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TRADE AND DEVELOPMENT BOARD

Commission on Investment, Technology
and Related Financial Issues

Expert Meeting on Mergers and Acquisitions:
Policies Aimed at Maximizing the Positive and
Minimizing the Possible Negative Impact of
International Investment

Geneva, 19-21 June 2000

**MERGERS AND ACQUISITIONS: POLICIES AIMED AT MAXIMIZING
THE POSITIVE AND MINIMIZING THE POSSIBLE NEGATIVE IMPACT
OF INTERNATIONAL INVESTMENT**

Outcome of the Expert Meeting

1. The Expert Meeting on Mergers and Acquisitions: Policies Aimed at Maximizing the Positive and Minimizing the Possible Negative Impact of International Investment" discussed a range of issues for consideration by the Commission on Investment, Technology and Related Financial Issues.

Trends, motivations and performance of M&As

2. Cross-border M&As have increased significantly in developed countries and are now also becoming important in developing countries and transition economies. They involve a broad spectrum of sectors and companies, large firms as well as SMEs, in developed and developing countries. Cross-border M&As are likely to continue to grow. A global market for firms is emerging.

3. Factors motivating M&As include the search for efficiency and synergies, access to markets, market power and strategic assets (including, among other things, a labour force with certain types of skills, specific technology or brands). But, above all, M&As are driven by the desire to move quickly, under pressures from markets to grow and enhance competitiveness. Changes in the global environment (liberalization in trade, finance and investment, as well as technological changes) have created a situation that facilitates cross-border M&As. It is the interaction between these two sets of forces - motivating factors at the firm level and macro-economic changes - that helps to explain the recent wave in cross-border M&As and is likely to sustain their growth in the future.

4. Despite a high perceived rate of failures in terms of increased shareholders' value and financial returns, M&As can bring other benefits for a company, such as an improved long-term strategic position important for its survival. Factors that contribute to the success of M&As include a proper integration of the human resources and mutual economic benefits for the firms involved.

Impact on host-country development

5. The following possible positive effects were mentioned: immediate capital inflows; immediate or follow-up new investment and resulting job creation; job conservation as acquired ailing firms are rescued or acquired firms are able to grow; immediate transfer of technology, especially information technology, and of managerial and other skills, leading to improved competitiveness; transfer of marketing skills; improvement of corporate governance; access to, and integration with, global markets and increased exports; restructuring of firms and industries; longer-term industry development perspective; greater efficiency and productivity and improved quality of services; and increased tax and privatization revenues.

6. The following possible challenges were identified: immediate reduction of employment; increase of concentration; less competition; no addition to the capital stock at the time of entry; possible low pricing of sold assets due, for example, to a lack of expertise; shrinking of domestic stock markets; crowding out of local enterprises, especially SMEs; loss of indigenous brands; cost

of arbitration; and increase in the foreign control of a host country's economy, of special concern in sectors considered of strategic importance for the country.

7. The economic policy framework and the country's level of development are key. Other factors affecting the impact are: whether a short or long-term perspective is taken to evaluate effects; the normal or exceptional circumstances (such as privatization programmes or financial crises) in which cross-border M&As take place; motivation of the investor (e.g. market seeking vs. efficiency seeking); the situation of the acquired enterprise; and the availability of alternatives as regards modes of entry of investment.

Policy considerations

General issues

8. As increased investment is not an end in itself, some countries have found that the positive impact depends, among other things, on having the right economic policies, the right level of government activity, the regulatory framework and a competition policy.

9. Some Governments do not have specific policies concerning cross-border M&As.

10. Policy responses for cross-border M&As among SMEs and among large firms may be different. Some Governments encourage cross-border M&As among SMEs to facilitate their access to foreign finance and improve their competitiveness.

11. In privatization, some countries have maintained "golden shares" and have sought commitments from strategic foreign investors on further investment. When such commitments are made, there is often a trade-off between the up-front price of assets to be sold and these commitments.

12. Some countries have restructured their public sector as an alternative to privatization.

13. Some Governments have in place measures to deal with the problem of lay-offs, such as the training and retraining of workers laid off. Some countries have found it useful, because (among other things) of these employment effects, to emphasize a balanced development of the domestic and foreign enterprise sector.

14. Some countries seek to establish corporate governance rules.

15. In the case of privatization and sales under exceptional circumstances, some countries have found that the price of assets is important but not the only consideration. In the case of sudden sales under such circumstances (including involving cross-border M&As), e.g. in an economic crisis, some countries have found it difficult to determine the right prices. A clear long-term developmental perspective was found helpful in this respect.

Competition policy

16. In the light of the rise of cross-border M&As, a number of countries pay increasing attention to the importance of competition laws and cooperation between competition authorities. They have found that policies aimed at maintaining the contestability of markets and the dissemination of the culture of competition complements the adoption and implementation of competition laws. They also found that special attention to the relevant market definitions, market performance and market structure is warranted.

17. Some countries integrate competition policy with other public interests and concerns and ensure policy co-ordination between competition authorities and regulatory bodies of specific industries, especially in industries that are monopolies.

18. Apart from national merger reviews, international co-operation might be useful, especially at the regional level. For example, as merger control is costly, cooperation at the regional level has been found useful by some. An exchange of information between countries affected by M&As has also been found useful by some countries. Another form of cooperation involves joint review mechanisms. Standardization of time limits was also mentioned.

19. When reviewing cross-border M&As, countries in a position to do so could make information relevant to developing countries available to them.

20. Some countries rely on donor partners for technical assistance to develop their laws and regulatory frameworks in this area.

Issues for further research

21. A number of issues were identified that could be considered for further research. In particular, research would be desirable concerning investment subsequent to entry, policy implications for development at the international level, and the impact of various types of cross-border M&As on market structure and key areas of economic development. Inputs from the World Association of Investment Promotion Agencies (WAIPA) and other competent organizations could be useful here.

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