

Co-Chairs:

James F. Rill
Paula Stern

**INTERNATIONAL COMPETITION POLICY
ADVISORY COMMITTEE**

To The Attorney General And The
Assistant Attorney General For Antitrust

Executive Director:
Merit E. Janow

Counsel:

Cynthia R. Lewis
(202) 514-8505

Andrew J. Shapiro
(202) 353-0012

Stephanie G. Victor
(202) 616-9705

Members:

Zoë Baird
Thomas E. Donilon
John T. Dunlop
Eleanor M. Fox
Raymond V. Gilmartin
Vernon E. Jordan, Jr.
Steven Rattner
Richard P. Simmons
G. Richard Thoman
David B. Yoffie

February 28, 2000

Over the last two years, we have had the great privilege of serving as the Co-Chairs and the Executive Director of the International Competition Policy Advisory Committee (the "Advisory Committee"). It is now our distinct pleasure to respectfully submit this Final Report to the Attorney General Janet Reno and the Assistant Attorney General for Antitrust Joel I. Klein.

This volume reflects the contribution of many individuals. We wish to extend our deepest appreciation for the support, encouragement and wisdom provided to the Advisory Committee by the Assistant Attorney General for Antitrust. He invited the Advisory Committee to think boldly about multijurisdictional mergers, international enforcement cooperation, and trade and competition policy issues with a view to improving approaches not only within the United States but also around the world over the medium term.

The Advisory Committee membership of distinguished individuals represent broad experience and expertise from U.S. business, industrial relations, academic, economic and legal communities. Committee members have vigorously debated and considered the international competition policy issues examined in this report. Members have been extremely generous with their time and support of this endeavor. We have been enriched by their participation and remain grateful for their many contributions.

The Advisory Committee undertook significant outreach efforts, which we would like to briefly acknowledge. The Advisory Committee held two sets of public hearings in the fall of 1998 and the spring of 1999. The hearings on November 2-4, 1998, involved 48 expert participants, including senior competition officials from around the world, lawyers, investment bankers, economists and academics from the United States, Australia, Brazil, Canada, the European Union, France, Germany, Japan, Mexico, Spain, and Venezuela.

A second set of hearings were conducted on April 22, 1999 and May 17, 1999, which provided an opportunity to hear from a number of business and trade associations who reported on the findings of special task forces that each had formed to consider issues under consideration by the Advisory Committee. The American Bar Association Section of Antitrust Law formed a task force chaired by Harvey Applebaum and Paul Victor, which

James F. Rill, Esq.
Collier, Shannon, Rill & Scott, PLLC
3050 K Street, N.W., Suite 400

Washington, DC 20007

Dr. Paula Stern
The Stern Group, Inc.

Division - Rm. 10011
Washington, DC 20008

Professor Merit E. Janow
Columbia University
3314 Ross Place, N.W. 420 West 118th Street

Int'l Affairs Bldg., Room 909
New York, NY 10027

ICPAC
U.S. Department of Justice
Antitrust

601 D Street, N.W.
Washington, DC 20530

formed three separate working groups: on Mergers and Joint Ventures, on Effectiveness of Private Litigation as an Enforcement Tool and on Enforcement Cooperation. Representatives from the ABA Antitrust Section also testified at the spring meetings. Members of the International Antitrust Law Committee of the ABA Section of International Law and Practice also formed a task force chaired by Daryl Libow and Paul Crampton. That task force testified at the hearings and provided a written submission on the U.S. merger review process from the perspective of foreign parties. The Advisory Committee also heard from a number of business representatives from American Forest & Paper Association, The Business Roundtable, Eastman Kodak Company, Guardian Industries Corporation, the National Association of Manufacturers, United Parcel Service, the U.S. Chamber of Commerce, the U.S. Council for International Business, as well as presentations by representatives from The Brookings Institution, IMF, OECD, U.S. Agency for International Development and The World Bank. The International Bar Association as well as the International Chamber of Commerce submitted written comments on confidential information sharing and made a presentation at the spring hearings. In addition, a representative from the AFL-CIO presented that organization's views at an Advisory Committee meeting in July 1999. The full record of these proceedings is available on the Advisory Committee's webpage.

The Advisory Committee also undertook a number of other more targeted outreach efforts. For example, in the area of mergers, the Advisory Committee initiated a survey of some 18 mergers that were reviewed by antitrust authorities in more than one jurisdiction and sent letters soliciting input from lawyers and business executives associated with those transactions. To facilitate the Advisory Committee's consideration of U.S. and foreign technical assistance programs, the Advisory Committee invited individuals in the U.S. and abroad to share their perspectives on programs underway to foster the development of sound competition policy regimes around the world. A number of individuals responded with very useful input.

We also wish to extend our appreciation to those senior business executives, lawyers and other e-commerce experts that met with this Advisory Committee's e-commerce subgroup in June 1999 to exchange views and discuss the role of competition policy in the development of e-commerce and high technology markets.

Indeed, many other individuals provided the Advisory Committee with background papers and essays, for which we are extremely grateful. Two background papers undertaken by experts at the request of the Advisory Committee deserve special recognition. Professor William Kovacic of George Washington University School of Law prepared an excellent essay entitled "The Impact of Domestic Institutional Complexity on the Development of International Competition Policy Standards." And Professors Valerie Suslow and Simon Evenett prepared a stimulating essay entitled "Assessment of Empirical Literature on Cartels and Market Access." Several prominent economists offered insightful commentary on those papers.

There are many other individuals that have made significant contributions to the work of this Advisory Committee. Senior staff at the Department of Justice Antitrust Division as well as the Federal Trade Commission have generously responded to our many questions and requests for data and perspective.

We wish to extend our deepest appreciation to the staff of the Advisory Committee. Their professionalism and dedication to the work of the Advisory Committee has been extraordinary. Cynthia Lewis took lead responsibility for the chapters on multijurisdictional mergers. Andrew Shapiro had lead responsibility for trade and competition policy and e-commerce issues. Stephanie Victor had principal responsibility for the

examination of cartel and enforcement cooperation matters. Marianne Pak, the Advisory Committee's executive secretary, has been a superb and efficient manager. We also wish to thank Eric Weiner, paralegal to the Advisory Committee. This project simply could not have been undertaken without their hard work and dedication. And finally, two individuals at Collier, Shannon, Rill & Scott deserve special mention, Sarah Bauers, Research Analyst, and Christine Wilson, an antitrust lawyer, for their substantial contributions.

Needless to say, the views expressed herein reflect the views of the Advisory Committee or certain individuals if so indicated, and do not necessarily reflect the views of any individuals acknowledged above.

In closing, we hope that this Report will be of use to policy makers at home and abroad. Thank you Attorney General and Assistant Attorney General for Antitrust for providing us with this exciting opportunity to consider these issues on your behalf.

Paula Stern
Co-Chair

James F. Rill
Co-Chair

Merit E. Janow
Executive Director