



# **DEPARTMENT OF JUSTICE**

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## **International Cooperation at the Antitrust Division**

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Good morning and thank you for inviting me to speak to you today. I am pleased to be here and to have this opportunity to address competition enforcers, practitioners and academics from around the world.

I think it appropriate, given the setting, that the subject of my remarks today is the Antitrust Division's approach to international cooperation in antitrust enforcement and policy matters. I have made it clear that this is one of my priorities.

Since I joined the division in the fall of 2010, first as a Deputy Assistant Attorney General and now as Acting Assistant Attorney General, I have seen first-hand the importance of international cooperation, both in individual cases and on a broader policy level. I also have seen that the division has done more than just talk about international cooperation. We have followed through on our commitments by working hard to strengthen the division's ties with our international counterparts and, whenever possible, by working with antitrust agencies around the world collaboratively on individual cases and on policy matters.

We are, of course, very fortunate to have Rachel Brandenburger serve as Special Advisor, International, for the Antitrust Division since her appointment in January 2010. Rachel, who is here today, would be the first to recognize that our international endeavors are the work of, and reflect the commitment of, the division as a whole.

The reality of international cooperation is well-known to this audience. You deal on a daily basis with cross-border transactions, an ever increasing array of antitrust authorities, and the analysis of markets, products and competitors that cross national

borders seamlessly. You see and experience the fruits of international cooperation and you know its limits.

So while I will take some time this morning to review what the Antitrust Division has been doing to further international cooperation recently, I want to start, for this knowledgeable audience, with the question of why we are committed to international cooperation. It is the *why*, of course, that should inform the practice. That is, we should have clear purposes in mind as we develop and implement mechanisms of international cooperation—purposes that inform our actions and provide a benchmark to test the effectiveness of our actions. The important question to ask is whether the mechanisms of international cooperation are serving all of our purposes.

So let me first set out three of the principal purposes of international cooperation: to increase our understanding of the competitive process; to increase the effectiveness of competition enforcement activities; and to increase the efficiency of the overall global enforcement effort in order to facilitate and promote economic activity to the benefit of consumers.

#### **I. Increasing our understanding of the competitive process**

The first purpose is conceptual. The exchange of ideas and analysis among enforcement agencies is particularly beneficial in helping all of us to understand both the nature of competition itself—what it is that we are trying to protect—and the best mechanisms for doing so. Such exchanges among agencies with different historical contexts—both with respect to national competition enforcement schemes and national economic organization—provide a valuable means of convergence around sound competition policy.

We thus engage in a wide range of contacts, including those encompassed by our numerous bilateral cooperation agreements and the multilateral organizations of which we are members, as well as a host of less formal exchanges with enforcement agencies around the world, including seminars, workshops and informal conversations regarding matters of general interest, such as the intersection of intellectual property and competition law, and industry or case specific issues. Fruitful discussions often can take place based on public information, especially when an agency has accumulated valuable experience in a sector and another agency is dealing with an issue in that sector for the first time. Some recent examples of this type of international cooperation include an intellectual property workshop involving U.S. and Chinese competition agencies, a workshop for Mexican federal judges on cartel enforcement, and informal discussion among U.K. Office of Fair Trading and Antitrust Division economists regarding most favored nation clauses.

I should mention one recent and promising development in our commitment to strengthen our relations with antitrust agencies outside the United States. That is our new Visiting International Enforcer Program, or VIEP. So far, two of our senior career officials have spent time in the European Commission's Competition Directorate (DG Comp) in Brussels. We welcomed one DG Comp manager to Washington last year, expect a second DG Comp visitor soon, and look forward to expanding this program in the future. We believe these exchanges will assist in formulating sound policies and practices on which to base enforcement decisions.

In short, from the perspective of enforcement agency officials seeking to advance their understanding of competition and the efficacy of their enforcement policies and

actions, international cooperation is an essential tool that allows us to look beyond the confines of our national experience.

## **II. Increasing the effectiveness of competition enforcement activities**

I will turn now to the second of our purposes: increasing the effectiveness of competition enforcement activities. As all of you know, much of the activity that concerns competition enforcers, whether illegal collusion, the use and abuse of market power, or legitimate merger activity, takes place internationally. International cooperation among enforcers is therefore essential to ensure that we identify and effectively remedy improper activity and otherwise protect consumers.

### **Cooperation in criminal matters**

Our recent cartel investigations are excellent examples of international cooperation that has helped competition agencies around the world better protect consumers. For instance, coordinated raids across multiple jurisdictions preserve evidence that might otherwise disappear were enforcers in different jurisdictions to proceed piecemeal. Those coordinated actions also facilitate the production of critical evidence to the Antitrust Division. Evidence from other enforcers' raids can come to us through our formal cooperation agreements with other jurisdictions or as a result of the affected firm's decision to voluntarily produce to us that evidence, a decision often influenced by the firm's desire to have us credit its cooperation.

On an even more basic level, international cooperation means that enforcers are able to learn about cartel activity affecting their jurisdictions because of events in another jurisdiction. The spread of amnesty programs has played an important role in this

development—increasingly, firms approach enforcers in multiple jurisdictions simultaneously to reveal their wrongdoing.

When cartels operate across national borders, cartel investigations also must have an international reach. For instance, during the course of our Auto Parts investigation, the Antitrust Division has worked with enforcement counterparts in Japan, the European Union, Canada and a number of other antitrust agencies around the world. Already, the division has obtained criminal fines of nearly \$800 million as a result of this investigation, and eight companies have also agreed to plead guilty. In addition, 11 auto parts executives have agreed to plead guilty and to serve U.S. prison sentences of between one and two years.

Other cartel matters on which the division has worked with our international counterparts include the Air Cargo cases, where we have worked with the U.K. Office of Fair Trading, the European Commission, the Canadian Competition Bureau, the Japan Fair Trade Commission, the Australian Competition and Consumer Commission, the New Zealand Commerce Commission and other antitrust agencies.

To put it another way, extremely harmful anticompetitive conduct occurs outside our national borders, yet U.S. consumers feel its full force. For example, in a recent trial in our liquid crystal display investigation, a jury found that AU Optronics, its U.S. subsidiary and their co-conspirators derived gains of at least \$500 million from a conspiracy, many of

the actions in furtherance of which took place outside the United States.<sup>1</sup> Stronger enforcement abroad results in stronger deterrence in those countries which, again in turn, ensures there are no safe havens where cartels targeting the United States can operate. Cooperation with our enforcement counterparts around the world will continue to be important in our efforts to combat cartels, as we work together to detect, punish and deter this pernicious conduct. There is global consensus as to the vast harm caused by international cartels, and that consensus feeds the interest among enforcers to cooperate. Fortunately for consumers, the spirit of cooperation has never been brighter.

### **Cooperation in civil matters**

We also routinely cooperate with our international counterparts on civil enforcement matters. That cooperation helps enforcers better understand competitive conditions and reach better results for consumers and competition—both with regard to the decision as to whether there has been harm to competition and, in those instances where we find harm, the appropriate remedy for restoring competition.

For example, the Antitrust Division worked closely with the European Commission on the e-books matter. In April of this year, the division filed a lawsuit against Apple and five of the largest book publishers in the United States, alleging that they had conspired to increase the prices consumers pay for e-books. Three of the publishers agreed to settle

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<sup>1</sup> *United States v. AU Optronics Corp.*, No. 09-cr-0110 SI, 2012 WL 2120452 (N.D. Cal. June 11, 2012).

with the division subject to court approval, which has since been granted.<sup>2</sup> We are continuing to litigate against Apple and the two remaining publishers.

Throughout the e-books investigation, we worked collaboratively with the European Commission. Attorney General Holder recognized this cooperation in his remarks at the press conference on the case, thanking “our partners at the European Commission . . . for their hard work and close cooperation.”<sup>3</sup> Former Acting Assistant Attorney General Pozen also emphasized the depth of our cooperation with the European Commission on the investigation, noting that this was a “global enforcement matter” and that “[n]ever before have we seen this kind of cooperation on a civil antitrust enforcement matter.”<sup>4</sup>

Another recent example of successful international cooperation was the Google/Motorola Mobility merger. That transaction involved Google’s acquisition of Motorola’s patent portfolio, including patents that Motorola had committed to license through its participation in certain standard-setting organizations. We cooperated closely with the European Commission on this matter, and both jurisdictions announced decisions

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<sup>2</sup> *United States v. Apple, Inc.*, No. 12-civ-2826 (DLC) (S.D.N.Y. Sept. 6, 2012).

<sup>3</sup> See Attorney General Eric Holder Speaks at the E-books Press Conference (Apr. 11, 2012), *available at* <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1204111.html>.

<sup>4</sup> Remarks as Prepared for Delivery by Acting Assistant Attorney General Sharis A. Pozen at the E-Books Press Conference (Apr. 11, 2012), *available at* <http://www.justice.gov/atr/public/speeches/282147.htm>.



on the same day.<sup>5</sup> Both agencies determined not to challenge the acquisition of the patent ownership rights, and both agencies also determined to note the reservation of their ability to challenge the future exercise of those rights.<sup>6</sup> The division and the European Commission also stated that they would continue to keep a close watch on these markets and would not hesitate to take enforcement action to stop any anticompetitive use of standard essential patents.<sup>7</sup> The Antitrust Division also discussed the acquisition with the Australian Competition and Consumer Commission, the Canadian Competition Bureau,

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<sup>5</sup> See Press Release, U.S. Dep't of Justice, Statement of the Department of Justice's Antitrust Division on its Decision to Close its Investigations of Google Inc.'s Acquisition of Motorola Mobility Holdings Inc. and the Acquisitions of Certain Patents by Apple Inc., Microsoft Corp. and Research in Motion Ltd. (Feb. 13, 2012) [hereinafter U.S. Google Statement], *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/280190.pdf](http://www.justice.gov/atr/public/press_releases/2012/280190.pdf); Press Release, European Commission, Mergers: Commission Approves Acquisition of Motorola Mobility by Google (Feb. 13, 2012) [hereinafter EC Google Statement], *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/129>.

<sup>6</sup> See U.S. Google Statement (Division's conclusion as to *Google/Motorola Mobility* "limited to the transfer of ownership rights and not the exercise of those transferred rights"); EC Google Statement ("Today's decision is without prejudice to potential antitrust problems related to the use of standard essential patents in the market in general").

<sup>7</sup> See U.S. Google Statement ("the Division continues to monitor the use of SEPs in the wireless device industry, particularly in the smartphone and computer tablet markets. The division will not hesitate to take appropriate enforcement action to stop any anticompetitive use of SEP rights"); EC Google Statement (quoting Joaquín Almunia, Vice President in charge of competition policy, as saying that "the Commission will continue to keep a close eye on the behaviour of all market players in this sector").

the Israel Antitrust Authority and the Korean Fair Trade Commission during our investigation.

**III. Increasing the efficiency of the overall global enforcement effort in order to facilitate and promote economic activity to the benefit of consumers**

Let me turn to the third purpose: increasing the efficiency of the overall global enforcement effort in order to facilitate and promote economic activity to the benefit of consumers. Our first two purposes, increased understanding and increased enforcement effectiveness, essentially have an institutional perspective—focus on how we can get the right result, both because we are acting on the best possible understanding of the competitive process and because we are sharing information or coordinating actions.

There is another equally important perspective: how does what we do impact the businesses that come before us? The work of competition enforcement agencies directly impacts economic enterprise, and it should be our objective to facilitate that enterprise as much as possible as we seek to enhance and protect competition.

What does international cooperation have to do with this? As our work touches a wide range of business activities, we have an obligation to promote clarity and consistency in light of the existence of different national antitrust regimes around the world, and to reduce the burden on firms doing business globally. The Antitrust Division believes we all share a strong interest in seeking to ensure that investigations and remedies are consistent, predictable and efficient. The only way to achieve that is through cooperation and communication. That's why our division's guiding principles for international cooperation stress convergence around sound competition policy, cooperation between agencies, transparency, accountability, respect for other jurisdictions' legal, political and economic

cultures, and ongoing dialogue. Our goal as antitrust authorities should be to avoid, as much as possible in a multi-authority world, imposing inconsistent, conflicting, or inefficient rules on businesses, either generally or in individual cases. We appreciate and expect, of course, that different regimes have different rules and traditions, but we have a responsibility to harmonize differences as much as possible.

I was in Japan recently to participate in the Antitrust Division's 32nd bilateral discussion with the Japanese competition authorities. During my visit, I had the opportunity to meet with several groups of industry representatives, including Japanese corporations and U.S. multinationals. The overriding concern of these representatives was not about compliance with substantive competition law. It was with the uncertainties and expense posed by dealing with multiplying competition authorities. These conversations were similar to many others that I have had and that all of you have had. Parties engaged in cross border economic enterprise reasonably seek consistency in enforcement outcome and efficiency in complying with the demands of the investigatory process.

One purpose, then, of international cooperation among competition agencies is to further such consistency and efficiency. And many of our recent efforts seek to serve that purpose. For example, we have agreed to best practices and guidance documents with other agencies. Indeed, following a year of dialogue among the division, the Federal Trade Commission and DG Comp, and a review of our recent merger cooperation experience, the three agencies last year revised and reissued our Best Practices on Cooperation in Merger

Investigations. These provide an up-to-date advisory framework for interagency cooperation when one of the U.S. agencies and DG Comp review the same merger.<sup>8</sup>

On this front, international cooperation can also be a two-way street. We strongly encourage the parties to our investigations to agree to waiver letters that allow agencies to share confidential information, thereby facilitating the efficient review of transactions or non-merger activity by multiple enforcement agencies.

Synchronized remedies that impose consistent obligations on merging parties are one very practical example of how international cooperation helps businesses. The recent United Technologies/Goodrich transaction, the largest merger in the history of the aircraft industry, is an excellent example. In that case, the division concluded that, as proposed, this transaction would have resulted in higher prices, less favorable contract terms and reduced innovation for several critical aircraft components, including generators, engines and engine control systems. In July 2012, the parties agreed to a settlement that, if approved by the court, will address our competitive concerns.<sup>9</sup>

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<sup>8</sup> Press Release, U.S. Dep't of Justice, United States and European Union Antitrust Agencies Issue Revised Best Practices for Coordinating Merger Reviews (Oct. 14, 2011), *available at* [http://www.justice.gov/atr/public/press\\_releases/2011/276308.htm](http://www.justice.gov/atr/public/press_releases/2011/276308.htm).

<sup>9</sup> *See* Press Release, U.S. Dep't of Justice, Justice Department Requires Divestitures in Order for United Technologies Corporation to Proceed with its Acquisition of Goodrich Corporation (July 26, 2012) [hereinafter U.S. UTC Statement], *available at* [http://www.justice.gov/atr/public/press\\_releases/2012/285420.pdf](http://www.justice.gov/atr/public/press_releases/2012/285420.pdf).

We cooperated closely throughout this investigation with the European Commission and the Canadian Competition Bureau. All three agencies announced their decisions on the same day. Just as we did, the European Commission also approved the merger, subject to certain conditions, and the Canadian Competition Bureau stated that it would take no action regarding the merger because the U.S. and EC remedies “appear to sufficiently mitigate the potential anti-competitive effects in Canada.”<sup>10</sup> As we stated in our press release, “the Division’s close cooperation with the European Commission and the Canadian Competition Bureau resulted in a coordinated remedy that will preserve competition in the United States and internationally.”<sup>11</sup> The division also discussed the transaction with other international enforcement agencies, including the Federal Competition Commission in Mexico and the Administrative Counsel for Economic Defense in Brazil.

#### **IV. Conclusion: The way forward**

The purposes of international cooperation that I discussed today are of course intertwined. We help businesses when we crack down on cartels because businesses are very often the victims of cartels. Similarly, coordinated remedies that minimize the

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<sup>10</sup> Canadian Competition Bureau, Competition Bureau Statement Regarding United Technology Corporation’s Acquisition of Goodrich Corporation (July 26, 2012), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03483.html>.

<sup>11</sup> U.S. UTC Statement.

burdens on businesses aid efficiency and reduce unnecessary costs—redounding to the benefit of consumers and competition.

As we look forward, these issues appear likely to only increase in importance. The increased globalization of the economy and interconnection among nations will require an increased commitment to international cooperation efforts. That commitment will help consumers, competition and businesses.

Thank you.