

RESEARCH ARTICLE



Considering the *direction of innovation* in EU merger control

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ABSTRACT

This paper considers the role that innovation plays in EU merger control analysis, and seeks to integrate perspectives highlighted by the philosophical literature on the so-called ‘direction of innovation’ in order to critically assess the impact of market concentration on the diversity of innovation and its ability to address larger normative questions and challenges, such as the transition to more sustainable economies. While normative goals other than competition are not an inherent part of merger control, this paper argues that in concentrated markets, ignoring such questions can play into the hands of the powerful merging entities, allowing them to further determine the *direction of innovation* to best serve their interests and business models rather than public interests. This is illustrated by critically discussing the merger between Bayer and Monsanto as an example.

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Introduction

As part of competition policy, merger control appraises concentrations and changes in market structures that often have a significant and long-lasting impact on markets and the development of industries and economies at large. While it is ‘not the job of competition law to save the planet’ (Khan 2022), both competition and innovation play a considerable role in deciding what the future markets and realities look like. This paper thus looks at the potential interaction of three things: the relationship between competition and market concentration; new perspectives on innovation; and the normative quest to address the sustainable development goals, in particular the counteraction of climate change. It postulates that the future structure of large industries and their innovation potential and diversity can play a large role in achieving sustainability goals. Critically analysing how market structures affect the innovative output and the so-called ‘direction of innovation’ could be a first step in this direction. This approach represents a diversion from traditional merger control, where market outputs such as innovation are often viewed as driven by market forces alone.

Directionality broadly describes the idea that innovation is not a blind or indeterminate process but that is can be the outcome of certain economic policies and market conditions.

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Merger Control In The Eu

Jones, Christopher, Weinert, Lisa



Merger Control In The Eu:

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.

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.

The EU Merger Regulation Alistair Lindsay, Alison Berridge, 2012. This is the 4th edition of The EC Merger Regulation, a detailed guide to the method of merger control in the European Union. Fully revised for 2012, this comprehensive text describes how the European Commission determines approval of a notified merger, thereby providing information and techniques to complete merger deals successfully for companies operating in the European Union.

Merger Control in Europe Nauta Dutilh, 2003-01-01. Rev. edition of Merger control in the EU edited by Peter Verloop. 3rd rev. ed. 1999.

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

Merger Control in the United Kingdom and European Union Celli,1997-01-08 Merger Control in the United Kingdom and European Union clearly and concisely sets out the rules and procedures governing mergers at both national and European Union EU levels This how to guide assists practitioners involved in mergers by identifying whether a transaction will come under the UK or the EU system who needs to be notified when and how notifications need to be filed under the UK or the EU system the various stages of the process Because in this area policy rather than merely legal rules plays a central role Merger Control in the United Kingdom and European Union also identifies the various strands and developments of merger policy in Whitehall and in Brussels The book has been fully updated to take account of the new legislative and interpretative measures introduced by the European Commission in December 1994 on the application of the EC Merger Regulation as well as the UK statutory instruments enacted in March 1996 to amend merger control and competition rules and recent developments involving mergers in the privatised utilities Also included in this single volume are the texts of the relevant UK and EU legislation This guide will interest all businesses involved in or contemplating transactions which could come under the rules as well as lawyers bankers accountants and other professional advisers and policymakers and observers of this developing area of law and policy

Merger Control in Europe Ioannis Kokkoris,2010-09-13 This book addresses the phenomenon of mergers that may result in non coordinated effects in oligopolistic markets Such cases are sometimes referred to as non collusive oligopolies or gap cases and there is a concern that they might not be covered by the substantive test that some Member States use for merger assessment Ioannis Kokkoris examines the argument that the European Community Merger Regulation Regulation 4064/89 did not capture gap cases and considers the extent to which the revised substantive test in Regulation 139/2004 deals with the problem of non collusive oligopolies The author identifies actual examples of mergers that gave rise to a problem of non coordinated effects in oligopolistic markets both in the EU and in other jurisdictions and analyses the way in which these cases were dealt with in practice The book considers legal systems such as United Kingdom United States Australia and New Zealand The book investigates whether there is any difference in the assessment of non collusive oligopolies between the various substantive tests which have been adopted for merger assessment in various jurisdictions The book also looks at the various methodological tools available to assist competition authorities and the professional advisers of merging firms to identify whether a particular merger might give rise to anticompetitive effects and explores the type of market structure in which a merger is likely to lead to non coordinated effects in oligopolistic markets

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 **Merger**

Control in the EU and Turkey Fevzi Toksoy, Bahadır Balki, Hanna Stakheyeva, 2022-05-11 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 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 second edition of the book considers the legislative changes that occurred in 2020 2021 including the reform of the Turkish Competition Law which introduced the significant impediment to effective competition SIEC test into the Turkish concentration control 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 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 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

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

Merger control in the European Union Edurne Navarro Varona, 2005

Merger Control in the EU Peter Verloop, Nauta Dutilh (Firm), 1999-01-01 This third edition of European Merger Control covers the law relating to the regulation of mergers acquisitions and joint ventures in 14 EU countries and by the EU itself Each chapter has been written by an expert in the relevant national law and discusses topics such as notification thresholds procedures and the substantive test s applied The book also contains a chart allowing readers to compare the basic elements of merger control law in all of the countries covered and in the EU making it a valuable reference manual

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

The European Commission's Jurisdiction to Scrutinise Mergers Morten Broberg, 1998-04-15 No major business or law firm can afford to disregard the European Commission s power in the control of mergers Since the Council of Ministers adopted the EC Merger Regulation in 1989 The power of the European Commission has increased steadily The scope of the Merger Regulation now occupies a central role in many mergers taking place both inside and outside the European Community To come within the scope of merger regulation and thus within the Commission s jurisdiction a merger must possess a community dimension Despite the careful definition of this term in the Merger Regulation itself The concept has created problems in many cases The European Commission s Jurisdiction to Scrutinise Mergers offers a comprehensive up to date analysis of all aspects of the community dimension concept The most thorough examination of the Commission s jurisdiction

to examine mergers under the EC Merger Regulation The European Commission s Jurisdiction to Scrutinise Mergers serves as a valuable guide for businesses their legal advisors and competition law enforcers in both the Commission And The Member States

EU and US Antitrust Arbitration Gordon Blanke, Phillip Louis Landolt, 2011-01-01 EU and US Antitrust Arbitration is the first book that deals with how both of the world s leading antitrust systems US and EU law are treated in international arbitration In forty nine chapters written by renowned experts this book provides an in depth examination of all relevant topics from drafting arbitration clauses to arbitrability provisional measures the applicability of antitrust law in arbitrations dealing with economic evidence and experts in relation to antitrust law to relations with courts and regulators remedies and recognition and enforcement of arbitration awards dealing with antitrust issues Both antitrust and merger control are covered The perspectives of the arbitrator and the in house andquot userandquot of arbitration are included Two chapters outline and explain US antitrust law and EU antitrust law with special reference to matters particularly likely to arise in arbitration One chapter is devoted to ICC antitrust arbitrations and another to the emerging area of EU State aids in arbitration There are industry specific chapters such as on telecommunications and pharmaceuticals and much else In this substantial book practitioners will find helpful and easy to understand guidance to their questions on antitrust arbitrations

Competition Law and Policy in the EU and UK Barry J. Rodger, Angus MacCulloch, 2014-09-19 Competition Law and Policy in the EU and UK provides a focused guide to the main provisions and policies at issue in the EU and UK including topics such as enforcement abuse of dominance anti competitive agreements cartels mergers and market investigations The book s contents are tailored to cover all major topics in competition law teaching and the authors clear and accessible writing style offers an engaging and easy to follow overview of the subject for course use The fifth edition provides a full update for this well established title presenting and contextualising the impact of key cases as well as changes to enforcement practice and at a legislative and institutional level There are new separate chapters in this edition on private enforcement and UK market investigations to reflect the increasing significance of these key areas of competition law practice Competition Law and Policy in the EU and UK integrates useful pedagogical features to help clarify topics and reinforce important points chapter overviews and summaries highlight the key points to take away from each chapter to structure student learning discussion questions facilitate self testing and seminar discussions of the major issues covered in each chapter to help reinforce understanding of these topics further reading lists additional resources in order to guide research and develop subject knowledge a new glossary provides succinct explanations of competition law terminology ideal for those studying the topic for the first time Clear focused and student friendly this title offers a comprehensive resource for students taking competition law courses and is supported online by updates to the law offered on Angus MacCulloch s blog Who s Competing <http://whoscompeting.wordpress.com>

Competition Law of the EU and UK Sandra Marco Colino, 2011-05-12 The competition policy of the European Community is a vital part of Community law Covering competition law in the UK and the

EU this book introduces the fundamental concepts employed in the application of competition 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 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 **EC Merger Control** Götz Drauz, Michael Reynolds, 2003 The European Commission adopted a comprehensive package of reforms to the EU merger control regime in conjunction with the accession of the new Member States in 2004 This constituted the most radical reform of the regime since the previous Merger Regulation was adopted in 1989 aimed at better adapting it to a globalizing market and enlarging an increasingly integrated European Union The extensive reform to the regulation has provoked significant questions about the way in which the Commission treats major merger evaluations EC Merger Control provides a comprehensive and insightful account of the many important procedural and substantive aspects of the reform process with contributions from eminent specialists in the field of mergers including lawyers economists and representatives of the European Commission Court of First Instance US Department of Justice the World Bank and several competition authorities The papers in this book are based on the proceedings of the 2002 EC Merger Control conference organised jointly by the European Commission and the International Bar Association

The book delves into Merger Control In The Eu. Merger Control In The Eu is a crucial topic that needs to be grasped by everyone, from students and scholars to the general public. The book will furnish comprehensive and in-depth insights into Merger Control In The Eu, encompassing both the fundamentals and more intricate discussions.

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6. In chapter 5, this book will draw a conclusion about Merger Control In The Eu. The final chapter will summarize the key points that have been discussed throughout the book.

The book is crafted in an easy-to-understand language and is complemented by engaging illustrations. This book is highly recommended for anyone seeking to gain a comprehensive understanding of Merger Control In The Eu.

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