State Owners in the Internal Market of the European Union: Competitive Risks and Rule of Law

Bartha Ildikó
University of Debrecen, Faculty of Law, Debrecen, Hungary

Horvath Tamas M.
University of Debrecen, Debrecen, Hungary

Abstract: State-owned enterprises (SOEs) are among the largest market players in both domestic economies and global markets and their importance increased in recent decades. In developed countries, this trend is a part of the functioning of a normal market economy as SOEs serve as an instrument to reduce market failures. However, the existence of such companies may also lead to undue competitive advantages, as the case of some Chinese monopolies and certain Central and Eastern European countries in democratic backsliding shows. This study analyses this issue in the context of the relevant European Union (EU) rules, and seeks to highlight the potential threats that state ownership may pose to competition in the EU internal market.
Governments acquire the majority of shares in companies for different reasons. One is to ensure the uninterrupted provision of public services or state ownership may also be motivated by environmental concerns, that is to find an effective instrument to fight against climate change. Similarly, the fulfilment of other tasks "for the public interest" (e. g. keeping alcohol consumption or gambling within limits) may also be accepted. However, state ownership justified by such reasons may also be used for the purpose of serving any particular economic interests. As a result, compliance of the operation of SOEs with EU internal market and competition rules is often questioned, and disputes of this kind are increasingly being brought before the competent EU institutions (i.e. the European Commission and the Court of Justice of the European Union).
The hypothesis of the research, which also applies to the EU internal market in a global context, is that the greater the involvement of national governments as owners of companies, the greater the risk of a reduction in the intensity of competition. This risk is even greater in Member States (such as Hungary) where the democratic control of a given political regime is unsatisfactory and the necessary guarantees to ensure that state-owned enterprises do not gain undue market advantages are lacking. Moreover, in these countries, this risk is further increased by the exceptional rules introduced in response to crises (emergency regulations, special taxes, etc.).
The study is based on comparative legal research by using qualitative and, in part, quantitative methods. The findings are derived from a statistical analysis of the ownership structure of state-owned public enterprises based on data from corporate databases and a primary analysis of the relevant case law of the European Commission and the Court of Justice of the European Union. We will also present a case study of Hungary, where there are serious problems with the rule of law, some of which are linked to the operation of state-owned enterprises.