



# DEPARTMENT OF JUSTICE

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## THE KOREAN FAIR TRADE COMMISSION AND THE INTERNATIONAL COMPETITION NETWORK

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[Mr. Pate greeted the audience in Korean: Good morning. I deeply apologize for not being able to be with you in Seoul.]

Now, for those of you who actually speak Korean, what I hope I have said is that I deeply regret that I cannot be in Seoul this week to attend the Seoul Competition Forum and the Third Annual ICN Conference. I have been assigned by my government to argue an important antitrust case (the Empagran case) before our Supreme Court in a few days, and instead of having the pleasure to be with you, I must spend my time in preparation sessions assigned by our Solicitor General. In this case, I will present arguments supported by several ICN members, so I hope you will see that by staying in Washington I am doing my part for international antitrust cooperation. Happily, our gracious Korean hosts have made it possible for me to speak to you directly through this live video feed.

In my brief remarks this morning, I want to do three things. First, I want to thank Dr. Kang Chul-Kyo, Chairman of the Korean Fair Trade Commission, for his kindnesses to me, and for his efforts to build a sound relationship between our agencies. Second, I would like to provide my perspective on the important role of the KFTC in the world of antitrust. And third, I want to talk a little bit about the current and future roles of the International Competition Network.

## **THE KFTC IN THE ANTITRUST WORLD**

Korea has done an outstanding job in becoming a leader in the promotion of sound competition law and policy, not only in Asia, but throughout the world. The KFTC has been an important participant in the fight against international cartels; its enforcement actions against

participants in the international vitamin and international graphite electrodes cartels are laudable examples of its success in this area. The KFTC was also one of the first competition enforcement agencies in Asia to adopt a corporate amnesty program, a tool that has proven helpful across the globe in detecting and rooting out both domestic and international cartels. I am sure the amnesty program will be a major weapon in the KFTC's arsenal against hard core cartels, especially if the proposed doubling of the maximum surcharge rate is enacted later this year.

The KFTC also has been in the antitrust vanguard in its efforts to engage in competition advocacy and promote regulatory reform. Korea's Monopoly Regulation and Fair Trade Act is noteworthy in expressly requiring other Korean agencies to notify the KFTC of proposed laws or regulations that might restrain competition, and in authorizing the KFTC to provide its views on how to minimize any adverse competitive effects. However, what is truly commendable is the KFTC's proactive efforts to promote regulatory reform through ambitious reviews of regulatory systems; its most recent review has led it to recommend, based on market principles, that more than one hundred regulations should be revised or eliminated to foster competition. In this important area of competition advocacy, the KFTC provides a model worthy of emulation by competition agencies around the globe.

The KFTC has shown itself to be a valued partner in efforts to strengthen international cooperation in the competition area. The U.S.-Korea bilateral antitrust relationship is a strong one, based on a firm tradition of cooperation on both enforcement and policy matters. We have established a tradition of annual antitrust consultations with the KFTC that dates back to 1996, and we were highly honored that Chairman Kang led the KFTC delegation to Washington, D.C.

last November. During those consultations, Chairman Kang, Tim Muris, and I agreed that our agencies have achieved a level of cooperation and trust that warrants a formal acknowledgment and deepening of our strong cooperative relationship. Consequently, I am happy to announce that we have recently entered into negotiations to complete a bilateral antitrust cooperation agreement between our two countries.

Finally, in the multilateral arena, the KFTC has demonstrated its commitment to be a leader in the Asian region as well as in the global antitrust community. It has been an active participant in competition-related meetings of the Organization for Economic Cooperation and Development and the World Trade Organization, and I am pleased to acknowledge that Seoul is now the home of the KFTC-OECD Seoul Regional Centre for Competition, where valuable capacity-building activities for new antitrust agencies in this region will be planned and executed. And in ICN, of course, the KFTC has played a leading role: both as a conscientious and active member of the Steering Group, and as a significant contributor over the past 30 months as Chair of the Membership Working Group. As you know better than I, many of you are here today in part because of KFTC's efforts in this regard.

## **THE INTERNATIONAL COMPETITION NETWORK**

And now, I'd like to say a few words about the ICN. Although ICN is just over two and a half years old, you are now gathered for ICN's third annual conference – which shows you how driven and efficient we are.

I trust that the gracious hosts at the KFTC have prepared a spectacular conference, but one of the greatest ICN accomplishments is that our meetings are becoming routine. For an organization in its infancy, such basic accomplishments are quite profound, and we should not

lose sight of that. What truly is impressive beyond expectations, is the list of ICN's substantive accomplishments, many of which you will review in the next two days.

## **THE YEAR IN REVIEW: MERIDA TO SEOUL**

It has been an eventful 10 months for the ICN since our last annual conference. Last Fall, our first Chair, Konrad von Finkenstein, was suddenly elevated to the bench in Canada. His unwavering dedication and clear vision helped establish the ICN and charted a course toward convergence. Upon his departure, we turned to Mexico's Fernando Sanchez Ugarte to lead us as Chair. ICN has not missed a beat since, and we have Fernando, his agency the Mexican Federal Competition Commission, and the enduring administrative support of the Canadian Competition Bureau to thank for that.

Our membership has once again increased, and is now nearly reaching the natural limits of our market share. At nearly 90 agencies and growing, we can count virtually all the world's antitrust agencies as members. The ICN has become a near universal network of antitrust enforcers.

In the past year, we have delved into new areas, adding a Working Group to examine the unique issues raised by enforcement in regulated sectors. A group of members has studied and prepared a proposal for a Cartel Working Group in the upcoming year, a proposal we at DOJ strongly support. We did not set out to cover all of antitrust at once, but as envisioned back in October 2001, we are addressing more and more topics of importance. The challenge, as from the beginning, is to focus and finish those projects of priority to members.

One of the most important initiatives of the past year has been the emphasis on implementation, exemplified by a panel presentation on Thursday led by Giuseppe Tesauro,

President of the Italian Antitrust Agency.

## **ICN'S MISSION: CONVERGENCE**

### ***The Idea of Convergence***

Because our goal is convergence, implementation, and not just consensus, is critical. As a virtual network, ICN lacks formal mechanisms to turn recommendations into reality overnight. But such a formalistic approach would not match the reality of today's state of competition policy. We antitrust agencies have our differences – some thrust on us by different legal systems that can take the form of set legal or procedural frameworks, and others of our own fashioning in analytical approaches, remedies, and internal procedural rules.

I think there is a general consensus in the U.S. antitrust community that the United States has benefitted enormously from our ability to learn from our mistakes in antitrust goals and antitrust analysis over the past 100 years. We are now seeing that type of learning within ICN as well. Our experience has been that agencies bring to ICN work a real openness to the ideas and experiences of others, and a willingness to question one's own traditional way of doing things that is not so frequently observed in other fora. Wherever possible, ICN should strive to combine its initiatives with implementation. I would like to single out two areas of emerging consensus that highlight many of our hopes for ICN – mergers, where we have made significant steps, and cartels, where we are poised to do the same.

### ***Convergence in the ICN: Mergers***

ICN's Merger Working Group has built on years of work by academics, practitioners, and agencies who have noticed the growing number of jurisdictions with merger review procedures and seen the potential problems of multijurisdictional review – unnecessary costs and

delays, conflicting outcomes, and unsound notification rules or investigation procedures. With a consensus already growing around basic procedural principles, the time was ripe for making merger process one of the ICN's two initial projects. Three years later, we can see the value of ICN, as it has refined and expanded this emerging consensus on merger review convergence. Makan Delrahim, my Deputy charged with international matters and Chair of the Merger Working Group, will summarize the ICN's accomplishments in this area tomorrow.

### ***Convergence in the ICN: Cartels***

In the past decade we also have seen the emergence of a truly global effort against cartels and its general recognition as the top priority for antitrust enforcers. Ten years ago, meaningful multilateral discussions were not possible in this area, but with growing empirical and moral support for cartel enforcement and the OECD's path-breaking recommendation on hard core cartels, many competition authorities – not just two or three – are now partners against the common enemy of hardcore cartels.

Recognizing this momentum, we agreed last year at Merida to study the idea of a Cartel Working Group. Many interested members met informally in Brussels last October to begin the discussion. Over the past six months, the group refined a proposed mandate and framework, considering the needs of all members. This thoughtful analysis of needs and goals is an effective example of how we should go about identifying new topics that are ripe for international convergence efforts. Coupled with the previous work in the area at the agency level and international fora, most notably the series of successful agency-run International Cartel Conferences, the carefully crafted mandate that will be discussed on Thursday should provide a solid basis for success for a future Cartel Working Group.

Mergers and cartels are two examples of how best to use ICN resources focused on discussions and work promoting convergence in areas 1) where it is possible, and 2) where it can have significant practical effects.

## **CONCLUSION**

As an enthusiastic supporter of the ICN, I want to extend my warmest personal thanks to all of you in Seoul who have contributed to the ICN's success, and particularly to our ICN Chair, Fernando Sanchez Ugarte, who has given a great deal of himself and his agency to continue the early success of the ICN, and to our host Dr. Kang Chul-Kyo, whose agency has become a leader in promoting antitrust principles in Asia. Again, thank you for this opportunity to address the Seoul Competition Forum.