8. Competition, the State, and Public Undertakings: Article 106 TFEU

This chapter examines how competition law applies to the actions of the State when it intervenes in the market through undertakings which it controls or owns or which it places in a privileged position. The discussion includes the principle of Union loyalty in Article 4(3) TEU; Article 106(1); Article 106(2); and the Commission's supervisory and policing powers in Article 106(3). Article 106(1) is a prohibition addressed to Member States against enacting or maintaining in force any measure in relation to public undertakings or undertakings to which they have granted special or exclusive rights which are contrary to the Treaty rules. The chapter discusses what is meant by 'public undertakings' and 'special or exclusive rights' and examines in the light of the case law what measures are forbidden by Article 106(1), including those involving the cumulation of rights, the extension of a dominant position from one market to another, and the creation of situations of inequality of
8. Competition, the State, and Public Undertakings: Article 106 TFEU

opportunity. Article 106(2) gives a limited derogation from Article 106(2) to undertakings entrusted with the operation of services of general economic interest (SGEIs). The chapter discusses the concept of ‘services of general economic interest’ and examines the cases in which the derogation has been applied or not applied, including the application of Article 106(2) to compensation for the provision of SGEIs which constitutes State aid. The chapter also considers Article 106(3) and the question of the direct effect of Article 106(1) and (2).

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