

PROFESSIONALS IN EMPLOYMENT AND COMPETITION LAW: WHO SHOULD FALL WITHIN THE REACH OF COMPETITION LAW?

BY

Dr Mary Catherine Lucey
UCD Sutherland School of Law

Chairperson: Associate Professor Burton Ong

05TH FEBRUARY 2016 (FRIDAY)

4.00 PM – 5.30 PM

NUS LAW (BUKIT TIMAH CAMPUS)

EU TONG SEN BUILDING, LEVEL 1, LEE SHERIDAN CONFERENCE ROOM

ABSTRACT

The traditional and prevailing view is that employees do not constitute “undertakings” and their collective/bilateral activities fall outside the reach of EU competition law’s Art 101 TFEU which prohibits anti-competitive arrangements among “undertakings”. This paper challenges the soundness of the traditional view and argues that some professionals in employment should be classifiable as “undertakings” and offers specific guidance on identifying such employees.

The traditional view, it will be argued, creates inconsistent immunities from the prohibition in Art 101 TFEU and, also, perpetuates uncertainty about the applicability of Art 101 TFEU to the activities of professional associations whose membership includes employees.

This paper argues that some professionals in employment are classifiable as “undertakings” on the grounds that they are “false employees”. The potential breadth of this category of employees is then sketched by drawing on research on human ownership of capital which challenges the traditional characterisation of employees as dependent labour under the care of their employers. On this basis, a wide range of professionals in employment, extending beyond the traditionally defined liberal professions, are potentially classifiable as “undertakings” and, consequently, their associations as “associations of undertakings” within the reach of Art 101 TFEU.

Adopting this approach would secure the applicability of Art 101 TFEU to anti-competitive decisions of professional associations whose membership includes employees (eg boycotts by association of non-consultant doctors employed by hospitals).

ABOUT THE SPEAKER



Dr Mary Catherine Lucey BCL, LL.M, BL is Associate Dean (Undergraduate Programmes) in the UCD Sutherland School of Law, Ireland where she teaches EU competition law. She has taught EU competition law in Fordham University, New York and, also, to judges from various EU states. She is a Non-Governmental Advisor to the Irish Competition and Consumer Protection Commission

Her PhD thesis, awarded by the London School of Economics and Political Science, examined the interface between EU competition law and the common law Restraint of Trade Doctrine. Her research has been published in international peer reviewed journals including Legal Studies.

REGISTRATION

There is no registration fee for this seminar but seats are limited.
Light snacks and drinks will be provided.

Closing Date: 03 Feb 2016 (Wednesday) 12 noon

For enquiries, please contact Ms Phoebe Oo at clb@nus.edu.sg

NUS Law, Centre for Law & Business

The Centre for Law & Business seeks to enhance and promote research and educational opportunities for faculty, students, legal practitioners and business executives who share a common interest in the fields of Law, Business and Economics. Website <http://law.nus.edu.sg/clb/>

Click [here](#) to register or scan the QR Code:

