



***EU-China Trade Project (II)***

中国-欧盟世贸项目(二期)



A project funded by the  
EUROPEAN COMMISSION  
欧盟资助项目

# Importance of Notion of Control in Merger Review Systems

*Dr Stanley Wong*

*Special Advisor on Competition Law &  
Policy, EUCTP II*

7 June 2011

**Support to China's Sustainable Trade and Investment System**


支持中国可持续贸易和投资体系

# Overview: Merger Review Regimes

- Most merger review regimes comprise three components
  - Test for notification
  - Assessment standard
  - Jurisdiction to apply the assessment standard

# Three Groups

- Virtually all merger regimes in world can be divided into three groups
  - Group I are countries with a notification system that provides that the assessment standard applies only to notifiable transactions, e.g. EU and China
  - Group II are countries with a notification system that is separate from the assessment standard, that is, whether or not notifiable, the standard may be applied, e.g. U.S., Canada and Japan


- 
- Group III are countries which do not have a compulsory notification requirement but have a assessment standard for reviewing mergers, e.g. United Kingdom, Australia, Singapore


# Test for Notification

- Compulsory notification regimes typically have a test of notification which includes one or more of the following:
  - Definition of types of transactions that are notifiable
  - Local nexus test
  - Market shares or financial thresholds
  - Extent of integration post-merger or acquisition of control or material influence

# Uses of 'Control'

- The notion of control may be used in at least three ways in a merger review regime:
  - It is used to determine whether or not the transaction is notifiable
    - If there is no change of control, the merger/acquisition is not notifiable and cannot be reviewed under the assessment standard

- 
- ‘Control’ is used to determine which members of a corporate group should be used in calculating financial thresholds in a test for notification
    - For example, the turnover (or revenues) of a subsidiary that is not controlled by the undertaking in question or by a parent company is not included

- 
- ‘Control’ is used to determine which members of a corporate group should be considered in assessing the effects of a merger/acquisition
    - Should an affiliated company which is in the same business as that of the acquiring undertaking be included in assessing the competitive effects of the merger/acquisition?





The End