

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

*In one of his first public remarks since 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.”*

*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.*

## **Enforcing Existing Rules to Hold Significant Corporate Actors Accountable**

### **Challenged Anticompetitive Mergers**

- Sued to block a mega-merger of U.S. Sugar and Imperial Sugar – both already multibillion-dollar corporations – [protecting consumers from paying higher prices](#) for groceries by halting further consolidation of the sugar industry.
- Sued to [block](#) 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 pebbled FRP wall panels in the United States.
- Sued to [block](#) the merger of Booz Allen and EverWatch Corp, two firms that are the only competitors for several NSA contracts that deal with operational modeling and simulation services.
- Joined the states of Minnesota and New York in an effort to [block](#) the acquisition of Change Healthcare by UnitedHealth Group, a vertical integration that is projected to hinder competition in the health insurance market.

- Expressed a willingness to block JetBlue's attempt to acquire Spirit Airlines if the result produces anti-competitive market conditions, significantly [impacting](#) negotiations over a merger that would create the [fifth largest](#) airline in the United States and raise fare prices.
- Took book publishers Simon & Schuster and Penguin Random House [to trial](#), challenging a merger that would increase consolidation in the industry, limit publishing options for authors, and decrease choices for readers.

### **Pursued Cases Against Price-Fixing, Bid-Rigging, and other Collusive Agreements that Artificially Increase Prices or Lower Wages**

- 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 in an anti-competitive fashion.
- Filed 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.
- [Indicted](#) individual owners of firms that engaged in 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.
- [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.

### **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.

## **Expanding the Scope of Existing Antitrust Enforcement**

### **Opened Merger Guidelines Review to Small Businesses, Workers, Consumers**

- The DOJ, along with the Federal Trade Commission launched a public inquiry on modernized merger guidelines in a joint effort to [strengthen enforcement against illegal mergers](#) that drive higher prices, lower wages, and less innovation.
- They received [almost 6,000 public comments](#) – approximately 187x 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 DOJ and FTC 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.
- In September, Kanter [made clear that upcoming merger guidelines](#) would put more emphasis on examining a market's competitive context, and not rely as much on cost-saving considerations that have dominated merger enforcement.

### **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.
- [Updated](#) the Department's "leniency policy," publicly on the DOJ FAQ page in an effort to promote transparency and encourage whistleblowers to come forward.
- [Announced](#) that the DOJ will be ramping up efforts to identify Section 8 of the Clayton Act violations across the broader economy, forbidding individuals from simultaneously serving as an officer or on the board of directors of two competing firms that are sufficiently large players in a market.

### **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 colluding with non-exempt universities to determine how much financial aid they will offer while not making all admissions on a need-blind basis.
- [Initiated an investigation](#) into PGA Tour's anti competitive 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.
- [Offered support](#) to the 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.

### **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.