



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2009 PERFORMANCE BUDGET**

Antitrust Division

FY 2009 Congressional Budget Submission

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I. Overview

A. Introduction

The Antitrust Division takes very seriously its mission to promote competition in the U.S. economy through enforcement of, improvements to, and education about 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."

To perform its mission effectively and achieve its goals in the face of an increasingly complex and global economy, the 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. Although merger volume declined after hitting a record high in 2000, recovery in the capital markets and the overall economy spurred a significant turn-around in FY 2004 and increases in merger activity are expected to continue into FY 2008 and FY 2009. To administer its caseload, the Division requests funding of \$150.591 million in FY 2009, reflecting an increase of \$2.772 million over the FY 2008 Enacted level.

The Division's FY 2009 request includes no funding for program increases and is essentially a steady-state budget. The requested adjustments to base include funding primarily for increases in salaries and benefits. 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.

Information Technology (IT) Expenditures

The Antitrust Division's FY 2009 budget request supports several broad Information Technology areas essential to carrying out its mission and does not include requests for program increases to support planned IT enhancements. 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. Providing support for electronic discovery, which is a key process in obtaining evidentiary materials and is the process for gathering, reviewing, and managing documents originating from computers.
- *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 and with outside parties.
- *IT Security* - - Measuring and 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.
- *IT Architecture* - - Maintaining oversight over all the Division's IT systems to ensure their compliance and compatibility with Federal and Departmental requirements and models, and with the IT needs of the Division, in a well integrated, efficient manner.
- *IT/Information Resources Management (IRM) Investment* - - Developing strategic and tactical plans, and carrying out a continuing program of management decision-making and oversight with respect to the Division's portfolio of IT investments, considering cost/benefits, risks, efficiency, value, security, and compliance with Federal and Department requirements.

During FY 2005, the Antitrust Division was assessed through OMB's Program Assessment Rating Tool (PART) along with five other litigating components (Civil; Criminal; Civil Rights; Environment and Natural Resources; and Tax) collectively named the General Legal Activities (GLA) Program. At the end of the assessment, the GLA program received a rating of "Effective". Further detailed discussion of additional findings and Division follow-up action progress related to the PART assessment is included in Part IV; paragraph A5c, of this budget submission.

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.usdoj.gov/jmd/2009justification/>.

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, and deregulation. These factors, added to the existing number and intricacy of our investigations, significantly impact the Division's overall workload. Many current and recent matters demonstrate the increasingly complex, large, and international nature of the matters encountered by the Division, as the following table and exemplars indicate.

| Enforcement Program | Major Matter Exemplars |
|--|--|
| Criminal DOJ Strategic Goal II Objective 2.7 | Airline Passenger and Cargo Pricing (see Exemplar - pg. 37) E-Rate Program (see Exemplar - pg. 40) |
| Civil – Merger DOJ Strategic Goal II Objective 2.7 | Chicago Mercantile Exchange/Chicago Board of Trade (see Exemplar - pg. 33) Exelon Corporation/Public Service Enterprise Group Incorporated (PSEG) (see Exemplar – pg. 35) |

Globalization

Corporate leaders have increasingly come to realize that a global presence is necessary for long-term economic success. More and more companies from around the world are transacting a significant portion of their business in other countries. Nowhere is this more evident than in the United States where international trade (defined as exports and imports of goods and services) was \$3.9 trillion in FY 2007.¹

The internationalization of the business marketplace has had a direct and significant impact on antitrust enforcement in general, and specifically, on the 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. However, it is not just our merger program that has been impacted by widespread globalization.

¹United States Department of Commerce, Bureau of Economic Analysis, "U.S. International Trade in Goods and Services", <http://www.bea.gov/newsreleases/international/trade/2007/pdf/trad1007.pdf>, October 2007, p. 4

In 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 2007, **26 percent** were associated with subjects or targets located in foreign countries. The Division has had great success in ferreting out illegal cartels and bringing them to justice. Of the approximate **\$3.9 billion** in criminal antitrust fines obtained by the Division between FY 1997 and the end of FY 2007, well over **97 percent** were imposed in connection with the prosecution of international cartel activity. In addition, the Division increased the number of foreign nationals prosecuted and sent to jail in connection with its cartel investigations. Approximately **31 foreign defendants** from Canada, France, Germany, Japan, South Korea, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom have served, or have been sentenced to serve prison sentences in U.S. jails as a result of the Division's cartel investigations.

A little more than a decade ago, the largest corporate fine ever imposed for a single Sherman Act count was \$6 million. However, in the past ten years, fines of \$10 million or more have become commonplace, with the Division now obtaining fines of more than \$100 million. Fiscal year 2007 criminal enforcement efforts brought imposed fines of \$300 million each for British Airways and Korean Air. These fines are eclipsed only by the \$500 million fine imposed against F. Hoffmann-La Roche for its participation in the vitamins cartel. In FY 2006, as a result of the Division's ongoing investigation of the dynamic random access memory (DRAM) market, a fine of \$300 million was imposed on Samsung Electronics Company, Ltd., and its U.S. subsidiary, Samsung Semiconductor Inc. This fine was the second largest criminal fine in Antitrust Division history. In FY 2005, two DRAM investigation defendants also were fined \$185 million and \$160 million respectively. 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.

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 even 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, 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. Cartels worldwide raise prices about 25 percent, estimates John M. Connor, a professor at Purdue University.² The Antitrust Division's commitment to detect and prosecute international cartel activity is shared with foreign governments throughout the world, resulting in the establishment of antitrust cooperative agreements among competition law enforcement authorities across the globe. Since 1999, the Division has entered into antitrust cooperation agreements with four foreign governments – Brazil, Israel, Japan, and Mexico. These agreements complement agreements previously reached with Australia, Canada, the European Union, and Germany.

In addition, as encouraged by the Division, antitrust authorities around the world are becoming increasingly aggressive in investigating and punishing cartels that adversely affect consumers. As effective global cartel enforcement programs are implemented and criminal cartel penalties adopted, the overall detection of large criminal conspiracies increases along with the Division's ability to collect evidence critical to its enforcement efforts on behalf of American consumers. Successes in this area of competition advocacy include:

- Landmark antitrust legislation passed by China in August 2007. The long anticipated – drafting began in 1994 – antimonopoly law will take effect in August 2008 and bans monopolistic agreements and practices such as cartels and price-fixing and includes practices similar to those used in the United States.
- The European Union and United Kingdom's recently overhauled antitrust regulations which reflect more closely the model used in the United States.
- The Australian Government, announcing in February 2005, that it will amend its competition law to introduce criminal penalties for serious cartel conduct.
- Japan's adopted major revisions to its Antimonopoly Act in April 2005.

One specific area of success has been the use of the Antitrust Division's highly effective Corporate Leniency Program as a best-practice model for similar corporate leniency programs adopted by antitrust authorities around the world. As an example, South Korea reformed its existing leniency policy in April 2005 to clarify the benefits companies can expect if they self-report about cartel involvement and the potential penalties if they are caught as a cartel participant. Also, in May 2006, Australia's attorney general announced that Australia would amend its immunity policy to give more protection to whistleblowers in antitrust investigations.

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

² Kanter, James. "A Crackdown on Cartels By European Regulators", *The New York Times*, December 27, 2005, Late Edition, Final, p.3

The Division continues to make international cooperation and antitrust policy convergence a priority 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 Division efforts to achieve a more uniform worldwide understanding and application of central antitrust enforcement principles. With leadership from the Antitrust Division, the International Competition Network was initiated in October 2001 as a worldwide organization of 13 antitrust agencies formed to promote greater substantive and procedural convergence among antitrust authorities on sound competition principles and to provide support for new antitrust agencies in enforcing their laws and in building strong competition cultures. In March 2007, the ICN welcomed its 100th member and now comprises 100 agencies from 88 jurisdictions. During the sixth annual conference held in May 2007, the ICN took significant steps toward strengthening antitrust convergence. The Japan Fair Trade Commission will host the seventh annual ICN conference in Kyoto, Japan in April 2008.

Concentration

Hand-in-hand with globalization goes the trend toward economic concentration occurring across industries and geographic regions. 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.

Although merger momentum slowed in the years following a record peak in 2000, recent indicators reflect a significant rise in merger activity and value. U.S. merger transactions for calendar year 2007 produced the most merger and acquisition activity since the end of 2000 with \$1.6 trillion in merger volume.³ According to research firm Dealogic, merger activity in the United States hit a new record in the first half of calendar year 2007 and broke the \$1 trillion level; the first time mergers hit that level in the first six months of any year and up 36 percent from the same period of FY 2006.⁴

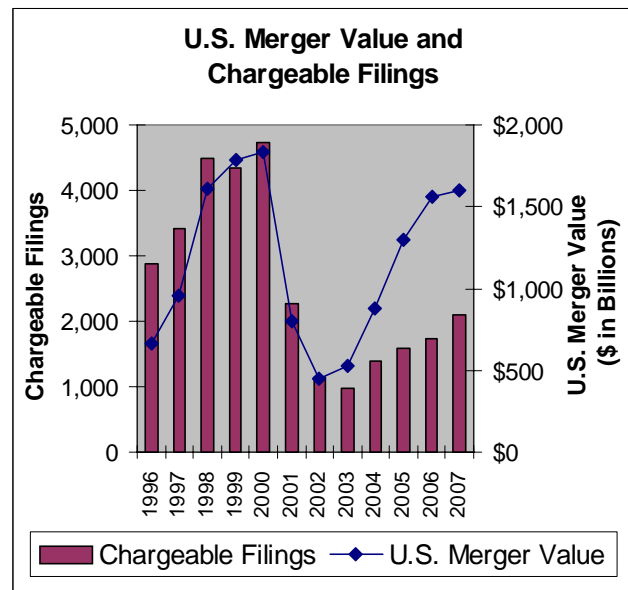


Figure 1

As shown in Figure 1, prior to FY 2001, chargeable filings had been on a meteoric rise, but a combination of factors including stock market volatility and the deterioration of global economic conditions led to a decline in filings for FY 2001 through FY 2003, both domestically and internationally.

³ Karnitschnig, Matthew. "Year-End Review of Markets & Finance 2007", *The Wall Street Journal*, January 2, 2008, p. R10.

⁴ Hall, Jessica. "U.S. merger volume hits record despite soft June", *Reuters.com*, June 28, 2007.

However, as merger and acquisition activity began to increase in calendar year 2004, associated chargeable filings also accelerated. In 2006, chargeable filings were 9 percent higher than the same time period in 2005, and in 2007 chargeable filings were 21 percent higher than the same period in 2006.

Volume was equally impressive on the global front with announced *worldwide* mergers and acquisitions of \$4.5 trillion in calendar year 2007, a 24 percent increase from 2006.⁵ According to Thomson Financial, \$1.65 trillion in merger deals were reached by the end of June 2007, a 90 percent increase from the same period in 2006, and a total which easily surpassed the first quarter of 2000 as the biggest three-month total.⁶

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. Despite the bursting of the high-tech bubble in 2001, 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 are an estimated 252.7 million wireless subscribers in the United States as of January 9, 2008 according to the Cellular, Telecommunications and Internet Association (CTIA).⁷ Although wireless Internet access via a notebook computer has shown substantial growth, Internet access via a mobile phone is outpacing wireless access from notebook PC's.⁸

Being 'connected' is quickly becoming essential to the American daily lifestyle. For example, as more consumers turn to high-speed broadband and wireless Internet access, Voice over Internet Protocol (VoIP), or what is also known as Broadband Telephony, may be the next emerging technology to grow dramatically over the next several years. In September 2006, First Glimpse Magazine reported that IDC (a global provider of market intelligence for the information technology, telecommunications, and consumer technology markets) predicts VoIP subscribers in the United States will grow from 10.3 million in 2006 to 44 million by 2010.⁹

⁵ Karnitschnig, Matthew. "Year-End Review of Markets & Finance 2007", *The Wall Street Journal*, January 2, 2008, p. R10.

⁶ Cimilluca, Dana. "Stock Market Quarterly Review: Private Equity Fuels Record Merger.....", *The Wall Street Journal*, July 2, 2007, p. C.8

⁷ CTIA Home Page. "Estimated Current US Wireless Subscribers", *ctia.org*, <http://www.ctia.org/>, January 9, 2008.

⁸ Wright, Adam. "Mobile Phones Could Soon Rival the PC....", *Ipsos-na.com*, www.ipsos-na.com/news/pressrelease.cfm, April 18, 2006.

⁹ "CE News - Tidbits", *First Glimpse Magazine*, www.firstglimpse.com, September 2006.

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 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 receives magnetic tapes and CD's of companies' e-mail traffic and documents.

Deregulation

Recent years have seen an increase in the number of key industries deregulated in whole or in part. Deregulation has two major impacts on the work of the Antitrust Division. First, in newly deregulated industries, the Antitrust Division often shares responsibility for the oversight of competitive market development with other federal or state agencies. Second, newly deregulated industries, even those whose deregulation is initiated via detailed legislation with prescribed rules and regulations, face a degree of uncertainty as they venture out in a newly competitive environment. The Antitrust Division is presented with questions and concerns through its Business Review Program, about what will and will not pass antitrust muster in industries in which such questions have not previously been asked. The Division is thus called upon to devote time and resources to providing information and guidance on the application of competitive principals in newly emerging markets.

Results

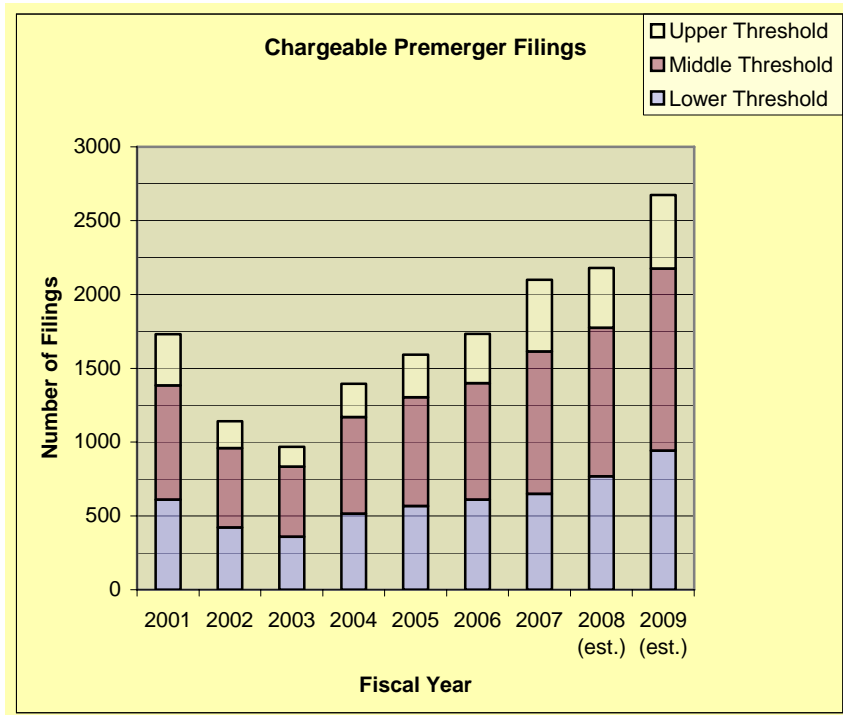
While specific GPRA Performance Measures are addressed in the Decision Unit Justification section of this submission, several interesting statistics relative to the Division's performance include:

- ✓ In FY 2007, as a result of the Division's efforts, \$630 million in criminal fines - currently the **second highest annual amount in the Division's history** - were assessed against antitrust violators, a 33% increase over FY 2006, the fourth highest fine year, when \$338 million in criminal fines were assessed.
- ✓ 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 in recent years have involved international price-fixing cartels, impacting billions of dollars in U.S. commerce. **Since FY 1997, defendants have been sentenced to pay nearly \$4 billion in criminal fines to the U.S. Treasury, including almost one billion in just the past two years.**
- ✓ 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. The average prison sentence between FY 2000 and the end of FY 2007 was more than double the 8-month average sentence of the 1990's, rising to an average of 19 months and resulting in 239 years of imprisonment imposed on antitrust offenders, with 111 defendants receiving jail sentences of one year or longer. Coupled with the increasing frequency and duration of defendants' incarceration was a rise in monetary restitution by criminal defendants. From FY 2004 through the end of FY 2007, restitution generated by the Division was approximately \$36 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 \$20 billion.**

Revenue Assumptions

Estimated FY 2008 filings and fee revenue take into account the continuing signs of a recovering merger market and the relative optimism of current medium-range economic forecasts. The August 2007 Congressional Budget Office, Budget and Economic Outlook predicts the U.S. economy will grow 2.9 percent in calendar year 2008 and projects economic growth to average 3.0 percent a year from 2009 to 2012.¹⁰

Consistent with statutory direction, pre-merger filing threshold amounts are adjusted based on the U.S. Gross Domestic Product Index. The affect on fee revenue is anticipated to be minimal as merger activity is expected to continue growing in FY 2008 and beyond, outpacing filings in FY 2007. This upward trend is evident in Figure 2, which depicts actual filings from FY 2001 through FY 2007, and projects filings for FY 2008 through FY 2009.



| Effective Spring, 2008 |
|------------------------|
| \$63.1M - <\$126.2M |
| \$126.2M - <\$630.8M |
| \$630.8M plus |

Figure 2

In conjunction with estimates calculated by the Congressional Budget Office and the Federal Trade Commission (FTC), fee collections of \$278 million for FY 2008 and \$341 million for FY 2009 are expected. The HSR filing fee revenue is divided evenly between the Antitrust Division and Federal Trade Commission (FTC). For FY 2009, the HSR fee collection estimate exceeds the Antitrust Division FY 2009 Congressional Budget request by \$20 million.

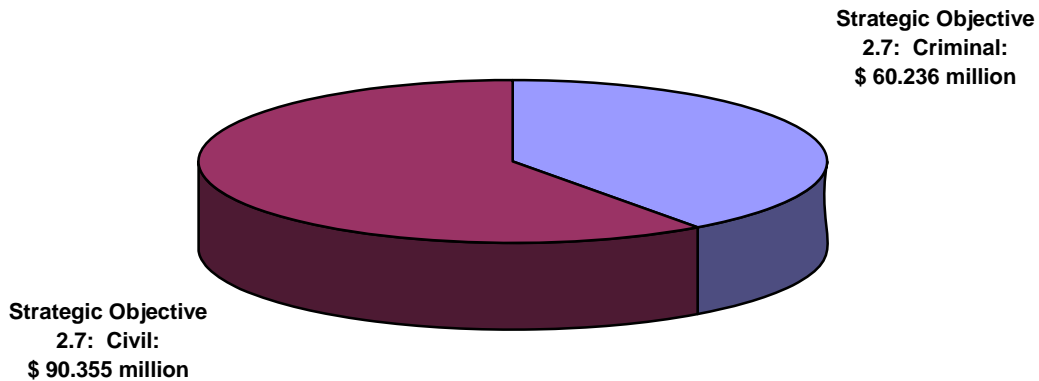
¹⁰ "The Budget and Economic Outlook: An Update." *Congressional Budget Office*, August 2007, c.2, p.1.

Summary

The Division is continually challenged by an increasingly international and complex workload that spans enforcement areas and requires considerable resources to manage. With our children destined to inherit the resulting markets, the importance of preserving economic competition in the global marketplace cannot be overstated. The threat to consumers is very real, as **anticompetitive behavior leads directly to higher prices and reduced efficiency and innovation**. In recognition of the importance of its mission, the Antitrust Division requests a FY 2009 budget increase of \$2.772 million and a total appropriation of \$150.591 million, in support of 880 positions, and 851 work years.

The FY 2009 Antitrust Division budget request of \$150.591 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.

FY 2009 Total Budget Request by Strategic Goal Strategic Goal II - Strategic Objective 2.7



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 2009 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
- Deregulation of key industries

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.

II. Summary of Program Changes

The Antitrust Division's budget request does not include any program changes.

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, [\$147,819,000] \$150,591,000 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 [\$139,000,000] \$150,591,000 in fiscal year [2008] 2009), 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 [2008] 2009, so as to result in a final fiscal year [2008] 2009 appropriation from the general fund estimated at [\$8,819,000] \$0.

[] - Proposed Deletion

XXX – Proposed New Language

Analysis of Appropriations Language

No substantive changes are proposed.

IV. Decision Unit Justification
A. Decision Unit: Antitrust

Antitrust Division
 Fiscal Year 2009 Congressional Submission

Decision Unit Justification

| Decision Unit: Antitrust - Total | Permanent Positions | FTE | Amount |
|---|----------------------------|------------|--------------------|
| 2007 Enacted | 880 | 851 | \$147,819,000 |
| 2008 Enacted | 880 | 851 | \$147,819,000 |
| Adjustments to Base | - | - | \$2,772,000 |
| 2009 Current Services | 880 | 851 | \$150,591,000 |
| 2009 Request | 880 | 851 | \$150,591,000 |
| Total Change 2008-2009 | - | - | \$2,772,000 |

| Decision Unit: Antitrust - Information Technology Breakout (of Decision Unit Total) | Permanent Positions | FTE | Amount |
|--|----------------------------|------------|------------------|
| 2007 Enacted | 28 | 26 | \$20,688,000 |
| 2008 Enacted | 33 | 31 | \$22,661,000 |
| 2009 Current Services | 36 | 34 | \$23,250,000 |
| 2009 Request | 36 | 34 | \$23,250,000 |
| Total Change 2008-2009 | - | - | \$589,000 |

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, Regulatory Matters, 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 and E-Rate Program 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, possible 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. For example, the Telecommunications Act of 1996 has affected the evolution of an entire industry, including impacting the Division's workload in assessing the competitive consequences of new entry into long distance, manufacturing, and video markets. Because the Division is the Department's sole resource for dealing with competition issues, it significantly contributes to the legislative development in areas where antitrust law may be at issue.

Education, Speeches, and Outreach – The Division seeks to reach the broadest audience in raising awareness of competition issues and 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 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.

Participation in International Organizations – The Division is heavily involved in international organizations in its effort to promote and facilitate global convergence regarding antitrust issues. One of the most notable examples of the Division's international efforts includes its participation in the International Competition Network (ICN). In May 2007, the ICN held a conference in Moscow attended by more than 350 delegates and competition experts from more than 80 antitrust agencies and organizations throughout the world. A significant outcome of the conference was the valuable progress made toward strengthening antitrust convergence. The conference featured the Unilateral Conduct Working Group's (UCWG) presentation of its survey report on unilateral conduct laws and also highlighted the activity of the Cartel Working Group (CWG), whose mandate is to address the challenges of domestic and international cartel enforcement by sharing effective investigative techniques and examining important legal and policy topics.

Laws Enforced: There are three major federal antitrust laws: the Sherman Antitrust Act, 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.

2. Performance and Resources Table

Decision Unit/Program: Antitrust

DOJ Strategic Goal/Objective: Criminal, Civil

| WORKLOAD/ RESOURCES | | Final Target | | Actual | | Changes | | Requested (Total) | | | |
|--|--|---------------|-----------|---------|-----------|------------------|-----------|--|---------|-----------------|-----------|
| | | FY 2007 | | FY 2007 | | FY 2008* Enacted | | Current Services Adjustments and FY 2009 Program Changes | | FY 2009 Request | |
| Workload - Number of HSR Transactions Received | | 1,635-2,376 | | 2199 | | 1,635 | | 0 | | 1,635 | |
| Total Costs and FTE | | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| Antitrust | | 851 | \$147,819 | 851 | \$147,819 | 851 | \$147,819 | 0 | \$2,772 | 851 | \$150,591 |
| TYPE/ Strategic Objective | PERFORMANCE/RESOURCES | FY 2007 | | FY 2007 | | FY 2008 | | Current Services Adjustments | | FY 2009 Request | |
| Program Activity | 1. Criminal | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| | | 298 | \$51,737 | 298 | \$51,737 | 340 | \$59,128 | 0 | \$1,108 | 340 | \$60,236 |
| Performance Measure – Criminal | ➤ Number of Active/Pending Preliminary Investigations | 60-70 | | 90 | | 60 | | 0 | | 60 | |
| | ➤ Number of Active Grand Juries Domestic/ International | 95-100/35-40 | | 141/58 | | 95/35 | | 0 | | 95/35 | |
| | ➤ Pleas/Cases Favorably Resolved | Not Projected | | 51 | | Not Projected | | Not Projected | | Not Projected | |
| | ➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Resolved (\$ in millions) | Not Projected | | \$5,612 | | Not Projected | | Not Projected | | Not Projected | |
| Program Activity | 2. Civil | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| | | 553 | \$96,082 | 553 | \$96,082 | 511 | \$88,691 | 0 | \$1,664 | 511 | \$90,355 |

| | | Final Target | Actual | | Changes | Requested (Total) |
|--|---|----------------|---------|------------------|--|-------------------|
| TYPE/ Strategic Objective | PERFORMANCE/RESOURCES | FY 2007 | FY 2007 | FY 2008* Enacted | Current Services Adjustments and FY 2009 Program Changes | FY 2009 Request |
| Performance Measure – Merger | ➤ Number of HSR Transactions Reviewed | 1,635-2,376 | 2,199 | 1,635 | 0 | 1,635 |
| | ➤ Number of HSR Preliminary Investigations Opened Domestic/International Aspects | 82-105 / 32-42 | 76/30 | 82 / 32 | 0 / 0 | 82 / 32 |
| | ➤ Number of Non-HSR Preliminary Investigations Opened Domestic/International Aspects | 31-42 / 9-12 | 25/9 | 31 / 9 | 0 / 0 | 31 / 9 |
| | ➤ Number of Bank Merger Applications | 1,104-1,322 | 1,028 | 850 | 0 | 850 |
| | ➤ Pleas/Cases Favorably Resolved | 8-14 | 12 | 8 | 0 | 8 |
| | ➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins (\$ in millions) | Not Projected | \$2,039 | Not Projected | Not Projected | Not Projected |
| | ➤ Dollar Volume of Commerce Affected in Relevant Markets for All Bank Mergers Wins (\$ in millions) | Not Projected | \$266 | Not Projected | Not Projected | Not Projected |
| Performance Measure – Civil Non-Merger | ➤ Number of Active Investigations - Domestic/ International Aspects | 77-85 / 18-20 | 52/9 | 77 / 18 | 0 / 0 | 77/ 18 |
| | ➤ Number of Cases Filed Domestic/International Aspects | 2-4 / 1-3 | 3/0 | 2/ 1 | 0 | 2/ 1 |
| | ➤ Pleas/Cases Favorably Resolved | 0-5 | 8 | 2 | 0 | 2 |
| | ➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions) | Not Projected | \$928 | Not Projected | Not Projected | Not Projected |
| Efficiency Measure | Increase in Criminal and Civil active investigations and HSR (Hart-Scott-Rodino Improvements Act of 1976) transactions reviewed per FTE | 14.6 | 16.5 | 15.6 | .4 | 16.0 |
| Outcome – Criminal, Merger, Civil Non-Merger | | | | | | |
| Consumer Savings | ➤ Total Criminal Dollar Value of Savings to U.S. Consumers (\$ in millions) | Not Projected | \$561 | Not Projected | Not Projected | Not Projected |
| | ➤ Total Civil Merger Dollar Value of Savings to U.S. Consumers (\$ in millions) | Not Projected | \$149 | Not Projected | Not Projected | Not Projected |
| | ➤ Total Civil Non-Merger Dollar Value of Savings to U.S. Consumers (\$ in millions) | Not Projected | \$17 | Not Projected | Not Projected | Not Projected |
| Success Rates (% of Cases Favorably Resolved) | ➤ Success Rate for Criminal Matters | 90% | 98% | 90% | 0 | 90% |
| | ➤ Number of Civil Merger "Successes"/Number of Merger Challenges and Resolutions During our Investigation | 80% | 100% | 80% | 0 | 80% |
| | ➤ Number of Civil Non-Merger "Successes"/ Number of Matters Challenged Where Division Expressed Concern | 80% | 114% | 80% | 0 | 80% |

* To align itself with the performance measure data format required of JPPRS (Justice Performance Planning and Reporting System), ATR modified its use of performance measure target ranges to specific numerical target values.

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

Dollars and FTE: HSR related performance measures for FY 2008 through FY 2009 projections are based on an analysis of FY 2001 through FY 2006 actual amounts. The projected performance measures were re-estimated in FY 2007 to more accurately reflect trends, the current state of the economy, and expected future growth in merger activity.

Criminal Performance Measure:

When a complaint or referral initially is received, or the Antitrust Division identifies a matter, we develop information from the complainant and from trade publications and other sources. Once we develop a sufficient factual and legal basis for further investigation, a **Preliminary Inquiry (PI)** may be authorized. Once approved, a PI may take from a few weeks to several months to conduct, and at that point we make a determination about whether to proceed by grand jury or to close the PI. Thus a PI is often more than a quick assessment, which is usually done when a matter is initially received or identified, and less than a formal grand jury investigation. The number of active PIs is indicative of the Division's baseline workload. (Note that a PI is not a necessary pre-grand jury stage; if the Division has sufficient factual and legal basis from the complaint or referral, a decision may be made to proceed immediately by grand jury without further investigation through a PI.)

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. A grand jury investigation is considered international when the conduct under investigation involves possible adverse impact on U.S. domestic or foreign commerce and any one of the following criteria is met: (1) one or more of the subjects, targets, or witnesses in the investigation is not a U.S. citizen or U.S. business organization; (2) one or more of the subjects, targets, or witnesses in the investigation, although a U.S. citizen or U.S. business organization, is not located in the U.S.; (3) relevant information or evidence is located outside the U.S.; (4) conduct potentially illegal under U.S. law occurred outside the U.S.; or (5) substantive foreign government consultation or coordination is undertaken in connection with the investigation. **Number of Active International Grand Juries** demonstrates the scope of our international investigations, which generally are more complex and require more resources than domestic investigations.

Pleas / Cases Favorably Resolved includes those defendants charged during the fiscal year pursuant to a plea agreement, or indicted in any fiscal year and who pled guilty or were found guilty at trial this fiscal year.

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 Measure:

The Antitrust Division's Merger Enforcement Strategy can be roughly divided into three categories: review of **Hart-Scott-Rodino (HSR)** transactions brought to our attention by statutorily-mandated filings; review of **Non-HSR** transactions, i.e., those not subject to HSR reporting thresholds; and review of bank merger transactions. Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires certain enterprises that plan to merge or to enter into acquisition transactions to notify the Antitrust Division and the FTC of their intention, and to submit certain information to us. These HSR premerger notifications provide advance notice of potentially anticompetitive transactions and allow the Division to identify and attempt to block such transactions before they are consummated. The **Number of HSR Transactions Reviewed** includes all HSR filings the Division reviews. 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 outside the Division, via competitors or consumers, and are generated from within the Division, based on staff knowledge of industries and information about current events. **Bank Merger Applications**, brought to our 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. It is the Division's statutory responsibility, under three of the four statutes, to provide appropriate bank regulatory authorities with a report on the competitive effects of all depository institution merger and acquisition transactions that are submitted to those agencies for approval.

Given the increasing globalization of today's marketplace, much of the Division's workload involves HSR and non-HSR mergers which have international aspects. The following definition addresses the Division's international work in general and includes some references that are not directly applicable to the Merger Enforcement Strategy. Generally, cases are determined to have **International Aspects** if they have the potential to adversely impact U.S. domestic or foreign competition, and if any one of five criteria is met, leading to increased complexity and greater resource requirements. A case is considered international when: (a) one or more involved parties (where "involved party" may be an individual or corporation that is the subject or target, or potential subject or potential target, of an HSR or non-HSR merger investigation or case; or otherwise a participant or potential participant in an investigation or case) is not a U.S. citizen or a U.S. business; (b) one or more involved parties is not located in the U.S.; (c) potentially relevant information is located outside the U.S.; (d) conduct potentially illegal under U.S. law occurred outside the U.S.; or (e) substantive foreign government consultation or coordination is undertaken in connection with the matter.

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.

The **Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins** and the **Dollar Volume of Commerce Affected in Relevant Markets for All Bank Mergers Wins** are estimated by the Antitrust Division based upon available, credible information. They serve as proxies for the potential effects of possibly anticompetitive merger transactions given our Strategy and ultimately our Vision. 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.

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.

Pleas / Cases Favorably Resolved includes the Number of Matters in Which Practices Changed After Investigation Initiated, Number of Cases Filed with Consent Decrees, Number of Cases Not Settled at Filing but Settled During Litigation, and Number of Cases Litigated to Judgment Successfully. In general, adequate relief in a civil antitrust case is relief that will: (1) stop the illegal practices alleged in the complaint, (2) prevent their renewal, and (3) restore competition to the state that would have existed had the violation not occurred.

Total Dollar Volume of U.S. Commerce Affected Where Pleas / Cases Favorably Resolved is estimated by the Antitrust Division based upon the best available information from investigative and public sources. The volume of commerce serves as a proxy for the potential effect of anticompetitive behavior. 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.

Efficiency Measure:

ATR will realize efficiency with an increase in activities (Criminal and Civil active investigations and HSR transactions reviewed) utilizing the same or fewer FTE. These activities play an essential role in relation to the long-term outcome measure, "Percent of cases favorably resolved."

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 and PART.**

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 and PART.**

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 and PART.**

3. Performance Measure Table

Decision Unit/Program: Antitrust

| Performance Report and Performance Plan Targets | | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY2005 | FY 2006 | FY 2007 | | FY 2008* | FY 2009 |
|---|---|----------|---------|----------|----------|---------|-----------|---------------|---------|---------------|---------------|
| TYPE/ Strategic Objective | PERFORMANCE/RESOURCES | Actual | Actual | Actual | Actual | Actual | Actual | Target | Actual | Target | Target |
| Performance Measure – Criminal | ➤ Number of Active/Pending Preliminary Investigations | 82 | 120 | 144 | 121 | 131 | 103 | 60-70 | 90 | 60 | 60 |
| | ➤ Number of Active Grand Juries Domestic/ International | 107/53 | 144/44 | 145/56 | 147/63 | 155/63 | 152/66 | 95-100/35-40 | 141/58 | 95/35 | 95/35 |
| | ➤ Pleas/Cases Favorably Resolved | 48 | 37 | 42 | 44 | 44 | 53 | Not Projected | 51 | Not Projected | Not Projected |
| | ➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions) | \$2,082 | \$450 | \$915 | \$1,162 | \$3,307 | \$550 | Not Projected | \$5,612 | Not Projected | Not Projected |
| Performance Measure – Merger | ➤ Number of HSR Transactions Reviewed | 2,376 | 1,526 | 990 | 1,458 | 2,121 | 1,890 | 1,635-2,376 | 2,199 | 1,635 | 1,635 |
| | ➤ Number of HSR PIs Opened Domestic/ International Aspects | 105/42 | 73/26 | 65/22 | 71/14 | 83/28 | 73/23 | 82-105/32-42 | 76/30 | 82/32 | 82 /32 |
| | ➤ Number of Non-HSR PIs Opened Domestic/ International Aspects | 42/16 | 27/10 | 27/6 | 17/12 | 23/5 | 23/3 | 31-42/9-12 | 25/9 | 31/9 | 31/9 |
| | ➤ Number of Bank Merger Applications | 1,322 | 1,080 | 966 | 1,112 | 943 | 1042 | 1,104-1,322 | 1,028 | 1,104 | 1,104 |
| | ➤ Pleas/Cases Favorably Resolved | 34 | 9 | 14 | 8** | 4 | 16*** | 8-14 | 12 | 8 | 8 |
| | ➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins (\$ in millions) | \$18,102 | \$6,758 | \$29,280 | \$733 | \$1,696 | \$100,707 | Not Projected | \$2,039 | Not Projected | Not Projected |
| | ➤ Dollar Volume of Commerce Affected in Relevant Markets for All Bank Mergers Wins (\$ in millions) | \$5,927 | \$98 | \$28 | \$135 | \$0 | \$0 | Not Projected | \$266 | Not Projected | Not Projected |
| Performance Measure – Civil Non-Merger | ➤ Number of Active Investigations Domestic/ International Aspects | 89/26 | 82/22 | 81/16 | 92/14 | 80/21 | 73/16 | 77-85/18-20 | 52/9 | 77/18 | 77/18 |
| | ➤ Number of Cases Filed Domestic/ International Aspects | 0/0 | 4/1 | 5/0 | 4/0 | 9/1 | 4/0 | 2-4/1-3 | 3/0 | 2/1 | 2/1 |
| | ➤ Pleas/Cases Favorably Resolved | 5 | 8 | 8 | 4** | 15 | 7 | 0-5 | 8 | 2 | 2 |
| | ➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions) | \$7,210 | \$81 | \$88,485 | \$44,200 | \$6,554 | \$125 | Not Projected | \$928 | Not Projected | Not Projected |

| Performance Report and Performance Plan Targets | | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY2005 | FY 2006 | FY 2007 | | FY 2008 | FY 2009 |
|---|---|---------|---------|---------|---------|--------|---------|---------------|--------|---------------|---------------|
| TYPE/ Strategic Objective | PERFORMANCE/RESOURCES | Actual | Actual | Actual | Actual | Actual | Actual | Target | Actual | Target | Target |
| Efficiency Measure | Increase in Criminal and Civil active investigations and HSR (Hart-Scott-Rodino Improvements Act of 1976) transactions reviewed per FTE | N/A | N/A | N/A | 16.9 | 18.6 | 17.4 | 14.6 | 16.5 | 15.6 | 16.0 |
| Outcome – Criminal, Merger, Civil Non-Merger | Consumer Savings | | | | | | | | | | |
| | ➤ Total Criminal Dollar Value of Savings to U.S. Consumers (\$ in millions) | \$260 | \$45 | \$91 | \$115.7 | \$330 | \$55 | Not Projected | \$561 | Not Projected | Not Projected |
| | ➤ Total Civil Merger Dollar Value of Savings to U.S. Consumers (\$ in millions) | \$1,875 | \$480 | \$1,420 | \$15 | \$99 | \$1,951 | Not Projected | \$149 | Not Projected | Not Projected |
| | ➤ Total Civil Non-Merger Dollar Value of Savings to U.S. Consumers (\$ in millions) | \$490 | \$1 | \$888 | \$0 | \$65 | \$1.3 | Not Projected | \$17 | Not Projected | Not Projected |
| | Success Rates (% of Cases Favorably Resolved) | | | | | | | | | | |
| | ➤ Success Rate for Criminal Matters | 94% | 91% | 97% | 88% | 96% | 100% | 90% | 98% | 90% | 90% |
| | ➤ Number of Civil Merger "Successes"/Number of Merger Challenges and Resolutions During our Investigation | 100% | 100% | 93% | 80% | 100% | 100% | 80% | 100% | 80% | 80% |
| | ➤ Number of Civil Non-Merger "Successes"/ Number of Matters Challenged Where Division Expressed Concern | 100% | 100% | 100% | 100% | 100% | 100% | 80% | 114% | 80% | 80% |

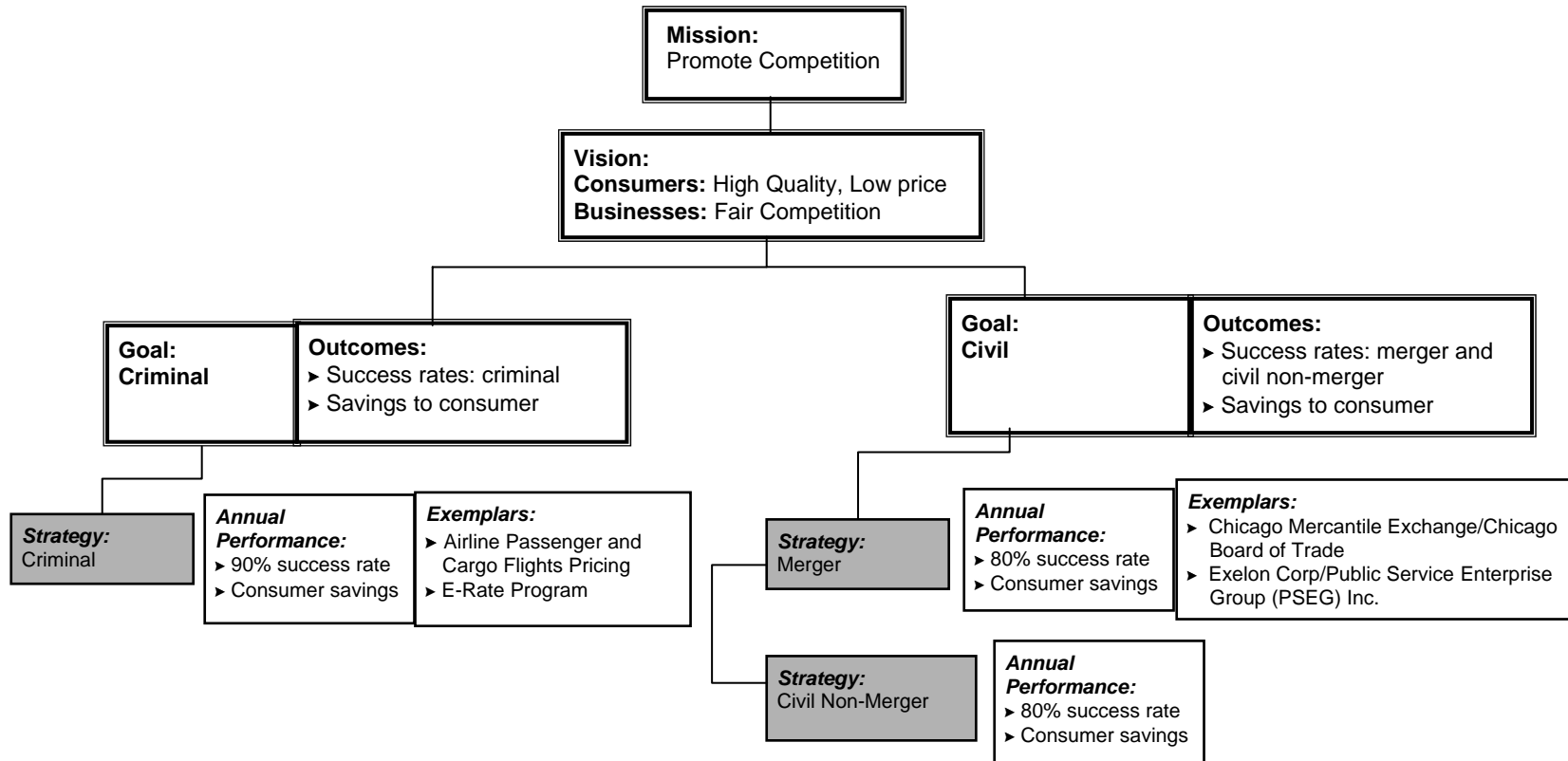
* See note regarding change of target ranges to specific numerical values on page 21.

** The FY 2004 actual figures for the indicated performance measures were incorrectly reported in the FY 2006 Congressional Budget Submission, *Performance Measure Table*. Data has been corrected to comport with figures accurately reported in the FY 2006 Congressional Budget Submission, *Performance and Resources Table*.

*** The FY 2006 actual figure for the indicated performance measure was incorrectly reported in the FY 2008 Congressional Budget Submission, *Performance and Resource Table* and *Performance Measure Table*. Data has been corrected and does not affect the FY 2006 Success Rate Outcome measure.

4. Performance Measurement Framework

Antitrust Division, Department of Justice
Performance Measurement Framework
 FY 2009



5. 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.

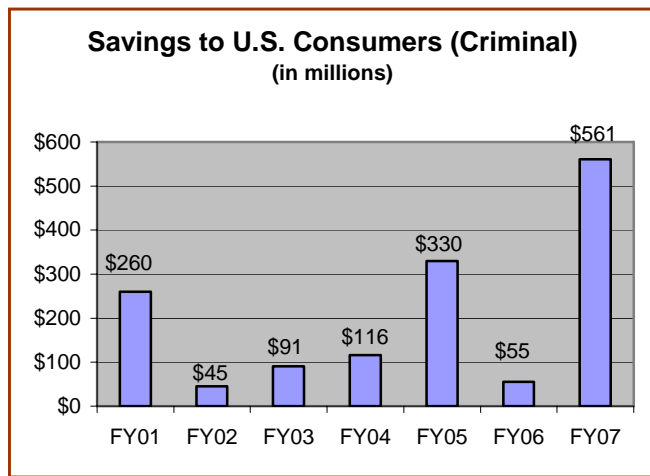
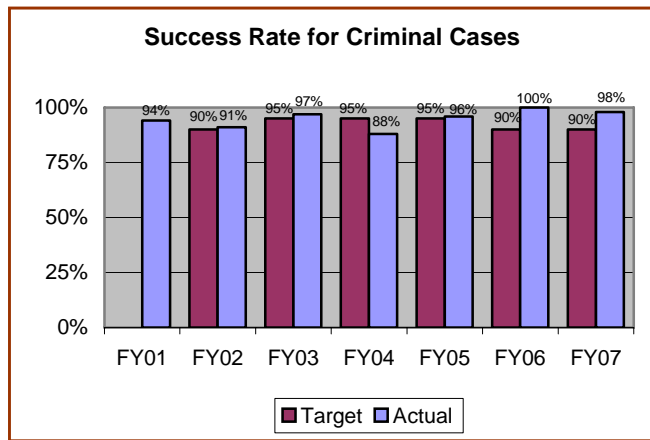
a. Performance Plan and Report for Outcomes

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 continued 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. The Division surpassed its target in FY 2007 and successfully resolved 98 percent of criminal matters, and expects to meet or exceed its goals for FY 2008 through FY 2009.

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



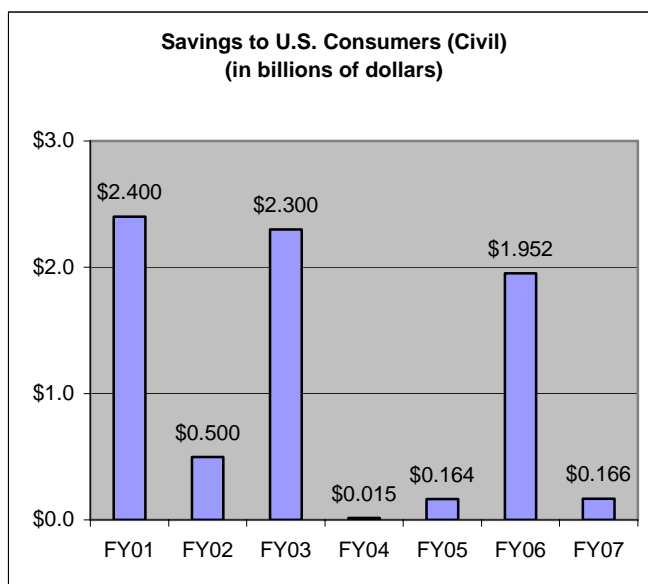
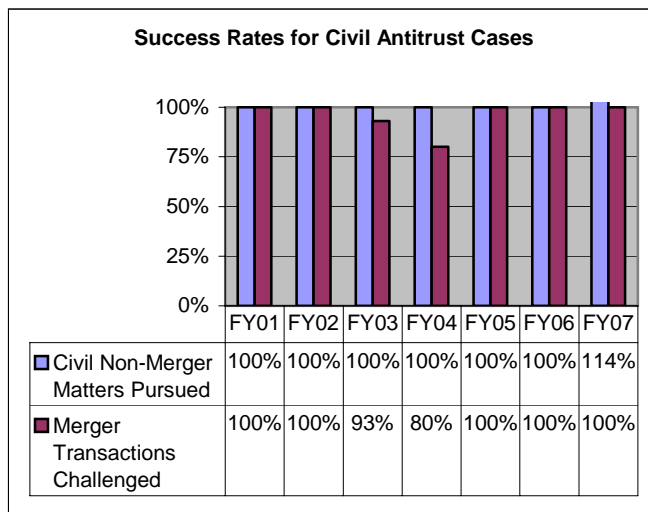
Civil Enforcement

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 2007 and expects to meet or exceed its goals for FY 2008 through FY 2009.

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 Civil Non-Merger, Civil Merger successfully resolved 100 percent of the matters it challenged in FY 2007 and expects to meet or exceed its goals for FY 2008 through FY 2009.

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 encountered and thus varies considerably. Targeted levels of performance are not projected for this indicator.



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 the 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 or 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 reviews of recently 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. It is the Division's statutory responsibility, under three of the four statutes, to provide appropriate bank regulatory authorities with a report on the competitive effects of all depository institution merger and acquisition transactions that are submitted to those agencies for approval.

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

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

c. Program Assessment Rating Tool (PART)

During FY 2005, the Antitrust Division was assessed through OMB's Program Assessment Rating Tool (PART) along with five other litigating components (Civil; Criminal; Civil Rights; Environment and Natural Resources; and Tax) collectively named the General Legal Activities (GLA) Program. At the end of the assessment, the GLA program received a rating of "Effective".

Other findings showed that:

- 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.

Additionally, to exhibit continual improvement of our practices, the Program will perform the following follow-up actions:

- Seek regular, independent evaluations of the Program's effectiveness at resolving cases in favor of the government.

STATUS: In FY 2006, Justice Management Division offered a proposal to Management and Planning Staff and the Office of the Inspector General to perform an independent evaluation of the GLAs. However, due to lack of resources, the OIG was unable to add the GLA evaluation to its FY 2007 docket. The Justice Management Division is reaching out to the Federal Consulting Group at the Department of Treasury. The FCG assists federal agencies in building an organization's program evaluation and performance measurement capacity.

- Establish a leadership training and mentoring program to continue improving the quality of the program's management.

STATUS: The Antitrust Division realizes the importance of developing organizational intellectual capital by providing mentoring, career broadening and management training opportunities as well as a structured career progression program. The Division has compiled a comprehensive list of leadership training courses and is in the process of rating and assessing the value of each course listed. Managers will be required to attend courses from this list on a recurring basis to fulfill established work plan requirements.

- Work with the Department's Chief Information Officer to evaluate and purchase litigation software that will improve productivity and efficiency.

STATUS: The Antitrust Division, along with the other litigating Divisions and the Executive Office for United States Attorneys (EOUSA) are working jointly on a project led by the Justice Management Division to develop a new Litigation Case Management System (LCMS) with the objective of providing an efficient and effective means of tracking all the prosecutorial and defensive litigation handled by the Department.

The prime LCMS contractor, Computer Sciences Corp. (CSC) has been selected. EOUSA and the Divisions are collaborating with the Department's Chief Information Officer to lay a foundation of fundamental departmental and component requirements for the design and development of the LCMS software.

The Division is participating in two LCMS Working Groups, The Cross Component Issues (CCI) Working Group and the Stage 2 Working Group (S2WG). The CCI working group is addressing issues related to ensuring efficient collaboration between components which share matters, common definitions for key litigation management concepts, and common mechanisms for measuring and counting matter outcomes. The S2 working group is working on the development of specifications for the LCMS time reporting system. In addition, the LCMS contractor is working with Stage 2 Divisions to complete a requirements tool to project resources & timeline for implementing LCMS. Requirements planning begin in the Spring of 2008, with deployment targeted for 2009.

6. Exemplars - Civil

A. Merger – Chicago Mercantile Exchange Holdings Inc. (CME) / Chicago Board of Trade Holdings Inc. (CBOT)

Introduction and Background

Futures markets help manage the risks that are part of doing business both within the United States and internationally. Consumers benefit because the fewer risks a business has to take, the lower the end price it needs to make a profit.

A futures contract is defined as an agreement to buy or sell a standardized amount of a standardized quality of a product at a set price on a future date. Over the decades, futures have expanded from farm products into many other areas including additional commodity products (e.g. oil and gold), foreign currency exchange products, interest rate products, and equity index products.

Futures markets began in 1848, when grain merchants formed the Chicago Board of Trade (CBOT) to provide buyers and sellers with a central meeting place to conduct business. The success of CBOT inspired the formation of additional exchanges. The Chicago Mercantile Exchange (CME) began in 1874 as the Chicago Produce Exchange, later named the Chicago Butter and Egg Board and then in 1919, the CME.

At the time the merger was announced in October 2006, CME and CBOT were the largest and second largest, respectively, futures exchanges in the United States. In 2006, 1.403 billion futures contracts were traded at CME, valued at \$827 trillion.

Investigation

The Antitrust Division's investigation of the proposed merger included meetings with the parties, review of over two million pages of electronic documents and 150 boxes of paper documents, 123 interviews, and 22 depositions. The Division interviewed customers (e.g. global investment banks, firms representing institutional investors, and commodity trading advisors), representatives from exchanges and representatives from clearinghouses. The Division also consulted with the Commodities Futures Trading Commission (CFTC) and retained industry and economic experts.

Four theories of harm were considered. The Division investigated whether the merger would:

- eliminate direct horizontal competition between certain CME and CBOT interest rate futures products;
- preclude CME's potential competition with CBOT in Treasury futures;
- limit innovation; and
- foreclose competition from rival exchanges by erecting significant barriers to entry.

Based upon the evidence, the Division determined that the transaction was unlikely to reduce competition substantially. More specifically, the Division determined that although the two exchanges account for most financial futures (and in particular, interest rate futures) traded on exchanges in the United States:

- their products were not close substitutes and seldom competed head to head, but rather provided market participants with the means to mitigate different risk; and
- they were, absent the merger, unlikely to introduce new products that competed directly with the other's entrenched products.

The Division also looked carefully at whether the combination would lead to less innovation and fewer new products. While the evidence suggested that competition between CME and CBOT had, at times, provided an incentive for them to develop and offer new products, it did not indicate that continued innovation depended on competition between the parties. Finally, the Division investigated whether the merger might prohibit entry by other exchanges into financial futures as a result of the integration of virtually all financial future contracts into a single clearinghouse. The evidence indicated that the transaction would not foreclose entry by other exchanges. Indeed, the New York Stock Exchange announced its intention to offer futures products, and the Intercontinental Exchange (ICE) stated its intent to offer interest rate futures.

Conclusion

After a comprehensive investigation, the Division's decision to close its investigation cleared the way for the July 2007 completion of the merger making the combined company, named the CME Group, the world's largest and most diverse exchange. CME's final offer to acquire CBOT was valued at \$11.9 billion.

In connection with its investigation, the Division relied on the CFTC as a resource concerning the nature and regulation of futures markets. Congress created the CFTC in 1974 as an independent agency with the mandate to regulate commodity futures and option markets in the United States. The information provided by the CFTC helped the Division understand current regulatory policy, and the Division will continue its work with the CFTC on an on-going basis to ensure continued competition in futures markets.

B. Merger - Exelon Corporation / Public Service Enterprise Group Incorporated (PSEG)

Introduction

The Antitrust Division is committed to protecting consumers' rights to fair and competitive prices for products and services. The cost of utilities, specifically electricity, is an important issue for any American responsible for paying to heat, cool, illuminate, and operate appliances in their homes. In December 2004, Exelon and PSEG, two of the largest utility companies in the United States, announced a \$16 billion proposed merger. As part of its effort to protect consumers, the Division initiated an investigation of the proposed merger and eventually filed a complaint against the two companies.

Exelon is a Pennsylvania corporation headquartered in Chicago, Illinois. Exelon owns electric generating plants located primarily in the Mid-Atlantic and Midwest regions of the United States with a total electricity generating capacity of more than 25,000 megawatts ("MW"). Exelon also owns two utilities that buy wholesale electricity and resell it to consumers in the Philadelphia area and in northern Illinois.

PSEG is a New Jersey corporation, with its headquarters in Newark, New Jersey. PSEG owns electric generating plants located primarily in New Jersey with a total generating capacity of more than 15,000 MW. PSEG also owns a gas and electric utility that serves customers in New Jersey.

If the merger were allowed to proceed as proposed, it would have created the nation's largest electric utility, Exelon Electric & Gas ("EEG"), which would have served seven million electricity customers, two million natural gas customers and have 52,000 MW of capacity, \$79 billion in assets, \$27 billion in annual sales and \$3.2 billion in annual earnings. Depending on many factors, one MW of generating capacity is capable of providing electricity to somewhere between 200 and 1,000 homes.

Background and Investigation

Electricity supplied to retail customers is generated at electric generating plants, which consist of one or more generating units. An individual generating unit uses any one of several types of generating technologies to transform energy, typically from fuels or the force of flowing water, into electricity.

Once electricity is generated at a plant, an extensive set of high-voltage lines and equipment, known as a transmission grid, transports the electricity to distribution lines that relay the power to homes and businesses. Transmission grid operators closely monitor the amount of electricity flowing over the grid in order to prevent damage to the grid and to prevent widespread blackouts from disrupting electricity service.

In the Mid-Atlantic, the transmission grid is overseen by PJM Interconnection LLC ("PJM"), a private non-profit organization whose members include transmission line owners, generating plant owners, distribution companies, retail customers, and wholesale and retail electricity suppliers. The transmission grid administered by PJM is the largest in the United States, providing electricity to approximately 51 million people in an area encompassing New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, the District of Columbia, and parts of North Carolina, Kentucky, Ohio, Indiana, Michigan, Tennessee, and Illinois.

PJM oversees daily auctions for the sale and purchase of wholesale electricity. Demand in these auctions is determined by buyers (typically electricity retailers) who submit their requirements to PJM; supply is determined by sellers (typically generators) who submit the amount of electricity and the price at which they are willing to sell. At times, transmission constraints prevent sellers with the lowest offers from meeting demand in a particular area within the PJM control area. When that happens, PJM often calls on more expensive units located within the smaller area bounded by the transmission constraints (a “constrained area”), with the result that prices for the buyers in that area will be higher.

The Division’s investigation focused on two of these constrained areas: PJM East, which includes the densely populated northern New Jersey and Philadelphia areas, and PJM Central/East, which includes PJM East and central Pennsylvania. Together, these two constrained areas accounted for \$19 billion in wholesale electricity sales to nearly 9 million retail customers during 2005. After the proposed merger, EEG would have owned approximately 49 percent of the total generating capacity in PJM East and approximately 40 percent of the total generating capacity in PJM Central/East.

Importance of the Investigation

The Division argued that Exelon’s proposed merger with PSEG, if consummated, would substantially lessen competition for wholesale electricity in PJM East and PJM Central/East in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Unless restrained, the transaction would likely have the following effects, among others:

- Competition in the market for wholesale electricity in PJM East would be substantially lessened;
- Prices for wholesale electricity in PJM East would increase;
- Competition in the market for wholesale electricity in PJM Central/East would be substantially lessened; and
- Prices for wholesale electricity in PJM Central/East would increase.

Conclusion

In June 2006, to address the Division’s concerns and to settle the formal complaint filed by the Division, Exelon and PSEG, through a consent decree, agreed to divest their interest in six power plants: two plants in Pennsylvania and four in New Jersey. These six plants represent 5,600 MW of generating capacity and the merged company were required to reach agreements on selling the plants within 150 days of closing the merger. Ultimately, however, the merger was terminated because the merging parties refused to meet the requirements of the New Jersey Board of Public Utilities.

Approving the merger as it was originally structured would have spurred higher wholesale electricity prices, ultimately increasing prices paid by millions of electricity consumers in the Mid-Atlantic region. The divestitures required by the consent decree helped ensure that customers will continue to benefit from competitive markets for electricity.

7. 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% 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.

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 is investigating price fixing for air cargo rates and passenger fares.

Results

To date, the Department has successfully obtained guilty pleas from three airlines: British Airways, Korean Air Lines and Qantas Airways Limited.

In addition to agreeing to plead guilty and each pay \$300 million criminal fines for their role in the price fixing conspiracies, British Airways and Korean Air Lines have agreed to cooperate with the Department's ongoing investigation. The two airlines are among the top 10 largest international air cargo carriers. During the conspiracy, their combined United States-related cargo revenue has been reported to total more than \$1 billion annually. Additionally, Korean Air is the largest passenger carrier from the United States to Korea and averages more than \$250 million a year in revenue on those flights. British Airways is the largest passenger carrier from the United Kingdom to the United States and had \$14 billion in total passenger revenues in 2006.

British Airways

British Airways was charged with engaging in a conspiracy to suppress and eliminate competition by fixing the rates charged to customers for international air shipment of cargo, including shipments to and from the United States between March 2002 and February 2006. British Airways and its competitors in the air cargo industry ship billions of dollars of consumer goods including produce, clothing, electronics and medicines.

The Department also charged that between August 2004 and February 2006, British Airways engaged in a conspiracy to suppress and eliminate competition by fixing the fuel surcharge charged to passengers on long-haul international flights, including flights between the United States and the United Kingdom. In 2004, British Airways' fuel surcharge for round-trip passenger tickets was approximately \$10 per ticket. By the time the passenger conspiracy was uncovered in 2006, the surcharge was nearly \$110 per ticket – a more than 10-fold increase.

British Airways was also fined 121.5 million British pounds (approximately \$246 million) by Britain's Office of Fair Trading bringing its total fines close to \$550 million.

Korean Air

The Department charged that between January 2000 and July 2006, Korean Air participated in a conspiracy to fix fares charged passengers and certain travel agents for flights from the United States to Korea. Korean Air was also charged with engaging in a conspiracy to suppress and eliminate competition by fixing the rates charged to customers in the U.S. and elsewhere for international air cargo shipments from at least January 2000 to February 2006. Korean Air and its conspirators agreed to increase the fuel surcharge over time from 10 cents per kilogram to as high as 60 cents per kilogram of cargo shipped from the U.S., to fix the security surcharge imposed after the September 11 terrorist attacks, and to increase the base rates charged for certain types of cargo shipments.

Qantas Airways Limited

Australian-based Qantas Airways Limited was charged with engaging in a conspiracy to eliminate competition by fixing the rates for shipments of cargo to and from the United States and elsewhere from at least January 2000 to February 2006. During the time period covered by the felony charge, Qantas was the largest carrier of cargo between the United States and Australia and earned more than \$600 million from its cargo flights to and from the United States.

In November 2007, Qantas agreed to plead guilty and pay a \$61 million criminal fine for its role in the air cargo shipment conspiracy. Qantas also agreed to cooperate with the Department's ongoing investigation.

Virgin Atlantic and Lufthansa AG

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. E-Rate Program

Introduction and Background

In an effort to protect federal programs aimed directly at improving the education of the Nation's children, the Division's involvement in investigating and prosecuting abuses in the Federal Communication Commission's (FCC) E-Rate program is an interesting and important example.

In 1998, the federal government implemented a program to provide subsidies to schools and libraries for use in the purchase and installation of Internet access and telecommunications services, as well as internal computer and communication networks. This is known as the E-Rate program. E-Rate is administered under contract with the federal government by a not-for-profit company called the Universal Service Administrative Company (USAC) and by a subdivision of USAC called the Schools and Libraries Division (SLD). The FCC oversees and regulates USAC and SLD.

One of the principal objectives of the E-Rate program is to encourage economically disadvantaged schools to install and upgrade their Internet and communications infrastructure and to provide their students with access to the Internet as a learning tool. To further this objective, the federal government offers to pay a large portion of the infrastructure enhancement costs of each eligible school participating in the E-Rate program.

A core requirement for participation in the E-Rate program is that each applicant school must pay some percentage of the infrastructure enhancement cost, ranging from ten to eighty percent, depending on the neediness of each applicant school. In addition, applicant schools must seek competitive bids for the desired infrastructure enhancements.

Investigation

The Division's initial investigation into unlawful practices by private sector entities involved with the E-Rate program began over three years ago and additional abuses continue to be uncovered as a result of diligent investigation and prosecution. The investigations involve many government agencies in addition to the Antitrust Division's Washington D.C. and field offices. Other agencies include the Federal Bureau of Investigation's (FBI) San Francisco, Los Angeles, Fresno, Milwaukee, Rapid City and Detroit field offices; the Internal Revenue Service's (IRS) Milwaukee and Fresno field offices; the United States Attorney's Office for the Northern District of California and District of South Dakota; the Department of Justice's Civil Division; the San Francisco City Attorney's Office; and the Federal Communication Commission's Office of Inspector General (OIG).

This investigation is far-reaching and includes a wide variety of potential charges including conspiracy, mail fraud, money laundering, contract allocation, bid rigging, wire fraud, bank fraud, inflating bids, and making false statements.

Results

In August 2003, a Colorado man, acting on behalf of his employer, pled guilty to participating in bid rigging on an E-Rate contract for the West Fresno Elementary School District in California. The defendant admitted to conspiring with school district representatives to ensure that his company would be the successful bidder for the project. The defendant agreed to assist the government in its investigation of the E-Rate program.

In March 2004, five individuals were indicted on criminal charges involving E-Rate contracts for schools in Milwaukee and Chicago. The defendants were paid \$1.3 million for goods and services never provided to the schools. Two of the individuals, both Pakistani nationals, agreed in October 2004 to plead guilty to charges of conspiracy, fraud and money laundering and were sentenced to terms of imprisonment of 72 and 63 months and to pay \$1.3 million in restitution. After serving their sentences, the two individuals will be removed to Pakistan and will not be permitted to re-enter the United States.

In May 2004, NEC-Business Network Solutions Inc. (NEC/BNS), agreed to plead guilty and pay \$20.6 million in settlement of a criminal fine, restitution, and a civil settlement in the E-Rate program. NEC/BNS was charged with collusion at five different school districts and fraud at a sixth school district. The illegal activity took place in Michigan, Wisconsin, Arkansas, and South Carolina.

In December 2004, Inter-Tel Technologies Inc., agreed to plead guilty and pay a fine of \$8.721 million (\$1.721 million in criminal fines and \$7 million in restitution and civil settlement) relating to criminal charges of collusion at two school districts and fraud at a third school district. The E-Rate programs affected were in Michigan, California, and San Francisco.

In April 2005, a federal grand jury in San Francisco returned a 22-count indictment against six corporations and five individuals in the Division's largest E-Rate matter to date, U.S. v. Video Network Communications, Inc. (VNCI), et al. Included were nine counts of collusion and eleven counts of fraud in the E-Rate program at schools in seven states including Arkansas, California, Michigan, New York, Pennsylvania, South Carolina, and Wisconsin. Also included were one count of collusion and one count of conspiracy to defraud for E-Rate funded projects at fifteen additional projects in these states.

In November 2005, a federal grand jury in San Francisco returned a superseding indictment in the VNCI matter that added another individual, a former vice president of NEC/BNS, to the previously indicted group of defendants. One of the corporate defendants, Expedition Networks, Ltd., pled guilty in January 2006 to the charges in the indictment and agreed to pay a \$5 million fine. Charges against another corporation, Howe Electric, Inc., are pending. All six individuals have either plead guilty or were found guilty at trial. Sentencing for the individual defendants is scheduled to take place in February and March 2008.

In May 2006, several companies and individuals, including a school official and his wife in Ecorse, Michigan were indicted on fraud and related charges, one of which involved abuse of the E-Rate program. The indictment charges that the defendants manipulated the E-Rate system to purchase and install ineligible and inappropriate equipment from companies associated with the defendant school official while that defendant managed the E-Rate program on behalf of the school system. The allegations of fraud to the E-Rate program amount to well over \$1 million in loss.

In April 2006, NextiraOne pled to one count of wire fraud and was sentenced to pay a \$1.9 million criminal fine, \$2.678 million civil fine and restitution of approximately \$400,000 to the schools on the Pine Ridge reservation in South Dakota. NextiraOne and its predecessor, Williams Communications, committed fraud through the waiver of the school's co-pay, the installation of inappropriate equipment, and the submission of ineligible "consulting" contracts with the Pine Ridge reservation and other Native American schools. In addition, NextiraOne failed to advise the tribe they would need to re-apply each year under the E-Rate program to pay for their large, recurring network costs. As a result, the tribe owed their local telecommunications company hundreds of thousands of dollars for mostly unused network capacity.

In December 2006, a federal grand jury in McAllen, Texas, returned a nine-count indictment alleging that the former president and owner of ATE Tel Solutions Inc. committed wire fraud in a scheme to defraud the federal E-Rate program. The charges stemmed from fraudulent applications for payment submitted on behalf of ATE Telecom Solutions Inc. to the FCC's USAC. In November 2007, the former president and owner of ATE was sentenced to serve three years in prison following his conviction for his involvement in the scheme and will also pay \$106,000 in restitution to the USAC.

In all, 14 individuals and 12 companies have been charged as part of the Division's investigation. Six companies and eleven individuals have been found guilty at trial, pleaded guilty, agreed to plead guilty, or have entered civil settlements. The defendants have agreed to pay criminal and civil fines and restitution totaling more than \$40 million. Individual defendants have collectively been sentenced to serve almost 20 years in prison.

Conclusion

Criminal activity within the E-Rate program, such as bid-rigging, takes much needed and important federal funding from our economically disadvantaged schools and libraries and diverts it to the pockets of criminals, resulting in a profound and adverse impact on the education of our Nation's children. The restitution payments made by those companies who have pled guilty provides full recovery to the E-Rate program for the funds those companies received inappropriately. By continuing to investigate and prosecute criminal abuses of the E-Rate program, the Antitrust Division sends a strong message that this type of activity will not be tolerate.

V. E-Gov Initiatives

The Justice Department is fully committed to the President’s Management Agenda (PMA) and the E-Government initiatives that are integral to achieving the objectives of the PMA. The E-Government initiatives serve citizens, business, and federal employees by delivering high quality services more efficiently at a lower price. The Department is in varying stages of implementing E-Government solutions and services including initiatives focused on integrating government wide transactions, processes, standards adoption, and consolidation of administrative systems that are necessary tools for agency administration, but are not core to DOJ’s mission. To ensure that DOJ obtains value from the various initiatives, the Department actively participates in the governance bodies that direct the initiatives and we communicate regularly with the other federal agencies that are serving as the “Managing Partners” to ensure that the initiatives meet the needs of the Department and its customers. The Department believes that working with other agencies to implement common or consolidated solutions will help DOJ to reduce the funding requirements for administrative and public-facing systems, thereby allowing DOJ to focus more of its scarce resources on higher priority, mission related needs. DOJ’s modest contributions to the Administration’s E-Government projects will facilitate achievement of this objective.

A. Funding and Costs

The Department of Justice participates in the following E-Government initiatives and Lines of Business:

| | | | |
|--|---------------------|--|--------------------------------------|
| Business Gateway | E-Travel | Integrated Acquisition Environment | Case Management LoB |
| Disaster Assistance Improvement Plan | Federal Asset Sales | IAE - Loans & Grants - Dunn & Bradstreet | Geospatial LoB |
| Disaster Assist. Improvement Plan - Capacity Surge | Geospatial One-Stop | Financial Mgmt. Consolidated LoB | Budget Formulation and Execution LoB |
| E-Authentication | GovBenefits.gov | Human Resources LoB | IT Infrastructure LoB |
| E-Rulemaking | Grants.gov | Grants Management LoB | |

The Department of Justice E-Government expenses – i.e. DOJ’s share of e-Gov initiatives managed by other federal agencies – are paid for from the Department’s Working Capital Fund. These costs, along with other internal E-Government related expenses (oversight and administrative expenses such as salaries, rent, etc.) are reimbursed by the components to the WCF. The Antitrust Division reimbursement amount is based on the anticipated or realized benefits from an e-Government initiative. As such, the Antitrust Division E-Government reimbursement to the Working Capital Fund is \$155,000 for FY2008 and \$55,000 for FY2009.

B. Benefits

The Antitrust Division established baseline cost estimates for each IT investment being (or planned to be) modified, replaced, or retired due to the Department’s use of an E-Government or Line of Business initiative. The Antitrust Division is measuring actual costs of these investments on an ongoing basis. As the Antitrust Division completes migrations to common solutions provided by an E-Government or Line of Business initiative, the Antitrust Division expects to realize cost savings or avoidance through retirement or replacement of legacy systems and/or decreased operational costs. The table below represents only those E-Government initiatives and Lines of Businesses where the Antitrust Division expects to realize benefits in FY2008 and FY2009.

(dollars in thousands)

| E-Gov Initiative | FY 2008 Benefits | FY 2009 Anticipated Benefits | Comments |
|----------------------------------|-------------------------|-------------------------------------|--|
| Business Gateway | \$6 | \$6 | Amounts are based on the cost development exercise required by OMB M-06-22 Memo: Cost Savings Achieved Through E-Government and Line of Business Initiatives -8/8/2006 |
| Financial Mgmt. Consolidated LoB | \$102 | \$104 | Amounts are based on the cost development exercise required by OMB M-06-22 Memo: Cost Savings Achieved Through E-Government and Line of Business Initiatives -8/8/2006 |
| Human Resource LoB | \$460 | \$470 | Amounts are based on the cost development exercise required by OMB M-06-22 Memo: Cost Savings Achieved Through E-Government and Line of Business Initiatives -8/8/2006 |

VI. Exhibits

A: Organizational Chart

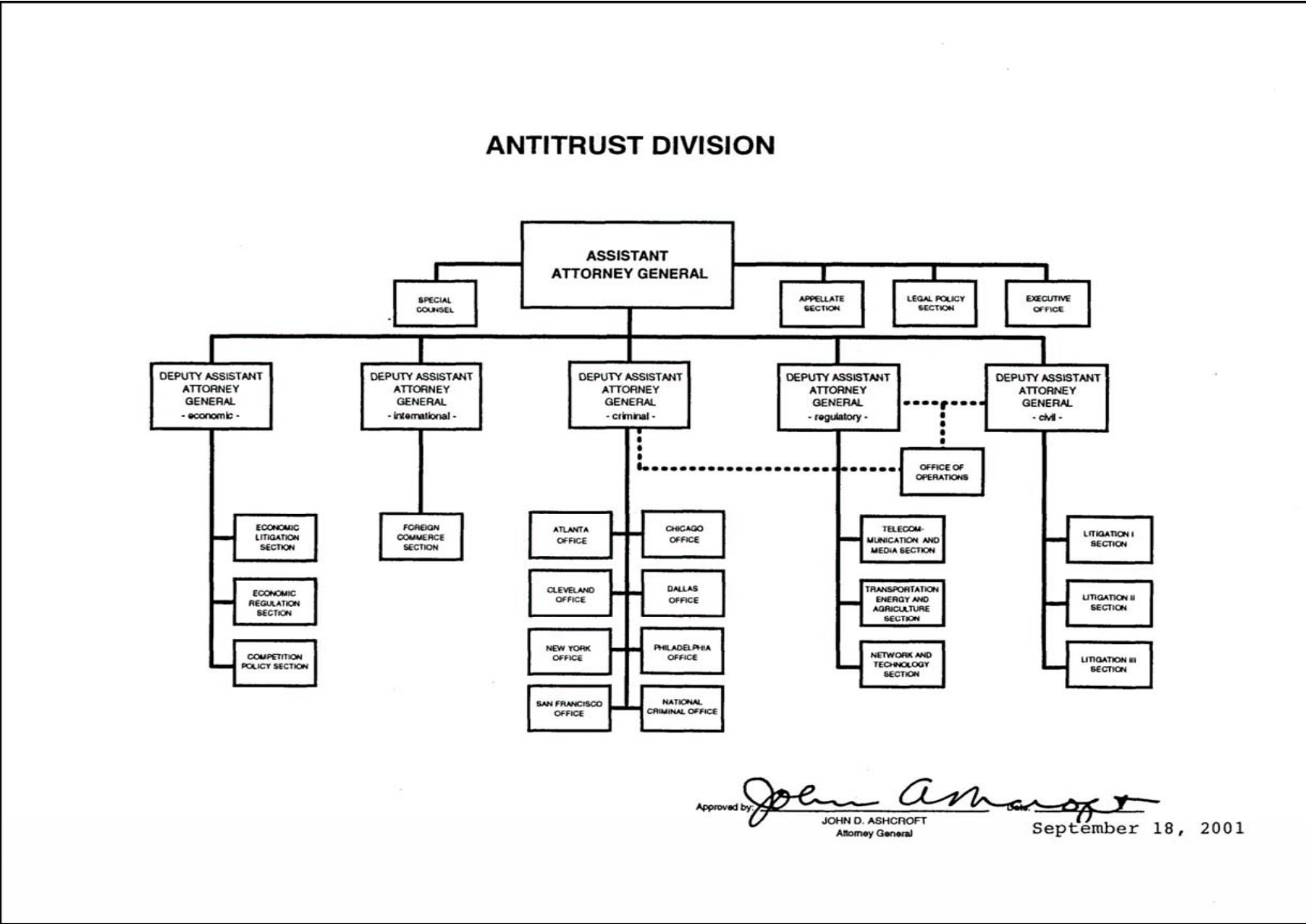


Exhibit A - Organizational Chart

B: Summary of Requirements

Summary of Requirements
 Antitrust Division
 Salaries and Expenses
 (Dollars in Thousands)

| | FY 2009 Request | | |
|-------------------------------------|-----------------|------------|------------------|
| | Perm. Pos. | FTE | Amount |
| 2007 Enacted | 880 | 851 | \$147,819 |
| 2008 Enacted | 880 | 851 | \$147,819 |
| Adjustments to Base | | | |
| Increases: | | | |
| 2009 pay raise (2.9%) | | | \$2,021 |
| 2008 pay raise annualization (3.5%) | | | \$784 |
| Retirement | | | \$80 |
| Health Insurance Premiums | | | \$124 |
| Employees Compensation Fund | | | \$1 |
| DHS Security Charges | | | -\$28 |
| Security Investigations | | | \$7 |
| Printing and Reproduction | | | \$5 |
| Working Capital Fund-JUTNet | | | \$129 |
| Subtotal Increases | | | \$3,123 |
| Decreases: | | | |
| Change in Compensable Days | | | -\$351 |
| Subtotal Decreases | | | -\$351 |
| Total Adjustments to Base | | | \$2,772 |
| 2009 Current Services | 880 | 851 | \$150,591 |
| 2009 Total Request | 880 | 851 | \$150,591 |
| 2008 - 2009 Total Change | 0 | 0 | \$2,772 |

| Estimates by budget activity | 2007 Appropriation Enacted w/Rescissions and Supplementals | | | 2008 Enacted | | | 2009 Adjustments to Base | | | 2009 Current Services | | | 2009 Increases | | | 2009 Offsets | | | 2009 Request | | | 2008-2009 Total Change | | |
|------------------------------|---|------------|------------------|--------------|------------|------------------|-----------------------------|----------|----------------|--------------------------|------------|------------------|-------------------|----------|------------|-----------------|----------|------------|-----------------|------------|------------------|---------------------------|----------|----------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Antitrust Division | 880 | 851 | \$147,819 | 880 | 851 | \$147,819 | 0 | 0 | \$2,772 | 880 | 851 | \$150,591 | 0 | 0 | \$0 | 0 | 0 | \$0 | 880 | 851 | \$150,591 | 0 | 0 | \$2,772 |
| Total | 880 | 851 | \$147,819 | 880 | 851 | \$147,819 | 0 | 0 | \$2,772 | 880 | 851 | \$150,591 | 0 | 0 | \$0 | 0 | 0 | \$0 | 880 | 851 | \$150,591 | 0 | 0 | \$2,772 |
| Total Comp. FTE | | 851 | | 851 | | | 0 | | | 851 | | | 0 | | | 0 | | | 851 | | | 0 | | |

D: Resources by DOJ Strategic Goal and Strategic Objective

Resources by Department of Justice Strategic Goal/Objective
Antitrust Division
(Dollars in Thousands)

| Strategic Goal/Objective | 2007 Appropriation Enacted w/Rescissions and Supplementals | | 2008 Enacted | | 2009 Current Services | | 2009 Increases/Offsets | | 2009 Request | | 2008-2009 Total Change | |
|---|---|------------------|-----------------|------------------|--------------------------|------------------|---------------------------|------------|-----------------|------------------|---------------------------|----------------|
| | Amount | | Amount | | Amount | | Amount | | Amount | | Amount | |
| | FTE | \$000s | FTE | \$000s | FTE | \$000s | FTE | \$000s | FTE | \$000s | FTE | \$000s |
| Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. | | | | | | | | | | | | |
| 2.7: Vigorously Enforce and Represent the Interests of the United States in all Matters over Which the Department has Jurisdiction. | | | | | | | | | | | | |
| Antitrust Division - Criminal | 298 | \$51,737 | 340 | \$59,128 | 340 | \$60,236 | 0 | \$0 | 340 | \$60,236 | 0 | \$1,109 |
| Antitrust Division - Civil | 553 | \$96,082 | 511 | \$88,691 | 511 | \$90,355 | 0 | \$0 | 511 | \$90,355 | 0 | \$1,663 |
| GRAND TOTAL | 851 | \$147,819 | 851 | \$147,819 | 851 | \$150,591 | 0 | \$0 | 851 | \$150,591 | 0 | \$2,772 |

E. Justification for Base Adjustments

Justification for Base Adjustments

Antitrust Division

(Dollars in Thousands)

Increases

2009 pay raise: This request provides for a proposed 2.9 percent pay raise to be effective in January of 2009. This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$2,021, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$1,677 for pay and \$344 for benefits).

Annualization of 2008 pay raise: This pay annualization represents first quarter amounts (October through December) of the 2008 pay increase of 3.5 percent. The amount requested \$784, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$651 for pay and \$133 for benefits).

Retirement: Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on U.S. Department of Justice Agency estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 1.3 percent per year. The requested increase of \$80 is necessary to meet our increased retirement obligations as a result of this conversion.

Health Insurance: Effective January 2007, the Antitrust Division's contribution to Federal employees' health insurance premiums increased by 3.1 percent. Applied against the 2008 estimate of \$3,974, the additional amount required is \$124.

Employees Compensation Fund: The \$1 increase reflects payments to the Department of Labor for injury benefits paid on our behalf in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.

Security Investigations: The \$7 increase reflects payments to the Office of Personnel Management for security reinvestigations for employees requiring security clearances.

Government Printing Office (GPO): GPO has provided an estimated rate increase of 4%. This percentage was applied to the FY 2008 estimate of \$125 to arrive at an increase of \$5.

JUTNet: The Justice United Telecommunications Network (JUTNet) is a new system that will provide a more reliable, secure, and economic connectivity among the many local office automation networks deployed throughout the Department, as well as a trusted environment for information sharing with other government agencies and remote users, field agents, and traveling staff personnel. JUTNet will utilize uniform security, updated encryption protocols, and eliminate network inefficiencies existing within the current systems. Funding of \$129 is required for this account.

Decreases

Changes in Compensable Days: The decreased cost of one compensable day in FY 2009 compared to FY 2008 is calculated by dividing the FY 2008 estimated personnel compensation of \$77,638 and applicable benefits of \$14,298 by 262 compensable days. The cost decrease of one compensable day is \$351.

DHS Security Charges: The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The request includes a decrease of \$28. The costs associated with DHS security were derived through the use of an automated system which uses the latest space inventory data. Rate adjustments expected in FY 2009 for Building Specific Security have been formulated based on DHS billing data. The rate for Basic Security costs for use in the FY 2009 budget process was provided by DHS.

F: Crosswalk of 2007 Availability

Crosswalk of 2007 Availability

Antitrust Division
 Salaries and Expenses
 (Dollars in Thousands)

| Decision Unit | FY 2007 Enacted Without Rescissions | | | Rescissions | | | Reprogrammings / Transfers | | | Unobligated Balances Carried Forward /Recoveries | | | 2007 Availability | | |
|-----------------------|--|------------|------------------|-------------|----------|------------|-------------------------------|----------|------------|--|----------|----------------|-------------------|------------|------------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Antitrust Division | 880 | 851 | \$147,819 | 0 | 0 | \$0 | 0 | 0 | \$0 | 0 | 0 | \$9,449 | 880 | 851 | \$157,268 |
| TOTAL | 880 | 851 | \$147,819 | 0 | 0 | \$0 | 0 | 0 | \$0 | 0 | 0 | \$9,449 | 880 | 851 | \$157,268 |
| Total Compensable FTE | | 851 | | | 0 | | | 0 | | | 0 | | | 851 | |

Unobligated Balances: FY 2006 funds were carried over from the 15X0319 account. The Division brought forward and recovered \$9,449 from prior years' salaries and expenses funding.

G: Crosswalk of 2008 Availability

Crosswalk of 2008 Availability

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

| Decision Unit | FY 2008 Enacted | | | Rescissions | | | Reprogrammings / Transfers | | | Unobligated Balances Carried Forward /Recoveries | | | 2008 Availability | | |
|-----------------------|-----------------|------------|------------------|-------------|----------|------------|----------------------------|----------|------------|--|----------|-----------------|-------------------|------------|------------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Antitrust Division | 880 | 851 | \$147,819 | 0 | 0 | \$0 | 0 | 0 | \$0 | 0 | 0 | \$18,716 | 880 | 851 | \$150,815 |
| TOTAL | 880 | 851 | \$147,819 | 0 | 0 | \$0 | 0 | 0 | \$0 | 0 | 0 | \$18,716 | 880 | 851 | \$150,815 |
| Total Compensable FTE | | 851 | | | 0 | | | 0 | | | 0 | | | 851 | |

Unobligated Balances: FY 2007 funds were carried over from the 15X0319 account. The Division brought forward and recovered \$18,716 from prior years' salaries and expenses funding, of which \$2,996 was made available. The remaining carryforward of \$15,720 is FY 2007 HSR Fee collections in excess of the FY 2007 authorized level of \$129,000 and is not available for obligation in FY2008 (\$7,278 is pending reprogramming).

H: Summary of Reimbursable Resources

Summary of Reimbursable Resources

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

| Collections by Source | 2007 Enacted | | | 2008 Planned | | | 2009 Request | | | Increase/Decrease | | |
|---|--------------|----------|--------------|--------------|----------|----------------|--------------|----------|--------------|-------------------|----------|------------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Federal Trade Commission | 0 | 0 | \$235 | 0 | 0 | \$182 | 0 | 0 | \$182 | 0 | 0 | \$0 |
| Environment and Natural Resource Division | 0 | 0 | \$170 | 0 | 0 | \$145 | 0 | 0 | \$145 | 0 | 0 | \$0 |
| Justice Management Division/CIO | 0 | 0 | \$136 | 0 | 0 | \$64 | 0 | 0 | \$64 | 0 | 0 | \$0 |
| Regimes Crime Liaison | 0 | 0 | \$114 | 0 | 0 | \$0 | 0 | 0 | \$0 | 0 | 0 | \$0 |
| National Security Division | 0 | 0 | \$0 | 0 | 0 | \$1,410 | 0 | 0 | \$0 | 0 | 0 | (\$1,410) |
| Budgetary Resources: | 0 | 0 | \$655 | 0 | 0 | \$1,801 | 0 | 0 | \$391 | 0 | 0 | (\$1,410) |

| Obligations by Program | 2007 Enacted | | | 2008 Planned | | | 2009 Request | | | Increase/Decrease | | |
|---------------------------|--------------|----------|--------------|--------------|----------|----------------|--------------|----------|--------------|-------------------|----------|------------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Criminal | 0 | 0 | \$114 | 0 | 0 | \$800 | 0 | 0 | \$95 | 0 | 0 | (\$705) |
| Civil | 0 | 0 | \$541 | 0 | 0 | \$1,001 | 0 | 0 | \$296 | 0 | 0 | (\$705) |
| Total Obligations: | 0 | 0 | \$655 | 0 | 0 | \$1,801 | 0 | 0 | \$391 | 0 | 0 | (\$1,410) |

I: Detail of Permanent Positions by Category

Detail of Permanent Positions by Category
 Antitrust Division
 Salaries and Expenses

| Category | 2007 Enacted w/Rescissions and Supps | 2008 Enacted | 2009 Request |
|---|---|---------------------|---------------------|
| | Total Authorized | Total Authorized | Total Authorized |
| Attorneys (905) | 390 | 390 | 390 |
| Paralegals / Other Law (900-998) | 200 | 200 | 200 |
| Personnel Management (200-299) | 10 | 10 | 10 |
| Clerical and Office Services (300-399) | 166 | 166 | 166 |
| Accounting and Budget (500-599) | 8 | 8 | 8 |
| Business & Industry (1100-1199) | 5 | 5 | 5 |
| Mathematics and Statistics (1500-1599) | 9 | 9 | 9 |
| Social Science, Economics and Kindred (100-199) | 66 | 66 | 66 |
| Supply Services (2000-2099) | 3 | 3 | 3 |
| Security Specialists (080) | 1 | 1 | 1 |
| Information Technology Mgmt (2210) | 22 | 22 | 22 |
| Total | 880 | 880 | 880 |
| Headquarters (Washington, D.C.) | 625 | 625 | 625 |
| U.S. Field | 255 | 255 | 255 |
| Total | 880 | 880 | 880 |

K: Summary of Requirements by Grade

Summary of Requirements by Grade

Antitrust Division
Salaries and Expenses

| Grades and Salary Ranges | 2007 Enacted With Rescissions | | 2008 Enacted | | 2009 Request | | Increase/Decrease | |
|--------------------------------------|----------------------------------|------------------|-----------------|------------------|--------------|------------------|-------------------|--------|
| | Pos. | Amount | Pos. | Amount | Pos. | Amount | Pos. | Amount |
| SES, \$111,676 - \$168,000 | 26 | | 26 | | 26 | | 0 | |
| GS-15, \$110,363 - 143,471 | 340 | | 340 | | 340 | | 0 | |
| GS-14, \$93,822 - 121,967 | 53 | | 53 | | 53 | | 0 | |
| GS-13, \$79,397 - 103,220 | 57 | | 57 | | 57 | | 0 | |
| GS-12, \$66,767 - 86,801 | 43 | | 43 | | 43 | | 0 | |
| GS-11, \$55,706 - 72,421 | 40 | | 40 | | 40 | | 0 | |
| GS-10, \$50,703 - 65,912 | 2 | | 2 | | 2 | | 0 | |
| GS-9, \$46,041 - 59,852 | 79 | | 79 | | 79 | | 0 | |
| GS-8, \$41,686 - 54,194 | 30 | | 30 | | 30 | | 0 | |
| GS-7, \$37,640 - 48,933 | 168 | | 168 | | 168 | | 0 | |
| GS-6, \$33,872 - 44,032 | 9 | | 9 | | 9 | | 0 | |
| GS-5, \$30,386 - 39,501 | 23 | | 23 | | 23 | | 0 | |
| GS-4, \$27,159 - 35,303 | 8 | | 8 | | 8 | | 0 | |
| GS-2, \$22,174 - 27,901 | 2 | | 2 | | 2 | | 0 | |
| Total, appropriated positions | 880 | | 880 | | 880 | | 0 | |
| Average SES Salary | | \$159,213 | | \$161,920 | | \$164,672 | | |
| Average GS Salary | | \$93,413 | | \$96,897 | | \$99,804 | | |
| Average GS Grade | | 12.30 | | 12.50 | | 12.80 | | |

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

| Object Classes | 2007 Actuals | | 2008 Enacted | | 2009 Request | | Increase/Decrease | |
|--|--------------|------------------|--------------|------------------|--------------|------------------|-------------------|----------------|
| | FTE | Amount | FTE | Amount | FTE | Amount | FTE | Amount |
| 11.1 Direct FTE & personnel compensation | 585 | \$60,175 | 596 | \$62,281 | 596 | \$63,663 | 0 | \$1,382 |
| 11.3 Other than full-time permanent | 266 | \$11,917 | 255 | \$12,334 | 255 | \$12,929 | 0 | \$595 |
| 11.5 Total, Other personnel compensation | 0 | \$1,727 | 0 | \$1,730 | 0 | \$1,730 | 0 | \$0 |
| <i>Overtime</i> | 0 | \$480 | 0 | \$480 | 0 | \$480 | 0 | \$0 |
| 11.8 Special personal services payments | 0 | \$274 | 0 | \$1 | 0 | \$1 | 0 | \$0 |
| Total 11.0 | 851 | \$74,093 | 851 | \$76,346 | 851 | \$78,323 | 0 | \$1,977 |
| Other Object Classes: | | | | | | | | |
| 12.0 Personnel benefits | | \$17,936 | | \$18,300 | | \$18,982 | | \$682 |
| 13.0 Benefits for former personnel | | \$24 | | \$24 | | \$24 | | \$0 |
| 21.0 Travel and transportation of persons | | \$2,371 | | \$2,000 | | \$2,000 | | \$0 |
| 22.0 Transportation of things | | \$442 | | \$425 | | \$425 | | \$0 |
| 23.1 Rental payments to GSA | | \$21,430 | | \$22,707 | | \$22,707 | | \$0 |
| 23.2 Rental payments to others | | \$604 | | \$0 | | \$0 | | \$0 |
| 23.3 Communications, utilities, & other misc. charges | | \$1,809 | | \$1,800 | | \$1,929 | | \$129 |
| 24.0 Printing and reproduction | | \$244 | | \$200 | | \$205 | | \$5 |
| 25.1 Advisory and assistance services | | \$1,059 | | \$1,050 | | \$1,050 | | \$0 |
| 25.2 Other services | | \$20,696 | | \$19,000 | | \$18,972 | | (\$28) |
| 25.3 Purchases of goods & services from Government accts | | \$1,867 | | \$1,800 | | \$1,807 | | \$7 |
| 25.4 Operation and maintenance of facilities | | \$585 | | \$550 | | \$550 | | \$0 |
| 25.6 Medical care | | \$72 | | \$72 | | \$72 | | \$0 |
| 25.7 Operation and maintenance of equipment | | \$1,001 | | \$1,000 | | \$1,000 | | \$0 |
| 26.0 Supplies and materials | | \$1,318 | | \$1,300 | | \$1,300 | | \$0 |
| 31.0 Equipment | | \$1,623 | | \$1,245 | | \$1,245 | | \$0 |
| 32.0 Lease Hold Improvements | | \$7,565 | | \$0 | | \$0 | | \$0 |
| Total obligations | | \$154,739 | | \$147,819 | | \$150,591 | | \$2,772 |
| Unobligated balance, start of year (-) | | (\$9,402) | | (\$18,716) | | (\$15,750) | | |
| Unobligated balance, end of year (+) | | \$18,716 | | \$15,750 | | \$15,750 | | |
| Recoveries of prior year obligations (-) | | (\$46) | | \$0 | | \$0 | | |
| Total requirements | | \$164,007 | | \$144,853 | | \$150,591 | | |