Roundtable Conference with Enforcement Officials

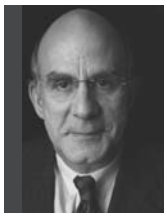
American Bar Association Section of Antitrust Law Spring Meeting ▪ Washington, D.C. ▪ April 23, 2010

MODERATOR

Ilene Knable Gotts
Chair, ABA Section of Antitrust Law; Wachtell, Lipton, Rosen & Katz, New York, NY

ENFORCEMENT OFFICIALS

Melanie L. Aitken
Commissioner of Competition, Canadian Competition Bureau, Gatineau, Quebec, Canada



James A. Donahue II
Chair, Multistate Antitrust Task Force, Pennsylvania Office of Attorney General, Harrisburg, PA

Alexander Italianer
Director-General for Competition, European Commission, Brussels

Jon Leibowitz
Chairman, Federal Trade Commission , Washington, DC

Christine Varney
Assistant Attorney General for Antitrust, U.S. Department of Justice, Washington, DC

PANELISTS

Roxann E. Henry
Howrey LLP, Washington, DC

Michael J. Reynolds
Allen & Overy LLP, London and Brussels

ILENE GOTTS: Welcome to the Enforcers Roundtable.* I thought we would start out by introducing the panel. I'll start with our international guests.

As you can see, our format is a little bit different from last year's. Melanie Aitken is the Commissioner of Competition at the Canadian Competition Bureau. Melanie joined the Competition Bureau in 2005 and was appointed as the Commissioner on August 4, 2009. Her appointment is for a five-year term. Prior to joining the Bureau, Melanie was a partner, first at Davies Ward Phillips & Vineberg and then at Bennett Jones. She also spent two years as a Senior Counsel with the Canadian Department of Justice. What I love the best on her résumé is that she was a Bencher of the Law Society of Upper Canada.

By way of video technology, we have Dr. Alexander Italianer, who has been the Director-General for Competition of the European Commission since February of 2010. He comes to this position after a long and distinguished career within the Commission. He joined the Commission in 1985, spent several years in its Directorate-General for Economic and Financial Affairs, includ-

* ***Editor's Note:*** *This Roundtable was edited for publication.*

ing acting as its Director. He also worked in the cabinet of two Commission Presidents, Santer and Barroso, and two Commissioners. Between 2006 and his appointment in DG Competition, he served as the Deputy Secretary General in charge of, among other things, the Better Regulation Agenda. I think we will hear a little bit about that later.

Moving on to our U.S. guests, we have Christine Varney. We are delighted to have Christine join us this year up here. Christine has been the Assistant Attorney General in charge of the Antitrust Division of the U.S. Department of Justice since April 21, 2009. She served as the Chief Counsel of the Clinton and Gore campaigns, General Counsel to the Democratic National Campaign Committee, and Assistant to the President and Secretary to the Cabinet in the Clinton Administration. From 1994–1997 she was an FTC Commissioner. Prior to joining the Antitrust Division, she was a partner at Hogan & Hartson.

So while you have differing views as to what the Guidelines may or may not do, let me just emphasize the Guidelines draft that came out earlier this week is our best attempt to really put a light on what it is we do.

—Assistant Attorney General Christine Varney

We have Jon Leibowitz joining us again. He is the Chairman of the Federal Trade Commission. He became a Commissioner in 2004 and was designated to serve as Chairman in March 2009. He joined the FTC from a position as the Vice President for Congressional Affairs at the Motion Picture Association of America and before that had a long and very distinguished career on Capitol Hill, and continues to this day to have a very good relationship with his colleagues on the other side of Pennsylvania Avenue, on the Hill.

Jim Donahue heads the Pennsylvania Attorney General's Antitrust Section and is the Chair of the NAAG Multistate Antitrust Task Force. He joined the Pennsylvania Office of Attorney General in 1985 and was appointed as the Chief Deputy Attorney General in 1997.

I have my two questioners here: Roxann Henry, who is a partner at Howrey here in Washington, D.C., and also a Co-Chair of the Spring Meeting Program; and Michael Reynolds, who is a partner at Allen & Overy in both London and Brussels and also currently serves as the Secretary General for the International Bar Association.

With that, I am going to ask, Christine, that we open with a brief statement from you.

CHRISTINE VARNEY: Thank you, Ilene, and congratulations on such a terrific Spring Meeting. I have heard nothing but great things from everybody. I am glad to have the opportunity to see so many friends and colleagues this morning.

I want to start by saying it has been a great year. You know, I got to the Division one year ago as this Spring Meeting ended, and I was committed to transparency, stability, and predictability for business. It was in that vein that we undertook a review of the Horizontal Merger Guidelines. I've been practicing in front of the Division and the Commission for the last decade and have done a lot of mergers at both agencies. One of the things that struck me as I was walking in the door was that I knew the 1992 Merger Guidelines didn't reflect the actual practice of the agency. So, working with Jon and with several of our staff, we all agreed that what we needed to do was to take a look at the Guidelines and talk to you and see if we couldn't make them more transparent.

While I understand many of you have many views as to what motivated the Guidelines—and I'm sure we will talk about them this morning—I think you should know from our end—and Jon, I think, will echo this—our effort here is to be transparent. I fundamentally believe that people in Chicago, Miami, Dallas, Kansas, and Los Angeles are as entitled to know what the agencies really do as those of us who are there on a more daily basis. So while you have differing views as to what the Guidelines may or may not do, let me just emphasize the Guidelines draft that came out earlier this week is our best attempt to really put a light on what it is we do.

If you disagree with us, if you think we have the wrong theory, that's fine, and we should have that conversation. But I don't want to pretend that we don't do the kind of analysis that we in fact

do and that many of you understand on a first-hand basis.

Let me start with that, because that is my marker—transparency, predictability, stability. I believe both businesses and practitioners are best served when we have all of those elements in place.

To that end, we have had a busy year. We are in one litigation, *Dean Foods*. We were prepared to sue on several others that either went to settlement or were abandoned. I think that we will probably talk this morning about some of the better-known settlements, including *Ticketmaster*.

We have an active non-merger program. We have a number of investigations, which I can't comment on because we don't talk about investigations.

Our criminal program continues to be very robust. I think you all know the *Air Cargo* investigation continues; *Marine Hose* continues; we have *Cathode Ray*; we have *Liquid Crystal Display Screens*. So we have a number of criminal undertakings, and I look forward to talking more about them.

The final thing that I'll mention is that we are doing a lot of what we like to think of as competition advocacy. We are advocating internationally, we are advocating on Capitol Hill, and we are advocating in the agencies here in Washington that competition be considered in every aspect of undertaking, whether it is Legislative or Executive.

MS. GOTTS: Thank you.

Jon?

JON LEIBOWITZ: Thank you, Ilene.

As I look around at the panel and I see Alexander, I think almost all of us—Jim, Melanie, Christine, Alexander, and I—have been in our jobs for a relatively short period of time—Christine just celebrated the first anniversary of her excellent tenure, and I've been there a little bit longer, and Melanie a little bit less, and Jim, you've been doing this gig for how long?

JIM DONAHUE: At the Task Force nine months.

MR. LEIBOWITZ: So we're all newbies up here. But we do try to do our best.

In general, our Commission's composition has changed a little bit over the last year—we have two terrific new Commissioners, Edith Ramirez and Julie Brill. Our competition priorities really haven't changed at all since I spoke to you a year ago on this same panel. From our perspective, a lot of it is doing the same things we always do. It is reviewing mergers, and it is looking at instances of potential anticompetitive conduct.

Beyond that, we have a few priorities, and you probably know them. One is fixing the pay-for-delay settlement problem, where we have had a fair amount of success, both legislatively and in litigation; establishing Section 5 as something more than a "me too" antitrust statute, and using it in the way Congress originally intended when it created the FTC in 1914; adjusting the Merger Guidelines—and I think Christine spoke very eloquently about that—to be more in line with the way the agencies actually review deals. I don't think any of this surprises anyone. I will talk a little bit more about each.

In the "pay for delay" settlement area, there have been some promising signs in litigation. We survived a motion to dismiss in a Philadelphia district court. We had a wonderful collaboration with the Antitrust Division and the Solicitor General's Office in the *Cipro* brief to the Second Circuit, and the Second Circuit is looking at revising its all-too-permissive rules on "pay for delay" settlements.

On the legislative side, legislation to solve the "pay for delay" problem, a sort of bright-line test, passed the House as a part of health care reform, and in the Senate came out of the Senate Judiciary Committee. It became part of the President's health care plan. Although we didn't get it over the finish line, in part because of the obscure and exceedingly technical rules of reconciliation, we are very, very optimistic that we will find a legislative solution and Congress will enact a legislative solution sometime this year. It helps when the problem is worth about $3.5 billion a year to consumers and that according to the Congressional Budget Office, the legislation we support will save the government $2 billion over ten years.

On Section 5, the majority of the Commission believes that it is a critical tool to protect consumers. As you have seen, we have used it in the Intel case that we brought earlier this year. We did a 2008 workshop under Bill Kovacic on Section 5. I think we are going to try to publish the report based on that workshop sometime in the fall.

We also have an important initiative on Internet privacy, where we are trying to consider what the rules of the road should be on behavioral marketing. It is a very complex issue, but a very important one to consumers.

—FTC Chairman Jon Leibowitz

On the Horizontal Merger Guidelines, I think Christine got it absolutely right. This is all about transparency. It is our intent to try to really explain to the business community and to the courts and to the folks in the audience how we look at mergers. It was a marvelous collaboration with many of the stakeholders in this room, and with the Justice Department. We are looking forward to receiving comments from you. But we think we have done a pretty good job. Again, we want to work with you.

I see Jim Rill, who is an author of the 1992 Guidelines, sitting in the front row. Those Guidelines, I think, reflected the way the Justice Department and the FTC reviewed mergers then. We have learned a little bit since. We think, and I hope Jim would agree, that the draft Guidelines that we put out are consistent with the 1992 Guidelines.

And then, on merger enforcement we are on a little bit of a winning streak. Since a year ago April, we have challenged nineteen mergers, resulting in eleven consents, three abandoned deals, and our first successful preliminary injunction motion in *CCC/Mitchell*, which was an insurance estimatics case, since 2003—the first time since I was on the Commission that we won a PI.

I should also say that we have closed a number of matters, which is important too. In one of our divisions, in the Bureau of Competition, we probably had something like thirty-two open investigations when I became Chairman. We reviewed all of those cases under Rich Feinstein's leadership, and we ended up closing a little more than half of them. So that is just as important too, figuring out what a good case is and moving on when an investigation doesn't pan out.

Very briefly on the consumer protection side, we have focused on two things this year. One of them is helping out people who are victims of the economic downturn. We brought about twenty foreclosure rescue scam cases, and with our partners, mostly state attorneys general, more than 200 cases involving foreclosure rescue scams and stimulus scams.

We also have an important initiative on Internet privacy, where we are trying to consider what the rules of the road should be on behavioral marketing. It is a very complex issue, but a very important one to consumers.

We were involved in the Consumer Financial Protection Act for financial reform, which has passed the House and which is expected to go to the Senate floor next week.[1]

The other administrative or policy function we have, really going back to our origins, is to just look at industries and issues and study the way industries behave and the way technology is evolving to the public.

---

[1] On May 20, 2010, the Senate approved Senate Bill S.3217, The Restoring American Financial Stability Act of 2010.

One of the initiatives we are most proud of and we spend a lot of time on is a series of workshops on the future of news reporting. Obviously, ad revenues for television networks and newspapers have been dropping precipitously with the growth of the Internet. The escalating growth of the Internet is in most ways a very, very good thing. But it is just not certain whether the creative destruction of news gathering and coverage that we are seeing is going to be good for the American public. Unlike, say, if you own a hotel on Route 1 or on an old federal highway and they build an interstate (bad for you, good for society), here we are dealing with the role of journalism, something that is a core need for democracy. So we are going to do one more workshop, we are going to write a report, and hopefully we can give some advice to policymakers.

MS. GOTTS: Thank you, Jon.

Alexander, would you like to say a few words?

ALEXANDER ITALIANER: I am really glad I can be with you. Some of us here in Europe are still under the volcano, if I may quote Malcolm Lowry. But I hope to be with you next year.

Like many of the others, I am a rookie. I feel a bit like Daniel in the lion's den, also being an economist.

The first thing I want to mention is that what we are doing at the European Commission is also state aid control. This is not like the other agencies represented on the other side of the Atlantic. This has been quite important over the past year in terms of stabilizing the financial crisis. We have been authorizing, in particular, rescue measures and trying to ensure that a level playing field continues to be ensured and that competition problems were not exported from one country to another.

What we are doing right now is looking at the restructuring plans of the banks, and we are dealing altogether with some forty cases. This has been a task that is quite important and keeping us quite busy as we are coming out of the recession.

But of course, it was also "business as usual" from an enforcement authority's perspective. Like the other three agencies, we have constantly been looking at our Guidelines. One of the things we have been revising—actually adopted this week—was a revision of the Guidelines on Vertical Agreements.[2] In particular, looking at Internet sales and also looking at the conditions under which distributors can benefit from an exemption agreement, we imposed a new market share threshold of 30 percent, which will be applicable on the buyer's upstream market. This threshold already applies on the suppliers' market.

With regard to our enforcement policy, I would like to mention two sectors in particular. The first sector is the energy sector, which is perhaps fairly specific for Europe, where we have quite a few cases, including many commitment cases resulting from an investigation under our dominance rule, Article 102 of the Treaty. The terms of the commitments include parties agreeing to release capacity for consumers or to improve their grid management to remedy the competition concerns, such as possible foreclosure derived from vertical integration or lack of access to the infrastructure.

On the IT side, our actions have, of course, been quite visible on the other side of the Atlantic, with the *Intel* case, also with the Microsoft Web browser commitments that were obtained at the end of last year, impacting, of course, a lot of the European consumers.

---

[2] The revised guidelines can be found at http://ec.europa.eu/competition/antitrust/legislation/guidelines_vertical_en.pdf.

We also are working on standards, in particular the need for standard-setting bodies to have open and transparent procedures. I think that the commitments that we obtained in the Rambus case are quite relevant there.

As I look forward to the year ahead, I think that the activities resulting from the crisis will still keep us busy. Like I said, there are forty banks under restructuring. We have only dealt with a couple of them. We will try to analyze them all before the end of the year.

At the same time, we will be reviewing our Guidelines on the horizontal agreements, with a particular focus on information exchange and standards, trying to build on the case practice and the case law, and trying to integrate that into our Guidelines.

At the same time, we will be reviewing our Guidelines on the horizontal agreements, with a particular focus on information exchange and standards, trying to build on the case practice and the case law, and trying to integrate that into our Guidelines.

Of course, our bread and butter is antitrust, in particular cartels, where we will continue to be very strict. We will pay due attention to companies that are in genuine financial difficulties when it comes to paying the fines. I think that the crisis reminds us that maintaining competition enforcement is important to maintain a level playing field in order to get out of the crisis in as forceful a way as possible.

Finally, as regards our enforcement system as such, I think that our system in Europe is a bit different when compared to others in the rest of the world. I think it compares to the best systems in the world. But we continue to look at improvements.

We have just published in January some text on new best practices that we are applying as regards the antitrust proceedings and the best practices of our hearing officers; also we published guidelines on the submission of economic evidence because we try to incorporate more and more economic evidence in what we are doing.

And, like Christine mentioned when she referred to the Merger Guidelines, we try to build more predictability and transparency into our own procedures. So far the reactions have been quite good.

The last thing I would like to mention—I would say it is last but not least—is our very firm intention on this side of the ocean to cooperate very closely with our counterparts in other jurisdictions, and in particular the United States and Canada. I think we already have an excellent track record, whenever needed, I speak to my colleagues. I would say that the recent cooperation we had on the *Cisco/Tandberg* merger is again an excellent example of our cooperation. I would like to thank our colleagues for that.

I am sure that in the rest of this discussion we will discuss cooperation and convergence.

Thank you.

—Director-General Alexander Italianer

MS. GOTTS: Thank you.

Melanie, would you like to go next?

MELANIE AITKEN: Sure, I'd be pleased to.

First of all, I'd like to say just how extremely pleased I am to be here. Thank you, Ilene, for inviting me. It's a real privilege to participate with the crowd up here.

If there is a key message to be taken from the events of the past year in Canada, it is that we entered a new chapter in Canadian competition law. We have substantially revised laws as of last Spring, and we have a revitalized mandate from Parliament to enforce those laws.

There are two areas where changes occurred that are probably of most interest to this audience, and they are in respect of our merger review process and our assessment of competitor collaborations. Very briefly, with respect to mergers, I want to emphasize that we haven't changed our analytical approach. Certainly, we will be watching what is happening with the U.S. Guidelines

and considering whether we want to be doing anything there.

But clearly, the reforms in our laws have been to do with process. They have really introduced a balanced framework that allows us, in circumstances where there is a real risk of anticompetitive consequences arising from a merger, to actually access the information that we need to perform our review before the merger closes—it may sound surprising to this audience that we didn't have it this way before these amendments came into force.

The new framework allows us to thoroughly review mergers that do pose real concerns. We don't look to turn over every rock or exhaustively look at every issue, but rather to focus very early on the key issues with the case, work with the counsel, try to front-end-load documentary production, and the like, and simply just make this work.

We don't look to turn over every rock or exhaustively look at every issue, but rather to focus very early on the key issues with the case, work with the counsel, try to front-end-load documentary production, and the like, and simply just make this work.

—*Commissioner Melanie Aitken*

With respect to assessment of competitor collaborations, we now have a per se criminal offense for hard-core cartels—again, something you all take for granted, but that we didn't have. We were a bit of an anomaly around the world, in that we had to prove an actual market effect, even in the face of a naked cartel agreement.

At the same time, we have removed a chill from our law, which subjected all competitor collaborations to potential criminal investigation. Of course, we didn't think that was the right balance either. Whether it made a real difference in practice, in theory it was a real anomaly. I think it caused a bit of a disjunction with our colleagues, particularly in the United States, in terms of trying to make sure that we could collaborate and align our investigations as closely as possible, and to reap all the benefits that that sort of cooperation entails.

While I firmly believe that these amendments are extremely good for Canada and for all those who carry on business in Canada, they do come with a very significant responsibility on our part. Our reaction when these amendments came into force relatively quickly, and a little bit unexpectedly, last year, was to become very active in our outreach to the consumer community, to the business community, and to their advisors, to try to educate, to listen, to learn, and to develop the best possible enforcement processes and practices that we could. This outreach has greatly assisted us in putting these terrific new amendments into play in a way that is good for business and good for consumers in Canada.

At the same time, and really more a matter of personal philosophy—and I certainly see it echoed in my colleagues here in the United States, and I'm sure it was ever thus—I have taken a very active role in our major enforcement matters. I think businesses have the right to know that I am engaged and, while I may not show up everywhere, they can be confident that I am aware of what is going on. I will be available and accessible at key milestone events, and I will be the one to tell them the news, whether they actually like the news or not.

In terms of the amendments, we were very active in releasing guidance on our enforcement approach. Within a few weeks of Royal Assent, we issued draft guidelines on the merger review process, very significantly assisted by our friends here—and, indeed, I would be remiss if I didn't mention the enormous support that we got before the amendments even came into place. Agencies and individuals out in practice not only gave us guidance as to how we could do this better, but also commented on these guidelines and gave us some really good ideas on how we might be able to do the best job in our particular Canadian circumstances.

While we adopted a lot—and I think we are very lucky to benefit from the input from the United States—we also strived to make it a "made in Canada" version, if you will, to reflect our different context and the fact that we have a different tradition that, perhaps by necessity, and certainly under the old regime, demanded an enormous amount of flexibility and accommodation. We issued those guidelines in draft in the Spring and finalized them in the Fall.

Likewise, we issued draft guidelines on our competitor collaboration provisions to calm, frankly, those who were worried—and I understand why, because there are limits to the English language in terms of how you articulate a per se offense in a statute. We don't have the many, many years of jurisprudence that you do, so we were trying to fit it into a statutory provision. So we got out to try to articulate that as best we could.

I think we were pretty bold and brave in taking a lot of things off the table very explicitly in our enforcement policy. Dual distribution agreements, franchise agreements, non-competes—those are not going to be considered under our criminal provision. If they are considered at all, they will be considered under a civil provision, which does require a market effect, and even—very Canadian—an efficiencies defense is available.

For obvious reasons, my priority this coming year, as it has been in the past year, is to get these amendments off onto a solid footing. In that context, there are a number of areas of our law in which we don't have very much jurisprudence.

And so, as one looks around the world—and I think the United States is an excellent example—you see authorities very willing to step in and say, "We are going to do our best to delineate the bounds of lawful and unlawful conduct." I think Canadians and those who carry on business in Canada should expect no less from us.

Really, this all sounds very good, but what does that mean in practice? To me, it means two things. It means, first of all, that we are going to continue to develop and refresh guidelines to the extent that we possibly can, so as to provide as much guidance and transparency as we can. Second, we are not going to hesitate to enforce in circumstances where it is necessary, in our view, to do so. Our first, second, and third preference will always be to resolve a matter consensually. But in appropriate cases, we won't be deterred by the fact that we very well might lose—that's always a real prospect because we wouldn't be having a tough fight if it weren't a close call. We won't be afraid of losing, and we will take cases to litigation. A loss in that context, to me, is not a loss, provided we do it in a principled and measured fashion, which, of course, is our commitment. We will clarify the law, we will increase transparency, and we will effect deterrence. In my view, there is absolutely no better deterrent to those considering anticompetitive conduct than to know that if they do do it, we have the will and the courage to enforce the law.

Now, I must say that a well-articulated commitment to enforcement does come with its own set of challenges. I have every reason to believe that the experience has been the same here in this administration and, no doubt, before that. But if you are clear that you will enforce the law if parties are over the line, parties have this tendency—and this is good—to play ball and to get you the remedy that you think you need in the public interest.

It doesn't make for great statistics, and the media loves to look at a lackluster enforcement record, but it is clearly the right thing to do, in our case, for Canadians, but obviously, and more generally, around the world.

We have been very active in our enforcement in mergers. We have had six consent agreements in seven months, in one period over the last year. We had an abuse settlement in very robust terms in a waste collection case. We have an active abuse of dominance case for the first time in seven years, in front of the Competition Tribunal. And, of course, we have been active on the criminal and consumer protection front as well.

I echo Jon's comment in terms of focus, focus, focus. In our case, even more so—we have fewer resources. But our view is that we can do a lot more by doing fewer things, focusing on where there are real issues and making sure that we see them through. Advocacy, yes, but probably more so these days through cases, advocacy through shining a light on issues through active enforcement.

Just to sum up, it is an exciting time for us in Canada. I encourage you to keep an eye north of the border. There is a lot of change going on. But I can assure you, to borrow a phrase I heard yesterday, that "we are on the beat." I think those who are in Canada and carrying on business in Canada can be confident that we are doing our best to ensure that competitive and honest markets are promoted to the best of our ability. We will certainly be looking forward to working with our international colleagues to that effective end.

Thank you.

I think the states are going to focus on three things in the coming year: conduct that is going to harm consumers; conduct that would harm state and local governments; and health care.

—*Task Force Chair James Donahue*

MS. GOTTS: Thank you.

Jim, what are the states up to?

JAMES DONAHUE: Thank you, Ilene.

I think the states are going to focus on three things in the coming year: conduct that is going to harm consumers; conduct that would harm state and local governments; and health care. I will talk a little bit about each of those three things very quickly.

On the consumer side, the states are going to look at the traditional types of anticompetitive conduct that harm consumers—like price fixing, like vertical price fixing; market allocations; other types of arrangements that have a harm, where consumers result in paying higher prices for the goods and services they need and purchase.

We also are going to look, and have looked, at mergers that impact consumers. Where the merging parties are largely people who sell products to consumers, we are going to be involved in those types of cases.

Thirdly, most attorneys general have very active consumer protection offices. They handle everything, from the situation where the roofer takes the deposit from the consumer and then disappears, to the things that Jon was talking about, where many states have worked with the Federal Trade Commission on mortgage repair scams or debt repair scams or any number of other things where there is a nationwide impact. We work together with the Federal Trade Commission to end that type of conduct.

On the state and local government side, as everybody here knows, state governments, in particular, and local governments are in a considerable amount of financial distress. There are a number of things that we are doing.

We are working very closely with the Department of Justice. Christine Varney has set up a process where the states and the Department of Justice are going out and doing bid-rigging training of state and governmental purchasing people, to have them better help us to be able to detect bid-rigging and other types of conduct that raise the price of the products that governments purchase and that governments need to function.

Another thing that we will be active in is those mergers where the merging parties sell stuff to governments. We are going to talk about a case a little bit later on today where I think you will be surprised that the states and the local governments were a major purchaser in that instance.

So mergers where the product is something that the states use: We have previously been involved in things like rock salt, which obviously everybody, at least in the northern part of the country, is familiar with; obviously, the states are the biggest purchasers of rock salt. Aggregate is another thing. But there is a wide variety of products that states purchase, from computer products to other things, where if there is a merger there, we are going to look at that very carefully.

Now, let me talk for just a couple minutes about health care. One of the things that happened in the health care reform bill is that there was a lot of focus on failures in coverage, making sure

that people who didn't have insurance coverage got it. There was less focus in that bill on the competitive impacts in health care. This is an area where the states have been very active, both with the FTC and the Department of Justice and by themselves over the past several years. Let me give you a couple of examples.

The Nevada Attorney General's Office, with the Department of Justice, about a year ago reached a settlement involving Medicare beneficiaries in Las Vegas. There were two competing Medicare HMO plans that were merging. They took action that required divestiture there. The Texas Attorney General's Office took action against a hospital that was requiring health plans that dealt with it to not deal with other providers that were competitors of it. They stopped that conduct.

Two years ago, during this meeting, a merger in Scranton, Pennsylvania, involving two hospitals and a health insurer fell apart after our office said that we would go in and challenge that transaction.

The important thing here is the last two examples I gave you, the Texas example and the Pennsylvania example, were situations where the states were acting on their own. They weren't acting with a partner federal agency. Now, we often are, especially in health care, and we have a very good working relationship with the FTC and the Department of Justice, and we have active things going on, many in health care with the FTC, a couple of things with DOJ. We are working with both of those agencies both on a one-to-one state basis. We've got a particular case in Pennsylvania where we are working with the Federal Trade Commission, and we also have multistate cases where we are working with the Federal Trade Commission and the DOJ.

Christine and Jon have been very helpful in encouraging their staffs to work together with us. We have had a very positive working relationship. We see that continuing and enabling all three of us to do more effective enforcement over the coming years.

Thank you.

ROXANN HENRY: Cartel enforcement has captured a large part of the enforcement resources across the globe, so we'd like to start with a couple of questions focusing on the cartel area.

Melanie, the 1985 Mutual Legal Assistance Treaty (MLAT) between the United States and Canada provides for the sharing of extremely confidential business information, and even provides for the sharing of grand jury evidence. Can you give us some sense of what cooperation has taken place under that MLAT?

MS. AITKEN: Sure, I'll be happy to.

I should introduce the topic by saying that we don't need to use MLATs very often, because we tend to cooperate using other less formal means, and increasingly even, so that our relationships become ever closer.

The MLAT process is quite involved and offers affected parties the ability to contest it. This can be very expensive and very time-consuming. But it effectively allows law enforcers, including competition authorities, to request formal assistance from each other in obtaining and transmitting evidence relating to criminal matters, including hard-core cartels.

We have MLATs in Canada with thirty different jurisdictions, including the United States. Over the past ten years, we have only resorted to using the MLAT about six times, as I understand it, to or from the United States.

Requests under the MLAT can cover quite a range of things. They can involve depositions, witness interviews, search and seizure and requests for records. Most commonly, requests have been made for searches to be conducted by the other country, or for documents that we couldn't otherwise access.

As Roxann mentioned, it is possible for the Canadian Bureau to gain access to U.S. grand jury evidence through the MLAT process, if the U.S. court authorizes the waiving of grand jury secrecy. So in that way, we would get something from the U.S. Department of Justice that they had collected for their own investigation.

Under the MLAT, we are also able to request that the United States subpoena for us information from the specified companies or actually conduct a search.

Obviously, we are talking about very confidential information. These MLAT requests come with very, very strict confidentiality requirements, such as restrictions on use of the information and documents received, and various conditions imposed by the requested authority. In the case of an MLAT request to conduct a search, when applying for a search warrant, the Bureau will, in appropriate circumstances, seek a sealing order to seal the request and any information submitted to the court in support of the search warrant.

It is not unique to the criminal context that we attach this importance to confidentiality, but, obviously, it takes on special meaning in this area. We are very aware of—and I want to emphasize very—and very sensitive to the fact that our stock in trade and our credibility turn very much on our ability to zealously protect that confidential information and I can assure you that we do so.

We do have other tools for getting information. By far the most important vehicle that we use is informal communication and cooperation. With respect to our colleagues here in the United States, we are fortunate to do that on almost a daily basis.

We have a provision in our Act that allows us, at our own initiative, to share information for the administration and enforcement of the Act. But again, in that context, let me assure you that we use that provision very, very carefully and we always require commitments with respect to how the information would be used. And frankly, we are very careful about the circumstances, and indeed the requesting authorities, as to whether we would provide that information.

As to what we share under this informal sharing mechanism, it's everything that you would expect: theories, information, sources of evidence, strategic issues, and the timing and the use of formal powers. With the advent of immunity and leniency programs around the world, it often means that we are going to get this information voluntarily from parties, which is, of course, the easiest route of all. Waivers are also becoming much more common, and in those cases we can get much greater detail.

So we really just look to the MLAT procedure to get evidence that is held in the United States or in one of the other countries that we cannot otherwise access.

MS. HENRY: Looking across the ocean, Alexander, cartels are not criminally prosecuted, but European fines have become astronomical. Certain folks are very concerned that the fines have gotten to the level where they are threatening the competitive viability of the companies, and certainly their overall viability in this economic environment.

Can you give some perspective on how that squares with the 2020 objectives? And also, could you comment just briefly on whether the Commission is looking at any ways to focus more on the culpable individuals instead of just heaping more fines on the companies?

DR. ITALIANER: Thank you, Roxann.

First of all, a word about the 2020 objectives. This is part of the new economic strategy that we are devising at the European level. It became necessary, in particular when we were coming out of the crisis, to move more to an economy that is based on knowledge, on innovation, is also sustainable and creates more jobs. So it is really a new economic strategy.

I would say that cartel enforcement has to be part of that strategy because a level playing field, competition, I think is the most beneficial breeding ground for a knowledge- and innovation-based economy.

As regards the fines and the level of our fines, it is true that the level has increased quite substantially since we introduced new fining guidelines a couple of years ago. We recognized that the level of our fines was clearly not deterrent beforehand, so we had to increase it in order to increase the deterrence.

I would say that the absolute level of the fines may sound astronomical, but it is not so important per se because we are very often looking at quite a large group of offenders with very large turnovers. So I think that has to be related to the turnovers of the companies. There we have an absolute cap on this, which is a 10 percent cap, which has existed since 1962. I think it has proven its value over the years.

We recognized that the level of our fines was clearly not deterrent beforehand, so we had to increase it in order to increase the deterrence.

—*Director-General Italianer*

Now, of course, when it comes to the actual payment of the fines, which very often may take place years later than when the actual offense occurred, we very closely look at the financial situation of the firms, like I said in my introductory statement. If there are real problems that would, for instance, lead to insolvency or bankruptcy, then we are ready to look at the fines. But, generally speaking, I think that the level of the fines is okay at this time.

When it comes to the fining of individuals, I think that this can only be additional to what we are doing in terms of fining companies because, after all, it is the companies that benefit from the excess pricing that they can obtain through a cartel. So I think the companies will always need to be fined.

It would be very hard to imagine that the European Commission with its powers could prosecute individuals in a way that this can be done in other jurisdictions. So I don't think this is something that will come very soon. But there are a couple of our Member States where this is possible and it is actually happening. There are not that many cases, but there have been a few cases, in the United Kingdom, for instance.

I think we need to consider the interaction between prosecuting individuals and the process and procedures and transparency on the one side, and the access to files that we have for the fining and infringement process with regard to firms on the other side. So there is quite a nexus between prosecuting individuals and prosecuting the companies. I think that if there is some progress to be made there, it is probably better done at the national level, at the level of our Member States.

MR. LEIBOWITZ: From the perspective of an agency that doesn't have the authority to seek monetary penalties for most of the cases that we bring, I think imposing a high level of fines is a really important deterrent to stopping bad conduct.

Moreover, in Europe you don't have the development of class actions and private damage litigation that you have here. Now, some people may say, "You know, here we've let it go perhaps too far"—and I might agree—and there is a toxic combination sometimes of class actions and treble-damage litigation.

But when you don't have those remedies—and in Europe they don't—then you really do need fining authority and you need to use it vigorously to stop malefactors. Of course, reasonable people can disagree about whether the fines that the European Union has imposed on companies are appropriate.

MS. HENRY: Christine, you bask in the glory of an outstanding criminal enforcement record. At the

same time, Judge Douglas Ginsburg, even as early as this morning, in a terrific program that I hope some of you attended, has looked at it and said that corporate fines are the wrong way to go, that the focus is misplaced; corporate fines are really punishing shareholders, and possibly the consumers when the companies have to increase their margins after they pay all these huge fines. He has advocated focusing on the individuals and less on the corporations.

Do you have any thoughts on that?

I do believe a robust corporate compliance program creates a culture of compliance, which is what you want to see in corporations.

—Assistant Attorney General Varney

MS. VARNEY: Let me start by saying that your first observation, that I bask in the glory of a terrific criminal program, is absolutely correct, going way back. As has been mentioned, Jim [Rill] is in the front of the audience, and Anne Bingaman certainly did a lot, and it is led by our terrific Deputy, Scott Hammond.

You know, we have a unique provision in the Division, where the corporate leniency program really does encourage cartel participants to be the first ones to come forward. It has been significant for us in detecting cartels around the world that the leniency program has worked so well.

Now, I believe that the leniency program works very well for two reasons. One is that if you are caught and you are not the first one in the door, you will go to jail. The second one is there will be significant fines imposed, coming out of the corporate treasury, that we believe deter corporations from allowing this kind of behavior to go forward.

You and I had a chance to chat about this a little bit beforehand. You know, I have served on corporate boards, and on Fortune 100 corporate boards, and I can tell you as a board member my first concern was always maximizing and protecting shareholder and stakeholder value. I would have been remiss as a director if I was not sure that we had a very robust compliance program, where every member of the corporation operating divisions understood what the rules were, regardless of the environment—environmental rules, antitrust rules, health rules, worker safety rules. I mean there is a wide variety of legal compliance issues.

I do believe a robust corporate compliance program creates a culture of compliance, which is what you want to see in corporations.

Now, in every corporation of significant size, there is a possibility of rogue actors. So we will look at every transaction, every violation, on the facts and the evidence of the violation. If, for example, you have a corporation that has an extremely robust compliance program, a corporate culture of compliance and responsibility, that no amount of training could have detected a very well-insulated rogue actor, that will be a factor in whether or not we prosecute the corporation and seek corporate fines.

With all respect to Judge Ginsburg, who has added so much to the theory and practice of law here, I do believe, both as a law enforcement officer and as a former corporate officer, that corporate fines are a very large deterrent. They are a very good incentive to get everybody focused on what you need to do to ensure knowledge and compliance with all relevant laws throughout the company.

MS. HENRY: Jim, the states have certainly not been absent from cartel enforcement. You touched earlier on bid rigging in your statement. Can you give us a little bit of insight into whether the economy has provoked greater bid rigging, or at least whether it has become any larger part of your agenda at the state level?

MR. DONAHUE: Yes, it has become a larger part of the agenda, for a couple of reasons. As I mentioned, the stuff we have been doing with the Department of Justice has led to some important

leads. So we expect that, maybe over the next year or so, we will be bringing additional bid-rigging cases.

In terms of complaints, I don't know, I can't do a scientific study, but certainly we have gotten more complaints about bid rigging over the past year than we have in a while.

The other thing that we see in the bidding area is an effort to maybe not use bid rigging to remove competition, but to use other things to remove competition. For example, now we are seeing specifications coming through for a particular product that is exclusively distributed by one particular manufacturer or one particular bidder. Those things are increasing the cost of products to government.

The thing we are getting from the government agency representatives is: "What can you do? Is there something that you can do to reduce the cost of these products? They have gone up, and we're concerned about it, because now we have this budget crisis and we've got to find ways to cut. The fact that something is 10 or 20 percent more than it was a year ago is a big problem."

MS. GOTTS: Let's focus for a few minutes on mergers if we could. I'd like start out with Melanie.

Melanie, you have changed the timing of your merger review process. Perhaps this is designed to make Canadian merger review more akin to the United States, with a thirty-day review process and a second request. How is it working?

MS. AITKEN: Well, it is early days still, but we have had some opportunity to assess our new process since it came into force last March.

I would note that it is a little complicated because, notwithstanding we all had fewer—dramatically fewer—merger notifications last year, we certainly were faced with a number of very, very complex strategic mergers that required, perhaps a little bit disproportionately to some of the years prior when we were looking at a lot of equity deals, real attention and real information.

By way of background for those of you who don't closely follow Canadian merger developments, we have a new, two-stage merger review process, much like the second-request process. I hesitate to say that at home, but I will say it in this audience. It is a "made in Canada" version, but it does very much replicate the second-request process in structure.

The reason I hesitate, of course, is because of the concerns you all hear so much about, or perhaps articulate yourselves, with respect to the sometimes real and sometimes perceived burdens associated with complying with a second request. Certainly—and I don't say so pejoratively—we heard those kinds of concerns from our business and our legal community in the period leading up to the implementation of the new merger review process. We already have an acronym. It's a Supplementary Information Request or "SIR," so "To SIR with Love," or something.

But in any event, there was a real concern over the costs and resources involved in complying with a SIR, and that SIRs would lead to excessive burdens on businesses.

I have to digress to say that I think most practitioners have been very supportive in Canada. We have really just gotten down to business and not distracted ourselves with hand-wringing.

But the excessive burdens haven't really materialized. We now actually just have a framework that makes sense. It is a framework that is not arbitrary, turning on the risk tolerance of the parties to close without comfort.

But I think part of the reason excessive burdens haven't materialized is that we did not add resources to our merger team. We are still in the fifty-five-person range. So we have a much-aligned incentive to not over-request information.

I think, more in a principled manner, we are very, very conscious of the power and effectiveness

of this tool if used properly, and we want very much to preserve it. Certainly, the early experience has shown that it is doing exactly what we hoped it would do.

I know you don't always believe it, but at the end of the day, we are actually not looking to make life difficult. We do want to get to the very same place you do, which is to dispense with reviews as quickly as we can in most mergers where they are efficiency-enhancing, and get down to business and focus on the core key issues in other cases as early as possible, so as to ascertain whether we have an issue, and, if we do have an issue, to identify what remedy is necessary to resolve it. Our interests are very much aligned in that respect as well.

[W]e managed to get one of the most complex transactions we had seen in a decade resolved to a satisfactory and very robust remedy in less than four months. And we got a pretty good report card, for the most part, from the parties and the public, as well.

—Commissioner Aitken

And so what we did was concentrate—and I mentioned this earlier—on coming up with guidelines and practices that do the most that we can to focus early, use counsel to help us do that, and get access to the clients as quickly as we can. And, indeed, we engage in things like what we call a pre-issuance dialogue of our Supplementary Information Request. What that means is that by day twenty-five in the first thirty days, we are sending off to parties a draft list of questions on the issues that hopefully we have narrowed, to drop some off the table, to get their comments—not so much to negotiate it, so much as to say, "Look, can you even give us the information in this way, or can you suggest to us a more efficient way to access a proxy for exploring whatever issue it might be?" Pre-issuance dialogue also assists us in making sure that the requests set out in the SIR are as narrow as they can reasonably be.

We also have limits, as do your Guidelines, on custodial numbers, time periods, and the like.

I think all of those measures are going a long way to demonstrating a commitment on our part to reduce the parties' burden as much as reasonably possible, and these measures are working out well in practice. We even managed to dispense with a SIR altogether in a case where one would have thought it was almost obvious we would need one. In those cases where we have had to issue them—and there have only been seven in just over a year—they have been much narrower than one might have expected. Only four have gone to full compliance, even on the terms that we have issued them.

I think we are very firmly of the view that the amendments have established a much more efficient and effective process.

I'd be remiss not to mention, of course, that it also aligns us much more closely with the U.S. process, which makes coordination much better. I think, frankly, on a very practical level, my observation is that the Canadian counsel who are representing the Canadian side are able to access and talk in a more direct way with U.S. counsel or European counsel because they are really speaking the same language. In the past, sometimes we've had a difference because it was a disjointed process and the clients decided to address the issues in the United States first, especially since they had an absolute right to close in Canada if they actually wanted to go that way and could tolerate the risk.

We had an early example of success with the new process in our very own *Exxon/Mobil* deal, *Petro-Canada/Suncor*. The deal arrived right out of the gate, literally within a week of the introduction of our new merger review process. Even so, we managed to get one of the most complex transactions we had seen in a decade resolved to a satisfactory and very robust remedy in less than four months. And we got a pretty good report card, for the most part, from the parties and the public, as well.

This process obviously requires an enormous commitment from us to address a variety of new issues that we are struggling very hard to get on top of as quickly as we can. I know we will make mistakes. But I must say again that I tip my hat to the counsel with whom we have been working. People realized that we've got a new process, it can work really well, and as long as we get it off on the right foot, we can do a lot of real good with it.

MS. GOTTS: It sounds a lot like the United States—cooperation with the parties, etc.

Now, something that doesn't sound familiar to us in the United States, Alexander, is the very complex system you have in Europe for deciding who has jurisdiction. Some mergers escape the EU thresholds as a result of the "two-thirds" rule, which states that a transaction that otherwise meets the thresholds of the Merger Control Regulation is not reportable in Brussels if the parties generate at least two-thirds of their revenues in a single jurisdiction. In some cases, that has meant a suspension of the national rules by the National Competition Authorities—for instance, in the *Lloyds* matter or in the *Alitalia* matter.

Is the Commission going to seek to change this, Alexander, the next time you have an opportunity to review the Merger Regulation?

DR. ITALIANER: We have indeed, as regards mergers, a somewhat more diverse system than we have for antitrust, because in antitrust there is really a unified legal framework that is being applied both by the European Commission and by the national competition authorities.

For mergers the system is somewhat different, in the sense that we are trying to have a "one-stop shop" system, so that mergers only need to be notified either with us or with the national competition authorities.

But then, when it comes to the application of the rules, there is not the harmonization that we have for antitrust. There is, of course, a lot of national convergence, but in the legal sense they are not harmonized. One has to weigh convergence concerns here against efficiency concerns.

That is why we have this "one-stop shop" system, where if the merging parties realize more than two-thirds of their turnover in a single country, it is the competition authority of that country that takes over the case. Generally, this has worked quite well, and I think it is appreciated by the business community.

There have been a couple of cases, and you cited two of them, where other concerns than purely competition concerns have come in to the national merger decisions. So there are still a couple of our Member States where the competition authorities can be set aside for other concerns, for reason of public interest.In a sense, that is regrettable, because we don't have a similar system at the EU level. But I think it is not a particular reason to change the system.

We have recently reviewed our system, which in its current form is now five years old—and if I look at the United States, that is relatively young, given the time lag you have in reviewing your Guidelines. Our preliminary conclusion is that the system is working actually quite well. We may in the future proceed to some adjustments at the margin.

It is a bit too early to say. We have a new Commission, and Vice President Almunia has only been in office for two months. But I wouldn't expect a radical change in the system.

MS. GOTTS: Thank you.

Christine and Jon, I was waiting and watching by the hour this week to see when the draft Horizontal Merger Guidelines would come out, and on Tuesday you released them. The buzz around the rooms that I have heard—though I only hear some of the comments—are the following three general themes: (1) there is less emphasis on market definition, which is now described as one analytical tool among several; (2) there are higher concentration levels, but the word "presumption" still appears in it; and (3) while the Guidelines contain few surprises, what I am hearing from the lawyers who practice before the agencies is that they wonder what the impact will be in the courts.

So I was wondering, from your perspective, what do you view as being the key changes, Christine?

MS. VARNEY: I know it was entirely coincidental that Jon managed to get a vote and get them out on Tuesday. That was great work on his part.

It was important to us both, I think, to have them out for this week, because both of us have had the opportunity to have many, many conversations with people and begin to get feedback.

Ilene, I think you have identified what I am hearing. Again, on market definition, I think anybody who has done a merger, in the last four or five years at least, at either agency would agree the market definition is an iterative process. Sometimes that works to the parties' benefit and sometimes it works to their detriment. Every transaction is viewed on the facts of the transaction.

So when you've got a repositioning or an entry argument in what otherwise would be an anticompetitive merger, I think this is something that you are obviously going to like. It does tend to cut both ways, but, more importantly, it reflects the reality of how we do the work.

One of the things you didn't mention, which I always found interesting, was whenever I was doing a merger in private practice, we tried to overwhelm the agency with the direct evidence that told our side of the story. So I thought it was very important—I think everybody agreed—to get direct evidence into the Guidelines, and you now see that is given the place that it deserves because we do rely quite a bit on direct evidence.

The thing that I have heard a lot as I've walked around is, "Oh, you've expanded your power and your jurisdiction by your description of how you will look at unilateral effects."

Well, frankly, we haven't. Whenever you have a merger—a four-to-three, a three-to-two—when you are bringing that merger to the agency and you are in a second request, you are doing everything you can to persuade the agency that there will not be a substantial lessening of competition.

I can't tell you how many times in private practice I generated critical loss analysis, I used price and cost margin, I looked at critical loss and put it in front of the agencies. These are tools that we have used consistently when you have a very complex merger in what might be an increasingly concentrated industry, and you have the data, and you have the ability to look at the data through a variety of prisms. It is what we do. It is not in my view an expansion of authority or an expansion of power.

Now, you can quibble with whether or not you like that we do it, whether or not various econometric models are actually predictive of a post-merger environment. But we use it, we look to it; the courts use it, the courts look to it.

It would be foolhardy to predict what the courts will do in response to the Guidelines. Some courts pay attention to them sometimes; some courts do not. Some courts endorse them; some courts specifically critique them.

Again, this is an effort for us to be transparent, to explain to the broader community what we do when we analyze a merger. I have had—I know you all have had this experience too—general counsels of companies say: "Well, why do you need that data? That data is not in the Merger Guidelines." You explain to them: "We are in a second request. If we generate this kind of data, it really is going to be helpful to our story." Then they get it.

It is odd to me, but general counsels actually do pick up the Merger Guidelines and read them. When you are the counselor telling them, "Well, I know it says that, but that's not quite how the agency does it," that's not good for anybody.

So I don't think the Guidelines are all that different in substance either from 1992 or 1997, and I certainly don't think they are really any different than the practice today.

MS. GOTTS: Thank you. Jon?

MR. LEIBOWITZ: I do agree almost entirely with Christine. I think she is right. So I guess I would just make a couple points following up.

This has been the most open Horizontal Merger Guidelines update process ever. I know that Jim Rill involved lots of stakeholders. We did too. We also had multiple workshops all around the country. We put the Guidelines out for comment.

So from my perspective, although to some extent there might be a little less certainty with the proposed Guidelines—there's not a "check the box" approach—but to another extent, it explains what we are doing much better to people who are practitioners, and also to district court judges whom we want to understand best practices.

—Chairman Leibowitz

And also, we got it done pretty fast. The process started just last fall.

I would say there are a couple of things that I am most proud of or would focus on.

One is, of course, we changed the HHI threshold. Again, we changed it consistent with the way the agencies think about it, and it does a better job of describing how we actually use them. I think that is helpful to general counsels and to practitioners all around the country.

And then, maybe the most important thing from my perspective is we explain that market definition isn't an end itself or a necessary starting point of merger analysis, but instead it is a tool.

I will tell you two experiences that I have had as a Commissioner that made me think that we need to have a direct evidence section. One was our evidence in an internal Commission case, a hospital merger case north of Chicago, in North Shore, in which the direct evidence was absolutely overwhelming. Another was *Giant/Western*, which was a petroleum merger case in the Southwest, in which the judge just took a very mechanistic view. This is, of course, not the intent of the 1992 Guidelines, and it wasn't the way most informed, smart, generalist district court judges look at them. And he might have been right in his decision, so I don't want to say he was wrong. We lost our PI, of course. But he took an incredibly mechanistic view of how the Merger Guidelines—and he looked at the Merger Guidelines—but a mechanistic view of how they should be interpreted. So he looked to see will we have coordinated effects—maybe, maybe not; will we have unilateral effects—maybe, maybe not. But he didn't really look at the totality of the evidence, which is what we should be doing and what judges should be doing.

So from my perspective, although to some extent there might be a little less certainty with the proposed Guidelines—there's not a "check the box" approach—but to another extent, it explains what we are doing much better to people who are practitioners, and also to district court judges whom we want to understand best practices. They can disagree with us, of course, and they can certainly disagree with the evidence we bring to bear in a case.

Part of this is informing the business community. Part of it is informing the judiciary. We think we have done a better job. And again, we are taking comments.

MS. GOTTS: Jim, are we going to see the states get into the game as well and update what might be outdated Guidelines?

MR. DONAHUE: I don't know that we are going to update our Guidelines in the near future. We've got a lot of priorities. And it is difficult for us. Unlike the Department of Justice or the Federal Trade Commission, most of the states don't have economists on staff. We don't have policy offices.

I get calls like I got a couple of weeks ago. We had a very successful case involving TriCor. We got $22.5 million. I sent the check out to the agencies. Then I got a call a couple weeks later saying, "Look, we really like that check you sent us. Can you get us another check in some other case?"

The idea that we would stop doing everything and work on Guidelines isn't something that we can normally do in the short term. So I don't think that we are going to do that.

In terms of our Guidelines, there are a lot of concepts in the new Guidelines that are very similar to the concepts that were in the NAAG Guidelines. Some of the stuff that we've talked about,

about having really empirical evidence of efficiencies, are now more incorporated into the new Guidelines. That was something that was in our Guidelines a while ago.

The focus on the ultimate effect of a merger (is it going to mean a price increase?) was a concept that is in our Guidelines. It is now talked a lot about in the new Guidelines.

The other thing that I hear all the time, or I have seen in the past couple of days, is "Will the Guidelines mean some great new ability to enforce merger cases or block merger cases?" No, that doesn't mean that. I think everybody here has said that the Guidelines are incorporating practice. But when it comes down to the decision whether to sue or not sue, it is based on what is the evidence like, what does the economic data say, what are your economists going to say. The Guidelines don't really change this.

We had a case a couple years ago with the FTC. We were jointly investigating this particular merger. You would think we were investigating a merger of crime families, because every witness who went on said, "Look, we'll tell you, but we really don't want to testify, because we're fearful of these merging companies and what they are going to do to us." The Guidelines don't change that fear that's out there. That's going to still be there. People aren't going to say, "Oh, there are new Guidelines, so I can freely talk to the Department of Justice or the FTC or the states about my fears about this transaction."

MS. GOTTS: Michael?

MICHAEL REYNOLDS: Going to Alexander, I had a question on European merger control. Alexander, you mentioned the new 2020 objectives, the new strategy in Europe. I think we are all very interested to see the effect of that on competition enforcement in Europe, particularly in the merger area.

For example, in the final declaration, the Council stresses, and I quote, "the importance of promoting economic, social, and territorial cohesion, as well as developing infrastructure in order to contribute to the success of the new strategy."

Are mergers going to be assessed any differently in Europe as a result of having regard to the 2020 objectives?

DR. ITALIANER: I wouldn't think so. This new strategy is a strategy to create an economy which is more competitive, more knowledge-based, more based on innovation. The best thing that we can do there is to ensure that markets work better, which is the objective of our policy. When we look at a merger, we will still look at whether a merger significantly impedes effective competition. If that is not the case, then we will clear it.

I think the way competition policy more broadly can contribute to this objective is by clarifying the Guidelines in the way we apply competition policy in the areas where it is relevant for this knowledge-based economy. One of the important objectives in Europe, for instance, is to have complete coverage of broadband. So what we are currently working on are guidelines to make it easier for operators to ensure the full coverage of broadband and the conditions under which this can take place.

I mentioned also the Guidelines on Vertical Agreements, where we are now clearer about the possibilities for agreements on Internet sales. The review of the horizontal agreements that we will undertake this year will look, in particular, at the issue of the standards, which is also very important for innovation.

So it is rather in sharpening and clarifying the way we use our competition tools that we will con-

tribute to this strategy rather than radically changing the way we use these tools.

MS. GOTTS: I'd like to turn to merger remedies if I could.

Melanie, Canada is a model in working cooperatively with other jurisdictions, including in the formation of remedies and, where appropriate, in not taking the lead on grounds of comity.

Could you discuss how you go about that process of deciding where you must get a remedy that is independent of, for instance, the United States, and when it is that you could be happy with what the United States comes up with?

MS. AITKEN: Certainly.

We obviously work very closely with the other jurisdictions that are implicated in whichever mergers we are looking at. Of course, very frequently that involves the Department of Justice and the Federal Trade Commission. Just in this past number of months, we have worked together on *Ticketmaster/Live Nation*, *Pfizer/Wyeth*, and *Merck/Schering-Plough*.

Most often, we will require some kind of formal agreement that the parties will either ensure that the remedy is implemented in Canada or do what is necessary to ensure that it affects the Canadian market in the appropriate way.

—Commissioner Aitken

There are obvious benefits to sharing information, sharing analysis, and all of those things that we have done for many, many years. But in recent years, we have enhanced our focus in trying to talk about how we can get the most effective remedies, ensuring that, at a minimum, we do not undermine one another's remedies, but also that we design a remedy that will be more effective across jurisdictions. I think, increasingly, we all recognize that, to be effective, it must be a remedy that has an effective implementation mechanism in other jurisdictions.

Very recently, in BASF's proposed acquisition of Ciba Holding, the agreement with the European Commission and the FTC was one that we felt would discharge any Canadian concerns. We did not even require a specific consent agreement in that case.

More recently, the FTC consent decree signed by Danaher Corporation in connection with the MDS acquisition adequately resolved our concerns as well.

There are other examples where we haven't insisted on a separate remedy. But the cases—and I guess this really goes to your question—where we consider whether we need an exclusive remedy turn on a number of different factors.

Most often, we will require some kind of formal agreement that the parties will either ensure that the remedy is implemented in Canada or do what is necessary to ensure that it affects the Canadian market in the appropriate way. But whether we need a separate remedy, whether we need a complete memorialization through a consent agreement, is really dependent on a variety of factors. Some of the things that we would think about include whether it is necessary in the circumstances to participate in the blessing of the buyer of the particular assets; and whether the particular transaction has very immediate effects in Canada or whether they are really more incidental.

I emphasize that this is not deference, but rather a practical approach in circumstances where we've all got issues and remedies are going to be designed and implemented by jurisdictions in which we have enormous faith and trusting relationships. We say, "We need to be sure and confident that we have done what we need to do for the Canadian marketplace," but that doesn't necessarily require belts and suspenders in every case. Sometimes, it can simply be a sign-on that's formalized. Sometimes, it can be a minimalized version of a consent agreement, and in certain cases we can dispense with a remedy altogether. In a case like *Thomson/Reuters*, we had a one-page letter agreement—obviously, a complex deal with very complex remedies, but it wasn't necessary in that case to engage in discussions on a separate remedy.

In cases where there may be a separate consent agreement, I want to emphasize that the

Bureau will make every effort to ensure that the remedy remains coordinated with the remedies issued by its counterparts in other jurisdictions.

MS. GOTTS: Alexander, if we could focus on merger remedies abroad for a second. When it comes to horizontal mergers there has been some resistance to the licensing of IP rights being the solution to the competition concerns. I thought your *Cisco/Tandberg* remedy recently raised a really interesting way to resolve that issue. Could you explain this?

DR. ITALIANER: The first thing I want to underline was the extremely close cooperation with the Justice Department on this merger, and in particular on the timing and remedies and with lots of exchanges. Of course, we did this with the consent of the parties. So I think cooperation is really a very good example of how we can achieve a common result.

Now, the competition concerns we had in this merger stem from the horizontal overlap of the parties in certain markets for videoconference equipment, and in particular the interoperability issues that this entailed. The remedy that we devised here, rather than going through licensing, is to divest the rights attached to the proprietary protocol TIP [Telepresence Interoperability Protocol] that was linked to the interoperability to an independent industry body, which would allow other vendors to participate in the development and in the implementation of the protocol. On that basis we cleared the merger. So what we have actually done is bring the remedy very close to an open standard-setting process, which I think is extremely important nowadays for technological development. In this way the protocol is available not only for the large entity but also for the competitors.

Now, this was a very specific remedy. So to deduce from this result that this could be applied more generally I would say is an overstatement. It is a bit like what Jon and Christine said in the previous description. You have to look at it on the merits of the case and do what makes sense. This is something that made sense in this particular merger. We do not have any general approach towards licensing.

MR. REYNOLDS: I wanted to take us for about ten minutes to the important area of international cooperation and greater efforts at convergence. All the agencies here—the European Commission, the DOJ, FTC, Canadian Bureau—over recent years have really made enormous efforts and invested considerable resources in this direction, towards the goal of greater outreach in enforcement to other jurisdictions.

I wanted to ask each of you what you thought was the singular most important accomplishment as a result of all this effort, perhaps starting here in the United States with the FTC, with Jon or Christine.

MS. VARNEY: I don't think that there has been a single most important accomplishment. I think that if you look over the last decade, kind of the evolution of the attitudes, that we can respect each other's unique historic cultural/legal traditions while coming to a common understanding of how you look at both mergers and anticompetitive conduct.

I think the dialogue that has been going on in the forums, such as the OECD [Organization for Economic Cooperation and Development] and the ICN [International Competition Network], has been tremendously important to getting to a common understanding. Jon runs an absolutely first-rate technical assistance program around the world that has also, I think, increased the understanding.

A lot of it is personal. Neelie Kroes and I talked whenever we needed to. We'd pick up the phone and we called each other. Alexander and I talk routinely.

I think *Cisco/Tandberg* was a terrific example of what we will be doing going forward. Again, that was in large part due to the parties. The parties decided that they wanted to try and move this transaction in parallel and gave us both all of the consents that we needed and put the information to us at the same time.

Despite enormous speculation to the contrary, *Sun/Oracle* was also a very cooperative undertaking. We worked with the Europeans. They worked with us. They had questions we didn't have. They ultimately came to their own decision. But it wasn't a divergence in terms of the substantive standards that were applied. It was a very good working experience at the end of the day, which led us to think about how we were going to approach *Cisco/Tandberg* based on what we'd gone through in *Oracle/Sun* and where we could cooperate more fully and at different points in the process.

I think that you are going to continue to see more and more cooperation between the United States and international jurisdictions, particularly when it comes to merger reviews, but frankly, only if the parties perceive that it is in their interest to do the merger that way.

—*Assistant Attorney General Varney*

I think that you are going to continue to see more and more cooperation between the United States and international jurisdictions, particularly when it comes to merger reviews, but frankly, only if the parties perceive that it is in their interest to do the merger that way. If they don't, then there's not that much we can do.

MR. LEIBOWITZ: I agree with Christine. From our perspective, I'd say no one thing stands out more than others, but it's a combination of things. We're fortunate enough to have wonderful relationships with the other competition agencies, such as the Canadian Competition Authority and the European Commission. A lot of our bilateral work has been critically important for both agencies and for the parties, and of course for consumers and competition. It has been mostly on mergers, but it has also been, for example, on the European Union's pharmaceutical initiative, where we've been working with them and they've been working with us.

The technical assistance program, which Christine knows well because she was present at its creation, has now expanded to the extent that we did sixty-three technical assistance missions in thirty countries last year. Some of that is funded by USAID, which is very helpful from the budget perspective. When you are in the business of running an agency, you need to make sure you have enough money to do the things you want.

And then, probably the third, as Christine mentioned, is, on the multilateral front, including our work at the OECD, very often with the Department of Justice, and ICN. Volcanic ash notwithstanding, the ICN meeting next week is probably going to be a very, very important place for developing relationships with our international colleagues and laying the groundwork for working together with them.

Michael, as you pointed out, just as the economy has become far more global in the last several decades, I think our collaborative work here has become far more important and we hope to continue it.

MR. REYNOLDS: Alexander, would you like to just say a few words from the European Commission's point of view?

DR. ITALIANER: I am very much in line with Christine and Jon. No particular outstanding achievement, but a constant improvement in the course of the year.

I was asking my colleagues when I arrived here, "How many cases are we working on with our international colleagues?" They said, "Well, we don't count; it is daily contact." As Christine said,

it is easy to pick up the phone, and the same with our contacts, very good contacts, with the Competition Bureau. So it is something that is certainly very natural.

I should underline how important it is to do this also with the consent of the parties, because I think it is in their interest to have a converged treatment of their cases by the various jurisdictions. So I would only encourage this. I know that many mergers are very complicated. They have to be notified sometimes in ten or twenty jurisdictions. I think this underlines the importance of achieving convergence at the international level.

OECD was already mentioned. I would also like to highlight the work of the ICN. I think the ICN is a very interesting example where in times when it is difficult to achieve focus in other areas, such as the WTO, what you are actually doing, in a very informal way, is to replace an international treaty by another system of governance, but as a very informal process. One example of an informal process is the Working Group on Unilateral Conduct. We have very different traditions in various jurisdictions on unilateral conduct. But to have this working group allows better understanding and imparts some convergence in the long term. We are very happy to host the Working Group on Unilateral Conduct at the end of the year. When we come together in Istanbul next week, I hope we can take stock of all the efforts that are being made in a very active and cooperative way in the ICN.

With globalization, with the need for convergence in the treatment of multinational firms when it comes to mergers and also anticompetitive conduct, I think this is a very important development that should only be encouraged.

MS. HENRY: Let's turn now to civil enforcement. I'd like to stay with Alexander for a moment. Can you give us some insight into what lessons you have learned from the pharmaceutical sector inquiry that you have done?

DR. ITALIANER: It is fairly recent since we concluded the sector inquiry that we undertook in 2008, and which we concluded in July 2009. Our work is still progressing.

I think one of the lessons we have learned from looking at the sector is that there are certain very peculiar behavioral practices that may raise competitive concerns. One of these practices is the so-called "pay-for-delay" settlements, where originator companies pay the generic companies for delaying the introduction of their generic products. Actually, the two cases that we have started are in that area.

But there are potentially also problems either between the originator companies or between the generic companies. Since we are still investigating, there is not much that I can say about this.

But I think what is clear is when you go into a particular sector, you find behavior that otherwise you wouldn't easily detect through complaints or through supervision or monitoring of the market. So I think when you look in this direct way, this is a very useful instrument, at least the way we have experienced it in Europe.

MS. HENRY: Jon, let me turn to you with a quick-and-easy softball question. You've been particularly vocal and the FTC has been particularly vocal about your position on reverse patent payment settlements. The legislative initiative sort of fizzled. The courts are not being overly supportive. Is it time to give up or do you have an alternative plan?

MR. LEIBOWITZ: Roxann, I think I would disagree with a part of your premise. I think we are closer to solving this problem than we have been at any time since I have been at the Commission.

Of course, it has been a collaborative effort for all the Commissioners and for the staff. We really do try to take the sort of Jeremy Bentham "greatest good for the greatest number of people" approach to figuring out what our priorities should be. And we also look at where is the case law the worst. This was a great confluence of both of those factors.

Pay for delay settlements are a very important problem for American consumers. Our Bureau of Economics estimates that the harm to consumers for brands literally paying generics to stay out of the market is $3.5 billion a year—and of course the generics make more money by not competing because their margins are so much lower. I think that is a very conservative estimate, because the push-out time—some of the circuit courts have very permissive rules—has gotten longer over the last year.

We take the approach that we are going to keep on fighting these settlements. I do think on the legislative side, in part because there is a savings for government—as we know, for a variety of reasons, we are running a major deficit—I think that will be part of the reason, as well as what we think is substantively good policy, that we have a very good chance of getting legislation enacted this year, even though we didn't get it done in health care reform because of the complications surrounding reconciliation in the Byrd Amendment. But we are working with lawmakers to try to find another vehicle.

And then, on the litigation front, the Justice Department and the FTC are largely in lock-step on an approach that makes these deals presumptively illegal but allows for rebuttal. This was certainly not true during our *Schering* case, where the Justice Department told the Supreme Court, "Do not take the Federal Trade Commission's cert appeal."

The Second Circuit is reviewing its own standard, which we believe is too permissive. An excellent brief was filed by Christine and her staff.

And then, you know, judges, when they think about this issue, they seem to be getting it. You might disagree, for those of you who follow this, with the formula or the methodology used by the district court judge—I think it's Judge Goldberg, but I could be wrong about that—in Philadelphia. But he sort of got it. We survived a motion to dismiss in the Cephalon case because he thought that we had the right to prove that they bought extra protection by paying $200 million to four generics, who otherwise we believe would have entered the market.

So I don't think we are ready to give up or throw in the towel for all the people who pay a little bit more for their insurance because of the high price of pharmaceuticals. And then, more importantly, we think it is a critical issue to stay involved with the legislation for the 47 million whose prescription costs will be reduced and for the many uninsured.

MS. HENRY: Jim, McCarran-Ferguson also didn't make the legislative agenda. It's still there. But the states do have a lot of power over the insurance industry. Can you tell us if there is an appetite at the state level to examine the competitiveness of the insurance industry?

MR. DONAHUE: This is a good question because actually right now our office is defending the Pennsylvania Insurance Department, which has been sued by Highmark and Blue Cross/Blue Shield to prevent the Insurance Department from releasing a report about the state of competition in health insurance in Pennsylvania. Here is advocacy that is being done by our Insurance Department. Highmark is trying to prevent the Department from releasing that information. We are defending them. We've got a PI hearing next week. We are actually doing briefing today. So that's right on there.

Insurance is 15 percent of the health care dollar. Eighty-five percent of it is providers. I can give

you a long list of states that are doing hospital mergers. Oregon and Pennsylvania are looking at physician mergers. I mentioned the Tricor case. We have partnered with the FTC on many of these drug cases.

One thing I should not forget to mention is Massachusetts. They have done a series of reports about the pricing of different hospitals. Health care pricing has always been completely opaque. They are taking that blanket off and exposing that and advocating that people want to consider the cost of different providers when they get their health care.

So there is a lot going on at the state level.

Health care pricing has always been completely opaque. They are taking that blanket off and exposing that and advocating that people want to consider the cost of different providers when they get their health care.

—*Chair Donahue*

MS. HENRY: Christine, let's turn to high tech. The *Microsoft* cases started in the early 1990s at the FTC; they then proceeded to the DOJ. Remedies at the DOJ were implemented in 2002, in Europe in 2004. It took a long time to get serious remedies.

Where are you looking to invest in your pipeline in the high-tech area and what should we expect to see?

MS. VARNEY: I don't think that you should expect to see the DOJ undertaking investigations and actions to put points on the board. That's not what we're about.

When we look at any particular industry, we are always looking at: What are the bottlenecks? What is preventing robust competition? What is in the way of getting more output, lower prices, faster innovation?

In high tech, as you know, Roxann, it's additionally complicated because it is so laden with IP, and in many, many industries the network effects can be such that the first winner takes all and locks in for quite a long time.

We are very conscious that in the United States we have several world-class companies that through innovation and competition have come to a place in the market where they enjoy a significant market share. With that market share comes enormous responsibility. Our view is that companies who have that market share and are behaving responsibly have nothing to fear from the Department of Justice. We are supportive of their efforts internationally to be competitive.

On the other hand, we have a very keen, very sharp eye for those companies that are attempting to retard competition. As I have said repeatedly, our touchstones are the Supreme Court-articulated precedents in *Lorain Journal*, in *Aspen Skiing*, and in that part of the *Microsoft* case that went up on appeal and was sustained.

I wouldn't tell you that you ought to watch anything in particular. Counsel your clients well.

I heard a lot of commentary last May, when we withdrew the DOJ Section 2 Report and aligned ourselves with the Federal Trade Commission. I heard "Well, what will I tell my clients?" Again, having been in practice for the last dozen years, I know exactly what to tell my clients as to when they were really pushing the envelope and taking on more risk than might have been acceptable and when they were operating completely within a zone of conduct that was sustainable under the antitrust laws.

So I think for practitioners it is pretty clear when you've got a company that enjoys market power that they do have special responsibilities and obligations, and I would expect again that they would adhere to it.

MS. GOTTS: Consumer protection is an area in which our Section is very interested these days. In connection with that, Jon, I was very interested that you indicated your agreement with creating another consumer protection agency. How do you see the definition of the role of the FTC if such an agency were launched?

MR. LEIBOWITZ: Well, we will probably know better after next week, when the Senate finishes debate on it.

From my perspective, I would say this. Reasonable people can disagree about the creation of a new consumer financial agency. That's what they did in the House bill. And in the Senate bill, it looks more like a bureau. I think we have a divergence of opinions on the Commission, with most of us supporting it. And all of us support elevating consumer protection.

But from my perspective, it is really not so much about something that's new as sort of rearranging the very balkanized pieces among banking regulators, to come up with a more robust, more effective consumer protection entity. There are four or five different agencies that have some responsibility for consumer protection over banks. We have responsibility for consumer protection over non-bank financial institutions and services and products. Within most of those agencies, what they focus on is safety and soundness, or bank examination, or, in the case of the Fed, protecting the economy. And so while they are good agencies and dedicated public servants, consumer protection is usually not at the top of their agenda.

So from my perspective, creating a new consumer financial agency or a new bureau that could have a laser-like focus on protecting consumers seems to me to be a good idea, and we will see where it goes.

—Chairman Leibowitz

And as we all know, what we have seen in the last few years was the result of a spectacular lack of regulation or oversight largely by, but not entirely by, the banking agencies. So from my perspective, creating a new consumer financial agency or a new bureau that could have a laser-like focus on protecting consumers seems to me to be a good idea, and we will see where it goes.

It is not entirely certain it will go much farther than the Senate. But I think actually more and more people are coming around towards the notion of creating it, and maybe with some bipartisan support, which I think gives institutions the support they need going forward, to know that they will be there for years, and perhaps decades, and not simply months, as the political tide changes.

MS. GOTTS: Well, let's hope they learned a few things from the formation of Homeland Security on how to make the work a little bit easier.

MR. LEIBOWITZ: One can only hope, yes.

MS. GOTTS: Jim, the states have been very active in consumer protection. Are there any scams that we should be aware of as consumers? And how are your resources holding up on things like Internet-based schemes?

MR. DONAHUE: Let me answer the last part of the question first, although it relates to the first part.

On Internet-based schemes, we have the resources to go after them. They are really no different, in a sense, than your run-of-the-mill scheme. The big problem with the Internet is trying to find the little buggers. They may not be in this country. The Nigerian letter thing has now been transferred to an email, and there's a variety of things that occur that take you overseas to countries with no cooperation arrangements with our country or the European countries or the Canadian authorities. So that's a big problem on the Internet side.

But in terms of resources, yes, we have the resources to look at it.

In terms of the focus on the consumer protection side, there has been a lot of focus, as Jon mentioned, on the impact of the economic crisis. That has spawned a whole bunch of scams involving mortgage repair and debt repair and all of this sort of stuff. That has been a focus of the attorneys general over the past couple of years, and it probably will continue to be a focus in the near future.

MS. GOTTS: I would like to take the last five minutes to give each of our panelists one minute to give us their summary of something they want us to walk away with and remember.

We'll start with Christine.

MS. VARNEY: When you come to the Department of Justice, you can expect and demand a fair, transparent, and open examination of the issue conducted by the most professional staff I have ever encountered, led by some of the most terrific lawyers in the world as our deputies.

In closing, let me say that this year we went green and our annual report is online. You can find it at usdoj.gov. Click on "antitrust." It's great. It has lots of pictures and lots of interesting statistics and facts.

We look forward to seeing you in the coming year.

I would just like to say that it's a transformative time in Canada, with a new coherent criminal cartel provision and, I think, a far more effective merger review process.

—Commissioner Aitken

MS. GOTTS: And, after seeing our ability to hook in Europe like this, I'm starting to believe we can actually pull things over the Internet.

Melanie?

MS. AITKEN: I would just like to say that it's a transformative time in Canada, with a new coherent criminal cartel provision and, I think, a far more effective merger review process. But that's a very significant challenge for us, and we have a responsibility to ensure that we do the most that we can with those new provisions for all who carry on business in Canada.

We will certainly try to be accommodating, creative, and flexible where we can—polite Canadians, if you will—but we will certainly also ensure that we do our job. We will be taking a principled and measured approach, but we will not hesitate to enforce the law, and you can be confident about that.

MS. GOTTS: This is a hard act for you to follow, Jon.

MR. LEIBOWITZ: It really is.

We too will try to take a principled and measured approach.

And we like to think of ourselves as going green. We are in the process of writing green guides, which is something we are doing on the consumer protection side, and moving the American society from watts to lumens, which I know you are all very excited about. But we have hard copies of our annual report here for you. You can also get it online.

From my perspective, we are a wonderful little agency with terrific professionals, a Commission that really wants to try to solve practical problems, or solve problems with practical solutions. We try to do the best we can. We have had a lot of interaction with so many of you in the audience. Please let us know when you think we've made a mistake. You can also let us know once in a while when you think we're doing a good job.

Thank you so much, and thank you for the opportunity to be here today.

MS. GOTTS: Jim?

MR. DONAHUE: I have been the Task Force Chair for nine months, but I have been in the Attorney General's Office for more than twenty years. I've gotten to know many of the staffs of many of the AGs around the country. There are really terrific attorneys, great litigators, a lot of really phenomenal professionals whom I have had the opportunity to work with. Coming to an AG's office, that's

the sort of treatment that you are going to get. You are going to be treated by professionals.

If you are dealing with consumer products, stuff that governments buy, or health care, you need to know that we are going to be looking at those issues carefully.

MS. GOTTS: I have not forgotten about you, Alexander.

DR. ITALIANER: Although I am only two months in my job, I must say that I am really impressed by the professionalism and the quality of the team that I encountered when arriving here. Certainly, not coming from the competition world myself—in fact, I used to do econometrics a long time ago—what I find most surprising is the way in which my institution is able to adjust to new circumstances, including the extremely rapid reaction we had to the potential financial meltdown in Europe. I know this is not so much the concern of the other agencies here because they don't have this responsibility. But this is really impressive. So it is an extremely versatile and resilient organization. I really have full trust in the capacity of my people to ensure a competitive economy in Europe that can coincide with the new 2020 goals that we are pursuing.

I must say how much I enjoyed being with you through technological means, and I hope to see all my colleagues in person in Istanbul. So we have had a good exchange and are working towards this global governance I was talking about.

I would say: Enforcers of the world, unite!

MS. GOTTS: Alexander, I wish you a bon weekend. I also would like to particularly thank you for your willingness of going this extra mile to participate.

I would ask the entire audience to thank Alexander and the rest of our panelists for participating. ●