

Remedies in EU and U.S. merger control

Abstract

Every year, there are a large number of mergers and acquisitions of companies around the world, many of which are investigated by competition authorities in both the EU and the USA before they take place. Although some of these proposed mergers may raise concerns that they will distort competition in the EU and U.S. markets, the competition authorities in both the EU and the USA also consider the potential benefits of such mergers and acquisitions to competition or consumers in the markets concerned when examining these mergers. Suppose the EU and U.S. competition authorities conclude that the benefits that the merger under investigation may bring to competition or consumers outweigh the risks that the merger may pose to competition in the relevant EU and U.S. markets. In that case, they do not prohibit the merger or acquisition, but conditionally clear the merger using so-called remedies.

The aim of this thesis is to analyse the EU and U.S. approaches to remedies used in merger control and the merger remedies used in past decisions of the EU and U.S. competition authorities conditionally clearing mergers in order to answer the question of how remedies used in clearing mergers in the EU and the USA differ in terms of the degree of difficulty in their design to ensure that they are actually able to maintain the level of competition that existed before the merger or acquisition was concluded. Furthermore, the author seeks to answer how remedies in the EU and the USA differ in terms of the difficulty and cost of administering them. Finally, the author aims to define whether certain types of remedies used in merger control in the EU and the USA differ to such an extent that their imposition may expose merging companies to difficult uncertainty or costs.

To achieve the objective of this thesis, the author first introduces in Chapter 2 the basic terminology, principles, legal framework and procedure for the use of merger remedies in the EU and USA. Then, in Chapter 3, the author introduces the different categories of structural and behavioural remedies and their subcategories that are used for conditional merger clearance in the EU and the USA. In Chapter 4, the author discusses the issue of enforcement of remedies in the EU and the USA. In Chapter 5, the author concludes all the insights gained while writing this thesis and attempts to answer the above research questions.