

1 **This transcript has been lightly edited for clarity**
2 COMPETITION AND CONSUMER PROTECTION IN THE WORLD ECONOMY:
3 CONFLICT, COOPERATION AND CONVERGENCE

4

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11

12 MR. TRITELL: Good afternoon. I'm Randy
13 Tritell, and I'm the Assistant Director for
14 International Antitrust in the FTC's Bureau of
15 Competition, and thanks to all of you stalwarts who have
16 stuck it out for this panel.

17 We're going to try our best to make it worth
18 your while, and Judy's told me that she's tried to help
19 out by giving everybody a little shot of sugar to get
20 them through the homestretch.

21 I would first like to, or I guess I should say
22 I'm obligated to, echo the words of many previous
23 speakers you have heard during this symposium in saying
24 that the remarks that I am going to make are my own and
25 are not necessarily the views of the Federal Trade
26 Commission or any Commissioner; in view of today's

1 panel, I should probably add or any former Commissioner
2 or any Commissioner of another agency or any former
3 Commissioners of another agency.

4 It's a pleasure for me to participate in this
5 panel for many reasons, and it's fitting that the panel
6 on the international aspects of the FTC's mission follows
7 immediately upon the panel on intra-government relations
8 within the U.S., and it's also fitting that in the last
9 panel of the program symbolizing the FTC's role in the
10 new frontier field of international antitrust. Or so I
11 thought.

12 Here I was fancying ourselves pioneers in the
13 brave, new old world of antitrust gone global, but that
14 was before I ran into our resident historian, Mark
15 Winerman, who took me aside and suggested we pay a visit
16 to, for me, an almost foreign corner of the FTC known as
17 the library.

18 There Marc introduced me to some dusty, dog-eared
19 books from when the FTC was but a gleam in the eye of Louis
20 Brandeis. Even then, Congress was charging the nation
21 agency with FCC with studying international competitive
22 issues.

23 There in the Commission's annual reports and
24 other volumes, from days long before there was an OECD,
25 ICN and other conference venues, were the FTC's early
26 forays beyond our borders. Some of these are rather

1 notable.

2 For example, it turns out that one of the new
3 Commission's first activities was to hold hearings on
4 the ability of U.S. firms to compete in foreign markets
5 and barriers thereto. Hence, the Federal Trade
6 Commission held hearings on what was later to become, on
7 its recommendation, the Webb-Pomerene Act, and
8 Congress charged the FTC with its administration. We're
9 still getting a big bang from the buck from this statute.
10 For having a grand total of 11 remaining Webb-Pomerene
11 associations, this statute attracts attention all over the
12 world, as I am regularly reminded by foreign governments
13 and NGOs at international conferences.

14 The Commission's annual report of 1917 included
15 a section called "Foreign Trade Conditions," noting that
16 Congress had specifically placed in the jurisdiction of
17 the Federal Trade Commission the investigation of trade
18 conditions with foreign countries relating to
19 combinations in trade.

20 By 1920 the Commission had established an Export
21 Trade Division to whose activities it devoted eight
22 pages of its annual report, including a section on
23 extraterritorial jurisdiction, which I previously
24 thought was a brand new issue.

25 In 1929 the Commission investigated 106
26 complaints concerning alleged unfair practices affecting

1 the foreign trade of the United States.

2 By 1938, the Commission reported, under Section
3 6 of the FTC Act, on antitrust and unfair competition laws
4 in foreign countries, with sections on 32 such countries.

5 You might say the FTC was doing international
6 antitrust in a manner of speaking, but not the substantive
7 matters that we know now are at the heart of it all like,
8 say, international cartels.

9 That's around the point where Marc introduced me
10 to the studies the FTC undertook in the 1940s of
11 international cartels. Of course back then the issues
12 must have been a lot different because they spent a lot
13 of time studying a cartel in a commodity called petroleum.

14 The Commission issued a detailed report pointing
15 to competition problems in the sector, but when they tried
16 to publish the report, something quite strange happened.
17 It became caught up in politics. Fortunately, times have
18 really changed!

19 So our field is not so new after all, but it's
20 still exciting, and we're lucky today to have such a
21 stellar group to enlighten us further on the
22 international dimension of the FTC's work.

23 With that, let me turn to my co-moderator and
24 colleague in the International Division of the Consumer
25 Protection Bureau, Hugh Stevenson, for some opening remarks.

26 MR. STEVENSON: Thanks, Randy. Hugh Stevenson.

1 I'm the Associate Director of the Division of
2 International Consumer Protection, and I make the same
3 disclosure Randy does.

4 Having said that, I would say we've saved the
5 best for last here when we really can focus on the
6 issues untroubled by too big an audience, but I think
7 it's really an important topic and really the sort of
8 forward looking topic, and I had the same caveat like
9 Randy.

10 At some point, Mark Winerman accosted me with
11 these same dusty volumes and actually sort of set me
12 right too, and there were some interesting issues back
13 in the day of people misrepresenting products as made in
14 France. This was seen as a marketing advantage at the
15 time.

16 The issues have changed somewhat in
17 international consumer protection. I think in looking
18 at the larger view, as Randy has suggested, a lot of the
19 issues we deal with are newer and indeed on the consumer
20 protection side, we're kind of the younger sibling in
21 the international area things, having gone even more
22 recently a lot, and we're trying to, of course, make up
23 for lost time.

24 Historically a lot of the issues we've been
25 dealing with in advertising and marketing have been in a
26 national or even local level. The marketplace has

1 become more globalized though. Of course as the
2 Internet in a lot of ways makes the world smaller, it
3 makes the work of international consumer protection
4 larger, and we've seen this in the complaints we've
5 received increasingly from foreign consumers or about
6 foreign companies or about evidence that may be in
7 another country or about money that's being taken from
8 somebody here but it's been moved to another country,
9 and an increasing number of the issues that we see have
10 some international dimension, telemarketing fraud,
11 crossing borders, web fraud of course, spam where it can
12 be sent to anybody from just about anywhere, a lot of
13 the phishing problems that have been talked about
14 recently also can have an international component,
15 privacy issues.

16 This raises a lot of new challenges for us, some
17 practical or enforcement challenges, how do we chase the
18 people across the borders, how do we cooperate with
19 these agencies?

20 That means engagement with a lot of foreign
21 agencies, foreign counterparts, and then on the policy
22 front, many of the issues that we have that are very
23 challenging we've heard about the last two days,
24 considering the domestic context, now can take on an
25 even greater international dimension.

26 That means engagement with our counterparts in

1 the kind of alphabet soup of international organizations
2 and the other folks who are thinking about these same
3 issues, and we're trying to build on what we've learned
4 on the competition side and enter into more
5 arrangements, developing more systematic ways to share
6 information, complaint databases, working on
7 partnerships, memorandum of understanding with other
8 agencies, working on legislation that's now pending in
9 Congress, the International Consumer Protection Act,
10 working in other organizations to think about how our
11 approaches compare and work with approaches taken by our
12 counterparts in other countries, and these are some of
13 the issues I think our panelists will address today so
14 let's turn to them.

15 MR. TRITELL: With that, let me introduce our
16 first speaker. I said at the outset that I was
17 delighted to moderate this program for several reasons,
18 and one key one is the opportunity to introduce my
19 former boss, colleague and friend, Terry Calvani.

20 I'm sure most of you know Terry, whether from
21 his scholarship when he was a professor of law at
22 Vanderbilt, from his colorful appearances at antitrust
23 conferences around the country and the world, from his
24 antitrust practice at Pillsbury Winthrop, and mostly
25 from his seven memorable years as a Commissioner and
26 Acting Chairman here at the Federal Trade Commission

1 where I had the great privilege of working with Terry.

2 As most of you know, Terry is now once again a
3 Commissioner, but this time with the Irish Competition
4 Authority, making him to my knowledge the first person
5 to serve as a Commissioner in two countries -- the very
6 personification of globalization.

7 Terry's portfolio includes responsibility for
8 enforcement against criminal cartels. Earlier I
9 mentioned the FTC's history with the Webb-Pomerene Act.
10 Well, it turns out that Terry has a special fondness for
11 Webb-Pomerene associations and in fact has even recently
12 taken the trouble to send each one of them a letter
13 inquiring about their activities in the Emerald Isle. In
14 a recent lecture Terry displayed a PowerPoint presentation
15 of the courtyard of the prison in Dublin in which executives
16 of such associations carrying on cartel activities in
17 Ireland can get their daily exercise.

18 Ladies and gentlemen, Terry Calvani.

19 MR. CALVANI: Thank you, Randy. I'm delighted
20 to be back here, and I thank you for that very gracious
21 introduction.

22 Our conference organizers, have suggested the themes
23 conflict, cooperation and convergence in international
24 competition policy. When I left the Federal Trade
25 Commission in September of 1990, conflict characterized much
26 of the interaction among national competition authorities.

1 Cooperation was the new, but largely unrealized objective,
2 and convergence would have meant precious little to anyone
3 at the FTC.

4 Now, some 15 years later, conflict among
5 national competition authorities is rare. Cooperation
6 is the order of the day, and convergence is not only in
7 everyone's lexicon but is actually taking place. Thus
8 in a relatively short period of time, the international
9 enforcement community has changed significantly.

10 As we pause to reflect on the history of the
11 Federal Trade Commission, I would like to review these
12 three themes and offer thoughts on what we might expect
13 14 years hence.

14 The 1986 Leeds Castle Kent Conference well
15 illustrates conflict. The agenda included
16 extraterritoriality, blocking legislation, claw-back
17 statutes and the like. The United Kingdom was to be
18 represented by senior officials of the Office of Fair
19 Trading. As the conference approached, the OFT was
20 instructed by the Department of Trade and Industry to
21 stand down. Senior representatives of the DTI rather
22 than the OFT would represent the United Kingdom. As the
23 dramatis personae changed, we learned that the OFT was not
24 trusted by its ministry to adequately represent UK
25 interests. Evidently it was feared that OFT officials would
26 not stand up to American trustbusters. Today that story

1 sounds silly, but times were different and conflict was
2 commonplace.

3 Cooperation? Well, there wasn't much. I cannot
4 identify a single important case where there was serious
5 multinational cooperation during my entire seven year
6 term as Commissioner, but I can recall instances where
7 there was a significant lack of cooperation, sometimes
8 on the part of the U.S.

9 Institut Merieux, for example, involved a merger
10 of a Canadian and French firms, neither of which had
11 productive assets located within the United States.
12 Employing the effects test of jurisdiction and an actual
13 potential competition theory, we required the
14 divestiture of a Canadian rabies vaccination business
15 without even notifying, much less consulting with the
16 Canadian authorities, and as you might expect the
17 Canadians were livid. Today such an event is inconceivable.

18 As for convergence, I don't think I'd heard the
19 term much less used it during my tenure of office. To sum
20 up, conflict? Yes. Cooperation? No. Convergence? Not
21 yet an idea.

22 Change was in the air when I left the FTC
23 in 1990. I think I am safe in saying though that my
24 international experience at the FTC was not
25 significantly different from any of my predecessors. My
26 successors, like Commissioner Thompson, on the other

1 hand, have had a very different experience.

2 Let's look at conflict. One can attribute the
3 conflict during my term to a variety of sources. The
4 effects test was certainly important. Very vocal
5 opposition to the test was voiced from Sydney to Ottawa
6 to London and places in between.

7 Foreign governments adopted laws and other
8 policies designed to frustrate U.S. efforts to exert
9 extraterritorial jurisdiction. Yet extraterritoriality,
10 in reality, was a bit of a whipping boy. The real
11 conflict was that the American faith in antitrust was
12 simply not shared abroad. The exercise of
13 extraterritorial jurisdiction by the United States
14 simply highlighted the difference in attitudes. Today,
15 competition policy is no longer an American commodity.

16 Skeptics will focus on episodic conflicts
17 between authorities today. Truth be told, conflicts will
18 never completely disappear. The United States itself has
19 achieved a broad based consensus on substantive antitrust,
20 and yet U.S. courts often find themselves in disagreement
21 when interpreting the very same statutory language. My
22 point is that conflict, while not eliminated, is much less
23 common.

24 Cooperation, on the other hand, is very common --
25 so common that I will mention it only briefly. In a
26 U.S. context, it is embodied in formal instruments,

1 including soft cooperation agreements, but also mutual
2 legal assistance treaties, and, of course, the all vowel
3 stature that I can never get quite right. More
4 importantly, cooperation has become part of the every
5 day fabric of international antitrust enforcers.

6 International cartel enforcement is so common
7 that countless continuing legal education programs have
8 been hosted around the world devoted to educating
9 counsel on how to deal with this new environment.

10 The combined raid by over 200 officers of the
11 United States, Japan, Canada and the European authorities
12 in eight countries at premises around the world on 12
13 February 2003 is an excellent example of the current state
14 of cooperation.

15 Near the end of my term in 1990, the
16 Bundeskartellamt hosted its semiannual cartel conference in
17 Berlin. Sir Leon Brittan, now Lord Brittan, took the
18 occasion to suggest that the time was ripe to reconsider
19 international antitrust convergence. A moribund subject
20 since the failure of the Havana Conference years earlier, he
21 initiated a discussion that has been the subject of
22 countless programs since.

23 Lord Brittan suggested the WTO as the vehicle,
24 but the idea enjoyed little progress without the
25 active cooperation and support of the United States.
26 Such support was not forthcoming.

1 Former Assistant Attorney General Klein summed
2 up the U.S. position in his "If It Ain't Broke, Don't
3 Fix It" address to the 1999 Cartel Conference, but there
4 was another unspoken reason for the U.S. position. Unsaid
5 was the U.S. fear that convergence would lead to populist
6 antitrust divorced from economic underpinnings. It had
7 been a long way from the likes of *Von's Grocery* and *Schwinn*,
8 and there was little interest in returning.

9 Attorney General Janet Reno convened the
10 International Competition Policy Advisory Committee in
11 October of 1997. The committee's final report
12 highlighted the costs associated with divergent
13 antitrust policies and the need for greater
14 convergence.

15 The final report signaled change when it
16 recommended that the United States explore the creation
17 of a new venue where government officials, as well as
18 private firms, NGOs and others could consult on matters
19 of competition law and policy.

20 Just before leaving office, Assistant Attorney
21 General Klein delivered another address, which many read
22 to mean a change was taking place in Washington.

23 The ICN, the International Cartel Network, was
24 born on October 2, 2001. In its short life, it has
25 accomplished much. One of its initial efforts was the
26 identification of best practices in the merger review

1 process. The fruits of these labors are nothing short of
2 dramatic.

3 The work of the merger working party was
4 important in the decision of 12 jurisdictions, including
5 Ireland, in modifying, amending and changing their
6 merger process. This is successful convergence taking
7 place real time.

8 The enlargement of the Union on May 1 highlights
9 additional convergence. As a condition of entry, the
10 new accession states had to adopt competition regimes
11 modeled on Articles 81 and 82 of the Treaty. Now,
12 whether these Member States otherwise would have opted
13 for different competition laws cannot be said, but the
14 adoption of laws in ten countries based on a single
15 model is a significant step toward convergence even if a
16 bit forced.

17 Informal convergence is also taking place.
18 Merger policy within the EU is much more akin to that in
19 the United States and North America generally than it
20 was a few years ago. The revised EU merger regulation
21 reflects this convergence. The treatment of unilateral
22 effects and the role of economic analysis are but two
23 examples.

24 New merger guidelines, which recognize the role
25 of efficiencies and speak of consumer welfare, look very
26 similar to those of the United States. The abandonment of

1 the EU Notification Regime is yet another example of soft
2 convergence.

3 So where are we now? Conflict rare;
4 cooperation, the order of the day; and convergence in
5 center stage.

6 What about the future? The grand question is
7 whether we will see the emergence of an international
8 competition regime as some have advocated. Lord Brittan
9 and Commissioner Monti have endorsed some, albeit as yet
10 ill-defined, regime within the WTO, and although these
11 sentiments have not found fertile ground within in the
12 U.S. government, the idea is not without American
13 supporters.

14 Although the U.S. is active in promoting convergence
15 in the working groups of the ICN and elsewhere, I see
16 nothing that leads me to conclude that the overall approach
17 by the U.S. is likely to change in the short-term. Since
18 U.S. participation is probably a necessary, but
19 insufficient, ingredient the question of whether a world
20 antitrust order will emerge strikes me as premature.
21 Perhaps it will, but not within the next 14 years.

22 Rather, the next two decades will likely
23 continue to present challenges, and although my paper
24 discusses several, I would like to mention just two, one
25 substantive and one process oriented. The first I call
26 differences in creed.

1 While there has been much consensus building,
 2 consensus has yet to be established on substantive law.
 3 When comparing substantive issues between Europe
 4 and North America, there is little disagreement today on
 5 cartel policy. The treatment of mergers, while less
 6 homogeneous than cartels, is very similar. True, there are
 7 non trivial differences in the treatment of vertical
 8 restraints but nothing of really great moment. Only in the
 9 area of single firm behavior are the differences dramatic.

10 Take price predation for example. U.S. law
 11 requires that a plaintiff established that the defendant
 12 sell below cost, using some version of an Areeda-Turner
 13 test, and that the plaintiff establish that the
 14 defendant is able to recoup the cost of predation.
 15 Intent is not important. European law, on the other hand,
 16 appears to be much more concerned about predatory pricing.
 17 For example, in the AKZO case the Court of Justice found
 18 that prices above variable cost could still be predatory.
 19 Average variable cost could still be predatory if
 20 accompanied by an intent to eliminate a competitor and the
 21 Court declined to require proof of recoupment. In doing so,
 22 the Court expressly rejected the Areeda-Turner test. This
 23 may appear about as far as one can get from U.S. current
 24 law, but is it?

25 This may be more a difference of form than
 26 substance since a firm must be dominant in the EU in the

1 first place before issues of predatory pricing can even
2 arise.

3 I must say I am cautiously optimistic. Focusing
4 again on predatory pricing, U.S. law was far more wobbly
5 than that of the European Union not that many years
6 ago. The legacy of *Utah Pie*, suggesting an average
7 total cost standard, enjoyed a very long ride in the
8 United States.

9 The evolution of U.S. antitrust law from an
10 intent rules based system to one grounded in industrial
11 organization economics took a generation, but there was
12 nothing particularly American about that development
13 because the dismal science does not respect flags or
14 frontiers. Seeds sowed within the academy by Aaron
15 Director and others sprouted and took hold over time.
16 While economics came late to European competition
17 enforcement, it has come, and over time it will have
18 the same effect.

19 Turning to a process issue, I asked whether
20 American antitrust federalism isn't the poster child for
21 bad policy. U.S. lawyers have not been bashful about
22 criticizing the cost associated with the
23 internationalization of merger enforcement, but non U.S.
24 lawyers are quick to point out that their American
25 colleagues have little to complain about.

26 As one European lawyer recently observed:

1 "U.S. lawyers complain about having to notify an American
2 transaction in Romania but force me to vet a deal between
3 two European companies before the antitrust regulators not
4 only in Washington but in Santa Fe, Des Moines, Tallahassee,
5 Albany, Portland, Seattle, and Sacramento."

6 The virtues of convergence seemingly have
7 escaped notice in the United States. What is to
8 be done? Our keynote speaker, Judge Posner, suggested
9 that state antitrust enforcement rights be limited, but
10 he acknowledges that legislation is necessary to
11 accomplish this. Absent support by State Attorneys
12 General, any reform proposal would be dead on arrival
13 in Congress.

14 Clearly this situation undercuts the U.S.
15 ability to call for more rational approaches abroad.
16 One of the biggest challenges to American competition
17 policy is to find a solution for this problem. These
18 issues pose opportunities for U.S. officials, and it
19 remains to be seen whether they are up to the
20 challenge.

21 In conclusion, the international competition
22 environment today is vastly different from that at the
23 end of my term in 1990. The late Dr. Wolfgang Karrte,
24 former president of Bundeskartellamt, used to refer to
25 the international enforcers assembled for cartel
26 conferences in Berlin as his competition family. While

1 a bit of an overstatement at the time, it is likely to
2 become much more a reality in the coming years. Thank you.

3 (Applause.)

4 MR. STEVENSON: Thank you.

5 We turn next from the Emerald Isle to the Land
6 Down Under. It is my great pleasure and honor to
7 introduce Professor Allan Fels. Professor Fels is
8 former head of what's known as the ACCC or the
9 Australian Competition and Consumer Commission.

10 The ACCC, like the FTC, combines both
11 competition and consumer protection functions in a
12 single agency, and Professor Fels led that agency with
13 distinction certainly as a figure well known in these
14 areas internationally and also very influential at
15 home.

16 Exhibit A for that proposition is this book that
17 I actually had the pleasure to read about Professor Fels
18 fortune and power and describes its many encomiums and
19 describes him as one of the most influential people in
20 Australia at the time, although I noticed that one of
21 the first quotes they give is someone giving the opinion
22 that he's rather mischievous, but in any event, a very
23 important figure we will see. Professor Fels?

24 MR. FELS: Okay. Well, I'm going to just talk
25 briefly about competition strategy, following a little
26 bit in the lines of Bill Kovacic, doing a couple of

1 comparisons of the U.S. and the rest of the world, a few
2 words on consumer protection, and then applying the
3 strategy analysis to international competition
4 questions.

5 So in any competition agency, in any government
6 agency there are a number of key questions that you
7 always have to ask: What should be done? What needs to
8 be done? What would be of value to the public?

9 Then you also need to ask, Well, what may be
10 done? What is actually permitted by legislation to be
11 done, and also what can be done? That is, what are the
12 administrative resources at your disposal? What are the
13 laws at your disposal to achieve what should be done?

14 Finally a question of ever growing importance in
15 government everywhere, not only in the competition area,
16 what requires cooperation from other organizations and
17 entities in order to achieve the public venue that one
18 is seeking to achieve?

19 Now, I'm going to use those questions, I've set
20 up a little model which is of use for policy agencies.
21 In passing I think it is relevant to a number of the
22 questions that have been asked in this conference and
23 builds a little bit on Bill's paper. Then I'm going to
24 more ambitiously apply it just very briefly to the
25 international theme.

26 One of my points is that most policy discussions

1 tend to focus on just one of those variables, a heated
2 discussion about what should be done with little
3 reference to what the political environment says may be
4 done or what is administratively possible or what
5 requires cooperation from others to get results.

6 Now, competition is very relevant to
7 international competition and policy, so there, just
8 said the same in slightly more convoluted language.
9 What one is trying to do is achieve public value.
10 That's what ought to be done and one depends upon the
11 political environment or what I call the authorizing
12 environment to allow a government authority to do that,
13 and then there is another question of what can be done,
14 the actual operating capability.

15 So just talking about each of those variables
16 for a moment, I said the aim is to try to get some
17 public value, so in the case of competition law, what is
18 the public value?

19 Well, of course, the first thing in value is
20 some kind of output, and here I've suggested maybe its
21 successful prosecution, and then that leads to the
22 outcome of a competitive economy, and that is of public
23 value, so that's one theme that is gainful, but
24 typically in the field of government as distinct from
25 the private sector, it's not just output.

26 There's also public value in the processes that

1 we follow, and so there is a considerable value attached
2 to following a fair process, and that leads to greater
3 trust in government, and that has the value of proper
4 use of government power, and also may be fairness, so
5 that's very quickly an idea of what is public value.

6 Then I mention the notion of an authorizing
7 environment, a political environment. In any strategy
8 analysis looking ahead, you have to have a look at what
9 is driving the environment that authorizes the laws and
10 regulations and so on under which you operate, and
11 that's driven by various forces that I've set up there,
12 and it's a very fickle kind of environment. It can
13 change quickly, so any look ahead at strategy has to
14 have a look at how the political environment may work.

15 Then the operating capability, that's simply the
16 laws and the resources that someone has to carry out
17 their tasks, and besides looking at those variables, you
18 have to look at their interrelationship, and sometimes
19 they're all kind of lined up. There's no disequilibrium
20 as shown there, but I do just mention that very often
21 you find that there's an equilibrium at a low level of
22 public value, in other words, the regulators doing
23 nothing much. That's what the political environment
24 wants, and they've got their resources just to do that.

25 More interesting is when there is some kind of
26 misalignment. Now, in that realm, I've suggested that

1 maybe the public value being pursued by the regulator
2 exceeds the actual mandate from the authorizing
3 environment. Something like that happened in Australia
4 when the regulators stepped up the litigation rate very
5 heavily. This brought it into conflict with the
6 political environment, and I've heard mention of similar
7 conflicts over the last few days, and I just mention
8 that sometimes the regulator can change the authorizing
9 environment by education, by advocacy and so on, and
10 bring them into line that way.

11 Just on the advocacy discussions that I've heard
12 here, I really think that if we're looking ahead at the
13 FTC over the next 20 years, it's really important to
14 look at how advocacy is done in the rest of the world
15 because it is done differently. In the EU the
16 Competition Commissioner sits at the table of all the
17 Commissioners when all decisions are being made about
18 transport and energy and agriculture and has a direct
19 input into the law making process.

20 In Korea, Taiwan and some other Countries, quite
21 often the head of the Competition Commission is a member
22 of the Cabinet and gets a say in the making of the law,
23 and it contrasts very much with the model we hear of
24 here where the competition bodies are not involved in
25 the making of the law. They go along hand and hand and
26 sort of make a submission.

1 It's a very different power situation from the
2 rest of the world, and I do very much caution against
3 U.S. people advocating the U.S. advocacy model in other
4 countries when it is possible. I mean, advocacy is
5 terrific, but the possibility of being able to be
6 involved in the making of the laws is very important.
7 Some might say, We're a federation. What can we do
8 about states?

9 In Australia, a federation, we do it differently.
10 There is a federal review of all anti-competitive state
11 laws, and if they are found to be anti-competitive and not
12 in the public interest, the States are subjected to a
13 severe financial penalty by the federal government. So
14 there are other ways of looking at advocacy, which I think
15 the FTC should look at in coming years.

16 Now, the next possibility is that the regulator
17 hasn't got the operating capability to achieve the
18 public value. It hasn't got the resource of the law,
19 and of course the classic examples is the EU. It's been
20 loaded up with tasks, but it just doesn't have the
21 people. What can it do?

22 Well, it can't get a bigger batch of things to
23 settle. It can squeeze a bit more out of the operating
24 capability by cutting back on notification and getting
25 higher output in that fashion, and there's another
26 possible solution, but I do think a lot of discussion of

1 policies tend to ignore the operating capability
2 restriction, and they should build it into policy
3 analysis.

4 Now, the next variable I just want to introduce
5 is that of coproducers. Sometimes to achieve public
6 value, you need the help of other people. You need the
7 help of coproducers, and in the EU for example, another
8 way of getting value is to use national regulators to
9 help the Commission get some results.

10 In the U.S.A. system, I've always thought of the
11 authorizing environment, the public value, the operating
12 capability, all at fairly high value, and also
13 reasonably well aligned, it seems to me that the issue I
14 keep hearing about at this conference is a coproducer
15 and do coproducers value in the field of competition
16 really deliver? Isn't that the big issue here?

17 The question about state laws, state regulators,
18 other regulators, overseas regulators, do they in some
19 way inhibit the achievement of public value? Isn't that
20 the big policy question, and on the question of consumer
21 protection, well I've just expressed my thoughts on that
22 again in this strange language of circles and so on, but
23 basically consumer protection policies are kind of a
24 coproducer of value.

25 It may at times complement or it may conflict
26 with competition policy. There are some interesting

1 questions about whether you should integrate the
2 functions of one body. I believe that is the way to
3 maximize the joint value of the activities, and one
4 point which I don't think has been mentioned so far is
5 that there is a huge political benefit in integrating
6 competition and consumer policy because the consumer
7 protection actions build general public support for the
8 agency and help carry it through its more unpopular
9 decisions when it rejects mergers in unpopular manner or
10 does other unpopular things. The political credit it
11 builds up for competition through consumer protection policy
12 is extremely important.

13 On the international side, it seems to me
14 that there is considerable public value to be achieved from
15 curbing international anti-competitive behavior, cartels,
16 mergers, market power, all those trade and competition
17 issues that we keep hearing about, and also in the field of
18 intellectual property law, there are numerous restrictions
19 on international trade and copyrighted and patented
20 products, which I've always found extremely hard to see any
21 justification for.

22 Certainly in terms of my way of looking at
23 things, there would be public value from doing something
24 about all the international restrictions on competition,
25 so one of the options: One is each country goes it
26 alone.

1 Now, that doesn't change something because not
2 only can your own actions help you, but also if there's
3 a place like Australia that you can sit back, and if the
4 U.S. or the EU breaks up cartels or mergers, that brings
5 a benefit to you.

6 I repeat the point, the extraterritorial
7 approach seems to work badly and it harms cooperation.
8 I did mention a lot of countries want to do something
9 about international cartels but permit their own export
10 cartels is somewhat contradictory.

11 So in terms of my diagram, if you go it alone,
12 then the potential value that you want to achieve can't
13 be achieved because of the insufficient operating
14 capability, so the actual capability is less than what
15 is required to get results.

16 Convergence, I think we've already heard about
17 it. I just mention that convergence is fine. It is
18 having a bit of an effect, but still many countries have
19 weak laws or, more importantly, they have laws that are
20 not being seriously applied. They may come to do that but
21 at the moment they don't.

22 Convergence doesn't itself do much to address
23 the global problems. It's more something that's
24 happening domestically. It still leaves the global
25 questions to be resolved, so what is happening is that
26 instead, we're getting more cooperation in many, many

1 forms.

2 It, too, has some limits. First of all, the
3 simple fact is that the political environment does not
4 permit too much cooperation. It imposes severe limits
5 on it. Many countries do not have agreements. There
6 are few agreements between developed and developing
7 countries, and even the agreements that you find, even
8 the very serious one between Australia and the U.S., the
9 IEAA, that has a number of letters, for example, it
10 doesn't cover mergers, and there's some public interest
11 exemptions, so cooperation is good, but it's still got a
12 long, long way to go.

13 I'll just signal that cooperation is a way of
14 harnessing coproducers, but there are limits on it from
15 the authorizing environment, and so the potential of
16 cooperation has still a long way to go before being
17 realized.

18 What is very important though, in this as in
19 every other area of government now, and as we heard in
20 the previous session, particularly from Commissioner
21 Harbour, what is really important is not to have a big
22 argument about who should do what, whether you're
23 talking about the federal regulators versus the states
24 or the federal competition agency versus the industry
25 regulators or the U.S. and the rest of the world, it is
26 actually to work on making cooperation work better.

1 There's a body of learning now on how to
2 make cooperation work better in government, and this
3 should be a really big focus for the future. I believe at
4 the FTC and everywhere else, it is the best not so much
5 to argue about who owns the patch but, whatever it is, to
6 work harder on making it work well.

7 On multilateral agreements, I suggest that the
8 actual operating capability is negligible at the moment
9 because there isn't the political support for multi lateral
10 agreements, and I've also then made even smaller the circle
11 of the world competition authority and suggested for the
12 whole subject of having a world competition authority
13 should be seriously revisited at the repeat conference that
14 will be held at the 180th birthday party of the FTC.

15 I want to mention an area that has gone
16 disastrously wrong in this world. Those of us who are
17 competition policy people feel trade policy is an area of
18 competition policy, but one that has gone disastrously
19 wrong, and we really need to do something about all the
20 legislative restrictions on international trade. They are
21 the biggest barrier to global economic welfare. I'm afraid
22 that cartels have come second in importance. That has to
23 be part of the agenda.

24 I will say finally and I'm only a quarter way
25 through my speech, finally I'll just mention that in
26 many ways the formal cooperation these days is less

1 important than informal, and my conclusion is at the
2 moment we're making some progress but there's a
3 political problem about cooperation.

4 Bilateral cooperation is the way forward, and
5 that we need to work harder on making sure that that
6 works well. Thank you.

7 (Applause.)

8 MR. TRITELL: Thanks to Terry and Allan.

9 Allan, I made a note next to your remarks to
10 make sure you're invited back to the FTC's 180th Anniversary
11 Symposium.

12 It's now my pleasure, after these two interesting
13 papers, to present our first discussant, Professor David
14 Gerber. Professor Gerber is a leading scholar in the
15 international antitrust field, currently the Distinguished
16 Professor of Law at Chicago Kent College of Law. David has
17 been a member of law faculties across the United States as
18 well as in Germany and Sweden, and has practiced law in both
19 continents.

20 His most recent book is "Law and Competition in
21 the Twentieth Century Europe: Protecting Prometheus."

22 David, after listening to these two provocative
23 papers, we look forward to hearing your observations and
24 insights.

25 MR. GERBER: Thanks very much, Randy. It's a
26 real pleasure to be here. As I look at the group there

1 are a lot of people here still. We weren't sure whether
2 we would be down to three by this time or not, and I'm
3 glad to see so many people are staying around.

4 I want to comment on two themes that have come
5 up in the prior discussions. One is European
6 modernization because that's such an important part of
7 the entire international picture, and the other is U.S.
8 antitrust on the world stage. Both, in my view, shed
9 some light on discussions we've had in other contexts
10 today.

11 First a little bit on the modernization of
12 European antitrust law. Terry Calvani talked about the
13 European situation as being part of both convergence and
14 divergence, and his discussion of this is a little bit
15 more extensive in the paper, but at one level we've got
16 an obvious tension.

17 If you look at Europe as a whole, it is getting
18 closer to the United States, so in that sense there's a
19 kind of convergence basically on two lines. There's
20 more strictly and narrowly defined economic analysis and
21 there's more of an effort to generate private actions,
22 even though it hasn't gone very far. The new structuring
23 of the European communities antitrust laws has moved in
24 that direction, and therefore there's less conflict and
25 more cooperation.

26 That seems to be the picture, but it's a bit

1 more complicated, and it deserves a couple of comments.
2 First, the changes in Europe are enormous and untried
3 for the non-specialist. I think non-specialist² in the
4 United States have not perhaps noticed or given this
5 sufficient weight. The member states, since May 1 of
6 this year, are now the primary enforcement agencies in
7 Europe. That is the 25 member states, some of whom are
8 very, very new of course, are the primary enforcement
9 agents throughout Europe. The idea is that everyone
10 will now apply EU law at least in most cases (not all
11 cases do they have to) this will create a degree of
12 uniformity, and consistency will be maintained. A degree
13 of coherence will be maintained in two ways.

14 One by virtue of the Commission's capacity to
15 essentially promote coherence -- for example, by taking
16 cases away from national authorities, by commenting on
17 what should be done, and by essentially pushing the Agency
18 to do things the way they're supposed to do as far as the
19 Commission is concerned, and second by a network
20 arrangement.

21 There's going to be a tremendous amount of flow
22 of information, within this network of competition
23 officials in Europe, and the idea is not only that this
24 flow of information will inform people, but that it will
25 be providing a kind of format for creating consistency.
26 Nobody knows really whether either of those will work

1 well.

2 We assume they'll work well. We think they'll
3 work well. Everybody's betting that eventually somehow
4 these will work. It's been going since the first of
5 May. There are a lot of little things that are
6 happening, and some things people aren't so happy about
7 it, and it's not quite clear just where all that's going
8 to go.

9 So from this perspective, we need to think about
10 the tremendous importance of it, about the tremendous
11 degree of change that's involved and also about the
12 questions about just how this mechanism will work.

13 So when you take those things and you put them
14 together with some major differences in how people in
15 the various parts of the European community, European
16 Union, think about competition law, things may all
17 become uniform, but right now there are some quite
18 large differences.

19 There are, for example, major differences with
20 regard to how much economics you use and what kind of
21 economics you use and how many resources you have to
22 support an economic analysis. It may be possible to get
23 all that quite uniform, but for a very long time there are
24 going to be very interesting implications for American
25 lawyers.

26 It's going to be more difficult to predict

1 outcomes, not in all cases, but in many cases it's going
2 to be more difficult to predict outcomes. It will be
3 more difficult to identify relative differences within
4 Europe. The differences will not be big ones and
5 obvious ones about substantive law. They will be
6 minor. How much does one competition authority believe
7 in economics and want to pursue economics by putting in
8 all the resources that are necessary? Do they have
9 sufficient resources to do it and so on?

10 Is there a degree to which procedural uniformity
11 can be achieved? At the moment the Commission has said
12 in its modernization, "We're not worrying about all the
13 differences in procedures," so as you have it right now,
14 you have 25 national systems with often completely
15 different procedural systems applying the same substantive
16 law. Outcomes are likely to be influenced.

17 Advantages for lawyers are likely to vary. A
18 great deal of detailed analysis is going to be necessary
19 to figure out at least in big cases what you should do,
20 how you should do it, why you should do it and so forth,
21 and finally it's going to create difficulty in terms
22 of identifying differences relative to the U.S.

23 There is an assumption that Europe is getting
24 closer to the U.S. In some ways, as I indicated, it is
25 with regard to substantive law matters, the use of
26 economics. It is the hope that there will be more

1 private enforcement actions, but still enormous
2 procedural differences remain. Fundamental procedural
3 differences still exist.

4 As to the use of economics, the Commission itself
5 is becoming more advanced. I'm not so clear what the
6 member states are going to be able to do about all of
7 that. Some won't have the resources, and what will
8 happen there is another question. Don't forget also
9 that antitrust is still something you have to sell in
10 parts of Europe at a certain level, not that it's
11 nonexistent, but "how far it should go?" "Will
12 businesses cooperate with it?" and so on. So there's a
13 risk that there will be some assumptions about
14 uniformity that don't hold.

15 Okay. Then the second point and that involves
16 U.S. antitrust on the world stage. Terry's paper and
17 some of the general discussions we've heard have a fairly
18 positive picture. There's growing convergence. There's
19 positive value for all, fewer distortions on global
20 playing fields, fewer conflicts.

21 For U.S. lawyers it's seen as positive on a
22 variety of fronts. Everybody is getting closer to the
23 United States. More like us, more convergence. Are
24 they the same thing, more like us and more convergence?
25 Maybe so. The picture is fairly complex actually.

26 We talk about convergence. At one point, at one

1 point not very long ago I may add, convergence simply
2 meant everybody sort of at least pays a lip service to
3 antitrust, and they have an antitrust statute. Now we
4 have a hundred of them, 60 of them in the last five or
5 six years or eight years.

6 Well, if convergence means anything, it means
7 you're converging towards some point, and if it's just a
8 question of having a similar substantive law, maybe
9 there's a degree of convergence there, but when we look
10 more carefully at it, the convergence begins to become
11 a little bit less clear.

12 If the question is, "Are we getting closer?" Is
13 the rest of the world getting closer to the U.S. model?
14 Well, maybe a little bit, sort of, kind of. In terms of
15 more economic analysis, what do we mean by that?
16 Everybody says, of course, there's economic analysis.

17 What do we mean by economic analysis? We've
18 heard today that what is generally considered the right
19 way to do things in the United States now is really only
20 being approached (and that indirectly) in Europe. There's
21 a different question on some levels.

22 The rest of the world doesn't pay a lot of
23 attention to that by and large. A major difference is
24 with regard to unilateral conduct. Norms on Cartels do
25 not show major differences, but, again, how far we go in
26 this. How it actually is going to work is not terribly

1 clear sometimes.

2 So, more private suits? Is that the other
3 part of the American model we think there's convergence
4 towards? Yes, but not very far. The United States
5 system believes very much in private enforcement. Europe
6 is beginning to say, "This would be nice," although I
7 think there's very little experience with private
8 enforcement in the Europe so far, so it's really quite
9 questionable whether we got a serious convergence there
10 at all. There's much to the convergence theme. It's an
11 important theme down the road, but it needs to be analyzed
12 in a nuanced way.

13 Perhaps what we really mean is that the U.S.
14 model is the convergence point. If so, we need to ask
15 how appropriate is the U.S. model? There's an assumption
16 that is bantered about often among American lawyers and
17 American administrators: essentially, that the American
18 approach top antitrust is the right approach and everybody
19 else should simply follow that approach. If they do,
20 we'll call it convergence, and if they don't, we'll call
21 it wrong headedness. I think this is a narrow-minded
22 sort of perspective.

23 There are many factors that will influence the
24 degree to which competition can be fostered by legal
25 process: the degree of economic integrations, the market
26 situation (in particular, how big is the market and

1 soon) how advanced is the market, the procedural
2 context in which you have to operate, the institutional
3 or political context in which you have to operate, the
4 role of lawyers and the freedom of lawyers to do certain
5 kinds of things, the resources of the lawyers.

6 All those things tend to affect how you can
7 actually operate a competition law system, and I think
8 it's real important that we think about that. I point
9 out here, merely for example, to China, China's in the
10 process of drawing up competition legislation, analyzing
11 what the Americans do, what the Europeans do, what the
12 Australians do, trying to figure out how it all works.

13 They're unlikely to come very closer to the
14 American model. They are likely to come out close to the
15 Europeans. Is that convergence? In some ways, yes. In
16 some ways, no. My point simply is it's very important to
17 think about that.

18 In conclusion then, when I think about the
19 future of all of this, I think about the issues that
20 I've brought up and the differences that still exist and
21 need to be taken into account. In any event the future
22 stage will look different than the stage that we've been
23 thinking about.

24 Issues will be framed differently. It will no
25 longer just be the U.S. and Europe as the primary basis
26 for discussion about convergence and cooperation.

1 Essentially, U.S. and Europe have been the entire focus.

2 The discussion will be much more fundamentally
3 international. It will take into account Asian countries.
4 It will take into account China and Japan and other
5 countries in a much more significant way in the future.

6 The issue will no longer be, it seems to me whether
7 to enact antitrust law or not, because clearly we'll have
8 antitrust laws almost everywhere. The issues will be what
9 sorts of substantive laws you have, how they can
10 be enforced and implemented in ways other than through
11 enforcement -- through advocacy action and so on.

12 It will no longer be just "are they like us or
13 not?" and it may be better that way. It may be better for
14 everybody concerned. The discussion it will no longer be
15 primarily from American perspectives. Are they simply
16 making the same mistakes we did?"? is often a frame for
17 thinking about what everybody else does. That will change.

18 So I think that U.S. agencies and lawyers will
19 be the key to success with the antitrust idea in the
20 world. We have a tremendous experience. We have
21 tremendous resources and so forth. The degree to which
22 that actually works will depend it seems to me, however,
23 on how well Americans understand the differences that
24 affect the way competition law operates elsewhere and
25 can operate elsewhere and adapt its approach
26 accordingly. Insisting on the U.S. model may mean that

1 in many places you simply don't get very far at all.

2 The FTC, in the last few years, has done a
3 wonderful job of trying to do these things with Bill
4 Kovacic and Randy Tritell, and I'm enormously impressed
5 by what they have done and where they seem to be trying
6 to go, and I wish them very well in getting there. I
7 think we all should. Thanks.

8 (Applause.)

9 MR. STEVENSON: We've just heard discussion of
10 the issues of cooperation and convergence and focusing
11 on the areas of antitrust competition law, and we turn
12 to our last speaker to address the competition and
13 convergence themes in the context of consumer
14 protection. It is a great pleasure for me to introduce
15 the next speaker, many of you already know, Mozelle
16 Thompson who has just finished a six year stint as a
17 Commissioner at the Federal Trade Commission.

18 I think it's fair to say its undisputed that he
19 has been a central figure in the development of the
20 international consumer protection area in the areas of
21 both cooperation and convergence.

22 In the convergence area, he represented the
23 United States and indeed shared the consumer policy
24 committee at the OECD, the Organization for Economic and
25 Cooperation and Development, and while there was one of
26 the driving forces behind one of the two sets of OECD

1 guidelines, one addressing consumer protection in
2 electronic commerce, and another protecting consumers
3 across borders against fraud and deceptive practices.

4 In the cooperation area, he was for several
5 years involved in what is know known as the
6 International Consumer Protection Enforcement Network,
7 ICPEN, which the competitive part of me has to know that
8 it actually predates the international competition that
9 we're going back to the early '90s, and he was involved
10 for several years then there and indeed led the FTC to
11 Europe's authorization, so let me turn it over to
12 Mozelle Thompson.

13 MR. THOMPSON: Good afternoon. Terry, I think
14 the fact everybody is still here is because I think half
15 the people think that we still work here, and therefore
16 they have to show up. They haven't gotten the memo yet,
17 but. It's good to see you all. You haven't changed
18 much in two weeks.

19 This is a very interesting topic for a couple of
20 different reasons. One is that a lot of what the FTC
21 does is oftentimes hard for the public to understand
22 because you're charged with predicting the future in
23 taking action on practices that people don't know, and
24 they've been victimized oftentimes, and so you're there
25 predicting the future, and this particular panel is
26 talking about predicting international cooperation and

1 convergence, about predicting the future, about things
2 that could go badly with the public.

3 So that takes a certain kind of mind set. First
4 you have to be an optimist. What it also tells me is
5 that we have thrown around a few terms here, which I
6 think I'm reminded of my public policy studies, which is
7 that what it is depends on where you sit, that
8 convergence in the context of international competition
9 and consumer protection has meant various things.

10 It's meant certain vertical issue, for example,
11 the difference between policy and practice because in
12 some cases there are many countries where the people
13 that do policies in these areas aren't the people who
14 actually do enforcement in these areas.

15 Then it's also a relationship between central
16 authorities and other enforcers. You heard a little bit
17 the last panel talking about the relationship with
18 states, and I think Terry talked a little bit about the
19 changes that are now occurring within the EU on
20 competition, between what happens at the European
21 Commission and what are the powers that member states
22 are going to be exercising.

23 So you see questions about cooperation and
24 convergence vertically, but you also see another kind of
25 cooperation and convergence, which not only takes place
26 between those who are involved in policy and enforcement

1 in various countries, but also the cross-pollination
2 between competition and consumer protection because more
3 and more people that are involved in both areas see that
4 there are synergies involved because they both
5 essentially deal with consumer welfare and consumer
6 benefit.

7 In many instances, you see opportunities for
8 both to work hand and hand, notwithstanding the fact
9 that sometimes it seems like the people in the Bureau of
10 Consumer Protection and the people in Competition don't
11 necessarily know what the other side is doing.

12 I will say in my time at the Commission, there
13 was much more of an opportunity to see how both sides
14 work together and especially in contraction to what we
15 know.

16 Then there's a final idea of convergence, which
17 I think some of the people here on the panel have talked
18 about, which is convergence of legal standards,
19 including proposals that have been made from
20 international competition authority, and there's been
21 similar proposals that's been made at the TransAtlantic
22 Consumer Dialogue having some omnibus consumer
23 protection agencies that will be in charge of global
24 enforcement.

25 I think what's happened in looking at the world,
26 especially recently, is we've looked more toward

1 opportunity for cooperation and highlighted areas which
2 have a transnational or cross border component to it,
3 whether it's on the cartel side, on competition, whether
4 it's us looking at ECommerce or cross border fraud, to
5 look at areas where we have common interest with other
6 enforcers, and that transcends whether they're involved
7 in the policy side or on the enforcement side or whether
8 they're involved in the criminal side when there's a
9 difference, for example, in some countries, civil law
10 countries versus common law countries.

11 Being led by trying to find practical results
12 eventually will lead to strands of cooperation and what
13 many will say will be convergence because in some senses
14 that's the way that you're going to get beyond the
15 normal territorial political and cultural restraints
16 that may lead people to believe that because they're
17 cooperating that they're giving up something instead of
18 looking at an opportunity to gain something that will
19 benefit people who are victimized, wherever they may be
20 in the world.

21 So those are some opportunities that I see, and
22 what's happening now, you're seeing it right now at the
23 OECD. In another two weeks I know that Hugh and Randy
24 will be over in Paris, and it will be the second joint
25 meeting between the competition and consumer policy
26 committees, and these are the people who are involved in

1 the policy side.

2 The first meeting took place a year ago, when
3 they talked about what are the general interests that
4 those committees have, and we talked about consumer
5 welfare. Now, people are going to talk about specific
6 examples of practices and policies that they have seen
7 that have a competition and consumer component and how
8 they might work together in examining those issues and
9 how they might move forward in informing each other's
10 thinking about how to enforce the law or what legal
11 changes have to be made.

12 I think that that's an opportunity. At the same
13 time, there is a strong interest I've seen on both
14 sides, competition and consumer protection, to have
15 practical, tangible results.

16 If you ask me whether there's one tangible
17 change that I've seen throughout the world, it is that
18 more and more governments are trying to find out how
19 they can be more publicly accountable and in doing that,
20 trying to find areas in competition and consumer
21 protection where they can actually show the public real
22 results and plot a course for the future of where they
23 might see more fruitful results from international
24 cooperation. So that's where I see things going, and
25 those are the opportunities.

26 Now, I think there's always this big contention

1 now, it's very funny actually, that the various
2 alphabet, languages of various bodies trying to grab
3 hold of this now, but I think what you see as
4 interesting is a two pronged analysis.

5 One is with existing bodies, whether it be the
6 OECD or for that matter the WTO or anyone else, to look
7 at them carefully to figure out, Well, what are the
8 opportunities presented by these organizations, and then
9 being willing to say, There are some things that maybe
10 we should take to another organization in order to get
11 more practical results, for example, at the ICN or ICPEN
12 where people are looking at a less formal way to
13 cooperate.

14 So those are the opportunities, and it's a very
15 interesting environment right now because the FTC is in
16 a very unique position. We do both competition and
17 consumer protection. We also do policy and enforcement
18 that while there are other things that may not be as
19 well, we have more of an opportunity here to talk in a
20 more cohesive way about those issues than many other
21 agencies in other countries.

22 If we can talk to other countries about what
23 those opportunities are instead of preaching what they
24 should do instead of talking about what they might be
25 able to do and what our experiences are, I think the FTC
26 will continue to have a very important role indeed, so

1 thank you.

2 (Appause.)

3 MR. STEVENSON: I think we have time for just a
4 little bit of discussion, and I would like to raise an
5 issue that's been touched on I think by a couple of
6 speakers. We have I think two folks here who used to
7 work for agencies that combine competition and consumer
8 protection, and one who was working for an agency that
9 has solely competition functions, and I wondered if our
10 panelists had thoughts on the pros and cons of that, of
11 those two kinds of organizations of functions in
12 government.

13 MR. FELS: Well, Tom, to my mind the two
14 functions complement one another. That is, competition
15 works better if consumers are informed and can exercise
16 choices and understand competition better. Likewise, as
17 was pointed out at lunch yesterday, a lot of consumer
18 protection problems are basically viewed from a market
19 functioning and computation analysis perspective to come
20 up with the broad solutions, and that's most likely to
21 happen if the two functions put together.

22 There are economies of scale and scope in
23 mentioning those and not mentioning the political
24 advantages.

25 MR. CALVANI: I really don't have anything to
26 add to Allan's comments except to say that I think the

1 principal advantage I see to consumer protection bureaus
2 is an infusion of economics that you don't see when
3 agencies are separated.

4 As I look at the recent events in Ireland, the
5 Irish consumer protection agency recently prosecuted
6 groceries stores for selling baby food too cheap, even
7 in the absence of any predation. That's a strange thing
8 for a consumer protection agency to do, and I don't
9 think you'll find that sort of thing taking place in a
10 combined agency.

11 Similarly, I think that there are advantages,
12 albeit less dramatic, that flow to competition agencies
13 who have expertise in marketing and retailing and the
14 like, so I think in general agencies that combine the
15 two are better placed. I agree with Allan.

16 MR. THOMPSON: I think that it's interesting. I
17 think that that's the natural assumption, but I actually
18 think that we're in kind of a different position because
19 we have been at the heads of agencies so that we tell
20 people that they have to talk to each other on both
21 sides of the fence within the agency.

22 I'm not sure, so the challenge is actually to
23 make sure that there is an understanding in parts of the
24 agency internally, that that actually happens because
25 what could happen by natural operation is you a defacto
26 wall that is not necessarily that much different than

1 what happens in a lot of other countries.

2 You've both alluded to something that's very
3 important, and I thought that occurred at the OECD joint
4 meeting that represented a pretty significant shift from
5 what people may have seen in the past.

6 It was the first time that a lot of people on
7 the competition side saw that consumer protection folks
8 actually have much more of a market focus now than they
9 may have had in the past, so that not to say that there
10 aren't anomalies, but at least have much more
11 understanding that they want to condition the market as
12 good behavior versus bad behavior.

13 That I think is a pretty significant and
14 important shift.

15 MR. GERBER: Just one additional thing on that.
16 If you look around the world on this, especially to
17 developing countries, countries where they're developing
18 in an economic sense but are also developing competition
19 authorities, the idea of having a consumer function
20 attached to the competition law is often very useful.

21 It allows progress. It allows the amassing of
22 otherwise often very scarce resources to get things
23 going, so that's to be considered in the rationale.

24 MR. THOMPSON: It also covers your political
25 butt.

26 MR. TRITELL: With that, thanks on behalf of

1 Hugh and me to our panelists and discussants, and to
2 all of you for bearing with us.

3 (Brief break.)
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