

PARALLEL PROCEEDINGS IN ANTITRUST MATTERS

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*The views expresses in this outline are not purported to reflect those
of the United States Department of Justice.*

Outline: Parallel Proceedings in Antitrust Matters

by Glenn Harrison

I. Common situation: discovery in a civil lawsuit that is “parallel” to a criminal antitrust investigation by the Division.

- A. Disadvantage (to the Division): civil discovery may disrupt the criminal investigation.
- B. Possible advantage (for the Division): the civil case may encourage cooperation by criminal defendants.

II. Possible Limitations on Civil Discovery

- A. Protective Orders under Fed. R. Civ. P. 26(c). For “good cause shown,” the Court may make “any order which justice requires,” including:
 - 1. Barring discovery
 - 2. Postponing discovery to a certain time (e.g., after a criminal investigation ends)
 - 3. Limiting discovery to a certain place
 - 4. Limiting the types of discovery (e.g., no depositions)
 - 5. Limiting subject matters (e.g., no discovery on communications with DOJ)
 - 6. Limiting amount of discovery (e.g., capping depositions at 10 per side)
 - 7. Limiting who can access the information (e.g., counsel only)
 - 8. Limiting use of information (e.g., only for the litigation)
 - 9. Requiring the parties to share all civil discovery with the Government
 - 10. Requiring the parties to provide notice to the Government.
- B. Examples of requests:
 - 1. Postpone all discovery until completion of the criminal investigation.
 - 2. Postpone all discovery until certain date.
 - 3. Permit document discovery, but limit all other discovery until certain date.
 - 4. Preclude or postpone depositions of key witnesses.
 - 5. Preclude discovery on certain topics, such as communications with competitors.
 - 6. Preclude discovery from amnesty¹ counsel or of amnesty communications to Government.

¹Counsel for party seeking amnesty or leniency under the Division’s Amnesty Policy.

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