

# Table of Contents

	<u>Page</u>
<b>EXECUTIVE SUMMARY</b> .....	1
CHAPTER 1	
<b>GLOBALIZATION AND ITS IMPLICATIONS FOR ANTITRUST COOPERATION AND ENFORCEMENT</b> .....	33
THE MANDATE OF THE INTERNATIONAL COMPETITION POLICY ADVISORY COMMITTEE . . . .	34
THE GLOBAL ECONOMY AND COMPETITION POLICY .....	36
STRUCTURE OF THE REPORT .....	38
CHAPTER 2	
<b>MULTIJURISDICTIONAL MERGERS: FACILITATING SUBSTANTIVE CONVERGENCE AND MINIMIZING CONFLICT</b> .....	41
INTERNATIONALIZATION OF ANTITRUST MERGER CONTROL LAW .....	43
Globalization and the Merger Wave .....	43
Overview of Substantive Approaches to Merger Analysis .....	48
Challenges Presented by Diverse Policy Goals and Approaches .....	52
<i>Potential for Divergence in Analyses and Results</i> .....	52
<i>Friction Among Jurisdictions</i> .....	54
STRATEGIES FOR FACILITATING SUBSTANTIVE CONVERGENCE AND MINIMIZING CONFLICT .	57
Facilitate Greater Transparency .....	59
Develop Disciplines for Merger Review .....	62
Continue to Enhance Cross-Border Cooperation .....	64
Develop a Framework for Cooperation and the Exchange of Confidential Business Information .....	68
<i>Protocol for Cooperation in Merger Investigations</i> .....	69
<i>Model Waivers of Confidentiality</i> .....	69
<i>Policy Statement</i> .....	71
<i>Notice of Information Exchange</i> .....	75
Develop Work-Sharing Arrangements .....	76
<i>Work Sharing in the Remedy Stage</i> .....	76
<i>Work Sharing in the Review Stage</i> .....	78
<i>Potential for Advanced Work Sharing</i> .....	81
SUMMARY OF RECOMMENDATIONS .....	82

*Table of Contents*

CHAPTER 3

**MULTIJURISDICTIONAL MERGERS: RATIONALIZING THE MERGER REVIEW PROCESS**

<b>THROUGH TARGETED REFORM</b> .....	87
Benefits of Antitrust Merger Notification .....	88
Challenges Presented by the Proliferation of Merger Regimes .....	90
Rationalizing the Merger Review Process in Light of Globalization .....	94
<b>TARGETED REFORM: CASTING THE MERGER REVIEW NET APPROPRIATELY</b> .....	98
Using Notification Thresholds to Screen Out Mergers That Are Unlikely to Have Appreciable Anticompetitive Effects Within the Reviewing Jurisdiction .....	99
<i>Nexus to the Jurisdiction</i> .....	99
<i>Appreciable Anticompetitive Effects within the Reviewing Jurisdiction</i> .....	104
Reducing Uncertainty and Unnecessary Burden Imposed by Notification Thresholds .....	106
<i>Objectively Based Notification Thresholds</i> .....	106
<i>Transparency</i> .....	107
<b>TARGETED REFORM: REDUCING BURDENS ON TRANSACTIONS IN THE MERGER REVIEW NET</b> .....	108
Setting Reasonable Deadlines and Time Frames for Review .....	109
<i>Triggering Events</i> .....	109
<i>Initial Review Periods</i> .....	111
<i>Second-Stage Review Periods</i> .....	112
Refining Information Requests .....	113
<i>Initial Filing Requirements</i> .....	114
<i>Second-Stage Investigations</i> .....	120
<b>ADVISORY COMMITTEE RECOMMENDATIONS FOR TARGETED REFORM IN THE UNITED STATES</b> .....	123
Recommendations on Threshold Requirements .....	124
<i>Nexus to the Jurisdiction</i> .....	124
<i>Appreciable Anticompetitive Effects</i> .....	126
Recommendations on Deadlines and Time Frames for Review .....	130
Recommendations on Focused Information Requirements .....	134
<i>Initial Filing and “One and a Half” Requests</i> .....	134
<i>The Second-Request Process</i> .....	137
Multiple Review of Mergers by Antitrust and Sectoral Regulators .....	142
<i>The U.S. Competition Policy System in Merger Review</i> .....	144
<i>Impact of Multiplicity</i> .....	145
<i>The Magnitude of the Problem</i> .....	147
<i>Possible Approaches to Reducing Costs and Achieving Domestic Policy</i> <i>Harmonization</i> .....	150
<i>Recommendations and Issues for Further Study</i> .....	153

Table of Contents

SUMMARY OF RECOMMENDATIONS ..... 154

CHAPTER 4

**INTERNATIONAL ANTICARTEL ENFORCEMENT AND INTERAGENCY ENFORCEMENT COOPERATION**

THE U.S. ENFORCEMENT RECORD ..... 165

    Surge in U.S. International Cartel Prosecutions ..... 166

    Examples of Recent International Cartels ..... 171

*Citric Acid and Lysine Cartels (Food and Feed Additives Cartels)* ..... 171

*Graphite Electrodes Cartel* ..... 172

*Vitamins Cartel* ..... 174

KEY ISSUES BEFORE THE ADVISORY COMMITTEE ..... 175

    An Increase in Cartels or in Detection? ..... 175

    Changes in U.S. Enforcement Policy ..... 177

    Interagency Anticartel Enforcement Cooperation ..... 181

*U.S. Antitrust Enforcement Cooperation Through MLATs* ..... 182

*Antitrust Enforcement Assistance Through Traditional International Law Mechanisms* ..... 183

    Anticartel Enforcement in Other Countries ..... 185

*Assessment of Recent Trends* ..... 190

    Greater Cooperation Through Increased Awareness ..... 190

THE USE AND MANAGEMENT OF CONFIDENTIAL INFORMATION ..... 191

    Agency Accountability in Safeguarding Information ..... 192

    Transparency ..... 193

    Notice ..... 193

    Transparency and Notice Issues in Civil Nonmerger Matters ..... 195

    Other Confidentiality Proposals Considered ..... 196

THE IMPORTANCE OF POSITIVE INCENTIVES ..... 196

SUMMARY OF RECOMMENDATIONS ..... 198

CHAPTER 5

**WHERE TRADE AND COMPETITION INTERSECT ..... 201**

THE ADVISORY COMMITTEE’S DEFINITION OF RELEVANT PRACTICES ..... 203

    Private Anticompetitive or Exclusionary Restraints ..... 204

    Governmental Practices ..... 206

    Not All Competition Problems are Trade Problems ..... 210

Table of Contents

CHAPTER 5 (CONT'D.)

THE SCOPE OF THE PROBLEM .....	211
Anecdotal Evidence .....	211
<i>U.S. Complaints about Japanese Business Practices</i> .....	211
<i>U.S. Complaints about Japanese Competition Law</i> .....	215
<i>U.S.-European Conflicts</i> .....	216
<i>Complaints about Latin American Practices</i> .....	218
<i>Anticompetitive and Exclusionary Practices Alleged to Exist in</i> <i>Other Countries</i> .....	219
Complaints Raised before the WTO Working Group .....	220
Evidence from Business Associations .....	223
The Advisory Committee's Assessment of the Evidence .....	224
POSITIVE COMITY .....	226
Evolution of Positive Comity .....	227
<i>1991 U.S.-EC Agreement</i> .....	229
<i>1998 Supplemental Agreement</i> .....	230
Positive Comity in Practice .....	232
<i>Formal Use: Computer Reservation Systems</i> .....	232
<i>Informal Applications</i> .....	234
Assessments of Positive Comity .....	235
The Advisory Committee's Assessment of Positive Comity .....	237
The Advisory Committee's Recommendations for Strengthening Positive Comity ...	239
U.S. ENFORCEMENT TO GAIN MARKET ACCESS .....	241
The U.S. Government's Extraterritorial Enforcement Policy .....	242
<i>The Government Case Record</i> .....	244
Private Enforcement Record .....	246
Reactions from Abroad to Extraterritorial Enforcement .....	248
Consideration of Proposals for Dealing with Anticompetitive Practices Abroad .....	249
The Advisory Committee's Approach for Applying U.S. Extraterritorial Enforcement .....	252
<i>Consider Foreign Enforcement</i> .....	252
<i>Using Extraterritorial Enforcement When Necessary</i> .....	253
<i>Develop a Base of Evidence on Export Restraints</i> .....	254
THE ROLE FOR INTERNATIONAL ORGANIZATIONS .....	255
The Organization for Economic Cooperation and Development .....	258
The World Trade Organization .....	259
<i>Competition Policy Features of Existing WTO Agreements</i> .....	261
<i>The Working Group on the Interaction Between Trade and Competition Policy</i> ..	263

Table of Contents

CHAPTER 5 (CONT'D.)

Views on the Appropriate Role for the WTO .....	264
<i>Views of Governments</i> .....	264
<i>Business and Labor Viewpoints</i> .....	268
<i>Other Expert Views</i> .....	269
The Seattle Ministerial and Its Treatment of Competition Policy .....	271
The Advisory Committee's Assessment on a Role for the WTO .....	272
<i>Private Restraints</i> .....	275
<i>Mixed Governmental and Private Restraints</i> .....	276
SUMMARY OF RECOMMENDATIONS .....	277

CHAPTER 6

<b>PREPARING FOR THE FUTURE</b> .....	281
EXPANDING THE DIALOGUE: A GLOBAL COMPETITION INITIATIVE .....	281
Why This Global Competition Initiative Is Needed and What It Would Do .....	282
The Mission and Activities of the Initiative .....	284
INTERNATIONAL MEDIATION OF COMPETITION POLICY DISPUTES .....	286
ELECTRONIC COMMERCE AND COMPETITION POLICY: A NEW FRONTIER .....	287
Traditional Antitrust Problems .....	289
Network Effects .....	290
Hidden Mercantilism .....	291
Alternative Approaches for Policymakers to Consider .....	292
THE ROLE OF COMPETITION POLICY IN U.S. FOREIGN ECONOMIC POLICY .....	294
Expanding the U.S. Profile in International Competition Policy .....	296
SUMMARY OF RECOMMENDATIONS .....	300

ANNEXES

ANNEX 1-A	Separate Statement of Advisory Committee Member Eleanor M. Fox
ANNEX 1-B	Biography of Members
	List of Advisory Committee Public Meetings and Hearings
	Advisory Committee Hearings Programs
ANNEX 1-C	U.S. Experience With International Antitrust Enforcement Cooperation
ANNEX 2-A	HSR Filing and Enforcement Statistics
ANNEX 2-B	Transactions Reported Under HSR Involving a Foreign Acquiring Person or a Foreign Acquired Entity
ANNEX 2-C	Worldwide Antitrust Merger Notification Systems
ANNEX 2-D	Model Waivers of Confidentiality Protections
ANNEX 2-E	Model Framework for Policy Statements

*Table of Contents*

ANNEX 3-A	Filing Fees of Selected Jurisdictions
	ANNEXES (CONT'D.)
ANNEX 3-B	The Relationship Between Antitrust Agencies and Sectoral Regulators
ANNEX 4-A	U.S. International Cartel Prosecutions During the 1990s
ANNEX 4-B	U.S. Corporate Leniency Program and Antitrust Penalties in Select Jurisdictions
ANNEX 4-C	Anticartel Enforcement in Canada and Japan
ANNEX 5-A	Summary of Outbound Restraint Cases
ANNEX 6-A	U.S. Antitrust Technical Assistant Programs