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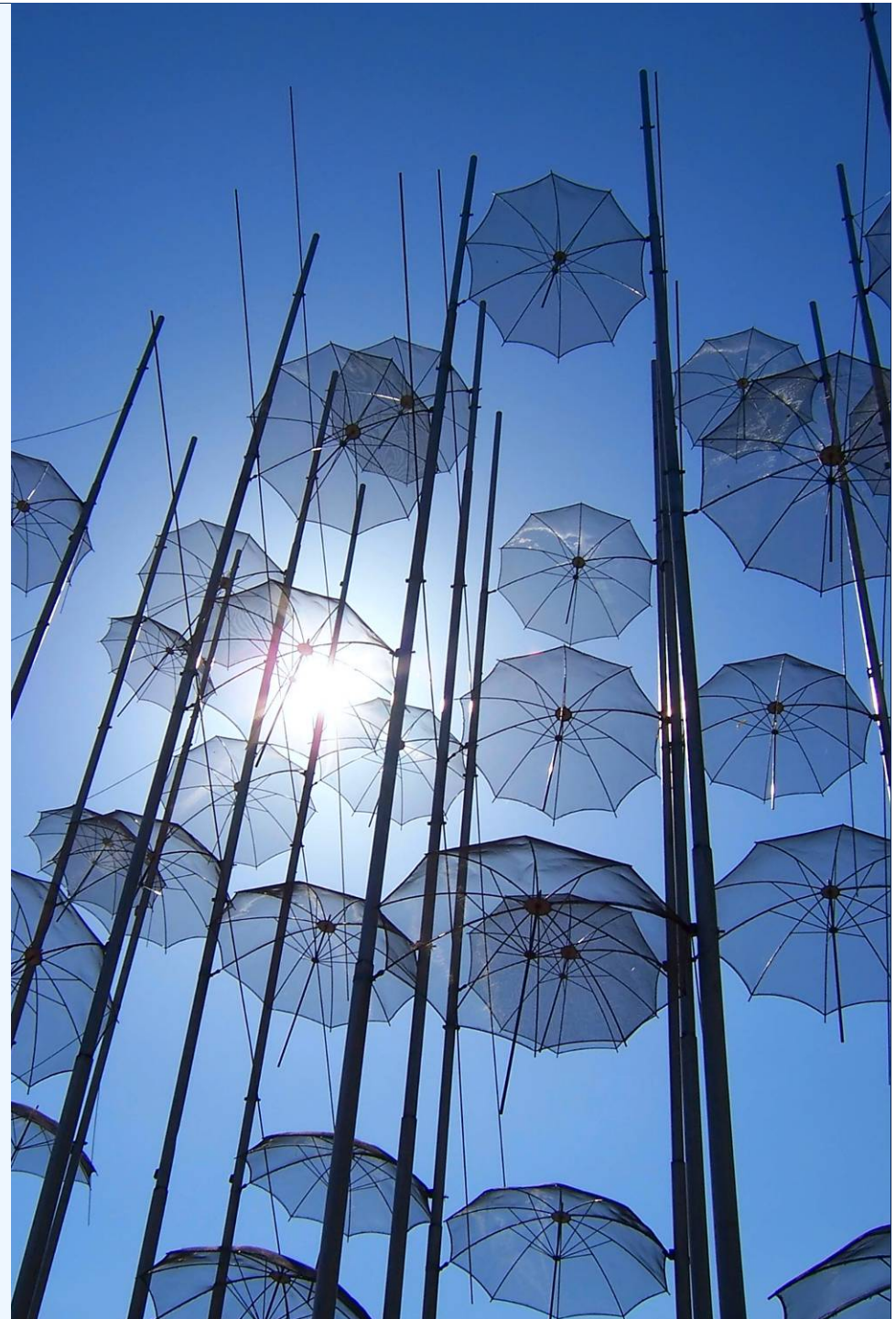
Services of General Economic Interest (SGEIs)

Introduction to SGEIs under EU
Competition Law:

SGEIs as a limitation to the
application of competition rules

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Topics

- Introduction
- Background of the notion of SGEIs
- Concept and definition of SGEIs
- Article 106 (2) TFEU
- Summary and concluding remarks

SGEIs – Background of the notion in Europe

Public services as one of the pillars of social and economic model in Europe

- *“The idea that the community, through its public institutions, takes responsibility for certain social needs and public goods translates into practice [our] basic values [...] Without good public services available to all, such values as solidarity, social justice and social cohesion would have remained mere ideals.”* (Joaquín Almunia, Vice President of the European Commission responsible for Competition Policy, 30.09.2011)
- Public services rooted in shared values of the EU and important for functioning community by promoting social and territorial cohesion
- Public interest for supply of such services if no satisfactory provision by market can lead to financial support from public authorities for provision
- Ongoing economical and financial crisis in Europe highlights importance of SGEIs

Article 106 (2) TFEU

“Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.”

- Derogation from the TFEU rules, in particular the rules on competition
- Conditions:
 - Undertaking or character of a revenue-producing monopoly
 - Genuine SGEI
 - Entrustment – assignment with a particular task
 - Application of competition rules would obstruct the performance of the task
 - Proportionality
 - No effect on trade contrary to interests of Union



Undertaking and economic activity

Undertaking is entity engaged in an economic activity, regardless of its legal status and the way in which it is financed (EJC)

- Legal status of the entity under national law irrelevant
 - If entity carries out economic and non-economic activities it is an undertaking only with respect to the former
- Economic activity: any activity consisting in offering goods or services on a market
 - Existence of a market depends on socio-economic conditions and political choices in the Member States
 - Exercise of public powers not an economic activity (e.g. army, police, air navigation safety and controls, anti-pollution surveillance, detention of criminals)
 - Social security schemes not economic if “solidarity-based” as opposed to economic schemes
 - Health care not economic if based on the principle of solidarity and funded directly by the state as opposed to provided for remuneration
 - Public education not economic as opposed to private education



Concept and definition of SGEIs

No clear and precise regulatory definition of concept in EU

- Term “SGEI”: used in Article 106 (2), Article 14 and Protocol 26 TFEU
 - But no legal definition fixing conditions – evolving notion
 - *“economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) by the market without public intervention”* (Commission Communication, 2011)
- Particular features of SGEIs (ECJ jurisprudence and Commission instruments):
 - Special characteristics compared to other economic activities
 - Wide margin of discretion for Member States
 - Commission checks for manifest errors only
 - Activity may not be provided by market already
 - Addressed to citizens or in the interest of society as a whole



Entrustment and Obstruction of Performance

Assignment by the State defining the special task of the undertaking

- Assignment act can be legislative or regulatory instrument or contract
- Act must specify
 - Content and duration of the public service obligation
 - The undertaking and territory concerned
 - Nature of any special or exclusive rights
 - Parameters for calculating, controlling and reviewing any compensation
 - Arrangements for avoiding and recovering any over-compensation

Application of competition rules incompatible with performance of SGEI

- Special or exclusive rights are necessary to enable the undertaking to perform its tasks
- Burden of proof on the Member State which, however, does not have to show that no other conceivable measure could enable those tasks to be performed under the same conditions



Summary and concluding remarks

Article 106 (2) TFEU vital for reconciling social policy and free competition in EU

- Many Member States have strong public service traditions which would be endangered if Treaty rules were strictly applied
- Member States primarily responsible for defining what they qualify as SGEIs
- Commission only controls for manifest error, but ECJ has stated that Art. 106 (2) TFEU must be interpreted strictly
- Both SGEIs and competition policy will continue to form key part of Europe's social and economic model – vital role of Art. 106 (2) TFEU

Thank you very much for your attention!

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