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competition agencies have disagreed in a few matters. During the same time, however, the EC and US agencies have agreed on dozens of enforcement decisions and have taken numerous actions to bring our enforcement policies and practices into convergence.

A typical example of EC/US enforcement cooperation is provided by the reviews of Procter & Gamble's recent acquisition of The Gillette Company.[4] Those reviews reflect the extent to which the agencies apply similar standards, reach similar conclusions, and cooperate in the processing of matters. The deal was valued at $57 billion and involved a wide range of consumer non-durable products. The parties' offerings overlapped, at least in some jurisdictions, in toothbrushes and toothpaste, antiperspirants and deodorants, and shaving creams. The parties also sold other, non-overlapping products such as laundry detergents, baby care articles, and batteries. About one-half of P&G's revenues in fiscal year 2005 came from North America and about one-quarter from Western Europe.

Staffs at the FTC and the EC contacted one another soon after the deal was announced. Once each agency had the opportunity to conduct initial inquiries about the deal in our respective jurisdictions, the staffs talked with one another and shared their initial impressions, specifically concerning those markets that might be affected by the acquisition. Upon realizing that they had common concerns in markets for oral care, particularly toothbrushes, staff requested and obtained waivers of confidentiality from the parties. The waivers enabled staff to discuss the issues, and particularly the parties' submissions to the respective agencies, in more detail.

The acquisition would have given the merged firm large market shares on both sides of the Atlantic in the market for battery-powered toothbrushes. Questions were also raised about the extent to which the deal would give the merged firm anticompetitive portfolio power. Both staffs began to discuss remedies as to toothbrushes with the parties, while at the same time they spoke with retailers in their respective realms about the portfolio power issue, including what is referred to in retailing as "category management." Both EC and FTC staffs concluded that the merger would not result in anticompetitive portfolio effects on either side of the Atlantic.

Focusing their attention on battery-powered toothbrushes, the FTC and EC staffs worked with the parties on the details of a divestiture, which both agencies ultimately accepted. Without getting into the details of those discussions, it is fair to say that they included issues that have been the object of discussion in conferences like this in the past, as well as in the EC's recently released merger remedies study.

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ruled against the EC concerning its implementation of the waiver granted by the Doha Ministerial Conference as to the banana regime, *see* http://www.wto.org/english/news_e/news_e.htm.

[4]

Some have noted that, notwithstanding all of this transatlantic communication, cooperation, and coordination, the clearance for the transaction at the FTC came two months after the EC's decision. The major reason for the longer process in the US was that the proposed merger raised concerns in other markets in the United States, but not in Europe.

We often hear references to "globalization," and it may be tempting to think that products regularly are being homogenized and markets unified. Our recent experience in the field of competition policy suggests that the effects of globalization are more subtle. Many of the drivers of globalization – particularly improved means of communication and transportation and manufacturing – have actually made it easier to differentiate products to appeal to persisting differences in consumer preferences and government regulation. Cases like P&G/Gillette reflect this fact. Paragraph 17 of the EC's decision (concerning the scope of the geographic market for toothbrushes) cites several factors that led it to conclude that the scope of the geographic market was limited to national borders. In our experience, that has often been the case in the pharmaceutical industry – the products are subject to national regulation as to approval and marketing, and pharmaceutical firms find it advantageous in some circumstances to market products in some countries by licensing to third parties. This was a factor that complicated the coordinad[(6onths r-1.1 ss afce m)8(a)-1(jor r)0.0003 T03 t014 T1enceawe ref

merger, and the GE/Instrumentarium merger[9] in that category. I know that these are less provocative for purposes of a program like today's, since the EC and US authorities agreed, but in our view these cases are still worth examining.

Realistically, even if we achieve near-complete policy convergence within the universe of sovereign jurisdictions, we need to recognize that there will continue to be some differences at the substantive margins of particular cases. First, just as different decision-makers in any given jurisdiction sometimes reach different conclusions when they apply applicable standards to the facts of a particular case, decision-makers in different jurisdictions may reach different conclusions as well. The FTC is a five-member body, and not all of our enforcement decisions are unanimous, even with a common set of standards applied to a common set of facts. Second, because the marketplace facts may differ in different jurisdictions, those jurisdictions may reach different conclusions about a particular case, even when they apply identical standards. One can envision circumstances in which those different conclusions may lead to inconsistent or conflicting proposals as to remedy. Third, even with broad agreement as