

# **TITLE 7 ANTITRUST DIVISION**

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**7-1.100 Department of Justice Policy and Responsibilities**

The U.S. antitrust laws represent the legal embodiment of our nation's commitment to a free market economy in which the competitive process of the market ensures the most efficient allocation of our scarce resources and the maximization of consumer welfare. The Department of Justice is responsible for enforcing the federal antitrust laws, which essentially prohibit private restraints of trade (such as price fixing, bid rigging and other collusive arrangements among competitors) that unreasonably impede the free forces of the market. The Antitrust Division is responsible for coordinating the Department's antitrust enforcement and public policy advocacy efforts, and has jurisdiction for the statutes described in USAM 7-4.000, among others.

The Antitrust Division accomplishes its mission in two principal ways. First, as an enforcement agency, it prosecutes violations criminally and civilly, primarily under the Sherman and Clayton Acts. Second, it advocates competition before congressional committees and federal regulatory agencies, articulating pro-competitive solutions for economic problems.

The experience of the Antitrust Division and of many United States Attorneys' offices generally is that, in the course of investigations supervised by United States Attorneys' offices, it is not uncommon for those offices to obtain evidence of conduct that constitutes criminal antitrust violations. United States Attorneys' offices should watch for manifestations of price fixing, bid rigging, or other types of collusive conduct among competitors that might have the effect of allocating customers, restricting output, or raising price: such conduct would constitute a criminal violation of Section 1 of the Sherman Act. See AG Policy Statement in the Antitrust Resource Manual at 1. A United States Attorney with evidence of a possible antitrust violation should consult with the chief of the Antitrust Division field office with geographical responsibility for the United States Attorney's district, see USAM 7-3.700 or with that field office's designated liaison with the United States Attorney's district, to determine who should investigate and prosecute the case. Most antitrust investigations are conducted by the Antitrust Division's sections and field offices because they have specific expertise in particular industries and markets. In some cases, however, it may be more advantageous for the United States Attorney's office to investigate and prosecute a matter, particularly where localized price-fixing or bid-rigging conspiracies are involved, or where the antitrust violations are part of an overall course of criminal conduct being investigated by the United States Attorney's office. There may also be important mutual benefits to be derived in situations where a United States Attorney's office and the Antitrust Division can coordinate the prosecution and disposition of criminal matters that involve both antitrust offenses and other offenses.

The Antitrust Division, through the Deputy Assistant Attorney General for Criminal Enforcement, may refer antitrust investigations to a United States Attorney. Once a United States Attorney's office accepts a referral, it will be primarily responsible for the investigation and prosecution of that case.

Pursuant to 28 C.F.R. Sec. 0.40, all antitrust investigations, whether initiated by or referred to a United States Attorney, are subject to supervision by the Assistant Attorney General for the Antitrust Division. This ensures a consistent national policy on antitrust questions. Accordingly, the Division's approval is required at various stages of the investigation, as outlined in USAM 7-2.000 et. seq.

### **7-1.200 Notification to Targets**

The Antitrust Division follows the Department's general practice of informing individuals, under certain circumstances, that they are targets of an investigation and advising them of the opportunity to appear voluntarily before the grand jury. No similar opportunity to appear before the grand jury extends to corporate entities. However, the United States Attorney ordinarily should advise counsel for the corporate entities if indictment is being contemplated.

Counsel for corporate and individual targets of the investigation may request the opportunity to present arguments against indictment to the Deputy Assistant Attorney General for Criminal Enforcement or other Antitrust Division officials. Although counsel does not have any absolute right to be heard by the Deputy Assistant Attorney General for Criminal Enforcement, the Deputy, at his/her discretion, will ordinarily meet with counsel, but only after counsel has already met and discussed the issues with the United States Attorney. The United States Attorney will be notified in advance of all such meetings and may be present.

**7-2.000  
PRIOR  
APPROVALS**

USAM	Type and Scope of Approval	Who Must Approve	Comments
7- 5.100; .210	Inquiry into possible antitrust violations.	Deputy Assistant Attorney General for Criminal Enforcement, Director and Deputy Director of Operations, Antitrust Division.	Written request and written approval required.
7-5.310	Grand jury investigation of possible antitrust violations.	Assistant Attorney General, Antitrust Division.	Written request and written approval required.
7- 5.400; .410	Initiate civil or criminal antitrust case.	Assistant Attorney General, Antitrust Division.	Written request and written approval required.
7- 5.610; .611 .612 .613	Disposition of antitrust actions, including plea agreements, settlements and sentencing recommendations.	Assistant Attorney General, Antitrust Division	

**7-3.000**  
**ORGANIZATION OF**  
**THE DIVISION**

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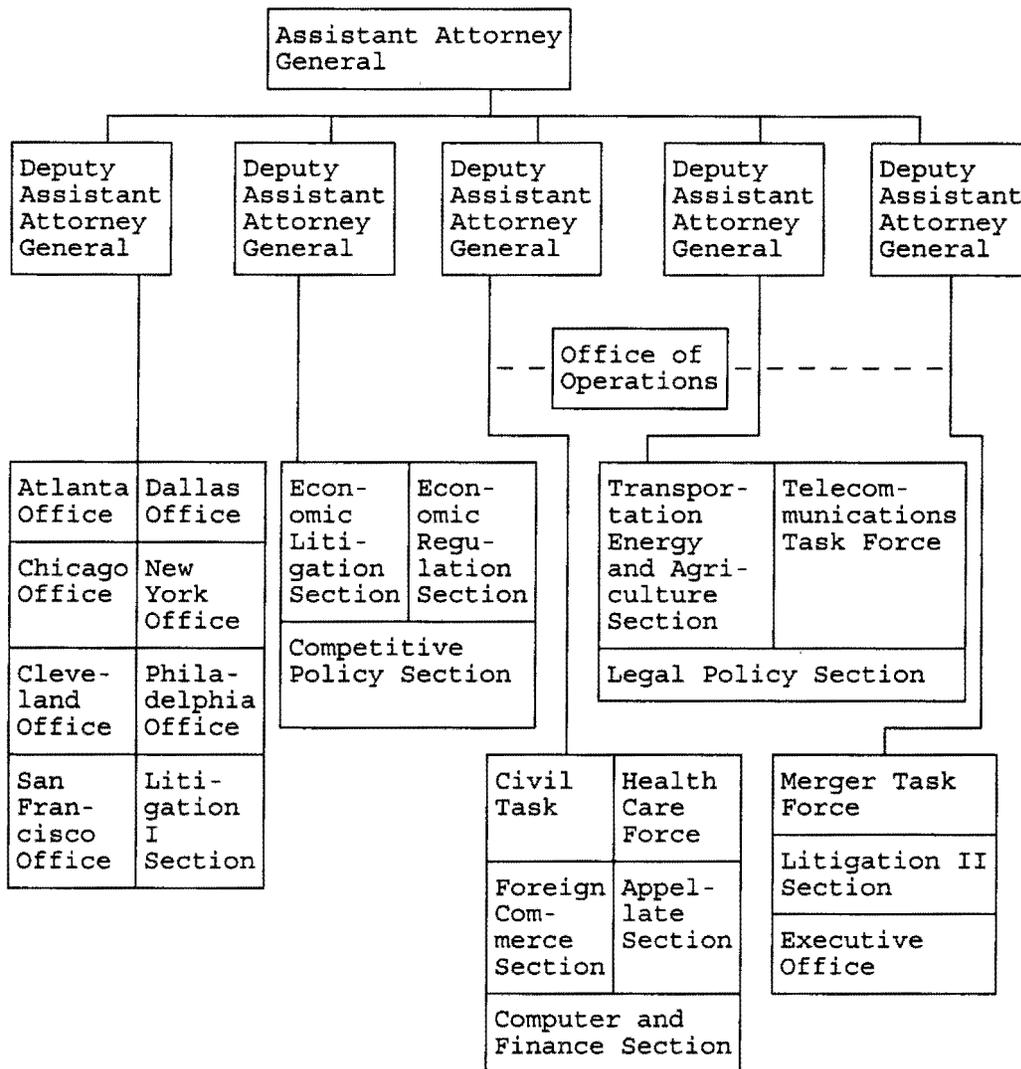
- 7-3.100 Office of the Assistant Attorney General**
  - 7-3.200 Organizational Chart**
  - 7-3.300 Deputy Assistant Attorney General for Criminal Enforcement**
  - 7-3.400 Office of Operations**
  - 7-3.500 Washington General Litigating Sections**
  - 7-3.600 Specialized Sections**
  - 7-3.700 Field offices**
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**7-3.100 Office of the Assistant Attorney General**

The Assistant Attorney General in charge of the Antitrust Division is the Division's chief representative and is responsible for leadership and oversight of all the Division's programs and policies. The Assistant Attorney General is assisted by five Deputy Assistant Attorneys General, of equal rank, and by the Director of Operations. The specific organizational units subordinate to each Deputy Assistant Attorney General are illustrated on the Division's organizational chart at USAM 7-3.200 (see following page).

### 7-3.200 Organizational Chart

[Organizational chart approved by Attorney General Reno on February 3, 1993.]



### 7-3.300 Deputy Assistant Attorney General for Criminal Enforcement

The Deputy Assistant Attorney General for Criminal Enforcement in the Antitrust Division has direct supervisory responsibility for the Division's criminal investigations and litigation. The Deputy assigns criminal investigations and cases to particular Division sections or field offices based upon the commodity or service at issue, the geographical area involved, the type of violation, and the availability of resources. In addition, the Deputy arranges for the provision of FBI support services for investigations relating to antitrust matters.

### 7-3.400 Office of Operations

The Office of Operations has direct supervisory responsibility for the Division's civil investigations and litigation. The Director and Deputy Director of Operations assign investigations, cases, and other civil matters to particular Division sections or field offices based upon the commodity or service at issue,

the geographical area involved, the type of violation, and the availability of resources. The Office of Operations also acts as the Division's chief liaison with the Federal Trade Commission. In addition, the Office of Operations processes all Freedom of Information Act requests relating to antitrust matters.

### **7-3.500 Washington General Litigating Sections**

The Antitrust Division has two general litigating sections based in Washington: Litigation I and Litigation II. Each has responsibility nationwide for commercial activities affecting specified groups of commodities.

These two sections are primarily concerned with criminal and civil violations of antitrust laws that affect national or multi-regional markets. They handle significant mergers and acquisitions, major civil investigations in which structural relief, such as divestiture, is anticipated, and conspiracies of regional or national scope.

### **7-3.600 Specialized Sections**

The Division's remaining Washington sections have somewhat more specialized duties. The Professions and Intellectual Property Section, for example, is responsible for investigating and prosecuting all violations of the antitrust laws that involve questions of patent, trademark, and copyright abuse. This section also has jurisdiction over the professions (including health care), drug commodities, labor, newspapers and motion pictures.

Two sections -- the Transportation, Energy, and Agriculture Section and the Communications and Finance Section -- investigate and litigate antitrust violations, appear in proceedings before regulatory agencies to advocate competitive policies, and prepare reports to other federal agencies and to Congress on competitive issues. The Transportation, Energy and Agriculture Section, as its name implies, handles Division functions, including civil litigation, relating to energy, transportation, and all agricultural industries. The Communications and Finance Section is responsible for the fields of banking, finance, securities, and communications, including telecommunications.

The Foreign Commerce Section is primarily responsible for the development of Division policy on issues of foreign trade and international antitrust enforcement. The Section also monitors and participates in competition-related proceedings at the International Trade Commission, handles legislation relating to foreign competition, deals with international organizations concerning problems of competition, and coordinates the implementation of the Export Trading Company Act of 1982 and the International Antitrust Enforcement Assistance Act of 1994 on behalf of the Division.

The Economic Litigation Section, Economic Regulatory Section and Competition Policy Section, collectively the Economic Analysis Group or EAG, provide economic advice to the Assistant Attorney General and policy assistance to the Division's enforcement programs and competition advocacy activities. Economists serve as economic and statistical expert witnesses in trial and regulatory proceedings and are assigned to most enforcement matters, assisting in them from the initial investigative stage through final resolution.

Other specialized sections and offices include the Appellate Section, which handles all appeals arising from civil and criminal cases brought by the United States under the federal antitrust laws, as well as all amicus filings in antitrust cases, and the Legal Policy Section, which prepares legal analyses of new or unusually difficult issues of antitrust law that arise in statutory enforcement or regulatory agency proceedings and is responsible for handling all legislative matters.

### **7-3.700 Field offices**

At present, there are seven regional field offices of the Antitrust Division, located in Atlanta, Chicago, Cleveland, Dallas, New York, Philadelphia, and San Francisco. *See Antitrust Resource Manual at 2, Addresses and Territories.* These offices are primarily responsible for the prosecution of criminal activities that constitute per se violations of the Sherman Act, and for other antitrust violations (including those pertaining to mergers and monopolies) that have local or regional impact.

It is expected that most antitrust complaints or problems coming to the attention of the United States Attorneys will fall within the jurisdiction of the Antitrust Division's field offices. For this reason, the field offices will ordinarily be the appropriate contact points for United States Attorneys on antitrust matters.

**7-4.000**  
**ANTITRUST**  
**STATUTES**

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7-4.010 Statutes in General

7-4.100 Sherman Act, 15 U.S.C. Secs. 1 to 7

7-4.200 Clayton Act, 15 U.S.C. Secs. 14, 18, 19, and 20

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**7-4.010**  
**Statutes in General**

The principal statutes affecting the investigative and litigation activities of the Antitrust Division are the Sherman Act and the Clayton Act. Criminal violations of the Sherman Act are the types of antitrust violations most likely to come to the attention of United States Attorneys' offices.

**7-4.100 Sherman Act, 15 U.S.C. Secs. 1 to 7**

The Sherman Act prohibits (a) contracts, combinations, or conspiracies in restraint of interstate commerce or foreign trade, and (b) monopolization, attempts to monopolize, or combinations or conspiracies to monopolize interstate commerce or foreign trade. While every violation of this Act is technically a felony, the Department reserves criminal prosecution for so called "naked" or "per se" unlawful restraints of trade among competitors, e.g., price fixing, bid rigging, and customer and territorial allocation agreements. Criminal violations of this Act carry a maximum fine of \$10 million for defendant corporations, \$350,000 for other organizations and \$350,000 and a maximum prison sentence of three years, or both, for individuals. See Antitrust Resource Manual at 6, "Identifying, Detecting, and Proving Per Se Violations of the Sherman Act."

**7-4.200 Clayton Act, 15 U.S.C. Secs. 14, 18, 19, and 20**

The Clayton Act prohibits corporate and other mergers -- and the acquisition of stock or assets -- of competing companies, where the effect of such action may be substantially to lessen competition or tend to create a monopoly. Anticompetitive tying and exclusive dealing contracts are also prohibited, as are certain interlocking directorates. Violations of this Act are prosecuted civilly.

## 7-5.000 PROCEDURES

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- 7-5.100 Investigations
  - 7-5.200 Standards for Initiating a Preliminary Inquiry
  - 7-5.210 Making a Request for Preliminary Inquiry Authority
  - 7-5.220 Federal Trade Commission Clearance Procedure
  - 7-5.230 Assistance From the Antitrust Division
  - 7-5.300 Antitrust Grand Jury Investigations
  - 7-5.310 Requesting a Grand Jury Investigation
  - 7-5.400 Completing the Investigation and Recommending Civil or Criminal suits
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### **7-5.100 Investigations**

Pursuant to 28 C.F.R. Sec. 0.40(a), the Assistant Attorney General in charge of the Antitrust Division has supervisory authority over all investigations involving possible violations of the antitrust laws. When a United States Attorney wishes to conduct such an investigation, he/she must obtain the approval of the Antitrust Division before beginning. The initial investigation of a potential antitrust violation is called a preliminary inquiry. The Antitrust Division's field office chiefs and their designated liaisons to specific United States Attorney's offices are the United States Attorney's primary contacts within the Antitrust Division regarding investigations and litigation. See USAM 7-3.700. The Division's Deputy Assistant Attorney General for Criminal Enforcement, Room 3214, Main Justice (202-514-3543), may also be contacted.

### **7-5.200 Standards for Initiating a Preliminary Inquiry**

Generally, a preliminary inquiry should be initiated if the facts presented appear to support a legal theory of an antitrust violation and the investigation will not duplicate other efforts of the Antitrust Division, the Federal Trade Commission, or another United States Attorney. (Investigations of suspected criminal antitrust violations may be initiated, where appropriate, through a request for grand jury authority rather than through a request to conduct a preliminary inquiry. See USAM 7-5.310.)

Based on these general guidelines, a request for preliminary inquiry authority is reviewed, in the case of violations involving mergers and acquisitions, by the Antitrust Division's Director of Operations, Room 3214, Main Justice (202-514-3544), and in all other cases by the Antitrust Division's Deputy Director of Operations, Room 3208, Main Justice (202-514-2562). If the request meets these standards and clearance is obtained from the Federal Trade Commission, see USAM 7-5.220, preliminary inquiry authority is granted.

### **7-5.210 Making a Request for Preliminary Inquiry Authority**

If a United States Attorney believes that a matter is appropriate for a preliminary inquiry, a short memorandum (1-3 pages) should be prepared describing the nature and scope of the suspect activity. The memorandum must contain sufficient information to permit the Antitrust Division to evaluate the request, obtain Federal Trade Commission clearance, and determine whether any section or field office of the Antitrust Division or the Federal Trade Commission is investigating, or has investigated, the same activity. NOTE: An instruction sheet for preparing a Memorandum Seeking Preliminary Inquiry Authority is in the Antitrust Resource Manual at 3. This memorandum should be addressed to the Director or Deputy Director of Operations, Antitrust Division, as noted in USAM 7-5.200. Approval, subject to Federal Trade Commission clearance, should take no more than three working days and may be expedited when necessary.

### **7-5.220 Federal Trade Commission Clearance Procedure**

All requests to initiate new antitrust investigations must be cleared with the Bureau of Competition of the Federal Trade Commission, in accordance with a longstanding inter-agency agreement. The purpose of the inter-agency clearance is to ensure that the two enforcement agencies, which have concurrent jurisdiction in certain areas, do not duplicate efforts by conducting similar or identical investigations. The Office of Operations will arrange to obtain Federal Trade Commission clearance on behalf of the United States Attorney. An investigation of criminal conduct, e.g., bid rigging or price fixing, is invariably and promptly cleared by the Federal Trade Commission.

### **7-5.230 Assistance From the Antitrust Division**

The discussion of investigating and proving price-fixing and bid-rigging violations, *see* USAM 7-4.100, provides a brief overview of antitrust investigative techniques. In addition, the Antitrust Division, through its local field offices, *see* USAM 7-3.700, can provide advice regarding investigative techniques and evidentiary issues unique to antitrust matters.

The Antitrust Division's Economic Litigation Section, Economic Regulatory Section or Competition Policy Section, collectively the Economic Analysis Group or EAG, can also provide economic analysis of particular issues, as well as statistical assistance, if the investigation requires it, and can serve as, or obtain, expert witnesses.

### **7-5.300 Antitrust Grand Jury Investigations**

Pursuant to 28 C.F.R. Sec. 0.40(a), the Assistant Attorney General in charge of the Antitrust Division must authorize any grand jury investigation of possible antitrust violations.

Consultation with the Deputy Assistant Attorney General for Criminal Enforcement or the local field office may be desirable at the time the United States Attorney's Office is formulating a request for grand jury authorization.

### **7-5.310 Requesting a Grand Jury Investigation**

If, based upon evidence initially presented to the United States Attorney or at the conclusion of a preliminary inquiry, the United States Attorney believes that there is sufficient evidence to proceed to the grand jury, the United States Attorney should request authority to conduct a grand jury investigation from the Assistant Attorney General in charge of the Antitrust Division. The request for grand jury authority should be in the form of a brief memorandum sent to the Deputy Assistant Attorney General for Criminal Enforcement, Room 3214, Main Justice (202-514-3543) for review. *See Antitrust Resource Manual 4* for instructions on preparing a Memorandum Seeking Grand Jury Authority. If this grand jury memo initiates the investigation, i.e., if no preliminary inquiry was required, the Deputy Assistant Attorney General for Criminal Enforcement will seek Federal Trade Commission clearance based upon the grand jury request memorandum. The Deputy Assistant Attorney General then submits it to the Assistant Attorney General, who approves or disapproves the request. The United States Attorney is advised promptly of the decision. This approval process generally takes no more than three working days, and may be expedited where necessary.

In the course of a grand jury investigation of other criminal conduct, a United States Attorney often also will develop evidence of antitrust violations. Such evidence may support either inclusion of antitrust counts in an indictment charging other crimes or indictment on antitrust charges alone. As soon as such evidence is identified, the United States Attorney should contact the chief of the local Antitrust Division field office (or that office's United States Attorney liaison), or the Deputy Assistant Attorney General for Criminal Enforcement, to apprise him/her of the possible antitrust violations, and to determine that no office of the Antitrust Division or the Federal Trade Commission is investigating the same conduct. Although, under these circumstances, further development of the evidence regarding the antitrust violations through the grand jury does not require authorization by the Assistant Attorney General, subsequent consideration of any proposed antitrust cases or counts may be expedited by keeping the Antitrust Division generally apprised of antitrust developments.

### **7-5.400 Completing the Investigation and Recommending Civil or Criminal suits**

As the United States Attorney develops evidence that may establish a violation of the antitrust laws, he/she should begin to determine what count or counts will be recommended and how the investigation might be concluded. The Deputy Assistant Attorney General for Criminal Enforcement, field office chiefs and liaisons, and other contacts within the Antitrust Division are available for consultation in this regard.

Three tasks usually are undertaken at the conclusion of an investigation. First, the United States Attorney determines whether to proceed with criminal or civil antitrust charges and selects the defendants to be recommended for prosecution. Second, the United States Attorney may, at his/her discretion, give counsel for the potential antitrust defendants an opportunity to present their views to the prosecutors. Finally, the United States Attorney and the staff prepare a brief prosecution memorandum and pleadings for the antitrust charges. *See USAM 7-5.410*. This fact

memorandum should be received by the Deputy Assistant Attorney General for Criminal Enforcement if criminal charges are contemplated, or the Director or Deputy Director of Operations if civil charges are contemplated, at least two weeks before the case is scheduled to be filed.

Upon receipt of the fact memorandum, the Deputy Assistant Attorney General for Criminal Enforcement, the Director of Operations, or Deputy Director of Operations will assess the merits of the antitrust charges. This review will focus primarily upon whether the facts as set forth meet the legal and policy requirements for an antitrust violation. Assessment of the weight of the evidentiary support for the antitrust charges and litigation strategy will be left to the United States Attorney. The Assistant Attorney General in charge of the Antitrust Division makes the final decision whether to seek an indictment, file a civil suit or decline prosecution.

#### **7-5.410 Preparation of Fact Memorandum**

The fact memorandum should be prepared by the United States Attorney's staff as a brief summary statement of the factual and legal basis for the proposed charges. See Antitrust Resource Manual at 5 for instructions on preparing a Criminal Case Fact Memorandum. The purpose of the fact memorandum is to serve as a vehicle for consideration of the case in the review process, including identification of any antitrust policy issues that the case may raise.

The fact memorandum should be prepared after any meetings with defense counsel, and, if appropriate, allowing the "targets" to appear before the grand jury.

The memorandum should be forwarded to the Antitrust Division accompanied by all pleadings (indictments, informations or complaints as well as any proposed plea agreements or consent decrees) in the matter and a draft press release. Sample pleadings and press releases are available from the Deputy Assistant Attorney General for Criminal Enforcement, the Office of Operations and from the field offices.

#### **7-5.420 Civil Actions Generally**

Civil antitrust actions are usually brought under Sections 1 and 2 of the Sherman Act (15 U.S.C. Secs. 1 and 2), Section 7 of the Clayton Act (merger cases) (15 U.S.C. Sec. 18), and Section 4A of the Clayton Act (Federal antitrust damage actions) (15 U.S.C. Sec. 15a). Few civil actions are initiated by United States Attorneys. Given the more complex issues of antitrust policy and analysis involved, civil cases generally rely upon "Rule of Reason" analysis. See USAM 7-4.100; USAM 7-4.200. Such analysis requires substantial economic input and evaluation. The Director or Deputy Director of Operations, or the local Antitrust Division field office, can provide advice to United States Attorneys contemplating the filing of a civil antitrust action.

#### **7-5.500 Procedures for Review of Case Recommendations**

After drafting the fact memorandum, pleadings and a press release, the package is sent to the Deputy Assistant Attorney General for Criminal Enforcement, or for civil cases to the Director or Deputy Director of Operations, for review. (As previously noted, sample pleadings

and press releases are available from the Deputy Assistant Attorney General for Criminal Enforcement, the Office of Operations, and the field offices.)

Upon review, and after consultation with the United States Attorney, the Deputy Assistant Attorney General for Criminal Enforcement, or the Director or Deputy Director of Operations, will submit his/her recommendation to the Assistant Attorney General. This process generally will take no more than ten working days and may be expedited where necessary. See USAM 7-5.400.

Only in rare circumstances, where significant and novel issues are raised, will counsel for the potential defendants be provided with an opportunity to meet with the Assistant Attorney General. Generally, the Deputy Assistant Attorney General for Criminal Enforcement (or another appropriate Division official in cases involving civil matters) will meet with counsel for a proposed defendant, if such a meeting is requested.

The United States Attorney will be informed immediately when a final decision is made by the Assistant Attorney General. The approval papers, signed pleadings, and any other additional information that will be required for filing will be sent to the United States Attorney.

When the case is filed, the United States Attorney's office should immediately inform the Deputy Assistant Attorney General for Criminal Enforcement (or for civil cases the Director or Deputy Director of Operations) of that fact so that he/she may authorize issuance of the press release. The United States Attorney's office also should inform the Deputy Assistant Attorney General for Criminal Enforcement (or the Director or Deputy Director of Operations in civil cases) of the docket number and the judge assigned to the case.

## **7-5.600 Litigation**

Pursuant to 28 C.F.R. Sec. 0.40(a), the Assistant Attorney General in charge of the Antitrust Division has supervisory authority over all antitrust suits brought by the Department. Although the United States Attorney's office handling a particular case is responsible for all pre-trial and trial activities, consultation with the Deputy Assistant Attorney General for Criminal Enforcement in criminal cases, or the Director or Deputy Director of Operations in civil cases, is required whenever issues of antitrust policy or novel issues of antitrust law are raised in litigation.

### **7-5.610 Disposition of Antitrust Actions**

Disposition of a criminal antitrust case by plea or dismissal must be approved by the Assistant Attorney General in charge of the Antitrust Division after review by the Deputy Assistant Attorney General for Criminal Enforcement. Disposition of a civil antitrust action by settlement or dismissal must also be approved by the Assistant Attorney General in charge of the Antitrust Division after review by the Director or Deputy Director of Operations. Such approval may be obtained orally through the Deputy Assistant Attorney General for Criminal Enforcement or the Director or Deputy Director of Operations.

### **7-5.611 Plea Agreements**

Plea agreements require the approval of the Assistant Attorney General where counts are being dismissed, companies are being promised no further prosecution, or particular sentences are being recommended. The Deputy Assistant Attorney General for Criminal Enforcement must be advised of any proposed plea agreement before it is finalized.

### **7-5.612 Settlements**

Civil settlements require the approval of the Assistant Attorney General where charges are being dismissed, particular injunctive relief is being recommended, or a claim for damages is being compromised. Civil antitrust settlements must also follow the procedures established by the Antitrust Procedures and Penalties Act. *See* 15 U.S.C. Secs. 16(b)-(h). The Director or Deputy Director of Operations must be advised of any proposed civil settlement before it is finalized.

### **7-5.613 Sentencing Recommendations**

Sentencing recommendations should be consistent with the U.S. Sentencing Commission Guidelines for sentencing antitrust violations. USSG §R1.1. Sentencing recommendations must be approved by the Assistant Attorney General, through the Deputy Assistant Attorney General for Criminal Enforcement, prior to their submission to the Probation Office.

### **7-5.620 Appeals**

The Antitrust Division's Appellate Section is responsible for handling all appeals in antitrust cases. At the conclusion of a case that may involve an appeal, the United States Attorney should consult with the Division's Appellate Section through the Deputy Assistant Attorney General for Criminal Enforcement for criminal cases, or the Director or Deputy Director of Operations for civil cases.