

# Investigation Planning

## APEC Workshop on Investigative Process & Procedural Fairness

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*The views expressed in this presentation do not necessarily reflect those of the U.S. Department of Justice*

# Investigative Plan: Overview

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- A written plan
- Guides investigative strategy and decisions
- Sets timing for the investigation
- A “living document”

# Investigative Plan: What to Include

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- Theories of harm
  - Include potential defenses and remedies
- Open issues, unanswered questions
- Types and sources of additional information needed
- Timing and deadlines

# Sample Theories Outline (Merger)

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- I. Candidate relevant market: widgets in the USA
  - A. Alpha's and Beta's widgets are close substitutes
  - B. Gadgets are not a good substitute for widgets
- II. Competitive effects: unilateral
  - A. The merger will eliminate competition between Alpha and Beta
  - B. The merger will enhance market power
  - C. The merged firm will likely raise prices
- III. Entry
  - A. Entry barriers
  - B. History of entry or attempted entry
- IV. Efficiencies

# Planning the Investigation: Facts and Evidence

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- Identify additional information needed, including:
  - potential sources of the information  
(witnesses, documents, data)
  - methods of obtaining the information  
(voluntary, compelled, dawn raid)
- Develop a method of organizing the information gathered

# Sample Investigation Plan (Merger)

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Task	Assigned	Timing	Status/Comments
Review party docs			
Identify & interview customers -draft outline			
Identify & interview competitors -draft outline			
Draft & issue third party document requests			
Outline of proof			
Case recommendation (challenge or close)			

# Sample Investigation Plan (Cartel)

Task	Assigned	Timing	Status/Comments
Identify subjects/targets			
Obtain info from complainant or cooperator (interviews, documents)			
Use covert tools			
Drop-in interviews			
Obtain documents (search & seizure, dawn raids, subpoenas)			
Case recommendation (plea, indictment)			