European Business Organization Law Review



# ARTICLES

The Commission's Modernization of Competition Policy: A Challenge to the Community's Constitutional Order

# TAKEOVERS

- Defending Passivity of the Target's Management
- The Austrian law on Takeovers

Convertible Securities – A Comparative Analysis Economic Analysis of Joint Dominance Greek Competition Law Private International Law of Business Organizations

## **BOOK REVIEWS**

 $\underset{\scriptscriptstyle 2000}{1:3}$ 

# T · M · C · A S S E R P R E S S

https://doi.org/10.1017/S1566752900000197 Published online by Cambridge University Press

#### AIMS AND SCOPE

The European Business Organization Law Review aims to promote a scholarly debate which critically analyses the whole range of organizations chosen by companies, groups of companies, and state-owned enterprises to pursue their business activities and offer goods and services all over the European Union. At issue are the enactment of corporate laws, the theory of the firm, the theory of capital markets and related legal topics.

### **EDITORIAL BOARD**

Prof. Talia Einhorn, Editor-in-Chief, T.M.C. Asser Institute, The Hague;
Dr. Brigitte Haar, LL.M. (University of Chicago), Max Planck Institute, Hamburg;
Mr. Michael Hofstötter, T.M.C. Asser Institute, The Hague;
Dr. Rainer Kulms, LL.M. (University of Michigan), Max Planck Institute, Hamburg;
Dr. Vesna Lazić, T.M.C. Asser Institute, The Hague;
Dr. Guus E. Schmidt, T.M.C. Asser Institute, The Hague.

### **ADVISORY BOARD**

Prof. Julian Franks, Corporation of London Professor of Finance, London Business School; Prof. Barry Hawk, Skadden, Arps, Slate, Meagher & Flom LLP/ Director, Fordham Corporate Law Institute, New-York; Francis Jacobs, Advocate General, European Court of Justice, Luxembourg; Prof. Hideki Kanda, Professor of Law, University of Tokyo; Alfred E. Kellermann, General Secretary, T.M.C. Asser Institute, The Hague; Prof. Harm-Jan de Kluiver, Maastricht University/ De Brauw, Linklaters and Alliance; Prof. Herbert Kronke, Secretary General, UNIDROIT, Rome/ Professor of Law, University of Heidelberg, (on leave); Prof. Colin Mayer, Peter Moores Professor of Management Studies (Finance), Said Business School, University of Oxford; Prof. Ernst-Joachim Mestmaecker, Director (emeritus), Max Planck Institute, Hamburg; Prof. Peter Nygh, Adjunct Professor, University of New South Wales; Prof. Roberta Romano, Allen Duffy/Class of 1960 Professor of Law, Yale Law School, New Haven; Prof. Wolfgang Schön, Director, Tax Law Institute and Center for European Economic Law, Bonn University; Prof. Kurt Siehr, University of Zurich Center for Private International Law; Dr. Robert Siekmann, Research Director, T.M.C. Asser Institute, The Hague; Prof. Tadeusz Skoczny, Jean-Monnet Chair on European Economic Law, Warsaw University Faculty of Management; Prof. Louis Vogel, University Panthéon-Assas (Paris), Director, Institut de droit comparé; Prof. Jan Wouters, Professor of Law, Catholic University of Leuven.

### EDITORIAL OFFICE

European Business Organization Law Review T.M.C. ASSER INSTITUTE P.O. Box 30461, 2500 GL The Hague, The Netherlands Tel. +31(0)703420300, Fax. +31(0)703420359 E-mail: EBOR@asser.nl

# EUROPEAN BUSINESS ORGANIZATION LAW REVIEW VOL. 1 2000/3

# CONTENTS

# Articles

ERNST-JOACHIM MESTMAECKER, The EC Commission's Modernization of Competition Policy: A Challenge to the Community's Constitutional Order	401
PETER MÜLBERT, In Defense of Passivity – the Proper Role of a Target's Management in Response to a Hostile Takeover	445
SUSANNE KALSS, The Austrian Law on Public Offers and Takeovers	479
HERIBERT HIRTE, Convertible Securities – A Comparative Analysis	507
ANDREA LOFARO AND DEREK RIDYARD, The economic analysis of joint dominance under the EC Merger Regulation	539
ANASTHASIA PAPATHOMA-BAETGE, Regional Integration of Competition Rules: A Comparative Analysis of European and Greek Competition Law	561
DANIEL ZIMMER, Private International Law Aspects of Business Organisation in Europe	585
<ul> <li>SUSANNE KALSS, The Austrian Law on Public Offers and Takeovers</li> <li>HERIBERT HIRTE, Convertible Securities – A Comparative Analysis</li> <li>ANDREA LOFARO AND DEREK RIDYARD, The economic analysis of joint dominance under the EC Merger Regulation</li> <li>ANASTHASIA PAPATHOMA-BAETGE, Regional Integration of Competition Rules: A Comparative Analysis of European and Greek Competition Law</li> <li>DANIEL ZIMMER, Private International Law Aspects of Business Organisation</li> </ul>	507 539 561

# **Book Reviews**

Mathias Habersack, Europäisches Gesellschaftsrecht.	
Einführung für Studium und Praxis (Martina Deckert)	601
Schwarz, Günter Christian, Europäisches Gesellschaftsrecht:	
Ein Handbuch für Wissenschaft und Praxis (Martina Deckert)	601

## **Editorial policy**

The journal encourages submissions from lawyers, both academic and practitioners, and economists. Contributions of authors from other disciplines, such as political and social scientists, are welcome. Occasionally, policy makers and business people will be invited to express their opinion within their fields of expertise. Theoretical and applied works are equally considered. Articles will be subjected to a review procedure. Accepted manuscripts will be edited, if necessary, to enhance their effectiveness. In case of extensive editing the approval of the author will be sought prior to typesetting.

### Submission of manuscripts

Manuscripts should be submitted to the Editor, accompanied by an assurance that the article has not been published or accepted elsewhere. However, exceptional contributions originally written in other languages may be considered for publication in proximity to their publication in that other language.

The articles should be comprehensible to readers outside the specific field of expertise. Special terms and abbreviations should be clearly defined. Manuscripts should range between 3000 and 10000 words and be prefaced by an abstract of no longer than 200 words. Contributors are requested to submit one hard copy of their manuscript and a diskette (preferably Word for Windows). Alternatively, manuscripts may be sent by e-mail (Word for Windows and rtf, rich text format attachments). A hard copy would only be requested if necessary.

# Copyright

The acceptance of a manuscript for publication implies that the author assigns to the publisher the copyright to the contribution whereby the publisher shall have the exclusive right to publish it everywhere during the full term of copyright and all renewals and extensions thereof. These rights include mechanical, electronic and visual reproduction, electronic storage and retrieval; and all other forms of electronic publication including all subsidiary rights.

The author retains the right to republish the article in any other publication one year after its publication in the journal, provided only that the author notifies the Publisher and ensures that that the Publisher is properly credited and that the relevant copyright notice is repeated verbatim.