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Comments on International Antitrust,
Antitrust Modernization Commission,
Topic VI,.2:

Are there technical ... steps the United States could take to facilitate further coordination with foreign antitrust enforcement authorities?

THIS SINGLE QUESTION IS WHERE THE UNIQUE ANTITRUST EXPERIENCE AND EXPERTISE OF COMMISSION MEMBERS CAN HAVE THE GREATEST AND AN HISTORIC WORLDWIDE IMPACT BY THE COMMISSION RECOMMENDING THAT ANTITRUST AND ECONOMIC POLICY WORLDWIDE EVOLVE AS A TECHNICAL MATTER FROM A STATIC "ZERO SUM," "WIN-LOSE" ECONOMIC EFFICIENCY OR OTHER THEORY TO MICHAEL PORTER'S "POSITIVE SUM," "WIN-WIN" ECONOMIC THEORY BASED ON PRODUCTIVITY, INNOVATION AND UNIQUE VALUE THAT BENEFITS ALL AND CELEBRATES ALL UNIQUE CIVILIZATIONS¹

UNIQUE CIVILIZATIONS,
INTERNATIONAL PEACE AND PROSPERITY, AND
INTERNATIONAL ANTITRUST

1. Current Antitrust's Static Efficiency Theory Economics is Limited to "Zero Sum" Competition and "Miniscule" Increases in the Standard of Living Worldwide

"[F]ormal economic theory" emphasizes a competitive market's "static-efficiency characteristics," a former Chairman of the President's Council of Economic Advisor (Charles Schultze) explains, but efficiency theory can only produce "miniscule" increases in the standard of living, even though the facts known to many have long shown that "what is far more important" about a competitive market is its "capacity to stimulate and take advantage of advancing technology" -- to innovate:²

¹ <http://www.atlasbooks.com/marktplc/01314.htm> Portions of this comment are also used in the author's Comments to the Commission on New Economy and Merger Enforcement questions, all of which are based on and elaborated in the book Charles Weller, Ed., Michael Porter, Peter Staudhammer & Scott Stern, *Unique Value: Competition Based on Innovation Creating Unique Value* (2004 & 2005), <http://www.atlasbooks.com/marktplc/01314.htm>.

² C. Schultze, *The Public Use of Private Interest* 25 (1977). Congress has also specifically found that "technological innovation" is "critical" to the "ability of the United States to raise the living standards of Americans." The National Cooperative Research and Production Act of 1993 ("NCRPA"), 15 U.S.C. secs. 4301-05.

Had the triumph of the market meant only a more efficient use of the technologies and resources then available, the gains in living standards would have been minuscule by comparison.

Every day, headlines blare

- "America: The 97-lb Weakling?"
- "Why Asia Will Eat Out Lunch"
- "Cutting Here But Hiring Over There"
- "China Economy Rising At Pace To Rival U.S."
- "The Three Scariest Words in U.S. Industry: 'The China Price'"
- "How Long Can Workers Tread Water"
- "As Rich-Poor Gap Widens in the U.S., Class Mobility Stalls."

Yet, seemingly oblivious to the facts that inundate us all daily, antitrust policy in the U.S. and in many other countries today is based on static "zero sum" economic efficiency theory that seems just as oblivious to factual reality and the need for a "positive sum" economic theory, in effect telling workers, companies and communities worldwide:

"Our antitrust theory says you are to compete in the new global economy on the basis of efficiency because our economic theory tells us so."

No wonder Ronald Coase, a Nobel Laureate in economics, described economic theory as "elegant but sterile theorizing" that "lives in the minds of economists but not on earth."³ No wonder the U.S. Supreme Court has said the same (twice)⁴:

"[I]n the real economic world rather than an economist's hypothetical model, the latter's drastic simplifications generally must be abandoned."

What to do?

One hundred years ago this year, Einstein changed the course of science from one of the greatest scientific theories of all times, Newtonian physics, to a new theory, Quantum physics, because Newtonian physics simply did not work at the atomic level.

The same is true today for U.S. antitrust policy. Static "zero sum" economic efficiency theory, like Newtonian physics 100 years ago, is elegant but inadequate for the dynamic global markets of our times, for the United States and other countries. A new theory is needed, ASAP.

Fortunately, outside the specialized world of antitrust and economics departments, there is a highly developed economic theory already in use worldwide, the Theory of Productivity, Innovation and Unique Value, principally developed by Harvard's Michael Porter, that also fits

³ R. Coase, "The Institutional Structure of Production," Nobel Prize Lecture December 9, 1991, <http://www.nobel.se/economics/laureates/1991/coase-lecture.html>.

⁴ Illinois Brick Co. v. Illinois, 431 U.S. 720, 741-42 (1977), quoting Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481, 493 (1968).

the new opportunities created by the historic worldwide change in the economy to what Peter Drucker identified as the "Knowledge Economy."

2. New "Positive Sum," "Win-Win" Economic Theory for Antitrust Policy Worldwide: The Theory of Productivity, Innovation and Unique Value

Our Age of Discontinuity -- and Enormous Opportunity. Peter Drucker pointed out with stunning foresight 40 years ago that the "foundations have shifted under our feet," so that after decades of the "least change in three hundred years," today we live in an "Age of Discontinuity."⁵ Two of the most important discontinuities he cites are the "knowledge economy" and the global economy.

"[K]nowledge has become the primary resource for individuals and for the economy overall."⁶ This sea-change in the source of wealth is occurring now, for the first time in human history. "Since a babe was born in a manger, it may be doubted whether so great a thing has happened with so little stir," borrowing Alfred North Whitehead's description of the birth of modern reasoning in the 1600s.⁷

As to the global economy, Alfred North Whitehead has wonderfully observed that "nations of different habits are not enemies; they are godsend" because "diversification among human communities" provides the "material for the Odyssey of the human spirit."⁸

The implications of a global knowledge economy are difficult to overstate. For one, knowledge as the primary source of wealth requires "a radical shift from previous conceptions of the sources of wealth," from the common assumption that wealth is fixed and that cheap natural resources, cheap labor and efficiency were determinative, to a new reality that "knowledge, investment, insight, and innovation" are determinative, that wealth is not fixed but is as limitless as knowledge, and that the focus needs to be on "superior productivity in assembling resources to create valuable products and services."⁹

Thus, "the potential for wealth is limitless" because wealth "is based on ideas and insights, not fixed because of scarce resources."¹⁰

New Dynamic, "Positive Sum," "Win-Win" Economic Theory. The Theory of Productivity, Innovation and Unique Value is a dynamic economic theory of wealth, prosperity, human dignity and long-term consumer welfare principally developed over the last quarter century by Michael Porter of Harvard Business School.

It is not the economics I was taught in college, it is not the economics taught in any economics department or law school antitrust course I'm aware of, nor is it in any antitrust text

⁵ P. Drucker, *The Age of Discontinuity* 9 (1968; 1992), quoted in Charles Weller, Ed., *Unique Value*.

⁶ P. Drucker, *Managing in a Time of Great Change* 75 (1995); see generally *The Age of Discontinuity* (1968; 1992). "Applied knowledge" is how Mr. Drucker specifically defines "knowledge," and he sharply distinguishes "applied knowledge" from inert or memorized knowledge. *Id.* at 269, 317-18.

⁷ A. Whitehead, *Science and the Modern World* 3 (1925).

⁸ C. Weller, "Connections," Chap. 1, *Unique Value*.

⁹ M. Porter, "Overview," Chap. 2, *Unique Value*.

¹⁰ *Id.*

I'm aware of (which is basically why I published a book on it, *Unique Value*, with 5 chapters by Prof. Porter).

However, it is taught in business schools around the world, and it is used all over the world. To illustrate, in February the *N. Y. Times* reported that in China in June 2004 "an overflow crowd paid \$1,000 a ticket" to hear Mr. Porter because of his "international reputation" for "works on competition between companies and across national borders." Barboza, "Seven Habits of Highly Effective Cadres," *N.Y. Times* B1 (Feb. 19, 2005). In the words of several prominent antitrust practitioners and scholars:

Terry Calvani, Former Commissioner, U.S. Federal Trade Commission, Member & Director of Cartel Division, The Competition Authority of Ireland; Lecturer on Law, Trinity College, Dublin:

"[T]he work of Michael Porter" is an "antidote to the conventional welfare economics that has served as the foundation for modern competition policy for the last thirty years."

Ky Ewing, Chair, American Bar Association Antitrust Section 2000-2001; former Deputy Assistant Attorney General, U.S. Department of Justice, Antitrust Division:

"UNIQUE VALUE: COMPETITION BASED ON INNOVATION CREATING UNIQUE VALUE ...is a book to be relished by thoughtful people who want to explore new dimensions of the competitive process, the very nature of which is changing as the 'knowledge economy' innovatively expands."

Thomas A. Piraino, Jr., Vice President, General Counsel and Secretary, Parker-Hannifin Corporation, Cleveland, Ohio

"Michael Porter's economic analysis can revolutionize the way we think about markets and competition. Business executives, antitrust practitioners and anyone who cares about the economic organization of our society can gain valuable insights from Charles Weller's collection of some of Michael Porter's most original thinking. Mr. Weller's summaries and commentaries will be an invaluable aid to any interested reader."

The Theory of Productivity, Innovation and Unique Value (my name for it) is a new theory, and is as different from economic department economics as Quantum physics is from Newtonian physics, e.g.:

- Productivity, not Efficiency, is the central focus for raising the standard of living and for consumer welfare.
- "Positive Sum" Competition, competition that increases wealth through innovation creating unique value and raising productivity, is distinguished from "Zero Sum" Competition, a static theory that assumes scarce resources, that wealth is fixed, and that the key competitive issues are allocative efficiency and wealth transfer.

- Long-Term Consumer Welfare, not just Short-Term Consumer Welfare, is the goal.
- High Wages and High Profits are celebrated as the result of “Positive Sum” Competition based on innovation creating unique value, greater productivity, and long-term consumer welfare.
- Unlimited Resources and Unlimited Wealth empirically replace the theoretical assumption of Scarce Resources because the historically unprecedented shift to an applied knowledge economy makes knowledge the largest driver of wealth -- and knowledge is an unlimited resource.
- The Theory Uses Three Key Variables -- (1) Five Forces, (2) the Type of Competition, and (3) the Business Environment "Diamond" (see Figs. 1 & 2).
- There are Two Key Types of Competition, not just one:
 - “Type I Competition” over efficiency (“operational effectiveness”)
 - “Type II Competition” over innovation creating unique value to customers.

Competition based on innovation creating unique value means doing things differently from competitors. It involves choosing a unique position to deliver value to customers and tailoring business activities to that position. Creating unique value means companies and their employees must develop new products and new services, and new ways of conducting the activities of their business to set them apart from their competitors -- a form of competition in which the U.S. can excel (and other countries too because this is "positive sum, not "zero sum," economics)" -- particularly in the new, rapidly growing, knowledge economy.

Examples of Type II Competition creating unique customer value include Nordson Corp., whose CEO Ed Campbell explained:¹¹

It's critical that leaders of a manufacturing organization listen very carefully to what is important to your customers and find a way to add value that will increase the likelihood of your customer being successful. It's very difficult for a U.S. manufacturer to be successful in global markets on the basis of being the lowest-cost producer. There needs to be some other means of adding value to your customer's commercial activities, other than simply low costs, whether it be in improving yields, better service, or adding proprietary features to your customer's products through what you offer them.

Another example of Type II Competition using innovation to create unique value, and the opportunities a global economy can create on a "win-win" basis, is the SpinBrush toothbrush, the largest selling manual and electric toothbrush in the world today. It is also an example of the difference between "zero sum" efficiency economics and "positive sum" economics, where both

¹¹ Gerdel, "Nordson Corp. at 50: Picture of Global Health," *Cleveland Plain Dealer* B1 (Oct. 8, 2004).

Chinese and American companies and workers prosper (but for the collaboration, this business would not exist).

Spinbrush was developed, produced and marketed by a start-up company with \$1.5 million in financing, and then sold to Procter & Gamble three years later for \$475 million. How did four Clevelanders and others create so much unique value and so much wealth so fast? Briefly, John Nottingham and John Spirk of a design firm with their names teamed up with two other entrepreneurs, one of whom, John Osher, had recently developed and sold, of all things, an electric lollipop. In pursuit of unique value, they regularly walk through Wal-Mart stores, asking, “what’s not on the shelves that should be?” One of the things they noticed was missing was a \$5 electric toothbrush. Obviously John Osher’s electric lollipop was a good place to start for the innards. The rest is just as fascinating history.¹²

3. Celebrating Unique Civilizations

Moreover, under the Theory of Productivity, Innovation and Unique Value and its focus on unique value, differences among unique civilizations are preserved, celebrated and strengthened, not lost, subjugated or homogenized.

Thus with the Theory of Productivity, Innovation and Unique Value, “[g]lobalization will not eradicate culture, as some have feared,” but, to the contrary, “cultural differences” can and should “become more celebrated.”¹³ Indeed, “instead of isolating some peoples in their economic disadvantage,” unique “cultural differences can contribute the specialized advantages so important to improving the prosperity of nations in the global economy” as “unique aspects of a society” provide the basis for “new patterns of international specialization” and “nations increasingly produce those goods and services in which their culture gives them a unique advantage.” *Id.*

As a former Peace Corps volunteer in the 1960s in a majority Muslim country in Asia (Malaysia), I can personally suggest the new economic Theory of Productivity, Innovation and Unique Value can help take international peace, prosperity and understanding to a new and much higher level. Connecting the sacred difference and diversity of other people, countries and cultures under the Theory of Productivity, Innovation and Unique Value provides a mutually beneficial and important economic reason to celebrate and learn about other specific countries, cultures and people. It thus promotes not only a rising standard of living economically for all, it promotes real international understanding, and thus addresses two of the root causes of terrorism. Of particular value in these times, recognizing and celebrating the world’s unique civilizations is not only mutually advantageous in terms of individual understanding and economics, it is one of the “the surest safeguards against world war.”¹⁴

¹² Berner, “Why P&G’s Smile is So Bright,” *Business Week Online* (Aug. 12 2002); and <http://www.ns-design.com/>. Another personal favorite: Purdue’s Department of Agricultural Economics annual conference for farmers, agricultural suppliers and manufacturers that includes opportunities for all to add unique value (personal communication with Prof. Wallace Tynner).

¹³ M. Porter, “Overview,” Chap. 2 in Unique Value.

¹⁴ S. Huntington, *The Clash of Civilizations and the Remaking of World Order* 321 (1996)(in sharp contrast to “multiculturalism” and “universalism,” which in different ways are the same because they call for the elimination of one or more unique civilizations, Western civilization by the former and non-Western civilizations by the latter. *Id.* at 306-07, 310).

An especially informative example is provided by Noah Feldman in *After Jihad*.¹⁵

[C]ontrary to what is sometimes believed in the U.S., Islam is not inherently committed to the overthrow of Western ideals. To the contrary, many, though by no means all, Muslims find the combination of Islamic ideals and democratic values appealing.

* * *

Many, probably most, Muslims feel a deep attraction to and admiration for American values of freedom, democracy, and even the free market. After all, the United States has succeeded in generating prosperity for its people and unparalleled world power. In the minds of many Muslims, these are successes to be emulated, not resented. * * *

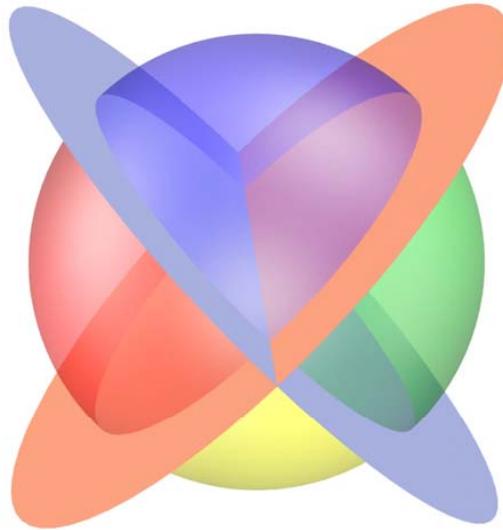
[I]f the U.S. would begin to signal to Muslims they cared about more than its own interests, narrowly defined, and was ready to make self-government for Muslims a part of its general policy, it could expect a transformation in Muslim attitudes.

Conclusion. I strongly urge the Commission and its members to apply their special antitrust experience and expertise to this potentially historic question, and recommend that antitrust and economic policy worldwide evolve as a technical matter promptly from static "zero sum," "win-lose" economic efficiency or other theory to the Theory of Productivity, Innovation and Unique Value that benefits all and celebrates all unique civilizations, for the reasons summarized here and elaborated in the book Charles Weller, Ed., Michael Porter, Peter Staudhammer & Scott Stern, *Unique Value: Competition Based on Innovation Creating Unique Value* (2004 & 2005).

¹⁵ N. Feldman, *After Jihad* 6, 202-03 (2003).

Figure 1:

Theory of Productivity, Innovation and Unique Value



| | |
|---|-------------------|
| Five Forces | (red "slice") |
| Type (Sophistication) of Competition | (blue "slice") |
| Business Environment "Diamond" | (4 color "globe") |

**Figure 2:
Applying the Three Variables**

Diamond

Five Forces

Type of Competition

