DONALD BAKER: Thank you very much and-- thank you for that. It's almost an excessive welcome. In the course of her introduction, she mentioned that I have co-taught this course in international antitrust at George Washington, and my co-teacher is John Briggs over there. Will you raise your hand, John, so we know who you are? [LAUGHS] It's been a huge learning-- teaching with John's been a huge learning experience.

Anyway, I thank you-- I'm just terribly excited to be back here in Charlottesville. I have two wonderful early memories related to this place. And the first one concerns the International Journal, which published the first law review article I've-- of the many I've ever written. And it came about because I had just come back from working in London for two years for a big solicitor's firm, and I found that the American lawyers tended to overlook foreign law provisions that were completely different from what we had at home.

And this one happened to be something-- a tax-- an important capital tax that if you did it right, costs you 30 shillings in terms of a corporate reorganization or something, and if you did it wrong, it cost you 2% of the value of the transactions. So it was it was certainly a law worth knowing about, and so that-- and I was honored that the journal was willing to take on this unknown young lawyer as an author.

Anyway, the second reason-- that was in 1964-- for the second reason was that six years later, by then I was a young lawyer at the Antitrust Division of the US Department of Justice, and my new friend, Professor Antonin Scalia, as he then, was on leave from the law school working for an agency that I worked with for a while, and he, on leave from the law school, he was teaching a weekend seminar down here in Charlottesville on competition and communications policy.

So he invited me down to come co-teach two sessions with him. So I stayed at the faculty club on the lawns, and Scalia and I drove back and forth through the Civil War battlefields arguing about things that might ultimately become constitutional law questions-- it was a great trip.

This time I am grateful to the journal for giving me a serious reason to revisit the familiar antitrust cooperation arrangements that go on between the antitrust agencies, and think through and realize that they're not just something that were sort of hands-on tools that we all used, they are unique for reasons that I will explain.

And I've had the benefit in putting this together to have really helpful advice, most recently received on an email last night, helpful advice from people in the government actively involved in international antitrust, people involved in Europe involved on international trends. So it's given me an excuse to spend some time exchanging ideas with some old friends who I much admire.

As I say, it turns out that the longstanding system of close cooperation among antitrust agencies is unique compared with other areas of government regulation. Since my time in the government in the 1970s, the US antitrust agencies, the Justice Department and the Federal Trade Commission, have worked closely with their counterparts in Brussels, Berlin, and Ottawa when

the same agencies were investigating the same merger or cartel. Since my time, inter-agency cooperation with foreign agencies, in particular on investigations, has become more continuous as markets are becoming more global. An ever-larger proportion of the agency workloads involve international matters.

In addition, the pressure to keep agencies' policies and procedures in general alignment with the other agencies has increased dramatically as the number of national competition agencies has multiplied since the 1980s to at least 130 around the world. When I was in the government, I'm not sure there were even 10 that we had to deal with.

And after explaining the system, I will then turn and try to deal with what I think are some of the potential problems that our current world holds for this system, and the disruptions come from several sources, including national politics, and it may take what are now regarded as technical antitrust questions out of the hands of the technicians and into the hands of the parliaments. Parliaments, of course, are much harder to keep in alignment than agencies that think roughly along the same line.

Anyway, the challenges I will talk about are first of all the growing political ferment all over the place-- not just in the US-- over the great digital monopolies which have emerged in the modern time. The second category is conflicts between agencies over whether to block or allow major international mergers. The third concerns the rise of private litigation in Europe and the potential of Europe having more favorable substantive laws in various areas of monopoly, and hence becoming a forum for attacking foreign countries, particularly US interests about conduct that isn't necessarily illegal in the United States. And the fourth is climate change, which I just regard as a political wild card.

To start with, let me talk about the different kinds of competitive antitrust agencies. I will use the term competition agencies, antitrust agencies interchangeably. We use the word antitrust, most of the rest of the world uses competition. But competition law-- either way, it's the same thing.

Antitrust enforcement can be entrusted to an administrative agency like the European Commission or the Federal Trade Commission, or it can be entrusted to a prosecutorial agency like the Antitrust Division of the US Department of Justice, my alma mater. In some countries, there's a sort of hybrid system where there is an administrative agency to investigate civil violations, which are most of them, and then the civil agency-- I'll explain this a little more-- can refer potential criminal cases to the normal criminal prosecutors who sometimes take the agency advice and sometimes don't.

The basic political difference is that the prosecutorial system that is usually under the control-- almost invariably under the control of the Executive. And the agency system, the agencies are supposed to be independent, which is why we have a Federal Trade Commission with no more than three members of one party on the commission. So it's a different concept.

This is an issue of institutional choice, agency versus prosecutor, is really important, because it defines what the agency can do procedurally and sometimes substantively, as we'll see as I go

along. Nearly all countries that have created the new 130 agencies since 1980 have chosen the administrative model of the EU rather than the prosecutorial model of the United States.

The choice probably reflects the thinking and assumption of civil law countries. All the prosecutorial systems have been created in common law countries, but the ability to prosecute seems to me to be particularly important, because as you kindly said in your introduction, I have believed since my time in the Justice Department that punishing individual participants in cartels is important to deterrence and a subject I'm glad to talk about.

So the so-called hybrids-- what I call in the hybrid systems of having antitrust administrative agency plus a criminal prosecutor have occurred in places like UK, Ireland, and to some degree in the modern system, Canada. What is unique about the Antitrust Division of the Justice Department is it's the only example of both criminal and civil enforcement being in the hands of one agency anywhere in the world. And I think it's an accident of history, because it started with the Sherman Act, and that was before the rise of the modern administrative state.

And so they wanted they wanted to be able to both enjoy future conduct and punish past conduct. But it does mean that the Justice Department has more ability to bring criminal cases than any of the countries using the hybrid system, and we've brought and many, many more.

And there was an important watershed while I was at the Justice Department, which was that Congress amended the Sherman Act, take it out of being a $50,000 misdemeanor to being a million-dollar felony. Jail sentences increased with one to three years. And now I think it's 10 years and $100 million-- I've forgotten how high the ceiling is gone.

And so we are-- I shouldn't say we as if I were still in the government. We're sending dozens and dozens-- 20, 30 people a year in jail for antitrust violations, and almost nobody else in the world is sending anyone even though they occasionally try. But the felony amendment convinced judges that Congress really regarded antitrust as a serious offense and acted accordingly.

OK. Let me now turn to the-- I've said that the system of cooperation among agencies, these different kinds of agencies, anti-- administrative, prosecuting agencies is unique. Why is this so? Well, I think this is partly dictated by the reality that a national government-- not just ours, a national government tends to be divided-- and I'm dealing with the agencies that deal with economics and money in some way or another. It's divided between what I will call a constituency-serving agencies, like labor or agriculture or even the trade representative, and the other are mission-oriented agencies where the agency isn't confined to any particular sector, but has a broader mission.

Now the constituency-serving agencies in our country are almost inevitably adverse to the constituency-serving agencies in other countries. And some of the mission-oriented agencies in the United States are also adverse to their counterparts with the taxing authorities being the obvious example.

In law enforcement, there is some extensive cooperation under mutual legal assistance processes, but it's really much more about nuts and bolts process. Than we have other mission-oriented

agencies with broad mandates like the Environmental Protection Agency, but they don't have anywhere near as much need to work closely with their foreign counterparts because much less of their workload is international and overlapping.

A second-- and so the antitrust agencies, meanwhile, have all kinds of reasons to cooperate. As I said, even in my time when we were-- we were cooperating over individual cases. And we're doing it not-- and cooperation in the antitrust area is not only at the head of agency or senior staff level, it's at the nuts and bolts level. The case handler in Brussels picks up the phone and calls the person who's investigating the same transaction and everything, and it suggests he might look-- or she might look at it at something and so forth.

And even in my time when there was less international-- I used to say that I'm sure that there were a great many more telephone calls between the Antitrust Division in Brussels and between the Antitrust Division in the Commerce Department. More than that, the national competition agencies have complementary missions. Promoting competition in Germany is no way inconsistent with promoting competition in the US. And I say, as they routinely investigate each of-- complementary-- the same transactions, and in some of the modern mergers, you could have five or six or more agencies investigating, which puts a lot of pressure on cooperation because there's so much room for conflict and confusion, which sometimes occurs.

And the process is just so continuous. It goes on without regard to administration. And in addition, we've-- in the antitrust area, we've developed some important institutions for cooperation on upper level. Another point, which I hadn't thought about until I started talking to my experienced friends about this lecture, is that the cooperation arrangements are seen as a way of maintaining agency-- enforcement agency independence from their political establishments, because part of the cooperation process-- and this is particularly true of a small agency in a small place-- and some of these agencies are a really small places.

One example being the Channel Islands between Britain and France has an antitrust agency. And this small agency in a small country with no antitrust tradition, it can very usefully benefit from best practices advice and suggested-- even suggested law reform.

Anyway, let me turn now to the institutions that I think make me much more convinced than when I was kindly asked to do this lecture of how unique the system is. There are two organizations. One is the Competition Committee of OECD, and it founded in 1961, and the other one is the much more inclusive International Competition Network founded in 2001 40 years later.

Let me start with the OECD committee. Since it was founded in '61, this committee has served as a forum of what may be for more discussion among a much smaller group of national competition agencies, but most of the major ones. And they talk about both substantive law and enforcement techniques, but they're more-- they're particularly heavy on what law and policy.

When I was at the Justice Department in the '70s, the committee was quite small because there were so few existing agencies, yet we created the committee as a useful forum to advocate our

ideas and to listen to the ideas of others. And the head of the Antitrust Division would all always attend the meeting in Paris.

In fact, I can't resist telling you a story. When I was head of the Antitrust Division, I went to one of these OECD sessions, which was the first time as international deputy-- I hadn't been going. And so-- and I'm chairing this committee. And I proposed something in terms of the process of the way we should proceed. And my subordinate, the head of the foreign unit in the United States, argues against that. And I say, well, does anyone else have anything to say? And the German representative raises his hand and says-- he thought what I was proposing was a perfectly good idea. And so I said, well, hearing no objection from anyone but the United States, we're going to do what I suggest.

Since the 1990s, the committee has taken on a broader role because antitrust has been more important and they're a bit more later, so it's [INAUDIBLE]. It's been pretty particularly able to develop some quite constructive ideas. One that I particularly like was a 1998 report dealing arguing for more stringent enforcement against international price fixing in market allocation agreements, which the OECD labeled hardcore cartels, a term we now use routinely.

The report urged members, OECD members to give higher priority to cartel and anti-cartel enforcement, which, of course, was most welcome over here because we were very active in this field. But it focused on the kinds of laws you needed and the kinds of commitments of resources that you needed. And it has had quite a favorable consequence, and now the cartel-- anti-cartel enforcement is now a more important part of more agencies' agendas than it was before.

Another important contribution of the OECD Committee was developing a process of systematic and reciprocal-- I call it performance evaluation of member agencies, which was a very useful step, because it was really intended to be friendly and helpful and give you advice-- give the particular advice and best practices recommendations that it could use back home in its national capital.

It also organized reviews of competition and regulatory issues from the soundness of the competition goals and so forth. And again, this has served as an important helpful thing for various agencies as they try at home politically to get their laws strengthened.

The other important agency-- I think my arthritic knees are getting tired of standing here, so I think I will-- with your indulgence, I will and talk from a microphone if that's OK. But I'll take my watch with me. I hope I don't go over. Sorry.

CREW: No, that's fine.

DONALD BAKER: This is-- the ICN is truly a virtual network of-- whose 130 members constitute almost all the antitrust agencies in the world. But it lacks a headquarters, a secretariat, and other traditional organizational features. And is the kind of organization that is made possible by the digital age of lots of emails and electronic transactions. It has one annual meeting, which I'll come back and talk to in a minute.

This new network was created in 2001 as a response to an initiative by the head of the Antitrust Division, Joel Klein, and the European Commissioner for Competition, Mario Monti. Klein in 2000 said, the burden of international cooperation and coordination among various national authorities will likewise increase. It follows as the night the day-- as markets become more global, the number of countries having a legitimate enforcement interest in a particular merger will increase. This creates a whole host of problems-- substantively and procedurally-- about the simultaneous review of the same transaction by numerous agencies.

Five months later, Commissioner Monti explained, I believe that the main mission of the forum, which-- the not-yet-created agency, should be to put in place an inclusive venue where those responsible for development and management of competition policy worldwide could meet, engage in constructive dialogue, and exchange their experiences on enforcement. The founders wanted the numerous small agencies to have access to friendly national-- direct and friendly practical advice and public support from their well-established counterparts in Europe and North America.

The members of the organization were the agencies themselves, but they invited the other world organizations-- OECD, UNCTAD, World Bank-- to participate, but not as voting members. And then each national agency was allowed to invite a certain number of camp followers, usually agency alumni or people with some important experience, that they would-- these so-called non-government advisors would come along and to the annual meeting and participate in the working group sessions in between. You mentioned that I had been such a non-government advisor since 2006, which is why I have more firsthand sense of how the ICN operates than how the OECD Committee may.

But the missions of the two seem to be quite complementary in the sense that the OECD Committee, which is chaired by this splendid French economist, Fred Jenny, who was one of my contacts, has more opportunity to deliberate over a substantive policies as well as best practices.

The ICN is more involved in procedures and how to run investigations and so forth, although we certainly do have discussions of substantive rules. And the ICN has these working groups which exchange ideas on various subjects. There are ones on mergers, there's one on competitive advocacy by agencies, there's one on single-firm monopolies, which is the committee that I-- working group that I participate in. And we exchange a lot of ideas back and forth in that process.

Every year, the ICN has its annual meeting hosted-- it has no headquarters-- hosted by one of the member institutions, and this May, for the first time, the US is going to host the annual meeting, which will be in Los Angeles. Between annual meetings, the working groups go ahead, but the annual meetings give the leaders of this very large group a chance to get to know each other a bit and feel a little bit freer of calling up for advice.

OK. Let me now turn to the two major areas of enforcement and just talk very briefly about-- one is an anti-cartel enforcement, and the other is mergers. And anti-cartel enforcement is interesting because the substantive laws, and indeed, processes are quite dissimilar. As I've already said, the Sherman Act is a $100 million felony with a 10-year thing. The European Commission, which is

probably the next most important antitrust enforcement agency, all it can do is levy fines against the enterprises, and I think tab is very much a second-best solution.

But when a cartel is being investigated, the staff numbers for the US and the EU will exchange quite a lot of information consistent with grand jury secrecy rules. And remember, the investigational techniques are quite different. We run this grand jury system, which I had a distinguished-- when I was head of the Antitrust Division, had a distinguished British diplomat say, this is unbelievable! He said, here you've got something that went out of our system with the court of Star Chamber. You've got this Star Chamber system in which people are hauled in, not allowed counsel and everything else.

And I responded that, well, the Framers of the Bill of Rights could remember that the colonial grand juries used to no bill the crown, and so they've seen it as as a [INAUDIBLE]. As far as my experience, which must cover hundreds of grand-- I wasn't personally involved in, but when I was-- that went on while I was in the division, I think I can only remember one that the government was no bill, and that-- I think that was down in Mississippi where the federal writ doesn't run quite as strong. My wife comes from there.

Anyway, so you get this version of-- this divergent system. In fact, the results aren't quite as divergent as you might think. Most of our grand jury investigations get resolved by plea bargains in which the government and the private lawyers negotiate about how much the company's going to pay and who's going to go to jail, things like that. And many of the European and other administrative agencies negotiate about how much money they're going to have to pay for their violations, but there's nothing known about the individuals.

The other big ongoing area of enforcement is mergers. And again, the formal systems are very, very different in the sense that in order to block a merger, an administrative system like the European Commission, for example, the staff does the investigations, makes proposals to the commissioner, and if the commissioner agrees, they may propose to block the-- prohibit the use of-- their words-- prohibit the transaction. And that is then subject to judicial review, but not until quite a bit later.

In our system, of course, the government, whether it's the FTC or the Justice Department, which allocate merger cases between each other, will run the factual investigation. They have a powerful tool in the Hart-Scott-Rodino Act which established pre-merger notification and requires companies to comply with very extensive demands for information. But then having decided what to do, they have to go to a federal court, try a merger case before a federal judge who may never have seen an antitrust course or an antitrust case.

And remember that merger law is quite different from most other areas of law. I can't think of any other area of law where an important question of substantive liability, as opposed to damages, substantive liability turns on guesses of what my-- intelligent guesses, economic testimony on what might happen in the future. And the government bears a fairly tough burden in this area and loses quite a few.

But again in practice, as I was saying with the cartel area, the substantive law differences are taken away by complementary procedures, because the Hart-Scott-Rodino Act, which was passed while I was assistant attorney general, requires pre-merger notification and gives the government a huge ability to hold up mergers. And that gives them-- as anyone who's ever represented merging parties knows, holding a merger together during a prolonged delay is a serious challenge. So that gives the government quite strong leverage to negotiate.

Essentially, the Hart-Scott Act made the government into a-- it's a new administrative process not too dissimilar from Europe. And thus, both in Brussels, London, US, whatever, most mergers are resolved by some sort of consent agreement in a merger between two competitors, the so-called horizontal merger, often by a requirement that there's some assets being invested.

At this point, let me turn to the potential challenges that I see to the new system. And up till now, I've been talking about facts and experience, now I'm talking about what I regard as educated guesses, but others might regard as wild speculation. Anyway, as I said briefly, this comes about because of-- it seems likely that we may get more political action in some of these areas, and the political action is someone out of control of the agencies.

But let me start first with digital monopolies. As we all know from reading in the newspapers, there is building political pressure in many places in the world to do something about digital monopolies, which are the-- for people like me who've been around a lot longer than most of you, are the most powerful organizations in market force terms that we've seen.

And so we've seen-- and it shows that different countries proceed in different ways. In the UK, EU, and Australia, they've appointed small panels of experts to make recommendations, and I am particularly fond of the so-called Furman Report in the United Kingdom chaired by a former member of the US Council of Economic Advisors.

And these come up with a menu of ways of doing things. But they generally are recommending that there be a-- I would call a sectoral regulator to deal with the special problems of information and so forth. And the digital monopolies are a really complicated question from the antitrust point. Here we have enterprises that have become powerful by giving the public something that they really want and most of us really use. And they have, by and large, given it away for what is nominally free.

This, then, before I go on with digital monopolies, let me talk for a second about monopoly law. The traditional monopoly, the kind that have been prosecuted occasionally, but only occasionally under the Sherman Act, are usually what I call facilities-based monopolies, like AT&T or the Railroad Terminal at St. Lewis or-- well, it's the only way across the river for everybody. Or a pipeline or even a railroad that's in the area.

And those are the cases that have dominated the agendas of both the United States and the EU, or they've dealt with monopolistic harbors and so forth, as well as endless cases against European telephone monopolies. The other kind-- so the first kind of monopoly is the facilities-based monopoly. The second one, which is a category I've made up, is what I call an innovation-based monopoly. This is someone comes along and invents a new mousetrap, and it conquers the

world. And it may be supported by intellectual property, and it certainly tends to be supported by network effects.

Network effects are where something becomes more valuable to you the more people are using it. A telephone company or-- network was, of course, a good example, [INAUDIBLE] network [INAUDIBLE]. And the modern American cases are-- that they haven't-- we've had three important modern American cases. One was AT&T, which has facilities-based, the other was IBM, and the third was Microsoft.

And the IBM case was eventually dismissed by the government. I just liked it when I was there. Anyway, but it was dismissed by the government, because the technology-- the world ran away from the case, which was going on forever, and no one was quite sure what the remedy was. The Microsoft case involved using the operating system to foreclose various other things. And if-- in fact, they never really quite figured out a remedy for it either. The government agreed to-- proposed to-- that the company be broken up. I don't know, it was going to be broken up into an operating system, the internet, and a applications unit or what.

And the district judge who ran it wrote quite a good opinion finding violation, then said, well, the government's wanting what it wants. The Court of Appeals said that's wrong, and they were right, and so the case-- the new administration eventually settled the case for some bits and pieces to create a relief.

So we're into-- in addition in dealing with the digital monopolies, we're into the one area where there isn't really serious convergence in antitrust. The US limits itself to exclusion-- what we call exclusionary conduct that keeps people out of coming into the market. And the Europeans and many other countries deal with what they call abuse of dominant market power. And that's a much more regulatory concept, and they will use it to regulate various nuts and bolts situations, like literally the ferry schedules in a harbor where one of the two ferry companies control the harbor and they made them do a fair scheduling thing.

So we've got an area where we don't know exactly what the rules are. And so we've got a situation where it seems likely that with a fair amount of political pressure to do something, that the European Commission will use its ability to punish unfair operations by dominant people for-- a market payment to try to regulate things, and it's doing it already. In other words, it has brought cases against Google for discriminatory display of search results and so forth. And there's a wider range of things that might come to pass.

And now the reality, of course-- it still is-- that the digital monopolies are all US. And this raises a great-- even more a problem for the cooperation situation, because the US agencies will be under pressure to support them, and if the EU and others start bringing what we regard-- we the politicians, not necessarily we in the room-- as unfair treatment of Facebook and Google and all those people, they may become national champions with the administration really supporting them.

And this is not just a Don Baker-made-up hypothetical, because what's going on in the tax area is highly illustrative. In the tax area, France and England-- the UK-- are trying to develop tax

systems to tax revenue values that these American digital giants are earning in their countries. And the US has said that if they do that, we're going to levy heavy duties on camembert, champagne, and things like this as a retaliation against the taxes. And so I don't know what happens in this area. I mean, I think this is really interesting.

The second source-- OK, I'll be out. Thanks for the warning at the bell. The second area is interagency disagreements over mergers. In the past here, it gives us some useful guidance. With the continuing growth of global markets, more and more mergers have affected more and more markets. A big international merger can generate political concerns, antitrust concerns in faraway places at the same time.

If the merger involves two companies with the same nationality, there are two kinds of problems that I can envision and have seen. One is the foreign agency seeks to block a transaction extraterritorially-- involving its own companies. And the second one is that the home country blesses a merger which some foreign agencies say shouldn't be blocked and maybe they will block. This, again, these kinds of situations are a real test for the cooperation system.

The two historic examples are in 1997, Boeing and McDonnell Douglas, who were then two of the world's three largest airplane manufacturers, proposed a merger-- merge. After investigating, the DOJ decided that they would have to let the transaction go because McDonnell Douglas was, in fact, they believed a failing company, although this had never been disclosed publicly.

These EC, which, of course, was home to Airbus, the only competitor, became quite concerned about the proposed approval, and a lively dialogue went back and forth between officials in Brussels and Washington. And the US was ultimately successful, but I understand that a number of European officials-- important European officials-- felt they've been bullied.

The next one was four years later and went the other way as EC prevailed to the annoyance of the US. This was the famous merger between General Electric and Honeywell. This would have-- and I might add before I say anything else, John Briggs, again, was a very important player in that drama. So if you're interested-- and it is an interesting drama-- go get him at lunchtime or something. That they-- the merger would have combined a major supplier of all kinds of avionics equipment, namely Honeywell, with one of three makers of jet engines.

The EC was concerned that the merged company would use its leverage to coerce customers to take Honeywell avionics rather than their own. And objectors, including American objectors, soon flocked to Brussels because they found the Brussels officials were much more interested in this kind of theory than the American ones. I, in fact, had a-- I was representing an American subsidiary of a British company, and after talking briefly in Washington, I, too, went to Brussels.

But my client and got cold feet, because it had decided that the merged company, which it still assumed was going to happen, would have so much market power and they could really screw the objectors in the future. But we had the officials from the US agencies over in Brussels arguing it was wrong, but Commissioner Monti stuck to it.

The next-- and almost the last substantive thing I'm going to say-- is a risk to the system comes from private antitrust cases against foreign defendants. Private antitrust has been a source of huge disruption from time to time, but the United States has always been the source of this disruption, because we've had private antitrust litigation since the Sherman Act. And in order to encourage private plaintiffs to bring cases, we have provided unique bounties in the form of automatic trebling of damages. The jury isn't told the damages are going to be treble, and they're not allowed to be told. And so it's a pure bounty.

And the second thing is, the cost rule for antitrust cases is that the successful plaintiff gets the other side to pay its costs, but the successful defendant doesn't. This really annoys the foreigners because in most other countries, there's a loser pay cost rule, and whoever loses, and the successful defendants get something back.

And what I see as a risk is the private-- and of course, private antitrust is completely out of control of the agencies. Our past experience involved the uranium industry where in the early '70s, the US embargoed the import of foreign uranium in order to protect the American uranium miners.

Foreign governments in uranium-producing countries set up a-- they would call it a protection cartel or something that would try to prop up the price of their market. Then the OPEC thing came along, energy prices soared. And Westinghouse, which it promised uranium when it sold generators, nuclear generators, didn't have the cover for its contracts. So it went and started suing all the foreign producers. And the foreign governments reacted ferociously. Not only did we hear from the agencies, but I had diplomats and everything.

And foreign countries ended up enacting what are called blocking statutes in which a British entity that wasn't-- that was served with process in an American antitrust case could not produce documents or witnesses without the express consent of the Secretary of State for Trade and Industry. And so the whole thing was a complete mess, and that's a problem.

But I am concerned about the shoe on the other foot situation, because as I suggested in talking about digital monopolies, I think the EU system of dealing with dominant firms is going to be more permissive to challengers of monopolies. And moreover, the national laws that have been established over there, at the urging of the commission, generally provide that a-- and we have a similar rule over here, but a government decree finding a violation can be used as evidence to prove the violation.

This is hugely important in a civil law country where there is so little discovery anyway. So you've got this weapon. So I envision the possibility that we'll end up with some European decisions against maybe the digital giants, maybe others, most Americans. And we'll suddenly see people bringing cases-- private cases in Europe based on the government decrees, and it will become a really hot issue if some of the plaintiffs are really US competitors and things like that, so we're just completing it for them.

The last disruption, which I don't have to say anything about this, it's the purest of speculation, is climate change. And climate change, I regard it as a political wildcard-- not as a hoax, but as a

political wildcard. And that there is already-- there have already been some boycotts-- foreign boycotts of carbon-intensive products to protect forests and things. And the situation is in Europe, for example, the government agency can bless, under Article 101(3), these kinds of agreements. We can't. And so we can end up with a messy scene in which the United States is an outlier and there's a lot of dissatisfaction.

That said, I really thank you all for your patience, and I hope some of this was interesting. It's really, really, really been interesting for me to consult with all these friends and governments and government alumni about these questions. Anyway, thank you very much.

[APPLAUSE]