

Unclassified

DAF/COMP/AR(2016)22

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

24-Jun-2016

English - Or. English

Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

DAF/COMP/AR(2016)22  
Unclassified

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED STATES**

--2015--

**15-17 June 2016**

*This report is submitted by the United States to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held 15 – 17 June.*

**JT03398647**

Complete document available on OLIS in its original format

*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

English - Or. English

**TABLE OF CONTENTS**

1. Introduction .....3  
1.1 Senior Leadership Update .....3  
2. Changes in law or policies .....3  
2.1 Changes in Antitrust Rules, Policies, or Guidelines .....3  
3. Enforcement of antitrust law and policies: actions against anticompetitive practices .....4  
3.1 Staffing and Enforcement Statistics .....4  
3.2 Antitrust Cases in the Courts .....5  
3.3 Statistics on Private and Government Cases Filed .....8  
3.4 Significant Enforcement Actions .....8  
3.5 FTC Advisory Opinions .....12  
3.6 Business Reviews Conducted by the DOJ .....13  
4. Enforcement of antitrust laws and policies; mergers and concentrations .....13  
4.1 Enforcement of Pre-merger Notification Rules .....13  
4.2 Select Significant Merger Matters .....14  
5. International antitrust cooperation and outreach .....21  
5.1 International Antitrust Cooperation Developments .....21  
5.2 Outreach .....22  
6. Regulatory and Trade Policy Matters .....23  
6.1 Regulatory Policies .....23  
6.2 DOJ and FTC Trade Policy Activities .....25  
7. New Studies Related to Antitrust Policy .....26  
7.1 Joint DOJ/FTC Conferences and Reports .....26  
7.2 FTC Conferences, Reports, and Economic Working Papers .....26  
7.3 DOJ Economic Working Papers .....27  
APPENDICES .....28

## 1. Introduction

1. This report describes federal antitrust developments in the United States for the period of October 1, 2014 through September 30, 2015 (“FY 2015”).<sup>1</sup> It summarizes the competition enforcement and policy activities of both the Antitrust Division (“Division”) of the U.S. Department of Justice (“Department” or “DOJ”) and the Federal Trade Commission (“Commission” or “FTC”). The two agencies are collectively referred to throughout this report as the “Antitrust Agencies” or “Agencies.” For additional information on the Agencies’ activities in FY 2015, see the FTC’s Annual Highlights 2015, *available at* <https://www.ftc.gov/reports/annual-highlights-2015>, and the DOJ’s Spring 2016 Division Update, *available at* <https://www.justice.gov/atr/division-operations/division-update-2016>.

### 1.1 Senior Leadership Update

2. On August 24, 2015, Joshua D. Wright, who served as a Commissioner of the FTC since January 2013, resigned. On November 24, 2015, FTC Chairwoman Edith Ramirez appointed Ginger Jin as the Director of the Bureau of Economics.

3. Principal Deputy Assistant Attorney General Renata B. Hesse assumed leadership of the Antitrust Division on April 15, 2016, succeeding Bill Baer, who was named the Acting Associate Attorney General of the DOJ. On August 23, 2015, Sonia K. Pfaffenroth became Deputy Assistant Attorney General (DAAG) for General Operations. Juan Arteaga became Deputy Assistant Attorney General (DAAG) for Civil Enforcement on May 29, 2016. Eric Mahr became the Director of Litigation on September 8, 2015.

## 2. Changes in law or policies

### 2.1 Changes in Antitrust Rules, Policies, or Guidelines

4. On August 13, 2015, the FTC issued a Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act. The statement explains that, consistent with FTC precedent, the Commission will adhere to the following principles when deciding whether to use its standalone authority under Section 5 of the FTC Act to challenge unfair methods of competition: the Commission will be guided by the public policy underlying the antitrust laws, namely, the promotion of consumer welfare; the act or practice will be evaluated under a framework similar to the rule of reason, that is, an act or practice challenged by the Commission must cause, or be likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications; and the Commission is less likely to challenge an act or practice as an unfair method of competition on a standalone basis if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm arising from the act or practice. *See* <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-issues-statement-principles-regarding-enforcement-ftc-act>.

5. On May 5, 2015, the FTC adopted revisions to its Rules of Practice to enable parties in adjudicative proceedings before the Commission to file confidential documents electronically. The revisions were published in the Federal Register on May 6, 2015 and took effect on May 12, 2015. *See* <https://www.ftc.gov/news-events/press-releases/2015/05/ftcs-electronic-filing-system-will-accept-confidential-documents>.

6. On March 13, 2015, the FTC adopted revisions to the agency’s Rules of Practice. Changes to Part 3 return to the approach of an earlier rule that automatically suspends administrative litigation, upon

---

<sup>1</sup> In some sections of the Report, e.g., the following section on Senior Leadership Update, more recent information is provided.

respondents' request, after the FTC's request for a preliminary injunction has been denied. With this revision, the Commission reiterates its commitment – set out in a 1995 Policy Statement – to consider the specific circumstances of each case when deciding whether it would be in the public interest to continue pursuing administrative litigation. Changes to Part 2 – which governs the FTC's investigatory procedures – add the director and deputy director of the Office of Policy Planning to the list of FTC officials who have the authority to modify the terms of compliance with compulsory process because of that Office's frequent role in conducting studies that involve the use of process. The Commission is also extending by 10 days its deadline for disposing of petitions to limit or quash compulsory process. Changes to Part 4 – which addresses, among other things, the public's accessibility to public records – reflect the FTC's updated procedures for responding to public record requests, now that many of its documents are available on the agency website. The changes also implement technical revisions to the rule governing Freedom of Information Act requests and to the FTC's Privacy Act rule. See <https://www.ftc.gov/news-events/press-releases/2015/03/commission-approves-revisions-its-rules-practice>.

7. On January 15, 2015, the FTC, after consultation with the Division, revised the thresholds that determine whether companies are required to notify federal antitrust authorities of a transaction under Section 7A of the Clayton Act. The FTC also revised the thresholds that trigger prohibitions on certain interlocking directorates under Section 8 of the Clayton Act. The Hart-Scott-Rodino Antitrust Improvements Act, Section 7A of the Clayton Act, requires companies proposing a merger or acquisition to notify federal authorities if the size of the parties and the value of a transaction exceed certain thresholds, absent an applicable exemption. The FTC revises the thresholds set forth in the HSR Act annually, based on the change in gross national product. For 2015, the size-of-transaction threshold for reporting proposed mergers and acquisitions increased from \$75.9 million to \$76.3 million. Section 8 of the Clayton Act requires the FTC to revise the thresholds that trigger a prohibition on certain interlocking directorates. The thresholds are adjusted annually, based on the change in gross national product. The new 2015 thresholds are \$31,084,000 for Section 8(a)(1) and \$3,108,400 for Section 8(a)(2)(A). See <https://www.ftc.gov/news-events/press-releases/2015/01/ftc-announces-new-thresholds-clayton-act-antitrust-reviews-2015>.

### **3. Enforcement of antitrust law and policies: actions against anticompetitive practices**

#### **3.1 Staffing and Enforcement Statistics**

##### **3.1.1 FTC**

8. During FY 2015, the FTC employed approximately 502 staff and spent approximately \$119.6 million in furtherance of its Maintaining Competition mission.

9. During FY 2015, 1,754 proposed mergers and acquisitions were reported for review under the HSR Act, a 8.4 percent increase over FY 2014. The Commission staff issued requests for additional information (“second requests”) in 20 transactions. The Commission challenged 22 mergers, 17 of which were settled with consent orders, two in which the transaction was abandoned or restructured as a result of antitrust concerns raised during the investigation, and three in which the Commission initiated administrative litigation. In the cases in which the Commission issued an administrative complaint, the Commission also voted to seek a preliminary injunction in federal district court to permanently enjoin the acquisition pending resolution of the Commission's administrative litigation.

10. During FY 2015, the FTC staff opened 25 non-merger initial phase investigations. The Commission brought five non-merger enforcement actions, four of which were resolved by a consent order, and one permanent injunction action in federal court.

11. During FY 2015, the Commission filed amicus curiae briefs in four cases; all four before federal appeals courts. The Commission also submitted 19 advocacy filings. See <http://www.ftc.gov/policy/advocacy>.

### 3.1.2 DOJ

12. At the end of FY 2015, the Division had 697 employees: 329 attorneys, 50 economists, 163 paralegals, and 155 other professional staff. For FY 2015, the Division received an appropriation of \$162.2 million.

13. In FY 2015, the Division opened 21 grand jury investigations and 16 preliminary inquiries (a total of 37 criminal investigations). The Division filed 60 criminal cases, charging 20 corporations and 66 individuals. The Division obtained more than \$3.6 billion in criminal fines and penalties against 19 corporations and 16 individuals. The courts sentenced 12 individuals with an average sentence of just over one year (13 months).

14. During FY 2015, the Division investigated 67 mergers and challenged 10 of them in court; 10 transactions were restructured or abandoned prior to the filing of a complaint as a result of an announcement by the Division that it would otherwise challenge the transaction. In addition, the Division screened a total of 595 bank mergers. The Division opened 82 civil investigations (merger and non-merger), and issued 515 civil investigative demands (a form of compulsory process). The Division filed four non-merger civil complaints.

## 3.2 Antitrust Cases in the Courts

### 3.2.1 United States Supreme Court Decisions

15. On February 25, 2015, the U.S. Supreme Court decided *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, affirming the FTC's position that a state may not give private market participants unsupervised authority to suppress competition even if they act through a formally designated "state agency." The North Carolina dental board's members, primarily dentists, were drawn from the very occupation they regulate, and they barred non-dentists from offering competing teeth whitening services to consumers. The Court's decision makes clear that state agencies constituted in this manner are subject to the federal antitrust laws unless the state actively supervises their decisions.

16. The Court's decision affirms a 2013 ruling by the U.S. Court of Appeals for the Fourth Circuit upholding a 2011 Decision and Order by the FTC that the North Carolina State Board of Dental Examiners illegally thwarted lower-priced competition by engaging in anticompetitive conduct to prevent non-dentists from providing teeth whitening services to consumers in the state. The FTC rejected the Dental Board's claim that the Board's conduct is protected from federal antitrust scrutiny by the state action doctrine. See <https://www.ftc.gov/news-events/press-releases/2015/02/statement-ftc-chairwoman-edith-ramirez-us-supreme-court-ruling>.

17. In May 2015, the U.S. Supreme Court denied ProMedica Health System's petition for Certiorari. This followed the U.S. Court of Appeals for the Sixth Circuit decision to uphold a 2012 Commission decision finding that ProMedica Health System, Inc.'s acquisition of its rival, St. Luke's Hospital, violated the antitrust laws because it was likely to result in higher health care costs in the area surrounding Toledo, Ohio. The Commission's order requires ProMedica to divest St. Luke's Hospital to an FTC-approved buyer.

3.2.2 *U.S. Court of Appeals Decisions*

18. On January 12, 2015, on panel rehearing, the U.S. Court of Appeals for the Seventh Circuit decided *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816, cert. denied, 135 S. Ct. 2837 (2015), which affirmed a partial grant of summary judgment in favor of foreign manufacturers accused of fixing the price of cellphone components they made and sold to Motorola's foreign subsidiaries. In its initial panel opinion, the court held that those foreign sales could not have a direct effect on U.S. commerce as required by the Foreign Trade Antitrust Improvement Act of 1982, 15 U.S.C. § 6a (FTAIA). The United States, represented by the Department, and the FTC participated as amici curiae, arguing that the initial panel opinion threatened the government's ability to enforce the antitrust laws for the protection of U.S. consumers. The United States and FTC asked the panel to narrow its opinion as it was "broader than necessary to preserve the balance Congress struck in" the FTAIA. In its opinion on rehearing, the court recognized that the foreign manufacturers' component price fixing could have a direct effect on U.S. commerce. In that event, the FTAIA would not block the government from seeking criminal or injunctive remedies. The court held that the FTAIA nevertheless still barred Motorola's damages claims here because they arose from its foreign subsidiaries' foreign purchases of price-fixed components.

19. On October 14, 2015, the U.S. Court of Appeals for the First Circuit decided *United States v. Peake*, 804 F.3d 81, which affirmed the conviction of a corporate executive for fixing rates and surcharges for freight services between various continental states and Puerto Rico. In affirming Mr. Peake's 60-month sentence, a record term of imprisonment for a Sherman Act conviction, the court agreed that his sentence must be calculated based upon all of the shipping company's revenue during the conspiracy period because Mr. Peake failed to rebut the presumption that all sales were "affected" by the conspiracy. The court also rejected Mr. Peake's argument that the court lacked jurisdiction over the case because Puerto Rico is not a state, and Section 1 of the Sherman Act requires commerce among the states. The court held that the conspirators fixed rates for freight originating in one state and transported to a second state's seaport before being shipped to Puerto Rico, which satisfied Section 1's interstate commerce element. The court also held, in the alternative, that the interstate commerce element was met because Puerto Rico is treated like a state for the purposes of the Sherman Act.

20. On June 30, 2015, the U.S. Court of Appeals for the Second Circuit decided *United States v. Apple, Inc.*, 791 F.3d 290, which upheld a judgment and injunction against Apple for conspiring with book publishers to fix ebook prices in violation of Section 1 of the Sherman Act. The court rejected Apple's argument that the rule of reason should apply because Apple had a vertical relationship to the publishers. The court explained that the relevant agreement in restraint of trade was not Apple's vertical contracts with the publishers, but rather the horizontal agreement that Apple organized among the publishers to raise ebook prices. Such a horizontal price-fixing conspiracy is the "archetypal example" of a per se unlawful restraint on trade, and each of the conspiracy's members is liable for the per se violation even if one has a vertical relationship to the others. The court also rejected a challenge to the injunction's breadth, explaining that the government must seek injunctive relief that not only closes the road already "worn," but also protects the public from future harm. The U.S. Supreme Court denied certiorari. 84 U.S.L.W. 3258 (2016). In a related appeal decided on May 28, 2015, *United States v. Apple, Inc.*, 787 F.3d 131, a different panel of the U.S. Court of Appeals for the Second Circuit rejected Apple's challenges to the scope of the monitorship required by the final injunction and to the court-appointed monitor's conduct.

21. On June 9, 2015, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision upholding a November 2013 FTC rulemaking that deems the transfers of pharmaceutical patent rights to be reportable assets under the Hart-Scott-Rodino Act, even if the sellers retain some manufacturing rights. The FTC's November 2013 rulemaking modified the HSR Act, clarifying how the Act applies to patent transfer arrangements that are commonly used in the pharmaceutical industry. It was later challenged by the Pharmaceutical Research and Manufacturers of America. The Court's decision upheld a 2014 order

issued by the U.S. District Court for the District of Columbia that denied summary judgment for Pharmaceutical Research and Manufacturers of America, and granted summary judgment to the FTC. See <https://www.ftc.gov/news-events/press-releases/2015/06/federal-appeals-court-rules-favor-ftc-pharmaceutical-industry>.

22. On April 15, 2015, the U.S. Court of Appeals for the Eleventh Circuit upheld a FTC Decision and Order finding that McWane, Inc., the largest U.S. supplier of ductile iron pipe fittings used in municipal and regional water distribution systems, unlawfully maintained its monopoly in the domestic fittings market through exclusionary conduct. The Commission had ruled that McWane imposed an illegal exclusive dealing policy on its distributors, which effectively prevented them from buying domestic pipe fittings from new competitor Star Pipe Products Ltd. if the distributors wished to also continue buying the fittings from McWane. McWane's conduct prevented Star from achieving the sales necessary to compete effectively and threaten McWane's monopoly in the domestic fittings market. The Commission upheld an Initial Decision by Chief Administrative Law Judge D. Michael Chappell. See <https://www.ftc.gov/news-events/press-releases/2015/04/federal-appeals-court-upholds-ftc-order-found-mcwane-inc>.

23. On February 10, 2015, the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's judgment that found the 2012 merger of St. Luke's Healthcare System and the Saltzer Medical Group in violation of Section 7 of the Clayton Act. The FTC, together with the Idaho Attorney General, filed a complaint in federal district court seeking to block St. Luke's Health System, Ltd.'s acquisition of Idaho's largest independent, multi-specialty physician practice group, Saltzer Medical Group P.A. According to the joint complaint, the combination of St. Luke's and Saltzer would give it the market power to demand higher rates for health care services provided by primary care physicians (PCPs) in Nampa, Idaho and surrounding areas, ultimately leading to higher costs for health care consumers. The federal district court held that the acquisition violated Section 7 of the Clayton Act and the Idaho Competition Act, and ordered St. Luke's to fully divest itself of Saltzer's physicians and assets. See <https://www.ftc.gov/news-events/press-releases/2015/02/statement-ftc-chairwoman-edith-ramirez-appellate-ruling-st-lukes>.

### 3.2.3 U.S. District Court Decisions

24. On August 25, 2015, the U.S. District Court for the Northern District of California decided *IPtronics Inc. v. Avago Technologies U.S., Inc.*, No. 14-cv-05647, which denied Avago's motion to dismiss IPtronics' claim for attempted monopolization based upon allegedly sham patent litigation before the United States International Trade Commission (ITC). Avago argued that the Noerr-Pennington doctrine barred IPtronics' claim because Avago's ITC action was not objectively baseless. Avago primarily supported its position with evidence that the ITC voted to institute an investigation in response to Avago's petition. The court ruled that the ITC's decision to investigate turns on a petition's compliance with ITC filing requirements and therefore "says nothing of the actual merits" of the underlying claims.

25. On June 23, 2015, the U.S. District Court for the District of Columbia granted a preliminary injunction in *FTC v. Sysco, USF Holding Corp., and US Foods, Inc.*, 113 F. Supp. 3d 1, which prevented the parties from consummating the merger. On February 19, 2015, the FTC filed an administrative complaint charging that the proposed merger of Sysco and US Foods would violate the antitrust laws by significantly reducing competition nationwide and in 32 local markets for broadline foodservice distribution services. The FTC alleged that if the merger went forward as proposed, foodservice customers, including restaurants, hospitals, hotels, and schools, would likely face higher prices and lower levels of service than would be the case but for the merger. According to the FTC complaint, a combined Sysco/US Foods would account for 75 percent of the national market for broadline distribution services. In addition, the parties would hold high shares in a number of local markets. The Commission also charged that the proposed sale of 11 US Foods distribution centers to Performance Food Group ("PFG") would neither

enable PFG to replace US Foods as a competitor nor counteract the significant competitive harm caused by the merger. The following state attorneys general joined the FTC's complaint for the preliminary injunction filed in federal district court: California, Illinois, Iowa, Maryland, Minnesota, Nebraska, Ohio, Virginia, Pennsylvania, Tennessee, and the District of Columbia. Following the ruling, Sysco and US Foods abandoned their proposed merger and the Commission dismissed its administrative complaint. See <https://www.ftc.gov/news-events/press-releases/2015/07/following-syscos-abandonment-proposed-merger-us-foods-ftc-closes>.

26. On May 29, 2015, the Commission issued an administrative complaint charging that Steris Corporation's proposed \$1.9 billion acquisition of Synergy Health plc would violate the antitrust laws by significantly reducing future competition in regional markets for sterilization of products using radiation, particularly gamma or x-ray radiation. The Commission also authorized agency staff to seek a temporary restraining order and preliminary injunction in federal court to maintain the status quo pending an administrative trial on the merits. According to the FTC, it was unlikely that new competitors in the market for contract radiation sterilization services would replicate the competition that would be eliminated by the merger. The Commission alleged that the challenged acquisition would eliminate likely future competition between Steris's gamma sterilization facilities and Synergy's planned x-ray sterilization facilities in the United States, thus depriving customers of an alternative sterilization service and additional competition. On September 25, 2015, the district court denied the FTC motion for a preliminary injunction; the Commission dismissed the administrative complaint on October 30, 2015. See <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-challenges-merger-companies-provide-sterilization-services>.

27. On January 28, 2015, the U.S. District Court for the Southern District of New York decided *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, 74 F. Supp. 3d 581, which denied a motion to dismiss antitrust actions by U.S. plaintiffs, while dismissing two foreign complainants' antitrust actions seeking damages for a conspiracy to rig benchmark rates in the foreign exchange market. The court held that the FTAIA precluded the foreign complainants' actions, noting that their allegations of harm suffered exclusively outside the United States but that occurred in a "worldwide competitive market" failed to implicate import commerce or establish that any U.S. effects of the global conspiracy were the proximate cause of the foreign complainants' injuries.

### **3.3 Statistics on Private and Government Cases Filed**

28. According to the 2015 Annual Report of the Director of the Administrative Office of the U.S. Courts, 769 new civil antitrust actions, both government and private, were filed in the federal district courts in FY 2015. See Table C-2A of the report, available at <http://www.uscourts.gov/statistics/table/c-2a/judicial-business/2015/09/30>.

### **3.4 Significant Enforcement Actions**

#### **3.4.1 DOJ Criminal Enforcement**

29. In FY 2015, the Division charged 66 individuals, including 12 auto parts executives and 36 real estate investors, with criminal antitrust offenses. Twelve individuals were sentenced to serve time in jail for an average of 13 months. From 1990-1999, the average annual number of individuals sentenced to prison was 13; this number increased to 21 for the 2000-2009 period, and to 29 for 2010-2014. The average prison sentence for 1990-1999 was 8 months; for 2000-2009 it was 20 months, and for 2010-2015, it increased to 26 months. In FY 2015, the Division obtained more than \$3.6 billion in criminal fines and penalties.

30. In April 2015, the Division brought the first e-commerce prosecution in its history when a former e-commerce executive, David Topkins, agreed to plead guilty for conspiring to fix the prices of posters sold online through Amazon Marketplace. According to the charges, Topkins and his co-conspirators agreed to end price competition between them by adopting complex pricing algorithms to automatically coordinate changes to poster prices. These algorithms allowed each conspirator to track the other's prices and to fix prices in conformity with the parties' unlawful agreement. See <https://www.justice.gov/opa/pr/former-e-commerce-executive-charged-price-fixing-antitrust-divisions-first-online-marketplace>.

31. In December 2015, a one-count indictment against two other conspirators in the e-commerce price-fixing scheme, Mr. Daniel Aston, and his company, Trod Ltd. (doing business as Buy 4 Less, Buy For Less, and Buy-For-Less-Online) was unsealed in Federal district court in California. The indictment's unsealing followed searches by U.K. law enforcement and the FBI of Trod's headquarters and Aston's residence in the U.K. See <https://www.justice.gov/opa/pr/e-commerce-exec-and-online-retailer-charged-price-fixing-wall-posters>.

32. On March 16, 2016, Mr. John Bennett, the former CEO of Bennett Environmental Inc., was convicted of committing major fraud against the United States and conspiring to pay kickbacks in connection with an EPA Superfund site in New Jersey. As a result of the payment of these kickbacks, Bennett Environmental was fraudulently awarded tens of millions of dollars in soil treatment and disposal contracts at Federal Creosote. Mr. Bennett, of Vancouver, British Columbia, was charged with these crimes in August 2009, extradited from Canada to the United States in November 2014 to face trial. Bennett was convicted after a three week trial in Newark, New Jersey. Sentencing is scheduled for June 27, 2016. See <https://www.justice.gov/opa/pr/former-ceo-canadian-hazardous-waste-treatment-company-convicted-conspiracy-pay-kickbacks-and>.

33. In FY 2015, an additional 8 companies and 12 individuals were charged with participating in conspiracies to fix prices and rig bids in the ongoing investigation of automobile parts. These cases involved nearly 20 different auto parts ranging from brake hoses to spark plugs to seatbelts. The Division continues to cooperate on this investigation with its counterparts in Japan, South Korea, the European Union, Canada, and other jurisdictions. As of April, 2016, the auto parts investigation has resulted in charges against 40 companies and 59 individuals. In total, 31 executives have pleaded guilty and been sentenced to an average of nearly 15 months in jail. Additionally, 39 corporations have pleaded guilty or agreed to plead guilty and have agreed to pay more than \$2.7 billion in criminal fines. See <https://www.justice.gov/opa/pr/corning-international-kabushiki-kaisha-pay-665-million-fixing-prices-automotive-parts>

34. In FY 2015 the Division continued to prosecute collusion and fraud in the financial services industry. Over the last several years, the Division, the Department's Criminal Divisions and the FBI have been investigating possible collusion activity intended to manipulate the price of U.S. dollars and euros exchanges in the foreign currency exchange ("FX") spot market. On May 20, 2015, four banks, Citicorp, JPMorgan Chase & Co., Barclays PLC, and The Royal Bank of Scotland plc agreed to plead guilty to conspiring to the price of U.S. dollars and euros exchanged in the FX spot market and the banks agreed to pay criminal fines totaling more than \$2.5 billion. A fifth bank—UBS AG—was found to have breached its non-prosecution agreement related to LIBOR misconduct, agreed to plead guilty to manipulating LIBOR charges brought by the Criminal Division, and agreed to pay more than \$200 million in additional criminal fines. See <https://www.justice.gov/opa/pr/five-major-banks-agree-parent-level-guilty-pleas>.

35. On April 23, 2015, DB Group Services (UK) Limited, a wholly owned subsidiary of Deutsche Bank AG, agreed to plead guilty to wire fraud for its role in manipulating LIBOR, a leading interest rate benchmark used in financial products and transactions around the world. That same day, the parent bank

entered into a deferred prosecution agreement and admitted its role in both manipulating U.S. dollar LIBOR and participating in a price-fixing conspiracy to rig yen LIBOR contributions with other banks. Together, Deutsche Bank and its UK subsidiary paid \$775 million in criminal penalties to the Justice Department. Deutsche Bank was the sixth major financial institution to admit its misconduct in the LIBOR investigation, and its resolution represents the investigation's largest penalty to date. See <https://www.justice.gov/opa/pr/deutsche-banks-london-subsiary-agrees-plead-guilty-connection-long-running-manipulation>.

36. Since early 2015, the Division charged 44 individuals who engaged in bid rigging and fraud at real estate foreclosure auctions in northern California and the southeastern United States. More than 100 individuals have been charged since the investigation began. See <https://www.justice.gov/atr/division-operations/division-update-2016/real-estate-foreclosure-auctions>.

37. In FY 2015, the Division continued its ongoing investigation into a single, world-wide conspiracy involving price fixing, bid rigging, and market allocation in international ocean shipping services for roll-on, roll-off cargo to and from the United States and elsewhere. Roll-on, roll-off cargo is non-containerized cargo that can be both rolled onto and off of an ocean-going vessel; examples include new and used cars and trucks and construction and agricultural equipment. Three companies (Kawasaki Kisen Kaisha Ltd., Nippon Yusen Kabushiki Kaisha, and Compañía Sud Americana de Vapores S.A.) have pled guilty, and have been sentenced to pay total fines of over \$136 million, and four corporate executives have pled guilty and been sentenced to an average of over 16 months in jail. See <https://www.justice.gov/opa/pr/three-ocean-shipping-executives-indicted-fixing-prices-and-rigging-bids>; [http://www.justice.gov/atr/public/press\\_releases/2015/312415.htm](http://www.justice.gov/atr/public/press_releases/2015/312415.htm); [http://www.justice.gov/atr/public/press\\_releases/2014/310793.htm](http://www.justice.gov/atr/public/press_releases/2014/310793.htm); [http://www.justice.gov/atr/public/press\\_releases/2014/308903.htm](http://www.justice.gov/atr/public/press_releases/2014/308903.htm); [http://www.justice.gov/atr/public/press\\_releases/2014/308903.htm](http://www.justice.gov/atr/public/press_releases/2014/308903.htm); [http://www.justice.gov/atr/public/press\\_releases/2014/304053.htm](http://www.justice.gov/atr/public/press_releases/2014/304053.htm).

#### 3.4.2 DOJ Civil Non-Merger Enforcement

38. Michigan Hospital Systems: On June 25, 2015, the Department sued four Michigan hospital systems that for years unlawfully agreed to allocate territories for marketing, depriving consumers and physicians of important information about competing providers and other benefits of unfettered competition. Three of the systems – Hillsdale Community Health Center, Community Health Center of Branch County, Michigan, and ProMedica Health System Inc. – entered into a settlement with the Department the time the complaint was filed. The Department continues to litigate against a fourth, W.A. Foote Memorial Hospital, doing business as Allegiance Health, to prohibit agreements that unlawfully allocate territories for marketing of competing healthcare services.

39. As alleged in the complaint, hospitals compete to attract patients by advertising, direct mailings to patients, outreach to physicians and employers, conducting health fairs and offering free health screenings. Hillsdale, Allegiance, Branch and ProMedica's Bixby and Herrick Hospitals – the only hospitals in their respective counties – each competed through marketing to attract patients. The complaint alleges that Hillsdale curtailed this competition for years by entering into agreements with Allegiance, Branch and ProMedica to limit the marketing of competing healthcare services. According to the complaint, the defendants' agreements deprived patients and physicians of information needed to make informed healthcare decisions. Patients in Hillsdale County, Michigan, were also prevented from receiving free medical services – such as health screenings and physician seminars – that they would have received from Allegiance in the absence of its unlawful agreement with Hillsdale. See <https://www.justice.gov/opa/pr/justice-department-sues-four-michigan-hospital-systems-unlawfully-agreeing-limit-marketing>.

### 3.4.3 *FTC Non-Merger Enforcement Actions*

40. In the Matter of National Association of Animal Breeders. On September 24, 2015, the National Association of Animal Breeders (“NAAB”) agreed to remove provisions in its Code of Ethics that, according to the FTC, limited competition among its members. The proposed consent order settling the FTC’s allegations requires NAAB to end certain advertising restrictions, remove references to the restrictions from its website and official documents, publish and distribute an announcement regarding the consent agreement and the resulting changes to the Code of Ethics, and implement an antitrust compliance program. See <https://www.ftc.gov/news-events/press-releases/2015/09/settlement-ftc-national-association-animal-breeders-agrees>.

41. In the Matter of Concordia Healthcare/Par Pharmaceutical. On August 18, 2015, pharmaceutical companies Concordia Pharmaceuticals Inc. and Par Pharmaceutical, Inc. settled FTC charges that they entered into an unlawful agreement not to compete in the sale of generic versions of Kapvay, a prescription drug used to treat Attention Deficit Hyperactivity Disorder. Until May 15, 2015, Concordia and Par were the only two firms permitted by the FDA to market generic Kapvay. Rather than competing against one another, Concordia agreed not to sell an authorized generic version of Kapvay in exchange for a share of Par’s revenues. Under the terms of the settlement, Concordia is prohibited from enforcing the anticompetitive provisions of its agreement with Par, including the profit-sharing provisions, and Par is prohibited from enforcing provisions that bar Concordia from selling an authorized generic version of Kapvay. Concordia began selling generic Kapvay after learning of the FTC’s investigation. The orders (i) prohibit Concordia and Par from agreeing with other entities to bar or delay entry of an authorized generic after the patents covering the branded product have expired, (ii) require them to provide notice to the FTC of any patent settlement they make that restricts entry of an authorized generic drug, (iii) require them to establish a compliance program for employees who are in a position to violate the order’s provisions, and (iv) require them to submit reports. See <https://www.ftc.gov/news-events/press-releases/2015/08/pharmaceutical-companies-settle-ftc-charges-illegal-agreement-not>.

42. FTC v. Cephalon, Inc. On May 28, 2015, the FTC reached a settlement resolving the Commission’s antitrust suit charging Cephalon, Inc. with illegally blocking generic competition to its blockbuster sleep-disorder drug Provigil. The settlement ensures that Teva Pharmaceutical Industries, Ltd., which acquired Cephalon in 2012, will make \$1.2 billion available to compensate purchasers, including drug wholesalers, pharmacies, and insurers, who overpaid because of Cephalon’s illegal conduct. Teva also agreed to a prohibition on the type of anticompetitive patent settlements that Cephalon used to artificially inflate the price of Provigil. Teva is the largest generic drug manufacturer in the world. This prohibition applies to all of its U.S. operations. See <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill>.

43. In the Matter of Cardinal Health, Inc. On April 20, 2015, the FTC announced that Cardinal Health, Inc. agreed to resolve charges that it illegally monopolized 25 local markets for the sale and distribution of low-energy radiopharmaceuticals and forced hospitals and clinics to pay inflated prices for these drugs. The stipulated order requires Cardinal to disgorge \$26.8 million of ill-gotten gains and represents the second largest monetary settlement the FTC has obtained in an antitrust case. The money was deposited into a fund for distribution to injured customers. The order also includes provisions to prevent future violations and restore competition in six markets where Cardinal remains the dominant radiopharmacy. See <https://www.ftc.gov/news-events/press-releases/2015/04/cardinal-health-agrees-pay-268-million-settle-charges-it>.

44. In the Matter of Professional Skaters Association, Inc.; In the Matter of Professional Lighting and Sign Management Company of America, Inc. On December 23, 2014, an association representing electricians and another representing skating teachers agreed, in two separately settled actions, to eliminate

provisions in their bylaws that, according to the FTC, limited competition among each association's members. The FTC's complaint against the Professional Lighting and Sign Management Companies of America, Inc. ("PLASMA") alleges that its bylaws restrained competition by: 1) prohibiting members from providing commercial lighting or sign services in the designated territory of another member unless that member declines to perform the work; 2) imposing a price schedule on work performed in the designated territory of another member; and 3) barring former members from soliciting or competing for clients of current members for one year after leaving the group. The FTC alleges that the purpose and effect of these bylaws was to restrain competition by discouraging and restricting competition among PLASMA members. The consent order settling the FTC's charges requires PLASMA to revise its bylaws, publicize its settlement with the FTC, and implement an antitrust compliance program. In a separate complaint, the FTC charged that the Professional Skaters Association ("PSA"), through its code of ethics, broadly bans members from soliciting other members' students, and thereby deprives consumers of the benefits of competition among the 6,400 ice skating teachers and coaches who are members. The consent order settling the FTC's charges requires the PSA to stop restraining its members from soliciting work and competing on the basis of price. It also requires the group to change its code of ethics, publicize its settlement with the FTC, and implement an antitrust compliance program. See <https://www.ftc.gov/news-events/press-releases/2014/12/settle-ftc-charges-two-trade-associations-agree-eliminate-rules>.

45. AmeriGas/Blue Rhino. On October 31, 2014, the two leading suppliers of propane exchange tanks, Blue Rhino and AmeriGas Cylinder Exchange, agreed to settle FTC charges that the companies illegally agreed not to deviate from their plans to reduce the amount of propane in tanks sold to Walmart, a key customer. Under the settlements, each company is barred from agreeing with competitors to modify fill levels or otherwise fix the prices of exchange tanks, and from coordinating communications to customers. The FTC's administrative complaint, issued in March 2014, alleges that, together, Blue Rhino and AmeriGas controlled approximately 80 percent of the market for wholesale propane exchange tanks in the United States. In 2008, Blue Rhino and AmeriGas each decided to implement a price increase by reducing the amount of propane in their exchange tanks from 17 pounds to 15 pounds, without a corresponding reduction in the wholesale price. Faced with resistance from Walmart, the companies secretly agreed to coordinate their negotiations with Walmart in order to force it to accept the fill reduction. The agreement between Blue Rhino and AmeriGas to maintain a united front against Walmart had the effect of raising the price per pound of propane sold to Walmart, and likely to the end consumers. The consent agreements prohibit the companies from soliciting, offering, participating in, or entering or attempting to enter into any type of agreement with any competitor in the propane exchange business to raise, fix, maintain, or stabilize the prices or price levels of propane exchange tanks through any means, including modifying the fill level contained in propane tanks or coordinating communications to customers. The companies also are prohibited from sharing sensitive non-public business information with competitors except in narrowly defined circumstances. The consent agreements also require the companies to maintain antitrust compliance programs. See <https://www.ftc.gov/news-events/press-releases/2014/10/blue-rhino-amerigas-settle-ftc-charges-restraining-competition>.

### 3.5 *FTC Advisory Opinions*

46. Under its Rules, the Commission or its staff may offer industry guidance in the form of advisory opinions regarding proposed conduct in matters of significant public interest. The opinions inform the public about the Commission's analysis in novel or important areas of antitrust law. In FY 2015, FTC staff issued no competition advisory opinions. For more information on the Commission's advisory letters, see <http://www.ftc.gov/policy/advisory-opinions>.

### 3.6 *Business Reviews Conducted by the DOJ*

47. Under the Department's business review procedure, a person may submit a proposed business action to the Department and receive a statement as to whether the Department would likely challenge the action under the antitrust laws. The Department issued two business review letters in FY 2015. Business review letters can be found at <http://www.justice.gov/atr/public/busreview/letters.html#page=page-0>.

48. On February 2, 2015, the Department announced it would not challenge a proposal by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) to update the IEEE Standards Association's (IEEE-SA) patent policy. The proposal revises the policy's provisions regarding commitments from parties holding patent claims that are essential to IEEE-SA standards to license those claims on reasonable and non-discriminatory (RAND) terms. The update addresses the availability of injunctive relief, the meaning of a reasonable licensing rate, permissible requests for reciprocal licensing, and the production levels to which the commitment applies. The update is not likely to produce anticompetitive effects given that licensing rates ultimately are determined through bilateral negotiations, the update's specific provisions are not out of step with the direction of current U.S. law interpreting RAND commitments, and patent holders can avoid the updated IEEE Rand Commitment and still participate in standards-setting activities at IEEE-SA. See <https://www.justice.gov/opa/pr/department-justice-will-not-challenge-standards-setting-organizations-proposal-update-patent>.

49. On October 3, 2014, the Department announced that it would not challenge a proposal by CyberPoint International LLC to offer a cyber intelligence data-sharing platform known as TruSTAR. The TruSTAR platform allows members to share threat and incident data along with attack information and develop remediation solutions to help define more effective strategies across industries to prevent successful cyber attacks. In approving the proposed TruSTAR platform, the Department concluded that the operation of the TruSTAR platform, as proposed, would be unlikely to facilitate price or other competitive coordination. See <https://www.justice.gov/opa/pr/department-justice-will-not-challenge-proposed-cyber-intelligence-data-sharing-platform>.

## 4. **Enforcement of antitrust laws and policies; mergers and concentrations**

### 4.1 *Enforcement of Pre-merger Notification Rules*

50. Leucadia National. On September 22, 2015, the Division, at the request of the FTC, filed a civil lawsuit against Leucadia National Corporation for violating the premerger reporting and waiting periods when it acquired voting securities of KCG Golding Inc. in July 2013, valued at \$173 million. Under the terms of the settlement filed simultaneously with the complaint, Lecuadia National Corporation agreed to pay a \$240,000 civil penalty. See <https://www.justice.gov/opa/pr/leucadia-national-corporation-pay-240000-civil-penalty-violating-antitrust-premerger>.

51. Third Point Funds. On August 24, 2015, the Division, at the request of the FTC, filed a civil suit against Third Point LLC and three Third Point funds for violating the premerger reporting and waiting requirements when it acquired shares of Yahoo in 2011. Although the defendants claimed that they were exempt from reporting the acquisitions because the acquisitions were made for investment purposes only, Third Point was taking actions inconsistent with an investment-only intent. Under the terms of a settlement filed simultaneously with the complaint, the defendants are prohibited from relying on the investment-only exception for five years if they have engaged in specified conduct in the four months prior to acquiring voting securities in excess of the premerger notification threshold. No civil penalties were imposed. See <https://www.justice.gov/opa/pr/doj-files-settlement-behalf-federal-trade-commission-concerning-third-points-violation>.

52. ValueAct. On April 4, 2015, the Department filed a civil suit in the U.S. District Court for the Northern District of California against certain ValueAct Capital entities for violating the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act (the “HSR Act”). On Nov. 17, 2014, Baker Hughes and Halliburton – two of the three largest providers of oilfield products and services in the world – announced their plan to merge in a deal valued at \$35 billion. Thereafter, ValueAct, an activist investment firm, purchased over \$2.5 billion of Halliburton and Baker Hughes voting shares without complying with the HSR Act’s notification requirements. According to the complaint, ValueAct purchased these shares with the intent to influence the companies’ business decisions as the merger unfolded and therefore could not rely on the limited “investment-only” exemption to HSR notification requirements. See <https://www.justice.gov/opa/pr/justice-department-sues-valueact-violating-premerger-notification-requirements>.

53. Flakeboard/SierraPine. On November 7, 2014, the Division filed a civil suit against Flakeboard America Limited (“Flakeboard”), its parent companies, and SierraPine, alleging that the companies engaged in illegal coordination while Flakeboard’s proposed acquisition of three SierraPine mills was under antitrust review. More specifically, during the premerger waiting period, Flakeboard and SierraPine illegally coordinated to close one of SierraPine’s particleboard mills and move the mill’s customers to Flakeboard. Under the terms of a settlement filed simultaneously with the complaint, the companies agreed to pay a combined \$3.8 million civil penalty. In addition, Flakeboard was required to disgorge \$1.15 million in illegally-obtained profits and both parties were required to establish antitrust compliance programs and agree to certain restrictions. See <https://www.justice.gov/opa/pr/justice-department-reaches-5-million-settlement-flakeboard-arauco-inversiones-angelini-and>.

## **4.2 Select Significant Merger Matters**

### **4.2.1 FTC Merger Investigations and Challenges**

54. Wright Medical Group, Inc./Tornier N.V. On September 30, 2015, Wright Medical Group, Inc. and Tornier N.V. agreed to sell Tornier’s U.S. rights and assets related to its total ankle replacements and total silastic toe joint replacements to resolve FTC charges that the proposed \$3.3 billion merger would illegally reduce competition for these devices. Wright and Tornier were close competitors and significant suppliers of these orthopedic devices in the United States. Under the proposed settlement, Wright and Tornier agreed to divest the rights and assets to these devices to Integra Lifesciences Corporation and provide Integra with intellectual property, manufacturing technology, and existing inventory, as well as other assets and assistance to ensure that Integra can effectively compete in the markets. The proposed order also requires Wright and Tornier to supply Integra with total ankle replacements for up to three years and total silastic toe joint replacements for up to one year, while Integra transitions to become an independent competitor in these markets. See <https://www.ftc.gov/news-events/press-releases/2015/09/ftc-requires-divestitures-prior-merger-orthopedic-device>.

55. Endo International plc/Par Pharmaceuticals, Inc. On September 25, 2015, pharmaceutical companies Endo International plc and Par Pharmaceuticals, Inc. agreed to divest all of Endo’s rights and assets to generic glycopyrrolate tablets and generic methimazole tablets in order to settle FTC charges that Endo’s proposed \$8 billion acquisition of Par likely would be anticompetitive. The FTC alleges that without the divestitures required by the proposed order, the acquisition would have combined the two most significant suppliers in the market for generic glycopyrrolate tablets, which are used with other drugs to treat certain types of ulcers, and two of only four active suppliers in the market for generic methimazole tablets, which are used to treat the body’s production of excess thyroid hormone. According to the FTC, the result would likely have been higher prices for consumers. See <https://www.ftc.gov/news-events/press-releases/2015/09/ftc-requires-divestitures-connection-endo-international-plcs>.

56. Pfizer Inc./Hospira, Inc. On August 24, 2015, Pfizer Inc. agreed to sell the rights and assets related to four pharmaceutical products in order to settle FTC charges that its proposed \$16 billion acquisition of Hospira, Inc. is anticompetitive. As the proposed buyer, Alvogen had the necessary resources, financial and technical capabilities, and experience marketing generic pharmaceutical products that would enable it to successfully replace the competition that otherwise would have been lost through the proposed acquisition. The proposed order requires Pfizer to provide transitional services to Alvogen to assist with establishing manufacturing capabilities and securing FDA approvals to market all of the divested products. See <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-requires-pfizer-inc-sell-rights-four-products-condition>.

57. Dollar Tree, Inc./Family Dollar Stores, Inc. On July 2, 2015, discount retailers Dollar Tree, Inc. and Family Dollar Stores, Inc. agreed to sell 330 Family Dollar stores to a private equity firm, Sycamore Partners, to settle FTC charges that Dollar Tree's proposed \$9.2 billion acquisition of Family Dollar would likely be anticompetitive. Without a remedy, according to the FTC, the acquisition was likely to lessen competition by eliminating direct competition between Dollar Tree and Family Dollar, and increasing the likelihood that Dollar Tree would unilaterally exercise market power. The proposed settlement requires the divestitures to Sycamore Partners to be completed within 150 days following the acquisition. The settlement includes an Order to Maintain Assets, to help ensure that Family Dollar maintains the 330 stores until they are divested. See <https://www.ftc.gov/news-events/press-releases/2015/07/ftc-requires-dollar-tree-family-dollar-divest-330-stores>.

58. Zimmer Holdings, Inc./Biomet, Inc. On June 24, 2015, medical device company Zimmer Holdings, Inc. agreed to divest U.S. rights and assets related to unicondylar knee implants, total elbow implants, and bone cement in order to settle FTC charges that its proposed \$13.35 billion acquisition of Biomet Inc. is anticompetitive. According to a complaint filed by the FTC, Zimmer and Biomet were two of the only three substantial competitors in the U.S. markets for unicondylar knee implants and total elbow implants, and two of only four significant competitors in the U.S. market for bone cement. By eliminating competition between the companies, and reducing the number of competitors for the sale of each relevant orthopedic product, the merger as proposed would increase the likelihood that Zimmer would unilaterally exercise market power, resulting in lower levels of quality and service and higher prices. FTC staff cooperated with antitrust agencies investigating the proposed acquisition in Europe and Japan, working closely with their staff to analyze the proposed transaction and potential remedies. See <https://www.ftc.gov/news-events/press-releases/2015/06/ftc-requires-medical-device-company-zimmer-holdings-inc-divest>.

59. Reynolds American Inc./Lorillard, Inc. On May 26, 2015, tobacco companies Reynolds American Inc. and Lorillard Inc. agreed to divest four cigarette brands to Imperial Tobacco Group to settle FTC charges that their proposed \$27.4 billion merger would likely be anticompetitive. According to the FTC complaint, without the divestiture to Imperial, the proposed merger would have raised significant competitive concerns by eliminating current and emergent, head-to-head competition between Reynolds and Lorillard in the U.S. market for traditional combustible cigarettes. The proposed order requires Reynolds to divest to Imperial four established cigarette brands: Winston, Kool, Salem, and Maverick. With the acquisition of the divested assets, Imperial would become a more substantial competitor in the United States. The Commission's order requires not only that the brands be divested, but also that Reynolds divest to Imperial the Lorillard manufacturing facilities in Greensboro, North Carolina, and provide Imperial with the opportunity to hire most of the existing Lorillard management, staff, and salesforce. It also requires the newly merged Reynolds and Lorillard to provide Imperial with retail shelf space for a short period, and to provide other operational support during the transition. See <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-requires-reynolds-lorillard-divest-four-cigarette-brands>.

60. ZF Friedrichshafen/TRW Automotive. On May 5, 2015, two of the world's largest auto parts suppliers, ZF Friedrichshafen AG and TRW Automotive Holdings Corp., agreed to divest TRW's linkage and suspension business in North America and Europe, to settle FTC charges that their proposed \$12.4 billion merger would likely harm competition in the North American market for heavy vehicle tie rods. ZF and TRW are two of only three North American suppliers of heavy vehicle tie rods. A tie rod is a rigid connector that links a vehicle's wheels with the steering control mechanism. The complaint alleges that the merger would eliminate direct competition between ZF and TRW and that reducing the number of competitors from three to two would increase the likelihood of coordinated interaction between a combined ZF/TRW and its only other competitor for heavy vehicle tie rods in North America. Under the proposed consent agreement, the combined company is required to divest TRW's North American and European linkage and suspension business for heavy and light vehicles (which includes heavy vehicle tie rods). Throughout the investigation, Commission staff cooperated with staff of the antitrust agencies in Canada, Mexico, and the European Union. In particular, they worked closely with the European Commission on the analysis of the proposed transaction and potential remedies to reach outcomes that benefit consumers in the United States. See <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-puts-conditions-merger-auto-parts-suppliers-zf>.

61. Holcim Ltd./Lafarge S.A. On May 4, 2015, Holcim Ltd. and Lafarge S.A. agreed to divest plants, terminals, and a quarry to settle FTC charges that their proposed \$25 billion merger creating the world's largest cement manufacturer would likely harm competition in the United States. According to the FTC complaint, the merger would have harmed competition in 12 markets for portland cement, an essential ingredient in making concrete, and in two additional markets for slag cement, a specialty cement used for making more durable concrete structures. The FTC staff cooperated closely with the Canadian Competition Bureau ("CCB") throughout the investigation. The consent agreement includes a hold separate order to ensure that Holcim and Lafarge continue to act independently and maintain the relevant assets until they are divested. See <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-requires-cement-manufacturers-holcim-lafarge-divest-assets>.

62. In the Matter of Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., Phoebe North, Inc., HCA Inc., Palmyra Park Hospital, Inc., and Hospital Authority of Albany-Dougherty County. On March 31, 2015, the FTC entered into a settlement with Phoebe Putney Health System, Inc., the Hospital Authority of Albany-Dougherty County, and HCA Inc. resolving the Commission's charge that the Hospital Authority's acquisition of Palmyra Park Hospital, Inc. from HCA Inc., which created an effective hospital monopoly in the Albany, Georgia area, was anticompetitive. This consent agreement follows a significant Supreme Court victory in 2013 that reaffirmed the FTC's petition as to the scope of state action immunity and allowed the Commission to challenge this transaction. Due to the unavailability of structural relief, the consent does not require a divestiture. Under the consent agreement with the FTC, Phoebe Putney and the Hospital Authority must notify the FTC in advance of acquiring any part of a hospital or a controlling interest in other healthcare providers in the Albany, Georgia area for the next 10 years, and will be prohibited from objecting to regulatory applications made by potential new hospital providers in the same area for up to five years. See <https://www.ftc.gov/news-events/press-releases/2015/03/phoebe-putney-health-system-inc-hospital-authority-albany>.

63. In the Matter of Impax Laboratories, Inc. On March 6, 2015, pharmaceutical companies Impax Laboratories Inc. and CorePharma, LLC agreed to divest all of CorePharma's rights and assets to generic pilocarpine tablets and generic ursodiol tablets, in order to settle FTC charges that Impax's proposed \$700 million acquisition of CorePharma would likely be anticompetitive. Without the divestitures required by the proposed order, the FTC alleged that the acquisition would reduce the number of future suppliers in the markets for generic pilocarpine tablets, which are used to treat dry mouth, and generic ursodiol tablets, which are used to treat biliary cirrhosis, a chronic disease of the liver, as well as gall bladder diseases. CorePharma's entry as an independent competitor would likely have resulted in significantly lower prices

for each of these drugs. See <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-requires-divestitures-connection-impax-laboratories-incs>.

64. **In the Matter of Sun Pharmaceutical Industries, Ltd., et al.** On January 30, 2015, pharmaceutical companies Sun Pharmaceutical Industries Ltd. and Ranbaxy Laboratories Ltd. agreed to divest Ranbaxy's interests in generic minocycline tablets in order to settle FTC charges that Sun's \$4 billion proposed acquisition of Ranbaxy would likely be anticompetitive. Torrent Pharmaceuticals Ltd., a global drug company based in India that markets generic drugs in the United States, acquired the divested assets. Generic minocycline tablets are used to treat a wide array of bacterial infections, including pneumonia, acne, and urinary tract infections. According to the FTC's complaint, the proposed merger would likely harm future competition by reducing the number of suppliers in the U.S. markets for of generic minocycline tablets. See <https://www.ftc.gov/news-events/press-releases/2015/01/ftc-puts-conditions-sun-pharmaceuticals-proposed-acquisition>.

65. **In the Matter of Cerberus Institutional Partners V, LP., AB Acquisition LLC/Safeway Inc.** On January 27, 2015, supermarket operators Albertsons and Safeway Inc. agreed to sell 168 supermarkets to settle FTC charges that their proposed \$9.2 billion merger would likely be anticompetitive in 130 local markets in Arizona, California, Montana, Nevada, Oregon, Texas, Washington, and Wyoming. According to the FTC's complaint, Albertsons and Safeway competed vigorously on the bases of price, quality, product variety, and services, and offer consumers the convenience of one-stop shopping for food and other grocery products. According to the FTC, absent the remedy, the acquisition would have lessened supermarket competition to the detriment of consumers in 130 local markets. See <https://www.ftc.gov/news-events/press-releases/2015/01/ftc-requires-albertsons-safeway-sell-168-stores-condition-merger>.

66. **Eli Lilly and Company/Novartis AG.** On December 22, 2014, global pharmaceutical company Eli Lilly and Company agreed to divest its Sentinel product line of medications for treating heartworm disease in dogs in order to settle FTC charges that its proposed \$5.4 billion acquisition of Novartis Animal Health would likely be anticompetitive. The complaint alleges that, without the divestitures required by the order, the transaction would have eliminated the close competition between Eli Lilly and Novartis Animal Health and substantially decreased competition in the market for canine heartworm parasiticides. Also, any other company seeking to enter the canine heartworm parasiticide market would face high barriers because developing new animal health pharmaceutical products, including those that treat heartworm in dogs, is difficult and time-consuming, the complaint alleges. See <https://www.ftc.gov/news-events/press-releases/2014/12/ftc-puts-conditions-eli-lillys-proposed-acquisition-novartis>.

67. **Verisk/EagleView.** On December 16, 2014, the FTC challenged Verisk Analytics, Inc.'s proposed \$650 million acquisition of EagleView Technology Corporation, alleging that it would likely reduce competition and result in a virtual monopoly in the U.S. market for rooftop aerial measurement products used by the insurance industry to assess property claims. The agency also authorized staff to seek a temporary restraining order and preliminary injunction in federal court to maintain the status quo pending an administrative trial on the merits. According to the FTC's complaint, damage to rooftops accounts for more than a third of all property insurance claims in the United States. Insurance carriers need roof measurements to calculate the costs associated with replacing or repairing rooftops. The Commission alleges that the challenged acquisition would combine the only two significant competitors for rooftop aerial measurement products for insurance purposes in the United States. According to the complaint, large insurance carriers now benefit from price competition between the two companies that would be eliminated if the acquisition proceeds. Verisk subsequently abandoned the proposed transaction. See <https://www.ftc.gov/news-events/press-releases/2014/12/ftc-challenges-verisk-analytics-incs-proposed-acquisition>; <https://www.ftc.gov/news-events/press-releases/2014/12/statement-ftc-bureau-competition-director-deborah-feinstein>.

68. Medtronic, Inc./Covidien plc. On November 26, 2014, global medical technology company Medtronic, Inc. agreed to divest the drug-coated balloon catheter business of Ireland-based medical products company Covidien plc, in order to settle FTC charges that its \$42.9 billion acquisition of Covidien would likely be anticompetitive. According to the FTC's complaint, both Medtronic and Covidien were developing drug-coated balloon catheters to compete with C.R. Bard, Inc., which currently is the only company that supplies these products, used to treat peripheral artery disease, in the U.S. market. Medtronic and Covidien were the only companies with products in clinical trials in the FDA approval process, which makes it unlikely that other competitors could enter the market in time to counteract the effects of the merger, the FTC alleged. The proposed transaction was reviewed by antitrust enforcement agencies around the world, as well as by the Commission. FTC staff cooperated closely with antitrust agencies in Canada, China, the European Union, Japan, and Mexico. See <https://www.ftc.gov/news-events/press-releases/2014/11/ftc-puts-conditions-medtronics-proposed-acquisition-covidien>.

69. In the Matter of Novartis AG. On November 26, 2014, global pharmaceutical company Novartis AG agreed to divest Habitrol, its nicotine replacement therapy patch, to settle FTC charges that its consumer health care products joint venture with GlaxoSmithKline ("GSK") would likely be anticompetitive. GSK currently sells its own nicotine replacement patch, Nicoderm CQ. Under the terms of the proposed joint venture agreement, GSK would control the joint venture and contribute, among other products, its nicotine patch business. Novartis would have a 36.5 percent interest in the joint venture, and without the divestitures required by the order, would have continued to own the Habitrol business, which had U.S. sales of more than \$58 million in 2013. Consumers use nicotine patches to reduce their nicotine intake gradually while quitting smoking. According to the FTC's complaint, Novartis and GSK are the only companies that market branded nicotine patches in the United States, and two of only three companies that supply private label patches to retailers. See <https://www.ftc.gov/news-events/press-releases/2014/11/ftc-puts-conditions-pharmaceutical-joint-venture-between>.

70. In the Matter of H.I.G. Bayside Deb et al. On October 31, 2014, the FTC announced that it would require Surgery Center Holdings, Inc., known as Surgery Partners, and Symbion Holdings Corporation to divest Symbion's ownership interest in an ambulatory surgery center in Orange City, Florida, as part of a settlement resolving charges that Surgery Partners' \$792 million purchase of Symbion would be anticompetitive. Both companies had operated a large number of ambulatory surgery centers located throughout the country that sell and provide outpatient surgical services to commercial health plans and commercially insured patients. The proposed merger would have combined the only two multi-specialty ambulatory surgical centers in the Orange City/Deltona area of Florida, and would have left commercial health plans and commercially insured patients there with only one meaningful alternative to Surgery Partners' outpatient surgical services. See <https://www.ftc.gov/news-events/press-releases/2014/10/ftc-requires-divestiture-condition-surgery-center-holdings>.

#### 4.2.2 *DOJ Public Merger Investigations and Challenges*

71. Halliburton/Baker Hughes. On May 1, 2016, the Division announced that Halliburton/Baker Hughes had abandoned their planned merger, valued at \$34 billion. The proposed merger would have combined two of the three largest oilfield service industry companies in the United States and the world. The Division filed suit on April 6, 2016, to block the merger, alleging that the transaction would unlawfully eliminate significant head-to-head competition between the companies in the markets for at least 23 products crucial to the exploration and production of oil and natural gas in the United States. Before the lawsuit was filed, Halliburton had offered to divest certain assets in an effort to address the Department's competitive concerns. The proposal was inadequate because it did not include full business units, withheld many critical assets and personnel, involved numerous ongoing entanglements between the merged company and the divestiture buyer, and generally failed to replicate the robust competition

between the parties that exists today. See <https://www.justice.gov/opa/pr/halliburton-and-baker-hughes-abandon-merger-after-department-justice-sued-block-deal>.

72. Charter Communications/Time Warner Cable. On April 25, 2016, the Division announced a settlement that permitted Charter Communications Inc. to complete its \$78 billion proposed acquisition of Time Warner Cable Inc. (TWC) and its related \$10.4 billion acquisition of Bright House Networks LLC (BHN) from Advance/Newhouse Partnership. The settlement forbids the merged company, referred to as “New Charter,” from entering into or enforcing agreements that could make it more difficult for online video distributors (OVDs) to obtain video content from programmers. Under the terms of the proposed settlement, New Charter will be prohibited from entering into or enforcing any agreement with a programmer that forbids, limits, or creates incentives to limit the programmer’s provision of content to one or more OVDs. The settlement further provides that New Charter will not be able to avail itself of other distributors’ most favored nation (MFN) provisions if they are inconsistent with this prohibition. The settlement also prohibits New Charter from retaliating against programmers for licensing to OVDs. See <https://www.justice.gov/opa/pr/justice-department-allows-charter-s-acquisition-time-warner-cable-and-bright-house-networks>.

73. General Electric/Electrolux. On December 7, 2015, after four weeks of trial in federal district court, Electrolux and General Electric Company announced the termination of the agreement under which Electrolux was to purchase General Electric’s appliance business. The Department brought suit on July 1, 2015, to challenge the \$3.3 billion acquisition because it would combine two of the leading manufacturers of ranges, cooktops, and wall ovens sold in the United States, eliminating competition that benefits American consumers and home builders through lower prices and more options. See <https://www.justice.gov/opa/pr/electrolux-and-general-electric-abandon-anticompetitive-appliance-transaction-after-four-week>.

74. Chicken of the Sea/Bumble Bee. On December 3, 2015, Thai Union Group P.C.L., owner of Tri-Union Seafoods LLC, d/b/a Chicken of the Sea International, and Bumble Bee Foods LLC abandoned their plans to merge after the Department informed the companies it had serious concerns that the proposed transaction would harm competition. As originally proposed, the acquisition of Bumble Bee would have combined the second and third largest sellers of shelf-stable tuna in the United States in a market long dominated by three major brands, as well as combined the first and second largest domestic sellers of other shelf-stable seafood products. See <https://www.justice.gov/opa/pr/chicken-sea-and-bumble-bee-abandon-tuna-merger-after-justice-department-expresses-serious>.

75. Springleaf/OneMain. On November 12, 2015, the Division announced a settlement that permitted Springleaf Holdings, Inc. (Springleaf) to proceed with its \$4.25 billion acquisition of OneMain Financial Holding, LLC (OneMain). As proposed, the merger would have joined the two largest personal installment lenders in the U.S., resulting in a combined company with over 1,800 branches in 43 states. During its review, the Division discovered that Springleaf and OneMain specialized in the same types of \$3,000–\$6,000 loans, targeted the same customer base, and often operated branches within blocks of one another. The Division concluded that the combination of Springleaf and OneMain without the divestitures would likely harm borrowers in and around 126 towns across Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia, Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia. The settlement required Springleaf to divest 127 branches in 11 states with over \$600 million in loans to Landmark Financial Services or to an alternative buyer approved by the United States to proceed with the acquisition. See <https://www.justice.gov/opa/pr/justice-department-requires-springleaf-divest-127-branches-11-states-order-complete>.

76. AT&T/DirecTV. On July 21, 2015, the Division announced that it would close its investigation into AT&T's proposed \$48 billion acquisition of DirecTV. The announcement followed a statement by Federal Communications Commission ("FCC") Chairman Tom Wheeler that a final order approving the transaction had been circulated within the FCC. The Division concluded that the combination of AT&T's land-based internet and video business with DirecTV's satellite-based video business does not pose a significant risk to competition and the commitments that the proposed FCC order includes, if adopted, will provide significant benefits to millions of subscribers. See <https://www.justice.gov/opa/pr/justice-department-will-not-challenge-atts-acquisition-directv>.

77. Applied Materials/Tokyo Electron. On April 27, 2015, Applied Materials Inc. and Tokyo Electron Ltd. abandoned their plans to merge after the Division informed the companies that their remedy proposal failed to resolve the Department's concerns. The proposed merger of Applied Materials and Tokyo Electron would have combined the two largest competitors with the necessary know-how, resources, and ability to develop and supply high-volume non-lithography semiconductor manufacturing equipment. During the investigation, the Division cooperated with the Korean Fair Trade Commission, China's Ministry of Commerce, Germany's Federal Cartel Office, and competition agencies from several other jurisdictions. See <https://www.justice.gov/opa/pr/applied-materials-inc-and-tokyo-electron-ltd-abandon-merger-plans-after-justice-department>.

78. National CineMedia/Screenvision. On March 16, 2015, shortly before trial, National CineMedia Inc. (NCM) announced that it would abandon its proposed acquisition of Screenvision LLC. The Division had filed a civil suit on November 3, 2014, to block the proposed transaction. NCM and Screenvision are the two largest cinema advertising networks in the United States. Cinema advertising networks are intermediaries between movie theaters and advertisers. The networks create "preshows"—20 to 30 minute programs combining advertisements with special content—that movie theaters play prior to the start of each movie. NCM and Screenvision collectively serve 88 percent of all movie theater screens in the United States through long-term, exclusive contracts. The Division's complaint alleged that the acquisition would combine the only two significant cinema advertising networks in the United States, creating an unlawful monopoly that would eliminate competition that had benefited movie theaters, advertisers, and moviegoers. See <https://www.justice.gov/opa/pr/justice-department-issues-statement-abandonment-national-cinemediastheaterscreenvision-merger>.

79. Verso/NewPage. On December 31, 2014, the Division announced a settlement that permitted Verso Paper Corp. to complete its acquisition of NewPage Holdings Inc. The settlement required Verso to divest NewPage mills in Maine and Wisconsin before proceeding with the acquisition. Without the divestitures, the transaction would have significantly increased concentration and likely resulted in higher prices in several coated paper markets in the United States and Canada. The settlement provided Catalyst Paper Corp. or an alternative buyer acceptable to the United States, with two NewPage mills that have approximately the same amount of production as Verso was operating at the time of the lawsuit. See <https://www.justice.gov/opa/pr/justice-department-requires-divestitures-verso-paper-corps-acquisition-newpage-holdings-inc>.

80. Continental AG/Veyance Technologies. On December 11, 2014, the Division announced a settlement that permitted Continental AG to complete its \$1.8 billion acquisition of Veyance Technologies, Inc. The settlement required Continental to divest Veyance's North American commercial vehicle air springs business to an independent buyer acceptable to the Department. The Division's lawsuit alleged that the proposed acquisition would have reduced the number of suppliers of air springs to North American commercial vehicle manufacturers from three to two, facilitating anticompetitive coordination between the two remaining suppliers and risking price increases and service quality reductions to original equipment manufacturers. The acquisition would also have reduced the number of significant suppliers of replacement air springs to commercial vehicle owners, which likely would have lessened competition in the North

American aftermarket for commercial vehicle air springs. The Division worked closely with competition authorities from Canada, Brazil, and Mexico throughout its investigation. See <https://www.justice.gov/opa/pr/justice-department-requires-divestiture-commercial-air-springs-business-connection>.

81. Embarcadero/CA Inc. On November 5, 2014, the Division announced that Embarcadero Technologies, Inc. had abandoned its proposed acquisition of CA Inc.'s Erwin data modeling product suite after the Division expressed concerns about the transaction's potential for anticompetitive effects in the market for data modeling software. Embarcadero's ER Studio products and CA's ERwin Data Modeler had been particularly close competitors prior to the proposed acquisition. See <https://www.justice.gov/opa/pr/justice-department-requires-divestitures-media-general-inc-acquisition-lin-media-llc>.

## **5. International antitrust cooperation and outreach**

### ***5.1 International Antitrust Cooperation Developments***

82. In FY 2015, the Antitrust Agencies continued to play a lead role in promoting cooperation and convergence toward sound competition policies internationally, through building strong bilateral ties with major enforcement partners and participation in multilateral bodies such as the Competition Committee of the Organization for Economic Cooperation and Development ("OECD"), the International Competition Network ("ICN"), the United Nations Conference on Trade and Development ("UNCTAD"), and the Asia-Pacific Economic Cooperation ("APEC").

83. On September 8, 2015, the Agencies announced that they had signed an antitrust cooperation agreement with the Korea Fair Trade Commission. The agreement contains provisions for antitrust enforcement cooperation and coordination, consultations with respect to enforcement actions, and technical cooperation, and is subject to effective confidentiality protections. The agreement also includes mutual acknowledgment of the importance of antitrust cooperation, including information sharing and coordination of enforcement actions. See <https://www.ftc.gov/news-events/press-releases/2015/09/federal-trade-commission-department-justice-sign-antitrust>.

84. On May 21, 2015, the heads of the Agencies met in Mexico City with their counterparts from Mexico's Federal Commission on Economic Competition and Canada's Competition Bureau to discuss their ongoing work to ensure effective antitrust enforcement cooperation in our increasingly interconnected markets. The discussions covered a wide range of topics, including implementation of Mexico's new competition law, enforcement cooperation among the three countries' antitrust agencies, approaches to innovative and disruptive technologies, and current enforcement priorities. See <https://www.justice.gov/opa/pr/officials-us-canada-and-mexico-participate-trilateral-meeting-mexico-city-discuss-antitrust>.

85. In FY 2015, the Agencies continued to work through the United States government's interagency processes to ensure that competition-related issues that arise in connection with China's Anti-Monopoly Law that implicate broader U.S. policy interests are addressed in a coordinated and effective manner. Over the past year, this work resulted in competition outcomes in the Strategic & Economic Dialogue, aimed at ensuring that China implements its competition law transparently and non-discriminatorily, and in the U.S.-China Joint Commission on Commerce and Trade, focused on independence in decision making, confidentiality, and coherence of AML and intellectual property rules.

86. During FY 2015, the Agencies cooperated on merger reviews, often pursuant to waivers from parties and third parties, with many competition agencies around the world, including those of Australia,

Brazil, Canada, China, the European Union, Germany, Japan, Mexico, South Korea, and the United Kingdom. To foster convergence with counterparts, the Agencies also held formal bilateral antitrust consultations with the Japan Fair Trade Commission and the Korea Fair Trade Commission.

87. The FTC cooperated with foreign counterparts on 30 merger and five non-merger investigations with many competition agencies around the world. Investigations on which the FTC cooperated with foreign counterparts included NXP's acquisition of Freescale, in which the FTC worked with antitrust agencies in the European Union, Japan, and Korea, including on the analysis of the proposed transaction and potential remedies, to reach consistent results. See <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-requires-nxp-semiconductors-nv-divest-rf-power-amplifier>. Commission staff cooperation with non-U.S. counterparts also included extensive coordination on a number of non-public matters in which the Commission ultimately closed its investigation without taking enforcement action or that resulted in abandonment of the transaction by the parties, some after second requests were issued.

88. In FY 2015, the Division cooperated with international counterparts on many civil non-merger, merger, and cartel investigations. One of the Division's most noteworthy instances of international cooperation was its Applied Materials Inc./Tokyo Electron Ltd. matter (*see* para. 77 above). With waivers from the parties early in the investigation, the Division was able to cooperate with counterparts in Korea, China, Germany, and four other jurisdictions. The Division's cooperation with competition enforcers in other jurisdictions enabled our staffs to work closely together, talking in detail about highly technical aspects of the products at issue, leading to a more comprehensive assessment of the remedy proposals. In total, the Division cooperated with international counterparts in 14 merger investigations in FY 2015. The Division also coordinated and cooperated with competition agencies in other jurisdictions in many ongoing international cartel investigations.

89. During FY 2014, the Agencies continued to play leadership roles in the International Competition Network ("ICN") and served as ICN Steering Group Members. At the ICN's annual conference in Sydney, Australia on April 28-May 1, 2015, the ICN adopted new recommended practices for predatory pricing analysis and competition assessment, and approved new work product on international merger enforcement cooperation, confidentiality protections during investigations, digital evidence gathering and leniency policies. See <http://www.internationalcompetitionnetwork.org/>.

90. During FY 2015, the Division became a co-chair of the ICN Unilateral Conduct Working Group ("UCWG"), together with the United Kingdom's Competition and Markets Authority and the Turkish Competition Authority. As co-chair of the ICN Unilateral Conduct Working Group, the Division has initiated a two-year project for drafting an Analytic Framework chapter for the Work Group Workbook that explores the basic questions an agency must address when formulating its unilateral conduct enforcement policies. Division officials also developed a hypothetical on refusals to deal that was presented to officials from 34 ICN member agencies in the UCWG workshop in Istanbul, Turkey.

91. In FY 2015, the FTC served as co-chair of the ICN's Agency Effectiveness Working Group ("AEWG"), together with the Finnish Competition and Consumer Authority and the Norwegian Competition Authority. The FTC co-led the Investigative Process Project, which resulted in ICN guidance on investigative process to promote fair and informed enforcement. The guidance addresses investigative principles and practices that promote procedural fairness and effective enforcement. See <http://www.internationalcompetitionnetwork.org/uploads/library/doc1028.pdf>.

## **5.2 Outreach**

92. In FY 2015, the Agencies continued to engage in technical cooperation on competition law and policy matters with their international counterparts. In FY 2015, the FTC continued its robust technical

assistance program in which it shares the agency's experience with competition and consumer protection agencies around the world, conducting 26 programs in 20 countries, including Brazil, Colombia, Ecuador, Mexico, Pakistan, Tanzania, Ukraine, United Arab Emirates, Vietnam, and Zambia, along with regional programs for Africa, Central America, Southeast Asia, and Southeast Europe.

93. As part of its ongoing effort to build effective relationships, the FTC provides opportunities for staff from foreign agencies to spend several months working directly with FTC staff on investigations through its International Fellows and Interns program. In FY 2015, the FTC hosted international fellows from the European Commission, India, Korea, and the United Kingdom, and also sent an FTC official to the UK Competition and Markets Authority ("CMA"). These assignments provide valuable opportunities for participants to obtain a deeper understanding of their international partners' laws and challenges. This knowledge provides critical support for coordinated enforcement and promotes cooperation and convergence towards sound policy.

94. The Division's technical assistance programs provide support to countries developing competition laws, agencies, and enforcement systems, offering practical advice on a myriad of topics such as merger enforcement, remedies, and leniency programs. In FY 2015 Division attorneys and economists traveled to Colombia, Egypt, Guatemala, Honduras, Hungary, India, Japan, Mexico, New Zealand, Panama, People's Republic of China, Peru, Republic of Korea, South Africa, Zambia. A total of 20 travelers participated in 15 different technical cooperation programs.

95. During the last year, the Division strengthened its Visiting International Enforcers Program. The program fosters a deeper mutual understanding and serves to expand relationships and increase mutual understanding with enforcement partners. This past year, as a part of this program, the Division hosted enforcers from the CMA. And, for the first time, a senior Division manager served as a visiting enforcer with the CMA.

## **6. Regulatory and Trade Policy Matters**

### **6.1 Regulatory Policies**

#### *6.1.1 DOJ Activities: Federal and State Regulatory Matters*

96. On October 26, 2015, in response to a request by the Virginia legislature, the Department and FTC issued a joint statement commenting on Virginia's certificate-of-need laws. Certificate-of-need laws require healthcare providers to obtain a certificate-of-need before providing services in a specific area. The Division and the FTC urged Virginia to repeal its certificate-of-need law because such laws create barriers to entry and expansion of competing services; limit consumer choice; and stifle innovation. *See* <https://www.justice.gov/atr/case-document/file/788171/download>.

97. On June 24, 2015, The Department updated its views on the FCC's Mobile Spectrum Holdings proceeding, specifically on the rules regarding the 600 MHz incentive auction. In its submission the Department continued to support the FCC's decision to create a significant reserve of spectrum to ensure that wireless earners, other than those that currently hold the majority of low-frequency spectrum, have a meaningful opportunity to acquire the spectrum necessary to foster a competitive wireless market. *See* <https://www.justice.gov/atr/file/630891/download>.

98. On May 6, 2015, the Agencies, in response to a request for public comments, commended the PTO for its continuing efforts to enhance patent quality, and supported efforts to define more clearly the boundaries of a claimed invention. The Agencies reiterated that clearer patent notice can encourage market participants to collaborate, transfer technology, or—in some cases—to design around patents, leading to a

more efficient marketplace for intellectual property and the goods and services that practice such rights. See <https://www.justice.gov/sites/default/files/atr/legacy/2015/05/07/313716.pdf>.

#### 6.1.2 *FTC Staff Activities: Federal and State Regulatory Matters*

99. Health Care. On June 29, 2015, in response to a request by Minnesota state legislators, FTC staff submitted a comment regarding the possible competitive impact of recently enacted amendments to the Minnesota Government Data Practices Act that would classify health care provider contracts as public data. According to the staff comment, disclosing the negotiated terms of health plan contracts may offer little benefit to health care consumers but could pose a substantial risk of reducing competition in health care markets. For example, the amendments may lead to the disclosure of competitively sensitive price and cost information that could enable health care providers to see what terms health plans are offering their competitors and to use that information against the plans during negotiations. Such disclosure of price and cost information could also enable competing health care providers to agree in advance on terms that they each will offer to health plans, instead of trying to outbid each other by offering better terms to win the contract. These concerns are heightened in Minnesota's health care markets, which already see reduced competition because there are fewer competing providers. See [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-regarding-amendments-minnesota-government-data-practices-act-regarding-health-care/150702minnhealthcare.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-amendments-minnesota-government-data-practices-act-regarding-health-care/150702minnhealthcare.pdf).

100. Health Care. On June 5, 2015, FTC staff submitted a comment to New York state legislators regarding the possible effects of a legislative proposal that would authorize Erie County Medical Center Corporation and Westchester County Health Care Corporation to collaborate with other public and private health care providers and payers. The proposed legislation would provide them and their collaborating entities with broad immunity from liability under federal and state antitrust laws even though this purported immunity would cover the kinds of information sharing and joint contract negotiation that are likely to result in reduced competition and higher prices for consumers. The staff comment states that because procompetitive or competitively benign health care collaborations already are permissible under the antitrust laws, the main effect of this legislation is to immunize conduct that would not generate efficiencies that are greater than consumer harms, and therefore would not pass muster under the antitrust laws. See [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-new-york-state-senator-ranzenhofer-new-york-state-assemblyman-abinanti-concerning/150605nypublichealthletter.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-new-york-state-senator-ranzenhofer-new-york-state-assemblyman-abinanti-concerning/150605nypublichealthletter.pdf).

101. Health Care. On May 18, 2015, in response to a request by an Oregon state legislator, FTC staff submitted a comment expressing concern that a broad antitrust exemption proposed in Oregon Senate Bill 231A for health care collaborations was unnecessary because antitrust law already permits such efforts that benefit consumers. While staff commended the underlying goal of the bill – to study and improve the delivery of primary care services to Oregon health care consumers, and to promote new collaborations among Oregon health care providers, payers, and other industry participants – the letter maintained that the broad purported antitrust exemption was based on misunderstandings about application of the antitrust laws to such endeavors. FTC staff noted that the proposed Bill is likely to lead to increased health care costs and decreased access to health care services for Oregon consumers. See [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-regarding-oregon-senate-bill-231a-which-includes-language-intended-provide-federal/150519oregonstaffletter.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-oregon-senate-bill-231a-which-includes-language-intended-provide-federal/150519oregonstaffletter.pdf).

102. Automobiles. On May 7, 2015, in response to a request from a Michigan state legislator, FTC staff submitted a comment on the possible competitive effects of legislation that would permit manufacturers of a category of vehicles, “autocycles,” to choose whether to sell directly to consumers, through dealers, or through some combination of the two. The staff comment states that the bill is likely to promote competition and benefit consumers by opening this category of motor vehicles to competition in

methods of distribution. However, in the staff's view, the bill "does not go far enough," and would "largely perpetuate the current law's protectionism for independent franchised dealers, to the detriment of Michigan car buyers." The comment urges Michigan lawmakers to consider repealing the ban on direct-to-consumer sale of motor vehicles by auto manufacturers, and instead permit manufacturers and consumers to reengage the normal competitive process that prevails in most other industries. See [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf).

103. **Patents.** On May 6, 2015, the Antitrust Agencies jointly submitted comments to the United States Patent and Trademark Office ("PTO") in response to the PTO's comprehensive initiative to increase the quality of granted patents. The PTO initiative focuses on excellence in work products, measuring patent quality, and customer service. The comments commend the PTO for its continuing efforts to enhance patent quality, and support efforts to give clearer notice of the boundaries of claimed inventions. Clearer patent notice can encourage market participants to collaborate, transfer technology, or design around patents, thus leading to a more efficient marketplace for intellectual property and the goods and services that practice such rights. See [https://www.ftc.gov/system/files/documents/advocacy\\_documents/comment-united-states-federal-trade-commission-united-states-department-justice-united-states/150507ptocomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-united-states-federal-trade-commission-united-states-department-justice-united-states/150507ptocomment.pdf).

104. **Dentistry.** On November 21, 2014, FTC staff submitted a comment to the Commission on Dental Accreditation ("CODA") in response to CODA's request for public comments on the 2014 version of its proposed accreditation standards for dental therapy education programs. The comment urged CODA to finalize and adopt accreditation standards, which likely will benefit consumers. In a previous comment to CODA in December 2013, FTC staff commended CODA's then-proposed standards as an important first step in encouraging the development of a nationwide dental therapy profession, and recommended revisions to portions of the standards that may have limited competition for dental services. Now that many of those concerns had been addressed, the FTC staff comment urged CODA "to finalize and adopt proposed standards without unnecessary delay, so that the development of this emerging service model can proceed, and consumers can reap the likely benefits of increased competition." See [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-commission-dental-accreditation-concerning-proposed-accreditation-standards-dental/141201codacomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-commission-dental-accreditation-concerning-proposed-accreditation-standards-dental/141201codacomment.pdf).

105. **Dentistry.** On October 6, 2014, FTC staff, in response to a notice requesting public comments, filed a comment urging the Texas State Board of Dental Examiners to reject two proposed rules that would impose new restrictions on the ability of Texas dentists to enter into contracts with non-dentists, such as dental service organizations, for the provision of nonclinical, administrative services. The comment explained that such restrictions may reduce competition, likely resulting in higher prices and reduced access to dental services, especially for underserved populations. See [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-texas-state-board-dental-examiners/141006tsbdecomment1.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-texas-state-board-dental-examiners/141006tsbdecomment1.pdf).

## 6.2 *DOJ and FTC Trade Policy Activities*

106. The Agencies are involved in interagency discussions and decision-making with respect to the formulation and implementation of U.S. international trade and investment policy as concerns competition policy. The Division participates in interagency trade policy discussions chaired by the Office of the U.S. Trade Representative, and provide antitrust and other legal advice to U.S. trade agencies. In addition, the Division works with other Department components (including the Civil, Criminal, and Environmental and Natural Resources Divisions) on international trade and investment issues that affect those components or the Department as a whole. The FTC participates in certain interagency trade policy discussions that

involve competition policy issues, and also coordinates on consumer protection aspects of trade policy with a number of U.S. government agencies.

107. The Agencies also participate in negotiations and working groups related to regional and bilateral trade agreements. The FTC and the DOJ participate in competition policy discussions and negotiations associated with the completed Trans-Pacific Partnership (“TPP”) and the on-going Transatlantic Trade and Investment Partnership (“TTIP”).

## **7. New Studies Related to Antitrust Policy**

### ***7.1 Joint DOJ/FTC Conferences and Reports***

108. Workshop Examining Health Care Competition. On February 24-25, 2015, the FTC and DOJ held the second in a series of public workshops, “Examining Health Care Competition,” to study developments related to health care provider organization and payment models that may affect competition in the provision of health care services. The workshop consisted of presentations and roundtable discussions that focused on early observations regarding “accountable care organizations” alternatives to traditional fee-for-service payment models; trends in provider consolidation; trends in provider network and benefit design strategies, as well as contracting practices and regulatory activity that may enhance or undermine these strategies; and early observations regarding health insurance exchanges. Workshop participants considered theoretical and empirical developments in the economic understanding of these practices, discussed developments in the relevant case law, and assessed the implications for the proper treatment of these practices under the antitrust laws. See <https://www.ftc.gov/news-events/events-calendar/2015/02/examining-health-care-competition>.

### ***7.2 FTC Conferences, Reports, and Economic Working Papers***

#### ***7.2.1 Conferences and Workshops***

109. Sharing Economy Workshop. On June 9, 2015, the FTC held a workshop to explore issues relating to emerging internet peer-to-peer platforms—often called the “sharing” economy—and the economic activity these platforms facilitate. The workshop examined competition, consumer protection, and economic issues arising in the sharing economy to promote more informed analysis of its competitive dynamics as well as benefits and risks to consumers. The workshop considered if, and the extent to which, existing regulatory frameworks can be responsive to sharing economy business models while maintaining appropriate consumer protections. It also examined how various regulatory choices may affect competition and consumers. See <https://www.ftc.gov/news-events/events-calendar/2015/06/sharing-economy-issues-facing-platforms-participants-regulators>.

110. 100th Anniversary Symposium. On November 7, 2014, the FTC held a symposium on the FTC’s unique “toolkit” comprised of enforcement and remedies, research, advocacy, and guidance in honor of its 100th anniversary. See <https://www.ftc.gov/news-events/events-calendar/2014/11/100th-anniversary-symposium>.

111. Seventh Annual Microeconomics Conference. On October 16-17, 2014, the FTC held its seventh annual conference on microeconomics, bringing together researchers from academia, government agencies, and other organizations to discuss economic issues in antitrust and consumer protection. See <https://www.ftc.gov/news-events/events-calendar/2014/10/seventh-annual-federal-trade-commission-microeconomics>.

## 7.2.2 Reports

112. Pet Medications. On May 27, 2015, the FTC released a report on the pet medications industry that noted fast growth and a changing landscape of suppliers, with veterinarians seeing increased competition from non-traditional sellers, and consumers finding more ways to buy medications for their pets. The report made recommendations for ways to make the pet medications market even more competitive. See <https://www.ftc.gov/system/files/documents/reports/competition-pet-medications-industry-prescription-portability-distribution-practices/150526-pet-meds-report.pdf>.

113. Patent Settlements. On December 22, 2014, the FTC released a report on patent settlements that concluded in FY 2013, companies filed a total of 145 final patent dispute settlements, of which 29 created potential “pay-for-delay” agreements between branded and generic drug companies. See <https://www.ftc.gov/system/files/documents/reports/agreements-filled-federal-trade-commission-under-medicare-prescription-drug-improvement/141222mmafy13rpt-1.pdf>.

114. Ethanol. On December 5, 2014, the FTC released a report that concluded the market for fuel ethanol in the United States is unconcentrated, and the industry is less concentrated today than it was ten years ago. See <https://www.ftc.gov/system/files/documents/reports/report-congress-ethanol-market-concentration/2014ethanolreport.pdf>.

## 7.2.3 Bureau of Economics Working Papers

115. The FTC’s Bureau of Economics issued the following working papers during FY 2015. The papers are available at <https://www.ftc.gov/policy/reports/policy-reports/economics-research/working-papers>.

- Christopher Garmon, The Accuracy of Hospital Merger Screening Methods, August 2015
- Patrick McAlvanah, Keith Anderson, Robert Letzler, and Jack Mountjoy, Fraudulent Advertising Susceptibility: An Experimental Approach, April 2015
- Louis Silvia and Christopher T. Taylor, Tax Pass-Through in Gasoline and Diesel Fuel: The 2003 Washington State Nickel Funding Package Increase, October 2014

## 7.3 DOJ Economic Working Papers

### 7.3.1 DOJ Economic Analysis Group Discussion Papers

116. The DOJ Economic Analysis Group issued the following paper during FY 2015. The papers are available at [www.usdoj.gov/atr/public/eag/discussion\\_papers.htm](http://www.usdoj.gov/atr/public/eag/discussion_papers.htm).

- Joseph Uri Podwol, Sequential English Auctions: A Theory of Opening-bid Fishing, EAG 15-1, March 2015

## APPENDICES

Department of Justice: Fiscal Year 2015 FTE<sup>2</sup> and Resources by Enforcement Activity

	FTE	Amount (\$ in thousands)
Criminal Enforcement	160	\$64,898
Civil Enforcement	478	\$97,348
<b>Total</b>	638	\$162,246

## Federal Trade Commission: Fiscal Year 2015 Competition Mission: FTE and Dollars by Program, Bureau &amp; Office

	FTE	Amount (\$ in thousands)
<b>Total Promoting Competition Mission</b>		
<i>Bureau of Competition</i>	277.5	52,518.7
<i>Bureau of Economics</i>	74.0	12,546.8
<i>Regional Offices</i>	18.4	3,253.0
<i>Mission Support</i>	132.0	51,257.0
<b>Premerger Notification</b>		
<i>Bureau of Competition</i>	27.5	4,508.1
<i>Bureau of Economics</i>	0.0	0.0
<i>Regional Offices</i>	0.4	67.8
<b>Merger &amp; Joint Venture Enforcement</b>		
<i>Bureau of Competition</i>	139.0	28,364.0
<i>Bureau of Economics</i>	42.8	7,063.7
<i>Regional Offices</i>	12.0	2,142.8
<b>Merger &amp; Joint Venture Compliance</b>		
<i>Bureau of Competition</i>	4.4	723.5
<i>Bureau of Economics</i>	1.5	249.5
<i>Regional Offices</i>	---	---
<b>Nonmerger Enforcement</b>		
<i>Bureau of Competition</i>	89.8	17,191.3
<i>Bureau of Economics</i>	14.7	2,656.7
<i>Regional Offices</i>	5.2	872.4

<sup>2</sup> An "FTE" or "full time equivalent" amounts to one employee working full time for a full year. Because the number of employees fluctuates throughout the year through hiring, attrition, and varying schedules, an agency typically has more employees than FTEs (e.g., two employees working 20 hours per week for one full year equals one FTE).

	FTE	Amount (\$ in thousands)
<b>Nonmerger Compliance</b>		
<i>Bureau of Competition</i>	---	---
<i>Bureau of Economics</i>	---	---
<i>Regional Offices</i>	---	---
<b>Antitrust Policy Analysis</b>		
<i>Bureau of Competition</i>	---	---
<i>Bureau of Economics</i>	7.6	1,246.4
<i>Regional Offices</i>	---	---
<b>Other Direct</b>		
<i>Bureau of Competition</i>	7.8	1,731.8
<i>Bureau of Economics</i>	7.4	1,330.5
<i>Regional Offices</i>	0.8	170.0
<b>Support</b>	132.0	51,257.0