GC
LEADERSHIP SERIES

the evolving role of GENERAL COUNSEL

A Roundtable Discussion

KEYNOTE SPEAKER:

Hans Peter Frick

Senior Vice President
Group General Counsel
Nestlé S.A.

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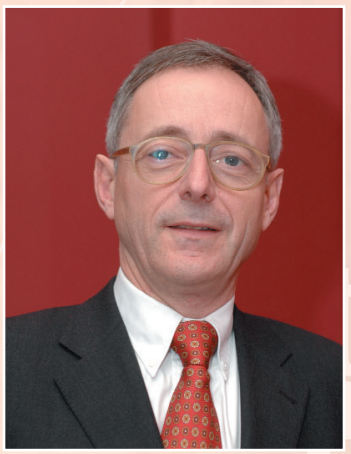
ALM

the PANELISTS

Hans Peter Frick
Senior Vice President and Group General Counsel Nestlé S.A.

David A. Carpenter
Partner Mayer, Brown, Rowe & Maw LLP



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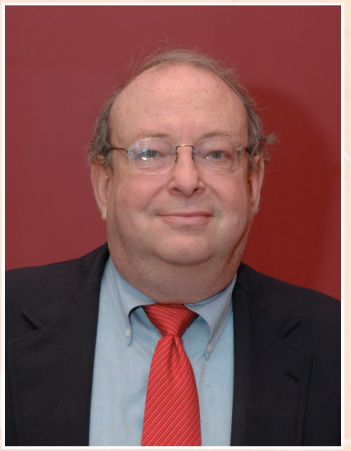


Jack Friedman
Chairman The Directors Roundtable

TO THE READER:

The modern global economy offers a world of new opportunities for companies seeking to increase and enhance their business. Naturally, doing business on a global scale adds a level of legal complexity beyond that which confronts purely domestic companies. Multinational corporations must be knowledgeable of and comply with multiple legal and regulatory regimes which may not be in harmony with each other, resulting in daunting but often vastly interesting tasks for corporate executives and their in-house and outside counsel.

The National Law Journal, an ALM publication, in partnership with **The Directors Roundtable**, a civic group which organizes events globally on issues relevant to corporate directors and their advisors, is pleased to present the latest in our **GC LEADERSHIP SERIES** examining the evolving role of General Counsel. We recently assembled several top attorneys who are counsel to multinational companies and invited them to comment on the legal challenges inherent in global business ventures. The guest of honor for this event, Hans Peter Frick, Senior Vice President and Group General Counsel for Nestlé, S.A provided a perspective on the legal challenges from inside a multinational corporation, touching on matters such as complying with multi-jurisdictional regulatory schemes, protecting intellectual property, responding to negative public relations, and efficiently managing a large multinational legal function.

The panelists, all of whom are partners in major law firms, offered perspectives from outside the corporation. Thomas O'Neil III, a Partner at DLA Piper Rudnick Gray Cary, talked about the U.S. regulatory environment, its reach to foreign companies, and its sometimes baffling aspects to non-U.S. companies. David Carpenter, a Partner at Mayer, Brown, Rowe & Maw, discussed the myriad business, financial and legal issues associated with the formation and operation of global joint ventures. Dr. Joachim von Faulkenhausen, a Partner at Latham & Watkins, offered optimism about the European M&A environment while highlighting some of the European regulatory issues faced by U.S. companies. Roxann Henry, a Partner at Howrey, spoke about antitrust compliance in multiple jurisdictions and identified some of the issues affected by antitrust such as employment, shareholder, and confidentiality considerations.

The text of the panelists' comments, edited for clarity and brevity, follows. The views expressed are those of the Roundtable participants and not necessarily the views of their firms or companies.

The Roundtable Discussion - held January 18, 2006, at The Harvard Club in New York City - was co-hosted by the marketing department of *The National Law Journal* and The Directors Roundtable. This custom publication is included as a special supplement to *The National Law Journal* and was produced independent of the NLJ's editorial staff.

—Brian Corrigan, Esq.

Mr. FRIEDMAN: The role of General Counsel, especially those working for multinational corporations, has become overwhelming. Today we have the privilege of having as our guest of honor Mr. Hans Peter Frick, who is the Senior Vice President and Group General Counsel for Nestlé, S.A. He will share his vision of his role in the company and the role of his company in the world at large. Nestlé, a great Swiss company, is a pioneer in operating in the global economy and acting as a citizen of the world.

Before Hans Peter speaks to us, we'll hear from our other panelists. Our first speaker is Thomas O'Neil III, a Partner at DLA Piper Rudnick Gray Cary and Joint Global Leader of its Legislative and Regulatory Group. He will be talking about regulatory matters in the U.S. such as governance and its international impact. Our second speaker will be David Carpenter, a Partner at Mayer, Brown Rowe & Maw. He is going to speak on global joint ventures. The third speaker is Dr. Joachim Frhr. von Falkenhausen who is a Partner of Latham & Watkins in Germany. He is going to give us a perspective of the M & A world in Europe. Our fourth speaker, Roxann Elizabeth Henry, is a Partner at Howry LLP and will discuss antitrust issues.

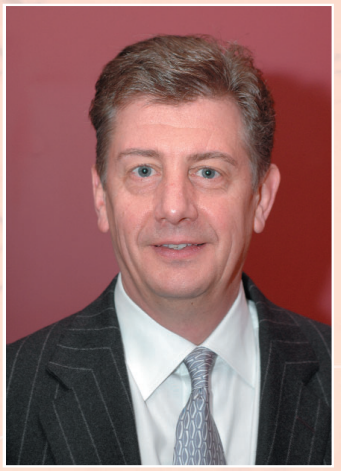
After they and Hans Peter Frick make their presentations we will have a panel discussion. We will begin with Tom O'Neil.

MR. O'NEIL: I would like to spend a few minutes today talking about the American regulatory climate and the extent to which it may reach across the ocean and affect the worlds of those in-house counsel who do business in multiple territories. The other day I was trying to report on some enforcement trends to a client in Europe, and I will never forget his comment: "By God, Tom, are those regulators on steroids?" In fact, this is a very apt analogy. American and Western European regulators and enforcement authorities are taking an increasingly muscular approach, vigorously reviewing the policies and business practices of global companies and focusing, in particular, on firms which produce, market or sell goods or services ultimately destined for the individual consumer. Most tellingly, agencies here in the U.S. are now coordinating these initiatives across state lines and national boundaries, and increasingly the agencies here in the U.S. are focusing not merely on the situs of conduct that is under scrutiny but also on the jurisdictions in which that conduct could have a reasonably foreseeable impact. Stated another way, a non-U.S. company's wholly extraterritorial conduct that is inconsistent with our statutes or regulations can be found to be actionable in the U.S. if the conduct has a direct and perceivable impact on our stream of commerce.

More troublingly, it is quite clear, from the very first meeting with the regulators or the arrival of a subpoena or the start of an informal inquiry, that a fundamental objective of the proceeding is the imposition of corporate regulatory and even criminal liability, resulting in substantial fines, convictions and structural remedies against the company. I am not going to get into any details about specific agencies, because my colleagues here on the panel are great jurists with respect to various areas of the law and they are going to get into that in greater detail in a moment. It is against this troubling backdrop that multinational corporations must now operate, and they must comply with all applicable laws, policies and regulations.

Here in the U.S, as we all know, the legal and regulatory requirements emanate from both federal and state authorities. All too often neither their underlying policies nor the provisions they promulgate can be harmonized. That is a very troubling thing to explain to a general counsel in Zurich, London or Milan. But the most important factor, from the per-

THOMAS F. O'NEIL III, the former senior vice president and general counsel of the MCI Group, co-chairs DLA Piper's global Legislative and Regulatory group and is chair of the U.S. Government Affairs practice group. Based in Washington, D.C., and New York, he provides strategic advice and business-focused advocacy to privately held and publicly traded companies whose business practices are the subject of congressional oversight, regulatory enforcement, or criminal investigations. Mr. O'Neil also conducts internal corporate inquiries and represents companies in civil litigation initiated by or against federal, state, or local agencies. He is widely known as a speaker and writer on a broad range of legal topics.



"European and particularly Western European regulators have already embraced American quasi-criminal enforcement theories and penalties. A key question moving forward for lawyers who transact business on these shores is whether the European regulators will next see fit to follow the American lead regarding business theories and penalties."

spective of in-house counsel advising executives in a multinational company, is that our regulators and legislators have decided, for better or for worse, to go far beyond the boundaries of legislation and traditional rule making. As a result of decades of corporate scandals, U.S. regulators and legislators have now individually and collectively determined that it is necessary as well to address corporate morality. They have undertaken in no uncertain terms to define and prescribe corporate citizenship and responsibility. European and particularly Western European regulators have already embraced American quasi-criminal enforcement theories and penalties. A key question moving forward for lawyers who transact business on these shores is whether the European regulators will next see fit to follow the American lead regarding business theories and penalties.

There are three key concepts that I think this touches on: compliance, self-reporting and the notion of administrative advocacy. Clearly, any company that wants to get ahead of the curve, if you will, and ensure that statutes and regulations are enacted in a way that enables it to protect its various streams of revenue and marketing, wants to get in at the ground floor and participate in legislative and administrative advocacy at the right time. But woe unto those who aren't already fully compliant with the existing compliance program and have not adopted the cultural attributes that our regulators and increasingly our legislatures are now demanding. Corporate executives are becoming ever more familiar with the regulatory new world order, and that includes codes of conduct, corporate compliance programs, the concept of up-the-ladder reporting, and, of course, voluntary self-disclosures.

Within the U.S., for a company to leverage this self-policing effort or to have credibility before a legislature or an administrative body, it must comply with regulators' expectations-which are that companies should go above and beyond the minimum legal requirements. This unwritten expectation can be baffling for a foreign lawyer or for foreign executives.

It is in this context that we are now asking corporations, wherever they may be housed, to step back and focus on the company's culture and core values. At the heart of any legitimate compliance program now must lie the fundamental notions of self-policing and self-reporting.

In the U.S., as we all know, codes of conduct and business ethics and records retention policies are no longer optional or something to be added on in a settlement negotiation.

Ben Heineman (the former GC of GE), I thought, had a number of interesting comments on this topic recently in the *Wall Street Journal*. He wrote that a company has to be able to articulate now its ethical values and aspirational platitudes just aren't going to carry the day. He went on to note that senior management is expected to establish specific and attainable benchmarks that are meaningful and readily ingested by the populace within the hallways of their company, and to that end it is important to provide specific and realistic examples of ethical dilemmas that the real life employees or officers may face in their daily affairs.

Those kinds of internal statutes and regulations can end up being little more than window dressing if the company does not appoint the key personnel and create the requisite communication channels to address apparent, suspected or actual wrongdoing. We could spend the entire day with a consultant trying to talk about the optimal structures for any given company. That would go well beyond the purpose of our gathering this morning. But suffice it to say that if a system is ultimately to resonate with the audience for which it is destined - and in the U.S. that means federal, state and now even international regulators and legislators - the company's compliance function must be fully empowered. It must be independent and it must be professionally executed with sufficient access at all times to senior management, to the control group, to the internal audit department and to the board of directors.

Finally, all employees and officers must understand and appreciate that there are significant adverse consequences for failing to embrace and adhere to the highest ethical standards. One of the biggest challenges is training employees to understand that ethical standards are not something that can merely be driven from the top down. Senior management can certainly articulate shared values and core cultural principles but, at the end of the day, employees have to understand that they need to embrace and further these principles at all times. They need to realize that adverse employee actions can take many forms, ranging from relatively benign statements in an employee's personnel record to termination of employment and disclosure of wrongful or illegal conduct to appropriate regulators.

And that brings me to my last subject as my time draws to a close. That is the concept of voluntary disclosure, a topic that has been much debated in the press and has now even reached our national business magazines. This concept is very difficult to articulate to somebody from another country, whether a lawyer or a business executive. The latest pronouncement out of Washington, from the Justice Department and the SEC, declares that they never really meant that corporate lawyers had to give up work product during the course of an investigation. Those issues are debatable and on the fringe of the whole topic as far as I am concerned.

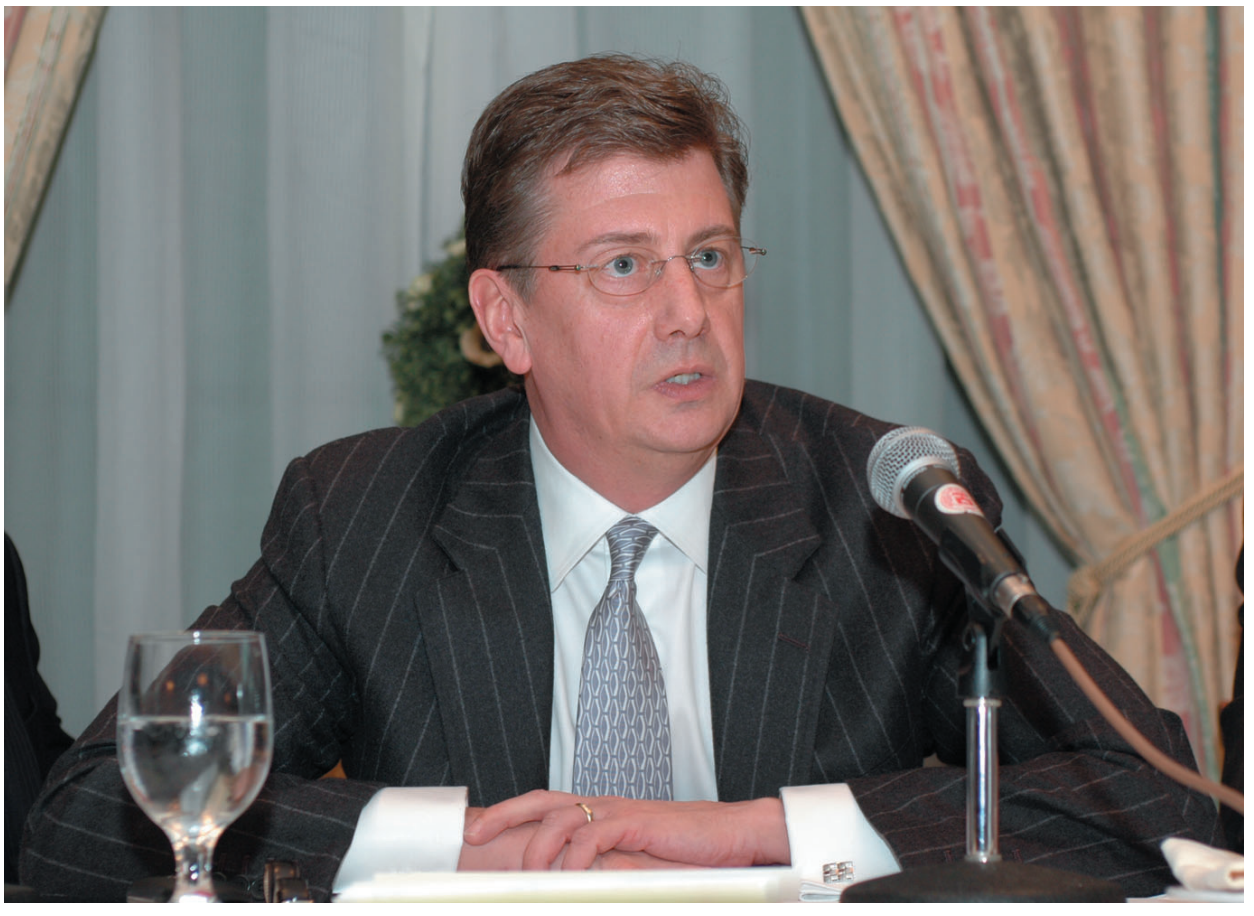
What regulators clearly are expecting in this country is that if a company embraces the concept of high culture, self-policing and ethical behavior, then the government will not have to expend resources delving into the company's problems and that, when appropriate, a company will make voluntary disclosures.

What is more difficult, of course, is trying to reconcile the policies of the different agencies in this country. Some agencies have articulated relatively concrete guidelines for in-house counsel to refer to when making this very thorny decision about voluntary disclosure. With other agencies, the guidelines are vague -- more a test of faith. These days we have to resort to things like unanimous disclosures until the day the agencies finally agree on the particular Damoclean sword they will ultimately wield.

It is tough stuff. In closing, I'll mention one of the interesting experiences I have had recently in the area

of voluntary disclosures. The Antitrust Division of the Justice Department has taken the position that even when they stray from the Sherman Act and they are investigating garden-variety Title 18 offenses, they intend to apply their first-in-the-door standard of leniency for a company. This can be a very difficult thing to grapple with.

MR. FRIEDMAN: Let me just ask a quick question. We had a program a year ago hosting the SEC in Paris. The keynote speaker was the chairman and CEO of Société Générale. He opened his remarks by saying that he had to learn about the American legal system because Société Générale had made a loan in the 1990's for an industrial project in Iraq which was perfectly legal under French law, but for which it was being sued in an American court. He asked his advisors how this was possible when



America wasn't directly involved. The Chairman said that it was how he learned about the concept of "deep pockets". What I would like to ask you is: What is your view of what foreign investors find hardest to understand about here in the United States?

MR. O'NEIL: The zeal with which our legislators and regulators assert jurisdiction over business practices and transactions. And our inability to assure them that any information shared with enforcement officials, including Congressional investigators, will be kept confidential.

MR. FRIEDMAN: We will develop that theme with the other panelists later.

Our second speaker is David Carpenter.

MR. CARPENTER: Good morning, everybody. Over the past 15 years or so our firm has had the privilege of working with Nestlé and Mr. Frick on a variety of interesting and often cutting-edge legal matters across many of the practice areas of the firm. I personally have worked on a number of cross-border acquisitions with Nestlé. I have to say that the most interesting aspect of my relationship with Nestlé over the years has been working on Nestlé's joint venture activities. If you know Nestlé you will understand that a great deal of Nestlé's success has been derived from its willingness to leverage its own strengths – such as its local market presence on a global scale, its brand recognition, its global marketing and distribution capabilities and its wealth of intellectual property that it has developed through its R & D operations - in combination with the strengths of its joint venture partners.

As a result of this willingness over the years, Nestlé has had tremendous success in forging strategic alliances to grow its businesses. Several examples stand out when you think of Nestlé's joint venture operations. It has a large global joint venture with General Mills in the manufacture, distribution and sale of breakfast cereals. It has a long-standing joint venture with Coca Cola for the distribution, principally in North America, of iced tea products. It has a joint venture with L'Oreal to research and develop oral skin care and other cosmetic related healthcare products. And more recently, it has entered into an alliance with a New Zealand company called The Fonterra Co-Operative Group for the manufacture of milk powder and the manufacture, sale and distribution of chilled milk-based drinks throughout the Americas. While not all of Nestlé's joint venture activities have resulted in homeruns, its ability to leverage its strengths in joint ventures really differentiates Nestlé from its food industry competitors.

As I am sure that you can imagine, Nestlé, as any other company that undertakes a global joint venture, has to work through a myriad of business, financial and legal issues associated with the formation and operation of the joint venture. These issues begin with very simple, basic questions such as: What corporate form should the joint venture take? Is there, for example, going to be a parent company that will act as an umbrella organization and then have a series of subsidiaries throughout the rest of the world to perform the joint venture activities locally? Alternatively, a joint venture could be structured as a series of separate companies that are owned by the local businesses. This structure may have advantages because you can better fit those operations into your existing corporate structure, such as your licensing of intellectual property up the chain.

Of course, the choice of the legal structure will have significant tax, corporate governance, operational and human resources consequences which need to be assessed and resolved. For example, a joint venture which is structured as a 50/50 umbrella company with a series of subsidiary companies may be easier to administer from a governance standpoint than one that is structured as a series of country-specific operations. This is because in the latter instance it would be necessary to replicate a board and a management structure - perhaps dozens of times - as the JV penetrates new markets.

By contrast, in the JV umbrella structure you can provide for a single place where corporate decisions are made and then pushed down those decisions to the subsidiaries through the exercise of traditional share holder rights. Under either structure it is vital that the joint venture arrangements afford the partners with a clear process for raising, considering and deciding major business issues. No joint venture will be successful if there is not a process for developing consensus among the partners. Likewise, no joint venture will be successful if one of the parties is forced to pursue a business strategy with which it does not agree.

Given this, it is critical that the joint venture agreement establish a clear methodology for resolving disputes promptly before they escalate. I do not mean that there needs to be a mediation or arbitration or litigation process, because if the parties are forced to resolve their disputes in this manner the joint venture will not have much of a chance to succeed.

Among the most important aspects of a successful joint venture will be the willingness of the parties to communicate with one another. Frankly, this is something that you cannot force the joint venture partners to do through legal contracts.

Interestingly enough in my experience, the most heavily negotiated aspects of most joint ventures involve exit procedures for joint venture parties if they no longer desire to stay in the joint venture. Exit procedures might involve shotgun buy-sell provisions, drag-along rights should one party determine to sell its interest to a third party, rights to initiate an initial public offering or to force third party sale of assets of the joint venture business.

As you can imagine, implementation of any of

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these procedures by a joint venture partner raises tremendously complicated issues. For example, if one of the parties is providing administrative or marketing or distribution services to the joint venture, will that party be required to continue to provide those services after the joint venture is terminated and if so, for how long? Likewise, if one of the parties is licensing its brands to the JV, will it be required to continue to license the brands? Clearly from a business standpoint once you lose control of your ability to determine the quality that is associated with the brands it becomes very difficult to justify the ongoing license.

In addition, although in my experience, the exit procedures are heavily negotiated at the time of formation, they are rarely followed in practice. In most cases when a joint venture is failing, the parties are aligned in their desire to exit the joint venture in the most cost-effective and least disruptive manner. As a result, the solution or the negotiated exit procedures are not likely to match up with the best business solution to terminate the joint venture.

Global joint ventures also raise particularly complicated issues regarding which laws should govern the relationship between the parties and which forum should be used to resolve claims between the parties. A joint venture partner that does not have a significant presence in a particular country where a joint venture has its business will be reluctant to agree to allow disputes to be resolved in the local forum. Under such circumstances it may be advisable to allow the disputes to be resolved through arbitration in the neutral forum. For this reason arbitration in London or Switzerland is often chosen for joint ventures which are global in nature.

From a legal standpoint, negotiating a joint venture agreement presents unique challenges because no two joint ventures are identical. There is no form or agreement that you can pull off the shelf and just mark up and have a joint venture. Rather, lawyers involved in the documenting of joint ventures must exercise a fair amount of creativity. In addition, because so many issues are involved in the formation of a joint venture, it is important to develop a detailed term sheet before moving forward to the next stage to ensure that the parties have the same expectations as to the fundamental aspects of the joint venture. You would be surprised at how many joint ventures do not make it beyond the term sheet phase because it is at this point that the parties really learn what the other parties are trying to get out of the joint venture and those expectations often don't coincide.

MR. FRIEDMAN: One of the fears that American companies have repeatedly stated is that their joint venture partner will illegally expropriate their intellectual property. It is often mentioned in relation to China but apparently it is a worldwide problem. How does a company protect itself?

MR. CARPENTER: The answer to that question is that it can be very difficult. I do quite a bit of work related to India and, obviously, that is a place that people are very frightened to do business in for that very reason.

The global community needs to pressure governments to adopt laws that are truly effective in enforcing intellectual property rights. In the long run, that is the way that it is done. You don't have to worry much about theft of intellectual property rights by partners in a joint venture; more leakage of the intellectual property occurs outside of the joint venture.

MR. FRIEDMAN: Do you mean by employees?

MR. CARPENTER: By employees.

MR. FRIEDMAN: Suppliers?

MR. CARPENTER: Right.

MR. FRIEDMAN: People who are not themselves officially a party to it.

MR. CARPENTER: That's right. And for that you can try to ensure that there are contractual protections in place. The bottom line is unless there is legal system in place that is willing to enforce the rights and do it quickly, you risk leakage of your intellectual property and diminishment of its value.

MR. FRIEDMAN: There is an old story from Communist Russia that an employee had night after night removed a large amount of sand in a wheel barrel from his employer. The guard observes him, puts his hand through the sand, and can't understand why the guy is repeatedly taking sand which has no particular value out and never seems to be stealing anything. The punch-line is that the employee resigns and sets up a company selling wheel barrels. The point is that no matter what your security, some employee will figure out a clever way of getting your property out the door.

In any case, our third speaker is Joachim Von Falkenhausen.

MR. VON FALKENHAUSEN: I am going to speak about European M&A and it is probably best that I start with the good news. The first piece of good news is that German M&A is booming, very much like in the United States. The volume and the number of transactions have been growing over the last years and we expect it to continue to grow in 2006.

The second piece of good news is that it is not so different from what you have over here in the U.S. The techniques are very much the same as are the drivers of M&A activity. In some instances it is in fact the same companies because very many of them act globally these days. So who are these drivers? Well, we have, of course, the corporates. The corporates have been selling their non-core activities over the last years. An example is the German energy concern EON selling its housing business for €7 billion Euros.

Also, these days the corporates are on the buyers side again, buying up strategic assets. Examples would be the Italian Unicredito taking over the German HVB HypoVereinsbank. Springer, the publisher, is trying to buy the Pro7Sat1 TV chain from the Saban group. It is quite probable that this deal will collapse for reasons of competition law, unfortunately.

The second big drive in the market - very much like in the U.S. and anywhere in the world - is private equity. Private equity has had enormous amounts of money to spend lately and is not looking only at small family or closely held companies. They are taking larger public companies private. They are also investing, possibly in minority stakes, in very big public companies. Private equity in Europe, again, like in the U.S., is also on the seller's side. The private equity sponsors have been selling various assets in Germany, et cetera.

One interesting aspect of European - and as I am a German - particularly German M&A, is what we used to call the Deutschland AG, the Germany Inc. This term refers to the interwoven structure of German industries, cross-holdings, and major shareholdings by banks.

For years we have been saying that Germany Inc. is breaking up, and this continues to produce a lot of business for M&A. There are still some major shareholdings by German banks but they seem to be on the sell side. They had a large holding in the industrial company, M.A.N., which they just placed onto the market. They still hold one in Linde, which has been the target for private equity for a long time. But then we have developments which are strange. We have the Germany Inc. reinventing itself. You will have heard that Porsche has been taking a major shareholding in our major car manufacturer Volkswagen in order to keep other investors out, and nobody knows why other than that they wanted to keep it away from others.

There is one big driver in European M&A which you do not have over here in the U.S. and that's the privatization of government owned companies. The absolutely biggest one that has been on the market was the French energy company, Electricité de

France, which has gone public. And finally something you will know and some of you will like and some of you will look at with critical eyes, the hedge funds are arriving in Europe.

The techniques that are used in European M&A

Dr. Joachim Frhr. von Falkenhausen

is a partner in the Hamburg office of Latham & Watkins. He is admitted to practice as a Rechtsanwalt in Germany. Besides his native German, he is fluent in English and French.

Dr. von Falkenhausen specializes in corporate law, in particular M&A transactions, joint ventures, restructurings and corporate litigation. He advises many domestic and international clients, in particular clients from the UK and the US as well as major German companies. Some of his representative clients include eBay, German utilities E.ON and RWE, M. M. Warburg & Co., and BAE Systems Plc., among others.

"I think that the message still is that European M&A does work. It does not work much differently than it does in the U.S. If you watch out for the local regulatory environment, the business can be done."

ROXANN ELIZABETH HENRY

is a partner at Howrey LLP in Washington, D.C. Ms. Henry regularly represents clients in antitrust grand jury investigations, including international cartel matters, and has particular expertise coordinating defenses in the context of a multiplicity of criminal, civil and administrative actions. She has handled acquisitions in a wide range of industries, including telecommunications, aerospace and defense, information technologies, industrial and research equipment, chemical industries, and many consumer and food products. Ms. Henry is currently on the Council of the Antitrust Section of the American Bar Association, and a member of the International Cartel Working Group Task Force of the ABA Antitrust Section.

are basically what you are used to over here in the U.S. but it just may happen a couple of years later.

The regulatory environment in Europe is interesting. The most interesting aspect is merger control, which I am not going to touch upon because Roxann is going to discuss that. We have a lot of activity by European community legislation as well as by the European courts. I'm not going to go into the details here but we have a directive for public takeovers which the European member states must implement by the middle of this year.

We have a merger directive which will allow European companies to merge over borders which is very interesting from a tax point of view. We have the European Court of Justice just issuing a judgment on exactly the same topic. So things may become much easier there. But the local capital market regulators are not unified in Europe yet, so that is something to look out for whenever you do a public deal involving a European company. And then we have our various bits and pieces. We have lots of regulations, of course, in the defense industry and we have things like the French government saying that they want to protect 15, I believe, French industries from takeovers. There we want to have the power to prohibit takeovers by foreigners. They are right now fighting this out with the European commission which, of course, will not like that idea.

Having said that, I think that the message still is that European M&A does work. It does not work much differently than it does in the U.S. If you watch out for the local regulatory environment, the business can be done. Thank you.

MR. FRIEDMAN: Thirty years ago I wrote a guest article for *The New York Times* along with a cartoon about the oil embargo. The title was, "Who's Afraid of Foreign Takeovers?" It showed Little Red Riding Hood with a bank, an airline, a tank for defense industries, and so forth. Behind a tree was a lecherous looking wolf with an Arab headdress. We went through the same type of mental images as the Europeans are now experiencing. They are confronting all the same concerns about foreigners stripping us of our secrets and controlling us, and so on and so forth. These trends come and go.

MR. VON FALKENHAUSEN: If I may I add something here, we have been afraid of American takeovers for decades but lately the Germans have gotten very concerned because the Americans were not buying anymore. So, it goes both ways. When the Americans come and buy we are concerned, but if they don't come and buy it is much worse.

MR. FRIEDMAN: And the reason is?

MR. VON FALKENHAUSEN: Well, the German industry apparently did not look attractive anymore.

MR. FRIEDMAN: I see. Well, we will develop that one with the other speakers later.

Roxann if you will make your presentation.

MS. HENRY: I am going to focus my remarks on antitrust which in the rest of the world it is known as competition law. Nestlé over the years has made a number of very well thought out acquisitions that have contributed immensely to shareholder value. It also routinely tweaks its global portfolio of businesses, again, toward maximizing value. This means that at any time Hans Peter Frick has to deal with the merger competition regimes of any number of jurisdictions.

I have had the privilege of assisting Nestlé in the United States with their antitrust work since Nestlé first acquired the Carnation Company. It was in 1984 that Nestlé entered into a contract to acquire the Carnation Company. Only after the Federal Trade Commission here in the United States finally convinced itself that the consumers of those little packets of hot cocoa mix were not going to be harmed by this $3 billion transaction did the transaction finally close. That acquisition was at the time the largest transaction that had taken place outside of the oil industry.

Since then, Nestlé has done a number of transactions in the billion dollar range. It purchased Ralston Purina for over $11 billion. More recently, it acquired a majority interest of the Dreyers Ice Cream Company and acquired Chef America which is the company that makes Hot Pockets™. Nestlé continues to actively look at acquisitions and divestitures.

Whenever acquisitions are strategic they involve antitrust or competition law considerations. For me, the pleasure in working on these matters has been largely due to the people that Nestlé has assembled to manage these acquisitions. Hans Peter Frick is very lucky in that he has competition law specialists on his staff. It is very unusual for a European company to have in-house competition law expertise. Nestlé brought this in early on and it is something that is happening more now.

As antitrust specialists working on acquisition matters, we coordinate and touch upon a variety of different workstreams, including in the areas of the business concerns where David Carpenter is very actively involved. Antitrust must be considered when evaluating a potential transaction. Value must be preserved from the time you enter into the contract until you close, which can be many, many months if you are undergoing an antitrust review process.

Shareholder issues today touch upon some of the regulatory issues. Sarbanes-Oxley has created much greater concern with what is disclosed. Much of the

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>
> Hans Peter Frick
> Senior Vice President

whole antitrust clearance investigative processes now is disclosed.

Confidentiality concerns. Insider trading has always been a concern but with renewed force these days. For at least the last five years, anytime a deal involves a publicly traded company, the SEC has done a thorough review of who knew what before the acquisition became public and who traded in that company.

Synergies are the principle reasons most companies do deals. Synergies means cost savings, but they also mean employment issues, with some people losing their jobs. These are some of the challenges in the antitrust area apart from the substance of the evaluation of competitive effects.

Let me go back to the multi-jurisdictional issue raised earlier. Howrey is the largest antitrust firm in the United States, with offices in other parts of the world. We routinely coordinate antitrust filings and pre-merger notification requirements across the world. We put together a book summarizing just the notification requirements of many different jurisdictions. There are over 90 countries today with some type of merger notification program, although not all are active. Hans Peter Frick and I have discussed Czechoslovakia, Brazil, Mexico, and Canada, just to name some. Coordinating the filing requirements is a massive task as more and more jurisdictions are adding pre-merger notification requirements.

The globalization of trade has also brought with it globalization of cartels and price fixing. This goes back to a point about compliance programs that Tom O'Neil raised, which I want to highlight again. Antitrust compliance programs are going global. You need them for your operations around the world. I am working right now on an international cartel conference where the enforcers from five different jurisdictions are going to show how they coordinate their efforts to globally attack a price fixing cartel that is of international dimensions. Compliance has become an area that corporations focus on more and more, and Nestlé in particular, has led the way here. Hans Peter Frick and his team have put together competition law compliance programs to deal with this issue on a global basis and we are seeing more and more companies do that.

In closing, I congratulate Hans Peter Frick and Nestlé for taking the initiative and having the foresight to address competition law on a global basis and doing so very effectively.

MR. FRIEDMAN: One reason why we invited Hans Peter to be the Guest of Honor at this program is because of his global experience as a result of working at Nestlé. I want to welcome him here personally and on behalf of the audience for speaking here in America.

MR. HANS PETER FRICK: Thank you, Jack. Thank you all of you to be here so early in the morning and to have come from far places in the United States as well.

What I would like to do is to give you of a snapshot of Nestlé and also make some general comments about some challenges to the legal practice, whether in-house or outside. Then I want to talk about some of my own issues as Group General Counsel of Nestlé.

Nestlé's Business

Nestlé's history is a history of internal growth and external growth. Nestlé was founded in 1867 in Vevey, Switzerland. Heinrich Nestlé came from Germany. He probably had to run away in the turbulences in the 1840's and came to the haven of Switzerland where he owned a pharmacy. When his sister-in-law could not breast feed her baby, he developed the infant formula, which is the origin of this company. So the story goes . . . and also the origin of many controversies all over the world.

The company went into chocolate in 1929. In 1938 Nestlé started to manufacture Nescafe in the U.S. We had a fantastic free ride with the U.S. Army all over Europe and all over the world. They marketed Nescafe everywhere. That is why it is such an important product still today.

As you can see on this slide, we went into the culinary business in 1947, Water business in the 1960's. In the 1970's we bought some companies in the U.S., including Stouffer's and Alcon, the eye care business, then Carnation, Friskies, Rowntree, Perrier, San Pellegrino and many others, with an acceleration of acquisitions in the 1990's and 2000s. Unfortunately for the M&A lawyers amongst us, in-house and outside, there is not much that there is left to do. This means more work for the competition lawyers because whenever we do something we reach that level which is the pain level for the competition authorities, which, obviously, gives us interesting jobs to do.

We have had an important presence in the world since the 19th century. Actually, the first tentative step to enter the U.S. dates back to 1882, with the acquisition of a milk factory in Middletown, N.Y. Offices were opened in Singapore and then in Australia already in the end of the 1800s. We have been in Brazil since 1920. We have been in Japan since 1933, in China since before the Second World War. And then, we had to leave. We went back 18 years ago. There are now 25 factories in China.

It is a big company. It is a huge company. Our worldwide sales are $70 billion U.S. dollars. We have 500 factories worldwide. This is historical, because in the early 1900s you could not manufacture goods in one country in the Agro/Food business and transport it to another country. The barriers of customs were much too high. You couldn't sell your produce to your consumers where you wanted. So we had to have factories in each country manufacturing for each country. That is why we have so many factories. Nestlé has some 250,000 employees.

We want to have a growth of between 4 and 6 percent. We did a nice figure in 2004, and we will come out with the 2005 numbers in three weeks. I cannot mention anything about it here but it looks like a good year.

We are truly multinational because we make less than 2 percent of our sales in our home country of Switzerland, with an important export business from home. The U.S. is our biggest market. California is as big a market as France or Germany. We are very proud of our U.S. operation. The market capitalization of the company gives us about $160 billion as of today.

We lead the pack of the world's leading food companies. Kraft Foods and Pepsi-Cola are about half our size. Unilever is a big competitor for us, so is Mars in the chocolate and confectionary area. Danon is a big competitor in the water and chilled dairy area. Cadbury and the others on this slide are also very interesting competitors.

Our sales are spread almost evenly around the world. We do about 30 percent in Europe, and 32 percent in the Americas, which comprises both parts of the Americas, the North and the South. Asia, Oceania and Africa are a little bit behind. Water is quite an important business for us as well. Others are our investments in Alcon and the joint ventures we have with various companies including Coca Cola, General Mills,

> "Corporate governance is not merely a question of increasing [the] regulatory burden of ensuring compliance with the procedure requirements... [n]or is it the innumerable governance codes and regimes in place throughout the world, where we have subsidiaries quoted on local stock exchanges. Corporate governance is more fundamental than this. It is the promise of a company to its shareholders, customers, consumers, employees and other stakeholders first to adhere to a set of principles embodied in law and regulations, and most importantly, the values and the standards of the company."

Fonterra and L'Oreal. We are also owner of 27 percent of the L'Oreal share capital. So we feel that we have a very good position there to see what happens in the future when Madame Bettencourt gives up her control of the company.

Nestlé has four pillars we work on, and the legal function follows these pillars as well. We have to be operationally efficient. We have to innovate and renovate on how we provide legal services to the company. Product availability means we have to be available wherever and whenever somebody needs legal services. We have to properly communicate what we can offer to our management because, as you can imagine, sometimes business people would prefer to do things without the lawyers. It is quicker, at least at the outset.

In the food business itself, quality is everything. It is important that on the social side we have good quality/price performance. Then, food must be convenient and fit cultural and ethnic tastes. On the sensory side, it needs to have a nice aroma and good texture. Good color. Maybe also CRUNCH chocolate has to have a good cracking sound when you eat it. Then, you know, these days more and more, I think we want to have healthy food. Something with good nutritional value - a safe product but also healthy one.

We are a branded goods company. The branded goods product is a tricky thing because we try to sell a product under a global brand but with different tastes. There are about 250 different recipes for Nescafe alone, because people like the coffee

different in each area. The Italians like it a little bit toasted. The Germans prefer a little bit more acid, and in the US, consumers love Vanilla and Hazelnut taste in their coffee. So we adapt our products to the local tastes even though we follow a global strategy. Another example is bouillon or broth. In China we have granulated chicken bouillon. In Nigeria you will find these Maggi cubes. And in Poland you will see basically the same product adapted to the Polish market.

Closer to home, in the U.S. some of the products we market are mineral water, baby food, confectionary products and ice cream. Some of the brands we use are on this slide. By the way, we just had reached 99 percent ownership of Dreyers Ice Cream, I think, at the end of the week.

Challenges to the Legal Practice

Here I would like to make some comments about the challenges to the legal profession these days. On one hand there is a need to specialize. This is particularly true in the area of antitrust. Indeed, when I joined Nestlé in 1990, there was no antitrust department in-house. I was not a specialist in antitrust, and when I had to defend the Perrier acquisition in Brussels the light bulb went on immediately: we needed somebody who is a master in this new area of business. In addition, we make it part of the baggage of each and every lawyer in our company, as this is really our daily bread and butter.

Then, also, today the client is more sophisticated than in the past. Many of the law firms used to deal with business people in the companies in the past. Now they have to deal with in-house lawyers, many of who are very high quality attorneys.

The legal services in-house are now part of management, which was not typically the case before. The legal department used to primarily deal with contracts, litigations and so forth. Today, we are very much involved upstream in the strategy and the decisions that are made before we go into transactions and before we expose the company to risks. We are assuming a more preventive role and we are more legal risk managers than the problem solvers that we used to be.

The relationship with outside counsel has also changed. I think the relationship has moved from a classic service provider relationship to more a symbiotic relationship where you form a team and you treat the outside lawyers as an extension of your in-house legal department. You try to embrace and bring them into the organization so they can really add value.

My challenges as Group General Counsel

As Group General Counsel of Nestlé, I would say one of my most important challenges is to maintain an overview of the material legal issues facing the Group, and to ensure that the Group Legal Function is positioned to address them. For this I first of all heavily rely on my colleagues in the Legal Function as my long distance radars. They are strategically placed in 53 countries where we have local legal departments around the world. They report into four Regional Counsel in the head office in Vevey on the shores of Lake Geneva. The radar has to be very well tuned because we have operations in almost every country.

We also work in this geographical spread, which includes the most advanced, industrialized countries and markets as well as markets that can yet not even be classified as emerging. The challenges to the group from the legal prospective are quite big. Unfortunately, a number of the themes that I want to explore now have

been experienced first hand in 2005, and sometimes in the ruthless gaze of the media. I will touch on one or two things here.

Corporate Governance and Increasing Regulation

The first issue is corporate governance and increasing regulation. I recognize that the combination of these two subjects is not really common but I think they have some things that are often interrelated. Corporate governance has become one of the major challenges to be faced by all publicly traded companies. In reality it is one of the major challenges faced also by privately owned companies. It is core. Corporate governance is not merely a question of increasing regulatory burden of ensuring compliance with the procedure requirements laid down in the Sarbanes-Oxley Act, the Combined Code, or closer to home, the Swiss Code of Obligations and the Swiss Code of Best Practices of the Stock Exchange for Corporate Governance. Nor is it the innumerable governance codes and regimes in place throughout the world, where we have subsidiaries quoted on local stock exchanges. Corporate governance is more fundamental than this. It is the promise of a company to its shareholders, customers, consumers, employees and other stakeholders first to adhere to a set of principles embodied in law and regulations, and most importantly, the values and the standards of the company.

And, second, to have established appropriate checks and balances to ensure such adherence. In other words, it touches all the aspects of a company's operation in every geographic region in which it is present or its products are marketed.

Increased regulation, indeed, is a burden faced by all businesses. The problem faced by business is not the regulation as such but the density of regulation. The authorities are imposing ever more detailed and technical requirements, usually at the national level and often contradictory to each other. This is not a criticism but a simple fact. To criticize the situation would be to fall into a trap faced by all global businesses, which would be to ignore and forget the huge ethnic, cultural and political diversities existing in the world. The choice is quite simple. Comply or face the consequences.

Increasingly, companies are judged publicly against their performance versus their stated code of conflict or business principles and applicable law and regulations. Any failure, even with the best intentions, can lead to important fines, expensive product recalls, compensation claims, class actions, even penal actions against management.

For example, in Italy last September we sold some powdered milk, which a laboratory found to contain traces of ink. The traces were so minimal and were absolutely harmless according to a report from the European Health Authorities. Nevertheless, we were accused of polluting the market with these products and of putting children into danger. We went back to find out what happened. It turned out that the packaging manufacturer prints the labels on the packaging material, rolls the packaging material into big rolls which are transported into the factories and then unrolled, and that during the rolling process some ink was transferred to the inside of the packaging material. It's not our problem; it is the manufacturer's packaging material. But in the newspapers, whose problem is it? Nestlé's. Nestlé is poisoning children. We have now some 35 lawsuits and two Penal actions - one against our chairman, one against the management in Italy for trying to poison the public.

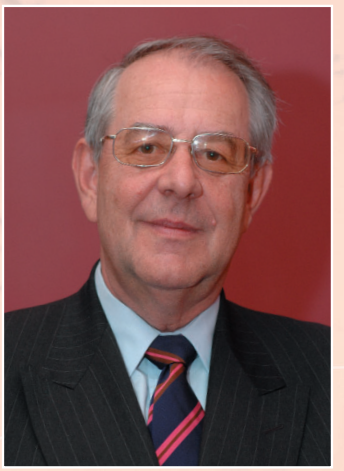
It is very, very damaging for the long-term and for all other products because now everything Nestlé markets in Italy is tainted; these products are no longer consumed there. So overnight it has become a big issue. It is the public condemnation and the accusations against the company that are dangerous.

Basically, we've lost the consumer's trust. Law enforcement, regulatory bodies and, of course, the media are responding to a public increasingly unforgiving of companies, particularly well known companies and multinational companies. And they think that they should be held accountable for their failings.

Increased Litigation

Another issue on my radar screen is increased litigation. Historically, Nestlé has not experienced a heavy flow of litigation given the size of the group.

HANS PETER FRICK



is Senior Vice President and Group General Counsel of Nestlé S.A., the Holding Company of the Nestlé Group and Executive Vice President of Nestec S.A., the management company of the Group.

As Group General Counsel, he is responsible for general legal matters and the share transfer office.

Mr. H.P. Frick joined Nestlé S.A. en 1990 following a three years term first as Legal Advisor and than as Chief Executive of ISMA, the International Securities Market Association. He also served as Legal Counsel of Hewlett-Packard Europe from 1976 to 1987.

Even in the U.S., our litigation casebook, when we benchmark with other companies, is very favorable compared to other household names. However, it is quite clear that we will face more litigation in the future, whether as plaintiff or defendant and the Group Legal Function has to beef up for this new challenge. Our external advisors also need to be prepared for this.

I just want to mention three reasons that I believe will drive increased litigation. First, the increasingly competitive business environment will drive companies, including Nestlé, to enforce intellectual property rights since these intangible assets really provide one's competitive advantage. So there will be more activity in the area of intellectual property rights. We see an increasing amount of counterfeit. And typically this occurs in countries very close to Europe like Turkey or Morocco.

Secondly, I think business is likely to scrutinize and challenge competitors' intellectual properties and products, especially their advertising claims. As we try to move from a traditional food business to a health and wellness business, we will have to sell products with clear claims associated with them. For example, we have challenges in the pet food area because we claim that if your dog eats our product he will live two years longer. Now, it seems that it is substantially proven that this is the case, but we have been challenged by one of our competitors.

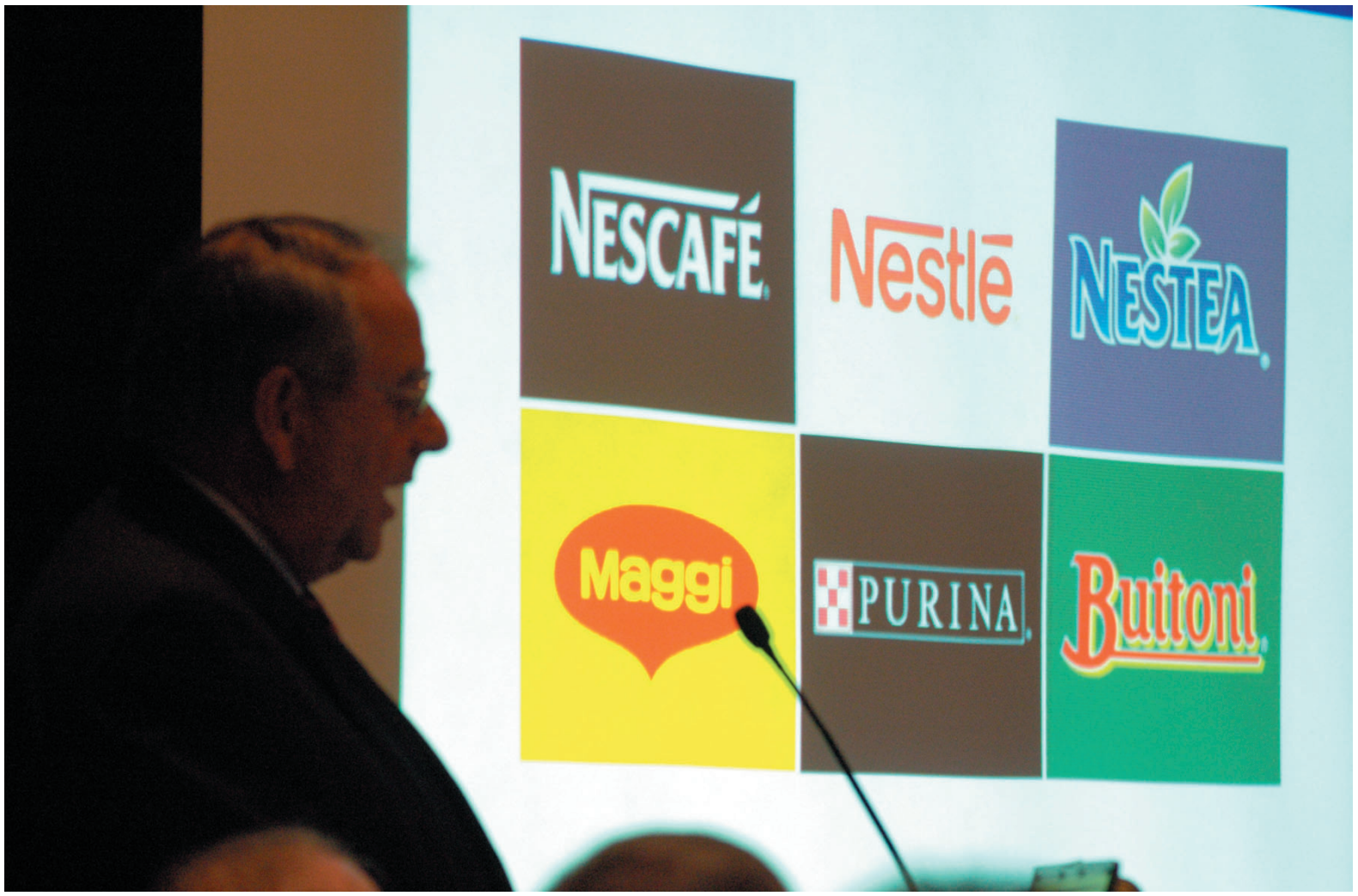
Finally, consumers are becoming more active in the event of noncompliance with legal and regulatory requirements. Indeed an announcement of an unproven concern over product quality or a regulatory investigation can lead to the initiation of proceedings in many countries. Likewise, businesses are showing an increasing willingness to claim compensation in such situations. This list could continue to include strategic claims by competitors, for example, to derail major product launches.

We just had that in the UK. We were launching a quite an innovative product. There you buy a straw, which has a flavor of Nesquik in it. You just need fresh milk and the straw. When you drink it you have the flavor of Nesquik in your mouth. And a competitor who wants to derail this launch is challenging us.

In this regard, actually, I think that multi-jurisdictional claims are likely to become more common and will in some cases be business critical. Consider, for example, the fact that strategic product launches are increasingly planned on a regional basis with regional packaging. The benefits to a competitor of bringing a multi-jurisdictional claim here are clearly apparent. He only needs to succeed in one major jurisdiction in order to effectively derail the defendant company's new product launch.

Project Work

The third area which is on my radar screen is what we call project work. It's project work in areas such as global (for advertising), regional (for coffee) procurement. We do some outsourcing of accounting and HR administration to one of the major providers whose offices are in Czechoslovakia for the whole of our European organization. And we do a lot of M&A and divestitures activities.



These projects represent a major workload of the legal function and that is one of our important legal cost drivers also, internally and externally. Such projects could be significant in contributing to the competitive edge of a company. If such contribution is to be maximized and maintained going forward, the input provided by in-house and external lawyers involved is crucial. Why is that? We are well positioned internally in this regard. We have reorganized the Group Legal Function and clustered our internal expertise into Regional Competence Centers and we have important partnering arrangements in place for M&A. In Europe, for instance, there is still room for driving greater efficiencies in our use of external lawyers.

Efficiency

Finally, driving efficiency. Whilst the issues mentioned earlier are some of the main legal issues to be faced by a Group going forward, the Nestlé Legal Function also needs to face the constant day-to-day challenge of proving its quality and efficiency. The inevitable questions are: Do we need an in-house legal department? How much does it cost? How many are we? Every part of the group is facing the same challenge and legal is no exception. Historically, the legal function has been successful in facing this challenge because we have taken it up and addressed it before the others have. We have reduced the number of outside counsel we use. We once had about 1,800 law firms on our address list.

We also have reduced in-house legal staff. We realized that some work that we had been doing was not really legal work. It was more corporate secretary activities or personal assistant type activities for the country manager and things like that. We are now focused on doing true legal work. I think that we have faced this challenge and succeeded.

Today we have 273 total legal staff, with 160 lawyers, 60 legal assistants and paralegals, 53 secretaries and administrative staff. The legal heads of the local organizations are part of the executive committee or the management committee in their markets. We have defined operating principles for the legal function. We have a very small center team of senior lawyers, with only twelve lawyers at the head office. There is a very strong functional reporting

line of all our local legal departments into the Regional General Counsels. We have Market Legal Departments but we have only one legal department per market. In earlier days, as an example, we had in Germany five legal departments. One in Frankfurt, one in Munich, another one for the mineral water business, one for the processed meat business, one for the ice cream business and so forth. Bringing lawyers together is quite a challenge.

We have created Competence Centers. We have a European M&A Competence Center. In Europe we have a European Commercial Competence Center.

They do international transactions out of Barcelona for the whole of Europe including Eastern Europe. We have a Commercial Competence Center in Mexico that does all of the major commercial transactions in Latin America. We have a Competence Center for antitrust/competition in Europe. We decided also that we would give legal advice to all the Nestlé businesses in the market, such as Alcon, Nespresso, and all the joint ventures out of the one in-house legal department in a Market. The management of the famous Nestlé Licensing System, which is based on internal license agreements for the use of trademarks, of patents and of unpatented know-how as well as management assistance between the Center and the subsidiaries has been given to the controllers because it is a standard approach of making agreements and managing them.

So with this, the legal department concluded "good enough is good enough." We wanted to stop over-lawyering issues. Sometimes, in special instances, we probably just accept conditions from our suppliers. Sometimes a handshake probably is good enough for a transaction. We want to return to the traditional way of doing business so that to buy a package of cigarettes in the tobacco parlor, you don't need a 24-page agreement.

Savings Results

These are the results of the initiatives we undertook on total legal spending and lawyer full time equivalents for the whole Group. In 2001 we spent some 145 million Swiss francs for in-house and outside legal costs. Then I installed a hiring freeze, and in 2002 we basically stayed at the same level of cost. We were able to reduce the cost in 2004 to 88 million Swiss francs by reducing the number of FTE's and negotiating outside counsel fees. We had some tailwind because we didn't have any many major acquisitions in 2004 and I expect that this amount will go up slightly in 2005. One of the lessons we have learned, however, is that the more in-house lawyers we have, the bigger our outside lawyer fees.

Everybody wants to second guess and second check and have somebody who is doing the work for him or her. So we have decided to reduce our full-time equivalence of lawyers from 212 in 2000 to 159 in 2004.

With these general comments I think that my time is also over and I am happy to answer questions if you have some. Thank you.

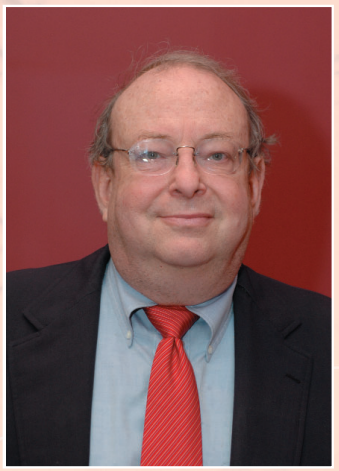
MR. FRIEDMAN: I'd like to have some discussion among the panelists and our distinguished guest. To start off, multi-jurisdictional issues are a theme that underlies all of the presentations. What types of situations arise where you have direct conflicts among the requirements of the various nations in which you do business? A second question is: What is the ability of particular regulators to stop an important deal? For Americans, I think the most famous one in Europe was GE-Honeywell.

MR. HANS PETER FRICK: Indeed, the regulators have the power to stop deals and do so in different ways. In Europe you need authorization before you consummate a merger. In Brazil you can consummate the merger and then the authorities will examine your merger. Three and-a-half years ago we bought the Brazilian confectionary company Garoto, and today the authorities want us to unwind it because they think that it harms the competition. Our competitors are very active against this merger and work quite closely with the authorities. So we are in court now against the competition authority because if we really have to divest we want to have a court judgment that obliges us to do so.

In Europe, as I mentioned, you have this pre-merger clearance you need and in the Perrier decision we knew that there was a negative decision in the typewriter in Brussels at the time. We were wondering how we could remedy to that fact. We had offered a package to divest. When we went into that notification process we were pretty confident that it would go through without any problems but Brussels tested a new theory at the time. It was in 1992. They decided that they wanted to test the oligopoly theory on Nestlé. It was our own mistake because our transaction was structured in such a way that some of our springs would go to our main competitor. Brussels just waited for this real life case which we offered them on a silver plate and we had to divest a pretty important part of that acquisition. It turned out to be a good thing, again, because the water market was moving in this direction anyway.

MS. HENRY: Let me comment on two somewhat separate issues you raised. One is the issue of multi-jurisdictional conflicts where one jurisdiction goes one way and the other jurisdiction goes another way. That was indeed the *GE-Honeywell* case. In *GE-Honeywell* the U.S. said that the transaction was fine and approved it. It was the EU that blocked it. That same conflict came up in the Boeing/McDonald-Douglas transaction. There, the U.S. sent a delegation to the EU and with some tweaks the transaction was ultimately approved. We were representing McDonald-Douglas. We got that deal through despite the fact that the two different sides of the Atlantic took very different views of what the competitive effect of the transaction would be. That, divergence, however, is pretty rare. In the Nestlé/Ralston transaction, both sides of the Atlantic looked at it. They both tweaked it. There were differences in the manner in which they wanted relief but on thefundamental competitive effects issues they

JACK FRIEDMAN,



Chair of the Directors Roundtable, is an executive and attorney active in diverse business and financial matters.

He has appeared on ABC, CBS, NBC, CNN and PBS, authored numerous business articles in the *Wall street Journal*, *Barron's* and the *New York Times*.

Mr. Friedman has served as an adjunct faculty member of Finance at Columbia University, NYU, US (Berkley), and UCLA. He received his MBA in Finance and Economics from Harvard Business School and a J.D. from the UCLA School of Law.

were pretty similar. By far that is more typical. There have been relatively few transatlantic competition law conflicts. The problem is that when there is a conflict it becomes very high profile just as a result of that conflict. Hans Peter Frick mentioned the Perrier acquisition. That was the first time that the EU disapproved a transaction when a member state, France, would have felt the purported anti-competitive effect and yet France didn't have any competition with the transaction. The other point raised regarding that transaction was the role of competitors in the regulatory review process of a transaction.

In Europe competitor complaints about a merger receive much greater credit than they do in the United States. In the United States the general principle is that, if this acquisition is going to make prices increase why would a competitor complain because it would get those increased prices too? Thus, there is a high degree of suspicion for competitor complaints in the United States. Nonetheless, what we have seen is that competitors have gotten more creative in how they go about trying to cause trouble for a transaction in the United States. Drumming up problems with customers is one manner. Certainly, competitor complaints have been one of the issues that Nestlé has faced.

MR. O'NEIL: I just want to echo everything that Roxann said and add one wrinkle to it. I was in-house counsel in the area of consumer telephony in the late 1990s and at the turn of this century. In addition to all the forces that she articulated, there are two other factors that can drastically affect a company's ability to get a merger approval through.

One is the prevailing political winds. In this country the winds really can change direction every four years. The Justice Department Antitrust group can actually set different priorities and different tolerance level for the way it reacts to mergers. A related issue is the ongoing relationships between our domestic regulators and their European counterparts. In terms of the competitor traction abroad, it can be formidable.

MS. BROWN: And how this year the government authorities.

MR. O'NEIL: Right.

MR. VON FALKENHAUSEN: What we have been talking about is probably only the tip of the iceberg. Under the layer of transactions that get blocked or actively scrutinized by the competition or other regulatory authorities, there is that second layer of where you enter into discussions with the authorities before you ever sign the deal. This is probably ten times (or some other multiplying factor) of whatever comes to the light. There are still more transactions which are never even really started because you know about the competition concerns. So probably the transactions we have mentioned are just five or one percent of what the real impact of regulatory regime is.

MR. FRIEDMAN: Joachim, when you do a major cross-border transaction in Europe and let's say there is no particular regulatory problem, even in the best of circumstances, how many governments or agencies do you have to deal with?

MR. VON FALKENHAUSEN: It depends, of course. We just did a transaction at the end of the year where a British company sold a German defense company to a German and a French company. Fortunately, we went to the European commission for antitrust approval which saved us up to 25 percent antitrust filings in Europe. They had subsidiaries and business activities all over the world. I think they have decided to file in Australia and possibly Japan. Roxann would know all of that much better. Brazil is always a likely candidate.

MS. HENRY: Brazil is always a likely candidate.

MR. VON FALKENHAUSEN: Plus, we have foreign investment approval in Australia and possibly in some other countries. As it is a defense company we have regulatory approval in Germany. All of that is a major exercise. In particular, some of its nature is that we just need to go through the right steps and it is all formality. Fortunately, this will be always. The one or two essential things would, of course, take 90 percent of your time.

MR. HANS PETER FRICK: We had a joint venture with an American company and it covered basically the rest of the world outside the U.S. The question came up: Where do we have to notify? We made a list of the countries and we came up with 35 different jurisdictions. Then we scrutinized the list and we decided to notify in 20 jurisdictions, where we really wanted to develop the business as a priority. We took the risk on the others, and would have notified later. The JV has been dissolved since.

MR. FRIEDMAN: We have talked about government. We have talked about competitors' reactions to different deals. What about the issue of workers or unions? That must be both politically, culturally, and every other way sensitive from country to country.

MR. HANS PETER FRICK: It is important, for instance, when you do something that touches France that you have - before you even announce whatever you plan to do - that you have consulted with the worker's counsil. In the hostile takeover of Perrier, again, we obviously couldn't consult with the workers, with the consequence that Mr. Maucher, the chairman of Nestlé at the time, was indicted. We had to fight out three instances.

MR. FRIEDMAN: Jail?

MR. HANS PETER FRICK: Almost jailed, but he was fined. At the last instance we finally won. There are some contradictions that exist and you just have to sometimes take the risk and go ahead and do it. It is important that you consult in many, many jurisdictions with worker's counsils.

MR. FRIEDMAN: We have situations where workers are demonstrating in front of a factory with signs saying, essentially, that efficiency means our families are going to starve.

MR. HANS PETER FRICK: Indeed, we would like to restructure our industrial park, as we call it, in France. We have had in the water business in Perrier, in particular, very, very strong oppositions by the workers and also in a chocolate factory which we tried to sell it to another producer, instead of closing. There they just picketed and they are on strike for 24 months now.

MS. HENRY: I could comment on that employment issue from a United States perspective. Where the employment issue arises frequently is in the context of a multi-jurisdictional antitrust review of an acquisition. In the United States, we not only have federal competition regimes but virtually every single state attorney general also can operate as an antitrust regulatory regime. Not infrequently with mergers, the motivation for states to exercise antitrust regulatory powers is employment, not antitrust.

MR. VON FALKENHAUSEN: I can make the same kind of comment about Germany. We have in the defense industry an approval requirement which theoretically was introduced to consolidate the German defense industry, but in reality it was largely driven by the unions. Germany is not easy but in the end somehow with the help of people who are experienced there we can make it work. Fortunately, in our transactions we have come through without being picketed and all that.

MR. FRIEDMAN: We thank our Guest of Honor and our distinguished panelists for sharing your expertise and your time. ■

Nestlé with headquarters in Vevey, Switzerland was founded in 1867 by Henri Nestlé and is today the world's biggest food and beverage company. Sales at the end of 2004 were CHF 87 bn, with a net profit of CHF 6.7 bn. We employ around 247,000 people and have factories or operations in almost every country in the world.

The Company's strategy is guided by several fundamental principles. Nestlé's existing products grow through innovation and renovation while maintaining a balance in geographic activities and product lines. Long-term potential is never sacrificed for short-term performance. The Company's priority is to bring the best and most relevant products to people, wherever they are, whatever their needs, throughout their lives. Nestlé is mainly active in the areas beverages, milk products, ice cream, nutrition, culinary products, chocolate and confectionary, petcare and pharmaceutical products.

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