Chapter VI. Division Resources

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The purpose of this chapter is to describe briefly the information and technical services available to Division attorneys, economists, and paralegals in conducting investigations and litigation, and to provide a resource guide to antitrust investigations and cases. This chapter provides a useful checklist for Division personnel in researching specific issues and obtaining data services, litigation and technical support, and training in various investigation and litigation skills.

A. Information and Technical Services Available in the Antitrust Division

This section describes the various research and technical services available to the Antitrust Division. These include the resources of each section and field office, the Office of Operations, the FOIA/PA Unit, the Antitrust Library, the Economic Analysis Group and its Corporate Finance Unit, the Information Systems Support Group, and the Division's training program.

1. Section and Field Office Resources

Each section and field office of the Division maintains substantial resources to assist attorneys, economists, and paralegals in obtaining information quickly and efficiently. Each section and field office receives the major legal publications that report new developments in antitrust and various industry and trade journals that relate to the component's assigned commodity and service expertise.

The combined expertise of the attorneys and economists of the Division is, in many ways, the most valuable information resource available within the Division.

2. Office of Operations

The Office of Operations maintains information about civil and criminal cases and investigations in numerous databases. As an aid to criminal prosecutors, studies of cases filed are available upon request, including specific defendant information, pleas, sentences, trials, and restitution. Fiscal year statistical summaries are maintained. Information concerning opened or closed grand jury investigations as well as formal and informal immunity authorizations is also available, subject to the requirements of Rule 6(e) of the Federal Rules of Criminal Procedure. Frequently requested are searches of databases to determine whether the Division has ever investigated or filed cases against particular companies or individuals or in certain industries.

The Premerger and Division Statistics Unit, in the Office of Operations, maintains substantial information about open and closed civil investigations and cases in numerous databases. Statistics—including fiscal year summaries—regarding cases filed, litigated, won or lost, and remedies imposed are maintained. Frequently requested are searches of databases to determine whether the Division ever investigated or

filed a case against a particular corporation or individual or in a certain industry. The Premerger and Division Statistics Unit also maintains information on all filings under the National Cooperative Research and Production Act (NCRPA) and the HSR statute. Information on clearances, the resolution thereof, and timing statistics involving the clearance program are also available.

[updated April 2018]

3. Freedom of Information Act/Privacy Act Unit

The Freedom of Information Act/Privacy Act Unit (FOIA/PA Unit) provides several major functions for the Division and serves as a Division resource. The FOIA/PA Unit is part of the Office of the Chief Legal Advisor, and reports to the Chief Legal Advisor. The FOIA/PA Unit specializes in confidentiality, privacy, and disclosure laws, regulations, policies and practices. It is responsible for receiving, evaluating, and processing requests for information made to the Division under the Freedom of Information Act and the Privacy Act of 1974, and for defending the Division's positions in the event of administrative appeals or litigation under those statutes. *See infra* Chapter VII, Part G. It is also responsible for processing requests for information by state attorneys general under Section 4F of the Clayton Act, 15 U.S.C. § 15f(b). In addition, the FOIA/PA Unit, in conjunction with the Directors of Enforcement, administers the clearance of outside communications under Division Directive ATR-3030.1. The Unit also assists the Chief Legal Advisor with special projects relating to confidentiality and disclosure, and advises the civil litigating sections and criminal enforcement sections on confidentiality, privacy, and disclosure issues in the context of investigations, litigation, business reviews, NCRPA, and competition advocacy.

The Antitrust Documents Group (ADG) within the FOIA/PA Unit serves as the official custodian of public antitrust documents and other matters of interest. ADG offers staffs access to much of the Division's prior litigation and policy materials including:

- Pleading files of many Division cases, including trial and appellate briefs and complete dockets, particularly of older matters not included on the Division's Intranet (ATRnet) or Internet sites.
- Complaints, indictments, informations, plea agreements, judgment and commitment orders, final judgments, and many court orders and opinions.
- Division filings with regulatory agencies.
- Civil investigative demands (CIDs) issued by the Division. (All persons not employed by the Federal Government must make a FOIA request for CIDs.)

- Business review letters since 1968 and the complete public files of materials submitted in connection with business reviews issued in the current year.
- Publications of the Antitrust Division.
- Published speeches and testimony given by Division personnel, particularly older matters not included on the Division's Intranet (ATRnet) or Internet sites.

Staffs are required to furnish ADG with copies of all complaints, indictments, informations, plea agreements, judgment and commitment orders, substantive court orders, opinions, and final judgments. Such materials should be sent promptly to ADG by the section or field office responsible for the matter. All of the data and materials maintained by ADG are available to Division personnel. In most instances, a telephone call, fax, or e-mail is sufficient to request assistance.

[updated April 2018]

4. Library System and Services

Library services are available to Division personnel through the Antitrust Division Library and the Justice Management Division (JMD) Library System.

The Antitrust Library contains general and specialized reporters, treatises, and legal periodicals; trade, business and census publications necessary to monitor industry activity; and academic economics journals and treatises. Library assistance is provided to Division personnel in the form of reference and research, online database searching, interlibrary loan and document retrieval, collection development, and circulation. Requests for assistance may be made via e-mail, telephone, or fax, as well as in person. To find out more about Antitrust Library resources and services, staff should view the Antitrust Library page on ATRnet.

Most Antitrust Library materials circulate, including trade and business journals. If a source of information is not held in the JMD Library System, patrons will be referred to nearby libraries where the material is available or the items will be borrowed through interlibrary loan. Book and journal selection is done primarily by library staff, but Division personnel are encouraged to recommend items for addition to the library collection.

The collection in the Main Library is available to Division personnel as are the other JMD branch library collections. The Justice Libraries' online catalog is accessible by Division personnel via computer, making available the complete holdings of all JMD libraries.

5. Economic Analysis Group

The Economic Analysis Group (EAG) provides economic analysis in all matters involving economic issues of substance. Economists identify the economic issues involved in an investigation or case, assist in the development of the theory of the case, identify and present data necessary to support the Division's position, assist in the development of trial strategy relating to the economic issues, and sometimes testify in Division litigation. More specifically, economists evaluate the competitive effects of business activities proposed for investigation; analyze proposed mergers and acquisitions by determining product and geographic markets, identifying potential entrants, and estimating competitive effects; analyze evidence related to alleged price fixing and bid rigging; participate in the formulation of relief necessary to restore competition; and analyze the economic effect of proposed consent decree modifications. EAG economists are trained in statistics and econometrics and regularly employ these tools.

a. Corporate Finance Unit

The Corporate Finance Unit (CFU) consists of financial analysts and support staff and has as its primary purpose counseling and advising the Division on financial and corporate matters arising in antitrust enforcement. CFU may be of assistance in the following areas:

- Investigating merger candidates' "failing company" claims.
- Participating in divestiture negotiations and assessment of the viability of divestiture proposals, locating trustees, and evaluating potential purchasers.
- Analyzing the efficiencies defense of a merger candidate.
- Evaluating financial issues relating to damages.
- Determining the ability of a company to pay a fine or damage settlement.

CFU is available to assist trial staffs in preparing Division financial witnesses, assist at depositions, prepare Division attorneys to cross-examine financial witnesses, and locate financial experts, such as investment bankers. In addition, CFU can assist in analyzing and understanding organizational structures and the financing of merger transactions. CFU is also available to prepare affidavits and present testimony on financial and accounting matters.

i. Resources

CFU has access to various financial databases with information on financial and corporate subjects. For example, CFU subscribes to the Bloomberg Financial Markets database, which contains financial profiles (including financial statements, SEC reports, and news articles) on publicly traded U.S. and some foreign companies. CFU also uses the

Internet to access information related to financial and corporate issues. CFU maintains a small library of reference materials often used to research specific topics. CFU can assist staff in obtaining publicly available information on specific companies and industries.

ii. Procedures for Obtaining Assistance

CFU should be called upon to lend assistance in court proceedings where financial and management witnesses are expected to be examined. Even if only a short period of time is available for preparation, CFU can provide quite effective assistance. Where written reports subject to court-imposed deadlines are needed, a financial analyst should be notified as soon as practicable. Requests for the assistance of CFU must be approved by the chief of the section or field office desiring assistance. In addition, the assigned financial analyst should be placed on the distribution list for the matter in question. Requests can be made to the chief or assistant chief of the Economic Litigation Section. CFU is also available to discuss matters with Division personnel informally and can assist staff in understanding complex issues such as the structure of a transaction, transaction financing (understanding where motivations and incentives lie), and the likelihood that a monopoly premium is included in the acquisition price.

b. Expert Witnesses

The selection of prospective expert witnesses in Division investigations involves collaboration between the legal component, EAG, and the appropriate Director of Enforcement, the DAAG for Economic Analysis, and the Assigned DAAG. The lead attorney, the legal component's chief and assistant chief, and the EAG manager should confer about the investigation's expert needs.

For economic analysis expertise, EAG typically provides an initial list of candidates. The discussion usually focuses on whether, for this particular matter, an EAG economist has special expertise and experience, or whether an outside academic or consultant offers qualifications more suited to the case. After a consensus is reached, the EAG manager contacts the candidate, discusses that candidate's interest and availability, and, if the candidate is a non-EAG economist, negotiates the scope of work and fees of the contract. The manager prepares a package including a completed OBD-47 Form and supporting memo that is processed by the Executive Office. All such packages for economist experts must be approved by the Assigned DAAG and the DAAG for Economic Analysis, who signs the OBD-47 Form. *See* Division Directive ATR 2110.1, "Employment of Expert Witnesses."

Special attention is paid to discovery concerns associated with the testifying economist. The "inside" EAG economist has full access to all materials and discussions, writes comprehensive economic memoranda, and participates fully in all case strategy and enforcement decision

meetings. The "outside" economist is the prospective testifying economist, from either within EAG or outside the Division. The materials provided to the "outside" economist will depend upon the needs of the case and must be monitored so that an appropriate record is maintained for use later in discovery.

EAG maintains a file of affidavits, testimony, and exhibits presented by economists and other experts in antitrust cases, regulatory proceedings, and related matters. The contents are listed by type of case (*e.g.*, Section 1 or 7), name of expert, case and date, and type of material. To ensure the completeness of the file, Division attorneys are requested to provide any EAG manager with copies they obtain of testimony, affidavits, and exhibits presented by experts in antitrust trials and regulatory proceedings. Such material should not be limited to the Government's testimonial evidence, but should include defense testimony and testimony introduced in private antitrust litigation and regulatory proceedings. Information about the file or access to it can be obtained by calling the Economic Regulatory Section.

c. Policy Analysis and Research Program

Economists in EAG conduct economic research directly related to the Division's antitrust enforcement and competition advocacy programs and in connection with the Division's policy analysis of competitive issues. The major results of this research are available through EAG's discussion paper series.

6. Information Systems Support Group

a. Purpose

The Information Systems Support Group (ISSG) is part of the Division's Executive Office and is responsible for the operation and management of the Division's information technology infrastructure which provides a suite of automated tools, computer services, and technical support to all Division personnel. The mission of ISSG is to develop, implement, and supervise an integrated approach for effectively and efficiently planning and managing all of the Division's information technology resources.

ISSG provides support services in five distinct functional areas: litigation support, management systems, office automation, information technology security, and web services. Each of these areas has senior information technology (IT) professional staff who work together to provide professional technical services to support the Division's attorneys, economists, and managers in gathering and organizing information related to case support, economic analysis, and administration. These services range from securing IT operations, to developing and maintaining a reliable network infrastructure that provides basic computer services (such as electronic mail, file management, Internet access, word processing, and database access), to offering Division litigation staffs the latest technology available for

courtroom presentations at hearings and trials, to preparing the management and financial reports which ultimately determine the Division's overall operating budget, and publishing content on Division web sites. Each functional area is described in detail below.

b. Automated Litigation Support

ISSG's Litigation Support Staff (LSS) provides advice and assistance for every Division investigation. LSS uses a wide variety of automated litigation support services. Automated litigation support (ALS) encompasses a broad range of services and products that help attorneys acquire, organize, develop, and present evidence. Through the use of advanced computer and image management and other technologies, litigation materials are organized so that the litigating attorney can rapidly locate and use information. The enormous volume of case materials and the complexity of the information to review necessitate the use of computers and advanced technology equipment to be effective. Databases designed by ISSG allow Division staff to perform complex data analysis using data and document control systems. LSS can provide a variety of support including services in the following areas:

- Document acquisition.
- Database creation. A customized database can be created by LSS personnel and maintained by staff.
- Electronic data acquisition and production. Automated support techniques prove especially valuable in price-fixing and bid-rigging investigations, where electronic data is available.
- Database utilization. LSS personnel provide beginner and advanced training for use of the systems.
- Pretrial support.
- Other litigation support services obtained through contract support.

Contact with LSS should occur at the earliest stages in the investigation. After being contacted by staff, LSS reviews all the relevant information regarding the investigation and suggests a plan of support. LSS will work directly with staff to outline what needs to be done by LSS or a private contractor and to estimate the costs and resources necessary. The chief of the section or field office may authorize smaller support projects. Larger projects require prior approval from the appropriate Director of Enforcement before work can begin. For additional information, *see* Division Directive ATR 2850.1, "Requests for Litigation Support Services."

c. Management Information Systems

The Management Systems Staff (MSS) is responsible for developing and supporting the Division's management information systems (MIS) which

are broadly characterized as those information technology solutions which provide managers with tools for organizing, evaluating, and efficiently running the Antitrust Division. More specifically, the MIS encompasses a set of application systems which provide the 30,000-foot view of the Division's overall workload, resource allocations, and litigation outcomes which serve as an essential resource for (1) management of day-to-day investigative and administrative operations, (2) presenting and defending the Division's budget submissions, and (3) a first-line source of vital statistics responsive to inquiries from oversight agencies such as the Office of Management and Budget (OMB), General Accountability Office (GAO), and the Congress.

Two of the principal functions of the Division's management systems are tracking (1) Division investigation and litigation workload, and (2) the allocation of Division resources to handle that workload.

Section and field office staffs play a vital role in ensuring that the information in these databases is accurate and up to date. When authority is requested to open a preliminary investigation or to file a complaint, staff is required to supply basic descriptive information concerning the proposed matter for the MTS. The information required includes matter title, judge, court, staff assigned, parties being investigated, industry, alleged violations, and geographic area. After approval to open an investigation is granted or the complaint is filed, the Premerger and Division Statistics Unit assigns the new matter a DOJ file number and enters this basic information into the MTS database. Subsequently, if any of the basic information about the matter changes or if the matter progresses to the next stage (such as moving from a preliminary investigation to a grand jury investigation) staff is required to provide the Premerger and Division Statistics Unit with updated information for the MTS database.

Another major element of the Division's management information systems involves tracking the allocation of staff resources across the wide array of enforcement and regulatory functions which the Division performs. The Time Reporting System (TRS) permits staff to report the number of regular and overtime hours worked on a daily basis on Division matters.

The Management Systems Staff also facilitates the substantive development of the evidence associated with individual investigations and cases, as follows. First, it develops, deploys, and supports the computational servers which Division economists use to conduct econometric analyses of massive litigation support databases obtained through the discovery and subpoena processes. Secondly, it provides a virtual collaborative environment, eRoom, for investigation and litigation teams to use in organizing, analyzing, and conferring about investigation-related evidence, filings, interviews, subpoenas, depositions, and other data which must be managed and organized for effective litigation administration purposes.

Finally, in addition to the systems which facilitate management of the Division's substantive workload, the MSS leverages database technology for purely administrative purposes. The Human Resources Tracking System facilitates the administration of the Division's overall staffing levels, personnel costs, staff allocations, and staff promotion and retirement schedules.

Executive level correspondence with the Congress and oversight agencies, as well as antitrust-related complaints from the public at large, are tracked in the Correspondence and Complaint Tracking System (CCTS), while requests from the public for information on Division activities are tracked in the FOIA Tracking System (FTS).

[updated April 2018]

d. Office Automation Program

The mission of the Office Automation Staff (OAS) is to provide a highly secure and reliable IT infrastructure that enables information sharing and fulfills program needs throughout the Antitrust Division. OAS achieves this through the acquisition, development, deployment, operation, and maintenance of an IT infrastructure that includes computing platforms, telecommunications networks, desktops, messaging, web services, training, and contract services. OAS provides support in five major functional areas: (1) Computer Services, Customer Support, and Training; (2) Systems Operations and Administration; (3) Systems Engineering and Development; (4) Computer Security; and (5) Miscellaneous Applications and Services. These five areas are integrated to meet the computer support needs of the Division. The tools offered by ISSG staffs depend upon a solid infrastructure that is stable, reliable, and available 24/7. Virtually everything any Division employee does on his or her computer is made possible through the services offered by the Office Automation Staff. Below is a brief description of the five OAS functional areas and how they support OAS's and the Division's mission.

i. Computer Services, Customer Support, and Training

Adhering to computer security guidelines from the Departments of Justice and Homeland Security, OAS has developed a standard desktop suite that currently includes the Windows Operating System, Microsoft Outlook for electronic mail, iManage WorkSite for document management, the Microsoft Office Suite (Word, Excel, and PowerPoint), Internet access, automated research tools (*e.g.* LexisNexis and Westlaw), litigation support tools, and TRS (Time Reporting System from MSS). To ensure the stability and safety of the desktop, anti-virus and patch management software run continuously in the background. In addition to the standard applications, OAS provides all Division users with a wide array of software packages to assist them in meeting the Division's mission (such as travel preparation software and economic analysis software). OAS subscribes to a three- to four-year hardware

refresh schedule for all desktop computers as well as walk-up desktops in general use areas. High speed, high volume printers, standard production printers, and scanners that create output from the desktop suite are also part of the Division's hardware inventory. In addition, OAS evaluates new versions of the applications in the current software suite and upgrades as necessary to ensure that Division staff have up-to-date, stable, and reliable tools.

Day-to-day support is provided via a 24-hour centralized Service Desk and escalation procedures which allow for the quick resolution of the simplest problem (such as printer paper jams) to the most difficult problems affecting large segments of Division staff (such as communications outages). This support is available 24/7 simply by calling the ATR Service Desk. The ATR Service Desk should be the first call for virtually any computer issue a user has. If it is determined that the problem is an issue related to LSS, MSS, or WCLS, the Service Desk analyst will forward the information to the appropriate staff. In addition, each field office employs a computer specialist (a.k.a. ITSFO) who provides day-to-day support to field office staff.

OAS provides training at its training center in the Liberty Square Building. The trainers offer a wide variety of classes for both beginners and advanced users. Every new Division employee is required to attend at least six hours of training before obtaining access to the Division's computer network. The training staff also provides training for the new software products both in D.C. and in the field offices. Besides instructor-led training, OAS works with the Executive Office to offer Department- and Division-mandated training via the Department's online learning management system, learnDOJ. learnDOJ is also utilized by the Division users for career enhancement training.

[updated December 2018]

ii. Systems Operations and Administration

This functional area involves all of the "back room" operational tasks essential to a reliable, stable network. Systems Operations Staff is responsible for, among other things, maintaining the servers that run the applications and store the Division's electronic data; ensuring that the communications lines, routers, and switches that connect all of the Washington and field offices are up and running efficiently; administering the directories that determine who has access to what data; maintaining e-mail address lists; performing data backups to ensure efficient recovery should data be lost; and maintaining the computer facilities in each Washington building and field office.

iii. Systems Engineering and Development

Systems Engineering and Development (SED) staff is responsible for ensuring that Division employees have available to them the most stable "state-of-the-art" tools to meet the Division's overall mission.

SED staff has a fully functioning computer lab that mirrors the production system. Every new software application or version is tested to ensure that the application works and that the software integrates well with the standard desktop suite.

In addition to evaluating software applications, SED staff is responsible for the design and development of the Division's standard infrastructure architecture. SED staff consistently reviews new tools and products. SED staff also works closely with the Department's JCON Program Management Office to ensure that the Division's standard infrastructure architecture meets Departmental requirements regarding configuration and security.

iv. Computer Security

The OAS security staff is responsible for ensuring that the Division's computing environment meets all security standards mandated by the Department of Justice. These standards come from many sources including the National Institute for Standards and Technology (NIST) and the Office of Management and Budget (OMB). Tasks include risk analyses regarding changes to the production network and incident reporting of security breaches (such as lost equipment and viruses). The OAS security staff works closely with the Department's IT Security staff. The security staff is also responsible for preparing the Certification and Accreditation (C&A) documentation every three years which is necessary to receive the Authority to Operate for our system within the Department of Justice.

v. Miscellaneous Applications and Services

OAS offers services to Division staff outside of the four areas described above. These services include audiovisual (AV) support, remote access, remote trial setup, and computer facilities setup for staff relocations. AV support includes presentation equipment, videoconferencing, and, to a limited extent, videotaping training sessions so that Division staff members have training material readily available. The AV staff also works with LSS to operate the Mock Courtroom. To request AV support, a user should call the Service Desk. More information regarding AV support can be found on ATRnet.

Remote access allows Division staff to work from any location with a phone line or high-speed Internet hookup via the Justice Secure Remote Access (JSRA) network. Each remote access user has a JSRA token which provides a secure entry into the Division's computer network from any remote location. Through JSRA, users are able to access their e-mail, iManage files, and litigation support databases; work on documents and spreadsheets; and report their time via TRS. To request remote access, a staff member should contact the Service Desk.

OAS also works with the Executive Office to support trial teams. Unless a trial is held in a city with a Division field office, OAS sets up a new field

office for each trial. This involves acquiring voice and data communications lines, building file and application servers to mirror staff's "home" server, migrating the trial staff's data to the new server (including all litigation support databases), supplying a PC for every trial team member, and, most importantly, providing on-site Service Desk support.

OAS is also responsible for ensuring that all computer services are maintained with as little disruption as possible in any staff relocation, whether one person or an entire office. When a Division staff member is transferred to another section or office, OAS is responsible for taking the steps necessary to make sure that all data is transferred, including transporting the desktop computer if necessary. For entire office relocations, OAS works closely with other Executive Office staff members to design computer facilities that will satisfy current needs as well as anticipate future needs.

In sum, OAS, in conjunction with all of ISSG, works to provide all Antitrust Division staff with the automated tools necessary to meet the Division's strategic goals and fulfill the Division's mission.

[updated December 2018]

e. Information Technology Security

The Executive Office has established within ISSG an Information Technology Security (ITS) group to function as an independent and unbiased auditing service for monitoring the Division's major computing environment and information technology security practices to ensure compliance with the Federal Information Security Management Act and with new Departmental security requirements.

In addition to monitoring the computer systems managed within ISSG, ITS staff reports on the status of implementing various security related requirements such as security awareness training, IT professional training, incident response, contingency planning, and configuration management to the Department's Deputy CIO for Information Technology Security.

f. Web Services

Recognizing the importance of the Division's Internet and intranet web sites in helping to fulfill the Division's mission, the Executive Office established the Web Customer Liaison Staff (WCLS) within ISSG in 2008. WCLS is responsible for maintaining the Division's web sites including audio/video media, posting case filings, guidance documents, reference and resource information, and for designing new web pages and program areas to support Division initiatives and staff requirements.

WCLS is also responsible for undertaking long-term design and development efforts to improve the usability, accessibility, and search ability of the Division's web sites. The web staff manages the Division's

Work Product Document Bank, provides customer support and training to content submitters, assists with contingency and continuity of operations program, aids other ISSG units, and serves as liaison to the Department's E-Government, Internet Services Office.

7. Training

The Antitrust Division offers an extensive program of training opportunities to Division attorneys, economists, paralegals, and other personnel each year. The Special Counsel for Professional Development in the Office of Operations has overall responsibility for Division training courses. That individual develops a comprehensive training program, formulates and coordinates specific training sessions, issues calendars and memoranda to notify employees of the opportunities available, and provides a brief description of the programs to be conducted. Antitrust Division employees interested in attending a course should contact their chiefs, in advance of the training course deadlines, to request permission to attend.

The Department's Office of Legal Education (OLE) publishes a training calendar with information on executive, professional development, management, supervisory, interagency, and other job-related training. Most of these programs are conducted in the OLE training center and are open to Division personnel. In addition, the Division supports participation in and pays for training by private vendors as long as the program contributes directly to the performance of the employee's official duties. The Division regularly sends attorneys to courses sponsored by the American Bar Association, the Federal Bar Association, law and business organizations, continuing legal education (CLE) groups, and law schools.

a. Programs

The training programs offered by the Antitrust Division fall into four broad categories:

i. Conferences, Seminars, and Lectures

Since the fall of 1993, the Division has offered a substantial in-house training program that offers courses in litigation skills, antitrust law, economics, and other areas. These courses range in length from lunch-hour sessions to multiday seminars. A structured in-house training plan for first through third year attorneys is available, as well as a separate series of training programs for experienced attorneys in the Division. A schedule of Division training classes is accessible on the Antitrust Training Program page on ATRnet. CLE credit may be available for some programs.

ii. Special Assistants in United States Attorneys' Offices

For many years, Division attorneys stationed in Washington have served tours of about six months as Special Assistant United States Attorneys in

the U.S. Attorney's Office for the Eastern District of Virginia and other U.S. Attorney's Offices. Similar programs are available for attorneys assigned to the field offices. These details provide the opportunity to gain trial experience. Despite the fact that the prosecutions do not involve Sherman Act conspiracies, the skills learned from these tours have direct applicability to the Division's work.

Participation as a Special Assistant U.S. Attorney involves a full range of criminal practice. Special Assistants are involved in misdemeanor prosecutions in Magistrate Court, grand jury work, motions, pleas, probation revocations, and trials in District Court, as well as appellate briefs and arguments. If interested in applying for a Special Assistant U.S. Attorney tour of duty, attorneys should speak to their chief. Since the Special Assistant U.S. Attorney tours are intended to augment the trial experience of Division attorneys, anyone accepting a Special Assistant U.S. Attorney position must agree to return to the Division for at least eighteen months after completing the detail.

iii. Office of Legal Education at the National Advocacy Center

Division attorneys are eligible to participate in training courses offered by OLE at the National Advocacy Center (NAC) in Columbia, South Carolina. Courses in civil and criminal trial practice, as well as courses in evidence, grand jury practice, supervisory skills, and white collar crime are available. In addition, OLE televises courses through its Justice Television Network. OLE's main purpose is to train Assistant United States Attorneys; however, OLE does reserve spaces at its courses for attorneys from the Department's litigating divisions. Antitrust Division attorneys, along with attorneys from all other divisions at the Department, may attend OLE courses when space is available. Notice of OLE courses is sent to section and field office chiefs, who nominate attorneys to attend the OLE courses.

The Civil and Criminal Trial Advocacy Courses were established to provide basic training in the skills of trial advocacy. The course formats include complementary lectures, workshops, and mock trials. The lectures center on the practical aspects of trial preparation and technique. The workshops and mock trials are designed to increase skills and cover basic trial problems. In the Civil and Criminal Trial Advocacy Courses, emphasis is on the skills of advocacy and trial practice rather than substantive law. The courses are designed for attorneys with little or no trial experience. They are intensive programs featuring lectures by experienced litigators and simulated trials before Federal judges.

b. Library of Independent Learning Resources

The Department and the Division have established a library of videotapes, DVDs, and written materials on various training topics. A list of the available materials can be found on the Training Resources page

on ATRnet. Division attorneys can obtain materials through the Office of Professional Development.

OLE sponsors free videotaped lecture series each year. The taped lectures include Irving Younger's Trial Advocacy and Discovery Techniques series. These videotaped seminars are offered periodically in Washington and other cities with substantial numbers of Federal attorneys such as New York. CLE credit may be available for watching the videotapes.

c. Application Procedures

Training opportunities and materials available for Division personnel and selected programs of interest are announced periodically in memoranda from the training program and the Executive Office. Training requests should be approved in advance by the applicant's chief. *See* Division Directive ATR 1410.1, "Employee Training."

B. Obtaining and Using Information and Documents in an Antitrust Investigation

Over the years, Antitrust Division attorneys and economists have accumulated considerable experience in investigating, analyzing, and litigating antitrust matters. In their work, Division attorneys and economists have found some sources and practices particularly useful in obtaining, assembling, and retrieving information.

At the outset, investigations typically require a quick accumulation of data about the companies, the industry, and the alleged violation that are the subject of the probe. Section 1 below describes some resource materials that are publicly available or found within the Division. Section 2 below discusses how staffs can obtain and use information and documents during the course of an investigation. Finally, after a case is approved, if it is not settled, staff will need services tailored to assembling or retrieving the information necessary to the proper presentation of evidence in court. Section 3 below describes services available to staff at this stage.

1. Preliminary Sources of Information

When an attorney, economist, or paralegal initially receives a complaint that a course of conduct or proposed transaction may violate the antitrust laws, he or she has immediately available a number of information sources within the Division. These sources include (1) material developed during the course of previous Division investigations and litigation, and (2) trade and industry data available through the library, EAG, and ISSG.

a. Prior Division Investigation and Litigation

The Division's official records of past investigations and litigation are a major source of industry and company information. Reports on recent

Division activity in particular industries may be obtained from MTS using ATRnet, or by contacting ISSG or the Premerger and Division Statistics Unit. Details about past matters, including copies of related documents in the work product data bank, may be obtained from ATRnet. Copies of case filings may be obtained either from ATRnet or the Division's Internet site. Files on matters may be obtained from the responsible section or field office. Files on closed matters may be obtained from the GSA records center by contacting the Support Services Staff in the Executive Office.

[updated April 2018]

i. Investigative Files

The MTS database contains a wide array of searchable data elements, including company names, industry identifiers (Standard Industrial Classification (SIC) codes or North American Industrial Classification System (NAICS) codes), and violation descriptions for both current and historical investigations and cases. Queries against these and many other descriptive data elements may be performed via "point-and-click" search tools within ATRnet. Once relevant matters have been retrieved, detailed descriptive information can be displayed along with the full text of key documents associated with those investigations (such as press releases, opening and closing memos). To obtain access to the original hard copy files associated with a prior investigation, staff can contact the handling section, or, if the files have been retired to the Federal Records Center, the Support Services Staff in the Executive Office. Additional information about current investigations and cases may be obtained from the appropriate special assistant in the Office of Operations.

ii. Pleading Files

ADG of the FOIA/PA Unit maintains a precomputer card index of the Division's litigation history by commodity, defendant, type of violation, and case name. In addition, the group maintains regulatory filings by agency and date, as well as a collection of all complaints, indictments, informations, and final judgments. Finally, the group has copies of all speeches, testimony by Division officials, Division publications, and business reviews. Both ATRnet and the Division's Internet site contain copies of pleadings filed in numerous cases.

b. Public Information Sources

In addition to the Division's internal files, considerable public information is available that can be quite helpful during the initial stages of an investigation. Useful investigative sources of publicly available information include:

i. Market Share Information

Preliminary market share information should be determined at the beginning of any merger investigation and many civil nonmerger investigations. Market share information is available from various public sources:

- U.S. Department of Commerce, Bureau of the Census reports: The Economic Censuses include the Censuses of Manufactures, Mineral Industries, Retail Trade, Wholesale Trade, Finance and Insurance, Real Estate and Leasing, Construction, Utilities, Transportation, and others. The Censuses are conducted every five years, in years ending in two and seven. Between those years, they are updated by various surveys.
- Most of the Censuses are classified by 6-digit product codes, called NAICS codes (North American Industrial Classification System), with the Manufacturing and Mineral Industries Censuses classified by up to 10 digits. The Censuses provide the number of establishments or companies in a NAICS code and the value of shipments or sales, for either the United States as a whole or a smaller geographic area. The Census of Manufactures also reports concentration ratios by 6-digit NAICS codes. The NAICS replaced the Standard Industrial Classification (SIC) system in 1997, and was revised in 2002. However, the SIC system is still used to classify information in many business directories and business databases. Other sources of Government information include the National Trade Data Bank and Stat-USA databases, available in the Division libraries.
- Directories and Online Databases: Other sources of market share information include directories such as: Manufacturing USA, Service Industries USA, Finance, Insurance and Real Estate USA, Ward's Business Directory, and Market Share Reporter (MSR) (MSR is searchable on LexisNexis). These directories provide information by 4-digit SIC or 6-digit NAICS code, ranking companies in terms of sales. For initial information on a firm's market presence in certain specific industries, the Division has online access to various computerized databases. For example, for data on airlines, the Division can access the Back Information Services Aviation Listing; for data on hospitals, the Division has the American Hospital Association Guide to Hospitals; and for information in bank loans, the Division has online access to the FDIC database. Online sources of market share information include the Dialog and LexisNexis databases. Approximately 130 files on Dialog are searchable by SIC, NAICS, or product code. Some files index their contents by 7- or 8-digit SIC-based codes. Full-text market research reports and stock brokerage analyses are also available.

Staff should consult with the Antitrust Library and with EAG to determine which databases are currently available and in use. Dialog

and market research reports may be requested from the Antitrust Library.

ii. Trade Association Information

Several directories identify associations serving particular industries or commodity areas: *National Trade and Professional Associations*, *Encyclopedia of Associations*, and *Associations Yellow Book*. Once an investigation is approved, the associations themselves may be contacted, and they will often provide information that can help to determine the scope of the market, the companies in that market, and market share data. The Antitrust Library either maintains these directories in print or has online access to them. The *Encyclopedia of Associations* is searchable on LexisNexis.

iii. Trade Press

There are a large number of trade periodicals, industry yearbooks, almanacs, and directories that contain information useful at the early stages of an investigation. The Division's library staff can identify industry specific directories, yearbooks, and almanacs, and provide bibliographic assistance by searching for articles on companies and industries. Bibliographic sources include the online databases Dialog, Westlaw, LexisNexis, Newsbank, and EBSCOhost. Staff may be able to access full-text articles online, find them in print or microform in the Antitrust Library, or request them through document delivery.

iv. Corporate Information

- General Information: The online library tutorial contains an overview of corporate information sources. Sources of general data on public corporations, including officers, subsidiaries, sales, and general corporate history, include: *Billion Dollar Directory*, *Million Dollar Directory*, *Standard & Poor's Register*, *Directory of Corporate Affiliations*, *Principle International Businesses*, and *Mergent Manuals*. *Mergent Manuals* provide concise descriptions of domestic and foreign companies, including information on company history, products, plants, stock prices, and recent acquisitions. These directories are available in the Antitrust Library. *Standard & Poor's Register* and *Directory of Corporate Affiliations* are also available on LexisNexis and are included in the LexisNexis Analyzer, a new due diligence tool providing corporate information. The Internet is also a source of corporate information. A company may have a home page that contains information on its perception of itself and the industries in which it does business.
- Specialized Information: Dun and Bradstreet produces specialized Business Information Reports/Federal Information Reports on both domestic and foreign corporations that provide up-to-date economic and business information on public and privately-held companies. Dun and Bradstreet reports may be requested from the

Antitrust Library. The field offices may generate their own Dun and Bradstreet reports. An abbreviated record is available in the Dun and Bradstreet Library on LexisNexis.

- U.S. Securities and Exchange Commission (SEC) Filings: SEC filings for public companies, including 10-K reports (annual reports to the SEC) and annual reports to stockholders, provide useful corporate information, especially relating to a company's perception of its markets, market shares, and industry position. They may provide useful comparisons with subsequently obtained documents and materials. These filings are available in full-text on LexisNexis, Westlaw, and the SEC's Edgar Database from 1995 onward. Filings not available online can be obtained from Primedia, Inc., usually on a same-day basis. To request filings through Primedia, contact the Antitrust Library. The Antitrust Library also has a microfiche collection of the 10-K reports and annual reports of all Fortune 1000 companies for the years 1976–1995.

v. Legal Information

Information on company litigation can be obtained from the full-text legal databases, Westlaw and LexisNexis, both of which are available to all Division personnel. For information on sources of public records information, consult the online library tutorial. The public records databases, such as Choicepoint, contain records that can be searched by company or individual name. Choicepoint searches are available through the Antitrust Library. The Federal court docket systems, Pacer, can be searched by company name, as can the LexisNexis court docket service, Courtlink. Dun and Bradstreet Business Information Reports include information on liens and judgments. Dun and Bradstreet Reports are available through the Antitrust Library and in the field offices. The indexes to BNA's Antitrust & Trade Regulation Report (ATRR) and CCH's Trade Regulation Reporter (TRR) can help an investigator determine whether a company or industry has been the subject of antitrust investigation or litigation by the Division, the Federal Trade Commission, states, or private parties. ATRR is available on LexisNexis. TRR is available through Library Resources on ATRnet, and in the Division libraries, some sections, and all field offices.

2. Obtaining and Using Information and Documents During the Course of an Investigation

Before preliminary investigation authority is requested, the attorney already should have reviewed much of the publicly available information and developed a preliminary legal theory upon which to proceed. Generally, an economist should be consulted at this stage. Once authority is granted, the focus shifts to more specialized information on a transaction or practice. Staff will begin to develop information through voluntary requests. Once compulsory process is authorized, it may be used in connection with the subject companies,

customers, trade associations, and other industry sources. At this stage, the investigators must consider not only what information will be sought, but also how such information is to be stored, indexed, and retrieved. In merger investigations, staff must work within the time frame for the premerger notification rules in requesting additional information from the companies and in issuing CIDs. *See supra* Chapter III, Part D.

Staff should begin to assess the strategy to be used in both the investigative and litigation stages of the proceeding. It is never too early for staff to begin to discuss the type of relief that would be feasible if a case were brought since, as a practical matter, the reason the Division would bring a case would be to correct or prevent anticompetitive activity. In civil or criminal conduct investigations, staff should also assess the possibility of a damage case on the Government's behalf. Staff should determine if there were significant Government purchases or if Government funds were less efficiently utilized because of anticompetitive practices. In essence, planning the investigation involves contemplating all of the litigation options available to staff, as well as an orderly use of the resources available in conducting the investigation.

EAG provides an analytical assessment of all the economic issues raised in each civil investigation: product or geographic market definitions, entry issues, and competitive effects. Coordination between the legal and economic staffs at the early stages of the investigation allows the economist to assist in framing the questions to be asked in a subpoena, CID, second request, or voluntary request, as well as in interviews and depositions. EAG managers are copied on all opening memoranda and routinely assign economists to most matters at the time preliminary investigation authority or grand jury authority is granted. EAG also receives copies of all HSR filings (without attachments). Those are screened within EAG, and many are quickly assigned to economists. In merger investigations, where staff usually has a limited time to obtain information and prepare its case, it is critical that the assigned attorney and economist make contact with each other quickly. If legal staff does not already know the economist assigned to a matter, that information can be obtained by calling any EAG manager's office.

a. Obtaining Information and Documents from Corporate Entities

Whether the investigation is conducted under the premerger notification procedures, by CID, by grand jury, or by voluntary requests, it is almost always necessary to obtain information from the corporate entities that are the subjects of the investigation, as well as those that may have useful information or may be victims of the conduct (such as customers). Although these techniques differ in merger cases and behavioral cases, certain principles in obtaining information from corporate entities apply to either type of investigation.

i. Noting Unique or Specialized Industry Practices

In researching the public sources set forth above, staff should look for unique or unusual industry structural and behavioral characteristics. Examples of the types of information that are helpful in Sherman Act investigations include (a) manner in which the product is priced; (b) terms of sale (such as delivered pricing or pricing zones); (c) who in the corporate structure is responsible for pricing, attending trade association meetings, and the like; (d) how sales are transacted (for example, bidding, negotiation, price lists); and (e) economic factors that affect the industry. Similarly, in merger investigations, staff should promptly gather information about (a) the relevant markets, both product and geographic; (b) the market shares of the companies; (c) other products produced or considered for production by the companies; (d) the financial condition of the companies; (e) which products are the closest substitutes for one another; (f) the competitive effects of the transaction; and (g) industry or marketing studies that provide a basic understanding of the markets. This information will help the investigator to draft a more focused document request.

ii. Consulting with the Economic Analysis Group

Before a subpoena, CID, second request letter, or voluntary request is drafted, the investigator should consult with the economist assigned to the matter. Coordination at the early stages of the drafting process allows the economists to assist in framing questions to obtain the most useful information in its best form and to draft questions that consider relief options and damage possibilities. An economist familiar with the industry also may assist the attorney in sharpening questions about specific industry practices or activities. Cooperation between the attorneys and economists at this stage will result in better information and a more focused investigation.

iii. Consulting with the Corporate Finance Unit

When the document request calls for company financial documents relating to justifications for certain types of behavior, or where structural considerations are present (*e.g.*, failing company defense or divestiture as a relief option), CFU should be consulted to determine what types of information are necessary, how that information may be obtained, and how the request should be framed to obtain specific data. This may be especially important in a merger investigation at the second request or CID stage. *See supra* Chapter VI, Part A.6.b (providing a more complete discussion of CFU and procedures for obtaining assistance).

iv. Consulting with Litigation Support Staff

When staff is beginning to frame questions for subpoenas, CIDs, or second requests, ISSG's LSS personnel can assist in several ways. Consultation will help attorneys plan for problems of data and document acquisition, organization, and retrieval before actual

submission of documents. Investigators should review with LSS personnel all options regarding document or data production. Even if staff anticipates only a small volume of documents, LSS personnel can provide a computer database for controlling and analyzing the information. LSS personnel can help staff determine what type of electronic data a company may possess and how the Division can best frame requests for access to such data. These types of document requests can be very specialized and technical; accordingly, the expertise of LSS should be utilized in framing data, documentary, or interrogatory requests.

v. Consulting Previous Work Product

The Division has a model second request. An office's official files also can provide staff with samples of how the Division has requested similar information in the past. The special assistants to the Directors of Enforcement will also be knowledgeable about recent requests for information used by attorneys in other sections in civil investigations.

All CIDs issued by the Division, including supplemental schedules of each CID, are available from the FOIA/PA Unit. The special assistants may also be aware of forms of questions, definitions, and other document request strategies, based upon their review of a wide variety of CIDs and second requests, including possibly previous requests of the particular subjects of an investigation. In addition, the Division already may have information from the company from previous investigations. Such information may be retrieved through MTS on ATRnet.

[updated January 2014]

vi. Drafting Production Requests

Consultation with the personnel and use of the resources indicated above should assist staff in drafting requests. Since staff is educating itself about the behavior or transaction in question by reviewing data and documents, the goal of the request should be to obtain the data and documents that will assist staff in facilitating a case decision and preparing the case, if warranted, as quickly and efficiently as possible. This is achieved in part by making requests that result in the production of data and documents that staff actually wants to obtain. All data and documents produced should be reviewed, so it is in staff's interest not to obtain more data and documents than it needs to reach a case decision and prepare a case, if one is warranted. Again, this is a matter that depends on staff's prior knowledge of the industry and the activity, and specificity is not always possible or practicable. Where the request is necessarily drafted in broad language, staff should narrow the initial production as much as possible after learning what responsive data and documents the recipient possesses.

vii. Managing Data and Document Production

Nearly 80% of all productions received by the Division in both criminal and civil matters are in electronic format. Division attorneys use standard language for requesting electronic data and documents from parties. Most attorneys and responding parties are uncertain about the time, labor, and costs involved in an electronic discovery project. Part of the confusion stems from the fact that there has been no standard definition of electronic discovery. LSS personnel will consult with the various Division attorneys and outside parties to ensure that clear advice and process instructions are provided. LSS has developed specifications documents for the production of materials to the Division. All discussion about electronic discovery technology should evolve from a common understanding of the response needed and the format in which the data and documents are to be produced.

True electronic discovery is characterized by technology that keeps electronic files in electronic form from start to finish. With this process, electronic data and documents are gathered from respondent's computers in many different file formats, processed by the parties and produced in an agreed upon format, and then LSS personnel load the data and documents into a software product that staff can use for review. The review process includes document review, annotations, Bates numbering, and categorization. If electronic files are reduced to paper format at any stage in the review process, the benefits of true electronic discovery technology are diminished. LSS personnel will assist in the analysis and reporting of such data and documents.

Upon receipt of the first data and documents, it is wise to consult with LSS regarding an indexing system if this has not already been done. LSS can also provide assistance on using tools to determine compliance of the production. Screening the document collection is imperative in order to identify key documents. LSS will design a database in a manner to ensure that the database is accurate, consistent, and built according to case specifications. LSS will also provide assistance for staffs who wish to perform the coding tasks directly from their desktops. LSS will provide assistance in designing searches and provide training on all database specific functionality including full text searching, clustering, or other assisted review technologies.

Data and documents should be securely maintained in the files of staff or in a central repository. *See* Division Directive ATR 2710.4, "Safeguarding Sensitive Information."

b. Using Documents and Materials in the Investigation

Once staff has obtained electronic data and documents, staff should begin to assemble such information for the interrogation of witnesses. Staff should be able to use the database systems developed by LSS for this purpose.

i. Locating Witnesses

Documents and electronic data can help in locating potential witnesses. Witnesses can be identified by the submitted documents they authored, their position within the corporate structure, or their other responsibilities. To assist in this process, staff may ask in a civil investigation for the names and present business addresses and phone numbers of all relevant current and former employees of the corporation. Staff also may ask for last known home or work information as well, if the employee has left the company. In a criminal investigation, staff should ask for the last known home address and phone number, and the Social Security number of relevant present and former employees.

ii. Preparing Immunity Requests

Staff should use information derived from electronic data, documents, and interrogatory responses to prepare information necessary to process witness immunity requests. As is indicated in Chapter III, Part F.7, the Witness Records Unit of the Criminal Division requires a minimum of 10 full working days from the date of receipt to process an immunity request through the Department's records. If the information provided is not complete, the process may take longer. The immunity request form, Form OBD-111, asks for substantial identifying information about the individual, such as home and business address, Social Security number, and date of birth.

Information obtained through data and document requests to the companies can facilitate the preparation of immunity requests, thereby saving staff considerable time in later locating information. Delays in processing immunity papers can force staff to cancel sessions with the witness.

Division attorneys have found it helpful to request witness immunity as far in advance of the witness interview or appearance as possible. This allows staff to develop as much information as possible about the witness before the witness actually testifies. It also allows immunity clearance to be obtained prior to staff making any promises or commitments to the witness or counsel.

iii. Preparing for Interviews and Testimony

In both civil and criminal investigations, staff should know as much as possible about the witness, the witness's company, and his or her activities with respect to the transaction or conduct in question before staff interviews the witness or takes testimony. In preparing for a witness interview or testimony, staff should review and evaluate all relevant electronic data and documentary materials about the witness, including desk calendars, diaries, telephone records, expense accounts, and corporate documents prepared by, sent to, or commented upon by

the witness. LSS has developed standard databases to facilitate this process.

It is also extremely valuable when using a litigation support system to search for all prior statements or testimony attributed to the witness to detect any contradictions in the witness's presentation. LSS can provide database systems to facilitate searching the full text of prior testimony. The Antitrust Library may also be able to assist in finding earlier public statements of the witness. When electronic data or documents are used during the witness's interview or testimony, such documents should always be appropriately marked and verified by the witness as exhibits. In this way, the witness has explained a specific document on the record and may have authenticated it.

iv. Using Documents for Economic or Financial Analysis

Documents that contain information to be analyzed by the economists or financial analysts should be provided to those individuals upon receipt. In that way, they can contribute to the development of the case and assist in the preparation of witness questions and materials, as well as in interviews and depositions. Economists and financial analysts are considered antitrust "investigators" under the Antitrust Civil Process Act. *See* 15 U.S.C. § 1311(e). By this time, economic analysis of price and market conditions will be underway, as well as the determination of possible Federal damages in a price-fixing or bid-rigging investigation. If, upon review, the economist believes that the economic data can best be analyzed using data processing techniques, the economist either handles this internally within EAG with research assistants or (often with the attorney) consults with ISSG.

The economists also will begin to chart the relevant information in graphic form. EAG and ISSG can produce the final product with in-house or contractor staff. ISSG will assist in obtaining the services of Department or other graphics assistance. Staff should provide at least several weeks for courtroom quality graphics work to be completed. *See* Division Directive ATR 2510.1, "Printing, Photocopying, Graphics, Audiovisual, and Photographic Services."

c. Using Internal Legal Resources

The legal theory shapes the framework for conducting the investigation and seeking information. Staff should research legal issues as soon as they develop, and throughout the course of an investigation. This is especially significant when the theory of the case is complex.

The Division has accumulated extensive research work product over the years, which is readily available on ATRnet. For earlier work product contained in a filed brief, but not included on the Division's Internet site, the FOIA/PA Unit may be able to provide copies. Additionally, requests for research assistance in a particularly complex area may be directed to the chief of the Appellate Section. Such requests should be

specific, related to a significant investigative issue of some complexity, and must be submitted with substantial lead time, allowing for a response on or before the anticipated deadline. Finally, the appellate attorneys or the appropriate Director of Enforcement or special assistant in the Office of Operations may be able to identify other instances where similar issues arose.

d. Using Public Sources

Public information sources available during the investigation are the same as those available in the preliminary stage. *See supra* Chapter VI, Part B.1.b., "Public Information Sources."

e. Preparing and Retrieving Testimony, Interview Materials, Electronic Data, and Documents

As staff is interviewing individuals or taking testimony before the grand jury or by CID deposition, staff should begin to assemble the information into a summary format by using the various database features. Data and documents are readily retrievable for analyzing the evidence in a case recommendation or drafting an order of proof, preparing for discovery, and preparing for trial. Staff should obtain CID and grand jury testimony in an electronic format for use in the Division's database. LSS can provide the format specifications to provide to court reporters. Staff may also want to consider using real-time transcription, which gives the ability to view and annotate testimony as the court reporter types.

As staff begins employing the computerized indexing and retrieval of transcripts, paralegals should begin to digest and reference the transcripts and interview memoranda as the transcripts are received and the interviews are conducted. Using tools provided by LSS, staff can digest testimony, affix comments and dates, issue codes to a portion of testimony, and isolate and capture key excerpts of testimony without having to retype them. This system also allows staff both to update its preparation for additional witnesses and to assess its investigatory findings at each stage of the investigation. Digesting, coding, and retrieval that begin early in the investigation and continue throughout the process make it less likely that particular areas or lines of questions will be missed, and facilitate preparation of a case recommendation and evidence for trial.

3. Information Services and Technical Assistance During the Litigation Stage

Once the complaint or indictment is filed, staff's primary goal shifts from compiling information to developing a framework for organizing and presenting the information to the court or the jury. The system employed at the beginning of the investigation should be continued at trial. Further, it is advisable that one person coordinate this information during trial. The attorney who will make the closing arguments is usually

the best person to supervise this process. Data and documentary evidence that might be cited in pleadings should be properly grouped with the testimonial information using specific trial tools provided by LSS.

a. Preparing Expert Economic or Statistical Evidence

The economists who have been working with staff through the investigation—and have been preparing data for staff—will continue to play an important role at trial. EAG staff and outside experts may serve as witnesses (either during the case-in-chief or on rebuttal) but the "in-house" EAG economists will be playing an integral role within the trial team. *See supra* Chapter VI, Part A.5.b. (discussing the selection of expert witnesses and the distinction between "inside" and "outside" economists).

i. Exhibits for Economic or Statistical Experts

If an economic or statistical expert is going to testify at trial and employ any type of charts, graphs, or other visual aids, such as pictures or slides, the economist or statistician, together with staff, should prepare the appropriate materials. A variety of methods might be used to generate such materials. These include preparation through internal graphics packages, use of private vendors, and reliance on other branches of the Department. Consultation with staffs of recent trials and with LSS can usually identify the full set of possibilities.

ii. Defense Economic and Statistical Evidence

Staff attorneys and economists should attempt to obtain, as early as possible in the discovery process, the exhibits, back-up data, and other relevant information that the defense experts are likely to use. This ensures that there will be adequate time to study and analyze the material, especially where the defense is relying on computer-based data or statistical samples. EAG, through its economists, statisticians and research assistants, can assist staffs in developing this information for use in depositions, cross-examination, and for other purposes.

iii. Computer-Based Information

When the Division employs computer-based economic or statistical information, legal staff, the economists and statisticians, and LSS should develop the method of presentation at the earliest stage possible. Using LSS's database tools allows staff to categorize facts and organize them by issues important in each case. LSS will assist staff in performing a variety of searches to retrieve documents and data germane to particular issues.

b. Sound Recordings and Other Technical Assistance

If staff or the expert needs sound recordings or other technical audio support, LSS can typically provide such services through its own

capabilities or through the use of contract vendors. If support such as handwriting or typewriting analysis or fingerprint identification is required, staff or the expert should request FBI assistance. Unless staff has already been working with the FBI on the investigation, a request for FBI assistance should be made through Operations as discussed in Chapter III, Part C.2.a.i. In appropriate circumstances, FBI special agents may testify concerning their findings and analysis.

c. Courtroom/Trial Support and Preparation

The Division has uniformly moved toward presenting evidence at trial in an electronic format. Electronic courtroom technology can facilitate trial management, reduce trial time and associated costs, and improve fact finding, jury understanding, and access to court proceedings.

Indexed material needs to be retrieved quickly for motion practice at trial, to respond to motions at the conclusion of the Government's case, to prepare for closing argument, and to draft proposed findings of fact, post-trial briefs, and any appellate briefs.

Primarily, this has meant scanning evidentiary documents as images and displaying them on monitors or projection screens in court. However, the Division has also gained substantial expertise in presenting audio evidence, videotaped depositions, and even remote trial testimony through video teleconferencing.

LSS works closely with each trial team to determine which visual strategy to use. LSS works with trial attorneys and discusses how to effectively present the evidence, and trains the paralegals to run the software and courtroom equipment. LSS contracts with outside graphics vendors for additional support. LSS also provides on-site support at trial.

d. Sources of Information About Trial Witnesses

Staff should formally request the FBI to check the prior criminal records of the defendants, all potential witnesses for the Government and defense, and all coconspirators. Staff should also request an MTS report from ISSG and consult with the Premerger and Division Statistics Unit and Operations to check former Division cases involving the defendants. CCH's Trade Regulation Reporter may provide staff with information about other antitrust cases involving the defendants, including private actions and FTC cases.

[updated April 2018]