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DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY

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ROUNDTABLE ON COMPETITION AUTHORITIES' ENFORCEMENT
PRIORITIES

-- Note by the United States --

This note is submitted by the Delegation of the United States to the Committee on Competition Law and Policy FOR DISCUSSION at its forthcoming meeting on 20, 21 and 22 October 1999, under item VI of its agenda.

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1. The U.S. antitrust system distributes prosecutorial power more widely than many other competition law regimes. U.S. statutes and court decisions confer standing to enforce antitrust statutes on the two federal antitrust agencies, the Federal Trade Commission and the Antitrust Division of the Department of Justice, as well as on state attorneys general and private parties, including injured consumers and businesses. This paper focuses on how the two federal antitrust agencies set and implement enforcement priorities.

injury to competition. An example from the merger area is *Staples Inc./Office Depot Inc.* in which the parties proposed a divestiture that only addressed the geographic areas where the merger would leave only one office superstore but not those where the number of such competitors was reduced from three to two. The Bureau urged the Commission to reject the settlement as inadequate to fully restore the level of competition that existed before the merger. The Commission agreed and authorised staff to seek injunctive relief, which the federal district court granted.

Conclusion

23. Competition law enforcement agencies have finite resources that impose a practical limit on the number of investigations and proceedings that can be initiated and pursued. In choosing where to allocate scarce resources, the Federal Trade Commission is guided primarily by a case- by-case weighing of the benefits to consumers of enforcement against the direct and opportunity costs of pursuing the case.

II. The Department of Justice

Legal Framework

24. The Department of Justice (DOJ) is a law enforcement agency. As an Executive Branch Department, it enforces the antitrust laws through criminal prosecutions and civil proceedings. (Department of Justice, 2013)

27. In addition to these precedential and doctrinal considerations, the DOJ considers the amount of

7. analysis of particular industry conditions by Division attorneys and economists;
and
 8. monitoring of private antitrust litigation to determine whether the Division should investigate the matter.
32. The broad standards used by the DOJ in deciding whether to conduct criminal proceedings,

NOTES

1. See *FTC v. Sperry & Hutchinson Co.*, 495 U.S. 233 (1972); *FTC v. R.F. Keppel & Bros., Inc.*, 291 U.S. 304 (1934).
2. The Supreme Court has held that the Commission's finding of a "reason to believe" that the law has been violated is a discretionary act not subject to judicial review except in connection with review of a final FTC cease and desist order. See *FTC v. Standard Oil Co.*, 449 U.S. 232, 239-43, 246 (1980).
3. The FTC Rules of Practice and Procedure provide that "[t]he Commission acts only in the public interest and does not initiate an investigation or take other action when the alleged violation of laws is merely of private controversy and does not tend to affect the public." 16 C.F.R. § 2.3.
4. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935).
5. See U.S. submissions for Working Party No. 2 round tables on broadcasting and professional services, DAF/CLP/WP2/WD(99)25 and DAF/CLP/WP2/WD(98)51.
6. Draft and final proposed consent agreements are reviewed by the Bureau and the Bureau of Economics