

*Transcript of ICN Training on Demand Module VI-2: Interviewing Techniques*

**SLIDE 1**

MARKUS MEIER: My name is Markus Meier, and I'm an Assistant Director at the United States Federal Trade Commission in Washington, D.C., where I lead a team of about 35 lawyers and other professionals who investigate competition cases involving the health care industry.

What I'm going to be talking to you today about is how to interview witnesses. We're going to talk about the who, the what, the where, the when, the why, and the how to interview witnesses.

But before I get started, I wanted to just make a couple additional points. First of all, this session will not be covering how to conduct covert investigations, such as investigations involving cartel cases. For those kind of cases, I refer you to the work being done by the ICN's Cartel Working Group.

Additionally, at various points during this session today, we'll be cutting away to see how to actually conduct witness interviews. And for that, we will be going to our colleagues at the Australian Competition and Consumer Commission, who are currently planning and investigation and are getting ready to conduct some witness interviews.

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MARKUS MEIER: Here's an overview of the session today. First of all, we're going to talk about why we interview witnesses. Second, we're going to talk about who should be interviewed. Third, we're going to talk about when to conduct interviews. Fourth, we're going to talk how to prepare for an interview. Fifth, we're going to talk about how to conduct an interview. And sixth and last, we're going to talk about what to do after you've concluded the interview.

**SLIDE 3**

MARKUS MEIER: So, why do we interview witnesses? Well, first of all, we interview them to learn about facts needed to prove or disprove a possible violation of competition law. Second, we interview witnesses to get information needed to understand the industry and the business practice that's under investigation. And, third, we interview witnesses to identify

potential witnesses for decisional proceedings whether that's done in your country as an administrative proceeding or whether that is done as a judicial proceeding.

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MARKUS MEIER: Let's talk about what kinds of witnesses should be interviewed, because in an antitrust case or a competition law case, there are any different types of witnesses that you might want to talk to. These witnesses include the complainant, competitors, customers, suppliers, distributors, retailers, other government agencies, business and trade organizations, industry experts, analysts and academics and, of course, you're going to eventually want to interview the target of the investigation.

Now, each type of witness here has the opportunity and the ability to give you useful information towards your investigation, but some types of witnesses have advantages over the other types. For example, the complainant. If a complainant comes to you, they're obviously highly motivated to talk to you and they may have lots of information that's useful to you. But they also may have a hidden agenda and you sometimes have to be careful when you're dealing with the complainant.

Competitors can be very useful witnesses to interview because they understand the business, they understand the market, they understand what customers are looking for and they can help you with issues such as product market, geographic market and entry.

Customers, obviously, are very important in competition cases. They're the people that would be harmed by the anti-competitive conduct if there's anti-competitive conduct occurring. And the customers can be very useful to tell you about what kinds of products they think are substitutes and help you with issues like defining the product market.

Suppliers, distributors and retailers, obviously, they can also be customers and can be very helpful, helping you understand demand conditions in the marketplace and entry issues.

Government agencies are useful witnesses to talk to, and they can be useful for two purposes. First of all, as regulators, they may have information that's useful to you to help you understand an industry and understand the competitive dynamics in an industry. Government agencies also can be purchasers and customers, so you might want to think about talking to various government agencies to get information from them.

Every major business and professional organization has some form of a trade organization and these trade organizations routinely collect information about their members and about the business and they can be useful sources, too.

Industry experts, analysts and academics who study these different industries that we may be investigating often have collected huge amounts of information about the industry and are often very willing to talk to you if you reach out to them and can find them.

And lastly, as I said, the target, we usually save the target until the end of the investigation once we know a lot more about what we're looking into.

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MARKUS MEIER: So, now let's talk about when to conduct an interview. Should you conduct the interview before or after receiving documents and data and can you interview a witness more than once? These are important considerations to take into account when deciding when to conduct an interview. If you conduct an interview before you get documents, it can often help you write better document requests and make sure you're asking for the right kinds of documents and data. On the other hand, if you interview witnesses after you receive the documents and data, you can spend a lot of time asking them questions about those documents and about that data.

Another consideration is whether you can interview the witness more than once. Complainants will often allow you to interview them a number of times. The target, on the other hand, often is very reluctant to talk to you, so you aren't necessarily going to get a chance to interview them more than once.

Generally speaking, the typical sequence of interviews is to talk to the complainant first to get as much information as you can, then to reach out to third parties like customers and competitors, and then ultimately to save the target until the end of the investigation.

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MARKUS MEIER: So, let's talk about how to prepare for an interview. One of the first things you want to do when preparing for an interview is you want to set some goals based on your theory of the case. Let's see how the Australians prepare for an interview.

INTERVIEWER: Okay, team, I just wanted to give you an update on what I'll be doing this afternoon, which is interviewing Chris Hopper, he's the company secretary and the managing director or one of the managers of Hopper Brewing, which as you know, is the third largest competitor in the market for beer brewing in Australia and hopefully, he should be able to give us some useful information about his two competitors, Tiger Leighton and Acme who are obviously proposing to merge.

So, it will be interesting to hear what he has to say about the market, particularly the market dynamics at the national level versus in the various states of Australia. So, I'll probably report back to you this afternoon after I've met with him.

MARKUS MEIER: One way to think about this is to think, why do we want to interview this witness, what's this witness likely to know, and how does this witness fit into our broader investigation.

The next thing you want to do as you prepare is to collect background information on the witness and the company that you're investigating using public sources. Today, there's a great deal of information available on the Internet and you should run Internet searches routinely as part of your investigation.

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MARKUS MEIER: Additionally, as part of the process in preparing for an interview, you want to prepare an interview outline. In fact, this might be the most important part of your preparation. Generally speaking, you should organize the outline by topics, things like product market, geographic market, entry conditions, and things like that.

As part of the process, you want to consult with your other team members. You want to give them drafts of your outline and get their input and thoughts on how to improve the question outline.

Generally speaking, when you're preparing an outline, you should write notes. Don't try to write out every question because one of the things you want to be doing during the interview is you really want to be making eye contact with the witness and you want to be watching the witness and you want to be thinking about what kinds of follow-up questions you ask. You'll often find that the most important questions you ask are not the ones you prepared in advance, but the ones you ask when you follow up in response to things that the witness tells you.

And then during the actual interview, you can use your outline as a checklist to make sure that you're covering all the things you wanted to cover and that you're getting answers to the questions that you need answers to.

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MARKUS MEIER: Let's talk now about how to actually conduct the interview. When you start an interview, you should start by explaining to the witness the purpose of the interview and whatever confidentiality provisions may apply to that interview. In other words, if your law has certain confidentiality guarantees, you should explain that to the witness so that the witness understands that.

INTERVIEWER: Mr. Hopper, thanks very much for coming in today. As I explained on the phone, the ACCC is currently making some inquiries regarding the proposed acquisition of Acme Brewing by Tiger Leighton and your company, Hopper Brewing, obviously being a competitor to those two firms, we would really like to speak to you about that proposed acquisition, the likely effect that it might have on the market.

So, I'm going to be asking you some questions today about the market, so the participants in the market being the competitors, but also customers, your customers, other potential customers, as well as some information about the manufacturing process, inputs, suppliers of those inputs and information like that.

I'm going to start by asking you a bit of -- some background questions about yourself, about your role in the company, your previous roles in that company and other companies and any other information that might be useful to help me understand, you know, how much you can tell us about this market.

So, have you got any questions for me before we begin?

MARKUS MEIER: After you've done that, then ask background questions. Ask about the witness' background, ask about the company background, and ask about the industry background. Sometimes you'll find that even though you've set up this interview in advance, you may not really be talking to the right person at the company for the information that you want to get. By asking a witness background questions, you'll have a better understanding of who you're talking to and what they're likely to know.

As you conduct the interview, listen carefully and think about the follow-up questions that you want to ask in response to the answers that the witness is giving you. And, generally, it's better to try to exhaust one topic before moving on to others.

INTERVIEWER: Mr. Hopper, what's your current position in the company?

MR. HOPPER: So, I'm the company secretary and I'm the manager of production and distribution for Hopper Brewing.

INTERVIEWER: And how long have you held that position?

MR. HOPPER: I'm -- in this position, I would have been at least ten years. I would have started...

INTERVIEWER: What are the dates -- what was the date that you began in that position?

MR. HOPPER: So, my father retired in early 2000, so I think I would have started in 2001 or 2002.

INTERVIEWER: Thank you. Now, can you tell me about your duties and responsibilities in your current position?

MR. HOPPER: So, as I said, it's production and distribution. So, I'm wholly responsible for our whole production chain. So, from procuring the ingredients for the beers and then getting them to the distribu[tion] -- the manufacturing plant and ensuring that we are manufacturing the right amount of each of our products to meet the needs of the market, and then ensuring that we get our product from the factory out to the points of sale.

INTERVIEWER: Thank you. And who do you report to?

MR. HOPPER: So, I report to Mike French, who's the CEO of the company.

INTERVIEWER: And who reports to you?

MR. HOPPER: So, quite a few people report to me. So, underneath me, there's Terry Smith, who's responsible for the -- we have kind of two main parts of our company. One is draft and one is canned and bottled beer. So, Terry's in charge of the canned and bottled beer. And then Phil Beers is in charge of the draft side of our production. So, they both report to me. Also, we have Carrie Brewer who's responsible for our marketing division. She reports to me.

And then underneath those people, we have a number of state managers responsible for the same kinds of things, but in each of the states.

INTERVIEWER: Okay. So, moving on to the company itself, can you describe the company, Hopper Brewing's business, generally, including the lines of business and the range of products?

MR. HOPPER: Okay. So, we produce beer for consumption either in pubs, so in kegs on the tap, draft beer, or we produce beer for consumption at home or, you know, off-license type products. So, we produce a lite range, a mid-strength range, a premium range, which is your strongest beers. We also produce a boutique range, which is the kind of more unique beers in smaller production volumes.

So, we procure the ingredients and produce some of the ingredients ourselves. We bring them to our manufacturing plant where we manufacture the products, and then we get them out of the factory to the -- or the beer brewery to points of sale. So, that could be in kegs to pubs or it could be we then provide them to major supermarket chains or major liquor brands for sale at the points of sale. We don't have any points of sale that we own. It's always through third-party retailers that they're sold.

Although we do -- we like to direct interface with the pubs. So, we -- the pub contacts us, or our marketing department, say we want to secure kegs for three taps, for example, and then we say "sure" and give them the kegs that they ask for.

INTERVIEWER: Great, thanks.

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MARKUS MEIER: So, let's talk about some of the actual questioning techniques that you want to use when you're interviewing a witness. It's generally best to start with open-ended questions. What do we mean by open-ended questions? We mean questions that start with the words "who" and "what" and "where", "when", "how", "why", and explain and describe. Your goal is to get the witness talking. You want to hear from the witness and learn what the witness has to say. And by asking open-ended questions, you have a better chance of getting that kind of information.

INTERVIEWER: Okay. Can you tell me who are your major competitors in Australia?

MR. HOPPER: Sure. So, they're the two that you guys are looking at. So, there's Tiger Leighton and there's Acme. They're our two major competitors. They also hold most of the market.

INTERVIEWER: What are their market shares on a national basis, including your own?

MR. HOPPER: So, I'd say Acme holds about half of the market. They're present and strongly present in almost all states. Then maybe Tiger Leighton holds about 30, 35 percent of the market. And then we hold nationally maybe 16, 20 percent. It would be about 16 or 17 percent of the market.

INTERVIEWER: Okay. And are there any markets, for example, state-based markets, where Hopper Brewing's share of the market is drastically different to its share of the national market?

MR. HOPPER: Beer consumption in Australia, there's quite a lot of brand loyalty. So, customers tend to find a beer that they like and then they kind of stick with it. There is an increasing trend for people to kind of try some boutique beers and that's why we produce a range of boutique beers.

So, yes, the short answer to your question is yes, there -- our market share differs greatly from state-to-state, depending on, well, who was there first so that people would then be used to that beer product and more likely to stick with it and be loyal. So, for us, our major market share is South Australia because that's where we started, and I'd say we hold about half of that market at the moment.

INTERVIEWER: Mm-hmm.

MR. HOPPER: Whereas, you know, in other states, it's far less than that.

INTERVIEWER: And, so, what would the shares of your two major competitors be in South Australia?

MR. HOPPER: In South Australia, they probably -- if we -- if you say we hold a bit less than half, they would then hold about 25 percent each of the market. And then the -- whatever's left over would be made up of the others, like those much smaller boutique suppliers.

INTERVIEWER: Great, thanks.

MARKUS MEIER: But you also want to be listening as you're asking the witness questions and listening carefully to the answers, and then following up with more narrowly focused questions that allow you to fill in details and also to test the bases for the witness' knowledge. Questions you might ask at that point are, "well, how do you know that?" and "what's your basis for saying this?" and, "why?". "Why" is one of your best questions to ask in a witness interview.



Ultimately, sometimes you'll find that the witness will claim that they only have limited knowledge or that they really don't know something that you're asking about. And if that happens, you should ask them "who else would know?", "what other documents might help?", "what other people can we talk to where might that information be?", "can you help me find where I might learn about that?".

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MARKUS MEIER: Sometimes when you're interviewing a witness and you're doing so in person and you already have some documents, you need to organize those documents for use during the interview. So, you should organize the documents you plan to use and you should cross reference them in your outline.

Generally speaking, it's best to bring at least two copies of each document to the interview, one for you to use and one for the witness.

And, again, you should try to exhaust the witness' recollection first and then show them the document and ask your questions again with the document in front of them.

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MARKUS MEIER: So, now let's talk about how you conclude the interview. One of the most important things you should do towards the end of the interview is confirm and summarize the key information you learned from the witness. Questions you might ask at this point are, "if I understand you correctly", or "so you are saying", and then try to summarize as accurately and correctly as you can the information you thought you learned from the witness in order to confirm that you really got it right.

At the very end of the interview, you should end by asking, "are you aware of any other information that may be relevant to our investigation?" and "do you know anyone else who we should be talking to?". As part of the investigative process, you're always looking for additional sources of information. You're always looking for other witnesses that you might need to talk to. By ending your interview by asking that, you may learn of witnesses and other information that you didn't know exist.

And then at the very, very end of the interview, you should thank the witness for taking the time to talk to you.

INTERVIEWER: Okay, thank you, Mr. Hopper. I think that's the end of my questions for you today. I'm going to go away and write up my notes of our discussion today and there might be some further questions that I might have. Do you mind if I contact you again by phone just to fill in any gaps in the information?

MR. HOPPER: Right, that's fine. Happy to help.

INTERVIEWER: Thank you. So, we will conduct some further inquiries. We need to speak to some other participants in the market, and then I'll get back to you to let you know either what the outcome of our inquiries is or whether we need any further information from Hopper Brewing. So, that's all for today. Thank you very much for coming in to speak to us. We appreciate your time.

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MARKUS MEIER: Now, what do you do after an interview? There are a number of things you should do after an interview. First, you should conduct a debriefing session with your team members who also attended the interview in order to confirm what you've learned.

INTERVIEWER: Okay, well, I had my interview with Chris Hopper. He was very useful to speak to. He gave some interesting information about the way that the market is broken up in the various states of Australia. So, he was talking about how you have various niche markets in the various states and territories which depend on the origins of the various companies that are based in each of the states and territories.

He also talked a bit about the rise of the craft beer and boutique breweries in Australia. So, I think that was really interesting.

I'll type up my notes and send them to you and if you have any -- if you can see any further information that we might need, he agreed that I could call him and ask him some further questions.

Okay, so, just in terms of planning a sequence of interviews that we're going to conduct in the remainder of our inquiry, we've obviously spoken to the competitors of the two companies that are planning on merging. I think next we need to speak to customers.

So, perhaps if we can draw up a plan and we can divide up the customer amongst ourselves and then go out and conduct those interviews, and then we can perhaps look at talking to some of the major distributors around Australia. And then after we've spoken to all of those

parties, we can then go back to the target and the proposed acquirer and speak to them again armed with all the information that we've gathered from these various witnesses.

MARKUS MEIER: The next thing you should do is write an interview report. And in the interview report, you want to summarize the facts that you've learned from the witness. Sometimes it's useful in an interview report to include impressions about the witness' credibility and suitability as a potential witness in the case.

And last, you want to circulate the interview report to your entire team, not just the people who attended the interview, but also the other people who might not have attended the interview so they can learn what you've learned from that witness.

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MARKUS MEIER: As part of the process after the end of the interviews, you want to assess the evidence that you learned during the interview. You want to ask yourself, "is this witness' testimony likely to be admissible?", *i.e.* meet your rules of evidence, if you have a system of law that requires that.

Even if you don't have a system of law in which you need to worry about whether the evidence is admissible, you still want to ask yourself, "how persuasive was this witness testimony?". And in thinking about how persuasive the witness' testimony was, you want to think about the credibility of the witness. Did they really have personal knowledge? Did they seem trustworthy? Did they seem competent?

You also want to look at the consistency and completeness of the story that the witness told you. How consistent is it? How consistent is it with other -- what other witnesses have told you? How consistent is it with what you've learned from other documents?

And, lastly, you want to make sure that the witness' testimony is based in facts and not just their speculation. You want to make sure that they're giving you information that they really know to be true and that they've personally experienced and seen for themselves and that they're not just speculating about what might have been or what could have been.

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MARKUS MEIER: Sometimes as part of the process, after you've conducted an interview, is that you may want to get a written statement from the witness. Now, whether to

seek a sworn and signed written statement from the witness depends on your national legal procedures that govern whether and how witnesses' statements may be used.

You should also note that in some jurisdictions around the world, written witness statements may have to be disclosed in advance of decision-making by the competition agency or by the courts.

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MARKUS MEIER: So, this really takes us to the end of the process. But as I said at the very beginning, interviewing witnesses is just one step in the investigative process, which also involves developing a theory, identifying sources of information, requesting documents, interviewing witnesses, which we've just talked about, and analyzing the evidence. And, as I mentioned at the beginning, the ICN has an entire video on how to plan and conduct investigations.

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MARKUS MEIER: In addition to this video, the International Competition Network has a number of other resources that may be useful to you as you plan and conduct investigations and as you prepare to interview witnesses.

First of all, the Cartel Working Group has an Anti-Cartel Enforcement Manual and is working on additional materials, including materials on how to interview witnesses as part of a cartel investigation.

Second, the Merger Working Group has an Investigative Techniques Handbook, which is very useful and you should take a look at.

And, last, the Unilateral Conduct Working Group has a set of recommended practices on assessing dominance and unilateral conduct in a workbook on how to do that, which may be useful to you and should be consulted as part of the process of planning and conducting investigations and interviewing witnesses.

Thank you.