Cooperation Among Competition Authorities in Merger Regulation

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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

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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 defense (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 cooperation.

Those words were published ten years ago,1 during an international merger wave of historical proportions.2 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.3 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.4 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.5 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.6

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.

2. See id.
3. See id.
of effectively and sensibly enforcing national laws in cases involving multi-
national firms and effects. This article will begin with a historical review,
continue with a discussion of how agencies cooperate in practice, and con-
clude 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 resis-
tance 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—enter-
prises, state-sanctioned cartels, and other measures that insulated enter-
prises from competition. Second, the growth of international trade
brought the anticompetitive effects of cartelized and monopolized econo-
mies, such as “Fortress Europe,” into the sights of the U.S. antitrust
enforcement machinery, i.e., both government and private enforcement.7

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.8 The uranium cartel case high-
lighted and seemingly cemented the differences between the United States
and its major trading partners over competition law enforcement.9 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 Ameri-
can uranium producers from foreign competition.10 In furtherance of the
litigation, U.S. courts issued discovery demands to the foreign defend-
ants.11 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.12 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,
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 Anti-
trust Litigation, 473 F.Supp. 382, 390 (N.D. Ill. 1979); In re Westinghouse Elec. Corp.
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 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.” 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.

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. 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. This case demonstrated the extraterritorial reach of European Community competition laws.

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. 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. While not a formal international agreement, the OECD recommendation

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


17. See id. at 25; Valentine Korah, An Introductory Guide to EC Competition Law and Practice § 1.6 (7th ed. 2000).


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. 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. In 1976, Germany and the United States entered a formal enforcement cooperation agreement, which endures in practice to this day. Formal agreements with Australia in 1982 and Canada in 1984 (supplanted by a new agreement in 1995) grew out of the uranium conflict.

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. 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. Given the breadth and depth of U.S. direct investment

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in Europe, mergers and acquisitions by U.S. firms in Europe would clearly fall under the EC’s scrutiny. 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.

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.” And, he warned, “The problem cases may be rare now, but they will increase in number and complexity.” 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.

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. 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. 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.”

31. Id. 29.
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. It has been an important factor in moving the two continents to grow together rather than to drift apart. 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. These episodes led to headlines declaring “splits” and even “trade wars” and caused some to question the efficacy of U.S.-EC cooperation. Yet, these two divisive cases are outnumbered by many instances of effective and complementary U.S.-EC merger enforcement. 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. 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. They also discussed investigative methods such as interview techniques and document gathering and analysis. 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.

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).
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.
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.45 The agencies are not prohibited from disclosing confidential agency information, but they normally treat this information as non-public.46 Confidential agency information includes staff analyses of cases, such as product and geographic market definitions, assessment of competitive effects, and potential remedies.47

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.48 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.49 Waivers typically cover all materials submitted to the agencies, but the waiver is limited to communication between the reviewing agencies.50 The agencies maintain the confidentiality of all materials against third parties and the general public.51 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

47. Id. at 26.
48. Id.
50. Harbour, supra note 45, at 26–27.
51. Id. at 27.
avoid subjecting the parties to conflicting obligations.\footnote{\textsuperscript{52}}

C. Reaching Complementary Resolution of Cases

As early as 1995, then-FTC Chairman Robert Pitofsky remarked that
[we 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.\footnote{\textsuperscript{53}}

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.\footnote{\textsuperscript{54}} Detailed discussions take place concerning the nature and relative viability of remedial options.\footnote{\textsuperscript{55}} 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.\footnote{\textsuperscript{56}} 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.\footnote{\textsuperscript{57}} The Group drew on the experience gained in their agencies’ case work as well as the findings of the FTC’s 1999 Divestiture Study.\footnote{\textsuperscript{58}} As a consequence, the EC issued a notice on merger remedies that broadly

\footnote{\textsuperscript{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).}


\footnote{\textsuperscript{55} See id.}

\footnote{\textsuperscript{56} See id.}


was consistent with U.S. approaches.\footnote{59}

Then, in the wake of the GE/Honeywell merger case, 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.\footnote{61} 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.\footnote{62}

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.\footnote{63} 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.\footnote{64}

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.”\footnote{65} This formulation is semantically compatible with the Clayton Act’s “substantial lessening of competition” test.\footnote{66} The Council’s amendments also clarified the Regulation to allow efficiency claims to be taken into account in merger analysis.\footnote{67} As a result, the EC also issued horizontal merger


\footnote{64. See generally id.}

\footnote{65. EC Merger Regulation, supra note 27, arts. 2.2-3, Recitals ¶¶ 25-26.}


\footnote{67. See EC Merger Regulation, supra note 27, art. 2.1(b), Recital ¶ 29.}
Cooperation Among Competition Authorities

guidelines, which most knowledgeable observers found functionally equivalent to the U.S. Horizontal Merger Guidelines. 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.

Another example of convergence in the EC’s 2004 merger reforms, is the revision of § 5.4 of the premerger notification form, Form CO. 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. 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. This factor sometimes is dismissively called the “deep pockets” theory, one that American enforcers are unlikely to find persuasive. 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.” 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.

70. See, e.g., Monti, supra note 66.
73. EC Merger Regulation, supra note 27, art. 2(1)(b).
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.77

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.78 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.”79 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.80 And, yet another is the worldwide financial crisis that raises concern of a retreat from competition principles and a resort to protectionist measures.


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.81

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.82 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.83 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.84 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.85 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.86 In a very short time, many jurisdictions already use these recommenda-
tions as a benchmark for amending their merger review laws and procedures.\(^87\) The OECD recently adopted a similar Recommendation.\(^88\) 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.\(^89\) The ICN also deals with other competition topics, including cartels, regulated sectors, and capacity building.\(^90\)

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.\(^91\) 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.\(^92\) During the development of its law, the Chinese actively sought information and guidance from the world’s competition authorities.\(^93\) Communication continues and it is to be hoped that such communication will be mutually beneficial.

90. ICN materials are available on its website at http://www.internationalcompetitionnetwork.org.
91. See Fox, supra note 84, 160–62.
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.94 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.95 During her tenure as EC Competition Commissioner, Neelie Kroes played a leading role in exhorting governments to limit their interventions.96

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.97

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.

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.

<table>
<thead>
<tr>
<th>Case</th>
<th>FTC #</th>
<th>EC #</th>
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<td>ICI/du Pont</td>
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<td>M.0214</td>
<td>chemicals</td>
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<td>C-3580</td>
<td>M.0269</td>
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