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THE UNITED STATES
DEPARTMENT OF JUSTICE

7-3.000 - INVESTIGATING AND ENFORCING AN ANTITRUST VIOLATION

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7-3.100 - Authorization to Investigate

Pursuant to 28 C.F.R. Section 0.40(a), the Assistant Attorney General in charge of the Antitrust Division has supervisory authority over all Department investigations involving possible violations of the antitrust laws.

In the course of an investigation into other criminal conduct, a United States Attorney may 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. When such evidence is identified, the United States Attorney should contact the Antitrust Division (specifically, the Deputy Assistant Attorney General for Criminal Enforcement, the Director of Criminal Enforcement, or the Chief of a criminal office or section) to apprise it of the possible antitrust violations, determine whether the Antitrust Division or the Federal Trade Commission is investigating or has investigated the same conduct, and determine who should investigate and prosecute the antitrust aspect of the case. See [JM 7-1.300 et seq.](#) and the [Antitrust Division Leadership, Section, and Office Directory](#) for contact information. In most cases, the Antitrust Division, either alone or jointly with the United States Attorney's Office, will investigate the anticompetitive conduct. A United States Attorney can independently investigate the anticompetitive conduct, but s/he needs the approval of the Assistant Attorney General for the Antitrust Division first.

All requests to initiate new antitrust investigations must be cleared with 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 civil areas, do not duplicate efforts by conducting similar or identical investigations. An investigation of criminal conduct—e.g., bid rigging, price fixing, or market allocation—is invariably and promptly cleared by the Federal Trade Commission.

[updated February 2020]

7-3.200 - Standards for Initiating a Criminal Investigation

A criminal antitrust investigation can be opened as a preliminary inquiry or as a grand jury investigation.

When presented with a request to open a preliminary inquiry, the Antitrust Division considers (a) whether there is reason to believe that an antitrust violation may have been committed; (b) what amount of commerce is affected; (c) if the investigation will duplicate or interfere with other efforts of the Division, the Federal Trade Commission, a United States Attorney, or a state attorney general; and (d) whether allocating resources to the matter fits within the needs and priorities of the Division. If additional evidence of an antitrust violation is gathered through the preliminary inquiry phase, then a request for grand jury authority can be made.

When presented with a request to open a grand jury investigation, the Antitrust Division considers the prior factors along with whether it is likely that if sufficient evidence confirming the alleged anticompetitive conduct is developed, the Antitrust Division would proceed (or approve proceeding) with a criminal prosecution.

When a significant amount of evidence is available at the inception of a case, a request can be made to bypass the preliminary inquiry phase and seek grand jury authority.

More information about the process for requesting authorization to conduct a preliminary inquiry or grand jury investigation can be found in the Antitrust Division Manual, which is available here: <https://www.justice.gov/atr/division-manual>

[updated February 2020]

7-3.300 - Case Recommendations

A recommendation to indict, file a plea agreement and information, or dismiss a charge must be approved by the Assistant Attorney General in charge of the Antitrust Division, among others. When a United States Attorney's Office independently investigated the matter and recommends a final disposition to the Assistant Attorney General in charge of the Antitrust Division, the United States Attorney is responsible for assessing the weight of the evidentiary support and litigation strategy. The Antitrust Division's review in that case is limited to an analysis of whether the facts presented meet the legal and policy requirements for an antitrust violation.

Additional information regarding the Antitrust Division's case recommendation process can be found in the Division's Manual, which is available here: <https://www.justice.gov/atr/division-manual>.

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7-3.400 - Notifying a Target

The Antitrust Division follows the Department's practice of informing individuals under certain circumstances that they are targets of the investigation. See [Justice Manual § 9-11.153](#); see also [Justice Manual § 9-11.151](#) (defining "target") and [§ 9-11.152](#) (discussing requests by targets to testify).

In investigations handled by the Antitrust Division, a target's counsel is usually afforded an opportunity to meet with staff and the office or section chief regarding the recommendation being considered. In such a meeting, counsel is encouraged to present all arguments as to why it would be unwise or inappropriate—for factual, legal, or prosecutorial policy reasons—to recommend indictment of their client. The Antitrust Division follows this practice in many cases so that it can evaluate efficiently the arguments of all prospective defendants and make a better-informed assessment of the evidence based on information from such parties.

A target's counsel does not have an absolute right to be heard by staff in the Antitrust Division's Office of the Assistant Attorney General, although unless the indictment will be placed under seal, the Deputy Assistant Attorney General for Criminal Enforcement and the Director of Criminal Enforcement will ordinarily give counsel an opportunity to be heard before recommending an indictment to the Assistant Attorney General. Only in very unusual circumstances will a target's counsel be granted a meeting with the Assistant Attorney General. Either way, defense counsel's arguments will be considered when the Office of the Assistant Attorney General evaluates the case recommendation.

If the investigation is being handled jointly with a United States Attorney's Office, the United States Attorney will be notified in advance of any meetings with defense counsel and may participate in such meetings and discussions.

[added October 2017]

7-3.500 - Sentencing Recommendations

Sentencing recommendations in antitrust prosecutions should be consistent with the U.S. Sentencing Commission Guidelines for sentencing antitrust violations and any applicable Department policies. See U.S.S.G. § 2R1.1.

[updated February 2020]

7-3.600 - 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.

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Additional information about the Antitrust Division and investigating and prosecuting antitrust offenses can be found in the Antitrust Division Manual, which is available here: <https://www.justice.gov/atr/division-manual>.

[updated February 2020]

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