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ROUNDTABLE ON COMMUNICATION BY COMPETITION AUTHORITIES

-- Note by the United States --

This document is submitted by the United States Delegation to the Competition Committee FOR DISCUSSION under Item VII at its forthcoming meeting on 23-24 October 2002.

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ROUNDTABLE ON COMMUNICATION BY COMPETITION AUTHORITIES

Note by the United States

1. Office of Public Affairs

1. The FTC's Office of Public Affairs (OPA) is located at the Commission's Headquarters in Washington, D.C., and is staffed by a director, deputy director, four full-time public affairs specialists, a public affairs assistant, and two student interns. The primary goal of the OPA is to secure accurate and comprehensive coverage of FTC initiatives on both the national and regional level.

2. The work of the FTC's OPA is designed to promote Commission activities, programs, and accomplishments through information provision and reporter education. Because many reporters are not well-versed in antitrust law or how the Commission operates, the educational aspect is as important as the dissemination of factual information. Accordingly, competition press releases are frequently used to illustrate and explain changes to legislation and regulations related to the Commission's antitrust mandate.

3. The program priorities of the OPA over the past year have been to expand media outreach, including: 1) the development of expanded electronic contact lists, extensive reporter call-outs, and increased news release dissemination via e-mail; and 2) the electronic tracking of media coverage and the posting of electronic "clips" on the agency's Intranet Web site every day.

2. Policies for Handling Media Relations

4. Nearly all competition-related matters – including mergers in which the FTC takes an enforcement action, staff comments, advocacies, Congressional testimony, and public workshops – are announced through a press release issued from Headquarters. Speeches by the Chairman and four other FTC Commissioners are announced via press release at their request. Major antitrust decisions may be announced at a press conference – typically held at Headquarters – with a media advisory issued prior to the announcement to encourage media attendance. Transactions that receive early termination of the antitrust waiting period or are closed following an investigation with no action taken are not publicly announced. In most of these cases, the relevant parties publicly announce that their transaction has been "cleared" by the FTC, and the press office will respond to queries following such announcements with public information only. The FTC also maintains the list of "early terminations" that are published daily. OPA will confirm that a particular transaction is included on this list (which also is available on the Web site), but will not disclose whether the FTC or the Department of Justice reviewed the transaction.

5. During the pendency of Commission investigations, all antitrust matters are nonpublic. Unless an investigation has been revealed by the parties, the FTC does not confirm or deny even its existence. Based on the deadline needs of reporters, embargoed press releases on certain competition-related matters are provided to trusted members of the press with whom OPA has an established relationship. The exception concerns merger action releases, which under no circumstances are provided to the press until after the Commission vote has been received and the Office of the Secretary has notified the parties and their counsel. The public versions of all competition-related press releases are posted on the Commission's Web site as a link to the respective release. This is especially important in matters where the public has an opportunity to provide comments, e.g., a conditionally approved transaction or an application for divestiture or order modification.

3. Target Audiences/Stakeholders

6. The target audiences and stakeholders of OPA products are as varied as the products themselves. Of course, press releases and advisories are targeted at international, national, regional, and local media, including television, newspapers, trade publications, wire services, Internet news sites, and talk/news radio stations. In addition, competition-related releases often are directed to antitrust lawyers and legal publications, as well as to industry groups.

7. While some competition releases are designed to announce Commission action regarding a proposed merger or divestiture, others concern more industry-specific information, such as changes to the HSR Act. It therefore is essential for the FTC to provide updated and accurate information to members of the Bar to ensure they are informed and able to submit the correct documentation to the Commission in the future. Further, press releases often concern antitrust education efforts, such as the ongoing FTC workshops on merger best practices and the second-request process. Providing information on these workshops to the Bar is essential both to educate members and to open a dialog on how to improve the current system.

8. OPA also prepares speeches for varied target audiences, including businesses, consumers, lawyers, associations, and national and international organizations. It is through these speeches that young attorneys may first hear of the FTC's work and become interested in a career with the Commission's Bureau of Competition. Similarly, press releases are developed to publicise staff comments and advisory opinions regarding antitrust issues such as Internet commerce.

9. Finally, as millions of consumers are affected by the competition decisions the Commission announces, they – as well as their elected representatives in Washington, D.C. and their home states – are a vital audience for all competition-related communications. These consumers are also stakeholders, as are the corporate counsel, board members, and employees of the companies in the particular transactions being considered. When the Commission considers international mergers, other antitrust authorities and their members also are important stakeholders and at times are consulted during the communications process.

4. Managing the Media/Dissemination Methods

10. The media outlets interested in FTC antitrust decisions, actions, workshops, and opinions fall into two main groups: mainstream press and economic/business press. The mainstream press is generally interested in any action that will affect a large number of consumers directly, such as a major merger, or one affecting consumers in their area. The business press is more interested in the economic effects of such actions, such as how stock prices are impacted, changes in market conditions, etc. For each of these two groups, the FTC's OPA maintains targeted media lists and has developed excellent working relationships with members of particular outlets. In addition, each public affairs officer is responsible for two regions of the country, and works closely with the regional director to ensure competition-related information relevant to consumers in those regions is presented efficiently and accurately to appropriate media outlets.

11. Communications information such as press releases and media advisories are posted on the FTC's Web site (www.ftc.gov), with links to the relevant supporting documents. The OPA also maintains targeted lists that are routinely sent to reporters either by fax or email to get this information to specific reporters who have expressed interest in the Commission's antitrust work. For highly newsworthy issues, such as major mergers, public affairs officers call the reporters who follow antitrust issues to alert them of the Commission action. Following this initial dissemination, OPA will set up interviews with key FTC staff at the request of the media. For announcements of national significance, press conferences may be

held at Headquarters; for less significant announcements that are still important to a specific sector of the economy, less formal, roundtable-like events called “media availability’s” are held. At both press conferences and media availability’s, conference call-in lines are made available for reporters who are unable to attend. While these press events are open to the public, only members of the media may ask questions. Senior FTC officials may take questions from the media following speeches, at seminars, during workshop breaks, or after giving Congressional testimony, at their discretion. Antitrust reports, advocacies, and staff comments are posted on the Commission’s Web site in PDF format, along with a press release summarising them.

5. The Role of Public Opinion and Public Debate

12. All mergers, acquisitions, and other antitrust matters in which the Commission takes law enforcement action are subject to public comment. Therefore, the announcement of such actions is essential, as is their coverage by the media, to ensure that the public is aware of the decision and can provide informed comments if they desire. The Commission considers and responds to all public comments. These comments may lead to altering the terms of a proposed consent order prior to its finalisation, or influencing the Commission’s decision regarding a proposed divestiture or order modification.

13. Similarly, comments and feedback provided during or following a publicised antitrust workshop or seminar may affect existing regulations and/or Commission policies. As the FTC is committed to gaining the widest range of public input, it is in its best interest to publicise these workshops and seminars broadly. By publicly announcing the issuance of a report summarising the proceedings, the FTC not only provides those who were unable to attend the event with an overview of the workshop or seminar, but elicits additional comments on these results. Agency communications contribute significantly to the evolution of the FTC’s policies and regulations regarding antitrust enforcement. This is also true of the press releases issued to announce a particular competition staff/bureau comment. The announcement alerts the public and interested parties may seek further information on the Commission’s policies. By encouraging public interaction and feedback, the FTC ensures its antitrust policies are not developed and implemented without sufficiently understanding “real-world” considerations.

6. Assessing Accomplishments: Communication’s Effect on Support for the Organisation

14. Each week, OPA provides the Commissioners, regional directors, and other senior managers with an update of agency communications over the prior seven days. Each month, the OPA develops a summary of the news items written about the Commission, and posts these clips daily on the FTC Intranet site. FTC’s media lists are tracked and constantly updated, continually increasing the number of reporters provided with antitrust information. Errors and/or misquotes in media items about the Commission are addressed as quickly as possible by the appropriate staff member. The result, since June 2001, has been the addition of more than 550 reporters to the FTC’s media lists (both antitrust and consumer protection), and the strengthening of OPA’s relationships with local, regional, and national media.

15. The attendance at FTC’s competition-related workshops, seminars, and testimony is another indication of the success of the agency’s communications outreach initiatives. Overflow rooms are often needed at these events, illustrating not only that the word is getting out, but that the public, antitrust bar, and others appreciate this open forum for feedback and interpretation. The larger result of the increasingly focused communications efforts by the Commission is a greater understanding and appreciation of agency activities by the public at large, as well as by other stakeholders such as Congress, which provides budget appropriations.

7. Education and Communications in the FTC's Mission

16. The Commission's education and communication activities are an integral part of the agency's strategy to preserve competition. Like most federal agencies, the Commission prepares a series of plans and reports that explicitly state what the agency seeks to accomplish and provide measures of whether the agency has accomplished its goals. The FTC's three strategies for preserving competition are:

1. Identify anticompetitive mergers and practices that cause the greatest consumer injury;
2. Stop anticompetitive mergers and practices through law enforcement; and
3. Prevent consumer injury through education.

17. The Commission thus intends that education, and hence communications, should play a key role in preserving a competitive marketplace.

18. The FTC's competition-oriented education and communication activities advance both antitrust enforcement and competition advocacy. To advance antitrust enforcement, the principal target audiences are the legal and business communities. When communicating with these audiences, our goal is to raise awareness of applicable legal standards and enforcement policies to facilitate compliance with the law. Speeches before the antitrust bar and business groups play a significant role in articulating principal themes; more detailed guidance is available through guidelines and advisory opinions.

19. All antitrust-related documents are available through the FTC's web site. One key measure of the success of our educational efforts is the number of "hits" on these documents. Web hits help measure the user's response to our education efforts, rather than just measuring the amount of our own activity. A web hit indicates that someone has decided that one of our documents is at least potentially useful enough that they want to look at it. This measure is helpful not just because antitrust attorneys frequently turn to the Internet to search for information, but also because web hits can provide an indirect measure of the success of other education efforts. For example, when an FTC official gives a speech or presents congressional testimony containing especially useful information, antitrust attorneys and other interested parties will likely visit the FTC web site to download a written copy of the speech. Similarly, a Commission decision or advisory opinion will likely generate more web hits the more significant or useful it is. Counting web hits thus helps us assess the impact of our broader education and communication efforts, rather than just the effectiveness of the web site itself.

20. To advocate pro-competitive policies, the principal target audiences are policymakers and those who advise them, including both staff and others whose opinions policymakers respect. Each advocacy document is actually intended to reach two groups of policymakers and advisors: (1) those involved in the particular decision on which we have been asked for our views, and (2) others who are not involved in the particular debate in which we have intervened, but who are making decisions on similar issues in other government agencies or other states.

21. The Commission or its staff offer their views on competition policy directly to the decision makers by letter, formal testimony, legal brief, or other appropriate document. We assess the success of competition advocacy communications in four ways:

- (1) Because each advocacy piece is produced and sent to a particular decision maker, subsequent discussion with the decision maker or others involved in the policy debate often reveals the extent to which our analysis influenced the decision. When the advocacy involves a court or regulatory proceeding in which the decision maker must explain the

reasons for the decision, favourable citation to FTC documents in the written decision is an obvious indicator of success.

- (2) "Repeat business:" This occurs when a policymaker we advise returns to us for advice on another issue, or when other policymakers consult our advocacy documents or seek our input because they see that we have already given advice on that topic. Perhaps the best recent examples of this are FTC staff letters assessing state legislation purporting to create antitrust exemptions for physician collective bargaining; several different states have asked FTC staff for its views over the past several years, often noting our previous advocacy letters on this topic.
- (3) Web hits on competition advocacy materials help us assess the extent to which policymakers, the news media, and others find our advocacy materials useful.
- (4) Media coverage, and direct feedback from officials and interested parties in response to the media coverage, also help us assess the extent to which our advocacy projects are having their intended effect.

ANNEX

OECD Roundtable on Media Relations - DOJ Submission

22. The Department of Justice's Media Relations Policy (U.S. Attorneys' Manual, 1-7.000 (available at http://10.173.2.10/usao/eousa/foia_reading_room/usam/title1/7m DOJ.htm), and governs dissemination of information related to DOJ antitrust enforcement. Overall, the Department's approach with regard to communication is to balance three principal interests: the right of the public to be informed, the right of an individual to a fair trial, and the government's ability effectively to enforce the administration of justice. (1-7.110).

23. The Department of Justice has an Office of Public Affairs (comprised of approximately 15 employees) that is primarily responsible for co-ordinating media relations. This Office works closely with the Assistant Attorneys General responsible for each Division. One individual within the Office oversees Antitrust media relations, and each litigating Division within the Department has a corresponding media representative within the Office.

24. The Office of Public Affairs, as part of the Department of Justice, approaches media relations from the perspective of a law enforcement agency. The Office bases all communication on the law and facts at hand. The Office believes that effective communication can have a significant effect in deterring illegal conduct. In particular, it is crucial that the public and the business community understand antitrust laws, and that they be aware of the fines and penalties that may result from violation of these laws.

25. To disseminate relevant information, the Office of Public Affairs primarily uses the Internet and print media, but also occasionally will rely upon radio or television. The Antitrust Division's web site is a particularly substantive resource for the public. It includes links to relevant court documents, press releases, and Division policies and guidelines. In 2001, the Antitrust Division issued 93 press releases; in 2000, 103 were issued. The Office of Public Affairs routinely e-mails press releases and relevant documents to reporters, and prepares a daily press guidance sheet for reporters. Print media upon which the Division relies to state and explain its actions and views include press releases, interviews, press conferences, and court documents. Occasionally, the Assistant Attorney General will do a radio interview or a press conference that will be televised; generally, these appearances relate to cases that have a national interest. The Antitrust Division avoids use of particular "stakeholders" to convey a message, since those stakeholders could at a later point themselves be subject to inquiry by the Department.

26. The Office of Public Affairs has a variety of target audiences, including reporters, industry associations, professional associations, and the general public. To measure the effectiveness of media relations, the Office of Public Affairs regularly reviews press articles and follows up with reporters or media contacts as necessary. In addition, the Department contracts for a service that monitors news articles which appear in the press. Each litigating section also has responsibility for monitoring media developments that pertain to its specific issues, and the Antitrust Division contracts with a clippings service that focuses on antitrust matters. When appropriate, the Department clarifies the grounds for its actions via op-ed pieces, editorials, or interviews.

27. The Department believes that a well-informed public will support the role of competition and effective antitrust enforcement in benefiting consumers. At the same time, however, the Department must make decisions based on the facts and the law. Public debate regarding antitrust policy occurs in legal and business venues, such as the American Bar Association, the Conference Board, and the National Association of Regulated Utility Commissioners, and also occurs in academic settings, seminars, and

conferences. Individuals from the Department frequently participate in panel discussions on competition policy; other panellists at these discussions typically include legal practitioners, economists and academics. Another important method of disseminating the Department's views regarding competition policy is through public testimony and speeches, and through advocacy work at all levels of government.