To: Officers and Council  


Re: Report of Secretary and Communications Officer  

Summary of Recent Action Items. Attached to this report is a summary of all actions taken by Council between the Spring Council Meeting and July 21, 2016. At the Council Meeting held during the Annual Meeting (the “Summer Council Meeting”), we will move to include that summary (with a report on the July 20, 2016 motion to approve a Publication Proposal for Antitrust Compliance Handbook: A Practitioner’s Guide, insertion of the relevant dates that comments were submitted and insertion of links to the submitted comments) in the minutes of the Summer Council Meeting. Please provide any proposed revisions to the summary before the Summer Council Meeting.  

SAL’s Other Social Media Platforms: LinkedIn Group – 7,293 members, Twitter (@abaantitrust) – 3,975 followers, Facebook – 988 likes. These platforms can be used to promote the Section’s programs, publications and projects. With respect to Twitter, the Section encourages members to use #ABASAL unless
another hashtag has been set up for a particular program or subject. The Competition Torts Committee is to be commended for preparing a YouTube video (https://youtu.be/helTFYONlsY) explaining the scope of the Committee’s activities. While maintain these social media outlets, it remains the Section’s strategy to focus on Connect as the principal community communications and connection tool. Unlike other forms of social media, Connect can help the Section create and maintain a connected community while protecting member-only content.

**Value of Connect to Members.** The ultimate success of Connect will be measured by whether the platform increases the value of Section membership by facilitating Committee communications and communications between members, improving delivery of and access to Section and Committee content, and increasing the amount and quality of member generated content. We are not there yet. While platforms like Connect can provide value to members without being the next social network, it is worth noting that after over three years of diligent promotion, only 552 members have two or more contacts. With additional assistance from Higher Logic for the 2016 - 2017 Fiscal Year and the additional resources of the new content delivery committee, the Section should be better able to realize the potential of this platform. To date, Connect has principally been used as a content and announcement delivery vehicle. The use of Connect to enhance member-to-member interaction on a more informal level may be worth exploring as we seek to attract use of it as a means to enhance the acculturation and personal contacts that membership in general provides to Section members.
**RCM Reports on the Use of Connect.** At the Midwinter Council Meeting, Chair Roxann Henry reminded Council members of their responsibilities as Responsible Council Members and requested each RCM to report to Council at the Spring Council Meeting on the use of Connect by the Committees for which they are the Responsible Council Member. Due to time constraints, the reports were deferred. Written reports provided to date are attached at the very end of this report.

**Review of the Difficult Transition.** The Section, long reliant on listservs for communicating with members, encountered a number of challenges in using Connect as a replacement for those listserves. The transition has required significant time and effort by Section staff and Section Leadership. The evolving system resulted in unnecessary member confusion. Testing of the platform for Committee communications and collaboration commenced in the third quarter of 2013 and the system came online in January 2014. After the initial use by a few pilot committees, Connect was more broadly rolled out before the 2014 Spring Meeting. Although Committees placed content on Connect, the Section encountered significant resistance from Committees when the Section sought to further promote Connect by phasing-out Committee listservs. Initially, no Committee was willing to lead the way by phasing-out their Committee listserv. (The use of a Committee listserv notice and a post on Connect resulted in most Committee members receiving two separate emails on the same matter and the use of a Committee listserv notice instead of a post on Connect was inconsistent with the goal of promoting this new platform). At the 2015 Midwinter Meeting, the Corporate Counseling Committee “volunteered” to help lead the way. After the broad roll out of
Connect, the Section instituted a number of changes to facilitate the use of Connect and increase the number of Committees using Connect as the primary means for communicating with members. These changes included: introduction for a single sign-on for ABA and Connect (a subject that still confuses some members), development of instructional videos for SAL Leadership and training materials, adjustment of system settings to reduce the stripping of formatting from posted messages (Committee banners and footers), changing the default setting to real time notices for most of the Committees phasing out their existing listservs, introduction of the ability to post by sending an email, limiting postings on Open Forum, and to facilitate the delivery of Committee content to Section members, periodically posting notes on the Open Forum with links to recent Committee Newsletters and periodic summaries.

**Content Delivery Conundrum.** On a daily basis, timely and valuable content is posted on Connect by the Section's General Committees, [Analysis from the Firms](#), and [Latest News from AT-CP Law Digests](#). Committees often overlap in terms of subject matter and Members are presented with an unfortunate dilemma with respect to receiving content prepared by the Section's Committees. Unless a member joins every Committee (with the risk of receiving duplicative communications), there is a risk that interesting communications will be missed (see Recommendations of the Long Range Planning Committee Report presented in March 2013 discussed in the report for the [2014 Fall Council Meeting](#) and the [2015 PAM Council Meeting](#)). While we can envision a world where, based on the Section’s prior interactions with a member and that member’s other internet activities, sophisticated
algorithms will identify and automatically provide Section generated content to meet that member’s legal interests and needs, we have a long way to go. When earlier efforts to produce a consolidated digest of Connect postings were unsuccessful, in January 2015 the Section started coordinating periodic posts on the Open Forum with a committee by committee round up recent and future activities (see post on July 11 and earlier posts by Thomas Bohnett, Lindsey Vaala, Katie Larkin-Wong, John Roberti, Christie Thompson, Aram Sethian, Valerie Matthews, and Joshua Chad). We are continuing to explore providing members with the ability to receive either a Daily Consolidated Digest or a Weekly Consolidated Digest. To further facilitate the delivery of Committee content to Section members, we continue to encourage committees to create newsletters and other periodic updates with separate links to each article or item (see approach used by Pricing Conduct in The Price Point Winter 2016). The links to the separate articles and items can then be included in the monthly Round Up. Virtually every Committee Newsletter has articles that are of interest members of the Section who are not members of that Committee. Separate links to the different articles will assist in making valuable content available to other Section members. Leadership of the new Content Committee already is discussing ways on which Connect can be used as a vehicle for delivering newer models of what we call “newsletter,” replacing static and merely periodical content with regularly updated postings that serve as regularly changing collection relevant content with older content replaced by newer offerings on an ongoing basis. This type of creative thinking is one way in which the Section can explore gaining new value from its investment in the Connect platform.
**Deactivation of Committee Listservs.** Because we have had some inadvertent posts on the listservs of Committees that had fully transitioned to Connect (including some posts by leaders in other Committees), we have deactivated those listservs.

**Moderation of Postings.** The Open Forum is set up for Full Moderation to limit posts. Before the introduction of Full-Moderation, Committees cross-posted newsletters, ebulletins, updates, and committee programs notices and events on the Open Forum to reach additional SAL members and large numbers of members were unsubscribing from the Open Forum. Committees have been advised that they can set up a system for moderating posts on their discussion boards. Some Committee program notices have been posted on the discussion boards of eight different Committees.

**Engagement by Members.** As you can see by scrolling through the membership tab on Antitrust Leadership community, a number of individuals in the Section Leadership have not yet taken the first step of adding a photo to their profile. This first step is a tangible indication of support for this platform. Please note that the percentage of the SAL Leaders with photos is much higher than the percentage for other SAL members. I have been monitoring total Profiles Created, profiles with photos, and members with more than two contacts as indicators of Connect as a social network. Here is the current status: 908 Profiles Created on Connect, 672 profiles with photos, and 552 Profiles with more than two contacts. Considering that a member with a LinkedIn profile can import that profile in less than a couple of minutes (and
photo associated with that profile), the number of members with profiles and photos on Connect remains relatively low. A chart showing members with the most postings on Connect between September 1, 2015 and July 19, 2016 is provided on page 14.

**Committee Content.** There are significant differences in the level of committee activity (with respect to the number of posts and the value of posts) and in the extent that different committees have placed Committee content on Connect. While some committees now have copies of all their Committee content on Connect, for other committees, a member would need to check both the Committee ABA page and the Connect Committee page.

**Background on Operation of Connect.** A member of the Section does not need to sign up for Connect to receive emails generated by Connect, as long as the ABA membership records show an email address for that individual, and the individual had not previously indicated a preference to receive no emails from the ABA, or subsequently adjusted his or her preferences to receive no emails. The original default settings for the Section’s communities on Connect resulted in a member receiving an email daily digest for the Open Forum and a separate email daily digest for every committee to which he or she is a member. A member also can subscribe to Analysis from the Firms, Latest News from Antitrust and Consumer Protection Digest, and a Law Students Forum.

Starting in January 2015, the Section’s general committees have phased out their email discussion listservs in stages. As part of the transition to using Connect as the primary means for Committee communications we have
periodically requested Higher Logic to change the default setting for these Committees from Daily Digests to Real Time notices (to mirror the functions of the Committee listserves). The same change was made for the Open Forum in January 2016. The Daily Digests are distributed around Noon Eastern. The All Discussion Subscriptions Report (pages 10-12) shows for each Committee the number of members receiving real time notices, the number of members receiving daily digests, and the number of members who have unsubscribed. A member can always adjust his or her settings on Connect to receive real time notices, a daily digest, or no emails.

**Area of Concern.** Over the past few months, some of the Committees that ceased using listservs and had the default settings changed to real time notices have had very significant unexplained changes in the relative number of members receiving daily digests. Either there are large numbers of members in most Committees who are adjusting their settings to receive daily digests, or there is a technical glitch. We are still investigating those anomalies. While for the Open Forum and five committees over 98% of the members* are receiving real time notices, most of the other Committees that discontinued their listservs have real time percentages of between 60-70% (*based on the total members in that community receiving emails).
Here are some illustrative committees with information on the number of messages posted and the percentage of members receiving real time notices. All of the committees are listed on pages 11-13.

<table>
<thead>
<tr>
<th>Discussion Name</th>
<th>Daily Digest</th>
<th>Real Time</th>
<th># of messages</th>
<th>% Real time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising Disputes &amp; Litigation</td>
<td>6</td>
<td>313</td>
<td>164</td>
<td>98%</td>
</tr>
<tr>
<td>Civil Practice and Procedure</td>
<td>163</td>
<td>371</td>
<td>50</td>
<td>69.5%</td>
</tr>
<tr>
<td>E &amp;I</td>
<td>76</td>
<td>168</td>
<td>92</td>
<td>61%</td>
</tr>
<tr>
<td>Federal Civil Enforcement</td>
<td>123</td>
<td>296</td>
<td>137</td>
<td>70.6%</td>
</tr>
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<td>GPL</td>
<td>74</td>
<td>120</td>
<td>73</td>
<td>61.9%</td>
</tr>
<tr>
<td>Health Care and Pharmaceuticals</td>
<td>209</td>
<td>418</td>
<td>143</td>
<td>66.7%</td>
</tr>
<tr>
<td>Media and Technology</td>
<td>6</td>
<td>677</td>
<td>106</td>
<td>99.1%</td>
</tr>
<tr>
<td>M &amp; A</td>
<td>274</td>
<td>604</td>
<td>74</td>
<td>68.8%</td>
</tr>
<tr>
<td>Open Forum</td>
<td>10</td>
<td>8,031</td>
<td>461</td>
<td>99.9%</td>
</tr>
<tr>
<td>Pricing Conduct</td>
<td>3</td>
<td>560</td>
<td>88</td>
<td>99.5%</td>
</tr>
<tr>
<td>PRIS</td>
<td>124</td>
<td>264</td>
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<td>68%</td>
</tr>
<tr>
<td>TSPA</td>
<td>4</td>
<td>369</td>
<td>168</td>
<td>98.7%</td>
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<tr>
<td>Unilateral Conduct</td>
<td>3</td>
<td>672</td>
<td>123</td>
<td>99.5%</td>
</tr>
</tbody>
</table>

**Post on Connect by Sending an Email.** A member of any Connect community can post on Connect by simply sending an email. I have managed to post using my phone. A member will only be able to post on his or her Committees and will need to use their email address associated with Connect. The Committee email addresses are available on the Connect homepage (click Support and then Committee Email Addresses).
Open Access for Committee Content. All SAL members are able to access content posted on any Connect Committee page. A member will need to join a particular committee to post to that committee’s Bulletin Board.

Analysis from the Firms. SAL encourages members to post their law firm case alerts or other substantive articles right on the Connect homepage in the Analysis from the Firms section or by sending an email to abaantitrust_firms@ConnectedCommunity.org. Just add a title and summary sentence, and a link to the article. Per SAL Policy, content is limited to legal analysis. Law firm news or pure marketing content is not permissible. Use good judgment. If an article sounds too promotional, then do not post it.

Upcoming Events. To reduce the need for posting multiple program notices, emails generated by Connect now provide a link to the Section’s Upcoming Events page.
All Discussion Subscriptions (as of July 19, 2016)

<table>
<thead>
<tr>
<th>Discussion Name</th>
<th>Daily Digest</th>
<th>Real Time</th>
<th>Never Subscribed</th>
<th>Total Not Subscribed</th>
<th>Current Community Members</th>
<th>Past Community Members</th>
<th>% Unsubscribed</th>
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<td>Advertising Disputes &amp; Litigation</td>
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<td>0</td>
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<td>3</td>
<td>5</td>
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<td>0.3%</td>
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<td>Civil Practice and Procedure</td>
<td>163</td>
<td>371</td>
<td>1</td>
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<td>553</td>
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<td>Competition Torts</td>
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<td>Compliance and Ethics</td>
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<td>20</td>
<td>327</td>
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<td>5.1%</td>
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<td>4</td>
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<td>908</td>
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<td>3</td>
<td>14</td>
<td>577</td>
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<tr>
<td>State Enforcement</td>
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<td>186</td>
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<td>3</td>
<td>295</td>
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<td>Trade, Sports and Professional Associations</td>
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<td>369</td>
<td>1</td>
<td>12</td>
<td>385</td>
<td>131</td>
<td>2.9%</td>
</tr>
</tbody>
</table>
### About This Report

A record can be a contact or company record; this report includes data for both.

Active is defined as a record that is not disabled (or pending email confirmation or pending approval for non-integrated clients). The statistics referencing "active records" only include data for active records.

- Total Subscribed is the number of current community members who are subscribed (i.e. are receiving discussion emails).
- Unsubscribed is the number of current community members who have unsubscribed (i.e. are no longer receiving discussion emails).
- Never Subscribed is the number of current community members who have never subscribed (i.e. have never received discussion emails).
- Total Not Subscribed is the number of current community members who are not subscribed (i.e. Unsubscribed + Never Subscribed).
- % Unsubscribed is the percentage of current community members (excluding those who have never subscribed) that have unsubscribed (i.e. Unsubscribed / (Current Community Members - Never Subscribed) * 100).

<table>
<thead>
<tr>
<th>Category</th>
<th>Subscribed</th>
<th>Pending</th>
<th>Active</th>
<th>Pending</th>
<th>Total</th>
<th>Unsubscribed</th>
<th>Active</th>
<th>% Unsubscribed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation and Energy</td>
<td>332</td>
<td>22</td>
<td>2</td>
<td>18</td>
<td>372</td>
<td>110</td>
<td>4.3%</td>
<td></td>
</tr>
<tr>
<td>Energy Industries</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trial Practice</td>
<td>97</td>
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<td>2</td>
<td>14</td>
<td>532</td>
<td>155</td>
<td>2.3%</td>
<td></td>
</tr>
<tr>
<td>Unilateral Conduct</td>
<td>3</td>
<td>672</td>
<td>2</td>
<td>16</td>
<td>691</td>
<td>190</td>
<td>2.0%</td>
<td></td>
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<td>Young Lawyer Representatives</td>
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<td>50</td>
<td>1</td>
<td>1</td>
<td>51</td>
<td>22</td>
<td>0.0%</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>177</strong></td>
<td><strong>1,505</strong></td>
<td><strong>23,495</strong></td>
<td><strong>8,966</strong></td>
<td><strong>177</strong></td>
<td><strong>1,505</strong></td>
<td><strong>23,495</strong></td>
<td><strong>8,966</strong></td>
</tr>
</tbody>
</table>
Engagement by User - Library Entries Posted

Sep 1, 2015 - Jul 19, 2016

Member: [Bar graph showing engagement points for each user]
Actions taken by Council between the Spring Council Meeting and July 21, 2016

International Comments

Comments of the ABA Sections of Antitrust Law and International Law on the General Conditions and Procedures for the Exemption of Monopoly Agreements of the Antimonopoly Commission of the State Council of The People's Republic of China

- Submitted for review and approval by Council on June 13, 2016 by International Officer Jonathan Gleklen. Vice Chair Jacobson suggested certain changes and a redraft was circulated by International Officer Jonathan Gleklen on June 14, 2016.
- Voting via electronic mail before the close of business on June 15, 2016.
- Approved by Council on June 15, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
  - There were no votes in opposition to the proposed comments.
- Upon approval by Council, the Comments were submitted and cleared in accordance with the ABA Blanket Authority Procedure.
- Final comments were submitted on June 29, 2016.
- The ITF leader on the project was Steve Harris; SAL drafters were Masayuki Atsumi, Mike Fanelli, Alysha Amanji-Knight and Michael Han. Yee Wah Chin and drafters from SIL also made a significant contribution to the draft.

Joint Comments of the ABA’s Section of Antitrust Law and Section of International Law on INDECOPI’s Draft Leniency Program Guidelines

- Submitted for review and approval by Council on June 17, 2016 by International Officer Jonathan Gleklen. INDECOPI stands for Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual, the Peruvian authority responsible for antitrust.
• Voting via electronic mail.

• Approved by Council on June 20, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
  
  o There were no votes in opposition to the proposed comments.

• Upon approval by Council, the proposed Comments were submitted and cleared in accordance with the ABA Expedited Blanket Authority Procedure.

• Final comments were submitted on June 24, 2016.

• The SAL drafting team was coordinated by Christina Hummer of the ITF and included Mariana Tavares and Julia Gierkens Ribiero for the International Cartel Task Force and Yoshi Ikeda for the Cartel and Criminal Practice Committee. Shoshanna Speiser and Lisl Dunlop also participated in the drafting for SIL.

Comments of the ABA Sections of Antitrust Law and International Law on CADE’s proposed amendments to its regulations governing pre-closing notification of "associative agreements" (Cade’s Public Consultation N. 02/2016, Dated May 5, 2016)

• Submitted for review and approval by Council on June 28, 2016 by International Officer Jonathan Gleklen.

• Background: CADE, Brazil’s antitrust enforcer, requires pre-notification of not just mergers, but also certain agreements that fall far short of a merger. The Section has previously filed comments on this subject with CADE in 2014 and 2012, but continue to have very serious concerns with Brazil's approach.

• Voting via electronic mail.

• Approved by Council on June 29, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
  
  o There were no votes in opposition to the proposed comments.
The proposed Comments were submitted and cleared in accordance with the ABA Expedited Blanket Authority Procedure.

Final comments were submitted on July 6, 2016.

Work for the Section was led by Barbara Rosenberg, Fiona Schaeffer, Jonathan Gowdy, and Lisl Dunlop, with ITF supervision from Tad Lipsky, Alden Abbott, Rob Kwinter, and Jay Modrall.


- Submitted for review and approval by Council on July 14, 2016 by International Officer Jonathan Gleklen.
- Voting via electronic mail.
- Approved by Council on July 18, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
  - There were no votes in opposition to the proposed comments.
- The proposed Comments will be submitted and cleared in accordance with the ABA Expedited Blanket Authority Procedure.
- Work on the project was led by Steve Harris of the ITF. SAL drafters were Guy Ben-Ishai from the Economics Committee and Ross Fisher from the Federal Civil Enforcement Committee.
Publications

Approval of the publication proposal for the Consumer Protection Compliance Manual (First Edition)

- On June 1, 2016 Bernard A. Nigro Jr, Publications Officer, circulated for Council review and approval a detailed publications proposal from the Section’s Consumer Protection Committee for the Consumer Protection Compliance Manual (First Edition) (“Publications Proposal”) and moved to approve the Publications Proposal, with possible additional changes to the outline, identified contributors, and schedule consistent with existing processes and procedures and with the Publications Officer keeping Council informed of significant changes consistent with existing processes and procedures.

- Background
  - Expected sales: a comparable book focused on antitrust is in its second edition and since publication of the first edition sold 700 copies for more than $100,000.
  - The Project Leaders are Svetlana Gans and Donnelly McDowell.
  - The planned schedule includes submission of final drafts to Council reviewers July 2017, submission to Council for approval October 2017, and publication in December 2017.
  - The outline, identified contributors, and schedule in the Publications Proposal are subject to change consistent with existing processes and procedures.
  - The Publications Officer reviewed the submission of this Publications Proposal to Council with the Chair, the incoming Publications Officer and the Consumer Protection Officer.

- Voting occurred by electronic mail.

Council members Hutnik and Sommer provided suggestions on the Publications Proposal.

There were no votes in opposition.

Approval of the publication of Private Equity Antitrust Handbook

- June 30, 2016 motion by Bernard A. Nigro Jr, Publications Officer, with the consent of the Chair, to approve the publication of Private Equity Antitrust Handbook and to take such vote by electronic mail.

- Background
  - The handbook was prepared by a working group headed by Deidre J. Johnson and Brandon L. Bigelow. The handbook was reviewed by Council, underwent revisions based on the Council review, and was subject to a final review and approval by the Books & Treatises Committee.

- Voting occurred by electronic mail.

- Publication Approved by Council on July 5, 2016.
  - There were no votes in opposition.

- Special thanks are due to Deidre J. Johnson and Brandon E. Bigelow, who coordinated the writing of this *Handbook* and Stephen Stack, who suggested that the Section create this *Handbook*. Special thanks also goes to the members of the Books and Treatises Committee, particularly Stephen Stack and Mark W. Nelson, who provided invaluable assistance in completing this Handbook and Henry B. McFarland, Eric J. Stock Co-Chairs, Insurance and Financial Services Committee, the committee was responsible for the project. There were many other individuals in the private bar—both in the United States and abroad—who assisted with this project, including:

  - Xuefei Bai
  - Dr. Wolfgang Bosch
Approval of the publication of Model Jury Instructions in Civil Antitrust Cases (Second Edition)

- June 30, 2016 motion by Bernard A. Nigro Jr, Publications Officer, with the consent of the Chair, to approve the publication of Model Jury Instructions in Civil Antitrust Cases (Second Edition) and to take such vote by electronic mail.

- Background
  - The book was prepared by a working group headed by Roberta D. Liebenberg and Rob Walters and other members of the Trial Practice Committee and the Section (see last item below).
  - For the first time, a “Blue Ribbon” panel of judges and experienced plaintiffs’ and defense practitioners with extensive trial experience was assembled to referee certain instructions nominated by the review teams for further examination. The nominated instructions fell into two broad categories: (1) new instructions that did not appear in the 2005 edition, and (2) revised instructions covering unsettled areas of the law. The Blue Ribbon panel was co-chaired by Joe Goldberg and Harry Reasoner. The judges included Chief Judge Sarah S. Vance (E.D. La.), Judge M. Margaret McKeown (Ninth Circuit), and Judge Vaughn R. Walker (retired N.D. Cal.). The other distinguished members of the panel included Arthur Burke, Mark Gidley, Bob Kaplan, Andy Marovitz, Laddie Montague, Steve Susman, and Heather Tewksbury.
  - The book was reviewed by Council, underwent revisions based on the Council review, and was subject to a final review and approval by the Books & Treatises Committee.

- Voting occurred by electronic mail.

- Publication Approved by Council on July 5, 2016.
  - There were no votes in opposition.

- We are extremely grateful to the practitioners who devoted so much time and energy to revising and drafting the instructions in this new edition. They include Dominique-
Chantale Alepin, Laura Alexander, Daniel Ambar, Barak Bassman, Roy Breitenbach, Eric Cramer, Matt Duncan, J. Hardy Ehlers, Koren Wong-Ervin, Lauren Etlinger, Mark Ford, Melissa J. Hatch, Kimberly Kefalas, Rich Koffman, Layne Kruse, Brent Landau, Bob LaRocca, Christine Levin, Joe Lukens, Nandu Machiraju, Ria Momblanco, Aaron Panner, James “Bo” Pearl, Donald Perelman, Al Pfeiffer, Jim Reeder, Ira Richards, Sharon Robertson, Barbara Sicalides, Daniel Simons, David Sorenson, Peter Sullivan, Howard Ullman, Nicole Williams, Eric J. Wilson, Katie Larkin-Wong, Timothy Zimmerman, Alex Okuliar, and Robert P. Davis. Thanks also to the co-chairs of the Trial Practice Committee, Layne Kruse and Brian Grube, for their support and patience during the completion of this project. Special thanks go to Paul Costa, the assistant editor of this edition. We are also appreciative of the members of the Editor Task Force: Lauren Miller Etlinger, Geraldine W. Yong, Kelly Burns, Brad Hubbard, and Will Thompson.

Approval of the publication of Antitrust Law and Economics of Product Distribution (Second Edition)

- July 1, 2016 motion by Bernard A. Nigro Jr, Publications Officer, with the consent of the Chair, to approve the publication of Antitrust Law and Economics of Product Distribution (Second Edition) and to take such vote by electronic mail.

- This edition of the book was prepared by a working group, headed by James Langenfeld, Quentin Wittrock, and Ted Banks.

- Voting occurred by electronic mail.

- Publication Approved by Council on July 5, 2016.
  - There were no votes in opposition.
Other Action Items

Co-sponsorship with Global Advertising Lawyers Alliance

- Request from the Consumer Protection Committee to cosponsor a series of panel discussions with the Global Advertising Lawyers Alliance ("GALA") during the remainder of FY2016 and through FY2017.
- Submitted for approval by Council on May 10, 2016 at the direction of Chair Roxann Henry.
- GALA describes itself as an alliance of lawyers located throughout the world with expertise and experience in advertising, marketing and promotion law that provides a resource to individuals and corporations dealing with complex legal issues affecting advertisers and marketers. It is a not-for-profit member-based organization. More information can be found on their website at http://www.galalaw.com/aboutgala.
- GALA publishes articles and books with summaries of specific legal issues from around the world, such as on alcohol advertising law, but does not typically offer webinars or similar programs.
- Voting via electronic mail.
  - There were no votes in opposition.
- The Section submitted a Request to Cosponsor Programs with an Outside Organization to Operations and Communications Committee, ABA Board of Governors and that request was approved on June 11, 2016.

Co-sponsorship with Corporate Counsel Women of Color

- Request from the Membership & Diversity Committee to cosponsor a panel discussion and networking event with Corporate Counsel Women of Color® during FY2017, either at
its Annual Career Strategies Conference or at its General Counsel Summit, whichever is more convenient for planning purposes.

- Submitted for approval by Council on May 10, 2016 at the direction of Chair Roxann Henry.
- Corporate Counsel Women of Color is a 501(c)(3) not-for profit organization of women attorneys of color.
- Voting via electronic mail.
  - There were no votes in opposition.
- The Section submitted a Request to Cosponsor Programs with an Outside Organization to Operations and Communications Committee, ABA Board of Governors and that request was approved on June 11, 2016.

**Co-sponsorship of the February 2, 2017 Consumer Protection Conference in Atlanta, GA with the Canadian Bar Association**

- Submitted for approval by Council on June 20, 2016 by Program Officer Brian Henry.
  - Such co-sponsorship is designed to facilitate obtaining additional registrants and faculty from outside of the United States.
- Voting via electronic mail.
  - There were no votes in opposition.
Assessment by Responsible Council Members on the use of Connect by Committees

Steve Cernak on the Agriculture and Food Committee and the Trade, Sports, and Professional Associations Committee

My two committees (Ag&Food, TSPA) both use Connect very well but in very different ways. TSPA has had one VC – Mark Katz – post something short whenever he found something of interest, especially regarding trade associations outside the US. The result was a lot of posts, probably more substantive posts than any other committee, but on an irregular basis. Most of the material was stuff that I’d not seen anywhere else. My only fear is what happens now that Mark is leaving the committee. Ag&Food does “The Afternoon Snack” on a more regular basis, like every couple weeks, and it collects a bunch of links and quickly summarizes them. I’ve seen other committees do the same and I think it works well.

As to my own comments: I thought Brent Justus’ comments, which you attached, were very thoughtful but I wouldn’t try to make Connect a way for active two-way conversations – I just don’t see it happening even with Brent’s suggestions. I think we should be pleased if we can use Connect to be an effective and efficient way to deliver content, one-way, to Section members. Personally, I have no issues with the multiple postings that I get because I belong to many committees – but I understand others disagree and so we need to keep working on that.

I think we need to see Connect on the spectrum of the written materials the Section offers. The posts will be much shorter but much more timely than what’s in ATLJ or Antitrust or even The Source. I think the question is whether the posts should be as quick and brief as the updates on Law360 or something hours/day later with a little thought to it like a good client alert. I think each Committee can and should answer that question. I think the client alert model works better because we don’t have the dedicated resources of the services but TSPA proves the opposite is possible. Then each Committee needs to dedicate resources to it – maybe one VC for the entire year, maybe they switch off over time, maybe each VC posts on different sub-topics. But the
point is to dedicate some resources and deliver something the members want or need and probably aren’t getting elsewhere, whether the latest news or a paragraph or two of summarized analysis with a link to more if desired. Then those short posts can serve as the kernel for longer newsletter articles or brown bags. And all this is in addition to the periodic short ads for committee or Section programs and other material.

**Subrata Bhattacharjee on the Insurance and Financial Services Committee, the Compliance & Ethics Committee and the International Committee**

1. Insurance and Financial Services

   Of the two committees I have been responsible for over the past year (International is new for this year, so will not include them in this statement), IFS is probably the best in terms of posting activity on Connect. There are regular postings in the forum (though not a lot of interactive postings), and often by multiple posters, which is good. The library content is reasonably up to date and I think that the Committee is making a solid effort at using the platform thoughtfully. Much of this, I think, is because of Bret Fulkerson, who has been very good at consistently using the platform and drawing eyeballs to it. Bret also had some observations on Connect which largely focused on the observation that email remained an important complement to Connect in that it still drew people to the site. I think it is a strong if not superlative user of the platform.

2. Compliance and Ethics

   C&E was off to a good start when its Connect presence was launched, but I think it has slowed down a bit. Compared to IFS, there are fewer forum posts and I think that the library could use a bit of a refresh. The nature of the committee’s activity is such that the library content would be of real benefit to members and not just a repository, and so I would hope that they focus a bit more on making it a compliance resource. Looks like they are getting the
newsletters up there though. Finally, part of the committee’s performance in this area may be tied to the person assigned to deal with Connect (Holden Brooks), who was tied up for a substantial part of her term in a matter and was not as active in the Committee as one would have normally expected. I understand that Holden is now back online and that as a result, there may be improvement.

3. International

I have just started as RCM for this committee. To me it looks like they have done some interesting things, including a blog and posting the chapters of the handbook on multijurisdictional investigations in the library organized by chapter. We’ll see how they do.
memorandum

To: ABA Section of Antitrust Law Council  
c/o Anthony Chavez

From: James Musgrove

Date: February 9, 2016

Re: Report to Council – CONNECT – from Unilateral Conduct Committee & IP Committee

1. The Unilateral Conduct Committee’s comments on Connect.

   • It is a reasonably good multi-media platform.

   • It lacks the simplicity and directness of the ListServ in communicating with interested members quickly.

   • Also, it is difficult to post to, so that things that committee members think have been posted often have not been.

2. The IP Committee’s comments on Connect.

Several IP Committee members have difficulty accessing Connect at work or via mobile devices. For those who can access Connect, there is some dissatisfaction about the interface and need to go through multiple screens. Possibly because we are in the process of transitioning from our listserv to Connect, several expressed a strong preference to continue using the listserv.

   • “Personally, I find Connect helpful and easy to use when I can access it, but my work browser does not allow me to access it, so I almost never do.”

   • “I find Connect a bit difficult to navigate, which is probably mostly because I just haven’t spent a ton of time on it. For me, ready access to the thing that caused me to go to Connect is the thing that makes it potentially the most useful, and I feel like it takes a couple of steps to get to whatever I am looking for.”
On Connect versus the listserv: “Maybe Connect doesn’t provide enough additional functionality to encourage folks to look at it every day (or every week). I am not sure what that would be, but it seems like a hard sell to get people who are already getting basically what they want from the listserv to move over to Connect, which gets them basically the same thing.”

“Experience with connect is fine; however, I don’t see why we can’t post things on Connect and circulate them via listserv.”

“I have similar issues [of not being able to access Connect at work], although I can now access it from work. I tend not to use it because I have to click through multiple screens to get to content.”

“I find connect cumbersome and difficult. It’s hard to open things on a mobile device. Even if I click on it – half the time it gets stuck in the browser so the message I am trying to open doesn’t open. Today I am far less attuned with what is going on at the ABA because I stopped receiving the ListServ emails that were informative and easy to read on any device. For example, for this reason I hardly ever read the TidBits anymore. Another reason the TidBits are of less use to me is that I can no longer cite to them because you stopped posting past copies on the open website. So I cannot share them with others around the world as a source of update. You would be doing me a big favor if you stopped forcing Connect.”

“My only comments are that the interface is clunky, attachments are unnecessarily difficult, and the lack of active participation by many people makes it less useful.”
MEMORANDUM

TO: ABA Section of Antitrust Law Council, C/O Anthony Chavez and Thomas Zych

FROM: Alysa Z. Hutnik

DATE: July 19, 2016

RE: Report on Connect from TEI and Legislative Committees

This memorandum summarizes the feedback that I’ve received about Connect by the Transportation and Energy Industries (TEI) Committee, and the Legislative Committee. The overall theme is the need for Connect to be more streamlined and user-friendly (with less steps to accomplish tasks, and for the tools to be more intuitive). There also is a need by Chairs to receive timely data on new members (upon joining).

Hopefully with Higher Logic prioritizing these issues, these functionality challenges will be meaningfully addressed. It also would be useful for the new Connect RCM and content delivery task force members (perhaps with involvement of savvy Connect users) to provide quarterly Connect webinars/town halls to leadership to recap practical use tips, and highlight the improvements to expect over the Section year. The types of issues that leadership is willing to absorb or seek out at the beginning of the Section year are different than what they may be open to learning as the year progresses (and the quarterly approach can provide marketing on the positive enhancements that may have occurred along the way to the Connect platform).

TEI Committee

- The steep learning curve for new users affects our ability to communicate with our members. Logging onto the platform can be difficult if you don't understand where to go, how to set up a profile, or how posts work. This affects our ability to communicate with our members in at least three ways:
First, many of our members don't understand how to set up their profile to receive postings or to change the frequency with which they receive committee updates.

Second, at least some of the committee Vice Chairs do not understand how to interface with Connect which limits our interaction with our members.

Third, the general complexity of the platform makes it difficult to get new posting volunteers up and running.

- Anecdotal observation: since moving to Connect we have not seen the same breadth of engagement and discussion on Connect that we saw with the prior list-serv platform. Part of this may be attributable to the perceived complexities in posting. For example, in a prior position for the Section, I supervised postings to AT-Conversation. There were often days on which the list would see numerous back-and-forth discussions of 20+ postings. These incidents are increasingly rare since the shift to Connect.

- Although not unique to Connect, some individuals inadvertently “reply all” to a post when the response is only intended for the original poster. Part of this may be attributable to the fact that some users do not realize that they are replying to a discussion thread, not an individual user email.

- Since the shift to Connect, committee chairs no longer receive notices of new committee members joining. I’ve been told that Higher Logic (the company that manages and develops Connect) does not have a mechanism that alerts member leaders of new members to a committee, such as TEI. ABA suggested that we periodically contact Diane Odom to obtain a list of new members, but this imposes seemingly unnecessary additional work on an already overworked staff member. There has to be a better way. Having the ability to contact new members upon their joining the committee benefitted the committee and the Section in multiple ways: (1) it gave the chairs an opportunity to put a “face” with their committee so new members would feel more welcome, (2) when new members feel more welcome, they are more willing to provide feedback, ideas, and/or volunteer, and (3) by knowing more about who is joining the committee, we can better recruit new members. So the goal here isn’t just to send an automated, impersonal email to new members. The goal is to know who is actually joining so we can communicate better with them.

**Legislative Committee**

- Connect is ok, but it is a bit more cumbersome than the list-serve was.

- It would be helpful if the posting author (or at least the leadership) had the ability to modify and/or delete a post once posted.

- The process to become a member of the individual Committees Connect pages is a bit disjointed. There is no information on Connect on how to do so. You have to know to go to the ABA Section page to become a member of the Committee first, but this is not clearly spelled out in Connect. A one stop shop would be helpful.
• The restrictions on the use of “open forum” has also, in my view, limited the ability to publicize committee programs. I recognize that some people felt they were getting too many notices, but there are also benefits, sometimes, of several reminders (and you can always just press delete).