

INTERNATIONAL COMPETITION LAW SERIES

Structure and Effects in EU Competition Law

Studies on Exclusionary Conduct and State Aid

Edited by

Jürgen Basedow

Wolfgang Wurmnest



Wolters Kluwer

Law & Business

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Structure and Effects in EU Competition Law

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VOLUME 47

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The titles published in this series are listed at the end of this volume.

PREFACE

Ever since the establishment of the European Economic Community the evolution and application of European competition law has strongly been influenced by the German *ordo-liberal* philosophy underpinning the Freiburg School focusing on the balance of powers of undertakings and economic liberties. It is only in the last decade that the European Commission has progressively abandoned that approach in favor of what is called a more economic approach concentrating on efficiency gains generated by, or expected from transactions with possible anti-competitive effects. In order to stimulate the debate on this basic reorientation, the Max Planck Institute for Comparative and International Private Law at Hamburg organized a conference on 23 and 24 January 2009. It convened economists, legal scholars and practitioners for an exchange of views on the methodological foundations of competition policy and competition law with the focus on two special areas: The prohibition of abuses of dominant positions and the review of State aid. The collected papers of this conference are hereby presented to the public.

While the abuse of market dominance has repeatedly been the object of academic discussion, the review of State aid by the European Commission has for a long time been in the shadow of academic interest. That is why the German Monopolies Commission devoted a special chapter of its XVIIth Biennial Opinion on the state of German and European competition policy, to the review of State aid (Monopolkommission, XVII. Hauptgutachten 2006/2007, Baden-Baden 2008, nos. 886 ff.). It explores the use of economic arguments in that sector and provides the background to the discussions conducted at the Hamburg conference on that matter. Its publication in this book is the more important as the present chairman of the German Monopolies Commission, Professor Dr. *Justus Haucap*, who presented a paper and the views of the Monopolies Commission at the Hamburg conference, despite repeated assurances, did not deliver a manuscript and thereby delayed the publication of the whole book.

The editors gratefully acknowledge the help of *Ann-Christin Maak* and *Julian Sanner* in the preparation of the various papers for the printing process, of Dr. *Jan Jacob* who drew up the index and of *Ingeborg Stahl* who produced the printer's copy. Their assistance has provided great help in the publication process.

Hamburg, January 2011

Jürgen Basedow, Wolfgang Wurmnest

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**PART I: THE MORE ECONOMIC APPROACH
IN EU COMPETITION LAW**

