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2 MR. YOO: So I think that I would say  
3 transparency has been converging a little bit and  
4 getting better. I think that the Intel case is a good  
5 example of where the failure to disclose meetings with  
6 adversaries led to a harmless error finding that  
7 nonetheless changed the practice of DG Comp because  
8 they realized it is error and they can't count on it  
9 being held harmless the next time.

10 You see things like the UPS decision to  
11 start to scrutinize more about economic reason, which  
12 I think are beneficial. There are still things that  
13 are missing. Early access to case files before  
14 decisions are made until they're fairly late. But  
15 what's quite interesting is you talk about closing  
16 cases. There's an interesting aspect of EU law, which  
17 is a complainant can get judicial review of a decision  
18 to close a case, which puts an agency in a difficult  
19 position with an ambiguous case, which you can neither  
20 prove to prosecute nor prove to close.

21 And I wonder that -- you know, I understand  
22 the impulse to give the guidance, but there can be a  
23 trap. One of the solutions we have is the Tunney Act  
24 or the modified Tunney Act that the FTC is subject to  
25 about settlements. The EU got a lot of criticism for

1 the early attempts to settle the Google cases without  
2 public participation.

3           One last thought I forgot to mention.  
4 Angela mentions French administrative law, and that is  
5 the touchstone for a lot of it. One of the  
6 interesting things is the incomplete reception in  
7 other countries of French administrative law. The  
8 modern trend in recent years is that's actually become  
9 much more searching in terms of judicial review of the  
10 agency action, but that development within French  
11 administrative law has yet to percolate throughout the  
12 rest of the EU. So they tend to follow, if you will,  
13 a dated conception of administrative law that is too  
14 deferential, and if they update it, you may find more  
15 search in judicial review.

16           MR. O'BRIEN: Thank you, Professor Yoo.

17           Professor Zhang, I wanted to return to your  
18 useful earlier comparative examples involving both the  
19 EU and China. Given the institutional realities that  
20 you had identified there, what do you think successful  
21 engagement might look like with the Chinese  
22 competition authorities, with the EU? Take it,  
23 whatever you'd like.

24           MS. ZHANG: Okay. Let me perhaps start with  
25 the Chinese authority. You know, as you know, the

1 Chinese authority is a little bit more than 10 years  
2 old and still relatively a new regime. And I know  
3 that there have been a lot of exchanges between the US  
4 and EU authorities with the Chinese authority,  
5 particularly on providing feedback and comments on the  
6 substantive law of drafting, but I know that there is  
7 actually less exchange in regard to the procedural  
8 aspects and how to create best practices for due  
9 process and procedure. But I think that due process  
10 and procedures matter crucially regarding Chinese  
11 antitrust enforcement.

12 And those of you who have practiced cases in  
13 China, you see that there are actually very few or  
14 almost no major appeals against any decision made by  
15 Chinese authority. And what's more bizarre is that  
16 companies not only promise to rectify the conduct  
17 immediately, they also volunteer to reduce prices for  
18 their products, even before the agency announces its  
19 decision. So this is something that you never see in  
20 any other jurisdictions.

21 And why would a company do that? And what  
22 I've found during my research is that on several  
23 occasions, especially in early cases, one agency  
24 called the National Development and Reform Commission,  
25 the NDRC, which is the former antitrust agency in

1 charge with price-related antitrust conduct, they like  
2 to employ what I call strategic public shaming  
3 strategy. So if a firm does not cooperate quickly and  
4 due to the agency's demand, the agency could leak such  
5 information proactively to the state media outlet.  
6 And so this would expose the firm to a high level of  
7 publicity and potentially the firm will suffer. Its  
8 top performance will suffer.

9           And in one example that I studied about, an  
10 infant formula case, a case involving several infant  
11 formula manufacturers, I found that one manufacturer  
12 called Biostime, which was subject to the worst public  
13 exposure, actually lost over one-third of its market  
14 capitalization within a seven-day window upon the  
15 agency's announcement of its investigation. It's not  
16 the decision. And, actually, this kind of market  
17 sanction far exceeds the ultimate antitrust fine that  
18 it received, even though this firm did receive a very  
19 high antitrust fine. Actually, the highest antitrust  
20 fine among all the firms.

21           So you can imagine the kind of pressures  
22 that executives will be subject to when their firms  
23 were subject to antitrust investigation in China. And  
24 this, I think, also possibly explains why the kind of  
25 bizarre phenomenon in China, why firms will actually



1 volunteer to cooperate with the agencies and volunteer  
2 to offer to reduce prices, because there's no legal  
3 requirement in China as to whether, when, and how an  
4 agency disclose an investigation. So this becomes a  
5 very powerful weapon for the agencies to put pressure  
6 on the firm in order to have them conform to its  
7 demand.

8 I can also say briefly about Europe, right,  
9 yeah?

10 MR. O'BRIEN: Sure, go ahead.

11 MS. ZHANG: Okay.

12 MR. O'BRIEN: And I also want to just put  
13 our other professors, our panelists, maybe to start  
14 thinking about -- as you briefly address the EU, maybe  
15 others will think about the similar -- sort of  
16 universalizing this question. What similar successful  
17 engagement in a diverse world look like for the FTC.  
18 But go ahead, please, on the EU, please, yes. Sorry.

19 MS. ZHANG: I think my impression as a  
20 scholar studying EU competition law for the past five,  
21 six years, is that we have often -- we've seen too  
22 much of this argument trying to explain the divergence  
23 between US antitrust law and EU competition law based  
24 upon philosophy, which is the so-called, you know, EU  
25 is driven by different philosophical thought, and it's

1 overliberalism, which is different from us.

2           But based on my empirical observations and  
3 studies, I have doubts about how much ultraliberalism  
4 really have much practical relevance. And so my  
5 suggestion is really to urge the FTC and the US  
6 authority rather than taking more like a top-down  
7 approach -- rather than taking a top-down approach,  
8 take a kind of like bottom-up approach to try to  
9 understand who are the institutional actors involved  
10 here and what are their real incentives.

11           I speak a lot about the EU court, and the  
12 reason is because we're seeing really growing  
13 convergence between the US and the EU authorities at  
14 the agency level, but the divergence -- and you see  
15 the gap -- to a large extent remain at the court,  
16 right? So we actually know very little about the  
17 court. Who are the decision-makers and how those  
18 decisions were made? And that's the reason that drove  
19 me to Luxembourg to study the court and to find out  
20 who are these judges, how they're appointed and how do  
21 they make decisions.

22           And my findings, which actually were  
23 published in a law review article called "A Faceless  
24 Court," are actually quite disturbing because I found  
25 that, you know, there is not -- first of all, the

1 judges in the EU are very well paid. This is not a  
2 problem, but it becomes a problem when there is a lack  
3 of safeguard for judicial appointment. And so some of  
4 the judges who are appointed are political appointees,  
5 and then they're not necessarily competent to do the  
6 work. And, also, these judges have very short tenure,  
7 unlike judges here in the United States. And the  
8 turnover rate of the judges is very high.

9 So all these factors result in the fact that  
10 these judges rely heavily -- many of the judges rely  
11 heavily on their law clerks who tend to stay in the  
12 court very long and know the EU law very well. Okay?  
13 So this heavy reliance on the law clerk -- and also a  
14 significant percentage of law clerks actually were  
15 seconded from the European Commission, so they will  
16 return back to the Commission after they finish their  
17 stint at the court.

18 So you can see the close revolving door  
19 between the EU court and the Commission. I mean, all  
20 these things raise conflict issues. And, also, it  
21 partly, I think, explains why you see the court is  
22 very heavily reliant on the Commission and actually  
23 sometimes quite deferential to the Commission.

24 So I want to urge the FTC to take a more  
25 bottom-up approach, really understand the

1 institutional actors and their incentives behind these  
2 cases. I think that will give us a better and more  
3 complete picture of what's going on here.

4 MR. O'BRIEN: Thank you, Professor Zhang.

5 I'm going to turn to Professor Marsden next  
6 and actually just open it up to everyone. We're under  
7 five minutes left on our panel.

8 This idea, this broad idea, successful  
9 engagement in a diverse world. Professor Marsden, why  
10 don't you start for us.

11 MR. MARSDEN: Sure. So we've heard various  
12 suggestions. One would be essentially public shaming,  
13 a return to that. We've heard sort of extortion  
14 through the commitments process. I suppose you could  
15 do that if you'd like. We have heard of just relying  
16 on prosecution. I started out as a prosecutor. I  
17 think it's a wonderful model, but it's very surgical,  
18 you know? And as we heard from Roger and others, it's  
19 very difficult sometimes. And so that's why agencies  
20 are becoming a bit more creative.

21 You know, you don't necessarily have to go  
22 the full hog and create an ex ante, procompetitive  
23 code like I'm suggesting through our Furman Report.  
24 That's something to discuss, but I think the agencies,  
25 which are getting a lot of traction here around the

1 world, are the ones that have a range of tooth. You  
2 don't want a competition watchdog with only one tooth,  
3 right? You need more tools. All right?

4 And so if you have market study powers,  
5 market investigation powers, that can allow you to be  
6 more nuanced in your analysis, still driven by  
7 economics and the evidence, but then also more  
8 creative in your remedial approach.

9 So my final point would be in the UK I was  
10 deputy chair of our banking investigation. We were  
11 under a great deal of political pressure to break up  
12 the big four banks. We decided on the evidence that  
13 that wasn't justified. It's an extraordinary remedy,  
14 and we didn't have the extraordinary evidence, but  
15 also it wouldn't be helpful. It wouldn't actually  
16 have driven more competition in that sector.

17 And we decided instead of breaking them up  
18 to open them up through open APIs and open banking  
19 model. And we've seen some increased engagement with  
20 consumers in that regard in new choice products, in  
21 new things, even the incumbents have been introducing  
22 new products, whereas before they were just sitting on  
23 their IT and not doing very much.

24 The only thing I'd say is, what was our test  
25 of success? Our test wasn't switching. Our test

1 wasn't to see whether, you know, people were switching  
2 banks. You know, it's very clear evidence that  
3 British people switch their spouses more than they  
4 switch their banks.

5 (Laughter.)

6 MR. MARSDEN: We didn't want divorce. We  
7 wanted engagement. We wanted consumers to be more  
8 engaged with their banks. And that's what we're  
9 seeing through a more forward-looking remedy that goes  
10 with the technological times, and I think that's  
11 something where creative agencies with multiple powers  
12 can really do some good.

13 MR. O'BRIEN: Thank you, Philip. Let me  
14 come back to Christopher and then Francesca for some  
15 final thoughts.

16 MR. YOO: So in terms of best engagement,  
17 best practices for engagement, it's funny, Paul, you  
18 and I have worked on the ICN on the agency  
19 effectiveness working group. The idea always has been  
20 to start with procedure because we believe that would  
21 be easier. And I think that it's still probably true  
22 in many ways it's easier. I still wouldn't call it  
23 easy. And so we deal with these -- the multilateral  
24 framework that the Justice Department is supporting  
25 and the FTC is supporting. We deal with the OECD and

1 the ICN.

2 My reaction to, though, this guidance is I  
3 think they're important in terms of commitments. They  
4 necessarily are general, a bit on the general level.  
5 And so I think that we should continue those  
6 engagements, but what I really see are rare  
7 opportunities when a country is changing its  
8 procedural practices.

9 And a good example right now is in China.  
10 With the unification of the three agencies, they have  
11 three procedural codes they have to turn into one.  
12 And so one way or the other, this is a natural  
13 opportunity for them to look for the best practices.  
14 And, in fact, we're on an -- the project that I'm  
15 working on with a Chinese and a European partner is  
16 trying to do exactly that.

17 At the same time, it's interesting. You  
18 may or may not know, China recently amended its  
19 administrative litigation law that changes the terms  
20 of judicial review. And we're actually seeing the  
21 first cases of judicial review and one in which they  
22 lost. It was reversed on appeal, but they did lose in  
23 the trial court. And that's actually when we had  
24 local officials, we asked how many times they had been  
25 challenged in court, and the answer was literally

1 zero.

2           And so we're starting to see those trickles,  
3 but the interesting thing also, the appeals now to go  
4 to the administrative court in Beijing, the appellate  
5 court. They have a different sensibility about  
6 administrative law, and, for example, the Securities  
7 Reform Commission in China just instituted what we  
8 would think of as ALJs. So there's a different form  
9 of advocacy, which is picking the moments where you  
10 see it in the country.

11           Korea is actually redoing its enforcement  
12 procedures right now. But also, move it beyond  
13 competition law and privacy to make it a general issue  
14 of administrative law and good government by tying  
15 into other bars, other constituencies, I think, could  
16 be a very effective advocacy move, and it's one that  
17 we're trying to explore.

18           MR. O'BRIEN: Thank you, Professor Yoo.

19           Professor Bignami, you have our final words.

20           MS. BIGNAMI: I just wanted to mention that  
21 I think that the view of the European Court of Justice  
22 as presented here was somewhat dated and it has  
23 changed significantly since the establishment of the  
24 general court in the late '80s.

25           And I think we're out of time, but I did



1 want to mention that I think that the one very  
2 productive way to engage with our foreign partners is  
3 to experiment, as Brandeis would say, with different  
4 methods and different policy aims and different ways  
5 of accomplishing the very same goals that both systems  
6 around the world generally tend to have, so  
7 experimentation and exploring different approaches I  
8 think is extraordinarily healthy within the United  
9 States and internationally.

10 MR. STEVENSON: Well, thank you very much.  
11 I hope everyone will join us in thanking our panelists  
12 for a great discussion. Thank you.

13 (Applause.)

14 MR. STEVENSON: So now I think we take a  
15 brief break, and we start again in about 15 minutes.  
16 Thanks.

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1 PROMOTING SOUND POLICIES FOR THE NEXT DECADE

2 MS. WOODS BELL: Colleagues, welcome back  
3 from the break. We're about to begin. It's my  
4 pleasure to introduce Commissioner Christine Wilson.  
5 Christine is a Commissioner here at the FTC. She  
6 previously served as the Chief of Staff to Tim Muris  
7 and also as a law clerk in the Bureau of Competition.  
8 So it shows that all your diligence and efforts here  
9 at the agency is quite something that pays off. Thank  
10 you so much for coming back home, Christine.

11 She also worked as Senior Vice President -  
12 Legal, Regulatory and International for Delta Airlines  
13 and as a member of the antitrust practice for Kirkland  
14 & Ellis and O'Melveny & Myers. She also worked for  
15 Assistant Attorney General James Rill. And she just  
16 has a bio so long, again, like so many of our other  
17 colleagues, we can't go on, but we welcome her now to  
18 provide comments here at the international hearing.

19 Thank you.

20 COMMISSIONER WILSON: Good morning,  
21 everyone, and thank you. I think when she says that I  
22 have a long bio, it means that I can't keep a job, so  
23 thank you for presenting that in a positive light.  
24 And it is good to be home. It's great to be back at  
25 the FTC. It is a wonderful institution that does

1 fantastic work for consumers in the United States and  
2 great work cooperating with our colleagues abroad, so  
3 it's a pleasure to be back.

4           So our next panel is going to discuss how to  
5 ensure that we have sound policies in place for  
6 international cooperation in the next decade. Before  
7 I begin, first I need to give the standard disclaimer  
8 that the views that I express are not necessarily  
9 representative of those of the Commission or any other  
10 Commissioner.

11           And second, I should give a little bit of  
12 perspective about myself. As was mentioned, as a  
13 young associate, I had the privilege and good fortune  
14 to practice law with Former Assistant Attorney General  
15 James F. Rill. And he is the one who instilled in me  
16 an appreciation of the great importance of  
17 participating in international competition dialogues  
18 and participating in events and activities like this.

19           He also roped me into helping to prepare  
20 submissions to the OECD, to the WTO, to the  
21 International Chamber of Commerce, and a number of  
22 other organizations. I also had the good fortune  
23 to work with Jim on the International Competition  
24 Policy Advisory Committee, including preparing  
25 recommendations that ultimately became the

1 International Competition Network that we know and  
2 love today.

3 And then as Chief of Staff to Tim Muris, I  
4 had the privilege of helping to launch the ICN, along  
5 with Randy and lots of other folks here and DOJ and  
6 around the world. And I've watched with pride the  
7 growth and success of the ICN over the ensuing years.  
8 I must say that the work of that group has exceeded my  
9 loftiest expectations, and I know I'm not alone in  
10 marveling at the good work that has been done under  
11 the auspices of the ICN.

12 And so with this background, I have faith in  
13 the ability of jurisdictions to nurture constructive  
14 dialogues, both in the bilateral and multilateral  
15 settings, and to achieve, through cooperation, sound  
16 policies on antitrust enforcement issues. But, of  
17 course, it wasn't always this way.

18 When I first began practicing international  
19 competition policy, I was eagerly preparing the final  
20 report for ICPAK and very excited about the work that  
21 we were doing. And I remarked to one of the  
22 relatively senior partners at the firm, this is  
23 fantastic, you know, here's what we're doing. We're  
24 doing all this great work, and it's going to be so  
25 exciting and so impactful for international

1 competition policy.

2           And, you know, maybe the senior partner was  
3 frustrated that I didn't have time to work on his  
4 matter, but he responded in a very frustrated tone of  
5 voice and indignantly, there is no such thing as  
6 international antitrust. So to protect the guilty,  
7 I'm not going to disclose his name, but, boy, was he  
8 wrong. Today, antitrust law has a clear international  
9 dimension, and its internationalization reflects a  
10 number of factors, including an increase in the number  
11 of jurisdictions with antitrust laws and the  
12 increasingly global scope of many industries.

13           And this growth has been coupled with a  
14 second significant development, the growing  
15 digitization of our economy. Apart from Microsoft,  
16 many of today's business titans didn't even exist when  
17 I graduated from law school. Not to date myself, but  
18 the internet and email also didn't exist when I  
19 graduated from law school, but that's another matter.

20           So these technology firms are now at the  
21 center of the next great debate, whether we should  
22 abandon or at least radically alter traditional  
23 antitrust principles to address what many believe to  
24 be a technology problem. So you see a lot of  
25 discussion of this issue even in the mainstream press.

1 In the news last month, we saw that organizations in  
2 several other jurisdictions, including the UK and  
3 Australia, have issued reports recommending  
4 significantly changing their respective competition  
5 regimes to expand their authority over big tech  
6 companies. And here at home, we see similar calls for  
7 big changes from wide-ranging structural and  
8 behavioral remedies to changes in the underlying goals  
9 of antitrust law.

10 For example, Senator Elizabeth Warren  
11 recently proposed rules that would break up technology  
12 companies with annual global revenues of over 25  
13 billion. And for smaller companies, she would impose  
14 regulatory behavioral mandates. Others have called  
15 for revisions to the antitrust laws that would require  
16 enforcers and courts to consider whether the  
17 challenged conduct takes into account a wide variety  
18 of factors not typically considered in mainstream  
19 antitrust enforcement, including fairness, reducing  
20 income equality, reducing jobs, benefitting smaller  
21 businesses, and protecting competition, workers,  
22 customers, and suppliers.

23 And, oftentimes, these calls are accompanied  
24 by conclusory statements asserting that the American  
25 economy is less competitive than in some ill-defined

1 golden age of yore. And sometimes these claims are  
2 even supported by rudimentary statistics measuring the  
3 total number of mergers, the valuation of these  
4 mergers, or the size of the largest businesses or even  
5 the share of "the e-commerce market" controlled by the  
6 largest online retailers.

7           And all of this analysis is very flawed from  
8 a standard antitrust perspective, but nonetheless is  
9 rolled out to support a wide variety of assertions  
10 about the lack of competition in our economy. So all  
11 of this is to say it strikes me that we are at an  
12 inflection point, and we do have important choices to  
13 make. So to name three, should we abandon our present  
14 focus on a single goal of antitrust? Currently, the  
15 consumer welfare standard in favor of a standard that  
16 requires us to weigh several different factors,  
17 including some of those that I just named?

18           Should we abandon our present reliance upon  
19 economic principles to inform our understanding of  
20 whether a given merger or trade practice is  
21 anticompetitive?

22           And, finally, should we return to the days  
23 of the US Supreme Court cases -- Pabst Brewing and  
24 Vons Grocery -- when antitrust analysis began and  
25 ended with a simple rule tied to a simple number, such

1 as prohibiting any increase above a given  
2 concentration threshold?

3 As I've said in a number of recent speeches  
4 and statements, I, myself, would answer each of these  
5 questions with an emphatic no. But regardless of my  
6 views on substance, I have confidence that we are well  
7 equipped to study these questions and to reach sound  
8 conclusions. And perhaps more importantly for today's  
9 purposes, I also have confidence in the ability of the  
10 international antitrust community, including the many  
11 bilateral relationships in multilateral institutions,  
12 to examine these important questions in a constructive  
13 way.

14 So this debate highlights the value of  
15 international engagement in the good work that Randy  
16 and his team do here at the FTC. Discussing these  
17 questions with our international partners is  
18 especially important in today's interconnected  
19 antitrust environment. The antitrust rules that we  
20 adopt in the United States may have repercussions  
21 abroad, and antitrust rules adopted by other  
22 jurisdictions may affect us here in the United States.

23 So comparing notes with our international  
24 partners has at least two benefits. First, it helps  
25 each agency, including the FTC, sharpen its own



1 analysis. And, second, it helps us identify areas for  
2 collaboration, and if appropriate, convergence. Given  
3 the importance of these discussions, we are fortunate  
4 to have strong teams in charge of international  
5 cooperation.

6 Here at the FTC, Randy Tritell and his team  
7 do yeoman's work, managing our extensive network of  
8 bilateral relationships with sister agencies around  
9 the globe. Our Office of International Affairs leads  
10 our daily cooperation on competition, consumer  
11 protection, and data privacy cases in order to reach  
12 compatible analyses and outcomes where possible.

13 OIA is also instrumental to the success  
14 of our other international initiatives, including  
15 our international assistance missions and our  
16 international fellows program. And even more  
17 impressively, the office maintains high quality over a  
18 very large volume of initiatives. In 2018, the FTC  
19 conducted 24 international assistance missions and  
20 hosted 10 international fellows from foreign agencies  
21 here at home. And Roger Alford has done similar  
22 excellent work over at the Department of Justice.

23 And we also benefit from exchanging ideas in  
24 order to promote convergence with our international  
25 partners through both bilateral relationships and

1 multilateral organizations, including the ICN, ICPEN,  
2 and the OECD.

3           So in conclusion, there's a growing  
4 international debate about whether and how to revise  
5 the antitrust laws, particularly as they apply to the  
6 digital economy. Given the potential impact that  
7 changes in antitrust law would have upon large global  
8 businesses, it's critically important that we think  
9 through these issues together with our international  
10 partners.

11           Thankfully, we can lean on Randy and his  
12 team and his counterparts at other agencies around the  
13 world to facilitate this discussion and help us to  
14 identify areas for further collaboration. Of course,  
15 this meaningful international collaboration is no  
16 small victory and certainly something I wouldn't have  
17 predicted more than 20 years ago.

18           And now, I will turn it over to our  
19 panelists to advise us on how to make the next decade  
20 of international collaboration even more successful.  
21 Thank you.

22                           (Applause.)

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1 somebody who was at Ditchley House, the conference in  
2 2001 that took the recommendations of ICPAK that  
3 Commissioner Wilson described and turned them into a  
4 concrete proposal for the ICN. Multilateral  
5 organizations are not a plausible framework for  
6 disciplines that would reduce substantially the  
7 unnecessary costs, the complexities, and the other  
8 frictions of compliance that multinational businesses  
9 face, nor are they likely to lead to any enforceable  
10 protection for fundamental rights of defense in  
11 jurisdictions that have weak rule-of-law traditions or  
12 inadequate antitrust agency procedures or to expunge  
13 protectionist elements of antitrust systems that have  
14 polycentric objectives. Binding disciplines are  
15 required for this purpose.

16 And let me -- I see that my time is  
17 essentially up. Let me just conclude by saying -- and  
18 I can explain this further to the extent anybody is  
19 interested -- I believe that the search for a viable  
20 international discipline to remedy the serious  
21 deficiencies in international antitrust enforcement  
22 should be initiated on a bilateral basis, preferably  
23 between the US and one or a very small number, like  
24 one or two, jurisdictions that are strategically  
25 friendly to the US, that follow a genuine economic-

1 spaced approach to antitrust in practice rather than  
2 as mere lip service, and that have a highly developed  
3 legal system that generally seeks to achieve accurate  
4 judgments, in part by ensuring adequate rights of  
5 defense. Thanks.

6 MR. STEVENSON: Thank you very much for  
7 that. Also, a reminder that we have, I think,  
8 question cards for people if they're interested in  
9 asking our panelists any questions.

10 With that, we turn next to Dan Solove from  
11 GW Law School. Again, we appreciate GW Law School's  
12 support for this event. I think we've had Professor  
13 Solove, Professor Bignami, Professor Kovacic  
14 yesterday. Professor Solove, we turn to you.

15 MR. SOLOVE: Thanks for having me here. So  
16 my focus is on privacy and security law. And the  
17 story is that since the '70s through the '90s, the US  
18 played a leading role in the development of privacy  
19 law. Reports coming out of the US, the famous ATW  
20 report, and the Code of Fair Information Practices,  
21 all to a series of various sectoral laws regulating  
22 privacy, and in the '90s the rise of the FTC jumping  
23 into this area, starting to do enforcement under  
24 Section 5 for privacy and security issues.

25 All that developed in the '70s and through

1 the '90s and has largely tapered off these days. The  
2 history there was the US adopted a sectoral approach,  
3 which is a series of different laws to regulate  
4 different sectors in different ways. This approach  
5 was favored by industry at the time. There were a lot  
6 of gaps and crevices, and some folks found themselves  
7 not regulated, and everyone had their particular law  
8 that regulated them the way they wanted to be  
9 regulated. And, you know, folks were happy with this  
10 general state of affairs, at least in industry.

11 The problem with the sectoral approach is  
12 that the sectors don't stay the same. They change.  
13 And now a lot of industries are dabbling in other  
14 industries and are finding themselves overlapped by  
15 three or four different laws, three or four different  
16 regulators, and various other states pouncing in, so  
17 the landscape has become very complicated, and we're  
18 kind of stuck in this situation.

19 The other thing is that Congress has largely  
20 ground to a halt. Congress used to be very active in  
21 privacy, passing a lot of laws. Now, really since the  
22 2000s, has been largely quiet. Here and there  
23 touching up a law, doing a little here and there, but  
24 nothing that major. Nothing like it did in the '70s  
25 to the '90s. And I don't see much activity in

1 Congress in the future, so that's the world we live  
2 in.

3 In the meantime, the rest of the world has  
4 really taken charge in privacy, especially the  
5 Europeans. The Europeans passed a very powerful new  
6 law, the GDPR, the General Data Protection Regulation,  
7 came into effect last year with very severe penalties.  
8 All the companies that I've talked to and know about  
9 and hear about, they all are looking overseas.  
10 They're looking over to Europe for guidance. They're  
11 building their privacy programs based on what the  
12 Europeans are saying.

13 Essentially, the Europeans are their  
14 regulator for most global businesses, you know, asking  
15 them, hey, where do you spend your time on. Eighty,  
16 90 percent of their time is on the GDPR. So really  
17 essentially now the world is focused elsewhere. The  
18 US has lost its leadership role. People don't look to  
19 the US that much for guidance in this.

20 Now, California has recently passed a new  
21 law, so everyone is looking at California. Might as  
22 well be another foreign country, but again what we  
23 don't see are the eyes at the federal level. The only  
24 entity at the federal level that had been making a lot  
25 of progress, doing a lot of activity, has been the

1     FTC. The FTC stepped into this void, this weird  
2     sectoral system that the US has with this fragmented  
3     regulation, and through Section 5, which has the  
4     broadest jurisdiction of any type of law that we have  
5     to regulate privacy and security, captured and  
6     regulated through a number of consent decrees a lot of  
7     different companies. And I think that the FTC has  
8     built a considerable body of jurisprudence.

9             There are now calls, very interestingly, in  
10    industry for a comprehensive privacy law. Folks look  
11    at this landscape, and I find it very interesting how  
12    significant the call is in industry and the desire for  
13    a comprehensive privacy law. I don't think that's  
14    likely. Just politically, I think it's very difficult  
15    for Congress to do that, so I think the answer is  
16    going to lie with the FTC.

17            I think that, you know, the future, if the  
18    US wants to take a leadership role, is that the FTC  
19    has to step up and has to play that role. The FTC is  
20    in that position already based on what it has done,  
21    and I think it is the logical choice for the US to  
22    unify its law, to pull itself together to be the  
23    leader, but I do think that calls for an even stronger  
24    role for the FTC to play.

25            MR. STEVENSON: Thank you, Dan.



1                   We turn next to John Pecman, formerly from  
2                   Canada's Competition Bureau to offer his thoughts.

3                   MR. PECMAN: Thank you, Hugh, and thank you  
4                   to the FTC for this invitation to speak about a  
5                   passion of mine, which is international cooperation  
6                   and convergence. And I was a big advocate while at  
7                   the Bureau, and I continue to be one. But to begin, I  
8                   want to note Makan Delrahim's speech called "Come  
9                   Together: Victories and New Challenges for the  
10                  International Antitrust Community," where he refers to  
11                  the Beatles, the "come together."

12                  And when I speak about international  
13                  cooperation and convergence, I like to quote John  
14                  Lennon, his song "Imagine." And don't worry, I'm not  
15                  going to sing it. My line is "Some say I'm a dreamer,  
16                  but I'm not the only one." And that kind of  
17                  encapsulates what's been driving me and advancing the  
18                  agenda here, working with my counterparts or formerly  
19                  my counterparts around the world.

20                  So I would like to open my statement today  
21                  by quickly highlighting three areas of good works  
22                  undertaken by the Bureau using soft law approaches to  
23                  further international concurrence. The first was  
24                  through bilateral relationships. The Bureau has  
25                  established extensive networks of cooperative

1 relationships with many competition agencies around  
2 the world, and these are based on bilateral  
3 cooperation agreements. These agreements enable staff  
4 to cooperate with agencies abroad on individual cases,  
5 technical assistance, and on developing competition  
6 policy.

7 For example, the US criminal MLAT has  
8 permitted the US, DOJ, and the Bureau to conduct joint  
9 price-fixing investigations. And the very first one  
10 was fax paper back in the '90s and also enabled the  
11 continuation of parallel investigations. Regrettably,  
12 there is no operational civil MLAT which permits the  
13 sharing of confidential information between Canada and  
14 the US as it pertains to merger review without a  
15 waiver from the parties or reviewing abuse or civil  
16 deceptive marketing practices investigations.

17 We also work with our counterparts through  
18 developing policy convergence. And a good example is  
19 the document produced with US agencies entitled "Best  
20 Practices on Cooperation in Merger Investigations"  
21 that puts out a good template for the entire  
22 community.

23 And another example is our alignment of  
24 merger review processes with the US. Canada modified  
25 its investigatory powers to include supplementary

1 information requests similar to the American second  
2 request, and aligned our 30-day timing procedures.  
3 Obviously, this collaborative approach has a  
4 significant number of efficiencies, not only for the  
5 review but for merging parties.

6 And, of course, technical assistance. Staff  
7 exchanges is something we rely on to build bridges. I  
8 like to point to the staff agreements that we have  
9 with the ACCC, which has facilitated the sharing of  
10 best practices by exposing senior staff to each other  
11 as investigative and analytical approaches, as well as  
12 the executive management functions.

13 The second area is leadership in the  
14 multilateral fora such as ICPEN, ICN, OECD, where soft  
15 convergence is a top priority for all these agencies.  
16 And the Bureau is a founding member of the ICN and  
17 acts as its secretariat, with tremendous support, I  
18 may add, from the FTC. The Bureau was currently the  
19 cochair of the ICN agency effectiveness working group,  
20 and in this regard, something that I think is  
21 extremely important, led the creation of the economist  
22 subgroup and economist workshops, including the first  
23 joint workshop between the ICN, OECD, and CRS in  
24 Seoul, Korea last year. We strategically advanced the  
25 economic subgroup to promote a normative approach to

1 economic analysis for determining anticompetitive  
2 harm, the foundation for competition analytics. The  
3 Bureau also participates regularly at the OECD and the  
4 ICPEN processes.

5           And the third area of importance in terms of  
6 convergence is international trade agreements. Trade  
7 liberalization and competition law share an objective  
8 of promoting efficient allocation of resources, create  
9 strong incentives for innovation and productivity.  
10 The Bureau advocates for competition considerations  
11 and agreements to ensure that the benefits from trade  
12 liberalization are not offset by anticompetitive  
13 business conduct.

14           A good example of this tool in action is the  
15 recent USMCA, which has not been ratified but agreed  
16 upon, for the procedural fairness article on this  
17 provision dealing with competition policy. It  
18 requires each of the parties to enforce their  
19 respective competition laws through transparent laws,  
20 procedural rules by conducting investigations within  
21 reasonable time frames and by providing opportunities  
22 for legal representation. In other words, similar  
23 rules can be established through trade agreements.  
24 And I think it is an important consideration as we go  
25 forward.

1           So we've made significant progress, you  
2 know, through soft convergence. However, the dual  
3 drivers of globalization and the new digital economy  
4 in conjunction with populism have increased tensions,  
5 in my view, among competition agency and the risk of  
6 divergent approaches to competition law. So the time,  
7 in my view, is ripe for considering new approaches.  
8 And I might get to that later because my time is up.

9           MR. STEVENSON: Thank you very much. I  
10 should point out that John has also written an article  
11 that talks about some of these ways forward, which I  
12 think is really worth a look.

13           We turn next to Justin Macmullan from  
14 Consumers International to offer some perspectives  
15 from that part of the world. Thank you.

16           MR. MACMULLAN: Thank you. And thank you to  
17 the FTC for the invitation as well. Before I start, I  
18 should just explain who Consumers International are  
19 for those of you who don't know us. We're the  
20 membership organization for consumer groups around the  
21 world, and we have more than 200 members in over 100  
22 countries. We represent them in international  
23 decision-making, policymaking forums, and also  
24 increasingly with companies that are operating in  
25 global markets.

1           Throughout our history, we've supported the  
2 development of international soft law through  
3 organizations such as the United Nations, the OECD,  
4 the G20, and other international bodies. At it's  
5 best, we believe soft law combines the expertise of  
6 stakeholders from around the world to define agreed  
7 principles and best practices. And it's a valuable  
8 reference point for those within government, business,  
9 and civil society who are advocating for improvements  
10 to consumer protection and the establishment of common  
11 approaches.

12           Over time, and we've heard this from other  
13 panelists, it does have a significant impact on policy  
14 by influencing global ideas and conversations, but  
15 also in a more formal sense by providing a framework  
16 for national legislation and regulation. And in  
17 today's world where markets are increasing connected  
18 across borders and many countries face the same  
19 challenges, this is particularly important.

20           However, it should be said that  
21 demonstrating this impact is difficult. And although  
22 it might be a challenge, as far as we know, relatively  
23 little is done to actually monitor how soft law  
24 contributes to positive change. This could be a  
25 useful step if it's possible to monitor it, and it

1 would help us understand when soft law is most  
2 effective, and it could inform future approaches.

3 So, whilst we recognize the benefits of soft  
4 law, we also support efforts to identify new ways to  
5 increase impact. And I'd like to briefly highlight  
6 three areas. The first is the need to respond to the  
7 exponential pace of change that international -- so  
8 that international work remains relevant to the  
9 challenges facing consumers.

10 The development of international soft law  
11 needs to stay ahead of the curve in order to remain  
12 relevant, helping authorities and other actors to  
13 tackle new and emerging issues so that consumers do  
14 not have to deal with the risks themselves. In  
15 today's context, this means addressing issues such as  
16 the central role of data and the intermediary  
17 platforms in markets, the impact of consumer IOT  
18 devices and AI-enabled services, the emergence of new  
19 and growing markets such as peer-to-peer economy.

20 This is a challenge for international work  
21 that has traditionally moved at a slower, more  
22 cautious pace, building on tried and tested national  
23 approaches. It's worth noting that it took 30 years  
24 to agree to the first comprehensive revision of the UN  
25 guidelines for consumer protection, and it took 16

1 years to deliver a revision of the OECD guidelines on  
2 e-commerce. However, the fact that both these  
3 revisions were agreed in 2015 and 2016 respectively  
4 and other initiatives such as the OECD work on AI and  
5 IOT do demonstrate a change in pace and a willingness  
6 to tackle new issues.

7           Ensuring relevance also requires impact and  
8 an ability to translate high-level international  
9 principles for national systems and real-world  
10 markets. There are many resource that exist to help  
11 with implementation, and a simple point is that many  
12 of them could be better known and more widely used.  
13 But in addition, programs and practical resources need  
14 to be developed with the stakeholders that will use  
15 them in order that they're relevant to their context,  
16 particularly where resources are limited and  
17 frameworks and institutions are either new or haven't  
18 been established.

19           Impact can also be delivered through the  
20 marketplace. It's not an alternative to regulation,  
21 but by working with companies, it is a way to deliver  
22 impact for consumers in markets now whilst regulation  
23 is being developed. It can also go beyond the  
24 standards required in regulation.

25           Finally, the need to address emerging issues



1 and the need to deliver impact create a strong  
2 argument for working more with other actors working  
3 with multi-stakeholders. As you would expect me to  
4 say, consumers and organizations always have a  
5 valuable role to play, but with the right protocols,  
6 the private sector also has a valuable role to play.

7           There is also a strong argument for  
8 intergovernmental organizations to work more closer  
9 together. Consumers International works a lot with  
10 international standards bodies. And, also, as has  
11 been mentioned, the trade agreements are increasingly  
12 important for consumers as well. So my time is up, so  
13 I better leave it there.

14           MR. STEVENSON: Thank you, very much.

15           And we turn to our final speaker, Pablo  
16 Trevisan, from Argentina's competition authority to  
17 give us his perspective, please.

18           MR. TREVISAN: Thanks, Hugh, and thanks,  
19 Russ, for the invitation. And obviously thanks to the  
20 FTC for this opportunity to explain and let you know  
21 what we are doing in Argentina specifically. The  
22 usual disclaimer, as a caveat, the opinions are mine  
23 and only mine and not necessarily those of the  
24 Commission where I'm a Commissioner.

25           (Laughter.)

1           MR. TREVISAN: But, I mean, when we were  
2 discussing this over the phone, I thought, well,  
3 this is very stimulating and encouraging being  
4 discussing -- I mean, discussing all these issues.  
5 But let me take you back to the basics in a certain  
6 way, at least from my perspective from a country like  
7 Argentina who has a lot of virtues but we have also  
8 some problems and issues to resolve.

9           One of them might be antitrust public policy  
10 or competition policy. Just in a minute, Argentina  
11 has had some sort of competition law since 1923. It  
12 was not the first country in Latin America to have  
13 some sort of competition law. It was maybe the  
14 second, but it was definitely one of the first  
15 countries in our region to have some sort of  
16 competition antitrust policy.

17           We had some significant reforms, mainly in  
18 the '80s and in 1999. In the last constitutional  
19 reform, antitrust and competition policy got a  
20 constitutional status in Argentina. And last year, we  
21 got a new competition act. So the question here is  
22 why are we still struggling to get competition law a  
23 solid public policy in Argentina and why this lack of  
24 enforcement.

25           And I think we can spend not only five

1 minutes but maybe years discussing why. And we may  
2 find some common issues between some certain Latin  
3 American countries why this is happening. But as for  
4 Argentina, I would say issues such as due process that  
5 were mentioned this morning, very much by the  
6 Commissioner Phillips and also by Roger Alford, many  
7 of us have been talking about due process.

8           It might be boring for my colleagues.  
9 Sometimes we are discussing at the Commission we are  
10 sort of an interdisciplinary commission, three  
11 economists, two lawyers, so sometimes I discuss on  
12 issues of due process that maybe I get some passion on  
13 that and the economists look at me, well, what are you  
14 talking about.

15           But, anyway, in that sense we definitely  
16 need to work on these issues. And in that sense, I  
17 think the devil is in the details in the sense of  
18 rules of proceeding, again going back to Commissioner  
19 Phillips' notes. So we need to get back, and as  
20 Philip Marsden said, I won't use your MAGA, M A G A,  
21 but MAPPA, make antitrust public policy again in  
22 Argentina. That's absolutely necessary to get a  
23 coherent policy afterwards.

24           So as Roger Alford said, I mean, there is  
25 some unity at the core and definitely some diversity

1 at the margins, but there are some common concepts we  
2 might all agree on. And I think also, in that sense,  
3 we may have a very solid and clear legislation, but  
4 history reminds us, Argentina, that you may have a  
5 very nice law, but if the implementation and the  
6 enforcement of that law is not good, the policy will  
7 not be good.

8 So you don't only need that solid  
9 legislation but also a strong enforcement, an  
10 independent authority, interaction between  
11 authorities, and when I say authorities, not only  
12 competition, consumer protection, privacy, and also as  
13 well sectoral authorities but also international  
14 authorities, and obviously multilateral organizations  
15 and the ones we were mentioning. And, also, one other  
16 thing that was issued here in the previous panel,  
17 transparency of our decisions.

18 So what we have done at the Commission, as  
19 Bill Kovacic put it some three years ago when we were  
20 sharing a panel at NYU, we have been rebuilding the  
21 house while living in it at the same time. When we  
22 got into the Commission, honestly, it was a difficult  
23 situation but a very encouraging situation, but with  
24 this multilateral cooperation, we realized we were not  
25 in a silo. And so all that work we've been doing,

1 coming back to the international arena and going back  
2 to international -- best of international practices,  
3 participating on the OECD, the ICN, the World Bank, et  
4 cetera, et cetera, really helped us a lot to get back  
5 on track quite in a speedy way.

6 So we have a new competition act, as I said  
7 since May last year. And in that process, the  
8 competition commission, the CNBC, took a very  
9 important role while drafting the bill. Then we  
10 discussed that bill at the executive level, and we  
11 also got two years of discussion with the legislature  
12 and advisors in Congress until we got that law.

13 So we had also increased the quantity of our  
14 cases, multiplying by five approximately, the cases we  
15 decided every year and also the quality of the cases  
16 in my opinion. We have issued also some guidelines  
17 and which we got a lot of help from multilateral  
18 organizations and also agencies like the FTC, the DOJ,  
19 et cetera.

20 So I will stop there because I think my time  
21 is off, but that's what I wanted to say.

22 MR. DAMTOFT: Okay, thank you, Pablo and the  
23 panelists. So it's no secret to the FTC, we have been  
24 proponents to varying degrees of a number of soft law  
25 approaches and instruments in order to bring policy

1 together. And to this, I hear two themes running in  
2 the background. One is come together; and the other,  
3 by the same authors, is he's a real nowhere man. And  
4 I wonder if we could sort of go down quickly and  
5 expand a little bit more on the pros and cons of, you  
6 know, of the soft law approach as to a more hard law  
7 approach. And I'll start out with the "come together"  
8 man with John.

9 MR. PECMAN: So I'm going to jump into some  
10 of the recommendations I have in my paper that I  
11 coauthored with Duy Pham in terms of some, I guess,  
12 positive aspects of using what I call softer law  
13 because some of these recommendations are commitments,  
14 but you have an option of jumping in. And some of the  
15 recommendations included creating joint investigative  
16 teams, JITs, using the EU framework that's currently  
17 in place for combating crimes across member states. I  
18 think that is one way of promoting convergence through  
19 investigative harmony.

20 Second through the use of the multilateral  
21 cooperation instruments that had been used by IOSCO,  
22 which is the international body for security  
23 regulators. And we see that obviously with the MFP  
24 spearheaded by the US agencies. That approach, I  
25 think, helps speed up the convergence across

1 jurisdictions.

2           The third proposal is a common marker system  
3 for leniency programs used by agencies around the  
4 world to combat hard-core cartels. Again, working  
5 together on investigations harmonizes practices and  
6 policies in my view. And, of course, there are a lot  
7 of efficiencies as incentives for participants in  
8 these programs.

9           A fourth proposal is the extraterritorial  
10 application of competition laws that we see takes  
11 place currently in Australia and New Zealand where  
12 there's mutual recognition of each other's competition  
13 laws and to the point where they no longer have  
14 antidumping legislation against one another. They use  
15 predatory pricing under their competition laws to deal  
16 with those types of issues.

17           So, I think there are a lot of benefits from  
18 this extraterritorial application. And touching on  
19 Tad's point regarding a bilateral partner, I think  
20 Canada and the US have many things in common in terms  
21 of level of trust between our agencies, the nature of  
22 the laws, our legal system, and I think we could  
23 benefit from a similar extraterritorial framework as  
24 we see currently being used in Australia and New  
25 Zealand.

1           And lastly, returning and recognizing that  
2     there is -- comity is available, deferral -- deference  
3     to other jurisdictions to resolve competition cases.  
4     So having said -- given these recommendations as a pro  
5     and a positive way of advancing cooperation, I still  
6     take issue with Tad suggesting that binding  
7     commitments or something a bit stronger beyond soft  
8     law is -- might not be feasible. I think it could be.  
9     And I think returning to the WTO and using that and  
10    maybe creating a permanent secretary there, if not at  
11    the ICN, to help compliance with international  
12    standards or the development of international  
13    standards.

14           I think right now we see, I think, a lot of  
15    deviation from consumer welfare principles as  
16    mentioned by Commissioner Wilson, public interest  
17    considerations, differentials in how abuse of  
18    dominance is treated. Even in the consumer protection  
19    side, there are deviations now that are emerging. So  
20    maybe pushing -- I mean, we've done a lot with the  
21    development of competition laws over time through soft  
22    convergence. I think the time is now for moving to a  
23    stronger approach.

24           MR. DAMTOFT: Well, more harmony than I  
25    thought.



1           Tad, what do you think?

2           MR. LIPSKY: Well, John's comments are  
3 interesting. I don't have much time, but let me just  
4 say that, John, I thought your description of the  
5 further advances in soft law cooperation or in  
6 different forms of cooperation, that may be something  
7 similar to JIT or IOSCO. I think that those kinds of  
8 things are possible as an extension of the current  
9 multilateral frameworks because the multilateral  
10 agencies consist of governments who enforce, and the  
11 participants in those entities are all enforcement  
12 agency officials.

13           So it's like any other business. You're  
14 going to get together and figure out how to advance  
15 your common interests, but the kind of change that's  
16 needed to further harmonize international antitrust  
17 today is very much contrary to the fundamental  
18 interests of some of those competition agencies. I  
19 can name you a number of competition agencies where I  
20 would say your procedures are totally inadequate to  
21 assure objective and accurate decision-making, and you  
22 need to make a fundamental change. You might want to  
23 read, for example, there are some very famous  
24 contributions by John Temple Lang, a former DG  
25 Competition official and a former European hearing

1 officer, making some of these critiques of the  
2 European system.

3           There is another very famous contribution by  
4 Ian Forrester, a very distinguished gentlemen at the  
5 bar of Scotland, the Queen's Counsel, as I recall, who  
6 is now a judge of the general court. I was really  
7 hoping that he would be released on March 29th to talk  
8 to the ABA about due process, but it doesn't look like  
9 that's going to happen. But in any event, I totally  
10 support -- I think soft law is probably a misnomer  
11 because law has some element of compulsion.

12           But if you're talking about the OECD and  
13 you're talking about the ICN, there is no law  
14 involved. It is voluntary cooperation. And I'm not  
15 saying it's a bad thing, but it's not a binding thing.  
16 And because many of the reforms needed in  
17 international and antitrust right now, not only as I  
18 think you would support, John, purging these  
19 polycentric objectives that are -- especially ones  
20 that are sounding in trade protection, but also  
21 remedying some of these fundamental due process  
22 problems.

23           No antitrust agency put into a voluntary  
24 organization is going to reform itself no matter how  
25 much agreement there is within that organization.

1 It's going to require -- the analogy I like to use,  
2 there was a day not so long ago when all international  
3 air transportation was cartelized. If you were flying  
4 internationally on a passenger aircraft, your fare was  
5 set by a price-fixing agreement, lawful as set by  
6 international treaty among all the international air  
7 carriers.

8 We don't have that anymore except in certain  
9 distinct parts of the world. And the reason we don't  
10 is that when the United States deregulated and  
11 discovered how wonderful competition was in bringing  
12 the benefits of improved efficiency of airline  
13 operations to consumers, and the United States began  
14 to advocate the so-called open skies approach, meaning  
15 competitive international aviation, we didn't go to  
16 the international civil aviation organization and say,  
17 hey, everybody, competition is great, let's do it.

18 They would have been laughed out of that  
19 organization because that was the cartel, or IATA, I  
20 guess, was technically the cartel. They went to a  
21 couple of countries, I believe Belgium and the  
22 Netherlands and some southern Mediterranean countries.  
23 On a bilateral basis, they worked out these open skies  
24 agreements. And they were so successful that now most  
25 of our part of the world has open skies treaties.

1                   MR. DAMTOFT: Thanks, Tad. That's a great  
2 example.

3                   MR. LIPSKY: So this is the -- I realize I  
4 have gone on beyond my time, but I just need to say  
5 that's the model. We need to start with the gold  
6 standard and we can only achieve a gold standard  
7 agreement with a very, very limited, maybe one  
8 negotiating partner and then build out from there.

9                   MR. DAMTOFT: Okay.

10                  Justin, how does this all sound to you?

11                  MR. MACMULLAN: I mean, just in terms of  
12 consumer protection, on the face of it, it sounds  
13 really appealing to have, you know, high standards of  
14 consumer protection consistent around the world  
15 required by law. But in the real world, I mean, just  
16 looking at what's achieved through soft law, soft law  
17 is all -- someone yesterday used the phrase "lowest  
18 common denominator." And that's the danger. We  
19 already have a little bit of that in relation to soft  
20 law. If this was hard law, then I'm sure the bar  
21 would be reduced lower.

22                  I've got a colleague who takes great delight  
23 in counting the number of times "as appropriate" or  
24 "if applicable" are used in soft law.

25                  (Laughter.)

1           MR. MACMULLAN: But, you know, it's an  
2 illustration of the need for flexibility, and that's  
3 in soft law, which isn't binding, it's voluntary. So  
4 I'm sure if we were talking about hard law, then what  
5 we would achieve would be far less than the sort of  
6 high standards that we were aiming for.

7           Interestingly, this is quite a current  
8 discussion because through the commerce trade  
9 negotiations there is a discussion around consumer  
10 trust. And there is potential there to call for some  
11 form of using the WTO mechanisms to support consumer  
12 protections. But certainly at the moment the majority  
13 of our members would favor a nonbinding approach that  
14 just supports the current regulatory cooperation  
15 that's going on rather than creating any sort of  
16 binding commitment through the new negotiations.

17           MR. STEVENSON: Actually, maybe we can go  
18 next to Dan Solove to offer his perspective on privacy  
19 in terms of how this approach sounds and whether that  
20 makes sense from that perspective. And while I'm  
21 asking, I'll also raise a question that has come from  
22 the question cards about whether the extraterritorial  
23 approach that has been taken in the GDPR is something  
24 that others should be looking at as part of a hard law  
25 approach or whether a different approach would be

1 appropriate.

2 MR. SOLOVE: Certainly. Well, the question  
3 -- I'll just do that question quickly. I think that,  
4 you know, the GDPR as well as other law such as  
5 California now are increasingly taking an  
6 extraterritorial approach, increasingly applying  
7 beyond, you know, to any business that is doing  
8 business in that jurisdiction, even if they're not  
9 physically located there. And I think that's a  
10 feature of the privacy laws to come. I think we're  
11 going to see that more and more and more because, you  
12 know, basically physical presence doesn't matter as  
13 much anymore these days.

14 In terms of soft law, I think a very  
15 interesting story in privacy, and that is in the, you  
16 know '90s and early 2000s, industry pushed very  
17 heavily for self-regulation for privacy online. And  
18 they started to do things voluntarily like put out  
19 privacy policies and make these promises about how  
20 they're going to use data and how they're not going to  
21 use data.

22 This approach got a lot of criticism at the  
23 time. There really weren't any teeth or any  
24 enforcement to it until the FTC stepped in. And the  
25 FTC stepped in and started saying that if you made a

1     promise in a privacy policy that you subsequently  
2     violated, the FTC would bring an action that's a  
3     violation of Section 5, a deceptive trade practice,  
4     and the FTC would do an enforcement.

5             This turned what was a rather toothless  
6     self-regulatory, you know, somewhat, you know,  
7     meaningless set of statements and empty promises into  
8     something that started to have teeth, something that  
9     now started to develop, in a more meaningful way  
10    because the FTC stepped in and hardened it a little  
11    bit. It's still soft in that, you know, companies had  
12    a lot of leeway in terms of what they voluntarily  
13    decided to promise or not. But over time, we saw that  
14    the kinds of promises started to evolve, basically  
15    taking in common practices. We started to see an  
16    evolution there.

17            And, now, today, we have something a lot  
18    more sophisticated where what companies promise, they  
19    understand that they have to keep those promises or  
20    there are consequences. So we've seen a hardening of  
21    the law a little bit and a fusion to some extent  
22    between a soft approach and a harder approach that I  
23    think has done a lot of good. I think it still can be  
24    improved, but basically without the hard edge that the  
25    FTC brought in, the teeth, I don't think it would have

1 succeeded. I don't think it would have been  
2 meaningful. These policies would have been rather  
3 empty unless the FTC did what they did. And so I  
4 think it took this regime and made it come to life in  
5 a way that I think it would not have had the FTC not  
6 step in.

7 MR. DAMTOFT: Okay. And let's turn to the  
8 last word of this topic with Teresa. I heard the  
9 reference to all of the "if applicables," and since  
10 I'm working with Teresa on a project now, that was  
11 resonating with me a bit.

12 MS. MOREIRA: Yes, yes, very interesting. A  
13 lot of things come to mind. Well, first of all, as  
14 you can imagine, working for the UN Secretariat, I can  
15 only highlight the advantages of soft law instruments.  
16 Although nonbinding, I will recognize this, I would  
17 like to underline the fact that the revised UN  
18 guidelines for consumer protection on one side and the  
19 revised OECD recommendation on consumer protection in  
20 e-commerce, in which I had the pleasure also of having  
21 been involved obviously with the FTC colleagues are  
22 far from establishing the lowest common denominator.

23 So soft law can be ambitious. Soft law can  
24 really -- well, I would not say just fully grasp the  
25 gold standard but can really move towards that



1 direction. And this is how it is so interesting that  
2 coming back to some of the previous speaker's  
3 comments, for instance, of course, the work of WTO,  
4 the working group on trade and competition, on the  
5 competition field was mentioned but because of the  
6 discussions within WTO, because of the OECD  
7 recommendations, because of the UN set on competition  
8 and UNCTAD model on competition, we moved, as we heard  
9 yesterday, Bill Kovacic mention from a dozen of  
10 jurisdictions having competition law to over 130  
11 jurisdictions having adopted competition law and  
12 policies, and these include several developing  
13 countries and countries with economies in transition.

14 So this persuasion is effective. I will  
15 agree, it takes more time, not all will adopt it or  
16 grasp the challenges and the content and the details  
17 at the same time, but I think soft law can play a very  
18 important role because it will tend to illustrate, to  
19 highlight the experience of the most advanced  
20 jurisdictions, so success stories. And everybody  
21 wants to follow and to replicate success stories.

22 They also provide, I think, guidance. And,  
23 of course, you mentioned, a lot of colleagues have  
24 mentioned, of course, the ICN, in which I also had the  
25 pleasure of working in the early days, so to speak.

1 And I think providing convergence in a flexible way, I  
2 think, is extremely important.

3 Of course I will, again, go back to the UN -  
4 - the UNCTAD tools that I mentioned. I think it is  
5 very important that this one, since it is not a one-  
6 size-fits-all, it's able to really reach out to  
7 countries that have different levels of development  
8 that face additional challenges but still are eager in  
9 a lot of cases to use these two policies to -- well,  
10 to promote economic growth, sustainable development,  
11 and better consumer welfare.

12 I can also say that I think soft law  
13 instruments can really enhance the authority between  
14 brackets of the most experienced agencies or  
15 countries. And this can translate into significant  
16 policy influence. So this is a multiplier, so to  
17 speak, in again soft, so smooth, but I think very  
18 effective way that should be mentioned.

19 Finally I would just say that I don't think  
20 there is any opposition. I understand, well, Tad, if  
21 I may say so, passion, passionate arguments for  
22 bilateral cooperation, I thought John Pecman's article  
23 was really excellent. And I can only support this  
24 call for more ambition. But as you can imagine coming  
25 from an organization that has 194 members, that is

1 member-driven, where all countries, I would say, we  
2 are the world so to speak or we represent the world,  
3 but with so many different nuances, with so many  
4 different priorities, one has to understand that soft  
5 law can, of course, be combined with hard law  
6 initiatives, I think bilateral and regional  
7 initiatives.

8           And, again, this mention of the regional  
9 trade agreements, for instance, or regional economic  
10 cooperation frameworks, I think it's extremely  
11 valuable because this is also the only way we can in a  
12 way mainstream competition and consumer protection  
13 policies.

14           MR. STEVENSON: Thank you. And we worked in  
15 "We are the World" there, I noticed, as well as "Come  
16 Together" in terms of our song titles.

17           (Laughter.)

18           MR. STEVENSON: John Pecman, please.

19           MR. PECMAN: Just if I may, and just a bit  
20 of a different perspective. I'm going to be putting  
21 on my private sector hat now. It allows me to speak  
22 on behalf of my clients, obviously. Businesses that  
23 face 133 referees with different variations of rules,  
24 it's a very expensive process of regulation, quite  
25 frankly. So international standardization, I think,

1 is important from that perspective, increasing  
2 transparency and predictability.

3 And in my view, and I understand that people  
4 are worried about the lowest common denominator, but I  
5 think international standardization, if it's not, you  
6 know, too soft, it does pick up the performance of  
7 agencies if they have to meet this new international  
8 standard, so I just wanted to bring that private  
9 sector perspective, how important it is for us to get  
10 more efficient at what we're doing. It's extremely  
11 costly.

12 MR. STEVENSON: Thank you. Well, we had  
13 raised the question with our panelists, which we have  
14 gotten into a little bit already, of what are the  
15 advantages relatively speaking of investing effort in  
16 multinational organizations as opposed to bilateral  
17 approaches. Actually, we've already heard something  
18 on that. I wonder, though, if people have thoughts on  
19 where there are particular opportunities they see to  
20 focus on one versus the other. Teresa's comments that  
21 she just made suggested there is still scope for work,  
22 as appropriate anyway, in the multilateral  
23 organizations.

24 But is there some work that is better done  
25 there as opposed to in bilateral situations, or in a

1 smaller setting of more like-minded countries, as  
2 sometimes the OECD has described -- maybe I'll, in  
3 fact, pose the question to Teresa for a brief comment.  
4 Is there a sort of reaction as to what works well in  
5 one setting versus the other?

6 MS. MOREIRA: Thank you. Well, of course, I  
7 think you need -- you tend to need multinational as  
8 you had asked frameworks, so to speak, to address  
9 global challenges. I think global challenges demand  
10 international solutions that should be discussed and  
11 crafted in an international setting, whatever that is.  
12 So I'm not even talking only, of course, of UNCTAD, I  
13 would say.

14 Now, this is not incompatible with this idea  
15 that I fully support that like-minded countries, if  
16 you allow me the expression, may, of course, because  
17 they share similar systems, they have similar  
18 standards, they have a close trade and economic  
19 partnership, are better placed to be more ambitious,  
20 to go forward. And the examples of the US and Canada,  
21 I think, or Australia and New Zealand, for instance,  
22 which are often quoted, namely by John's paper, of  
23 course are very good.

24 In any case, this bilateral, more ambitious  
25 experience set a standard. But in the end, and we

1 talk -- I would go back to the private sector  
2 perspective. In the end, aren't we just -- aren't we  
3 aiming to assist countries, I would say governments,  
4 but also trying to create better opportunities, namely  
5 for business? So create opportunities that will lead  
6 again to economic growth and sustainable development  
7 in countries, creating predictability.

8 So this means to say that you would need to  
9 aim for an international multilateral setting.  
10 Otherwise you will be very limited. Obviously in the  
11 digital era, you tend to look global and not regional  
12 or bilateral.

13 MR. STEVENSON: Right. How about that  
14 point, Tad. This is a global era, and there you are  
15 focusing on airline regulation.

16 MR. LIPSKY: I'm shocked --

17 MR. STEVENSON: I mean, here we are in a  
18 digital world. It's a big place. So how can we take  
19 that sort of narrow approach that you're advocating?

20 MR. LIPSKY: Well, I'm really shocked that  
21 you'd let me have the microphone again, but thank you.  
22 Let me try to state it as succinctly as possible. We  
23 have had more than 50 years of multilateral  
24 cooperation in international antitrust. It has done  
25 some incredibly useful things, all of which serve the

1 common united interests of government antitrust  
2 enforcement officials who want to enforce government  
3 antitrust law as it is written in their jurisdiction.  
4 And that's exactly what the ICN and the OECD have been  
5 doing.

6 But no jurisdiction wants to be told you may  
7 not exercise this prerogative, issuing a complaint,  
8 for example, or reaching a judgment before you have  
9 presented the evidence to an independent judicial  
10 officer or administrative law judge who agrees with  
11 you. That is something that no competition agency  
12 will ever voluntarily seek to place a limit on its own  
13 jurisdiction. And as a matter of fact, most of them,  
14 when the opportunity is presented, they say, oh, we  
15 can't do that. That's not the way our law works.

16 And that's why there is this need for the  
17 imposition of disciplines that are inconsistent with  
18 voluntary international cooperation. And that's why I  
19 say that the way to approach that is not through a  
20 voluntary organization in any sense. It's to approach  
21 through, you know, a bilateral or very small number  
22 situation like US, Canada or --

23 MR. STEVENSON: Let me ask our colleague  
24 from Argentina, for example, how that resonates from  
25 his perspective.

1           MR. TREVISAN: Well, going back to Bill  
2 Kovacic's phrase, I mean, rebuilding, when we were  
3 rebuilding, or we are rebuilding the house while  
4 living in it at the same time, we were so-called -- I  
5 mean, the President of our country really said, hey,  
6 you have to go back to the international arena and see  
7 what is happening out there. And in that sense, I  
8 feel that we got into the DeLorean and then sort of  
9 back to the future sense in the sense we are  
10 rebuilding the house, we get into the car, go to the  
11 international organizations, listen to what is  
12 happening, which are the hot topics, what's next, what  
13 are the general consensus, et cetera, et cetera. And  
14 that really helps us a lot because we are not -- we're  
15 not in the silo in the sense of when we were trying to  
16 rebuild the house.

17           So in that sense, I think multilateral  
18 organizations such as the OECD, the ICN, UNCTAD, all  
19 those organizations, like we've been going to these  
20 panels or programs, and it's been very rich for us in  
21 the sense of learning and also getting our own  
22 experience.

23           But, also, I need to stress that bilateral  
24 cooperation is also very, very important for us  
25 because as Teresa said, we do have similar cultural



1 ties, similar situations, similar problems. Needless  
2 to say in specific cases, we have the same cases and  
3 it happens with all the general -- in general with the  
4 agencies. We do sign the NDAs. We exchange  
5 personnel, senior people from our teams going to the  
6 COFECE, to the FNE, to the CADE. We have received a  
7 lot of visits from the FTC. And so I think -- I mean,  
8 I am not in a situation to say what is best. But I  
9 think in our case it's definitely both are really  
10 helping us to reshape and rebuild the competition  
11 house.

12 MR. DAMTOFT: Well, this actually leads to  
13 another -- our last question we wanted to talk about  
14 here. Also inspired by the Beatles, in this case,  
15 Help.

16 (Laughter.)

17 MR. DAMTOFT: Which is so the FTC has put a  
18 fair amount of resources over the last 20 years into  
19 technical assistance, to helping other agencies  
20 develop. And so the question is, you know, is this a  
21 valuable thing for us to do? Is it a little too  
22 preachy, or is this something that really makes a  
23 difference? And I'll start with Pablo, and then we'll  
24 get a couple of other perspectives and give other  
25 people a chance to clean up on the last topic as well.

1           MR. TREVISAN: Thanks, Russ. Definitely I  
2 think it's really helpful for an authority like ours  
3 in the sense, as I said, at the beginning, when we got  
4 into the office in the beginning of 2016, there was a  
5 lot to be done. And I'm not saying this because I'm  
6 here at the FTC, but the first who came to Argentina  
7 down there to the Commission was the FTC team. And I  
8 recall that we had trainings and programs and  
9 workshops in 2016, '17, '18.

10           As we speak, right now, we're having other  
11 trainings with the OECD, but, I mean, the FTC's  
12 assistance, technical assistance has been very, very  
13 useful for us. I remember we -- I mean, not only  
14 making good friends like Russ, Randy, Elise, Leon, I  
15 mean, all the people at the FTC, but we've been  
16 learning a lot on multisided markets, how to approach  
17 certain mergers, unilateral conduct. So in that  
18 sense, we went through together with the FTC to very  
19 specific phases of our work on a daily basis. So I  
20 think definitely, yes, this is good.

21           MR. DAMTOFT: And, Teresa, you work with a  
22 lot of newer authorities, developing countries on both  
23 the competition and consumer side. What's your view  
24 of the value of technical assistance?

25           MS. MOREIRA: Well, technical assistance is

1 actually -- well, we call it technical cooperation, so  
2 encompassing technical assistance, advisory services  
3 and obviously capacity building, it is one of our key  
4 areas of work in both policies. I think it is  
5 extremely important because we, through these  
6 activities, are really able to promote sound policies.  
7 This is based on a multi-stakeholder approach, meaning  
8 that, of course, we strengthen, we advise on adopting  
9 and revising laws and on the strengthening of  
10 capacities and setting up of institutions to actually  
11 implement them.

12           But I think it is very important to  
13 underline the advocacy and awareness-raising  
14 activities to other key stakeholders like the  
15 judiciary. We heard in the previous panel like how  
16 some judges -- administrative court judges typically  
17 may not be familiar with economics to actually  
18 understand competition cases. That is a very, very  
19 important activity for us in a number of developing  
20 countries.

21           But I would also talk about private sectors,  
22 especially SMEs or small business associations and  
23 civil society organizations, not just the consumer  
24 organizations that are affiliated with Consumers  
25 International, of course, but other kind of civil

1 society organizations in order to what? In order to  
2 really foster understanding and generate greater  
3 acceptance to the benefit of these policies because  
4 Tad, for instance mentioned a lot enforcement.

5 I think the policies and what I call  
6 mainstreaming competition and consumer policies is  
7 really the ultimate challenge. And for that I would  
8 say international organizations, formal organizations  
9 or even bilateral agreements are better placed because  
10 they really imply commitments from the government to  
11 then reach out and get and gather information, but  
12 also disseminate all of this.

13 I would like also to say that through  
14 technical assistance one can really promote  
15 convergence, harmonization, and build trust as we  
16 heard from Pablo. And I would end just saying that  
17 the FTC has played a major role in both policies,  
18 fields in our technical assistance projects. We are  
19 extremely grateful for this. They have shared  
20 intelligence, experiences, interactive tools,  
21 presented other initiatives, namely in Latin America  
22 and the African continent. And I can only expect you  
23 to remain as actively involved in this activity,  
24 especially in cooperation with UNCTAD. And I'm  
25 looking at Randy for this. Thanks.

1           MR. DAMTOFT: John, I know you were starting  
2 to give a fair amount of thought to this when you were  
3 a Commissioner. What's your perspective?

4           MR. PECMAN: Well, I think from an  
5 individual agency's perspective obviously requires  
6 funding to do it. And, unfortunately, the Bureau did  
7 not have access to a USAID or, you know, a larger  
8 government initiative for technical assistance, but we  
9 did, where we could, contribute multilaterally to the  
10 various fora, as well as through MOUs where we target,  
11 whether it be India or an ASEAN country and usually  
12 through staff exchanges and sent people for a period  
13 of time and have them come visit to Canada, again, for  
14 deepening ties and also to help shape policy and  
15 procedure in the other jurisdiction. It's invaluable.

16           If I could render one comment, and I know  
17 there are significant and bilateral resources being  
18 thrown at this area by the US, Australia, and ASEAN  
19 for example, Germany as well is very active in terms  
20 of technical assistance. I think where you may see a  
21 lot of overlap and redundancy in some of the  
22 technicals, I think there could be a bit more  
23 harmonization bilaterally or working and making sure  
24 there isn't, again, redundancy with the multilateral  
25 fora like UNCTAD and others, OECD, that are providing

1 technical assistance. I think everyone's just out  
2 there doing it, and I don't know if there's  
3 coordination. And so to the extent that that can be  
4 done would be something I think that would improve  
5 this important aspect of convergence.

6 MR. STEVENSON: We have just a couple of  
7 minutes left. Maybe, Dan Solove, I might ask you to  
8 comment from a privacy perspective on this issue, both  
9 of the technical assistance and also our earlier  
10 discussion about looking at when to engage in certain  
11 multilateral versus narrower bilateral engagements  
12 from the point of view of privacy issues.

13 MR. SOLOVE: Certainly. Well, I would say  
14 that certainly technical assistance is a great thing.  
15 Privacy and security involve technology and some very  
16 difficult challenges, especially designing technology,  
17 and so to the extent the FTC can be involved in that,  
18 I think that's great, as well as coordinating among  
19 all the different regulators out there worldwide.

20 It really is a global landscape with privacy  
21 these days, with every year seeing more and more  
22 countries enact privacy laws. So I think that a  
23 multinational approach to this is really essential. I  
24 think that there needs to be an increasingly global  
25 standard that a company can build its practices around

1 because it's not easy to comply with all the different  
2 regulations, especially because a lot of it is about  
3 how you build a program to -- that implicates  
4 everything from how you define what personal  
5 information even is.

6           And if you have 50 different definitions, it  
7 gets very consuming for figuring out how to inform  
8 employees, well, when is the data covered and not and  
9 by what and where. So, I think the coordinating  
10 multinationally is essential. And I think that really  
11 depends on, you know, the US taking a real leadership  
12 role in this. And I think that -- you know, I hope  
13 that we will take that greater role. I think Europe  
14 has really taken a huge step forward with the GDPR.  
15 And other countries are coming in and they're modeling  
16 their laws on the GDPR. So that is becoming the  
17 global standard.

18           I think we have a lot of important things to  
19 say and an important voice, but I think we need to  
20 step forward and say that and really develop some of  
21 the strengths of certain things in the US approach  
22 because I like the GDPR a lot, but it's not perfect.  
23 There are certain things in the approach here in the  
24 United States that are actually, I think, more  
25 workable and are good and should be promoted. But for

1 that, I think we need to plausibly step forward and  
2 present something on our behalf about how our  
3 approach, you know, addresses a lot of the issues that  
4 are key to privacy and security protection worldwide.  
5 So I hope that we'll take that role.

6 MR. STEVENSON: Thank you very much for  
7 that. I have to say, as the author of many such  
8 phrases, I found all of this both applicable and  
9 appropriate. And I really appreciate -- although  
10 never in the same sentence.

11 (Laughter.)

12 MR. STEVENSON: But I hope you all join me  
13 in thanking all of our panelists for an excellent job  
14 today. Thank you.

15 (Applause.)

16 MR. STEVENSON: And we now break for lunch.

17 (Lunch recess.)

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1                   EFFECTIVE INTERNATIONAL ENGAGEMENT:

2                   FOREIGN AGENCY PERSPECTIVES

3                   MS. KRAUS: Well, welcome back from lunch  
4 for those of you here onsite. And good afternoon and  
5 welcome back to those of you on the web. We are back  
6 to our hearings on the FTC's role in the changing  
7 world.

8                   My name is Elizabeth Kraus. I am the Deputy  
9 Director for International Antitrust here at the FTC,  
10 and I'm delighted to be comoderating this session on  
11 Effective International Engagement with Deon Woods  
12 Bell, Counsel for International Consumer Protection  
13 and Data Privacy here at the FTC.

14                  This session should really prove  
15 particularly interesting as it's going to allow us to  
16 hear directly from our foreign agency counterparts on  
17 what they find makes for effective international  
18 engagement. We're eager to learn from our sister  
19 agencies about their successful strategies and tools  
20 for engagement with foreign counterparts and, of  
21 course, we're also interested in hearing their  
22 perspective on what has not worked as well and why  
23 with a view to seeking how we might further develop  
24 the FTC's international tools and programs to ensure  
25 that they are fit for purpose for the 21st Century.

1           We're really honored to have this incredible  
2     slate of seasoned enforcers from truly diverse  
3     backgrounds to provide their insights on these issues.  
4     Their impressive biographies are listed on the website  
5     as well as outside in print copy. So I'm really just  
6     going to give a brief introduction starting with those  
7     closest to us and moving down the table.

8           First, we have Paula Farani de Azevedo  
9     Silveira from CADE, Brazil's agency, and she's a  
10    Commissioner there.

11          Next, we go to Tunde Irukera, the Director  
12    General from the Consumer Protection Council of  
13    Nigeria.

14          Following Tunde is Han Li Toh, the Chief  
15    Executive and Commissioner of the Competition and  
16    Consumer Commission of Singapore.

17          Following Han Li is Chris Warner, who is the  
18    Legal Director of the Competition and Markets  
19    Authority, the CMA, from the UK.

20          The tall man after Han Li is Rainer Wessely,  
21    who is responsible for EU-US cooperation in  
22    competition and justice policies at the Delegation of  
23    the European Union to the United States.

24          And last, but truly not least, is Steven  
25    Wong, the Privacy Commissioner in the Office of the

1 Privacy Commissioner for Personal Data in Hong Kong.

2 As with our other sessions, for those here  
3 in the audience, we will take questions from our  
4 audience and have note cards available in the room  
5 that will be passed out for your use.

6 With that, I'm going to turn to Deon to kick  
7 off our session.

8 MS. WOODS BELL: Thank you, Liz. And thank  
9 you to our esteemed panelists.

10 So we're going to start off the first round  
11 with asking our colleagues to please share your key  
12 strategies and tools that you've used for successful  
13 international engagement. We're going to ask you to  
14 be brief because we'll come back with other questions.

15 Please, over to you, Paula.

16 MS. SILVEIRA: Thank you, Deon. Thank you,  
17 Liz.

18 I think in Brazil our main tools for  
19 successful international cooperation are our MOUs that  
20 we've signed with over 20 jurisdictions and our  
21 interactions in multilateral and regional fora.  
22 Through these tools, we've been able to not only  
23 foster relationships, but also cement existing ones  
24 and really consolidate best practices and promote  
25 legislative change within Brazil. And I think we can

1 talk more about this later on but that's the  
2 highlight.

3 MS. WOODS BELL: Thank you very much. Over  
4 to you, Tunde.

5 MR. IRUKERA: Well, thank you very much. I  
6 am wearing two different hats now, so I'm going to  
7 talk a little more on what our experience has been,  
8 which is actually an old law that was repealed about  
9 two months ago. So that provision there still has an  
10 equivalent in the new law. And essentially there is  
11 actually statutory mandate to cooperate with other  
12 agencies internationally. And so proceeding from  
13 that, essentially in fulfilling the mandate you have  
14 to work with other agencies. And one of the things  
15 we've used a lot is, again, like she said, the  
16 memoranda of understanding. And we have one with the  
17 FTC and another agency in Nigeria.

18 Then what we've also found is the right  
19 fora, there's an African dialogue that is also  
20 supported by the -- promoted and actually supported by  
21 the FTC. And what that has helped us to do is to  
22 realize that the problems are pretty similar across  
23 the different countries and the region and so just  
24 getting that sense of understanding and getting to  
25 share notes and then building relationships that you

1 can leverage on to gather information sometimes.  
2 Also, to at least just discuss experience and provide  
3 context has been very helpful. Thank you.

4 MS. WOODS BELL: Thank you very much.

5 MR. HAN LI: Han Li, thank you. Thank you,  
6 Deon.

7 I fully agree with what Paula and Tunde have  
8 said about MOUs and the interactions and international  
9 fora. I just want to add one additional piece which  
10 has been very useful for us, which is the regional  
11 free trade agreements. In particular, I see Rod Sims  
12 in the audience. So I want to highlight the ASEAN,  
13 the Australian-New Zealand free trade agreement.

14 Under that free trade agreement with the ten  
15 member states of ASEAN, including Singapore, we have  
16 the CLIP Program, which is the Competition Law  
17 Implementation Program, and to which Australia and New  
18 Zealand have provided very significant support and  
19 assistance to the member states of ASEAN, including  
20 secondments, expert placements, capacity building,  
21 e-learning. So I think that's been very good for us.

22 MS. WOODS BELL: Thank you very much. I  
23 have to congratulate you all. You're moving quite  
24 swiftly. You did have more time. So if anybody wants  
25 to revel in the comments and then circle back to our

1 previous colleagues, please do feel free.

2 Chris?

3 MR. WARNER: Thank you very much. First of  
4 all, thank you for inviting the Competition and  
5 Markets Authority here today. And I should add the  
6 caveat, as other speakers have, the views I express  
7 are my own and not necessarily the views of the CMA,  
8 although, like others, I hope they're not going to be  
9 too misaligned.

10 I wanted to take a slightly different slant  
11 if I may. I mean, the CMA is very active in the  
12 international arena. We participate in the  
13 international European consumer enforcement networks  
14 and in international European policy networks and we  
15 do a whole range of bilateral works and technical  
16 assistance and secondments and things that we can talk  
17 about in a bit more detail as we go through.

18 But I wanted to reflect on some of the  
19 strategies we found or some of the approaches we found  
20 that have been quite useful in terms of making the  
21 most out of those fora. I wanted to highlight just  
22 two or three of those. The first thing I think I'd  
23 like to highlight is I've called it focusing on  
24 outcomes. Two or three years ago, the CMA was the  
25 president of ICPEN. I think one of the things we

1 wanted to make a concerted effort to do when we took  
2 over the presidency was to focus on outcomes. And I  
3 suppose how I describe it is that there was an awful  
4 lot of very useful discussions happening and we wanted  
5 to shift debate slightly in terms of moving it from  
6 kind of what have we done to what can we do together  
7 given what we have done.

8 I think that -- people in the room will be  
9 able to correct me, but I think that has identified --  
10 there has been a shift in how to identify some  
11 opportunities to work together and it feels it's  
12 brought agencies together. A good example was some  
13 work on online reviews that we did, which I can touch  
14 upon later, where we took the project that we had done  
15 in the UK and we helped the ICPEN members roll out  
16 some guidelines for a number of parts of the industry  
17 which can be rolled out across the globe.

18 The second thought is that we're focusing on  
19 the harm. So I think given there's a range of  
20 divergences across the world, it's been very helpful  
21 to focus on the harm rather than legal infringement  
22 and that's enabled us to focus on areas of common  
23 ground rather than areas of differences. So I think  
24 that's something worth doing.

25 And the third area I think which has been

1 very helpful is looking inwards as well as looking  
2 outwards. And by that, I mean thinking about the  
3 wealth of what we do at the CMA and making sure that  
4 we're joined together in thinking about how they  
5 supplement each other and can be used on the  
6 international arena, but also thinking about the UK as  
7 a whole and making sure we're joined up there.

8 Just one example is last year we had a  
9 conference involving all the organizations involved in  
10 competition and consumer policy across the UK to see  
11 what we could do better on the international frame  
12 arena and there were 20 organizations in the UK alone  
13 who have got international touch points in those  
14 arenas. And I think it was really striking to  
15 everyone who participated that there were so many  
16 touch points and just the potential benefits of  
17 working together more collaboratively.

18 So I shall stop there.

19 MS. WOODS BELL: Thank you very much.

20 Rainer, what can you add to the conversation  
21 here?

22 MR. WESSELY: Well, first of all, thanks for  
23 having me.

24 International corporation on all three  
25 fields, whether it be data consumer protection, data



1 protection, but also competition enforcement, is an  
2 essential part of our international and day-to-day  
3 enforcement strategy. So we would not be successful  
4 enforcers would we not have our international outreach  
5 and cooperation.

6 The main objectives that we see in this kind  
7 of cooperation is that we want to be, first of all,  
8 able to quickly address violations together with our  
9 international partners, also in order to increase  
10 deterrence. We want to be able to minimize the risk  
11 of conflicting findings, for example, when it comes to  
12 merger assessments and when it comes to remedies. And  
13 we want to make emerging authorities efficient and  
14 effective enforcers in their own rights.

15 I have to admit that we, in the EU, probably  
16 are very privileged in that regard because  
17 international cooperation is built in our system. We  
18 work on daily basis with the consumer protection  
19 authorities, with the data protection authorities, and  
20 with the competition enforcers of 28 member states and  
21 we work in 24 different languages so that provides us  
22 a very good training ground also for the broader  
23 international context.

24 I will try to focus my remarks today more on  
25 the work that we do in competition enforcement because

1 that is the only field where the Commission actually  
2 has direct and exclusive competence. We only  
3 coordinate the work of our consumer protection  
4 authorities and of our data protection authorities.

5           When it comes to competition enforcement,  
6 there's a significant number of cases where we work  
7 together with international partners. If you look at  
8 the period between 2016 and 2017, we coordinated with  
9 other agencies in more or less 55 percent of our  
10 cartel, of our antitrust, and of our complex merger  
11 investigations.

12           Looking at the three different types and  
13 levels of cooperation, I think, most importantly, we  
14 have our European regional cooperation, that's the  
15 European Competition Network, the ECN, which is  
16 probably as close as it can get in terms of  
17 international cooperation because we enforce the same  
18 rules and we have to make sure that we have the same  
19 interpretation of our rules.

20           We have the second level, which is the ICN  
21 and OECD. The ICN, as such, is a success story in  
22 itself from 14 authorities that created it in 2001.  
23 And, now, I think we are at more than 100 members.

24           And the third level is bilateral cooperation  
25 where we have technical competition cooperation with a

1 number of agencies, our first generation agreements.  
2 The first one we had was with the US, with the FTC and  
3 DOJ, with Canada, Japan and Korea. We now also have  
4 started to have second generation agreements that  
5 allow us actually to really exchange evidence on  
6 specific cases. We have that with Switzerland and  
7 we're quite advanced in our negotiations with Canada  
8 and with Japan.

9 We have a lot -- and Paula already referred  
10 to that we have a lot of MOUs -- we call them nowadays  
11 administrative agreements -- with all the BRICs  
12 countries. So we have them with Brazil, Russia,  
13 India, South Africa, with China, as well as with  
14 Mexico. We have technical programs with some states.  
15 We have technical cooperation with Asia. And we have  
16 more references to competition also in our trade  
17 agreement. So we have competition chapters in 14  
18 trade agreements around the world.

19 To sum up, we see that we have a very, very  
20 close network in our international cooperation, which  
21 I think has allowed us over the years to speak the  
22 same language amongst enforcers. That does not mean  
23 that we always say the same things.

24 MS. WOODS BELL: Excellent.

25 Commissioner Wong, please.

1           MR. WONG: Thank you. Given the fact that  
2 my office is an entirely independent statutory  
3 authority, regulatory authority, independent of the  
4 government, and also the fact that Hong Kong has a  
5 very different system, including a different legal  
6 system from the Mainland of China, we do have the  
7 benefits of having unique advantages or attributes in  
8 relation to data protection.

9           I must emphasize that my office is  
10 responsible for personal data only. Privacy is  
11 regarded as a fundamental human right in Hong Kong.  
12 But I don't have any authority over competition or  
13 consumer protection. There are different bodies  
14 regulating these issues.

15           We pursue effective international engagement  
16 largely through, one, what we call the established  
17 channels. The other one is the ad hoc channels. The  
18 established channels originate from the three  
19 international agreements or arrangements Hong Kong had  
20 entered into, and that is the APEC Cross-Border  
21 Privacy Enforcement Arrangement. The second one is  
22 the Global Privacy Enforcement Network Action Plan and  
23 the third one being the International Conference for  
24 Data Protection and Privacy Commissioners Global  
25 Cross-Border Enforcement Cooperation Arrangement, a

1 very long name. The acronym is ICDPPCA.

2 (Laughter.)

3 MR. WONG: Still very long.

4 These established mechanisms provide the  
5 means and the tools for cooperation, in particular in  
6 relation to the sharing of information and also, to a  
7 certain extent, the sharing of evidence as well. But  
8 we do enter into ad hoc arrangements with individual  
9 DPAs, for example, Australia, Holland, and sometimes,  
10 on previous occasions, we've entered into ad hoc  
11 arrangements with the United kingdom and the FTC on  
12 specific cases. Now, bear in mind that Hong Kong is  
13 also an international trading center, international  
14 financial center, logistics center like Singapore.  
15 You know, we are at the top of everything in the  
16 world. And that's why.

17 Somehow people in Hong Kong are involved in  
18 the data breach incidents, for example, the  
19 multinational data breach incidents. We have an  
20 interest in those cases. So we manage to get into  
21 some informal ad hoc arrangements with the states or  
22 jurisdictions concerned. Certainly, this is something  
23 that we can pursue further in order to refine the  
24 framework or the network of international cooperation.

25 MS. WOODS BELL: Thank you. Fascinating.

1           So from that discussion, we got a panoply of  
2 different opportunities to pursue engagement with  
3 foreign counterparts, administrative agreements and  
4 MOUs, multilateral frameworks looking at technical  
5 cooperation as a tool, new laws that come into force  
6 and to provide new powers; focusing on outcome-driven  
7 determinants and then looking at collective harm  
8 seeing where we might find common ground; coordinating  
9 with other sister agencies and then taking a look to  
10 minimize the risk and avoid divergent outcomes.

11           We've taken a look at those, and I don't  
12 know if you, Paula, or you, Tunde especially because  
13 we started over here and you were quite swift, do you  
14 want to respond to anything any of your colleagues  
15 have said?

16           MS. SILVEIRA: Just picking up on some of  
17 the things that they said, I think one of the issues  
18 that was pointed out by Chris at the CMA is the issue  
19 of what can we do together. So I think that's  
20 something that we've been particularly interested in  
21 at the regional level. As you know, Brazil has had an  
22 interesting development in the past few years and  
23 we've reached a certain level of maturity due to  
24 international cooperation that we received from our  
25 counterparts, from more developed agencies. So we

1 feel that, right now, it's our duty to also help other  
2 agencies in the region, especially those that are  
3 either reviewing their antitrust laws or with newly-  
4 developed agencies to also reach this level of  
5 maturity.

6 So what can we do together? We've been  
7 helping a lot of agencies through international  
8 cooperation to revise their soft law, revise their  
9 legislation. We've been doing a lot of capacity  
10 building and I think that's something that's extremely  
11 important in international cooperation. That's  
12 something that we have to continue to build on.

13 MS. WOODS BELL: Thank you. Thank you very  
14 much.

15 Tunde?

16 MR. IRUKERA: Yeah, thank you. One  
17 interesting thing that I've learned from these is  
18 there are quite a number of regional cooperations that  
19 already exist. And what a coincidence. In Africa, at  
20 least in West Africa, and even the entire continent,  
21 we're on the cusp of learning that. Only recently,  
22 the ECOWAS, which is the Economic Community of West  
23 African States, established its own competition  
24 authority in Banjul, Gambia. That has become  
25 operational only in a matter of months.

1           The whole continent is also negotiating its  
2           own continental free trade agreement, which has been  
3           signed by many countries. Nigeria hasn't and we're  
4           still working on that. As a matter of fact, the  
5           second round of the negotiations, which includes the  
6           competition law aspect, is just about starting. So  
7           it's interesting to hear what these regional  
8           experiences are so that at least we can watch out for  
9           that as we go.

10           MS. WOODS BELL: All right. I think we have  
11           opportunity for one more colleague to respond. Han  
12           Li, you also moved very swiftly. Do you have any  
13           thoughts? We'll go deeper later, but just your  
14           initial impressions, please.

15           MR. HAN LI: Actually, I thought it was  
16           interesting for us because we've just started the  
17           consumer protection not even one year, and I was  
18           sharing with Tunde. They've been doing for 20 years,  
19           but they've just started doing competition. So it's  
20           quite nice we can have a very good mutual exchange on  
21           that.

22           MS. WOODS BELL: Conveniently, we seated you  
23           side by side, right?

24           (Laughter.)

25           MR. HAN LI: Yeah. But I think, for us,



1 because we've been doing competition for a number of  
2 years and a lot of dual agencies in the world, we were  
3 able to leverage on our contact base to learn the  
4 consumer side much quicker, including of the FTC. We  
5 had a senior economist, Janis Pappalardo, she came  
6 down last year and did a session with all our staff  
7 and it was great. We have done work with the  
8 Australians, as well as the UK CMA. So again, because  
9 we already had the contact base in competition, it was  
10 very easy to leverage on to consumer.

11 MS. KRAUS: That kind of picks up on the  
12 human glue issue that was raised yesterday and how  
13 developing the relationships actually fosters further  
14 relations and convergence and cooperation. But I'll  
15 flip it back to Deon.

16 MS. WOODS BELL: No, that's completely fine.  
17 I think we're moving in the right direction. So with  
18 all those comments on the record, what we've done is  
19 now we've picked up three buckets and we're going to  
20 move over to the three buckets. And it's actually  
21 great that Han Li -- that you started to mention that  
22 because we're going to look at domestic priorities and  
23 how they might motivate international engagement.  
24 We're going to look at some differences and  
25 similarities and explore a little bit more, if you

1 have a competition regime or if you have consumer  
2 regime, and what that's like. And then, finally,  
3 we're going to look at regional multilateral fora and  
4 maybe dip our toes into bilateral issues if we have  
5 enough time.

6 Liz?

7 MS. KRAUS: Terrific. Well, maybe I'll pick  
8 up on the first theme that Deon mentioned and that's  
9 the one of domestic priorities, motivating  
10 international engagement. And, Chris, I've heard you  
11 speak on this in the past, so maybe I'll pass the mic  
12 to you to start off and then we'll get a little  
13 dialogue going.

14 MR. WARNER: So a lot of the CMA's  
15 international work is founded in its domestic  
16 priorities. There's a lot of work we do around unfair  
17 terms and the digital economy. So it got me thinking,  
18 is that the right approach? And I've come to the  
19 conclusion it is, obviously. It would be unfortunate  
20 for me to say no.

21 (Laughter.)

22 MR. WARNER: It's quite easy, I think, at  
23 first blush to kind of say that's a quite selfish  
24 approach to international engagement, I suppose my  
25 reflex on that is I think that it makes an awful lot

1 of sense. At one level, we've got limited resources,  
2 so we need to focus somewhere. But, also, I think  
3 looking at our domestic priorities, we wouldn't be  
4 doing our job properly there if we're not thinking  
5 about the international dimensions. It's not a great  
6 outcome for the consumers we're seeking to protect if  
7 we just move the problem along, for example, or don't  
8 have sister agencies.

9 But I also think it makes an awful lot of  
10 sense in terms of it's the area we spend most of our  
11 time working on as an agency, and so it's where we've  
12 got most to offer and the most to share where we can  
13 provide in-depth knowledge and experience, which I  
14 think is really good news for others. And a practical  
15 level, I think in terms of getting sort of  
16 organizational buy-in and support for kind of  
17 international cooperation, it's where you can get most  
18 bang for your buck as it were because the additional  
19 workload is limited over and above your domestic  
20 project work, but actually you can deliver quite a lot  
21 of value and support more broadly.

22 MS. KRAUS: Thank you. I was wondering if  
23 Paula might have anything to add to that.

24 MS. SILVEIRA: Yes, I tend to agree with  
25 Chris. I think our domestic priorities truly do

1 influence our international engagement. I think  
2 Brazil is very good example of that and our recent  
3 OECD accession is an example, I mean, a crystal clear  
4 example of how international cooperation be used to  
5 further domestic engagement.

6 So what happened in Brazil was we, up until  
7 2011, we had another competition law in which we did  
8 not have a premerger notification regime. So we  
9 needed several changes to our legislation; we needed  
10 congressional approval; we needed support internally;  
11 and we were having a very difficult time finding that  
12 support. So at the time, the people at CADE and the  
13 CADE president and the commissioners, what they did  
14 was they decided to look outside of Brazil for best  
15 practices, began benchmarking and decided to request a  
16 peer review at the OECD.

17 The first peer review, very helpfully,  
18 pointed out absolutely everything that was wrong with  
19 the Brazilian competition system. And while some  
20 outsider might look at that and say, well, how  
21 humiliating for CADE, we actually found it absolutely  
22 wonderful because that was a way that we were able to  
23 go to the legislature and say, we need help. We need  
24 to actually promote change in our legislation; we need  
25 to enact a new law. And this truly helped us to

1 change our law.

2           And we've done this on several occasions  
3 either -- this was the most -- the clearest example of  
4 the way that we promoted a huge legislative change.  
5 But we've also done this on a smaller level. For  
6 several years, we've had difficulties in dealing with  
7 the Brazilian Central Bank on mergers involving the  
8 financial sector. The OECD has had several papers  
9 published by several different countries on how these  
10 countries have dealt with financial institution  
11 mergers and how their competition agencies have been  
12 interacting with their central banks.

13           So based on these reports that are issued by  
14 our sister agencies and our counterparts -- and we've  
15 been speaking to several of them -- we were able to  
16 negotiate an MOU with our central bank, which was very  
17 successful and which basically remedied basically all  
18 of our problems. And, yesterday, we were able to  
19 finally accept the invitation to become a permanent  
20 member of -- an associate member of the Competition  
21 Commission at the OECD. And one of the main obstacles  
22 that we had precisely the review of financial  
23 institution mergers.

24           Another way in which domestic priorities  
25 motivate our international engagement is through the

1 cases that we're currently handling. So for example,  
2 there are several new issues that are coming up right  
3 now in Brazilian antitrust law. We have a globalized  
4 era, we have a digital economy, and a lot of the  
5 problems that we're seeing in Brazil, a lot of the new  
6 conducts that weren't there before, maybe five years  
7 ago, ten years ago, are also being seen around the  
8 world.

9           And it's very helpful to be able to pick up  
10 the phone and call our counterparts and say, you know,  
11 what's the theory of harm? Does this make sense to  
12 you? Does this conduct seem like it will affect the  
13 consumer welfare in your country? And this kind of  
14 exchange is very important for a competition agency  
15 such as CADE because, in a lot of cases, this is the  
16 first time that we're looking at a certain conduct or  
17 a certain market, and having the experience of other  
18 agencies that have already looked at these markets,  
19 minimizes what I can only call growing pains. So it  
20 minimizes errors. Mistakes made in the competition  
21 area is ultimately very costly to the economy,  
22 especially an economy such as Brazil which, at the  
23 moment, is not growing as rapidly as it could be.

24           So minimizing errors, not impeding  
25 innovation is something that we're very attentive to.

1 This is something that has been very helpful through  
2 international cooperation.

3 MS. KRAUS: Those were absolutely terrific,  
4 kind of spot-on examples. Because we want to move on  
5 with a number of themes, I just note that they also  
6 bring out a number of the issues that were raised  
7 yesterday in relation to cooperation and also pick up  
8 beautifully on the prior panel regarding the impact of  
9 soft law and developing hard law. So thank you.

10 But I'm going to pass over to Deon right now  
11 for our next theme.

12 MS. WOODS BELL: Thank you. We foreshadowed  
13 this theme before. We want to go over to Tunde and to  
14 Han Li and we want to talk about differences in having  
15 a consumer protection agency that acquires competition  
16 authority and having a competition authority that then  
17 acquires a consumer protection agency. But, more  
18 globally, what we want to talk about is how you use  
19 your tools in one area and how they might influence or  
20 inform another area.

21 And we're going to ask Commissioner Wong to  
22 follow up with some observations after you talk. And  
23 I want to give a nod to Commissioner Trevisan, who  
24 mentioned building a house while you live in it. I  
25 think both of you, in your instances in Nigeria and in

1 Singapore, you're going to have to build your houses  
2 while you live in them. How are you going to manage  
3 this, gentlemen?

4 MR. IRUKERA: I'll let him go first. Maybe  
5 I'll --

6 (Laughter.)

7 MR. HAN LI: So I remember when my ministry  
8 told me, hey, you know, you're going to take on  
9 consumer protection, and I just want to tell you that,  
10 you know, these consumer protection folks are  
11 different from the competition people.

12 (Laughter.)

13 MR. HAN LI: So I wasn't sure what they  
14 meant by that. But, I mean, I guess the first point  
15 is that most of them are not lawyers or economists,  
16 right? So that's obvious. So they have a different  
17 background. But what we've been really focusing on is  
18 the integration. And, actually, the agency from which  
19 I learned a lot on integration was the ACCC in  
20 Australia. One of the first visits I did was to visit  
21 ACCC and Rod and Marcus were very good at hosting and  
22 sharing everything which they did to integrate the  
23 case team.

24 So I think there is a lot of  
25 complementariness. One of the things we started



1 doing is market studies with consumer protection  
2 people inside. In fact, the recent one which we  
3 just completed on online travel has a very heavy  
4 consumer focus on that, things like drip pricing  
5 and that kind of stuff and subscription traps.

6 And in terms of the international  
7 engagement, I mean, I mentioned Janis? She was really  
8 useful. She came down for a week and she did a  
9 workshop for us. That was great. She shared about  
10 the Volkswagen case and how they got redress for  
11 consumers. So I think -- yes, so as part of the  
12 integration efforts, the international engagement has  
13 really been very helpful and I think -- I mean,  
14 certainly we're not all right because we've only been  
15 doing this for one year, but I think we've really had  
16 a good start.

17 MS. WOODS BELL: Thank you.

18 MR. IRUKERA: Well, thank you. It is proven  
19 to everyone that he's had an easier ride than I'm  
20 about to have.

21 (Laughter.)

22 MR. IRUKERA: Essentially, the point comes  
23 down to they have moved from the more technical and  
24 precise area to the more intense and less predictable  
25 area. You would think that that would mean a bumpier

1 ride. But, in reality, moving to something quite  
2 technical and very precise is relatively bumpier in  
3 many respects.

4           The one thing that I think is somewhat  
5 helpful is -- even I haven't been at the Consumer  
6 Protection Council that long, just under two years and  
7 then you get this graveyard shift. But what I think  
8 has been helpful is that the way the statute was set  
9 up before, it was relatively broad, and so I think  
10 there was a particular provision that literally  
11 addressed what was considered obnoxious practices in  
12 the market, whatever was exploitative of consumers.  
13 And so there was no way to broadly interpret that  
14 without running into conduct that would be considered  
15 anticompetitive.

16           So in some sense, we already have dipped out  
17 feet in the mud somewhat. And because the law itself  
18 was very long time coming, you had an agency that was  
19 somewhat salivating and prepared for it. That's the  
20 one thing. But the reality of waking up the next day  
21 and looking in the mirror and finding something  
22 entirely different has struck us.

23           One thing that we recommended and thought  
24 would be in the law was a transition period. It turns  
25 out that the law that came out didn't have that

1 transition period. And so we literally had to wake up  
2 the next morning and start figuring many things out.

3 Industry is more concerned in the sense that  
4 people who have done their businesses in a way that is  
5 not necessarily illegal and then, all of a sudden,  
6 there are laws that suggest that that's prohibited, so  
7 there is lack of capacity, both from the regulator  
8 side and many times even from industry side, where  
9 there are lawyers or competition economists, so that's  
10 an advantage. At least nobody seems to be far ahead  
11 of the other person, you know, the real definition of  
12 the bliss and ignorance where no one is ahead of the  
13 other person.

14 But the relationships we have obviously have  
15 become one of our most important assets, both  
16 domestically and internationally. We have the  
17 Securities and Exchange Commission that was already  
18 looking at merger work from a finance standpoint. So  
19 all that -- the new law repealed those provisions in  
20 their law. So at least, the law may have repealed  
21 their provisions, but at least it didn't take away the  
22 knowledge. So the knowledge of those folks in the  
23 Securities and Exchange Commission is becoming very  
24 important.

25 The FTC is another example. The FTC luckily

1 is also an organization that does both things, and so  
2 we have relationships within the FTC that can help  
3 both ways. And obviously being at the African  
4 dialogue with other consumer protection authorities  
5 who also do competition work has been very helpful.  
6 Then somehow, after I came to the spring meeting last  
7 year, I met UNCTAD and ended up speaking in Geneva  
8 later in the year and that helped with the  
9 relationship.

10 So do I have everything I need? No. But do  
11 I know whose doors to knock on? Yeah, I do. So I  
12 suppose instead of sleeping with both eyes open, I  
13 sleep with one eye closed.

14 MS. WOODS BELL: All right. Excellent.

15 Commissioner Wong, I don't know how many  
16 eyes you sleep with open or closed, but if you want to  
17 comment on Singapore or Nigeria's comments, we would  
18 welcome.

19 MR. WONG: Yes. In Hong Kong, the people of  
20 Hong Kong has been enjoying the consumer protection  
21 for more than 40 years. It's one of the longest  
22 authorities in Hong Kong, you know, protecting the  
23 interest of the public. People in Hong Kong don't  
24 realize that they have privacy effectively protected  
25 by my office until recently. Because of the cross-

1 border incidents and the -- they were woken up by the  
2 impact not on only personal data, but on the economy  
3 as a whole.

4 The competition authority has not come into  
5 place until I think couple of years ago. But the  
6 three persons in charge of these authorities put their  
7 heads together recently and we tried to work out some  
8 sort of cooperation, saving resources and sharing  
9 information, and this is agreeable. But we have  
10 different portfolios, different legislative  
11 frameworks, and different responsibilities. So  
12 there's still some way to go before we can reach some  
13 sort of an enforcement agreement and so on.

14 But we manage to cooperate with our  
15 counterparts, if there are any, in the Mainland of  
16 China or in the neighboring emerging economies. In  
17 the Mainland of China, they do have a very strong  
18 regime protecting consumers' interests. They have a  
19 consumer protection authority and they're very  
20 effective given number of people affected in the  
21 Mainland. So we do envy that, you know. Consumers'  
22 interests are protected well in the Mainland of China.

23 Privacy rights, recently, they have been  
24 catching up very fast. They know how serious the  
25 issue could be. And just a couple of days ago as

1 reported by I think the CNN, I don't know whether it's  
2 real news or fake news. But --

3 (Laughter.)

4 MR. WONG: They talk about that China will  
5 lose up to 5.5 trillion US dollars in economic growth  
6 if they don't brush up their privacy protection law.  
7 So that's a very serious warning. In fact, they have  
8 been doing some -- we have been liaising and sharing  
9 our experience with the Mainland Chinese authorities  
10 recently.

11 With the neighboring regions like Macau and  
12 other Special Administration Regions, you know, we are  
13 talking about entering into some sort of MOU. And we  
14 are wrapping up our MOU with Singapore. We have drawn  
15 up MOU agreements with Korea. So we do plan to enter  
16 into cooperation agreements, including sharing  
17 information where appropriate amongst the economies  
18 and regions in Asia in particular.

19 MS. WOODS BELL: Thank you. I'll quickly  
20 pass over to Liz.

21 MS. KRAUS: I was going to say one of the  
22 interesting themes that I think everyone has hit on in  
23 that last question is one of relationship building as  
24 one of the most important assets. And we touched in  
25 the introductions on developing relations through

1 MOUs, through regional and multilateral fora. So I  
2 thought I would like to hear from Rainer, if he's  
3 still awake down there, and see what you might have to  
4 say on those points.

5 MR. WESSELY: Both eyes wide open.

6 (Laughter.)

7 MS. WESSELY: If you allow me come to just  
8 back one second on your previous question on domestic  
9 priorities and influencing the international agenda.  
10 I just wanted to add, and I owe that to my colleagues,  
11 that having the GDPR in place now for almost one year  
12 we see that this actually really heavily influences  
13 our international outreach, not only in promoting  
14 privacy legislation in other countries, but also to  
15 cooperate in terms of enforcement when it comes to  
16 privacy violations.

17 But if you look at the multilateral fora and  
18 our cooperation there, I already mentioned our work in  
19 the ECN, in the ICN and in the OECD. Certainly many  
20 of the features that we have in the ECN, taking that  
21 we enforce the same law, are not transposable to the  
22 wider multilateral framework, but I think they can  
23 still inspire and they can still help also to set the  
24 agenda for these discussions.

25 We have features in the ECN which foresee

1 that if member states want to take antitrust decisions  
2 that they have to notify that to us so that we can  
3 consider the decisions before actually they are  
4 adopted. We have established an early warning system  
5 amongst authorities so that if somebody wants to take  
6 up a new investigation, a new type of investigation,  
7 he would notify to the other members of the ECN. And  
8 we even share all our own decisions before we adopt  
9 them through the advisory committees with the member  
10 states.

11 But much more important is I think the  
12 exchange that we see in the working groups in the ECN.  
13 We have working groups on each and every topic and in  
14 different sectors. So we actually have the people  
15 that work on the cases, they come together and say, we  
16 work on this and this, cartel or vertical agreement,  
17 we work on forensic IT or in pharmaceuticals,  
18 transport or financial sectors, they sit together and  
19 discuss their cases and exchange and see whether they  
20 are lessons to be learned. These kinds of discussion  
21 certainly feed into our international engagement also  
22 then in the ICN and in the OECD.

23 In the ICN, if you look, we are cochairing  
24 the cartel working group there, but we also are very  
25 active in all the other working groups. I think, most



1 importantly, we are in the steering committee and  
2 similarly also in the OECD. We try actually to set  
3 the agenda forward-looking to identify the topics that  
4 will be the enforcement problems of the future and sit  
5 together and want to address them already as soon as  
6 possible.

7 MS. KRAUS: Thank you. The work in the  
8 regional area of the European Competition Network, the  
9 ECN, is particularly informative for us. And I think  
10 I might turn to Paula because I know you've been quite  
11 active in both regional and multilateral fora and  
12 maybe you want to pick up on some of those points.

13 MS. SILVEIRA: Yeah, I was actually taking  
14 notes here while Rainer was talking how we can learn  
15 from that and bring that to our regional group. But I  
16 think maybe what I can share is a little bit about not  
17 so much our regional cooperation, but our BRICs  
18 cooperation, which I think is an interesting kind of  
19 cooperation because we're largely very different  
20 countries, even though we're all in this kind of same  
21 economic development stage.

22 And it's curious that in -- prior to our  
23 memorandums of understanding, we didn't truly  
24 cooperate. So this is a case where the MOUs didn't  
25 really cement an existing relationship with most

1 countries, but it truly fostered a relationship. This  
2 relationship has been very fruitful. I mean, we get  
3 together every two years officially, even though we do  
4 also interact, and very meaningfully, when we see each  
5 other at the OECD, when we see each other at the  
6 spring meeting.

7 We have a spring meeting of the Brazilian  
8 bar, which happens every year in October in Brazil.  
9 And last year BRICs countries were also invited to our  
10 spring meeting and they attended and we had a closed  
11 session at our spring meeting, and then we had an open  
12 session with the bar. And this kind of cooperation  
13 has been extremely important in order to foster not  
14 only our own agenda, but also to be able to kind of  
15 set the tone for the international agenda and what are  
16 this issues that we, as developing economies and  
17 transitioning economies, believe are most important at  
18 this time.

19 And one of the issues that the BRICs  
20 countries have been working on and is proving to be  
21 very useful is on digital economies. So we have a  
22 digital economy working group that gets together once  
23 a year. And I was actually taking notes here on  
24 Rainer's talking about the working groups because --  
25 and, also, I think the human glue issue is truly

1 central because this is what works. Our experience in  
2 international cooperation is that what really proves  
3 and what really brings more knowledge to CADE is  
4 having the people that are working on the cases meet  
5 with the people that are working on the cases in other  
6 jurisdictions.

7 For digital economy working group, for  
8 example, that we have at BRICs, we have people from  
9 our economics department, from our superintendents,  
10 from the Commission, and we're not talking about high-  
11 level employees, we're talking about the actual  
12 technical staff. This is extremely important. We've  
13 also been doing a lot of exchange programs, and this  
14 is not only within BRICs but with other agencies.

15 So we've actually just had a member of the  
16 FTC in Brazil for the past three months, and we hope  
17 that this continues. Because it was extremely useful  
18 for us and extremely helpful to have someone there to  
19 help us in our day-to-day issues and really to just  
20 have someone there to be able to consult with. We do  
21 this not only by having someone there, but we've also  
22 sent someone from our staff to other agencies, and  
23 we've done this regionally in Latin America.

24 So I think the regional cooperation, for a  
25 country like Brazil, when you think of regional

1 cooperation, we think of Latin America. But for  
2 Brazil, specifically speaking, it's not so much Latin  
3 America, but regional for us would be Latin America  
4 plus BRICs, I think.

5 MS. KRAUS: Chris, before we move on to our  
6 next topic, did you want to respond to any of this?

7 MR. WARNER: Well, I was just going to  
8 briefly make one point if I may. We heard a few  
9 minutes ago a lot about the cooperation between the  
10 competition and the consumer side in terms of  
11 procedure and substantive process and so on. But I  
12 think it's important to think about bringing those  
13 sides together at a substantive law level as well.

14 So for the CMA, being a joint competition  
15 and consumer authority, we naturally -- when presented  
16 with a new difficult issue, we naturally think about  
17 it from both sides of the coin. And I think it's  
18 important that we try to replicate that on a sort of  
19 international dimension. So that's particularly  
20 useful in terms of digital economy issues as well.

21 So one example I'd like to draw on is some  
22 work we've been doing on personalized pricing. It's  
23 been causing a fair bit of debate in the UK and we  
24 naturally thought about it from the competition and  
25 consumer side and thinking about where the problems

1 and where the harm might arise and what way it might  
2 most effectively be tackled.

3 So what we did is we took a policy paper to  
4 OECD, both to the consumer panel but also to the  
5 competition panel. So we had separate discussions  
6 there, getting different perspectives. We also  
7 encouraged the two committees to discuss it  
8 collectively. I think we found that really useful,  
9 really illustrative. And I think it's always good to  
10 bring different sides of the debate together to really  
11 understand and -- we talked about common ground a  
12 little while ago. I think it's surprising how much  
13 common ground can be identified when you bring the  
14 debate together.

15 MS. WOODS BELL: Thanks, Chris.

16 On your point of common ground, we want to  
17 go to something that's very difficult to do. During  
18 our conversations, you all shared with us really that  
19 there are some frustrations, and we get down to it,  
20 what hasn't worked well is something that we also want  
21 to put on the table. We're not afraid. We want to  
22 bring it to you, but we are running out of time. So  
23 don't think it's because we're afraid, so we're going  
24 to ask to you move quickly.

25 So we're going to go over to you,

1 Commissioner Wong. Can you talk to us in just very --  
2 and we're going to time you, too -- quickly, on what  
3 hasn't worked we well? And you'll have a chance to  
4 put more on the record, but we really do want to hear  
5 because we want to get it right and want to improve.  
6 That's why we're here.

7 MR. WONG: What hasn't worked well, you  
8 know, perhaps, you may term them as difficulties or  
9 challenges, in my view, they are more than a couple of  
10 them, including domestic legal restrictions, legal  
11 systems, the government influence or institutionalized  
12 design, the security issues or the communications  
13 issues, no free flow of information in some  
14 jurisdictions, no free flow of data or data  
15 localization in some jurisdictions. And most  
16 important of all, in my view as a lawyer, lawyers tend  
17 to overclassify or misclassify the meaning of  
18 confidential information.

19 MS. WOODS BELL: Wow. That's powerful.  
20 Okay.

21 MR. WONG: Because as a regulator, I always  
22 come across lawyers banning -- you know, the placard  
23 saying that this is confidential, you can't reveal to  
24 anybody else. And I said, I'm a regulator, I'm  
25 investigating your client's case. And so -- okay,

1 well, you asked me to keep quiet.

2 (Laughter.)

3 MS. WOODS BELL: Well, we're going to come  
4 back to you. We're not asking to you keep quiet, but  
5 we're going to come back to you and let you get chance  
6 to get in more on that.

7 Tunde, what hasn't worked well?

8 MR. IRUKERA: Well, I think Commissioner  
9 Wong has actually -- he spoke for everyone.

10 (Laughter.)

11 MR. IRUKERA: Except, of course, I'm a  
12 lawyer. But, yeah, the big challenge continues to be  
13 information sharing. There is a platform that's  
14 working, but whether we can get to the point where we  
15 can truly fully really optimize -- and I think  
16 everything works into that, if you see where we  
17 started about domestic priorities. So the information  
18 sharing would take on the shape or the character of  
19 what the domestic priorities are.

20 I think the platforms for accessing  
21 information seem robust and good. But the specifics  
22 that sometimes are very critical seem to present quite  
23 a potential challenge. Sometimes because of local  
24 legislation, again because of priorities. So you  
25 might have a regulator who doesn't have the kind of

1 information you're looking because what's a big  
2 problem to you is not a big problem in that  
3 environment. And then you think about what it will  
4 cost them to start looking for that information when  
5 they don't have need to pursue it.

6 But I think that to the extent that we can  
7 find a way to still simplify that whole information-  
8 sharing process to get around the data protection  
9 issues, I think that that would be a very important  
10 thing. I might note that in a previous investigation  
11 once, that I was outside counsel and I was assisting  
12 the civil division authority into what might be  
13 collusion between two airlines on a certain route and  
14 when they asked for information, one -- both airlines  
15 were in Europe and they said the European data  
16 protection laws prohibited transfer of information  
17 that is --

18 MS. WOODS BELL: We said no fighting on the  
19 panel, Tunde. I see Rainer getting ready to jump in.

20 MR. IRUKERA: Okay, Okay. But essentially  
21 what it was was exactly the point he made, that the  
22 exception to exchange of laws need to be the fact that  
23 it's a regulatory activity.

24 MS. WOODS BELL: All right. Paula? I'm  
25 failing in my job, though, guys. It was very hard



1 with all these compelling comments to cut you off. So  
2 please self-regulate.

3 MS. SILVEIRA: I'll be very fast. What  
4 hasn't worked in Brazil is that -- something that  
5 hasn't worked for a very long time -- which is  
6 basically service of process. So when we have mainly  
7 cartel investigations and we have to serve companies  
8 or individuals outside of Brazil, and for certain  
9 countries, especially countries with information  
10 privacy laws, it's very difficult to complete service  
11 of process in these countries. And it will sometimes  
12 take us five years, six years, seven years to complete  
13 service of process.

14 And the problem in Brazil is that all  
15 defendants in a case have to be served before the case  
16 can actually begin. So what happens is either the  
17 case is on pause for, you know, maybe five years, or  
18 what we will have to eventually do is, after a number  
19 of years, we have to remove certain individuals from  
20 this case and open a separate case for them so that we  
21 can move on with the investigation. Because,  
22 otherwise, we have a cartel investigation that begins  
23 seven years after we initiate the case, and the case  
24 is usually initiated maybe five years after the  
25 conduct is discovered, and so that's maybe 10 or 15

1 years after the fact. And that's already way too  
2 late. So what we truly need to find a way to move  
3 forward with this is how to serve process.

4 MS. KRAUS: I think that's a problem we all  
5 share.

6 I actually want to move quickly from kind of  
7 case cooperation difficulties to policy cooperation or  
8 policy issues. And maybe I'll just tag team both  
9 Rainer and Han Li, and see if you'd like to just have  
10 a quick interjection on issues you're seeing.

11 MR. WESSELY: You can go first.

12 MR. HAN LI: Okay, thanks. I think I want  
13 to speak on a regional level, Southeast Asia, and I  
14 suppose Rainer will talk about the EU level. I think  
15 the challenge is sometimes the member states' domestic  
16 political considerations overshadow some of the  
17 regional considerations. So to give a concrete  
18 example, in ASEAN, one member state does not have  
19 merger provisions for political considerations. I  
20 know Hong Kong as well didn't pass the merger law  
21 because, again, I think it was political  
22 considerations. So I think these are impediments.

23 And then another competition authority in  
24 our region is China passed leniency provisions and  
25 that would greatly facilitate cooperation. But,

1 again, I think the domestic politics is getting in the  
2 way.

3 And a positive example is in the case of  
4 Thailand where they exempted state-owned enterprises  
5 from competition law for long time, but since last  
6 year, that's been brought in, so that's a positive  
7 example of how it has worked out. But I think  
8 sometimes these get in the way of regional integration  
9 efforts.

10 MS. KRAUS: Rainer.

11 MR. WESSELY: Thank you. Well, as I said  
12 before, I think we have managed to overcome some of  
13 the problems of the cultural differences, speaking the  
14 same language, which doesn't mean that it's always  
15 easy to overcome, also, structural differences. And I  
16 think what we see is we have different concepts, we  
17 different concepts of state, as Steve already  
18 mentioned. We have different legal systems. We see,  
19 for example, when we looked at China, they have a  
20 different -- when we make our merger assessments, they  
21 have a different concern of state-owned enterprises.  
22 And we experience it very, very closely just now when  
23 it comes to our second-generation agreements,  
24 actually.

25 As you know, for us, privacy is a very high

1 good. It's protected as a constitutional right. So  
2 when we want to enter in these kind of really far-  
3 reaching agreements with third partners, we have to  
4 make sure that when we exchange evidence actually then  
5 on the ground, that the protection of the data of the  
6 persons, the data subjects, concerned is actually also  
7 protected once it is passed over to the other  
8 authorities, and that there is a sufficient redress  
9 mechanism in place.

10 Other systemic differences are very  
11 difficult to overcome. Again, when we think about we  
12 run an administrative system, others have criminal  
13 systems. And for us, it is a problem if evidence that  
14 we hand over to a third country authority is used in  
15 the criminal proceedings. So these systemic issues, I  
16 don't want to say are impossible to solve, but will  
17 take a bit longer, perhaps.

18 MS. KRAUS: Well, speak of solving, we're  
19 kind of more on the optimistic side of the camp here  
20 and don't want to end on negativity. So we thought  
21 maybe we'd open up for about two or three minutes to  
22 see if you have any suggestions, in addition to those  
23 just made by Rainer, but to overcoming some of these  
24 issues or impediments.

25 And since we skipped over Chris, I thought

1 maybe I would just give you the floor for a minute.

2 MR. WARNER: Thank you. So I think this may  
3 be moving on to something we're going to talk about,  
4 but I think a really effective way of coming out of  
5 some of these difficulties is actually learning  
6 through doing, actually cooperating and doing some  
7 joint working.

8 Because I think sometimes it's quite  
9 difficult to really process some of the difficulties  
10 in the abstract. And sometimes only when you're faced  
11 with a particular problem, you can work out the  
12 solution and the way around it. And I think something  
13 that we do, we've been involved in both at the  
14 European and at the international consumer enforcement  
15 level is -- so I'm taking something we call "sweeps,"  
16 where we sort of take a case from kind of cradle to  
17 grave, as it were, starting off sort of identifying a  
18 potential issue that might be there that we go in and  
19 investigate. We bring back the results together and  
20 we work out how we can take action together and what  
21 kind of action that could be like, what that would  
22 look like.

23 And through taking those different stages of  
24 the case together, you identify potential differences;  
25 you identify the common ground; you identify the

1 solutions. And it can be a really fertile ground for  
2 working together and sharing knowledge and developing  
3 kind of new practices, and so on. And it can work  
4 really effectively, I think.

5 MS. WOODS BELL: Thank you. That is a  
6 perfect segue to something that one of our colleagues  
7 from the audience raised, something that we had  
8 discussed among ourselves. What kind of cooperation  
9 or collaboration do you have with emerging markets,  
10 emerging competition, consumer protection, privacy  
11 authorities? Put differently, what kind of  
12 relationships are you exploring between younger and  
13 more mature agencies?

14 Why don't we go first to you, Han Li.

15 MR. HAN LI: I think it's two-way. I think  
16 within ASEAN, we are doing a lot of capacity building,  
17 and we have a lot of partners. I mentioned the  
18 Australian-New Zealand CLIP Program. But we also have  
19 the Japan ASEAN Integration Fund; the GIZ -- it's a  
20 very long German word which I can't pronounce.

21 (Laughter.)

22 MR. HAN LI: So I'll just call it GIZ.

23 MS. WOODS BELL: Me either, by the way.

24 MR. HAN LI: It's a German technical  
25 assistance program. And, also, the Europeans have

1     come in last year, and so have the Canadians. So  
2     we're still waiting for the Americans, actually. But  
3     --

4             MS. WOODS BELL: Hey, Jan was already there.  
5     Come on, come on. Okay.

6             (Laughter.)

7             MR. HAN LI: But I think all these partners  
8     have really been useful for capacity building, and the  
9     actual, like I mentioned earlier, staff exchanges,  
10    placements, both ways, you know, from the more  
11    experienced agency to a newer agency, a new agency to  
12    more experienced, and as well as workshops and all the  
13    like. So I think it's really a very fruitful two-way  
14    exchange and there's always something to learn.

15            MS. WOODS BELL: Thank you very much.  
16            Stephen?

17            MR. WONG: Yes. We have experienced no  
18    liasing or sharing experience with the younger  
19    economies, including, you know, those in the Mainland  
20    of China, because they don't have a similar framework  
21    as we do, or as the EU does, or the Americans have in  
22    their own jurisdictions.

23            But the issue of privacy, for example, data  
24    privacy, has become so prevalent as a topic for  
25    discussion, not only amongst the organizations

1 themselves because of the heavy fines they are being  
2 threatened, but also amongst the citizens in the  
3 Mainland. But they lack the requisite trust.

4           If they talk about this, they fear we are  
5 trying to influence, you know, our line of thinking,  
6 which is culturally different in relation to the  
7 protection as a basic or fundamental human right. So  
8 this is a cultural difference. And the same happens  
9 in other emerging economies, and that's no -- because  
10 they might misunderstand that we have, you know, some  
11 hidden agenda and political ones included.

12           So probably I would suggest that in order to  
13 pave the way, you know, the right way or the right  
14 track, you know, for all the economies, emerging,  
15 young or otherwise, you know, within the region,  
16 perhaps we could help set up a multinational or  
17 multijurisdictional database, for example, or some  
18 sort of a repository of, you know, the best practices  
19 and the related views. In the longer run, perhaps,  
20 when we aim to reach some sort of a model arrangement,  
21 model agreement, model classes, you know, to be  
22 drafted and shared, introduced for the regional  
23 cooperation, whether multilateral or bilateral  
24 enforcement network or management.

25           At the end of the day, perhaps, like ASEAN,



1 APAC and the EU, we might, you know, wish to come to  
2 some sort of multinational treaty on which the  
3 economies can join and have reference to.

4 MS. WOODS BELL: Thank you. It harkens back  
5 to the panel yesterday IOSCO maybe looking at an MOU,  
6 amongst other things.

7 Tunde, can you share with us in a one-minute  
8 response, newer, younger, before we wrap up with the  
9 last question?

10 MR. IRUKERA: I mean, well, we're pretty  
11 young.

12 MS. WOODS BELL: No pressure, no pressure.

13 MR. IRUKERA: The relationship, obviously,  
14 with the FTC has been very helpful, and we're  
15 inheriting or using two things with respect to the  
16 competition side, the strong relationships we've had  
17 on the consumer protection side, and the relationship  
18 the FTC had with the Securities and Exchange  
19 Commission in Nigeria. And the Consumer Protection  
20 Council, I inherited a long relationship between the  
21 FTC and the Council, including, especially, with  
22 respect to regional capacity development and specific  
23 bilateral capacity development in the FTC's fellowship  
24 program. And that has been very helpful.

25 The European Union provided quite some

1 support in developing the legislation. So that's also  
2 a channel that we look to to depend on. So, yes,  
3 quite some relationships. And then, obviously,  
4 relationships that are just like conversation, more  
5 like with UNCTAD and a few others. I am relatively  
6 comfortable with what I think is going to be a great  
7 network of support from more experienced, mature  
8 organizations.

9 MS. WOODS BELL: Thank you. Well done.

10 MS. KRAUS: Well, because we are so  
11 interested in learning from our experts, and after  
12 this extremely fruitful discussion, I wanted to give  
13 each of you at least a minute or so to just provide  
14 any ideas you might have on how we might best develop  
15 the FTC's tools and international program for the  
16 success of our international outreach, but, also, I  
17 think our global initiative for, you know, good  
18 enforcement.

19 So maybe we can just move down the line,  
20 starting with Paula.

21 MS. SILVEIRA: Thanks, Liz. Well, first of  
22 all, I'd like to commend the FTC on your efforts on  
23 international cooperation. I think the international  
24 cooperation that the FTC has in Brazil has been not  
25 only very intense -- we've had people here, you've

1 sent people there. We've had a lot of, you know,  
2 "pick up the phone" cooperation, talks about cases,  
3 and that's been extremely helpful.

4 But what we would like to see -- and I think  
5 this is something that we would like to see not only  
6 with the FTC but with other jurisdictions as well --  
7 is a possibility of exchanging more information and  
8 maybe more confidential information on specific cases.  
9 So with the US, I know that Brazil has an MLAT, but it  
10 covers basically criminal investigations. So that's  
11 not something we can exchange with the FTC. And the  
12 FTC has a lot more experience than Brazil on  
13 unilateral conduct, abusive dominance, and that's  
14 something that CADE has been focusing on over the past  
15 two years, and it's new to us.

16 So having the experience of the FTC,  
17 especially because a lot of our cases are also cases  
18 that the FTC has gone through, so that would be very  
19 interesting for us.

20 MS. KRAUS: For us, too, trust me.

21 (Laughter.)

22 MS. KRAUS: Tunde?

23 MR. IRUKERA: Thank you very much. And I  
24 completely agree with Paula. I think the FTC is doing  
25 quite a phenomenal job, truly investing in other

1 agencies, and the work you're doing to actually  
2 maintain those relationships is amazing. Because two  
3 things that come to mind when I think about the FTC,  
4 you can resort to them and their resource. So that's  
5 very important.

6           The one thing that I might add, in addition  
7 to the information sharing, which is quite perennial,  
8 as it were is that you shouldn't substitute a  
9 bilateral engagement with a country for a regional  
10 engagement where that country also belongs. I think  
11 engaging on those two levels is so important because  
12 now you can see -- I mean, I'm using West Africa as an  
13 example. We've got ECOWAS, we've got Nigeria, and now  
14 we've got an African continental free trade agreement  
15 coming up.

16           I think it's good to engage on the regional  
17 level, but have a certain level of flexibility to also  
18 recognize what the national priorities are so you can  
19 engage on that level, also. I think with that you're  
20 probably going to cover the entire space. Thank you.

21           MS. KRAUS: Thank you. It's an excellent  
22 thought.

23           Han Li?

24           MR. HAN LI: Yes. I think we have always  
25 recognized I think the FTC's leadership role in

1 international organizations like ICN and OECD. We are  
2 also beginning to see FTC or the US taking a bigger  
3 interest in our region. This Friday, there's a panel  
4 at ASEAN at its spring meeting that I think is no  
5 doubt coordinated by FTC, and I think we look forward  
6 to more such partnerships.

7 Just to share, in 2015, in fact, we did a  
8 course with the FTC in Singapore on competition  
9 investment and transparency, together with the US  
10 Small Business Administration. That was organized  
11 under the Singapore-US third country training program.  
12 So I think we look forward to, again, US leadership in  
13 the region.

14 MS. KRAUS: Thank you.

15 Chris?

16 MR. WARNER: So a reflection from me is the  
17 Competition and Markets Authority has a wide range of  
18 tools, including market-based investigative tools.  
19 And we find that having that lurk across the wider  
20 picture, especially on kind of a no-fault basis, when  
21 you're looking at failings of the markets rather than  
22 failings of individual companies, is there a really  
23 useful tool and a really useful platform to build on  
24 in kind of international discussions.

25 I think also, on a consumer protection point

1 of view, we have a particular mandate in the UK to  
2 focus on issues causing problems with market-wide  
3 practices, and as a result we're investigating market-  
4 wide issues rather than single, individual cases.  
5 And, again, that deepening understanding of the  
6 broader picture I think is a really valuable kind of  
7 asset when you're taking issues and cases on an  
8 international arena. And that's something that I  
9 think is something worth reflecting on.

10 MS. KRAUS: Thank you.

11 Rainer?

12 MR. WESSELY: Thank you. I think I can very  
13 much echo what was it before when I told my colleagues  
14 in Brussels that I'm going to be on the FTC panel on  
15 international cooperation, everybody said, pay  
16 attention to what the FTC says, they are the role  
17 model for international cooperation, so you can learn  
18 a lot from them. And I think that has been certainly  
19 true for the past.

20 I would just like to draw attention to a  
21 certain kind of bilateral cooperation that we have  
22 that we see that is very fruitful and successful. One  
23 of them actually is with Brazil. We have an EU-Brazil  
24 sector dialogue. We just had this this month in  
25 March, three colleagues from CADE coming over to

1 Brussels, that was a very intense and very fruitful  
2 dialogue.

3 And we entered into a program which we call  
4 a technical cooperation program with Asia, with all  
5 Asian countries, actually. We have had visitors in  
6 this context from Japan, from Korea, from Indonesia,  
7 and the Philippines. We have not had anybody from  
8 Singapore or not from Hong Kong yet. But to Hong  
9 Kong, actually, we sent one of our former colleagues  
10 to your Competition Enforcement Authority which might  
11 do the trick.

12 And, finally, what I think is a takeaway is  
13 we focus very much on the multilateral cooperation,  
14 also on the bilateral cooperation. But what we should  
15 also not forget is probably that we also raise  
16 awareness internally, within our organization, that we  
17 have these capabilities, that we do all this because  
18 actually the people working on the ground on the  
19 cases, they have to spot that there is an  
20 international dimension to their case and they have to  
21 know how to react, how to bring this forward, and how  
22 to actually then exchange it with other authorities.  
23 Because we might have the best cooperation in the  
24 world, but if people working on the cases don't  
25 realize it, then it doesn't help.

1 MS. KRAUS: Super point.

2 And Commissioner Wong?

3 MR. WONG: Yeah, very quickly. As a  
4 regulatory authority enforcing the law, the relevant  
5 law in our regard, and this is about personal data  
6 privacy law, we must emphasize that, you know, that  
7 the enforcement must be fair. In this regard, we need  
8 accurate information and intelligence, facts,  
9 especially.

10 So in view of the cross-border nature of  
11 data incidents, for example, you can name a few, and  
12 also the absence of unifying enforcement laws and  
13 practices effectively, you know, some of the  
14 organizations might find shelter because of the  
15 absence, because of the lack of the unifying  
16 enforcement laws and practices for those who, for  
17 example, misuse or abuse data, that doesn't belong to  
18 them.

19 So it is in this era, digital economy, it's  
20 very difficult to comply with the legal requirements  
21 if we have restrictions about cross-border transfer,  
22 localization, or a consent-based system of transfer.  
23 So what we need is international engagement, effective  
24 international engagement. And, thankfully, FTC has  
25 played a leading or vital or pivotal role over the



1 last few years, and bearing also in mind that the USA,  
2 EU are the top two or top three trading partners of  
3 Hong Kong. So we have a lot of connections with the  
4 Americans and especially, you know, in the view of  
5 data incidents.

6 So apart from being an enforcer, we, as  
7 regulators, should also play the role of a  
8 facilitator, which facilitates the innovation and  
9 economic growth without compromising the privacy right  
10 enjoyed by citizens, streamline the processes, reduce  
11 implementation cost, deliver compliance efficiency,  
12 and support the continued growth of the digital  
13 ecosystem, and the effective law enforcement and  
14 beneficial use of data.

15 Now, as I mentioned earlier on, as part of  
16 China, but with a very different ecosystem, including  
17 a unique data protection framework, Hong Kong has  
18 unique and irreplaceable attributes being part of  
19 China in respect of, one, the free flow of  
20 information.

21 MS. WOODS BELL: Thank you so much,  
22 Commissioner.

23 Well, with that, we're going to conclude  
24 this panel. We want to thank you very much. We've  
25 left some questions on the table. We'll deliver them

1 to Randy. Maybe he knows all the answers, anyway.

2 We're going to take a brief 15-minute break  
3 and invite those speakers who are on the next session  
4 to please come forward.

5 Also, in other announcements, two silver  
6 rings found, collect them at the table outside.

7 And thank you all very much for a super,  
8 awesome, successful, phenomenal panel.

9 (Applause.)

10 (Brief break.)

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1 THE FTC'S ROLE IN A CHANGING WORLD

2 MR. TRITELL: Welcome back from the break.

3 If everybody would please take their seats, we're  
4 ready to proceed to our last session.

5 Again, I'm Randy Tritell from the Office of  
6 International Affairs. And we are now approaching the  
7 end of our two days of hearings, and we'll conclude  
8 with the panel on the FTC's Role in the Changing  
9 World. As the title indicates, this panel will focus  
10 on the future, anticipating the challenges that the  
11 FTC will face and seeking insights and guidance from  
12 leading experts from the realms of data privacy,  
13 consumer protection, and competition policy.

14 To lead us into our panel, there is no  
15 better person to do that than one of the true greats  
16 of the antitrust field, domestically and  
17 internationally. That is Jim Rill. I have had the  
18 pleasure and privilege of knowing Jim for several  
19 decades, and I would have been honored to introduce  
20 him to you properly, but as you will see, I'm about to  
21 yield the floor to someone who knows Jim even longer  
22 and better than I.

23 Ladies and gentlemen, from the FTC's Office  
24 of Congressional Relations, Derick Rill.

25 MR. J. RILL: Oh, my God.

1 (Applause.)

2 MR. D. RILL: Thank you, Randy, for this  
3 absolute honor to introduce Jim Rill for our next  
4 session titled, "The FTC's Role in a Changing World."

5 Mr. Rill has an impressive resume, to say  
6 the least. Summarizing his accomplishments is quite  
7 the challenge. But I'll be brief as I'm told this  
8 introduction counts towards his speaker time. He  
9 wouldn't forgive me if I didn't give him enough time  
10 to be able to talk.

11 MR. J. RILL: Cut it short.

12 MR. D. RILL: So quickly, here are some of  
13 his career bullet points. Currently Senior Counsel at  
14 Baker Botts, Mr. Rill served from 1989 to 1992 as  
15 Assistant Attorney General in charge of the Antitrust  
16 Division where he negotiated the US-EC Antitrust  
17 Cooperation Agreement; issued in 1992, the first joint  
18 FTC and DOJ horizontal merger guidelines; and, again,  
19 provided counsel for the provision of those guidelines  
20 in 2010.

21 He led the International Competition Policy  
22 Advisory Committee, which spawned the ICN. Now, 130  
23 member nations can trace their roots to the man Randy  
24 Tritell called the "Godfather of the ICN."

25 As for awards, in 2012, Mr. Rill received

1 DOJ's -- and I quote -- "highest antitrust honor, the  
2 Sherman Award, for his outstanding lifetime  
3 contributions to the protection of American consumers  
4 and the preservation of economic liberty."

5           Lastly, recognizing Mr. Rill's passion for  
6 helping grow talented, aspiring antitrust attorneys,  
7 DOJ a few years ago launched the Rill Fellowship,  
8 which entails a 24-month appointment at DOJ for the  
9 next generation of antitrust superstars who, like many  
10 of Mr. Rill's current protégés, probably will end up  
11 as DOJ antitrust chiefs or commissioners here at the  
12 FTC.

13           You know, as incredible as all that iconic  
14 stuff I just mentioned is what makes Mr. Rill so very  
15 special is that he also found time to be as wonderful  
16 and loving father as you'd ever meet.

17           Please welcome, as Randy calls him, "the  
18 Dean of the US Antitrust Bar," my dad, Jim Rill.

19           (Applause.)

20           MR. J. RILL: Well, that leaves me  
21 speechless, which I'm not known for being.

22           (Laughter.)

23           MR. J. RILL: Derick, thank you very much.  
24 And, Randy, you blindsided me.

25           I want to talk in what time is left for

1 really what I see as the challenges in front of the  
2 FTC and, indeed, in front of the agencies of the  
3 Federal Government, in international cooperation and  
4 international enforcement, to lay the groundwork for  
5 the panel that follows and to give some humble, if  
6 somewhat, I would say, radical suggestions for going  
7 forward.

8 I'd like to talk about really in order of  
9 policy and substantive contributions that the  
10 Commission has made in international organizations,  
11 about technical assistance programs to newly emerging  
12 agencies, particularly in regard to the rise of new  
13 technology, to the promotion of accountability in  
14 international cooperation. It's one thing to have  
15 guidance. It's another thing to be sure it's  
16 followed. And then, finally, I'd like to talk not  
17 only about international cooperation but domestic  
18 cooperation, I think a challenge and something that's  
19 vitally needed in the 21st Century.

20 We don't know where we can go unless we know  
21 where we've been. As the saying on the front of the  
22 Archives building indicates -- can you all hear me all  
23 right? I'm fighting an allergy and my voice isn't as  
24 resonant as it usually is.

25 But in front of the Archives building,

1 there's the podium with the platform, "the past is  
2 history," and in this particular case of international  
3 cooperation and the work of the FTC, the past is,  
4 indeed, history. The role of the FTC in international  
5 cooperation really cannot be overemphasized.

6 The work that the Commission's done in ICN  
7 and OECD providing, I think, a remarkable set, for  
8 example, of antitrust enforcement guidelines on  
9 policy, procedure, transparency, and engagement, is a  
10 real contribution to international cooperation. That  
11 was adopted by the ICN, and it has been since updated  
12 and improved and annotated.

13 Other guidance documents too numerous to be  
14 mentioned follow in the merger field and the  
15 unilateral conduct field and other areas, largely, not  
16 exclusively, but largely fomented by, promoted by the  
17 work of the Federal Trade Commission.

18 Technical assistance. The technical  
19 assistance provided by the Federal Trade Commission  
20 and the United States Department of Justice goes all  
21 the way back to 1990, and possibly before. In 1990,  
22 as the Soviet Union collapsed, the countries of  
23 Eastern Europe threw off the bonds, the Federal Trade  
24 Commission and the Department of Justice sent missions  
25 -- often joint missions -- to places like Budapest,

1 Prague, Warsaw, and other cities around the newly  
2 emerging free market systems of Central and Eastern  
3 Europe.

4 That predated the work that the FTC has done  
5 since that time. In 2017 alone, the FTC had a program  
6 of conducting 38 programs of technical assistance in  
7 22 jurisdictions. I won't name them all, but 38  
8 programs in 22 jurisdictions of technical assistance.

9 Cooperative agreements. In 2018, the  
10 International Antitrust Report, authored by Randy  
11 Tritell, the FTC and DOJ played an active role in US  
12 delegations to negotiate competition chapters in  
13 proposed trade agreements. Highlighted among those  
14 agreements, of course, are the new antitrust chapter  
15 in the -- I guess call it NAFTA 2.0 -- in which the  
16 parties agree to foundational principles of process  
17 requiring transparency, early consultation, access to  
18 information, and opportunity to appear before the  
19 agency, and the right to judicial review. Should that  
20 agreement be adopted, be confirmed by the Senate, it  
21 would be a landmark agreement on the antitrust  
22 cooperation and the trade agreement.

23 The KORUS agreement contains a competition  
24 chapter, which just the other day has been invoked by  
25 USTR by calling for consultation with the Korean



1 antitrust agency on the ability to obtain evidence and  
2 to appeal, consider that evidence and rebut it. We'll  
3 see where that goes.

4           So that's the very, very impressive history  
5 that's been fomented by the Federal Trade Commission.  
6 But what about looking forward? And let me, with  
7 great respect and some hesitancy, make some  
8 suggestions. First of all, it seems to me appropriate  
9 to continue the work that's being done with the  
10 international organizations to promote sound  
11 principles of consumer welfare based antitrust  
12 principles.

13           Much of the focus now has been on procedural  
14 reform, as it should be. Let's take a look at what  
15 can be done on consultation that leads to substantive  
16 coordination and addresses the issues of the proper  
17 effect that antitrust should have on the economy. A  
18 little bit of evangelical work here is necessary. How  
19 far it goes, I don't know, but we should not ignore  
20 the need to, if you will, evangelize on substance and  
21 discussions, negotiations in international  
22 organizations and bilateral basis.

23           The link between intellectual property and  
24 antitrust isn't a bad place to start. A focus can be  
25 made on noneconomic goals in certain nations and the

1 influence of state-owned as well as state-supported  
2 enterprises. In 2017, the US Chamber put together a  
3 group of so-called experts -- I was on it, so that's  
4 why I say "so-called" -- which issued a report which  
5 suggested that the ICN form a working group that  
6 focuses on state-owned enterprises and state-supported  
7 enterprises. Why not a joint FTC/DOJ effort in that  
8 direction?

9 National champions are, again, on top of the  
10 mind, given the recent decision of the EC, for  
11 example, to block the Siemens-Alstom merger, and the  
12 objections thereto by the French and German  
13 Governments. Why not address that issue?

14 Again, procedure is important. Procedure is  
15 critically important, but you can have the best trial  
16 in the world if they hang you for the wrong offense.  
17 And it seems to me, that substance is a very  
18 legitimate area for this kind of work.

19 Continue the technical assistance programs.  
20 I don't think I need to -- I think I'm singing to the  
21 choir when I say that. But consider, also, doing that  
22 jointly with the Department of Justice. We started  
23 out in 1990 doing it jointly. It seemed to work then.  
24 Why not give it another try and work jointly with the  
25 different but excellent skills brought in from both of

1 the agencies?

2 I would say convert these guidance documents  
3 into best practice documents through the ICN,  
4 particularly. The OECD issued best practice documents  
5 and so did the ICN and merger notification and  
6 procedure? Why not broaden that at least to put more  
7 gravitas, if you will, substance behind the guidance  
8 documents?

9 And then I would say continue workshops and  
10 roundtables. I think the FTC's workshops and  
11 roundtables in the ICN area have been paragons of  
12 value. More is not a bad idea. Again, focusing on  
13 substance.

14 Guidance is very well and good. But are  
15 people actually following the guidance? Are nations,  
16 are agencies following the guidance? We all know too  
17 often that at OECD or at ICN the question is asked, do  
18 you give transparency? Oh, yeah, next question. What  
19 about some system of measuring accountability?  
20 Radical consideration, perhaps, but I think this may  
21 have been the initial thought, maybe still the  
22 thought, behind the Department of Justice initiative  
23 for the multilateral framework for procedure which  
24 now, apparently, is going on a dual track, side-by-  
25 side track with the ICN, according to recent speeches

1 by -- a recent speech by Roger Alford.

2 This is a DOJ initiative, but it's one I  
3 think that the FTC can play a role in through the ICN  
4 or support for the MFP. The agencies should work  
5 together to find, formulate, develop a system for  
6 measuring accountability and adherence to the guidance  
7 documents which hopefully will become best practice  
8 documents. Probably have to start on the voluntary  
9 basis. Probably have to have companies sign on to it.  
10 But it's worth exploring and worth exploring, I  
11 suggest to you, jointly.

12 I'm not suggesting any sanction system. I'm  
13 not suggesting trade -- God help us -- trade  
14 sanctions. All I can think of is back in the day when  
15 you traded off chicken for brandy, which way in the  
16 past, I consider that a personal offense.

17 (Laughter.)

18 MR. J. RILL: But as has been said by a lot  
19 of people, and I think it has a good bit of truth to  
20 it, reputational effect can be very significant. And  
21 holding out an agency for, I would say, gross  
22 departure from globally accepted norms of procedural  
23 or substantive agreement, principles, can have a  
24 reputational effect.

25 Let me switch for a minute to another form

1 of cooperation, and that's interagency cooperation. I  
2 suggest that there's a lot of room for cooperation  
3 between the two antitrust agencies. The 2017  
4 guidelines on international enforcement, international  
5 cooperation, they're jointly issued, jointly issued by  
6 DOJ and FTC. The suggestion in there that applies to  
7 what the agencies do, not to what one agency does or  
8 what the other agency does, but what the agencies do  
9 -- specifically, one of the provisions is they may  
10 engage in general discussions with foreign authorities  
11 on matters where only one authority -- that is, the  
12 foreign authority -- has an open investigation.

13 Why not have both deal with that issue? The  
14 guidelines uses the word, plural, "agencies." This is  
15 consistent with a recent speech in 2013 -- that's  
16 recent in my vocabulary -- an article on antitrust  
17 source, which I recommend to you, by then-Commissioner  
18 Ohlhausen. So why not, for example, a joint work  
19 program in the international sector, in addition to  
20 the joint technical assistance, which has worked so  
21 well in the past.

22 What about cooperation and coordination with  
23 the other non-antitrust agencies of the Federal  
24 Government? I recognize that this can bring in other,  
25 from a domestic standpoint, what seem to be foreign

1 ideas, ideas that antitrust is not particularly  
2 comfortable with. I went through three years of  
3 working with the USTR and the structural impediment  
4 initiative talks with the Japanese. I understand some  
5 of the problems of that relationship. But these  
6 agencies, they have a good bit to offer in many  
7 respects.

8 Their expertise in particular industries is  
9 very valuable, can be very instructive, can be very  
10 useful. They can bring into play and bring into  
11 understanding issues of national interest that are  
12 sometimes beyond the antitrust agencies', at least,  
13 professional focus -- national security being, I  
14 think, paramount among those issues -- where the  
15 antitrust agencies can cooperate with these other  
16 agencies.

17 Now, the chamber report that I mentioned to  
18 you suggested a cabinet level committee to deal with  
19 antitrust policy. I, frankly, don't think that's a  
20 great idea. But I think the antitrust agencies  
21 themselves can informally call together, as needed,  
22 and listen to and reflect on the -- I'm getting the  
23 flash that the time is up; I'm almost through -- that  
24 can bring in expertise and considerations which can  
25 well inform the antitrust decisions that are being

1 made by the antitrust agencies. We can have a  
2 ramification across technological issues facing  
3 industries with which the Commission and the DOJ might  
4 well be unfamiliar and national security interests  
5 which can be vital to the welfare of the country.

6           Whatever decisions are being made on  
7 antitrust that affect antitrust, the DOJ and the  
8 Commission should have a seat at the table to explore,  
9 conversely, the antitrust implications of industry  
10 decisions being made at another level. And the  
11 Commission, although not as part of the Executive  
12 Branch, the Commission can bring a good bit to play in  
13 the way of its expertise to those considerations. So  
14 it should have the seat at the table.

15           So there's the issue of international  
16 cooperation, which we've addressed, and I would  
17 suggest to you equally important in the international  
18 field is the issue of cooperation across the panoply  
19 of the Federal Government, including our sister  
20 agency, my alma mater, the Department of Justice, and  
21 the other agencies of the Federal Government that have  
22 a particular expertise and have much to offer in those  
23 areas that can affect and influence and promote sound  
24 antitrust enforcement.

25           So with that, thank you very much for your

1 time. I appreciate it. And I look forward to hearing  
2 the panel.

3 (Applause.)

4 MR. TRITELL: Thanks so much, Jim. Let's  
5 bring the last panel up to the table.

6 (Brief pause.)

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1 THE FTC'S ROLE IN A CHANGING WORLD (PANEL)

2 MR. TRITELL: Well, thanks again to Jim Rill  
3 for his, as always, insightful and thought-provoking  
4 remarks which will help frame our discussion and will  
5 also inform our thinking about how the FTC should  
6 advance our international antitrust agenda.

7 We're going to organize this panel -- or try  
8 to organize -- the discussion into four parts,  
9 recognizing that the borders between them are going to  
10 be somewhat porous. First, we're going to ask for  
11 some thoughts on what makes for an effective  
12 competition, consumer protection and/or data privacy  
13 agency. We'll then consider how the FTC can be most  
14 effective in its bilateral relationships and  
15 cooperation.

16 Next, we'll take up the FTC's role in  
17 promoting sound policy and, as appropriate, as  
18 referred to on the previous panel, policy convergence.  
19 And we'll conclude with perspectives on the role of  
20 the FTC as a leader in thought and action in our  
21 fields. We'll leave around 10 minutes for questions,  
22 so, please, use the question cards that will be  
23 circulating. And we'll try to leave a few last  
24 minutes for closing thoughts.

25 All of our previous sessions have raised

1 many questions on our panel. We'll try to find at  
2 least some of the answers.

3 To do that, we have an absolutely world-  
4 class, stellar panel. And so we're delighted to be  
5 joined by -- and I'll do this alphabetically -- Bojana  
6 Bellamy is the President of Hunton Andrews Kurth LLP's  
7 Center for Information Policy Leadership.

8 Terry Calvani with the Freshfields Law Firm  
9 is also a former Commissioner and acting Chairman here  
10 at the Federal Trade Commission, where I had the great  
11 privilege to be able to work with him, and has an  
12 almost unique experience of also having been a member  
13 of another international agency, a member of the Irish  
14 Competition Authority.

15 Eduardo Perez Motta is Senior Partner at the  
16 SIA Law and Economics Firm and he is the former  
17 President of the Mexican Competition Authority,  
18 COFECE, and, also, a former Chair of the International  
19 Competition Network.

20 Rod Sims is the Chairman of the Australian  
21 Competition and Consumer Commission.

22 And Andy Wyckoff is the Director of the  
23 OECD's Directorate for Science, Technology, and  
24 Innovation.

25 Let's start with some general principles for

1 a good agency. So to be effective as an enforcer or a  
2 policy leader, one has to have an institutional  
3 structure and institutional principles that undergird  
4 the agency. To frame our discussion, I'd first like  
5 to turn to Bojana for her thoughts on what makes for  
6 an effective agency, especially operating in the  
7 international arena.

8 Bojana, I know that your experience is  
9 primarily from the privacy world, but from our  
10 discussion, I know that your thoughts reflect  
11 principles that I think everyone will find relevant to  
12 their substantive areas.

13 MS. BELLAMY: Thank you, Randy, very much.  
14 I'm delighted to be here. In fact, you know, this  
15 whole session is called, The FTC Role in Leadership in  
16 the Changing World, and the fact that we are having  
17 this discussion across a number of experts from  
18 different countries and also different areas, like  
19 competition, consumer, and privacy is really a sign of  
20 that leadership. So really, thank you so much for  
21 organizing this and, of course, for inviting me as  
22 well.

23 We, at the CIPPO, have done a project looking  
24 at what constitutes an effective regulator in this new  
25 world of the fourth Industrial Revolution, of course,

1 from the privacy perspective. The feeling was that we  
2 have been advocating for a very long time for need for  
3 countable, corporately, digitally responsible  
4 organizations on one side. And then we were thinking  
5 so what does the world look like from the side of  
6 regulators in this new innovative world with  
7 disruption, technology, that is bringing exciting  
8 innovation every day? How can regulators really step  
9 up and be effective?

10 The work very much resonates with what I  
11 have actually heard this morning, Randy. Your  
12 fantastic panel on the comparative legal traditions,  
13 and Professors Bignami, I think, and Marsden have  
14 talked a little bit about that. So what we have found  
15 is that to be an effective regulator, regulators need  
16 to step up and be strategic, prioritize their  
17 engagement, thought leadership, actions versus  
18 potential enforcement, and be very transparent in how  
19 they conduct their regulatory policy. Very much risk-  
20 based as well. So "selective to be effective" was a  
21 great wording that was said actually by former  
22 Information Commissioner Richard Thomas.

23 The second point is that constructive  
24 engagement should be favored over the enforcement and  
25 enforcement should be used, of course, for those who

1 deliberately, repeatedly keep breaking the rules and  
2 not wanting to engage with a new regulator. This  
3 constructive engagement, of course, requires some  
4 innovative thinking, innovative regulatory policy.  
5 And so we looked at things like, for example,  
6 regulatory sandbox, which first started with the  
7 Financial Service Authority in the UK, but has been  
8 picked up by the UK Information Commissioner as well  
9 as the Singapore Commissioner. I'm kind of thinking  
10 this is an example of how the constructive engagement  
11 can be formalized in a more formal way.

12 But, of course, it is important that  
13 constructive engagement is a town goal. You can't  
14 just have an effective regulator. You have to have an  
15 accountable organization who is ready to engage with  
16 regulators. This is really what we felt was really  
17 needed in this new world.

18 Now, the final point is that an effective  
19 and new regulator has to also build bridges with other  
20 regulators internationally. And I know we will be  
21 talking more about this.

22 Our final point of our research work was  
23 relating to the incentives. And we felt that  
24 effective and smart regulators should be  
25 incentivizing, rewarding those organizations that step

1 up and are able to deliver compliance in a new way and  
2 go beyond compliance. And I think it will be really  
3 interesting to discuss what could these incentives  
4 look like. I think we've seen some in the past from  
5 FTC. So as I'm speaking about this, I'm kind of  
6 thinking FTC was pretty much there with this. But, of  
7 course, this isn't just about FTC; it's about other  
8 data protection regulators that operate globally in  
9 this connected world, and they're increasingly having  
10 to cooperate.

11 So our message was very much not just for  
12 FTC, but for the other regulators really stepping up  
13 in this new world.

14 MR. TRITELL: So that is getting us off to a  
15 great start, Bojana, and I'd be interested in other's  
16 reactions to those points. And, also, turning it back  
17 to the FTC, what can we learn from the experience of  
18 other jurisdictions in this area and how can we apply  
19 that to our work?

20 Let me first ask Eduardo, based on your  
21 experience both with the Mexican agency and in your  
22 interactions with agencies around the world through  
23 the ICN.

24 MR. MOTTA: Thank you, Randy, and thank you  
25 for this invitation. If you allow me, I consider that

1 there are five elements that basically characterize a  
2 good -- a well-designed -- let's put it that way -- a  
3 well-designed agency in competition.

4 First, it has to be independent. It has to  
5 be independent from the Executive Branch, from the  
6 government, from the -- but what is -- that is part of  
7 it. But it has to be independent because its only  
8 obligation is to apply the law. They do not design  
9 the law. The design of the law is part of the  
10 government and the legislative consideration and  
11 jurisdiction.

12 Obviously, the concept of independency goes  
13 hand by hand with the specific characteristics of the  
14 jurisdiction. I remember having these discussions in  
15 an OECD table a few years ago with some colleagues  
16 from Denmark, and they were saying, well, I mean, why  
17 are you insisting so much on the independence? We're  
18 not having that problem. We have never had -- we have  
19 never faced that problem with the executive branch.  
20 They have always respected our work decisions. And I  
21 said, well, I mean, if you come from Mexico, you would  
22 think differently.

23 At that time, that was not a major risk.  
24 Today, that's a major risk in Mexico. So,  
25 fortunately, in Mexico, the Competition Authority is

1 constitutionally independent. So it's as independent  
2 as the central bank or as the Federal Reserve here in  
3 the US. So it depends on the culture of the country  
4 and it depends on the realities they are going to  
5 face. But that's -- what I consider that that --  
6 regardless of where you -- the reality in which you  
7 are based, independence is a key element.

8           Second, you have to be perceived -- and you  
9 have to behave in a neutral way. You have to be  
10 perceived as an unbiased authority. You have to treat  
11 everyone with exactly the same line. That's not an  
12 easy issue, and that -- it is very important because  
13 that goes very much in line with what the economic  
14 agencies consider the way that you are behaving.

15           Number three, you have to be, obviously,  
16 technically strong. You have to be technically solid  
17 as an agency. And I think you have to behave very  
18 much in line with best international practices.

19           Number four, you have to be efficient.  
20 Efficiency goes basically with the way you design the  
21 incentives within the agency. And that is very  
22 important. That is crucial. You have to have the  
23 right incentives in the way you design the agency's  
24 design.

25           And, finally, transparency. Transparency



1 and accountability. That's crucial. You have to be a  
2 very open communicator all the time with the  
3 practitioners, with the public, with the economic  
4 agents, with, obviously, other agencies  
5 internationally. And I completely, totally agree with  
6 Jim when he was saying that you have to be very  
7 communicative within the agencies of your own country.

8 MR. TRITELL: Thank you, Eduardo.

9 And I think it's interesting that Bojana,  
10 coming from the privacy world, Eduardo, coming from  
11 the competition world, have defined principles that I  
12 think are quite generally applicable across the  
13 spectrum of what we do.

14 Are there others who would like to come in  
15 on this topic? Rod?

16 MR. SIMS: Well, I will just add a couple of  
17 other points because I completely agree with the  
18 points that have been made. But I think a regulatory  
19 agency has got to be and be seen to be a strong  
20 enforcer. It has got to be taking people to court and  
21 be seen to be doing that, as well as doing market  
22 studies, where markets aren't working as they should.  
23 I think they are complementary things to do that have  
24 the regulator doing their job properly. So that's one  
25 thing I would add.

1           And the other thing I would add is that I  
2 think the regulator has got to be a constant  
3 communicator. It can't just be doing things. It's  
4 got to tell people what it's doing. Otherwise, it's  
5 just not doing its job. And part of that is, I think,  
6 as an advocate for competition. If the competition  
7 regulator -- I mean, whereby the competition regulator  
8 and the consumer regulator, if we're not advocating  
9 for competition and advocating for consumers in  
10 Australia, nobody else is. So we have to be a  
11 constant advocate.

12           MS. BELLAMY: So I just wanted to come back  
13 on one point. Rod, Eduardo, you have actually  
14 prompted me. So what is, I think, different in this  
15 world of fourth Industrial Revolution, and what should  
16 regulators do is we that have this asymmetry -- and  
17 somebody talked about informational asymmetry between  
18 consumers and the tech world. But actually there is  
19 asymmetry, regulators and this new tech world.

20           So what does it mean to be technically  
21 strong? It means also having capabilities to  
22 understand the technology and the world that we  
23 regulate. We are now regulating the world of data and  
24 there hasn't been anyone else who has ever regulated  
25 data. This world is so different and new and so

1 changing that I think we need to completely step up  
2 and reinvent ourselves as regulators. I'm speaking as  
3 though I'm a regulator; I'm not. I used to be a  
4 privacy officer in a company, but it's the same. You  
5 know, internally, we, when we would deliver privacy  
6 compliance, had to completely change, and regulators  
7 have to change.

8 That's why I think this constructive  
9 engagement, where there is a feedback loop of  
10 reiterative compliance, learning from each other,  
11 understanding, using sandbox, using citizens' jury,  
12 this is something that ICO in the UK is doing now, is  
13 actually something that would serve us better as  
14 regulators at the moment because it is a new brave  
15 world that we are regulating. And I think the old-  
16 fashioned methodologies are just not going to cut it  
17 anymore. So that's, perhaps, a challenge for us.

18 MR. TRITELL: All right. You've thrown down  
19 the gauntlet, and I think we have Andy and Terry who  
20 are also interested in coming in on this. Andy?

21 MR. WYCKOFF: She has certainly inspired me,  
22 but so did Mr. Rill. I just want to combine the two,  
23 really because we're just done with a very large study  
24 at the OECD across 14 different policy committees  
25 looking at what we call the digital transformation. I

1 think Bojana's comment is absolutely right, that data  
2 now cuts through almost every area.

3 So going back to where Mr. Rill was it's  
4 just that I think you need competition and consumer  
5 protection authorities to begin to work with  
6 departments of transportation, where there's a lot of  
7 data, departments of health or agencies like NIH that  
8 have a lot of data and don't necessarily understand  
9 always the properties associated with the marketplace  
10 as an FTC would.

11 MR. CALVANI: I don't want to be a skunk in  
12 the wood pile, but I just can't resist the temptation.

13 (Laughter.)

14 MR. CALVANI: I think the FTC's record as a  
15 regulator has been mixed, at best. And that's because  
16 I don't think it is a regulator, nor do I think it  
17 should be. I think the US agencies, unlike many other  
18 competition agencies which have true regulatory power,  
19 like the ACCC, the FTC and the DOJ principally do not.  
20 They're law enforcement agencies; they're not  
21 regulators like the Federal Reserve Board and the  
22 Federal Communications Commission.

23 And while there is some residual powers, for  
24 example within the FTC's organic statute with the  
25 Magnuson Moss Act, where the FTC can look at a market,

1 find that it's not operating the way it would like to  
2 operate, notwithstanding the absence of any violation  
3 of law, it can do a market study, but a market study  
4 plus, and then impose a regulatory regime that has the  
5 force and effect of the law. And the agency was  
6 fascinated with these powers in the 1970s. And I  
7 think no one would disagree with me in saying at the  
8 end of the day, the record was at best mixed.

9 I think in the United States, we're not  
10 really regulatory agencies. We're law enforcement  
11 agencies. And while that may seem like a semantic  
12 difference, I actually think it does impact the way  
13 that the agencies do behave and, frankly, how they  
14 ought to behave. And I don't quarrel with agencies  
15 that have mixed roles. The ACCC is a classic example  
16 where the Australian legislature vested it with powers  
17 that are broad based. And many other agencies are  
18 like that, too. I don't think that's the role of the  
19 US agencies.

20 MR. TRITELL: Good, we're off to a  
21 rollicking start here.

22 Now, let's take these insights and focus the  
23 lens on the FTC's bilateral relationship and  
24 international cooperation. As we heard on our panel  
25 this morning, we operate in a world where agencies are

1 housed in all different legal systems and economic  
2 cultures and histories and powers. How can the FTC be  
3 effective in operating in that environment? And,  
4 also, are there things that we can learn from some of  
5 the other systems and tools that other agencies may  
6 have that can enhance the FTC's ability to be  
7 effective?

8 Let me see if we can start off our  
9 discussion with some observations from Rod, whose  
10 agency mirrors our own in the breadth of our  
11 engagement.

12 MR. SIMS: Well, it's hard to come up with  
13 too many suggestions for the FTC because I think your  
14 interaction within international organizations is  
15 sensational. Your cooperation with various agencies,  
16 at least as we experience, is terrific. So there's  
17 nothing to say there, but to thank you very much for  
18 that.

19 The areas of improvement for cooperation, I  
20 think much better information sharing. I know that it  
21 was mentioned earlier, particularly in Marcus'  
22 section, trying to have the competition agencies more  
23 emulate what IOSCO does in terms of information  
24 sharing would be extremely helpful. And, also,  
25 although I hesitate to give up our uniqueness, but

1 Australia has a treaty, an antitrust treaty with the  
2 US that allows essentially the US agencies to act on  
3 our behalf, which is stunningly powerful. We don't  
4 use it that often because we don't have to use it that  
5 often because people know we can use it.

6 And I think if that -- even though as an  
7 aside, I really appreciate the uniqueness and I  
8 hesitate to lose that status. But I think more of  
9 that sort of cooperation would be just tremendously  
10 powerful in making agencies more effective worldwide.

11 MR. TRITELL: Well, we'd like to make you  
12 more of a path breaker than a unicorn in having more  
13 of those agreements.

14 Andy, are you dealing with a lot of consumer  
15 agencies and privacy agencies in the context of the  
16 OECD? What do you see that we could bring into the  
17 FTC to enhance our bilateral engagement and  
18 cooperation?

19 MR. WYCKOFF: Again, I agree with Rod.  
20 You're already doing a whole lot, and it's been really  
21 -- you've been playing a leadership role at the OECD  
22 for some time all the way back to 2003. We put out --  
23 the best thing we have is a policy recommendation,  
24 which is called a council recommendation, in the area  
25 of guidelines for protecting consumers from fraudulent

1 and deceptive commercialization practices across  
2 borders. That's really acted -- it was launched by  
3 FTC and then FTC Commissioner Mozelle Thompson. And  
4 that has stood the test of time.

5 We just reviewed it a few years ago, in  
6 2018, and it set out a number of different modalities  
7 that countries can follow to get this cooperation  
8 going. We found that, you know, across 31 countries  
9 we were looking at, only two didn't have something  
10 pretty well established. So I think this is an  
11 exemplary role. As was just said, there are some  
12 limits here, though. We can always do better. This  
13 is the OECD. We always encourage more. And that's  
14 the implementation challenge, particularly with  
15 sharing confidential information is difficult, and I  
16 think this is an area for maybe further work.

17 MR. TRITELL: Great, thanks.

18 And, Eduardo, from the perspective of the  
19 competition landscape that you observed from the ICN  
20 and elsewhere?

21 MR. MOTTA: Yeah. Let me say that what I  
22 could see from other agencies that could be used or  
23 could be applied in the FTC, I will start with the  
24 same general idea of the best design of an agency, how  
25 you can use that best structure in order to be applied



1 in different jurisdictions. And I think independence  
2 is still a very important element.

3 The way the Commissioners are selected or  
4 are appointed is important. It's something that as  
5 long as you could separate that process of decision  
6 from political elements and you can put it in a more  
7 technical area, I think that's going to be useful.  
8 And I think that's something that has been seen in  
9 different countries. And in Mexico, I think, is not  
10 an exception of that.

11 I would say that the case of attribution of  
12 merger cases would be also important. Something that  
13 we didn't have in Mexico until recently, until 2014,  
14 and something which you have been living with in the  
15 US is the fact of having two agencies dealing with  
16 this similar areas. That's difficult itself. In  
17 Mexico, that started in 2013, with the basically  
18 separation of competition application or competition  
19 enforcement in the telecom's regulator.

20 Even though that is a little bit more  
21 specific, there are some gray area where -- I mean, as  
22 a practitioner -- and now I am on the other side of  
23 the table -- it's difficult to understand who decides  
24 what. And that's -- and I think there is much to do  
25 in that line to give more clarity to the private

1 players and practitioners in general.

2 MR. TRITELL: We have a lot of private  
3 sector stakeholders with a keen interest in our  
4 discussion. Is there a constructive role that the  
5 private sector can play in helping the agencies be  
6 effective or in facilitating good cooperation?

7 MR. CALVANI: Well, just to make a couple of  
8 comments. I mean, I think that the private sector can  
9 play an important but limited role. The agencies need  
10 to always be in the driver's seat, in my view. That's  
11 not to say that there isn't a role for the private  
12 sector. I think that there is. It can be a very  
13 valuable sounding board for proposed changes and  
14 regulation law and policy where -- provide information  
15 that the agencies can take on board or not. But,  
16 nonetheless, hopefully consider. I think that's a  
17 valuable aspect.

18 Secondly, the agencies have -- the private  
19 sector has resources that sometimes can be used to  
20 augment those of the public agencies and the ICN's use  
21 of NGAs, as I suppose is an excellent example there.  
22 So I think there's an important role for the private  
23 sector, but I think it is, as you phrased the  
24 question, helping the agencies.

25 MS. BELLAMY: I sort of -- it's a little bit

1 of a tangential comment, but in privacy in particular,  
2 one thing that we are seeing, unlike competition --  
3 and I totally appreciate that -- is that the private  
4 sector is playing an increasingly important leadership  
5 role in shaping global responses to the diverging  
6 privacy rules that exist globally. So we don't have  
7 one privacy rule. We don't even have it in the US,  
8 which we should, but that's a separate discussion.  
9 But, globally, there isn't one.

10 What we are seeing is the multinationals  
11 filling that vacuum and applying reasonably coherent  
12 privacy requirements and rules wherever they operate.  
13 And they have these accountability programs, privacy  
14 management programs.

15 So I think there is something there, Randy,  
16 that I think FTC should be exploiting and kind of  
17 using that to also promote organizational  
18 accountability. I actually don't think that  
19 everything in privacy certainly can be solved by laws.  
20 Technology is just too far out of the corral to be  
21 able to be curtailed back. We need these different  
22 methodologies to core regulate -- not self-regulate,  
23 but core regulate -- through an accountability model  
24 that can be also certifiable.

25 We have seen a great example in privacy in

1 so-called cross-border privacy rules that have been  
2 jointly adhered and approved in the APAC economies.  
3 The US is one of that. Those economies -- FTC has  
4 played a really important role in building these  
5 cross-border privacy rules which act as a minimum-  
6 based standard, if you like, across the APAC regions  
7 and enable companies to share data accountably and  
8 responsibly and, therefore, promote consumer trust and  
9 confidence in the digital economy.

10 And so I think those kind of accountability  
11 measures that are based on private sector stepping up,  
12 but with the regulator who is incentivizing and  
13 rewarding those kind of behaviors, would be really  
14 very, very important.

15 And may I also say, I want to remind all our  
16 colleagues here, we have had a very interesting  
17 project years ago, the so-called privacy bridges  
18 project, where we tried to bridge differences between  
19 regulatory approaches in Europe and US. One of the  
20 recommendations from that report came out to say that  
21 regulatory agencies should be doing not only joint  
22 enforcement, which we see at the moment, but also  
23 joint policy setting and potentially even joint  
24 guidelines. And I think this is something to also  
25 explore.

1 MR. TRITELL: Well, thank you, but you've  
2 mischaracterized your comment as tangential.

3 MS. BELLAMY: Sorry. I could go massive  
4 times --

5 MR. TRITELL: It is indeed central. And I  
6 think it's a perfect segue into broadening our  
7 discussion from the realm of bilateral cooperation to  
8 more policy-oriented convergence. So with scores of  
9 agencies in the privacy and consumer protection and  
10 competition business, I think we all agree it's  
11 impractical, unrealistic, and highly undesirable for  
12 each to be off on its own without any coordination.

13 At the same time, there is no unifying super  
14 national hard law in this area. There won't be, I  
15 think, despite Tad Lipsky's desire expressed earlier,  
16 and in my personal view, that's a good development.  
17 But where does that leave us in terms of the ability  
18 to use what the previous panel discussed as soft law  
19 in promoting good practice and identifying best  
20 practices in spreading them? And what role can the  
21 FTC play in doing that?

22 So I'd like to ask everybody, really, what  
23 are the areas you think that are most important for  
24 the FTC to encourage convergence and how should they  
25 do that? And are there areas where they should avoid

1 preaching convergence because there's room for  
2 experimentation? And are there less good practices  
3 that we ought to try to be warding off in the world?

4 So big question. And let me ask, Terry, if  
5 you can lead off our thinking on this.

6 MR. CALVANI: Well, I'll just very briefly  
7 toss out some things that I think are important. I'd  
8 focus on the consumer welfare model, which I think has  
9 served us well over the last good number of decades in  
10 both Republican and Democratic administrations, and,  
11 which, frankly, is under assault at present.

12 I think due process is an area that all of  
13 us ought to be concerned with. While I don't have any  
14 significant criticisms of the US system as it's  
15 employed, due process is certainly lacking in other  
16 places around the world, and I think that there's a  
17 great deal of very profitable missionary activity that  
18 ought to and can take place there.

19 I think in the area of privacy or privacy,  
20 however you want to pronounce it, it's obviously  
21 something that all of us value. But that doesn't mean  
22 that you raise your hand every time anybody says, do  
23 you want more privacy? I believe you always need to  
24 think about the interface between competition and  
25 privacy and strive to reach the right balance, and I

1 think that's a very, very difficult challenge. It's  
2 easy to say, harder to make word. But I'll just toss  
3 those out as some ideas.

4 MR. TRITELL: Great. Well, let's go down to  
5 the end of the table. Andy, do you have thoughts on  
6 areas ripe for convergence efforts?

7 MR. WYCKOFF: Yeah, I kind of expressed it  
8 before. I like to think that organizations, such as  
9 the one I work at, can bring this convergence, at  
10 least show best practices, and once in a blue moon,  
11 worst practices. It doesn't happen as much as we  
12 would like.

13 And to go back to I think a common thread of  
14 this panel, I do think kind of a new factor production  
15 for today is data. This raises some interesting  
16 questions both for competition authorities, but data  
17 protection and privacy. So there's a convergence area  
18 right there, I think, that I think FTC is perfectly  
19 poised to begin to look at. And I think you're going  
20 to see this competitive advantage that's associated  
21 with data goes way beyond the companies we think about  
22 today.

23 And I just think about more traditional  
24 companies, such as John Deere, who are now making  
25 creative use of data in many different markets

1 simultaneously. And there's a bit of debate in some  
2 parts of the world who owns that data. Is it the  
3 farmer or is it John Deere? That's just one dimension  
4 of this. But I think that is a convergence area that  
5 is worthy of attention.

6 MR. TRITELL: Rod?

7 MR. SIMS: Well, look, I'm going to slightly  
8 agree with Terry. I have to be careful how far I go  
9 here. But, I mean, I think promoting the consumer  
10 welfare standard is an important thing to do. I  
11 noticed James Rill mentioned national champions and  
12 I've been jumping all over that every time it gets  
13 mentioned.

14 So going back to my point about advocacy,  
15 we, and particularly I, have been a very strong  
16 advocate against national champions. Every time that  
17 the community mentions it, because they do just about  
18 every time there's a merger, every time the  
19 Governments mention it, because they do every time  
20 they want to justify things they've done, and I think  
21 unless the competition agencies are jumping over that,  
22 nobody else will. So that's where we absolutely need  
23 to be an advocate.

24 But the consumer welfare standard is  
25 obviously a sensible grounding for determining what --



1 and we are an enforcement agency -- what, as  
2 enforcement agencies, we should be focusing on and how  
3 do you separate procompetitive and anticompetitive  
4 behavior.

5 I guess the caution I would put with it,  
6 though, is I think in implementing the consumer  
7 welfare standard, which, as I say, we strongly adhere  
8 to, we just need to be a bit careful as we promote it  
9 around the world about the evidentiary burden we're  
10 seeking to impose as well and the way we're  
11 complicating cases. Competition policy -- I was very  
12 taken by Han Li's point that competition is very  
13 technical, economic and legal, and consumer is not.  
14 Our consumer and competition staff are one. They  
15 melded into one and they both -- they're all basically  
16 economists and lawyers, we've got a few ring-ins.

17 But the point I want to make is we do  
18 complicate competition cases and we do sometimes put  
19 on a very large evidentiary burden on them. We've  
20 just taken a case in Australia where the New South  
21 Wales State Government put in place a system to  
22 penalize, so they sold two ports to the one player,  
23 which is a bad idea in the first place, and they put  
24 penalties on the third potential port which was sold  
25 to somebody else so it couldn't compete with the

1 ports they had sold. That's a case we took with great  
2 -- glee is the wrong word, but enthusiasm is the right  
3 word, and, of course, we were not there spending a  
4 second trying to work out what the harm to consumers  
5 are. It is patently self-evident that there is harm  
6 to the competitive process and we took it on that  
7 basis.

8 So I just want to make sure we're not  
9 overcomplicating. As we promote the consumer welfare  
10 standard, don't make it so technical no one wants to  
11 touch it.

12 MR. TRITELL: Great.

13 Eduardo, would you like to come in on the  
14 convergence point?

15 MR. MOTTA: Yes. Well, let me just put that  
16 question in kind of a likely different background  
17 which has to do with the role of the FTC today with  
18 respect to international organizations. What's the  
19 way or how I would like to see the FTC role at this  
20 time, I mean, I go very much in line with what Rod  
21 said. I think advocacy is a key element. Advocacy --  
22 even though the agencies -- the competition agencies  
23 are very much in -- they have the obligation to apply  
24 the law and to enforce the law, they have a broader  
25 obligation also to praise and to advocate for

1 efficient markets. And, today, that is something that  
2 is at risk internationally.

3           The role of the FTC, as an advocate, a long  
4 time ago -- well, not so long time ago, but it was  
5 when the ICN was created -- and the grandfather of the  
6 ICN was just present here -- it was precisely to  
7 advocate for that internationally, to advocate for  
8 efficient market-oriented policies through the  
9 application of competition and enforcement of  
10 competition law.

11           We are now living in a very difficult  
12 reality internationally that puts at risk the  
13 consideration of market policies and market efficient  
14 -- the promotion of market efficient policies. So I  
15 think this is the good moment to think about what  
16 should be the next step for the ICN and what could be  
17 the role of agencies like the FTC, like the DOJ or  
18 even the European DG Comp in this area.

19           I think as they had this important role a  
20 few years ago with respect -- in the creation of the  
21 ICN, I think this is a good moment to think what  
22 should be the next step for the ICN. In my view, the  
23 next step for the ICN or the next reflection has to go  
24 in line of a creation of an organization, more  
25 formally a national organization, in order to keep

1 promoting markets to be efficient.

2 And I think the FTC is in this important  
3 historic moment to take a decision of how to move  
4 forward. If it's needed, if it's useful to think of  
5 an international organization with a permanent  
6 secretariat to defend the market-oriented policies,  
7 how to do it, how the jurisdictions and the countries  
8 that want to be part of that should be joining, what  
9 kind of conditions should be designed in order to do  
10 that.

11 MR. TRITELL: Well, thanks, Eduardo. You  
12 left us still a little bit in suspense about next  
13 steps and I know that you have a strong background as  
14 well in the trade world from your days in the WTO, and  
15 I may come back to you to see if you think the ICN's  
16 "all antitrust all the time" motto is still apt in  
17 today's world or we ought to be looking more broadly  
18 at intersections with other such policies.

19 But, now, let me come back to Bojana to ask  
20 how you think this convergence idea or agenda might  
21 play out. Is it relevant in the world of privacy  
22 authorities? And I would like to interject into that  
23 a question from our audience, which is what do you  
24 think is the greatest obstacle or the obstacles to  
25 privacy agencies collaborating on best practices and

1 guidelines, especially between the United States and  
2 the European Union, and how can we overcome those  
3 obstacles?

4 MS. BELLAMY: Million dollar questions. If  
5 only I knew this, whoever asked me that, I think we  
6 would be very rich and we would solve all the  
7 problems. But, seriously, it's a bit of a loaded  
8 question, right, because we assume there are some  
9 obstacles, and whoever has asked me, I think there  
10 have been some obstacles and maybe, maybe some people  
11 would say there's been a little bit of erosion of  
12 trust between regulators in the EU and here on this  
13 side of Atlantic.

14 Some people also may say there's been a bit  
15 of -- we have different philosophies and, therefore,  
16 we cannot focus on these differences as opposed to  
17 something else. But I would like to be a little bit  
18 more optimistic and I actually think there is a path  
19 forward.

20 So first of all, there have been great  
21 examples of this kind of bridging and collaboration  
22 between EU authorities and the FTC in the context of  
23 Privacy Shield. FTC has been a phenomenal not only  
24 supporter, but a knight with a shield using the shield  
25 really in the way that it is supposed to be used and

1 has hugely contributed to acceptance of Privacy Shield  
2 as a proper transfer mechanism. For those of you who  
3 are privacy geeks here, you know what I'm talking  
4 about.

5           There's been a great collaboration between  
6 some of the regulators in the EU and FTC through GPEN,  
7 Global Privacy Enforcement Network. I think that that  
8 shows that things can be done together. There are a  
9 number of memoranda of understanding, as I understand,  
10 between individual agencies in the EU and FTC. So  
11 there are lots of these things that actually have  
12 worked already.

13           Now, how do we move forward? I think there  
14 is more that brings us together than actually pulls us  
15 apart, and we have to both, on both sides of the  
16 Atlantic, just like the privacy bridge project was  
17 about, it was about finding an adapter. Like when I  
18 come here -- and I really get annoyed with English  
19 plugs. I hate English plugs. And we've got  
20 continental plugs and British plugs and we've got  
21 American plugs. But we have to have -- I want  
22 electricity, but all these different plugs. So that's  
23 what we need to find.

24           We need to find some plugs in between so  
25 that we can live with these differences and we can

1 translate what we talk together. And that means  
2 respecting each other's philosophies and backgrounds  
3 and constitutional frameworks. It doesn't mean  
4 imposing European values on the US. And, in fact, I'm  
5 really emboldened by the European Court of Justice  
6 Attorney General opinion on the case, which actually  
7 relates to whether the right to be forgotten should  
8 now be expanded globally at Google.com and, you know,  
9 everywhere, including the US.

10 Well, frankly, that would bring a huge crash  
11 of cultures and constitutional frameworks of First  
12 Amendment versus privacy, and that's not what we want.  
13 And the attorney general has very cautiously kind of  
14 said, well, there has to be a limit to how far we can  
15 apply these rules, even though it's a fundamental  
16 right to data protection. So I hope the court is  
17 going to uphold that.

18 And I think it is important that we, in  
19 Europe, do not believe that our way is the only way  
20 and I think we must be also humble to take on some of  
21 the US best examples. But then the US also, we've got  
22 expectations, the US federal privacy debate is going  
23 to sort of stir up and come up with perhaps some new  
24 ways of dealing with some of these issues. So I think  
25 building on that respect for differences, but also

1 what brings us together is really a good way forward.  
2 I talked about some of the joint policy initiatives.  
3 I really think this would be a great way to bring us  
4 together. Think about facial recognition or  
5 blockchain or machine learning or Internet of Things,  
6 drones, all of that would be amazing.

7           For example, a case study to bring us to  
8 work on something which is proactive, which isn't kind  
9 of reactive, confrontational, adversarial, but  
10 actually we're creating something better for the world  
11 ahead. Of course, cooperation and enforcement is  
12 important and I think, as some in Europe, do not  
13 believe any of the complaints end up in the right  
14 hands. I think that's where the FTC can also help and  
15 ensure that the EU-led complaints that are sent to the  
16 US actually get heard properly and get enforced  
17 potentially or there is a feedback loop back. I think  
18 that would be helpful as well.

19           And then the final point I would like to  
20 add, which is something around -- more around, as  
21 Eduardo has said, about the leadership role of FTC. I  
22 really think actually FTC has got something to teach  
23 other regulators just because of its breadth and sort  
24 of experience in being a tough enforcer. Those of you  
25 who were in privacy for many years used to remember --



1 people used to say -- Europeans used to say, if only  
2 we had the FTC enforcement in the European law that  
3 would be the best combination.

4 So we always looked up to FTC as to how they  
5 enforce the law, how they manage, and I think that's  
6 something that FTC can really take on a great role,  
7 particularly with European regulators, who now have  
8 got similar enforcement powers. But, frankly, and I  
9 apologize, I know it's going to be online, they don't  
10 have the know-how, how to actually use these powers in  
11 the best way.

12 We've seen some Draconian enforcement in the  
13 EU without proper due diligence, without proper  
14 process, without proper transparency and proper  
15 lessons learned why that fine has been applied in this  
16 way and why it hasn't been applied that way. And I  
17 think this is something, Rod, I think you slightly  
18 talked about that. That is where I think FTC can help  
19 also, frankly, technically bring the other regulators  
20 a little bit up to higher level simply because of its  
21 standing and experience in enforcement.

22 MR. TRITELL: Thank you. I think we have a  
23 wonderful example how your questions can really  
24 stimulate the panel.

25 (Laughter.)

1 MR. TRITELL: So feel free, please, to find  
2 those cards and send them up here and enhance the  
3 show.

4 So we're talking about conversions and joint  
5 projects of an exciting nature. One way to  
6 potentially move those forward is through the vehicles  
7 of international organizations. Our hearings have  
8 touched many times on the OECD, ICN, ICPEN, we have  
9 UNCTAD, regional organizations like APAC, various  
10 privacy groups. There's a big menu of these venues,  
11 but resources are finite.

12 Let me ask where in surveying that spectrum  
13 do you think the FTC should allocate its resources and  
14 what should they seek to accomplish in some of these  
15 important international fora?

16 Rod?

17 MR. SIMS: Well, I wouldn't mind just --  
18 I'll answer that question, but it's just backing up to  
19 what --

20 MR. TRITELL: Or come back to any other  
21 point, please.

22 MR. SIMS: Well, what Bojana just said, the  
23 -- we notice this quite a lot in our consumer work  
24 because we are a consumer and a competition regulator,  
25 and because most of our staff do both competition and

1 consumer work, we don't separate them out. I think  
2 we're fairly unique in that. But it just strengthens  
3 that process, that know-how in competition, which  
4 you've got to have to be in the game.

5           When you translate that into consumer work,  
6 it's just so immensely powerful. I think, on average,  
7 we would take larger companies to court for breaches  
8 of consumer law than we do for competition law. We've  
9 recently taken Ford, Hines, Apple to court for  
10 breaches of our consumer law. We've got large fines.  
11 Perhaps the biggest development in Australia is we've  
12 just convinced the government, under the heading of  
13 advocacy, to align the penalties for breaches of  
14 competition law and consumer law. So now the  
15 penalties will be the same. Previously, the penalties  
16 were much lower for consumer law, which is a terrible  
17 thing.

18           The harm you can do through misleading  
19 consumers is visibly as bad as it can be from cartels.  
20 There is just no doubt about that. I can give you  
21 numerous examples. So I just want to back up that  
22 point, that the strength of being the regulator that  
23 does a number of things is important. I guess it  
24 leads into my point that I think ICPEN is the  
25 organization that perhaps needs that extra bit of

1 work, whether it's capacity building with new  
2 jurisdictions, whether it's more coordinated action  
3 amongst the members, whether it's common approaches  
4 and practices, but really just raising up the profile  
5 of consumer work.

6 I have to say I continually get irritated  
7 when I'm at international meetings, you get the sense  
8 that competition work is held to be in some way  
9 superior to consumer work. That is complete rubbish.  
10 They are equally important. If you want your market  
11 economy to work for the benefit of consumers, you need  
12 effective competition law and you need effective  
13 consumer law. They can both equally do great harm.  
14 And so I just think we've got to raise it up.

15 MR. TRITELL: I think you have a sub  
16 silentio round of applause in the room there, Rod.

17 (Laughter.)

18 MR. TRITELL: Not to mention from Bojana who  
19 mentioned privacy --

20 MS. BELLAMY: And privacy as well. So we --

21 MR. TRITELL: -- which we think of as part  
22 of our consumer protection.

23 MR. SIMS: I can't talk about privacy,  
24 but --

25 MS. BELLAMY: The three-headed Medusa. It's

1 the three heads, right?

2 MR. SIMS: But I would happily push it to  
3 privacy, absolutely. Well, the same point applies and  
4 it was Bojana's point that got me in there. The same  
5 point applies.

6 MR. TRITELL: Would anybody else like to  
7 come in on where we should focus our efforts in the  
8 international organizations.

9 Eduardo, you talked about maybe we ought to  
10 be going to the next step. So if you'd like to  
11 elaborate on that.

12 MR. MOTTA: Well, yes. I could, in a very  
13 general way, elaborate a little bit more on that. Let  
14 me first -- let me start with the main features of the  
15 ICN. The main features of the ICN, in my view, is  
16 that it's a soft law organization, it's a consensus  
17 organization. It's a consensus organization. That  
18 goes very much in line with what happens in the WTO.  
19 It could be risky, but that's the reality.

20 It's a beautiful system, organization, it's  
21 a beautiful network. It uses, very efficiently, the  
22 communication technologies and so on. And the main  
23 products that are created by the ICN are this best  
24 international practices standards, practical guides  
25 and toolkits, and they organize workshops for members.

1 I mean, that's in a very general and a schematic way.

2 Well, the first question is that has been,  
3 in my view, the ICN has been one of the most efficient  
4 networks I have ever seen, international networks that  
5 I have ever seen. When I compare how the ICN was  
6 created and what was the situation in the context of  
7 the WTO discussion on trade and competition, which was  
8 one of the elements that provoked the creation of the  
9 ICN, and if you see that, that was 2001 more or less  
10 -- I think it was 2001 with 15 members in the ICN.  
11 Today, they have more than 114 members.

12 In 2001, the WTO was working generally well.  
13 We were in the middle -- in the start of a new round,  
14 the Doha Round. At that time, the ICN was created and  
15 the ICN has been much more effective, frankly, than  
16 organizations like the WTO.

17 But my point here is that the international  
18 context in which we are living is highly complicated.  
19 I mean, there are a lot of nationalistic pressures,  
20 national champions, pressure from different countries,  
21 developed and developing countries at the same time.  
22 That has become, I would say, a more systemic, risky  
23 problem for markets. And that doesn't mean -- I mean,  
24 the most important elements is how to show that  
25 markets in a competition scenery is one of the most

1 important instruments you have in order to create not  
2 only efficiency in your economy, but also equality of  
3 opportunities for economic players, for economic  
4 agents, but also at the same time a quality of  
5 opportunities for consumers.

6           So in that situation is where I think it is  
7 needed to give an additional impulse to an  
8 international organization like -- or an international  
9 network like the ICN. And maybe -- I mean, I'm  
10 basically suggesting to reflect on the possibility to  
11 create a new organization, a new international  
12 organization of -- this could be consumer and  
13 competition agencies. And that should be a more -- in  
14 my view, should be a more formal organization in order  
15 to generate an international pressure for the  
16 evaluation and valuation of the importance of markets  
17 in that context, in the context of competition.

18           So to think about the possibility of having  
19 a formal and permanent secretariat, that makes a  
20 difference because today what you have is the members  
21 are the secretariat itself. So it's difficult to  
22 differentiate what a jurisdiction is saying or what  
23 the organization is saying because the word is the  
24 same. So in my view, you need someone that is more  
25 independent than the agencies in order to advocate for

1 competition in different jurisdictions.

2 It has to be a product, in my view, from an  
3 international agreement with some cooperation  
4 mechanism, but also some monetary mechanism. That's  
5 the most -- I mean, this is a difficult task. I'm not  
6 saying that it is not. It's a real challenge. But,  
7 frankly, what we are living internationally is a  
8 challenge itself today.

9 Sorry for taking --

10 MR. TRITELL: No, no, a lot of food for our  
11 continued thought.

12 Andy, from the OECD perspective, what role  
13 can you see from the OECD and how can the FTC  
14 effectively engage within the OECD, for example, in  
15 the consumer committee or in the privacy activities of  
16 the organization?

17 MR. WYCKOFF: I'll touch on that in just one  
18 second. Eduardo provokes me because my part of the  
19 OECD has done a lot on telecom dereg, particularly in  
20 Mexico. Here's maybe an example we can begin to think  
21 about because we did something in 2012. It helped  
22 inform the decisions in the regulatory reform that  
23 went on in creating an independent regulator even  
24 then. We followed up in 2017 and looked at  
25 implementation. What really went on? And that's now



1 become a lessons learned that the rest of the region  
2 now is beginning to look at. So I think there's a  
3 model for what he's saying.

4 The FTC -- I speak under the Chair here of  
5 my Consumer Policy Committee, Hugh Stevenson, already  
6 plays a huge leadership role at the OECD. There's two  
7 areas if I had to put on my Christmas list from FTC,  
8 where I would like to see them push. One is on this  
9 evidence base that many people have talked about. We  
10 love statistics at the OECD and comparative --

11 MS. BELLAMY: Data.

12 MR. WYCKOFF: Data. Comparative indicators,  
13 and can we begin to look at things as we get, for  
14 example, like data breach laws from around the world.  
15 Can we begin to compare these and get some -- it may  
16 not be apples to apples, but at least fruit to fruit  
17 to look at.

18 The other is really leadership work that  
19 happened in 2010 again led by the FTC on our consumer  
20 policy toolkit. I think they began to open the  
21 thinking on both behavioral economics and the  
22 informational economics, which I think is important.  
23 And following up on that -- and we've begun to do some  
24 work on consumer attitudes towards trust. It goes to  
25 what people are saying. It may not be such big

1 differences as people think, but also doing some more  
2 experimental work, such as on personalized pricing,  
3 which we're beginning to see proliferate in many  
4 different areas. These are areas where I think  
5 there's a lot of international interest and where the  
6 FTC could play a leading role.

7 MR. TRITELL: Well, leading right into our  
8 next topic, which is the FTC's leadership role, I  
9 think that there was a point in time when the FTC had  
10 so much longer and deeper experience in some of these  
11 areas that it was a default and natural leader. Now,  
12 we live in a very multipolar world in all of these  
13 disciplines, and it prompts me to wonder what does it  
14 mean to be a leader in this environment. Is it  
15 important for the FTC to be perceived as and to be a  
16 thought and policy leader? If so, how can the FTC  
17 exercise effective leadership internationally,  
18 including on emerging issues and with agencies that  
19 operate in very different environments?

20 So let me just run down the table for  
21 anybody who would like to offer thoughts on this study  
22 with Bojana.

23 MS. BELLAMY: Yeah, sure. So I've got a  
24 very long wish list, which I will submit in writing  
25 probably to my friends at FTC. But, Andy, to continue

1 where you kind of stopped, I would really love the FTC  
2 -- I think there is some leadership vacuum first, let  
3 me say, in the privacy regulatory community at the  
4 moment, and I think FTC would be very well placed to  
5 fill that vacuum, together with some other across the  
6 world are kind of wanting to seek that new leadership  
7 role.

8           So one area where I would like to see some  
9 work would be in the area of fairness, fair  
10 processing, fairness and unfairness, you know. In the  
11 majority of data privacy laws we have requirements  
12 with fair processing, yet nobody knows what it means.  
13 Yet here, FTC statute and work is based on unfair  
14 trade practices. There is unfairness methodology that  
15 FTC can teach us a lot in this world of AI and machine  
16 learning as to what creates harms to consumers, what  
17 and how do we measure that and how we, as  
18 organizations, think what is fair and what is not  
19 fair.

20           I think this will be a great opportunity not  
21 just for bilateral, multilateral regulatory  
22 corporation, but together with the organizations who  
23 are implementing this in the practice as well. FTC  
24 anonymization test, again for those of you in the  
25 privacy geek community is still standing the test of

1 time where frankly everybody else says there's no such  
2 things as anonymous data because everything about me  
3 doesn't matter. If you know who I am, but you know  
4 everything about me, that's good enough to identify  
5 me. Well, I think FTC has done some really great  
6 thinking in the past and we need to revive that  
7 leadership and kind of, again, convergence with some  
8 others.

9 Risk-based approach to regulation and  
10 enforcement and investigation is something that I  
11 think FTC again is best placed to teach the rest of  
12 the world. We live in a world where data is  
13 everywhere. Every company, to your point, is today a  
14 data company, Rod. I mean, I keep hearing this from  
15 manufacturing companies to financial companies who say  
16 we are data and tech companies today. So in that  
17 world, we really need different ways of approaching  
18 that.

19 And then a final point, I would like to say  
20 that this whole topic of incentivizing what good looks  
21 like and rewarding good behaviors, I think there is  
22 something about that that we need to exploit more.  
23 I've been head of privacy for a huge multinational  
24 company for 12 years, and trust me, when we got good  
25 praises from a regulator, that gave me a bigger

1 budget, that gave me more standing internally, that  
2 got me to speak to the CEO and the board much quicker  
3 than any penalty and any fine did.

4 I think realizing what motivates companies  
5 and motivates people to behave well and be good  
6 corporate citizens in this new interconnected world, I  
7 think there is work to be done there. And I do  
8 remember FTC consent decrees that I have read as I was  
9 a practitioner, every single consent decree said to  
10 me, here is how they reward companies who actually do  
11 something while in privacy. That's what DOJ said.  
12 Data -- I think somebody mentioned before, that's  
13 what the SEC does, that's what US sentencing  
14 guidelines do.

15 So I kind of feel there is this US body of  
16 work and it's not even -- it's legal background and  
17 framework that actually exists and can teach the rest  
18 of the world how to use those incentives and rewards  
19 for compliance in this new world where I think this  
20 will be particularly useful.

21 MR. TRITELL: Thank you.

22 So as we go down the table and as I see the  
23 hourglass time running low, thoughts on FTC leadership  
24 and any other closing thoughts you'd like to include  
25 in about a minute and a half each.

1 Terry?

2 MR. CALVANI: A minute and a half. Okay.  
3 On the perception issue, you can go to Google and you  
4 can find a gazillion people, not a gazillion, but a  
5 large number of people that say that the US agencies  
6 have failed to export the US view of competition law  
7 and policy around the world. And I think, in some  
8 sense, that's a red herring.

9 If you had asked yourself, have they been  
10 successful in selling the treaty, absolutely. One  
11 would expect them to be. I mean, the treaty you just  
12 -- in Ireland, we just go Xerox Articles 101 and 102.  
13 It's really easy to do. If you wanted to Xerox the  
14 US, what in God's name would you do to do that? The  
15 Section 1 of the Sherman Act is not very helpful.  
16 It's a common law -- judge-made common law that we  
17 have for competition law in the United States. It's  
18 not a user-friendly exportable commodity.

19 The same thing is true on the process side.  
20 Our legal process side is firmly grounded in the  
21 adversarial process that we took from England where  
22 the agencies, generally speaking, stand in the  
23 position of the crown as a party plaintiff before the  
24 courts. And it's obviously a hell of a lot easier to  
25 sell the administrative process to jurisdictions who

1     owe their history to the continental system.

2                     So I don't find the fact that Article 101  
3     and 102 have been adopted around the world, I'd be  
4     surprised if it hadn't been. I don't find it  
5     bothersome that an adjudicative administrative program  
6     has been adopted and the adversarial process hasn't.  
7     I would be surprised if it were otherwise. I think  
8     the agency has been very successful in focusing on  
9     discrete and important topics.

10                    We may have duplicated Article 101 and 102  
11    in Ireland, but when it came time to look at our  
12    merger guidelines, we basically -- I guess we're being  
13    filmed here -- we basically Xeroxed the US guidelines  
14    and tinkered with it a bit to make sure it fit our  
15    system. So I think the perception, sometimes this is  
16    a bit of a red herring. We've got to ask really what  
17    are we talking about.

18                    MR. TRITELL: Eduardo, what are we really  
19    talking about?

20                    (Laughter.)

21                    MR. MOTTA: Well, I coincide with Terry. I  
22    mean, the legal system makes a major difference. But  
23    let me tell you in the case of Mexico. We frankly  
24    used the -- I mean, when we started the negotiations  
25    of NAFTA, we didn't have competition law at all. That

1 was a little bit more than 25 years ago. There was  
2 not a competition law in Mexico. And we basically  
3 used, with the help of the OECD, we basically used the  
4 model of the FTC. So that's what we did.

5 So an element of leadership could be in very  
6 specific elements, like -- I mean, we have an  
7 administrative legal system, a completely different  
8 legal system than the US, but we basically use the  
9 same design of the FTC and that has been useful. We  
10 basically use the knowledge -- the human capital from  
11 the FTC. I remember the FTC helping the Mexican  
12 authority to communicate with our judges. We created  
13 a very important human capital in Mexico in the  
14 judiciary to judge the decisions of the competition  
15 authority. That was basically, even though the legal  
16 system was completely different, that was an example  
17 of how you could apply the knowledge of the markets,  
18 the knowledge of the competition enforcement in  
19 general itself. And it goes beyond the legal system.

20 MR. TRITELL: Rod?

21 MR. SIMS: In the interest of time, I'm  
22 actually going to junk what I was going to say and  
23 just I want to reinforce some of the things that  
24 Bojana said. I think it's an extremely good idea for  
25 the FTC to exercise leadership in the data field,



1 given it is the competition, the consumer and the  
2 privacy regulator. That is a fantastic combination.  
3 I had never met our privacy regulator in Australia. I  
4 didn't know where they were. I didn't know who they  
5 were until we did our digital platform inquiry, and  
6 then I finally located them. They're in the same  
7 building I work in in Sydney.

8 (Laughter.)

9 MR. SIMS: But I didn't know.

10 MS. BELLAMY: Oh, no. You met them in the  
11 lift.

12 MR. SIMS: Sort of, yes.

13 (Laughter.)

14 MR. SIMS: So the fact that you're already  
15 at one I think is something that can be worked on.  
16 And I also want to support the consent of unfairness  
17 in our digital platform inquiry. We are completely  
18 looking to the US on that, not just the way the law is  
19 done, but the way it's administered. If we were to  
20 press for such a law, we would try and completely copy  
21 the way the US is doing it.

22 MR. TRITELL: Andy, last word?

23 MR. WYCKOFF: I'll pull a trick from Rod and  
24 actually build on a comment he made earlier. I think  
25 after basically 40 years of regulatory reform and then

1 our economy's becoming more digitally based on the  
2 internet, which it really empowers the end user in a  
3 way we hadn't seen before, that the importance of  
4 consumer policy needs to be underscored. I completely  
5 agree, but I don't see it in many countries or at the  
6 OECD for that matter. And so giving greater weight to  
7 that and what that means, because we rely on them to  
8 make markets in a way that we didn't 50 years ago.

9 MR. TRITTELL: One second left. Bingo.

10 Thank you. I will go over our time to thank  
11 you for an extraordinarily informative and interesting  
12 and fun discussion. Thank you all so much.

13 Please join me in recognizing our wonderful  
14 panel in this discussion.

15 (Applause.)

16 MR. TRITTELL: And if you would stay where  
17 you are, we're just going to have a few concluding  
18 remarks to wrap up our hearings. Time has flown. Our  
19 panel time has flown, our two days have flown.  
20 They've been an extraordinary couple days. We had  
21 high expectations. From my point of view they have  
22 been roundly exceeded throughout the program. We've  
23 had an extremely rich dialogue on the key issues that  
24 the FTC faces today and those that will confront the  
25 agency in the international aspect of our work, which

1 will continue to play an increasingly important role  
2 as we seek to fulfill our consumer protection privacy  
3 and competition missions.

4 None of this would, of course, have been  
5 possible without a truly extraordinary amount and  
6 quantity of work by a huge number of people. So allow  
7 me a moment to offer a few words of thank.

8 First of all to Chairman Simons, joined by  
9 our Commissioners, for conceiving these hearings and  
10 supporting this hearing on international issues; to  
11 the FTC staff far too numerous to name, especially  
12 from all my colleagues in the Office of International  
13 Affairs; to Bilal Sayyed and his team from the Office  
14 of Policy Planning, who have run this and all the  
15 other hearings; from the amazing group from my Office  
16 of the Executive Director working mainly behind the  
17 scenes whom you may have seen, though, at the back of  
18 this room and outside this room, who not only made  
19 this happen, but ensured that our program transpired  
20 extremely seamlessly and professionally, thank you,  
21 thank you.

22 To our panel moderators from the Office of  
23 International Affairs, plus Ellen Connelly from OPP,  
24 and to our faculty who came from around the world in  
25 some cases just for this hearing. Thank you for

1 making the time and for all the preparation and  
2 thought that went into making these panels so  
3 productive and insightful.

4 We've learned so much from these sessions  
5 and that learning will greatly inform our thinking and  
6 the FTC's priorities and policies as we prepare for  
7 the challenges of the coming years and decades.

8 Thanks as well to our audience and our  
9 stakeholders whose views we welcome at all times and  
10 especially in comments that we encourage you to submit  
11 by the end of May as part of our hearings record.

12 That concludes our 11th session of the FTC  
13 Hearings on Competition and Consumer Protection in the  
14 21st Century. Please join us for our future hearings,  
15 including our 12th hearing, which will focus on the  
16 FTC's approach to consumer privacy, which will take  
17 place at our Constitution Center in Washington on  
18 April 9th and 10th.

19 We look forward to working with you in  
20 furtherance of the FTC's critical missions of  
21 maintaining competition and protecting consumers.

22 Thank you very much.

23 (Applause.)

24 (At 4:40 p.m., the hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, Linda Metcalf, do hereby certify that the foregoing proceedings were digitally recorded by me and reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, not financially or otherwise interested in the outcome in the action.

s/Linda Metcalf  
LINDA METCALF, CER  
Court Reporter