



ANTITRUST DIVISION

**CONGRESSIONAL SUBMISSION
FY 2008 PERFORMANCE BUDGET**

Antitrust Division

FY 2008 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 2.5, "Enforce Federal Statutes, Uphold the Rule of Law, and Vigorously Represent the Interests of the United States in All Matters for 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 for the remainder of FY 2007 and into FY 2008. To administer its caseload effectively and efficiently, the Division requests funding of \$155.097 million in FY 2008, reflecting an increase of \$9.736 million over the FY 2007 Estimated Enacted level.

The Division's FY 2008 request includes no funding for program increases and is essentially a steady-state budget. The requested adjustments to base include funding for increases in salaries and benefits along with facilities related expenses such as funding to support the Division's Congressionally approved Washington DC building consolidation and increases in GSA rent. The \$155.097 million requested in FY 2008 will support the Division's authorized 880 positions (390 Attorneys) and 851 work years (FTE). 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 2008 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/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.

Beginning in FY 2007, electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits may be viewed or downloaded from the Internet using the Internet address:
<http://www.usdoj.gov/jmd/2008justification/>.

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 indicates.

Enforcement Program	Major Matters
Criminal DOJ Strategic Goal II Objective 2.5	Dynamic Random Access Memory (DRAM) (see Exemplar - pg. 38) E-Rate Program (see Exemplar - pg. 41)
Civil – Merger DOJ Strategic Goal II Objective 2.5	Wireless Telecommunication Mergers – Sprint/Nextel, ALLTEL/Western Wireless, AT&T/Cingular (see Exemplar - pg. 32) Exelon Corporation/Public Service Enterprise Group Incorporated (PSEG) (see Exemplar – pg. 36)

Globalization

Over the past decade, 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 fiscal year 2006.¹

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", www.bea.gov/bea/newsrelarchive/2006/trad1006.xls, October 2006.

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 2006, 47 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 more than \$3.4 billion in criminal antitrust fines secured by the Division between FY 1997 and the end of FY 2006, well over 90 percent were imposed in connection with the prosecution of international cartel activity.**

A little more than a decade ago, the largest corporate fine ever imposed for a single Sherman Act count was \$2 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. 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, representing the fourth and fifth largest Sherman Act corporate fines ever imposed. 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. Recent successes in this area of competition advocacy include the Australian Government, announcing in February 2005, that it will amend its competition law to introduce criminal penalties for serious cartel conduct. In addition, Japan adopted major revisions to its Antimonopoly Act in April 2005 and both the European Union and the United Kingdom recently have overhauled their antitrust regulations to reflect more of the model used in the United States.

The Division continues its work on antitrust policy and compliance issues with many additional countries and international organizations including the International Competition Network (ICN), which began in October 2001 as a worldwide organization of 13 antitrust agencies formed to promote sound competition policies and support new antitrust agencies in creating and enforcing laws. The ICN currently exceeds 80 members and now includes almost every antitrust agency in the world. In FY 2006, the Division was involved in the ICN's Unilateral Conduct Working Group, which announced plans to focus on the objectives of single-firm enforcement and the standards for analysis of dominance (monopolization). The Division attended meetings with the antitrust agencies of United States trading partners, and the U.S., Canadian, and Mexican agencies created working groups on unilateral conduct and intellectual property issues.

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, Philip Ruddock, 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 should enhance global antitrust enforcement and reduce the burden on 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

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 2006 produced the most merger and acquisition activity since the end of 2000 with \$1.56 trillion in merger volume.³ The total value of merger and acquisition activity in calendar year 2006 was one of the largest in history; ranking 4th overall, just slightly behind calendar years 2000, 1998 and 1999.⁴

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 fiscal years 2001 through 2003, both domestically and internationally. 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.

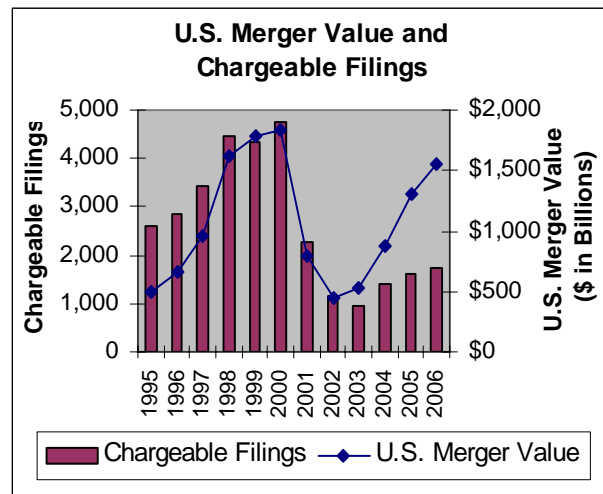


Figure 1

Volume was equally impressive on the global front with announced *worldwide* mergers and acquisitions of \$3.79 trillion in calendar year 2006, a whopping 38 percent increase from 2005.⁵ Stefan Selig, global head of mergers and acquisitions at Bank of America in New York, predicts 2007 will be a very busy year for mergers and acquisitions and expects global merger volume to exceed \$4 trillion.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.

^{3, 5, 6} Berman, Dennis. "Year-End Review of Markets & Finance 2006", *The Wall Street Journal*, January 2, 2007, p. R5.

⁴ Hulbert, Mark. "In a Merger Wave, a Dangerous Undertow for Stocks", *The New York Times*, December 17, 2006.

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 is nearly one cell phone per person in the United States, with cell phone users numbering more than 203 million and an estimated two billion cell phone users worldwide.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

The continuing evolution of technology, as it reshapes both industries and business processes worldwide, creates new demands on the 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 conferencing 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 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.

⁷ Leo, Peter. "Cell Phone Statistics That May Surprise You", *post-gazette.com*, www.post-gazette.com, March 16, 2006.

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.

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

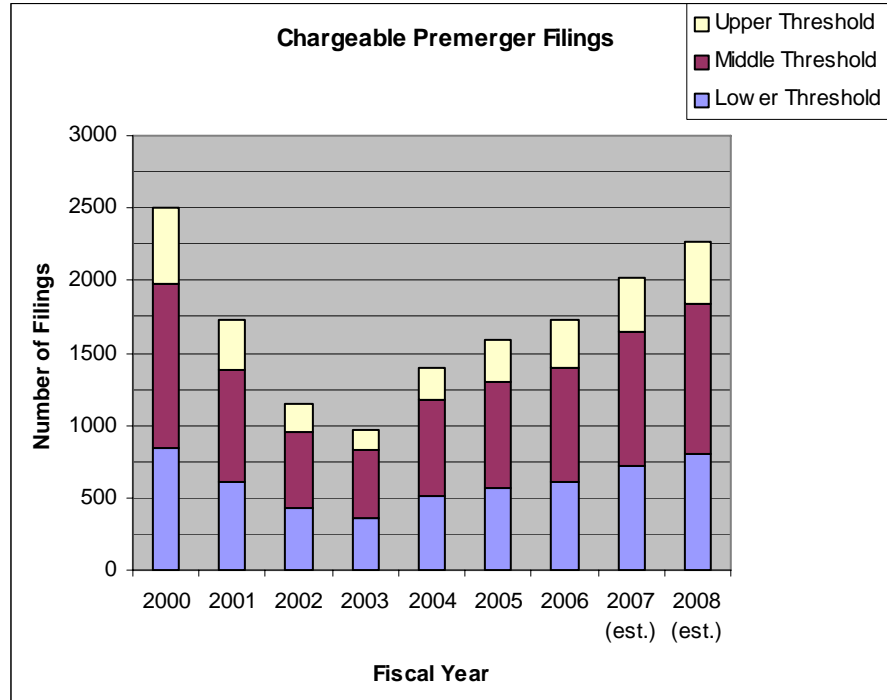
While specific GPRA Performance Measures are addressed in the Decision Unit Justification section of this submission, several interesting statistics relative to the Division's performance include:

- ✓ In FY 2006, as a result of the Division's efforts, \$473 million in criminal fines - currently the **second highest annual amount assessed in the Division's history** - were assessed against antitrust violators, a 40% increase over FY 2005, 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, the Division has brought in over \$3.4 billion in criminal fines to the U.S. Treasury.**
- ✓ The average prison sentence between FY 2000 and the end of FY 2006 is almost double the 8-month average sentence of the 1990's, rising to an average of 15 months and resulting in over 150 years of imprisonment imposed on antitrust offenders, with more than 50 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 2006, restitution generated by the Division has totaled over \$30 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 2006 Congressional Budget Office, Budget and Economic Outlook predicts the U.S. economy will grow at a moderate and sustainable pace throughout 2007 and 2008.¹⁰

In March 2005, consistent with statutory direction, pre-merger filing threshold amounts received their first annual adjustment 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 accelerating in fiscal years 2007



Threshold Prior to March 1, 2005	Effective Spring, 2006
\$50M - <\$100M	\$56.7M - <\$113.4M
\$100M - <\$500M	\$113.4M - <\$567.0M
\$500M plus	\$567.0M plus

Figure 2

and 2008, outpacing filings in FY 2006. This upward trend is evident in Figure 2, which depicts actual filings from FY 2000 through FY 2006, and projects filings for fiscal years 2007 through 2008.

In conjunction with estimates calculated by the Congressional Budget Office and the Federal Trade Commission (FTC), fee collections of \$258 million for fiscal year 2007 and \$289 million for FY 2008 are expected. This filing fee revenue is divided evenly between the Antitrust Division and Federal Trade Commission (FTC).

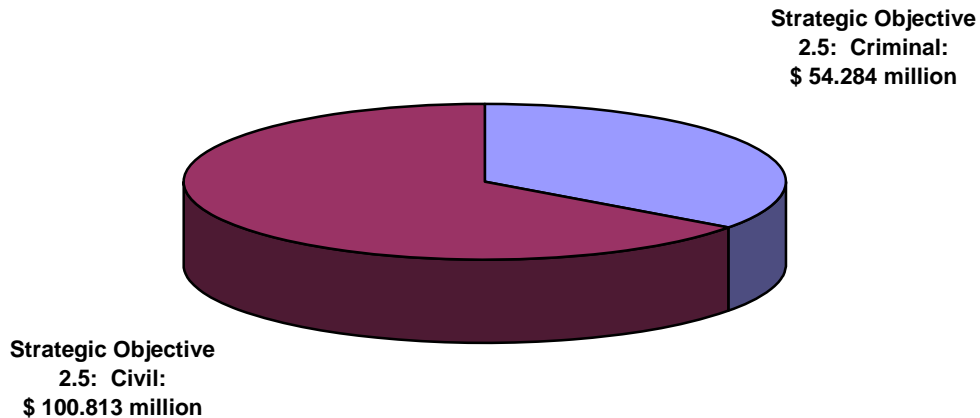
¹⁰ "The Budget and Economic Outlook: Fiscal Years 2008-2017." *Congressional Budget Office*, August 2006, p.XI.

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 2008 budget of \$155.097 million, in support of 880 positions, and 851 work years. The increase of \$9.736 million for base adjustments will allow the Division to maintain an effective operating level and continue to meet the challenges of an evolving world economy.

The FY 2008 Antitrust Division budget request of \$155.097 million supports Departmental Strategic Goal II: 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 2.5: Enforce Federal Statutes, Uphold the Rule of Law, and Vigorously Represent the Interests of the United States in All Matters for Which the Department has Jurisdiction.

FY 2008 Total Budget Request by Strategic Goal Strategic Goal II - Strategic Objective 2.5



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 as outlined in the previous section. This Strategic Goal defines the two broad program areas:

- Criminal Enforcement
- Civil Enforcement

Historically, 35 percent of the Division's budget and expenditures can be attributed to its criminal program and 65 percent of the Division's budget and expenditures can be attributed to its civil program. The FY 2008 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, \$155,097,000 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 \$144,600,000 in fiscal year 2008), 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, so as to result in a final fiscal year 2008 appropriation from the general fund estimated at \$10,497,000.

XXX – Proposed New Language

Note: The FY 2008 President's Budget uses the FY 2007 President's Budget language as a base so all language is presented as new.

IV. Decision Unit Justification

A. Decision Unit: Antitrust

Antitrust Division
Fiscal Year 2008 Congressional Submission

Decision Unit Justification

Decision Unit: Antitrust - Total	Permanent Positions	FTE	Amount
2006 Enacted with Rescissions	880	851	\$144,035,561
2007 Estimate	880	851	\$145,361,000
Adjustments to Base	-	-	\$9,736,000
2008 Current Services	880	851	\$155,097,000
2008 Request	880	851	\$155,097,000
Total Change 2007-2008	-	-	\$9,736,000

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 E-Rate Program and DRAM (Dynamic Random Access Memory) 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 2006, the ICN held a conference in South Africa attended by nearly 300 representatives from almost 70 antitrust agencies throughout the world. A significant outcome of the conference was the issuance of a Merger Guidelines Workbook, designed to be a useful sourcebook for all of the world's competition agencies in analyzing the competition effects of mergers. The Division's Deputy Assistant Attorney General for International Enforcement chaired the Merger Working Group, responsible for the development of the workbook.

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		Estimate		Changes		Requested (Total)	
		FY 2006		FY 2006		FY 2007		Current Services Adjustments and FY 2008 Program Changes		FY 2008 Request	
Workload - Number of HSR Transactions Received		1,635-2,376		1,890		1,635-2,376		0		1,635-2,376	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Antitrust		851	\$144,088	763	\$143,949	851	\$145,361	0	\$9,736	851	\$155,097
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	FY 2006		FY 2006		FY 2007		Current Services Adjustments		FY 2008 Request	
Program Activity	1. Criminal	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		298	\$50,431	267	\$50,382	298	\$50,876	0	\$3,408	298	\$54,284
Performance Measure – Criminal	➤ Number of Active/Pending Preliminary Investigations	60-70		103		60-70		0		60-70	
	➤ Number of Active Grand Juries Domestic/ International	95-100/35-40		152/66		95-100/35-40		0		95-100/35-40	
	➤ Pleas/Cases Favorably Resolved	Not Projected		53		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		\$550		Not Projected		Not Projected		Not Projected	
Program Activity	2. Civil	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		553	\$93,657	496	\$93,567	553	\$94,485	0	\$6,328	553	\$100,813

		Final Target	Actual	Projected	Changes	Requested (Total)
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	FY 2006	FY 2006	FY 2007	Current Services Adjustments and FY 2008 Program Changes	FY 2008 Request
Performance Measure – Merger	➤ Number of HSR Transactions Reviewed	1,635-2,376	1,890	1,635-2,376	0	1,635-2,376
	➤ Number of HSR Preliminary Investigations Opened Domestic/International Aspects	82-105 / 32-42	73/23	82-105 / 32-42	0 / 0	82-105 / 32-42
	➤ Number of Non-HSR Preliminary Investigations Opened Domestic/International Aspects	31-42 / 9-12	23/3	31-42 / 9-12	0 / 0	31-42 / 9-12
	➤ Number of Bank Merger Applications	1,104-1,322	1,042	1,104-1,322	0	1,104-1,322
	➤ Pleas/Cases Favorably Resolved	8-14	15	8-14	0	8-14
	➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins (\$ in millions)	Not Projected	\$100,707	Not Projected	Not Projected	Not Projected
	➤ Dollar Volume of Commerce Affected in Relevant Markets for All Bank Mergers Wins (\$ in millions)	Not Projected	\$0	Not Projected	Not Projected	Not Projected
Performance Measure – Civil Non-Merger	➤ Number of Active Investigations - Domestic/ International Aspects	77-85 / 18-20	73/16	77-85 / 18-20	0 / 0	77-85 / 18-20
	➤ Number of Cases Filed Domestic/International Aspects	2-4 / 1-3	4/0	2-4 / 1-3	0	2-4 / 1-3
	➤ Pleas/Cases Favorably Resolved	0-5	7	0-5	0	0-5
	➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions)	Not Projected	\$125	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	13.3	17.4	14.6	1.0	15.6
Outcome – Criminal, Merger, Civil Non-Merger	Consumer Savings					
	➤ Total Criminal Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$55	Not Projected	Not Projected	Not Projected
	➤ Total Civil Merger Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$1,951	Not Projected	Not Projected	Not Projected
	➤ Total Civil Non-Merger Dollar Value of Savings to U.S. Consumers (\$ in millions)	Not Projected	\$1.3	Not Projected	Not Projected	Not Projected
Success Rates (% of Cases Favorably Resolved)	➤ Success Rate for Criminal Matters	90%	100%	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%	100%	80%	0	80%

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

FY2006 Explanation of Missed Targets:

Merger Performance Measure Targets Missed:

1. Number of HSR Preliminary Investigations Opened Domestic/International Aspects
2. Number of Non-HSR Preliminary Investigations Opened Domestic/International Aspects
3. Number of Bank Merger Applications

Explanation: These measures are significantly impacted by the state of the economy, merger activity and market conditions. Merger matters also require extensive, highly complex and time-consuming analysis, further complicating the accurate estimation of annual targets.

Non-Merger Performance Measure Targets Missed:

1. Number of Active Investigations - Domestic/ International Aspects
2. Number of Cases Filed - International Aspects

Explanation: Civil non-merger matters require extensive, highly complex and time-consuming analysis, which often result in multi-year investigations that do not lend themselves to the parameters of standardized performance measurement with annual estimated targets.

Dollars and FTE: HSR related performance measures for FY 2007 through FY 2008 projections are based on an analysis of FY 2001 through FY 2005 actual amounts. The projected performance measures were re-estimated in FY 2005 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 in FY 2004 [and other years] 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 were filed in FY 2004 or prior years 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

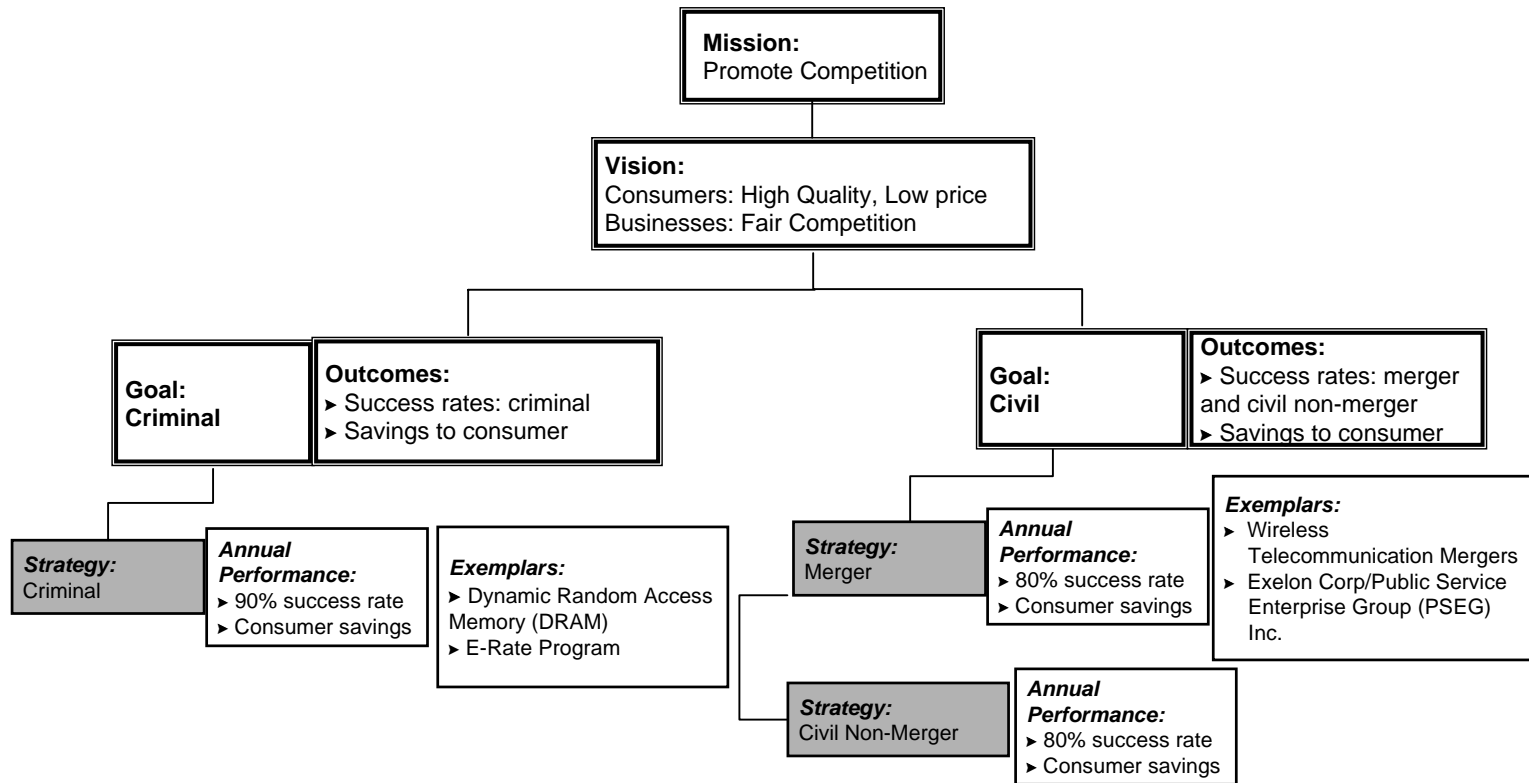
Performance Report and Performance Plan Targets		FY 2000	FY 2001	FY 2002	FY 2003	FY2004	FY 2005	FY 2006		FY 2007	FY 2008
TYPE/ Strategic Objective	PERFORMANCE/RESOURCES	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure – Criminal	➤ Number of Active/Pending Preliminary Investigations	82	82	120	144	121	131	60-70	103	60-70	60-70
	➤ Number of Active Grand Juries Domestic/ International	107/40	107/53	144/44	145/56	147/63	155/63	95-100/35-40	152/66	95-100/35-40	95-100/35-40
	➤ Pleas/Cases Favorably Resolved	53	48	37	42	44	44	Not Projected	53	Not Projected	Not Projected
	➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions)	\$3,901	\$2,082	\$450	\$915	\$1,162	\$3,307	Not Projected	\$550	Not Projected	Not Projected
Performance Measure – Merger	➤ Number of HSR Transactions Reviewed	4,926	2,376	1,526	990	1,458	2,121	1,635-2,376	1,890	1,635-2,376	1,635-2,376
	➤ Number of HSR Pls Opened Domestic/ International Aspects	137/45	105/42	73/26	65/22	71/14	83/28	82-105/32-42	73/23	82-105/32-42	82-10 /32-42
	➤ Number of Non-HSR Pls Opened Domestic/ International Aspects	41/6	42/16	27/10	27/6	17/12	23/5	31-42/9-12	23/3	31-42/9-12	31-42/9-12
	➤ Number of Bank Merger Applications	1,373	1,322	1,080	966	1,112	943	1,104-1,322	1042	1,104-1,322	1,104-1,322
	➤ Pleas/Cases Favorably Resolved	46	34	9	14	8*	4	8-14	15	8-14	8-14
	➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets for All Merger Wins (\$ in millions)	\$79,085	\$18,102	\$6,758	\$29,280	\$733	\$1,696	Not Projected	\$100,707	Not Projected	Not Projected
	➤ Dollar Volume of Commerce Affected in Relevant Markets for All Bank Mergers Wins (\$ in millions)	\$438	\$5,927	\$98	\$28	\$135	\$0	Not Projected	0	Not Projected	Not Projected
Performance Measure – Civil Non-Merger	➤ Number of Active Investigations Domestic/ International Aspects	81/19	89/26	82/22	81/16	92/14	80/21	77-85/18-20	73/16	77-85/18-20	77-85/18-20
	➤ Number of Cases Filed Domestic/ International Aspects	2/1	0/0	4/1	5/0	4/0	9/1	2-4/1-3	4/0	2-4/1-3	2-4/1-3
	➤ Pleas/Cases Favorably Resolved	1	5	8	8	4*	15	0-5	7	0-5	0-5
	➤ Dollar Volume of U.S. Commerce Affected in Relevant Markets Where Pleas/Cases Successfully Litigated (\$ in millions)	\$133	\$7,210	\$81	\$88,485	\$44,200	\$6,554	Not Projected	\$125	Not Projected	Not Projected

Performance Report and Performance Plan Targets		FY 2000	FY 2001	FY 2002	FY 2003	FY2004	FY 2005	FY 2006		FY 2007	FY 2008
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	13.0	16.9	18.6	13.3	17.4	14.6	15.6
Outcome – Criminal, Merger, Civil Non-Merger	Consumer Savings										
	➤ Total Criminal Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$390	\$260	\$45	\$91	\$115.7	\$330	Not Projected	\$55	Not Projected	Not Projected
	➤ Total Civil Merger Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$6,049	\$1,875	\$480	\$1,420	\$15	\$99	Not Projected	\$1,951	Not Projected	Not Projected
	➤ Total Civil Non-Merger Dollar Value of Savings to U.S. Consumers (\$ in millions)	\$0	\$490	\$1	\$888	\$0	\$65	Not Projected	\$1.3	Not Projected	Not Projected
	Success Rates (% of Cases Favorably Resolved)										
	➤ Success Rate for Criminal Matters	100%	94%	91%	97%	88%	96%	90%	100%	90%	90%
	➤ Number of Civil Merger "Successes"/Number of Merger Challenges and Resolutions During our Investigation	100%	100%	100%	93%	80%	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%	100%	80%	80%

* 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*.

4.

Antitrust Division, Department of Justice Performance Measurement Framework FY 2008



5. Performance, Resources, and Strategies

The Antitrust Decision Unit contributes to the Department's Strategic Goal II: 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 2.5: Enforce Federal Statutes, Uphold the Rule of Law, and Vigorously Represent the Interests of the United States in All Matters for Which the Department has Jurisdiction.

a. Performance Plan and Report for Outcomes

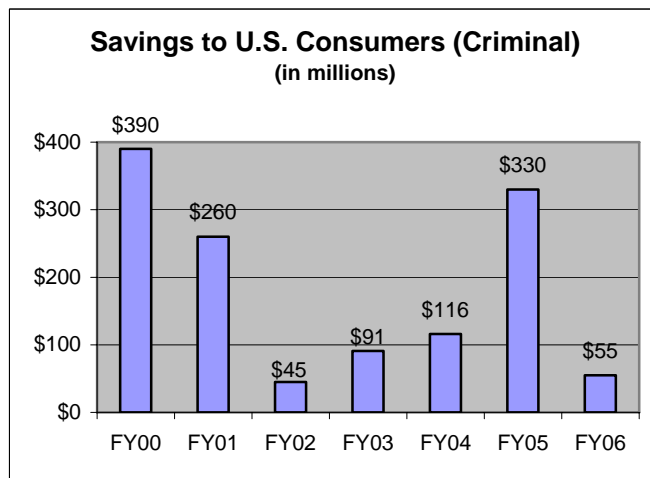
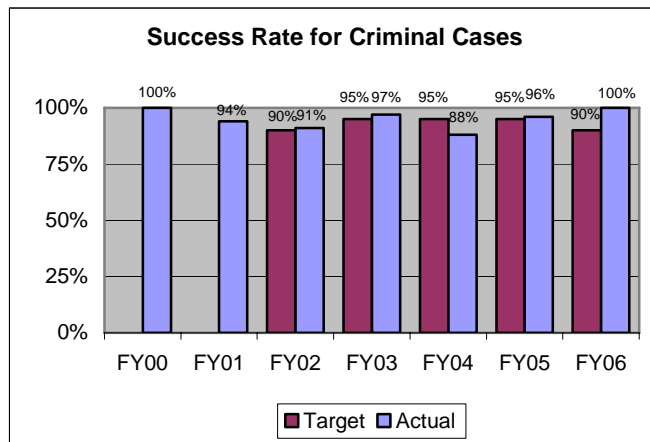
Prosecute International Price Fixing Cartels

As illustrated in the Performance and Resources Tables below, the performance outcome measures for this Decision Unit 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 2006 and successfully resolved 100 percent of criminal matters.

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.

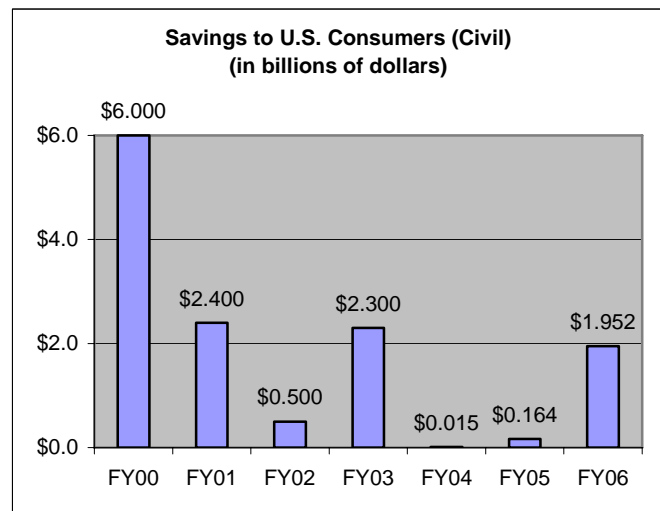
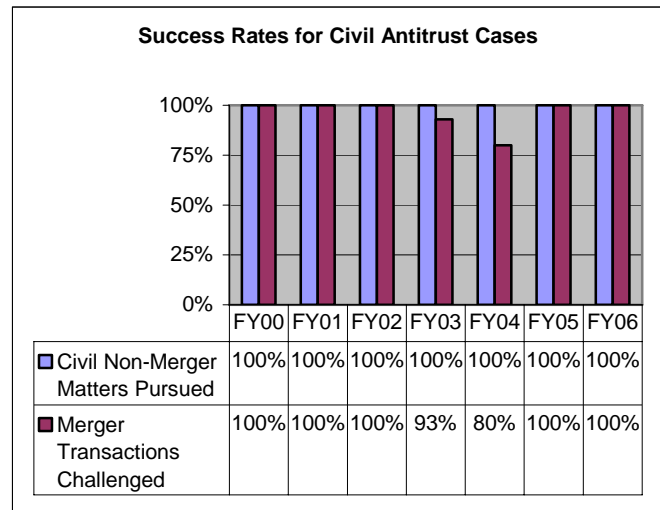


Civil Enforcement

As illustrated in the Performance and Resources Tables below, the performance outcome measures for this objective 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 2006, for a 100 percent success rate, and expects to meet or exceed its goals for FY 2007 and FY 2008.

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 2006 and expects to meet or exceed its goal for FY 2007 and FY 2008.

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 Division's Individual and Corporate Leniency Programs, revised in recent years for greater effectiveness, have proven critical in uncovering criminal antitrust violations. Increasingly, the Division is relying on formal international cooperation agreements or informal consultations with foreign antitrust authorities in pursuit of the companies and individuals involved, whether those companies come to the attention of the Division via the leniency programs, or through other channels. 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 *tied* product, or at least agree that he will not purchase that *tied* product from any other supplier. Whether addressing matters under Sections 1 or 2 of the Sherman Act or Section 3 of the Clayton Act, our Civil Non-Merger enforcement activities rely upon civil compulsory process to investigate the alleged violation.

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 (JMD) offered a proposal to the Management and Planning Staff (MPS) and the Office of the Inspector General (OIG) to perform an independent evaluation of the General Legal Activities (GLAs). The proposal recommended MPS perform initial background interviews in a manner consistent with OIG yellow book regulations. MPS would then provide their research to OIG for review and preparation of findings and recommendations. However, due to lack of resources, OIG is unable to add the GLA evaluation to their FY07 docket. As a result, JMD and the GLAs are currently exploring other options to meet this PART follow-up action.

- 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 is currently compiling a comprehensive list of leadership training courses, of which, managers will be required to select from and attend 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 Executive Office for United States Attorneys (EOUSA) and the other litigating Divisions 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. ATR participated in the Source Selection Evaluation Board for the system. Vendor demos were conducted and revised proposals were evaluated for vendors still in the procurement process. The board has completed its evaluation and sent recommendations to the selecting officials.

6. Exemplars - Civil

A. Merger - Wireless Telecommunication Mergers

Introduction and Background

The wireless telecommunications industry is a complex and technologically evolving industry that requires a substantial commitment of resources by the Antitrust Division to properly enforce antitrust law. The industry is quickly growing, with more than 219 million wireless subscribers in the United States, and many providers are upgrading their networks to provide new advanced services, such as wireless broadband. With mobile wireless service revenues in 2006 of more than \$118 billion in the United States, wireless communications are a significant component of the telecommunications industry and the U.S. economy.

The Division's investigations to date typically have focused on mobile wireless telecommunications services and, for certain mergers, mobile wireless broadband services, commonly known as third generation or "3G" advanced wireless services. Mobile wireless broadband services are defined as wireless technology services that support bandwidth-intensive services such as video conferencing, video streaming, downloading of music and video files, and Voice over Internet Protocol (VoIP) calling. Despite the existence of wireless service providers advertising "nationwide" service, recent wireless investigations have found that competition in mobile wireless telecommunications services primarily remains local and the Division is often required to evaluate hundreds of geographic overlaps among the merging parties. These geographic areas all have different characteristics, and the number and quality of services provided by participants can vary from one area to another. In addition to the Antitrust Division's review of proposed mergers, the Federal Communications Commission (FCC) also conducts its own review either concurrent with or following statutorily mandated analysis provided by the Antitrust Division.

When investigating the impact mergers will have on the various markets involved, the Division considers many issues including:

- Elimination of actual and potential competition between the merging companies;
- Impact on prices for consumers;
- Impact on quality and quantity of services available for consumers;
- Impact on incentives to improve wireless networks; and
- Impact on incentives to innovate or launch new services.

Although there are some common issues, each mobile wireless merger involves unique issues and the number of locations where consumers are likely to be impacted by the merger vary. This exemplar provides an overview of three mergers that the Division has recently investigated.

Cingular Wireless Corporation / AT&T Wireless Services

In February 2004, Cingular (a joint venture between SBC Communications and BellSouth Corp.) agreed to acquire AT&T Wireless in the largest all-cash transaction in U.S. history. Under the terms of the agreement, Cingular agreed to pay AT&T Wireless approximately \$41 billion. At the time of the announcement, Cingular and AT&T Wireless were the second and third-largest U.S. wireless telephone carriers as measured by revenues and subscribers.

Cingular and AT&T Wireless both operated networks that reach most areas in the U.S. The two providers overlapped in more than 350 geographic license areas, each of which had to be reviewed for potential anticompetitive effects of the merger. To conduct this analysis, the Division reviewed more than 14 million pages of documentation received electronically and more than 250 gigabytes of data from other mobile wireless providers to use for econometric studies. These documents and information required approximately one terabyte of disk storage space. At the investigation's conclusion, the Division determined the transaction would likely negatively impact thirteen geographic markets across the United States. Ten geographic markets related to mobile wireless telecommunications services and three geographic markets in which mobile wireless broadband services were affected. As a result, the Division reached a settlement with Cingular to divest assets in thirteen identified markets before consummating the merger.

The combined firm became the largest wireless carrier in the United States, with more than 46 million customers and \$32 billion in revenue.

Sprint Corporation / Nextel Communications Corporation

Sprint, the third-largest provider of wireless services in the country by number of subscribers, had approximately 23 million subscribers at the time of the announced proposed merger with Nextel in December 2004. Nextel, the fifth-largest provider, had approximately 15 million subscribers. The two companies' networks overlapped in more than 200 areas requiring the Division to evaluate each separately for potential competitive effects.

The parties produced more than 6.2 million pages in electronic form, and in addition 80-90 gigabytes of data was received from other mobile wireless carriers. The Division focused its investigation on mobile wireless telecommunications services that Sprint and Nextel currently offer, in addition to emerging advanced wireless broadband technologies where the companies were potential competitors. The acquisition of Nextel by Sprint also required significant resources as it raised substantial complex issues and the importance of the industry meant that a thorough review was warranted to protect consumers. The Division ultimately concluded that the proposed merger would not harm customers and thus did not require divestitures or other remedies.

The creation of the new company, Sprint Nextel Corporation, was completed in August 2005, and with more than 44 million mobile phone subscribers, it became the third-largest wireless provider in the country, behind Cingular Wireless and Verizon Wireless.

ALLTEL Corporation / Western Wireless Corporation

ALLTEL's acquisition of Western Wireless was smaller in terms of the dollar value of the merger as well as the extent of overlaps between the merging parties; however, it was significant in its impact on customers in certain rural areas. Customers who live in rural areas often have fewer choices for mobile wireless telecommunications services.

ALLTEL, headquartered in Little Rock, Arkansas, was, at the time of the announcement of the proposed merger in January 2005, the sixth-largest provider of mobile wireless telecommunications services in the U.S. by number of subscribers, serving approximately 8.8 million customers. Western Wireless, with headquarters in Bellevue, Washington, was the ninth largest provider of mobile wireless voice and data services, serving approximately 1.4 million customers. The merging companies overlapped in approximately 25 rural areas.

In the course of its investigation, the Division evaluated the extent of the overlap and the requirements for providing wireless services in rural areas to gain an understanding of the likely impact of the merger. The Division evaluated the firms that held spectrum in these areas, the extent to which they were built-out, as well as the likelihood that they would extend their networks in these rural markets. Because of the expertise that the Division had gained in previous wireless mergers, the staff was able to identify areas likely to be impacted by the merger and to negotiate a settlement with the merging parties expeditiously. The investigation did not, therefore, require the extensive document and data collection that characterized previous merger investigations, thus reducing the burden on the merging parties and helping to conserve Division resources.

The Division's investigation concluded that there were sixteen geographic markets in three states – Arkansas, Kansas, and Nebraska – where the proposed merger would result in higher prices, lower quality, and diminished investment in network improvements for consumers of mobile wireless telecommunications services. The merging parties agreed to divest assets in rural areas of the three states to remedy the harm that was likely to result from this merger.

ALLTEL Corporation / Midwest Wireless Holdings LLC

Like ALLTEL's acquisition of Western Wireless, its acquisition of Midwest Wireless had significant impact in certain rural areas in Minnesota. ALLTEL, at the time of the announcement of the proposed acquisition in November 2005, had become the fifth-largest mobile wireless telecommunications services provider in the United States by subscribers with approximately 11 million subscribers. Midwest Wireless, headquartered in Mankato, Minnesota, was a smaller provider serving approximately 440,000 subscribers in Minnesota, Iowa, and Wisconsin. The merging firms had overlaps that raised competitive concerns in four rural licensing areas in Minnesota.

Because of the Division's recent experience in rural markets with ALLTEL's last transaction, the Division quickly identified the geographic areas likely to experience a loss of competition as a result of the merger. The Division issued requests for additional information to ALLTEL and Midwest Wireless focused on those areas and without extensive additional document and data collection, was able to negotiate a divestiture settlement to resolve concerns in the identified areas.

The settlement resulted in divestitures of ALLTEL's mobile wireless telecommunications services business, including wireless spectrum and customers in 28 Minnesota counties where ALLTEL and Midwest Wireless were each other's most significant competitors. The State of Minnesota joined the Department's lawsuit and settlement.

Conclusion

The purpose of the Division's review and, if necessary, subsequent settlement with merging providers was to ensure consumers of mobile wireless telecommunications services would continue to benefit from competition throughout the U.S. These merger reviews help ensure that mobile wireless customers will continue to enjoy healthy competition for their wireless telephone services, helping to minimize the risk of higher prices, lower quality service, and fewer choices for traditional mobile wireless services and the newer broadband mobile wireless services. To achieve that goal, the Division required divestitures only where necessary to preclude harm to competition, and allowed the mergers to go forward so consumers could benefit from any efficiency resulting from these transactions.

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 create the nation's largest electric utility, Exelon Electric & Gas ("EEG"), which would serve 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 merger, EEG would own 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 must reach agreements on selling the plants within 150 days of closing the merger. In the end, 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 ensure that customers will continue to benefit from competitive markets for electricity.

7. Exemplars – Criminal

A. Dynamic Random Access Memory (DRAM)

One of the most important sectors of the American economy is the high-technology market. This area is becoming increasingly more prevalent and complex. Dynamic random access memory (DRAM) is a widely used technology within the high-tech market and the Division's investigation of this market represents its commitment to enforcement of antitrust laws in all areas of the U.S. economy.

The Antitrust Division is actively investigating an international conspiracy to fix prices in the DRAM market. DRAM is the most commonly used semiconductor memory product, providing high-speed storage and retrieval of electronic information for a wide variety of computer, telecommunication, and consumer electronic products. DRAM is used in personal computers, laptops, workstations, servers, printers, hard disk drives, personal digital assistants, modems, mobile phones, digital cameras, video recorders and televisions, game consoles, and MP3 digital music players. There were approximately \$25.5 billion in DRAM sales in the United States in calendar year 2005.

In September 2004 Infineon Technologies agreed to pay a \$160 million criminal fine, in April 2005 Hynix Semiconductor agreed to pay a \$185 million criminal fine, and in October 2005 Samsung Electronics Company and its U.S. subsidiary, Samsung Semiconductor Inc., agreed to pay a \$300 million fine. These three fines represent the second, fourth and fifth largest Sherman Act fines ever imposed against corporate defendants. In January 2006, Elpida Memory Inc. agreed to plead guilty and pay an \$84 million fine. Fines totalling over \$732 million have resulted from the Division's DRAM investigation, representing the second largest amount of fines ever imposed in a U.S. criminal antitrust investigation from a single price-fixing conspiracy.

In addition to the charges against the four companies, 18 executives have been charged individually in the investigation and courts have imposed a total of 2,460 days of prison time for 15 of those individuals.

The Investigation

The Division's investigation is ongoing and has thus far revealed that some of the largest companies in the high-tech industry including Dell Inc., International Business Machines Corp. (IBM), Apple Computer Inc., Gateway Inc., Hewlett-Packard Co. and Compaq Computer Corp., all original equipment manufacturers (OEMs) of personal computers, were affected by the conspiracy.

As stated in the Division's charging documents, Infineon Technologies AG, Hynix Semiconductor, Inc., Samsung Electronics Company Ltd., and Elpida Memory Inc., along with their co-conspirators agreed to suppress and eliminate competition by fixing the prices of DRAM to be sold to certain OEMs from April 1, 1999 until June 15, 2002. In addition to the company charges, four Infineon executives, five Hynix Semiconductor Inc executives, seven Samsung Electronics Company Ltd. Executives and one Elpida executive were charged with joining and participating in the conspiracy at various periods of time during the conspiracy period. The conduct engaged in by the conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). Elpida Memory Inc. was also charged with conspiring with an unnamed DRAM manufacturer to rig a bid for a lot sold to Sun Microsystems Inc. in March 2002.

Infineon, Hynix, Samsung, and Elpida were charged with carrying out the price-fixing conspiracy by:

- Participation in meetings, conversations, and communications in the United States and elsewhere to discuss the prices of DRAM to be sold to certain OEMs;
- Agreement, during those meetings, conversations, and communications, to charge prices of DRAM at certain levels to be sold to certain OEMs;
- Issuing price quotations in accordance with the agreements reached; and
- Exchanging information on sales of DRAM to certain OEM customers, for the purpose of monitoring and enforcing adherence to the agreed-upon prices.

Elpida was also charged with carrying out the bid-rigging conspiracy by:

- Participating in meetings, conversation, and communications in the United States and elsewhere to discuss allocating (*i.e.*, dividing up) a bid offered by Sun among themselves;
- Agreeing, during those meetings, conversations, and communications, to allocate a bid offered by Sun;
- Allocating, in accordance with the agreements reached, a bid offered by Sun among themselves, denying Sun a competitive price;
- Participating in meetings, conversations, and communications to discuss the submission of prospective bids for a bid offered by Sun to purchase one lot of a particular DRAM product;
- Agreeing, during those meetings, conversations, and communications, to submit complementary bids to ensure the success of their agreement; and
- Submitting complementary bids for one lot of a particular DRAM product, denying Sun a competitive price.

Results

In December 2003, Alfred P. Censullo, an executive for Micron, the largest DRAM manufacturer in North America, agreed to plead guilty to obstructing the grand jury investigation of a suspected conspiracy to fix the price of DRAM products sold in the United States. As Micron's regional sales manager for upstate New York, Censullo was responsible for Micron's DRAM sales to customers in his region, including the server division of IBM. Mr. Censullo was sentenced in October 2004 to pay a \$6,200 criminal fine and serve 6 months of home confinement.

Infineon Technologies AG, a German manufacturer of DRAM pled guilty in October 2004 and was sentenced to pay a \$160 million fine for participating in the international conspiracy. Under the plea agreement, Infineon agreed to cooperate with the government in its ongoing investigation of other DRAM producers. In addition, four executives of Infineon pled guilty in December 2004 to participating in the conspiracy and were sentenced to pay fines of \$250,000 each and serve prison terms ranging from four to six months.

In April 2005 Hynix Semiconductor Inc. and in October 2005 Samsung Electronics Company Ltd., both Korean manufacturers of DRAM, agreed to plead guilty and pay fines of \$185 million and \$300 million, respectively, for their participation in the conspiracy to fix prices in the international DRAM market. Samsung Semiconductor Inc., the U.S. subsidiary of Samsung Electronics, pled guilty and jointly agreed to pay the Samsung fine. Hynix and Samsung also agreed to cooperate with the government in its investigation of other DRAM manufacturers. In addition, four Hynix executives and five Samsung executives pled guilty to participating in the DRAM conspiracy. The Hynix and Samsung executives were subsequently sentenced to pay fines of \$250,000 each and serve prison terms ranging from five to eight months. One executive has agreed to serve ten months, the longest jail sentence ever agreed to by a foreign national in an international case. In October 2006, a federal grand jury in San Francisco returned a single-count indictment against two additional Samsung executives and one additional Hynix executive.

Elpida Memory Inc., a Japanese manufacturer of DRAM pled guilty in January 2006 and was sentenced to pay an \$84 million fine for participating in the conspiracy to fix prices in the international DRAM market. Under the plea agreement, Elpida agreed to cooperate with the government in its ongoing investigation of other DRAM producers. In addition, an Elpida executive agreed in November 2006 to plead guilty, serve a seven-month prison term and pay a \$250,000 fine for his role in the conspiracy.

Conclusion

This investigation is an excellent example of the Division's top priority of prosecuting criminal cartels. The Division is committed to pursuing illegal price-fixing cartels, regardless of whether they are at home or abroad, that harm American consumers. The Infineon case sends the message that high-tech price-fixing cartels will not be tolerated.

The Division's investigation into DRAM is ongoing and the cooperation of Infineon, Hynix, Samsung and Elpida will provide valuable assistance as the investigation progresses. The Antitrust Division's San Francisco Field Office and the Federal Bureau of Investigation's (FBI) San Francisco Division are conducting the investigation.

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.

The 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. In addition, one of the corporate defendants pled guilty in January 2006 to the charges in the indictment. Trial for the remaining defendants, expected to last approximately 2 months, is scheduled to begin April 2007, in San Francisco.

The Division has also brought several other cases concerning the same types of abuses as in the VNCI case. 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.

A federal grand jury in McAllen, Texas, returned a nine-count indictment in December 2006 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 stem from fraudulent applications for payment submitted on behalf of ATE Telecom Solutions Inc. to the FCC's USAC.

In all, 14 individuals and 12 companies have been charged as part of the Division's investigation. Six companies and three individuals have either pleaded guilty, agreed to plead guilty, or have entered civil settlements. The defendants have agreed to pay criminal fines and restitution totaling more than \$40 million. Two of the individuals have each been sentenced to serve six 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 tolerated.

V. Exhibits

A: Organizational Chart

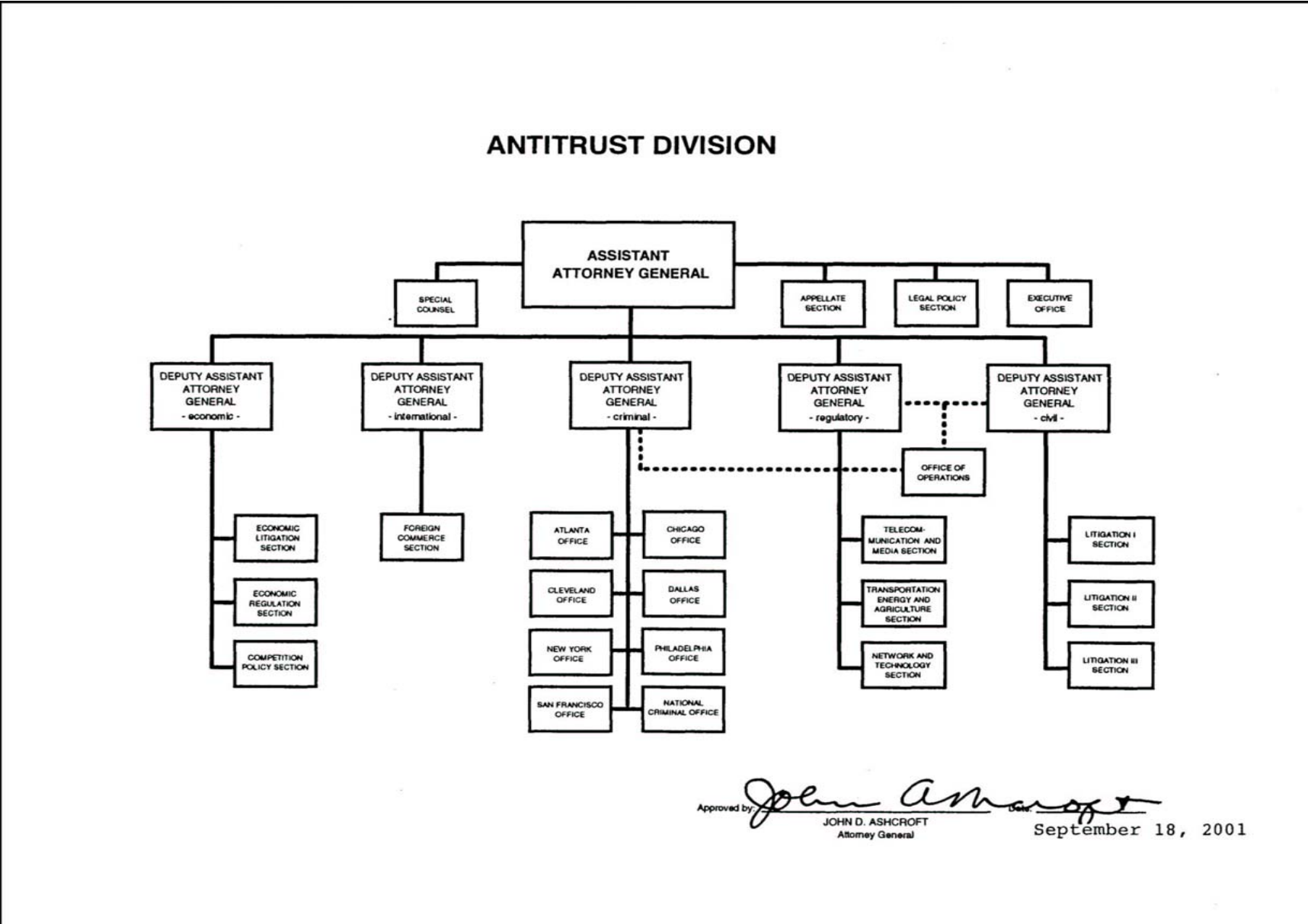


Exhibit A - Organizational Chart

B: Summary of Requirements

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

	FY08 Pres. Budget		
	Perm. Pos.	FTE	Amount
2006 Appropriation Enacted (with Rescissions, direct only)	880	851	\$144,036
2007 President's Budget (information only)	880	851	\$147,742
2007 Continuing Resolution Level (as reflected in the 2008 President's Budget, information only)	880	851	\$145,915
2007 Estimate (with Rescissions)	880	851	\$145,361
Adjustments to Base			
Increases:			
2008 pay raise (3.0%)			\$2,017
2007 pay raise annualization (2.2%)			\$651
Change in Compensable Days			\$681
Thrift Savings Plan			\$171
Health Insurance Premiums			\$175
Employees Compensation Fund			\$2
GSA Rent			\$2,375
Lease Expirations			\$3,600
Security Investigations			\$24
DHS Security Charges			\$40
Subtotal Increases			\$9,736
Total Adjustments to Base			\$9,736
2008 Current Services	880	851	\$155,097
2007 Total Request	880	851	\$155,097
2007 - 2008 Total Change	....	....	\$9,736

Estimates by budget activity	2006 Appropriation Enacted w/Rescissions and Supplementals			2007 Estimate			2008 Adjustments to Base			2008 Current Services			2008 Increases			2008 Offsets			2008 Request			2007-2008 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	\$144,036	880	851	\$145,361			\$9,736	880	851	\$155,097	....	....	\$0	....	....	\$0	880	851	\$155,097	....	....	\$9,736
Total	880	851	\$144,036	880	851	\$145,361	....	....	\$9,736	880	851	\$155,097	....	....	....	....	....	....	880	851	\$155,097	....	....	\$9,736
Total Comp. FTE		851			851			....		851			....		....		....		851			....		....

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	2006 Appropriation Enacted w/Rescissions and Supplementals		2007 Estimate		2008 Current Services		2008 Increases/Offsets		2008 Request		2007-2008 Total Change	
	Amount		Amount		Amount		Amount		Amount		Amount	
	FTE	\$000s	FTE	\$000s	FTE	\$000s	FTE	\$000s	FTE	\$000s	FTE	\$000s
Goal 2: Enforce Federal Laws and Represent the Rights and Interests of the American People												
2.5 Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction.												
Antitrust Division - Criminal	298	\$50,413	298	\$50,876	298	\$54,284	-	-	298	\$54,284	-	\$3,408
Antitrust Division - Civil	553	\$93,623	553	\$94,485	553	\$100,813	-	-	553	\$100,813	-	\$6,328
GRAND TOTAL	851	\$144,036	851	\$145,361	851	\$155,097	-	-	851	\$155,097	-	\$9,736

E. Justification for Base Adjustments

Justification for Base Adjustments

Antitrust Division ¹

(Dollars in Thousands)

Increases

2008 pay raise. This request provides for a proposed 3.0 percent pay raise to be effective in January of 2008. (This percentage is likely to change as the budget formulation process progresses.) This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$2,017, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$1,674 for pay and \$343 for benefits).

Annualization of 2007 pay raise. This pay annualization represents first quarter amounts (October through December) of the 2007 pay increase of 2.2 percent. The amount requested \$651, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$541 for pay and \$110 for benefits).

Changes in Compensable Days: The increased cost of two more compensable days in FY 2008 compared to FY 2007 is calculated by dividing the FY 2007 estimated personnel compensation \$74,797 and applicable benefits \$13,729 by 260 compensable days. The cost increase of two compensable days is \$681.

Thrift Savings Plan (TSP): The cost of agency contributions to the Thrift Savings Plan will also rise as FERS participation increases. The contribution rate is 4.3 percent and the increase of the TSP is \$171.

Health Insurance: Effective January 2007, this component's contribution to Federal employees' health insurance premiums increased by 4.9 percent. Applied against the 2007 estimate of \$3,601, the additional amount required is \$175.

Employees Compensation Fund: The \$2 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.

General Services Administration (GSA) Rent. GSA will continue to charge rental rates that it contends approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$2,375 is required to meet our commitment to GSA.

Moves (Lease Expirations). GSA requires all agencies to pay relocation costs associated with lease expirations. This request provides for the costs associated with new office relocations caused by the expiration of leases in FY 2008. Funding of \$3,600 is required for this account.

Security Investigations: The \$24 increase reflects payments to the Office of Personnel Management for security reinvestigations for employees requiring security clearances.

DHS Security Charges. The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$40 is required to meet our commitment to DHS. Cost estimates were developed by DHS.

¹ ATB's must be recalculated following final FY 2007 action.

F: Crosswalk of 2006 Availability

Crosswalk of 2006 Availability
 Antitrust Division
 Salaries and Expenses
 (Dollars in Thousands)

Decision Unit	FY 2006 Enacted Without Rescission			Rescissions/ Credit Warrants			Reprogrammings/ Transfers			Unobligated Balances Carried Forward/ Recoveries			2006 Availability**		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Antitrust Division	880	851	\$144,451			-\$99,452	....	....		....	....	\$108,353	880	851	\$153,352
TOTAL	880	851	\$144,451	....	....	-\$99,452	....	....	\$0	....	....	\$108,353	880	851	\$153,352
Total Compensable FTE		851			....			....			....			851	

Enacted Rescissions: Funds rescinded as required by the Department of Justice Appropriations Act, 2006 (P.L. 109-108) and the Department of Defense Appropriations Act, 2006 (P.L. 109-148).

Unobligated Balances: Funds were carried over from FY 2005 from the 15X0319 account. The Antitrust Division brought forward and recovered \$108,353 from funds provided in FY 2005 for salaries and expenses. Amounts shown in this column include \$98,500 in FY 2005 HSR fee offsetting collections subsequently adjusted by credit warrant.

** Only \$147,150 of the \$153,352 indicated in the FY 2006 Availability column was made available by the Division in FY 2006.

G: Crosswalk of 2007 Availability

Crosswalk of 2007 Availability

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Decision Unit	FY 2007 Estimate			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	\$145,361	....	....	....	....	....	....	....	....	\$9,402	880	851	\$154,763
TOTAL	880	851	\$145,361	....	....	....	....	....	....	....	....	\$9,402	880	851	\$154,763
Total Compensable FTE		851			....			....			....			851	

Unobligated Balances: Funds were carried over from FY 2006 from the 15X0319 account. The Division brought forward and recovered \$9,402 from funds provided in FY 2006 for salaries and expenses.

H: Summary of Reimbursable Resources

Summary of Reimbursable Resources

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Collections by Source	2006 Enacted			2007 Planned			2008 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Federal Trade Commission	\$128	....	....	\$235	....	....	....	....	....	(\$235)
Environment and Natural Resource Division	\$165	....	....	\$170	....	....	\$175	....	....	\$5
Justice Management Division/CIO	\$87	....	....	\$136	....	....	\$136	....	....	\$0
Office of Attorney Recruitment and Management	\$9	....	....	....	....	....	....	....	....	\$0
Regimes Crime Liaison	\$81	....	....	\$114	....	....	\$95	....	....	(\$19)
Council of Economic Advisors	\$66	....	....	....	....	....	....	....	....	\$0
Budgetary Resources:	\$536	....	....	\$655	....	....	\$406	....	....	(\$249)

Obligations by Program	2006 Enacted			2007 Planned			2008 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Criminal	\$81	....	....	\$114	....	....	\$95	....	....	(\$19)
Civil	\$455	....	....	\$541	....	....	\$311	....	....	(\$230)
Total Obligations:	\$536	....	....	\$655	....	....	\$406	....	....	(\$249)

I: Detail of Permanent Positions by Category

Detail of Permanent Positions by Category
 Antitrust Division
 Salaries and Expenses

Category	2006 Enacted w/Rescissions and Supps	2007 Estimate	2008 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.)	645	645	645
U.S. Field	235	235	235
Total	880	880	880

K: Summary of Requirements by Grade

Summary of Requirements by Grade

Antitrust Division
Salaries and Expenses

Grades and Salary Ranges	2006 Enacted With Rescissions		2007 Estimate		2008 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
SES, \$109,808 - \$152,000	29	....	29	....	29	....	....	....
GS-15, \$107,521 - 139,774	326	....	326	....	326	....	....	....
GS-14, \$91,407 - 118,828	67	....	67	....	67	....	....	....
GS-13, \$77,353 - 100,554	42	....	42	....	42	....	....	....
GS-12, \$65,048 - 84,559	33	....	33	....	33	....	....	....
GS-11, \$54,272 - 70,558	60	....	60	....	60	....	....	....
GS-10, \$49,397 - 64,213	3	....	3	....	3	....	....	....
GS-9, \$44,856 - 58,318	67	....	67	....	67	....	....	....
GS-8, \$40,612 - 52,794	29	....	29	....	29	....	....	....
GS-7, \$36,671 - 47,669	183	....	183	....	183	....	....	....
GS-6, \$33,000 - 42,898	16	....	16	....	16	....	....	....
GS-5, \$29,604 - 38,487	16	....	16	....	16	....	....	....
GS-4, \$26,460 - 34,402	6	....	6	....	6	....	....	....
GS-3, \$23,571 - 30,645	2	....	2	....	2	....	....	....
GS-2, \$21,602 - 27,182	1	....	1	....	1	....	....	....
Total, appropriated positions	880	....	880	....	880	....	....	....
Average SES Salary	....	\$151,024	....	\$159,213	....	\$159,213	....	....
Average GS Salary	....	\$87,174	....	\$93,413	....	\$96,897	....	....
Average GS Grade	....	12.00	....	12.30	....	12.50	....	....

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class

Antitrust Division
Salaries and Expenses
(Dollars in Thousands)

Object Classes	2006 Actuals		2007 Estimate		2008 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Total FTE & personnel compensation	496	\$57,666	585	\$60,437	585	\$62,351	....	\$1,914
11.3 Other than full-time permanent	267	\$11,693	266	\$12,276	266	\$13,146	....	\$870
11.5 Total, Other personnel compensation	....	\$439	....	\$1,376	....	\$1,376	....	....
<i>Overtime</i>	....	....	....	\$1,376	....	\$1,376	....	....
11.8 Special personal services payments	....	\$73	....	\$76	....	\$76	....	....
Total 11.0	763	\$69,871	851	\$74,165	851	\$76,949	....	\$2,784
Other Object Classes:								
12.0 Personnel benefits		\$17,112		\$17,310		\$18,223		\$913
13.0 Benefits to former personnel		\$24		\$26		\$26		....
21.0 Travel and transportation of persons		\$2,257		\$2,200		\$2,200		....
22.0 Transportation of things		\$638		\$639		\$639		....
23.1 GSA rent		\$20,374		\$22,104		\$24,479		\$2,375
23.2 Rental payments to others		\$572		\$688		\$688		....
23.3 Comm., util., & other misc. charges		\$1,662		\$1,675		\$1,675		....
24.0 Printing and reproduction		\$187		\$190		\$190		....
25.1 Advisory and assistance services		\$1,030		\$1,050		\$1,050		....
25.2 Other services		\$18,382		\$15,080		\$15,080		....
25.3 Purchases of goods & services from Government acct		\$1,333		\$1,211		\$1,275		\$64
25.4 Lease expirations & Operation of GOCO's (private sector)		\$4,980		\$4,930		\$8,530		\$3,600
25.6 Medical Care		\$52		\$53		\$53		....
25.7 Operation and Maintenance of Equipment		\$639		\$652		\$652		....
26.0 Supplies and materials		\$1,342		\$1,368		\$1,368		....
31.0 Equipment		\$3,494		\$2,020		\$2,020		....
Total obligations		\$143,949		\$145,361		\$155,097		\$9,736
Unobligated balance, start of year (-)		(\$8,780)		(\$9,402)		(\$9,402)		....
Unobligated balance, end of year (+)		\$9,402		\$9,402		\$9,402		....
Recoveries of prior year obligations (-)		(\$535)		\$0		\$0		....
Total requirements		\$144,036		\$145,361		\$155,097		
Relation of Obligation to Outlays:								
Total obligations		\$143,949		\$145,361		\$155,097		
Obligated balance, start of year (+)		\$16,013		\$23,935		\$32,657		
Obligated balance, end of year (-)		(\$23,935)		(\$32,657)		(\$41,964)		
Recoveries of prior year obligations (-)		(\$535)		\$0		\$0		
Outlays		\$135,492		\$136,639		\$145,790		