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1. Introduction

1. This report describes federal antitrust developments in the United States for the period of October 1, 2016 through September 30, 2017 (“FY 2017”).¹ 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 the “Agencies.” For additional information on the Agencies’ activities in FY 2017, see the FTC’s Annual Highlights 2017, available at <https://www.ftc.gov/reports/annual-highlights-2017>, and the DOJ’s 2018 Spring Update, available at <https://www.justice.gov/atr/division-operations/division-update-spring-2018>.

1.1. Senior Leadership Update

2. The Agencies underwent a significant senior leadership transition in FY 2017. President Donald Trump nominated Joseph Simons as FTC Chairman, who took office on May 1, 2018 for a term that expires in September 2024. FTC Commissioner Maureen K. Ohlhausen served as Acting Chairman from January 25, 2017 until May 1, 2018. She continues to serve as a Commissioner until her term expires in September 2018 or when the Senate confirms the President’s nomination for her to become a judge on the United States Court of Federal Claims.

3. On May 2, 2018, Noah Joshua Phillips, Rebecca Kelly Slaughter, and Rohit Chopra were sworn in as FTC Commissioners. Phillips’ term expires in September 2023, Slaughter’s term expires in September 2022, and Chopra’s in September 2019.

4. At DOJ, Makan Delrahim was confirmed by the U.S. Senate as the new Assistant Attorney General (“AAG”) of the Antitrust Division on September 27, 2017. AAG Delrahim’s confirmation follows his nomination on April 6, 2017. Following AAG Delrahim’s nomination, Andrew Finch was appointed as the Division’s Principal Deputy Assistant Attorney General and served as Acting AAG as of April 2017.

5. Deputy Assistant Attorney General Brent Snyder resigned on June 16, 2017. Following his resignation, Marvin Price was appointed to the role of Acting Deputy Assistant Attorney General for Criminal Enforcement. On May 7, 2018, Richard Powers became the new Deputy Assistant Attorney General for Criminal Enforcement.

6. On June 20, 2017, Donald G. Kempf was appointed the Deputy Assistant Attorney General for Litigation. Luke Froeb was appointed Deputy Assistant Attorney General for Antitrust Economics in July 2017. In August 2017, Bernard Nigro and Roger Alford were appointed as Deputy Assistant Attorney General and Deputy Assistant Attorney General for International Affairs, respectively.

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

2. Changes in law or policies

2.1. Changes in Antitrust Rules, Policies, or Guidelines

7. On September 12, 2017, the Department and the FTC announced the release of antitrust guidance for businesses taking part in relief efforts and those involved in rebuilding communities affected by Hurricanes Harvey and Irma. The guidance is intended to help businesses understand how they can work together to rebuild affected communities without violating the antitrust laws. The antitrust laws accommodate procompetitive collaborations among competitors. At the same time, the agencies intend to hold accountable those who enter into anticompetitive agreements that take advantage of hurricane victims or hurricane relief efforts. Among other actions, the Department will criminally prosecute companies that fix prices, rig bids, or allocate customers, and the FTC will investigate and take action against companies and individuals who violate consumer protection laws. See <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-announce-guidance-post-hurricane-relief>.

8. On June 29, 2017, the FTC and the Department approved minor procedural changes to the form that companies use to report a proposed merger, acquisition, or similar transaction under the Hart-Scott-Rodino (“HSR”) Antitrust Improvements Act. See <https://www.ftc.gov/news-events/press-releases/2017/06/ftc-doj-approve-procedural-changes-hsr-form>.

9. On January 19, 2017, the HSR size-of-transaction threshold for reporting proposed mergers and acquisitions under Section 7A of the Clayton Act increased from \$78.2 million to \$80.8 million. The new 2017 thresholds under Section 8 of the Act that trigger prohibitions on certain interlocking memberships on corporate boards of directors are \$32,914,000 for Section 8(a)(1) and \$3,291,400 for Section 8(a)(2)(A). The FTC revises the thresholds annually based on the change in gross national product. See <https://www.ftc.gov/news-events/press-releases/2017/01/ftc-announces-annual-update-size-transaction-thresholds-premerger>.

10. On January 13, 2017, the Department and the FTC issued an update to the Antitrust Guidelines for the Licensing of Intellectual Property to reflect intervening changes in statutes, case law, and enforcement policy. The update builds on the success of the 1995 Antitrust Guidelines for the Licensing of Intellectual Property, which guided enforcement decisions involving antitrust and intellectual property (“IP”) law and aided business planning. The Agencies finalized the update after carefully reviewing and considering comments submitted by academics, private industries, law associations, and non-profit organizations during a 45-day comment period. The updated Guidelines reaffirm the Agencies’ commitment to an economically grounded approach to antitrust analysis of IP licensing. In taking this approach, the Guidelines reflect the three core principles of the 1995 Guidelines: (1) standard antitrust analysis applies to conduct involving IP; (2) the Agencies will not presume that a patent, copyright, or trade secret necessarily confers market power upon its owner; and (3) IP licensing allows firms to combine complementary factors of production and generally is procompetitive. Applying these principles in a variety of scenarios, the Guidelines provide a useful and flexible framework to determine when competition may be harmed by conduct involving IP licensing. See <https://www.justice.gov/atr/IPguidelines/download> and <https://www.justice.gov/atr/guidelines-and-policy-statements-0/2017-update-antitrust-guidelines-licensing-intellectual-property>.

11. On January 13, 2017, the FTC and the Department issued revised Antitrust Guidelines for International Enforcement and Cooperation. These Guidelines update the 1995 Antitrust Enforcement Guidelines for International Operations and provide guidance for businesses engaged in international activities on questions that concern the Agencies' international enforcement policy, as well as the Agencies' related investigative tools and cooperation with foreign authorities. The revisions describe the current practices and methods of analysis the Agencies employ when determining whether to initiate and how to conduct investigations of, or enforcement actions against, conduct with an international dimension. The Antitrust Guidelines for International Enforcement and Cooperation are different from the 1995 Guidelines in several important ways. In particular, they: (1) add a chapter on international cooperation, which addresses the Agencies' investigative tools, confidentiality safeguards, the legal basis for cooperation, types of information exchanged and waivers of confidentiality, remedies, and special considerations in criminal investigations; (2) update the discussion of the application of U.S. antitrust law to conduct involving foreign commerce, the Foreign Trade Antitrust Improvements Act, foreign sovereign immunity, foreign sovereign compulsion, the act of state doctrine, and petitioning of sovereigns, in light of developments in both the law and the Agencies' practice; and (3) provide revised illustrative examples focused on the types of issues most commonly encountered. See <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-announce-updated-international-antitrust-guidelines-for-international-enforcement-and-cooperation> and <https://www.justice.gov/atr/internationalguidelines/download>.

12. On October 20, 2016, the FTC and the Department issued Antitrust Guidance for Human Resource Professionals. This document explains that agreements among competing employers to limit wages, benefits, terms of employment, or job opportunities can violate the antitrust laws. The document gives practical information to human resource professionals about the antitrust laws, providing questions and answers explaining how these laws would apply to real-world scenarios. The Agencies also issued a quick-reference card for human resource professionals, which highlights situations that should raise red flags for these professionals. See <https://www.ftc.gov/news-events/press-releases/2016/10/ftc-doj-release-guidance-human-resource-professionals-how> and <https://www.justice.gov/atr/file/903511/download>.

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

3.1. Staffing and Enforcement Statistics

3.1.1. FTC

13. During FY 2017, the FTC employed approximately 535 staff and spent approximately \$134.2 million in furtherance of its Maintaining Competition mission.

14. During FY 2017, 2,052 proposed mergers and acquisitions were reported for review under the HSR Act, a 12 percent increase from the number of HSR transactions reported during FY 2016. The Commission staff issued requests for additional information ("second requests") in 33 transactions. The FTC challenged 23 mergers, including 15 in which the Commission issued a consent order, six in which the transaction was abandoned or restructured as a result of antitrust concerns raised during the investigation, and two 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 enjoin the acquisition pending resolution of the Commission's administrative litigation.

15. During FY 2017, the FTC staff opened 25 non-merger initial phase investigations. The Commission brought nine non-merger enforcement actions, three of which were resolved by a consent order, and four by permanent injunction action in federal court.

16. During FY 2017, the Commission filed *amicus curiae* briefs in four cases, all before federal courts. The Commission or Commission staff also sent or filed 12 competition advocacy comments. See <http://www.ftc.gov/policy/advocacy>.

3.1.2. DOJ

17. At the end of FY 2017, the Division had 666 employees: 330 attorneys, 50 economists, 136 paralegals, and 150 other professional staff. For FY 2017, the Division received an appropriation of \$165.0 million.

18. In FY 2017, the Division opened 44 criminal investigations (25 grand jury investigations and 19 preliminary inquiries). The Division filed 24 criminal cases, charging 8 corporations and 27 individuals. The Division obtained more than \$66 million in criminal fines and penalties from 7 corporations and 34 individuals. The courts sentenced 30 individuals to serve time in jail with an average of nearly 9 months incarceration.

19. During FY 2017, the Division challenged 18 merger transactions, including 11 with filed complaints in U.S. district courts. In 9 of these 11, the Division simultaneously filed a proposed settlement. In the remaining two, the complaint initiated litigation. In 6 of the other challenges, the parties abandoned the proposed transaction, and in the last, the parties restructured the transaction to resolve the Division's concerns. The Division also issued "second requests" in 18 mergers. In addition, the Division screened a total of 529 bank mergers. The Division opened 61 civil investigations (merger and non-merger), and issued 377 civil investigative demands (a form of compulsory process). The Division filed five non-merger civil complaints.

3.2. Antitrust Cases in the Courts

3.2.1. United States Supreme Court

20. **In the Matter of Animal Science Prods, Inc. v. Hebei Welcome Pharma Co. Ltd.** On September 20, 2016, the U.S. Court of Appeals for the Second Circuit decided *In re: Vitamin C Antitrust Litigation*, 837 F.3d 175 (2d Cir. 2016), vacating a district court judgment that ordered Chinese corporate defendants to pay damages to U.S. purchasers for fixing the price of Vitamin C exported to the United States in violation of U.S. antitrust law. The appeal presented the question of what laws and standards control when U.S. antitrust laws are violated by foreign companies that claim to be acting at the express direction or mandate of a foreign government. The Second Circuit concluded that, in consideration of principles of international comity, the district court should have abstained from adjudicating the U.S. purchasers' private antitrust claims because the Chinese government filed a formal statement asserting that Chinese law required defendants to fix prices of Vitamin C sold abroad, and because defendants could not simultaneously comply with Chinese law and U.S. antitrust law. On January 12, 2018, the U.S. Supreme Court granted certiorari on the question of whether a court may

exercise independent review of a foreign sovereign's interpretation of its domestic law or whether it is bound to defer to that statement.

21. **In the Matter of Ohio v. American Express Co.** The United States and seventeen Plaintiff States sued American Express Co. alleging that anti-steering rules in Amex's contracts with merchants blocked price competition among credit-card networks because they precluded merchants from encouraging customers to use less costly cards. The District Court for the Eastern District of New York held the anti-steering rules unlawful, but the U.S. Court of Appeals for the Second Circuit reversed and directed judgment for Amex. *United States v. American Express Co.*, No. 15-1672 (2d Cir.). The Second Circuit held that the district court erred by "excluding the market for cardholders from its relevant market definition." The court further held that the government failed to carry its initial burden of proof under the rule of reason because it failed to show "net harm" to merchants and cardholders accounting for any "offsetting benefits to cardholders." On October 16, 2017, the U.S. Supreme Court granted certiorari on the question whether the government's showing that Amex's anti-steering provisions stifled price competition on the merchant side of the credit-card platform sufficed to prove anticompetitive effects and thereby shift to Amex the burden of establishing any procompetitive benefits from the provisions.

3.2.2. U.S. Court of Appeals Decisions

22. **FTC v. Advocate Health Care Network.** The FTC issued an administrative complaint alleging that the proposed merger of Advocate Health Care Network and NorthShore University HealthSystem will create the largest hospital system in the North Shore area of Chicago. According to the complaint, the combined entity would harm competition in the market for of the general acute care inpatient hospital services. The Commission also authorized staff to file for a preliminary injunction to maintain the status quo pending the administrative trial. In the federal court proceeding, the district court denied the motion for a preliminary injunction on June 20, 2016, but granted plaintiffs' motion for a stay pending appeal. On October 31, 2016, the Seventh Circuit Court of Appeals reversed, and remanded the case to the district court for further proceedings. On March 7, 2017, the district court granted an injunction, and the parties abandoned their merger plans. On March 20, 2017, the Commission dismissed the administrative complaint. See <https://www.ftc.gov/enforcement/cases-proceedings/1410231/ftc-v-advocate-health-care-network>.

3.2.3. U.S. District Court Decisions

23. **Energy Solutions, Inc. and Waste Control Specialists.** On June 21, 2017, the U.S. District Court for the District of Delaware enjoined the proposed merger of Energy Solutions, Inc. and Waste Control Specialists. The court found that the merger would substantially lessen competition in the market for disposal of low-level radioactive waste. While the defendants had claimed that Waste Control Specialists was a failing firm that would exit the market absent acquisition, the court found defendants failed to demonstrate Energy Solutions was the only available purchaser. In particular, the court found Waste Control Specialists had not made a good faith effort to elicit reasonable offers for the firm. See <https://www.justice.gov/opa/pr/us-district-court-blocks-energysolutions-acquisition-waste-control-specialists>.

24. **Allergan, Watson and Endo.** The FTC's complaint alleges that Endo Pharmaceuticals Inc. and several other drug companies violated antitrust laws by using

pay-for-delay settlements to block consumers' access to lower-cost generic versions of Lidoderm. The agreement not to market an authorized generic – often called a “no-AG commitment” – is a form of reverse payment. The FTC's complaint alleges that Endo paid the first generic companies that filed for FDA approval – Watson Laboratories, Inc. – to eliminate the risk of competition for Lidoderm, in violation of the Federal Trade Commission Act. Lidoderm is a topical patch used to relieve pain associated with post-herpetic neuralgia, a complication of shingles. Under federal law, the first generic applicant to challenge a branded pharmaceutical's patent, referred to as the first filer, may be entitled to 180 days of exclusivity as against any other generic applicant upon final FDA approval. But a branded drug manufacturer is permitted to market an authorized generic version of its own brand product at any time, including during the 180 days after the first generic competitor enters the market. According to the FTC, a no-AG commitment can be extremely valuable to the first-filer generic, because it ensures that this company will capture all generic sales and be able to charge higher prices during the exclusivity period. The FTC is seeking a court judgment declaring that the defendants' conduct violates the antitrust laws, ordering the companies to disgorge their ill-gotten gains, and permanently barring them from engaging in similar anticompetitive behavior in the future. Endo agreed to settle the charges in a proposed stipulated order to be entered by the court. See <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al>.

25. **FTC, State of California, and District of Columbia v. DraftKings Inc. and FanDuel Limited.** The FTC authorized legal action to block the merger of the two largest daily fantasy sports sites, DraftKings and FanDuel, alleging that the combined firm would control more than 90 percent of the U.S. market for paid daily fantasy sports contests. The FTC, jointly with the Offices of the Attorneys General in the State of California and the District of Columbia, filed a complaint in federal district court seeking a preliminary injunction to stop the deal and to maintain the status quo pending an administrative trial. The Commission also issued an administrative complaint alleging that the proposed merger violates Section 7 of the Clayton Act and Section 5 of the FTC Act by creating a single provider with by far the largest share of the market for paid daily fantasy sports contests in the United States. On July 13, 2017, the parties abandoned the transaction, and the Commission dismissed the complaint without action by the court. See <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draftkings-fanduel-ftc-state-california-district-columbia-v> and <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draft-kings-inc-fanduel-limited>.

3.3. Statistics on Private and Government Cases Filed

26. According to the 2017 Annual Report of the Director of the Administrative Office of the U.S. Courts, 655 new civil antitrust actions, both government and private, were filed in the federal district courts in FY 2017, with many more filed in state courts. See Table C-2A of the report, available at <http://www.uscourts.gov/statistics/table/c-2a/judicial-business/2017/09/30>.

3.4. Significant Enforcement Actions

3.4.1. DOJ Criminal Enforcement

27. In FY 2017, the Division charged 27 individuals, including: 9 executives in the capacitors industry; 2 executives in the general pharmaceutical industry; 5 foreign

currency exchange dealers; 3 packaged seafood company executives; and 2 customized promotional products company executives, with criminal antitrust offenses. Thirty individuals were sentenced to serve time in jail for an average of nearly 9 months. The Division also obtained more than \$66 million in criminal fines and penalties from 7 corporations and 34 individuals.

28. In FY 2017, the Division continued its longstanding investigation of conspiracies to fix prices and rig bids in the auto parts industry, including a \$6.1 million criminal fine for a company's role in a conspiracy to rig bids of side-door latches and latch minimodules. See <https://www.justice.gov/opa/pr/kiekert-ag-plead-guilty-bid-rigging-involving-auto-parts>. To date, the auto parts investigation has resulted in 49 charges against companies and 66 charges against individuals. In total, 32 executives have pleaded guilty and been sentenced to an average of just over 15 months in jail. Additionally, 44 corporations have pleaded guilty and have agreed to pay more than \$2.9 billion in criminal fines.

29. In FY 2017, the Division continued its ongoing investigation of individuals engaged in bid rigging and fraud at real estate foreclosure auctions throughout the United States. The Division in the past few years has secured convictions of over 125 individuals throughout the United States. Fines imposed in this investigation total more than \$9.3 million. See e.g., <https://www.justice.gov/opa/pr/four-northern-california-real-estate-investors-convicted-rigging-bids-public-foreclosure-0>; <https://www.justice.gov/opa/pr/northern-california-man-convicted-rigging-bids-public-foreclosure-auctions>; <https://www.justice.gov/opa/pr/northern-california-real-estate-investor-sentenced-rigging-bids-public-foreclosure-auctions>; <https://www.justice.gov/opa/pr/georgia-real-estate-investor-pleads-guilty-bid-rigging-and-bank-fraud-public-foreclosure>; <https://www.justice.gov/opa/pr/alabama-real-estate-investor-sentenced-bid-rigging-and-fraud-public-foreclosure-auctions>; <https://www.justice.gov/opa/pr/three-northern-california-real-estate-investors-sentenced-rigging-bids-public-foreclosure>; <https://www.justice.gov/opa/pr/three-northern-california-real-estate-investors-convicted-rigging-bids-public-foreclosure>; <https://www.justice.gov/opa/pr/northern-california-man-sentenced-prison-rigging-bids-public-foreclosure-auctions>; <https://www.justice.gov/opa/pr/northern-california-real-estate-investor-pleads-guilty-bid-rigging-public-foreclosure-0>; <https://www.justice.gov/opa/pr/georgia-real-estate-investor-convicted-bid-rigging-and-bank-fraud-public-foreclosure-auctions>; <https://www.justice.gov/opa/pr/northern-california-real-estate-investor-sentenced-prison-rigging-bids-public-foreclosure-0>; <https://www.justice.gov/opa/pr/two-real-estate-investors-plead-guilty-bid-rigging-northern-california>.

30. In FY 2017, the Division continued to investigate an international conspiracy to fix prices and rig bids for electrolytic capacitors. Electrolytic capacitors store and regulate electrical current in a variety of electronic products, including computers, televisions, car engines, airbag systems, home appliances, and office equipment. In July 2017, Nichicon Corp. was charged with participating in a conspiracy to fix prices, and rigging bids of certain electrolytic capacitors. See <https://www.justice.gov/opa/pr/seventh-company-agrees-plead-guilty-fixing-prices-electrolytic-capacitors>. To date, 8 companies and 10 individuals have been charged with participating in conspiracies to fix prices and rig bids of certain electrolytic capacitors and have agreed to pay more than \$34 million in criminal fines.

31. In FY 2017, two former senior generic pharmaceutical executives pleaded guilty for their roles in conspiracies to fix prices, rig bids, and allocate customers for certain generic drugs, specifically an antibiotic, doxycycline hyclate, and glyburide, a medicine used to treat diabetes. The charges are the result of the Division's ongoing investigation into the generic pharmaceutical industry. See <https://www.justice.gov/opa/pr/former-top-generic-pharmaceutical-executives-charged-price-fixing-bid-rigging-and-customer>.

32. In FY 2017, the former executive of an Israel-based defense contractor pleaded guilty for his role in multiple schemes to defraud the multi-billion dollar United States Foreign Military Financing program ("FMF"). The executive and others falsified bid documents to make it appear that certain FMF contracts had been competitively bid. The executive further caused false certifications to be made to the U.S. Department of Defense ("DoD") stating that no commissions were being paid and no non-U.S. content was used in these contracts, when, in fact, he had arranged to receive commissions and to have services performed outside the United States, all in violation of the DoD's rules and regulations. The executive was charged in January 2016, and extradited from Bulgaria to the United States in October 2016. In June 2017 the executive was sentenced to 30 months in jail and ordered to pay a \$7,500 criminal fine and \$41,170 in restitution. See <https://www.justice.gov/opa/pr/israeli-executive-pleads-guilty-defrauding-foreign-military-financing-program>; <https://www.justice.gov/opa/pr/israeli-executive-sentenced-prison-defrauding-foreign-military-financing-program>.

33. In FY 2017, the Division continued to prosecute collusion and fraud in the financial services industry. The Division's investigation into manipulation of the foreign exchange market resulted in pleas from two foreign currency exchange traders for participating in a price-fixing conspiracy of Central and Eastern European, Middle Eastern, and African currency traders, and the indictment of three former traders for conspiring to fix prices and rig bids for U.S. dollars and euros exchanged in the foreign exchange spot market. See <https://www.justice.gov/opa/pr/three-former-traders-major-banks-arraigned-foreign-currency-exchange-antitrust-conspiracy>; <https://www.justice.gov/opa/pr/foreign-currency-exchange-dealer-pleads-guilty-antitrust-conspiracy>; <https://www.justice.gov/opa/pr/second-foreign-currency-exchange-dealer-pleads-guilty-antitrust-conspiracy>. Additionally, the Division's joint investigation with the U.S. Department of Justice's Criminal Division into the manipulation of LIBOR continued and resulted in the indictment of two former traders for wire fraud and conspiring to commit wire and bank fraud. Trial is currently scheduled for June 2018. See <https://www.justice.gov/opa/pr/two-former-deutsche-bank-employees-indicted-fraud-charges-connection-long-running>.

34. In FY 2017, the Division continued its investigation into a 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 oceangoing vessel. Examples include new and used cars and trucks, and construction and agricultural equipment. To date, 5 companies have pleaded guilty, and have been sentenced to pay total fines of \$255.9 million, and 4 corporate executives have pleaded guilty and have been sentenced to an average of over 16 months in jail. See <https://www.justice.gov/opa/pr/norwegian-company-agrees-plead-guilty-price-fixing-ocean-shipping-services-cars-and-trucks>.

35. In FY 2017, the Division charged 2 executives and their companies for their roles in participating in conspiracies to fix the price of customized promotional products,

including wristbands. The 2 companies pleaded guilty and were sentenced to pay a total of over \$2.3 million. Both former executives have pleaded guilty, and are awaiting sentencing. See <https://www.justice.gov/opa/pr/e-commerce-company-and-top-executive-agree-plead-guilty-price-fixing-conspiracy-customized>; <https://www.justice.gov/opa/pr/second-e-commerce-company-and-its-top-executive-agree-plead-guilty-price-fixing-conspiracy>.

3.4.2. DOJ Civil Non-Merger Enforcement

36. **Henry Ford Allegiance Health.** On February 9, 2018, the Division announced that it had reached a settlement with Henry Ford Allegiance Health (“Allegiance”) for conspiring with a rival hospital in a neighboring county to restrict marketing in that rival’s county. The settlement ended almost three years of litigation and a scheduled March 6 trial relating to agreements to restrict marketing among hospitals in South Central Michigan. The Division previously settled claims against three other South Central Michigan hospitals. The Department charged Allegiance and these other hospitals with insulating themselves from competition by agreeing to withhold outreach and marketing in each other’s counties, so as not to solicit certain customers. As a result, consumers were denied the benefits of competition, including free screenings and other services, as well as valuable information that informs healthcare choices and opportunities for higher quality care. The Department’s proposed settlement prevents Allegiance from engaging in improper communications with competing providers regarding their respective marketing activities and entering into any improper agreement to allocate customers or to limit marketing. It explicitly prevents Allegiance from continuing to carve out Hillsdale County from its marketing and business development activities. See <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-henry-ford-allegiance-health-antitrust-charges>.

3.4.3. FTC Non-Merger Enforcement Actions

37. **National Association of Animal Breeders, Inc.** On August 18, 2017, the National Association of Animal Breeders, Inc. (“NAAB”) – a non-profit trade association whose members compete to sell dairy cattle semen to U.S. dairy farms for artificial insemination of dairy cows – has agreed to refrain from adopting rules that unreasonably stifle competition among its members. The agreement between the FTC and the association resolves the FTC’s complaint alleging that NAAB adopted rules that violated the FTC Act by restraining competition for buying dairy bulls for use in artificial insemination. U.S. dairy farmers rely on the fertilization services provided by NAAB member breeders. See <https://www.ftc.gov/enforcement/cases-proceedings/151-0138/national-association-animal-breeders-inc> and <https://www.ftc.gov/news-events/press-releases/2017/08/national-association-animal-breeders-inc-agreed-refrain-adopting>.

38. **In the Matter of Louisiana Real Estate Appraisers Board.** On May 31, 2017, the FTC filed an administrative complaint against the Louisiana Real Estate Appraisers Board, alleging that the group is unreasonably restraining price competition for appraisal services in Louisiana, contrary to federal antitrust law. The complaint alleges that the appraisal board’s regulations exceeded the scope of the mandate outlined in the Dodd-Frank Act that required appraisal management companies to pay “a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.” Specifically, the board required appraisal fees to equal or exceed the median fees identified in survey reports commissioned and published by the board. The board then investigated and sanctioned companies that paid fees below the specified levels. This

case is pending adjudication in the FTC's administrative process. See <https://www.ftc.gov/enforcement/cases-proceedings/161-0068/louisiana-real-estate-appraisers-board>.

39. **American Guild of Organists.** On March 31, 2017, the American Guild of Organists agreed to eliminate rules that restrict its members from competing for opportunities to perform to settle charges that the guild's rules restrained competition and harmed consumers in violation of the FTC Act. The guild represents approximately 15,000 member organists and choral directors in 300 chapters in the United States and abroad. Under the guild's code of ethics, if a consumer wished to have someone other than an "incumbent musician" play at a venue for a wedding, funeral, or other service, the consumer was required to pay both the incumbent and the consumer's chosen musician. The code of ethics stated that "members are advised to protect themselves as incumbents" through contracts that secure fees even if they don't perform. The guild also developed and publicized compensation schedules and formulas, and instructed its chapters and members to develop and use regionally applicable versions to determine charges for their services. The Commission's consent order requires the American Guild of Organists to stop restraining its members from soliciting work as musicians, and to stop issuing compensation schedules, guidance, or model contract provisions for members to use to determine their compensation. The guild must implement an antitrust compliance program, and is required to stop recognizing chapters that fail to certify their compliance with the order's provisions. See <https://www.ftc.gov/enforcement/cases-proceedings/151-0159/american-guild-organists>.

40. **Shire ViroPharma.** On February 7, 2017, the FTC filed a complaint in federal district court charging Shire ViroPharma Inc. with violating the antitrust laws by abusing government processes to delay generic competition to its branded prescription drug, Vancocin HCl Capsules. The complaint alleges that to maintain its monopoly, ViroPharma waged a campaign of serial, repetitive, and unsupported filings with the U.S. Food and Drug Administration ("FDA") and courts to delay the FDA's approval of generic Vancocin Capsules, and exclude competition. According to the FTC, ViroPharma submitted 43 filings with the FDA and filed three lawsuits against the FDA between 2006 and 2012. According to the FTC, ViroPharma knew that it was the FDA's practice to refrain from approving any generic applications until it resolved any pending relevant citizen petition filings. ViroPharma intended for its serial filings to delay the approval of generics, and thus competition and lower prices. The FTC sought a court order permanently prohibiting ViroPharma from submitting repetitive and baseless filings with the FDA and the courts, and from similar and related conduct as well as any other necessary equitable relief, including restitution and disgorgement. A federal judge dismissed the lawsuit, ruling that the FTC failed to prove that Shire ViroPharma was about to violate the law. The FTC appealed the ruling to the Third Circuit. See <https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viopharma> and <https://www.reuters.com/article/ftc-shireviopharma/u-s-judge-dismisses-ftc-antitrust-lawsuit-against-shire-unit-idUSL1N1R31AB>.

41. **In the Matter of Impax Laboratories, Inc.** On January 23, 2017, Endo agreed to settle charges following the FTC's administrative complaint that in 2010, Endo Pharmaceuticals Inc. and Impax Laboratories, Inc. illegally agreed that Impax would not compete by marketing a generic version of Endo's Opana ER until January 2013. In exchange, Endo paid Impax more than \$112 million. Impax contests the charges; this case is pending in the FTC's administrative process. See <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/impax-laboratories-inc> and

<https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al>.

42. **Cooperativa de Médicos Oftalmólogos de Puerto Rico (OFTACOOOP).** On January 19, 2017, OFTACOOOP, a Puerto Rico ophthalmologist cooperative, agreed to settle FTC charges that its actions harmed competition. The complaint charged that OFTACOOOP unlawfully orchestrated an agreement among competing ophthalmologists to refuse to deal with a health plan, MCS Advantage, Inc., and its network administrator, Eye Management of Puerto Rico, LLC. OFTACOOOP's concerted refusal to deal forced MCS to abandon its plan to engage Eye Management to create a lower-cost network of ophthalmologists. MCS was also forced to maintain its reimbursement rates paid to ophthalmologists. According to the complaint, OFTACOOOP restrained competition without any justification, in violation of federal antitrust law. The consent order prohibits OFTACOOOP from entering into or facilitating agreements between or among ophthalmologists (1) to refuse to deal, or threaten to refuse to deal, with any payor regarding any term, including price terms, or (2) not to deal individually with any payor, or not to deal with any payor other than through OFTACOOOP. The order also prohibits information exchanges to facilitate any prohibited conduct, and it bars any attempts to engage in any prohibited conduct. OFTACOOOP is also barred from encouraging, suggesting, advising, pressuring, inducing, or trying to induce anyone to engage in any prohibited conduct. See <https://www.ftc.gov/enforcement/cases-proceedings/141-0194/cooperativa-de-medicos-oftalmologos-de-puerto-rico>.

43. **Mallinckrodt Ard Inc. (Questcor Pharmaceuticals).** On January 18, 2017, Mallinckrodt Ard Inc., formerly known as Questcor Pharmaceuticals, Inc., and its parent company, Mallinckrodt plc, agreed to pay \$100 million to settle charges that they violated the antitrust laws when Questcor acquired the rights to a drug that threatened its monopoly in the U.S. market for adrenocorticotrophic hormone ("ACTH") drugs. Questcor's Acthar is a specialty drug used as a treatment for infantile spasms, a rare seizure disorder afflicting infants, as well as a drug of last resort used to treat other serious medical conditions. The complaint alleges that, while benefitting from an existing monopoly over Acthar, the only U.S. ACTH drug, Questcor illegally acquired the U.S. rights to develop a competing drug, Synacthen Depot. The acquisition allegedly stifled competition by preventing any other company from using the Synacthen assets to develop a synthetic ACTH drug, preserving Questcor's monopoly and allowing it to maintain extremely high prices for Acthar. In addition to the \$100 million monetary payment, the proposed stipulated court order, which must be approved by the federal court, requires that Questcor grant a license to develop Synacthen Depot to treat infantile spasms and nephrotic syndrome to a licensee approved by the Commission. See <https://www.ftc.gov/enforcement/cases-proceedings/1310172/mallinckrodt-ard-inc-questcor-pharmaceuticals>.

3.5. Advisory Letters from the FTC

44. 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. These opinions inform the public about the Commission's analysis in novel or important areas of antitrust law. In FY 2017, FTC staff did not issue any 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

45. 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 one business review letter in FY 2017. Business review letters can be found at <http://www.justice.gov/atr/public/busreview/letters.html#page=page-0>.

46. On September 21, 2017, the Department announced it would not challenge a proposal by The Clearing House Payments Company LLC to create and operate a new real-time payment rail, the Real Time Payment system, which will allow banks to complete near-instantaneous fund transfers between each other, as well as end users. In light of the lack of current evidence of likely anticompetitive effects and the likelihood of procompetitive benefits, the Division has no present intention to take antitrust enforcement action in this case. See <https://www.justice.gov/atr/response-clearing-house-payments-company-llc-requestbusiness-review>.

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

4.1. Enforcement of Pre-merger Notification Rules

47. On January 18, 2017, the Department filed a civil lawsuit against Duke Energy Corporation for violating the premerger notification and waiting period requirements. Under the terms of the settlement filed simultaneously with the complaint, Duke agreed to pay \$600,000 in civil penalties to resolve the Department's charges that, after agreeing to purchase the Osprey Energy Center from Calpine Corporation, Duke took control of Osprey's business before filing premerger notification and observing the required waiting period. See <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-duke-energy-corporation-violating-premerger>.

48. On January 17, 2017, the Department, at the request of the FTC, filed a civil lawsuit against Ahmet Okumus for violating the pre-merger notification and waiting period requirements when he acquired voting securities of Web.com Group, Inc. in 2016. At the same time, the Department filed a settlement under which Okumus agreed to pay an \$180,000 civil penalty to resolve the lawsuit. See <https://www.justice.gov/opa/pr/ahmet-okumus-pay-180000-civil-penalty-violating-antitrust-premerger-notification-requirements>.

49. On January 17, 2017, the Department, at the request of the FTC, filed a civil lawsuit against Mitchell Rales for violating the premerger notification and waiting period requirements when he acquired voting securities of Colfax Corporation in 2011, and of Danaher Corporation in 2008. At the same time, the Department filed a settlement under which Rales agreed to pay a \$720,000 civil penalty to resolve the lawsuit. See <https://www.justice.gov/opa/pr/mitchell-rales-pay-720000-civil-penalty-violating-antitrust-premerger-notification>.

50. On October 28, 2016, the Department, at the request of the FTC, filed a civil lawsuit against Fayez Sarofim for violating the pre-merger notification and waiting period requirements when he acquired voting securities of Kinder Morgan and Unitrin, which later changed its name to Kemper. At the same time, the Department filed a settlement under which Sarofim agreed to pay a \$720,000 civil penalty to resolve the lawsuit. See

<https://www.justice.gov/opa/pr/fayez-sarofim-pay-720000-civil-penalty-violating-antitrust-premerger-notification>.

4.2. Select Significant Merger Matters

4.2.1. FTC Merger Investigations and Challenges

51. **In the Matter of Baxter International Inc., Claris Lifesciences Limited, and Arjun Handa.** On August 30, 2017, the FTC approved a final order in which Baxter International Inc. and Claris Lifesciences Limited agreed to divest two types of pharmaceutical products to settle charges that Baxter's proposed \$625 million acquisition of Claris's injectable drugs business would (1) reduce current competition in the United States for the antifungal agent fluconazole in saline intravenous bags, which is used to treat fungal and yeast infections, and (2) reduce future competition in the U.S. market for intravenous milrinone, which dilates the blood vessels, lowers blood pressure and allows blood to flow more easily through the cardiovascular system. Under the FTC order, the parties will divest all of Claris's rights to fluconazole in saline intravenous bags and milrinone in dextrose intravenous bags to New Jersey-based pharmaceutical company Renaissance Lakewood LLC. The order requires Baxter to supply Renaissance with fluconazole in saline intravenous bags and milrinone in dextrose intravenous bags for up to five years while transferring the manufacturing technology to Renaissance or its contract manufacturing designee. Baxter is also required to assist Renaissance in establishing its manufacturing capabilities and securing the necessary FDA approvals. See <https://www.ftc.gov/enforcement/cases-proceedings/171-0052/baxter-international-inc-claris-lifesciences-limited-arjun>.

52. **In the Matter of Sherwin-Williams/Valspar.** On July 28, 2017, the FTC approved a final order in which the Sherwin-Williams Company agreed to settle charges that its proposed \$11.3 billion acquisition of Valspar Corporation is likely anticompetitive by selling Valspar's North America Industrial Wood Coatings Business to Axalta Coating Systems Ltd. The transaction would combine Sherwin-Williams and Valspar, two of the top three industrial wood coatings manufacturers. According to the complaint, the acquisition as originally proposed likely would reduce competition in the North American market for industrial wood coatings used to make furniture, kitchen cabinets, and building products. Under the terms of the consent agreement, Sherwin-Williams will divest to Axalta two Valspar industrial wood coatings plants, one in High Point, North Carolina, and the other in Cornwall, Ontario. Axalta will also receive the research and development facilities, warehouses, and testing facilities of Valspar's Industrial Wood Coatings Business, as well as customer contracts, intellectual property, inventory, accounts receivable, government licenses and permits, and business records. See <https://www.ftc.gov/enforcement/cases-proceedings/161-0116/sherwin-williamsvalspar-matter>.

53. **DraftKings, Inc. and FanDuel Limited.** On July 13, 2017, DraftKings, Inc. and FanDuel Limited abandoned their proposed merger following the FTC's challenge to the transaction. The FTC alleged that, through the merger of DraftKings and FanDuel, the two largest daily fantasy sports sites, the combined firm would control more than 90 percent of the U.S. market for paid daily fantasy sports contests. The FTC, jointly with the Offices of the Attorneys General in the State of California and the District of Columbia, filed a complaint in federal district court seeking a preliminary injunction to stop the deal and to maintain the status quo pending an administrative trial. The Commission also issued an administrative complaint alleging that the proposed merger

violates Section 7 of the Clayton Act and Section 5 of the FTC Act by creating a single provider with by far the largest share of the market for paid daily fantasy sports contests in the United States. Following the parties' abandonment of the transaction, the Commission dismissed the administrative complaint. See <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draft-kings-inc-fanduel-limited>.

54. **China National Chemical Corporation, et al.** On June 16, 2017, the FTC approved a final order in which China National Chemical Corporation (ChemChina) and Swiss global agricultural company Syngenta AG agreed to divest three types of pesticides to settle FTC charges that their proposed merger would harm competition in the U.S. markets for three pesticides: (1) the herbicide paraquat, which is used to clear fields prior to the growing season; (2) the insecticide abamectin, which protects primarily citrus and tree nut crops by killing mites, psyllid, and leafminers; and (3) the fungicide chlorothalonil, which is used mainly to protect peanuts and potatoes. According to the complaint, Syngenta owns the branded version of each of the three products at issue, giving it significant market shares in the United States. ChemChina subsidiary ADAMA focuses on generic pesticides and is either the largest- or second-largest generic supplier in the United States for each of these products. The complaint alleged that without the proposed divestiture, the merger would eliminate the direct competition that exists today between ChemChina generics subsidiary ADAMA and Syngenta's branded products, increasing the likelihood that U.S. customers buying paraquat, abamectin, and chlorothalonil would be forced to pay higher prices or accept reduced service for these products. The Commission's order requires ChemChina to sell all rights and assets of ADAMA's U.S. paraquat, abamectin, and chlorothalonil crop protection businesses to California-based agrochemical company AMVAC. See <https://www.ftc.gov/enforcement/cases-proceedings/1610093/china-national-chemical-corporation-et-al>.

55. **Enbridge and Spectra Energy.** On March 24, 2017, the FTC approved a final order in which Enbridge Inc. and Spectra Energy Corp agreed to settle FTC charges that their proposed merger likely would harm competition in the market for pipeline transportation of natural gas in three production areas off the coast of Louisiana. According to the FTC's complaint, the merger likely would reduce natural gas pipeline competition in three offshore natural gas producing areas in the Gulf of Mexico—Green Canyon, Walker Ridge and Keathley Canyon—leading to higher prices for natural gas pipeline transportation from those areas. In portions of the affected areas, the FTC alleged, the merging parties' pipelines are the two pipelines located closest to certain wells and, as a result, are likely the lowest cost pipeline transportation options for those wells. According to the FTC, the merger would give Canada-based Enbridge an ownership interest in both pipelines, which would give it access to competitively sensitive information of the Discovery Pipeline, as well as significant voting rights over the Discovery Pipeline. Access to its competitor's competitively sensitive information and significant voting rights would provide Enbridge with the incentive and opportunity to unilaterally increase pipeline transportation costs for natural gas producers located in the affected areas. The exchange of information also may increase the likelihood of tacit or explicit anticompetitive coordination between the Walker Ridge Pipeline and the Discovery Pipeline. Under the settlement with the FTC, the companies agreed to conditions that will preserve competition in those areas. The consent agreement required Enbridge to establish firewalls to limit its access to non-public information about the Discovery Pipeline. Also under the order, Enbridge must notify the Commission before acquiring an ownership interest in any natural gas pipeline operating in the Green Canyon, Walker Ridge, and Keathley Canyon areas, or increasing the 40 percent

ownership interest of Spectra affiliate DCP Midstream Partners, LP in the Discovery Pipeline. See <https://www.ftc.gov/enforcement/cases-proceedings/161-0215/enbridge-spectra-energy>.

56. **In the Matter of C.H. Boehringer Sohn.** On February 24, 2017, the FTC approved a final order in which Boehringer Ingelheim agreed to divest five types of animal health products in the United States to settle FTC charges that its proposed asset swap with Sanofi would likely be anticompetitive. Under the proposed swap, Boehringer Ingelheim acquired Sanofi's animal care subsidiary, Merial, valued at \$13.53 billion, and Sanofi obtained Boehringer Ingelheim's consumer health care business unit, valued at \$7.98 billion, as well as cash compensation of \$5.54 billion. The FTC's complaint alleged that without the divestitures the proposed asset swap would harm competition in the U.S. markets for various vaccines for companion animals (pets) and certain parasite control products for cattle and sheep. The proposed consent order preserves competition by requiring Boehringer Ingelheim to divest the companion animal vaccines to Eli Lilly and the company's Elanco Animal Health division, and the parasite control products to Bayer AG. See <https://www.ftc.gov/enforcement/cases-proceedings/161-0077/ch-boehringer-sohn-matter>.

57. **In the Matter of Abbott Laboratories and St. Jude Medical.** On February 23, 2017, the FTC approved a final order in which Abbott Laboratories agreed to divest two medical device businesses to settle FTC charges that its proposed \$25 billion acquisition of St. Jude Medical, Inc. would likely be anticompetitive. Lesion-assessing ablation catheters provide feedback to physicians regarding the force being applied by the catheter or the temperature of the ablation target. Currently, only St. Jude and one other company provide lesion-assessing ablation catheters in the United States. Abbott and ACT have formed a partnership to develop these catheters. After the acquisition of St. Jude, if Abbott acquired lesion-assessing ablation catheter assets from ACT, it could eliminate additional competition that would result from an independent ACT. The FTC's complaint alleged that without a remedy, the proposed acquisition would harm competition in the U.S. markets for vascular closure devices, which are used to close holes in arteries from the insertion of catheters, and for "steerable" sheaths, which are used to guide catheters for treating heart arrhythmias. Without a remedy, the merger would cause significant harm to competition in these two markets. The consent order required the parties to divest to Tokyo-based medical device maker Terumo Corporation all rights and assets related to St. Jude's vascular closure device business and Abbott's steerable sheath business. The order required both companies to assist Terumo with establishing its manufacturing capabilities. Under the order, Abbott is also required to notify the FTC if it intends to acquire lesion-assessing ablation catheter assets from Advanced Cardiac Therapeutics, known as ACT. See <https://www.ftc.gov/enforcement/cases-proceedings/161-0126/abbott-laboratories-st-jude-medical-matter>.

58. **Koninklijke Ahold and Delhaize Group.** On October 31, 2016, the FTC approved a modified final order in which Koninklijke Ahold and Delhaize Group, which together own and operate five well-known U.S. supermarket chains, agreed to sell 81 stores to settle charges that their proposed \$28 billion merger would likely be anticompetitive in 46 local markets in Delaware, Maryland, Massachusetts, New York, Pennsylvania, Virginia, and West Virginia. Ahold operated 760 supermarkets under the Stop & Shop, Giant, and Martin's banners in ten Eastern states and the District of Columbia. Delhaize operated 1,291 supermarkets under the Food Lion and Hannaford banners in 14 Eastern and Southern states. Under the consent agreement, Ahold and Delhaize divested a total of 81 stores to seven divestiture buyers. See

<https://www.ftc.gov/enforcement/cases-proceedings/151-0175/koninklijke-ahold-delhaize-group>.

59. **ON Semiconductor Corporation.** On October 5, 2016, the FTC approved a final order in which ON Semiconductor Corporation agreed to sell its Ignition IGBT business in order to settle charges that its proposed \$2.4 billion acquisition of Fairchild Semiconductor International, Inc. would likely substantially lessen competition in the worldwide market for Ignition IGBTs, resulting in higher prices and reduced innovation. Ignition IGBTs are semiconductors that function as solid-state electronic switches in the ignition systems of automotive internal combustion engines. The order preserved competition by requiring ON to divest its Ignition IGBT business to Chicago-based manufacturer Littelfuse, Inc. The divestiture included design files and intellectual property that Littelfuse needs to manufacture ON's Ignition IGBTs. ON must also facilitate the transfer of its customer relationships to Littelfuse, and supply Ignition IGBTs for Littelfuse to sell to customers while Littelfuse sets up its manufacturing operations. See <https://www.ftc.gov/enforcement/cases-proceedings/161-0061/semiconductor-corporation>.

4.2.2. DOJ Public Merger Investigations and Challenges

60. **AT&T DirecTV/Time Warner.** On November 20, 2017, the Department filed a civil antitrust lawsuit to block AT&T/DirecTV's proposed acquisition of Time Warner Inc. – a \$108 billion acquisition that would be one of the largest mergers in American history. According to the lawsuit, the proposed transaction would hinder competitors by forcing them to pay hundreds of millions of dollars more per year for the right to distribute television networks. The combined company would also use its increased power to slow the industry's transition to new and exciting video distribution models that provide greater choice for consumers, resulting in fewer innovative offerings and higher bills for American families. The trial began on March 22, 2018 and concluded on April 30; a decision is expected on June 12. See <https://www.justice.gov/opa/pr/justice-department-challenges-attdirectv-s-acquisition-time-warner>.

61. **Entercom/CBS.** On November 1, 2017, the Division filed a civil antitrust lawsuit, challenging Entercom's proposed acquisition of CBS Radio, and simultaneously filed a proposed settlement that would resolve the competitive harm alleged in the lawsuit. The Division alleged that the proposed transaction would have eliminated head-to-head competition between Entercom's and CBS's radio stations for the business of local and national advertisers on radio stations in the following markets: Boston, Massachusetts; San Francisco, California; and Sacramento, California. The Division's settlement required Entercom Communications Corp. to divest 13 radio stations to Department-approved buyers in these affected markets to proceed with its acquisition of CBS Radio, Inc. Entercom and CBS Radio own and operate a combined total of 244 broadcast radio stations in various metropolitan areas throughout the United States, including 23 of the top 25 markets. Upon settlement, the approved merger gave Entercom an additional 235 radio stations across the country. See <https://www.justice.gov/opa/pr/justice-department-requires-divestitures-radio-stations-boston-san-francisco-and-sacramento>.

62. **General Electric/Baker Hughes.** On October 17, 2017, the Department announced that General Electric Co. ("GE") had agreed to make incentive payments beginning in 2018 until GE completes the worldwide divestiture of its Water & Process Technologies business ("GE Water"). The Division had approved GE's acquisition of

Baker Hughes, conditioned upon GE's agreement to divest GE Water to SUEZ S.A. The original proposed settlement, filed on June 12, 2017, gave GE until September 2017 to effectuate the divestiture. While GE divested in a timely manner GE Water assets accounting for approximately 90 percent of GE Water's revenues (including all assets in North America), GE was not able to, within the time period specified in the final judgment, transfer to Suez legal title of GE Water assets in certain international jurisdictions due to various administrative challenges. Delays pushed the divestiture in some international jurisdictions into 2018. In the meantime, GE conferred beneficial ownership and operational control of the assets in these jurisdictions to Suez. Because the divestitures took longer than provided for in the final judgment, the Division filed a motion to enter a modified final judgment in the U.S. District Court for the District of Columbia, which the Court approved and signed. The modified final judgment contains two newly agreed-upon provisions of note. First, in order to encourage GE to complete the divestitures promptly, the modified final judgment requires GE to begin making daily incentive payments as soon as January 1, 2018, until the divestitures in each international jurisdiction are completed. Second, the modified final judgment reflects GE's agreement to reimburse the United States for attorney's fees and costs incurred in addressing these delays. See <https://www.justice.gov/opa/pr/justice-department-requires-general-electric-company-make-incentive-payments-encourage>.

63. **CenturyLink/Level 3 Communications.** On October 2, 2017, the Department filed a civil antitrust lawsuit in the U.S. District Court for the District of Columbia to block the proposed \$34 billion acquisition of Level 3 Communications, Inc. by Century Link, Inc. At the same time, the Department filed a proposed settlement that resolved the competitive concerns alleged. According to the Department's complaint, the combined company would have reduced competition for fiber-optic-based telecommunications services in Albuquerque, Boise, and Tucson as well as for the sale of dark fiber (fiber-optic cable with no electronics attached to it) along certain intercity routes across the U.S., including routes traversing Alabama, Arizona, California, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Nevada, New York, North Carolina, Ohio, Oregon, Tennessee, Texas, Utah, and Virginia. The complaint states that this reduction in competition likely would have led to higher prices, lower quality, and reduced access for consumers. The Department's settlement requires CenturyLink, Inc. and Level 3 Communications, Inc. to divest Level 3's telecommunications networks in Albuquerque, Boise, and Tucson, and to offer long-term leases called indefeasible rights of use (IRUs) for dark fiber along 30 intercity routes in order for the companies to proceed with CenturyLink's acquisition of Level 3. The transaction is also subject to review by the Federal Communications Commission ("FCC"). The Department coordinated with the FCC throughout its investigation. The court entered the final judgment on March 6, 2018. See <https://www.justice.gov/opa/pr/justice-department-requires-divestitures-order-centurylink-proceed-its-acquisition-level-3>.

64. **SDK/SGL.** On September 27, 2017, the Division filed a civil antitrust lawsuit in the U.S. District Court for the District of Columbia to block the proposed \$264.5 million acquisition of SGL Carbon SE's global graphite electrodes business by Showa Denko K.K. ("SDK"). At the same time, the Department filed a proposed settlement that resolved the Department's competitive concerns. SDK and SGL manufacture and sell large ultra-high power graphite electrodes, which are used to generate sufficient heat to melt scrap metal in electric arc furnaces. SDK and SGL are two of the three leading suppliers of large ultra-high power graphite electrodes to U.S. electric arc furnace steel mills. Together, the two firms have a combined market share of approximately 56

percent. According to the complaint, the loss of competition between SDK and SGL would likely result in higher prices and lower quality of delivery and service to U.S. electric arc furnace customers. Under the terms of the settlement, SDK must divest SGL's entire U.S. graphite electrodes business, including its manufacturing facilities in Ozark, Arkansas and Hickman, Kentucky, to Tokai Carbon Co., Ltd., or an alternate acquirer approved by the United States. The Department said that the divestiture would remedy the acquisition's anticompetitive effects by providing the acquirer with the domestic manufacturing presence and robust local service capabilities that U.S. electric arc furnace steel mills prefer. The final judgment was entered by the court on January 9, 2018. See <https://www.justice.gov/opa/pr/justice-department-requires-divestiture-sgls-us-graphite-electrodes-business-order-sdk>.

65. **Chicago Sun-Times/Chicago Tribune.** On July 12, 2017, the Division announced closing of its investigation into the possible acquisition of the Chicago Sun-Times by Tronc Inc., the owner of the Chicago Tribune, after Wrapports LLC, the owner of the Chicago Sun-Times, announced its sale of the Chicago Tribune to ST Acquisition Holdings. On May 15, 2017, the Division announced that it was investigating the possible acquisition of the Chicago Sun-Times by Tronc because the merger of the two daily newspapers in Chicago would raise significant antitrust concerns. The Division's investigation focused on whether the Chicago Sun-Times was a failing company under the U.S. Horizontal Merger Guidelines, which provide that a transaction is not likely to be anticompetitive if the assets of one of the firms would otherwise exit the market. One of the conditions required to be met in order to establish the "failing firm" defense is that the failing firm "has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep its tangible and intangible assets in the relevant market and pose a less severe danger to competition than does the proposed merger." Horizontal Merger Guidelines at § 11. Because this condition may not be satisfied by a confidential sale effort, a seller may choose to undertake a public sale process to augment its effort to elicit reasonable alternative offers. In this case, Wrapports LLC, the owner of the Chicago Sun-Times, launched a public sale process on May 16, 2017, which the Division monitored closely. This process resulted in Wrapports selling the Chicago Sun-Times to an alternative buyer, ST Acquisition Holdings LLC, which does not currently own an interest in any other newspaper. See <https://www.justice.gov/opa/pr/department-justice-statement-closing-its-investigation-possible-acquisition-chicago-sun-times>.

66. **Dow/DuPont.** On June 15, 2017, the Division, along with the state attorneys general representing Iowa, Mississippi, and Montana, filed a civil antitrust lawsuit in the U.S. District Court for the District of Columbia to enjoin the proposed merger of Dow Chemical Company and E.I. DuPont, along with a proposed settlement that resolved the Division's competitive concerns. According to the complaint, without the divestitures, the proposed merger likely would reduce competition between two of only a handful of chemical companies that manufacture certain types of crop protection chemicals and the only two U.S. producers of acid copolymers and ionomers, potentially harming U.S. farmers and consumers. Under the terms of the proposed settlement, DuPont must divest its Finesse herbicide and Rynaxypyr insecticide products to a buyer to be approved by the United States. The Division said that the divestiture of these products would preserve competition in U.S. markets for broadleaf herbicides for winter wheat and insecticides for chewing pests. The proposed settlement further requires Dow to divest its U.S. acid copolymers and ionomers business to a buyer approved by the United States to remedy the merger's harm in the U.S. markets for acid copolymers and ionomers. The final

judgment was entered by the court on October 19, 2017. See <https://www.justice.gov/opa/pr/justice-department-requires-divestiture-certain-herbicides-insecticides-and-plastics>.

5. International antitrust cooperation and outreach

5.1. International Antitrust Cooperation Developments

67. In FY 2017, the Antitrust Agencies continued to play a leading 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 Asia-Pacific Economic Cooperation (“APEC”).

68. On February 1, 2018, the Agencies participated in high level bilateral meetings in Beijing, China with officials responsible for China’s three anti-monopoly agencies – National Development and Reform Commission (“NDRC”) Vice Minister Hu Zucai, Ministry of Commerce (“MOFCOM”) Assistant Minister Li Chenggang, and State Administration for Industry and Commerce (“SAIC”) Vice Minister Wang Jiangping. The meetings allowed participating agencies to exchange information and views on antitrust developments and priorities, as well as to discuss the role of competition enforcement and advocacy in promoting innovation. This was the fourth joint dialogue between the agencies since they signed an antitrust memorandum of understanding on July 27, 2011. See <https://www.ftc.gov/news-events/press-releases/2018/02/ftc-justice-department-officials-meet-chinese-anti-monopoly>.

69. On November 20, 2017, the heads of the Agencies met with their counterparts from Canada’s Competition Bureau and Mexico’s Federal Commission on Economic Competition in Washington, DC to discuss their antitrust enforcement developments and priorities. The discussions covered a wide range of topics, including antitrust and the digital economy, opportunities for cooperation among the agencies, and technical assistance. See <https://www.justice.gov/opa/pr/officials-us-canada-and-mexico-participate-2017-trilateral-meeting-washington-dc-discuss>.

70. During FY 2017, the FTC cooperated on 38 merger and anticompetitive conduct investigations of mutual concern with counterpart agencies from 21 jurisdictions. The vast majority of these cases involved cooperation with two or more foreign agencies. For example, in *Abbott/St. Jude* (para. 57) the Commission cooperated with antitrust agencies in Brazil, Canada, China, the European Union, Israel, Korea, and South Africa to ensure consistent analyses, outcomes, and divestiture remedies. In its review of the *Syngenta AG/ChemChina* (para. 54), the Commission cooperated with antitrust agencies in Australia, Canada, the European Union, India, and Mexico, often working closely with their staff to analyze the proposed transaction and potential remedies, and reaching outcomes that benefit consumers in the United States.

71. The Division’s cooperation in FY 2017 included hundreds of hours in separate staff-to-staff and management level calls, as well as several days of in-person meetings. In total, the Division cooperated with international counterparts in 18 merger investigations in FY 2017. The Division also coordinated and cooperated with

competition agencies in other jurisdictions in many ongoing international cartel investigations.

72. During FY 2017, 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 on May 10-12, 2017 in Porto, Portugal, the ICN adopted new recommended practices for merger review; a framework for analyzing unilateral conduct; guiding principles for market studies; and a report on setting cartel fines. See <https://www.ftc.gov/news-events/press-releases/2017/05/international-competition-network-adopts-recommended-practices>.

73. During FY 2017, the Division continued to co-chair the ICN Unilateral Conduct Working Group (“UCWG”), together with the United Kingdom’s Competition and Markets Authority and the Australian Competition and Consumer Commission. As co-chair, the Division helped conclude a two-year project to produce a workbook chapter on the Analytical Framework for Evaluating Unilateral Conduct. The project explores the issues an agency faces in formulating its unilateral conduct enforcement policies, specifically focusing on two major questions in unilateral conduct enforcement: what is dominance and what makes conduct exclusionary.

74. In FY 2017, the FTC continued to co-chair the ICN’s Merger Working Group (“MWG”) with the Canadian Competition Bureau and the French Competition Authority. The FTC co-leads a project updating and implementing the ICN’s Recommended Practices on Merger Analysis and on Merger Notification and Review Procedures, providing sound benchmarks for merger rules and procedures internationally. The MWG’s new Recommended Practices adopted in 2017 address notification thresholds, remedies, and efficiencies. See <http://www.internationalcompetitionnetwork.org/uploads/library/doc1108.pdf>. In addition, the FTC leads the ICN’s work on due process in competition investigations and the ICN Training on Demand Project, and co-chairs with the competition agencies of Portugal and Mexico the ICN’s Advocacy and Implementation Network.

5.2. Outreach

75. In FY 2017, the Agencies continued to engage in technical cooperation on competition law and policy matters with their international counterparts. The FTC continued its robust technical assistance program in which it shares the agency’s experience with competition agencies around the world, conducting 38 programs in 22 countries, including but not limited to Argentina, Barbados, Colombia, Guatemala, Honduras, India, Japan, Peru, Singapore, Ukraine, and Vietnam. The FTC also placed resident advisors in the competition agencies of India, the Philippines, and the Ukraine.

76. 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 2017, the FTC hosted eleven international fellows and interns from nine countries, bringing to over 100 the number the agency has hosted under this program. These assignments provide valuable opportunities for participants to obtain a deeper understanding of their international partners’ laws, policies, procedures, and challenges. This knowledge provides critical support for coordinated enforcement and promotes cooperation and convergence towards sound policy.

77. The Division’s technical assistance programs provide support to jurisdictions as they develop their competition laws, agencies, and enforcement systems, offering practical advice on a myriad of topics such as merger enforcement, remedies, and leniency programs. In FY 2017, Division attorneys and economists led programs in nine countries including Brazil, El Salvador, Honduras, Mexico, Ukraine, and the Philippines. A total of 10 officials participated in 11 different technical cooperation programs, including long-term advisors in Ukraine.

78. In FY 2017, the Division expanded its Visiting International Enforcers Program. The program is designed to increase mutual understanding and enhance relations with enforcement partners. As a part of this program, the Division sent a Section Chief to the Australian Competition and Consumer Commission (“ACCC”).

6. Regulatory and Trade Policy Matters

6.1. Regulatory Policies

6.1.1. DOJ Activities: Federal and State Regulatory Matters

79. On June 16, 2017, the Division sent a letter to the Real Estate Commission in Kansas expressing its concerns regarding a proposed regulation that would bar Kansas real estate brokers from offering gift cards to home buyers. According to the Division, this regulation would reduce competition and the likely effect would be to harm home buyers in Kansas. The Real Estate Commission subsequently moved to table the proposed regulation. See <https://www.justice.gov/opa/press-release/file/975031/download>.

80. On April 12, 2017, in response to a state legislator’s request for comment, the Department and the FTC issued a joint statement commenting on proposed legislation in Alaska that would repeal the state’s certificate-of-need laws. Certificate-of-need laws require healthcare providers to obtain state authorization before making certain investments or providing certain services. The Agencies urged Alaska to repeal its certificate-of-need laws 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/335898>.

81. On November 29, 2016, in response to a state legislator’s request for comment, the Department submitted a letter describing how Michigan legislation could enhance competition and promote greater use of telehealth services for the benefit of patients and consumers. In particular, the bill (1) specified that permitted telehealth services extend beyond the state’s prior statutory definition, (2) provided flexibility in how patients must provide consent for telehealth treatments, and (3) with the exception of controlled substances, authorized remote prescriptions by health professionals who can prescribe drugs in-person. See <https://www.justice.gov/atr/page/file/913876/download>.

82. On November 28, 2016, the Department and the FTC submitted a comment in response to the U.S. Federal Energy Regulatory Commission’s (“FERC”) Notice of Inquiry addressing how FERC assesses market power with respect to mergers and electricity sales at market-based rates. Based on their experience analyzing market power, especially with respect to competition and mergers in electricity markets, the Agencies encouraged FERC not to rely solely on structural indicators of market power, such as market share or concentration, when assessing market power under the Federal Power Act. Due to certain features specific to electricity markets, even firms with

relatively small market shares may be able to exercise market power. Therefore, FERC should consider evidence such as whether a proposed combination of assets would enhance the ability and incentive of a firm to raise prices. See <https://www.justice.gov/atr/page/file/913741/download>.

83. On November 22, 2016, the Division offered comments to the Federal Maritime Commission raising concerns about the potential anticompetitive impact of an “alliance” agreement between significant competitors in the ocean shipping industry. The letter followed an earlier letter from 2016 opposing a different “alliance” agreement in the same industry that raised similar concerns. See <https://www.justice.gov/atr/page/file/913521/download>.

6.1.2. FTC Staff Activities: Federal and State Regulatory Matters

84. **Occupational Licensing.** On September 12, 2017, in testimony presented to a U.S. House Judiciary Subcommittee, Acting FTC Chairman Maureen K. Ohlhausen described the FTC’s extensive work on the potential competitive effects of excessive occupational licensing through research, education, advocacy, and enforcement. Testifying on behalf of the Commission before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Acting Chairman Ohlhausen noted that licensing has become an increasingly dominant form of occupational regulation, with studies suggesting that 25 to 30 percent of the U.S. workforce is employed in occupations that require a license. See <https://www.ftc.gov/news-events/press-releases/2017/09/ftc-testifies-house-judiciary-subcommittee-about-competitive>.

85. **Pharmaceuticals.** On July 27, 2017, in testimony presented to the U.S. House of Representatives’ Judiciary Committee Subcommittee on Regulatory Reform, Commercial and Antitrust Law, the FTC described its efforts to stop anticompetitive conduct in the pharmaceutical industry. Testifying on behalf of the Commission, Acting Director of the Bureau of Competition, Markus H. Meier noted that the 1984 Hatch-Waxman Act established a carefully balanced framework to facilitate introduction of lower-cost generic drugs in the marketplace while preserving incentives for innovation. However, some drug manufacturers have exploited certain features of the Act, with the result that their exclusive rights over branded drugs have extended well beyond the periods Congress provided to spur investments in innovation. At times, this has led to private windfalls at the public’s expense, according to the testimony. See <https://www.ftc.gov/news-events/press-releases/2017/07/ftc-testifies-house-judiciary-committees-subcommittee-regulatory>.

86. **Occupational Licensing.** On July 6, 2017, in response to a request from North Carolina Assistant Attorney General Roberta A. Ouellette, the directors of the FTC’s Office of Policy Planning, Bureau of Competition and Bureau of Economics issued a comment on the competitive impact of proposed legislation affecting compensation for real estate appraisers in North Carolina. The proposal, NC House Bill 829, would prescribe a single method for determining customary and reasonable appraisal fees paid to real estate appraisers by appraisal management companies (“AMCs”), which would preclude the negotiation of market-based rates. It would also direct the North Carolina Appraisal Board to adopt rules necessary to enforce the new law. The FTC comment urges the North Carolina General Assembly to consider whether the proposed bill will promote competition and benefit consumers, taking into account that, were NC House Bill 829 enacted, real estate appraisal fees in North Carolina might not be based on competitively-set market rates, and that AMCs – and, ultimately, consumers – might face

higher prices for real estate appraisal services. See <https://www.ftc.gov/news-events/press-releases/2017/07/ftc-office-bureau-directors-comment-state-legislative-proposal>.

87. **Occupational Licensing.** On March 16, 2017, in response to requests from four Nebraska State Senators, FTC staff submitted a comment to the Nebraska Senate on proposed legislation that would reduce or eliminate licensure requirements for certain occupations in Nebraska. The staff comment explains the competitive benefits of loosening unnecessary licensing requirements, and suggests a general framework for evaluating proposed changes to Nebraska’s licensing laws. See <https://www.ftc.gov/news-events/press-releases/2017/03/ftc-staff-issues-comment-occupational-licensing-reforms-nebraska>.

88. **Occupational Licensing.** On March 9, 2017, in response to Ohio State Senator Peggy Lehner’s request, FTC staff submitted a comment to the Ohio State Senate on the likely competitive impact of Senate Bill 330 (“SB 330”). The bill would broaden dental hygienists’ ability to work without a supervising dentist on-site, and provide for the licensure of dental therapists, a relatively new type of “mid-level” provider who offers some of the same basic services offered by dentists. To ensure that Ohio consumers fully benefit from the bill’s general supervision provisions, the comment suggested that legislators consider whether requiring a dentist to authorize general supervision is necessary to address any legitimate and substantiated health and safety concerns, and whether a less restrictive alternative might achieve such goals without unduly burdening competition. See <https://www.ftc.gov/news-events/press-releases/2017/03/ftc-staff-comment-ohio-state-legislative-effort-enhance-access>.

6.2. DOJ and FTC Trade Policy Activities

89. 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, 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.

90. The Agencies also participate in negotiations and working groups related to regional and bilateral trade agreements. In FY 2017, the Agencies participated in the U.S. delegation that negotiated the competition chapter of the proposed revised North American Free Trade Agreement (“NAFTA”).

7. New Studies Related to Antitrust Policy

7.1. Joint DOJ/FTC Conferences, Reports

91. **Defense Industry.** On April 12, 2016, the Agencies issued a joint statement reaffirming the importance of preserving competition in the defense industry. The statement describes the Antitrust Agencies’ framework for analyzing defense industry mergers and acquisitions and emphasizes that the Agencies work closely with the Department of Defense, which is in a unique position to assess the impact of proposed

defense industry consolidation. See <https://www.ftc.gov/news-events/press-releases/2016/04/ftc-doj-issue-joint-statement-preserving-competition-defense>.

7.2. FTC Conferences, Reports, and Economic Working Papers

7.2.1. Conferences and Workshops

92. **Economic Liberty Roundtables – Occupational Licensing.** On July 27, 2017, the FTC’s Economic Liberty Task Force hosted its first roundtable, “Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability.” The event explored options for enhancing the portability of occupational licenses. This was followed by a second roundtable on November 7, 2017, which examined empirical evidence on the effects of occupational licensure. See <https://www.ftc.gov/policy/advocacy/economic-liberty/events>; <https://www.ftc.gov/news-events/events-calendar/2017/07/streamlining-licensing-across-state-lines-initiatives-enhance>; and <https://www.ftc.gov/news-events/events-calendar/2017/11/effects-occupational-licensure-competition-consumers-workforce>.

93. **Hearing Health Care.** On April 18, 2017, the FTC hosted a workshop to examine competition, innovation, and consumer protection issues raised by hearing health and technology, especially hearing aids. See <https://www.ftc.gov/news-events/events-calendar/2017/04/now-hear-competition-innovation-consumer-protection-issues>.

94. **Ninth Annual Microeconomics Conference.** On November 3-4, 2016, the FTC held its ninth 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/2016/11/ninth-annual-federal-trade-commission-microeconomics-conference>.

7.2.2. Reports

95. **Merger Remedies.** On February 3, 2017, the FTC issued a comprehensive report examining Commission merger remedies between 2006 and 2012. The study examined 89 merger orders issued by the Commission between 2006 and 2012, including those requiring divestitures, as well as non-structural relief, to address anticompetitive effects. FTC staff found that the agency’s process for designing and implementing merger remedies is generally effective and in most cases resulted in remedies that preserved or restored competition that would have been lost due to the merger. The study also identified certain areas in which improvements can be made, particularly for divestitures of limited asset packages in horizontal, non-consummated mergers. See <https://www.ftc.gov/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics>.

96. **The “Sharing” Economy.** On November 17, 2016, the FTC issued a report that addressed a range of competition and consumer protection issues in the “sharing” economy. The report examines, among other things, the regulatory approaches to protect consumers and the public while preserving the benefits of competition offered by these new sources of supply. The report summarized a June 2015 FTC public workshop and highlighted a number of competitive benefits and potential consumer protection challenges posed by disruptive business models in markets such as for-hire-transportation and short-term lodging. See <https://www.ftc.gov/reports/sharing-economy-issues-facing-platforms-participants-regulators-federal-trade-commission>.

97. **Patent Assertion Entities (“PAEs”).** On October 6, 2016, the FTC issued a report featuring the business practices of PAEs, firms that acquire patents from third parties and then try to make money by licensing or suing accused infringers. The report included several recommendations for patent litigation reforms, aimed at better balancing the needs of patent holders with the goal of minimizing nuisance litigation. See <https://www.ftc.gov/reports/patent-assertion-entity-activity-ftc-study>.

7.2.3. Bureau of Economics Working Papers

98. The FTC’s Bureau of Economics issued the following working paper during FY 2017. The paper is available at <https://www.ftc.gov/policy/reports/policy-reports/economics-research/working-papers>.

- Price Effects of a Merger: Evidence from a Physicians’ Market, August 2017

7.3. DOJ Economic Working Papers

7.3.1. DOJ Economic Analysis Group Discussion Papers

99. The DOJ Economic Analysis Group issued the following papers during FY 2017. The papers are available at <https://www.justice.gov/atr/discussion-paper-after-2006>.

- Simulating Mergers in a Vertical Supply Chain with Bargaining, Gloria Scheu and Charles Taragin, EAG 17-3, October 2017
- Forward Contracts, Market Structure, and the Welfare Effects of Mergers, Nathan H. Miller and Joseph U. Podwol, EAG-17-2, October 2017
- Three Economist’s Tools for Antitrust Analysis: A Non-Technical Introduction, Russell Pittman, EAG 17-1, January 2017

7.3.2. Appendices

Table 1. Department of Justice: Fiscal Year 2017 FTE and Resources by Enforcement Activity

	FTE	Amount (\$ in thousands)
Criminal Enforcement	285	\$65,991
Civil Enforcement	428	\$98,986
Total	713	\$164,977

Table 2. Federal Trade Commission: Fiscal Year 2017 Competition Mission

FTE and Dollars by Program, Bureau & Office

	FTE	Amount (\$ in thousands)
Total Promoting Competition Mission	535.0	\$134,160.0
Premerger Notification	18.0	\$3,402.0
Merger & Joint Venture Enforcement	206.0	\$38,418.0
Merger & Joint Venture Compliance	11.0	\$2,071.0
Nonmerger Enforcement	128.0	\$23,989.0
Nonmerger Compliance	1.0	\$189.0
Antitrust Policy Analysis	26.0	\$5,181.0
Other Direct	20.0	\$3,737.0
Support	125.0	\$57,173.0