



## A Look Back at Year One

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It has been over a year since we first launched this Asia Column in December 2011. As the editor of the Column, I would like to thank all the contributors who made generous efforts to share their insights with us on antitrust and competition issues across Asia. I'd also like to thank all the readers of the Column for your continuous support to our Column throughout the year. We would not have made this Column a success without any of you.

This past year is a fruitful one for our Asia Column. We had authors from academia, governments, and private industries to discuss cutting-edge issues with our readers. We covered geographic regions including China, ASEAN, Singapore, Japan, Korea and Taiwan. Among those regions, China has attracted our attention as one of the most dynamic. Among all of antitrust issues in China, merger control is its most advanced and transparent area. Several authors over the past year discussed merger control policies in China from different perspectives. Xinzhu Zhang and Vanessa Yanhua Zhang's article painted a big picture of the merger control policy in 2011, and summarized some characteristics of the decisions made by the Anti-Monopoly Bureau of the Ministry of Commerce ("MOFCOM") up to December 2011. In particular, those two economists of Global Economics Group discussed the issues that MOFCOM might consider in its investigation and decision processes.

Also focusing on China were Angela Huyue Zhang and Mark Jephcott of Herbert Smith, who revisited the question of whether an international joint venture transaction needs to have a sufficient "nexus" to the jurisdiction in question for the transaction to fall within its merger control regime. In their article, they compared the merger regulations of the EU and China and their potential extraterritorial jurisdiction over newly created offshore joint ventures.

Michael Han and Zhaofeng Zhou of Freshfields Bruckhaus Deringer additionally examined the key distinctions between MOFCOM's approach to merger remedies and the approaches taken in other jurisdictions. They briefly analyzed the implications of such distinctions for companies, which may need to consider offering remedies to obtain merger clearance in China.

Ninette Doodoo and Angie Ng of Clifford Chance assessed information technology mergers in China. Their article provided an overview of MOFCOM's three conditional clearance decisions in the IT sector, considered MOFCOM's approach to horizontal and non-horizontal mergers in this sector and drew out some of the implications for future IT mergers in the China context.

Enforcement against abuse of dominance and monopoly agreements in China is another hot topic in which many experts and practitioners are interested. Peter Wang, Yizhe Zhang and Sebastien Evrard of Jones Day are some of those experts who discussed two investigations, namely price discrimination by China Telecom and China Unicom, and refusals to deal by dominant distributors of a pharmaceutical precursor, both of which carried out by the National Development and Reform Commission (“NDRC”). They also discussed a civil lawsuit filed against Baidu in an effort to project future consequences for abuse of dominance cases brought under the AML.

Margaret Wang and Richard Hughes of Freshfields Bruckhaus Deringer summarized the key developments in the fast-moving Chinese antitrust litigation landscape. In another article by Margaret Wang, she made an in-depth analysis of China’s current approach to vertical arrangements under the AML. She not only summarized the extent to which vertical arrangements have been scrutinized by antitrust regulators, but also walked through the instances where they have been challenged in the private sphere.

Susan Ning of King & Wood Mallesons reviewed the latest judicial practice under the current code of conduct of the AML, and she discussed the challenges presented by these new developments. James Modrall, Matthew Bachrack and Cunzhen Huang of Cleary Gottlieb Steen & Hamilton provided a complete picture of the court system in China and summarized the Judicial Interpretation recently released by the Supreme People’s Court of China. Hao Zhan of Grandall (now Anjie), in particular, discussed the critical aspects of evidence rules in private antitrust litigation in China. John Yong Ren and Jet Zhisong Deng of T&D examined public enforcement against cartels in China. Their article specifically compared the enforcement roles of two antitrust agencies NDRC and SAIC, and provided future outlook.

Hong Kong’s competition regime is another shining spot that has attracted people’s attention in 2012. Ping Lin of Lingnan University and Jingjing Zhao of Norton Rose discussed recent amendments to Hong Kong’s competition bill. Marc Waha and Julienne Chang of Norton Rose gave us a brief description of the tortuous legislative history, and described the scope of the Competition Ordinance of Hong Kong and its enforcement mechanism. Margaret Wang of Freshfields Bruckhaus Deringer went thoroughly through the Ordinance and discussed the challenges faced by businesses and government.

Other issues that were covered in China include Wei Tan (Renmin University)'s piece on SOEs and competition policy, which is Chinese characteristic and an area that enforcers of the US, EU and many other jurisdictions might not have dealt with; Jason Xiao Si (Tencent)'s article on network distribution and copy right protection, one of the center issues that many internet businesses have to consider, was also covered.

Beside China, our contributors also gave us an in-depth analysis of competition issues in the rest of the geographic regions of Asia. Ian R. McEwin of National University of Singapore (now Chulalongkorn University), a former chief economist of the Competition Commission of Singapore, presented an overview of competition law in ASEAN countries, which is another dynamic area in the antitrust community in Asia.

Etsuko Kameoka of Van Bael & Bellis and Mel Marquis of European University Institute discussed the trend away from Japanese exceptionalism in its merger control and JFTC's effort to make its system closer to global standard. SeongHoon Jeon of Sogang University and Commissioner of KFTC talked about the competition policy to promote "shared growth," which is among the top priority political agenda of all the parties in South Korea. Hee-Eun Kim of Covington & Burling discussed Korea's new presidency and development in criminal enforcement of competition law in South Korea. Progress also took place in Singapore, and Chester Toh of Rajah & Tann examined the Competition Commission of Singapore's intention to step up its merger enforcement. Andy C.M. Chen of Chung Yuan Christian University and former commissioner of TFTC went through twenty years of enforcement experience of Taiwan Fair Trade Law, and discussed the challenges faced by TFTC.

Last but not the least, while we are celebrating the Lunar New Year this month, we wish our Asian antitrust and competition community a successful and prosperous year ahead.

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