



# ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION  
FY 2012 PERFORMANCE BUDGET**



# **Antitrust Division**

## **FY 2012 Congressional Budget Submission**

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# I. Overview

## A. Introduction

The Antitrust Division is committed to its mission to promote 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 2.7, "Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction." 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>.

To perform its mission effectively and achieve its goals in the face of an increasingly complex and global economy, the Antitrust Division must expend significant resources. 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 steadily increased from 2003 through the first half of 2008, falling off at the end of 2008 based upon tentative global economic conditions. Merger volume picked-up toward the end of 2009 as credit markets continued to recover and cash-rich companies regained business confidence. This upward trend is expected to continue throughout fiscal years 2011 and 2012. To administer its caseload, the President's Budget includes \$166.221 million in FY 2012, reflecting annual cost adjustments of \$3.051 million over the FY 2011 Continuing Resolution amount.

It is critical that the Division have adequate resources to keep abreast of a workload, which more and more 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.

- In FY 2009 and FY 2010, as a result of the Division's efforts, just over **\$1.3 billion in criminal fines** were obtained against antitrust violators.
- Electronic storage and processing capability, vital to the mission of the Antitrust Division, continues to expand significantly, growing exponentially since FY 2003, when 12 terabytes (12 trillion bytes) of capacity readily satisfied Division requisite demands. Within six short years, demand grew by 738 percent and by FY 2010 requirements surpassed 100 terabytes. The Division expects its electronic storage and processing capacity requirements to nearly double by FY 2013 when it anticipates the need to support up to 180 terabytes of electronic analytical capacity.

## B. Issues, Outcomes, and Strategies

Fundamental changes continue in the business marketplace, including the expanding globalization of markets, increasing economic concentration across industries, rapid technological change, significantly expanding numbers of business bankruptcies and failing firms, and substantial government investment in business enterprise. 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.

<b>Enforcement Program</b>	<b>Major Matter Exemplars</b>
<p align="center"><b>Criminal</b> DOJ Strategic Goal II Objective 2.7</p>	<p>Airline Passenger and Cargo Pricing (see Exemplar - pg. 38)</p> <p>Liquid Crystal Display (see Exemplar - pg. 40)</p> <p>Economic Recovery Initiative (see Exemplar - pg. 42)</p>
<p align="center"><b>Civil</b> <b>Merger/Non-Merger</b> DOJ Strategic Goal II Objective 2.7</p>	<p>Ticketmaster Entertainment, Inc./Live Nation, Inc. (see Exemplar - pg. 34)</p> <p>The Authors Guild v. Google, Inc. (see Exemplar - pg. 36)</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 \$4 trillion in FY 2010.<sup>1</sup>



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

<sup>1</sup>United States Department of Commerce, Bureau of Economic Analysis, "U.S. International Trade in Goods and Services", <http://www.bea.gov/newsreleases/international/trade/2010/pdf/trad1010.pdf>, December 2010.

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 in FY 2010, **25 percent** were associated with subjects or targets located in foreign countries. Of the approximate **\$6.1 billion** in criminal antitrust fines imposed by the Division between FY 1997 and the end of FY 2010, approximately **96 percent** were imposed in connection with the prosecution of international cartel activity. In addition, approximately **48 foreign defendants** from France, Germany, 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. However, for more than a decade, fines of \$10 million or more have become commonplace, with the Division now obtaining fines of more than \$100 million. In FY 2010, as the result of Division enforcement efforts, a total of approximately **\$343 million** in criminal fines were assessed against antitrust violators. In FY 2009, a total of nearly **\$1 billion** in criminal fines were assessed, including a single fine of **\$400 million** assessed against LG Display Co., Ltd. /LG Display America, the second largest criminal fine in Antitrust Division history. In FY 2008, as a result of the Division's ongoing investigation of the Air Transportation industry, a fine of **\$350 million** was imposed on Air France-KLM. This fine was the third largest criminal fine in Antitrust Division history. These fines are eclipsed only by the \$500 million fine imposed in 1999 against F. Hoffmann-La Roche for its participation in the vitamins cartel. The impact of these heightened penalties has been an increase in the participation of large firms in the Division's Corporate Leniency Program, bringing more and larger conspiracies to the Division's attention before they can inflict additional harm on U.S. businesses and consumers.

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. Total cartel sales of \$1.2 trillion in 2005 contained illegal overcharges of \$300 billion, a 25 percent premium paid for by consumers and businesses worldwide.<sup>2</sup> 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 eight foreign governments – Australia, Brazil, Canada, the European Union, Germany, Israel, Japan, and Mexico. Most recently, in November 2009, the Division concluded a memorandum of understanding on antitrust cooperation with the Russian Federal Anti-Monopoly Service.

In addition, antitrust authorities around the world 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, Australia, Canada, South Africa, and Russia have recently adopted or strengthened criminal sanctions for hard core cartel conduct. In addition, jurisdictions such as Brazil, the European Union, France, Germany, Japan and the UK have made revisions to their cartel amnesty policies making them more consistent with the United States.



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<sup>2</sup> Connor, John M. "Statistics on Modern Private International Cartels, 1990-2005", *The American Antitrust Institute - Working Paper 07-01*, January 10, 2007.



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.

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. With support from the Antitrust Division, the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN) are assisting substantially in this effort. With leadership from the Antitrust Division, the International Competition Network was initiated in October 2001 and 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. In March 2007, the ICN welcomed its 100<sup>th</sup> member and now comprises 112 agencies from 99 jurisdictions. The ninth annual conference of the International Competition Network was held in Istanbul, Turkey in April 2010 where ICN members worked together to promote superior methods in competition policy and enforcement in the areas of cartels, mergers, unilateral conduct and competition advocacy.





## 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.

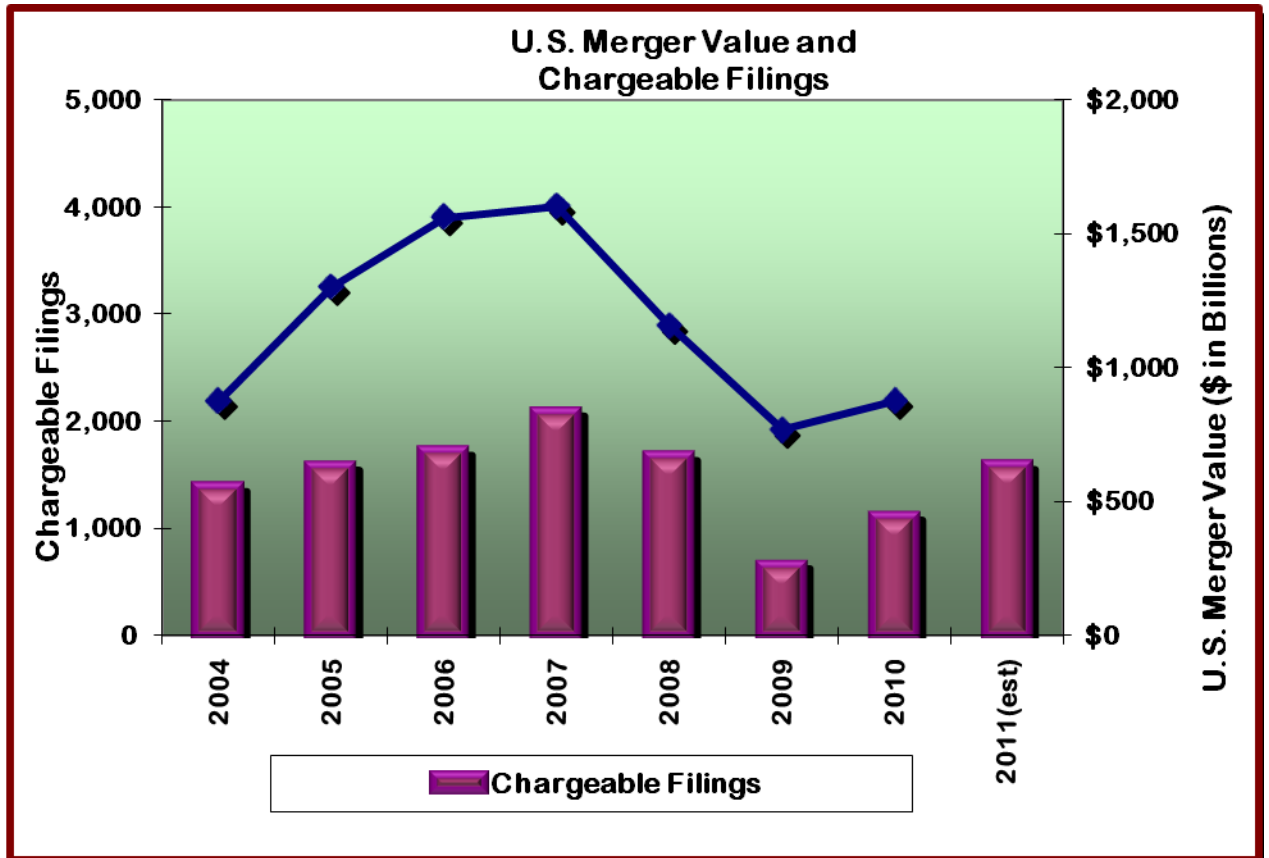


Figure 1

As shown in Figure 1, U.S. merger volume steadily increased over the four-year period from calendar year 2004 through 2007, expanding from just over \$800 billion in 2004 to \$1.6 trillion in 2007. 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 significantly improved in calendar year 2010 where the U.S. value of mergers and acquisitions grew by 15 percent and chargeable merger filings increased by 67 percent. In addition, worldwide merger and acquisition volume grew by 25 percent, ending the year at \$2.7 trillion.<sup>3</sup>

<sup>3</sup> Anupreeta Das, Gina Chon, & Dana Cimilluca. (2011, January 3). Year-End Review of Markets & Finance 2010 --- M&A Began to Pick Up in '10 --- Wall Street Bankers, of Course, Expect Deal Making to Continue This Year. *Wall Street Journal* (Eastern Edition), p. R.8. Retrieved January 3, 2011, from Wall Street Journal. (Document ID: 2227741311).

While the economic slump affected companies around the globe, several favorable conditions, including the relatively weak dollar, low interest rates and companies flush with cash hoards and optimism about the future of the global economy are enticing many companies to the merger table. Such conditions have primed the outlook for 2011 merger and acquisition activity to likely reach its highest levels since 2007. Cross-border deals are expected to be especially hot with strong activity in the energy, mining, health care and technology sectors.<sup>4</sup>

### **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, such as wireless communications, Voice over Internet Protocol (VoIP), biometrics, hand-held computing and online security, continues and intensifies.

Certainly, we will see even more advances in technology in coming years as the telecommunications upheaval continues to transform traditional industry business models. One such transformation is in wireless communication and connectivity. There were an estimated 292.8 million wireless subscribers in the United States (93 percent of total U.S. population) as of June 30, 2010, an increase of 51 percent from the same period in 2005 according to the Cellular,

Telecommunications and Internet Association (CTIA) Wireless Facts Report. In the same October 2010 report, CTIA announced that as of June 2010, in the hands of U.S. consumers were 264.5 million data-capable devices, including 61.2 million smart phones/wireless PDA's and 12.95 million wireless-enabled laptops, notebooks or wireless broadband modems.<sup>5</sup>



Clearly, being ‘connected’ has become essential to the American daily lifestyle, and this connectivity demand continues to result in rapidly emerging newer and faster networks, applications and equipment. A July 2010 Pew Mobile Access Report published by the Pew Research Center found that mobile web users go online much more frequently using their handheld devices than they did as recently as the same period in 2009. More than half of the mobile internet users went online using their handheld device daily, while 43 percent went online several times a day. At a similar point in 2009, just 24 percent of mobile internet users went online several times a day.<sup>6</sup>

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<sup>4</sup> Aguilía, Frank. “Conditions Are Ripe for an M&A Boom in 2011” *Business Week*, December 22, 2010, retrieved January 4, 2011 [http://www.businessweek.com/print/investor/content/dec2010/pi20101222\\_628902.htm](http://www.businessweek.com/print/investor/content/dec2010/pi20101222_628902.htm).

<sup>5</sup> CTIA – “Wireless Quick Facts” [www.ctia.org](http://www.ctia.org), October 2010, retrieved January 4, 2011. <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>.

<sup>6</sup> Pew Internet & American Life Project, "Mobile Access 2010" July, 2010, retrieved August 30, 2010. [http://pewinternet.org/Reports/2010/Mobile Access 2010.aspx](http://pewinternet.org/Reports/2010/Mobile%20Access%202010.aspx)

As more consumers turn to high-speed broadband, wireless Internet access, and search for more efficient and cost effective methods of communication, expanding technologies such as Voice over Internet Protocol (VoIP), or what is also known as Broadband Telephony, stand to grow dramatically over the next several years. In fact, VoIP is expected to overtake traditional telephony systems in the next five to ten years according to Telappliant News.<sup>7</sup>

The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the Antitrust Division's resources. 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.

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<sup>7</sup> "VoIP will replace phone lines 'within ten years'", [www.telappliant.com](http://www.telappliant.com), January 7, 2011, retrieved January 10, 2011  
<http://www.telappliant.com/voip-news/800328598/voip-will-replace-phone-lines-within-ten-years/>.

## Results

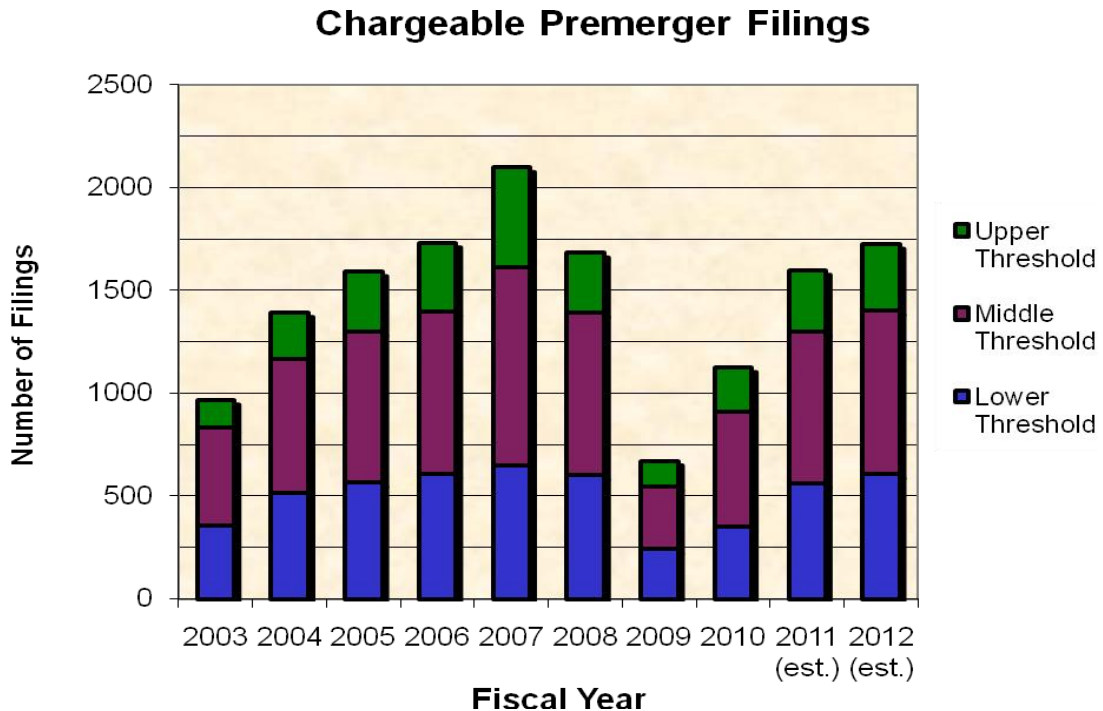
While specific GPRA Performance Measures are addressed in the Decision Unit Justification section of this submission, several interesting statistics relative to the Division's performance include:

- In FY 2009, as a result of the Division's efforts, just over **\$1 billion in criminal fines** - currently the **second highest annual amount in the Division's history** - were obtained against antitrust violators, a 1.4 percent increase over FY 2008, the third highest fine year, when \$701 million in criminal fines were obtained.
- 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 nearly \$6.1 billion in criminal fines to the U.S. Treasury, including more than \$2 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. Prison sentences between FY 2000 and the end of FY 2010 climbed to an **average of approximately 22 months**, nearly three times the 8-month average sentence of the 1990's. These prison sentences have resulted in approximately **420 years** of imprisonment imposed on antitrust offenders, with **161 defendants** sentenced to imprisonment of one year or longer. In FY 2010, as the result of Division enforcement efforts, 12 corporations and 37 individuals were sentenced due to antitrust violations.
- 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 2010, restitution generated by the Division was approximately **\$82 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 \$25 billion.**



## Revenue Assumptions

Estimated FY 2011 filings and fee revenue take into account the relative optimism of current medium-range economic forecasts. The August 2010 Congressional Budget Office, Budget and Economic Outlook anticipates that over the next few years, the economic recovery will continue at a modest pace.<sup>8</sup>



Premerger Filing Fee Thresholds Effective Feb 24, 2011	
Value of Transaction	Filing Fee
Lower: \$66M - <\$131.9M	\$45,000
Middle: \$131.9M - <\$659.5M	\$125,000
Upper: \$659.5M 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)

As the second half of 2009 realized predicted economic growth, merger deals that had been ready to go but had been waiting upon improved market conditions began filing as businesses regained confidence in the marketplace. This renewed confidence resulted in a 67 percent increase in Hart-Scott-Rodino (HSR) filings and a 73 percent increase in fee revenue in FY 2010. An increased level of merger activity is expected to continue throughout fiscal years 2011 and 2012.

Based upon estimates calculated by the Congressional Budget Office and the Federal Trade Commission (FTC), fee collections of \$204 million for FY 2011 and \$220 million for FY 2012 are expected. HSR filing fee revenue is divided evenly between the Antitrust Division and Federal Trade Commission.

<sup>8</sup> “The Budget and Economic Outlook: An Update.” *Congressional Budget Office*, August 2010, c.2, p.1.

## 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 recycling program throughout the building 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 on 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 an FY 2012 budget increase of \$3.051 million to address annual cost adjustments and a total appropriation of \$166.221 million, in support of 880 positions and 851 work years.

The FY 2012 Antitrust Division budget request of \$166.221 million supports Departmental Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. The Division's criminal and civil programs are both included in Strategic Objective 2.7: Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction.

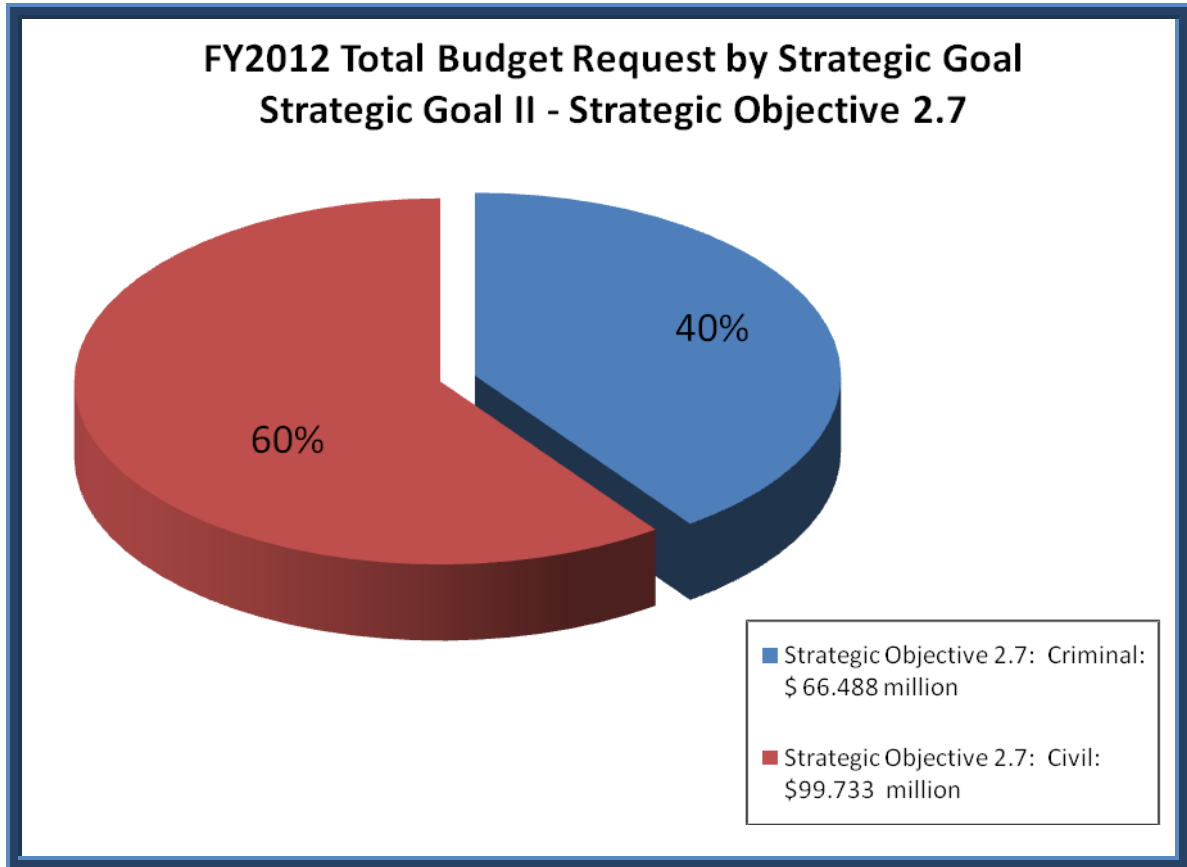


Figure 3

**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, Enforce Federal Laws and Represent the Rights and Interests of the American People. This Strategic Goal defines the two broad program areas:

- Criminal Enforcement
- Civil Enforcement

In recent years, 40 percent of the Division’s budget and expenditures can be attributed to its criminal program and 60 percent of the Division’s budget and expenditures can be attributed to its civil program. The FY 2012 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 limited resources.

### Information Technology (IT) Expenditures

The Antitrust Division's FY 2012 budget request does not include IT enhancements, and its steady-state IT budget will continue to support several broad Information Technology areas essential to carrying out its mission. These Information Technology areas include:

- *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.
- *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.
- *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.
- *Data Storage* – Storing increasingly large amounts of electronic discovery submitted by parties under investigation by the Division. The IT revolution has vastly increased the amount of information that business entities produce and store, and it is a significantly increasing challenge for the Division to keep up with these huge volumes of information.
- *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.
- *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				See Page
	Antitrust Division	Pos.	FTE	Dollars (\$000)	
Admin Efficiencies	Efficiencies and cost savings in Administrative areas	0	0	-\$135	44
Extend Technology Refresh	Refresh technology at a slower rate	0	0	-\$ 76	46
Reduce Physical Footprint	Office space consolidation	0	0	-\$100	47

### 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, \$166,221,000 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 \$110,000,000 in fiscal year 2012), 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 2012, so as to result in a final fiscal year 2012 appropriation from the general fund estimated at \$56,221,000.*

**Note:** A full-year 2011 appropriation for this account was not enacted at the time the budget was prepared; therefore, this account is operating under a continuing resolution (P.L. 111–242, as amended). The amounts included for 2011 reflect the annualized level provided by the continuing resolution.

[ ] - Proposed Deletion                      XXX – Proposed New Language

#### Analysis of Appropriations Language

There are no substantive changes are proposed.

**Note:** The FY 2012 President’s Budget uses the FY 2011 President’s Budget language as a base so all language is presented as new.

## IV. Decision Unit Justification

### A. Decision Unit: Antitrust

<b>Antitrust Division</b> <b>Fiscal Year 2012 Congressional Budget Submission</b> <b>Decision Unit Justification</b>			
Decision Unit: Antitrust - TOTAL	Permanent Positions	FTE	Amount
2010 Enacted	880	851	\$163,170,000
2011 CR	880	851	\$163,170,000
<b>Adjustments to Base and Technical Adjustments</b>	<b>0</b>	<b>0</b>	<b>\$3,362,000</b>
2012 Current Services	880	851	\$166,532,000
2012 Program Changes/Offsets	0	0	-\$311,000
2012 Request	880	851	<b>\$166,221,000</b>
<b>Total Change 2010 - 2012</b>	<b>0</b>	<b>0</b>	<b>\$3,051,000</b>
Decision Unit: Antitrust Information Technology Breakout (of Decision Unit Total)	Permanent Positions	FTE	Amount
2010 Enacted	36	34	\$23,717
2011 CR	36	34	\$24,193
<b>Adjustments to Base and Technical Adjustments</b>	<b>0</b>	<b>0</b>	<b>\$485</b>
2012 Current Services	38	36	\$24,678
2012 Request	38	36	<b>\$24,678</b>
<b>Total Change 2010 - 2012</b>	<b>2</b>	<b>2</b>	<b>\$485</b>

## 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, Civil Litigation, Criminal Enforcement, Economic Analysis, and International Enforcement.



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 recent Airline Passenger and Cargo Pricing investigation (page 38) and Economic Recovery Initiative (page 42) prosecutions 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 analyze 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. In August 2010, The Department of Justice and the Federal Trade Commission (FTC) issued revised Horizontal Merger Guidelines that outline how the federal antitrust agencies evaluate the likely competitive impact of mergers and whether those mergers comply with U.S. antitrust law. These changes mark the first major revision of the merger guidelines in 18 years and will give businesses a better understanding of how the agencies evaluate proposed mergers.

In addition, 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.

*Agriculture Hearings* – In 2010, the Antitrust Division and the U.S. Department of Agriculture (USDA) held five joint public workshops to explore competition issues affecting the agricultural sector in the 21st century and the appropriate role for antitrust and regulatory enforcement in that industry. These were the first joint Department of Justice/USDA workshops ever to be held to discuss competition and regulatory issues in the agriculture industry. The goals of the workshops were to promote dialogue among interested parties and foster learning with respect to the appropriate legal and economic analyses of these issues as well as to listen to and learn from parties with real-world experience in the agricultural sector.

Workshops were held in Ankeny, Iowa; Normal, Alabama; Madison, Wisconsin, Fort Collins, Colorado and Washington, D.C.



*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.



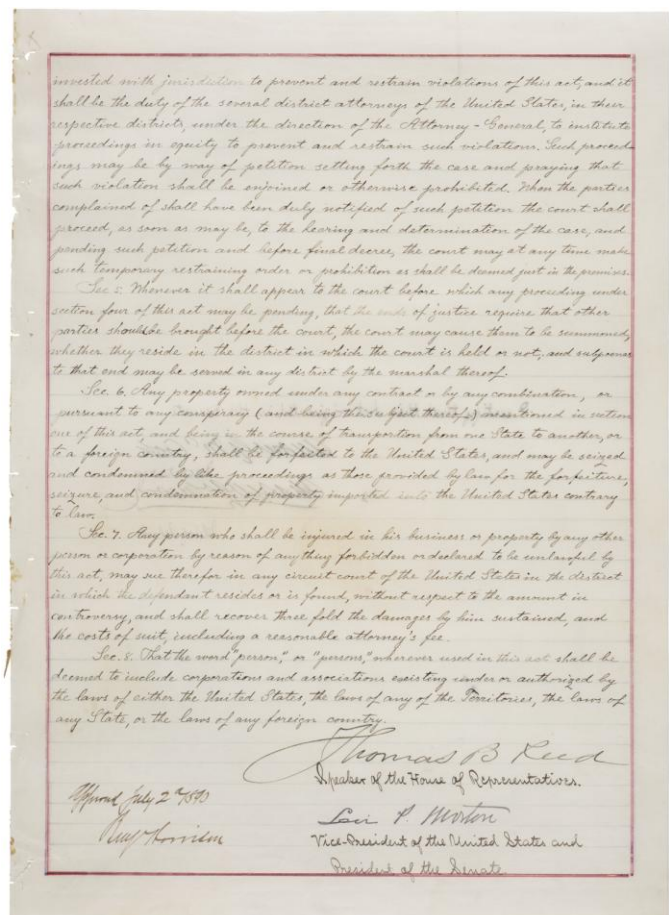
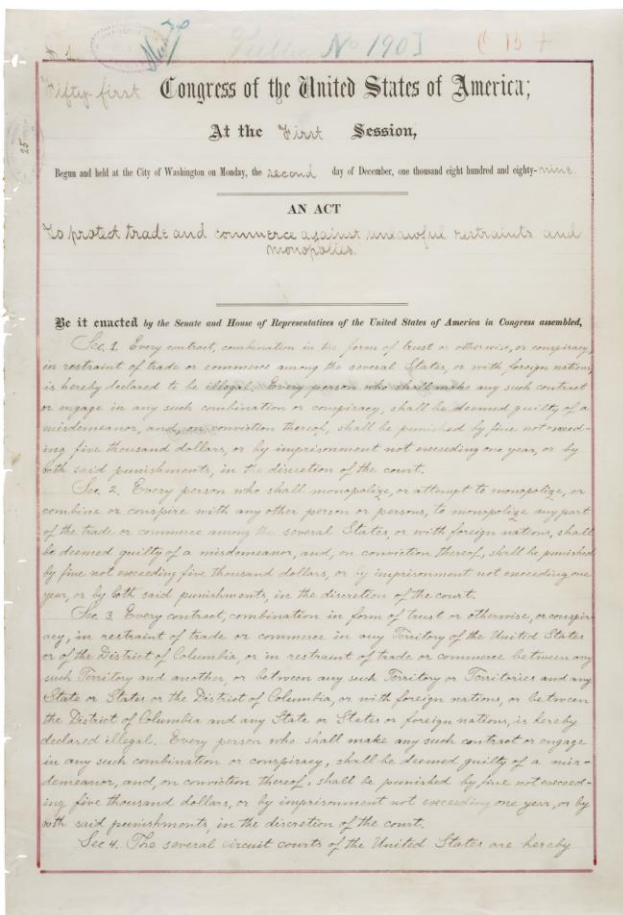
The Division pursues these goals by working closely with multilateral organizations, strengthening its bilateral ties with antitrust agencies worldwide, and working with countries that are in the process of adopting antitrust laws. One of the most notable examples of the Division's international efforts includes its participation in the International Competition Network (ICN). In April 2010, the ICN held a conference in Istanbul attended by more than 500 delegates and competition experts from more

than 80 antitrust agencies and organizations throughout the world. At this ninth annual conference, the ICN adopted Recommended Practices for substantive merger analysis, approved a pilot project for a virtual university on competition law and practice, and presented a report on the analysis of refusal to deal and margin squeeze conduct under unilateral conduct laws.

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/Objective: Criminal, Civil

WORKLOAD/ RESOURCES		Final Target		Actual		Projected		Changes		Requested (Total)	
		FY 2010		FY 2010		FY 2011 CR		Current Services Adjustments and FY 2012 Program Changes		FY 2012 Request	
<b>Workload</b> - Number of HSR Transactions Received		1,635		1,170		1,635		1,635		1,635	
<b>Total Costs and FTE</b>		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
<b>Antitrust</b>		851	\$163,170	798	\$170,652	851	\$163,170	0	\$3,051	851	\$166,221
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	FY 2010		FY 2010		FY 2011 CR		Current Services Adjustments and FY 2012 Program Changes		FY 2012 Request	
Program Activity	1. Criminal	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		340	\$65,268	319	\$68,261	340	\$65,268	0	\$1,220	340	\$66,488
Performance Measure – Criminal	Number of Active Grand Juries	95		168		95		0		95	
	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	Not Projected		\$502		Not Projected		Not Projected		Not Projected	
Program Activity	2. Civil	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		511	\$97,902	479	\$102,391	511	\$97,902	0	\$1,831	511	\$99,733

TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	Final Target	Actual	Projected	Changes	Requested (Total)
		FY 2010	FY 2010	FY 2011 CR	Current Services Adjustments and FY 2012 Program Changes	FY 2012 Request
<b>Performance Measure – Merger</b>	Number of Preliminary Inquiries Opened	110	64*	110	0/0	110
<b>Performance Measure – Civil Non-Merger</b>	Number of Active Investigations	77	61*	77	0/0	77
<b>Performance Measure – Civil Merger and Non-Merger</b>	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	\$8,114	Not Projected	Not Projected	Not Projected
<b>Outcome – Criminal, Civil (Merger and Civil Non-Merger)</b>						
<b>Consumer Savings</b>	Criminal: Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$50.2	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	\$186.7	Not Projected	Not Projected	Not Projected
<b>Success Rates</b>	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:**

**\*Justification for Civil Merger and Civil Non-Merger targets not met in FY 2010:**

**Civil Merger:** Although merger activity remained somewhat depressed in FY2009, it began to build momentum throughout FY 2010 as market conditions improved, the economy continued to recover and businesses regained confidence in the marketplace. However, activity was such that FY2010 performance targets could not successfully be met.

**Civil Non-Merger:** Civil non-merger matters typically require extensive, highly complex and time-consuming analysis which often result in multi-year investigations that do not lend themselves to the parameters of standardized performance measurement.

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

**Dollars and FTE:** HSR related performance measures for FY 2010 through FY 2012 projections are based on an analysis of FY 2003 through FY 2009 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 & Accountability Report.**

The **Success Rate for Civil Matters** is determined **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 & Accountability Report.**

**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 & Accountability Report.**

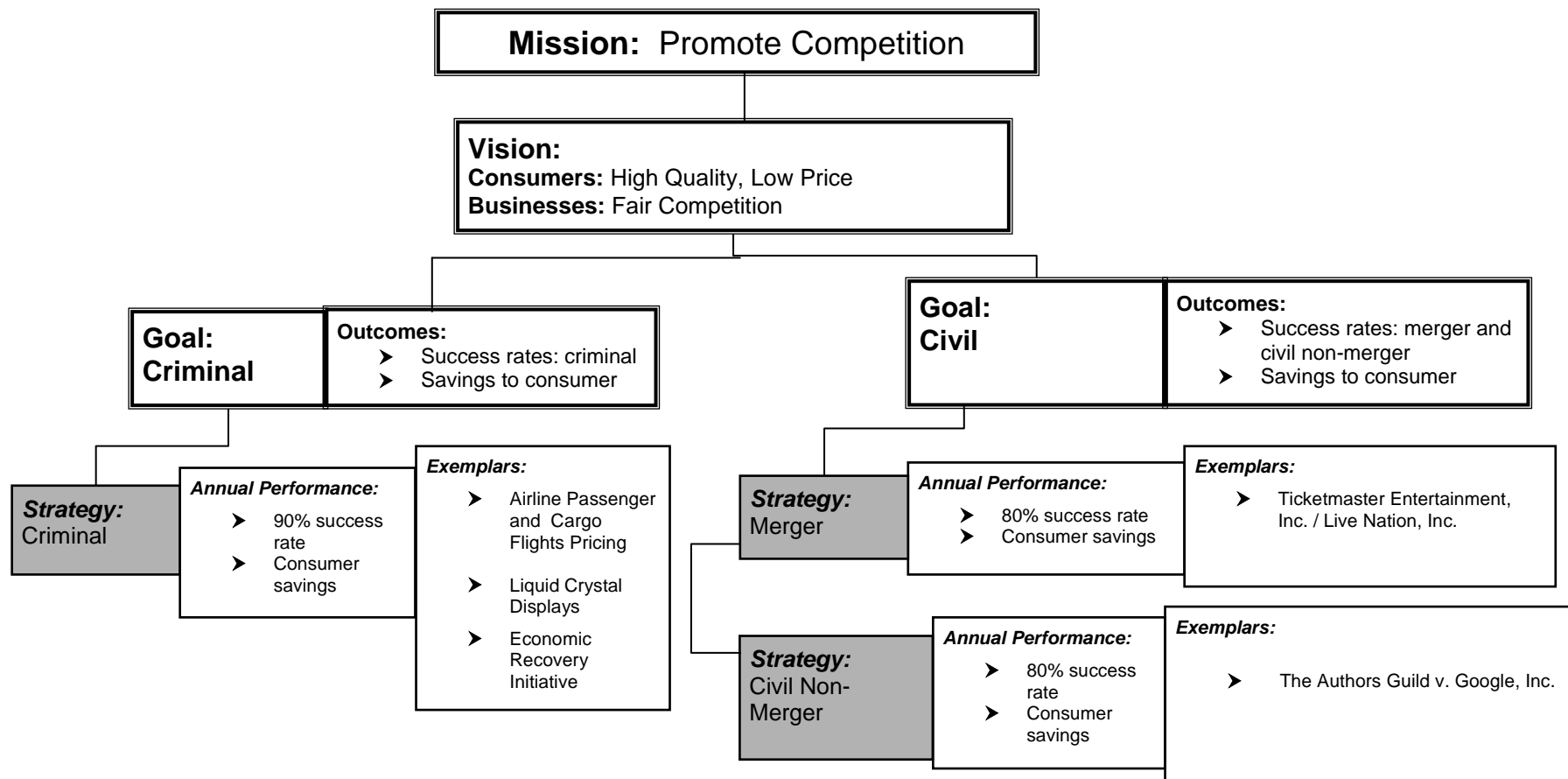
**Performance Measure Report - Historical Data**

**Decision Unit: Antitrust**

Performance Report and Performance Plan Targets		FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010		FY 2011	FY 2012
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
<b>Performance Measure: Criminal</b>	Number of Active Grand Juries	147	155	152	141	167	175	95	168	95	95
<b>Performance Measure: Criminal</b>	Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Favorably Resolved (\$ in millions)	\$1,162	\$3,307	\$550	\$5,612	\$210	\$6,056	Not Projected	\$502	Not Projected	Not Projected
<b>Performance Measure: Civil Merger</b>	Number of Preliminary Inquiries Opened	88	106	96	101	85	65	110	64	110	110
<b>Performance Measure: Civil Non-Merger</b>	Number of Active Investigations	92	80	73	52	57	73	77	61	77	77
<b>Performance Measure: Civil (Merger and Non-Merger)</b>	Dollar Volume of U.S. Commerce Affected in Relevant Markets for all Merger Wins and All Non-Merger Pleas/Cases Favorably Resolved (\$ in millions)	\$44,933	\$8,250	\$100,832	\$2,967	\$16,085	\$94,629	Not Projected	\$8,114	Not Projected	Not Projected
<b>Outcome Measure: Consumer Savings - Criminal</b>	Criminal - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$115.7	\$330	\$55	\$561	\$21	\$606	Not Projected	\$50.2	Not Projected	Not Projected
<b>Outcome Measure: Consumer Savings - Civil</b>	Civil (Merger and Non-Merger) - Total Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$15	\$164	\$1,952.3	\$166	\$509.7	\$1,222	Not Projected	\$186.7	Not Projected	Not Projected
<b>Outcome Measure: Success Rate - Criminal</b>	Criminal - Percentage of cases favorably resolved	88%	96%	100%	98%	85%	97%	90%	98%	90%	90%
<b>Outcome Measure: Success Rate - Civil (Merger and Non-Merger)</b>	Civil - Percentage of cases favorably resolved	90%	100%	100%	100%	100%	100%	80%	100%	80%	80%



*Antitrust Division, Department of Justice*  
**Performance Measurement Framework**  
**FY 2012**



#### 4. Performance, Resources, and Strategies

The Antitrust Decision Unit contributes to the Department's Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. Within this Goal, the Decision Unit's resources specifically address Strategic Objective 2.7: Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction.

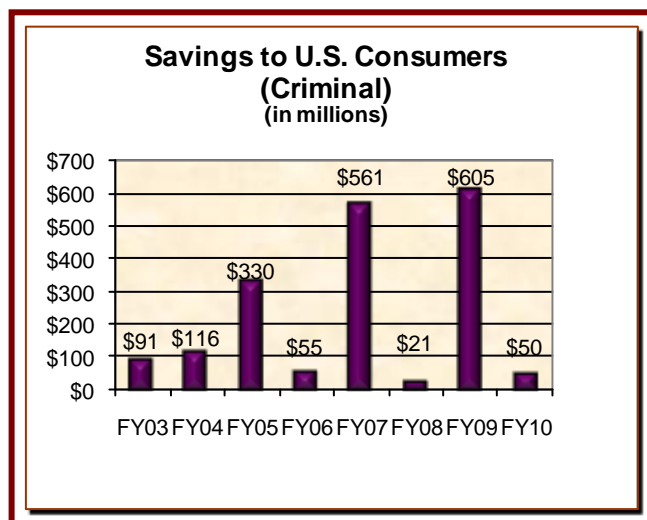
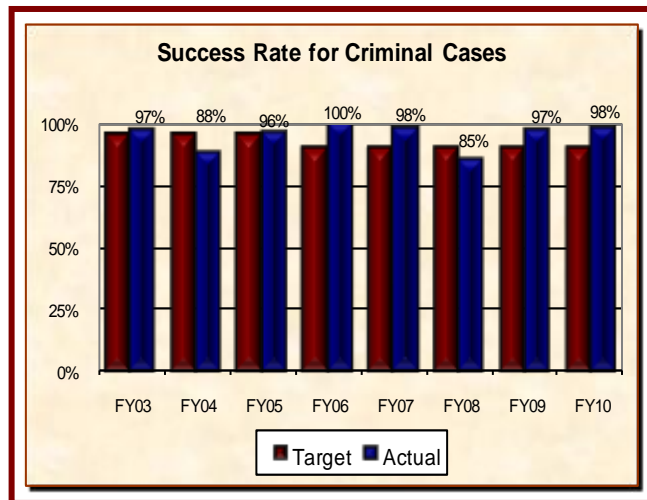
##### a. Performance Plan and Report for Outcomes

##### 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 2010, 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 94 percent of its cases. The Division expects to meet or exceed its goals for FY 2011 through FY 2012.

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.



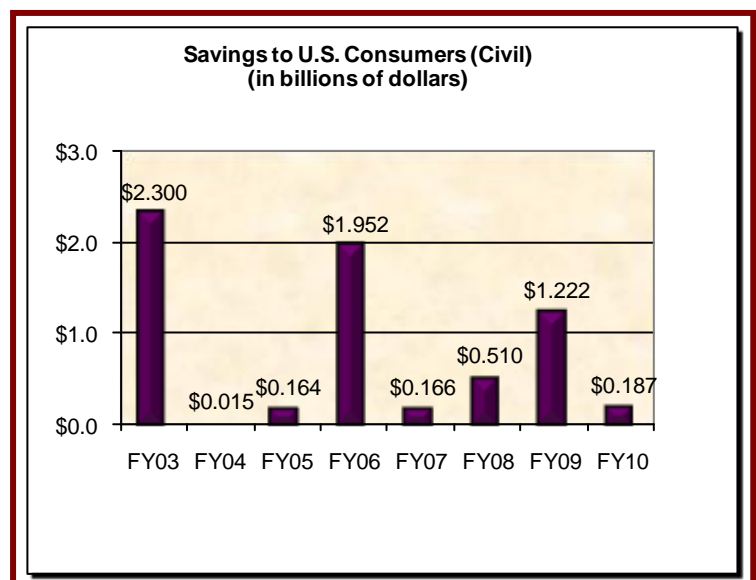
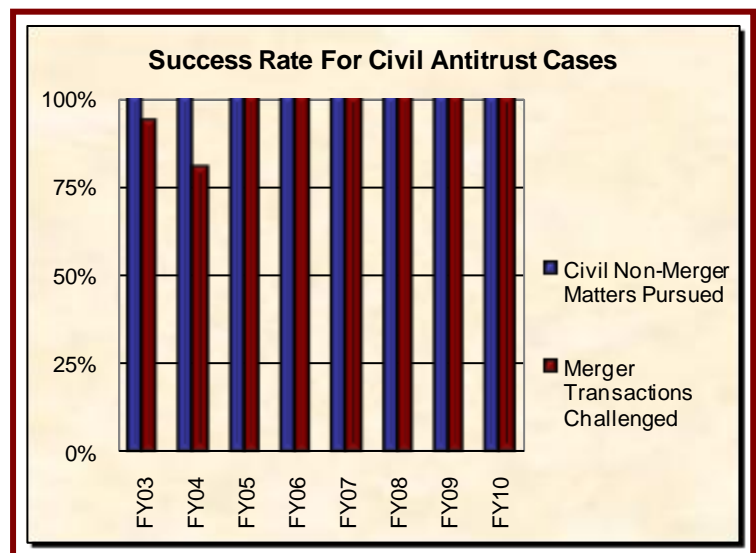
## Civil Enforcement

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 2010 and expects to meet or exceed its goals for FY 2011 through FY 2012.

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. Similar to its Civil Non-Merger Program, the Division's Civil Merger Program successfully resolved 100 percent of the matters it challenged in FY 2010 and expects to meet or exceed its goals for FY 2011 through FY 2012.

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 seven geographically dispersed Field Offices and one Section 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 two Field Offices 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 Washington sections and some field 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 *tied* product, or at least agree that he will not purchase that *tied* 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.



## 5. Exemplars - Civil

### A. Merger: Ticketmaster Entertainment, Inc. / Live Nation, Inc.-

#### **Introduction**

In February 2009, Ticketmaster Entertainment, Inc. and Live Nation, Inc. agreed to merge. Ticketmaster was the largest primary ticketing company in the United States, providing primary ticketing services to more than eighty percent of major concert venues in the United States in 2008. Primary ticketing companies are responsible for the initial distribution of tickets through channels such as the Internet, call centers, and retail outlets, and for enabling the venue to sell tickets at its box office. In other words, the primary ticketing company provides the technology infrastructure for the initial ticket distribution. The overall price a consumer pays for a ticket generally includes the face value of the ticket and a variety of service fees above the face value of the ticket. Such fees are most often collected by the provider of primary ticketing services.

Live Nation was the largest concert promoter in the United States, earning more than \$1.3 billion in revenue from its U.S. promotions business in 2008 and promoting shows representing thirty-three percent of the concert revenues at major concert venues in 2008. Promoters contract with artists to perform at particular concerts, assume the financial risk of staging the concerts, make the arrangements for the concerts to occur at certain times and places, and market the concerts. Live Nation owned or operated about seventy major concert venues throughout the United States.

Prior to January 2009, Live Nation was Ticketmaster's largest ticketing customer. Unhappy with its relationship with Ticketmaster, Live Nation decided to enter the primary ticketing business itself. Live Nation intended for its new ticketing company to serve its own venues and to compete against Ticketmaster for primary ticketing contracts at independent venues. This competition, however, was threatened by the proposed merger of Live Nation and Ticketmaster that was announced less than two months after Live Nation's entry.

#### **Background and Investigation**

The Antitrust Division conducted an extensive, detailed, eleven-month investigation into the potential competitive effects of the proposed merger. As part of the investigation, the Division issued Second Requests and twelve Civil Investigative Demands ("CIDs") to the merging parties, as well as more than fifty CIDs to third parties. The Division considered more than 2.5 million documents received in response to the Second Requests and CIDs. More than 250 interviews were conducted with customers, competitors, and other individuals with knowledge of the industry.



As part of its investigation, the Division considered the potential competitive effects of the merger on numerous products and services, customer groups, and geographic areas. For the vast majority of these, including the provision of services to promote live entertainment events, the Division determined that the proposed merger was unlikely to reduce competition substantially. Because Ticketmaster and Live Nation were the two largest providers of primary ticketing services, the Division focused principally on the combination of the parties' primary ticketing services.

Through its investigation, the Division concluded that the combination of Ticketmaster and Live Nation likely would lessen competition in the provision and sale of primary ticketing services for major concert venues in the United States. The merger of Ticketmaster and Live Nation, as originally proposed, would have removed Live Nation's competitive presence from an already highly concentrated and difficult-to-enter market. The resulting increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely would have resulted in higher prices for major concert venues and reduced innovation in primary ticketing services.

## **Conclusion**

In January 2010, the Division announced that it had required Ticketmaster and Live Nation to make significant changes to their merger before it could proceed. These changes were reflected in a proposed Final Judgment filed with the U.S. District Court in Washington, D.C. The proposed Final Judgment was approved by the Court in July 2010.

The Final Judgment requires Ticketmaster to license a copy of its primary ticketing software to AEG, the nation's second-largest concert promoter and operator of some of the most important concert venues in the country. With a copy of the Ticketmaster software, AEG will be able to market a ticketing system that is an attractive choice to venues. As a concert promoter and venue operator, AEG will have incentives similar to Live Nation to provide better ticketing services at lower prices. Within five years, AEG can purchase the Ticketmaster ticketing software, decide to create its own software, or partner with a ticketing company other than Ticketmaster. This remedy was designed to enhance short- and long-term competition in the primary ticketing market.

Pursuant to the Final Judgment, Ticketmaster also divested Paciolan Inc., another ticketing company that it owned, to Comcast-Spectacor. Comcast-Spectacor is a sports and entertainment company with management relationships with a number of concert venues and ticketing experience with its New Era Tickets company. Hundreds of venues, including major concert venues, currently use Paciolan to sell tickets. Paciolan's ticketing system provides venues greater flexibility to lower the ticket service fees that are added to the face value of the ticket. The Division concluded that divesting Paciolan to Comcast-Spectacor, in conjunction with the AEG license, would replace the competitive pressure on Ticketmaster lost as a result of the merger as originally proposed.

The Final Judgment also contains additional conduct remedies designed to ensure the effectiveness of the divestitures described above. The Final Judgment prohibits the merged firm from retaliating against any venue owner that chooses to use another company's ticketing services or another company's promotional services, and includes restrictions on anticompetitive bundling. The merged firm must allow any client that leaves and chooses to use another primary ticketing service to take a copy of the ticketing data related to that client's sales. The Final Judgment sets up firewalls that protect confidential and valuable competitor data by preventing the merged firm from using information gleaned from its ticketing business in its day-to-day operations of its promotions or artist management business. Additionally, the merged firm must provide notice of any other acquisitions of a ticketing company so that the Division may investigate the competitive effect of such an acquisition.

Together with the license of the Ticketmaster software to AEG and the divestiture of Paciolan to Comcast-Spectacor, these remedies will preserve the competition that Ticketmaster faced from Live Nation, a new ticketing entrant. As a result of the Division's investigation and resulting Final Judgment, American consumers are provided with continuing healthy competition in the concert ticketing industry, resulting in competitively priced tickets purchased for concert events.

## **B. Non-Merger: The Authors Guild v. Google, Inc.**

### **Introduction**

In 2004, Google began scanning books from university libraries and making the text searchable by internet users. While Google enabled the public to read the entirety of older books that have entered the public domain, it provided only snippets of text for copyright protected books. Google claimed its use of the library books was legal and fair under U.S. copyright law.

A class of authors and publishers, however, sued Google claiming that the company infringed the copyrights of millions of authors and publishers because Google did not seek advance permission to copy their books, make them searchable on the internet, or display snippets of text based on the user's search terms.

### **Background**

In October 2008, the parties reached a wide-ranging proposed class action settlement that went far beyond resolving the plaintiffs' claims of Google's past copyright infringement.

This unusual class settlement reached by the parties would have: 1) resolved the claims of millions of U.S. and foreign authors throughout the world even if they never received notice of the lawsuit or its settlement; 2) created a new joint venture for managing author rights and distributing royalties; 3) reversed the normal operation of copyright law as to Google alone by allowing it to sell ebooks before obtaining the copyright holder's permission; 4) established a uniform royalty split among competing publishers and authors; and 5) established Google as the only company to offer subscription access to a comprehensive set of millions of library books.

Moreover, the settlement proposed by the parties would have permitted Google to sell eBook-versions of the copyrighted books it scanned, an infringing activity not defensible as fair use. While this settlement proposed by the parties would have offered the promise of making millions of older books searchable and readily available in digital format for millions of Americans, the settlement, as constructed, also created the risk of effectively granting Google a monopoly over the distribution of such books and setting the prices for such books above levels that would prevail with competition.

This class action settlement as proposed by the parties required district court approval. In July 2009, the Antitrust Division informed the Court that it was investigating the settlement. The Court then permitted the Division to present its views on the proposed settlement.

As the investigation progressed, the Division learned that the proposed settlement implicated a broad set of government interests, including copyright law, class action law, and treaty obligations. The Division therefore worked with other governmental agencies as well as other components in the Department of Justice to file in September 2009, a unified statement of interest from the Department covering all governmental concerns.

In response to the Department's statement, the parties withdrew their proposed settlement and subsequently filed an amended settlement. The parties' amended version responded to the Department's comments by making several improvements such as removing a large number of foreign authors from the class and reducing restraints on Google's ability to lower eBook prices, but many of the troubling aspects of the original proposed settlement remained. The Department of Justice therefore filed in February 2010 an opposition to the Court's approval of the amended class settlement.

In relation to antitrust concerns, the Division explained that the amended class settlement may have the following effects on competition and pricing, among others:

- Competition at the wholesale level between publishers would be restrained;
- Competition at the retail level could be restrained by the collective setting of retail prices and by prohibitions on Google's ability to offer discounts to consumers; and
- The settlement risks establishing Google as the de facto exclusive distributor of particular books and the only company with the ability to market to libraries a comprehensive digital-book subscription service.

## **Conclusion**

The Division continues to believe that a properly structured settlement agreement in this case offers the potential for important societal benefits and is committed to continuing to work with the parties and other stakeholders to help develop solutions through which copyright holders could allow for digital use of their works by Google and others, whether through legislative or market-based activities.

The investigation remains on hold as the parties and the Department of Justice await the Court's decision.

## 6. Exemplars – Criminal

### A. International Airline Passenger and Cargo Pricing

#### Introduction and Background



International air transportation costs, for both passengers and cargo, affect every American either through the purchase of airline tickets or the purchase of consumer goods. Air cargo alone generated worldwide revenues of \$50 billion in 2005, accounting for 12 percent of the airline industry's revenues.

In investigations covering three continents and involving many governmental entities including the Department of Justice, the European Commission and the United Kingdom's Office of Fair Trading, price fixing conspiracies were uncovered setting prices for air cargo rates and passenger fares.

The investigations are far-reaching and ongoing. In August 2007, the Antitrust Division announced that two airlines, British Airways (based in the United Kingdom) and Korean Air Lines (based in South Korea) agreed to plead guilty and each pay a fine of \$300 million for their roles in these price fixing conspiracies. Since then, an additional sixteen airlines have pled guilty and agreed to pay more than \$1.1 billion in criminal fines. More matters in this area are pending.

Total criminal fines imposed against these airlines, some of the world's largest, in the Division's ongoing cargo and fuel surcharge fee investigations in the air transportation industry total **more than \$1.7 billion**, marking the highest total amount of fines ever imposed in an Antitrust Division investigation.

#### Investigation

The Antitrust Division's investigations are focused on the period of January 2000 through February 2006 for air cargo and passenger services. In February 2006, the Department of Justice, with the support of international competition authorities, raided various airline offices in Asia, Europe, and the United States.

The investigations include international air cargo flights and long-haul international passenger flights, including flights in and out of the United States. Air transportation costs for both passengers and cargo include a base rate plus various surcharges, such as fuel and post-September 11th security surcharges. The base rate plus various charges for air cargo are collectively referred to as 'cargo rates' and the base rate plus various charges for air passengers is known as 'passenger fare'.

Specifically, the Division has been investigating price fixing for air cargo rates and passenger fares.

## Results

To date, the Department has successfully obtained criminal fines of over \$1.7 billion and guilty pleas from eighteen airlines and four executives including:

### **Fines Obtained from August 2007 through January 2011**

Air France and KLM Airlines - \$350 million  
British Airways - \$300 million  
Korean Air Lines - \$300 million  
Cargolux Airlines International - \$119 million  
Japan Airlines - \$110 million  
LAN Cargo and Aerolinhas Brasileiras - \$109 million  
Qantas Airways Limited - \$61 million  
Cathay Pacific Airways - \$60 million  
SAS Cargo Group - \$52 million  
Asian Airlines - \$50 million  
Singapore Airlines Cargo - \$48 million  
Nippon Cargo Airlines - \$45 million  
Martinair Holland - \$42 million  
Northwest Airlines LLC - \$38 million  
Polar Air Cargo LLC - \$17.4 million  
EL AL Israel Airlines - \$15.7 million

The four airline executives who have pleaded guilty for their involvement in the illegal activity worked for Qantas Airways, SAS Cargo Group, Martinair Holland, and British Airways. The executives have been sentenced to serve a total of 28 months in jail.

Both Virgin Atlantic and Lufthansa AG have been conditionally accepted into the Antitrust Division's Corporate Leniency Program. The Division's Corporate Leniency Program allows a qualifying company that is the first to voluntarily disclose its participation in an antitrust crime and which fully cooperates in the subsequent investigation to avoid criminal conviction and a heavy fine. Virgin Atlantic entered the program after reporting its participation with British Airways in the passenger fuel surcharge conspiracy. The United Kingdom's Office of Fair Trading also has a leniency policy and has indicated that Virgin is not expected to face a fine. Lufthansa was conditionally accepted into the Division's program after it disclosed its role in the international air cargo conspiracy in which British Airways and Korean Air were participants.

## Conclusion

As a result of the price fixing conspiracy in the airline industry, American consumers and businesses paid more for air transportation costs. Passengers pay hundreds of millions of dollars in ticket prices each year, and the conspiracy raised the price on virtually every ticket purchased between 2004 and 2006 for the conspirators' long-haul international flights

This exemplar demonstrates the ever-increasing international scope of the Division's investigations and highlights the importance of international law enforcement cooperation in prosecuting global cartels.

## **B. Liquid Crystal Displays**

### **Background and Investigation**

The Division's investigation in the Liquid Crystal Display (LCD) industry focuses on price-fixing in the sales of Thin-Film Transistor (TFT) LCDs sold worldwide during a five-year period between 2001 and 2006. LCD panels are used as screens in computer monitors and notebooks, televisions, mobile phones and other electronic devices. Indeed, each and every personal computer, cell phone, smart phone, MP3 player, and electronic reader may have been impacted by this conspiracy. In 2006, the worldwide market for LCD panels was approximately \$70 billion. The LCD sales under investigation for this period were to some of the largest computer and television manufacturers in the world including Apple, Dell, and Hewlett-Packard.

Specifically, the Division's investigation has focused on the following illegal, collusive activities among LCD producers:

- Participation in meetings, conversations, and communications in Taiwan, Korea and the United States to discuss the prices of LCD panels;
- Agreement during those meetings, conversations and communications to charge prices of LCD panels at certain pre-determined levels;
- Issuance of price quotations in accordance with the agreements reached; and
- The exchange of information on sales of LCD panels for the purpose of monitoring and enforcing adherence to the agreed-upon prices.

### **Results**

To date, the Department has obtained criminal fines of over \$890 million from eight LCD producers. The large amount of fines reflects the size of the LCD panel market and the harm to American consumers resulting from the cartel activity.

The fines include:

- Chi Mei Optoelectronics – \$220 million
- Chunghwa Picture Tubes – \$65 million (Chunghwa was the first Taiwanese company to ever plead guilty to criminal charges for participating in a antitrust cartel)
- Epson Imaging Devices – \$26 million
- Hitachi Displays Ltd. – \$31 million
- HannStar Display Corporation – \$30 million
- LG Display Co., Ltd. and LG Display America – \$400 million (the LG fine is the second-highest fine ever imposed in an Antitrust Division case, and among the largest criminal fines ever imposed in the history of the Department of Justice)
- Sharp Corporation– \$120 million

In addition to the eight LCD producers that have pled guilty, a Taiwanese LCD producer, AU Optronics Corporation, and its American subsidiary, AU Optronics Corporation America, were recently indicted for participating in the cartel. The indictment also charges that in December, 2006, employees of AU Optronics Corporation America took steps to destroy evidence of the cartel when they became aware of the investigation by the Division.

In January 2011, a federal grand jury in San Francisco returned an indictment against the current president of HannStar Display Corporation, bringing to twenty-two the total number of executives, all foreign nationals, charged with participating in LCD cartel activity. Nine of these executives, including the CEO of Chungwha Picture Tubes and the President of Chi Mei Optoelectronics, have pled guilty to participating in the illegal activity and have been sentenced to serve prison terms up to fourteen months. Thirteen other high-level executives have been indicted for participating in the cartel.

### **Conclusion**

The LCD cartel is one of the largest ever prosecuted by the Division. It has resulted in historic fines and significant jail terms for executives at the highest levels. As a result of the price-fixing agreements reached among the major producers of LCD panels, American consumers and businesses paid more for LCD panels used in products found in almost every American household. The investigation continues and additional prosecutions and criminal fines are anticipated.

By prosecuting illegal business practices in the highly visible multiple billion dollar LCD market, the Division has not only addressed clear criminal violations of law, but its prosecutions also serve as a significant deterrent to companies considering illegal activities including price fixing, bid rigging and other collusive activity.

## C. Economic Recovery Initiative

### **Introduction and Background**

Enforcement of the Sherman Antitrust Act, which authorizes the Antitrust Division to bring criminal prosecutions against those that are involved in contracts, business combinations and conspiracies that unreasonably restrain the nation's free market economy, is a critical component of the Division's mission. One major aspect of the Division's responsibility in this area is to protect taxpayer dollars used to fund government projects and programs.

With the passage of the American Recovery and Reinvestment Act of 2009 (ARRA), signed by President Obama in February 2009, the Division's role to uphold the American public's expectation that our nation's \$787 billion investment in economic recovery will not fall victim to fraud and other illegal activity was clearly evident. Accordingly, within one month of the Recovery Act becoming Public Law, the Antitrust Division launched an "Economic Recovery Initiative" to assist in ensuring successful results from implementation of the Recovery Act.

### **Development and Implementation of the Economic Recovery Initiative**

Guidance issued by the Office of Management and Budget (OMB) to heads of government agencies immediately after passage of the Recovery Act clearly stated that with a stimulus the size of ARRA and the requirement to distribute the funds timely, particular attention must be given to make sure that "funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated."

The Economic Recovery Initiative represents the Antitrust Division's commitment to assist federal, state, and local agencies receiving Recovery Act funds to ensure that measures are in place to protect procurement and program funding processes from bid-rigging and other fraudulent conduct, as well as to ensure that those who seek to corrupt the competitive bidding process are prosecuted to the fullest extent of the law. A principle aim of the Initiative is training government officials to prevent, detect, and report efforts by parties to unlawfully profit from stimulus awards before those awards are made and taxpayer money is wasted. This focus reflects the Antitrust Division's experience from investigating and prosecuting fraud that the potential risk of collusion and fraud relating to lucrative government contracts is dramatically minimized when an early and strong emphasis is placed on prevention and detection.

"Red Flags of Collusion" Training – A key component of the Economic Recovery Initiative is training agency procurement and grant officials, auditors, and investigators at the national, regional, and local levels on techniques for identifying "red flags of collusion" *before* the award of Recovery Act funds. This training teaches procurement and grant officials to identify collusion warning signs through case illustrations and a four-step analytical process called M.A.P.S. The M.A.P.S. training teaches procurement and grant officials to identify problems with the Market of potential competitors for an



award; **A**pplications or paperwork submitted by competitors for an award; **P**atterns that have developed over time for awards of particular products and services; and **S**uspicious behavior they are exposed to during the process of an award, and then to report those problems to their Inspector General's (IG) office, the Antitrust Division or other appropriate regulatory authority.

Partnering with the IG Community and State Authorities – The “red flags of collusion” training offered by the Antitrust Division focuses on pre-award collusion indicators, that arise before a government award is made. The Division has partnered with a broad network of IGs and law enforcement authorities for the numerous federal, state, and local agencies who are overseeing the distribution of Recovery Act funds to combine the Division's pre-award training with the traditional post-award training offered by those offices.

To date, the Antitrust Division has conducted training for twenty federal agencies, thirty-six states and two U.S. territories receiving Recovery Act funds. Through its federal, state, and local efforts to date, the Division has already conducted nearly 400 training presentations to over 25,000 agents, auditors and procurement and grant officials nationwide. The Division's training effort is ongoing.

Public Outreach – The Antitrust Division has invited the public to learn more about and participate in making the Economic Recovery Initiative a success. Information about the Initiative is available on the Department of Justice web site at <http://www.usdoj.gov/atr> and a description of the Initiative and a link to the Antitrust Division web site is also available on the official Recovery Act website at [www.recovery.gov](http://www.recovery.gov).



### **The Financial Fraud Enforcement Task Force**

The Antitrust Division's Economic Recovery Initiative is now a critical component of the outreach and training efforts of the Recovery Act Fraud Working Group of the President's Financial Fraud Enforcement Task Force. The Task Force's Recovery Act Fraud Working Group, which is co-chaired by the Assistant Attorney General for the Antitrust Division is responsible for coordinating a national strategy to draw on all the resources and expertise of the Department, as well as other partner agencies, regulatory authorities, and Inspectors General throughout the Executive Branch, to ensure that taxpayer funds are safeguarded from fraud and abuse and that the Recovery Act effort is conducted in an open, competitive, and non-discriminatory manner.

### **Conclusion**

The Antitrust Division is committed to deterring fraudulent and criminal conduct aimed at undermining the government's procurement processes and the economy at large, through swift and just prosecutions. The Economic Recovery Initiative demonstrates the Division's equally important commitment to providing government officials the tools they need to prevent and root out these forms of fraudulent and criminal conduct before that conduct results in a single dollar of loss to the American taxpayer.

## 7. Program Assessment

During FY 2005, the Antitrust Division was assessed through OMB's Program Assessment along with five other litigating components (Civil; Criminal; Civil Rights; Environment and Natural Resources; and Tax) collectively named the General Legal Activities (GLA) Program.

OMB's findings include the following:

- The Program effectively achieves its goal of resolving cases in favor of the government. Favorable resolutions, in turn, punish and deter violations of the law; ensure the integrity of federal laws and programs; and prevent the government from losing money through unfavorable settlements or judgments.
- The Program collaborates effectively with its partners, notably the US Attorneys Offices. The two programs work closely to share expertise, make referrals, and designate cases for prosecution, while minimizing any overlap of responsibilities.
- The Program exhibits good management practices. This includes strong financial management, collecting and using performance information to make decisions, and holding managers accountable for program performance.

## V. Program Changes/Offsets by Item

**Item Name: Administrative Efficiencies**

Budget Decision Unit(s): **Antitrust**

Strategic Goal(s) & Objective(s): **Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People.**

**Strategic Objective 2.7: Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction.**

Organizational Program: **Antitrust Division's Enforcement Programs**

Component Ranking of Item: **1**

Program Reduction: Positions 0 Atty 0 FTE 0 Dollars -\$135

**Description of Item**

Efficiencies and cost savings in Administrative areas (e.g. printing, travel, supplies and equipment).

**Summary Justification**

The Division is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2012, the Division is focusing on areas in which savings can be achieved, which include, but are not limited to: printing, publications, travel, conferences, supplies, and general equipment. For the Antitrust Division, these administrative efficiencies will result in an offset of \$135,000.

**Impact on Performance**

This reduction to administrative items demonstrates that the Division plans to institute substantive efficiencies without unduly taxing either the people or the mission of the Antitrust Division.

**Base Funding**

FY 2010 Enacted (w/resc./supps)				FY 2011 CR				FY 2012 Current Services			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
880	390	851	\$163,170	880	390	851	\$163,170	880	390	851	\$166,532

**Non-Personnel Reduction Cost Summary**

Non-Personnel Item	Unit	Quantity	FY 2012 Request (\$000)
Administrative Efficiencies	Various	Various	-\$135
Total Non-Personnel	Various	Various	-\$135

**Total Request for this Item**

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	880	390	851	\$109,400	\$57,132	\$166,532
Decreases	0	0	0	0	\$ -135	\$ -135
Grand Total	880	390	851	\$109,400	\$56,997	\$166,397

**Item Name: Extend Technology Refresh**

Budget Decision Unit(s): **Antitrust**

Strategic Goal(s) & Objective(s): **Strategic Goal II:** Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People.

**Strategic Objective 2.7:** Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction.

Organizational Program: **Antitrust Division’s Enforcement Programs**

Component Ranking of Item: **2**

Program Reduction: Positions 0 Atty 0 FTE 0 Dollars -\$76

**Description of Item**

Extend the refresh rate of all desktops and laptops by one year.

**Summary Justification**

As desktops and laptops are used primarily for basic office automation applications (e.g., spreadsheets and word processing), replacing this inventory at a slower rate is expected to have minimal impact on Division operations. In FY 2012, the Division is proposing to extend the refresh rate of all desktops and laptops by one year, resulting in an offset of \$76,000 for the Antitrust Division.

**Impact on Performance**

Replacing desktop and laptop inventory at a slower rate is expected to have minimal impact on Division operations.

**Base Funding**

FY 2010 Enacted (w/resc./supps)				FY 2011 CR				FY 2012 Current Services			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
880	390	851	\$163,170	880	390	851	\$163,170	880	390	851	\$166,532

**Non-Personnel Reduction Cost Summary**

Non-Personnel Item	Unit	Quantity	FY 2012 Request (\$000)
Administrative Efficiencies	Various	Various	-\$76
Total Non-Personnel	Various	Various	-\$76

**Total Request for this Item**

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	880	390	851	\$109,400	\$57,132	\$166,532
Decreases	0	0	0	0	-\$76	-\$76
Grand Total	880	390	851	\$109,400	\$57,056	\$166,456

**Item Name: Reduce Physical Footprint**

Budget Decision Unit(s): **Antitrust**

Strategic Goal(s) & Objective(s): **Strategic Goal II:** Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People.

**Strategic Objective 2.7:** Vigorously Enforce and Represent the Interests of the United States in All Matters over Which the Department has Jurisdiction.

Organizational Program: **Antitrust Division's Enforcement Programs**

Component Ranking of Item: **3**

Program Reduction: Positions 0 Atty 0 FTE 0 Dollars -\$100

**Description of Item**

The consolidation of Antitrust Division office space.

**Summary Justification**

In FY 2012, the Division is proposing the consolidation of some existing office work and storage space. The Division will realize savings from the consolidation of facilities, operations services and other related services. For the Antitrust Division, office space consolidation will result in an offset of \$100,000.

**Impact on Performance**

To minimize the impact on operational capability, this offset applies only to GSA rent; staffing reductions are not proposed.

**Base Funding**

FY 2010 Enacted (w/resc./supps)				FY 2011 CR				FY 2012 Current Services			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
880	390	851	\$163,170	880	390	851	\$163,170	880	390	851	\$166,532

**Non-Personnel Reduction Cost Summary**

Non-Personnel Item	Unit	Quantity	FY 2012 Request (\$000)
Administrative Efficiencies	Various	Various	-\$100
Total Non-Personnel	Various	Various	-\$100

**Total Request for this Item**

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	880	390	851	\$109,400	\$57,132	\$166,532
Decreases	0	0	0	0	-\$100	-\$100
Grand Total	880	390	851	\$109,400	\$57,032	\$166,432



## **VI. Exhibits**