



# Department of Justice

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**STATEMENT OF  
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ANTITRUST DIVISION  
DEPARTMENT OF JUSTICE**

**BEFORE  
THE SUBCOMMITTEE ON THE ADMINISTRATIVE STATE, REGULATORY  
REFORM, AND ANTITRUST  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES  
AT A HEARING ENTITLED  
“OVERSIGHT OF THE ANTITRUST DIVISION”**

**PRESENTED  
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**Statement of Jonathan Kanter**  
**Assistant Attorney General**  
**Department of Justice Antitrust Division**  
**Before the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust**  
**House Committee on the Judiciary**  
**November 14, 2023**

Chairman Massie, Ranking Member Correa, and distinguished members of the Subcommittee, it is an honor to appear before you today on behalf of the Antitrust Division of the Department of Justice. I want to thank members of this Committee for their public support of the Antitrust Division's work and of legislation to strengthen antitrust enforcement.

For the last two years, I have had the privilege to serve at one of the finest law enforcement agencies in the world. The Antitrust Division investigates and prosecutes law breaking that undermines the heart of our free market system, and as a result our cases are incredibly important to both our economy and our democracy. Our cases are often highly complex and our defendants are often the largest and most well-resourced corporations in the world.

Every day, I am inspired and humbled by the work the Antitrust Division's investigators and litigators do to bring and win important and impactful cases. Their work has improved the lives of Americans by supporting competition in nearly every part of our economy. For example:

- We won a key civil trial protecting airline competition by blocking a *de facto* merger between two major airlines that would have caused harm to air travelers across the country.
- We won another large and complex civil trial to prevent further harmful consolidation in the publishing industry through the proposed merger of two major book publishers.
- Defendants committed to pay over \$90 million in restitution to poultry workers harmed by anticompetitive conduct among broiler chicken, pork, and turkey processors.
- We are protecting competition that lowers drug prices. In a case involving inflated drug pricing, we recently obtained the largest penalty ever imposed for a purely domestic cartel—over \$200 million. And for the first time ever, we have secured \$50 million in free pharmaceuticals for people in need, along with a requirement that the wrongdoers divest products that were at the heart of the illegal conspiracy.
- When appropriate, we are also pursuing criminal charges against individuals and companies that collude to deprive the public of competition. In addition to securing dozens of guilty pleas, we have won convictions of seven individuals at trial in 2022 and 2023 alone.

These cases are part of the busiest docket of law enforcement matters the Antitrust Division has had in decades. In the last two years, the Division identified nearly two dozen mergers that risked substantially lessening competition. The Division has challenged eight of these mergers in court. A number of others were abandoned after the Division expressed concern, but before the Division filed suit—a highly resource-efficient outcome for preserving competition. This activity occurs against the backdrop of nearly 4,700 notified transactions in FYs 2022 and 2023, with FY 2022 following FY 2021 as the largest number of filings of any year since the reporting thresholds were adjusted in 2000. Meanwhile, our criminal prosecutors have initiated prosecutions in a number of critical sectors such as agriculture, labor, healthcare, public procurement, and pharmaceuticals. The Division conducted more criminal grand jury investigations targeting corporate and executive wrongdoers in FY 2023 than in any of the past 30 years. Our indictments have yielded a large number of criminal convictions—forty in the last two years alone. Additionally, our appellate program has been thriving, with recent successes before multiple circuits.

**A. *Helping Americans Across the Economy***

As we pursue economy-wide law enforcement matters, we strive to keep our eyes on the impact of our work for individual Americans. Our antitrust laws protect competition, and competition ensures economic progress and opportunity. Competition also empowers individual liberty. Unfortunately, we are hearing more and more often from people who see corporate power abused to harm their communities.

For example, doctors, nurses, and other healthcare workers have told us that years of anticompetitive mergers have made it harder to do the work they love and to treat patients with care and flexibility. One Intensive Care Unit nurse reached out to us about our merger guidelines to tell us how healthcare mergers had harmed her and her patients. She said she worked for a community hospital that had “remarkable care” for patients, but after a merger, nursing ratios dropped and practice expectations became “unsafe.”<sup>1</sup>

We have heard similar stories from farmers and food distributors who have seen their costs for seed and fertilizer increase while competition has been reduced, forcing them out of a critical supply chain for American’s security and well-being.<sup>2</sup> At the same time, farmers—and family farmers, in particular—are feeling the squeeze with respect to prices for livestock and crops, while paying more for key products and services necessary to operate their farms.

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<sup>1</sup> Comment from Gale Galarza, FTC-2023-0043-1034 (Aug. 20, 2023) (former ICU nurse detailing the harms resulting from hospital system merger and urging the FTC and Antitrust Division to “prevent further mergers that limit choice for consumers, especially in healthcare.”). *See also* Comment from Elizabeth Slattery, FTC-2023-0043-0551 (Aug. 4, 2023) (physician whose “medical practice crumbled” as a result of merger and further consolidation in the healthcare industry).

<sup>2</sup> Comment from Stan Moore, FTC-2023-0043-0260 (July 24, 2023) (farmer for over 45 years and raised livestock for 28 years).

These Americans consistently urge the Division to vigorously enforce the antitrust laws. We are answering the call with investigations and enforcement actions that protect critical sectors where our work will have the most impact.

***Agriculture:*** We are proud of our work to support farmers and farming communities. As this subcommittee noted this past June, it is critically important that small- and medium-sized farmers can effectively compete. The Antitrust Division devotes significant resources to investigating mergers and unlawful conduct in the agriculture industry. For example, in September we filed a civil antitrust lawsuit against a firm for organizing and managing anticompetitive information exchanges among certain meat processors.<sup>3</sup> This alleged conduct reduces choice at grocery stores and drives up the cost of food for families.

In another recent matter, two defendants pled guilty to conspiring with others to rig bids at a 2018 auction for hundreds of acres of farmland and a tract of timber rights in Kentucky. The crime resulted in a financial loss to the Kentucky family selling the property. While on probation, one of the defendants retaliated against witnesses who cooperated with law enforcement in the case. As a result, the court found a violation of the witness retaliation statute, revoked the defendant's probation, and resented him to 8 months imprisonment, a criminal fine of \$171,000, and restitution of \$79,000.

We also recently deepened our partnership with the U.S. Department of Agriculture (USDA). Last year, we jointly launched farmerfairness.gov, a new online tool that allows farmers and ranchers to anonymously report potentially unfair and anticompetitive practices in the livestock and poultry sectors. As part of the agencies' enforcement partnership, the Antitrust Division and USDA signed an interagency memorandum of understanding to further foster cooperation and communication between the agencies and effectively process the complaints received through the portal.

This partnership is yielding significant results. Last year, the Antitrust Division and the USDA collaborated on an investigation of poultry processors who participated in an illegal conspiracy to exchange information about poultry processing plant workers.<sup>4</sup> By unlawfully sharing information, the poultry processors were able to keep wages down and limit benefits to the detriment of the poultry workers. Our investigation and subsequent consent decrees led to over \$90 million in restitution for poultry workers.<sup>5</sup> In addition to the significant financial

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<sup>3</sup> Press Release, U.S. Dep't of Justice, *Justice Department Sues Agri Stats for Operating Extensive Information Exchanges Among Meat Processors* (Sept. 28, 2023), <https://www.justice.gov/opa/pr/justice-department-sues-agri-stats-operating-extensive-information-exchanges-among-meat>

<sup>4</sup> Press Release, U.S. Dep't of Justice, *Justice Department Files Proposed Amended Complaint and Consent Decree with Fourth Poultry Processor, Further Addressing Long-Running Conspiracy to Suppress Workers' Compensation* (May 17, 2023), <https://www.justice.gov/opa/pr/justice-department-files-proposed-amended-complaint-and-consent-decree-fourth-poultry>; Press Release, U.S. Dep't of Justice, *Justice Department Files Lawsuit and Proposed Consent Decrees to End Long-Running Conspiracy to Suppress Worker Pay at Poultry Processing Plants and Address Deceptive Abuses Against Poultry Growers* (July 25, 2022), <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy>.

<sup>5</sup> *Id.*

settlement, the poultry processors agreed to meaningful changes that will benefit the poultry farmers and consumers more broadly.

**Healthcare:** As the nurse’s story I described earlier underscores, healthcare is another area where we recognize the critical need to promote competition given the soaring prices of life-saving medications and growing barriers to access medical care. This past August, the Division announced the resolution of criminal antitrust charges against two major pharmaceutical companies.<sup>6</sup> These companies admitted to conduct that inflated drug prices and agreed to pay, collectively, \$255 million in penalties. The penalty to one company—\$225 million—was the largest criminal fine or penalty ever imposed for a purely domestic cartel. Additionally, the resolution included historic remedial measures to ensure competition is restored to the industry and the wrongdoers are not enriched as a result of their long-running criminal conspiracies.<sup>7</sup> As part of those agreements, both companies agreed to divest a key business line involved in the misconduct. As an additional remedial measure, one company agreed to make a \$50 million drug donation to charitable organizations to help people in need. I am proud of the Division attorneys who worked hard to resolve this case in a manner that will benefit patients by keeping generic drugs that consumers depend on in the marketplace and deter future criminal antitrust conduct that raises drug prices.

Moreover, the Division entered a memorandum of understanding with the Office of the Inspector General (OIG) of the Department of Health and Human Services (HHS) to strengthen the partnership between the two agencies. Through coordination in our enforcement efforts, and training, the two agencies are strengthening the enforcement of federal laws, including the full force of OIG’s exclusion authorities and the antitrust laws enforced by the Antitrust Division, while ensuring the continuity of health care products and services. This MOU allows us to make referrals of potentially illegal activity to each other, as appropriate, and to coordinate on policy, strategy, and training.

**Transportation and the Supply Chain:** The U.S. air travel industry is a critical sector where consumers are experiencing the problems of too little competition more and more. Next week, millions of flyers will travel for Thanksgiving. When airlines genuinely compete for passengers, they do so by offering lower fares, more routes, more seats, and better experiences on board. When airlines instead rely on abusing their market power, they raise prices, decrease quality of service, and lower capacity overall. For many Americans, competitive travel prices can be the critical factor in spending holidays with family, visiting a loved one who is sick, or taking a hard-earned vacation. We believe American families should not bear the risk that competition will suffer after a merger removes an airline from the market. This year, we successfully

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<sup>6</sup> Press Release, U.S. Dep’t of Justice, *Major Generic Drug Companies to Pay Over Quarter of a Billion Dollars to Resolve Price-Fixing Charges and Divest Key Drug at the Center of Their Conspiracy* (Aug. 21, 2023), <https://www.justice.gov/opa/pr/major-generic-drug-companies-pay-over-quarter-billion-dollars-resolve-price-fixing-charges>.

<sup>7</sup> *Id.*

challenged the *de facto* merger involving the operations of two major airlines.<sup>8</sup> That was the first time in decades of consolidation that the Department has brought and won a court challenge to airline consolidation. We currently have a team in court challenging another merger involving major airlines based on allegations that the proposed transaction will result in higher prices to consumers for air travel.<sup>9</sup>

The Division's work also directly impacts Americans by protecting competition in the global supply chain. For example, last August, China International Marine Containers Group Co. Ltd. (CIMC) abandoned its intended acquisition of Maersk Container Industry A/S and Maersk Container Industry Qingdao Ltd. (collectively, MCI) after the Division threatened to challenge the transaction in court following a thorough investigation. The deal would have combined two of the world's four suppliers of insulated container boxes and refrigerated shipping containers. It would also have consolidated control of over 90% of insulated container box and refrigerated shipping container production worldwide in Chinese state-owned or state-controlled entities.<sup>10</sup>

And Cargotec abandoned its proposed acquisition of Konecranes one day after the Division informed the shipping equipment giants that their settlement proposal was not sufficient to address the Division's concerns that the acquisition would eliminate important competition in four types of shipping container handling equipment.<sup>11</sup> As a result of the abandonment, U.S. port customers and terminal operators that move consumer products, medicines, and other important goods through the global supply chain will continue to benefit from the head-to-head competition between the companies.

Even when deals are not fully abandoned, the Division has helped protect competition. For example, the Division reached a settlement in its litigation regarding ASSA ABLOY's proposed \$4.3 billion acquisition of Spectrum Brand Holding Inc.'s Hardware and Home Improvement division.<sup>12</sup> This settlement required ASSA ABLOY to divest certain assets that will allow another competitor to vigorously compete in the markets for premium door hardware and smart locks.

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<sup>8</sup> Press Release, U.S. Dep't of Justice, *Justice Department Statements on District Court Ruling Enjoining American Airlines and JetBlue's Northeast Alliance* (May 19, 2023), <https://www.justice.gov/opa/pr/justice-department-statements-district-court-ruling-enjoining-american-airlines-and-jetblue-s>.

<sup>9</sup> Press Release, U.S. Dep't of Justice, *Justice Department Sues to Block JetBlue's Proposed Acquisition of Spirit* (March 7, 2023), <https://www.justice.gov/opa/pr/justice-department-sues-block-jetblue-s-proposed-acquisition-spirit>.

<sup>10</sup> Press Release, U.S. Dep't of Justice, *Global Shipping Container Suppliers China International Marine Containers and Maersk Container Industry Abandon Merger after Justice Department Investigation* (Aug. 25, 2022), <https://www.justice.gov/opa/pr/global-shipping-container-suppliers-china-international-marine-containers-and-maersk>.

<sup>11</sup> Press Release, U.S. Dep't of Justice, *Shipping Equipment Giants Cargotec and Konecranes Abandon Merger After Justice Department Threatens to Sue* (Mar. 29, 2022), <https://www.justice.gov/opa/pr/shipping-equipment-giants-cargotec-and-konecranes-abandon-merger-after-justice-department>.

<sup>12</sup> Press Release, U.S. Dep't of Justice, *Justice Department Reaches a Settlement in Suit to Block ASSA ABLOY's Proposed Acquisition of Spectrum Brands' Hardware and Home Improvement Division* (May 5, 2023), <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-suit-block-assa-abloy-s-proposed-acquisition-spectrum>.

**Digital Markets:** Digital markets are another area where Americans have been impacted by the consequences of too little competition. In tech, instead of exercising monopoly power over prices, companies can use it to control access to online forums for speech, extract and misuse personal data and shape the flow of information in the public square. We have multiple matters in this industry that are currently in active litigation.

**Jobs:** We are also committed to protecting competition in hiring workers. A competitive job market can mean everything from securing a family’s basic needs to economic mobility for better jobs and more opportunity in a chosen career. The Antitrust Division is hard at work to ensure employees in all industries have the benefits of competition.

For example, we successfully challenged the \$2.2 billion merger of two major book publishers. The district court found that the merger would have lessened the competition for the work of authors and others whose labor brings books to print.<sup>13</sup> Quite simply, fewer book publishers would mean less competition for authors to research and write books, which are central to our democracy and freedom. By reducing competition in that market, the court found that authors were likely to suffer. As the court wrote in the opinion blocking the deal, “book publishers have the enormous power and responsibility to decide which books—and therefore which ideas and stories—will be made broadly available to the public,”<sup>14</sup> underscoring the importance of protecting the marketplace of ideas by enforcing the antitrust laws.

The Antitrust Division criminally prosecutes wage fixing and job market allocation. When competitors agree to not recruit or hire each other’s employees, they are agreeing to not compete for a critical resource—the people who help them succeed. These agreements are no different than agreeing not to compete for any other input. Last year, the Antitrust Division successfully prosecuted a wage-fixing conspiracy and secured a guilty plea from a healthcare staffing company in Las Vegas that fixed the wages for school nurses and agreed not to compete for those workers.<sup>15</sup> That company not only paid a fine, it also paid restitution to the nurses, marking the Department’s first successful criminal prosecution of a no-poach agreement.

We have also seen success promoting competitive job markets through our appellate program. Last year, the Division filed an amicus brief an appeared at oral argument in *Deslandes v. McDonalds*, arguing that provisions in franchise agreements that disallow hiring or solicitation of workers may violate the antitrust laws.<sup>16</sup> In August, the U.S. Court of Appeals for the Seventh Circuit agreed with our position, reversing the district court and noting that an increase in output in a downstream product market cannot justify anticompetitive conduct in labor markets.<sup>17</sup> The

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<sup>13</sup> Press Release, U.S. Dep’t of Justice, *Justice Department Obtains Permanent Injunction Blocking Penguin Random House’s Proposed Acquisition of Simon & Schuster* (Oct. 31, 2022), <https://www.justice.gov/opa/pr/justice-department-obtains-permanent-injunction-blocking-penguin-random-house-s-proposed>.

<sup>14</sup> *U.S. v. Bertelsmann SE & Co. KGaA*, 646 F.Supp.3d 1, 11 (Nov. 15, 2022).

<sup>15</sup> Press Release, U.S. Dep’t of Justice, *Health Care Company Pleads Guilty and is Sentenced for Conspiring to Suppress Wages of School Nurses* (Oct. 27, 2022), <https://www.justice.gov/opa/pr/health-care-company-pleads-guilty-and-sentenced-conspiring-suppress-wages-school-nurses>.

<sup>16</sup> Brief of the U.S. Dep’t of Justice & Fed. Trade Comm’n, *Deslandes v. McDonalds*, Nos. 22-2333, 2-2334 (7th Cir. Nov. 18, 2022).

<sup>17</sup> *Deslandes v. McDonalds*, Nos. 22-2333, 2-2334 (7th Cir. Aug. 25, 2023).

opinion by Judge Easterbrook underscored that agreements are unlawful when used to restrain job market competition just as they are unlawful when used to restrain competition over consumer products.

The Division is committed to protecting labor market competition that ensures workers' wages are not artificially depressed. This April, the Division filed a complaint against an e-sport gaming company for suppressing player compensation through a tax that effectively operated as a salary cap for esports teams in a popular league.<sup>18</sup> Under the terms of this tax, league owners fined teams for paying esports players above a certain threshold and limited player compensation. Pursuant to the Division's settlement agreement with Activision, the company agreed to refrain from putting any caps or limits on salaries of esports players or teams. This settlement helps ensure that these professional players, who have generated hundreds of millions of dollars for Activision from franchise fees, sponsorship revenues, and media deals, will be fairly compensated for their labor.

### ***B. Safeguarding the Government from Anticompetitive Abuse***

The Division's Procurement Collusion Strike Force (PCSF) recovers millions of dollars for American taxpayers every year. Federal, state, and local governments spend a tremendous amount of money on goods and services contracts. These large contracts invite the potential for bad actors to emerge, including criminal conspirators who try to tilt the playing field in their favor through kickbacks, bid rigging, or other forms of collusion, all at the expense of taxpayer dollars. That risk of collusion extends to the billions of dollars dedicated to projects funded by the \$1.2 trillion Investment in Infrastructure and Jobs Act. Collusive behavior undermines the competitive process, wastes taxpayer dollars, and deprives businesses that follow the rules of the right to fair competition.

This is where the PCSF comes in. This critical joint law enforcement effort combats antitrust crimes and related fraudulent schemes that impact government procurement, grant, and program funding at all levels of government.

This strike force has been amazingly successful. Though it was established just four years ago, the PCSF has already obtained more than \$65 million in criminal fines and restitution, relating to over \$500 million worth of government contracts.<sup>19</sup> That recovery comes out of the PCSF's more than 100 criminal investigations, which resulted in the prosecution of over 65 companies and individuals. These prosecutions led to more than 50 guilty pleas and trial convictions. In addition, over the last four years, the PCSF has trained over 31,000 agents,

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<sup>18</sup> Press Release, U.S. Dep't of Justice, *Justice Department Files Lawsuit and Proposed Consent Decree to Prohibit Activision Blizzard from Suppressing Esports Player Compensation* (Apr. 3, 2023), <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decree-prohibit-activision-blizzard>.

<sup>19</sup> U.S. Dep't of Justice, *Director of the Justice Department's Procurement Collusion Strike Force Daniel Glad Delivers Remarks to the Seventh Annual White-Collar Criminal Forum at the University of Richmond Law School* (Sept. 14, 2023), [https://www.justice.gov/opa/speech/director-justice-departments-procurement-collusion-strike-force-daniel-glad-delivers#\\_ednref12](https://www.justice.gov/opa/speech/director-justice-departments-procurement-collusion-strike-force-daniel-glad-delivers#_ednref12).



attorneys, auditors, analysts, and procurement officials to recognize antitrust crimes in government-funded projects.

By establishing partnerships with various agencies at all levels of government, PCSF is a whole-of-government response to the problem of collusion in government contracts. Since 2019, the PCSF has established partnerships with key national agencies, including 22 U.S. Attorney's Offices and 11 national law enforcement partners, including the Federal Bureau of Investigation (FBI) and several federal Offices of Inspector General. There are approximately 60 additional local, state, and federal agencies that are involved PCSF's outreach, investigation, and enforcement. In November 2022, the PCSF expanded to include four new national law enforcement partners who are responsible for overseeing hundreds of billions of dollars in authorized funding that will be distributed to federal, state, and local government agencies. These partnerships can promptly alert the Antitrust Division to anticompetitive conduct in government procurement and funding so that the Division can more readily act to stop it.

The PCSF partnerships, along with the experience and expertise of the Antitrust Division's criminal program, have resulted in a series of criminal pleas and sentences for those who have tried to profit from defrauding the U.S. government and the American taxpayer. For example, the owner of an Alaska flooring company pleaded guilty for his role in a conspiracy to provide kickbacks at a U.S. army facility.<sup>20</sup> In another investigation, two military contractors pleaded guilty to rigging bids on more than \$17 million worth of U.S. Army contracts in Texas.<sup>21</sup> In another, a construction company owner conspired to fraudulently secure over \$240 million in government contracts intended for service-disabled veterans, even though the owner had never actually served. The owner was recently sentenced to 27 months in prison and ordered to pay a \$1.75 million fine for his role in the long running scheme.<sup>22</sup>

The Antitrust Division will continue to pursue these cases and hold contractors—who are an integral part of our government's functions—to the highest standards.

### ***C. Improving Our Law Enforcement Capabilities***

As we confront the evolving challenges of protecting a competitive economy, we are adapting our own tools to better meet the moment. It is critical to our mission that as we protect the timeless values of competition, we use up-to-date tools that help us to understand modern market realities.

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<sup>20</sup> Press Release, U.S. Dep't of Justice, *Owner of Commercial Flooring Contractor Pleads Guilty to Participating in Kickback Scheme to Defraud a U.S. Army Facility* (Sept. 22, 2022), <https://www.justice.gov/opa/pr/owner-commercial-flooring-contractor-pleads-guilty-participating-kickback-scheme-defraud-us>.

<sup>21</sup> Press Release, U.S. Dep't of Justice, *Owners of Military Contracting Companies Sentenced for Bid Rigging in Texas* (Aug. 23, 2023), (Jul. 14, 2022). <https://www.justice.gov/opa/pr/owners-military-contracting-companies-sentenced-bid-rigging-texas>

<sup>22</sup> Press Release, U.S. Dep't of Justice, *Construction Company Owner Sentenced for Fraud in Securing Millions of Dollars in Contracts Intended for Service-Disabled Veteran-Owned Small Businesses* (Jan. 18, 2023), <https://www.justice.gov/opa/pr/construction-company-owner-sentenced-fraud-securing-millions-dollars-contracts-intended>.

***Merger Guidelines:*** That is why we have undertaken a revision of the Division’s merger guidelines, which have not been updated since the 2010 revision of a framework developed in 1982. Obviously, a lot has changed in the last 13 years, and especially the last 40, so it is well past time to update our toolkit.

Developing the Draft Merger Guidelines has been the most inclusive process in the Division’s history. Beginning in January 2022, we sought initial public input on modernizing our guidelines to better detect and prevent illegal, anticompetitive deals in today’s modern markets.<sup>23</sup> We received over 5,000 written submissions which overwhelmingly supported stronger enforcement. The Division and the Federal Trade Commission organized virtual listening forums, which we opened to the public to discuss key industries, including food and agriculture, health care, media and entertainment, and technology.<sup>24</sup> At the same time, we engaged the staff in both agencies in the process of developing the draft guidelines, ensuring we made full use of their expertise and experience.

In July, we released a draft for public comment. The response has been even more significant, with many thousands of comments. The vast majority strongly support our approach and call on the agencies to vigorously enforce the antitrust laws to prevent illegal mergers. At the same time, we also received very thoughtful and constructive critiques, and we are looking closely at those as we revise and finalize the guidelines.

***Artificial Intelligence:*** Another area where we are improving our capabilities is building the technical and substantive infrastructure to address artificial intelligence and other complex digital tools. Congress has heard testimony over the past year regarding the boundless opportunities that AI presents. We expect that AI will have huge competitive impacts—including potentially shaping the economy of the future. Although AI has groundbreaking potential to enhance lives, these technologies also create risks to competition, including further market concentration and enhancing the market power of powerful incumbents that already have the scale needed to compete and innovate. In our view, and as the recently issued Executive Order on Artificial Intelligence confirms, competition must be preserved and protected in the core technology itself—including in the hardware, interfaces, and data—and in the application of AI in other products or services such as research, healthcare diagnostics, and manufacturing. To that end, the Antitrust Division has, for the first time ever, hired data scientists and we continue to bring in expertise in this area to ensure that we have the ability to analyze the use of AI in the marketplace and to harness it in the context of investigations. This expertise is critical for the Division to respond when transactions or conduct in the AI-space may pose a competitive risk or harm competition.

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<sup>23</sup> Press Release, U.S. Dep’t of Justice, *Justice Department and Federal Trade Commission Seek to Strengthen Enforcement Against Illegal Mergers* (Jan. 18, 2022), <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-seek-strengthen-enforcement-against-illegal>.

<sup>24</sup> Press Release, U.S. Dep’t of Justice, *Justice Department and FTC Launch Listening Forums on Firsthand Effects of Mergers and Acquisitions* (Mar. 17, 2022), <https://www.justice.gov/opa/pr/justice-department-and-ftc-launch-listening-forums-firsthand-effects-mergers-and-acquisitions>.

As the Division continues to build our expertise in this area, I am optimistic that we will be able to meet the technological and competitive challenges of the future.

***Interlocking Directorates:*** We have also launched the broadest enforcement program in the history of Section 8 of the Clayton Act, which prohibits corporate competitors from sharing officers or directors. This practice, known as interlocking directorates, further concentrates power and creates the opportunity to exchange competitively sensitive information and facilitate coordination—all to the detriment of the economy and the American public. However, Congress wisely made interlocking directorates a *per se* violation of the antitrust laws. By eliminating the opportunity to coordinate—explicitly or implicitly—through interlocking directorates, Section 8 is also intended to prevent other violations of the antitrust laws before they occur.

Our enforcement program—the first ever systematic effort to enforce Section 8—has already resulted in fifteen interlocking director resignations from eleven boards. Last October, we announced that seven directors had resigned from corporate board positions in response to concerns by the Antitrust Division that their roles violated the Clayton Act’s prohibition on interlocking directorates.<sup>25</sup> We followed that up with announcements in March<sup>26</sup> and August<sup>27</sup> of additional directors who have resigned following our efforts. Section 8 enforcement remains a top priority of the Antitrust Division, spanning industries across the economy.

***Federal, State, and International Partnerships:*** Protecting competition is not a job that the Antitrust Division can do alone, and that is why I have made it a priority to expand our partnerships with our state enforcement partners, other federal agencies, and international competition authorities.

Our work with State Attorneys General from all over the country increasingly benefits the Division and the American economy. State partners can be particularly vital on matters having significant adverse local impacts. For example, in one major monopolization litigation, we are joined by 48 states and territories who have been key partners in the development and litigation of the case, including at trial. We have partnered with states on many other enforcement matters as well.

We increasingly partner closely with other federal agencies as well. President Biden’s Executive Order on Competition supports the Antitrust Division’s collaboration with other executive agencies to inject competition expertise into their work and ensure that competition remains an important factor in any government action or rulemaking across all sectors of the

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<sup>25</sup>Press Release, U.S. Dep’t of Justice, *Directors Resign from the Boards of Five Companies in Response to Justice Department Concerns about Potentially Illegal Interlocking Directorates* (Oct. 19, 2022), <https://www.justice.gov/opa/pr/directors-resign-boards-five-companies-response-justice-department-concerns-about-potentially>.

<sup>26</sup> Press Release, U.S. Dep’t of Justice, *Justice Department’s Ongoing Section 8 Enforcement Prevents More Potentially Illegal Interlocking Directorates* (Mar. 9, 2023), <https://www.justice.gov/opa/pr/justice-department-s-ongoing-section-8-enforcement-prevents-more-potentially-illegal>.

<sup>27</sup> Press Release, U.S. Dep’t of Justice, *Two Pinterest Directors Resign from Nextdoor Board of Directors in Response to Justice Department’s Ongoing Enforcement Efforts Against Interlocking Directorates* (Aug. 16, 2022), <https://www.justice.gov/opa/pr/two-pinterest-directors-resign-nextdoor-board-directors-response-justice-departments-ongoing>.

economy. I think it's good government for the Division to share knowledge and expertise with other agencies that have a role in promoting a competitive economy.

To further our collaboration with other agencies, the Antitrust Division has established six interagency memoranda of understanding (MOUs) with agencies that oversee labor, agriculture, transportation, healthcare, and banking industries. These MOUs facilitate information sharing, coordination, reciprocal trainings, and frequent engagements to ensure we are bringing the whole of government to bear on the effort to combat anticompetitive market concentration.

The Antitrust Division has submitted nine public comments to federal agencies encouraging the agencies to promote competition in rulemaking and other industry oversight. The Division has submitted public filings in agency enforcement proceedings and merger reviews. And the Antitrust Division has contributed to agency reports addressing competition in the following markets: (1) beer, wine, and spirits; (2) labor markets; (3) the mobile application ecosystem; (4) seeds and other agricultural inputs; and (5) the defense industrial base. We are proud of our work with our sister agencies to promote competition.

Internationally, the Justice Department has a long tradition of engaging with international agencies to represent the United States' interests in areas that impact U.S. markets or businesses. For example, when the Eastern European countries were moving quickly toward market economies with functioning antitrust laws in the 1990s, we had attorneys on the ground providing guidance on the proper scope and enforcement of antitrust. Later, amidst concerns regarding conflicting remedies imposed on U.S. companies by foreign competition agencies, we started a series of short exchanges for senior enforcers designed to smooth coordination for the parties.

We are continuing that tradition of engagement today. Since 2016, the Division has provided well over one hundred separate training programs to foreign competition agencies on a broad array of antitrust issues. Along similar lines, the European Commission is now beginning to implement the Digital Markets Act, legislation that will have a significant impact on U.S. businesses and potentially U.S. markets. The Division sent a liaison to the European Commission to better understand the impact of the Act on our domestic interests and to enable us to advocate for U.S. interests in its implementation. Meanwhile alongside its partners from Mexico's Federal Economic Competition Commission (COFECE) and Canada's Competition Bureau, the Division launched a joint initiative to deter, detect, and prosecute collusive schemes related to the provision of goods and services in connection with the 2026 FIFA World Cup. Through this initiative, the enforcement agencies will collaborate on outreach to the public and business community about anticompetitive conduct, as well as on investigations, using intelligence sharing and existing international cooperation tools. Collaborating with our international partners will allow us to deter anticompetitive conduct impacting the games in our three nations.

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Thank you again for inviting me to appear before your Subcommittee. I look forward to working with members of this Committee and Congress to strengthen antitrust enforcement, and I am happy to answer any questions that you may have.