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# Introduction: Regulation of Competition in the Canada/U.S. Context--Extraterritorial Reach of U.S. Anti-Trust Law

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## INTRODUCTION

### REGULATION OF COMPETITION IN THE CANADA/U.S. CONTEXT – EXTRATERRITORIAL REACH OF U.S. ANTI- TRUST LAW

*Sanford Yosowitz*<sup>\*</sup>

Extraterritorial enforcement in the antitrust sense is a really hot topic. At the spring meeting of the American Bar Association section of antitrust laws just a couple of weeks ago, there was a major program on this subject, along with two or three other sessions of committees focused on the different aspects of this phenomenon, extraterritorial enforcement.

Joe Klein, the Assistant Attorney General for the Antitrust Division of the U.S. Department of Justice, boasts that he has over twenty grand juries involving twenty different countries on four continents presently going on. As the world gets smaller and smaller, and as more mega-mergers take place, the issues are going to exacerbate, and they will not go away.

The quotation in your materials from an article by Debra Valentine is very apt, as we shall see from this session: “The issue of extraterritoriality, you know, that’s a little bit like modern art.”<sup>1</sup> In the antitrust context, especially, it’s a splattering of many different colored issues over a canvas of the whole world. Among those issues are criminal enforcement, civil enforcement, mergers, the effects doctrine, implementation, comity, sovereignty, transnational diplomacy, dispute resolution, the World Trade Organization (WTO), market access, jurisdiction, firewalls, nationality, rogue elephants, technicalities, punitive sanctions, administrative processes, remedial measures, piscatorial activities, unilateral activities, judicial guise, and discretion – the fireworks of modern art.

To help us interpret the picture we have two distinguished practitioners here. First, we have Crystal Witterick. Crystal is a partner in the law firm of Davies, Ward & Beck in Toronto. She graduated with honors in business

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<sup>1</sup> Debra A. Valentine, *Building A Cooperative Framework for Oversight in Mergers – The Answer to Extraterritorial Issues in Merger Review*, 6 GEO. MASON L. REV. 525, at 525 (1998).

administration from Wilfrid Laurier University in Waterloo, Ontario, and the Law School of University of Western Ontario. She was called to the Ontario Bar in 1991.

Crystal's practice is in the area of corporate commercial law, competition law, and trade law. She is on the editorial board of the *Competition Law Journal of Canada*, published by Juris Publishing and is a contributor to *FTC Watch*, a U.S. publication, and the *Canadian Competition Record*. Crystal is also a regular contributor to *Legal Alert*, published by Insight Information. She has co-authored a number of articles and has spoken at a number of conferences in the fields of competition law and trade law. She is a member of the Competition Section of the Canadian Bar Association. She is Vice Chair Responsible for International Matters of the Canadian Committee of Competition Law and Policy of the Canadian Council for International Business.

She also is participating in the International Chamber of Commerce's (ICC) Joint Working Party on Competition and International Trade and is a member of the Standing Group on International Cooperation and Convergence of the ICC Commission on Law and Practice Relating to Competition.

From the United States, we have Joe Griffin. He is Manager of the International Section of the well-known U.S. law firm, Morgan, Lewis & Bockius, L.L.P. He has substantial experience in representing U.S. and foreign companies with negotiations, litigations, and arbitration involving international business transactions.

Active in civic and professional organizations, he was a member of the Secretary of State's Advisory Committee on Private International Law between 1987 and 1997. He is an adjunct professor at Georgetown University Law Center and former chairman of the American Bar Association's 16,000-member International Law and Practice Section.

Mr. Griffin's most recent book is the 1996 revised edition of *U.S. International Antitrust Enforcement*.<sup>2</sup> After graduating from the University of Virginia, Mr. Griffin received his law degree from the Georgetown University Law Center and a Diploma in Law from Oxford University in England.

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<sup>2</sup> JOSEPH P. GRIFFIN, *U.S. INTERNATIONAL ANTITRUST ENFORCEMENT: A PRACTICAL GUIDE TO THE AGENCIES* (Bureau Nat'l Aff. 1996).