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Working Party No. 3 on Co-operation and Enforcement

JURISDICTIONAL NEXUS IN MERGER CONTROL REGIMES

-- Note by the United States --

14-15 June 2016

This document reproduces a written contribution from the United States submitted for Item 5 of the 123rd meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 14-15 June 2016.

More documents related to this discussion can be found at
www.oecd.org/daf/competition/jurisdictional-nexus-in-merger-control-regimes.htm

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UNITED STATES

1. To achieve an appropriate balance between identifying potentially anticompetitive transactions and avoiding unnecessary filing burdens, the United States federal antitrust agencies (the Federal Trade Commission (FTC) and Department of Justice (DOJ)) have broad notification thresholds with exemptions for transactions that are unlikely to raise competition concerns. The thresholds are complemented by a simple notification form, a short initial review period, expedited review of transactions that can quickly be identified as not raising competition concerns, and the ability to review transactions that do not meet the notification threshoOGV7KH 86 DJHQFLHV¶ premerger notification program (administered by the FTC) allows for efficient and expedient review of more than one thousand proposed transactions annually.[1]

2. From the enactment of the Clayton Act in 1914 until 1976, there was no mandatory pre-merger notification in the United States. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94- 6WDW WKH +65 $FW DQG LPSOHPHQWLQJ UHJXODWLRQV established a pre-merger notification system with specified thresholds that govern which transactions parties must notify to the U.S. agencies.[2] The notification thresholds are based on the sales and/or assets of both parties for transactions of a particular size (described below in paragraphs 6 and 7) to determine which transactions parties must report to the U.S

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to report small transactions that are unlikely to raise competitive concerns while retaining the ability to review the few problematic below-the-threshold transactions. For example, over the past five years, the FTC has conducted an in-depth review of 28 transactions that were not notifiable under the HSR rules, in addition to the 117 notified transactions where the Commission conducted an in-depth review. Similarly, DOJ conducted in-depth reviews of 28 transactions that were not notified under the HSR rules during this period, in addition to 130 in-depth investigations of notified transactions.

10. Staff rely on several sources to learn of such transactions. Often, staff will learn about potentially problematic non-notifiable transactions from reading the trade press or other media. For

that were prepared by or for any officer or director, or by individuals exercising similar functions, for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth, or expansion into product or geographic markets.

16. Third, the U.S. agencies review notified transactions expediently. The initial review period is 30 days (15 days in the case of a cash tender offer or a bankruptcy) from the initial filing.[9] Parties FDQ UHTXHVW HDUO\ WHUPLQDWLRQ LI WKH\ EHOLHYH WKH WUDQVDFWLRQ LV XQOLNHO\ WR SUHVHQW FRPSH

20. It was not until 2001 that the U.S. Congress made the first s