DEPARTMENT OF JUSTICE

STATEMENT

OF

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BEFORE THE

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CONCERNING

ANTITRUST ENFORCEMENT OVERSIGHT

PRESENTED ON

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Good afternoon, Mr. Chairman and members of the committee. It is a pleasure for me to appear before you today on behalf of the Antitrust Division of the Department of Justice to discuss the Division and its enforcement activities to protect consumers and businesses through sound and vigorous antitrust enforcement.

As members of this Committee appreciate, competition is the cornerstone of our Nation's economic foundation. Antitrust enforcement promotes and protects a robust free-market economy. It has helped American consumers obtain more innovative, high-quality goods and services at lower prices; and it has strengthened the competitiveness of American businesses in the global marketplace.

That is not the same as guaranteeing the success of any particular competitor; we are not in the business of picking winners and losers, or dictating how a market should be structured. Those decisions should be made by competitive market forces. The goal of antitrust enforcement is to ensure that anticompetitive agreements, conduct, and mergers do not distort market outcomes.

Antitrust enforcement has enjoyed substantial bipartisan support through the years, and we appreciate this Committee's active interest in and strong support for our law enforcement mission.

The first part of my testimony today will review recent developments in the Division's three core enforcement programs: criminal, merger, and civil non-merger. Then I will describe some ongoing international and policy developments at the Antitrust Division to strengthen the foundation for effective antitrust enforcement here and around the world.

Enforcement Activities

Let me spend a few minutes highlighting some of the Antitrust Division's recent work in each of these three major enforcement areas. In brief, the Antitrust Division's criminal program detects, punishes and deters price-fixing and other illegal conduct by those who conspire to cheat consumers rather than compete to win their business. Our merger review program prevents anticompetitive combinations that can lead to higher prices or to increased opportunities for collusive behavior. And our civil non-merger program prevents the unlawful creation or abuse of monopoly power.

Criminal Enforcement

Criminal enforcement remains a core priority, and we are continuing to move forcefully against hard-core antitrust violations such as price-fixing, bid-rigging, and market allocation. Cartel activity essentially robs U.S. consumers and businesses of many hundreds of millions of dollars annually. This causes higher prices for virtually all consumers because of the wide range of products that cartel activity implicates, such as school milk, electricity, clothing, and food products, just to mention a few areas of prosecutions in recent years.

During the current fiscal year, the Antitrust Division has obtained almost $60 million in criminal fines, with convictions of 11 corporations and 17 individuals; in the previous fiscal year, the Division obtained over $75 million in fines, with convictions of 20 corporations and 23 individuals. We have continued a recent trend toward more certain and longer prison terms for individual antitrust offenders. In the last fiscal year,

defendants in Division prosecutions received more than 10,000 days of jail time – a record high – with convicted individuals receiving sentences averaging more than 18 months, another record high average that is continuing thus far in the current fiscal year.

The following cases from the last couple of years give good examples of the types of jail time we have been successful in pursuing: (i) the prosecution of Sotheby's former Chairman, Alfred Taubman, who was convicted after trial and sentenced to a year and a day in prison and a $7.5 million fine for his role in the auction-house price-fixing scheme between Sotheby's and Christie's; (ii) the three-year jail term imposed on Elmore Roy Anderson for rigging USAID bids and defrauding USAID in connection with construction work in Egypt that the U.S. government funded as part of the Camp David Peace Accords; (iii) the 63-month jail term imposed on Melvyn Merberg for his role in rigging bids submitted to, and defrauding, Newark public schools and other government, not-for-profit, and private entities in the New York City metropolitan area; and (iv) a record-breaking ten-year sentence imposed on Austin "Sonny" Shelton, a former Guam government official, for orchestrating a bid-rigging, bribery, and money-laundering scheme involving FEMA-funded contracts in Guam.

We have maintained a strong focus on international cartels because of the tremendous volume of commerce typically associated with such conspiracies. Currently, there are almost 50 sitting grand juries investigating international cartel activity. But we are committed to rooting out criminal anticompetitive conduct wherever it occurs, and have more than 70 grand juries investigating domestic cartels. Many of our recent

criminal cases have been significant domestic cases involving price fixing and bid-rigging.

Some of our recent criminal prosecutions include the following:

- In April of this year, two more individuals pled guilty to participating in a conspiracy to rig bids and allocate markets for advertising printing and graphics in the New York City area. This is a continuing investigation that since September 2002 has resulted in 13 guilty pleas, with two additional defendants scheduled for trial this October. Thus far, three defendants have been sentenced to prison terms of 37, 21, and 15 months, and an additional defendant has agreed to a prison term of 63-78 months when he is sentenced later this year. In addition, these defendants have been ordered to pay millions in restitution to victims and back taxes to the IRS. The charges arose out of wide-ranging bid-rigging and kickback schemes, pursuant to which the advertising executives subverted competitive bidding requirements and steered valuable contracts to suppliers who gave them cash, airline tickets, expensive clothing, limo service, and other kickbacks.

- In February of this year, Hoechst A.G., an international chemical conglomerate based in Germany, pled guilty and agreed to a $12 million fine for its role in a conspiracy that suppressed competition in the world markets for monochloroacetic acid (referred to as "MCAA"), an industrial chemical used in the production of commercial and consumer products including pharmaceuticals, herbicides, and plastic additives. Hoechst was the third company to plead guilty and accept a multi-million-dollar fine in this ongoing investigation, following Dutch company Akzo Nobel Chemicals B.V.'s $12 million fine and French company Elf Atochem's $5 million fine. The top executive of each company agreed to serve 3 months in prison.

- In November 2002, Morganite, Inc., pled guilty to participating in a decade-long international cartel to fix prices for carbon brushes and collectors used to transfer electrical current in direct current motors, and agreed to pay a $10 million fine. At the same time, the company's UK parent, Morgan Crucible Co. PLC, pled guilty to obstructing our investigation by giving us false information in an attempt to convince us that their price-fixing meetings with competitors were legitimate business meetings and by composing a written script containing this false information for a co-conspirator to use in answering Division questions. The parent company agreed to pay a $1 million fine.

- In October 2002, Arteva Specialties S.a.r.l., a Luxembourg company doing

business out of Charlotte, North Carolina as KoSa, pled guilty to price-fixing and market allocation in polyester staple, a synthetic fiber used in textile products such as clothing, table and bedding linens, upholsteries, carpeting, and air and water filters. The company agreed to pay a $28.5 million fine, and its former director of textile staples pled guilty and agreed to eight months in prison and a $20,000 fine. This is part of a continuing investigation.

Other markets where the Antitrust Division has brought recent criminal prosecutions include: industrial chemical markets for organic peroxides, used in the manufacture of polyvinyl chloride, low-density polyethylene, and most polystyrene products such as containers and packaging; carbon cathode block, a heat- and chemical-resistant product used in aluminum smelters; nucleotides, used to enhance food flavor; magnetic iron oxide (MIO) particles, used in the manufacture of video and audio tapes; tactile tile; scrap metal; automotive tooling; industrial pumps used in wastewater treatment equipment; vitamins used in human nutritional supplements and livestock feed additives; federal highway construction contracting; home improvement contracting; periodical magazine distribution; sheriff's auctions; collectible stamp auctions; and automotive replacement glass.

The Division's corporate leniency, or amnesty, program continues to be our most active generator of criminal investigations. Under the Division's corporate leniency policy, a corporation that reports its illegal antitrust activity at an early stage will not be charged criminally for this activity if the company meets the requirements of the leniency program. For a corporation that comes forward after an investigation has begun to be eligible for leniency, the Division must not yet have evidence against the company that is

likely to result in a sustainable conviction. Executives of the company who cooperate with the investigation are also covered by the leniency. Acceptance into the Division's leniency program can save a company tens of millions of dollars in fines and can avoid the prosecution and incarceration of its culpable executives.

This policy, while allowing leniency for one participant in the cartel, has tremendous benefits to enforcers and consumers. First, the mere possibility that one of the cartel members will get leniency if it is the first to come in to the Division works to prevent cartels from forming in the first place, because businesses have an increased risk they will be targeted for prosecution as a result of a fellow cartel member reporting on their illegal activities, subjecting them to heavy criminal fines and incarceration of their culpable executives. Second, even if a cartel does form, the benefits associated with the leniency policy lead to destabilization of the cartel by creating a powerful incentive for a company to report the cartel to antitrust authorities. Third, having a member of the cartel provide evidence to authorities helps ensure that prosecutions of the cartel are likely to be more successful than without such cooperation. Fourth, companies targeted for prosecution as a result of a particular grant of leniency not infrequently seek to negotiate a plea agreement and seek to obtain more lenient treatment than otherwise by reporting on activity of an unrelated cartel. Thus, the leniency program has something of a domino effect. One leniency grant may ultimately have the effect of enabling the Division to prosecute multiple cartels.

The Division’s leniency policy is a very important factor behind the Division's

increased ability to crack cartels in recent years; of course there are also other factors, including the Division's increasing use of search warrants and the increased assistance provided by foreign antitrust authorities, including coordinated searches in multiple jurisdictions. We intend to continue to look for ways to improve the leniency program in order to destabilize and prosecute more cartels on behalf of American businesses and consumers. Notably, the Division's success with the leniency program has influenced antitrust authorities around the world to adopt or strengthen their own leniency policies. The European Union revised its leniency program last year to closely mirror our own, making it easier for corporations who need a "package deal" to come forward and cooperate.

In addition to leniency applications, the Division discovers antitrust violations from a variety of sources, including citizen complaints made to the Division's New Case Unit or to a Division field office, leads from foreign antitrust authorities, and news reports; leads may also come from a new entrant whom cartel members have tried to recruit into an ongoing antitrust conspiracy, a customer who has suspected price-fixing or bid-rigging, a disgruntled cartel member, or even a relative of a cartel member or industry insider.

While the increasing jail sentences and huge multi-million dollar fines that have characterized international cartel prosecutions are vitally important, the Antitrust Division does not limit its enforcement to those cases; we also prosecute multiple cases that, while seemingly small, are significant to the victims and to our overall efforts at deterrence. We

are determined to bring antitrust violators to justice; and we also want the level of our enforcement activity, including the fines and sentences, to send a powerful and unmistakable deterrent message to those in our country and around the world who would victimize American consumers and the American marketplace. For that reason, I believe it is time to consider whether it is appropriate to increase the penalties associated with criminal antitrust violations. I look forward to working with this Committee on that issue.

Merger Enforcement

Another core element of the Division's enforcement mission is enforcing section 7 of the Clayton Act against mergers and acquisitions that may substantially lessen competition or tend to create a monopoly. Section 7 authorizes the Division to file suit to block anticompetitive mergers, and section 7A of the Clayton Act, known as the Hart-Scott-Rodino Antitrust Improvements Act, requires parties to most mergers above a certain dollar value threshold ($50 million) to file notification with the federal enforcement agencies and observe a prescribed waiting period in order to give the agencies adequate time to review the merger.

The merger wave of recent years has subsided from its dizzying heights of a few years ago. We received Hart-Scott-Rodino Act pre-merger filings for 1,187 transactions in Fiscal Year 2002, and have received filings for over 800 thus far this fiscal year, compared to over 4,500 in each of the previous two fiscal years. Part of that reduction is due to the enactment of the Hart-Scott-Rodino Antitrust Improvements Act of 2000, which significantly raised the HSR filing thresholds. Even so, it is apparent that merger

activity is down.

Despite the slowdown, there are still many mergers that require careful review, and we are working hard to ensure that those transactions are receiving appropriate levels of scrutiny. Thus far this fiscal year, the Antitrust Division has opened 75 preliminary investigations, issued second requests for additional information to the parties in 16 of those investigations, and challenged 13 mergers. We have a number of important merger investigations ongoing, including investigations involving News Corp./DirectTV, First Data/Concord and GE/Instrumentarium, among others. We will closely examine those transactions, and all mergers we review, for potential anticompetitive impacts on consumers.

Since June 2001, the Division has challenged 34 mergers it deemed anticompetitive, and we have been successful in 31 of the 32 matters that have thus far reached a conclusion. Nine of these matters were resolved by consent decree, twelve through a "fix-it-first" restructuring, seven were abandoned after the Division indicated that it would file suit, and three -- General Dynamics/Newport News, Hughes/Echostar, and SGL Carbon/ Carbide/Graphite Group -- were abandoned after the Division filed suit. The Division was unsuccessful in seeking to block the Sungard/Comdisco merger, a transaction the Division asserted was likely substantially to lessen competition in the market for shared "hotsite" disaster recovery services. Two of the merger challenges remain in litigation.

The range of markets involved in these merger challenges includes airlines, airline

reservation systems, banking, defense contracting, dairy processing, fresh bread, corn wet milling, molded doors and doorskins, industrial rapid prototyping systems, radio broadcasting, satellite multichannel video programming distribution, electric power, ready-mix concrete, college textbooks, computer-based testing, computer processing center "hotsite" disaster recovery services, and nuclear submarine construction.

Some of our recent and significant recent merger challenges include:

- UPM Kymmene OYI/MACtac. The Division sued and had a preliminary injunction hearing last month in an effort to block a merger between Raflatac (a UPM subsidiary) and MACtac, the second and third largest producers of pressure sensitive labelstock in North America. Labelstock is the base material for labels used in a variety of applications that American consumers encounter every day, including shipping labels and supermarket scale labels. The Division concluded that the merger would facilitate coordination between the merged company and other North American producers of bulk paper labelstock, and would substantially reduce competition in the production of bulk paper labelstock and result in higher prices for bulk paper labelstock throughout the United States.

- Northrop Grumman/TRW. Northrop was one of only two U.S. companies that design, develop, and produce the payload used in reconnaissance satellites. TRW was one of only a few companies with the ability to serve as a prime contractor on U.S. government reconnaissance satellite programs. Since Defense Department contracts typically rely on the prime contractor to select sub-systems, Northrop's acquisition of TRW – which enabled it to be both prime contractor and payload provider for reconnaissance satellites – resulted in a vertical combination that could have substantially lessened competition in the development and sale of reconnaissance satellites systems used by the U.S. military, by giving Northrop the ability and incentive to lessen competition by favoring its in-house payload to the detriment or foreclosure of its payload competitors and by refusing to sell, or selling at disadvantageous terms, its payload to competing prime contractors. To prevent this result, the Division challenged the merger and entered into a consent decree requiring Northrop to act in a non-discriminatory manner in (1) choosing a payload for a satellite program where Northrop is acting as the prime contractor, and (2) supplying its payload to prime contractors competing with Northrop for U.S. satellite programs. The consent decree, fashioned in consultation with the Defense Department, also gives the Secretary of the Air Force significant power to

ensure compliance with the consent decree, including the ability to ask the Department of Justice to seek civil penalties of up to $10 million for each violation of the decree.

- Hughes/Echostar. Hughes Electronics's DirecTV and Echostar's DISH Network were the only two significant direct broadcast satellite licensees in the United States. Their proposed merger would have created a monopoly in areas where cable television is not available, primarily rural areas, thereby eliminating competitive choice for millions of households. It also would have left tens of millions of other households – for whom DirecTV, DISH Network, and the local cable company now compete to provide multichannel video programming distribution service – with only two competitive choices. After the Division filed suit to block the merger as anticompetitive, the parties abandoned the merger.

- Dairy Farmers of America/Southern Belle. This 2002 merger between two dairy processors was not subject to the Hart-Scott-Rodino premerger notification requirements, because its dollar value fell below the statutory threshold for reporting, and the Division did not learn about it until after it had been completed. DFA's acquisition eliminated the only other independent bidder for school milk in the area, resulting in a monopoly in 47 school districts in Kentucky and Tennessee, and reduced the number of independent bidders from three to two in 54 other school districts in those two states. The Division filed suit in April of this year to require DFA to divest its interests in Southern Belle Dairy in order to restore competition for milk prices in those school districts. The enforcement action is pending.

- General Dynamics/Newport News. General Dynamics and Newport News were the only two nuclear-capable shipyards and the only designers and producers of nuclear submarines for the U.S. Navy. The two shipbuilders also led opposing teams to develop the next generation propulsion system for use in submarines and surface combatants, so-called electric drive. Our staff worked in close consultation with the Department of Defense, the only customer, in evaluating the proposed merger. Our complaint alleged that the combination would create a monopoly in nuclear submarine design and construction, and would substantially lessen competition for electric drive and surface combatants. After the parties terminated their merger agreement, Newport News received a second bid from Northrop Grumman, which did not raise significant competitive issues.

- Suiza/Dean. Suiza and Dean were dominant firms in several geographic markets for fluid milk processing and school milk markets. The parties agreed to divest eleven dairies to National Dairy Holdings, L.P. (NDH), a newly formed

partnership that is 50 percent owned by Dairy Farmers of America Inc. (DFA), a dairy farmer cooperative. The parties also agreed to modify Suiza's supply contract with DFA to ensure that dairies owned by the merged firm in the areas affected by the divestitures would be free to buy their milk from sources other than DFA.

- United/USAirways. At the time of the transaction, United and USAirways were the second and sixth largest U.S. airlines. The Division concluded that USAirways was United's most significant competitor on densely traveled, high-revenue routes between their hubs, such as Philadelphia and Denver, as well as for nonstop travel to and from Washington D.C. and Baltimore, and on many routes up and down the East Coast. The acquisition would have given United a monopoly or duopoly on nonstop service on over 30 routes, where consumers spend over $1.6 billion annually, and would have substantially limited the competition it faced on numerous other routes representing over $4 billion in revenues. The parties abandoned the transaction after the Division indicated its intention to challenge it.

- 3D Systems/DTM. The Division concluded that the acquisition as initially proposed would have substantially lessened competition in the U.S. industrial rapid prototyping systems market, by reducing the number of competitors in the U.S. market from three to two and limiting the dynamic competition that has resulted in lower prices to customers and technological improvements to rapid prototyping systems. Rapid prototyping is a process by which a machine transforms a computer design into three-dimensional objects, speeding the design process for everything from cellular phones to medical equipment. The Division filed suit to block the transaction, and subsequently reached a settlement with 3D Systems Corporation that allowed the company to go forward with its purchase of DTM Corporation, provided that 3D and DTM agreed to license their rapid prototyping patents to a company that will compete in the U.S. market. The settlement was designed to permit new entry by requiring 3D and DTM to license their rapid prototyping-related patents to a firm that will compete in the U.S. market and that currently manufactures rapid prototyping equipment.

We have also been very active in cases related to our merger enforcement program, filing several cases against "gun-jumping" and other violations of the Hart-Scott-Rodino premerger notification and waiting period requirements. It is important that merging parties strictly adhere to the requirements of the HSR Act and maintain their

companies as separate and independent firms during the HSR waiting period.

In a case we filed against Gemstar and TV Guide in February of this year, we charged Gemstar with assuming premature control over TV Guide prior to its July 2000 acquisition, in violation of the HSR Act's pre-merger waiting period requirements, as well as with fixing prices and allocating customers in violation of section 1 of the Sherman Act. Starting in mid-1999, a full year before the merger, Gemstar and TV Guide had agreed to stop competing for customers, decided together on prices and terms to be offered, and jointly managed their interactive program guide business. Filed along with our complaint was a consent decree under which Gemstar agreed to pay a record civil penalty of $5.67 million, and that also gave customers that signed contracts with TV Guide during the pre-merger period a chance to rescind those contracts.

We brought similar case in September 2001 against Computer Associates International, Inc. and Platinum Technology International, Inc., charging that the parties had agreed that Platinum would limit the price discounts and other terms it offered its customers during the premerger waiting period, and that Computer Associates had obtained premature operational control of Platinum, prematurely reducing competition between the two companies. In April 2002, the Division entered into a consent decree with Computer Associates requiring the payment of $638,000 in civil penalties and prohibiting Computer Associates from agreeing on prices, approving or rejecting proposed customer contracts, or exchanging prospective bid information with any future merger partner.

Civil Non-merger Enforcement

Civil non-merger cases are cases, other than criminal prosecutions, that are based on anticompetitive conduct under the Sherman Act. We have been very active in this area as well.

The Division's best-known recent civil non-merger case is the Microsoft case. After the court of appeals rendered its decision narrowing the basis of liability and vacating the remedy, and ordering a new remedy hearing before a different district judge, we reached a settlement with Microsoft, which the district court approved and entered with minor revisions. The consent decree enjoins the conduct found to be unlawful from recurring and takes proactive steps to restore lost competition. All states that joined in the Division's enforcement action either joined in our settlement or have reached separate

settlements with Microsoft, except for Massachusetts, which is appealing the district court's decision denying the vast majority of the additional relief it and eight other states had sought. We are not participating in that appeal, but we have filed appellate briefs supporting the decision by the district court to deny a motion by the Computer and Communications Industry Association and the Software & Information Industry Association to intervene in our case in order to appeal the court's approval of the settlement.

We are continuing to actively monitor Microsoft's compliance with the decree. In April, we prompted Microsoft to revise its terms for licensing to third parties certain technology used by Microsoft server operating system products to interoperate with Windows operating system products, to eliminate the non-disclosure agreement covering the licensing terms and to make the licenses more accessible and functional. Earlier this month we filed a compliance report with the district court describing our recent compliance enforcement activities, including a separate section written by Microsoft describing its compliance efforts. The Division remains committed to enforcing complete compliance with the consent decree.

Let me mention some other recent civil non-merger cases.

In January of this year, the Division filed a lawsuit against NT Media (New Times) and Village Voice Media, charging them with unlawful market allocation in violation of section 1 of the Sherman Act. New Times and Village Voice Media are the nation's two leading publishers of alternative news weeklies, and had been head-to-head competitors

in publishing alternative news weeklies in Cleveland and Los Angeles. In October 2002, however, New Times agreed to shut down its Los Angeles news weekly, the New Times Los Angeles, if Village Voice Media would close its news weekly in Cleveland, the Cleveland Free Times. Thus, the companies "swapped" markets, leaving New Times with a monopoly in Cleveland and Village Voice Media with a monopoly in Los Angeles. The lawsuit was settled by consent decree, in which the parties agreed to terminate their illegal market allocation agreement, allow affected advertisers in Los Angeles and Cleveland to terminate their contracts, and divest the assets of the New Times Los Angeles and the Cleveland Free Times to new entrants in those markets.

Last December, the Division sued Mountain Health Care, an independent physicians organization in Asheville, North Carolina, charging that it was restraining price and other forms of competition among physicians in Western North Carolina by adopting a uniform fee schedule governing the prices of its participating physicians and negotiating with health plans on their behalf, resulting in higher rates charged to health plans, and ultimately higher health costs for ultimate consumers. The case was settled with a consent decree requiring Mountain Health to cease operations and dissolve.

Last summer, the Division sued The MathWorks Inc. and Wind River Systems Inc. to stop them from illegally allocating the markets for software used to design dynamic control systems. Dynamic control system design software enables engineers to develop the computerized control systems of sophisticated devices, such as anti-lock braking systems for automobiles, guidance and navigation control systems for unmanned

spacecraft, and flight control systems for aircraft. High-technology products like these work behind the scenes to help build some of the most sophisticated products in our economy. We concluded that the "licensing" arrangement between the parties operated primarily to force the exit of the Wind River product from the market and to prevent it from re-emerging in the hands of some other party. The parties settled the case with a consent decree requiring The MathWorks to divest Wind River's design control software assets.

We also have cases currently in litigation. In our case against Visa and MasterCard, we are defending against an appeal challenging the district court's finding of partial liability – the district court found against the Division on its challenge to the dual governance structure, permitting member banks to simultaneously participate in management of both networks, but found for the Division on its challenge to the practice of prohibiting members from issuing competing cards. In the case against Dentsply International for unlawfully maintaining its monopoly in the market for artificial teeth, we completed trial in May 2002, and post-trial briefing and argument last September, and are now awaiting the court's ruling.

International and Policy Initiatives

International

Increased economic globalization is continuing to create new challenges for antitrust enforcement. With corporations and corporate alliances stretching across the world, and with nearly 100 national and regional antitrust regimes now operating in the international arena, seeking convergence in procedure and substance where possible – without compromising sound enforcement principles – helps minimize the cost, complexity, and sheer uncertainty of enforcement and compliance that could otherwise become a major hindrance to procompetitive business activity and economic growth. Accordingly, we have continued working with antitrust enforcers abroad to forge effective cooperative relationships based on our core beliefs in competition.

A special focus has been the European Union, which stands as the most important antitrust enforcer outside our borders. Despite our different legal traditions and cultures, and despite substantial differences in the language of our governing laws, the U.S. and EU enforcement agencies have been able to develop largely consistent competition policies, built on sound economic foundations directed at the goal of promoting consumer welfare through competition rather than on protecting firms from efficiency-enhancing mergers and other arrangements that may increase competitive pressures. The past two years have been among the most productive ever in our relationship, as a result of increased contact between senior antitrust officials on both sides of the Atlantic, as well as a reinvigorated U.S.-EU merger working group. The working group has analyzed

important merger topics such as efficiencies and our differing policies towards conglomerate mergers. It has also developed a set of merger review "best practices" that the Division, the FTC, and the EC published last October.

In addition to our bilateral efforts with the EU, Canada, Japan, and others, we are also pursuing multilateral efforts to promote cooperation and convergence around sound antitrust principles, through the International Competition Network. The ICN, which we and the FTC helped take the lead in launching less than two years ago, has emerged as a global network of antitrust authorities from more than 70 developed and developing countries on six continents, representing nearly 90 percent of the world's Gross Domestic Product. Its virtual network structure, and its organization around diverse working groups that consult frequently and informally throughout the year, have enabled the ICN to produce meaningful results very quickly.

At an ICN conference last month in Merida, Mexico, we adopted recommended practices for merger notification and review procedures that had been prepared by the ICN Merger Review Working Group; the recommended practices are non-binding, and governments will implement them voluntarily, as appropriate. We also discussed efforts to assist new antitrust agencies in developing economies, as described in a report by the ICN Capacity Building and Competition Policy Implementation Working Group. And the Competition Advocacy Working Group led discussions on how competition advocacy efforts can promote procompetitive outcomes across other areas of government. The ICN also established a new working group on the role of competition enforcement in regulated

sectors, and it agreed to explore the potential for work on the topic of cartel enforcement.

Through these and other international efforts, the Antitrust Division is committed to promoting convergence around sound antitrust principles in order to strengthen enforcement while minimizing unnecessary burdens on corporations doing business around the world.

Policy

The Division has also been undertaking a number of policy initiatives to revitalize our economic and legal approaches in several areas of enforcement policy, including intellectual property, remedies, coordinated effects in merger enforcement, and health care.

Our intellectual property hearings are a response to the increasing frequency with which intellectual property issues have arisen in our merger and civil conduct investigations and enforcement actions in recent years. While intellectual property and antitrust law share the common purpose of promoting dynamic competition and thereby enhancing consumer welfare, issues at the intersection of intellectual property and antitrust can be murky. More than ever before, the creation and dissemination of intellectual property is a major engine driving economic growth. Consequently, as antitrust law addresses the competitive implications of conduct involving intellectual property, and as intellectual property law addresses the nature and scope of intellectual property rights, care must be taken to maintain proper incentives for the innovation and creativity on which our national economy depends. Our joint hearings with the FTC on

this subject, which took place from February to October of last year, drew from a broad cross-section of business leaders, legal practitioners, economists, and academic experts with extensive experience in these areas. We expect to publish a report by the end of this year, which we hope will provide helpful insights into the effects of competition and patent law and policy on innovation and other aspects of consumer welfare.

Our remedies policy initiative is a response to the basic fact that we not only need to win the battle, we need to win the war. That is, it does not help consumers to enforce against an illegal merger or other agreement if, at the end of the day, the relief reached does not fully and adequately protect competition. The Division has been reviewing this important component of antitrust enforcement, examining our guiding principles and the legal and economic basis for imposition of particular remedies, as well as administrative issues, to better ensure that our remedies protect and preserve the competitive interests that gave rise to our enforcement action.

Another recent policy initiative is our reinvigoration of coordinated effects analysis in merger review. In recent years, theories of unilateral effects, focusing on the potential for the merged firm to exercise market power on its own, have predominated in our merger challenges. We are committed to considering coordinated effects theories, which focus on the potential for the merged firm to exercise market power in coordination with other firms in the market. A team of Division lawyers and economists undertook a months-long re-examination of coordinated effects analysis, and the results of their efforts will be used throughout the Division in appropriate situations.

Our joint hearings with the FTC on health care competition law and policy reflect the continuing strong interest of antitrust enforcers and the public in the variety of complex issues in this area. Since the hearings began in February of this year, there have been 22 days of hearings on a wide range of important topics, including defining hospital markets properly for analysis, the role of specialty hospitals, the significance of hospitals' non-profit status, vertical arrangements, entry barriers and monopoly and monopsony power in health insurance, physician collective bargaining, the state action and Noerr-Pennington doctrines, and enforcement agency guidance. Future sessions will cover such topics as defining physician markets properly, physician information sharing, group purchasing organizations, criminal and civil remedies, and international perspectives. The hearings are generating valuable input from relevant medical, insurance, legal, academic, and government groups on these important topics, enhancing understanding in these areas. We expect the hearings to continue until October, and anticipate publishing a public report on the hearings sometime in the spring of 2004.

Conclusion

Mr. Chairman, the men and women of the Antitrust Division approach our critical mission to enforce the U.S. antitrust laws with the utmost seriousness. We are committed to continuing the excellent work that has always been done by the Division, while positioning ourselves to meet the challenges of the future. Given the important role of competition in our nation's economy, the Antitrust Division must be a vigorous, formidable, and effective enforcer of our antitrust laws.

Thank you. I would be happy to answer any questions.