

client alert

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EU EXTENDS MERGER CONTROL REQUIREMENT FOR CHINESE SOEs

In a recent decision¹, the European Commission for the first time held that Chinese state-owned entities (“**SOEs**”) active in the same sector are considered as a single undertaking for the purposes of determining whether a merger notification to the Commission is required and making the competitive assessment. While previous decisions had left the question open², it is anticipated that the Commission will adopt this new approach in future cases.

CALCULATION OF CHINESE SOE TURNOVER

The European Commission examines only mergers with an EU dimension. The undertakings to a merger must reach certain turnover thresholds before notification becomes mandatory.

Under the *EDF/CGN* decision, the turnovers of all SOEs active in the energy industry were aggregated to determine whether the thresholds were met. The reasoning behind this approach was that these companies are all controlled by the central State-Owned Assets Supervision and Administration Commission (“**SASAC**”), a state organ under the Chinese central government that oversees Chinese SOEs.

Based on this ruling, future filings to the Commission may be triggered not only as a result of the turnover of the SOE party to the transaction, but also as a result of the turnovers of other Chinese SOEs active in the same sector. This broader scope will increase the likelihood that a merger involving a Chinese SOE will need to be reviewed and authorised by the European Commission before it can be implemented.

SUBSTANTIVE COMPETITIVE ASSESSMENT

In its competitive assessment of the impact of the *EDF/CGN* transaction, the European Commission analysed both CGN’s and other Chinese SOEs’ activities in the energy sector in the European Economic Area and worldwide.

Likewise, for future transactions involving a Chinese SOE, the Commission may take into account the activities of other Chinese SOEs not directly involved in the transaction. While the Commission cleared the *EDF/CGN* merger without imposing remedies, in other cases, an assessment of all the activities of other Chinese SOEs may complicate the competition analysis depending on the circumstances of the case and the markets concerned.

¹ M.7850 - EDF / CGN / NNB Group of Companies. The decision authorised the partnership between Electricité de France (“**EDF**”) and China General Nuclear Power Corporation (“**CGN**”) to develop, construct and operate three nuclear power plants in the UK.

² M.6113 - DSM / Sinochem / JV, M.6082 - China National Bluestar / Elkem, M.6151 - PetroChina / Ineos/ JV, M.6141 - China National Agrochemical Corporation / Koor Industries / Makhteshim Agan Industries

IMPLICATIONS FOR FUTURE TRANSACTIONS

This new approach adopted by the European Commission will not necessarily prevent Chinese SOEs from investing in Europe, as the EDF/CGN decision shows. However, future mergers involving Chinese SOEs will:

- More systematically require a notification to the European Commission; and
- Lead to more complex competition analysis, particularly if the SOE acquiring the European business is not independent and other Chinese SOEs are active in the same sector.

CONTACTS

DAVID BOITOUT

boitout@gide.com

LAURENT GODFROID

godfroid@gide.com

SEGOLENE PELS

pelsy@gide.com

CHEN XI

chen.xi@gide.com

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