CHAPTER I

HISTORY AND ORGANIZATION OF THE ANTITRUST DIVISION

A. Creation of the Antitrust Division

Between the Sherman Act’s passage in 1890 and 1903, the Attorney General enforced the antitrust laws. In 1903, the administration of President Theodore Roosevelt and Attorney General Philander Knox established the office of Assistant to the Attorney General to take charge of all antitrust matters.

In 1933, under the administration of President Franklin D. Roosevelt and Attorney General Homer S. Cummings, the Antitrust Division was founded. Its purpose was to establish “its own corps of specialists in antitrust law to cope with the increasing complexities of antitrust enforcement.” That same year, Harold M. Stephens was appointed the first Assistant Attorney General in charge of the Antitrust Division.

B. Purpose of the Antitrust Division

The mission of the Antitrust Division “is the promotion and maintenance of competition in the American economy.” The Division’s mission is based on the premise that “competition in a free market benefits American consumers through lower prices, better quality, and greater choice.”

The Division’s primary functions and goals include:

2. See id.
3. See id.
4. Id.
5. See id.
6. Id.
8. See 28 C.F.R. §§ 0.40, 0.41 (listing the Division’s primary functions).
• “General criminal and civil enforcement of the federal antitrust laws and other laws relating to the protection of competition and the prohibition of restraints of trade and monopolization, including investigation of possible violations of antitrust laws, conduct of grand jury proceedings, issuance and enforcement of civil investigative demands, and prosecution of all litigation that arises out of such civil and criminal investigations.”

• Providing guidance to the business community on antitrust laws, which reduces the costs to businesses of complying with the law by alleviating uncertainty about the parameters of legal behavior.

• Intervention or participation before administrative agencies functioning under the regulatory statutes in proceedings requiring consideration of the antitrust laws or competitive policies.

• Acting as an advocate for competition before other branches of government, including: developing and presenting legislative proposals relating to the antitrust laws for Congress, advising the President and Executive Branch on the competitive implications of governmental action, assembling information and preparing reports relating to the antitrust laws that are required or requested by the Congress or the Attorney General, and coordinating antitrust enforcement efforts with states and international competition enforcement authorities.

C. Organization and Structure

The Attorney General and Congress officially approve the organizational structure of the Antitrust Division. An Assistant

10. See About the Division: Mission, supra note 7.
12. See id. at I-3; see also About the Division: Mission, supra note 7.
Attorney General supervises the Division. The Assistant Attorney General is assisted by a designated number of Deputy Assistant Attorneys General. Each Deputy Assistant Attorney General is assigned a number of sections and offices (referred to collectively as “components”) that report to him or her, though in some cases a matter handled by a particular component may be overseen by a deputy other than the one with primary responsibility for that component, such as where another deputy has particular expertise or where the primarily responsible deputy is recused. The Director of Civil Enforcement, the Director of Criminal Enforcement, the Director of Litigation, and the Economics Director of Enforcement, who are career employees, have additional supervisory authority over their respective programs. The Assistant Attorney General and the Deputy Assistant Attorneys General, along with the various directors and the support personnel associated with them, are often collectively referred to as the “Front Office.”

The Division has eleven litigating components composed of eight Washington-based sections and three regional offices located in Chicago, New York, and San Francisco. These components consist of staff attorneys and various support staff including paralegals and secretaries. A chief and one or more assistant chiefs supervise each section and office. Of these litigating components, six sections are responsible for conducting most of the Division’s civil merger and non-merger enforcement activity, beginning with Hart-Scott-Rodino pre-merger notification review and preliminary investigations through litigation and trial. The other five litigating components—two Washington-based sections and the three regional offices—are primarily responsible for the Division’s criminal enforcement program. The Division also has seven other components that perform specialized roles—the three economic sections comprising the Economic Analysis Group, the Appellate

15.  *See id.* Currently, the Division has six Deputy Assistant Attorneys General, including the Principal Deputy Assistant Attorney General; see *About the Division: Sections and Offices*, Deputy Assistant Attorneys General, U.S. DEP’T OF JUSTICE, ANTITRUST DIV., https://www.justice.gov/atr/deputy-assistant-attorneys-general-0.
17.  *See id.*
18.  *See id.*
19.  *See id.* at I-3-I-4.
20.  *See id.* at I-6-I-7.
Section, the International Section (formerly: Foreign Commerce Section), the Competition Policy and Advocacy Section (formerly: Legal Policy Section), and the Executive Office.  

1. Office of the Assistant Attorney General

a. Assistant Attorney General

The Antitrust Division is supervised by the Assistant Attorney General, who is nominated by the President and confirmed by the Senate. The Assistant Attorney General is responsible for the leadership and oversight of the Division’s enforcement programs and policies and is the Division’s chief representative. The Deputy Assistant Attorneys General assist the Assistant Attorney General, who also may be supported by a Chief of Staff and by special advisors and other counsel.

b. Deputy Assistant Attorneys General

The Division has six Deputy Assistant Attorneys General who assist the Assistant Attorney General, including the Principal Deputy Assistant Attorney General who is authorized to assume the powers of the Assistant Attorney General in his or her absence. Each Deputy Assistant Attorney General is assigned primary supervisory and management power for specific Division components and subject-matters as described below.

- The Principal Deputy Assistant Attorney General and one of the Deputy Assistant Attorneys General share supervisory authority over the six civil litigating sections as well as civil investigations.

22. See id. at I-8-I-10.
23. See id. at I-4.
24. See id.
25. See id. In addition to the Chief of Staff, there are currently two Senior Counsel to the Assistant Attorney General and six Counsel to the Assistant Attorney General; see About the Division: Sections and Offices, Chief of Staff and Senior Advisors, U.S. DEP’T OF JUSTICE, ANTITRUST DIV., https://www.justice.gov/atr/chief-staff-and-senior-advisors.
27. See id.
arising out of the San Francisco office. Primary responsibility between them is allocated by component.

- The Deputy Assistant Attorney General for litigation provides guidance and shares supervisory authority related to contested civil matters.
- The criminal enforcement program is managed by a Deputy Assistant Attorney General who oversees the two Washington-based criminal sections and the Chicago, New York, and San Francisco offices.
- The Economic Litigation, Economic Regulatory, and Economic Policy sections are managed by a Deputy Assistant Attorney General who is an economist.
- The Deputy Assistant Attorney General in charge of international affairs oversees the Division’s international operations and is primarily responsible for the management of the International Section.

The Deputy Assistant Attorney General for criminal enforcement traditionally is a career prosecutor whose tenure generally spans those of several Assistant Attorneys General. The remaining Deputy Assistant Attorneys General are political appointees who typically change with presidential administrations. Unlike the Assistant Attorney General, the Deputy Assistant Attorneys General are appointed by the President without the need for confirmation by the Senate.

c. Directors of Enforcement

The Director of Civil Enforcement, the Director of Criminal Enforcement, the Economics Director of Enforcement, and the Director of Litigation are career employees with direct supervisory authority over the activities of the various sections and offices. These offices work closely with the five Deputy Assistant Attorneys General in overseeing Division activities, and each Director is responsible for the matters arising out of the various Division components that fall within his or her particular area of responsibility. There are four special assistants to the Directors of Civil and Criminal Enforcement who serve as liaisons between the litigating components and these Directors. The Directors of

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28. See id.
29. See id. at I-4-I-5.
30. See id. at I-5.
Enforcement ensure continuity of Division operations and policies and work closely with the Deputy Assistant Attorneys General to oversee Division activities.

d. Office of Operations

The Office of Operations both supports the Directors of Enforcement and coordinates the administrative policies and procedures of the Division. The Office of Operations includes four administrative and support units: the Premerger Unit and FTC Liaison Office, the Paralegal Unit, the Office of Professional Development, and the Citizen Complaint Center. These units report to the Directors of Civil Enforcement, Criminal Enforcement, and Litigation.

e. Chief Legal Advisor

The Chief Legal Advisor (formerly: General Counsel), who reports directly to the Assistant Attorney General, advises on the Division’s jurisdiction, the interpretation of relevant antitrust statutes, and various other procedural and substantive legal issues. The Chief Legal Advisor also provides advice related to civil and criminal settlements entered into by the Division and is responsible for ensuring that all Division judgments are consistently enforced by monitoring compliance with consent decrees and evaluating related complaints. In addition, the Chief Legal Advisor has oversight responsibilities over certain ethical and professional obligations of the Division (e.g., compliance with the Freedom of Information Act and the Privacy Act), oversees responses to requests and inquiries from other government agencies (e.g., Office of the Inspector General and Office of Professional Responsibility), and coordinates responses to lawsuits brought against, and subpoenas issued to, the Division. The Office of Chief Legal Advisor includes the Civil and Criminal Deputy General Counsel, the Division’s Ethics Officer, and the Freedom of Information Act/Privacy Act Unit.

31. See id. at I-6.
32. See id. at I-5.
33. See id.
34. See id.
35. See id. at I-5-I-6.
2. Civil Sections

The six civil litigating sections in Washington, D.C. carry out most of the Division’s civil investigative activity and litigation.\textsuperscript{36}

a. Healthcare and Consumer Products Section (HCP)

The Healthcare and Consumer Products Section (formerly: Litigation I Section) investigates and litigates mergers and civil non-merger cases in a broad range of industries. Its assigned industries include healthcare, insurance, pulp, paper, timber, photography, film, appliances, food products, and cosmetics.\textsuperscript{37} HCP works with the Department of Health and Human Services and the Centers for Medicare and Medicaid Services in its healthcare and insurance related investigations.\textsuperscript{38}

b. Defense, Industrials, and Aerospace Section (DIA)

The Defense, Industrials, and Aerospace Section (formerly: Litigation II Section) investigates and litigates mergers and civil non-merger cases in industries such as metals, banking, avionics and aeronautics, defense, road and highway construction, industrial equipment, and waste industries.\textsuperscript{39} DIA works closely with the Federal Reserve Board and the Department of Defense in the oversight of their respective industries, as well as with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, as needed.\textsuperscript{40}

c. Media, Entertainment, and Professional Services Section (MEP)

The Media, Entertainment, and Professional Services Section (formerly: Litigation III Section) investigates and litigates mergers and civil non-merger cases primarily related to the entertainment and media industries. Its assigned industries include motion pictures, music, publishing, radio, television, newspapers, advertising, sports, credit

\textsuperscript{36} Five of these sections, along with three specialized components, were renamed in October 2017.

\textsuperscript{37} See Antitrust Div. Manual, supra note 1, at I-6.

\textsuperscript{38} See id.

\textsuperscript{39} See id. at I-7.

\textsuperscript{40} See id.
cards, and real estate. As needed, MEP works with the Copyright Office, the Federal Communications Commission, the Department of Housing and Urban Development, and the Treasury Department.

d. Technology and Financial Services Section (TFS)

The Technology and Financial Services Section (formerly: Networks and Technology Enforcement Section) investigates and litigates mergers and civil non-merger cases in the areas of computer hardware and software, high technology component manufacturing, Internet-related businesses, financial services, payment services, professional associations, and the securities industries. TFS works closely with the Securities and Exchange Commission, the Federal Reserve Board, the Commerce Department, and the Commodities Futures Trading Commission in oversight over their respective industries.

e. Telecommunications and Broadband Section (TEL)

The Telecommunications and Broadband Section (formerly: Telecommunications and Media Enforcement Section) investigates and litigates mergers and civil non-merger cases in the communications industry, including telecommunications equipment as well as wireline, wireless, and satellite telecommunications services. TEL works closely with the Federal Communications Commission (FCC) in oversight of the communications industry and coordinates merger reviews with the FCC.

f. Transportation, Energy, and Agriculture Section (TEA)

TEA investigates and litigates mergers and civil non-merger cases in the transportation, energy, and agricultural industries, including domestic and international aviation; railroad, trucking, and ocean shipping; electricity; hotel, restaurant, and travel services; oil field services; agricultural biotech; and food products, crops, seeds, fish, and

41. See id.
42. See id.
43. See id.
44. See id.
45. See id.
46. See id.
livestock.47 TEA works closely with the Federal Maritime Commission, the Federal Energy Regulatory Commission, the Environmental Protection Agency, and Department of Agriculture in oversight of their respective industries.48

3. Criminal Sections and Offices

The Division’s criminal program is run by two Washington-based sections and three offices located in Chicago, New York, and San Francisco. These sections and offices handle all phases of the criminal enforcement process, including investigation, litigation, settlement, and sentencing. They also act as the Division’s liaison with U.S. Attorneys, state attorneys general, and other law enforcement agencies.49 Some of the regional offices also may handle civil merger and non-merger matters, depending on resources and expertise.50 Responsibilities within the criminal program are assigned by territory as follows:51

- Washington Criminal I Section: District of Columbia, Maryland, Delaware, West Virginia, Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Puerto Rico, and Florida.
- Washington Criminal II Section: District of Columbia, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, Texas, and the Virgin Islands.

47. See id.
48. See id.
49. See id. at I-8.
50. The San Francisco office traditionally takes a larger role in civil matters than do the other field offices. In particular, it frequently works with TFS on technology matters involving California-based companies.
4. Economic Analysis Group

The Economic Analysis Group (EAG) consists of three sections under the oversight of the Economics Director of Enforcement: the Economic Policy Section (formerly: Competition Policy Section), the Economic Litigation Section, and the Economic Regulatory Section. These sections do not have investigative responsibilities that correlate directly with those of specific civil and criminal components. Instead, matters are assigned to economist-managers primarily based on their industry experience, and those managers draw on EAG staff in any of the sections to undertake the analysis. It is not unusual, therefore, for an investigation to be supervised by a manager from one EAG section but staffed by economists from the other two sections.52

EAG is typically responsible for analyzing the competitive effects of mergers and acquisitions, cartel behavior, various alleged trade restraints, proposed regulatory changes, and the economic aspects of competition advocacy efforts undertaken by the Division. Economists participate in all civil enforcement matters, regulatory proceedings, and competition advocacy matters, from their initial investigative stage through their final resolution.53 EAG economists are also available to serve as expert witnesses in court and agency proceedings.54 Notably, in recent years, as part of the Division’s competition advocacy efforts, EAG has worked extensively with the International Section to assist foreign governments around the world in writing antitrust laws, training antitrust officials, and evaluating specific competitive issues.55

5. Specialized Components

a. Appellate Section

The Appellate Section represents the Division in all appeals, both civil and criminal, to the U.S. courts of appeals. The section also works in conjunction with the Solicitor General’s office on Division cases and selected cases of antitrust interest before the United States Supreme Court.56 The section is also responsible for filing amicus briefs in selected private antitrust cases or other cases “where the Division’s

52. See id.
53. See id. at I-8-I-9.
54. See id. at I-9.
55. See id.
56. See id.