

# Cooperation Among Competition Authorities in Merger Regulation

John J. Parisi†

<b>Introduction</b> .....	55
<b>I. From Conflict Through Comity to Cooperation and Convergence</b> .....	57
A. The Dark Ages of Conflicts .....	57
B. From Conflict to Comity .....	58
C. The U.S.-EC Cooperation Agreement .....	59
<b>II. Cooperation in Practice</b> .....	61
A. Information Sharing .....	62
B. Facilitating Cooperation Through Waivers of Confidentiality .....	62
C. Reaching Complementary Resolution of Cases .....	63
<b>III. From Cooperation to Convergence</b> .....	63
<b>IV. Meeting Continuing and New Challenges</b> .....	66
A. More Regimes, More Convergence .....	67
B. New Major Players .....	68
C. The Economic Crisis .....	69
<b>Conclusion</b> .....	69
<b>Appendix</b> .....	70

## Introduction

Co-operation among antitrust authorities facilitates the effective and efficient enforcement of antitrust laws and thus the maintenance of competition in markets. That is not an expression of economic theory, but rather a fact of life. As business concerns have increasingly pursued foreign trade and investment opportunities, antitrust compliance issues have arisen which transcend national borders and have led antitrust authorities in the affected jurisdictions to communicate, co-operate, and co-ordinate their efforts to achieve compatible enforcement results.

These efforts succeed in the vast majority of cases, despite differences in laws, procedures, and, sometimes, the interests of the affected countries. Like taxes, environmental regulations, and employment laws, antitrust rules differ somewhat from jurisdiction to jurisdiction, both as to scope and

---

† The author has been Counsel for European Competition Affairs in the Office of International Affairs of the United States Federal Trade Commission since 1991. The views expressed herein are his own and do not necessarily reflect the views of the Federal Trade Commission or any Commissioner thereof. Portions of this article were previously published in 61 *N.Y.U. ANN. SURV. AM. L.* 509, 509-27 (2005). The author would like to thank Andrea Tkacikova and Ashley Vincent for their assistance in preparing this article.

threshold levels of violations as well as the procedures which are followed in order to obtain and assure compliance. These differences reflect policy-makers' choices based upon assessments of the economic structures in their jurisdictions and the role that competition should play in them. And these differences occasionally result in a transaction or conduct being found in violation of one reviewing jurisdiction's laws, but not another's. Also, a nation's "important interests" may include some whose defence (e.g. jobs, "national champions", etc.) is not necessarily compatible with antitrust enforcement. When competition enforcers reach different, albeit compatible, results, as in *Boeing/McDonnell Douglas* or *Ciba-Geigy/Sandoz*, some question—wrongly, given the overall record—the efficacy of co-operation.

Those words were published ten years ago,<sup>1</sup> during an international merger wave of historical proportions.<sup>2</sup> Competition authorities around the world were challenged not only by the number and scope of these transactions but also by the multi-national nature of the development, production, and distribution of the products or services at issue. Furthermore, they had to work through differences in procedures and substantive standards in their respective laws to avoid conflicts in their decisions.<sup>3</sup> The more competition authorities worked together, the more they recognized the common goals they sought in their enforcement and, thus, the value of cooperating with one another.

In the intervening ten years, competition authorities mostly have succeeded in avoiding conflict—nine years have passed since the one notable conflict, the *GE/Honeywell* case.<sup>4</sup> Competition authorities also have taken steps to converge their rules and methods of analysis, spurred by their own experience and furthered by their joint efforts in the International Competition Network that was established in 2001. The challenges inherent in mergers of firms with multi-national operations remain, as well as the specter of "national interests," a factor that some fear has re-emerged as a consequence of the current worldwide financial crisis.<sup>5</sup> Finally, new competition authorities in growing economies, particularly China and India, recently have entered the stage amidst speculation as to how they will interpret and enforce their new laws.<sup>6</sup>

To understand how competition authorities face these challenges and how they continue to provide credible and effective enforcement cooperation, it is useful to recall the evolution of enforcement cooperation, how it works in practice, and how the agencies successfully can face the challenge

---

1. John J. Parisi, *Enforcement Co-operation Among Antitrust Authorities*, 20 E.C.L.R. 133, 133 (1999).

2. *See id.*

3. *See id.*

4. Commission Decision No. 2004/134/EC of 3 July 2001, declaring a concentration to be incompatible with the common market and the EEA Agreement (Case COMP/M.2220 - General Electric/Honeywell), 2004 O.J. (L 48) 1 (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:048:0001:0085:EN:PDF>.

5. *See, e.g.,* Mario Monti, *Watchdogs of the World, Unite!*, FIN. TIMES, July 28, 2009, available at [http://www.ft.com/cms/s/0/be1c26c8-7ba8-11de-9772-00144feabdc0.html?nclick\\_check=1](http://www.ft.com/cms/s/0/be1c26c8-7ba8-11de-9772-00144feabdc0.html?nclick_check=1).

6. Atleen Kaur, *Competition Laws in the Lands of Tigers and Dragons*, MICH. BAR J., Sept. 2008, at 37, 34.

of effectively and sensibly enforcing national laws in cases involving multinational firms and effects. This article will begin with a historical review, continue with a discussion of how agencies cooperate in practice, and conclude with some thoughts about facing ongoing and current challenges.

## I. From Conflict Through Comity to Cooperation and Convergence

### A. The Dark Ages of Conflicts

A generation ago, U.S. antitrust enforcement faced enormous resistance from some of its leading trading partners in Europe and elsewhere. There were two main reasons for that: First, while the U.S. economy from its beginnings mainly has been based upon competition among privately-owned enterprises exercising relative freedom of contract, many foreign economies were based on state-owned—and sometimes monopoly—enterprises, state-sanctioned cartels, and other measures that insulated enterprises from competition. Second, the growth of international trade brought the anticompetitive effects of cartelized and monopolized economies, such as “Fortress Europe,” into the sights of the U.S. antitrust enforcement machinery, i.e., both government and private enforcement.<sup>7</sup>

From the 1940s through the late 1970s, the U.S. antitrust agencies and private parties in private litigation aggressively applied U.S. antitrust law against parties operating outside the United States and whose business activities were aimed at the United States.<sup>8</sup> The uranium cartel case highlighted and seemingly cemented the differences between the United States and its major trading partners over competition law enforcement.<sup>9</sup> An American firm sought damages from foreign uranium producers who had formed a cartel in the face of a U.S. import ban imposed to protect American uranium producers from foreign competition.<sup>10</sup> In furtherance of the litigation, U.S. courts issued discovery demands to the foreign defendants.<sup>11</sup> To the foreign states involved, especially the United Kingdom, the United States was applying its laws, both substantive and procedural, unreasonably extraterritorially, and moreover, in conflict with that nation’s important economic and strategic interests.<sup>12</sup> The situation led a

7. See GARY CLYDE HUFBAUER, *EUROPE 1992: AN AMERICAN PERSPECTIVE* 21 (1990); Brian T. Hanson, *What Happened to Fortress Europe?: External Trade Policy Liberalization in the European Union*, 52 *INT’L ORG.* 55, 55-56 (1998) (explaining the concern that the EU would adopt a liberal trade policy within the EU, but exclude outside competition, creating a “fortress”).

8. SPENCER WEBER WALLER, *ANTITRUST AND AMERICAN BUSINESS ABROAD* §§ 6.14, 2.12-2.14, 2.19-2.23 (3d ed. 1997).

9. See *In re Uranium Antitrust Litig.*, 617 F.2d 1248 (7th Cir. 1980); WALLER, *supra* note 8, § 6.14 (providing a synopsis of the uranium cartel litigation).

10. See *In re Uranium Antitrust*, 617 F.2d at 1254; WALLER, *supra* note 8, § 6.14.

11. See *In re Uranium Antitrust Litigation*, 617 F.2d at 1255-56; *In re Uranium Antitrust Litigation*, 473 F.Supp. 382, 390 (N.D. Ill. 1979); *In re Westinghouse Elec. Corp. Uranium Contract Litig.* [1978] A.C. 547, 551-53 (H.L.) (appeal from Eng.).

12. See *In re Westinghouse Elec. Corp. Uranium Contract Litig.* [1978] A.C. 547, 591-92 (H.L.) (appeal from Eng.); WILBUR L. FUGATE, *FOREIGN COMMERCE AND THE ANTI-TRUST LAWS* § 2.16 (5th ed. 1996); A.V. Lowe, *Blocking Extraterritorial Jurisdiction: The British Protection of Trading Interests Act, 1980*, 75 *AM. J. INT’L L.* 257, 269-71 (1981)

British judge, Lord Wilberforce, to declare that “[i]t is axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack.”<sup>13</sup> As a consequence of this case, the United Kingdom and France each enacted “blocking statutes” in 1980 that prohibited their citizens from cooperating with foreign authorities, such as through the provision of evidence or consenting to judgments.<sup>14</sup>

The European Community, meanwhile, showed that it too would actively apply its competition laws to foreign firms operating in Europe whose business activities appeared to harm European consumers. In 1984, IBM agreed to settle European Commission (EC) charges concerning certain business practices, a case with some similarity to the recent *Microsoft* case.<sup>15</sup> Also during the 1980s, the EC condemned the so-called “Wood-pulp” export cartel that included among its members U.S. firms which were immunized from U.S. antitrust law.<sup>16</sup> This case demonstrated the extraterritorial reach of European Community competition laws.<sup>17</sup>

## B. From Conflict to Comity

The uranium cases demonstrated that confrontation was not an effective way of resolving transnational economic disputes and threatened deleterious spill-over effects on other important aspects of foreign relations.<sup>18</sup> The Organisation for Economic Co-operation and Development (OECD) began efforts to deal cooperatively with anticompetitive business practices that affect international trade. In 1967, the OECD’s members adopted a recommendation concerning cooperation between member countries on restrictive business practices affecting international trade; the OECD has modified their recommendation several times, most recently in 1995.<sup>19</sup> While not a formal international agreement, the OECD recommendation

---

(discussing British objections to the U.S.’s assertion of jurisdiction over foreign antitrust defendants).

13. *In re Westinghouse Elec. Corp. Uranium Contract Litig.* [1978] A.C. 547, 617 (H.L.).

14. See Protection of Trading Interests Act, 1980, c. 11 (U.K.); Law No. 80-538 of July 16, 1980, Journal Officiel de la République Française [J.O.] [Official Gazette of France], July 17, 1980, p. 1799; see also WALLER, *supra* note 8, § 4.16 (describing foreign blocking statutes).

15. See THE EC LAW OF COMPETITION 627-28 (Jonathan Faull & Ali Nikpay eds., 1999) (discussing the IBM case).

16. Commission Decision No. 85/202/EEC of 19 December 1984, relating to a proceeding under Article 85 of the EEC Treaty (IV/29.725 - Wood pulp), 1985 O.J. (L 85) 1, 6-7 (EC).

17. See *id.* at 25; VALENTINE KORAH, AN INTRODUCTORY GUIDE TO EC COMPETITION LAW AND PRACTICE § 1.6 (7th ed. 2000).

18. See Joseph P. Griffin, U.S. International Antitrust Enforcement: A Practical Guide to the Agencies’ 1995 Guidelines, Bureau of National Affairs 1996, Part Four (“Understanding the Concerns of Foreign Governments”); Terry Calvani, Comm’r, Irish Competition Auth., Remarks at Panel Discussion on Competition and Consumer Protection in the World Economy: Conflict, Cooperation and Convergence, 208-09 (Sept. 23, 2004), available at <http://www.ftc.gov/ftc/history/transcripts/040923transcript011.pdf>.

19. ORG. FOR ECON. CO-OPERATION AND DEV., REVISED RECOMMENDATION OF THE COUNCIL CONCERNING CO-OPERATION BETWEEN MEMBER COUNTRIES ON ANTICOMPETITIVE PRACTICES AFFECTING INTERNATIONAL TRADE, OECD Doc. C(95)130/FINAL (July 27-28, 1995).

nonetheless provides a framework and encouragement to notify members of enforcement actions that may affect their interests, share information, take member concerns into account, and discuss enforcement policy on a regular basis.<sup>20</sup>

The OECD's efforts were based upon previous examples of international bilateral cooperation. For example, in 1959 Canada and the United States agreed to consult with each other in antitrust matters, and the United States and Germany developed a cooperative relationship out of post-World War II decartelization efforts.<sup>21</sup> In 1976, Germany and the United States entered a formal enforcement cooperation agreement, which endures in practice to this day.<sup>22</sup> Formal agreements with Australia in 1982<sup>23</sup> and Canada in 1984 (supplanted by a new agreement in 1995)<sup>24</sup> grew out of the uranium conflict.<sup>25</sup>

Increasing contact between the EC and U.S. authorities during the 1980s over the *IBM* and *Woodpulp* cases, among others, illuminated the need for cooperation.<sup>26</sup> But the adoption of another source of potential conflict in 1989 demonstrated the urgent need for a formal cooperation agreement.

### C. The U.S.-EC Cooperation Agreement

Among the many momentous events of 1989 was the decision of the European Community's Council of Ministers to adopt the EC Merger Regulation, which authorized the European Commission (EC) to vet proposed business mergers.<sup>27</sup> Given the breadth and depth of U.S. direct investment

20. See *id.*; OECD, *Inventory on Effective Cooperation Practices*, (E.C.), OECD Doc. DAF/COMP/WP3/WD(2007)45 (2007).

21. See Submission from the United States to the World Trade Organization Working Group on the Interaction between Trade and Competition Policy, US Experience with Antitrust Cooperation Agreements, WT/WGTC/W/48 (Nov. 24, 1997) at 2.

22. See Agreement Relating to Mutual Cooperation Regarding Restrictive Business Practices, U.S.-F.R.G., June 23, 1976, *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,501.

23. See Agreement Relating to Cooperation on Antitrust Matters, U.S.-Austl., June 29, 1982, 34 U.S.T. 388, *reprinted in* 4 Trade Reg. Rep (CCH) ¶ 13,502.

24. Agreement Regarding the Application of Their Competition and Deceptive Marketing Practices Laws, U.S.-Can., Aug. 3, 1995, *reprinted in* 4 Trade Reg. Ret. (CCH) ¶ 13,503, available at <http://www.usdoj.gov/atr/public/international/docs/uscan721.pdf> (replacing Memorandum of Understanding as to Notification, Consultation and Cooperation with Respect to the Application of National Antitrust Laws, U.S.-Can., Mar. 9 1984, *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,503A).

25. See Int'l Competition Advisory Comm. to the Att'y Gen. and Asst. Att'y Gen. for Antitrust, Final Report Annex I-C, v-vii (2000), available at <http://www.justice.gov/atr/icpac/finalreport.htm> (also noting that the U.S. has also entered such bilateral cooperation agreements with Brazil, Israel, Japan, and Mexico).

26. See Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Div., U.S. Dep't of Justice, Improving Bilateral Antitrust Cooperation, Remarks at the Conference on Competition Policy in the Global Trading System: Perspectives from Japan, the United States, and the European Union 4 (June 23, 2000), available at <http://www.justice.gov/atr/public/speeches/5075.pdf>.

27. See Council Regulation 139/2004, EC Merger Regulation, ¶¶ 17, 20, art. 25, 2004 O.J. (L 24) 1, 3, 19 [hereinafter EC Merger Regulation] (replacing Council Regulation 4064/89, On the Control of Concentrations Between Undertakings, 1989 O.J. (L

in Europe, mergers and acquisitions by U.S. firms in Europe would clearly fall under the EC's scrutiny.<sup>28</sup> Less clear were the precise standards under which such deals would be examined—including whether notions of “industrial policy” would be considered—and how those standards compared with the standards applied by U.S. antitrust authorities.<sup>29</sup>

Given the numerous differences between the United States and Europe as to, for example, trade in goods and services, government subsidies, and access to government procurement, EC Competition Commissioner, Sir Leon (now Lord) Brittan stated, “With the best will in the world . . . the US and the [European] Community may well one day soon take different views of a competition case.”<sup>30</sup> And, he warned, “The problem cases may be rare now, but they will increase in number and complexity.”<sup>31</sup> Consequently, Sir Leon proposed that the United States and the European Community enter an agreement to coordinate the application of their antitrust laws and to strengthen cooperation between their respective enforcement authorities.<sup>32</sup>

The U.S. Government, represented by its two antitrust enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), accepted Sir Leon's invitation to negotiate an enforcement cooperation agreement with the European Communities. The Agreement was signed on September 23, 1991.<sup>33</sup> In sum and substance, the parties pledged to notify each other when enforcement activities might affect important interests of the other party, exchange information to the extent allowed by each party's laws, coordinate their enforcement activities when in their mutual interest to do so, and consider comity in enforcement decisions.<sup>34</sup> The Agreement's purpose is to “promote cooperation and coordination and lessen the possibility or impact of differences between the Parties in the application of their competition laws.”<sup>35</sup>

---

395) and Council Regulation 1310/97), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:024:0001:0022:EN:PDF>.

28. See Stark, *supra* note 26, at 4.

29. See, e.g., Bernd Langeheine, *Substantive Review Under the EEC Merger Regulation*, 1990 ANN. PROC. FORDHAM CORP. L. INST. 481 (1991); James S. Venit, *The Evaluation of Concentrations Under Regulations 4064/89: The Nature of the Beast*, 1990 ANN. PROC. FORDHAM CORP. L. INST. 519 (1991) (speculating as to the evaluation of concentrations under the EC Merger Control Regulation with regards to industrial and social policy, the meaning of “dominant position,” and when modification of concentrations will be required); Panel Discussion, *Substantive Review Under Merger Regulation*, 1990 ANN. PROC. FORDHAM CORP. L. INST. 561 (1991).

30. LEON BRITTAN, COMPETITION POLICY AND MERGER CONTROL IN THE SINGLE EUROPEAN MARKET 18 (1991).

31. *Id.*, 29.

32. See Press Release, European Commission, Sir Leon Brittan and the US Attorney General, Dick Thornburgh, Discuss EC-US Agreement on Antitrust Issues (Jan. 15, 1991), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/91/35&format=HTML&aged=1&language=EN&guiLanguage=EN>.

33. Agreement on the Application of Their Competition Laws, U.S.-European Communities, Sept. 23, 1991, 30 I.L.M.1487, 1492, reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,504 [hereinafter U.S.-EC Agreement].

34. See *id.* arts. II-VI,

35. *Id.* art. I(1).

U.S.-EC cooperation in competition policy is based upon “golden rule” principles—sovereignty, comity, and respect—as well as the persuasive power of facts and ideas.<sup>36</sup> It has been an important factor in moving the two continents to grow together rather than to drift apart.<sup>37</sup> But, this relationship between the United States and the EC is a story that includes episodes, in particular, the *Boeing/McDonnell-Douglas* and *GE/Honeywell* merger cases, that highlight differences between Europe and the United States.<sup>38</sup> These episodes led to headlines declaring “splits” and even “trade wars” and caused some to question the efficacy of U.S.-EC cooperation.<sup>39</sup> Yet, these two divisive cases are outnumbered by many instances of effective and complementary U.S.-EC merger enforcement.<sup>40</sup> Studying these successful cases is important to understand how cooperation “works” in practice generally and to discern how specific issues in actual cases are resolved.

## II. Cooperation in Practice

Entering their Agreement almost two decades ago, U.S. and EC authorities recognized that their respective competition laws contained different legal standards (such as the EC’s “dominance” test versus the United States’ “substantial lessening of competition” test for mergers) that could lead to divergent outcomes.<sup>41</sup> To better understand each other’s laws and processes, workshops were held where EC and U.S. staff discussed analytical tools such as market definition and competitive effects analysis, which were particularly timely under the newly developed U.S. horizontal merger guidelines.<sup>42</sup> They also discussed investigative methods such as interview techniques and document gathering and analysis.<sup>43</sup> Additionally, the United States and the EC studied each other’s pre-merger notification instruments so that each would know exactly what information each side required.<sup>44</sup>

---

36. See *id.* at 1487 (Introductory Note by Charles F. Rule).

37. See JOSEPH P. QUINLAN, DRIFTING APART OR GROWING TOGETHER? THE PRIMACY OF THE TRANSATLANTIC ECONOMY 1-2, 14-16, 22-26 (2003) (exploring the relationship between the U.S. and Europe and how the economy and other factors have impacted that relationship).

38. See Douglas Melamed & Charles Stark, *Time to Reflect-on the Future*, GLOBAL COUNSEL, Oct. 2001, at 45 (discussing the threat to effective ES-US enforcement cooperation stemming from the EC’s handling of the *GE/Honeywell* case).

39. See, e.g., Edmund L. Andrews, *Boeing Is said to Give In to European Demand on McDonnell Deal*, NY TIMES, July 23, 1991, at D1 (reporting on Boeing’s efforts to “avoid a bruising trade battle”).

40. See attached Appendix for a list of such cases.

41. See *supra* note 29.

42. See Janet D. Steiger, *Perspectives on U.S. International Antitrust Enforcement*, 1993 FORDHAM CORP. LAW INST. 15, 25-27 (1994).

43. *Id.*

44. *Id.*

## A. Information Sharing

With the help of their respective legal services, the agencies determined what kinds of information the United States and EC could share with each other within the bounds of their respective confidentiality rules. The agencies distinguish confidential *agency* information from confidential *business* information: confidential agency information can be shared with other antitrust authorities, while statutes bar the disclosure of confidential business information absent a waiver from the information's submitter.<sup>45</sup> The agencies are not prohibited from disclosing confidential agency information, but they normally treat this information as non-public.<sup>46</sup> Confidential agency information includes staff analyses of cases, such as product and geographic market definitions, assessment of competitive effects, and potential remedies.<sup>47</sup>

## B. Facilitating Cooperation Through Waivers of Confidentiality

The willingness of parties to grant a limited waiver of their confidentiality rights to facilitate cooperation among enforcement agencies marks the most significant development emerging from the 1990s merger wave. As companies and their counselors became more familiar with the nature and extent of enforcement cooperation that took place among the agencies and recognized the benefits of coordination, they became more willing to facilitate the process.<sup>48</sup> Granting waivers is now routine in most mature enforcement relationships, as the relationship between U.S. agencies, the EC, and EU Member States' authorities demonstrates.<sup>49</sup> Waivers typically cover all materials submitted to the agencies, but the waiver is limited to communication between the reviewing agencies.<sup>50</sup> The agencies maintain the confidentiality of all materials against third parties and the general public.<sup>51</sup> Waivers enable the reviewing agencies to focus more quickly on the enforcement issues over which they have common concerns, to determine whether the magnitude of the concerns requires enforcement action by one or both agencies, and then to consider remedial measures that will

---

45. Pamela Jones Harbour, Comm'r, U.S. Fed. Trade Comm'n, Developments in Competition Law in the European Union and the United States: Harmony and Conflict, Remarks at the New York State Bar Association International Law and Practice Section Fall Meeting 25 London England (Oct. 21, 2005), at 25-26; *see also* Commission Report to the Council and the European Parliament on the Application of the Agreement Between the European Communities and the Government of the United States of America Regarding the Application of Their Competition Laws, COM(98) 509 final, at 5.

46. Harbour, *supra* note 45, at 26.

47. *Id.* at 26.

48. *Id.*

49. *See* INT'L COMPETITION NETWORK, WAIVERS OF CONFIDENTIALITY IN MERGER INVESTIGATIONS, pt. I (June 8, 2005) [hereinafter ICN WAIVERS OF CONFIDENTIALITY], available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc330.pdf>.

50. Harbour, *supra* note 45, at 26-27.

51. *Id.* at 27.

avoid subjecting the parties to conflicting obligations.<sup>52</sup>

### C. Reaching Complementary Resolution of Cases

As early as 1995, then-FTC Chairman Robert Pitofsky remarked that [W]e consulted with the EC on a number of cases over the past year. In many of those instances, we found separate European and American markets and different market effects. What is most interesting, however, is the consistency of analysis and conclusions that were reached by our respective staff members. Although there are procedural and substantive differences between our laws, the market analysis brought to bear is quite similar.<sup>53</sup>

When mergers between multi-national firms raise anticompetitive concerns, the reviewing agencies coordinate their efforts to ensure that the required remedies are complementary; that is, the remedies will meet the enforcement needs of the reviewing agencies without imposing conflicting obligations on the merging parties.<sup>54</sup> Detailed discussions take place concerning the nature and relative viability of remedial options.<sup>55</sup> In a few instances, U.S. and EC authorities have rejected a proposed divestee that was viable on one side of the Atlantic but not the other.<sup>56</sup> Even in cases where different remedies are necessary in different geographic markets, the agencies seek to coordinate the timing of their actions.

## III. From Cooperation to Convergence

In Spring, 1999, then-EC Competition Commissioner Karel Van Miert called for the establishment of a U.S.-EC Mergers Working Group to gather the wisdom gained in the many mergers jointly reviewed up to that point and to examine where cooperation could be enhanced, particularly as to remedies.<sup>57</sup> The Group drew on the experience gained in their agencies' case work as well as the findings of the FTC's 1999 Divestiture Study.<sup>58</sup> As a consequence, the EC issued a notice on merger remedies that broadly

---

52. *Id.*; see generally ICN WAIVERS OF CONFIDENTIALITY, *supra* note 49 (fully discussing the issues arising out of waivers of confidentiality and the role of waivers in inter-agency cooperation).

53. See Robert Pitofsky, Chairman, U.S. Fed. Trade Comm'n, Remarks Before the Fordham Corporate Law Institute 22nd Annual Conference on International Antitrust Law and Policy: International Antitrust - An FTC Perspective (Oct. 26, 1995), available at <http://www.ftc.gov/speeches/pitofsky/fcli95.shtm>.

54. See John J. Parisi, Counsel, E.U. Affairs Int'l Antitrust Div. U.S. Fed. Trade Comm'n, Enforcement Cooperation Among Antitrust Authorities, pt. III(5), Remarks Before the 6th Annual London Conference on EC Competition Law (May 19, 1999), available at <http://www.ftc.gov/speeches/other/ibc99059911update.shtm>.

55. *See id.*

56. *See id.*

57. Karel Van Miert, Member, Eur. Comm'n, Mega-Mergers and the Wave of Mergers Across the World - A Challenge for Antitrust Law?, Remarks Before the IX. International Conference on Competition, Berlin, (May 10, 1999), in MEGA-MERGERS - A NEW CHALLENGE FOR ANTITRUST LAWS? 231, 240-43 (Knud Hansen ed., 2000).

58. See A Study of the Commission's Divestiture Process, Staff of the Bureau of Competition (Fed. Trade Comm'n 1999), available at <http://www.ftc.gov/os/1999/08/divestiture.pdf>.

was consistent with U.S. approaches.<sup>59</sup>

Then, in the wake of the *GE/Honeywell* merger case,<sup>60</sup> the Group examined issues that arise in conglomerate mergers, including leveraging, bundling, and tying. The effort resulted in a clearer understanding of the issues and the agencies' approaches.<sup>61</sup> Consequently, the EC and the U.S. agencies have reached consistent outcomes in subsequent cases that raised vertical and conglomerate issues, such as *GE/Amersham* and *Google/DoubleClick*.<sup>62</sup>

The Merger Working Group also focused on procedures and produced a document, adopted in October 2002, describing best practices for the coordination of merger reviews.<sup>63</sup> Reflecting the experience gained over the past decade, the document describes how the agencies work together and suggests ways that merging parties can facilitate coordination.<sup>64</sup>

In 2004, the EU Council of Ministers substantially revised the Merger Regulation, supplanting the "dominance" test with a test that asks whether a proposed merger will "significantly impede effective competition."<sup>65</sup> This formulation is semantically compatible with the Clayton Act's "substantial lessening of competition" test.<sup>66</sup> The Council's amendments also clarified the Regulation to allow efficiency claims to be taken into account in merger analysis.<sup>67</sup> As a result, the EC also issued horizontal merger

59. See Mario Monti, European Comm'r for Competition Policy, The Commission Notice on Merger Remedies - One Year After, 2, Remarks Before the Centre d'économie industrielle, Ecole Nationale Supérieure de mines (CERNA) (Jan. 18, 2002), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/02/10&format=HTML&aged=0&language=EN&guiLanguage=EN>.

60. Commission Decision No. 2004/134/EC of 3 July 2001, declaring a concentration to be incompatible with the common market and the EEA Agreement (Case COMP/M.2220 - General Electric/Honeywell), 2004 O.J. (L 48) 1 (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:048:0001:0085:EN:PDF>.

61. See Charles A. James, Assistant Att'y Gen. Antitrust Div., U.S. Dep't of Justice, Recent Developments and Future Challenges at the Antitrust Division, 12-14, Remarks Before the Dallas Bar Association (Sept. 17, 2003), available at <http://www.justice.gov/atr/public/speeches/200239.pdf>.

62. See Commission Decision No. 2008/C 184/06 of 11 March 2008, declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.4731 - Google/DoubleClick), 2008 O.J. (C 184) 10 (EU), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:184:0010:0012:EN:PDF>; Case No. COMP/M.3304 - GE/Amersham, available at [http://ec.europa.eu/competition/mergers/cases/decisions/m3304\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m3304_en.pdf).

63. See U.S.-EU Merger Working Group, *Best Practices on Cooperation in Merger Investigations*, ¶¶ 2-3 (2002), available at [http://ec.europa.eu/competition/mergers/legislation/eu\\_us.pdf](http://ec.europa.eu/competition/mergers/legislation/eu_us.pdf).

64. See generally *id.*

65. EC Merger Regulation, *supra* note 27, arts. 2.2-3, Recitals ¶¶ 25-26.

66. See Mario Monti, European Comm'ner responsible for Competition Policy, Convergence in EU-US Antitrust Policy Regarding Mergers and Acquisitions: an EU Perspective, Remarks before the UCLA Law First Annual Institute on US and EU Antitrust Aspects of Mergers and Acquisitions (Feb. 28, 2004) 3, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/04/107&format=HTML&aged=0&language=EN&guiLanguage=EN>.

67. See EC Merger Regulation, *supra* note 27, art. 2.1(b), Recital ¶ 29.

guidelines,<sup>68</sup> which most knowledgeable observers found functionally equivalent to the U.S. Horizontal Merger Guidelines.<sup>69</sup> During the drafting of the EC's horizontal merger guidelines, numerous conversations took place between EC and U.S. staff and officials on all aspects of the guidelines.<sup>70</sup>

Another example of convergence in the EC's 2004 merger reforms, is the revision of § 5.4 of the premerger notification form, Form CO.<sup>71</sup> This section is the EC's analog to the U.S. premerger notification form's specification 4(c), which requires the submission of reports prepared by or for merging company directors or officers for the purpose of evaluating or analyzing a possible merger.<sup>72</sup> Revised § 5.4 of the EC's Form CO simplifies the document search required in a merger subject to concurrent U.S. and EC review.

Some differences remain. For example, the EC Merger Regulation obliges the EC to consider a number of factors in analyzing a merger, including the "economic and financial power" of the merging parties.<sup>73</sup> This factor sometimes is dismissively called the "deep pockets" theory, one that American enforcers are unlikely to find persuasive.<sup>74</sup> Even if the EC might be inclined to give this factor less weight in a merger review, the EC cannot ignore this factor, as it learned to its chagrin a few years ago when one of its decisions to clear a merger was overturned because the Court of First Instance (now called the General Court) found that the EC had failed to consider "economic and financial power."<sup>75</sup> There is, however, little need to dwell on or magnify such differences. The areas of convergence of U.S. and EC law and analysis are of much greater practical significance, as demonstrated repeatedly over the past decade.<sup>76</sup>

---

68. Guidelines on the Assessment of Horizontal Mergers Under the Council Regulation on the Control of Concentrations Between Undertakings, 2004 O.J. (C 31) 5, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:031:0005:0018:EN:PDF>.

69. See Louis Kaplow & Carl Shapiro, *Antitrust*, 78 n.112, 82 n.125, 84 n.131 (Harvard Law and Economics, Discussion Paper 575, 2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=961264&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=961264&download=yes).

70. See, e.g., Monti, *supra* note 66.

71. Commission Regulation 802/2004, Form CO Relating to the Notification of a Concentration Pursuant to Regulation (EC) (No. 139/2004), Annex I, § 5.4, 2004 O.J. (L 133) 1, 15, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:133:0001:0039:EN:PDF>.

72. See 16 C.F.R. pt. 803, Appendix, Notification and Report Form for Certain Mergers and Acquisitions, 4(c), available at <http://www.ftc.gov/os/2005/02/050223premergerfrnnotif.pdf>.

73. EC Merger Regulation, *supra* note 27, art. 2(1)(b).

74. See John J. Parisi, A Simple Guide to the EC Merger Regulation 11 (2009), <http://www.ftc.gov/bc/international/docs/ECMergerRegSimpleGuide.pdf>.

75. Case T-156/98, RJB Mining v. Comm'n, 2001 E.C.R. II-337.

76. See William Blumenthal, Gen. Counsel, Fed. Trade Comm'n, The Status of Convergence on Transatlantic Merger Policy, Remarks Before the ABA Section of International Law 2005 Fall Meeting Program: Cross-Atlantic Perspectives on Antitrust Enforcement (Oct. 27, 2005), available at <http://www.ftc.gov/speeches/Blumenthal/051027transatlantic.pdf>.

A prominent competition law professor contacted the FTC on behalf of the professor's students who wanted to examine cases in which the United States and the EC had differed. The professor, therefore, asked whether there were cases other than *Boeing/McDonnell Douglas* and *GE/Honeywell*. FTC staff replied that it would be more useful for students to learn how agencies enforcing different statutes are able to reach compatible, non-conflicting decisions, rather than focus on the few cases where the agencies came to different decisions. It is clearly a worthwhile aspiration to train the next generation of lawyers—whether they work in the public or private sectors—to aim toward conflict resolution. Toward that end, students will learn little of use by focusing most of their attention on the *GE/Honeywell* case. There is much to be learned from the resolution of the issues in the cases listed in the Appendix to this article. Along with the usual issues raised in merger cases, some of these cases presented analytical, as well as remedial, issues that required, *inter alia*, a willingness to avoid beggar-thy-neighbor solutions. This is a particularly important factor in the current economic crisis as some fear that government authorities will force competition authorities to bend toward such solutions.<sup>77</sup>

#### IV. Meeting Continuing and New Challenges

This Article has focused on examples of transatlantic cooperation because it provides a credible and effective model to follow. Recent experience with other jurisdictions reflects the methods utilized, and the work of the International Competition Network informs and reinforces these methods.<sup>78</sup> As the Financial Times observed, “The growth of US-EU co-operation on antitrust policy shows different methods can coexist, provided objectives are broadly shared - or at least understood - and agencies do not retreat into territorial defensiveness.”<sup>79</sup> The transatlantic model is being, and will continue to be, tested by several challenges. One is the need for further convergence given the increase in the number of merger review regimes around the world. Another is the entry of China and India onto the stage.<sup>80</sup> And, yet another is the worldwide financial crisis that raises concern of a retreat from competition principles and a resort to protectionist measures.

---

77. See, e.g., Peter Freeman, Chairman, U.K. Competition Comm'n, Competition Advocacy in Time of Recession, the U.K. Competition Commission's Approach, Talk Given at the International Competition Forum, Warsaw, 3-4 (Apr. 15, 2009), available at [http://www.competition-commission.org.uk/our\\_role/speeches/pdf/freeman\\_warsaw\\_150409.pdf](http://www.competition-commission.org.uk/our_role/speeches/pdf/freeman_warsaw_150409.pdf) (noting that competition commissions are subject to politicization and protectionist tendencies).

78. See INT'L COMPETITION NETWORK, MEMORANDUM ON THE ESTABLISHMENT AND OPERATION OF THE INTERNATIONAL COMPETITION NETWORK (2002), [http://www.internationalcompetitionnetwork.org/media/library/conference\\_1st\\_naples\\_2002/mou.pdf](http://www.internationalcompetitionnetwork.org/media/library/conference_1st_naples_2002/mou.pdf).

79. *Rules for Regulators: What is Good for the EU is Good for US Trade Relations*, FIN. TIMES, Mar. 4, 2003, at 18.

80. See Kaur, *supra* note 6, at 35.

### A. More Regimes, More Convergence

With the number of merger control regimes approaching one hundred worldwide, it is important that convergence go beyond the transatlantic realm. The spread of merger review regimes around the world can be viewed as a triumph of competition policy. Many of these laws were adopted as part of broader competition laws that accompanied the transition to market-based economies. At the same time, however, subjecting global mergers to a gauntlet of regulatory regimes poses problems of its own. Parties pursuing cross-border mergers often must cope with a multiplicity of possible merger reviews, along with different timetables, information requirements, and substantive standards, among other things.<sup>81</sup>

There are several international fora in which governments and the private sector work to minimize frictions that result from the proliferation of competition laws, including merger review regimes. One, mentioned earlier, is the Organisation for Economic Co-operation and Development (OECD), an organization of thirty developed countries where competition agency representatives meet three times per year to share experiences on competition issues of mutual concern and develop recommendations addressed to competition policy and its enforcement.<sup>82</sup> Another organization, also mentioned earlier, is the International Competition Network (ICN) that provides a venue for the world's competition agencies to concretely address competition policy and enforcement issues.<sup>83</sup> The ICN now includes almost all of the world's competition agencies.

One of the ICN's first projects was to establish a Merger Working Group.<sup>84</sup> The group developed, and the ICN adopted, a set of eight guiding principles for merger notification and review, which addresses topics such as transparency, non-discrimination, and procedural fairness.<sup>85</sup> In addition, the Working Group developed a set of Recommended Practices for Merger Review Procedures, which address issues such as the need for a nexus between the transaction and the reviewing jurisdictions, objective notification thresholds, and conducting merger investigations efficiently.<sup>86</sup> In a very short time, many jurisdictions already use these recommenda-

---

81. See Julie N. Clark, *Multi-Jurisdictional Merger Review Procedures - A Better Way*, 14 TRADE PRAC. L.J. 90, 94 (2006).

82. See Org. for Econ. Co-operation and Dev., Annual Report 2009 8, 32 (2009), available at <http://www.oecd.org/dataoecd/38/39/43125523.pdf>.

83. INT'L COMPETITION NETWORK, ABOUT THE ICN, <http://www.internationalcompetitionnetwork.org/about.aspx>.

84. See ELIZABETH F. KRAUS & MARIA B. COPPOLA, THE INTERNATIONAL COMPETITION NETWORK: A VIRTUAL REALITY, available at <http://www.ftc.gov/bc/international/docs/krauscoppolaicn04.pdf>; Eleanor M. Fox, *Linked-In: Antitrust and the Virtues of a Virtual Network*, 43 INT'L LAW. 151, 161 (2009), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1431560&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1431560&download=yes).

85. See INT'L COMPETITION NETWORK, GUIDING PRINCIPLES FOR MERGER NOTIFICATION AND REVIEW PROCEDURES (2002), <http://www.internationalcompetitionnetwork.org/uploads/library/doc591.pdf>.

86. See INT'L COMPETITION NETWORK, RECOMMENDED PRACTICES FOR MERGER NOTIFICATION PROCEDURES (2005), <http://www.internationalcompetitionnetwork.org/uploads/library/doc588.pdf>.

tions as a benchmark for amending their merger review laws and procedures.<sup>87</sup> The OECD recently adopted a similar Recommendation.<sup>88</sup> The ICN working group also addressed merger investigation techniques and the analytical framework for merger review; these latter works include a study of substantive tests applied to mergers and remedies.<sup>89</sup> The ICN also deals with other competition topics, including cartels, regulated sectors, and capacity building.<sup>90</sup>

Both the ICN and the OECD benefit from the contributions of non-governmental advisers, often private attorneys who devote some of their time to share their perspective with agency officials in the process of developing recommended practices.<sup>91</sup> In many instances, these practitioners bring experience in representing clients in multi-jurisdiction merger reviews and aid cooperation and coordination among the agencies by encouraging their clients to cooperate in ways such as granting waivers of confidentiality. These efforts foster cooperation and convergence.

## B. New Major Players

The entry of China and India to the family of merger control regimes raises questions similar to those raised twenty years ago upon the advent of the EC Merger Regulation. For example, can China or India's merger provisions be used to foster industrial policy. Recently, the Chinese authorities decided to block Coca-Cola's attempted acquisition of a Chinese juice manufacturer on portfolio effects grounds. Commentators have expressed varying views about the decision, but it is too early to try to draw definitive conclusions on the basis of the few decisions rendered to date.<sup>92</sup> During the development of its law, the Chinese actively sought information and guidance from the world's competition authorities.<sup>93</sup> Communication continues and it is to be hoped that such communication will be mutually beneficial.

---

87. See INT'L COMPETITION NETWORK, A STATEMENT OF ACHIEVEMENTS JUNE 2006 - MAY 2007 4 (2007), <http://www.internationalcompetitionnetwork.org/uploads/library/doc392.pdf>.

88. See ORG. FOR ECON. CO-OPERATION AND DEV., RECOMMENDATION OF THE COUNCIL ON MERGER REVIEW 2-3 (2005), <http://www.oecd.org/dataoecd/3/41/40537528.pdf>.

89. See INT'L COMPETITION NETWORK, ICN INVESTIGATIVE TECHNIQUES HANDBOOK FOR MERGER REVIEW (2005), <http://www.internationalcompetitionnetwork.org/uploads/library/doc322.pdf>; ICN MERGER WORKING GROUP: ANALYTICAL FRAMEWORK SUB-GROUP, THE ANALYTICAL FRAMEWORK FOR MERGER CONTROL (2002), <http://www.internationalcompetitionnetwork.org/uploads/library/doc573.pdf>.

90. ICN materials are available on its website at <http://www.internationalcompetitionnetwork.org>.

91. See Fox, *supra* note 84, 160-62.

92. See, e.g., Joel Mitnick, Yang Chen, & Adrian Emch, *The Dragon Rises: China's Merger Control Regime One Year On*, 23 ANTITRUST 53, 57-58 (2009) (discussing some of the various positions on the *Coca-Cola/Huiyuan* decision).

93. See William Blumenthal, Gen. Counsel, Fed. Trade Comm'n, Looking Towards Implementation of China's Anti-Monopoly Law, Remarks Before the ABA Section on International Law 2008 Spring Meeting 1 (April 4, 2008), available at <http://www.ftc.gov/speeches/Blumenthal/20080404ABAIntlSecNYreChinaAML.pdf>.

### C. The Economic Crisis

The economic crisis has raised fears that nations will retreat from competition and adopt protectionist measures. In Fall 2008, for example, the United Kingdom's Minister for Business, Lord Mandelson, used his reserved powers under the Enterprise Act 2002 to intervene and approve Lloyds' acquisition of HBOS in the banking sector, over the objections of the Office of Fair Trading.<sup>94</sup> States are intervening directly into their economies by investing and thereby acquiring financial stakes in private firms to keep them in business. The European Commission possesses a unique power among competition authorities, the power to review and act affirmatively or negatively on state subsidies.<sup>95</sup> During her tenure as EC Competition Commissioner, Neelie Kroes played a leading role in exhorting governments to limit their interventions.<sup>96</sup>

So far, there have been few instances such as the *Lloyds/HBOS* merger. But, competition authorities have been urged, by experts such as former EC Competition Commissioner Mario Monti, to stay the course in the face of the economic maelstrom.<sup>97</sup>

### Conclusion

Competition authorities face the ongoing challenge of effectively reviewing mergers involving multi-national operations and effects. Over the past two decades, agencies have developed modes of cooperation to coordinate investigations and resolve cases, despite differences in procedural and substantive rules. The collaboration of states, agencies, and experts has led to convergence in competition authorities' rules and methods of analysis, which that has built credibility in the private sector and earned its cooperation both in individual cases and in the development of policy convergence in international fora.

This accumulated experience will be put to the test as new enforcers enter the scene and the economic crisis tempts some governments to resort to protectionist measures. The trend toward convergence in competition policy remains strong and appears ready to withstand these new challenges.

---

94. See IAN FORRESTER, Q.C. & STEFAN MAHONEY, EXCEPTIONAL APPROVAL OF MAJOR MERGERS: LONDON AND BRUSSELS COMPARED 3 (2009) available at [http://www.whitecase.com/files/Publication/a8c25f8f-4ae5-46fd-98ca-98e7a90a46e1/Presentation/PublicationAttachment/542d2d77-4fc0-4e0f-8e5b-994b3e70762b/artilce\\_Exceptional\\_Approval\\_of\\_Major\\_Mergers\\_London\\_and\\_Brussels.pdf](http://www.whitecase.com/files/Publication/a8c25f8f-4ae5-46fd-98ca-98e7a90a46e1/Presentation/PublicationAttachment/542d2d77-4fc0-4e0f-8e5b-994b3e70762b/artilce_Exceptional_Approval_of_Major_Mergers_London_and_Brussels.pdf).

95. See Philip Lowe, *Competition Policy and the Global Economic Crisis*, COMPETITION POL'Y INT'L, Autumn 2009, at 3, 7, available at [http://ec.europa.eu/competition/speeches/text/cpi\\_5\\_2\\_2009\\_en.pdf](http://ec.europa.eu/competition/speeches/text/cpi_5_2_2009_en.pdf).

96. See Neelie Kroes, Comm'n'r for Competition, European Comm'n, European Models for Economic Recovery, Remarks before the Atlantic Council: European Models for Economic Recovery (Mar. 26, 2009), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/149&format=HTML&aged=0&language=EN&guiLanguage=EN>.

97. See Monti, *supra* note 5.

## Appendix

Merger cases concurrently reviewed by EC and FTC since 1992 with complementary outcomes, i.e., non-conflicting enforcement decisions, as of December 2009.

This list does not include cases that were cleared without enforcement action after first phase reviews. It does include significant concurrent clearance decisions after second phase proceedings, such as HP/Compaq, Carnival/P&O Princess, Sony/BMG, and Google/DoubleClick. Finally, the list does not include instances of similarly effective concurrent reviews by the EC and the Department of Justice.

Case	FTC #	EC #	industry sector
ICI/du Pont	C-3473	M.0214	chemicals
Shell/Montedison	C-3580	M.0269	chemicals (PP)
Roche/Syntex	C-3542	M.0457	pharmaceuticals
AHP/Cyanamid	C-3557	M.0500	pharmaceuticals
Glaxo/Wellcome	C-3586	M.0555	pharmaceuticals
Hoechst/Merion Merrill Dow	C-3725	M.0587	pharmaceuticals
Upjohn/Pharmacia	C-3638	M.0631	pharmaceuticals
Lockheed/Loral	C-3685	M.0697	aerospace
Ciba-Geigy/Sandoz	C-3725	M.0737	pharmaceuticals
Baxter/Immuno	C-3726	M.0821	medical devices
Exxon/Shell jv	C-3833	M.1137	motor oil additives
Guinness/GrandMetropolitan	C-3801	M.0938	beverages
Roche/Boehringer Mannheim	C-3809	M.0950	pharmaceuticals
Compaq/Digital Equipment Corp.	C-3818	M.1120	computers
BP/Amoco	C-3868	M.1293	petroleum
ABB/Elsag-Bailey	C-3867	M.1339	measuring devices
Hoechst/Rhone-Poulenc	C-3919	M.1378	pharmaceuticals
Exxon/Mobil	C-3907	M.1383	petroleum
Astra/Zeneca	C-3880	M.1403	pharmaceuticals
Rohm&Haas/Morton	C-3883	M.1467	chemicals
BP-Amoco/ARCO	C-3938	M.1532	petroleum
Rhodia/Albright & Wilson	C-3930	M.1517	chemicals
Dow/Union Carbide	C-3999	M.1671	chemicals
Reckitt&Coleman/Benckiser	C-3918	M.1632	household cleaners
VNU/Nielsen Media Research	C-3900	M.2291	computer gathered data
Pfizer/Warner Lambert	C-3957	M.1878	pharmaceuticals
Novartis/AstraZeneca	C-3979	M.1806	animal health
SKB/Glaxo Wellcome	C-3990	M.1846	pharmaceuticals
Boeing/Hughes	C-3992	M.1879	aerospace & satellites
AOL/Time Warner	C-3989	M.1845	media
Lafarge/Blue Circle	C-4014	M.1847	cement

Case	FTC #	EC #	industry sector
Covisint jv	001-0127	38.064	B2B exchange
Metso/Svedala	C-4024	M.2033	mining machinery
Tyco/Mallinckrodt	C-3985	M.2074	medical devices
Siemens/Atecs Mannesmann	C-4011	M.1922	postal automation
General Mills/Pillsbury	011-0213	M.2101	foodstuffs
Phillip Morris/Nabisco	C-3987	M.2072	foodstuffs
Chevron/Texaco	C-4023	M.2208	petroleum
Diageo-Pernod/Seagram	C-4032	M.2268	beverages
Pepsi/Quaker Oats	011-0059	M.2275	beverages
Nestle/Ralston-Purina	C-4028	M.2337	dog & cat foods
CVC/Accordis-Lenzing <sup>98</sup>		M.2187	chemical fibres
Bayer/Aventis CropSciences	C-4049	M.2547	agricultural chemicals
Hewlett-Packard/Compaq	011-0249	M.2609	computers
INA/FAG Kugelfischer	C-4033	M.2608	auto engine bearings
Carnival/P&O Princess	021-0041	M.2706	cruise lines
Solvay/Ausimont	C-4046	M.2690	chemicals
Pfizer/Pharmacia	C-4075	M.2922	pharmaceuticals
DSM/Roche Vitamins	C-4098	M.2972	chemicals
GE/Agfa Gevaert	C-4103	M.3136	testing devices
Air Liquide/Messer	C-4109	M.3314	industrial gases
Sanofi/Aventis	C-4112	M.3354	pharmaceuticals
Sony/BMG	041-0054	M.3333	music
Cytec/UCB SA	C-4132	M.3558	chemicals
Cemex/RMC Group	C-4131	M.3572	cement
Johnson&Johnson/Guidant	051-0050	M.3687	medical devices
Novartis/Eon Labs (Hexal)	051-0106	M.3751	generic pharmaceuticals
Procter & Gamble/Gillette	C-4151	M.3732	personal care goods
Boeing/Lockheed (ULA)	051-0165	M.3856	military satellite launchers
Teva/Ivax	C-4155	M.3928	generic pharmaceuticals
Boston Scientific/Guidant	061-0046	M.4076	medical devices
Linde/BOC	C-4163	M.4141	industrial gases
ThermoElectron/Fischer Scientific	C-4170	M.4242	centrifugal evaporators
Owens Corning/St. Gobain	061-0281	M.4828	glass fibre reinforcements
Schering-Plough/Akzo	071-0132	M.4691	pharmaceuticals
Google/DoubleClick	071-0170	M.4731	on-line advertising
Hexion/Huntsman	C-4235	M.4835	epoxy resins
Carlyle-PQ/INEOS jv	071-0203	M.4927	sodium silicate
Pernod/V&S	081-0119	M.5114	vodka
Teva/Barr	C-4242	M.5295	generic pharmaceuticals

98. Parties abandoned merger after EC prohibition decision. See Timothy Muris, Chairman, Fed. Trade Comm'n, Remarks Before the Brookings Institution 13 (Dec. 21, 2001), available at <http://www.ftc.gov/speeches/muris/brookings.pdf>.

Case	FTC #	EC #	industry sector
Dow Chemical/Rohm&Haas	C-4243	M.5424	specialty chemicals
BASF/Ciba Holdings	C-4253	M.5355	pigments
Pfizer/Wyeth	C-4267	M.5476	animal health pharma
Merck/Schering-Plough	C-4268	M.5502	pharmaceuticals
Panasonic/Sanyo	C-4278	M.5421	batteries