

State-Owned Enterprises and Competition Policy: The US Perspective

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Concerns About SOEs

- Around half of SOE assets are in non-strategic sectors, favoritism for SOEs prevents fair competition.
- To what extent are SOEs exempt from China's AML? (Article 7)
- Will Chinese SOEs compete against each other abroad?

Concerns About SOEs

- What prevents an SOE from discriminating against a foreign firm?
- When SOEs control certain areas of the economy, will they provide the same service to foreign firms that they do to domestic? (e.g. licenses, charging fees, moving goods)
- Will SOEs decide on procurement between domestic and foreign products based solely on commercial factors?

US Goals on SOEs

- Ensure SOEs actions operating under delegated authority are covered by BIT obligations.
- Prevent parties from imposing domestic technology requirements, or requiring foreign firm to purchase domestic tech.
- Recognize international standards as the norm.
- Clarify what constitute acting “in accordance with commercial considerations” for SOEs.
- Increase transparency.
- Ensure strong dispute settlement provisions.

Competition Policy

- China's AML on par with US and EU, but implementation has been uneven and raises questions.
- MOFCOM has been slow to clear some mergers & acquisitions, and unusual conditions have been placed.
- NDRC pressures foreign firms to lower prices, even if there is no evidence of cartel behavior.

Competition Policy Goals

- More transparency for AML agencies.
- Reveal scope of factors for decisions.
- Fair treatment for foreign firms under investigation.
- Bilateral consultations on competition-related matters between government authorities.

Final Thoughts

- Building mutual trust: BIT important for US-China relationship
- Third Plenum “Decisions” stated intention to widen market access.
- US-China BIT may provide template for a Multilateral Agreement on Investment.