

Some Comments from Brent Snyder, former Antitrust Division Criminal Deputy, as he Heads to the Hong Kong Competition Commission

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If you ever wanted to sell a student on pursuing a career in antitrust because of the interesting possibilities, Brent Snyder's career (which is far from over) would be a good case in point. Mr. Snyder graduated with Honors from the University of Texas School of Law, where he was an Associate Editor of the Texas Law Review. After completing a federal judicial clerkship, he began practicing as a private commercial litigator and in 2001 became a partner at Perkins Coie, a large Seattle law firm. Mr. Snyder joined the Antitrust Division United States Department of Justice in 2003. In June 2017 Mr. Snyder stepped down from the Antitrust Division and will be heading to Hong Kong. On June 19, 2017, the Hong Kong Competition Commission announced the appointment of Mr. Snyder as its next Chief Executive Officer (CEO) for a term of three years commencing 4 September 2017 ([here](#)).

Mr. Snyder had a remarkably successful career with Antitrust Division. He started in 2003 as a trial attorney. He was involved, both as a trial attorney and as a supervisor, in many successful cartel investigations and prosecutions. He was part of the team that conducted the TFT-LCD international cartel investigation, which

culminated in a conviction and a \$500 million fine against AU Optronics. Several AUO executives were also convicted and sentenced to lengthy prison terms. From 2013 until his departure, Mr. Snyder served as the Deputy Assistant Attorney General for Criminal Enforcement overseeing all of the Division's criminal investigations, prosecutions, leniency and other policy work.

Mr. Snyder is known to his friends as someone whose career has always focused on positions that would be interesting, provide new challenges and allow him to make a meaningful contribution. On these scores, his going to Hong Kong is not surprising. Hong Kong has a relatively new but robust competition enforcement regime. Full enforcement of the Hong Kong Competition Ordinance began only a little over 18 months ago and the Competition Commission has had positive results already. Some of these results are outlined in the Commission's March 2017 newsletter, "[Competition Matters](#)." The Competition Commission also has a very helpful [website](#).

The Hong Kong Competition Commission has been very innovative during its short history. The Commission created an educational video on "Fighting Bid Rigging Cartels," which can be viewed [here](#) on You Tube. The Commission's "Fighting Bid-rigging Cartels" Campaign was named a winner in the category "Engaging through results: Successful experience in planning, implementing and monitoring advocacy strategies" in the Competition Advocacy Contest organised by the International Competition Network (ICN) and the World Bank Group ([here](#)).

Mr. Snyder will bring a great deal of valuable experience and perspective to the Hong Kong Competition Commission. Before heading off to Hong Kong, Mr. Snyder kindly agreed to answer a few questions about his experiences to date.

Q. Can you talk about an experience you had in the Antitrust Division that might be your fondest memory?

First, thank you for the opportunity to contribute to Cartel Capers! Your blog has been a great and influential addition to the antitrust landscape and facilitates discussion and thinking on important topics in our field. I appreciate your interest and am happy to answer your questions.

I suppose I should have an easy answer to this question, but it is hard to pick from so many great experiences over the years. Anyone who has worked in the Division understands what a special place it is and the exciting things its attorneys get to

do.

Running through the Honolulu airport to serve a grand jury subpoena on someone trying to hightail it out of the country, the excitement of trial wins, a karaoke celebration party with the AUO team, kayaking on a bio-luminescent bay in Puerto Rico with the Peake trial team, any number of memorable drop-in interviews, planning a successful undercover operation, and, most recently, a surprise farewell party complete with a hula dancer, ukulele player and Aloha-attired Division friends (people seem to think I have a thing for Aloha shirts for some reason ☐) all come to mind.

They all have one thing in common — that I was fortunate to be part of great teams. I can't separate any memory from the fantastic people with whom I shared the experiences and accomplishments. Experiencing those things with people I like and respect are my fondest memories. I was just so fortunate to work for and with talented, hardworking, dedicated public servants who also are fun and have a great sense of humor (and/or high tolerance for mine). Anyone who knows me knows that I value that last part especially highly!

Q. You've had several different positions in the Division, starting out as a trial attorney, rising to Criminal Deputy and even being Acting Assistant Attorney General for a time. For the trial staff, what do you think are the biggest challenges they face today in cartel enforcement?

It is a great time to be a Trial Attorney because the Division has a number of really exciting investigations and plenty of cases going to trial. But, as always, there are challenges. I think some of the significant ones are:

- Keeping up with the work, especially while the Division has so many cases in litigation, which pulls resources away from investigations;
- The complexity of several of the schemes and industries under investigation, such as LIBOR and the foreign exchange spot market;
- Coordinating and harmonizing investigations with an increasingly greater number and variety of enforcement and regulatory agencies, especially non-competition enforcement agencies; and
- Keeping up with ever evolving technologies that cartelists are using to communicate and that are difficult to detect and penetrate.

I have been proud to see the Division's attorneys overcome every challenge with

determination and dedication and fully expect them to have a continued track record of great success in the future.

Q. Overall, what do you think is the biggest challenge facing the Antitrust Division in its primary mission of cartel enforcement?

You raise one of them below — keeping the incentive strong to seek leniency.

Another challenge is that the Division has lost many of its most experienced attorneys through retirements, office closures, and other attrition over the past several years. Although the Division was able to hire a large number of exceptionally talented attorneys, the lost experience cannot immediately be replicated. The good news is that this challenge should be short term in nature. Recent trials and investigations have provided opportunities for the new attorneys to get tremendous experience, and the Division is on its way to having a really deep pool of accomplished prosecutors to go along with a skilled group of managers.

Finally, as I mentioned above, there is a much more crowded enforcement landscape today than there was even a few years ago. I am referring less to the emergence of new competition enforcers than to investigations involving a greater number and variety of other domestic and foreign enforcement agencies and regulators. This results in greater harmonization challenges, and these investigations no doubt complicate the leniency calculus for companies that may face non-antitrust exposure from those regulators and enforcers for the same or related conduct.

Q. Is there any one area of international enforcement harmonization or cooperation you'd hope to see improvement in among the world's cartel enforcement agencies?

I think the quality and quantity of international cooperation is better than it has ever been. The Antitrust Division now routinely communicates and coordinates with enforcement agencies that it had little or no interaction with just a few years ago. I think this is testament to the rate at which agencies around the world are maturing and becoming involved in international investigations.

If there is one area that I would like to see improved, it would be in the area of witness interviews. As I have said at other times, I think enforcers can do a better

and more efficient job of coordinating the timing of and approach to witness interviews among enforcement agencies. This would not only benefit our investigations but also be more cost effective and efficient for the witnesses and cooperating companies.

Q. Do you think “leniency” has lost some of its appeal to potential cooperators? If so, can/should anything be done about that?

I don't think leniency has lost its appeal. For a company confronted with exposure to a cartel offense and the resulting large fines, civil liability, and incarceration for executives, it is still a great opportunity. And, I believe that companies and their counsel still see it as one.

But, as I mentioned above, the decision to seek leniency is undoubtedly more complicated than it has ever been as a result not only of the proliferation of competition enforcement agencies but also the more frequent involvement of other types of enforcement agencies and regulators in parallel investigations of the same conduct. The proliferation of enforcement agencies increases the potential cost and burden of seeking leniency, and the involvement of other enforcement agencies and regulators increases the risk of liability not covered by leniency.

I think the expense and burden of multi-jurisdictional cartel investigations can be addressed through greater coordination and efficiency enhancements among competition enforcement agencies. I think that harmonizing leniency with non-competition enforcement agencies and regulators presents greater challenges, but I believe it will become easier as they have more experience with leniency and see its results. I saw improvements in this area during my years as DAAG.

Finally, the best way to make leniency attractive is to prove you can and will detect and prosecute cartels even without a leniency applicant. The Antitrust Division has an excellent track record of doing so, and cartelists who choose not to seek leniency face a real risk of detection and prosecution.

Q. As mentioned above with “Fighting Bid Rigging Cartels” video the Hong Kong Competition Commission has been innovative and active in public outreach. Do you think that kind of outreach can be duplicated in the United States?

I have been really impressed by innovative public outreach efforts in other jurisdictions, such as Hong Kong, and have often wondered if they can be replicated here. Unfortunately, I am doubtful that they can be replicated here because the U.S. is so large and the channels for communicating to the general population are diffuse or prohibitively expensive.

Nonetheless, the Antitrust Division has prioritized making public outreach more systematic and diverse than in the past. I don't think we'll see any national ad campaigns or public service announcements from the Division, but I do think it will be finding ways to get in front of a greater number of groups and constituents than in the past.

I think this outreach is very important not only from the perspective of developing investigative leads but also to educate the public regarding the illegality of cartel offenses. In 2015, Prof. Andreas Stephan of the University of East Anglia published an interesting survey of public attitudes to price fixing in the UK, Germany, Italy, and the U.S. which showed that the U.S. lags behind the other jurisdictions in knowledge that cartel conduct is illegal. Outreach can certainly help with this.

Q. You no doubt had many possible very lucrative opportunities upon leaving the Department of Justice. Why did you choose to go to work with the Hong Kong Competition Commission?

I thought it was an incredible and interesting opportunity to go from one of the most established and experienced agencies in the world to one of the newest. You've already noted that the Hong Kong Competition Commission has shown itself to be innovative and thoughtful during its relatively short existence. I am excited to get to contribute to what Stanley Wong, Rose Webb, and others have already begun to build there and hope to make good use of my experience at the Antitrust Division.

It should come as no surprise that I think the Antitrust Division is the finest competition enforcement agency in the world, but I jokingly told Acting Assistant Attorney General Andrew Finch that we're going to try to knock them back to second best. ☐

Thanks Brent. Best of luck in the new position in Hong Kong!

This post originally appeared in the [CartelCapers blog](#).