

## BOOK REVIEW

Alexandr Svetlicinii, *Chinese State Owned Enterprises and EU Merger Control*, Routledge 2020, 144 pages, ISBN: 9780367513207

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The increasing presence of state-owned enterprises (SOEs) on the global markets has prompted challenges in the area of trade, investment and competition policy. SOEs can be found in many countries, with slightly different forms, playing dominant role in domestic market and serving public and social interests. However, the upsurge and high profile of SOEs foreign investment triggered protectionist sentiment, and fuel political backlash in several host States. The distinctive economic development model of China and the factor of state ownership places the Chinese SOEs in the spotlight. Their investments and cross-border mergers and acquisitions in the strategic sectors add an additional level of scrutiny, particularly in Western economies, and result in introducing additional or new regulatory regime to tackle relevant challenges posed by these SOEs. Concerns associated with SOEs conducts are usually rooted in two aspects: political, i.e. the national security threat; and economic, i.e. the market distortion effect. Reciprocity in market access and the 'level playing field' vis-à-vis Chinese companies are two main economic claims raised by the leading economies, i.e. the US and EU. Foreign investment review mechanism and competition law play critical roles in regulating these SOEs in pre-establishment and post-establishment phases respectively.

The regulatory challenges and issues with regard to SOEs have been raised by academic, practitioners and policy-makers. The core of SOE relevant problems lie in whether existing regulations can address issues posed by SOEs and whether new rules and mechanisms should be introduced to deal with it. One contribution which stands out from the literature is the book entitled *Chinese State Owned Enterprises and EU Merger Control*, written by Alexandr Svetlicinii. The book, with an EU regulation focused perspective, tries to illustrate the conceptual and regulatory challenges of applying EU merger control rules in cases involving Chinese SOEs' acquisitions by considering the feature of corporate governance of these entities and regulatory framework provided for their operation in China. The book also explores the difficulties of applying traditional merger assessment tools in the EU and the effectiveness of this regime to address possible anti-competitive distortion caused by SOEs acquisitions. The book ended with a discussion on the proposal for reforming the merger control regime, and EU foreign direct investment screening framework and the white paper for foreign subsidies.

The book is divided into four chapters with a short conclusion part. Svetlicinii provides an analysis of relevant concepts concerning possible concentration raised by SOEs'

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acquisitions under the EU merger control rule, i.e. ‘undertaking’ ‘person’ ‘single economic unit’ in its initial chapter. By assessing relevant SOEs cases in internal EU market, the book emphasises that ‘SOEs do not have any specific regulatory treatment under the EUMR’. The book demonstrates numerous examples contained in the European Commission’s merger assessment practice concerning substantive assessment of the notified concentrations involving SOEs and even non-controlling state shareholdings. Chapter 2 discusses the dominance of SOEs in the national economy of China and assesses two institutional ways through which the Chinese State can exercise ‘control’ over its SOEs, i.e. ownership-based control and political control. The author suggests in this chapter that China maintains firm stance on the separation of the State and its SOEs in international economic law and in its domestic legislation. The anti-monopoly law is no exception, under which SOEs are regarded as ‘business operator’, but the author finds that rare instance of antitrust investigations involving SOEs can be figured out, indicating a ‘selective enforcement’ of the law rather than the inapplicability of it. Chapter 1 and 2 provide readers the necessary background information regarding the EU merger control and Chinese SOEs. Chapter 3 analyses the application of EU merger control rules on economic concentrations of Chinese SOEs, addressing the question of whether the unique feature of Chinese SOEs, be it corporate governance or regulatory environment, can be dealt with by the existing rules, as well as relevant challenges posed on the regime. The author argues that the Commission’s assessment practice demonstrates that ‘wait and see’ flexible approach remains the Commission’s preferred approach, despite the CGN decision as an exceptional case and its option for a ‘worst case scenario’ assessment rather than reaching a definitive conclusion concerning the independence of the SOEs. Chapter 4 contains the prominent regulatory proposals for the reform of the EU merger control regime to exert its efficiency in addressing the anti-competitive distortions triggered by the foreign SOEs on the EU internal market. The author emphasises in this chapter that the Commission did not accept proposals for reforming the existing EU merger control rules; instead, the Commission pursued the establishment of a coordinated and EU level foreign investment screening framework and seek to a distinct legal instrument (i.e. proposal on regulating foreign subsidies) to address the distortive effects of investment and acquisitions by foreign SOEs.

The book provides a concise and comprehensive overview for the reader on the current state of art of EU merger control regime applied on SOEs from member States and foreign countries. A significant advantage of the book lies in the extensive references to EU cases and academic papers concerning SOEs and EU merger control, which makes the content consistent with the theme of this book. This book is a good source for readers who are interested in conducting research on SOEs’ overseas investment, especially in the EU market. From a stylistic perspective, this book is definitely a compelling read. The detailed outline in connection with a clear structure of each section, relatively short length and articulate sub-titles make the reader easily to follow and be able to catch up with the author’s ideas. The writing style of the author makes the reading an enjoyable experience and makes the book an excellent reference guide. The reader can search through the book and find which part of it could be of help and support the reader’s further research or practical work.

This book is a highly recommendable literature and reading materials. It would be benefit from providing an general introduction at the beginning for the reader to know the importance of the topic and discussing the rationale for topic selection as well as a certain

degree of theoretical exploration. These quite minor remarks cannot detract from the positive impression of this book, which is a highly up to date study, and a very substantial work of numerous useful references and cases. This book will be of interest, particularly to scholars and researchers in the field of international economic law, corporate governance, competition law; legal practitioners dealing with foreign investment and cross-border mergers and acquisitions; policymakers designing and considering high-quality regulation on market participants, either private companies or SOEs; investors, especially SOEs seeking better compliance programs in the host State. Due to the book's conclusive coverage of the developments of the case law and Commission's practices with respect to merger control involving SOEs, this book could also offer guidance to students learning EU law.