

Qianlan WU: Equality, Efficiency or the third way --State owned enterprises and Competition Laws in China, Brazil and India

In the backdrop of transnational law, competition regulation of the BRICS countries have become increasingly assertive. Since 2009, BRICS countries' competition authorities held international competition law conference biannually with an aim to build up cooperation and search for their own theoretical underpinnings. Following the 2011 conference, the BRICS countries have agreed that competition law, among others, should aim to ensure that macro-economic interests, to which the state owned sector plays a central role and that public moral values take precedence over local or individual interests. Hence, for BRICS countries, the competition law does not function as a neutrally applicable legal institution to maximize consumer benefits leading to the maximization of social welfare, as advocated by leading competition authorities such as the US. Nor has it been enforced with a primary aim to improve equality on the market place leading to economic development, as advocated by international organizations. The paper aims to examine the design and enforcement of competition laws against State owned enterprises in China, Brazil and India as case studies. It compares the approaches used by the three competition authorities to achieve macroeconomic interests and development vis-à-vis SOEs. It in particular analyses the political, economic and social factors that help to explain the convergence and divergence of the approaches. The study on the possible third way, other than efficiency or equality - as goals advocated by global competition law norms maker - can help to better understand the impact of the assertiveness of competition laws in BRICS countries on their respective economic development and shed light on studies of global competition laws as well as on law and development.