

Transforming Antitrust Enforcement: How AAG Kanter is Protecting Competition Across the Economy

In one of his first public remarks made shortly after joining the U.S. Department of Justice, Assistant Attorney General of the Antitrust Division Jonathan Kanter noted “antitrust law enforcement has not succeeded in keeping pace with these massive changes in our economy.”

Since then, as AAG, Kanter has worked to transform antitrust enforcement across the federal government to promote competition and meet the new economic challenges America now confronts. Under his leadership, the DOJ Antitrust Division has taken aggressive action to protect American businesses, workers, and consumers from powerful corporate monopolies. In AAG Kanter’s words: “Antitrust is for the people.” And the people are winning.

Enforcing Existing Rules to Hold Corporate Actors Accountable

Acted to Break Monopolies

- The DOJ, along with 39 [states](#), [sued](#) to break up Live Nation-Ticketmaster after an investigation revealed the entertainment behemoth repeatedly abused its market power to throttle competition in the live ticketing market.
- Litigated and won a lawsuit to stop the [illegal American Airlines-JetBlue Airways “Northern Alliance.”](#) a de facto merger that throttled competition in air travel and raised prices for travelers.
- [Put Google’s online search monopoly on trial](#), arguing that Google illegally monopolizes search engine services by paying kickbacks worth [tens of billions](#) of dollars per year to bribe Apple not to develop a competing search engine and imposing anticompetitive terms on industry partners to entrench itself as the default search engine and exclude competitors. A federal judge [ruled](#) that Google is

a monopoly that illegally abused its market power to squash competition in internet search. The DOJ is widely [expected](#) to seek bold remedies.

- Sued to [break up Google's monopoly over online advertising](#), requesting that the court order Google to separately divest its various online ad businesses, to protect advertisers, online publishers, and consumers from Google's monopoly.
- Sued to stop an [industry-wide price fixing scheme by meat processors](#) enabled by agricultural data firm Agri Stats, which operates a data service allowing dominant processors like Tyson Foods and Cargill to collude to sidestep competition and keep prices high.
- [Filed a civil lawsuit against the fifth-largest U.S. poultry processor, Koch Foods](#), for leveling draconian penalties against chicken farmers who switched to work with rival processors. Entering a consent decree with Koch, the action is part of a suite of actions DOJ is taking on behalf of poultry and other meat farmers and producers.
- Won the [first criminal monopolization](#) case in 50 years against a construction firm that agreed to split markets with a competing company. The DOJ also held the President of the company criminally liable in which he pled guilty for attempting to monopolize the market for highway crack-sealing services.
- Launched a [monopolization investigation](#) into the managed-care industry, which includes healthcare giants UnitedHealth and CVS Health, owner of Aetna.
- [Sued](#) Apple for monopolizing the smart phone market.
- Launched a [probe](#) into UnitedHealth Group's monopolization and self-dealing.

Challenged Anticompetitive Mergers

- [Won permanent injunction at trial, blocking](#) Simon & Schuster and Penguin Random House's proposed merger, which would have increased consolidation in the industry, limited publishing options for authors, and decreased choices for readers. This was the first merger successfully blocked for its harms to labor.
- Challenged and successfully [blocked at trial JetBlue's attempt to acquire Spirit Airlines](#), preserving much-needed competition in the airline industry and preventing fare hikes that result from airline mergers. The win was the first successful challenge to an airline merger in more than 40 years.
- [Stopped the \\$20 billion mega-merger of software firms Adobe and Figma](#), who abandoned their deal after facing DOJ scrutiny. The deal would have further entrenched Adobe's near-monopoly in design software.
- [Won the abandonment](#) of a nearly half-billion dollar merger that would have handed Tenaris SA a monopoly on steel tubing used in oil and gas extraction.
- Won the [abandonment of a billion-dollar merger](#) between two of the four biggest suppliers of refrigerated shipping containers, which would have consolidated 90%

of refrigerated shipping container production worldwide, raised prices, and imperiled supply chain resiliency.

- Also in shipping, [stopped a merger of two shipping giants](#) that would have eliminated competition and raised prices for goods and medicine.
- [Won the abandonment of a merger](#) between the two largest producers of pebbled fiberglass reinforced plastic, Grupo Verzatec and Crane Composites, which make up a combined 80% of the market for the most commonly used wall panel in the U.S.
- Sued to block a merger between two of the three largest producers of residential door hardware, [securing a settlement](#) that will help protect Americans' privacy and security.
- [Won the abandonment](#) of a merger between Fresh Express and Dole – two packaged salad companies – which would have reduced the number of competitors from three to two and raised grocery prices for food that is purchased by 85% of Americans.
- Won the [abandonment](#) of a merger between TopBuild and SPI – two of the largest providers of building insulation products – which would have eliminated head-to-head competition.
- [Accused](#) Assa Abloy of breaching the terms of its settlement agreement governing the acquisition of Spectrum Brands Holding unit by refusing to cover the costs of an independent monitor.
- Requesting [information](#) regarding Colorado ski resort Alterra Mountain Co.'s acquisition of Arapahoe Basin.

Pursued Cases Against Price-Fixing, Bid-Rigging, and other Collusive

Agreements that Artificially Increase Prices or Lower Wages

- [Resolved a criminal investigation into an illegal generic drug price-fixing scheme](#) by pharma giants Teva and Glenmark, ordering the firms to divest a generic cholesterol drug and pay more than \$300m in penalties.
- [Won its first criminal antitrust case](#) against employers colluding to not hire each other's workers, securing a guilty plea from staffing firm VDA for its use of a “no-poach” agreement to scam caregivers who help special needs children.
- [Sued and swiftly reached a consent decree](#) stopping video game giant Activision-Blizzard from suppressing wages in esports leagues built around its video game properties.
- Indicted four home health care agencies for [fixing the wages of essential workers](#) during the height of the COVID-19 pandemic.
- [Charged](#) employees of the California Department of Transportation (Caltrans) and multiple private contractors for colluding to steer Caltrans contracts to themselves.

- [Filed and won a case](#) against an individual and a construction firm for colluding to rig bids for public contracts in Minnesota related to construction and concrete repair.
- [Criminally indicted](#) contractors for bid-rigging for several contracting jobs for the Department of Defense.
- [Filed suit](#) against several entertainment firms for colluding to fix prices for DVDs and Blu-Ray discs sold on Amazon Prime Marketplace.
- [Filed suit](#) against a firm and its owner for participating in a bid rigging and price fixing arrangement in the market for commercial flooring services and products.
- Filed a statement of interest [backing tenants](#) filing a class action suit against RealPage, a real estate property management software that the suit alleges acted as a price fixing mechanism for landlords.
- Alongside eight states, filed a civil antitrust [lawsuit](#) against [RealPage](#) for its algorithmic pricing scheme and monopolizing the commercial revenue management software market.
- Filed a joint-statement with FTC in a private New Jersey case targeting algorithmic [price](#) fixing of hotel rooms.
- The D.C Circuit allowed the DOJ to [reopen](#) its investigation into the National Association of Realtors related to broker compensation and multiple-listing service rules that hinder competition.
- [Prohibited](#) the National Collegiate Athletic Association (NCAA) from enforcing rules that limited competition for college athletes and restricted their ability to transfer to colleges and universities that provided better opportunities for them.
- Scrutiny by DOJ forced UnitedHealth Group to [abandon](#) two acquisitions that would have allowed the company to further its dominance as the largest employer of physicians in the country.
- [Filed](#) an amicus brief in a private suit by DirecTV against Nextstar for fixing broadcast retransmission license fees.
- Filed and [won](#) a criminal conviction against leaders of a price-fixing conspiracy in concrete markets.
- Filed a statement of [interest](#) in the National Association of Realtors case.
- Secured a [guilty](#) plea against Asphalt Specialists for its role in conspiracies to rig bids for asphalt paving services contracts in the State of Michigan, resulting in a \$6.5 million penalty.
- Criminally [indicted](#) Sioux Erosion Control, its vice president and another employee for a price-fixing conspiracy targeting over \$100 million in publicly-funded transportation construction contracts across Oklahoma.
- Filed and won a criminal [conviction](#) against Former Interim President of Puerto Rican steel distributor for conspiring with competitors to fix prices for eight years.

Reinvigorated Enforcement against Illegal [Interlocking Directorates](#)

- Revived enforcement of a statute banning company directors simultaneously serving on the boards of competing companies. The DOJ announced its intent to enforce and notify major companies, resulting in a slew of board resignations.
 - The DOJ put on notice:
 - [Definitive Healthcare and ZoomInfo Technologies](#)
 - [Maxar Technologies and RedWire](#)
 - [Littelfuse and CTS](#)
 - [Skillsoft and Udemy](#)
 - [Solarwinds and Dynatrace](#)
 - [Qualys, SumoLogic, and F5](#)
 - [N-able, Dynatrace, and SolarWinds](#)
 - [Brookfield Asset Management and American Equity Investment Life Holding Company](#)
 - [Sun Country Airlines Holdings and Atlas Air Worldwide Holdings](#)
 - [Warner Bros, Discovery](#)
 - [Pinterest](#)

Pursued Cases Where Firms Failed to Properly Disclose Acquisitions

- Filed an antitrust suit against restaurant chain investor Biglari Holdings for failing to disclose its acquisition of voting securities of Cracker Barrel in violation of the Hart-Scott-Rodino Act, resulting in Biglari [settling](#) for over \$1.3 million in civil penalties.
- Filed a suit against Clarence Werner, founder of Werner Enterprises, an Omaha-based truckload carrier, for failing to disclose his purchases of company stock, resulting in Werner being [ordered](#) to pay nearly \$500,000 in penalties.
- Confirmed the DOJ is investigating whether some private equity firms [withheld](#) HSR information from antitrust enforcers during deal reviews to avoid the possibility of acquisitions being blocked.
- Filed a civil lawsuit and proposed [settlement](#) with Legends Hospitality Parent Holdings LLC for violating the Hart-Scott-Rodino Act. The company allegedly engaged in illegal premerger coordination with its proposed acquisition of ASMM Global Inc.

Expanding the Scope of Existing Antitrust Enforcement

Opened Merger Guidelines Review to Small Businesses, Workers, Consumers

- Along with the FTC, the DOJ [updated merger enforcement guidelines](#), bringing in new learning and evidence discovered by economists, business people, consumers, and scholars over the last fifteen years. The new guidelines better reflect today's

new market realities, articulating the harms of mergers with regard to worker power, labor markets, and the role of private equity in consolidation. The guidelines will help strengthen enforcement against illegal mergers that drive higher prices, lower wages, and less innovation.

- The new guidelines reflect public input, receiving [almost 6,000 public comments](#) - approximately 80x more than a previous merger guideline rewriting in 2010 - from entrepreneurs, small businesses, workers, and consumers who have experienced firsthand the effects of mega-mergers and acquisitions. The comments were [overwhelmingly in favor](#) of stronger antitrust enforcement.
- Along with the FTC, the DOJ also [hosted joint listening forums](#) that included grocers, health care professionals, farmers, innovators in biotechnology, media and entertainment, and technology workers, who shared their personal experiences on the effects of previous mergers.
- Along with the FTC, proposed changes to modernize the merger filing fee process by requiring merging parties to submit more relevant information allowing antitrust agencies to evaluate the effects of a merger more efficiently and effectively. The new filing process [takes into account](#) companies' history of labor law violations.

Reinterpreted Antitrust Policy to Strengthen Enforcement and Promote Transparency

- AAG Kanter [announced his intention](#) to ramp up enforcement of Section 2 of the Sherman Act, which outlaws monopolization and attempts or conspiracies to monopolize a market.
- AAG Kanter announced that the Justice Department will take [a more active role](#) in preventing dangerous bank consolidation.
- [Updated](#) the Department's "leniency policy," publicly on the DOJ FAQ page in an effort to promote transparency and encourage whistleblowers to come forward.
- Filed a joint comment with FTC to the Copyright Office advocating for right to repair [regulations](#).
- Along with the FTC, launched a public inquiry to identify serial acquisitions and roll-ups, a common private equity strategy and loophole to avoid the regulatory reporting required of larger deals.
- [Issued](#) a joint statement alongside the FTC and European enforcers on AI antitrust enforcement.

Supported Stricter Antitrust Enforcement on Existing Cases Where Harmful Actors Had Previously Gotten Their Way

- [Stepped in](#) to favor a narrower view of Major League Baseball's 100 year antitrust exemption, stating that teams cannot collude in the labor market to suppress wages for minor league players.
- Issued a [brief](#) to support an antitrust case against major universities that violated antitrust law by using a narrow antitrust exemption to colluding with non-exempt universities in determining how much financial aid they will offer.
- [Initiated an investigation](#) into PGA Tour's anticompetitive policies after the organization excluded players who had decided to participate in rival tournaments. The FTC had previously examined PGA's policies in 1994, but eventually decided to back off.

Leadership Across Government to Strengthen Antitrust Efforts

Established & Supported Antitrust Initiatives Across Government at the State and Federal Level

- Following President Biden's Competition Executive Order, AAG Kanter launched the [Antitrust Enforcement for All-of-Government](#) initiative, a new program to win more cases against anticompetitive conduct, transforming the approach to competition policy by law enforcement.
- Partnered with the USDA to launch a new online tool that allows [farmers and ranchers to anonymously report anti-competitive practices](#) in the livestock and poultry sectors, empowering farmers and ranchers in the highly concentrated meatpacking market to ease supply chain issues and lower prices for consumers.
- [Filed amicus brief supporting](#) 45 states in an antitrust lawsuit filed against Meta/Facebook, backing up the state AGs' claims that Facebook exploited its immense market power to crush competition through a "buy or bury" scheme while becoming a monopoly that harms its users and the public at large.
- Submitted a [joint comment with the FTC](#) urging the Federal Energy Regulatory Commission not to restore a right of first refusal that would let incumbent electricity transmission owners block competitors from bidding to design, construct, and own certain new interstate transmission facilities.
- DOJ is co-chairing the White House's [Strike Force](#) on Unfair and Illegal Pricing alongside the FTC.
- Built a first of its kind team in [Chicago](#), Illinois focused on agricultural antitrust.
- [Launched](#) a portal for public reporting of anticompetitive healthcare practices, and a [request for information](#) on the impact of corporate greed in healthcare, alongside FTC and HHS.

- Signed a [memorandum](#) of understanding with FTC, DOL, and NLRB to enhance the FTC and DOJ's ability to investigate the impact of mergers and acquisitions on labor markets.

Collaborated With National and International Entities to Target Supply Chain

Exploiters

- Established a [joint DOJ Antitrust Division-FBI initiative to detect and prosecute](#) companies that take advantage of supply chain disruptions to collude with rivals in order to raise prices.
- Formed an [international working group focusing on global supply chain collusion](#) with corresponding agencies in Australia, Canada, New Zealand, and United Kingdom to detect and combat collusive schemes that lead to higher freight rates and more expensive goods for consumers.