, the Division has entered into antitrust cooperation agreements with fifteen foreign governments – Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Germany, India, Israel, Japan, Korea, Mexico, Peru, and Russia. The Division's engagement prioritizes international cooperation on criminal (cartel), civil conduct, and merger enforcement, advocacy regarding procedural fairness and, where appropriate, competition policy convergence. In addition to promoting sound enforcement, generally, these efforts help create a more stable legal environment for U.S. companies operating abroad. In FY 2020, the Division signed the Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities (MMAC). Together with competition agencies in Australia, Canada, New Zealand and the United Kingdom, this framework builds on prior agreements and robust collaboration while simultaneously creating a new model cooperation agreement. The model agreement is expected to serve as a template for subsequent agreements by signatories that would facilitate cooperation in both cartel and civil investigations.

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

the timing of key investigative steps, such as the execution of search warrants, and fine methodology. For example, in FY 2020, the Division worked closely with the Department's Criminal Division Office of International Affairs and their international counterparts to extradite two fugitives from Europe in connection with its *Air Cargo* and *Auto Parts* investigations.

The Division also regularly cooperates with international counterparts in its civil investigations. Such engagement provides cooperating competition agencies with a fuller picture of the merger or conduct under investigation and its potential competitive effects. Working closely with other competition agencies also helps avoid the prospect of propounding conflicting theories of harm or adopting inconsistent remedies, and ensures that parties can actually comply with the remedies imposed by multiple jurisdictions. In any given year, the Division works on dozens of investigations with an international dimension, most of which involve cooperation with other competition agencies. In FY 2020, for example, the Division reviewed the proposed merger of *McGraw-Hill* and *Cengage* and worked closely with competition agencies in a number of jurisdictions, including Australia, New Zealand and the United Kingdom.

In addition to bilateral cooperation, multilateral engagement through such organizations as the International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD) and the 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 Federal Trade Commission (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 2020, the Division continued efforts to lead the implementation of the ICN Framework on

Competition Agency Procedures (CAP) signed in 2019. With 73 competition agency signatories to date, this historic multilateral agreement recognizes fundamental principles of transparency and procedural fairness in competition enforcement and promotes review mechanisms to ensure that participating agencies abide by these norms. The Division also led efforts in FY 2020 to develop guidance on enhancing cross-border leniency cooperation in cartel investigations. The guidance aims to make international cartel enforcement more effective and reduce disincentives for prospective leniency applicants.

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

Intellectual Property

Invention and innovation are essential to promoting economic growth, creating jobs, and maintaining our competitiveness in the global economy. Intellectual Property (IP) laws create exclusive rights that provide incentives for innovation. Antitrust laws ensure that new proprietary technologies, products, and services are bought, sold, traded and licensed in a competitive environment. Together, antitrust enforcement and IP protection promote the innovation vital to economic success. Issues involving IP have arisen in various parts of the Division's recent work, as described below.

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

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

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

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

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

Technological Change and the Changing Face of Industry

The need for careful consideration of antitrust issues in evolving technology markets continues to consume significant Division resources. Technological change continues to create new businesses and industries virtually overnight, and its impact on the overall economy is enormous. The emergence of new and improved technologies continues and intensifies in a range of industries, such as robotics, transportation, wireless communications, Over-the-Top (OTT) services such as Voice over Internet Protocol (VoIP) and online video, mobile collaboration, biometrics and online security.

It is expected that even more advances in technology will be seen in the coming years as telecommunication providers expand into new markets such as voice calls, messaging and video content delivery. Global mobile subscriptions were over 8 billion in 2021 and are expected to grow to almost 9 billion by 2026 according to the Ericsson Mobility Report, published by Ericsson in November 2021.³

Clearly, being ‘connected’ while on-the-go has become essential to the American daily lifestyle, and this connectivity demand continues to result in rapidly emerging newer and faster networks, services, applications and equipment. By 2027, it is estimated that the number of smartphone subscriptions alone is set to reach 7.7 billion, a substantial increase over the 5.9 billion smartphone subscriptions in 2020.⁴

As more consumers turn to OTT services (Internet or broadband-based services that replicate services traditionally offered to subscribers by network operators, such as messaging, voice calls and video content delivery) expanding technologies such as wireless video streaming and VoIP, stand to grow dramatically over the next several years. According to Digital TV Research, OTT revenue is expected to grow to \$210 billion in 2026; more than double the \$106 billion recorded in 2020.⁵

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

³ “Ericsson Mobility Report.” *Ericsson*, November 2021. Viewed on February 25, 2022 at <https://www.ericsson.com/en/reports-and-papers/mobility-report/key-figures>.

⁴ “Ericsson Mobility Report.” *Ericsson*, November 2021. Viewed on February 25, 2022 at <https://www.ericsson.com/en/reports-and-papers/mobility-report/key-figures>.

⁵ “Global OTT TV and Video Forecasts” *Digital TV Research*, May 2021. Viewed on September 16, 2021 at <https://www.digitaltvresearch.com/products/product?id=321>.

Technological Change and Information Flows

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

As the tools of the trade become more sophisticated, there appears to be a corresponding growth in the subtlety and complexity with which prices are fixed, bids are rigged, and market allocation schemes are devised. The increased use of electronic mail, and even faster, more direct methods of communication, such as text and instant messaging, has fostered this phenomenon. Moreover, the evolution of electronic communication results in an increase in the amount and variety of data and materials that the Antitrust Division must obtain and review in the course of an investigation. In addition to hard-copy documents, telephone logs, seized data, bank records and other information from public sources, the Division now regularly obtains information from social media providers, cloud service providers, and physical media such as hard drives and computer servers containing the e-mail traffic and documents of companies under investigation. Many of these data sources are non-standard and require additional processing before they can be reviewed. The Division is using search warrants and seized data far more frequently than in years past.

Appellate Advocacy

The Antitrust Division has been active in the U.S. Supreme Court and the federal courts of appeals, both in appeals from the Division's own actions and in cases where views are offered as an amicus party. For example, the Division worked with the Solicitor General to file an amicus brief and participate at an oral argument in the 2021 Supreme Court case *NCAA v. Alston*, which upheld a challenge to some of the NCAA's rules limiting student-athlete compensation. The Division also provided advice to other DOJ components and to the Office of the Solicitor General on competition issues in various non-antitrust cases at the certiorari and merits stages before the Supreme Court.

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

challenged his conviction of price fixing based on various jury instructions and the admission of certain evidence. After briefing and oral argument, consistent with the Division's arguments, the Ninth Circuit affirmed the defendant's 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 subjects of lower court filings in this time frame have included how exemptions from the antitrust laws should be construed narrowly so as to protect competition and consumers, how no-poach agreements unrelated to legitimate collaborations are per se unlawful, and how private antitrust enforcement is an important complement to government enforcement and should not be constrained by unreasonably high bars to bringing claims.

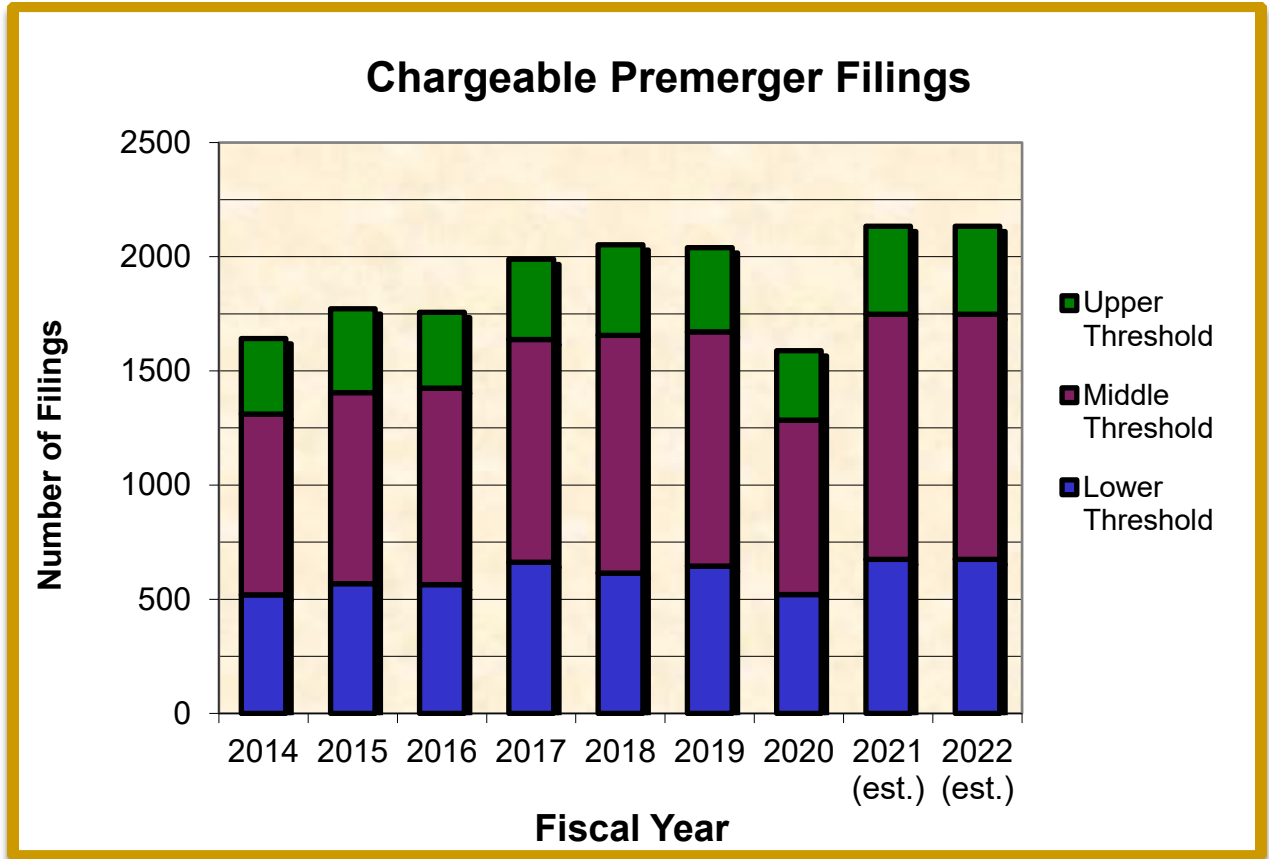
Results

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

- In the area of criminal enforcement, the Division continues to move forcefully against hard-core antitrust violations such as price fixing, bid rigging and market allocation agreements. A significant number of the Division's prosecutions have involved **international price fixing cartels**, affecting billions of dollars in U.S. commerce. **In the last ten years (FY 2011 – FY 2021), defendants have been sentenced to pay approximately \$9.3 billion in criminal fines and penalties to the U.S. Treasury. In FY 2021, the Antitrust Division obtained \$151 million in criminal fines and penalties in Division cases.**
- In FY 2021, as the result of Division enforcement efforts, **14 corporations and 29 individuals** were sentenced due to antitrust violations. Prison sentences from FY 2011 through FY 2020 **averaged approximately 17 months**, more than two times the 8-month average sentence of the 1990's. During the same ten-year time period, prison sentences resulted in more than **314 years** of imprisonment in cases prosecuted by the Antitrust Division, with **127 defendants** sentenced to imprisonment of one year or longer.
- Coupled with the increasing frequency and duration of defendants' incarceration was a rise in monetary restitution by criminal defendants. In the last ten years (FY 2011 – FY 2021) restitution generated by the Division was more than **\$35 million.**

Revenue Assumptions

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



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

Figure 2

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

Based upon estimates calculated by the Congressional Budget Office and the FTC, fee collections of \$237 million for FY 2022 are expected. Hart-Scott-Rodino (HSR) filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division. If the proposed Merger Fee Modernization Act is signed into law, the fees collected by the Division would be

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

significantly higher—if the Act had been in effect in 2018 and 2019, for example, fee revenue would have been over \$436 million per year.

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

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

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

The Division’s FY 2023 budget request empowers the Division to pursue these enforcement efforts more effectively, and at a scale proportional to the need, by (1) increasing its roster of attorneys, paralegals, economists, and support staff and (2) modernizing its technology infrastructure to provide much-needed litigation-support tools and services.

The FY 2023 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 current resource shortage has real-world effects. For example, the Division has suspended high-priority civil conduct investigations because it needed to reassign staff to mergers reviews, which must be completed on a statutorily mandated timeline. As a result, conduct investigations have been abandoned because evidence has gone stale. Similarly, the Division’s outdated technology infrastructure cannot accommodate the Division’s current workload, which exacerbates the staffing shortfall and reduces the Division’s capacity to take on new matters. For example, because of insufficient computing resources and IT staff, it often takes several weeks before document and data productions can be processed for attorney review. This backlog is so severe that top Division leadership meet each Monday to prioritize which document productions will be loaded in the coming week, and which will be pushed down the queue. The Division’s staffing and technology deficits are particularly acute.

The Division’s FY 2023 budget request is designed to provide the Division with the resources needed to overcome its staffing and technological shortfalls, thereby enabling it to more effectively enforce the antitrust laws, fight fraud, and protect American consumers.

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

- Allow the Division to protect consumers by allocating sufficient staff to investigate and (if needed) block the increasingly numerous, high-dollar-value, and complex mergers reviewed by the Division;
- Provide the staff needed to complete the Division’s landmark litigation against Google; properly staff the Division’s numerous high-priority investigations (including those in digital markets); and build out the recently created Civil Conduct Task Force, which currently has only four attorneys; and

- Increase the Division’s capacity to prosecute and deter criminal antitrust violations by providing the staff needed to try the 18 criminal trials currently scheduled (including against Teva, the world’s largest generic pharmaceutical company); staff the Division’s over 145 open grand jury investigations and any resulting litigation; and expand the Procurement Collusion Strike Force, whose mission is to protect taxpayers by investigating collusion, fraud, and corruption in government procurement but which currently only has 1.5 full-time-equivalent attorneys.

The technology infrastructure request in the Division’s budget proposal is also critical to empowering a fully-staffed Division to protect consumers and vigorously enforce the antitrust laws. The Division conducted a comprehensive review of its IT portfolio in FY 2020 and diagnosed numerous serious problems that jeopardize the Division’s ability to carry out its mission. The Division’s FY 2023 budget request would address these problems by enabling the Division to:

- Conduct investigations and litigation more efficiently by modernizing the Division’s IT network, including implementing an IT service management platform to automate and streamline the Division’s IT workflows and by creating a project management office to review current and future IT initiatives;
- Reduce the time staff spends on redundant data entry in the Division’s legacy case- and record-management applications, thereby enabling them to spend more time advancing their cases;
- Implement a more modern, cloud-based document-review platform that will enable staff to review documents more quickly and effectively; and
- Reduce the time needed to ingest voluminous data sets and document productions by optimizing and stabilizing the Division’s network design.

In sum, enforcing the antitrust laws, combatting fraud, and protecting consumers are at the core of the Division’s mission, and the FY 2023 budget request would equip the Division with the staffing and IT resources it needs to effectively carry out its mission.

Summary

The Division is continually challenged by an increasingly international and complex workload that spans enforcement areas and requires considerable resources to manage. The importance of preserving economic competition in the U.S. and around the world cannot be overstated. The threat to American consumers is very real, as **anticompetitive behavior leads directly to higher prices and reduced efficiency and innovation**. In recognition of the importance of its mission, the Antitrust Division requests a total appropriation of \$273 million in support of 1,022 positions and 887 estimated FTE.

FY 2023 Total Budget Request by Program Area

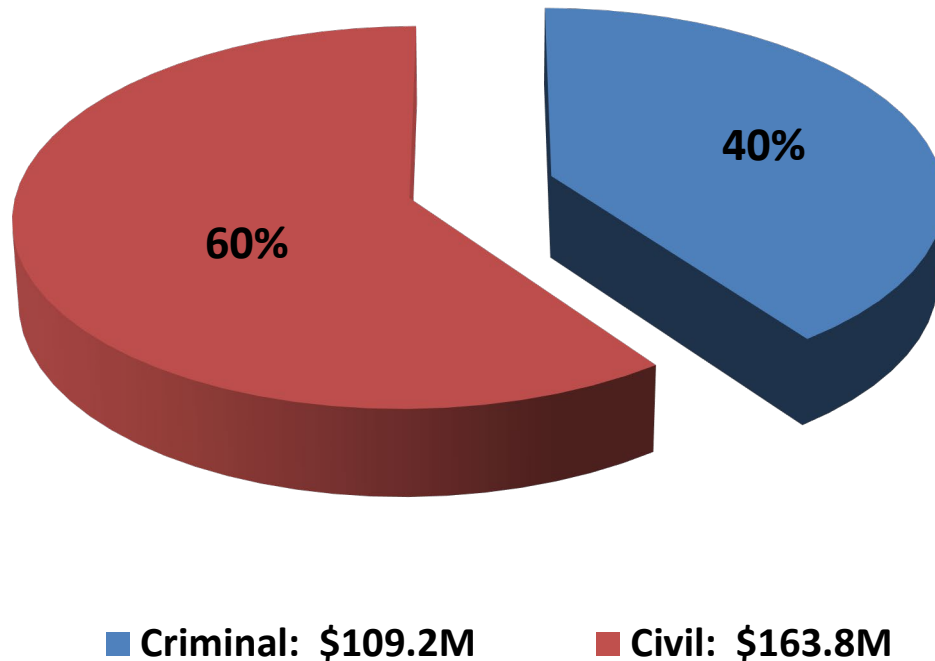


Figure 3

C. Full Program Costs

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

- Criminal Enforcement
- Civil Enforcement

In recent years, approximately 40 percent of the Division's budget and expenditures can be attributed to its criminal program with the remaining, approximately 60 percent attributed to its civil program. The FY 2023 budget request assumes this same allocation. It also incorporates all costs to include mission costs related to cases and matters and oversight and policy, as well as overhead.

D. Performance Challenges

External Challenges

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

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

Internal Challenges

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

Information Technology (IT) Expenditures

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

- *Data Storage* – Electronic storage and processing capability, vital to the mission of the Antitrust Division, continues to expand, growing exponentially since FY 2003, when 12 terabytes (12 trillion bytes) of capacity readily satisfied Division demands. By FY 2010 requirements surpassed 100 terabytes and the Division now requires electronic analytical capacity needs in excess of **3,000 terabytes**.
- *Data Security* – Monitoring and effecting actions to ensure that system design, implementation, and operation address and minimize vulnerabilities to various threats to computer security, including carrying out security planning, risk analysis, contingency planning, security testing, intrusion detection, and security training.
- *Litigation Support Systems* – Providing litigation support technologies that encompass a wide range of services and products that help attorneys and economists acquire, organize, develop, and present evidence. 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	Increase staffing level to address historical high workloads in the Antitrust Division.	247	124	\$27,400	54
Modernizing Antitrust Information Technology	To address gaps in the Antitrust Division's network configuration, applications, and development methods.	25	13	\$38,494	65

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, [\$201,176,000] \$273,006,000, 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 [\$138,000,000]\$274,500,000 in fiscal year [2022]2023, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [2022]2023, so as to result in a final fiscal year [2022]2023 appropriation from the general fund estimated at [\$65,176,000]\$0.

Analysis of Appropriations Language

In support of the Antitrust Division's international efforts, reception and representation fund authority is requested in the amount of \$5,000 to continue building and maintaining important international relationships. The funds will be used to pay for gifts or tokens of appreciation to visiting dignitaries and to fund official activities that further the mission of the Division, such as official receptions held in honor of visiting dignitaries.

IV. Program Activity Justification

Decision Unit: Antitrust

Antitrust Division Fiscal Year 2023 OMB Submission Decision Unit Justification (dollars in thousands)			
Decision Unit: Antitrust – TOTAL	Direct Positions	Estimate FTE	Amount
2021 Enacted	[740]	659	\$184,524
2022 Annualized CR	[830]	753	\$201,176
Adjustments to Base and Technical Adjustments	[-80]	-3	\$4,459
2023 Current Services	[750]	750	\$207,112
2023 Program Increases	[272]	137	\$65,894
2023 Request	[1,022]	887	\$273,006
Total Change 2022 – 2023	[192]	134	\$71,830

Antitrust Division - Information Technology Breakout (of Decision Unit Total)	Direct Positions	Estimate FTE	Amount
2021 Enacted	[31]	31	\$38,050
2022 Annualized CR	[31]	31	\$38,274
Adjustments to Base and Technical Adjustments	[13]	13	\$0
2023 Current Services	[44]	44	\$38,274
2023 Program Increases	[53]	27	\$40,758
2023 Request	[97]	71	\$79,032
Total Change 2022-2023	[66]	40	\$40,758

A. Program Description

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

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



Criminal Enforcement – In pursuit of its criminal enforcement strategy, the Antitrust Division addresses the increased globalization of markets, constant technological change, and massive, complex, and difficult-to-detect criminal conspiracies. These matters transcend national boundaries, involve increasingly technologically advanced efforts to avoid detection of sophisticated criminal behavior, and affect more U.S. businesses and consumers than ever before. Matters such as the Division’s ongoing investigation in the generic pharmaceuticals industry 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 Procurement Collusion Strike Force (PCSF). The PCSF is an interagency effort designed to deter, detect, investigate, and prosecute bid rigging and related crimes that undermine government procurement processes. The PCSF has increased scrutiny on procurement collusion and related fraud in response to the COVID-19 pandemic. During times of crisis, when exigent Government spending increases, the need for effective deterrence of potential bad actors, and successful detection and prosecution of actual bad actors, is particularly acute. The PCSF’s coordinated and collaborative response includes engagement with the Pandemic Response Accountability Committee, an interagency body providing oversight on CARES Act spending; the Department’s COVID-19 Fraud Enforcement Task Force; and multiple working groups dedicated to deterring and detecting fraud, collusion, and misconduct related to pandemic-response spending.

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

- Review of transactions notified by the parties under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) through statutorily mandated filings;

- Review of transactions not subject to HSR reporting thresholds; and
- Review of bank merger applications.

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

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



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

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

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

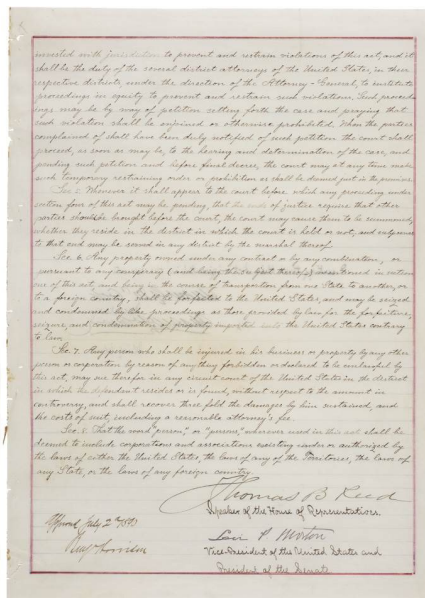
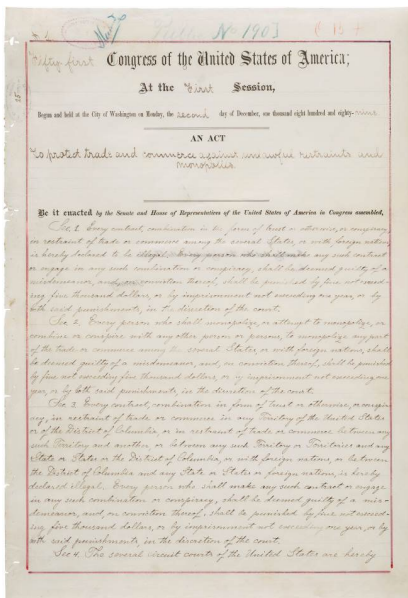
In addition, the Division seeks opportunities to deploy its employees to serve the needs of

the Federal Government for a broad variety of policy matters that involve competition policy to include:

- Detailing Division employees to federal agencies and other parts of the Administration;
- Detailing Division employees to Congressional offices; and
- Actively participating in White House interagency task forces.

International Advocacy – The Antitrust Division continues to work toward bringing greater cooperation to international enforcement, promoting procedural fairness and transparency both at home and abroad, and achieving greater convergence, where appropriate, to the substantive antitrust standards used by agencies around the world. The Division pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, including the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN), and working with countries that are in the process of adopting antitrust laws.

Laws Enforced: There are three major federal antitrust laws: the Sherman Antitrust Act (pictured below), the Clayton Act, and the Federal Trade Commission Act. The Sherman Antitrust Act has stood since 1890 as the principal law expressing the United States' commitment to a free market economy. The Sherman Act outlaws all contracts, combinations and conspiracies that unreasonably restrain interstate and foreign trade. The Department of Justice alone is empowered to bring criminal prosecutions under the Sherman Act. The Clayton Act is a civil statute (carrying no criminal penalties) that was passed in 1914 and significantly amended in 1950. The Clayton Act prohibits mergers or acquisitions that are likely to lessen competition. The Federal Trade Commission Act prohibits unfair methods of competition in interstate commerce, but carries no criminal penalties.



(An Act to protect trade and commerce against unlawful restraints and monopolies ("Sherman Antitrust Act"), July 2, 1890; 51st Congress, 1st Session, Public Law #190; Record Group 11, General Records of the U.S.)

B. Performance and Resource Table

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Antitrust Division												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Changes		FY 2023 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
			659	184,524	602	182,215	753	201,176	134	71,830	887	273,006
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Changes		FY 2023 Request	
Program Activity	<u>CRIMINAL</u>		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			264	73,810	241	72,886	301	80,470	54	28,732	355	109,202
KPI:	Percent of antitrust cases favorably resolved		90%		100%		90%		0		90%	
Performance Measure:	Number of Active Grand Juries		75		150		85		10		95	
Outcome Success Rate:	Total Dollar Value of Savings to U.S. Consumers (\$ in millions)		Not Projected		2,185,000		Not Projected		Not Projected		Not Projected	
Program Activity	<u>CIVIL</u>		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			395	110,714	361	109,329	452	120,706	80	43,098	532	163,804
KPI:	Percent of antitrust cases favorably resolved		80%		100%		80%		0		80%	
Performance Measure:	Number of Active Investigations		50		32		50		0		50	
Outcome Success Rate:	Total Civil (Merger and Non-Merger) Dollar Value of Savings to U.S. Consumers (\$ in millions)		Not Projected		1,567,000		Not Projected		Not Projected		Not Projected	

TABLE DATA DEFINITIONS:

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

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

Program Activity: Criminal

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

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: Percent of antitrust cases favorably resolved result includes the following:

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

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

Performance Measure: 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.

C. Performance Measure Table

PERFORMANCE MEASURE TABLE					
Decision Unit: Antitrust Division					
Strategic Objective	Performance		FY 2021	FY 2022	FY 2023
			Actual	Target	Target
4.1	Key Performance Indicator: Criminal	Percent of antitrust cases favorably resolved	100%	90%	90%
4.1	Key Performance Indicator: Civil	Percent of antitrust cases favorably resolved	100%	80%	80%
4.1	Performance Measure: Criminal	Number of Active Grand Juries	150	85	95
4.1	Performance Measure: Civil Non-Merger	Number of Active Investigations	32	50	50

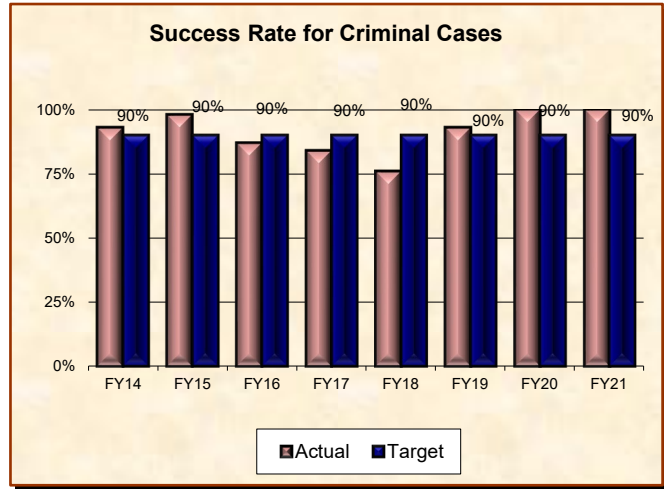
D. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

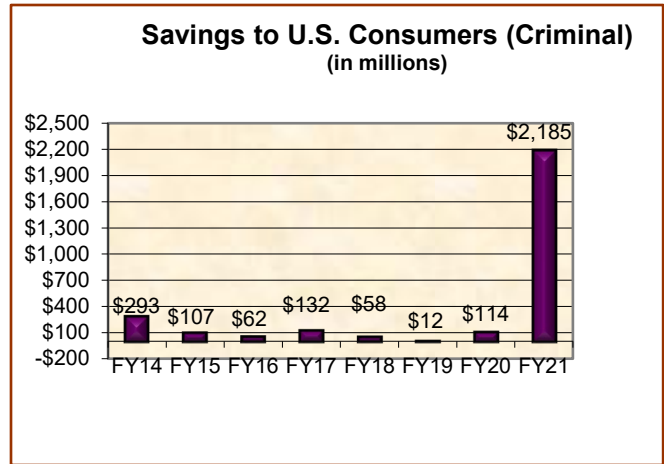
The charts below illustrate the Criminal Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Antitrust Criminal Cases and Savings to U.S. Consumers (as a result of the Antitrust Division's criminal enforcement efforts). It is the Division's goal to achieve a successful 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 2021, the Division successfully resolved 100 percent of criminal matters. The Division expects to meet or exceed its goals for FY 2022 and FY 2023.



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



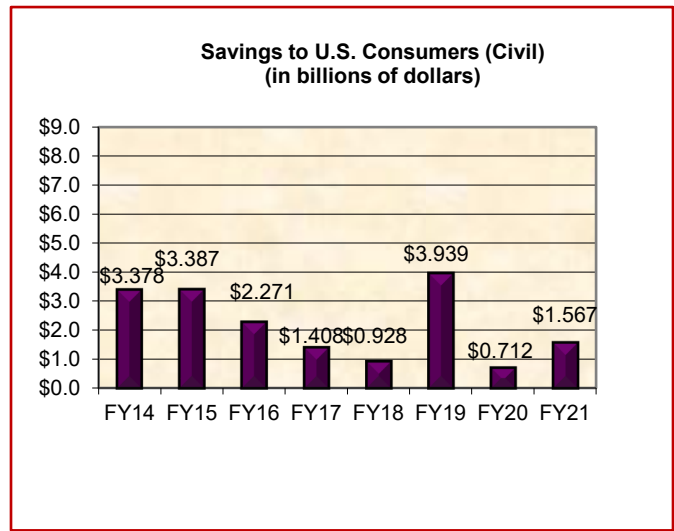
Civil Enforcement

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

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

The success rate for merger transactions challenged includes mergers that are abandoned, fixed before a complaint is filed, filed as cases with consent decrees, filed as cases but settled prior to litigation, or filed and litigated successfully. Many times, merger matters involve complex anticompetitive behavior and large, multinational corporations, requiring significant resources to review. The Division's Civil Merger Program successfully resolved 100 percent of the matters it challenged in FY 2013 - FY 2021 that have since reached full conclusion and expects to meet or exceed its success rate goal for FY 2022 and FY 2023.

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.





Civil Enforcement

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

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

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

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

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

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

Prosecute International Price Fixing Cartels

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

The global reach of modern cartels and their significant effects on U.S. consumers highlights the critical importance of international advocacy and coordination efforts.

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



E. Exemplars – Civil

A. Non-Merger

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

United States v. Google Litigation

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

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

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

Online Platform Investigations

In addition to its litigation against Google, the Antitrust Division is in the midst of large-scale investigations into the diverse business practices of the world’s largest online platform companies. These investigations each involve potentially anticompetitive business practices spanning many years, and many permutations of business models in technologically complex industries. The Division has made great progress in these investigations in FY 2021: developing the facts about many different business practices and contractual relationships, cultivating industry and economic experts, amassing legal research to understand the best way to apply precedent to these unique facts, and working collaboratively with a large number of state and foreign jurisdictions who are looking into similar theories of harm. The online platform investigations are entering a critical

phase as the Division moves into FY 2022.

National Association for College Admission Counseling (NACAC)

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

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

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

Embedded SIMs

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

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

The Division expressed its concerns to GSMA and, in response, GSMA drafted new

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

Civil Conduct Task Force

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

B. Merger:

Aon/Willis Tower Watson

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

Tupy/Teksid

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

Harvard Pilgrim Health Care/Health Plan Holdings

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

reduced choice for many consumers throughout the state of New Hampshire. Concurrent with the complaint, the Division and New Hampshire filed a settlement to remedy the competitive harm alleged in the complaint. The settlement requires that the merging parties divest Heath Plan Holdings' commercial health insurance business in New Hampshire before proceeding with the merger. The Division approved UnitedHealth Group Inc. as the acquirer for the divestiture. The settlement will preserve competition for the sale of commercial health insurance to small, private employers in New Hampshire.

Visa/Plaid

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

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

Intuit/Credit Karma

In November 2020, the Division filed a complaint challenging Intuit Inc.'s acquisition of Credit Karma Inc. According to the lawsuit, Intuit's TurboTax has enjoyed a dominant position in the market for digital do-it-yourself (DDIY) tax preparation products for more than a decade, but has been challenged by Credit Karma Tax since it entered and disrupted the industry four years ago. The complaint alleged the merger, as originally structured, would eliminate this important competition and lead to higher prices, lower quality, and less choice for consumers. To address these concerns, Intuit and Credit Karma agreed to divest Credit Karma Tax to Square Inc. This divestiture will ensure robust competition for DDIY tax preparation products relied on by millions of American taxpayers.

Waste Management/Advanced Disposal Services

In October 2020, the Antitrust Division and the Attorneys General of Florida, Illinois, Minnesota, Pennsylvania, and Wisconsin filed a complaint challenging the proposed merger of Waste Management, Inc. and Advanced Disposal Services, Inc. The complaint

alleged that the merger involved two of only a few significant providers of certain types of waste services in local markets across a number of states and that the merger, as originally proposed, would eliminate head-to-head competition between Waste Management and Advanced Disposal and threaten the lower prices and better services that customers had realized from that competition. The Division and the states filed a settlement that required the sale of assets covering landfills, transfer stations, hauling locations, and waste collection routes. The Division approved GFL Environmental Inc. as the up-front buyer of all of the divestiture assets. This settlement will preserve competition for customers of these services in over 50 local markets.

Liberty Latin America/AT&T Puerto Rico

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

Geisinger Health/Evangelical Hospital

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

On March 3, 2020, the Division announced a settlement with the parties that would resolve the antitrust concerns. Under the terms of the proposed settlement, Geisinger's interest in Evangelical will be capped, its interest will be passive, and it will not be able to exercise any control or influence over Evangelical's strategic business decisions. The settlement also requires the two hospitals to implement antitrust compliance programs. At the same time, the settlement allows the procompetitive aspects of the hospitals' agreement to go forward, including upgrades to Evangelical's electronic health records and patient care. The settlement will preserve competition for patient care in central Pennsylvania.

CPI/GD SATCOM

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

Dairy Farmers of America/Dean Foods

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

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

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

Cengage Learning/McGraw-Hill

On May 4, 2020, Cengage Learning Holdings II Inc. and McGraw-Hill Education Inc. announced they would abandon their proposed transaction after the Antitrust Division communicated to the parties its serious concern with the transaction. This merger would have combined the second and third largest publishers of textbooks in the United States, a market long dominated by three major participants. When evaluating the likely competitive effects of this deal, the Division’s primary concern was the transaction’s likely impact on American students. The Division conducted a rigorous investigation

into the likely competitive effects of the transaction, focusing on issues of innovation as well as price. The Division determined that Cengage and McGraw-Hill compete aggressively in the development of courseware technology, an increasingly important area due to the expansion of online and remote learning. The abandonment of this deal preserves critical competition in the market for textbook publishing that benefits American students.

United Technologies Corp./Raytheon

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

Novelis Inc./Aleris Corp.

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

Prior to filing the complaint, the Division reached an agreement with defendants to refer the matter to binding arbitration if the parties were unable to resolve the United States' competitive concerns with the defendants' transaction within a certain period of time. Fact discovery proceeded under the supervision of the district court. Pursuant to the arbitration agreement, following the close of fact discovery, the matter was referred to binding arbitration to resolve the issue of product market definition. A ten-day arbitration hearing concluded in early March 2020, marking the first time the Antitrust Division has used its authority under the Administrative Dispute Resolution Act of 1996 (5 U.S.C. § 571 et seq.) to resolve a matter. On March 9, 2020, the arbitrator ruled for the United States, holding that aluminum auto body sheet constitutes a relevant product market, as the United States had alleged. Because the Department prevailed, the United States filed a proposed final judgment with the U.S. District Court for the Northern

District of Ohio that requires Novelis to divest Aleris's entire aluminum ABS operations in North America to preserve competition in the relevant market. This arbitration procedure provided certainty and efficiency, as well as allowing the defendants to close their transaction subject to foreign regulatory review. Novelis reimbursed the United States \$2.4 million for all of its litigation costs and paid the arbitrator's fees.

Consent Decree Enforcement

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

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

i. T-Mobile/Sprint/DISH

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

ii. CenturyLink/Level 3 Communications

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

In September 2021, the Division filed a second civil contempt claim against CenturyLink. The petition alleged that CenturyLink violated the non-solicitation

provision by sending more than 100 marketing emails to Boise-area customers who had switched their business away from CenturyLink. The accompanying settlement agreement and order requires CenturyLink to make a \$275,000 payment to the United States.

iii. Live Nation/Ticketmaster

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

F. Exemplars - Criminal

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

In FY 2020 - FY 2021, the Division obtained the conviction after trial of a CEO, indicted several senior executives, obtained four criminal fines and penalties at or above the Sherman Act's \$100 million statutory maximum, launched and expanded an interagency partnership to safeguard public procurement from collusion, and prosecuted antitrust violations affecting generic drugs, cancer patients, grocery store staples, labor markets, federal agencies, financial markets, electronic components, and particularly vulnerable consumers, including the elderly and taxpayer-funded schools and hospitals. The Division's investigations into violations in many of these industries remain ongoing. Indeed, the Division ended FY 2020 with the highest total number of open grand jury investigations since FY 2009. The Division also initiated more grand jury investigations in FY 2020 than in any year since FY 2003.

In FY 2020, despite extremely challenging circumstances due to the COVID-19 pandemic, the Division charged 11 corporations and 22 individuals. The Division obtained significant sentences against both corporations (including criminal fines and penalties) and individuals (including prison terms and criminal fines). In FY 2020, the Division obtained over \$529 million in criminal fines and penalties, and prison sentences totaling 3,145 days of incarceration, including the former CEO and President of Bumble Bee Foods, who was sentenced to 40 months in jail.

A. Health Care Markets

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

i. Generic Pharmaceuticals

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

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

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

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

Four executives have been charged in the investigation, three of those executives have pleaded guilty and a former senior Taro executive is awaiting trial following his indictment for participating in two antitrust conspiracies and making a false statement to the Federal Bureau of Investigation (FBI).

ii. Oncology

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

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

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

In September 2020, the founder and former president of FCS was indicted for his participation in the conspiracy. Trial is scheduled for May 2022.

B. Grocery Store Staples

i. Canned Tuna

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

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

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

statutory maximum fine.

ii. Broiler Chickens

In June 2020, four senior executives from two major broiler chicken producers, including a CEO and president, were indicted for participating in a five-year conspiracy to fix prices and rig bids for chicken sold to American grocery stores and restaurants. In October 2020, six additional individuals—including one former CEO—were indicted for their participation in the same conspiracy, as well as charging one of the individuals with making false statements to federal law enforcement and obstruction of justice. Trial against these 10 individual defendants is set for October, 25 2021 in the District of Colorado.

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

In May 2021, an additional broiler chicken producer, Claxton Poultry Farms, was indicted for its part in the conspiracy. A co-conspirator broiler chicken producer, Koch Foods, was charged by superseding indictment in July 2021. A trial date has not been set.

The July 2021 superseding indictment also charged four former executives and employees of Pilgrim's Pride Corporation. These four are co-conspirators of the initial ten indicted defendants. A trial date has not been set and the investigation is ongoing.

These indictments, along with the prior investigation in the canned tuna industry, illustrates the Division's commitment to holding companies and executives accountable for collusion that affects our most basic necessity, food.

C. Labor Market

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

Most recently, in July 2021, DaVita, Inc., a company that operates outpatient medical care centers focusing on dialysis and kidney care, and its former CEO, were indicted for their participation in two bi-lateral conspiracies to allocate certain employees by agreeing with other employers not to solicit certain senior-level employees. DaVita is awaiting trial in the District of Colorado.

Previously, in January 2021, healthcare company Surgical Care Affiliates, LLC, and a related entity, were charged for their participation in conspiracies not to solicit for employment senior-level employees from competitors. One of the charged conspiracies involves DaVita, Inc. In July 2021, a superseding indictment was filed. This case is

proceeding in the Northern District of Texas and is scheduled for May 9, 2022.

In March 2021, a healthcare staffing company, VDA OC LLC (formerly Advantage On Call LLC) and its former manager were indicted for their participation in a conspiracy to allocate employee nurses and fix the wages of those nurses. Trial is set for February 28, 2022.

In December 2020, the former owner of a Texas-based in-home physical therapy company was indicted for participating in a conspiracy to fix prices by lowering the rates paid to healthcare workers by his company and a conspiracy to obstruct a separate investigation by the FTC. A former clinical director of a Texas-based therapist staffing company was superseded into the case in April 2021. Trial is set for April 4, 2022.

D. Prosecutions and Policy Changes to Protect Government Victims, Promote Competition & Save Taxpayer Dollars

i. Procurement Collusion Strike Force

To protect taxpayer dollars from antitrust crimes and related schemes that undermine competition for government procurement and grant and program funding, in November 2019, the Department announced the Procurement Collusion Strike Force (PCSF). The PCSF is a nationwide interagency partnership among the Division, 22 U.S. Attorneys' Offices (USAOs), the FBI, and multiple federal Offices of Inspector General to promote competition in the public procurement process and safeguard taxpayer dollars from collusion.

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

First, a key part of the PCSF's mission is training federal, state, and local procurement and grant officers, as well as agency auditors and investigators, on antitrust risks in the procurement process. Prior to the pandemic, the PCSF conducted over 30 in-person outreach presentations across the United States. In response to the pandemic, the PCSF quickly and seamlessly adjusted to virtual outreach and customized its training to the heightened risks presented by the current crisis. Since the presidential declaration of a national emergency, the PCSF has provided interactive virtual training to more than 15,000 representatives from 500 federal, state, and local agencies.

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

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

Whether in light of the more than \$2 trillion of pandemic relief spending or the billions in annual discretionary government spending, funding to support the PCSF's mission is critical. Yet the PCSF lacks dedicated funding and has achieved its early accomplishments on a shoestring budget relying primarily on the Division's existing resources. Securing adequate dedicated funding for the PCSF would enable it to investigate and prosecute more procurement-related schemes and deter wrongdoing by training even more procurement officials and government contractors on antitrust risks associated with the procurement process. According to the Organization for Economic Cooperation and Development, eliminating antitrust crimes such as bid rigging could reduce public procurement costs by 20 percent or more⁷.

ii. Government Victims

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

a. Korea Fuel

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

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

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

b. Detroit Demolition

The Antitrust Division partnered with the U.S. Attorney of the Eastern District of

⁷ "Fighting bid rigging in public procurement" *Organization for Economic Cooperation and Development*. Viewed on September 16, 2021. www.oecd.org/competition/bidrigging

Michigan, the Special Inspector General of the Troubled Asset Relief Program, and the FBI to investigate and prosecute a bribery and fraud scheme affecting the Detroit Demolition Program, a federally-funded program to help protect home values, preserve home ownership, and promote economic growth.

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

c. GSA Auctions

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

Three individuals were charged in the investigation and have all pleaded guilty. These defendants await sentencing.

d. Security Services

In June, the Division indicted a Belgian-based security service company and three foreign-national executives for a conspiracy to rig bids for contracts to provide security services for the Department of Defense military bases and installations in Belgium. A second Belgian security firm, pleaded guilty for its role in the same bid rigging conspiracy and agreed to pay a \$15 million criminal fine. This was the first international resolution obtained by the PCSF.

e. Upcoming Trials Involving Government Victims

Division prosecutors are also preparing for trial in four other cases in courts from Raleigh to Sacramento involving fraud and bid-rigging schemes affecting federal spending. In September 2021, the Division is proceeding to trial in Sacramento against a former facility manager and owner of a roofing company who fraudulently manipulated the contracting process for 8(a) Business Development construction contracts at Sierra Army Depot. In January 2022, trial is scheduled against a defendant that participated in a conspiracy to rig bids for aluminum structure projects funded by the U.S. and the North Carolina Department of Transportation. In February 2022, trial is scheduled in New Orleans against a defendant that was charged with making false statements and conspiracy to defraud the United States by corrupting the procurement process for subcontracts from the U.S. Department of Energy. Also, in February 2022, the Division is scheduled for trial in San Antonio against a defendant charged with conspiracy to commit wire fraud and wire fraud based on fraudulently obtaining 8(a) Small Business Development contracts.

The Division remains committed to protecting taxpayer funds by prosecuting conduct that subverts the competitive process by which the Government buys and sells goods and services.

E. Financial Markets

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

i. Foreign Exchange Market

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

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

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

ii. Pre-Release American Depository Receipts

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

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

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

F. Components for Consumer Electronics

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

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

G. Commercial Construction

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

i. Commercial Insulation

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

To date, four individuals and one company have pleaded guilty in the ongoing investigation and await sentencing. These individuals have also agreed to pay restitution to the victims and to resolve civil forfeiture cases connected to the criminal charges.

ii. Commercial Flooring

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

To date, six individuals and three corporations have been charged in the ongoing

investigation. One individual was indicted, and five individuals and three companies have agreed to plead guilty accept responsibility for their participation in the conspiracy.

A. V. Program Increases by Item

Item Name: **Increased Antitrust Enforcement**

Budget Decision Unit(s): Antitrust

Organizational Program: Antitrust Division

Program Increase: Positions 247 Atty 112 FTE 124 Dollars \$27,400,000

Description of Item

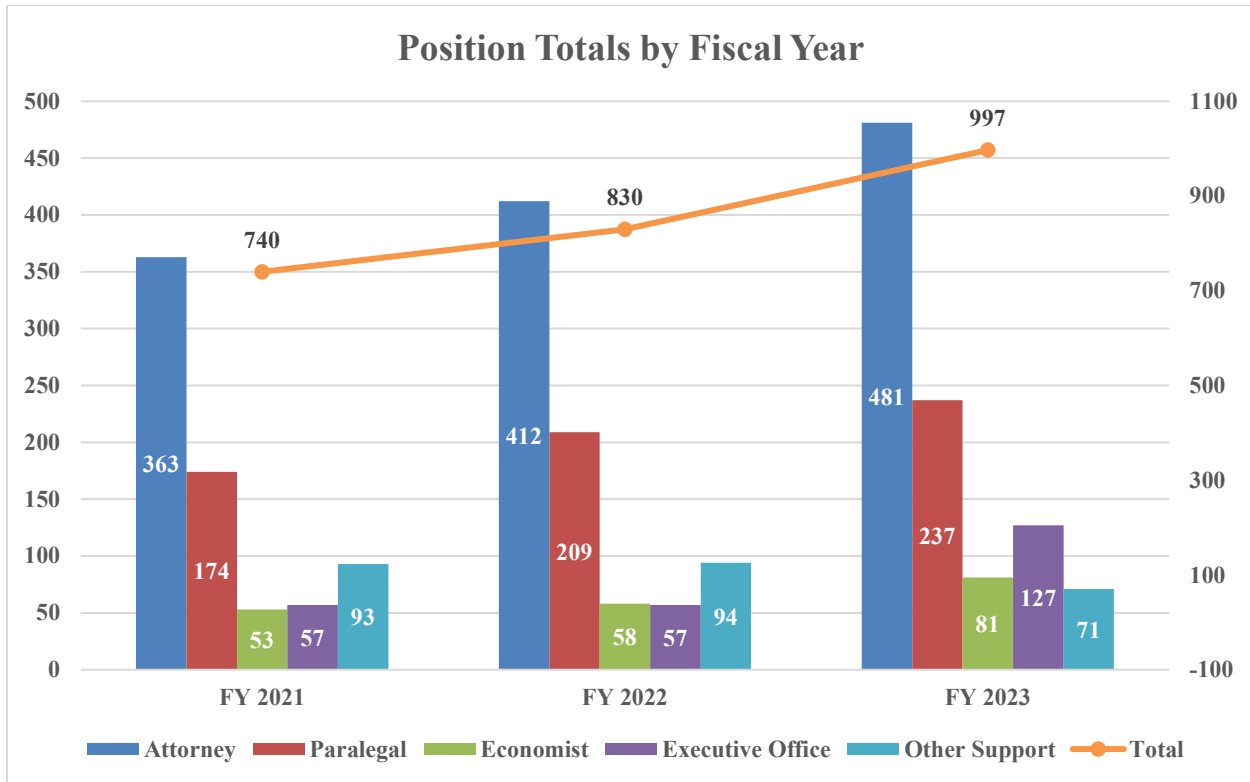
The Antitrust Division is requesting additional resources in order to achieve an increased staffing state that will enable the Division to fully address its historically high investigative, litigative, and program support workload. To meet the challenges presented by the complex and unprecedented workload of the Division's civil and criminal enforcement programs, the Division requests \$27.4 million to fund 247 positions, including 112 attorneys, 54 paralegals, 28 economists, and 53 program and administrative support staff, and to provide office space for the positions.

Justification

Overview

For FY 2023, the Antitrust Division requests an additional \$23.6 million and 247 positions to achieve an end strength that allows the Department to fully enforce the laws protecting our economic liberty, and \$3.8 million to provide office space to support the new positions. Over the past ten years, the Division's budget and staffing levels have not kept pace with the growing volume and complexity of its investigations and litigation. Today, the current workload is historically high and includes critical, resource-intensive investigations of the tech sector; the generational monopolization case against Google; and 18 criminal trials involving food, farmland, healthcare, and labor markets.

The requested Increased Antitrust Enforcement would result in a headcount of 997 employees—including 481 attorneys—which would increase the Division's size by 67 percent over its FY 2021 end-of-year staffing level of 602 employees. Progress toward achieving this target is included in the FY 2022 President's Budget request, which if enacted, would provide funding for 90 permanent positions bringing the Division to a total of 830 employees.



Note: FY 2022 is based on fiscal hiring plan as of February 2022. FY 2023 is based on FY 2022 Staffing Plan, with this enhancement incorporated.

The Antitrust Division’s budget remained essentially flat from FY 2010 to FY 2020. On average, the Division has been at 94% of its staff ceiling each year since 2018 (when a Department-wide effort was undertaken to more accurately align staff ceilings with affordability).⁸ For example from FY 2010 to FY 2021, the Division’s headcount of onboard staff decreased by 61 attorney FTEs and 31 paralegal FTEs due to the rising per-employee cost of salaries and benefits. For example, the civil program lost, on net, 12 attorneys—over 7%. Likewise, the Division’s criminal program shrank by 33 attorneys—over 29%. In addition, the staffing shortfall is not limited to attorneys. The civil and criminal programs have lost 27% and 8% of their paralegals, respectively.

While the Division’s headcount has contracted, its civil and criminal workload has expanded.

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021 ¹
\$163	\$163	\$160	\$159	\$160	\$162	\$165	\$165	\$165	\$165	\$167	\$185

¹ The Division’s FY 2021 appropriation provided a \$17.8 million increase, including a \$4.3 million program enhancement (45 positions) and \$13.5 million for adjustments-to-base, of which \$10.7 million in non-recurring funding was provided to move or renovate the Division’s office space.

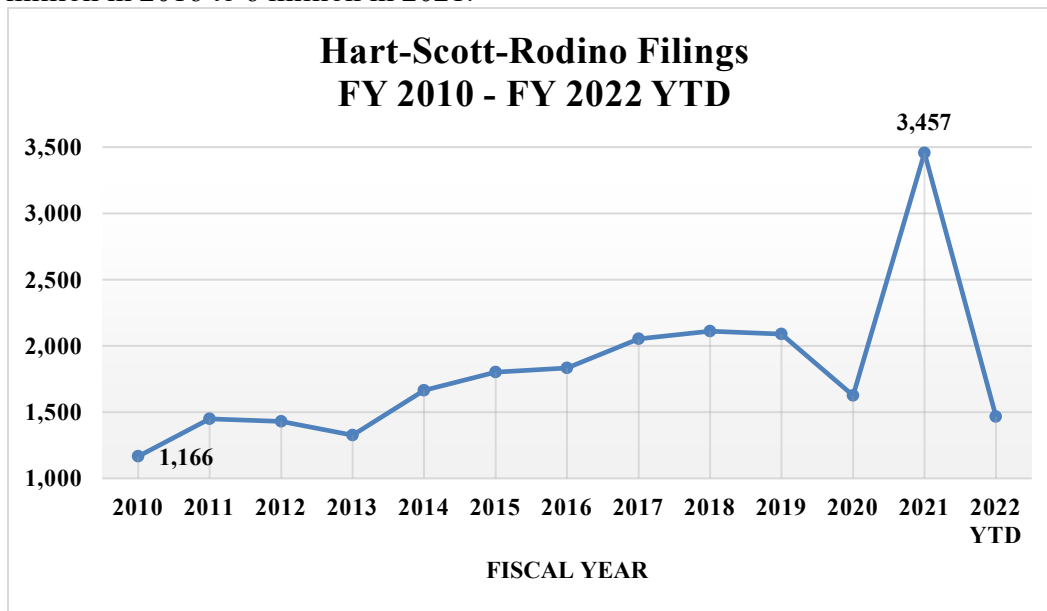
⁸ From FY 2010 to FY 2020, the Division’s staffing level averaged 81.8% of its authorized staff ceiling. This is due to a historic practice within the Department that authorized higher staff ceilings than components had the resources to achieve. As noted in the text, this practice was adjusted in 2018 to more closely align staff ceilings with affordability. The Division began tracking position affordability in FY 2020, and the Division ended that year with an onboard count that was 8.3% above its total position affordability level. In FY 2021, the Division ended the year at 3% below its position affordability level.

	2010 FTEs	Change:		Strength at End of FY21 ⁹	Change:		End of FY21 FTEs
		2010-Current			End of FY21		
		Percentage Change	FTE Change		Percentage Change	FTE Change	
Attorneys	371	-16.4%	-61	310	55.2%	171	481
Paralegals	168	-18.5%	-31	137	73.0%	100	237
Economists	55	-10.9%	-6	49	65.3%	32	81
Other¹⁰	208	-38.0%	-79	129	53.5%	69	198
Total Employees	802	-22.1%	-177	625	59.5%	372	997

Civil Enforcement Workload

The Division’s civil program is responsible for promoting and protecting consumers through enforcement of the civil antitrust laws, including reviewing mergers and investigating anticompetitive conduct.

Mergers. The workload facing the Division’s civil program has steadily increased over the past decade. Today, the Division’s civil sections review triple the volume of HSR filings than in 2010; there were 1,166 HSR filings in FY 2010 and 3,457 in FY21. The size and complexity of mergers has also increased over the last decade. The number of mega-mergers valued over \$1 billion has increased by over 600 percent—from 124 in FY 2010 to 795 in FY 2021—and many mergers the Division reviews involve specialized industries, global businesses, overlapping product markets, and coordination with multiple state and international enforcement agencies. The size of investigatory records has also increased exponentially. For example, the average number of documents produced per fiscal year in support of investigations has doubled from 3 million in 2016 to 6 million in 2021.



⁹ Attorney and paralegal headcounts do not include term-limited “Tech Fellows” (25 attorneys, 24 paralegals, and one statistician) hired using predominantly the Department-wide 3% Fund.

¹⁰ This category includes positions within the Executive Office, statisticians, and government information specialists.

Note: HSR filings in FY 2020 were abnormally low as a result of COVID-19 economic uncertainty.

Conduct Matters. As the merger case load has increased, so too has the demand for the Division to pursue civil non-merger work. For example, the Division frequently receives requests from members of Congress to initiate conduct investigations into critical industries,¹¹ and Members of Congress have publicly called for more active enforcement of anticompetitive conduct.¹² The Division also typically receives 1,000–1,500 complaints each year through its citizen complaint center, most of which address anticompetitive conduct.

The Division is currently conducting multiple high-profile, resource-intensive civil conduct investigations in the tech sector, in addition to litigating its landmark case against Google and a large ongoing civil conduct litigation against American Airlines and JetBlue alleging coordination that harms airline passengers. These cases are resource intensive because they involve complex fact patterns and require evaluation of conduct over many years. In addition, the Division has opened significant civil investigations to evaluate potentially anticompetitive conduct in the U.S. debit card market, the beef packing industry, the health care industry, and the airline industry. The Division’s conduct matters are currently understaffed due to resource constraints. The Division has also identified other possible investigations—including in high-priority areas like the use of non-compete agreements in labor markets—that have yet to be opened due to its staffing shortfall. Lack of resources has been a longstanding limitation on the Division’s ability to open and complete civil conduct investigations.

As just one datapoint, 60 attorneys have worked on the Google investigation and litigation since the Division first opened its investigation, devoting over 100,000 attorney hours. That is approximately a third of the Division’s civil attorney staff. Pursuing a single case of that magnitude saps resource availability Division-wide, forcing triage of cases or staffing levels. The Division needs sufficient staff to pursue multiple such matters at once without compromising other work, which it cannot accomplish at current staffing levels.

Finally, on both merger and conduct matters, Division attorneys routinely face off against high-powered, highly-paid law firms and companies with seemingly unlimited resources. The resulting David-versus-Goliath dynamic has grown more extreme over time as the Division’s staffing resources have dwindled.

Criminal Enforcement Workload

The Division’s criminal program prosecutes per se violations of the antitrust laws, including price fixing, bid rigging, and market allocation. Amid a stagnant budget and shrinking headcount, the Division’s criminal program is historically busy. The Division is currently litigating or preparing for 18 criminal trials against ten companies and 42 individuals, including the first-ever criminal actions involving labor markets, a bet-the-company trial against two

¹¹ As just a sample of the requests for conduct investigations the Division receives from members of Congress, in the last year the Division has received letters requesting that the Division investigate anticompetitive conduct in industries such as beef, insulin, online stock trading, plumbing, and search engines.

¹² For example, Sen. Amy Klobuchar, chair of the Senate Judiciary Committee Antitrust Subcommittee, has said, “[W]e’re asking [the antitrust enforcement agencies] to take on these major cases that we tend to agree [] as a country need to be taken on exclusionary conduct.” Rep. Ken Buck, ranking member of the House Judiciary Committee Antitrust Subcommittee, has expressed similar sentiments, noting that “[o]ne area where there is agreement between Republicans and Democrats is that we need more robust enforcement of the antitrust laws.”

generic drug companies, and litigation against high-level executives (including eight CEOs and presidents for collusion affecting vital markets for food, health care, government spending, and construction). If all 18 trials proceed in FY 2022, it will mark the most trials the Division has litigated in decades.¹³

Criminal antitrust trials are among the most complex handled by the Department and typically face highly sophisticated, well-funded defenses. The Division's upcoming corporate and individual trials for price fixing of generic drugs have required the production of more than 20 million documents to date. In another upcoming trial involving a labor market conspiracy, ten partners from some of the country's most renowned law firms, including a former U.S. Solicitor General and a former U.S. Attorney, have entered appearances on behalf of the defendants and undoubtedly are supported by a multitude of associates and paralegals. By contrast, only five Division attorneys have spent time working on the trial. Division prosecutors are currently trying a ten-defendant case against individuals and executives in the chicken industry, which has required the production of more than 12 million documents.

In addition to a 25-year-high number of trials, the Division has the highest number of ongoing grand jury investigations in the last decade, including investigations into collusion affecting American workers, key consumer markets from food and farmland to health care and taxpayer spending. The Division ended FY 2021 with 146 grand jury investigations, including 84 opened in the last two years. The Division opened more grand jury investigations in FY 2020 and FY 2021 than in any year since FY 2003, and has the most pending grand jury investigations in 30 years, since FY 1991. Our efforts to prosecute collusion affecting American workers and the recent establishment of the PCSF—a multi-agency law enforcement team focused on deterring, detecting, and prosecuting collusion affecting federal, state, and local procurement efforts—will likely increase the Division's criminal docket further over the next few years. Indeed, the PCSF has 37 open investigations and has already trained 19,000 investigators and procurement officials.

Increased Antitrust Enforcement by Program Area

A fully resourced Antitrust Division is essential to the vigorous enforcement of the antitrust laws. To calculate "fully resourced," Division leadership reviewed historic staffing levels and worked with section management (both litigating and non-litigating). The Division grounded each of the staffing increases discussed below in objective criteria to avoid requesting more than is necessary to achieve the Division's mission.

Civil Enforcement Increased Antitrust Enforcement

Attorney Staffing. The Division's civil attorneys perform merger review and conduct investigations in every U.S. industry, ranging from manufacturing to multi-layered software platforms. As a result of statutory deadlines, merger investigations move quickly and require substantial resources. If the Division sues to block a merger, the litigation typically moves on a compressed schedule; on average, a merger trial starts just five months after the Division files its complaint. Lacking sufficient resources to fulfill its mission, over the last several years the Division has regularly had to make hard choices about which matters to prioritize. Many conduct investigations have been suspended because the Division has had no choice but to assign

¹³ The Division's high volume of litigation is due to several factors, including fewer pleas, white-collar trials that were delayed during the pandemic, and a bigger pipeline of investigations that has resulted in more cases.

attorneys to statutorily mandated merger reviews; for example, severely understaffed Division teams investigated capacity coordination in the airline industry and anticompetitive conduct in travel-booking technology for years before ultimately abandoning the investigations after the evidence became stale.

In order to rectify this problem and allow the Division to fulfill its mission of investigating and enjoining both anticompetitive conduct and mergers, the Division requests additional resources to restore its civil attorney staffing; fully staff the Civil Conduct Task Force; add dedicated civil attorneys to the San Francisco office; and allocate additional resources to support our investigations and deepen our economic analysis.

Civil Sections. In “Increased Antitrust Enforcement,” each of the six civil litigating sections with responsibility for merger review would be staffed with 29 full-time attorneys, including 25 generalist attorneys, one attorney dedicated to reviewing HSR filings, and three managers. Today, in many sections, HSR review is divided among the staff attorneys—on top of their responsibilities for investigating and litigating mergers and conduct cases. By adding an attorney with primary responsibility for coordinating this review, the remaining staff attorneys would be able to focus on mission-critical merger and conduct investigations. In the Financial Services, Fintech, and Banking section, one of the 25 full-time staff attorneys would be dedicated to reviewing bank mergers.

The proposed staffing level is the same for each civil section with merger-review responsibilities because the industries assigned to each section were reallocated in late 2020 to balance each section’s workload. Additionally, although the use of sections allows attorneys to develop industry-specific expertise, the Division frequently details staff between sections as case needs require and to ensure that resources are used efficiently. Sections of about 29 attorneys have also proven to work well from a management perspective.

Civil Conduct Task Force (CCTF). The Division also requests funding to fully staff the CCTF. Until last year, civil conduct investigations were managed solely by the civil litigating sections on top of their merger work. Because merger review must be expedited to comply with statutory deadlines, the civil litigating sections often had to deprioritize conduct investigations and reassign attorneys to fast-moving mergers. This often resulted in conduct investigations being understaffed, put on hold, closed, or, in some cases, proceeding so slowly that industry circumstances changed and the conduct at issue was no longer relevant. These tradeoffs severely hindered the Division’s ability to identify, investigate, and pursue civil conduct investigations, even as several of the Division’s most important civil cases over the past two decades have been conduct cases (including our lawsuits against Microsoft, American Express, Apple, and now Google).

In 2020, recognizing the need for greater focus on anticompetitive conduct, the Division created the CCTF, a section dedicated to pursuing civil conduct investigations full time. Today, the CCTF has just four full-time attorneys, plus a chief and assistant chief who also work on the section’s conduct investigations. This barebones staffing is not sufficient to tackle the slate of conduct investigations the Division is currently pursuing, much less to open and investigate additional potential violations.

The Division requests that the CCTF be fully staffed with 28 full-time attorneys, including 25 generalist attorneys and three managers. This level of staffing would enable the

CCTF to support the high-profile tech investigations, take the lead on other conduct investigations that are currently open but are understaffed, and open new investigations that the Division cannot adequately pursue at its current staffing levels. Based on the Division's experience over the last decade, if the increase in conduct-focused attorneys is less than the equivalent of a full section, the Division will have to keep triaging merger investigations over conduct investigations. The Division's ability to bring civil conduct enforcement actions will continue to suffer as a result. Building out the CCTF to a staffing level equivalent to other civil sections will provide the Division with the staffing needed to prioritize conduct investigations and responsibly manage our merger docket while also keeping all civil sections—both the CCTF and commodity-specific sections—at a size that has proven to work well from a section-management perspective.

Paralegal Staffing. The Division operates a unique paralegal program, which hires paralegals—typically recent college graduates who go on to pursue graduate education—on a four-year term basis. Paralegals are assigned to each civil section and are a crucial part of our investigative and litigation teams, handling everything from developing case facts and reviewing documents, to preparing and managing depositions. As the Antitrust Division increases its attorney staffing to take on more—and more complex—investigations, its paralegal staffing should increase as well. Under this proposal, the Division's civil paralegal team would grow to 115. This would create a ratio of 1.89 attorneys for every paralegal, which is just below the 2:1 ratio the Division has aimed for, and has proven effective, historically.

Economists, Research Assistants & Data Scientists Economists within the Division's Economic Analysis Group provide economic analysis on all civil and select criminal matters. The Division has traditionally maintained a ratio of one economist for every three civil litigating attorneys. The Division recommends adhering to this ratio and hiring an additional 24 Ph.D. economists. The Division's economists would be supported by six additional research assistants and four data scientists. Data scientists have become increasingly important as industries have become more complex.

Industry Fellowships. The Division proposes creating three rotating industry fellowship positions. These outside specialists will invigorate the Division's investigative work with up-to-the-minute knowledge of the industries the Division investigates.

Criminal Enforcement Increased Antitrust Enforcement

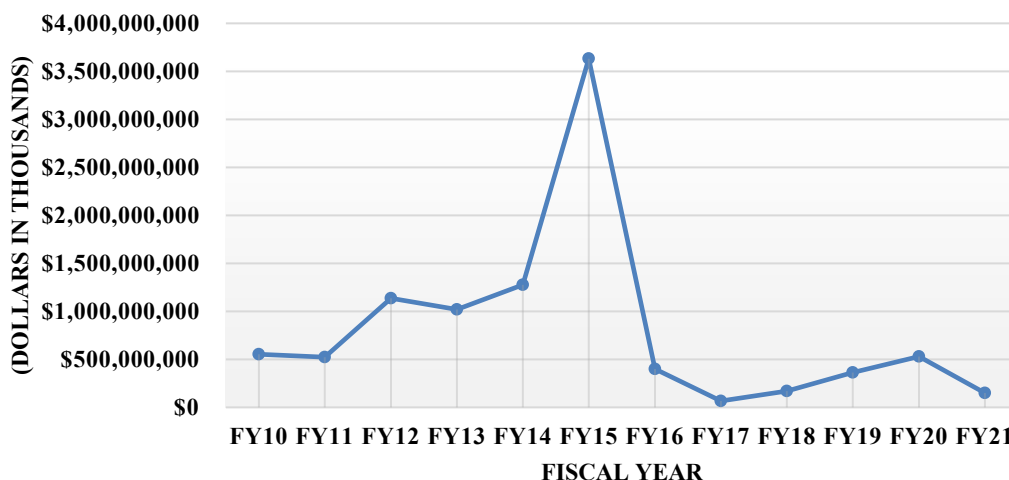
Attorney Staffing. Today, the Division's criminal sections have 113 attorneys and 61 paralegals. The Increased Antitrust Enforcement would include 28 attorneys and 17 paralegals in each criminal section, along with four FTEs supporting the PCSF. In total, 143 prosecutors in the Division's criminal program falls just below 2010 level, prior to field office closures that occurred in 2012 to decrease the Division's real estate costs and prioritize the work of its Chicago, New York, San Francisco, and Washington offices.¹⁴

¹⁴ In 2012, the Division closed its regional field offices in Atlanta, Cleveland, Dallas, and Philadelphia. As an internal announcement explained at the time, “[t]he intent of the proposed realignment is to preserve employee jobs and pay while also consolidating Division operations, reducing office space and cutting Division costs. . . . This closure would eliminate approximately 90,000 square feet of office space and associated rent . . . and provide for staffing increases in the Division's Chicago, New York, San Francisco, and Washington, D.C., locations.”

The proposed staffing level is the same for each criminal section because of the Division’s efforts and ability to ensure workload parity between offices. The Division’s criminal sections each cover a region of the United States, but each section conducts international investigations and significant investigations, and trials are often staffed across offices. The Division’s Front Office assigns new matters (for instance, resulting from citizen complaints) with each office’s workload in mind.

The criminal program’s Increased Antitrust Enforcement staffing numbers are necessary to support a growing number of complex investigations, hearings, and trials; ensure that there are adequate resources to avoid and replace attrition; thoroughly investigate promising procurement-collusion leads from the PCSF; complete a growing number of labor-market investigations; evaluate and respond to citizen complaints, referrals, and leniency applications; and continue the Division’s successful efforts that have led to the prosecution of over 538 individuals and 193 companies, and the collection of over \$9.8 billion in fines and penalties, since 2010.

ATR Criminal Fines Obtained
Total: \$9.8+ billion FY 2010 to FY 2021



Paralegal staffing. In addition to backfilling the Division’s prosecutor ranks, the nature of criminal work requires strong paralegal support. Criminal program paralegals organize, process, and review large numbers of search warrant documents that — unlike documents obtained by compulsory process — have not been prescreened by law firms. Paralegal support is particularly critical to support the Division’s 18 ongoing and upcoming trials. For example, it will take at least 33 out of the Division’s 61 criminal paralegals to staff upcoming trials.

Executive Office and Support Increased Antitrust Enforcement

As the Division increases its roster of attorneys, paralegals, and economists, it will need to grow its Executive Office team and Division-wide section support staff to an increased antitrust enforcement level of 198 positions.

The enhancement requests funding that will enable the Division to hire an Increased Antitrust Enforcement level of 126 positions for the Division’s Executive Office, including 72 positions for the Information Systems Support Group. This request would increase the Division’s IT staff by 64 percent above the FY 2021 end-of-year hiring plan and includes case managers for

managing the increase in litigation documents and data at the core of the Division’s work. The remaining 54 of the Increased Antitrust Enforcement position level for the Executive Office is for the Acquisitions and Records, Budget and Fiscal, Personnel, Library, and Security and Facilities sections. Staffing at this level will provide the additional support necessary for the requested increase in employees for the Division’s civil and criminal enforcement programs.

In addition to the Executive Office, the enhancement would allow the Division to hire to an Increased Antitrust Enforcement total of 72 positions for Division-wide Section Support. Support positions includes administrative positions, financial analysts, statisticians, and government information specialists.

Summary

In order to reach an Increased Antitrust Enforcement staffing state for the enforcement of the nation’s antitrust laws, the Division is requesting \$27.4 million and 247 additional positions for FY 2023, including 112 attorneys, 54 paralegals, 28 economists, 43 executive office staff, and 10 other support staff.

	FY 2021 Enacted	FY 2022 Budget Request¹⁵		FY 2023 Congressional Submission	
	Hiring Plan	PB Request	New FY Total	PB Request Positions	Delta (Enhancement)
Attorney	320	49	369	481	112
Paralegal	148	35	183	237	54
Economist	48	5	53	81	28
Executive Office	83	0	83	126	43
Other Support	61	1	62	72	10
Total	660	90	750	997	247

The Antitrust Division’s Increased Antitrust Enforcement will give its 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 played a leading role in the Antitrust Division’s multi-year ranking at the bottom of the survey of the best places to work in the Federal Government. Division employees are routinely asked to work long hours and do more with less, which, among other issues, negatively impacts the ability to retain the talent necessary to handle complex, multi-year investigations that comprise the majority of the Division’s work. In FY 2019, the Division experienced an overall 24 percent increase in attrition over FY 2018, with attorney attrition increasing 82 percent over FY 2018 levels.

The requested additional resources for FY 2023 will enable the Division to fulfill its critical role of protecting American consumers and promoting competition in vital markets for digital platforms, agriculture, food, farmland, public procurement, and labor.

¹⁵ FY 2022 Budget request is based on current FY 2021 hiring, which was revised after the submission of the FY 2022 President’s Budget.

Impact on Performance

In his prepared remarks on May 4, 2021 before the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, the Attorney General stated that “[t]he antitrust laws are the charter of our economic liberty, and the Justice Department is committed to enforcing them.” The Division’s FY 2023 request reflects a level of resources that enables the Department to fully enforce the nation’s antitrust laws. With the additional requested resources, the Division estimates that its performance measure target of 85 active grand juries will increase by 10 in FY 2023, resulting in a new target of 95 active grand juries.

Funding

1. Base Funding

FY 2021 Enacted				FY 2022 President's Budget				FY 2023 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
<u>740</u>	<u>363</u>	<u>659</u>	<u>\$184,524</u>	<u>830</u>	<u>412</u>	<u>753</u>	<u>\$201,176</u>	<u>750</u>	<u>369</u>	<u>750</u>	<u>\$207,112</u>

2. Personnel Increase Cost Summary

Type of Position/Series	Positions Requested	Annual Costs per Position* (\$000)			FY 2023 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Security Specialists (0080)	3	\$81	\$72	\$180	\$243	\$216	\$162
Economists (0110)	28	\$107	\$105	\$220	\$2,996	\$2,940	\$169
Personnel Management (0200-0299)	3	\$81	\$72	\$180	\$243	\$216	\$162
Clerical and Office Svcs (0300-0399)	6	\$81	\$72	\$180	\$486	\$432	\$108
Accounting and Budget (0500-0599)	4	\$81	\$72	\$180	\$324	\$288	\$144
Attorneys (0905)	112	\$118	\$121	\$241	\$13,216	\$13,552	\$207
Paralegals (0950)	54	\$58	\$40	\$101	\$3,132	\$2,160	\$106
Financial Analysts (1160)	4	\$107	\$105	\$220	\$428	\$420	\$115
Library (1400-1499)	2	\$81	\$72	\$180	\$162	\$144	\$216
Statisticians (1530)	6	\$55	\$39	\$95	\$330	\$234	\$336
Info Technology Mgmt (2210)	25	\$81	\$72	\$180	\$2,025	\$1,800	\$117
Total Personnel	247				\$23,585	\$22,402	\$1,843

3. Non-Personnel Increase/Reduction Cost Summary

The \$3.8 million represents the non-recurring costs of buildout for basic office space associated with the new positions requested in the FY 2023 Congressional Justification. 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.

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Buildout/Space	\$3,815	\$15	247	-\$3,815	\$0
Total Non-Personnel	\$3,815	\$15	247	-\$3,815	\$0

4. Justification for Non-Personnel Annualizations

The buildout costs associated with the 247 new positions are non-recurring.

5. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/ Atty	FTE	Personnel	Non-Personnel	Total	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	750	369	750	\$105,276	\$101,836	\$207,112	-	-
Increases	247	112	124	\$23,585	\$3,815	\$27,400	\$18,599	\$1,849
Grand Total	997	481	874	\$128,861	\$105,651	\$234,512	\$18,599	\$1,849

6. Affected Crosscuts

Cyber Security

Item Name: **Modernizing Antitrust Information Technology**

Budget Decision Unit(s): Antitrust

Organizational Program: Antitrust Division

Program Increase: Positions 25 Atty 0 FTE 13 Dollars \$38,494,000

Description of Item

The Antitrust Division is hindered by an outdated IT infrastructure that strains to support litigation against sophisticated defendants that has rapidly increased in both complexity and volume. As a means of coping with limited resources, for years the Division has prioritized hiring additional personnel at the expense of investing in technology. The resulting IT erosion is no longer sustainable and threatens the ability of the Division to execute its mission. The existing infrastructure cannot sustain the Division's current level of operations, much less the anticipated increase that will come as investigations produce larger and larger volumes of data and the Division hires additional personnel.

In FY 2020, the Antitrust Division conducted a comprehensive review to diagnose points of weakness within the IT portfolio and develop remediation plans to solve for these weaknesses. This review found that IT posture is at a low maturity state. This not only results in a fragmented and negative experience for attorneys and paralegals, but also creates a real and persistent risk to Division-wide operations. The negative user experience has caused adverse outcomes for the Division, including failure to meet deadlines, reprimands in court, and litigating decisions made based on technological hurdles as opposed to case merit.

To address these findings, the Division is requesting \$38.5 million and 25 positions to resolve enterprise wide systemic shortcomings that limit the Division's ability to execute its mission.

Justification

Initiative #1

Establish Modern IT Capabilities

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

As part of this initiative, the Division will migrate away from legacy IT configurations to a 21st century technology stack and revitalize core capabilities to address the following deficiencies: implement and deploy monitoring tools; upgrade network infrastructure; establish dedicated network engineering teams; drastically improve network speed and bandwidth constraints; establish a mature software development lifecycle framework; establish a program management

office (PMO); enhance the Division's security posture; and stabilize disaster recovery capabilities.

In order to achieve the goals and outcomes outlined under this initiative, the engineering team will be staffed with federal and contractor personnel. Five federal positions are requested to ensure that the Division has sufficient in-house subject matter expertise to continue operational support once project implementation has been achieved.

Initiative #2
Application Modernization

The Division's day to day operations are conducted via a series of IT applications. This initiative will modernize the full suite of custom developed applications; civil and criminal case management applications; litigation support and case data tracking solution; employee lifecycle management applications; and consolidate the Division's disconnected records management solutions. The Division's existing suite of applications were developed 30+ years ago, using outdated instances of Oracle Databases, Oracle Forms, JAVA and ActiveX Controls that are no longer used in the industry. In the FY 2020 assessment, customers reported regular application crashes and found the Division's custom-built applications to be unintuitive, archaic, and lacking in automation.

Additionally, these legacy applications were developed and deployed in a manner that prohibits collaboration across teams and integration with other Division applications. As a result, users manually enter duplicative information across multiple applications – a task that is estimated to consume 40 percent of staff time. Continuing to operate in antiquated applications has created wide ranging inefficiencies, a poor user experience, high costs associated with maintaining the application environment, and an inability to easily provide enhanced functionality. Moreover, the legacy set of applications exposes the Division to a variety of security vulnerabilities due to the use of outdated technology, which requires constant monitoring and updating. Modernizing these legacy applications to a single repository for all of the Division's information, as well as streamlining processes, will make information more readily accessible across the Division and allow staff to ultimately spend more time on mission related work.

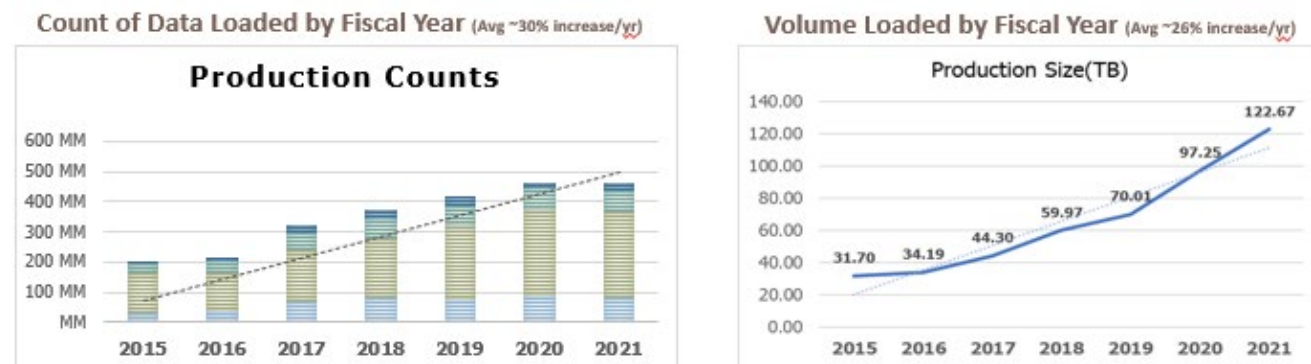
This initiative will leverage modern application platforms to enhance user access to data, ensure data resiliency, reduce long term reliance on application development and contract resources, and promote a more fiscally responsible model for the Antitrust Division. The Division anticipates maintaining the current systems in FY 2023, while it completes the transitionary work necessary in modernizing its application set. It is anticipated that current systems will need to be maintained at approximately 50 percent of present levels during FY 2024, with a completed transition from current to new application systems by the start of FY 2025.

In order to achieve the goals and outcomes outlined under this initiative, five federal positions are requested to ensure that the Division has sufficient in-house subject matter expertise to continue operational support once project implementation has been achieved.

Initiative #3
Litigation Support

This initiative will deliver the capacity to upload, store, review, and produce the rapidly

increasing amount of data associated with Division investigations now and into the future. Document review is at the core of the Division’s work and is enabled by an electronic document review platform, which will reach end of life and no longer be supported by the end of FY 2024. This critical initiative will allow the Division to smoothly transition to a new cloud based solution while simultaneously providing the flexibility and scalability to accommodate the increasing volume of cases into the future.



A solution of this type will provide enhanced storage capabilities with the capacity to support the ever-increasing size of investigative data sets, provide mobile ready and on-demand access to compute resources, introduce a more dynamic and reliable solution to support litigation teams while in trial, and provide the ability to archive and access historical data. Since FY 2015, the total files produced in Division investigations has continued to increase by an average of 30 percent each fiscal year, and the total size of those files (production volume) continues to grow on average 25 percent per fiscal year. In addition, the FY 2020 assessment found that users experience delays of up to one minute when toggling between documents in Relativity and must change browsers depending on the task.

The Division anticipates maintaining the current version of its document review platform in FY 2023 while improving network bandwidth necessary to facilitate migration to the new cloud-based instance. It is anticipated that the current instance will need to be maintained at approximately 50 percent of present levels during FY 2024, with a completed transition from the current instance to the new platform by the start of FY 2025.

In order to achieve the goals and outcomes outlined under this initiative, five federal positions are requested to ensure that the Division has sufficient in-house subject matter expertise to continue operational support once project implementation has been achieved.

Initiative #4
Network Optimization

The Antitrust Division requires a scalable, robust, and reliable network that can rapidly ingest voluminous data sets and is nimble enough to allow for the unimpeded simultaneous review of these data sets by attorneys and paralegals across the Division. In the FY 2020 assessment, customers reported slow network speeds and system lags, resulting in data processing delays, wasted employee time, and overall reduced productivity.

Enhancements will include Cloud compute and storage resources, proactive monitoring,

replacing end-of-life hardware, establishing a refresh schedule on network resources, and implementation of industry standard configuration and administration tools. Taking these actions will not only improve performance for staff, it will also provide the Division with the tools to proactively address situations when system resources are not operational or are not functioning at the appropriate performance levels. This will allow support staff to take the necessary steps to correct the issues and restore network operation while limiting the time the network is unavailable. This initial change will position the Division to stay on the leading edge of technological advances and prevent reliance on legacy/outdated network resources.

In order to achieve the goals and outcomes outlined under this initiative, five federal positions are requested to ensure that the Division has sufficient in-house subject matter expertise to continue operational support once project implementation has been achieved.

Initiative #5:

Data Management and Governance

This initiative will allow the Antitrust Division to replace its legacy and disparate document management platforms. It will replace the Division's current multiple, siloed, and redundant case management platforms that are built on end of life technology with a cohesive solution that can search for data across the enterprise. This approach not only removes data redundancy, which increases legal risk, but also introduces a cost savings to the Division. Among the findings in the FY 2020 assessment is that there is no single unified location to find all case information, which results in wasted attorney time searching for information across multiple siloed platforms. In addition, this initiative will allow the Division to de-duplicate data, facilitate insider threat monitoring, provide reporting capability on who has access to Division data, and provide data governance capabilities.

In order to achieve the goals and outcomes outlined under this initiative, five federal positions are requested to ensure that the Division has sufficient in-house subject matter expertise to continue operational support once project implementation has been achieved.

Initiative #6:

IT Service Management Solution

Transitioning the IT Service Management platform will assist the Division in moving away from the serial processes and stove piped silos that characterize its current internal management platforms to a modern, predictable, and automated workflow process. The FY 2020 assessment reported that customers have specifically found current management system processes to be lacking in functionality and in need of automation.

This initiative will streamline the Antitrust Division's IT and personnel hiring processes, improve operational stability, provide better management of assets, and enhance current reporting capabilities with more modern analytics. Additionally, it will provide a consolidated platform for automating and tracking various IT and HR related activities. A platform of this type provides tighter integration into existing/future support systems which reduces the number of systems to manage, provides greater reporting capability and will assist in budgetary forecasting.

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 tools necessary to adequately meet those demands.

The requested additional funding will enable the Division to realize the enterprise-wide transformation needed to support its mission into the future. Additional funding for these mission-critical IT infrastructure enhancements will allow employees to work efficiently and keep pace with the Division’s well-resourced adversaries.

Funding

1. Base Funding

FY 2021 Enacted				FY 2022 President’s Budget				FY 2023 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
<u>31</u>	<u>0</u>	<u>31</u>	<u>\$38,050</u>	<u>31</u>	<u>0</u>	<u>31</u>	<u>\$38,274</u>	<u>44</u>	<u>0</u>	<u>44</u>	<u>\$38,274</u>

2. Personnel Increase Cost Summary

Type of Position/Series	Positions Requested	Annual Costs per Position* (\$000)			FY 2023 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Info Technology Mgmt (2210)	25	\$81	\$72	\$180	\$2,021	\$1,800	\$680
Total Personnel	25				\$2,021	\$1,800	\$680

3. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Establish Modern IT Capabilities	\$17,849	\$17,849	1	-\$7,059	\$1,203
Application Modernization	\$7,025	\$7,025	1	-\$5,169	-
Litigation Support	\$5,612	\$5,612	1	-\$3,912	-
Network Optimization	\$1,937	\$1,937	1	-\$1,837	-
Data Management and Governance	\$1,457	\$1,457	1	-\$957	-
IT Service Management Solution	\$2,593	\$2,593	1	-\$1,393	-
Total Non-Personnel	\$36,473	\$36,473	6	-\$20,327	\$1,203

4. Justification for Non-Personnel Annualizations

- Establish Modern IT Capabilities: The Division estimates \$7.1 million requested in FY 2023 to be non-recurring. In FY 2024, \$10.8 million is anticipated as recurring costs for the contract, with costs increasing to \$12.0 million in FY 2025 in anticipation of increased costs each option year.
- Application Modernization: The Division estimates \$5.2 million requested in FY 2023 to be non-recurring. In FY 2024 and FY 2025, \$1.9 million is anticipated as recurring costs for license subscriptions.
- Litigation Support: The Division estimates \$3.9 million requested in FY 2023 to be non-recurring. In FY 2024 and FY 2025, \$1.7 million is anticipated as recurring costs for Operations and Maintenance (O&M).
- Network Optimization: The Division estimates \$1.8 million requested in FY 2023 to be non-recurring. In FY 2024 and FY 2025, \$100,000 is anticipated as recurring costs for O&M.
- Data Management and Governance: The Division estimates \$1.0 million requested in FY 2023 to be non-recurring. In FY 2024 and FY 2025, \$500,000 is anticipated as recurring costs for O&M.
- IT Service Management Solution: The Division estimates \$1.4 million requested in FY 2023 to be non-recurring. In FY 2024 and FY 2025, \$1.2 million is anticipated as

recurring costs for O&M.

5. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	44	0	44	\$7,955	\$30,319	\$38,274	-	-
Increases	25	0	13	\$2,021	\$36,473	\$38,494	-\$18,527	\$1,883
Grand Total	69	0	57	\$9,976	\$66,792	\$76,768	-\$18,527	\$1,883

6. Affected Crosscuts

Cyber Security

B. VI. Exhibits