

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 Corporate Actors Accountable

Acted to Break Monopolies

- [Litigated in court](#) against Google’s online search monopoly, arguing that Google illegally monopolizes search engine services using anticompetitive pay-to-play agreements with firms like Apple to entrench itself as the default search engine and exclude competitors.
- 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](#) enabled by agricultural data firm Agri Stats, which operates a data service allowing dominant meat processors like Tyson Foods and Cargill to collude to sidestep competition and keep prices high.
- Opened an [investigation into the monopoly of Live Nation/Ticketmaster](#) over the live events ticketing market, and for violations of their [2020 consent decree](#) with the DOJ.

- Won the [first criminal monopolization](#) case in 50 years against a construction firm that agreed to split markets with a competing company.
- Launched a [monopolization investigation](#) into the managed-care industry, which includes healthcare giants UnitedHealth and CVS Health, owner of Aetna.

Challenged Anticompetitive Mergers

- [Went to trial and successfully blocked](#) Simon & Schuster and Penguin Random House from merging, challenging a merger that would increase consolidation in the industry, limit publishing options for authors, and decrease choices for readers. This was the first merger successfully blocked for its harms to labor.
- 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.
- Filed a lawsuit now headed to trial to [block JetBlue’s attempt to acquire Spirit Airlines.](#) If successful, the suit will preserve much-needed competition in the airline industry and prevent fare hikes that result from airline mergers.
- [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 commonly used type of 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.

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

Agreements that Artificially Increase Prices or Lower Wages

- Sued and secured a [settlement](#) with fifth-largest U.S. poultry processor, Koch Foods, which stifled competition in poultry markets by preventing chicken farmers from switching to rival processors. Koch was ordered to reimburse farmers and banned from further penalizing farmers for switching.

- [Successfully resolved](#) a criminal probe 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 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.
- Revived enforcement of a ban on company directors simultaneously serving on the boards of competing companies. The DOJ announced its intent to enforce and notified major companies, resulting in a slew of [board resignations](#).

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

- Along with the FTC, the DOJ issued an important proposed [update to 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 and 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.
- [Modernized the merger filing process](#), which would require merging parties to submit additional 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.
- 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.

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.
- [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.