“U.S. ANTITRUST PRACTICE - HOW DOES IT AFFECT EUROPEAN BUSINESS?”
remarks by
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It is a pleasure to be back in Brussels, among friends and colleagues in the competition community. I am particularly pleased to share the podium this afternoon with Philip Lowe and Ulf Boge, and to be preceded this morning by Competition Commissioner Neelie Kroes. I would like to thank the Studienvereinigung Kartellrecht, and in particular, Cornelis Canenbley, for offering me the opportunity to speak to you today, and I congratulate you on your 40 years of work.

The last time I spoke as a government official at a public forum in Europe was back in 2003. At that time, I was the Principal Deputy Assistant Attorney General in the Antitrust Division of the Department of Justice (“DoJ”), Mario Monti was the EU’s Competition Commissioner, and your clients were submitting their agreements to DG COMP on Form A/B under Regulation 17 of 1962. All of that - and more - has changed.

Much, however, remains the same. The dedication that I applied to protecting consumers when I was at the DoJ continues now at the Federal Trade Commission (“FTC” or “Commission”), and I am continuing and building on the work of my predecessors there. Neelie Kroes has replaced Mario Monti, and she and I, along with Hew Pate, head of the Antitrust Division, are committed to carry on bilateral cooperation under the 1991 agreement as well as broader multilateral efforts within the International Competition Network (“ICN”). And,

[1] The views expressed herein are my own and do not necessarily represent the views of the Federal Trade Commission or of any other individual Commissioner.

without question, global faith in competition and the benefits it provides consumers continues to spread. Just last week, the American Bar Association Section of Antitrust Law held its annual Spring Meeting, which attracted a record nearly 2000 attendees, including nearly 300 from outside of the United States. Plainly, there is strong interest in competition and in enforcement of the laws that protect it.

With such interest climbing on a global basis, comes interest in the U.S.-EU relationship and, naturally, in where we have differences. Indeed, when I spoke in London nearly eighteen months ago and provided a positive report on U.S.-EU cooperation in competition matters, the moderator of the panel actually mocked me in a disappointed tone. This hope for drama reminds me at times of the interest in Prince Charles and his bride, Camilla, or in the United States today, the break-up of Jennifer Aniston and Brad Pitt! While divergence may make for exciting headlines and interesting panel discussions, we work to avoid it quite simply because it has the potential to harm the market that we have vowed to protect. And, although not generally visible, we are working together every day on matters common to our respective jurisdictions. It is against this backdrop that I will describe our work at the FTC.

As with any important and complex undertaking, it is essential to establish first principles and to return to them often.

First, the goal of competition policy should be the enhancement of consumer welfare. Providing consumers with their needs is a prime generator of economic activity. It leads to innovation, jobs, and economic growth.

Second, free markets have unmatched potential to benefit consumers. Ensuring robust competition based on free markets is the most effective way to achieve efficiencies that boost consumer welfare. Consequently, we must take any government interventions in the economy very seriously.

Third, reliance on free markets does not mean that market participants are free of responsibility. We have rules to prevent cheating by those who fear competition and, when those rules are broken, the enforcers must act. To those here in Europe who believe in the myth of American "cowboy capitalism," I suggest that they not test our enforcement commitment.[2]

Finally, our enforcement is directed at protecting competition, not competitors. I often am asked, particularly in Europe, "how it is that we can have competition without competitors?" Good question. We support competition because it will lead to efficiencies. But competition can be fierce and someone may "lose." We do not seek to prop up the "loser" just to keep it in the game. And we do not seek to tame the competition, through anticompetitive regulation or enforcement, to assist a rent-seeking rival.

At the Federal Trade Commission, we put these principles into action through three courses: law enforcement, competition advocacy, and research and development. We attempt to direct our resources to markets of greatest significance to consumers, including (but certainly not limited to) health care, which affects every American and now amounts to about 15 percent of U.S. gross domestic product; energy, which also affects every American, a truism confirmed every time the retail price of gasoline rises; and high tech, which continues to change our very way of life. I now will describe some recent FTC actions and initiatives.

[2] For a description of the myth versus reality of "cowboy capitalism" in America, *see* Olaf Gersemann, *Cowboy Capitalism: European Myths, American Reality*, Cato Institute 2004.

FTC Enforcement Actions: A Sample

Perrigo and Alpharma, two of the largest makers of over-the-counter medications in the United States, each sought, and obtained, approval from the Food and Drug Administration ("FDA") to sell a generic version of children's liquid Motrin, a drug used to relieve pain and reduce inflamation. Instead of competing in the store-branded market, however, they agreed that only Perrigo would market its product, and that Alpharma would receive royalties from the higher prices Perrigo obtained. The FTC charged that the parties' agreement was an unlawful restraint of trade, and the FTC was able to reach a settlement with the companies under which they agreed to pay a total of $6.25 million of illegal profits stemming from their agreement. The FTC will use those funds to compensate customers harmed by the companies' conduct.[3]

In another healthcare matter, the FTC challenged a rule issued by the South Carolina State Board of Dentistry that restricted the ability of dental hygienists to provide on-site preventive dental services, including cleanings, sealants, and fluoride treatments to children in South Carolina schools. The FTC alleged that the Board acted unlawfully in adopting an emergency regulation that reimposed a requirement that dentists preexamine patients before dental hygienists could provide treatment in school settings. The complaint alleged that the Board's actions hindered competition and deprived thousands of school children – particularly economically disadvantaged children – of the benefits of preventive oral health care.[4] The South

[3] *See* FTC Press Release (Aug. 12, 2004), *available at* http://www.ftc.gov/opa/2004/08/perrigoalpharma.htm.

[4] FTC Press Release (July 30, 2004), *In the Matter of California State Board of Dentistry*, FTC Docket No. 9311, *available at* http://www.ftc.gov/opa/2004/07/scdentists.htm.

Carolina Board claims that its action is protected by the state action doctrine, articulated by the U.S. Supreme Court in 1943 in the case of *Parker v. Brown*,[5] a defense the FTC rejected. The matter is now pending in the Court of Appeals for the Fourth Circuit.

The FTC also took enforcement actions in several merger cases arising out of the pharmaceutical industry. The first is one that will be familiar to most of you: Sanofi's $64 billion acquisition of Aventis.[6] One of the markets critically affected by this merger was that of treatments for colorectal cancer. While Aventis did not market cytotoxic colorectal cancer drugs in the United States, there were significant entanglements between Aventis and Pfizer that affected the U.S. market, and these entanglements – which include Aventis' conducting key clinical trials for Pfizer – allowed Aventis to impact the market. Although it took the FTC more time to unravel the entanglements that affected the U.S. market, the FTC worked closely with the European Commission's Competition Directorate to coordinate the terms of the remedy with the parties.

The *Sanofi/Aventis* case is typical of pharmaceutical industry merger cases. The markets are national in geographic scope because of the national regulation of pharmaceutical products. Furthermore, pharmaceutical firms often license products to other firms for sale in other geographic markets. This can lead to different competitive conditions in different jurisdictions and, thus, may require different remedies.

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[5] 317 U.S. 341 (1943).

[6] FTC Press Release (July 28, 2004), *In the Matter of Sanofi-Synthelabo and Aventis,* FTC Docket No. C-4112, *available at* http://www.ftc.gov/opa/2004/07/sanofiaventis.htm.

Two other pharmaceutical merger cases illustrate the flexibility – as opposed to rigid reliance on past practice – we must show in devising remedies that directly correct the harm anticipated to arise from the transactions: *Cephalon/Cima Labs*[7] and *Genzyme/Ilex*.[8]

In *Cephalon/Cima*, the FTC was concerned that the merger of firms with branded breakthrough cancer pain drugs would have the ultimate effect of undermining generic entry into this market. The remedy creates a generic competitor to solve the anticompetitive problems raised by a merger of two branded pharmaceutical competitors. Although this remedy is somewhat novel, it is appropriately tailored to the specific harm caused by the merger.

In *Genzyme/Ilex*, the market affected was the market for solid organ transplant acute therapy drugs. The settlement requires Genzyme to divest all contractual rights in Ilex's product, Campath, for use in solid organ transplants. Because Campath is used in other markets that did not raise competitive concerns, the FTC did not require the parties to divest all of their rights to the product, but rather only those involved in its use for solid organ transplant therapy.

In the energy field, the FTC charged Unocal, a petroleum firm, with unlawful monopolization.[9] The complaint alleged that Unocal misrepresented to the California Air Resources Board ("CARB"), and to industry participants, that its emission research results were non-proprietary and in the public domain, and that it did not disclose that it had pending patent

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[7] FTC Press Release (Aug. 9, 2004), *In the Matter of Cephalon, Inc., and Cima Labs, Inc.*, FTC Docket No. C-4121, *available at* http://www.ftc.gov/opa/2004/08/cimacephalon.htm.

[8] FTC Press Release (Dec. 20, 2004), *In the Matter of Genzyme Corporation and Ilex Oncology, Inc.*, *available at* http://www.ftc.gov/opa/2004/12/genzyme.htm.

[9] Complaint, *In the Matter of Union Oil Co. of California*, FTC Docket No. 9305, *available at* http://www.ftc.gov/os/2003/03/unocalcmp.htm.

claims on these research results. Unocal's actions allegedly led to the adoption of a regulatory standard that overlapped with Unocal patents, giving Unocal a monopoly over the technology used to produce and supply California "summertime" reformulated gasoline. According to the complaint, Unocal is now claiming that it is entitled to royalties that potentially could result in hundreds of millions of dollars per year in additional costs to consumers. A trial on the merits of the *Unocal* case before an administrative law judge ("AJL") ended on January 28, 2005, and the parties are now preparing post-trial pleadings.[10]

Another monopolization case involving standard-setting that now is before the commission is the *Rambus* matter. The complaint charged that Rambus knowingly failed to disclose its relevant intellectual property holdings to a standards organization - the JEDEC Solid State Technology Association - that develops and issues widely adopted technical standards for a common form of computer memory known as synchronous dynamic random access memory, or "SDRAM."[11] According to the complaint, Rambus participated in JEDEC's SDRAM-related work for more than four years without making it known to JEDEC or its members that Rambus was actively working to develop, and did in fact possess, a patent and several pending patent applications that involved specific technologies proposed for, and ultimately adopted in, the relevant standards. The complaint charges that, by allegedly concealing this information,

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[10] In an Opinion issued in July 2004, the Commission reversed an ALJ's initial decision that the *Noerr-Pennington* doctrine protected Unocal from charges of monopolization, thus sending the matter back before an ALJ for a full trial on the merits. *See* FTC Press Release (July 7, 2004), *In the Matter of Union Oil Co. of California*, FTC Docket No. 9305, *available at* http://www.ftc.gov/opa/2004/07/unionoil.htm.

[11] Complaint, *In the Matter of Rambus, Inc.*, FTC Docket No. 9302, *available at* http://www.ftc.gov/os/adjpro/d9302/020618admincmp.pdf.

Rambus purposefully sought to, and did, convey to JEDEC the false impression that it had no relevant intellectual property rights. Rambus' conduct allegedly has caused substantial harm to competition because it placed Rambus in a position to assert patent rights over the relevant JEDEC standards, and to obtain substantial royalties from memory manufacturers producing products in compliance with those standards.

Rambus maintains that its conduct did not violate the antitrust laws.[12] Rambus has argued to the Commission that it did not violate JEDEC's rules, that JEDEC's members were aware during the relevant time period that Rambus might acquire patent rights over features that could be incorporated in JEDEC standards, and that JEDEC would have adopted the same standards even if Rambus had made additional disclosures. Rambus further argued that, even if Rambus had violated a JEDEC duty to disclose its patents, such conduct does not constitute unlawful exclusionary conduct, and also that complaint counsel has failed to prove that Rambus' conduct produced anticompetitive effects.

The ALJ dismissed the *Rambus* complaint, concluding that Rambus' conduct did not amount to deception or a violation of Rambus' duties, and that complaint counsel did not prove that Rambus' conduct violated the antitrust laws. Complaint counsel appealed the decision to the full Commission. The Commission heard oral argument in December 2004, and a decision is forthcoming.

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[12] Brief of Appellant and Cross-Appellant Rambus, Inc., *In the Matter of Rambus, Inc.*, FTC Docket No. 9302, *available at* http://www.ftc.gov/os/adjpro/d9302/040602rambsbriefofappelle.pdf.

Merger Enforcement Issues

As merger notifications are increasing, I have committed to improving our review process. First, although the FTC's Bureau of Competition has made some useful efforts to streamline merger review[13] and make it more transparent, the second request process still needs work. European firms have been particularly vocal about the burdens of the U.S. merger review process and I agree, up to a point, that we can do better. What we need is balance, based on our 28 years of merger review under Hart-Scott-Rodino, and 12 years of experience under the Horizontal Merger Guidelines.

If we are not sufficiently disciplined and rigorous in collecting and dissecting information during the merger review process, then we are not spending the taxpayer's dollar appropriately. Similarly, however, if firms are not appropriately cooperative and responsive during this process, then they are wasting the shareholder's dollar. In each instance, consumers lose. I have established a task force to assess the merger review process and determine how we may improve.

But I must stress that we will likewise hold parties to their responsibilities. Last month, the FTC sued Blockbuster Video for failing to comply with the requirements of the Hart-Scott-Rodino Act. Blockbuster had failed to produce pricing data that was vital to evaluating the transaction's competitive effects. The suit - known as a (g)(2) action – was necessary because Blockbuster had advised the Commission that it considered itself free to close the transaction even though it had not produced the pricing data. After the suit was filed, Blockbuster agreed to produce the data and agreed upon a date before which it would not close. Blockbuster

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[13] *See, e.g.*, the FTC's Merger Best Practices, *available at* http://www.ftc.gov/bc/bestpractices/index.htm.

subsequently abandoned the transaction. I hope never to have to file a similar action again, but we will do so if necessary. While I am determined to improve and streamline the FTC's merger review process, I am equally determined to enforce the requirements of the merger review process.

Second, the FTC, along with the DoJ, intends to produce a Commentary on the 1992 Horizontal Merger Guidelines. The consensus that emerged from the Merger Enforcement Workshop hosted by the FTC last year was that the Guidelines are fundamentally sound, but additional explanation of how the Guidelines are applied in actual practice would be useful. We hope, through the Commentary, to provide this additional transparency.

Third, we are reflecting on the losses we suffered in the courts last year. The FTC and DoJ each suffered a loss - the *ArchCoal* and *Oracle/PeopleSoft* cases, respectively. One of the factors that we are examining is customer testimony. The courts in both cases discounted the significance of the testimony of many of the agencies' largest customer witnesses. My view is that we should continue to give significant weight to the views of customers in our merger investigations, and continue to present customer testimony at trial. Customers are valuable sources of information about many mergers' competitive effects because they have the most to lose from an anticompetitive deal, and usually have little incentive to provide misleading information. We are, however, carefully evaluating how we present customer testimony at trial.

Competition Advocacy: An Example

Advocacy by competition agencies is an increasingly important tool in seeking to prevent anticompetitive rent-seeking through legislation or government agency regulatory action. I am persuaded that it is one of the FTC's most cost-effective enforcement tools.[14]

For example, in January 2004, the FTC filed comments with the Commodities Futures Trading Commission ("CFTC") on an application by Eurex, a German-Swiss exchange, to set up an all-electronic operation in the United States to compete with the Chicago Board of Trade and the Chicago Mercantile Exchange. Not surprisingly, the incumbent exchanges opposed the application, arguing that the new entrant could engage in predatory pricing.

Although we did not examine or endorse this particular applicant's submission, we argued that new entry would benefit consumers of futures trading services. In addition to reminding the CFTC of the benefits of competition and new entry generally, the comment pointed to economic studies showing that the presence of multiple exchanges increases competitive pressure and leads to significantly lower bid-ask spreads, thereby likely enhancing consumer welfare. Moreover, entrants with new business models might have a significant impact on prices and services, and electronic trading systems may lower the cost of executing trades.

[14] Deborah Platt Majoras, *A Dose of our Own Medicine: Applying a Cost/Benefit Analysis to the FTC's Advocacy Program*, Remarks before Charles River Associates (Feb. 8, 2005), *available at* http://www.ftc.gov/speeches/majoras/050208currebttopics.pdf.

The CFTC ruled in the applicant's favor. CFTC Commissioner Lukken indicated that he had placed great weight on the FTC's analysis in supporting the decision to designate another U.S. futures exchange.[15] Subsequent reports from the business press describe how the incumbent exchanges lowered their trading fees substantially in reaction to the new competitive threat in the market for U.S. Treasury futures contracts.[16] Although the entrant has not yet garnered a significant market share given the competitive reaction of the incumbent exchanges, consumers have benefitted handsomely as trading volume increased, and the exchanges offered customers bargain prices for Treasury futures trades.

Policy Research and Development: An Example

As many of the cases I have described illustrate, intellectual property increasingly presents important issues in competition policy and enforcement. In 2003, following weeks of hearings on IP issues, the FTC issued a report on patent policy[17] in which it concluded, among other things, that U.S. patent policy appears to be overly generous to patent claimants and that this may discourage innovation. Other groups also have cited the need for patent reforms.

To further this dialogue, the FTC is co-sponsoring a series of patent reform workshops with the National Academies' Board on Science, Technology and Policy and the American Intellectual Property Law Association. These workshops are bringing together government

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15 *See* Statement of Commissioner Walter Lukken (Feb. 4, 2004), *available at* http://www.cftc.gov/opa/press04/opausferemarks.htm.

16 Joseph Webber and David Fairlamb, *Chicago Takes on Europe*, Business Week, July 5, 2004, at 76-77.

17 *To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy*, A Report by the Federal Trade Commission, October 2003, *available at* http://www.ftc.gov/os/2003/10/innovationrpt.pdf.

officials, business representatives, independent inventors, scholars, lawyers and other members of the patent community to discuss recommendations for patent reform. In February and March, we held three workshops, each in a town-meeting format, in San Jose, Chicago and Boston. We will hold a final workshop in Washington, on June 9.

Three broad points have emerged from the meetings conducted to date. First, there is consensus that patent reform is required. Participants differed on what and how to reform, but not on whether to reform the patent system. The same types of patent quality problems that spurred the FTC's Report and its recommendations for patent reform are causing problems for many companies in various industries.

Second, the patent reform debate has new participants, which may change some of the dynamics of the movement toward patent reform. In contrast to earlier patent reform efforts, this one involves big players from the computer hardware and software fields. For some of these companies, preventing so-called hold-ups by firms that use their patents to generate licensing revenue rather than to commercialize products is quite important.

Third, there seems to be broad support *in principle* for adopting a post-grant review procedure and for doing something to restrain the scope of the willful infringement doctrine.

We understand that some members of Congress also are devoting significant attention to intellectual property issues. The Senate Judiciary Committee has scheduled a hearing on patent reform for late April. In addition, Representative Lamar Smith (R-Texas), who chairs the Intellectual Property Subcommittee of the House Judiciary Committee, has indicated a strong interest in patent reform. Our understanding is that he is likely to hold hearings in April or May, and to produce a draft patent reform bill this Spring. Our June workshop will focus discussion on that draft bill, as well as on what we have learned in the town meetings.

Single Firm Conduct: A Careful Approach

I have described some cases involving single firm conduct. This area of competition law attracts a lot of attention from commentators, and I know that DG-COMP currently is reflecting on the application of Article 82.

Single-firm conduct is the most difficult area of competition law enforcement because it is tough to differentiate between healthy competition on the merits and harmful exclusionary conduct. Sound antitrust policy is based on faith in the competitive process, even when that process is not pretty. Sixty years ago, Judge Learned Hand correctly stated the underlying principle when he said, "the successful competitor, having been urged to compete, must not be turned upon when he wins."[18]

Having won the competition, it is reasonable to ask the question what the winner can do to stay on top legitimately. But even those who have earned high market shares must be permitted to compete aggressively on the merits, because they can provide great benefits for consumers, and because if we do not permit winners to truly win, they will not work as hard at winning. Unilateral conduct that generally advances critical efficiencies – such as price discounting and cost-reducing distributional restrictions – is particularly subject to being chilled to the detriment of consumers if we apply monopolization laws too expansively. To take a well-

[18] *United States v. Alcoa*, 148 F.2d 416, 430 (2d Cir. 1945).

known example, DoJ consistently indicated in the Microsoft case that "if Microsoft had confined itself to improving and promoting its products on the merits, it would have faced no antitrust liability, whatever the effect on its rivals."[19] But, DoJ argued, and the Court of Appeals subsequently agreed, that Microsoft took actions to discourage the development and deployment of rival web browsers and Java technologies – beyond just making their own product better – in an effort to prevent them from becoming middleware threats to Microsoft's operating system monopoly.

Recently, in *Verizon Communications, Inc. v. Law Office of Curtis V. Trinko, LLP*[20] the United States Supreme Court rejected a claim that Verizon's refusal to provide a competitor with various types of access to its telephone network violated Section 2 of the Sherman Act. The Court emphasized the well-established principle that a party can decide with whom it chooses to deal and determined that the facts did not support an exception to that principle.

In its opinion, the Court sounded a cautionary note, highlighting the importance of avoiding "false positives." Said the Court, "[a]gainst the slight benefits of antitrust intervention here, we must weigh a realistic assessment of its costs. Under the best of circumstances, applying the requirements of § 2 'can be difficult' because the means of illicit exclusion, like the

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[19] Brief of the Appellees United States and State Plaintiffs, *United States v. Microsoft Corp.*, 373 F.3d 1199 (D.C. Cir. 2004).

[20] 540 U.S. 398 (2004).

means of legitimate competition, are myriad."[21] The Court cited the D.C. Circuit's opinion in *Microsoft*.[22]

In another recent U.S. case, however, where hard facts showed that a dominant firm's exclusive dealing practices had effectively undermined competition, the U.S. Court of Appeals for the Third Circuit reinstated DoJ's Section 2 case.[23] There, with the benefit of a substantial factual record, the court could determine that the defendant's conduct had significantly reduced competition in the artificial tooth market. Dentsply's exclusive dealing contracts were found to have led directly to price increases and the inability of other firms to enter and compete effectively. Further, Dentsply had no plausible business justification, other than to exclude rivals. Accordingly, the court found that on these facts, distributional restraints that are generally efficient were not in this case. The key was reliance on the facts.

Antitrust Modernization Commission ("AMC")

If imitation is the sincerest form of flattery, Europe should be flattered that the U.S. Congress named the commission it created to study antitrust policy after the modernization effort undertaken by the EU that took effect last May 1. So far, however, it does not appear that this modernization effort will recommend changes as extensive as those adopted here in Europe. In its initial meetings, the AMC appears to be focusing more on issues that are more likely to result

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[21] *Id.* at 414.

[22] *Id.*

[23] *United States v. Dentsply International, Inc.*, 399 F.3d 181 (3rd Cir. 2005).

in some consensus.[24] The AMC's term extends into 2007, and one of the issues it will consider is clarification of the Foreign Trade Antitrust Improvements Act of 1982, the law that is at the heart of the controversy in the *Empagran* case – a case that I know many of you are watching closely.

Officials at both antitrust agencies continue to provide substantial input to the AMC. My strongest recommendation has been that the AMC take a hard look at all statutory exemptions and immunities from the antitrust laws and recommend abolition of most, if not all of them. Markets move on, and I believe that most of the exemptions likely have outlived their usefulness.

Related U.S. Developments

I am hesitant to stray away from competition policy, but there are two U.S. laws that I should mention because of their impact on European firms doing business in the United States: They are the Exon-Florio Act[25] and the Class Action Fairness Act.[26]

The Exon-Florio Act of 1988 has been in the news recently because of several mergers and acquisitions that arguably raise national security issues in the United States. Recently, the Committee on Foreign Investment in the United States – "CFIUS" – cleared IBM's proposed

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[24] A list of the AMC issue study groups is *available at* http://www.amc.gov/pdf/meetings/list_of_study_groups_rev.pdf.

[25] For information on Exon-Florio, *see* http://www.treas.gov/offices/international-affairs/exon-florio/.

[26] Public Law 109-2 (Feb. 18, 2005), *available at*, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ002.109.pdf.

sale of its PC business to Lenorvo, a Chinese computer firm. Announced deals such as British Aerospace's proposed acquisition of United Defense Industries also will be reviewed by CFIUS.

The Class Action Fairness Act of 2005 was signed into law by President Bush on February 18, and while it is not completely clear how this Act may affect class actions brought under U.S. federal antitrust laws, it does make it easier for defendants to move actions to federal court from state courts, and it limits the use of settlements in which consumers get coupons while lawyers get big fees.

Enforcement Cooperation Continues

As of the year 2000, American firms held 3 trillion dollars' worth of assets in Europe and European firms held 3.3 trillion dollars worth of assets in the United States.[27] In terms of jobs, U.S. firms directly employed 4.1 million workers in Europe in 2000 while European affiliates employed roughly 4.4 million American workers. So, despite some differences over trade, competition, and other policies it seems that European and American firms find it not only possible but highly desirable to do a substantial amount of business in each other's territory.

The late former President of the Bundeskartellamt, Wolfgang Kartte, lamented that, "[m]y cannons shoot only as far as Aachen." But that is not true any more. Acting in concert with its fellow members of the European Competition Network or in cooperation with U.S.

[27] Joseph P. Quinlan, *Drifting Apart or Growing Together? The primacy of the Transatlantic Economy* (Washington, DC, Center for Transatlantic Relations, 2003), *available at* http://transatlantic.sais-jhu.edu/PDF/publications/Quinlan%20Text%20FINAL%20March%202003.pdf, *cited in* Timothy Garton Ash, *Free World*, 122 (2004).

authorities under our bilateral cooperation agreements,[28] the enforcement cannons of the U.S. agencies, the European Commission and the Member State authorities can effectively cover the transatlantic realms.[29] We must work, however, to keep them pointed in the same direction.

Protecting consumers means protecting the market. And we do the market a disservice if we fail to recognize that we do not work alone in competition enforcement. We are firmly committed to working with the European Commission, as well as Member States, in bilateral cooperation and pursuant to multilateral organizations, like the ICN. It may not make headlines, but good government seldom does.

Let me conclude by again thanking Conelis and his colleagues in the Studienvereinigung Kartellrecht for affording me the opportunity to speak to you today.

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[28] In particular, the 1991 EC-U.S. cooperation agreement and the 1976 Germany-U.S. cooperation agreement. Cooperation between the U.S. agencies and other EU Member States is guided by the 1995 OECD Recommendation concerning cooperation between member countries on Anticompetitive Practices affecting International Trade. These instruments are *available at* http://www.usdoj.gov/atr/public/international/intdocs.htm.

[29] The recent settlement of the *GE/InVision* merger case is a good example of cooperation between a U.S. agency, the FTC, and an EU Member State authority - in this case, the *Bundeskartellamt*. The press release announcing the decision in the matter and noting the close bilateral cooperation is *available at* http://www.bundeskartellamt.de/wEnglisch/News/Archiv/ArchivNews2004/2004_08_19.shtml.