



Business and Industry Advisory Committee to the **OECD**

Comité Consultatif Economique et Industriel Auprès de l' **OCDE**

BIAC Comments on Topics for OECD CLP WP3 Work on Transnational Mergers

February 13, 2001

- Over 60 jurisdictions have enacted some form of merger control legislation thus far. This proliferation in merger laws significantly has increased the number of jurisdictions in which a proposed merger may be reportable. Furthermore, this occurrence has given rise to the potential for incompatible enforcement decisions by different reviewing jurisdictions.
- The procedural aspects of complying with multiple merger regulations of various jurisdictions have substantially increased the transaction costs for businesses contemplating global mergers. Many of today's mergers involving multinational companies hold the potential to trigger premerger filing requirements in numerous jurisdictions. Furthermore, each jurisdiction maintains its own time frame for the notification and investigatory process for mergers. If a transaction cannot be closed before receiving approval from all relevant jurisdictions, the delay can impose substantial costs on business.
- Since it seems infeasible at this time to expect full substantive convergence of antitrust laws surrounding the merger review process on a world-wide basis, co-operation and harmonisation appear to be the most viable alternatives in addressing overlapping jurisdiction issues in this area. While the benefits derived from the use of co-operation in the international competition arena to date have been noticeable, more initiatives need to be pursued to improve such co-operation and harmonisation efforts.
- It is obvious that the premerger notification systems in some jurisdictions may capture transactions with no appreciable nexus to the economy of the reviewing jurisdiction. A study of ways for jurisdictions to tailor their premerger notification systems to require notification for only those transactions with some domestic effect on the country's economy would be very useful as a mechanism to eliminate unnecessary filings. In the final analysis, it would be highly desirable not only for jurisdictions to afford transparency in notification thresholds but also to limit reporting requirements to those transactions having a competitive link to the jurisdictions. An OECD recommendation in this regard would be extremely helpful.
- An analysis of different triggering events for notification, together with reasons for disparity, would be helpful. For example, the U.S. permits notification on a letter of intent, whereas the EU requires notification of a definitive agreement.
- It also would be useful to study the possibility of co-ordinating or harmonising the time frames for the investigatory review process of different countries. As previously noted, the disparate timing of review processes could impose significant financial hardship on corporations waiting to close a transaction.

- Divergence in information requested among jurisdictions is inevitable to some extent. Nevertheless, an effort should be made to harmonise, to the extent possible, the categories of information required.
- Finally, and perhaps as a longer-term project, discussion and clarification of substantive standards would be of considerable use to the business community.
- All of these issues are of obvious importance to the business community and merit increased dialogue and discussion. BIAC would be eager to participate in OECD discussions of possible ways to increase co-operation and harmonisation in the merger review process, including the prospect of a comprehensive roundtable in May on these issues. In the interim, BIAC is prepared to work to develop enhanced suggestions and position statements from the business community on mechanisms that both business and enforcement authorities can undertake to make the process more efficient and transparent.