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The Treatment of State-Owned Enterprises under China's Anti-Monopoly and Foreign Competition Laws: Problems and Prospects for China's Economy

by

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Abstract

The uniqueness of the Chinese economic system stems from State-Owned Enterprises (hereinafter SOEs) and their relationships with municipal and state government. SOEs are pillars of the Planned Economy¹ and engines of the Socialist Economy. On one hand, the relationships provide support and convenience for SOEs, which made contributions to China's economy at an early stage; on the other hand, the relationships issues have been labelled as "public authority interfering with market competition". Therefore, after the Planned Economy period, government-SOE relationships are always core concerns for both policy-makers and the wider public, which are concerned to realise equality and freedom in the market economy without privileges for SOEs or interference from municipal and state government.

What measures have China taken to deal with the aforementioned concerns? The State-owned Assets Supervision and Administration Commission (hereinafter called SASAC) began its functions as an investor representative in SOEs when it was established in 2003. State-owned Capital Investment and Operating Companies (hereinafter SCIOC) were established by the State Council with issuance of *Several Opinions of the State Council on Reforming and Improving the State-owned Asset Management System* after 2015. SCIOC is a new measure to continuously decrease interference from administrative power in SOEs and to realize substantial independence of the enterprises themselves. Interactions between municipal and state government and SOEs exists at the development of China's enterprises, governance methods for enterprises and restructuring of SOEs. However, under such interaction, SOEs have been criticized for abusing their dominant position and privileged support from municipal and state government and thus are facing challenges from China's Anti-Monopoly Law (hereinafter called AML). This thesis starts with an overview of general SOE characteristics which includes their history, definition, scope, type and current status under "Socialist Economy with China's Characteristics", and moves on to establish whether the relationship issues influence treatment for SOEs. I will analyze how SOEs operate and restructure under anti-monopoly regulations and other relevant bylaws.

¹ 'Planned Economy' means a type of economy in which government has total control over allocation of resources and determines every aspect from distribution to pricing. China had a Planned Economy from 1949 to 1992.

Court cases indicate that SOEs' nature is not clear enough for foreign competition lawmakers. Are SOEs the "long arms" of China's administration or just competitors in the market economy like any other market participants? Besides, cases indicate that foreign courts start to treat SOEs as independent market participants but in the meantime, they have become more cautious when China applies foreign sovereign compulsion, act of state and international comity as a legal defense in litigation.

China's economic reform has been ongoing for decades, the center of which is adjustment of the government-SOE relationship issue; therefore, the issue will dominate this thesis. Domestic cases and transnational cases indicate that both the relationships and foreign courts' attitudes toward Chinese SOEs are becoming clearer. Under the transitional period of China's economy reform, SOEs and their relationships with municipal and state government still call for scrutiny from the public; only deepening SOE reform and releasing SOEs from administrative interference will improve equality and fair competition; only by changing strategies can SOEs deal with challenges from Foreign Competition Law.

Key-words: State-Owned Enterprises; government-SOE relationships; anti-monopoly law; competition law; State-owned Assets Supervision and Administration Commission; trade association; restructuring

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