



# **DEPARTMENT OF JUSTICE**

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## **TRANSATLANTIC ANTITRUST: PAST AND PRESENT**

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It is a great privilege for me to participate in the highly esteemed St. Gallen International Competition Law Forum, and to have the opportunity to discuss transatlantic antitrust, past and present, with you this morning. It is also a great pleasure for me to be here in Switzerland. My grandfather (Brandenburger) was born very near here—in Wil, St. Gallen—in 1887. He moved to England as a young man in 1908. I remember him taking me and my sister and brother to visit Wil one summer when we were children, more years ago now than I care to remember. We travelled all the way from London by train—well before the days of high-speed trains—and visited Wil, our relatives, and the house where our grandfather grew up.

My personal anecdote illustrates how small the world can be. And, of course, it is getting ever smaller. Technological development is shrinking our world: we can communicate with each other by videoconferencing, as well as by phone. We can stay connected by e-mail and BlackBerry across many time zones. This is true for business and commerce, and it is true for antitrust as well.

It is the shrinking world—the globalization of markets and businesses—that necessitates the strides that have been made, and that will continue to be made, in bringing antitrust and competition agencies around the globe together. Those same forces that are allowing businesses to go global are globalizing antitrust agencies as well.

Indeed, the International Competition Network, which, as you know, just held its ninth Annual Conference in Istanbul last month, is often referred to as a “virtual” network. (The vast majority of its work throughout the year is done through multinational phone conferences, tele-seminars, and e-mail exchanges.) International dialogue in antitrust circles, both in terms of conferences like this one and inter-agency discussion, is at an all-time high.

This morning, I will focus on transatlantic antitrust cooperation between the U.S. antitrust agencies and the European Commission. That mutually supportive relationship has been a very important, if sometimes—I believe—under-appreciated success story. Today, the U.S. agencies and the European Commission have largely consistent enforcement policies, directed at the common goal of promoting consumer welfare. They are both deeply committed to cooperating closely on enforcement matters and to exchanging views on policy matters.

This relationship encompasses an organic process of frequent enforcement and policy collaboration at all levels. I can tell you from my own personal experience now that high-level officials talk often, and staff-level contacts are also frequent. Of course, as in any longstanding relationship, there will be occasional differences or difficulties. Yet it is the ability to work through those differences, as much as to celebrate the successes, that is the true measure of the relationship's strength and depth. On any measure, our progress has been beyond, I think, what anyone would have imagined even 20 years ago.

Today, I would like to recap briefly the trailblazing efforts of the past two decades of transatlantic antitrust and then to touch upon the most important challenges facing us today. There is every reason to believe the next decade can bring the same unimaginable progress as the last two decades have.

## **I. Milestones in Transatlantic Cooperation**

Today's era of constructive, comprehensive, and routine international cooperation was not ushered in until the early 1990s. A significant advance was the signing of the U.S.-EC

cooperation agreement in 1991—almost 20 years ago.<sup>1</sup> It was Lord Brittan, then-EC Competition Commissioner, who first proposed the concept of a U.S.-EC agreement in a meeting with then-U.S. Assistant Attorney General Jim Rill—an idea that the U.S. agencies readily embraced. Spurred by the adoption of the European Merger Regulation in 1989, the U.S. agencies and the European Commission recognized that they would have to work together more often and more closely because large, multinational mergers would commonly come under their simultaneous review.

The value of such cooperation was evident from the beginning, and by 1994, a group of experts appointed by the late EC Competition Commissioner Karel Van Miert was recommending broader cooperation, citing the importance of transatlantic relations.<sup>2</sup> In 1995, the U.S. agencies published Antitrust Enforcement Guidelines for International Operations, with a section dedicated to comity concerns and the commitment to “consider whether the objectives sought to be obtained by the assertion of U.S. law would be achieved in a particular instance by foreign enforcement.”<sup>3</sup>

The mid-1990s also witnessed two key OECD recommendations. The 1995 OECD Council recommendation on antitrust enforcement and cooperation emphasized the need for

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<sup>1</sup> At around the same time, the U.S. antitrust agencies’ relationship with Canada also became mutually reinforcing and cooperative. This was prompted in part by Canada’s adoption of a new Competition Act in 1986 and the U.S.-Canada Mutual Legal Assistance Agreement, which came into effect in 1990. Mutual Legal Assistance Agreements—“MLATs”—are agreements that provide generally for assistance in criminal law enforcement, including the obtaining of evidence and the sharing of information. The United States now has MLATs in effect with more than 60 jurisdictions.

<sup>2</sup> Directorate-Gen. for Competition, European Comm’n, *Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules* (1995), *available at* [http://aei.pitt.edu/4112/01/001201\\_1.pdf](http://aei.pitt.edu/4112/01/001201_1.pdf).

<sup>3</sup> U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N, *ANTITRUST ENFORCEMENT GUIDELINES FOR INTERNATIONAL OPERATIONS* § 3.2 (1995).

improved cooperation among antitrust agencies and established a basic framework for such cooperation.<sup>4</sup> The 1998 OECD Council hard-core cartel recommendation reflected an emerging consensus among antitrust agencies about the great harm that cartels inflict on consumers. The recommendation helped spur the surge in international anti-cartel enforcement and the unprecedented levels of cooperation that we see on the cartel front today.<sup>5</sup>

The end of the 1990s brought another great step forward. As some of you will recall, in 1997, Attorney General Janet Reno and Assistant Attorney General Joel Klein appointed the International Competition Policy Advisory Committee (ICPAC)<sup>6</sup> and charged it with making recommendations regarding the most pressing international competition policy issues facing the United States. Published in 2000, ICPAC's final report<sup>7</sup> became a blueprint for international competition policy at the U.S. Department of Justice.

The report focused on the identification of initiatives to achieve three overarching goals:

- (1) expanded cooperation between U.S. and foreign competition enforcement agencies;
- (2) greater convergence of systems; and
- (3) increased transparency and accountability of government actions.<sup>8</sup>

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<sup>4</sup> ORGANISATION FOR ECON. CO-OPERATION & DEV., RECOMMENDATION OF THE COUNCIL CONCERNING CO-OPERATION BETWEEN MEMBER COUNTRIES ON ANTICOMPETITIVE PRACTICES AFFECTING INTERNATIONAL TRADE (1996), *available at* [http://webdomino1.oecd.org/horizontal/oecdacts\\_nsf/linkto/C\(95\)130](http://webdomino1.oecd.org/horizontal/oecdacts_nsf/linkto/C(95)130).

<sup>5</sup> ORGANISATION FOR ECON. CO-OPERATION & DEV., RECOMMENDATION OF THE COUNCIL CONCERNING EFFECTIVE ACTION AGAINST HARD CORE CARTELS (1998), *available at* [http://webdomino1.oecd.org/horizontal/oecdacts\\_nsf/linkto/C\(98\)35](http://webdomino1.oecd.org/horizontal/oecdacts_nsf/linkto/C(98)35).

<sup>6</sup> ICPAC was an independent panel chaired by former Assistant Attorney General Jim Rill and former Chair of the U.S. International Trade Commission Paula Stern. Its members comprised distinguished individuals representing broad legal, economic, and business experience and expertise.

<sup>7</sup> INT'L COMPETITION POL'Y ADVISORY COMM., FINAL REPORT TO THE ATTORNEY GENERAL AND ASSISTANT ATTORNEY GENERAL FOR ANTITRUST (2000), *available at* <http://www.justice.gov/atr/icpac/finalreport.htm>.

<sup>8</sup> *Id.* at 2.

These three principles of cooperation, convergence, and transparency are the key drivers of international competition collaboration today.

The ICPAC report also recommended that the United States and other nations undertake a “global competition initiative” to create a new venue where governmental officials, private firms, and non-governmental organizations (NGOs) could discuss issues of competition law and policy.<sup>9</sup>

Having experienced the practical benefits of their own bilateral cooperation, the U.S. agencies and the European Commission embraced the idea of a global competition initiative as an opportunity to bring the benefits of increased cooperation to a multilateral context. As some of you will recall, in September 2000, in a speech at the gathering in Brussels to commemorate the 10th anniversary of one-stop shop merger control in the EU,<sup>10</sup> Assistant Attorney General Joel Klein articulated strong U.S. support for a global competition initiative:

For global cooperation and coordination to work, we need to develop a common language even if we can't achieve pure convergence: *i.e.*, we all need to be doing microeconomic-based competition enforcement. Beyond that, we need to foster the kind of independence and credibility that the U.S. and EU have demonstrated in their antitrust enforcement. The confidence that we're acting based on a common approach toward a common objective is what makes our bilateral relationship work.<sup>11</sup>

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<sup>9</sup> *Id.* at 281-85.

<sup>10</sup> See Council Regulation (EEC) No. 4064/89 on the Control of Concentrations Between Undertakings, 1989 O.J. (L 395).

<sup>11</sup> Joel I. Klein, Assistant Attorney Gen., U.S. Dep't of Justice, Time For a Global Competition Initiative? 5 (Sept. 14, 2000), available at <http://www.justice.gov/atr/public/speeches/6486.htm>.

EC Competition Commissioner Mario Monti also endorsed this idea,<sup>12</sup> and cited U.S.-EU convergence as “a key building block for a multilateral cooperation in antitrust towards which our agencies are working closely together.”<sup>13</sup> In October 2001, antitrust officials from 14 jurisdictions, including the United States and the European Commission, met in New York to launch the International Competition Network (ICN)—the first international body devoted exclusively to international antitrust issues.<sup>14</sup>

Nine years later, the ICN has 112 member agencies from 99 jurisdictions.<sup>15</sup> Through the development of consensus-based recommended practices, workshops, and other experience-sharing work, the ICN has excelled, facilitating convergence and building working relationships among antitrust authorities not only across the Atlantic, but around the globe. This year’s conference in Istanbul was attended by over 500 delegates and more than 80 antitrust authorities.<sup>16</sup> It covered a breathtaking array of substantive and procedural topics, and included lively debate about its future objectives under the energetic leadership of John Fingleton. It is truly amazing to see, in relatively little time, just how much has been achieved and just how populous the international family of antitrust agencies has become.

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<sup>12</sup> See Mario Monti, Competition Comm’r, European Comm’n, European Competition Policy for the 21st Century 9 (Oct. 20, 2000), *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/00/389&format=html&aged=0&language=EN&guiLanguage=en>.

<sup>13</sup> Mario Monti, Competition Comm’r, European Comm’n, Antitrust in the U.S. and Europe: A History of Convergence 2 (Nov. 14, 2001), *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/01/540&format=html&aged=0&language=EN&guiLanguage=en>.

<sup>14</sup> Press Release, U.S. Dep’t of Justice, U.S. and Foreign Antitrust Officials Launch International Competition Network (Oct. 25, 2001), *available at* <http://www.justice.gov/atr/public/pressreleases/2001/9400.htm>.

<sup>15</sup> Press Release, U.S. Dep’t of Justice, International Competition Network Adopts Recommended Practices to Improve Merger Analysis and Presents Report on Unilateral Conduct Issues (Apr. 29, 2010), *available at* [http://www.justice.gov/atr/public/press\\_releases/2010/258303.pdf](http://www.justice.gov/atr/public/press_releases/2010/258303.pdf).

<sup>16</sup> *Id.*

## **II. Today's Challenges and Opportunities**

The accomplishments of the international antitrust community over this brief history have been substantial, but these accomplishments themselves foster new challenges. The expanding antitrust family forces us to think carefully and creatively about how to manage the multiplicity of voices and approaches. As ICN approaches its tenth anniversary, and transatlantic cooperation goes from strength to strength, now is a good time for us all to think about our blueprint for the future, building on what has already been achieved.

### **A. Globalization and a “Multi-Polar” Antitrust World**

The continuing trend towards globalization in businesses and markets, the rapid pace of innovation in technology and industry, and the proliferation of antitrust regimes around the world create challenges for businesses and antitrust agencies alike. Any global business that has had to coordinate merger filings across many jurisdictions, or to evaluate business conduct that could potentially face investigation in multiple jurisdictions, let alone face a global cartel investigation, will know what I mean by challenges. We no longer live in a “bipolar” antitrust world. In addition to Washington, D.C. and Brussels, international companies now routinely must pay attention to the rulings and decisions in 27 EU Member States, as well as in Beijing, Berne, Brasilia, Canberra, Moscow, New Delhi, Ottawa, Pretoria, Seoul, Tokyo, and elsewhere.

The globalization of antitrust policy poses challenges not only for businesses, but also for antitrust agencies, as both Assistant Attorney General Christine Varney and Vice-President Joaquín Almunia have noted recently. As Vice-President Almunia has said:

It is clear that, at the beginning of the 21<sup>st</sup> century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic

analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions.<sup>17</sup>

And in Assistant Attorney General Varney's words:

[W]e are all interested in protecting our consumers, and though we may not always agree on the best course, we all should listen to, learn from, and respect the various voices in the global antitrust community. It is only in this way that effective global antitrust enforcement can become truly a reality.<sup>18</sup>

In today's multi-polar antitrust world, it will no longer be sufficient for agencies to cooperate on investigations with only one or two other jurisdictions. Moreover, with so many different agencies involved—each with its own unique culture, legal regime, political structure, and economic situation—achieving procedural and substantive convergence to the extent possible requires ever more effort. Agencies also need to be acutely aware that their work may have impacts beyond their borders, thus raising both the stakes and the expectations.<sup>19</sup> We all need to find ways to deal ever more effectively and efficiently with these challenges.

The question is: how can the antitrust community successfully meet the challenges posed by today's multi-polar antitrust world and also take full advantage of its opportunities? For an answer, let me turn again to the three overarching goals identified in the ICPAC report of 2000 that brought such significant success to the previous decade: cooperation, convergence, and transparency.

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<sup>17</sup> Joaquín Almunia, Vice-President, European Comm'n, Cooperation and Convergence: Competition Policy in the 21st Century 3 (Apr. 27, 2010), *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/183&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>18</sup> Christine A. Varney, Assistant Attorney Gen., U.S. Dep't of Justice, Coordinated Remedies: Convergence, Cooperation, and the Role of Transparency 12 (Feb. 15, 2010), *available at* <http://www.justice.gov/atr/public/speeches/255189.htm>.

<sup>19</sup> Assistant Attorney General Varney has called on competition agencies to be "mindful" of extraterritorial effects, other agencies' choices, and other agencies' options with respect to remedies. *Id.* at 4-9.

## **B. Cooperation**

First, cooperation. Without effective cooperation, it will be impossible successfully to meet the challenges of the coming years. Antitrust agencies need to continue to work together, to learn from each other's practices, and to build mutual respect and trust—and I would like to stress the word mutual.<sup>20</sup> Cooperation can reduce uncertainty and unnecessary burdens on both companies and antitrust agencies, and help to avoid divergent outcomes where possible. Parties are, in turn, encouraged to work with the agencies by providing timing agreements, executing waivers, and engaging in other practices that facilitate inter-agency cooperation. With appropriate recognition of sovereignty interests, cooperation also can help enable agencies to use their limited resources more efficiently. Cooperation is also essential for agencies to effectively combat transnational anticompetitive activity. Today, effective prosecution of an international cartel requires, for example, the ability to gather evidence located in many different jurisdictions.

We are fortunate that technological development is making it easier to cooperate. Where there is a will for regular coordination and cooperation, communication advances are providing a way. This is true of ICN's "virtual" network and it is also true with respect to day-to-day staff- and leadership-level bilateral communications on individual cases and policy matters. So long as the antitrust agencies around the world are mindful of the need for frequent coordination and cooperation, the information age is making that coordination a readily achievable goal.

I know Assistant Attorney General Varney would want me to cite my own appointment as an example of the importance the Antitrust Division attaches to international coordination and

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<sup>20</sup> Assistant Attorney General Varney has emphasized her desire for the Division "to continue its fruitful collaboration with international antitrust enforcement authorities." Christine A. Varney, Assistant Attorney Gen., U.S. Dep't of Justice, Vigorous Antitrust Enforcement in this Challenging Era 19 (May 12, 2009), *available at* <http://www.justice.gov/atr/public/speeches/245777.htm>.

cooperation. Since January, I have had the privilege of working as Christine Varney's Special Advisor on international matters as a member of her Front Office leadership team. In the time since I took up my appointment, I have already been involved in bilateral and multilateral projects, including recent OECD and ICN meetings. I also work regularly with the Antitrust Division's staff on investigations with an international dimension, and facilitate interactions at all levels within the Antitrust Division with antitrust agencies both across the Atlantic and all around the world.

A recent example of successful U.S.-EU cooperation was the review by the Antitrust Division and DG Comp of the Cisco/Tandberg merger. Cisco, a U.S. firm, and Tandberg, headquartered in both Norway and New York, are leaders in the videoconferencing market. Aided, importantly, by waivers from the parties and industry participants that permitted the agencies to share information and assessments, the Division and DG Comp were able to regularly and meaningfully coordinate their reviews, complementing each others' investigations. On March 29, the Division announced that we were closing our investigation, taking into account the commitments secured by the European Commission and announced that same day.

As Assistant Attorney General Varney stated, the Cisco/Tandberg matter "was a model of international cooperation between the United States and the European Commission." She commended the parties for "making every effort to facilitate the close working relationship between the Department of Justice and the European Commission."<sup>21</sup> Vice-President Almunia

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<sup>21</sup> Press Release, U.S. Dep't of Justice, Justice Department Will Not Challenge Cisco's Acquisition of Tandberg (Mar. 29, 2010), *available at* [http://www.justice.gov/atr/public/press\\_releases/2010/257173.htm](http://www.justice.gov/atr/public/press_releases/2010/257173.htm).

similarly expressed his satisfaction with “the overall review process that was carried out in close co-operation with the U.S. Department of Justice.”<sup>22</sup>

Since coming to the U.S. Department of Justice this year, I have seen at first hand the strong commitment the U.S. antitrust agencies have to working with their counterparts in Europe and around the world. It has become evident to me that progress comes from the dedicated efforts, on both sides of the Atlantic, of the agencies, private practitioners, and academics alike. And it is also clear that the essence of effective cooperation is not only multilateral engagement through fora such as ICN and the OECD—important as that is—but also the day-to-day mindfulness and discussion among antitrust agencies across the Atlantic and around the globe.

### **C. Convergence**

The second overarching goal, convergence, is about trying to improve the likelihood that agencies get to similar answers on similar questions. This is a primary aim of work within the ICN and OECD. An increasingly convergent approach in the U.S., Europe, and elsewhere to the core principles of antitrust analysis has made it possible for the ICN and OECD to issue coherent and wide-reaching recommendations, and has reduced the risk of divergent analyses and outcomes in individual cases.

We have seen such recommendations from the ICN’s Mergers Working Group, co-chaired by the U.S. Department of Justice and the Irish Competition Authority, and also from the Unilateral Conduct Working Group, co-chaired by the U.S. Federal Trade Commission and the Bundeskartellamt. Where we reach appropriate consensus based on the recognition of common

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<sup>22</sup> Press Release, European Comm’n, Commission Clears Cisco’s Proposed Acquisition of Tandberg Subject to Conditions (Mar. 29, 2010), *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/377&format=HTML&aged=0&language=EN&guiLanguage=en>.

objectives and approaches, the antitrust agencies have the responsibility, I believe, to go beyond the talk and achieve concrete results.

We have, for example, made significant progress towards such international convergence in cartel enforcement. Just last month, at the annual ICN conference in Istanbul, the ICN Cartel Working Group focused on trends in cartel enforcement and policy. The session discussed a survey of antitrust authorities from 46 jurisdictions on significant developments in their anti-cartel laws, policies, and practices over the past 10 years.<sup>23</sup> The survey revealed that the agencies have achieved increased convergence in several important areas, including the authorization and use of greater investigative powers to detect and prove cartel activity, the widespread adoption and refinement of increasingly effective leniency programs, and the imposition of more effective sanctions for cartel violations.

The movement by agencies around the world to implement effective strategies for combating cartel conduct not only advances the ability of each agency to maximize detection, deterrence, and prevention of cartel activity within its own borders, but also facilitates greater cooperation among enforcers across borders. The proliferation of effective leniency programs has resulted in an increasing number of applicants seeking leniency in several jurisdictions simultaneously. In such cases, enforcers can often coordinate investigative steps and, with the consent of the applicant, share certain information provided by the applicant. As a result, coordinated searches and other investigative steps are becoming more common. The recent coordinated raids related to an alleged cartel in automotive electronics supply, widely reported in

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<sup>23</sup> See INT'L COMPETITION NETWORK, TRENDS AND DEVELOPMENTS IN CARTEL ENFORCEMENT (Apr. 2010), available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc613.pdf>.

the press, are an excellent example of such cooperation among cartel enforcers. Such coordinated activity provides a strong deterrent message for those who seek to victimize consumers in multiple jurisdictions.

This example also demonstrates that convergence and cooperation are mutually reinforcing. Because so many jurisdictions now see eye-to-eye on many basic antitrust principles and the broader benefits that a sound antitrust regime have to bring to an economy, cooperation on the implementation of those principles becomes that much easier. And, of course, when jurisdictions have a convergent approach, it is easier for global firms to do business efficiently. These are benefits that we have a responsibility to deliver to consumers.

#### **D. Transparency**

The third and final overarching principle, transparency, is one of Assistant Attorney General Varney's top priorities.<sup>24</sup> At the OECD conference in June, Working Party 3, under Assistant Attorney General Varney's chairmanship, will continue its examination of issues surrounding transparency and procedural fairness. This is part of an ongoing effort to build towards greater convergence in this important area of procedural practice. Transparency plays a key part in this respect. A fundamental component of cooperation, and ultimately convergence, is developing an understanding of one another's approaches. Transparency helps to increase that understanding, to build trust, and to facilitate cooperation. It is impossible to cooperate effectively, converge, or reach non-conflicting outcomes unless all involved understand where the other agencies are coming from and how they are likely to approach a matter. Even where

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<sup>24</sup> See Varney, *supra* note 18, at 2.

broad convergence may not be possible, transparency still allows for more effective cooperation and understanding.

In fact, because it is a topic likely to be of interest to many of you, I will indulge in a brief digression on one of the success stories of transparency. Since their original introduction in 1968, the U.S. Horizontal Merger Guidelines have served as an important guide for businesses, scholars, practitioners, and courts about the enforcement intentions of the United States regarding mergers. In the international context, the guidelines have helped provide a common framework for analyzing mergers around the globe. Unilateral effects, coordinated effects, and HHIs, for instance, are parts of the lexicon of the global antitrust community in no small part because of the influence of the U.S. Horizontal Merger Guidelines—and now, of course, other agencies' guidelines, as well.

Last month, revised U.S. Guidelines were released for public comment.<sup>25</sup> The proposed Guidelines reflect current practice at the U.S. antitrust enforcement agencies and are in large measure designed to remedy gaps that have grown up between actual practice and the current Guidelines (which were last revised in wholesale fashion 18 years ago, in 1992). Thus, the revised Horizontal Merger Guidelines enhance transparency.

The new proposed Guidelines were drafted in consultation with many experts in the U.S. as a result of workshops that were held around the country. Non-U.S. experts were also consulted. Representatives of four international agencies, including from the EU, travelled to the United States to participate in the public workshops and there have been informal discussions with other agencies around the world as well. Indeed, in today's multi-polar world, it would

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<sup>25</sup> See Press Release, Fed. Trade Comm'n, Federal Trade Commission Seeks Views on Proposed Update of the Horizontal Merger Guidelines (Apr. 20, 2010), *available at* <http://www.ftc.gov/opa/2010/04/hmg.shtm>.

have been unthinkable to have engaged in such an undertaking without seeking the views of the broader antitrust community.

### **III. Conclusion**

Each of the three overarching objectives—cooperation, convergence, and transparency—is important individually. But when we strive for all three together, we maximize the possibility of real progress. In today’s multi-polar world, no one entity or individual, whether public, private, or academic, has a monopoly on good ideas.<sup>26</sup> Through continued mutually respectful dialogue and action, we have the potential to make the next decade and beyond of international antitrust even more productive than the last 20 years of transatlantic antitrust have been. Thank you very much.

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<sup>26</sup> At the Fordham Competition Law Institute Annual Conference on International Antitrust Law and Policy in 2009, Assistant Attorney General Varney emphasized that “openness to others’ ideas and new approaches is critical to our efforts towards greater convergence.” Christine A. Varney, Assistant Attorney Gen., U.S. Dep’t of Justice, *Our Progress Towards International Convergence 6* (Sept. 24, 2009), *available at* <http://www.justice.gov/atr/public/speeches/250264.htm>.