

The State of Antitrust Regulation

As antitrust regulation increasingly factors into the [2020 election campaign](#), we wanted to share relevant facts on the background and current state of Antitrust regulation.

What is the purpose of Antitrust?

Antitrust laws' objectives are to promote fair economic competition leading to lower prices, better quality, greater choice, and more innovation. There are three primary branches of antitrust laws ([FTC - The Antitrust Laws](#)) that were created in the late part of the 19th and early 20th century as a response to the consolidation of major industries at the time:

- **Sherman Antitrust Law of 1890** is the nation's first antitrust act, which outlawed "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize". Theodore Roosevelt's Administration (1901-1909) was the first administration to enforce the law vigorously ([Brittanica](#)).
- **Clayton Act of 1914** was designed to address practices the Sherman Antitrust did not cover, such as mergers and acquisitions that harm competition, exclusive dealings, and price-fixing cases.
- **Federal Trade Commission (FTC) Act of 1914** banned "unfair methods of competition" and "unfair or deceptive acts or practices" and created the federal agency of the Federal Trade Commission.

The majority of the antitrust cases are brought to the courts by businesses that are damaged by unfair practices of other businesses. However, the Department of Justice (DOJ) and Federal Trade Commission (FTC) also help regulate the markets through their interventions. The agencies either institute the antitrust litigation themselves as a party of the lawsuit (on behalf of the US Government), or intervenes in private lawsuits through an [Amicus Curiae](#) (friend of the court) filing, to represent and protect the public interest and assist the court in reaching its decision.

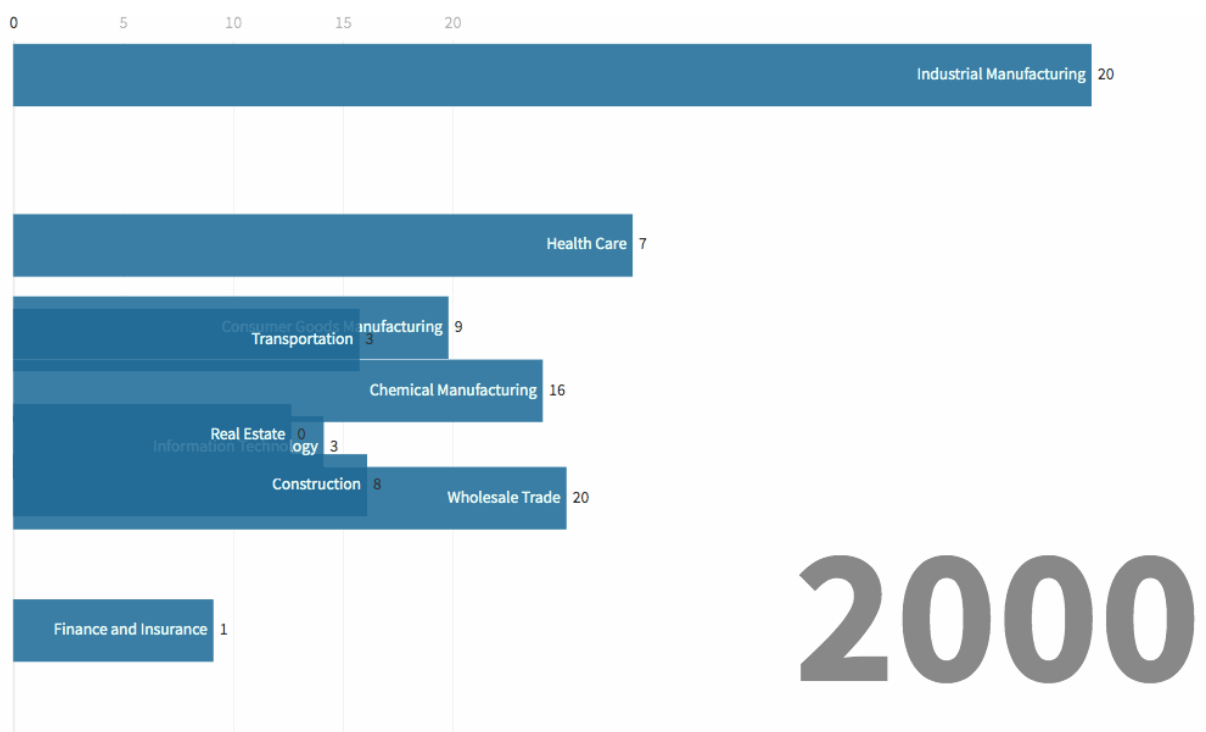
What is the difference between the FTC and the DOJ's roles?

Generally, the agencies complement each other's work, and each agency has its own specialty. The FTC focuses its resources on the parts of the economy with high levels of consumer spending (health care, pharmaceuticals, professional services, food, energy and certain information technology sectors). The DOJ on the other hand is the only agency of the two that can obtain criminal sanctions and has antitrust jurisdiction over industries such as railroads, airlines, banks and telecommunications. ([FTC - The Enforcers](#)).

In which industries does the most antitrust regulation proceedings occur?

From 2000 to 2018, combined the DOJ and FTC averaged 82 interventions per year (with a maximum of 118 in 2011 and a minimum of 45 in 2018). To better understand how these cases broke down by industry since 2000, we merged the databases and aggregated to the two digit NAICS Industry Code Level. For Manufacturing, we broke it down further by FTC definitions (Industrial Goods, Consumer Goods (non Food & Bev.), Chemicals/Industrial Gases, Food & Beverages, Others).

To visualize how the Federal Agencies' interventions have changed over time, we graphed it using a [bar chart race](#).

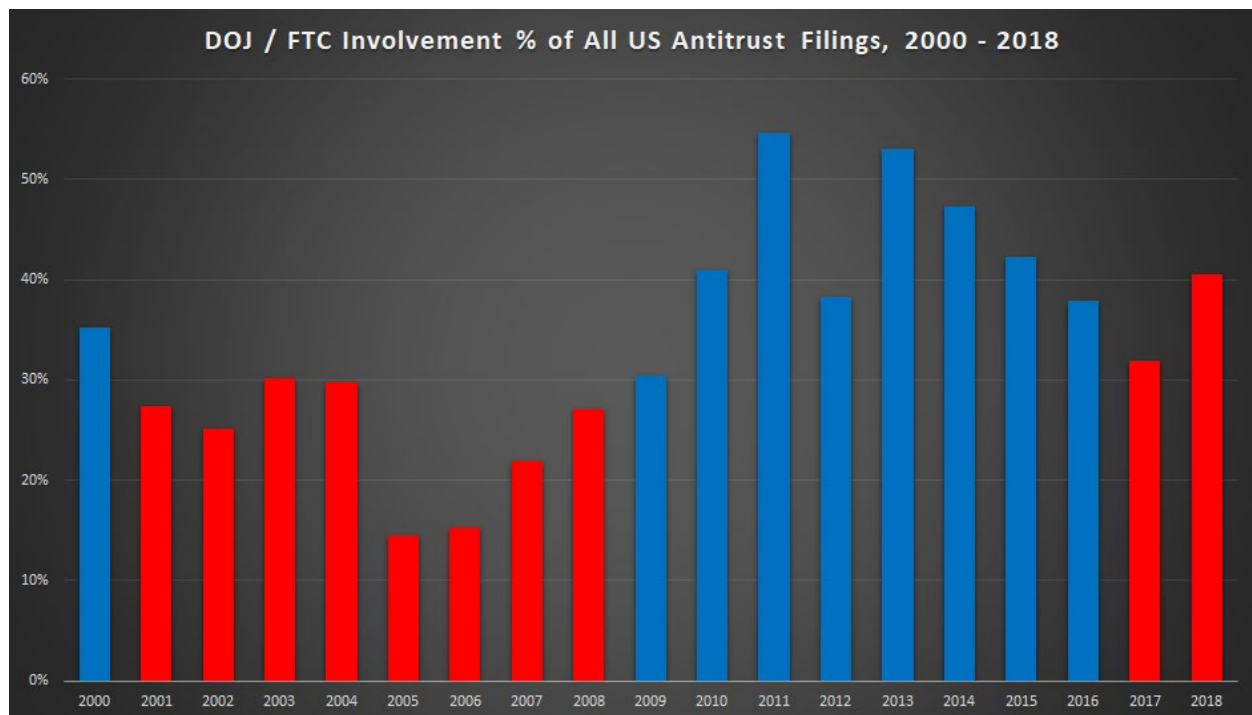


Which firms are involved in the most antitrust proceedings?

In terms of individual firms, since 2000, the three firms that have been involved in the highest number of overall antitrust proceedings are Samsung (51), Monsanto (55) and Abbott Laboratories (60). Many of the country's largest agricultural and food firms have been parties to a high number of antitrust filings as well, including Tyson Foods (42), Koch Foods (34) and Perdue Farms (34). This finding could reflect the significant [consolidation](#) in United States Agriculture.

What are the trends in overall government proceedings?

As can be seen in the graph below, there is significant variance in the level of federal intervention, especially by political party. Democratic administrations generally have a higher intervention rate (Obama's DOJ and FTC averaging around 44%) compared to Republican administrations (Bush averaging around 22% and Trump currently averaging about 35%).



How long does the average antitrust litigation usually take?

In his 2000 paper, *Antitrust in the New Economy* Richard Posner argued that “Antitrust litigation moves very slowly relative to the new economy.” Since 2000, it appears, this trend has continued. Of the 2% of cases that reached a verdict since the year 2000, those that reached a jury verdict, on average had a duration of 3 years and 3 months, and those that reached a bench verdict had a duration of 2 years and 3 months.

Conclusion

As antitrust continues to receive well-deserved attention in the media, IAMECON will continue its antitrust research. Later on this year, we plan to apply to a research grant to increase our impact on this important study area.

Dr. Devrim Ikizler has provided expert witness testimony on a number of antitrust cases involving industry giants such as Facebook, Google and Walmart.