WRITTEN STATEMENT OF THE
UNITED STATES SENTENCING COMMISSION
BEFORE THE
ANTITRUST MODERNIZATION COMMISSION

Hearing on Consideration of Antitrust Criminal Remedies

November 3, 2005

Madam Chair, Commissioners, my name is Charles Tetzlaff and I am the general counsel for the United States Sentencing Commission. It is my honor and privilege to speak to you today on behalf of the Sentencing Commission. The Sentencing Commission thanks you for the opportunity to testify before you today as the Antitrust Modernization Commission considers criminal remedies for antitrust violations.

My remarks today necessarily will be limited in scope and will focus on the Sentencing Commission's recent activities regarding antitrust offenses, the Sentencing Commission's amendment process, and some brief comments about the state of federal sentencing since the Supreme Court issued its decision in *United States v. Booker*. I believe this format will assist the Antitrust Modernization Commission in its evaluation of current antitrust penalties and formulation of recommendations to Congress.

A Brief Introduction to the United States Sentencing Commission

The United States Sentencing Commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The Sentencing Commission is a bipartisan, independent agency in the judicial branch of government. The Sentencing

Commission consists of seven voting members appointed by the President and confirmed by the Senate.[1] No more than three of the commissioners may be federal judges and no more than four may belong to the same political party. The Attorney General is an *ex officio* member of the Commission, as is the Chair of the U.S. Parole Commission.

The Sentencing Commission's principal purposes are to: (1) establish sentencing policies and practices for the federal courts, including guidelines regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

The sentencing guidelines established by the Sentencing Commission are designed to

* incorporate the purposes of sentencing (i.e., just punishment, deterrence, incapacitation, and rehabilitation);

* provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors;

* reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

The Sentencing Commission's Guideline Promulgation Process

The Sentencing Commission operates under "amendment cycles" that culminate in the submission to Congress of proposed amendments to the Federal sentencing guidelines on or

[1]The Sentencing Commission currently has one vacancy in its voting membership.

before May 1 of each calendar year. The Sentencing Commission typically announces its list of priorities fo an amendment cycle in the summer; works on policy issues related to those priorities in the fall; publishes proposed amendments in the *Federal Register* for public comment in the winter; holds public hearings on proposed amendments in the early spring; and votes to promulgate amendments in April. Amendments are submitted to Congress by May 1, and Congress has 180 days to take affirmative action with regard to the proposed amendments. If Congress does not act, the amendments become effective no later than November 1. *See* 28 U.S.C. § 994(p) (2004).

The Sentencing Commission's Recent Activity with Respect to Antitrust Offenses

In June 2004, Congress passed the "Antitrust Criminal Penalty Enhancement and Reform Act of 2004"[2] "to reflect Congress' belief that criminal antitrust violations are serious white collar crimes that should be punished in a manner commensurate with other felonies."[3] Section 215 of the Act increased the maximum term of imprisonment from three to ten years, increased the maximum fine for individuals from $350,000 to $1 million, and increased the maximum fine for corporations from $10,000,000 to $100,000,000.

In the Act's legislative history, Congress set forth its expectations that the Sentencing Commission review and modify the Federal sentencing guidelines governing antitrust violations. "This section will require the United States Sentencing Commission to revise the existing

---

[2]Pub. L. No. 108-237 (2004).

[3]Supplemental Legislative History by Reps. Sensenbrenner and Conyers, *Cong. Rec.* H3658, June 2, 2004).

antitrust sentencing guidelines to increase terms of imprisonment for antitrust violations to reflect the new statutory maximum."[4] Congress also explicitly endorsed the fine calculations set forth in the antitrust guidelines:

> No revision in the existing guidelines is called for with respect to fines, as the increases in the Sherman Act statutory maximum fines are intended to permit courts to impose fines for antitrust violations at current Guideline levels without the need to engage in damages litigation during the criminal sentencing process.
>
> For example, Congress does not intend for the Commission to revisit the current presumption that twenty percent of the volume of commerce is an appropriate proxy for the pecuniary loss caused by a criminal antitrust conspiracy. This presumption is sufficiently precise to satisfy the interests of justice, and promotes efficient and predictable imposition of penalties for criminal antitrust violations. Comments to the guidelines provide that if the actual overcharge caused by cartel behavior can be shown to depart substantially from the presumed ten percent overcharge that underlies the twenty percent presumption, this should be considered by the court in setting the fine within the guideline fine range.[5]

With this direction from Congress, the Sentencing Commission began its examination of the antitrust guidelines. The Sentencing Commission organized a staff policy team, and that team conducted extensive review of the applicable guidelines, including data analysis and case law research. The policy team also contacted interested parties, including staff of your commission, met with the Antitrust Section of the Department of Justice and the Antitrust section of the American Bar Association, and received written comments from the Department of Justice, the ABA, the Probation Officers Advisory Group, the Practitioners Advisory Group,[6] and

---

[4] *Id.*

[5] *Id.*

[6] The Probation Officers Advisory Group and the Practitioners Advisory Group are standing advisory groups for the Sentencing Commission.

the Federal Public Defenders Service. In early 2005, the Sentencing Commission published its proposed amendments to the antitrust guidelines and requested public comment. Public comment was received from the Antitrust Division of the Department of Justice, the American Bar Association's Antitrust Section, and the Federal Public Defenders Service.

In April 2005, the Sentencing Commission held a public hearing at which it received testimony from the Department of Justice and the American Bar Association regarding its proposed amendments to the antitrust guideline. Following the public hearing and after careful consideration of all the commentary and proposals it had received, the Sentencing Commission unanimously voted to promulgate amendments to the antitrust guideline that it believes fully address the concerns Congress articulated through passage of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004.

The Sentencing Commission's Amendment to the Antitrust Guidelines

There are three components to the amended antitrust guidelines, U.S.S.G. §2R1.1[7] First, the base offense level – the starting point for determining the guideline range, that it, the range of months of imprisonment an individual defendant is subject to under the guidelines – was raised from a level 10 to a level 12 for antitrust offenses. Under the amended guideline, an individual convicted of an antitrust offense with no or minimal previous criminal history, would face a sentence of 10-16 months before other mitigating or aggravating factors are taken into

[7]A copy of the 2004 edition of the 2R1.1 guideline and the 2005 amended guideline are attached for your reference.

consideration.[8] This change reflects congressional concern that some antitrust offenses punished pursuant to this guideline were not commensurate with their social impact. The change also fosters greater proportionality between fraud offenses and antitrust offenses, particularly in light of the significant changes made to fraud penalties pursuant to the Sarbanes- Oxley Act of 2002.

Second, the Sentencing Commission amended the "volume of commerce" table in the antitrust guideline. This table increases the guideline range based on the volume of commerce attributable to the defendant because of the offense. The amendment provides up to 16 additional offense levels for the defendant whose offense involves more than $1,500,000,000, and raised the threshold to $1,000,000 from $400,000. The new table: (1) recognizes the depreciation in the value of the dollar since the table was last revised in 1991; (2) responds to data indicating that the financial magnitude of antitrust offenses has increased significantly; and (3) provides greater deterrence for large-scale price-fixing crimes. The Sentencing Commission is confident that the revisions made to the "volume of commerce" table are in furtherance of Congress' intent to punish adequately antitrust offenses and provide a deterrent effect against future violations.

Finally, the Commission amended commentary accompanying the guideline to ensure that courts consider a defendant's particular role in the antitrust offense. For example, the Sentencing Commission instructs courts to apply a four-level enhancement if a sales manager organizes or leads the price-fixing activity of five or more participants to reflect his or her aggravated role in the offense. The guideline commentary also suggests that when setting a fine under the antitrust

---

[8]This is approximately a 25% increase from the 6-12 month initial sentencing range applicable under the old guideline.

guidelines, courts consider the extent of the defendant's participation in the offense, the defendant's role in the offense, and the degree to which the defendant personally profited from the offense (including salary, bonuses, and career enhancement).

The amendment was submitted to Congress on April 29, 2005. Congress is coming to the end of its 180-day review period and the Sentencing Commission does not expect Congress to disapprove of the amendment. As such, we anticipate the amendment becoming effective on November 1, 2005.

A Brief Note on United States v. Booker

On January 12, 2005, the Supreme Court issued a decision in the companion cases *United States v. Booker* and *United States v. Fanfan*,[9] which severed two provisions of the Sentencing Reform Act requiring courts to apply the Federal sentencing guidelines, thus rendering the guidelines "effectively advisory." The Court made clear, however, that "the Sentencing Commission remains in place, writing Guidelines, collecting information about actual district court sentencing decisions, undertaking research, and revising the Guidelines accordingly. . . ."[10] Moreover, the *Booker* court emphasized that although application of the Federal sentencing guidelines no longer is mandatory, sentencing courts still are required "to calculate and consider Guidelines ranges, although they retain the ability to tailor the sentence in light of other statutory

[9]125 S. Ct. 738 (2005).

[10]125 S. Ct. at 768.

concerns as well."[11]

Case law that has developed since the *Booker* decision sets forth a three-step process for imposing a sentence that the Sentencing Commission advocates in its training programs throughout the 94 judicial districts.[12] First, the court should determine the applicable guideline range. Next, the court should consider any departure factor that may be applicable under the guidelines system. Finally, the court should consider the sentencing factors set forth in 18 U.S.C. § 3553(a). If the court determines that a guidelines sentence (including any applicable departures) does not meet the purposes of sentencing, it may impose a non-guidelines sentence pursuant to its new *Booker* authority. Case law also suggests that the Federal sentencing guidelines are to be afforded substantial weight in the sentencing process.[13] The Sentencing Commission wholeheartedly agrees with this approach and believes that it is consistent with the remedial holding in *Booker*.

These post-*Booker* developments strongly suggest that although the Federal sentencing guidelines are no longer mandatory, they retain significant impact on federal sentencing trends and continue to offer the most fair and effective way to obtain neutral sentences. In fact, since

---

[11] 125 S. Ct. at ___ (internal citations omitted); *see also United States v. Hughes*, 2005 WL 147059 (4th Cir. Jan. 24, 2005)(holding that "consistent with the remedial scheme set forth in Booker, a district court shall first calculate the range prescribed by the guidelines. Then, the court shall consider that range as well as other relevant factors set forth in the guidelines and those factors set forth in § 3553(a) before imposing the sentence.").

[12] *See*, *e.g.*, *United States v. Crosby*, 397 F.3d 107, 113 (2nd Cir. 2005); *United States v. Haack*, 40 F.3d 997 (8th Cir. 2005); *United States v. Christenson*, 403 F.3d 1006 (8th Cir. 2005)(same).

[13] *United States v. Wanning*, 2005 WL 1273158, (D. Neb. Feb. 3, 20005)(Kopf, J. stating guidelines must be given substantial weight); *United States V. Peach*, No. C4-04-033, 2005 WL 352636, *4 (D.N.D. 2005)(Hovland, J.).

the *Booker* decision, the Sentencing Commission has been collecting and analyzing sentencing trend data on a near real-time basis. The most current data, covering 41,579 cases sentenced since *Booker*, demonstrate that 61.9 percent of all federal sentences are within the applicable sentencing guideline range. That rate is generally consistent with compliance rates prior to passage of the 2003 PROTECT Act, which severely restricted judicial sentencing discretion. When you add the number of outside-the-guideline range sentences requested or supported by prosecutors, the guideline compliance rate climbs to over 85 percent.

Conclusion

The Department of Justice continues to seek guidelines sentences for antitrust offenses "because they have promoted consistency, fairness, and transparency."[14] The Sentencing Commission believes that it has successfully implemented the congressional intent expressed through passage of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, and this belief will be confirmed should Congress allow the amendments to take effect on November 1. Consideration and application of the new antitrust guidelines will provide both increased punishment and deterrence and remain a powerful tool for prosecution of antitrust violations.[15]

I would like to thank the members of the Antitrust Modernization Commission for the opportunity to appear before you today and I look forward to answering any questions you may have.

---

[14]*See* Address by Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement, Antitrust Division, Department of Justice, March 30, 2005 before the American Bar Association's Antitrust Section (explaining the Division's approach to sentencing post-*Booker*).

[15]*Id*.

NOVEMBER 1, 2004
ANTITRUST GUIDELINE

PART R - ANTITRUST OFFENSES

§2R1.1. Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors

(a) Base Offense Level: **10**

(b) Specific Offense Characteristics

(1) If the conduct involved participation in an agreement to submit non-competitive bids, increase by **1** level.

(2) If the volume of commerce attributable to the defendant was more than $400,000, adjust the offense level as follows:

Volume of Commerce (Apply the Greatest)		Adjustment to Offense Level
(A)	More than $400,000	add **1**
(B)	More than $1,000,000	add **2**
(C)	More than $2,500,000	add **3**
(D)	More than $6,250,000	add **4**
(E)	More than $15,000,000	add **5**
(F)	More than $37,500,000	add **6**
(G)	More than $100,000,000	add **7**.

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy is the volume of commerce done by him or his principal in goods or services that were affected by the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level.

(c) Special Instruction for Fines

(1) For an individual, the guideline fine range shall be from one to five percent of the volume of commerce, but not less than $20,000.

(d) Special Instructions for Fines - Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use 20 percent of the volume of affected commerce.

(2) When applying §8C2.6 (Minimum and Maximum Multipliers), neither the minimum nor maximum multiplier shall be less than 0.75.

(3) In a bid-rigging case in which the organization submitted one or more complementary bids, use as the organization's volume of commerce the greater of (A) the volume of commerce done by the organization in the goods or services that were affected by the violation, or (B) the largest

contract on which the organization submitted a complementary bid in connection with the bid-rigging conspiracy.

Commentary

Statutory Provisions: *15 U.S.C. §§ 1, 3(b). For additional statutory provision(s), see Appendix A (Statutory Index).*

Application Notes:

1. *The provisions of §3B1.1 (Aggravating Role) and §3B1.2 (Mitigating Role) should be applied to an individual defendant as appropriate to reflect the individual's role in committing the offense. For example, if a sales manager organizes or leads the price-fixing activity of five or more participants, a 4-level increase is called for under §3B1.1. An individual defendant should be considered for a downward adjustment under §3B1.2 for a mitigating role in the offense only if he was responsible in some minor way for his firm's participation in the conspiracy.*

2. *In setting the fine for individuals, the court should consider the extent of the defendant's participation in the offense, his role, and the degree to which he personally profited from the offense (including salary, bonuses, and career enhancement). If the court concludes that the defendant lacks the ability to pay the guideline fine, it should impose community service in lieu of a portion of the fine. The community service should be equally as burdensome as a fine.*

3. *The fine for an organization is determined by applying Chapter Eight (Sentencing of Organizations). In selecting a fine for an organization within the guideline fine range, the court should consider both the gain to the organization from the offense and the loss caused by the organization. It is estimated that the average gain from price-fixing is 10 percent of the selling price. The loss from price-fixing exceeds the gain because, among other things, injury is inflicted upon consumers who are unable or for other reasons do not buy the product at the higher prices. Because the loss from price-fixing exceeds the gain, subsection (d)(1) provides that 20 percent of the volume of affected commerce is to be used in lieu of the pecuniary loss under §8C2.4(a)(3). The purpose for specifying a percent of the volume of commerce is to avoid the time and expense that would be required for the court to determine the actual gain or loss. In cases in which the actual monopoly overcharge appears to be either substantially more or substantially less than 10 percent, this factor should be considered in setting the fine within the guideline fine range.*

4. *Another consideration in setting the fine is that the average level of mark-up due to price-fixing may tend to decline with the volume of commerce involved.*

5. *It is the intent of the Commission that alternatives such as community confinement not be used to avoid imprisonment of antitrust offenders.*

6. *Understatement of seriousness is especially likely in cases involving complementary bids. If, for example, the defendant participated in an agreement not to submit a bid, or to submit an unreasonably high bid, on one occasion, in exchange for his being allowed to win a subsequent bid that he did not in fact win, his volume of commerce would be zero, although he would have contributed to harm that possibly was quite substantial. The court should consider sentences*

near the top of the guideline range in such cases.

7. *In the case of a defendant with previous antitrust convictions, a sentence at the maximum of the applicable guideline range, or an upward departure, may be warranted. See §4A1.3 (Adequacy of Criminal History Category).*

Background: These guidelines apply to violations of the antitrust laws. Although they are not unlawful in all countries, there is near universal agreement that restrictive agreements among competitors, such as horizontal price-fixing (including bid-rigging) and horizontal market-allocation, can cause serious economic harm. There is no consensus, however, about the harmfulness of other types of antitrust offenses, which furthermore are rarely prosecuted and may involve unsettled issues of law. Consequently, only one guideline, which deals with horizontal agreements in restraint of trade, has been promulgated.

The agreements among competitors covered by this section are almost invariably covert conspiracies that are intended to, and serve no purpose other than to, restrict output and raise prices, and that are so plainly anticompetitive that they have been recognized as illegal per se, i.e., without any inquiry in individual cases as to their actual competitive effect. The Commission believes that the most effective method to deter individuals from committing this crime is through imposing short prison sentences coupled with large fines. The controlling consideration underlying this guideline is general deterrence.

Under the guidelines, prison terms for these offenders should be much more common, and usually somewhat longer, than typical under pre-guidelines practice. Absent adjustments, the guidelines require confinement of six months or longer in the great majority of cases that are prosecuted, including all bid-rigging cases. The court will have the discretion to impose considerably longer sentences within the guideline ranges. Adjustments from Chapter Three, Part E (Acceptance of Responsibility) and, in rare instances, Chapter Three, Part B (Role in the Offense), may decrease these minimum sentences; nonetheless, in very few cases will the guidelines not require that some confinement be imposed. Adjustments will not affect the level of fines.

Tying the offense level to the scale or scope of the offense is important in order to ensure that the sanction is in fact punitive and that there is an incentive to desist from a violation once it has begun. The offense levels are not based directly on the damage caused or profit made by the defendant because damages are difficult and time consuming to establish. The volume of commerce is an acceptable and more readily measurable substitute. The limited empirical data available as to pre-guidelines practice showed that fines increased with the volume of commerce and the term of imprisonment probably did as well.

The Commission believes that the volume of commerce is liable to be an understated measure of seriousness in some bid-rigging cases. For this reason, and consistent with pre-guidelines practice, the Commission has specified a 1-level increase for bid-rigging.

Substantial fines are an essential part of the sentence. For an individual, the guideline fine range is from one to five percent of the volume of commerce, but not less than $20,000. For an organization, the guideline fine range is determined under Chapter Eight (Sentencing of Organizations), but pursuant to subsection (d)(2), the minimum multiplier is at least 0.75. This multiplier, which requires a minimum fine of 15 percent of the volume of commerce for the least serious case, was selected to provide an effective deterrent to antitrust offenses. At the same time, this minimum multiplier maintains incentives for desired organizational behavior. Because the

Department of Justice has a well-established amnesty program for organizations that self-report antitrust offenses, no lower minimum multiplier is needed as an incentive for self-reporting. A minimum multiplier of at least 0.75 ensures that fines imposed in antitrust cases will exceed the average monopoly overcharge.

The Commission believes that most antitrust defendants have the resources and earning capacity to pay the fines called for by this guideline, at least over time on an installment basis. The statutory maximum fine is $350,000 for individuals and $10,000,000 for organizations, but is increased when there are convictions on multiple counts.

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendments 211 and 303); November 1, 1991 (see Appendix C, amendments 377 and 422); November 1, 2003 (see Appendix C, amendment 661); November 1, 2004 (see Appendix C, amendment 674).

NOVEMBER 1, 2005
ANTITRUST GUIDELINE
AMENDMENT

AMENDMENT TO U.S.S.G. 2R1.1 submitted to Congress on April 29, 2005 with a specified effective date of November 1, 2005:

Section 2R1.1(b) is amended by striking subdivision (2) and inserting the following:

"(2) If the volume of commerce attributable to the defendant was more than $1,000,000, adjust the offense level as follows:

Volume of Commerce (Apply the Greatest)		Adjustment to Offense Level
(A)	More than $1,000,000	add 2
(B)	More than $10,000,000	add 4
(C)	More than $40,000,000	add 6
(D)	More than $100,000,000	add 8
(E)	More than $250,000,000	add 10
(F)	More than $500,000,000	add 12
(G)	More than $1,000,000,000	add 14
(H)	More than $1,500,000,000	add 16.

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy is the volume of commerce done by him or his principal in goods or services that were affected by the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level.".

The Commentary to §2R1.1 captioned "Application Notes" is amended by striking Note 1 and inserting the following:

"1. Application of Chapter Three (Adjustments).—Sections 3B1.1 (Aggravating Role), 3B1.2 (Mitigating Role), 3B1.3 (Abuse of Position of Trust or Use of Special Skill), and 3C1.1 (Obstructing or Impeding the Administration of Justice) may be relevant in determining the seriousness of the defendant's offense. For example, if a sales manager organizes or leads the price-fixing activity of five or more participants, the 4-level increase at §3B1.1(a) should be applied to reflect the defendant's aggravated role in the offense. For purposes of applying §3B1.2, an individual defendant should be considered for a mitigating role adjustment only if he were responsible in some minor way for his firm's participation in the conspiracy.".

The Commentary to §2R1.1 captioned "Application Notes" is amended in Note 2 by striking the first sentence and inserting the following:

"Considerations in Setting Fine for Individuals.—In setting the fine for individuals, the court should consider the extent of the defendant's participation in the offense, the defendant's role, and the degree to which the defendant personally profited from the offense (including salary, bonuses, and career enhancement).".

The Commentary to §2R1.1 captioned "Background" is amended in the second paragraph by striking the "The Commission" and all that follows through "general deterrence."; in the third paragraph by striking "confinement of six months or longer" and inserting "some period of confinement"; and in the last paragraph by striking the last sentence.

Reason for Amendment: This amendment responds to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. 108-237 (the "Act"). The Act increased the statutory maximum term of imprisonment for antitrust offenses under 15 U.S.C. §§ 1 and 3(b) from three to ten years. The amendment responds to congressional concern about the seriousness of antitrust offenses and provides for antitrust penalties that are more proportionate to those for sophisticated frauds sentenced under §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). The Commission has long recognized the similarity of antitrust offenses to sophisticated frauds.

The amendment increases the base offense level for antitrust offenses in §2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors) to level 12. The higher base offense level ensures that penalties for antitrust offenses will be coextensive with those for sophisticated frauds sentenced under §2B1.1 and recognizes congressional concern about the inherent seriousness of antitrust offenses. The penalties for sophisticated fraud have been increased incrementally due to a series of amendments to §2B1.1, while no commensurate increases for antitrust offenses had occurred. Raising the base offense level of §2R1.1 helps restore the historic proportionality in the treatment of antitrust offenses and sophisticated frauds.

The "volume of commerce" table at §2R1.1(b)(2) is amended to provide up to 16 additional offense levels for the defendant whose offense involves more than $1,500,000,000, while the new table's first threshold is raised from $400,000 to $1,000,000. The new volume of commerce table: (1) recognizes the depreciation in the value of the dollar since the table was last revised in 1991; (2) responds to data indicating that the financial magnitude of antitrust offenses has increased significantly; and (3) provides greater deterrence of large scale price-fixing crimes.

Application Note 1 to §2R1.1 is amended to emphasize the potential relevance of such Chapter Three enhancements as §3B1.1 (Aggravating Role), §3B1.3 (Abuse of Position of Trust or Use of Special Skill), and §3C1.1 (Obstructing or Impeding the Administration of Justice) in determining the appropriate sentence for an antitrust offender. Application Note 2 also is amended to highlight the potential relevance of the defendant's role in the offense in determining the amount of fine to be imposed. Finally, the amendment strikes outdated background commentary.