

## *European Merger Control: Getting the Efficiencies Right*

Peter D. Camesasca

Antwerp: Intersentia (2000), *xiii* + 498 pp., 120 euro.

Reviewed by Charles Lister, *Covington & Burling (London)*.

A longstanding question on both sides of the Atlantic is the extent to which, and circumstances in which, anticipated postmerger efficiencies may justify a merger's approval. In the United States, efficiencies defenses were rejected in principle by the Supreme Court nearly 40 years ago.<sup>1</sup> Nonetheless, they have since been given at least partial weight by several lower courts.<sup>2</sup> Moreover, regulators have cautiously acknowledged the possible relevance of some merger-specific efficiencies, at least in the absence of a near-monopoly, in successive versions of the Horizontal Merger Guidelines.<sup>3</sup> Suggestions as to when and to what extent efficiencies should be taken into account have also been offered by texts and commentaries.<sup>4</sup> Even so, the issue cannot be regarded as set-

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<sup>1</sup> *E.g.*, *United States v. Philadelphia National Bank*, 374 U.S. 321, 371 (1963); *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 580 (1967).

<sup>2</sup> *E.g.*, *FTC v. University Health, Inc.*, 938 F.2d 1206, 1222 (11th Cir. 1991); *FTC v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34, 61 (D.D.C. 1998); *FTC v. Tenet Health Care Corp.*, 186 F.3d 1045, 1054 (8th Cir. 1999).

<sup>3</sup> *United States Department of Justice & Federal Trade Commission, Horizontal Merger Guidelines* (1992 rev. 1997).

<sup>4</sup> 4A P. AREEDA, H. HOVENKAMP, & J. SOLOW, *ANTITRUST LAW* § 970 (1998). *See also* 1 ABA SECTION OF ANTITRUST LAW, *ANTITRUST LAW DEVELOPMENTS* 335 (4th ed. 1997).

# European Merger Control Getting The Efficiencies Right

**Marcus Glader**



## **European Merger Control Getting The Efficiencies Right:**

**European Merger Control** Peter D. Camesasca, 2000 The first decade of merger control under European competition law offers an enticing stimulus for all kinds of evaluations on the Merger Regulation's running time in particular into the economic feasibility of its rules and their application An economic analysis of the Regulation allows for a positive assessment of the envisioned effects while also enabling normative statements on how to improve the rules' workability given a number of goals to be achieved This study was inspired by one of the Merger Regulation's more controversial issues as surrounding the taking into account of efficiencies resulting from a merger under scrutiny Currently hardly featured in the evaluation process it will be shown that efficiencies carry the potential to move to the centre of stage in those competitively close cases pending prohibition because of the underlying amalgamation's latent anticompetitive effects but at the same time characterised by a strong synergistic content Roberto Pardolesi Luiss Guido Carli Rome The major strength of the work is the original development of fresh insights in discussing existing literatures as well as in applying sophisticated economic arguments to the analysis of European discipline of Merger Control The comparison with the US legal and economic approach to merger regulation is pervasive and efficaciously performed

**European Merger Control** Catalin Stefan Rusu, 2010-09-17 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 **Regulating Competition in the EU** Pernille Wegener Jessen, Bent Ole Gram Mortensen, 2016-04-20

Competition law in the EU includes a wide range of topics and has developed into a very comprehensive area of regulation This book covers the broader perspective of competition law giving an overview of a very complex domain of EU law Through all relevant sources of primary and secondary EU law the book presents the intricacies of the present competition framework for businesses and public entities It draws the lines between the different areas and between competition law and the internal market project The book covers all aspects of traditional EU competition law as well as issues not formally regulated in the TFEU section on competition rules the competition issues of the liberalised sectors and public procurement Among the matters covered are the following the substantive rules on Articles 101 and 102 TFEU the enforcement rules of these provisions merger control the liberalised sectors with focus on energy transport postal services and telecommunication state aid public undertakings and public procurement With its enhanced view of EU competition policy regulation and enforcement and its emphasis on specific industry sectors this book offers an unusually thorough view of aspects of competition law which play an essential role in regulating the conduct of undertakings and public authorities in the market It will be of special value to any lawyer policymaker or scholar active in European competition law European Competition Law and Economics Roger van den Bergh, Peter D. Camesasca, 2001 The aim of this book is to explore the economic fundamentals of European competition law **Does EU Merger Control Discriminate Against Small Market Companies?** Mika

Oinonen, 2010-01-01 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

*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

**Communications in EU Law : Antitrust Market Power and Public Interest** Antonio Bavasso, 2003-01-01 Approaching the theme from an antitrust perspective and focusing on telecommunications and television broadcasting this volume examines how traditional European competition law doctrines and principles can be applied to this converging sector The application of antitrust rules to the communications sector is often one of the most controversial areas of law and policy The shift towards a more competition law oriented form of regulation is one of the main principles inspiring the recent reform of European sectorial regulation enshrined in the 2002 Electronic Communication Package The Package was adopted in 2002 and is in the process of being implemented throughout the Union This monograph provides a detailed description of the new regulatory package and highlights the interplay

between regulatory provisions and EC competition law It then follows the pattern of a typical antitrust analysis containing chapters on the definition of relevant market in the sector and various forms of abuses of market power The book also critically examines the Commission's practice and policy in the field of merger control and considers its relationship with wider regulatory policies Finally it analyses the sector from the perspective of the European public interest and the changed nature of communications as a public service      *The Efficiency Defence and the European System of Merger Control*, 2002

*Comparative Competition Law and Economics* Roger J. Van den Bergh, 2017-09-29 Offering a concise and critical comparison of EU competition law and US antitrust law from an economic perspective this is the ideal textbook for international and interdisciplinary courses combining law and economic approaches      *Merger Control in Post-Communist Countries* Jurgita Malinauskaite, 2010-11-01 This book provides a critical analysis of merger control regimes in the former socialist countries with small market economies looking at the unique challenges facing these economies Questions will be asked as to what extent these countries have had to follow dictation from the EU and whether this implementation of EU merger control rules has been justified from the point of view of these countries economic situations The book will analyse the merger control regimes in Estonia Latvia and Lithuania Slovenia and Slovakia However reference will be made to other small market economies of the EU including Cyprus Ireland Luxembourg and Malta in order to evaluate the particular difficulties the former socialist countries with small market economies have had in the implementation and further development of merger control rules      **EU Competition Law and the Information and Communication Technology**

**Network Industries** Andrej Fatur, 2012-03-08 Competition policies have long been based on a scholarly tradition focused on static models and static analysis of industrial organisation However recent developments in industrial organisation literature have led to significant advances moving beyond traditional static models and a preoccupation with price competition to consider the organisation of industries in a dynamic context This is especially important in the field of information and communication technology ICT network industries where competition centres on network effects innovation and intellectual property rights and where the key driver of consumer benefit is technological progress Consequently when an antitrust intervention is contemplated a number of considerations that arise out of the specific nature of the ICT sector have to be taken into account to ensure improved consumer welfare This book considers the adequacy of existing EU competition policy in the area of the ICT industries in the light of the findings of modern economic theory Particular attention is given to the implications of these dynamic markets for the competitive assessment and treatment of the most common competitive harms in this area such as non price predatory practices tying and bundling co operative standard setting platform joint ventures and co operative R D      **Economic Efficiency** Ben Van Rompuy, 2012-08-01 Over the past decade we have witnessed an apparent convergence of views among competition agency officials in the European Union and the United States on the appropriate goals of competition law enforcement Antitrust policy it is now suggested should focus on enhancing economic

efficiency which we are to believe will promote consumer welfare Recent EU Commission Guidelines on the application of Article 101 TFEU appear to banish considerations that cannot be construed as having an economic efficiency value such as the environment cultural policy employment public health and consumer protection from the application of Article 101 TFEU Arguing that the professed adoption of an exclusive efficiency approach to Article 101 TFEU does not preclude but rather obfuscates the role of non efficiency considerations the author of this timely contribution accomplishes the following objectives traces the genesis of the shift to an efficiency orientation in EU and US antitrust policy and dispels several ingrained misconceptions that underpin it demonstrates the close interrelationship between evolving images of the purpose of antitrust the development of related enforcement norms and enforcement output provides in depth analyses of a number of analytically rich cases in the audiovisual sector and particularly those related to sports rights and explores what the role of non efficiency considerations in the application of Article 101 TFEU could and should be under the modernized enforcement regime

**Professional Services in the EU Internal Market** Tinne Heremans, 2012-01-31 Professional services are a key component of the EU internal market economy yet also significantly challenge the legal framework governing this internal market Indeed specific professional regulatory structures which are often the result of a blend of government and self regulation hold clear potential for conflict with EU free movement and competition law rules Hence this book looks at the manner in which both free movement and competition laws might apply to such self and co regulatory set ups and at the leeway given to quality considerations apparently conflicting with free movement or competition objectives In addition since court action will seldom suffice to genuinely integrate a market the book also explores those instruments of EU secondary legislation that are likely to impact the most on the provision of professional services However the book goes beyond a mere inventory to ask how EU Internal Market policy could contribute to the optimal legal environment for professional services A law and economics analysis is employed to investigate the need for specific professional rules the preferred type of regulator self co or government regulation and the level national and or European at which regulation should be adopted As becomes clear the story of the market for professional services is one of market and government failure the author is thus left to compare imperfect situations where market failures compete with rent seeking efforts the tendency towards over centralisation and national protectionism This book offers both an in depth legal analysis of the EU framework as it applies to professional services as well as a more normative evaluation of this framework based on insights from law and economics scholarship It will therefore be a valuable resource for all practitioners policy makers and academics dealing with professional services as well as more generally with questions of quality and self regulation

**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

**Competition Law** Eugène Buttigieg, 2009-01-01 Although it is commonly assumed that consumers benefit from the application of competition law this is not necessarily always the case Economic efficiency is paramount thus competition law in Europe and antitrust law in the United States are designed primarily to protect business competitors and in Europe to promote market integration and it is only incidentally that such law may also serve to protect consumers That is the essential starting point of this penetrating critique The author explores the extent to which US antitrust law and EC competition law adequately safeguard consumer interests Specifically he shows how the two jurisdictions have gone about evaluating collusive practices abusive conduct by dominant firms and merger activity and how the policies thus formed have impacted upon the promotion of consumer interests He argues that unless consumer interests are directly and specifically addressed in the assessment process maximization of consumer welfare is not sufficiently achieved Using rigorous analysis he develops legal arguments that can accomplish such goals as the following replace the economic theory of consumer welfare with a principle of consumer well being build consumer benefits into specific areas of competition policy assess competition cases so that income distribution effects are more beneficial to consumers and control mergers in such a way that efficiencies are passed directly to consumers The author argues that in the last analysis the promotion of consumer well being should be the sole or at least the primary goal of any antitrust regime Lawyers and scholars interested in the application and development and reform of competition law and policy will welcome this book They will find not only a fresh approach to interpretation and practice in their field comparing and contrasting two major systems of competition law but also an extremely lucid analysis of the various economic arguments used to highlight the consumer welfare enhancing or welfare reducing effects of business practices

**EC Competition Law** Giorgio Monti, 2007-08-06 Monti explores the development of EC competition law through an interdisciplinary approach focusing on the political and economic considerations that affect the way the rules are interpreted Written with competition law students in mind it should also be of interest to undergraduate and postgraduate students of EU politics and economics

Competition Law and Consumer Protection Katalin Judit Cseres, 2005-01-01 The assumption that competition law and consumer protection are mutually reinforcing is rarely challenged The theory seems uncontroversial However because a positive interaction between the two is presumed to be self evident the frequent conflicts that do in fact arise are often dealt with on an ad hoc basis with no overarching legal authority There is a clear need for a detailed and coherent understanding of exactly where the complements and tensions between the two policy areas exist Dr Cseres in depth analysis provides that understanding Proceeding from the dual perspective of law and economics that is of justice fairness and reasonableness on the one hand and of efficiency of the other she fully considers such underlying issues as the following the role of competition law and consumer law in a free market economy the notion of consumer welfare the effect of the modernisation of EC

competition law for consumers economics theories of information bounded rationality and transaction costs the special significance of vertical agreements and merger control and how consumers are affected by information asymmetries The ultimate focus of the book is on current and emerging EC law in which a rapprochement between the two areas seems to be under way Dr Cseres provides a knowledgeable guide to the various strands of theory policy and jurisprudence that she shows ought to be taken into account in the process including schools of thought and law and policy experience in both Europe and the United States A special chapter on Hungary where post 1989 law and practice reveal a fresh and distinctly forward looking understanding of the matter is one of the book s most extraordinary features Competition Law and Consumer Protection stands alone as a committed contribution to bridging a gap in legal knowledge the significance of which grows daily It will be of immeasurable value to a wide range of professionals from academics and researchers to officials policymakers and practitioners in competition law consumer protection advocacy economic theory and planning business administration and various pertinent government authorities European Union Law Damian Chalmers,2006 Comprehensive student textbook covering all aspects of European Union law Innovation Markets and Competition Analysis Marcus Glader,2006-01-01 The book is warmly recommended to practitioners and academics from both the legal and the economic field Guido Westkamp Journal of Intellectual Property Law and Practice Glader offers strong commentary and case explanation coupled with insightful analysis in this complex area This book is strong on both the relevant law and the economics arena in which the law must be applied and deals equally well with the US and EC principles and practice Mark Furse European Competition Law Review The pace and scope of technological change is increasing but some innovative technologies take years before they give rise to saleable products Before they do there is competition in ideas and research but the ideas cannot be market tested because there are no products or services to offer to consumers Competition law in Europe and the USA cannot be applied to competition in research for innovation as if it was competition between products Completely different problems arise and a completely different approach is needed This book the first on innovation markets shows how this new approach has been used by competition authorities on both sides of the Atlantic in a wide variety of cases It analyses in depth and detail the comparative law and economics of the problems arising from the different stages of these markets It considers how far conclusions can be drawn about the future and comes to interesting practical and sensible conclusions And it avoids both unjustified scepticism and exaggerated enthusiasm about the theories of innovation markets John Temple Lang Cleary Gottlieb Steen Trinity College Dublin Ireland and Oxford University UK This book examines the legal standards and their underlying economic rationale for the protection of competition in the innovation process in both European competition law and American antitrust law Apart from relevant regulatory frameworks the author also reviews a range of case laws which assess whether a transaction or unilateral conduct would limit market participants incentives and abilities for continued innovation and future competition At the centre of this study is the

innovation market concept This concept entails the delineation for purposes of antitrust analysis of an upstream market for competing R D Questions of market definition the assessment of innovation competition in defined markets the role of efficiencies in the appraisal of transactions and possible remedies to alleviate anti competitive effects are also explored Updating the field of research in light of new developments and broadening and deepening the categorization and analysis of the innovation market area this book will be of great interest to academics practitioners and consultants and also public policymakers Research Handbook on Global Merger Control Ioannis Kokkoris, Nicholas Levy, 2023-05-09 Over the past 30 years merger control has become well established around the world with broad consensus around its ambit and objectives That consensus has fractured in recent years Enforcement today is at a critical juncture facing an array of challenges and calls for reform unprecedented in their scope and intensity Authored by leading legal practitioners economists enforcers and jurists this timely Research Handbook on Global Merger Control discusses those challenges and predicts how merger control is likely to evolve

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