



Federal Trade Commission

**Remarks of Deborah Platt Majoras
U.S. Federal Trade Commission Chairman**

National Champions: I Don't Even Think it Sounds Good

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I am pleased to be here and, in particular, to have the opportunity to honor my colleague, Ulf Böge, as he ends his tenure as the President of the Bundeskartellamt. Ulf has provided steady leadership not only to the Kartellamt, but also to the International Competition Network as Chairman of the Steering Group over the past couple of years. I thank you, Ulf, for your service, support, and friendship.

The title of our program is "National Champions; sounds good, but" The title of my talk is "National Champions: I Don't Even Think It Sounds Good." (Unless, of course, you are talking about a football team.) But for companies, the national champion concept is one whose time has come and gone.

Promoting and protecting domestic companies from foreign competition has likely been around as long as there have been governments. The temptation for businesses to seek and governments to grant protection from foreign competition can be overwhelming. As we all know, where benefits are concentrated and costs are diffuse, it is possible for narrow groups to

enrich themselves at the expense of consumers. Thus, it is not surprising that while the political issues and debates of our time come in many shapes and sizes, their central undercurrent often is whether a government will displace market competition to favor special interests.

By providing subsidies to or trade barriers for a domestic champion, and prohibiting foreign ownership, a country can certainly preserve the domestic firm far longer than it might survive in the market. What, however, does the country gain by such policies? Perhaps it protects domestic jobs, but only for those who work for the national champion. Maybe it gains a flagship company to showcase in foreign countries, but I question an economic policy that would place pride ahead of productivity. Most importantly, the evidence shows that any benefits to protecting national firms come at a substantial cost. One study suggests that if post-Uruguay Round trade barriers were removed, global wages would rise by \$1.9 trillion – including increases of \$512 billion in Europe and \$537 billion in the United States.¹

The fact is that competition in the domestic market, regardless of its origin, begets efficient, productive firms, which are better able to compete on global markets, which in turn increases economic growth and standards of living. Beginning in 1991, the McKinsey Global Institute undertook a twelve-year study to determine why some nations remain wealthy, while others remain poor even after years of international aid. In his book providing the results of the study, the Institute's founder, William Lewis, explained that, "economic progress depends on increasing productivity, which depends on undistorted competition. When government policies

¹ Secretary of the Treasury Henry M. Paulson, Address at the Confederation of British Industry Annual Conference (Nov. 28, 2006), *available at* <http://www.treas.gov/press/releases/p178.htm>.

limit competition . . . more efficient companies can't replace less efficient ones. Economic growth slows and nations remain poor.”²

The consequences of protection from competition can readily be seen in what has been characterized as Japan's dual economy. Lewis' book describes how the Japanese industries that face intense domestic and international competition -- automobiles, electronics, and steel -- perform at productivity levels that are, on average, approximately 130% of the levels in the United States.³ In contrast, Japan's large retail sector, which is heavily sheltered from competition by tax laws, zoning requirements, and other government-imposed restrictions, functions at roughly 50% of U.S. productivity levels.⁴

Other researchers have reached similar conclusions. In his comprehensive study of international competitiveness, Michael Porter explained that “creating a dominant domestic competitor rarely results in international competitive advantage. Firms that do not have to compete at home rarely succeed abroad.”⁵

Without fierce domestic and foreign rivals to push it to innovate and become more efficient, the national champion will not engage in best practices. As Judge Learned Hand explained over a half century ago:

. . . unchallenged economic power deadens initiative, discourages thrift and depresses energy; that immunity from competition is a narcotic, and rivalry is a

² William Lewis, *The Power of Productivity: Wealth, Poverty, and the Threat to Global Stability* (2004), at 103.

³ *Id.* at 25.

⁴ *Id.*

⁵ Michael E. Porter, *The Competitive Advantage of Nations* (1990), at 662.

stimulant to industrial progress; that the spur of constant stress is necessary to counteract the inevitable disposition to let well enough alone.⁶

In a speech to American antitrust lawyers, then Secretary of the Treasury, Dr. Lawrence Summers maintained that antitrust law remained a vital part of national economic policy precisely because competition is more effective than industrial policies designed to champion domestic firms.⁷ He added:

If you ask why the American economy has managed to experience relatively low inflation and unemployment for so long, the competitiveness of American industry, the drive for efficiency that that has created, the contribution in particular that imports have made to that competitiveness is enormously important, and so the general proposition that competitive markets, rather than national champion firms, and competitive global markets are desirable should be a very strong principle and one that should be upheld.⁸

As Commissioner Neelie Kroes succinctly put it in a speech in London last year: “It is open, competitive markets that generate wealth - not politicians.”⁹

Thus, a national champion policy, by its very design, does not benefit consumers. Instead, it replaces domestic competition with a monopoly firm sheltered by the government to be a bulwark against foreign firms in both domestic and international markets. Consumers lose twice, through higher domestic prices and reduced imports.

⁶ *United States v. Aluminum Company of America*, 148 F.2d 416, 427 (2d Cir. 1945).

⁷ Lawrence Summers, *Competition Policy in the New Economy*, 63 Antitrust L.J. 353, 357 (2001).

⁸ *Id.*

⁹ Neelie Kroes, Address at the Institute of Electrical Engineers, *Challenges to the Integration of the European market: Protectionism and Effective Competition Policy* (June 12, 2006), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/369&format=HTML&aged=0&language=EN&guiLanguage=en/>.

And promotion of national champions not only distorts markets and the political process with respect to the market in which the chosen firm participates, but also begets more problems in other markets. Once rent-seeking rather than competition becomes the norm, it becomes the favored method of competition between domestic companies, and more resources will be allocated to currying favor with government to persuade officials to close off still more domestic markets through higher tariffs, protectionist product standards, “buy domestic” requirements, and other methods at odds with competition. It is, of course, any nation’s right to do so, but it should be forthright about that choice, and not pretend that such policies protect consumers or promote efficiency.

Because of the vital role that free markets play in protecting consumers and promoting economic growth, it is important that competition officials take action and promote policies that favor competition over protection and that ignore the nationality of the firms at issue. In the United States over the past century, after significant trial and error, courts, practitioners, and scholars concluded that the proper focus of antitrust law is to protect consumer welfare through protecting competition. This focus developed out of the recognition that robust competition produces substantial benefits for consumers and societies as a whole by promoting growth, spurring innovation, and facilitating the efficient allocation of resources. In short, protect competition, and you protect consumers. Try to direct or manage competition, and you protect only specific competitors and their special interests; consumers, and thus the economy, lose. Thurman Arnold, who led the Antitrust Division in the United States more than sixty years ago, explained that, “[t]he economic philosophy behind the antitrust laws is a tough philosophy. [T]hose laws recognize that competition means someone may go bankrupt. They do not

contemplate a game in which everyone who plays can win.”¹⁰ National champion promotion is simply inconsistent with the central objective of antitrust law, to protect competition.

In addition, permitting antitrust enforcers to promote national champions, rather than protect competition, would undermine the important goal of producing clear and predictable antitrust law and enforcement standards, which also are crucial to promoting the efficient resource allocation. For example, in the United States, it is understood by the business community that the FTC and the DOJ only challenge mergers that they believe are likely, in the foreseeable future, to raise prices, lower output, or retard quality or innovation. We do not account for the possibility that particular firms will be harmed by a transaction, consider the nationality of the firms involved in the transaction, or weigh other factors, such as employment benchmarks, that do not relate to competition. To do so would not only be poor economics, but would inevitably make the application of the antitrust laws highly subjective, and undermine the credibility of competition officials.

While it is not always easy to determine whether a transaction or conduct will increase price and reduce output, it is relatively clear and well-understood how one goes about conducting the analysis. But if a merger inquiry expands to include other factors, the analysis will inevitably become increasingly complex, less precise, and more politically charged. Putting aside for the moment the likely negative welfare effects from considering non-competition factors, competition law simply provides no guidance as to which national companies deserve protection, and which do not. Likewise, standard industrial organization economics do not inform whether or when we should worry about employment levels in a favored industry, as opposed to an industry that has less political support.

¹⁰ Quoted by Jack Brooks, Address at Symposium in Commemoration of the 60th Anniversary of the Establishment of the Antitrust Division, January 10, 1994, Washington, DC.

Moreover, once issues beyond price, output, quality, and innovation enter the picture, the temptation for politicians to become involved in the individual decisions of competition enforcers will become almost irresistible. In the United States, elected officials occasionally express interest in antitrust investigations, but it is well understood that antitrust is fundamentally a law enforcement process, based on the application of consistent economic principles that vary little with election cycles. The lack of political involvement in competition policy increases confidence in both enforcement and non-enforcement decisions. If our charter is expanded to include issues with broad political overtones, such as protection or promotion of national champions, politicians will understandably face significant pressure to play a more active role in enforcement decisions, with the likely result being less support for sound, robust antitrust enforcement. While an open robust political system is vital to maintaining a free and prosperous society, nonetheless, history has shown that the give-and-take of the political process is not the best mechanism for deciding whether a merger or other conduct is likely to reduce competition.

Finally, consideration of national champion issues makes little sense in the antitrust context because competition agencies are ill-equipped and poor forums to evaluate such issues. Most competition agencies, including the FTC, lack the expertise to evaluate issues associated with national champions, such as the importance of energy independence, employment levels, and the psychological value of domestically produced products and services. In addition, because such factors usually have strong political overtones, they are better-suited for resolution by elected officials in open legislative and other policy forums.

Thus, as former FTC Chairman Pitofsky stated on the occasion of the 90th anniversary of the FTC, “the national champion argument is almost certainly a delusion . . . The [FTC] has no

discretion to authorize anticompetitive but ‘good’ mergers because they may be thought to advance national trade interests.”¹¹

I want to provide a few examples of how at the FTC we keep national champion objectives out of our enforcement activities. The petroleum industry is among the most politically sensitive domestic sector in the United States. As the supplier of most of the energy used for transportation, and a substantial part of the energy used to heat homes and offices, any change in the structure of the petroleum industry is widely publicized. In the United States, the FTC is the agency that has antitrust oversight over this industry, and the Commission has closely reviewed every substantial petroleum industry merger in the last 20 years. A number of these transactions have involved acquisitions by foreign companies of U.S. firms or assets. For example, the FTC has reviewed, among others, (1) British Petroleum’s acquisition of Amoco and ARCO; (2) Saudi Refining Inc.’s acquisition of a minority position in Motiva, a joint venture of refining, transportation, and marketing operations between Shell and Texaco; and (3) the acquisition by Lukoil, a major Russian energy firm, of Getty Oil, and Lukoil’s later acquisition from ConocoPhillips of several hundred Mobil-branded gasoline stations in the Mid-Atlantic region of the United States. In the first two of these cases, the FTC required limited divestitures sufficient to prevent the loss of competition, but approved the bulk of the acquisitions by the foreign companies.¹² And we cleared the Lukoil transactions. In none of the investigations did the FTC consider protecting domestic firms from foreign ownership.

¹¹ FTC’s 90th Anniversary Symposium, *More Than Law Enforcement: The FTC’s Many Tools – A Conversation with Tim Muris and Bob Pitofsky*, 72 Antitrust L.J. 773, 808 (2005).

¹² *Shell Oil Co.*, 125 F.T.C. 769 (1998) (consent order); *The British Petroleum Co. P.L.C. (Amoco)*, 127 F.T.C. 515 (1999) (consent order).

Similarly, to take an example from our sister agency, in 2004, the Department of Justice Antitrust Division, challenged (unsuccessfully) Oracle's acquisition of PeopleSoft on the ground that the transaction would substantially reduce competition in the markets for certain types of enterprise software.¹³ At the time, SAP had the largest worldwide market share of this type of software. Had DOJ wanted to create a national champion that was relatively free from domestic competition this would have been a perfect opportunity. Instead, DOJ, consistent with longstanding U.S. antitrust policy, concluded that continued robust competition between Oracle and PeopleSoft was the best way to protect consumers and promote efficiency.

Now, of course, I realize that even if competition agencies refuse to promote national champions, government policies that consider a firm's nationality may arise elsewhere. In the United States, for example, an inter-governmental body, the Committee on Foreign Investment in the United States, known as CFIUS, can consider whether a merger involving a foreign acquirer would be contrary to our national interest. While there have been instances in which deals have been abandoned in the face of adverse review by CFIUS, or by political opposition in the U.S. Congress, such transactions are exceedingly rare. And the U.S. Congress and state legislatures, within constitutional bounds, are free to pass laws that displace competition and aid particular industries or companies, and occasionally such laws are passed. But just because they *can* displace competition does not mean that they *should*. In those instances, the FTC, often together with the Antitrust Division, itself acts as a champion – a champion for competition, foreign and domestic, and against special interests that seek to squelch competition – through formal or informal advocacy.

¹³ *United States v. Oracle Corp.*, 331 F. Supp. 2d 1098 (N.D. Cal. 2004).

For example, in January 2004, the FTC filed comments with the U.S. Commodities Futures Trading Commission (“CFTC”) on an application by Eurex, a German-Swiss exchange, to set up an all-electronic operation in the United States to compete with the Chicago Board of Trade and the Chicago Mercantile Exchange. Not surprisingly, the incumbent U.S. exchanges opposed the application, arguing that the new entrant could engage in predatory pricing. Although we did not examine or endorse this particular applicant’s submission, we did argue that new entry would benefit consumers of futures trading services. The CFTC ruled in the applicant’s favor, and CFTC Commissioner Lukken indicated that he had placed great weight on the FTC’s analysis in supporting the decision to designate another U.S. futures exchange.

Similarly, we highly admire the work that Commissioner Kroes has done to battle the displacement of competition by governments in the European Union, both in the form of state aids and financial restraints on competition. This work is every bit as essential as the work we do to prevent and prosecute private restraints on competition.

Thank you again for the opportunity to speak and participate in the program today.