MEMORANDUM

TO: Brian Henry, ABA Antitrust Section Vice Chair
    Long Range Planning Committee

FROM: Mergers and Acquisition Committee
      Co-Chair(s): Norman Armstrong, Jr., Ronan Harty
      Vice Chairs: Ian Conner, Lisl Dunlop, Casey Halladay, Mike Keely, Mike Knight, Mary Marks,

DATE: December 2017

RE: Long Range Plan, 2017-19

I. Current State of Your Committee

   A. Scope of Charter

       The M&A Committee addresses domestic and international merger issues. The Committee provides its members with resources to assist them in learning more about these matters through publications, programs and electronic resources.

       The Committee believes it has benefitted from strong leadership for many years and is in good shape. It benefits from an active group of vice chairs and a host of regular and episodic volunteers for its numerous projects such as ALD, The Threshold, and Section comments. Its charter is appropriate for current conditions and it has a strong and growing membership base.

   B. Description and Reflective Evaluation of Membership Levels, Diversity, and Growth

       The M&A Committee is among the largest (if not the largest), in the Section. We enjoy a wide base of active members who participate in our programs, provide content to our newsletter, work on other publications and projects, and add to our general resources. Our membership includes economists and lawyers in government, private practice and academia. We are diverse with regard to gender and nationality, and the Committee draws strength from this diversity. We plan to maintain this wide and diverse base, and indeed to grow our membership, through a series of outreach efforts, including member surveys and recruiting events as well as tailored programming. We will also continue our practice of reaching out to law firms and economic consulting firms with significant merger clearance practices and to government attorneys with an interest in merger issues.

   C. Level of Interaction with Other Committees (including co-sponsored programs)

       We regularly co-sponsor programs with other committees, including recently with Membership, Unilateral Conduct, Federal Civil Enforcement, and International.
D. Top 3 Accomplishments Since Last Long Range Plan

We have several accomplishments since our last plan. First, and foremost, our goal has been to increase our membership levels which we have been able to do year after year. Second, we have strived to provide our members with top notch content which we have done through our publications such as The Threshold and our various programs. Lastly, we have attempted to be a leader in diversity. The management of our committee is diverse with an African-American as one of the co-chairs and two women as vice-chairs. In addition, our recent Women's Networking event was a huge success and will be repeated in California.

II. Major Competition/Consumer Protection Policy or Substantive Issues within Committee’s Jurisdiction Anticipated to Arise Over Next Three Years

A. Vertical Mergers: Vertical foreclosure theory has been discussed as a possible merger challenge basis for several years, especially following the DOJ’s consents in Ticketmaster/LiveNation, Google/ITA, and Comcast/NBCU. Now, with the DOJ’s challenge in AT&T/Time Warner, a court may decide the validity of this theory. The Committee will develop programs discussing this merger, the theory more broadly, and whether guidance is needed from the agencies for future vertical cases.

B. The proliferation of national merger control regimes continues at a rapid pace. In particular, there has been a notable increase in mandatory/suspensory notification regimes over the past 3 years. The Section is increasingly called upon by these jurisdictions to provide feedback and advice on proposed new regimes, or on (usually much-needed) revisions to existing regimes. While these requests are typically coordinated by the ITF, the Mergers and Acquisitions Committee is the primary drafter of all such comments as they pertain to mergers-related topics. These comments are time-consuming to prepare, as they require an analysis of foreign laws and policies, and the practical implications of such laws and policies on enforcement agencies and on transaction parties. Recognizing this increasing workload, for the 2017-2018 year the Mergers and Acquisitions Committee appointed two Vice-Chairs (Casey Halladay; Lisl Dunlop), rather than one Vice-Chair (as in past years) to prepare these comments. If current trends continue, additional resources may need to be designated to this task in future years.

C. Over the last few years, both the FTC and DOJ have actively pursued merger enforcement actions in District Court, in particular in the healthcare space. These actions have produced a body of District Court and appellate court jurisprudence, and focused attention on what it takes to bring (and for the most part win) a merger antitrust litigation. The Committee has been and will continue to be attentive to merger litigation developments, including monitoring and disseminating information to members on new developments, organizing teleconferences and other events involving the participants in litigations to discuss procedure, trial preparation, economic issues and other key factors, and address merger litigation in our newsletter and other publications.

D. Role of data and algorithms in merger analysis.
E. Proposals to improve and streamline merger review procedures at DOJ and FTC.

F. SMARTER Act and other proposed changes to Clayton Act and FTC Act introduced by various members of Congress.

III. **Specific Long Term Plans to Strengthen Your Committee**

A. Potential Modifications to Charter

   None.

B. On-going Activities and Plans for Growth

   a. Expansion of Membership

      Our goal is to grow M&A Committee membership by approximately 5%-10% year-over-year, and we intend to do so through surveys, outreach events, and direct recruiting. To this end:

      • In the Fall of 2017 the Committee conducted a member survey to assess member satisfaction with existing programs and to offer opportunities for members to become more actively involved in section programs and events as well as to advocate for specific programs that interest them. We intend to continue surveying members on at least an annual basis, both as a means of ensuring the Committee offers programs and resources that are most valuable to the membership and to explore avenues for membership growth.

      • Also in the Fall of 2017, we held a virtual Town Hall meeting for Committee members and others interested in potentially joining the M&A Committee to introduce the leadership and describe Committee programs and resources.

      • In November 2017, the Committee sponsored a Women In Deal Work reception to provide networking opportunities for women within the Committee’s membership.

      • We plan to conduct additional prospective member events, both in conjunction with larger Section programs such as the Spring Meeting, and as stand-alone events.

      • Finally, we plan to recruit members directly through renewed outreach to law firms, economic consulting firms and government agencies.

   b. Diversification of Membership
As noted above, our membership is diverse in terms of gender and nationality. Our racial diversity is commensurate with that of the Section, although we must constantly strive to increase it.

We intend to continue reaching out to women in the profession through programs such as the Women in Deal Work reception referenced above. While we do not have a ready means by which to measure the diversity of our membership in other ways, we hope to encourage growth in diversity by adhering to Section guidelines on programming, and by sponsoring specific recruitment and outreach programs targeting minorities in the field. We will also continue to seek specific means by which to involve women and minorities in our programs, newsletter and other publications, web site content, and other Committee activities.

We have a number of members located overseas, which creates a significant opportunity for the Committee to broaden its reach. We can potentially expand our ex-U.S. membership by developing programs that cater to merger review outside the United States and through direct outreach. We will look for ways to do this in the near future including partnering with the International Committee.

c. CLE/Committee Programs

We plan to chair 6 programs during each year, and to co-sponsor with other committees programs of interest to our members. We had a networking event in DC this fall in conjunction with a panel highlighting careers of women in deal work and we are looking to have a similar program on the West Coast in the new year. We are looking to enhance membership and committee participation by inviting members to join the networking events via Skype.

d. Publications and Newsletter

The Committee will continue its existing schedule of publishing *The Threshold* 3 times a year. The Committee seeks to have its issues coincide with the Spring Meeting, the Post-Annual Meeting, and the Fall Forum. The Committee has expanded the editorial resources dedicated to *The Threshold* by adding 2 associate editors to the masthead, supporting the work of the 3 editors and the Committee’s supervising Vice-Chair. In addition, we will continue updating the Market Definition Catalog for our members.

e. Technology, CONNECT, and Innovative Content/Value Delivery

The Committee has decided to focus on two technology resources to reach members on a consistent basis: Connect and LinkedIn. With the move from the List-Serv to the new Connect platform, we are learning best practices – balancing the frequency of posts with a desire to post and comment on important developments as they happen. Our goal is to use
Connect to alert members to key developments on the day they occur (e.g., court decisions and important DOJ/FTC actions).

The Committee LinkedIn page has nearly 900 members, but we have not utilized the group as well as we can. We envision the LinkedIn page to supplement Connect posts and to reach practitioners not already members of the Committee through member networks. In addition, we will use the LinkedIn page to advertise all Committee programs.

For both Connect and LinkedIn, we plan to consult with other Section Committees and Section leadership for recommended best practices to create an effective plan to maximize the quality and content of both platforms.

f. Joint Activities with Other Committees/Entities

The Committee enjoys a wealth of opportunities for collaborations. Natural fits include: the Federal Civil Enforcement Committee, the International Task Force, and the various industry focused committees. The M&A Committee has partnered on several programs in the last year with these committees and plans to continue to do so.

We believe that joint activities with other committees, particularly jointly-proposed and sponsored programs for the Spring Meeting, and jointly-proposed and sponsored teleseminars throughout the Committee Year, are an important part of expanding the member base and the profile of the Mergers and Acquisitions Committee and should be pursued each year. Joint Activities with other entities, particularly (non-competing) bar associations, is a similarly valuable exercise. One good example is the Canadian Bar Association’s National Competition Law Section, which in recent years has reorganized its committee structures to closely align with the SAL’s committee structure. One of our Vice-Chairs has organized a joint CBA/SAL teleseminar each of the past two years, and reports that the CBA Leadership (of which he is also a member) has a stated interest in pursuing more joint programming opportunities with the SAL.

g. Development of Future Leaders

The Committee plans to develop future leaders by creating programs targeted directly to law students and junior attorneys (i.e., 1-3 years). These programs will include brown bag seminars on topics ranging from the fundamental of a Hart-Scott-Rodino practice to being involved in the YLR program. We plan to coordinate with other Section Committees to jointly sponsor such programs.

h. Other Recommended Resources, Support, or Initiatives?
i. We continue to believe there is strong member interest in Committee-based networking events, whether connected to substantive CLE or Committee programs or not. The Mergers and Acquisitions Committee recently hosted such an event — our “Women in Deal Work” event on November 9, 2017 — which was very successful.

C. Principal Challenges, Weaknesses, or Impediments to Operation of Your Committee – And Plans to Address

The principal challenges facing our Committee are in the areas of diversity and differentiation. With respect to diversity, we have numerous avenues available to us to promote diversity in all its forms (gender, ethnicity, cultural, sexual orientation, etc.): programming, publications, participation in Section comments, and leadership. We do and should strive to ensure representation by a diverse group of antitrust practitioners in all of these activities. We should continue to make it a requirement for any activity that is organized by our Committee that a diverse group of participants is involved in the organization, preparation and presentation of the material. That is the best way for us to ensure continued diversity in the membership of our Committee, and in the antitrust bar more generally. Perhaps the most visible and significant area where ensuring diversity is crucial is in the leadership of our Committee. We urge the Section leadership to continue its focus on this issue, and to make leadership appointments to our Committee that reflect our commitment to diversity. There is no stronger signal that can be sent to new and aspiring members than in the appointment of a leadership group that is both diverse and exceptionally talented in the practice of antitrust law.

The other principal challenge we face is ensuring that the activities of our Committee are sufficiently differentiated from those of other committees of the Section and, perhaps more importantly, from the many other organizations that are active in the field of antitrust. This is a difficult task. With the rapid increase in the flow and speed of information, it seems that, for any event of note in the antitrust world, we almost immediately see a conference, article, or commentary from one or more of the numerous antitrust groups that effectively “compete” for the attention of our members or potential members. We believe the best way for us to thrive in this environment is to differentiate ourselves on the basis of quality. We believe that our publications, programs and other Committee activities are among the most recognized and sought-after in the antitrust field. In order to differentiate ourselves, we must continue to attract the best leadership, authors, speakers, and commentators to present the most thoughtful reflections on the antitrust issues that are important. This will require us to be rigorous in all aspects of our Committee work.

cc: Responsible Council Member: Tara Koslov
Committee Operations Representative: Amanda Wait
Long Range Planning Committee Representative: Alysa Hutnik