CHINA'S NEW ANTI-MONOPOLY LAW:
AN INTERNATIONAL ANTITRUST CONVERGENCE PERSPECTIVE

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This past summer (or winter, depending on which side of the equator one lives on), the People's Republic of China joined the ranks of more than one hundred nations that enforce antitrust laws, when its new Anti-Monopoly Law ("AML" or "The Law") took effect on August 1. Soon thereafter, official word came out about the three Chinese agencies tasked with enforcing the Law: China's Ministry of Commerce (MOFCOM); its National Development and Reform Commission (NDRC); and the country's State Administration for Industry and Commerce (SAIC). In addition we hear that the Anti-Monopoly Commission, designated under AML Art. 9 to coordinate AML enforcement, issue AML guidelines, and research and formulate antimonopoly policy, has now been set up, and is chaired by Chinese Vice Premier Wang Qishan.

The commencement of China's antitrust enforcement is part of an ongoing global trend, that began in the early 1990s, during which most of the world's nations have adopted antitrust enforcement regimes or revised and began to actively enforce such existing regimes. With economic activity increasingly transcending national borders, and jurisdictions applying their competition laws to firms and conduct outside their borders, achieving a reasonable degree of coherence and convergence in the application of

[1] The views expressed are the author's, not those of the Federal Trade Commission or any specific Commissioner.

competition laws is important nowadays. Without such convergence, global border-crossing business activities, which account for an ever-growing number of today's business activities, may be compromised, to the detriment of economies and, ultimately, consumers.[2]

The increasing importance of international antitrust convergence leads me to devote most of my remarks today to evaluating how China's new Law and related guidelines fit into the trend of international antitrust convergence reflected in the work of the International Competition Network (ICN). I will then use my remaining time to discuss certain concerns that have arisen with respect to how the AML will be enforced, which is of course still unknown at this time, and to advocate caution in implementation of the AML. As appropriate at a conference titled "unleashing the tiger" my remarks will include relevant references to these regal felines and lessons we can learn from our experience with them.

I. The AML from an International Antitrust Convergence Perspective

The ICN is an international body devoted exclusively to competition law policy and enforcement, whose goals include facilitating procedural and substantive convergence in antitrust enforcement through a results-oriented agenda and informal, project-driven organization.[3] Currently in its 7th year and growing steadily, the ICN's membership now numbers 103 competition agencies from 92 jurisdictions, who work together in specialized working groups on documents aiming to facilitate antitrust enforcement convergence.

The AML's language is not very different from that of other modern antitrust laws. It contains provisions dealing with: agreements between competitors; the exercise of monopoly power; a system of pre-merger notification and substantive merger review; investigation processes; and remedial provisions. I will now look at the Law in light of certain ICN documents, organizing my remarks under common competition law categories.

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[2] For more on international antitrust convergence see: Randolph Tritell, INTERNATIONAL ANTITRUST CONVERGENCE: A POSITIVE VIEW, in the American Bar Association Antirust Section's Antitrust magazine (Summer 2005), available at http://www.ftc.gov/bc/international/docs/tritellpostiveview.pdf.

[3] See the ICN website at http://www.internationalcompetitionnetwork.org/.

A. Objectives of the Law

I begin by looking at the objectives of the AML. While I am not aware of an ICN work product on general objectives of an antitrust enforcement, the ICN 2007 Report on *Objectives of Unilateral Conduct Laws, Assessment of Dominance / Substantial Market power, and State-Created Monopolies*[4] ("Objectives Report") is useful in this regard. In providing responses that laid the base of this report, many jurisdictions did not make a distinction between objectives of their overall competition rules and those of their unilateral conduct rules. It therefore seems that jurisdictions' overall objectives of antitrust enforcement can be inferred from their stated objectives for enforcing unilateral conduct rules, as the two tend to be one and the same.

Many of the objectives listed in AML Articles 1 and 4, which spell out the objectives of the Law, seem to be in line with the objectives mentioned in the ICN Objectives Report that summarized responses of 33 jurisdictions and 14 non-governmental advisors. Explicit AML objectives include: "safeguarding fair market competition"; "protecting the interests of consumers"; "improving economic efficiency"; and "improving a unified, open, [and] competitive…market system". These objectives seem to broadly conform with the objectives identified in the Objectives Report that included, respectively: "ensuring an effective competitive process"; "promoting consumer welfare"; "maximizing efficiency"; and "achieving market integration." Such apparent convergence is quite encouraging, and the drafters of the Law should be commended for it.

At the same time, a number of the AML objectives stated in Articles 1 and 4 seem foreign to what is commonly thought of as antitrust objectives, including goals such as: "promoting the healthy development of the socialist market economy"; "improving macroeconomic control" and promoting an "orderly market system." Naturally, convergence has its limits, and every jurisdiction tailors its antitrust laws in the way it feels best suits its specific circumstances. However, these specific goals are puzzling because they seem to contradict the spirit of antitrust enforcement, and to suggest market circumstances over which such enforcement may be meaningless.

[4]Available at http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Objectives%20of%20Unilateral%20Conduct%20May%2007.pdf.

It is difficult to reconcile a robust market economy with a socialist economy that is typically centrally planned by the government. Similarly, competition laws, as their name suggests focus their attention on ensuring an unobstructed competitive market process, rather than on governmental "macroeconomic control," a concept which sounds almost antithetical to the former. Finally, a free-flowing competitive process can hardly be characterized as "orderly"; like any competition it is a rather unpredictable process. Some economists have even gone as far as describing a fierce competitive process and the innovation it brings about as a "perennial gale of creative destruction."[5] Hence, an antitrust goal of ensuring an "orderly market system" may contradict the bedrock of antirust enforcement.

Because goals such as a "socialist…economy," "macroeconomic control," and "orderly market system" are difficult to reconcile with antitrust enforcement, as viewed by most, if not all, jurisdictions that have antitrust regimes, one would hope that these terms are merely formalistic relics of China's past, reflecting the country's current state of transition from a planned-controlled economy into a market economy -- "paper tigers" if you will. A free-running market economy and antitrust enforcement feed each other and are closely intertwined. As the old Cambodian proverb goes: "the tiger depends on the forest; the forest depends on the tiger." Similarly, meaningful competition enforcement cannot exist without an unobstructed market economy upon which a competitive process develops, and a robust competitive process depends on sound antitrust enforcement to safeguard it. Market "control" and "order" are adverse to this ecosystem, as they would eliminate antitrust's vital competitive "forest" habitat.

B. Unilateral Conduct Rules

This past April, at its 7th Annual Conference, the ICN adopted Recommended Practices on Dominance/Substantial Market power Analysis Pursuant to Unilateral Conduct Laws ("Dominance Recommended Practices" or "DRPs").[6] Review of the AML Third Chapter, which covers abuse of a dominant market position, reveals a significant

[5] Joseph Schumpeter, Capitalism, SOCIALISM AND DEMOCRACY, 81-86 (New York and London: Harper and Row 1942).

[6] ICN Unilateral Conduct Working Group, RECOMMENDED PRACTICES ON DOMINANCE/SUBSTANTIAL MARKET POWER ANALYSIS PURSUANT TO UNILATERAL CONDUCT LAWS, available at http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Unilateral_WG_1.pdf.

degree of convergence between the Law and the widely accepted ICN Dominance Recommended Practices as follows:

First, in line with the DRP's preamble, AML Art. 17 does not condemn market power as such, but merely prohibits certain abuses of a dominant market position. **Second**, Art. 18 of the Law provides six different considerations to be used in the assessment of a dominant position, including: **(1)** market share; **(2)** the ability to control sale/purchase prices; **(3)** financial status and technical capabilities of the undertaking; **(4)** extent of other market players' dependence on the potentially dominant player; **(5)** difficulty of entry into the relevant market; and **(6)** other relevant factors.

Many of these considerations seem in line with the DRPs, that, respectively: **(1)** recognize market shares as an indication or starting point for the assessment of dominance (although the analysis does not stop there);[7] **(2)** advocate the use of an analytical framework firmly grounded in economic principles in assessing dominance – and the last paragraph of Art. 17 and Art. 18(2) seem to suggest the use of such economic principles, with the latter also specifically addressing "buyer power" which is mentioned in the DRPs;[8] **(3) & (4)** suggest other circumstances deemed relevant, in line with the DRPs that encourage consideration of further criteria as appropriate in the specific circumstances;[9] **(5)** highlight the importance of barriers to entry as an integral part of the analysis of dominance;[10] and **(6)** call for the comprehensive consideration of factors affecting competitive conditions in the market under investigation.[11]

Third, AML Art. 17's description of five of the six abusive conduct patterns[12] is modified by the phrase "without any justification." This modification suggest a *rule of reason* analysis, under which only unreasonable restraints of competition will be found abusive, in other words, justifications (such as efficiencies) may preclude the finding of an abuse. I am not aware of broad work examining international convergence in the area of *rule of reason* vs. *per-se* analysis. However, a rule of reason analysis seems to be increasingly utilized around the world, especially in the complex area of unilateral conduct.

[7] DRPs, *Id*., Arts. I.2. Comment 2; II.3.
[8] DRPs, *supra* note 6, Art II.8.
[9] DRPs, *supra* note 6, Art II.8.
[10] DRPs, *supra* note 6, Art II.7.
[11] DRPs, *supra* note 6, Art I.2.
[12] AML art. 17(7) adds a broad additional category of other abusive conduct as determined by the Anti-Monopoly Commission.

Furthermore, a recent ICN report has found that, with respect to exclusive dealing, the majority of responding jurisdictions indicated that justifications and defenses, including efficiencies, were available to dominant firms – which suggests convergence around a rule of reason analysis at least in this specific context.[13]

The above elements of AML Arts. 17 and 18 suggest a significant degree of convergence between dominance assessment under the AML and its assessment in other jurisdictions. However, at the same time, certain aspects of the Law do not fit as neatly into the convergence picture. AML Art. 19 sets up market share presumptions of dominance despite the DRPs finding of increasing convergence toward the principle that dominance analysis reaches well beyond market shares, and their conclusion that assessment that goes well beyond market shares is highly desirable, and that most jurisdictions do not use such presumptions.[14] This divergence is somewhat mitigated by the concluding paragraph of Art. 19, which renders the market share presumption rebuttable, and thus in line with the DRP's recommendation that jurisdictions should remain receptive to evidence that may overcome such a presumption.[15] Another element of divergence may be deduced from the fact that the AML does not set up a market share-based safe harbor under which dominance is not likely to be found, in divergence from the DRP's recognition of the potential benefits of such a safe harbor.[16]

C. Merger Enforcement

The AML merger review articles seem to apply equally to all transactions, and hopefully will replace the previous merger review rules under which China reviewed only certain transactions involving foreign parties pursuant to the merger review provisions of the Foreign Investment Law. Overall, the AML's merger review standards and procedures

[13] ICN Unilateral Conduct Working Group, REPORT ON SINGLE BRANDING/EXCLUSIVE DEALING, pp. 3, 17-20, available at http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Unilateral_WG_4.pdf.
[14] DRPs, *supra* note 6, Preamble, Art. I.1, and Art. II.6. Comment 3.
[15] DRPs, *supra* note 6, Art II.6. Comment 1
[16] DRPs, *supra* note 6, Art II.5. Note that the penultimate paragraph of Art. 19 sets up a safe harbor from the presumption of dominance under Arts. 19(2) and 19(3) for market players with a market share of less than 10%. However, the Law's language describes this safe harbor as protecting from a presumption of dominance, rather than from a finding of dominance. In other words, it merely a sets a lower cap on the Law's presumption of dominance.

seem reasonably in line with the principles and merger notification procedures on which there is broad agreement by the many jurisdictions that enforce antitrust laws.

1. Substantive Merger Review

The guiding ICN authority in this area is the Recommended Practices for Merger Analysis, the first three of which were adopted earlier this year at the ICN 7th annual conference in Kyoto ("MRPs").[17] The MRPs are still a work in progress, and additional recommended practices will hopefully be adopted to augment them over the next few years. The fourth Chapter of the AML (Arts 20-31) seems generally to conform with the existing MRPs. Thus for example, in line with the MRPs, Art. 28 AML identifies the purpose of its merger analysis as aiming is to prohibit only mergers that are likely to harm competition.[18] At the same time, in listing some of the factors to be considered in merger analysis, AML Art. 27(4) and 27(5) respectively consider the proposed merger's effect "on other undertakings" and "on the development of the national economy." These considerations, especially the latter, do not seem like competition considerations, and one wonders as to their exact meaning.

A **second** example worth noting is that the AML merger chapter as a whole (Arts. 20-31) seems to provide a "comprehensive framework for effectively addressing mergers that are likely to harm competition" as required by the ICN MRPs.[19] **Finally**, the MRPs note that while market shares and measures of market concentration play an important role in merger analysis, and can provide useful initial guidance to help identify mergers that may raise competitive concerns, they are not determinative of ultimate competition concerns.[20] In listing market shares and concentrations as two out of six considerations to be taken into account, the last of which being an open "other factors having effects" consideration, AML Art. 27 seems to be in line with the MRPs guidance that market shares

[17] ICN Mergers Working Group, RECOMMENDED PRACTICES FOR MERGER ANALYSIS, available at http://www.internationalcompetitionnetwork.org/media/library/Cartels/Merger_WG_1.pdf. Another important resource worth mentioning in this regard is the ICN MERGER GUIDELINES WORKBOOK, available at http://www.internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/ICNMergerGuidelinesWorkbook.pdf.

[18] MRPs, *id*., Art. I.A. Note that the MRPs language, throughout the document, speaks of mergers that are likely to harm competition significantly, while the AML does not use this modifier.

[19] MRPs, *supra* note 17, Art. I.B.

[20] MRPs, *supra* note 17, Arts. II.A and II.B.

and concentrations are useful, but not necessarily conclusive for identifying merger deals that raise competitive concerns.

2. Merger Notification Procedures

The ICN Recommended Practices for Merger Notification Procedures[21] ("NP-RPs") are the main ICN document in this area. On August 3, 2008, China's State Council issued pre-merger notification regulations under the AML,[22] to provide additional procedural guidance in this regard ("PMN Regulations"). The PMN Regulations are very brief, and may be revised in the near future. The limited information they provide, together with the fourth chapter of the AML (Arts. 20-31), suggest a system that is generally consistent with the ICN NP-RPs.

The **first** ICN NP-RP sets down a local nexus requirement, under which jurisdiction should be asserted only over transactions that have an appropriate nexus with the jurisdiction concerned.[23] Article 3 of the Chinese PMN Regulations sets out notification thresholds that seem to satisfy the NP-RPs local nexus standard, as they reference the activities of at least two of the parties to a merger to China. The **second** NP-RP requires that notification thresholds be clear, understandable and based on objectively quantifiable criteria[24] -- standards that seem to be met by the clear and understandable language of PMN Regulations' Art. 3, that are based on quantifiable criteria (turnover, rather than market shares).

The third NP-RP, recommends that jurisdictions that prohibit closing while the competition agency reviews the transaction, or for a specified time period following notification, should not impose deadlines for pre-merger notification.[25] Both Art. 21 AML and Article 3 of the PMN Regulations indicate that notification in China will have the effect of suspending the closing, and seem in line with the third NP-RP because they impose no deadline for the notification. **Fourth**, with respect to the merger review periods, AML Arts. 25 and 26 set out a 30-day review period for the initial investigation,

[21] Available at http://www.internationalcompetitionnetwork.org/media/archive0611/mnprecpractices.pdf.
[22] State Council Decree No. 529, *Rules of the State Council on Notification Thresholds for Concentrations of Undertakings* (August 3, 2008).
[23] RP-NPs, *supra* note 21, Art. 1.
[24] RP-NPs, *supra* note 21, Art. 2.
[25] RP-NPs, *supra* note 21, Art. 3(B).

that may be extended by 90 days where a second, more thorough investigation is deemed necessary. The review period may be further extended by 60 days under the circumstances set out in AML Art. 26. These review periods appear to conform with the "reasonable period of time" requirement for completion of merger reviews under the NP-RPs.[26] However, contrary to the NP-RPs,[27] The AML and PMN Regulations do not incorporate procedures for expedited review and clearance of notified transactions that do not raise material competitive concerns, nor do they employ tailored provisions to accommodate particular circumstances associated with non-consensual transaction and sales in bankruptcy.

Fifth, the AML's requirements for the notification as set out in Art. 23 of the Law seem mostly in line with the NP-RPs that limit these requirements so as to avoid unnecessary burdens on parties to transactions that do not present material competitive concerns. However, AML Art. 23(5) broadly allows the reviewing agency to require any "other documents," which leaves the parties without significant guidance as to what additional details may be required, in contrast with NP-RP 5.(C), and opens the door for broad requirements that do not meet the previously mentioned NP-RP standard. Another significant divergence from the NP-RPs,[28] emanates from the AML and PMN Regulations' failure to limit the translation requirements and formal authentication burdens, which may impose huge financial burdens and significant time delays on notifying parties.

Quite a few of significant issues covered by the NP-RPs are not covered by the AML and PMN Regulations. These include: the recommendation that parties be permitted to notify proposed mergers upon certification of a good faith intent to consummate the proposed transaction; the manner in which merger investigations are conducted; issues of procedural fairness; transparency in the application of merger review; confidentiality of business secrets and other confidential information; interagency coordination; merger remedies; competition agency powers; and periodic review of merger control provisions.[29] Only time will reveal how these issues will be dealt with in China. In the interim, I offer only two comments in this regard:

[26] RP-NPs, *supra* note 21, Art. 4(A).
[27] RP-NPs, *supra* note 21, Arts. 4(B) and 4(E) respectively.
[28] RP-NPs, supra note 21, Art. 5(D).
[29] RP-NPs, supra note 21, Arts. 3(A) and 6-13 respectively.

With respect to **interagency coordination**, I see room for optimism. The U.S. agencies' ongoing contacts with our Chinese counterparts have allowed us to develop an excellent working relationship. Despite the different cultural and market starting points, we have found our Chinese counterparts quite open to our comments and suggestions, and are already beginning to see early signs of cooperation with them. Therefore, we may well witness interagency coordination of the type encouraged by the ICN NP-RP's Art. 10. At the same time, with respect to **transparency**, I believe that many challenges still lie ahead. Thus, for example, AML Art. 23(5) grants the agency broad discretion with respect to documents required for notification; PMN Regulations' Art. 4, provides for review of transactions that do not meet the merger thresholds, but leaves many open questions.

As an interim summary of the above review, I would note that the AML and its derivative regulations' standards of merger notification procedures seem broadly in line with the ICN Recommended Practices in this area. However, at the same time, the Chinese rules diverge from the international standards on a number of important issues, and are silent with respect to quite a few other significant matters, which does not allow for a clear assessment of convergence in these latter areas.

II. Translating the Law into Practice, or from a Paper Tiger into an Unleashed Tiger

In the absence of a significant enforcement track record, due to the fact that the AML took effect only two months ago, my remarks today were limited to the language of the AML and derivative PMN Regulations. However, only enforcement of the Law, which is still yet to play out, will be its real test. Given the relatively solid language of the AML and PMN regulations, which broadly conform with international antitrust best practices (despite some areas of divergence), I believe there are grounds for optimism. An old Chinese proverb observes that "a tiger father has no canine sons," a phrase generally equivalent to the English language's "the apple doesn't fall far from the tree." In an analogy to the same rationale, one would hope that the implementation of the AML, whose normative parent is a relatively solid piece of antitrust legislation that seems reasonably in line with international antitrust best practices, would equally conform with the latter.

At the same time, there may be some reason for concern that implementation of the AML will, in fact, diverge from international best practices. For example, in a March 1, 2008 speech, the Chairman of the NPC Legal Affairs Committee said, "The AML needs to coordinate with Chinese industrial policy and other policies, like the policy to foster large (domestic) enterprises and groups so that they could gain international competitiveness, and considerations on national economic development and technical progress." A second potential cause of concern, that corresponds with the previous example, was reported in the Chinese media on August 5, 2008, when an official of the State-owned Asset Supervision and Administration Commission (SASAC), the government supervisory body of the nation's large state-owned enterprises (SOEs), claimed that SOEs are exempt from the AML rules.[30]

Finally, it should also be noted that the membership Anti-Monopoly Commission (AMC), that has been tasked with coordinating antitrust policy and enforcement, will be very broad. Chaired by Vice Premier Wang Qishan, aided by four deputies from the three AML enforcement agencies and one State-Council official, it is our understanding that the AMC membership will also include representatives of more than ten other regulatory agencies. These non-antitrust regulators' approach to how antitrust enforcement should be applied is a complete unknown at this stage.

III. The Way Forward - A Call for Caution

Finally, as a general remark and a follow up to my last comments, I would advocate a healthy measure of caution in the implementation of the AML. The adoption of a competition law presents both opportunities and risks. Properly designed and implemented antitrust enforcement can bring significant benefits and play an important supportive role in China's transition into a market-based economy. It can bring about lower prices, greater output, better quality, and enhanced innovation, all to the benefit of domestic consumers as well as the economy as a whole.

[30] Reported in the Economic Observer Weekly on August 5, 2008. See also an August 12, 2008 news item by China Finance Online at http://finance1.jrj.com.cn/news/2008-08-12/000003921431.html.

At the same time, however, the application of competition law entails many potential pitfalls. As we know, it can be difficult to distinguish some types of anticompetitive conduct from vigorous competition on the merits. Even an experienced antitrust agency can adopt policies and bring cases that appear, *ex post facto*, to have been unwarranted because they diminish consumer welfare and distort the competitive process, and the risk of mistakes is of course exacerbated when an agency is just beginning to enforce a new law.

A competition enforcement system often attracts complainants seeking to use it to restrain their competitors, to the detriment of consumers. Political forces may also seek to influence an agency's enforcement agenda based on non-competition social goals, or even to favor domestic over foreign firms. Competition policy can become an instrument to achieving neighboring but incompatible objectives, such as the creation of national champions through industrial policy. Misguided antitrust enforcement that gives in to such pressures restricts competition, consumer welfare and efficiency, as consumers face higher prices and lower quality. Such erroneous antitrust enforcement may also be injurious to such complainants and protected national champions, because shielding them from competition renders them less efficient and innovative, and thus less able to compete in global markets, which also hurts imports and the economy as a whole.[31] As John F. Kennedy, the thirty-fifth U.S. President observed in a different context in his inaugural address: "in the past, those who foolishly sought power by riding on the back of a tiger ended up inside." Seeking protection from competitive market forces by attempting to steer the AML tiger into a wrong path, may similarly bring about undesirable results.

In cautioning against erroneous antitrust enforcement that is guided by non-competition considerations, I would draw special attention to the complex interface area of antitrust and intellectual property. Art. 55 of the AML stipulates that, although the Law is "inapplicable to the exercise of intellectual property rights pursuant to provisions of law," it does apply to "conduct that eliminates or restricts competition by abusing IP rights." Although facially neutral, Art. 55 has created a tremendous amount of anxiety in the business community, because it does not clarify the meaning of the term "abuse of IP

[31] See remarks of former FTC Chairman Deborah Platt-Majoras, NATIONAL CHAMPIONS: I DON'T EVEN THINK IT SOUNDS GOOD, delivered at the EU Competition Day (Munich, Germany, March 26, 2007), available at http://www.ftc.gov/speeches/majoras/070326munich.pdf.

rights." It also plays into broader concerns regarding the treatment of intellectual property rights in China, particularly those held by non-Chinese owners. These concerns are intensified by official Chinese statement such as the June 2007 statement of Zhang Qin, Deputy Director of China's State Intellectual Property Office (SIPO), who highlighted the importance of banning misuse of intellectual property, a ban he characterized as "largely aimed at multi-national companies, U.S. companies in particular."[32]

This area of the AML is receiving much attention in China these days. In announcing its National IPR Strategy in June of this year, China's State Council identified "preventing IP abuse" as one of the Strategy's five key focuses. We hope that the Chinese development of this complex area of law, that even experienced antitrust agencies find difficult, be guided solely by sound competition considerations. More specifically, we suggest a clarification that AML Art. 55 does not condemn just any "abuse of IP rights" but, rather, that a violation under it requires a finding that some provision of the Law's prohibitions relating to agreements or dominance has been infringed, would be helpful. Such clarification would constitute sound antitrust enforcement because it would apply the same legal analysis for antitrust issues relating to intellectual property as to other types of allegedly anticompetitive conduct.

My very last point today highlights the importance of vigilance against over-enforcement of the Law. Despite the scholarly appearance of most antitrust enforcers (present company excluded), an antitrust enforcement regime is a very powerful tool. Although anti-competitive conduct harms consumers, over-enforcement of antitrust laws leads to significant false positive results that can chill pro-competitive behavior to the detriment of consumers. In speaking of dangerous endeavors, Chairman Mao has once advised that: "In waking a tiger, use a long stick." In a similar fashion, I would advocate caution by China's nascent antitrust enforcers in unleashing their new AML tiger. As they begin to enforce their new Law, they need to take care not to over-enforce it in a manner that may disadvantage their consumers, and, ultimately, their economy.

[32] Zhang Qin, BAN ON THE ABUSE OF IP, ABSENCE OF RELEVANT LEGISLATION (June 3, 2007) available at http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=58847&col_no=925&dir=200703.