



DEPARTMENT OF JUSTICE

Recent Developments in Merger Control: Views from the U.S. Department of Justice's Antitrust Division

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My remarks today address two of the U.S. Department of Justice's Antitrust Division merger cases over the past year: the proposed mergers of AT&T and T-Mobile USA, and Deutsche Börse and NYSE Euronext. Those cases involved interesting analytical issues regarding market definition, efficiencies and partial acquisitions. I am pleased to have the opportunity to discuss them with you today within the framework of the 2010 Horizontal Merger Guidelines,¹ whose two-year anniversary we just passed.

The Deutsche Börse/NYSE matter also involved extensive cooperation efforts between the Antitrust Division and the European Commission. I will accordingly mention the principles that guide our international cooperation efforts, as well as discuss a third matter—the merger of United Technologies Corporation (UTC) and Goodrich Corporation—which involved substantial international cooperation efforts and resulted in synchronized resolutions across three jurisdictions: the United States, the European Union and Canada. Finally, I will conclude my remarks by briefly mentioning three other fruits of our international cooperation efforts: revised best practices regarding cooperation in merger investigations issued jointly by the Antitrust Division, the Federal Trade

¹ U.S. DEP'T OF JUSTICE AND FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES (2010) [hereinafter 2010 HMGs or 2010 guidelines], available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>. See generally Christine A. Varney, *The 2010 Horizontal Merger Guidelines: Evolution, Not Revolution*, 77 ANTITRUST L.J. 651 (2011); Carl Shapiro, *The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years*, 77 ANTITRUST L.J. 49 (2010); Rachel Brandenburger & Joseph Matelis, *The 2010 U.S. Horizontal Merger Guidelines: A Historical and International Perspective*, 25 ANTITRUST 48 (Summer 2011).

Commission and the European Commission; joint guidance on case cooperation issued by the Antitrust Division, the Federal Trade Commission and the Chinese Ministry of Commerce (MOFCOM); and upcoming discussions to share merger enforcement expertise among antitrust enforcers from the United States, Canada and Mexico.

United States v. AT&T

About this time last year, the United States brought an antitrust case in federal district court seeking to prevent AT&T's proposed \$39 billion acquisition of T-Mobile USA.² In the United States, there are four wireless carriers with facilities located across most of the country: Verizon, AT&T, Sprint and T-Mobile. Smaller, regional carriers with local presences exist as well, but their competitive significance is limited: at the time of our suit, the four national carriers had about a 90 percent share of U.S. wireless consumers.

Market definition

In our complaint, we alleged two product markets: mobile wireless telecommunications services and mobile wireless telecommunications services sold to enterprise and government customers. That is, we pleaded an individual consumer market and an enterprise market.

² Complaint, *United States v. AT&T Inc.*, No. 1-11-cv-1560 (D.D.C. filed Aug. 31, 2011), available at <http://www.justice.gov/atr/cases/f274600/274613.htm>. The factual allegations of each case discussed herein are set forth in their respective court filings, citations to which are provided once in each relevant section.

The two product markets had different geographic markets. The enterprise market was national because large businesses often purchase wireless services for employees located in different parts of the country. With regard to the consumer market, the United States alleged that AT&T's acquisition of T-Mobile would have had nationwide competitive effects across local markets. In keeping with the 2010 guidelines' emphasis on "demand substitution factors,"³ we alleged local markets because, among other things, most individual consumers buy wireless services from providers that offer and market services near their homes and workplaces. Also in keeping with our past practice, the local markets were defined by reference to spectrum licensing areas authorized by the Federal Communications Commission (FCC), the U.S. regulatory body that manages the nation's spectrum.

In addition, we also emphasized the nationwide competitive effects. In competing for individual consumers, service providers advertise nationally, have nationally recognized brands, and offer pricing, plans and devices that are available nationwide. Moreover, the four national carriers vary their prices little across the United States because, among other reasons, nationwide pricing simplifies customer service and billing, reduces consumer confusion that might otherwise result from regional pricing disparities, and allows the carriers to take advantage of nationwide advertising in promoting their services. Moreover, the national carriers' competitive decisions affecting technology,

³ 2010 HMGs § 4.

plans, prices and device offerings are typically made at a national, rather than a local, level. All these factors led us to allege that it was also appropriate to consider the competitive effects of the transaction at a national level.

Concentration levels

One change in the 2010 guidelines was the revision of the concentration thresholds that trigger the Antitrust Division to presume competitive harm from a proposed transaction. Specifically, the 2010 guidelines provide that the Antitrust Division will presume that a merger will harm consumers if it increases the Herfindahl-Hirschman Index (HHI) by more than 200 points and results in a highly concentrated market with an HHI exceeding 2,500 points.⁴ As you will recall, that presumption was triggered under the previous guidelines at a lower 1,800 point threshold.⁵

But even under the higher thresholds announced in the 2010 guidelines, AT&T's proposed acquisition of T-Mobile triggered the presumption of anticompetitive effect in many markets, often by large margins. With regard to the national enterprise market, we alleged that the transaction would have resulted in an HHI of more than 3,400 and an increase of more than 300 points. With regard to the local consumer markets, we alleged that the proposed transaction triggered the presumption of anticompetitive effect in more

⁴ *Id.* § 5.3.

⁵ U.S. DEP'T OF JUSTICE AND FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 1.51(c) (1997), *available at* <http://www.justice.gov/atr/public/guidelines/hmg.htm#15>.

than 90 of the 100 largest local markets. Aggregating those consumer markets across the nation, we also alleged that the proposed merger would have resulted in an HHI of more than 3,100 with an increase of nearly 700 points.

Our competitive effects analysis fully supported the presumption of anticompetitive harm flowing from the concentration levels. Our complaint detailed the important role that T-Mobile played in the market, citing, for instance, internal AT&T analyses describing ways that it felt competitive pressure from T-Mobile innovations and evidence regarding T-Mobile's disruptive, low-price strategy.

Efficiencies

The parties abandoned their proposed merger before the matter went to trial, shortly after the FCC, which was concurrently reviewing the transaction, released a staff report detailing the likely anticompetitive effects of the proposed transaction.⁶ A few aspects of the FCC's report are particularly worth highlighting because they usefully illustrate how the 2010 guidelines, which the FCC cited in connection with its own analysis, applied to the parties' primary argument in support of the proposed merger—that it would have allowed the firms to achieve significant efficiencies.

As noted in the 2010 guidelines, “a primary benefit of mergers to the economy is their potential to generate significant efficiencies and thus enhance the merged firm's

⁶ *In re AT&T Inc.*, FCC WT Docket No. 11-65, Staff Analysis and Findings (Nov. 29, 2011) [hereinafter FCC Report], available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1955A2.pdf.

ability and incentive to compete, which may result in lower prices, improved quality, enhanced service, or new products.”⁷ Accordingly, the Antitrust Division is attuned to efficiency claims and will not ordinarily challenge mergers when their “cognizable efficiencies are of a character and magnitude such that the merger is not likely to be anticompetitive in any relevant market.”⁸

The thrust of the parties’ efficiencies claim was that the acquisition would have allowed the merged firm to lower its costs, thereby leading to lower prices notwithstanding any increase in the merged firm’s market power. The parties supported their claimed cost reductions through economic and engineering models comparing likely costs with and without the merger. The FCC closely analyzed these models and detailed their flaws as the reason for rejecting them. Among other things, the FCC noted significant inconsistencies between the models and the parties’ actual business practices. For instance, the model assumed that, faced with increased demand for wireless services in a particular geographic region, the parties would add another cell site at a randomized area within the region instead of at a place where it would address increased demand most effectively and

⁷ 2010 HMGs § 10.

⁸ *Id.*

efficiently.⁹ This and other inconsistencies between the parties’ models and actual business practices led the FCC to reject the parties’ efficiency claims as “unsupported.”¹⁰

The FCC’s focus on the flaws in the parties’ efficiency submissions is fully in keeping with the 2010 guidelines, which similarly emphasize that it is “incumbent upon the merging firms to substantiate efficiency claims so that the Agencies can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), how each would enhance the merged firm’s ability and incentive to compete, and why each would be merger-specific.”¹¹ Evidence of efficiencies typically lies with the parties themselves, and it is thus appropriate to put the burden on them to come forward and substantiate any claims. Establishing that claimed efficiencies are consistent with the parties’ “usual business planning process” and “analogous past experience” is an important step in verifying their likelihood to counter any anticompetitive effects.¹²

Finally, with regard to the AT&T/T-Mobile transaction, it is worth noting that the 2010 guidelines provide that “efficiencies are most likely to make a difference in merger analysis when the likely adverse competitive effects, absent the efficiencies, are not

⁹ FCC Report ¶¶ 170-79.

¹⁰ *Id.* ¶ 132.

¹¹ 2010 HMGs § 10.

¹² *Id.*

great.”¹³ In this case, the likely adverse competitive effects were substantial, threatening the long-term competitiveness of a heavily concentrated industry marked by high entry barriers, including the need for scarce spectrum licenses, and touching the lives of nearly everyone in the United States. Indeed, the \$39 billion proposed acquisition was the second largest transaction that the Division has ever challenged in a contested litigation.¹⁴

United States v. Deutsche Börse

In December 2011, the United States filed an action challenging the proposed combination of Deutsche Börse and NYSE Euronext.¹⁵ The Antitrust Division’s competitive concerns arose because Deutsche Börse, through its subsidiaries, was a partial owner of Direct Edge, which is the fourth largest operator of stock exchanges in the United States and competes with NYSE in markets for U.S. equities exchange products and services.

¹³ *Id.*

¹⁴ The largest was the proposed merger of WorldCom Inc. and Sprint Corporation. See Press Release, U.S. Dep’t of Justice, *Justice Department Sues to Block WorldCom’s Acquisition of Sprint* (June 27, 2000), available at http://www.justice.gov/atr/public/press_releases/2000/5049.htm.

¹⁵ Complaint, *United States v. Deutsche Börse AG*, No. 1-11-cv-2280 (D.D.C. filed Dec. 22, 2011), available at <http://www.justice.gov/atr/cases/f278500/278545.pdf>. See also Press Release, U.S. Dep’t of Justice, *Justice Department Requires Deutsche Börse to Divest Its Interest in Direct Edge in Order to Merge with NYSE Euronext* (Dec. 22, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/278537.htm

Partial acquisitions

In most horizontal mergers, two competitors come under common ownership and control, thereby completely eliminating post-acquisition competition between them. In contrast, partial acquisitions typically contemplate some form of residual competition between the parties following the transaction, and the underlying competitive concerns may therefore differ from those that would be at issue following a merger involving a complete integration of financial interests.

The 2010 guidelines contain a new section explaining the approach to partial acquisitions. Specifically, the guidelines explain that the competitive effects of a partial acquisition vary according to the specific details of the post-acquisition relationship between the parties, and highlight ways that competition can be diminished by a partial acquisition.¹⁶ Several parts of this new section of the guidelines were at issue in our analysis of the Deutsche Börse/NYSE proposed transaction, which analytically can be viewed as NYSE's partial acquisition of Direct Edge.

The 2010 guidelines explain that “a partial acquisition can lessen competition by giving the acquiring firm the ability to influence the competitive conduct of the target firm.”¹⁷ Several aspects of the companies' arrangements led us to conclude that post-acquisition competition between NYSE and Direct Edge would be chilled as a result of the

¹⁶ HMGs § 13.

¹⁷ *Id.*

proposed transaction. For instance, the 2010 guidelines specifically highlight the potential influence of voting interests or governing rights on post-transaction competition.¹⁸ Although it held only a 31.5 percent ownership interest in Direct Edge, Deutsche Börse was Direct Edge's largest equity holder and also held voting and special veto rights, including the right to veto some significant corporate transactions and the right to veto Direct Edge's entry into certain businesses. Deutsche Börse also had the power to appoint three of Direct Edge's eleven managers, as well as access rights to Direct Edge's non-public, competitively sensitive business information. Taken together, this combination of factors led us to conclude that the post-acquisition firm would have the ability to use its influence to induce Direct Edge to compete less aggressively in the future, thereby harming competition more generally in the markets where the firms compete.

The parties were willing to resolve our concerns by divesting Deutsche Börse's holdings in Direct Edge. Accordingly, we filed a proposed final judgment reflecting that anticipated relief at the same time we filed our complaint. Before the divestiture occurred, however, the European Commission prohibited the proposed merger because of its effects "in the area of European financial derivatives traded globally on exchanges."¹⁹

¹⁸ *Id.*

¹⁹ Press Release, European Commission, *Commission blocks proposed merger between Deutsche Börse and NYSE Euronext* (Feb. 1, 2012), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/94>; see also Press Release, European Commission, *Commission prohibits proposed merger between Deutsche Börse AG and NYSE Euronext – frequently asked questions* (Feb. 1,

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International Cooperation

Guiding principles

Seven principles guide our cooperation efforts at the Antitrust Division with other antitrust or competition agencies around the world. First, we strive for increased transparency and accountability of government actions. Second, we seek expanded and deeper cooperation between U.S. and overseas competition enforcement authorities. Third, we work toward greater convergence of competition regimes. Fourth, we are mindful of other jurisdictions' interests. Fifth, we respect other jurisdictions' legal, political and economic cultures. Sixth, we trust each other's actions. Seventh, we engage in ongoing dialogue on all aspects of international competition policy and enforcement.²⁰

Deutsche Börse/NYSE

It is important to note that these principles do not contemplate that the Antitrust Division and a non-U.S. counterpart will always reach the same result when investigating

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2012), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/60&format=HTML&aged=0&language=EN&guiLanguage=en>.

²⁰ See generally Christine A. Varney, *International Cooperation: Preparing for the Future* (Sept. 21, 2010), available at <http://www.justice.gov/atr/public/speeches/262606.htm>; Sharis A. Pozen, *Promoting Competition and Innovation Through Vigorous Enforcement of the Antitrust Laws on Behalf of Consumers* (Apr. 23, 2012), available at <http://www.justice.gov/atr/public/speeches/282515.pdf>; Rachel Brandenburger, *The Many Facets of International Cooperation at the Antitrust Division* (June 15, 2012), available at <http://www.justice.gov/atr/public/speeches/284239.pdf>; Rachel Brandenburger, *International Competition Policy and Practice: New Perspectives?* (Oct. 29, 2010), available at <http://www.justice.gov/atr/public/speeches/270980.pdf>.

the same transaction. For instance, the Division and the European Commission reached quite different results in the Deutsche Börse matter: we would have allowed the merger to go forward with a divestiture, while the European Commission prohibited it. That difference in outcome emanated from different competitive conditions in Europe and the United States. Notwithstanding those differences, we were still able to engage in significant cooperation efforts. Indeed, our conversations lasted for almost a year and were acknowledged by both the Antitrust Division and the European Commission. For instance, in December 2011, when the Antitrust Division announced that we had reached a settlement with the parties resolving our concerns about the effect of the merger on equities trading in the United States, we noted 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.”²¹ On the same day, the European Commission said, “[w]e have had regular and constructive dialogue with the DOJ throughout our respective procedures” and noted that, “the markets that the DOJ is examining in its own jurisdiction, namely in

²¹ 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; 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.

the area of U.S. equities, are different to those where the Commission has raised concerns, namely European financial derivatives.’’²²

UTC/Goodrich

In contrast, close cooperation among enforcers during our recent investigation of the merger of UTC and Goodrich led to substantially identical resolutions in multiple jurisdictions.²³ That \$18.4 billion transaction was the largest merger in the history of the aircraft industry. As originally proposed, the merger would have led to competitive harm for several critical aircraft components, including generators, engines and engine control systems.

The Antitrust Division, the European Commission and the Canadian Competition Bureau cooperated closely throughout the course of our respective investigations, with frequent contact among the agencies. In addition, the Antitrust Division had discussions with other competition agencies, including the Federal Competition Commission in

²² Nandini Sukumar et al., *U.S. Clearing Deutsche Boerse-NYSE Takeover Moves Final Approval to Europe*, Bloomberg, Dec. 22, 2011, available at <http://www.bloomberg.com/news/2011-12-22/nyse-deutsche-boerse-merger-given-u-s-approval-pending-direct-edge-sale.html>.

²³ Competitive Impact Statement, *United States v. United Technologies Corp.*, No. 1:12-cv-1230 (D.D.C. filed July 26, 2012) [hereinafter UTC Competitive Impact Statement], available at <http://www.justice.gov/atr/cases/f285400/285430.pdf>; Press Release, U.S. Dep’t of Justice, *Justice Department Requires Divestitures In Order For United Technologies Corporation to Proceed with Its Acquisition of Goodrich Corporation* (July 26, 2012) [hereinafter UTC Press Release], available at http://www.justice.gov/atr/public/press_releases/2012/285420.htm.

Mexico and the Administrative Council for Economic Defense in Brazil. Those discussions facilitated the successful resolution of our competitive concerns. In particular, our close cooperation with the European Commission and Canadian Competition Bureau resulted in a coordinated resolution that will preserve competition in the United States and internationally.

The proposed settlement requires UTC to divest a significant number of assets, including Goodrich's business that designs, develops and manufactures large main engine generators for aircraft; Goodrich's business that designs, develops and manufactures engine control systems; and Goodrich's shares in Aero Engine Controls (AEC), a joint venture to manufacture engine control systems for large aircraft turbine engines. The proposed settlement further provides that UTC must extend the term of certain contracts held by customers of Goodrich's engine control systems business for a period of 30 days after the divestiture of the engine control systems business; provide various supply and transition services agreements to the acquirers of the assets being divested in order to assist in the transition of the businesses and allow the acquirers to continue to fulfill obligations of the divested businesses; and extend the period for its joint venture partner, Rolls-Royce Group plc, to exercise its option to acquire the Goodrich business that provides aftermarket services for Rolls-Royce engines equipped with AEC engine control systems.

Cooperation among enforcers was—and will continue to be—essential to ensure that these complicated remedies are instituted in a manner that best served consumers and competition. The business divestitures concern assets located in the United States, Canada and the United Kingdom, and the provisions ensuring smooth transition of the divested

assets will similarly affect ongoing business relationships in multiple jurisdictions. Our competitive impact statement thus further explains that, “The United States will continue to cooperate with the European Commission as appropriate in implementing the remedies provided in the proposed Final Judgment.”²⁴

On the same day that the United States announced its resolution and consent decree, the European Commission and the Canadian Competition Bureau issued statements regarding their investigations. European Commission Vice President Almunia explained that, “In this case concerning a major transaction affecting markets on both sides of the Atlantic, we worked in close and very effective cooperation with the US and Canadian competition authorities.”²⁵ Similarly, the Canadian Competition Bureau released a statement announcing that it was closing its investigation without an independent remedy in light of “remedial orders issued by antitrust authorities in the U.S. and Europe [that] appear to sufficiently mitigate the potential anti-competitive effects in Canada.”²⁶ The Canadian Competition Bureau also noted that it “worked closely with the U.S. Department

²⁴ UTC Competitive Impact Statement at 2 n.1.

²⁵ Press Release, European Commission, *Mergers: Commission approves acquisition of aviation equipment company Goodrich by rival United Technologies, subject to conditions* (July 26, 2012), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/858>.

²⁶ Press Release, Canadian Competition Bureau, *Competition Bureau Statement Regarding United Technology Corporation’s Acquisition of Goodrich Corporation* (July 26, 2012), available at <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03483.html>.

of Justice’s Antitrust Division and the European Commission” and “considers this form of cooperation to be very important for the effective review of international mergers.”²⁷ The Antitrust Division similarly said that our “close cooperation with the European Commission and Canadian Competition Bureau resulted in a coordinated remedy that will preserve competition in the United States and internationally.”²⁸ Indeed, that cooperation was necessary to ensure that the conditions imposed were consistent across jurisdictions and did not impose conflicting obligations on the merged entity.

US/EU Best Practices on Cooperation in Merger Investigations

Finally, I will also mention three other recent fruits of our international cooperation efforts. *First*, the Antitrust Division, the Federal Trade Commission and DG Competition issued revised best practices regarding cooperation in merger investigations just under a year ago. The three agencies first released our Best Practices on Cooperation in Merger Investigations in 2002.²⁹ In October 2011, following a year of dialogue among the three agencies and a review of our merger cooperation experience since 2002, the agencies

²⁷ *Id.*

²⁸ UTC Press Release.

²⁹ US-EU Merger Working Group, *Best Practices on Cooperation in Merger Investigations* (Oct. 30, 2002), available at <http://www.justice.gov/atr/public/international/docs/200405.htm>. See also Press Release, U.S. Dep’t of Justice, *United States and European Union Antitrust Agencies Issue “Best Practices: for Coordinating Merger Reviews* (Oct. 30, 2002), available at http://www.justice.gov/atr/public/press_releases/2002/200407.htm.

issued revised Best Practices.³⁰ The revised Best Practices provide an up-to-date advisory framework for interagency cooperation when one of the U.S. enforcement agencies and DG Competition review the same transaction. They also provide guidance to firms about how best to work with the agencies to coordinate and facilitate review of a proposed deal. The revised Best Practices recognize the increasing globalization of antitrust enforcement and that transactions reviewed by the U.S. and European agencies often will also be subject to review in multiple other jurisdictions. They also place increased emphasis on coordination among the U.S. agencies and DG Comp at key stages of investigations, including the stage when the agencies consider potential remedies.

These revised Best Practices are consistent with the guiding principles I discussed above. They highlight the importance of international cooperation. They seek to promote fully informed decision-making by facilitating the exchange of information and dialogue between agencies; to enhance the efficiency of investigations; to reduce the burdens on merging parties and third parties; to increase the transparency of the merger review process; and to minimize the risk of divergent outcomes.

³⁰ US-EU Merger Working Group, *Best Practices on Cooperation in Merger Investigations* (Oct. 14, 2011) [hereinafter US-EU Best Practices], available at <http://www.justice.gov/atr/public/international/docs/276276.pdf>. 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.

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 U.S. 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, finally, they emphasize the role that waivers of confidentiality executed by the merging parties play in enabling more complete communication between the reviewing agencies and the merging parties regarding evidence that is relevant to the investigation, and investigations to be conducted efficiently.³¹

MOFCOM guidance

Second, the Antitrust Division, the Federal Trade Commission and the Chinese Ministry of Commerce (MOFCOM) issued joint guidance on case cooperation in November 2011.³² The guidance provides a framework for interagency cooperation when MOFCOM and one of the U.S. antitrust agencies are reviewing the same merger. The

³¹ See US-EU Best Practices. 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>.

³² U.S. Dep't of Justice, Federal Trade Commission, and Ministry of Commerce, *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>.

guidance recognizes that case cooperation between the investigating agencies may help improve the efficiency of their investigations, and thereby maintain competition in their jurisdictions. In particular, the guidance provides that, when MOFCOM and the relevant U.S. antitrust agency each finds it appropriate and consistent with confidentiality obligations under their respective laws, they may decide to exchange information regarding a merger they both are investigating, such as the timing of their respective investigations and technical aspects of cases, including, for example, definition of relevant market, evaluation of competitive effects, theories of competitive harm, economic analysis, and remedies.³³

U.S., Canada and Mexico merger discussions

Third, following last year's meetings among the Antitrust Division, the Federal Trade Commission, the Canadian Competition Bureau and Mexico's Federal Competition Commission,³⁴ the three jurisdictions are initiating a merger discussion group to address issues of common interest among the three jurisdictions, share merger enforcement expertise and promote understanding of our respective merger enforcement procedures.

³³ *Id.*

³⁴ Press Release, U.S. Dep't of Justice, *US, Canada and Mexico Antitrust Officials Participate in Trilateral Meetings in Mexico to Discuss Antitrust Enforcement* (Dec. 19, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/278394.htm

Conclusion

Merger enforcement remains vigorous at the Antitrust Division. Increasingly, effective enforcement requires deep cooperation with non-U.S. enforcers reviewing the same transaction. Thank you for the opportunity to address some of our recent merger cases and international cooperation efforts.