

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

DEFINITION OF TRANSACTION FOR THE PURPOSE OF MERGER CONTROL REVIEW

-- United States --

18 June 2013

The attached document is submitted to Working Party No. 3 of the Competition Committee FOR DISCUSSION under item IV of the agenda at its forthcoming meeting on 18 June 2013.

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1. Introduction

1.

2.3 *Joint Ventures*

9. Premerger reporting may be required for the formation of certain types of joint ventures. Section 801.40 of the HSR Rules provides specific rules regarding the formation of corporate joint ventures, treating such formations as acquisitions of voting securities of the venture by the venturers.¹²

10. Section 801.50 provides specific rules regarding formations of non-corporate joint ventures, such as partnerships and limited liability companies (LLCs).¹³ Premerger reporting of the formation of non-corporate joint ventures is required only when one of the venturers will “control” the new entity – in which case, it is deemed to be acquiring the assets of the joint venture that it did not previously hold. Although change of control of an entity is generally not a prerequisite for reportability of a voting securities or asset transaction, it is a key factor in determining when an acquisition of an interest in an unincorporated entity must be reported. “Control” is defined in Section 801.1(b) of the HSR rules.¹⁴ In the case of an entity that has no voting securities (*e.g.*, a partnersh

to raise significant antitrust issues (*e.g.*, acquisitions of goods or realty in the ordinary course of business);

contained in the statute. Although Congress has not changed these basic underpinnings regarding the type of transactions that may require premerger reporting, it has changed the *thresholds* for premerger reporting.

The centerpiece of the 2002 amendments to the Hart-Scott-Rodino Act is the creation of a new category of transactions that require premerger reporting. The centerpie
