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Competition policies and legislation regarding the European-Asian economic corridors

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Abstract. *Competition policy has become an important issue in the context of global trade and capital liberalisation processes over the past decade. The set of rules is established on several levels (at national level or at group level in the case of trade or financial unions, but also taking into account the sectors of activity taken individually). The average level of duty on imports decreased significantly and various non-tariff restrictions were removed. However, trade barriers put in place by private parties have remained largely unaddressed, even though these trade practices can distort trade and investment flows and lead to conflicts between countries. Competition policy refers to anti-competitive business practices (sometimes referred to as restrictive business practices). Competition laws were first introduced in the United States and later in European countries. Latin American countries have recently adopted competition laws. The subject is complex and interdisciplinary. It brings together the areas of international law, company law, industrial organisation, innovation policy, transnational corporations, international trade and transport. Competition policy aims to prevent undertakings from reducing the efficiency of market mechanisms. The aim is to discourage undertakings from forming cartels or monopolies and abusing a dominant position, and to ensure that mergers and acquisitions are subject to adequate control. These practices often limit competition and remove incentives for excellence, innovation, price reductions and improved customer service. Anti-competitive practices can also act as barriers to trade, distorting trade and investment flows. They can reduce global prosperity and lead to conflicts between countries. Therefore, some kind of international agreement may be needed to prevent or remove these new types of trade barriers.*

Keywords: competitiveness, Asian, development, policies, regulation.

JEL Classification: D70, D78, N14, N15, N25.

1. Introduction

The origins of modern competition law date back to the passage of the Sherman Antitrust Act by the United States in 1890. This was followed in 1914 by the Clayton Antitrust Act, which dealt with price discrimination, exclusive transactions, interconnection of directorships, and takeovers of competing companies through stock purchases. The Federal Trade Commission Act was also passed that same year, establishing the Federal Trade Commission (FTC) (Chaisse, 2018). Antitrust enforcement is done in conjunction with the Department of Justice's Antitrust Division, which can pursue certain antitrust violations by filing criminal cases. In addition to these federal laws, most states also have antitrust laws enforced by attorneys general. However, private enforcement accounts for the majority of antitrust litigation in the United States, where competitors, suppliers and customers seek compensation for harm caused by anticompetitive conduct. European Union competition law is codified in Articles 101-109 of the Treaty on the Functioning of the European Union (TFEU). The Treaty includes prohibitions on agreements the object or effect of which is to restrict competition, abuse of a dominant position and State aid. In addition to this main instrument, other rules, guidelines and notices have been issued to regulate other areas, such as mergers and mergers. The main enforcing authority of these rules is the European Commission, which is responsible, among other things, for establishing the facts, taking action against infringements and imposing sanctions. Actions for annulment of Commission competition decisions are first brought before the General Court of the European Union, while appeals are heard before the Court of Justice (Dür et al., 2023).

The dynamic nature of competition law is best seen in how policy considerations have evolved over time. The relative brevity of the Sherman Antitrust Act and ambiguous legislative intent have led to differing legal interpretations of its text. Initially, courts and political actors were concerned about protecting small businesses from anti-competitive business practices by large companies (Chaisse, 2018). Today, consumer welfare is the dominant yardstick, with a narrower focus on price. Initial proponents of consumer welfare were primarily concerned with maximizing wealth or satisfying consumer desires. Although this approach has gained wide acceptance, it remains controversial, especially with regard to digital markets (Dür et al., 2023). A similar debate has also influenced the development of competition policy in the EU. Many competitive cases decided in Europe are based on the Freiburg School's double conviction that legal norms are necessary to constrain the economic power of large firms, while, at the same time, governments should not be given general control over market behaviour. While this approach has benefited small and medium-sized enterprises, it has also been criticised for focusing on protecting competitors rather than the competitive process itself (Franchino et al., 2022).

2. Literature review

Although competition law in these jurisdictions is based on different values and objectives, it generally seeks to prevent the same types of behaviour, namely anti-competitive agreements, abuse of dominant position and anti-competitive mergers. However, competition laws typically differ in the methods, enforcement methods and promotional tools available to agencies to enforce their antitrust laws. The EU has an administrative system that fines companies that break the law, while the US has both criminal and civil enforcement. The Department of Justice enforces criminal enforcement measures and imposes fines and prison sentences on individuals. However, EU Member States are taking individual responsibility more seriously. Some countries have started imposing criminal sanctions for certain cases of anti-competitive behaviour Private enforcement is also becoming an important factor in antitrust enforcement in other jurisdictions, such as China. M&A review procedures are also applied differently around the world. Merger control systems may be mandatory or voluntary. A regulation is binding if reporting of transactions to the relevant competition authority is mandatory. In such a case, the parties to a transaction are legally prevented from completing a transaction until they receive merger authorisation. In a voluntary system, merging parties are not prevented from entering into transactions and completing transactions before applying for and receiving approval for the merger (Dür et al., 2023). However, there is a risk that the merging parties will be investigated and provisional measures will be imposed on the transaction. Many regimes use mandatory merger control to effectively deter anti-competitive transactions. However, some regimes with young economies or small powers consider it economical to implement a voluntary reporting system. The US, EU, China and Canada adopt binding merger control regimes, while the UK remains one of the few countries with a voluntary framework (Franchino et al., 2022).

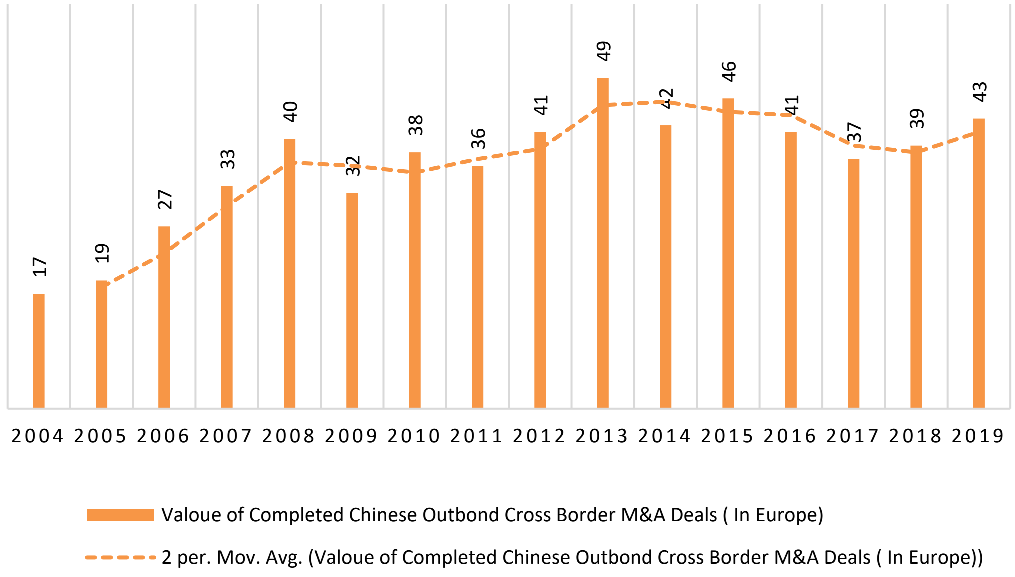
Another point of divergence concerns government policies restricting competition. In some jurisdictions, competition authorities receive additional mandates to review laws or regulations that may distort competition in certain markets. In the EU, the State aid regime is the most effective tool to prevent state restrictions. Subject to certain exceptions, EU law prohibits any aid granted by an EU Member State, directly or indirectly, to a particular undertaking or to the production of specific goods and services that distorts or threatens to distort competition and affects intra-EU trade (Chaisse, 2018).

Apart from World Trade Organization subsidy treaties and free trade agreements that inherit and complement these subsidy rules, there are no domestic subsidy control systems in the US, Canada and China (Djankov and Miner, 2026). Finally, Chinese competition law prohibits administrative authorities from abusing their administrative powers by eliminating or restricting competition through various means, with a focus on local administrative abuses. It prohibits any exercise of administrative powers that (1) hinder the free movement of goods between regions; (2) participation of parties located elsewhere in the PRC in local calls for tender; or (3) local investments by parties located elsewhere in the PRC. Differences in policy objectives and enforcement tools available to regulators have profound implications for the degree with which jurisdictions can enforce their competition rules. EU regulators are generally considered to take a more aggressive stance than other authorities when examining similar issues (Amighini, 2018). This has become more evident in recent years as the EU has taken action against the growing market power of big tech companies. Trade remains the most problematic aspect of EU-China economic relations, although challenges need to be addressed in a number of areas (Franchino et al., 2022). There is almost no trade in services between the EU and China, but the value of products traded from Asian areas is increasing (it is mainly discussed about existing products, stocks and fixed assets from China) (Dür et al., 2023). The added value of Chinese exports and competition on third markets are increasing. In terms of investment, while EU companies have attracted more foreign direct investment to China than vice versa, Chinese investment in Europe is growing and largely focused on technology (Chaisse, 2018). This raises the question of whether the EU should fear losing its technological edge, especially if Chinese state-owned enterprises could distort competition not only in China but also abroad through acquisitions. Finally, looking at the importance of the BRI from a European perspective. The BRI offers potential trade gains for Europe by improving physical connectivity with countries along the route to China, but also presents challenges for the EU. The biggest challenge is China's growing soft power, which is felt in the EU's neighbourhood and even in a growing number of EU countries. Strengthening EU countries' bargaining power in relations with China requires a more unified approach to managing EU-China economic relations (Djankov and Miner, 2026). The EU has adjusted its trade defence rules, in particular its methodology for calculating dumping margins. This is particularly relevant for the EU's trade policy stance towards China, as the EU has removed specific rules for calculating anti-dumping duties for China and other non-market economy countries. A detailed analysis of the difference between market economy status (MWS) and market economy status (NMES) goes beyond the scope of this chapter.

3. Data analysis

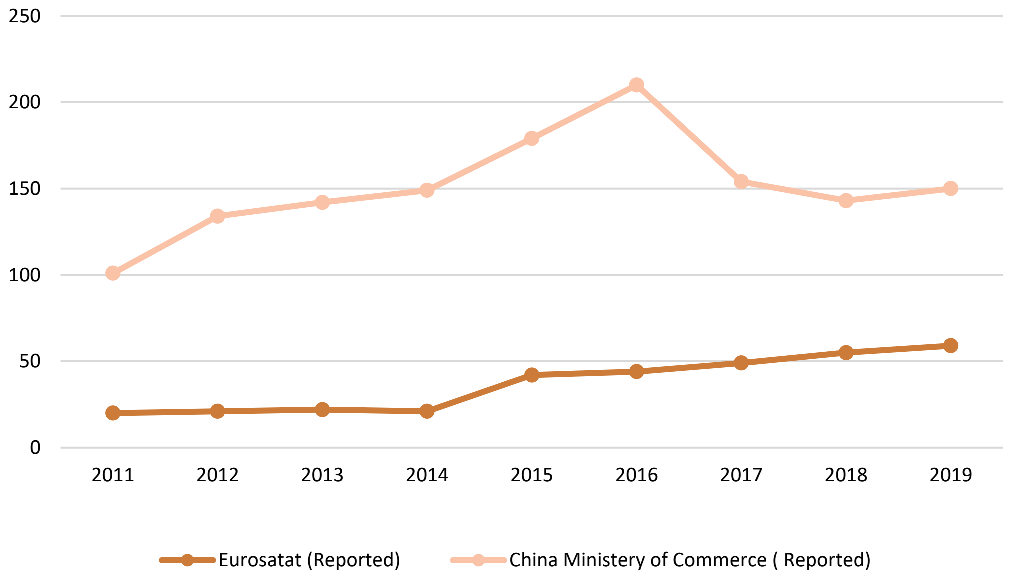
These distortions are similar to those that previously characterized NMEs and include (among others) state presence in companies, distorted wages and preferential access to finance for certain companies. With such distortions, the way anti-dumping duties are calculated is similar to the old NMES methodology (Chaisse, 2018). The main difference between the old and the new methodology is the change in the burden of proof. Under the old methodology, China was treated as NME by default and normal value was established using third country prices. Under the new methodology, the European Commission must demonstrate that there is a significant distortion in order to base the determination of normal value on third country prices. This decision is based on country reports assessing individual sectors and factors of production (Amighini, 2018).

Figure 1. *Completed Chinese outbond cross border M&A transactions in Europe (mil. Euro)*



Source: Authors own processing of data from OECD.

Figure 2. *Direct investments in the UE made by China (US/BN)*



Source: Authors own processing of data from Natrix (European Central Bank)[(1)]

However, there have been concerns that the seemingly one-way flow of capital that characterises ambitious European companies entering the Chinese market is starting to soften. The decline in EU direct investment in China seems all the more worrying given that China's economy continues to grow rapidly and given the size of its market. However, the situation may not be as serious as it seems on the surface. First, total foreign direct investment in China continued to grow (Djankov and Miner, 2026). The decline in direct investment in the EU and the US was largely offset by increased foreign direct investment in mainland China. As an investment hub, China has always played an important role in channelling capital flows to and from Asia. Two possible explanations come to mind for the recent increase in foreign direct investment in Hong Kong. First, foreign investors redirect more of their foreign direct investment to China to transfer to the mainland (Chaisse, 2018). Second, Chinese investment re-enters the mainland through China for fiscal or other reasons (round-tripping). Due to the uncertain global environment in recent years and strict capital controls, more and more multinationals are moving their investments through offshore centres, with China being a natural choice for entering China. Finally, the fact that returns on investment in China are falling very rapidly is another important reason why European companies are no longer so interested in the Chinese market. Looking not only at the size of EU FDI in China, but also at its components, it is important to note that most EU investment in China is concentrated in manufacturing (Franchino et al., 2022). A much smaller share is China's service sector (Consoli et al., 2023).

The economic benefits of BUILDS AND ROADS (BRI) agreements are expected to continue to increase as free trade agreements between China and countries other than the European Union can be signed to further improve the institutional, economic and business environment in all countries involved (Pavlićević, 2019). Over time, the thematic and political focus of the BRI has evolved and there are other concrete projects underway and/or under development that go far beyond large-scale physical infrastructure projects along the Silk Road Economic Belt and the Maritime Silk Road. This demonstrates China's ability to respond politically to emerging economic challenges facing China and the world (Amighini, 2018). A key relevant project is China's commitment to the BRI countries to build a Digital Silk Road. Facing the ongoing fourth industrial revolution and the challenges of industrial restructuring, China has launched a new "Made in China 2025" industrial policy, which aims to make China a world leader in key technologies by 2025 and one by 2045 to become a technological superpower. Firstly, one of the ten priority areas of the initiative is modern information/digital technologies, such as big data, artificial intelligence, robotics and smart manufacturing. Subsequently, digital technologies have also been explicitly integrated into China's BRI strategy (Consoli et al., 2023). The proposed goal is to build a Digital Silk Road. This would not include infrastructure, but rather cooperation between China and other BRI countries to develop and deploy modern informational/digital technologies that would support innovation-driven development in the countries (Djankov and Miner, 2026). Given China's growing influence and the importance of infrastructure for sustained economic growth, the BRI has attracted the attention of EU countries since its initial announcement. To some extent, the BRI complements existing official development assistance programs from institutions such as the World Bank and the Asian Development Bank, which provide financing for infrastructure projects in less developed countries. Although the impact is always somewhat controversial, in the past most of these existing development assistance plans have generally been well received, especially given that global organisations have higher standards than local authorities in developing countries when selecting projects. The BRI stands out in this regard. Initially, it was perceived quite positively, but recently it has been seen in a much more negative light (Franchino et al., 2022).

There are several reasons for international concern, starting with the circular nature of the BRI, which differ significantly from the usual multilateral approach to development assistance that the West has developed. This perception has not changed much since the establishment of the Asian Infrastructure Investment Bank (AIIB), which aimed to attract global players, including EU Member States, to participate in BRI projects and strengthen the multilateral nature of the initiative. The other international concern about the BRI is China's economic model of state capitalism and China's need to find new markets for its excess capacity. Overcapacity is a natural consequence of the Chinese model, which relies on overinvestment to sustain growth and is reinforced by state industrialisation and support for young industries (Djankov and Miner, 2026). Moreover, without market principles, beneficiary countries risk engaging in too many projects that could be unprofitable in the long term and raising doubts about the sustainability of BRI projects (Mallouppas et al., 2022). There has already been some controversy about debt pitfalls related to some BRI projects, such as Sri Lanka's failure to repay loans granted by China for the construction of Hambantota Port and the subsequent 99-year lease granted to China instead of payment. The situation has been aggravated by Most BRI projects are long-term and subject to great uncertainty, which inevitably entails a high level of risk. In addition, due to the one-sided nature of the BRI and the lack of global cooperation, most projects do not meet the transparency standards of the Organisation for Economic Co-operation and Development, for example (Mallouppas et al., 2022). Although China has worked to establish a multilateral institution, it has not fully addressed external concerns. The situation has become more complicated due to the Chinese growth model, with a strong governmental role and weak domestic institutional development. The lack of trust in the BRI poses challenges. However, sentiment started to turn less positive after 2017 and the more negative trend was particularly strong for the EU (Parusheva and Aleksandrova, 2021). In addition, there is no significant difference in the perception of the BRI between countries that are officially involved in the BRI and those that are not. Although the BRI is an important strategy for building China's soft power and expanding Chinese influence around the world, it has not received full recognition around the world. EU countries appear to be more positive about the BRI than non-EU European countries, although the latter group consists of more direct beneficiaries of the BIS, including Ukraine, Belarus and Bosnia and Herzegovina. More specifically, the Netherlands, Portugal and Bulgaria are the most positive EU countries with regard to the BRI. As the largest EU economy to join the BRI, Italy has an above-average positive perception of the BRI. Opinions about the BRI are more negative in Belgium, Ireland and France (Amighini, 2018).

The huge infrastructure investments China has encouraged under the Belt and Road Initiative (BRI) have the potential to alleviate bottlenecks in cross-border transport. Among the many benefits of improved connectivity, easier trading stands out. The idea that improving transport infrastructure should promote trade is very obvious (Mallouppas et al., 2022). However, it is less certain whether these benefits can accumulate for all countries, and in particular which countries will gain and lose the most, depending, among other things, on their proximity or distance from improved infrastructure. In the next subsection we will summarize several scenarios analyzed in the paper. Our results showed that reducing transportation costs can actually increase international trade (Parusheva and Aleksandrova, 2021). A 10% reduction in rail, air and maritime costs would increase trade by 5.5% on average. While the BRI is currently focused on building infrastructure, it could evolve in other ways. An obvious objective would be to remove trade barriers. The Chinese authorities have started to consider free trade agreements with BRI countries (Minghao, 2019). As many EU countries are not directly involved in the initiative and China is not in a position to conclude a free trade agreement with all EU countries, the chances of the EU benefiting from a comprehensive free trade agreement are slim (Pavlićević, 2019). A scenario in which the BRI focuses on trade barriers is less attractive in terms of trade benefits than one in which only transport infrastructure is built. Indeed, the EU would no longer benefit from the Chinese-funded BRI infrastructure and would be denied access to a very large free trade area even beyond its borders (Parusheva and Aleksandrova, 2021). A third scenario, where transport infrastructure is improved and a free trade agreement agreed between BRI countries, would be relatively neutral for the EU as a whole, although there would be winners and losers within the EU. The analysis has particular policy implications for the EU (Consoli et al., 2023).

While the BRI is currently focused on building infrastructure, it could evolve in other ways. An obvious objective would be to remove trade barriers. The Chinese authorities have started considering free trade agreements (FTAs) with BRI countries. As many EU countries are not directly involved in the initiative and China is not in a position to conclude a free trade agreement with all EU countries, the chances of the EU benefiting from a comprehensive free trade agreement are slim (Minghao, 2019). As can be imagined, a scenario in which the BRI focuses on trade barriers is less attractive in terms of commercial benefits than one in which only transport infrastructure is built. Indeed, the EU would no longer benefit from the Chinese-funded BRI infrastructure and would be denied access to a very large free trade area even beyond its borders. A third scenario, where transport infrastructure is improved and a free trade agreement agreed between BRI countries, would be relatively neutral for the EU as a whole, although there would be winners and losers within the EU. The analysis has particular policy implications for the EU (Amighini, 2018).

Although EU-China trade has increased significantly in recent decades, bilateral investment has remained moderate. Chinese direct investment (FDI) in the EU has only recently increased significantly and there is growing uncertainty about whether this trend can continue. European direct investment in China continued to stagnate, partly due to increasingly difficult conditions for European companies in the Chinese market.

4. Conclusion

This is particularly relevant in the EU-China context. Both economies agreed to pursue a bilateral investment agreement that better protects investment, improves market access and addresses key regulatory challenges, including transparency, licensing and permits. While most of these issues are covered by existing bilateral agreements, an EU-wide BIT with China provides a new opportunity to further reduce barriers to investment and boost foreign direct investment (Minghao, 2019). In addition, not all EU countries have BITs with China. Given the rapid growth of Chinese investment in European Union countries in recent years, the new agreement also offers significant advantages for China (Consoli et al., 2023). Market access for EU investors in China is restricted. China is one of the most restrictive countries in terms of market access for foreign investors. Beyond market access, EU authorities fear possible discrimination against EU investors operating in China, including explicit or implicit preferential subsidies to certain companies. Such discrimination could also be a factor supporting Chinese companies to operate in Europe. While market access is a more general issue, potential discrimination through implicit or explicit subsidies is linked to the role of Chinese SOEs (Ntousas and Minas, 2021).

The EU argues that state-owned enterprises are exposed, at least partially, to more favourable market conditions than their private competitors due to the explicit or implicit state support they receive, which undermines market efficiency. In addition, there are disagreements on how to resolve disputes between investors, especially those involving state-owned companies (Ntousas and Minas, 2021). These concerns raise the spectre of discrimination not only against European firms operating in the Chinese market, but also against Chinese foreign investment in Europe, as a significant proportion (mostly until recently) comes from SOEs (Consoli et al., 2023). Therefore, understanding the behaviour of Chinese SOEs, including how they differ from their European counterparts, is central to any subsequent negotiations on the EU-China BIT.

Note

[1] The difference between the values comes from the fact that in Eurostat the values are recorded at the end of the process of receiving/implementing/absorbing the money, and China methodically quantifies the amounts of money from the moment the investments were sent.

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