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COMPETITION IN THE HEALTHCARE MARKET IN SINGAPORE – AN EXPLORATIVE CASE STUDY

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Abstract

The suggested paper conducts a preliminary assessment of the Singaporean hospital care sector from a competition law perspective.

Market elements have increasingly been introduced into the public service regimes of many countries over recent decades. Such moves were meant to foster competition and choice which in turn was thought to increase quality while decreasing prices.[1] Such progressive liberalisation led to public services, such as the utilities as well as employment and health services - which are not the main focus of competition law regimes - to be increasingly regarded as 'economic activities'.[2] As a result, competition law became applicable to these services in some competition law regimes;[3] partly

[1] Studies regarding the effectiveness of introducing choice and competition in healthcare (being the main topic of this research) to achieve better quality and lower prices have had mixed results. While some tendency to prefer providers with a higher quality has been measured after the introduction of choice in England for certain heart surgeries, it has also been stressed that other factors such as distance play a role and that higher quality and lower prices can equally be achieved with regulatory price and quality control (Charlesworth and Kelly 2013). The King's Fund equally concluded that '[c]ompetition can bring benefits but these benefits can be outweighed by costs and difficulties of competitive process' (The King's Fund 2015). Similarly, the European Commission's Expert panel concluded that '[t]he conditions for competition to be a useful instrument vary across countries, health care subsectors and time. There is no golden rule or unique set of conditions that can be met to ensure that competition will always improve the attainment of health systems goals' (EXPH 2015). Others argue that competition can be most effective only if linked to broader reforms of the market structure rather than just introducing selected market based elements (Dash and Meredith) or that '[c]hoice on its own has been shown not to be conducive to cost-containment' and that in fact the true drivers behind introducing choice and competition policies are far more diverse than the usually stated one of increasing quality and decreasing prices (Costa-Font and Zigante 2012).

[2] In the EU competition law is, for example, applicable only to undertakings which are defined as entities conducting economic activities (Case C-41/90 *Höfner*). A similar definition has been adopted by the Competition Commission Singapore (CCS Major Provision Guidelines para 1.1). The Court of Justice of the European Union in its case law has excepted activities relating to sovereign power and activities based on social solidarity from the definition of undertaking (e.g. cases C-364/92 *Eurocontrol* and C-159, 160/91 *Poucet et Pistre*). If public service are considered as economic activities, they do fall under competition law. Yet, infringements might still be exempted if the entity is providing a service of general economic interest (see, for example, Article 106 Treaty on the Functioning of the European Union or Third Schedule to the Singaporean Competition Act). Individual regimes might also have certain provisions exempting particular sectors (e.g. the Malaysian regime provides exemptions for telecommunications and energy markets in the First Schedule of the Competition Act).

[3] For more on the inclusion of public services into EU competition and internal market law see Prosser 2010, Neergaard 2011 p. 174 seq.

requiring further liberalisation. However, there are certain tensions between providing such services in a competitive market and, at the same time, allowing them to retain their public interest character including such elements as universal provision, trust based relationships[4] or equality of access. The ASEAN countries, in which competition law is still a relatively new area of law, might face such tensions with increasing application of competition law to these areas. Yet, the application of competition law to public services in ASEAN countries has thus far received virtually no attention.

The suggested paper aims to make a first step in filling this gap in the research by exploring the healthcare sector in Singapore from a competition law perspective. It will leave to one side questions on medical research, pharma firms' interaction with the market and primary care and instead focus on hospital care. The paper will, first, provide an overview of the healthcare sector in Singapore. This will be followed by an initial assessment of the sector from a competition law perspective including the question in how far providers qualify as 'undertakings' and in how far s 34, 47 and 54 of the Competition Act might be applicable.

Keywords: Competition law, healthcare, Singapore, ASAN, EU

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[4] On the latter, see Newdick 2007.

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