Organisation for Economic Co-operation and Development

DAF/COMP/AR(2020)36

Unclassified

English - Or. English

9 November 2020

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in the United States

-- 2019 --

This report is submitted by the United States to the Competition Committee.

JT03468132

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United States

1. Introduction

1. This report describes federal antitrust developments in the United States for the period of October 1, 2018 through September 30, 2019 ("FY 2019").[1] It summarizes the competition enforcement and policy activities of 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 2019, see the FTC's Annual Highlights 2019, *available at* https://www.ftc.gov/reports/annual-highlights-2019, and the DOJ's 2020 Update, *available at* https://www.justice.gov/file/1280196/download.

1.1. Senior Leadership Update

2. On August 24, 2020, Tara Isa Koslov, who served as Chief of Staff to Chairman Joe Simons from May 2018 through March 2020, was named Deputy Director of the FTC's Bureau of Competition. She had been Acting Deputy Director since March 2020. On December 23, 2019, Professor Andrew Sweeting from the University of Maryland was appointed Bureau of Economics Director, replacing Bruce Kobayashi. On December 18, 2019, Ian Conner assumed the position of Director of Competition Bureau and Daniel Francis was appointed Deputy Director.

3. On July 29, 2019, Rene Augustine was appointed Deputy Assistant Attorney General responsible for the Division's international and policy matters, replacing outgoing Deputy Assistant Attorney General Roger Alford. Alexander Okuliar was appointed Deputy Assistant Attorney General on January 28, 2020. Kathleen O'Neill was appointed Senior Director of Investigations and Litigation on July 19, 2019. On December 27, 2018, Robert Majure resigned as Director of Economic Enforcement. Jeff Wilder now serves as Acting Deputy Assistant Attorney General and Director of Economic Enforcement.

2. Changes in law or policies

2.1. Changes in Antitrust Rules, Policies, or Guidelines

4. On July 11, 2019, the Antitrust Division announced a new policy to incentivize and potentially credit corporate compliance programs in criminal investigations. First, the Antitrust Division announced it would consider and allow for crediting corporate compliance at the charging stage in criminal antitrust investigations. When considering corporate charges, the Division now considers compliance together with all the other factors under the Principles of Federal Prosecution and the Principles of Federal Prosecution of Business Organizations, as well as its Corporate Leniency Policy. In

[1] In some sections of the Report, e.g., the following section on Senior Leadership Update, more recent information is provided. Any given fiscal year ("FY") runs from October 1st of the prior year through September 30th of the named year.

addition to updates to the Division's operating manual reflecting this policy change, the Division made public for the first time an internal guidance document focused on evaluating compliance programs at both the charging and sentencing stages of criminal antitrust investigations. This guidance document is intended to assist Division prosecutors in their evaluation of compliance programs, and to provide greater transparency of the Division's compliance analysis. *See* https://www.justice.gov/opa/pr/antitrust-division-announces-new-policy-incentivize-corporate-compliance.

5. On June 27, 2019, the Agencies approved amendments to the Hart-Scott-Rodino Rules and to the instructions for filling out the Antitrust Act Notification and Report Form (also known as the HSR Form). The Agencies amended the HSR Rules and the HSR Form's filing instructions to incorporate the new 10-digit North American Product Classification System, or NAPCS, codes introduced by the Census Bureau, and the updated 6-digit North American Industry Classification System, or NAICS, codes. Filers submitting data on non-manufacturing revenue would be required to use the 6-digit NAICS codes. Filers submitting data on manufacturing revenue would be required to use the new 10-digit NAPCS codes. *See* https://www.ftc.gov/news-events/press-releases/2019/06/ftc-doj-approve-procedural-changes-hsr-rules-and-form.

6. On February 15, 2019, the HSR size-of-transaction threshold for reporting proposed mergers and acquisitions under Section 7A of the Clayton Act increased from $84.4 million to $90 million. The new 2019 thresholds under Section 8 of the Act that trigger prohibitions on certain interlocking memberships on corporate boards of directors are $36,564,000 for Section 8(a)(l) and $3,656,400 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/2019/02/ftc-announces-annual-update-size-transaction-thresholds-premerger.

7. During FY 2019, the Antitrust Division continued its initiative to terminate outdated antitrust judgments. The Judgment Termination Initiative represents the Division's ongoing effort to end obsolete perpetual judgments dating back as far as the 1890s. To date, the Division has terminated decrees in 78 of 79 affected districts across the United States. Courts have terminated nearly 800 legacy judgments in total, with a majority of those terminations occurring in FY 2019, and no court has denied the Division's request to terminate a decree. Terminated decrees under the Initiative have ranged from obsolete industries (like music rolls) to those resulting from seminal antitrust cases (like *Standard Oil* and *Brown Shoe*). In addition to those decrees terminated under the Judgment Termination Initiative, the Division has continued to review other perpetual decrees to assess their continued necessity. *See* https://www.justice.gov/atr/JudgmentTermination.

8. The Antitrust Division also continued its "New Madison" approach for analyzing issues at the intersection of antitrust and intellectual property law. First announced in 2018, this approach emphasizes the importance of intellectual property rights to innovation and economic growth, and cautions that improperly expanding antitrust law to prohibit conduct that can be addressed by contract or patent law risks undermining incentives to innovate. During FY 2019, the Division worked with the U.S. Patent & Trademark Office and the National Institute of Standards and Technology to develop an updated Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments. The new policy statement was issued in December 2019, replacing a 2013 statement on the same topic, and clarified that no special legal rules apply when determining remedies for standards-essential patents. The Division also expanded its advocacy in federal district courts, filing statements of interest promoting a disciplined approach to intellectual

property issues, as in *NSS Labs, Inc. v. Crowdstrike* and *FTC v. Qualcomm*. *See* https://www.justice.gov/atr/division-operations/antitrust-division-update-2020/new-heights-new-madison-approach.

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

3.1. Staffing and Enforcement Statistics

3.1.1. FTC

9. During FY 2019, the FTC employed approximately 1,130 staff and spent approximately $137.8 million in furtherance of its Maintaining Competition mission.

10. During FY 2019, 2,030 proposed mergers and acquisitions were reported for review under the HSR Act, almost unchanged from the number reported during FY 2018. The Commission staff issued requests for additional information ("second requests") in 30 transactions. The FTC challenged 21 mergers, including 10 in which the Commission issued a consent order, nine in which the transaction was abandoned or restructured as a result of antitrust concerns raised during the investigation, and two in which the Commission issued an administrative complaint. In the two 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.

11. During FY 2019, the FTC staff opened 11 non-merger, initial phase investigations. The Commission brought two non-merger enforcement actions, including one in which the Commission initiated administrative litigation, and one that was resolved by a consent order.

12. During FY 2019, the Commission filed *amicus curiae* briefs in two cases, both before federal courts. The Commission or Commission staff also submitted four competition advocacy comments. *See* https://www.ftc.gov/policy/advocacy.

3.1.2. DOJ

13. At the end of FY 2019, the Division had 594 employees: 292 attorneys, 43 economists, 122 paralegals, and 137 other professional staff. For FY 2019, the Division received an appropriation of approximately $165 million.

14. In FY 2019, the Division opened 49 criminal investigations (38 grand jury investigations and 11 preliminary inquiries). The Division filed 26 criminal cases, charging 13 corporations and 15 individuals. The Division obtained more than $364 million in criminal fines and penalties from 16 corporations and 23 individuals. The courts sentenced 22 individuals to serve time in jail with an average of nearly six months incarceration.

15. During fiscal year 2019, the Antitrust Division challenged 17 merger transactions that it concluded would substantially lessen competition if allowed to proceed as proposed. In 11 of these challenges, the Antitrust Division filed a complaint in the U.S. district court. In eight of these court challenges, the Division filed settlement papers simultaneously with the complaint. One transaction was abandoned after the Division filed a complaint and another court challenge was resolved in the Division's favor at arbitration. The remaining court challenge was litigated in the U.S. district court and, after a trial on its merits, the court found in favor of the defendants. In five instances, the parties abandoned their

proposed transactions after the Division and, in some cases, other jurisdictions raised concerns about the competitive effects of the transactions. The remaining challenge was resolved after the parties addressed the Division's concerns during the course of the investigation. The Division also issued "second requests" in 31 mergers. The Division opened 110 civil investigations (merger and non-merger), and filed five non-merger civil complaints.

3.2. Antitrust Cases in the Courts

3.2.1. United States Supreme Court

16. **Apple Inc. v. Pepper.** A putative class of iPhone app purchasers alleged that Apple unlawfully monopolized the market for iPhone app distribution. The U.S. District Court for the Northern District of California viewed the plaintiffs as indirect purchasers of Apple's app distribution services—whereas app developers were direct purchasers—so it dismissed their complaint for lack of antitrust standing under Illinois Brick Co. v. Illinois (1977). The U.S. Court of Appeals for the Ninth Circuit reversed, reasoning that the plaintiffs purchased apps directly from Apple, which played the role of a distributor, so the Illinois Brick rule did not bar their claims. Apple petitioned the U.S. Supreme Court for a writ of certiorari, and the Court sought the DOJ's views on whether to grant review. Noting a conflicting 1999 ruling in the Eighth Circuit, the United States recommended Supreme Court review, which the Court granted. In an amicus curiae brief on the merits, the United States sided with Apple, arguing that Illinois Brick should be understood to bar damages claims, like the plaintiffs', that are premised on a theory of passed-on harm. The Supreme Court instead held for the plaintiffs, in a 5-4 decision on May 13, 2019. In the majority opinion by Justice Kavanaugh, the Court held that "[t]he bright-line rule of Illinois Brick" is that "indirect purchasers who are two or more steps removed from the antitrust violator in a distribution chain may not sue," and thus, "[t]he absence of an intermediary" in the distribution chain between Apple and the plaintiffs "is dispositive." Justice Gorsuch dissented, claiming that the majority's "bright-line rule" "replace[d] a rule of proximate cause and economic reality with an easily manipulated and formalistic rule of contractual privity."

3.2.2. U.S. Court of Appeals Decisions

17. **Criminal Bid-Rigging Cases (*United States v. Marr*, *Sanchez* & *Casorso*).** In the U.S. District Court for the Northern District of California, the Department successfully prosecuted a conspiracy to rig bids at hundreds of public real-estate foreclosure auctions in Alameda and Contra Costa Counties. The conspirators used verbal and nonverbal signals to agree not to bid (or to stop bidding) on particular properties, thereby causing those properties to sell for artificially low prices. The conspirators then held second, private auctions to award the properties to members of the conspiracy and determine payoffs for other conspirators who had agreed not to bid against each other at the public auctions. The defendants appealed their convictions, arguing primarily that the *per se* rule violated their due process rights by relieving the government of its burden to prove beyond a reasonable doubt the unreasonableness of their conduct. On January 25, 2019, the U.S. Court of Appeals for the Ninth Circuit rejected that argument, citing longstanding precedent that "the per se rule is not an evidentiary presumption *at all*" and does not violate a defendant's constitutional rights. The court of appeals also rejected the defendants' argument that they could have been engaged in a lawful joint venture. The defendants' subsequent petitions for *en banc* rehearing and Supreme Court review were unsuccessful.

3.2.3. U.S. District Court Decisions

18. **Federal Trade Commission v. Qualcomm Inc.** On May 21, 2019, a U.S. District Court granted the FTC's injunction challenging Qualcomm's patent licensing practices for baseband processors used in cellular devices. The FTC alleged that Qualcomm has used its dominant position as a supplier of certain baseband processors to impose onerous and anticompetitive supply and licensing terms on cell phone manufacturers and to weaken competitors. The court found that Qualcomm used anticompetitive tactics to maintain a monopoly on key cell phone chip markets and to acquire higher royalties than it could obtain based only on its patent value. On August 11, 2020, the Court of Appeals of the Ninth Circuit reversed the District Court's decision, ruling in favor of Qualcomm. The FTC originally filed a complaint in January 2017. See ***https://www.ftc.gov/enforcement/cases-proceedings/141-0199/qualcomm-inc***.

19. **FTC v. Actavis, Inc., et al.** On February 28, 2019, the FTC reached a settlement in FTC v. Actavis, the 2009 case alleging that the brand-name drug company, Solvay, and the three generic drug companies illegally agreed to restrict generic competition to Solvay's branded testosterone-replacement drug AndroGel for nine years. After the district court dismissed the FTC's complaint and the appellate court affirmed the district court decision, the Supreme Court, in June 2013, rejected lower court rulings that treated "reverse-payment" patent settlements (agreements in which the patent holder pays the alleged infringer) as largely immune from antitrust law. The Court held such agreements are subject to antitrust scrutiny. The case was remanded to the district court. Under the settlement, Solvay's current owner AbbVie is prohibited from entering into certain patent infringement settlement agreements that restrict generic entry for certain drugs and contain common forms of reverse payments. The order, if approved by the court, will remain in effect for 10 years. See ***https://www.ftc.gov/enforcement/cases-proceedings/071-0060/watson-pharmaceuticals-inc-et-al-ftc-v-actavis***.

3.2.4. DOJ Participation in Private Enforcement Actions

20. Throughout FY 2019, the Antitrust Division continued to deploy its amicus program as a cost-effective means of ensuring the proper implementation and development of federal antitrust laws, filing a record 22 briefs and statements of interest. Designed to supplement the Division's own investigative and litigation efforts, the amicus program allows the Division to share its expertise and experiences with generalist courts and judges—some of whom may have limited experience with antitrust laws. Some of the significant cases in which the Division participated in FY 2019 are summarized below. *See* https://www.justice.gov/crt/amicus-curiae-program.

21. ***Mountain Crest SRL, LLC v. Anheuser-Busch InBev SA/NV.*** Mountain Crest SRL, LLC, a small U.S. brewer, brought antitrust conspiracy claims under Sections 1 and 2 of the Sherman Act against Anheuser-Busch InBev SA/NV and Molson Coors Brewing Co. Mountain Crest's claims were directed primarily at successful efforts by the defendants to convince the government of Ontario to restrict the sale of beer in formats larger than a six-pack. Mountain Crest also alleged a broader conspiracy by defendants to restrict competition in Ontario from U.S. beer exporters like itself. The U.S. District Court for the Western District of Wisconsin dismissed the antitrust claims under the act-of-state doctrine, and Mountain Crest appealed to the U.S. Court of Appeals for the Seventh Circuit. After oral argument, the court of appeals invited the United States to file an amicus brief "as to whether the district court properly relied upon the act of state doctrine in dismissing [this antitrust] action." The United States filed an amicus brief explaining that the district court

properly relied on the act-of-state doctrine to dismiss Mountain Crest's challenge to the six-pack restrictions—which would require passing on the validity of official government acts—but that the act-of-state doctrine did not require dismissing the broader conspiracy allegations. On September 5, 2019, the Seventh Circuit issued an opinion agreeing with the United States' position. It affirmed the judgment below in part and vacated the judgment in part. On remand, the district court dismissed the remaining conspiracy claims on other grounds.

22. ***Oscar Insurance Co. of Florida v. Blue Cross & Blue Shield of Florida.*** Oscar Insurance Company, a new entrant in certain Florida health insurance markets, sued Blue Cross, the dominant health insurer in Florida, in the U.S. District Court for the Middle District of Florida. Oscar alleged that Blue Cross's exclusivity policy, whereby Blue Cross prohibits its insurance brokers from selling insurance plans offered by competing insurers, violated Sections 1 and 2 of the Sherman Act. Blue Cross moved to dismiss Oscar's complaint, arguing, *inter alia*, that the McCarran-Ferguson Act exempted the policy from the Sherman Act. The McCarran-Ferguson exemption applies only when challenged conduct (1) is part of the "business of insurance"; (2) is "regulated by state law"; and (3) does not involve a "boycott, coercion, or intimidation." The United States filed a statement of interest arguing that the McCarran-Ferguson exemption did not apply to the alleged policy because it was not "the business of insurance" and because Blue Cross employed "coercion." The district court disagreed and dismissed the complaint. Oscar has since appealed to the U.S. Court of Appeals for the Eleventh Circuit, and the United States filed an amicus brief supporting Oscar, again arguing that the alleged policy is not the "business of insurance" and involves "coercion."

23. ***City of Oakland v. The Oakland Raiders.*** The City of Oakland sued the National Football League and its member teams under Section 1 of the Sherman Act for damages stemming from the Raiders' relocation to Las Vegas. The city alleged that the defendants conspired to boycott and refuse to deal with Oakland, and to fix prices for hosting a professional football team, all to facilitate the Raiders' move to Las Vegas. Oakland sought to recover significant tax revenue that it derived from hosting the Raiders. The defendants moved to dismiss for lack of standing and for inadequate allegations of a Sherman Act violation. The United States filed a statement of interest arguing that general tax injuries are not cognizable under Section 4 of the Clayton Act and thus are not recoverable as a matter of law. The U.S. District Court for the Northern District of California agreed and dismissed all of Oakland's claims based on lost tax revenue, along with the rest of the complaint. Oakland is now pursuing an appeal in the U.S. Court of Appeals for the Ninth Circuit.

3.3. Statistics on Private and Government Cases Filed

24. According to the 2019 Annual Report of the Director of the Administrative Office of the U.S. Courts, 521 new civil antitrust actions, both government and private, were filed in the federal district courts in FY 2019. See Table C-2A of the report, *available at* https://www.uscourts.gov/statistics/table/c-2a/judicial-business/2019/09/30.

3.4. Significant Enforcement Actions

3.4.1. DOJ Criminal Enforcement

25. In fiscal year 2019, the Division filed 26 criminal cases and obtained more than $364 million in criminal fines and penalties from 16 corporations and 23 individuals.

Altogether, 13 corporations and 15 individuals were charged for antitrust offenses. These crimes affected government victims, important American consumer markets and industries, including household staple canned tuna, financial services, generic pharmaceuticals, and electronic components, and victimized particularly vulnerable consumers including schools and hospitals.

26. **Government Victims.** The Division announced a number of charges and resolutions involving conduct that victimized the federal government. In November 2018, the Antitrust Division announced resolution of criminal charges against South Korea-based companies SK Energy Co. Ltd., GS Caltex Corporation, and Hanjin Transportation Co. Ltd. arising from a decade-long bid-rigging conspiracy that targeted fuel supply contracts to U.S. military bases in South Korea. The defendants agreed to plead guilty and pay over $82 million in criminal fines. *See* https://www.justice.gov/opa/pr/three-south-korean-companies-agree-plead-guilty-and-enter-civil-settlements-rigging-bids. In March 2019, the Division unsealed a superseding criminal indictment charging two additional companies, Hyundai Oilbank Co. Ltd and S-Oil Corporation, and seven executives with defrauding the federal government and participating in the bid-rigging conspiracy. One executive was also charged with obstruction. The two companies pled guilty to the antitrust charge and agreed to pay nearly $75 million in criminal fines. *See* https://www.justice.gov/opa/pr/more-charges-announced-ongoing-investigation-bid-rigging-and-fraud-targeting-defense. In separate civil resolutions, the five companies agreed to pay over $205 million to the United States for civil antitrust and False Claims Act violations.

27. In March 2019, the Division brought its first charges in an investigation into bid rigging at General Services Administration ("GSA") auctions for surplus government equipment. *See* https://www.justice.gov/opa/pr/texas-bidder-pleads-guilty-rigging-bids-online-auctions-surplus-government-equipment. GSA operates an online auction that allows the public to bid on federal assets that are no longer needed by government agencies. Auction proceeds go to the government agencies or the U.S. Treasurer's general fund. In April and September 2019, two online bidders pled guilty in the investigation. *See* https://www.justice.gov/opa/pr/online-bidder-pleads-guilty-antitrust-charge-rigging-bids-government-auctions; https://www.justice.gov/opa/pr/texas-bidder-pleads-guilty-rigging-bids-online-auctions-surplus-government-equipment.

28. **Household Staples.** The Division continued its ongoing investigation into price fixing in the packaged seafood industry in fiscal year 2019. In October 2018, StarKist Co. agreed to plead guilty for its role in the conspiracy to fix prices of canned tuna. *See* https://www.justice.gov/opa/pr/starkist-co-agrees-plead-guilty-price-fixing. In September 2019, StarKist was ordered to pay a $100 million statutory maximum fine after nearly a year of litigation regarding its ability to pay the criminal fine. *See* https://www.justice.gov/opa/pr/starkist-ordered-pay-100-million-criminal-fine-antitrust-violation. Including StarKist, three executives and two companies have pled guilty in the investigation. A fourth executive, Christopher Lischewski, the President and Chief Executive Officer of Bumble Bee Foods, was found guilty at trial. *See* https://www.justice.gov/opa/pr/former-ceo-convicted-fixing-prices-canned-tuna.

29. **Financial Services.** The Division also continued its investigation and prosecution of collusive conduct that undermined the financial markets. In October 2018, two former Deutsche Bank traders were convicted for their participation in a scheme to manipulate the London Interbank Offered Rate, a global benchmark tied to trillions of dollars of financial products. *See* https://www.justice.gov/opa/pr/two-former-deutsche-bank-traders-

convicted-role-scheme-manipulate-critical-global-benchmark. The Antitrust Division also continued its investigation of collusion in the foreign currency exchange market, the largest financial market in the world. To date, the investigation has resulted in charges against five companies and six individuals, including a former foreign currency trader found guilty at trial. *See* https://www.justice.gov/opa/pr/former-trader-major-multinational-bank-convicted-price-fixing-and-bid-rigging-fx-market.

30. The Division also announced the first charges in an investigation into rigging bids for certain financial instruments. *See* https://www.justice.gov/opa/pr/new-york-broker-dealer-pleads-guilty-violating-us-antitrust-laws-rigging-bids-financial. Two companies and one executive pled guilty to conspiring to borrow pre-release American Depository Receipts at artificially suppressed rates. *See* https://www.justice.gov/opa/pr/second-new-york-broker-dealer-pleads-guilty-rigging-bids-financial-instruments-violation; https://www.justice.gov/opa/pr/former-financial-services-executive-pleads-guilty-rigging-bids-financial-instruments;

31. **Generic Drugs.** The Division announced additional charges in an investigation into collusion among generic drug manufacturers. In May 2019, Heritage Pharmaceuticals admitted to conspiring to fix prices for a generic drug used to treat diabetes. *See* https://www.justice.gov/opa/pr/pharmaceutical-company-admits-price-fixing-violation-antitrust-law-resolves-related-false. Heritage's former CEO and its former president were previously charged in the ongoing investigation. *See* https://www.justice.gov/opa/pr/former-top-generic-pharmaceutical-executives-charged-price-fixing-bid-rigging-and-customer.

32. **Electronic Components.** An additional company was fined in the Division's investigation into 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 October 2018, Nippon Chemi-Con was ordered to pay a $60 million fine and a five-year term of probation. *See* https://www.justice.gov/opa/pr/leading-electrolytic-capacitor-manufacturer-ordered-pay-60-million-criminal-fine-price-fixing. To date, eight companies and 10 individuals have been charged with participating in conspiracies to fix prices and rig bids of certain electrolytic capacitors. All eight companies have pled guilty and have been ordered to pay criminal fines totaling over $150 million. Of the 10 individuals, two have pled guilty and eight remain under indictment.

33. In July 2019, the Division announced the first charges in its investigation into an international conspiracy to fix prices of suspension assemblies. Suspension assemblies are components of hard disk drives, which are used to store information electronically and are incorporated into computers or sold as stand-alone electronic storage devices. NHK Spring Co. Ltd. agreed to plead guilty and pay a $28.5 million criminal fine for its role in the conspiracy. *See* https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk.

34. **Commercial Construction & Vulnerable Victims.** The Division announced two investigations into collusion in the commercial construction industry targeting particularly vulnerable victims, including hospitals and schools. One of these investigations involved a fraud and bid-rigging scheme affecting $45 million of commercial insulation contracts for New England facilities including schools and hospitals. In fiscal year 2019, three executives pled guilty to antitrust and fraud charges in the ongoing investigation. See ***https://www.justice.gov/opa/pr/president-insulation-contracting-firm-pleads-guilty-***

antitrust-and-fraud-charges; *https://www.justice.gov/opa/pr/insulation-contractor-executive-pleads-guilty-antitrust-and-fraud-charges*; *https://www.justice.gov/opa/pr/insulation-contractor-branch-manager-pleads-guilty-bid-rigging-and-fraud*. In fiscal year 2019, the Division also charged one executive and one corporation in a bid-rigging and price-fixing conspiracy among commercial flooring manufactures that spanned almost a decade and victimized schools, hospitals, and charities in the greater Chicago area. See *https://www.justice.gov/opa/pr/commercial-flooring-contractor-agrees-plead-guilty-antitrust-charge*; *https://www.justice.gov/opa/pr/former-vice-president-commercial-flooring-contractor-charged-bid-rigging*.

3.4.2. DOJ Civil Non-Merger Enforcement

35. **Television Broadcasters Information Sharing Settlement.** On November 13, 2018, the Division filed a complaint and settlement agreement in the District of Columbia against seven broadcast television companies for agreeing to exchange competitively sensitive information relevant to many advertising spot markets. The complaint alleged that, by exchanging such information, the broadcasters were better able to anticipate their competitors' pricing conduct, which in turn helped inform the stations' own pricing strategies and negotiations with advertisers. As a result, the information exchanges distorted the normal price-setting mechanism in the spot advertising process and harmed the competitive process. On June 17, 2019, the Division filed an amended complaint naming five additional broadcast television companies, as well as a settlement agreement with those companies. The Division obtained settlement agreements from the twelve parties that prohibit the sharing of such competitively sensitive information. The settlements further require broadcasters to cooperate in the Department's ongoing investigation and to adopt rigorous antitrust compliance and reporting measures to prevent similar anticompetitive conduct in the future. See *https://www.justice.gov/opa/pr/justice-department-requires-six-broadcast-television-companies-terminate-and-refrain-unlawful*.

36. **United States v. Carolinas Healthcare System.** On November 15, 2018, the Division announced that it reached a settlement with Atrium Health, formerly known as Carolinas HealthCare System. The settlement resolved more than two years of civil antitrust litigation. With an approximately 50 percent share in the sale of acute inpatient hospital services to health insurers in the Charlotte area, Atrium is the largest healthcare system in North Carolina and one of the largest not-for-profit healthcare systems in the United States. In June 2016, the Division filed a civil antitrust lawsuit against Atrium. According to the complaint, Atrium, the dominant hospital system in the Charlotte area, used its market power to restrict health insurers from encouraging consumers to choose healthcare providers that offer better overall value. The restrictions also constrained insurers from providing consumers and employers with information regarding the cost and quality of alternative health benefit plans. The settlement, in which the Division was joined by the North Carolina Attorney General's Office, prevents Atrium from enforcing steering restrictions in its contracts with health insurers or seeking contract terms or taking actions that would prohibit, prevent, or penalize steering by insurers in the future in contracts between commercial health insurers and its providers in the Charlotte, North Carolina metropolitan area. See *https://www.justice.gov/opa/pr/atrium-health-agrees-settle-antitrust-lawsuit-and-eliminate-anticompetitive-steering*.

37. **Korea Fuel Supplies.** As discussed above, in November 2018 and March 2019, the Division announced global resolutions of criminal charges and civil claims against five South Korea-based companies arising from a decade-long bid-rigging conspiracy that

targeted fuel supply contracts to U.S. military bases in South Korea. SK Energy Co. Ltd., GS Caltex Corporation, Hanjin Transportation Co. Ltd., Hyundai Oilbank, Co., Ltd., and S-Oil Corporation collectively agreed to pay more than $200 million in civil damages to the United States. The civil claims were brought under Section 4A of the Clayton Act, an enforcement tool that allows the Government to recover treble damages for antitrust violations when the Government is a victim. See ***https://www.justice.gov/opa/pr/more-charges-announced-ongoing-investigation-bid-rigging-and-fraud-targeting-defense***.

38. **Learfield IMG College.** On February 14, 2019, the Antitrust Division announced that it had reached a settlement with Learfield IMG College to resolve a Department lawsuit alleging that it engaged in unlawful agreements not to compete for multimedia rights contracts for universities' athletic programs. The settlement prohibits agreements not to bid, or to submit joint bids, between Learfield IMG College and any of its competitors in multimedia rights management. The settlement further requires Learfield IMG College to adopt rigorous antitrust compliance and reporting measures to prevent similar anticompetitive conduct in the future. See ***https://www.justice.gov/opa/pr/justice-department-requires-college-multimedia-rights-provider-refrain-unlawful-agreements***.

3.4.3. FTC Non-Merger Enforcement Actions

39. **In the Matter of Reckitt Benckiser Group PLC.** In its July 11, 2019 complaint before the federal district court in the Western District of Virginia, the Commission alleged that Reckitt-Benckiser engaged in a product-hopping scheme to shift patients away from its branded opioid addiction treatment, Suboxone, which was facing generic competition. The Commission alleged that the company used deceptive means to transfer patients to a more lucrative version of the drug that enjoyed patent protection, which provided no legitimate health benefits. Reckitt-Benckiser agreed to pay $50 million to affected consumers to settle the matter. *See* https://www.ftc.gov/enforcement/cases-proceedings/131-0036/reckitt-benckiser-group-plc.

40. **In the Matter of SureScripts LLC.** On April 24, 2019, the Commission filed for permanent injunction against Surescripts for using tactics such as threats and exclusivity agreements to maintain its monopolies in two electronic prescribing markets. The FTC alleged that Surescripts' actions prevented healthcare providers from using additional platforms to determine patient eligibility for prescription coverage and to transmit prescriptions directly to pharmacies, thereby blocking competitors' success. In January 2020, a federal district court denied Surescripts' motion to dismiss. *See* https://www.ftc.gov/enforcement/cases-proceedings/141-0210/surescripts-llc.

41. **In the Matter of Impax Laboratories, Inc.** On March 29, 2019, the Commission ruled that Impax Laboratories had entered into an illegal reverse payment settlement with Endo Pharmaceuticals to block consumers' access to a lower-cost generic version of Endo's branded drug, Opana ER, an extended release opioid used for pain relief. The case is pending appeal in the Fifth Circuit. *See* https://www.ftc.gov/enforcement/cases-proceedings/141-0004/impax-laboratories-inc.

42. **In the Matter of 1-800 Contacts, Inc.** On November 14, 2018, the Commission upheld an administrative initial decision that 1-800 Contacts, the largest online retailer of contact lenses in the United States, entered into unlawful agreements with rival online sellers to suppress competition in certain online search advertising auctions and to restrict truthful and non-misleading internet advertising to consumers. This case is pending appeal before the Second Circuit. *See* https://www.ftc.gov/enforcement/cases-proceedings/141-0200/1-800-contacts-inc-matter.

3.5. Advisory Letters from the FTC

43. 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. For more information on the Commission's advisory letters, *see* https://www.ftc.gov/policy/advisory-opinions.

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

4.1. Select Significant Merger Matters

4.1.1. FTC Merger Investigations and Challenges

44. **In the Matter of US Foods Holding Corp. and Services Group of America, Inc.** On November 19, 2019, food distributor US Foods, Inc. agreed to divest assets to settle FTC charges that US Foods, Inc.'s proposed $1.8 billion acquisition of Services Group of America, Inc. would violate federal antitrust law. The complaint alleges that, in Eastern Idaho, Western North Dakota, Eastern North Dakota, and the Seattle area, the transaction would eliminate a key broadline distributor and limit customers' ability to switch between distributors to obtain better pricing and service. Under the proposed consent agreement, within 30 days of the acquisition closing, US Foods must divest three FSA distribution centers: one in Boise, Idaho; another in Fargo, North Dakota (FSA competes in both Eastern and Western North Dakota out of this facility); and a third in the greater- Seattle area. *See* https://www.ftc.gov/enforcement/cases-proceedings/181-0215/us-foods-sga-matter.

45. **In the Matter of Otto Bock HealthCare North America, Inc.** On November 6, 2019, the FTC issued an opinion and final order in which the Commission upheld the Administrative Law Judge's decision that the consummated acquisition of Freedom Innovations by Otto Bock HealthCare North America, Inc.—both top sellers of prosthetic knees equipped with microprocessors or MPKs—resulted in anticompetitive harm in the microprocessor prosthetic knee market, likely leading to higher prices and less innovation for amputee patients and prosthetic clinic customers. The acquisition was not reportable under the Hart-Scott-Rodino Act. The Commission's order requires Otto Bock to divest the Freedom Innovations assets to an FTC-approved buyer. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations.

46. **In the Matter of Boston Scientific and BTG.** On September 19, 2019, the FTC approved a final order settling charges that Boston Scientific's proposed $4.2 billion acquisition of medical equipment and pharmaceutical supplier BTG plc would violate federal antitrust law. According to the complaint, Boston Scientific's acquisition of BTG would harm consumers in the U.S. market for drug eluting beads, or DEBs, which are microscopic beads used to treat certain liver cancers. Interventional radiologists use DEBs, combined with chemotherapy drugs, in a procedure called transarterial chemoembolization. This procedure blocks the flow of blood to a liver tumor, causing it to shrink over time, while simultaneously slowly releasing a chemotherapy agent that also attacks the tumor. Under the proposed settlement agreement, Boston Scientific is required to divest to Varian its DEB business, as well as its bland bead product line. Bland beads are used in another type of procedure to block the flow of blood to a liver tumor. According to the FTC, BSC's

bland bead business must be divested with its DEB business to ensure the divestiture's effectiveness. Commission staff cooperated with staff from Spain's National Commission on Markets and Competition ("CNMC") to analyze the proposed transaction and potential remedies. The CNMC closed its investigation and cleared the transaction, subject to Boston Scientific fulfilling the terms contained in the FTC's consent order. *See* https://www.ftc.gov/enforcement/cases-proceedings/191-0039/boston-scientific-btg-matter.

47. **In the Matter of DTE Energy Co.** On September 13, 2019, joint venture NEXUS Gas Transmission, LLC, and its member companies, DTE Energy Company and Enbridge Inc., agreed to settle FTC charges that the joint venture's acquisition of an Ohio pipeline would likely harm competition to provide natural gas pipeline transportation in a three-county area that includes Toledo, Ohio. The complaint alleges that NEXUS's purchase of Generation from North Coast Gas Transmission LLC ("North Coast") and several other owners is anticompetitive due to a non-compete clause that keeps North Coast from competing to provide natural gas pipeline transportation, for three years after the acquisition closes, in parts of the Ohio counties of Lucas, Ottawa, and Wood. The consent agreement preserves competition by requiring the parties to eliminate the non-compete clause from the sales agreement. Also, absent prior Commission approval, Nexus, DTE, and Enbridge are barred from participating in a written or oral agreement that restricts competition between any of them and another provider of natural gas pipeline transportation in the Ohio counties of Lucas, Ottawa, and Wood. *See* https://www.ftc.gov/enforcement/cases-proceedings/191-0068/dte-energy-company-matter.

48. **In the Matter of Quaker Chemical Corp./Global Houghton Ltd.** On September 12, 2019, the FTC approved a final order settling charges that chemical company Quaker Chemical Corp.'s $1.4 billion acquisition of Houghton International Inc. is anticompetitive. According to the complaint, the proposed acquisition would harm competition in the North American market for aluminum hot rolling oil and associated technical support services, and in the North American market for steel cold rolling oils and associated technical support services. Steel cold rolling oils include sheet cold rolling oil, pickle oil, and tin plate rolling oil. Under the proposed settlement agreement, Quaker must divest Houghton's North American aluminum hot rolling oil and steel cold rolling oil product lines and related assets to Total. *See* https://www.ftc.gov/enforcement/cases-proceedings/1710125/quaker-chemical-corporation-global-houghton-ltd-matter.

49. **In the Matter of Fidelity/Stewart.** On September 6, 2019, the FTC issued an administrative complaint charging that Fidelity National Financial's proposed $1.2 billion acquisition of Stewart Information Services would violate the antitrust laws by significantly reducing competition for title insurance underwriting for large commercial transactions in 45 states and the District of Columbia, and for title information services in 14 local markets. The FTC alleged that, if consummated, the merger would reduce an industry dominated by "the Big 4" players to "the Big 3". Post-merger, Fidelity would control more than 43 percent of all title insurance sales nationwide, and over 40 percent of sales for large commercial transactions in most state-level markets. The FTC also authorized staff to seek in federal court a temporary restraining order and a preliminary injunction to prevent the parties from consummating the merger, and to maintain the status quo pending the administrative proceeding. On September 10, 2019, the parties abandoned the transaction. *See* https://www.ftc.gov/enforcement/cases-proceedings/181-0127/fidelity-national-financialstewart-information-services.

50. **In the Matter of UnitedHealth Group/DaVita Medical Group.** On August 22, 2019, the FTC approved a final order settling charges that UnitedHealth Group's proposed $4.3 billion acquisition of DaVita Medical Group from DaVita, Inc. will likely harm competition in healthcare markets in Clark and Nye Counties, Nevada. According to the complaint, without a remedy in the Las Vegas area, the proposed acquisition would likely have reduced competition in the markets for managed care provider organization services sold to Medicare Advantage insurers, and Medicare Advantage plans sold to individual Medicare Advantage members. The proposed acquisition also would have positioned UnitedHealth Group to raise the costs of its managed care provider organization services to rival Medicare Advantage insurers, or even withhold such services from these rivals, the complaint alleged. *See* https://www.ftc.gov/enforcement/cases-proceedings/181-0057/unitedhealth-groupdavita-matter.

51. **In the Matter of Evonik/PeroxyChem.** On August 2, 2019, the FTC authorized an action to block Evonik Industries AG's proposed $625 million acquisition of PeroxyChem Holding Company, alleging that the merger of the chemical companies would substantially reduce competition in the Pacific Northwest and the Southern and Central United States for the production and sale of hydrogen peroxide, a commodity chemical used for oxidation, disinfection, and bleaching. The FTC issued an administrative complaint, and filed for a temporary restraining order and preliminary injunction in federal district court to maintain the status quo pending an administrative trail on the merits. In January 2020, a federal court denied the FTC's motion for a preliminary injunction. *See* https://www.ftc.gov/enforcement/cases-proceedings/191-0029/evonikperoxychem-matter.

52. **In the Matter of Tronox/Cristal USA.** On May 29, 2019, the FTC approved a final order settling charges that the acquisition by Tronox Limited of competitor Cristal would violate the antitrust laws by significantly reducing competition for chloride process titanium dioxide in the United States and Canada. According to the complaint, Tronox's proposed acquisition of Cristal, for $1.67 billion and a 24 percent stake in the combined entity, would increase the risk of coordinated action among the remaining competitors and the likelihood of future anticompetitive output reductions by Tronox. Under the settlement, which was reached after the FTC won key victories before a federal court and an Administrative Law Judge in its case to block the transaction, Tronox and Cristal must divest Cristal's North American titanium dioxide assets, thereby preserving competition in the market for this important and widely used compound. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcristal-usa.

53. **In the Matter of Fresenius Medical Care and NxStage Medical.** On April 9, 2019, the FTC approved a final order imposing healthcare companies Fresenius Medical Care AG & KGaA and NxStage Medical, Inc. to divest all rights and assets related to NxStage's bloodline tubing set business to B. Braun Medical, Inc. as part of a settlement resolving charges that Fresenius's proposed $2 billion acquisition of NxStage likely would be anticompetitive. The FTC's complaint alleges that the proposed merger would harm competition in the U.S. market for bloodline tubing sets that are compatible with hemodialysis machines used in clinics that treat chronic renal failure. Bloodline tubing sets are single-use plastic tube sets used during hemodialysis treatments. Fresenius and NxStage are two of only three significant suppliers of bloodline tubing sets used in open architecture hemodialysis machines in the United States. Fresenius and NxStage together control 82 percent of the market for bloodlines. The settlement requires Fresenius and NxStage to divest to B. Braun all assets and rights to research, develop, manufacture, market, and sell NxStage's bloodline tubing sets. *See*

https://www.ftc.gov/enforcement/cases-proceedings/171-0227/fresenius-medical-care-nxstage-medical-matter.

54. **In the Matter of Linde A.G./Praxair, Inc.** On February 28, 2019, the FTC approved a modified final order requiring industrial gas suppliers Praxair, Inc. and Linde AG to sell assets in nine industrial gases product markets in numerous U.S. geographic markets to four divestiture buyers. The nine product markets in which the Commission alleged harm in its October 2018 complaint are bulk liquid oxygen, bulk liquid nitrogen, bulk liquid argon, bulk liquid carbon dioxide, bulk liquid hydrogen, bulk refined helium, on-site hydrogen, on-site carbon monoxide, and excimer laser gases. Commission staff and the staff of antitrust agencies in Argentina, Brazil, Canada, Chile, China, Colombia, the European Union, India, Korea, and Mexico worked cooperatively to analyze the proposed transaction and potential remedies. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0068/linde-ag-praxair-inc.

55. **In the Matter of Corpus Christi Polymers LLC, et al.** On February 25, 2019, the FTC approved a final order settling charges that three PET resin producers' proposed $1.1 billion joint acquisition out of bankruptcy of an under-construction PET production facility would violate federal antitrust law. According to the complaint, without a remedy, the proposed acquisition likely would substantially lessen competition in the highly concentrated North American market for PET resin. The terms of the final order prevent the joint-venture partners—Alpek S.A.B. de C.V., known as DAK, Indorama Ventures Plc, and Far Eastern New Century—from using their joint ownership of the assets to act alone or in concert to exercise market power or to transmit competitively sensitive information beyond what is necessary to accomplish the legitimate purposes of the venture. *See* https://www.ftc.gov/enforcement/cases-proceedings/corpus-christi-polymers-llc-et-al-matter.

56. **In the Matter of Marathon Petroleum Corp./REROB.** On February 8, 2019, the FTC approved a final order settling charges that Marathon Petroleum Corp.'s proposed acquisition of Express Mart would violate federal antitrust law. Marathon's wholly owned subsidiary Speedway operates the second-largest chain of company-owned and -operated gasoline and convenience stores in the United States. Express Mart is a Syracuse, New York-based operator of convenience stores and retail fuel outlets. According to the complaint, the acquisition likely would harm competition for both retail gasoline and retail diesel in five local markets in New York State: Farmington, Fayetteville, Johnson City, Rochester, and Whitney Point. Under the terms of the proposed consent order, Marathon will be required to divest to Sunoco retail fuel assets in Farmington, Fayetteville, Johnson City, Rochester, and Whitney Point within 90 days after the acquisition is completed. Marathon and Express Mart will be required to maintain the competitiveness of the divestiture assets during the divestiture process. *See* https://www.ftc.gov/enforcement/cases-proceedings/181-0152/marathon-petroleum-et-al.

57. **In the Matter of Sycamore Partners II, L.P, Staples, Inc. and Essendant Inc.** On January 28, 2019, office supply distributors Staples Inc. and Essendant Inc. agreed to a settlement as part of the companies' proposed $482.7 million merger. In a complaint filed along with the consent agreement, the FTC alleged that Staples competes with Essendant-sourced independent dealers to sell office supplies to mid-sized business customers. As a result of the acquisition, Staples would have access to commercially sensitive business information on Essendant's reseller customers, and those resellers' end customers, which could allow Staples to offer higher prices than it otherwise would when bidding against a

reseller for an end customer's business. *See* https://www.ftc.gov/enforcement/cases-proceedings/181-0180/sycamore-partners-ii-lp-staples-inc-essendant-inc-matter.

4.1.2. DOJ Merger Investigations and Challenges

58. **Nexstar/Tribune Media.** On July 31, 2019, the Division, along with several states, challenged the proposed merger of Nexstar Media Group, Inc. and Tribune Media Company. The Division simultaneously filed a proposed settlement. According to the complaint, as originally structured, the transaction would have substantially lessened competition in 13 Designated Market Areas ("DMAs"), resulting in higher prices for licensing the retransmission of television network content in 12 of the DMAs and increased prices for broadcast television spot advertising in all 13 DMAs. The final judgment, which was entered by the court on February 10, 2020 required the parties to divest the local broadcast television station or stations owned by either Nexstar or Tribune in each of the 13 DMAs. *See* https://www.justice.gov/opa/pr/justice-department-requires-structural-relief-resolve-antitrust-concerns-nexstar-s-merger.

59. **T-Mobile/Sprint.** On July 26, 2019, the Division, along with a number of states, challenged the proposed merger of Deutsche Telekom AG, T-Mobile US, Inc., Softbank Group Corp. and Sprint Corp. At the same time, the Division filed a proposed settlement that resolved the competitive concerns alleged. According to the complaint, T-Mobile and Sprint were two of the four national retail wireless mobile service providers in the United States. The merger would have eliminated Sprint as an independent competitor, reducing the number of national mobile wireless carriers from four to three. This loss in competition likely would have incentivized the merged company to compete less aggressively and would have made it easier for the remaining three mobile wireless carriers to coordinate their pricing, promotions, and service offerings. Under the terms of the settlement, T-Mobile agreed to divest certain assets, including retail wireless business and network assets, to Dish Network Corp., a Colorado-based satellite television provider. The divestitures were designed to enable Dish to replace Sprint as an independent competitor in the retail mobile wireless service market. On April 1, 2020, following an extensive Tunney Act process, the court entered the final judgment.

60. *See* https://www.justice.gov/opa/pr/court-enters-final-judgment-t-mobilesprint-transaction.

61. **Harris/L3 Technologies, Inc.** On June 20, 2019, the Division challenged the proposed merger of Harris Corporation and L3 Technologies, Inc. The complaint alleged that the merger, as initially structured, would have eliminated competition for the manufacture and sale of U.S. military-grade image intensifier tubes, an essential component in night vision devices used by the United States military, and would have provided the combined firm with a monopoly in this product market. As a result, the merged firm would have had the incentive and ability to reduce research and development efforts and offer less favorable contractual terms to its customers. Under the terms of a proposed final judgment filed simultaneously with the complaint, the parties agreed to divest Harris's night vision business to an acquirer approved by the Division. On October 10, 2019, the court entered the final judgment. *See* https://www.justice.gov/opa/pr/justice-department-requires-harris-and-l3-divest-harris-s-night-vision-business-proceed.

62. **Quad/LSC Communications.** On June 20, 2019, the Division filed suit to enjoin Quad/Graphics, Inc. from acquiring LSC Communications, Inc. The complaint alleged that the proposed acquisition would have combined the only two significant magazine, catalog, and book printers in the United States. The complaint further alleged the loss of

competition likely would have resulted in increased prices for printing services, reduced printing capacity, and reduced printing quality for publishers and retailers in the United States. On July 23, 2019, Quad and LSC abandoned the proposed acquisition. *See* https://www.justice.gov/opa/pr/quadgraphics-and-lsc-communications-abandon-merger-after-antitrust-division-s-suit-block.

63. **Amcor/Bemis.** On May 30, 2019, the Division challenged the proposed acquisition of Bemis Company, Inc. by Amcor Limited and simultaneously filed a proposed settlement. The complaint alleged that Amcor and Bemis were two of only three significant suppliers of the following three flexible medical packaging products: (1) heat-seal coated medical-grade Tyvek rollstock; (2) heat-seal coated medical-grade rollstock; and (3) heat-seal coated medical-grade Tyvek die-cut lidding. According to the complaint, many customers viewed Amcor and Bemis as their two best substitutes. The proposed acquisition, therefore, likely would have resulted in increased prices and lower-quality medical flexible packaging products. The court entered the final judgment on September 11, 2019 requiring Amcor to divest three manufacturing facilities and certain other assets related to Amcor's flexible medical packaging business. *See* https://www.justice.gov/opa/pr/justice-department-requires-amcor-divest-medical-flexible-packaging-assets-order-proceed.

64. **Thales/Gemalto.** On February 28, 2019, the Division challenged the proposed acquisition of Gemalto N.V. by Thales S.A. At the same time, the Division filed a proposed settlement resolving the Division's competitive concerns. The complaint alleged that the transaction, as originally proposed, would have combined the two leading providers of general-purpose ("GP") hardware security modules ("HSMs") used for secure encryption processing and key management in the United States. The loss of head-to-head competition between Gemalto and Thales would have resulted in higher prices, lower quality, reduced choice, and diminished innovation for GP HSM customers in the United States. The final judgment, which was entered by the court on July 1, 2019, required the parties to divest Thales' GP HSM business. The Division cooperated closely with its enforcement partners around the world, including the European Commission, throughout the course of their respective investigations. *See* https://www.justice.gov/opa/pr/justice-department-requires-divestiture-thales-general-purpose-hardware-security-module.

65. **Gray Television/Raycom Media.** On December 14, 2018, the Division challenged Gray Television, Inc.'s proposed merger with Raycom Media, Inc. and simultaneously filed a proposed settlement. According to the complaint, as originally structured, the transaction would have substantially lessened competition in nine DMAs resulting in higher prices for licensing the retransmission of television network content and broadcast television spot advertising. The final judgment, entered by the court on June 5, 2019, required Gray to divest broadcast television stations in nine markets. *See* https://www.justice.gov/opa/pr/justice-department-requires-divestitures-resolve-antitrust-concerns-gray-s-merger-raycom.

66. **CVS/Aetna.** On October 10, 2018, the United States, along with several states, challenged CVS's acquisition of Aetna. The complaint alleged the proposed acquisition would substantially lessen competition for the sale of standalone individual Medicare Part D prescription drug plans ("PDPs") in 16 geographic regions. As a result, the complaint alleged the loss of competition likely would have led to increased premiums and increased costs paid by Medicare beneficiaries, higher subsidies paid by the federal government, a lessening of service quality, and a reduction in innovative product features. At the same time the complaint was filed, the Division filed a proposed final judgment requiring the parties to divest Aetna's individual PDP business. On September 4, 2019, the court entered

the final judgment. *See* https://www.justice.gov/opa/pr/judge-decides-cvs-aetna-final-judgment-public-interest-and-grants-united-states-motion.

67. **United Technology Corp. (UTC)/Rockwell Collins.** On October 1, 2018, the Division filed a civil antitrust lawsuit challenging the proposed acquisition of Rockwell Collins, Inc. by UTC, and simultaneously filed a proposed settlement that would resolve the competitive harm alleged in the lawsuit. The complaint alleged that UTC and Rockwell Collins were two of three worldwide suppliers for pneumatic ice protection systems for fixed wing aircraft and two of the leading worldwide suppliers for trimmable horizontal stabilizer actuators ("THSAs") for large aircraft. The complaint alleged the transaction, as initially structured, would have substantially lessened competition in the worldwide markets for the development, manufacture, and sale of pneumatic ice protection systems for aircraft and THSAs for large aircraft. The final judgment, which was entered by the court on January 11, 2019, required the parties to divest Rockwell Collins' pneumatic ice protection business and its THSA business. The Division cooperated closely with the European Commission and the Competition Bureau of Canada throughout the course of their respective investigations. *See* https://www.justice.gov/opa/pr/justice-department-requires-utc-divest-two-aerospace-businesses-proceed-acquisition-rockwell.

5. International antitrust cooperation and outreach

5.1. International Policy Initiatives

68. **ICN Framework on Competition Agency Procedures.** The Agencies continued to promote due process in antitrust investigations around the globe, working with the ICN to successfully launch the Framework on Competition Agency Procedures ("CAP") in May 2019. This initiative was envisioned and developed by the Division in 2018, and in June 2019, the Division was confirmed as a first-term CAP co-chair, along with the Australian Competition and Consumer Commission and the German Bundeskartellamt. The CAP is an ICN-sponsored framework that promotes fundamental due process, as well as fair and effective procedures, in investigations by competition authorities. The principles to which CAP members adhere include non-discrimination, transparency and predictability, confidentiality protection, appropriate notification of allegations, written enforcement decisions, and availability of independent review of decisions. Membership in the CAP is open to all eligible competition agencies around the world, including non-ICN members. Thus far, over 70 competition agencies have signed on to the CAP and the Agencies expect that number to continue growing.

69. **G7 Common Understanding on Competition and the Digital Economy.** On July 17-18, 2019, the G7 Finance Ministers and Central Bank Governors met in Chantilly, France, to discuss a multitude of issues, including competition and the digital economy. The United States was represented by the Secretary of the Treasury. The Agencies worked with their G7 counterparts to draft a *Common Understanding of G7 Competition Authorities on Competition and the Digital Economy* ("Common Understanding"), which was publicly released on July 18, 2019. The Common Understanding explains why competitive markets are essential to well-functioning economies and how they can improve consumer welfare by unlocking the benefits of digital innovation and growth. The paper notes that competition law is flexible and can adapt to any challenges the digital economy may present; at the same time, the paper recognizes that it is crucial for competition authorities to have the means to expand their understanding of new business models and

their impact on competition. The paper advocates for use of market studies and sector inquiries, as well as adding in-house capabilities to monitor issues raised by the digital economy. The paper also states that the G7 competition authorities will continue their efforts regarding the digital economy through cooperation in existing international fora and through group exchanges of information which deepen common understanding. *See* https://www.ftc.gov/news-events/press-releases/2019/07/ftc-chairman-supports-common-understanding-g7-competition.

5.2. International Antitrust Cooperation Developments

70. In FY 2019, 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 Intergovernmental Group of Experts ("UNCTAD"), and the Competition Policy and Law Group of the Asia-Pacific Economic Cooperation ("APEC").

71. In August 2019, Deputy Assistant Attorney General ("DAAG") Rene Augustine and the Division hosted a delegation from Japan's Cabinet Secretary and the Japanese Ministry of Economy, Trade, & Industry to discuss digital platform issues. DAAG Augustine and Division staff also hosted a delegation from China's State Administration for Market Regulation and the National People's Congress to discuss Anti-Monopoly Law revisions.

72. On April 25-26, 2019, the Agencies participated in high-level bilateral meetings in Tokyo, Japan with senior officials from the Japan Fair Trade Commission ("JFTC") and in Seoul, Korea with senior officials from the Korea Fair Trade Commission ("KFTC"). The discussions covered a wide range of topics, including recent enforcement developments, antitrust policy, digital markets, and international cooperation, as well as the Framework on Competition Agency Procedures ("CAP") adopted by the ICN. *See* https://www.ftc.gov/news-events/press-releases/2019/04/us-officials-participate-bilateral-meetings-officials-japan-south.

73. In March 2019, the heads of Agencies met with Commissioner Margrethe Vestager, Director General Johannes Laitenberger and officials from the European Commission's Directorate-General for Competition ("DG COMP") in Washington, D.C. While in Washington, Commissioner Vestager and the DG COMP delegation also met with Attorney General William Barr for a discussion that included competition related to digital markets.

74. On November 8, 2018, 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 range of topics, including enforcement in digital markets, updates on agency developments, international cooperation, and challenges to antitrust enforcement faced by each agency. *See* https://www.justice.gov/opa/pr/officials-us-canada-and-mexico-participate-2018-trilateral-meeting-mexico-city-discuss.

75. During FY 2019, the FTC cooperated on 36 merger and anticompetitive conduct investigations of mutual concern with counterpart agencies from 21 jurisdictions. Many of these matters involved cooperation with several foreign agencies. For example, during its

review of the Praxair/Linde merger, the FTC cooperated with 10 competition agencies to ensure consistent analyses, outcomes, and remedies.

76. The Division's investigative teams continued to cooperate closely with their international counterparts. In FY 2019, the Division cooperated with 12 international counterparts on 24 merger and civil non-merger matters.

77. For example, the Division cooperated closely with enforcement partners around the world in its investigation of Thales S.A.'s proposed $5.64 billion acquisition of Gemalto N.V. The proposed merger would have combined close competitors in the manufacture and sale of certain hardware components used in complex encryption solutions to safeguard sensitive data. The Division's cooperation with the European Commission's DG COMP was extensive and resulted in parallel divestiture remedies. On the criminal side, Division staff collaborated with at least 18 jurisdictions on cross-border investigations and global cartel enforcement.

78. **International Competition Network.** During FY 2019, the Agencies continued to play leadership roles in the ICN and served as ICN Steering Group Members. At the ICN's annual conference in Cartagena, Colombia on May 15-17, 2019, the ICN established a Framework on CAP that reflects the commitment by its participants to uphold fundamental procedural fairness principles. The Framework on CAP is discussed in more detail above.

79. During FY 2019, DOJ continued to serve as co-chair for the Agency Effectiveness Working Group ("AEWG"). As co-chair, the Division has focused on promoting procedural best practices, studying the effects of organizational design on an agency's efficiency, and promoting the role of economics in the effective enforcement of the antitrust laws. This year, the AEWG developed the Recommended Practices for Investigative Process ("Recommended Practices"). The Recommended Practices establish detailed, aspirational, procedural fairness norms for competition agency investigative tools, transparency, engagement during investigations, decision-making safeguards, and confidentiality protections. As Recommended Practices, they are the ICN highest level consensus statement on agency procedures and procedural fairness.

80. The Division also developed an ICN initiative on cross-border leniency cooperation to fight international price fixing cartels. This effort resulted in the release of the "Guidance on Enhancing Cross-Border Leniency Cooperation" in July 2020 by the ICN's Cartel Working Group. The guidance document is designed to assist competition agencies around the globe in engaging and cooperating with their international counterparts when dealing with leniency applicants and other cooperating companies in cross-border investigations.

81. In FY 2019, the FTC continued to serve as co-chair for the ICN's Merger Working Group ("MWG"), which promotes convergence toward best practices in merger process and analysis and seeks to reduce the public and private costs of multijurisdictional merger reviews. This year, the MWG presented a report on vertical mergers and promoted the use of its Framework for Merger Review Cooperation, developing explanatory material on the types of documents typically exchanged in multijurisdictional merger review to support sound enforcement cooperation.

82. Additionally, the FTC co-chairs the ICN's Promotion and Implementation Team with the Federal Economic Competition Commission of Mexico and the Portuguese Competition Authorities, providing network-wide support for the use of ICN work and the ICN's Group of Chairs by ensuring consistency and providing quality control across the

ICN's working groups. The FTC also led the ICN project that culminated in the adoption of the Recommended Practices for Investigative Process and Guiding Principles for Procedural Fairness in Competition Investigations. The FTC initiated a new ICN project on the intersection of competition, consumer protection, and data privacy law and policy. In addition, the FTC continued its leadership of the ICN Training on Demand Project, which produces video training materials for newer competition agencies and staff.

83. The Agencies had been looking forward to hosting the 2020 ICN Annual Conference ("ICN 2020") in Los Angeles, California in May 2020. Although the COVID-19 pandemic disrupted our ability to meet in person, the Agencies held a virtual event for this year's annual conference. The meeting took place on September 14-17, 2020, with a focus on competition in the digital economy.

5.3. Outreach

84. In FY 2019, 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 through which it shares the agency's experience with competition agencies around the world, conducting 29 technical assistance missions in 19 jurisdictions, including regional programs in Africa, Central America, and Eastern Europe. The FTC also placed resident advisors in the competition agencies of Brazil, the Philippines, and Ukraine.

85. 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 2019, the FTC hosted international fellows and interns from five competition authorities, adding to the more than 100 fellows 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.

86. The Division has continued to provide technical assistance to competition and other agencies around the world, with programs on key topics in antitrust enforcement, such as merger enforcement, economic investigative tools, and leniency programs. In FY 2019, Division attorneys and economists led over 22 different technical assistance programs in 17 countries, including Barbados, Chile, Georgia, India, Israel, Kenya, Moldova, Romania, and the Philippines. The Division partnered with the FBI, International Corruption Unit, to provide cartel training to numerous competition agencies, including those in Chile, Ireland, and Australia. The training consisted of theory and practical exercises in investigative techniques and interviewing skills.

87. In FY 2019, the Division continued its efforts to build ever closer relationships with its international counterparts through the Visiting International Enforcers Program ("VIEP"). The program is designed to increase mutual understanding and enhance relations with enforcement partners. As part of this program, the Division hosted VIEPs from the Australian Competition and Consumer Commission ("ACCC"), the European Commission ("EC"), the JFTC, and the KFTC.

6. Regulatory and trade policy matters

6.1. Regulatory Policies

6.1.1. DOJ Activities: Federal and State Regulatory Matters

88. **Health Care.** The Antitrust Division continued to provide advice and guidance to state governments and regulators on competition issues related to health care. On March 7 and March 11, 2019, DOJ and FTC submitted joint letters on pending legislation before the States of Alaska and Tennessee. The letters shared the agencies' past guidance on potential competitive problems posed by Certificate of Need ("CON") laws. Generally speaking, CON laws prevent firms from entering certain areas of the health care market (e.g., building a new hospital) unless they can demonstrate to a state regulator that there is an unmet need for the services. Reflecting current research, the letters noted that "[b]y interfering with the market forces that normally determine the supply of facilities and services, [Certificate of Need] laws can suppress supply, misallocate resources, and shield incumbent health care providers from competition from new entrants." *See* https://www.justice.gov/atr/page/file/1146346/download; https://www.justice.gov/atr/page/file/1146241/download.

89. **Auto Dealers.** On March 14, 2019, the Antitrust Division and the FTC submitted a joint letter to the Nebraska Legislature regarding proposed state legislation to remove restrictions on automobile manufacturers selling and servicing new motor vehicles directly to consumers. The proposed legislation would only benefit manufacturers who had not previously used independent, franchised dealers in Nebraska. The letter emphasized previous guidance that these restrictions on automobile manufacturers interfere with "the competitive process [that] effectively aligns the interests of firms and consumers on the issue of distribution method" and "can discourage innovation and new forms of competition." Instead, the Agencies suggested that wherever possible, "the law should permit automobile manufacturers to choose their distribution method to be responsive to the desires of car buyers," and that "full repeal" can offer "even greater benefits to competition and consumers." *See* https://www.justice.gov/atr/page/file/1146236/download.

90. **Electric Power Transmission.** On April 19, 2019, the Antitrust Division submitted a letter to the State of Texas regarding a bill that would prevent development of high-voltage transmission facilities in Texas by non-local companies. In the letter, the Division warned Texas legislators that restrictions on new entry "would likely reduce the competitive pressure on [local] incumbents to develop higher quality, lower cost transmission facilities." As a result of lost competition, transmission rates may be more expensive. Moreover, if the bill reduced construction of transmission, electricity rates may be higher and less reliable because it could limit "the supply of generation available to serve a local territory or area." As a result, the Division urged the State of Texas to "consider whether it can achieve [its objectives] through mechanisms that do not restrict unnecessarily competition to develop transmission facilities in Texas." *See* https://www.justice.gov/atr/page/file/1155881/download.

6.1.2. FTC Staff Activities: Federal and State Regulatory Matters

91. **Digital Platforms.** On September 24, 2019, in testimony before the U.S. Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights, the FTC addressed how U.S. antitrust laws apply to acquisitions of nascent or potential competitors by digital

platforms. Testifying on behalf of the FTC, Bureau of Competition Director Bruce Hoffman described the basics of antitrust analysis that the Commission can employ to prevent competitive harm in technology markets. The testimony considers how merger analysis under the Clayton Act accounts for the incentives of established firms to acquire nascent or potential competitors. *See* https://www.ftc.gov/news-events/press-releases/2019/09/ftc-testifies-senate-subcommittee-antitrust-competition-policy-0.

92. **Protect Consumers and Promote Competition.** On September 17, 2019, in testimony before the U.S. Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights, the FTC detailed recent victories in stopping anticompetitive mergers and conduct, as well as significant policy initiatives, advocacy work, and engagement with antitrust enforcement agencies abroad. Testifying on behalf of the FTC, Chairman Joseph J. Simons noted that in FY 2018, the agency took action to protect consumers in 22 merger cases, across a wide variety of industries. The agency compiled an impressive record of success in both contested merger challenges and important conduct cases. *See* https://www.ftc.gov/news-events/press-releases/2019/09/ftc-testifies-senate-subcommittee-antitrust-competition-policy.

93. **Health Information.** On May 30, 2019, FTC staff submitted a comment to the Department of Health & Human Services' Office of the National Coordinator for Health Information Technology ("ONC") regarding its proposed rule on "information blocking." Recognizing that Congress sought to foster greater interoperability between electronic health records systems and the productive flow of electronic health information under the recently enacted 21st Century Cures Act, the FTC staff comment suggests that ONC consider changes to ensure the final rule does not inadvertently distort competition or impede innovation, to the detriment of consumer welfare. *See* https://www.ftc.gov/news-events/press-releases/2019/06/ftc-submits-comment-proposed-information-blocking-rule-department.

94. **Protect Consumers and Promote Competition.** On May 8, 2019, the FTC testified before the House Energy and Commerce Subcommittee on Consumer Protection and Commerce about its efforts to effectively protect consumers and promote competition, while anticipating and responding to changes in the marketplace. Testifying on behalf of the Commission, FTC Chairman Joseph J. Simons and Commissioners Noah Joshua Phillips, Rohit Chopra, Rebecca Kelly Slaughter, and Christine S. Wilson said the FTC is committed to using its resources efficiently to protect consumers and promote competition through law enforcement, policy and research, and consumer and business education. The Commission noted that FTC law enforcement actions have helped return more than $1.6 billion to consumers during fiscal year 2018. *See* https://www.ftc.gov/news-events/press-releases/2019/05/ftc-testifies-house-energy-commerce-subcommittee-its-work-protect.

95. **Pharmaceuticals.** On May 6, 2019, FTC staff responded to the Food and Drug Administration's ("FDA")request for comment on its updated industry guidance regarding non-proprietary naming of biological products. The FDA proposes to add a unique, meaningless suffix to the non-proprietary name of all biosimilar and interchangeable products and to any reference biologic approved after January 2017. This comment and two prior comments to the FDA express the FTC's concern that disparate treatment and differentiated naming of certain biosimilar products will reduce biosimilar competition in the United States. *See* https://www.ftc.gov/news-events/press-releases/2019/05/ftc-submits-comment-fda-guidance-regarding-nonproprietary-naming.

96. **Occupational Licensing.** On March 27, 2019, FTC staff recommended that Alaska pass Senate Bill 1, which would repeal its CON law. Alaska's CON law requires

healthcare providers to obtain state approval before expanding, establishing new facilities or services, or making certain large capital expenditures. FTC staff members testified before the Alaska Senate Committee on Health & Social Services at the request of Alaska State Senator David Wilson. Staff's testimony reaffirmed prior testimony and a previous joint FTC and DOJ statement endorsing state legislation that would repeal Alaska's CON laws. *See* https://www.ftc.gov/news-events/press-releases/2019/03/ftc-staff-testifies-favor-repealing-alaska-laws-limit-competition.

97. **Pharmaceuticals.** On December 3, 2018, the FTC responded to the Food and Drug Administration's request for comment on its revised draft guidance, which aims to deter pharmaceutical companies from abusing the citizen petition process to delay approval of, and competition from, generic drugs. In its revised draft guidance, the FDA describes considerations it will use to determine whether a petition was submitted primarily to delay approval of a competing drug. Once the FDA determines that a petition was submitted primarily to delay competition, it will refer that determination to the FTC, according to the guidance. The FTC shares the FDA's concerns about patient access to lower-cost generic drugs and supports the FDA's efforts to deter abuse of the citizen petition process, according to the comment. *See* https://www.ftc.gov/news-events/press-releases/2018/12/ftc-submits-comment-fda-guidance-aimed-deterring-abuse-citizen.

6.2. DOJ and FTC Trade Policy Activities

98. 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.

99. The Agencies also participate in negotiations and working groups related to regional and bilateral trade agreements. In July 2019, the Agencies and the Office of the U.S. Trade Representative participated in formal consultations with the Republic of Korea under the chapter on Competition-Related Matters of the United States-Republic of Korea Free Trade Agreement ("KORUS"). The United States requested the consultations to discuss procedures in competition hearings held by the Korea Fair Trade Commission ("KFTC"). In addition, the Agencies serve on U.S. interagency groups that developed G7 and G20 statements on issues involving competition in the digital economy.

7. New studies related to antitrust policy

7.1. FTC Conferences and Reports

7.1.1. Conferences and Workshops

100. **Certificates of Public Advantage Workshop.** On June 18, 2019, the FTC hosted a public workshop to assess the impact of certificates of public advantage ("COPAs") on prices, quality, access, and innovation for healthcare services. This workshop was part of a broader COPA Assessment Project announced in November 2017. COPAs are regulatory regimes adopted by state governments intended to displace competition among healthcare providers, and immunize mergers and collaborations from antitrust scrutiny. Academics,

health policy experts, healthcare industry stakeholders, state regulators and law enforcers, and staff from the FTC's Bureau of Economics discussed research regarding the effects of COPAs, as well as practical experiences with these regulatory regimes. *See* https://www.ftc.gov/news-events/events-calendar/health-check-copas-assessing-impact-certificates-public-advantage.

101. **Hearings on Competition and Consumer Protection in the 21st Century.** On June 12, 2019, the FTC concluded its series of public hearings on Competition and Consumer Protection in the 21st Century examining whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy. Over the course of the hearings, the agency hosted over 350 unique non-FTC participants throughout the 23 days of public hearings, and received more than 900 non-duplicative, germane written comments. *See* https://www.ftc.gov/policy/hearings-competition-consumer-protection?utm_source=slider.

102. **Eleventh Annual Microeconomics Conference**. On November 1-2, 2018, the FTC held its eleventh 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/2018/11/eleventh-annual-federal-trade-commission-microeconomics.

7.1.2. Reports

103. **High Pharmaceutical Drug and Biologic Prices.** On June 27, 2019, the FTC issued a Report on Standalone Section 5 to Address High Pharmaceutical Drug and Biologic Prices. Congress directed the FTC to report to the House and Senate Appropriations Committees on the use of the FTC's standalone authority under Section 5 of the FTC Act to address high pharmaceutical prices. The report provides an overview of the scope of the FTC's authority under Section 5(a) to address unfair methods of competition and the nexus to existing antitrust principles. It explains how the Commission may combat high drug prices when a monopolist employs business practices that harm competition. *See* https://www.ftc.gov/reports/ftc-report-standalone-section-5-address-high-pharmaceutical-drug-biologic-prices.

104. **Patent Settlements.** On May 23, 2019, the FTC issued a staff report analyzing branded drug firms' patent settlements with generic competitors. The report summarizes data on the 232 final patent settlements filed with the FTC and the DOJ during FY 2016 pursuant to requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The report found that, despite a considerable increase in the total number of final Hatch-Waxman patent settlements in FY 2016, significantly fewer settlements included the types of reverse payments that are likely to be anticompetitive. *See* https://www.ftc.gov/news-events/press-releases/2019/05/ftc-staff-issues-fy-2016-report-branded-drug-firms-patent.

105. **Ethanol Report.** On November 26, 2018, the FTC issued its 2018 Report on Ethanol Market Concentration. The Energy Policy Act of 2005 directs the Commission to perform an annual review of market concentration in the ethanol production industry "to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior." As in prior years, the 2018 report concludes that "the low level of concentration and large number of market participants in the U.S. ethanol production industry continue to suggest that the exercise of market power

to set prices, or coordinate on price or output levels, is unlikely." *See* https://www.ftc.gov/news-events/press-releases/2018/11/ftc-issues-annual-report-ethanol-market-concentration-2018.

7.2. DOJ Conferences and Reports

106. **Public Workshop on Competition in Labor Markets.** On September 23, 2019, the Antitrust Division hosted economists, lawyers, academics, labor unions, advocacy groups, and the private sector for a public workshop on the state of competition in labor markets. The workshop featured a presentation on the economics of labor markets delivered jointly by Professor Ioana Marinescu of the University of Pennsylvania's School of Social Policy & Practice and Professor Elena Prager of Northwestern University's Kellogg School of Management. The workshop's three panels explored market definition, how antitrust enforcers should assess restraints on worker mobility (including restraints that arise within franchise systems and for workers in the "gig" economy), and developments in case law and public policy regarding statutory and non-statutory labor exemptions from the antitrust laws for collective bargaining and other union activity, including issues affecting amateur ("National Collegiate Athletic Association") athletics. *See* https://www.justice.gov/atr/events/public-workshop-competition-labor-markets.

107. **Public Workshop on Competition in Television and Digital Advertising.** On May 2 and 3, 2019, the Antitrust Division held a public workshop to explore industry dynamics in television and digital advertising and the implications for antitrust enforcement and policy. The workshop's four panels featured executives from broadcast and cable television companies, advertising agencies, online publications, digital platforms, and consumer packaged goods companies as well as economists, academics, and other experts, with Professor Susan Athey of Stanford University's Graduate School of Business delivering an opening lecture providing an overview of the state of competition in digital and television advertising. *See* https://www.justice.gov/atr/events/public-workshop-competition-television-and-digital-advertising.

108. **Public Roundtable on ACPERA.** On April 11, 2019, the Antitrust Division held a public roundtable to discuss the potential reauthorization of the Antitrust Criminal Penalty Enhancement & Reform Act ("ACPERA"). Since it was enacted in June 2004, ACPERA has created greater incentives for corporations to self-report illegal conduct to the Division in exchange for potential mitigation of civil liability. The ACPERA roundtable provided the Antitrust Division with the opportunity to hear the views of interested stakeholders, including judges, attorneys, academics, and the business community regarding the efficacy of ACPERA and its impact on the Division's criminal enforcement efforts. Subsequent to the Division's workshop, ACPERA was reauthorized by the U.S. Congress in June 2020 and sent to the President for his signature. *See* https://www.justice.gov/atr/events/public-roundtable-antitrust-criminal-penalty-enhancement-reform-act-acpera.

7.3. Economic Working Papers

7.3.1. DOJ Economic Analysis Group Discussion Papers

109. The DOJ Economic Analysis Group issued the following papers during FY 2019. These papers are *available at* https://www.justice.gov/atr/discussion-paper-after-2006.

- Collusion Along the Learning Curve: Theory and Evidence from the Semiconductor Industry, Danial Asmat, EAG 16-4, August 2016, Revised July 2019
- Common Ownership and Airlines: Evaluating an Alternate Ownership Data Source, Eric Lewis and Randy Chugh, EAG 19-1, April 2019

7.3.2. FTC Bureau of Economics Working Papers

110. The FTC's Bureau of Economics issued the following working papers during FY 2019. The papers are *available at* https://www.ftc.gov/policy/reports/policy-reports/economics-research/working-papers.

- Pay Every Subject or Pay Only Some?, July 2019
- Reduced Demand Uncertainty and the Sustainability of Collusion: How AI Could Affect Competition, June 2019
- What do course offerings imply about university preferences?, July 2019
- Prices for Medical Services Vary Within Hospitals, But Vary More Across Them, December 2018
- Mergers of capacity-constrained firms, December 2018

7.3.3. Appendices

Table 1. Department of Justice: Fiscal Year 2019 FTE and Resources by Enforcement Activity

	FTE	Amount ($ in thousands)
Criminal Enforcement	230	$65,991
Civil Enforcement	344	$98,986
Total	574	$164,977

* 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).

Table 2. Federal Trade Commission: Fiscal Year 2019 Competition Mission

FTE and Dollars by Programs, Bureau & Office

	FTE	Amount ($ in thousands)
Total Promoting Competition Mission	528	$137,843
Premerger Notification	18	$3,432
Merger & Joint Venture Enforcement	202	$38,047
Merger & Joint Venture Compliance	11	$2,084
Nonmerger Enforcement	127	$24,067
Nonmerger Compliance	1	$191
Antitrust Policy Analysis	26	$5,286
Other Direct	20	$3,759
Support	123	$60,977