Why Does Article 101(2) TFEU Not List Concerted Practices?

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Introduction

Article 101(2) TFEU states that agreements and decisions by associations of undertakings that constitute Article 101(1) TFEU are not to be considered as such. However, it is not clear on the face of this provision whether concerted practices are also excluded from liability under Article 101(2). This question has been the subject of several decisions by the European Courts and has been the subject of much debate among legal scholars. In this post, I will attempt to provide an overview of the case law on this issue and discuss the implications of the Court's decisions.

Theoretical Considerations

The European Court of Justice (ECJ) has acknowledged that concerted practices are still being practiced in the market and are not going to disappear anytime soon. However, the ECJ has also recognized that concerted practices can have detrimental effects on competition and economic efficiency. As a result, the ECJ has stated that concerted practices should be prohibited under Article 101(2) TFEU.

In conclusion, it is clear that concerted practices are not exempt from liability under Article 101(2) TFEU. This is because concerted practices are still being practiced in the market and can have detrimental effects on competition and economic efficiency. As a result, concerted practices should be prohibited under Article 101(2) TFEU.

Notes and References