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978-1-107-00772-7 - The Economic Assessment of Mergers Under European Competition Law

Daniel Gore, Stephen Lewis, Andrea Lofaro and Frances Dethmers

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THE ECONOMIC ASSESSMENT OF MERGERS UNDER EUROPEAN COMPETITION LAW

This concise and practical guide to the most important economic techniques and evidence employed in modern merger control draws on the authors' extensive experience in advising on European merger cases. It offers an introduction to the relevant economic concepts and analytical tools, and stand-alone chapters provide an in-depth overview of the theoretical and practical issues related to market definition, unilateral effects, coordinated effects and non-horizontal mergers. Each form of economic evidence and analysis is illustrated with practical examples and an overview of key merger decisions.

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We would like to dedicate this book to our parents.

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FOREWORD

It is difficult now to recall the sense of expectation, uncertainty, and excitement that greeted the entry into force of the Merger Regulation in 1990. Among the many unanswered questions was how the Commission would define markets and analyse the substantive issues raised by reportable concentrations. Notwithstanding the explicit emphasis placed on competition-based criteria in the original text of the Merger Regulation, the use of economics and economists was in its infancy in the EU: few Commission officials had a background in economics; outside counsel were for the most part unfamiliar with economic theory and concepts; and economics was at the time applied only rarely in antitrust cases. Fundamental issues concerning the role of economic evidence in EU merger control were therefore unresolved and very real.

Initially in respect of market definition and subsequently in connection with horizontal and non-horizontal effects, the Commission started to employ a more rigorous, quantitative, and economically orientated approach to the assessment of mergers and other forms of concentration, placing increasing reliance on firm evidence and solid investigative techniques that could be tested against what Joseph Schumpeter called 'the cold metal of economic theory'. When, in 2003 and 2004, as part of the package of measures implemented in response to a series of reversals before the EU Courts, the Commission adopted the Horizontal Mergers Guidelines and appointed its first Chief Economist, the central role of economics and economists in the application of the Merger Regulation was confirmed, and decisions since then have been increasingly grounded in hard data and sound economics.

This magnificent and comprehensive textbook introduces students, practitioners, economists, and regulators alike to the economic tools and methodologies used to assess concentrations under the Merger Regulation. The principal empirical techniques employed to define markets and to analyse unilateral effects, coordinated effects, vertical effects, and conglomerate effects are described with clarity and precision. Each

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FOREWORD

chapter explains – clearly, concisely, and thoughtfully – the underlying economic concepts before describing the Commission’s practice. Charts, tables, and graphs illustrate the applicable principles, and individual cases, including many of the leading decisions of the past decade – *Nokia/Navteq*, *Sony/BMG*, *Google/DoubleClick*, *Statoil/JET*, *ABF/GBI Business*, *Oracle/Sun Microsystems* and *Gas Natural/Endesa* – are given detailed analysis, drawing on the authors’ considerable experience and insights. And, most importantly perhaps, authoritative guidance is provided on those quantitative techniques that have been employed most successfully to address the wide array of substantive issues that have arisen in practice.

No antitrust lawyer can aspire to practice EU merger control today without a sound knowledge of economics. This textbook provides that knowledge. It is a formidable achievement, a truly invaluable work. Daniel Gore, Stephen Lewis, Andrea Lofaro, and Frances Dethmers have authored a terrific antitrust reference book.

Nicholas Levy
December 2012

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A COMMENT ON THE TEXT BY PROFESSOR
JEFFREY CHURCH

This comprehensive and insightful volume is distinguished by its skillful and knowledgeable mix of relevant economic theory and practice of competition economics.

The authors have been at the forefront of the economic revolution that has transformed merger enforcement policy in Europe in the last decade and this book reflects their inside knowledge and experience.

In providing a comprehensive discussion of the economic concepts that underlie modern merger enforcement policy and in presenting and assessing the empirical techniques and methodologies used in practice to marshal and assess the evidence on competitive effects of a merger, whether horizontal, vertical, or conglomerate, the authors have provided a real and valuable service to the competition policy enforcement community worldwide. Their focus is clearly on the “what” of enforcement policy, with deft discussion of the actual use of the techniques in merger cases considered by the European Commission.

This is a foundational text destined to be the “go to” reference for those new to the intricacies of the practice of merger policy enforcement, as well as experienced hands.

*Professor Jeffrey Church
University of Calgary
December 2012*