Chapter Eleven

EU Competition Law and Issues of National Authorisation of Private Space Activities

L.J. Smith

1. Introduction

The parameters of competition law as applied to the space sector in Europe have recently undergone transition. There are two reasons for this. Firstly, the high profile GNSS project Galileo, initiated a decade ago by the European Union, inspired the creation of an advanced architecture for collaboration with the European Space Agency (ESA), ahead of the Treaty of Lisbon reforms.1 This has led to a demarcation between those space activities carried out under the aegis of the European Union and those carried out within the original remit of the European Space Agency. Secondly, the entry into force of the Treaty of Lisbon,2 with an increased competence base, has extended the role of the European Union in space-related matters, thereby creating a new field to which its competition rules apply.3 The European Union and the European Space

---

3 The attribution of space competence by the member states to the European Union is anchored in Artt. 4(3), 179 & 189, Treaty on the Functioning of the European Union (Treaty establishing the European Community as amended by the Treaty of Lisbon
Agency, as two independent international economic and governmental organisations, are governed by their own respective founding constitutions. These dictate differing procurement rules that reflect divergent economic philosophies. The extension of EU competence to the space sector means that EU competition law now spans an even broader sphere of market activities than before. It also marks a bifurcation in ESA’s original role as initiator and operator of agency-sponsored European or national space programmes, now partly entrusted with shaping the contours of the recently formed European Space Policy.

In short, a distinction between space programmes falling within the remit of European Union and that of ESA has become essential, particularly from a competition law perspective. The approach to competition law and procurement by each institution is distinct, if not fundamentally opposed, the financial frameworks of these individual institutions reflecting differing objectives and approaches. Each institution’s budgetary rules impose compliance with separate rules of procurement.

---

