



# Department of Justice

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ADDRESS

BY

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ATTORNEY GENERAL OF THE UNITED STATES

TO THE

THE ECONOMIC CLUB OF NEW YORK

WEDNESDAY, FEBRUARY 22, 1989  
GRAND BALLROOM, NEW YORK HILTON  
NEW YORK CITY, NEW YORK

I am pleased to have the honor and opportunity to speak tonight before this distinguished organization which since 1907 has served as a premier forum for the discussion of challenge and change in these United States.

New challenges to this nation and to our economy are emerging every day and every day we are called upon to adapt anew to change -- not just to avoid being left behind in an increasingly technological world, but to capitalize on the opportunities presented by these challenges so that we can help lead the world into the next century.

Look at the world around us. It's not the world of our forefathers. It's not the world of our youth. It's not even the world we knew 20 years ago, when I first entered public service. And I dare say that ten years into the next century, 1989 may well look as archaic to us and our children as 1969 seems today.

The changes we must face by that time can't be imagined today. Who could have predicted, for example, the impact of Japanese and German re-industrialization on the American automobile and electronics markets? And who could have foreseen the complete reversal of the attitude of my youth that the label "Made in Japan" meant "junk?"

The answer, of course, is: "Almost no one." Almost no one at the end of World War II was able to look far enough into the

future to see the world we live in today. And while there still is no reliable crystal ball available to us, there are lessons from the latter half of the twentieth century that we can look to, along with the realities of today, that will help us prepare for and deal with tomorrow.

Foremost among those lessons and realities, I suggest to you, is that more than anything else, where we have been, where we are, and where we are going, derives from an ever-shrinking world economy governed not just by American industrial giants, or by the government of the United States; but governed by decisions made in corporate board rooms and marketplaces across the oceans, and in national capitals around the world -- a process soon to be further complicated by the emergence in 1992 of a unified European Community.

This phenomenon extends beyond one product or commodity. During eight years as governor of my home state of Pennsylvania, our economy underwent a wrenching transition from its stagnant "smokestack" base of the past to a new high-tech, diversified economy of the future that permitted us not just to survive but to prosper.

Similar transitions are underway today in other states too

long committed to over reliance on single industries or sectors now challenged by foreign competition.

These shifts in the world economy have a pervasive effect. I needn't remind this audience that we must deal today with securities markets that never sleep. Today's worldwide 24-hour market leaves little time for translating information into results, even less time for careful decision-making, and almost no time for reflection and adjustment.

Satellite communications, instantaneous transmittal of funds, the capability of computers to digest and regurgitate massive amounts of financial information in seconds -- and which are programmed to respond to any given circumstance -- all of these things have changed our world and will continue to change our world, whether we like it or not.

I say that because I know in some instances we don't like it. We don't like it because of the on-going battles we must wage with foreign governments and parastatal corporations over fair and unfair trade practices. And we don't like it because, frankly, it makes our lives a lot more difficult. And we don't like it because, in this world, government review of business decisions seems itself to have become more than a nine-to-five job.

But "liking it" is not really the point, because no matter how hard we might try to fight it, or how firmly we might dig in our heels to try to stop it, the world will continue to change and will constantly pose new challenges to our abilities to stay in the race and, most importantly, to win that race.

I know many of you might be thinking, "That's easy for you to say from a vantage point in the Department of Justice." But let me tell you, our worlds are not so different. The same pressures from international change that you feel on a daily basis in your business pursuits, we feel and must address in carrying out our responsibilities in law enforcement and the administration of justice.

In fact, when people ask me what the biggest change has been at the Department of Justice since the time when I served as head of its Criminal Division a decade ago during the Ford Administration, my answer has invariably been: the increasingly international scope of the Department's work.

It is most readily apparent, to be sure, in law enforcement where we now deal daily across international boundaries in pursuit of multi-national drug trafficking cartels -- our number one priority at home and abroad -- sophisticated money laundering

operations and global networks of organized crime and terrorism.

But it is also true in other fields. And tonight I would like to speak to you briefly about the international dimensions of another important component of our responsibilities -- the nation's antitrust laws.

Here we must accomplish a difficult balancing act, since our government must provide protection to U.S. consumers by promoting healthy competition within this country, while at the same time allowing for legitimate efforts that will enable American companies to compete effectively in the global marketplace.

And to make matters even more confusing, all of the U.S. government's regulatory work must be conducted in response to not only the always-evolving circumstances of our own business community, but to the similarly ever-changing circumstances of our international competitors and the regulatory actions and reactions of their governments.

Consequently, regulations which made good sense and worked well years ago, today may no longer strike the important balance we are constantly struggling to achieve.

I remember well my initial encounters with the antitrust laws of yesterday. In the fifties as a law student and a young corporate lawyer, debate seemed to focus in the area of corporate merger, for example, on questions such as whether the relevant market for purposes of a particular case encompassed Chillicothe, Ohio, as well as Massillon, Ohio -- an inquiry that seems totally unrealistic in today's global economy. But vestiges of such a point of view still persist.

Let me give you one example.

U.S. firms today face unprecedented challenges in the global marketplace. Innovations in many fields, such as superconductivity, high-definition television, robotics and computer-aided design and manufacturing, are being developed by our major trading partners as well as by U.S. firms.

The costs of developing these technologies and bringing them to market often exceed the resources of any single firm. New manufacturing technologies and management strategies made possible by computers have created a new economics of manufacturing that is replacing traditional mass production. This new economics features increasingly short product life-cycles, continuous incremental modification of products as

experience indicates new areas for improvement, and rapid response to customer demands for variety and customization.

Because competing products, whether parallel developments or imitations, may give an innovator no more than six months of exclusivity, firms must develop and initiate marketing strategies and production scheduling with much greater dispatch.

Foreign firms keep pace with these competitive challenges in part by entering into cooperative production ventures. U.S. firms generally have not done so -- and one reason is the fear of an antitrust challenge. To ensure that the federal government's antitrust enforcement policy does not inhibit legitimate international ventures, the Justice Department recently reformed and spelled out its policy in a set of guidelines designed to "recognize the realities of a global economy" and to promote more effective global competition by U.S. companies.

But even with a rational and sympathetic government policy, the fear of a private antitrust suit seeking treble damages, as well as attorneys' fees, is surely enough to inhibit many worthwhile ventures. The U.S. economy can ill afford the burden of such fear. That is why we support moves in the Congress to eliminate antitrust uncertainty with respect to joint production



ventures. It could employ either of two basic approaches used in the past.

The first approach, a certificate program, was employed by Congress in the Export Trading Company Act of 1982 to encourage American exports. As applied to joint production ventures, such a program could work something like this: the government, perhaps jointly through the Commerce and Justice Departments, would grant a certificate to any joint-production venture that, after careful analysis, was determined not to threaten competition.

The conduct covered by the certificate could not be challenged under federal or state antitrust laws in either a governmental or a private suit. The government would then periodically review the joint venture to ensure that it did not subsequently become a threat to competition. While the government review that would be necessary to certify ventures would require time and some expense, the certificate could, if the law were properly written, eliminate most antitrust uncertainty surrounding joint ventures.

The second approach was used by Congress to provide antitrust certainty for cooperative research without a review and certification process. The National Cooperative Research Act of

1984 prohibits a court from condemning a joint-research venture without first considering the competitive benefits that the venture might create and then determining that the venture will on balance harm competition. Under NCRA, joint-venture participants who file brief notifications with the Justice Department and the Federal Trade Commission may be sued only for actual, rather than the normal automatic treble damages, and the participants can in some cases obtain attorneys' fees if they prevail in a private suit. The participants' conduct, however, can still be challenged by the department or the Federal Trade Commission.

This approach has been successful in the research and development field and may also be effective in the area of production. Although it does not provide the same degree of certainty as a certification procedure, and NCRA-approach requires virtually no government involvement in the structuring and supervision of the joint venture, and, for all practical purposes, eliminates the threat of private suits against legitimate joint ventures.

Either of these two approaches can enhance the ability of U.S. firms to compete better internationally by removing artificial barriers imposed by "fear of antitrust." The benefits will redound to U.S. firms through increased profits, to U.S.

workers through more good jobs, and to consumers around the world through the introduction of new competitively priced products in the market.

The message behind this proposal and our new international guidelines should be clear: that this Administration and this Department of Justice are anxious to take the steps necessary to help keep American business competitive in the world.

Make no mistake, though. This is not a free ride. We do not propose, by any means or under any circumstances, to forego aggressive enforcement of the laws of this nation, or to go easy in punishing those who cheat the system, bilk the government, or steal from the public.

Last year the Antitrust Division empaneled more federal grand juries to investigate criminal antitrust violations than ever before in the history of the antitrust laws, and in the past eight years, the Division averaged more criminal cases than in any previous administration.

If anything, this administration brings an increased vigor and determination on behalf of the President and myself to deal with what has aptly been called "crime in the suites." Our new efforts to deal with securities and commodities markets frauds

are highlighted by special task forces in six major trading centers. Our defense procurement fraud effort has begun to pay its first dividends in both increased financial recoveries and significant indictments. And the President's commitment to a \$50 million enhancement in our investigation and prosecution of rip-offs in the savings and loan industry is further evidence that we mean business in dealing with serious white collar crime.

But as I have tried to indicate tonight, while not being "kinder or gentler" toward corporate criminality, we do recognize our responsibility to help American businesses respond to global economic forces so as to ensure them of a fair and unfettered chance to run the race to the marketplace on as level a course as possible.

We are anxious to take the fair and judicious steps necessary to keep American business competitive in the world and to do everything within our power to help preserve for all Americans the hope for present economic security and future prosperity in an ever-changing world.

Thank you.

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