

Illuminating the Story of China's Anti-monopoly Law

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Setting the Stage

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and

problem, as well as interventions by the government to set prices for items such as staple consumer products. In addition, he noted that the imposition of hurdles to market access is another major economic problem, which the AML on its own cannot address.

In addition to the showcase, other panels offered more revelations by Chinese officials and scholars on some controversial issues, such as the panel on IP rights and antitrust. Again demonstrating a commitment to fostering open debate on these issues, the panel included a diversity of viewpoints, from SAIC officials and Chinese and American scholars to representatives of U.S. enforcement agencies, law firms, and companies that have strong IP interests.

Yang Jie, Director of the Anti-monopoly Commission, noted that the government is committed to fostering open debate on these issues, and that the government is committed to fostering open debate on these issues.

when evaluating the prices charged for licensing IP. Other panelists, such as Roy Hoffinger of Qualcomm,

er number of large, globally competitive enterprises.¹⁶ Although consolidation itself, if driven by market forces, may not necessarily be antithetical to competition values, this effort by government to spur consolidation in key industries for purposes of global competitiveness of Chinese industries certainly raises questions whether the free market or the government will be the primary driver of the Chinese economy, at least in these particular industries.

What Will the Sequel Be?

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vidual agencies at the senior or working level.²³ In addition to the MO , the .S. agencies and MOFCOM have developed a *Guidance for Case Cooperation*,²⁴ which establishes a framework for cooperation in merger cases. Further, the Chinese agencies have MO s or similar arrangements with the E and the .K. Office of Fair Trading, among others.²⁵ Officials from MOFCOM, NDRC, SAIC, and other Chinese government entities are devoting substantial resources to studying foreign competition enforcement through formal technical assistance and exchange programs, secondment of personnel to foreign agencies, and direct exchanges with foreign practitioners, scholars, and industry groups.

In my keynote remarks, I commended the Chinese competition agencies for their international engagement thus far. I also urged them to become members of the International Competition Network and contribute their learning to the group in helping us shape best practices, as well as to continue bilateral engagement with other agencies on merger reviews and other investigations. This engagement permits us to move together to become better competition enforcers and to protect the interests of consumers around our increasingly interconnected world.

Much of what took place at the forum makes me hopeful of continued progress by the Chinese competition authorities in several of these areas. The most promising is transparency, given the high level and open debate, the active inclusion of critical viewpoints from within China and abroad, and the willingness to focus on controversial areas. The Expert Advisory Board and especially Pro

Chinese government's suppression of market-oriented viewpoints during the Cultural Revolution and the personal experiences of forum participants, most notably Professor Wu. Despite this emphasis on moving away from a planned economy and toward a market system, the discussions still revealed a continuing impulse to factor in effects on Chinese industry and employment rather than focusing simply on efficiency and consumer welfare, as well as ongoing support for more direct government intervention in the market.

This raises a final question what can we outside observers do to encourage a satisfactory sequel to the first five years of the AML. I believe that the open debate at the forum likely reflects a conversation going on behind the screen in China, with some voices arguing for increased market orientation and others favoring a hybrid system that includes greater government involvement in the market. If so, it is vital to help support those within the Chinese antitrust community who are advocating for a market system and to understand the challenges they face in their efforts. Thus, the most important thing that we in the audience can do toward ensuring a good sequel for the Chinese antitrust story is to pursue patient cooperation and diligent work on both sides when engaging the Chinese agencies, offering them advice and support, and advocating for a competition-based enforcement approach. ●