

BOOK REVIEW

INTERNATIONAL MERGERS—THE ANTITRUST PROCESS

London: Sweet & Maxwell, 1991, 950 pp.

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The importance and long-term consequences of corporate merger activity are now undoubted in the industrialized world. This has been driven home by the pace and breadth of the industrial adjustments which are taking place to achieve the competitive scale necessary to succeed in the trans-national markets of the 1990s and beyond. Against this background, national and supranational authorities have increasingly sought to equip themselves with competition law régimes to enable them to monitor and control more effectively merger activities within, or affecting, their jurisdictions. This means that authoritative information and guidance on how to obtain or oppose antitrust clearance for proposed mergers and takeovers in a range of foreign countries is now vital for those proposing or opposing international mergers which are likely to affect competition in more than one jurisdiction.

In *International Mergers—The Antitrust Process* Baker and Rowley meet this need with great style and equivalent substance. Not only is the book unique in its scope of coverage, it looks to be an intensely practical single-volume, desktop planning guide for those involved in the field.

The book surveys and compares the substantive coverage, practical approach and dynamics of the ten industrialized jurisdictions which can be said to have intrusive antitrust merger régimes—the European Community, Canada, the United States, Germany, the United Kingdom, Ireland, France, Spain, Australia and

Japan. What will likely prove particularly appealing is the inclusion in each chapter of sets of appendices which provide (sometimes for the first time in English) all relevant statutes, regulations, forms and guidelines. In addition, corporate charts for the enforcement agency of each jurisdiction (including names, responsibilities and telephone numbers) are included, as are detailed decision trees. The latter should make ideal checklists for general counsel who need to manage a process in several jurisdictions at once.

Rowley (McMillan Binch, Toronto) and Baker (Sutherland, Asbill and Brennan, Washington, D.C.), are Chairman and Secretary respectively of the Antitrust and Trade Committee of the International Bar Association. They have made good use of their IBA connections in their choice of individual chapter authors. Each is a senior partner of a leading firm in his assigned jurisdiction. With the exceptions of Professors Matsushita and Takigawa, whose reputations are unparalleled in the field in Japan, each is also a ranking competition law practitioner in his own jurisdiction.

Despite its length (950 pages), the volume is clearly intended to be used as a quick reference tool, rather than a definitive work on substantive merger control in any one country. Thus, for example, merger control in the United States is summarized in 57 pages of text, supplemented by 79 pages of statutes and regulations, and 37 pages of forms and charts. By way of comparison, the German chapter contains 50 pages of text, 19 pages of statutes and regulations, and seven pages of charts and forms.

International Mergers—The Antitrust Process will be most useful to the transaction planner who needs to identify what antitrust obstacles a complex international transaction is likely to face in several jurisdictions. For example, it would have been helpful to a planner (or indeed to

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interested arbitrageurs) of the recent Schneider S.A. (France) takeover of Square D (U.S.)—which raised antitrust issues in Canada, the United States, the European Community, Germany, and perhaps other jurisdictions.

To facilitate quick and easy cross-reference, each chapter is organized on exactly the same format. Thus, each national chapter is divided into twelve main subsections. These are:

1. Statutory Standards
2. Enforcement Agency
3. Private Enforcement
4. Adjudicative Body
5. Pre-Merger (and Post-Merger) Notification
6. Normal Investigatory Process
7. Advance Ruling
8. Negotiated Solutions
9. Contested Adjudicative Proceedings
10. Final Orders
11. Role of Securities Agencies
12. Other Regulatory Approval Requirements

Each subsection is further subdivided and followed by pertinent appendices.

The standardized approach makes interjurisdictional comparisons easy. It also allows the reader to conveniently pursue the same issue in a number of jurisdictions. And while the chosen format fits some jurisdictions better than others (a minor complaint considering the disparate approaches of the jurisdictions surveyed), it accommodates all of them remarkably well.

The line between "enforcement" and "adjudication" is different in almost every system, and the interplay between antitrust enforcement and the political process varies from country to country. In many systems, the antitrust

enforcement agency undertakes an investigation and makes an order which is subject to limited judicial review (as in the European Community and Germany). In other systems (including Canada), the enforcement agency really acts as prosecutor before an independent tribunal. In the United Kingdom, a Cabinet Minister is the key decision maker. He obtains help from the enforcement agency and the Monopolies Commission but is not subject to judicial review. In Germany a separate appeal can be taken to the Minister of the Economy to override the enforcement agency decision. In the United States, the process is more judicial, and has an odd plurality of enforcers, with the federal Department of Justice, the quasi-independent Federal Trade Commission and the unpredictable state attorneys-general involved in the process. All this complexity is summarized in *International Mergers—The Antitrust Process* in a generally readable way. And the pigeonholing of subjects is both useful and rational.

The organization charts and decision trees which are provided for each jurisdiction are also helpful in directing the reader to the appropriate parts of what will generally be unfamiliar organizations. Having regulations and forms translated into English will also be helpful to readers who are looking for a "one-stop-shop", (especially in the case of Japan where such information has not been previously available).

All in all, *International Mergers—The Antitrust Process* is different from anything available today. There is not other work on the market that has either the same geographic scope or substantive coverage. It should find a happy home on the bookshelves of many international merger planners and counsel.