

SHIPPING AND THE LAW
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OUTLINE

- EU and UK competition law targets financial services
- Joint Ventures
- Information Exchange
- Impact in UK of new FCA concurrent competition powers
- Double jeopardy risks
- Lack of clarity and some guidance
- Competition Compliance help available

EU AND UK COMPETITION LAW

- Art 101(1) TFEU prohibition of agreements restricting competition
- Art 101(3) TFEU exemption
- Art 102 TFEU Prohibition of abuse of dominance
- Financial services enforcement priority
- no definition of financial services within FCA concurrent competition powers in UK
- both authorised and unauthorised entities and regulated as well as unregulated activities covered in FCA Concurrency Guidelines

JOINT VENTURES

- examples of cooperation agreements in financial sector
- joint trading platforms
- syndicated loans
- involve standardising of terms, exchange of information on pricing and conditions of competition
- Art 100(1) risk, and exemption under Art 101(3) difficult to apply – guidance from EU Insurance BER e.g. for certain re-insurance pools

INFORMATION EXCHANGE

- High risk because fined as if cartels , even if no agreement but just pure gossip
- Dole case, EUCJ 19 March 2015
- Radio Banana gossip over phone, 2000-2002: stock levels, left over imported sticks at ports, anticipated demand and market developments, likelihood of price fluctuations
- Container shipping lines: alleged price signalling through public announcements to trade press – settlement negotiations with Competition Commissioner Verstager in Brussels

UK FCA CONCURRENT COMPETITION POWERS

- How concurrency works
- FAC and PSR powers in financial services sector not just FSA regulated firms
- FCA primary obligation to consider use of competition powers before uses regulation
- CMA alone controls mergers and criminal cartel enforcement
- Subject to MOU with CMA on case allocation, enforcement of Art 101 and 102 TFEU and Chapters 1 and 2 UK Competition Act equivalent rules

DOUBLE JEOPARDY

- Risks of double jeopardy from concurrent competition powers
- ICAP case
- Aalborg Portland case principles

LACK OF CLARITY AND COMPETITION COMPLIANCE

- Much remains unclear
- Some guidance from EU Horizontal cooperation guidelines and Insurance BER
- Competition Compliance programmes essential and help available!