DEPARTMENT OF JUSTICE

REPORT FROM THE ANTITRUST DIVISION, SPRING 1994

Address by

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Today is my first opportunity since being sworn in on June 16, 1993 as Assistant Attorney General in charge of the Antitrust Division to appear before this large and distinguished body of antitrust practitioners and report on the activities of the Division. In nine and one-half months, the people of the Division have built a record of which I am very proud and which together we will continue to build over the next few years. This record builds upon the enforcement activities of my predecessors, all of who have been uniformly generous to me in offering their advice and help. This audience particularly is aware that antitrust is not a doctrinaire political field. It is law enforcement, and the people of this country expect and deserve that enforcement to be fair, even-handed and non-partisan. Our settlement of the airlines case recently illustrates the bi-partisan and non-partisan nature of antitrust enforcement: it was the product of three successive Administrations' work. So also does the historic AT&T case, whose prosecution, settlement and consent decree enforcement activities now represent a monumental 20-year project of the Antitrust Division. We are committed to continuing to build upon this tradition of fair, even-handed and non-partisan enforcement of antitrust law.

Our record to date provides a concrete embodiment of our vision of antitrust enforcement, but, of course, it is only a beginning. In this spirit, today I would like to recount some of the recent achievements of the Division.

I have announced previously that I have constituted a Task Force to reevaluate and establish an enforcement policy with respect to an important area of our economy, intellectual property. I will describe today some of our thinking at this stage about what our enforcement policy should be in this key area. I will also invite this audience and the antitrust and intellectual property community at large to offer their thoughts and suggestions back to us.

If I had to sum up my view of the Antitrust Division's mission today in one sentence I would say "The mission of the Antitrust Division is to protect competition and consumers in increasingly international and technology-driven markets through sound and reasoned enforcement of the antitrust laws." I brought this view with me to the Division and then spent long hours consulting with the lawyers and economists of the Division and other experts as to how best to achieve that mission. As a result, we arrived at initiatives and priorities in the areas of civil conduct, mergers, criminal, and special industries. I will describe our initiatives in each of these areas in a moment.

Recognizing that the resources of the Division are limited, my first priority was to improve the efficiency and focus of the Antitrust Division. I have spoken at length on this subject in the past few months and therefore I will only touch on the highlights here. Following the spirit of the Vice President's "reinventing government" program, we now employ at the Division consensus decision-making, early setting of priorities and identification of goals and objectives, and targeting of the work effort towards achieving those goals and priorities. We also are actively engaged in re-thinking how we manage ourselves, and we have re-emphasized the Antitrust Division's litigation mission, focusing efforts on preparation for litigation much earlier in the process and instituting litigation training, including mock trials and skills programs.

The Division has realigned its sections around its litigating functions, with the "regulatory sections" primarily focusing on civil conduct matters, Lit I, Lit II and C&F focusing largely on mergers, and the seven field offices carrying the brunt of the criminal enforcement load, with some merger and civil work. I have asked each of my Deputy Assistant Attorneys General to supervise one functional area -- Bob Litan for civil conduct and regulatory enforcement, Steve Sunshine for merger

enforcement, and Joe Widmar for criminal prosecution. We have received Congressional approval for the creation of a fifth Deputy Assistant Attorney General slot for international antitrust issues, and as most of you already know, we are very fortunate to have Diane Wood in that position. Finally, Rich Gilbert supervises our top-notch economics staff of 51 professionals.

With significant support from Attorney General Reno and the Congress, for which we are immensely grateful, the Antitrust Division has obtained additional resources which we intend to devote to hiring and improved support. We are in the process of hiring 35 lateral attorneys, 15 honors law school graduates (class of 1994), and six economists. We have also introduced to the Division a greatly strengthened paralegal program and hired 60 honors paralegals to buttress the Division's investigation and litigation capabilities. The Division is also pursuing a technology audit to determine what support tools are available and appropriate, including document imaging and retrieval, hardware and software, and auxiliary equipment.

All of these efforts have led to a Division better able to carry out its fundamental mission of antitrust enforcement. I will now turn to our efforts in each of the substantive areas I mentioned earlier.

CIVIL CONDUCT

One of the major priorities of the Administration is the investigation and prosecution of cases involving civil conduct that violates the antitrust laws. Whether these cases involve illegal acts by monopolists or by dominant firms attempting to achieve monopoly, illegal restraints imposed in relationships between a manufacturer and its distributors, or illegal agreements among competitors, they all involve allegations of

conduct that are often industry-wide and enduring, thereby having the potential to cause significant consumer injury. When these restraints effectively and illegally limit access to or the ability to develop and market essential technology, the potential for consumer harm and future market distortion is magnified.

Substantial resources in the Division are now devoted to the identification, investigation, and, where appropriate, prosecution of cases alleging civil conduct violative of the Sherman Act. In addition to the three regulatory sections, we have created a Civil Task Force of about 18 lawyers to focus exclusively on civil conduct cases. We also have formed a New Case Unit, spearheaded by Ann Jones and Max Stier, whose principal responsibility is to solicit and develop ideas for civil enforcement initiatives that can be handed off to litigating sections for investigation.

The results of these efforts have borne fruit. The Division has generated over 50 new civil conduct preliminary investigations in the last six months. In over half of those investigations, the Division has issued compulsory process. For comparison, in earlier years, the number of civil conduct investigations with compulsory process was in the range of four to eight per year.

We have also filed suit in several significant matters. When we discovered that Alliant and Aerojet, two producers of cluster bomb munitions, had prepared a joint bid to the Department of Defense to avoid competing for a contract to replenish inventories drawn down during the Gulf War, we sued. As a result, we obtained through a consent decree an injunction against future anticompetitive behavior and a price reduction for the Department of Defense that saved taxpayers about $12 million, equivalent to a 10% savings.

Just last month we filed a civil suit against eight Utah hospitals and several related entities for exchanging current and prospective wage information that had the effect of reducing the wages paid to nurses, the result of an investigation opened in the Bush Administration. As part of a joint federal-state effort, the State of Utah simultaneously filed a case under Utah's antitrust statute against the University of Utah Medical Center. Between the federal and state actions, consent decrees were obtained from all defendants prohibiting such information exchanges in the future. The consent decrees are consistent with the Division and FTC Joint Health Care Policy Statements on this subject issued in September, 1993.

Three weeks ago we settled U.S. v. Airline Tariff Publishing Co., which was opened in the Reagan Administration and filed in the Bush Administration, by obtaining the agreement of the six remaining defendant airlines and their tariff publishing company to accept a consent decree. That decree prohibits computer exchanges of information that, in our opinion, constituted price fixing and which resulted in excess travel costs to the public of up to $2 billion.

MERGER ENFORCEMENT

In the area of merger enforcement, we believe that a sound and reasoned structural enforcement program will reap huge dividends in future market performance. To this end, we apply the Department of Justice's and the Federal Trade Commission's 1992 Horizontal Merger Guidelines to transactions among competitors. But our analysis does not stop there, since nonhorizontal mergers may also have potential anticompetitive effects. For example, we believe that a vertical merger may lessen competition in an upstream or downstream market through foreclosure. Such a merger may also cause a competitor to become

a supplier as well and, under certain conditions, allow the merging parties to raise the costs of or otherwise handicap their rivals. As a consequence, a vertical merger may chill innovation or lead to coordination of output or prices. We are not ready to make sweeping policy pronouncements, especially in the form of guidelines on vertical mergers, but we are studying vertical effects in specific pending investigations and will bring a case if we find appropriate circumstances indicating likely competitive harm.

Embodying these standards, our merger program over the last months has been active. In the first *six months* of fiscal year 1994 (from October, 1993, to the present), the Division has intervened in 14 merger transactions, causing the parties to restructure the transaction to alleviate competition concerns or to abandon plans to consummate in 13 of those cases. The fourteenth, U.S. v. Flow International Corp., is now pending in the federal district court of the Eastern District of Michigan. This record compares with 10 to 12 annual challenges previously.

One of the more important enforcement actions of the Division was our suit against the proposed acquisition of GM's Allison Division by ZF Friedrichshafen, which would have combined their bus and truck automatic transmissions business. Although this transaction would have resulted in very high levels of concentration in a few application-specific markets in the U.S., our concern over the transaction was much broader. We alleged that the transaction would result in a near total monopoly in product and process improvements and developments throughout the world. Our focus on innovation in GM is an example of how we will continue to strive to protect competition in technology. We focus on technology because we view innovation as crucial to consumer welfare and believe that consumer welfare is enhanced when innovative diversity and competition is preserved.

The Division obtained significant restructuring in connection with investigations into several proposed transactions. In U.S. v. Dresser Industries, Inc., the Division secured a divestiture of one of the parties' drilling fluid assets and of Baroid's diamond drill bits business. The divestiture was valued at about $300 million, roughly one-third of the value of the parties' $900 million transaction. In connection with a proposed tender offer transaction between Cypress Minerals and Amax, the parties agreed to sell a primary molybdenite mine and a processing facility to a third party to alleviate the Division's competition concerns. Finally, in its first Clayton Act Section 8 enforcement action in many years, the Division entered into a consent decree with the International Association of Machinists which has the power to appoint directors to the boards of two competing airlines. The Division approved this arrangement subject to a firewall that prevents the exchange of competitively sensitive information directly between the serving representatives or indirectly through the IAM.

CRIMINAL ENFORCEMENT

Criminal enforcement of the antitrust laws against naked restraints of trade has been and will continue to be one of our core areas. We have increasingly prioritized the investigation of national and international price-fixing conspiracies and other cartels with substantial consumer impact. To make the best use of combined federal-state resources, we have continued and expanded our cooperation with state antitrust enforcers. We believe that increased cooperation with state antitrust enforcers will allow us to coordinate investigations of activities affecting local or regional commerce only. We are working closely with the National Association of Attorneys General to implement a joint enforcement program, and we are encouraging more states to adopt criminal antitrust statutes. We are fortunate that Milton Marquis from the Virginia Attorney

General's Office will join us to act as a Senior Counsel to the AAG to coordinate relations with State Attorneys General for the Antitrust Division.

Our criminal enforcement program has remained vigorous. Last year the Division filed 84 criminal cases against 71 corporations and 51 individuals. Fines of $41,817,571 were imposed as a result of convictions obtained. Total jail time amounted to 3,673 days with additional confinement (at home, in a halfway house, etc.) of 2,704 days. We expect the statistics for this year to be comparable.

Perhaps the most notable indictment returned since we took office was against General Electric, DeBeers Centenary AG, and two individuals for fixing the price of industrial diamonds. The indictment alleges that the two companies agreed to fix prices through an elaborate scheme of exchanging confidential future price information. The case is scheduled for trial in the near future.

During the last year, several major corporations were convicted of criminally violating the Sherman Act or agreed to a fine in connection with a plea. Miles, Inc. pled guilty to fixing the price of steel wool pads and agreed to pay a fine of $4.5 million. Borden Inc. and its affiliate paid an aggregate of $13.2 million in fines in connection with convictions for rigging the bids for school milk. The Stanley Works was fined $5 million after a conviction of conspiring to fix prices on architectural hinges. Finally, Bolar Pharmaceutical Co., Inc. was fined $1 million after a conviction on a count of fixing prices of the generic drug, diazide.

You may recall that last August, when I spoke at the ABA Annual Meeting in New York, I announced a new Division policy under which we expanded our corporate amnesty program to include

companies which come in to the Division to offer cooperation after an investigation has begun. We undertook this to expedite our investigations, and to use our resources in the most efficient manner possible. I am happy to report that the new policy appears to be succeeding. In the 15 years from 1978 to 1993, under the former, more restricted amnesty policy, a total of 17 companies availed themselves of the policy. Since announcement of the new policy in August, 1993, nine companies have offered to cooperate in a period of eight months -- approximately one per month as compared to one per year under the previous policy. Within a few days, to complement this new, expanded corporate amnesty policy, we will be announcing a new individual amnesty program as well.

In the criminal enforcement area, I want to note particularly one matter that has caused me a great deal of concern -- the increased obstruction that we are encountering in our grand jury investigations. During the past year, we returned five indictments involving obstruction of justice charges. Currently, no less than 14 of our grand juries (over 10 percent) are investigating possible obstructions. We at the Division, and I personally, believe that such conduct cuts at the very heart of law enforcement, and we take it with the utmost seriousness. I can assure you that the Antitrust Division will continue to vigorously prosecute every obstruction and perjury violation that appears in any of our grand jury or other matters and to seek maximum penalties in such cases.

SPECIAL INDUSTRIES

We are cognizant that certain industries -- health care, telecommunications, and defense among others -- are in important periods of change. We have devoted substantial attention to these industries either to provide clear guidance or to aid the Administration with our views on competition policy. In each

case, we have affirmed the continuing vitality of antitrust enforcement.

The Division, with the participation of the Federal Trade Commission, issued six Statements of Antitrust Enforcement Policy in the health care area in September, 1993. At their core, these statements make clear that basic antitrust principles remain our touchstone and discuss the manner in which the two agencies will apply these principles with respect to six areas of common concern in health care. We took this unusual step because some members of the health care community claimed that the application of the antitrust laws to various health care providers was sufficiently uncertain and that broad antitrust exemptions were necessary. Besides providing clear expressions of our enforcement policy, the Statements commit the Division and the FTC to provide expedited business review letters. Approximately ten health care business reviews have been issued since the expedited procedure was announced in September, 1993, and ten to fifteen more are currently pending. We will continue to work with a number of health care groups to provide additional guidance to the health care community. We also plan to cooperate with the state Attorneys General who are interested in health care antitrust, and the FTC, to ensure that the prosecutorial resources of all three enforcement groups in this significnat area of the economy are used most efficiently.

The Division has also participated on a Department of Defense task force that is seeking to determine the best manner to evaluate mergers of firms in the defense industry. A report is in preparation and release is expected imminently. A reading of that report should make clear that the salutary effect of antitrust enforcement will continue to be felt in the defense supply industries.

Consistent with the Division's long and crucial role in telecommunications policy, the Division is participating as a member of the Administration's working group on legislation to modernize the telecommunications laws. I was privileged to serve as the lead Administration witness in testimony on pending telecommunications legislation before Chairman Jack Brooks in the House Judiciary Committee and before Congressman Ed Markey, Chairman of the House Subcommittee on Telecommunications of the House Energy & Commerce Committee in January, 1994. Generally speaking, the Division and the Administration believe that the goal should be to encourage free entry in all areas of telecommunications, including local exchange services, information services, long distance, and manufacturing, when regulatory and technological barriers are removed. We appear to be at the point where competitive options are emerging for voice, data, and video, calling into question some premises about natural monopolies in these areas. While we are mindful of the dangers from firms trying to leverage existing monopoly power into new or adjacent markets, it is our function to encourage competition so that the shape and content of future markets can emerge from the free play of competitive forces. These principles are at the core of our policy pronouncements and inform our enforcement actions in telecommunications.

INTELLECTUAL PROPERTY

Telecommunications is but one industry where technological advances power rapidly developing new markets and competitive options. It is safe to say that technology is the driving force in the U.S. economy today. And it is clear that without intellectual property rights that assure a return on investment in innovation, that force would wane. Consequently, one simply cannot speak of an antitrust policy without a coherent policy toward intellectual property. Yet antitrust enforcement in the area of intellectual property has swung from a policy that was

viewed as sharply limiting intellectual property rights,[1] the so-called nine "no-no's" of the 1970's, to one some viewed as a too-deferential treatment of intellectual property rights and little practical antitrust enforcement, the so-called no "no-no's" of the 1980's.[2]

To clarify our policy in this crucial area of the economy, I have made the establishment of a clear, coherent and publicly stated antitrust policy in intellectual property a top priority. The Antitrust Division is in a unique position in the United States Government to formulate a balanced competition policy. In addition to our enforcement efforts, we also foster competition through competition advocacy before every branch of the Government -- judicial bodies, both state and federal, the Administration, independent regulatory bodies, and Congress.

Because intellectual property will continue to be a major and critical force in our economy as we enter the next century, it is vital that we play our unique role as the Administration's competition advocate in this area. We intend to work closely with Commissioner Bruce Lehman and the Patent and Trademark Office and to be an active voice by filing amicus briefs, serving on the NEC Task Force on Intellectual Property, and, where appropriate and agreed upon by others in the Administration, possibly proposing legislation. I extend to all of you the same message that I have stated to others: please send us your suggestions for appropriate amicus briefs and any other actions

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[1] This view is disputed by the Chief of the Intellectual Property Section at the Antitrust Division in the 1970's. See "Whatever Happened to the Nine No-No's," address of Richard H. Stern, (former Chief, Intellectual Property Section, Antitrust Division (1970-79), before American Bar Association Section of Patent, Trademark, and Copyright Law, 1993 Annual Meeting, New York, New York, August 10, 1993.

[2] In our view, this mischaracterizes much sound policy expressed in the 1988 International Guidelines. As this speech makes clear, we recognize the continuing validity of many of the basic concepts contained in those guidelines.

you believe we should be taking to ensure that competition is effective and strong in this area of the economy.

We also plan to issue revised International Guidelines, as I have earlier stated, which alone would require a revisiting of the intellectual property portions of the 1988 International Guidelines. To formulate our policy in this area, and to draft revised intellectual property guidelines, I have constituted a Task Force, chaired by DAAG Richard Gilbert, to examine these issues in consultation with experts from academia, industry, and the bar. I will outline briefly here some of the issues presently under consideration, and some of our proposed positions. I invite all interested parties to submit their thoughts, comments, and suggestions to our Task Force by May 9.[3] We will welcome this input and consider it seriously as we formulate our policy. We hope to publish proposed guidelines for intellectual property, as well as new international guidelines, for comment by early summer, 1994.

Intellectual property refers to products of creative efforts protected under the patent, copyright, mask work, trade secret, and, to a lesser extent, trademark laws. The scope of protection offered to each of these types of intellectual property differs importantly under their various regimes, but the basic antitrust principles that apply to them are the same.

The intellectual property laws and the antitrust laws share the common purpose of promoting "innovation, industry, and competition."[4] The intellectual property laws provide incentives for innovation by establishing enforceable property rights for

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[3] You may send your comments to Richard Gilbert, Deputy Assistant Attorney General, Antitrust Division, 10th & Constitution Ave., N.W., Rm. 3113, Washington, D.C. 20530.

[4] Atari Games Corp. v. Nintendo of America, Inc., 975 F.2d 832 (Fed. Cir. 1992).

the creators of new and useful products and more efficient processes. The antitrust laws promote innovation and consumer welfare by ensuring that owners of intellectual property rights do not abuse those rights, for example, to suppress competition in alternate technologies and in adjacent markets. These principles have guided the enforcement policy of the Division for over fifty years.

The bedrock principle of our policy towards intellectual property is that we treat it as we treat any other form of tangible or intangible property. Intellectual property is not exempt from the application of the antitrust laws, nor particularly suspect under them. While an owner of intellectual property is given certain rights to exclude competitors by intellectual property law, the right to exclude is bounded by the prohibitions of the Sherman and Clayton Acts, which can prohibit the owner from using its rights to suppress competition from alternative technologies. This limiting of rights is no different than the case for any other property owner.

We will not presume monopoly power solely from the existence of an intellectual property right. If a specific form of intellectual property does confer a significant competitive advantage on its owner, that advantage is no more in conflict with the antitrust laws than one created by any other asset that enables its owner to earn supracompetitive profits. Judge Learned Hand's statement in Alcoa almost fifty years ago that the Sherman Act is not violated by the attainment of power solely through "superior skill, foresight and industry"[5] remains apt today with respect to the types of innovation protected by intellectual property rights.

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[5] United States v. Aluminum Co. of America, 148 F 2d. 416, 430 (2d Cir. 1945).

To further illustrate the application of these principles, I will discuss at some length the licensing of intellectual property. I will also touch on intellectual property issues related to monopolization and mergers.

Licensing of intellectual property typically allows the combination of that property with other complementary assets, such as manufacturing facilities, distribution assets, and other items of intellectual property. Licensing the right to use intellectual property typically is efficiency enhancing, promoting the efficient dissemination and use of the technology and leading to cost reduction, new products, and the development of new technology to produce services or products to be marketed to the public.

While intellectual property licensing arrangements are typically procompetitive, certain arrangements present the potential to create, enhance, or facilitate the exercise of market power. In evaluating these arrangements, we generally look to their effects in the licensing or development of intellectual property and the intermediate processes using that property ("technology" markets), and in the sale of goods and services that are either produced using the intellectual property or are complementary to such property ("goods" markets).

Following general principles of antitrust jurisprudence, the analysis of the licensing arrangement depends in part upon the relationships between the licensor and the licensee and whether those relationships are horizontal or vertical. Typically, the licensor and the licensee supply complementary inputs and are therefore in a vertical relationship. If the licensor and the licensee are actual or potential competitors in one or more markets, the relationship, of course, is horizontal as well.

A license agreement between horizontal competitors in technology markets is likely to have an adverse effect on competition when the agreement tends to reduce output, increase prices or inhibit technological innovation in any market. Consistent with the guiding principle that intellectual property should be treated as we treat other forms of property, license agreements between horizontal competitors are *per se* illegal if they involve a naked agreement to fix prices, allocate customers or territories, or exclude competitors. In come circumstances, settlements of intellectual property disputes may themselves constitute illegal agreements, where, for example, the dominant purpose is to exclude a mutual competitor.[6] Most licensing agreements, however, do not involve naked restraints, and will, therefore, be evaluated under the rule of reason, typically by weighing their likely procompetitive efficiency benefits against their potential anticompetitive effects.

The vertical aspects of licensing restrictions may also pose anticompetitive hazards if they foreclose access by competitors with alternate technologies to markets, increase competitors' costs of doing business, or facilitate coordination among horizontal competitors. Most vertical restraints are analyzed under the rule of reason. Such restraints are more likely to raise concern when the restricted license eliminates likely competition from alternative technologies.

Although vertical restraints are typically analyzed under the rule of reason, I would like to point out two familiar exceptions. First, it is *per se* unlawful for an owner of property, including an owner of intellectual property, to fix resale prices in a downstream market.[7] Second, consistent with

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[6] See U.S. v. Singer Mfg. Co., 74 U.S. 174, 195 (1963).

[7] United States v. Univis Lens Co., 316 U.S. 241, 243-45, 249-51 (1942).

the general principles of the law against illegal tying, an owner of intellectual property may not condition the license of that property on the customer's purchase of a second product if the seller has market power in the tying product.[8]

In sum, we analyze restraints in intellectual property licensing guided by the same law and principles we use when analyzing restraints involving other types of property. Except for certain narrow cases, these restraints are evaluated under the rule of reason where the likely procompetitive benefits of the arrangement are weighed against potential anticompetitive effects.

In the same vein, owners of intellectual property are subject to the prohibitions of Section 2 of the Sherman Act. Of course, a key inquiry under Section 2 analysis is market definition. For purposes of determining the boundaries of the relevant market and the power of a firm in that market, we will generally use the standards contained in the 1992 Horizontal Merger Guidelines.[9] This is of course consistent with our view that monopoly or market power will not be presumed solely from the existence of intellectual property. We understand, of course, that defining relevant market is always a fact-bound inquiry, and never more so than in this area.

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[8] United States v. Paramount Pictures, Inc., 334 U.S. 131, 156-58 (1958) (copyrights); International Salt Co. v. U.S., 332 U.S. 392 (1947); see also Section 271(d) of the Patent Code (patent tying not illegal without demonstration of market power); cf. Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2 (1984), in which the Supreme Court indicated in dicta that market power in the tying market can be presumed from the existence of a patent.

[9] The use of the "small but significant and non-transitory increase in price" test in the monopoly context may require departure from the typical starting point of prevailing market price.

Owners of intellectual property with monopoly power are prohibited from illegally acting to preserve that power or to acquire monopoly power in another market. Additionally, owners of intellectual property may not conspire or attempt to monopolize and are subject to the same conditions in this regard as are all other property owners. For example, an intellectual property owner with monopoly power may violate Section 2 of the Sherman Act if that person attempts to enforce a patent obtained by fraud.[10] Similarly, an infringement action brought in bad faith, when the intellectual property right is known to be invalid, may violate Section 2 of the Sherman Act.[11]

Acquisitions of intellectual property are, of course, subject to Section 7 of the Clayton Act. The Division's approach to merger analysis is described in the 1992 Horizontal Merger Guidelines. The Division will examine the merger's effects in all relevant markets, including both technology and goods markets. Our approach to merger analysis in goods markets is well known to this audience. For our approach to merger analysis in technology markets, I refer you to the Division's complaint filed in the federal district court in Delaware in connection with its challenge of the General Motors/ZF Friedrichshafen proposed acquisition.

I have outlined our current thinking on what some of the basic tenets of our enforcement policy with respect to intellectual property should be. The Division's Task Force is working hard now to prepare a statement of enforcement policy on

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[10] Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172 (1965); See also United States v. Singer Mfg. Co., 374 U.S. 174 (1963) (concurring opinion of Justice White stating that a conspiracy to conceal prior art from Patent Office violates the Sherman Act).

[11] Cf. Handgards, Inc. v. Ethicon, Inc., 743 F.2d 1282, 1288-89 (9th Cir. 1984) (principle of law explained).

intellectual property and I urge you to provide us with your input.

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I am immensely proud of the efforts made by the dedicated professionals of the Antitrust Division in the last nine and one-half months. My recitation of their recent achievements serves to underscore that a small number of dedicated professionals can have a tremendous positive effect on the nation's economy. I look forward with great enthusiasm to the opportunity to work with the outstanding professionals of the Division to continue to carry out our enforcement mission.