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I. INTRODUCTION

The 20th anniversary of the EU-U.S. Cooperation Agreement takes place in an era of globalisation and increasing competition challenges. Highlighting the importance of cooperation between the different competition agencies is in the interest of both market players and consumers.

The European Union successfully cooperates with the U.S. competition authorities (the Department of Justice and the Federal Trade Commission) on the basis of the 1991 Cooperation Agreement and the 1998 Positive Comity Agreement. Today, twenty years after its signature, the U.S. authorities represent the Commission's most frequent cooperation partner.

This paper will look at the development of this bilateral cooperative regime, focusing on the main areas covered, looking at achievements, and stressing areas in which effectiveness and efficiency could be improved by means of further collaboration.

II. ORIGINS AND CONTENT OF THE 1991 COOPERATION AGREEMENT

The Cooperation Agreement was concluded by the European Communities and the government of the United States on the 23rd of September 1991. At the time, France contested before the European Court of Justice the competence of the Commission to conclude such agreements on the European side. The Court ruled the agreement should have been concluded by the Council. In order to remedy this, the Council of Ministers concluded the Agreement for the European Communities and approved it with a retroactive effect to 1991, the date of the original signature.

The Agreement provides for the notification of enforcement activities by the competition authority of one party to the extent that these concern the important interests of the other party, as well as the exchange of information on general matters relating to the implementation of the competition rules, and for the cooperation and coordination of actions of both Parties' competition authorities, among other things.

It provides for an annual bilateral meeting for the exchange of information on current enforcement activities and priorities, on economic sectors of common interest, for the discussion of policy changes being considered, and/or any matter of mutual interest.

The Agreement introduced the concepts of "traditional" and "positive" comity, which aim to avoid conflicts either through cooperation or through deference with one authority taking the lead. It is fair to say that cooperation has proven to be more common than deference.

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In merger control, the European Union and the United States have—on the basis of the 1991 Agreement—jointly developed the "Best Practices on cooperation in merger investigation," established in 2002 and revised again in 2011. Rather than a binding instrument, it is an advisory framework to promote fully informed decision-making on the part of the European Commission and the U.S. authorities in order to minimise the risk of divergent outcomes, to facilitate coherence and compatibility of remedies, and to increase the overall transparency in the process. The most recent revision of the framework provides greater detail on issues regarding timing, collection of evidence, and definition of remedies. The "Best Practices" framework is considered to be a success, which has since improved the efficiency of competition authorities and assisted the parties to potential mergers.

III. FORMAL AND INFORMAL COOPERATION: AVOIDANCE OF CONFLICT AND INCREASED CONVERGENCE.

The 1991 Agreement set the basis for an environment of mutual respect and trust, providing a framework for discussions, cooperation, and, in many cases, convergence.

The *Boeing/ McDonnell Douglas* case is considered to be the first formal application of the Agreement, though there have been very few instances where one side has made a formal submission to the other pursuant to the Agreement.

There is an increasingly mature relationship between the competition authorities; cooperation takes place in an informal way through calls and emails, the formal procedure provided in 1991 usually not proving necessary.

A. Cooperation in Merger Investigations

The main aims of cooperation between DG Competition and the U.S. competition authorities in merger cases are to ensure fully-informed decision-making on the part of the authorities involved, to minimize the risk of conflicting outcomes in different jurisdictions, to facilitate coherence and compatibility in remedies, to enhance the efficiency of their respective investigations, to reduce burdens on merging parties and third parties, and to align the timing of investigations.

Obviously not all of these aims will be met in every case but, overall, the cooperation increases the transparency of the merger review process. The success in the resolution of this type of case is due in part to the waivers frequently provided by merging parties, facilitating the exchange of information and increasing convergence.

To cite just a couple of very many examples, the Sony/ BMG merger showed that the differences in market structure between the U.S. and the EU markets did not deprive the cooperation of its added value, and the Thompsons Reuters merger highlighted the benefits of both agencies working closely together in formulating a common remedial approach.

B. Cooperation in Cartel Investigations

Cooperation in cartels is primarily used to harmonize the timing and scope of the investigative actions and is therefore particularly intense at the initial stage of the investigation. Agencies may exchange their own conclusions, but are not entitled to exchange confidential information regarding the parties unless the latter have provided a waiver—obviously rather less common here as the parties do not know of the investigation.

One outstanding cooperation case, going beyond bilateral EU-U.S. cooperation is the Marine Hose cartel case. Cooperation took place not only with the United States but also with Korea, China, Australia, Japan, Brazil, and South Africa. While this case is notable for the high level of global collaboration, even down to the precise timing of the launch of the inspections, it also shows the difficulty of accommodating all the individual national interests in setting a common date for inspections—something the different agencies should look to overcome by further coordination.

C. Cooperation in Unilateral Conduct Cases

Cooperation in this area tends to focus on exchange of views on the theories of harm and, provided the necessary waivers have been obtained, on the exchange of information.

In cases such as abuses, the difference in the approaches between the European Union and the United States, deriving from the different historical and legal context, is notable but again does not undermine the benefits of cooperation.

Different approaches between the European Union and the United States, although sometimes inevitable, are not a barrier to cooperation but a challenge. On the anniversary of the Agreement the Commission is looking to intensify dialogue with its U.S. colleagues in order to bring about a greater knowledge and understanding of both the legal contexts and, where possible, to avoid divergence.

Although the terminology may differ, we often use only different terms to name the same things. For example, while "recoupment" is not a condition for finding predatory pricing in the European Union, we do have the condition for anticompetitive foreclosure, which has a lot in common with "recoupment."

IV. CONCLUSION: FUTURE PROSPECTS

EU-U.S. cooperation is considered to be a remarkable success story, which has ultimately benefited consumers on both sides of the Atlantic.

Although there is always likely to be a certain degree of divergence due to cultural differences, many obstacles can be conquered through day-to-day cooperation and frank discussion on substantial issues. Greater cooperation may lead to greater predictability of decision-making and avoidance of conflict of interest.

In the global context in which both competition authorities operate, cooperation is already taking a step forward and includes other countries such as Canada, Japan, and South Korea; countries with whom the European Union has concluded cooperation agreements similar to the 1991 agreement with the United States. DG Competition has also made efforts to extend cooperation to the so-called BRIICs, the major emerging economies. It signed a Memorandum of Understanding with the Brazilian and the Russian competition authorities in recent years as it had already in 2004 with Mofcom, the Chinese competition authority responsible for merger control.

Also, the U.S. agencies signed cooperation agreements with a large number of other countries, most recently with the three Chinese competition enforcement agencies. These cooperation agreements and memorandums of understanding further promote the idea of creating a widespread trustworthy and efficient cooperation environment in which agencies can act faster and find more efficient and consistent solutions to safeguard the competitiveness of the markets and the interests of consumers.

The Commission looks forward to extending its cooperation with other jurisdictions.