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Annual Report on Competition Policy Developments in the United States
-- 2018 --

3-4 December 2019

This report is submitted by the United States to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 3-4 December 2019.

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1. Introduction

1. This report describes federal antitrust developments in the United States for the period of October 1, 2017 through September 30, 2018 ("FY 2018").[1] It summarizes the competition enforcement and policy activities of both the Antitrust Division ("Division") of the U.S. Department of Justice ("Department" or "DOJ") and the Federal Trade Commission ("Commission" or "FTC"). The two agencies are collectively referred to throughout this report as the "Antitrust Agencies" or the "Agencies." For additional information on the Agencies' activities in FY 2018, see the FTC's Annual Highlights 2018, *available at* https://www.ftc.gov/reports/annual-highlights-2018 and the DOJ's 2019 Spring Update, *available at* https://www.justice.gov/atr/division-operations/division-update-spring-2019/international-program-update-2019.

1.1. Senior Leadership Update[1]

2. The Agencies underwent a significant senior leadership transition in FY 2018. FTC Chairman Joseph Simons took office on May 1, 2018 for a term that expires in September 2024. Former FTC Commissioner Maureen K. Ohlhausen, who served as Acting Chairman from January 25, 2017 until May 1, 2018, departed the agency on September 25, 2018.

3. On May 2, 2018, Noah Joshua Phillips, Rebecca Kelly Slaughter, and Rohit Chopra were sworn in as FTC Commissioners. Phillips' term expires in September 2023, Slaughter's term expires in September 2022, and Chopra's in September 2019. Christine S. Wilson was sworn in as Commissioner on September 26, 2018. Her term expires on September 25, 2025.

4. At DOJ, Deputy Assistant Attorney General for Litigation Don Kempf resigned on August 15, 2018. Following his resignation, Michael Murray was appointed to the role of Deputy Assistant Attorney General on September 17, 2018. On May 7, 2018, Richard Powers was appointed the Deputy Assistant Attorney General for Criminal Enforcement. On July 9, 2018, Luke Froeb resigned as Deputy Assistant Attorney General for Economics, and Jeff Wilder now serves as the Acting Deputy Assistant Attorney General.

2. Changes in law or policies

2.1. Changes in Antitrust Rules, Policies, or Guidelines

5. On January 26, 2018, the HSR size-of-transaction threshold for reporting proposed mergers and acquisitions under Section 7A of the Clayton Act increased from $80.8 million to $84.4 million. The new 2018 thresholds under Section 8 of the Act that trigger prohibitions on certain interlocking memberships on corporate boards of directors are $34,395,000 for Section 8(a)(l) and $3,439,500 for Section 8(a)(2)(A). The FTC revises the thresholds annually based on the change in gross national product. *See*

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

https://www.ftc.gov/news-events/press-releases/2018/01/ftc-announces-annual-update-size-transaction-thresholds-premerger.

6. On April 25, 2018, the Antitrust Division announced an initiative to terminate outdated antitrust judgments. As part of a larger effort to streamline and improve the Antitrust Division's use of consent decrees, the Division has identified nearly 1,300 longstanding judgments still in effect, some over 100 years old. These perpetual decrees predate a Division policy, adopted nearly 40 years ago, setting the standard term of its consent decrees at 10 years. In enacting that policy, the Division recognized that markets and competition rarely remain stagnant even for that long; therefore, perpetual judgments are not in the public interest. The Division has been reviewing these perpetual decrees and addressing any that no longer serve the public interest and are appropriate for termination. As of May 2019, the Division has filed motions to terminate these perpetual judgments in 25 federal district courts throughout the United States, and 16 courts have issued orders terminating these judgments. *See* https://www.justice.gov/atr/JudgmentTermination.

7. The Antitrust Division has taken steps to improve the enforceability of its consent decrees and announced it will seek to include provisions designed to place the risk of a decree's failure on the defendants—whose merger or conduct the Division has determined to be anticompetitive—not on the American consumer. Recent decrees that the Division has negotiated have included provisions under which defendants agree that the Division may establish a violation of a consent decree by a preponderance of the evidence (as opposed to by clear and convincing evidence). These provisions also permit the United States to apply for an extension of a decree's term if the court finds a violation of the decree; enable the Division to seek reimbursement on behalf of taxpayers for attorneys' fees, expert fees, and costs incurred in connection with any consent decree enforcement effort; and allow the Division, after a certain number of years, to terminate the decree upon notice to the court and the defendants if the Division determines it is no longer necessary or in the public interest. The Division also announced a renewed emphasis on seeking structural relief, as opposed to regulatory behavioral conditions, in remedying anticompetitive mergers. Doing so is consistent with the Division's broader emphasis on antitrust as law enforcement, not regulation. *See* https://www.justice.gov/opa/speech/remarks-assistant-attorney-general-makan-delrahim-delivered-new-york-state-bar.

8. In a series of speeches over the past year, Assistant Attorney General Makan Delrahim has set forth the Division's "New Madison" approach for analyzing issues at the intersection of antitrust and intellectual property ("IP") law. This approach emphasizes the importance of intellectual property rights to innovation and economic growth and cautions that improperly using antitrust law to create restrictive rules for patent owners risks undermining incentives to innovate. In promoting this approach, the Division has urged competition enforcers and courts to be mindful of the proper application of antitrust law to transactions involving intellectual property, particularly in the standard-setting context. Although parties may seek to apply antitrust law to the exercise of IP rights—especially in the context of the enforcement or licensing of standard-essential patents (SEPs) subject to commitments to license on fair, reasonable, and non-discriminatory terms—patent and/or contract law typically form the proper foundation for settling such disputes. It is the Division's policy that a patent holder cannot violate the antitrust laws by merely exercising the rights patents confer, such as by seeking an injunction on a SEP. Moreover, the Division has made clear that it is not a price regulator and will not encroach on royalty negotiations between private parties. In contrast to these scenarios involving unilateral action by SEP holders, the Division has explained that collective action that excludes competitors from the standard-setting process, or is aimed at depressing (or increasing)

licensing rates for the benefit of implementers (or patent holders), can raise antitrust concerns. *See* https://www.justice.gov/opa/speech/file/1010746/download; https://www.justice.gov/opa/speech/file/1030496/download; https://www.justice.gov/opa/speech/file/1044316/download; https://www.justice.gov/opa/speech/file/1050956/download; and https://www.justice.gov/opa/speech/file/1095011/download.

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

3.1. Staffing and Enforcement Statistics

3.1.1. FTC

9. During FY 2018, the FTC employed approximately 528 staff and spent approximately $139.7 million in furtherance of its Maintaining Competition mission.

10. During FY 2018, 2,111 proposed mergers and acquisitions were reported for review under the HSR Act, a 2.9 percent increase from the number of HSR transactions reported during FY 2017. The Commission staff issued requests for additional information ("second requests") in 26 transactions. The FTC challenged 22 mergers, including 12 in which the Commission issued a consent order, five in which the transaction was abandoned or restructured as a result of antitrust concerns raised during the investigation, two in which the Commission initiated administrative litigation, and three in which the Commission authorized staff to seek a preliminary injunction in federal district court. In the cases in which the Commission issued an administrative complaint, the Commission also voted to seek a preliminary injunction in federal district court to enjoin the acquisition pending resolution of the Commission's administrative litigation.

11. During FY 2018, the FTC staff opened 20 non-merger, initial phase investigations. The Commission brought three non-merger enforcement actions, including one in which the Commission initiated administrative litigation, and two that were resolved by a consent order.

12. During FY 2018, the Commission filed *amicus curiae* briefs in six cases, five before federal courts and one before the Rhode Island Supreme Court. The Commission or Commission staff also sent or filed 16 competition advocacy comments. *See* http://www.ftc.gov/policy/advocacy.

13. In FY 2018, the FTC also began its *Hearings on Competition and Consumer Protection in the 21st Century*, a series of 14 hearings that examines whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to the Commission's competition and consumer protection enforcement priorities. The hearings, which feature expert discussion panels and presentations, as well as a public comment process, are intended to provide opportunities for FTC staff and leadership to listen to interested persons and outside experts representing a broad and diverse range of viewpoints. Additionally, the hearings intend to stimulate internal and external evaluation of the FTC's near- and long-term law enforcement and policy agenda. The hearings identify areas for enforcement and policy guidance, including improvements to the agency's investigation and law enforcement processes, as well as areas that warrant additional study. *See* https://www.ftc.gov/policy/hearings-competition-consumer-protection.

3.1.2. DOJ

14. At the end of FY 2018, the Division had 648 employees: 328 attorneys, 48 economists, 134 paralegals, and 138 other professional staff. For FY 2018, the Division received an appropriation of approximately $165 million.

15. In FY 2018, the Division opened 39 criminal investigations (27 grand jury investigations and 12 preliminary inquiries). The Division filed 18 criminal cases, charging 5 corporations and 28 individuals. The Division obtained more than $172 million in criminal fines and penalties from 4 corporations and 53 individuals. The courts sentenced 21 individuals to serve time in jail with an average of nearly 9.5 months incarceration.

16. During FY 2018, the Division challenged 16 merger transactions, including 9 with filed complaints in U.S. district courts. In 8 of these 9, the Division simultaneously filed a proposed settlement. In the remaining one case, the DOJ initiated litigation, and, after trial, the U.S. district court ruled in favor of the defendants. In 3 of the other challenges, the parties abandoned the proposed transaction, and in the remaining 4, the parties restructured the transaction to resolve the Division's concerns. The Division also issued "second requests" in 19 mergers. In addition, the Division screened a total of 502 bank mergers. The Division opened 81 civil investigations (merger and non-merger), and issued 504 civil investigative demands (a form of compulsory process). The Division filed one non-merger civil complaint.

3.2. Antitrust Cases in the Courts

3.2.1. United States Supreme Court

Ohio v. American Express Co.

17. The United States and seventeen individual states sued American Express Co. ("Amex") alleging that anti-steering rules in Amex's contracts with merchants blocked price competition among credit-card networks because they precluded merchants from encouraging customers to use less costly cards. The U.S. District Court for the Eastern District of New York held the anti-steering rules unlawful, but the U.S. Court of Appeals for the Second Circuit reversed and directed judgment for Amex. The court of appeals held that the district court erred by "excluding the market for cardholders from its relevant market definition." The court further held that the government failed to carry its initial burden of proof under the rule of reason because it failed to show "net harm" to merchants and cardholders accounting for any "offsetting benefits to cardholders." The U.S. Supreme Court granted certiorari, and on June 25, 2018, the Supreme Court affirmed in a 5-4 decision. In the majority opinion by Justice Thomas, the Supreme Court held that, for a "two-sided transaction platform," it is necessary to "include both sides of the platform—merchants and cardholders—when defining the credit-card market." Justice Breyer dissented "because the challenged contractual term clearly has serious anticompetitive effects."

Animal Science Products Inc. v. Hebei Welcome Pharmaceutical Co.

18. U.S. purchasers of Vitamin C sued Chinese exporters under the Sherman Act, alleging that the exporters had agreed to fix the price and quantity of vitamin C exported to the United States. The Chinese defendants claimed that the act-of-state doctrine, foreign sovereign immunity, and international comity shielded them from liability because Chinese law compelled them to price-fix vitamin C. The Chinese Ministry of Commerce submitted

an *amicus curiae* brief supporting the Chinese defendants' position. The district court rejected the defenses, and a jury found that the Chinese defendants had violated the Sherman Act. The U.S. Court of Appeals for the Second Circuit held that the district court should have granted conclusive deference to the Ministry's *amicus* brief and determined that Chinese law required the Chinese defendants to price-fix. On June 14, 2018, the U.S. Supreme Court reversed the Second Circuit in a unanimous opinion, consistent with the position advanced by the United States as an *amicus*. The Supreme Court held that "[a] federal court should accord respectful consideration to a foreign government's submission, but is not bound to accord conclusive effect to the foreign government's statements."

3.2.2. U.S. Court of Appeals Decisions

United States v. AT&T, Inc.

19. On June 12, 2018, the U.S. District Court for the District of Columbia denied the government's request to enjoin the proposed merger of AT&T, Inc., owner of DirecTV, and Time Warner Inc., owner of several TV networks. The government alleged that the merger may lessen competition substantially in local markets for multichannel video distribution, in violation of Section 7 of the Clayton Act. In concluding that the government had not established any likelihood that the merger would lessen competition by increasing Time Warner's bargaining leverage—the government's primary theory of harm—the court discounted the probative value of third-party distributor witnesses and of prior statements by defendants on the potential anticompetitive effects of vertical integration in the industry; credited the testimony of the defendants' executives; found that the assumptions underlying, and the inputs used in, a model presented by the government's expert economists were not sufficiently grounded in the evidence; and credited an econometric analysis by the defendants' expert economist of past vertical integration in the industry. On February 26, 2019, the U.S. Court of Appeals for the District of Columbia Circuit affirmed, concluding that, while the trial court "made some problematic statements," its findings were not clearly erroneous.

United States v. Kemp & Associates, Inc.

20. In August 2016, a Utah heir-location-services company and one of its executives were charged with conspiring with a competing firm to allocate customers, in violation of Section 1 of the Sherman Act. Heir-location-services providers identify sizable intestate estates and find the decedents' heirs. The providers then offer to inform the heirs of their potential inheritances and to prove their claims in probate court in exchange for a portion of the inheritances (a contingency fee). If multiple firms identify and approach the same heir around the same time, then those firms will compete to distinguish their offers from one another by, among other things, offering lower prices in the form of reduced contingency fees. The indictment described a scheme in which the defendants agreed to allocate potential customers in exchange for a portion of the fees. The U.S. District Court for the District of Utah ruled that the challenged agreement was subject to the rule of reason, not the *per se* rule, because it did not "affect a very large part of our society," was "narrowly focused," and was "unique and unusual." The district court also ruled that the indictment was too late because, in its view, payoffs among the conspirators did not constitute acts in furtherance of their conspiracy. The United States appealed to the U.S. Court of Appeals for the Tenth Circuit, which reversed the statute-of-limitations ruling on October 31, 2018, reasoning that the statute of limitations in a criminal antitrust case "is tolled as long as the firm that ultimately received the rigged bid receives payments on the unlawfully obtained

contract" and also until the conspirators have finished distributing the proceeds of the conspiracy. The court of appeals also held that it lacked jurisdiction to decide the rule-of-reason issue, but it made clear that "it is immaterial whether a customer allocation agreement applies to new or existing customers," that "there is no rule that allocation agreements are only subject to the *per se* rule if customers are divided geographically," that it does not "matter that the alleged agreement would only affect a small number of potential customers," and that "any lack of judicial familiarity with the Heir Location Services industry is largely irrelevant." On remand, the district court agreed to proceed under the *per se* rule.

United States v. Broadcast Music, Inc.

21. Broadcast Music, Inc., a performing-rights organization that aggregates licenses for the public performance of songs from their copyright-owner members and offers them to users as blanket licenses, brought a declaratory judgment action against the United States in the U.S. District Court for the Southern District of New York. The subject of the suit was a consent decree between BMI and the United States that settled the United States' antitrust claims against BMI in 1941 and has since been amended. The decree obligated BMI to license "the right of public performance of any, some or all" of the songs in BMI's repertory to users at a reasonable fee. BMI asked the court to declare that the decree did not preclude BMI from offering fractional licenses for the songs in its repertory, meaning licenses conferring only its own members' shares of the rights in the songs instead of the full rights to play the songs. The district court agreed and issued the declaratory ruling. The United States appealed and, on December 19, 2017, the U.S. Court of Appeals for the Second Circuit affirmed. The court of appeals agreed with the district court that the decree was correctly interpreted as allowing BMI to license partial rights to the songs in its repertory.

3.2.3. U.S. District Court Decisions

Federal Trade Commission v Qualcomm Inc.

22. The FTC filed a complaint in federal district court charging Qualcomm Inc. with using anticompetitive tactics to maintain its monopoly in the supply of a key semiconductor device used in cell phones and other consumer products. Qualcomm is the world's dominant supplier of baseband processors – devices that manage cellular communications in mobile products. The FTC alleged that Qualcomm unlawfully maintained a monopoly in baseband processors and engaged in exclusionary conduct that taxes its competitors' baseband processor sales, reduces competitors' ability and incentive to innovate, and raises prices paid by consumer for cell phones and tablets. On May 21, 2019, the U.S. District Court for the Northern District of California ruled that Qualcomm's practices violate Sections 1 and 2 of the Sherman Act and constitute an unfair method of competition under the FTC Act. See https://www.ftc.gov/enforcement/cases-proceedings/141-0199/qualcomm-inc.

FTC v AbbVie.

23. On June 29, 2018, the U.S. District Court for the Eastern District of Pennsylvania ruled that AbbVie used sham litigation to illegally maintain its monopoly over the testosterone replacement drug Androgel, and ordered $448 million in monetary relief to consumers who were overcharged for Androgel as a result of AbbVie's conduct. This court order represents the largest monetary award ever in a litigated FTC antitrust case. The FTC

filed a complaint in federal district court in 2014 charging that AbbVie Inc. and its partner Besins Healthcare Inc. were illegally blocking American consumers' access to lower-cost alternatives to Androgel by filing baseless patent infringement lawsuits against potential generic competitors. See https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al.

FTC v. Wilhelm Wilhelmsen, et al.

24. On July 23, 2018, a U.S. District Court granted the Federal Trade Commission's request for a preliminary injunction against Wilhelmsen Maritime Services' proposed $400 million acquisition of Drew Marine Group. Wilhelmsen subsequently announced that it would abandon the transaction. The FTC alleged that the acquisition would violate the antitrust laws by significantly reducing competition in an important market for marine water treatment chemicals and services used by global fleets. Marine water treatment chemicals and services are used by tankers, container ships, bulk carriers, cruise ships, and military support vessels to maintain critical on-board equipment. The complaint alleges that customers for these products, owners and operators of global fleets of these vessels, will be harmed by the proposed acquisition. See https://www.ftc.gov/enforcement/cases-proceedings/171-0161/wilhelm-wilhelmsen-et-al-ftc-v.

Federal Trade Commission v. Shire ViroPharma.

25. On March 20, 2018, a U.S. District Court granted Shire ViroPharma Inc.'s motion to dismiss the FTC's complaint charging the company with violating the antitrust laws by abusing government processes to delay generic competition to its branded prescription drug, Vancocin HCl Capsules. The complaint alleges that to maintain its monopoly, ViroPharma waged a campaign of serial, repetitive, and unsupported filings with the U.S. Food and Drug Administration ("FDA") and courts to delay the FDA's approval of generic Vancocin Capsules, and exclude competition. According to the FTC, ViroPharma submitted 43 filings with the FDA and filed three lawsuits against the FDA between 2006 and 2012. According to the FTC, ViroPharma knew that it was the FDA's practice to refrain from approving any generic applications until it resolved any pending relevant citizen petition filings. ViroPharma intended for its serial filings to delay the approval of generics, and thus competition and lower prices. The FTC sought a court order permanently prohibiting ViroPharma from submitting repetitive and baseless filings with the FDA and the courts, and from similar and related conduct as well as any other necessary equitable relief, including restitution and disgorgement. The FTC appealed the ruling to the Third Circuit, which affirmed the lower court's ruling on February 25, 2019. See https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viropharma.

FTC and State of North Dakota v Sanford Health.

26. On December 13, 2017, a U.S. District Court granted the request of the FTC and the Attorney General's Office of North Dakota for a preliminary injunction in the proposed merger of Sanford Health and Mid Dakota Clinic in the Bismarck-Mandan region of North Dakota. The FTC issued a complaint alleging that the merger would violate antitrust law by significantly reducing competition for adult primary care physician services, pediatric services, obstetrics and gynecology services, and general surgery physician services in the greater Bismarck and Mandan metropolitan area. The complaint sought a temporary restraining order and preliminary injunction to stop the merger and maintain the status quo pending an administrative trial on the merits. According to the complaint, Sanford and Mid Dakota are each other's closest rivals in the four-county Bismarck-Mandan region of North

Dakota, and the merger would create a group of physicians with at least 75 to 85 percent share in the provision of adult primary care physician services, pediatric services, and obstetrics and gynecology services. On June 13, 2019, the U.S. Court of Appeals for the 8th Circuit upheld a December 2017 preliminary injunction by the district court that halted the acquisition pending a full administrative trial. Following the court decision, the parties abandoned the proposed acquisition. See https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-healthsanford-bismarckmid-dakota-clinic.

3.2.4. DOJ Participation in Private Enforcement Actions

27. The Division has embarked on an effort to expand its amicus program and has significantly increased its participation in private antitrust cases before they reach the Supreme Court. The goal of this effort is to help shape the development and application of antitrust law in the earliest stages of private litigation. Some examples follow.

LSP Transmission Holdings, LLC v. Lange.

28. In the U.S. District Court for the District of Minnesota, LSP Transmission Holdings, LLC ("LSP"), an electric transmission line developer, challenged a Minnesota law for hindering its entry into Minnesota under the dormant Commerce Clause, which prohibits state legislation that discriminates against interstate or international commerce. The law gives "any public utility that owns, operates, and maintains an electric transmission line in this state" a right of first refusal to build and own new federally approved high-voltage transmission lines that connect to its existing facilities. LSP argued that the law discriminates against out-of-state transmission developers and that the statute unduly burdens interstate commerce by walling off the state from new entrants. The United States supported LSP with a statement of interest. The district court dismissed LSP's complaint with prejudice, finding no dormant Commerce Clause violation. LSP appealed to the U.S. Court of Appeals for the Eighth Circuit, where the United States has submitted an amicus brief urging that the district court opinion be vacated.

SolarCity Corporation v. Salt River Project Agricultural Improvement and Power District.

29. SolarCity, a seller of rooftop solar energy systems, brought monopolization claims under Section 2 of the Sherman Act against Salt River Project, a public power entity that provides electricity in the Phoenix metropolitan area. Salt River Project asserted as a defense the "state action" doctrine, under which federal antitrust law does not reach anticompetitive conduct that is (1) in furtherance of a clearly articulated state policy to displace competition, and (2) actively supervised by the state. The district court refused to apply the defense, and Salt River Project appealed, contending that the denial of its motion to dismiss was immediately appealable under an exception to the final-judgment rule called the "collateral order doctrine." The United States submitted an amicus brief supporting SolarCity and arguing that the U.S. Court of Appeals for the Ninth Circuit lacked appellate jurisdiction over the state action issue. On June 12, 2017, the Court of Appeals agreed with Solar City and the United States and dismissed the appeal. The U.S. Supreme Court granted certiorari. SolarCity and Salt River Project then settled the case, causing the Supreme Court to dismiss it without reaching a decision.

Steves and Sons, Inc. v. Jeld-Wen, Inc.

30. Jeld-Wen, a door manufacturer, sought to acquire Craftmaster International ("CMI"), a maker of doorskins, which are used to make interior doors, along with CMI's doorskins manufacturing facility. In June 2016, Steves and Sons filed a private complaint against Jeld-Wen in the U.S. District Court for the Eastern District of Virginia, alleging that the merger violated Section 7 of the Clayton Act. A jury determined that it did. As a remedy, Steves sought divestiture of the CMI manufacturing facility, together with a number of conduct remedies that Steves said would be necessary for the divested entity to compete. The United States filed a statement of interest in June 2018, explaining that the best equitable remedy for an anticompetitive merger is to restore competition by divestiture. The district court ruled that Jeld-Wen should divest the CMI manufacturing facility to remedy the Section 7 violation. Jeld-Wen filed a notice of appeal on April 12, 2019. Appellate briefs are to be filed during the summer of 2019, and the U.S. Court of Appeals for the Fourth Circuit is likely to issue a decision in 2020.

3.3. Statistics on Private and Government Cases Filed

31. According to the 2018 Annual Report of the Director of the Administrative Office of the U.S. Courts, 557 new civil antitrust actions, both government and private, were filed in the federal district courts in FY 2018. *See* Table C-2A of the report, *available at* https://www.uscourts.gov/statistics/table/c-2a/judicial-business/2018/09/30.

3.4. Significant Enforcement Actions

3.4.1. DOJ Criminal Enforcement

32. In FY 2018, the Division charged 28 individuals, including: the president and chief executive officer of a packaged seafood company; 7 executives in the fuel supply industry; one foreign currency exchange trader; 11 executives in the real estate foreclosure industry; 2 executives in the freight forwarding industry; and one realtor and one accountant with criminal antitrust offenses. Twenty-one individuals were sentenced to serve time in jail for an average of nearly 9.5 months. The Division also obtained more than $172 million in criminal fines and penalties from 4 corporations and 53 individuals.

33. The Division's ongoing investigation into price fixing in the packaged seafood market has led to charges against four executives and two companies. Three executives and two companies have pleaded guilty to participating in a conspiracy to fix prices for packaged seafood sold in the U.S. The fourth executive, Christopher Lischewski, the President and Chief Executive Officer of Bumble Bee Foods, was indicted in May 2018. His trial is currently scheduled for November 2019. *See* https://www.justice.gov/opa/pr/bumble-bee-ceo-indicted-price-fixing.

34. In September 2018, a grand jury in the Southern District of Ohio indicted seven associates, managers, and executives for their involvement in a bid-rigging conspiracy that targeted contracts to supply fuel to U.S. military bases in South Korea. The executives were charged with rigging bids and conspiring to defraud the United States. One executive was also charged with obstruction of justice. *See* https://www.justice.gov/opa/pr/more-charges-announced-ongoing-investigation-bid-rigging-and-fraud-targeting-defense.

35. The Division continued to prosecute collusion regarding the manipulation of benchmark interest rates and foreign exchange rates in the financial services industry in FY 2018. In January 2018, BNP Paribas USA Inc. ("BNPP USA"), a subsidiary of BNP

Paribas S.A., pleaded guilty to participating in a price-fixing conspiracy in the foreign currency exchange market, and agreed to pay a $90 million criminal fine. BNPP USA is the fifth major bank to plead guilty as a result of the department's ongoing investigation into antitrust and fraud crimes in the FX market. *See* https://www.justice.gov/opa/pr/bnp-paribas-usa-inc-pleads-guilty-antitrust-conspiracy. In May 2018, a grand jury in the Southern District of New York charged Akshay Aiyer, a former JP Morgan foreign exchange currency trader, with conspiring to fix prices of the Central and Eastern European, Middle Eastern, and African currencies. His trial is currently scheduled for October 2019. *See* https://www.justice.gov/opa/pr/former-currency-trader-indicted-participating-antitrust-conspiracy.

36. Additional charges and guilty pleas were also announced 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 2017, a grand jury in the Northern District of California indicted Nippon Chemi-Con Corporation, a Japanese based electrolytic capacitor manufacturer, for participating in a conspiracy to fix prices for electrolytic capacitors sold to customers in the United States and elsewhere, from as early as September 1997 to January 2014. *See* https://www.justice.gov/opa/pr/leading-electrolytic-capacitor-manufacturer-indicted-price-fixing. Nippon Chemi-Con pleaded guilty to the conspiracy in May 2018, and was later sentenced to pay a $60 million fine and five-year term of probation. *See https://www.justice.gov/opa/pr/leading-electrolytic-capacitor-manufacturer-ordered-pay-60-million-criminal-fine-price-fixing*. In June 2018, Tokuo Tatai, an executive of Japan-based capacitor manufacturer Elna Co. Ltd., pleaded guilty for his role in a conspiracy to fix prices and rig bids for electrolytic capacitors sold to customers in the United States and elsewhere. In October 2018, Tatai was sentenced to serve a prison term of a year and a day. He has agreed to cooperate with the Division's ongoing investigation. *See* https://www.justice.gov/opa/pr/second-executive-pleads-guilty-participating-capacitors-price-fixing-conspiracy. To date, 8 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 pleaded guilty and have been sentenced to pay criminal fines totalling over $150 million. Of the 10 individuals, 2 have pleaded guilty and 8 remain under indictment.

37. The Division continued its ongoing investigation of individuals engaged in bid rigging and fraud at real estate foreclosure auctions throughout the United States in FY 2018. Over the past few years, the Division has secured convictions of 136 individuals throughout the United States, including 12 defendants found guilty at trial. Fines imposed in this investigation total more than $17 million, and 68 individuals were sentenced to 15,292 days in jail, with an average of more than 7 months each. *See e.g.*, https://www.justice.gov/opa/pr/georgia-real-estate-investor-sentenced-16-months-prison-bid-rigging-and-bank-fraud-public (Georgia); https://www.justice.gov/opa/pr/five-real-estate-investors-sentenced-rigging-bids-northern-california-public-foreclosure (California); https://www.justice.gov/opa/pr/seventh-mississippi-real-estate-investor-pleads-guilty-conspiring-rig-bids-public-foreclosure (Mississippi); https://www.justice.gov/opa/pr/real-estate-investor-pleads-guilty-bid-rigging-online-auctions (Florida). Another real estate investor, Yama Marifat, is scheduled for trial in October 2019.

38. The Division announced an investigation into price fixing in the international freight forwarding industry in FY 2018. Freight forwarders arrange for and manage the

shipment of goods, including by receiving, packaging, and otherwise preparing cargo destined for international shipment. In June 2018, the FBI arrested two executives, Jason Handal and Roberto Dip, in Miami, Florida, on charges of conspiracy to fix prices for international freight forwarding services from early March 2014 to March 2015. In July 2018, a federal court ordered Dip detained pending trial in November 2018. *See* https://www.justice.gov/opa/pr/two-freight-forwarding-executives-arrested-miami. Dip and Handal both pleaded guilty in November 2018. *See* https://www.justice.gov/opa/pr/two-freight-forwarding-executives-plead-guilty-fixing-prices .

39. The Division continued its long-running investigation into conspiracies to fix prices and rig bids in the auto parts industry in FY 2018, including securing a $12 million criminal fine for Maruyasu Industries Co. Ltd.'s role in a conspiracy to fix prices, rig bids, and allocate customers for automotive steel tubes incorporated into vehicles sold in the United States and elsewhere. *See* https://www.justice.gov/opa/pr/japanese-auto-parts-company-pleads-guilty-antitrust-conspiracy-involving-steel-tubes. As of May 2019, the auto parts investigation has yielded more than $2.9 billion in fines and convictions of 46 corporations and 32 executives.

40. Four transportation company owners were charged with participating in bid rigging and fraud conspiracies, as a result of the Division's investigation into anticompetitive conduct in the Puerto Rico school bus transportation services industry. In February 2018, three transportation company owners were sentenced to 12 months and a day in jail for participating in bid rigging and fraud conspiracies. The fourth defendant was sentenced by a federal court to a term of two years' probation with the court allowing the defendant to serve the first six months of probation in home confinement because of his medical condition. *See* https://www.justice.gov/opa/pr/four-school-bus-company-owners-sentenced-jail-bid-rigging-and-fraud-involving-puerto-rico.

3.4.2. DOJ Civil Non-Merger Enforcement

Henry Ford Allegiance Health.

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

Knorr-Bremse and Westinghouse Air Brake Technologies Corporation ("Wabtec").

42. On April 3, 2018, the Antitrust Division filed a civil antitrust lawsuit against Knorr-Bremse AG and Wabtec, and simultaneously filed a civil settlement. The complaint alleges that these companies and a third company, Faiveley, reached unlawful agreements not to compete for each other's employees beginning as early as 2009 and continuing until at least 2015, in violation of Section 1 of the Sherman Act. Under the terms of the settlement, Wabtec and Knorr are prohibited from entering, maintaining, or enforcing such "no-poach" agreements with any other companies, subject to limited exceptions. The settlement also requires Knorr and Wabtec to implement rigorous notification and compliance measures to preclude their entry into these types of anticompetitive agreements in the future. *See* https://www.justice.gov/opa/pr/justice-department-requires-knorr-and-wabtec-terminate-unlawful-agreements-not-compete.

3.4.3. FTC Non-Merger Enforcement Actions

In the Matter of Your Therapy Source, Neeraj Jindal and Sheri Yarbray.

43. On July 31, 2018, Your Therapy Source, its owner, and the former owner of a competing staffing company settled FTC charges that they agreed to reduce pay rates for therapists and invited other competitors to collude on the rates. The Texas-based company provides therapist-staffing services to home health agencies. Your Therapy Source and other therapist staffing companies contract with or employ therapists, including physical, occupational, and speech therapists and therapist assistants, to treat patients of home health agencies. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0134/your-therapy-source-neeraj-jindal-sheri-yarbray.

In the Mater of CoreLogic, Inc.

44. On June 15, 2018, the Federal Trade Commission approved a modifying order against California-based real estate data and analytics company CoreLogic Inc., to address deficiencies in the company's compliance with a 2014 order. CoreLogic agreed to the 2014 order to resolve Commission concerns that the company's acquisition of DataQuick Information Systems, Inc. would significantly reduce competition in the market for national bulk data, in violation of the federal antitrust laws. The bulk data that CoreLogic provides to customers includes national assessor and recorder data, which contains information regarding ownership, status and value of real estate properties. The FTC alleges that CoreLogic did not provide all the required data and information by the deadlines in the order. Under the modified order, the Commission is requiring CoreLogic to provide bulk data to RealtyTrac until at least 2022, an additional three years beyond the term in the 2014 order. *See* https://www.ftc.gov/enforcement/cases-proceedings/131-0199/corelogic-inc-matter.

In the Matter of Oregon Lithoprint, Inc.

45. On April 27, 2018 the Federal Trade Commission approved a negotiated final order that prohibits Oregon Lithoprint Inc. from making or attempting to make any agreement to refuse publication of legal notices or to allocate customers who wish to publish these notices. The settlement between the FTC and Oregon Lithoprint Inc., owner of the News-Register, a twice-weekly community newspaper based in Oregon, was first announced in March 2018. The order also prohibits the company from communicating with a competitor

regarding advising customers to place foreclosure notices in the newspaper with the widest circulation in the area where the property is located, and regarding refusing to publish notices for properties located outside the competitor's primary distribution area. The FTC complaint alleged that in August 2016, in violation of federal law, the News Register invited competitor The Newburg Graphic to forego competition and instead divide the Yamhill County market for foreclosure notices based on subscription volumes within different zip codes. *See* https://www.ftc.gov/enforcement/cases-proceedings/161-0230/oregon-lithoprint-inc-news-register.

3.5. Advisory Letters from the FTC

46. Under its Rules, the Commission or its staff may offer industry guidance in the form of advisory opinions regarding proposed conduct in matters of significant public interest. 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* http://www.ftc.gov/policy/advisory-opinions.

47. On November 7, 2017, FTC staff issued an opinion advising Crouse Health Hospital that an exemption under the Non-Profit Institutions Act, or NPIA, applied to its proposal to sell discounted pharmaceutical products to the employees and retirees, as well as their dependents, of its affiliated medical practice. The NPIA provides an exemption for certain non-profit entities to the Robinson-Patman Act, a U.S. antitrust law that prohibits anticompetitive price discrimination. Crouse Health Hospital formed its affiliate, Crouse Medical Practice, to develop an integrated medical service system to help further its mission to improve access to quality health care for patients in the community. The staff letter concludes that Crouse Health Hospital's proposal would qualify for the exemption because the hospital is an eligible entity under the NPIA. Staff explained that, consistent with Supreme Court and prior Commission precedent, offering the NPIA-discounted pharmaceuticals to Crouse Medical Practice to employees, retirees and their dependents appears to qualify under the NPIA's "own use" requirement. *See* https://www.ftc.gov/policy/advisory-opinions/letter-markus-h-meier-assistant-director bureau-competition-concerning

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

4.1. Select Significant Merger Matters

4.1.1. FTC Merger Investigations and Challenges

In the Matter of Grifols, S.A., and Grifols Shared Services North America, Inc.

48. On September 18, 2018, the Commission approved a final order settling charges that Grifols S.A.'s acquisition of Biotest US Corporation would be anticompetitive and violate federal antitrust law. Grifols is a global healthcare company based in Spain and Biotest US is a healthcare company based in Florida. According to the complaint, the acquisition, as originally proposed, would have given Grifols a monopoly in the markets for collection of human blood plasma in three cities in Nebraska, Georgia, and Ohio. The settlement requires Grifols to divest its plasma collection centers in these cities to KedPlasma, a subsidiary of Kedrion Biopharma Inc., a leading manufacturer of protein products and the fifth-largest producer of plasma proteins worldwide. The complaint also

alleged that, absent a remedy, the acquisition would have harmed the U.S. market for hepatitis B immune globulin (HBIG). Grifols' proposed acquisition of Biotest US raised competitive concerns due to Biotest US' partial ownership of ADMA Biologics, Inc., which has the largest share of HBIG sales in the U.S. Biotest US transferred its ownership share in ADMA to The Biotest Divestiture Trust, the parent company of Biotest US. Grifols is only acquiring Biotest US and not its parent, and under the acquisition, Grifols will not acquire any shares of ADMA. The consent agreement prohibits Grifols, without prior notification, from acquiring any ownership interest in ADMA or obtaining any rights to nominate or obtain representation on the ADMA Board of Directors. The consent agreement also requires Grifols to provide prior notice to the Commission if it seeks to purchase any ADMA stock or re-purchase any of the divested plasma collection centers. *See* https://www.ftc.gov/enforcement/cases-proceedings/181-0081/grifols-sa-grifols-shared-services-north-america-inc-matter.

In the Matter of Tronox/Cristal USA.

49. On September 5, 2018, the FTC successfully obtained a preliminary injunction from the U.S. District Court for the District of Columbia, which prevented Tronox Limited and Cristal, two of the largest suppliers of the white pigment chloride process titanium dioxide ("TiO2"), from consummating their proposed acquisition before the Administrative Law Judge ("ALJ") issued a decision in the matter. The District Court ruled that the Commission showed a likelihood that the proposed transaction would substantially lessen competition in the TiO2 market and presented credible evidence that the merger would have created a highly concentrated market in which producers faced greater incentives to engage in strategic output withholding. In December 2017, the FTC filed an administrative complaint, alleging that Tronox's acquisition of Cristal, for $1.67 billion and a 24 percent stake in the combined entity, would violate the antitrust laws by significantly reducing competition in the North American market for chloride process TiO2. The FTC also alleged in the complaint that the acquisition, if consummated, would increase the risk of coordinated action among the remaining competitors and would increase the likelihood of future anticompetitive output reductions by Tronox. The ALJ issued an initial decision in December 2018, finding the proposed acquisition unlawful. The ALJ ruled that the proposed acquisition would have increased the likelihood of anticompetitive coordination among chloride process TiO2 suppliers in North America and would have increased Tronox's unilateral incentive and ability to curtail production of chloride process TiO2 in North America. The matter was on appeal before the Commission, but was eventually withdrawn from adjudication to consider a settlement. On April 10, 2019, the parties agreed to settle FTC charges by divesting 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.

In the Matter of CRH plc.

50. On August 3, 2018, the FTC approved a final order settling charges that Dublin, Ireland-based construction company CRH plc's $3.5 billion acquisition of its Kansas-based competitor Ash Grove Cement Company likely would be anticompetitive. According to the complaint, the acquisition would harm competition in three markets: portland cement in Montana; sand and gravel in the Omaha, Nebraska/Council Bluffs, Iowa region; and crushed limestone in the Johnson County, Kansas region. Under the terms of the settlement, CRH is required to divest cement assets in Montana to Grupo Cementos de

Chihuahua SAB de CV, sand and gravel assets in Nebraska to Martin Marietta Materials, Inc., and crushed limestone assets in Kansas to Summit Materials, Inc. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0230-c-4653/crh-plc.

In the Matter of Air Medical Group, KKR North America, and AMR Holdco.

51. On May 3, 2018, the FTC approved a final order settling charges that a proposed merger is likely to harm competition among air ambulance transport services that transfer patients between medical facilities among the Hawaiian islands. According to the complaint, patients depend on air ambulance services when they need medical or surgical care that is not available in their local communities. Without a remedy, the acquisition would have combined the only two providers of air ambulance transport services operating in Hawaii and would lessen competition and create a monopoly in the market for inter-facility air ambulance services in Hawaii, in violation of federal antitrust laws. The FTC worked with the Hawaii Department of the Attorney General on the case. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0217-c-4642/air-medical-group-kkr-north-america-amr-holdco.

In the Matter of Seven & i Holdings, 7-Eleven and Sunoco.

52. On March 29, 2018, the FTC approved a final order final order settling charges that the proposed $3.3 billion acquisition of 1,100 Sunoco retail fuel outlets by the Tokyo-based parent company of 7-Eleven would violate federal antitrust laws. According to the complaint, the acquisition as proposed by Seven & I Holdings Co. would harm competition in 76 local markets across 20 metropolitan statistical areas. Under the terms of the final order, 7-Eleven is required to sell 26 retail fuel outlets that it owns to Sunoco, and Sunoco is required to retain 33 fuel outlets that 7-Eleven otherwise would have acquired. Sunoco intends to convert the acquired or retained stations from company-operated sites to commission agent sites. Sunoco will have full control over fuel pricing and supply at all of these locations. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0126-c-4641/seven-i-holdings-7-eleven-sunoco.

In the Matter of CDK Global and Auto/Mate.

53. On March 20, 2018, the FTC issued an administrative complaint charging that a proposed merger between two specialized software vendors would violate federal antitrust laws. According to the complaint, CDK Global, Inc.'s proposed acquisition of Auto/Mate would reduce competition in an already concentrated market, eliminating the substantial current competition between CDK and Auto/Mate, and between Auto/Mate and other market participants. The complaint also alleged that Auto/Mate was poised to become an even stronger competitive threat in the future, so that existing, current competition between the parties understates the most likely anticompetitive effects of this transaction. The Commission also authorized FTC staff to seek a temporary restraining order and a preliminary injunction in federal court to prevent the parties from consummating the merger, and to maintain the *status quo* pending the administrative proceeding. CDK and Auto/Mate subsequently notified the FTC that they have abandoned the proposed transaction. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0156/cdk-global-automate-matter.

In the Matter of Agrium Inc., Potash Corporation, and Nutrien Ltd.

54. On February 7, 2018, the FTC approved a final order settling charges with regard to the merger of Canadian fertilizer and chemical companies Potash Corporation of Saskatchewan Inc. and Agrium Inc. The charges alleged that the merger would likely harm competition in the North American market for superphosphoric acid, a highly concentrated form of phosphoric acid that contains the essential crop nutrient phosphate and the market for "65-67 percent concentration nitric acid" sold to customers near and to the east of the parties' nitric acid plants in Ohio. The newly merged firm agreed to divest two U.S. production facilities and related assets to settle FTC charges. Commission staff and the staff of antitrust agencies in Canada and China worked cooperatively to analyze the proposed transaction. *See* https://www.ftc.gov/enforcement/cases-proceedings/161-0232/agrium-inc-potash-corporation-nutrien-ltd.

In the Matter of Becton, Dickinson and Company / C.R. Bard, Inc.

55. On January 26, 2017, the FTC approved a final order settling charges that medical technology company Becton, Dickinson's proposed $24 billion acquisition of competitor C. R. Bard would violate federal antitrust laws by harming competition in two U.S. markets for certain medical devices. Specifically, the markets at issue concern tunnelled home drainage catheter systems, which are used to treat recurrent fluid build-up in the lungs and abdomen, and soft tissue core needle biopsy devices, which are typically used by doctors to remove small samples of tissue from soft tissue organs. Under the terms of the order, Becton, Dickinson's soft tissue core needle biopsy device business and Bard's tunneled home drainage catheter system business would both be divested to Utah-based medical device supplier Merit Medical Systems, Inc. Commission staff and the staff of antitrust agencies in China, the European Union, Mexico, and South Africa worked cooperatively to analyze the proposed transaction and remedies. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0140/becton-dickinson-company-cr-bard-inc-matter.

In the Matter of Otto Bock HealthCare North America, Inc.

56. On December 20, 2017, the FTC issued an administrative complaint challenging the merger of two prosthetics manufacturers that are top sellers of prosthetic knees equipped with microprocessors. According to the FTC's complaint, Otto Bock's consummated acquisition of FIH Group Holdings (owner of Freedom Innovations) would harm competition in the U.S. market for microprocessor prosthetic knees by eliminating head-to-head competition between the two companies, removing a significant and disruptive competitor, and entrenching Otto Bock's position as the dominant supplier. Microprocessor knees, which use microprocessors to adjust the stiffness and positioning of the joint in response to variations in walking rhythm and ground conditions, provide a stable platform for amputees. Compared to other products, microprocessor prosthetic knees reduce the risk of falling, cause less pain, and promote the health and function of the sound limb. In addition to issuing an administrative complaint, the Commission authorized agency staff to seek a temporary restraining order, preliminary injunction, and ancillary relief in federal court, should doing so be necessary to ensure the Freedom Innovations business remains viable and to preserve the Commission's ability to order effective relief. On May 7, 2019, Chief Administrative Law Judge D. Michael Chappell upheld the Commission's complaint, requiring Otto Bock to divest the assets of Freedom Innovations to an approved buyer. To ensure that the buyer can operate Freedom Innovations in the same way that it has been run, Otto Bock is required under the order to hold Freedom

Innovation's assets separately, provide transitional services to the buyer, and allow the buyer the opportunity to recruit and employ all Freedom Innovation employees, The order also allows the Commission to appoint a monitor to ensure Otto Bock's compliance with the order, and a divestiture trustee to ensure compliance with the divestiture agreement. Otto Bock appealed the ruling, and the case is now on appeal before the Commission. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations.

In the Matter of Mars, Incorporated and VCA Inc.

57. On December 19, 2017, the FTC approved a final order to settle charges that Mars, Incorporated's $9.1 billion acquisition of pet care company VCA Inc. would violate federal antitrust laws. Under the Order, Mars is required to divest 12 clinics in 10 localities to three divestiture buyers. The complaint alleged that if the acquisition had taken place without a remedy, it would have substantially lessened competition for certain specialty and emergency veterinary services in 10 U.S. localities by eliminating head-to-head competition between Mars specialists in the area and those of VCA. In response to comments received during the designated public comment period, the Commission modified the proposed order. The change in the order allows long-standing arrangements that permit veterinarians at different clinics to cover for each other temporarily to continue, while maintaining the provisions necessary to ensure an effective remedy. Specifically, the modified order adds language to allow on-call or "relief" veterinarians to perform work at both Mars clinics and divested clinics. *See* https://www.ftc.gov/enforcement/cases-proceedings/171-0057/mars-incorporated-vca-inc.

In the Matter of Abbott Laboratories and Alere, Inc.

58. On November 14, 2017, the FTC approved a final order to remedy the anticompetitive effects resulting from Abbott's $8.3 billion acquisition of Alere. Under the consent order, the parties will divest two point-of-care medical device product lines: point-of-care blood gas testing systems (which measure blood pH, oxygen, carbon dioxide, and electrolyte levels) and point-of-care cardiac marker testing systems (which measure specific proteins in the blood to assess whether a patient is having a heart attack or experiencing congestive heart failure). In its complaint, the FTC alleged that the proposed acquisition would likely harm competition in the United States for these two types of devices. Commission staff and the staff of antitrust agencies in Canada and the European Union worked cooperatively to analyze the proposed transaction and remedies. *See* https://www.ftc.gov/enforcement/cases-proceedings/161-0084/abbott-laboratories-alere-inc.

4.1.2. DOJ Merger Investigations and Challenges

Walt Disney/Twenty First Century Fox.

59. On June 27, 2018, the Division filed a civil antitrust lawsuit in the U.S. District Court for the Southern District of New York to block the acquisition by The Walt Disney Company ("Disney") of certain assets and businesses of Twenty-First Century Fox, Inc. ("Fox"), including Fox's ownership of, or interests in, its regional sports networks ("RSNs"), FX cable networks, National Geographic cable networks, television studio, Hulu, film studio, and internal television businesses. The complaint alleged that the acquisition would have eliminated the head-to-head competition between Disney's ESPN franchise of networks and Fox's portfolio of twenty-two RSNs in the licensing of cable

sports programming to multi-channel video programming distributors ("MVPDs") in 25 Designed Market Areas ("DMAs") across the United States. This loss in competition likely would have resulted in increased MVPD licensing fees in each DMA market, and because licensing fees typically are passed on to consumers, higher subscription fees for MVPD customers. The proposed final judgment requires the parties to divest all of Fox's interests in its 22 RSNs. *See* https://www.justice.gov/opa/pr/walt-disney-company-required-divest-twenty-two-regional-sports-networks-order-complete.

CRH Americas Materials/Pounding Mill Quarry.

60. On June 22, 2018, the Division challenged CRH America Materials Inc.'s ("CRH") proposed acquisition of quarry assets from Pounding Mill Quarry Corporation ("Pounding Mill") and simultaneously filed a proposed settlement. The complaint alleged that, as originally structured, the acquisition would have combined two of only three competitive sources of DOT qualified aggregate in southern West Virginia resulting in higher prices for aggregate customers in the area. The complaint also alleged that the acquisition would have strengthened CRH's virtual monopoly in the supply of asphalt concrete in southern West Virginia by eliminating Pounding Mill as a source of aggregate for its competitor. This loss in competition would have provided CRH with the ability and incentive to disadvantage its competitor by denying it access to aggregate, reliable delivery and competitive prices, resulting in higher prices for the sale of asphalt concrete in the area. The decree required CRH to divest Pounding Mill's quarry in Rocky Gap, Virginia. The court entered the final judgment on November 28, 2019. *See* https://www.justice.gov/opa/pr/justice-department-requires-crh-divest-rocky-gap-quarry-order-proceed-pounding-mill.

Bayer/Monsanto.

61. On May 29, 2018, the Division challenged Bayer AG's ("Bayer") proposed $66 billion acquisition of Monsanto Company ("Monsanto"). At the same time, the Department filed a proposed settlement that resolved the competitive concerns alleged. Bayer and Monsanto were two of the largest agricultural companies in the world. The complaint alleged that the acquisition would have substantially lessened competition in 17 agricultural product markets within the following four broad categories: (1) genetically modified seeds and traits; (2) foundational herbicides; (3) seed treatments; and (4) vegetable seeds. The loss of competition in each of the affected markets would have resulted in higher prices, less innovation, fewer choices, and lower-quality products for American farmers and customers. Under the terms of the decree, Bayer agreed to divest businesses and assets valued at approximately $9 billion to BASF. The required divestitures included the Bayer businesses that competed with Monsanto; Bayer seed treatment businesses that, when combined with Monsanto's seed business, would have given the company the incentive and ability to harm competition by raising the prices it charges rival seed companies; intellectual property and research capabilities and additional assets that were needed to give BASF the scale and scope to compete with the combined company. On February 8, 2019, the court entered the final judgment. *See* https://www.justice.gov/opa/pr/justice-department-secures-largest-merger-divestiture-ever-preserve-competition-threatened.

Martin Marietta/Bluegrass.

62. On April 25, 2018, the Division and the State of Maryland challenged Martin Marietta Materials, Inc.'s ("Martin Marietta") proposed acquisition of Bluegrass Materials Company, LLC ("Bluegrass"). At the same time, the Division filed a proposed settlement

resolving the competitive concerns. The complaint alleged that the acquisition, as initially structured, would have eliminated head-to-head competition between Martin Marietta and Bluegrass in supplying DOT-qualified aggregate to customers in and immediately around Forsyth and north Fulton County, Georgia, and in and immediately around Washington County, Maryland. This loss of competition likely would have resulted in increased prices and decreased customer service for aggregate customers in these areas. The final judgment, which was entered by the court on July 16, 2018, required Martin Marietta to divest quarries and related assets in Georgia and Maryland. *See* https://www.justice.gov/opa/pr/justice-department-requires-martin-marietta-divest-quarries-preserve-competition-connection.

Vulcan Materials/Aggregates USA.

63. On December 22, 2017, the Division along with the State of Tennessee challenged the proposed acquisition of SPO Partners II, L.P.'s aggregates business, Aggregates USA, LLC, by Vulcan Materials Company. At the same time, the Division filed a proposed settlement that resolved the competitive concerns alleged. The complaint alleged that the acquisition, as originally structured, would have combined the only two potential suppliers of Tennessee and Virginia DOT qualified aggregate in the Knoxville, Tennessee; Tri-Cities, Tennessee; and Abingdon, Virginia markets. This combination likely would have substantially lessened competition in these markets for DOT-qualified aggregate resulting in higher prices and poorer customer service for aggregate customers in these areas. Under the terms of the final judgment, entered by the court on April 6, 2018, the parties agreed to divest 13 active quarries and yards and four inactive quarries in east Tennessee and southwest Virginia. *See* https://www.justice.gov/opa/pr/justice-department-requires-vulcan-divest-17-aggregate-facilities-order-acquire-aggregates.

TransDigm/SCHROTH.

64. On December 21, 2017, the Division filed a civil antitrust lawsuit challenging TransDigm Group Inc.'s ("TransDigm") consummated acquisition of SCHROTH Safety Products GmbH ("SCHROTH") from Takata Corporation ("Takata"). At the same time the complaint was filed, the Division filed a proposed final judgment requiring TransDigm to divest all of the SCHROTH assets it acquired from Takata. The complaint alleged that the consummated transaction combined TransDigm subsidiary, AmSafe Inc., the dominant supplier of restraint systems for commercial aircraft, with its only meaningful competitor, SCHROTH. As a result, the complaint alleged that the acquisition would likely lessen competition substantially for the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide. This loss of competition likely would have resulted in higher prices for several types of restraint systems used on commercial airplanes and diminished innovation in the development of new airplane restraints. The court entered the final judgment on April 4, 2018. *See* https://www.justice.gov/opa/pr/justice-department-requires-transdigm-group-divest-airplane-restraint-businesses-acquired.

CenturyLink/Level 3.

65. On October 2, 2017, the Department filed a civil antitrust lawsuit in the U.S. District Court for the District of Columbia to block the proposed $34 billion acquisition of Level 3 Communications, Inc. by Century Link, Inc. At the same time, the Department filed a proposed settlement that resolved the competitive concerns alleged. According to the Department's complaint, the combined company would have reduced competition for fiber-optic-based telecommunications services in Albuquerque, Boise, and Tucson as well as for the sale of dark fiber (fiber-optic cable with no electronics attached to it) along certain

intercity routes across the U.S., including routes traversing Alabama, Arizona, California, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Nevada, New York, North Carolina, Ohio, Oregon, Tennessee, Texas, Utah, and Virginia. The complaint states that this reduction in competition likely would have led to higher prices, lower quality, and reduced access for consumers. The Department's settlement requires CenturyLink, Inc. and Level 3 Communications, Inc. to divest Level 3's telecommunications networks in Albuquerque, Boise, and Tucson, and to offer long-term leases called indefeasible rights of use (IRUs) for dark fiber along 30 intercity routes in order for the companies to proceed with CenturyLink's acquisition of Level 3. The transaction was also subject to review by the Federal Communications Commission ("FCC"). The Department coordinated with the FCC throughout its investigation. The court entered the final judgment on March 6, 2018. *See* https://www.justice.gov/opa/pr/justice-department-requires-divestitures-order-centurylink-proceed-its-acquisition-level-3.

Entercom/CBS.

66. On November 1, 2017, the Division filed a civil antitrust lawsuit challenging Entercom's proposed acquisition of certain broadcast radio stations from CBS Corporation ("CBS"), and simultaneously filed a proposed settlement that would resolve the competitive harm alleged in the lawsuit. The transaction, as originally structured, would have eliminated the substantial head-to-head competition between Entercom and CBS in the sale of radio advertising to advertisers targeting English-language listeners in the Boston, Sacramento, and San Francisco Designated Market Areas ("DMAs") (collectively, the "Local Markets"). This loss in competition likely would have resulted in higher prices to advertisers in these markets. The Division's settlement required Entercom Communications Corp. to divest certain radio stations to Department-approved buyers in the Local Markets. *See* https://www.justice.gov/opa/pr/justice-department-requires-divestitures-radio-stations-boston-san-francisco-and-sacramento.

5. International antitrust cooperation and outreach

5.1. Global Procedural Fairness Initiative

67. Promoting procedural fairness in antitrust enforcement globally has been a long-term objective of the Antitrust Agencies for many years. In FY 2018, this topic came increasingly into focus, most notably through the proposal for a Multilateral Framework on Procedures ("MFP"). The goal of the MFP initiative was to establish fundamental procedural norms that are truly universal, and to achieve commitment from participating competition agencies to abide by these norms. The proposal was animated by standards that are widely accepted across the globe and that most competition agencies already recognize in some form. The proposal combined this set of universal procedural fairness norms with adherence and review mechanisms, under which the participants commit to these norms and agree to cooperate with each other regarding their implementation.

68. On June 1, 2018, following intense discussions with a group of leading competition agencies from across the globe, Assistant Attorney General Delrahim outlined the MFP initiative in a speech at the Council on Foreign Relations. *See* https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-global-antitrust-enforcement?utm_medium=email&utm_source=govdelivery. The Antitrust Agencies subsequently engaged in discussions and meetings with many

dozen competition agencies from all over the world, including multilateral meetings with over 40 agencies in New York and Paris in September and November 2018. These discussions demonstrated unanimous support for the substantive principles set forth in the MFP proposal. Several partner agencies indicated a preference, however, for implementing the text within the International Competition Network ("ICN"), in order to take advantage of existing institutions and processes, and to reduce administrative burdens on participants.

69. Over several months, the Antitrust Agencies worked closely with the ICN chair and the whole ICN Steering Group to find ways to implement both the substantive norms contained in the MFP proposal, as well as meaningful adherence and review mechanisms within an ICN instrument. The text that resulted from this process, the Framework on Competition Agency Procedures (CAP), incorporates the substantive principles of the original MFP, largely verbatim, and combines these principles with adherence and review provisions that resemble the parallel mechanisms proposed under the MFP. The ICN Steering Group adopted the final text of the CAP on April 3, 2018. *See* https://www.internationalcompetitionnetwork.org/featured/framework-for-competition-agency-procedures/. The CAP became open for competition agencies from around the world – both ICN members as well as non-member agencies – to join as participants on May 1, 2019, and it came formally into effect on May 15, 2019 at the 2019 ICN Annual Conference in Cartagena, Colombia. More than 65 competition agencies from all over the world have joined the CAP as founding members.

5.2. International Antitrust Cooperation Developments

70. In FY 2018, 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. On September 27, 2018, the Agencies participated in high level bilateral meetings with senior level officials from the European Commission in Washington, DC. Discussions at the meetings included digital markets, two-sided markets and platforms, data protection rules and cooperation, the proposed Multilateral Framework on Procedures, and future opportunities for cooperation and convergence on merger investigations. The U.S. and E.U. competition agencies have met regularly at the most senior level to promote cooperation and convergence and enhance their close relationship enshrined in the 1991 U.S.- E.U. agreement on the application of their competition laws. *See* https://www.justice.gov/opa/pr/officials-us-and-european-commission-participate-bilateral-meetings-washington-dc-discuss.

72. On February 1, 2018, the Agencies participated in high level bilateral meetings in Beijing, China with officials responsible for China's three anti-monopoly agencies – National Development and Reform Commission ("NDRC") Vice Minister Hu Zucai, Ministry of Commerce ("MOFCOM") Assistant Minister Li Chenggang, and State Administration for Industry and Commerce ("SAIC") Vice Minister Wang Jiangping. The meetings allowed participating agencies to exchange information and views on antitrust developments and priorities, as well as to discuss the role of competition enforcement and advocacy in promoting innovation. This was the fourth joint dialogue between the agencies

since they signed an antitrust memorandum of understanding on July 27, 2011. *See* https://www.ftc.gov/news-events/press-releases/2018/02/ftc-justice-department-officials-meet-chinese-anti-monopoly.

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

74. During FY 2018, the FTC cooperated on 43 merger and anticompetitive conduct investigations of mutual concern with counterpart agencies from 19 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.

75. The Division's cooperation in FY 2018 included hundreds of hours in separate staff-to-staff and management level calls, as well as several days of in-person meetings. In total, the Division cooperated with 14 international counterparts in 16 merger and civil non-merger investigations in FY 2018. On the criminal side, the Division collaborated with competition agencies in 13 jurisdictions on cross-border investigations and global cartel enforcement.

76. During FY 2018, the Agencies continued to play leadership roles in the International Competition Network ("ICN') and served as ICN Steering Group Members. At the ICN's annual conference on March 20-23, 2018 in New Delhi, India, the ICN adopted guiding principles for procedural fairness in competition agency enforcement; revised merger recommended practices addressing international enforcement cooperation, timing of notification, and review periods; and presented the results of a member survey on vertical merger assessment and related economic issues. The Unilateral Conduct Working Group presented an interim report examining a series of hypothetical vertical restraints and their effect on competition and potential resulting efficiencies. *See* https://www.ftc.gov/news-events/press-releases/2018/03/international-competition-network-adopts-guiding-principles.

77. During FY 2018, the Division co-chaired the ICN 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.

78. In FY 2018, the FTC continued to co-chair the ICN's Merger Working Group ("MWG") with the UK Competition and Markets Authority and the Japan Fair Trade Commission. The FTC co-leads a multi-year initiative to update and expand the ICN's Recommended Practices for Merger Merger Notification and Review Procedures and Merger Analysis, providing sound benchmarks for merger rules and procedures internationally. The FTC also serves as co-chair of the ICN's implementation working group to promote the use of ICN recommendations and work product. Notably, the FTC led a project that resulted in the ICN's 2018 adoption of guiding principles for procedural fairness in antitrust investigations. 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.

5.3. Outreach

79. In FY 2018, the Agencies continued to engage in technical cooperation on competition law and policy matters with their international counterparts. The FTC continued its robust technical assistance program in which it shares the agency's experience with competition agencies around the world, conducting 24 technical assistance missions in 17 jurisdictions, including regional programs in Africa, Central America, and Eastern Europe. The FTC also placed resident advisors in the competition agencies of India, the Philippines, and Ukraine.

80. 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 2018, the FTC hosted ten international fellows and interns from eight 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.

81. The Division's technical assistance programs provide support to jurisdictions as they develop their competition laws, agencies, and enforcement systems, offering practical advice on a myriad of topics such as merger enforcement, remedies, and leniency programs. In FY 2018, Division attorneys and economists led programs in fifteen countries including Guatemala, El Salvador, Honduras, Georgia, Mexico, Hungary, India, and the Philippines. A total of 24 Division officials participated in 22 different technical cooperation programs, including one long-term advisor in Ukraine.

82. In FY 2018, the Division expanded its 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 has hosted VIEPs from the Australian Competition and Consumer Commission ("ACCC") and the Japan Fair Trade Commission ("JFTC").

6. Regulatory and Trade Policy Matters

6.1. Regulatory Policies

6.1.1. DOJ Activities: Federal and State Regulatory Matters

83. On September 10, 2018, in response to a state legislator's request for comment, the Department provided guidance to the Maryland state legislature with respect to professional standards setting for the medical profession. Because medical doctors have raised concerns that the requirements to maintain specialty certification from private certifying bodies have become increasingly costly, the State of Maryland was contemplating legislation that would restrict hospitals and insurance companies from using information about a medical doctor's maintenance of certification record. The Division encouraged the Maryland legislature to consider ways to facilitate new entry by and competition among legitimate certifying bodies, while continuing to allow hospitals and insurers to decide whether to consider a medical doctor's maintenance of certification record when making business decisions, such as granting hospital privileges. The Division

also encouraged certifying bodies, which are frequently governed by active market participants and may have market power, to ensure that their policies promote procompetitive goals, that their standards are applied objectively, and that input is available from, and decision-making is vested in, groups that represent a balance among the various relevant stakeholders. *See* https://www.justice.gov/atr/page/file/1092791/download.

6.1.2. FTC Staff Activities: Federal and State Regulatory Matters

Protect Consumers and Promote Competition.

84. On July 18, 2018, in testimony before the U.S. House Energy and Commerce Subcommittee on Digital Commerce and Consumer Protection, the Federal Trade Commission described its work to protect consumers and promote competition. Testifying on behalf of the Commission, FTC Chairman Joe Simons and Commissioners Maureen K. Ohlhausen, Noah Joshua Phillips, Rohit Chopra, and Rebecca Kelly Slaughter stressed the agency's commitment to maximizing its resources, enhancing its effectiveness, and anticipating and responding to changes in the marketplace. They noted that during FY 2017, the Commission returned over $543 million in redress to consumers and deposited $94 million into the U.S. Treasury, reflecting collections in both consumer protection and competition matters. *See* https://www.ftc.gov/news-events/press-releases/2018/07/ftc-testifies-house-energy-commerce-subcommittee-about-agencys.

Occupational Licensing.

85. On February 7, 2018, FTC staff recommended that Alaska repeal its certificate-of-need ("CON") laws, which require healthcare providers to obtain state approval before expanding, establishing new facilities or services, or making certain large capital expenditures. In testimony presented to the Alaska Senate Committee on Labor & Commerce, FTC staff endorsed an April 2017 joint FTC/Department of Justice statement on Alaska Senate Bill 62, which would repeal the Alaska CON laws. The staff's testimony, like the 2017 FTC/DOJ statement, was provided at the request of Alaska State Senator David Wilson. *See* https://www.ftc.gov/news-events/press-releases/2018/02/ftc-staff-testifies-favor-effort-repeal-alaska-laws-limit.

Telehealth.

86. On November 2, 2017, FTC staff submitted a comment to the Department of Veterans Affairs ("VA") in support of its proposed rule that would clarify that VA health care practitioners may provide telehealth services to beneficiaries notwithstanding any contrary state licensing laws, rules, or requirements. The comment underscores that the proposed rule would likely increase access to telehealth services, increase the supply of telehealth providers, increase the range of choices available to patients, improve health care outcomes, and reduce the VA's health care costs, thereby benefiting veterans, especially those in underserved areas or who are unable to travel. The comment notes that VA's rulemaking would also send an important signal to non-VA health care providers, state legislatures, employers, patients, and others regarding the tremendous potential of telehealth to promote competition and improve access to care. *See* https://www.ftc.gov/news-events/press-releases/2017/11/ftc-staff-comment-supports-va-telehealth-rule-will-increase.

Net Neutrality.

87. On November 1, 2017, Acting FTC Chairman Maureen K. Ohlhausen and Commissioner Terrell McSweeny testified before the U.S. House of Representatives Judiciary Committee Subcommittee on Regulatory Reform, Commercial and Antitrust Law on the role of antitrust enforcement in the debate over network neutrality. In written testimony on behalf of the Commission, Acting Chairman Ohlhausen and Commissioner McSweeny described the ongoing debate over network neutrality, which relates to the treatment of Internet traffic that travels over the networks of broadband Internet access providers. The testimony notes that the FTC has jurisdiction to protect consumers and maintain competition in most sectors of the economy but does not have authority over common carrier activities. In light of this, the FCC's 2015 reclassification decision resulted in the FTC losing jurisdiction over the provision of Internet access service. *See* https://www.ftc.gov/news-events/press-releases/2017/11/ftc-testifies-house-judiciary-subcommittee-net-neutrality.

6.2. DOJ and FTC Trade Policy Activities

88. 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, National Security, and Environmental and Natural Resources Divisions) on international trade and investment issues that affect those components or the Department as a whole.

89. The Agencies also participate in negotiations and working groups related to regional and bilateral trade agreements. In FY 2018, the Agencies participated in the U.S. delegation that negotiated the competition chapter of the United States-Mexico-Canada Agreement. In addition, the Agencies serve on U.S. interagency groups that address U.S.-China economic and trade issues and shape the G20 and G7 outcomes on digital economy issues.

7. New Studies Related to Antitrust Policy

7.1. FTC Conferences and Reports

7.1.1. Conferences and Workshops

Hearings on Competition and Consumer Protection in the 21st Century.

90. In FY 2018, the FTC began its *Hearings on Competition and Consumer Protection in the 21st Century*, a series of hearings that examines whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection enforcement priorities of the Commission. The Commission's inaugural hearing, held on September 13, 2018, included discussions and presentations on the current landscape of competition and consumer protection law and policy; whether the U.S. economy has become more concentrated and less competitive; the regulation of consumer data; antitrust law and the consumer welfare standard; and the analysis of vertical mergers. The second hearing, which occurred on September 21, 2018, examined monopsony and the state of U.S.

antitrust law. *See* https://www.ftc.gov/news-events/events-calendar/2018/09/ftc-hearing-1-competition-consumer-protection-21st-century and https://www.ftc.gov/news-events/events-calendar/2018/09/ftc-hearing-2-competition-consumer-protection-21st-century.

Residential Real Estate Brokerage Competition.

91. On June 5, 2018, the Agencies held a joint public workshop to explore competition issues in the residential real estate brokerage industry. Buying or selling a home is one of the biggest financial transactions most consumers make in their lives, and the residential real estate brokerage industry has seen significant change in recent years, including the emergence of new business models. The workshop focused on developments since the publication of the FTC and DOJ's Report on Competition in the Real Estate Brokerage Industry in 2007. *See* https://www.ftc.gov/news-events/events-calendar/2018/04/whats-new-residential-real-estate-brokerage-competition-ftc-doj.

Contact Lens Workshop.

92. On March 7, 2018, the FTC held a public workshop to explore issues regarding competition in the contact lens marketplace, consumer access to contact lenses, prescription release and portability, and related subjects. The workshop was held in conjunction with the Commission's regulatory review of the Contact Lens Rule. A Notice of Proposed Rulemaking (NRPM) was issued in December 2016 announcing proposed changes to the Commission's Contact Lens Rule. The Rule, in place since August 2004, helps to promote competition in the retail sale of contact lenses by facilitating consumers' ability to comparison shop for contact lenses. It imposes obligations on both eye-care prescribers and contact lens sellers. *See* https://www.ftc.gov/news-events/events-calendar/2018/03/contact-lens-rule-evolving-contact-lens-marketplace.

Competition in Prescription Drug Markets Workshop.

93. On November 8, 2017, the FTC hosted a workshop titled, "Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics." The workshop focused on generic drug markets, and considerations that may preclude entry after relevant patents have expired. It also addressed how intermediaries in the pharmaceutical supply chain, such as pharmacy benefit managers ("PBMs") and group purchasing organizations ("GPOs"), affect competition. *See* https://www.ftc.gov/news-events/events-calendar/2017/11/understanding-competition-prescription-drug-markets-entry-supply.

Occupational Licensing Workshop.

94. On November 7, 2017, the FTC's Economic Liberty Task Force hosted a roundtable to examine empirical evidence on the effects of occupational licensure. Licensing restrictions – typically embodied in state statutory law, regulations, and administration – define the occupation's scope of practice and establish conditions for entry into an occupation. *See* https://www.ftc.gov/news-events/events-calendar/2017/11/effects-occupational-licensure-competition-consumers-workforce.

Tenth Annual Microeconomics Conference.

95. On November 2-3, 2017, the FTC held its tenth 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/2017/11/tenth-annual-federal-trade-commission-microeconomics-conference.

7.1.2. Reports

Occupational License Portability.

96. On September 24, 2018, the FTC issued a staff report examining ways to reduce the burden on licensed workers moving to new states or wishing to market services across state lines. The report, entitled "Options to Enhance Occupational License Portability," is part of the FTC's Economic Liberty Task Force initiative, which aims to reduce hurdles to job growth and labor mobility by encouraging states to reduce unnecessary and overbroad occupational licensing regulation. The Report examines interstate compacts and model laws that states can use to improve the portability of occupational licenses. It considers procedures to facilitate multistate practice by those who already hold a valid license in one state and specific initiatives to reduce the burden of state relicensing on military spouses. *See* https://www.ftc.gov/news-events/press-releases/2018/09/ftc-staff-report-examines-ways-improve-occupational-license.

Ethanol Report.

97. On November 21, 2017, the FTC issued its 2017 Report on Ethanol Market Concentration, an annual report required by the Energy Policy Act of 2005 "to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior." As in prior years, the 2017 report concludes "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 to coordinate on price and output levels, is unlikely." *See* https://www.ftc.gov/news-events/press-releases/2017/11/ftc-issues-annual-report-ethanol-market-concentration-2017.

Patent Settlements.

98. On November 1, 2017, the FTC issued a report analyzing branded drug firms' patent settlements with generic competitors. The report summarized data on patent settlements filed with the FTC and the U.S. Department of Justice during FY 2015, as required under the Medicare Modernization Act of 2003. According to the report, there were 14 potentially anticompetitive patent settlement deals in FY 2015, down from 21 identified in the FY 2014 report. Moreover, excluding settlements in which the only compensation is the payment of less than $7 million in litigation fees, only five settlements in FY 2015 contained both compensation to the generic and a restriction on generic entry. *See* https://www.ftc.gov/news-events/press-releases/2017/11/ftc-staff-issues-fy-2015-report-branded-drug-firms-patent.

7.2. DOJ Conferences and Reports

7.2.1. Deregulation and Competition.

99. The Antitrust Division conducted a series of public roundtable discussions to explore the relationship between competition and regulation and its implications for antitrust enforcement policy. The roundtables were held on March 14, April 26, and May

31, 2018, and the Division thereafter published a report on the series. The goal of the series of roundtables was to help the Department of Justice pursue effective and appropriate competition policy and identify related regulatory burdens on the American economy. The roundtables provided a forum for industry participants, academics, think tanks, and other interested parties to discuss the economic and legal analyses of competition and deregulation. *See* https://www.justice.gov/atr/compreg.

7.2.2. Criminal Antitrust Compliance.

100. On April 9, 2018, the Antitrust Division held a public roundtable discussion to explore the issue of corporate antitrust compliance and its implications for criminal antitrust enforcement policy. The roundtable provided a forum for the Division to engage with inside and outside corporate counsel, foreign antitrust enforcers, international organization representatives, and other interested parties on the topic of antitrust compliance. The Division recognized that antitrust compliance programs can help to deter, detect, and address antitrust crimes that harm consumers. In a series of panel discussions, participants addressed the role that antitrust compliance programs play in preventing and detecting antitrust violations, and ways to further promote corporate antitrust compliance. *See* https://www.justice.gov/atr/public-roundtable-antitrust-criminal-compliance.

7.3. Economic Working Papers

7.3.1. DOJ Economic Analysis Group Discussion Papers

101. The DOJ Economic Analysis Group issued the following paper during FY 2018. This paper is *available at* https://www.justice.gov/atr/discussion-paper-after-2006.

- Pricing of Complements in the U.S. Freight Railroads: Cournot Versus Coase, Alexei Alexandrov, Russell Pittman, and Olga Ukhaneva, EAG 18-1, April 3, 2018 22

7.3.2. FTC Bureau of Economics Working Papers

102. The FTC's Bureau of Economics issued the following working papers during FY 2018. The papers are available at https://www.ftc.gov/policy/reports/policy-reports/economics-research/working-papers.

- David Balan and Keith Brand, "Simulating Hospital Merger Simulations," September 2018
- Devesh Raval and Ted Rosenbaum, "Why is Distance Important for Hospital Choice? Separating Home Bias from Transport Costs," June 2018
- Thomas Koch, Brett Wendling, and Nathan Wilson, "The Effects of Physician and Hospital Integration on Medicare Beneficiaries' Health Outcomes," July 2018

Annex

Table 1. Department of Justice: Fiscal Year 2018 FTE and Resources by Enforcement Activity

	FTE	Amount ($ in thousands)
Criminal Enforcement	263	$65,991
Civil Enforcement	395	$98,986
Total	658	$164,977

Table 2. Federal Trade Commission: Fiscal year 2018 Competition Mission

Federal Trade Commission: Fiscal Year 2018 Competition Mission		
FTE and Dollars by Program, Bureau & Office		
	FTE	Amount ($ in thousands)
Total Promoting Competition Mission	528.0	$139,681.0
Premerger Notification	18.0	$3,580.0
Merger & Joint Venture Enforcement	202.0	$39,259.0
Merger & Joint Venture Compliance	11.0	$2,171.0
Nonmerger Enforcement	127.0	$24,897.0
Nonmerger Compliance	1.0	$200.0
Antitrust Policy Analysis	26.0	$5,230.0
Other Direct	20.0	$3,899.0
Support	123.0	$60,445.0