

Joint Ventures : main issues in today legal practice

A practical view and some tips for:

- surviving the task of creating a solid and effective JV;
- advising on the same; and
- anticipating and solving related legal issues

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Gabriella Porcelli – Irina Piazzoli - Philip B. Taub

Agenda

- Joint Ventures: nature, structure and “main ingredients”
- Practical experiences and best practices for structuring the arrangement
- Measuring and monitoring the impact of competition law on JVs
- Anticipating and addressing potential issues/areas of dispute
- Governance and compliance in light of the long reach of the FCPA and SOX

1. - What is a joint venture?

No legal definition of JV: strategic alliance between two or more companies, individuals or organisations otherwise unrelated, for the purpose of conducting a new profit-motivated business. Various stakeholders' ownership structures

At least one of the participants will be an operating entity which wishes to broaden its activities.

Subject to the laws of country where it is based and/or operates, but heavily influenced by crossborder rules

1. - What is a joint venture?

“...Regardless of the scope, the nature of the JV or the respective degrees of equity or management involvement, a JV must :

- (1) be a separately identifiable entity;
- (2) have an ownership interest in such entity by each joint venture partner (“JVP”); and
- (3) have an active management involvement or deliberate rejection of the right to such involvement by each JVP.”

(source: **What is a Joint Venture?** Janel Vaughan – the Univ of IOWA. Centre dor international Finance and Development)

2. Why establish an international joint venture?

- **Market Access** : when one of the parties involved may not be able to achieve its aims in its own country and may want a new market abroad or building a closer relationship with a local company. Often (with a local firm or local gvmt) only opportunity for a foreign investor in protectionist countries
- **Development**: useful vehicle between developed countries with a market economy and other countries seeking to develop market economies
- **Risk Sharing and Funding Constraints**: use for large intergovernmental projects which cannot be funded by one country alone
- **Prelude to Acquisition**

Key areas of interactions among members

- Goal/ purpose
- Interest and type of contributions: dynamics
- Financing and Management
- Shared Capital and intangible assets, shared Profits & Losses, Control.
- *other?*

Practical experiences and best practices for structuring the arrangement

Corporate vs non-corporate

*(An idea could be to prepare a comparative table for
main features of each type of JV, which could be left
for distribution and only summarized during the
presentation)*

Measuring and monitoring the impact of competition law on JVs

Key issues:

- The exchange of information between “competitors”
- What has changed after the Modernization (reg.1/2003) - some case law?
- Structural remedies and their impact
- Commitments: some recent cases involving JVs

Anticipating and addressing potential issues/areas of dispute

Model Clauses on specific issues?

Best practices?

CONCLUSION - DISCUSSION