

INTERNATIONAL COMPETITION POLICY ADVISORY COMMITTEE

Remarks of Assistant Attorney General Joel Klein

Thank you, Attorney General Reno. I cannot overstate how gratified I am by the participation in this advisory committee of the exceptional group of people who have agreed to contribute to the formation of policy in this critical area, or how much I look forward to being enriched by their advice.

In today's global economy, no aspect of antitrust enforcement and antitrust policy is more important than its international dimension. A quarter of the American gross domestic product involves international trade. A growing number of the transactions and activities reviewed by us or our colleagues at the Federal Trade Commission are also being examined by antitrust enforcement authorities in at least one other, and often several other, countries -- as the recent Boeing/McDonnell Douglas merger brought home vividly to many of us. Some two dozen of our current grand jury investigations involve cartels that cross national boundaries -- cartels that victimize not only American consumers, but consumers around the world. And we hear more and more often from firms that believe they are handicapped in their efforts to export their products and services by anticompetitive conduct on the part of their foreign rivals.

Our antitrust policies and our actions need to be attuned to these realities, and we have devoted a tremendous amount of effort to making sure they are. Jim Rill, who has generously agreed to co-chair the committee along with former ITC chairwoman Paula Stern, deserves tremendous credit for turning the Division's focus to the international

arena when he served as Assistant Attorney General -- for his role in bringing about the 1991 US-EC antitrust agreement, as a key participant in the Structural Impediments Initiative talks between the U.S. and Japanese governments, and in many other ways. Under my predecessor Anne Bingaman, with Attorney General Reno's leadership, we worked with Congress to enact the International Antitrust Enforcement Assistance Act of 1994 -- pathbreaking legislation that paves the way for effective enforcement cooperation with our foreign counterparts by lowering the barriers that too often have denied us access to key evidence located outside our borders.

Today, we are actively building on these foundations. In April we announced the first agreement negotiated under the IAEEAA, with the Government of Australia. We expect this agreement to be the first of many such agreements, as other jurisdictions recognize the importance of cooperation and enact their own authorizing legislation.

At the same time, we are giving substance to the principle of positive comity -- the idea that if anticompetitive conduct abroad hurts both us and the country in which it is taking place, and the other country is prepared to act under its own antitrust laws, deferring to their enforcement efforts will often be the most effective way to restore competition in both markets. Earlier this year we made the first formal positive comity request to the EU under our 1991 agreement, and an active EC investigation is underway in response.

But positive comity, to be effective, requires two-way assurances of cooperation and communication, and a high degree of confidence that the problem conduct will be

adequately and promptly investigated and, as appropriate, remedied. That is why we and the EU have negotiated a new agreement, devoted to fleshing out and implementing the positive comity process, which we hope will be finalized soon. This kind of cross-border enforcement partnership has important potential for clearing away the kinds of anticompetitive arrangements that in the past have posed difficult issues for antitrust enforcement.

I mentioned that we have approximately two dozen ongoing investigations of international cartels. These cartels can do -- have done -- tremendous damage to the interests of consumers in the United States and abroad. Nothing exemplifies this more forcefully than our prosecutions of the worldwide food additives cartels, in which we have recovered to date nearly \$200 million in criminal fines. Other investigations of significant global cartels are pending. We have made important strides in cooperating with foreign governments in those investigations to secure evidence that would simply have been beyond our reach in the past, using a combination of mutual legal assistance treaties, letters rogatory, and similar mechanisms. Our extraordinarily and mutually productive coordinated investigations with our Canadian counterparts are well known by now, but we are making significant progress toward similar cooperation with antitrust authorities on other continents, as well.

At the multilateral level, an OECD working group on international antitrust cooperation, which I chair, is working toward agreement on a consensus recommendation that would reflect OECD member countries' hostility to hard core cartels and their shared

commitment to cooperate in eradicating them. The working group is also looking at multi-jurisdictional mergers, exploring whether there are ways to bring more uniformity to filing requirements without prejudicing the effectiveness of individual countries' merger screening procedures.

In the World Trade Organization, we are participating actively in the working group on trade and competition, established last December by the WTO at its Singapore ministerial meeting. We think this working group can play an important educational role in demonstrating the importance contributions of antitrust to efficient national markets and open international trade, and in fostering international cooperation. We are less persuaded that the time is ripe for the negotiation of global antitrust rules.

But I don't claim to have all the answers to these questions, and I don't expect any one of us has. That is why this advisory committee, whose members represent extraordinary breadth and depth of experience and perspective, has such an important role to play.