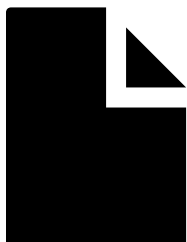


The Application of Article 101 of the Treaty of Lisbon to forms of horizontal collaboration in the Financial Services Sector



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Abstract

Since the dawn of the European Union, insurance and banking undertakings claimed to be subject to a special status vis-à-vis the application of EU competition law, due to the quasi social nature of the services they provide. Within the financial services industry, anti-trust concerns do arise in relation to mergers and acquisitions, possible abuses of dominant position and state aid; however Art. 101 TFEU and the regulation of forms of co-operation arguably represent the paramount and most intricate aspects of the application of the EU competition rules to the financial services sector. This is due to the fact that the insurance and banking industries historically have been characterised by intense forms of horizontal co-operation between undertakings deemed necessary for the correct functioning of the financial services industry. On a general level, any agreement establishing a homogeneous pricing structure vis-à-vis consumers represents a blatant violation of Art. 101 TFEU giving rise to serious anti-trust concerns. Nevertheless, as will be explored in this thesis, in the financial services sector the Commission has often allowed what the doctrine has correctly defined as “forms of horizontal agreements concerning a relevant cost element making up the final price vis-à-vis customers”¹ through its decisions relating to interbank fees in payment systems and through the enactment of a block exemption for the insurance industry. Art. 101 thus seems to manifest a common element for these two industries, presenting interesting and intricate teleological quandaries. This thesis endeavours to break the impasse down into questions to which an answer may be provided: Ought Art. 101 to apply to the financial services sector at all? If so, to what extent? Is there any justification for a block exemption in the insurance sector? Indeed, should the banking sector too benefit from a block exemption? This thesis endeavours to answer the above questions and thereby to contribute to the identification of an ideal regulatory framework for forms of horizontal co-operation in the financial services sector.

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