

“Competition law and the provision of public services in ASEAN: Does regional economic development and market integration require the application of competition law to public services?”

Monday 7th November 2016 at 2:00 p.m.

IAS Meeting Room 2.27, Level 2, FASS Building

Abstract

The main focus of competition law is traditionally the private rather than the public sector. Yet, if the public sector gets more involved in market activities, such activities can fall more readily under competition law. When exactly competition law becomes applicable is often not that clear cut. In EU law the reach has constantly been fine-tuned by the Court due to two prominent factors: liberalisation of public services and the establishment of the internal market. Liberalisation of formerly public services required the application of competition law to public entities to achieve an equal playing field. This made it necessary for the Court to define and differentiate the notion of undertaking. At the same time, with an increasing number of public service providers being regarded as undertakings in the first place the importance of the exemption for services of general economic interest grew since the full application of competition law has not always been deemed appropriate. At the same time, market integration has already early on been interpreted by the Court as requiring increasing application of competition law to public market regulation (13/77 *INNO v ATAB*) and state aid and public procurement rules equally aided in avoiding national championing.

ASEAN does not have a regional competition law (yet). States can still unilaterally decide on their competition law. The latter aspect of market integration thus so far does not play the same role in ASEAN, despite the launch of the AEC. For example, national competition regimes are partly explicitly excluding government regulations from the scope of competition law or are highly subsidising particular undertakings. Is this approach hindering economic development? Or is this approach possibly preferable to the EU model which has been criticised by many in that the aim of market integration and liberalisation might be detrimental for public service delivery in particular since economic integration is not (yet) outbalanced by sufficient integration in more social / public areas? The paper will investigate this question by first providing some background on the EU approach. It will then investigate the ASEAN Competition Law Guidelines as well as the national competition law regimes (as far as already in place) as to their treatment of public services. This will be followed by conclusions on the questions if the application of the competition law rules beyond purely private sector activity is necessary, appropriate and desirable in light of the regional market integration goals which the ASEAN Member States are trying to pursue.

Speaker's Profile



Andrea is a CLB-CCS Postdoctoral Fellow at the Centre for Law & Business, National University of Singapore for which she has suspended her position as Lecturer in Law at the University of Liverpool. Andrea is working on the application of competition law to public services in ASEAN with a particular focus on healthcare. In 2014 she received her PhD from the University of Leeds having passed her viva without corrections. Her thesis 'Higher Education Institutions under EU Law Constraints: An interdisciplinary analysis of the position of European higher education institutions between directly applicable EU law and their public service mission' has been shortlisted for the Jean Blondel PhD Prize 2015 and is forthcoming as a monograph with TMC Asser. During her time as PhD researcher she has also taught at the University of Leeds and worked on various research projects (e.g. for the EU funded project 'European economic and social constitutionalism after the Treaty of Lisbon', University of Leeds, and for the project 'The European Union and Global Financial Regulation', University of York). Before starting her PhD, Andrea worked, among other things, for the Carl von Ossietzky Universität Oldenburg and for the German Development Service (now German Agency for International Cooperation, GIZ) at the Badan Pendidikan dan Pelatihan NTT, Indonesia.