



Good morning. Thank you to the International Bar Association, Janet McDavid, and the conference organizers. It is a pleasure to be here today with so many distinguished international speakers and guests.¹ I have spent the last two years as a Commissioner and many years before that as the head of our competition advocacy program and pursuing policies at the FTC and around the world that are transparent, predictable, and grounded in the pursuit of economic efficiency and consumer welfare. I want to focus my remarks today on the need for cooperation and convergence among competition regimes and the roles of competition law and policy.

Although this is my first trip to the country of South Africa, I was in a way on South African soil just two weeks ago, when I attended a dinner at the home of his Excellency Ebrahim Rasool, South Africa's ambassador to the United States. Ambassador Rasool is a remarkably insightful and gracious person, who joined in the struggle to remake South African society and served time in prison with Nelson Mandela. In his remarks about what his experiences in South

¹ My remarks today reflect only my opinions; I am not speaking for the Commission or any other Commissioner.

Africa have taught him about relationships between nations, Ambassador Rasool talked about the South African concept of "ubuntu," which he described as recognizing the interdependence and interconnectedness of all humanity.

I believe the interdependence and interconnectedness he described grows clearer each day in our increasingly globalized economies. In turn, this ubuntu among nations must extend to the work of our competition enforcers, both in terms of cooperation among agencies and international convergence of nations on norms relating to competition enforcement. Let me spend a few minutes discussing each.

First, cooperation. There are more than 125 antitrust agencies in the world today enforcing the competition laws of over 100 jurisdictions. The increasingly interdependent world economy and the global scope of many modern transactions require more cooperation among agency officials. This can range from discussions of substantive law, economic analysis, and procedural issues to sharing knowledge about a particular industry; and, of course, coordinating on specific investigations. Cooperation allows agencies to identify issues of common interest, to improve their analyses, build trust and relationships at all levels of the respective agencies, and ideally to avoid contradictory outcomes. As enforcers, we need to remember that failure to cooperate well can have serious repercussions for the global economy. My hope is that the FTC and other agencies add concrete value by efficiently protecting competition and consumers and, in the process, avoid imposing an unreasonable government burden that could drag on innovation and economic development.

investigations, including topics such as transparency, meaningful engagement between the parties and the decision makers, confidentiality, and internal checks and balances. This omnivorous process, which we expect to culminate in agreement on best practices or other forms of guidance for agencies. As it addresses fundamental principles for all agencies and is important to our business community stakeholders who face investigations around the world, I expect this to be a banner project, and one worth following.

We also participate in regional capacity-building workshops, including here in Africa. Currently, the FTC, the U.S. Department of Justice (DOJ), and the South African Competition Commission, with funding provided by the United States Agency for International Development (USAID), are engaged in a joint program to build the capacity of eight newer competition agencies in countries in central and southern Africa: Botswana, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Swaziland, and Zambia. The funding for this program arose from an earlier successful program between 1999 and 2006, and again in 2008, when the FTC and DOJ maintained a resident advisor in South Africa on an almost continuous basis, and had conducted several capacity building workshops.

The workshops are designed around international recommended practices, include substantive and practical skills, and are interactive in that they include mock investigation based on the relevant subject matter. The first regional program, held in September 2013, was on merger notification and review. The second regional program, held just last week (February 24-28), was on assessment of unilateral conduct. Participants at that workshop also were able to participate in a predatory pricing case brought by the Competition Commission of South Africa. We plan to hold a workshop on cartels and other

anticompetitive agreements later this year and, if funds permit, a fourth workshop dedicated to practical skills such as interview techniques, drafting document requests, and report writing. Moreover, the training is not book-marked by the first and last day of each workshop. Rather, we supplement each workshop with two or three monthly webinar conferences addressing additional issues related to the workshop topic.

Ideally, we would like all competition regimes to converge on a consensus enforcement paradigm grounded in contemporary economic principles and focused on competitive effects and consumer welfare because evidence and experience shows that robust competition produces substantial benefits for consumers and society as a whole by promoting growth, spurring innovation, and facilitating the efficient allocation of resources. This counsels strongly against use of non-competition or public interest factors as part of competition analyses. I am sympathetic to arguments to the contrary, particularly in nations with emerging economies exhibiting high levels of unemployment, poverty, and economic dislocation. For the governments of such countries, accounting for public interest factors like employment or protection of export industries may be viewed by many as a responsible approach to governance.

I see that many African nations, including South Africa, Botswana, Malawi, Namibia, Swaziland, Zambia, have adopted express references to public interest considerations in their competition laws. These laws often address concerns like employment with other competitive effects and sometimes impose remedies on transactions that may result in retrenchment of employees. Examples I am sure you will find familiar from the past few years include *Wal-Mart/MassMart*, *Glencore/Xstrata*, *AON/Glenrand*,

and *Kansai/FreeWorld*. I also note that regional organizations like COMESA³ allow for public interest concerns, as well. I appreciate this viewpoint, but want to offer a few observations as to why I think, in the long run, such policies may hurt emerging economies more than help them.

At the outset, let me note that these concerns are not foreign to us in the United States. After enacting the Sherman Act in 1890, our courts and policy makers spent decades reading our competition laws to include numerous social and political objectives. The Supreme Court repeatedly read the laws to protect non-economic ideals, including famously remarking that the Court "can protect the right of small, locally owned businesses to compete with larger, more powerful ones." Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets.⁴

as economic development, effects on local or national control, and international competitiveness, may be considered in competition analysis.⁵

The McKinsey Global Institute conducted a well-known twelve year study of thirteen nations to examine the differing plights of rich and poor countries; specifically, they sought to explain why it is that some countries grow or remain wealthy while others seem stuck in poverty despite years of international financial aid and assistance. The study revealed, without much surprise, that levels of productivity were associated with increasing wealth. But, more surprisingly, the study also found that differences in the amount of investment in respective domestic markets were far more important drivers of national wealth than were other differences, for instance, in the labor or capital markets.⁶

Markets with vigorous competition force participants to best rivals in one of two ways: either sell consumers goods more cheaply or sell them new and better goods. Either outcome benefits the e

to the upgrading of an economy than insuring vigorous domestic rivalry. . . Firms that do not have to compete at home rarely succeed abroad.⁷

Selling customers better and newer goods ó product innovation ó is the second ingredient to greater economic welfare. It is less easy to articulate the right recipe for product innovation ó how does one capture a process for great ideas? But if I could point to one truth that holds here it is Rñcvqøu" o czk o "vjcv"pgeguukv{"ku the mother of invention. Vjg"yqtnføu" o quv"financially-valuable technology company, Apple, offers perhaps the best modern example of the far-reaching implications a well-implemented idea can have on the fortunes of a company and, in turn, the prosperity of a nation. In 1997, Apple was nearly finished. Its computers were no longer selling and it was fast running out of cash and ideas. Steve Jobs was tapped by the board to re-join the company and search for a solution. It was a matter of survival. His solution was to throw the old ideas out and start fresh ó to ðThink Differentö cu"vjg"eq o rcp{øu"pgy"marketing slogan professed. And so he and his team of designers and engineers pushed themselves to their limits over the ensuing years, yielding a rapid succession of hit products ó the iMac, the iPod, the iPhone, and the iPad ó that reversed the fortunes of Apple and helped spark a new era of mobile computing that has created new fields, like mobile applications development, populated by hundreds of thousands of well-paying jobs that did not exist, even in the imagination, less than ten years ago. I could say similar things about other innovative companies like Google, Qualcomm, Facebook, Microsoft, IBM, and Intel, each of which is successful globally in large part because they were forged in the cauldron of intense domestic competition.

When government distorts competition, for example by forcing the retention of employees after a merger where doing so reduces efficiencies, it allows firms to escape the demands of the market. It allows inefficiencies to fester, pushing the costs of goods up and the

⁷ M. Porter, *The Competitive Advantage of Nations* (1990), 662.

raising the costs of employment-enhancing mergers, and thereby reducing employment and growth.

To return to the concept of ubuntu, I hope my remarks today have helped explain why convergence is such an important goal for competition agencies to pursue in our interconnected global economy. Further, the interdependence of businesses within an economy ó relying on each other for inputs and spurring each other to innovate ó shows why pursuing competition values is crucial to improving a nation's overall wealth and its people's well-being.

Thanks very much.