

Interviewing Witnesses

Why interview

To learn facts needed to prove or to disprove the elements of the legal theory under investigation.

- Interviews may also be used –
 - to **understand** the industry and business practice under investigation
 - to get an **explanation** of things that are unclear in documents
 - to **test** the validity of information provided from other sources
 - to **assess** the credibility of witnesses
 - to **identify** other sources of information
 - to find out what **defenses** may be raised

Who

- Complainant/Informant
- Competitors
- Customers
- Suppliers, Distributors, Retailers
- Government Agencies
- Business/Trade Associations
- Industry Experts, Analysts, Academics
- Target/Respondent

Complainant/Informant

- Motivated to be helpful
- Generally willing to be interviewed more than once
- Good source of information about the industry and participants
- But
 - May not know (tell) the whole story
 - May make allegations rather than provide direct evidence
 - May be biased (e.g., a competitor complaining about a rival because the rival's practice is more efficient)

Competitors

- Willingness to cooperate may depend on type of investigation
- Good source of information on:
 - How the industry works
 - Participants in the industry
 - Entry conditions
 - Efficiencies
- But
 - May be concerned about their own conduct
 - May be concerned about their reputation if they too overtly assist the authority
 - May complain if rival's practice is efficient, but may not if it creates a price umbrella

Other witnesses

- Customers (suppliers, distributors, retailers)
 - Interests generally aligned with competition & consumers
 - May have the best information on the effects of any alleged anticompetitive conduct
 - May be concerned about how its cooperation with the competition authority will be perceived
- Others
 - Business/Trade Associations
 - Industry Experts, Analysts, and Academics
 - Government Agencies

Target/Respondent

- May be uncooperative
- Unlikely to volunteer information needed to establish a violation
- May claim not to remember (or unlikely to make an effort to recall) information helpful to your case
- May seek to confuse the issue, minimize it, or rationalize it
- May make counter allegations to neutralize or to distract

Preparation

- Helps make sure you get the right information from a person
- Helps ensure that the person gives you correct and helpful information:
 - A friendly witness will respond favorably if you have knowledge
 - A difficult witness will be cautious about giving untrue information if it appears you know what you are talking about

Preparation

- Why do you want to interview this person?
- What facts is the person likely to know that is relevant to the investigation?
- What do we already know about these facts?
- How would these facts fit into our ultimate proof?

Preparing for the Interview

- Set goals for your interview
- Make use of your investigational plan and proof chart
- Think about the legal and factual theory of the case
- Review all facts at your disposal before the interview
- Prepare an interview outline

Conducting the Interview

- Explain purpose of the interview
 - Inform them of their rights/obligations
 - Confidentiality
 - Target vs. non-target
- Then ask background questions
 - Witness background
 - Company background
- Ask short, concise, open-ended questions
- Listen carefully and ask follow-up questions
- Exhaust one topic before moving on to others
- Summarize and confirm the key information learned

Questioning Techniques

- Use mostly open-ended questions
 - Who? What? Where? When? How? Why? Explain?
- Ask follow-up questions
 - How do you know that? What is your basis for that?
- If witness claims limited knowledge, ask
 - Who would know? What documents would help?
- Modify questioning during interview, as necessary
 - Talkative versus quiet witnesses
 - Cooperative versus uncooperative witnesses

Using Documents

- Documents can:
 - Refresh a witness's memory
 - Clarify the meaning of something in a document
 - Check the validity of the witness's answer
- Organize the documents you plan to use & cross-reference them in your outline
- Bring at least two copies – one for you and one for the witness
- Exhaust the witness's recollection first, then show the witness the document

After the Interview

- Conduct a “debriefing” with team members who attended the interview to confirm facts learned
- Write an interview report summarizing everything learned
- Circulate the interview report to the team