

Economists in the Antitrust Division

Diane S. Owen

After 20 years as an economist in the Antitrust Division of the U.S. Department of Justice, I've perfected my cocktail-party description of my job: I collaborate with other economists and attorneys to investigate possible violations of the antitrust laws and, if necessary, to try to persuade federal judges to stop the violations. In a (doubtless riveting) episode of *Law & Order: Antitrust*, my colleagues and I would be in both halves of the show. A fuller explanation of our work and its attractions takes a little longer—one reason why we schedule an extra fifteen minutes in our sessions with candidates at the AEA/ASSA Annual Meetings.

What Economists Do in the Antitrust Division

The Antitrust Division shares responsibility with the Federal Trade Commission for enforcing federal antitrust laws. As economists, most of what we do centers on specific civil investigations, either investigations into proposed mergers or investigations of a firm's business conduct (e.g., exclusive contracts, loyalty discounts); the Division's criminal price-fixing investigations don't rely on economic analysis to the same degree. Every merger and conduct investigation has at least one economist on it from the outset, and complex or data-rich matters can have six or eight with different areas of responsibility divided up by interest and skills.

The key question in a merger investigation is whether the merger is likely to reduce competition, taking into account both its potential to create market power and its ability to create efficiencies. The key question in a conduct investigation is whether the business practice in question impairs other firms' abilities to compete on the merits and does so without adequate justification. While the question is always the same, figuring out how to answer it changes every time. The investigation is iterative:

learn facts from interviews, company documents, or depositions; from those, frame theories; figure out how to test the theories; dig for the facts and data necessary for the test; re-examine your theories; repeat.

Economists are involved in all steps of that process, but two roles stand out. First, the attorneys often look to economists to provide an intellectual framework of the analysis, to help in shutting down unproductive lines of inquiry (or entire investigations) and to identify potentially dispositive facts. Second, of course, economists in our office identify available data and conduct empirical analyses, which often carry a lot of weight in internal decision-making.

A major difference from academia and from many policy jobs is the nature of our work product. Though we contribute to legal briefs filed in court, our own writing is almost always for an internal audience. Sometimes that takes the form of a memo to someone higher in our mostly-flat organization structure, such as the top economist in the Division (always a prominent academic economist on leave—currently, Nancy Rose of MIT), or the Assistant Attorney General for Antitrust, who is our ultimate decision-maker. Often our persuasive writing is aimed at other members of our case team, in emails recommending a search for a particular kind of document or arguing the pros and cons of a particular theory of a case.

If an investigation looks like it might go to court, we will generally prepare an economic expert who might testify about their conclusions. On smaller matters economists in our office may act as experts, but on high-profile matters we often bring in a well-known economist from academia. I doubt that in any other context I would work so intensively with (or against) Frank Fisher, Carl Shapiro, Michael Katz, Dennis Carlton and others, engaging on facts and ideas that we all know well. It's an

unexpected perk of the job.

If we do go to court to block a merger or stop a business practice, economists work on the trial and are typically in the courtroom at least part of the time. In addition to working with our own expert, we help determine how to cross-examine the defendants' expert, and what facts we need to be sure to establish through our own fact witnesses' testimony. Trial work is intense, interesting—and rare. The Division goes to trial in merger and conduct matters once or twice in an average year. Many more cases settle, and economists work on the teams that negotiate those settlements, which are intended to cure the competitive problems identified during the investigation.

While work in the Division is not primarily a research job, there are opportunities for limited release time to pursue personal research projects, and the Division encourages publication and participation in conferences. Economists vary in whether they continue to pursue publication, and job performance is not measured by publication record. It's also not a policy job in a traditional sense, though it has an enormous impact on the public through our enforcement of the antitrust laws. Outside of casework, there are also opportunities to help the Division shape and publicize recommendations on competition issues. In recent years, such issues have included the appropriate economic and legal analysis in the antitrust context of intellectual property issues and of standards-setting bodies.

What Brought Us to the Division and Why We Stay

The Economic Analysis Group within the Antitrust Division comprises about 54 PhD economists, of whom currently 14 are women. To get perspective beyond my own, I surveyed my women colleagues on why they came to the Division and why they stayed. I think



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my male colleagues would say similar things.

Economists in the Division come with background in a range of fields. I'm at one extreme, in that my dissertation related to antitrust, and the Division was where I most wanted to be when I went on the market. Unfortunately, I didn't get the job! I spent three years in a tenure-track position at William & Mary before applying again. A number of my colleagues, in contrast, had primary fields such as experimental, health, labor and trade, with at most a secondary interest in industrial organization (IO) coming out of grad school. Empirical expertise transfers particularly well from other fields of applied micro.

Debby Minehart arrived by a different path: She was a tenured Associate Professor at Maryland who came to the Division as a Visiting Scholar—the office hosts one in most years—loved it from her first week, and chose to stay on. In academia, she worked on theoretical models of buyer and supplier relationships and of the structure of R&D-intensive industries. She found that the Division let her see IO theory in action, and she played a leading role in the analysis of two-sided markets as part of the investigation and prosecution of American Express for restrictive terms in its contracts with merchants.

Investigation is exciting if you like asking questions and getting into the weeds. (Another of my cocktail-party lines is: "It's a great job if you're nosy.") To identify likely constraints on a firm's pricing, or the potential for entry, we dive deeply into the facts and see data and internal analyses that aren't visible to economists in any other circumstance. So many of the complexities of real-world business are left out of standard IO models, and the work every day presents challenges that I would not have dreamed up on my own. In identifying the potential for price increases after a merger, how should I take account of the three-year supply of the product now sitting outside a closed-down mine? What natural experiments

are available from which I can infer the competitive importance of a new product with no sales yet? The cleverness and thoroughness with which I can address such questions can have an immediate, visible impact when we must decide whether a multi-billion-dollar merger should be blocked because it is likely to harm competition.

Teamwork is a prime attraction for those who stay in the Division. As I've already described, day-to-day investigative work is inherently collaborative. Skill at teaching economic logic to non-economists matters, and not surprisingly, many economists in the office say they'd likely have chosen careers at liberal arts colleges if they hadn't come here. Litigation consulting is another alternative, with some clear advantages in money, opportunities to testify and locational flexibility, and we see former colleagues on "the other side of the table" when they come present arguments on behalf of firms that we're investigating. (The traffic flows the other way, too; two of my current colleagues came to the Division from consulting firms.) I can't speak from experience in consulting, but in the Division I like knowing that I have the freedom—in fact, the responsibility—to reach and present my own conclusion about the merits of an investigation without worrying whether it's what someone above me wants to hear.

Government jobs, including work in the Division, are both more and less flexible than academia for those with family responsibilities. There's no equivalent to the academic calendar's summer, holiday and spring "breaks," but economists can and do opt for various kinds of flexible work schedules (for instance, with later start and end times, or a "flex day" off every two weeks). When decision or court deadlines loom, economists do put in whatever time is necessary to present high-quality work, but otherwise can use their nights and weekends as they choose without guilt. A colleague notes that for the 20 years or so that raising a family is your second job, it's crucial that your "day job"

be low-stress, flexible and supportive.

Staying in the Division has some costs. Beyond the tradeoffs I've already mentioned, my colleagues most often mention the locational constraint: All the Division's economists are in Washington, DC, as are most of the available short-term posts at other government agencies (e.g., Council of Economic Advisors, FCC).

Outreach

Under Department of Justice rules, we are limited to hiring U.S. citizens (native or naturalized). That is a serious restriction, given the composition of the pool of new PhDs, and raises the importance of making sure that everyone in the eligible pool knows about the opportunities the Division offers so that we can maximize our chance of finding good matches.

To that end, we held our first-ever outreach event last year, inviting women PhD students at universities in driving distance from DC who are within a few years of going on the market. During the daylong event, the attendees heard about life in the Division, attended a paper given by an outside speaker as part of our regular seminar series and participated in substantive discussion groups on antitrust issues in network industries and on empirical issues in healthcare cases. We've done less-formal educational gatherings of interested students at a couple of universities, and hope to do more. Through word-of-mouth—and this article—we hope also to remind mid-career economists to consider the Division when they're looking for a policy-relevant place for a year-long visit or for a new permanent position with scope for meaningful, varied economic analysis that has immediate impact.

Note: The views expressed above do not purport to reflect those of the U.S. Department of Justice.