

International and Crossborder Coordination and Collaboration
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Good morning. It's a pleasure to be here today to talk about antitrust enforcement at the Federal Trade Commission and to share some insights on how and why cooperate with other competition enforcement agencies around the world. COFECE The views I express today are my own and not necessarily those of the Commission or any Commissioner.

As Chairwoman Ramirez noted last year at a meeting organized by COFECE and attended by officials from the United States and Mexico, the Commission is committed to working closely with our Mexican counterparts to address antitrust issues. This collaboration is essential for promoting fair competition and economic growth in both countries.

If competition laws are lax or not enforced

Competition—does every day to investigate and where appropriate take action against potential U.S. competition law violations.

Broadly speaking, there are three goals of international cooperation to reach compatible results on cross-border cases, to increase the predictability of outcomes, and to facilitate more efficient use of limited agency resources. Most cooperation occurs in merger reviews, where the agencies typically have similar timelines for review in each country wants to avoid conflicting outcomes. The number of mergers that are subject to review in multiple jurisdictions has increased significantly in the past several years which means that the risks and costs for businesses stemming from multiple regulatory reviews have increased. 8-20-2019 11:11 AM

European Union's Directorate General for Competition. Our cooperation began early in the investigation and included weekly phone calls. We received a number of waivers which allowed us to share more than just general impressions.

Based on our review, the FTC staff concluded that customers located in North America typically rely on manufacturers with production facilities located in the United States, Canada and Mexico. We concluded that ZF and TRW, together with the Mexican firm USK Internacional (also known as Urresko), accounted for virtually all of the sales of heavy vehicle tie rods in North America. As part of its review, the European Commission determined that the merger would reduce competition in a different market in Europe—chassis components for cars and trucks. To resolve concerns in both countries, ZF committed to sell TRW's entire suspension business in North America and Europe, a single divestiture that satisfied concerns raised in both regions. This divestiture included five manufacturing plants located in the United States, Canada, the Czech Republic and Germany, as well as a German research lab. While the FTC on its own would not have required such an extensive divestiture package, the companies opted to sell a broader portfolio of assets.

countries and sales of \$35 billion worldwide. Early on, we were in contact with our counterparts at the Canadian Competition Bureau and DG of the European Commission. The FTC's investigation revealed that because cement products are heavy and relatively cheap, transportation costs limit their markets to local or regional areas. In addition, we determined that there is significant cross

while at the same time avoiding an outcome in which one country's remedy determines another's. It also illustrates how cooperation benefits the merging companies, who can get to a final decision in all the reviewing countries when the enforcers are flexible and have established procedures to obtain an effective remedy.

prosecute criminal violations of the U.S. antitrust laws. Other types of agreements among competitors may rise to the level of criminal conduct, and can cause significant harm to consumers. Those are the types of cases that are the focus of the FTC's nonmerger enforcement efforts.

The most straightforward type of anticompetitive conduct involves an agreement between current or potential rivals not to compete. These deals can be hard to detect because there may be no overt sign of the agreement. Take for example our recent enforcement action involving an agreement in which a potential entrant was to sell a new product. The FTC charged Concordia Pharmaceutical and Par Pharmaceutical with entering into an agreement not to compete in the sale of generic versions of Kapvay, a prescription drug used to treat attention deficit hyperactivity disorder in children. Concordia held a patent on the branded formulation, but the patent term was coming to an end. At the time of their agreement, Concordia and Par were the only two firms permitted by the U.S. Food and Drug Administration to market generic Kapvay in the United States. Rather than competing against one another, Concordia agreed not to sell its own generic version of Kapvay in competition with Par for five years in exchange for a substantial share of Par's revenues, which would be higher if it did not face competition from Concordia's generic version. By eliminating that competition, the agreement deprived consumers of the lower prices that typically result from generic competition.

After learning of the FTC's investigation, Concordia immediately launched its own competing generic, resulting in lower prices for patients using the drug. The companies then entered into a settlement with the FTC, prohibiting them from continuing

with their anticompetitive agreement and from entering into such anticompetitive agreements in the future.

Yet, agreements between competitors that don't directly raise prices can still reduce competition because they interfere with the normal operation of competitive markets. For example, the Commission charged the two leading suppliers of propane exchange tanks with colluding to reduce the amount of propane in their tanks sold to a key customer. Blue Rhino and AmeriGas together control approximately 80 percent of the market for wholesale propane exchange tanks in the United States. In 2008, each company decided to reduce the amount of propane in their exchange tanks from 17 pounds to 15 pounds, without a corresponding reduction in the wholesale price. This was effectively a price increase. After Walmart, a key customer for both companies, refused to accept the fill reduction, Blue Rhino and AmeriGas secretly agreed that neither would deviate from their proposal to reduce the fill level to Walmart. Their agreement had the effect of raising the price per pound of propane to Walmart, and likely to the ultimate consumers. Eventually, each company settled the charges and agreed not to solicit or enter into an agreement with a competitor to fix price levels or modify the fill level in propane tanks.

Another area of potential antitrust concern is trade association activities. Most trade association activities are beneficial and pose no competitive issue. But forming a trade association does not shield joint activities from antitrust scrutiny. Agreements among competitors that restrain competition still violate antitrust laws even if they are done through a trade association. That means that a code of ethics or membership rule that prevents members that are also competitors from competing with one

another may raise antitrust concerns.

reduces costs and promotes efficient distribution. However, when a firm has market power, exclusive dealing contracts may help that firm maintain its dominant position by preventing rivals from competing on the merits.

For instance, the FTC charged pipemaker McWane with monopolizing US markets for pipe fittings through an exclusive dealing policy that raised rival's costs and unfairly excluded competitors. McWane was the largest U.S. supplier of ductile pipe fittings which are used in municipal water systems. After an administrative trial, the Commission found that while most demand for domestic fittings can be met with just a few commonly used sizes of pipe fittings, distributors need access to a full line of fittings in order to meet their customers' demands. When a new entrant tried to compete without having a full line of pipe fittings, McWane implemented a program that required

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Competition Advocacy

Finally, I wanted to turn briefly to the topic of how the FTC works to promote policies at the federal and state level that rely on competition as much as possible to achieve policy goals. As the examples I already discussed show, stopping anticompetitive private conduct is central to a competition agency's mission. But if we focus solely on the conduct of private firms, we address only part of the problem.

Often, an easy and effective way for firms to escape the rigors of competition is to persuade governments to impose regulations that cause exactly the same effects as cartels or schemes by dominant firms to exclude competitors. Government-imposed barriers to competition can be far more durable and pernicious than private restraints, and thus are particularly troubling.

These can take several forms. Some mandate disclosure of competitively sensitive information, which can make it easier for industry rivals to collude. Regulations can also facilitate exclusion by creating barriers to entry that protect incumbent products or services, or that support a particular business model. Both kinds of regulations can lead to higher prices, less competition for a range of dimensions of competition like quality and service, and diminished incentives to innovate.

Sometimes, regulators are not fully aware of the competitive implications and consequences of their actions. In other cases, existing regulations become dated and impede entry simply because their drafters had never imagined some new product or service, such as smartphones. When asked to comment on proposed legislation or regulations that restrict competition, we rely on our power of persuasion to convey to lawmakers and regulators the likely impact of their decision on competition.

ultimately, on consumer welfare. When possible, we draw on our expertise and present data and studies

FTC works. One of our merger lawyers, Leonor Velazquez, just returned from several months in Mexico City working side-by-side with COFECE investigators. I think the value of this type of personal interaction transcends specific outcomes, and it deepens our understanding of how ~~ea~~ a country works to promote competition for the benefit of its consumers.

Thank you for your time this morning.