

Transparency and Engagement in Investigations

APEC Workshop on Investigative Process & Procedural Fairness

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Benefits of Transparency and Engagement

- Improves the quality of the evidence
 - Allows parties to address concerns, focus document production, propose remedies
- Promotes more efficient investigations
 - Helps identify dispositive issues; eliminate non-issues
 - Provides preview of defenses
 - Allows for more effective settlements
- Leads to good enforcement decisions and settlements

Engagement with Parties During an Investigation

- Provide notice of investigation
- Encourage transparent discussions re:
 - Procedural issues
 - Theories of harm
 - Evidence
 - Enforcement decision or settlement
- Offer meetings with agency management at key points in the investigation

Practice Pointers for Engaging with Parties

- Oral or written (“white papers”)
- Consider setting up regular meetings or teleconferences with counsel
- Consider meeting with parties’ business executives or economists

Engagement with Third Parties

- Allow third parties an opportunity to engage with the agency
- Establish a cooperative rapport
- Keep them informed of major developments