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SPACE ACTIVITIES IN EUROPE THROUGH THE LENSES OF EU COMPETITION LAW

Abstract

The objective for writing this paper is to present an overview of the applicability and effects of EC competition law in the space sector in Europe.

The first part of the paper will present an overview of the case law of the DG Competition of the European Commission on a series of merger and antitrust cases decided for the past thirty years in the aerospace sector. While the market analysis each time is linked to the specific features of the parties and the conditions of the market at a particular moment, it is still possible to draw some general conclusions about the legal assessment of a field of activity which became gradually privatised. Not only do the decisions of the DG Competition record the evolution of the major actors in the space sector in Europe and therefore tell us their stories but they most importantly address the competitive conditions in specific segments of space-related activities including satellites and launchers which will be addressed in detail.

The second part of the paper will report and demonstrate the role that EU competition law plays in the regulating space activities in Europe. National public institutions in Europe, like France, Germany and the United Kingdom (up to now), notified state aid schemes implemented in the space sector. Reference will be made to the UK National Space Technology Programme and the French guarantee for damages caused to third parties linked to space operations activities. For what concerns ESA. The paper will describe how the optional programmes of the Agency, and in particular the co-funded programmes, are structured in such a way so as to ensure that there is an alignment between the two different regulatory legal systems. While ESA is not bound by European competition law, it is important to establish rules for the co-funded ESA programmes where the intensity of the aid does not establish the conditions for a potential breach of the law for the ESA Member States which are also EU Member States.

The paper will conclude that the regulatory impact of EU Competition law has been important for shaping the landscape of the private space sector as well as the policies of the public space sector in Europe.