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In this Article, I discuss the problems of regulating competition in a common market. I will begin by discussing the role of the United States Constitution's Commerce Clause and U.S. antitrust law in creating and maintaining the 200-year-old U.S. "common market." In light of that experience and the increasing integration of world markets, I will then discuss the role that U.S. and other national antitrust laws should play in maintaining the economic integrity of these world markets.

The reader will not be surprised to discover that I believe that antitrust has played a crucial role in preserving the free market system in this country, and that a primary task of government antitrust enforcers for the future is to ensure that antitrust continues to play a major, constructive role in the evolving world economy. In particular, the task for U.S., European Community, and other antitrust enforcers will be to work toward the convergence of antitrust rules and procedures, so that the regulation of competition keeps pace with the changing realities of international markets.

I. The Role of the Commerce Clause in Creating the U.S. "Common Market"

In at least one significant respect, the historical role of antitrust in the European Economic Community ("EC") has been strikingly different from that in the United States. While the EC's competition legislation is a part of (and is concurrent with) the Treaty of Rome, the U.S. Constitution's Commerce Clause[1] created the American "common market" a full century before the 1890 passage of the Sherman Act. One legacy of this historical difference is that U.S. antitrust enforcers traditionally have been responsible

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[1] US Const, Art I, § 8, cl 3.

for maintaining competition in the U.S. free trade community, while EC competition authorities, DG-IV, have been responsible for both creating *and* maintaining a common market. These different roles have resulted in some variations in the respective enforcement policies of the U.S. and the EC that we should endeavor to minimize during the upcoming process of substantive and procedural antitrust harmonization.

After the American Revolution, the newly independent United States (definitely a plural noun) chose a form of political union, the Articles of Confederation, that left the thirteen states free to do what they liked with respect to regulating commerce with foreign nations and with one another. Perhaps inevitably, the temptations of particularism and protectionism proved difficult for many state governments to resist, and they began to weave a fabric of inconsistent and discriminatory legislation that discouraged trade among the several states.

For example, the states' tariff regimes "failed to provide a truly common market,"[2] because they discriminated against other states directly or indirectly. Connecticut taxed "imports" from Massachusetts,[3] and New York taxed goods moving through its ports on the way to New Jersey.[4] Maryland, for its part, feared that Virginia would deter interstate or foreign ships from landing in Baltimore and would instead divert them to Norfolk.[5] In short, the states' unrestricted power over commerce, "guided by inexperience and jealousy, began to show itself in iniquitous laws and impolitic measures, from which grew up a conflict of commercial regulations, destructive to the harmony of the States, and fatal to their commercial interests abroad."[6]

After a few years of trade in this environment, shipping and manufacturing interests in most states realized that a Union based on the Articles of Confederation would not create the free trade regime essential to individual and national prosperity.[7] Accordingly, one of the chief goals of the new Constitution was to create

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[2] Richard B. Morris, *The Forging of the Union, 1781-1789* 149-50 (Harper & Row, 1987).

[3] Id at 149 n 91 (citing Gaillard Hunt, ed, 2 *The Writings of James Madison* 395 (G.P. Putnam's Sons, 1900-10)).

[4] Id at 142, 150.

[5] Id at 251-52, noting that the Maryland delegation introduced a motion in the Constitutional Convention that ultimately was incorporated into Article I, § 9 of the Constitution, barring preferential treatment of one state's ports over those of another.

[6] *Gibbons v Ogden*, 22 US (9 Wheat) 1, 224 (1824) (Johnson concurring).

[7] Morris, *Forging of the Union* at 150 (cited in note 2).

an area of free trade, a truly "common market," among the United States.[8] The Constitution accomplished that goal through the Commerce Clause, which provides that "Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." As Chief Justice John Marshall stated nearly 170 years ago, this "power over commerce . . . was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it."[9] Moreover, as he explained for the Court in *Gibbons v Ogden*, Congress's Commerce Clause power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."[10]

What does the Commerce Clause have to do with competition? A good deal, it turns out. Besides laying the basic foundation for the United States' competitive "common market," the Commerce Clause and the Supremacy Clause were invoked frequently over the years, both before and after the passage of the Sherman Act, to strike down anticompetitive state legislation. Indeed, *Gibbons v Ogden*, in which the Supreme Court clearly asserted the primacy of Congress's commerce powers over inconsistent state legislation, struck down a state-created monopoly.

In *Gibbons*, the New York legislature had, by statute, granted Robert Fulton and Robert Livingston a monopoly over steamboat navigation in New York waters. This legislation effectively required residents of New Jersey to pay Mr. Fulton's monopoly price if they wished to take a steamboat ride across the Hudson to New York City. New Jersey retaliated by enacting legislation that created a right to damages against Mr. Fulton on behalf of anyone who sought to compete with the monopoly, but was restrained from doing so by New York authorities.[11] The Supreme Court's decision to void the New York legislation thus not only upheld the federal commerce power and defused a dispute between neighboring states, but the decision also implicitly demonstrated that at least some anticompetitive actions by states would run afoul of the Constitution.

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[8] See, for example, Phillip E. Areeda and Donald F. Turner, 1 *Antitrust Law* ¶ 220b at 124 (Little, Brown & Co., 1978) (citing *McLeod v J.E. Dilworth Co.*, 322 US 327, 330 (1944)).

[9] *Gibbons v Ogden*, 22 US at 190.

[10] Id at 196.

[11] Id at 4-7.

In the years since *Gibbons*, courts have often invoked the Commerce Clause to safeguard the U.S. common market at the expense of anticompetitive state laws.[12] Just five years ago, for example, the Supreme Court invalidated a New York liquor price-posting statute on Commerce Clause grounds.[13] The New York statute required every liquor distiller selling to New York wholesalers to affirm that its liquor prices were no higher than the lowest price at which the same product was sold in any other state during that month. The state statute effectively prevented distillers from offering price promotions both inside and outside New York. The Court held that this competition-deterring statute had the practical effect of regulating commerce wholly outside New York and thus was invalid under the Commerce Clause.[14]

II. The Role of U.S. Antitrust Law in Maintaining the Integrity of the U.S. "Common Market"

By 1890, when Congress adopted the Sherman Act, it had become quite clear that the Commerce Clause was in itself an effective tool for deflecting state encroachments on free trade within the United States. It was also clear, however, that a different kind of legislation was needed to safeguard against anticompetitive actions by private parties similarly restricting trade within the United States. Because the Commerce Clause did not forbid such conduct, Congress enacted the Sherman Act to fill the gap. The interesting point here—to which I shall return—is that, in passing the Sherman Act, Congress did not have to devise a law that would create a common market within the United States, as such a market already existed. Congress was therefore free to fashion a law prohibiting anticompetitive private restraints on the efficient operation of the U.S. common market.

The Sherman Act almost turned out to be a false start in this direction. In *United States v E.C. Knight Co.*,[15] the 1895 "Sugar Trust" case, the Supreme Court read the Sherman Act in conjunction with the Commerce Clause in a manner which threatened to negate the Act's impact on the U.S. economy. In the "Sugar Trust" case, the American Sugar Company had acquired four rival sugar refineries in Philadelphia that gave it—as the Supreme Court con-

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[12] See Areeda & Turner, 1 *Antitrust Law* ¶ ¶ 220a-b at 122-27 (cited in note 8).

[13] *Brown-Forman Distillers Corp. v New York State Liquor Auth.*, 476 US 573 (1986).

[14] Id. Three years later the Court struck down a Connecticut beer pricing-posting statute on similar grounds. *Healy v Beer Inst., Inc.*, 491 US 324 (1989).

[15] 156 US 1 (1895).

ceded—"nearly complete control of the manufacture of refined sugar within the United States."[16] The Justice Department took the sensible view that American Sugar's actions violated sections 1 and 2 of the Sherman Act and sought to rescind the acquisitions.

The Supreme Court acknowledged both the anticompetitive nature of American Sugar's conduct and the role of the Commerce Clause as the "strongest bond of union."[17] Nonetheless, the Court construed Congress's decision to regulate commerce through the Sherman Act as *exclusive* of the power to regulate sugar manufacturing, as opposed to commerce in sugar. The Court further decided that the case involved only acquisitions of manufacturing facilities in a single state, and thus did not implicate interstate commerce. Accordingly, the Court's majority concluded that the Sherman Act did not reach American Sugar's clearly monopolistic behavior.[18] In a strident dissent, Justice John Marshall Harlan urged that while the majority's decision did not declare the Sherman Act to be unconstitutional, "it defeats the main object for which it was passed,"[19] which was to prohibit private anticompetitive combinations that could not coexist with "the free course of trade among the states."[20]

Fortunately, the Court soon heeded Justice Harlan's warning. Only four years later, in *Addyston Pipe & Steel Co. v United States*,[21] a unanimous Supreme Court sustained the Justice Department's efforts to enjoin the multistate operation of a cast-iron pipe cartel. Distinguishing *E.C. Knight* on its facts,[22] the Court cited Congress's broad Commerce Clause powers and observed that "'[i]f a State, with its recognized power of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?' "[23] The question answered itself.

In the 90 years since *Addyston Pipe*, the Supreme Court has taken a broad view of Congress's powers under the Commerce Clause and has taken a similarly expansive view of the scope of the Sherman Act. As the Court stated just last term, "[i]t is firmly set-

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[16] Id at 9.
[17] Id at 13.
[18] *E.C. Knight*, 156 US at 10-17.
[19] Id at 42.
[20] Id at 37.
[21] 175 US 211 (1899).
[22] Id at 238-40.
[23] Id at 230 (quoting *In re Debs*, 158 US 564 (1895)).

tled that when Congress enacted the Sherman Act, it 'left no area of its constitutional power [over commerce] unoccupied.' "[24] In other words, the Sherman Act confers nearly as broad a mandate to maintain the integrity of our U.S. common market against private anticompetitive behavior as the Commerce Clause did to create that market.[25]

In fact, our antitrust laws have played a crucial role in maintaining free trade within the U.S. "common market." At bottom, of course, the role of U.S. antitrust law has been to ensure that consumer choice is not adversely affected by anticompetitive business conduct. U.S. antitrust law is the bulwark of our free market economy because it provides a set of basic rules for maintaining competition in the economy. These rules regulate the competitive process, but they do not determine whether firms will succeed, or which firms will excel, in providing consumers with desirable goods and services at an attractive price. The market does that. Instead, our antitrust laws ensure that firms win and lose market share based on their own skill in competing in the market and on their ability to provide goods and services of good quality at a competitive price.

While certain details of U.S. antitrust law and policy have varied over the years, the Supreme Court enunciated its core meaning some 30 years ago:

> The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.[26]

Indeed, the U.S. experience has been that sound antitrust laws and enforcement policies protect and promote competition in our free-market economy, benefitting consumers and businesses alike.

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[24] *Summit Health, Ltd. v Pinhas*, 111 S Ct 1842, 1846 n 10 (1991) (citing *United States v Frankfort Distilleries, Inc.*, 324 US 293, 298 (1945)); see also *United States v South-Eastern Underwriters Assn.*, 322 US 533, 558 (1944) (the Sherman Act reaches "to the utmost extent of [Congress's] Constitutional power").

[25] There are, of course, some statutory exceptions to, and some Supreme Court-recognized limiting constructions on, the reach of the Sherman Act.

[26] *Northern Pacific Ry. Co. v United States*, 356 US 1, 4 (1958).

Antitrust outlaws collusive disregard of the competitive ethic, and guards against structural changes where it can be predicted with confidence that they would substantially harm competition. Furthermore, antitrust prevents the clear abuse of market power that would wrongfully oust competition from the marketplace, or prevent it from arising in the first place. This is the broad impact—past, present, and future—that antitrust enforcement has had on maintaining the integrity of the U.S. common market created in 1789.

There is, however, another constructive aspect to the U.S. antitrust dynamic that warrants discussion: the plurality of our enforcement agencies. The United States has a common market, a common body of federal antitrust laws, and a common body of federal courts to interpret those laws. But so great is the importance that Americans attach to antitrust enforcement that, over the last 100 years, we have created a triad of antitrust enforcement agents: the two federal agencies (the Department of Justice and the Federal Trade Commission ("FTC")); the 50 state attorney generals, who can enforce both federal and state antitrust laws;[27] and private parties, who initiate the vast bulk of the antitrust litigation and give rise to most of the antitrust case law in this country.[28]

At first glance, this multiplicity of enforcement agents may seem like a sure recipe for the proliferation of conflicting policies and rules that threaten to undermine the salutary effects of antitrust enforcement on the U.S. common market. And in fact, over the past century there have been numerous goals proposed for the antitrust laws—enhancement of consumer welfare, dispersal of economic power, protection of small business—that have generated significant controversy among enforcers, academics, and antitrust practitioners alike. Furthermore, the "Harvard" and "Chicago Schools" have long disputed the mainstream "consumer welfare" approach to antitrust.[29] Arguments over these various goals have generated legislation, affected government enforcement policy, and

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[27] Compare Areeda & Turner, 1 *Antitrust Law* ¶ 103 (cited in note 8); Robert H. Bork, *The Antitrust Paradox* (Basic Books, 1978); Robert H. Lande, *Health Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged*, 34 Hastings L J 65 (1982).

[28] Between July 1, 1989 and June 30, 1990, nearly 450 private antitrust cases were filed in the federal courts. Organization for Economic Cooperation and Development ("OECD"), Directorate for Financial, Fiscal, and Enterprise Affairs, Committee on Competition Law and Policy, 1990 Annual Report on Developments in the United States 17 (internal OECD document on file with the University of Chicago Legal Forum).

[29] See, for example, Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 U Pa L Rev 925 (1979).

sometimes created inconsistent case law. Overall, however, U.S. antitrust law has maintained a remarkable coherence over the years, largely as a result of the role of the federal judiciary as the ultimate arbiter of the general purpose and particular application of our antitrust laws.

III. The Role of National Antitrust Laws in the Emerging World "Common Market"

As I have already noted, the world economy is becoming increasingly integrated, a phenomenon demonstrated by the EC 1992 exercise, the EC/European Free Trade Area negotiations, the North American Free Trade Agreement talks, and the arrangements between Australia and New Zealand. At the same time, many nations have recognized the importance of sound antitrust laws as an effective tool in combatting private behavior which erects invisible trade barriers and inhibits economic efficiency. In just the last five years, countries as diverse as Canada and Brazil, Italy and Czechoslovakia, and the Russian Republic and Kenya have enacted new antitrust laws and created agencies to enforce such laws.[30]

This increased emphasis on national competition legislation has prompted some concern that, in a world where international business transactions are commonplace, simultaneously applying several different national laws to the same transactions may create inconsistent procedural and substantive antitrust rules that could, over time, threaten efficient international economic integration. Accordingly, Dr. Wolfgang Kartte, President of the German Federal Cartel Office, has recently proposed a sort of multilateral merger control agency;[31] Sir Leon Brittan, Vice-President of the EC Commission, has suggested that the U.S. and the EC consider ways to allocate jurisdiction over international mergers;[32] and Arthur Dunkel, Director General of GATT, has wondered aloud

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[30] See, for example, Competition Act, RSC, ch C-34 (1985) (Can); Competition Protection Act of January 30, 1991, No 63/1991 Coll of Law (Czech); Law of the Russian Soviet Federated Socialist Republic on Competition and the Limitation of Monopolistic Activity on Goods Markets (June 11, 1991) (Russia); Law No 8158 (Jan 8, 1991) (Brazil); Law on the Protection of Competition and the Market, Law No 287 (Oct 10, 1990) (Italy); The Restrictive Trade Practices, Monopolies and Price Control Bill (1988) (Kenya).

[31] *FCO President Offers Suggestions to Improve EC's Merger Regulation*, 61 Antitrust & Trade Reg Rep (BNA) 322 (Sept 12, 1991).

[32] Right Hon. Sir Leon Brittan, *Competition Policy in the European Community: The New Merger Regulation*, address to the EC Chamber of Commerce, New York (Mar 26, 1990).

about the possibility of a multilateral mechanism for policing anticompetitive private business practices.[33]

In my view, the fact that the world now seems to have reached a consensus that sound competition law is a vital component of a free market economy is an extremely positive, and somewhat overdue, development. It does *not* mean, however, that the time is suddenly ripe to negotiate a binding international antitrust code that would be enforced by some sort of international antitrust agency. At this point in time, there are simply too many analytical and practical obstacles to the successful negotiation of such a code. On the other hand, I strongly believe that concerns regarding inconsistent policies and procedures by different national antitrust authorities deserve serious attention. I further believe that there is much that national enforcement agencies can and should do in the area of procedural and substantive harmonization of antitrust law enforcement.

It is important to understand that there is no existing structural commitment to an integrated world "common market." There is no international equivalent of the Commerce Clause or the Treaty of Rome; that is, there is no political commitment, in the United States or elsewhere, to mandate world economic integration under some ultimate arbitral authority. Thus, the necessary foundation for a worldwide antitrust regime simply does not exist. In the United States, our commitment to a "common market" long preceded our antitrust laws. In the EC, the two instruments were created at the same time. Yet, to negotiate an international antitrust regime in the absence of an international commitment to a truly integrated international "common market"[34] would be even less apposite than enacting a Sherman Act under the Articles of Confederation or implementing Articles 85 and 86 of the Treaty of Rome in a Western Europe "united" only by the North Atlantic Treaty Organization and the Organization for Economic Cooperation and Development ("OECD").

Moreover, there is no common international understanding of what competition rules are supposed to do and thus no comprehensive substantive basis for a binding international antitrust code. After 100 years, the United States has reached a basic consensus about the consumer welfare-enhancing goal of our antitrust

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[33] Alan Riding, *Top Official at GATT Faces a Round in Crisis*, NY Times D10 (Dec 3, 1990).

[34] Such an approach is even beyond the reach of the current Uruguay Round negotiations as I understand them.

laws. However, other goals, sometimes quite different, have been suggested for our laws, and even today no consensus exists on many aspects of antitrust goals even among our many antitrust enforcers. Regarding other national competition laws, the difficulties of agreeing on basic goals are even more apparent. As the *Financial Times* recently pointed out, "[o]nly half of OECD members have merger policies, enforced with varying rigour and according to differing criteria. Attitudes to restrictive trade practices diverge still more widely."[35]

In the EC, as Barry Hawk has explained, "[t]he primary objective [of competition policy] is the promotion of integration of the separate economies of the member states into a unified 'common market,' " while the other major—but secondary—goal is the "promotion of effective competition in the Community."[36] In other words, while the U.S. Commerce Clause has left our antitrust laws free to concentrate on purely competition-based concerns, the EC cannot be so precisely focused—although that may change following more complete economic integration.[37] To take an example closer to home, the 1986 Canadian Competition Act clearly states that its purpose "is to maintain and encourage competition in Canada," which sounds very much like our mandate. However, the statute then lists some other goals that seem to reflect some of the same arguments concerning the meaning of "competition" that we have had in the U.S.[38]

Other national competition laws show even more serious disagreement about the goals of antitrust enforcement, with enforcement rationales ranging from industrial policy or protectionism to labor protection or other social goals. For instance, the EC Commission decided in October to block a proposed Franco-Italian takeover of de Havilland, the Canadian aircraft manufacturer, on the standard antitrust grounds that the merger would have given the acquiring group a dominant position in the European market for turbo-prop commuter aircraft. French and Italian government officials attacked the EC's decision, arguing that the EC should have approved the transaction on industrial policy grounds in order to create a European "champion" in the commuter aircraft

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[35] *Antitrust in Global Markets*, Financial Times 1-16 (Sept 27, 1991).

[36] Barry Hawk, 2 *United States, Common Market and International Antitrust: A Comparative Guide* 5 (Prentice Hall Law & Business, Supp 1990).

[37] Id at 6-7.

[38] "[I]n order to expand opportunities for Canadian participation in world markets . . . [and] to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy." The Competition Act, § 1.1.

market.[39] Until we come closer to agreeing on what antitrust laws should strive to accomplish, we plainly cannot agree on precisely what business practices they should permit or prohibit, and in what circumstances. Nor can we cede national sovereignty to a multilateral body that would make such decisions for us.

That said, there is a great deal that the world's competition enforcement agencies have done, and should continue doing, to promote procedural and substantive harmonization of antitrust rules. Over the last ten years, the competition laws and policies of many countries have converged in a manner that would have seemed remarkable in 1980. The best evidence of this development is, of course, the clear consensus that free market economies are the best vehicles to economic prosperity and that competition laws have an important role to play in safeguarding the efficient operation of such markets.

To take one specific example of this convergence, the U.S. and Canadian merger review standards, though different in numerous details that reflect divergences in their respective statutes, have nonetheless attained a general similarity. In the wake of the U.S.-Canada Free Trade Agreement, this similarity is crucial to the ability of North American (and other) businesses to plan the many mergers and acquisitions that will involve both countries.[40] In another area, the Justice Department has convinced many of its foreign counterparts over the last ten years that price-fixing is a serious economic threat warranting severe punishment. Price-fixing is now a crime in Canada, punishable by imprisonment for up to five years and fines up to $10 million,[41] while the competition authorities in the EC, France, Germany, and Japan recently imposed fines of millions of dollars on price-fixers in those countries.[42] Finally, while ten years ago many of our trading partners objected strongly

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[39] See David Buchan, *Delors defends decision to block de Havilland takeover*, Financial Times 1-1 (Oct 7, 1991); Andrew Hill, William Dawkins, and David Gardner, *Brussels attacked over merger policy*, Financial Times 1-1 (Oct 8, 1991).

[40] See Calvin S. Goldman, *A Commentary on Certain Aspects of Canadian Merger Law in a North American Context*, 1990 Fordham Corp L Inst 313 (Barry Hawk, ed, 1991); *Canadian Bureau Adopts Merger Guidelines, Makes Few Revisions from Earlier Version*, 60 Antitrust & Trade Reg Rep (BNA) 594-595 (Apr 25, 1991).

[41] The Competition Act § 45(1); see also *Record Individual Fines for Executives are Levied in Canadian Price Fixing Case*, 61 Antitrust & Trade Reg Rep (BNA) 523 (Oct 24, 1991).

[42] See *EC Commission Imposes Largest Fines for Cartel Arrangements in Soda Ash Sector*, 60 Antitrust & Trade Reg Rep (BNA) 14-15 (Jan 3, 1991) (EC); *French Competition Council Meted Out Record Sum of Fines to Many Firms in 1989*, 58 Antitrust & Trade Reg Rep (BNA) 929 (June 14, 1989) (France); *FCO Levies Fines on Drug Wholesalers for Price Fixing, Customer Allocation*, 60 Antitrust & Trade Reg Rep (BNA) 286-287 (Feb 21, 1991)

to our use of the "effects" test to establish U.S. antitrust jurisdiction over anticompetitive conduct overseas that affected our markets, countries from Canada to Czechoslovakia now employ the "effects" test in their antitrust statutes and enforcement policies, and the EC uses the test in implementing its new Merger Regulation.[43]

Building on these accomplishments, the various national agencies should talk to each other in general and specific terms about antitrust policy goals and enforcement efforts. The members of the OECD meet three times a year in Paris. The Justice Department and the FTC have regular consultations with their counterparts in the EC, Canada, and Japan. The U.S. maintains bilateral antitrust agreements with Australia, Canada, and Germany, and a brand-new agreement with the EC that promises to open a new era of close cooperation and coordinated enforcement effort between the antitrust authorities of the world's two largest economies.

In addition, the Justice Department should provide comments, both formal and informal, general and detailed, on major enforcement guidelines proposed by competition agencies in other countries. In recent years, the Justice Department has provided such comments to the EC with respect to its Merger Regulation, to Canada with respect to its new Merger Guidelines and its recently proposed guidelines on predatory pricing, and to Japan with respect to its proposed guidelines on import distribution and on practices in the Japanese domestic distribution system. Conversely, the Justice Department has frequently benefitted from the views of other national competition authorities on subjects as diverse as our 1988 "Antitrust Enforcement Guidelines for International Operations" and the legislation on production joint ventures now pending before Congress.

We can also move toward a common international understanding of competition policy by exchanging staff personnel—consistent, of course, with the demands of our respective confidentiality statutes. In recent years, the Justice Department has hosted staff interns from Canada, the EC, and Japan, and last December a senior official of the EC Merger Task Force took part in a week-long merger training seminar that the Justice Department

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(Germany); Robert Thomson, *Japan's Cartel Busters Start to Get Tough*, Financial Times 1-6 (April 3, 1991).

[43] See Goldman, *Commentary* at 332-35 (Canada) (cited in note 40); Competition Protection Act of January 30, 1991, No 63/1991 Coll of Law, art 2(3) (1991) (Czechoslovakia); Commission Reg 4064/89, art 1, 1989 OJ L395:5.

organized for the benefit of U.S. officials. As part of our program of technical assistance to the emerging market economies of Central and Eastern Europe, I have made policy-level visits to competition agencies in Czechoslovakia, Hungary, and Poland, and Justice Department and FTC staff have visited the former USSR and Bulgaria to consult with local authorities about new competition legislation and policy. In addition, the Justice Department and the FTC have hosted a week-long competition seminar in Washington for USSR and Soviet republic officials, and the Justice Department and the FTC have assigned staff attorneys and economists to work on a long-term basis with the Polish Antimonopoly Office in Warsaw and the Czechoslovak Federal Bureau of Competition in Bratislava. In all of these endeavors, we have attempted to come to a common understanding of core competition principles, while taking into account obvious differences in national legislation and economic circumstances.

But I believe we can do more than that. The Justice Department and the FTC should sit down with our Canadian and EC counterparts and work toward homogenizing the premerger notification process in the three jurisdictions. Firms involved in international mergers simply should not have to make vastly different filings in Washington, Ottawa, and Brussels. Along the same lines, we should think seriously about how the leading national antitrust authorities could work together toward the convergence of substantive antitrust requirements.[44] We are currently engaged in such an exercise in the OECD, and I am optimistic that this work will have significant results. Indeed, the Ministerial communique issued at the conclusion of the OECD Ministerial Meeting on June 5, 1991 noted that, "recent work in [the OECD] on competition law and policy provides the foundation for greater policy convergence and progress toward updating and strengthening the existing rules and arrangements (including both policy principles and procedures) for international co-operation in this area."[45]

I am not suggesting that resolving the differences between two or three or ten national competition agencies on these matters will be swift or easy, but if we begin now we can work to ensure that international antitrust enforcement will not fall behind the pace of world economic integration.

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[44] For an interesting perspective on antitrust harmonization, see Karl M. Meessen, *Competition of Competition Laws*, 10 Nw J Intl L & Bus 17 (1989).

[45] Council of the OECD, Communique of the June 5, 1991 Ministerial Level Meeting, Paris, SG/PRESS(91)31 at 8.

CONCLUSION

In closing, I would emphasize once again the crucial role that competition has played in the enormous growth of the United States economy over the last 200 years, and stress that competition must play a similar role in the world economy in the future. At a time when there is an unprecedented agreement that free market principles are the best means to achieve economic prosperity, we need to shape a consensus about goals and procedures for antitrust laws among the increasingly large number of national enforcement agencies in order to ensure that our application of antitrust principles meets the challenge of an increasingly integrated world economy. As I have discussed in this Article, much progress has already been made, and I can promise that the Department of Justice will continue to strive forcefully to achieve that goal.