

European Union

“Towercast”

Decision of the Court of Justice of the European Union (Second Chamber)

16 March 2023 – Case No. C-449/21; ECLI:EU:C:2023:207

*Towercast SASU v. Autorité de la concurrence and
Ministre chargé de l'économie; other parties: Tivana
Topco SA, Tivana Midco SARL, TDF Infrastructure
Holding SAS, TDF Infrastructure SAS, Tivana France
Holdings SAS*

**Treaty on the Functioning of the European Union, Art.
102; Regulation (EC) No. 139/2004, Art. 21(1)**

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Keywords Control · Concentrations between undertakings · Permissibility ·
Member State competition authorities · Exclusive application of Regulation ·
Ex ante control · Lack of Community dimension · National law

Article 21(1) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings must be interpreted as not precluding the competition authority of a Member State from regarding a concentration of undertakings which has no Community dimension within the meaning of Article 1 thereof, is below the thresholds for mandatory *ex ante* control laid down in national law, and has not been referred to the European Commission under Article 22 of that regulation, as constituting an abuse of a dominant position prohibited under Article 102 TFEU, in the light of the structure of competition on a market which is national in scope.

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