**Competition Day in Russia, Suzdal, Russia**
**Prepared remarks of Marian Bruno**
**June 8, 2010**

It is an honor to be here today and to participate in your celebration of the 20-year anniversary of the Russian antimonopoly authority. I bring you greetings and congratulations from Federal Trade Commission Chairman Jon Leibowitz, Commissioners William Kovacic and Thomas Rosch, Edith Ramirez, and Julie Brill.

The FTC has been engaged with FAS and its predecessors from the very beginning. We are proud to share this important mission with you of protecting consumer welfare through promoting and protecting competition, and we commend your accomplishments in this mission over the past 20 years.

I am also appreciative of this opportunity to meet my colleagues at FAS given the signing this past November of the Memorandum of Understanding on Antitrust Cooperation Between the U.S. FTC, U.S. Department of Justice, and FAS. The memorandum provides for cooperation between our agencies to keep each other informed of significant competition policy and enforcement developments and for technical cooperation between our agencies. We also look to consult one another for advice on matters of competition enforcement and policy and to hold periodic meetings among officials to exchange information on policy and enforcement priorities. We are delighted to be a part of this agreement to promote greater cooperation between our agencies and to strengthen our relationship. This anniversary celebration provides a great opportunity for me to learn about your current priorities so that the FTC may work to fulfill the goals of this agreement.

As we all know, free and open markets are the foundation of a vibrant economy. Aggressive competition among sellers in an open marketplace gives consumers – both

individuals and businesses – the benefits of lower prices, higher quality products and services, more choices, and greater innovation and productivity. The competition mission of every anti-monopoly or antitrust agency around the world is to enforce the rules of the competitive marketplace – the antitrust and competition laws. While these laws have slight variations from country to country, at their core, the purposes of competition laws are to promote vigorous competition and protect consumers from anticompetitive mergers and business practices. As you have experienced first-hand, in the international arena, competition laws help improve international competitiveness, help economies to grow, and help address privately-imposed barriers to trade.

In the past 20 years, many countries have realized the importance of and have adopted competition laws. Twenty years ago, there were only about 20 countries with competition laws; today there are over 90. Together, we have established a strong program of convergence and cooperation among competition agencies through organizations such as the ICN and OECD. Let me take a moment here to thank FAS for its continued leadership and active cooperation in the ICN.

These programs of convergence and cooperation among the international competition agencies have promoted more efficient and effective antitrust enforcement worldwide. Specifically, as a group, we have identified key principles of competition law. These key principles include:

- establishing benchmarks for merger notification thresholds and appropriate merger review periods to reduce unnecessary delays in multi-jurisdictional merger review;
- instituting recommended practices for merger review and analysis;
- identifying recommended practices on the assessment of dominance and unilateral

conduct;

- developing techniques for improving anti-cartel strategies and enforcement; and
- recognizing the importance of competition advocacy to educate decision-makers, to promote competition within markets, and to conduct market studies and other research on competition issues.

We have learned over several years of enforcing the antitrust laws about the importance of incorporating sound economic theories into our analyses and assessments of business practices. We have learned not to interfere unduly in the competitive process, and to listen to economic justifications for business conduct.

While a business practice may on its face appear to be anticompetitive, we have learned that often the business has a sound economic justification for the practice, and that the intent is not to capture supracompetitive profits but rather to create efficiencies and compete more aggressively in the market place. For example, in the U.S., in recent years, we have further refined our analysis of horizontal agreements among competitors. In the health care context, the FTC adopted the *inherently suspect* analysis to allow groups to proffer economic justifications for their conduct before we determine if the conduct is illegal. For example, a group of doctors may adopt a clinical integration program of best treatment practices to produce higher quality care for its patients. As a part of that clinical integration program, the group may agree to fixed prices for their services, but if that price agreement is related to and necessary for the clinical integration efficiencies to succeed, then we would allow the program to go forward because consumers are ultimately better off from the efficiencies.

This is not to say though that we have let up any on hard-core cartel behavior. We all recognize the importance of combating cartels. Our authorities have rightly made a top priority

of this, and we're glad to see that FAS has as well. If you have not seen the undercover surveillance tapes from the 1995 lysine cartel investigation against Archer Daniels Midland and other companies, I encourage you to do so. Our colleagues in the U.S. at the Department of Justice have shown the tapes worldwide, and you can even find them on YouTube. These tapes demonstrate the awesome power of cartels to rip-off businesses and consumers. And from watching the tapes, you see first hand the brazen nature of these cartels; they are clearly aware that what they are doing is illegal.

We've learned a lot from our experiences in enforcing the competition laws. One of these things is that the government's power to punish is an awesome one. We must ensure that there are robust due process protections in place for those accused of violating the competition laws. If we do not ensure such due processes, we risk the credibility of our entire enforcement effort. That is why it is so critical for us to maintain a strong program of worldwide cooperation and convergence among the competition authorities. Together we can learn from each others' experiences and create strong and effective enforcement programs that do not unduly burden businesses.

I want to turn now to some of our current initiatives for improving processes at the FTC.

I, too, am celebrating my 20th year of enforcing competition laws. I joined the FTC in 1990 as an attorney in our Premerger Notification Office, one of the offices that I now manage. I have been privileged to experience first hand how the work of the competition authorities in both the U.S. and world-wide benefits and protects consumers and competition in the market. I have participated in the FTC's active merger enforcement program under which we have brought about 450 merger enforcement actions in my 20 years at the agency. We filed court cases to block anticompetitive mergers or required divestitures or other remedies to restore the

competition that would otherwise be lost in the mergers. I have also overseen significant changes in the U.S.'s Hart-Scott-Rodino Premerger Notification program, including a statutory increase in notification thresholds and other related rules changes.

Although the FTC has almost 100 years of experience in enforcing competition laws, we are always reflecting on what we do and how we do it to learn from our successes and failures and to adapt to changing markets. We continue to review and revise our competition policies and priorities; we regularly examine our investigation processes to balance our needs for information with the burden imposed on the businesses we are investigating; and we adopt new rules as needed to combat anticompetitive behavior.

Our most significant current project in the U.S., which many of you may have heard about, is our Merger Guidelines Revision Project. In April, the FTC, in conjunction with the Antitrust Division of the Department of Justice, released for public comment a proposed update of the Horizontal Merger Guidelines. As you know, the Guidelines outline for courts and practitioners how the federal antitrust agencies evaluate the likely competitive impact of mergers and whether those mergers comply with U.S. antitrust law. We know that many of our foreign counterparts have also used our Guidelines as a reference in conducting their own merger investigations, and some countries have adopted similar merger guidelines. The last major revision to the U.S. Guidelines was in 1992. Advances in economic understanding and additional experience, however, have gradually modified the way that the FTC and DOJ evaluate and investigate mergers. As a result, the 1992 Guidelines no longer offer an entirely accurate representation of our practices. To ensure that the Guidelines remain a useful tool, the FTC and the DOJ have worked together to revise the Guidelines to more accurately reflect the way we currently conduct merger reviews.

This update of the Guidelines is notable for the transparency they bring to the merger review process. The proposed Guidelines will assist the business community and antitrust practitioners by increasing the transparency of the analytical process underlying the agencies' enforcement decisions. It is also important, especially for our foreign counterparts, to note that we have made no real changes to our merger review process and we have not changed the law of what mergers are anticompetitive or not. This update is about transparency – describing the process in more detail for businesses and the outside counsel who advise them. One of the key differences is that the proposed Guidelines clarify that merger analysis does not use a single methodology, but is instead a fact-specific process, using a variety of tools to analyze the evidence. The Guidelines also explain that market definition is not an end in and of itself, or even a necessary starting point of merger analysis, but instead a tool to be used when it is useful to illuminate the potential competitive effects of the proposed merger – but we will still consider and define relevant markets in our investigations. The proposed Guidelines also introduce a new section on "Evidence of Adverse Competitive Effects." This section discusses several categories and sources of evidence that the agencies, in their experience, have found informative in predicting the likely competitive effects of mergers. We have found direct evidence of competitive effects in some mergers, and we wanted to be more transparent about how this evidence is used in our decision making.

It is also worth noting that the proposed revisions to the Guidelines were issued after consideration of public comments and input received during a series of joint FTC/DOJ workshops held over the past six months, which were open to the public and attended by attorneys, academics, economists, consumer groups, and businesses. We have found in this and other projects that it is very helpful to invite comments from our stakeholders on our processes

and policies. Their comments help to fully inform us so that we may adopt the most well-rounded approaches to matters.

A few years ago, I also led an in-depth and critical look at our merger investigation processes. This project led to the announcement of steps that FTC management and staff have taken to collect the critical information we need to conduct our enforcement programs without unduly burdening commerce by requiring more information than we need. The reforms were designed to reduce the costs and time required to complete merger investigations in which "second requests" had been issued. The reforms had the goals of rapid identification of the relevant issues, preparation of focused second requests, and the use of consistent investigation timetables. We find that to be most effective, assessment of our merger review processes must be ongoing and based on the lessons we learn in each enforcement action and from a robust dialogue that we maintain with businesses and their counsel in private practice.

On the premerger notification side, the most significant change in the past 20 years was the 2001 amendments to our Hart-Scott-Rodino Premerger Notification law. The principal statutory changes included an increase from $15 million to $50 million in the transaction value threshold over which companies must file premerger notification forms. This change resulted in an immediate drop of more than half in the number of transactions reported to the agency. At the same time, we also amended our Rules of Practice to reflect an internal appeals process for requests for additional information in merger investigations, which are often quite extensive. We undertook these reforms to balance our enforcement needs with the burdens we may impose on businesses, and to create due processes for those under our investigation. Our experience showed us that we rarely investigated or challenged smaller transactions – these small transactions rarely involved overlapping markets or significant competitors in a market. Thus, it

was prudent practice to relieve businesses from the burdens of having to file a premerger notification and wait the requisite waiting period for a group of transactions that were unlikely to raise competitive concerns. To be clear, this did not change the legal standard for what mergers may violate the competition laws – if a small merger that is not required to be notified is found to be anticompetitive, we will challenge the transaction. We have done so for a few matters in the years since the reforms. Currently, we are looking at our premerger notification rules again with a goal of producing a simplified notification filing form that will provide us with more useful information allowing us to complete more timely initial assessments of filings.

Finally, I turn to international technical assistance. Some of my most favorite experiences and rewarding opportunities at the FTC have been participating in several International Technical Assistance programs, including a trip to Volgograd in 1997. As many of you know, in these programs, we share our experiences of enforcing the competition laws and conducting investigations with newer competition agencies. These programs are also 20 years old, with our first missions taking place in 1990 to the new market economies of Central and Eastern Europe. Today, we are excited to have Russia and these other countries from our programs 20 years ago as our partners as we focus our technical assistance efforts on other areas of the world that are just adopting antimonopoly laws, including China, Latin America, India, and Africa.

We also have a relatively new program at the FTC called the International Fellowship program. Subject to carefully applied confidentiality rules, this program permits us to bring highly qualified foreign enforcement agency counterparts to the FTC for periods up to six months to learn directly how the FTC investigates cases and analyze legal and economic evidence. So far in the Bureau of Competition, we have hosted nine fellows and have a few

visiting us this summer. The experiences have been great and our staff, too, learns much from the visiting fellows about applying competition laws in market settings unlike what we may have seen recently in the U.S.

Thank you again for including me in this celebration of the 20th anniversary of the Russian antimonopoly authority. The FTC is proud to have you as a partner in our important mission of protecting consumers worldwide from anticompetitive practices and in promoting the competitive processes that leads to innovation, higher quality products and services, and lower prices. We look forward to fulfilling the commitments we made in November in adopting our Memorandum of Understanding on cooperation and communication. We congratulate you on your successes of these past 20 years and look forward to working closely with you for many years to come on competition policy and enforcement matters.