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# EU MERGER CONTROL

*A Legal and Economic Analysis*

IOANNIS KOKKORIS  
HOWARD SHELANSKI

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OXFORD

# Eu Merger Control An Economic And Legal Analysis

**Damien Geradin, Anne Layne-  
Farrar, Nicolas Petit**



## **Eu Merger Control An Economic And Legal Analysis:**

EU Merger Control Ioannis Kokkoris, Howard Shelanski, 2014-01 Economic issues play a pivotal role in competition enforcement Integrating economic and legal analysis throughout this work provides expert coverage of both the substantive and procedural law relating to merger control in the EU considering EU and national case law The key substantive and procedural issues in the US are also considered

**EU Merger Control** Ioannis Kokkoris, 2014 Economic issues play a pivotal role in competition enforcement Integrating economic and legal analysis throughout this work provides expert coverage of both the substantive and procedural law relating to merger control in the EU considering EU and national case law The key substantive and procedural issues in the US are also considered

**Merger Control in the European Union**

Edurne Navarro Varona, 2005 This second edition of *Merger Control in the EU* provides the reader with an exhaustive analysis of the European Community rules relating to merger control including the new EC Merger Regulation 139/2004 of 20 January 2004 which entered into force on 1 May 2004 and the latest interpretive notices adopted by the European Commission A brand new addition to the book is the companion website which will maintain the currency of the main work after publication a service that is free of charge to all who own a copy of the book The European Commission has exclusive competence to authorise or prohibit concentrations which have a Community dimension Bearing in mind the economic relevance of these operations decisions made by the Commission have an extraordinary market impact This work is an invaluable and precise instrument for legal practitioners and economists as well as for those undertakings involved in merger operations or acquisitions It will enable them to become acquainted with the Commission's policy in this field and to guide themselves through the complex procedure of notification in Brussels It will also be useful for those merger operations which are required to follow the procedure of notification to the national competition authorities in EU Member States since the Commission's guidelines inspire to a large extent the acts and decisions of the national authorities in this field This book analyses the issues related to merger control not only from a legal standpoint but also from an economic one It is a product of the authors' knowledge and experience in Brussels as officials of DG Competition in the Commission and as lawyers defending the interests of undertakings involved in the notification procedure

*Law and Economics in European Merger Control* Ulrich Schwalbe, Daniel Zimmer, 2009-10 Co-written by an expert lawyer and economist this book provides a thorough guide to the economic theory behind the regulation of mergers The economic theory is then used to analyse the current state of European competition law and test the success of the European Commission's search for a more economic approach to merger regulation

Competition Law of the EU and UK Sandra Marco Colino, 2019 Competition Law of the EU and UK is the essential introduction to competition law Clear and accessible without compromising on rigor it helps students to navigate all of the technicalities of competition law With strong coverage of the economics underpinning the law this text leads students through the complexities of competition law and helps them to understand its principles Designed to bring the

law to life a range of learning features aid comprehension and invite students to think about the many applications of competition law Key cases boxes provide lively discussion and user friendly flow charts and visual aids offer a stimulating approach to competition law making it an ideal introduction to the subject for undergraduates and postgraduates new to this area of law An Online Resource Centre accompanies this book and provides Summary maps and key cases downloadable for ease of use Multiple choice questions to help students to self check progress and understanding Table of OFT decisions for quick reference Web links to enable students to take their learning further

**European Merger Control** Catalin Stefan Rusu, 2010-01-01 Twenty years of experience have inevitably brought to light challenges and tensions in the enforcement of the European merger control system Some of these challenges have been faced some have been solved and some remain latent This very valuable study starts from the proposition that the EU has never fully acknowledged those fundamental challenges which relate to the rationale behind merger control in Europe The author shows how the Commission's focus on adapting the rules of merger control to the economic realities of the future business environment although designed with a view to facilitating European integration has compromised attainment of legal certainty transparency and welfare enhancement In its detailed evaluation of the future market structure prediction process embedded in European merger control policy this book approaches two rock bottom far reaching questions In what ways does merger control promote consumer and societal welfare Is the Commission able to correctly predict the outcome of any given concentration transaction These considerations take the reader through a deep and searching analysis that calls into question the very credibility and transparency of the system leading to alternatives which promise a new clarity of purpose and procedure The author describes how these recommendations can be integrated into the functioning framework of the European project Taken fully into account along the way is a wide spectrum of relevant source material including the following applicable articles and chapters of the founding and subsequent European Treaties secondary European legislation concerning competition and merger activity domestic competition laws guidelines notices and action plans competition law reviews statements of intentions draft legislative attempts speeches on the enactment and purpose of merger control Member States views concerning European merger control as expressed during Council negotiations officially available concentration related statistics and a wide ranging literature review covering both the legal and economic sides of merger control Throughout the author substantiates theoretical assertions with case law examples clearly exposing doctrines arising from such cases as Continental Can Phillip Morris Rothmans and the Airtours Schneider and Tetra Laval trilogy A unique feature of the analysis draws on the author's personal experience while working for a Brussels competition law firm This book is a remarkable compound of academic guide to the roots and rationales of the European Merger Control System practical guide to the day to day intricacies of merger control enforcement and raw guide for decision makers and merger control law enforcers It will be of immense value in all three contexts

*Market Power in EU Antitrust Law* Luis Ortiz

Blanco, 2011-12-02 The notion of market power is central to antitrust law Under EU law antitrust rules refer to appreciable restrictions of competition Article 101 1 Treaty on the Functioning of the European Union TFEU ex Article 81 1 EC Treaty the elimination of competition for a substantial part of the market Article 101 3 TFEU ex Article 81 3 EC dominant positions Article 102 TFEU ex Article 82 EC and substantial impediment to effective competition in particular by creating or reinforcing a dominant position Article 2 of the EU Merger Regulation At first sight only the concept of dominant position relates to market power but it is the aim of this book to demonstrate that the other concepts are directly linked to the notion of market power This is done by reference to the case law of the EU Courts and the precedents of the European Commission The author goes on to argue that for very good reasons clarity and enforceability among others the rules should be interpreted in this way Beginning with market definition the book reviews the different rules and the different degrees of market power they incorporate Thus it analyses the notion of appreciable restriction of competition to find a moderate market power obtained by agreement among competitors to be the benchmark for the application of Article 101 TFEU ex Article 81 EC It moves on to the concept of dominance under Article 102 TFEU ex Article 82 EC which is equivalent to substantial or significant market power and then focuses on the old and new tests for EU merger control Finally it addresses the idea of elimination of competition in respect of a substantial part of the market Article 101 3 TFEU ex Article 81 3 b EC in which the last two types of market power Article 102 TFEU ex Article 82 EC and EU Merger Regulation converge To exemplify this an in depth study of the notion of collective dominance is conducted The book concludes that a paradigm of market power exists under the EU antitrust rules that both fits with past practice and provides for a useful framework of analysis for the general application of the rules by administrative and even more importantly judicial authorities in the Member States under conditions of legal certainty *The More Economic Approach to EU Antitrust Law* Anne C

Witt, 2016-11-17 In the late 1990s the European Commission embarked on a long process of introducing a more economic approach to EU Antitrust law One by one it reviewed its approach to all three pillars of EU Antitrust Law starting with Article 101 TFEU moving on to EU merger control and concluding the process with Article 102 TFEU Its aim was to make EU antitrust law more compatible with contemporary economic thinking On the basis of an extensive empirical analysis of the Commission's main enforcement tools this book establishes the changes that the more economic approach has made to the Commission's enforcement practice over the past fifteen years It demonstrates that the more economic approach not only introduced modern economic assessment tools to the Commission's analyses but fundamentally changed the Commission's interpretation of the law Emulating one of the key credos of the US Antitrust Revolution thirty years earlier the Commission reinterpreted the EU antitrust rules as aiming at the enhancement of economic consumer welfare only and amended its understanding of key legal concepts accordingly This book argues that the Commission's new understanding of the law has many benefits Its key principles are logical translate well into workable legal concepts and promise a great degree of

accuracy However it also has a number of serious drawbacks as it stands Most worryingly its revised interpretation of the law is to large extents incompatible with the case law of the European Court of Justice which has not been swayed by the exclusive consumer welfare aim This situation is undesirable from the point of view of legal certainty and the rule of law

### **A comparative analysis of EU and US transnational mergers regulation** Dimitris Liakopoulos,2017-12-22

Document from the year 2017 in the subject Law Civil Private Trade Anti Trust Law Business Law grade A language English abstract The major problem associated with the regulation of transnational mergers which affect several national markets is the allocation of jurisdiction Each country concerned may wish to exert jurisdiction and apply its national competition law to regulate the anti competitive effects a merger may have in its territory However this approach may lead to risks of inconsistent decisions regarding the legality of mergers Indeed the national competition laws applied by the regulating authorities may diverge in several aspects which raise the likelihood of inconsistency The authors advocates the creation of an international merger control framework IMCF for the regulation of transnational mergers This framework will rest on an informal and a formal pillar The former includes non legally binding competition principles Consistency of these principles with the concepts of legitimacy and efficiency as well as the presence of peer reviews and assistance programmes should lower the risk of non implementation The formal pillar includes bilateral cooperation agreements which apply to merger affecting the countries which have concluded the agreements As essential pre condition for the application of bilateral agreements the level of cooperation achieved by such agreements should be at least equal to that ensured by the informal pillar The last part of the study addresses and examines the long and complex processes in merger and acquisition M A transactions M A arbitration faces certain difficulties during the transaction Such difficulties the author seeks to underline Two main problems of arbitration in M A transactions particularly have been covered Firstly the problem of consent in consolidation of parallel proceedings during M A transactions and secondly parties consent that validate arbitration agreements clauses in assignment or succession after M A transactions have been completed The author also tries to clarify the content of consent of parties to a transaction Finally a criticism of parallel proceedings is enhanced *The Interplay between European Merger Control Law and the Liberalisation of European Electricity, Natural Gas and Petroleum Markets* Henning Matthiesen,2023-04-21 Doctoral Thesis Dissertation from the year 2020 in the subject Law European and International Law Intellectual Properties grade 2 2 Leuphana Universit t L neburg Fakult t Wirtschaftswissenschaften language English abstract This doctoral thesis examines how European merger control law is applied to the energy sector and to which extent its application may facilitate the liberalisation of the electricity natural gas and petroleum industries so that only those concentrations will be cleared that honour the principles of the liberalisation directives In 2007 the Commission emphasized that a real internal European energy market is essential to meet Europe s three energy objectives These were for example competitiveness to cut costs for citizens and undertakings to foster energy efficiency and investment

sustainability including emissions trading and security of supply with high standards of public service obligations The EU issued three pre liberalisation directives since the 1990s Dissatisfied with the existing monopolistic structures in Germany through demarcation and exclusive concession agreements for the supply of electricity and natural gas which were until 1998 exempted from the cartel prohibition provision and the prevalence of exclusive rights on the energy markets the Commission triggered infringement proceedings against four Member States The CJEU confirmed that the Commission has the power to abolish monopoly rights under certain circumstances and the rulings had the effect of convincing the member states to enter into negotiations for an opening up of energy markets owing to the internal market energy liberalization directives 1996 1998 2003 2009 2019 The 2nd liberalisation package of 2003 brought a widening of market opening and acceleration of pace of market opening to a greater number of eligible customers and an increase in the provisions on management and legal unbundling The 3rd energy package of 2009 addressed ownership unbundling of key infrastructure ownership and energy wholesale and retail supply consisting of three regulations and two directives The 4th liberalization package inter alia consists of a new IEMD2019 and IGMD2019 and addresses energy efficiency and rules on good governance in the Energy Union A brief analysis of the economic implications of concentrations is followed by an assessment of the evolution of European merger control law since 1989 1997 and 2004 Then the theoretical findings are contrasted to the results of recent merger proceedings in the energy sector

#### **Competition Law in the EU** Johan W. van de Gronden, Catalin S.

Rusu, 2024-05-02 This thoroughly revised and updated second edition provides an enhanced understanding of EU competition law exploring significant substantive and enforcement issues relating to antitrust merger control the Digital Markets Act and state aid law While considering well established doctrines and landmark judgements the textbook also addresses recent developments such as digitalisation sustainability and globalisation and how these issues will influence future inquiry into competition law

#### **Killer Acquisitions in Digital Markets: An Analysis of the EU Merger Control Regime** Giulia

Sonderegger, 2024-06-10 In her PhD thesis Giulia Aur lie Sonderegger analyses killer acquisitions which in short are acquisitions that aim to pre empt potential future competition at an early stage While this phenomenon was originally discovered in pharmaceutical markets this thesis exclusively discusses killer acquisitions in the context of digital markets thereby primarily focusing on the current European Merger Control Regulation EUMR The main research question is whether the EUMR is appropriate to tackle killer acquisitions occurring in digital markets and if not in what ways it needs to be amended to better address the challenges in the future To tackle this question the author assesses both the economic and legal effects of killer acquisitions on merger control in digital markets and based on her findings suggests amendments to the current European merger control regime For a more comprehensive analysis this thesis also includes an assessment of the recently enacted Digital Markets Act DMA to ascertain whether this regulation may serve as an additional tool to remedy such transactions

#### **European Merger Control** Michael Rosenthal, Stefan Thomas, 2010-01-01 European merger control is

among the most important and complex aspects of competition law. The rapid pace of development in this area presents a further challenge: legislation and guidance documents are frequently issued and updated and the formidable body of Court and Commission case law continues to grow at a daunting rate. This book provides a comprehensive treatment of EC merger control law and procedure. It adopts an integrated approach that embraces both the law and economics of merger control, supplemented throughout with practical insights drawn from the authors' own experience. The book blends practical and academic perspectives and addresses new and unsolved questions of EC merger control law. Highlights: Specific and detailed treatment of EC merger control. Comprehensive and up to date overview of recent case law and Commission guidance. Detailed analysis of economic issues posed by the ECMR, e.g. market definition and SIEC test.

**Merger Control in the EU and Turkey** Fevzi Toksoy, Bahadır Balki, Hanna Stakheyeva, 2019-09-08 As a country on the way to integration with the European Union, EU Turkey has been following EU principles in establishing and improving its merger control regime as well as overall competition law, keeping pace with changes in relevant EU legislation and case law. However, as is to be expected, specific adjustment needs engender significant differences in the two regimes. This book presents for the first time a description and analysis of the relationship between the EU and Turkish merger control law and practice. The authors, all three both practicing lawyers and academicians in Turkey, focus on comparing substantive, procedural and jurisdictional issues and draw parallels on their regulation in the two jurisdictions. These matters include the following: determining whether a transaction shall be regarded as a notifiable merger, hence be subject to control; financial thresholds used for allocating jurisdictions; extraterritoriality of merger control; relationship between the significant impediment to effective competition (SIEC) test and the dominance test; determination of the relevant market; techniques used for assessment of horizontal and non horizontal mergers; notification requirements; procedural duties of competition authorities in relation to remedies; third party rights; gun jumping; fines and other sanctions for failure to comply with merger control requirements and peculiarities of assessment of mergers in the big data world. Each chapter provides an overview of the respective issues in the EU and Turkey, projecting a clear understanding of the main similarities and differences in the two regimes. A notable feature is an in depth analysis of applicable case law concerning each issue, with most of the Turkish decisions available in English for the first time. In addition to these practical issues, the book's comparative approach will prove to be of great value. With its clear answers to questions about what transactions are subject to merger control, what criteria are used in assessing those transactions and the main issues that a foreign company should be aware of while merging with another foreign company with effect in Turkey and/or EU, the book will be of immeasurable value for lawyers and their business clients dealing with multijurisdictional merger cases. Interested academics and policymakers will also find much here to attract their attention.

*Trademarks and Brands in Merger Control* Damiano Canapa, 2016-06-23 The role of intellectual property rights in merger control procedures has not received the attention it warrants. Most research has focused on the assessment of intellectual



property rights in anticompetitive conducts rather than on how a firm can monopolise a market by accumulating such assets. This is despite the fact that access to such assets whether used or unused is often a key factor if not the only one motivating mergers. This book is the first to address trademarks and brands from the perspective of merger control procedure studies the legal issues of the topic. It provides a comprehensive response to the question of how European and Swiss competition authorities should consider trademarks and brands when assessing a merger. The author's thorough and critical approach addresses topics such as the in depth assessment of the legal and economic foundations of both trademarks and brands and merger control why trademarks and brands may be relevant to the assessment of mergers including the distinction between trademarks and brands the origin of the brands strength according to marketing sciences and how and why brands may provide market power to their holder the conditions under which the assignment or licence of a trademark may qualify as a concentration under the definition of the European Union Merger Regulation or of the Swiss Cartel Act the role played by trademarks and brands in the substantive assessment of a merger including the definition of the relevant markets different types of mergers and the invocation of the failing firm defence the provision of detailed guidelines describing the possible influence of trademarks and brands on the outcome of the merger assessment and the importance of trademarks and brands in the design and assessment of remedies. At every stage of the study special attention is given to the decisions of both the European Commission and the Swiss Competition Commission. As the first detailed analysis of the role of trademarks and brands in the assessment of mergers this book constitutes a deep and illuminating answer to the uncertainties regarding the outcomes of the assessment of mergers that derive from the more economic approach prevailing in European Union Law. It cannot fail but capture the interest of practitioners businesspeople and academics whose work involves competition and intellectual property.

**EU Competition Law and Economics** Damien Geradin, Anne Layne-Farrar, Nicolas Petit, 2012-03-22. This is the first EU competition law treatise that fully integrates economic reasoning in its treatment of the decisional practice of the European Commission and the case law of the European Court of Justice. Since the European Commission's move to a more economic approach to competition law reasoning and decisional practice the use of economic argument in competition law cases has become a stricter requirement. Many national competition authorities are also increasingly moving away from a legalistic analysis of a firm's conduct to an effect based analysis of such conduct indeed most competition cases today involve teams composed of lawyers and industrial organisation economists. Competition law books tend to have either only cursory coverage of economics have separate sections on economics or indeed are far too technical in the level of economic understanding they assume. Ensuring a genuinely integrated approach to legal and economic analysis this major new work is written by a team combining the widely recognised expertise of two competition law practitioners and a prominent economic consultant. The book contains economic reasoning throughout in accessible form and more pertinently for practitioners examines economics in the light of how it is used and put to effect in the courts and

decision making institutions of the EU A general introductory section sets EU competition law in its historical context The second chapter goes on to explore the economics foundations of EU competition law What follows then is an integrated treatment of each of the core substantive areas of EU competition law including Article 101 TFEU Article 102 TFEU mergers cartels and other horizontal agreements and vertical restraints

**Index to Legal Periodicals & Books**, 2006 *The More Economic Approach to EU Antitrust Law* Anne C Witt, 2016-11-17 In the late 1990s the European Commission embarked on a long process of introducing a more economic approach to EU Antitrust law One by one it reviewed its approach to all three pillars of EU Antitrust Law starting with Article 101 TFEU moving on to EU merger control and concluding the process with Article 102 TFEU Its aim was to make EU antitrust law more compatible with contemporary economic thinking On the basis of an extensive empirical analysis of the Commission's main enforcement tools this book establishes the changes that the more economic approach has made to the Commission's enforcement practice over the past fifteen years It demonstrates that the more economic approach not only introduced modern economic assessment tools to the Commission's analyses but fundamentally changed the Commission's interpretation of the law Emulating one of the key credos of the US Antitrust Revolution thirty years earlier the Commission reinterpreted the EU antitrust rules as aiming at the enhancement of economic consumer welfare only and amended its understanding of key legal concepts accordingly This book argues that the Commission's new understanding of the law has many benefits Its key principles are logical translate well into workable legal concepts and promise a great degree of accuracy However it also has a number of serious drawbacks as it stands Most worryingly its revised interpretation of the law is to large extents incompatible with the case law of the European Court of Justice which has not been swayed by the exclusive consumer welfare aim This situation is undesirable from the point of view of legal certainty and the rule of law

**The Role of Economic Analysis in the EC Competition Rules: The European School** Doris Hildebrand, 2002-03-20 The scope is on Articles 85 and 86 and the Merger Regulation because those are the EC competition rules applying to businesses Does EU Merger Control Discriminate against Small Market Companies? Mika Oinonen, 2010-07-20 Although the question posed by the title of this book has generated considerable debate the essential issue remains open and largely blurred While some believe that there is no so called small market problem others discern discrimination against small market companies i.e. companies with a strong position in their home markets but a modest position in the European and global markets and a consequent need for changes in competition law The author of this enormously helpful work here sets the stage for meaningful discussion by analysing the EC Merger Regulation's objectives economic foundations and application practice to present a reasoned view of the issues that can be considered relevant for such a discussion Considering their effect on the small market problem the author scrutinizes such factors as the following the Commission's methodology for delineating relevant markets in merger assessments unnecessary prohibition caused by overestimation of the market power of small market mergers erroneous approval of cases that should

actually be prohibited impact of the so called Harvard and Chicago schools of competition theory and their key policy implications process related alternative views of competition and new synthesizing approaches relevant criteria for a proper analysis of market power concentration measures and market shares barriers to entry price and profitability analyses and product definition v geographic definition of markets In a final chapter the author presents some tentative conclusions normative in nature concerning the problem and the relevant issues relating to it As the first in depth analysis of the issues that are actually involved with its particular diagnosis of the assessment of market power in considering the relevant issues for the problem this study brings into salience the terms of the debate on the problem and thus takes a giant step forward towards defining what needs to be done Competition lawyers policymakers and academics in Europe and elsewhere will find the discussion of great value

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