



**TRIBUNAL TAL-APPELL
GHALL-KOMPETIZZJONI U GHALL-KONSUMATUR**

**ONOR. IMHALLEF MARK CHETCUTI LL.D
Prof. Lino Briguglio**

Illum it-Tnejn 27 ta' Ottubru, 2014

Numru 1

Rikors Nru. 2/2010

**A.A.J.E. Abela Brothers Partnership, Mario Axiaq,
Carmelo Bros Partnership, N.&C. Camilleri Partnership, Carmelo Fenech,
John Fenech, Lajmic Burdnara Partnership, Carmelo Gatt,
G.S.L. Grech Brothers Partnership, Philip Meli, Aaron Mizzi, John Mizzi,
G.&A. Refalo Partnership, Nazzareno Sammut & Sons Partnership,
Victor Vella, E. & S. Zahra Brothers Partnership, Alex Zammit,
V. Zammit & Sons Partnership, T.&R. Zammit Partnership u
C.&F. Abela Partnership, kollettivament maghrufa taht l-isem "Burdnara Bulk
Cargo Group" u Central Cement Limited (C6108)**

vs

**L-Ufficju ghall-Kompetizzjoni
wara l-ilment ta' Carmelo Meli Limited**

It-Tribunal

Ra l-ilment ta' Carmelo Meli Limited tas-6 ta' Marzu 2007 imressaq quddiem l-Ufficju tal-Kummerc Gust ("l-ilment") (a fol. 31 et. seq.);

Ra d-decizjoni tad-Direttur tal-Ufficju tal-Kompetizzjoni Gusta (“l-Ufficju”) tas-6 ta’ Jannar 2010 (“id-Decizjoni”) (a fol. 5 et. seq.);

Ra z-zewg rikorsi tad-Direttur tal-Ufficju ghall-Kompetizzjoni Gusta (a fol. 26 et. seq. u fol. 29 et. seq.) li permezz taghhom tressqu quddiem il-Kummissjoni ghall-Kummerc Gust (illum it-Tribunal) it-talbiet tal-appellanti, u cioe’ Burdnara Bulk Cargo Group u Central Cement Limited, sabiex id-Decizjoni tigi riveduta mill-Kummissjoni;

Ra l-atti kollha nkluz il-verbal tad-29 ta’ Novembru 2010 u n-noti ta’ sottomissjonijiet tal-partijiet;

Ra l-verbal tad-29 ta’ Jannar 2014 fejn il-vertenza tkomplet bit-Tribunal kompost biss mill-President u membru wiehed;

Ra l-verbal tal-21 ta’ Mejju 2014 fejn il-kawza thalliet ghad-decizjoni.

Ikkunsidra

Illi fis-6 ta’ Marzu 2007 is-socjeta’ Carmelo Meli Limited (gia Salvu Meli & Sons Limited) ressqet l-Ilment fil-konfront tal-appellanti Burdnara Bulk Cargo Group u Central Cement Limited quddiem l-Ufficju tal-Kummerc Gust fejn allegat li l-Burdnara Bulk Cargo Group eskudiet lis-socjeta’ lanjanti mill-attivitajiet tal-garr tac-cement mill-port lejn diversi klijenti f’Malta u li Central Cement Limited naqset milli tirrikonoxxi d-dritt tas-socjeta’ lanjanta u ghalhekk milli tikkoncedi lill-istess socjeta’ d-dritt li ggor ic-cement minn Central Cement Limited lill-klijenti tal-istess Central Cement Limited u dan kollu bi ksur tal-artikoli 5 u/jew 9 tal-Kap. 379 tal-Ligijiet ta’ Malta;

Illi l-Ufficju ddecieda l-Ilment nhar is-6 ta’ Marzu 2010 fejn ikkonkluda li jezisti akkordju vertikali bejn Central Cement Limited u l-membri tal-Burdnara Bulk Cargo Group u akkordju orizzontali bejn l-istess membri tal-Burdnara Cargo Group liema akkordju jew Prattika miftiehma jiksru d-disposizzjonijiet tal-Artikolu 5(1) tal-Kap.

379 in kwantu ghandhom l-iskop li jipprevjenu l-kompetizzjoni fis-suq rilevanti ta' cement kif definit fl-istess Decizjoni u ghalhekk l-Ufficju ordna fl-ewwel lok li Central Cement Limited u Burdnara Bulk Cargo Group jieqfu milli jippartecipaw fl-akkordju jew prattika miftiehma fis-suq rilevanti u li Central Cement Limited ghandha tibda' tissupplixxi x-xoghol taghha b'mod mhux esklussiv lil kwalunkwe burdnar li jitlob li jigi hekk supplit;

Illi fis-seduta mizmuma nhar id-29 ta' Novembru 2010, il-Burdnara Bulk Cargo Group talbet li tressaq sottomissjonijiet fir-rigward tal-applikazzjoni tar-Regolament Numru 169/2009/KE u r-Regolament Numru 1017/1968/KEE u anke fir-rigward tar-raguni li fuqha l-Ufficju ibbaza d-Decizjoni li s-suq lokali ma jaffettwax in-negozju bejn l-Istati Membri tal-Unjoni Ewropea;

Illi l-Burdnara Bulk Cargo Group ressqet is-sottomissjonijiet taghha fejn a fol. 86 tal-process talbet lit-Tribunal ihassar, jannulla u jirrevoka d-Decizjoni fil-konfront taghha in kwantu:

“(1) L-allegat ksur tal-ligi, jekk jigi konfermat bhala tali, ghandu effett fuq il-kummerc bejn l-Istati Membri u kwindi jikser id-dispozizzjonijiet tal-Artikolu 101 TFUE (gja 81 KE) mhux kif intqal mid-Direttur fid-decizjoni lanjata li huwa materja purament interna u li l-analizi ghalhekk tibda u tieqaf mal-Artikolu 5 tal-Kap. 379; u

(2) Meta tali agir ikun jikser it-Trattat, ai termini tar-Regolament 1/2003/KE id-Direttur (bhala “National Competition Authority (NCA)”) mhux biss jista' u ghandu japplika t-Trattat izda ma jistax japplika ligi nazzjonali tal-kompetizzjoni li tkun aktar stretta mid-dispozizzjonijiet tat-Trattat (Art. 101 TFUE et seq.);

(3) Illi fuq il-bazi tat-Trattat imbaghad l-agir lanjat huwa espressament eskluż mis-sindikabilita' taht l-Artikolu 101 bis-sahha tad-dispozizzjonijiet tar-Regolamenti nru. 1017/68/KEE u 169/2009/KE li fihom deroga/ezenzjoni settorjali u jghidu li r-regoli tal-kompetizzjoni ma japplikawx ghal imprizi zghar u medji li joperaw fis-settur tat-trasport u l-garr ta' merkanzija.”

Illi fid-Decizjoni l-Ufficju qal hekk:

“The OFC is obliged when applying national competition law to agreements and/or concerted practices between undertakings which may appreciably affect trade between Member States also to apply Article 101. The OFC does not consider that the agreement/concerted practice may

appreciably affect trade between Member States. The agreement and/or concerted practice concerns the national market for the provision of road haulage services only. Accordingly, since it results to the OFC that there is no infringement of Article 101, it is not under a duty, in terms of Article 12A(3) of the Competition Act to make a report to the Commission for Fair Trading so that it may issue a decision thereon.”¹

Illi kuntrarjament għal dak li intqal mill-Ufficju, il-Burdnara Bulk Cargo Group isostnu li l-agir in kwistjoni, misjub bhala illegali mill-istess Ufficju, fil-fatt għandu effett fuq il-kummerc bejn l-Istati Membri u għalhekk għandhom japplikaw ukoll id-disposizzjonijiet tal-Artikolu 101 (għa 81) tat-Trattat dwar il-Funzjonijiet tal-Unjoni Ewropea (“it-Trattat”). Għalhekk, l-appellanti Burdnara Bulk Cargo Group isostnu li, minhabba n-natura tal-ftehim in kwistjoni, għal dan l-agir allegatament illegali għandu japplika mhux biss l-Artikolu 5 tal-Kap. 379 tal-Ligijiet ta’ Malta izda l-Ufficju hu obbligat, ai termini tar-Regolament 1/2003/KE², li japplika anke t-Trattat, pero’ ma jistax japplika ligi nazzjonali tal-kompetizzjoni li tkun aktar stretta mid-disposizzjonijiet tat-Trattat. Dan inghad mis-socjeta’ appellanti in kwantu għa la darba jigi applikat it-Trattat, u l-legislazzjoni sussidjarja promulgata bis-sahha tal-istess Trattat³, għandu jirrizulta li l-agir in kwistjoni hu ezenti mid-disposizzjonijiet relattivi u għalhekk l-Artikolu 101 ma japplikax għall-istess agir;

Illi minn-noti ta’ sottomissjonijiet rispettivi, jidher li hemm qbil bejn il-Burdnara Bulk Cargo Group u l-Ufficju li, meta ftehim jista’ jolqot il-kummerc bejn l-Istati Membri, oltre l-ligi nazzjonali għandu jigi applikat l-Artikolu 101 tat-Trattat. Hemm qbil ukoll dwar li Awtorita’ Nazzjonali, fl-applikazzjoni tal-ligi lokali, ma tistax tipprojbixxi tali ftehim jekk dan hu permess ai termini tat-Trattat. Dan kollu jirrizulta mill-Artikolu 3 tar-Regolament 1/2003/KE:

3 (1) Fejn l-awtoritajiet tal-kompetizzjoni ta’ l-Istati Membri u qrati nazzjonali japplikaw ligijiet nazzjonali tal-kompetizzjoni għal ftehim, decizjonijiet min assoċjazzjonijiet tal-impriża jew prattici miftiehma fis-sens ta’ l-Artikolu 81(1) (illum 101(1)) tat-Trattat li jista’ jaffettwa l-kummerc bejn l-Istati Membri fis-sens ta’ din id-disposizzjoni, dawn fha japplikaw ukoll l-Artikolu 81 tat-Trattat għal ftehim bħal dawn, decizjonijiet jew prattici

¹ Paragrafu 32 tad-Decizjoni

² Ir-Regolament Tal-Kunsill (KE) Nru 1/2003 tas-16 ta’ Diċembru 2002 fuq l-implimentazzjoni tar-regoli tal-kompetizzjoni mniżżlin fl-Artikoli 81 u 82 tat-Trattat

³ Regolament tal-Kunsill (KE) Nru 169/2009 tas-26 ta’ Frar 2009 li japplika r-regoli tal-kompetizzjoni għat-trasport bil-ferrovija, bit-triq u permezz tal-passaggi fuq l-ilma interni u Regolament tal-Kunsill (KEE) Nru 1017/68 tad-19 ta’ Lulju 1968

miftiehma. Fejn l-awtoritajiet tal-kompetizzjoni ta' l-Istati Membri jew qrati nazzjonali japplikaw liġijiet nazzjonali tal-kompetizzjoni għal xi kwalunkwe abbuż proji bit mil-Artikolu 82 tat-Trattat, dawn ħa japplikaw ukoll l-Artikolu 82 tat-Trattat.

(2) L-applikazzjoni tal-liġijiet nazzjonali tal-kompetizzjoni ma tistax twassal għal projbizzjoni ta' ftehim, deċiżjonijiet minn assoċjazzjonijiet ta' l-impriża jew prattiċi miftiehma li jista jaffetwa il-kummerċ bejn l-Istati Membri imma ma jirrestringix il-kompetizzjoni fis-sens ta' l-Artikolu 81(1) tat-Trattat, jew ma jilħaqx il-kondizzjonijiet ta' l-Artikolu 81(3) tat-Trattat jew li huma kopru ti min xi Regolament għall-applikazzjoni ta' l-Artikolu 81(3) tat-Trattat. Stati Membri mhux taħt dan ir-Regolament jiġu prekluzi milli jadottaw u japplikaw fuq it-territorju tagħhom liġijiet nazzjonali aktar stretti li jipprojbixxu jew jissanzjonaw kondotta unilaterali imqabdin biex jaħdmu min xi impiża.

Illi dan l-Artikolu hawn fuq citat jinsab ukoll fil-Kapitolu 379 tal-Liġijiet ta' Malta. L-Artikolu 3(2), magħruf bhala l-*'convergence rule'*, hu riprodott hekk fil-Kap. 379:

5 (6) L-applikazzjoni tas-subartikoli (1), (2) u (3) ma titqiesx li twassal biex tinkludi l-projbizzjoni ta' xi ftehim, deċiżjoni minn assoċjazzjonijiet ta' intrapriži jew prattiċi miftiehma li jistgħu jolqtu l-kummerċ bejn Stati Membri iżda li ma jirrestringux il-kompetizzjoni fil-kuntest tal-Artikolu 101(1) tat-TFUE jew li jissodisfaw il-kondizzjonijiet tal-Artikolu 101(3) tat-TFUE, jew li jinkwadraw f'xi Regolament għall-applikazzjoni tal-Artikolu 101(3) tat-TFUE.

Illi dak li m'hemmx qbil dwaru bejn l-istess partijiet hu dwar jekk l-agir in kwistjoni jistax jaffetwa il-kummerċ bejn l-Istati Membri. F'dan ir-rigward, mill-paragrafu 32 tad-Deciżjoni hawn fuq citat, l-Ufficju kkonkluda li l-agir in kwistjoni ma jaffettwax il-kummerċ bejn l-Istati Membri u għalhekk konsegwentement l-Artikolu 101 m'huw iex applikabbli. Hawnhekk it-Tribunal jinnota li l-Ufficju ma ta l-ebda spjegazzjoni jew motivazzjoni ta' kif wasal għal tali konkluzjoni.

Illi mill-Linji Gwida relattivi mahru ga mill-Kummissjoni⁴ ("il-Linji Gwida") jirrizulta li hemm tlett elementi li jridu jiġu kkunsidrati fl-applikazzjoni tal-kriterju tal-effett fuq is-suq. L-ewwel element hu dak tal-kummerċ bejn Stati Membri. F'dan ir-rigward il-Linji Gwida jgħidu, *inter alia*, dwar il-kuncett ta' 'kummerċ' li *"trade is not limited to traditional exchanges of goods and services. It is a wider concept, covering all*

⁴ Commission Notice – Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (2004/C 101/07)

*cross-border economic activity including establishment*⁵ u li dan il-kuncett ta' kummerc, *“also encompasses cases where agreements or practices affect the competitive structure of the market. Agreements and practices that affect the competitive structure inside the Community by eliminating or threatening to eliminate a competitor operating within the Community may be subject to the Community competition rules.”*⁶ Il-Linji Gwida jghidu wkoll li, *“The application of the effect on trade criterion is independent of the definition of relevant geographic markets.”*⁷ Ghalhekk, ghalkemm il-ftehim in ezami jirrigwarda t-territorju Malti, dan xorta wahda jista' jkollu effett fuq il-kummerc bejn l-Istati Membri, pero' l-effett in kwistjoni irid ikun tali li jelimina, jew ghandu l-potenzjal li jelimina, kompetituri li joperaw fil-Komunjoni.

It-tieni element li jrid jigi kkunsidrat hu dak imsejjah fil-Linji Gwida bhala *the notion ‘may affect’* u cioe' li, *“it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that the agreement or practice may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.”*⁸ Dan ifisser, *inter alia*, li l-kunsiderazzjoni dwar jekk il-ftehim jew Prattika ghandiex effett fuq is-suq trid tkun msejsa fuq fatturi oggettivi u l-intenzjoni suggettiva tal-intraprizi mhux mehtiega⁹. In oltre, m'huwiex mehtieg li l-ftehim jew Prattika attwalment ikollhom jew kellhom effett fuq il-kummerc bejn l-Istati Membri izda, *“it is sufficient that the agreement or practice is capable of having such an effect”*¹⁰. Ghal dak li jirrigwarda *“pattern of trade”*, il-Linji Gwida jghidu li, *“The term pattern of trade is neutral. It is not a condition that trade be restricted or reduced. ... Indeed, Community law jurisdiction is established if trade between Member States is likely to develop differently with the agreement or practice compared to the way in which it would probably have developed in the absence of the agreement or practice.”*¹¹

⁵ Para 19, Linji Gwida

⁶ Para 20, Linji Gwida

⁷ Para 22, Linji Gwida

⁸ Para 23, Linji Gwida

⁹ Para 25, Linji Gwida

¹⁰ Para 26, Linji Gwida

¹¹ Para 34, Linji Gwida

It-tielet element hu *the concept of appreciability*, u cioè, “a quantitative element, limiting Community law jurisdiction to agreements and practices that are capable of having effects of a certain magnitude.”¹² “The assessment of appreciability depends on the circumstances of each individual case, in particular the nature of the agreement and practice, the nature of the products covered and the market position of the undertakings concerned.”¹³ “Market share alone, however, has not always been considered the decisive factor. In particular, it is necessary also to take account of the turnover of the undertakings in the products concerned.”¹⁴ Appreciability can thus be measured both in absolute terms (turnover) and in relative terms, comparing the position of the undertaking(s) concerned to that of other players on the market (market share).¹⁵ Pero, “the application of the appreciability test does not necessarily require that relevant markets be defined and market shares calculated.”¹⁶

Illi fl-analizi tal-*concept of appreciability*, il-paragrafu 52 tal-Linji Gwida jipprovdi hekk:

“The Commission holds the view that in principle agreements are not capable of appreciably affecting trade between Member States when the following cumulative conditions are met:

- (a) The aggregate market share of the parties on any relevant market within the Community affected by the agreement does not exceed 5%, and;*

- (b) In the case of horizontal agreements, the aggregate annual Community turnover of the undertakings concerned in the products covered by the agreement does not exceed 40 million euro. ... In the case of vertical agreements, the aggregate annual Community turnover of the supplier in the products covered by the agreement does not exceed 40 million euro.”*

¹² Para 44, Linji Gwida

¹³ Para 45, Linji Gwida

¹⁴ Para 46, Linji Gwida

¹⁵ Para 47, Linji Gwida

¹⁶ Para 48, Linji Gwida

Illi għalhekk tezisti presunzjoni negattiva li ftehim ma jolqotx il-kummerc bejn l-Istati Membri meta jissussistu dawn iz-zewg kundizzjonijiet. Tezisti wkoll presunzjoni positiva fil-Linji Gwida fil-paragrafu sussegwenti: “ ... *In the case of agreements that by their very nature are capable of affecting trade between Member States it can also be presumed that such effects are appreciable when the market share of the parties exceeds the 5% set out in the previous paragraph.*”¹⁷ Għalhekk, fir-rigward ta’ dawk il-ftehim li min-natura tagħhom jistghu jaffettwaw il-kummerc bejn l-Istati Membri, il-presunzjoni hi li l-element tal-*appreciability* jigi sodisfatt meta l-*market share* tal-partijiet fil-ftehim jeccedi l-5%.

Illi esposti dawn it-tlett elementi, l-Linji Gwida jipprovdu wkoll ezempji fejn il-principji hawn fuq imsemmija jigu applikati għall-ftehim komunement misjuba. Fil-Linji Gwida jinghad li, “*With a view to providing additional guidance on the application of the effect on trade concept it is therefore useful to consider various common types of agreements and practices.*”¹⁸ *In the following sections a primary distinction is drawn between agreements and practices that cover several Member States and agreements and practices that are confined to a single Member State or to part of a single Member State.*¹⁹ Fir-rigward ta’ ftehim li jkopri Stat Membru wiehed, jinghad li, “*It should be recalled that for there to be an effect on trade between Member States it is not required that trade is reduced. It is sufficient that an appreciable change is capable of being caused in the pattern of trade between Member States. Nevertheless, in many cases involving a single Member State the nature of the alleged infringement, and in particular, its propensity to foreclose the national market, provides a good indication of the capacity of the agreement or practice to affect trade between Member States.*”²⁰ *Horizontal cooperation agreements ... which are confined to a single Member State and which do not directly relate to imports and exports, do not belong to the category of agreements that by their very nature are capable of affecting trade between Member States.*²¹ *Horizontal cooperation agreements may, in particular, be capable of affecting*

¹⁷ Para 53, Linji Gwida

¹⁸ Para 59, Linji Gwida

¹⁹ Para 60, Linji Gwida

²⁰ Para 77, Linji Gwida

²¹ Para 83, Linji Gwida

trade between Member States where they have foreclosure effects.²² Vertical agreements covering the whole of a Member State may, in particular, be capable of affecting patterns of trade between Member States when they make it more difficult for undertakings from other Member States to penetrate the national market in question, either by means of exports or by means of establishment (foreclosure effect).²³

Illi applikati dawn il-principji għall-kaz in ezami, t-Tribunal ma jqisx li l-ftehim in kwistjoni jaffettwa l-kummerċ bejn l-Istati Membri. It-Tribunal ma jaqbilx mat-tezi tal-Burdnara Bulk Cargo Group li l-ftehim in ezami hu wiehed li min-natura tiegħu jista' jaffettwa l-kummerċ bejn l-Istati Membri. Il-ftehim in kwistjoni, kemm dak orizzontali bejn il-membri tal-Burdnara Bulk Cargo Group u kemm dak vertikali bejn l-istess Burdnara Bulk Cargo Group u Central Cement Limited, jikkoncerna t-trasport tal-prodott impurtat, mill-port għad-destinazzjoni finali, pero' ma jikkoncernax per se l-importazzjoni tal-prodott fil-pajjiz. Għalhekk il-presunzjoni possittiva misjuba fil-Linji Gwida ma gietx sodisfatta in kwantu għalkemm il-Burdnara Cargo Group għandhom aktar minn 5% tas-suq tal-garr tas-siment u fil-kaz tal-Central Cement Limited aktar minn 5% tas-suq tal-importazzjoni tal-istess siment, il-ftehim in ezami jirrelata għas-suq tat-trasport tas-siment ġia la darba jidhol fil-port u mhux għas-suq tal-importazzjoni tas-siment, li m'huwiex ftehim li min-natura tiegħu jista' jaffettwa l-kummerċ bejn l-Istati Membri. Fi kwalunkwe kaz, ġia ingħad li l-*market share* wahdu m'huwiex fattur determinanti u li għandu jittiehed in kunsiderazzjoni wkoll it-*turnover* relattiv, li fil-kaz *de quo* ma giex ippruvat li jlahhaq il-figuri msemmija fil-Linji Gwida. Għaldaqstant, it-tielet element fil-Linji Gwida, u cioe' l-*concept of appreciability*, ma giex sodisfatt in kwantu ma jirrizultax li l-effetti tal-ftehim mertu tal-appell odjern huma ta' portata tali li jistgħu jaffettwaw il-kummerċ bejn l-Istati Membri.

Illi oltre l-aspett kwantitattiv, it-Tribunal hu wkoll tal-fehema li l-ftehim in ezami ma għandux il-potenzjal li jaffettwa l-kummerċ bejn l-Istati Membri in kwantu anqas ma

²² Para 84, Linji Gwida

²³ Para 86, Linji Gwida

gie sodisfatt li l-ftehim għandu *foreclosure effect* fuq is-suq lokali kif provdut fil-Linji Gwida. Fil-kaz tal-ftehim vertikali bejn il-Burdnara Bulk Cargo Group u Central Cement Limited, dan il-ftehim ma jostakolax intraprizi minn Stati Membri ohra milli jidhlu fis-suq tal-importazzjoni tas-siment hawn Malta (u cioe' jidhlu f'kompetizzjoni ma' Central Cement Limited), jekk tali intraprizi jottjenu l-permessi mehtiega. Il-ftehim vertikali hu esklussiv fis-sens li qed jigi allegat li Central Cement Limited assenjaw it-trasport tas-siment esklussivament favur il-Burdnara Bulk Cargo Group b'eskluzjoni ta' burdnara ohra pero' dan ma jfissirx li intrapriza kompetitrici ta' Central Cement Limited hija michuda mid-dritt li tqabbad lill-istess Burdnara Bulk Cargo Group jew kwalsiasi burdnara ohra (bhall-lanjant Carmelo Melo Limited) għall-gar tas-siment. Minn-naha l-ohra, fil-kaz tas-suq tal-garr tas-siment, u għalhekk dan jinkludi wkoll l-ftehim orizzontali bejn il-membri tal-Burdnara Bulk Cargo Group, il-Linji Gwida jipprovdu li, *"In addition to the factors already mentioned, it is necessary to take account of the legal and factual environment in which the agreement or practice operates. ... If there are absolute barriers to cross-border trade between Member States, which are external to the agreement or practice, trade is only capable of being affected if those barriers are likely to disappear in the foreseeable future."*²⁴ L-Ufficju ssottometta²⁵ li jezisti ostaklu għall-kummerc bejn l-Istati Membri li m'huwiex relatat għall-ftehim in kwistjoni in kwantu jezisti numru limitat ta' burdnara licenzjati. Dan inghad ukoll mill-Ufficju fid-Decizjoni: *"Administrative provision has restricted the number of cargo clearance and forwarding agents licences ("numeris clausus"), and has allowed the licence to be passed on hereditarily."*²⁶ Dan ma giex kontradett mill-partijiet. Għalhekk, ma jistax jinghad li l-ftehim in kwistjoni johloq *foreclosure effect* fir-rigward ta' intraprizi minn Stati Membri ohra. Għaldaqstant, il-ftehim mertu tal-appell odjern m'għandux effett fuq il-kummerc bejn l-Istati Membri u kwindi l-Artikolu 101 tat-Trattat m'huwiex applikabbli.

²⁴ Para 32, Linji Gwida

²⁵ A fol. 117, 118

²⁶ Para 3 tad-Decizjoni

Decide

Dan it-Tribunal għalhekk jichad it-talbiet tal-Burdnara Bulk Cargo Group kif misjuba a fol. 86 tal-process għar-revoka tad-Decizzjoni fil-konfront tagħha u tordna l-prosegwiment tal-appell.

Onor. Mark Chetcuti LL.D.
Imhalled

Prof. Lino Briguglio
Membru

Anne Xuereb
Deputat Registratur