Department of Justice

STATEMENT

OF

SHARIS A. POZEN
ACTING ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE

SUBCOMMITTEE ON INTELLECTUAL PROPERTY, COMPETITION
AND THE INTERNET
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON

THE FEDERAL TRADE COMMISSION'S BUREAU OF COMPETITION AND THE
U.S. DEPARTMENT OF JUSTICE'S ANTITRUST DIVISION

PRESENTED ON

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PREPARED STATEMENT OF SHARIS A. POZEN
ACTING ASSISTANT ATTORNEY GENERAL FOR THE ANTITRUST DIVISION
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Good morning Chairman Goodlatte and members of the Subcommittee. It is a pleasure for me to appear before you today on behalf of the Department of Justice. I am honored to serve as Acting Assistant Attorney General for the Antitrust Division and to work with the talented Antitrust Division staff to ensure that consumers and businesses are protected from violations of the antitrust laws. When the Attorney General announced that he had selected me to lead the division, he said it would be a seamless transition, and that has been my focus—continued, vigorous enforcement of the antitrust laws, as well as transparency and certainty for consumers and business.

I thank you for this opportunity to highlight the Antitrust Division's accomplishments, answer your questions about our work, and listen to your views about enforcement of the antitrust laws. We appreciate this Committee's active interest in and strong support of our law enforcement mission.

Competition is an important cornerstone of our nation's economic foundation. Vigilant antitrust enforcement preserves and protects competition and delivers American consumers lower prices, higher quality goods, and more innovation. The Antitrust Division undertakes this vigilance using a measured approach that relies on sound competition and economic principles. We galvanize the tremendous skills of our lawyers and economists to evaluate each matter carefully, thoroughly, and in light of its particular facts.

The pillars of the division's work are civil merger and non-merger enforcement, criminal enforcement, competition advocacy, and international activities and we have been active in all those areas. Each is critical; and combined, they ensure consumers and businesses benefit from innovative, high-quality goods at low prices. Through its work, the division has addressed anticompetitive conduct that harms consumers and stymies innovation in industries of crucial importance, including transportation, communications, technology, health care, energy, and financial services, among others.

Merger Enforcement

Efficient and effective merger review and enforcement is a core priority for the Antitrust Division. Indeed, to many Americans merger enforcement is how they know the Antitrust Division. Since the last time the antitrust agencies appeared before this Subcommittee, the division increased its merger activity as

represented by investigations and concomitant enforcement actions. In Fiscal Year 2011, merging parties submitted 1,450 Hart-Scott-Rodino (HSR) filings to the Agencies, an increase of approximately 25% over Fiscal Year 2010, in which parties made 1,166 filings.

When we review HSR filings, the division identifies those transactions that raise no competitive issues and lets those proceed as quickly as possible. We then focus our resources on transactions that may harm competition. Just as consumers rely on us to protect them against harmful business combinations, businesses can rely on the division to get to the right decision quickly and efficiently, allowing them to move forward with lawful transactions.

Many proposed transactions do not pose a threat to competition and the division is able to determine quickly that no further action is currently warranted. Fiscal Year 2011 was no different in that regard; the division allowed 98% of the transactions it reviewed to clear its process without requesting any further information from the parties. In the remaining 2% of matters, the division identified potential competitive concerns and requested additional information from the parties to determine if the transaction posed a threat to competition.

From this limited group of transactions, the division identified those transactions that it determined required enforcement action. In many of these matters, the parties proposed remedies that the division agreed would solve the

competitive problem it had identified. In those cases, the division entered into a consent decree with the parties that will effectively preserve competition in the relevant markets while allowing the transaction to proceed. In other cases, in which the parties did not propose remedies that would effectively preserve competition, the division went to court to block the transaction. Indeed, our record since former Assistant Attorney General Christine Varney last appeared before the Subcommittee demonstrates the division's commitment to moving swiftly to bring enforcement actions against transactions that would harm competition when an effective remedy has not been offered by the parties.

Among these actions is the division's recent win of its first merger case litigated to a favorable court decision since 2003. The division filed a civil antitrust lawsuit on May 23, 2011, to prevent H&R Block from acquiring TaxACT, a digital, do-it-yourself tax preparation provider. The division alleged that TaxACT had competed aggressively with H&R Block and disrupted the relevant market through low pricing and product innovation. The transaction would have left American taxpayers with only two major digital, do-it-yourself tax preparation providers, likely leading to higher prices, lower quality products, and less innovation. The United States District Court for the District of Columbia agreed with the division's assessment of this deal, ruling in the division's favor on October 31 with a finding that the proposed transaction violated Section 7 of the

Clayton Act. The parties have since announced they would abandon their transaction and would not appeal the court's decision. This decision marks an important victory by the division on behalf of the American people.

Another notable case that remains in active litigation is our lawsuit to block AT&T Inc.'s proposed acquisition of T-Mobile USA Inc. The division filed its complaint in the U.S. District Court for the District of Columbia on August 31, 2011. While I cannot get into the details of this pending court matter, I can say that, as articulated in our complaint, this transaction, if consummated, would substantially reduce competition in mobile wireless telecommunications services across the United States, resulting in higher prices, less innovation, and lower-quality service in an industry important to millions of American consumers.

In May of this year, the division filed suit to block George's Incorporated's acquisition of a Tyson Foods poultry processing plant in Harrisonburg, Virginia. The division determined that the transaction would have had the anticompetitive effect of reducing the prices paid to Shenandoah Valley area farmers who raise chickens for processors such as George's and Tyson. After the division filed suit, George's proposed an acceptable settlement agreement, which requires George's to make capital improvements to the Harrisonburg plant which will enhance the competitive viability and increase the production of that poultry processing plant.

This competition translates into more opportunities for farmers to grow and process poultry.

The division also filed suit to block VeriFone Systems' acquisition of Hypercom, a transaction that would have harmed competition in the sale of point-of-sale terminals. The division moved to block this transaction after the parties proposed a divestiture to the only other significant provider of POS terminals, which we determined would not remedy the competitive concerns associated with the merger. Shortly after the filing of the lawsuit, on May 20, 2011, VeriFone and Hypercom entered into settlement negotiations with the division, and in August the parties reached a settlement that requires divestiture of Hypercom's U.S. point-of-sale terminals business to a buyer that preserves competition.

In many other matters that the division determined required enforcement action, the division and the parties avoided litigation through tailored remedies that the division agreed would solve the competitive problems it had identified. In those cases, the division entered into consent decrees with the parties that will effectively preserve competition in the relevant markets while allowing the transaction to proceed.

Just last month, the division settled a challenge to an agreement between Blue Cross Blue Shield of Montana and five of six Montana hospitals that own New West Health Services, a health insurer that competes with Blue Cross in

Montana. Under the agreement, Blue Cross had proposed to pay $26 million to the hospital defendants in exchange for those hospitals agreeing collectively to stop purchasing health insurance from New West for their own employees and to purchase it instead exclusively from Blue Cross for a period of six years. The division determined that such an agreement would substantially reduce, and perhaps eliminate, New West's ability to compete in the sale of commercial health insurance by signaling that New West was likely to exit the market. The consent decree permits the defendants to proceed with their agreement, but requires both the divestiture of New West's commercial health insurance business and that the defendant hospitals contract with the buyer of the divested insurance business, as well as other injunctive relief. The division determined that this remedy will preserve competition in the sale of commercial health insurance in the affected Montana markets.

The division's settlement with Comcast and NBC Universal is another example. As proposed, this transaction would have blunted NBC's incentive to distribute programming to Comcast's video distribution rivals, and could have caused Comcast's rivals and their customers to face higher prices for that content. The division concluded that Comcast's rivals need access to NBC's content, including the NBC broadcast network, to compete effectively against Comcast. The Federal Communications Commission (FCC) also had jurisdiction to review

the transaction, and we coordinated closely with them throughout our investigation. Through this coordination, we worked closely with the FCC to reach an efficient and effective resolution to the transaction's competitive issues, and to achieve complementary results across the agencies that should yield consistent and thorough enforcement of pro-competitive decree conditions. For example, the FCC order requires the joint venture to license NBC content to Comcast's cable, satellite, and telephone competitors, making it unnecessary for the division to impose those same requirements.

Under the settlement with the division, the Comcast/NBC Universal joint venture must make available to online video distributors (OVDs) the same package of broadcast and cable channels that it sells to traditional video programming distributors. In addition, the joint venture must offer OVDs broadcast, cable, and film content that is similar to, or better than, the content these distributors receive from any of the joint venture's programming peers, including NBC's broadcast competitors, the largest cable programmers, and the largest video production studios. In the event of a licensing dispute between the joint venture and an OVD, the division may seek court enforcement of the settlement or permit, in its sole discretion, the aggrieved OVD to pursue a commercial arbitration procedure established under the settlement. In addition, the decree prohibits Comcast from retaliating against any broadcast network, cable programmer, production studio, or

content licensee for licensing content to a competing cable, satellite, or telephone company or OVD. Further, Comcast must relinquish its management rights in Hulu, an OVD, and continue to make NBC content available to Hulu that is comparable to content Hulu obtains from Disney and News Corp. Finally, in accordance with recently established Open Internet requirements, the decree prohibits Comcast from unreasonably discriminating in the transmission of an OVD's lawful network traffic to a Comcast broadband customer.

Another example of a matter in which the division agreed to a tailored remedy that addressed its competitive concerns was Google's acquisition of ITA software. ITA's software powers airfare search engines for travel websites. The division was concerned that the proposed transaction would threaten competition among airfare comparison and booking websites. To safeguard competition in this arena, the decree requires that Google continue to license ITA's QPX software to airfare websites on commercially reasonable terms and continue to fund research and development of that product at least at levels similar to what ITA had invested in recent years. In addition, the decree requires that Google further develop and offer ITA's next generation InstaSearch product to travel websites. Further, Google must implement firewall restrictions within the company to prevent unauthorized use of competitively sensitive information and data gathered from ITA's customers. Google also is barred from entering into agreements with

airlines that would inappropriately restrict the airlines' right to share seat and booking class information with Google's competitors. The settlement establishes a formal reporting mechanism for complaints if Google acts unfairly.

A key component included in some of the NBCU/Comcast, Google/ITA and other settlements is compliance monitoring. For that we established, over a year ago, an Office of General Counsel, led by a long-term career attorney who has been a leader at the division. The Office of General Counsel, among other things, works closely with others around the division to ensure compliance with conduct provisions in division consent decrees.

While many of the matters in which the division identified a competitive problem were resolved with a tailored consent decree, in some instances the division's decision to pursue an enforcement action led the parties to abandon their transaction. For example, the NASDAQ OMX Group and IntercontinentalExchange abandoned their joint bid to acquire NYSE Euronext, which owns the New York Stock Exchange, after the division informed them that it planned to file suit to block the deal. The division's investigation showed that the transaction would have substantially eliminated competition for a number of important services, including corporate stock listing services.

As I noted, the division is committed to expeditiously assessing and closing investigations where we determine no further action is warranted. For instance, the

division closed its investigation into the merger of UAL Corporation, the parent of United, and Continental, after the parties announced an agreement to transfer 36 slots (*i.e.*, takeoff and landing rights) to low-cost carrier Southwest Airlines Co., which resolved the division's principal concerns with the merger and also created potential benefits to consumers on a number of routes where entry had been unlikely. After thorough investigations, the division also closed its investigations into Microsoft's acquisition of Skype and Southwest Airlines' acquisition of AirTran.

The division also seeks continually to improve transparency in merger enforcement. In June 2011, the division released an updated version of the Antitrust Division's Policy Guide to Merger Remedies. The policy guide is a tool for division staff to use in analyzing proposed remedies in its merger matters, and also provides clarity to the outside world as to the division's approach to merger remedies.

It has been just over a year since the division and the Federal Trade Commission (FTC) released their revised 2010 Horizontal Merger Guidelines, and that too has been a great help in making the agencies' processes more transparent for the benefit of merging parties, the antitrust community, and the general public. As the Guidelines explain, and as the division's cases over the past year and a quarter demonstrate, we continue to apply traditional merger analysis techniques to

our matters, including defining relevant markets, looking at all measures of market power, analyzing barriers to entry, and reviewing claimed transaction efficiencies. In addition, from the outset of every matter, the division is open with the parties about our theories of competitive harm, continually keeping parties aware of any concerns as investigations develop and are always willing to listen to the parties' theories about why a transaction should pass muster.

Civil Non-Merger Enforcement

Another important foundation is the division's civil non-merger enforcement efforts, through which we vigilantly police the nation's markets against the many types of conduct that threaten competition and harm American consumers. For example, the division sued the major credit card companies—Visa, MasterCard, and American Express—to challenge rules those companies imposed on merchants prevent merchants from offering discounts to consumers for using a particular brand of card and stifling inter-brand competition among card networks. The division settled that matter with Visa and MasterCard, which agreed to end their imposition of merchant restrictions. Our case against American Express is ongoing.

In another ongoing matter, the division has gone to court to stop Blue Cross Blue Shield of Michigan's use and enforcement of "most favored nations" clauses in its contracts with Michigan hospitals. We believe that these MFNs distort the

competitive process by ensuring that Blue Cross' competitors cannot obtain hospital services at prices comparable to what Blue Cross pays and by increasing the prices its competitors must pay for those services. The district court recently denied Blue Cross' motion to dismiss this case, issuing an opinion agreeing with the division's arguments opposing the motion. Blue Cross is seeking an interlocutory appeal of that decision to the Sixth Circuit, which we have opposed.

In another health care matter, the division challenged a Texas hospital's use of exclusionary contracts with health insurers to maintain market power in its local market. This marked the first case brought by the division since 1999 challenging a monopolist with engaging in traditional anticompetitive unilateral conduct. United Regional Health Care System of Wichita Falls had entered into a number of contracts with insurers that imposed a significant pricing penalty on those insurers if they contracted with a competing facility in the local region. The impact of these contracts was to slow or prevent expansion and entry by other health care providers, likely leading to higher insurance premiums and health care costs in the Wichita Falls area. After the division challenged these practices, United Regional agreed to enter into a consent decree that prohibits it from engaging in a range of contracting practices that unlawfully hinder its rivals' ability to compete.

Already, in Fiscal Year 2012, we have reached a settlement in another civil non-merger challenge, which, if approved, will require financial services company

Morgan Stanley to disgorge $4.8 million to settle charges that it entered into an anticompetitive agreement with KeySpan Corporation that restrained competition in the New York City electricity capacity market. KeySpan paid $12 million in disgorgement in an earlier settlement with the division that was approved by the court and that established that disgorgement is available as a remedy under the Sherman Act.

These cases demonstrate that the division is carefully monitoring business conduct across a range of critical industries and that, when we discover anticompetitive conduct, we are ready and willing to go to court to put a stop to it.

Criminal Antitrust Enforcement

Another key priority for the division is criminal enforcement of the antitrust laws. Our criminal enforcement program remains busy and successful. In Fiscal Year 2011 the division filed 90 criminal cases (up from 60 cases in FY 2010) and obtained over $520 million dollars in criminal fines, which is roughly the same amount obtained as in FY 2010. In these cases, we charged 27 corporations and 82 individuals, and courts imposed 21 jail terms totaling 10,544 days of jail time. These cases and the underlying investigations were brought in a range of important industries, including real estate, auto parts, and financial services, to name a few.

For example, the division has been conducting an international cartel investigation into price-fixing and bid-rigging in the auto parts industry. This

investigation, which is ongoing, already has resulted in one corporate and three individual guilty pleas, $200 million in fines, and three separate jail terms for executives involved in a conspiracy to rig bids and fix prices for automotive parts. As described in the information filed in this matter's Furukawa case, this was hard core, pernicious price fixing that could only have resulted in inflated prices on the parts that are found in every American consumer's car.

During the past year the division, along with other federal agencies, also has been investigating criminal conspiracies involving bid-rigging in the municipal bond investments market. As a result of that investigation, JPMorgan Chase entered into an agreement with the division to resolve its role in a conspiracy and agreed to pay a total of $228 million in restitution, penalties, and disgorgement to federal and state agencies. Earlier in the year, UBS AG agreed to pay a total of $160 million in restitution, penalties, and disgorgement as a result of this investigation, and Bank of America previously agreed to pay $137.3 million. The investigation into the municipal bonds industry is ongoing and is being conducted by the division, the FBI and the Internal Revenue Service (IRS)-Criminal Investigation division. The division is coordinating this investigation with the Securities Exchange Commission (SEC), the IRS, the Office of the Comptroller of the Currency (OCC), the Federal Reserve Bank of New York, and 25 State Attorneys General.

In the real estate industry, the division continues its investigations into bid rigging conspiracies at public real estate foreclosure auctions and tax lien auctions. With the help of the FBI, we have ferreted out the ways participants were coordinating their bids in these auctions. For example, we have brought charges against a number of individuals who, at real estate foreclosures, conspired with other real estate speculators not to bid at certain auctions, with the purpose of suppressing and restraining competition and obtaining selected real estate at non-competitive prices. As a result of real estate foreclosure and tax lien investigations, to date, 32 defendants have pleaded guilty to conspiracies that suppress and restrain competition in ways that harm our communities and already-financially distressed homeowners.

The division's criminal investigations and cases have focused on a variety of other industries important to American businesses and consumers, including air transportation services, freight forwarding, and liquid crystal display (LCD) panels. The division's air transportation services investigation is an example of the division's focus on the investigation and prosecution of large international cartels that inflict massive harm on consumers and the American economy. Collusion in the air transportation industry affected billions of dollars of U.S. commerce and affected shipments for products used by businesses and consumers every day, including electronics, produce, medicines, textiles, and heavy equipment. As a

result of the division's efforts to date, a total of 22 airlines and 21 executives have been charged for their involvement in cartels in the air cargo and air passenger industries. More than $1.8 billion in criminal fines have been imposed, and four executives have been sentenced to serve prison time. Charges are pending against 17 executives.

In a related industry, freight forwarding, the division's investigation is focused on illegal agreements to fix the various fees and surcharges imposed on consumers for shipments of goods to the United States from numerous foreign countries, including Germany, Switzerland, the United Kingdom, and China. The charges that were fixed include peak season surcharges imposed during the period before the Christmas holiday shopping season in the United States. The conspirators agreed to impose these peak season surcharges and agreed on the approximate amount and timing of the surcharges. The freight forwarding investigation has resulted in charges against 13 companies for price fixing on freight forwarding services on air cargo shipments. All 13 companies have agreed to plead and to pay criminal fines totaling nearly $1 billion.

The division's LCD investigation involves collusion in yet another critical consumer industry, TFT-LCD panels. TFT-LCD panels are used in computer monitors and notebooks, televisions, mobile phones and other electronic devices. By the end of the period of the conspiracy under investigation by the division, the

worldwide market for sales of TFT-LCD panels was valued at $70 billion. Companies directly affected by the LCD price-fixing conspiracy are some of the largest computer and television manufacturers in the world, including Apple, Dell and Hewlett Packard. As a result of the division's investigation to date, seven companies have pleaded guilty and have been sentenced to pay criminal fines totaling nearly $900 million. Additionally, 22 executives have been charged to date, ten of whom have been sentenced to serve a total of more than seven years of prison.

The division's criminal investigations have put a stop to conduct that harmed competition in some of our most important industries and that hurt American municipalities and consumers. The Department thanks this Subcommittee for leading the effort to preserve incentives for corporations to self-report such criminal antitrust violations by extending the division's Leniency program's detrebling provisions through a ten-year reauthorization.

The Leniency Program has become one of the Department's most successful voluntary disclosure programs and the Antitrust Division's most effective criminal investigative tool, having led to the detection of numerous large international cartels that have targeted U.S. businesses and consumers. The division encourages firms to establish and maintain effective antitrust compliance programs, thoroughly

instructing employees about the requirements of the antitrust laws and setting up internal controls protecting against cartel activity.

The division's cartel cases demonstrate that the division's criminal matters continue to grow in size and complexity, both domestically and internationally. Larger teams of attorneys and support staff are needed to review and challenge matters that increasingly span the nation or the world. As our criminal workload evolves, the division intends to evolve with it and is seeking ways to harness more effectively and efficiently the division's criminal resources to meet these evolving challenges. The division fully expects to continue providing the government and American public with protection from civil and criminal antitrust violations, including maintaining its track record of annual criminal fines in the hundreds of millions of dollars.

As part of Attorney General Eric Holder's call for cost-cutting measures to streamline operations and reduce spending, the Department of Justice sent a proposal to Congress that would consolidate four of the division's field offices into our remaining offices. That proposal provides for jobs and moving expenses to our affected employees and up to a year's severance and health benefits to those, who for whatever reason, cannot move. The primary purpose of the reorganization is to realign the Division's field office structure to meet most efficiently and effectively the requirements of its evolving workload in a fiscally constrained

environment. Let me be clear—vigorous criminal antitrust enforcement both domestically and internationally will continue. The criminal program remains a priority in which we have and will continue to invest significant resources.

Competition Advocacy

The division promotes competition principles through its advocacy efforts. Our competition advocacy program increases awareness and understanding of the importance of competition and healthy markets among both federal and state governments and regulators, the courts, the antitrust bar, the business community, and international jurisdictions. As with our enforcement mission, we focus our advocacy efforts on industries and sectors that are important to American's everyday lives, such as health care, agriculture, and finance.

This past year has been an active one for our advocacy program. In the health-care arena, the division worked closely with the Federal Trade Commission (FTC), the U.S. Department of Health and Human Services, and other federal agencies to ensure that sound competition principles will help guide reform, encouraging innovation in health-care delivery systems while preserving competitive markets. As part of this effort, the division is working with the Center for Medicare and Medicaid Innovation and its parent entity, the Centers for Medicare and Medicaid Services, to ensure that the creation of Accountable Care Organizations (ACOs) or other innovative health care delivery systems does not

result in price-fixing or anticompetitive consolidation among providers. The division and the FTC released a joint Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program, which provides valuable guidance to healthcare providers interested in forming procompetitive ACOs that participate in the Medicare and commercial markets.

As a key part of the division's work to protect competition in agriculture industries, the Department of Justice and the U.S. Department of Agriculture (USDA) conducted a successful series of workshops in 2010, held in locations around the United States, to discuss competition and regulatory issues in these industries. The joint competition workshops allowed officials from both agencies to listen and learn from farmers, ranchers, cooperatives, processors, and retailers while further solidifying a strong working relationship. Through new efforts such as the Agriculture Competition Joint Task Force, which consists of USDA staff and attorneys from DOJ's Antitrust and Civil division, USDA and DOJ have been able to explore new opportunities for harnessing each other's expertise and improving enforcement of laws designed to protect producers. By taking advantage of the resources available to each entity, the Task Force has already begun streamlining the process for considering producer complaints, has analyzed

possible legal theories to address producer concerns, and provided assistance to USDA on proposed regulations.

Thanks to the workshops, we gained a more complete and detailed understanding of the agriculture sector. This understanding will better ensure that farmers, processors, and consumers reap the benefits of competitive agricultural markets. This keener appreciation of the dynamics of agricultural markets has already proven valuable to the division's enforcement work, such as our challenge to the proposed acquisition by George's of a Tyson's processing plant and our merger challenge to Dean's acquisition of Foremost, which settled after a year of litigation. Going forward, the division will continue to build on this foundation to further improve its enforcement in the agriculture sector and to reap the benefits of increased cooperation with USDA.

In the financial services sector, the division filed comments in December 2010 on rules proposed by the (SEC) and the Commodity Futures Trading Commission regarding implementation of the derivatives title of the Dodd-Frank financial reform law, seeking to ensure that competition was safeguarded in this important sector.

Global Antitrust Enforcement and Policy

Not only is the division championing consumers and competition domestically, but we also are actively engaging with the global antitrust

community, which has increased as the scope of international business operations has grown. Today, roughly 120 competition agencies enforce competition laws, including new agencies in China and India, and it is becoming increasingly common for many agencies to investigate the same matter. We recognize that the decisions of one competition agency can affect consumers and businesses elsewhere and have sought to more fully integrate the consideration of international issues into the Antitrust Division's day-to-day investigation and policy work. This has meant intensifying the division's cooperative relationships with other competition agencies and encouraging our staffs to be mindful of the international implications of our actions from the start of an investigation through the remedial phase.

Cooperation with our international counterparts is at an all-time high on enforcement matters. Virtually every day the division is in close contact with its counterparts all around the world on a variety of matters, including both investigations and policy matters. For example, with waivers from the parties, the division worked closely with the German Federal Cartel Office on an investigation into the acquisition of certain patents and patent applications from Novell by CPTN, marking the first significant merger enforcement cooperation the division had with Germany in twenty years. And, leading up to the division's complaint and consent decree involving Unilever and Alberto-Culver Co., also with party

waivers, we were aided by discussions with our counterparts in Mexico, the United Kingdom, and South Africa abut product markets and competitive issues that varied over the different jurisdictions affected by the merger. In addition, extensive international cooperation has taken place in our criminal investigations, including the on-going auto parts, refrigerant compressor, and liquid crystal display (LCD) global cartel investigations.

Other recent accomplishments include a Memorandum of Understanding (MOU) that the division and the FTC signed with all three competition agencies in China on July 27, 2011. The MOU outlines the commitment of these five agencies to work together when we can and creates a framework for enhanced cooperation among our agencies.

In October 2011, the division, FTC, and the European Commission issued an updated set of Best Practices on Cooperation in Merger Investigations for use in coordinating our merger reviews. October also marked the 20th anniversary of our bilateral cooperation agreement with the EC, an on-going success story marked by consistent enforcement policies directed at the goal of promoting consumer welfare.

The division is an active participant and leader in international competition groups, including the Organization for Economic Co-operation and Development (OECD), the International Competition Network (ICN), the United Nations

Conference on Trade and Development (UNCTAD), as well as international competition agencies, to promote competition and consumer interests across the globe. The division and the Italian and Irish Competition Authorities currently co-chair the ICN's Merger Working Group and the division is closely involved with all aspects of OECD's competition work.

Since 2009, the division has led the global dialogue on procedural fairness and transparency issues. The OECD Competition Committee's working party on enforcement and cooperation, of which I was elected chair in October, held a roundtable discussion in October focused on recent developments, highlighting concrete steps that many competition authorities around the world have taken to ensure the transparency of their investigations. The OECD's Competition Committee also has addressed a wide range of other important issues over the past year, such as the use of economic evidence in merger analysis, quantification of harm in antitrust cases, information exchanges, standard setting, bid rigging, and merger remedies. The division filed papers and commented actively in these and other discussions.

The Antitrust division continues to look for ways to deepen our collaboration with our counterparts. In November, a senior division attorney completed two weeks working in the European Commission's Directorate-General for Competition (DG Comp), and we currently are hosting a DG Comp attorney for

two weeks. The exchange is part of our new Visiting International Enforcers Program, which we call VIEP. This program builds on our existing relations and takes the division to a new phase of effective cooperation with the participating jurisdictions.

Conclusion

I emphasize in closing that none of what I have discussed could have been accomplished without the dedicated men and women of the Antitrust Division. It is because of their experience, talent, and dedication to the mission of protecting consumers that we have been able to achieve the successes we have. It is an honor and privilege to serve with them.

Given the important role we assign to competition in our nation's economy, the Antitrust division must be a vigorous, formidable, and effective enforcer of our laws to ensure that the competitive playing field is open and fair, giving consumers more and better choices. While I am pleased with all that we have accomplished thus far, the hallmark of any successful organization is continued improvement. In that regard I look forward to working with the members of this Subcommittee and your respective staff.