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Annual Report on Competition Policy Developments in the United States

-- 2021 --

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

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United States

Introduction

1. This report describes federal antitrust developments in the United States for the period of October 1, 2020 through September 30, 2021 (“FY 2021”).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.” Additional information on the FTC’s activities in FY 2021 will be made available shortly, see the FTC’s Annual Highlights 2021².
2. The Agencies underwent significant leadership changes in FY 2021. Joseph J. Simons announced his resignation from the Commission, effective January 29, 2021, and Commissioner Rebecca Kelly Slaughter was named Acting Chair. On June 15, 2021, Lina Khan was sworn in as Chair of the FTC following her confirmation by the U.S. Senate earlier that day. President Biden nominated Khan to be a Commissioner for a term that expires September 25, 2024, and, upon her confirmation, designated her as Chair. Alvaro Bedoya was sworn in May 16, 2022, as a Commissioner, following the resignation of Commissioner Rohit Chopra on October 12, 2021.
3. Makan Delrahim resigned as Assistant Attorney General for the Antitrust Division on January 19, 2021, and Richard Powers was named Acting Assistant Attorney General. On July 22, 2021, President Biden nominated Jonathan Kanter to serve as the next Assistant Attorney General. Kanter assumed office on November 16, 2021, upon confirmation by the Senate.

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

4. **Criminal Antitrust:** Over the past year, the Agencies supported a number of legislative changes to strengthen the antitrust laws. A major legislative priority for the Division was the reauthorization of the Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA). Congress enacted ACPERA in 2004 to incentivize corporations to self-report and cooperate pursuant to the Division’s Corporate Leniency Policy. In October 2020, an extension of ACPERA that repealed its sunset provision became law, ensuring that ACPERA will continue to support the Antitrust Division’s Leniency Program.
5. Congress also passed longstanding legislation that extended protections to whistleblowers in criminal antitrust cases. In December 2020, the Criminal Antitrust Anti-Retaliation Act, which prohibits employers from retaliating against certain individuals who report criminal antitrust violations, was signed into law.

¹ Any given fiscal year (“FY”) runs from October 1st of the prior year through September 30th of the named year.

² <https://www.ftc.gov/policy/reports/ftc-annual-reports>

6. **Health Care:** In January 2021, the Competitive Health Insurance Reform Act of 2020, which limits the antitrust exemption available to health insurance companies under the McCarran-Ferguson Act, was signed into law. The McCarran-Ferguson Act exempted certain conduct that constituted the “business of insurance” from the federal antitrust laws. The Competitive Health Insurance Reform Act amended the McCarran-Ferguson Act to clarify that, except for certain activities that improve health insurance services for consumers, the conduct of health insurers remains subject to the antitrust law.

1.2. Other relevant measures, including new guidelines

7. In September 2020, the Antitrust Division invited additional public comments on whether and how the division should revise its 1995 Bank Merger Competitive Review Guidelines to ensure that the Guidelines reflect current economic realities and empirical learning, ensure Americans have choices among financial institutions, and guard against the accumulation of market power. The Division extended the public comment period in December 2021.³

8. In November 2020 the Antitrust Division issued updated and supplemental guidance on the use of arbitration, which includes case selection criteria to help identify Division cases that would benefit from the application of arbitration. The updated document also contains guidance regarding the arbitration agreement, the decision whether to file a complaint in federal district court before the matter is referred to arbitration, arbitrator selection, arbitrator compensation and cost shifting, and the training of Division staff on the use of arbitration.⁴

9. In November 2020, the Division launched a new web resource to provide targeted antitrust information and guidance to small business owners. The new “Antitrust and Your Small Business” section of the Division’s website contains user-friendly guidance and links to DOJ materials on antitrust “hot topics” relevant to small businesses, including tips on identifying potential anticompetitive conduct that harms small businesses, tips on avoiding and reporting criminal antitrust violations, requirements for applying to the criminal leniency program, tips on avoiding antitrust issues related to hiring and management, materials on COVID-19 and disaster relief, and guidance on information sharing and trade associations.⁵

10. On July 21, 2021, the FTC announced that it rescinded a 2015 antitrust policy statement that limited its enforcement authority to stop anticompetitive business tactics under Section 5 of the FTC Act. Congress directed the FTC to enforce the prohibition on “unfair methods of competition,” which extends beyond the Sherman Act and the Clayton Act.⁶

11. On July 21, 2021, the FTC also voted to rescind a 1995 policy statement that made it more difficult and burdensome to deter problematic mergers and acquisitions. The 1995 Policy Statement on Prior Approval and Prior Notice Provisions ended the Commission’s longstanding practice of requiring all companies that had violated the law in a previous

³ <https://www.justice.gov/opa/pr/antitrust-division-seeks-additional-public-comments-bank-merger-competitive-analysis>

⁴ <https://www.justice.gov/atr/page/file/1336516/download>

⁵ www.justice.gov/atr/antitrust-issues-and-your-small-business

⁶ <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-rescinds-2015-policy-limited-its-enforcement-ability-under-ftc-act>

merger to obtain prior approval by the FTC for any future transaction in at least the same product and geographic market for which a violation was alleged.⁷

12. To deal with a surge in merger filings, on August 3, 2021, and September 28, 2021, the FTC implemented a series of process reforms aimed at streamlining the investigative process while increasing the analytical rigor of investigations⁸. As part of this effort, the Commission began sending standard form letters alerting companies that the FTC's investigation remains open and mentioning that the Commission may subsequently find the deal unlawful. An example of a standard form letter may be found here⁹.

13. On September 14, 2021, the FTC voted to approve and make public a series of resolutions that will enable agency staff to efficiently and expeditiously investigate conduct in core FTC priority areas over the next ten years. The resolutions remove bureaucratic hurdles, allowing the Chair or a Commissioner to authorize compulsory process in lieu of the full Commission in the following essential areas: (1) Acts or Practices Affecting United States Armed Forces Service Members and Veterans; (2) Acts or Practices Affecting Children; (3) Bias in Algorithms and Biometrics; (4) Deceptive and Manipulative Conduct on the Internet; and (5) Repair Restrictions; (6) Abuse of Intellectual Property; (7) Common Directors and Officers and Common Ownership; and (8) Monopolization Offenses. Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoenas. Streamlining and improving efficiency at the agency is vital given the increased volume of investigatory work created by the surge in merger filings.¹⁰

14. On September 16, 2021, the FTC withdrew its approval of the Vertical Merger Guidelines, which were issued jointly with the DOJ on [June 30, 2020](#), and the FTC's Vertical Merger Commentary, issued on [December 22, 2020](#). In voting to withdraw, the FTC reaffirmed its commitment to working closely with the DOJ to review and update the agencies' merger guidance to better-reflect market realities.¹¹ On the same day, the DOJ announced that while the Vertical Merger Guidelines remain in place at DOJ, DOJ would work closely with the FTC to conduct a careful review of the Horizontal Merger Guidelines and the Vertical Merger Guidelines to ensure that they are appropriately sceptical of harmful mergers.¹²

15. In September 2021, the Department and the FTC issued a Joint Statement on preserving competition in post-hurricane relief efforts. The statement details antitrust guidance for businesses taking part in relief efforts and those involved in rebuilding

⁷ <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-rescinds-1995-policy-statement-limited-agencys-ability-deter-problematic-mergers>

⁸ <https://www.ftc.gov/news-events/blogs/competition-matters/2021/09/making-second-request-process-both-more-streamlined> and <https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-adjusts-its-merger-review-process-deal-increase-merger-filings>

⁹ https://www.ftc.gov/system/files/attachments/blog_posts/Adjusting%20merger%20review%20to%20deal%20with%20the%20surge%20in%20merger%20filings/sample_pre-consummation_warning_letter.pdf

¹⁰ <https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-streamlines-consumer-protection-competition-investigations-eight-key-enforcement-areas-enable>

¹¹ <https://www.ftc.gov/news-events/news/press-releases/2021/09/federal-trade-commission-withdraws-vertical-merger-guidelines-commentary>

¹² <https://www.justice.gov/opa/pr/justice-department-issues-statement-vertical-merger-guidelines>

communities affected by Hurricane Ida. See [Justice Department and Federal Trade Commission Issue Joint Statement to Preserve Competition in Post-Hurricane Relief Efforts: DOJ & FTC Statement](#).

16. **FTC Advisory Opinions and DOJ Business Reviews.** 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 letters¹³. On September 2, 2021, the Bureau of Competition Health Care Division issued an Advisory Opinion to Doylestown Health in response to a request on behalf of the Doylestown Health Foundation. The Bureau concluded that the Doylestown Health Physicians’ proposal to extend the sales of discounted pharmaceuticals and medical devices to its affiliate, Doylestown Hospital, would fall within the Non-Profit Institutions Act exemption to the Robinson-Patman Act.¹⁴

17. In FY 2021, the Antitrust Division issued five business review letters, indicating the Division had no present enforcement intentions regarding the proposed collaborations. Two of these were issued pursuant to an expedited business review letter process for proposed conduct concerning COVID-19-related public health and safety efforts. These included: (1) a letter relating to the development of common quality standards for collecting COVID-19 convalescent plasma; and (2) a letter regarding a proposal by the ecoHair Braiders Association to help hair braiders address COVID-19 challenges. The Antitrust Division also issued three favorable business review letters under its standard business review program. For example, the Division issued a letter regarding a proposal by the University Technology Licensing Program (UTLP) to establish a joint patent-licensing program, that would aggregate certain complementary patents of Member universities and license them in packages exclusively through UTLP. All can be accessed here¹⁵.

1.3. Government proposals for new legislation

18. The current Congress has seen the introduction of a high volume of antitrust and antitrust-adjacent legislation. The leading proposals fall generally into four high-level categories: technical reform bills intended to assist antitrust enforcers in enforcing existing law, broad-based antitrust reform bills that would significantly reshape antitrust law and/or agency structure, tech-specific bills that would impose obligations on a small handful of the largest technology platforms, and industry-specific bills that target conduct in particular industries.¹⁶ Some examples are described below.

¹³ <https://www.ftc.gov/policy/advisory-opinions>

¹⁴ https://www.ftc.gov/system/files/documents/advisory_opinions/ftc-staff-advisory-opinion-concerning-discounted-pharmaceuticals-medical-devices-under-non-profit/p213500doylestownadvisoryopinion.pdf

¹⁵ <https://www.justice.gov/atr/business-review-letters-and-request-letters>

¹⁶ On July 28, 2021, the FTC testified before the House Energy and Commerce Subcommittee on Consumer Protection and Commerce on 16 bills to modify the FTC’s authority and address other pressing issues facing the agency. <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-testifies-house-energy-commerce-subcommittee-legislation-modify-commissions-authority-address>.

1.3.1. Technical Antitrust Reform Legislation

- The “**Merger Filing Fee Modernization Act**” (Sens. Klobuchar and Grassley), which would increase Hart-Scott-Rodino (HSR) filing fees for the largest transactions, while decreasing fees for transactions valued at less than \$161.5 million. Fees collected under the bill would be used to increase appropriations for the DOJ and FTC. The Department of Justice expressed support for this legislation in a letter to Senator Durbin.
- The “**Consumer Protection and Recovery Act**” (Rep. Cardenas), which [would restore the](#) FTC’s authority to seek permanent injunctions under Section 13(b) of the FTC Act, which was removed by the Supreme Court in *AMG Capital Management LLC v. FTC* (2021).
- The “**State Antitrust Enforcement Venue Act**” (Sen. Lee and Rep. Buck) would exempt antitrust suits by State Attorneys General from consolidation and transfer with private cases by the Multidistrict Litigation panel. The FTC sent a letter to Congress supporting this bill.

1.3.2. Broad-Based Antitrust Reform Legislation

- “**Competition and Antitrust Law Enforcement Reform Act**” (CALERA) (Sen. Klobuchar) would change the substantive standard for mergers from “substantially ... lessen[ing] competition” to “creat[ing] an appreciable risk of materially lessening competition”, create a burden-shifting scheme for large transactions (\$5B target or \$100B purchaser) or transactions creating high market shares (greater than 50%), and create a new “exclusionary conduct” offense that would shift the burden to dominant firms to show that their conduct is *not* exclusionary.
- “**Tougher Enforcement Against Monopolists Act**” (TEAM) (Sen. Lee) would shift all federal antitrust authority to the DOJ, create new presumptions against mergers that result in more than 33% market share and a ban on mergers to over 66% share, prohibit discrimination in distribution, and enact multiple procedural reforms, including vesting the DOJ and FTC with civil penalty authority, requiring the agencies to issue closing statements at the end of investigations, and prohibiting antitrust violators from receiving government contracts for five years.
- “**Prohibiting Anticompetitive Mergers Act**” (Sen. Warren) would prohibit mergers by firms with greater than 33% market share (25% for labor markets), and would give the agencies and relevant sectoral regulators unilateral power to block mergers without going to court. The bill would broaden Clayton Act Sec. 7 to prohibit mergers that “harm the competitive process”, which is defined to include harms to workers, rural communities, small businesses, sellers, and communities of color. DOJ and FTC would be directed to review, and if necessary, unwind, all mergers over a specified size since 2000.

1.3.3. Tech-Specific Legislation

- “**American Innovation and Choice Online Act**” (AICOA) (Sen. Klobuchar, Rep. Cicilline) would prohibit any conduct by a “covered platform” (i.e., the largest tech companies) that (i) preferences its own products over those of other business users, (ii) excludes other business users, or (iii) discriminates in the application of its terms of service, in a manner that would materially harm competition. AICOA also prohibits a list of anticompetitive practices *per se*, which would shift the burden to defendants to show that the practices were necessary

and/or did not harm competition. The listed practices include tying, self-preferencing in search ranking, denial of interoperability, and using third parties' non-public data to compete. The Department of Justice endorsed the legislation in a letter to the House and Senate Judiciary Committees.

- **“Open App Markets Act” (Sen. Blumenthal, Rep. Johnson)** would impose new obligations and prohibitions on the largest app stores (50m users or more), including prohibiting tying of payment to distribution, bans on self-preferencing in app search, and restrictions on the use of non-public data to compete with third party apps. It would also require covered companies that control both a covered app store and the underlying mobile OS to permit third party developers access to all hardware and software features available to first-party apps, and permit sideloading of third-party apps and app stores.
- **“Platform Competition and Opportunity Act” (Sen. Klobuchar, Rep. Jeffries)** would prohibit any acquisitions by covered platforms unless the acquirer can demonstrate by clear and convincing evidence that the acquired assets do not “compete” with or “constitute nascent or potential competition to the covered platform or covered platform operator for the sale or provision of any product or service” and do not “enhance the . . . market position” of the covered platform owner with respect to “any product or service offered on or directly related to the platform.”

1.3.4. Other Industry-Specific Legislation

- The **“Ocean Shipping Competition Reform Act” (Sen. Klobuchar)** would give the Antitrust Division authority to bring enforcement actions against ocean carriers in vessel sharing agreements. The legislation would allow for third parties to participate in legal cases brought by the Antitrust Division or Federal Maritime Commission against ocean carriers for anticompetitive harm and let successful third parties in those legal cases receive money damages, with additional financial penalties designed to deter anticompetitive conduct.
- The **“No Oil Producing and Exporting Cartels Act” (Sen. Grassley, Rep. Chabot)** would explicitly authorize the Justice Department to bring lawsuits against oil cartel members for antitrust violations. It would clarify that neither sovereign immunity nor the “Act of State” doctrine prevents a court from ruling on antitrust charges brought against foreign governments for engaging in illegal pricing, production and distribution of petroleum products.
- The **“Aluminum Pricing Examination (APEX) Act” (Sens. Baldwin and Cotton)**, grants the Commodities Futures Trading Commission (CFTC) the statutory authority to conduct oversight of the aluminum market and to investigate price setting, benchmarking, and reporting entities. This bill also enables the DOJ to consult with the CFTC to ensure all regulatory and oversight actions align with antitrust statutes, including those that publish the Midwest Premium.

2. Enforcement of competition laws and policies

2.1. Actions against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. DOJ Criminal Enforcement

19. In fiscal year 2021, the Division filed 25 criminal cases against 14 corporations and 29 individuals. The Division obtained more than \$150 million in criminal fines and penalties from 8 corporations and 6 individuals. At the end of FY 2021, the Division was preparing for 18 criminal trials pending against 10 companies and 35 individuals, including 8 current or former CEOs or presidents.

20. The Division's enforcement efforts touched all sectors of the economy. The Division prosecuted price fixing, bid rigging and market allocation cases involving kitchen table issues for American families, from food to pharmaceuticals, and the Division prosecuted wage fixing and employee allocation agreements to protect American workers from employer cartels. The Division, through the Procurement Collusion Strike Force (PCSF), also protected American taxpayers and government entities from collusion in the government procurement process. The Division also built upon relationships with fellow enforcers around the world and prosecuted international cartels

21. **International Cases.** The Division continued to prioritize prosecuting international cartels in Fiscal Year 2021. In June, 2021, in the first case to come out of the PCSF: Global initiative, a security services firm agreed to plead guilty for its role in a conspiracy to rig bids, allocate customers and fix prices for defense-related security services, including a multimillion-dollar contract issued in 2020 to provide security services to the U.S. Department of Defense for military bases and installations in Belgium. The company was fined \$15 million¹⁷. In June 2021, the Division filed charges against another company and three individuals for their part in the bid rigging scheme affecting U.S. Department of Defense contracts¹⁸. In October 2021, the Division charged two other executives who both pleaded guilty for their involvement in the conspiracy.¹⁹

22. In January 2021, the Division charged the manager of a Defense Logistics Agency contract to provide hazardous waste removal at U.S. military installations in South Korea for his participation in a scheme to falsify laboratory reports submitted under this hazardous waste contract. In March 2021, the defendant pleaded guilty²⁰.

23. **Household Staples.** In June 2020, the Division brought its first charges against four individuals in an investigation into price fixing and bid rigging in the sale of broiler chicken products, which are chickens grown for human consumption and sold to grocers

¹⁷ <https://www.justice.gov/opa/pr/belgian-security-services-firm-agrees-plead-guilty-criminal-antitrust-conspiracy-affecting>

¹⁸ <https://www.justice.gov/opa/pr/belgian-security-services-company-and-three-former-executives-indicted-bid-rigging-us>

¹⁹ <https://www.justice.gov/opa/pr/former-security-services-executives-plead-guilty-rigging-bids-department-defense-security>

²⁰ <https://www.justice.gov/opa/pr/south-korean-national-pleads-guilty-scheme-defraud-us-department-defense>

and restaurants²¹. In October 2020, the Division brought charges against six additional individuals for their participation in the same conspiracy²². In February 2021, chicken supplier Pilgrim's Pride pleaded guilty for its participation in the conspiracy and was sentenced to pay a \$107 million criminal fine, the highest fine ever obtained for a domestic antitrust conspiracy²³. In May and July 2021, the Division filed charges against chicken suppliers Claxton Poultry and Koch Foods, and against four additional employees and executives, for their participation in the conspiracy.²⁴

24. The case against the ten individuals charged in 2020 proceeded to trial in the fall of 2021. This case ended in a mistrial after the jury could not agree on the guilt of any defendant. The retrial also ended in a mistrial for the same reason, after which, charges against five of the defendants were dismissed. A third trial against the five remaining defendants began on June 6, 2022. The cases against the Claxton Poultry and Koch Foods is scheduled to begin on April 17, 2023, and the case against the four employees charged in July 2021 is scheduled for trial on October 31, 2022.

25. In Fiscal Year 2021, the Division concluded its successful prosecution of price fixing in the canned tuna market. Christopher Lischewski, the former President and Chief Executive Officer of Bumble Bee Foods, was sentenced to serve 40 months in prison and to pay \$100,000 fine in June 2020, following his conviction at trial.²⁵ In July 2021, the Ninth Circuit affirmed the defendant's conviction. In May 2022, the Supreme Court denied the defendant's petition for certiorari.

26. **Labor Markets.** In Fiscal Year 2021, the Division filed four cases alleging labor market collusion. In December 2020, the Division charged the former owner of a therapist staffing company for participating in a conspiracy to fix the rates paid to physical therapists and physical therapist assistants²⁶. In April 2021, a superseding indictment was filed, charging an additional defendant with his participation in the conspiracy.²⁷ In January 2021, the Division filed charges against Surgical Care Affiliates, which owns and operates outpatient medical care centers across the country, for agreeing with competitors not to solicit senior-level employees²⁸. In April 2021, the Division filed charges against VDA OC LLC (formerly Advantage On Call LLC), a health care staffing company, and a former manager of the company, with entering into and engaging in a conspiracy with a competitor

²¹ <https://www.justice.gov/opa/pr/senior-executives-major-chicken-producers-indicted-antitrust-charges>

²² <https://www.justice.gov/opa/pr/six-additional-individuals-indicted-antitrust-charges-ongoing-broiler-chicken-investigation>

²³ <https://www.justice.gov/opa/pr/one-nation-s-largest-chicken-producers-pleads-guilty-price-fixing-and-sentenced-107-million>

²⁴ <https://www.justice.gov/opa/pr/broiler-chicken-producer-indicted-price-fixing-and-bid-rigging>; <https://www.justice.gov/opa/pr/four-executives-and-company-charged-price-fixing-ongoing-investigation-broiler-chicken>

²⁵ <https://www.justice.gov/opa/pr/former-bumble-bee-ceo-sentenced-prison-fixing-prices-canned-tuna>

²⁶ <https://www.justice.gov/opa/pr/former-owner-health-care-staffing-company-indicted-wage-fixing>

²⁷ <https://www.justice.gov/opa/pr/second-individual-charged-fixing-wages-health-care-workers-and-obstructing-ftc-investigation>

²⁸ <https://www.justice.gov/opa/pr/health-care-company-indicted-labor-market-collusion>

to allocate employee nurses and to fix the wages of those nurses.²⁹ And in July 2021, the Division filed charges against DaVita, Inc., another owner and operator of outpatient medical care centers, and its former CEO for agreeing with competitors not to solicit employees.³⁰

27. **Government Victims.** In Fiscal Year 2021, the Division charged multiple cases involving government victims and secured significant criminal fines. For example, in October 2020, an engineering firm in North Carolina and its former executive were charged with rigging bids and defrauding the North Carolina Department of Transportation.³¹ In June 2021, the engineering firm in North Carolina pleaded guilty to rigging bids and defrauding the North Carolina Department of Transportation. The company was sentenced to pay a \$7 million fine and more than \$1.5 million to the victim government agency.³² The former executive was tried and convicted in February of 2022.

28. In December 2020, a Louisiana company was sentenced after previously pleading guilty to conspiracy to defraud the United States and to violate the Procurement Integrity Act. The charges stemmed from the company obtaining non-public pricing and cost information in order to obtain subcontract awards and payments from the U.S. Department of Energy in connection with its operation of the nation's Strategic Petroleum Reserve.³³ In February, 2021, the Division filed charges against a former employee of the U.S. Department of Energy for his participation in the conspiracy.³⁴ The individual defendant was tried and convicted in May 2022.

2.1.2. DOJ Civil Non-Merger Enforcement

29. **United States v. Google Litigation.** On October 20, 2020, the Division filed a landmark civil enforcement action against Google alleging that the company has used a range of anticompetitive tactics to maintain and extend monopolies in markets for search and search advertising, to the detriment of American consumers and advertisers. As the complaint alleges, for many years Google has had a monopoly in general search, which includes search engines that can handle queries of all types. Google's overall market share in general search is now over 85 percent; its share is even higher on mobile devices, at nearly 95 percent. Google monetizes its search monopoly by selling ads on the search results pages. As in many markets, to become a successful search engine a company must be able to effectively distribute its product to consumers. Google has used its monopoly power to exclude rivals from the search distribution channels they would need to achieve sufficient scale to challenge Google's monopolies. About 80 percent of searches are covered by the combination of Google's exclusionary contracts and Google's own

²⁹ <https://www.justice.gov/opa/pr/health-care-staffing-company-and-executive-indicted-colluding-suppress-wages-school-nurses>

³⁰ <https://www.justice.gov/opa/pr/davita-inc-and-former-ceo-indicted-ongoing-investigation-labor-market-collusion-health-care>

³¹ <https://www.justice.gov/opa/pr/engineering-firm-and-its-former-executive-indicted-antitrust-and-fraud-charges>

³² <https://www.justice.gov/opa/pr/engineering-firm-pleads-guilty-decade-long-bid-rigging-and-fraud-scheme>

³³ <https://www.justice.gov/usao-edla/pr/louisiana-company-sentenced-role-conspiracy-defraud-government-and-violate-procurement>

³⁴ <https://www.justice.gov/usao-edla/pr/louisiana-man-charged-conspiracy-defraud-government-and-violate-procurement-integrity>

properties, leaving only a small fraction potentially available for competitors. Google has described some of its exclusionary agreements as “[i]nsurance polic[ies] that preserve our search and assistant usage.” A bipartisan group of 14 states are co-plaintiffs with the Division. An additional 38 states and territories filed suit against Google in December 2020, incorporating the Division’s allegations and adding certain additional claims. The two suits have been consolidated for pretrial proceedings in federal court in Washington, D.C. Trial is scheduled for September 2023.

30. **United States et al. v. American Airlines Group and JetBlue Airways.** On September 21, 2021, the Division and Attorneys General in six states and the District of Columbia sued to block a series of agreements between American Airlines and JetBlue through which the two airlines will consolidate their operations in Boston and New York City. This extensive combination, called the “Northeast Alliance,” combines American’s and JetBlue’s operations at four major airports: Boston Logan, John F. Kennedy, LaGuardia, and Newark Liberty. The airlines have committed to coordinate “on all aspects” of network planning, including which routes to fly, when to fly them, who will fly them and what size planes to use for each flight. The two airlines will also share revenues earned at these airports, eliminating their incentives to compete with one another. The Northeast Alliance will also allow the parties to pool their gates and takeoff and landing authorizations, known as “slots.” According to the complaint, this unprecedented combination would not only raise prices and reduce choices for air passengers traveling to and from Boston and New York City, but will also harm air travelers across the country by significantly diminishing JetBlue’s incentive to compete with American elsewhere, further consolidating an already highly concentrated industry. Trial is scheduled for September 2022.³⁵

2.1.3. *FTC Non-Merger Enforcement*

31. In FY 2021, the FTC took action to check anticompetitive practices in four matters. Additionally, six ongoing matters were still active at the end of FY 2021.

32. **Federal Trade Commission v. Facebook, Inc.** In December 2020, the Commission filed a landmark monopolization case against Facebook in federal court alleging the company has engaged in a systematic buy-or-bury scheme, including the acquisition of nascent competitors and monitoring of promising app developers, to maintain its monopoly, allowing Facebook to impose anticompetitive terms on innovative competitors. In August 2021, the Commission filed an amended complaint that includes additional data and evidence to support the FTC’s contention that Facebook is a monopolist that abused its excessive market power to eliminate threats to its dominance. This matter is pending in federal court.³⁶

33. In **Impax Laboratories, LLC**, the U.S. Court of Appeals for the Fifth Circuit upheld the FTC’s administrative determination in that Impax Laboratories, LLC engaged in an illegal pay-for-delay, or “reverse payment,” settlement to block consumers’ access to a lower-cost generic version of Endo Pharmaceuticals Inc.’s branded extended-release opioid pain reliever Opana ER.³⁷

³⁵ <https://www.justice.gov/opa/pr/justice-department-sues-block-unprecedented-domestic-alliance-between-american-airlines-and>

³⁶ See: <https://www.ftc.gov/legal-library/browse/cases-proceedings/191-0134-facebook-inc-ftc-v>

³⁷ See : <https://www.ftc.gov/legal-library/browse/cases-proceedings/141-0004-impax-laboratories-inc-matter>

34. ***AMG Capital Management v. Federal Trade Commission.***³⁸ On April 22, 2021, the Supreme Court unanimously held that the FTC is not authorized by Section 13(b) of the Federal Trade Commission Act to demand monetary relief for the purpose of obtaining restitution or disgorgement. Section 13(b) authorizes the FTC to seek temporary and permanent injunctions against unfair and deceptive trade practices “if such action would be in the public interest.” Over the past four decades, the Commission has relied on Section 13(b) of the Federal Trade Commission Act to secure billions of dollars in relief for consumers in a wide variety of cases, including telemarketing fraud, anticompetitive pharmaceutical practices, data security and privacy, scams that target seniors and veterans, and deceptive business practices, among many others. The FTC requested that Congress clarify Section 13(b) of the FTC Act and preserve the FTC’s ability to enjoin illegal conduct and restore to consumers money they have lost.³⁹

2.1.4. Description of significant cases

U.S. Supreme Court

35. ***Comcast Corp. v. Viamedia, Inc.*** The defendant provided cable TV services and, in certain regions, managed clearinghouses (Interconnects) for the sale of advertising by multichannel video programming distributors (MVPDs) (including cable TV distributors). The defendant also provided advertising-representation services to other MVPDs in competition with the plaintiff. The plaintiff alleged that the defendant violated Section 2 of the Sherman Act by denying the plaintiff access to Interconnects in order to monopolize markets for advertising-representation services. The district court dismissed the plaintiff’s refusal-to-deal claim and granted the defendant summary judgment on the plaintiff’s tying claim, but the Seventh Circuit reversed. In response to the Supreme Court’s invitation, the United States filed an amicus brief (in May 2021), arguing that the Court should deny review. The United States argued that the plaintiff had plausibly alleged an unlawful refusal to deal, and that the Seventh Circuit correctly applied settled legal principles in holding that the plaintiff created a triable issue of fact about whether the defendant had unlawfully tied Interconnect access and advertising-representation services. The Court denied review (on June 28, 2021).

36. ***NCAA v. Alston.*** The plaintiffs, college athletes, challenged rules of the National Collegiate Athletic Association (NCAA) limiting the compensation that member schools could offer student athletes. Following a bench trial, the district court held that certain limits violated Section 1 of the Sherman Act, and the Ninth Circuit affirmed. In the Supreme Court, the United States filed an amicus brief in support of the plaintiffs (in March 2021), arguing that the lower courts had properly applied the rule of reason. The lower courts, the United States argued, reasonably determined that some of the challenged rules did not actually foster consumer demand and that removing certain limits on education-related benefits would not dampen consumer demand. The Supreme Court affirmed (on June 21, 2021) in a unanimous decision.

U.S. Court of Appeals Decisions

37. In *United States v. Aiyer*, the Second Circuit affirmed (on May 2, 2022) the conviction of a trader for conspiring to fix prices and rig bids in connection with trading in

³⁸ 593 U.S. ____ (2021), 141 S Ct 1341 (2021).

³⁹

See:

https://www.ftc.gov/system/files/documents/public_statements/1589164/prepared_statement_of_the_ftc_before_the_senate_committee_on_commerce_science_and_transportation.pdf

the foreign currency exchange market in violation of Section 1 of the Sherman Act. The court held that the district court did not need to make a threshold determination that the per se rule governs the charged conduct where, as here, the defendant has been charged with a per se offense in a facially valid indictment. The court also held that the district court acted within its discretion in “strictly limiting” the defendant’s evidence of competitive effects to the issue of intent as the reasonableness of the alleged conduct was irrelevant. Finally, the court held that the district court did not abuse its discretion in its investigation of an allegation of juror misconduct.

38. In *United States v. Lischewski*, the Ninth Circuit affirmed (on July 7, 2021) the conviction of a former CEO for conspiring to fix canned-tuna prices in violation of Section 1 of the Sherman Act. The court rejected the defendant’s argument that the per se rule creates a presumption of “unreasonableness” that unconstitutionally eliminates the government’s burden in criminal cases to prove every element of the offense. Additionally, the court rejected the defendant’s challenges to the jury instructions and to the trial court’s evidentiary rulings. The Supreme Court denied review (on May 2, 2022).

2.1.5. Agency Participation in Private Enforcement Actions

39. Throughout FY 2021, the Agencies continued to deploy its amicus program as a means of sharing its views on the correct interpretation of the antitrust laws and to advance its interests in effective antitrust enforcement and sound competition policy.⁴⁰

40. For example, the Commission filed an amicus curiae brief in *UFCW Local 1500 Welfare Fund, et al. v. AbbVie Inc.* The brief addresses two legal errors committed by the district court in applying *FTC v. Actavis, Inc.*, 570 U.S. 136 (2013). First, the court seemingly ruled that because the settlements merely allowed “early” competition before AbbVie’s patents expired, they did not contain “Actavis-like” reverse payments and were procompetitive as a matter of law. Second, the court erred to the extent it based dismissal on the public policy favoring settlement.⁴¹

41. In *PLS.Com v. National Association of Realtors*, the court ruled consistently with the Division’s amicus brief in reversing dismissal of an antitrust claim alleging anticompetitive conduct in the real-estate industry. Other subjects of DOJ’s lower court filings included the appropriate treatment of horizontal no-poach agreements, the importance of private antitrust enforcement as a complement to government enforcement, and how association rules can provide direct evidence of Section 1’s concerted-action requirement.

2.1.6. Statistics on Private and Government Cases Filed

42. According to the 2021 Annual Report of the Director of the Administrative Office of the U.S. Courts, 555 new civil antitrust actions, both government and private, were filed in the federal district courts in FY 2021.⁴²

⁴⁰ Filings can be found at <https://www.justice.gov/atr/appellate-briefs>, <https://www.justice.gov/atr/statements-interest>, and <https://www.ftc.gov/legal-library/browse/amicus-briefs>

⁴¹ 1. See <https://www.ftc.gov/legal-library/browse/amicus-briefs/ufcw-local-1500-welfare-fund-et-al-v-abbvie-inc-et-al>.

⁴² See Table C-2A of the report, available at <https://www.uscourts.gov/statistics/table/c-2a/judicial-business/2021/09/30>.

2.2. Mergers and acquisitions

2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

43. During FY 2021, the FTC and DOJ received notice of 3,520 transactions under the HSR Act, a 66% increase over the 10-year high.⁴³

44. FTC staff issued requests for additional information (“second requests”) in 42 transactions. The Commission brought 18 merger enforcement challenges:⁴⁴ 5 in which it issued final consent orders after a public comment period; 7 in which the transaction was abandoned or restructured as a result of antitrust concerns raised during the investigation; and 6 in which the Commission initiated administrative or federal court litigation.

45. During fiscal year 2021, the Division issued 23 second requests. It challenged 14 merger transactions. The Division brought suit to enjoin two transactions and resolved nine of these cases by filing a complaint and proposed settlement simultaneously in U.S. district court. The remaining three challenges were resolved after the parties addressed the Division’s concerns during the investigation.

2.2.2. FTC Merger Enforcement Actions

46. **Cancer Detection Tests:** In March 2021, the Commission challenged Illumina’s proposed acquisition of Grail, makers of DNA-sequencing-based, non-invasive early detection liquid biopsy tests used in screening for multiple types of cancer. According to the complaint, Illumina is the only provider of these multi-cancer early detection (MCED) testing services in the United States and the deal would likely diminish innovation in the U.S. market for MCED services, which have the potential to identify up to 50 types of cancer and save millions of lives This matter is pending in administrative adjudication.⁴⁵

47. **Health Care Providers:** In FY 2021, the FTC challenged two anticompetitive mergers among competing health care providers. In November 2020, the Commission challenged Methodist Le Bonheur Healthcare’s proposed \$350 million acquisition of two Memphis-area hospitals from Tenet Healthcare Corporation. The Commission’s complaint alleged that the transaction would have lessened competition for inpatient general acute care services in the Memphis area by reducing from four to three the number of hospital systems operating in the area, leading to higher prices and reduced quality. Shortly after the FTC issued its complaint, the parties abandoned the proposed transaction.⁴⁶

48. In December 2020, the FTC opposed Hackensack Meridian Health’s proposed acquisition of Englewood Health. According to the complaint, the deal would eliminate close competition between the health care providers in the Bergen County, New Jersey

⁴³ Testimony of Chair Lina M. Khan Before the House Appropriations Subcommittee on Financial Services and General Government, n.5, May 18, 2022, available at https://www.ftc.gov/system/files/ftc_gov/pdf/Testimony%20of%20Chair%20Lina%20M.%20Khan%20Before%20the%20House%20Appropriations%20Subcommittee%20on%20Financial%20Services%20and%20General%20Government%20-%20final.pdf.

⁴⁴ To avoid double-counting, these numbers include only those merger enforcement actions in which the Commission or the Antitrust Division took its first public action during fiscal year 2021.

⁴⁵ See <https://www.ftc.gov/legal-library/browse/cases-proceedings/201-0144-illumina-inc-grail-inc-matter>.

⁴⁶ See <https://www.ftc.gov/legal-library/browse/cases-proceedings/191-0189-methodist-le-bonheur-healthcare-matter>.

area, giving the combined hospital system increased leverage with insurers, which would lead to higher insurance premiums, co-pays, deductibles, and other out-of-pocket expenses. The court granted the FTC a preliminary injunction in August 2021. On March 22, 2022, the Third Circuit Court of Appeals affirmed the preliminary injunction. The parties subsequently abandoned the proposed transaction.⁴⁷

49. **Apartment Rental Listing Services:** In November 2020, the Commission sued to block CoStar’s proposed acquisition of competitor RentPath. The two firms both operate online platforms such as Apartments.com (CoStar) or Rent.com (RentPath) for renters to identify available apartments. According to the complaint, the acquisition would significantly increase concentration for internet listing services advertising for large apartment complexes (more than 100 units) in 49 metropolitan areas throughout the United States. After the Commission issued its complaint, the parties announced the abandonment of the proposed merger.⁴⁸

50. **Shaving Razors:** In December 2020, the FTC challenged Procter & Gamble’s proposed acquisition of nascent rival Billie, a direct-to-consumer seller of women’s shaving and body care products. According to the complaint, the acquisition would have allowed Procter & Gamble, the leader in both women’s and men’s wet shave razors, to eliminate the threat to its business posed by the growing rival firm, and return to its dominant position to the detriment of consumers. The parties abandoned the merger after the FTC action.⁴⁹

51. **Cement Makers:** In May 2021, the FTC challenged Lehigh Cement Company’s proposed acquisitions of rival cement producer Keystone Cement Company. The complaint alleged the deal would have harmed competition in the market for gray Portland cement, a key ingredient used to make concrete, in the eastern Pennsylvania and western New Jersey areas by reducing the number of significant competitors in the market from 4 to 3. Cement markets are generally local or regional due to the substantial transportation costs due to the extreme weight of the products. Shortly after the Commission issued its complaint, the parties abandoned the proposed merger.⁵⁰

2.2.3. DOJ Merger Enforcement Actions

52. In *United States v. Visa Inc. and Plaid Inc.*,⁵¹ the Division filed suit to block Visa Inc.’s \$5.3 billion proposed acquisition of Plaid Inc. The complaint alleged that Visa is a monopolist in online debit services and sought to protect its monopoly by acquiring Plaid, a nascent competitor developing a disruptive and innovative, lower-cost option for online debit payments. The complaint also alleged that the acquisition, if allowed to proceed, likely would have enabled Visa to raise prices, increase barriers to entry, and reduce quality, service, choice and innovation in the online debit market. On January 12, 2021,

⁴⁷ See <https://www.ftc.gov/legal-library/browse/cases-proceedings/2010044-hackensack-meridian-health-inc-englewood-healthcare-foundation-matter>.

⁴⁸ See <https://www.ftc.gov/legal-library/browse/cases-proceedings/201-0061-costar-group-rentpath-holdings-matter>.

⁴⁹ See <https://www.ftc.gov/legal-library/browse/cases-proceedings/2010042-procter-gamble-co-billie-inc-matter>.

⁵⁰ See <https://www.ftc.gov/legal-library/browse/cases-proceedings/2010006-heidelbergcement-ag-et-al-matter>.

⁵¹ *United States v. Visa Inc. and Plaid Inc.*, 3:20-cv-07810 (N.D. Cal. filed Nov. 5, 2020).

Visa and Plaid terminated their merger agreement and abandoned the proposed acquisition.⁵²

53. In *United States v. Aon plc and Willis Towers Watson plc*,⁵³ the Division filed a lawsuit to enjoin Aon plc (“Aon”) from acquiring Willis Towers Watson plc. (“Willis”). The complaint alleged that the proposed acquisition would have combined two of the three largest insurance brokers in the world. The complaint further alleged that combination would have eliminated substantial head-to-head competition between Aon and Willis, resulting in higher prices and less innovation in five relevant product markets: (1) property, casualty, and financial risk broking for large customers; (2) health benefits broking for large customers; (3) actuarial services for large single-employer defined benefit pension plans; (4) the operation of private multicarrier retiree exchanges; and (5) reinsurance broking. On July 26, 2021, Aon and Willis abandoned the proposed acquisition.⁵⁴

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1. Domestic Engagement

54. **President’s Executive Order on Promoting Competition.** July 2021 President Biden issued an Executive Order on Promoting Competition in the American Economy recognizing a “whole-of-government approach” as necessary to address overconcentration, monopolization, and unfair competition in the American economy. The EO asks the DOJ and the FTC to work together with agencies that regulate specific industries to promote and maintain competitive markets through a combination of pro-competitive regulation and law enforcement.

55. The DOJ and the FTC have been actively engaged in implementing President Biden’s Executive Order on Competition in the American Economy, including taking several key steps: (1) building capacity within the federal government to support interagency engagement that promotes competition; (2) building on and expanding existing agency relationships; (3) working together on substantive and process reforms; and (4) empowering prosecutors and procurement officials.

56. **Pharmaceuticals.** In May 2021, the Antitrust Division and FTC, along with counterpart competition enforcement agencies that are members of the Multilateral Pharmaceutical Merger Task Force, sought public input aimed at updating the analysis of pharmaceutical mergers.

57. **Federal Maritime Commission.** Building on a July 2021 Memorandum of Understanding, in February 2022 the Department of Justice and the Federal Maritime Commission reaffirmed their continuing commitment to jointly enforcing competition laws and strengthening their cooperation to promote competition in the ocean freight transportation system.

⁵² <https://www.justice.gov/opa/pr/visa-and-plaid-abandon-merger-after-antitrust-division-s-suit-block>.

⁵³ *United States v. Aon plc and Willis Towers Watson plc*, No. 1:21-cv-01633 (D.D.C. filed June 16, 2021).

⁵⁴ See <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-s-statement-aon-and-willis-towers-watson-decision>

58. Agriculture. In June 2021, the Department issued a statement on the U.S. Department of Agriculture’s Proposed Rules to support enforcement of the Packers and Stockyards Act to improve competition in agricultural markets.

59. Procurement Collusion Strike Force. November 2020 marked the one-year anniversary of the Procurement Collusion Strike Force (PCSF), and saw the addition of 11 new national partners. The PCSF is a coordinated national response to combat antitrust and related schemes in government procurement, grant, and program funding at all levels of government. It is a district-based, virtual strike force, where dedicated Division attorneys work with Assistant U.S. Attorneys and agents from federal, state, and local entities with two complementary goals: conducting outreach to increase awareness and deterrence of antitrust and other criminal violations in government contracts, grants, and programs; and leveraging the combined talents and resources of the enforcement community to detect, investigate, and prosecute violations.

60. Federal Reserve Board of Governors. In August 2021, the Division and FTC Staff each filed comments in support of the Federal Reserve Board of Governors’ (Board) notice of proposed rulemaking on Debit Card Interchange Fees and Routing, which are rules implementing the Electronic Fund Transfer Act (EFTA) made under the Dodd-Frank Wall Street Reform Act of 2010 (Dodd-Frank). In the Dodd-Frank Act, Congress amended EFTA to promote competition among debit card networks by requiring debit card issuers to enable at least two networks so that merchants have a choice for routing electronic debit transactions. The Board’s proposed rule would clarify that a 2011 regulation applies both to transactions in which a physical debit card is used and to “card-not-present transactions,” such as online purchases or transactions made over the phone. The DOJ and FTC staff each encouraged the Board to assess additional ways the proposed rule could be enhanced to increase competition for debit payment processing. For example, FTC staff called for rules that would prohibit debit card networks from exploiting an issuer’s position by paying incentives to that issuer based on how electronic debit transactions are routed by merchants using that issuer’s debit cards. DOJ also urged the Board to consider whether card networks and other industry participants are circumventing routing rules and encouraging issuers to refrain from enabling technology that would help smaller debit networks.⁵⁵

61. Trade. 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.

62. Technology. The Agencies served on U.S. interagency groups that developed G7 and G20 statements on issues involving competition in the digital economy.

3.2. International Engagement

63. EU-U.S. Joint Technology Competition Policy Dialogue. In June 2021, the United States and the European Union established the Trade and Technology Council, a platform for discussion to advance bilateral and multilateral cooperation on multiple

⁵⁵ See [Comments on Proposed Rule on Debit Card Interchange Fees and Routing, Docket No. R-1748](https://www.justice.gov/opa/record/2021/08/17/2021-08-17-1748) (justice.gov); <https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-urges-federal-reserve-board-require-debit-card-gatekeepers-compete-fairly>.

fronts.⁵⁶ In parallel with the Council, FTC Chair Khan, AAG Kanter of the DOJ Antitrust Division, and Executive Vice President Margrethe Vestager of the European Commission launched the EU-U.S. Joint Technology Competition Policy Dialogue. The three agencies issued a statement reaffirming their mutual interest in cooperating on competition policy and enforcement, especially in technology sectors, including through the Joint Dialogue. The Dialogue will include high-level meetings as well as regular staff discussion focused on the shared competition enforcement and policy issues that arise in technology markets. In addition to enhancing enforcement and policy coordination, these exchanges will help inform similar domestic efforts, potentially contributing to greater alignment on these pressing issues.⁵⁷

64. **Procurement Collusion Strike Force (PCSF) Global.** In FY 2021, the Division launched PCSF Global, an expansion of the PCSF, a domestic interagency partnership created to combat antitrust crimes and related schemes targeting public procurement. PCSF Global is designed to strengthen relationships with foreign-located federal agents, increase collaboration with international enforcers, and detect, investigate, and prosecute antitrust offenses that target U.S. government spending abroad. As an example, PCSF Global is investigating a criminal antitrust conspiracy targeting security services provided in Belgium to, among others, U.S. government agencies and government-sponsored/funded entities. *See* DOJ Criminal Enforcement, above, for additional details.

65. **Korean Prosecution Service.** In FY 2021, ATR signed a Memorandum of Understanding (MOU) with the Korean Prosecution Service (KPS). The MOU is designed to promote increased cooperation and communication on criminal antitrust enforcement and policies. The MOU is intended to further strengthen the relationship between ATR and the KPS as they work together to root out harmful collusive conduct that affects consumers in both countries.

4. Resources of competition authorities

4.1. Antitrust Division

66. The Antitrust Division's FY 2021 budget was \$184.524M (civil enforcement: \$110.744M; criminal enforcement: \$73.810M). The total number of staff at the end of FY 2021 was 671, including 335 attorneys, 157 paralegals, 49 economists, and 130 others.

⁵⁶ See Press Release, White House, U.S.-EU Summit Statement (June 15, 2021) available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/u-s-eu-summit-statement>

⁵⁷ See <https://www.justice.gov/opa/press-release/file/1453916/download>; https://www.ftc.gov/news-events/press-releases/2021/12/joint-statement-ftc-doj-antitrust-division-european-commission?utm_source=govdelivery.

4.2. Federal Trade Commission

Table 1. Federal Trade Commission: Fiscal Year 2021 Competition Mission⁵⁸

FTE⁵⁹ and Dollars by Programs, Bureau & Office

	FTE	Amount (\$ in thousands)
Total Promoting Competition Mission	528	154,410
Premerger Notification	18	3,785
Merger & Joint Venture Enforcement	202	42,232
Merger & Joint Venture Compliance	11	2,300
Nonmerger Enforcement	127	26,670
Nonmerger Compliance	1	210
Antitrust Policy Analysis	26	5,867
Other Direct	20	4,162
Support	123	69,184

5. Summaries of or references to new reports and studies on competition policy issues

67. **FTC’s Role in a Changing World Report.** In October 2020, the Commission issued a report on the effectiveness of the FTC’s enforcement cooperation tools and approaches in light of new challenges in competition, consumer protection, and privacy matters; the effectiveness of the FTC’s approaches to promoting international policy coordination and best practice development; and strategies for international enforcement and policy engagement in today’s dynamic global marketplace. The Report cites expert testimony from hearings the Commission convened in March 2019, held in conjunction with the George Washington University’s Competition Law Center. The Report made several observations, including that the FTC should pursue additional mechanisms for enhanced antitrust information sharing and investigative assistance and work to overcome foreign barriers to FTC enforcement.⁶⁰

68. **Ethanol Report.** On March 3, 2021, the FTC issued its 2020 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.”⁶¹

⁵⁸ <https://www.ftc.gov/system/files/documents/reports/fy-2022-congressional-budget-justification/fy22cbj.pdf> (at page 155).

⁵⁹ 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).

⁶⁰ The Report is available here: <https://www.ftc.gov/system/files/documents/reports/commission-report-hearings-competition-consumer-protection-21st-century/p181201internationalhearingreport.pdf>.

⁶¹ The Report is available here: https://www.ftc.gov/system/files/documents/reports/2020-report-ethanol-market-concentration/p063000_ethanol_industry_report.pdf.

69. Non-HSR Reported Acquisitions by Select Technology Platforms Study. At an Open Commission meeting held on September 15, 2021, the FTC Staff presented findings from an inquiry launched in February 2020, into past acquisitions by the largest technology platforms that did not require reporting to antitrust authorities. Among the key findings, of the 616 transactions that were the focus of the inquiry, 94 exceeded the HSR Size of Transaction threshold.⁶²

70. Nixing the Fix: An FTC Report to Congress on Repair Restrictions. This report, issued May 2021, examines consumer protection and antitrust issues relating to repair restrictions, with particular emphasis on those imposed by mobile phone and car manufacturers. The report's findings, including that "there is scant evidence to support manufacturers' justifications for repair restrictions," are primarily based on responses to the Commission's requests for public comments and empirical research issued in connection with its July 2019 workshop, "Nixing the Fix: A Workshop on Repair Restrictions."⁶³

⁶² See <https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-staff-presents-report-nearly-decade-unreported-acquisitions-biggest-technology-companies>. The Report is available here: <https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf>.

⁶³ See https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.