Interview with James F. Rill, Former Assistant Attorney General for Antitrust

Editor's Note: During his career, James Rill has played a uniquely important role in the development of global antitrust. From 1989 to 1992, Mr. Rill served as Assistant Attorney General (AAG) of the U.S. Department of Justice (DOJ) Antitrust Division, during which time the DOJ and Federal Trade Commission (FTC) for the first time issued joint Horizontal Merger Guidelines. As described in this interview, it was also an important time for the expansion of competition law internationally and for U.S. relations with other competition regimes. As AAG, Mr. Rill directed structural impediment talks with the Japanese government, using competition law to ensure market access; assisted newly liberated Eastern European countries in their efforts to establish new free-market systems; and helped negotiate a landmark antitrust cooperation agreement between the United States and the European Union.

In 1997, then-Attorney General Janet Reno and Assistant Attorney General for antitrust Joel Klein appointed Mr. Rill as co-chair of the International Competition Policy Advisory Committee (ICPAC) to advise the DOJ regarding international antitrust policy in the 21st century. Foremost among ICPAC's recommendations was its proposal to create a global competition forum for competition authorities throughout the world to confer on competition law issues. That recommendation was the impetus for establishing the International Competition Network in 2001, which in the past 19 years has contributed significantly to worldwide convergence of competition law and policies.

Mr. Rill served as Chair of the American Bar Association's Antitrust Law Section from 1987–1988 and over the years has been a mentor and trusted advisor to many in the leadership of the Section and U.S. enforcement agencies.

The interview was conducted for The Antitrust Source by Deborah Garza, former Chair of the ABA Antitrust Law Section, on October 15, 2019.

DEBORAH GARZA: Jim, you were confirmed as the Assistant Attorney General for the DOJ Antitrust Division in 1989. What was the state of antitrust or competition law enforcement outside the U.S. at that time?

JAMES RILL: Very sporadic and somewhat meager. About that time, there were a little over a dozen antitrust regimes in place with very spotty enforcement records. Of course, the U.S. had an antitrust program and, prominently, Canada and the European Union, which had the Treaty of Rome with its antitrust provisions.

The European Commission had just recently issued the Merger Regulation. Interestingly, Japan had the Antimonopoly Act, which was a very comprehensive antitrust statute that was adopted in 1947, but which had not been enforced. So, let's say that the action as of the spring and summer of 1989 was somewhat episodic, scattered and not, overseas, marked by particularly vigorous enforcement.

Then, 1989 was really a seismic year. In November of 1989, the Berlin Wall came down. In Poland, in August, the first non-communist government in Eastern Europe since 1947 was put into office.

In Hungary, in September, the name was changed from the Peoples' Republic to the Republic of Hungary. The remains of Imre Nagy, who had led the 1956 Hungarian Revolution, were exhumed and he was given a state burial that he was denied after he had been executed in 1956 by the Soviets. The first open party election was conducted in Hungary in October of 1989.
Very significantly, in November of 1989, demonstrations occurred in Wenceslas Square in Prague. The keys were rattled. The Communists were thrown out of the government. In the following few days, Václav Havel was installed as the president of what was then known as Czechoslovakia.

So, this massive change in the political landscape of Central and Eastern Europe had ramifications on a worldwide political basis, but also had very significant ramifications for competition policy.

At the same time, there were developments in the Far East. In 1989, the view was that Japan's economy was going to dominate the world. There was considerable friction between the United States and Japan over the keiretsu policy whereby, at least according to the United States, the Japanese vertically integrated auto companies, for example, under government direction from the Ministry of International Trade and Industry (MITI), which would foreclose, or at least diminish the opportunities for American exports into Japan.

At that point a Section 301 process was also beginning to emerge under the Trade Act, which would accuse Japan of unfair trade practices. This development was on the brink of taking place in 1989, which led us to what became the Structural Impediments talks. But, I think we'll talk about them a little bit later.

**DEBORAH GARZA:** What role did the U.S. have in the development of competition policy in these new eastern European market economies?

**JAMES RILL:** Very interesting. There was a great commitment at the very top level of the United States government from President George H.W. Bush on down, in undertaking to support the emergence of market economies in these formerly Soviet-dominated, command-and-control economies that ran across the entire panoply of various commercial and financial enterprises. As it became apparent, competition policy had a role in facilitating and endorsing the expansion of a market economy in the former eastern European Soviet-dominated countries.

Competition authorities were involved with all levels of the U.S. government. In April of 1990, the door was opened by an organized program led by Commerce Department General Counsel Wendell Willkie for the agency heads at the time, myself at DOJ and Janet Steiger, who was Chairman of the Federal Trade Commission, to lead a mission to Poland and Hungary shortly after the opening of the markets there.

The mission to Czechoslovakia was separately organized.

In Poland, we had a meeting with Anna Fornalczyk, who was then the new head of the Polish Antimonopoly Office. She was a professor from the University of Lodz. In Hungary, we met with Ferenc Vissi, who had just become head of the Hungarian Competition Authority.

In Prague—and this is particularly significant—we had the opportunity to meet with President Havel. This demonstrated the top-level interest of that country in competition policy. In our meeting with Václav Havel, his competition staff, and some of his economic advisors—actually, one of them was a Communist—we talked for 45 minutes to an hour about the benefits of a competition policy as an essential element of supporting the market economy. I have to say, that was one of the great experiences of our professional careers, to have that opportunity with that giant of a leader.

This initiative led to the development of technical assistance programs where we were invited by these countries to provide assistance, as well as other countries in Eastern Europe, Bulgaria and Romania, in particular.
Congress passed a law called the SEED Act. SEED stands, as I recall, for Support for East European Democracy. That Act provided some $300 million for technical assistance across the entire economic sphere—labor, finance, commercial enterprise. When we saw that that money was available, DOJ and FTC said, “Well, what about competition policy getting some of that for technical assistance?”

Russ Pittman at DOJ and Jim Langenfeld at the FTC developed a paper explaining the importance of competition policy to enhancing the overall move from a command-and-control economy to a market economy and so that former state enterprise would not simply become private monopolies without the benefit of competition and the enforcement of competition principles. As a result, the agencies got something like $3.6 million to support technical assistance to specifically, Poland, Czechoslovakia, Hungary and, later, the Baltic States as well as Romania, Ukraine, and Bulgaria.

There are really two characteristics of the technical assistance program that were established that stand out in my mind. One, this assistance involved not just short-term visits, but long-term advisors as well. The opportunity was there for long-term advisors to go to these countries and work with the antitrust agencies on specific cases, discuss substance and procedure, and give advice on how to develop a case.

The long-term advisors were particularly appreciated. One of the foreign agency heads said to me at the time, “You know, it’s very nice to see you guys for a cup of coffee. But, it’s really helpful that these people come in and give us the long-term assistance as we develop our analytical process and our cases.”

The other significant aspect of the technical assistance program was that the people that went over from both the FTC and DOJ were very senior, experienced antitrust lawyers and economists. It was a matter of such significance to Janet Steiger and me that we were able to send over people like, from the FTC, Terry Winslow, Howard Morse, and Liz Callison, and from DOJ, Craig Conrath, M.J. Moltenbrey, and Hays Gorey. Craig spent 18 months working with the Polish agencies in Warsaw and Krakow, and I believe that time produced very significant results.

This assistance helped establish vibrant, ongoing, strong antitrust regimes in these countries; they were anxious to have that help and they made good use of it. In addition, since salaries for the long-term advisors were actually paid out of the AID money, it did not impact our domestic enforcement budget very much to provide this level of assistance.

The relative success of these programs spread from the countries of eastern and central Europe to Russia, South Africa, Latin America, Indonesia, and Southeast Asia with long-term assistance.

Obviously, the political dimensions in each of these countries were quite different, one from the other, as was the extent to which they were amenable to accepting our advice.

I have to give enormous credit to Janet Steiger for all that she did to promote this effort.

I would like to share one particular anecdote to demonstrate the highest-level support provided by the United States government. There was a request from the quite-different-then government of Venezuela, which was a free market government under President Perez, to participate in the technical assistance program. For one reason or another, the State Department was somewhat reluctant. So, Janet wrote a letter to President George H.W. Bush advising him that this is something that ought to be done. Lo and behold, the President advised the State Department that Venezuela was, yes indeed, eligible for technical assistance. A copy of that letter is available. At that point, as I say, the Venezuelan climate was quite different from what it is now. It was then very much a free market economy.
Today the competition regimes, to varying degrees, by and large are firmly established in these countries, particularly in Central and Eastern Europe. I think that is in some measure attributable to the overall commitment and technical assistance provided by the United States agencies—by the Federal Trade Commission and the Department of Justice and making their assistance available on a continuing basis—not just dropping in for a cup of coffee but assisting the gradual development of antitrust procedure and substance in those countries on a continuing basis. Importantly, this was a commitment of the United States government. There may be some disagreement with this, but it was viewed that a strong competition policy was indeed essential to the development of free markets, as these markets moved from command-and-control, particularly under the former Soviet regimes, to market economies. Competition policy principles supported the development of market economies in these formerly command-and-control directed national economies under the Soviet dictatorship.

I have to say, it was one of the more rewarding experiences that a lot of us had in trying to help foment that principle.

DEBORAH GARZA: Let’s go back to Asia, then, and U.S. interactions with Japan and South Korea. What was happening at the time with those two countries?

JAMES RILL: Let’s talk about Japan first. As I mentioned earlier, Japan had a very well-crafted, carefully articulated antitrust law, the Antimonopoly Act of 1947 which, as you can well imagine, was a gift of the supreme Allied headquarters and, in fact, was not very well received as Japan itself moved from the authoritarian dictatorship, if you will, into a liberal form of government. They were still very skeptical about the efficacy of having an antitrust program. In fact, perhaps the most prominent post-war Japanese Prime Minister, Yoshida Shigeru, in his memoir said that one of the worst parts of the Allied occupation was the Antimonopoly Act, which slowed their economic development.

Gradually, the Japanese Fair Trade Commission became sort of a dead end. Somebody from the Finance Ministry ordinarily ran it. They were very much under the influence of MITI.

As I mentioned earlier, there was considerable concern in 1989 with the extent to which corporate Japan, the keiretsu system of relationships, operated to inhibit United States exports into Japan—for example, autos, semiconductors and other products. A petition was filed to proceed under Section 301 of the Trade Act accuse the Japanese of violating the trade agreement by this exclusionary practice.

Then-President George H.W. Bush didn’t necessarily want to go that far, which could have led to a serious trade dispute, to put it mildly. So, it was suggested that there should be talks to see if there were ways to get around that particular problem. This led to the Structural Impediments Initiative talks, or SII talks, which were conducted at the sub-cabinet level.

Initially, the SII talks were headed by State, Treasury, Commerce, U.S. Trade Representative (USTR), and the Council of Economic Advisers. The USTR at that time, Carla Hills, being an outstanding antitrust in her own right, said, “Well, what about Justice?” She called then-Attorney General Dick Thornburgh and said, “Can we get you guys to help out here?”

Attorney General Thornburgh thought it was a good idea. He called me and said, “You are going to Japan.” I asked, “General, you’ve tired of me already?” So, in September of 1989, only four months after I joined DOJ, we had the first SII talks in Tokyo. Japanese counterparts at their sub-cabinet level, vice minister level, were participants. They were very productive meetings.

It was quite interesting. I think at age 56, I was probably one of the older members of our six-member delegation.
I looked across the table and they were all older than I was. On the U.S. side, we had all been in office maybe six months, while they had all been in office 10 years or more.

And it seemed to me quite early on that they knew a lot more about us than we knew about them.

But, they did want to reach a resolution. The first interim report that came out of the SII talks contained a strong endorsement of strengthening the JFTC and an agreement to go after cartel practices, including vertical cartel practices and boycotts and to really increase enforcement of the antitrust law.

Now, this may not have produced so many immediate, tangible results, but in the long term, I was told by JFTC commissioners the talks helped to create a respect within the Japanese government for the JFTC that had not been there before. The JFTC then became a functioning and respected part of the Japanese government. Beyond that report, I think the SII talks resulted in strengthened relationships between Japan and the United States on antitrust issues, which, under Attorney General Janet Reno and Assistant Attorney General Joel Klein, led to a well formulated antitrust cooperation agreement between the U.S. antitrust agencies and the government of Japan.

Korea came somewhat later. Korea had not been particularly involved in antitrust enforcement, but gradually became imbued with the notion of becoming a leader in antitrust enforcement, some would say not always in the proper consumer welfare-oriented direction. But, ultimately, there was an agreement which led to a trade agreement—KORUS—between the United States and Korea. It was a very significant development, and one that is getting a lot of attention right now in light of the USTR complaint that the agreement’s due process provisions are not being honored by the Korean Fair Trade Commission (KFTC).

**DEBORAH GARZA:** You mentioned that in 1989 the European Union had a system of competition law enforcement through the Treaty of Rome. Here, the issues and points of friction were different from what you experienced in Eastern Europe and Asia. Can you talk about those frictions and what steps were taken to resolve them?

**JAMES RILL:** Sure, Deb. A lot has been written about this area. In particular, I commend everyone’s attention to a recent paper by Greg Werden and Luke Froeb entitled, “Antitrust and Tech: Europe and the United States Differ, and It Matters.”

There are structural, institutional elements of the relationship between the U.S. and Europe that will always create some kind of friction, or at least different perceptions of how enforcement ought to operate. Europe works more on an administrative system.

Some of the common law procedures that are available in the United States—witness presentation, cross-examination and so forth, and the adversarial system that operates in the United States—are not part of the system in Europe. The hearings before the Directorate General of Competition (DG COMP) are more like congressional hearings or speeches and not so much a presentation of witnesses and evidence, subject to cross examination.

Judicial review is considerably more limited in Europe than it is in the United States. That’s the view of many European observers, as well as U.S. observers. And there are those who think that there is more focus on competitors than competition in Europe than there is in the U.S. because European activities are primarily generated by competitor complaints. So, there is a question of whether or not Europe’s focus is on harm to competitors rather than on harm to competition. These differences will always create some disparity on substance, and certainly of procedure.
There has been continued effort and cooperation between the U.S. and Europe to at least be able to discuss and air these disagreements, so that one would understand specific enforcement decisions. In 1991, DOJ and FTC negotiated the U.S.-European antitrust cooperation agreement, which I think was one of the landmark cooperation agreements between the U.S. and a foreign agency—between the governments, actually, not just the agencies.

Among other things, it initiated and included the opportunity for positive comity, pursuant to which one country could ask the other country to take action against an antitrust violation that affected the important interest of the requesting country. That was a landmark aspect of that agreement. The agreement has been implemented on at least one occasion—not formally—but it provided a lodestone for more informal cooperation.

A formal application occurred once in a case involving Air France and Amadeus, and conduct inhibiting information available to U.S. computer reservation systems.

In any case, the agreement provided a good basis for cooperation. Now, we all know that the relationship has not always been peace and light. In 1997, there was a dispute over Boeing and McDonnell Douglas, in which the early position of the European Commission was to block the transaction.

That escalated to the level of President Clinton (a former Arkansas antitrust enforcer) getting directly involved in the matter to persuade Europe that there ought to be a better resolution than blocking the transaction, which of course happened.

Subsequently, in the early days of the George W. Bush Administration, when Charles James headed the Antitrust Division, there was the GE/Honeywell case in Europe, which many think was based on a very questionable foundation of conglomerate merger analysis. It produced a rather sharp criticism of the European decision by Bill Kolasky, who was then a Deputy Assistant Attorney General, in the middle of an OECD competition policy meeting. I was sitting next to EU Competition Commissioner Mario Monti at that time and I could see that as Bill was talking, Commissioner Monti was visibly agitated.

Nevertheless, since then, the harmonization in the area of cartel and merger enforcement has been quite substantial, some of it generated by European court decisions.

There have been substantial moves in the right direction of convergence, if not harmonization, at least approaching an understanding between the U.S. and Europe. But, the frictions are still there as the Werden and Froeb article discusses. As that article indicates, there are structural issues that will always be there. And we have to understand those and try to move towards greater convergence in the broad sense of the word of the various institutional differences that may produce different results.

DEBORAH GARZA: Tell us about the road to the development of the International Competition Network. How did that come about? You obviously had a huge role in that. Can you talk about it a bit?

JAMES RILL: Yes. I have to say that a lot of people had a role, but I think it has been one of the major accomplishments that U.S. antitrust efforts have been able to produce. It really started with the World Trade Organization (the WTO). There was a WTO committee, a competition task force, headed by Prof. Frédéric Jenny, who is a very widely respected global antitrust thought leader.

That task force was charged with recommending what role the WTO could play in formulating global antitrust principles. There was a lot of skepticism about the appropriate role for the WTO, frankly.
The enforcement mechanism—the way that the WTO operated—might have led to results that would have been somewhat inconsistent at times with the kinds of results you might get from an antitrust regime. One can think of trading market access for brandy for chickens as part of the WTO activity. That raised some eyebrows as to how the WTO would handle antitrust.

About this time, in 1997, Attorney General Janet Reno and Assistant Attorney General Joel Klein created an advisory committee, the International Competition Policy Advisory Committee—acronym ICPAC—to advise the Department of Justice on the appropriate avenues it might pursue with the very rapidly increasing global impact of antitrust and enforcement that tracks across multiple jurisdictions. ICPAC members were non-governmental individuals. It was a committee of advisors to the Department of Justice. It consisted purely of private sector individuals who were academics, business people, practitioners, and former government officials who put together a report after several hearings, including a hearing in Washington in which half a dozen leading antitrust officials from other countries around the world participated.

There were several recommendations. The report touched on cartel activity, merger activity, and the trade and antitrust interface.

One of the recommendations of the report was to create what was referred to as the Global Antitrust Forum, which would provide a mechanism or forum for antitrust officials around the world (just antitrust officials, not trade officials) to meet and act on an informal basis. It was not intended to be a structured agency. Rather it was intended as an informal agency that would meet on a regular basis to discuss better avenues for promoting, if not harmonization, at least broader understanding of antitrust across the globe, with the help of non-governmental advisors. That recommendation was in the report that was issued in February of 2000 (the Final Report of the International Competition Policy Advisory Committee to the Attorney General and Assistant Attorney General for Antitrust).

Some of the recommendations in the report were in the merger area and those were pretty rapidly adopted by DOJ. FTC by the way, was always an observer at the sessions of ICPAC.

The global forum recommendation was not immediately adopted. All of this history is set forth in an article prepared by Merit Janow and me. Merit was the executive director of the ICPAC and really the godmother, if you will, of this entire program.

We met with Assistant Attorney General Joel Klein and urged him to take a position on the global forum. I suggested that that would be an important part of something he could do before he left DOJ—we were going into the summer of 2000, which was an election year. He agreed. At the anniversary of the European Merger Regulation in Brussels, Joel made a speech in which he endorsed the creation of the global forum along the lines as recommended in the ICPAC report. I’m not sure what the prior conversation or exchange was with then-Commissioner Mario Monti, who was vice president of the European Commission, with antitrust as one of his responsibilities. But, at any rate, the very next day, Commissioner Monti endorsed the Klein proposal. That gave the endorsement of the European and U.S. antitrust authorities to the creation of the global forum.

Still, the global forum didn’t happen overnight. It was the topic of a meeting in February of 2001, at Ditchley Park, which had been a retreat of Winston Churchill during World War II, well outside of London. A lot of credit goes to a leader of antitrust for the International Bar Association, Bill Rowley. He arranged it and facilitated attendance of the heads of a number of antitrust agencies, including Commissioner Mario Monti and Acting Assistant Attorney General for Antitrust John Nannes (Charles James had not yet taken his seat). The Ditchley Park conference provided a real spark for the creation of the global initiative because it was an opportunity for antitrust officials to talk all antitrust all the time. Later in 2001, the focus on the issue by the new heads of the agencies in
the United States began to take off. Charles James was over at DOJ; he had been a deputy assistant attorney general in the prior Republican administration. At the Federal Trade Commission you had Tim Muris as Chairman and General Counsel, Bill Kovacic, who, of course, is legendary for his contributions to global antitrust convergence. They devoted time to supporting moving forward with this global forum, or global initiative. It was finally announced by the leaders of the U.S. agencies and European Commission Director General Alexander Schaub at the Annual Conference on International Antitrust Law and Policy at Fordham University in October of 1991. It was called the International Competition Network (ICN). The initial signatories were from 14 jurisdictions, including the United States.

It was designed as an informal organization and the membership was to be strictly antitrust agencies. The only qualifications were that the country had to have an antitrust law and agency, but otherwise, it was wide open.

You can see where it’s gone now. That’s how it got started.

DEBORAH GARZA: Let’s fast forward to almost two decades later. How do you assess the way that the ICN is operating today? Has it fulfilled the vision that you had for the global forum?

JAMES RILL: Certainly directionally and in large part it has. There are now over 130 agency members of the ICN and a large body of non-governmental advisors—you have been one. The ICN has produced enormously good work, such as the best practices guidance. One of the early efforts was merger notification and procedure. And, a lot of work has been done on predatory pricing.

One of the paramount achievements has been the development of the guidance document on agency investigative procedures, produced by the Agency Effectiveness Working Group, which provided for transparency and consultation and independent review of agency procedures. A lot of work was done on that by Paul O’Brien and Randy Tritell of the FTC. That was adopted, I believe at Sydney.

Be that as it may, whether it represents soft convergence or not, it is convergence. And it’s convergence on very, very important, concrete principles, not just verbal assurances. It’s not just asking a jurisdiction if it offers due process, accepting its answer, and moving on.

The ICN is continuing to develop principles for due process. I think the non-government advisor (NGA) participation there has been very helpful. A lot of NGA work went into the agency investigation documentation that was produced by the Agency Effectiveness Working Group. So, I think, in large measure, the ICN is fulfilling its objectives.

The ICN is not alone in its efforts. The Organization for Economic Cooperation and Development (OECD) has a global forum once a year. The members of the OECD collaborate on best practices and they created a merger notification procedure document that was adopted by the OECD. The OECD Competition Committee has a task force that deals with interagency international cooperation. The OECD also produced a landmark document on antitrust enforcement with respect to mergers that have international implications which Professor Richard Whish and now-Judge Diane Wood authored when I was the Assistant Attorney General for Antitrust at the DOJ and working with the OECD. But the OECD has made limited efforts to achieve accountability for any of the information, guidance, and suggestions that it makes. And it is, of course, at least in theory, limited to participation by industrial nations. The ICN has much broader representation and includes as members less developed economies. The United Nations Conference on Trade and Development (UNCTAD) also has limitations. The ICN is much more broadly based, more widely open.
Going beyond the ICN, the U.S. has entered into 15 cooperation agreements with foreign jurisdictions including our agreement with Japan, and even a generalized agreement with China. And we have antitrust chapters now in trade agreements. I mentioned earlier the KORUS agreement, the South Korea-U.S. agreement. That's a landmark. There is a substantial antitrust component to the Trans-Pacific Partnership Agreement. Unfortunately, the U.S. withdrew. In my personal view, that was very unfortunate. There is a competition tranche in the U.S.-Canada-Mexico Agreement that is pending approval. One can question the efficacy of trade agreements containing antitrust tranches and the extent to which enforcement mechanisms are consistent with antitrust principles. But it shows a continuing recognition of a need for due process and international harmonization or at least convergence of antitrust principles.

**DEBORAH GARZA:** As successful as the ICN and these other efforts have been, we still face some challenges in the global antitrust ecosystem, don’t we? What issues do you see today and on the horizon?

**JAMES RILL:** I think there is a significant need for greater convergence and some level of accountability in the extent to which these global instruments of convergence and harmonization are actually being followed.

It's not simply satisfied by perfunctory government review, as we see in the OECD, but some levels of sound accountability, to test the extent to which agencies both here as well as overseas, are actually following recognized global principles of antitrust procedures as well as substance.

You co-chaired a blue ribbon committee, Deb, endorsed by the U.S. Chamber of Commerce, really an independent committee, ICPEG, in which I participated. One of the recommendations we made highlights another questionable issue for the future of competition enforcement—that is, to what extent are we going to depart from the model of the ICN, which is all competition all the time among the competition agencies, to involve other agencies in what could be considered competition issues. I think the question was sparked by some issues involved in the Far East. In 1989, you had criticism of Japan by the State Department for alleged discriminatory antitrust enforcement. More recently, we have the USTR filing a formal paper under the KORUS against the KFTC for procedural default in their enforcement process. That paper was filed under the auspices of the USTR, though the Antitrust Division of the Justice Department participated. The question is to what extent the other agencies should have a role to play in this effort? It’s a controversial issue.

ICPEG recommended a cabinet-level organization. Some of us who were members of that group raised some question about that recommendation.

There is now some thought of maybe a sub-cabinet level group headed by DOJ so that at least some kind of conversation might take place, as an attempt to foment greater accountability or at least some review process and ability to bring by reputational force, if you will, on agencies who depart from global standards of either process or even substance in enforcement. I think this may have in large measure motivated Assistant Attorney General Makan Delrahim’s proposal to establish a multilateral framework for antitrust procedure. That concept was adopted by the ICN with the establishment of the Competition Agency Procedure process, or the CAP.

CAP is a major step by the ICN that approaches the level of accountability that might be desirable through the force of reputational influence that can be brought to bear where there has been a clear and undebatable departure from global standards of due process or substantive enforcement. It remains to be seen how far that goes. There are about 70 signatories now.

Signing jurisdictions are to provide a template showing the extent to which each are adopting the CAP consensus on global standards of process, particularly, and, also substance.
Those templates, I think, will be posted on the ICN website and subject to review. What’s not clear is the extent to which there will be an objective third-party review of the extent to which those templates are actually expressive of what is really done by the agency. I think that is a subject undergoing some discussion and some debate. I know that the U.S. Chamber of Commerce is very much involved. I think the ABA Antitrust Law Section is also quite interested in that. There was a task force established within the ABA Antitrust Law Section to evaluate conformance with antitrust standards.

**Deborah Garza:** Your colleague John Taladay and Melanie Aitken chaired that task force, which assessed whether or not jurisdictions were living up to best practices of process and transparency.

**James Rill:** That report has been filed and I think it’s a very good report. Now, there is an ABA follow up on appropriate antitrust standards and a task force headed by Dick Steuer and Cal Goldman. So, we’ll see where that leads. From conversations with Assistant Attorney General Delrahim and recently departed Deputy Assistant Attorney General Roger Alford, I understand that the DOJ is sympathetic to the view that there needs to be some form of at least reputational accountability established. How that’s going to work out, I don’t know. But, I think it’s very important to the continuing credibility of the international effort.

**Deborah Garza:** Well, I think that’s a good place to end the interview. Thank you very much.

**James Rill:** I appreciate the opportunity.