



# City Research Online

## City, University of London Institutional Repository

---

**Citation:** Kalintiri, A. ORCID: 0000-0002-6281-7724 (2018). Book Review: Alistair Lindsay and Alison Berridge, *The EU Merger Regulation: Substantive Issues* (5th edition, Sweet and Maxwell 2017). *World Competition*, 41(1), pp. 170-172.

This is the accepted version of the paper.

This version of the publication may differ from the final published version.

---

**Permanent repository link:** <https://openaccess.city.ac.uk/id/eprint/21434/>

**Link to published version:**

**Copyright:** City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

**Reuse:** Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

*The EU Merger Regulation: Substantive Issues*, Alistair Lindsay & Alison Berridge. London, UK: Sweet & Maxwell. 2017. lxxii+730 pp. 5th edition, ISBN 978 0 41405 259 8.

Having long established its well-deserved reputation as a must-have in the library of every practitioner involved in merger cases, the latest edition of *The EU Merger Regulation: Substantive Issues*, co-authored by Alistair Lindsay and Alison Berridge, is most welcome. As per its previous editions, the book constitutes an impressive feat and provides a comprehensive, yet easy to navigate guide to the analysis of substantive merger issues drawing heavily upon the decisional practice of the European Commission and the jurisprudence of the EU Courts.

The content is organised around twenty chapters of varying lengths and essentially covers four broad themes: general elements of merger analysis (Chapters 1-6); specific theories of harm (Chapters 7-13); countervailing factors and defences (Chapters 14-19); and remedies (Chapter 20). Chapter 1 provides a concise, yet lucid introduction into the economics of competition law with a focus on merger control and analysis. Chapter 2 then briefly discusses the objectives of EU merger control and proceeds with examining the history and interpretation of the ‘significant impediment to effective competition’ (SIEC) legal test, while it also elaborates on certain legal and methodological issues, including the burden and standard of proof and the interaction of the EU Merger Regulation with other provisions and legal systems. Chapter 3 is dedicated to market definition and contains a comprehensive presentation of the relevant factors and types of evidence which may be considered for this purpose on the basis of the practice of the European Commission. Chapter 4 focuses then on market shares and concentration levels and examines the specifics of their calculation. Paving the way for the ensuing outline of specific theories of harm, Chapter 5 briefly describes the use of the counterfactual in merger analysis and its implications, whereas Chapter 6 highlights the unique nature of each market and explains how the distinct features and operation of various markets may inform the Commission’s assessment.

The following seven chapters are devoted to the examination of the different grounds on which a merger may be objected. Chapter 7 considers the assessment of non-coordinated effects in the context of horizontal mergers, along with a detailed presentation of the evidence and analytical techniques which may be employed in order to establish such effects. Chapter 8, on the other hand, discusses the conditions for demonstrating that a merger may give rise to coordinated effects. Chapters 9 and 10 examine two specific theories of harm: the loss of potential competition and the increased buyer power of the merged entity. Chapter 11 focuses on vertical issues and analyses input and customer foreclosure. Chapter 12 is dedicated to conglomerate issues and considers leveraging, tying and portfolio power theories. These possible grounds for objecting to a merger are then complemented with Chapter 13 which turns its attention to joint ventures and their parent companies’ incentive and ability to engage in coordination. The subsequent seven chapters of the book complete the framework for substantive merger analysis by considering countervailing factors and potential defences. Specifically, Chapter 14 focuses on the existence of competition from actual rivals; Chapter 15 analyses the relevance of countervailing buyer power, whereas Chapter 16 examines potential competition in the form of new entry in the market. Then, Chapter 17 discusses the failing firm defence, whereas Chapter 18 analyses the relevance of efficiency gains in merger assessment. Chapter 19 is devoted to other evidence of the likely effects of the merger on consumers, including – but not limited to – the parties’ motives for merging, the effects of past concentrations and the reaction of the stock market. Finally, the book concludes with a lengthy and detailed chapter on remedies (Chapter 20), which sets out, among others, the

principles underpinning the selection of remedies, the types of remedies that may be employed, as well as the European Commission's approach.

While much of the content naturally features in previous versions of the book, the latest edition stands out, insofar as it highlights important developments in the substantive analysis of mergers over the past five years. First of all, in view of the increased use of quantitative techniques by the European Commission, the book has been helpfully expanded to include a comprehensive presentation of the various types of complex economic evidence and quantitative analysis that the authority may employ in defining the market and in assessing the potential non-coordinated effects of a horizontal merger (see in particular Chapter 7, Section 8). Secondly, in light of the recent proposals for a jurisdictional reform of the EU Merger Regulation, among others, towards extending its application to certain acquisitions of non-controlling minority shareholdings, the analysis throughout the book has been refined to reflect the experience that the European Commission has had so far with analysing pre-existing minority shareholdings, as well as other structural links (for example, in Chapter 7, Section 7; Chapter 14, Section 4; Chapter 8, Section 13; Chapter 9, Section 2 and Chapter 11, Section 7.4). Thirdly, the analysis on the burden and standard of proof in Chapter 2 has been updated to include the latest insights on these issues from *Cisco* (Case T-79/12, ECLI:EU:T:2013:635), *Deutsche Börse* (Case T-175/12, ECLI:EU:T:2015:148) and *Niki Luftfahrt* (Case T-162/10, ECLI:EU:T:2015:283). Fourthly, Chapter 17 has been revised to include the clarifications on the operation of the failing firm defence gained from the two *Olympic/Aegean* cases and from *Nynas/Shell/Harburg Refinery*. Last but not least, the latest edition takes note of the gradual emergence of the loss of innovation competition as an independent theory of harm, whereas it also examines recent cases involving the application of input and customer foreclosure analysis to technology platforms, which the authors predict will provide valuable guidance for future cases, too.

Understandably, the book is more analytical than critical, in the sense that it offers a systematic, clearly-written and detailed account of the European Commission's approach to substantive merger analysis, although the analysis helpfully integrates useful references to relevant academic commentary. In view of its nature and excellent content, the value of the book for competition practitioners is unquestionable. In addition to its primary audience of practitioners, however, the book is also highly recommended as a key reference point for competition academics, as well as regulators working in the field of merger control.

*Dr Andriani Kalintiri*  
Law Department, LSE