

Criminal Antitrust / Cartel Investigations and Enforcement

Antitrust

The U.S. Department of Justice's Assistant Attorney General Jonathan Kanter's remarks¹ at the 2022 Spring Enforcers Summit underscored the Administration's commitment to promoting competition in the U.S. economy² by highlighting the DOJ's aggressive criminal enforcement of antitrust laws to protect consumers, workers and businesses harmed by unlawful collusion and monopolization.

One key takeaway from Kanter's remarks concerns updates to the leniency program. First, a company must now promptly self-report wrongful conduct to qualify for immunity from prosecution. Since only the first company to report can obtain leniency, this places a much greater importance on detection and internal controls. Second, a company must now undertake remediation and compliance efforts before it obtains conditional leniency.³

Kanter highlighted the DOJ's initiative to support antitrust enforcement throughout the U.S. government that includes new and expanded partnerships with various agencies (including international partners and in foreign jurisdictions), training on antitrust laws, and prosecuting procurement collusion through the Procurement Collusion Strike Force (PCSF). Kanter emphasized that criminal enforcement of antitrust crimes such as monopolistic practices, wage-fixing, agreements not to compete for workers and other labor-side violations, will make up an important part of the Antitrust Division's agenda.⁴

Kanter's remarks clearly signal the DOJ Antitrust Division's focus on increased enforcement and emphasis on compliance and remediation. To effectively mitigate the potential impacts from increased regulatory risk, companies need an integrated solution that incorporates expertise in data analytics and communications into an experienced and dedicated team.

— HOW FTI CAN HELP

The Antitrust practice at FTI Consulting is a global multidisciplinary team of professionals dedicated to antitrust cartel matters, combining financial and economic expertise with data analytics and compliance. We bridge the gaps between the needs of the business, the demands of the government and civil plaintiffs, and legal counsel's strategy in any situation involving antitrust matters. FTI's global footprint and experience in cartel matters provide a foundation to assist companies and their counsel as they navigate enforcement policy changes and actions. Our integrated practice focuses on enforcement response, litigation support and compliance.

¹ <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-opening-remarks-2022-spring-enforcers>

² <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>

³ <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-opening-remarks-2022-spring-enforcers>

⁴ <https://www.law360.com/articles/1480641/doj-adds-new-obligations-to-lenieny-program>

Enforcement Response

- We use quantitative and qualitative data from the company and our ability to link sales data with the evidence of the case to provide guidance on which potential affirmative and rebuttal approaches deliver the highest impact for a fact-based defense.
- We contextualize financial analysis with assessment of communication and other unstructured data for evidence of suspicious activity internally or as between competitors consistent with cartel behavior.
- We address the challenges of international investigations through integrated data collections across teams in 28 local jurisdictions experienced in data privacy laws, blocking statutes, local customs and foreign language review.
- We help craft messaging and communications plans to ensure company leaders deliver the right messages at the right time to stakeholders and employees in the face of potential subpoenas or indictments.

Litigation Support

- In class action matters that are concurrent or subsequent to an investigation, we provide consulting and expert testimony to assist with settlement and customer negotiations offering continuity and institutional knowledge gained during the investigation phase.
- Our [Find Facts Fast](#) solution, conducted by trained researchers leveraging data analytics, quickly identifies key facts and communications to help counsel assess the strengths and weaknesses of its case and develop the case narrative.
- Our crisis and media relations experts help companies manage the public narrative and protect their reputations with external stakeholders including customers, investors, policymakers, and enforcement and regulatory agencies.

Compliance

- Before an issue occurs, we provide companies with proactive assessments of their current antitrust compliance program identifying areas to better align with enforcement expectations and link to their overall compliance program.
- We aid in the development or enhancement of antitrust compliance programs throughout all critical areas including conducting risk assessments, developing and launching policies and procedures, designing and implementing internal controls and related monitoring, and developing and executing training.
- We help companies assess and benchmark the state of ethics and compliance in their corporate culture to enable continuous improvement and ensure appropriate tone at the top resonates throughout the organization.
- We pair written policies and training with best-of-breed technology to enable effective monitoring of compliance across disparate sources of data including financial data, operational data, cloud-based applications, and other means of communication.
- Our change management experts bring the communication, leader engagement and training skills necessary to ensure employees are fully prepared and can effectively execute their job responsibilities within the new or enhanced compliance programs.

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04212022 | VN02091-v02

