

## **EU Competition Law (JUS 5310) Autumn term 2023**

The shipping company Mar-Lines was established in Maravia, a coastal state within the European Union. Mar-Lines had primarily been active in the market for offshore supply services to offshore oil and gas installations, but had seen increased business in support services for construction of offshore wind mills.

Mar-Lines had teamed up with another shipping company, Coast-Link, in order to optimize both companies' operations and use of vessels. The companies had agreed to pool their fleets of vessels, so that Mar-Lines could hire Coast-Line vessels in operations and the other way around. Both companies reached a level of over 80 % use of fleet capacity on a monthly basis. The combined use of the fleets steadily attracted customers as the companies could offer high level flexibility and availability. The agreement provided for extensive exchange of information relating to position of vessels, spare capacity, ongoing missions etc.

Mar-Lines and Coast-Link had approximately 45 % and 20 % of the Maravian market, while Extremar had a share of 25 %. The remaining share of the market was supplied by various companies from adjacent EU Member States.

***Question 1:*** Discuss whether the agreement on pooling of resources may run counter to TFEU Article 101.

The agreement between Mar-Lines and Coast-Link also contained a clause whereby each company committed not to contract with existing customers of the other company.

***Question 2:*** Discuss whether the agreement not to contract with customers of the other company may run counter to TFEU Article 101.

During the summer of 2023, a period where the offshore construction market grew rapidly, Mar-Lines and Coast-Link agreed to tighten their cooperation by forming a joint venture, "Mar-Link", focussing its business towards the wind-mill segment of the market.

The joint venture would be owned 50/50 by the companies. Ownership to vessels would be retained by the parent companies, but the joint venture would be manned up with all other functions, and both parent companies committed to allocate up to 60 % of vessel capacity to the subsidiary.

**Question 3 A:** *Discuss whether the formation of the Joint Venture constitutes a "concentration" pursuant to Article 3 of the EU Merger Regulation (you do not need to discuss turnover thresholds in Article 1 of the EU Merger Regulation).*

**Question 3 B:** *Discuss briefly whether the formation of "Mar-Link" amounts to a Significant Impediment of Effective Competition according to Article 2 of the EU Merger Regulation.*

In the autumn of 2023, Coast-Link got a new CEO, Mrs. Angela Goodfellow. Mrs Goodfellow was concerned that Coast-Link was involved in an infringement of the EU Competition rules. She considered to report all agreements to the European Commission and apply for leniency, and asked the Legal Department for advice.

**Question 4:** *Please provide advice to Mrs. Goodfellow on how to proceed with the case.*