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Maritime shipping sector and competition law - The AGCM's CIN/Tirrenia decision 1

Through the years the shipping sector has received special attention under national and EU competition law. One of the main problems is that the shipping sector, also by means of their conferences, is often structured oligopolistically, and prone to co-ordination of prices and/or quantities, albeit explicitly or tacitly. In this contribution I first set out the past and present legislation of the shipping sector and collective dominance, and the relative case law. Hereafter, I review the CIN/Tirrenia merger decision of the Italian Competition Authority (AGCM) of June 21, 2012 in the light of the European decision practice and case law. In my view the AGCM, finding single dominance in this case, did not assess two further possible anti-competitive effects of the merger, being co-ordinated effects and unilateral effects in oligopolistic markets. I also go into possible problems which might arise from using two different merger tests: the former EU test which is still applicable under Italian law, and the "new" merger test of the European Regulation 139/04 with regard to unilateral effects in oligopolistic markets.

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Competition law and state aid rules play a crucial role in preserving healthy business environments by providing a level playing field for all market participants. It is therefore unsurprising that considerable attention to these areas of law is devoted in the future EU-Ukraine Association Agreement. This article focuses on the potential effect upon Ukrainian businesses that the harmonisation of the Ukrainian competition law and state aid provisions with the European standards through the Association Agreement will have. Ukraine's improved institutional and legal system, and in particular its competition policy and new state aid control policy, should result in a healthier business environment and improved market access for EU operators in Ukraine. This should also lead to increased production, trade, investment flows, sustainable growth and the general modernisation of Ukraine.

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The case law of the European Commission and the German Federal Cartel Office is unclear as to what degree branded goods and own label products form part of one single relevant product market. This question is central in the context of merger control, abuse of a dominant position and the co-operation of manufacturers and retailers. When assessing mergers of manufacturers, the authorities generally assume the existence of one single relevant product market for both branded goods and own label products, but when assessing a merger between retailers purchasing these products, the authorities usually assume the existence of two separate markets. This article advocates a uniform approach. The implementation of the law does not sufficiently consider the distinct dynamics of change in the retail sector. In addition, the application is too mechanistic. Within category management systems, the relationship remains vertical even though a retailer offers private label products in its product portfolio.

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