



DEPARTMENT OF JUSTICE

ANTITRUST ENFORCEMENT IN A GLOBAL ECONOMY

Address by

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I. INTRODUCTION

Good morning. It is an honor to be the first antitrust official to address this Silver Anniversary edition of the Fordham international antitrust conference. I will begin this morning by summarizing the many remarkable developments in international antitrust law and policy in which the Antitrust Division has participated over the past twelve months. In his talk here last year, Joel Klein said that the year preceding his speech had been an “*annus mirabilis*” for the Division. While it would be imprudent of me to try to outdo Joel, I do have to say that I’ve got even better material than he had.

After reviewing recent developments, I will turn to a discussion of some of the broader antitrust policy questions that our experience suggests. These questions arise from the fundamental facts that we live in a global economy, but we do not live in a global state.¹

The first fact -- that we live in a global economy -- means that we all have a real and increasing interest in the state of competition, and of antitrust law, outside our borders. Much of the discussion these days about international antitrust policy, particularly in academic circles and multilateral fora such as OECD and the WTO, is premised on this point.

I fear, however, that the discussion sometimes loses sight of the second fundamental fact -- that we do not live in a global state. This is not just a legal formality. It is crucial because it implicates issues of procedure and efficiency in antitrust enforcement and, more important, because different states sometimes have different views as to what kinds of substantive competition rules and enforcement policies are in their interests. So, I would like to explore

¹See A. Douglas Melamed, “International Antitrust in an Age of International Deregulation,” 6 *George Mason Law Review* 437, 438 (1998).

what I perceive as a tension between these fundamental facts, and to suggest some things that the tension may tell us about the appropriate course for development of international antitrust.

II. INTERNATIONAL ANTITRUST ENFORCEMENT AT THE DEPARTMENT OF JUSTICE DURING THE PAST YEAR

Before reviewing our international enforcement record, I think it is important to put this in context. Not all of our antitrust enforcement is international in scope. To the contrary, the 860 employees of the Antitrust Division still spend a great deal of time -- most of their time -- on largely domestic matters. To mention just a few highlights from earlier this year, some of you might have heard that we filed a civil lawsuit against Microsoft, charging it with various types of anticompetitive conduct in an effort to monopolize the markets for desktop computer operating systems and Internet browsers; the trial in that case began earlier this week.

In March, we went to court to challenge the proposed acquisition by Lockheed Martin of Northrop Grumman. This \$11.6 billion defense industry merger was the single largest merger ever challenged by the Department in contested litigation. After motions practice in district court, the defendants abandoned the transaction in July -- a good result, we think, for both the Department of Defense and American taxpayers.

And earlier this month, the Division sued Visa and Mastercard, the nation's two largest credit card networks (which together account for 75% of all credit card purchases). The complaint alleges that the ownership structure and by-laws of these networks restrict competition among credit card networks.

While those and many other domestic matters grabbed headlines this past year, our international enforcement activities were no less successful in breaking new ground.

A. International Cartel Enforcement

Let me begin with our immensely successful program of criminal law enforcement against international cartels. Vigorous enforcement against international cartels has been a top Division priority for several years.² Anne Bingaman and Joel Klein have discussed the details of some of these cartels on previous occasions here at Fordham. The products involved in these cartels have been varied: They include lysine or citric acid (both of which are food additives), sodium gluconate (an industrial cleaner), graphite electrodes (used in steel production), and sorbates (a food preservative); and the firms and individuals involved have been American, Belgian, Dutch, French, German, Italian, Japanese, and Swiss. But, while the specifics have varied, the goals and methods of the cartels have been essentially the same: to carve up world markets by fixing prices and allocating sales volumes among the conspirators on a worldwide basis. These cases are not aberrations. The Division now has more than 30 ongoing grand juries -- approximately one-third of our criminal investigations -- looking into suspected international cartel activity.

The time, effort, and unequalled professionalism that Gary Spratling, our Criminal Deputy, and our hardworking Division staff have put into this program yielded record criminal fines in the fiscal year that ended in September 1997 -- a total of \$205 million. That total was five times higher than in any previous year in the Division's history. Amazingly, however, during the fiscal year just ended, we broke that record, with nearly \$270 million in fines imposed or recommended in plea agreements. In one of the recent cases, UCAR International, a U.S.

²See Statement of Joel I. Klein before the Subcommittee on Antitrust, Business Rights, and Competition of the Senate Judiciary Committee, Oct. 2, 1998, at 5-10.

firm, agreed in April to pay the largest antitrust fine in U.S. history -- \$110 million -- for its role in an international cartel to fix the price and allocate the volume of graphite electrodes in the United States and elsewhere. Of the nearly half billion dollars in fines we have secured over the past two years, nearly \$440 million was imposed in connection with the prosecution of international cartels. To put these numbers in perspective, the total amount of criminal fines in international cartel cases during the past two years is virtually identical to the total amount of criminal fines imposed in all the Division's criminal prosecutions during the 20 years from 1976 through 1995.

The Division achieved another important victory just last month in our battle against international cartels, when a Chicago jury returned a verdict of guilty against three top executives of Archer Daniels Midland, for masterminding that firm's participation in the lysine cartel. That verdict, coupled with the many guilty pleas we have obtained from U.S. and foreign individuals during the past two years, should send a strong deterrent message that our commitment to vigorous enforcement against hard-core cartels -- both international and domestic -- includes prosecuting top corporate officials in appropriate cases.

Unfortunately, the persistence of international cartel activity suggests that our deterrent message has not been strong enough. Accordingly, we have asked Congress to raise the Sherman Act ceiling on corporate criminal fines from the current \$10 million to \$100 million.³ We believe that, in this way, cartel activity will be shown not to pay, even in large international

³In recent years, the Division sometimes has been able to use the "twice the gain or twice loss" formula of 18 U.S.C. § 3571(d) in negotiated resolutions of criminal matters, rather than being limited by the \$10 million maximum of 15 U.S.C. § 1, as amended.

conspiracies where the commercial harm extends far beyond U.S. borders. In that regard, I should emphasize that other antitrust enforcement agencies around the world are investigating and taking action against some of the same cartels that we are prosecuting, based on injuries inflicted on their economies. I suspect that Konrad von Finckenstein and Alex Schaub will have something to say about that in their presentations to you later today.

As you know, the investigation and prosecution of international cartels poses a number of challenges for the Division. In many cases, key documents and witnesses are located abroad, often out of the reach of our evidence-seeking authority. While we have been very successful recently in convincing foreign participants in international cartel activity to cooperate in our investigations, the fact is that national boundaries continue to limit our ability to prosecute cartels solely by using our own processes. Accordingly, we continue to work with foreign governments in a variety of U.S. criminal matters, and to pursue cooperation agreements of various sorts with foreign competition authorities, in order to improve our ability to cooperate against hard-core cartels and other matters. I am pleased to note in that connection, as the government of Japan announced recently, that Japan and the United States have begun negotiations on an antitrust cooperation agreement; a good agreement would have real benefits for antitrust enforcement in both countries.

To the same end, we have been working in the Organization for Economic Cooperation and Development (the OECD) to encourage the 29 OECD member countries toward more systematic and effective anti-cartel enforcement and international cooperation. The United States introduced a cartel proposal at the OECD two years ago; it was adopted by the OECD Council in March of this year as a Recommendation and endorsed in April at the ministerial

level.⁴ This new Hard Core Cartel Recommendation encourages OECD members to ensure that their laws “effectively halt and deter hard core cartels;” to enter into mutual assistance agreements to permit sharing evidence with foreign authorities, to the extent permitted by national laws; and to review provisions in their laws that stand in the way of such cooperative efforts. This is a major step in our joint fight against international cartels.

B. International Merger Enforcement

Turning to international merger enforcement, the Division and the FTC received premerger notifications for nearly 4,600 mergers and acquisitions during the fiscal year just ended, the largest number ever. Not surprisingly, many of these transactions were international in scope because they involved firms or assets based outside the U.S., or affected international (as opposed to U.S.-only) markets, or involved evidence located outside the U.S. One recent example was our investigation of American Airlines’ proposed acquisition of 8.5% of Aerolineas Argentinas. In July, American agreed to restructure the transaction to eliminate certain anticompetitive effects that the transaction would otherwise have had on US-Argentine passenger routes.

For various reasons -- most of them relating to merging parties’ Hart-Scott-Rodino obligations -- we have not had as much difficulty obtaining evidence in merger cases as in criminal or civil non-merger cases. But international mergers sometimes do present special analytical and remedial challenges.

⁴OECD, Recommendation of the Council Concerning Effective Action against Hard Core Cartels, [C(98)35/FINAL], March 30, 1998.

Moreover, international mergers often are subject to review by two or more -- sometimes many more -- countries' antitrust agencies. In order to minimize the burden placed on merging parties by multijurisdictional antitrust review, and to minimize conflicts that can result from different antitrust decisions about a transaction, it is crucial that we establish and cultivate good relations with foreign antitrust agencies, that we understand each other's merger enforcement policies and practices, and that we coordinate where it makes sense to do so. Given the clear and continuing interest of different nations in applying their own laws to mergers that have significant impacts on their markets, cooperation is crucial, perhaps especially in those cases where it is difficult because of the complexity of the transaction or the existence of different statutory requirements.

In recent years, we have had the most frequent need for pre-merger review cooperation with the EU. And our most recent experiences with case-specific enforcement cooperation have been very good. This is illustrated by two recent mergers.

The first was the enormous WorldCom/MCI telecom merger, involving two U.S. firms, which resulted this summer in the divestiture of MCI's \$1.75 billion in Internet assets to Cable & Wireless plc -- the largest divestiture in U.S. merger history. In that case, Division staff and DGIV staff worked closely to share their independent analyses of the transaction as they evolved, and we and the EC Commission ultimately reached essentially the same conclusions. With the parties' consent, obtained through written waivers of confidentiality, the agencies shared confidential information with one another and held joint meetings with the two U.S. companies to discuss the issues and possible solutions. In addition, before announcing its approval of the transaction in July, the European Commission formally requested, pursuant to the

1991 U.S.-EU antitrust cooperation agreement, the Division's cooperation and assistance in evaluating and implementing the proposed divestiture, which had been proposed both to us and to the Commission.⁵

Similarly, both the Division and DG-IV reviewed the proposed merger of Halliburton and Dresser Industries (again, both U.S. companies). These independent but coordinated investigations culminated in late September in a proposed U.S. consent decree in which Halliburton agreed to sell a key part of its worldwide oilfield service business. In this matter, too, Division and DG-IV staffs shared views and information about the transaction, pursuant to written waivers of confidentiality by the parties; and, again, the Commission relied on Halliburton's divestiture commitment to the Division to resolve competitive issues that might have arisen for the Commission.⁶

In my view, the *WorldCom/MCI* and *Dresser/Halliburton* matters illustrate how well-coordinated merger enforcement should work: Our staffs interacted frequently and effectively; the merging parties were able to work through issues with both staffs at roughly the same time; both we and the Commission preserved independent decision-making authority; and the

⁵The Commission's press release of July 8, 1998 stated, in part: "The Commission's investigations, and negotiations of remedies, were undertaken in parallel with the examination of the case which is still being conducted by the [Department]. The process so far has been marked by [a] considerable level of cooperation between the two authorities, including exchanges of views on the analytical method to be used, coordination of information gathering and joint meetings and negotiations with the parties."

⁶The Commission's press release of July 8, 1998 stated, in part: "Concerns that the merger might create or strengthen a dominant position in the drilling fluids segments have been removed by undertakings submitted by the parties to the [Department], which is concurrently reviewing the transaction."

divestiture results satisfied the competition concerns of both the U.S. and the EU. We will continue to work with the EU along these lines, and with other antitrust agencies as well, in appropriate circumstances, while maintaining our independent authority to enforce U.S. antitrust laws.

C. Civil Non-Merger Matters and Positive Comity

During the past year, there has been an important addition to the tools we possess to deal with international matters, and with civil non-merger matters in particular: our new positive comity agreement with the EU, signed in June, which builds upon the positive comity provisions of our 1991 antitrust cooperation agreement. Most of you are familiar with the concept. The antitrust authority of one country makes a preliminary determination that there are reasonable grounds for an antitrust investigation, typically in a case in which a firm based in that country appears to have been denied access to the markets of another country by anticompetitive behavior in the latter. The requesting authority then refers the matter, along with the preliminary analysis, to the authority whose home markets are most directly affected by the suspect behavior. After consulting with the foreign antitrust authority, and depending on the conclusions the foreign authority reaches and the actions it takes, the requesting authority may accept the foreign authority's conclusions or seek different results under its own laws. Both the 1991 agreement with the EU and our 1995 agreement with Canada contain positive comity provisions; the basic

concept is part of the 1995 OECD Recommendation;⁷ and we strongly believe that such provisions should form a part of standard antitrust cooperation agreements.

Our new agreement with the EU fleshes out the positive comity process and sets forth a formal protocol for referrals, including a presumption of use in certain cases in exchange for certain commitments on the part of the requested authority. The agreement explicitly does not apply to mergers, in part because of the tight statutory deadlines involved in both the U.S. and the EU; and the agreement contemplates that the parties will remain free to pursue separate and parallel enforcement activities where anticompetitive conduct, such as international cartel behavior, affects both jurisdictions and justifies the imposition of penalties within both jurisdictions. While no requests have yet been made under the new agreement, we understand that the EU is far along in investigating a referral we made last year under the 1991 agreement regarding possible anticompetitive conduct by several European airlines that may be preventing U.S.-based computer reservation systems from competing effectively in certain European countries. Both we and the EU are working hard to ensure that the positive comity mechanism will be successful.

III. DEALING WITH INTERNATIONAL ANTITRUST PROBLEMS IN THE REAL WORLD: COMMON LAW OR COMPETITION CODE?

The increasing interest in transnational antitrust enforcement -- through application of antitrust laws to international transactions and behavior, enforcement cooperation by competition

⁷OECD, Revised Recommendation of the Council Concerning Cooperation between Member Countries on Anticompetitive Practices Affecting International Trade, [C(95)130/Final], July 28, 1995.

authorities, and positive comity -- reflects the fact that we live in a global economy. But the hard problems result from the fact that we do not live in a global state. The multinational world naturally implies issues of national sovereignty and issues of process. All of us who have been involved in multinational mergers, and have confronted the different timetables and different procedures of various reviewing competition agencies, are familiar with these problems.

But the problems posed by multinational competition enforcement go, I think, deeper than that. They reflect at their core the fact that different countries have different substantive views about what constitutes sound competition policy. They might, of course, all be right about that; it might be that what is sound competition policy for one country is not -- at least in some respects -- sound competition policy for another country. But, regardless of what any one country thinks is sound competition policy for itself or for others, the fact is that there are differences. The critical question, therefore, is how to ameliorate those differences over time, and how to deal with the differences when and to the extent they exist.

There was a time when it seemed that no one, except specialists (such as the people in this room), cared about these issues. Today, though, interest in antitrust is spreading throughout the world. For those of us who believe in the importance of competition and open markets, this is a good thing. We are pleased that competition issues are discussed in an increasing number of international fora -- OECD, NAFTA, the Free Trade Area of the Americas (FTAA), the Asia Pacific Economic Cooperation, the United Nations Conference on Trade and Development, and the World Trade Organization (WTO), to name just a few, and we are pleased to participate actively in those discussions.

In that connection, we believe that the existing WTO working group on the relationship between trade and competition policy has played an important educational role for the past two years in exposing many WTO members to antitrust concepts and in exchanging ideas among WTO members. We hope that consensus can be reached later this year to continue the working group's discussion and education mandate.

We do not believe, however, that it would make sense at this time to commence multinational negotiation of common antitrust principles or rules. As you know, some have suggested that we do just that. Perhaps best-known is the EU's proposal for negotiating competition rules in the WTO, subject to binding dispute settlement.

For the next few minutes, I would like to explain why we at the Department of Justice question both the utility and the wisdom of such an exercise, whether in the WTO or elsewhere. Briefly stated, our view is that there are real, substantive differences among nations; that many of the theoretical and practical issues involved in international antitrust enforcement are new and unformed; that agreement on rules or principles, beyond the most general and imprecise -- and certainly agreement on sound substantive principles -- is very unlikely in the near future; that competition authorities from different countries are more likely to agree as they gain enforcement experience dealing with and cooperating on specific cases; that these agencies are more likely to agree on individual cases than on general rules or principles; and, therefore, that nations are likely to have more success by exchanging views and working together in a common law type of case-by-case process, than by seeking to negotiate multinational rules.

A. The EU Proposal

Let me begin by summarizing the EU's proposal, as stated by Commissioner Van Miert at the WTO last April,⁸ which we might regard as a proxy for other, similar suggestions. As I understand it, under the EU's proposal WTO members would: (1) agree to enact antitrust laws and create agencies to enforce them; (2) agree on "common principles or rules on anticompetitive practices with an international dimension," including a ban on cartel behavior (including export cartels) and rules on monopolies and vertical restraints; (3) develop a "cooperation instrument," including mandatory positive comity rules; and (4) provide binding dispute settlement for alleged government failures to adhere to the first three obligations. The EU does not foresee the creation of a WTO antitrust enforcement agency, and it is not clear whether merger rules would be developed under its approach.

Our view, as summarized by Joel Klein in the *Financial Times* in February⁹ and at this conference last year, is that negotiating WTO competition rules at this time is a bad idea, for several reasons.

First, it would be very difficult to negotiate sound antitrust rules in the WTO. There simply is no worldwide consensus on the sort of neutral legal and economic principles that sound antitrust enforcement demands, and a trade-focussed forum like the WTO is not the place to develop such a consensus. Roughly one-half of the WTO's 130-odd members do not have antitrust laws, and most of the members that do have only a very few years of enforcement

⁸See, e.g., Address of Commissioner Karel Van Miert, "The WTO and Competition Policy: the Need to Consider Negotiations," Geneva, April 21, 1998.

⁹Klein, "No Monopoly on Antitrust," *Financial Times*, Feb. 13, 1998.

experience. Second, in this context, any WTO rules would be lowest-common-denominator rules that would merely serve to justify weak national antitrust enforcement. Third, such lowest-common-denominator rules would serve little purpose, and extending the WTO dispute settlement mechanism into antitrust enforcement would both involve the WTO in second-guessing prosecutorial decisionmaking in complex evidentiary contexts -- a task in which the WTO has no experience and for which it is not suited -- and inevitably politicize international antitrust in ways that are not likely to improve either the economic rationality or the legal neutrality of antitrust decisionmaking. That is the broad outline of the argument; I refer you to Commissioner Van Miert's April speech for the EU's response.

B. Antitrust for Everyone?

Another response to our concerns was set forth in a recent edition of *The Economist*. That magazine, while acknowledging that many WTO members already have antitrust laws, pointed out that some 60 WTO members still have no such laws and argued that those countries should be forced to adopt some, even of a minimalist sort.¹⁰ But why should that be so?

We at the Antitrust Division, and presumably most or all of you, share the view that sound antitrust enforcement opens markets to healthy competition and contributes substantially to economic well-being. But, unlike the international trade rules that are the core of the WTO's work, antitrust rules are not primarily concerned with international boundaries or with interactions among nations. Antitrust rules are primarily focused on private conduct and on economic activity -- which, in the U.S. and elsewhere, is still largely domestic in nature.

¹⁰See *The Economist*, Oct. 3, 1998, at 16-17.

By our count, more than 80 countries now have antitrust laws of some description, and another two dozen countries are in the process of drafting them. Nearly every significant trading nation in the world is in one or the other of these categories. And almost all of the countries that do not yet have and are not about to enact antitrust laws are very small. To those who argue that all countries should be required to have antitrust laws, we should ask, just how many officials should a country with a population of 500,000 have in its as-yet-nonexistent antitrust agency? (Nearly 20 WTO members have populations of 500,000 or less.) And what sort of enforcement policies and priorities should it devise? I certainly don't have answers to those questions, and it is not clear why anyone in the U.S. or at the WTO should want to second-guess whatever conclusions such countries might themselves reach about those questions.

Moreover, antitrust laws differ in important respects from country to country. To be sure, most have broadly similar core substantive provisions: prohibitions of cartel behavior, abuse of dominance (or anticompetitive conduct by monopolists), and prohibitions on anticompetitive mergers and acquisitions. (Argentina and Peru are notable exceptions on this last point.) Nearly 50 countries have premerger notification requirements.

It is not clear, however, that there is anything approaching the same degree of similarity in the ways in which these broad notions are implemented by the various countries in the context of real cases. Nor is it clear that all or even most of these 100 or so countries have the resources and the experience to administer their antitrust laws effectively.

This is not to suggest that diversity is necessarily bad. Diversity may reflect differing market circumstances or different choices in the way antitrust is integrated with laws reflecting other national objectives. Whatever their reason, these differences have to be taken seriously.

C. Dealing With Substantive Differences

Some of the differences among competition regimes are well-known. For example, the U.S. and the EU have different enforcement policies with respect to vertical restraints, rooted at least partly in the EU's historic need to abolish distribution systems based on intra-EU national borders. There are also differences between the U.S. and the EU on monopolization or abuse of dominance, and there are differences between the *per se* U.S. rule on criminal price-fixing and the Canadian requirement of "undueness" for the same offense.

Naturally, there are and will be many other differences in law and enforcement policy among the 100-plus antitrust laws. For example, in some countries, protecting competition means fostering efficient outcomes, even if that means that smaller local businesses fall by the wayside in the face of more efficient, and maybe foreign, competitors. In other countries, by contrast, protecting competition means making sure that small local concerns have a fair chance to compete against larger rivals, or that nascent local industries are able to get off the ground; those objectives may translate into policies that are not entirely based on efficiency or consumer welfare.

The procedures followed by some antitrust agencies -- and not just those in developing countries -- are not as transparent as we think they should be, although law enforcement agencies that deal with highly confidential business information clearly have to have some limitations on transparency. Some antitrust laws in developing countries and countries in transition have allegedly been applied as investment screening laws rather than antitrust laws when applied to foreign investment.

Differences like these -- some substantive, some procedural, some consistent, some *ad hoc*, and some simply invisible -- will often be outcome-determinative. And for at least this reason, it seems to me that requiring every country to have an antitrust law will either result in vague, general standards that do not add much to competition or will expose substantive differences whose resolution will either be impossible or jeopardize the preservation of sound antitrust principles.

So, while we are at a point where we can identify some important questions posed by the recent proliferation of antitrust laws, we are far from being justified in binding ourselves to answers or dictating the answers to others -- which is what a WTO negotiation would require us to do. This is not false modesty on our part. Perhaps because we in the U.S. have had a long and complex enforcement history and are accustomed to a common law development of antitrust law, and because we know the serious adverse consequences there would have been for our law and the U.S. economy if antitrust law had been frozen in, say, 1895 after the *Sugar* case¹¹ or 1967 after *Von's Grocery*¹² and *Schwinn*,¹³ we are skeptical of attempts to set complex antitrust principles in stone. Even a "least common denominator" stone.

Let me be clear: We are very pleased by what has been achieved through our good and increasingly close working relationships with antitrust agencies in Canada, the EU, and elsewhere; these are constantly evolving relationships. We learn a lot in every case, not only about similarities in view, but about differences in substantive law and procedure that we have to

¹¹United States v. E.C. Knight Co., 156 U.S. 1 (1895).

¹²United States v. Von's Grocery Co., 384 U.S. 270 (1966).

¹³United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).

deal with and take into account the next time we work together. And the process of working together on specific cases has, I think, tended to bring our thinking closer together.

Accordingly, we will continue to work with foreign antitrust agencies, as appropriate, on particular law enforcement matters, pursuant to various types of cooperation agreements. We will continue to make negotiation of new, appropriately-tailored bilateral cooperation agreements a priority. And we will continue to work with new antitrust agencies as we have done since 1990 in two dozen developing countries and countries in transition, as our resource constraints allow. In the past year alone, we have sent Division attorneys and economists (joined by FTC colleagues) on technical cooperation missions to antitrust destinations from Bucharest to Buenos Aires. In all these ways, we hope to broaden the consensus that sound antitrust enforcement benefits both individual countries and the international community as a whole.

We will, in short, continue to pursue a common law approach to international antitrust enforcement -- through case-by-case cooperation and bilateral dealings with competition authorities throughout the world and through discussion and mutual education in multinational fora.¹⁴ But we do not believe that the time is right to negotiate multinational antitrust principles

¹⁴These include, in addition to those I mentioned earlier in this presentation, others, such as the recent Antitrust Summit of the Americas. On October 9, the heads of antitrust agencies from 9 of the 12 Western Hemisphere countries with antitrust laws met in Panama City to discuss antitrust issues of common interest; two other agencies were also represented. The agencies issued a communique in which they expressed their intention: “1) to promote an authentic competition culture among market participants in their respective countries; 2) to affirm their commitment to effective enforcement of sound competition laws, particularly in combatting illegal price-fixing, bid-rigging, and market allocation; 3) to cooperate with one another, consistently with their respective laws, to maximize the efficacy and efficiency of the enforcement of each country’s competition laws, and to help disseminate the best practices for the implementation of competition policies, with emphasis on institutional transparency; 4) to encourage the efforts by those small economies in the region that do not yet have solid

or rules, when the problems are only dimly understood, there remain significant differences of view about antitrust policy, and it is so hard to see what practical benefit -- to the resolution of real problems and the preservation of sound antitrust principles -- could result from such negotiations.

D. ICPAC

Consistent both with our recognition that there are important unresolved international antitrust issues and with our common law approach, Attorney General Reno and Joel Klein last year established an International Competition Policy Advisory Committee to examine these issues with an outside-the-Division perspective, giving special attention to three key issues. First, building on our antitrust cooperation agreements and the OECD Hard Core Cartel Recommendation, how can we build a consensus among governments for cooperation and effective prosecution directed at international cartels? Second, given the proliferation of antitrust laws and premerger notification requirements, how can the various antitrust agencies best coordinate their merger review efforts, while preserving their sovereignty, to achieve sound results for both merging firms and consumers? And third, how do we deal with the complex relationships between trade and competition from an antitrust perspective? The Advisory Committee, which is co-chaired by former AAG Jim Rill and former International Trade Commission Chairwoman Paula Stern, has already met twice this year and will hold three days of hearings on November 2-4; the first day will feature antitrust officials from around the world, including many of the speakers at this Conference.

competition regimes to complete the development of their legal frameworks; and 5) to seek to advance these principles in the Negotiating Group on Competition Policy of the [FTAA].”

We look forward to receiving the Committee's final report next Fall and, more broadly, to continuing our dialogue on these important issues with all of you and with our counterparts throughout the world. Thank you.