

Testimony of

The Honorable Herb Kohl

September 19, 2002

Good afternoon. We meet today to hear from the heads of the two agencies charged with the important responsibility of enforcing our nation's antitrust laws - the Justice Department's Antitrust Division and the Federal Trade Commission. Much has happened to the nation's economy since our Subcommittee last met for an oversight hearing more than two years ago. We have seen sharp declines in the stock market, scandals affecting the leaders in the boardrooms at some of the our largest and most prestigious corporations, and continued consolidation in many key sectors of the economy, including media and telecommunications, pharmaceuticals, aviation, oil and gas, and computer manufacturing.

These challenging economic times make vigorous enforcement of our antitrust laws all the more essential. In recent years, we have witnessed an incredible wave of mergers and acquisitions, touching virtually every sector of the economy. In the decade from 1991 to 2001 - the value of mergers and acquisitions reviewed by the antitrust agencies increased more than six times, from \$ 169 billion dollars to more than \$ 1 trillion dollars. And application of antitrust laws is not limited to corporate mergers, of course. In industries as varied as computer software, aviation, and health care, the antitrust agencies have had to be a vigilant watchdog to ensure that the antitrust laws are properly enforced to prevent companies from stifling competition and harming consumers.

Given the merger wave of the last decade and the corporate scandals of the last year, this is not the time to be lax or ho hum about enforcing antitrust laws. We will be watching closely to see how your two agencies respond to these challenges in the years ahead, Mr. James and Chairman Muris.

We are especially pleased, Chairman Muris, with the emphasis that you are placing in antitrust enforcement in the health care sector. However, we have heard a growing sense of unease about the direction of the Antitrust Division in the last year, Mr. James. The sense of skepticism about the Division's activity is founded on several things - from a decline in actions taken by the Division, to the high profile Microsoft settlement, to the consolidation trend in media, cable, telecom, and airlines, to name a few industries, that seems to be meeting little, if any, resistance from the Antitrust Division.

Observers have noted a sharp decline in the Division's enforcement activity. While we recognize that the numbers of mergers and acquisition reported to the Antitrust Division has also diminished in the last couple of years, this decline includes a significant drop in the Division's activities in civil, non- merger and criminal enforcement.

The Microsoft settlement is also dismayed. The settlement contains so many loopholes, qualifications and exceptions that many worry that Microsoft will be easily able to evade its

provisions, and it leaves many in doubt that competition will truly be restored to the computer software market. By this action, has the Antitrust Division squandered its golden opportunity to ensure a competitive software industry, a result for which consumers will be paying the price for years to come?

And the reorganization of the Antitrust Division and streamlining of the merger review process have also raised concerns. Does the elimination of the Civil Task Force signal a diminishment of the importance of non-merger civil enforcement? Will the elimination of the Health Care Task Force result in a loss of expertise to pursue health care matters? In general, does the decline in Antitrust Division activity and the internal reorganization mean an end to the era of strong antitrust enforcement of the last decade.

We hope not.

My own view is that vigorous and aggressive enforcement of our nation's antitrust laws is essential to ensuring that consumers pay the lowest possible prices and gain the highest quality goods and services. In this era of ever quicker technological change and ever increasing corporate consolidation, the need for vigorous enforcement of our antitrust laws has never been greater. We are committed to ensuring that your agencies have the necessary resources to do this vital job.

The weeks and months ahead will be a crucial time for the antitrust agencies, with decisions expected in major mergers such as Echostar/DirectTV and Comcast/ATT at the Antitrust Division, and with the FTC engaged in several important health care projects, including its work undertaken at our request to investigate allegations of anti-competitive practices in the hospital group purchasing industry. We will be monitoring your agencies carefully, Mr. James and Chairman Muris, as you carry out your vital responsibilities on behalf of American consumers.