

Antitrust Division Redistributes Responsibilities to Address Technology's Effect on Industries

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The U.S. Department of Justice's Antitrust Division is reorganizing its civil enforcement program with the goal of improving enforcement of judgments and consent decrees, prioritizing civil non-merger enforcement, and creating deeper expertise within the various sections. The Antitrust Division announced on August 20, 2020, that it had created the Office of Decree Enforcement and Compliance, and a Civil Conduct Task Force. The Division also announced that it would redistribute responsibilities within the six civil sections in the Antitrust Division to account for how several industries have evolved over the years, due to the impact of technological advancements in particular.

According to the Division's [press release](#), the Office of Decree Enforcement and Compliance "will have primary responsibility for enforcing judgments and consent decrees in civil matters." It will also advise the Division's criminal sections when corporations seek credit for their corporate compliance programs during the charging stage and will work closely with others within the division to "ensure effective implementation of and compliance with antitrust judgments." According to Assistant Attorney General Makan Delrahim, the Office "will ensure the American consumer fully benefits from the Antitrust Division's hard work identified anticompetitive mergers and conduct." Delrahim stated that addressing the Division's approach to consent decrees has been one of his focuses since joining the Division, and this new Office will ensure that commitments made in consent decrees are ensured. The Office will be led by Lawrence Reicher, who served most recently as Counsel to the Assistant Attorney General.

The Civil Conduct Task Force, also newly created, will be a dedicated group of Antitrust Division attorneys working to "identify conduct investigations that require additional focus and resources." The Task Force will be an independent group with dedicated resources and a "consistent mandate" to investigate and prosecute civil conduct violations of antitrust law. According to Delrahim, the task force "will energize and prioritize non-merger civil enforcement. Concentrating responsibility will mean greater accountability for these important investigations that lack the statutory deadlines of many merger investigations."

Finally, the Antitrust Division's third change announced was the redistribution of certain responsibilities within the six civil sections of the Antitrust Division. The commodity distribution between the sections was last reorganized over 20 years ago, and this realignment is meant to account for how "technology has reshaped the competitive dynamics" in the industries the Antitrust Division regularly analyzes. While the new section names have not been announced yet, Delrahim noted the hope that the redistribution would "make the Antitrust Division more efficient

and more effective enforcing antitrust laws. This result is better for companies under investigation and, more importantly, leads to outcomes that benefit the American consumer.”

For example, financial services, banking, insurance, and credit card businesses were previously spread across four different sections but will not have a single dedicated section. Media, broadcast, and telecommunications were previously divided between two sections but will likewise be consolidated into one section. Ultimately, the redistribution is meant to address outdated commodity groupings that “don’t seem to make sense.”

These reorganization efforts by the Antitrust Division, which Delrahim noted were in part foreshadowed by remarks Delrahim made at the University of Chicago in 2018, are meant to ensure an effective and efficient enforcement effort that accounts for how technology has changed virtually every industry to which the antitrust laws apply. The Antitrust Division appears to be attempting to account for these significant changes and realign their enforcement efforts with modern industry, but time will tell how effective this realignment will be.

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