***International and Crossborder Coordination and Collaboration***
**Remarks at the United States-Mexico Chamber of Commerce**
**Mid-Atlantic Chapter – March 10, 2016**

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

As Chairwoman Ramirez noted last year at a meeting organized by COFECE and attended by officials from Canada and Mexico—including President Palacios—the need to cooperate across borders increases every year. In the last year alone, the FTC cooperated with international counterpart agencies on 35 cases of mutual concern, both conduct and merger cases. We welcome the expanding need for cooperation because it reflects the growing number of countries around the world that have recognized that sound competition policy can deliver benefits to innovation, economic development and consumer welfare.

In the United States, we have had over one hundred years of experience with antitrust enforcement. Given this long history, we believe in the importance of free markets and vigorous competition as a core part of our country's economic culture. Moreover, we have an established process for enforcing our competition laws. As a result, companies doing business in the United States know the competition standards the FTC applies when making enforcement decisions and how our process works.

Why is it so important to have predictable and transparent competition enforcement? Because strong competition laws and policies foster competitive, dynamic markets that benefit consumers through lower prices, better quality goods and services, and more choices. Businesses also benefit from strong competition enforcement. When firms compete on the merits – in markets unencumbered by anticompetitive conduct or state-sanctioned-monopolies – businesses can reap the rewards of their efforts. They gain customers by offering products consumers want, and they have the incentive to innovate and become more efficient.

There are studies that support this view. For instance, the McKinsey Global Institute, led by William Lewis, undertook a twelve-year study of the economic performance of thirteen nations, seeking to understand what makes some countries rich and other countries poor. The study showed that levels of productivity made the difference. That, by itself, should not be surprising. But what caused the difference in productivity levels? The answer proved to be undistorted competition. Mr. Lewis wrote that “[m]ost economic analysis ends up attributing most of the differences in economic performance to differences in labor and capital markets. This conclusion is incorrect. Differences in competition in product markets are much more important.”

Competition also has significant implications for competitiveness. Michael Porter, in his seminal work on the competitiveness of nations, famously stated: “Firms that do not have to compete at home rarely succeed abroad.” This should be intuitively obvious. International soccer champions do not win internationally by sheltering themselves from tough opponents. They play and beat the best at home, and then do the same abroad. It works the same way in international commerce.

If competition laws are lax or not enforced, the benefits of competition are lost. When firms are permitted to act alone or in concert with others to prevent competition, not only are consumers harmed, so are businesses. That is because anticompetitive conduct often targets emerging or potential new rivals. If not addressed through competition law, such conduct can protect inefficient firms from innovative and low-cost rivals. Evidence-based enforcement of competition standards helps eliminate barriers to competition that can open up new opportunities for businesses that want to grow. Without rules to prevent unfair competition, both consumers and businesses suffer, and opportunities for economic growth and productivity are lost.

Although I am no expert in Mexican competition law, I understand that recent reforms have strengthened Mexico's system of enforcement, and that early efforts have benefitted competition in telecommunications, pharmaceuticals, and the energy sector.

Now that I've explained why it's important to have a strong culture of competition in country, the next issue I address is the benefits of cooperation between countries that share a commitment to competition law enforcement. From the U.S. perspective, when more countries began adopting competition laws and set up their own competition enforcement agencies, it became clear that there needed to be a mechanism to minimize conflicts and for the agencies to work together on enforcement, policy development, and training. Policy cooperation occurs at a high level through negotiated relationships and transnational organizations such as the OECD and the International Competition Network. That work is important, but today, I'm going to talk about enforcement cooperation, which is the case work that my Bureau—the Bureau of

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

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

The main risk for the merging businesses occurs when different enforcers impose conflicting remedies.  In our experience, the risk of inconsistent outcomes can be reduced by communicating with other competition authorities from the very early stages of the investigations.  Communicating with staff in other reviewing jurisdictions has become standard practice in merger reviews involving multinational companies. This dialogue may include participating in joint conference calls with the merging companies or with third parties, discussing the industry context and background, comparing substantive approaches to market definition or competitive effects, sharing and discussing documents and other information obtained from merging parties or from third parties, as well as coordinating on merger remedies.

Cross-border cooperation is greatly aided by international waivers of confidentiality from companies under investigation. The FTC encourages all parties to investigations that involve non-U.S. competition authorities to consider granting a waiver of confidentiality restrictions.  Waivers enable more complete communication and coordination among the competition agencies, which expedites the review and leads to well informed, consistent decisions—for all the competition enforcers. Without these waivers, FTC staff cannot share confidential information with non-U.S. competition authorities also reviewing the merger or conduct. We can have discussions about information that is publicly available, and share staff views on different elements of competition analysis, such as market definitions, competitive effects, and possible remedies. When investigative information is shared, the receiving agency will protect its confidentiality in accordance with its own statutes and rules. The FTC and the U.S. Department of Justice have developed a Model Waiver, which is posted on the FTC website if you'd like to learn more about waivers.

I would also say that the earlier cooperation begins, the better the outcome. This is true in any merger investigation—whether you're talking about conversations with the merging parties or conversations with enforcers in other countries. In my experience—and I counseled clients in merger investigations for many years in private practice—merger review will proceed more quickly and with fewer misunderstandings if you engage early on the critical issues. This is the way we approach merger review at the FTC. We reach out to the merging parties for information as soon as we can, oftentimes even before they make a merger filing. We also reach out to competition authorities in other countries to establish contact, and this can occur early on as well.

Here's an example of how cooperation works in practice, involving the recent merger of two global auto parts makers. Last year, ZF Fredrichshafen AG proposed to buy TRW Automotive Holdings. Both companies manufactured a wide variety of car and truck components, such as chassis, powertrains, and suspension systems and had production facilities located throughout the United States, Canada and Mexico. In our review, we cooperated with COFECE, the Canadian Competition Bureau, and the

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

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

Another example from last year highlights a different issue that is more likely to occur in markets where there are substantial cross-border sales. The case involved the proposed $25 billion merger of cement manufacturers Holcim Ltd and Lafarge SA. Before the merger, Holcim was a vertically integrated global supplier of building materials based in Switzerland. Lafarge was based in France, and sold many of the same products, including cement. The combined company would have operations in 90 countries and sales of $35 billion worldwide. Early on, we were in contact with our counterparts at the Canadian Competition Bureau and DG-Comp of the European Commission. The FTC's investigation revealed that because cement products are heavy and relatively cheap, transportation costs limit their markets to local or regional areas. In addition, we determined that there is significant cross-border trade in cement with sources in Canada supplying customers in U.S. border states, and vice versa.

After an extensive investigation, the Commission concluded that the merger was likely to harm competition in 12 U.S. regional markets for portland cement, an essential ingredient in making concrete, and in two U.S. regional markets for slag cement, a specialty cement used in certain building applications. The FTC remedy required divestitures of specific plants and terminals in both the US and Canada. The Canadian Competition Bureau also determined that the merger would cause harm to Canadian customers. To resolve those concerns, the companies entered into an agreement with Canada requiring divestitures of a larger group of Holcim assets, most of which were located in Canada but included some facilities in the United States. The FTC's order and the CCB's order were compatible because our asset package was a subset of what was required to be divested by Canada. In addition, although most of the U.S. divestitures were made to upfront buyers, we were willing to accommodate the Canadian authority in the timing of their divestitures. We allowed the assets that were included in the Canadian package to be sold after the FTC order was entered, subject to a hold separate agreement and with the FTC's approval of the post-order buyer.

The Holcim/Lafarge case is an excellent example of how cooperation allows each country to prevent mergers that are likely to cause harm to its consumers and businesses while at the same time avoiding an outcome in which one country's remedy undermines another's. It also illustrates how cooperation benefits the merging companies, who can get to a final decision in all the reviewing countries when the enforcers are flexible and have established procedures to obtain an effective remedy.

**FTC Nonmerger Enforcement**

Now I'm going to talk about a few recent FTC competition cases involving anticompetitive conduct. Although there are fewer conduct investigations that include cooperation with international enforcement agencies, I wanted to share my perspective on the FTC's non-merger enforcement. While not every company will undertake a merger, all companies that operate in the United States need to be aware of how the U.S. antitrust laws apply to their operations, both when they act in concert with others and when they act alone.

In general, the FTC seeks to identify conduct that interferes with the fundamental give-and-take of competition among rivals without offering countervailing benefits to consumers. We are not in the business of picking winners and losers; rather, we enforce the rules of fair and vigorous competition and when necessary, take action to stop harmful conduct and prevent it from happening again. Today, I'm going to focus on a few examples of anticompetitive conduct that may lead to a U.S. antitrust investigation and possibly an enforcement action.

Most businesses are aware of the rules against price-fixing. In the United States, agreements among competitors that directly set prices or restrict output are illegal, and may result in criminal charges. At the FTC, if we see evidence of explicit price fixing, we refer the investigation to the Department of Justice, which has sole authority to prosecute criminal violations of the U.S. antitrust laws. Other types of agreements among competitors may not rise to the level of criminal conduct, and yet can cause significant harm to consumers. Those are the types of cases that are the focus of the FTC's non-merger enforcement efforts.

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

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

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

Another area of potential antitrust concern is trade association activities. Most trade association activities are beneficial or pose no competitive issue. But forming a trade association does not shield joint activities from antitrust scrutiny. Agreements among competitors that restrain competition still violate the antitrust laws even if they are done through a trade association. That means that a code of ethics or membership rule that prevents members that are also competitors from competing vigorously with one another may raise antitrust concerns. We have taken action against a number of trade association rules that prevented competition between its members.

Another area of concern is the exchange of price or other sensitive business data among competitors. Especially when the data contains current prices or company-specific statistics, information exchange can raise antitrust concerns because it encourages more uniform prices than would otherwise exist. For instance, the FTC has used its authority to prevent “unfair methods of competition” to stop two competitors from exchanging extremely sensitive business information even though they were not large companies.

I understand that COFECE recently issued Guidelines on Information Exchange between Competitors. [I also understand that the Guidelines have been nominated for an Antitrust Writing Award for 2016, which is a significant accomplishment.] At the FTC, we believe that industry guidance is extremely helpful to businesses that want to comply with the law. By explaining not only what the rules are but also what motivates our competitive concerns, guidelines can be a cost-effective enforcement tool. If businesses understand what conduct is likely to raise antitrust concerns, they can avoid those risks, and competition occurs on the merits.

Now I’ll turn briefly to the topic of unilateral conduct. Under U.S. law, common business practices, if implemented unilaterally, that may affect competition are of concern only when a firm with a large market presence uses them. Take for example exclusive dealing contracts. Most contracts between companies at different levels of the supply chain are lawful because they improve competition. An exclusive contract between a manufacturer and a distributor can be beneficial for consumers because it reduces costs and promotes efficient distribution. However, when a firm has market power, exclusive dealing contracts may help that firm maintain its dominant position by preventing rivals from competing on the merits.

For instance, the FTC charged pipe-maker McWane with monopolizing US markets for pipe fittings through an exclusive dealing policy that raised rival's costs and unfairly excluded competitors. McWane was the largest U.S. supplier of ductile iron pipe fittings which are used in municipal water systems. After an administrative trial, the Commission found that while most demand for domestic fittings can be met with just a few commonly used sizes of pipe fittings, distributors need access to a full line of fittings in order to meet their customers' demands. When a new entrant tried to compete without having a full line of pipe fittings, McWane implemented a program that required distributors to buy a full-line of products from McWane. Distributors would not be able to buy any fittings from McWane if they bought some fittings from the new competitor. The Commission found that this program amounted to an exclusive dealing requirement that allowed the company to maintain its monopoly in the U.S. fittings market by preventing new competitors from contracting with distributors to supply customers with pipe.

To be clear, not all exclusive agreements—even those used by firms with a significant market presence—have the effect of limiting opportunities for new competitors. The factors that we look at include the percentage of the market foreclosed by the exclusive agreements, the length of the agreements, and the penalties associated with terminating the agreement. Like almost everything in competitive analysis, this is a highly fact-specific inquiry, and there are few bright lines.

**Competition Advocacy**

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

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

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

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

Here's a recent example, which involved anticompetitive regulations that made it more difficult for lower-cost health care practitioners to serve low-income patients.  In the United States, many rural or underserved areas face primary health care shortages. Physicians may be few and far between, and some patients may have trouble seeing a doctor or paying for a doctor's services.  Traditionally, nurses and doctors have worked together in many different ways, and nurses have been especially important in delivering health care to remote or underserved people.

In recent decades, many states have allowed nurse practitioners – nurses with advanced training – to provide basic health care services more independently.  Physician groups, however, have often opposed this type of independent practice, and some states have put limits on the ability nurse practitioners to do some of what they have been trained to do, or to practice at all without direct physician oversight.  For example, laws in a number of states prohibit these types of nurses from practicing unless they had first obtained a written "collaborative practice" agreement with a doctor.  This would give doctors the opportunity to block entry by nurses whom they might see as competitors, or deter entry by demanding high fees for such agreements.  Our staff has written to legislatures in many of these states supporting proposed laws that would remove or relax these requirements.

In cities all around the world, the taxi industry has advocated that regulations be used to erect obstacles for new entrants like Uber and Lyft.  The FTC has responded to such efforts by the taxi industry and we have urged regulators to weigh the competitive effects of any proposed restrictions. In so doing, we have emphasized that safety and other legitimate restrictions should be no broader than necessary to protect consumers. In this context, that could include rules requiring sufficient liability insurance and other important consumer protections.

This is an area in which Mexico has provided some welcome policy leadership. As I understand it, last summer COFECE advised policymakers in Mexico City to formally recognize transportation providers such as Uber and others who rely on mobile platforms to serve customers. Specifically, COFECE encouraged the adoption of a legal framework that protects passengers but does not impose unjustified restrictions on competition. This is exactly the type of approach we advocate for local authorities—an approach that accommodates new business models that consumers clearly like while establishing a framework to ensure that those companies operate safely. If that approach can work in Mexico City, why not elsewhere?

**Closing**

In closing, I would note that while the benefits of cooperation are clear, cooperation does not just happen. It takes a shared commitment to the benefits of competition and an established process that can improve outcomes in each country. Close relationships, like the one between the United States and Mexico, help each country promote competition and protect consumers at home without imposing undue burdens on the companies under investigation. I would mention that one of the benefits of this close relationship is getting to know competition enforcers working in other countries. Last year, it was my great pleasure to host Carlos Mena, my counterpart at COFECE. He spent several weeks with me in Washington, observing first-hand how the

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

Thank you for your time this morning.