



As you know, weather prediction is famously difficult, often because of a phenomenon called the butterfly effect. The butterfly effect explains that even small changes in one system can have large, unforeseeable changes other systems, such that the flap of a butterfly's wing creates a tornado a thousand of miles away. And that phenomenon is not limited to weather. As a competition enforcer, I have at times seen the blue skies of consensus suddenly swept by the cold winds of doubt and the clouds of dissension, and I have observed the political weather vane spin and spin again.

Although such forces are certainly not unique to competition enforcement, an important question is how we as competition enforcers and scholars respond to forces that may challenge our core principle that competition delivers the best results for consumers and society. Do we retreat to our storm shelters and hope it will blow over? Do we simply shift to reflect the prevailing winds? Or do we seek to reinforce and improve the structures that promote and safeguard competition so that they can withstand the tempest?

As you may have already guessed, I believe the third approach of strengthening the institutions that support competition is the best way to respond, and I offer three areas of focus. First, continuous improvement of the agencies that safeguard and promote market-based competition. Second, a greater appreciation for the structures that underlie the market economy, especially intellectual property rights that drive innovation. And third, encouraging competition agencies to look beyond private action and also challenge government barriers to competition.

For the remainder of my remarks, I would like to examine each of these three points more deeply in the context of China's experience over the past five years.



adoption of the simple transactions procedure has, by all accounts, significantly shortened the review time for a sizable majority of transactions, especially those that should take little time to review. SAMR recently announced that the average time to clear simple transactions is down to 17 days from when the notification is accepted. I am hopeful that with continued experience, SAMR's ability to dispose of even more transactions quickly will grow, leaving its staff more time to focus on the modest number of transactions that do present legitimate competition concerns.

Like efficiency, transparency is a key attribute, prompting greater public understanding of the agency's activities and promoting compliance with the law. The three AML agencies took impressive steps in recent years to enhance their transparency, including more detailed merger decisions by MOFCOM and lengthy rulings by SAIC.

NDRC engaged in an extensive effort to promote transparency through the issuance of guidelines in various areas, a process that I understand continues.

A second important aspect of transparency relates to the competition agency's interaction with the parties it investigates. Informing parties of the competition agency's concerns, including the facts, reasons, and evidence for its investigation, provides the parties an important opportunity to respond in detail. This frank and open exchange improves the quality and

The other two characteristics I recommended for agencies are a focus on competition factors in pursuit of consumer welfare, not that of competitors or others. China's enforcers have indeed frequently stated that, like other competition laws around the world, the AML is designed to promote the welfare of Chinese consumers. That is to be commended. Moreover, many of its agencies' enforcement decisions appear to accord with this approach, even if there are some instances where we might disagree on the best substantive analysis of the conduct at issue.

I am hopeful that SAMR will deepen its efforts to eliminate concerns that exist in the international community that some AML decisions are motivated by factors other than economic efficiency and consumer welfare. Dispelling beliefs that enforcement actions are protecting domestic competitors or promoting particular domestic industries should be a primary goal as SAMR assumes all responsibility for AML enforcement.

### **Respect for the Role of IP Rights in Enabling Market Competition & Innovation**

Another trend over the past 5 years is the increasingly vital role of IP in innovation-driven competition. Of course, the essence of any property right, including intellectual property, is the ability to determine who uses that property and under what terms. As more and more commerce involves IP, the appropriate treatment of intellectual property has become a crucially important issue for competition agencies across the globe.

One of the basic rules of a market economy is that, over time, capital will flow to where it can generate the highest possible returns. If IP rights are diminished inappropriately, however, the rate of return on investments in IP intensive industries will decline. Capital will simply shift

My research demonstrates that, across the developed world, there is a positive correlation between innovation rates and robust IP protections. The countries that protect IP rights within their borders tend to foster innovation, those that fail to create the necessary predicates to investments in innovation lag behind. Thus, all policymakers should care intensely about creating and maintaining an overall legal environment that encourages investment in IP creation and the innovation that it spurs.



