

## The Appraisal of Collective Dominance and Efficiency Gains under the Substantive Test of the New EU Merger Regulation

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### Abstract

In this paper I will focus on the main economic and legal issues which stem from the adoption of the new Merger Regulation (139/2004) by the European Commission. In particular, I will consider the factors that, in the case-law history of the European Communities, have increasingly posed the Merger Regulation reform as a priority issue in the agenda of the European Commission. My starting point is the new wording of Art. 2(3); it encompasses a onepronged test, makes the significant impediment of effective competition the only investigation benchmark and marks the switch from a Market Dominance test to a Substantial Lessening of Competition test. Alongside the new set of Horizontal Merger Guidelines, the SIEC test is conceived to include in the assessment of market compatibility those cases of collective dominance that previously could not be caught by the investigations of the Commission. More importantly, though, the new substantive test is deemed to strengthen the economic analysis of prospective concentrations by balancing both the anti-competitive and the pro-competitive effects of a merger (efficiency defence). The numerous cases of overruling by the Court of First Instance, the controversy between the Commission and the US antitrust authorities over the GE/Honeywell case and the critiques of several economists, triggered a long-lasting debate about the comparative effectiveness of the MD test and the SLC test. Had the Commissions antitrust policy to be aligned with the US standards or was it already sufficient to make the competition control effective? In the last part of my paper I will consider some of the main arguments both in favour and against the reform of the Merger Regulation. Thereafter I will finally address the paramount question of whether the new test will actually provide the Commission with more effective instruments for the interpretation and enforcement of competition rules.

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