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COMPETITION LAW AND ITS RELEVANCE TO THE SUCCESS OF COMMERCIAL SPACE
EXPLOITATION

Abstract

With the growing attention granted to climate change and depletion of fossil fuels, different entities around the world are looking to alternative energy sources and this has resulted in some turning to outer space. In 1972, NASA's Apollo 17 mission brought back 111kg of Moon rock and when examined, it showed that it contained significant quantities of helium-3 which can be used in highly clean and efficient nuclear fusion. There is an estimated 907,184,740,000kg of helium-3 located on the Moon which could potentially sustain the Earth with clean energy for the next 300 years and this has resulted in States and companies, such as Shackleton Energy, investing in lunar Helium-3 mining.

While there are ongoing debates about the legality of outer space exploitation pursuant to the UN-COPUOS Treaties, it must not be forgotten that this topic also has a terrestrial aspect and because of this, other laws will be applicable. This paper will explore the relevance of competition law with the purpose of showing the wider legal implications of lunar mining and to also highlight substantial legal hurdles that the industry must overcome in order for it to be economically feasible.

Commercial lunar exploitation will involve significant financial investment and because of this, profitability is by no means guaranteed. In a monopoly, profitability will be easier as the company can engage in supply manipulation which can keep the price high. In a competitive market, competition will lower prices and this will reduce or remove profit. Therefore, in attempts to make this high investment industry economically feasible, it may be necessary for the companies to negotiate supply, prices and markets with the aim of boosting profits. This anti-competitive would be illegal in many jurisdictions, including the EU and US, as it would breach price-fixing and cartel laws. Therefore, competition law will play a very significant role in lunar mining and must be fully appreciated so the companies do not subject themselves to fines or unprofitability. Exemptions may be granted, but these must be in place before any anti-competitive behaviour is engaged in and there is no guarantee that they will be given. Therefore, there are significant legal issues that will need to be overcome in order to facilitate legal and economic certainty.