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Editorial

Privatising Public Services – Rules and Governance Structures

Privatised public services have become a fact of daily life, in these times of budget constraints and concerns about government efficiency. There is much debate, however, as to what government activities should be entrusted to the private sector. Politicians are unsure whether public goods can be provided at quality and price levels acceptable to the general public. Moreover, there is a need to study the governance structures and legal framework of privatised government activities that range from public-private partnerships to private companies supplying services under a private-law contract. It is against this background that we present a series of articles, marking a starting point in an as yet open debate where aspects of public, competition and contract laws overlap.

Traditionally, the member states of the European Union have attempted to shield public services from the influences of competition law. Hans-Peter Schwintowski takes a fresh look at Article 16 and the competition rules of the EC Treaty to scrutinise the role of public undertakings. His analysis extends to markets characterised by imperfections and to conditions where public undertakings may engage in regular competitive activities. Finally, he advances rules for effective and reasonable public participation in competitive public undertakings.

Privatising public services is a political device which has its origins in the United States. Initially, it was the US taxpayer and voter who forced local governments to privatise public services when tax cuts were adopted. Since 1979, successive British governments have introduced comprehensive schemes to hand over public services to private bodies. Stephen Osborne and Kate McLaughlin review the early partnerships between local governments and the voluntary sector. With respect to the latest British developments in this field, they introduce the notion of the voluntary sector compact to describe the specific problems of local strategic partnerships which have to strike a balance between co-ordination and co-production. Privatisation will be costly if contractual arrangements and governance structures fail. Using a wealth of material from France and other European countries, Freddy Huet and Stéphane Saussier apply a transaction cost approach to analyse the optimal organisational arrangement for providing public interest services. This covers both full-scale privatisation with extensive private-law contracting and delegation contracts.

Lourdes Torres, Vicente Pina and Basilio Acerete study the contractual aspects of public-private partnerships with Spanish local governments, while Newton de Castro discusses the needs for further regulatory action after the privatisation of rail services in Brazil.

The debate on privatising public services and the delivery of public goods by private parties is in a state of flux. This special issue was designed to give an introduction to the variety of legal and economic themes associated with this subject. It is beyond the scope of one issue of EBOR to give the subject exhaustive coverage. Our intention is merely to stimulate debate and further research, to provide a point of departure for future studies in EBOR.

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