I. Introduction

Historically, seaports have been seen not only as trade and transport facilitators but also as centres of regional economic and social development providing services of general economic interest. Nowadays, maritime ports are becoming increasingly commercial in character and port managers are engaged in purely commercial activities, such as the provision of port facilities to third parties and cargo handling. This has resulted in increased inter-port and intra-port competition and has led to growing concern about the application of EC competition rules in this economic field. This chapter examines the application of state aid rules in the port sector with particular focus on two distinct aspects of seaport public financing: infrastructure funding and state participation in ports’ capital. The analysis is based on the provisions of primary EC law (i.e. Articles 87 and 88 of the EC Treaty) and on non-obligatory acts of secondary legislation, such as the Commission’s communications on seaports.¹

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To date, the Commission has failed to enact a port services Directive,\(^2\) while no Guidelines on the application of state aid rules to the port sector have yet been published.

II. Seaports’ Market Organisation

Before analysing whether the contribution to the financing of infrastructure or the stakeholding of the State in a port could involve state aid, it is important to understand the organisation of the European seaports market in order to assess the factors of competition and the Commission’s stance in this sector.

1. Inter-Port and Intra-Port Competition

European ports differ substantially with regard to their physical characteristics, administrative responsibilities and the commercial activities of their managing bodies.\(^3\) The different philosophies of port management regarding the role of the public and private sectors imply a different degree of public involvement in the financing and building of port structures, in the organisation of the port and in the management of its activities. Roughly speaking, there are two extreme types of ports within the common market: ports which are operated entirely on a commercial basis, whether publicly or privately owned; and ports operated essentially without immediate commercial considerations. There is a multitude of ports operating on the basis of policies somewhere between these extremes. But in all cases, the typology of ports is an essential element of the financing of port infrastructure. Not only is there a wide variety of ports in Europe but they also cater for different markets. Many have a captive, regionally limited market or are handling specialised goods destined for a limited number of users, which are normally within easy reach of the

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