

## **US-EU Merger Working Group**

### **BEST PRACTICES ON COOPERATION IN MERGER INVESTIGATIONS**

Recognizing the 20<sup>th</sup> anniversary of the Agreement between the European Communities and the Government of the United States of America Regarding the Application of their Competition Laws, and

Celebrating two decades of cooperation between the Competition Directorate-General of the European Commission and the Unitnit2(nip l)-2[-2(i)-2s cd(e)4(a)4(t)-2(e)4((nd t)(i)-2(t)-2(i)-2a)4(u )-1te)4((no

This document revises the best practices agreed between DG Competition and the US agencies in 2002<sup>3</sup> and builds on the experience gained in a significant number of cases since 2002. This re-statement of best practices sets out the conditions under which trans-Atlantic inter-agency cooperation in merger investigations should be conducted, while at the same time confirming and building upon current practice. The US agencies and DG Competition reserve their fMCID duurre002

## Competition







reviewing agencies on the substantive assessment of the merger before the remedial stage. If the timing of the respective filings and therefore of the investigations does not allow for such cooperation, the reviewing agencies may ultimately not be able to agree on consistent and non-conflicting remedies in relation to their respective investigations.

18. Consistent with their confidentiality and/or non-disclosure obligations and their common objective of ensuring efficient outcomes, implementation, and monitoring of remedies, the reviewing agencies should seek to keep one another informed of remedy discussions with the parties and of other relevant developments with respect to remedies, to the extent the remedies may impact the other reviewing agency's review. Where appropriate, and consistent with confidentiality and/or non-disclosure obligations, the reviewing agencies should share draft remedy proposals and participate in joint discussions with the merging parties, prospective buyers, and trustees. Practice has shown that it is particularly important for both the merging parties and reviewing agencies to communicate and coordinate early and frequently when the remedies under consideration include an up-front buyer and when DG Competition is considering a remedy in its Phase I investigation.
19. Cooperation is beneficial throughout the remedial process. Cooperating on the design of possible remedies may result in a single proposal for a remedial package to address concerns of both reviewing agencies. The remedy proposals may, for example, be similar or even identical in relation to the scope of a business to be divested, interim supply relations with the parties, or other interim safeguards. Cooperation on the implementation of the remedies may allow, in appropriate cases, the appointment of common trustees or monitors, or agreement on the same purchasers for assets to be divested in both jurisdictions. As effective cooperation at both stages will depend significantly on the timing and the content of the merging parties' proposals, the merging parties have an important role in enabling meaningful cooperation between the reviewing agencies.
20. Specific issues necessitating cooperation may arise in cases in which the European Commission and the relevant US agency agree with the merging parties on similar remedies to address common competitive concerns, but conclude that different implementation procedures are warranted. For example, the US agency may conclude that an upfront buyer of the assets to be divested is necessary, but the European Commission may conclude that the parties should be allowed to propose a purchaser after a clearance decision. In that circumstance, the US agency and DG Competition would benefit from close cooperation to seek to achieve a compatible outcome. Depending on the circumstances of the case, an identical purchaser may be desirable or even necessary, and the reviewing agencies intend to cooperate in making their determination in such a situation. It will be in the interests of the merging parties to coordinate their proposal for a purchaser with both reviewing agencies, taking into account the reviewing agencies' respective procedures and timing requirements to allow for meaningful cooperation between the reviewing agencies before either agency makes a decision, so that the risk of inconsistent or conflicting implementation is minimized.