

Competition *policy brief*

Occasional discussion papers by the Competition Directorate-General of the European Commission

EU merger control and innovation

Introduction

Innovation is a critical component for the success of the Commission's top priority of boosting jobs, growth and investment¹. This Competition policy brief discusses the specific contribution of merger enforcement to the protection and promotion of innovation as one parameter of competition alongside price and output and other factors. It sets out how the EU merger control regime takes into account both negative and positive innovation effects of mergers that fall within its jurisdiction.

Section 1 discusses the benefits of competition for innovation in light of economic theory. Section 2 summarises the EU merger control rules for assessing innovation effects. Section 3 sets out how they have been applied to merger cases.

1. Benefits of competition for innovation

Do mergers that increase market power lead to more or less innovation? Economic theory offers two seemingly conflicting responses.

Scholars following in the footsteps of **Joseph Schumpeter's** theory of continuous innovation and creative destruction² submit that less competition in a market leads to more innovation – at least in dynamic, high tech industries in which competition is more about the development of new products and services than about price or output. Less competition increases the post-innovation rewards for the innovator, which in turn will increase the incentives to engage in research and development (R&D). Even if there is little price competition in the market, innovation competition from firms seeking to take over the leading supplier's role (competition for the market) will goad the current market leader to invest in innovation to stay ahead, or else lose its market position to rivals.

In a nutshell

Innovation is essential to increasing productivity in the EU, and thus contributes to boosting growth and jobs. The EU framework for merger control allows the Commission to assess the impact of mergers and acquisitions on innovation. The framework puts the competitive harm caused by reduction of innovation on an equal footing with increased prices and reduced output.

In recent pharmaceutical and medical devices mergers as well as the GE/Alstom case, the Commission found that these horizontal mergers would lessen innovation competition. In its *Deutsche Börse* judgment, the General Court upheld a similar finding. Remedies in horizontal innovation cases typically include the divestment of products that are still in the pipeline.

Harm to the ability to innovate of the merged entity's rivals was probed in a number of non-horizontal ICT mergers, including *Intel/McAfee*, *ARM/Giesecke & Devrient/Gemalto* Joint Venture, *Telefonica UK/Vodafone UK/Everything Everywhere* Joint Venture and *Intel/Altera*. Remedies in this type of case may also involve access remedies and/or other non-divestiture remedies.

At the same time, the EU merger control regime acknowledges that mergers may result in synergies arising from innovation that can offset anti-competitive effects. In *TomTom/TeleAtlas*, the Commission recognised innovation efficiencies that were at least partly merger-specific and beneficial to consumers.

¹ See http://ec.europa.eu/competition/policies_innovation_investment/index_en.htm.
² J.A. Schumpeter, *Capitalism, Socialism and Democracy*, 1942.

Merger Competition Policy In The

Michael Faure, Xinzhu Zhang



Merger Competition Policy In The:

Chinese Merger Control Law Tingting Weinreich-Zhao,2014-11-19 On 1 August 2008 the Chinese Anti Monopoly Law entered into force introducing a comprehensive framework for competition law to the Chinese market One set of the new rules pertains to merger control China s Ministry of Commerce MOFCOM was nominated as the authority responsible for enforcing merger control in China and has been actively doing so ever since Recent years have established China as one of the most important merger filing jurisdictions for cross border mergers alongside the EU and USA This work evaluates the Chinese merger control law regime and MOFCOM s decision making practice after more than five years of application In particular it assesses which policy goals competition policy goals or industrial policy considerations prevail in the written law and its application and provides suggestions for a further improvement of the law with the aim to develop a transparent merger control regime that promotes long term economic growth in China *Competition Policy for Small Market*

Economies Michal S. Gal,2003-03-15 Accordingly applying the same competition policy to all economies alike may be contrary to its goals **Competition Policy in the European Union** Michelle Cini, Lee McGowan,2008-10-30 Competition Policy in the European Union provides a comprehensive introduction to the European Union s policies on restrictive practices mergers monopolies and state aid The authors offer a wide ranging analysis of the evolution operation and regulation of one of the EU s most important policies in a clear and accessible format Competition Policy and Merger Analysis in

Deregulated and Newly Competitive Industries Peter C. Carstensen, Susan Beth Farmer,2008-01-01 The thorough analyses presented in the book provide the reader with a good overview of the deregulation process in the respective industries Competition Policy and Merger Analysis in Deregulated and Newly Competitive Industries is a valuable resource for researchers of law economics and political science Volker Soyeze European Competition Law Review This comprehensive book contains case studies on the evolution of competition policy with an emphasis on merger policy for seven major US industries that have experienced substantial deregulation in the past forty years electricity natural gas telecommunications railroads airlines hospitals and banking Also included is a comparison of the EU s experience in attempting to bring about competition in the energy finance and airline industries The contributors to the volume each a recognized expert on the industry examined explore the positive and negative implications of the substitution of market oriented processes for historic patterns of command and control regulation The chapters reveal clear similarities in the economic legal and public policy issues that have arisen following deregulation of these economic sectors Together they provide a good basis to discern the consistency of the problems and the relative success of differing responses to these issues over a range of industries going through similar transformation While taking a basically positive view of the movement away from direct regulation the contributors identify a number of continuing problems with achieving workable competition in these industries The thorough analyses presented here will be of great value to law economics and political science researchers interested in deregulation economic

consultants advising government agencies or private parties attorneys who focus on deregulated industries policy planners at the agencies overseeing these industries and students in advanced seminars on economic regulation *RETRACTED, The Regulation of Transnational Mergers in International and European Law* Dimitris Liakopoulos, Armando Marsilia, 2009-12-07

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 Therefore it is desirable to opt for regulatory approaches which are more sensitive to the transnational nature of mergers and which allow cooperation between competition authorities A possible solution may be bilateral cooperation agreements through which two countries coordinate the enforcement activities of their national competition authorities However the benefits of these agreements are enjoyed only by the signatory parties The sole reliance upon bilateral agreements does not appear to be the optimal regulatory approach towards transnational mergers

Merger Remedies in American and European Union Competition Law François Lévêque, Howard A. Shelanski, 2003-01-01 This impressive volume presents a detailed comparative analysis of merger remedies in the EU and US motivated by the fact that a growing number of mergers are being scrutinized and reviewed under both jurisdictions Merger remedies on either side of the Atlantic play an increasingly important role in the implementation of public policy with regard to the economic concentration of industry The book provides an understanding of merger remedies in general and of procedural and substantive differences in the approach of the EU and the US The editors have gathered together leading European and American practitioners and scholars to comprehensively discuss this issue They aim to help policymakers decide if and how current practices can be improved and to help firms and their counsel better prepare cases and predict outcomes

In the Public Interest Stephen Wilks, 1999 This book brings together for the first time five French directors who have established themselves as among the most exciting and significant working today Bruno Dumont Robert Guiguian Laurent Cantet Abdellatif Kechiche and Claire Denis Whatever their chosen habitats or shifting terrains each of these highly distinctive auteurs has developed unique strategies of representation and framing that reflect a profound investment in the geophysical world The book proposes that we think about cinematographic space in its many different forms simultaneously screenspace landscape narrative space soundscape spectatorial space Through a series of close and original readings of selected films it posits a new space of the cinematic subject Accessible and wide ranging this volume opens up new areas of critical enquiry in the expanding interdisciplinary field of space studies It will be of immediate interest to students and researchers working not only in film studies and film philosophy but also in French Francophone studies postcolonial studies gender and cultural studies Listen to James S Williams speaking about his book <http://bit.ly>

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Competition Policy for the New Era Tembinkosi

Bonakele, Eleanor Fox, Liberty Mncube, 2017-12-01 Competition law has expanded to more than 100 jurisdictions worldwide with varying degrees of economic social and institutional development raising important questions as to what is the appropriate design of competition law regimes and the interaction between competition law and economic development This volume comprising a selection of papers from the 4th BRICS International Competition Conference written by academic and practising economists and lawyers from both developed and developing countries is distinctive in its focus on a broader view of competition policy in BRICS and developing countries It examines the role competition the application of broader public interest and national interest concerns in the analysis and influence on developing country competition authorities policy making The contributors address topics such as a broad view of competition policy making markets work for the people as a post millennium development goal some key issues concerning the further development of China s antimonopoly law remedies in BRICS countries public interest issues in cross border mergers crafting creative remedies in food markets in South Africa what are African competition authorities doing to fight cartels successes and challenges in the fight against cartels and the economics of antitrust sanctioning *EU Competition Law Volume II: Mergers and Acquisitions* Jones, Christopher, Weinert, Lisa, 2021-12-14 This book is a Claey's and Casteels title now formally part of Edward Elgar Publishing With extensive updating in the decade since the publication of the second edition and written by the key Commission and European Court officials in this area as well as leading practitioners the third edition of this unique title provides meticulous and exhaustive coverage of EU Merger Law *Competition Policy in the EU* Xavier Vives, 2009-08-06 A volume that takes stock and looks ahead on the development and implementation of competition policy in the European Union fifty years after the Treaty of Rome Competition policy has emerged as a key policy in the EU with competition acting as the driving force for economic efficiency and the welfare of citizens Case law has been established to control and prevent anti competitive behavior state aid control has consolidated and evolved towards a more economic approach and the authority of the EC and the judicial review of the Court of the First Instance CFI and the European Court of Justice ECJ are firmly established The book provides an economic approach to competition policy and reflects the main areas of interest open issues and progress in the area The volume examines the design of competition policy institutions the evolution of the implementation of competition policy and its convergence or divergence with US practice restrictive practices cartels abuse of dominance merger control and state aids The volume also analyses the interaction of competition policy and regulation and studies its application to telecoms banking and energy sectors All chapters are written by leading specialists combining theoretical with practical knowledge and discussing the underpinnings of the application of law *Competition Policy in the Global Economy* William S. Comanor, Akira Goto, Leonard Waverman, 2005-10-26 This volume examines the complexities involved when international co ordination and harmonization of competition law and policy are considered **Competition Policy**

Emmanuel Combe, 2021-11-22 **Competition Policy An Empirical and Economic Approach** Emmanuel Combe It is a truism of competition that paradoxically those who were responsible for yesterday's innovations and productivity become obstacles to future growth This is why competition law has been assigned such an important role in modern countries to detect and sanction anticompetitive practices that prevent the entry of new efficient competitors This utterly original book which thoroughly explains competition policy using economic analyses of European and U S antitrust cases illuminates the complex but crucial back and forth between economic theory and competition law practice Covering the full range of competition policy from antitrust cartels abuse of dominant position to merger control the book not only offers a general view of competition policy in Europe and the United States but also clearly explains the economic underpinnings that guide it thus illustrating how principles are applied in practice Issues and topics include the following economic approach of antitrust sanctions role of criminal sanctions and private actions factors favoring cartel formation and stability role of leniency policies vertical restraints in the age of e commerce economic assessment of R detecting and sanctioning predatory pricing exploitative and exclusionary abuses and impact of a horizontal vertical and conglomerate mergers on competition All the major fields of competition policy are clearly explained with many illustrative examples from case law There is also a chapter presenting an overview of competition policies around the world as well as the legal and institutional framework within which they operate At a time of increasing public concern regarding high industrial concentration especially in the digital sector the question of regulating competition is returning to the forefront Given that the concepts and tools of economic analysis are widely used by competition authorities this book gives lawyers a clear understanding of the objectives and instruments of competition policy It will thus enable corporate counsel academics and policymakers to apply or formulate competition law with increased precision in their day to day work

A Functional Competition Policy for India Pradeep

S. Mehta, 2006 Contributed articles emerging out of various seminar platforms on Indian government policies on competition and laws regarding it

The Economic Assessment of Mergers Under European Competition Law Daniel

Gore, Frances Dethmers, Andrea Lofaro, 2013-04-25 Provides a clear concise and practical overview of the key economic techniques and evidence employed in European merger control

International Merger Policy Julie Clarke, 2014-04-25

International Merger Policy offers a compelling comparative assessment of domestic and regional merger laws and procedures Identifying important areas of convergence and emerging best practice it considers existing levels of international cooperation

Globalization and the Limits of National Merger Control Laws Joseph Wilson, 2003-02-01

The proliferation of merger control laws in the absence of a mechanism to coordinate the transnational merger review places an unnecessary burden on merging parties and runs the risk of divergent outcomes which at times cause friction among nation states

Promoting Competition in Innovation Through Merger Control in the ICT Sector Kalpana Tyagi, 2019-06-21

This book addresses the question of how competition authorities assess mergers in the Information Communication

Technology ICT sector so as to promote competition in innovation A closer look at the question reveals that it is far more complex and difficult to answer for the ICT telecommunications and multi sided platform MSP economy than for more traditional sectors of the economy This has led many scholars to re think and question whether the current merger control framework is suitable for the ICT sector which is often also referred to as the new economy The book pursues an interdisciplinary approach combining insights from law economics and corporate strategy Further it has a comparative dimension as it discusses the practices of the US the EU and wherever relevant of other competition authorities from around the globe Considering that the research was conducted in the EU the practices of the European Commission remain a key aspect of the content Considering its normative dimension the book concentrates on the substantive aspects of merger control To facilitate a better understanding of the most important points the book also offers a brief overview of the procedural aspects of merger control in the EU the US and the UK and discusses recent amendments to Austrian and German law regarding the notification threshold Given its scope the book offers an invaluable guide for competition law scholars practitioners in the field and competition authorities worldwide

A Framework for the Design and Implementation of Competition Law and Policy R. S. Khemani, 1999 A dynamic and competitive environment underpinned by competition law policy is an essential characteristic of successful market economies To satisfy the growing demand for information on current approaches and practices in competition law policy the project Framework for the Design and Implementation of Competition Law Policy was initiated by the World Bank with participation by OECD This ensuing volume reflects the main issues that arise in design and implementation of competition law and policy in order to assist countries in developing an approach that suits their own needs and conditions The views articulated in this publication suggest that the administration and enforcement of competition law policy should assign the greatest importance to fostering economic efficiency and consumer welfare

Competition Policy and Regulation Michael Faure, Xinzhu Zhang, 2011-01-01 This unique book considers competition policy and regulation in light of the recent introduction of the anti monopoly law in China It addresses the relevance of competition policy for China from a broad theoretical and practical perspective bringing together lawyers and economists from China Europe and the US to provide an integrated law and economics approach Given that the development of the Chinese anti monopoly law in China was heavily reliant on a comparative approach the contributors analyse how its text and practice actually compare to European and US legislation The first cases in which Chinese anti monopoly law were applied are explored and both competition law and competition policy are discussed in detail Topics include industrial and professional regulation and their relationship to competition law merger control substantive competition law issues cartels and abuse of dominance and predation This unique book will prove a fascinating read for competition lawyers economists with a special interest in regulation and competition and for practitioners concerned with competition policy and regulation

EU Competition Law Eleanor M. Fox, Damien Gerard, 2023-01-20 This innovative

textbook now in its second edition presents EU competition law in political economic and comparative context It brings competition law to life from an EU and global perspective with cross currents of trade and industrial policy and attention to the intervention of the state in the market Quintessentially readable the book deftly and concisely excerpts the key cases and embeds them in explanatory materials including policy statements and regulations It is entirely up to date and integrates for example new issues of power in the digital economy Notes accompanying the cases raise hard questions and explain the fascinating issues underlying contemporary competition policy in the European Union and around the world

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