Is a trade union an undertaking under EU competition law?

KEYWORDS: competition law, trade unions, undertakings, Article 101, collective bargaining

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BACKGROUND

- The concept of an undertaking in competition law makes it possible to determine the category of actors to which the competition rules apply.
- EU competition law only applies to undertakings.
- Existing case law implies that a trade union is not an undertaking when engaged in collective bargaining.

METHODOLOGY

- The paper will present reasoning as to why current case law is wrong.
- Explores whether a trade union when engaged in collective bargaining can be an undertaking.
- Considers whether collective bargaining is either a public function or a solidarity function.
- Adopts a decentralised firm-level bargaining model.

KEY FINDINGS

- A trade union, when engaged in collective bargaining, is an undertaking.
- In a decentralised bargaining system, a trade union does not act as its members’ agent. Even where it does act as its members’ agent, EU competition law can still apply.
- Collective bargaining is neither a public function nor a solidarity function, it is an economic activity.

POLICY ISSUES
It is argued that trade unions, contrary to existing Court of Justice of the European Union jurisprudence, can be classified as “undertakings” when engaged in collective bargaining.

Trade unions when engaged in collective bargaining do not act as their members’ agent.

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