Another obstacle to effective merger control by the EC Commission was the lack of clear guidelines on the issue. Consequently, the Commission was not in a position to compel notification of mergers so as to avoid the possibility of having to unravel large, anti-competitive mergers after their completion. In addition, there was no clear guidance regarding the criteria that the Commission should use to analyze mergers. For example, there was no Community-wide consensus on the importance that the EC Commission should attach to alleged efficiencies or industrial policy considerations in its analysis .

2. The Provisions of the Merger Control Regulation

The Merger Control Regulation, implemented in September 1990, represents an important step toward eliminating the above problems. It places certain mergers under the exclusive jurisdiction of EC competition authorities. For these mergers, criteria for assessment are set forth and the powers of the Commission to intervene are established. In addition, the Regulation and proposed guidelines for its application contain extensive notification and other procedural requirements.

2.1 Activity Covered by the Regulation

The coverage of the Merger Control Regulation is not strictly limited to mergers and acquisitions. Rather, "concentrations" covered by the Regulation may include any exchange of securities or assets, contract or other action by which "the possibility of exercising decisive influence on an undertaking" is transferred.[14] The potential for joint ventures to constitute concentrations under this definition has been a controversial issue. Article 3 of the Regulation generally provides that joint ventures which are involved in the coordination of competitive behaviour of independent companies should be dealt with under Article 85 of the EEC Treaty rather than the Merger Control Regulation. Joint ventures, however may, be examined under the Regulation if they lead to the creation of an "autonomous economic entity."[15]