

SEMESTER II EXAMINATIONS SUMMER 1998/99

LL.B. - ALL YEARS
BACHELOR OF CORPORATE LAW - THIRD YEAR
BACHELOR OF COMMERCE
OCCASIONAL STUDENTS

LAW OF EU MERGER CONTROL (LW392)

Professor D. O'Keeffe
Mr. T. Carney

Time allowed: 2½ Hours. *Erasmus Students have 3 Hours.*

Answer THREE Questions.

Answer Part A and any TWO questions from Part B.

PART A

(This Question must be answered)

1. Alpha Limited, which has a worldwide turnover of ECU 2.5 billion, wishes to acquire a 35% interest in Beta Limited, which has a world wide turnover of ECU 700 million. Alpha and Beta produce starter batteries for cars. They both supply customers of original equipment and replacement batteries.

In the United Kingdom, Alpha has a turnover of ECU 1200 million. Beta has a turnover of ECU 50 million there. In Germany, Alpha has a turnover of ECU 75 million while Beta has a turnover of ECU 45 million there.

In Austria, Alpha has a turnover of ECU 55 million. Beta has a turnover of ECU 50 million there. In Ireland, Alpha has a turnover of ECU 15 million while Beta has a turnover of ECU 40 million there.

If Alpha were to acquire a 35% shareholding in Beta, the remainder of the shares in Beta would be held by 115,000 other shareholders none of whom own more than 5 per cent., with only four shareholders holding more than 3 per cent. of the issued share capital. The voting practice at Beta's shareholders' meetings over the past three years displays a very unstable pattern.

Both Alpha and Beta want to conclude the acquisition agreement next month. It is understood that Alpha is negotiating the right, upon conclusion of the acquisition agreement, to nominate the majority of the Board of Directors of Beta.

The directors of Alpha believe that through its acquisition of the interest in Beta it will have access to a 30% share in the EU batteries market. It is understood that Alpha's present share of the replacement batteries market in the EU could be increased from 35% to over 47%.

Alpha realises that it might have to notify the transaction to the EC Commission and asks you to advise on the applicable substantive law.

PTO

PART B
(Answer any **TWO** questions)

2. Examine the main jurisdictional issues raised by merger law enforcement under the EC Merger Regulations.
3. *"The EC Commission generally employs a cautious approach to market definition in merger control cases"*. Critically assess, with reference to the decided cases, the correctness of this statement having regard to the criteria used by the EC Commission to define the relevant product and geographic markets in Phase I and Phase II investigations.
4. Discuss the substantive legal issues raised by the control of horizontal mergers in the United States under Section 7 of the Clayton Act.
5. *"The concept of dominance under the Merger Regulation, on its face, appears similar to that developed by the EC Commission and the European Court of Justice under Article 86. However, there are several significant differences"*. Discuss.
6. The EC Commission's control of joint ventures under the Merger Regulation has always focused on the concentrative-cooperative distinction. Examine the extent to which the EC Commission has been successful in clearly identifying those joint ventures which should be examined by the Merger Task Force.