



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2017 PERFORMANCE BUDGET**

Antitrust Division
FY 2017 Congressional Budget Submission
Table of Contents

I. Overview	2
A. Introduction	2
B. Issues, Outcomes, and Strategies	3
C. Full Program Costs	15
D. Performance Challenges	16
II. Summary of Program Changes	17
III. Appropriations Language and Analysis of Appropriations Language	18
IV. Program Activity Justification	19
A. Decision Unit: Antitrust	19
1. Program Description	19
2. Performance and Resource Tables	24
3. Performance Measurement Framework	29
4. Performance, Resources, and Strategies	30
5. Exemplars – Criminal	35
6. Exemplars – Civil	41
V. Program Increases by Item	47
A. Enhanced Antitrust Merger Enforcement and Cartel Prosecution	47
VI. Exhibits	51
A. Antitrust Division Organization Chart	
B. Summary of Requirements	
C. FY 2017 Program Increases/Offsets by Decision Unit	
D. Resources by DOJ Strategic Goal/Objective	
E. Justification for Technical and Base Adjustments	
F. Crosswalk of 2015 Availability	
G. Crosswalk of 2016 Availability	
H. Summary of Reimbursable Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Changes	
K. Summary of Requirements by Object Class	
L. Status of Congressionally Requested Studies, Reports, and Evaluations (Not Applicable)	
M. Senior Executive Service Reporting (Not Applicable)	

I. Overview

A. Introduction

The Antitrust Division is committed to its mission of promoting economic competition through enforcing and providing guidance on antitrust laws and principles. Its vision is 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 Division supports the Department's Strategic Goal II, Objective 2.6, "Protect the federal fisc and defend the interests of the United States." In recent years, the Division has aggressively pursued far-reaching criminal cartel activity and important civil matters while reviewing a large number of premerger filings, many involving complex issues and global conglomerates. Merger volume is projected to continue climbing in fiscal years 2016 and 2017 since regaining momentum after the 2008 global economic downturn. To administer its caseload, the Division's request includes \$180,506,000 in FY 2017, reflecting an increase of \$15,529,000 over the FY 2016 Enacted funding levels. In addition to annual cost adjustments of \$529,000, included is a requested program increase of \$15,000,000 to enhance the Division's efforts promoting competition and protecting consumers from economic harm.

It is critical that the Division have adequate resources to keep abreast of a workload, which ever increasingly involves large, multi-national corporations and anticompetitive behaviors that are pervasive and difficult to detect. By protecting competition across industries and geographic borders, the Division's work serves as a catalyst for economic efficiency and growth with benefits accruing to both American consumers and American businesses.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address:

<http://www.justice.gov/02organizations/bpp.htm>.

- From FY 2009 through the end of FY 2015, as a result of the Division's efforts, over **\$9.1 billion in criminal fines and penalties** were obtained from antitrust violators.
- As a key participant in the President's Financial Fraud Enforcement Task Force, the Division in FY 2015 was instrumental in the Department's investigation of the foreign currency exchange (FX) spot market resulting in the prosecution of five major banks which agreed to plead guilty to felony charges and pay **criminal fines totaling more than \$2.5 billion**.
- **Intellectual property** issues involving patents, copyrights, trademarks, or trade secrets are instrumental in the Division's work. Invention and innovation are critical in promoting economic growth, creating jobs, and maintaining our competitiveness in the global economy. Antitrust laws ensure new proprietary technologies, products, and services are bought, sold, traded and licensed in a competitive environment.

B. Issues, Outcomes, and Strategies

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

Enforcement Program	Major Matter Exemplars
<p align="center">Criminal DOJ Strategic Goal II Objective 2.6</p>	<p>Financial Fraud Enforcement (see Exemplar - pg. 35) (Real Estate, Securities and Commodities)</p> <p>Automobile Parts (see Exemplar – pg. 38)</p> <p>Ocean Shipping (see Exemplar – pg. 40)</p>
<p align="center">Civil Merger/Non-Merger DOJ Strategic Goal II Objective 2.6</p>	<p><u>Merger (pg. 41)</u> Electrolux/General Electric (see Exemplar – pg. 41)</p> <p>Chicken of the Sea/Bumble Bee (see Exemplar - pg. 42)</p> <p>Springleaf/OneMain Financial (see Exemplar – pg. 42)</p> <p>Comcast/Time Warner Cable (see Exemplar - pg.43)</p> <p>Applied Materials/Tokyo Electron (see Exemplar – pg. 44)</p> <p><u>Non-Merger (pg. 45)</u> American Express, MasterCard and Visa – Credit Card Merchant Restraints (see Exemplar - pg.45)</p> <p>eBooks (see Exemplar – pg. 46)</p>



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 \$5.1 trillion in FY 2015.¹

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

¹ “U.S. International Trade in Goods and Services.” *United States Department of Commerce, Bureau of Economic Analysis*, November 2015. Viewed on January 21, 2016 at <http://www.bea.gov/newsreleases/international/trade/2016/pdf/trad1115.pdf>.

involve foreign acquirers, acquirees, major customers and competitors, and/or divestitures.

This also impacts our criminal enforcement program. The Division has witnessed a tremendous upsurge in international cartel activity in recent years. 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. Of the grand juries opened through the end of FY 2015, approximately **43 percent** were associated with subjects or targets located in foreign countries. Of the approximate **\$11 billion** in criminal antitrust fines and penalties imposed by the Division between FY 1997 and the end of FY 2015, approximately **98 percent** were in connection with the prosecution of international cartel activity. In addition, approximately **88 foreign defendants** from France, Germany, Italy, Japan, South Korea, Taiwan, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom have served, or have been sentenced to serve, prison sentences in the United States as a result of the Division's cartel investigations.

The Division's criminal enforcement program overall, including enforcement against international cartels, has resulted in an increase in criminal fines. Up until 1994, the largest corporate fine imposed for a single Sherman Act count was \$6 million. Today, fines of \$10 million or more are commonplace, including many fines in excess of \$100 million. In FY 2015, total criminal antitrust fines obtained were just over **\$3.6 billion**.

As a key participant in the President's Financial Fraud Enforcement Task Force, the Division in FY 2015 was instrumental in the Department's investigation of the foreign currency exchange (FX) spot market, which resulted in five major banks agreeing to plead guilty to felony charges. Four banks – Citicorp, JPMorgan Chase & Co., Barclays PLC, and The Royal Bank of Scotland plc – agreed to plead guilty to conspiring to manipulate the price of U.S. dollars and euros exchanged in the FX spot market and to pay criminal fines totaling more than **\$2.5 billion**. The \$925 million fine obtained from one of the banks was the largest criminal fine ever obtained for an antitrust charge. A fifth bank, UBS AG, agreed to plead guilty to manipulating the London Interbank Offered Rate (LIBOR) and other benchmark interest rates and pay a \$203 million criminal penalty, after breaching its non-prosecution agreement resolving the LIBOR investigation. In conjunction with previously announced settlements with regulatory agencies in the United States and abroad, the total fines and penalties paid by these five banks for their conduct in the FX spot market was nearly **\$9 billion**.

As discussed above, our work no longer takes place solely within the geographic borders of the U.S. In our enforcement efforts we find parties, potential evidence, and impacts abroad, all of which add complexity, and ultimately cost, to the pursuit of matters. Whether that complexity and cost results from having to collect evidence overseas or from having to undertake extensive inter-governmental negotiations in order to depose a foreign national, it makes for a very different, and generally more difficult investigatory process than would be the case if our efforts were restricted to conduct and individuals in the U.S. The markets and competitors affecting U.S. businesses and consumers are more international in scope, and the variety of languages and business cultures that the

Division encounters has increased. Consequently, the Division must spend more for translators and translation software, interpreters, and communications, and Division staff must travel greater distances to reach the people and information required to conduct an investigation effectively and expend more resources to coordinate our international enforcement efforts with other countries and international organizations.

International Competition Advocacy - The Antitrust Division is actively working with international organizations to encourage the adoption, regulation, and enforcement of competition laws as worldwide consensus continues to grow that international cartel activity is pervasive and is victimizing consumers everywhere. From January 1990 to March 2014, North American known affected sales totaled \$4.2 trillion and known overcharges totaled \$31.5 billion.² The Antitrust Division's commitment to detect and prosecute international cartel activity is shared with foreign governments throughout the world, resulting in the establishment of antitrust cooperative agreements among competition law enforcement authorities across the globe. To date, the Division has entered into antitrust cooperation agreements with fourteen foreign governments – Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Germany, India, Israel, Japan, Korea, Mexico, and Russia.

In addition, antitrust authorities globally are becoming increasingly active in investigating and punishing cartels that adversely affect consumers. The Division is a strong advocate for effective anti-cartel enforcement around the world. As effective global cartel enforcement programs are implemented and criminal cartel penalties adopted, the overall detection of large, international cartels increases along with the Division's ability to collect evidence critical to its enforcement efforts on behalf of American consumers. In the past decade, dozens of jurisdictions have increased penalties for cartel conduct, improved their investigative powers and introduced or revised amnesty programs. For example, Canada and Mexico have recently adopted or strengthened criminal sanctions for hard core cartel conduct. In addition, jurisdictions such as Australia, Brazil, Canada, Japan, New Zealand, and South Korea have made revisions to their cartel amnesty policies making them more consistent with the United States.



Efforts such as these help enhance global antitrust enforcement and reduce the burden on law abiding companies that operate in international markets. In addition, they promote international uniformity and help bring cartel prosecution in line with international best practices.

² Connor, John M. "The Private International Cartels (PIC) Data Set: Guide and Summary Statistics, 1990-2013." (2014): 31. Viewed on January 15, 2016 at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478271, Available at SSRN 247827.

The Division continues to prioritize international cooperation, procedural fairness and, where appropriate, antitrust policy convergence and pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, and working with countries that are in the process of adopting antitrust laws.

In October 2001, with leadership from the Antitrust Division, the International Competition Network (ICN), comprised of competition authorities from 14 jurisdictions, was launched. The Division continues to play an important role in achieving consensus, where appropriate, among antitrust authorities on sound competition principles and also provides support for new antitrust agencies in enforcing their laws and building strong competition cultures. As of 2015, the ICN has grown to include 132 agencies from 119 jurisdictions. The 14th annual conference of the ICN was held in Sydney, Australia in April 2015 where ICN members adopted guidance on investigative process in competition cases and approved new work on international merger enforcement cooperation, legal theories in tying and bundling investigations and interaction with government procurement agencies.



Intellectual Property

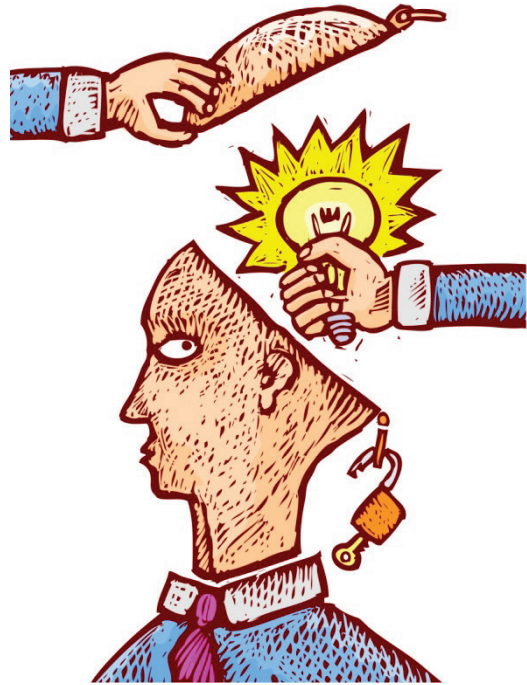
Invention and innovation are critical in promoting economic growth, creating jobs, and maintaining our competitiveness in the global economy. Intellectual property (IP) laws create exclusive rights that provide incentives for innovation. Antitrust laws ensure that new proprietary technologies, products, and services are bought, sold, traded and licensed in a competitive environment. Together, antitrust enforcement and the protection of intellectual property rights create an environment that promotes the innovation necessary for economic success. Issues involving patents, copyrights, trademarks, or trade secrets, arise in the Division's antitrust enforcement investigations, international competition advocacy, interagency initiatives, business review letters, and amicus filings in court cases. A number of these areas are highlighted below.

Patent Assets in Antitrust Cases and Business Reviews - The Division analyzes acquisition of significant patent assets closely to ensure competition is protected and invention and innovation are advanced. The Division also investigates allegations that companies are using their intellectual property in a way that violates 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. After completing an investigation, the Department publishes its business review letter. This procedure provides the business community an important opportunity to receive guidance from the Department with respect to the scope, interpretation, and application of the antitrust laws to particular proposed activity. The Department has issued a number of business reviews relating to intellectual property, including letters relating to patent pooling agreements and proposed IP policies of standard-setting organizations. In February 2015, the Division analyzed a proposed update by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) to its standards association's patent policy. The policy governs the incorporation of patented technologies in IEEE standards. The update would clarify the terms under which owners of patents needed to implement IEEE standards voluntarily agree to license such patents. The Division concluded that it was unlikely to challenge the proposed update if IEEE were to adopt it. This letter continues the Division's effort to provide standards-setting organizations and the high-tech community with guidance regarding the boundaries of procompetitive standards-setting activities.

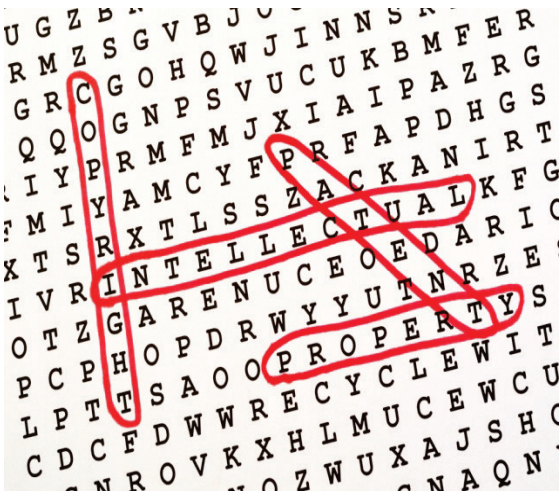
International Advocacy - The Division regularly engages in international competition advocacy projects promoting the use of sound analysis of competition complaints involving intellectual property rights in multinational fora, such as the World Intellectual Property Organization, the Organization for Economic Cooperation and Development, and the Asian Pacific Economic Cooperation, and with our antitrust enforcement counterparts in other jurisdictions, including China, the European Commission, India, Japan, and Korea.

To ensure that U.S. businesses may appropriately utilize their important intellectual property rights, it is crucial that other jurisdictions approach the intersection of antitrust and intellectual property in ways that promote both competitive markets and respect for intellectual property rights. The Division devotes substantial time and effort to advocating that all jurisdictions enforce competition laws in ways that create the right incentives for innovative activity to take place. In a September 2014 speech, Assistant Attorney General for Antitrust Bill Baer expressed concern about foreign antitrust



regimes that take action against IP owners “that is not necessary to remedy the actual harm to competition” and thereby “diminish incentives of existing and potential licensors to compete and innovate over the long term, depriving jurisdictions of the benefits of an innovation-based economy.” The Division continues to focus on best practices to analyze the competitive impact of standard-setting activities involving intellectual property rights and of the pooling of patents. In December 2014, the Division participated in a hearing on competition, standards, and patents sponsored by the OECD Competition Committee.

Interagency Initiatives - The Division regularly participates in interagency activities that promote competition advocacy where antitrust and intellectual property law and policy intersect.



In January 2013, the Division and the U.S. Patent & Trademark Office (PTO) issued a policy statement recommending that the U.S. International Trade Commission (ITC) undertake fact-based, case-specific decisions regarding the enforcement of a patent essential to a standard that is encumbered by a commitment to license that patent on reasonable and non-discriminatory (RAND) or fair, reasonable, and nondiscriminatory (FRAND) terms to those implementing the standard. When appropriately taking the effect of its exclusion order remedies on

competitive conditions in the U.S. economy and on U.S. consumers into account, it may be inconsistent with the public interest to issue an exclusion order in cases where the infringer is acting within the scope of the patent holder’s F/RAND commitment and is able, and has not refused, to license the patent on F/RAND terms. In a well-publicized matter, the U.S. Trade Representative recently cited extensively to the statement when disapproving an ITC exclusion order for the first time in over two decades.

Appellate Filings - The Division’s views concerning the possibility of a government amicus brief, or the content of an amicus brief in response to an invitation from the court, are routinely sought in most intellectual property cases in the Supreme Court and some in the courts of appeals. The Division provides its views in cases that have a significant potential to affect competition and may in other ways contribute actively to the development of a brief.

In March 2015, responding to a request from the Court of Appeals for the Second Circuit, the Antitrust Division submitted a letter brief explaining its view that under a Division consent decree that governs the music licensing practices of the American Society of Composers, Authors and Publishers (ASCAP), ASCAP cannot accept partial grants of public performance rights from its members. The Department currently is undertaking a review of the ASCAP decree, and a similar decree with Broadcast Music, Inc., to examine the operation and effectiveness of the decrees and whether they should be modified.

Economic Concentration

Ongoing economic concentration across industries and geographic regions also increases the Division's 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.

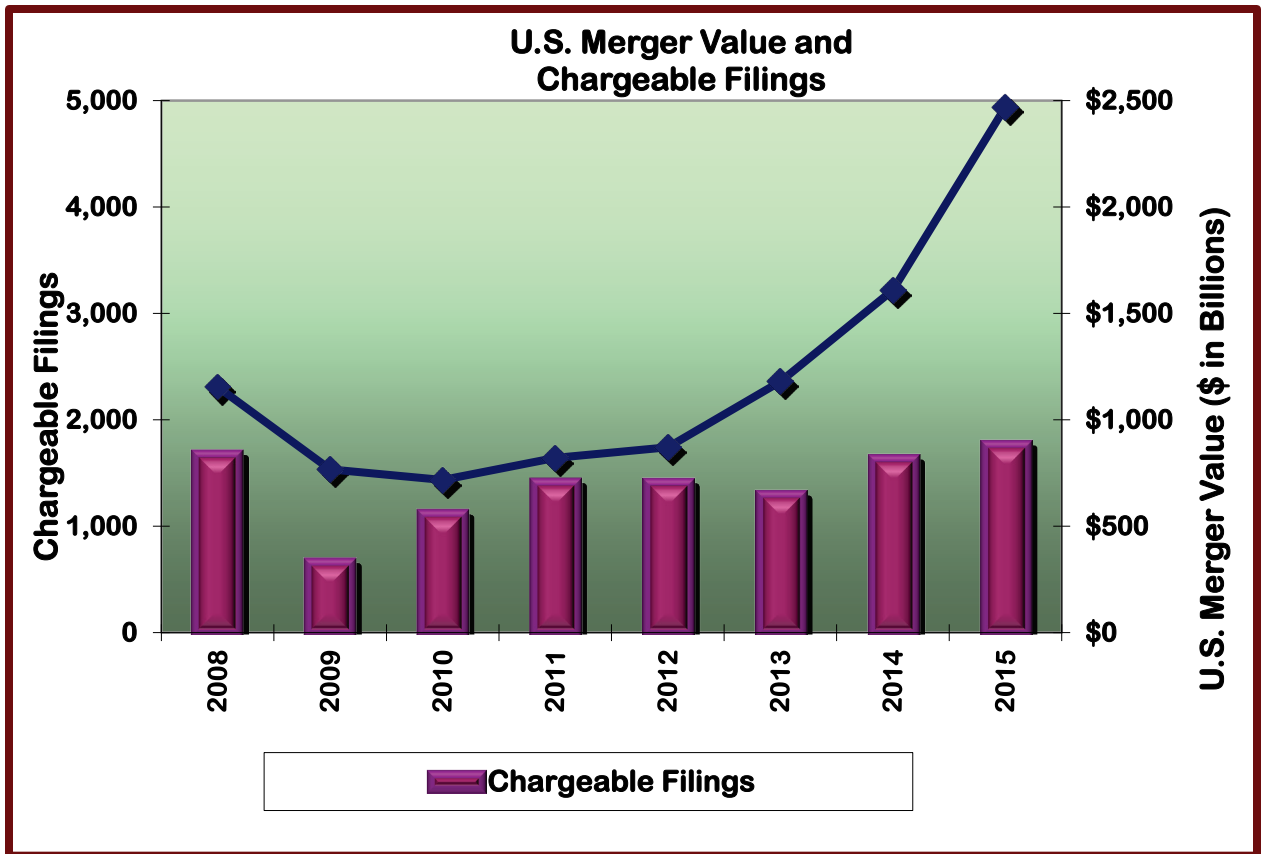


Figure 1

As shown in Figure 1, the overall economic downturn that began in calendar year 2008 resulted in a drop in merger deals in 2009 and the year finished with \$767 billion in U.S. merger value. However, merger and acquisition activity improved in calendar year 2010 and has steadily increased each year since. In calendar year 2015, worldwide merger and acquisition volume reached \$5.05 trillion, a record high, and U.S. volume reached its highest level on record, with an annual total of \$2.47 trillion.³

³ "Global M&A Review - Full Year 2015." *Dealogic Quarterly Reviews*, January 2016. Viewed on January 12, 2016 at <http://www.dealogic.com/u-media/1440/dealogic-global-ma-review-full-year-2015.pdf>.

Relative stability around the globe as well as moderate growth from corporations has created a level of optimism among investment bankers not seen in recent years. According to the KPMG 2016 M&A (Mergers and Acquisitions) Outlook Survey Report, 91 percent of M&A professionals surveyed are planning at least one acquisition in 2016.⁴

Technological Change and the Changing Face of Industry

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 in robotics, transportation, wireless communications, Over-the-Top (OTT) services such as Voice over Internet Protocol (VoIP) and mobile collaboration, biometrics and online security continues and intensifies.

We will see even more advances in technology in coming years as the telecommunications upheaval continues to transform services traditionally offered to subscribers by network operators, such as voice calls, messaging and video content delivery. Global mobile subscriptions reached close to 7.4 billion in 2015 and are expected to grow to 9.1 billion by 2021 according to the Ericsson Mobility Report, published by Ericsson in November 2015.⁵



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 2021, it’s estimated that globally 90 percent of people aged six years and over will have mobile phones and the number of smartphone subscriptions alone is set to reach 6.4 billion, a substantial increase over the 3.4 billion smartphone subscriptions in 2015. Mobile video traffic is set by 2021 to grow to around 70 percent of all mobile data traffic, an increase of 20% over 2015 traffic levels.⁶

⁴ “2016 M&A Outlook Survey Report.” *KPMG*, December 2015: 6. Viewed on January 12, 2016 at <http://info.kpmg.us/content/dam/info/ma-survey2016/pdf/2016-ma-outlook.pdf>.

⁵ Qureshi, Rima. “Ericsson Mobility Report – On the Pulse of the Networked Society.” *Ericsson*, November 2015: 2. Viewed on January 12, 2016 at <http://www.ericsson.com/res/docs/2015/mobility-report/ericsson-mobility-report-nov-2015.pdf>.

⁶ Qureshi, Rima. “Ericsson Mobility Report – On the Pulse of the Networked Society” *Ericsson*, November 2015: 2, 14. Viewed on January 12, 2016 at <http://www.ericsson.com/res/docs/2015/mobility-report/ericsson-mobility-report-nov-2015.pdf>.

As more consumers turn to Over-the-Top services (Internet or broadband-based services that replicate services traditionally offered to subscribers by network operators, such as messaging, voice calls and video content delivery) expanding technologies such as wireless video streaming and Voice over Internet Protocol (VoIP), stand to grow dramatically over the next several years. According to Digital TV Research, OTT revenue is expected grow to \$51.1 billion in 2020 compared to \$26.0 billion expected in 2015.⁷



The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the Antitrust Division. The economic paradigm is shifting so rapidly that the Division must employ new analytical tools, which allow it to respond quickly and appropriately. It must be vigilant against anticompetitive behavior in the new economy where the Internet and cutting-edge information technology may facilitate the rapid entry and dominance of emerging markets.

Technological Change and Information Flows

Technological change is occurring at a blistering 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, and other information from public

sources, including the Internet, the Division now regularly receives magnetic tapes, CD's, and computer servers containing the e-mail traffic and documents of companies under investigation.

⁷ "OTT TV & video revenues to rocket to \$51 billion." *Digital TV Research*, June 15, 2015. Viewed on January 14, 2016 at <https://www.digitaltvresearch.com/press-releases?id=127>.

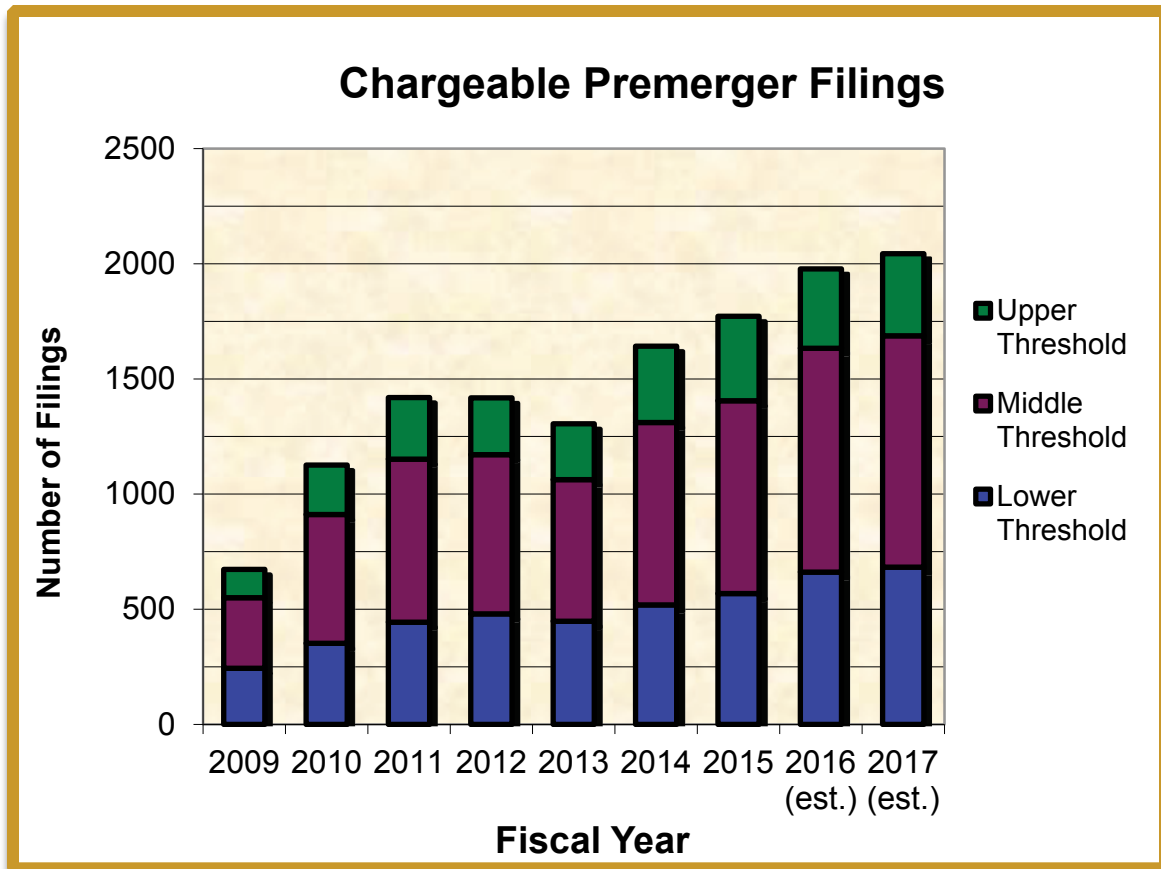
Results

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

- From FY 2009 through the end of FY 2015, as a result of the Division's efforts, over **\$9.1 billion in criminal fines and penalties** were obtained against antitrust violators. In FY 2015 alone the Division obtained just over **\$3.6 billion** in criminal fines, the first time the Division has reached this level of obtained fines and penalties in its history.
- 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 our prosecutions have involved international price-fixing cartels, impacting billions of dollars in U.S. commerce. **Since FY 1997, defendants have been sentenced to pay approximately \$11 billion in criminal fines and penalties to the U.S. Treasury, including more than \$7 billion just since the beginning of FY 2008.**
- The Division believes that individual incarceration has a greater deterrent effect than fines alone and continues to emphasize prison terms for individuals who participate in antitrust criminal behavior. In FY 2015, as the result of Division enforcement efforts, 15 corporations and 15 individuals were sentenced due to antitrust violations. Prison sentences between FY 2000 and the end of FY 2015 were an **average of approximately 22 months**, close to three times the 8-month average sentence of the 1990's. Prison sentences since FY 1990 have resulted in approximately **720 years** of imprisonment in cases prosecuted by the Antitrust Division, with **255 defendants** sentenced to imprisonment of one year or longer.
- Coupled with the increasing frequency and duration of defendants' incarceration was a rise in monetary restitution by criminal defendants. From FY 2004 through the end of FY 2015, restitution generated by the Division was approximately **\$102 million.**
- Despite a workload of increasingly complex cases, the Antitrust Division has made great strides in combating anticompetitive behavior across industries and geographic borders and has saved consumers billions of dollars by ensuring a competitive and innovative marketplace. **Since FY 1998, the first year for which data is available, the Division, through its efforts in all three enforcement areas - merger, criminal and civil non-merger - is estimated, conservatively, to have saved consumers \$45 billion.**

Revenue Assumptions

Estimated FY 2016 - 2017 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. In the August 2015 update to its “Budget and Economic Outlook: 2015 to 2025”, the Congressional Budget Office predicts that “economy will expand...at a solid pace in calendar years 2016 and 2017, and at a more moderate pace in subsequent years.”⁸



Premerger Filing Fee Thresholds Effective Feb 20, 2015	
Value of Transaction	Filing Fee
Lower: \$76.3M - <\$152.5M	\$45,000
Middle: \$152.5M - <\$762.7M	\$125,000
Upper: \$762.7M 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 Federal Trade Commission (FTC), fee collections of \$256 million for FY 2017 are expected. Hart-Scott-Rodino (HSR) filing fee revenue is collected by the FTC and divided evenly with the Antitrust Division. The Budget proposes to increase the HSR fees and index them for the percentage annual change in the gross national product. The fee proposal would also create a new merger fee category for mergers valued at over \$1 billion. Under the proposal, the fee increase would take effect in 2018 and would potentially bring in fee revenues of \$378 million.

⁸ “An Update to the Budget and Economic Outlook: 2015 to 2025.” *Congressional Budget Office*, August 2015: 1. Viewed on January 21, 2016 at <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50724-BudEconOutlook-3.pdf>.

Environmental Accountability

The Antitrust Division is mindful of responsible environmental management and has implemented processes to encourage awareness throughout the Division, including:

- Adherence to environmental standards during the procurement process to ensure products meet the recommended guidelines of the Department of Energy's energy efficiency standards, the Environmental Protection Agency's designated recovered material and bio-based products specifications, and the Department of Justice's Green Purchase Plan requirements.
- The Antitrust Division's central Washington D.C. Liberty Square building meets many LEED (Leadership in Energy and Environmental Design) criteria and includes many environmentally sound features including: zoned climate control for efficiencies in heating and air conditioning, motion sensed overhead lighting to minimize wasted energy in unoccupied space, and a building wide recycling program for paper, plastic, glass, and newspaper.
- The Division encourages employees to print documents only when absolutely necessary and, whenever possible, print double-sided in an effort to save paper.



The Division will continue to implement additional programs as further guidance is received from the Department, Administration and Congress.

Summary

The Division is continually challenged by an increasingly international and complex workload that spans enforcement areas and requires considerable resources to manage. With our children destined to inherit the resulting markets, the importance of preserving economic competition in the global marketplace cannot be overstated. The threat to 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 \$180,506,000 in support of 982 positions and 771 estimated FTE. This includes a requested program increase of \$15,000,000, 152 positions, and 77 FTE to enhance the Division's efforts promoting competition and protecting consumers from economic harm.

The FY 2017 Antitrust Division budget request of \$180,506,000 supports Departmental Strategic Goal II: Prevent Crime, Protect the Rights of the American People and Enforce Federal Law. The Division's criminal and civil programs are both included in Strategic Objective 2.6: "Protect the federal fisc and defend the interests of the United States."

FY2017 Total Budget Request by Strategic Goal Strategic Goal II - Strategic Objective 2.6

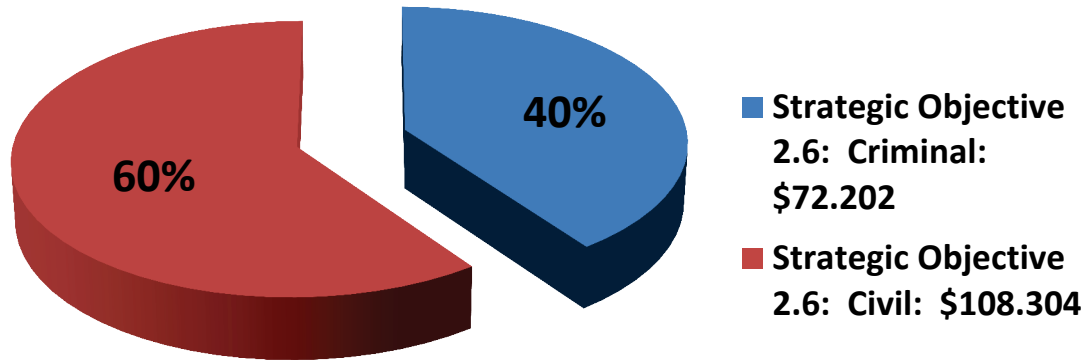


Figure 3

C. Full Program Costs

The Antitrust Division contains one Decision Unit (Antitrust). Within this Decision Unit the Division supports the Department's Strategic Goal II: "Prevent Crime, Protect the Rights of the American People and Enforce Federal Law". This Strategic Goal defines the two broad program areas:

- Criminal Enforcement
- Civil Enforcement

In recent years, approximately 40 percent of the Division's budget and expenditures can be attributed to its criminal program and approximately 60 percent of the Division's budget and expenditures can be attributed to its civil program. The FY 2017 budget request assumes this same allocation.

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

D. Performance Challenges

External Challenges

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

- Globalization of the business marketplace
- Increasing economic concentration across industries and geographic regions
- 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. 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 expects electronic analytical capacity needs to **reach 785 terabytes (TB) by FY 2016 and 1148 TB by FY 2017.**
- *Data Security* - - Monitoring and effecting actions to ensure that system design, implementation, and operation address and minimize vulnerabilities to various threats to computer security, including carrying out security planning, risk analysis, contingency planning, security testing, intrusion detection, and security training.
- *Litigation Support Systems* - - Providing litigation support technologies that encompass a wide range of services and products that help attorneys and economists acquire, organize, develop, and present evidence. Providing courtroom presentation and related training to the legal staff to develop staff courtroom skills and practice courtroom presentations using state-of-the-art technology.

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

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Enhanced Antitrust Merger Enforcement and Cartel Prosecution	To enhance the Division's efforts promoting competition and protecting consumers from economic harm.	152	77	\$15,000	47

Additional resources of \$15,000,000, 152 positions (98 attorneys), and 77 FTE are requested to address the increase in workload for ATR in both its civil merger enforcement and criminal cartel enforcement programs. With merger and cartel enforcement work expected to increase in FY 2016 and FY 2017, the requested program enhancement will help meet the challenges presented by this increased activity and enable the Division to continue protecting American consumers from anticompetitive merger deals and domestic and international cartels that harm U.S. consumers and businesses.

Approximately two-thirds of ATR's funding is derived from HSR premerger filing fees paid by companies planning to merge. Chargeable premerger filings are expected to continue increasing in FY 2017 resulting in HSR filing fee revenue offsetting the Division's FY 2017 request by an estimated \$128.0 million.

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, [\$164,977,000] \$180,506,000 to remain available until expended: Provided, That, notwithstanding any other provision of law, fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection (and estimated to be [\$124,000,000] \$128,000,000 in fiscal year [2016] 2017), 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 [2016] 2017; so as to result in a final fiscal year [2016] 2017 appropriation from the general fund estimated at [\$40,977,000] \$52,506,000.

Analysis of Appropriations Language

No substantive changes proposed.



IV. Program Activity Justification

A. Decision Unit: Antitrust

Antitrust Division			
Fiscal Year 2017 Congressional Budget Submission			
Decision Unit Justification			
<i>(dollars in thousands)</i>			
Decision Unit: Antitrust - TOTAL	Direct Positions	Estimate FTE	Amount
2015 Enacted	830	638	\$162,246
2016 Enacted	830	694	\$164,977
Adjustments to Base and Technical Adjustments	0	0	\$529
2017 Current Services	830	694	\$165,506
2017 Program Increases	152	77	\$15,000
2017 Request	982	771	\$180,506
Total Change 2016 - 2017	152	77	\$15,529

Note: FY 2015 FTE is actual.

1. Program Description

The Antitrust Division promotes competition and protects consumers from economic harm by enforcing the Nation's 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 has two main 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 has established five supervisory Deputy Assistant Attorney General (DAAG) positions reporting directly to the Assistant Attorney General. Each of these DAAGs has oversight of a specific program including Civil Enforcement, Criminal Enforcement, Litigation, Operations, and Economic Analysis.



Criminal Enforcement - Within the Criminal strategy, the Antitrust Division must address the increased globalization of markets, constant technological change, and a large number of massive criminal conspiracies the Division is encountering. These matters transcend national boundaries, involve more technologically advanced and subtle forms of criminal behavior, and impact more U.S. businesses and consumers than ever before. The requirements -- whether in terms of staff time, travel and translation costs, or automated litigation support -- of fighting massive criminal conspiracies effectively is great. Matters such as the Division's ongoing investigation in the auto parts industry (page 38) exemplify the increasingly complex nature of Division workload in the criminal area and demonstrate that successful pursuit of such matters takes time and resources.

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

- Review of HSR transactions brought to our attention by statutorily mandated filings
- Review of non-HSR transactions (those 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. Articulation of a pro-competitive position may make the difference between regulations that effectively do no antitrust harm and actively promote competitive regulatory solutions and those that may negatively impact the competitiveness of an industry. Examples of regulatory agencies before which the Division has presented an antitrust viewpoint include the Federal Communications Commission, Securities and Exchange Commission and the Federal Energy Regulatory Commission.

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. Many of the hundreds of legislative proposals considered by the Department each year have profound impacts on competition and innovation in the U.S. economy. 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 and policy statements aimed at particular industries or issues. Division personnel routinely give speeches addressing these guidelines and policy statements to a wide variety of audiences including industry groups, professional associations, and antitrust enforcers from international, state, and local agencies.

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

- Detailing Division employees to federal agencies and other parts of the Administration and
- Actively participating in White House interagency task forces in areas such as Internet Policy Principles, standard setting, and Accountable Care Organization (ACO) implementation.

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.

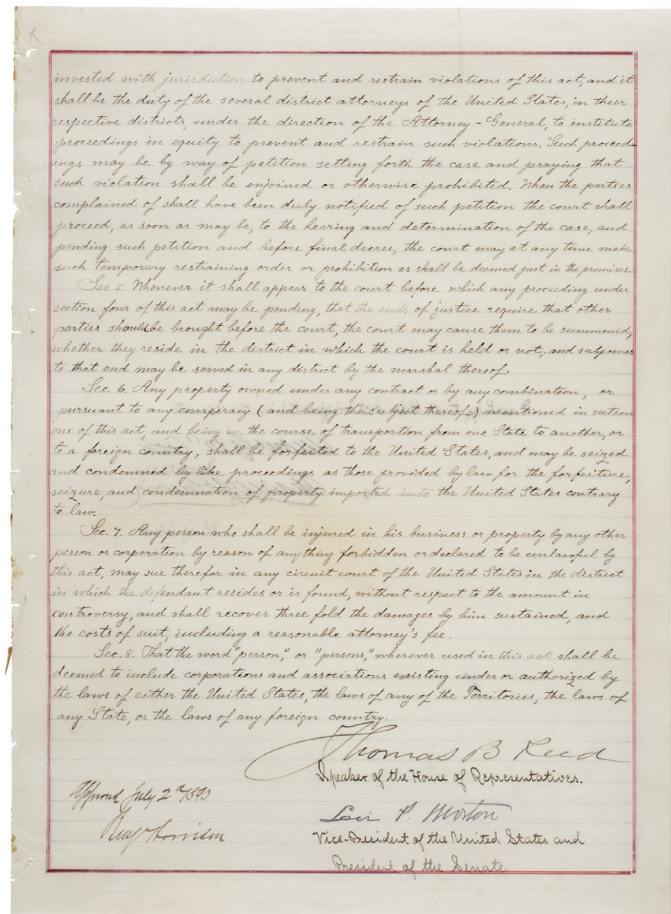
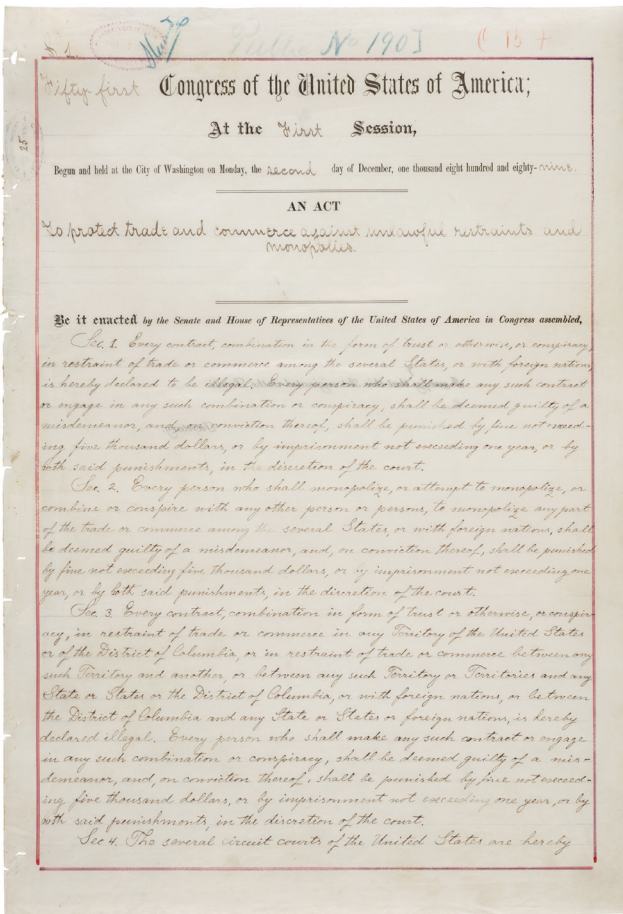


The Division pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, and working with countries that are in the process of adopting antitrust laws. One of the most notable examples of the Division's international efforts includes its participation in the International Competition Network (ICN). In April 2015, at its 14th annual conference in Sydney, Australia with more than

500 delegates and competition experts from more than 70 antitrust agencies in attendance, members adopted guidance on investigative process in competition cases and approved new work on international merger enforcement cooperation, legal theories in tying and bundling investigation and interaction with government procurement agencies.

With support from the Antitrust Division, the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN) are assisting substantially in Division efforts to achieve a more transparent, and where appropriate, uniform worldwide application of central antitrust enforcement principles.

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



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

2. Performance and Resource Tables

Decision Unit/Program: Antitrust

DOJ Strategic Goal II: Strategic Objective 2.6: Criminal, Civil

WORKLOAD/RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2015		FY 2015		FY 2016		Current Services Adjustments and FY 2017 Program Changes		FY 2017 Request	
Workload - Number of HSR Transactions Received		1,635		1,761		1,635		0		1,635	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Antitrust		654	\$162,246	638	\$159,972	694	\$164,977	77	\$15,529	771	\$180,506
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	FY 2015		FY 2015		FY 2016		Current Services Adjustments and FY 2017 Program Changes		FY 2017 Request	
Program Activity	1. Criminal	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		262	\$64,898	160	\$63,989	174	\$65,991	30	\$6,211	204	\$72,202
Performance Measure – Criminal	Number of Active Grand Juries	75		88		75		0		75	
	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected				Not Projected		Not Projected		Not Projected	
Program Activity	2. Civil	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		392	\$97,348	478	\$95,983	520	\$98,986	47	\$9,318	567	\$108,304

TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	Target	Actual	Projected	Changes	Requested (Total)
		FY 2015	FY 2015	FY 2016	Current Services Adjustments and FY 2017 Program Changes	FY 2017 Request
Performance Measure – Merger	Number of Preliminary Inquiries Opened	70	67	70	0/0	70
Performance Measure – Civil Non-Merger	Number of Active Investigations	70	37	70	0/0	70
Performance Measure – Civil Merger and Non-Merger	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected	\$216,998	Not Projected	Not Projected	Not Projected
Outcome – Criminal, Civil (Merger and Civil Non-Merger)						
Consumer Savings	Criminal: Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$107	Not Projected	Not Projected	Not Projected
	Civil: Total Civil (Merger and Non-Merger) Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$3,387	Not Projected	Not Projected	Not Projected
Success Rates	Criminal - Percentage of Cases Favorably Resolved	90%	98%	90%	0	90%
	Civil - Percentage of Cases Favorably Resolved	80%	100%	80%	0	80%

TABLE DATA DEFINITIONS:

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

Criminal, Civil Merger and Civil Non-Merger performance measure target adjustments for FY 2015 through FY 2017 projections are based on an analysis of FY 2007 through FY 2015 actual amounts.

Criminal Performance Measure:

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

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

Civil Performance Measures:

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

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

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

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

Outcome:

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

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

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

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

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

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

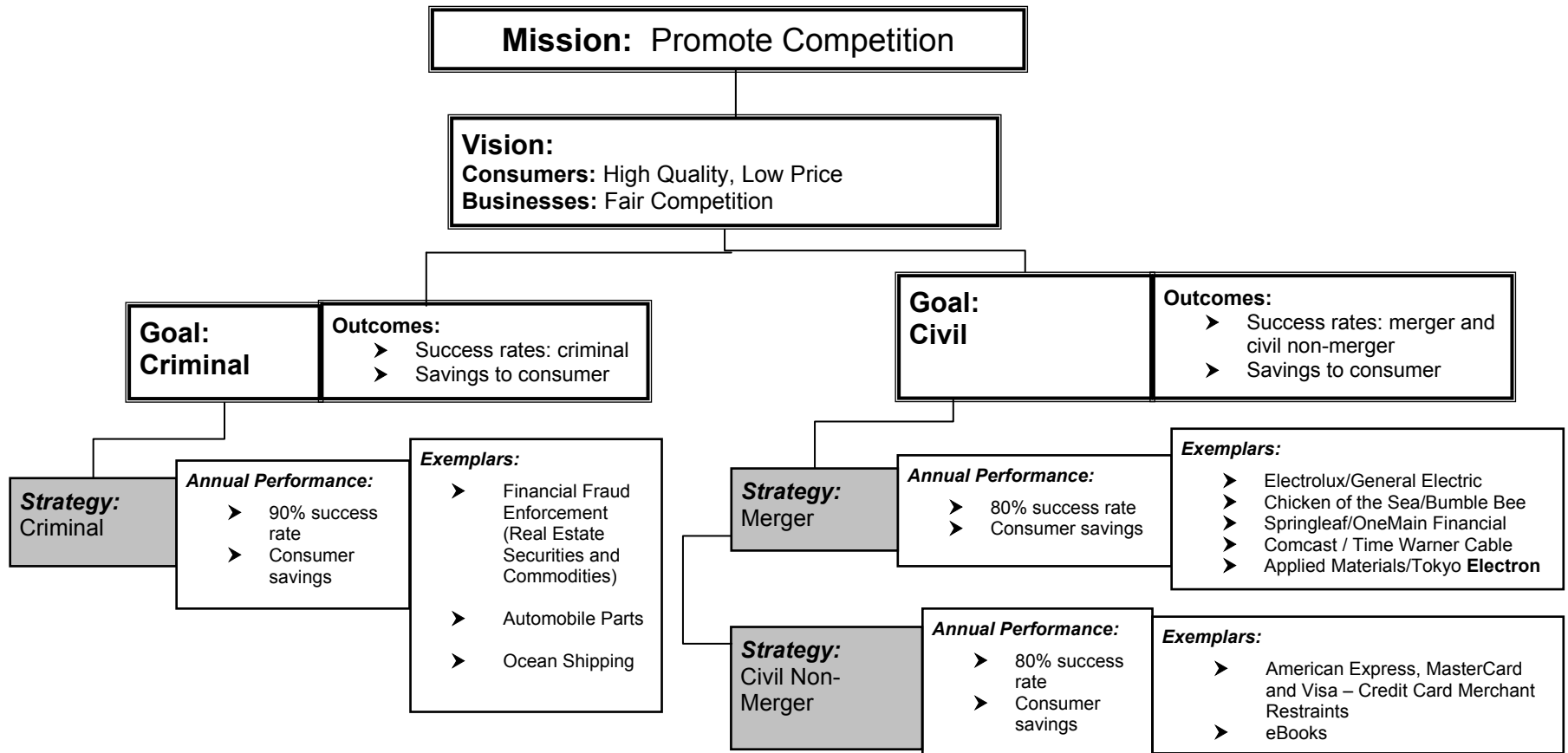
Matters Challenged Where the Division Expressed Concern include those in which: a complaint has been filed; the subject or target of an investigation has been informed that the Assistant Attorney General (AAG) has authorized the filing of a complaint; the subject or target of an investigation has been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

Performance Measure Report - Historical Data

Decision Unit: Antitrust									
Performance Report and Performance Plan Targets		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015		FY 2016	FY2017
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure: Criminal	Number of Active Grand Juries	141	87	75	72	75	88	75	75
Performance Measure: Criminal	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	\$2,486.4	\$4,469	\$2,296	\$2,931	Not Projected	\$178,004	Not Projected	Not Projected
Performance Measure: Civil Merger	Number of Preliminary Inquiries Opened	90	74	64	61	70	67	70	70
Performance Measure: Civil Non-Merger	Number of Active Investigations	50	46	38	34	70	37	70	70
Performance Measure: Civil (Merger and Non-Merger)	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	\$125,069	\$437,410	\$46,457	\$39,395	Not Projected	\$216,998	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Criminal	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$248.6	\$447	\$230	\$293	Not Projected	\$107	Not Projected	Not Projected
Outcome Measure: Consumer Savings - Civil	Civil (Merger and Non-Merger) - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$1431.1	\$8,965.6	\$909	\$3,378	Not Projected	\$3,387	Not Projected	Not Projected
Outcome Measure: Success Rate - Criminal	Criminal - Percentage of cases favorably resolved	97%	93%	100%	93%	90%	98%	90%	90%
Outcome Measure: Success Rate - Civil (Merger and Non-Merger)	Civil - Percentage of cases favorably resolved	98%	100%	90%	100%	80%	100%	80%	80%

3. Performance Measurement Framework

Antitrust Division, Department of Justice
Performance Measurement Framework
 FY 2017



4. Performance, Resources, and Strategies

The Antitrust Decision Unit contributes to the Department’s Strategic Goal II: “Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law”. Within this Goal, the Decision Unit’s resources specifically address Strategic Objective 2.6: “Protect the federal fisc and defend the interests of the United States”.

a. Performance Plan and Report for Outcomes

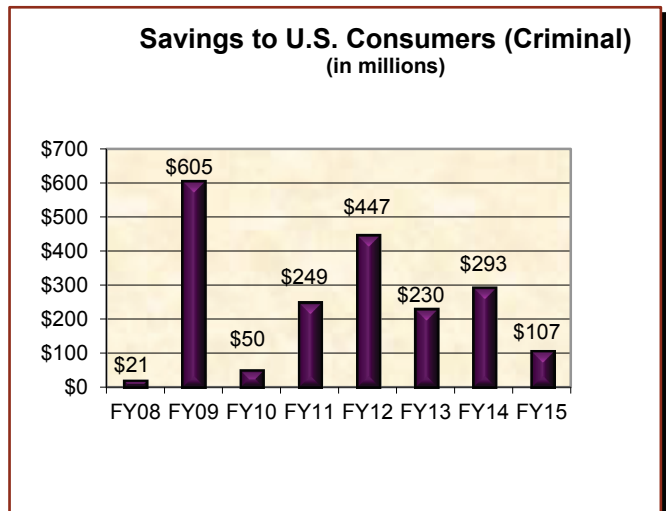
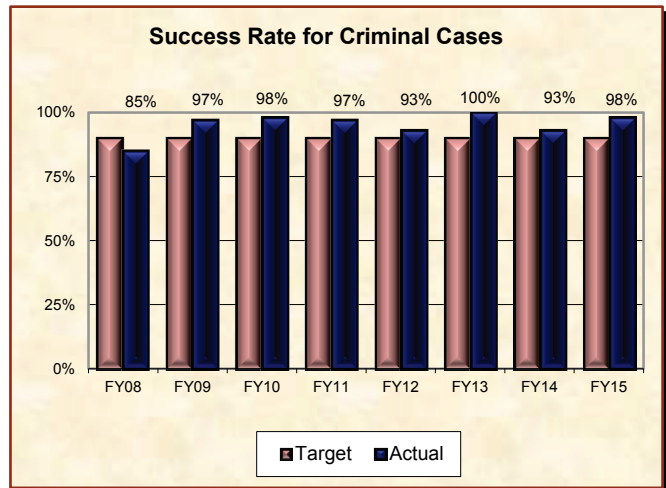
Prosecute International Price Fixing Cartels

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

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

In FY 2015, the Division successfully resolved 98 percent of criminal matters. This measure is a consolidated measure shared with all other litigating components within the Department. As a whole, the Department exceeded its target by successfully resolving 97 percent of its cases. The Division expects to meet or exceed its goals for FY 2016 and FY 2017.

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.

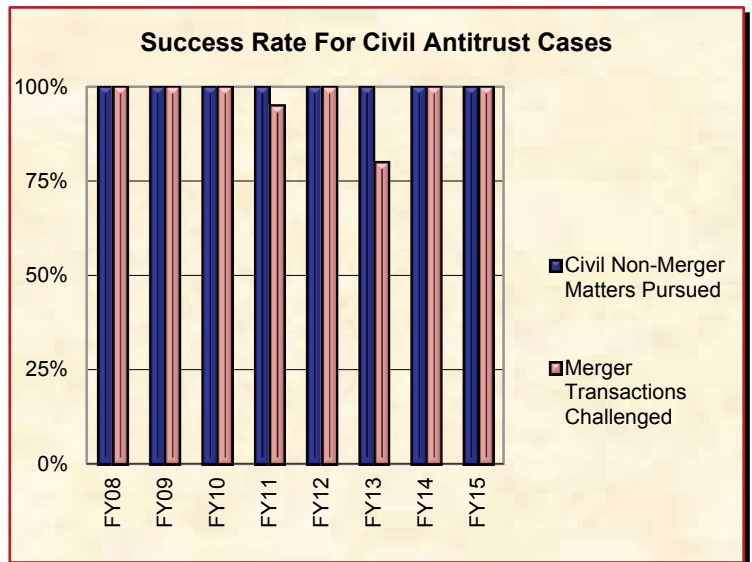


Civil Enforcement

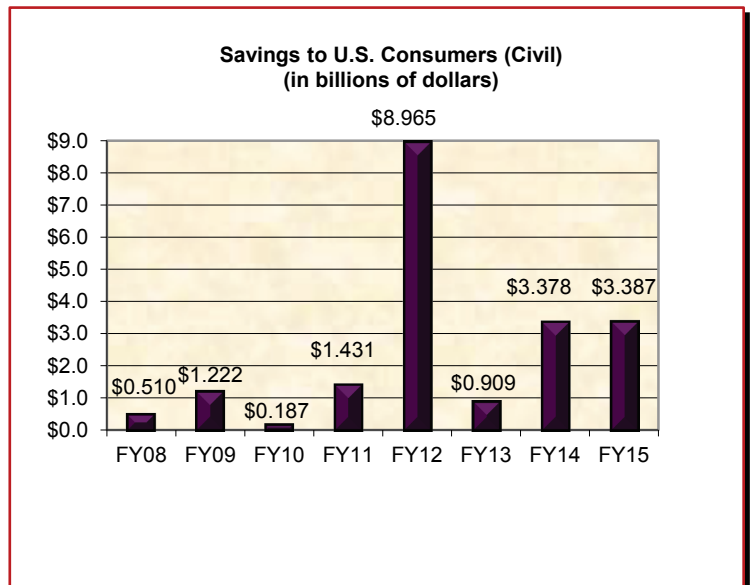
The charts below illustrate the Civil Outcome Performance Measures for the Antitrust Decision Unit, to include: Success Rate for Civil Antitrust Cases and Savings to U.S. Consumers (as a result of the Antitrust Division's Civil enforcement efforts).

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 Division successfully resolved every matter it challenged in FY 2015 and expects to meet or exceed its goals for FY 2016 and FY 2017.

The success rate for merger transactions challenged includes mergers that are abandoned, fixed before a complaint is filed, filed as cases with consent decrees, filed as cases but settled prior to litigation, or filed and litigated successfully. Many times, merger matters involve complex anticompetitive behavior and large, multinational corporations and require significant resources to review. The Division's Civil Merger Program successfully resolved 100 percent of the matters it challenged in FY 2015 and expects to meet or exceed its goals for FY 2016 and FY 2017.



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.





ANTITRUST DIVISION

b. Strategies to Accomplish Outcomes

Prosecute International Price Fixing Cartels

Utilizing geographically dispersed regional offices and two 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, revised in recent years for greater effectiveness, 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 successfully prosecutes, the Division may obtain criminal fines and injunctive relief.

Civil Enforcement

The Division's Civil strategy is comprised of two key activities - Merger Review and Civil Non-Merger work. Six Washington, DC sections, 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 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.



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 Federal Trade Commission (FTC) of their intention and to submit certain information. These HSR premerger notifications provide advance notice of potentially anticompetitive transactions and allow the Division to identify and block such transactions before they are consummated. HSR premerger reviews are conducted under statutorily mandated time frames. This workload is not discretionary; it results from the number of premerger filings we receive.

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

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

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

A distinction between the Criminal and Civil Non-Merger activities is that conduct prosecuted through the Criminal strategy is considered a *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 he will not purchase that *tyed* product from any other supplier. Whether addressing matters under Sections 1 or 2 of the Sherman Act or Section 3 of the Clayton Act, our Civil Non-Merger enforcement activities rely upon civil compulsory process to investigate the alleged violation.

c. Priority Goals

The Antitrust Division contributes to the FY 2016-2017 Priority Goal, “Fraud and Public Corruption.” By September 30, 2017, the Department of Justice will increase the number of new investigations by 2 percent with emphasis on holding individuals accountable associated with fraud and public corruption, including white collar crime, financial fraud, and health care fraud.



5. Exemplars - Criminal

A. Financial Fraud Enforcement

Introduction and Background

The Sherman Antitrust Act authorizes the Antitrust Division to bring criminal prosecutions against those who conspire with competitors to fix prices, rig bids, or allocate customers, territories, markets, or sales or production volumes. Enforcing the Sherman Act is a critical component of the Department's overall battle against financial fraud. Of the 60 criminal cases the Antitrust Division filed in FY 2015, many involved serious financial fraud and accounted for a significant portion of the \$3.6 billion total in criminal fines and penalties obtained. Altogether, 20 corporations and 66 individuals were charged and the courts imposed 12 prison sentences totaling 4,822 days of incarceration. The Division brought these cases in investigations of important industries, including real estate, auto parts, and financial services, to name just a few.



Because of the importance of criminal antitrust enforcement in the fight against financial fraud, the Antitrust Division has played, and continues to play, a prominent role in the President's Financial Fraud Enforcement Task Force, Exec. Order No. 13519, 74 Fed. Reg. 60, 123 (Nov. 17, 2009). The Division is a primary contributor to the Task Force's efforts to detect and prosecute mortgage frauds, securities and commodities frauds, and frauds targeting funds dedicated to economic recovery pursuant to the American Recovery and Reinvestment Act.

Mortgage and Foreclosure Fraud

In calendar-year 2011, the Antitrust Division began investigating patterns of collusion among real estate speculators. Instead of competitively bidding at public auctions held on the steps of courthouses and municipal buildings around the country, groups of speculators have conspired to keep auction prices artificially low. These schemes include speculators paying each other off to refrain from bidding, or holding unofficial "knockoff" auctions among themselves. While the country continues to face unprecedented home-foreclosure rates, this collusion is aimed at eliminating competition at foreclosure auctions. This artificially drives down foreclosed home prices, enriching the colluding speculators at the expense of homeowners, municipalities and lending institutions. These collusive schemes have a far-reaching negative impact, because they affect home prices in neighborhoods where the foreclosed properties are located. Similar collusive conduct has also been detected among bidders at auctions for public tax liens.



To combat this anticompetitive epidemic, the Antitrust Division, in conjunction with the FBI, developed a Real Estate Foreclosure Initiative. The initiative includes outreach and training efforts designed to raise awareness within the investigative community and the public about bid rigging and fraud at real estate-foreclosure and tax-lien auctions. The initiative includes information sharing and coordinated enforcement efforts with our law-enforcement partners to facilitate identifying, investigating, and prosecuting bid-rigging and collusive conduct at public auctions.

To date, as a result of the Division's efforts, 109 defendants have pleaded guilty to real estate-foreclosure and tax-liens conspiracies across the United States that suppress and restrain competition to the detriment of communities and already-financially distressed homeowners. Additionally, three individuals were convicted after trial and another 20 defendants have been indicted and are awaiting trial. The Division coordinates its initiative through the Mortgage Fraud Working Group of the Financial Fraud Enforcement Task Force.

Securities and Commodities Fraud

The Antitrust Division is integral to the Department's ongoing efforts to combat securities, commodities, and investment frauds. These so-called "Wall Street" frauds have plagued the nation's markets, businesses and consumers, and continue to act as a drag on the nation's ability to sustain a full economic recovery.

Of particular note are the Financial Fraud Enforcement Task Force's prosecutions involving manipulation of benchmark interest rates, which undermined financial markets worldwide and directly affected the rates referenced by financial products held by and on behalf of companies and investors around the world.

LIBOR (London Interbank Offered Rate)

One of these benchmark interest rates, LIBOR, serves as the primary benchmark for short-term interest rates globally and is used as a reference for many interest-rate contracts, mortgages, credit cards, student loans and other consumer lending products. Pursued jointly with the Criminal Division, the Antitrust Division's investigation of LIBOR manipulation has resulted in deferred prosecution agreements with four banks (the Royal Bank of Scotland, Rabobank, Lloyds Banking Group and Deutsche Bank AG), charges filed against RBS Securities Japan and DB Group Services (UK) Limited, indictments or information filed against eight former traders, six of whom have either been convicted or pleaded guilty, and criminal complaints filed against three former brokers and two former traders, all for their roles in manipulating LIBOR and related benchmark interest rates.



The Division has obtained **\$1.3 billion** in criminal fines and penalties in this ongoing investigation.

The broader investigation relating to LIBOR and other benchmark rates has benefited from a wide-ranging cooperative effort among various enforcement agencies both in the United States and abroad. The FBI, SEC, the Commodity Futures Trading Commission, the U.K. Financial Conduct Authority and Serious Fraud Office, the Japanese Ministry of Justice, the Japan Financial Services Agency, the Swiss Financial Market Supervisory Authority, the Dutch Public Prosecution Service, and the Dutch Central Bank have played a major role in the LIBOR investigation. The total of global criminal and regulatory fines, penalties and disgorgement obtained by authorities is over \$8 billion.

Foreign Exchange Rates

In 2015, four major banks pleaded guilty to felony antitrust charges as a result of the Division's investigation of collusion in the foreign-currency exchange spot market. Altogether, the banks—Citicorp, JPMorgan Chase & Co., Barclays PLC, and The Royal



Bank of Scotland plc—paid criminal fines totaling more than \$2.5 billion. A fifth bank, UBS AG, pleaded guilty to manipulating the LIBOR and other benchmark interest rates and paid a \$203 million as a criminal penalty for breaching its December 2012 non-prosecution agreement in the LIBOR investigation. Working together with the Criminal Division and other regulators and enforcers in the United States and abroad, the Antitrust Division investigated and prosecuted a

conspiracy affecting currencies at the heart of international commerce and undermining the integrity and competitiveness of foreign currency exchange markets that account for hundreds of billions of dollars worth of transactions every day. The five parent-level pleas were a testament to the Department's commitment to vigorously prosecute all those who manipulate the economic system to their own advantage at the expense of the public and investors.

In addition to the criminal penalties levied against the banks, civil enforcement authorities also imposed substantial penalties. The Office of the Comptroller of the Currency fined Bank of America, Citigroup, and JP Morgan Chase a **total of \$950 million** in November 2014. The Commodity Futures Trading Commission and the United Kingdom's Financial Conduct Authority imposed penalties totaling over **\$1.4 billion and \$1.7 billion**, respectively, on five banks. These included Citibank, HSBC, JPMorgan Chase, Royal Bank of Scotland and UBS. The Division continues to play a leading role in investigating the global manipulation of foreign exchange rates.

B. Automobile Parts Investigation

Introduction

The Antitrust Division continues to prosecute the illegal business practices of major automobile parts suppliers in an investigation spanning three continents and involving the Federal Bureau of Investigation, the European Union, Canada's Competition Bureau, the Japanese Fair Trade Commission, and the Korean Fair Trade Commission. The investigation quickly went beyond its initial focus on conspiracies involving sales of wire harnesses used in auto bodies and related products, and has continued to steadily expand as the Division investigates and prosecutes conspiracies involving other parts and additional suppliers. The collusion in the auto-parts industry impacted American automobile manufacturing companies and many foreign producers.

The automobile parts investigation is the **largest criminal investigation the Antitrust Division has ever pursued**, both in terms of its scope and the potential volume of commerce affected by the alleged illegal conduct. The ongoing cartel investigation of price-fixing and bid-rigging in the automobile parts industry has yielded **charges against 38 companies and 58 individuals and over \$2.6 billion in criminal fines** in the investigation thus far. Twenty-nine foreign-national executives charged have submitted to U.S. jurisdictions and agreed to serve prison sentences in the United States – two of whom agreed to serve two years in prison—the **longest prison terms** imposed on foreign nationals voluntarily submitting to U.S. jurisdiction for an antitrust violation.



Background and Investigation

The Division's investigation initially examined only "wire harnesses"—the distribution system of cables and connectors that carry electronic information throughout an automobile. Since then, the investigation expanded to include alternators, starters, air flow meters, valve timing control devices, fuel injection components, ignition coils, electronic throttle bodies, motor generators, instrument panel clusters, electronic control units, heater control panels, various sensors, seatbelts, airbags, hoses, steering wheels, and more component parts of automobiles.

The Antitrust Division continues to investigate whether the auto parts companies that provide component parts to vehicle manufacturers such as Chrysler, Ford, General Motors, Honda and Toyota, participated in illegal anti-competitive cartel conduct, with some suspected activity dating as far back as 2000. Specific charges to date include conspiring to allocate markets, fix prices, and rig bids.

Many conspirators that have pleaded guilty carried out their conspiracies by agreeing during meetings and conversations to allocate the supply of an automobile product on a model-by-model basis and to coordinate price adjustments requested by automobile manufacturers in the United States and elsewhere. They sold the auto parts to manufacturers at non-competitive, rigged and fixed prices, and monitored the prices to make sure those involved in the conspiracies adhered to the agreed upon bid-rigging and price-fixing schemes.

Results

Corporate fines in excess of \$50 million and the associated jail sentences for corporate executives in the auto parts investigation since the beginning of FY 2011 include:

Yazaki Corporation	<ul style="list-style-type: none"> • \$470 million—the second largest criminal fine ever for an antitrust violation • Wire harnesses and related products, instrument panel clusters, fuel senders • 6 executives ranging from 14 months to 2 years
Bridgestone Corporation	<ul style="list-style-type: none"> • \$425 million • Anti-vibration rubber parts • 1 executive, 18 months
Furukawa Electric Company Ltd.	<ul style="list-style-type: none"> • \$200 million • Wire harnesses and related products • 3 executives ranging from one year and one day to 18 months
Hitachi Automotive Systems, Ltd.	<ul style="list-style-type: none"> • \$195 million • Starter motors, alternators, and other products • 1 executive, 15 months
Mitsubishi Electric Corporation	<ul style="list-style-type: none"> • \$190 million • Starter motors, alternators, ignition coils
Mitsuba Corporation	<ul style="list-style-type: none"> • \$135 million • Windshield wiper systems and other products • 1 executive, 13 months
Toyo Tire & Rubber Co., Ltd.	<ul style="list-style-type: none"> • \$120 million • Anti-vibration rubber and constant-velocity-joint boots • 1 executive, one year and one day
Jtekt Corporation	<ul style="list-style-type: none"> • \$103 million • Bearings, steering assemblies
DENSO Corporation	<ul style="list-style-type: none"> • \$78 million • Electronic control units and heater control panels • 6 executives ranging from one year and one day to 16 months

Takata Corporation	<ul style="list-style-type: none"> • \$71.3 million • Seatbelts • 4 executives ranging from 14 months to 19 months
NSK Ltd.	<ul style="list-style-type: none"> • \$68.2 million • Bearings
Kayaba Industry Co., Ltd. d/b/a KYB Corporation	<ul style="list-style-type: none"> • \$62 million • Shock absorbers
Robert Bosch GmbH	<ul style="list-style-type: none"> • \$57.8 million • Spark plugs, standard oxygen sensors, and starter motors
Koito Manufacturing Co., Ltd.	<ul style="list-style-type: none"> • \$56.6 million • Automotive lighting fixtures and high intensity discharge ballasts
NGK Spark Plug Co., Ltd.	<ul style="list-style-type: none"> • \$52 million • Spark plugs, oxygen and air fuel ratio sensors

Conclusion

The illegal activity of these and other conspirators had a significant impact on automotive manufacturers in the United States. Some of the conspiracies went on for at least a decade. The conduct also potentially affected commerce on a global scale in other markets where automobiles are manufactured and/or sold.

Criminal antitrust enforcement remains a top priority of the Antitrust Division. The automobile parts investigation is continuing, and the Division anticipates additional fines and prison sentences. The importance of rooting out this type of illegal criminal conduct cannot be overstated. It negatively impacts the United States economy and results in higher prices for consumers and businesses.

C. Ocean Shipping Investigation

Background and Investigation

The Antitrust Division quickly and successfully investigated a conspiracy in the deep-sea freight transportation industry. This conspiracy involved sales of international shipping services for roll-on, roll-off cargo—non-containerized cargo that can be rolled onto and off of an ocean-going vessel. Examples include new and used cars and trucks, and construction and agricultural equipment. The conspiring companies agreed on prices, allocated customers, and agreed to refrain from bidding against one another, and to exchange customer pricing information. The conspirators then charged fees in accordance with their agreements for international ocean-shipping services for certain roll-on, roll-off cargo to and from the United States and elsewhere at collusive and non-competitive prices.

Results

Prosecutions to date have held three shipping companies responsible for their participation in the conspiracy. Their criminal sentences after guilty pleas collectively amounted to \$136 million. Four executives from the companies pled guilty and were sentenced to terms of imprisonment ranging from 14 to 18 months. Additionally, three individuals were indicted. The Antitrust Division conducted this investigation with the FBI's Baltimore Field Office, along with assistance from the U.S. Customs and Border Protection Office of Internal Affairs, Washington Field Office/Special Investigations Unit.



6. Exemplars – Civil

A. Merger

Electrolux/General Electric

Major cooking appliances (ranges, cooktops, and wall ovens) are an essential part of the American household and among consumers' most significant purchases. In 2014, purchasers in the United States spent over \$4 billion on major cooking appliances. In the United States, only a handful of producers supply major cooking appliances. And only three producers have the full line of cooking appliances, variety of choices and models for each appliance, and the large sophisticated distribution network necessary to meet the needs of American homebuilders, property managers, and other contract-channel appliance purchasers.



In September 2014, Electrolux announced an agreement to acquire General Electric's appliance business for \$3.3 billion. This transaction would have combined two of the leading manufacturers of major cooking appliances. Indeed, together with Whirlpool, Electrolux and GE possess a combined share of more than 90 percent of sales of each major cooking appliance sold in the contract channel.

The Division conducted a thorough investigation, and determined that the transaction would eliminate strong head-to-head competition between Electrolux and GE, and would create a duopoly in the sale of major cooking appliances to builders and other commercial purchasers.

On July 1, 2015, the Division filed a complaint in the US District Court for the District of Columbia to prevent the companies from merging and to preserve their competition. Trial commenced on November 9, 2015, and after trial was nearly over, the parties announced the termination of their deal on December 7, 2015.

Chicken of the Sea/Bumble Bee

In 2013, millions of U.S. consumers purchased over \$1.7 billion in shelf-stable tuna products, much of which is canned tuna, a staple of the American diet. There are only three major suppliers of branded shelf-stable tuna products to U.S. consumers—StarKist, Bumble Bee, and Chicken of the Sea. These companies make almost 80% of shelf-stable tuna sales in the United States, and the rest of the industry’s sales come from various retailers’ private label products that provide little competitive constraint on the three powerful brands.

On December 18, 2014, Thai Union, the owner of Chicken of the Sea, entered into a purchase agreement to purchase Bumble Bee from its owner, Lion Capital LLP, potentially combining the second- and third-largest suppliers of canned tuna in the United States into a new market-leading firm.



The Division’s investigation determined that further consolidation in the industry would harm competition and consumers, the purchasers of shelf-stable tuna.

On December 3, 2015, after the Division expressed its concerns, Chicken of the Sea and Bumble Bee abandoned their merger. The parties’ abandonment of this transaction preserves three major independent brands in this market.

Springleaf/OneMain Financial

Personal installment loans to subprime borrowers are fixed-rate, fixed-term, and fully amortized loan products that are marketed to consumers who have limited access to credit from traditional banking institutions. Personal installment loans provide a critical lifeline for borrowers with limited credit options, allowing them to pay for unexpected expenses or to consolidate debts.

On March 3, 2015, Springleaf Holdings announced that it had agreed to acquire OneMain Financial for approximately \$4.25 billion. Springleaf and OneMain are the two largest providers of personal installment loans to subprime borrowers in the United States. Springleaf’s branch network included more than 800 locations in 26 states, and OneMain operated 1,110 branches in 43 states. They specialize in the same products (large installment loans, typically ranging from \$3,000 to \$6,000), target the same customer base, and have a large degree of geographic overlap between their branch networks.

The Division's investigation determined that subprime borrowers seeking personal installment loans would face fewer choices for these important loan products in local markets located in Arizona, California, Colorado, Idaho, North Carolina, Ohio,



Pennsylvania, Texas, Virginia, Washington, and West Virginia. In 126 towns and municipalities in those states, Springleaf and OneMain operate branches in close proximity to one another and face few, if any, competitors. The loss of head-to-head competition between Springleaf and OneMain would result in a reduction of consumer choice that would likely drive subprime borrowers to more expensive forms of credit or leave with no reasonable alternative.

On November 13, 2015, the Division, along with the offices of seven state attorneys general, filed a civil antitrust lawsuit in the US District Court for the District of Columbia to block the proposed transaction. At the same time, the Division filed a proposed settlement that would resolve the competitive concerns. The settlement required Springleaf and OneMain to divest 127 branches with over \$500 million in loan receivables to Lendmark Financial Services or to an alternative buyer approved by the United States. Divestiture to Lendmark will create a new competitor in many of the affected states and will enhance its competitive presence in others. Taken together, the divestitures will remedy the loss of competition alleged in the Division's complaint.

Comcast / Time Warner Cable

Broadband connectivity is transforming the way Americans receive video content and delivering a wide array of new products and services. Among them are "over-the-top" video services such as Netflix and Hulu that provide innovative new ways to access video programming using the broadband services that cable companies frequently provide. These new services offer exciting new choices for consumers, but threaten to disrupt the traditional cable business model.

In February 2014, Comcast Corporation, the nation's largest video and wired broadband Internet-access provider, and Time Warner Cable Inc., the fourth-largest video and third-largest wired broadband Internet-access provider, agreed to merge in a \$45.2 billion transaction that would drastically expand Comcast's nationwide video and broadband service footprint to approximately 30 million American homes.

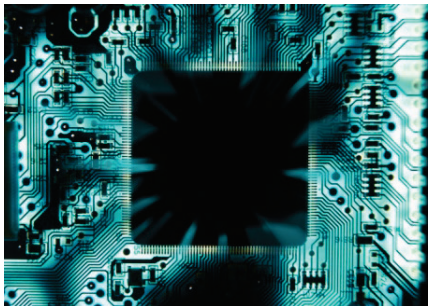


In close cooperation with the Federal Communications Commission, the Division carefully examined the proposed merger and its effects on competition and innovation. The investigation left the Division with significant concerns that Comcast's acquisition of Time Warner would make the new Comcast an unavoidable gatekeeper for Internet-based services that rely on a broadband connection to reach consumers. Specifically, with a far larger share of the nation's broadband customers – including close to 60 percent of all high-speed broadband subscribers – Comcast would have an increased ability to block the adoption of innovative products and services, including the “over-the-top” video services that compete with Comcast's traditional cable business.

In April 2015, after the Division informed Comcast and Time Warner of its concerns, the companies announced that they were abandoning their proposed merger. The transaction's abandonment is a victory for providers of video content and streaming services and for the millions of consumers who are benefiting from the innovative new products and services enabled by broadband connectivity.

Applied Materials / Tokyo Electron

Semiconductors help power the smart phones, tablets, computers, and other consumer electronics that millions of Americans rely on every day. In September 2013, two of the world's largest makers of semiconductor manufacturing equipment – Applied Materials, Inc. and Tokyo Electron Ltd. – announced a \$10 billion merger that would combine the American manufacturer with its Japanese rival. The transaction would join the two leading firms that possessed the necessary know-how, resources, and ability to develop and supply high-volume non-lithography semiconductor manufacturing equipment.



The Division conducted an extensive investigation of the proposed merger, cooperating with the Korean Fair Trade Commission, China's Ministry of Commerce, Germany's Federal Cartel Office, and competition agencies from several other jurisdictions. The investigation left the Division with substantial concerns about the transaction's competitive effects, particularly with respect to the development of equipment for next-generation semiconductors. The Division was not convinced that a remedy proposed by the merging parties to address these concerns would sufficiently replace the competition lost through the merger.

In April 2015, after the Division informed Applied Materials and Tokyo Electron that their proposed remedy was inadequate, the companies announced that they were abandoning the merger. The transaction's abandonment preserves competition and future innovation in an industry that is vitally important to the American economy.

B. Non-Merger:

Court Victories in American Express and Apple e-Books Litigation

The Division continues to vigorously police anticompetitive activity outside the merger context, initiating civil enforcement actions in numerous industries to protect consumers and the competitive process. Over the last year, the Division won court victories in two of its most significant recent enforcement actions: its litigation against American Express to end the company's "anti-steering" rules with merchants and its challenge to Apple's unlawful conspiracy with five major book publishers to inflate the prices of e-books.

District Court Rules that American Express's Anti-Steering Rules Are Unlawful



American consumers purchase more than \$2.3 trillion in goods and services annually using credit cards. Credit cards are accepted by millions of merchants, who pay a card acceptance fee – or “swipe fee” – to the credit card network each time a credit card is used to make a purchase. Credit card acceptance fees cost merchants over \$50 billion annually and are largely passed on to consumers through higher prices.

In October 2010, the Antitrust Division, joined by several states, filed a civil antitrust lawsuit against American Express, MasterCard, and Visa in the U.S. District Court for the Eastern District of New York alleging that the companies had violated Section 1 of the Sherman Act by including contractual restraints in their agreements with merchants that prohibited the merchants from steering consumers towards lower cost payment methods such as credit or charge cards with lower swipe fees. At the time of the lawsuit, MasterCard and Visa agreed to a settlement, later approved by the court, that terminated the companies' anticompetitive practices.

American Express chose to litigate and the case proceeded to trial in the summer of 2014. In February 2015, the district court ruled that American Express's contractual restraints, which prohibited roughly 3.4 million merchants from steering consumers towards less expensive payment methods, violated the antitrust laws. In a 150-page opinion, the court held that American Express's restraints had directly harmed competition by “sever[ing] the essential link between the price and sales of network services by denying merchants the opportunity to influence their customers' payment decisions and thereby shift spending to less expensive cards.” The court also found that interbrand price competition had been “frustrated to the point of near irrelevance” and noted that the absence of steering “largely insulated [card networks] from the downward pricing pressure ordinarily present in competitive markets.”

In May 2015, the district court entered an order enjoining American Express's anticompetitive practices, although American Express has appealed the court's ruling.

Appeals Court Sustains Apple e-Books Ruling

The emergence of “e-books” has brought revolutionary change to the business of publishing and selling books and delivered a variety of benefits to consumers. E-books offer 24-hour access to a product with near-instant delivery, easier portability and storage, and are considerably easier to produce and distribute than physical “print” books.

In April 2012, the Antitrust Division filed a civil antitrust lawsuit in the U.S. District Court for the Southern District of New York against Apple and five of the six major U.S. trade book publishers – Hachette Book Group (USA), HarperCollins Publishers L.L.C., Holtzbrinck Publishers LLC (d/b/a Macmillan), Penguin Group (USA) Inc., and Simon & Schuster Inc. The Division’s lawsuit, which was consolidated with similar challenges brought by 33 states and territories, alleged that Apple and the five publishers had unlawfully conspired to end e-book retailers’ freedom to compete on price, took control of pricing from e-book retailers, and substantially increased the prices that consumers paid for e-books.

The Division reached settlements with three of the publishers at the time of the lawsuit and settled with the two remaining publishers during discovery. The publisher settlements, which were approved by the court, restored e-book retailers’ ability to compete on price, resulting in markedly lower e-book prices to consumers.

Apple proceeded to trial, and in July 2013, the district court issued an opinion finding that the Division had demonstrated through “compelling direct and circumstantial evidence” that Apple and the publishers had unlawfully conspired to eliminate competition. The district court entered a final judgment enjoining Apple from reestablishing the unlawful e-book distribution agreements with the publishers and from entering into similar agreements. The judgment also required Apple to adopt a rigorous antitrust compliance program and imposed an external compliance monitor to evaluate Apple’s antitrust compliance and training programs.

Apple appealed the district court’s liability finding and certain provisions of the injunction. In June 2015, the Second Circuit affirmed the district court’s rulings, concluding that the district court’s liability determination was “amply supported and well-reasoned” and that the injunction was “lawful and consistent with preventing future competitive harms.” In addition to sustaining the district court’s injunction, in the absence of any further appeals, the Second Circuit’s decision clears the way for Apple to pay \$450 million to consumers as part of a settlement reached with the states in their related lawsuit.



V. Program Increases by Item

Item Name:	<u>Enhanced Antitrust Merger Enforcement and Cartel Prosecution</u>
Strategic Goal:	<u>Strategic Goal II:</u> Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law
Strategic Objective:	<u>Strategic Objective 2.6:</u> Protect the federal fisc and defend the interests of the United States
Budget Decision Unit(s):	<u>Antitrust</u>
Organizational Program:	<u>Antitrust Division Civil Merger Enforcement and Criminal Enforcement Programs</u>
Program Increase: Positions <u>152</u> Atty <u>98</u> FTE <u>77</u> Dollars <u>\$15,000,000</u>	

Description of Item

As the Nation's economy continues its recovery, the Antitrust Division takes seriously its ongoing mission of protecting the American consumer by promoting economic competition through enforcement of antitrust laws. Along with the ongoing recovery has come significant additional workload for the Division in both its civil merger enforcement and criminal cartel enforcement programs.

To meet the challenges presented by this increased activity and to continue protecting American consumers from anticompetitive merger deals and domestic and international cartels that harm U.S. consumers and businesses, the Division requests \$15.0 million to provide funding for 152 positions including 98 attorneys, 49 paralegals, and 5 economists.

Justification

Merger Enforcement -- The current economic recovery has resulted in what many economic and legal experts have called a wave of mega-deals. The Division's workload statistics support this assessment. The number of mergers reviewed by the Division per year has increased substantially and so has the size and complexity of these deals. For example, between FY 2010 and FY 2015, the number of mergers the Division reviewed annually increased by more than 50%, from 1,166 in FY 2010 to 1,761 in FY 2015. Over the same time frame, the number of mergers per year valued greater than \$1 billion more than doubled, from 128 to 280. Nonetheless, the Division has fought hard to stop anticompetitive transactions that threatened to raise prices on key products and services for millions of hardworking Americans. These efforts maintain and promote competition in industries ranging from cable television and broadband (Comcast-Time Warner), cell phone service (AT&T-T-Mobile and T-Mobile-Sprint), and cooking appliances (Electrolux-General Electric), to common foods (Chicken-of-the-Sea-Bumble Bee) and airline travel (USAir-American Airlines).

Merger reviews are complicated because they involve numerous product and service markets as well as complex remedies that need thorough vetting. In investigating these deals, the Division must devote considerable time and resources assessing their potential competitive effects, a process that requires close coordination with federal agencies, state regulators, and foreign antitrust enforcers who may have certain industry expertise and/or may be conducting parallel investigations. If the Division deems a merger anticompetitive, it must seek an injunction from the federal courts. These proceedings are costly, resource intensive, and lengthy. They require a substantial commitment of lawyers, economists, and paralegals.

For example, the Division is presently reviewing two large mergers that would fundamentally transform the U.S. health insurance industry by reducing the number of large national health insurers from 5 to 3. These mergers potentially would affect the cost and availability of health services to Americans who obtain insurance through their employers, the individual exchanges under the Affordable Care Act, and/or the Medicare Advantage program. The Division is also currently reviewing a large proposed merger in the oil industry that would combine two of the three largest oilfield service providers in the world and, as a result, potentially increase the costs for domestic oil producers who are striving to put this country on the path toward energy independence.

Experts predict that this “merger wave” will continue throughout FY 2016 and 2017, adding to the Division’s already significant workload. For example, there have been recent announcements of proposed complex mergers involving beer, agricultural seeds and chemicals, and railroads.

Cartel Prosecution -- Modern cartel investigations are complex, resource intensive, and time consuming. Many investigations focus on conspirators who operate in foreign countries and target U.S. consumers and businesses, like in the auto parts and liquid-crystal display (LCD) conspiracies. Investigating conspiracies like these requires the Division to obtain and translate millions of documents and to work closely with enforcers throughout the world. Investigations involving the financial industry can be especially complicated, involving conduct in the United States and elsewhere and analysis of thousands of highly complex transactions between countless counter-parties.

Over the last 7 years, the Division has continued to vigorously prosecute domestic and international cartels. Since January 2009, the Division has charged 417 individuals and 143 companies, resulting in more than \$8.5 billion in criminal antitrust fines and, where imprisonment was imposed, an average sentence of about 24 months. (The criminal fines collected by the Division go to the DOJ’s Crime Victim’s Fund, which aids victims of crime with support and services.) The Division has brought charges against some of the largest banks in the world in the foreign exchange and LIBOR investigations, broken up decades-long conspiracies among ocean freight companies, auto parts suppliers, and LCD panel manufacturers, and stopped widespread bid-rigging and fraud at mortgage foreclosure auctions in Northern California and the southeastern United States. During this time, the Division has worked to strengthen cartel enforcement in other countries, leading to the extradition of foreign nationals who violated U.S. antitrust laws.

Cartel enforcement work is expected to continue to increase in FY 2016 and 2017. Investigations into collusive behavior among major international banks and their employees are ongoing. In a continuing investigation, the Division recently announced charges against a company that manufactures electrolytic capacitors (a component used in just about every product that has a battery or plug) and the Division continues to investigate price-fixing that emerges in new or unusual industries, like recent prosecutions against online retailers and heir-location service firms (companies that identify people who may be entitled to an inheritance from the estate of a relative who died without a will).

Impact on Performance

This enhancement supports the Department's FY 2014-2018 Strategic Plan, Strategic Goal II: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law, and Strategic Objective 2.6: Protect the federal fisc and defend the interests of the United States.

The Performance Measures for Strategic Objective 2.6 are to favorably resolve 90 percent of criminal cases and to favorably resolve 80 percent of civil cases. This proposed enhancement will aid the Department in reaching these goals in FY 2017.

In conjunction with our partners across the Department, the Division's mission and this program enhancement specifically, supports a priority goal to combat fraud and public corruption. Within this priority goal, this enhancement addresses the following two areas: 1) Criminal and Civil Litigation: Pursue criminal and civil litigation to protect the federal fisc and hold accountable those entities and individuals who commit fraud, and 2) Consumer Protection: Promote transparency in markets by preserving competition and protecting consumers and investors.

Funding

Base Funding

FY 2015 Enacted				FY 2016 Enacted				FY 2017 Current Services			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
830	380	638	\$162,246	830	380	694	\$164,977	830	380	694	\$165,506

Personnel Increase Cost Summary

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 st Year Annualization (\$000)	Number of Positions Requested	FY 2017 Request (\$000)	2 nd Year Annualization (\$000)	2 nd Year FY 2018 Net Annualization (change from 2017) (\$000)
Economists (0110)	\$181	\$105	5	\$523	\$76	\$379
Attorneys (0905)	\$209	\$119	98	\$11,655	\$92	\$9,031
Paralegals (0950)	\$91	\$58	49	\$2,822	\$24	\$1,180
Total Personnel	\$481	\$282	152	\$15,000	\$192	\$10,590

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Current Services	830	380	694	\$165,506	\$0	\$165,506	\$0
Increases	152	98	77	\$15,000	\$0	\$15,000	\$10,590
Grand Total	982	478	771	\$180,506	\$0	\$180,506	\$10,590

VI. Exhibits