Keynote Address by Commissioner Edith Ramirez
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Parallel antitrust investigations across jurisdictions are nothing new. But we are now entering an unprecedented era of regulatory interdependence. Last year, Western Digital and Seagate Technology, two U.S.-based high-tech companies, each entered into agreements to acquire another player in the global hard disk drive business. The proposed transactions were announced around the same time, and at least eleven jurisdictions, including the Federal Trade Commission here in the United States, worked together as each of us determined whether they presented any competitive concerns.

No prior transaction has involved cooperation by such a large number of competition agencies. A decision reached by any one jurisdiction could have had significant ramifications for the others, so a high level of coordination was crucial. Although the degree of cooperation with each agency varied, as did the substantive issues discussed, it was critical to keep each other informed of our progress. And, while not everyone reached the same result—due at least in part to different facts in each country—engagement with our counterparts enhanced our review and made the process more effective and efficient, including for the parties.

With over 120 antitrust agencies worldwide, multi-jurisdictional reviews will only become more common. As a result, we all need to think about the implications of these reviews for U.S. enforcers, businesses, and the consumers who buy their products.

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In addition to structural changes, the reform significantly modifies the merger review process. The primary change is the adoption of a mandatory pre-merger review system to replace the previous post-merger system. Under the old law, parties were free to consummate a merger without first obtaining antitrust approval.[4] Now mergers that meet the filing thresholds must receive CADE's approval before closing.[5]

Moving to a pre-merger system will allow CADE to approve or deny a merger without needing to unwind a consummated deal. No longer will a company have to face uncertainty about whether it will be required to divest an acquired asset years after consummating the transaction. It should also lessen CADE's reliance on behavioral remedies, increase the effectiveness of relief, and bring Brazil further into the antitrust mainstream. The shift may also help expedite the review process by providing parties incentives to cooperate with CADE to accelerate clearance. We worked closely with all three agencies during the crafting of the legislation to share our experience, and while there are still some issues that need to be worked out, I think everyone hopes that the new pre-merger system will be a significant improvement.

Even with these positive changes, some challenges remain. Although designed to expedite the review process, the law does not provide any consequences if CADE fails to meet its statutory deadlines. Nor does it provide deadlines for completing the various stages of merger review or a time frame for clearing transactions that do not raise competitive concerns, something akin to the 30-day preliminary investigation period in the United States. It also fails to streamline the remedial process, which could delay final approval of a deal. Finally, questions remain about how to interpret the new filing thresholds and what deals they cover. While some of these issues should be resolved quickly, others may linger for some time.

Despite these challenges, I am confident that these reforms will usher in a new era in Brazilian antitrust enforcement. Brazilian antitrust authorities have shown an admirable willingness to acknowledge weaknesses in their system and to engage with peer agencies to address them. The FTC, both directly and through international organizations like the International Competition Network, has been at the forefront of these efforts, including through the antitrust cooperation agreement between the United States and Brazil signed in 1999, technical assistance, and the routine dialogue we have maintained over the years. The FTC will continue its efforts to ensure that the new CADE fulfills its promise to become a world-class enforcement agency, a real possibility so long as the political will in Brazil remains committed to the benefits of sound antitrust enforcement.

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[4] Law No. 8,884, Art. 54

[5] Law No. 12,529, Art. 37. On May 31, 2012, two days after the new law took effect, the Ministry of Justice and the Ministry of Finance issued a joint statement increasing the filing thresholds. The filing thresholds now require reporting if one company's reported revenues in Brazil are at least R$750 million (approximately US$375 million) and the other party had Brazilian sales of at least R$75 million (approximately US$37 million). *See* Melissa Lipman, *Brazil Merger Filings to Drop as*

II. China

Let me now turn to China. Currently the second largest economy in the world, China has been a key player on the global economic stage for some time. It is now also emerging as an important figure in the antitrust world, despite being a newcomer to the scene. China's Anti-Monopoly Law (AML) took effect in 2008 and led to the creation of three antitrust enforcement agencies: the Anti-Monopoly Bureau of the Ministry of Commerce (MOFCOM) to conduct merger reviews and two other agencies to deal with conduct matters.

The passage of the Anti-Monopoly Law was seen by outside observers as a potentially promising development. But there was also deep concern that enforcers would not be independent from the larger Chinese government and that the law might be used for purposes other than the promotion of competition and consumer welfare.

These fears were heightened by MOFCOM's decision in March 2009 to block Coca Cola's proposed $2.4 billion acquisition of Huiyuan Juice Group, the owner of a highly popular Chinese juice brand. And MOFCOM's short public statement, providing little insight into its reasoning, did little to allay those concerns. But despite this somewhat controversial start, our impression is that this young agency is working hard to deal with the daunting procedural and substantive issues it faces in reviewing major international transactions.

Two recent decisions have also helped to calm concerns that the merger laws would disadvantage foreign investors. In November 2011, MOFCOM approved the $584 million acquisition of a controlling interest in Little Sheep Group, the Chinese owner of a popular chain of Mongolian hot pot restaurants, by Yum! Brands, the Kentucky-based owner of the KFC, Taco Bell, and Pizza Hut chains. A month later, MOFCOM cleared Nestlé's purchase of a 60% stake in one of China's largest candy producers.[6]

These decisions have helped to quell some of the worst fears expressed by skeptics. At the same time though, MOFCOM has made decisions that are inconsistent with other agencies, including by imposing remedies that would be unusual here in the United States.

As an example, let me turn back to the hard disk drive cases I discussed at the start. Of the jurisdictions that examined the Seagate transaction, only China imposed conditions. In December 2011, MOFCOM announced it would require Seagate to operate the Samsung hard disk drive business as a separate competitor for at least a year. MOFCOM imposed similar conditions on Western Digital in March, apparently concluding that the divestiture of Hitachi's 3.5 inch desktop hard disk drive assets required by the FTC and the European Commission was not enough.

What may be at least as pressing a concern to the business community, however, is the timing of merger reviews. As MOFCOM itself has acknowledged, it takes longer to clear transactions that do not present significant competitive concerns than it should. In the United States, about 96% of transactions are cleared within the first 30 days, and only 4% face a second request. By comparison, over 40% of MOFCOM's merger investigations proceed to Phase 2.

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[6] *See* Jim O'Connell, *The Year of the Metal Rabbit: Antitrust Enforcement in China in 2011*, ANTITRUST, Spring 2012, at 68-69.

The lengthy reviews may be driven less by substantive concerns than by resource constraints. Agency staff is showing growing sophistication, but they are still learning and gaining valuable experience. At the same time, the volume of cases they are handling has risen dramatically, so the delays are hardly surprising. MOFCOM's leadership understands that this is a problem. In a press conference in December, the head of MOFCOM's Anti-Monopoly Bureau committed to a review of its merger process in an effort to make it more efficient.[7] This will undoubtedly continue to be an ongoing challenge, especially given the small size of the agency, which has a staff numbering only in the dozens.

For me, one of the most encouraging signs out of China is the willingness of Chinese regulators to engage in an open and extensive dialogue with foreign experts, including the FTC and the Department of Justice.

How these and other issues play out remains to be seen. But there is no question that the Chinese antitrust agencies, barely approaching their fourth full year, have made substantial progress in a short period of time.

III. India

India is another relative newcomer to the antitrust world. India passed a new and more economically-grounded Competition Act in 2002 to replace an earlier outdated law. But before the Act came into full force, the constitutional validity of the new enforcement agency's composition and authority was challenged

Affairs invited us to make comments on two drafts of India's National Competition Policy, and CCI began a dialogue with us from the day it opened for business.

We have also provided technical assistance dating back to 2004, when CCI had only a skeleton staff. These efforts increased substantially after the Competition Act took effect and CCI hired more personnel. Over the past two years alone we have conducted

V. Conclusion

If there is a common theme among the BRIC countries, it is one of steady progress under sometimes challenging circumstances. Challenges still lie ahead, particularly amid new signs that the BRIC economies are slowing.