DEPARTMENT OF JUSTICE

Antitrust Enforcement Priorities: A Year in Review

Remarks by

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I. Introduction

Good afternoon, and thank you for that kind introduction. My presence here delivering one of the keynote addresses at the ABA Antitrust Section's Fall Forum is a reflection of the principal topic of my speech: the growing consensus on the enforcement priorities of antitrust agencies around the world. In particular, the highest enforcement priority is rooting out and prosecuting illegal cartels – naked agreements not to compete. Accordingly, Hew Pate, the Assistant Attorney General and my boss, sends his regrets that he is unable to participate in the Fall Forum this year. He is actually about as far away from here as it is possible to be – although you shouldn't take that personally – down in Australia attending the ICN's Annual International Cartel Workshop and the ACCC Enforcement Conference in Sydney. So, the honor of speaking to you all about recent developments at the Antitrust Division, as well as our enforcement priorities in the coming year, has passed to me. In that context, I want to review some of the significant Division activities over the course of the last year.

Much of official Washington – indeed of the nation – has been focused on things other than antitrust during the past year. I believe that there was a presidential election and, if I am not mistaken, the Red Sox overcame the curse of the bambino to win the World Series for the first time since 1918. Nevertheless, the antitrust world has been remarkably active since last November.

The "antitrust year" saw some significant antitrust decisions handed down by the U.S. Supreme Court – *Trinko* and *Empagran* – and at least one additional decision – *Blakely* – that already has had a significant impact on how sentences are set in criminal antitrust cases; legislation that amended the Sherman Act; the exit from the antitrust enforcement stage of

several major players, the appointment of two new Federal Trade Commissioners, one of them the new Chairman; and decisions in a number of high-profile merger challenges.

A busy year by any standard.

II. Enforcement Priorities at the Antitrust Division

During the past four years the Antitrust Division has established and promoted internationally a hierarchy of antitrust enforcement that places criminal cartel prosecution as the top priority, followed by merger review and then single firm conduct or what we sometimes call "Section 2 monopolization" issues. This ranking is important not only to ensure that enforcement resources are directed to their most effective use, but also to help minimize the possibility of unintended harm from enforcement activities.

Cartels, as the Supreme Court said in this year's *Trinko* decision, are "the supreme evil of antitrust." Naked agreements among competitors to fix prices, rig bids, allocate markets or customers, or reduce output are devoid of any efficiency justification, and are nothing less than direct assaults on the principles of competition that drive our market economy.

Anticompetitive mergers lead to fewer choices, less innovation, and increased prices to American consumers. Merger enforcement, however, is second on our enforcement hierarchy because their anticompetitive effects are not as clear as they are for cartels. A merger can increase market power, but it can also generate pro-competitive benefits, such as lower costs or increased innovation. Further, merger challenges typically occur prior to consummation, and therefore require the agencies and/or the courts to predict future effects, which is inherently more difficult than assessing past harm.

Finally, the Division has established as its third priority the promotion of objective standards for the evaluation of monopolization and other single firm conduct. This is the area in which it is most difficult to distinguish between harmful exclusionary conduct and beneficial hard-nosed competition and where overzealous antitrust enforcement is most likely to cause harm to consumer welfare.

I would now like to review the past year in light of each of these priorities.

III. Cartel enforcement

Cartels, as the Supreme Court said in this year's *Trinko* decision, are "the supreme evil of antitrust." Companies that participate in such cartels are committing a fraud against their customers and deserve severe penalties.

Global cartels often inflict the most extensive damage. They also can be difficult to uncover and prosecute, in part due to the complex enforcement issues created by the multiplicity of affected jurisdictions. For this reason, we are particularly pleased that our efforts to promote tough enforcement and strong international cooperation in the area of cartel enforcement has borne fruit. There is now widespread agreement around the globe on the serious harm caused by cartels, and on the need for enforcement agencies to give their highest priority to rooting out and punishing such behavior. I will say more about that later.

a. FY 2004

We have had a very good year at the Division in anti-cartel enforcement. First, some numbers. During fiscal year 2004, which just ended, we obtained more than $350 million in criminal fines from 17 different corporations and 15 individuals, making 2004 the second-

highest year the Division has ever had. In addition, U.S. courts ordered defendants to pay over $18 million in restitution, and sentenced 20 individuals to serve a total of 7,334 days in prison.

The largest single fine was paid by Infineon Technologies AG, a German manufacturer of dynamic random access memory (DRAM) chips that agreed in September to pay a $160 million fine for participating in an international conspiracy to fix prices in the DRAM market. DRAM is the most commonly used semiconductor memory product, providing high-speed storage and retrieval of electronic information for a wide variety of computer, telecommunications, and consumer electronic products. Annual sales of DRAM in the U.S. alone exceed $5 billion. The fine levied against Infineon was the third largest Sherman Act fine ever imposed against a corporate defendant, and the largest corporate fine imposed under any statute by the Justice Department under the Bush Administration.

In another significant investigation, U.S.-based Crompton Corporation agreed in March to plead guilty and pay a $50 million fine, and Germany's Bayer AG agreed in July to plead guilty and pay a $66 million fine, for their participation in an international conspiracy to eliminate competition and fix prices in the rubber chemicals market from 1995-2001. Approximately $1 billion worth of these chemicals are sold in the U.S. every year, where they are used to improve the elasticity, strength, and durability of everyday household products, such as tires, outdoor furniture, hoses, and footwear. Three Crompton executives and five Bayer executives were carved out of the non-prosecution protection of the companies' corporate plea agreements, leaving them subject to prosecution. In September, two of the Crompton executives agreed to plead guilty to participating in the conspiracy.

Finally, a diamond may be forever, but diamond cartels are not. In July, De Beers Centenary AG submitted to U.S. jurisdiction, pled guilty, and was sentenced to pay a $10 million fine to resolve a 10-year-old indictment for conspiring to fix the price of industrial diamonds. Diamond tool manufacturers use industrial diamond products in cutting and polishing tools for a variety of manufacturing and construction applications, including road construction, stone cutting and polishing, automobile manufacturing, mining, and oil drilling. De Beers's alleged co-conspirator was tried and acquitted a number of years ago without the benefit of access to evidence from De Beers. De Beers, headquartered in Lucerne, Switzerland, was not tried on the charge because the court lacked jurisdiction over the company. In entering the plea agreement, De Beers consented to the jurisdiction of the court, admitted that it reached agreements with its co-conspirator to raise list prices for certain industrial diamond products sold worldwide, as charged in the indictment.

b. <u>ACPERA</u>

Earlier this year, Congress enacted the Antitrust Criminal Penalty Enhancement and Reform Act, which increased maximum antitrust prison terms from three years to ten years and increased maximum statutory fines from $10 million to $100 million. The Act also introduced a de-trebling provision into our leniency system that is meant to bolster that program. The ability of "private attorneys general" to recover treble damages, while not free of problems or controversy, is an important component of antitrust enforcement in the United States. However, in our judgment the risk of exposing themselves to liability for treble damages in private antitrust litigation has from time to time prevented firms from taking advantage of our amnesty program and exposing their and their co-conspirators' illegal activity. The Act enhances the incentive for

corporations to self-report illegal conduct by limiting the damages recoverable from a corporate amnesty applicant to the damages actually inflicted by the amnesty applicant's conduct, provided that the applicant also cooperates with private plaintiffs in their damage actions against remaining cartel members. This should remove a major disincentive for submitting amnesty applications, encourage the exposure of more cartels, and make our leniency program even more effective. (The Act also included minor changes to the Tunney Act that should have no substantive impact.)

c. International Consensus

We have made it a priority not only to prosecute cartels, but also to work with other competition agencies to help put cartel prosecution at the top of their enforcement priorities as well. We are pleased to see increasing evidence of an international consensus on this issue. For example, outgoing EC Competition Commissioner Mario Monti spoke recently at a conference here in the U.S. and observed that "[u]ndoubtedly, international cartels are the private practice most distortive to competition and damaging to consumers. The prosecution of these harmful practices requires a combination of resourceful enforcement domestically and effective cooperation internationally. I am heartened by the fact that there is a consensus in the community of competition enforcers as to the harm that international cartels cause."

The ICN has now taken on cartel enforcement as a topic for its work, which is potentially a very significant development, as strengthened inter-agency cooperation and information sharing will be critical as we and our trading partners work to uncover and prosecute cartels that are increasingly multi-national in scope. We have already had some promising developments in this area, as demonstrated by this past year's coordinated raids and service of subpoenas by the

United States, the European Union, Canada, and Japan. We are hopeful that more can be done in the area of joint action, and in fact that is one of the major topics on the agenda of the International Cartel Workshop that Hew Pate is attending in Sydney.

Before leaving the subject of international cooperation on cartel enforcement, I should mention one of the Supreme Court's antitrust decisions this year – *Empagran*. In *Empagran* the Department argued in its *amicus* brief, and Hew Pate argued personally before the Court, that U.S. courts should not be open to treble-damages actions arising from non-U.S. transactions between non-U.S. buyers and non-U.S. sellers. In cooperation with a number of our most important trading partners, we sought to prevent the "legal imperialism" that would displace the judgments of other countries about how best to promote competition in their respective jurisdictions. Importantly, this approach also furthers cartel enforcement efforts. As AAG Pate argued to the Court, opening the U.S. courts to such foreign transactions would have served as a disincentive for conspirators to apply for amnesty under our or other countries' leniency programs. Accordingly, we are pleased with the decision of the Court.

The *Empagran* decision did not, however, end the case. After rejecting the plaintiffs' claims under the assumption that the foreign harm was independent of the U.S. harm, the Court remanded for further consideration of plaintiffs' alternative theory that the foreign harm was connected to the U.S. harm because the relevant market was global. Plaintiffs argued that the defendants had to raise foreign prices to avoid undermining the higher prices in the U.S. Thus, they contend, the foreign harm could not have occurred "but for" the U.S. harm. The Division and the FTC filed an amicus brief on remand arguing, in part, that this alternative theory also falls outside the domestic injury exception of the FTAIA. Permitting such claims would

undermine the Court's rationale that U.S. courts should not become "world courts" for antitrust claims that would displace the judgments of the local jurisdictions.

d. *Blakely* & the Future of the Sentencing Guidelines

No discussion of our criminal enforcement efforts would be complete without some mention of the Supreme Court's landmark ruling in *Blakely v. Washington*, in which it applied the rule it announced in 2000 in *Apprendi v. New Jersey* to invalidate an upward departure under Washington state's sentencing guidelines that was imposed on the basis of facts found by the court at sentencing. The Court held that the defendant's sentence violated his 6th Amendment right to a jury trial because the facts supporting the departure were "neither admitted by [the defendant] nor found by a jury." The Court reserved the issue of whether the holding in *Blakely* applied to the U.S. federal sentencing guidelines as well, stating that "[t]he Federal Guidelines are not before us, and we express no opinion on them."

After the *Blakely* decision, the Antitrust Division began implementing safeguards such as including in plea agreements a waiver of any *Blakely* rights that a defendant might have and having defendants specifically agree to be sentenced pursuant to the U.S. Sentencing Guidelines. In addition, post-*Blakely* indictments in Division cases contain sentencing allegations which put before the jury conduct or characteristics for which sentencing enhancements or upward departures might be sought. Finally, in cases where an indictment was pending but trial had not yet commenced, superseding indictments were returned which included sentencing allegations.

Obviously, *Blakely* could have far-reaching effects in the criminal justice system that go well beyond antitrust law, and only time will tell whether the Sentencing Guidelines can continue to be applied and, if so, in what form. For those interested in this topic, I direct your

attention to the petition that the DOJ filed before the Supreme Court in two recent cases – *United States v. Booker* and *United States v. Fanfan*. In its petition the Department seeks answers to the following questions: (1) Is the 6th Amendment violated by the imposition of an enhanced sentence under the Sentencing Guidelines based on the sentencing judge's determination of a fact that was neither found by the jury nor admitted by the defendant, and (2) if so, in a case in which the Guidelines would require the court to find a sentence-enhancing fact, would they therefore be wholly inapplicable, such that the sentencing court must instead exercise its discretion to sentence the defendant within the maximum and minimum set by statute for the particular offense? The Supreme Court heard oral argument in *Booker* and *Fanfan* on October 4, and is expected to render an opinion soon.

e. Jim Griffin Departure

I must take a moment to acknowledge an important transition at the Division. As many of you know, Jim Griffin, the Deputy Assistant Attorney General who heads up our criminal enforcement operations at the Division, will be leaving shortly after a quarter century of public service to pursue new challenges in his professional career. Jim will be replaced by Scott Hammond, who is currently the Director of Criminal Enforcement at the Division. Jim leaves us on a high note after what has been an extraordinarily successful fiscal year, a year that has seen the Division secure near-record fines and prison sentences, as well as the passage of legislation that Jim has been advocating for some time. In fitting tribute to Jim's sterling record of public service, this year President Bush personally presented Jim with the Distinguished Executive Award, the highest award that can be bestowed upon a U.S. civil servant.

We at the Division wish Jim great success as he begins the next phase of his professional life.

IV. Merger Enforcement

As I move to civil enforcement, I begin with another transition. David Sibley, our Deputy Assistant Attorney General for Economics, departed the Division at the end of October to return to his duties in Texas. David was a talented and valued colleague whose services will be missed. Merger enforcement is second on our enforcement hierarchy. While anticompetitive mergers can harm consumers, mergers also generate efficiencies that can reduce prices and benefit consumers. Further, the predictive nature of the analysis creates more uncertainty. For these reasons, determining the competitive effects of mergers requires sound economic analysis and prudent enforcement decisions.

a. The Numbers

Turning again to the numbers, I will have to disappoint the transactional lawyers in the room who might be looking for official recognition from the Division that a merger wave like the one we all rode in the late 1990s is gathering on the horizon. I can confirm that the "slight uptick" that everyone has been talking about for the past year is real. There were 1,454 reportable transactions in 2004, which is far below the late 1990s level, but which represents a 43% increase over 2003's figures. The Division investigated 6% of those transactions, 17% of its investigations resulted in the issuance of second requests, and slightly more than half of those cases led to challenges. Those figures are all down somewhat from FY '03. In real numbers, we initiated 89 investigations, issued second requests in 15 of those cases, and challenged 8

transactions. One can infer from the increase in filings, but the lack of an increase in challenges, that we are not seeing a significant increase in horizontal mergers between sizable competitors.

b. Merger Policy

On the policy front, the Division has devoted a significant amount of resources to merger work during the past year. At last year's Fall Forum Hew Pate and Tim Muris announced a joint DOJ/FTC study that led to the issuance of merger review data on our past enforcement cases. In February of this year, the Division and the FTC hosted a first-ever merger workshop, which touched on all areas of merger review to ensure that the enforcers remain up-to-date with current merger issues. As Chairman Majoras announced yesterday, the DOJ and FTC plan to build on the workshop to provide further transparency to how the agencies apply the Horizontal Merger Guidelines on a day-to-day basis. We look forward to working with our FTC colleagues on this project.

Last month we released a "Policy Guide to Merger Remedies" that both explains our policies and describes the legal and economic analysis that supports them. Among other things, the Guide emphasizes that structural remedies such as asset divestitures are preferred to conduct remedies, that divestitures must include all assets necessary for the purchaser to be an effective, long-term competitor, including critical intangible assets, and that the divestiture of an existing business entity that possesses all of the assets necessary for the efficient production and distribution of the relevant product is preferred to a partial divestiture. None of this should come as a surprise to anyone here as the Guide sets forth what has long been the practice at the Division with respect to relief in merger cases.

Finally, we have continued to stress the crucial importance of adhering to merger filing laws. Without adherence to merger filing laws, parties may seek to complete mergers harming consumers before the government has had a chance to stop the merger to prevent increased prices to consumers. As a result of those merger filing enforcement efforts, the Division has seen a 26% increase in the level of merger filing penalties assessed over the past four years.

c. Major matters

As there was a merger panel yesterday, I will make only limited comments on specific transactions. The Division challenged 8 transactions, including First Data/Concord and Oracle/PeopleSoft. When the last Fall Forum was held, the Division had just filed a lawsuit to block First Data's $7 billion acquisition by First Data of Concord EFS. Concord owned STAR, the nation's largest PIN debit network, and First Data owned NYCE, the third-largest network. These networks enable consumers to purchase goods and services from merchants through PIN debit transactions by swiping their bank cards at a merchant's terminal and entering a Personal Identification Number, or PIN. We had concluded that the transaction would substantially reduce competition among such networks, which could have resulted in consumers paying higher prices for goods and services from merchants that offer debit transactions. On the eve of the mid-December trial we reached a settlement with the parties under which First Data agreed to divest its entire interest in NYCE Corporation in order to proceed with its acquisition of Concord. The divestiture was completed in July of this year.

Much of the merger enforcement effort this past year at the Division – at least in terms of person hours – was on Oracle's still-pending acquisition of its enterprise software rival PeopleSoft. This past February the Division filed suit to block the transaction, arguing that it

would reduce the number of competitors in the markets for high-function financial management and human resource management software from three to two. The trial was held in federal district court in San Francisco over the month of June and part of July, and on September 9 the district court declined to block the transaction. We announced that we would not appeal the district court's decision on October 1.

I leave for other fora debates about the specific facts and evidence in Oracle. Here, I want to focus briefly on a few points.

First, although we were obviously disappointed in the court's decision, we continue to believe that we were right to challenge the deal. We respect, however, the role of the courts in the United States merger review process and this particular judge found that we failed to meet our burden to prove critical facts, particularly with respect to the relevant product market. Although we also disagree with some of the district court's legal observations – several of which we discussed on the panel yesterday – those observations were dicta. The court's ultimate decision rested on its detailed factual findings. Because those findings would appropriately have received great deference at the Court of Appeals, we determined that we had little to gain from an appeal.

There has also been considerable comment regarding the court's competitive effects analysis. Stepping back from the court's exposition, I think it is important that we keep some fundamentals in mind. Under section 7 of the Clayton Act, courts are to enjoin any transaction where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." That is the statutory standard, and it says nothing about "nodes," "unilateral effects," "coordinated effects," "critical loss," "diversion ratio," or even "HHIs." Those

concepts are all aspects of the various analytical tools that courts and the antitrust enforcement agencies have developed to help assess whether a transaction may substantially lessen competition or tend to create a monopoly. These tools are extremely valuable, and I applaud the economists, attorneys, and judges who have helped develop them. Ultimately, however, these tools are only guides in the application of the statutory mandate. They are a means to an end, not an end in and of themselves. Nor do they replace more traditional kinds of evidence, such as customer testimony and internal company documents. Indeed, in some cases it is not possible to perform some of these more sophisticated economic analyses and the lack of these tools certainly does not immunize such transactions from antitrust scrutiny.

In this regard, a number of people have asked me about the continuing relevance of customer testimony in a post-*Oracle* world. Customer testimony will continue to be relevant in the same way that it has always been relevant; customers remain the most objective marketplace participants. Their incentives generally are aligned with our goals of protecting competition, and the decisions they make in the ordinary course of business frequently provide a better window onto how the market actually functions than an economist's model or the court's intuition. While it is true that this particular judge found our customer evidence unpersuasive, another judge may have felt differently. We will continue to talk to customers, to solicit their views, and to integrate their testimony into our analyses and court challenges.

There may be one other lesson that we can take away from the *Oracle* case. Shortly after the final resolution of the U.S. proceedings, the EC ended its own investigation. We believe that when a competent authority in a jurisdiction with which the parties to a transaction have a strong connection rules in a case, generally speaking the global antitrust system should respect such a

decision. The alternative would be a highly inefficient system of seriatim review of controversial matters in which each agency – to use Hew Pate's phrase – lines up to takes its own whack at the piñata. While the EC, as it should, made its own, independent decision in the Oracle case, the result is consistent with this view of comity. This is perhaps a minor silver lining.

V. **<u>Section 2 Enforcement</u>**

Finally, the Division has established the promotion of objective standards for the evaluation of monopolization and other single firm conduct as its third priority. This is the area in which it is most difficult to distinguish between harmful exclusionary conduct and beneficial, albeit tough, competition. We encourage companies – even monopolists – to compete vigorously on the merits of their products and services. Antitrust enforcement should not interfere with the rough and tumble of the marketplace unless and until there is a clear and sound basis for finding harm to competition. While we see increasing recognition around the world that intervention against such single firm conduct should be treated with caution, this is the area with the most significant differences of approach among antitrust enforcers around the world.

That these differences continue should come as no great surprise, given that U.S. courts and antitrust enforcers have been struggling with unilateral conduct cases since the enactment of the Sherman Act over a hundred years ago. As Judge Learned Hand famously admonished in the *Alcoa* case, "The successful competitor, having been urged to compete, must not be turned upon when he wins." There are those who continue to advocate precisely such an approach in the U.S. even today, under the rubric of "de-monopolization." Even dominant firms – many of which

achieve their success due to superior skill and industry – must be allowed to compete aggressively, and should not be prevented from reaping the rewards of their success.

Determining whether a competitor is competing aggressively or acting anticompetitively is a significant challenge that is best met by the application of objective, economically based, transparent standards. These standards have evolved over time, and were most recently discussed by the Supreme Court in this year's *Trinko* case, in which the DOJ and FTC advocated a standard under which a refusal to assist rivals cannot be exclusionary unless it makes no economic sense *but for* its tendency to reduce or eliminate competition. Although the Court did not explicitly adopt this standard, the Court's analysis was consistent with the approach, and provided important guidance on the fundamental principles of U.S. monopolization law. The Court also expressed profound skepticism that the antitrust laws were intended to create a duty by one competitor to assist its competitors by assuring them access to its tangible or intellectual property.

But there are signs of progress out there, if you look for them. The most recent developments in the European Commission's long-running case against IMS Health, for example, indicate that the European Court of Justice recognizes that mere denial to competitors of access to certain intellectual property rights, standing alone, is not sufficient to constitute an abuse of dominance.

At this point, I want to convey some remarks directly from Hew Pate on a matter on which I am not involved – *Microsoft*:

"In case you missed it, the case has finally came to an official end. At the end of June the U.S. Court of Appeals for the D.C. Circuit (after oral argument by the now-FTC Chairman

Majoras) affirmed the District Court's finding that our settlement with Microsoft is in the public interest. In doing so, the court went out of its way to say that the district court, 'by remedying the anticompetitive effect of commingling, went to the heart of the problem Microsoft had created, and it did so without intruding itself into the design and engineering of the Windows operating system. We say, Well done!' With that ringing endorsement of the Division's efforts, it is perhaps not surprising that last month's deadline for the filing of appeals in the case passed quietly without incident, but we still greeted the official end of the matter with great satisfaction at the Division."

"Division efforts to enforce the Microsoft settlement are ongoing. The Division's Microsoft staff and the company appear regularly before U.S. District Court Judge Kollar-Kotelly to brief the court on enforcement activities (the most recent status conference was on October 19), and the staff meets often with the company in Redmond to ensure full compliance with the decree's requirements. The staff also consults periodically with European Commission staff regarding implementation of the EC's own Microsoft decision, which the company is currently appealing, as well as with competition authorities in other countries – most recently Japan and Korea."

Turning back to more general Section 2 considerations, devising a remedy for unilateral antitrust violations requires at least as much care as the initial rooting out of the violations. The potential for causing more harm than good through counterproductive remedies is great in the single firm context, particularly when combined with the practical problems of enforcing conduct remedies. Remedying single firm conduct is also one of the areas of greatest difference among antitrust enforcement bodies around the world. As one illustration, we believe, and our

courts have held, that antitrust enforcers should generally be skeptical about claims that competition has been harmed by the product design choices of a dominant firm. Our fellow enforcers around the world, however, do not necessarily see things the same way. For example, in Europe there are those who believe that firms have a duty to compete with each other "like gentlemen," and that dominant firms especially should be careful when improving their successful products, lest they cross the line between fair competition and abuse of their dominant position. We believe that companies, even dominant companies, should be encouraged to compete vigorously.

VI. Conclusion

I will end with two final observations. First, I draw your attention to the Report of the Department of Justice's Task Force on Intellectual Property (available at http://www.usdoj.gov/olp/ip_task_force_report.pdf). Issued just last month, the Report includes several recommendations for antitrust enforcement:

1. Support the rights of intellectual property owners to decide independently whether to license their technology to others;
2. Encourage trade associations and other business organizations seeking to establish industry standards for the prevention of intellectual property theft, to use the Justice Department's business review procedure for guidance regarding antitrust enforcement concerns; and
3. Continue to promote international cooperation and principled agreement between nations on the proper application of antitrust laws to intellectual property rights.

Second, the Division will continue to place a high priority on working with the increasingly numerous antitrust enforcement agencies around the globe – on specific matters, but

also on the continuing evolution of antitrust enforcement policy. I want to emphasize that our discussions with these other governments are a two-way street. For example, as Commissioner Monti mentioned last month, properly addressing state impediments to competition should be an important focus of competition authorities in many countries, particularly those that are making the transition to more market-based economies. While we have less of a history of state impediments here in the U.S. than many countries, we nonetheless have a history. The FTC has been emphasizing this issue in recent years, and the Division is focusing on the issue as well. Similarly, regarding the goal of increased transparency, the European Commission and others have been ahead of the U.S. when it comes to explaining the reasons behind decisions not to bring challenges. During the past year we announced a policy of issuing public statements – beyond the usual press release – upon the closing of certain investigations, for example in cases where public dissemination of the rationales behind our decision not to bring an action might benefit businesses attempting to comply with complex antitrust standards. We issued such a statement this week, explaining our decision to close our investigation into the Arch/Metrocall "pagers" merger, and we will continue to provide such public statements where appropriate.

Thank you.