



DEPARTMENT OF JUSTICE

INTENSIFICATION OF INTERNATIONAL COOPERATION: THE ANTITRUST DIVISION'S RECENT EFFORTS

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Introduction

It is an honor to be here today to speak to the American Chamber of Commerce, and it is a pleasure to be back in Brussels again. Indeed, this is my eighth visit to Brussels as Special Advisor, International at the Department of Justice's Antitrust Division.

I would like to begin my remarks today by discussing the Antitrust Division's excellent working relationship with the European Commission; then to talk about the Antitrust Division's commitment to international cooperation more generally; and finally to give you a brief update on some recent Antitrust Division international matters. All of these aspects fit into the overarching theme of my remarks today – intensifying international antitrust cooperation. That is the Antitrust Division's goal.

The Antitrust Division's Relationship with the European Commission and the US/EU Cooperation Agreement

Turning first to the Antitrust Division's relationship with the European Commission. In October 2011 – the last time I was in Brussels – current and former representatives of the Antitrust Division, the US Federal Trade Commission (FTC) and the European Commission (EC) came together to celebrate the 20th anniversary of the United States/European Union Cooperation Agreement. The 1991 agreement is a cornerstone of our cooperative relationship with the EC. It provides for “mutual notification of enforcement activities regarding each other's important interests; exchange of non-confidential information and regular meetings among the agencies; cooperation and coordination of enforcement activities; consideration of requests by one party to pursue enforcement activities against anticompetitive conduct affecting the

interests of the requesting party; and taking into account at all stages of enforcement, the important interests of the other party.”¹

As I have noted elsewhere, the 1991 agreement was groundbreaking and “ushered in an era of mutual respect, trust, expanded communication, and agreement as to common objectives and perspectives.”² Indeed, as Acting Assistant Attorney General Sharis Pozen said during the 20th anniversary celebration, “[i]n a world of multiple competition regimes, the strength of the US-EU relationship and the depth of cooperation between the US agencies and the European Commission serve as a model for the sound enforcement of competition laws.”³

The 20th anniversary of the US/EU Cooperation Agreement was marked by a symposium here in Brussels that was attended by some of the senior US and European antitrust officials who were responsible for the adoption of the 1991 agreement, as well as present and former senior officials from the DOJ, FTC, and EC and leading academic experts, practitioners and senior business executives from the US and Europe.⁴

The symposium highlighted the agreement’s success in expanding communication and understanding among the agencies; enlarging the scope of cooperation in merger, cartel, and single-firm conduct investigations; coordinating approaches to global antitrust developments; pursuing convergence on better procedures and substantive analysis; and

¹ Agreement Between the Government of the United States of America and the Commission of the European Communities Regarding the Application of their Competition Laws, Sept. 23, 1991, available at <http://www.justice.gov/atr/public/international/docs/0525.htm>. See also Press Release, U.S. Dep’t of Justice, *United States and European Union Antitrust Agencies Issue Revised Best Practices for Coordinating Merger Reviews* (Oct. 14, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/276308.htm.

² Rachel Brandenburger, *Twenty Years of Transatlantic Antitrust Cooperation: the Past and the Future*, CPI Antitrust Chronicle, October 2001(1) at 2, available at <http://www.justice.gov/atr/public/articles/279068.pdf>.

³ Press Release, *supra* note 1.

⁴ Celebration of the 20th Anniversary of the EU-US Competition Cooperation Agreement, Pictures, available at <http://ec.europa.eu/avservices/photo/photoDetails.cfm?sitelang=en&ref=P-019685/00-02#0>.

helping to overcome the rare differences in outcomes. The symposium participants also reflected on the future of transatlantic cooperation in a global economy with more than 120 competition agencies, and how US/EU cooperation might serve as a model in the global context.

Best Practices on Cooperation in Merger Investigations

Consistent with the symposium's theme of international cooperation, the DOJ, FTC, and EC also issued an updated set of Best Practices on Cooperation in Merger Investigations.⁵ As AAAG Pozen noted, "The revised Best Practices...are a prime example of how our working relationship will go forward with cooperation, trust, and respect as its guiding principles."⁶

The revised Best Practices provide an updated advisory framework for interagency cooperation when one of the two US federal antitrust agencies (US agencies) and the EC's Directorate-General for Competition (DG Comp) are reviewing the same merger. During 2011, representatives from the three agencies held a series of discussions by video link to share their experience of how the Best Practices that were issued in 2002⁷ had worked in practice over the past decade. In light of these discussions, the discussion group revised the Best Practices to better reflect current cooperation practices between the US agencies and the EC. Our common objectives remain promoting fully-informed decision-making; minimizing the risk of divergent outcomes; enhancing the efficiency of investigations; reducing burdens on merging parties and third parties; and increasing the overall transparency of the merger review process.

⁵ See US-EU Merger Working Group, Best Practices on Cooperation in Merger Investigations, October 2011, *available at* <http://www.justice.gov/atr/public/international/docs/276276.pdf>.

⁶ Press Release, *supra* note 1.

⁷ US-EU Merger Working Group, Best Practices on Cooperation in Merger Investigations, October 2002, *available at* <http://www.justice.gov/atr/public/international/docs/200405.htm>.

The revised Best Practices “reiterate the enormous value of continuing and open communication between agencies reviewing the same merger, and their common interest, along with the parties themselves, in resolving cases efficiently with effective remedies that work together to preserve competition in both jurisdictions.”⁸

The 2011 Best Practices enhance the 2002 Best Practices in several ways:

- they provide increased guidance to firms about how to work with the agencies to coordinate and facilitate the reviews of their proposed transactions;
- they recognize that transactions that agencies in the US and Europe review may also be subject to review in other countries;
- they place greater emphasis on coordination among agencies at key stages of their investigations, including the final stage in which agencies consider potential remedies to preserve competition; and
- they emphasize the role that waivers of confidentiality executed by the merging parties play in enabling more complete communication between the reviewing agencies and with the merging parties regarding evidence that is relevant to the investigation, and investigations to be conducted efficiently.⁹

⁸ *Twenty Years of Transatlantic Antitrust Cooperation*, supra note 2 at 9.

⁹ Best Practices, supra note 5. See also *FAQs of the US-EU Merger Working Group’s Best Practices on Cooperation in Merger Investigations*, available at <http://www.justice.gov/atr/public/international/docs/276279.pdf>.

Intensification of International Cooperation

Types of International Cooperation

As the 2011 Best Practices evidence, the US agencies and the EC are deeply committed to our cooperative relationship. Cooperation itself is a broad concept in the competition law context. It ranges from capacity-building in the form of seminars and international exchanges of visits by competition experts to and from relatively new agencies – something that the US agencies have done, and continue to do, with many other agencies around the world, to our mutual advantage – to very close working relationships between and among enforcement agencies in analyzing particular competition enforcement cases.

Competition agencies often also find it useful for their staffs (lawyers and economists) to talk with one another generally about competitive issues in particular sectors or particular investigations. Valuable cooperation of this sort often can be accomplished solely with a discussion of public information, particularly where one agency has accumulated significant experience in a sector.

Moving beyond public information, it is often appropriate and useful for agencies to exchange views about the specific evidence in an investigation and that evidence's relevance to specific competitive concerns and possible remedies. Such cooperation can be -- and is -- done in a limited way without waivers from the parties, but the most effective forms of cooperation require waivers from the parties. In any event, cooperation among agencies can speed the review of a matter and make for more efficient information gathering and assessment from both the agencies' and the parties' points of view.

Our overall aim is to intensify the Antitrust Division's cooperative relationships and interactions with other competition agencies around the world, and to encourage our staffs constantly to be mindful of the international implications of our enforcement actions from the very start of an investigation through to the remedial phase.¹⁰ We do this by making sure we communicate with our counterparts around the world in an open, two-way manner. Indeed, hardly a day goes by when we are not on the phone or on a videoconference with other agencies reviewing the same issues or matters. We are working hard to establish "pick-up-the-phone" relationships with the increasing number of agencies around the world. Building on existing relationships and creating new ones is key to our vision for the future of competition policy and enforcement.

Visiting International Enforcers Program

As part of our efforts to enhance our relations with international competition agencies, one of the Antitrust Division's senior career officials (an assistant chief) spent two weeks working in the EC's DG Comp in November 2011, and we hosted a DG Comp manager at the Antitrust Division in Washington, DC in December 2011. The exchange is part of our new Visiting International Enforcers Program, which we call VIEP. We envision this program, along with our other international efforts, as an enduring legacy and recognition of the ever-smaller world in which we all live.

¹⁰ See, e.g., Christine A. Varney, Assistant Attorney General, U.S. Dep't of Justice, *Coordinated Remedies: Convergence, Cooperation, and the Role of Transparency*, Remarks as Prepared for the Institute of Competition Law New Frontiers of Antitrust conference (Feb. 15, 2010), available at <http://www.justice.gov/atr/public/speeches/255189.htm>; Rachel Brandenburger, Special Advisor, International, U.S. Dep't of Justice, *International Competition Policy and Practice: New Perspectives?* Remarks as Prepared for The Centre of European Law, King's College, (Oct. 29, 2010), available at <http://www.justice.gov/atr/public/speeches/270980.pdf>.

Benefits of International Cooperation

In our experience, cooperation with our international counterparts in matters that we are each investigating benefits both the agencies and the parties: agencies gain shared learning and expertise, and the parties gain from a more efficient review. But as AAAG Pozen has noted, “unfortunately, not all merging parties have supported our cooperative approach and instead have attempted to leverage one country’s investigation against another’s. That is their choice, but these tactics often unnecessarily complicate our investigations and may extend our review.”¹¹

Guiding Principles for International Cooperation

In today’s world of multiple competition agencies, we have given consideration to how best to meet the challenges, and seize the opportunities, presented by this new situation. In this context, we have sought to articulate a new international lexicon of seven guiding principles for international cooperation with other competition agencies around the world. We have explained these principles (transparency, cooperation, convergence, mindfulness, respect, trust, and dialogue) in a number of public fora.¹²

The first three principles were first articulated by the Department of Justice’s International Competition Policy Advisory Committee (or ICPAC) in 2000:

- Increased *transparency* and accountability of government actions;

¹¹ Sharis A. Pozen, Acting Assistant Attorney General, U.S. Dep’t of Justice, *Developments at the Antitrust Division & The 2010 Horizontal Merger Guidelines – One Year Later*, Remarks as Prepared for the ABA Section of Antitrust Law 2011 Antitrust Fall Forum, (Nov. 17, 2011), available at <http://www.justice.gov/atr/public/speeches/277488.pdf>.

¹² See, e.g., Christine A. Varney, Assistant Attorney General, U.S. Dep’t of Justice, *International Cooperation: Preparing for the Future*, Remarks as Prepared for the Fourth Annual Georgetown law Global Antitrust Enforcements Symposium, (Sept. 21, 2010), available at <http://www.justice.gov/atr/public/speeches/262606.htm>; Rachel Brandenburger, Special Advisor, International, U.S. Dep’t of Justice, *International Competition Policy and Practice*, supra note 10.

- Expanded and deeper *cooperation* between US and overseas competition enforcement authorities; and
- Greater *convergence* of competition regimes.¹³

These principles of transparency, cooperation, and convergence have been at the core of our international competition policy efforts for over 10 years now. To those core principles, we have added four more that, in our view, should guide international competition policy now and in the future:

- *Mindfulness* of other jurisdictions' interests;
- *Respect* for other jurisdictions' legal, political, and economic cultures;
- *Trust* in each other's actions; and
- Ongoing *dialogue* on all aspects of international competition policy and enforcement.¹⁴

While none of these factors is completely new to international competition enforcement, we believe that it will be increasingly important to place a high priority on *each* of them in the future.

Cooperation on Individual Cases

Cooperation on individual cases can take different forms and have different outcomes, as I mentioned earlier. The Antitrust Division, with increasing frequency, cooperates with its international counterparts on many investigations, ranging from

¹³ International Competition Policy Advisory Committee, Final Report to the Attorney General and Assistant Attorney General for Antitrust, at 2 (Feb. 28, 2000), *available at* <http://www.justice.gov/atr/icpac/finalreport.htm>.

¹⁴ See Christine A. Varney, Assistant Attorney General, U.S. Dep't of Justice, *International Cooperation: Preparing for the Future*, supra note 12; Rachel Brandenburger, Special Advisor, International, *International Competition Policy and Practice*, supra note 10; Rachel Brandenburger, Special Advisor, International, U.S. Dep't of Justice, *Challenges and Opportunities in International Competition Policy*, Remarks as Prepared for the Law Society's European Group, (Nov. 9, 2010), *available at* <http://www.justice.gov/atr/public/speeches/272860.pdf>.

mergers and civil non-merger matters to criminal matters and including many of our largest and most significant investigations.

In Fiscal Years 2010 and 2011, for example, the Antitrust Division worked on dozens of investigations with an international dimension, most of which involved cooperation with competition agencies in other jurisdictions. During 2011 alone, we cooperated on merger reviews – often under waivers from parties and third parties – with many non-US competition agencies, including those in Australia, Brazil, Canada, Colombia, the European Union, Germany, Japan, Mexico, South Africa, and the United Kingdom. The Antitrust Division also coordinated with many competition agencies on criminal matters, and on some civil non-merger matters, as well.

Some Examples

Let me give you a few examples of cooperation with our international counterparts during calendar year 2011.

Deutsche Börse/NYSE Euronext

Throughout almost the whole of 2011, the Antitrust Division and EC cooperated closely on our respective investigations of the proposed acquisition by Deutsche Börse (a German company that operates Germany's largest stock exchange) of NYSE Euronext (one of the two largest stock exchange operators in the United States). The Antitrust Division and the EC communicated extensively throughout the course of the investigations, with frequent contact between the investigative staffs and the leadership of the two agencies, aided by waivers provided by the merging parties.

On December 22, 2011, the Antitrust Division announced that it had reached a settlement with the parties regarding its concerns about the effect of the merger on equity

trading in the US. The Antitrust Division required Deutsche Börse to direct its subsidiary International Securities Exchange Holdings Inc. to sell its 31.5% stake in Direct Edge Holdings¹⁵ and agree to other restrictions in order to proceed with its merger with NYSE. The Antitrust Division was concerned that, without this divestiture and other restrictions, a “combined NYSE and Deutsche Börse entity could influence the actions of Direct Edge, and thereby lessen the zeal of an aggressive and innovative exchange competitor.”¹⁶ The Antitrust Division also said that the “open dialogue between the Antitrust Division and the European Commission was very effective and allowed each agency to conduct its respective investigation while mindful of ongoing work and developments in the other jurisdiction.”¹⁷ On the same day, the EC said “we have had regular and constructive dialogue with the DOJ throughout our respective procedures” and that “the markets that the DOJ is examining in its own jurisdiction, namely in the area of U.S. equities, are different to those where the commission has raised concerns, namely European financial derivatives.”¹⁸

On February 1, 2012, the EC prohibited the merger. The differing conclusions of the two agencies resulted from differences in the markets in the respective jurisdictions. The issues in the EC’s investigation arose largely in the European derivatives market, whereas the Antitrust Division’s focus was on the US cash equity market. Nevertheless, as the EC stated, “the Commission and the US Department of Justice (DOJ) cooperated

¹⁵ Direct Edge is the fourth largest stock exchange operator in the United States. See Press Release, U.S. Dep’t of Justice, *Justice Department Requires Deutsche Börse to Divest its Interest in Direct Edge in Order to Merger with NYSE Euronext* (Dec. 22, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/278537.htm.

¹⁶ Id.

¹⁷ Id. See also Press Release, U.S. Dep’t of Justice, *Justice Department Dismisses Antitrust Lawsuit against Deutsche Börse and NYSE Euronext* (Feb. 9, 2012), available at http://www.justice.gov/atr/public/press_releases/2012/280066.htm.

¹⁸ “U.S. Clearing Deutsche Börse-NYSE Takeover Moves Final Approval to Europe,” Bloomberg, Dec. 22, 2011.

closely in this matter, although the issues on which [the agencies] focused were different.”¹⁹

The result in this matter illustrates how effective cooperation does not always result in the same outcome in different jurisdictions. We had excellent communication throughout our respective investigations, with frequent contacts between the agencies and open dialogue about the respective investigations. Critically, we were looking at different markets on the two sides of the Atlantic. Thus, while the outcome was different, there was no conflict. Indeed, this is an example of how it is important for agencies to work closely together even when market conditions differ among jurisdictions, so that each agency can understand, and anticipate, the outcome of the other’s (or others’) investigation.

CPTN/Novell

An example last year where the Antitrust Division cooperated with an international counterpart and came to the *same* outcome is *CPTN/Novell*. The Antitrust Division worked closely with the German Federal Cartel Office on the acquisition of certain patents and patent applications from Novell Inc. by CPTN Holdings (a holding company owned by Microsoft Inc., Oracle Corp., Apple Inc. and EMC Corp.). This was the first merger enforcement cooperation the Antitrust Division had had with Germany in 20 years. Aided by waivers from the parties, the agencies discussed information on, and assessments of, likely competitive effects and coordinated on potential revisions to the

¹⁹ Press Release, European Commission, *Commission prohibits proposed merger between Deutsche Börse AG and NYSE Euronext – frequently asked questions* (Feb. 1, 2012), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/60&format=HTML&aged=0&language=EN&guiLanguage=en>.

parties' agreements. The two agencies announced their respective decisions on the same day.²⁰

Unilever/Alberto Culver

This is another example of a matter where the Antitrust Division worked closely with several international counterparts around the world. In that matter, the Antitrust Division filed a complaint and consent decree requiring Unilever and Alberto-Culver Co. to divest two hair care brands in order to proceed with Unilever's acquisition of Alberto-Culver.²¹ The product markets and competitive issues involved in that investigation varied significantly between the different jurisdictions affected by the merger. Nevertheless, we discussed the merger with our counterparts in Mexico, South Africa, and the United Kingdom, and, aided by waivers from the parties, were able to enter into useful dialogue with each other as we conducted our respective investigations and crafted remedies appropriate to our respective jurisdictions.

Auto Parts

I would also like to highlight a major and ongoing criminal matter with significant international dimensions. Last month, the Antitrust Division obtained the second largest criminal fine ever imposed for a U.S. antitrust violation as a result of its investigation in

²⁰ Press Release, U.S. Dep't of Justice, *CPTN Holdings LLC and Novell Inc. Change Deal in Order to Address Department of Justice's Open Source Concerns* (Apr. 20, 2011) available at http://www.justice.gov/atr/public/press_releases/2011/270086.htm; Press Release, German Bundeskartellamt, *Bundeskartellamt clears CPTN joint venture for acquisition of Novell patents* (Apr. 20, 2011) available at http://www.bundeskartellamt.de/wEnglisch/News/press/2011_04_20.php.

²¹ Press Release, U.S. Dep't of Justice, *Justice Department Requires Divestitures in Unilever's Acquisition of Alberto-Culver Company* (May 6, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/270854.htm; Press Release, UK Office of Fair Trading, *Unilever/Alberto Culver merger: OFT accepts divestment undertakings* (June 16, 2011) available at <http://www.of.gov.uk/news-and-updates/press/2011/66-11>.

the Auto Parts industry.²² Yazaki Corporation and DENSO Corporation -- both Japanese suppliers of automotive components -- four Yazaki executives, and their co-conspirators carried out price-fixing and bid-rigging conspiracies in the sale of auto parts to automobile manufacturers in the United States. They carried out the conspiracies by agreeing, during meetings and conversations, to allocate the supply of the named products on a model-by-model basis and to coordinate price adjustments requested by automobile manufacturers in the United States and elsewhere. They sold automotive components to automobile manufacturers at inflated prices and engaged in meetings and conversations for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme.

Yazaki and DENSO agreed to plead guilty and to pay a total of \$548 million in criminal fines for their involvement in multiple price-fixing and bid-rigging conspiracies in the sale of parts to automobile manufacturers in the United States. Those fines bring the total fines obtained in the auto parts investigation to \$748 million. This exceeds the total amount in criminal fines obtained by the Antitrust Division for all of fiscal year 2011.²³ The four Yazaki executives also agreed to plead guilty and serve prison time in the United States, ranging from 15 months to two years. The two-year sentences would be the longest term of imprisonment imposed on a non-US national voluntarily submitting to US jurisdiction for a Sherman Act antitrust violation.

²² *Remarks as Prepared for Delivery by Acting Assistant Attorney General Sharis A. Pozen at the Briefing on Department's Enforcement Action in Auto Parts Industry* (Jan. 30, 2012), available at http://www.justice.gov/atr/public/press_releases/2012/279740.htm.

²³ Press Release, U.S. Dep't of Justice, *Yazaki Corp., DENSO Corp., and Four Yazaki Executives Agree to Plead Guilty to Automobile Parts Price-Fixing and Bid-Rigging Conspiracies* (Jan. 30, 2012), available at http://www.justice.gov/atr/public/press_releases/2012/279734.htm.

Our investigation into this wide-spread conspiracy in the auto parts industry is another example of the Antitrust Division's intensified international cooperation. We have worked closely with our counterparts at the EC, the Canadian Competition Bureau, and the Japanese Fair Trade Commission.

Google/Motorola

The last investigation I would like to mention briefly is the Google/Motorola investigation, where both we and the EC worked closely together and announced our decisions, within a few hours of each other, on Monday this week.²⁴ The focus of our respective investigations was the transfer of ownership to Google of Motorola's portfolio of patents – especially standard essential patents – relevant to wireless device that Motorola committed to license through its participation in standard setting organizations (SSOs).²⁵

We cooperated closely with the EC – and we also had discussions about the merger with the Australian Competition and Consumer Commission, the Canadian Competition Bureau, the Israeli Antitrust Authority and the Korean Fair Trade Commission.²⁶

²⁴ Press Release, U.S. Dep't of Justice, *Statement of the Department of Justice's Antitrust Division on its Decision to Close Its Investigations of Google Inc.'s Acquisition of Motorola Mobility Holdings Inc. and the Acquisitions of Certain Patents by Apple Inc., Microsoft Corp. and Research In Motion Ltd.* (Feb. 13, 2012), available at http://www.justice.gov/atr/public/press_releases/2012/280190.htm; Press Release, European Commission, *Mergers: Commission Approves Acquisition of Motorola Mobility by Google*, (Feb. 13, 2012), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/129>.

²⁵ *Statement of the Department of Justice's Antitrust Division on its Decision to Close Its Investigations of Google Inc.'s Acquisition of Motorola Mobility Holdings Inc. and the Acquisitions of Certain Patents by Apple Inc., Microsoft Corp. and Research In Motion Ltd.*, *supra* n. 24.

²⁶ *Id.*

Multilateral Cooperation

As well as cooperation with our counterparts on individual investigations, the Antitrust Division also regularly engages in multilateral dialogue on competition policy and enforcement. The Antitrust Division is an active participant and leader in various international competition fora, including the Organisation for Economic Co-operation and Development (OECD), the International Competition Network (ICN), the United Nations Conference on Trade and Development (UNCTAD) and the Asia Pacific Economic Cooperation (APEC), promoting competition and consumer interests across the globe. The Antitrust Division is also involved in the negotiations of the Trans-Pacific Partnership Free Trade Agreement (TPP).

OECD

The Antitrust Division has been the chair of the OECD's Working Party 3 (on Enforcement and Cooperation) for many years and is an active participant in the OECD's meetings. The OECD's Competition Committee met earlier this week in Paris with a very full agenda. There were roundtables on competition in hospital services and unilateral disclosure of information. There was also a discussion of antitrust in the digital economy, and approval of a two-year work plan in the areas of cooperation and assessment of agency performance. OECD also hosted a Global Forum on Competition aimed primarily at the concerns of developing countries, at which close to 100 competition agencies participated

Over the past two years, first former AAG Christine Varney and now AAAG Sharis Pozen, as chair of Working Party 3, have led three roundtables on the important topics of transparency and procedural fairness. The first of the three discussions covered

transparency relating to competition law and agency procedures and practice, notice of charges and proceedings, party contacts with agencies, opportunities to be heard, conduct of hearings, publication and timing of decisions, and statements issued on the closing of investigations. The second session covered agency decision-making processes, confidentiality rules and the treatment of business secrets, agency requests for information, the possibility of agreed resolutions of enforcement proceedings, and judicial review and interim relief. The last session covered the relationship between the courts and agencies, the procedures applicable to public and private competition cases before the courts, and updates on developments relating to procedural fairness and transparency in individual jurisdictions.

The proceedings of these roundtables, including summaries of the discussions and an introduction from AAAG Sharis Pozen will be published as a special publication that will summarize the extensive discussions the Working Party has had on transparency and procedural fairness over the past two years.

Procedural fairness is also a topic in other international fora, including the International Competition Network (ICN), the Asia Pacific Economic Cooperation (APEC), and the Trans-Pacific Partnership Free Trade Agreement (TPP) negotiation.

ICN

The Antitrust Division is actively engaged in the International Competition Network (ICN), a working collaboration of over 120 competition agencies devoted to dialogue and cooperation on common antitrust law and policy issues.

The Antitrust Division is a founding member of the ICN and serves on the Steering Group that guides the direction of the ICN's work. The Antitrust Division also

co-chairs the ICN's Merger Working Group with the Irish and Italian competition authorities, and leads a subgroup of the Cartel Working Group. Currently, the Antitrust Division is also leading a strategic project, along with the Turkish Competition Authority, to evaluate the ICN's work and future goals with respect to international enforcement cooperation, as the ICN embarks on its second decade.

Next month, the Antitrust Division, in partnership with our colleagues at the FTC and the ICN's Agency Effectiveness Working Group, will co-host an ICN roundtable for agency heads in Washington, DC on effective enforcement and the quality of agency decision-making.

UNCTAD

The Antitrust Division is also a participant in the Geneva-based United Nations Conference on Trade and Development (UNCTAD), which has been involved in competition issues for over 30 years. In the 1970s, UNCTAD was the forum for lengthy negotiations (in which the Antitrust Division played a leading role), that led to the United Nations General Assembly's adoption of the Set, a non-binding multilateral code of conduct for the prevention of private anticompetitive behavior.²⁷ UNCTAD has 193 members and a relatively small competition-dedicated Secretariat, which is responsible for preparing the annual meetings and provides developing countries, particularly least developed countries, with a great deal of expert assistance in drafting and implementing new competition laws. UNCTAD conducts a review conference on the Set every five years, the last in 2010, and holds annual meetings in Geneva of its Intergovernmental Group of Experts (IGE).

²⁷ The Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices, available at www.unctad.org/Templates/StartPage.asp?intItemID=4106&lang=1.

APEC

The Antitrust Division also participates in the Asia Pacific Economic Cooperation (APEC), a relative newcomer to multilateral competition work. APEC is an organization of 21 member economies in the Asia-Pacific region, including the United States. It was established in 1989 to facilitate economic growth, cooperation, trade, and investment in the region, and its Competition Policy and Law Group (CPLG) was created in 1996. Each year, the CPLG holds one meeting that discusses one or two competition-related topics; at its meeting last year, in Washington, the CPLG held discussions/roundtables on competition advocacy and procedural fairness. The CPLG also holds a competition policy training session for member economies each year.

TPP

The Antitrust Division is also involved in the negotiation of the Trans-Pacific Partnership Free Trade Agreement (TPP), a negotiation among the US, Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam – and later this year, possibly Japan. The TPP will enhance trade and investment among the TPP partner countries, promote innovation, economic growth and development, and support the creation and retention of jobs. The draft competition policy text will promote a competitive business environment, protect consumers, and ensure a level playing field for TPP companies. Notable features of the section on competition policy are the commitments to procedural fairness and transparency in competition law enforcement.²⁸

Bilateral Relations

In addition to our case cooperation and involvement in multilateral organizations, the Antitrust Division is also very active in developing new and deeper relationships with

²⁸ For more information on the TPP, see <http://www.ustr.gov/tpp>.

emerging economies, some of which – particularly the BRICS countries – are playing increasingly important roles in the global economy.

- Brazil – The US and Brazil have both an antitrust cooperation agreement²⁹ and a mutual legal assistance treaty.³⁰ The Antitrust Division recently worked closely with Brazil on a cartel investigation involving commercial compressors used in devices such as water coolers and vending machines, a case that affected both of our jurisdictions.³¹
- Russia – In November 2009, the Antitrust Division, along with the FTC, signed a Memorandum of Understanding (MOU).³² In July 2011, Russia’s Federal Anti-Monopoly Service (FAS) sponsored a conference in Moscow to train judges on competition issues, at which Antitrust Division staff presented a training session on cartel enforcement issues.
- China – In July 2011, the Antitrust Division and FTC signed an MOU with the three antimonopoly agencies in China. This was an important first step in building our relationship in competition law with China.³³ It was supplemented in November

²⁹ Agreement Between the Government of the United States of America and the Government of the Federative Republic of Brazil Regarding Cooperation Between Their Competition Authorities in the Enforcement of Their Competition Laws (Oct. 26, 1999), *available at* <http://www.justice.gov/atr/public/international/3776.htm>.

³⁰ Treaty with Brazil on Mutual Legal Assistance in Criminal Matters (Apr. 28, 1998), *available at* <http://www.gpo.gov/fdsys/pkg/CDOC-105tdoc42/pdf/CDOC-105tdoc42.pdf>.

³¹ Press Release, U.S. Dep’t of Justice, *Danfoss Group Subsidiary Agrees to Plead Guilty for Role in Price-Fixing Conspiracy Involving Refrigerant Compressors* (Oct. 4, 2011), *available at* <http://www.justice.gov/opa/pr/2011/October/11-at-1315.html>.

³² Memorandum of Understanding on Antitrust Cooperation Between The United States Department of Justice and The United States Federal Trade Commission, on the One Hand, and The Russian Federal Anti-Monopoly Service, on the Other Hand (Nov. 10, 2009), *available at* <http://www.justice.gov/atr/public/international/251836.htm>.

³³ Memorandum of Understanding on Antitrust and Antimonopoly Cooperation between the United States Department of Justice and Federal Trade Commission, on the One Hand, and the People’s Republic of China National Development and Reform Commission, Ministry of Commerce, and State Administration for Industry and Commerce, on the Other Hand (July 27, 2011), *available at* <http://www.justice.gov/atr/public/international/docs/273310a.pdf>; Christine A.

2011 with a guidance document for cooperation in merger cases.³⁴ The Antitrust Division and the FTC have also conducted frequent meetings and training workshops with the Chinese antimonopoly agencies, both in China and the US, to discuss substantive antitrust analysis and effective investigative techniques, submitted written comments on draft implementing rules and guidelines, and had less formal exchanges to deepen our cooperative relationship.

- India – The Antitrust Division has engaged with India’s competition authorities for several years – hosting Ministry of Corporate Affairs (MCA) and Competition Commission of India (CCI) officials in Washington, most recently last November and sending our experts to India to share our enforcement and administrative experience. We expect to conclude an MOU with MCA and CCI in the near future.
- South Africa – The Antitrust Division recently conducted a cartel workshop in South Africa in December 2011 and worked closely with the Competition Commission of South Africa on the Unilever/Alberto Culver merger I discussed earlier.

All of the BRICS except China are active members of ICN and observers at OECD.

Conclusion

I hope that these remarks about the Antitrust Division’s recent activities have given you an idea of the importance the Antitrust Division places on international cooperation across the entire spectrum of its activities. The Antitrust Division is committed to the vigorous enforcement of the antitrust laws, as well as to enhancing

Varney, Assistant Attorney General, U.S. Dep’t of Justice, *Remarks on the Occasion of the Signing of the Memorandum of Understanding on Antitrust Cooperation*, (July 27, 2011), available at <http://www.justice.gov/atr/public/speeches/273347.pdf>.

³⁴ Guidance for Case Cooperation between the Ministry of Commerce and the Department of Justice and Federal Trade Commission on Concentration of Undertakings (Merger) Cases (Nov. 29, 2011), available at <http://www.justice.gov/atr/public/international/docs/277772.pdf>.

transparency and certainty for consumers and business. As Attorney General Eric Holder has said in relation to our work: the “Antitrust Division is open for business.”³⁵ This applies equally to the intensification of our international cooperation efforts, as it does to our efforts domestically.

³⁵ “Farmers Tell Feds Considering Antitrust Action that Big Poultry Companies Control Industry,” Star Tribune (May 21, 2010), *available at* http://www.startribune.com/templates/Print_This_Story?sid=94618149.