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Randolph Tritell: A US Government  
official's perspective on international  
antitrust

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| *Director, Office of International Affairs, U.S. Federal Trade Commission*

# Interview

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Director, Office of International Affairs,  
U.S. Federal Trade Commission

## 2007-Present

Director, Office of International  
Affairs, Federal Trade Commission

## 1998-2007

Assistant Director for International  
Antitrust, Federal Trade  
Commission

## 1992-1998

Partner in charge of opening and  
managing the Brussels office of  
Weil, Gotshal & Manges LLP

## 1986-1992

Associate, Trade Regulation  
Department, Weil, Gotshal &  
Manges LLP; New York

## 1978-1986

Staff attorney, Assistant to the  
Director, Attorney advisor  
to Commissioner Calvani,  
and Executive Assistant to  
the Chairman, Federal Trade  
Commission

## 1977

J.D., University of Pennsylvania  
Law School

This interview was conducted in writing for  
Concurrences by Associate US Editor Anna Chehtova

# Randolph TRITELL: A US Government official's perspective on international antitrust

## What led to your involvement in the international antitrust field and to your appointment as Director of the Federal Trade Commission's Office of International Affairs?

I wish I could say that this was the logical result of my carefully thought out career plan. Although I did not have this path in mind when I left law school, my current position takes advantage of the many experiences I have been fortunate to have had, aided by superb mentors that have facilitated my professional development.

I joined the FTC's Consumer Protection Bureau as a staff attorney in what was then called the Compliance Division. My first break was having the opportunity to join the staff of Bureau Director Tim Muris, where I was exposed to the relatively new learning about the economic foundations of regulation. I then worked for Commissioner Terry Calvani, first as attorney-advisor and then as what is now called Chief of Staff when Terry was the FTC's Acting Chairman. I had my first exposure to antitrust matters in Terry's office, and was also introduced to the American Bar Association's Antitrust Section which has been a valuable professional network. Working in the Chairman's office gave me a broad perspective not only on all of the FTC's substantive work but also on the broader environment in which the FTC operates.

I later joined the New York office of Weil, Gotshal & Manges where I worked with leading trade regulation practitioners and was able to broaden my areas of practice to include international trade. It turned out that many of the clients for which I worked were foreign or were involved in matters that raised antitrust issues outside the United States. I found working on international aspects of my cases, learning about different countries' laws and legal systems, and dealing with people from different cultures to be particularly interesting parts of my work. When the firm decided to open an office in Brussels, I guess I was at the right place at the right time to be asked to establish the office, which consisted of myself and a secretary. We were eventually able to build a 15-lawyer office focused on European and international antitrust and telecommunications law, which exposed me to dealing with regulatory regimes around the world. Our team included Elizabeth Kraus, who I was somehow later able to lure to the FTC where she is now the Deputy Director for International Antitrust.

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**"The creation of the Office of International Affairs reflects the increased importance of the international aspects of the FTC's competition and consumer protection missions..."**

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When I was ready to return to the U.S. after six years in Brussels, I was contacted by the FTC which was looking for someone to head the International Antitrust Division of the Bureau of Competition. The prospect was very attractive because it would allow me to combine my international experience with my interest in policy work. I was happy to be able to return to my roots at the FTC, a special institution that inspires so many to return at various stages of their careers. My decision was richly rewarded with opportunities to contribute to the rapidly evolving

international antitrust dialogue as business globalized and more jurisdictions adopted competition laws. I have had the good fortune to work under a succession of Chairmen – Bob Pitofsky, Tim Muris, Bill Kovacic, Debbie Majoras, and Jon Leibowitz – who were not only fine leaders but also very supportive of the international mission, including having the FTC play a significant role in shaping international antitrust policy. When Chairman Majoras created the Office of International Affairs out of the Commission’s international antitrust, consumer protection, and technical assistance offices, I was asked to lead the new consolidated office. My daily work now allows me to take advantage of my experiences working in both the consumer protection and competition fields, in different positions in the public and private sectors, in the United States and overseas.

**You mentioned the creation of the Office of International Affairs through the merger of the Agency’s international antitrust, consumer protection and technical assistance offices in early 2007. Why this consolidation and has this combined leadership allow you to better pursue the international missions of the agency?**

The creation of the Office of International Affairs (OIA) reflects the increased importance of the international aspects of the FTC’s competition and consumer protection missions and has enabled the FTC to carry out its international work more effectively.

When I started at the FTC in 1978, international issues were rarely encountered in either competition or consumer protection matters. When I returned in 1998, the international function had increased as commerce increasingly crossed borders and more countries adopted competition, consumer protection, and privacy protection laws. There were four staff lawyers in the International Antitrust Division, one lawyer responsible for international matters in the Bureau of Consumer Protection, and a lawyer that operated the technical assistance program from the FTC Chairman’s office. Over the next years the FTC’s international teams grew in all three areas to keep pace with developments, but in silos in different parts of the agency. Chairman Debbie Majoras had the vision to combine the three international operations to give the international function a stronger voice within the agency and externally, both in the U.S. government and with our international counterparts, and also to take advantage of synergies between the operations.

Internally, the creation of the Office, with its Director on the Chairman’s senior staff team, ensured that the Commission’s leadership would be able to hear and consider the international implications of its decisions and policies. For example, OIA reports on how other countries deal with the issues we are facing, and how an FTC decision might affect other economies and be interpreted abroad. In addition, co-locating the formerly disparate international functions provides lawyers working on competition and consumer protection matters involving the same country, the same international organization such as the OECD (the Organization for Economic Co-operation and Development), or the same kind of issue, such as obtaining evidence from a particular country, with enhanced opportunities to

communicate and pool their expertise. Externally, OIA’s higher profile gives us a better “seat at the table” in U.S. interagency discussions and makes us a more effective advocate when we deal with our foreign counterparts. It also demonstrates the high level of the FTC’s recognition of and commitment to the international dimension of our work.

**Talking about mission, can you explain to the readers of *Concurrences* the goals, *la raison d’être* if you will, of the FTC’s Office of International Affairs in terms of international antitrust and what concrete steps have you undertaken to achieve them?**

We have several goals and areas of activity, of which I will mention six.

The first is to support the FTC’s competition and consumer protection enforcement missions by assisting our staff with any international issues that arise in their work. For example, in competition matters, our office facilitates coordination between our staff and their counterparts that are looking at the same merger or conduct, and assists with obtaining confidentiality waivers from firms. We can help explain the U.S. system to other agencies, and foreign laws and procedures to FTC staff. Our office also assists with obtaining evidence abroad, advising on legal issues such as jurisdiction and service of process, and notifying foreign governments and agencies under our international agreements.

Second, we build and maintain cooperative bilateral relationships with counterpart agencies around the world. The deepest cooperation takes place on cases where, often aided by parties’ confidentiality waivers, we discuss the facts, legal theories, analysis, and proposed remedies. Our staff spends significant amounts of time exchanging e-mails and on the telephone with our colleagues on cases, and we also work together to address policy issues of mutual interest. While much of our cooperation takes place under the auspices of cooperation agreements, we also are glad to work with agencies with which we do not have a formal framework. Our regular cooperation facilitates consistency in the understanding and handling of cross-border cases and establishes trust that can be drawn upon to deal with potential conflicts when they arise.

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Third, promoting substantive and procedural convergence is a key mission for OIA and the FTC. We have made a major commitment to furthering convergence in the ICN

(International Competition Network), OECD, UNCTAD (United Nations Conference on Trade and Development), APEC (Asia-Pacific Economic Cooperation), and other multilateral fora. Although there will, at least for the foreseeable future, be differences among countries' and agencies' substantive rules and procedures, it is important that agencies try their best to align their procedures and find common ground on substantive analysis to the extent possible so that the global antitrust system can work best for agencies, firms, and ultimately consumers.

Fourth, we design and implement the FTC's worldwide technical assistance and International Fellows programs. OIA arranges for FTC staff to serve as long and short term advisors, designs programs tailored to the individual needs of young competition and consumer protection agencies, and evaluates our programs so they can be made most effective in the future. We also recruit colleagues from foreign agencies to spend several months at the FTC as International Fellows and help identify opportunities for FTC lawyers and economists to work in foreign competition and consumer protection agencies.

Fifth, we negotiate competition and consumer protection agreements with other governments and agencies. These include bilateral government-level agreements, agency-level memoranda of understanding, and competition provisions of free trade agreements. In the competition area, we have bilateral agreements with eight jurisdictions (Australia, Brazil, Canada, Germany, European Union, Israel, Japan, and Mexico), positive comity agreements with Canada and the European Union, a mutual assistance agreement that allows sharing confidential information with Australia, agency-level agreements with the Russian and Chilean competition authorities, and competition provisions in several free trade agreements. We are currently working on memoranda of understanding with China and India, and are negotiating competition provisions in the Trans-Pacific Partnership free trade agreement.

Finally, the Office represents the FTC in various U.S. government interagency discussions and processes where we work with the State Department and agencies with responsibility for international trade, intellectual property, data privacy, and other policies on issues of mutual interest. For example, we coordinate on our positions on competition policy in free trade agreements, and our work on the implementation China's competition policies intersects with other federal agencies with an interest in China's economic policies.

We are able to accomplish this wide range of challenging work thanks to the Office's exceptionally talented and dedicated staff. The work of the Office is described in greater detail in a paper available at <http://ftc.gov/bc/international/docs/ftcintantiprogram.pdf>.

### **What international fora relating to antitrust law and policy does the FTC engage in and what are the objectives and contributions of these venues to cooperation and convergence in the antitrust field?**

The FTC is an active participant in numerous fora that are concerned with the development of international antitrust law and policy. These organizations provide opportunities for competition officials from around the world to meet each other, share ideas and experiences, learn from one another, and spread good practices.

Starting with the International Competition Network, the FTC was a founding member and has been deeply involved in its projects and management through the present. The ICN provides a forum for its members, which include almost all of the world's competition agencies, to promote analytical and policy convergence through concrete projects. ICN members work closely with expert private sector lawyers, economists, academics, and consumer representatives as well as other international organizations such as the OECD. The ICN covers all facets of substantive competition law as well as investigative techniques, advocacy, and agency effectiveness. Its recommended practices, such as those for merger notification and procedures, have become international benchmarks that dozens of governments and agencies have used as a basis for reforms to their laws and policies. It has produced practical guides for conducting investigations and analysis, and holds widely attended workshops and webinars that facilitate in-depth exploration of issues and the dissemination of agencies' learning and experiences. Simply by working together in the ICN, agency officials get to know each other better, which provides a foundation for stronger cooperation.

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The FTC co-leads the U.S. delegation to the OECD Competition Committee. The Committee holds meetings of its 34 members from developed economies to conduct high-level discussions of competition issues of mutual interest. For example, Chairman Leibowitz participated in a session on competition issues in the pharmaceutical industry that included discussion of how agencies deal with anticompetitive pay-for-delay settlements. The sessions are typically based on in-depth analytical papers prepared by the Committee's Secretariat along with members' submissions explaining their experiences with the issue under consideration. In some cases the discussions lead to the adoption of an OECD Council Recommendation, for example on cooperation among competition agencies, combating hard-core cartels, and merger notification and procedures. The OECD also holds an annual competition forum with delegates from dozens of non-member countries to share experience, and OECD staff organizes technical assistance programs for young competition agencies.

The FTC participates in competition groups of other international organizations including the UNCTAD and APEC, which also hold multilateral discussions of competition policy issues. For example, the FTC recently participated in a session on due process in competition investigations with members of APEC and its business advisory group. The FTC led the establishment of the Inter-American Alliance, a new network of competition agencies in our hemisphere that convenes monthly to discuss enforcement issues of mutual interest. The FTC was also pleased to participate in the recent inaugural meeting of the African Competition Forum in March 2011, in Nairobi, Kenya.

**The FTC has assumed various leadership roles in the International Competition Network since its inception in 2001. What challenges has the Network faced during its 10-years existence and what are its most significant antitrust contributions according to you? What are your thoughts on the future of the Network?**

The FTC is proud to have had many leadership roles in the ICN. After experiencing the issues related to multijurisdictional merger review in private practice, I had the opportunity to chair the ICN group that developed recommendations aimed at making the review process work more efficiently and effectively for agencies and parties. I now serve as co-chair of the ICN's unilateral conduct working group and help lead the Curriculum Project, which is developing accessible, high-quality electronic training materials for use by young competition agencies and others in the field. The FTC has invested heavily in the success of the ICN with many of my FTC colleagues playing leadership roles across the spectrum of ICN projects. Bill Kovacic serves on the ICN's steering group, enabling the ICN to benefit from his incredible wealth of experience, expertise, and devotion to the development of competition policy.

The ICN's first challenge was to establish itself and its place in the competition landscape. The ICN was proposed by the U.S. International Competition Policy Advisory Committee because, despite the widespread expansion of competition laws and agencies, at the end of the 1990s there was no forum for the world's agencies to meet and work together on common issues and challenges. The growth of the ICN from its 16 founding members to its 114 members today demonstrates that it was an idea whose time had come.

Its next challenge was to prove that it could achieve consensus given the wide variety of laws, legal systems, level of economic development, and cultures among its members. After considerable hard work, the ICN met early success with its Guiding Principles and Recommended Practices for Merger Notification and Review. For example, the ICN adopted recommendations that merger notification thresholds incorporate standards of an adequate nexus between the transaction and the jurisdiction (as opposed to thresholds based on worldwide sales) and that thresholds be based on objective criteria (rather than market shares) even though a substantial number of member jurisdictions' rules did not meet these standards. Members were persuaded that the value of articulating aspirational best practice

standards outweighed their concerns about not currently meeting the standards. The ICN followed with consensus recommended practices and other work product pertaining to unilateral conduct, cartels, advocacy and other areas of competition policy.

Having achieved consensus on some important principles, an important challenge remained to have members implement them given that ICN recommendations are non-binding. While being careful not to unduly pressure its members, the ICN recognizes that its value ultimately depends on the use of its work. In my view, the ICN has succeeded rather well, but the job is incomplete. Dozens of agencies and even governments have amended their laws and policies to conform to ICN recommendations, particularly those on merger notification and review procedures, often citing the ICN as the impetus for legislative or administrative reform. The ICN has recently begun to directly advocate the adoption of reforms that implement its recommendations, such as the merger review provisions in the pending amendments to the Brazilian competition law, when they are supported by the domestic agency.

ICN recommendations have also proven useful when advocating good practice to non-members that are designing new laws and policies. For example, when China and India sought comments on the development of their merger review systems, competition agencies, bar groups, and academics all cited the ICN recommendations as a model - a more powerful statement than citing the virtue of one's domestic laws.

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**“Conflicting outcomes in merger reviews make for interesting conference programs but the real headline in this area is the rarity of such conflicts, especially given that there are now nearly 100 merger review regimes worldwide.”**

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The ICN has incorporated implementation into the agendas of all of its substantive working groups and I expect the ICN to be more active in encouraging implementation.

With respect to challenges for the future, under the leadership of Office of Fair Trading CEO John Fingleton, the ICN has been thinking hard about its future role as it moves into its second decade. For example, its mantra, “all antitrust all the time” has served the organization well in focusing its activities during its early years on issues that most directly concern its member agencies. However, there are external challenges to competition policy that can emanate from other parts of government, and the ICN is considering whether it can play a useful and effective role as an advocate for competition policy in these broader settings.

The ICN has had important successes in finding areas of convergence but may have to also consider how agencies can best cope with differences that persist on policies or in specific matters. The ICN has thrived with its “virtual” structure, with no Secretariat and minimal self-funding, but it will have to continually evaluate this model as its activities grow and its mission may evolve. Other challenges facing the ICN include fully engaging young agencies, ensuring broad private sector participation especially in jurisdictions with less antitrust experience, working with other organizations involved in competition policy, and communicating its work effectively to external constituencies.

Based on my experience with the ICN, I believe it will deal successfully with these challenges and remain a major player on the international antitrust scene. I foresee it continuing to generate valuable work product, including fostering further convergence through recommended practices such as on the analysis of types of unilateral conduct. The ICN will continue to produce workbooks and other forms of guidance that help agencies operationalize the learning from the ICN’s projects, and workshops and webinars that deepen understanding and provide a forum to compare different approaches. The ICN’s Curriculum project holds hope for an eventual comprehensive compendium of accessible training materials prepared by leading experts from agencies, academics, and practitioners that young agencies and new staff can use to move rapidly up the antitrust learning curve.

**10 years after the GE-Honeywell failed merger, many conferences and programs on international antitrust issues continue to predict the doom of another merger leading to diverging outcomes in the U.S. and in the EU. Further, the U.S. antitrust authorities have recently released new U.S. Horizontal Merger Guidelines introducing some new concepts in merger review. What efforts have you deployed to reach consistent outcomes between the U.S. and other foreign agencies in merger review and how realistic is the risk of divergence?**

Conflicting outcomes in merger reviews make for interesting conference programs but the real headline in this area is the rarity of such conflicts, especially given that there are now nearly 100 merger review regimes worldwide. The FTC has worked hard to build cooperative relationships with our colleagues in other agencies and to promote procedural and substantive convergence that minimizes the risk of conflict. Following the conflicting *GE-Honeywell* decisions, the FTC, the Antitrust Division of the Department of Justice (DOJ), and DG-COMP formed a working group to conduct in-depth, high-level discussions of how we analyze conglomerate mergers. Since then, we have reached compatible conclusions in several cases that presented issues of this kind. We have formed groups with DG-COMP to discuss and foster further understanding and convergence on other issues of mutual interest such as unilateral conduct and merger procedures. We have engaged in similar exercises with other agencies, for example on intellectual property issues with the Japanese and Korean Fair Trade Commissions. During the consideration of the new U.S. horizontal merger guidelines, we consulted widely including with colleagues from DG COMP and other competition agencies outside

the United States. We also pursue convergence in merger policy and other areas through multilateral bodies such as the ICN and OECD.

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While I believe these efforts have significantly reduced the risk of conflicting outcomes, it is still possible that a U.S. agency will reach a different conclusion from a foreign agency in a merger review. Of course, some differing outcomes result from differences in market conditions. But it is also possible that there could be inconsistent results in a transaction with a world market. There are still differences in statutory standards for merger review, in judicial interpretation of statutes, and probably in some aspects of merger enforcement policy. Some differences of this nature are inevitable in a world of multiple enforcers without a harmonizing superstructure, the detriments of which I believe would probably outweigh the benefits. But the work of the competition community, including the agencies and private sector stakeholders, is continuing to improve the efficiency and quality of merger review while minimizing the risk of the next *GE/Honeywell*.

**The FTC is not alone in enforcing the antitrust laws in the United States. What are the implications of the shared jurisdiction between the FTC and DOJ for your international work? For instance, domestically, when the 2008 DOJ issued its Report on Unilateral Conduct and filed its *amicus* brief with the Supreme Court in the *linkLine* case, we observed diverging views on policy and enforcement. How do the U.S. antitrust authorities ensure that they speak with one voice internationally?**

When the FTC held consultations in connection with Commissioner Kovacic’s project, “The FTC at 100: Into our Second Century,” stakeholders told us how important it is for the U.S. agencies to speak with one voice. We enjoy a close working relationship with our colleagues at the Antitrust Division. My staff is in constant contact with the Antitrust Division’s Foreign Commerce Section as we work together on our shared policy agenda through, for example, submissions to the OECD, contributions to the ICN, and negotiation of cooperation agreements and competition chapters of free trade agreements. We also collaborate on the design and provision of technical assistance to young competition agencies. Of course, our international offices ultimately reflect the views of our agencies which can differ, as in the case of the Section 2 report and the *linkLine* brief. However, those situations are in my experience the rare exception to our general experience of expressing a single U.S. view.

**This is very helpful. Our European readers may further be interested in understanding how the responsibilities of enforcing the U.S. antitrust laws are shared between the FTC and DOJ, and who are the other actors entitled to bring antitrust actions. Can you shed some light on this intricate procedural question?**

As your question indicates, there are multiple points of enforcement of the antitrust laws in the U.S. The FTC and DOJ share responsibility for enforcing the Sherman and Clayton Acts, the DOJ directly and the FTC through the Federal Trade Commission Act. In addition, the FTC Act's prohibition of "unfair methods of competition," covers conduct beyond the Sherman and Clayton Acts. We have used this authority against invitations to collude that did not result in an agreement, and also in the recent case against Intel in connection with certain practices relating to the sale of computer chips. As the FTC does not have criminal enforcement authority, hard core cartel conduct is prosecuted by the Justice Department, and the DOJ also has sole jurisdiction in certain regulated sectors.

Private actions comprise the large majority of antitrust cases in the U.S. Private plaintiffs that suffer injury of a type the antitrust laws were designed to prevent can bring actions for damages under the federal antitrust laws. These may include class actions, and successful plaintiffs are generally entitled to treble damages. In addition almost every U.S. state has an antitrust law. These laws are enforced by the attorney general of each state, and typically also provide for a private right of action. The States often work closely with the FTC and DOJ in their investigations and by joining with the federal agencies in bringing legal challenges.

**Do other U.S. or State agencies play any role in multijurisdictional antitrust cases?**

Among government authorities, enforcement of the Sherman, Clayton, and FTC Acts is carried out exclusively by the FTC and DOJ. Because antitrust policy sometimes overlaps with other government policies, we work with other federal agencies on issues of broader competition policy. For example, the FTC co-chaired with the Office of the United States Trade Representative (USTR) the U.S. delegation to the World Trade Organization Working Group on the Interaction Between Trade and Competition Policy, and we work with other U.S. agencies on the negotiation of competition chapters of free trade agreements. We are part of interagency groups that can include USTR, the Department of Commerce, the Department of State, and other federal agencies on some aspects of implementation of competition laws and policies of other countries, such as China and Japan. State enforcement tends not to involve international antitrust matters, but we sometimes work with State Attorneys General when they investigate antitrust matters with an international dimension. The FTC and DOJ are responsible for handling bilateral antitrust relations and international antitrust policy activities in multilateral organizations such as the ICN and the OECD Competition Committee.

**The FTC, created in 1914, by the virtue of its long history and diverse caseload has accumulated significant experience in antitrust enforcement over the years. What do you do to share the agency's expertise with foreign counterparties?**

The FTC conducts a robust program of international technical assistance, enabling us to share our experience with young competition agencies around the world. Our program began in earnest in the early 1990s with assistance to Central and Eastern European governments that were establishing competition laws and agencies as part of their transition to market economies. As many countries around the world have adopted competition laws, we have expanded our program to Latin America, Africa, and Asia.

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Our assistance takes many forms, including advising on draft laws, implementing regulations, and guidelines, assisting in designing and establishing new agencies, and working with staff on the analysis of types of issues and of actual cases. In many instances we have stationed a long-term resident advisor in the agency, enabling us to provide hands-on advice in ongoing matters. For example, FTC advisors have recently spent several months working in the competition agencies of Vietnam and Colombia. In other cases advisors have conducted specific training at an agency, for example in merger analysis, or organized regional conferences.

We have developed state-of-the-art training materials, including realistic case hypotheticals that allow agency staff to simulate how they would handle typical investigative and enforcement scenarios. Some of these materials are available online at <http://ftc.gov/oia/assistance/training.shtm>. We have been active in designing and conducting, with other U.S. agencies, in-depth training to the Chinese antitrust enforcement agencies on many aspects of the enforcement of the Anti-Monopoly Law. We are conducting extensive training for the Competition Commission of India as it begins to enforce its new law and regulations. The FTC also provides technical assistance to young consumer protection and privacy agencies around the world.

The FTC has for many years hosted officials from around the world who sought to learn about the FTC and its law enforcement program. Three years ago, the FTC obtained authority to share non-public information with visiting officials, making it possible for the first time for them to work with our staff on investigations. We have used this authority to establish the FTC's International Fellows program,

through which we have hosted 35 officials from other competition, consumer protection, and privacy agencies for up to six months. This program has enabled officials from around the world to see how the FTC organizes its work, conducts investigations, analyzes cases, and enforces its laws through the administrative and judicial systems. The program has strengthened our ties with many agencies and has also enabled us to learn from our guests about their systems. We are currently hosting the first International Fellow from a Chinese antitrust agency. The FTC also seconds its attorneys and economists to foreign agencies. For example, FTC officials have spent several months at agencies in the UK and Canada, and in DG-COMP. The Fellows and exchange programs have been valuable for the participating staff and agencies, and we look forward to continuing them with more agencies. Information about the Fellows program is available at <http://ftc.gov/oia/fellowsprogramannouncement.pdf>.

**You have been in charge of international antitrust matters during two alternations between Republican and Democratic administrations. Have you observed any changes in priorities with respect to international antitrust issues?**

This may be surprising to some international audiences but the answer is no. There is a high degree of continuity in the FTC's international antitrust agenda. The FTC is institutionally structured to ensure substantial continuity. Our statute provides that we always have Commissioners from both parties, and their seven-year terms transcend the election cycle. More important, in recent years, the priorities of Democratic and Republican administrations in this area have been consistent, emphasizing bilateral and multilateral cooperation and seeking convergence toward sound policy. Like his predecessors, Chairman Leibowitz has strongly supported the FTC's international competition program. This has enabled the FTC to maintain a substantial commitment to strengthening ties with our international partners, playing a lead role in multilateral fora, and expanding our program of international technical assistance. Of course, our international program reflects the priorities of each Chairman -- for example, under Chairman Leibowitz, the FTC proposed and our Chairman played a lead role in a program in an OECD session on competition issues in the pharmaceutical sector, enabling the FTC to share our experience on combating anticompetitive pay-for-delay settlements and learn how others deal with similar issues in their jurisdictions. The issues at the forefront of the agenda also evolve depending on external events, for example the emergence of China and India on the world antitrust stage.

**With the introduction of competition laws in more than 100 jurisdictions around the world, the increased importance of this branch of economic law is no longer news. What are some of the challenges lying ahead of this vast multijurisdictional world?**

The international antitrust field will continue to face challenges, many of which you have identified in your questions. Some will be internal to the competition field and some will involve external challenges. Internal challenges

include finding ways to align the timing and procedures of investigations to allow agencies to better coordinate parallel investigations while reducing unnecessary burdens on parties. There have been several interesting proposals to reduce burdens from multiple investigations and remedies through the exercise of comity. Although the solution is not clear, I believe the concept merits further thought and discussion. Substantive convergence will also remain a challenge. I do not see a realistic prospect of harmonization through a supranational mechanism, nor do I think that would be beneficial to the evolution of good policy in our dynamic field. I believe soft convergence through experimentation, identifying superior practices, and opting in, as articulated by Bill Kovacic, has already been productive and provides the best path toward increased convergence. Having said that, where differences in laws, their interpretation, and legal and economic analysis remain, it will be a challenge to reach consistent outcomes, and when differences occur, to minimize disruption and costs to firms and agencies. It will probably also be an increasing challenge for agencies to ensure that remedies adopted by one jurisdiction do not have adverse consequences in other jurisdictions.

The business community has also raised very plausible concerns about transparency and due process in competition investigations. I think everyone in the competition community shares the goals of adequate transparency and procedural fairness, but differences in legal systems and traditions makes it challenging to achieve these goals to everyone's satisfaction. There have been valuable discussions in the OECD and APEC about these issues, and we are committed to continuing to engage in a constructive dialogue to seek further progress.

Another challenge is finding ways to enhance law enforcement through the exchange of confidential information. Although a 1995 statute authorizes the U.S. to enter into agreements that allow for sharing such information and for agencies to use compulsory means to obtain information for the other party's agency, only one agreement, with Australia, has been concluded. Efforts to enter into additional agreements have foundered, including on concerns about use of information for criminal prosecution in the United States and on sharing information provided for use in an antitrust investigation for other governmental purposes.

Finding ways to train new agencies and staff will also be a challenge. The ICN's Curriculum Project seeks to address this by developing online training modules on all areas of competition law as well as investigation methods, taught by the world's leading experts.

An interesting emerging issue is the relationship between obtaining information for competition investigations and rules governing data privacy. We have encountered instances in which firms raised concerns that providing requested information to the FTC could violate another country's data privacy laws.

External challenges may include questions about the very role of competition policy in relation to other economic policies such as development policy, industrial policy, and



national economic security. We saw some subordination of competition policy in the face of the recent financial crisis. There are continuing calls to displace competition policy with industrial policies that favor national champions even though the economic case for industrial policy has been largely discredited, including by some of its previous users. In all of these cases it is important that the competition community speak up for the importance of maintaining the strength and integrity of competition policy, which has proven to be the best guarantor of consumer welfare at all stages of development, through good times and bad.

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**What important developments do you foresee in the international antitrust field?**

To spend a substantial part of one’s career in the international antitrust field almost necessitates being an optimist, and I gladly admit to being one although I am sometimes accused of seeing the glass as more full than it is. With that caveat, I foresee continued progress toward broader and deeper cooperation among the world’s competition agencies, continued convergence toward sound competition policies, and greater recognition by governments of the value of strong and sound competition policy. ■