



DEPARTMENT OF JUSTICE

U.S. AND EU COMPETITION POLICY: CARTELS, MERGERS, AND BEYOND

Address by

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Good morning. It is an honor to be here this morning to talk about U.S. and EU competition policy with my good friends Alex Schaub and Eleanor Fox. As I noted the last time Alex and I were on a podium together, the events of 9/11 were a forcible reminder that whatever small policy differences we may have, much more unites us than divides us.

As all of you probably know, the United States and Europe together account for over 50% of the world's total gross domestic product (GDP). In an ever shrinking world, our economic policies, including our competition policies, affect the economic well-being, not just of our own citizens, but of people everywhere. Together we must, therefore, be leaders in developing and propagating sound competition policies.

The good news is that over the past decade we have achieved a remarkable record of cooperation and convergence. Despite our different legal traditions and cultures, and despite substantial differences in the language of our governing laws, we have been able to work together to develop generally coherent and largely consistent competition policies, built on sound economic foundations, directed at a common goal: to promote consumer welfare through competition.

Today, I want to talk about the challenges we face in three critical areas: cartel enforcement, merger review, and intellectual property. I will close by talking about the role we see the new International Competition Network playing in promoting sound competition policy globally.

Cartel Enforcement

Detection and prosecution of hard-core cartels has always been, and remains, one of our top law enforcement priorities. Cartels — whether in the form of price fixing, output restrictions, bid rigging, or market division — raise prices and restrict supply, enriching producers at consumers' expense and acting as a drag on the entire economy. In our view, these are crimes, pure and simple, and those who perpetrate them are criminals who belong in jail.

As commerce has become more global, so too have cartels. That is why the United States has been one of the leaders both in prosecuting international cartels and in encouraging other countries to do likewise. Since 1996, the Division has prosecuted more than 50 companies for participating in international cartels affecting more than \$10 billion in U.S. commerce. We have obtained fines of more than \$1.9 billion, and at least 20 senior executives have been sentenced to or served jail time. These cartels cost U.S. businesses and consumers hundreds of millions of dollars annually, in some cases artificially inflating prices by as much as 100%. They undoubtedly cost businesses and consumers in the rest of the world, in both developing and developed countries, as much or more.

While we are gratified at our success in prosecuting these cartels, we know our work has just begun. Cartels continue to be a way of life in many parts of the world, impeding economic performance, promoting inequality, impoverishing consumers, and thereby providing fuel for those who oppose globalization and free market ideals.¹

We are pleased, therefore, that the European Union has become our strong partner in prosecuting cartel activity by European companies. Last year alone the EU issued ten decisions against price-fixing and market-sharing cartels, levying fines of more than 1.8 billion Euros on more than 50 companies.

In the United States, our most effective weapon in exposing cartel activity has been our leniency program. Since 1993, companies have applied for and obtained complete amnesty from prosecution at a rate of more than one per month. Their cooperation has contributed to the filing of the majority of the international cartel cases prosecuted by the Division in the last few years. A continuing impediment to more companies coming forward, however, is that the leniency programs of other jurisdictions, where they exist at all, often leave companies stepping forward in jeopardy, thus discouraging voluntary cooperation.

We are very pleased, therefore, by the European Union's leadership this past year in proposing to strengthen their leniency program. The proposed changes are an important step in the direction of greater transparency and predictability and will substantially enhance the incentives to come forward by making a grant of full immunity automatic for the first company to qualify if the Commission was previously unaware of the violation. We understand the Commission is considering additional changes suggested by the comments it received on the draft notice that would further strengthen its leniency program, and we look forward to seeing the revised draft.

Effective cartel enforcement also requires investigators and prosecutors who know their job. In the United States, this work has been largely handled by our field offices in seven cities around the country, under the direction of our criminal deputy, Jim Griffin, and our director of criminal enforcement, Scott Hammond, both of whom are career prosecutors. Approximately 35% of the Division's legal staff is tasked to work essentially full-time on anti-cartel enforcement. We intend to maintain this strong commitment to this aspect of the Division's law enforcement mission. We are pleased that the EU has announced that it is now taking steps to strengthen its cartel unit further.

Finally, both we and the EU recognize that effective cartel enforcement requires that all countries have effective anti-cartel laws and that they enforce those laws. We, therefore, worked together to secure approval of the OECD 1998 Recommendation Concerning Effective Action Against Hard-Core Cartels, which encourages each member country to ensure that its competition laws effectively halt and deter hard-core cartels and to cooperate in investigating and prosecuting those cartels. Since that Recommendation was issued, several OECD member countries have strengthened their laws in this area, and nine now have criminal sanctions for cartel activity. Worldwide, more than 90 countries now have antitrust laws, and almost all of these laws have anti-cartel provisions.

Having laws is not enough; they must be enforced. The United States, therefore, has also taken a leadership role in helping to train competition authorities in other parts of the world in how to detect, investigate and prosecute cartels and in exchanging best practices. In September 1999, we hosted 80 competition officials from nearly 30 countries in Washington for a seminar on

hard-core cartels. This has now become an annual event, with the United Kingdom and Canada having hosted seminars in 2000 and 2001, respectively. While the International Competition Network, which I will talk about later, is focusing initially on other areas, we expect that it will become an important vehicle for fostering even closer cooperation.

Transatlantic Merger Reviews

In merger reviews, as in cartel enforcement, Washington and Brussels have, over the years, developed an excellent working relationship in reviewing the growing number of mergers that are notified in both jurisdictions. This strong working relationship has helped foster a considerable degree of substantive convergence, especially in terms of how we define markets and how we evaluate the likely competitive effects of horizontal mergers. As a result, until last year, neither of us had prohibited a merger over the other's objection.

The big story in 2001, therefore, was the one case in which we failed to agree despite extensive cooperation and coordination -- GE/Honeywell. We both spent a good part of the fall explaining the reasons for our different conclusions in that case.² I certainly do not want to rehash that debate today, nor to revisit the specific facts of the GE/Honeywell merger. We, and I believe our colleagues in Brussels, are eager to put that case behind us and move on, hoping it will prove to be an aberration.

I have always believed, however, that we learn more from our failures than from our successes. In that spirit, I would like today to talk about some of the broader issues that have emerged from our discussion of GE/Honeywell and about what we are doing to address them.

Let me start with several positives that have already come out of this debate. The first, and most important, is a strong reaffirmation by the European Commission that it shares our view that the ultimate goal of any sound competition policy must be consumer welfare, which competition advances through lower prices, higher output and enhanced innovation.³ A second is a clarification by the Commission of its attitude toward efficiencies. The Commission has now made it clear, just as we have, that it views merger-generated efficiencies positively and that it will not challenge a merger just because it creates a more efficient firm and thereby benefits consumers, even if competitors might suffer from the increased competition.⁴

To the extent there is any difference between us, therefore, it is not over these fundamental principles, but rather over how we apply them in practice. In GE/Honeywell, we reached opposing conclusions on at least five key issues. First, whether GE, with a 45% share of recent contract awards in the fiercely competitive global market for aircraft engines, could be said to have a “dominant” position in that market. Second, whether bundling of avionics and non-avionics systems with aircraft engines was likely to be a successful exclusionary strategy in a market with large and sophisticated buyers like Boeing and Airbus who would have a strong incentive to maintain a competitive supply base. Third, whether GE’s vertical integration into aircraft leasing could give rise to realistic foreclosure concerns given its small (less than 10%) share of worldwide aircraft purchases. Fourth, whether GE’s financial strength would harm competition by enabling Honeywell to invest more in R&D and offer its customers lower prices than its rivals could. Fifth, whether these price cuts would harm competition by forcing rivals to exit the market. On all five issues, the EU said yes and we said no.

Why did we reach such different conclusions? Certainly, as many have suggested, differences in our processes may have been one contributing factor. Another factor, however, maybe a difference of view over the extent to which the antitrust laws should be used to protect competitors *from* competition in order to preserve competition. Some more junior EU officials, as well as some of the lawyers for the complainants in the GE/Honeywell case, have argued that they needed in that case to protect competitors, not for their own sake, but in order to preserve competition.⁵ With this in mind, they try to distinguish between mergers that may lead to price cuts resulting from cost savings and those that may lead to “strategic” price cuts designed to eliminate or marginalize rivals.⁶

In the U.S., while we agree that the antitrust laws should protect competitors from exclusionary or predatory conduct, we do not believe the antitrust laws should be used to hold an umbrella over less efficient competitors in order to ensure their survival. As Judge Frank Easterbrook has written, our view is that “[r]ivalry is harsh, and consumers gain the most when firms slash costs to the bone and pare price down to cost, all in pursuit of more business.”⁷ It is for this reason that the Supreme Court has consistently “rejected . . . the notion . . . that above-cost prices that are below . . . the costs of a firm’s competitors inflict injury to competition cognizable under the antitrust laws.”⁸ As the Supreme Court went on to explain, “[l]ow prices benefit consumers regardless of how those prices are set;”⁹ “the exclusionary effect of prices above a relevant measure of cost either reflects the lower cost structure of the alleged predator, and so represents competition on the merits, or is beyond the practical ability of a judicial tribunal to control without courting intolerable risk of chilling legitimate price-cutting.”¹⁰

Given that it is lawful under U.S. law for a firm to cut prices down to, but not below, cost, even if its intention is to drive its rivals from the market, the Supreme Court has also held that we should not condemn a merger that may give the merged firm an incentive to reduce prices in a similar manner.¹¹ Again, our view is that such price cuts benefit consumers both directly -- by reducing price and increasing output -- and indirectly -- by stimulating rivals to become more efficient so they can match those lower prices. We also tend to discount claims by rivals that they face extinction unless we intervene. Our experience is that such claims, like the reports of Mark Twain's death, are almost always exaggerated.

Let me say a word to those who have expressed concern that our transatlantic dialogue over these differences is focusing too much attention on them, thereby itself creating greater uncertainty and chilling transactions that might otherwise be proposed. I would agree that as we talk about areas in which we disagree, we should not lose sight of the many other, larger areas where we are in substantial agreement. But to the extent there are differences, uncertainty is created not by discussing those differences in an effort to resolve them, but by the differences themselves. What is needed therefore is not that we stop talking about these important issues, but that we move beyond talking and begin taking steps to address them. It is that subject to which I would now like to turn.

First, and most importantly, both we and the FTC are continuing to cooperate closely with the European Commission on merger reviews. We have several major matters now being reviewed in both Brussels and Washington, and our working relationships are still very good.

Second, both we and the European Commission are devoting substantial resources to using our joint merger working group to bring us even closer together. The working group is currently examining three issues: (1) conglomerate mergers (like GE/Honeywell); (2) process and timing; and (3) the substantive standard for merger review -- dominance vs. substantial lessening of competition. We and the FTC have over 20 lawyers and economists working on these issues, with a similar number from the EU. We have already had several transatlantic video conferences on these issues and are planning to send a delegation to Brussels in February to carry on the discussions in person. Our hope is to complete work on these three issues by our next annual bilateral meeting, scheduled for this summer.

Third, both we and the European Commission are examining our own internal policies and procedures to find ways they might be strengthened. I know Alex is going to discuss the Commission's recent green paper in some detail, so all I will say on that subject is that we will be sharing with the Commission through our joint merger working group our views on both the substantive and procedural issues raised by the green paper and in particular the issue of how efficiencies should be treated.

Focusing instead on our own efforts, it will not surprise you that, as part of an Administration headed by the first president with an MBA, the Division has undertaken a thorough review of how we do business and how we could do better. Among other steps, in November we convened a roundtable with the senior in-house counsel of many of America's largest companies so they could tell us what they thought we were doing well and what we could do better in the merger review area. We have also listened closely to our other constituencies,

especially the organized antitrust bar. The result of this introspection is a five-step program that is well underway.

First, even before we came in, Congress early last year raised the HSR filing threshold from \$15 million to \$50 million; this, together with the economic slowdown and the aftermath of 9/11, has resulted in a substantial decrease in the number of filings. For the first quarter of FY02 we received only 289 HSR filings, as compared with 1,156 in FY01, and issued only six Second Requests, as compared with 13 in FY01. Congress also extended the waiting period after compliance with a Second Request from 20 to 30 days, giving us a more realistic period to complete our review.

Second, in October, shortly after he arrived, Assistant Attorney General Charles James announced our Merger Review Process Initiative. The purpose of this initiative is to streamline the merger review process by encouraging and empowering Division staff to narrow the focus of the review to critical legal, factual and economic issues as early as possible and to limit their investigative requests accordingly. To that end, we encourage early and frequent dialogue with the parties and authorize the staff to enter into agreements with the parties under which the Division will agree to a procedural schedule in exchange for undertakings by the parties regarding submission of information and compliance with investigative requests. We believe this initiative will serve to make our review process more efficient and effective, while at the same time reducing the investigative burden on the merging firms. Its success, however, depends on the active cooperation of the merging firms and their counsel.

Third, on January 4th, Charles announced a modernization of the Division. The first step in this modernization effort is a realignment of our civil litigation sections along industry lines that correspond better with today's economy. The second step will be a series of process improvements designed both to make the Division work better and to make it a better place to work, so that we can continue to attract and retain talented lawyers and economists. Among other things, we are encouraging our section chiefs to become much more visible in reaching out to the industries they monitor.

Fourth, as you might have read in the press last week, we are endeavoring to improve the functioning of the clearance process by which the FTC and we decide which agency will conduct particular investigations. Although the clearance process has generally functioned smoothly, the allocation of industries between the two agencies developed over the years in a somewhat ad hoc fashion along lines that in some cases no longer make sense given how those industries have evolved. This has resulted in too many instances of investigations being delayed by clearance disputes between the two agencies. Tim Muris and Charles have worked hard to come up with a more rational allocation of industries designed to reduce the frequency of clearance disputes and also to develop improved procedures for handling clearance disputes when they arise. The proposed changes are currently being reviewed with the congressional committees that have oversight over our two agencies and will, hopefully, be completed soon.

Fifth, we are re-examining how we evaluate and prove competitive effects in merger cases. One area we are examining relates to the growing use of econometric evidence in merger investigations. In September, the FTC convened a roundtable of prominent Industrial

Organization economists to discuss this issue. Based on that discussion, we and the FTC are working together to ensure that we make appropriate use of this potentially powerful tool.

Antitrust and Intellectual Property

Let me turn next to the interaction between antitrust and intellectual property. As we move toward an increasingly knowledge-based economy, intellectual property is becoming both more central to economic success or failure and a more frequent focus of antitrust disputes.

Given the growing importance of intellectual property, the Division and the FTC will be co-hosting hearings on *Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy* to explore these issues. We will invite interested businesses, consumers, legal practitioners, academics, and government agencies to participate in discussions covering a broad range of topics, including: the importance of intellectual property to businesses and innovation; competitive issues raised by the type and scope of patents issued, as well as by the procedures and criteria used during the patent examination process; the licensing of intellectual property; standard setting; competitive concerns raised by the settlement of patent disputes; comparative international treatment of many of these issues; and the role of the U.S. Court of Appeals for the Federal Circuit in developing antitrust law. We anticipate that these hearings will take place between February and June of this year.

We last examined this topic systematically seven years ago in developing our Intellectual Property Guidelines, which we issued in 1995. Those guidelines proceed from the premise that the intellectual property and antitrust laws share the common purpose of promoting innovation

and enhancing consumer welfare.¹² A corollary is that intellectual property should generally be treated just as any other property for purposes of the antitrust laws. A patent or a copyright gives the patent-holder or copyright-holder the right to exclude others from using its property just as a deed to land gives the landowner the right to keep trespassers off. In both cases, what antitrust cares about is the structure, conduct, and performance of the markets in which the property is used, not the existence of the property itself.

While these principles seem straightforward enough, their application is not. In applying the antitrust laws, agencies and courts must be sensitive to the nature of the property and conduct at issue and to the impact enforcement action will have on incentives to invest and innovate. The difficulties this presents in terms of developing administrable rules is illustrated by the ongoing debate in the United States about whether and, if so, under what circumstances, a refusal to license intellectual property might give rise to an antitrust violation, with three different circuit courts of appeals proffering three different tests. Under the Ninth Circuit test in *IMS v. Kodak*, a refusal to license might give rise to antitrust liability unless there was a non-pretextual legitimate business reason for the refusal;¹³ under the First Circuit test in *Data General* a refusal to license a copyright might constitute an antitrust violation absent a valid business justification, but an author's desire to exclude others from using its copyrighted work is presumptively justified;¹⁴ and under the Federal Circuit test in *CSU v. Xerox* a refusal to license a valid patent or copyright is virtually per se lawful unless it is part of an illegal tying arrangement.¹⁵

In examining this and other issues, the hearings will focus not only on how we approach these issues, but on how our approach compares to that of the EU and our other major trading

partners. Recently, for example, the European Commission appears to be taking a more expansive view than we do of the essential facilities doctrine, especially as it applies to intellectual property.¹⁶ In the United States, we have generally applied the essential facilities doctrine much more narrowly, believing that its overuse might reduce incentives to innovate and invest.¹⁷ This issue is now before the European courts, whose approach in the past has been closer to ours.¹⁸

International Competition Network

Let me turn finally to the new International Competition Network (or ICN). The last decade has seen market principles, deregulation and respect for competitive forces broadly embraced around the world. Over 90 countries -- accounting for nearly 80 percent of world production¹⁹ -- have enacted antitrust laws, and at least 60 have antitrust merger notification regimes. Many of these laws are modeled after the U.S. or EU antitrust laws.

Now the real work begins. Having convinced much of the world to structure their national economies around competition and free markets, we must ensure that antitrust works effectively and efficiently to deliver what it promises. As we all know, while sound competition policies promote consumer welfare, fostering support for free market economies, misguided policies can cause a great deal of harm to consumer interests, chilling incentives to invest, innovate, and compete, and imposing substantial transactions costs on procompetitive efficiency-enhancing transactions. If that happens, it will not only increase the cost of doing business and hurt consumers, but will undermine support for market based reforms generally.

We all recognize that consistently sound antitrust enforcement policy cannot be defined

and decreed for others by the U.S., the EU, or anyone else. Sound antitrust enforcement requires a deep and shared “culture of competition.” The first step is to build an understanding of each other’s laws and institutions and of the economic principles that give antitrust laws their reason for being.

It was in this spirit that antitrust officials from 14 countries last October launched the International Competition Network to provide a new framework for interaction and cooperation among government officials, private firms and non-governmental organizations. The philosophy underlying ICN is that regular and focused interaction among the ever-growing number of competition authorities will serve to promote the spread of sound enforcement policies and procedures around the globe.

ICN is, first and foremost, a network of, by, and for antitrust authorities. It is open to any national or multinational competition agency responsible for the enforcement of competition laws, from both developed and developing countries. Since its launch barely three months ago, its membership has grown to 40 developed and developing countries from all regions of the world. We expect to have many more countries on board in time for the first annual ICN conference planned for this September in Italy.

We also expect the private sector to play an important role in the Network, not as members but as partners. Businesspeople, members of the private bar, economists, academics, and representatives of international organizations will be invited to work with us side-by-side on each of the projects we undertake.

The ICN is a “virtual” network, flexibly organized around working groups, the members of which work together by Internet, telephone, fax machine, and video conferences. It will receive direction from a steering group of member competition authorities, with no bricks and mortar organization, no permanent secretariat, and no physical headquarters.

As a virtual network, ICN is not intended to replace or displace any existing organization. Many of these more formal organizations, such as the OECD, WTO, and UNCTAD, perform valuable functions, and ICN will seek to build on what they do, not duplicate it.

- The OECD Competition Law and Policy Committee (CLP) has played a critical role over the years in building consensus among developed countries on a wide range of antitrust and competition policy subjects, in conducting training programs for new competition authorities, and in conducting peer reviews of the performance of their competition authorities. More recently, OECD has begun a major outreach effort to expand participation by non-OECD members through the Global Forum on Competition.
- UNCTAD's Intergovernmental Group of Experts on Competition Law plays a valuable capacity-building role with new antitrust agencies.

- The WTO Working Group on Trade and Competition Policy will play a critical role in the discussions at the governmental level about potential inclusion of competition policy in the WTO.

As ICN projects move forward, we will encourage representatives from these organizations to participate actively in ICN projects so as to ensure that the work of ICN is well coordinated with the work of these other groups.

ICN's long-term goal is to develop best practice recommendations to be implemented voluntarily by member countries. Our first two projects are large and important ones: the multinational merger review process and competition advocacy in emerging economies.

The Merger Review Working Group, which I chair, is concentrating on three areas: merger notification and review procedures; the analytical framework for merger review; and investigative techniques for merger review. Each area has its own subgroup. In the first year, we expect to address a number of practical issues for which concrete solutions will likely be proposed.

- The Notification and Procedures subgroup will develop a set of guiding principles to be used in developing best practice recommendations for merger review and will begin work on best practice recommendations in two or three key areas.
- The Analytical Framework Subgroup will examine the pros and cons of the “substantial lessening of competition” vs. “creation or strengthening of a dominant

position” vs. “public interest” standards. Longer term, we would like to see this subgroup developing model set of merger guidelines similar to those we have in the U.S. and Canada.

- The Investigative Techniques Subgroup will begin by planning and conducting an ICN international merger conference to be held in the United States for staff lawyers and economists from competition authorities around the world, modeled after the highly successful multinational cartel conferences.

It has been said that, "Networks, rather than countries or economic areas, are the true architectures of the new global economy."²⁰ We now have the designs for an international competition network and are busy laying the foundation. We invite you to help us build it.

ENDNOTES

1. See *Regulation speed: Asia's absent antitrust: The region's governments are learning about competition policy - very slowly*, *The Economist*, January 20, 2001.
2. See generally, William J. Kolasky, *Conglomerate Mergers and Range Effects: It's a Long Way from Chicago to Brussels*, Address Before the George Mason University Symposium (November 9, 2001) (transcript available on U.S. Department of Justice Antitrust Division web site, www.atrnet.gov); Götz Drauz, *Unbundling GE/Honeywell: the Assessment of Conglomerate Mergers Under EC Competition Law*, Speech Presented at the Fordham Corporate Law Institute, Oct. 2001; United States Department of Justice Note for Discussion at Roundtable on Portfolio Effects in Conglomerate Mergers (Oct. 15, 2001) (on file with OECD and available upon request from Antitrust Division of U.S. Department of Justice).
3. See Mario Monti, *The Future for Competition Policy in the European Union*, Address at Merchant Taylor's Hall, London (July 9, 2001) (transcript available on European Union web site, <http://europe.eu.int>, under News/Press releases) (“[T]he goal of competition policy . . . is to protect consumer welfare by maintaining a high degree of competition in the common market. Competition should lead to lower prices, a wider choice of goods, and technological innovation, all in the interest of the consumer.”)
4. See *id.* (“[W]e are not against mergers that create more efficient firms. Such mergers tend to benefit consumers, even if competitors might suffer from increased competition.”)
5. See *Transatlantic Antitrust: Convergence or Divergence*, *Antitrust*, Fall 2001, pp. 7-10 (comments of Francisco-Enrique Gonzalez-Diaz and John DeQ. Briggs)
6. *Id.* at 8.
7. *A.A. Poultry Farms, Inc. v. Rose Acre Farms, Inc.*, 881 F.2d 1396, 1401 (7th Cir. 1989).
8. *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 223 (1993).
9. *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 340 (1990).
10. *Brooke Group*, 509 U.S. at 223.
11. See *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104 (1986).
12. See, e.g., U.S. Department of Justice and Federal Trade Commission, *Antitrust Guidelines for the Licensing of Intellectual Property* (1995) (“IP Guidelines”) at § 1.0; *Atari Games Corp. v. Nintendo of America*, 897 F.2d 1572, 1576 (Fed. Cir. 1990) (“[T]he aims and objectives of patent and antitrust law may seem, at first glance, wholly at odds. However, the two bodies of

law are actually complementary, as both are aimed at encouraging innovation, industry, and competition.”)

13. *Image Technical Services, Inc. v. Eastman Kodak Co.*, 125 F.3d 1195 (9th Cir. 1997).
14. *Data General Corp. v. Grumman Systems Support Corp.*, 36 F.3d 1147, 1187 (1st Cir. 1994).
15. See *In re Independent Service Organization Antitrust Litigation*, 203 F.3d 1322 (Fed. Cir. 2000), *cert. denied*, 121 S.Ct. 1077 (2001).
16. See Sergio Baches Opi, *The Application of the Essential Facilities Doctrine to Intellectual Property Licensing in the European Union and the United States: Are Intellectual Property Rights Still Sacrosanct?*, 11 *Fordham Intell. Prop. Media & Ent. L.J.* 409 (2001).
17. See, e.g., Philip A. Areeda, *Essential Facilities: An Epithet in Need of Limiting Principles*, 58 *Antitrust L.J.* 841 (1989).
18. See *Radio Telefis Eireann (RTE) and Independent Television Publications Ltd. (ITP) v. Commission*, 1995 E.C.R. I-0742 (Court of Justice 1995); *IMS Health Inc. v. Commission*, Order of 26.10.2001 (Court of First Instance 2001); Case C-7/97, *Oscar Bronner GmbH&Co KG v. Mediaprint Zeitungs-und Zeitschriftenverlag GmbH&Co KG*, 1998 E.C.R. I-7791, [1998] 36 *C.M.L.R.* 1289 (Court of Justice 1999).
19. David S. Evans, *The New Trustbusters: Brussels and Washington May Part Ways*, *Foreign Affairs*, Jan./Feb. 2002, pp. 14, 15.
20. Will Hutton & Anthony Giddens, *Global Capitalism* 61 (2000).