

# State Owned Enterprises Under the EU Merger Control Rules

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## Introduction

- EU Merger Control Regime:
  - transactions among undertakings involving change of control and reaching certain thresholds are subject to filing obligation to the EU Commission.
  - before clearance is obtained, the transaction cannot be closed.
  - the EU Commission can impose conditions or prohibit the transaction.

## Introduction

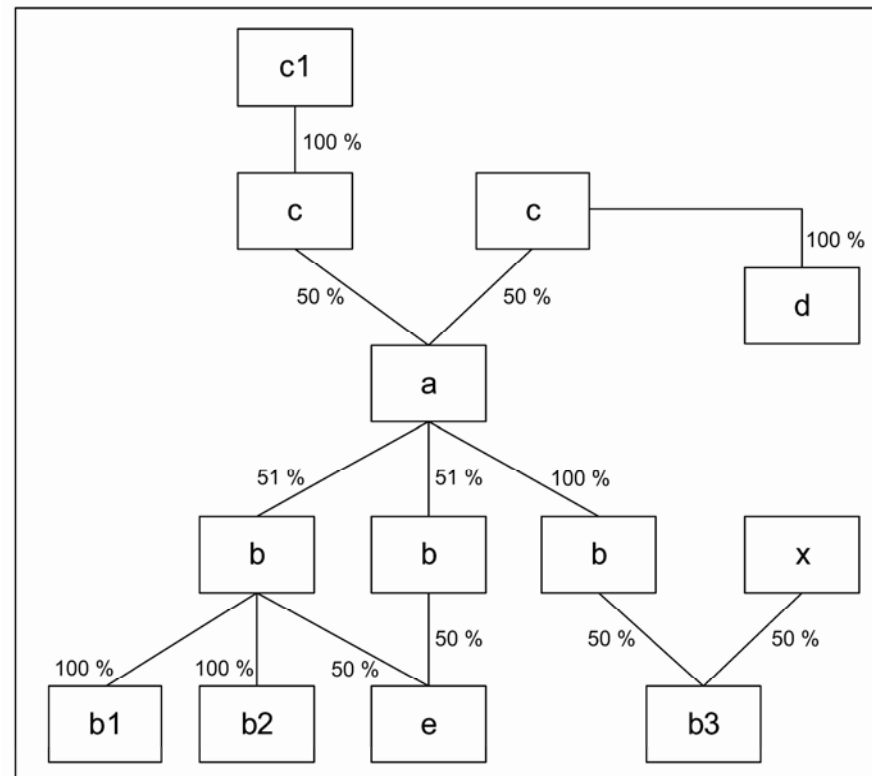
- Type of transactions: “change of control”.
- Control can be obtained by:
  - acquiring majority share  
e.g. Company A acquires 60% share of Company B.
  - acquiring minority share with special rights  
e.g. Company A acquires 30% share of Company B with veto rights on budget.
  - via other methods  
e.g. Company A concludes a licensing agreement with Company B, according to which Company A can decide the price and quantity of the products produced and sold by Company B.

## Introduction

- Thresholds: turnover based and EU dimension
  - turnover: revenue minus certain tax.
  - the location for the transaction is irrelevant.  
e.g. a transaction between two American companies can also trigger filing obligation in the EU.
  - whether the undertakings have entities in EU is irrelevant.  
e.g. a merger between two Chinese companies which only generate income from the EU through exporting without any sales entity.

## Definition of Undertakings

- Control:
  - determine which the undertakings concerned are, so as to calculate the turnover.
  - also relevant when evaluating the substantive competition issue.



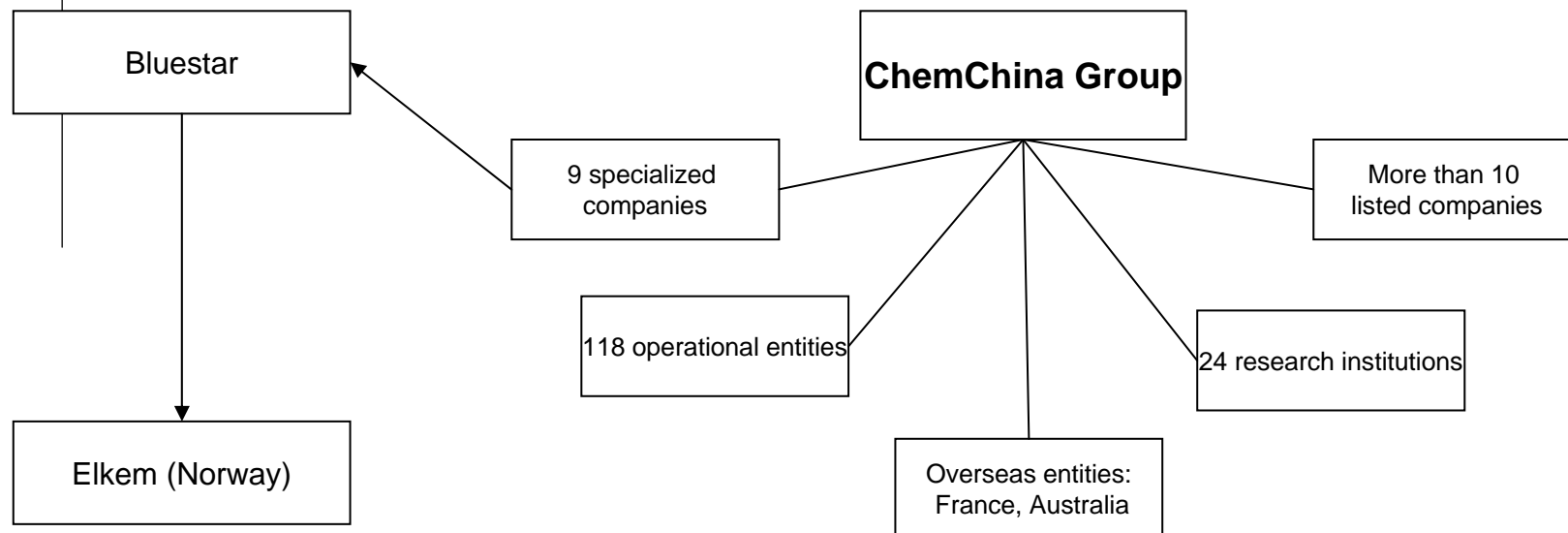
## Definition of Undertakings

- Commission Consolidated Jurisdictional Notice includes some guidance on SOEs:
  - SOEs are different as by definition the State holds all/majority shares.
  - Allocation of turnover: independent power of decision.
  - A Concentration versus internal restructuring.

## Definition of Undertakings

Example of a Chinese SOE:

- Situation 1: if Bluestar is considered as the undertaking to the transaction.
- Situation 2: if ChemChina Group is considered as the undertaking to the transaction.





## SOE in Europe

- Some Member States have SOEs, e.g. France, Italy, the Netherlands.
- EU precedence: more with SOEs in Europe.

## China Co?

- Central SOEs and local SOEs
- Sectors relating to raw material
- History of coordination







- Questions?