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# U.S. Antitrust Institutions

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Merger Antitrust Law

Fall 2017

Georgetown University Law Center

Dale Collins

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# Overview

- Four antitrust statutes
- Five types of enforcement agents
- Four types of sanctions/relief
- Four types of proceedings

# Four Antitrust Statutes

- The major provisions that define offenses
  - Sherman Act
    - Section 1 prohibits “contracts, combinations . . . and conspiracies in restraint of trade”
    - Section 2 prohibits monopolization, attempted monopolization, and conspiracies to monopolize
  - Clayton Act
    - Section 7 prohibits the acquisition of stock or assets whose effect “may be substantially to lessen competition, or to tend to create a monopoly”
  - Robinson-Patman Act
    - Section 2 prohibits certain discriminations in price
  - Federal Trade Commission Act
    - Section 5 prohibits “unfair methods of competition”
    - NB: Unlike other provisions, not included in the definition of “antitrust law” in Clayton Act § 1
      - This will be important when it comes to private actions

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# Five Types of Enforcement Agents

- Department of Justice (DOJ) Antitrust Division
- Federal Trade Commission (FTC)
- State Attorneys General
  - Injunctive relief actions
  - Parens patriae actions
    - Class actions for damages sustained by citizens of the state brought by the state attorney general
- Individual private parties
- Private class actions

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# Four Types of Sanctions/Relief

- Criminal fines/imprisonment
- Damages (usually trebled)
- Injunctive relief
- Other equitable relief
  - Most notably disgorgement

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# Four Types of Proceedings

- Criminal prosecutions in federal district court
- Civil judicial adjudications in federal district court
- FTC administrative adjudications
- Agency administrative resolutions (consent decrees)

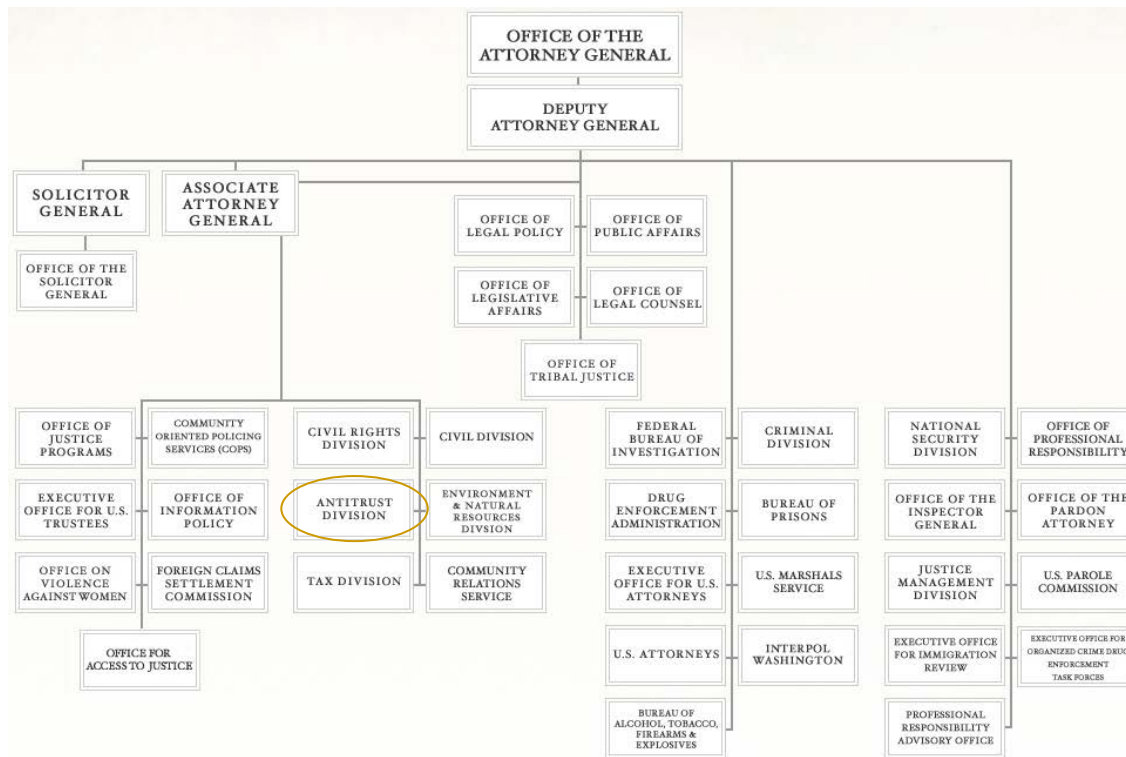
# Summary


	Forum	Criminal	Injunctive Relief	Damages
DOJ	Federal court	X (under federal law)	X	
FTC	Administrative court		X	
State AGs*	Federal court for federal and state claims	X (under state law)	X	X (on behalf of citizens)
Private*	Federal court for federal and state claims		X	X

\* Can bring state antitrust claims (but not federal antitrust claims) in state court

# Government Organization

- United States Department of Justice

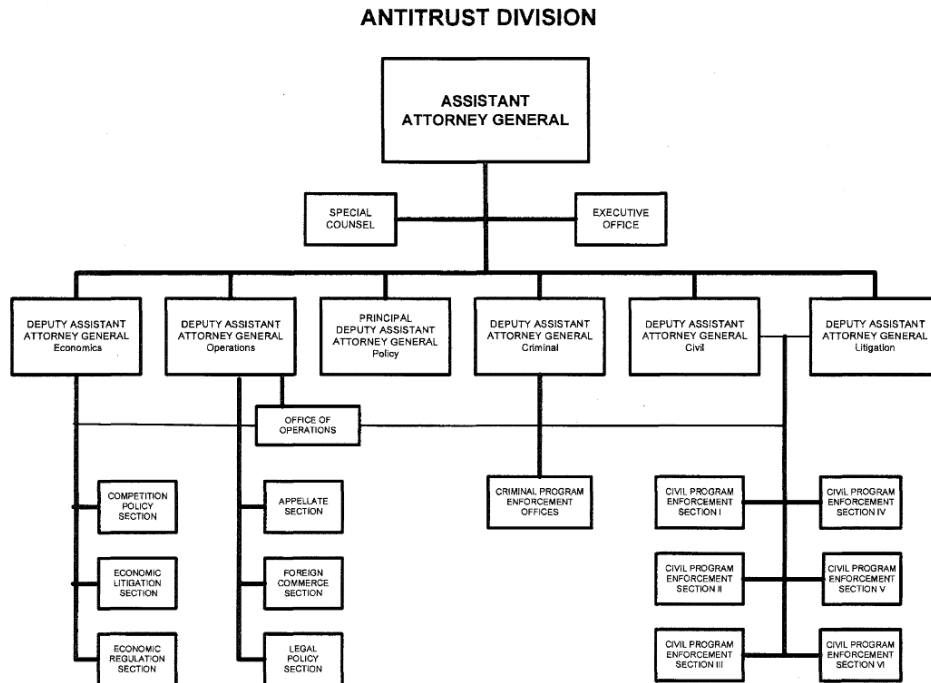



Approved by:  Date: 6/5/2015  
 LORETTA E. LYNCH  
 Attorney General



# Government Organization

## ■ Antitrust Division



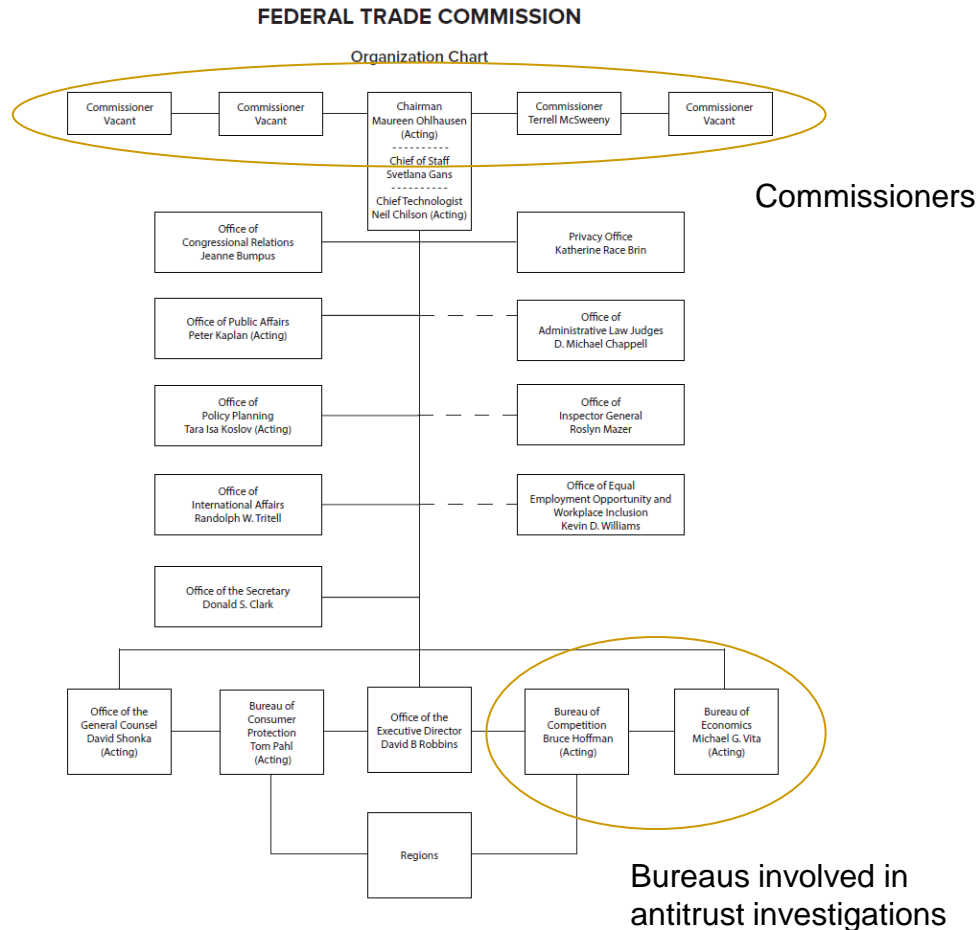
Approved by  Date: 5/16/13  
ERIC H. HOLDER, JR.  
Attorney General

### Notes:

1. The ATD has a hierarchical structure.
2. The Assistant Attorney General (AAG) has “complaint authority” to file a complaint without seeking the approval of anyone else. No one else in the Division has complaint authority. As a result, the AAG is the ultimate and sole decision-maker on legal challenges brought by the ATD.
3. The AAG is nominated by the President and subject to confirmation by the Senate. No one else in the ATD is subject to Senate confirmation.
4. The AAG serves at the pleasure of the President and the Attorney General and may be removed with cause.

# Government Organization

## ■ Federal Trade Commission

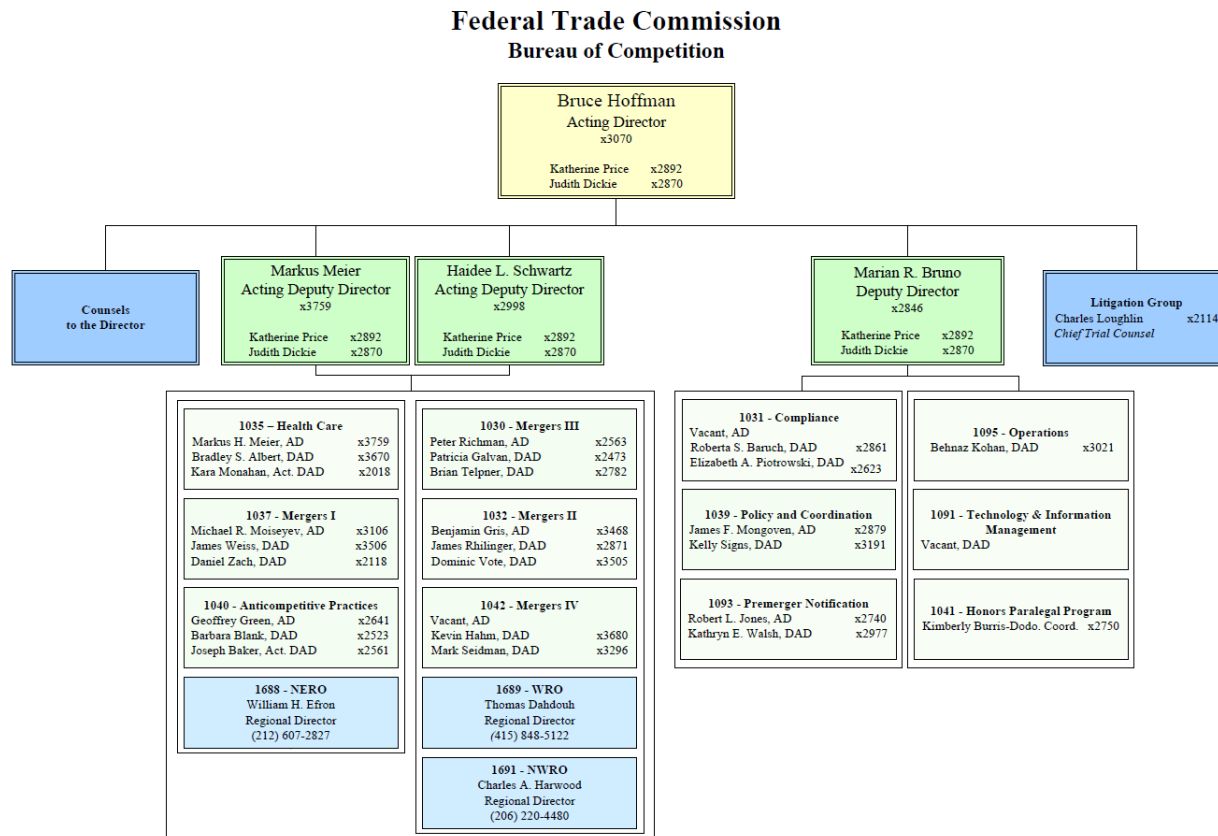


### Notes:

1. The FTC has a “collegial” structure, that is, the Commission cannot take enforcement action unless a majority of the Commissioners vote to do so. No single person can make an enforcement decision for the FTC.
2. The FTC Act provides for five Commissioners. Each Commissioner serves for a term of seven years (or fills out the remaining term of her predecessor). By law, no more than three Commissioners can be a member of the same political party.
3. Each Commissioner is nominated by the President and subject to confirmation by the Senate. No one else in the FTC is subject to Senate confirmation.
4. The President appoints the chairman of the Commission, who is responsible for chairing Commission meetings and for administering the staff of the FTC.
5. The FTC is an “independent agency,” so that Commissioners do not serve at the pleasure of the President and can only be removed for cause.

# Government Organization

## ■ FTC Bureau of Competition



### Notes:

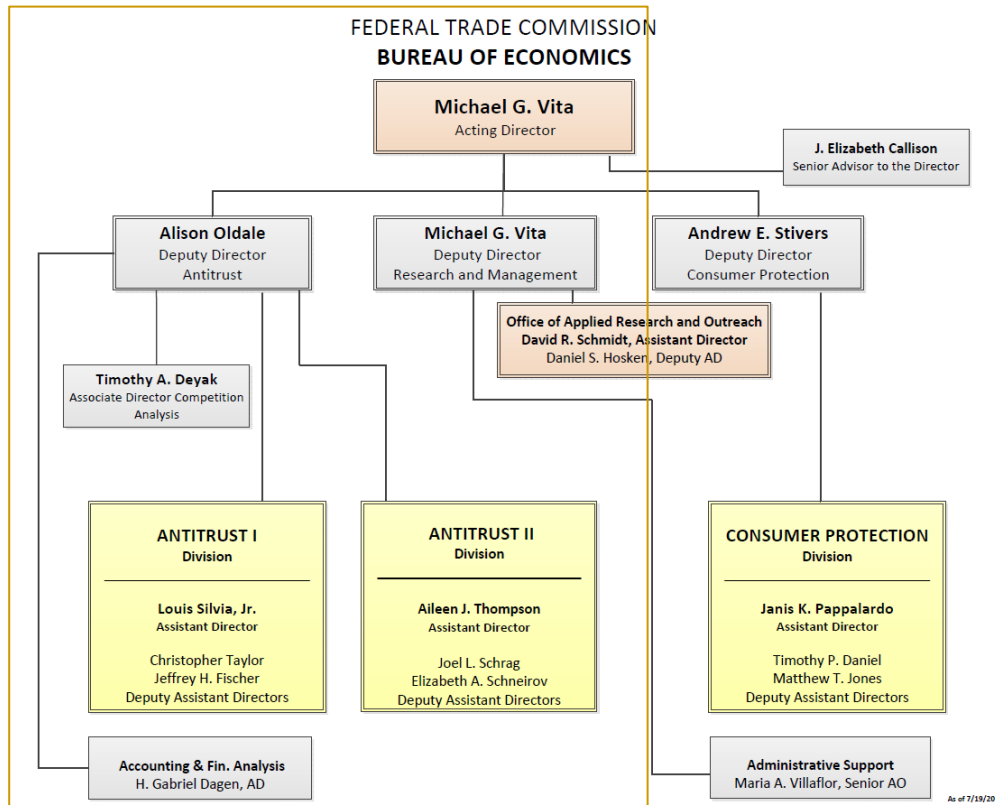
1. The Bureau of Competition (BC) is the competition legal arm of the FTC and conducts antitrust investigations and legal challenges.
2. BC has a hierarchical structure.
3. The Director of the Bureau of Competition is appointed by the Commission and is the Commission's chief antitrust enforcement staff official.
4. The BC Director makes recommendations to the Commission on enforcement actions. As a matter of practice, the recommendations of other BC officials also go to the Commission.

Note: Please add (202) 326 to all phone numbers prefixed with an x.

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# Government Organization

## ■ FTC Bureau of Economics



Involved in antitrust investigations

### Notes:

1. The Bureau of Economics (BE) the economics arm of the FTC and participates in investigations conducted by BC.
2. BE has a hierarchical structure.
3. The Director of the Bureau of Economics is appointed by the Commission and is the Commission's chief economics staff official.
4. The BE Director makes recommendations to the Commission on antitrust enforcement actions. As a matter of practice, the recommendations of other BE officials also go to the Commission.