

2021 IMPACT REPORT



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FIGHTING FOR COMPETITION TO PROTECT CONSUMERS, WORKERS, AND SMALL BUSINESSES

The American Antitrust Institute turned the challenges of 2020 into opportunities in 2021 as we continued to lead in progressive competition research, education, and advocacy. AAI's work has a measurable, positive impact on the consumers, workers, and businesses that are at risk from the exercise of market power by dominant firms and oligopolies.

AAI's work will continue to promote more vigorous enforcement of the antitrust laws and competition policy that supports it. This means working to further enhance our resources, our networks, and our impact. AAI is committed to fulfilling the vital mission that has defined our organization for more than 20 years. It is because of your support that we are able to serve the public interest.

Sincerely,

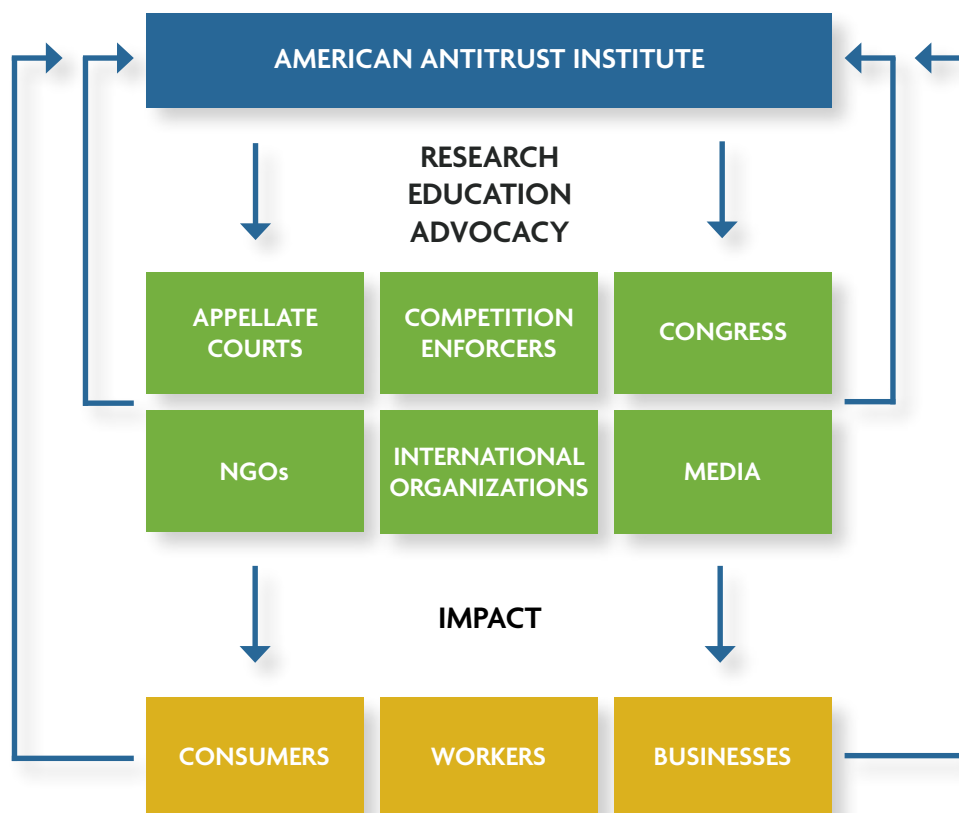


Diana Moss

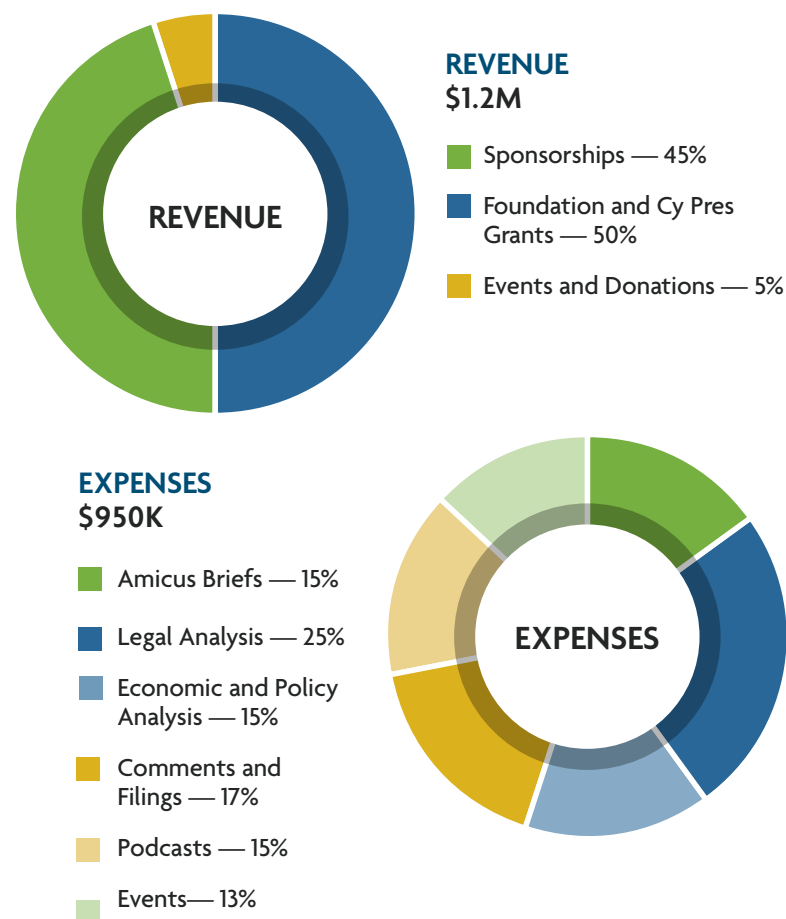
President, American Antitrust Institute

EFFECTIVE, EFFICIENT, AND IMPACTFUL

HOW AAI WORKS

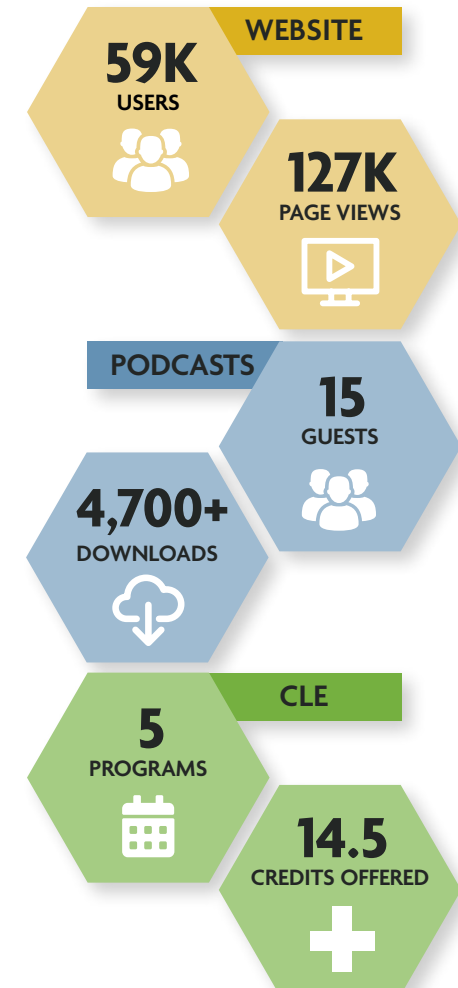
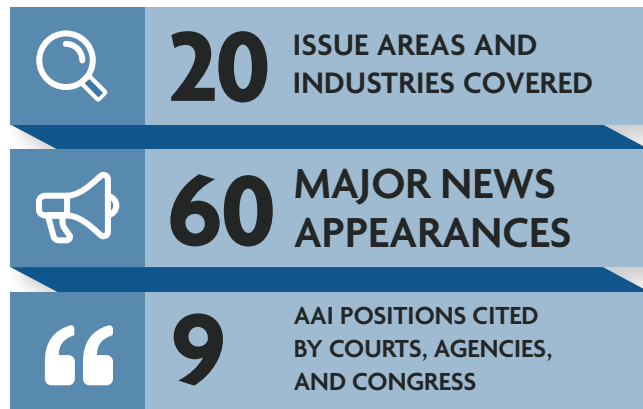


FISCAL YEAR 2021 FINANCIALS



OUR IMPACT

THE NATION'S LEADING PROGRESSIVE COMPETITION RESEARCH, EDUCATION, AND ADVOCACY ORGANIZATION



OUR WORK



AAI'S CUTTING-EDGE ANALYSIS AND REPORTS

Can the Biden Enforcers Flip Merger Policy?

AAI argued Biden antitrust enforcers should expand their focus beyond tech markets and embrace a bold merger policy—rooted in history, precedent, and economics—shifting away from risk aversion and toward aggressive litigation to block anticompetitive mergers across all markets.

Soaring Private Equity Investment in the Healthcare Sector: Consolidation Accelerated, Competition Undermined, and Patients at Risk

AAI, in collaboration with the Petris Center at U.C. Berkeley, assessed the impact from private equity funds' push into the healthcare sector, finding alarming signs that private equity investment exacerbates existing competition problems, increases consolidation, and degrades quality of care.

Market Power and Digital Business Ecosystems: Assessing the Impact of Economic and Business Complexity on Competition Analysis and Remedies

AAI and marketing experts took a multidisciplinary approach to evaluating competition issues raised by the digital business ecosystems, filling a significant analytical gap, and informing the enforcement and legislative debate over reining in the market power of large digital business ecosystems.

Antitrust, Dominant Firms, and Public Policy Problems: A Framework for Maximizing Success by Minimizing Uncertainty

In this ambitious report, AAI set forth a general framework for policymakers to assess potential outcomes when combatting dominant-firm behavior using federal antitrust litigation. AAI identified five key variables that drive antitrust outcomes and their implications for policymakers.

Privacy and Antitrust at the Crossroads of Big Tech

AAI examined the complicated intersection between antitrust law and privacy, explaining how antitrust can reinforce privacy rights, highlighting how antitrust should better account for privacy harms, and articulating why antitrust law and competition policy cannot substitute for affirmative privacy rights.



MAKING INROADS IN THE COURTS: AAI'S AMICUS BRIEFS

AAI Amicus Briefs Cited in Three U.S. Supreme Court Cases in 2021

The U.S. Supreme Court cited to and quoted from AAI amicus briefs in three antitrust and competition policy cases in 2021, as discussed by legal data analytics website Juris Lab, which identified AAI among its list of the “most prolific filers.”

AAI Urges Supreme Court to Reject NCAA's Antitrust Arguments in Dispute Over-Paying Student-Athletes (NCAA v. Alston)

The U.S. Supreme Court sided with and cited approvingly to AAI's amicus brief in rejecting an amateurism defense offered as justification for an agreement among the NCAA and its member institutions to collectively suppress the pay of student athletes.

AAI Asks U.S. Supreme Court to Mobilize Competition Policy in High-Stakes Copyright Case (Google v. Oracle)

The U.S. Supreme Court, citing and quoting from AAI's amicus brief, followed AAI's argument that copying declaring code used in APIs should be treated as a fair use under copyright law to promote competition and interoperability in network markets.

AAI Fights to Preserve Supreme Court's Actavis Ruling in Fifth Circuit (Impax v. FTC)

A unanimous Fifth Circuit panel followed AAI's amicus positions in affirming an FTC finding of liability in a reverse payment case, agreeing with AAI on issues relating to the baseline entry date and that departure from the baseline is established by the large, unjustified payment.

AAI Asks D.C. Circuit to Hold FERC to Higher Standards in Protecting Competition and Consumers from Regulatory Gaming (EDF v. FERC)

The D.C. Circuit sided with AAI and used language identical to that in AAI's brief in overturning a FERC approval of a new gas pipeline without accounting for the risk that a regulated, vertically integrated monopolist has an incentive to inflate transfer pricing.

“[A] TITAN IN THE ANTITRUST ARENA.”

— Chief Judge Rosenstengel, U.S. District Court for the Southern District of Illinois



SHAPING ENFORCEMENT AND POLICY: AAI'S FILINGS BEFORE CONGRESS AND GOVERNMENT AGENCIES

AAI Commends DOJ for Challenging American- JetBlue Northeast Alliance and Urging DOT to Get Tougher on Airline Joint Ventures
AAI's letter highlighted that airline joint ventures like the NEA are the "go-to" strategy for large carriers to maintain or expand their market positions, illustrating the misalignment between regulatory policy and the troubled domestic air passenger service markets, and need for major overhaul.

AAI Testifies Before Senate Judiciary Subcommittee on Consolidation, Monopolies, and Innovation, Stresses Harm to Innovation Competition

AAI's testimony emphasized that innovation competition is harmed by anticompetitive conduct and harmful consolidation and stressed the need for more stand-alone innovation competition cases, discounting tenuous efficiencies claims, and stronger standards for blocking harmful acquisitions of disruptive, innovative rivals.

AAI Weighs in With DOJ and FTC Opposing Proposed Rule Exempting Many Partial Acquisitions from HSR Reporting Requirements

In comments, AAI supported proposed changes making needed updates to reporting but opposed a provision exempting many partial ownership acquisitions (e.g., private equity and institutional investors), concluding that in light of rising concentration, it does not serve the interests of competition and consumers.

AAI Urges FCC to Oppose Verizon's Proposed Acquisition of Tracfone, Warns of Oligopoly in Pre-Paid Wireless and Harm to Consumers

AAI emphasized that the proposed transfer's anticompetitive effects in the market for pre-paid wireless service could lead to higher prices, lower quality, and less innovation, to be felt by consumers hard hit by the COVID-19 pandemic, economic downturn, and other disruptions.

“[AAI'S AMG CAPITAL BRIEF IS AN
EXAMPLE WHERE] IMPACT IS FELT IN
POLICY RELATED MATTERS.”

– The Juris Lab

AAI Writes to DOJ About Anticompetitive Concerns Raised by UnitedHealth Group's Proposed Acquisition of Rival, Change Healthcare

AAI provided in-depth analysis on the potential harm to competition and consumers from eliminating rivalry between UHG's information and technology-enabled health services subsidiary, Optum, and Change Healthcare, highlighting issues arising from unique characteristics of digital technology markets.

AAI Urges USDA to Use Agency Authority to Better Address Concentration and Supply Chain Instability

In comments to USDA, AAI encouraged the agency to take a more aggressive role in crafting competition policies to combat concentration and supply chain instability in food and agriculture, noting the importance of the integrity and stability of the food system.

AAI Submits Comments to the FTC Multilateral Task Force on Broken Pharma Merger Policy

AAI submitted comments highlighting that pharma merger policy needs an overhaul, recapping its 2020 study showing that branded and generic drug manufacturers swap assets within a shrinking group of powerful players, to the detriment of competition and consumers.

AAI Teams Up with Public Knowledge, Urging DOJ to Carefully Scrutinize Mergers in Media/Entertainment and Distribution

AAI and Public Knowledge wrote to DOJ, encouraging the agency to carefully scrutinize mergers in media/entertainment and distribution, revealing new analysis that shows growing challenges to competition and the failure of past mergers to prove up benefits.

OUR WORK



HIGHLIGHTS OF AAI'S 2020 EVENTS

15th Annual Private Antitrust Enforcement Conference

In this flagship forum held in Washington D.C., AAI gathered leading private enforcers and experts to explore frontier issues in the areas of legislative reform, diversity and inclusion, class action certification, and developments in the protein industries.

Virtual Roundtable: The Darkest Side of Rising Concentration – Fear and Retaliation in Antitrust

AAI gathered antitrust experts to discuss how threats posed by dominant firms and oligopolies affect competition and the implications of the potent problem of fear and retaliation in bringing and litigating public and private antitrust cases.

Virtual Roundtable: Taking Stock of Competition in Retail Grocery – Consolidation, Buyer Power, and Consumer Choice

AAI's advocacy in food and the COVID pandemic coalesced in this discussion on rising concentration, the role of smaller players, and diversity in the grocery supply chain and framing a unified approach to promoting competition in retail grocery through antitrust enforcement and other policy tools.

Virtual Roundtable: Competition in Real Estate – Taking Stock of the “American Dream”

AAI probed into existing and potential competition in residential real estate, bringing together experts to discuss revisiting the “American Dream” in light of challenges in residential real estate, and unpacking issues for antitrust enforcement and remedies.

22nd Annual Policy Conference: Competition Enforcement in the International Arena

AAI's annual policy conference gathered experts from across the progressive spectrum, focusing on policy transitions, perspectives on privacy, technology, and competition, the state of global cartel enforcement, and a special conversation between antitrust experts Frederic Jenny and William Baer.



AAI'S TOP-RANKED COMPETITION PODCAST SERIES “RULED BY REASON”

A Conversation with Prof. Herb Hovenkamp: Competition, Consumer Welfare, and the Future of Antitrust Law

A Conversation with Competition Experts William Baer and Frederic Jenny: Enforcement and Policy Issues in the International Arena

Private Equity and Competition: How Private Equity Drives Consolidation and Undermines Market Stability while Flying Under the Antitrust Enforcement Radar

What's the Beef? How the Beef Packing Cartel Hurts Producers and Consumers and How Independent Cattle Producers and Processors Can Help Restore Competition and Choice

Market Power and Digital Business Ecosystems: A Discussion of the Impact of Economic and Business Complexity on Competition Analysis and Remedies

Class Action Issues Update: The Latest Developments and Looking Ahead to 2021 and Beyond

Antitrust Litigation in the Age of Big Data: How New Technology is Harnessed to Enforce the Antitrust Laws and Return Money to Victims

“LET'S NOT DENY THAT ANTITRUST IS HOT RIGHT NOW...BUT I HAVE TO GIVE AAI CREDIT BECAUSE AAI STARTED EARLY... AAI LIVED THROUGH THE ANTITRUST WINTER. YOU KEPT THE FLAME ALIVE.”

– Tim Wu, Special Assistant to the President, National Economic Council

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THE ONLY WAY AAI CAN FULFILL ITS MISSION IS WITH YOUR SUPPORT.

Promoting competition that protects consumers, businesses, and society is more important than ever. AAI is the leading progressive competition research, education, and advocacy organization in the United States. Our independent, expert, and highly respected work has significant impact on advancing the case for strong enforcement and progressive competition policy. Please connect with AAI and give your support.

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