

**EEC**

**COMPETITION  
LAW**

**A Practitioner's Guide**

Lennart Ritter      W. David Braun

Francis Rawlinson

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# EEC Competition Law

## a practitioner's guide

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# Foreword

EEC competition law has undergone the most dramatic changes over the last decade. A mere 'new entrant' into the world market of antitrust laws in post-war Europe in the 1950s, by the 1990s it had become one of the world's dominant systems of antitrust law. EEC competition law is administered in a European civil law system in nine languages by people from twelve countries with diverse cultural and legal backgrounds. Its substantive rules are influenced by the German, British and American systems, among others.

That is why authors from Germany, the United Kingdom and the United States decided to collaborate in a cooperative joint venture to write a work which gives the reader the benefits of analysis by Lennart Ritter and Frank Rawlinson, both officials of the Directorate-General for Competition of the EEC Commission, and W. David Braun, a former official of the Antitrust Division of the U.S. Department of Justice who is now in private practice. We have tried neither to judge the law under 'Chicago School' principles nor to be spokesmen for the EEC Commission. Instead, we have attempted to explain the present status of the law – including its sometimes frustrating contradictions and apparent inconsistencies – and probable future direction to the best of our ability based on the Commission's practice, including its policy objectives, and the judgments of the European Court of Justice and the new Court of First Instance. In many cases we have failed to discern a common line of reasoning because the law has developed explosively – and sometimes divergently – through the issuance of numerous new regulations, Commission decisions, Court judgments and rapidly developing administrative practice. In other cases we willingly admit that, despite our best efforts, we may have missed the mark. We take the sole and full responsibility for any such errors or omissions.

The state of law reflected is that of March 1991. In the special case of the merger regulation we have done our best to reflect the Commission's rapidly developing practice in the first 20 or so decisions, recognizing that this field has hardly begun to be plowed.

## Acknowledgements

This work has been an international 'cooperative' research and development joint venture in every sense – among the authors, their families, colleagues and the publisher – since its commencement in 1983. Little did any of us suspect that a venture initiated to produce a short handbook of EEC competition law

## FOREWORD

based upon Ritter's brief contribution on EEC law to the commentary on German restrictive practices law, 'Kommentar zum Kartellgesetz' authored by Langen, Niederleithinger, Ritter and Schmidt, would turn into such a voluminous commentary. Neither the authors nor their families nor their secretaries realized the enormity of the project at its beginning: eight years of cooperation between Lennart Ritter and David Braun, and for the past five years including Frank Rawlinson. We have lost track not only of the numerous meetings in Brussels, Chicago and elsewhere to review and revise and update the various chapters in an attempt to achieve the best result for the reader, but also of the numerous occasions when we thought we were 95 % complete – only to find that the Commission had just adopted or amended a regulation or rendered a decision, or the Court of Justice had issued a judgment, or the Council had taken another action that required us again and again to review, rethink and revise.

Against this background we can offer only our sorrowfully inadequate thanks to our families, secretaries, reviewers and proof readers. One person deserves more than special thanks: Hilde Bojes, secretary of W. David Braun. Hilde has typed, retyped and typed again and again at one stage or another every chapter of this book since nearly the beginning of the project. She experienced far greater torture yet in having to type the footnotes. She performed every task with understanding, kindness, and undaunting diligence often late into the evenings. But so many others deserve our heartfelt thanks as well: at DG IV in Brussels Maren Brialmont, Josephine Gallagher, Jean Freri-Grainger, Dorothee Convens, Monique Museur, Gudrun Stock, Gabriela De Bastiani, Catherine De Leener, Mette Klitgaard, Eliane Petit and Patricia Mayer; and at Gardner, Carton & Douglas in Chicago Del Brown, Anna Garcia, Hannelore Hokanson, Mary Beth Jasek, Patricia Lopez, Magdalena Lozado, Doris Quinn, Elaine Ramsey, Laura Rebeck and Frieda Walch. We would also like to express our thanks to Hans Witt, Christiane Hornemann and Prydwen Doueihy of DG IV's library and the staff of the Commission's central library and of the Foreign and International Law Library at Northwestern University School of Law, including in particular its librarian Irene Berkey.

The authors are also especially grateful to Simon Horner, late of DG IV and now of DG VIII of the Commission, who read the majority of the chapters in draft, and also to Götz Drauz, Colin Overbury, Helmut Schröter, Emil Paulis, Hartmut Johannes, Sebastiano Guttuso, Ben Van Houtte, Jean-Eric de Cockborne and Michael Albers of DG IV and Kurt Riechenberg, clerk to Judge Diez de Valasco of the European Court of Justice, all of whom kindly read drafts of one or several chapters or sections of the book and contributed many useful suggestions, rectifications and clarifications. Our thanks, too, to Michelle Cini and Hjalmar Hütte in Brussels who kindly helped with the proofreading.

Last but not least we would like to express our gratitude to our long-suffering families who patiently endured the gestation, pregnancy and labour pains associated with this work before it finally saw the light of day.

L. Ritter

W.D. Braun

F. Rawlinson

Brussels and Chicago, March 1991.

# The Authors

*Dr. K. Lennart Ritter* joined the Directorate-General for Competition of the EC Commission in 1959, one year after it was formed. Dr. Ritter is currently Head of Division of the Directorate which deals with investigations and cases in the energy and chemicals sector, and prior to that served, *inter alia*, in the general policy section of the Competition Directorate. Dr. Ritter has done considerable writing and speaking about EEC competition law, and was contributor to one of the two principal German language commentaries on German and EEC competition law, the Langen-Niederleithinger-Ritter-Schmidt *Kommentar zum Kartellgesetz* (6. Auflage 1982, Luchterhand Verlag). The commentary on EEC competition law in that work formed the basis for the present book.

*W. David Braun* is currently a partner in the Chicago, Illinois, USA law firm of Gardner, Carton & Douglas, and prior thereto served for a total of seven years in the U.S. competition law enforcement authority, the Antitrust Division of the U.S. Department of Justice. During the period immediately before joining his present firm, he served in the Foreign Commerce Section of the Antitrust Division where he coordinated policy and investigatory matters with the EEC and German antitrust authorities. Mr. Braun has also studied EEC and German antitrust law at the University of Munich and at the Max Planck Institut für ausländisches und internationales Patent-, Urheber-, und Wettbewerbsrecht, Munich, in 1978–79. His current law practice includes litigation of domestic and international antitrust cases as well as counselling clients on U.S., EEC and German antitrust law. He is currently Chairman of the International Antitrust Law Committee, Section of International Law and Practice, American Bar Association.

*Dr. J. Francis Rawlinson* has been an official in the Directorate-General for Competition of the EC Commission for a total of six years, the last two in its State Aids Directorate. Having studied languages, he started off his career in the EC administration in 1973 as a translator, before turning to Economics in which he gained a degree from the British Open University in 1989. His current work includes antitrust and monopoly matters as well as the control of government subsidies, especially in the energy field.

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