

MERGER CONTROL IN THE EUROPEAN UNION

Law, Economics and Practice

Second Edition

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FOREWORD TO THE SECOND EDITION

by Mario Monti

It is my great pleasure to be able already to introduce the second edition of *Merger Control in the EU*, and this barely two years after its first appearance. This second edition was dictated not only by the success of the book, but primarily because of the recent reforms to the EU merger control system, which crystallized in Merger Regulation 139/2004 and accompanying legal instruments. These reforms manifest a unique feature of our system: its ability to adapt and improve to take account of the rich experience we have acquired in the enforcement of merger control. Further reforms, in particular in the form of guidelines, will follow.

During my tenure as Commissioner for Competition, together with my services, I have advocated reforms to merger control aimed at attaining the most appropriate legal and economic standards against which to assess concentrations falling within the jurisdiction of the European Commission. The new legal standard adopted for assessing the compatibility of concentrations notified to us will provide the scope for a more comprehensive and precise analysis. This analysis will fully consider all relevant economic and legal factors, including substantiated increases in efficiencies. Considered in their entirety, these factors will determine whether a concentration benefits a healthy competitive market structure, for the ultimate benefit of consumers.

Readers will also notice the procedural refinements that we have incorporated in order to make our system even more transparent and fair to all stakeholders. We have drawn some lessons from the judicial control of our decisions. We have also been attentive to views coming from other jurisdictions, in various international fora, and we have furthermore received valuable practical input from both the legal and the business community. I sincerely thank all those who have worked to improve the system.

Mario Monti
Member of the Commission

PREFACE AND ACKNOWLEDGEMENTS

This book is a team effort and each of its chapters is the final result of the contributions and viewpoints of the four authors. It should be stressed that this book would not have existed without the contributions of each author.

At the same time, the initial work was shared out taking into account the specific training and experience of each author. For this reason it is worth identifying the author or authors responsible for the first draft of each chapter. Juan Briones contributed particularly to the introduction, the definition of relevant market, collective dominant positions, the analysis of vertical concentrations, the analysis of economic efficiencies and the assessment of commitments by the parties and amendments to the notified operation. Jaime Folguera and Edurne Navarro focused particularly on the creation or reinforcement of a dominant individual position, barriers to entry and potential competition, rights to defence, institutional questions, relations with Member States and third countries and jurisdictional control, cases brought before the Community courts, interim relief and the efficacy of judicial control. Andrés Font contributed especially to the questions of jurisdictional matters, the concepts of concentration and control, the Commission's policy as regards joint ventures, the Community dimension, the failing company defence, the application of Article 81 to full-function joint ventures, the analysis of ancillary restrictions and the procedure and practice followed by the Commission in this field, and notification, investigation and adoption of Commission decisions.

The content of this book reflects the authors' personal opinions. The fact that one of the authors is a civil servant working in the Commission does not mean that the conclusions given can be attributed to this institution.

The authors would like to acknowledge the great support received from Philip Lowe, Götz Drauz, Kirtikumar Mehta, Linsey McCallum, Carles Esteva, Olivier Guersent, Dan Sjöblom and José María Carpi.

The authors are also particularly grateful to the assistance received from the lawyers Patricia Vidal, Sergio Baches Opi, James Callaghan and Cecelia Kye, whose excellent contributions in the preparation of the materials on which this book is based have been extraordinarily useful for the preparation of the final text, and acknowledge the assistance of José Carlos Engra, Mercedes García, and Ana Rodríguez in the updating of the book.

Likewise, the authors would like to thank Manuel Atienza Vizarro for his excellent work in assisting the authors in coordinating and integrating their different contributions, and Andrew Read for his excellent translation into English.

Preface and Acknowledgements

This book will be kept up to date by the means of a companion website, which will include links to new relevant Commission Notices, especially important merger decisions, and any other key developments. To register for free access, please visit <http://www.oup.co.uk/law/practitioner/cws>, and click on the link for *Merger Control in the EU*.

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