

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

Cancels & replaces the same document of 10 June 2013

**Working Party No. 3 on Co-operation and Enforcement**

**DRAFT AGENDA OF THE 116th MEETING OF WORKING PARTY No.3**

**18 June 2013**

*To be held on 18 June 2013 from 10:00 to 17:30 at the OECD Conference Centre, in room CC 12, 2 rue André Pascal, 75116 Paris.*

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**DRAFT AGENDA OF THE 116<sup>TH</sup> MEETING OF WORKING PARTY NO. 3**

**18 June 2013, beginning at 10.00 a.m.**

**OECD Conference Centre, Room CC 12**

**2 rue André-Pascal, 75116 Paris**

**I. ADOPTION OF THE DRAFT AGENDA** [DAF/COMP/WP3/A\(2013\)2/REV2](#)

**II. ADOPTION OF THE SUMMARY RECORD OF THE LAST MEETING**

- Summary record from the last meeting of 26 February 2013

[DAF/COMP/WP3/M\(2013\)1](#)

**Approved by written procedure:**

- Summary of Discussion for the WP3 Roundtable on Leniency for Subsequent Applicants from 23 October 2012

[DAF/COMP/WP3/M\(2012\)3/ANN2/FINAL](#)

- Executive Summary of the Roundtable on Leniency for Subsequent Applicants

[DAF/COMP/WP3/M\(2012\)3/ANN2/FINAL](#)

**For information:**

- List of participants for the meeting of 26 February 2013

[DAF/COMP/WP3/M\(2013\)1/ANN1](#)

**III. DISCUSSION ON INTERNATIONAL CO-OPERATION**

**For discussion:**

- Note by the Secretariat on how to amend the 1995 Recommendation on International Co-operation

[DAF/COMP/WP3\(2013\)3](#)

- Note by the Secretariat on national and international provisions for the exchange of confidential information

[DAF/COMP/WP3\(2013\)4](#)

- Submissions by delegations:

Australia  
Japan  
Mexico  
New Zealand

[DAF/COMP/WP3/WD\(2013\)27](#)

[DAF/COMP/WP3/WD\(2013\)16](#)

[DAF/COMP/WP3/WD\(2013\)28](#)

[DAF/COMP/WP3/WD\(2013\)19](#)

Switzerland [DAF/COMP/WP3/WD\(2013\)25](#)  
European Union [DAF/COMP/WP3/WD\(2013\)30](#)

And

India [DAF/COMP/WP3/WD\(2013\)26](#)  
Russian Federation [DAF/COMP/WP3/WD\(2013\)17](#)  
BIAC [DAF/COMP/WP3/WD\(2013\)34](#)

**IV. ROUNDTABLE ON THE DEFINITION OF TRANSACTION  
FOR THE PURPOSE OF MERGER CONTROL REVIEW**

**For discussion:**

-- Note by the Secretariat [DAF/COMP/WP3\(2013\)5](#)

-- Submissions by delegations:

Australia [DAF/COMP/WP3/WD\(2013\)1](#)  
Canada [DAF/COMP/WP3/WD\(2013\)2](#)  
Czech Republic [DAF/COMP/WP3/WD\(2013\)3](#)  
Estonia [DAF/COMP/WP3/WD\(2013\)4](#)  
Germany [DAF/COMP/WP3/WD\(2013\)5](#)  
Hungary [DAF/COMP/WP3/WD\(2013\)6](#)  
Italy [DAF/COMP/WP3/WD\(2013\)7](#)  
Japan [DAF/COMP/WP3/WD\(2013\)8](#)  
Korea [DAF/COMP/WP3/WD\(2013\)20](#)  
Mexico [DAF/COMP/WP3/WD\(2013\)28](#)  
Poland [DAF/COMP/WP3/WD\(2013\)21](#)  
Slovak Republic [DAF/COMP/WP3/WD\(2013\)22](#)  
Turkey [DAF/COMP/WP3/WD\(2013\)23](#)  
United Kingdom [DAF/COMP/WP3/WD\(2013\)31](#)  
United States [DAF/COMP/WP3/WD\(2013\)9](#)  
European Union [DAF/COMP/WP3/WD\(2013\)10](#)

And

Bulgaria [DAF/COMP/WP3/WD\(2013\)11](#)  
Colombia [DAF/COMP/WP3/WD\(2013\)12](#)  
India [DAF/COMP/WP3/WD\(2013\)18](#)  
Indonesia [DAF/COMP/WP3/WD\(2013\)33](#)  
Romania [DAF/COMP/WP3/WD\(2013\)32](#)  
Russian Federation [DAF/COMP/WP3/WD\(2013\)13](#)  
South Africa [DAF/COMP/WP3/WD\(2013\)24](#)  
Chinese Taipei [DAF/COMP/WP3/WD\(2013\)14](#)  
Ukraine [DAF/COMP/WP3/WD\(2013\)15](#)  
BIAC [DAF/COMP/WP3/WD\(2013\)35](#)

V. **OTHER BUSINESS AND FUTURE TOPICS**

*ANNOTATIONS TO THE DRAFT AGENDA*

**Proposed Timetable**

10:00 – 10:05	<b>Items I. and II.</b>
10:05 – 12.30	<b>Item III.</b> Discussion on International Co-operation
<i>12:30 – 14.30</i>	<i>Lunch break</i>
14.30 – 17.00	<b>Item IV.</b> Roundtable on the Definition of Transaction for Merger Control Review
17.00 – 17:30	<b>Item V.</b> Other business and future topics

**Item III. (from 10.05 to 12.30).** Under this agenda item, WP3 will continue its work on the international co-operation project. In particular, at its last meeting WP3 decided to focus on two topics:

- (a) A scoping discussion on ways in which the 1995 Recommendation on international co-operation could be amended and improved. The scoping discussion on the possible amendments and improvements to the 1995 Recommendation on international co-operation will be based mostly on the suggestions put forward by respondents to the OECD/ICN Survey on international enforcement co-operation.
- (b) A discussion on experiences with national/international provisions allowing for the exchange of information without waivers. This discussion will build on existing material and will summarise the conditions under which agencies can exchange confidential information in jurisdictions where “information gateways” exist. These are national/international provisions allowing for the exchange of information between enforcers even without the consent of the parties involved. To the extent this information is available, the discussion will include experiences in actual cases where these gateways have been used by agencies and the challenges that the enforcement of these provisions can raise.

Both discussion topics will benefit from two short Secretariat papers and from country contributions.

**Item IV. (from 14.30 to 17.00).** Under this agenda item, WP3 will discuss under a roundtable format the topic of the “*Definition of Transaction for the Purpose of Merger Control Review*”. The topic was suggested by delegates as a follow-up discussion to the Committee Report to the OECD Council on the experiences of member countries under the 2005 OECD Recommendation on Merger Review.

The 2005 Recommendation provides that a merger regime’s jurisdictional thresholds should be based on clear and objective criteria, but otherwise does not provide any guidance as to the concept of a “merger transaction”. Significant differences exist among jurisdictions in this regard. For example, in the case of share acquisitions, some jurisdictions use percentage thresholds to identify at what level the acquisition of shares in another corporation is a “merger transaction”, some focus on the value of the transaction or size of the parties, and others apply an “acquisition of control/material influence” model.

Despite these different approaches, most “middle of the road” transactions will clearly fall under any jurisdiction’s definition of a merger transaction. The difficult questions tend to arise in what could be considered “borderline cases”, such as the acquisition of a relatively small percentage of shares in another corporation, joint ventures where it is less clear how permanent the changes are that the parties’ collaboration will bring about, and acquisitions of a few assets which is themselves are not clearly an “independent business”. In these borderline cases, one can expect to see more differences among various approaches to the definition of a “merger transaction”, and advantages and disadvantages of various approaches might become more apparent.

The purpose of the Roundtable will be to focus on these difficult and more interesting questions. The roundtable will be an opportunity to revisit some issues that were discussed during the 2008 WP3 Roundtable on Minority Shareholdings [see [DAF/COMP\(2008\)30](#)], although in a different context and without getting into questions of substantive analysis and remedies. The discussion will benefit from a Secretariat paper highlighting the main issues for discussion and from country contributions.

**Item V. (from 17.00 to 17.30).** Under the last agenda item, delegates will be asked to confirm the work plan for the WP3 October 2013 meeting. At the February meeting, WP3 delegates agreed that the working party should host a roundtable discussion on “*Remedies in cross border merger cases*”. A second substantive topic on international co-operation should be decided in June. If there are any suggestions that delegates would like the Working Party to consider, you should feel free to send to the Secretariat as soon as possible.